United States Bankruptcy Court
Southern District of Texas
ENTERED
March 28, 2025
Nathan Ochsner, Clerk

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

In re	:	Chapter 11
Cutera, Inc, *et al.*,	:	Case No. 25-90088 (ARP)
Debtors.[1]	:	(Jointly Administered)

FINAL ORDER (I) AUTHORIZING THE DEBTORS TO OBTAIN POSTPETITION SENIOR SECURED SUPERPRIORITY FINANCING, (II) GRANTING LIENS AND PROVIDING CLAIMS WITH SUPERPRIORITY ADMINISTRATIVE EXPENSES STATUS, AND (III) GRANTING RELATED RELIEF
[Relates to Docket No. 19, 83]

Upon the motion (the "Motion") of the above referenced debtors and debtors in possession (collectively, the "Debtors") in the above-referenced chapter 11 cases (the "Chapter 11 Cases"), for entry of an interim order (the "Interim Order") and a final order (this "Final Order" and, together with the Interim Order, the "DIP Orders"), pursuant to sections 105, 361, 362, 363, 364, 503, and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq*. (as amended, the "Bankruptcy Code"), Rules 2002, 4001, 6003, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (as amended, the "Bankruptcy Rules"), Rules 2002-1, 4001-1(b), 4002-1(i), and 9013-1 of the Bankruptcy Local Rules of the United States Bankruptcy Court for the Southern District of Texas (the "Bankruptcy Local Rules"), and the Procedures for Complex Cases in the Southern District of Texas (the ("Complex Case Procedures"), seeking, *inter alia*:

(i) authority for (a) the Debtors, including Cutera, Inc. (the "Borrower"), to obtain up to $25,000,000.00 in principal amount of senior secured postpetition financing on a superpriority basis in respect of a new money delayed draw term

[1] The Debtors in these Chapter 11 cases, together with the last four digits of each Debtor's federal tax identification number, are as follows: Cutera, Inc. (2262) and Crystal Sub, LLC (6339). The Debtors' service address is 3240 Bayshore Boulevard, Brisbane, CA 94005-1021.

loan facility (the "DIP Facility," and loans made pursuant to the DIP Facility, the "DIP Loans," and the commitments to make DIP Loans thereunder, the "DIP Commitments"), on the terms and conditions set forth in the Interim Order, this Final Order and that certain Superpriority Senior Secured Debtor-in-Possession Credit Agreement (as amended, restated, amended and restated, modified, waived, or supplemented from time to time, the "DIP Credit Agreement," substantially in the form attached to the Interim Order as Annex 1 and together with the Interim Order, this Final Order, and all appendices, exhibits or schedules hereto and to the DIP Credit Agreement, including, without limitation, the Approved Budget (as defined below), and all other agreements, instruments, pledge agreements, guarantees, fee letters, control agreements, and other ancillary documents related thereto (including any security agreements, intellectual property security agreements, mortgages, or notes) as the same may be amended, restated, supplemented, waived or modified from time to time in accordance with the terms hereof and thereof, collectively, the "DIP Loan Documents"),[2] among the Borrower, the guarantor identified on the signature pages to the DIP Loan Documents (the "Guarantor"), the other lenders identified on the DIP Credit Agreement (the "DIP Lenders") and Wilmington Savings Fund Society, FSB, as the DIP Agent (the "DIP Agent" and, together with the DIP Lenders, the "DIP Secured Parties"), and (b) the Guarantor to guaranty the Borrower's obligations in respect of the DIP Loans and all other obligations and indebtedness of the Borrower under or arising in connection with the DIP Loan Documents;

(ii) authority for the Debtors to execute and deliver the DIP Loan Documents and to perform such other acts as may be necessary or desirable in connection with the DIP Loan Documents;

(iii) authority for the Debtors to borrow the remaining $10 million of DIP Commitments, which shall be available and funded following entry of this Final Order (in accordance with and subject to the terms and conditions set forth in the Interim Order, this Final Order and the other DIP Loan Documents);

(iv) authority for the Debtors to, subject to the Carve-Out (defined below) and Permitted Prior Senior Liens,[3] grant security interests, liens, and superpriority claims (including a superpriority administrative claim pursuant to sections 364(c)(1), 503(b) and 507(b) of the Bankruptcy Code, and liens pursuant to sections 364(c)(2) and 364(c)(3) of the Bankruptcy Code) to the DIP Agent, on

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[2] Capitalized terms not otherwise defined herein shall have the meaning ascribed to those terms in the Motion and DIP Loan Documents, as applicable.

[3] "Permitted Prior Senior Liens" means liens on property of the Debtors (including the proceeds of such property) that are in existence on the Petition Date but only, if applicable, (A) to the extent such liens on any property are valid, perfected, and not avoidable, or (B) to the extent such liens constitute valid, non-avoidable liens that are perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code. Moreover, nothing shall prejudice the rights of any party-in-interest, including, but not limited to the Debtors, the DIP Secured Parties, or the Committee, if any, to challenge the validity, priority, enforceability, seniority, avoidability, perfection, or extent of any alleged Permitted Prior Senior Liens.

behalf of itself and the other DIP Secured Parties, to secure all obligations of the Debtors under and with respect to the DIP Facility (collectively, the "DIP Obligations"), including, on the proceeds and property recovered in respect of the Debtors' claims and causes of action (but not on the actual claims and causes of action) arising under Chapter 5 of the Bankruptcy Code, including sections 544, 545, 547, 548, and 550 or any other similar state or federal law (collectively, the "Avoidance Action Proceeds");

(v) authority for the Debtors to pay the principal, interest, premiums, fees, expenses, and other amounts payable under the DIP Loan Documents as such become earned, due and payable, including the Upfront Payment, the Repayment Premium, audit fees, appraisal fees, valuation fees, liquidator fees, structuring fees, administrative agent's and collateral agent's fees, the reasonable and documented fees and disbursements of the DIP Agent's and the other DIP Secured Parties' attorneys, advisors, accountants, and other professionals, consultants, and other representatives, all to the extent provided in, and in accordance with, the Interim Order, this Final Order and the other DIP Loan Documents;

(vi) authority for the Debtors to waive any right to surcharge any DIP Collateral pursuant to sections 105(a) and 506(c) of the Bankruptcy Code or otherwise (subject to the payment in full in cash of the Carve-Out), and the equitable doctrine of marshaling and other similar doctrines;

(vii) 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 this Final Order;

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

(ix) granting related relief;

and the interim hearing to consider the relief sought in the Motion and the entry of the proposed Interim Order (the "Interim Hearing") having been held by this Court on March 6, 2025; and the Interim Order having been entered on March 6, 2025; and the final hearing to consider entry of the Final Order granting the relief requested in the Motion (the "Final Hearing") having been held by this Court on April 3, 2025; and due and sufficient notice of the Motion and the relief sought at the Interim Hearing and the Final Hearing having been given under the particular circumstances

by the Debtors pursuant to the Bankruptcy Rules and Bankruptcy Local Rules; this Court having considered the Motion, the exhibits attached thereto, the Milne Declaration, the Braun Declaration, the First Day Declaration (collectively, the "Declarations") and all other pleadings related thereto, including the record made by the Debtors at the Interim Hearing and the Final Hearing; and all objections, if any, to the final relief requested in the Motion having been withdrawn, resolved, or overruled by the Court; and it appearing that approval of the final relief requested in the Motion is fair and reasonable and in the best interests of the Debtors, their estates, and all parties-in-interest, and is essential for the continued operation of the Debtors' businesses and the preservation of the value of the Debtors' assets; and it appearing that the Debtors' entry into the DIP Loan Documents is a sound and prudent exercise of the Debtors' business judgment; and after due deliberation and consideration, and good and sufficient cause appearing therefor:

THE COURT HEREBY FINDS AS FOLLOWS:

A. Petition Date. On March 5, 2025 (the "Petition Date"), each Debtor filed with this Court a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of Texas, Houston Division (the "Court").

B. Debtors in Possession. The Debtors are continuing to operate their respective businesses and manage their respective properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner, or statutory committee has been appointed in these Chapter 11 Cases.

C. Committee Formation. No official committee of unsecured creditors (the "Committee"), as provided for under section 1102 of the Bankruptcy Code, has been appointed in the Chapter 11 Cases.

D. Notice. Proper, timely, sufficient and appropriate notice of the Motion, the Interim Hearing and the Final Hearing has been provided in accordance with the Bankruptcy Code, the Bankruptcy Rules, and the Bankruptcy Local Rules, and no other or further notice of the Motion with respect to the relief requested at the Interim Hearing or the Final Hearing or the entry of the Interim Order or this Final Order shall be required.

E. Cash Collateral. As of the date of entry of the Interim Order, all of the Debtors' cash, including any cash in their deposit accounts, wherever located, whether as proceeds of the DIP Facility or DIP Collateral (defined below), constitutes cash collateral, as such term is defined in section 363(a) of the Bankruptcy Code ("Cash Collateral"), of the DIP Secured Parties.

F. Findings Regarding Postpetition Financing.

(a) The Debtors need to obtain postpetition financing under the DIP Facility to, among other things, fund working capital requirements, costs, and expenses of administration of the Chapter 11 Cases (including for funding the Carve-Out), and fees and expenses relating to the DIP Facility during the pendency of the Chapter 11 Cases. The Debtors do not have sufficient available sources of working capital and financing to operate their businesses, maintain their properties in the ordinary course of business, and preserve the going-concern value of their estates, without access to the DIP Facility.

(b) The DIP Facility is the best source of debtor-in-possession financing available to the Debtors at this time. Given their current financial condition, the Debtors have been and continue to be unable to obtain financing from sources other than the DIP Lenders on terms more favorable than the DIP Facility. The Debtors would be unable to obtain (i) adequate unsecured credit allowable either (a) under sections 364(b) and 503(b)(1) of the Bankruptcy Code, or (b) under section 364(c)(1) of the Bankruptcy Code, in each case, from sources other than the

DIP Secured Parties on terms more favorable than the terms of the DIP Facility. The only viable source of credit available to the Debtors is the DIP Facility together with its related fees and expenses. The Debtors require additional financing under the DIP Facility under the terms of the Interim Order and this Final Order to satisfy their postpetition liquidity needs.

(c) The DIP Lenders have indicated a willingness to provide the Debtors with the DIP Facility, but solely on the terms and conditions set forth in the Interim Order, this Final Order and in the DIP Loan Documents. Accordingly, after considering all of their practical alternatives, the Debtors have concluded, in an exercise of their sound business judgment, that the financing to be provided by the DIP Lenders pursuant to the terms of the Interim Order, this Final Order and the DIP Loan Documents represents the best financing currently available to the Debtors.

(d) The security interests and liens granted pursuant to the Interim Order and this Final Order to the DIP Lenders are appropriate under section 364(c) of the Bankruptcy Code because, among other things, such security interests and liens do not impair the interests of any holder of a valid, perfected, prepetition security interest or lien in the property of the Debtors' estates.

(e) Entry of this Final Order is in the best interests of the Debtors and their estates and creditors. The terms of the DIP Loan Documents are fair and reasonable under the circumstances, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties, and provide the Debtors reasonably equivalent value and fair consideration.

G. Sections 506(c) and Marshaling. In light of, among other things (i) the DIP Agent's and the DIP Secured Parties' agreement that their liens and superpriority claims shall be subject to the Carve-Out; and (ii) the DIP Agent's and the other DIP Secured Parties' agreement

to the payment (in a manner consistent with the Approved Budget and subject to the terms and conditions of the Interim Order, this Final Order and the DIP Loan Documents) of certain expenses of administration of these Chapter 11 Cases, the DIP Agent and the other DIP Secured Parties seek a waiver of the provisions of section 506(c) of the Bankruptcy Code and the equitable doctrine of marshaling and other similar doctrines.

H. Good Faith. Based upon the pleadings and proceedings of record in the Chapter 11 Cases, (a) the terms and conditions of the DIP Facility have been negotiated in good faith and at arm's length among the Debtors and the DIP Secured Parties with the assistance and counsel of their respective advisors; (b) any credit to be extended, loans to be made, and other financial accommodations to be extended to the Debtors by the DIP Secured Parties, including, without limitation, pursuant to the Interim Order and this Final Order, have been allowed, advanced, extended, issued, or made, as the case may be, in "good faith" within the meaning of section 364(e) of the Bankruptcy Code by the DIP Secured Parties in express reliance upon the protections offered by section 364(e) of the Bankruptcy Code; and (c) the DIP Facility, the DIP Liens (as defined below), and the DIP Superpriority Claims (as defined below), shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that the Interim Order, this Final Order or any provision hereof or thereof is reversed or modified on appeal.

I. Consents. The Debtors acknowledge, represent, stipulate, and agree that subject to the entry of this Final Order, no consent or authorization of, filing with, or notice to, any Governmental Authority is required to be obtained or made by any Loan Party for the extensions of credit hereunder or such Loan Party's execution and delivery of, or performance of its obligations under, or validity or enforceability of, the DIP Credit Agreement or any of the other DIP Loan Documents to which it is party, as against or with respect to such Loan Party, except (i)

consents, authorizations, filings and notices which have been obtained or made and are in full force and effect, (ii) consents, authorizations, filings and notices the failure of which to obtain would reasonably be expected to have a Material Adverse Effect and (iii) the filings referred to in the DIP Credit Agreement.

J. Based on the foregoing, and upon the record made before this Court at the Interim Hearing and the Final Hearing, and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:[4]

1. Jurisdiction and Venue. Consideration of the Motion constitutes a "core proceeding" as defined in 28 U.S.C. § 157(b)(2). This Court has jurisdiction over this proceeding and the parties and property affected hereby pursuant to 28 U.S.C. § 1334. The Court may enter a final order approving the relief sought in the Motion consistent with Article III of the United States Constitution. Venue for the Chapter 11 Cases and the proceedings on the Motion is proper in this district pursuant to 28 U.S.C. § 1408. The predicates for the relief sought herein are sections 105, 361, 362, 363, 364, 503 and 507 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001, 6003, 6004 and 9014, and Bankruptcy Local Rules 2002-1, 4001-1(b), and 9013-1.

2. Notice. Notice of the Motion and the relief requested thereby and granted in this Final Order has been provided in accordance with the Bankruptcy Code, Bankruptcy Rules, Bankruptcy Local Rules, and Complex Case Procedures, and no further notice was required under the circumstances. This Court concludes that the form, scope, and timing of the foregoing notice complies with the Bankruptcy Code, the Bankruptcy Rules, the Bankruptcy Local Rules, and any other applicable law, and, under the circumstances, no further notice relating to the Interim Hearing, the Final Hearing or Motion is necessary or required.

[4] Pursuant to Bankruptcy Rule 7052, findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact.

3. Approved Budget.

(a) Subject to and in accordance with the terms of the DIP Credit Agreement and the other DIP Loan Documents, the Borrower shall from time to time prepare and provide to the DIP Agent a rolling 13-week consolidated weekly operating budget of the Debtors setting forth projected operating receipts, vendor disbursements, net operating cash flow and liquidity on a weekly basis, substantially in the form of the initial budget annexed to the Interim Order as Annex 2 (the initial budget and each subsequent budget delivered and approved in accordance with the DIP Credit Agreement, an "Approved Budget"). For the avoidance of doubt, until an updated Approved Budget is approved by the Required Lenders as provided in the DIP Credit Agreement, the existing Approved Budget shall remain in effect. The Borrower may use the proceeds of the DIP Facility and DIP Collateral for the purposes set forth in and up to (but not in excess of) the amounts set forth in the Approved Budget, together with the Permitted Variance (as defined in the DIP Credit Agreement) subject to the terms and conditions set forth in the DIP Credit Agreement, the other DIP Loan Documents, the Interim Order, and this Final Order.

(b) The Approved Budget may be updated, amended, restated, amended and restated, supplemented, extended, or otherwise modified from time to time in any manner as to which Debtors and the Required Lenders mutually agree in writing (email being sufficient) without further order of this Court, including through the procedures set forth in the DIP Credit Agreement.

4. Borrowing Authorization.

(a) The DIP Facility. The DIP Facility is hereby approved on a final basis as set forth herein. The Debtors' prior execution and delivery of the DIP Loan Documents and their continued performance thereunder, including the transactions contemplated in the Interim Order, this Final Order and the DIP Loan Documents, and the Debtors' execution and delivery of such

additional documents, instruments, and agreements as may be reasonably required by the DIP Agent (acting at the direction of the Required Lenders) to implement the terms or effectuate the purposes of the Interim Order and this Final Order, and to receive financial accommodations and borrow under the DIP Facility subject to the terms set forth herein and in the DIP Credit Agreement are in each case approved on a final basis. The Debtors shall pay, in accordance with the Interim Order, this Final Order and the DIP Loan Documents, the principal, interest, premiums, fees, payments, expenses, and other amounts described in the DIP Credit Agreement and the other DIP Loan Documents as such amounts become due and payable, without the need to obtain further Court approval, and to take any other actions that may be necessary or appropriate, all as provided in the Interim Order, this Final Order or the DIP Loan Documents. The DIP Credit Agreement and the other DIP Loan Documents shall constitute and evidence the validity and binding effect of the DIP Obligations, which are hereby deemed to be the legal, valid, and binding obligations of the Debtors and each of their respective estates, enforceable in accordance with the terms hereof and the DIP Loan Documents against each such Debtor, its respective estate, and any successor of each such Debtor or any representative of the estates (including a trustee, responsible person, or examiner with expanded powers appointed in the Chapter 11 Cases or any case under chapter 7 of the Bankruptcy Code upon the conversion of any of the Chapter 11 Cases, or in any other proceedings superseding or related to any of the foregoing (collectively, the "Successor Cases")). Upon entry of the Interim Order and hereby ratified by this Final 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 any of the Debtors to the DIP Agent or any of the DIP Secured Parties, in each case, under the DIP Loan Documents, the Interim Order or this Final Order or secured by the DIP Liens (as defined below), including, without limitation, all principal,

accrued and unpaid interest, costs, fees, expenses, and other amounts owing under the DIP Loan Documents. The Debtors shall be jointly and severally liable for the DIP Obligations. No obligation, payment, transfer, or grant of collateral security hereunder or under the DIP Loan Documents (including any DIP Obligation or DIP Liens) shall be stayed, restrained, voidable, avoidable, or recoverable under the Bankruptcy Code or under any applicable law (including, without limitation, under chapter 5 of the Bankruptcy Code, section 724(a) of the Bankruptcy Code, or any other provision with respect to avoidance actions under the Bankruptcy Code or applicable state or foreign law equivalents) or subject to any avoidance, reduction, setoff, recoupment, offset, recharacterization, subordination (whether equitable, contractual, or otherwise, but other than to the Carve-Out), counterclaim, cross-claim, defense, or any other challenge under the Bankruptcy Code or any applicable law or regulation by any person or entity.

(b) Authorization to Borrow. Until the DIP Termination Date (as defined below), subject to the terms, conditions, and limitations on availability set forth in the DIP Loan Documents, the Interim Order and this Final Order, the Debtors are hereby authorized on a final basis to (x) borrow under the DIP Facility and (y) use Cash Collateral (including any proceeds of the DIP Facility) of the DIP Secured Parties in accordance with the terms of the Interim Order and this Final Order.

(c) Use of Proceeds. Subject to and in accordance with the Approved Budget, the Debtors are authorized to utilize the proceeds of the DIP Facility to, among other things, (i) pay general corporate or working capital requirements, (ii) pay the costs and expenses of administration of the Chapter 11 Cases, including the fees and expenses of professionals associated with the Chapter 11 Cases, and (iii) pay fees and expenses relating to the DIP Facility during the pendency of the Chapter 11 Cases, including the Upfront Payment and Repayment Premium;

provided that the Approved Budget shall not permit or be deemed to limit the Carve-Out (defined below) or the estate professional fees and expenses.

5. Due Authorization. The Debtors acknowledge, represent, stipulate, and agree, and this Court hereby finds and orders, that:

(a) in entering into the DIP Loan Documents, and as consideration therefor and for the other accommodations and agreements of the DIP Secured Parties reflected herein and in the DIP Loan Documents, until such time as all of the DIP Obligations are indefeasibly paid in full in cash (excluding contingent indemnification obligations for which no claim has been asserted) or as otherwise provided in the DIP Credit Agreement[5] and the termination of the DIP Loan Documents in accordance with their terms and all DIP Commitments, with such payment being without prejudice to any terms or provisions contained in the DIP Facility which survive such discharge by their terms (the "DIP Repayment"), it shall be an Event of Default if the Debtors in any way prime or seek to prime the DIP Obligations, the DIP Liens, or the DIP Superpriority Claims provided to the DIP Secured Parties under the Interim Order or this Final Order by offering a subsequent lender or a party in interest a superior or *pari passu* lien or administrative expense pursuant to sections 105(a), 326, 328, 330, 331, 364(c), 364(d), 503, 506, 507, 546(c), 552(b), 726 (other than expenses of a trustee under section 726(b)) or 1114 of the Bankruptcy Code) or otherwise or acquiesce thereto except as expressly authorized in the DIP Credit Agreement; provided, that the DIP Liens and the DIP Superpriority Claims shall be subordinate and subject to the Carve-Out (defined below) in all respects;

[5] For the avoidance of doubt, the DIP Credit Agreement provides that, upon the satisfaction of certain conditions, the DIP Obligations shall be repaid through the issuance of term loans under the Exit Facility (as defined in the DIP Credit Agreement) on a dollar-for-dollar basis, subject to the terms and conditions set forth in, and otherwise in accordance with, the Restructuring Support Agreement and an Acceptable Plan of Reorganization; provided that, for the avoidance of doubt, the outstanding amount of interest on the Plan Effective Date shall be paid in full in cash on such date.

(b) the Guarantor is liable for, and hereby absolutely and unconditionally guarantees to the DIP Secured Parties the full and prompt payment when due (whether at maturity or earlier, by reason of acceleration or otherwise, and at all times thereafter) and performance of, all DIP Obligations owed or hereafter owing to the DIP Secured Parties by the Borrower. The Guarantor agrees that its guarantee obligation hereunder shall be, and is, absolute and unconditional for all purposes in these Chapter 11 Cases and any Successor Cases and is a present and continuing guaranty of payment and performance and not of collection. It shall constitute an Event of Default if the Guarantor's obligations under the Interim Order, this Final Order or any DIP Loan Document are discharged prior to the DIP Repayment.

6. DIP Interest and Payment of Expenses.

(a) The DIP Obligations shall bear interest at the applicable rate (including any applicable default rate upon the occurrence and during the continuance of an Event of Default) as and to the extent set forth in the DIP Loan Documents, and be due and payable in accordance with the Interim Order, this Final Order and the DIP Loan Documents, in each case without further notice, motion or application to, order of, or hearing before this Court.

(b) The Debtors shall pay the reasonable and documented prepetition and postpetition fees and expenses of the attorneys and advisors as provided for herein or in the DIP Credit Agreement or the other DIP Loan Documents limited to (i)(A) Paul, Weiss, Rifkind, Wharton & Garrison LLP, as co-counsel to the DIP Lenders, (B) Porter Hedges LLP, as co-counsel to the DIP Lenders, (C) Centerview Partners, LLC, as financial advisor to the DIP Lenders, and (D) any other advisors as shall be deemed necessary by the DIP Lenders (the "Ad Hoc Committee Advisors") and (ii)(A) McDermott Will & Emery LLP, as counsel for the DIP Agent, and (B) any other advisors as shall be deemed necessary by the DIP Agent with the consent of the Required

Lenders. None of the Ad Hoc Committee Advisors or any legal or financial advisors for the DIP Agent (including any successor agent) shall be required to file an application seeking compensation for services or reimbursement of expenses incurred following entry of the Interim Order with this Court. Each Ad Hoc Committee Advisor and legal or financial advisor for the DIP Agent seeking compensation for services or reimbursement of expenses under the DIP Credit Agreement or the other DIP Loan Documents, the Interim Order, or this Final Order shall transmit a summary invoice of its reasonable fees and out-of-pocket expenses (which shall include a description of the nature of the matters for which services were performed but shall not be required to contain time entries, and which may be reasonably redacted or modified to protect from disclosure any confidential information or information otherwise subject to a protective privilege such as attorney-client privilege or attorney work-product privilege (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)) by e-mail to counsel to the Debtors, the U.S. Trustee, and counsel to the Committee, if any (together, the "Review Parties"); provided that, the Review Parties may reasonably request additional detail regarding the services rendered and expenses incurred by such professionals. The Review Parties, shall have seven (7) business days from receipt of a statement or invoice (the "Review Period") in which to raise an objection to the payment of any fees and expenses of such attorneys and advisors (the "Disputed Fees"), setting forth the specific objections to the Disputed Fees. Upon the expiration of the Review Period, the Debtors shall promptly pay in full in cash all such fees and expenses other than the Disputed Fees. To the extent any objection has been interposed within the Review Period and cannot be consensually resolved, the dispute will be scheduled for adjudication at the next regularly-scheduled omnibus hearing in the Chapter 11 Cases, and the Debtors shall pay any and all portion of the Disputed Fees whose payment has

been approved by the Court at such hearing within three (3) business days of such approval. Notwithstanding the foregoing, the Debtors shall pay on or about the Closing Date all reasonable and documented fees, costs, and out-of-pocket expenses of the Ad Hoc Committee Advisors and any legal or financial advisors for the DIP Agent (including any successor agent), in accordance with, and subject to the DIP Credit Agreement, incurred on or prior to such date without the need for any professional to first deliver a copy of its invoice as provided for herein (other than to the Debtors). For the avoidance of doubt, the Debtors shall not have an obligation to pay such reasonable and documented fees, costs, and out-of-pocket expenses of the Ad Hoc Committee Advisors and any legal or financial advisors for the DIP Agent until invoices are provided to the Debtors.

7. Amendments. The DIP Loan Documents and the Approved Budget may from time to time be amended, restated, amended and restated, modified, waived, or supplemented by the parties thereto in accordance with the terms thereof, and each of the Debtors is expressly authorized and empowered to enter into and implement such amendments, restatements, amendment and restatements, modifications, waivers, or supplements from time to time in accordance with the terms of the DIP Loan Documents, without further order of this Court if the amendment, restatement, amendment and restatement, modification, waiver or supplement is not material or is necessary to conform the terms of the DIP Loan Documents or the Approved Budget to the Interim Order or this Final Order. Any material amendment, restatement, amendment and restatement, modification, waiver, or supplement to the DIP Loan Documents (a "Material Amendment") shall be filed with the Court no later than three (3) business days prior to the anticipated date of effectiveness of any such Material Amendment, and if no objection is made by the U.S. Trustee and Committee, if any, within such three (3) business day period, then, without further application

to or order of the Court, the Material Amendment shall automatically be deemed approved and effective; provided that if an objection is made within such three (3) business day period, then such Material Amendment shall be subject to a hearing and approval of the Court; provided, further that, the foregoing shall be without prejudice to the Debtors' right to immediately seek approval from the Court of a Material Amendment on an expedited basis. For the avoidance of doubt, the extension of a Milestone shall not constitute a material amendment, restatement, amendment and restatement, modification, waiver, or supplement to the DIP Loan Documents.

8. DIP Collateral. As security for the DIP Obligations, effective immediately upon entry of the Interim Order and hereby ratified by this Final Order, pursuant to sections 361, 362, 364(c)(2), and 364(c)(3) of the Bankruptcy Code, and subject in all respects to the Carve-Out, the DIP Agent, for the benefit of itself and the other DIP Secured Parties, is hereby granted valid, binding, continuing, enforceable, non-avoidable and automatically perfected liens upon and security interests in all real and personal property, whether now existing or hereafter arising and wherever located, tangible or intangible, of each of the Debtors, including, inter alia, (i) all of those items and types of collateral in which security interests may be created under Article 9 of the Uniform Commercial Code and, to the extent not expressly prohibited by law or contract, all of those items and types of collateral not governed by Article 9 of the Uniform Commercial Code, including any and all cash and cash equivalents, deposit accounts, securities accounts, other receivables and rights to the payment of money (including, without limitation, tax refunds and other extraordinary payments), chattel paper, contract rights, inventory (wherever located), instruments (including, without limitation, promissory notes), documents, securities (whether marketable or not) and investment property (including, without limitation, all of the issued and outstanding capital stock of each of the Debtors' subsidiaries, including foreign subsidiaries), all

securities accounts and security entitlements related thereto, and financial assets carried therein, hedge agreements, furniture, fixtures, equipment (including documents of title), goods, vehicles, franchise rights, trade names, trademarks, service marks, copyrights, patents, pending patents, license rights, intellectual property, general intangibles (including, for the avoidance of doubt, payment intangibles and hedging agreements), supporting obligations, guarantees, letter of credit rights, commercial tort claims, causes of action, and all substitutions, indemnification rights, all present and future intercompany debt, books, records, ledger cards, files, correspondence, customer lists, blueprints, technical specifications, manuals, computer software, computer printouts, tapes, disks, and other electronic storage media and related data processing software related to the foregoing, licenses issued by any federal or state regulatory authority, any leasehold or other real property interests (including, for the avoidance of doubt, all owned real property interests and all proceeds of leased real property; provided that liens shall not attach to or encumber the Debtors' non-residential real property leases (or leasehold interest created thereby) that restrict or prohibit the grant of such liens or security deposits held pursuant to such leases, but such liens shall attach solely to the proceeds of such leases, as applicable), and proceeds, accessions, products, rents, and profits of the foregoing, wherever located, including insurance proceeds and other proceeds; (ii) actions brought under section 549 of the Bankruptcy Code to recover any postpetition transfer of DIP Collateral; (iii) the Avoidance Action Proceeds (but not the Avoidance Actions); (iv) the proceeds of any exercise of the Debtors' rights under sections 506(c) or 550 of the Bankruptcy Code (the "Recovery Actions"), provided that no liens shall attach to the Recovery Actions; (v) all assets of the Debtors that are not otherwise subject to the Permitted Prior Senior Liens; (vi) any assets of the Debtors that are subject to Permitted Prior Senior Liens (the "Encumbered Collateral"); (vii) any and all other collateral of any nature or form; and (viii) the

products, rents, offspring, profits, and proceeds of any of the foregoing (collectively, (i)-(viii), the "DIP Collateral").

9. Superpriority Claims and DIP Liens. In respect of the DIP Obligations under the DIP Credit Agreement, the other DIP Loan Documents, the Interim Order, and this Final Order, the DIP Agent, for its own behalf and on behalf of the other DIP Secured Parties, is granted the following with respect to the Debtors, their estates and all DIP Collateral:

(a) a superpriority administrative expense claim pursuant to section 364(c)(1) of the Bankruptcy Code with priority over all other administrative expenses pursuant to the Bankruptcy Code (including the kinds specified in or arising or ordered pursuant to sections 105(a), 326, 328, 330, 331, 361, 362, 363, 364, 503(a), 503(b), 506(c), 507, 546, 552(b), 726, 1113, and 1114 of the Bankruptcy Code or otherwise), which superpriority expenses of the DIP Agent (on behalf of itself and the other DIP Secured Parties) shall be subordinate in all respects to the Carve-Out (the "DIP Superpriority Claims"); provided that pursuant to applicable bankruptcy law, the granting of such DIP Superpriority Claims does not affect the status and superior priority of any liens, including the liens of the DIP Agent (for itself and on behalf of the other DIP Secured Parties) and the holder of any of the Permitted Prior Senior Liens. The DIP Superpriority Claims shall be payable from the Avoidance Action Proceeds;

(b) a first priority security interest and lien pursuant to section 364(c)(2) of the Bankruptcy Code on all DIP Collateral of the Debtors other than Encumbered Collateral (the "Section 364(c)(2) Liens"), including Avoidance Action Proceeds and proceeds of Recovery Actions, which Section 364(c)(2) Liens shall be subject only to the Carve-Out; and

(c) a junior security interest and lien pursuant to section 364(c)(3) of the Bankruptcy Code on all DIP Collateral constituting Encumbered Collateral (collectively, the

"Section 364(c)(3) Liens" and, together with the Section 364(c)(2) Liens, the "DIP Liens"), which Section 364(c)(3) Liens shall be subject to the Permitted Prior Senior Liens and the Carve-Out.

(d) Except for the Carve-Out and the Permitted Prior Senior Liens, and as otherwise provided in this Paragraph 9, none of the DIP Obligations, DIP Liens, or DIP Superpriority Claims shall be (i) made *pari passu* with or subject or subordinate to, (A) any lien or security interest that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code, (B) unless otherwise provided for in the DIP Loan Documents, the Interim Order or this Final Order, any liens or security interests arising after the Petition Date, including any liens or security interests granted in favor of any federal, state, municipal, or other governmental unit (including any regulatory body), commission, board, or court for any liability of the Debtors, (C) any intercompany or affiliate claims, whether secured or unsecured, or liens of the Debtors or any domestic or foreign subsidiary or affiliate of any Debtor, (D) any orders of attachment or judicial liens, or (E) any other lien or security interest that is heretofore or hereinafter granted in the Chapter 11 Cases or any Successor Cases, including under sections 361, 363 or 364 of the Bankruptcy Code, (ii) avoided and preserved for the benefit of the Debtors' estates under section 551 of the Bankruptcy Code, or (iii) be subject to sections 510, 549, or 550 of the Bankruptcy Code. The DIP Liens shall be valid and enforceable against any trustee appointed in the Chapter 11 Cases or any Successor Cases, upon the conversion of any of the Chapter 11 Cases to Successor Cases, and/or upon the dismissal or conversion of any of the Chapter 11 Cases or Successor Cases.

(e) Nothing herein waives or modifies any right or remedy of the DIP Lenders to challenge the validity, priority, extent, enforceability, or amount of any Permitted Prior Senior Lien.

10. Carve-Out.

(a) Generally. The Carve-Out shall be senior to all claims and liens over all assets of the Debtors, including for the avoidance of doubt DIP Collateral. The DIP Liens and the DIP Superpriority Claims, shall in all respects be subject to the payment of, without duplication, and subordinate to, the following fees and expenses (the "Carve-Out") from, at the Debtors' discretion, any Cash Collateral, loan proceeds of the DIP Facility or proceeds resulting from the liquidation of DIP Collateral:

(i) whether allowed by the Court at any time and without regard to whether such fees and expenses are provided for in the Budget, including any interim approval as set forth in any procedures approved by the Court, the unpaid fee and expense claims ("Professional Fees") of the respective professionals retained by the Debtors and the Committee, if any, pursuant to sections 327, 328, 363, or 1103 of the Bankruptcy Code (the "Retained Professionals"), including any restructuring fee, sale fee, transaction fee or other success fee payable to the Debtors' investment banker ("Success Fees"), which were incurred (A) before the Carve-Out Trigger Date (defined below), and (B) on and after the Carve-Out Trigger Date in an aggregate amount not exceeding $500,000 (the foregoing clause (B) being the "Post Carve-Out Cap");

(ii) the unpaid fees payable to the U.S. Trustee pursuant to section 1930 of Title 28 of the United States Code plus statutory interest, if any, imposed under 31 U.S.C. § 3717 and the Clerk of the Court. There is no limitation on the obligations of the Debtors and their estates with respect to unpaid fees payable to the U.S. Trustee and Clerk of the Court pursuant to section 1930 of Title 28 of the United States Code; and

(iii) all reasonable and documented fees and expenses incurred by a

trustee under section 726(b) of the Bankruptcy Code and allowed by the Court in an amount not to exceed $100,000.

(b) Carve-Out Trigger Date. As used herein, the term "Carve-Out Trigger Date" means the business day following the date upon which the DIP Agent (at the direction of the Required Lenders) provides written notice by email (or other electronic means) (the "Carve-Out Trigger Notice") to the Debtors' lead restructuring counsel (Ropes & Gray LLP and Hunton Andrews Kurth LLP), counsel to the DIP Lenders (Paul, Weiss, Rifkind, Wharton & Garrison LLP and Porter Hedges LLP), the U.S. Trustee, and counsel to the Committee, if any (the "Carve Out Notice Parties"), which notice may be delivered following the occurrence and during the continuation of an Event of Default and acceleration of the DIP Obligations under the DIP Facility, that the Carve-Out is invoked and the Post-Carve-Out Cap is imposed.

(c) [Reserved].

(d) Professional Fees Account. On Tuesday of each week starting with the first full calendar week following the Petition Date, each Retained Professional shall deliver to the Debtors and the Ad Hoc Committee Advisors a statement (each, a "Weekly Statement") setting forth a good-faith estimate (the "Estimated Fees and Expenses") of the amount of fees and expenses incurred during the preceding week by such professional (through Saturday of such week, the "Calculation Date"); provided, that within two (2) business days after the Carve-Out Trigger Date, each Retained Professional shall deliver one additional final statement setting forth a good-faith estimate of the amount of fees and expenses incurred during the period commencing on the calendar day after the most recent Calculation Date for which a Weekly Statement has been delivered and concluding on the Carve-Out Trigger Date. The Debtors shall, on a weekly basis, transfer cash proceeds from cash on hand in an amount equal to the Estimated Fees and Expenses

of each Retained Professional (or if a Retained Professional has not delivered a Weekly Statement, the fees for such Retained Professional in the Approved Budget) into a segregated account not subject to the control of the DIP Agent, any DIP Secured Party, or any other secured party and shall not be subject to any cash sweep and/or foreclosure provisions in the DIP Loan Documents (the "Professional Fees Account"). At any time, if the Debtors in good faith believe a restructuring, sale, financing, or other success fee has been earned by a Retained Professional, the Debtors shall deposit in the Professional Fees Account an amount equal to such fee. The Debtors shall cause funds held in the Professional Fees Account to be used to pay Professional Fees solely as they become allowed and payable pursuant to any interim or final orders of the Court or otherwise; provided that when all allowed Professional Fees have been paid in full (regardless of when such Professional Fees are allowed by the Court), any funds remaining in the Professional Fees Account shall revert to the Debtors for use in accordance with the DIP Orders; provided, further that the Debtors' obligations to pay allowed Professional Fees shall not be limited or be deemed limited to funds held in the Professional Fees Account. The Professional Fees Account, and all funds held in the Professional Fees Account, shall be held in trust exclusively for the benefit of the Retained Professionals, including with respect to obligations arising out of the Carve-Out. Funds transferred to the Professional Fees Account shall not be subject to any liens or claims granted to the DIP Secured Parties, or to any other party pursuant to the Interim Order or this Final Order, shall not constitute DIP Collateral, and shall not be or be deemed to be property of any Debtor's estate; provided that the DIP Collateral shall include the Debtors' reversionary interest in funds held in the Professional Fees Account, if any, after all Professional Fees have been indefeasibly paid in full in cash (regardless of when such Professional Fees are allowed by the Court). The Debtors shall not be permitted to draw upon the Professional Fees Account other than (i) to pay

Professional Fees as they become allowed and payable pursuant to any interim, final or procedural orders of the Court or (ii) to fund the Carve-Out (including for the avoidance of doubt the Post Carve-Out Cap). The Debtors' obligations to pay Professional Fees shall not be limited or be deemed limited to funds held in the Professional Fees Account. The Professional Fees Account, and all funds held in the Professional Fees Account, shall be held in trust exclusively for the benefit of the Retained Professionals and, after the Carve-Out Trigger Date, the parties benefiting from the Carve-Out.

(e) The occurrence of the Carve-Out Trigger Date shall (1) constitute a demand to the Debtors to transfer cash from cash on hand in an amount equal to the Carve-Out into a segregated account outside the control of any DIP Secured Party exclusively to pay such obligations (the "Carve-Out Reserve Account"), provided that the Carve-Out Reserve Account may be the Professional Fees Account and (2) be deemed a draw request and notice of borrowing by the Debtors for DIP Loans in an amount equal to (x) the then unpaid amounts of the Professional Fees plus (y) reasonably estimated fees not yet allowed for the period through and including the Carve-Out Trigger Date and (z) the Post Carve-Out Cap. 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 the Interim Order, this Final Order, the DIP Loan Documents, the Bankruptcy Code, and applicable law. Notwithstanding anything to the contrary herein, (i) disbursements by the Debtors from the Carve-Out Reserve Account shall not constitute DIP Loans, (ii) the failure of the Carve-Out Reserve Account to satisfy in full the Professional Fees shall not affect the priority of the Carve-Out, and (iii) in no way shall the Carve-Out, the Professional Fees Account, the Carve-Out Reserve Account or the Budget (or Approved Budget), or any of the foregoing be construed as a cap or limitation on the amount of the

Professional Fees that may be allowed by the Court and payable by the Debtors and their estates at any time (whether by interim order, final order, or otherwise).

(f) Reduction of Amounts. The Post Carve-Out Cap shall be reduced, dollar-for-dollar, by the aggregate amount of payments made after the Carve-Out Trigger Date on account of fees and expenses incurred after the Carve-Out Trigger Date to Retained Professionals.

(g) Reservation of Rights. The DIP Secured Parties reserve their rights to object to the allowance of any fees and expenses and any fees incurred before, on or after the Carve-Out Trigger Date. The payment of any fees or expenses of the Retained Professionals pursuant to the Carve-Out shall not, and shall not be deemed to, (i) reduce any Debtor's obligations owed to any of the DIP Secured Parties or to any holder of any Permitted Prior Senior Liens, or (ii) modify, alter, or otherwise affect any of the liens and security interests of such parties in the DIP Collateral (or their respective claims against the Debtors). The DIP Secured Parties shall not be responsible for the direct payment or reimbursement of any fees or disbursements of any Retained Professional, the U.S. Trustee or Clerk of the Court (or of any other entity) incurred in connection with the Chapter 11 Cases or any Successor Cases, and nothing in the Interim Order, this Final Order or otherwise shall be construed to obligate such parties in any way to pay such compensation to or to reimburse such expenses.

11. Waiver of Right to Surcharge. In light of (a) the consent of the DIP Secured Parties to the current payment of administrative expenses of the Debtors' estates in accordance with the Approved Budget, (b) the agreement of the DIP Secured Parties to subordinate the DIP Superpriority Claims to the Carve-Out, and (c) the agreement of the DIP Secured Parties to subordinate the DIP Liens to the Carve-Out and Permitted Prior Senior Liens, the DIP Secured Parties with respect to the DIP Collateral are entitled to a waiver of the any surcharge pursuant to

the provisions of sections 105(a) or 506(c) of the Bankruptcy Code. No costs or expenses of administration or other charge, lien, assessment, or claim incurred at any time (including, without limitation, any expenses set forth in the Approved Budget) by any Debtor or any other person or entity shall be imposed or charged against any or all of the DIP Collateral and the DIP Secured Parties, or their respective claims or recoveries under the Bankruptcy Code, including sections 105(a) and 506(c) thereof or otherwise, and the Debtors, on behalf of their estates, waive any such rights. It is expressly understood by all parties that in making all such undertakings and proceeding in compliance with the Approved Budget, the Interim Order, this Final Order, and the DIP Loan Documents, the DIP Secured Parties have each relied on the foregoing provisions of this Paragraph. Notwithstanding any approval of or consent to the Approved Budget, nothing in the Interim Order or this Final Order shall constitute or be deemed to constitute the consent by any of the DIP Secured Parties to the imposition of any costs or expense of administration or other charge, lien, assessment, or claim (including, without limitation, any amounts set forth in the Approved Budget) against such party, its claims, or its collateral under sections 105(a) or 506(c) of the Bankruptcy Code or otherwise and no such consent shall be implied from any other action or inaction by such parties.

12. No Marshaling. None of the DIP Secured Parties or DIP Collateral shall be subject to the doctrine of marshaling or any similar doctrine or law of any jurisdiction requiring the recovery upon or application to any indebtedness of any collateral or proceeds in any particular order or action.

13. Automatic Perfection.

(a) The DIP Liens granted to the DIP Agent (on behalf of itself and the other DIP Secured Parties) pursuant to the Interim Order, this Final Order and the DIP Loan Documents

shall be valid, enforceable, and perfected by operation of law upon entry of the Interim Order by this Court without any further action by any party, including any filing or recording that may otherwise be required under the law or regulation of any jurisdiction or the taking of any other action, and the Interim Order and this Final Order shall be sufficient and conclusive evidence of the creation, validity, perfection and priority of all liens granted herein, including the DIP Liens. Neither the DIP Agent nor the other DIP Secured Parties in respect of the DIP Liens shall be required to enter into or to obtain any control agreements, landlord waivers (unless required by law or contract), mortgagee waivers, bailee waivers, or warehouseman waivers or to give, file, or record any UCC-1 financing statements, mortgages, deeds of trust, leasehold mortgages, notices to account debtors or other third parties, notices of lien, or similar instruments in any jurisdiction (including filings (unless required by law or contract) with the United States Patent and Trademark Office, the United States Copyright Office, or any similar agency in respect of trademarks, copyrights, trade names, or patents with respect to intellectual property) (collectively, the "Perfection Documents"), or obtain consents from any licensor or similarly situated party in interest, or take any other action to validate, record, or perfect the DIP Liens granted under the DIP Loan Documents, the Interim Order, and this Final Order and approved hereby, all of which are automatically and immediately perfected by the entry of the Interim Order. If the DIP Agent or any other DIP Secured Party, independently or collectively, in each case in their respective sole discretion, chooses to obtain, enter into, give, record, or file any Perfection Documents, (x) all such Perfection Documents shall be deemed to have been obtained, entered into, given, recorded, or filed, as the case may be, as of the Closing Date, (y) no defect in any such act shall affect or impair the validity, perfection, priority, or enforceability of the DIP Liens, and (z) such liens shall have the relative priority set forth herein notwithstanding the timing of filing of any such Perfection

Documents. In lieu of the optional recording or filing of any Perfection Documents, the DIP Agent (acting at the direction of the Required Lenders) may, in its sole discretion, choose to record or file a true and complete copy of the Interim Order and/or this Final Order in any place that any Perfection Document would or could be recorded or filed (which may include a description of the collateral appropriate to be indicated in a recording or filing at such place of recording or filing), and such recording or filing by the DIP Agent or any other DIP Secured Party shall have the same effect as if such Perfection Document had been filed or recorded as of the Petition Date. The Debtors are authorized to execute and deliver promptly upon request to the DIP Agent all Perfection Documents as the DIP Agent (at the direction of the Required Lenders) may reasonably request to ensure the DIP Agent and the DIP Lenders have valid and perfected liens as contemplated by the DIP Credit Agreement, the Interim Order and this Final Order.

(b) The authorization, grant, perfection, scope, and vesting of the DIP Liens, the DIP Superpriority Claims, and the DIP Obligations are fully effectuated by the Interim Order, this Final Order and any security agreements, collateral agreements, or other Perfection Documents executed as part of the DIP Loan Documents, which security agreements, collateral agreements, and other Perfection Documents shall supplement the authorization, grant, perfection, scope, and vesting set forth herein as well as the powers and protections accorded to the DIP Agent and the other DIP Secured Parties, but in no event shall any such security agreement, collateral agreement, or other Perfection Document be interpreted as a limitation of such provisions of the Interim Order or this Final Order.

14. Limitation on Use of Proceeds. Notwithstanding anything in the Interim Order or this Final Order to the contrary, no portion or proceeds of the DIP Facility, the DIP Collateral, including Cash Collateral, or the Carve-Out, and no disbursements set forth in the Approved

Budget may be used by the Debtors or any other party in interest, or their representatives, to (or support any other party to) pay professional fees, disbursements, costs, or expenses incurred in connection with: (a) investigating, analyzing, commencing, prosecuting, threatening, litigating, objecting to, contesting, challenging in any manner or raising any defense to the validity, perfection, priority, or enforceability of, or any amount due under, the DIP Loan Documents or any security interests, liens, or claims granted under the Interim Order, this Final Order or the DIP Loan Documents to secure such amounts; (b) asserting any challenges, claims, actions, or causes of action, including Avoidance Actions, against any of the DIP Secured Parties or any of their respective agents, affiliates, subsidiaries, directors, officers, representatives, attorneys, or advisors; (c) preventing, hindering or otherwise delaying the DIP Agent's or the DIP Lenders' assertion, enforcement or realization on the DIP Collateral or the exercise of rights by the DIP Agent or the DIP Lenders once an Event of Default has occurred and is continuing, provided, however, the Debtors may challenge the existence of an Event of Default pursuant to Paragraph 18; (d) seeking to modify the rights granted to the DIP Agent or the DIP Lenders under the DIP Loan Documents without the prior written consent of the Required Lenders; or (e) paying any amount on account of any claims arising prior to the Petition Date unless such payments are approved by an order of the Court (which order may be the Interim Order or this Final Order) and permitted by the DIP Loan Documents.

15. Milestones. As a condition to the DIP Facility and the use of Cash Collateral, the Debtors have agreed to the milestones set forth in the DIP Credit Agreement (the "Milestones"). For the avoidance of doubt, the failure of the Debtors to comply with any of the Milestones (a) shall constitute an Event of Default under the DIP Facility, the Interim Order and this Final Order, (b) subject to Paragraph 18, result in the automatic termination of the Debtors' authority to use

Cash Collateral under the Interim Order and this Final Order, and (c) permit the DIP Agent (acting at the direction of the Required Lenders) or the Required Lenders, in each case subject to Paragraph 18, to exercise the rights and remedies provided for in the Interim Order, this Final Order and the DIP Facility. The Milestones may only be extended by agreement of the Debtors and the DIP Agent (acting at the direction of the Required Lenders (in their sole discretion)).

16. Indemnification. The Debtors shall pay, indemnify and reimburse the DIP Agent, each DIP Lender and each of their affiliates, and their respective officers, directors, trustees, employees, agents, sub-agents, attorneys, advisors, controlling persons, successors, and assigns and partners and members of each of the foregoing (each, an "Indemnified Person"), solely to the extent any such Indemnified Person was performing services on behalf of the DIP Agent and/or DIP Lender, for, and hold each of them harmless from and against, any and all reasonable and documented out-of-pocket costs, expenses (including reasonable and documented out-of-pocket fees, disbursements, and other charges of counsel), obligations, losses, damages, penalties, disbursements and liabilities of such Indemnified Person arising out of or relating to any claim or any actions, judgments, suits, litigation or other proceeding of any nature whatsoever (regardless of whether such Indemnified Person is a party thereto and regardless of whether such matter is initiated by a third party or by the Debtors or any of their affiliates or shareholders) that relates to or arises out of the execution, delivery, enforcement, performance and administration of the DIP Loan Documents, the DIP Facility, the Interim Order, or this Final Order, including the transactions contemplated hereby and thereby, and any actual or proposed use of the proceeds of any loans made under the DIP Facility in accordance with the terms of the DIP Credit Agreement; provided that no Indemnified Person will be indemnified for any cost, expense, or liability to the extent determined in a final, non-appealable judgment of a court of competent jurisdiction to have

resulted from such Person's gross negligence, willful misconduct, fraud, breach of their obligations under the DIP Facility or violations of this Order. Other than with respect to the proviso at the end of the immediately preceding sentence, nothing herein is meant to limit the scope of any indemnity provided for the benefit of the DIP Agent or the DIP Lenders or any of their representatives in the DIP Loan Documents; provided that in no event shall any Indemnified Person be liable on any theory of liability for any special, indirect, consequential, or punitive damages.

17. Released Parties. The Debtors absolutely and unconditionally release and forever discharge and acquit the DIP Agent, the DIP Lenders, and their respective successors, assigns, affiliates, parents, subsidiaries, partners, controlling persons, representatives, agents, attorneys, advisors, financial advisors, consultants, professionals, officers, directors, members, managers, shareholders, and employees, past, present and future, and their respective heirs, predecessors, successors, and assigns, each solely in such capacity (collectively, the "DIP Released Parties"), from any and all obligations and liabilities to the Debtors (and their successors and assigns) and indemnify and hold harmless from and for any and all claims, demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness and obligations, rights, assertions, allegations, actions, suits, controversies, proceedings, losses, damages, injuries, attorneys' fees, costs, expenses, or judgments of every type (in each case, arising on or prior to the date of this Final Order), whether known, unknown, asserted, unasserted, suspected, unsuspected, accrued, unaccrued, fixed, contingent, pending, or threatened including, without limitation, all legal and equitable theories of recovery, arising under common law, statute or regulation or by contract, of every nature and description, in each case, arising in connection with or relating to the DIP Facility, the DIP Liens, and security interests or any of the DIP Loan Documents; but excluding obligations of the DIP Lenders under the DIP Loan Documents arising after the date of this Final Order, and

provided that nothing herein shall relieve the DIP Released Parties from fulfilling their obligations under the DIP Loan Documents, the Interim Order and/or this Final Order. For the avoidance of doubt, the releases set forth in this Paragraph 17 do not include the release of the holders of the Prepetition Notes (as defined in the DIP Credit Agreement) that are party to the DIP Credit Agreement (the "Prepetition DIP Notes Parties") in their capacity as such.

18. Remedies.

(a) The automatic stay is hereby modified to the extent necessary to permit the DIP Agent (acting at the direction of the Required Lenders) or the Required Lenders to take any or all of the following actions, at the same or different times, in each case without further order or application to the Court, on not less than five (5) business days' notice (the Remedies Notice Period") after the date of delivery of a written notice (a "Default Notice" and the date of delivery of such Default Notice, the "DIP Termination Date") by the DIP Agent (at the direction of the Required Lenders) to the Debtors, counsel for the Committee, if any, and the U.S. Trustee: immediately upon the occurrence and during the continuance of an Event of Default under the DIP Loan Documents or upon the Maturity Date, (A) declare the termination, reduction or restriction of any applicable further DIP Commitment to the extent any further DIP Commitment remains, (B) cease making financial accommodations to the Debtors, (C) declare all applicable DIP Obligations to be immediately due, owing and payable in full in cash, without presentment, demand, protest, or other notice of any kind, all of which are expressly waived by the Debtors, notwithstanding anything herein or in any DIP Loan Document to the contrary, (D) terminate the DIP Loan Documents as to any future liability or obligation of the DIP Agent or the DIP Lenders with respect to the DIP Commitments thereunder (but, for the avoidance of doubt, without affecting any of the DIP Liens, DIP Superpriority Claims, or DIP Obligations), and

(E) fund and apply the Carve-Out through the delivery of a Carve-Out Trigger Notice; provided that upon the occurrence and continuation of an Event of Default or upon the Maturity Date, but prior to the exercise or enforcement of any rights against the DIP Collateral, the DIP Lenders shall be required to file a motion with the Court seeking emergency relief (the "Stay Relief Motion") on not less than five (5) business days' notice to the Debtors, counsel for the Committee, if any, and the U.S. Trustee (which period may run concurrently with the Remedies Notice Period and any notice required to be provided under the DIP Loan Documents) for a further order modifying the automatic stay to permit the DIP Agent (acting at the direction of the Required Lenders) to (A) exercise all of its rights and remedies under the Interim Order, this Final Order, the DIP Loan Documents and otherwise available under applicable law, including, without limitation, to foreclose upon the DIP Collateral or otherwise enforce the DIP Obligations, the DIP Liens, and the DIP Superpriority Claims on any or all of the DIP Collateral and to exercise any other default-related remedies under the DIP Loan Documents, the Interim Order, this Final Order, or applicable law in seeking to recover payment of the DIP Obligations, and (B) withdraw consent to the Debtors' continued use of Cash Collateral.

(b) During the Remedies Notice Period, the Debtors shall be permitted to cure any Event of Default and to use Cash Collateral solely to (A) pay payroll and other critical administrative expenses to keep the business of the Debtors operating, strictly in accordance with the Approved Budget (and Permitted Variance) or as necessary to maintain and maximize the value of the DIP Collateral, or as otherwise agreed by the DIP Agent acting at the direction of the Required Lenders, (B) fund the Carve-Out Account, and (C) contest any Stay Relief Motion.

(c) No rights, protections or remedies of the DIP Agent or the DIP Lenders granted by the provisions of the Interim Order, this Final Order or the other DIP Loan Documents

shall be limited, modified or impaired in any way by: (i) any actual or purported withdrawal of the consent of any party to the Debtors' authority to continue to use Cash Collateral; (ii) any actual or purported termination by any party of the Debtors' authority to continue to use Cash Collateral; or (iii) the terms of any other order or stipulation related to the Debtors' continued use of Cash Collateral.

19. Access to DIP Collateral. Notwithstanding anything contained herein to the contrary and without limiting any other rights or remedies of the DIP Secured Parties contained in the Interim Order, this Final Order or the DIP Loan Documents, or otherwise available at law or in equity, and subject to the terms of the DIP Loan Documents and the terms of Paragraph 18 hereof, upon written notice to the landlord of any leased premises that an Event of Default or the Maturity Date has occurred and is continuing under the DIP Loan Documents, the DIP Agent (acting at the direction of the Required Lenders) may, subject to the applicable notice provisions in this Final Order and any separate agreement by and between such landlord and the DIP Agent or any DIP Secured Party (or consent of the landlord), enter upon any leased premises of the Debtors or any other party for the purpose of exercising any remedy with respect to DIP Collateral located thereon and shall be entitled to all of the Debtors' rights and privileges as lessee under such lease without interference from the landlords thereunder. Nothing herein shall require any DIP Secured Party to assume any lease as a condition to the rights afforded to the DIP Secured Parties in this Paragraph.

20. Insurance Policies. Effective as of entry of the Interim Order, the Debtors consent to, and, to the fullest extent provided by applicable law, the DIP Agent (on behalf of itself and the other DIP Secured Parties) shall be, and shall be deemed to be, without any further action or notice, named as additional insureds and loss payees on each insurance policy maintained by the Debtors

that in any way relates to DIP Collateral.

21. Chubb Insurance Policies. For the avoidance of doubt, (a) the Debtors shall not grant liens and/or security interests in any insurance policy issued by Federal Insurance Company and/or any of its U.S.-based affiliates (collectively, together with each of their predecessors and successors, and solely in their roles as insurers, "Chubb") to any other party; (b) the proceeds of any insurance policy issued by Chubb shall only be considered DIP Collateral to the extent such proceeds are paid to the Debtors (as opposed to a third party claimant) pursuant to the terms of any such applicable insurance policy; and (c) nothing, including the DIP Loan Documents and/or this Final Order, alters or modifies the terms and conditions of any insurance policies issued by Chubb and/or any agreements related thereto.

22. Successors and Assigns. The Interim Order, this Final Order, the DIP Credit Agreement, and the other DIP Loan Documents, including all findings herein, shall be binding upon all parties in interest in the Chapter 11 Cases, including, without limitation, the Debtors, the DIP Agent, the DIP Lenders, the Prepetition DIP Notes Parties, the Committee, if any, all other creditors of any of the Debtors and all other parties in interest in these Chapter 11 Cases or any Successor Cases, any statutory or non-statutory committee, responsible individual, examiner with expanded powers, or other estate representative or other fiduciary appointed as the legal representative of any of the Debtors and the respective successors and assigns of each of the foregoing, including any subsequently appointed or elected chapter 11 trustee or, in the event of the conversion of any of the Chapter 11 Cases or any Successor Cases to a liquidation under chapter 7 of the Bankruptcy Code, any chapter 7 trustee, and shall inure to the benefit of the DIP Lenders and the Debtors and their successors and assigns. Such binding effect is an integral part of the DIP Orders.

23. Survival. The provisions of the Interim Order, this Final Order, the DIP Loan Documents and any actions taken pursuant hereto and thereto, and all of the protections, rights, remedies, liens, priorities, privileges, and benefits granted to any or all of the DIP Secured Parties shall survive, and shall not be modified, impaired, or discharged by, the entry of any subsequent order, including any order (i) confirming any plan of reorganization or liquidation in any of the Chapter 11 Cases (and, to the extent the DIP Repayment does not occur, each of the Debtors have hereby waived the right to seek to discharge the DIP Obligations pursuant to section 1141(d)(4) of the Bankruptcy Code pursuant to such order), (ii) converting any of the Chapter 11 Cases to a chapter 7 case, (iii) dismissing any of the Chapter 11 Cases or any Successor Case, (iv) withdrawing of the reference of any of these Chapter 11 Cases or any Successor Cases, or providing for abstention from handling or retaining of jurisdiction of any of these Chapter 11 Cases in this Court, or (v) terminating the joint administration of these Chapter 11 Cases, or by any other act or omission. The terms and provisions of the Interim Order and this Final Order, as well as the DIP Obligations, the DIP Liens, the DIP Superpriority Claim, and the DIP Loan Documents, shall continue in full force and effect in the Chapter 11 Cases, any Successor Cases, and following the dismissal of the Chapter 11 Cases or any Successor Cases, and such protections, rights, remedies, priorities, privileges, benefits, claims, and liens shall maintain their priority as provided by the Interim Order, this Final Order and the DIP Loan Documents to the maximum extent permitted by law until the DIP Repayment has occurred.[6]

[6] For the avoidance of doubt, the DIP Credit Agreement provides that, upon the satisfaction of certain conditions, the DIP Obligations shall be repaid through the issuance of term loans under the Exit Facility (as defined in the DIP Credit Agreement) on a dollar-for-dollar basis, subject to the terms and conditions set forth in, and otherwise in accordance with, the Restructuring Support Agreement and an Acceptable Plan of Reorganization; provided that, for the avoidance of doubt, the outstanding amount of interest on the Plan Effective Date shall be paid in full in cash on such date.

24. Discharge. Subject to the terms and conditions of the DIP Credit Agreement, the DIP Obligations shall not be discharged by the entry of an order confirming any plan of reorganization in any of the Chapter 11 Cases or any Successor Case, notwithstanding the provisions of Section 1141(d) of the Bankruptcy Code, unless the DIP Repayment has occurred on or before the effective date of such plan of reorganization or the DIP Agent (at the direction of the Required Lenders) has otherwise agreed in writing.

25. Good Faith. Based on the findings set forth in the Interim Order, this Final Order and the record made during the Interim Hearing and the Final Hearing, and in accordance with section 364(e) of the Bankruptcy Code, (a) the DIP Facility, the use of Cash Collateral, and the other provisions of the Interim Order, this Final Order, the DIP Credit Agreement, and the other DIP Loan Documents have been negotiated in good faith and at arm's length among the Debtors and the DIP Secured Parties, and the extension of the financial accommodations to the Debtors by the DIP Secured Parties pursuant to the Interim Order, this Final Order and the DIP Loan Documents have been and are deemed to be extended in good faith, as that term is used in section 364(e) of the Bankruptcy Code, and (b) in the event any or all of the provisions of the Interim Order or this Final Order are hereafter reversed or modified, on appeal, each of the DIP Agent and the DIP Lenders is entitled to, and is hereby granted, the protections provided in section 364(e) of the Bankruptcy Code. To the fullest extent provided by section 364(e) of the Bankruptcy Code, any such reversal or modification shall not affect (i) the validity and enforceability of any obligation, advances, indebtedness or liability under the Interim Order, this Final Order and the DIP Loan Documents by the Debtors prior to the date of receipt of written notice to the DIP Agent of the effective date of such action, and (ii) the validity and enforceability of any lien, administrative expense, right, or priority authorized or created hereby or pursuant to the Interim

Order, this Final Order and the DIP Loan Documents, including, without limitation, the DIP Obligations, the DIP Liens, and the DIP Superpriority Claims.

26. No Waiver. The Interim Order and this Final Order shall not be construed in any way as a waiver or relinquishment of any rights that the DIP Secured Parties or any Prepetition DIP Notes Party may have to bring or be heard on any matter brought before this Court. Any consent, modification, declaration of default, exercise of remedies, or non-exercise of remedies under or in connection with the Interim Order, this Final Order or the DIP Loan Documents shall require the approval of the Required Lenders and shall not be deemed a waiver or relinquishment of any of the rights of any of the DIP Lenders. Except as expressly set forth herein, nothing contained in the Interim Order or this Final Order shall impair, prejudice, or modify any rights, claims, or defenses available in law or equity to any DIP Secured Parties or Prepetition DIP Notes Party, including, without limitation, the right (a) to request conversion of any of the Debtors' Chapter 11 Cases to chapter 7, (b) to seek to terminate the exclusive rights of the Debtors to file, and solicit acceptances of, a plan of reorganization under section 1121 of the Bankruptcy Code or propose, subject to the provisions of section 1121 of the Bankruptcy Code, a chapter 11 plan or plans, (c) to object to the fees and expenses of any Retained Professional, (d) to seek relief from the automatic stay, and (e) seek any other relief, whether legal, equitable or otherwise. All such rights, claims, and defenses, and the rights, objections, and defenses of all parties in connection therewith, are hereby reserved. The failure of the DIP Agent, the other DIP Lenders, or the Prepetition DIP Notes Parties to seek relief or otherwise exercise their rights and remedies under the Interim Order, this Final Order, the DIP Loan Documents, the Prepetition Notes Documents, or applicable law, as the case may be, shall not constitute a waiver of the rights hereunder,

thereunder or otherwise of the DIP Agent, the other DIP Lenders, or the Prepetition DIP Notes Parties.

27. Final Order Governs. In the event of any inconsistency or conflict between or among, as applicable, the provisions of the Interim Order, this Final Order, the DIP Loan Documents, the Motion, or any supporting documents, the provisions of this Final Order shall control and govern to the extent of such conflicts.

28. Right to Credit Bid. In connection with any sale process authorized by the Court, whether effectuated through sections 363, 725, or 1123 of the Bankruptcy Code, the DIP Agent (at the direction of the Required Lenders) shall have the right to use the DIP Obligations, DIP Liens, and DIP Superpriority Claim to credit bid (directly or via one or more acquisition vehicles) with respect to any bulk or piecemeal sale of all or any portion of the DIP Collateral, subject in all respects to section 363(k) of the Bankruptcy Code.

29. Waiver of Requirement to File Proofs of Claim. None of the DIP Agent, the DIP Lenders, or the Prepetition DIP Notes Parties shall be required to file proofs of claim in the Chapter 11 Cases or any Successor Cases for any claims allowed herein, including claims for the DIP Obligations under the DIP Loan Documents, the DIP Superpriority Claims, the DIP Liens, or the Prepetition Notes Obligations under the Prepetition Notes Documents. The statements of claim in respect of the DIP Obligations set forth in the Interim Order and this Final Order, together with the evidence accompanying the Motion and presented at the Interim Hearing and the Final Hearing, are deemed sufficient to and do constitute proofs of claim for the DIP Agent, the DIP Lenders, and the Prepetition DIP Notes Parties in respect of such obligations, and each of the DIP Agent, the DIP Lenders and the Prepetition DIP Notes Parties shall be treated under section 502(a) of the Bankruptcy Code as if they filed a proof of claim. Any order entered by the Court in relation to

the establishment of a bar date for any claim (including without limitation administrative claims) in any of the Chapter 11 Cases or any Successor Cases shall not apply to (i) the DIP Agent or the other DIP Secured Parties or (ii) the Prepetition DIP Notes Parties with respect to the Prepetition Notes or any claims under the Prepetition Documents.

30. Proceeds of Subsequent Financing. If the Debtors, any trustee, any examiner with expanded powers, or any responsible officer subsequently appointed in these Chapter 11 Cases or any Successor Cases shall obtain credit or incur debt pursuant to sections 364(b), 364(c), 364(d) of the Bankruptcy Code in violation of the DIP Loan Documents, the Interim Order or this Final Order at any time prior to the DIP Repayment, including subsequent to the confirmation of any chapter 11 plan with respect to any or all of the Debtors (if applicable), then all the cash proceeds derived from such credit or debt shall immediately be applied to repay the DIP Obligations in accordance with the Interim Order, this Final Order and the DIP Loan Documents until the DIP Repayment occurs.

31. Maintenance of DIP Collateral. Until the DIP Repayment has occurred, the Debtors shall (a) insure the DIP Collateral as required under the DIP Loan Documents; (b) maintain the cash management system in effect as of the Petition Date, as modified by any order of the Court or otherwise agreed to by the DIP Agent (at the direction of the Required Lenders); and (c)(i) maintain accurate records of all transfers (including intercompany transactions) within the cash management system so that all postpetition transfers and transactions shall be adequately and promptly documented in, and readily ascertainable from, their books and records, to the same extent maintained by the Debtors before the Petition Date, and (ii) provide access upon reasonable prior request to such records to the DIP Agent and the DIP Lenders.

32. Disposition of DIP Collateral. Except as otherwise provided for in the DIP Loan Documents, the Debtors may not sell, transfer, lease, encumber, or otherwise dispose of any portion of the DIP Collateral other than in the ordinary course of business, or file a motion or application seeking, or otherwise seek or directly or indirectly support any other person in seeking authority to take such action, without the prior written consent of the DIP Agent (at the direction of the Required Lenders) and no such consent shall be implied from any other action, inaction, or acquiescence by the DIP Agent or any other DIP Secured Parties.

33. Limits on Lender Liability. Nothing in the Interim Order, this Final Order, any of the DIP Loan Documents, any of the Prepetition Documents, or any other documents related thereto, shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Agent or the other DIP Secured Parties or the Prepetition DIP Notes Parties of any liability for any claims arising from any activities by the Debtors in the operation of their businesses or in connection with the administration of these Chapter 11 Cases or any Successor Cases. The DIP Agent or the other DIP Secured Parties shall not, solely by reason of having made loans under the DIP Facility or authorizing the use of Cash Collateral, be deemed in control of the operations of the Debtors or to be acting as a "responsible person" or "owner or operator" with respect to the operation or management of the Debtors (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). Nothing in the Interim Order, this Final Order or the DIP Loan Documents shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Agent, any of the DIP Secured Parties, or any of the Prepetition DIP Notes Parties of any liability for any claims arising from the prepetition or postpetition activities of any of the Debtors. For the avoidance of doubt, this provision applies to

the DIP Agent, the other DIP Secured Parties, and the Prepetition DIP Notes Parties solely in their capacity as such.

34. Replacement Agent. Notwithstanding the resignation or replacement of any collateral agent or administrative agent, including the DIP Agent, the DIP Liens on the DIP Collateral shall remain continuously and properly perfected, notwithstanding the transfer of control, possession, or title of any DIP Collateral to a new collateral or administrative agent.

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

36. Joint and Several Liability. Nothing in the Interim Order or this Final Order shall be construed to constitute a substantive consolidation of any of the Debtors' estates, it being understood, however, that the Debtors shall be jointly and severally liable for the obligations hereunder and all DIP Obligations in accordance with the terms hereof and of the DIP Loan Documents.

37. No Obligation to Extend Credit. The DIP Lenders shall have no obligation to make any loan under the DIP Loan Documents unless all of the conditions precedent to the making of such extension of credit under the DIP Loan Documents, the Interim Order and/or this Final Order, as applicable, have been satisfied in full or waived by the Required Lenders in accordance with the terms of the DIP Loan Documents.

38. No Modification of Order. Until the DIP Repayment occurs, the Debtors shall be prohibited from seeking or consenting to, directly or indirectly, any material modification, stay, vacatur, or amendment to this Final Order without the prior written consent of the DIP Agent

(acting at the direction of the Required Lenders) and no such consent shall be implied by any action or inaction of the DIP Agent.

39. Headings. The headings in this Final Order are for reference purposes only and will not in any way affect the meaning and interpretation of the terms of this Final Order.

40. Immediate Effect of Order. This Final Order shall take effect immediately upon execution hereof, and, notwithstanding anything to the contrary contained in Bankruptcy Rules, including Bankruptcy Rule 4001(a)(3), 6004(h), 6006(d), 7062, or 9014, there shall be no stay of execution of effectiveness of this Final Order. All objections to the entry of this Final Order have been withdrawn or overruled and the Motion is approved on a final basis on the terms and conditions set forth herein.

41. Jurisdiction. The Court shall retain exclusive jurisdiction with respect to any and all disputes or matters under, or arising out of or in connection with, either the DIP Facility or the DIP Loan Documents, including the interpretation and enforcement of the Interim Order and this Final Order.

Signed: March 28, 2025

Alfredo R Pérez
United States Bankruptcy Judge