IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
GST, INC.,[1]	)	Case No. 25-12188 (KBO)
Debtor.	)	

MOTION OF DEBTOR AND DEBTOR IN POSSESSION FOR ENTRY OF INTERIM AND FINAL ORDERS (I) AUTHORIZING THE DEBTOR TO (A) OBTAIN SENIOR SECURED POSTPETITION FINANCING AND (B) USE CASH COLLATERAL; (II) GRANTING LIENS AND SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS; (III) GRANTING ADEQUATE PROTECTION; (IV) MODIFYING THE AUTOMATIC STAY; (V) SCHEDULING A FINAL HEARING; AND (VI) GRANTING RELATED RELIEF

GST, Inc., as debtor and debtor-in-possession (the "Debtor" or the "Company") in the above-captioned chapter 11 case (this "Chapter 11 Case"), hereby submits this motion (this "Motion") seeking (i) entry of an interim order, substantially in the form annexed hereto as **Exhibit A** (the "Interim Order"), and (ii) following the Final Hearing (as defined herein), entry of a final order granting the relief requested herein (the "Final Order" and, together with the Interim Order, the "DIP Orders"),[2] authorizing the Debtor to obtain postpetition secured financing, approving the DIP Credit Agreement (defined below), granting perfected liens to secure the DIP Obligations, granting adequate protection, granting related relief including if consent is later granted authorizing the use of cash collateral, and scheduling a final hearing on the Motion.

In support of the Motion, the Debtor relies upon and fully incorporates by reference the *Declaration of Nicholas Rubin in Support of the Debtor's Chapter 11 Petition and First Day*

[1] The last four digits of the Debtor's taxpayer identification number are 1002. The Debtor's corporate headquarters and service address is 322 Culver Boulevard, Suite 150, Playa Del Rey, CA 90293.

[2] The Debtor will file the form of Final Order prior to the Final Hearing (as defined herein).

Pleadings (the "Rubin Declaration"), filed contemporaneously with this Motion,[3] and respectfully states as follows:

PRELIMINARY STATEMENT

1. By this Motion, the Debtor respectfully requests that the Court grant authorization, pursuant to sections 364(c) and (d) of the Bankruptcy Code, to obtain a DIP Facility (as defined below) from Winners Alliance, Inc. (the "Prepetition Lender" or the "DIP Lender"), which will provide the Debtor with the liquidity necessary to continue operations, preserve its estate, and pursue a successful reorganization.

2. The Debtor requires access to the DIP Facility to fund this Chapter 11 Case and to effectuate one or more going-concern transactions, through a chapter 11 plan or sale under Bankruptcy Code section 363 (or a combination of the foregoing), that maximizes recoveries for all stakeholders. As of the Petition Date, the Debtor has approximately $143,000 in cash on hand, all of which is subject to existing liens of the Prepetition Lender. The Prepetition Lender has consented to the Debtor's use of Cash Collateral pursuant to the terms of the proposed Interim Order and the Budget. However, even with the use of the Cash Collateral on hand, the amount is not enough to fund the administration of this Chapter 11 Case. Thus, postpetition financing under the DIP Facility is necessary for the Debtor to have access to sufficient liquidity to maintain ongoing day-to-day operations, and fund working capital needs and expenses incurred administering its estate.

3. The Debtor proposes a roll-up of a portion of its Prepetition Secured Obligations in connection with the DIP Facility, which is critical to securing the necessary financing. The roll-up provisions reflect the best available financing option and are the result of extensive arms'-length

[3] Capitalized terms used but not otherwise defined in this Motion shall have the meanings ascribed to such terms in the Interim Order and the DIP Credit Agreement, as applicable.

negotiations with the DIP Lender. Given the Debtor's financial condition and the lack of other viable financing options, the roll-up is a necessary feature to secure liquidity and ensure that the Debtor can continue operations. The Debtor submits that the roll-up is fair, reasonable, and appropriate under the circumstances and should be approved.

4. Although the DIP Lender is an insider of the Debtor, the Debtor submits that the proposed DIP Facility is appropriate and necessary under the heightened scrutiny standard applicable to insider transactions. The Debtor has engaged in arms'-length negotiations with the DIP Lender and has reviewed the terms of the DIP Facility with its independent financial advisors. Given the absence of alternative financing options and the urgent need for liquidity, the Debtor believes that the DIP Facility provides the best available terms and serves the best interests of the estate. The Debtor solicited eleven (11) debtor-in-possession financing proposals, but to date has only received a debtor-in-possession financing proposal from the DIP Lender. The terms of the DIP Facility were scrutinized by the independent member of the Debtor's board of directors, and no other financing proposal was offered to the Debtor. If the Debtor is unable to gain access to the DIP Facility, the proposed path to a successful emergence of the Chapter 11 Case and the Debtor's value as a whole would be materially and irreparably harmed. Absent the liquidity provided by the DIP Facility and use of Cash Collateral, the Debtor likely would, among other things, be unable to continue its operations or pay administrative costs and expenses.

5. The relief requested by this Motion is a necessary step to preserving the Debtor's operations and serves as a bridge to emerging from the Chapter 11 Case, which is the optimal result for the Debtor's estate and all of its stakeholders. On this record, and as the Debtor is prepared to demonstrate at the interim hearing on this Motion and at the Final Hearing, the relief requested herein represents a sound exercise of the Debtor's business judgment, meets the

heightened scrutiny of a transaction between a debtor and its insider, and should therefore be approved.

RELIEF REQUESTED

6. By this Motion, the Debtor respectfully requests entry of the DIP Orders and the following relief as provided therein:

a. ***DIP Facility**:* authorizing the Debtor to obtain post-petition debtor-in-possession financing from the DIP Lender pursuant to a senior secured super-priority term loan (the "DIP Facility"), consisting of the following components (i) a new money multi-draw term loan facility in the aggregate principal amount of up to $1,100,000 (the "Interim New Money DIP Loans"); (ii) during the period from the entry of this Interim Order through and including the earlier of (x) the entry of the Final Order or (y) the DIP Termination Date (as defined in the Interim Order), upon each advance of Interim New Money DIP Loans, a "roll-up" of the Debtor's Prepetition Secured Obligations (as defined below) under the Prepetition Credit Agreement in an amount equal to such advance (the "Interim Roll-Up DIP Loans"), which shall be automatically rolled up, refinanced, and converted into postpetition obligations under the DIP Facility on an equal basis; (iii) a new money term loan facility in the aggregate principal amount not to exceed $1,800,000 (the "Final New Money DIP Loans," together with the Interim New Money DIP Loans, the "New Money DIP Loans"); and (iv) upon entry of the Final Order, a roll-up of $3,250,000 of the Prepetition Secured Obligations (the "Additional Roll-Up DIP Loan," together with the Interim Roll-Up DIP Loans, the "Rolled-Up DIP Loans," and, together with the New Money DIP Loans, the total "DIP Loans"), as further detailed in the DIP Documents (as defined below);

b. ***DIP Documents***: authorizing the Debtor to execute, deliver, and enter into the *Senior Secured Superpriority Debtor-in-Possession Credit and Security Agreement* (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time, the "DIP Credit Agreement," and together with the schedules and exhibits attached thereto, and all agreements, documents, instruments, and amendments executed and delivered in connection therewith, the "DIP Documents"), in substantially the form annexed to the Interim Order as **Exhibit 1**, and to perform all of the Debtor's obligations thereunder, and such other and further acts required in connection with the DIP Documents;

c. ***DIP Obligations***: authorizing the Debtor to enter into the DIP Facility and to incur all obligations owing thereunder and under the DIP Documents to the DIP Lender (including the fees and expenses of the Lender Professionals and all other Indebtedness, the "DIP Obligations"), and granting the DIP Lender allowed superpriority administrative expense claim status in the Chapter 11 Case and in any Successor Case, subject to the Carve-Out;

d. ***DIP Liens***: authorizing the Debtor to grant to the DIP Lender, and authorizing the Debtor to incur, the DIP Liens (as defined below) in all DIP Collateral to secure the DIP Obligations (including in respect of the Interim Roll-Up DIP Loans), which liens and security interests shall be automatically perfected, on the terms and conditions set forth herein and in the applicable DIP Documents, subject to the Carve-Out;

e. ***Proceeds of DIP Facility***: authorizing the Debtor to use proceeds of the DIP Facility in accordance with this Interim Order and the DIP Documents, including in accordance with the Budget (subject to Permitted Variances, unless otherwise expressly specified in the DIP Credit Agreement) as required herein;

f. ***Fees and Expenses***: authorizing and directing the Debtor to pay the principal, interest, fees, expenses, and other amounts payable and reimbursable under the DIP Documents or this Interim Order as such become earned, due, and payable, including, without limitation, the reasonable fees and disbursements of the DIP Lender (including, without limitation, the Lender Professionals), as and to the extent provided in, and in accordance with, the applicable DIP Documents and this Interim Order;

g. ***Cash Collateral***: authorizing the Debtor to use the proceeds of the DIP Loans and the collateral under the Prepetition Credit Agreement (the "Prepetition Collateral"), including Cash Collateral (as defined below), in accordance with the terms hereof, including pursuant to the Budget (as defined below), as further described herein, to (a) pay fees, interest, and expenses under the DIP Facility; (b) provide working capital for, and for other general corporate purposes of, the Debtor, including for funding the Carve-Out; (c) pay for bankruptcy-related costs and expenses; and (d) pay Adequate Protection Obligations;

h. ***Adequate Protection***: granting adequate protection, with respect to the Debtor, to the Prepetition Lender, on the terms set forth in the DIP Documents and this Interim Order, for any diminution in value of its interests in the Prepetition Collateral, including Cash Collateral, resulting from, among other things: (i) the use of Cash Collateral during the Chapter 11 Case; (ii) the use, sale, or lease of any of the Prepetition Collateral; (iii) the imposition of the automatic stay pursuant to Bankruptcy Code section 362(a); and/or (iv) for any other reason for which adequate protection may be granted under the Bankruptcy Code (collectively, the "Diminution in Value");

i. ***Automatic Stay:*** authorizing a modification of the automatic stay imposed under section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of the Interim Order and the other DIP Documents;

j. ***Immediate Effectiveness***: granting a waiver of any applicable stay with respect to the effectiveness of the Interim Order (including a waiver pursuant to Bankruptcy Rule 6004(h)) and providing for immediate effectiveness of this Interim Order;

k. ***Final Hearing***: scheduling a final hearing (the "Final Hearing") to consider approval of the relief requested in this Motion on a final basis and entry of the Final Order, and approving the form of notice with respect to the Final Hearing; and

l. ***Further Relief***: granting the Debtor such other and further relief as is appropriate.

JURISDICTION AND VENUE

7. The United States Bankruptcy Court for the District of Delaware (the "Court") has jurisdiction over this Chapter 11 Case and this Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated as of February 29, 2012. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

8. Venue of this Chapter 11 Case and this Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory bases for the relief requested in this Motion are sections 105(a), 361, 362, 363, 364, 503, 506, 507 and 552 of 11 U.S.C. § 101 *et seq.* (the "Bankruptcy Code"), rules 2002, 4001, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and rule 4001-2 of the Local Rules for the United States Bankruptcy Court for the District of Delaware (the "Local Rules").

9. Pursuant to Local Rule 9013-1(f), the Debtor consents to the entry of a final judgment or order on this Motion if it is determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

BACKGROUND

10. On December 11, 2025 (the "Petition Date"), the Debtor commenced a voluntary case under chapter 11 of the Bankruptcy Code. The Debtor is authorized to continue to operate its business and manage its property as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

11. No statutory committee of unsecured creditors has been appointed by the Office of

the United States Trustee for the District of Delaware (the "U.S. Trustee") and no trustee or examiner has been appointed in the Chapter 11 Case.

12. Additional details regarding the Debtor, its business, and the events leading to commencement of this Chapter 11 Case, are set forth in the Rubin Declaration and are incorporated herein by reference.

PROPOSED POSTPETITION FINANCING

13. The DIP Facility contemplates a postpetition senior secured superpriority debtor in possession multi-draw term loan facility, in an aggregate principal amount of up to $2,900,000 of new money. The Debtor, its legal and financial advisors, and the DIP Lender engaged in arms'-length, good faith negotiations regarding the terms offered by the DIP Lender. Over the course of multiple weeks, the Debtor and the DIP Lender, with the assistance of their respective legal and financial advisors, worked to negotiate the most favorable terms of the DIP Facility. Given the nature of the Debtor's business, the Debtor was unable to obtain any other source of financing, and such efforts would have been futile in light of the Debtor's existing capital structure.

14. The terms and conditions of the DIP Facility, including the interim partial and final roll-up of a portion of the Prepetition Obligations, are fair and reasonable under the circumstances, especially in light of the Debtor's need for postpetition financing and its capital structure, among other factors. The terms and covenants contained in the DIP Documents are the result of negotiation and are an integral component of the overall terms of the DIP Facility, which in turn is integral to the broader success of the Chapter 11 Case.

15. Additionally, the DIP Credit Agreement contemplates certain milestones (the "DIP Milestones") that the Debtor must meet throughout the Chapter 11 Case, the failure of which would constitute an Event of Default under the DIP Documents. These DIP Milestones have been negotiated with the DIP Lender and are essential to ensure the Debtor remains on track toward a

successful restructuring or sale. The Debtor intends to meet these DIP Milestones in order to maximize the value of the estate and benefit all stakeholders.

16. Moreover, as a condition to the extension of credit under the DIP Documents, the DIP Lender and the Debtor have agreed that proceeds of any advance made under the DIP Documents shall be used exclusively in a manner consistent with the Budget (subject to Permitted Variances). No portion of the proceeds of any advance under the DIP Documents or any Cash Collateral shall be used, directly or indirectly, to make any payment or prepayment that is prohibited under the DIP Documents. The Debtor's initial budget (the "Budget") reflecting the anticipated cash receipts and anticipated disbursements for each week during the period from the Petition Date through and including the end of the thirteenth week following the Petition Date, is annexed to as **Exhibit 2** to the Interim Order.

17. The Debtor submits that the DIP Facility and Budget, taken as a whole, are reasonable under the facts and circumstances, were negotiated at arms'-length and in good faith, and are the Debtor's best—and in fact only—currently available option.

18. The DIP Facility will provide the Debtor with a smooth landing into the Chapter 11 Case and a viable path forward that will maximize the value of the Debtor's estate for the benefit of all stakeholders. For the reasons set forth above, the Debtor respectfully requests that the Court grant the relief requested in this Motion, including authorization to enter into the DIP Facility, use Cash Collateral, and provide adequate protection to the Prepetition Lender, along with the immediate access to liquidity necessary to ensure the Debtor's continued operations and successful reorganization. The Debtor further requests that the Court schedule the Final Hearing on this Motion at the earliest possible date to ensure timely approval of the DIP Facility and allow the Chapter 11 Case to proceed without disruption.

CONCISE STATEMENTS PURSUANT TO BANKRUPTCY RULE 4001(b) AND LOCAL RULE 4001-2[4]

19. The following chart contains a summary of the material terms of the proposed DIP Facility, together with references to the applicable sections of the relevant source documents, as required by Bankruptcy Rules 4001(b)(1)(B) and 4001(c)(1)(B) and Local Rule 4001-2.

SUMMARY OF MATERIAL TERMS OF DIP CREDIT FACILITY	
Borrower Bankruptcy Rule 4001(c)(1)(B)	GST, Inc., in its capacity as a debtor and debtor-in-possession under chapter 11 of the Bankruptcy Code ("Borrower") *See* DIP Credit Agreement at 1.
DIP Lender Bankruptcy Rule 4001(c)(1)(B)	Winners Alliance, Inc. ("Lender") *See* DIP Credit Agreement at 1.
Term Bankruptcy Rules 4001(b)(l)(B)(iii), 4001(c)(1)(B) Local Rule 4001-2(a)(B), (a)(ii)	The DIP Loans (together with all other DIP Obligations) shall mature and be due and payable on the earliest to occur of the following (such date, the "Maturity Date"): (a) the earliest to occur of (a) the date that is one Business Day after the closing of the sale of all or substantially all of the DIP Collateral; (b) the date that is one Business Day after the Effective Date of a confirmed Chapter 11 Plan; or (c) the date that is 120 days following the Petition Date (the "Final Maturity Date"); (b) the date upon which the Interim Order expires if the Final Order has not been entered on or before the date that is thirty-five (35) days after the Petition Date, (c) the conversion of the Chapter 11 Case into a case under chapter 7 of the Bankruptcy Code, (d) the consummation of the sale of all or substantially all of the assets of the Borrower, taken as a whole, pursuant to section 363 of the Bankruptcy Code,

[4] This summary is qualified in its entirety by reference to the applicable provisions of the DIP Documents. To the extent there exists any inconsistency between this summary and the provisions of the DIP Documents or the DIP Orders, the provisions of the DIP Documents or the DIP Orders, as applicable, shall control. Any capitalized terms used but not otherwise defined in these summaries shall have the respective meanings ascribed to such terms in the DIP Documents and/or the Interim Order, as applicable. The Debtor reserves the right to supplement the statements made pursuant to Bankruptcy Rule 4001 and Local Rule 4001–2 herein.

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	(e) the occurrence of the Effective Date of a Chapter 11 Plan; and (f) the date of the acceleration of the Loans and termination of the New Money DIP Commitments. *See* DIP Credit Agreement at §§ 1.01, 2.04.
Commitments Bankruptcy Rule 4001(c)(1)(B); Local Rules 4001-2(a)(i)(E); 4001-2(a)(ii)	The New Money DIP Loan will be available by multiple draws in an aggregate principal amount of up to $2,900,000. Subject to the conditions set forth in "Conditions to Effectiveness" and "Funding Conditions" in the DIP Credit Agreement, (i) the amount of the New Money DIP Loans to be available following entry of the Interim Order by the Court shall be $1,100,000, and (ii) subject to the entry of the Final Order, up to an additional $1,800,000 will be made available to the Borrower. *See* DIP Credit Agreement at 1, § 1.01.
Interest Rate Bankruptcy Rule 4001(c)(1)(B)	Loans under the DIP Facility will bear interest at a rate of 14.5% simple interest per annum. At any time when an Event of Default under the DIP Facility has occurred and is continuing, outstanding amounts under the DIP Facility shall bear additional interest at the rate of 6% per annum. *See* DIP Credit Agreement, § 2.05(a).
Use of DIP Facility Bankruptcy Rule 4001(b)(1)(B)(ii) Local Rule 4001-2(a)(ii)	The proceeds of the New Money DIP Loans will be used to provide liquidity for the Debtor throughout the Chapter 11 Case solely in accordance with (i) the DIP Credit Agreement, and (ii) the Budget approved by the Lender. *See* DIP Credit Agreement at 1, 2.
Budget Bankruptcy Rule 4001(c)(1)(B)	The use by the Borrower of the Loans and other credit extensions under the DIP Credit Agreement and the DIP Documents shall be in compliance with the Budget, the DIP Documents, and the DIP Orders. The Lender (i) may assume that the Borrower will comply with the Budget, (ii) shall have no duty to monitor such compliance, and (iii) shall not be obligated to pay (directly or indirectly from the DIP Collateral) any unpaid expenses incurred or authorized to be incurred pursuant to the Budget or unpaid expenses that the Borrower may have failed to include in the Budget. The line items in the Budget for payment of interest, expenses, and other amounts to the Lender are estimates only, and the Borrower remains obligated to pay any and all DIP Obligations in accordance with the terms of the DIP Documents and the DIP Order, regardless of whether such amounts exceed such estimates. Nothing in the Budget shall constitute an amendment or other modification of any DIP Document or any of the borrowing restrictions or other lending limits set forth therein.

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	See DIP Credit Agreement, § 6.17.
Variance Covenant Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(ii)	Each line item in the Budget is subject to a permitted negative variance of (i) 10% per week above the projected aggregate disbursements set forth in the Budget, (ii) 10% per week, on disbursement on a by-line-item basis, and (iii) 10% per rolling four-week period, then ending, on the revenue set forth in the Budget. Any unused amounts in the Budget during any one-week period may be carried forward to future weekly periods and applied to any amount by which that same line-item, and only that same line-item, exceeds its projected use as set forth in the Budget, such that the cumulative-to-date budgeted amount for each line item is available without causing such future weekly periods to exceed the allowable variance. *See* DIP Credit Agreement, § 7.23.
Expenses and Fees Bankruptcy Rule 4001(c)(1)(B)	The DIP Credit Agreement provides for payment of (i) all Lender's Expenses and all reasonable and documented out of pocket expenses incurred by Lender in connection with the documentation and negotiation of the DIP Credit Agreement and the other DIP Documents and in connection with the Chapter 11 Case through and after the Effective Date and (ii) an Exit Fee of 2.0% multiplied by the aggregate principal amount of all New Money DIP Loans advanced under the DIP Credit Agreement. *See* DIP Credit Agreement, § 2.07
Collateral and Priority Bankruptcy Rules 4001(c)(1)(B)(i), 4001(c)(1)(B)(ii) Local Rules 4001-2(a)(i)(D) and (G), 4001-2(a)(ii)	Upon the entry of the DIP Order and subject to its terms, the DIP Obligations will be secured by a valid and perfected lien on all of the DIP Collateral (the "DIP Liens"), subject to the Carve-Out, with priority pursuant to section 364(c)(2) and 364(c)(3) on an interim basis and pursuant to section 364(d) on a final basis. *See* DIP Credit Agreement, § 5.15; Interim Order ¶ 7.
Covenants Bankruptcy Rule 4001(c)(1)(B)	Usual and customary covenants for debtor in possession financings of this type, including certain financial reporting and adherence to the Budget. *See* DIP Credit Agreement, Art. 6, 7.
Events of Default Bankruptcy Rule 4001(c)(1)(B)	Any of the following shall constitute an "Event of Default": (i) **Non-Payment**. Borrower fails to pay, when and as required to be paid herein, any amount of principal of any Loans, any interest on any Loans, premium or any fee due hereunder, or any other amount payable hereunder or under any other DIP Document; or (ii) **Specific Covenants; Other Defaults**. Borrower fails to perform or observe (i) any term, covenant, or agreement contained in any

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	of Article VI (Affirmative Covenants) or Article VII (Negative Covenants) of this Agreement, or (ii) any other term, covenant, or agreement contained in any DIP Document on its part to be performed or observed which failure under this clause (ii) has not been remedied or waived within five (5) Business Days after receipt by Borrower of written notice thereof from Lender; *provided* that Borrower expressly acknowledges that the failure to meet any Milestones under Section 6.16 and covered under clause (g), below, may be waived by Lender in its sole discretion but is not subject to remedy or cure by Borrower; or (iii) **Representations and Warranties**. Any representation, warranty, certification, or statement of fact made or deemed made by or on behalf of Borrower herein, in any other DIP Document, or in any document delivered in connection herewith or therewith shall be incorrect or misleading in any material respect when made or deemed made (other than those representations, warranties, and certifications that are expressly qualified by Material Adverse Effect or other materiality, in which case such representations, warranties, and certifications shall be incorrect or misleading in any respect when made or deemed made); or (iv) **Insolvency Proceedings**. Other than the Chapter 11 Case, (i) Borrower institutes or consents to the institution of any proceeding under any Debtor Relief Law or conversion of the Chapter 11 Case to chapter 7, or makes an assignment for the benefit of creditors; (ii) applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator, or similar officer for it or for all or any material part of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator, or similar officer is appointed without the application or consent of Borrower and the appointment continues undischarged or unstayed for sixty (60) calendar days; or (iii) any proceeding under any Debtor Relief Law relating to Borrower or to all or any material part of its property is instituted without the consent of Borrower and continues undismissed or unstayed for sixty (60) calendar days, or an order for relief is entered in any such proceeding; or (v) **Judgments**. There is entered against Borrower (i) one or more final judgments or orders for the payment of money in an aggregate amount exceeding $50,000 (to the extent not covered (subject to normal deductibles) by independent third-party insurance as to which the insurer does not dispute coverage); or (ii) any one or more non-monetary final judgments that have, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and, in either case ((i) or (ii)), (A) enforcement proceedings are commenced by any creditor upon such judgment or order and such proceedings remain unstayed or undismissed for a period of thirty (30) consecutive days, or (B) there is a period of thirty (30)

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	consecutive days during which a stay of enforcement of such judgment, by reason of a pending appeal, the Chapter 11 Case, or otherwise, is not in effect; or (vi) **Milestones**. A Milestone under Section 6.17 is not met as of the date required to be met, unless extended or waived by the Lender in its sole discretion; or (vii) **Invalidity of DIP Documents**. Any DIP Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or on account of satisfaction in full of all the DIP Obligations, ceases to be in full force and effect; or Borrower contests in any manner the validity or enforceability of any DIP Document; or purports to revoke, terminate, or rescind any DIP Document; or (viii) **DIP Collateral**. The DIP Order after delivery thereof shall for any reason (other than pursuant to the terms thereof) cease to create a valid and perfected Lien, with the priority required by the DIP Order on and security interest in any DIP Collateral purported to be covered thereby, subject to Liens permitted under Section 7.01; or (ix) **Chapter 11 Case**. There shall have occurred any of the following in any Chapter 11 Case: (A) An order shall be entered by the Bankruptcy Court appointing, or Borrower shall file an application for an order seeking the appointment of, (a) a trustee under section 1104 of the Bankruptcy Code, or (b) an examiner or other responsible person or officer with enlarged powers relating to the operation of the business (powers beyond those set forth in section 1106(a)(3) and (4) of the Bankruptcy Code) under section 1106(b) of the Bankruptcy Code; (B) An order shall be entered by the Bankruptcy Court converting the Chapter 11 Case to a chapter 7 case; (C) An order shall be entered by the Bankruptcy Court confirming a Chapter 11 Plan that does not (A) contain a provision for termination of the commitments and indefeasible payment in full in cash of all DIP Obligations of Borrower hereunder and under the other DIP Documents and the Indebtedness under the Prepetition Credit Agreement on or before the effective date of such plan or plans upon entry thereof and (B) provide for the continuation of the Liens and security interests granted to Lender hereunder until the Effective Date of such Chapter 11 Plan; (D) An order shall be entered by the Bankruptcy Court dismissing the Chapter 11 Case which does not contain a

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	provision for termination of the commitments hereunder and payment in full in cash of all DIP Obligations of Borrower hereunder and under the other DIP Documents upon entry thereof; (E) An order shall be entered by the Bankruptcy Court without the express prior written consent of Lender to (a) revoke, reverse, stay, modify, supplement, or amend any of the DIP Orders, (b) permit any administrative expense or any claim (now existing or hereafter arising, of any kind or nature whatsoever) to have administrative priority as to Borrower equal or superior to the priority of Lender in respect of the DIP Obligations, except for certain allowed administrative expenses, or (c) to grant or permit the grant of a Lien on the DIP Collateral, other than a Permitted Lien; (F) An order shall be entered by the Bankruptcy Court that is not stayed pending appeal granting relief from the automatic stay to any creditor of Borrower with respect to any claim in an amount equal to or exceeding $50,000; (G) An application for (a) an order impairing the DIP Collateral, the appointment of a trustee, conversion to chapter 7 or dismissal of the Chapter 11 Case shall be made (i) by a Person other than Borrower and such application is not contested by Borrower in good faith, or (ii) by Borrower; (b) an order for the use of cash collateral without the prior written consent of Lender is made; or (c) an order for the use of DIP Collateral (or the obtaining of financing or loans, secured by liens that are senior to, *pari passu* with, or junior to Lender's Liens on DIP Collateral) without the prior written consent of Lender, is made; or (H) Borrower fails to obtain entry of an order approving the engagement of Nicholas Rubin as Debtor's Chief Restructuring Officer, on terms reasonably acceptable to Lender and consistent with the Budget, on or before January 26, 2026, or Mr. Rubin shall cease acting as an officer of Borrower following approval of his engagement. *See* DIP Credit Agreement, § 8.01.
Milestones Bankruptcy Rule 4001(c)(1)(B)(vi)	The Borrower shall comply with the following milestones in the Chapter 11 Case (the "Milestones"): (a) Borrower shall have commenced the Chapter 11 Case on December 11, 2025; (b) On or before December 23, 2025, the Bankruptcy Court shall have entered the Interim Order approving the Interim New Money DIP Loan and the Interim Roll-Up DIP Loan in form and

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	substance acceptable to Lender in its sole discretion; (c) On or before January 28, 2026, the Bankruptcy Court shall have entered the Final Order, in form and substance acceptable to Lender in its sole discretion; (d) On or before January 30, 2026, Borrower shall have filed a Disclosure Statement and a proposed Chapter 11 Plan, which shall provide that the Debtor emerges reorganized with Michael Johnson and Stephen Gera remaining as officers of the Reorganized Debtor and be in form and substance acceptable to Lender in its sole discretion. (e) On or before March 6, 2026, the Bankruptcy Court shall have entered an order approving the Disclosure Statement, (f) On or before April 13, 2026, the Bankruptcy Court shall have entered an order confirming the Debtor's Chapter 11 Plan; (g) On or before April 15, 2026, the Effective Date shall have occurred; and (h) On or before April 15, 2026, the Loans (to the extent not converted into Equity Interests) shall be paid in full. To the extent that any such Milestone is not satisfied due to the Bankruptcy Court not being available on the timing contemplated herein, such Milestone shall be deemed extended (with corresponding extensions of subsequent Milestones) as appropriate to resolve such conflict but in no event for more than three (3) Business Days. *See* DIP Credit Agreement, § 6.16.
Roll-Up Local Rule 4001-2(a)(i)(O)	During the period from the entry of the Interim Order through and including the earlier to occur of (x) the entry of the Final Order or (y) the DIP Termination Date, upon each advance of Interim New Money DIP Loans, a "roll-up" of the Prepetition Secured Obligations of the Debtor under the Prepetition Credit Agreement in an amount equal to such advance. Upon entry of the Final Order by the Court, an additional roll-up of $3,250,000,000 of the loans under the Prepetition Credit Agreement into loans under the DIP Facility shall occur. *See* DIP Credit Agreement, § 2.01.
Adequate Protection Bankruptcy Rule 4001(b)(1)(B)(iv)	As adequate protection for any diminution in value of the DIP Lender's interest in the Prepetition Collateral and the use of the Prepetition Collateral, including the Cash Collateral, the DIP Lender shall receive the adequate protection provided in the Interim Order, which consists of valid

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	and nonavoidable postpetition security interests in and liens on all of the Debtor's property and assets, whether now existing or hereafter arising and wherever located, with any such lien junior to the liens securing the DIP Obligations, the Carve-Out, and any valid, perfected, and unavoidable liens in existence as of the Petition Date. The DIP Lender will also receive a superpriority administrative claim in the Borrower's Chapter 11 Case. *See* Interim Order at ¶ 9.
Carve-Out Bankruptcy Rule 4001(b)(1)(B)(iii)	The Interim Order provides for a Carve-Out from the DIP Lender's collateral that includes (i) all fees required to be paid to the Clerk of the Court and to the U.S. Trustee under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate (without regard to the notice set forth in (iii) below); (ii) all reasonable fees and expenses up to $25,000 incurred by a trustee under section 726(b) of the Bankruptcy Code; (iii) to the extent allowed at any time and consistent with the Budget, whether by interim order, procedural order, or otherwise, all unpaid fees and expenses (the "Allowed Professional Fees") incurred by persons or firms retained by the Debtor pursuant to section 327, 328, or 363 of the Bankruptcy Code (the "Debtor Professionals") and the Committee pursuant to section 328 or 1103 of the Bankruptcy Code (the "Committee Professionals" and, together with the Debtor Professionals, the "Professional Persons") at any time before or on the first business day following delivery by the DIP Lender of a Carve Out Trigger Notice (as defined below), whether allowed by the Court prior to or after delivery of a Carve-Out Trigger Notice; and (iv) Allowed Professional Fees of Professional Persons in an aggregate amount not to exceed $125,000 (allocated $100,000 to the Debtor Professionals and $25,000 to the Committee Professionals) incurred after the first business day following delivery by the DIP Lender of the Carve-Out Trigger Notice, to the extent allowed at any time, whether by interim order, procedural order, or otherwise. *See* Interim Order ¶ 30.
Prepayments Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(i)(I)	Customary conditions for mandatory prepayments on facilities of this type and purpose, including but not limited to: i. Upon the receipt by the Borrower of the Net Cash Proceeds of any Disposition or Involuntary Disposition consummated on or after the Petition Date, the Borrower shall, on or prior to the date which is three (3) Business Days after the date of the realization or receipt by the

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	Borrower of such Net Cash Proceeds, prepay the Loans as hereafter provided in an aggregate amount equal to 100% of the Net Cash Proceeds of such Disposition or Involuntary Disposition. ii. Upon the receipt by the Borrower after the Petition Date of the Net Cash Proceeds (x) of any Debt Issuance not permitted under Section 7.03 or (y) from the sale or issuance by the Borrower of any of its Equity Interests, in each case the Borrower shall, on or prior to the date which is three (3) Business Days after the date of the realization or receipt by the Borrower of such Net Cash Proceeds, prepay the Loans as hereafter provided in an aggregate amount equal to 100% of such Net Cash Proceeds. *See* DIP Credit Agreement, § 2.03.
Repayment Features Bankruptcy Rule 4001-2(a)(i)(E)	Borrower must repay the DIP Loans according to the terms of the DIP Credit Agreement, with amounts due on the Final Maturity Date or Maturity Date, as applicable. *See* DIP Credit Agreement, § 2.04.
Conditions to Closing Bankruptcy Rule 4001(c)(1)(B)	Usual and customary for financings of this type. *See* DIP Credit Agreement, §§ 4.01, 4.02.
Superpriority Expense Claims Bankruptcy Rule 4001(c)(1)(B)(i)	Subject to the Carve-Out in all respects, the DIP Lender is granted superpriority administrative expense claim status against each Debtor jointly and severally in the Chapter 11 Case. *See* Interim Order, ¶ 8.
Parties with an Interest in Cash Collateral Bankruptcy Rule 4001(b)(1)(B)(i)	Winners Alliance, Inc.
Adequate Protection Bankruptcy Rule 4001(b)(1)(B)(iv)	The Prepetition Lender is granted adequate protection for any diminution in value of its interest in the Prepetition Collateral, including Cash Collateral, resulting from postpetition activities. *See* Interim Order, ¶ 9.
Determination Regarding Prepetition Claims	The Interim Order contains stipulations of fact by the Debtor, including those related to the extent, validity, perfection and enforceability of the

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Bankruptcy Rule 4001(c)(1)(B)(iii)	Prepetition Secured Obligations, subject to Challenge. *See* Interim Order, ¶ 17.
Liens on Avoidance Actions Bankruptcy Rule 4001(c)(1)(B)(xi)	The DIP Lender will receive a lien on avoidance actions under chapter 5 of the Bankruptcy Code and the proceeds thereof, subject to the Carve-Out, upon entry of a Final Order providing such relief. *See* Interim Order, ¶ 6.
Effect of Debtor's Stipulations on Third Parties Bankruptcy Rule 4001(c)(1)(B)(iii), (viii)	The Debtor acknowledges and agrees that as of the Petition Date, the DIP Lender's liens on the Prepetition Collateral are valid, enforceable, and perfected first-priority security interests in and continuing liens against the assets that secured the prepetition obligations and not subject to offset, deduction, claim, counterclaim, or defense of any kind, nature, or description whatsoever. *See* Interim Order, ¶ F.
Challenge Period Bankruptcy Rule 4001(c)(1)(B)(iii) Local Rule 4001-2(a)(i)(B)	The Debtor's stipulations shall be binding upon all other parties in interest, including, without limitation, any statutory or non-statutory committees appointed or formed in the Chapter 11 Case and any other person or entity acting or seeking to act on behalf of the Debtor's estate, in all circumstances and for all purposes, subject only to challenge by adversary proceeding validly brought and commenced no later than 75 days after the Petition Date. *See* Interim Order, ¶ 17.
Waiver or Modification of the Automatic Stay Bankruptcy Rule 4001(c)(1)(B)(iv)	The Interim Order includes a customary waiver/modification of the automatic stay to permit the Debtor to take all actions as are necessary or appropriate to implement the terms of the Interim Order. The automatic stay shall be modified to the extent necessary to permit the DIP Lender to take any action authorized by the Interim Order. *See* DIP Credit Agreement, § 8.01; Interim Order, ¶ 14.
Waiver or Modification of Authority to File a Plan, Extend Time to File Plan, Request Use of Cash Collateral, or Request Authority to Obtain Credit Bankruptcy Rule 4001(c)(1)(B)(v)	N/A

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Waiver or Modification of Applicability of Non-Bankruptcy Law Relating to the Perfection or Enforcement of a Lien Bankruptcy Rule 4001(c)(1)(B)(vii)	The Debtor stipulates that the liens and security interests granted to the Prepetition Lender are valid, binding, enforceable, non-avoidable, and properly perfected. The DIP Liens are valid, binding, enforceable, non-avoidable, and automatically and properly perfected. *See* DIP Credit Agreement at §§ 5.12; 10.02; Interim Order, ¶¶ F, 7.
Release, Waivers or Limitation on any Claim or Cause of Action Bankruptcy Rule 4001(c)(1)(B)(viii)	The Interim Order provides for customary releases, subject to Challenge and entry of the Final Order, if provided for therein. *See* Interim Order, ¶ 17.
Provision Limiting the Court's Power or Discretion to Enter Future Orders Local Rule 4001-2(a)(i)(C)	N/A
506(c) Waiver; Section 552(b) Bankruptcy Rules 4001(c)(1)(B)(x); 4001(c)(1)(B) Local Rules 4001 2(a)(i)(C), 4001-2(a)(i)(h)	Subject to and effective upon the entry of the DIP Order and subject to the terms of the DIP Order, except to the extent of the Carve-Out, no costs or expenses of administration of the Chapter 11 Case or any future proceeding that may result therefrom, including a case under chapter 7 of the Bankruptcy Code, shall be charged against or recovered from the Prepetition Collateral pursuant to sections 105 or 506(c) of the Bankruptcy Code, the enhancement of collateral provisions of section 552 of the Bankruptcy Code, or any other legal or equitable doctrine (including, without limitation, unjust enrichment) or any similar principle of law, without the prior written consent of the Lender. Upon the entry of the DIP Order and subject to its terms, in no event shall the DIP Lender be subject to (i) surcharge under section 506(b) of the Bankruptcy Code, (ii) the "equities of the case" exception contained in section 552(b) of the Bankruptcy Code, or (iii) the equitable doctrine of "marshaling" or any other similar doctrine with respect to DIP Lender's collateral, including, without limitation, the DIP Collateral. *See* DIP Credit Agreement, § 5.15.
Indemnification Bankruptcy Rule 4001(c)(1)(B)(ix)	The Borrower will indemnify and defend the DIP Lender and its Related Parties (each such Person being called an "Indemnitee") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities, and related expenses (including the reasonable fees, charges, and disbursements of outside counsel for the Indemnitees, including one local counsel, as applicable, in any relevant jurisdiction and any specialty counsel, as applicable, for each relevant specialty and, in the case of actual or potential conflict of interest (as determined by such Indemnitee),

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	separate counsel for Indemnitees to the extent needed to avoid such conflict), incurred by any Indemnitee or asserted against any Indemnitee arising out of, in connection with, or as a result of, (i) the execution or delivery of the DIP Credit Agreement or any other DIP Document, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, or the administration of the DIP Credit Agreement and the other DIP Documents; (ii) any DIP Loan or the use or proposed use of the proceeds therefrom; (iii) any actual or alleged release of hazardous materials at, on, under or from any property owned, leased, or operated by the Borrower, or any environmental liability related in any way to the Borrower or its properties (if any); or (iv) any actual or prospective claim, litigation, investigation, or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, and regardless of whether any Indemnitee is a party thereto, in all cases, whether or not caused by or arising, in whole or in part, out of the comparative, contributory or sole negligence of the Indemnitee; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from the actual fraud, gross negligence, bad faith, or willful misconduct of such Indemnitee. *See* DIP Credit Agreement, § 9.04; Interim Order, ¶ 28.
No Marshaling Local Rule 4001-2(a)(i)(X)	Upon the entry of the DIP Order and subject to its terms, in no event shall the Lender be subject to the equitable doctrine of "marshaling" or any other similar doctrine with respect to Lender's collateral, including, without limitation, the DIP Collateral. *See* DIP Credit Agreement, § 5.15.

* * * *

THE DEBTOR'S PREPETITION CAPITAL STRUCTURE

A. Prepetition Secured Obligations

20. As of the Petition Date, the Debtor has approximately $5.3 million in funded debt obligations with Winners Alliance, summarized as follows:

Winners Alliance Debt Facilities	Principal Amount Outstanding[5]
Promissory Note and Security Agreement (March 6, 2025)	$3.0 million
Promissory Note and Security Agreement (March 27, 2025)	$1.0 million
Promissory Note and Security Agreement (December 8, 2025)	$1.02 million
Total Secured Debt:	**Approx. $5.3 million**

21. The Debtor's secured indebtedness (the "Prepetition Secured Obligations") arises under the promissory notes and security agreements identified above (collectively, the "Prepetition Credit Agreement"). As of the Petition Date, the Debtor is indebted to the Prepetition Lender on a secured basis in an aggregate amount of approximately $5.3 million, subject to reconciliation. The obligations evidenced by the March 6, 2025 Note and the March 27, 2025 Note matured prior to the Petition Date. The December 8, 2025 Note has a stated maturity date of January 5, 2026. Pursuant to the terms of the Prepetition Credit Agreement, (i) the Prepetition Secured Obligations under March 6, 2025 Note and the March 27, 2025 Note bore interest at the "Applicable Rate" of 4.31%, while (ii) the Prepetition Secured Obligations under the December 8, 2025 Note bear

[5] Amounts reflected herein are based on the Debtor's books and records as of the Petition Date and remain subject to reconciliation, including through the claims allowance process.

interest at the "Applicable Rate" of 3.66%.

22. The Prepetition Secured Obligations are secured by substantially all of the Debtor's tangible and intangible personal property and rights, whether now owned or hereafter acquired, including, without limitation: intellectual property and brand rights; contracts with athletes; media, sponsorship, and distribution agreements; cash; accounts; deposit accounts; general intangibles; and proceeds of the foregoing, as more fully described in the Prepetition Credit Agreement.[6]

23. As of the Petition Date, the Debtor's assets primarily consist of intangible assets, including intellectual property, contractual rights, and goodwill associated with the "Grand Slam Track" brand, which represents the foundation of its business value. Given the lack of unencumbered assets and the Debtor's inability to obtain unsecured credit, the Debtor has no viable financing options other than the DIP Facility. The Debtor's ability to access this financing is critical to preserve the value of these intangible assets and move forward with its Chapter 11 Case.

B. Prepetition Unsecured Obligations

24. In addition to the Prepetition Secured Obligations, the Prepetition Lender asserts unsecured claims against the Debtor in excess of approximately $6.1 million arising from prepetition advances, interest, fees, expenses, and other obligations.

25. The Debtor also has significant unsecured obligations arising from its prepetition operations, consisting primarily of amounts owed to athletes, vendors, contractors, service providers, and other trade creditors. Based on the Debtor's books and records, the Debtor estimates that its unsecured obligations, exclusive of the Prepetition Lender's unsecured claims, total

[6] The Debtor does not own real property or other significant hard assets. Accordingly, the value of the Debtor's estate is primarily dependent on the preservation of its intellectual property, contractual relationships, connection to the Debtor's founder, Mr. Johnson, and brand goodwill.

approximately $20 million as of the Petition Date, consisting of approximately $7 million owed to athletes and approximately $13 million owed to other vendors, subject to reconciliation and exclusive of any contingent, unliquidated, or contract rejection claims.

ALTERNATIVE SOURCES OF FINANCING ARE NOT AVAILABLE

26. As discussed more fully in the Rubin Declaration, prior to the filing of this Chapter 11 Case, the Debtor faced significant financial headwinds stemming from several factors, including the substantial capital requirements associated with launching a new, global professional track and field league. Although Debtor's inaugural season was met with positive market interest and fan engagement, the Debtor's financial position was hindered by its high operating costs, including global event production, athlete compensation, and media distribution. Despite generating revenue across multiple channels, the Debtor's expenditures far exceeded its cash inflows, leaving it unable to sustain operations or fund its growth without additional capital. Moreover, the broader capital market conditions for venture and sports-media investments were increasingly conservative, further complicating the Debtor's ability to raise the necessary funds to maintain liquidity and expand operations.

27. In the months leading up to the bankruptcy filing, the Company made significant efforts to secure additional capital and financing to address its liquidity shortfall and support its ongoing operations. These efforts included:

- **Discussions with Existing Lenders and Investors**: The Company engaged with the Prepetition Lender and other strategic investors to explore potential sources of additional funding. The Company had ongoing discussions with potential investors, including Eldridge Industries, which provided positive indications of investment, contingent on the successful completion of the Company's inaugural season.

- **Capital-Raising and Strategic Outreach**: To augment its capital base, the Company retained PJT Partners ("PJT") to conduct a formal capital-raising process. Over a three-month period, from January to

March 2025, PJT contacted over 150 potential investors and facilitated extensive diligence efforts, and the Company's management participated in more than 30 live pitch meetings. Despite this broad outreach, many potential investors declined to move forward, citing concerns over the early-stage nature of the league, the absence of operating results, and the uncertainties surrounding media and sponsorship revenue.

- **Efforts to Secure Bridge Loans**: While attempting to raise capital from new investors, the Company also sought bridge loans and short-term financing to cover immediate liquidity needs. However, these efforts were insufficient to address the Company's working capital requirements or ensure continued operations.

Despite these extensive efforts, the Debtor was unable to secure the required financing to stabilize its operations and meet its financial obligations.

28. As part of its restructuring efforts, the Debtor explored out-of-court solutions with creditors. This included engaging in negotiations with athletes, vendors, and service providers to extend payment terms and restructure certain obligations. The Company made partial payments to athletes to maintain goodwill and preserve its athlete relationships, which were crucial to the success of the league. However, these negotiations did not result in a sustainable resolution. The Debtor's liquidity challenges continued to intensify, and the required capital infusion did not materialize in time to stabilize the business or prevent further operational strain.

29. After exhausting all reasonable prepetition restructuring efforts and failing to secure the necessary capital, the Debtor determined that filing for chapter 11 bankruptcy protection was the most viable solution. The chapter 11 process provides the breathing room and judicial oversight necessary to restructure liabilities, preserve the Company's intellectual property and brand equity, and implement a more efficient cost structure. The Debtor's financial condition, combined with threats of an involuntary bankruptcy filing by creditors, left no alternative path to ensure the ongoing viability of the business.

THE DEBTOR'S IMMEDIATE NEED FOR ACCESS TO THE DIP FINANCING

30. The Debtor requires immediate access to the DIP Facility to (i) maximize the value of the estate, (ii) ensure sufficient working capital to operate its businesses and to administer its estate, and (iii) timely pay administrative expenses incurred during the Chapter 11 Case.

31. The Debtor's inability to restructure its debt prior to the Petition Date has left it in urgent need of postpetition financing. The Debtor's liquidity is severely constrained, and the absence of new financing would prevent it from continuing operations or moving forward with a restructuring plan. The DIP Facility is crucial to provide the immediate liquidity necessary to fund ongoing operations, preserve the value of the Debtor's assets, and support the Debtor's efforts to propose a reorganization plan or explore other strategic alternatives. Without this financing, the Debtor would be forced to cease operations, resulting in irreparable harm to the estate and its stakeholders.

32. In consultation with its advisors, the Debtor reviewed and analyzed its projected cash flows to determine the requisite amount of debtor in possession financing needed to provide ongoing working capital. Based on management's cash-flow forecast, the Debtor compiled the Budget. Based on the forecasted funding requirements reflected in the Budget, the liquidity provided under the proposed DIP Facility will enable the Debtor to preserve its value as a going concern, provide the Debtor with sufficient liquidity to meet its ongoing day-to-day obligations, fund the operational and administrative costs of the Chapter 11 Case, and satisfy working capital requirements and other operational expenses, all of which will preserve the value of the Debtor's estate for the benefit of its stakeholders.

BASIS FOR RELIEF

I. THE DEBTOR SHOULD BE AUTHORIZED TO OBTAIN POSTPETITION FINANCING THROUGH THE DIP DOCUMENTS.

A. Entry into the DIP Credit Facility is an Exercise of the Debtor's Sound Business Judgment.

33. The Court should authorize the Debtor, as an exercise of its sound business judgment, to enter into the DIP Documents, obtain access to the proceeds of the DIP Facility, continue to use Cash Collateral (subject to the terms of the Interim Order) and grant the liens, superpriority administrative claims, and adequate protection contemplated in the DIP Credit Agreement and proposed Interim Order and, following the Final Hearing, the Final Order. Section 364 of the Bankruptcy Code authorizes a debtor to obtain secured or superpriority financing under certain circumstances discussed in detail below. Courts grant debtors considerable deference in acting in accordance with their business judgment in obtaining postpetition secured credit, so long as the agreement to obtain such credit does not run afoul of the provisions of, and policies underlying, the Bankruptcy Code.[7]

34. Bankruptcy courts generally will not second-guess a debtor's business decisions when those decisions involve "a business judgment made in good faith, upon a reasonable basis, and within the scope of [its] authority under the [Bankruptcy] Code." *In re Curlew Valley Assocs.,* 14 B.R. 506, 513-14 (Bankr. D. Utah. 1981) (noting that courts should not second guess a debtor's

[7] *See, e.g.*, *In re L.A. Dodgers LLC*, 457 B.R. 308, 313 (Bankr. D. Del. 2011) ("[C]ourts will almost always defer to the business judgment of a debtor in the selection of the lender."); *In re Barbara K. Enters.*, No. 08-11474 (MG), 2008 WL 2439649, at *14 (Bankr. S.D.N.Y. June 16, 2008) (citation omitted) (explaining that courts defer to a debtor's business judgment "so long as a request for financing does not 'leverage the bankruptcy process' and unfairly cede control of the reorganization to one party in interest"); "); *Trans World Airlines, Inc. v. Travellers Int'l AG.* (*In re Trans World Airlines, Inc.*), 163 B.R. 964, 974 (Bankr. D. Del. 1994) (approving a postpetition loan and receivables facility because such facility "reflect[ed] sound and prudent business judgment"); *In re Ames Dep't Stores, Inc*., 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) ("[C]ases consistently reflect that the court's discretion under section 364 [of the Bankruptcy Code] is to be utilized on grounds that permit [a debtor's] reasonable business judgment to be exercised so long as the financing agreement does not contain terms that leverage the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to benefit a party-in-interest.").

business decision when that decision involves "a business judgment made in good faith, upon a reasonable basis, and within the scope of [the debtor's] authority under the [Bankruptcy] Code"). Specifically, the business judgment rule applies unless: "(1) the directors did not in fact make a decision, (2) the directors' decision was uninformed; (3) the directors were not disinterested or independent; or (4) the directors were grossly negligent." *In re In re L.A. Dodgers LLC*, 457 B.R. 308, 313 (Bank. D. Del. 2011).

35. To determine whether the business judgment test is met, "the court 'is required to examine whether a reasonable business person would make a similar decision under similar circumstances.'" *In re Dura Auto. Sys., Inc.*, No. 06-11202 (KJC), 2007 WL 7728109, at *97 (Bankr. D. Del. Aug. 15, 2007) (citation omitted). In determining whether the Debtor has exercised sound business judgment in entering into the DIP Documents, the Court should consider the economic terms of the DIP Facility under the totality of circumstances. *See* Hr'g Tr. at 734:23-35:24, *In re Lyondell Chem. Co.*, No. 09-10023 (Bankr. S.D.N.Y. Feb. 27, 2009) (recognizing that "the terms that are now available for DIP financings in the current economic environment aren't as desirable" as they once were previously); *In re Ellingsen MacLean Oil Co.*, 65 B.R. 358, 365 n.7 (W.D. Mich. 1986) (recognizing that a debtor may have to enter into "hard" bargains to acquire funds for its reorganization), aff'd, 834 F.2d 599 (6th Cir. 1987).

36. Moreover, the Court may appropriately take into consideration noneconomic benefits to the Debtor offered under the proposed postpetition facility. For example, in *In re ION Media Networks, Inc.,* the Bankruptcy Court for the Southern District of New York held that:

> Although all parties, including the Debtors and the Committee, are naturally motivated to obtain financing on the best possible terms, a business decision to obtain credit from a particular lender is almost never based purely on economic terms. Relevant features of the financing must be evaluated, including non-economic elements such as the timing and certainty of closing, the impact on creditor constituencies

> and the likelihood of a successful reorganization. This is particularly true in a bankruptcy setting where cooperation and establishing alliances with creditor groups can be a vital part of building support for a restructuring that ultimately may lead to a confirmable reorganization plan. That which helps to foster consensus may be preferable to a notionally better transaction that carries the risk of promoting unwanted conflict.

No. 09-13125 (JMP), 2009 WL 2902568, at *4 (Bankr. S.D.N.Y. July 6, 2009).

37. The Debtor's entry into the DIP Facility is entitled to the deference of the business judgment rule. The Debtor and its advisors went to great lengths to ensure the decision to enter into the DIP Facility was informed and reasonable, including by seeking out-of-court restructuring options or alternative DIP financing.

38. The Debtor's decision to enter into the DIP Facility is an appropriate exercise of its sound business judgment. As further discussed in the Rubin Declaration, the DIP Facility reflects the Debtor's operational challenges and prepetition capital structure and is the product of arms'-length, good faith negotiations and no other financing was offered or otherwise available.

39. Keeping in mind the advantages and disadvantages of the proposed DIP Facility, the Debtor ultimately decided that moving forward with the proposed DIP Facility was appropriate and in the Debtor's best interests. Given the Debtor's current cash position and the lack of alternatives, the Debtor and its advisors determined that entry into the DIP Facility was the best path forward under the totality of the circumstances, and the Debtor believes that it has obtained the best terms available under the circumstances. The Debtor does not believe that it could secure sufficient financing in the form of unsecured credit as an administrative expense in exchange for the grant of a superpriority administrative expense claim, or without granting priming liens, and was not able to obtain postpetition financing or other financial accommodations from any alternative prospective lender or group of lenders on more favorable terms and conditions than those for which approval is being sought.

40. Further, the negotiated DIP Milestones are a crucial element of the terms of the DIP Facility, and their inclusion in the DIP Credit Agreement is important to ensure that this Chapter 11 Case proceeds in a strategic, value-maximizing fashion. In similar contexts, this Court has entered interim financing orders that included express milestones for the progress of a debtor's case.[8]

41. Given the Debtor's immediate liquidity needs to prosecute its value-maximizing Chapter 11 strategy, the Debtor believes the DIP Facility represents the best, and the only, viable source of financing available. Accordingly, the Debtor submits that entry into the DIP Facility is in the best interests of the Debtor's estate, is necessary to avoid immediate and irreparable harm, and is a reasonable exercise of the Debtor's business judgment.

B. <u>The Debtor Should Be Authorized to Grant Liens and Superpriority Claims to Secure the DIP Facility.</u>

42. The Debtor proposes to obtain DIP Facility by providing security interests and liens as set forth in the DIP Documents and the proposed Interim Order. The Debtor satisfies the requirements for relief under section 364 of the Bankruptcy Code, which authorizes a debtor to incur secured debt under certain circumstances. Specifically, section 364(c) of the Bankruptcy Code provides that:

> If the trustee is unable to obtain unsecured credit allowable under section 503(b)(1) of this title as an administrative expense, the court, after notice and a hearing, may authorize the obtaining of credit or

[8] *See, e.g., In re Blink Holdings, Inc.*, No. 24-11686 (JKS) (Bankr. D. Del. Aug. 13, 2024) (Docket No. 63) (approving case milestones in the interim DIP financing order); *In re Coach USA, Inc.*, No. 24-11258 (MFW) (Bankr. D. Del. Jun. 13, 2024) (Docket No. 79) (same); *In re Nanostring Technologies, Inc.,* No. 24-10160 (CTG) (Bankr. D. Del. Feb. 6, 2024) (Docket No. 75) (same); *In re Pegasus Home Fashions, Inc.,* No. 23-11235 (MFW) (Bankr. D. Del. Aug. 25, 2023) (Docket No. 34) (same); *In re Virgin Orbit Holdings, Inc.*, No. 23-10405 (KBO) (Bankr. D. Del. Apr. 5, 2023) (Docket No. 71) (same).

The referenced orders are voluminous in nature and are not attached to this Motion. However, in light of the requirements of Local Rule 7007-2(a)(vii), undersigned counsel has retained copies of each order and will make them available to the Court, if requested, or to any party that requests them.

> the incurring of debt—
>
> (1) with priority over any or all administrative expenses of the kind specified in section 503(b) or 507(b) of this title;
>
> (2) secured by a lien on property of the estate that is not otherwise subject to a lien; or
>
> (3) secured by a junior lien on property of the estate that is subject to a lien.

11 U.S.C. § 364(c).

43. To satisfy the requirements of section 364(c) of the Bankruptcy Code, a debtor need only demonstrate "by a good faith effort that credit was not available" to the debtor on an unsecured or administrative expense basis. *In re Crouse Grp.*, 71 B.R. 544, 549 (Bankr. E.D. Pa. 1987) (finding that secured credit under section 364(c) of the Bankruptcy Code is authorized, after notice and hearing, upon a showing that unsecured credit cannot be obtained). "The statute imposes no duty to seek credit from every possible lender before concluding that such credit is unavailable." *Bray v. Shenandoah Fed. Savs. & Loan Ass'n* (*In re Snowshoe Co.*), 789 F.2d 1085, 1088 (4th Cir. 1986). When few lenders are likely to be willing to extend the necessary credit to a debtor, "it would be unrealistic and unnecessary to require [the d]ebtor to conduct such an exhaustive search for financing." *In re Sky Valley, Inc.*, 100 B.R. 107, 113 (Bankr. N.D. Ga. 1988); *Ames Dep't Stores*, 115 B.R. at 40 (approving financing facility and finding that debtor made reasonable efforts to satisfy the requirements of section 364(c) by approaching four lending institutions, two of which refused to provide financing, and selecting the most favorable of the two offers it received).

44. Courts have articulated a three-part test to determine whether a debtor is entitled to enter into financing under section 364(c) of the Bankruptcy Code. Specifically, courts look to whether:

- the debtor is unable to obtain unsecured credit under section 364(b) of the Bankruptcy Code (*i.e.*, by allowing an administrative claim);
- the credit transaction is necessary to preserve the assets of the estate; and
- the terms of the transaction are fair, reasonable, and adequate, given the circumstances of the debtor-borrower and proposed lenders.

Crouse Grp., 71 B.R. at 549; *see also L.A. Dodgers LLC*, 457 B.R. at 312–13*; In re Aqua Assocs.*, 123 B.R. 192, 195–96 (Bankr. E.D. Pa. 1991); *Ames Dep't Stores*, 115 B.R. at 37-40.

45. In the event that a debtor is unable to obtain unsecured credit allowable as an administrative expense under section 503(b)(1) of the Bankruptcy Code, section 364(c) provides that a court "may authorize the obtaining of credit or the incurring of debt (1) with priority over any or all administrative expenses of the kind specified in section 503(b) or 507(b) of [the Bankruptcy Code]; (2) secured by a lien on property of the estate that is not otherwise subject to a lien; or (3) secured by a junior lien on property of the estate that is subject to a lien." 11 U.S.C. § 364(c). As described above and in the Rubin Declaration, the Debtor does not believe alternative financing is presently available on an unsecured or administrative priority only basis. Thus, the Debtor determined the DIP Facility provided the best—and, in fact, the *only*—opportunity available to the Debtor under the circumstances to fund this Chapter 11 case. Moreover, the DIP Lender is already the Prepetition Lender and is ready, willing, and able to move forward with funding promptly. Therefore, approving superpriority claims in favor of the DIP Lender is reasonable and appropriate.

C. <u>The Interests of Prepetition Lender Are Adequately Protected</u>.

46. Parties with an interest in collateral, including Cash Collateral, are entitled to adequate protection. *See* 11 U.S.C. § 363(e). Adequate protection may be provided in various

forms, including, among other things, payment of adequate protection, payment of interest, or granting of replacement liens or administrative claims. Thus, what constitutes adequate protection is decided on a case-by-case basis. *See, e.g.*, *Resolution Tr. Corp. v. Swedeland Dev. Grp. (In re Swedeland Dev. Grp.)*, 16 F.3d 552, 564 (3d Cir. 1994); *In re Satcon Tech. Corp.*, No. 12-12869 (KG), 2012 WL 6091160, at *18 (Bankr. D. Del. Dec. 7, 2012); *In re Columbia Gas Sys., Inc.*, Nos. 91- 803, 91-804, 1992 WL 79323, at *2 (Bankr. D. Del. Feb. 18, 1992); see also In re Dynaco Corp., 162 B.R. 389, 394 (Bankr. D.N.H. 1993) (citing *In re Briggs Transp. Co.*, 780 F.2d 1339 (8th Cir. 1985)) (explaining that adequate protection can take many forms and "must be determined based upon equitable considerations arising from the particular facts of each proceeding")).

47. Pursuant to sections 361, 362, 363(e), and 507 of the Bankruptcy Code, the Debtor asserts that the Prepetition Lender, is entitled to adequate protection of its interests in all Prepetition Collateral, to the extent of any Diminution in Value of its interests in the Prepetition Collateral from and after the Petition Date, if any. The adequate protection package provided to the Prepetition Lender, as described above and set forth in the DIP Orders, is consensual and appropriately safeguards the Prepetition Lender from Diminution in Value (if any) of its interests in the Prepetition Collateral. The Debtor submits that its provision of adequate protection to the Prepetition Lender is fair and reasonable and is sufficient to satisfy the requirements of section 364(d)(1)(B) of the Bankruptcy Code. The Prepetition Lender does not object to the adequacy of the proposed adequate protection at this time, but reserves rights to seek additional adequate protection should the current package prove insufficient.

D. <u>The Proposed Roll-Up Is Appropriate</u>.

48. Section 363(b) of the Bankruptcy Code permits a debtor to use, sell, or lease property, other than in the ordinary course of business, with court approval. It is well settled in the Third Circuit that such transactions should be approved when they are supported by a sound

business purpose. *See In re Abbots Dairies, Inc.*, 788 F.2d 143 (3d Cir. 1986) (holding that in the Third Circuit, a debtor's use of assets outside the ordinary course of business under section 363(b) of the Bankruptcy Code should be approved if the debtor can demonstrate a sound business justification for the proposed transaction). The business judgment rule shields a debtor's management from judicial second-guessing. *Comm. of Asbestos-Related Litigants v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 615–16 (Bankr. S.D.N.Y. 1986) ("[T]he [Bankruptcy] Code favors the continued operation of a business by a debtor and a presumption of reasonableness attaches to a debtor's management decisions.").

49. Repaying prepetition debt with funds borrowed postpetition (often referred to as a "roll-up") is a common feature in debtor in possession financing arrangements. Indeed, most DIP loans in Delaware involve roll-ups or creeping roll ups, and the importance of "roll-up" features in DIP facilities has been repeatedly recognized by courts in this district and others, and such courts have granted relief similar to the relief requested herein.[9]

50. For example, as Judge Sontchi stated in *In re Capmark Financial Group Inc.*,

[9] *See, e.g.*, *In re Franchise Group, Inc.*, No. 24-12480 (JTD) (Bankr. D. Del. Dec. 11, 2024) (Docket No. 414) (approving a $750 million DIP Credit Facility with a 2:1 ratio consisting of $500 million of prepetition debt and $250 million of new money); *In re Restoration Forest Prods. Grp.*, No. 24-10120 (KBO) (Bankr. D. Del. Feb. 1, 2024) (Docket No. 44) (authorizing an approximately $93 million DIP Credit Facility, including a $64 million roll-up of the prepetition bridge facility on an interim basis); *In re DeCurtis Holdings LLC*, No. 23- 10548 (JKS) (Bankr. D. Del. June 23, 2023) (Docket No. 285) (authorizing an approximate $27 million DIP Credit Facility, including a $20.5 million roll-up of prepetition loans); *In re SiO2 Medical Prods., Inc.*, No. 23-10366 (JTD) (Bankr. D. Del. Apr. 26, 2023) (Docket No. 216) (authorizing an approximately $120 million DIP Credit Facility, including a $60 million roll-up of the prepetition term loan); *In re Phoenix Servs. Topco LLC*, No. 22-10906 (MFW) (Bankr. D. Del. Sept. 29, 2022) (Docket No. 73) (approving a $100 million interim DIP Credit Facility with a 3:1 roll-up ratio consisting of $75 million of prepetition debt and $25 million of new money); *In re TPC Grp.*, No. 22- 10493 (CTG) (Bankr. D. Del. June 3, 2022) (Docket No. 147) (authorizing an approximately $323 million DIP Credit Facility, including a $238 million roll-up of prepetition secured notes, of which approximately $59 million rolled up on an interim basis); *In re Nine Point Energy Holdings, Inc.*, No. 21-10570 (MFW) (Bankr. D. Del. Mar. 17, 2021) (Docket No. 100) (approving a $13 million interim DIP Credit Facility with a 3:1 ratio consisting of $39 million of prepetition debt and $13 million of new money); *In re Blackhawk Mining LLC*, No. 19-11595 (LSS) (Bankr. D. Del. July 23, 2019) (Docket No. 81) (authorizing DIP facilities in the aggregate amount of $240 million, including a $100 million roll-up of the prepetition term loan and an additional $140 million in incremental liquidity, pursuant to interim order); *In re Charlotte Russe Holding, Inc.*, No. 19-10210 (LSS) (Bankr. D. Del. Feb. 5, 2019) (Docket No. 92) (approving a $50 million interim DIP Credit Facility with a 2.57:1 roll-up ratio consisting of $36 million of prepetition debt and $14 million of new money).

438 B.R. 471 (Bankr. D. Del. 2010) (CSS):

> [P]repetition secured claims can be paid off through a "roll-up." Most simply, a [roll-up] is the payment of a pre-petition debt with the proceeds of a post-petition loan. Roll-ups most commonly arise where a pre-petition secured creditor is also providing a post-petition DIP loan under section 364(c) and/or (d) of the Bankruptcy Code. The proceeds of the DIP loan are used to pay off or replace the pre-petition debt, resulting in a post-petition debt equal to the pre-petition debt plus any new money being lent to the debtor. As a result, the entirety of the pre-petition and post-petition debt enjoys the post-petition protection of section 364(c) and/or (d) as well as the terms of the DIP order. In both a refinancing and a roll-up, the pre-petition secured claim is paid through the issuance of new debt rather than from unencumbered cash.

Id. at 511 (footnotes omitted). Judge Sontchi recognized that, in a roll-up, "actual money rarely changes hands. The pre-petition loan is deemed satisfied and the post-petition loan includes the amount of the pre-petition debt." *Id.* at 511 n.14. As Judge Sontchi further stated in Capmark:

> A "creeping roll-up" is identical to a roll-up except that the payment of the pre-petition debt occurs over time. Creeping roll-ups are most commonly used with revolving lines of credit or "revolvers." In a typical revolver, the debtor has a zero-balance account. As payments are received by the debtor from third parties they are deposited in an account with the lender and applied, usually daily, to reduce the debt. As payments are made by the debtor to third parties the debt increases. Thus, the amount of the debt rises and falls on an almost daily basis. In a creeping roll-up, payments received post-petition by the debtor are used to reduce the pre-petition debt. In addition, the debtor's post-petition payments to third parties serve to increase the post-petition debt. Thus, the pre-petition revolver is gradually "paid off" and replaced with the post-petition revolver—often before the final DIP hearing. Again, actual money rarely changes hands.

Id. at 511 n.15; *see also Simon & Schuster, Inc. v. Advanced Mktg. Servs. (In re Advanced Mktg. Servs.),* 360 B.R. 421, 423 (Bankr. D. Del. 2007) (discussing "creeping roll up" approved as part of interim relief and stating that the DIP Loan Agreement "contemplates the Debtors' satisfaction of their pre-petition obligations to the Senior Lenders through application of Cash Collateral (as defined in the Interim Order), which is derived primarily from the proceeds from the sale of the Debtors' inventory, all before payment of Debtors' post-petition obligations under the

DIP Loan.”).

51. As set forth above, the DIP Documents provide that the DIP Facility will be used to roll up, subject to entry of the Final Order, a portion of the Prepetition Secured Obligations. This repayment is a sound exercise of the Debtor’s business judgment and is a material component of the structure of the DIP Facility. Without continued access to the additional liquidity provided under the DIP Facility, the Debtor will be unable to fund the administration of this Chapter 11 Case.

52. As discussed in the Rubin Declaration, the Rolled-Up DIP Loans were the subject of arms’-length, good faith negotiations between the Debtor and the DIP Lender, is an integral component of the overall terms of the DIP Facility, and is subject to the Carve-Out. Additionally, the Rolled-Up DIP Loans were a necessary and integral condition for the DIP Lender to agree to the DIP Facility. For these reasons and because no other party has put forward an actionable financing proposal, the Rolled-Up DIP Loans are reasonable, appropriate, a sound exercise of the Debtor’s business judgment, and ultimately in the best interests of all stakeholders given the alternatives.

E. <u>The Carve-Out is Appropriate</u>.

53. The liens granted pursuant to the DIP Facility, adequate protection claims, and the superpriority claims of the Prepetition Lender and the DIP Lender are subject and subordinate to the Carve-Out. The Carve-Out contains similar terms to others that have been found to be reasonable and necessary to ensure that a debtor’s estate and any statutory committee can retain assistance from counsel.[10]

[10] *See, e.g.*, *In re Cano Health, Inc.*, No. 24-10164 (KBO) (Bankr. D. Del. Mar. 6, 2023) (Docket No. 271); *In re Sunlight Fin. Holdings, Inc.*, No. 23-11794 (MFW) (Bankr. D. Del. Nov. 30, 2023) (Docket No. 169); *In re Western Glob. Airlines, Inc.*, No. 23-11093 (KBO) (Bankr. D. Del. Sept. 12, 2023) (Docket No. 236); *In re Brooks Brothers Grp.*, No. 20-11785 (CSS) (Bankr. D. Del. Aug. 14, 2020) (Docket No. 443); *In re Exide Holdings, Inc.*, No. 20-11157 (CSS) (Bankr. D. Del. May 21, 2020) (Docket No. 123); *In re Claire’s Stores, Inc.*, No. 18-10584

54. Without the Carve-Out, the Debtor's estate may be deprived of possible rights and powers if the services for which professionals may be compensated are restricted. *See Ames Dep't Stores*, 115 B.R. at 38 (observing that courts insist on carve outs for professionals representing parties in interest because "[a]bsent such protection, the collective rights and expectations of all parties-in-interest are sorely prejudiced"). Additionally, the Carve-Out protects against administrative insolvency during the course of this Chapter 11 Case by the funding of reserves to ensure that assets remain for the payment of U.S. Trustee fees and professional fees, notwithstanding the grant of superpriority claims and replacement liens as part of the adequate protection of the Prepetition Lender's interests in the Prepetition Collateral and the funding of a reserve.

F. The Debtor Has Exercised Its Business Judgment in Entering Into the DIP Facility and Satisfies the Heightened Scrutiny Required for an Insider.

55. A debtor's decision to enter into a postpetition lending facility under section 364 of the Bankruptcy Code is generally governed by the business judgment standard. *See Ames Dep't Stores* at 40 ("[C]ases consistently reflect that the court's discretion under section 364 is to be utilized on grounds that permit reasonable business judgment to be exercised so long as the financing agreement does not contain terms that leverage the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to benefit a party-in-interest."); *see also In re Farmland Indus., Inc.*, 294 B.R. 855, 881 (Bankr. W.D. Mo. 2003) (noting that approval of postpetition financing requires, inter alia, an exercise of "sound and reasonable business judgment"); *In re Trans World Airlines, Inc.*, 163 B.R. at 974 (noting that the interim loan,

(MFW) (Bankr. D. Del. March 20, 2018) (Docket No. 130); *Ames Dep't Stores*, 115 B.R. at 40–41; *In re Halcón Res. Corp.*, No. 16-11724 (BLS) (Bankr. D. Del. Aug. 19, 2016) (Docket No. 130); *In re Am. Apparel, Inc.*, No. 15-12055 (BLS) (Bankr. D. Del. Nov. 2, 2015) (Docket No. 248); *In re Reichold Holdings US, Inc.*, No. 14-12237 (MFW) (Bankr. D. Del. Oct. 2, 2014) (Docket No. 54).

receivable facility and asset-based facility were approved because they "reflect[ed] sound and prudent business judgment . . . [were] reasonable under the circumstances and in the best interests of [the debtor] and its creditors.").

56. However, when a transaction is between a debtor and its insider, "courts apply a 'heightened scrutiny' test in assessing the bona fides of a transaction among a debtor and an insider of the debtor." *In re LATAM Airlines Grp. S.A.*, 620 B.R. 722, 769 (Bankr. S.D.N.Y. 2020) (citation omitted). "A claim arising from the dealings between a debtor and an insider is to be rigorously scrutinized by the courts." *Schubert v. Lucent Techs. Inc. (In re Winstar Commc'ns, Inc.)*, 554 F.3d 382, 412 (3d Cir. 2009) (*quoting Fabricators Inc. v. Tech. Fabricators, Inc. (In re Fabricators, Inc.)*, 926 F.2d 1458, 1465 (5th Cir. 1991)).

57. In seeking to enter into the DIP Facility, the Debtor has not only exercised sound business judgment but has also satisfied the heightened scrutiny test for entering into transactions with insiders. The former chair of the Debtor's board of directors, who owns a material amount of the equity of the DIP Lender (which, in turn, is an equity interest holder of the Debtor), recused himself from negotiating and voting on approval of the DIP Facility. Indeed, the former chair (and another member of the Debtor's board of directors with connections to the DIP Lender) resigned prior to the Petition Date. As set forth in the Rubin Declaration, the Debtor's CRO was actively involved in negotiating the DIP Facility with the DIP Lender. Those negotiations were conducted at arm's length and in good faith and included multiple iterations of the Budget and the Carve-Out to ensure appropriate protections for the estate and its stakeholders. Moreover, while the DIP Lender is affiliated with the Debtor, each of the parties have separate counsel that assisted their respective clients in connection with negotiating the DIP Facility and the Debtor's CRO independently engaged in efforts to identify alternative financing options (as discussed further

below).

58. The use of its current cash reserves and reliance on business operations is insufficient to meet the Debtor's working capital needs to operate its business in the ordinary course and simultaneously navigate, and emerge from, the Chapter 11 Case. As detailed in the Rubin Declaration, there is an urgent need for DIP Facility because the Debtor's current finances are insufficient to allow the Debtor to continue to operate its business and meet its obligations in the Chapter 11 Case.

59. Further, in an effort to secure alternative sources of postpetition financing, the Debtor solicited proposals from eleven (11) potential lenders, including distressed investors and alternative financing sources. However, despite these extensive efforts, the Debtor received only a single proposal from the DIP Lender. The terms of this proposal were subject to rigorous negotiation, and the Debtor, in consultation with its advisors, has concluded that the proposed DIP Facility is the only viable option to secure the necessary liquidity to preserve the value of the estate and continue operations. Therefore, following reasoned business judgment, it is clear the DIP Facility is the best offer obtainable under the circumstances.

60. The Debtor engaged in arm's length negotiations with the DIP Lender and further improved the terms of the DIP Facility. The DIP Credit Agreement contains terms and conditions that are the best available and provides the Debtor with sufficient liquidity to effectively operate the Debtor's business through the Chapter 11 Case and make necessary administrative payments. This Court has previously approved similar debtor-in-possession financing agreements where the debtor was not able to obtain postpetition financing under other conditions.[11]

[11] *See, e.g.*, *In re BLH Topco LLC*, No. 25-10576 (CTG) (Bankr. D. Del. Apr. 24, 2025) (Docket No. 129) *In re Brightmark Plastics Renewal LLC*, No. 25-10472 (LSS) (Bankr. D. Del. Apr. 22, 2025) (Docket No. 152); *In re Viridos, Inc.*, No. 25-10697 (CTG) (Bankr. D. Del. Apr. 15, 2025) (Docket No. 16); *In re Smallhold, Inc.*, No. 24-10267 (CTG) (Bankr. D. Del. Apr. 17, 2024) (Docket No. 129).

61. The funds provided by the DIP Facility are essential to enable the Debtor to continue to operate during the course of this Chapter 11 Case and allow it to emerge from bankruptcy. Indeed, failure to obtain approval of the DIP Facility would potentially lead to a wind-down of the Debtor's business operations which, in turn, would adversely affect its creditors and the estate.

62. Accordingly, pursuant to sections 364(c) and (d) of the Bankruptcy Code, the Debtor respectfully submits that it should be granted authority to obtain financing from the DIP Lender on the terms set forth in the DIP Credit Agreement.

G. <u>The DIP Lender Should Be Deemed a Good Faith Lender.</u>

63. Section 364(e) of the Bankruptcy Code protects a good faith lender's right to collect on loans extended to a debtor, and its right in any lien securing those loans, even if the authority of the debtor to obtain such loans or the grant of such liens is later reversed or modified on appeal. Section 364(e) provides that:

> The reversal or modification on appeal of an authorization under this section [364 of the Bankruptcy Code] to obtain credit or incur debt, or of a grant under this section of a priority or a lien, does not affect the validity of any debt so incurred, or any priority or lien so granted, to an entity that extended such credit in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and the incurring of such debt, or the granting of such priority or lien, were stayed pending appeal.

11 U.S.C. § 364(e).

64. Here, the Debtor believes the DIP Facility embodies the most favorable terms on which the Debtor could obtain postpetition financing. As described in the Rubin Declaration, all negotiations of the DIP Documents with the DIP Lender were conducted in good faith and at arm's length. The terms and conditions of the DIP Documents are entirely fair under the circumstances, and the proceeds of the DIP Facility will be used only for purposes that are permissible under the Bankruptcy Code, in accordance with the DIP Orders and the DIP Documents and in accordance

with the Budget (subject to Permitted Variances). Further, no consideration is being provided to any party to the DIP Documents other than as described herein and in the Rubin Declaration. Accordingly, the Court should find that the DIP Lender is a "good faith" lender within the meaning of section 364(e) of the Bankruptcy Code and that the DIP Lender thus is entitled to all of the protections afforded by that section.

II. THE USE OF CASH COLLATERAL IS APPROPRIATE

65. Section 363 of the Bankruptcy Code generally governs the use of estate property. Section 363(c)(2) provides that:

> The trustee may not use, sell or lease cash collateral . . . unless—(A) each entity that has an interest in such collateral consents; or (B) the court, after notice and a hearing, authorizes such use, sale or lease in accordance with the provisions of this section.

11 U.S.C. § 363(c)(2). Furthermore, section 363(e) provides that "on request of an entity that has an interest in property . . . proposed to be used, sold or leased, by the trustee, the court, with or without a hearing, shall prohibit or condition such use, sale, or lease as is necessary to provide adequate protection of such interest." 11 U.S.C. § 363(e).

66. The Debtor requires the use of Cash Collateral to obtain services that are necessary to its business. Although the use of Cash Collateral alone is insufficient to satisfy the Debtor's ongoing funding requirements for its business and the administration of this Chapter 11 Case and consequently needs to supplement with the funds provided by the DIP Facility, it is imperative that the Debtor obtain authority to use Cash Collateral, subject to the terms described herein and provided for in the Interim Order. Accordingly, to obtain the necessary financing, and to avoid immediate and irreparable harm to its business and estate, the Debtor has an immediate need for authority to use the Cash Collateral as set forth in the DIP Orders.

67. During this Chapter 11 Case, the Debtor will need access to its Cash Collateral to

make payments that are essential for the operation of the Debtor's business, including, without limitation, payments coming due pos-petition with respect to certain insurance policies and employee wages. An inability to use such funds during this Chapter 11 Case could severely impact the success of this Chapter 11 Case. Indeed, without access to Cash Collateral, the Debtor and its estate will suffer immediate and irreparable harm.

68. The Debtor has satisfied the requirements of sections 363(c)(2) and (e) and should be authorized to use Cash Collateral. As noted above, the Debtor intends to provide the Prepetition Lender with adequate protection for the use of Cash Collateral that constitutes Prepetition Collateral. Mitigating any potential operational damage from a consensual Cash Collateral agreement will prevent avoidable Diminution in Value of the Cash Collateral and enhance the likelihood of preserving the Debtor's overall value. *See, e.g., 495 Cent. Park Ave. Corp.*, 136 B.R. 626, 631 (Bankr. S.D.N.Y. 1992) (noting that, in determining whether protection is "adequate," courts consider "whether the value of the debtor's property will increase as a result of the" use of collateral or provision of financing); *In re Sky Valley, Inc.*, 100 B.R. 107, 114 (Bankr. N.D. Ga. 1988) ("an increase in the value of the collateral . . . resulting from superpriority financing could result in adequate protection." (citation omitted)), *aff'd sub nom. Anchor Sav. Bank FSB v. Sky Valley, Inc.*, 99 B.R. 117 (N.D. Ga. 1989).

69. The Prepetition Lender has consented to the Debtor's use of Cash Collateral. This satisfies the Bankruptcy Code's requirement for a priming lien with respect to the Prepetition Lender. Accordingly, the Court should grant the Debtor the authority to use Cash Collateral under section 363(c) of the Bankruptcy Code.

III. <u>MODIFICATION OF THE AUTOMATIC STAY IS WARRANTED</u>.

70. The relief requested herein contemplates a modification of the automatic stay to permit the Debtor to, among other things, (i) grant the security interests, liens, and superpriority

claims described above with respect to the DIP Lender and the Prepetition Lender, as applicable, and to perform such acts as may be requested to assure the perfection and priority of such security interests and liens; (ii) permit the Debtor to incur all liabilities and obligations to the DIP Lender and the Prepetition Lender under the DIP Documents, the DIP Facility, and the Interim Order, as applicable; and (iii) authorize the Debtor to pay, and the DIP Lender and the Prepetition Lender to retain and apply, payments made in accordance with the terms of the Interim Order and the DIP Documents.

71. Stay modifications of this kind are ordinary and standard features of postpetition financing facilities, and under the present circumstances, are well within the Debtor's reasonable business judgment and entirely fair.[12]

IV. THE DEBTOR REQUIRES IMMEDIATE ACCESS TO DIP FINANCING.

72. The Court may grant interim relief in respect of a motion filed pursuant to section 363(c) or 364 of the Bankruptcy Code if, as here, interim relief is "necessary to avoid immediate and irreparable harm to the estate pending a final hearing." Fed. R. Bankr. P. 4001(b)(2)(A), (c)(2)(A). In examining requests for interim relief under this rule, courts generally apply the same business judgment standard applicable to other business decisions. *See Ames Dep't Stores*, 115 B.R. at 38, 40.

73. As of the Petition Date, the Debtor has approximately $143,000 in cash on hand,

[12] *See, e.g.*, *In re Cano Health, Inc.*, No. 24-10164 (KBO) (Bankr. D. Del. Mar. 6, 2023) (Docket No. 271); *In re Sunlight Fin. Holdings, Inc.*, No. 23- 11794 (MFW) (Bankr. D. Del. Nov. 30, 2023) (Docket No. 169); *In re Western Glob. Airlines, Inc*., No. 23-11093 (KBO) (Bankr. D. Del. Sept. 12, 2023) (Docket No. 236); *In re Brooks Brothers Grp.*, No. 20-11785 (CSS) (Bankr. D. Del. Aug. 14, 2020) (Docket No. 443); *In re Exide Holdings, Inc*., No. 20-11157 (CSS) (Bankr. D. Del. May 21, 2020) (Docket No. 123); *In re Checkout Holding Corp.*, No. 18-12794 (KG) (Bankr. D. Del. Jan. 17, 2019) (Docket No. 222); *In re Mattress Firm, Inc.*, No. 18-12241 (CSS) (Bankr. D. Del. Oct. 9, 2018) (Docket No. 184); *In re NORDAM Grp., Inc.*, No. 18-11699 (MFW) (Bankr. D. Del. July 25, 2018) (Docket No. 85); *In re Claire's Stores, Inc.*, No. 18-10584 (MFW) (Bankr. D. Del. Mar. 20, 2018) (Docket No. 130); *In re Charming Charlie, LLC*, No. 17-12906 (CSS) (Bankr. D. Del. Dec. 13, 2017) (Docket No. 93).

all of which constitutes Cash Collateral of the Prepetition Lender and is to be paid to the Prepetition Lender. In any event, even if use of Cash Collateral were consented to by the Prepetition Lender, it is not in sufficient amount to fund the estate and would be exhausted within the first weeks of this Chapter 11 Case. Absent authority to enter into and to access the proceeds of the DIP Facility, even for a limited period of time, the Debtor will be unable to continue operating its businesses, resulting in a deterioration of value and immediate and irreparable harm to the Debtor's estate. Thus, the Debtor requires immediate access to the proceeds of the DIP Facility, as well as authority to use Cash Collateral, to finance its operations and continue operating as a going concern during the pendency of this Chapter 11 Case.

REQUEST FOR A FINAL HEARING

74. The Court may grant interim relief in respect of a motion filed pursuant to section 364 of the Bankruptcy Code where, as here, interim relief is "necessary to avoid immediate and irreparable harm to the estate pending a final hearing." Fed. R. Bankr. P. 4001(b)(2)(A), (c)(2)(A). The Debtor respectfully requests a date which is no later than thirty (30) days after entry of the Interim Order, to hold a hearing to consider entry of a Final Order and the final approval of the relief requested in this Motion.

BANKRUPTCY RULE 6003(b) HAS BEEN SATISFIED

75. Bankruptcy Rule 6003(b) provides that, " [u]nless relief is needed to avoid immediate and irreparable harm, the court must not, within 21 days after the petition is filed, grant . . . a motion to pay all or a part of a claim that arose before the petition was filed." Fed R. Bankr. P. 6003(a)(2). Immediate and irreparable harm exists where the absence of relief would impair a debtor's ability to maximize value or threaten the debtor's future as a going concern. *See, e.g.*, *In re Bayou Steel BD Holdings, L.L.C.,* No. 19-12153 (KBO) (Bankr. D. Del. Oct. 3, 2019), (Docket No. 46) (providing that debtors satisfied the requirements of Bankruptcy

Rule 6003(b)); *see also In re Genco Shipping & Trading Ltd.,* 509 B.R. 455, 469 (Bankr. S.D.N.Y. 2014) (finding that the debtors would suffer "immediate and irreparable harm" without the assumption of a restructuring support agreement and the use of cash collateral).

76. For the reasons discussed above, the Debtor believes an immediate and orderly transition into chapter 11 is critical, and the failure to receive the requested relief during the first twenty-one (21) days of this Chapter 11 Case could impact the Debtor's operations at this important juncture. As described in this Motion and in the Rubin Declaration, the Debtor would suffer immediate and irreparable harm if the relief sought herein were not promptly granted and if the Debtor was therefore unable to access the proceeds of the DIP Facility or use Cash Collateral. Based on the foregoing, the Debtor submits that the relief requested in this Motion is necessary to avoid immediate and irreparable harm, and therefore, Bankruptcy Rule 6003(b) is satisfied.

REQUEST FOR BANKRUPTCY RULES 6004(a) AND (h) WAIVERS

77. To implement the foregoing successfully, and given the emergent nature of the relief requested in this Motion, the Debtor seeks a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the fourteen (14) day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h). As explained above and in the Rubin Declaration, the relief requested in this Motion is necessary to avoid immediate and irreparable harm to the Debtor. Accordingly, ample cause exists to justify the waiver of the notice requirements under Bankruptcy Rule 6004(a) and the fourteen (14) day stay imposed by Bankruptcy Rule 6004(h), to the extent such notice requirements and such stay apply. The Debtor further submits that waiver is appropriate as part of any Final Order, because the incremental funding that will be made available will be necessary to avoid immediate and irreparable harm at such time.

RESERVATION OF RIGHTS

78. Nothing contained herein or any action taken pursuant to relief requested is intended to be or shall be construed as: (a) an admission as to the validity of any claim against the Debtor; (b) a waiver of the Debtor's or any party in interest's rights to dispute the amount of, basis for, or validity of any claim or interest under applicable law or non-bankruptcy law; (c) a promise or requirement to pay any claim; (d) a waiver of the Debtor's or any other party in interest's rights under the Bankruptcy Code or any other applicable law; (e) a request for or granting of approval for assumption of any agreement, contract, program, policy, or lease under section 365 of the Bankruptcy Code; or (f) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtor's estate. Likewise, if the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended to be and should not be construed as an admission to the validity of any claim or a waiver of the Debtor's or any party in interest's rights to subsequently dispute such claim.

NOTICE

79. Notice of this Motion has been provided by email, facsimile, or overnight courier to: (i) the Office of the United States Trustee for the District of Delaware; (ii) the holders of the twenty (20) largest unsecured claims against the Debtor (excluding insiders); (iii) counsel to the Prepetition Lender and the DIP Lender; and (iv) all parties that have filed a notice of appearance and request for service of papers pursuant to Bankruptcy Rule 2002. As this Motion is seeking "first day" relief, within two (2) business days of the hearing on this Motion, the Debtor will serve copies of this Motion and any order entered in respect to this Motion as required by Local Rule

9013-1(m). The Debtor submits that in light of the nature of the relief requested, no other or further notice is necessary.

NO PRIOR REQUEST

80. No previous request for the relief sought herein has been made by the Debtor to this or any other court.

WHEREFORE, the Debtor respectfully requests entry of interim and final orders, substantially in the forms of the Interim Order filed with this Motion and the Final Order, granting the relief requested herein and granting such other relief as is appropriate.

Dated: December 21, 2025,
Wilmington, Delaware

Respectfully submitted,

REED SMITH LLP

By: */s/ Jason D. Angelo*

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Proposed Counsel for the Debtor and Debtor in Possession

EXHIBIT A

Proposed Interim Order

(Attached)

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
GST, INC.,[1]	)	Case No. 25-12188 (KBO)
Debtor.	)	**Ref. Docket No. _____**

INTERIM ORDER (I) AUTHORIZING THE DEBTOR TO (A) OBTAIN SENIOR SECURED POSTPETITION FINANCING AND (B) USE CASH COLLATERAL; (II) GRANTING LIENS AND SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS; (III) GRANTING ADEQUATE PROTECTION; (IV) MODIFYING THE AUTOMATIC STAY; (V) SCHEDULING A FINAL HEARING; AND (VI) GRANTING RELATED RELIEF

Upon the motion, dated December 21, 2025 (the "Motion"),[2] of the above-captioned debtor and debtor-in-possession (the "Debtor") in the above-captioned chapter 11 case (the "Chapter 11 Case"), for entry of an interim order (this "Interim Order") and a final order (the "Final Order") under sections 105, 361, 362, 363(b), 363(c), 363(m), 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), 364(e), 503, 506(c), 507, and 552 of title 11 of the United States Code, 11 U.S.C. § 101 *et seq*. (the "Bankruptcy Code"), Rules 2002, 4001, 6003, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rules 2002-1, 4001-2, and 9013-1 of the Local Bankruptcy Rules for the District of Delaware (the "Local Rules") seeking, among other things,

(a) authorization for the Debtor to obtain postpetition financing, the Debtor's obligations in connection with such debtor-in-possession financing comprising a senior secured, superpriority, multiple-draw credit facility (the "DIP Facility"), with Winners Alliance, Inc. ("Winners Alliance" or the "Prepetition Lender" or the "DIP Lender"), consisting of: (i) a new money multi-draw term loan facility in the

[1] The last four digits of the Debtor's taxpayer identification number are 1002. The Debtor's corporate headquarters and service address is 322 Culver Boulevard, Suite 150, Playa Del Rey, CA 90293.

[2] Capitalized terms used but not defined herein have the meanings given to them in the Motion or the DIP Credit Agreement (as defined below), as applicable.

aggregate principal amount of up to $1,100,000 (the "Interim New Money DIP Loans"); (ii) during the period from the entry of this Interim Order through and including the earlier to occur of (x) entry of the Final Order or (y) the DIP Termination Date (as defined herein), upon each advance of Interim New Money DIP Loans, a "roll-up" of the Prepetition Secured Obligations (as defined below) of the Debtor under the Prepetition Credit Agreement (as defined below) in an amount equal to such advance (such rolled-up obligations, the "Interim Roll-Up DIP Loans" and together with the Interim New Money DIP Loans, the "Interim DIP Loans"), which Interim Roll-Up DIP Loans shall be automatically rolled up, refinanced, and converted into postpetition obligations under the DIP Facility on a cashless, equal basis; (iii) a new money term loan facility in the aggregate principal amount not to exceed $1,800,000 (the "Final New Money DIP Loans" and, together with the Interim New Money DIP Loans, the "New Money DIP Loans"); and (iv) upon entry of the Final Order, a "roll-up" of $3,250,000 of the Prepetition Secured Obligations (the "Additional Roll-Up DIP Loan" and together with the Interim Roll-Up DIP Loans, the "Rolled Up DIP Loans" and, together with the New Money DIP Loans, the "DIP Loans"), all as more fully set forth herein and in the DIP Documents (as defined below);

(i) authorizing the Debtor to execute and deliver that certain *Senior Secured Superpriority Debtor-in-Possession Credit and Security Agreement* (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time, the "DIP Credit Agreement", and together with the schedules and exhibits attached thereto, and all agreements, documents, instruments, and amendments executed and delivered in connection therewith, the "DIP Documents"), substantially in the form attached hereto as **Exhibit 1**, by and among the Debtor, as borrower, and the DIP Lender, substantially in the form attached to the Motion as Exhibit A, and any other agreements and documents related thereto, and to perform such other acts as may be necessary or desirable in connection with the DIP Documents;

(ii) authorizing the Debtor to enter into the DIP Facility and to incur all obligations owing thereunder and under the DIP Documents to the DIP Lender (including the fees and expenses of the Lender Professionals and all other Indebtedness, the "DIP Obligations"), and granting the DIP Lender allowed superpriority administrative expense claim status in the Chapter 11 Case and in any Successor Case (as defined herein), subject to the Carve-Out (as defined herein);

(iii) authorizing the Debtor to grant to the DIP Lender, and authorizing the Debtor to incur, the DIP Liens (as defined below) in all DIP Collateral (as defined below), to secure the DIP Obligations (including in respect of the Interim Roll-Up DIP Loans), which liens and security interests shall be automatically perfected, on the terms and conditions set forth herein and in the applicable DIP Documents, subject to the Carve-Out;

(iv) authorizing the Debtor to use proceeds of the DIP Facility in accordance with this Interim Order and the DIP Documents, including in accordance with the Budget

(subject to Permitted Variances, unless otherwise expressly specified in the DIP Credit Agreement) as required herein;

(v) authorizing and directing the Debtor to pay the principal, interest, fees, expenses, and other amounts payable and reimbursable under the DIP Documents or this Interim Order as such become earned, due, and payable, including, without limitation, the reasonable fees and disbursements of the DIP Lender (including, without limitation, the Lender Professionals), as and to the extent provided in, and in accordance with, the applicable DIP Documents and this Interim Order;

(vi) authorizing the Debtor to use the proceeds of the DIP Loans and the Prepetition Collateral (as defined herein), including Cash Collateral (as defined below), in accordance with the terms hereof, including pursuant to the Budget (as defined below), as further described herein, to (a) pay fees, interest and expenses under the DIP Facility; (b) provide working capital for, and for other general corporate purposes of, the Debtor, including for funding the Carve-Out; (c) pay for bankruptcy-related costs and expenses; and (d) pay Adequate Protection Obligations (as defined below);

(vii) granting adequate protection, with respect to the Debtor, to the Prepetition Lender, on the terms set forth in the DIP Documents and this Interim Order, for any diminution in value of its interests in the Prepetition Collateral, including Cash Collateral, resulting from, among other things: (i) the use of Cash Collateral during the Chapter 11 Case; (ii) the use, sale or lease of any of the Prepetition Collateral; (iii) the imposition of the automatic stay pursuant to Bankruptcy Code section 362(a); and/or (iv) for any other reason for which adequate protection may be granted under the Bankruptcy Code (collectively, the "Diminution in Value");

(viii) authorizing a modification of the automatic stay imposed under section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of the Interim Order and the other DIP Documents;

(ix) granting a waiver of any applicable stay with respect to the effectiveness of the Interim Order (including a waiver pursuant to Bankruptcy Rule 6004(h)) and providing for immediate effectiveness of this Interim Order;

(x) scheduling a final hearing (the "Final Hearing") to consider entry of a Final Order (i) authorizing and approving, on a final basis, among other things, the Debtor's entry into the DIP Facility, the borrowings under the DIP Facility, the continued use of Cash Collateral and the granting of adequate protection, in each case, as described in the Motion and as set forth in the DIP Documents, and (ii) approving the form of notice with respect to the Final Hearing; and

(xi) granting the Debtor such other and further relief as is appropriate.

The Court having held a hearing to consider entry of this Interim Order (the "Interim Hearing"); and the Court having considered the Motion, the exhibits attached thereto, the

Declaration of Nicholas Rubin in Support of the Debtor's Chapter 11 Petition And Motion for Entry of Interim and Final Orders (I) Authorizing the Debtor to (A) Obtain Postpetition Financing, (B) Grant Liens and Superpriority Administrative Expense Claims and (C) Utilize Cash Collateral; (II) Granting Adequate Protection to Certain Prepetition Secured Parties; (III) Modifying the Automatic Stay; (IV) Scheduling a Final Hearing; and (V) Granting Related Relief [D.I. ●] (the "DIP Declaration"), the evidence submitted and arguments made at the Interim Hearing; and appropriate notice of the Motion and the Interim Hearing having been given in accordance with Bankruptcy Rules 2002, 4001(b), (c) and (d), and 9014 and all applicable Local Rules; and the Interim Hearing to consider the relief requested in the Motion having been held and concluded; and all objections, if any, to the interim relief requested in the Motion having been withdrawn, resolved or overruled by the Court; and it appearing that approval of the relief granted by this Interim Order is necessary to avoid immediate and irreparable harm to the Debtor and its estate pending the Final Hearing, otherwise is fair and reasonable and in the best interests of the Debtor and its estate and is essential for the continued operation of the Debtor's businesses and the preservation of the value of the Debtor's assets; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and it appearing that the Debtor's entry into the DIP Credit Agreement and the other DIP Documents is a sound and prudent exercise of the Debtor's business judgment; and after due deliberation and consideration, and good and sufficient cause appearing therefor, **BASED UPON THE RECORD ESTABLISHED AT THE INTERIM HEARING, THE COURT MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:**[3]

[3] The findings and conclusions set forth herein constitute this Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

A. **Petition Date**. December 11, 2025 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the District of Delaware (the "Court").

B. **Debtor in Possession**. The Debtor has continued in the management and operation of its business and property as Debtor in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

C. **Jurisdiction and Venue**. This Court has jurisdiction over the Chapter 11 Case, the Motion, and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. Consideration of the Motion constitutes a core proceeding pursuant to 28 U.S.C. § 157(b). This Court may enter a final order consistent with Article III of the United States Constitution. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

D. **Committee Formation**. As of the date hereof, the United States Trustee for the District of Delaware (the "U.S. Trustee") has not appointed an official committee of unsecured creditors in the Chapter 11 Case pursuant to section 1102 of the Bankruptcy Code (any such committee, the "Creditors' Committee").

E. **Notice**. Under the circumstances, the notice given by the Debtor, and described in the Motion, of the relief requested therein and the Interim Hearing constitutes due and sufficient notice thereof and complies with the Bankruptcy Code, the Bankruptcy Rules and the Local Rules, and no further notice of the relief sought at the Interim Hearing and the relief granted herein is necessary or required.

F. **Debtor's Stipulations**. Without prejudice to the rights of any other party, but

subject to the limitations contained in this Interim Order, including, without limitation, paragraph 17, the Debtor, on behalf of itself, its estate, and any successor or assigns thereto, shall be deemed to admit, stipulate, acknowledge and agree as follows:

(i) *Prepetition Secured Obligations.* Prior to the Petition Date, the Debtor (in such capacity, the "Prepetition Borrower") entered into those certain *Note and Security Agreements*, dated as of March 6, 2025, March 27, 2025, and December 5, 2025 (collectively, as amended, restated, supplemented, amended and restated, or otherwise modified from time to time, and together with all ancillary agreements, the "Prepetition Credit Agreement") with Winners Alliance, as lender. The Prepetition Credit Agreement provides for funded debt obligations (the "Prepetition Credit Facility") secured by security interests in and liens on all or substantially all of the Debtor's assets. As of the Petition Date, the Debtor was indebted and liable to the Prepetition Lender under the Prepetition Credit Agreement in the aggregate principal amount of not less than $5,000,000, together with accrued, interest, fees, expenses, and disbursements (collectively, the "Prepetition Secured Obligations").

(ii) *Prepetition Liens and Prepetition Collateral*. Prior to the Petition Date, pursuant to the Prepetition Credit Agreement, the Prepetition Borrower granted to the Prepetition Lender a lien on and security in substantially all of its assets, including, without limitation, all tangible or intangible personal property, all as set forth in the Prepetition Credit Agreement (collectively, the "Prepetition Collateral"). The Prepetition Secured Obligations and the security interests granted under the Prepetition Credit Agreement in favor of the Prepetition Lender on the Prepetition Collateral are (a) valid, enforceable, and perfected first-priority security interests in and continuing liens upon such assets, (b) not subject to offset, deduction, claim, counterclaim, or defense of any kind, nature, or description whatsoever.

(iii) *Cash Collateral*. Substantially all of the Debtor's cash, wherever located or held, including any amounts generated by the collection of accounts receivable, all cash proceeds of the Prepetition Collateral, and the cash in the Debtor's banking, checking or other deposit accounts with financial institutions as of the Petition Date (excluding cash deposits that secure any outstanding letters of credit) or deposited into the Debtor's banking, checking or other deposit accounts with financial institutions after the Petition Date, constitutes cash collateral within the meaning of Bankruptcy Code section 363(a) ("Cash Collateral") of the DIP Lender. The Debtor's use of Cash Collateral shall be subject to the terms of this Interim Order and the Debtor's authority to use Cash Collateral of the DIP Lender may be terminated in accordance with paragraphs 16 and 17 hereof.

G. **Entitlement to Adequate Protection**. The Prepetition Lender is entitled, pursuant to Bankruptcy Code sections 105, 361, 362, and 363(e), to adequate protection of its interests in the Prepetition Collateral, including Cash Collateral, to the extent of any postpetition Diminution in Value of its interests in the Prepetition Collateral. Based on the Motion, the DIP Declaration and the record presented to the Court at the Interim Hearing, the terms of the proposed adequate protection arrangements and of the use of the Prepetition Collateral, including Cash Collateral, are fair and reasonable, reflect the Debtor's prudent exercise of business judgment and constitute reasonably equivalent value and fair consideration for the use of the Prepetition Collateral (including the use of Cash Collateral).

H. **No Control**. Winners Alliance, in its capacity as either Prepetition Lender or DIP Lender, does not (i) control the Debtor or its properties or operations, (ii) have authority to determine the manner in which any Debtor's operations are conducted, or (iii) control persons or insiders of the Debtor by virtue of any of the actions taken with respect to, in connection with,

related to or arising from this Interim Order, the DIP Facility, or the Prepetition Credit Facility.

I. **Findings Regarding the DIP Facility and the Use of Cash Collateral**. Based on the record established at the Interim Hearing, including the DIP Declaration, and the representations of the parties, the Court makes the following findings:

(i) *Good Cause*. Good and sufficient cause has been shown for: (a) the entry of this Interim Order; (b) the Debtor to obtain postpetition financing on the terms and conditions set forth in the DIP Documents and this Interim Order; (c) authorizing the Debtor to continue to use Cash Collateral of the Prepetition Lender; and (d) granting adequate protection to the Prepetition Lender.

(ii) *Request for Postpetition Financing.* The Debtor seeks authority on an interim basis to enter into the DIP Facility on the terms described herein and in the DIP Documents and for authority to use the Prepetition Lender's Cash Collateral to administer its Chapter 11 Case and fund its operations in accordance with the Budget (as defined herein), subject to Permitted Variances (as defined herein) and unless otherwise expressly specified in the DIP Credit Agreement. At the Final Hearing, the Debtor will seek final approval of the proposed postpetition financing and use of Cash Collateral arrangements pursuant to the Final Order, which shall be in form and substance acceptable to the DIP Lender. Notice of the Final Hearing and Final Order will be provided in accordance with this Interim Order.

(iii) *Need for Postpetition Financing*. The Debtor has an ongoing, immediate, and critical need to use Cash Collateral on an interim basis and obtain credit in the form of the Interim DIP Loans pursuant to the DIP Facility in order to, among other things: (a) permit the orderly continuation of their business; (b) maintain business relationships with their vendors, customers and other parties; (c) make payroll; (d) pay the costs of administering the Chapter 11

Case; and (e) pay Adequate Protection Obligations, in each case, in compliance with, and subject in all respects to, the Budget and the terms and conditions set forth in the DIP Documents and this Interim Order. The incurrence of the Interim DIP Loans under the DIP Credit Agreement and use of Cash Collateral is necessary and vital to the preservation and maintenance of the going concern value of the Debtor. Immediate and irreparable harm will be caused to the Debtor and its estate if immediate financing is not obtained and permission to use Cash Collateral is not granted. The Debtor does not have sufficient available sources of working capital and/or financing to operate its business or maintain its property in the ordinary course of business without the DIP Facility and authorized use of Cash Collateral. The terms of the DIP Facility are fair and reasonable, reflect the Debtor's exercise of prudent business judgment, are supported by reasonably equivalent value and fair consideration and are in the best interests of the Debtor and its stakeholders. The adequate protection provided in this Interim Order and other benefits and privileges contained herein are consistent with and authorized by the Bankruptcy Code.

(iv) *No Credit Available on More Favorable Terms*. The DIP Facility is the best source of debtor in possession financing available to the Debtor. As set forth in the DIP Declaration, given its current financial condition, financing arrangements, capital structure and the circumstances of the Chapter 11 Case, the Debtor has been and continues to be unable to obtain financing from sources other than the DIP Lender on terms more favorable than those provided under the DIP Facility. The Debtor has been unable to obtain adequate unsecured credit allowable under Bankruptcy Code section 503(b)(1) as an administrative expense. The Debtor also has been unable to obtain sufficient credit: (a) on an unsecured basis having priority over all other administrative expenses of the kind specified in sections 503(b), 507(a), and 507(b) of the Bankruptcy Code; (b) secured solely by a lien on property of the Debtor and its estate that is not

otherwise subject to a lien; or (c) secured solely by a junior lien on property of the Debtor and its estate that is subject to a lien. Postpetition financing is not otherwise available without granting the DIP Lender (x) perfected security interests in and liens on (each as provided herein) all of the Debtor's existing and after-acquired assets with the priorities set forth below, (y) superpriority claims and liens, and () the other protections set forth in this Interim Order.

(v) *Use of Proceeds of the DIP Facility*. As a condition to the Debtor's entry into the DIP Documents and the extensions of credit under the DIP Facility, the DIP Lender and the Debtor has agreed that the proceeds of the DIP Facility shall be used, in each case in a manner consistent with the terms and conditions of this Interim Order and the DIP Documents, in accordance with the approved budget in connection therewith as the same may be modified from time to time consistent with the terms of the DIP Documents and subject to such variances as permitted in the DIP Credit Agreement (such variances, "Permitted Variances," and such budget, the "Budget"),[4] and as otherwise provided in this Interim Order and the DIP Documents, solely for the purpose of: (a) payment of the DIP Lender's costs and expenses (including the fees and expenses of the Lender Professionals in accordance with the DIP Credit Agreement); (b) refinancing of certain Prepetition Secured Obligations; and (c) general corporate purposes and administrative expenses as contemplated by and in accordance in all material respects with the terms of the Budget (subject to Permitted Variances).

(vi) *Application of Proceeds of Collateral*. As a condition to entry into the DIP Credit Agreement and the extension of credit under the DIP Facility, the Debtor and the DIP Lender have agreed that, as of and commencing on the date of the Interim Hearing, the Debtor

[4] A copy of the Budget is attached hereto as **Exhibit 2**, any updates or changes to which must be acceptable to the DIP Lender in its sole and absolute discretion.

shall apply the proceeds of DIP Collateral in accordance with this Interim Order and the DIP Documents.

J. **Section 506(c), 552(b), Marshaling Waiver (Subject to Final Order)**. As a material inducement to the DIP Lender to agree to provide the DIP Facility and in exchange for the DIP Lender's agreement to subordinate its DIP Liens and DIP Superpriority Claims (each as defined below) to the Carve-Out to the extent set forth herein, the DIP Lender is entitled to receive: (x) a waiver of any "equities of the case" exceptions or claims under Bankruptcy Code section 552(b); (y) a waiver of the provisions of Bankruptcy Code section 506(c); and (z) a waiver of the equitable doctrine of "marshaling" or any similar doctrine with respect to the DIP Collateral in each case effective upon entry of a Final Order providing such relief.

K. **Good Faith**

(i) *Willingness to Provide Financing*. The DIP Lender has indicated a willingness to provide the DIP Facility to the Debtor subject to: (a) entry of this Interim Order and, subsequently, the Final Order; (b) approval of the Debtor's entry into the DIP Facility and the DIP Documents; (c) satisfaction of the closing conditions set forth in the DIP Documents; and (d) findings by this Court that the DIP Facility is essential to the Debtor's estate, that the DIP Lender is extending credit to the Debtor pursuant to the DIP Documents and consenting to the use of its Cash Collateral in good faith, and that the DIP Superpriority Claim and DIP Liens, and other protections granted pursuant to this Interim Order and the DIP Documents will have the protections provided by section 364(e) of the Bankruptcy Code.

(ii) *Business Judgment and Good Faith Pursuant to Section 364(e)*. The extensions of credit under the DIP Facility and the DIP Documents, and the fees to be paid thereunder, and the terms of the consensual use of Cash Collateral, are fair, reasonable, and the

best available to the Debtor under the circumstances, are appropriate for secured financing to Debtor in possession, reflect the Debtor's exercise of prudent business judgment consistent with its fiduciary duties, and are supported by reasonably equivalent value and consideration. The terms and conditions of the DIP Facility and the consensual use of Cash Collateral were negotiated in good faith and at arms' length among the Debtor and the DIP Lender with the assistance and counsel of their respective advisors. Credit to be extended under the DIP Facility shall be deemed to have been allowed, advanced, made, or extended in good faith by the DIP Lender within the meaning of section 364(e) of the Bankruptcy Code.

L. **Use of Cash Collateral**. The Debtor is hereby authorized to use all Cash Collateral solely in accordance with the terms and conditions of the DIP Documents and this Interim Order and in accordance with the Budget, subject to the Permitted Variances (as defined below), including, without limitation, for working capital needs of the Debtor in the ordinary course of business, for the costs and expenses of administering the Chapter 11 Case, and to make payments on account of the Adequate Protection Obligations, all outstanding and unpaid fees and expenses of the Prepetition Lender and the Lender Professionals, and all other obligations provided for in this Interim Order and the DIP Documents.

M. **Immediate Entry**. Good and sufficient cause exists for immediate entry of this Interim Order pursuant to Bankruptcy Rule 4001(b)(2). The use of Cash Collateral (and the other Prepetition Collateral), in accordance with this Interim Order, is necessary to avoid immediate and irreparable harm to the Debtor's estate.

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

IT IS HEREBY ORDERED THAT:

1. **Motion Granted**. The relief sought by the Motion is granted on an interim basis as set forth herein, and the DIP Facility, in the amount of up to $1,100,000 of New Money DIP Loans, and the Interim Roll-Up DIP Loan in an amount not to exceed $1,100,000 is authorized and approved, and the use of Cash Collateral and provision of adequate protection on an interim basis is authorized, in each case, subject to the terms and conditions set forth in the DIP Documents or this Interim Order, as applicable.

2. **Objections Overruled**. Any objections to the Motion that have not been withdrawn, waived or settled, and all reservations of rights or other statements inconsistent with this Interim Order, are hereby denied and overruled. This Interim Order shall become effective and enforceable immediately upon its entry.

3. **Authorization of the DIP Facility**. The Debtor is authorized and empowered to execute and deliver the DIP Documents, and to incur and perform the DIP Obligations (as defined in the DIP Credit Agreement) in accordance with, and subject to, the terms of this Interim Order and the DIP Documents, and to deliver all instruments, certificates, agreements, and documents which may be required or necessary for the performance by the Debtor under the DIP Facility and the creation and perfection of the DIP Liens described in and provided for by this Interim Order and the DIP Documents. The Debtor is hereby authorized and directed to, in accordance with this Interim Order, pay any principal, interest, fees, expenses, and other amounts described in the DIP Documents or this Interim Order, as such amounts become due and owing, without the need to obtain further Court approval, including, without limitation, any reasonable and documented fees and disbursements of the Lender Professionals, as set forth herein and to the extent provided in the DIP Credit Agreement, whether or not such professional fees and disbursements arose before or

after the Petition Date, to implement all applicable reserves and to take any other actions that may be necessary or appropriate, all to the extent provided in this Interim Order and the DIP Documents. Upon execution and delivery, the DIP Documents shall represent valid and binding obligations of the Debtor, enforceable against the Debtor and its estate in accordance with its terms.

4. **Authorization to Borrow**. In order to prevent immediate and irreparable harm to the Debtor's estate, from the entry of this Interim Order through and including the earliest to occur of (i) entry of the Final Order and (ii) the DIP Termination Date, and subject to the terms, conditions, limitations on availability, and reserves set forth in the DIP Documents and this Interim Order, the Debtor is hereby authorized to draw the interim availability in the aggregate principal amount of $1,100,000.

5. **DIP Obligations**. The DIP Documents and this Interim Order shall constitute and evidence the validity and binding effect of the Debtor's DIP Obligations, which DIP Obligations shall be enforceable against the Debtor, its estate and any successors thereto, including without limitation, any trustee appointed in the Chapter 11 Case, or in any case under chapter 7 of the Bankruptcy Code upon the conversion of the Chapter 11 Case, or in any other proceedings superseding or related to any of the foregoing (collectively, the "Successor Case"). Upon entry of this Interim Order, the DIP Obligations will include all loans and any other indebtedness or obligations, contingent or absolute, which may now or from time to time be owing by the Debtor to the DIP Lender pursuant to the DIP Documents or this Interim Order, including, without limitation, all principal, accrued and unpaid interest, costs, fees, expenses, and other amounts under the DIP Documents. The DIP Obligations shall be due and payable, without notice or demand, on the DIP Termination Date, subject to the Carve-Out requirements in paragraph 30 herein. No obligation, payment, transfer, or grant of collateral security hereunder or under the DIP Documents

(including any DIP Obligation or DIP Liens (as defined herein)) shall be stayed, restrained, voidable, avoidable, or recoverable, under the Bankruptcy Code or under any applicable law (including, without limitation, under sections 502(d), 544, and 547 to 550 of the Bankruptcy Code or under any applicable state Uniform Voidable Transactions Act, Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, or similar statute or common law), or subject to any avoidance, reduction, setoff, recoupment, offset, recharacterization, subordination (whether equitable, contractual, or otherwise), counterclaim, cross-claim, defense, or any other challenge under the Bankruptcy Code or any applicable law or regulation by any person or entity.

6. **DIP Liens**. In order to secure the DIP Obligations, effective immediately upon entry of this Interim Order, pursuant to sections 361, 362, 364(c)(2), and 364(c)(3) of the Bankruptcy Code, the DIP Lender is hereby granted continuing, valid, binding, enforceable, non-avoidable, and automatically and properly perfected postpetition security interests in and liens (collectively, the "DIP Liens"), with the priorities set forth in this paragraph herein, as set forth in Article X of the DIP Credit Agreement, on all of the Debtor's property and assets, whether now existing or hereafter arising and wherever located, tangible and intangible (the "DIP Collateral"), including without limitation: all Accounts; all contract rights; all chattel paper; all documents; all instruments; all supporting obligations and letter-of-credit rights, all General Intangibles (including payment intangibles, intercompany accounts, intellectual property and software); all deposit accounts, bank deposits, prepayments, deferred assets, refunds, credits or overpayments, and similar cash items, including all tax credits and rights arising from any refunds due from federal, state, or local governmental authorities with respect to taxes paid by the Debtor for periods ending on or before the Petition Date; all inventory and other goods, all motor vehicles, equipment and fixtures, financial assets and all securities accounts; all money, cash, cash equivalents,

securities, and other property of any kind; all notes, and all documents of title; all books, records and other property related to or referring to any of the foregoing, including books, records, account ledgers, data processing records, computer software and other property, and all General Intangibles at any time evidencing or relating to any of the foregoing; all commercial tort claims; all assets, including all of the Debtor's interests in deposit accounts, money, cash, cash equivalents, securities, or other property interests serving as collateral or funding sources for any other obligation; all real property and rights therein; all other personal property of the Debtor, including any causes of action under sections 502(d), 544, 545, 547, 548, 549, 550, or 553 of the Bankruptcy Code or similar causes of action under applicable non-bankruptcy law for the avoidance and recovery of any transfers (collectively, the "Avoidance Actions") (but not the actions themselves); and all accessions to, substitutions for, and replacements, products and proceeds of any of the foregoing, including, but not limited to, dividends or distributions on Investment Property, rents, profits, income and benefits, premiums, proceeds of any insurance policies, claims against third parties, and condemnation or requisition payments with respect to all or any of the foregoing; *provided that* the DIP Collateral shall not include: (a) any lease, license, or agreement to the extent that grant of a security interest therein would invalidate such lease, license, or agreement or similar arrangement, violate the terms of such lease, or create a right of termination in favor of any other party thereto notwithstanding the operation of the Bankruptcy Code; (b) Avoidance Actions or the proceeds thereof unless and until the Bankruptcy Court enters a Final Order granting such relief; or (c) any account established to provide a deposit pursuant to section 366 of the Bankruptcy Code. Notwithstanding anything to the contrary in this Interim Order, for purposes of this Interim Order, DIP Liens and Adequate Protection Liens shall not encumber, and DIP Collateral shall not include, (i) leasehold interests of non-residential real property that prohibit or restrict the granting of such

liens in the applicable lease except as permitted pursuant to applicable non-bankruptcy law (but shall include the proceeds of the sale or disposition of such leases) and (ii) any security deposits (in possession of the Debtor or the landlord) or the Debtor's interests, if any, in pre-paid rent, unless liens on such security deposits or pre-paid rent are expressly permitted pursuant to the underlying lease documents; provided that, the DIP Liens and Adequate Protection Liens shall extend to any such security deposits or pre-paid rent upon reversion thereof to the Debtor, if at all, as well as any proceeds or value of such leasehold interests whether by sale, financing, or other disposition or form of transfer, termination or transaction.

7. **DIP Lien Priority**. The DIP Liens are valid, automatically fully-perfected, and non-avoidable. Pursuant to section 364(c)(2) of the Bankruptcy Code, the DIP Liens constitute first-priority liens on, and security interest in, all DIP Collateral that (i) as of the Petition Date, are not subject to any valid, perfected and non-avoidable liens (and do not become perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code) (including, subject to entry of the Final Order granting such relief, Avoidance Action proceeds) or (ii) that becomes unencumbered upon the satisfaction of any prior secured obligations of the Debtor or release of any prior security interests. Pursuant to section 364(c)(3) of the Bankruptcy Code, the DIP Liens constitute junior liens solely with respect to any DIP Collateral that is subject to (i) any valid, perfected, and unavoidable senior liens in existence immediately prior to the Petition Date and (ii) any such valid and unavoidable senior liens in existence immediately prior to the Petition Date that are perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code. Upon entry of the Final Order, the DIP Liens shall constitute first-priority security interests in and liens on all DIP Collateral pursuant to section 364(d) of the Bankruptcy Code. Notwithstanding anything to the contrary in this Interim Order or the DIP Documents, the

DIP Liens shall be subject in all respects to the Carve-Out. Other than as set forth in this Interim Order or in the DIP Documents, the DIP Liens shall not be made subject to or *pari passu* with any lien or security interest heretofore or hereinafter granted in the Chapter 11 Case or any Successor Case, and shall be valid and enforceable against any trustee appointed in the Chapter 11 Case or any Successor Case, upon the conversion of the Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code (or in any other Successor Case), and/or upon the dismissal of the Chapter 11 Case or Successor Case. The DIP Liens shall not be subject to section 510, 549, or 550 of the Bankruptcy Code. No lien or interest avoided and preserved for the benefit of the estate pursuant to section 551 of the Bankruptcy Code shall be *pari passu* with or senior to the DIP Liens.

8. **DIP Superpriority Claims**. Upon entry of this Interim Order, the DIP Lender is hereby granted, pursuant to section 364(c)(1) of the Bankruptcy Code, an allowed superpriority administrative expense claim in each of the Chapter 11 Case and any Successor Case (a "DIP Superpriority Claim") for all DIP Obligations: (a) except as set forth herein, with priority over any and all administrative expense claims and unsecured claims against the Debtor or its estate in the Chapter 11 Case and any Successor Case, at any time existing or arising, of any kind or nature as and to the extent provided for by sections 503(b) and 507(b) of the Bankruptcy Code; and (b) which shall at all times be senior to the rights of the Debtor and its estate, and any successor trustee or other estate representative to the extent permitted by law. Notwithstanding anything to the contrary in this Interim Order or the DIP Documents, the DIP Superpriority Claim and the DIP Liens shall be subject in all respects to the Carve-Out.

9. **Adequate Protection**. From the Petition Date, pursuant to Bankruptcy Code sections 361, 362, 363(c)(2), 363(e), 364(d)(1), 364(e), and 507, the Prepetition Lender shall receive the following, in all Chapter 11 Case solely to the extent of the Diminution in Value (the

"Adequate Protection Obligations"):

(i) *Adequate Protection Liens*. Solely to the extent of any Diminution in Value, the Prepetition Lender is hereby granted additional and replacement valid, binding, enforceable, non-avoidable, effective and automatically perfected postpetition security interests in, and liens on, (the "Adequate Protection Liens"), without the necessity of the execution by the Debtor (or recordation or other filing) of security agreements, control agreements, pledge agreements, financing statements, mortgages or other similar documents, all prepetition and postpetition property of the Debtor, including, for the avoidance of doubt, the DIP Collateral, whether existing on the Petition Date or thereafter created, acquired or arising, and wherever located, including, without limitation, property that (x) is of the same nature, scope, and type as the Prepetition Collateral that is subject to any of the Prepetition Liens securing the Prepetition Secured Obligations, and (y) on or as of the Petition Date is not subject to valid, perfected, and nonavoidable liens (or perfected after the Petition Date to the extent permitted by Bankruptcy Code section 546(b)) (excluding Avoidance Actions, but, subject to entry of the Final Order, including the Avoidance Action proceeds). The Adequate Protection Liens shall be subject and junior to the DIP Liens (including any liens to which the DIP Liens are junior) and the Carve-Out, and otherwise be senior to all other security interests in, liens on, or claims against any of the Prepetition Collateral, including the Prepetition Liens and any lien or security interest that is avoided and preserved for the benefit of the Debtor and its estate under section 551 of the Bankruptcy Code. Notwithstanding anything to the contrary in this Interim Order, for purposes of this Interim Order, DIP Liens and Adequate Protection Liens shall not encumber, and DIP Collateral shall not include, (a) leasehold interests of non-residential real property that prohibit or restrict the granting of such liens in the applicable lease except as permitted pursuant to applicable non-bankruptcy law (but

shall include the proceeds of the sale or disposition of such leases) and (b) any security deposits (in possession of the Debtor or the landlord) or the Debtor's interests, if any, in pre-paid rent, unless liens on such security deposits or pre-paid rent are expressly permitted pursuant to the underlying lease documents; *provided* that, the DIP Liens and Adequate Protection Liens shall extend to any such security deposits or pre-paid rent upon reversion thereof to the Debtor, if at all, as well as any proceeds or value of such leasehold interests whether by sale, financing, or other disposition or form of transfer, termination or transaction.

(ii) *Adequate Protection Superpriority*. Solely to the extent of any Diminution in Value, the Prepetition Lender is hereby granted an allowed superpriority administrative expense claim (the "Adequate Protection Superpriority Claim") in the Chapter 11 Case: (a) except as set forth herein, with priority over any and all administrative expense claims and unsecured claims against the Debtor or its estate in the Chapter 11 Case, at any time existing or arising, of any kind or nature as and to the extent provided for by sections 503(b) and 507(b) of the Bankruptcy Code; and (b) which shall at all times be senior to the rights of the Debtor and its estate, and any successor trustee or other estate representative to the extent permitted by law. Notwithstanding anything to the contrary in this Interim Order or the DIP Documents, the Adequate Protection Superpriority Claim shall be subject and subordinate in all respects to the Carve-Out and the DIP Superpriority Claim. The Adequate Protection Superpriority Claim shall be payable from and have recourse to all prepetition and postpetition property of the Debtor and all proceeds thereof (excluding Avoidance Actions, but, subject to entry of the Final Order, including the proceeds of any Avoidance Actions). Subject to the Carve-Out and the DIP Superpriority Claims in all respects, the Adequate Protection Superpriority Claim will not be junior or *pari passu* to any claims and shall have priority over all administrative expense claims against the Debtor, now existing or

hereafter arising, of any kind or nature whatsoever, including, without limitation, administrative expense claims of the kinds specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 365, 503(a), 506(c), 507(a), 507(b), 546(d), 726, 1113, and 1114 of the Bankruptcy Code. The Prepetition Lender shall not receive or retain any payments, property, or other amounts in respect of the Adequate Protection Superpriority Claim from the Debtor under Bankruptcy Code section 507(b) granted hereunder unless and until the DIP Obligations have been indefeasibly paid in full, in cash, or as otherwise provided in the DIP Documents.

(iii) *Fees and Expenses.* As further adequate protection, the Debtor is authorized and directed to pay, without further Court order, the reasonable and documented fees and expenses, whether incurred before or after the Petition Date, of the Prepetition Lender, including, without limitation, the reasonable and documented fees and expenses of the Lender Professionals as set forth herein.

10. **No Obligation to Extend Credit**. The DIP Lender shall have no obligation to make any loan under the DIP Documents unless all of the conditions precedent to the making of such extensions of credit under the DIP Documents and this Interim Order have been satisfied in full or waived by the DIP Lender.

11. **Use of Proceeds of DIP Facility**. From and after the Petition Date, the Debtor shall use advances of credit under the DIP Facility only in accordance with the Budget (subject to Permitted Variances and unless otherwise expressly provided in the DIP Documents or this Interim Order), and in compliance with the terms and conditions in this Interim Order and the DIP Documents, only for the purposes specifically set forth in this Interim Order and the DIP Documents (including to refinance certain Prepetition Secured Obligations and to pay the Lender Professionals, to the extent set forth in the DIP Documents), and in compliance with the terms and

conditions in this Interim Order and the DIP Documents.

12. **Amendment of the DIP Documents**. The DIP Documents may from time to time be amended, modified, or supplemented by the parties thereto without further order of the Court if: (a) the amendment, modification, or supplement (i) is in accordance with the DIP Documents, and (ii) does not prejudice the rights of the Debtor or its estate in any material respect; (b) a copy (which may be provided through electronic mail) of the amendment, modification or supplement is provided at least three (3) Business Days in advance to counsel to the Creditors' Committee (if any), any other statutory committee appointed in the Chapter 11 Case, and the U.S. Trustee (collectively, the "Notice Parties"); and (c) notice of the amendment, modification or supplement is filed with the Court; *provided*, that neither consent of the Notice Parties nor approval of the Court will be necessary to effectuate any such amendment, modification, or supplement, and *provided further* that such amendment, modification, or supplement shall be without prejudice to the right of any party in interest to be heard regarding such proposed amendment, modification, or supplement, and *provided further* that such amendment, modification, or supplement shall be without prejudice to the right or any party in interest to be heard regarding such proposed amendment, modification, or supplement.

13. **Budget Maintenance and Compliance**. Commencing on the first Friday of the full week following entry of this Interim Order, and no later than five (5) business days after the end of each week thereafter, the Debtor will deliver to the DIP Lender and the Lender Professionals a variance report showing for the immediately preceding week the amount of variance and percentage variance of actual disbursements of the type of each line item set forth on the Budget (on a line item basis) from those disbursements and other amounts reflected in the Budget for the corresponding periods, and an explanation of the reason for any such variance and compliance or

non-compliance with the requirements set forth in Section 6.02(d) of the DIP Credit Agreement.

14. **Modification of Automatic Stay**. The automatic stay imposed under section 362(a)(2) of the Bankruptcy Code is hereby modified as necessary to effectuate all of the terms and provisions of this Interim Order, including, without limitation, to: (a) permit the Debtor to grant the DIP Liens and DIP Superpriority Claim; (b) permit the Debtor to perform such acts as the DIP Lender may reasonably request to assure the perfection and priority of the liens granted herein; (c) permit the Debtor to incur all liabilities and obligations to the DIP Lender under the DIP Documents, the DIP Facility, and this Interim Order; and (d) authorize the Debtor to make, and the DIP Lender to retain and apply, payments made in accordance with the terms of this Interim Order and the DIP Documents.

15. **Perfection of DIP Liens**. This Interim Order shall be sufficient and conclusive evidence of the creation, validity, perfection, and priority of the DIP Liens, without the necessity of filing or recording any financing statement, mortgage, notice, or other instrument or document which may otherwise be required under the law or regulation of any jurisdiction or the taking of any other action (including, for the avoidance of doubt, entering into any deposit account control agreement, securities account control agreement, or other similar agreement) to grant, attach, validate or perfect (in accordance with applicable non-bankruptcy law) the DIP Liens, or to entitle the DIP Lender to the priorities granted herein. Notwithstanding the foregoing, the DIP Lender is authorized, but not required, to file, subject to the terms and priorities of this Interim Order, as the DIP Lender in its sole discretion deems necessary or advisable, such financing statements, security agreements, mortgages, notices of liens, and other similar documents to perfect in accordance with applicable non-bankruptcy law or to otherwise evidence the DIP Liens, and all such financing statements, mortgages, notices, and other documents shall be deemed to have been filed or

recorded as of the Petition Date; *provided*, *however*, that no such filing or recordation shall be necessary or required in order to create or perfect the DIP Liens. The Debtor, without further consent of any party, is authorized to execute and deliver, upon request of the DIP Lender, all such financing statements, mortgages, notices, and other documents as the DIP Lender may reasonably request. The DIP Lender, in its discretion, may file a copy of this Interim Order as a financing statement with any filing or recording office or with any registry of deeds or similar office, in addition to or in lieu of such financing statements, notices of lien or similar instrument.

16. **Application of Proceeds to Collateral**. As a condition to the entry of the DIP Documents and the extensions of credit under the DIP Facility, the Debtor has agreed that as of and commencing on the date of the Interim Hearing, the Debtor shall apply all net proceeds of DIP Collateral in accordance with the DIP Credit Agreement until the DIP Obligations have been indefeasibly paid in full, in cash.

17. **Debtor's Stipulations**. The Debtor's stipulations shall be immediately binding upon the Debtor and any successor thereto. The Debtor's stipulations shall be binding upon all other parties in interest, including, without limitation, any statutory or non-statutory committees appointed or formed in the Chapter 11 Case and any other person or entity acting or seeking to act on behalf of the Debtor's estate (including any chapter 7 or chapter 11 trustee appointed or elected for the Debtor), in all circumstances and for all purposes, subject only to challenge by appropriate pleading validly brought, filed and/or commenced no later than 75 days after the entry of this Interim Order; *provided, however*, that if a chapter 7 or chapter 11 trustee is appointed for the Debtor prior to the termination of such 75-day period, then the deadline for any such chapter 7 or chapter 11 trustee to commence a challenge shall be extended to forty-five days after the date of its appointment. For the avoidance of doubt, nothing herein vests or confers on any Creditors'

Committee or any other person or entity standing or authority to bring, assert, commence, continue, prosecute, or litigate any cause of action belonging to the Debtor or its estate, and all rights of any person or party to object to any such request for such standing are expressly reserved; *provided, however*, that any chapter 7 trustee appointed or elected for the Debtor has automatic standing by virtue of section 323 of the Bankruptcy Code. Notwithstanding the foregoing, the timely filing of a motion seeking standing to file a challenge consistent with applicable law and rules of procedure before the expiration of the investigation period provided herein, which attaches a draft complaint setting forth the legal and specific factual bases of the proposed challenge, shall toll the applicable investigation period only as to the party that timely filed such standing motion until such motion is resolved or adjudicated by the Court, and solely with respect to the challenge(s) asserted in the draft complaint, provided, further that if standing is denied by the Court, the investigation period shall be deemed to have immediately expired with respect to such challenge(s). For the avoidance of doubt, any trustee appointed or elected in the Chapter 11 Case shall, until the expiration of the period provided herein for asserting challenges, and thereafter for the duration of any adversary proceeding or contested matter commenced pursuant to this paragraph (whether commenced by such trustee or commenced by any other party in interest on behalf of the Debtor's estate), be deemed to be a party other than the Debtor and shall not, for purposes of such adversary proceeding or contested matter, be bound by the acknowledgments, admissions, confirmations and stipulations of the Debtor in this Interim Order.

18. **Protections of Rights of DIP Lender**. The Debtor will, until the DIP Termination Date, (A) maintain books, records, and accounts to the extent and as required by the DIP Documents, (B) reasonably cooperate with, consult with, and provide to the DIP Lender all such information and documents that the Debtor is obligated (including upon the request by the DIP

Lender) to provide under the DIP Documents or the provisions of this Interim Order, (C) upon reasonable advance notice, permit consultants, advisors, and other representatives of the DIP Lender to visit and inspect the Debtor's property, to examine and make abstracts or copies from its books and records, to tour the Debtor's business premises and other properties, and to discuss, and provide advice with respect to, its affairs, finances, properties, business operations, and accounts with its officers, employees, independent public accountants, and other professional advisors (other than legal counsel) as and to the extent required by the DIP Documents, (D) permit the DIP Lender and any of its consultants, advisors, and other representatives to consult with the Debtor's management and advisors on matters concerning the Debtor's business, financial condition, operations and assets as and to the extent required by the DIP Documents, (E) upon reasonable advance notice, permit the DIP Lender to conduct, at its reasonable discretion and at the Debtor's cost and expense, field audits, collateral examinations, liquidation valuations, and inventory appraisals at reasonable times in respect of any or all of the DIP Collateral as and to the extent required by the DIP Documents, (F) provide the DIP Lender with a current list of all platforms used by the Debtor for accounting, managing cash and bank balances, and data management (such as food management, inventory tracking, labor management, and sales tracking) and provide the DIP Lender with at least seven (7) Business Days written notice before making any additions, deletions, or material alterations to such platforms; and (G) provide the DIP Lender at all times with a unique username and password providing continuous, real time, read-only access to its deposit accounts and its cash and bank account information.

19. **Credit Bidding**. Consistent with Bankruptcy Code section 363(k) and applicable law, Winners Alliance, as DIP Lender and Prepetition Lender (either directly or through one or more acquisition vehicles), shall have the right to credit bid for all or any portion of the DIP

Collateral, as applicable, up to the full amount of any DIP Obligations, as part of any sale or disposition of the DIP Collateral or the Prepetition Collateral (in whole or in part), including without limitation, sales occurring pursuant to: (i) Bankruptcy Code section 363; (ii) a plan of reorganization or a plan of liquidation under Bankruptcy Code section 1129; or (iii) a sale or disposition by a chapter 7 trustee for any Debtor under Bankruptcy Code section 725 (each such sale, a "Sale Transaction"). The Debtor agrees that any motion filed by the Debtor seeking approval of a Sale Transaction (including approval of any procedures related thereto) will contain a request for approval of the right of the DIP Lender to credit bid the DIP Obligations and Prepetition Secured Obligations as set forth herein. The foregoing agreement shall operate as a finding that the DIP Lender shall have the right to credit bid the DIP Obligations then outstanding and the Prepetition Secured Obligations in accordance with section 363(k) of the Bankruptcy Code as set forth above, and the right of the DIP Lender to credit bid in accordance with this subsection shall not be modified or altered by any event, without the prior written consent of the DIP Lender, subject to the rights of any party in interest (other than the Debtor) arising under section 363(k) of the Bankruptcy Code. The DIP Lender shall have the absolute right to assign, sell or otherwise dispose of its right to credit bid, in whole or in part, to affiliates of the DIP Lender, to be exercised by such affiliate(s) at any auction in connection with the sale of any (or all) of the Debtor's assets.

20. **Proceeds of Subsequent Financing**. If the Debtor, any trustee, any examiner with expanded powers, or any responsible officer subsequently appointed in the Chapter 11 Case or any Successor Case, shall obtain credit or incur debt pursuant to Bankruptcy Code sections 364(b), 364(c), or 364(d) in violation of the DIP Documents at any time prior to the indefeasible repayment in full of all DIP Obligations, and the termination of the DIP Lender's obligation to extend credit under the DIP Facility, and such facilities are secured by any DIP Collateral, then all the cash

proceeds derived from such credit or debt shall immediately be turned over to the DIP Lender to be applied in accordance with this Interim Order and the DIP Documents.

21. **Cash Management**. From and after the date of the entry of this Interim Order, the Debtor shall maintain its cash management system consistent with prepetition practices and in accordance with the terms and conditions of any interim and/or final order granting the Debtor authorization to continue its cash management system and certain related relief, the DIP Credit Agreement, the DIP Documents, and this Interim Order. The Debtor and the financial institutions where the Debtor maintains deposit accounts 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 DIP Lender in accordance with the terms of this Interim Order upon or following delivery of a Termination Declaration to the Debtor. Nothing set forth herein shall preclude the Debtor from opening debtor-in-possession accounts or converting the Debtor's accounts to debtor-in-possession accounts, with any such changes to be deemed to be consistent with prepetition practices and in accordance with the terms and conditions of the DIP Credit Agreement, the DIP Documents, and this Interim Order.

22. **Maintenance of DIP Collateral**. Until the indefeasible payment in full of all DIP Obligations and the termination of the DIP Lender's obligation to extend credit under the DIP Facility, the Debtor shall: (a) insure the DIP Collateral as required under the DIP Facility, as applicable; and (b) maintain the cash management system in accordance with any interim and/or final order granting the Debtor authorization to continue its cash management system and certain related relief, as modified by any order that may be entered by the Court which has first been agreed to by the DIP Lender or as otherwise required by the DIP Documents.

23. **DIP Termination Date**. Subject to any applicable notice and cure periods and

other terms set forth in paragraph 24 of this Interim Order or in the DIP Credit Agreement and the DIP Documents, on the DIP Termination Date (as defined below), subject to the Carve-Out, all DIP Obligations shall be immediately due and payable, all commitments to extend credit under the DIP Facility will terminate, other than with respect to the Carve-Out, and all consent or authorization for the use of Cash Collateral shall automatically cease.

24. **Events of Default.** Until the DIP Obligations are indefeasibly paid in full and all commitments thereunder are terminated, the occurrence of any of the following events, unless waived by the DIP Lender in writing and in accordance with the terms of the DIP Credit Agreement, shall constitute an event of default (collectively, the "Events of Default") under this Interim Order: (a) the failure of the Debtor to perform, in any material respect, any of the terms, provisions, conditions, covenants, or obligations under this Interim Order (except where such failure would not adversely affect the DIP Lender), or (b) the occurrence of any other "Event of Default" under, and as defined in, the DIP Credit Agreement.

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

(i) The automatic stay provisions of section 362 of the Bankruptcy Code are hereby modified to the extent necessary to permit the DIP Lender to enforce all of its rights under this Interim Order and the DIP Documents and, immediately upon the occurrence and during the continuation of an Event of Default and subject to the giving by the DIP Lender of five (5) calendar days' prior written notice (such notice period, the "Remedies Notice Period") (*provided* that such period may be extended by written agreement between the Debtor and the DIP Lender, in their respective sole discretion) delivered to counsel to the Debtor, with copies to the U.S. Trustee and counsel to the Creditors' Committee (if any), subject in all respects to the terms of this Interim Order, including clause (b) below, the DIP Lender may declare (any such declaration, a

"Termination Declaration") (1) all DIP Obligations owing under the DIP Documents to be immediately due and payable, (2) the termination, reduction, or restriction of any further commitment to extend credit to the Debtor to the extent any such commitment remains outstanding under the DIP Facility, (3) termination of the DIP Credit Agreement and the DIP Documents as to any future liability or obligation of the DIP Lender, but without affecting any of the DIP Liens or the DIP Obligations, and (4) that the application of the Carve-Out has occurred through the delivery of the Carve-Out Trigger Notice (as defined herein) to the Debtor (the date which is the earliest date a Termination Declaration is delivered following the expiration of the Remedies Notice Period, the "DIP Termination Date"). Upon the DIP Termination Date, unless the Court orders otherwise, and subject to clause (b) below, the DIP Lender shall be entitled to exercise all rights and remedies in accordance with the DIP Documents and this Interim Order and shall be permitted to satisfy the relevant DIP Obligations, DIP Superpriority Claim, and DIP Liens, subject to the Carve-Out, and subject to and consistent with this Interim Order. Unless the Court orders otherwise, the automatic stay, as to the DIP Lender, shall automatically be terminated at the end of the Remedies Notice Period without further notice or order. Upon expiration of the Remedies Notice Period, unless the Court orders otherwise, and subject to the Carve-Out in all respects, including the requirements of paragraph 30 hereof, the DIP Lender shall be permitted to exercise all remedies set forth herein, in the DIP Documents and as otherwise available at law without further order of or application or motion to the Court.

(ii) Notwithstanding anything to the contrary in this Interim Order or the DIP Documents, during the Remedies Notice Period, the Debtor shall be permitted to use proceeds of the DIP Facility and other DIP Collateral, to (1) pay any amounts in accordance with the Carve-Out, (2) pay accrued wages and any other critical employee-related expenses, and (3) subject to

the consent of the DIP Lender, pay any other critical business-related expenses necessary to operate the Debtor's business or preserve the DIP Collateral as determined by the Debtor in its reasonable discretion and in good faith.

26. **Good Faith Under Section 364(e) of the Bankruptcy Code; No Modification or Stay of this Interim Order**. The DIP Lender has acted in good faith in connection with this Interim Order and is entitled to rely upon the protections granted herein and by section 364(e) of the Bankruptcy Code. Based on the findings set forth in this Interim Order and the record made during the Interim Hearing, and in accordance with section 364(e) of the Bankruptcy Code, in the event any or all of the provisions of this Interim Order are hereafter reversed or modified on appeal, the DIP Lender is entitled to the protections provided in section 364(e) of the Bankruptcy Code. Any such reversal or modification shall not affect the validity and enforceability of any advances previously made hereunder, or any lien, claim or priority authorized or created hereby.

27. **DIP and Other Expenses**. Subject to the terms set forth in this paragraph, the Debtor is authorized and directed to pay all reasonable and documented prepetition and postpetition fees and expenses of the DIP Lender in connection with the DIP Facility (including without limitation the Lender Professionals, as and to the extent provided in the DIP Documents), whether or not the transactions contemplated hereby are consummated, including attorneys' fees, financial advisory fees, fees and expenses of other consultants, and indemnification and reimbursement of fees and expenses, in each case to the extent provided for in this Interim Order or the DIP Documents, with payment of all such fees and expenses not subject to further order or allowance by the Court. Any time Lender Professionals seek payment of fees and expenses from the Debtor, each professional shall provide copies of its fee and expense statements or invoices in summary form without detailed time records (which may be redacted or modified to the extent

necessary to delete any information subject to the attorney-client privilege, any information constituting attorney work product, or any other confidential information, and the provision of such invoices shall not constitute any waiver of the attorney-client privilege or of any benefits of the attorney work product doctrine) to the U.S. Trustee and counsel for a Creditors' Committee (if appointed) contemporaneously with the delivery of such fee and expense statements to the Debtor. No Lender Professional shall be required to file an application seeking compensation for services or reimbursement of expenses with the Court. If the Debtor, the U.S. Trustee, or a Creditors' Committee objects to the reasonableness of the fees and expenses of the DIP Lender, and such objection cannot be resolved, the Debtor, the U.S. Trustee, or the Creditors' Committee (if any), as the case may be, shall file with the Court and serve on counsel for the DIP Lender (with a copy to the Debtor), within ten (10) calendar days of receipt of such invoices, an objection limited to the reasonableness of such fees and expenses and detailing with specificity which fees and/or expenses are being objected to (each a "Fee Objection"). The Debtor shall pay to the DIP Lender, in accordance with the terms and conditions of this Interim Order, within 15 calendar days after receipt of the applicable invoice, (a) the full amount invoiced if no Fee Objection has been timely filed, and (b) the undisputed fees, costs, and expenses reflected on any invoice to which a Fee Objection has been timely filed, in each case regardless of whether such amounts are in excess of the amounts set forth in the Budget. For the avoidance of doubt, the professional fees of the DIP Lender shall not be subject to the provisions of sections 327, 328, 329 or 331 of the Bankruptcy Code.

28. **Indemnification**. The Debtor shall indemnify and hold harmless the DIP Lender in accordance with the terms and conditions of the DIP Credit Agreement, and subject to the limitations set forth therein; *provided, however*, that notwithstanding anything to the contrary in

the DIP Credit Agreement, the Debtor shall not be required to indemnify any Indemnitee (as that term is defined in the DIP Credit Agreement) for any costs or fees of any kind that an Indemnitee incurs in connection with a successful challenge brought pursuant to paragraph 17 of this Interim Order.

29. **Proofs of Claim**. The Notwithstanding anything to the contrary contained in any prior or subsequent order of the Court, including, without limitation, any order establishing a deadline for the filing of proofs of claim or requests for payment of administrative expenses under Bankruptcy Code section 503(b), neither the DIP Lender nor the Prepetition Lender shall be required to file any proof of claim with respect to any of the DIP Obligations, Prepetition Secured Obligations, or Adequate Protection Obligations, as applicable. The Prepetition Lender and DIP Lender may (but are not required to) in their discretion file (and amend and/or supplement) applicable proofs of claim and/or aggregate proofs of claim the Chapter 11 Case or any successor case for any claim allowed herein.

30. **Carve Out.**

(i) Notwithstanding anything to the contrary in the DIP agreement, as used in this Interim Order, the "Carve-Out" means the sum of (i) all fees required to be paid to the Clerk of the Court and to the U.S. Trustee under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate (without regard to the notice set forth in (iii) below); (ii) all reasonable fees and expenses up to $25,000 incurred by a trustee under section 726(b) of the Bankruptcy Code; (iii) to the extent allowed at any time and consistent with the Budget, whether by interim order, procedural order, or otherwise, all unpaid fees and expenses (the "Allowed Professional Fees") incurred by persons or firms retained by the Debtor pursuant to section 327, 328, or 363 of the Bankruptcy Code (the "Debtor Professionals") and the Creditors' Committee

pursuant to section 328 or 1103 of the Bankruptcy Code (the "Committee Professionals" and, together with the Debtor Professionals, the "Professional Persons") at any time before or on the first business day following delivery by the DIP Lender of a Carve-Out Trigger Notice (as defined below), whether allowed by the Court prior to or after delivery of a Carve-Out Trigger Notice; and (iv) Allowed Professional Fees of Professional Persons in an aggregate amount of $100,000 for Debtor Professionals and $25,000 for the Committee Professionals incurred after the business day following delivery by the DIP Lender of the Carve-Out Trigger Notice, to the extent allowed at any time, whether by interim order, procedural order, or otherwise (the amounts set forth in this clause (iv) being the "Post Carve-Out Trigger Notice Cap"). For purposes of the foregoing, "Carve-Out Trigger Notice" shall mean a written notice delivered by email (or other electronic means) by the DIP Lender to the Debtor, its counsel, the U.S. Trustee, and counsel to the Creditors' Committee (if any), which notice may be delivered following the occurrence and during the continuation of an Event of Default in connection with the issuance of a Termination Declaration and acceleration of the DIP Obligations under the DIP Facility, stating that the Post Carve-Out Trigger Notice Cap has been invoked.

(ii) On the day on which a Carve-Out Trigger Notice is given by the DIP Lender to the Debtor with a copy to counsel to the U.S. Trustee and counsel to the Creditors' Committee (if any) (the "Carve-Out Trigger Notice Date"), the Carve-Out Trigger Notice shall constitute a demand to the Debtor to utilize all cash on hand constituting DIP Collateral as of such date and any such cash thereafter held by the Debtor to pay and/or establish a reserve for the payment of all unpaid statutory fees described in paragraph 30(a)(i) of this Interim Order and Allowed Professional Fees prior to any and all other claims. The Debtor shall also hold in trust for the benefit of the Professional Persons an amount equal to the Post Carve-Out Trigger Notice Cap,

which shall exclusively be used to pay such Allowed Professional Fees benefiting from the Post Carve-Out Trigger Notice Cap. Within five (5) business days following the Carve-Out Trigger Notice Date, the Debtor shall deliver a statement to the DIP Lender setting forth its estimate of the total Allowed Professional Fees incurred prior to the Carve-Out Trigger Notice Date.

(iii) Notwithstanding anything to the contrary in the DIP Documents or this Interim Order, following delivery of a Carve-Out Trigger Notice, if the DIP Lender sweeps or forecloses on cash (including cash received as a result of the sale or other disposition of any assets) of the Debtor, the DIP Lender shall promptly deposit cash swept or foreclosed upon after delivery of the Carve-Out Trigger Notice (including cash received as a result of the sale or other disposition of assets) into an account designated by the Debtor up to an amount equal to the sum of the Allowed Professional Fees plus any unpaid statutory fees described in paragraph 28(a)(i) of this Interim Order and as otherwise provided in the DIP Documents.

(iv) For the avoidance of doubt and notwithstanding anything to the contrary herein or in the DIP Documents, the Carve-Out shall be senior, with payment priority, to all liens and claims securing the DIP Facility.

(v) The DIP Lender shall not be responsible for the payment or reimbursement of any fees or disbursements of any Professional Persons incurred in connection with the Chapter 11 Case or any Successor Case under any chapter of the Bankruptcy Code. Nothing in this Interim Order or otherwise shall be construed to obligate the DIP Lender in any way, to directly pay compensation to, or to reimburse expenses of, any Professional Persons or to guarantee that the Debtor has sufficient funds to pay such compensation or reimbursement.

(vi) Upon entry of this Interim Order, the Debtor shall establish a reserve account for Allowed Professional Fees, with such account to be funded on a weekly basis in

accordance with the Budget and with such funding being allocable to, and held for the benefit of, the Professional Persons on a line-item basis as set forth in the Budget. For the avoidance of doubt, any funds deposited into such reserve account shall remain property of the Debtor unless and until they are paid to the Professional Persons after Court approval of a fee application seeking approval of same. Prior to the Carve-Out Trigger Notice Date, the Debtor shall be permitted to pay compensation and reimbursement of all Allowed Professional Fees of Professional Persons, as the same may be due and payable from such reserve account, and such payments shall not reduce the Carve-Out. Upon the receipt of the Carve-Out Trigger Notice, the right of the Debtor to pay professional fees outside the Carve-Out shall terminate and the Debtor shall provide immediate notice to all Professional Persons informing them that such notice was delivered and further advising them that the Debtor's ability to pay such Professional Persons is subject to and limited by the Carve-Out.

(vii) Any payment or reimbursement made on or after the occurrence of the DIP Termination Date in respect of any Allowed Professional Fees (except from the Allowed Professional Fees reserve account) shall permanently reduce the Carve-Out on a dollar-for-dollar basis. Any funding of the Carve-Out shall be added to, and made a part of, the DIP Obligations secured by the DIP Collateral and shall be otherwise entitled to the protections granted under this Interim Order, the DIP Documents, the Bankruptcy Code, and applicable law.

31. **Limitations on Use of DIP Proceeds, DIP Collateral, Cash Collateral, and Carve-Out**. The DIP Facility, the DIP Collateral, the Cash Collateral, and the Carve-Out may not be used in connection with: (a) selling or otherwise disposing of DIP Collateral without the consent of the DIP Lender other than as permitted in the DIP Documents and this Interim Order; (b) using or seeking to use any insurance proceeds constituting DIP Collateral outside the ordinary course

of business without the consent of the DIP Lender; (c) incurring indebtedness without the prior consent of the DIP Lender, except to the extent permitted under the DIP Credit Agreement; (d) seeking to amend or modify any of the rights granted to the DIP Lender under this Interim Order or the DIP Documents without its consent; (e) objecting to or challenging in any way the DIP Liens, the DIP Obligations, the DIP Superpriority Claim, the DIP Collateral, or any other claims or liens, held by or on behalf of the DIP Lender or the Prepetition Lender; (f) asserting, commencing or prosecuting any claims or causes of action whatsoever, including, without limitation, any actions under Chapter 5 of the Bankruptcy Code or applicable state law equivalents, any so-called "lender liability" claims and causes of action, or actions to recover or disgorge payments, against the DIP Lender or Prepetition Lender, or any of its affiliates, successors and assigns and the partners, shareholders, controlling persons, directors, officers, employees, agents, trustees, administrators, managers, advisors, attorneys and representatives, solely in its capacities as such; (g) litigating, objecting to, challenging, or contesting in any manner, or raising any defenses to, the validity, extent, amount, perfection, priority, or enforceability of any of the DIP Obligations, the DIP Liens, the DIP Superpriority Claim, or any rights or interests of the DIP Lender granted under this Interim Order or the DIP Documents or any rights or interests of the Prepetition Lender; or (h) seeking to subordinate, recharacterize, disallow or avoid the DIP Obligations, the DIP Liens or the DIP Superpriority Claim or any other claims or liens held by or on behalf of the Prepetition Lender.

32. **Payment of Compensation**. Nothing herein shall be construed as a consent to the allowance of any professional fees or expenses of any Professional Person or shall affect the right of the DIP Lender to object to the allowance and payment of such fees and expenses.

33. **Limitation on Charging Expenses**. Subject to entry of the Final Order granting

such relief and except to the extent of the Carve-Out, no costs or expenses of administration which have been or may be incurred in the Chapter 11 Case at any time shall be charged against the DIP Lender or any of its claims, the DIP Collateral, or the DIP Superpriority Claim, or any claims or liens held by on behalf of the Prepetition Lender, pursuant to sections 105 or 506(c) of the Bankruptcy Code, or otherwise without the prior written consent of the DIP Lender or the Prepetition Lender, as applicable, and no such consent shall be implied, directly or indirectly, from anything contained in this Interim Order (including, without limitation, consent to the Carve-Out or the approval of any budget hereunder) or from any other action, inaction, or acquiescence by the DIP Lender or any of the Prepetition Lender.

34. **No Marshaling; Section 552(b) Waiver**. Subject to entry of a Final Order granting such relief, the DIP Lender shall not be subject to the equitable doctrine of "marshaling" or any other similar doctrine with respect to any of the DIP Collateral, and proceeds shall be received and applied pursuant to this Interim Order and the DIP Documents notwithstanding any other agreement or provision to the contrary. Upon entry of the Final Order granting such relief, and effective as of the Petition Date, in light of, among other things, the agreement of the DIP Lender and the Prepetition Lender to allow the Debtor to use Cash Collateral on the terms set forth herein (i) the DIP Lender and the Prepetition Lender shall be entitled to the rights and benefits of section 552(b) of the Bankruptcy Code, if any, and (ii) the "equities of the case" exception under section 552(b) of the Bankruptcy Code shall not apply to such parties with respect to the proceeds, products, offspring or profits of any of the Prepetition Collateral or the DIP Collateral, as applicable.

35. **Access to DIP Collateral**. Without limiting any other rights or remedies of the DIP Lender contained in this Interim Order, the DIP Documents, or otherwise available at law or

in equity, and subject to the terms of the DIP Documents, upon written notice to the landlord of any leased premises that an Event of Default or the DIP Termination Date has occurred and is continuing, the DIP Lender may, subject to applicable notice provisions, if any, in this Interim Order and any separate applicable agreement by and between such landlord and the DIP Lender, enter upon any leased premises of the Debtor or any other party for the purpose of exercising any remedy with respect to the DIP Collateral located thereon and shall be entitled to all of the Debtor's rights and privileges as lessee under such lease without interference from the landlords thereunder. Nothing herein shall require the DIP Lender to assume any lease as a condition to the rights afforded in this paragraph. For the avoidance of doubt, subject to (and without waiver of) the rights of the DIP Lender under applicable non-bankruptcy law, the DIP Lender can only enter upon a leased premises after an Event of Default or the DIP Termination Date in accordance with (i) a separate agreement with the landlord at the applicable leased premises, (ii) written consent of the landlord, or (iii) upon entry of an order of this Court obtained by motion of the DIP Lender, on such notice to the landlord as shall be required by this Court or applicable law.

36. **Limits on Lender Liability**. Nothing in this Interim Order or in any of the DIP Documents or any other documents related thereto shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Lender, in such capacity, of any liability for any claims arising from any activities by the Debtor in the operation of its business or in connection with the restructuring efforts and the administration of the Chapter 11 Case. The DIP Lender, solely in its capacity as such, shall not be deemed to be in control of the operations of the Debtor or to be acting as a "responsible person" or "owner or operator" with respect to the operation or management of the Debtor or its business (as such terms, or any similar terms, are used in the United States Comprehensive Environmental Response, Compensation and Liability Act,

42 U.S.C. §§ 9601 *et seq*. as amended, or any similar federal or state statute), nor shall they owe any fiduciary duty to any of the Debtor, its creditors or estate, or constitute or be deemed to constitute a joint venture or partnership with the Debtor. Furthermore, nothing in this Interim Order, the DIP Credit Agreement, the DIP Documents or the Prepetition Credit Agreement shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Lender or the Prepetition Lender of any liability for any claims arising from the prepetition or postpetition activities of any of the Debtor and its affiliates (as defined in Bankruptcy Code section 101(2)).

37. **Insurance Proceeds and Policies**. Except as subject to the terms of the Debtor's nonresidential real property leases, upon entry of this Interim Order and to the fullest extent provided by applicable law, the DIP Lender shall be, and shall be deemed to be, without any further action or notice, named as additional insured and loss payee on each insurance policy maintained by the Debtor that constitutes DIP Collateral; *provided*, *however*, that the rights granted herein shall not interfere with any rights held by a landlord to insurance proceeds for damage to a landlord's property.

38. **Rights Preserved**. Except as provided in this Interim Order and the DIP Documents, the entry of this Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly: (a) the DIP Lender's right to seek any other or supplemental relief in respect of the Debtor; (b) any of the rights of the DIP Lender under the Bankruptcy Code or under non-bankruptcy law, including, without limitation, the right to (i) request modification of the automatic stay of section 362 of the Bankruptcy Code, (ii) request dismissal of the Chapter 11 Case or any Successor Case, conversion of the Chapter 11 Case to a case under chapter 7, or appointment of a chapter 11 trustee or examiner with expanded powers, or (iii) propose, subject to the provisions of section 1121 of the Bankruptcy Code, a chapter 11 plan or plans; or (c) any other

rights, claims, or privileges (whether legal, equitable or otherwise) of the DIP Lender. Entry of this Interim Order is without prejudice to any and all rights of any party in interest with respect to the terms and approval of the Final Order and any other position which any party in interest deems appropriate to raise in the Chapter 11 Case.

39. **No Waiver by Failure to Seek Relief**. The failure of the DIP Lender to seek relief or otherwise exercise its rights and remedies under this Interim Order, the DIP Documents, or applicable law, as the case may be, shall not constitute a waiver of any of the rights hereunder, thereunder, or otherwise of the DIP Lender.

40. **Binding Effect of Interim Order**. Notwithstanding Bankruptcy Rule 6004(h), and except as otherwise stated herein, immediately upon the entry of this Interim Order by this Court, the terms and provisions of this Interim Order shall become valid and binding upon and inure to the benefit of the Debtor, DIP Lender, all other creditors of the Debtor, the Creditors' Committee (if any), or any other Court-appointed committee appointed in the Chapter 11 Case, and all other parties-in-interest and its respective successors and assigns, including any trustee or other fiduciary hereafter appointed in the Chapter 11 Case, any Successor Case, or upon dismissal of the Chapter 11 Case or any Successor Case.

41. **No Modification of Interim Order**. Until and unless the DIP Obligations have been indefeasibly paid in full in cash (such payment being without prejudice to any terms or provisions contained in the DIP Facility, which survive such discharge by its terms), and all commitments to extend credit under the DIP Facility have been terminated, the Debtor irrevocably waives the right to seek and shall not seek or consent to, directly or indirectly: (a) without the prior written consent of the DIP Lender, (i) any modification, stay, *vacatur*, or amendment to this Interim Order; or (ii) a priority claim for any administrative expense or unsecured claim against

the Debtor (now existing or hereafter arising of any kind or nature whatsoever, including, without limitation, any administrative expense of the kind specified in sections 503(b), 506(c), 507(a), or 507(b) of the Bankruptcy Code) in the Chapter 11 Case or any Successor Case, equal or superior in priority to the DIP Superpriority Claim, other than the Carve-Out; (b) without the prior written consent of the DIP Lender, any lien on any of the DIP Collateral with priority equal or superior to the DIP Liens, except as specifically provided herein and in the other DIP Documents; or (c) without the prior written consent of the DIP Lender, any modification, stay, *vacatur*, or amendment to this Interim Order affecting the rights, duties or obligations of the DIP Lender. It shall be an Event of Default if the Debtor seeks any amendment, modification or extension of this Interim Order without the prior written consent, as provided in the foregoing, and no such consent shall be implied by any other action, inaction or acquiescence of the DIP Lender.

42. **Interim Order Controls**. In the event of any inconsistency between the terms and conditions of the DIP Documents and of this Interim Order, the provisions of this Interim Order shall govern and control.

43. **Discharge**. The DIP Obligations shall not be discharged by the entry of an order confirming any plan of reorganization in the Chapter 11 Case, notwithstanding the provisions of section 1141(d) of the Bankruptcy Code, unless such obligations have been indefeasibly paid in full in cash and all commitments have been terminated in writing, on or before the effective date of such confirmed plan of reorganization or the DIP Lender has otherwise agreed in writing.

44. **Survival**. The provisions of this Interim Order and any actions taken pursuant hereto shall survive entry of any order which may be entered: (a) confirming any plan of reorganization in the Chapter 11 Case; (b) converting the Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code; (c) dismissing the Chapter 11 Case or any Successor Case; or

(d) pursuant to which this Court abstains from hearing the Chapter 11 Case or any Successor Case. The terms and provisions of this Interim Order, including the claims, liens, security interests, and other protections granted to the DIP Lender, shall continue in the Chapter 11 Case, in any Successor Case, or following dismissal of the Chapter 11 Case or any Successor Case, and shall maintain its priority as provided by this Interim Order until all the DIP Obligations, pursuant to the DIP Documents and this Interim Order, have been indefeasibly paid in full in cash and all commitments have been terminated. The terms and provisions concerning the indemnification of the DIP Lender shall continue in the Chapter 11 Case or any Successor Case, following dismissal of the Chapter 11 Case or any Successor Case, and following termination of the DIP Documents or the indefeasible repayment of the DIP Obligations.

45. **No Third-Party Rights**. Except as explicitly provided for in this Interim Order, any rights and obligations granted in this Interim Order inure solely for the benefit of the DIP Lender and the Prepetition Lender, and no third party shall have any rights hereunder.

46. **Final Hearing**. The Final Hearing shall be held on **January ____, 2026, at _____ __. m. (prevailing Eastern Time)**; *provided* that the Final Hearing may be adjourned or otherwise postponed upon the Debtor filing a notice of such adjournment if the DIP Lender so consents. No later than two (2) business days after the date of this Interim Order, the Debtor shall serve notice of the entry of this Interim Order and of the Final Hearing (the "Final Hearing Notice"), together with copies of this Interim Order, the proposed Final Order and (to the extent not previously served) the Motion, on: (a) the parties having been given notice of the Interim Hearing; (b) any party which has filed prior to such date a request for notices with this Court; (c) counsel for a Creditors' Committee (if appointed); and (d) the Internal Revenue Service. The Debtor shall file a certificate of service no later than 48 hours after service. The Final Hearing

Notice shall state that any party in interest objecting to the entry of the proposed Final Order shall file written objections with the Clerk of the Court no later than 4:00 p.m. (prevailing Eastern Time) seven days before the Final Hearing (the "Objection Deadline"), objections shall be served so as to be received on or before such date by: (i) proposed counsel to the Debtor, (a) Levene, Neale, Bender, Yoo & Golubchik L.L.P., 2818 La Cienega Avenue, Los Angeles, CA 90034, Attn: David B. Golubchik Esq. (DBG@LNBYG.COM) and Krikor J. Meshefejian, Esq. (KJM@LNBYG.COM) and (b) Reed Smith LLP, 1201 N. Market Street, Suite 1500, Wilmington, DE 19801, Attn: Kurt F. Gwynne, Esq. (kgwynne@reedsmith.com) and Jason D. Angelo, Esq. (jangelo@reedsmith.com); (ii) counsel to the DIP Lender, (a) Raines Feldman Littrell LLP, 1350 Avenue of the Americas, 22nd Floor New York, NY 10019 Attn: Carollynn H.G. Callari, Esq. (ccallari@raineslaw.com), and (b) Raines Feldman Littrell LLP, 4675 MacArthur Ct, Suite 1550 Newport Beach, CA 92660, Attn: Hamid R. Rafatjoo, Esq. (hrafatjoo@raineslaw.com); (iii) proposed counsel to any Creditors' Committee; (iv) the Office of the United States Trustee for the District of Delaware, J. Caleb Boggs Federal Building, 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801, Attn: Benjamin Hackman, Esq. (benjamin.hackman@usdoj.gov),; and (v) any other parties requesting service pursuant to Bankruptcy Rule 2002. If no objections or responses are filed and served by the Objection Deadline, the Court may enter the Final Order without further notice or hearing.

47. **Necessary Action**. The Debtor is authorized 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.

48. **Effectiveness**. Subject to the terms hereof, this Interim Order shall constitute findings of fact and conclusions of law and shall take effect and be fully enforceable *nunc pro tunc*

to the Petition Date immediately upon entry thereof. Notwithstanding Bankruptcy Rules 4001(a)(3), 6004(h), 6006(d), 7062, or 9024, any other Bankruptcy Rule or Rule 62(a) of the Federal Rules of Civil Procedure, this Interim Order shall be immediately effective and enforceable upon its entry, and there shall be no stay of execution or effectiveness of this Interim Order.

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

50. **Retention of Jurisdiction**. The Court shall retain jurisdiction to resolve any and all disputes arising under or related to the provisions of this Interim Order, and to enforce all of the conditions of this Interim Order.

EXHIBIT 1

DIP Credit Agreement

(Attached)

SENIOR SECURED SUPERPRIORITY DEBTOR-IN-POSSESSION CREDIT AND SECURITY AGREEMENT

Dated as of December ___, 2025

by and between

GST, INC., DEBTOR IN POSSESSION,

as Borrower.

and

WINNERS ALLIANCE, INC.,

as Lender

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SENIOR SECURED SUPERPRIORITY DEBTOR-IN-POSSESSION CREDIT AND SECURITY AGREEMENT

This SENIOR SECURED SUPERPRIORITY DEBTOR-IN-POSSESSION CREDIT AND SECURITY AGREEMENT (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time, this "**Agreement**") is entered into as of December ____, 2025, by and between GST, INC., a Delaware corporation ("**Borrower**" or "**Debtor**"), and WINNERS ALLIANCE, INC., a Delaware corporation, as lender under this Agreement (together with its successors and permitted assigns, "**Lender**").

RECITALS

WHEREAS, on the Petition Date, Borrower commenced the Chapter 11 Case in the Bankruptcy Court and has retained possession of its property and is authorized under the Bankruptcy Code to continue the operation of its business as a debtor in possession; and

WHEREAS, prior to the Petition Date, Lender provided secured financing to Borrower under the Prepetition Credit Agreement;

WHEREAS, pursuant to the Prepetition Credit Agreement, Lender is owed at least $5 million from Borrower in secured debt as of the Petition Date (in addition to in excess of $6.1 million in unsecured debt); and

WHEREAS, Borrower has requested that Lender provide a secured term credit facility to Borrower in order to fund the continued operation of Borrower's business as a debtor and debtor-in-possession under the Bankruptcy Code during the pendency of the Chapter 11 Case;

WHEREAS, Borrower has requested that Lender provide it with postpetition loans and advances and other financial or credit accommodations, and Lender has agreed— subject to the conditions set forth herein and in the DIP Orders—to extend a $2,900,000 senior secured, multiple-draw credit facility to Borrower comprising (x) (i) an Interim New Money DIP Loan in the aggregate principal amount of *up to* $1,100,000 and (ii) an Interim Roll Up DIP Loan of the Prepetition Secured Obligations to the extent of each advance of Interim New Money DIP Loans, each of which will be available to be drawn or deemed drawn, as applicable, after entry of the Interim DIP Order (as defined below) and (y) (i) an Additional New Money DIP Loan in the aggregate principal amount of *up to* $1,800,000 and (ii) an Additional Roll Up DIP Loan in the aggregate principal amount of $3,250,000 each of which will be available to be drawn or deemed drawn after entry of the Final DIP Order (as defined below); and

WHEREAS, Lender is willing to make available to Borrower such postpetition loans subject to the terms of this Agreement and the DIP Orders;

WHEREAS, Lender is only willing to make the Loans provided for by this Agreement (and Borrower acknowledges and agrees that Lender is only willing to make the Loans provided for by this Agreement) on all of the terms and conditions and provisions of this Agreement and the other DIP Documents (defined below), based on the truth and accuracy of these Recitals and all of the other representations and warranties made by Borrower in this Agreement and the other DIP

Documents, as applicable, and on the terms and subject to the conditions of this Agreement and the other DIP Documents, as applicable; and

WHEREAS, all Annexes, Schedules, Exhibits and other attachments hereto, or expressly identified to this Agreement, are incorporated herein by reference, and taken together, shall constitute but a single agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the representations and mutual covenants and agreements contained herein and in the other DIP Documents, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in contemplation of the statements set forth in Recitals above, the truth and accuracy of which statements (and reliance thereon by Lender) are specifically acknowledged by Borrower and Lender (together, the "**Parties**"), the Parties hereby covenant and agree as follows:

ARTICLE I
DEFINITIONS AND OTHER TERMS

1.01 **Defined Terms.**

As used in this Agreement, the following terms shall have the meanings set forth below:

"**Acquisition**" means, by any Person, the acquisition by such Person, in a single transaction or in a series of related transactions, of all or substantially all of the property of another Person or more than a majority of the Voting Stock of another Person, in each case whether or not involving a merger or consolidation with such other Person and whether for cash, property, services, assumption of Indebtedness, securities or otherwise.

"**Additional New Money DIP Commitment**" means Lender's commitment to make Additional New Money DIP Loans in a principal amount of *up to* $1,800,000.

"**Additional New Money DIP Loans**" has the meaning set forth in Section 2.01(b)(i).

"**Additional Roll Up DIP Loan**" has the meaning set forth in Section 2.01(b)(ii).

"**Affiliate**" means, with respect to any Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified; *provided*, that for purposes of this Agreement, Lender shall not be considered an "Affiliate" of Borrower.

"**Agreement**" has the meaning set forth in the introductory paragraph hereto.

"**Anti-Corruption Laws**" means all Laws of any jurisdiction applicable to Borrower from time to time concerning or relating to bribery or corruption, including without limitation the Foreign Corrupt Practices Act of 1977, 15 U.S.C. §§ 78dd-1, *et seq*.

"**Anti-Money Laundering Laws**" means all Laws of any jurisdiction applicable to Borrower from time to time concerning or relating to money laundering, including, without limitation, the Patriot Act.

"**Anti-Terrorism Laws**" means all Laws of any jurisdiction applicable to the Borrower from time to time concerning or relating to terrorism or money laundering, including, without limitation, Title III of the Patriot Act, the Trading with the Enemy Act, and each of the foreign assets control regulations of the United States Treasury Department (31 C.F.R. Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto.

"**Assignment and Assumption**" means an assignment and assumption, if any, entered into by Lender and an assignee respecting this Agreement and the DIP Documents, as applicable.

"**Attributable Indebtedness**" means, on any date, (a) in respect of any Capital Lease of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP and (b) in respect of any Synthetic Lease of any Person, the capitalized amount of the remaining lease payments under the relevant lease that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP if such lease were accounted for as a Capital Lease.

"**Avoidance Action**" means an action or claim brought under the Bankruptcy Code or applicable state law to recover certain transfers of property or to avoid certain obligations incurred by Borrower before the Petition Date. These actions include actions to avoid and recovery preferences, fraudulent transfers, and post-petition transfers as well as other avoidance actions as provided for under Bankruptcy Code sections 544, 545, 547, 548, 549, and 550 and applicable state laws.

"**Bankruptcy Code**" means title 11 to the United States Code, 11 U.S.C. § 101, *et seq*.

"**Bankruptcy Court**" means the United States Bankruptcy Court for the District of Delaware.

"**Bid Procedures Order**" means an order entered by the Bankruptcy Court establishing bid procedures related to the sale of all, substantially all or a portion of Debtor's assets, which shall be in form acceptable to Lender in its sole discretion.

"**Board of Directors**" means, with respect to any Person, the board of directors of such Person (or the equivalent board of advisors, managers, or members or body performing similar functions for such Person) or any committee of the board of directors of such Person authorized, with respect to any particular matter, to exercise the power of the board of directors (or board of advisors, managers, or members or body performing similar functions) of such Person.

"**Borrower**" has the meaning set forth in the introductory paragraph hereto.

"**Borrowing**" means a borrowing or deemed borrowing of a Loan on a given date.

"**Borrowing Request**" means an irrevocable, written request for a Borrowing of Loans, which must be substantially in the form of **Exhibit A** and must specify (i) the requested date of the

borrowing (which shall be a Business Day), (ii) the principal amount of New Money DIP Loans to be borrowed, and (iii) wire instructions for the account(s) to which funds are to be disbursed.

"**Budget**" means the thirteen (13) week cash flow forecast attached to this Agreement as **Exhibit B**, approved by Lender in its sole discretion, and approved by the Bankruptcy Court pursuant to the DIP Order, as such budget may be amended or modified in accordance with this Agreement and the DIP Order.

"**Business Day**" means any day other than a Saturday, Sunday, or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the State of New York.

"**Businesses**" means, at any time, a collective reference to the businesses operated by Borrower.

"**Capital Expenditures**" means, with respect to any Person for any period, any expenditure in respect of the purchase or other acquisition of any fixed or capital assets which are classified as capital expenditures in accordance with GAAP (excluding normal replacements and maintenance which are properly charged to current operations).

"**Carve-Out**" means collectively, (a) all fees required to be paid to the Clerk of the Bankruptcy Court and to the UST pursuant to 28 U.S.C. §1930(a), plus interest at the statutory rate, if any, pursuant to 31 U.S.C § 3717 (without regard to the Carve-Out Trigger Notice (as defined below)), (b) reasonable fees and expenses incurred by a trustee and payable under section 726(b) of the Bankruptcy Code in an aggregate amount not to exceed $25,000 (without regard to the Carve-Out Trigger Notice), (c) to the extent allowed at any time and consistent with the Budget and a Permitted Variance, whether by interim order, procedural order, or otherwise, all unpaid fees and expenses incurred by persons or firms retained by (i) Debtor pursuant to section 327, 328, or 363 of the Bankruptcy Code, and (ii) the Committee pursuant to section 328 or 1103 of the Bankruptcy Code, at any time before or on the first business day following delivery by Lender of a Carve-Out Trigger Notice, whether allowed by the Bankruptcy Court prior to or after delivery of a Carve-Out Trigger Notice; and (d) to the extent allowed at any time and consistent with the Budget and a Permitted Variance, whether by interim order, procedural order, or otherwise, all unpaid fees and expenses incurred after the first business day following delivery by Lender of the Carve-Out Trigger Notice by persons or firms retained by (i) Debtor pursuant to section 327, 328, or 363 of the Bankruptcy Code, and (ii) the Committee pursuant to section 328 or 1103 of the Bankruptcy Code, in an aggregate amount of $100,000 for professionals retained by Debtor and $25,000 for professionals retained by the Committee.

"**Carve-Out Trigger Notice**" shall mean a written notice delivered by Lender to Borrower's counsel, the UST, and lead counsel to any Committee, which notice may only be delivered following the occurrence and during the continuation of an Event of Default under this Agreement.

"**Challenge**" means any action, proceeding, objection, defense, counterclaim, cross-claim, motion, or claim, whether asserted in an adversary proceeding, contested matter, or otherwise, that challenges, contests, or seeks to avoid, subordinate, disallow, recharacterize, surcharge, set aside, or otherwise limit, directly or indirectly, in whole or in part, any of the following (or the enforceability thereof): (a) the validity, priority, extent, perfection, or enforceability of the Prepetition Secured Obligations, the DIP Obligations, the Prepetition Liens, or the Carve-Out; (b)

the validity, priority, extent, perfection, or enforceability of any claims or liens granted or reaffirmed pursuant to the Interim DIP Order or the Final DIP Order; (c) the amount of the Prepetition Secured Obligations or DIP Obligations; (d) the releases, waivers, or findings set forth in the Interim DIP Order or the Final DIP Order, including, without limitation, any waiver of claims under sections 506(c), 552(b), 544, 547, 548, 549, 550, or 553 of the Bankruptcy Code; or (e) the right of the Lender to credit bid pursuant to section 363(k) of the Bankruptcy Code; *provided*, *however*, that the foregoing shall not include (i) the filing of a proof of claim, (ii) any objection to a proof of claim that does not otherwise constitute a Challenge, or (iii) any motion or pleading solely seeking interpretation or enforcement of the Interim DIP Order or Final DIP Order.

"**Change in Law**" means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation, or treaty, (b) any change in any law, rule, regulation, or treaty or in the administration, interpretation, or application thereof by any Governmental Authority, central bank, or comparable agency charged with the interpretation, administration, or application thereof, after the date of this Agreement, or (c) the making or issuance of any request, guideline, or directive (whether or not having the force of law) by any Governmental Authority, central bank, or comparable agency made or issued after the date of this Agreement.

"**Chapter 11 Case**" means the case commenced by the Borrower under Chapter 11 of the Bankruptcy Code in the Bankruptcy Court on the Petition Date, Case No. 25-12188.

"**Chapter 11 Plan**" means a plan of reorganization or liquidation in this Chapter 11 Case confirmed by order of the Bankruptcy Court.

"**Code**" means the Internal Revenue Code of 1986, as amended.

"**Committee**" means, collectively, the official committee of unsecured creditors and any other committee formed, appointed or approved in the Chapter 11 Case.

"**Contractual Obligation**" means, as to any Person, any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

"**Control**" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract, or otherwise. "Controlling" and "Controlled" have meanings correlative thereto. Without limiting the generality of the foregoing, a Person shall be deemed to be Controlled by another Person if such other Person possesses, directly or indirectly, power to vote 10% or more of the securities having ordinary voting power for the election of directors, managing general partners, or the equivalent; *provided* that Lender shall not be deemed to "control" Borrower.

"**Debt Issuance**" means the issuance by Borrower of any Indebtedness.

"**Debtor**" has the meaning set forth in the recitals hereto.

"**Debtor Relief Laws**" means the Bankruptcy Code, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership,

insolvency, reorganization, or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

"**Default**" means any event or condition that constitutes an Event of Default or that, with the giving of any notice, the passage of time, or both, would be an Event of Default.

"**Default Rate**" means an interest rate equal to the Interest Rate plus **5.00%** per annum, to the fullest extent permitted by applicable Laws.

"**DIP Collateral**" means all property pledged, mortgaged, assigned, granted, or otherwise subjected to a Lien under this Agreement or the DIP Order. Without limitation of the foregoing, except as otherwise expressly provided for in the DIP Order, as applicable, and the Carve-Out, entry and subject to the terms of the Final DIP Order, the DIP Collateral shall include all proceeds of any and all Avoidance Actions.

"**DIP Documents**" means this Agreement, the DIP Order, and each other agreement, instrument, or document executed or delivered at any time in connection with this Agreement and/or the DIP Order. Any reference in this Agreement or any other Loan Document to a Loan Document shall include all appendices, exhibits, or schedules thereto.

"**DIP Obligations**" means all advances to, and debts, principal, interest, premiums, fees, liabilities, obligations, covenants, and duties of Borrower arising under any DIP Document, or otherwise with respect to any Loan, in each case, payable in accordance with the DIP Documents, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing, or hereafter arising and including interest, premiums, or fees that accrue after the commencement by or against Borrower of any proceeding under any Debtor Relief Laws naming Borrower as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding.

"**DIP Order**" means the Interim DIP Order or Final DIP Order, as applicable under the circumstances.

"**Disclosure Statement**" means the document filed in the Chapter 11 Case providing adequate information about the Borrower's financial affairs, its proposed Chapter 11 Plan, and the means for its implementation and approval by the Bankruptcy Court.

"**Disposition**" or "**Dispose**" means the sale, transfer, license, lease, or other disposition (including any Sale and Leaseback Transaction) of any property by Borrower outside the ordinary course of business, including any sale, assignment, transfer, or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith.

"**Dollar**" and "**$**" mean lawful money of the United States.

"**Effective Date**" means the date on which confirmation of Debtor's Chapter 11 Plan becomes effective in accordance with its terms.

"**Environment**" means ambient and indoor air, surface water, and groundwater (including potable water, navigable water, and wetlands), the land surface or subsurface strata or sediment, and natural resources such as flora or fauna.

"**Environmental Laws**" means any and all Laws relating to (a) the Environment, preservation or reclamation of natural resources, or the generation, use, handling, transportation, storage, treatment, or Release of any Hazardous Material and (b) human health and employee health as affected by exposure to Hazardous Materials.

"**Environmental Liability**" means any liability, contingent or otherwise (including any liability for personal injury or damages, costs of environmental investigation, feasibility studies, and remediation, fines, penalties, or indemnities), of the Borrower directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment, or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the Release of any Hazardous Materials, and (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

"**Environmental Permits**" means any and all Permits required under any applicable Environmental Law.

"**Equity Interests**" means, with respect to any Person, all of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options, or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights, or other interests are outstanding on any date of determination.

"**ERISA**" means the Employee Retirement Income Security Act of 1974, as amended, and any successor thereto.

"**ERISA Affiliate**" means any trade or business (whether or not incorporated) under common control with the Borrower within the meaning of Section 414(b) or (c) of the Code (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code) or the meaning of Section 4001(a)(14) of ERISA; *provided*, however, that in no event shall the Lender or any of its Affiliates constitute an ERISA Affiliate for the purposes of this Agreement. Any former ERISA Affiliate of a Person shall continue to be considered an ERISA Affiliate of such Person within the meaning of this definition with respect to the period such entity was an ERISA Affiliate of such Person and with respect to liabilities arising during such period (but, for the avoidance of doubt, not after such period) for which such Person could be liable under the Code or ERISA.

"**ERISA Event**" means (a) a Reportable Event; (b) a withdrawal by the Borrower or any of its ERISA Affiliates (if any) from any Pension Plan subject to Section 4063 of ERISA during a plan

year in which such entity was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by the Borrower or any of its ERISA Affiliates (if any) from a Multiemployer Plan or notification that a Multiemployer Plan is in "critical," "endangered" or "critical and declining" status (each, within the meaning of Section 432 of the Code or ERISA Section 305); (d) a mass withdrawal from a Multiemployer Plan under ERISA Section 4219(c)(1)(D); (e) the withdrawal from a Multiemployer Plan by any employer required to be listed in Schedule R of the Multiemployer Plan's Form 5500; (f) a Multiemployer Plan's adoption, amendment or update of a rehabilitation plan under ERISA Section 305(e); (g) the adoption by a Multiemployer Plan of any plan rule creating employer liability that is in addition to collectively bargained contributions or withdrawal liability; (h) the filing of a notice of intent to terminate, the treatment of a Pension Plan amendment as a termination under Sections 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan; (i) an event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan or Multiemployer Plan; (j) notice received by the Borrower or any of its ERISA Affiliates (if any) from a Multiemployer Plan that such Multiemployer Plan is subject to Section 4245 of ERISA; (k) the failure of the Borrower or any of its ERISA Affiliates (if any) to make by its due date a required installment under Section 430(j) of the Code with respect to any Pension Plan or the failure by any Pension Plan to satisfy the minimum funding standards (within the meaning of Section 412 of the Code or Section 302 of ERISA) applicable to such Pension Plan, whether or not waived in accordance with Section 412(c) of the Code or Section 302(C) of ERISA; (l) a determination that any Pension Plan is, or is expected to be, in "at risk" status (within the meaning of Section 430 of the Code or Section 303 of ERISA); (m) the filing pursuant to Section 412 of the Code or Section 302 of ERISA of an application for a waiver of the minimum funding standard with respect to any Pension Plan; (n) the failure by the Borrower or any of its ERISA Affiliates (if any) to make any required contribution to a Multiemployer Plan pursuant to Section 431 or 432 of the Code; (o) the failure by the Borrower or any of its ERISA Affiliates (if any) to pay when due (after expiration of any applicable grace period) any installment payment with respect to withdrawal liability under Section 4201 of ERISA; (p) the imposition of a Lien pursuant to Section 430(k) of the Code or Section 303(k) or 4068 of ERISA with respect to any Pension Plan; (q) the assertion of a material claim (other than routine claims for benefits) against any ERISA Plan other than a Multiemployer Plan or the assets thereof or against the Borrower or any of its ERISA Affiliates (if any) in connection with any ERISA Plan; or (r) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon the Borrower or any of its ERISA Affiliates (if any).

"**ERISA Plan**" means any "employee benefit plan" (as such term is defined in Section 3(3) of ERISA) in respect of which the Borrower or any of its ERISA Affiliates (if any) is (or, if such ERISA Plan were terminated, would under Section 4062 or Section 4069 of ERISA be deemed to be) an "employer" as defined in Section 3(5) of ERISA.

"**Event of Default**" has the meaning specified in Section 8.01.

"**Excluded Accounts**" means any accounts exclusively used for payroll, payroll taxes, or employee benefits and funded in the ordinary course of business.

"**Excluded Taxes**" means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient: Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, imposed as a result of such Recipient being organized under the laws of, or having its principal office located in, the jurisdiction imposing such Tax (or any political subdivision thereof).

"**Final Maturity Date**" means the earliest to occur of (a) the date that is one Business Day after the closing of the sale of all or substantially all of the DIP Collateral; (b) the date that is one Business Day after the Effective Date of a confirmed Chapter 11 Plan; or (c) the date that is 120 days following the Petition Date

"**Final DIP Order**" means, collectively, an order of the Bankruptcy Court entered in the Chapter 11 Case after a final hearing under Bankruptcy Rule 4001(c)(2) or such other procedures as approved by the Bankruptcy Court, which order shall be in form and substance satisfactory to Lender, in its sole discretion, and which order is in effect and not stayed, together with all extensions, modifications, and amendments thereto, in form and substance satisfactory to Lender, in its sole discretion, which, among other matters but not by way of limitation, authorizes Borrower to obtain credit, incur (or guaranty) Indebtedness, and grant Liens under this Agreement and the other DIP Documents, as the case may be, and provides for the super priority of Lender's claims and authorizes the use of cash collateral.

"**Fiscal Year**" means the fiscal year of Borrower ending on or about December 31 of each year.

"**Fund**" means any Person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its activities.

"**GAAP**" means generally accepted accounting principles in the United States set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and the statements and pronouncements of the Financial Accounting Standards Board, consistently applied and as in effect from time to time.

"**Governmental Authority**" means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, any tribal, aboriginal, or native government or corporation, and any agency, authority, instrumentality, regulatory body, court, central bank, or other entity exercising executive, legislative, judicial, taxing, regulatory, or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

"**Guarantee**" means, as to any Person, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation payable or performable by another Person (the primary obligor) in any manner, whether directly or indirectly, or (b) any Lien on any assets of such Person securing any Indebtedness or other obligation of any other Person, whether or not such Indebtedness or other obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien). The amount of any Guarantee shall be deemed to be an amount equal to the stated

or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term "Guarantee" as a verb has a corresponding meaning.

"**Hazardous Materials**" means (a) any substance, material, or waste designated or defined as a "hazardous substance," "hazardous material," "hazardous waste," "extremely hazardous waste," "restricted hazardous waste," "pollutant or contaminant," "toxic waste," or "toxic substance" under any provision of Environmental Law, and (b) any petroleum, petroleum distillates, petroleum products, asbestos, or asbestos-containing materials, urea-formaldehyde insulation, explosive, or radioactive materials, and polychlorinated biphenyls.

"**Indebtedness**" means, as to any Person at a particular time, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP:

(a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments;

(b) all direct or contingent obligations of such Person arising under letters of credit (including standby and commercial), bankers' acceptances, bank guaranties, surety bonds and similar instruments;

(c) net obligations of such Person under any swap agreement;

(d) all obligations of such Person to pay the deferred purchase price of property or services (other than trade accounts payable in the ordinary course of business and, in the case of any such trade account payables, not past due for more than 90 days);

(e) indebtedness (excluding prepaid interest thereon) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;

(f) Capital Leases and Synthetic Lease obligations;

(g) all obligations of such Person prior to the Maturity Date to purchase, redeem, retire, defease, or otherwise make any payment in cash or cash equivalents in respect of any Equity Interest in such Person or any other Person, valued, in the case of a redeemable preferred interest, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends; and

(h) all Guarantees of such Person in respect of any of the foregoing.

Notwithstanding the foregoing, in no event shall the following constitute Indebtedness, in each case to the extent consistent with Borrower's past practices: (i) purchase price holdbacks arising in the ordinary course of business in respect of a portion of the purchase price of an asset to satisfy warranties or other unperformed obligations of the seller of such asset; (ii) trade accounts payable,

deferred revenues, liabilities associated with customer prepayments, and deposits and other accrued obligations (including transfer pricing and accruals for payroll and other operating expenses accrued in the ordinary course of business), in each case incurred in the ordinary course of business, (iii) operating leases, (iv) customary obligations under employment agreements and deferred employee compensation, and (v) prepaid or deferred revenue and deferred tax liabilities.

For all purposes hereof, the Indebtedness of any Person shall include the Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venturer, unless such Indebtedness is expressly made non-recourse to such Person. To the extent that any recourse with respect to Indebtedness of the type described in clause (e) above is limited to solely to property of a Person, the amount of Indebtedness of any Person for purposes of clause (e) shall be equal to the lesser of (i) the aggregate unpaid amount of such Indebtedness and (ii) the net book value of such property encumbered thereby.

"**Indemnitee**" has the meaning specified in Section 9.04(b).

"**Information**" has the meaning specified in Section 9.07.

"**Interim New Money DIP Commitment**" means the commitment of Lender to make an Interim New Money DIP Loan in a principal amount of *up to* $1,100,000.

"**Interim New Money DIP Loan**" has the meaning specified in Section 2.01(a)(i).

"**Interim Roll Up DIP Loan**" has the meaning specified in Section 2.01(a)(ii).

"**Interest Rate**" has the meaning specified in Section 2.05(a).

"**Interest Payment Date**" means the Maturity Date.

"**Interim DIP Order**" means the order of the Bankruptcy Court, substantially in the form of Exhibit C (except as may otherwise be agreed in writing or on the record by the Lender at the interim hearing with respect to such order in the Chapter 11 Case), entered in the Chapter 11 Case after an interim hearing (assuming satisfaction of the standards prescribed in Section 364 of the Bankruptcy Code and Bankruptcy Rule 4001 and other applicable Law), which order is in effect and not stayed, together with all extensions, modifications, and amendments thereto, in form and substance satisfactory to Lender, which, among other matters but not by way of limitation, authorizes, on an interim basis, Borrower to execute and perform under the terms of this Agreement and the other Loan Documents.

"**Investigation Period**" means the period from the Petition Date until the date that is the earlier of (a) seventy-five (75) days after the date of entry of the Interim DIP Order, (b) sixty (60) days after the date that a Committee is formed, if any, and (c) unless Lender has credit bid for all, or substantially all, of Debtor's assets, the date that the Bankruptcy Court enters any order approving the sale of all, or substantially all, of Debtor's assets.

"**Investment**" means, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition of Equity Interests of another

Person, (b) a loan, advance or capital contribution to, Guarantee or assumption of debt of, or purchase or other acquisition of any other debt or equity participation or interest in, another Person, including any partnership or joint venture interest in such other Person and any arrangement pursuant to which the investor Guarantees Indebtedness of such other Person, or (c) an Acquisition. For purposes of covenant compliance, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in value, or the write-ups, write-downs or write-offs with respect thereto, of such Investment net of any return representing a return of capital or repayment of principal or payment of interest, if applicable, with respect to such Investment.

"**Investment Property**" means any security, whether certificated or uncertificated, security entitlement, securities account, commodity contract, or commodity account.

"**Involuntary Disposition**" means any loss of, damage to or destruction of, or any condemnation or other taking for public use of, any property of Borrower.

"**Laws**" means, collectively, all international, foreign, federal, state, local, tribal, or aboriginal statutes, treaties, rules, guidelines, regulations, ordinances, codes, and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation, or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations, and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

"**Lender's Expenses**" are, without duplication, (a) all reasonable and documented audit fees and expenses, costs, and expenses (including reasonable and documented attorneys' fees and expenses (excluding fees and expenses generated by in house counsel), as well as appraisal fees, fees incurred on account of lien searches, inspection fees, and filing fees) incurred by Lender in connection with the Chapter 11 Case, the preparation, negotiation, and administration of this Agreement and the other DIP Documents or any amendments, modifications, or waivers of the provisions hereof or thereof, and (b) all reasonable and documented fees and expenses (including attorneys' fees and expenses, as well as appraisal fees, fees incurred on account of lien searches, inspection fees and filing fees) for defending and enforcing the DIP Documents (including, without limitation, those incurred in connection with appeals, this Chapter 11 Case, or other insolvency proceedings) or otherwise incurred by Lender in connection with the DIP Documents.

"Lender's Fees" means the Exit Fees, as defined in Section 2.07(b)-(d).

"**Lien**" means (a) any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest, or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way, or other encumbrance on title, and any financing lease having substantially the same economic effect as any of the foregoing), and (b) in the case of securities or Equity Interests, any purchase option, call or similar right of a third part with respect to such securities or Equity Interests; *provided*, however, that in no event shall any operating lease in and of itself be deemed to constitute a Lien.

"**Loans**" means New Money DIP Loans and Roll Up DIP Loans, as applicable.

"**Material Adverse Effect**" means (a) a material adverse change in, or a material adverse effect upon, the business, assets, properties, liabilities (actual or contingent), or financial condition of Borrower taken as a whole (except for the filing, commencement, and continuation of the Chapter 11 Case); (b) a material impairment of the ability of Borrower taken as a whole to pay the DIP Obligations or perform its other material obligations under the DIP Documents, or (c) a material adverse effect upon the legality, validity, binding effect, or enforceability against Borrower of any DIP Documents.

"**Material Contract**" means the contracts, agreements, leases, instruments, and other binding commitments and undertakings of Borrower or any Subsidiary thereof identified in the Prepetition Credit Agreement, and all other contracts, agreements, leases, instruments, and other binding commitments and undertakings of Borrower or any Subsidiary thereof the performance or breach of which could reasonably be expected to have a Material Adverse Effect on Borrower.

"**Maturity Date**" means the earliest to occur of (a) the Final Maturity Date, (b) the date upon which the Interim DIP Order expires if the Final DIP Order has not been entered on or before the date that is thirty five (35) days after the Petition Date, (c) the conversion of the Chapter 11 Case into a case under chapter 7 of the Bankruptcy Code, (d) the consummation of the sale of all or substantially all of the assets of the Borrower, taken as a whole, pursuant to section 363 of the Bankruptcy Code, (e) the occurrence of the Effective Date of a Chapter 11 Plan; and (f) the date of the acceleration of the Loans and termination of the New Money DIP Commitments hereunder.

"**Milestones**" has the meaning set forth in Section 6.16.

"**Multiemployer Plan**" means any employee benefit plan of the type described in Section 3(37) or 4001(a)(3) of ERISA that is subject to ERISA and to which the Borrower or any of its ERISA Affiliates (if any) makes or is obligated to make contributions or, during the preceding five plan years, has made or been obligated to make contributions.

"**Net Cash Proceeds**" means the aggregate cash or cash equivalents proceeds received by Borrower in respect of any Disposition, Debt Issuance, or Involuntary Disposition, including by way of insurance proceeds or condemnation awards or sale or issuance of Equity Interests, net of (a) direct costs incurred in connection therewith (including, without limitation, legal, accounting and investment banking fees, costs, expenses, and sales commissions), (b) Taxes paid as a result thereof or reasonably estimated to be actually payable within two (2) years of the date of the relevant Disposition, Debt Issuance, or Involuntary Disposition as a result thereof, (c) payment of ordinary course expenses set forth in the Budget (subject to a Permitted Variance), (d) in the case of any Disposition, the amount necessary to retire any Indebtedness secured by a Permitted Lien (ranking senior to any Lien of the Lender) on the related property, and (e) set aside for any U.S. Trustee quarterly fees that may be due and owing as a result thereof; it being understood that "Net Cash Proceeds" shall include, without limitation, any cash or cash equivalents received upon the sale or other disposition of any non-cash consideration received by Borrower in any Disposition, Debt Issuance, Involuntary Disposition or sale or issuance of Equity Interests.

"**New Money DIP Commitments**" means, collectively, the Interim New Money DIP Commitments and Additional New Money DIP Commitments.

"**New Money DIP Loans**" has the meaning specified in Section 2.01(b)(i).

"**Note**" has the meaning specified in Section 2.06.

"**Organization Documents**" means, (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement; and (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

"**Other Connection Taxes**" means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

"**Other Taxes**" means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment.

"**Patriot Act**" has the meaning ascribed to such term in Section 9.15.

"**PBGC**" means the Pension Benefit Guaranty Corporation or any successor thereto.

"**Pension Plan**" means any "employee pension benefit plan" (as such term is defined in Section 3(2) of ERISA), other than a Multiemployer Plan, that (i) is subject to Title IV of ERISA or the minimum funding standards under Section 412 of the Code and (ii) is sponsored or maintained by the Borrower or any of its ERISA Affiliates (if any) or to which the Borrower or any of its ERISA Affiliates (if any) contributes or has an obligation to contribute, or in the case of a multiple employer or other plan described in Section 4064(a) of ERISA, has made contributions at any time during the immediately preceding five plan years.

"**Permit**" means any permit, license, certificate, approval, consent, clearance, notification, waiver certification, registration, franchises, accreditations, qualification or authorization issued or granted by any Governmental Authority or pursuant to any applicable Law.

"**Permitted Dispositions**" means (so long as no Default exists or would result therefrom) the following:

(a) the granting of Permitted Liens;

(b) (i) any involuntary loss, damage or destruction of property by casualty and (ii) to the extent such property is equipment, the disposition of the assets so damaged or destroyed for fair market value (if any);

(c) the leasing of equipment by Borrower in the ordinary course of business or as otherwise consented to in writing by Lender;

(d) the making of a Permitted Investment;

(e) sales of inventory (if any) in the ordinary course of business;

(f) rejection of leases, closure of locations, and/or sale, liquidation or otherwise disposal of obsolete, surplus or worn-out property as permitted by order of the Bankruptcy Court; and

(g) sale of substantially all of the assets of Borrower pursuant to a final, non-appealable order entered by the Bankruptcy Court in a form acceptable to Lender in its sole discretion.

"**Permitted Indebtedness**" means, at any time, Indebtedness of Borrower permitted to exist at such time pursuant to the terms of Section 7.03.

"**Permitted Investments**" means, at any time, Investments by Borrower permitted to exist at such time pursuant to the terms of Section 7.02.

"**Permitted Liens**" means, at any time, Liens in respect of property Borrower permitted to exist at such time pursuant to the terms of Section 7.01.

"**Permitted Variance**" has the meaning set forth in Section 7.23.

"**Person**" means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

"**Petition Date**" has the meaning set forth in the recitals hereto.

"**Prepetition Credit Agreement**" means those certain *Note and Security Agreements*, dated as of March 6, 2025, March 27, 2025, and December 5, 2025 between Borrower, as borrower, and Lender, as lender (collectively, as amended, restated, amended and restated, refinanced, replaced, increased supplemented or otherwise modified through the Petition Date).

"**Prepetition Credit Documents**" means the Prepetition Credit Agreement and other agreements, documents, and instruments executed or delivered in connection therewith.

"**Prepetition Lender**" means Winners Alliance, Inc.

"**Prepetition Liens**" means the Lender's asserted security interests in, and liens on, the collateral under the Prepetition Credit Documents.

"**Prepetition Loans**" means the secured loans made by the Lender (or any predecessor in interest) to the Borrower before the Petition Date.

"**Prepetition Secured Obligations**" means the "Obligations" that constitute secured Indebtedness under and as defined in the Prepetition Credit Agreement and other Prepetition Credit Documents.

"**Recipient**" means Lender or an assignee of Lender, as applicable.

"**Register**" has the meaning specified in Section 9.06(c).

"**Related Parties**" means, with respect to any Person, such Person's directors, officers, employees, agents, advisors and sub-advisors of such Person; *provided* that for purposes of this Agreement, Lender shall not be a Related Party of the Borrower, or its Affiliates, partners, directors, officers, employees, agents, advisors, or sub-advisors.

"**Release**" means any depositing, spilling, leaking, seeping, pumping, pouring, emitting, emanating, discarding, abandoning, emptying, discharging, migrating, injecting, escaping, leaching, dumping, or disposing in, into or through the Environment.

"**Reorganized Debtor**" means GST, Inc. (or its successor) upon emergence from Chapter 11 after the Effective Date of the Chapter 11 Plan.

"**Reportable Event**" means any of the events set forth in Section 4043(c) of ERISA, other than events for which the thirty-day notice period has been waived pursuant to DOL Reg. Section 4043.

"**Responsible Officer**" means (i) with respect to Borrower, the chief restructuring officer, president, chief financial officer, treasurer or assistant treasurer of Borrower or any other officer of Borrower designated as a "Responsible Officer" for purposes of the DIP Documents by Borrower in writing to Lender and reasonably acceptable to Lender and (ii) with respect to Lender, any partner, managing director, principal, vice president, assistant vice president, assistant treasurer, assistant secretary, or any other officer of Lender customarily performing functions similar to those performed by any of the above designated officers and having direct responsibility for the administration of this Agreement. Any document delivered hereunder that is signed by a Responsible Officer of Borrower shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of Borrower and such Responsible Officer shall be conclusively presumed to have acted on behalf of Borrower.

"**Roll Up DIP Loans**" has the meaning specified in Section 2.01(b)(ii).

"**Sale and Leaseback Transaction**" means, with respect to the Borrower, any arrangement, directly or indirectly, with any Person whereby the Borrower shall sell or transfer any property used or useful in its business, whether now owned or hereafter acquired, and thereafter rent or lease such property or other property that it intends to use for substantially the same purpose or purposes as the property being sold or transferred.

"**Sanctioned Country**" means any country, region or territory to the extent that such country or territory itself is the subject of comprehensive Sanctions (as of the date of this Agreement, the so-

called Donetsk People's Republic, the so-called Luhansk People's Republic, the Crimea, Zaporizhzhia and Kherson Regions of Ukraine, Cuba, Iran, North Korea and Syria).

"**Sanctioned Person**" means, at any time, (a) any Person who is the subject of any Sanctions, including any Person listed or designated as being the target of any Sanctions (whether by name or by reason of being included in a class of persons), (b) any Person operating, having a place of business, organized, located or resident in a Sanctioned Country, (c) any agency of the government of or an organization controlled by a Sanctioned Country, or (d) any Person that is 50% or more, individually or in the aggregate, directly or indirectly, owned, or that is Controlled by, one or more of the persons indicated in clauses (a), (b) and/or (c), or acting directly or indirectly on behalf of any such Person.

"**Sanctions**" means any economic, financial or trade sanctions, laws, regulations or restrictive measures, or trade embargoes, imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State, (b) the United Nations or its Security Council, (c) the European Union, (d) His Majesty's Treasury of the United Kingdom, or (e) any other relevant sanctions authority, including any other governmental or regulatory authority, institution or agency which administers economic, financial or trade sanctions laws, regulations, trade embargoes or restrictive measures applicable to the Borrower or the Lender.

"**Section 363 Sale**" means the sale of the assets of Borrower to (i) Lender on account of any bid by Lender (memorialized in a separate agreement) or (ii) any other bidder pursuant to the Bid Procedures Order.

"**Security Agreement**" shall mean the Security Agreement executed by Borrower in favor of Lender, granting liens upon substantially all of its personal property, as such agreement may be amended, supplemented or otherwise modified from time to time in accordance with its terms.

"**Subsidiary**" of a Person means a corporation, partnership, joint venture, limited liability company or other business entity of which at least a majority of the shares of Voting Stock is at the time beneficially owned, or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by such Person.

"**Superpriority Claim**" shall mean a claim against Borrower in the Chapter 11 Case that is a superpriority administrative expense claim having priority over any or all administrative expenses and other claims of the kind specified in, or otherwise arising or ordered under, any sections of the Bankruptcy Code (including, without limitation, sections 105, 326, 328, 330, 331, 503(b), 507(a), 507(b), 546, 726, 1113 and/or 1114 thereof), whether or not such claim or expenses may become secured by a judgment Lien or other non-consensual Lien, levy or attachment, subject to the Carve-Out in all respects.

"**Synthetic Lease**" means any synthetic lease, tax retention operating lease, off-balance sheet loan or similar off-balance sheet financing arrangement whereby the arrangement is considered borrowed money indebtedness for tax purposes but is classified as an operating lease or does not otherwise appear on a balance sheet under GAAP.

"**Taxes**" means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholdings), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

"**UCC**" means the Uniform Commercial Code as in effect in the State of New York or, when the laws of any other jurisdiction govern the perfection or enforcement of any Lien, the Uniform Commercial Code of such jurisdiction.

"**United States**" and "**U.S.**" means the United States of America.

"**UST**" means the Office of the United States Trustee for Region 3.

"**Variance Report**" means a weekly report to be provided by Borrower to Lender and counsel for Lender on the first Wednesday of the week following entry of the Interim DIP Order and no later than three (3) Business Days after the end of each week thereafter showing for the immediately preceding week the amount of variance and percentage variance of actual disbursements of the type of each line item set forth on the Budget (on a line item basis) from those disbursements and other amounts reflected in the Budget for the corresponding periods, and an explanation of the reason for any such variance and compliance or non-compliance with the requirements set forth in Section 6.02(d).

"**Voting Stock**" means, with respect to any Person, Equity Interests issued by such Person the holders of which are ordinarily, in the absence of contingencies, entitled to vote for the election of directors (or persons performing similar functions) of such Person, even though the right so to vote has been suspended by the happening of such a contingency.

1.02 **Other Interpretive Provisions**.

With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." The word "will" shall be construed to have the same meaning and effect as the word "shall." Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document (including any Organization Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented, restated or otherwise modified (subject to any restrictions on such amendments, supplements, restatements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person's successors and assigns, (iii) the words "herein," "hereof" and "hereunder," and words of similar import when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv) all references in a Loan Document to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, the Loan Document in which such references appear, (v) any reference to any law shall include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such law, and any

reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time, and (vi) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all real and personal property and tangible and intangible assets and properties, including cash, securities, accounts and contract rights. Unless otherwise defined herein, all other undefined terms contained in any of the Loan Documents shall, unless the context indicates otherwise, have the meanings provided for by the UCC as in effect in the State of New York to the extent the same are used or defined therein (including without limitation, "Accounts," "Chattel Paper," "Documents," "Instruments," "Inventory" and "Proceeds").

(b) In the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including"; the words "to" and "until" each mean "to but excluding"; and the word "through" means "to and including."

(c) Section headings herein and in the other DIP Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

1.03 **Accounting Terms**.

Except as otherwise specifically prescribed herein, all accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP applied on a consistent basis, as in effect from time to time, applied in a manner consistent with that used in preparing Borrower's financial statements; *provided* that calculations of Attributable Indebtedness under any Synthetic Lease or the implied interest component of any Synthetic Lease shall be made by the Borrower in accordance with accepted financial practice and consistent with the terms of such Synthetic Lease.

1.04 **Times of Day**.

Unless otherwise specified, all references herein to times of day shall be references to Delaware time (Eastern daylight or standard, as applicable).

ARTICLE II
AMOUNT AND TERMS OF CREDIT

2.01 **The Loans**.

(a) **Interim DIP Loans**. Subject to the terms and conditions set forth herein and in the DIP Order, following entry of the Interim DIP Order: (i) Lender agrees to make a loan to Borrower, upon its written request in accordance with Section 2.02 below and subject to Article IV, in an aggregate amount of *up to* the Interim New Money DIP Commitment (the "**Interim New Money DIP Loan**"), and (ii) upon each advance of Interim New Money DIP Loans hereunder, an amount of the Prepetition Secured Obligations equal to such advance shall be deemed repaid and refinanced as DIP Obligations (the "**Interim Roll Up DIP Loan**"); *provided* that the deemed borrowing by Borrower of the Interim Roll Up DIP Loan shall entitle Borrower to receive for cancellation an equivalent aggregate principal amount of Prepetition Secured

Obligations from the Lender and shall not entitle Borrower to receive any cash or other consideration from Lender on account of the Interim Roll Up DIP Loan. Notwithstanding that no such cash or other consideration is exchanged on account of the Interim Roll Up DIP Loan, Borrower shall owe the aggregate principal amount of the Interim Roll Up DIP Loan to Lender under this Agreement, and Borrower and Lender agree that such amounts shall no longer be outstanding under the Prepetition Credit Documents. The Interim New Money DIP Commitment shall expire upon the funding by Lender of the maximum amount of the Interim New Money DIP Commitment.

(b) **Final DIP Facility**. Subject to the terms and conditions set forth herein and in the DIP Order, following entry of the Final DIP Order, except for funds advanced under Section 8.03: (i) Lender agrees to make one or more loans to Borrower, upon its written request in accordance with Section 2.02 below and subject to Article IV, in an aggregate amount of *up to* the Additional New Money DIP Commitment (the "**Additional New Money DIP Loans**" and, together with the Interim New Money DIP Loan, the "**New Money DIP Loans**") and (ii) $3,250,000 of the Prepetition Secured Obligations held by Lender shall be deemed to have been made as a term loan by Lender and borrowed by Borrower under this Agreement (the "**Additional Roll Up DIP Loan**" and, together with the Interim Roll Up DIP Loan, the "**Roll Up DIP Loans**"); *provided* that the deemed borrowing by Borrower of the Additional Roll Up DIP Loan shall entitle Borrower to receive for cancellation an equivalent aggregate principal amount of Prepetition Secured Obligations from Lender and not entitle Borrower to receive any cash or other consideration from Lender on account of the Additional Roll Up DIP Loan. Notwithstanding that no such cash or other consideration is exchanged on account of the Additional Roll Up DIP Loan, Borrower shall owe the aggregate principal amount of the Additional Roll Up DIP Loans to Lender under this Agreement, and Borrower and Lender agree that such amounts shall no longer be outstanding under the Prepetition Credit Agreement. The Additional New Money DIP Commitment shall expire upon the funding by Lender of the maximum amount of the Additional New Money DIP Commitment.

(c) Once repaid, whether such repayment is voluntary or required, amounts borrowed (or deemed borrowed) under this Section 2.01 may not be reborrowed.

2.02 **Borrowing of the Loans**.

(a) Following the entry of the Interim DIP Order (with respect to an Interim New Money DIP Loan) or the Final DIP Order (with respect to an Additional New Money DIP Loan), Borrower may request a Borrowing under a New Money DIP Loan by delivering a Borrowing Request to Lender no later than 12:00 p.m. one Business Day prior to the requested date of such Borrowing (or such later time as may be agreed to by Lender); *provided* that Lender's obligations to advance any requested amounts are subject in all respects to the conditions precedent set forth in Article IV, below.

2.03 **Prepayments**.

(a) **Voluntary Prepayments**. Borrower may, upon notice to Lender, at any time or from time to time, voluntarily prepay any Loans in whole or in part without premium or penalty; *provided* that such notice must be received by the Lender not later than 2:00 p.m. three

(3) Business Days prior to any date of prepayment of Loans other than prepayments resulting from a Section 363 Sale. Each such notice shall specify the date and amount of such prepayment. Any prepayment of a Loan shall be accompanied by all accrued interest thereon other than prepayments resulting from a Section 363 Sale.

(b) **Mandatory Prepayments of Loans**.

(i) **Dispositions and Involuntary Dispositions**. Upon the receipt by Borrower of the Net Cash Proceeds of any Disposition or Involuntary Disposition consummated on or after the Petition Date, Borrower shall, on or prior to the date which is three (3) Business Days after the date of the realization or receipt by Borrower of such Net Cash Proceeds, prepay the Loans as hereafter provided in an aggregate amount equal to 100% of the Net Cash Proceeds of such Disposition or Involuntary Disposition.

(ii) **Debt and Equity Issuances**. Upon the receipt by Borrower after the Petition Date of the Net Cash Proceeds (x) of any Debt Issuance not permitted under Section 7.03 or (y) from the sale or issuance by Borrower of any of its Equity Interests, in each case Borrower shall, on or prior to the date which is three (3) Business Days after the date of the realization or receipt by Borrower of such Net Cash Proceeds, prepay the Loans as hereafter provided in an aggregate amount equal to 100% of such Net Cash Proceeds.

(iii) Borrower shall notify Lender in writing of any mandatory prepayment of Loans required to be made by Borrower pursuant to clauses (i) and (ii) of this Section 2.03(b) not later than 12:00 p.m. at least one Business Day prior to the date of such prepayment. Each such notice shall specify the date of such prepayment and provide a reasonably detailed calculation of the aggregate amount of such prepayment to be made by Borrower.

(iv) **Application of Mandatory Prepayments**. All amounts to be paid pursuant to Section 2.03(a) or (b) shall be applied as follows:

(A) First, to payment of that portion of the DIP Obligations constituting fees, indemnities, expenses, and other amounts (including fees, charges and disbursements of counsel to Lender and amounts payable under Article III) payable in accordance with the DIP Documents to the Lender;

(B) Second, to payment of that portion of the DIP Obligations constituting accrued and unpaid interest on the Loans; and

(C) Third, to payment of that portion of the DIP Obligations constituting unpaid principal payments.

Notwithstanding anything to the contrary in any DIP Document, all prepayments under this Section 2.03(b) shall be accompanied by interest on the principal amount prepaid through the date of prepayment.

2.04 **Repayment of Loans**.

Borrower shall repay to Lender on the Maturity Date the aggregate principal amount of all Loans outstanding on such date, together with all accrued and unpaid interest thereon, and any outstanding fees, expenses and any other amounts payable under the Loan Documents, in each case, payable in accordance with the DIP Documents.

2.05 **Interest**.

(a) **PIK Interest**. Subject to the provisions of Section 2.05(b), the Loans shall bear interest on the outstanding principal amount thereof from the date such Loans are borrowed until repaid, accruing on a simple basis at a rate per annum equal to 14.5%, which will be paid by Borrower in kind on the then outstanding principal amount of the Loans by increasing the principal amount of the Loans.

(b) **Default Interest**.

(i) Upon the occurrence and during the continuance of an Event of Default, Borrower shall pay interest on the outstanding DIP Obligations hereunder at an interest rate per annum at all times equal to the Default Rate, to the fullest extent permitted by applicable Laws.

(ii) After the Maturity Date, accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

(c) **Interest Payment**. Interest shall accrue and be paid to Lender on the Interest Payment Date. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law. Interest at the Default Rate shall be payable on demand following an Event of Default.

(d) **Computation of Interest and Fees**. All computations of interest for the Loans shall be made on the basis of a 360-day year and actual days elapsed. Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid; *provided* that any Loan that is repaid on the same day on which it is made shall bear interest for one day. Each determination by Lender of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

2.06 **Evidence of Debt**.

The Loans made by Lender shall be evidenced by one or more accounts or records (including the Register maintained pursuant to Section 9.06(c)) maintained by Lender in the ordinary course of business. Such accounts or records maintained by Lender shall be conclusive as to the amount of the Loans made by Lender to Borrower and the interest and payments thereon, absent manifest error. Any failure to so record or any error in the accounts or records shall not, however, limit or otherwise affect the obligation of Borrower hereunder to pay any amount actually owing with respect to the DIP Obligations. For the avoidance of doubt, this Agreement is being executed as a

"noteless" credit agreement. However, at the request of Lender at any time, Borrower agrees that it will prepare, execute and deliver to Lender a promissory note, in form and substance satisfactory to Lender and consistent with the terms of this Agreement, payable to the order of Lender and its registered assigns (a "**Note**"). Thereafter, the Loans evidenced by such Note and interest thereon shall at all times (including after assignment permitted hereunder) be represented by one or more Notes in such form payable to the order of the payee named therein and its registered assigns.

2.07 **Lender's Fees and Expenses**.

(a) **Senior Lender Expenses.** All Lender Expenses and all reasonable and documented out of pocket expenses incurred by Lender in connection with the documentation and negotiation of this Agreement and the other DIP Documents and in connection with the Chapter 11 Case through and after the Effective Date, including, without limitation, the reasonable and documented fees and expenses of Raines Feldman Littrell LLP, as counsel, any third party consultants, financial, or accounting advisors, and other professionals, which expenses will be paid within five (5) Business Days after presentation of a payment request, subject to the Budget and any Permitted Variances.

(b) **Exit Fees**. Upon the earlier to occur of the (a) Maturity Date, or (b) full repayment of the Loan and all other Indebtedness whether as a result of the acceleration of the Loan, or otherwise, Borrower shall pay an exit fee (the "**Exit Fee**") to Lender in an amount equal to **2.0%** multiplied by the aggregate principal amount of all New Money DIP Loans advanced hereunder, which fee shall not be refundable under any circumstances.

2.08 **Payments Generally**.

All payments to be made by Borrower shall be made without condition or deduction for any counterclaim, defense, recoupment, or setoff. Except as otherwise expressly provided herein, all payments by Borrower hereunder shall be made to Lender in Dollars and in immediately available funds not later than 2:00 p.m. on the date specified herein. All payments received by Lender after 2:00 p.m. shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. If any payment to be made by Borrower come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

ARTICLE III
TAXES, YIELD PROTECTION AND ILLEGALITY

3.01 **Taxes**.

(a) **General**. Any and all payments by Borrower hereunder shall be made in full, free and clear of and without deduction or withholding for any and all present or future Taxes. If Borrower is required by law to deduct or withhold any Taxes from or in respect of any such payment to Lender, (i) the sum payable shall, subject to applicable law, be increased as may be necessary so that after making all required deductions and withholdings (including deductions and withholdings applicable to additional sums payable under this Section 3.01), Lender receives an amount equal to the amount it would have received had no such deductions or withholdings been made, (ii) Borrower shall make such deductions or withholdings and (iii) Borrower shall pay the

full amount required to be deducted or withheld to the relevant taxation authority or other authority in accordance with applicable law and within the time for payment prescribed by applicable law.

(b) **Other Taxes**. In addition, Borrower agrees to pay any present or future Other Taxes, other than Excluded Taxes.

(c) **Tax Indemnity**. Borrower shall indemnify Lender for, and agrees to hold Lender harmless from, the full amount of all Taxes and Other Taxes payable by Lender (other than Excluded Taxes) and any liability, cost or amount (including penalties, interest and expenses) arising therefrom or with respect thereto.

(d) **Payment of Taxes**. Within 30 days after the date required for payment of any Taxes or Other Taxes required to be deducted or withheld by Borrower in respect of any payment or delivery to Lender, Borrower will furnish to Lender a form of evidence of payment thereof reasonably acceptable to Lender.

3.02 **Increased Costs**.

(a) **Increased Costs Generally**. If any Change in Law shall:

(i) impose, modify, or deem applicable any reserve, special deposit, compulsory loan, insurance charge, or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, Lender;

(ii) subject Lender to any Taxes and Other Taxes payable by Lender (other than Excluded Taxes) with respect to this Agreement or any Loan made by it, or change the basis of taxation of payments to Lender in respect thereof; or

(iii) impose on Lender any other condition, cost, or expense affecting this Agreement or loan made by Lender;

and the result of any of the foregoing shall be to increase the cost to Lender of making or maintaining the Loan, or to reduce the amount of any sum received or receivable by Lender hereunder (whether of principal, interest, or any other amount) then, upon request of Lender, Borrower will pay to Lender such additional amount or amounts as will compensate Lender for such additional costs incurred or reduction suffered.

(b) **Certificates for Reimbursement**. A certificate of a Responsible Officer of Lender setting forth the amount or amounts necessary to compensate Lender as specified in paragraph (a) of this Section 3.02 and delivered to Borrower shall be conclusive absent manifest error. Borrower shall pay Lender the amount shown as due on any such certificate within five (5) Business Days after receipt thereof.

(c) **Delay in Requests**. Failure or delay on the part of Lender to demand compensation pursuant to this Section 3.02 shall not constitute a waiver of Lender's right to demand such compensation.

3.03 **Survival**.

All of Borrower's obligations under this Article III shall survive repayment of all other DIP Obligations hereunder, subject to the limitations contained in this Article III.

ARTICLE IV
CONDITIONS PRECEDENT

4.01 **Conditions to Funding of the Interim New Money DIP Loan**.

The obligations of Lender to make the Interim New Money DIP Loan shall be subject to the satisfaction or waiver of the following conditions precedent:

(a) **Credit Agreement**. Receipt by Lender of executed counterparts of this Agreement and the other DIP Documents, properly executed by a Responsible Officer of Borrower, and subject only to entry of the Interim DIP Order.

(b) **Resolutions**. Receipt by Lender of such copies of resolutions, certificates of good standing, or other action, incumbency certificates and/or other certificates of a Responsible Officer of Borrower as Lender may require evidencing (i) the identity, authority and capacity of such Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Agreement and the other DIP Documents, and (ii) the resolutions adopted by Borrower's Board of Directors for the purpose of approving the transactions contemplated by this Agreement, each in form and substance reasonably satisfactory to Lender.

(c) **Financing Statement Searches**. Certified copies, dated no earlier than 30 days prior to the first Borrowing Request, of financing statement searches, as Lender shall reasonably request, accompanied by written evidence (including any UCC termination statements) that the Liens indicated in any such financing statements either constitute Permitted Liens or have been or, in connection with the funding of the Interim New Money DIP Loan, will be terminated or released;

(d) **Evidence of Insurance**. Receipt by Lender of certificates of insurance and related endorsements of Borrower evidencing liability and casualty insurance naming Lender as additional insured (in the case of liability insurance) and loss payee (in the case of hazard insurance).

(e) **No Litigation**. Except for the Chapter 11 Case, there shall be no (i) material litigation pending, or to the best of Borrower's knowledge threatened in writing, against or affecting Borrower, or (ii) injunction or other form of restraining order, which in either case restrains, restricts, or seeks to restrain or restrict the closing of this Agreement or the making of the Loans.

(f) **Interim Order**. The Interim DIP Order, in form and substance satisfactory to Lender in its sole discretion, shall have been entered and shall not have been (x) stayed, vacated, reversed or rescinded, and any appeal of such Interim DIP Order shall not have been timely filed and a stay of such order pending appeal shall not be presently effective, or (y) without the prior written consent of Lender, revised, amended or modified.

(g) **Budget**. Borrower and Lender shall have agreed upon the Budget, and the Budget shall have been delivered to Lender and approved by the Bankruptcy Court pursuant to the Interim DIP Order. Borrower's chief restructuring officer, with the approval of at least the independent director, has sole authority over the use of the proceeds of the Loans and use of Cash Collateral in compliance with the Budget and the DIP Order.

(h) **Chapter 11 Case**. The Chapter 11 Case shall have been commenced and all of the pleadings related to the DIP Documents to be entered or filed shortly after commencement of the Chapter 11 Case shall have been provided at least one (1) Business Day in advance to Lender or otherwise with as much notice as reasonably practicable—but in no event later than the time on which such draft orders and pleadings are provided to the UST—and shall be in form, scope, and substance reasonably satisfactory to Lender.

4.02 **Conditions to Funding All Loans**.

The obligations of Lender to make any Loans, including the Interim New Money DIP Loan and the Additional New Money DIP Loans, shall be subject to the satisfaction or waiver of the following additional conditions precedent:

(a) **Accuracy of Representations and Warranties**. The representations and warranties of Borrower contained in Article V or any other Loan Document, or which are contained in any document furnished at any time under or in connection herewith or therewith, shall be true and correct in all material respects (without duplication of any materiality qualifier contained therein) on and as of the date of any Borrowing Request, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects (without duplication of any materiality qualifier contained therein) as of such earlier date.

(b) **No Default**. No Default or Event of Default shall exist or would result from the making of such Loans or from the application of the proceeds thereof.

(c) **Borrowing Request**. Lender shall have received an executed Borrowing Request in accordance with the requirements of Section 2.02 of this Agreement.

(d) **DIP Order**. Other than with respect to the Interim New Money DIP Loan, the Final DIP Order, in a form satisfactory to Lender in its sole discretion, shall be in full force and effect, and shall not have been (x) stayed, vacated, reversed, or rescinded, and any appeal of such order shall not have been timely filed and a stay of such order pending appeal shall not be presently effective, or (y) without the prior written consent of Lender, , revised, amended or modified.

(e) **Material Adverse Effect**. Other than the commencement of the Chapter 11 Case, in Lender's reasonable discretion, no Material Adverse Effect shall have occurred since the Petition Date.

(f) **Milestones**. All Milestones set forth in Section 6.17 required to have been met as of the date of each applicable Borrowing shall have been met.

(g) **Budget**. Borrower shall be in compliance with the then-current Budget as determined pursuant to Section 7.23.

(h) **Valid Security Interest**. Lender shall have, approved in the applicable DIP Order, a valid and perfected, priming first-priority Lien on and security interest in the DIP Collateral pursuant to this Agreement and the DIP Order, subject to the Carve-Out.

(i) **Bid Procedures Order**. The Bid Procedures Order shall be in form and substance acceptable to Lender in its sole discretion, and once entered no order shall have been entered reversing, amending, staying, vacating, terminating, or otherwise modifying in any manner the Bid Procedures Order without the prior written consent of Lender.

(j) **Payment of Lender Fees and Expenses**. Borrower shall have paid all Lender Expenses and Lender Fees and then due as set forth in Sections 2.07 and 2.09 hereof.

(k) **Compliance Certificate**. Lender shall have received a certificate duly signed by a Responsible Officer of Borrower certifying to the conditions set forth in clauses (a)-(i) of this Section.

(l) **Access to E-Books and Records**. With respect to the Additional New Money DIP Loans, Borrower shall have complied with Sections 6.08(c) and (d).

ARTICLE V
REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants to Lender as follows:

5.01 Existence, Qualification and Power.

Borrower (a) is duly organized or formed, validly existing and in good standing under the Laws of the jurisdiction of its incorporation or organization, (b) upon entry of the DIP Order, has all requisite organizational power and authority and all requisite governmental licenses, authorizations, consents and approvals to own, pledge, mortgage and operate its assets, to lease or sublease its assets and to carry on its business and execute, deliver and perform its obligations under the DIP Documents to which it is a party, and (c) is duly qualified and is licensed and in good standing under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license. Borrower has no Subsidiaries.

5.02 Authorization; No Contravention.

Subject to entry of the DIP Order and to the extent not remedied by the entry of the DIP Order, the execution, delivery and performance by Borrower of each DIP Document have been duly authorized by all necessary company or other organizational action and do not (a) contravene the terms of any of Borrower's Organization Documents; (b) result in any breach or contravention of, or the creation of any Lien under, or require any payment to be made under (i) any Material Contract to which Borrower is a party or affecting Borrower or the properties of Borrower or (ii) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to

which Borrower or its property is subject; (c) or violate any Law, except, in each case referred to in clause (c), to the extent that such violation could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

5.03 **Governmental Authorization; Other Consents**.

Except for the entry of the DIP Order, no Permit, approval, consent, exemption, authorization or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with the execution, delivery or performance by, or enforcement against, Borrower of this Agreement or any other DIP Document other than (a) those that have already been obtained and are in full force and effect and (b) actions necessary to comply with the DIP Documents on or after the Petition Date.

5.04 **Binding Effect**.

Upon entry of the DIP Order, each DIP Document will have been duly executed and delivered by Borrower. Each DIP Document constitutes a legal, valid and binding obligation of Borrower, enforceable against Borrower in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting the enforcement of creditors' rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or at law).

5.05 **No Material Adverse Effect**.

(a) Since the Petition Date, there has been no Disposition by Borrower, or any Involuntary Disposition, of any material part of the business or property of Borrower, and no purchase or other acquisition by any of them of any business or property (including any Equity Interests of any other Person) material to Borrower, in each case, that is not set forth in the Budget or has not been disclosed in writing to Lender on or prior to the Petition Date.

(b) Since the Petition Date, there has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect, other than the filing, commencement and continuation of the Chapter 11 Case and the events that customarily result from filing, commencement and continuation of the Chapter 11 Case.

5.06 **Litigation**.

Except for the Chapter 11 Case, there are no actions, suits, proceedings, claims, disputes or investigations pending or, to the best knowledge of Borrower, threatened, at law, in equity, in arbitration or before any Governmental Authority, by or against Borrower or against any of its properties or revenues including, without limitation, any actions, suits, proceedings, claims, disputes or investigations pending that (a) purport to affect or pertain to this Agreement, any other DIP Document, the DIP Collateral or any of the other transactions contemplated hereby or thereby, or (b) could reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

5.07 **Environmental Compliance**.

(a) To the best knowledge of Borrower, after reasonable inquiry, Borrower has not received any notice, report, or other information regarding any actual violation, alleged violation, non-compliance, liability or potential liability concerning or arising out of Environmental Laws or Hazardous Materials with regard to Borrower or its Business or any of its past or present properties or facilities.

(b) To the best knowledge of Borrower, after reasonable inquiry, Borrower has not handled, generated, treated, stored, transported, or disposed of, any Hazardous Materials, except in the ordinary course of business and in compliance with all applicable Environmental Laws.

(c) To the best knowledge of Borrower, after reasonable inquiry, no judicial proceeding or governmental or administrative action is pending or threatened under any Environmental Law to which Borrower is or may be named a party or with respect to the Business, nor, to the knowledge of Borrower, are there any consent decrees or other decrees, judgements, consent orders, administrative or other orders or similar administrative of judicial requirements outstanding under any Environmental Law with respect to the Business.

(d) To the best knowledge of Borrower, after reasonable inquiry, Borrower is, and for a period of two (2) years prior to the Petition Date, has been, in compliance with all applicable Environmental Laws.

5.08 **Insurance**.

The properties and businesses of Borrower are insured with financially sound and reputable insurance companies that are not Affiliates of Borrower, in such amounts, with such deductibles and covering such risks as are customarily carried by prudent companies of similar size and engaged in similar businesses and owning similar properties in localities where Borrower operates. All such insurance coverage is in full force and effect and all premiums due in respect of all insurance maintained by Borrower has been paid, to the extent due. As of the date hereof, to the best knowledge of Borrower, after reasonable inquiry, Borrower has not received notice of violation or cancellation of any such insurance coverage and there is no existing default or event which, with the giving of notice or lapse of time or both, would constitute a default by any insured thereunder.

5.09 **Taxes**.

To the best knowledge of Borrower, after reasonable inquiry, Borrower has timely filed, or caused to be timely filed, with the appropriate Governmental Authorities and in the appropriate jurisdictions, all federal, state, local and other Tax returns and reports required to be filed, and has timely paid, prior to the date on which any liability may be added thereto for non-payment thereof, all federal, state, local and other Taxes levied or imposed upon it or its properties, income or assets otherwise due and payable, except to the extent not required due to the filing of the Chapter 11 Case or those which are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves have been provided in accordance with GAAP. To the

best knowledge of Borrower, after reasonable inquiry, no such Tax return or report is under audit or examination by any Governmental Authority.

5.10 **Disclosure**.

Borrower has disclosed to Lender all matters known to it (including with respect to all agreements, instruments and corporate or other restrictions to which it is subject) that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. To the best knowledge of Borrower, after reasonable inquiry, no representation or warranty made by it in this Agreement or any other DIP Document contains any untrue statement of a material fact or omits to state any material fact necessary to make the statements herein or therein, taken as a whole, in light of the circumstances when made, not misleading.

5.11 **Compliance with Laws and Agreements**.

To the best knowledge of Borrower, after reasonable inquiry, and subject to entry of the DIP Order, Borrower is in compliance with the requirements of all Laws and all orders, writs, injunctions and decrees binding upon it and its properties, except in such instances in which (i) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted and (ii) the failure to comply therewith could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

5.12 **Creation and Perfection of Security Interests in the DIP Collateral**.

To the best knowledge of Borrower, upon the entry thereof and subject to its terms, the provisions of the DIP Order are effective to create in favor of Lender a legal, valid and enforceable first-priority, priming Lien in all right, title and interest of Borrower in each item of DIP Collateral, except, as set forth in the DIP Order, in the case of any Permitted Liens to the extent that any such Permitted Liens would have priority over the security interest in favor of Lender pursuant to any applicable Law.

5.13 **Labor Matters**.

To the best knowledge of Borrower, there are no collective bargaining agreements or Multiemployer Plans covering any employees of Borrower. To the best knowledge of Borrower, after reasonable inquiry, as of the date hereof, Borrower is in compliance with all Laws relating to labor and employment.

5.14 **Permits**.

To the best knowledge of Borrower, after reasonable inquiry, it has all Permits necessary to enable it to conduct its Business in the manner in which it is presently conducted, and such Permits are in full force and effect. To the best knowledge of Borrower, after reasonable inquiry, it is in compliance in all material respects with all of its Permits.

5.15 **Reorganization Matters**.

(a) The Chapter 11 Case was commenced on the Petition Date in accordance with applicable law, and Borrower shall provide proper notice of (x) the motion seeking approval of the DIP Documents and the DIP Order, (y) the hearing for the approval of the Interim DIP Order, and (z) the hearing for the approval of the Final DIP Order. Borrower shall give on a timely basis as specified in the Interim DIP Order or the Final DIP Order, as applicable, all notices required to be given to all parties specified in the Interim DIP Order or the Final DIP Order, as applicable.

(b) Upon the entry of the Final DIP Order and subject to its terms, the DIP Obligations will constitute allowed Superpriority Claims in the Chapter 11 Case having priority over all administrative expense claims and unsecured claims against Borrower now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expense claims of the kind specified in sections 326, 330, 331, 503(b), 506(c), 507(a), 507(b), 726, or any other provision of the Bankruptcy Code or otherwise, as provided under section 364(c)(1) of the Bankruptcy Code, subject to the Carve-Out.

(c) Upon the entry of the DIP Order and subject to its terms, the DIP Obligations will be secured by a valid and perfected, first-priority priming Lien on all of the DIP Collateral, subject to the Carve-Out.

(d) The DIP Order is in full force and effect and has not been reversed, stayed, modified or amended without Lender's consent.

(e) The Budget delivered to Lender was prepared in good faith on the basis of the assumptions stated therein, which assumptions were believed in good faith by Borrower to be reasonable in light of the conditions existing at the time of delivery of the Budget (it being understood that any projections or estimates made in the Budget are not to be viewed as facts, that no assurance can be given that any such projections or estimates will be realized, that actual results may differ from projected results and such differences may be material).

(f) Effective upon the entry of the Final DIP Order and subject to its terms, except to the extent of the Carve-Out, no costs or expenses of administration of the Chapter 11 Case or any future proceeding that may result therefrom, including a case under Chapter 7 of the Bankruptcy Code, shall be charged against or recovered from the DIP Collateral pursuant to sections 105 or 506(c) of the Bankruptcy Code, the enhancement of collateral provisions of section 552 of the Bankruptcy Code, or any other legal or equitable doctrine (including, without limitation, unjust enrichment) or any similar principle of law, without the prior written consent of Lender. Upon the entry of the Final DIP Order and subject to its terms, in no event shall Lender be subject to (i) surcharge under section 506(b), (ii) the "equities of the case" exception contained in section 552(b) of the Bankruptcy Code, or (iii) the equitable doctrine of "marshaling" or any other similar doctrine with respect to Lender's collateral, including, without limitation, the DIP Collateral.

ARTICLE VI
AFFIRMATIVE COVENANTS

So long as Lender shall have any New Money DIP Commitment hereunder, or any Loan or other obligation hereunder shall remain unpaid or unsatisfied (other than contingent indemnification obligations for which no underlying claim has been asserted), Borrower shall:

6.01 **Certificates; Other Information**.

Deliver to Lender, in form and detail satisfactory to Lender in its commercially reasonable discretion:

(a) promptly after any request from Lender, information regarding the business, financial or corporate affairs of Borrower or compliance with the terms of the DIP Documents;

(b) promptly after any request by Lender, copies of any detailed audit reports, management letters or recommendations submitted to the Board of Directors (or the audit committee of the Board of Directors) of Borrower by independent accountants in connection with the accounts or books of Borrower, or any audit of any of them;

(c) on or before 12:00 p.m. on the first Wednesday of the week following entry of the Interim DIP Order and no later than 12:00 p.m. three (3) Business Days after the end of each week thereafter, a Variance Report, in a form satisfactory to Lender in its commercially reasonable discretion; and

(d) copies of all monthly reports, projections, or other information respecting Borrower's business or financial condition or prospects as well as all pleadings, motions, applications and judicial information filed by or on behalf of Borrower with the Bankruptcy Court or provided to the UST or any trustee (including any monitor, examiner, or interim receiver) or Committee appointed in the Chapter 11 Case, which documents Borrower shall endeavor to provide to Lender *at least one (1) Business Days prior* to the earlier of the time that such documents are filed with the Bankruptcy Court (but which in no event will be provided to Lender later than the time that such documents are provided to the UST, a trustee, or counsel to a Committee); *provided*, *however*, that all material pleadings will be provided to Lender no later than the earlier of two (2) Business Days prior to (i) the time such documents are filed with the Bankruptcy Court or (ii) such time as they are provided to the UST or counsel the Committee (or such later time as is agreed to in writing by counsel for Lender).

Documents required to be delivered pursuant to this Section 6.02 may be delivered electronically; *provided* that Borrower shall deliver paper copies of such documents to Lender if Lender so requests.

6.02 **Notices**.

Upon any Responsible Officer of Borrower becoming aware thereof:

(a) Promptly notify Lender of the occurrence of any Default or Event of Default.

(b) Promptly notify Lender of the occurrence of any Material Adverse Effect.

(c) Promptly notify Lender of (i) any material breach or non-performance of, or any material default under, a Contractual Obligation of Borrower; (ii) any dispute, litigation, investigation, proceeding or suspension between Borrower and any Governmental Authority; (iii) any action, suit, proceeding or claim alleging any Environmental Liability against Borrower; (iv) the commencement of, or any material development in, any litigation or proceeding affecting Borrower, including pursuant to any applicable Environmental Laws; (v) any judgment against Borrower; or (vi) any dispute, litigation, investigation, proceeding or suspension between Borrower and any Governmental Authority against or affecting Borrower or any Affiliate thereof with respect to any Sanctions.

(d) Promptly notify Lender of any material change in accounting policies or financial reporting practices by Borrower.

(e) Promptly provide Lender with (i) copies of any adverse reports or notices received from any Governmental Authority related to any Taxes of Borrower, and (ii) copies of any other adverse reports or notices received by Borrower from any Governmental Authority.

(f) Promptly provide Lender with copies of (i) any Organization Documents that have been amended or modified after the Petition Date in accordance with the terms hereof and (ii) a copy of any notice of default given or received by Borrower under any Organization Document.

(g) Promptly, from time to time, provide such other information regarding the operations, business affairs, and financial condition of Borrower, or compliance with the terms of any DIP Document, as the Lender may reasonably request.

Each notice pursuant to this Section 6.02(a) through (g) shall be accompanied by a statement of a Responsible Officer of Borrower setting forth details of the occurrence referred to therein and stating what action Borrower has taken and propose to take with respect thereto. Each notice pursuant to Section 6.02(a) shall describe with particularity any and all provisions of this Agreement and any other DIP Document that have been breached.

6.03 **Payment of Taxes and Other Obligations**.

(a) **Payment of Obligations**. Except to the extent expressly prohibited by any DIP Document or excused, or not permitted, by the Bankruptcy Code or the filing, commencement and continuation of the Chapter 11 Case and effect thereof due to the filing of the Chapter 11 Case, pay and discharge, in the ordinary course of business, all of its obligations and liabilities, including (a) all Taxes upon it or its properties or assets, or with respect to which Borrower has a withholding obligation, unless the same are being contested in good faith by appropriate proceedings diligently conducted, adequate reserves in accordance with GAAP are being maintained by Borrower, and the failure to make the payment could not reasonably be expected to result in a Material Adverse Effect; (b) all lawful claims arising after the Petition Date which, if unpaid, would by Law become a Lien upon its property not permitted by this Agreement and that is not void due to the filing of the Chapter 11 Case unless being contested in good faith; and (c) all Indebtedness arising after the Petition Date, as and when due and payable, unless being contested in good faith.

(b) **Filing of Returns**. Timely and correctly file all federal, state, local and other Tax returns required to be filed by or with respect to it or its properties or assets.

6.04 **Preservation of Existence**.

(a) Preserve, renew, and maintain in full force and effect its legal existence under the Laws of the jurisdiction of its organization.

(b) Preserve, renew, and maintain in full force and effect its good standing under the Laws of the jurisdiction of its organization.

(c) Maintain all rights, privileges, permits, licenses, and franchises necessary or desirable in the normal conduct of its business.

6.05 **Maintenance of Properties and Leases**.

Except to the extent subject to the automatic stay of section 362 of the Bankruptcy Code, excused by the Bankruptcy Code, or caused by the filing, commencement and continuation of the Chapter 11 Case and effect thereof, or not permitted by the Budget:

(a) Use the standard of care typical in the industry to maintain, preserve, and protect all of its properties and equipment necessary or useful in the operation of its business in good working order and condition, ordinary wear and tear excepted, except in a transaction that constitutes a Permitted Disposition.

(b) Make all necessary repairs thereto and renewals and replacements thereof.

(c) Use the standard of care typical in the industry in the operation and maintenance of its facilities.

6.06 **Maintenance of Insurance**.

(a) Maintain in full force and effect all policies of insurance of any kind with respect to the property and business of Borrower with financially sound and reputable insurance companies that are not Affiliates of Borrower, in each instance, providing such coverages, in such amounts and with such deductibles as has been historically carried by Borrower or are customarily carried by prudent companies of similar size engaged in similar businesses and owning similar properties in localities where Borrower operates. If and to extent possible and permitted under the Bankruptcy Code, (a) Lender shall be named as loss payee or mortgagee, as its interest may appear, and/or additional insured with respect to any such insurance, (b) such insurance shall provide that no cancellation, amendment or termination of coverage shall be effective until after 30 days' notice thereof to Lender, (c) such insurance shall provide that (i) after the occurrence and during the continuance of an Event of Default, all proceeds thereunder shall be payable to Lender and (ii) no such insurance shall be affected by any act or neglect of the insured or owner of the property described in such policy and (d) Borrower hereby agrees that it shall provide Lender with at least ten (10) days' prior written notice before any such policy or policies shall be renewed.

(b) Subject to the provisions of the Bankruptcy Code, Lender is hereby authorized to adjust and compromise claims under insurance coverage referred to in this Section 6.07 after the occurrence and during the continuance of an Event of Default. All loss recoveries received by Lender under any such insurance may be applied to the DIP Obligations in such order as set forth in Section 8.04 hereof. Any surplus shall be paid by Lender to Borrower. So long as no Event of Default has occurred and is continuing, Borrower shall have the right to adjust and compromise all claims under insurance coverage and to receive the proceeds of such insurance, subject to the requirements of Article II of this Agreement. If Borrower fails to obtain insurance as hereinabove provided, or to keep the same in force, Lender, if Lender so elects, may obtain such insurance and pay the premium therefor on behalf of Borrower, which payment shall constitute part of the DIP Obligations and shall be required to be paid by Borrower to Lender.

6.07 **Compliance with Laws**.

Except to the extent subject to the automatic stay of section 362 of the Bankruptcy Code, excused by the Bankruptcy Code, or caused by the filing, commencement and continuation of the Chapter 11 Case and effect thereof:

(a) Comply with the requirements of all applicable Laws (including all Environmental Laws, Anti-Corruption Laws, all applicable Bank Secrecy Act, Anti-Terrorism Laws and Anti-Money Laundering Laws and regulations and the Patriot Act) and all Permits, orders, writs, injunctions and decrees applicable to it or to its business or property, except in such instances in which (i) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted and (ii) the failure to comply therewith could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) Maintain in effect policies and procedures designed to promote and ensure compliance by Borrower and its directors, officers, employees and agents, with this Section 6.07, and with Anti-Corruption Laws, Anti-Money Laundering Laws and regulations, the Patriot Act, and Sanctions.

6.08 **Books and Records**.

(a) Maintain books of record and account, in which full, true and materially correct entries in conformity with GAAP consistently applied shall be made of all financial transactions and matters involving the assets and business of Borrower.

(b) Maintain such books of record and account in material conformity with all applicable requirements of any Governmental Authority having regulatory jurisdiction over Borrower.

(c) Provide Lender with a current list of all platforms used by Borrower for accounting, managing cash and bank balances, and data management (such as food management, inventory tracking, labor management, and sales tracking) and provide Lender with at least seven (7) Business Days written notice before making any additions, deletions, or material alterations to such platforms.

(d) Provide Lender at all times with a unique username and password providing continuous, real time, read-only access to its deposit accounts and its cash and bank account information.

6.09 **Inspection Rights**.

Permit representatives and independent contractors on behalf of Lender to visit and inspect any of its properties, to examine its corporate, financial and operating records, and to make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors, officers and independent public accountants, all at the expense of Borrower and, unless an Event of Default has occurred and is continuing, at such reasonable times during Borrower's normal business hours, upon reasonable advance written notice to Borrower.

6.10 **Use of Proceeds**.

Use the proceeds of the Loans only in accordance with the Budget and the DIP Order. Notwithstanding the foregoing, no portion of proceeds of the Loans, the Carve-Out, or the DIP Collateral may be used in connection with the investigation (including discovery proceedings), initiation or prosecution of any claims, causes of action, adversary proceedings or other litigation against Lender or its Related Parties.

6.11 **ERISA Compliance**.

Except to the extent subject to the automatic stay of section 362 of the Bankruptcy Code, excused by the Bankruptcy Code, or caused by the filing, commencement and continuation of the Chapter 11 Case and effect thereof, do, and cause each of its ERISA Affiliates (if any) to do, each of the following: (a) maintain each ERISA Plan in compliance with the applicable provisions of ERISA, the Code and other federal or state law; (b) cause each ERISA Plan that is qualified under Section 401(a) of the Code to maintain such qualification; (c) make all required contributions to any ERISA Plan subject to Section 412 of the Code; and (d) take no actions that could reasonably be expected to result in an ERISA Event.

6.12 **Environmental Compliance**.

(i) Comply, and use commercially reasonable efforts to cause all lessees and other Persons occupying any real properties owned by Borrower to comply, with all Environmental Laws and Environmental Permits applicable to properties owned, leased or occupied by Borrower; (ii) not Release or threaten to Release any Hazardous Material on, under, about or from any properties owned, leased, or occupied by Borrower to the extent caused by Borrower's operations except in compliance with all applicable Environmental Laws; (iii) timely obtain and renew all Environmental Permits applicable to its operations and properties; and (iv) undertake and perform any cleanup, removal, remedial or other action necessary to address a Release of Hazardous Materials at, on or from any of its current or former properties in accordance with applicable Environmental Laws.

6.13 **Pledged Assets**.

(a) **[Reserved]**

(b) **Other Property**. Deliver such other documentation as may be necessary or as Lender may reasonably request in connection with the DIP Collateral, including appropriate UCC-1 financing statements, resolutions, and other organizational and authorizing documents of such Person, and other items of the types required to be delivered pursuant to Section 6.02, all in form, content and scope satisfactory to Lender.

6.14 **Casualty and Condemnation**.

Furnish to Lender prompt written notice of any casualty or other insured damage to any of the DIP Collateral or the commencement of any action or proceeding for the taking of any of the DIP Collateral or any part thereof or interest therein under power of eminent domain or by condemnation or similar proceeding and ensure that the Net Cash Proceeds of any such event (whether in the form of insurance proceeds, condemnation awards or otherwise) are collected and applied as and to the extent required in accordance with the applicable provisions of this Agreement.

6.15 **Further Assurances**.

At the request of Lender at any time and from time to time, Borrower shall, at its expense, duly execute and deliver, or cause to be duly executed and delivered, such further agreements, documents, and instruments as are reasonably necessary to effectuate the provisions or purposes of this Agreement or any of the other DIP Documents.

6.16 **Milestones**.

Borrower shall satisfy or cause to be satisfied the following milestones (the "**Milestones**"), unless extended or waived by Lender in accordance with the DIP Order.

(a) Borrower shall have commenced the Chapter 11 Case on **December 11, 2025**;

(b) On or before **December 23, 2025**, the Bankruptcy Court shall have entered the Interim DIP Order approving the Interim New Money DIP Loan and the Interim Roll Up DIP Loan in form and substance acceptable to Lender in its sole discretion;

(c) On or before **January 28, 2026**, the Bankruptcy Court shall have entered the Final DIP Order, in form and substance acceptable to Lender in its sole discretion;

(d) On or before **January 30, 2026**, Borrower shall have filed a Disclosure Statement and a proposed Chapter 11 Plan, which shall provide that GST emerges reorganized with Michael Johnson and Stephen Gera remaining as officers of the Reorganized Debtor and be in form and substance acceptable to Lender in its sole discretion.

(e) On or before **March 6, 2026**, the Bankruptcy Court shall have entered an order approving the Disclosure Statement,

(f) On or before **April 13, 2026**, the Bankruptcy Court shall have entered an order confirming the Debtor's Chapter 11 Plan;

(g) On or before **April 15, 2026**, the Effective Date shall have occurred; and

(h) On or before **April 15, 2026**, the Loans (to the extent not converted into Equity Interests) shall be paid in full.

Borrower and Lender acknowledge that certain of the Milestones set forth above are subject to the Bankruptcy Court's availability. Borrower and Lender shall cooperate in good faith to give effect to such Milestones. To the extent that any such Milestone is not satisfied due to the Bankruptcy Court not being available on the timing contemplated herein, such Milestone shall be deemed extended (with corresponding extensions of subsequent Milestones) as appropriate to resolve such conflict but in no event for more than three (3) Business Days.

6.17 **Budget**.

The use by Borrower of Loans and other credit extensions under this Agreement and the DIP Documents shall be in compliance with the Budget, the DIP Documents and the DIP Order. Lender (i) may assume that Borrower will comply with the Budget, (ii) shall have no duty to monitor such compliance, and (iii) shall not be obligated to pay (directly or indirectly from the DIP Collateral) any unpaid expenses incurred or authorized to be incurred pursuant to the Budget or unpaid expenses that Borrower may have failed to include in the Budget. The line items in the Budget for payment of interest, expenses, and other amounts to Lender are estimates only, and Borrower remains obligated to pay any and all DIP Obligations in accordance with the terms of the DIP Documents and the DIP Order regardless of whether such amounts exceed such estimates. Nothing in the Budget shall constitute an amendment or other modification of any DIP Document or any of the borrowing restrictions or other lending limits set forth therein.

ARTICLE VII
NEGATIVE COVENANTS

So long as Lender shall have any New Money DIP Commitment hereunder, or any Loan or other DIP Obligation hereunder shall remain unpaid or unsatisfied (other than contingent indemnification obligations for which no underlying claim has been asserted), Borrower shall not, directly or indirectly:

7.01 **Liens**.

Create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, other than the following (collectively "**Permitted Liens**"):

(a) Liens pursuant to any DIP Document;

(b) Liens arising under the DIP Order;

(c) Liens existing on the Petition Date and listed on Schedule 7.01;

(d) normal and customary rights of setoff upon deposits of cash in favor of banks or other depository institutions;

(e) encumbrances consisting of minor easements, zoning restriction, or other restrictions on the use of real property that do not (individually or in the aggregate) affect the value of the assets encumbered thereby in any material respect or impair the ability of Borrower to use such assets in its business, and none of which is violated by existing or proposed structures or land use;

(f) Liens for Taxes not yet due or that are being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP; and

(g) statutory or common law Liens arising in connection with landlords, carriers, warehousemen, mechanics, suppliers, materialmen, or repairmen and other similarly situated Persons imposed by applicable law that, in each case, arise in the ordinary course of business which secure amounts not overdue for a period of more than thirty (30) days or are being contested in good faith by appropriate proceedings, including in connection with the Chapter 11 Case, so long as reserves, if any, to the extent required by GAAP shall have been made for any such contested amounts.

7.02 **Investments**.

Make any Investments, except:

(a) Investments held by Borrower in the form of cash or cash equivalents;

(b) Investments existing on the Petition Date and listed on Schedule 7.02;

(c) Guarantees permitted by Section 7.03; and

(d) Investments received in settlement of amounts due to Borrower effected in the ordinary course of business or owing to Borrower as a result of insolvency proceedings involving an account debtor or upon the foreclosure or enforcement of any Lien in favor of Borrower.

7.03 **Indebtedness**.

Create, incur, assume, or suffer to exist any Indebtedness, except:

(a) Indebtedness under the DIP Documents;

(b) Indebtedness incurred pursuant to the DIP Order;

(c) Indebtedness listed on Schedule 7.03;

(d) intercompany Indebtedness permitted under Section 7.02;

(e) unsecured Indebtedness incurred in respect of netting services or overdraft protection services, in each case, incurred in the ordinary course of business;

(f) Indebtedness constituting Permitted Investments;

(g) Indebtedness in respect of performance bonds, bid bonds, appeal bonds, surety bonds, and completion guarantees and similar obligations, in each case provided in the ordinary course of business, including those incurred to secure health, safety, and environmental obligations in the ordinary course of business; and

(h) unsecured Indebtedness incurred by Borrower in the ordinary course of business and consistent with the Budget (including Permitted Variances).

Notwithstanding anything herein to the contrary, Borrower may not incur any additional Indebtedness that is *pari passu* with or senior to the DIP Obligations or the obligations under this Agreement in right of payment or security.

7.04 **Fundamental Changes**.

Merge, dissolve, liquidate, consolidate with or into another Person, or Dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person, except as permitted by final, non-appealable order entered by the Bankruptcy Court in a form acceptable to Lender in its sole discretion.

7.05 **Dispositions**.

Make any Disposition, other than Permitted Dispositions or except as permitted by final, non-appealable order entered by the Bankruptcy Court in a form acceptable to the Lender in its sole discretion.

7.06 **[Reserved]**.

7.07 **Transactions with Affiliates and Insiders**.

Enter into or permit to exist any transaction or series of transactions with any officer, director, or Affiliate of Borrower other than (a) advances of working capital to any such Person permitted hereunder, (b) transfers of cash and assets to, and other transactions between or among, any such Person permitted hereunder, (c) transactions, distributions and payments expressly permitted by Section 7.02(e), (d) normal and reasonable compensation and reimbursement of expenses of officers, employees, and directors in the ordinary course of business, and (e) except as otherwise specifically limited in this Agreement, other transactions which are entered into in the ordinary course of Borrower's business on terms and conditions as favorable to the Borrower as would be obtainable by it in a comparable arms-length transaction with a Person other than an officer, director or Affiliate.

7.08 **Burdensome Agreements**.

(a) Enter into, or permit to exist, any Contractual Obligation that encumbers or restricts the ability of any Affiliates of the Borrower to (i) pay dividends or make any other distributions to Borrower on its Equity Interests or with respect to any other interest or participation in, or measured by, its profits, (ii) pay any Indebtedness or other obligation owed to Borrower, (iii) make loans or advances to Borrower, (iv) sell, lease or transfer any of its property to Borrower, (v) pledge its property pursuant to the DIP Documents or any renewals, refinancings, exchanges, refundings or extensions thereof, or (vi) act as Borrower pursuant to the DIP Documents or any renewals, refinancings, exchanges, refundings or extensions thereof, except (in respect of any of the matters referred to in clauses (i) through (v) above) for (1) this Agreement and the other DIP Documents and (2) any Permitted Lien or any document or instrument governing any Permitted Lien; provided that any such restriction contained therein relates only to the asset or assets subject to such Permitted Lien.

(b) Enter into, or permit to exist, any Contractual Obligation that prohibits or otherwise restricts the existence of any Lien upon any of its property in favor of Lender for the purpose of securing the DIP Obligations, whether now owned or hereafter acquired, or requiring the grant of any security for any obligation if such property is given as security for the DIP Obligations, except in connection with any Permitted Lien or any document or instrument governing any Permitted Lien; *provided* that any such restriction contained therein relates only to the asset or assets subject to such Permitted Lien.

7.09 **Amendments to Indebtedness; Material Contracts**.

(a) Amend any document, agreement, or instrument evidencing any Indebtedness that is subordinated to the DIP Obligations, other than amendments or modifications that are not adverse to Lender and that do not affect the subordination or payment provisions thereof (if any) in a manner adverse to Lender; or

(b) Amend, modify, or change any Material Contract without Lender's prior written consent; *provided*, *however*, that Borrower may seek to reject any contract or lease pursuant to section 365 of the Bankruptcy Code with prior written notice to, and upon consultation with, Lender.

7.10 **Amendments to Material Documents; Fiscal Year; Legal Name**.

(a) Amend, modify, or change its Organization Documents without Lender's prior written consent.

(b) Change its Fiscal Year without Lender's prior written consent.

(c) Change its name, jurisdiction of formation or type of entity without Lender's prior written consent.

7.11 **[Reserved]**

7.12 **Sale and Leaseback Transactions**.

Enter into any Sale and Leaseback Transaction.

7.13 **Speculative Transactions**.

Engage in any transaction involving commodity options or swap contracts or any similar speculative transactions, which are, in any case, inconsistent with prior practice and not otherwise made in the ordinary course of business.

7.14 **Formation of Subsidiaries**.

Acquire, organize, or form any new Subsidiary.

7.15 **Prepayment of Indebtedness**.

At any time, directly or indirectly, make any payment or prepayment or redemption of any Indebtedness or repurchase, redeem, retire or otherwise acquire any Indebtedness of Borrower except (a) the DIP Obligations and (b) regularly scheduled or required repayments or redemptions of Permitted Indebtedness as provided for in the Budget.

7.16 **Sanctions**.

(a) Permit any Loan or the proceeds of any Loan, directly or indirectly, to be used, lent, contributed or otherwise made available (i) to any Sanctioned Person or in any Sanctioned Country, (ii) to fund any activity or business of any Sanctioned Person or in any Sanctioned Country; or (iii) in any other manner that will result in any violation by any Person (including Lender) of any Sanctions.

(b) Fund all or part of any payment under this Agreement out of proceeds or property of a Sanctioned Person or that is directly or indirectly derived from transactions which would cause a violation by any Person (including Lender) of any Sanctions.

7.17 **Anti-Corruption Laws**.

Permit any Loan or the proceeds of any Loan, directly or indirectly, to be used, lent, contributed or otherwise made available in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Law, including the United States Foreign Corrupt Practices Act of 1977, as amended.

7.18 **Capital Expenditures**.

Make any Capital Expenditure other than in accordance with the Budget and the DIP Order.

7.19 **Compensation**.

Pay any compensation or other payments (x) to any Affiliate of Borrower without the consent of Lender or (y) to any officer, director or employee of Borrower or any other Affiliate of Borrower other than as provided for in the Budget.

7.20 **Chapter 11 Claims**.

(a) Except for the Carve-Out and the adequate protection Liens and claims of Lender against Borrower in its role as prepetition lender, incur, create, assume, suffer to exist, or permit any other super priority claim or Lien on any DIP Collateral which is *pari passu* with or senior to the DIP Obligations (or the Liens securing the DIP Obligations) or adequate protection Liens or claims of Lender against Borrower in its role as a prepetition lender.

(b) File an application for approval of any Superpriority Claim or Lien in the Chapter 11 Case that is *pari passu* with or senior to (i) the DIP Obligations (or the Liens securing the DIP Obligations), (ii) the Liens securing the Prepetition Secured Obligations, or (iii) any Liens granted by the Bankruptcy Court to Lender in its role as a prepetition lender as adequate protection, in each case without the consent of Lender.

(c) Commence any adversary proceeding, contested matter, or other action asserting any claims or defenses or otherwise against Lender arising from or relating to the Prepetition Credit Documents, the other documents or agreements executed or delivered in connection therewith or the transactions contemplated thereby.

(d) Borrower shall not make (i) any prepetition "critical vendor" payments or other payments on account of any creditor's prepetition unsecured claim, (ii) payments on account of claims or expenses arising under section 503(b)(9) of the Bankruptcy Code, or (iii) payments under any management incentive plan or on account of claims or expenses arising under section 503(c) of the Bankruptcy Code, except in each case in amounts and on terms and conditions that (x) are approved pursuant to order of the Bankruptcy Court after notice and a hearing and (y) to the extent that such payments will be made from Borrowings, are approved by Lender in its sole discretion and within the limits of the Budget and the DIP Order.

7.21 **Amendments to the DIP Order**.

Amend, supplement, or otherwise modify the DIP Order without the written consent of Lender.

7.22 **Bankruptcy Notices**.

Fail to provide Lender with copies of all motions or other documents at least two (2) Business Days prior to being filed with the Bankruptcy Court or delivered to the UST or counsel the Committee (and if impracticable, then as soon as possible and in no event later than as promptly practicable before being filed).

7.23 **Budget Covenant**.

Each line item in the Budget is subject to a permitted negative variance of (i) 10% per week above the projected aggregate disbursements set forth in the Budget, (ii) 10% per week, on disbursement on a by-line-item basis, and (iii) 10% per rolling four-week period, then ending, on the revenue set forth in the Budget (each, a "**Permitted Variance**"). Notwithstanding the foregoing, Debtor and the Committee may incur estate professional fees and expenses that exceed amounts set forth in the Budget and are in excess of a Permitted Variance, and the incurrence of such amounts exceeding the Budget and in excess of a Permitted Variance shall not be deemed to constitute an Event of Default or a violation of this Budget covenant. Similarly, the incurrence or payment of any fees and expenses of Lender in excess of the amounts set forth in the Budget shall not be deemed to constitute an Event of Default or a violation of this Budget covenant. Any unused amounts in the Budget during any one-week period may be carried forward to future weekly periods and applied to any amount by which that same line-item, and only that same line-item, exceeds its projected use as set forth in the Budget, such that the cumulative-to-date budgeted amount for each line item is available without causing such future weekly periods to exceed the Permitted Variance.

ARTICLE VIII
EVENTS OF DEFAULT AND REMEDIES

8.01 **Events of Default**.

Any of the following shall constitute an "Event of Default":

(a) **Non-Payment**. Borrower fails to pay, when and as required to be paid herein, any amount of principal of any Loans, any interest on any Loans, premium or any fee due hereunder, or any other amount payable hereunder or under any other Loan Document; or

(b) **Specific Covenants; Other Defaults**. Borrower fails to perform or observe (i) any term, covenant, or agreement contained in any of Article VI (Affirmative Covenants) or Article VII (Negative Covenants) of this Agreement, or (ii) any other term, covenant or agreement contained in any DIP Document on its part to be performed or observed which failure under this clause (ii) has not been remedied or waived within five (5) Business Days after receipt by Borrower of written notice thereof from Lender; *provided* that Borrower expressly acknowledges that the failure to meet any Milestones under Section 6.17 and covered under clause (g), below, may be waived by Lender in its sole discretion but is not subject to remedy or cure by Borrower; or

(c) **Representations and Warranties**. Any representation, warranty, certification, or statement of fact made or deemed made by or on behalf of Borrower herein, in any other DIP Document, or in any document delivered in connection herewith or therewith shall be incorrect or misleading in any material respect when made or deemed made (other than those representations, warranties, and certifications that are expressly qualified by Material Adverse Effect or other materiality, in which case such representations, warranties, and certifications shall be incorrect or misleading in any respect when made or deemed made); or

(d) **[Reserved]**.

(e) **Insolvency Proceedings**. Other than the Chapter 11 Case, (i) Borrower institutes or consents to the institution of any proceeding under any Debtor Relief Law or conversion of the Chapter 11 Case to chapter 7, or makes an assignment for the benefit of creditors; (ii) applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator, or similar officer for it or for all or any material part of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator, or similar officer is appointed without the application or consent of Borrower and the appointment continues undischarged or unstayed for sixty (60) calendar days; or (iii) any proceeding under any Debtor Relief Law relating to Borrower or to all or any material part of its property is instituted without the consent of Borrower and continues undismissed or unstayed for sixty (60) calendar days, or an order for relief is entered in any such proceeding; or

(f) **Judgments**. There is entered against Borrower (i) one or more final judgments or orders for the payment of money in an aggregate amount exceeding $50,000 (to the extent not covered (subject to normal deductibles) by independent third-party insurance as to which the insurer does not dispute coverage); or (ii) any one or more non-monetary final judgments that have, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and, in either case ((i) or (ii)), and either (A) enforcement proceedings are commenced by any creditor upon such judgment or order and such proceedings remain unstayed or undismissed for a period of thirty (30) consecutive days, or (B) there is a period of thirty (30) consecutive days during which a stay of enforcement of such judgment, by reason of a pending appeal, the Chapter 11 Case, or otherwise, is not in effect; or

(g) **Milestones**. A Milestone under Section 6.17 is not met as of the date required to be met, unless extended or waived by the Lender in its sole discretion; or

(h) **Invalidity of DIP Documents**. Any DIP Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or on account of satisfaction in full of all the DIP Obligations, ceases to be in full force and effect; or Borrower contests in any manner the validity or enforceability of any DIP Document; or purports to revoke, terminate or rescind any DIP Document; or

(i) **DIP Collateral**. The DIP Order after delivery thereof shall for any reason (other than pursuant to the terms thereof) cease to create a valid and perfected Lien, with the priority required by the DIP Order on and security interest in any DIP Collateral purported to be covered thereby, subject to Liens permitted under Section 7.01; or

(j) **Chapter 11 Case**. There shall have occurred any of the following in any Chapter 11 Case:

(i) An order shall be entered by the Bankruptcy Court appointing, or Borrower shall file an application for an order seeking the appointment of, (a) a trustee under section 1104 of the Bankruptcy Code, or (b) an examiner or other responsible person or officer with enlarged powers relating to the operation of the business (powers beyond those set forth in section 1106(a)(3) and (4) of the Bankruptcy Code) under section 1106(b) of the Bankruptcy Code;

(ii) An order with respect shall be entered by the Bankruptcy Court converting the Chapter 11 Case to a chapter 7 case;

(iii) An order shall be entered by the Bankruptcy Court confirming a Chapter 11 Plan that does not (A) contain a provision for termination of the commitments and indefeasible payment in full in cash of all DIP Obligations of Borrower hereunder and under the other DIP Documents and the Indebtedness under the Prepetition Credit Agreement on or before the effective date of such plan or plans upon entry thereof and (B) provide for the continuation of the Liens and security interests granted to Lender hereunder until the Effective Date of such Chapter 11 Plan;

(iv) An order shall be entered by the Bankruptcy Court dismissing the Chapter 11 Case which does not contain a provision for termination of the commitments hereunder and payment in full in cash of all DIP Obligations of Borrower hereunder and under the other DIP Documents upon entry thereof;

(v) An order shall be entered by the Bankruptcy Court without the express prior written consent of Lender to (a) revoke, reverse, stay, modify, supplement, or amend any of the DIP Orders, (b) permit any administrative expense or any claim (now existing or hereafter arising, of any kind or nature whatsoever) to have administrative priority as to Borrower equal or superior to the priority of Lender in respect of the DIP Obligations, except for certain allowed administrative expenses, or (c) to grant or permit the grant of a Lien on the DIP Collateral, other than a Permitted Lien;

(vi) An order shall be entered by the Bankruptcy Court that is not stayed pending appeal granting relief from the automatic stay to any creditor of Borrower with respect to any claim in an amount equal to or exceeding $50,000;

(vii) An application for (a) an order impairing the DIP Collateral, the appointment of a trustee, conversion to chapter 7 or dismissal of the Chapter 11 Case shall be made (i) by a Person other than Borrower and such application is not contested by Borrower in good faith, or (ii) by Borrower; (b) an order for the use of cash collateral without the prior written consent of Lender is made; or (c) an order for the use of DIP Collateral (or the obtaining of financing or loans, secured by liens that are senior to, *pari passu* with, or junior to Lender's Liens on DIP Collateral) without the prior written consent of Lender, is made; or

(viii) Borrower fails to obtain entry of an order approving the engagement of Nicholas Rubin as Debtor's Chief Restructuring Officer, on terms reasonably acceptable to Lender and consistent with the Budget, on or before January 26, 2026, or Mr. Rubin shall cease acting as an officer of Borrower following approval of his engagement.

8.02 **Remedies Upon Event of Default**.

If any Event of Default occurs and is continuing, Lender may (subject to the terms hereof) take any or all of the following actions:

(a) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, premiums, fees and all other amounts owing or payable hereunder or under any other DIP Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by Borrower; and

(b) declare the New Money DIP Commitments terminated, whereupon the New Money DIP Commitments shall immediately be terminated, except as provided in Section 8.03;

(c) terminate this Agreement and the other DIP Documents as to any future liability or obligation of Lender, subject to the obligations in Section 8.03, but without affecting any of Lender's Liens in the DIP Collateral and without affecting the DIP Obligations; and

(d) after providing five (5) Business Days' notice to counsel to Borrower, the UST, and counsel to the Committee (if any), which notice may be by email, of the occurrence of the Event of Default, during which period Borrower may attempt to cure such Event of Default if feasible, (the "**Notice Period**"), exercise all rights and remedies with respect to the DIP Collateral and all rights and remedies available to it under the DIP Documents, or under applicable Law or equity.

Upon entry of the Final DIP Order, and subject to the terms thereof, none of the DIP Collateral or the application of the proceeds of the DIP Collateral (in connection with any voluntary or mandatory prepayment, exercise of remedy, or otherwise) shall be subject to the equitable doctrine of "marshaling" or any other similar doctrine. Upon termination of the Notice Period and unless an order is entered by the Bankruptcy Court to the contrary prior to the expiration of the Notice Period, the automatic stay pursuant to section 362 of the Bankruptcy Code shall be automatically terminated without further notice or order of the Bankruptcy Court, unless Lender elects otherwise in a written notice to Borrower, and Lender shall be permitted to exercise all rights and remedies, including with respect to the DIP Collateral, set forth in the DIP Order and the DIP Documents, and as otherwise available at Law without further order or application or motion to the Bankruptcy Court, and without restriction or restraint by any stay under Bankruptcy Code sections 362 or 105 or otherwise.

8.03 **Carve Out Reserve Funding**.

Upon the occurrence of an Event of Default, Borrower may use the proceeds of the New Money DIP Loans or cash collateral to fund, subject to the Budget, the Carve-Out.

8.04 **Application of Funds**.

After the exercise of remedies provided for in Section 8.02 (or after the Loans have automatically become immediately due and payable), any amounts received on account of the DIP Obligations shall be applied by Lender in the following order:

First, to payment of that portion of the DIP Obligations constituting fees, indemnities, expenses and other amounts (including fees, charges and disbursements of counsel to Lender and amounts payable under Article III) payable to Lender;

Second, to payment of that portion of the DIP Obligations constituting accrued and unpaid interest on the Loans and fees, premiums and scheduled periodic payments, and any interest accrued thereon;

Third, to payment of that portion of the DIP Obligations constituting unpaid principal of the Loans; and

Last, the balance, if any, after all of the DIP Obligations have been indefeasibly paid in full, to Borrower, or as otherwise required by Law.

ARTICLE IX
MISCELLANEOUS

9.01 **Amendments**.

Unless otherwise provided in this Agreement (including, for the avoidance of doubt, provisions that permit or require the consent, approval, waiver, extension, satisfaction, determination, judgment, acceptance, or similar action of Lender), no amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by Borrower therefrom, shall be effective unless in writing signed by Lender and Borrower, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

9.02 **Notices and Other Communications; Facsimile Copies**.

(a) **Notices Generally**. All notices and other communications provided for herein shall be in writing and shall be delivered both (i) by hand or overnight courier service or mailed by certified or registered mail, and (ii) by electronic mail, each to the address specified in this Section 9.02. Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received (if by hand) or one day after being deposited with a courier for overnight delivery. Notices delivered through electronic communications to the extent provided in subsection (b) below shall be effective as provided in such subsection (b).

TO THE LENDER:

Winners Alliance, Inc.
Attn: Ahmad Nassar
8484 Westpark Dr., Suite 630
McLean, VA, 22102-3590
Email: ahmad@winnersalliance.com

With Copies to:

RAINES FELDMAN LITTRELL LLP
Attn: Thomas Francella, Esq.
Mark Eckard, Esq.
824 North Market Street, Suite 805

Wilmington, DE 19801
Telephone: (302) 772-5803
tfrancella@raineslaw.com
meckard@raineslaw.com

RAINES FELDMAN LITTRELL LLP
Attn: Hamid R. Rafatjoo, Esq.
4675 MacArthur Court, Suite 1550
Newport Beach, CA 92660
hrafatjoo@raineslaw.com

RAINES FELDMAN LITTRELL LLP
Carollynn H.G. Callari
1350 Avenue of the Americas,
22nd Floor
New York, NY 10019
ccallari@raineslaw.com

TO THE BORROWER:

Nicholas Rubin, CRO
c/o Force 10 Partners LLC
5271 California, Suite 270
Irvine, CA 92617
nrubin@force10partners.com

With Copies to:

LEVENE, NEALE, BENDER, YOO & GOLUBCHIK L.L.P.
Attn: David Galubchek, Esq.
2818 La Cienega Ave
Los Angeles, CA 90034
Telephone: 310 229 3393
dbg@lnbyg.com

and

REED SMITH LLP
Attn: Kurt F. Gwynne, Esq.
Jason D. Angelo, Esq.
1500 North Market Street, Suite 1500
Wilmington, DE 19801
Telephone: (302) 778-7500
kgwynne@reedsmith.com
jangelo@reedsmith.com

(b) **Electronic Communications**. Borrower or Lender may, in their respective discretion, agree to accept notices and other communications to them hereunder by electronic communications pursuant to procedures approved by them; *provided* that approval of such

procedures may be limited to particular notices or communications. Notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement); *provided* that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient.

(c) **Change of Address, Etc**. Borrower and Lender may change their respective address or electronic mail address for notices and other communications hereunder by notice to the other parties hereto.

(d) **Reliance by Lender**. Lender shall be entitled to rely and act upon any notices (including telephonic notices) purportedly given by or on behalf of Borrower even if (i) such notices were not made in a manner specified herein, were incomplete, or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. Borrower shall indemnify Lender and its Related Parties from all losses, costs, expenses, and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of Borrower, except for such losses caused by the gross negligence or willful misconduct of Lender or any of Lender's Related Parties. All telephonic notices to and other telephonic communications with Lender may be recorded by Lender, and each of the parties hereto hereby consents to such recording.

9.03 **No Waiver; Cumulative Remedies**.

No failure by Lender to exercise, and no delay by any such Person in exercising, any right, remedy, power, or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege. The rights, remedies, powers, and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers, and privileges provided by law.

9.04 **Expenses; Indemnity; Damage Waiver**.

(a) **Costs and Expenses**. Except as provided in the DIP Order, Borrower shall pay, whether accrued or incurred prior to, on or after the Petition Date, (i) all out-of-pocket expenses (including, without limitation, reasonable and documented fees, disbursements, and other charges of outside counsel, local counsel, and financial advisors and all persons not regularly in its employ) incurred by Lender in connection with this Agreement, the transactions contemplated hereby, and the Chapter 11 Case, and (ii) all reasonable and documented out-of-pocket expenses (including, without limitation, fees, disbursements and other charges of counsel) of Lender for enforcement costs and documentary taxes associated with this Agreement, the transactions contemplated hereby, and the Chapter 11 Case. Such costs and expenses shall be added and capitalized to the outstanding principal balance of the Loans.

(b) **Indemnification by Borrower**. Borrower shall indemnify and defend Lender and its Related Parties (each such Person being called an "**Indemnitee**") against, and hold

each Indemnitee harmless from, any and all losses, claims, damages, liabilities, and related expenses (including the reasonable fees, charges, and disbursements of outside counsel for the Indemnitees, including one (1) local counsel, as applicable, in any relevant jurisdiction and any specialty counsel, as applicable, for each relevant specialty and, in the case of actual or potential conflict of interest (as determined by such Indemnitee), separate counsel for Indemnitees to the extent needed to avoid such conflict), incurred by any Indemnitee or asserted against any Indemnitee arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement or any other DIP Document, the performance by the parties hereto of their respective obligations hereunder or thereunder, or the consummation of the transactions contemplated hereby or thereby, or the administration of this Agreement and the other DIP Documents; (ii) any Loan or the use or proposed use of the proceeds therefrom; (iii) any actual or alleged Release of Hazardous Materials at, on, under, or from any property owned, leased or operated by Borrower, or any Environmental Liability related in any way to Borrower or its respective facilities and/or properties; or (iv) any actual or prospective claim, litigation, investigation, or proceeding relating to any of the foregoing, whether based on contract, tort, or any other theory, and regardless of whether any Indemnitee is a party thereto, in all cases, whether or not caused by or arising, in whole or in part, out of the comparative, contributory, or sole negligence of the Indemnitee; *provided* that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities, or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the actual fraud, gross negligence, bad faith, or willful misconduct of such Indemnitee.

(c) **Waiver of Consequential Damages, Etc**. To the fullest extent permitted by applicable Law, Borrower shall not assert, and Borrower hereby waives, any claim against Lender or its Related Parties on any theory of liability for special, indirect, consequential, or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of this Agreement, any other DIP Document, or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan, or the use of the proceeds thereof. Lender and its Related Parties shall not be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic, or other information transmission systems in connection with this Agreement or the other DIP Documents or the transactions contemplated hereby or thereby so long as such Person is in compliance with Section 9.07 hereof.

(d) **Payments**. All amounts due under this Section 9.04 shall be payable not later than five (5) Business Days after demand therefor.

(e) **Survival**. The agreements in this Section 9.04 shall survive the resignation or replacement of Lender and the repayment, satisfaction or discharge of all the DIP Obligations.

9.05 **Payments Set Aside**.

To the extent that any payment by or on behalf of Borrower is made to Lender, or Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside, or required (including pursuant to any settlement entered into by Lender in its discretion) to be repaid to a trustee, receiver, or any other party in connection with any proceeding under any Debtor Relief Law or

otherwise, then to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred.

9.06 **Successors and Assigns**.

(a) **Successors and Assigns Generally**. The provisions of this Agreement and the other DIP Documents shall be binding upon and inure to the benefit of the parties hereto and thereto and their respective successors and assigns permitted hereby, except that Borrower may not assign or otherwise transfer any of its rights or obligations hereunder or thereunder without the prior written consent of Lender, and Lender may not assign or otherwise transfer any of its rights or obligations hereunder except (i) in accordance with the provisions of Section 9.06(b), or (ii) by way of pledge or assignment of a security interest subject to the restrictions of Section 9.06(d) (and any other attempted assignment or transfer by any party hereto shall be void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby and, to the extent expressly contemplated hereby, the Related Parties of Lender) any legal or equitable right, remedy, or claim under or by reason of this Agreement.

(b) **Assignments by Lender**. Lender may at any time assign all of its rights and obligations under this Agreement and the other DIP Documents (including all or a portion of the Loans). Subject to recording thereof by the Lender pursuant to clause (c) of this Section 9.06, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of Lender under this Agreement to the extent of the interest assigned, and Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, Lender shall cease to be a party hereto and the assignee shall become the "Lender" hereunder), but shall continue to be entitled to the benefits of Sections 3.01, 3.02, and 9.04 with respect to facts and circumstances occurring prior to the effective date of such assignment. Upon request, Borrower (at its expense) shall execute and deliver a Note to the assignee. Any assignment or transfer by Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by Lender of a participation in such rights and obligations.

(c) **Register**. Lender, acting solely for this purpose as a non-fiduciary agent of Borrower, shall maintain at its office a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of any assignees and the New Money DIP Commitments of, and principal amounts of (and stated interest on) the Loans owing to, Lender pursuant to the terms hereof from time to time (the "**Register**"). The entries in the Register shall be conclusive absent manifest error. The Register shall be available for inspection by Borrower at any reasonable time and from time to time upon reasonable prior notice.

(d) **Certain Pledges**. Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note, if any) to secure obligations of Lender, including any pledge or assignment to secure obligations to a Federal

Reserve Bank; provided that no such pledge or assignment shall release Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such as a party hereto.

(e) **Electronic Execution of Assignments**. The words "execution," "signed," "signature," and words of like import in any Assignment and Assumption shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity, or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable Law, including the Federal Electronic Signatures in Global and National Commerce Act and any state laws based on the Uniform Electronic Transactions Act.

9.07 **Set-off**.

If an Event of Default shall have occurred and be continuing, Lender and each of its Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other obligations at any time owing by Lender or any such Affiliate to or for the credit or the account of Borrower against any and all of the obligations of Borrower now or hereafter existing under this Agreement or any other Loan Document to Lender, irrespective of whether or not Lender shall have made any demand under this Agreement or any other Loan Document and although such obligations of Borrower may be contingent or unmatured. The rights of Lender and its Affiliates under this Section 9.07 are in addition to other rights and remedies (including other rights of setoff) that Lender or its Affiliates may have. Lender agrees to notify Borrower promptly after any such setoff and application, provided that the failure to give such notice shall not affect the validity of such setoff and application.

9.08 **Interest Rate Limitation**.

Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the DIP Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the "**Maximum Rate**"). If Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to Borrower. In determining whether the interest contracted for, charged, or received by Lender exceeds the Maximum Rate, Lender may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the DIP Obligations hereunder.

9.09 **Credit Bid**

Subject to entry of Final DIP Order, the terms of such Final DIP Order, and a successful Challenge, Borrower hereby irrevocably authorizes Lender to credit bid and purchase (either directly or through one or more acquisition vehicles) all or any portion of the DIP Collateral at any sale thereof, including, without limitation, any sale pursuant to section 363, 365 and/or 1129 of the Bankruptcy Code, and Borrower waives any right to object thereto (other than with respect to the calculation of the amount available to credit bid); *provided that*, in the event that a Challenge is

timely commenced and successfully prosecuted, any amounts previously applied by the Lender through a credit bid (to the extent of the amount of the successful Challenge) in connection with a sale of assets pursuant to section 363(k) of the Bankruptcy Code shall, solely for purposes of such successful Challenge, be deemed a cash payment in an equivalent amount; *provided*, *further* that the Bankruptcy Court may grant appropriate monetary relief with respect thereto, including disgorgement, surcharge, reduction, recharacterization, reclassification, or disallowance of the applicable secured claims or liens; provided, however, that no such relief shall affect the validity of the sale or the purchaser's title to the assets.

9.10 **Counterparts; Integration; Effectiveness**.

This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other DIP Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Article IV, this Agreement shall become effective when it shall have been executed by Lender and when Lender shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by email shall be effective as delivery of a manually executed counterpart of this Agreement.

9.11 **Survival of Representations and Warranties**.

All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by Lender, regardless of any investigation made by Lender or on its behalf and notwithstanding that Lender may have had notice or knowledge of any Default at the time of the making of any Loan, and shall continue in full force and effect as long as any Loan or any other obligation hereunder shall remain unpaid or unsatisfied.

9.12 **Severability**.

If any provision of this Agreement or the other DIP Documents is held to be illegal, invalid, or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other DIP Documents shall not be affected or impaired thereby, and (b) the parties hereto and thereto shall endeavor in good faith negotiations to replace the illegal, invalid, or unenforceable provisions with valid provisions, the economic effect of which comes as close as possible to that of the illegal, invalid, or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

9.13 **GOVERNING LAW; JURISDICTION**.

(a) **GOVERNING LAW**. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF DELAWARE, WITHOUT REGARD TO ANY CHOICE-OF-LAW PROVISIONS THAT

WOULD REQUIRE THE APPLICATION OF LAW OF ANOTHER JURISDICTION AND, TO THE EXTENT APPLICABLE, THE BANKRUPTCY CODE.

(b) **SUBMISSION TO JURISDICTION**. EACH OF THE PARTIES IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO (I) THE NONEXCLUSIVE JURISDICTION OF THE BANKRUPTCY COURT AND, IN THE EVENT THAT THE BANKRUPTCY COURT DOES NOT HAVE, OR ABSTAINS FROM EXERCISING, SUCH JURISDICTION, TO (II) THE NONEXCLUSIVE JURISDICTION OF THE FEDERAL AND STATE COURTS SITTING IN NEW CASTLE COUNTY, DELAWARE, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT LENDER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST BORROWER OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) **WAIVER OF VENUE**. EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (b) OF THIS SECTION 9.13. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) **SERVICE OF PROCESS**. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 9.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

9.14 **WAIVER OF RIGHT TO TRIAL BY JURY**.

EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON

CONTRACT, TORT, OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT, OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER DIP LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 9.14.

9.15 **USA Patriot Act Notice**.

Lender hereby notifies Borrower that, pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "**Patriot Act**"), it is required to obtain, verify, and record information that identifies Borrower, which information includes the name and address of Borrower and other information that will allow Lender to identify Borrower in accordance with the Patriot Act.

9.16 **No Advisory or Fiduciary Relationship**.

In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver, or other modification hereof or of any other Loan Document), Borrower acknowledges and agrees that: (a)(i) the arranging and other services regarding this Agreement provided by Lender are arm's-length commercial transactions between Borrower, on the one hand, and Lender, on the other hand, (ii) Borrower has consulted its own legal, accounting, regulatory, and tax advisors to the extent it has deemed appropriate, and (iii) Borrower is capable of evaluating, and understands and accepts, the terms, risks, and conditions of the transactions contemplated hereby and by the other DIP Documents; (b)(i) Lender is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not and will not be acting as, an advisor, agent, or fiduciary, for Borrower, and (ii) Lender has no obligation to Borrower with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other DIP Documents to which it is a party; and (c) Lender and its Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of Borrower, and Lender has no obligation to disclose any of such interests to Borrower. To the fullest extent permitted by law, Borrower hereby waives and releases any claims that they may have against Lender with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

9.17 **Conflict**.

In the event of a conflict between this Agreement and the DIP Order, the DIP Order shall govern.

9.18 **Release**.

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, effective upon entry of the Final DIP Order, subject in all respects to the Investigation Period, Borrower hereby, for itself and its successors and assigns, fully and without reserve, releases, acquits, and forever discharges Lender, its successors and assigns, officers, directors, employees, representatives, trustees, attorneys, agents, and affiliates (collectively, the

"**Released Parties**" and each individually a "**Released Party**") from any and all actions, claims, demands, causes of action, judgments, executions, suits, debs, liabilities, costs, damages, expenses, or other obligations of any kind and nature whatsoever, direct and/or indirect, at law or in equity, whether now existing or hereafter asserted, whether absolute or contingent, whether due or to become due, whether disputed or undisputed, whether known or unknown, for or because of any matters or things occurring, existing or actions done, omitted to be done, or suffered to be done by any of the Released Parties, in each case, on or prior to the date hereof and are in any way directly or indirectly arising out of this Agreement, any other DIP Document, the Prepetition Credit Agreement, the Prepetition Secured Obligations, any other Loan Document (as defined in the Prepetition Credit Agreement), the Chapter 11 Case, the DIP Order or any of the other orders, documents, or other matters related thereto, or any of the transactions contemplated hereby or thereby (collectively, the "**Released Claims**"). Borrower agrees that it will not sue any Released Party on the basis of any Released Claim. The provisions of this Section 9.18 shall survive the termination of the DIP Documents and the payment in full of the DIP Obligations.

ARTICLE X
COLLATERAL

10.01 **Grant of Security Interest**.

As security for all DIP Obligations, Borrower hereby collaterally assigns and grants to Lender a continuing first-priority (subject to the Carve-Out) security interest in all property and assets of Borrower, whether now owned or existing or hereafter acquired or arising, regardless of where located, and all proceeds and products and supporting obligations (as defined in the Code) in respect thereof, including the following:

(i) all Accounts;

(ii) all contract rights;

(iii) all chattel paper;

(iv) all documents;

(v) all instruments;

(vi) all supporting obligations and letter-of-credit rights;

(vii) all General Intangibles (including payment intangibles, intercompany accounts, intellectual property including all copyrights, all copyright licenses, all patents, all patent licenses, all trademarks, all trademark licenses and software, and all extensions, reissues and renewals thereof);

(viii) all pledged Equity Interests, deposit accounts, bank deposits, prepayments (including prepayments made to third party vendors), deferred assets, refunds, credits or overpayments, and similar cash items of Borrower, including all tax credits and rights arising from any refunds due from federal, state, or local government

entities with respect to taxes paid by Borrower for periods ending on or before the Petition Date;

(ix) all inventory and other goods;

(x) all motor vehicles, equipment, and fixtures;

(xi) all Investment Property, financial assets, and all securities accounts;

(xii) all money, cash (including, without limitation, all Cash Collateral, cash deposits, and all cash proceeds held in escrow), cash equivalents, securities, and other property of any kind;

(xiii) all notes and documents of title;

(xiv) all books, records, and other property related to or referring to any of the foregoing, including books, records, account ledgers, data processing records, computer software, and other property, and General Intangibles at any time evidencing or relating to any of the foregoing;

(xv) all commercial tort claims;

(xvi) all of Borrower's interest in deposit accounts, money, cash, cash equivalents, securities, or other property interests serving as collateral or funding sources for any other obligation, subject only to any first-priority, perfected, and unavoidable security interests of any holder of a Permitted Lien in such accounts existing as of the Petition Date;

(xvii) [reserved]

(xviii) all real property and rights therein;

(xix) all other personal property of Borrower, including, subject to entry of the Final DIP Order, proceeds from any Avoidance Actions (as defined in the DIP Order) and recoveries therefrom (but not the actions themselves); and

(xx) all accessions to, substitutions for, and replacements, products, and proceeds of any of the foregoing, including, but not limited to, dividends or distributions on Investment Property, rents, profits, income and benefits, proceeds of any insurance policies, returns or refunds of any premiums, prepayments or deposits, claims against third parties, and condemnation or requisition payments with respect to all or any of the foregoing.

10.02 **Perfection of Security Interest**.

(a) Notwithstanding the perfection of any security interest granted hereunder pursuant to the order of the Bankruptcy Court under the applicable DIP Order, to the fullest extent

permitted by applicable law, Lender may, but is not required to, file or authorize the filing of one or more financing statements disclosing the Liens under this Agreement on the DIP Collateral.

(b) A certified copy of the DIP Order may, in the discretion of Lender, be filed with or recorded in filing or recording offices in addition to or in lieu of such financing statements, mortgages, notices of lien or similar instruments, and all filing offices are hereby authorized to accept such certified copy of the DIP for filing and recording. Notwithstanding the date of any such filing, the date of such perfection shall be the date of the DIP Order.

10.03 **Right to Cure**.

Upon the occurrence and during the continuance of an Event of Default, Lender shall have the right to (but not the obligation to) pay any amount or do any act required of Borrower hereunder or under any other Loan Document (other than in respect of principal, interest or fees on the advances) in order to preserve, protect, maintain, or enforce the DIP Obligations, the DIP Collateral, or the Liens securing the DIP Obligations, and which Borrower fails to pay or do, including payment of any judgment against Borrower, any insurance premium, any warehouse charge, any finishing or processing charge, any landlord's or bailee's claim, and any other obligation secured by a Lien upon or with respect to the DIP Collateral. All payments that Lender makes under this Section 10.03 and all documented out-of-pocket costs and expenses that Lender pays or incurs in connection with the foregoing shall be considered part of the DIP Obligations. Any payment made or other action taken by Lender under this Section 10.03 shall be without prejudice to any right to assert an Event of Default hereunder and to proceed thereafter as herein provided.

10.04 **Lender's Rights, Duties, and Liabilities**.

Borrower assumes all responsibility and liability arising from or relating to the use, sale, or other disposition of the DIP Collateral. The DIP Obligations shall not be affected by any failure of Lender to take any steps to perfect the Liens hereunder or to collect or realize upon the DIP Collateral, nor shall loss of or damage to the DIP Collateral release Borrower from any of the DIP Obligations. Nothing in this Agreement shall be interpreted as giving Lender responsibility for or any duty concerning the validity, perfection, priority, or enforceability of the Liens granted hereunder or giving Lender any obligation to take any action to procure or maintain such validity, perfection, priority or enforceability, including, without limitation, any duty to file any financing statements, amendments, continuation statements or other documents to perfect or maintain the perfection of the security interest granted hereunder.

10.05 **Remedies**.

(a) Borrower recognizes that Lender may be unable to effect a public sale of any or all of the DIP Collateral that constitutes securities to be sold by reason of certain prohibitions contained in the Laws of any jurisdiction outside the United States or in applicable federal, provincial, territorial, or state securities laws but may be compelled to resort to one or more private sales thereof to a restricted group of purchasers who will be obliged to agree, among other things, to acquire such DIP Collateral to be sold for their own account for investment and not with a view to the distribution or resale thereof. Borrower acknowledges and agrees that any

such private sale may result in prices and other terms less favorable to the seller than if such sale were a public sale and, notwithstanding such circumstances, agrees that any such private sale shall, to the extent permitted by applicable law, be deemed to have been made in a commercially reasonable manner. Unless required by applicable law, Lender shall not be under any obligation to delay a sale of any of such DIP Collateral to be sold for the period of time necessary to permit the issuer of such securities to register such securities under the Laws of any jurisdiction outside the United States or under any applicable federal, provincial, territorial, or state securities Laws, even if such issuer would agree to do so. Borrower further agrees to do or cause to be done, to the extent that Borrower may do so under applicable Law, all such other acts and things as may be necessary to make such sales or resales of any portion or all of such DIP Collateral or other property to be sold valid and binding and in compliance with any and all applicable Laws at Borrower's expense. Borrower further agrees that a breach of any of the covenants contained in this Section 10.05(a) will cause irreparable injury to Lender for which there is no adequate remedy at law and, as a consequence, agrees that each covenant contained in this Section 10.05(a) shall be specifically enforceable against Borrower, and Borrower hereby waives and agrees, to the fullest extent permitted by law, not to assert as a defense against an action for specific performance of such covenants that (i) Borrower's failure to perform such covenants will not cause irreparable injury to Lender, or (ii) Lender has an adequate remedy at Law in respect of such breach. Borrower further acknowledges the impossibility of ascertaining the amount of damages which would be suffered by Lender by reason of a breach of any of the covenants contained in this Section 10.05(a) and, consequently, agrees that, if Borrower shall breach any of such covenants and Lender shall sue for damages for such breach, Borrower shall pay to Lender, as liquidated damages and not as a penalty, an aggregate amount equal to the value of the DIP Collateral or other property to be sold on the date Lender shall demand compliance with this Section 10.05(a).

(b) Subject to the terms of the DIP Order and the terms hereof, including, without limitation, Section 8.02, if an Event of Default has occurred and is continuing, Lender shall have, in addition to all other rights of Lender, the rights and remedies of a secured party under the UCC, and without limiting the generality of the foregoing, Lender shall be empowered and entitled to: (i) take possession of, foreclose on and/or request a receiver of the DIP Collateral and keep it on Borrower's premises at any time, at no cost to Lender, or remove any part of it to such other place or places as Lender may desire, or Borrower shall, upon Lender's demand, at Borrower's cost, assemble the DIP Collateral and make it available to Lender at a place reasonably convenient to Lender; (ii) exercise set-off rights on cash collateral or deposits (other than, for the avoidance of doubt, with respect to Excluded Accounts); (iii) sell and deliver any DIP Collateral at public or private sales, for cash, upon credit or otherwise, at such prices and upon such terms as Lender deems advisable and may postpone or adjourn any sale of the DIP Collateral by an announcement at the time and place of sale or of such postponed or adjourned sale; (iv) hold, lease, develop, manage, operate, control, and otherwise use the DIP Collateral upon such terms and conditions as may be reasonable under the circumstances (making such repairs, alterations, additions and improvements and taking other actions, from time to time, as may be reasonably necessary or desirable), exercise all such rights and powers of Borrower with respect to the DIP Collateral, whether in the name of Borrower or otherwise, including without limitation the right to make, cancel, enforce, or modify leases, obtain and evict tenants, and demand, sue for, collect and receive all rents, in each case, in accordance with the standards applicable to Lender under the DIP Documents; and (v) take any other actions, as may be reasonably necessary or desirable, in connection with the DIP Collateral (including preparing for the disposition thereof), and all

reasonable and documented out-of-pocket fees and expenses incurred in connection therewith shall be borne by Borrower. Promptly following written demand from Lender, Borrower shall direct the grantor or licensor of, or the contracting party to, any property agreement with respect to any property to recognize and accept Lender as the party to such agreement for any and all purposes as fully as it would recognize and accept Borrower and the performance of Borrower thereunder and, in such event, without further notice or demand and at Borrower's sole cost and expense, Lender may exercise all rights of Borrower arising under such agreements. Without in any way requiring notice to be given in the following manner, Borrower agrees that any notice by Lender of a sale, disposition, or other intended action hereunder or in connection herewith, whether required by the UCC or otherwise, shall constitute reasonable notice to Borrower if such notice is delivered by registered or certified mail, return receipt requested, postage prepaid, or is delivered personally against receipt, at least five (5) Business Days prior to such action to Borrower's addresses specified in Section 9.02. If any DIP Collateral is sold on terms other than payment in full at the time of sale, no credit shall be given against the DIP Obligations until Lender receives payment, and if the buyer defaults in payment, Lender may resell the DIP Collateral. In the event Lender seeks to take possession of all or any portion of the DIP Collateral by judicial process, Borrower irrevocably waives (to the extent permitted by applicable law): (A) the posting of any bond, surety, or security with respect thereto which might otherwise be required; (B) any demand for possession prior to the commencement of any suit or action to recover the DIP Collateral; and (C) any requirement that Lender retain possession and not dispose of any DIP Collateral until after trial or final judgment. Borrower agrees that Lender has no obligation to preserve rights to the DIP Collateral or marshal any DIP Collateral for the benefit of any Person. Lender is hereby granted a license or other right to use, without charge, Borrower's labels, patents, copyrights, name, trade secrets, trade names, trademarks and advertising matter, or any similar property, in completing production of, advertising or selling any DIP Collateral, and Borrower's rights under all licenses and all franchise agreements shall inure to Lender's benefit for such purpose. Lender will return any excess proceeds of the DIP Collateral to Borrower, and Borrower shall remain liable for any deficiency. The proceeds of sale shall be applied as required pursuant to Section 2.03(b)(iv) hereof.

(c) Notwithstanding anything herein to the contrary, Lender shall not take any action under this Section 10.05 except after compliance with any applicable requirements under the DIP Order applicable thereto.

10.06 **Concerning the DIP Collateral**.

(a) Except for the custody of the DIP Collateral in its possession and the accounting for monies actually received by it hereunder, Lender shall have no other duty as to the DIP Collateral, whether or not Lender has or is deemed to have knowledge of any matters, or as to the taking of any necessary steps to preserve rights against any parties or any other rights pertaining to the DIP Collateral. Lender shall not be liable for any interest on any money received by it. Lender shall be deemed to have exercised reasonable care in the custody and preservation of the DIP Collateral in its possession if such DIP Collateral is accorded treatment substantially equal to that which Lender would accord similar assets held for the benefit of third parties.

(b) Notwithstanding anything to the contrary contained herein or in any other Loan Document, in no event shall Lender be obligated to execute or deliver any document

evidencing any release or re-conveyance of DIP Collateral without receipt of a certificate executed by a duly authorized officer of Borrower certifying that such release is permitted by this Agreement and the other DIP Documents, and that all conditions precedent to such release or re-conveyance (if any) have been complied with.

(c) Lender shall not be responsible for insuring the DIP Collateral or for the payment of Taxes (and shall not be responsible for any tax reporting in connection with this Agreement), charges, assessments, or liens upon the DIP Collateral. Lender shall be under no obligation independently to request or examine insurance coverage with respect to any DIP Collateral. Lender shall not be responsible for the maintenance of the DIP Collateral, except as expressly provided in this Agreement.

(d) In connection with the exercise of any rights or remedies in respect of, or foreclosure or realization upon, any Equity Interest Collateral pursuant to this Agreement or any other Loan Document, Lender shall not be obligated to take title to or possession of such Equity Interests, as the case may be, in its own name, or otherwise in a form or manner that may, in its reasonable judgment, expose it to liability. In the event that Lender deems that it may be considered an "owner or operator" under any environmental laws or otherwise cause Lender to incur, or be exposed to, any Environmental Liability or any liability under any other federal, state, or local law, Lender reserves the right, instead of taking such action, to arrange for the transfer of the title or control of the asset to a court-appointed receiver. Lender will not be liable to any Person for any Environmental Liability or any environmental claims or contribution actions under any federal, state, or local law, rule or regulation by reason of Lender's actions and conduct as authorized, empowered, and directed hereunder or relating to any kind of discharge or release or threatened discharge or release of any hazardous materials into the environment.

(e) Lender shall not be liable for the acts or omissions of any bank, depositary bank, custodian, or independent counsel of Lender, Borrower, or any other party selected by Lender with reasonable care or selected by any other party hereto that may hold or possess DIP Collateral or documents related to DIP Collateral, and Lender shall not be required to monitor the performance of any such Persons holding DIP Collateral.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

BORROWER:

GST, INC.

By:_____
Name: Michael Johnson
Title: Chief Executive Officer

By:_____
Name: Nicholas Rubin
Title: Proposed Chief Restructuring Officer

LENDER:

WINNERS ALLIANCE, INC.

By: _____
Name: Ahmad Nassar
Title: CEO

SCHEDULE 7.01

EXISTING LIENS

[TO COME]

SCHEDULE 7.02

EXISTING INVESTMENTS

[TO COME]

SCHEDULE 7.03

EXISTING INDEBTEDNESS

[TO COME]

EXHIBIT A

BORROWING REQUEST FORM

GST, INC.

BORROWING REQUEST

Date: _____, 202__

Lender: Winners Alliance, Inc.

Dear Mr. Nassar:

This Borrowing Request is furnished pursuant to Section 2.02 of that certain *Senior Secured Superpriority Debtor-in-Possession Credit and Security Agreement* dated as of December ___, 2025 (as amended, restated, amended and restated, modified, supplemented, renewed, or extended from time to time, the "**Agreement**") by and between GST, Inc., as Borrower, and Winners Alliance, Inc., as Lender. Unless otherwise defined herein, capitalized terms used in this Borrowing Request have the meanings ascribed to them in the Agreement.

Borrower represents that as of the date of this Borrowing Request:

A. Borrower has not exceeded the Budget, on a cumulative basis for each line item, for the week ending prior to the date of this Borrowing Request, such that the Ending Cash balance is within **10%** of the Ending Cash balance in the Budget for the week ending prior to the date of this Borrowing Request;

B. All Milestones in Section 6.17 of the Agreement have been met or waived or extended by the Lender; and

C. There is no Default or Event of Default under the Agreement.

Borrower hereby notifies Lender of its request for the following Borrowing:

(1) Date of the Borrowing (must be a Business Day):

_____

(2) Amount of the Requested Borrowing:

$_____

(3) Account to be credited (last 4 digits):

_____

GST, INC.

By: _____

EXHIBIT B

BUDGET

EXHIBIT C

FORM OF INTERIM DIP ORDER

EXHIBIT 2

Budget

(Attached)

GST INC Budget
Confidential and Privileged
DRAFT - 12/16/25

Week Ending:	Week 1 2025 December 12/19/25 Budget	Week 2 2025 December 12/26/25 Budget	Week 3 2026 January 01/02/26 Budget	Week 4 2026 January 01/09/26 Budget	Week 5 2026 January 01/16/26 Budget	Week 6 2026 January 01/23/26 Budget	Week 7 2026 January 01/30/26 Budget	Week 8 2026 February 02/06/26 Budget	Week 9 2026 February 02/13/26 Budget	Week 10 2026 February 02/20/26 Budget	Week 11 2026 February 02/27/26 Budget	Week 12 2026 March 03/06/26 Budget	Week 13 2026 March 03/13/26 Budget	Week 14 2026 March 03/20/26 Budget	Cumulative 12/19/25 to 03/20/26 Budget
Cash Inflows															
Operating Revenues	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Cash Receipts	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**
Operating Expenses															
Payroll	-	60,235	-	60,235	-	60,235	-	60,235	-	60,235	-	60,235	-	60,235	421,643
Employer Tax	-	3,500	-	3,500	-	3,500	-	3,500	-	3,500	-	3,500	-	3,500	24,500
Employer 401k Contribution	-	1,105	-	1,105	-	1,105	-	1,105	-	1,105	-	1,105	-	1,105	7,737
Anthem Medical Insurance	-	-	18,996	-	-	-	-	8,873	-	-	-	8,873	-	-	36,742
PEO Fees	-	-	2,000	-	-	-	-	2,000	-	-	-	2,000	-	-	6,000
D&O Insurance	-	25,723	-	-	-	-	-	-	-	-	-	-	-	-	25,723
Insurance (GL & EL)	-	906	-	-	-	-	-	-	-	-	-	-	-	-	906
G&A	-	2,500	-	-	2,500	-	2,500	-	2,500	-	2,500	-	2,500	-	15,000
AWS Cloud	-	2,000	-	-	2,000	-	-	-	-	2,000	-	-	-	2,000	8,000
Storage	-	-	2,000	-	-	-	-	2,000	-	-	-	2,000	-	-	6,000
Athlete Prizing & Appearance Fees	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Travel & Logistics	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Broadcast Production	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Venue Rental and Live Event Production	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Event Marketing	-	-	-	-	-	-	-	-	-	100,000	-	-	-	100,000	200,000
Fan Experience Costs	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Sponsorship Sales Costs	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Participation Races Costs	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Racer Contract Guarantees	-	-	-	-	-	200,000	-	-	-	200,000	-	-	-	-	400,000
Marketing	-	-	-	100,000	-	-	-	-	-	100,000	-	-	-	-	200,000
Consultants	-	-	-	-	50,000	-	-	-	75,000	-	-	100,000	-	-	225,000
Kekst CNC - PR Firm															
Total Operating Expenses	**-**	**95,969**	**22,996**	**164,840**	**54,500**	**264,840**	**2,500**	**77,713**	**77,500**	**466,840**	**2,500**	**177,713**	**2,500**	**166,840**	**1,577,251**
Operating Cash Flow	**-**	**(95,969)**	**(22,996)**	**(164,840)**	**(54,500)**	**(264,840)**	**(2,500)**	**(77,713)**	**(77,500)**	**(466,840)**	**(2,500)**	**(177,713)**	**(2,500)**	**(166,840)**	**(1,577,251)**
Professional and Restructuring Fees															
Company Professionals															
Debtor's Counsel	-	-	-	120,000	-	-	-	-	-	120,000	-	-	-	120,000	360,000
Force 10 Partners LLC - CRO	-	-	-	50,000	-	-	-	-	-	50,000	-	-	-	50,000	150,000
Force 10 Partners LLC - Support	-	-	-	40,000	-	-	-	-	-	75,000	-	-	-	75,000	190,000
Kekst CNC - PR Firm	-	-	-	50,000	-	-	-	-	-	35,000	-	-	-	35,000	120,000
Stretto	-	-	-	15,000	-	-	-	-	-	15,000	-	-	-	15,000	45,000
Director - J. Rudy Freeman	-	-	25,000	-	-	-	-	25,000	-	-	-	25,000	-	-	75,000
Investment Banker	-	-	-	25,000	-	-	-	-	-	25,000	-	-	-	25,000	75,000
Lenders' Professionals															
Lenders' Counsel	-	-	-	100,000	-	-	-	-	-	100,000	-	-	-	100,000	300,000
Unsecured Credit Committee Professionals															
UCC Counsel	-	-	-	30,000	-	-	-	-	-	30,000	-	-	-	30,000	90,000
UCC FA	-	-	-	10,000	-	-	-	-	-	18,750	-	-	-	18,750	47,500
Ch. 11 Related Expenses															
UST Fees	-	-	-	-	-	-	384	-	-	-	-	-	-	-	384
Professional and Restructuring Fees	**-**	**-**	**25,000**	**440,000**	**-**	**-**	**384**	**25,000**	**-**	**468,750**	**-**	**25,000**	**-**	**468,750**	**1,452,884**
Net Cash Flow	**-**	**(95,969)**	**(47,996)**	**(604,840)**	**(54,500)**	**(264,840)**	**(2,884)**	**(102,713)**	**(77,500)**	**(935,590)**	**(2,500)**	**(202,713)**	**(2,500)**	**(635,590)**	**(3,030,135)**
Beginning Cash	**143,126**	**143,126**	**47,157**	**999,161**	**394,321**	**339,821**	**74,981**	**72,097**	**219,384**	**141,884**	**206,294**	**203,794**	**1,081**	**648,581**	**143,126**
Proceeds from DIP Loan Draws	-	-	1,000,000	-	-	-	-	250,000	-	1,000,000	-	-	650,000	-	2,900,000
Ending Cash	**143,126**	**47,157**	**999,161**	**394,321**	**339,821**	**74,981**	**72,097**	**219,384**	**141,884**	**206,294**	**203,794**	**1,081**	**648,581**	**12,991**	**12,991**