

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

VIEW, INC., *et al.*,

Debtors.¹

Chapter 11

Case No. 24-10692 (CTG)

(Joint Administration Requested)

**DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS
(I) AUTHORIZING THE DEBTORS TO (A) OBTAIN POSTPETITION FINANCING
AND (B) UTILIZE CASH COLLATERAL, (II) GRANTING LIENS AND PROVIDING
SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS, (III) GRANTING
ADEQUATE PROTECTION, (IV) MODIFYING THE AUTOMATIC STAY,
(V) SCHEDULING A FINAL HEARING, AND (VI) GRANTING RELATED RELIEF**

View, Inc. and the above-captioned debtors and debtors in possession (collectively, the “Debtors”), hereby move (this “Motion”) the Court for entry of an interim order, substantially in the form attached hereto as **Exhibit A** (the “Interim Order”) and a final order (the “Final Order”)² and together with the Interim Order, the “DIP Orders”), pursuant to sections 105, 361, 362, 363, 364, 503, 506, 507 and 552 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”), rules 2002, 4001, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and rules 2002-1(b), 4001-2 and 9013-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”). In support of this Motion, the Debtors refer to the contemporaneously filed *Declaration of Thomas King in Support of Chapter 11 Petitions and First*

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: View, Inc. (5065), View Operating Corporation (4899), and Iotium, Inc. (4600). The Debtors’ corporate headquarters is 6280 America Center Drive, Suite 200, San Jose, CA 95002.

² The Debtors will file a proposed Final Order prior to the Final Hearing.

Day Pleadings (the “First Day Declaration”)³ and the *Declaration of Gregory Hagood in Support of the Debtors’ DIP Financing Motion* (the “Hagood Declaration”, and together with the First Day Declaration, the “Declarations”), and further represent as follows:

RELIEF REQUESTED

1. The Debtors seek entry of the DIP Orders:
 - Authorizing the Debtors to obtain postpetition financing (the “DIP Financing”) pursuant to a priming, senior secured, superpriority debtor-in-possession credit facility (the “DIP Facility”) consistent with the terms and conditions set forth in that certain term sheet attached to the Interim Order as Exhibit 1 (the “DIP Term Sheet”), by and among View, Inc. (the “DIP Borrower”), the Guarantors (as defined in the DIP Term Sheet), the lenders who elect to participate in the DIP Facility (the “Electing Lenders”), RXR FP Investor LP, RXR FP Investor II LP, RXR FP Investor III LP, RSR FP Investor IV LP, RXR FP GP LLC and/or their direct or indirect investors (together, “RXR Lender”), and CF Principal Investments, LLC or CFV Investments, LLC and/or any Affiliates thereof (the “CF Lender”, and together with the Electing Lenders and RXR Lender, the “DIP Lenders”), and Cantor Fitzgerald Securities, as administrative agent (in such capacity, the “DIP Agent”, and together with the DIP Lenders, the “DIP Secured Parties”), consisting of a delayed draw term loan in an aggregate maximum principal amount of \$17.5 million (the commitment in respect thereof, the “DIP Facility Commitment”) from the DIP Lenders, of which \$10.0 million will be available immediately upon entry of the Interim Order (the “Initial Advance”), with the remainder to be available only upon and following entry of the Final Order (the “Subsequent Advance”), in each case in accordance with the terms of the DIP Documents (as defined herein) and any Approved Budget (as defined in the Interim Order).
 - Authorizing the Debtors to execute and deliver the DIP Term Sheet and any related security or other agreements (collectively, the “DIP Documents”) and to perform their respective obligations thereunder;
 - Authorizing the Debtors to grant to the DIP Lenders, subject and subordinate solely to any Prepetition Permitted Senior Liens (as defined below) and the Carve-Out (as defined below), allowed superpriority administrative expense status and automatically perfected senior liens, including (i) a first priority, perfected lien on all of the Debtors’ rights in property of the Debtors’ estates as of the Petition Date that, as of the Petition Date, were unencumbered (and do not become perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code); (ii) a junior priority, perfected lien on all of

³ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the First Day Declaration or the DIP Term Sheet, as applicable.

the Debtors' rights in property of the Debtors' estates as of the Petition Date that, as of the Petition Date, were subject to a lien permitted under the terms of the Prepetition Credit Agreement⁴ that was perfected prior to the Petition Date or is perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code (other than the liens securing the obligations under the Prepetition Credit Agreement) (collectively, the "Prepetition Permitted Senior Liens"), and (iii) valid, enforceable, priming first priority, fully perfected security interests in and liens upon all of the Debtors' rights in property of the Debtors' estates as of the Petition Date and all of the Debtors' rights in property acquired post-petition (and proceeds thereof), whether now existing or hereafter acquired or arising that secure the obligations under the Prepetition Credit Agreement (such lien, together with the liens described in clauses (i) and (ii) above, the "DIP Liens" and the collateral described in clauses (i) through (iii) above, collectively, the "DIP Collateral").

- Authorizing the Debtors to use all cash and cash equivalents of the Debtors, whenever or wherever acquired, and the proceeds of all collateral pledged to the DIP Agent, as contemplated by section 363 of the Bankruptcy Code ("Cash Collateral") in accordance with the thirteen-week detailed cash projection attached to the Interim Order as Schedule 1 (the "Initial DIP Budget");
- Granting adequate protection to the Prepetition Secured Parties as provided in the DIP Orders;
- Subject to entry of the Final Order, waiving all rights to surcharge any DIP Collateral or Prepetition Collateral under sections 506(c) and 552(b) of the Bankruptcy Code or any applicable principle of equity;
- Subject to entry of the Final Order, waiving the equitable doctrine of "marshaling" and other similar doctrines with respect to (a) the DIP Collateral for the benefit of any party other than the DIP Secured Parties and (b) the Prepetition Collateral (including the Cash Collateral) for the benefit of any party other than the Prepetition Secured Parties;
- Modifying the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and conditions of the DIP Documents and DIP Orders;
- Scheduling a final hearing (the "Final Hearing") to consider entry of the Final

⁴ The Prepetition Credit Agreement refers to that certain Credit Agreement, dated as of October 16, 2023 (as amended, supplemented, and otherwise modified from time to time, the "Prepetition Credit Agreement"), among View, Inc., Cantor Fitzgerald Securities, in its capacity as Administrative Agent under the Prepetition Credit Agreement (the "Prepetition Agent") and those lenders who are parties to the Prepetition Credit Agreement as of the Petition Date (the "Prepetition Lenders", and together with the Prepetition Agent, the "Prepetition Secured Parties").

Order; and

- Providing for the immediate effectiveness of the DIP Orders and waiving any applicable stay.

JURISDICTION AND VENUE

2. The United States District Court for the District of Delaware has jurisdiction to consider this Motion under 28 U.S.C. § 1334, which was referred to this Court under 28 U.S.C. § 157, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012.

3. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and the Debtors confirm their consent, pursuant to Local Rule 9013-1(f), to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

4. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

5. The bases for the relief requested herein are sections 105, 361, 362, 363, 364, 503, 506, 507 and 552 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001, 6004 and 9014 and Local Rules 2002-1(b), 4001-2 and 9013-1.

RELEVANT BACKGROUND

I. General Background

6. On the date hereof (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors are operating their business and managing their property as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. As of the date hereof, no party has requested the appointment of a

trustee or examiner in these chapter 11 cases, and no official committees have been appointed or designated.

7. The Debtors' business operations, corporate and capital structures and restructuring efforts are described in greater detail in the First Day Declaration.

II. Debtors' Prepetition Capital Structure

8. As of the Petition Date, the Debtors have approximately \$287 million of funded debt obligations, consisting of obligations under the MDA Term Loan, the Prepetition Secured Facility and the Convertible Notes (as defined below).

A. MDA Term Loan

9. On November 22, 2010, the Company entered into a debt arrangement with the Mississippi Development Authority (the "MDA"), in an amount of \$40 million (the "MDA Term Loan"), for the purpose of financing equipment and tenant improvements at its manufacturing facility in Olive Branch, Mississippi. Pursuant to the original terms, the MDA Term Loan provides for interest-free debt to be repaid in semi-annual payments due on June 30 and December 31 each year. The MDA Term Loan was originally being paid over 24 semi-annual installments through June 30, 2024. The MDA Term Loan is secured by certain specified manufacturing equipment located in the Olive Branch facility.

10. On October 22, 2020, the Company entered into an amended and restated debt arrangement with the MDA, which temporarily suspended the payments until June 30, 2022. Starting June 30, 2022, the Company is required to make semi-annual payments of \$0.7 million through June 30, 2032. As of the Petition Date, the Company had \$12.491 million outstanding under the MDA Term Loan.

B. Prepetition Secured Facility

11. On October 16, 2023, the Company entered into the Prepetition Term Loan credit agreement with Cantor Fitzgerald Securities, as administrative agent and as collateral agent, and the lenders party thereto (the “Credit Agreement”). The Credit Agreement established (i) a \$12.5 million senior secured term loan facility and (ii) a \$37.5 million senior secured delayed draw term loan facility, each maturing on September 30, 2027. The lenders include, among others: (i) RXR FP Investor IV LP, an affiliate of RXR Realty LLC, (ii) CF Principal Investments, LLC, and (iii) entities affiliated with Anson Funds and Affinius Capital, all of whom are also holders of the Convertible Notes.

12. The Prepetition Term Loan has an annual rate equal to Term SOFR, plus (i) a margin of 7.50%, for interest paid in cash, or (ii) a margin of 14.0%, for interest paid in kind. The obligations under the Credit Agreement are guaranteed by the Company’s wholly-owned subsidiaries, subject to certain customary exceptions, and secured by a first-lien security interest in substantially all of the Company’s tangible and intangible assets, as well as substantially all of the tangible and intangible assets of the guarantors.

13. As of the Petition Date, the outstanding amount of the Prepetition Term Loan is approximately \$52.108 million.

C. 6.00% / 9.00% Unsecured Convertible Senior PIK Toggle Notes due 2027

14. In October 2022, the Company completed the sale of \$200 million aggregate principal amount of the Company’s 6.00% / 9.00% Convertible Senior PIK Toggle Notes (the “Convertible Notes”), with the option to sell an additional \$40 million of notes to the Purchasers (as defined in the indenture governing the Convertible Notes). The Convertible Notes were issued pursuant to that certain Indenture, dated as of October 26, 2022, between View, Inc. and

Wilmington Trust, National Association, as Trustee. The Convertible Notes will mature on October 1, 2027 and bear interest at 6.00% per annum, to the extent paid in cash (“Cash Interest”), and 9.00% per annum, to the extent paid in kind through the issuance of additional Convertible Notes (“PIK Interest”). Interest is payable semi-annually in arrears on April 1 and October 1 of each year, beginning on April 1, 2023. The Company can elect to make any interest payment through Cash Interest, PIK Interest or any combination thereof.

15. As of the Petition Date, the outstanding principal amount of the Convertible Notes is approximately \$222.258 million.

D. Unsecured Obligations

16. As of the Petition Date, the Debtors broadly estimate that they have approximately \$27.160 million in outstanding obligations to trade vendors and other creditors.

E. Common and Preferred Stock

17. On March 9, 2021, the Debtors’ common stock and warrants began trading on the Nasdaq Global Select Market under the ticker symbols “VIEW” and “VIEWW,” respectively. Pursuant to the Debtor’ certificate of incorporation, the Debtors are authorized to issue 600,000,000 shares of common stock with a par value of \$0.0001 per share. As of the Petition Date, the Debtors had 4,113,403 shares of common stock issued and outstanding.

III. Debtors’ Need for Postpetition Financing and Use of Cash Collateral

18. The Debtors have limited liquidity to continue business in the ordinary course and satisfy accruing administrative expenses. Indeed, the Debtors cannot operate on access to Cash Collateral alone and require debtor-in-possession financing to meet the Debtors’ postpetition liquidity needs and ensure the administrative solvency of these estates. See Hagood Decl. ¶ 12. Such financing is also required to consummate the transactions contemplated in the prepackaged

plan of reorganization. *Id.* ¶ 13. Without access to Cash Collateral and the funding available under the DIP Facility, the Debtors will be unable to operate their business, maintain business relationships, pay their employees and vendors, satisfy other working capital and general corporate needs, fund costs and expenses related to the chapter 11 cases and fund certain amounts to the Debtors' foreign non-debtor subsidiaries, causing immediate and irreparable harm to the value of the Debtors' estates to the detriment of all stakeholders. *Id.*

19. The Debtors and their advisors reviewed and analyzed the Debtors' projected cash needs and prepared the Initial DIP Budget outlining the Debtors' postpetition cash needs during these chapter 11 cases. *Id.* ¶ 14. The Debtors believe that the Initial DIP Budget and their projections provide an accurate reflection of their funding requirements over the identified period, will allow them to meet their obligations – including the administrative expenses of the chapter 11 cases – and are reasonable and appropriate under the circumstances. *Id.* As a result, the Debtors believe that the financing available under the DIP Facility, along with consensual access to Cash Collateral, provide the Debtors sufficient working capital and liquidity to continue to operate during the pendency of these cases.

IV. Debtors' Efforts to Obtain Postpetition Financing

20. The Debtors, based on the prepetition liens and claims of the Prepetition Lenders, assessed the futility of soliciting alternative sources to provide financing to the Debtors during these chapter 11 cases. *See* Hagood Decl. ¶ 16. In exchange for providing postpetition financing, every financing source would have required a first priority priming lien on all of the assets of the Debtors. *Id.* The Prepetition Lenders would not consent to such priming liens and would have argued that the Debtors could not have provided adequate protection for the proposed financing.

Id. The Debtors thus believe that the possibility of obtaining priming financing or loans secured solely by an administrative claim are nonexistent. *Id.* ¶ 18.

21. Notwithstanding these concerns, the Debtors, with the assistance of SOLIC, engaged with numerous parties to potentially fund the chapter 11 cases. *Id.* Specifically, SOLIC contacted approximately nine potential lenders with a history and capability of providing debtor-in-possession financing to determine whether any of these parties would be willing to provide postpetition financing to the Debtors, all of which declined the opportunity. *Id.* Thus, no party other than the DIP Lenders provided the Debtors with an executable out-of-court or postpetition financing facility. *Id.* The Debtors do not have any alternative sources of financing readily available with terms better than those included in the DIP Facility. *Id.*

22. Accordingly, the DIP Facility and the authorization to use Cash Collateral are the best financing option that the Debtors could obtain under the circumstances. *Id.* ¶ 27. Fully unsecured postpetition financing was not available to the Debtors. *Id.* ¶ 18. Other potential sources of debtor-in-possession financing for the Debtors, including on a junior secured basis, were also nonexistent. *Id.* The terms of the DIP Facility are reasonable under the circumstances. *Id.* ¶ 20. The DIP Facility is the product of good-faith, robust arm's-length negotiations and is necessary for the Debtors to maximize value on behalf of their constituents in these chapter 11 cases. *Id.* ¶ 19. Accordingly, the DIP Facility is in the best interests of the Debtors' estates and represents a sound exercise of the Debtors' reasonable business judgment. *Id.* ¶¶ 28-29.

SUMMARY OF ESSENTIAL TERMS OF DIP FACILITY⁵

23. The below 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 Rule 4001 and Local Rule 4001-2.⁶

Bankruptcy Code	Summary of Material Terms	Reference
Borrower Bankruptcy Rule 4001(c)(1)(B)	View, Inc.	Interim Order at 1
Guarantors Bankruptcy Rule 4001(c)(1)(B)	View Operating Corporation and Iotium, Inc.	DIP Term Sheet
DIP Agent Bankruptcy Rule 4001(c)(1)(B)	Cantor Fitzgerald Securities	Interim Order at 2
DIP Lenders Bankruptcy Rule 4001(c)(1)(B)	The Prepetition Term Loan Lenders that elect to participate in the DIP Facility (the “ <u>Electing Lenders</u> ”), RXR FP Investor LP, RXR FP Investor II LP, RXR FP Investor III, LP, RXR FP Investor IV LP, RXR FP GP LLC (“ <u>RXR</u> ”), and/or their direct or indirect investors (collectively, the “ <u>RXR Lender</u> ”), and CF Principal Investments, LLC or CFV Investments, LLC and/or any affiliates thereof (the “ <u>CF Lender</u> ”, and together with the Electing Lenders and the RXR Lender, the “ <u>DIP Lenders</u> ”). The Required DIP Lenders are CF Lender and RXR.	Interim Order at 2
Commitment Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(i)(A)	A priming, senior secured, superpriority debtor-in-possession credit facility consisting of a delayed draw term loan in an aggregate maximum principal amount of \$17.5 million, of which \$10.0 million will be available immediately upon entry of the Interim Order.	Interim Order at 2
Conditions to Closing and Borrowing Bankruptcy Rule 4001(c)(1)(B)	The closing of the DIP Facility, each Advance and the Debtors’ right to use Cash Collateral, will be subject to the satisfaction of the following conditions precedent: i. satisfactory completion of legal and collateral due diligence and transaction structuring, including due diligence concerning the Chapter 11 Cases and the receipt of all required court approvals of the DIP Facility and any other motions of the Debtors of concern to the DIP Lenders;	DIP Term Sheet

⁵ The summaries contained in this Motion are qualified in their entirety by the provisions of the documents referenced, including the DIP Term Sheet and the Interim Order. To the extent anything in this Motion is inconsistent with such documents, the terms of the applicable documents shall control. Capitalized terms used in this summary chart but not otherwise defined have the meanings ascribed to them in the DIP Documents or the DIP Orders, as applicable.

⁶ Capitalized terms used but not otherwise defined in this chart have the meanings ascribed to them in the DIP Term Sheet or Interim Order, as applicable.

Bankruptcy Code	Summary of Material Terms	Reference
Local Rule 4001-2(a)(i)(E)	ii. the RSA shall remain in full force and effect; iii. the DIP Agent shall have received executed counterparts to the DIP Facility from each DIP Lender; iv. no later than three (3) days prior to the Petition Date, the Required DIP Lenders shall have received the Initial DIP Budget; v. the Debtors shall have provided the DIP Lenders with a copy of the “first day” motions and proposed orders; vi. orders approving all “first day” motions shall have been entered by the Bankruptcy Court, and in the case of any “first day” motions and orders that affect the rights or duties of the DIP Agent or DIP Lenders (including without limitation the cash management order), shall be in form and substance acceptable to the Required DIP Lenders; vii. other than as set forth in the RSA, the Debtors shall not have executed, entered into or otherwise committed to any plan or restructuring support agreement or any other agreement or understanding concerning the terms of a chapter 11 plan or other exit strategy without the consent of the Required DIP Lenders; viii. the Interim Order, in form and substance acceptable to the Required DIP Lenders, shall have been entered by the Bankruptcy Court within three (3) days following the Petition Date and shall not have been stayed, modified or appealed. ix. the representations and warranties of the Debtors in the DIP Term Sheet shall be true and correct; x. except as disclosed to the DIP Lenders in writing, since the date of the Interim Order, there shall have been no Material Adverse Effect⁷; xi. reimbursement in full in cash of the reasonable and documented fees and expenses of the DIP Agent, DIP Lender, and, solely to the extent provided for in the Prepetition Credit Agreement, Prepetition Agent and Prepetition Lenders; xii. the DIP Agent shall have received (for distribution to the DIP Lenders), by at least five (5) business days prior to the Closing Date “know your customer” and anti-money laundering rules and regulations, including the Patriot Act, beneficial ownership and other similar information that may be required by any DIP Lender; xiii. there shall not exist any action, suit, investigation, litigation or proceeding pending or threatened (other than the Chapter 11 Cases) in any court or before any governmental authority that, in the discretion of the Required DIP Lenders, materially and adversely affects any of the transactions contemplated hereby, or that has or could be reasonably likely to result in a Material Adverse Effect. The obligation of each DIP Lender to make any Advance, including the availability of any Subsequent Advance and any further availability of the balance of the DIP Facility, will be subject to the satisfaction of each of the following conditions precedent, on and as of the date of each such Advance: i. (a) with respect to the Initial Advance, the Interim Order shall have been entered and shall be in full force and effect, shall not have been vacated or	

⁷ “Material Adverse Effect” means a material adverse effect on (a) the business, assets, financial condition or results of operations, in each case, of the Debtors and their Subsidiaries, taken as a whole, (b) the rights and remedies of the DIP Agent under the DIP Documents or (c) the ability of any Debtor to perform its obligations under the applicable DIP Documents.

Bankruptcy Code	Summary of Material Terms	Reference
	reversed, and shall not be subject to any stay and (b) with respect to any Subsequent Advance, the Final Order shall have been entered within three (3) business days following the Petition Date, and shall not have been vacated or reversed, and shall not be subject to any stay. ii. the RSA shall remain in full force and effect; iii. the DIP Agent shall have received a duly executed notice of borrowing; iv. no later than three (3) days prior to the Petition Date, the DIP Agent and the Required DIP Lenders shall have received the Initial DIP Budget; v. other than as set forth in the RSA, the Debtors shall not have executed, entered into or otherwise committed to any plan or restructuring support agreement or any other agreement or understanding concerning the terms of a chapter 11 plan or other exit strategy without the consent of the Required DIP Lenders; vi. except as disclosed to the DIP Lenders in writing, since the date of the Interim Order, there shall have been no Material Adverse Effect; vii. reimbursement in full in cash of the DIP Agent's and DIP Lenders' reasonable and documented fees and expenses; viii. there shall not exist any action, suit, investigation, litigation or proceeding pending or threatened (other than the Chapter 11 Cases) in any court or before any governmental authority that, in the reasonable opinion of the DIP Lenders, materially and adversely affects any of the transactions contemplated hereby, or that has or could be reasonably likely to result in a Material Adverse Effect; ix. the Debtors shall be in compliance with the Milestones and the Financing Orders, as applicable; x. such other customary deliverables as the Required DIP Lenders may reasonably require, including but not limited to the DIP Documents; xi. the Debtors shall have provided a certificate confirming that all of the representations and warranties of the Debtors in the DIP Term Sheet or the DIP Facility Documents, as applicable, remain true and correct, unless otherwise agreed by the Required DIP Lenders; xii. all security and collateral documents (as necessary and to be mutually agreed) evidencing or perfecting the DIP Agent liens and security interests on the DIP Collateral (in each case for the benefit of the DIP Lenders) shall be executed in form and substance reasonably acceptable to the Required DIP Lenders; and xiii. there shall be no defaults or Events of Default under the DIP Term Sheet or the DIP Facility Documents, as applicable, or any defaults or Events of Default shall have been waived by the Required DIP Lenders or cured pursuant to the terms thereof.	
Entities with Interests in Cash Collateral Bankruptcy Rule 4001(b)(1)(B)(i)	No entities other than the Prepetition Secured Parties and the DIP Secured Parties have an interest in the Cash Collateral	Interim Order ¶ G
Use of DIP Facility and Cash Collateral Bankruptcy Rule 4001(b)(1)(B)(ii)	No proceeds of the DIP Loans (including payments derived from the DIP Collateral) shall be used to (i) make any payment in settlement or satisfaction of any pre-petition claim or administrative claim (other than the DIP Obligations, as provided for in the Interim Order and DIP Term Sheet), unless (x) in compliance with the Initial DIP Budget or Approved DIP Budget, as applicable or (y) as separately approved by the Court in compliance with the DIP Budget; (ii) except as expressly provided for or permitted in the Interim Order, under the DIP Term Sheet or in the Initial DIP Budget	DIP Term Sheet; Interim Order ¶ 11

Bankruptcy Code	Summary of Material Terms	Reference
	or Approved DIP Budget, as applicable, or as otherwise approved in advance and in writing by the Required DIP Lenders (and as approved by the Court, if necessary) to make any payment or distribution, directly or indirectly, to any non-Debtor affiliate; provided that, notwithstanding anything else herein, any consent of the Required DIP Lenders to payments or distributions to non-Debtor Affiliates shall not be deemed, inferred or assumed absent express line-item approval of such payment or distribution in the Initial DIP Budget or Approved DIP Budget, as applicable; (iii) except as expressly provided or permitted hereunder, under the DIP Term Sheet or the Initial DIP Budget or the Approved DIP Budget, as applicable, or as otherwise approved in writing by the Required DIP Lenders (and approved by this Court, if necessary) to make any payment or distribution to any insider of the Debtors that is outside of the ordinary course, and in no event shall any non-ordinary course management, advisory, consulting or similar fee be paid to or for the benefit of any affiliate that is not a Debtor; (iv) to make any payment, advance, intercompany advance or transfer, or any other remittance or transfer whatsoever that is not in accordance with the DIP Term Sheet and the Initial DIP Budget or Approved DIP Budget, as applicable; (v) to make any payment otherwise prohibited by the Interim Order; or (vi) to make any intercompany loans and investments (including to and in foreign subsidiaries) unless expressly permitted by the Interim Order or the Initial DIP Budget or Approved DIP Budget, as applicable. Cash Collateral may be used only for (i) working capital purposes of the Debtors, (ii) interest and fees under the DIP Facility, (iii) payment of adequate protection payments to the Prepetition Agent and Prepetition Lenders, and (iv) the allowed costs and expenses of the Chapter 11 Cases, in each case, solely in accordance with the Approved Budget and the DIP Orders (subject to the Variance Limit).	
Maturity Date Bankruptcy Rule 4001(b)(1)(B)(iii), 4001(c)(1)(B) Local Rule 4001-2(a)(i)(M)	Unless otherwise consented to in writing by the Required DIP Lenders, the DIP Facility and the Debtors' right to use Cash Collateral shall automatically terminate (the date of such termination, the "<u>Termination Date</u>") without further notice or court proceedings on the earliest to occur of: i. 90 days after the Petition Date (the "<u>Scheduled Maturity Date</u>"); ii. the date of termination of the DIP Facility Commitment and/or acceleration of any outstanding borrowings under the DIP Facility pursuant to an Event of Default; iii. the first business day on which the Interim Order expires by its terms or is terminated, unless the Final Order has been entered and become effective prior thereto; iv. conversion of any of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code; v. dismissal of any of the Chapter 11 Cases; vi. the closing of a sale of substantially all of the equity or assets of the Debtors or any material asset of the Debtors; vii. the date of repayment in cash in full by the Debtors of all DIP Obligations and termination of the DIP Facility Commitment in accordance with the terms of the DIP Facility; and viii. the effective date of the Debtors' plan of reorganization confirmed in the Chapter 11 Cases.	DIP Term Sheet
Adequate Protection Bankruptcy Rules 4001(b)(1)(B)(iv), 4001(c)(1)(B)(ii)	The Prepetition Agent, on behalf of the Prepetition Secured Parties, shall receive the following as adequate protection, including as an inducement to the Prepetition Secured Parties' consent to the priming of the Prepetition Liens and use of the Prepetition Collateral (including Cash Collateral) (collectively, the "<u>Adequate Protection Obligations</u>"): i. upon closing of the DIP Facility, payment of all accrued and unpaid interest	Interim Order ¶ 20

Bankruptcy Code	Summary of Material Terms	Reference
	and fees (to the extent applicable) at the default rate then owing under the Prepetition Credit Agreement and the current payment of postpetition interest and fees at the default rate as and when due and payable under the Prepetition Credit Agreement, each of which shall be paid-in-kind notwithstanding anything to the contrary in the Prepetition Credit Agreement; ii. effective and perfected upon the date of the Interim Order and without the necessity of the execution of any mortgages, security agreements, pledge agreements, financing statements or other agreements, a valid, perfected replacement security interest in and lien upon all of the DIP Collateral (the “<u>Adequate Protection Liens</u>”) subject and subordinate only to (i) the Prepetition Permitted Senior Liens, (ii) the Carve-Out, and (iii) the DIP Liens; iii. an allowed superpriority administrative expense claim on account of such Prepetition Secured Parties’ Adequate Protection Claims as provided for in section 507(b) of the Bankruptcy Code (the “<u>Adequate Protection 507(b) Claim</u>”), which Adequate Protection 507(b) Claim shall be payable from and have recourse to all DIP Collateral and all proceeds thereof (including, without limitation, subject to entry of the Final Order, Avoidance Actions and Avoidance Proceeds). With respect to the Prepetition Collateral, the Adequate Protection 507(b) Claim shall be senior to all other claims of any kind and, with respect to the DIP Collateral, the Adequate Protection 507(b) Claim shall be subject and subordinate only to the Carve-Out, the Prepetition Permitted Senior Liens and the DIP Superpriority Claims; iv. current cash payments, in accordance with the Prepetition Credit Agreement, of all reasonable and documented prepetition and postpetition fees and expenses, the reasonable and documented fees and out-of-pocket expenses of (a) Gibson, Dunn & Crutcher LLP; (b) Sidley Austin LLP; and (c) Young Conway Stargatt & Taylor, LLP, and any other professional advisor engaged by the forgoing (such fees and expenses, the “<u>Adequate Protection Fees and Expenses</u>”). v. delivery of all reports and notices deliverable to the DIP Lenders and/or the DIP Agent pursuant to the DIP Term Sheet at the same time as such reporting is (or would be required to be) provided to the DIP Lenders and/or the DIP Agent, as applicable (the “<u>Prepetition Adequate Protection Information Right</u>”); and vi. maintenance and insurance by the Debtors of the Prepetition Collateral and DIP Collateral in amounts and for the risks, and by the entities, as required under the Prepetition Credit Agreement and the DIP Documents, as applicable.	
Liens and Priorities Bankruptcy Rule 4001(c)(1)(B)(i) Local Rule 4001-2(a)(i)(G)	Subject to the Carve-Out, all obligations of the Debtors under the DIP Facility (the “<u>DIP Obligations</u>”) shall be: i. entitled to superpriority claim status under section 364(c)(1) of the Bankruptcy Code with priority over all administrative expense claims and unsecured claims now existing or hereafter arising under the Bankruptcy Code, including, without limitation, the prepetition claims and adequate protection claims of the Prepetition Agent on behalf of the Prepetition Lenders (the “<u>DIP Superpriority Claims</u>”). The DIP Superpriority Claims of the DIP Lenders may be repaid from any cash of the Debtors, including without limitation, Cash Collateral and, upon entry of the Final Order, the proceeds of any Avoidance Action, and property received or recovered thereby (the “<u>Avoidance Proceeds</u>”);	Interim Order ¶¶ 7-8

Bankruptcy Code	Summary of Material Terms	Reference
	ii. secured, pursuant to section 364(c)(2) of the Bankruptcy Code, by a first priority, perfected lien on all of the Debtors' rights in property of the Debtors' estates as of the Petition Date that, as of the Petition Date, were unencumbered (and do not become perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code); provided, however, that unencumbered property shall include Avoidance Proceeds only upon entry of the Final Order; iii. secured, pursuant to section 364(c)(3) of the Bankruptcy Code, by a junior priority, perfected lien on all of the Debtors' rights in property of the Debtors' estates as of the Petition Date that, as of the Petition Date, is subject to Prepetition Permitted Senior Liens, which DIP Liens shall be (x) immediately junior and subordinate to any such Prepetition Permitted Senior Liens but (y) senior to the Prepetition Liens and the Adequate Protection Liens on all Prepetition Collateral subject to such Prepetition Permitted Senior Liens; iv. secured, pursuant to section 364(d)(1) of the Bankruptcy Code, by valid, enforceable, priming first priority, fully perfected security interests in and liens upon all of the Debtors' rights in property of the Debtors' estates as of the Petition Date and all of the Debtors' rights in property acquired post-petition (and proceeds thereof), whether now existing or hereafter acquired or arising that secure the obligations under the Prepetition Credit Agreement, subject and subordinate only to the Prepetition Permitted Senior Liens (the "<u>DIP Priming Liens</u>"). Notwithstanding anything herein to the contrary, the DIP Priming Liens shall be (i) senior in all respects to the Prepetition Liens, (ii) senior to any Adequate Protection Liens on DIP Collateral, and (iii) not subordinate to any lien, security interest or mortgage that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code. The DIP Liens shall not be (x) subject or subordinate to or made <i>pari passu</i> with (i) 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, (ii) any liens or security interests arising after the Petition Date including, without limitation, any liens or security interests granted in favor of any federal, state, municipal or other governmental unit, commission, board or court for any liability of the Debtors, or (iii) any intercompany or affiliate liens of the Debtors or (y) or (y) subordinate to or made <i>pari passu</i> with any other lien or security interest under section 363 or 364 of the Bankruptcy Code.	
Stipulations to Prepetition Liens and Claims Bankruptcy Rule 4001(c)(1)(B)(iii) Local Rule 4001-2(a)(i)(Q)	Valid and binding upon entry of the Interim Order, the Debtors shall stipulate and acknowledge (i) to the amount, validity, priority and enforceability of the Obligations (as defined in the Prepetition Credit Agreement) under the Prepetition Credit Agreement, (ii) that the Prepetition Agent for the benefit of the Prepetition Lenders has a valid, enforceable and fully perfected first priority lien in all of the Prepetition Collateral, including Cash Collateral, and all proceeds thereof, subject only to the DIP Liens, the Prepetition Permitted Senior Liens and the Carve-Out, and (iii) that the Prepetition Collateral is declining in value on a daily basis as the result of the Debtors' business operations, including current levels of resource extraction, capital expenditure and cash flow. The Debtors shall provide a full release to the Prepetition Agent and the Prepetition Lenders (and their related parties and affiliates), which would not bind any statutory committee of unsecured creditors (the "<u>Committee</u>") or other party in interest until the expiration of the Challenge Period.	Interim Order ¶¶ E, 61
Waiver/Modification of the Automatic Stay	The automatic stay imposed under section 362(a) of the Bankruptcy Code is modified as necessary to effectuate all of the terms and provisions of the Interim Order,	Interim Order ¶ 33

Bankruptcy Code	Summary of Material Terms	Reference
Bankruptcy Rule 4001(c)(1)(B)(iv) Local Rule 4001-2(a)(i)(S)	including, without limitation, to: (a) permit the Debtors to grant the DIP Liens, Adequate Protection Liens, DIP Superpriority Claims and Adequate Protection Claims; (b) permit the Debtors to perform such acts as the DIP Secured Parties or the Prepetition Secured Parties, as applicable, may reasonably request to assure the perfection and priority of the liens granted herein; (c) permit the Debtors to incur all liabilities and obligations to the DIP Secured Parties and the Prepetition Secured Parties under the DIP Documents, the DIP Facility and the Interim Order, as applicable; (d) authorize the Debtors to make, and each of the DIP Secured Parties and the Prepetition Secured Parties to retain and apply, payments made in accordance with the Interim Order; and (e) permit the DIP Secured Parties to exercise all their rights and remedies under the DIP Documents as provided herein.	
Milestones Bankruptcy Rule 4001(c)(1)(B)(v), (vi) Local Rule 4001-2(a)(i)(H)	The Debtors will agree to comply with the following deadlines (each of which may be extended or waived in writing by the Required DIP Lenders (collectively, the “ <u>Milestones</u> ”): - The Debtors shall file the prepackaged plan and disclosure statement in accordance with the RSA in form and substance acceptable to the Required DIP Lenders, in each case on the Petition Date; - the Debtors shall have filed a motion for approval of the disclosure statement on the Petition Date; - the Bankruptcy Court shall have entered the Interim Order no later than three days after the Petition Date; - the Bankruptcy Court shall have entered the Final Order no later than 35 days after the Petition Date; - the disclosure statement shall be approved by the Bankruptcy Court no later than 45 days after the Petition Date; - the Bankruptcy Court shall have entered an order confirming the prepackaged plan no later than 45 days after the Petition Date; and - the effective date of the prepackaged plan shall have occurred no later than 60 days after the Petition Date.	Interim Order ¶ 59
Section 552(b) Bankruptcy Rule 4001(c)(1)(B)(viii) Local Rule 4001-2(a)(i)(W)	The DIP Agent, the DIP Secured Parties, and the Prepetition Secured Parties shall be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and subject only to and effective upon entry of the Final Order, the “equities of the case” exception under section 552(b) of the Bankruptcy Code shall not apply to the DIP Agent, the DIP Secured Parties and the Prepetition Secured Parties with respect to proceeds, products, offspring or profits of any of the DIP Collateral or Prepetition Collateral.	Interim Order ¶¶ T, 48
Indemnification Bankruptcy Rule 4001(c)(1)(B)(ix)	The DIP Secured Parties and Prepetition Secured Parties shall be indemnified (as applicable) as provided in the Prepetition Credit Agreement and the DIP Documents, as applicable. The Debtors agree that no exception or defense in contract, law or equity exists as of the date of the Interim Order to any obligation set forth, as the case may be, in the Interim Order or in the DIP Documents, or in the Prepetition Credit Agreement to indemnify and/or hold harmless the DIP Agent, the Required DIP Lenders or any other DIP Secured Party, as the case may be, and any such defenses are hereby waived. The DIP Secured Parties shall not, in any way or manner, be liable or responsible for (i) the safekeeping of the DIP Collateral, (ii) any loss or damage thereto occurring or arising in any manner or fashion from any cause, (iii) any diminution in the value thereof or (iv) any act or default of any carrier, servicer, bailee, custodian, forwarding agency or other person and all risk of loss, damage or destruction of the DIP Collateral shall be borne by the Debtors.	Interim Order ¶¶ 31, 32

Bankruptcy Code	Summary of Material Terms	Reference
506(c) Waiver Bankruptcy Rule 4001(c)(1)(B)(x) Local Rule 4001-2(a)(i)(V)	Subject to entry of the Final Order, without limiting the scope of the Carve-Out, no costs or expenses of administration of the Chapter 11 Cases or any Successor Cases or any future proceeding that may result therefrom, including liquidation in bankruptcy or other proceedings under the Bankruptcy Code, shall be charged against or recovered from (and the Debtors shall irrevocably waive any such claim to) the DIP Collateral (including Cash Collateral) or Prepetition Collateral pursuant to section 506(c) of the Bankruptcy Code or any similar principle of law, without the prior written consent of the DIP Agent (as directed by the Required DIP Lenders) and the Prepetition Agent, as applicable, and no consent shall be implied from any other action, inaction or acquiescence by the DIP Secured Parties or the Prepetition Secured Parties, and nothing contained in the Interim Order shall be deemed to be a consent by the DIP Secured Parties or the Prepetition Secured Parties to any charge, lien, assessment or claims against the Collateral under section 506(c) of the Bankruptcy Code or otherwise.	Interim Order ¶ 48
Liens on Avoidance Actions Bankruptcy Rule 4001(c)(1)(B)(xi) Local Rule 4001-2(a)(i)(U)	The DIP Superpriority Claims shall be payable from and have recourse to all prepetition and postpetition property of the Debtors and all proceeds thereof, including Cash Collateral and claims and causes of action under sections 502(d), 544, 545, 547, 548 and 550 of the Bankruptcy Code, or any other proceeds or property recovered, unencumbered or otherwise from avoidance actions under the Bankruptcy Code, whether by judgment, settlement or otherwise. The Adequate Protection 507(b) Claim shall be payable from and have recourse to all DIP Collateral and all proceeds thereof (including, without limitation, subject to entry of the Final Order, Avoidance Actions and Avoidance Proceeds).	Interim Order ¶¶ 7, 19(b)
Interest Rate Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(i)(B)	The DIP Facility shall accrue interest at a rate per annum equal to Term SOFR (as defined in the Prepetition Credit Agreement) plus 7.5% which shall be payable monthly in cash; <i>provided</i> that at the Debtors' option, interest may paid-in-kind and shall accrue and be added to the principal balance on a monthly basis at an interest rate per annum equal to Term SOFR plus 14%; with a default interest rate of 2%.	DIP Term Sheet
Fees Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(i)(B)	Closing fee of 3% payable in cash on the date of the closing of the DIP Facility to the DIP Lenders based on the DIP Facility Commitment, and a commitment fee in an amount equal to 2% per annum of the undrawn amount of the DIP Facility Commitments, payable on a monthly basis in cash.	DIP Term Sheet
Provisions that Limit the Court's Discretion Local Rule 4001-2(a)(i)(C)	None	
Funding of Non-Debtor Affiliates Local Rule 4001-2(a)(i)(D)	Except as expressly provided for or permitted in the Interim Order, under the DIP Term Sheet or in the Initial DIP Budget or Approved DIP Budget, as applicable, or as otherwise approved in advance and in writing by the Required DIP Lenders (and as approved by the Court, if necessary), no proceeds of the DIP Loans (including payments derived from the DIP Collateral) shall be used to make any payment or distribution, directly or indirectly, to any non-Debtor affiliate; provided that, notwithstanding anything else in the Interim Order, any consent of the Required DIP Lenders to payments or distributions to non-Debtor Affiliates shall not be deemed,	Interim Order ¶ 11

Bankruptcy Code	Summary of Material Terms	Reference
	inferred or assumed absent express line-item approval of such payment or distribution in the Initial DIP Budget or Approved DIP Budget, as applicable.	
Budget and Variance Covenant Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(i)(E)	No later than the date of Closing, the Debtors shall prepare for the DIP Lenders' and DIP Agent's review and the Required DIP Lenders' consent (in their sole discretion) an updated thirteen-week (13-week) detailed cash projection, which shall be thereafter updated, as necessary, but shall not be updated less than once every four (4) weeks (each, a "<u>Proposed Budget</u>"). Upon the Debtors' receipt of the Required DIP Lenders' consent to a Proposed Budget, which approval shall be in the Required DIP Lenders' sole discretion (and may be withheld for any reason), such budget shall become an "Approved Budget" and shall replace the then-operative Approved Budget for all purposes. The Initial Approved Budget shall be the Approved Budget until such time as a new Proposed Budget is approved, following which such approved Proposed Budget shall constitute the Approved Budget until a subsequent Proposed Budget is approved. The Debtors shall operate in accordance with the Approved Budget and all disbursements shall be consistent with the provisions of the Approved Budget (subject to the Variance Limit). The Debtors may submit additional Proposed Budgets to the DIP Agent and the Required DIP Lenders, but until the Required DIP Lenders consent to such Proposed Budget, it shall not become an Approved Budget and the Debtors shall continue to comply with the then-operative Approved Budget. No later than 4:00 p.m. Eastern Time on the first Friday following the initial (4)-week anniversary of the Petition Date ("<u>Initial Variance Report Date</u>"), the Debtors shall provide to the DIP Lenders and the Prepetition Term Loan Agent, for the period beginning on the Petition Date and ending on the 4-week anniversary of the Petition Date (the "<u>Initial Testing Period</u>") a report (the "<u>Variance Report</u>") detailing (i) aggregate receipts on a combined basis during the testing period; (ii) capital expenditures on a combined basis during the testing period; and (iii) all other operating disbursements (excluding capital expenditures and administrative costs of the Chapter 11 Cases) during the testing period and (iv) disbursements for Debtors' administrative expenses of the Chapter 11 cases including professionals' fees and (v) any variance (whether positive or negative, expressed as a percentage) between the receipts and disbursements made during testing period and the corresponding amounts as set forth in the applicable Approved Budget. After the Initial Testing Period, beginning on the second Friday following the Initial Variance Report Date ("<u>Bi-weekly Testing Date</u>"), Debtor shall provide a Variance Report for the 2-week period ending the week preceding the Bi-weekly Testing Date. For both the Initial Variance Report Date and subsequent Bi-weekly Testing Dates, the Debtors shall not allow: (i) receipts received during the testing period, less the sum of (ii) capital expenditures on a combined basis since the Petition Date; and (iii) all other operating disbursements (excluding capital expenditures and administrative costs of the Chapter 11 Cases) since the Petition Date (the "<u>Cumulative Net Operating Cash Flow</u>") to be less than 105% of the sum of the estimated (i) cumulative receipts on a combined basis during the testing period, less the sum of (ii) capital expenditures on a combined basis during the testing period and (iii) all other operating disbursements (excluding capital expenditures,) during the testing period (such limitation, the "<u>Variance Limit</u>"); <i>provided</i> that any variances greater than the limits set forth above shall require advance approval from the Required DIP Lenders; <i>provided, further</i>, that the Required DIP Lenders shall consider in good faith weekly variances resulting from changes in the timing of particular receipts or disbursements and, in such cases, approval of such variances shall not be	Interim Order ¶¶ 16-18

Bankruptcy Code	Summary of Material Terms	Reference
	unreasonably withheld (solely to the extent the Approved Budget is not exceeded on a cumulative basis). Additional variances, if any, from the Approved Budget, and any proposed changes to the Approved Budget, shall be subject to the Required DIP Lenders' reasonable approval. For the avoidance of doubt, any reference to "written consent" hereunder shall include consent granted by email.	
Carve-Out Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(i)(F)	Notwithstanding anything to the Interim Order to the contrary, the Debtors' obligations to the DIP Secured Parties and the Prepetition Agent and Prepetition Lenders, and the liens, security interests and superpriority claims granted by the Interim Order or under the Prepetition Credit Agreement and the DIP Documents, and the payment of all such obligations, shall be subject and subordinate in all respects to payment of the following fees and expenses: (a) the payment of unpaid fees required to be paid to the Clerk of this Court and to the U.S. Trustee pursuant to 28 U.S.C. § 1930(a); (b) fees and expenses up to \$25,000 incurred by a trustee under section 726(b) of the Bankruptcy Code; (c) to the extent allowed at any time, whether by interim order, procedural order or otherwise, but subject to final allowance by the Court, all unpaid fees and expenses (excluding any restructuring, sale, success or other transaction fee of any investment bankers or financial advisors) (the " <u>Allowed Professional Fees</u> ") incurred by persons or firms retained by the Debtors pursuant to section 327, 328 or 363 of the Bankruptcy Code (the " <u>Debtor Professionals</u> "), and any Committee (together with the Debtor Professionals, the " <u>Estate Professionals</u> ") at any time before the delivery by the DIP Agent (acting at the direction of the Required DIP Lenders) of a Carve-Out Notice (as defined in the Interim Order) whether allowed by the Court prior to or after delivery of a Carve-Out Notice up to the amounts for the Estate Professionals included in the Approved Budget through the date of the Carve-Out Notice (the amounts set forth in this clause (c) being the " <u>Pre Carve-Out Trigger Notice Amount</u> "); and (d) the Allowed Professional Fees of Debtor Professionals, after application of all retainers, incurred on or after the delivery by the DIP Agent (acting at the direction of the Required DIP Lenders) of the Carve-Out Notice up to \$500,000 (the amount set forth in this clause (d) being the " <u>Post Carve-Out Trigger Amount</u> ") (the foregoing clauses (a) through (d), collectively, the " <u>Carve-Out</u> ").	Interim Order ¶ 42
Repayment Features Local Rule 4001-2(a)(I)	The following mandatory prepayments will be required to be made toward the DIP Facility within three business days of receipt by any Debtor: (i) 100% of any net cash proceeds received from the incurrence or issuance of any indebtedness or equity by any Debtor; <i>provided</i> that no Debtor shall incur or issue any additional postpetition superpriority indebtedness or liens without the prior written consent of the Required DIP Lenders; (ii) 100% of the net cash proceeds received from any non-ordinary course asset sale or disposition; (iii) 100% of any cash proceeds received (a) under any insurance policy on account of damage or destruction of any assets or property of any Debtor and/or (b) due to any taking or condemnation of any assets or property; or (iv) 100% of any cash received by or paid to or for the account of any Debtor not in the ordinary course of business, including but not limited to tax refunds, pension plan reversions, indemnity payments and any purchase price adjustments.	DIP Term Sheet
Joint Liability Local Rule 4001-2(a)(i)(J)	None	
Payment of Secured Parties' Fees Without Review Local Rule 4001-2(a)(i)(K)	The Debtors are authorized and directed to pay the DIP Agent's and Required DIP Lenders' reasonable and documented (in summary format) fees and out-of-pocket expenses in connection with the negotiation and preparation of the documentation of the DIP Loans, in accordance with the DIP Term sheet, including, but not limited to, legal fees, without the DIP Agent's counsel's or Consenting Creditor Advisors' having to file any application with this Court for approval or payment, and the DIP Agent's	Interim Order ¶¶ 19(c), 39

Bankruptcy Code	Summary of Material Terms	Reference
	counsel and Consenting Creditor Advisors shall not be required to comply with the U.S. Trustee fee guidelines. The professionals for the DIP Agent and the Required DIP Lenders shall deliver a summary invoice (which shall not be required to contain time entries but shall include a general, brief description of the nature of the matters for which services were rendered) to counsel to the Committee, if any, and the U.S. Trustee, redacted as necessary with respect to any privileged or confidential information contained therein. Any objections raised by the Debtors, the U.S. Trustee or the Committee, if any, with respect to such invoices within ten days of the receipt thereof will be subject to resolution of this Court. Pending such resolution, the undisputed portion of any such invoice will be paid promptly by the Debtors.	
Challenge Period Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(i)(L), (Q)	The Debtors' stipulations, admissions, agreements and releases contained in the Interim Order shall be binding upon all other parties in interest, including, without limitation, any Committee and any other person or entity acting or seeking to act on behalf of the Debtors' estates including any chapter 7 or chapter 11 trustee or examiner appointed or elected for any of the Debtors, in all circumstances and for all purposes unless: (a) such Committee or any other party in interest with requisite standing (subject in all respects to any agreement or applicable law that may limit or affect such entity's right or ability to do so) has timely filed an adversary proceeding or contested matter (subject to the limitations contained in the Interim Order) by no later (i) in the case of any Committee, the earlier of (a) 75 days from the entry of the Interim Order or (b) the date upon which the confirmation order is entered, with such 75-day period subject to extension by agreement of the Committee and the Required DIP Lenders, and other third parties, as the case may be, or by order of the Court; provided that if the confirmation order is not entered within 75 days from the Petition Date, the Committee shall have 75 days from formation; (ii) in the case that a chapter 7 or chapter 11 trustee is appointed or elected within 75 days after the Petition Date (including following a conversion of these Chapter 11 Cases to cases under chapter 7) the earlier of (a) 75 days from the Petition Date or 30 days from the appointment of such chapter 7 or chapter 11 trustee, or (b) the date upon which the confirmation order is entered; (iii) in the case of any other party in interest (including a chapter 7 or chapter 11 trustee appointed or elected more than 75 days after the Petition Date), the earlier of (a) 75 days of the Petition Date, or (b) the date upon which the confirmation order is entered (the time period established by clauses (i), (i) and (iii), the " <u>Challenge Period</u> "), (A) objecting to or challenging the amount, validity, perfection, enforceability, priority or extent of the Prepetition Secured Debt or the Prepetition Liens, or (B) otherwise asserting or prosecuting any action for preferences, fraudulent transfers or conveyances, other avoidance power claims or any other claims, counterclaims or causes of action, objections, contests or defenses (collectively, the " <u>Challenges</u> ") against the Prepetition Secured Parties or their respective subsidiaries, affiliates, officers, directors, managers, principals, employees, agents, financial advisors, attorneys, accountants, investment bankers, consultants, representatives and other professionals and the respective successors and assigns thereof, in each case in their respective capacity as such (each, a " <u>Representative</u> " and, collectively, the " <u>Representatives</u> ") in connection with matters related to the Prepetition Credit Agreement, the Prepetition Secured Debt, the Prepetition Liens and the Prepetition Collateral; and (b) there is a final non-appealable order in favor of the plaintiff sustaining any such Challenge in any such timely filed adversary proceeding or contested matter; <u>provided, however</u> , that any pleadings filed in connection with any Challenge shall set forth with specificity the basis for such challenge or claim and any challenges or claims not so specified prior to the expiration of the Challenge Period shall be deemed forever, waived, released and barred.	Interim Order ¶ 61
Events of Default	The occurrence of any of the following events, unless waived by the Required DIP Lenders, shall constitute an event of default (each, a " <u>Postpetition Default</u> " and	Interim Order ¶ 53

Bankruptcy Code	Summary of Material Terms	Reference
Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(i)(M)	collectively, the “ <u>Postpetition Defaults</u> ”): (a) the failure of the Debtors to perform any of the terms, provisions, conditions, covenants or obligations under the Interim Order, (b) the failure of the Debtors to comply with any of the Milestones or (c) the occurrence of an “Event of Default” as set forth in the DIP Term Sheet.	
Cross-Collateralization and Administrative Expense Status Local Rule 4001-2(a)(i)(N)	None	
Roll Up Local Rule 4001-2(a)(i)(O)	None	
Non-Consensual Priming Liens Local Rule 4001-2(a)(i)(P)	None	
Provisions Approving All Terms of the Loan Agreement Local Rule 4001-2(a)(i)(R)	None	
Limitation on Remedies Hearing Local Rule 4001-2(a)(i)(T)	None	
Marshaling Waiver Local Rule 4001-2(a)(i)(X)	Subject to and effective only upon entry of the Final Order, the DIP Secured Parties and the Prepetition Secured Parties shall not be subject to the equitable doctrine of “marshaling” or any similar doctrine with respect to the DIP Collateral, the DIP Obligations, the Prepetition Secured Debt or the Prepetition Collateral.	Interim Order ¶ 47

BASIS FOR RELIEF REQUESTED

I. The Debtors Should Be Authorized to Obtain Postpetition Financing Pursuant to Section 364(c) and (d) of the Bankruptcy Code

24. For the reasons set forth herein, the Court should authorize the Debtors, as an exercise of their sound business judgment, to enter into the DIP Documents and obtain access to the DIP Facility.

A. Entry Into the DIP Documents Is a Sound Exercise of the Debtors' Business Judgment

25. Section 364 of the Bankruptcy Code authorizes a debtor to obtain secured or superpriority financing under certain circumstances discussed below. Courts grant a debtor-in-possession considerable deference in acting in accordance with its 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. *See, e.g., 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 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.”). To determine whether the business judgment standard is met, a court need only “examine whether a reasonable businessperson would make a similar decision under similar circumstances.” *In re Exide Techs.*, 340 B.R. 222, 239 (Bankr. D. Del. 2006).

26. Furthermore, in considering whether the terms of postpetition financing are fair and reasonable, courts consider the terms in light of the relative circumstances of both the debtor and the potential lender. *In re Farmland Indus., Inc.*, 294 B.R. 855, 886 (Bankr. W.D. Mo. 2003) (“Viewed in isolation, several of the terms of the [postpetition financing] might appear to be extreme or even unreasonable. Certainly, many of them favor the DIP Lender(s). But, taken in context, and considering the relative circumstances of the parties, the Court does not believe that the terms are unreasonable.”); *see also Unsecured Creditors' Comm. Mobil Oil Corp. v. First Nat'l Bank & Trust Co. (In re Elingsen McLean Oil Co., Inc.)*, 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). Courts may also appropriately take into consideration noneconomic benefits to a

debtor offered by a proposed postpetition facility. For example, in *In re ION Media Networks, Inc.*, the United States 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 foster consensus may be preferable to a notionally better transaction that carries the risk of promoting unwanted conflict.

2009 WL 2902568, at *4 (Bankr. S.D.N.Y. July 6, 2009) (emphasis added).

27. Here, the Debtors' decision to move forward with the DIP Facility is a sound exercise of their business judgment following an arm's-length process and careful evaluation of alternatives, as well as evaluation of the Debtors' financial needs. Specifically, the Debtors and their advisors determined that postpetition financing will create adequate liquidity necessary to administer these chapter 11 cases, continue operations, fund working capital needs and consummate the transactions contemplated in the prepackaged plan of reorganization. See Hagood Decl. ¶ 13. Indeed, without immediate additional liquidity, the Debtors will be unable to preserve their business nor maximize value, to the detriment of the Debtors' creditors, customers, vendors, employees and other stakeholders. *Id.* The Debtors negotiated the DIP Term Sheet with the DIP Lenders in good faith, at arm's-length and with the assistance of their respective advisors, and the Debtors believe that they have obtained the best financing available under the circumstances. *Id.* ¶¶ 19, 24, 27. The Debtors further believe that the economics of the DIP Facility, including the fees and interest payable thereunder, are fair and reasonable and consistent with market norms. *Id.* ¶¶ 20, 24, 28. Accordingly, the Court should authorize the Debtors' entry into the DIP Documents as a sound exercise of the Debtors' business judgment.

B. The Debtors Should Be Authorized to Grant Liens and Superpriority Claims

28. The Debtors propose to obtain financing under the DIP Facility by providing security interests and liens as set forth in the DIP Documents pursuant to section 364(c) and 364(d) of the Bankruptcy Code. More specifically, the Debtors propose to provide to the DIP Lenders, subject to the Carve-Out, continuing, valid, binding, enforceable, non-avoidable and automatically and properly perfected postpetition security interests in and liens on the DIP Collateral, which include substantially all of the Debtors' assets, and (a) a superpriority administrative expense claim under section 364(c)(1) of the Bankruptcy Code, (b) a first priority, perfected lien in all unencumbered property of the Debtors pursuant to section 364(c)(2) of the Bankruptcy Code, (c) a junior priority, perfected lien on all property of the Debtors that is subject to Prepetition Permitted Senior Liens pursuant to section 364(c)(3) of the Bankruptcy Code, and (d) a priming first priority, fully perfected security interest in and lien upon the Prepetition Collateral pursuant to section 364(d)(1) of the Bankruptcy Code.

29. The statutory requirement for obtaining postpetition credit under section 364(c) of the Bankruptcy Code is a finding, made after notice and hearing, that a debtor is "unable to obtain unsecured credit allowable under section 503(b)(1) of [the Bankruptcy Code] as an administrative expense." 11 U.S.C. § 364(c); *see also In re Crouse Grp., Inc.*, 71 B.R. 544, 549 (Bankr. E.D. Pa. 1987) (secured credit under section 364(c) of the Bankruptcy Code is authorized, after notice and hearing, upon showing that unsecured credit cannot be obtained). In such instance, the court may authorize the obtaining of credit or the incurring of debt (i) with priority over any or all administrative expenses of the kind specified in section 503(b) or 507(b) of this title, (ii) secured by a lien on property of the estate that is not otherwise subject to a lien, or (iii) secured by a junior lien on property of the estate that is subject to a lien. 11 U.S.C. § 364(c).

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

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

In re Crouse Grp., Inc., 71 B.R. at 549; *see also L.A. Dodgers LLC*, 457 B.R. at 312-13.

31. As described herein, the Debtors are unable to obtain unsecured credit. *See* Hagood Decl. ¶ 18. The Debtors recognized that it would be particularly difficult to secure financing because all of the Debtors' cash and material assets are encumbered by existing liens under their prepetition debt and the Prepetition Lenders indicated that they would not consent to a "priming" debtor-in-possession financing provided by a third party. *Id.* ¶ 16-17. In light of this, the Debtors understood that any third-party debtor-in-possession financing would require engaging in a protracted and costly priming fight or valuation dispute with their prepetition lenders at the very outset of these chapter 11 cases. *Id.* ¶ 16. And regardless of the prospects of success, the expense and disruption associated with complex litigation on the first day would seriously jeopardize the Debtors' reorganization efforts, as already strained liquidity would be required to fund such a fight. *Id.* ¶ 17.

32. Absent the DIP Facility and the consensual use of Cash Collateral, which will provide sufficient liquidity and working capital during these chapter 11 cases, the value of the Debtors' estates would be significantly impaired to the detriment of all stakeholders. *Id.* ¶ 13. Given the Debtors' circumstances, the Debtors believe that the terms of the DIP Facility, as set forth in the DIP Term Sheet, are fair, reasonable and adequate. *Id.* ¶ 20. The terms of the DIP Facility were negotiated in good faith and at arm's-length between the Debtors and the DIP

Lenders. *Id.* ¶ 19. For all of these reasons, the Debtors have met the standard for obtaining postpetition financing under section 364(c) of the Bankruptcy Code.

33. Further, section 364(d) of the Bankruptcy Code provides that a debtor may obtain credit secured by a senior or equal lien on property of the estate already subject to a lien, after notice and a hearing, where the debtor is “unable to obtain such credit otherwise” and “there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted.” 11 U.S.C. § 364(d)(1). In other words, a debtor may incur “priming” liens on collateral subject to prepetition liens if either the prepetition lenders consent or the prepetition lenders’ interest in the collateral are adequately protected. *See Anchor Savs. Bank FSB v. Sky Valley, Inc.*, 99 B.R. 117, 122 (N.D. Ga. 1989) (“[B]y tacitly consenting to the superpriority lien, those [undersecured] creditors relieved the debtor of having to demonstrate that they were adequately protected.”).

34. Here, the Prepetition Lenders have affirmatively consented to the DIP Facility and actively participated in facilitating the proposed DIP Facility. *See* Hagood Decl. ¶ 21. Indeed, the Prepetition Lenders are also DIP Lenders. Moreover, as set forth more fully in the DIP Orders, the Debtors propose to provide an adequate protection package to protect the interests of the Prepetition Lenders. Therefore, the relief requested pursuant to section 364(d) of the Bankruptcy Code is appropriate.

C. The Debtors Were Unable to Obtain Financing on More Favorable Terms

35. To obtain a postpetition financing facility, a debtor need only demonstrate “by a good faith effort that credit was not available without” the protections afforded to potential lenders by sections 364(c) and (d) of the Bankruptcy Code. *In re Snowshoe Co., Inc.*, 789 F.2d 1085, 1088 (4th Cir. 1986); *see also In re Reading Tube Indus.*, 72 B.R. 329, 332 (Bankr. E.D. Pa 1987).

Moreover, in circumstances where only a few lenders likely can or will extend the necessary credit to a debtor, “it would be unrealistic and unnecessary to require [the debtor] to conduct such an exhaustive search for financing.” *In re Sky Valley, Inc.*, 100 B.R. 107, 113 (Bankr. N.D. Ga. 1988), *aff’d sub nom. Anchor Sav. Bank FSB v. Sky Valley, Inc.*, 99 B.R. 117, 120 n.4 (N.D. Ga. 1989); *see also In re Snowshoe Co.*, 789 F.2d at 1088 (demonstrating that credit was unavailable absent the senior lien by establishment of unsuccessful contact with other financial institutions in the geographic area); *In re Ames Dep’t Stores, Inc.*, 115 B.R. 34, 37-39 (Bankr. S.D.N.Y. 1990) (finding that the debtor must show that it made reasonable efforts to seek other sources of financing under section 364(a) and (b) of the Bankruptcy Code).

36. As discussed above, the Debtors carefully considered their financing options and determined that the DIP Facility provides the Debtors with the best postpetition financing option available. *See* Hagood Decl. ¶¶ 27, 29. The Debtors do not believe that alternative sources of financing are reasonably available given the circumstances and the Debtors’ unsuccessful solicitation of alternative financing proposals. *Id.* ¶¶ 18, 27. Thus, the Debtors have determined that the DIP Facility provides the most favorable terms while reducing execution risks and providing the incremental liquidity necessary to administer these chapter 11 cases, continue operations, fund working capital needs and consummate the transactions contemplated in the prepackaged plan of reorganization. *Id.* ¶¶ 13, 29. Simply put, the DIP Facility provides the Debtors with the liquidity they need at the lowest cost available while simultaneously placing the Debtors on an optimal path to reorganization. Therefore, the requirement of section 364 of the Bankruptcy Code that alternative credit on more favorable terms be unavailable to the Debtors is satisfied.

II. Section 363 of the Bankruptcy Code Authorizes the Debtors' Use of Cash Collateral

37. Section 363(c)(2) of the Bankruptcy Code provides that a debtor in possession may not use cash collateral unless (A) each entity that has an interest in such cash collateral provides consent or (B) the court approves the use of cash collateral after notice and a hearing. 11 U.S.C. § 363(c). Section 363(e) of the Bankruptcy Code provides that “on request of an entity that has an interest in property used . . . or proposed to be used . . . by the [debtor in possession], the court . . . shall prohibit or condition such use . . . as is necessary to provide adequate protection of such interest.” *Id.* § 363(e).

38. Here, the Debtors seek authority to use Cash Collateral pursuant to the Interim DIP Budget and seek the approval of various forms of adequate protection in favor of the Prepetition Lenders, including a superpriority claim, replacement liens on the DIP Collateral (subordinate only to the Prepetition Permitted Senior Liens, Carve-Out and DIP Liens), reimbursement of reasonable fees and expenses incurred by the Prepetition Secured Parties as set forth in the Interim Order. Importantly, the DIP Lenders and the Prepetition Lenders consent to the use of Cash Collateral on the terms set forth in the DIP Orders.

39. The Debtors submit that the proposed adequate protection is sufficient to protect the Prepetition Lenders from any potential diminution in value to the Prepetition Collateral. The Debtors' provision of adequate protection is also fair and appropriate under the circumstances of these chapter 11 cases to ensure that the Debtors are able to continue using the Cash Collateral, subject to the terms and limitations set forth in the DIP Orders, for the benefit of all parties in interest and their estates.

40. Bankruptcy Rule 4001(b) permits a court to approve a debtor's request for use of cash collateral during the fourteen-day period following the filing of a motion requesting

authorization to use cash collateral “only . . . as is necessary to avoid immediate and irreparable harm to the estate pending a final hearing.” FED. R. BANKR. P. 4001(b)(2). In examining requests for interim relief under this rule, courts apply the same business judgment standard applicable to other business decisions. *See, e.g., In re Simasko Production Co.*, 47 B.R. 444, 449 (D. Colo. 1985); *see also In re Ames Dep’t Stores Inc.*, 115 B.R. at 38. After the fourteen-day period, the request for use of cash collateral is not limited to those amounts necessary to prevent harm to the debtor’s business.

41. As previously noted, in order to continue operating and satisfy accruing administrative expenses, the Debtors require immediate access to the DIP Facility and the use of Cash Collateral. Such use will provide the Debtors with the necessary funds to remain administratively solvent during these chapter 11 cases. Absent access to Cash Collateral, the Debtors would face immediate and irreparable harm. *See* Hagood Decl. ¶ 13. The Debtors would likely be forced to cease operations and convert these chapter 11 cases to cases under chapter 7 of the Bankruptcy Code. Thus, immediate access to Cash Collateral is essential to the Debtors’ ability to maximize value for the benefit of all constituents. *Id.* ¶ 25.

III. The Debtors Should Be Authorized to Pay the Fees Required by the DIP Agent and the DIP Lenders Under the DIP Documents

42. Under the DIP Term Sheet, the Debtors have agreed, subject to Court approval, to pay certain fees to the DIP Lenders in exchange for providing the DIP Facility. Specifically, the DIP Facility provides for a closing fee of 3% and a commitment fee in an amount equal to 2% per annum of the undrawn amount of the DIP Facility Commitment, payable on a monthly basis in cash. These fees are customary and reasonable under the circumstances and comparable to fees in similar debtor-in-possession financings. There is ample justification for this Court to approve the

payment of such fees, which are part of the DIP Documents. Thus, they should not be viewed separately, but rather as a part of the overall, substantial benefits provided under the DIP Facility.

IV. The DIP Lenders Should Be Deemed Good-Faith Lenders Under Section 364(e) of the Bankruptcy Code

43. 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 grant such liens is later reversed or modified on appeal. Section 364(e) of the Bankruptcy Code 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).

44. As explained herein, the DIP Documents are the result of (a) the Debtors' reasonable and informed determination that the DIP Lenders offered the most favorable terms on which to obtain vital postpetition financing and (b) arm's-length, good-faith negotiations between the Debtors, the DIP Agent and the DIP Lenders. *See* Hagood Decl. ¶ 19. The DIP Documents are reasonable and appropriate under the circumstances, and the proceeds of the DIP Facility will be used only for purposes that are permissible under the Bankruptcy Code and the DIP Documents. Furthermore, no consideration is being provided to any party to the DIP Documents other than as described herein. Accordingly, the Court should find that the DIP Lenders are "good faith" lenders within the meaning of section 364(e) of the Bankruptcy Code and are entitled to all of the protections afforded therein.

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

45. The Interim Order provides that the automatic stay provisions of section 362 of the Bankruptcy Code will be modified to (a) permit the Debtors to grant the DIP Liens, Adequate Protection Liens, DIP Superpriority Claims and Adequate Protection Claims; (b) permit the Debtors to perform such acts as the DIP Secured Parties or the Prepetition Secured Parties, as applicable, may reasonably request to assure the perfection and priority of the liens granted in the Interim Order; (c) permit the Debtors to incur all liabilities and obligations to the DIP Secured Parties and the Prepetition Secured Parties under the DIP Documents, the DIP Facility and the Interim Order, as applicable; (d) authorize the Debtors to make, and each of the DIP Secured Parties and the Prepetition Secured Parties to retain and apply, payments made in accordance with the Interim Order; and (e) permit the DIP Secured Parties to exercise all their rights and remedies under the DIP Documents as provided herein.

46. Stay modifications of this kind are ordinary and standard features of debtor-in-possession financing arrangements, and in the Debtors' business judgment, are reasonable and fair under the circumstances of these chapter 11 cases. *See, e.g., In re Carestream Health, Inc.*, No. 22-10778 (JKS) (Bankr. D. Del. Aug. 24, 2022) (modifying automatic stay as necessary to effectuate the terms of the order and following occurrence of an event of default); *In re Town Sports Int'l, LLC*, No. 12-12168 (CTG) (Bankr. D. Del. Oct. 2, 2020) (same); *In re Akorn, Inc.*, No. 20-11177 (KBO) (Bankr. D. Del. May 22, 2020) (same).⁸

⁸ Because of the voluminous nature of the orders cited herein, such orders have not been attached to this Motion. Copies of these orders are available upon request of the Debtors' proposed undersigned counsel.

VI. Failure to Obtain Immediate Interim Access to the DIP Facility Would Cause Immediate and Irreparable Harm

47. Bankruptcy Rule 4001 provides that a final hearing on a motion to obtain credit pursuant to section 364 of the Bankruptcy Code may not be commenced earlier than fourteen days after the service of such motion. FED. R. BANKR. P. 4001(c)(2). Upon request, however, the Court may conduct a preliminary, expedited hearing on the motion and authorize the obtaining of credit to the extent necessary to avoid immediate and irreparable harm to a debtor's estate. *Id.*

48. For the reasons noted herein, the Debtors have an immediate need for the liquidity provided by the DIP Facility. *See* Hagood Decl. ¶ 13. The proposed DIP Facility is critical to the Debtors' ability to continue operations, fund working capital needs and consummate the transactions contemplated in the prepackaged plan of reorganization while providing sufficient liquidity without creating a value-destructive "priming" or valuation dispute at the outset of these chapter 11 cases. *Id.* ¶ 13. The DIP Facility is an essential component to funding the Debtors and providing a path to emergence and is critical to reassure customers and vendors and protect operations.

49. The Debtors request that the Court hold and conduct a hearing to consider entry of the Interim Order authorizing the Debtors, from and after entry of the Interim Order until the Final Hearing, to use Cash Collateral and receive initial funding under the DIP Facility. This relief will enable the Debtors to preserve and maximize value and, therefore, avoid immediate and irreparable harm and prejudice to their estates and all parties in interest, pending the Final Hearing.

THE REQUIREMENTS OF BANKRUPTCY RULE 6003(b) ARE SATISFIED

50. Bankruptcy Rule 6003 empowers a court to grant certain relief within the first twenty-one days after the petition date only "to the extent that relief is necessary to avoid immediate and irreparable harm." For the reasons discussed above, the Debtors believe an

immediate and orderly transition into chapter 11 is critical and the failure to receive the requested relief during the first twenty-one days of these Chapter 11 Cases could impact the Debtors' operations at this important juncture. The requested relief is necessary for the Debtors to operate this business in the ordinary course, preserve the ongoing value of their operations, and maximize value of their estates for the benefit of all stakeholders. The Debtors have demonstrated that the requested relief is "necessary to avoid immediate and irreparable harm," as contemplated by Bankruptcy Rule 6003, and the Court should grant the requested relief.

WAIVER OF BANKRUPTCY RULE 6004(a) AND 6004(h)

51. To implement the relief requested in this Motion, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the fourteen-day stay of an order authorizing the use, sale or lease of property under Bankruptcy Rule 6004(h).

NOTICE

52. Notice of this Motion will be provided to: (a) the Office of the United States Trustee for the District of Delaware; (b) the parties listed on the Debtors' consolidated list of their thirty (30) largest unsecured creditors; (c) counsel to the Required Consenting Creditors; (d) counsel to the DIP Agent; (e) the United States Securities and Exchange Commission; (f) the Internal Revenue Service; (g) the Office of the United States Attorney for the District of Delaware; (h) Delaware State Treasury; (i) Delaware Secretary of State; and (j) all parties that have requested notice pursuant to Bankruptcy Rule 2002. As this Motion is seeking "first day" relief, the Debtors will serve this Motion and any order entered with respect to this Motion as required by Local Rule 9013-1(m). The Debtors submit that no other or further notice is required under the circumstances.

NO PRIOR REQUEST

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

WHEREFORE, the Debtors request that the Court enter the DIP Orders (a) granting the relief requested herein and (b) granting such other relief as the Court deems appropriate under the circumstances.

[Remainder of Page Intentionally Left Blank]

Dated: April 2, 2024
Wilmington, Delaware

COLE SCHOTZ P.C.

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*Proposed Counsel for Debtors and
Debtors-in-Possession*

EXHIBIT A

Proposed Interim Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

VIEW, INC., *et al.*,

Debtors.¹

Chapter 11

Case No. 24-10692 (CTG)

(Jointly Administered)

Re: Docket No. __

INTERIM ORDER

**(I) AUTHORIZING (A) POSTPETITION FINANCING,
AND (B) THE USE OF CASH COLLATERAL; (II) GRANTING
LIENS AND PROVIDING SUPERPRIORITY ADMINISTRATIVE
EXPENSE CLAIMS; (III) GRANTING ADEQUATE PROTECTION TO
PREPETITION LENDERS; (IV) MODIFYING THE AUTOMATIC STAY;
(V) SCHEDULING A FINAL HEARING; AND (VI) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)² of View, Inc. and its debtor affiliates, as debtors and debtors in possession (collectively, the “Debtors”), seeking entry of an interim order (this “Interim Order”) and a final order (the “Final Order,” and together with the Interim Order, the “DIP Orders”) pursuant to sections 105, 361, 362(d), 363(c), 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), 503(b), and 507 of title 11 of the United States Code (the “Bankruptcy Code”), Rules 2002, 4001, 6003, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rules 2002-1, 4001-2, and 9006-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), inter alia:

- (i) authorizing View, Inc. (the “DIP Borrower”) to obtain postpetition financing (the “DIP Financing”) pursuant to a priming, senior secured, super-priority, debtor-in-possession

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: View, Inc. (5065), View Operating Corporation (4899), and Iotium, Inc. (4600). The Debtors’ corporate headquarters is 6280 America Center Drive, Suite 200, San Jose, CA 95002.

² Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to them in the Motion.

credit facility (the “DIP Facility”) consistent with the terms and conditions set forth in that certain term sheet attached hereto as **Exhibit 1** (the “DIP Term Sheet”), by and among the DIP Borrower, the Guarantors (as defined in the DIP Term Sheet), CF Principal Investments, LLC or CFV Investments, LLC, and/or any Affiliates (the “CF Lender”), RXR FP Investor LP (“RXR FP Investor”), RXR FP Investor II LP (“RXR FP Investor II”), RXR FP Investor III, LP (“RXR FP Investor III”), RXR FP Investor IV LP (“RXR FP Investor IV”), RXR FP GP LLC (“RXR” and, together with RXR FP Investor, RXR FP Investor II, RXR FP Investor III and RXR FP Investor IV and/or any of their direct or indirect investors, collectively, the “RXR Lender,” and RXR and the CF Lender, together, the “Required DIP Lenders”), the lenders party to the Prepetition Credit Agreement (defined below) that elect to participate in the DIP Facility, or a subset thereof (collectively, together with the CF Lender and the RXR Lender, the “DIP Lenders”), and Cantor Fitzgerald Securities, as administrative agent and collateral agent (in such capacity, together with its successors and permitted assigns, the “DIP Agent” and, together with the DIP Lenders, the “DIP Secured Parties”), consisting of a delayed draw term loan in an aggregate maximum principal amount of \$17.5 million (the commitment in respect thereof, the “DIP Facility Commitment” and the amounts borrowed under the DIP Facility, the “DIP Facility Loans”) from the DIP Lenders, of which \$10.0 million will be available immediately upon entry of this Interim Order (the “Interim Advance”), with the remainder to be available only upon and following entry of the Final Order (the “Delayed Draws”), in each case in accordance with the terms of the DIP Documents (as defined herein) and any Approved Budget (as defined herein).

- (ii) authorizing the Borrowers to incur, and the Guarantors to guarantee on an unconditional joint and several basis, the principal, interest, fees, costs, expenses, obligations (whether contingent or otherwise), and all other amounts and obligations owing under and/or secured by the DIP Documents (defined below) (including, without limitation, all “DIP Obligations” as described in the DIP Term Sheet, subject to limitations on upstream guarantees by non-U.S. Guarantors, as may be required by local law.
- (iii) authorizing the Debtors to execute, deliver, and perform under the DIP Term Sheet and the other DIP Documents (as defined herein), the DIP Orders, and all other related agreements and documents creating, evidencing, or securing indebtedness or obligations of any of the Debtors to the DIP Agent and the DIP Lenders on account of the DIP Facility or granting or perfecting liens or security interests by any of the Debtors in favor of and for the benefit of the DIP Agent, for itself and for and on behalf of the DIP Lenders, on account of the DIP Facility, as the same now exists or may hereafter be amended, modified, supplemented, ratified, assumed, extended, renewed, restated, or replaced, and any and all of the agreements and documents currently executed or to be executed in connection therewith or related thereto, by and among any of the Debtors, the DIP Agent, and the DIP Lenders, and, in accordance with the

DIP Term Sheet (including any subsequent credit agreement that may be entered into between the Debtors and the DIP Secured Parties³ (collectively, the “DIP Documents”);

- (iv) authorizing the Debtors to pay fees and reimburse expenses under the DIP Documents, and perform such other and further acts as required in connection with the DIP Documents;
- (v) granting to the DIP Agent, for itself and for and on behalf of the DIP Lenders, and authorizing the Debtors and non-Debtor Guarantors to incur valid, binding, enforceable, non-avoidable, and automatically and properly and fully perfected DIP Liens (defined below) in all DIP Collateral (defined below) pursuant to sections 364(c)(2), (c)(3), and (d) of the Bankruptcy Code, to secure the DIP Loans and all obligations and indebtedness of any of the Debtors to the DIP Agent and the DIP Lenders under the DIP Documents, including all interest accrued and accruing thereon, and all other amounts owing by the respective Debtors in respect thereof (collectively, the “DIP Obligations”), which DIP Obligations shall be subject to the Carve-Out (defined below) and the Permitted Senior Liens as provided herein;
- (vi) granting to the DIP Agent, for itself and for and on behalf of the DIP Lenders, allowed superpriority administrative expense claims pursuant to section 364(c)(1) of the Bankruptcy Code against each of the Debtors in respect of all DIP Obligations, with recourse to all prepetition and postpetition property of the Debtors;
- (vii) granting automatically perfected liens, security interests and other adequate protection to the Prepetition Secured Parties (defined below) under the Prepetition Credit Agreement in their Prepetition Collateral (defined below) resulting from the use of Cash Collateral (defined below) or otherwise, and subject to the restrictions set forth in the DIP Documents and this Interim Order, authorizing the Debtors to use the Prepetition Collateral, including Cash Collateral of the Prepetition Secured Parties under the Prepetition Credit Documents (defined below), and provide adequate protection to the Prepetition Secured Parties for any diminution in value of their respective interests in the applicable Prepetition Collateral (including Cash Collateral), for any reason provided for under the Bankruptcy Code, including resulting from the imposition of the automatic stay under section 362 of the Bankruptcy Code, and the Debtors’ use, sale, or lease of the Prepetition Collateral (including Cash Collateral);
- (viii) subject to entry of a final order, waiving all rights to surcharge any DIP Collateral or Prepetition Collateral under sections 506(c) or 552(b) of the Bankruptcy Code or any other applicable principle of equity;
- (ix) subject to entry of a final order, waiving the equitable doctrine of “marshaling” and other similar doctrines with respect to (a) the DIP Collateral for the benefit of any party

³ As used herein, the DIP Term Sheet contemplates that the Debtors and the DIP Credit Parties may, subsequent to entry of the Interim Order, enter into a DIP Credit Agreement or other DIP Documents, and any such DIP Credit Agreement will be filed with this Court at such time.

other than the DIP Secured Parties and (b) the Prepetition Collateral (including the Cash Collateral) for the benefit of any party other than the Prepetition Secured Parties;

- (x) modifying the automatic stay of section 362 of the Bankruptcy Code to the extent provided to permit the Debtors and their affiliates, the DIP Secured Parties, and the Prepetition Secured Parties to implement and effectuate the terms and provisions of this Interim Order and the DIP Documents and to deliver any notices of termination described below and as further set forth herein;
- (xi) scheduling the Final Hearing (defined below) within thirty-five (35) days of the entry of the Interim Order and approving notice with respect thereto in accordance with Bankruptcy Rule 4001(c)(2); and
- (xii) waiving any applicable stay (including under Bankruptcy Rule 6004) with respect to the effectiveness and enforceability of the Interim Order and providing for the immediate effectiveness of the Interim Order.

This Court having considered the Motion, the *Declaration of Gregory G. Hagood in Support of the Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing The Debtors to (A) to Obtain Postpetition Financing and (B) Utilize Cash Collateral, (II) Granting Liens and Providing Superpriority Administrative Expense Status (III) Granting Adequate Protection, (IV) Modifying the Automatic Stay, (V) Scheduling a Final Hearing and (VI) Granting Related Relief*, (the "Hagood Declaration") and the *Declaration of Thomas King in Support of Chapter 11 Petitions and First Day Motions* (the "First Day Declaration"), the available DIP Documents, and any other applicable evidence submitted at the hearing held before this Court on April __, 2024 to consider entry of this Interim Order (the "Interim Hearing"); and in accordance with Bankruptcy Rules 2002, 4001(b), (c), and (d), and 9014 and the Local Rules, notice of the Motion and the Interim Hearing having been given; and it appearing that approval of the interim relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors pending the Final Hearing and is otherwise fair and reasonable and in the best interests of the Debtors, their creditors and their estates, and essential for the continued operation of the Debtors' businesses; and all objections, if any, to the entry of this Interim Order having been withdrawn, resolved or

overruled by this Court; and after due deliberation and consideration, and for good and sufficient cause appearing therefor:

THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:⁴

THE CHAPTER 11 CASES; JURISDICTION AND NOTICE

A. On April 2, 2024 (the “Petition Date”), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the District of Delaware (this “Court”). Since the Petition Date, the Debtors have continued in the management and possession of their business and property as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

B. As of the date hereof, no official committee (the “Committee”) has yet been appointed pursuant to section 1102 in these chapter 11 cases (the “Chapter 11 Cases”).

C. This Court has jurisdiction over this proceeding and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157 and 1334. Venue of the Chapter 11 Cases is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (B), (D), (G), (K), (M) and (O).

D. Notice of the Motion and the Interim Hearing has been given pursuant to Bankruptcy Rules 2002, 4001, 9006, and 9014 and the Local Rules, and as required by sections 102, 105, 361, 362, 363, and 364 of the Bankruptcy Code. Such notice is sufficient for all purposes under the Bankruptcy Code and the applicable Bankruptcy Rules in respect to the relief requested

⁴ The findings and conclusions set forth herein constitute the Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

and, except as otherwise provided for herein, no further notice of the relief sought in the Motion is necessary.

DEBTORS' STIPULATIONS

E. After consultation with their attorneys and financial advisors, the Debtors (on behalf of and for themselves and their non-Debtor affiliates and related parties) admit, stipulate, acknowledge, and agree that:

- (i) *Prepetition Secured Facility.* Pursuant to that certain Credit Agreement, dated as of October 16, 2023 (as amended, supplemented, restated or otherwise modified prior to the Petition Date, the “Prepetition Credit Agreement” and, collectively with the Loan Documents (as defined in the Prepetition Credit Agreement) and any other agreements and documents executed or delivered in connection therewith, each as amended, restated, supplemented, or otherwise modified from time to time, the “Prepetition Credit Documents”), by and among (a) View, Inc., as borrower (the “Prepetition Borrower”), (b) the guarantors party thereto (in such capacities, the “Prepetition Guarantors” and, together with the Prepetition Borrower, the “Prepetition Obligors”), (c) Cantor Fitzgerald Securities, as administrative agent and collateral agent (in such capacities, the “Prepetition Agent”), and (d) the lenders party thereto from time to time (collectively, the “Prepetition Lenders” and together with the Prepetition Agent, the “Prepetition Secured Parties”), the Prepetition Lenders provided the Prepetition Term Loans and the Prepetition Revolving Loans to the Prepetition Borrower.
- (ii) *Prepetition Secured Obligations.* As of the Petition Date, the Prepetition Borrower and the Prepetition Guarantors were justly and lawfully indebted and liable to the Prepetition Secured Parties without defense, challenge, objection, claim, counterclaim, or offset of any kind, in the aggregate principal amount of not less than \$51,843,078.43 of the outstanding Prepetition Term Loans, pursuant to, and in accordance with the terms of, the Prepetition Credit Documents, plus accrued and unpaid interest thereon and fees, expenses (including any attorneys’, accountants’, appraisers’ and financial advisors’ fees and expenses, in each case, that are chargeable or reimbursable under the Prepetition Credit Documents), costs, charges, indemnities, the Prepayment Premium (which includes, for the avoidance of doubt, the Make-Whole Premium and Early Exit Premium, each as defined in the Prepetition Credit Documents), and other obligations incurred in connection therewith (whether arising before or after the Petition Date) as provided in the Prepetition Credit Documents (collectively, the “Prepetition Secured Debt”), which Prepetition Secured Debt has been guaranteed on a joint and several basis by each of the Prepetition Guarantors.
- (iii) *Validity of Prepetition Secured Debt.* The Prepetition Secured Debt constitutes legal, valid, binding, and non-avoidable obligations of the Prepetition Borrower and the Prepetition Guarantors, as applicable, enforceable in accordance with its terms and no

portion of the Prepetition Secured Debt or any payment made to the Prepetition Secured Parties, in their capacities as such, or applied to or paid on account of the obligations owing under the Prepetition Credit Documents prior to the Petition Date is subject to any contest, attack, rejection, recovery, reduction, defense, counterclaim, offset, subordination, recharacterization, avoidance or other claim (as such term is used in the Bankruptcy Code), cause of action (including any claims or avoidance actions under Chapter 5 of the Bankruptcy Code), chases in action or other challenge of any nature under the Bankruptcy Code or applicable non-bankruptcy law.

- (iv) *Validity, Perfection and Priority of Prepetition Liens.* Pursuant to and in connection with the Prepetition Credit Documents, the Prepetition Borrower and the Prepetition Guarantors granted to the Prepetition Agent, for the benefit of itself and the other Prepetition Secured Parties, a security interest in and continuing lien, senior in priority over any and all other liens (the “Prepetition Liens”), on all of their assets and property, including the “Collateral” (as defined in Prepetition Credit Agreement) (which includes certain Cash Collateral) and all proceeds, products, accessions, rents, and profits thereof, in each case whether then owned or existing or thereafter acquired or arising (collectively, the “Prepetition Collateral”). As of the Petition Date, such Prepetition Liens constitute valid, binding, properly perfected, enforceable, non-avoidable first priority security interests in and continuing liens on the Collateral, which Prepetition Liens are not subject to avoidance, recharacterization, subordination (whether equitable, contractual, or otherwise), recovery, attack, disgorgement, effect, rejection, reduction, disallowance, impairment, counterclaim, offset, crossclaim, defense or Claim (as defined in the Bankruptcy Code), subject and subordinate only to certain liens permitted by the Prepetition Credit Documents, solely to the extent any such permitted liens were valid, binding, enforceable, properly perfected, non-avoidable and senior in priority to the Prepetition Liens as of the Petition Date, or that are perfected subsequent to the Petition Date, but solely as permitted by section 546(b) of the Bankruptcy Code (collectively, the “Prepetition Permitted Senior Liens”).
- (v) *Intercreditor Provisions.* Pursuant to section 510 of the Bankruptcy Code, any applicable intercreditor or subordination provisions contained in any of, or entered into as permitted by and in accordance with, the Prepetition Credit Documents shall (i) remain in full force and effect, (ii) shall be binding against the Prepetition Secured Parties in accordance with its terms, and (iii) not be deemed to be amended, altered or modified by the terms of this Interim Order or the DIP Documents.
- (vi) *No Control.* None of the Prepetition Secured Parties, by virtue of any actions taken with respect to, in connection with, related to or arising from the Prepetition Credit Documents, control (or have in the past controlled) the Debtors or their properties or operations, have authority to determine the manner in which any Debtors’ operations are conducted or are control persons or insiders of the Debtors.
- (vii) *No Claims or Causes of Action.* As of the Petition Date, the Debtors, their affiliates and their related parties, and their estates have no claims, objections, challenges, causes of action, and/or chases in action, including avoidance claims under Chapter 5 of the Bankruptcy Code or applicable state law equivalents, or actions for recovery or

disgorgement, against any of the Prepetition Secured Parties or any of their Representatives (as defined herein) (in each case, in their capacities as such) arising out of, based upon or related to the Prepetition Secured Debt, and the Debtors waive, discharge and release any right to challenge any of the Prepetition Secured Debt and the Prepetition Liens.

FINDING REGARDING THE DIP FINANCING AND USE OF CASH COLLATERAL

F. *Corporate Authority.* Each Debtor has all requisite corporate power and authority to execute and deliver the DIP Documents to which it is a party and to perform its obligations thereunder, and no other consents or approvals are required from any party, including any governmental authority, for each Debtor to execute, deliver, and perform under the DIP Documents. None of the execution and delivery of, or the performance under, any DIP Document by any Debtor is in contravention of any applicable law, rule, or regulation, or will result in a violation or contravention of any governance document of any Debtor or the breach or violation of, or be inconsistent with, any agreement, contract or instrument to which any Debtor is a party.

G. As used herein, the term “Cash Collateral” shall mean all of the Debtors’ cash, wherever located and held, including cash in deposit accounts, that constitutes or will constitute “cash collateral” of any of the Prepetition Secured Parties or any of the DIP Secured Parties within the meaning of section 363(a) of the Bankruptcy Code.

H. Good and sufficient cause has been shown for the entry of this Interim Order and for authorization of the Debtors to obtain financing pursuant to the DIP Documents.

I. The Debtors have an immediate and critical need to obtain the DIP Financing and to use Prepetition Collateral (including Cash Collateral) in order to permit, among other things, the orderly continuation of the operation of their businesses, to maintain business relationships with vendors, suppliers and customers, to pay salaries and wages, to make capital expenditures, to satisfy other working capital and operational needs, and to fund expenses of the Chapter 11 Cases. The access of the Debtors to sufficient working capital and liquidity through the use of Cash

Collateral and other Prepetition Collateral, the incurrence of new indebtedness under the DIP Documents, and other financial accommodations provided under the DIP Documents are necessary and vital to the preservation and maintenance of the going concern values of the Debtors and to a successful restructuring of the Debtors.

J. Based upon the pleadings and proceedings of record in the Chapter 11 Cases, the Debtors are unable to obtain interim or long-term financing on more favorable terms from sources other than the DIP Lenders under the DIP Documents and are unable to obtain adequate unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense. The Debtors are also unable to obtain secured credit allowable under sections 364(c)(1), 364(c)(2) and 364(c)(3) of the Bankruptcy Code without granting to the DIP Secured Parties the DIP Liens (as defined herein) and the DIP Superpriority Claims (as defined herein) and incurring the Adequate Protection Obligations (as defined herein), in each case as provided for herein subject to the Carve-Out to the extent set forth herein, under the terms and conditions set forth in the DIP Orders and in the DIP Documents.

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

L. The Debtors desire to use a portion of the cash, rents, income, offspring, products, proceeds and profits described in the preceding paragraph that constitute Cash Collateral of the Prepetition Secured Parties under section 363(a) of the Bankruptcy Code in their business operations. Certain prepetition rents, income, offspring, products, proceeds, and profits, in

existence as of the Petition Date or hereafter created or arising, including balances of funds in the Debtors' prepetition and postpetition operating bank accounts, also constitute Cash Collateral.

M. Based on the Motion, the Hagood Declaration, the First Day Declaration and the record presented to this Court at the Interim Hearing, the terms of the DIP Financing, the terms of the adequate protection granted to the Prepetition Secured Parties in this Interim Order (the "Adequate Protection"), and the terms on which the Debtors may continue to use the Prepetition Collateral (including Cash Collateral) pursuant to this Interim Order and the DIP Documents are fair and reasonable, consistent with the Bankruptcy Code (including section 506(b) thereof), sufficient to protect the interests of the Prepetition Secured Parties, reflect the DIP Secured Parties' exercise of prudent business judgment consistent with their fiduciary duties, and constitute reasonably equivalent value and fair consideration.

N. The DIP Lenders have indicated a willingness to provide post-petition secured financing to the Debtors, but solely on the terms and conditions set forth in this Interim Order and the DIP Documents. After considering all of their alternatives, the Debtors have concluded, in an exercise of their sound business judgment, that the DIP Facility to be provided by the DIP Lenders and the authorization to use the Cash Collateral represent the best financing presently available to the Debtors.

O. The DIP Financing, the Adequate Protection, the DIP Liens and the use of the Prepetition Collateral (including Cash Collateral), have been negotiated in good faith and at arm's length among the Debtors, the DIP Secured Parties and the Prepetition Secured Parties, and all of the DIP Secured Parties' obligations and indebtedness arising under, in respect of, or in connection with, the DIP Financing or the DIP Documents, including, without limitation, all loans made to and guarantees issued by the Debtors pursuant to the DIP Documents and any other DIP

Obligations shall be deemed to have been extended by the DIP Agent and the DIP Secured Parties and their respective affiliates in good faith, as that term is used in section 364(e) of the Bankruptcy Code, and in express reliance upon the protections offered by section 364(e) of the Bankruptcy Code.

P. The DIP Agent and the DIP Secured Parties (and the successors and assigns thereof) shall be and are entitled to the full protection of section 364(e) of the Bankruptcy Code, including in the event that this Interim Order or any provision hereof is vacated or modified on appeal or otherwise.

Q. The Prepetition Secured Parties have acted in good faith regarding the DIP Financing and the Debtors' continued use of the Prepetition Collateral (including Cash Collateral) to fund the administration of the Debtors' estates and continued operation of their businesses (including the incurrence and payment of and performance under the Adequate Protection Obligations and the granting of the Adequate Protection Liens (as defined herein)), in accordance with the terms hereof, and the Prepetition Secured Parties (and the successors and assigns thereof) shall be entitled to the full protection of section 364(e) of the Bankruptcy Code, including in the event that this Interim Order or any provision hereof is vacated or modified, on appeal or otherwise. The Debtors have been provided adequate consideration and reasonably equivalent value in exchange for the guarantees provided by them.

R. The Prepetition Secured Parties are entitled to the Adequate Protection provided in this Interim Order as and to the extent set forth herein pursuant to sections 361, 362, 363 and 364 of the Bankruptcy Code. Based on the Motion and on the record presented to this Court, the terms of the proposed Adequate Protection arrangements and of the use of the Prepetition Collateral (including Cash Collateral) are fair and reasonable, reflect the Debtors' prudent exercise of

business judgment and constitute reasonably equivalent value and fair consideration for the use of the Prepetition Collateral, including the Cash Collateral, and, to the extent their consent is required, the requisite Prepetition Secured Parties have consented or are deemed hereby to have consented to the use of the Prepetition Collateral, including the Cash Collateral, on the terms set forth in this Interim Order, and the priming of the Prepetition Liens by the DIP Liens pursuant to the terms set forth in this Interim Order and the DIP Documents; provided that nothing in this Interim Order or the DIP Documents shall (x) be construed as the affirmative consent by any of the Prepetition Secured Parties for the use of Cash Collateral other than on the terms set forth in this Interim Order and in the context of the DIP Financing authorized by this Interim Order to the extent such consent has been or is deemed to have been given, (y) be construed as a consent by any of the Prepetition Secured Parties to the terms of any other financing or any other lien encumbering the Prepetition Collateral (whether senior or junior) other than as contemplated by the DIP Financing authorized by this Interim Order, or (z) prejudice, limit or otherwise impair the rights of any of the Prepetition Secured Parties to seek new, different or additional adequate protection or assert any rights of any of the Prepetition Secured Parties, and the rights of any other party in interest, including the DIP Secured Parties, to object to such relief are hereby preserved.

S. The Debtors have prepared and delivered to the advisors to the Required DIP Lenders and the DIP Agent an initial budget (the “Initial DIP Budget”), attached hereto as **Schedule 1**. The Initial DIP Budget reflects, among other things, the Debtors’ anticipated operating receipts, anticipated operating disbursements, anticipated non-operating disbursements, net operating cash flow and liquidity for each calendar week covered thereby. The Initial DIP Budget may be modified, amended, extended, and updated from time to time with the consent of the Required DIP Lenders (in their sole discretion) (each a “Proposed Budget”). Proposed Budgets

shall be provided by the Debtors to the Required DIP Lenders and the DIP Agent not less than every two weeks. Once a Proposed Budget is approved by the Required DIP Lenders (in their sole discretion), such Proposed Budget shall modify, replace, supplement or supersede, as applicable, the Initial DIP Budget for the periods covered thereby (the Initial DIP Budget and each successive approved Proposed Budget shall constitute, without duplication, an “Approved Budget”). If the Required DIP Lenders object to the Proposed Budget, the then-current Approved Budget (which may include the Initial Budget) – for variance testing purposes – shall continue in effect and remain unchanged until an updated Proposed Budget has been agreed. The Debtors believe that the Initial DIP Budget is reasonable under the circumstances. The DIP Secured Parties are relying upon the Debtors’ agreement to comply with the Approved Budget (subject to Permitted Variances), the other DIP Documents and this Interim Order in determining to enter into the postpetition financing arrangements provided for in this Interim Order.

T. Subject to entry of the Final Order, each of the DIP Agent, the DIP Secured Parties, and the Prepetition Secured Parties shall be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and the “equities of the case” exception under section 552(b) of the Bankruptcy Code shall not apply to the DIP Agent, the DIP Secured Parties, and the Prepetition Secured Parties with respect to proceeds, product, offspring, or profits with respect to any of the DIP Collateral or the Prepetition Collateral.

U. Sufficient cause exists for immediate entry of this Interim Order pursuant to Bankruptcy Rules 4001(b)(2) and (c)(2) and Local Rule 4001-2(b). Absent granting the relief set forth in this Interim Order, the Debtors’ estates will be immediately and irreparably harmed. Consummation of the DIP Financing and the permitted use of Prepetition Collateral (including Cash Collateral), in accordance with this Interim Order and the DIP Documents, are therefore in

the best interests of the Debtors' estates and consistent with the Debtors' exercise of their fiduciary duties. The Motion and this Interim Order comply with the requirements of Local Rule 4001-2.

V. The Prepetition Agent (at the direction of the Required Lenders (as defined in the Prepetition Credit Documents)), on behalf of and for the benefit of each of the Prepetition Secured Parties, has consented to, conditioned upon the entry of this Interim Order, the Debtors' incurrence of the DIP Facility and proposed use of Cash Collateral on the terms and conditions set forth in this Interim Order, including, without limitation, the terms of the adequate protection provided for in this Interim Order.

W. In light of the foregoing, the relief hereunder is necessary to avoid immediate and irreparable harm to the Debtors' estates because, without the use of Cash Collateral and the additional liquidity pursuant to the DIP Facility, as provided for herein, the Debtors will not have the funds necessary to orderly continue the operation of their businesses, to maintain business relationships with vendors, suppliers and customers, to pay salaries and wages, to make capital expenditures, to satisfy other working capital and operational needs, and to fund expenses of the Chapter 11 Cases, necessary to maximize the value of the Debtors' estates. Accordingly, the use of Cash Collateral by the Debtors is actual and necessary to preserving their estates.

X. The use of Cash Collateral and credit to be extended under the DIP Documents, and the financial accommodations provided thereunder, shall be deemed to have been so allowed, advanced, made, provided, used or extended in good faith, and for valid business purposes and uses, within the meaning of section 364(e) of the Bankruptcy Code, and in express reliance upon the protections offered by section 364(e) of the Bankruptcy Code, and the claims, security interests and liens, and other rights, benefits and protections granted to each of the DIP Agent and Required DIP Lenders shall be entitled to the full protection and benefits of section 364(e) of the Bankruptcy

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

NEED FOR ADEQUATE PROTECTION AND DIP FACILITY

Y. The terms of the DIP Facility and this Interim Order, including, without limitation, adequate protection and liens granted in accordance therewith, are fair, just, and reasonable under the circumstances, are ordinary and appropriate for secured financing to debtors-in-possession, reflect the Debtors' exercise of their prudent business judgment consistent with their fiduciary duties, and are supported by reasonably equivalent value and fair consideration. Entry of this Interim Order is in the best interest of the Debtors, their creditors, and their estates. Any credit extended under the terms of this Interim Order and the DIP Facility shall be deemed to have been extended in good faith by the DIP Agent and the DIP Lenders, as the term "good faith" is used in section 364(e) of the Bankruptcy Code.

Z. To the extent any portion of the foregoing constitute rulings of law, they shall constitute this Court's rulings with respect to the matters so stated.

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

NOW THEREFORE, THE COURT ORDERS AS FOLLOWS:

1. The Motion is hereby GRANTED on an interim basis in accordance with the terms and conditions set forth in the DIP Documents and this Interim Order. Any objections to the Motion with respect to the entry of this Interim Order that have not been withdrawn, waived, or settled, and all reservation of rights included therein, are hereby denied and overruled with respect to this Interim Order. Entry of this Interim Order is without prejudice to any party in interests' rights to object to final relief under the Motion.

2. This Interim Order is effective on entry and shall be binding on the Debtors and all parties in interest.

APPROVAL OF DIP FACILITY

3. The Debtors are hereby authorized to execute, deliver, enter into, and, as applicable, perform all of their obligations under the DIP Documents and such other and further acts as may be necessary, appropriate or desirable in connection therewith, in each case without further approval of this Court, except as otherwise provided herein. The DIP Borrower is hereby authorized to borrow money pursuant to the DIP Term Sheet, which borrowings shall be used only for purposes permitted under the DIP Documents and the Interim Order, and subject to and in accordance with the Approved Budget (subject to any Permitted Variances) up to the aggregate amount of the Initial Draw.

4. The Guarantors (as defined in the DIP Term Sheet) are hereby authorized and directed to jointly, severally, and unconditionally guarantee, and upon entry of this Interim Order shall be deemed to have guaranteed, in full, all of the DIP Obligations of the DIP Borrowers.

5. In furtherance of the foregoing and except as otherwise provided herein without further approval of this Court, each Debtor is authorized and directed to perform all acts, to make, execute and deliver all instruments, certificates, agreements, charges, deeds and documents (including, without limitation, the execution or recordation of pledge and security agreements, mortgages, financing statements and other similar documents), and, solely to the extent provided in the Approved Budget, to pay those certain fees, expenses and indemnities in connection with or that may be reasonably required, necessary, or desirable, for the DIP Secured Parties' performance of their obligations under or related to the DIP Financing, including, without limitation:

a. the execution and delivery of, and performance of its obligations under, each of the DIP Documents;

b. the execution and delivery of, and performance of its obligations under, any amendments, waivers, consents or other modifications to and under the DIP Documents, in each case, in such form as the Required DIP Lenders may agree, it being understood that no further approval of this Court shall be required for any authorizations, amendments, waivers, consents or other modifications to and under the DIP Documents (and such fees and other expenses, including attorneys', accountants', appraisers' and financial advisors' fees, amounts, charges, costs, indemnities and other like obligations paid in connection therewith provided for in the Approved Budget) that do not shorten the maturity of the extensions of credit thereunder, increase the aggregate commitments, increase the rate of interest payable or fees that are payable calculated on commitments thereunder. Updates, modifications, and supplements to the Approved Budget shall not require any further approval of this Court;

c. the non-refundable payment to the DIP Secured Parties of all fees and rights received as consideration under, or in connection with, the DIP Facility, including the DIP Agent's fees, upfront fees, exit fees, rights under the DIP Term Sheet, indemnities and professional fees (the payment of which fees shall be irrevocable, and shall be, and shall be deemed to have been, approved upon entry of this Interim Order, whether or not the transactions contemplated hereby are consummated, and upon payment thereof, shall not be subject to any contest, attack, rejection, recoupment, reduction, defense, counterclaim, offset, subordination, recharacterization, avoidance, disallowance, impairment, or other claim, cause of action or other challenge of any nature under the Bankruptcy Code, applicable non-bankruptcy law or otherwise by any person or entity) and any amounts due (or that may become due) in respect of any

indemnification and expense reimbursement obligations, in each case referred to in the DIP Term Sheet or the DIP Documents, and the costs and expenses as may be due from time to time in accordance with the DIP Documents, including, without limitation, reasonable and documented fees and expenses of the professionals retained by, or on behalf of, any of the Required DIP Lenders (including (a) Gibson, Dunn & Crutcher LLP; (b) Sidley Austin LLP; and (c) Young Conway Stargatt & Taylor, LLP, as Delaware local counsel, and any other professional advisor engaged by the forgoing as are permitted under the DIP Documents), (collectively, the “Consenting Creditor Advisors”) in each case, as provided for in the DIP Documents and subject to the terms of this Interim Order, without the need to file retention motions or fee applications; and

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

DIP Obligations

6. Upon execution and delivery of the DIP Documents, the DIP Documents shall constitute legal, valid, binding and non-avoidable obligations of the Debtors and the non-Debtor Guarantors, enforceable against each Debtor and its estate and the non-Debtor Guarantors in accordance with the terms of the DIP Documents and this Interim Order, and any successors thereto, including any trustee appointed in the Chapter 11 Cases, or in any case under Chapter 7 of the Bankruptcy Code upon the conversion of any of the Chapter 11 Cases, or in any other proceedings superseding or related to any of the foregoing (collectively, the “Successor Cases”). Upon execution and delivery of the DIP Documents, the DIP Obligations 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 and the non-Debtor Guarantors to any of the DIP Agent or DIP Secured Parties, in such capacities, in each case, under, or secured by, the DIP Documents (including this Interim Order), including all principal, interest, costs, fees, expenses, premiums, makewholes, prepayment premiums, indemnities and other amounts under the DIP Documents (including this Interim Order). The Debtors and the non-Debtor Guarantors shall be jointly and severally liable for the DIP Obligations. Except as permitted hereby, no obligation, payment, transfer, or grant of security hereunder or under the DIP Documents to the DIP Agent and/or the DIP Secured Parties (including their Representatives) shall be stayed, restrained, voidable, avoidable, or recoverable, under the Bankruptcy Code or under any applicable law (including, without limitation, under sections 502(d), 544, and 547 to 550 of the Bankruptcy Code or under any applicable state Uniform Voidable Transactions Act, Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, or similar statute or common law), or subject to any defense, avoidance, reduction, setoff, recoupment, offset, recharacterization, subordination (whether equitable, contractual, or otherwise), disallowance, impairment, claim, counterclaim, cross-claim, or any other challenge under the Bankruptcy Code or any applicable law or regulation by any person or entity.

DIP Superpriority Claims and DIP Liens

7. Subject to the Carve-Out (as defined herein), all of the DIP Obligations shall constitute allowed superpriority administrative expense claims (including super-priority administrative expense claims pursuant to section 364(c)(1) of the Bankruptcy Code) against the Debtors on a joint and several basis (without the need to file any proof of claim) with priority over any and all claims against the Debtors, now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code and any and all administrative expenses or other claims arising

under sections 105, 326, 327, 328, 330, 331, 365, 503(b), 506(c), 507(a), 507(b), 726, 1113 or 1114 of the Bankruptcy Code (including the Adequate Protection Obligations), whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment, which allowed claims (the “DIP Superpriority Claims”) (i) shall for purposes of section 1129(a)(9)(A) of the Bankruptcy Code be considered administrative expenses allowed under section 503(b) of the Bankruptcy Code, and (ii) shall be payable from and have recourse to all prepetition and postpetition property of the Debtors and all proceeds thereof, including (a) Cash Collateral, (b) claims and causes of action under sections 502(d), 544, 545, 547, 548 and 550 of the Bankruptcy Code, and (c) upon entry of the Final Order, any other proceeds or property recovered, unencumbered or otherwise recovered in connection with the pursuit of claims or causes of action arising under chapter 5 of the Bankruptcy Code, if any, whether by judgment, settlement or otherwise (“Avoidance Proceeds”). The DIP Superpriority Claims shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that this Interim Order or any provision hereof is vacated or modified, on appeal or otherwise.

8. As security for the DIP Obligations, effective and automatically and properly perfected upon the date of this Interim Order and without the necessity of the execution, recordation or filing by the Debtors or any of the DIP Secured Parties of any mortgages, security agreements, control agreements, pledge agreements, financing statements, intellectual property filing or other similar documents, any notation of certificates of title for titled goods or other similar documents, instruments, deeds, charges or certificates, or the possession or control by the Required DIP Lenders or DIP Agent of, or over, any Collateral, without any further action by any Debtors, the Required DIP Lenders, the DIP Agent or any DIP Secured Party, the following valid, binding, continuing, enforceable and non-avoidable security interests and liens (all security

interests and liens granted to the DIP Agent, for its benefit and for the benefit of the other DIP Secured Parties, pursuant to this Interim Order and the DIP Documents, the “DIP Liens”) are hereby granted to the DIP Agent for its own benefit and the benefit of the other DIP Secured Parties (all property identified in clauses (i) through (ii) below being collectively referred to as the “DIP Collateral”):

a. *Liens on Unencumbered Property.* Pursuant to section 364(c)(2) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected first priority senior security interest (subject only to the Carve-Out) in, and lien upon, all tangible and intangible prepetition and postpetition property of the Debtors and the Guarantors, whether existing on the Petition Date or thereafter acquired, and the proceeds, products, rents, and profits thereof, that, on or as of the Petition Date, is not subject to Prepetition Permitted Senior Lien, including, without limitation, any and all unencumbered cash of the Debtors (whether maintained with any of the DIP Secured Parties or otherwise) and any investment of cash, inventory, accounts receivable, other rights to payment whether arising before or after the Petition Date, contracts, properties, plants, fixtures, machinery, equipment, general intangibles, documents, instruments, securities, goodwill, causes of action, insurance policies and rights, claims and proceeds from insurance, commercial tort claims and claims that may constitute commercial tort claims (known and unknown), chattel paper (including electronic chattel paper and tangible chattel paper), interests in leaseholds, real properties, deposit accounts, patents, copyrights, trademarks, trade names, rights under license agreements and other intellectual property, equity interests of subsidiaries, joint ventures and other entities, wherever located, and the proceeds, products, rents and profits of the foregoing, whether arising under section 552(b) of the Bankruptcy Code or otherwise (the “Unencumbered Property”). For the avoidance of doubt, “Unencumbered Property” shall include Avoidance Proceeds, but only

upon entry of the Final Order. Notwithstanding anything to the contrary contained herein, to the extent a lien cannot attach to any of the foregoing pursuant to applicable law, the liens granted pursuant to this Interim Order shall attach to the Debtors' economic rights, including, without limitation, any and all proceeds of the foregoing.

b. *Liens Priming Certain Prepetition Secured Parties' Liens.* Pursuant to section 364(d)(1) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected first priority senior priming security interest (subject and subordinate only to (i) the Carve-Out and (ii) Prepetition Permitted Senior Liens in, and lien upon, the DIP Collateral (the "DIP Priming Liens"). Notwithstanding anything herein to the contrary, the DIP Priming Liens shall be (i) senior in all respects to the Prepetition Liens, (ii) senior to any Adequate Protection Liens on DIP Collateral and (iii) not subordinate to any lien, security interest or mortgage that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code.

c. *Liens Junior to Prepetition Permitted Senior Liens.* Pursuant to section 364(c)(3) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully perfected security interest (subject only to the Carve-Out) in and lien upon all tangible and intangible prepetition and postpetition property of the Debtors that, on or as of the Petition Date, is subject to Prepetition Permitted Senior Liens, which DIP Liens shall be (x) immediately junior and subordinate to any such Prepetition Permitted Senior Liens but (y) senior to the Prepetition Liens and the Adequate Protection Liens on all Prepetition Collateral subject to such Prepetition Permitted Senior Liens.

d. *Liens Senior to Certain Other Liens.* The DIP Liens shall not be: (x) subject or subordinate to or made *pari passu* with (1) any lien or security interest that is avoided

and preserved for the benefit of the Debtors or their estates under section 551 of the Bankruptcy Code, (2) unless otherwise provided for in the DIP Documents or this Interim Order, any liens or security interests arising after the Petition Date, including, without limitation, any liens or security interests granted in favor of any federal, state, municipal or other governmental unit (including any regulatory body), commission, board or court for any liability of the Debtors, or (3) any intercompany or affiliate liens of the Debtors or security interests of the Debtors; or (y) subordinate to or made *pari passu* with any other lien or security interest under section 363 or 364 of the Bankruptcy Code.

Cash and DIP Proceeds

9. Cash Management.

a. To the extent proceeds of the DIP Facility are deposited into any account maintained by the Debtors, the DIP Liens shall be deemed automatically and properly perfected on such proceeds upon entry of this Interim Order.

b. The Debtors shall maintain their cash management arrangements in a manner consistent with the [Cash Management Order]. The Debtors shall comply with the covenants contained in the DIP Term Sheet regarding conduct of business, including, without limitation, preservation of rights, qualifications, licenses, permits, privileges, franchises, governmental authorizations, and intellectual property rights material to the conduct of their business and maintenance of properties and insurance.

10. Except as expressly permitted in this Interim Order or the DIP Documents and except with respect to the DIP Secured Parties, in the event that any person or entity receives any payment on account of a security interest in DIP Collateral, receives any DIP Collateral or any proceeds of DIP Collateral or receives any other payment with respect thereto from any other source prior to indefeasible payment in full in cash of all DIP Obligations and termination of the

DIP Facility Commitment, such person or entity shall be deemed to have received, and shall hold, any such payment or proceeds of DIP Collateral in trust for the benefit of the DIP Secured Parties and shall immediately turn over the proceeds to the DIP Agent, for application in accordance with the DIP Documents and this Interim Order.

11. For the avoidance of doubt, no proceeds of the DIP Loans (including payments derived from the DIP Collateral) shall be used to (i) make any payment in settlement or satisfaction of any pre-petition claim or administrative claim (other than the DIP Obligations, as provided for herein, and in the DIP Term Sheet), unless (x) in compliance with the Initial DIP Budget or Approved DIP Budget, as applicable or (y) as separately approved by this Court in compliance with the DIP Budget; (ii) except as expressly provided for or permitted hereunder, under the DIP Term Sheet or in the Initial DIP Budget or Approved DIP Budget, as applicable, or as otherwise approved in advance and in writing by the Required DIP Lenders (and as approved by this Court, if necessary) to make any payment or distribution, directly or indirectly, to any non-Debtor affiliate; provided that, notwithstanding anything else herein, any consent of the Required DIP Lenders to payments or distributions to non-Debtor Affiliates shall not be deemed, inferred, or assumed absent express line-item approval of such payment or distribution in the Initial DIP Budget or Approved DIP Budget, as applicable; (iii) except as expressly provided or permitted hereunder, under the DIP Term Sheet or the Initial DIP Budget or the Approved DIP Budget, as applicable, or as otherwise approved in writing by the Required DIP Lenders (and approved by this Court, if necessary) to make any payment or distribution to any insider of the Debtors that is outside of the ordinary course, and in no event shall any non-ordinary course management, advisory, consulting, or similar fee be paid to or for the benefit of any affiliate that is not a Debtor; (iv) to make any payment, advance, intercompany advance or transfer, or any other remittance or

transfer whatsoever that is not in accordance with the DIP Term Sheet and the Initial DIP Budget or Approved DIP Budget, as applicable; (v) to make any payment otherwise prohibited by this Interim Order; or (vi) to make any intercompany loans and investments (including to and in foreign subsidiaries) unless expressly permitted by this Interim Order or the Initial DIP Budget or Approved DIP Budget, as applicable.

12. To the extent there exists or comes to exist any cash of the Debtors' estates that is not Cash Collateral, wherever located and however held, such cash shall be deemed to have been used first by the Debtors' estates, and such cash, to the extent applicable, shall be subject to the DIP Liens, DIP Superpriority Claims, Adequate Protection Liens (defined below), and Adequate Protection 507(b) Claims (defined below) granted to the DIP Agent, DIP Lenders, Prepetition Agent, and Prepetition Lenders hereunder.

ADEQUATE PROTECTION

Budgeted Cash Usage

13. The Debtors are hereby authorized, subject to the terms and conditions of this Interim Order, to use all Cash Collateral in accordance with the DIP Documents and Approved Budget (subject to Permitted Variances (defined below)); provided that (a) the Prepetition Secured Parties are granted the Adequate Protection as hereinafter set forth, and (b) except on the terms and conditions of this Interim Order, the Debtors shall be enjoined and prohibited from at any times using the Cash Collateral absent further order of this Court, and subject to the Carve-Out in all respects. The Debtors shall comply with the Approved Budget and all disbursements of the Debtors shall be consistent with the provisions of the Approved Budget, in each case subject to

Permitted Variances. The Debtors shall update the Approved Budget from time to time in accordance with the DIP Documents and this Interim Order.

14. The Debtors hereby covenant and agree that commencing on the Petition Date and at all times thereafter, the Debtors shall strictly perform in accordance with the Approved Budget, subject to certain limited variances (the “Variance Limit”) as set forth in the DIP Term Sheet.

15. Except as expressly provided in the Approved Budget, the Debtors agree that no transfer of Cash Collateral shall be made to any of the Debtors’ (or their affiliates) insiders, as that term is defined in section 101(31) of the Bankruptcy Code. The Debtors are required to provide an express line-item on any Proposed Budget that seeks to have any insider receive Cash Collateral.

16. No later than the date of Closing, the Debtors shall prepare for the DIP Lenders’ and DIP Agent’s review and the Required DIP Lenders’ consent (in their sole discretion) an updated thirteen-week (13-week) detailed cash projection, which shall be thereafter updated, as necessary, but shall not be updated less than once every four (4) weeks (each, a “Proposed Budget”). Upon the Debtors’ receipt of the Required DIP Lenders’ consent to a Proposed Budget, which approval shall be in the Required DIP Lenders’ sole discretion (and may be withheld for any reason), such budget shall become an “Approved Budget” and shall replace the then-operative Approved Budget for all purposes. The Initial Approved Budget shall be the Approved Budget until such time as a new Proposed Budget is approved, following which such approved Proposed Budget shall constitute the Approved Budget until a subsequent Proposed Budget is approved. The Debtors shall operate in accordance with the Approved Budget and all disbursements shall be consistent with the provisions of the Approved Budget (subject to the Variance Limit). The Debtors may submit additional Proposed Budgets to the DIP Agent and the Required DIP Lenders, but until the Required DIP Lenders consent to such Proposed Budget, it shall not become an

Approved Budget and the Debtors shall continue to comply with the then-operative Approved Budget.

17. No later than 4:00 p.m. Eastern Time on the first Friday following the initial (4)-week anniversary of the Petition Date (“Initial Variance Report Date”), the Debtors shall provide to the DIP Lenders and the Prepetition Term Loan Agent, for the period beginning on the Petition Date and ending on the week prior to the 4-week anniversary of the Petition Date (the “Initial Testing Period”) a report (the “Variance Report”) detailing (i) aggregate receipts on a combined basis during the testing period, (ii) capital expenditures on a combined basis during the testing period; and (iii) all other operating disbursements (excluding capital expenditures and administrative costs of the Chapter 11 Cases) during the testing period and (iv) disbursements for Debtors’ administrative expenses of the Chapter 11 cases including professionals’ fees and (v) any variance (whether positive or negative, expressed as a percentage) between the receipts and disbursements made during testing period and the corresponding amounts as set forth in the applicable Approved Budget. After the Initial Testing Period, beginning on the second Friday following the Initial Variance Report Date (“Bi-weekly Testing Date”), Debtor shall provide a Variance Report for the 2-week period ending the week preceding the Bi-weekly Testing Date.

18. For both the Initial Variance Report Date and subsequent Bi-weekly Testing Dates, the Debtors shall not allow: (i) receipts received during the testing period, less the sum of (ii) capital expenditures on a combined basis since the Petition Date; and (iii) all other operating disbursements (excluding capital expenditures and administrative costs of the Chapter 11 Cases) since the Petition Date (the “Cumulative Net Operating Cash Flow”) to be less than 105% of the sum of the estimated (i) cumulative receipts on a combined basis during the testing period, less the sum of (ii) capital expenditures on a combined basis during the testing period and (iii) all other

operating disbursements (excluding capital expenditures,) during the testing period (such limitation, the “Variance Limit”); *provided* that any variances greater than the limits set forth above shall require advance approval from the Required DIP Lenders; *provided, further*, that the Required DIP Lenders shall consider in good faith weekly variances resulting from changes in the timing of particular receipts or disbursements and, in such cases, approval of such variances shall not be unreasonably withheld (solely to the extent the Approved Budget is not exceeded on a cumulative basis). Additional variances, if any, from the Approved Budget, and any proposed changes to the Approved Budget, shall be subject to the Required DIP Lenders’ reasonable approval. For the avoidance of doubt, any reference to “written consent” hereunder shall include consent granted by email.

Adequate Protection of Prepetition Secured Parties

19. The Prepetition Secured Parties are entitled, pursuant to sections 361, 362, 363(e), 364(d)(1) and 507 of the Bankruptcy Code, to adequate protection of their respective interests in the Prepetition Collateral (including Cash Collateral) for the aggregate diminution in the value of their respective interests in the Prepetition Collateral (including Cash Collateral) from and after the Petition Date for any reason provided for under the Bankruptcy Code, including, without limitation, any such diminution resulting from the sale, lease or use by the Debtors of the Prepetition Collateral, the priming of the Prepetition Liens by the DIP Priming Liens pursuant to the DIP Documents and this Interim Order, the payment of any amounts under the Carve-Out or pursuant to this Interim Order, the Final Order or any other order of this Court or provision of the

Bankruptcy Code or otherwise, and the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code (the “Adequate Protection Claims”).

Adequate Protection Liens and 507(b) Claims

20. In consideration of the foregoing, the Prepetition Secured Parties are hereby granted the following as Adequate Protection, including as an inducement to the Prepetition Secured Parties’ consent to the priming of the Prepetition Liens and use of the Prepetition Collateral (including Cash Collateral) (collectively, the “Adequate Protection Obligations”):

a. *Current Payment of Prepetition Credit Agreement Obligations.* The Prepetition Agent, on behalf of the Prepetition Secured Parties, is hereby granted (a) upon closing of the DIP Facility, payment of all accrued and unpaid interest and fees (to the extent applicable) at the default rate (then owing under the Prepetition Credit Agreement, and (b) the current payment of post-petition interest and fees at the default rate as and when due and payable under the Prepetition Credit Agreement, each of which shall be paid-in-kind notwithstanding anything to the contrary in the Prepetition Credit Agreement.

b. *Adequate Protection Liens.* The Prepetition Agent, on behalf of the Prepetition Secured Parties, is hereby granted (effective and perfected upon the date of this Interim Order and without the necessity of the execution of any mortgages, security agreements, pledge agreements, financing statements or other agreements), on account of its Adequate Protection Claims, a valid, perfected replacement security interest in and lien upon all of the DIP Collateral (the “Adequate Protection Liens”) subject and subordinate only to (i) the Prepetition Permitted Senior Liens, (ii) the Carve-Out, and (iii) the DIP Liens.

c. *Prepetition Secured Parties’ Section 507(b) Claim.* The Prepetition Agent, on behalf of the Prepetition Secured Parties, is hereby granted an allowed superpriority

administrative expense claim on account of such Prepetition Secured Parties' Adequate Protection Claims as provided for in section 507(b) of the Bankruptcy Code (the "Adequate Protection 507(b) Claim"), which Adequate Protection 507(b) Claim shall be payable from and have recourse to all DIP Collateral and all proceeds thereof (including, without limitation, subject to entry of the Final Order, the Avoidance Proceeds). With respect to the Prepetition Collateral, the Adequate Protection 507(b) Claim shall be senior to all other claims of any kind and, with respect to the DIP Collateral, the Adequate Protection 507(b) Claim shall be subject and subordinate only to the Carve-Out, the Prepetition Permitted Senior Liens and the DIP Superpriority Claims.

d. *Current Payment of Prepetition Secured Parties' Fees and Expenses.* As further adequate protection, the Debtors shall provide the Prepetition Secured Parties with current cash payments, in accordance with the Prepetition Credit Documents, of all reasonable and documented prepetition and postpetition fees and expenses, including, subject to paragraph 39 of this Interim Order, the reasonable and documented fees and out-of-pocket expenses of the Consenting Creditor Advisors (such fees and expenses, the "Adequate Protection Fees and Expenses").

e. *Additional Adequate Protection Information Rights.* The Prepetition Secured Parties shall be entitled to delivery of all reports and notices deliverable to the DIP Lenders and/or the DIP Agent pursuant to the DIP Term Sheet at the same time as such reporting is (or would be required to be) provided to the DIP Lenders and/or the DIP Agent, as applicable (the "Prepetition Adequate Protection Information Right"). Upon indefeasible payment in full of all DIP Obligations and termination of the DIP Facility Commitment, the Prepetition Secured Parties shall continue to be entitled hereby to satisfaction of the Prepetition Adequate Protection Information Rights.

f. *Maintenance of Collateral.* The Debtors shall continue to maintain and insure the Prepetition Collateral and DIP Collateral in amounts and for the risks, and by the entities, as required under the Prepetition Credit Documents and the DIP Documents, as applicable.

g. *Reservation of Rights.* Notwithstanding any other provision hereof, the grant of adequate protection to the Prepetition Secured Parties pursuant to this Interim Order shall not be deemed an admission that the interests of such Prepetition Secured Parties are indeed adequately protected, and is without prejudice to the right of the Prepetition Secured Parties (subject to any applicable intercreditor or subordination provisions contained in any of, or entered into as permitted by and in accordance with, the Prepetition Credit Documents) to seek additional relief with respect to the use of Prepetition Collateral (including Cash Collateral), or to seek modification of the grant of adequate protection provided hereby so as to provide different or additional adequate protection. Nothing herein shall be deemed to waive, modify or otherwise impair the respective rights of the Prepetition Secured Parties under the Prepetition Credit Documents, any applicable intercreditor or subordination provisions contained in any of, or entered into as permitted by and in accordance with, the Prepetition Credit Documents, or under applicable law, and the Prepetition Secured Parties expressly reserve all of their respective rights and remedies whether now existing or hereafter arising under the Prepetition Credit Documents, any such applicable intercreditor or subordination provisions, and applicable law. Without limiting the foregoing, nothing contained in this Interim Order shall impair or modify the application of section 507(b) of the Bankruptcy Code in the event that the adequate protection provided hereunder is insufficient to compensate the Prepetition Secured Parties for any diminution in value during the Chapter 11 Cases.

Automatic Perfection

21. This Interim Order shall be sufficient and conclusive evidence of the priority, perfection, attachment, and validity of all of the DIP Agent's and the Prepetition Agent's security interests in and liens on the Collateral, for the respective benefits of the DIP Lenders and Prepetition Lenders, granted and created hereunder, and such security interests and liens shall constitute valid, automatically perfected and unavoidable security interests and liens, with the priorities granted hereunder, effective as of the Petition Date, without the necessity of creating, filing, recording, or serving any financing statements, continuation statements, mortgages, or other documents that might otherwise be required under federal or state law in any jurisdiction or the taking of any other action to validate or perfect the security interests and liens granted to the DIP Agent and the Prepetition Agent, on behalf of the DIP Lenders and Prepetition Lenders, by this Interim Order.

22. To the extent that any applicable non-bankruptcy law otherwise would restrict the granting, scope, enforceability, attachment, or perfection of the liens and security interests granted and created by this Interim Order or otherwise would impose filing or registration requirements with respect to such liens and security interests, such law is hereby pre-empted to the maximum extent permitted by the Bankruptcy Code, applicable federal law, and the judicial power of this Court.

23. By virtue of the terms of this Interim Order, to the extent that the DIP Agent, the DIP Lenders, the Prepetition Agent, or any Prepetition Lender has filed Uniform Commercial Code financing statements or other security or perfection documents under the names of any of the Debtors, such filings shall be deemed to properly perfect the liens and security interests granted under this Interim Order, including, without limitation, the DIP Liens and the Adequate Protection 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 entering into any deposit account control agreement, collateral access agreement, customs broker agreement or freight forwarding agreement) to validate or perfect (in accordance with applicable non-bankruptcy law) the DIP Liens and the Adequate Protection Liens, or to entitle the DIP Agent, the Prepetition Agent, DIP Lenders or the Prepetition Lenders, as applicable, to the priorities granted herein.

24. To the extent that the Prepetition Agent or any other Prepetition Secured Party is the secured party under any account control agreements, listed as loss payee under the Debtors' insurance policies or is the secured party under any Prepetition Credit Document, the DIP Lenders and the DIP Agent are also deemed to be the secured party under such account control agreements, loss payee under the Debtors' insurance policies and the secured party under each such Prepetition Credit Document, shall have all rights and powers attendant to that position (including, without limitation, rights of enforcement) and shall act in that capacity and distribute any proceeds recovered or received first, for the benefit of the DIP Secured Parties in accordance with the DIP Documents and second, subsequent to indefeasible payment in full of all DIP Obligations, for the benefit of the Prepetition Secured Parties. The Prepetition Agent and each Prepetition Secured Party shall serve as agent of the DIP Secured Parties for purposes of perfecting the DIP Secured Parties' security interests and liens on all DIP Collateral that is of a type such that perfection of a security interest therein may be accomplished only by possession or control by a secured party.

25. Without in any way limiting the automatically valid effective perfection of the DIP Liens and the Adequate Protection Liens granted pursuant to this Interim Order, if the DIP Agent or the Prepetition Agent shall elect, in their determination and in the case of the DIP Agent as directed by the Required DIP Lenders, for any reason to file any Uniform Commercial Code

financing statements or other recordable documents, or execute or enter into deposit account control agreements, to further evidence perfection of their interests in property of the estates, the DIP Agent (as directed by the Required DIP Lenders or the Prepetition Agent, as applicable) or, upon the request of the DIP Agent or Prepetition Agent, as applicable, the Debtors are authorized and directed to execute, enter into, and/or file, or cause to be executed, entered into, and/or filed, all such financing statements or deposit account control agreements and other such documents, and the execution, entering into, filing, recording, or service (as the case may be) of such financing statements, deposit control agreements, or similar documents shall be deemed to have been made at the time of and on the date of entry of this Interim Order, and the signature(s) of any person(s) designated by the Debtors, whether by letter to the DIP Agent or the Prepetition Agent, as applicable, or by appearing on any one or more of the agreements or other documents respecting the security interests and liens granted hereunder shall bind the Debtors and their estates. The DIP Agent or the Prepetition Agent, as applicable, may execute such documents on behalf of the Debtors as the Debtors' attorney-in-fact or file a certified copy of this Interim Order in any filing or recording office in any county or other jurisdiction in which any of the Debtors have real or personal property, and, in such event, the subject filing or recording officer is authorized to file or record such documents or certified copy of this Interim Order.

Authorization to Act

26. The Debtors are hereby authorized and directed to perform all acts, take any action, and execute and comply with the terms of such other documents, instruments and agreements, as the DIP Agent (acting at the direction of the Required DIP Lenders) may require as evidence of

and for the protection of the Collateral, or that may be otherwise deemed necessary by the Required DIP Lenders to effectuate the terms and conditions of this Interim Order and the DIP Facility.

27. Until such time as the DIP Obligations shall have been indefeasibly paid and satisfied in full in accordance with the terms of the DIP Documents, and without further order of this Court: (a) the Debtors shall use the proceeds of the DIP Facility and all Cash Collateral strictly in accordance with the terms of the Approved Budget and the other terms of this Interim Order; (b) the Debtors shall not, without prior order of this Court, engage in any transaction that is not in the ordinary course of the Debtors' business; and (c) the Debtors shall timely comply with all of the covenants set forth in the DIP Documents.

No Additional Liens

28. Until such time as the DIP Obligations shall have been indefeasibly paid and satisfied in full in accordance with the terms of the DIP Documents and this Interim Order, the Debtors shall not be authorized to obtain credit secured by a lien or security interest in the Collateral, other than the DIP Facility, without the prior written consent of the Required DIP Lenders.

No Liability

29. No act committed or action taken by the DIP Lenders or DIP Agent, for itself and for and on behalf of the DIP Lenders, as applicable, under this Interim Order, the DIP Facility, the DIP Documents, or the collection of the DIP Obligations, shall be used, construed, or deemed to hold the DIP Agent and/or the DIP Lenders, as applicable, to be in "control" of or participating in the governance, management, or operations of the Debtors for any purpose, without limitation, or to be acting as a "responsible person(s)" or "owner(s) or operator(s)" or a person(s) in "control" with respect to the governance, management, or operation of the Debtors or their businesses (as such terms, or any similar terms, are used in the Internal Revenue Code, WARN Act,

Comprehensive Environmental Response, Compensation and Liability Act, or the Bankruptcy Code, each as may be amended from time to time, or any other federal or state statute, at law, in equity, or otherwise) by virtue of the interests, rights, and remedies granted to or conferred upon the DIP Agent and DIP Lenders, as applicable, under the DIP Documents, or this Interim Order including, without limitation, such rights and remedies as may be exercisable by the DIP Agent and DIP Lenders, as applicable, in connection with this Interim Order, the DIP Facility, or the DIP Documents. Nothing in this Interim Order, 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 Secured Parties of any liability for any claims arising from any activities by the Debtors in the operation of their business or in connection with the administration of these Chapter 11 Cases.

Release

30. Effective as of the date of entry of this Interim Order, and subject to the rights of other parties as set forth in paragraph 61 hereof, the Debtors, on behalf of themselves and their respective estates and their affiliates and related parties, hereby absolutely, irrevocably, and unconditionally release and forever discharge and acquit the DIP Agent; the DIP Lenders; and subject to entry of the Final Order, the Prepetition Secured Parties; and the foregoing entities' respective former, current, or future officers, partners, directors, managers, members, principals, employees, agents, related funds, affiliates, investors, financing sources, financial advisors, attorneys, legal advisors, shareholders, accountants, investment bankers, consultants, representatives, and other professionals and the respective successors and assigns thereof, in each case solely in their capacities as such (collectively, the "Released Parties"), from any and all claims, offsets, defenses, counterclaims, set off rights, objections, challenges, causes of action, liabilities, losses, damages, responsibilities, disputes, remedies, actions, suits, controversies,

reimbursement obligations (including, attorneys' fees), costs, expenses, or judgments of every type, whether known or unknown, asserted or unasserted, fixed or contingent, or pending or threatened, of any kind or nature whatsoever, whether arising at law or in equity (including, without limitation, any so-called "lender liability" or equitable subordination claims or defenses, recharacterization, subordination, avoidance, any claim arising under or pursuant to section 105 or chapter 5 of the Bankruptcy Code or under any other similar provisions of applicable state or federal law, or any other claim or cause of action arising under the Bankruptcy Code or applicable non-bankruptcy law), in each case, arising under, in connection with, or related to the Debtors or their estates, the extent, amount, validity, enforceability, priority, security, and perfection of the Prepetition Credit Documents, DIP Facility, the DIP Obligations, the DIP Liens, the DIP Documents, the negotiation thereof and of the deal reflected thereby, in each case that the Debtors at any time had, now have or may have, or that their successors or assigns hereafter can or may have against any of the Released Parties for or by reason of any act, omission, matter, cause, or thing whatsoever arising at any time on or prior to the date of this Interim Order. Nothing in this release shall relieve the DIP Secured Parties or the Debtors of their obligations under the DIP Documents.

Indemnification and Exculpation

31. The DIP Secured Parties and Prepetition Secured Parties have acted in good faith and without negligence, misconduct, or violation of public policy or law, in respect of all actions taken by them in connection with or related in any way to negotiating, implementing, documenting, or obtaining requisite approvals of the DIP Facility and the use of Cash Collateral, including in respect of the granting of the DIP Liens and the Adequate Protection Liens, any challenges or objections to the DIP Facility or the use of Cash Collateral, the DIP Documents, and all other documents related to and all transactions contemplated by the foregoing. Accordingly, without

limitation to any other right to indemnification, the DIP Secured Parties and Prepetition Secured Parties shall be and hereby are indemnified (as applicable) as provided in the Prepetition Credit Documents and the DIP Documents, as applicable. The Debtors agree that no exception or defense in contract, law, or equity exists as of the date of this Interim Order to any obligation set forth, as the case may be, in this paragraph 31 or in the DIP Documents, or in the Prepetition Credit Documents to indemnify and/or hold harmless the DIP Agent, the Required DIP Lenders, any other DIP Secured Party, or any Prepetition Secured Party, as the case may be, and any such defenses are hereby waived.

32. The DIP Secured Parties shall not, in any way or manner, be liable or responsible for (i) the safekeeping of the DIP Collateral, (ii) any loss or damage thereto occurring or arising in any manner or fashion from any cause, (iii) any diminution in the value thereof or (iv) any act or default of any carrier, servicer, bailee, custodian, forwarding agency or other person and all risk of loss, damage or destruction of the DIP Collateral shall be borne by the Debtors.

Automatic Stay

33. The automatic stay imposed under section 362(a) 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 Debtors to grant the DIP Liens, Adequate Protection Liens, DIP Superpriority Claims and Adequate Protection Claims; (b) permit the Debtors to perform such acts as the DIP Secured Parties or the Prepetition Secured Parties, as applicable, may reasonably request to assure the perfection and priority of the liens granted herein; (c) permit the Debtors to incur all liabilities and obligations to the DIP Secured Parties and the Prepetition Secured Parties under the DIP Documents, the DIP Facility, and this Interim Order, as applicable; (d) authorize the Debtors to make, and each of the DIP Secured Parties and the Prepetition Secured Parties to retain and apply, payments made in accordance with this Interim Order; and (e) permit the DIP

Secured Parties to exercise all their rights and remedies under the DIP Documents as provided herein.

Collateral Insurance, Maintenance, Taxes, and Deposits

34. The Debtors shall maintain, with financially sound and reputable insurance companies, insurance of the kind covering the Collateral, and in accordance with the Prepetition Credit Documents and the DIP Documents. Upon entry of this Interim Order, the DIP Secured Parties, shall be, and shall be deemed to be, without any further action or notice, named as an additional insured and loss payee, as applicable, on each insurance policy maintained now or in the future by any of the Debtors which in any way relates to the Collateral. Notwithstanding the foregoing, the Debtors are authorized to take any actions that the Required DIP Lenders (in its sole discretion) shall request, to have the DIP Agent, on behalf of the DIP Lenders, added as an additional insured and loss payee on each insurance policy.

35. The Debtors shall make any and all payments necessary, permitted under the Approved Budget, and in accordance with the DIP Documents to keep the Collateral and their other property in good repair and condition and not permit or commit any waste thereof.

36. To the extent the Debtors have made or make any deposits for the benefit of utility companies or any other entity, or otherwise set aside funds for the benefit of any entity, (and the Debtors shall not make any such deposits or otherwise set aside funds which are not included in the Approved Budget without first obtaining prior written consent of the Required DIP Lenders), such deposits shall be, and hereby are, upon any return of same to the Debtors, subject to the first-priority perfected liens and security interests of the DIP Lenders in respect of the DIP Facility and the Debtors' use of Cash Collateral granted by this Interim Order.

Reporting Requirements

37. The Debtors are authorized and directed to provide to the DIP Agent and the Required DIP Lenders all of the documentation and reports required under the DIP Documents unless the Required DIP Lenders waive or modify such requirements in writing.

Interest, Fees, Costs and Expenses of the DIP Lenders

38. During the Chapter 11 Cases, subject to the terms of the DIP Term Sheet, the interest, fees, costs, and expenses, including attorneys' fees and expenses, due at any time to the DIP Agent or Required DIP Lenders under the DIP Documents may be charged by the DIP Agent or the Required DIP Lenders, as applicable, and shall be paid by the Debtors out of the Cash Collateral or out of any DIP Facility advances, in accordance with the terms of this Interim Order and the applicable DIP Documents.

39. The Debtors are hereby authorized and directed to pay the DIP Agent's and Required DIP Lenders' reasonable and documented (in summary format) fees and out-of-pocket expenses in connection with the negotiation and preparation of the documentation of the DIP Loans, in accordance with the DIP Term sheet, including, but not limited to, legal fees, without the DIP Agent's counsel's or Consenting Creditor Advisors' having to file any application with this Court for approval or payment, and the DIP Agent's counsel and Consenting Creditor Advisors shall not be required to comply with the U.S. Trustee fee guidelines. The Consenting Creditor Advisors shall deliver a summary invoice (which shall not be required to contain time entries but shall include a general, brief description of the nature of the matters for which services were rendered) to counsel to the Committee, if any, and the U.S. Trustee, redacted as necessary with respect to any privileged or confidential information contained therein. Any objections raised by the Debtors, the U.S. Trustee, or the Committee, if any, with respect to such invoices within ten

(10) days of the receipt thereof will be subject to resolution of this Court. Pending such resolution, the undisputed portion of any such invoice will be paid promptly by the Debtors.

40. All DIP Agent and DIP Lender costs, fees and expenses, including legal fees and expenses owed shall constitute obligations under the DIP Facility and shall be secured by the DIP Collateral and afforded all priorities and protections afforded to the DIP Facility under this Interim Order and the DIP Documents.

41. The Debtors will use best efforts to report to the DIP Agent, the Required DIP Lenders, and the Prepetition Agent the fees and expenses of counsel and other advisors for the Debtors, as provided for herein on a bi-weekly basis.

Professional Fees of the Estates; Carve-Out

42. Notwithstanding anything to the contrary herein, the Debtors' obligations to the DIP Secured Parties and the Prepetition Agent and Prepetition Lenders, and the liens, security interests and superpriority claims granted by this Interim Order or under the Prepetition Credit Documents and the DIP Documents, and the payment of all such obligations, shall be subject and subordinate in all respects to payment of the following fees and expenses: (a) the payment of unpaid fees required to be paid to the Clerk of this Court and to the U.S. Trustee pursuant to 28 U.S.C. § 1930(a); (b) fees and expenses up to \$25,000 incurred by a trustee under section 726(b) of the Bankruptcy Code; (c) to the extent allowed at any time, whether by interim order, procedural order, or otherwise, but subject to final allowance by this Court, all unpaid fees and expenses (excluding any restructuring, sale, success, or other transaction fee of any investment bankers or financial advisors) (the "Allowed Professional Fees") incurred by persons or firms retained by the Debtors pursuant to section 327, 328, or 363 of the Bankruptcy Code (the "Debtor Professionals"), and any official Committee (the "Committee Professionals" and, together with the Debtor Professionals, the "Estate Professionals") at any time before the delivery by the DIP Agent (acting

at the direction of the Required DIP Lenders) of a Carve-Out Notice (defined below) whether allowed by this Court prior to or after delivery of a Carve Out Notice up to the amounts for the Estate Professionals included in the Approved Budget through the date of the Carve-Out Notice (the amounts set forth in this clause (c) being the “Pre Carve-Out Trigger Notice Amount”); and (d) the Allowed Professional Fees of Debtor Professionals, after application of all retainers, incurred on or after the delivery by the DIP Agent (acting at the direction of the Required DIP Lenders) of the Carve-Out Notice up to \$500,000 (the amount set forth in this clause (d) being the “Post Carve-Out Trigger Amount”) (the foregoing clauses (a) through (d), collectively, the “Carve-Out”). The term “Carve-Out Trigger” shall mean a written notice stating that the Post-Carve-Out Notice Amount has been invoked, delivered by hard copy or email by the DIP Agent (acting at the direction of the Required DIP Lenders) to lead bankruptcy counsel for the Debtors, the U.S. Trustee, and the Prepetition Secured Parties, and counsel to the Committee, if any, which notice may be delivered following the occurrence and during the continued existence of a Postpetition Default (as defined herein) under the terms of this Interim Order.

43. On the date on which a Carve Out Notice is delivered in accordance with paragraph 42 herein, (the “Carve-Out Trigger Notice Date”) the Debtors shall use all cash on hand (including the DIP Loan Proceeds) to fund a reserve in an amount equal to the Carve-Out, which shall be earmarked and held in trust to pay unpaid fees and expenses incurred by Estate Professionals, to the extent allowed by this Court at any time, prior to any and all other claims in the Chapter 11 Cases (the “Carve-Out Reserve”). All funds in the Carve-Out Reserve shall be used first to pay the obligations set forth in clauses (a)-(d) in the above definition of “Carve-Out” until paid in full, second, to pay the DIP Secured Parties, and third, to pay the Prepetition Secured Parties. The amounts in the Carve-Out Account shall be available only to satisfy Allowed Professional Fees

and other amounts included in the Carve-Out until such amounts are paid in full. Notwithstanding anything to the contrary herein, (i) the failure of the Carve-Out Account to satisfy in full the amount set forth in the Carve-Out shall not affect the priority of the Carve-Out and (ii) in no way shall the Carve-Out, the Carve-Out Account, or any Approved Budget be construed as a cap or limitation on the amount of the Allowed Professional Fees due and payable by the Debtors or that may be allowed by this Court at any time (whether by interim order, final order, or otherwise). The amount in the Carve-Out Account shall be reduced on a dollar-for-dollar basis for Allowed Professional Fees that are paid after the delivery of the Carve-Out Trigger Notice, and the Carve-Out Account shall not be replenished for such amounts so paid. Payments from the Carve-Out shall be subject to any terms and conditions of the engagement agreements and appurtenant orders for the employment of each Estate Professional. Any payment or reimbursement made on or after the occurrence of the Carve Out Trigger Date in respect of any Allowed Professional Fees incurred after the occurrence of the Carve Out Trigger Date shall permanently reduce the Carve Out Amount on a dollar-for-dollar basis.

44. The DIP Agent, the DIP Lenders and the Prepetition Secured Parties shall not be responsible for the direct payment or reimbursement of any fees or expenses of any Estate Professionals incurred in connection with the Chapter 11 Cases or any Successor Case under any chapter of the Bankruptcy Code, regardless of whether payment of such fees or disbursement has been allowed by this Court. Nothing in this Interim Order or otherwise shall be construed to obligate any of the DIP Agent, the DIP Lenders or the Prepetition Secured Parties in any way to pay compensation to or reimburse expenses of any Estate Professional, or to guarantee that the Debtors have sufficient funds to pay such compensation or expense reimbursement.

45. *No Direct Obligation To Pay Allowed Professional Fees.* None of the Prepetition Secured Parties or the DIP Secured Parties shall be responsible for the payment or reimbursement of any fees or disbursements of any Professional Person incurred in connection with the Chapter 11 Cases or any successor cases under any chapter of the Bankruptcy Code. Nothing in this Interim Order or otherwise shall be construed to obligate the Prepetition Secured Parties or the DIP Secured Parties, in any way, to pay compensation to, or to reimburse expenses of, any Professional Person or to guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement.

46. Nothing in this Interim Order shall be construed as a waiver of any right of the DIP Secured Parties or the Prepetition Secured Parties with respect to any fee statement, interim application or monthly application issued or filed by the Professional Persons. Notwithstanding anything to the contrary herein or in the DIP Documents, (x) in no event shall any DIP Lender be required to fund any amounts in excess of its Commitment and (y) the payment of any Allowed Professional Fees pursuant to the Carve Out shall not (i) reduce any Debtor's obligations owed to the DIP Agent, any DIP Lender, and the Prepetition Secured Parties (whether under this Interim Order or otherwise) or (ii) modify, alter or otherwise affect any of the liens and security interests of such parties (whether granted under this Interim Order or otherwise) in the Prepetition Collateral or the DIP Collateral (or their claims against the Debtors).

No Marshaling

47. Subject to and effective only upon entry of the Final Order, the DIP Secured Parties and the Prepetition Secured Parties shall not be subject to the equitable doctrine of "marshaling" or any similar doctrine with respect to the DIP Collateral, the DIP Obligations, the Prepetition Secured Debt, or the Prepetition Collateral.

Limitation on Charging Expenses Against Collateral

48. Subject to entry of the Final Order, without limiting the scope of the Carve-Out, no costs or expenses of administration of the Chapter 11 Cases or any Successor Cases or any future proceeding that may result therefrom, including liquidation in bankruptcy or other proceedings under the Bankruptcy Code, shall be charged against or recovered from (and the Debtors shall irrevocably waive any such claim to) the DIP Collateral (including Cash Collateral) or Prepetition Collateral pursuant to section 506(c) of the Bankruptcy Code or any similar principle of law, without the prior written consent of the DIP Agent (as directed by the Required DIP Lenders) and the Prepetition Agent, as applicable, and no consent shall be implied from any other action, inaction or acquiescence by the DIP Secured Parties or the Prepetition Secured Parties, and nothing contained in this Interim Order shall be deemed to be a consent by the DIP Secured Parties or the Prepetition Secured Parties to any charge, lien, assessment or claims against the Collateral under section 506(c) of the Bankruptcy Code or otherwise. Further, the DIP Agent, the DIP Secured Parties, and the Prepetition Secured Parties shall be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and subject only to and effective upon entry of the Final Order, the “equities of the case” exception under section 552(b) of the Bankruptcy Code shall not apply to the DIP Agent, the DIP Secured Parties, and the Prepetition Secured Parties with respect to proceeds, products, offspring, or profits of any of the DIP Collateral or Prepetition Collateral.

Payments Free and Clear

49. Any and all payments or proceeds remitted to the DIP Secured Parties and the Prepetition Secured Parties by, through or on behalf of the Debtors pursuant to the provisions of this Interim Order, the DIP Documents or any subsequent order of this Court shall be irrevocable, received free and clear of any claim, charge, assessment or other liability, including without limitation, any such claim or charge arising out of or based on, directly or indirectly, sections

506(c) or 552(b) of the Bankruptcy Code, whether asserted or assessed by, through, or on behalf of the Debtors.

No Proofs of Claim

50. No DIP Secured Party or Prepetition Secured Party shall be required to file proofs of claim in any of the Chapter 11 Cases or Successor Cases of the Debtors under any chapter of the Bankruptcy Code, and the Debtors' stipulations in this Interim Order shall be deemed to constitute a timely filed proof of claim against the applicable Debtor(s). Any order entered by this Court in relation to the establishment of a bar date for any claim (including without limitation, administrative expense claims and priority claims) in any of the Chapter 11 Cases or Successor Cases shall not apply to the claims of the DIP Secured Parties with respect to the DIP Obligations or to the claims of the Prepetition Secured Parties under the Prepetition Credit Documents. Notwithstanding the foregoing, (a) the DIP Agent (on behalf of itself and the DIP Lenders) is hereby authorized and entitled, in its determination, but not required, to file (and amend and/or supplement, as applicable) a master proof of claim for any claims of the DIP Agent or any of the DIP Lenders in respect of the DIP Obligations, as applicable and (b) the Prepetition Agent (on behalf of itself and the Prepetition Lenders) is hereby authorized and entitled, in its determination, but not required, to file (and amend and/or supplement, as applicable) a master proof of claim for any claims of the Prepetition Agent or any of the Prepetition Lenders under the Prepetition Credit Documents, as applicable; provided, however, that nothing in this Interim Order shall waive the right of any DIP Lender or any Prepetition Lender to file its own proof of claim against any of the Debtors.

Limitations on Use of DIP Facility Proceeds and Collateral

51. *No Obligation to Extend Credit.* The DIP Lenders shall have no obligation to make any loan under the DIP Documents unless (and subject to the occurrence of the Closing Date (as

defined in the DIP Term Sheet)) all of the conditions precedent to the making of such extension of credit under the DIP Documents, this Interim Order and/or the Final Order, as applicable, have been satisfied in full or waived by the Required DIP Lenders.

52. No DIP Loans, DIP Collateral (including Cash Collateral), or any portion of the Carve-Out, may be used directly or indirectly by any Debtor, any statutory, or non-statutory committee (including any official Committee, if appointed), or any trustee appointed in the Chapter 11 Cases or any Successor Case, including any chapter 7 case, or any other person, party, or entity (a) in connection with the initiation, or prosecution of any claims, causes of action, adversary proceedings, or other litigation (i) against any of the DIP Secured Parties or the Prepetition Secured Parties or their respective predecessors in interest, officers, directors, employees, agents, affiliates, representatives, attorneys, or advisors, or any action purporting to do the foregoing in respect of the DIP Obligations, the DIP Liens, the DIP Superpriority Claims, the Prepetition Secured Debt, the Prepetition Liens, or the Adequate Protection Liens or Adequate Protection 507(b) Claims; or (ii) challenging the amount, validity, perfection, priority or enforceability of or asserting any defense, counterclaim or offset with respect to the DIP Obligations, the DIP Superpriority Claims, the Prepetition Secured Debt, the Prepetition Liens or the liens, claims, rights, or security interests granted under this Interim Order, the DIP Documents or the Prepetition Credit Documents, as applicable, including, in each case, without limitation, for lender liability or pursuant to section 105, 510, 544, 547, 548, 549, 550, or 552 of the Bankruptcy Code, applicable non-bankruptcy law, or otherwise (*provided* that, notwithstanding anything to the contrary herein, the proceeds of the DIP Loans and/or DIP Collateral (including Cash Collateral) may be used by any Committee to investigate, but not to prosecute, (x) the claims and liens of the Prepetition Secured Parties and (y) potential claims, counterclaims, causes of action or defenses against the Prepetition Secured

Parties, up to an aggregate cap of no more than \$50,000 (the “Investigation Budget”)); (b) to prevent, hinder, or otherwise delay the DIP Agent’s, or the DIP Lenders’, as applicable, enforcement or realization on the DIP Obligations, DIP Superpriority Claims, DIP Collateral, and the liens, claims, and rights granted to such parties under this Interim Order, each in accordance with the DIP Documents or this Interim Order; (c) to seek to modify any of the rights and remedies granted to the DIP Agent or the DIP Lenders under this Interim Order or the DIP Documents, as applicable; (d) to apply to this Court for authority to approve superpriority claims or grant liens (other than the liens permitted pursuant to the DIP Documents) or security interests in the DIP Collateral or any portion thereof that are senior to, or pari passu with, the DIP Liens, DIP Obligations, DIP Superpriority Claims, Adequate Protection Liens and Adequate Protection 507(b) Claims, unless all DIP Obligations and claims granted to the DIP Secured Parties under this Interim Order, have been paid in full in cash or as otherwise agreed to in writing by the Required DIP Lenders; or (e) to seek to pay any amount on account of any claims arising prior to the Petition Date unless such payments are agreed to in writing by the Required Lenders or are otherwise included in the Approved Budget. The Debtors shall be entitled to use DIP Collateral to pay reasonable and documented fees incurred to (x) contest that a Postpetition Default has occurred and/or is continuing hereunder pursuant to and consistent with paragraph 55 of this Interim Order and/or (y) prepare for and participate at any hearing held by this Court regarding any exercise of rights or remedies under the DIP Documents; provided that, in each case, such amount shall apply against the Debtor Post Carve-Out Notice Amount.

POSTPETITION DEFAULT/REMEDIES

Postpetition Defaults

53. The occurrence of any of the following events, unless waived by the Required DIP Lenders, shall constitute an event of default (each, a “Postpetition Default” and collectively,

the “Postpetition Defaults”): (a) the failure of the Debtors to perform any of the terms, provisions, conditions, covenants, or obligations under this Interim Order, (b) the failure of the Debtors to comply with any of the Milestones (as defined below) or (c) the occurrence of an “Event of Default” as set forth in the DIP Term Sheet. Upon the occurrence and during the continuation of any Postpetition Default that has not been waived by the Required DIP Lenders, the DIP Secured Parties shall have the rights and remedies set forth in the DIP Documents and in this Interim Order.

Remedies

54. Subject to the terms of the DIP Documents and this Interim Order, including paragraph 56, the automatic stay provisions of section 362 of the Bankruptcy Code shall be modified to the extent necessary to permit the DIP Secured Parties to exercise all rights and remedies and to take any or all of the following actions, without further order of or application to this Court, immediately upon the occurrence and during the continuance of an Event of Default, so long as the DIP Agent, as directed by the Required DIP Lenders, provide five calendar days’ prior written notice (e-mail being sufficient for this purpose) to the Debtors, their counsel (Cole Schotz P.C.), the U.S. Trustee, and other lienholders for any Postpetition Default of the exercise of any rights and remedies in accordance with the DIP Documents (such notice, the “Default Notice” and such notice period, the “Enforcement Notice Period”).

55. During the Enforcement Notice Period, the Debtors and/or any party in interest shall be entitled to seek an emergency hearing (with the DIP Agent and the DIP Secured Parties deemed to consent to such emergency hearing pursuant to this Interim Order) or such other time as this Court can schedule the hearing in accordance with the Local Rules.

56. Unless during the Enforcement Notice Period this Court orders otherwise, the DIP Secured Parties may: (a) terminate, reduce, or restrict the Debtors’ use of any Cash Collateral; (b) cease or reduce making any DIP Loans; (c) declare all DIP Obligations to be immediately due and

payable; (d) charge the default rate of interest on the DIP Loans; (e) freeze monies or balances in the Debtors' accounts; (f) immediately set-off any and all amounts in accounts maintained by the Debtors and subject to the control of the DIP Secured Parties against the DIP Obligations; (g) otherwise enforce any and all rights against the DIP Collateral in the possession of any of the applicable DIP Secured Parties, including, without limitation, disposition of the DIP Collateral solely for application towards the DIP Obligations; (h) enforce all of the guaranty rights; and (i) take any other actions or exercise any other rights or remedies permitted under the DIP Orders, the DIP Documents or applicable law to effect the repayment of the DIP Obligations.

57. The automatic stay under section 362 of the Bankruptcy Code otherwise applicable to the DIP Agent and DIP Lenders is hereby modified as set forth in the previous paragraphs so that the DIP Agent (at the direction of the Required DIP Lenders) shall be entitled to exercise all rights and remedies against the DIP Collateral in accordance with the DIP Documents and this Interim Order, and shall be permitted to satisfy the DIP Liens, the DIP Superpriority Claims, the Adequate Protection Liens and Adequate Protection 507(b) Claims, subject only to the Carve-Out and Prepetition Permitted Senior Liens. Unless this Court orders otherwise, the automatic stay shall automatically be terminated upon the issuance of the Default Notice without further notice or order, and the DIP Agent (at the direction of the Required DIP Lenders) shall be permitted to exercise all remedies set forth herein, in the DIP Documents, and as otherwise available at law against the DIP Collateral, without further order of or application or motion to this Court, and without restriction or restraint by any stay under sections 105 or 362 of the Bankruptcy Code, or otherwise, against the enforcement of the liens and security interest in the DIP Collateral or any other rights and remedies granted to the DIP Agent (acting at the direction of the Required DIP Lenders) with respect thereto pursuant to the DIP Documents or this Interim Order.

58. Upon or after the occurrence of any Postpetition Default, the Required DIP Lenders may, in their sole determination, consistent with the terms of this Interim Order and the DIP Documents, advance funds to the Debtors or may consent to the Debtors' use of Cash Collateral, and all such advances or consent to use of Cash Collateral shall not constitute a waiver, limitation, or modification of the DIP Agent's and the Required DIP Lenders' rights and remedies pursuant to the DIP Documents, this Interim Order, and applicable law.

Milestones

59. The Debtors agree that failure to comply with any of the milestones (as set forth in the DIP Term Sheet, the "Milestones") shall constitute an Event of Default. Each of the Milestones may be extended or waived in writing (email being sufficient) at any time by the Required DIP Lenders. The Milestones include:

- i) On the Petition Date, the Debtors shall file the Prepackaged Plan and Disclosure Statement in accordance with the RSA in form and substance acceptable to the Required DIP Lenders;
- ii) the Debtors shall have filed a motion for approval of the Disclosure Statement and scheduling a hearing with respect to approval of the Disclosure Statement and confirmation of the Prepackaged Plan on the Petition Date;
- iii) this Court shall have entered the Interim Order by the date that is no later than three (3) days after the Petition Date;
- iv) this Court shall have entered the Final Order by the date that is no later than thirty-five (35) days after the Petition Date;
- v) the Disclosure Statement shall be approved by this Court by the date that is no later than forty-five (45) days after the Petition Date;
- vi) this Court shall have entered an order confirming the Prepackaged Plan by the date that is no later than forty-five (45) days after the Petition Date; and
- vii) the effective date of the Prepackaged Plan shall have occurred by the date that is no later than sixty (60) days after the Petition Date.

Challenge Period

61. The Debtors' stipulations, admissions, agreements and releases contained in this Interim Order shall be binding upon the Debtors in all circumstances and for all purposes upon entry of this Interim Order. The Debtors' stipulations, admissions, agreements and releases contained in this Interim Order 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 Cases and any other person or entity acting or seeking to act on behalf of the Debtors' estates including any chapter 7 or chapter 11 trustee or examiner appointed or elected for any of the Debtors, in all circumstances and for all purposes unless: (a) such committee or any other party in interest with requisite standing (subject in all respects to any agreement or applicable law that may limit or affect such entity's right or ability to do so) has timely filed an adversary proceeding or contested matter (subject to the limitations contained herein, including, *inter alia*, in this paragraph) by no later (i) in the case of any Committee, the earlier of (a) 75 days from the entry of the Interim Order or (b) the date upon which the confirmation order is entered, with such 75-day period subject to extension by agreement of the Committee and the Required DIP Lenders, and other third parties, as the case may be, or by order of this Court; (ii) in the case that a chapter 7 or chapter 11 trustee is appointed or elected within 75 days after the Petition Date (including following a conversion of these Chapter 11 Cases to cases under chapter 7) the earlier of (a) 75 days from the Petition Date or 30 days from the appointment of such chapter 7 or chapter 11 trustee, or (b) the date upon which the confirmation order is entered; (iii) in the case of any other party in interest (including a chapter 7 or chapter 11 trustee appointed or elected more than 75 days after the Petition Date), the earlier of (a) 75 days of the Petition Date, or (b) the date upon which the confirmation order is entered (the time period established by clauses (i), (i) and (iii) of this paragraph 61, the "Challenge Period"), (A) objecting to or challenging the amount, validity, perfection, enforceability, priority

or extent of the Prepetition Secured Debt or the Prepetition Liens, or (B) otherwise asserting or prosecuting any action for preferences, fraudulent transfers or conveyances, other avoidance power claims or any other claims, counterclaims or causes of action, objections, contests or defenses (collectively, the “Challenges”) against the Prepetition Secured Parties or their respective subsidiaries, affiliates, officers, directors, managers, principals, employees, agents, financial advisors, attorneys, accountants, investment bankers, consultants, representatives and other professionals and the respective successors and assigns thereof, in each case in their respective capacity as such (each, a “Representative” and, collectively, the “Representatives”) in connection with matters related to the Prepetition Credit Documents, the Prepetition Secured Debt, the Prepetition Liens and the Prepetition Collateral; and (b) there is a final non-appealable order in favor of the plaintiff sustaining any such Challenge in any such timely filed adversary proceeding or contested matter; provided, however, that any pleadings filed in connection with any Challenge shall set forth with specificity the basis for such challenge or claim and any challenges or claims not so specified prior to the expiration of the Challenge Period shall be deemed forever, waived, released and barred. If no such Challenge is timely and properly filed during the Challenge Period or this Court does not rule in favor of the plaintiff in any such proceeding then: (1) the Debtors’ stipulations, admissions, agreements and releases contained in this Interim Order shall be binding on all parties in interest; (2) the obligations of the Prepetition Obligors under the Prepetition Credit Documents, including the Prepetition Secured Debt, shall constitute allowed claims not subject to defense, avoidance, reduction, setoff, recoupment, recharacterization, subordination (whether equitable, contractual, or otherwise), disallowance, impairment, claim, counterclaim, cross-claim, or any other challenge under the Bankruptcy Code or any applicable law or regulation by any person or entity for all purposes in the Chapter 11 Cases, and any subsequent chapter 7 case(s); (3)

the Prepetition Liens on the Prepetition Collateral shall be deemed to have been, as of the Petition Date, legal, valid, binding, perfected, security interests and liens, not subject to defense, avoidance, reduction, setoff, recoupment, recharacterization, subordination (whether equitable, contractual, or otherwise), disallowance, impairment, claim, counterclaim, cross-claim, or any other challenge under the Bankruptcy Code or any applicable law or regulation by any person or entity, including any statutory or non-statutory committees appointed or formed in the Chapter 11 Cases or any other party in interest acting or seeking to act on behalf of the Debtors' estates, including, without limitation, any successor thereto (including, without limitation, any chapter 7 trustee or chapter 11 trustee or examiner appointed or elected for any of the Debtors) and any defense, avoidance, reduction, setoff, recoupment, recharacterization, subordination (whether equitable, contractual, or otherwise), disallowance, impairment, claim, counterclaim, cross-claim, or any other challenge under the Bankruptcy Code or any applicable law or regulation by any statutory or non-statutory committees appointed or formed in the Chapter 11 Cases or any other party acting or seeking to act on behalf of the Debtors' estates, including, without limitation, any successor thereto (including, without limitation, any chapter 7 trustee or chapter 11 trustee or examiner appointed or elected for any of the Debtors), whether arising under the Bankruptcy Code or otherwise, against any of the Prepetition Secured Parties and their Representatives arising out of or relating to any of the Prepetition Credit Documents, the Prepetition Secured Debt, the Prepetition Liens and the Prepetition Collateral shall be deemed forever waived, released and barred. If any such Challenge is timely filed during the Challenge Period, the stipulations, admissions, agreements and releases contained in this Interim Order shall nonetheless remain binding and preclusive (as provided in the second sentence of this paragraph) on each other statutory or non-statutory committee appointed or formed in the Chapter 11 Cases and on any other person or entity, except to the extent

that such stipulations, admissions, agreements and releases were expressly and successfully challenged in such Challenge as set forth in a final, non-appealable order of a court of competent jurisdiction (and solely as to the plaintiff party that timely filed such Challenge Proceeding and not, for the avoidance of doubt, any other party in interest). Nothing in this Interim Order vests or confers on any Person (as defined in the Bankruptcy Code), including any statutory or non-statutory committees appointed or formed in the Chapter 11 Cases, standing or authority to pursue any claim or cause of action belonging to the Debtors or their estates, including, without limitation, Challenges with respect to the Prepetition Credit Documents, the Prepetition Secured Debt or the Prepetition Liens, and any ruling on standing, if appealed, shall not stay or otherwise delay the Chapter 11 Cases or confirmation of any plan of reorganization.

Right to Credit Bid

62. Pursuant to this Interim Order and subject to Bankruptcy Code section 363(k), the DIP Agent (acting at the direction of the Required DIP Lenders) and the Prepetition Agent (at the direction of the Required Lenders (as defined in the Prepetition Credit Documents)) shall have the right to credit bid (the “Credit Bid Right”) any portion and up to the entire amount of the DIP Obligations, or Prepetition Secured Debt, as applicable, at any time on any individual asset, portion of the assets, or all assets constituting their respective Collateral (including, for the avoidance of doubt, Adequate Protection Claims, if any) in conjunction with any sale pursuant to section 363 of the Bankruptcy Code or included as part of any chapter 11 plan subject to confirmation under Bankruptcy Code section 1129(b)(2)(A)(ii)-(iii). The DIP Agent (acting at the direction of the Required DIP Lenders) and the Prepetition Agent (at the direction of the Required Lenders (as defined in the Prepetition Credit Documents)), or any special purpose entity created by them, shall be a qualified and permitted bidder in all respects at any auction, and shall not be required to submit

a deposit, purchase agreement, or any other deliverable or documentation to the Debtors or their representatives or agents.

OTHER TERMS

63. *No Modification of Interim Order.* Absent the consent of the Required DIP Lenders, it shall be an Event of Default if the Debtors irrevocably seek or consent to, directly or indirectly: (a) (i) any reversal, modification, stay, vacatur or amendment to this Interim Order; or (ii) a priority claim for any administrative expense or unsecured claim against the Debtors (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), 507(a) or 507(b) of the Bankruptcy Code) in any of the Chapter 11 Cases or Successor Cases, equal or superior to the DIP Superpriority Claims or the Adequate Protection Superpriority Claims, other than the Carve Out and except to the extent expressly provided in this Interim Order or the DIP Documents; and (b) any order, other than this Interim Order or the Final Order, allowing use of Cash Collateral resulting from DIP; and (c) except as expressly set forth in this Interim Order or the Final Order (including with respect to the Carve Out), any lien on any of the DIP Collateral or Prepetition Collateral with priority equal or superior to the DIP Liens or the Prepetition Liens.

64. The Debtors and the Required DIP Lenders, are authorized to implement, in accordance with the terms of the DIP Documents, any modifications or amendments to any DIP Document which are not material and adverse to the Debtors. Any modifications or amendments of any DIP Document which are material and adverse to the Debtors, the estates, or any secured

party shall be subject to prior approval by this Court upon motion by the Debtors, and any party (including the Required DIP Lenders) may seek to have such motion heard on an expedited basis.

65. The DIP Obligations provided herein shall not be discharged (and the Debtors hereby waive any rights to seek any such discharge) by the entry of an order confirming any plan in any of the Chapter 11 cases, notwithstanding the provisions of section 1141(d) of the Bankruptcy Code, unless such obligations have been indefeasibly paid in full in cash on or before the effective date of such confirmed plan or the Required DIP Lenders have agreed in writing to such other treatment.

66. The DIP Lenders may assign or participate any portion of their DIP Obligations in accordance with and subject to the terms of the DIP Documents; provided, however, that any assignee or participant with respect to DIP Obligations shall be subject to the terms of this Interim Order and the Final Order.

67. Other than any Prepetition Permitted Senior Liens and the Carve-Out, no priority claims shall be allowed that are or will be prior to or on parity with the superpriority claims or secured claims of the DIP Agent and DIP Lenders, against the Debtors and their estates arising from the DIP Documents and this Interim Order.

68. No obligations incurred or payments or other transfers made by or on behalf of the Debtors on account of the DIP Facility shall be avoidable or recoverable from the DIP Agent or the DIP Lenders under any section of the Bankruptcy Code, or any other federal, state, or other applicable law.

69. Except as explicitly provided for herein, this Interim Order does not create any rights for the benefit of any third party, creditor, equity holder or any direct, indirect or incidental beneficiary.

70. Except for the reasonable and necessary sale of inventory in the ordinary course of the Debtors' business and as may be provided for in the Approved Budget and consistent with the DIP Term Sheet, the Debtors shall not sell, transfer, lease, encumber, or otherwise dispose of any of the Collateral, except as otherwise permitted by the DIP Documents.

71. All advances under the DIP Facility are made in reliance on this Interim Order, and so long as the DIP Obligations remain unpaid, it shall be an Event of Default if an order is entered in these Chapter 11 Cases that, except as consented to by the Required DIP Lenders in writing (a) authorizes the use of Cash Collateral or the sale, lease, or other disposition of the Collateral unless the cash proceeds will indefeasibly pay the DIP Obligations in full, in cash; (b) authorizes the obtaining of credit or the incurring of indebtedness secured by a lien or security interest in property in which the DIP Agent holds or asserts liens or security interests; or (c) grants to any claim a priority administrative claim status that is equal or superior to the superpriority status granted to the DIP Agent herein.

72. The terms hereunder and under the DIP Documents, the security interests and liens granted to the DIP Agent and Prepetition Agent, for themselves and for and on behalf of the DIP Lenders and Prepetition Lenders, under this Interim Order, and the rights of the DIP Agent and Prepetition Agent, the DIP Lenders, and Prepetition Lenders pursuant to this Interim Order with respect to the Collateral, and treatment of the Prepetition Lenders' Claims and the DIP Obligations shall not be altered, modified, extended, impaired, or affected by any plan of reorganization of the Debtors without the prior written approval of the Required DIP Lenders. The DIP Obligations provided herein shall not be discharged (and the Debtors hereby waive any rights to seek any such discharge) by the entry of an order confirming any plan in any of the Chapter 11 Cases, notwithstanding the provisions of section 1141(d) of the Bankruptcy Code, unless such obligations

have been indefeasibly paid in full in cash on or before the effective date of such confirmed plan or each of the DIP Secured Parties, as applicable, has agreed in writing to such other treatment.

73. The terms and provisions of this Interim Order, as well as the priorities in payment, liens, and security interests granted pursuant to this Interim Order and the DIP Documents, shall continue in this or any Successor Case of the Debtors, and such priorities in payment, liens, and security interests shall maintain their priority as provided by this Interim Order until such time as the DIP Obligations shall have been indefeasibly paid and satisfied in full in accordance with the terms of the DIP Documents and the DIP Agent shall have no further obligation or financial accommodation to the Debtors.

74. The provisions of this Interim Order shall inure to the benefit of the Debtors, the DIP Secured Parties, and the Prepetition Secured Parties, and they shall be binding upon (a) the Debtors and their successors and assigns, including any trustee or other fiduciary hereafter appointed as legal representative of the Debtors or with respect to property of the estates of the Debtors, whether under chapter 11 of the Bankruptcy Code, any confirmed plan, or any subsequent chapter 7 case, and (b) all creditors of the Debtors and other parties in interest.

75. The DIP Agent, the DIP Secured Parties and the Prepetition Secured Parties (and the successors and assigns thereof) shall be and are entitled to the full protection of section 364(e) of the Bankruptcy Code, including in the event that this Interim Order or any provision hereof is vacated or modified, on appeal or otherwise. If any or all of the provisions of this Interim Order are hereafter modified or vacated, on appeal or otherwise, without the prior written agreement of the Required DIP Lenders, such modification or vacation shall not affect (a) the validity of any obligation, indebtedness or liability incurred by the Debtors to the DIP Agent, Prepetition Agent, DIP Lenders, and/or Prepetition Lenders before the effective date of such modification or vacation

or (b) the validity or enforceability of any security interest, lien, priority or other protection authorized, granted, or created hereby or pursuant to any of the DIP Documents or Prepetition Credit Documents. Notwithstanding any such modification or vacation, any indebtedness, obligations, or liabilities incurred by the Debtors to the DIP Agent for itself or for and on behalf of the DIP Lenders or the Prepetition Agent for itself or for and on behalf of the Prepetition Lenders, as applicable, before the effective date of such modification or vacation shall be governed in all respects by the original provisions of this Interim Order, and the DIP Agent and the Prepetition Agent for themselves and for and on behalf of the DIP Lenders or Prepetition Lenders, as applicable, shall be entitled to all the liens, rights, remedies, privileges, and benefits granted herein and pursuant to the DIP Documents and Prepetition Credit Documents with respect to all such indebtedness, obligations, or liabilities.

76. To the extent the terms and conditions of the DIP Documents or Prepetition Credit Documents are in express conflict (as opposed to being additive, limiting, or more specific than this Interim Order) with the terms and conditions of this Interim Order, the terms and conditions of this Interim Order shall control.

77. Except as otherwise provided for the DIP Documents, no approval, agreement, or consent requested of the DIP Agent or the Required DIP Lenders by the Debtors pursuant to the terms of this Interim Order or otherwise, shall be inferred from any action, inaction, or acquiescence of the DIP Agent or the Required DIP Lenders other than a writing acceptable to the Required DIP Lenders that is signed by the DIP Agent and expressly shows such approval, agreement or consent, without limitation. Nothing herein shall in any way affect the rights of the DIP Agent, the Prepetition Agent, the DIP Lenders and the Prepetition Lenders as to any non-Debtor entity, without limitation.

78. Nothing herein shall be deemed or construed to waive, limit, or modify the rights of the Prepetition Agent and the Prepetition Lenders, to obtain further adequate protection and other statutory protections for the use of the Collateral, including Cash Collateral, or to seek other relief in these Cases or any Successor Cases in accordance with any provision of the Bankruptcy Code or applicable law.

79. Unless expressly and specifically provided otherwise herein, nothing herein shall be deemed or construed to waive, limit, modify or prejudice the claims, rights, protections, privileges and defenses of the DIP Secured Parties and the Prepetition Secured Parties afforded pursuant to the Bankruptcy Code.

80. This Interim Order shall constitute findings of fact and conclusions of law in accordance with Bankruptcy Rule 7052 and shall take effect and be fully enforceable effective as of the Petition Date immediately upon entry hereof. Notwithstanding Bankruptcy Rules 4001(a)(3), 6004(h), 6006(d), 7062, or 9014, any Local 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.

81. This Court hereby expressly retains jurisdiction over all persons and entities, co-extensive with the powers granted to this Court under the Bankruptcy Code, to enforce the terms of this Interim Order and to adjudicate any and all disputes in connection therewith by motion and without necessity of an adversary proceeding.

82. All headings in this Interim Order are descriptive and for reference only, and do not have separate meaning or change any terms therein.

83. Any consent, agreement, amendment, approval, waiver or instruction of the Borrowers, Guarantors, or DIP Secured Parties to be delivered pursuant to this Interim Order or the DIP Documents, may be delivered by any written instrument, including by way of electronic mail, by the Borrowers, Guarantors, or DIP Secured Parties or their respective counsels on their behalf.

NOTICE

84. The Debtors' proposed counsel shall serve this Interim Order on all of the following parties: (a) [●].

85. A final hearing on the Motion shall take place before the Honorable [●], United States Bankruptcy Judge, at the United States Bankruptcy Court, District of Delaware, 824 Market Street, Courtroom [●], 3rd Floor, Wilmington, Delaware 19801, on [●] at [●] a.m./p.m. (the "Final Hearing"). Pursuant to Bankruptcy Rule 4001(d)(2), any objection to the entry of the Final Order must be filed **on or before 5:00 p.m. Eastern Time on [●]**, and any such objection shall be served upon (i) proposed counsel to the Debtors, Cole Schotz P.C. [●], Attn: David Bass; (ii) Sidley Austin LLP, 787 Seventh Avenue, New York, New York, 10019, Attn: Stephen E. Hessler, Jason Hufendick, and Margaret R. Alden, counsel to Cantor Lender, (iii) Gibson, Dunn & Crutcher LLP, 1050 Connecticut Avenue, N.W., Washington, D.C. 20036, Attn: Matthew J. Williams and AnnElyse Scarlett Gains, counsel to RXR Lender, and (iv) Troutman Pepper Hamilton Sanders LLP, 875 Third Ave., New York, NY 10022, Attn: Adam Jachimowski and Deborah Kovsky-Apap, counsel to the Prepetition Agent and DIP Agent.

86. The Debtors shall promptly serve copies of this Interim Order (which shall constitute adequate notice of the Final Hearing, including, without limitation, notice that the Debtors will seek approval at the Final Hearing of a waiver of rights under sections 506(c) and

552(b) of the Bankruptcy Code) to the parties having been given notice of the Interim Hearing, to any party that has filed a request for notices with this Court.

RESERVATION OF RIGHTS

87. To the extent of any inconsistencies between the terms of this Interim Order and the findings of fact and conclusions of law made by this Court at the Interim Hearing or the terms stated on the record on which this Court granted interim approval of the DIP Facility at the Interim Hearing (collectively, the “Interim Rulings”), the Interim Rulings shall control.

88. *Joint and Several Liability.* Nothing in this Interim 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 of the DIP Obligations in accordance with the terms hereof and with the terms of the DIP Documents.

89. *Rights Preserved.* Notwithstanding anything herein to the contrary, the entry of this Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly: (a) the DIP Secured Parties’ and the Prepetition Secured Parties’, as applicable, the right to seek any other or supplemental relief in respect of the Debtors (including, the right to seek additional or different adequate protection) or (b) the rights of any of the DIP Lenders to seek the payment of the Debtors of postpetition interest or fees pursuant to section 506(b) of the Bankruptcy Code. Other than as expressly set forth in this Interim Order, any other rights, claims, or privileges (whether legal, equitable or otherwise), of the DIP Secured Parties, are preserved.

90. *No Waiver by Failure to Seek Relief.* The failure or delay on the part of any of the DIP Secured Parties or the Prepetition Secured Parties to seek relief or otherwise exercise their rights and remedies under this Interim Order, the DIP Documents, the Prepetition Credit Documents, or applicable law, as the case may be, shall not constitute a waiver of any of their respective rights hereunder, thereunder or otherwise. No delay on the part of any party in the

exercise of any right or remedy under this Interim Order shall preclude any other or further exercise of such right or remedy. None of the rights or remedies of any party under this Interim Order shall be deemed to have been amended, modified, suspended, or waived unless each amendment, modification, suspension, or waiver is express, in writing, and signed by the party or parties against whom such amendment, modification, suspension, or waiver is sought. No consents required hereunder by any of the DIP Secured Parties or the prepetition Secured Parties shall be implied by any inaction or acquiescence by any of the DIP Secured Parties or the Prepetition Secured Parties, respectively.

EXHIBIT 1

DIP Term Sheet

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**SUMMARY OF PROPOSED TERMS AND CONDITIONS
FOR DIP FINANCING AND USE OF CASH COLLATERAL**

**View Inc. et al.,
as Debtors and Debtors-in-Possession
April 2, 2024**

The terms and conditions summarized below are intended as a summary outline of a proposed financing commitment which is conditioned in all respects upon completion of due diligence, negotiation of definitive documentation and final credit approval and do not purport to summarize all of the conditions, covenants, representations, warranties and other provisions which would be contained in definitive documentation. No DIP Lender (as defined herein) is under any obligation to make a loan or make any commitment to lend and any such commitment would be subject to, among other conditions, such DIP Lender obtaining any necessary final credit authorizations and approvals and negotiation and execution of definitive documentation in form and substance satisfactory to such DIP Lender. This document is delivered to you with the understanding that neither it nor its substance shall be disclosed to any third party. Any provision of financial accommodations under such debtor-in-possession credit facility shall be further subject to the terms and conditions, and Bankruptcy Court approval, set forth below.

*Capitalized terms used in this term sheet (this “**DIP Term Sheet**”) and not otherwise defined shall have the meaning given to such terms in the Credit Agreement, dated as of October 16, 2023 (as amended, supplemented, and otherwise modified from time to time, the “**Prepetition Credit Agreement**”), among the Borrower (as defined below), the Prepetition Term Loan Lenders (as defined below) and the Prepetition Term Loan Agent (as defined below).*

Borrower:

View, Inc., as debtor and debtor in possession (the “**Borrower**”) under title 11 of chapter 11 of the United States Code (the “**Bankruptcy Code**”) in the jointly administered cases of Borrower and certain of its affiliates (collectively, the “**Chapter 11 Cases**”) in the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”).

Guarantors:

All obligations under the DIP Facility (as defined below) and the other DIP Facility Documentation (as defined below) will be unconditionally guaranteed (the “**Guarantee**”) by the Borrower and each subsidiary of the Borrower that is a debtor-in-possession under the Bankruptcy Code, including each subsidiary of the Borrower which is a Guarantor as such term is defined in the Prepetition Credit Agreement as of the Petition Date (as defined below) (such parties, collectively, the “**Guarantors**” and, together with the Borrower, the “**Debtors**”, which have been identified on **Schedule 1** hereto).

Prepetition Term Loan Agent:

Cantor Fitzgerald Securities, in its capacity as Administrative Agent under the Prepetition Credit Agreement (the “**Prepetition Term Loan Agent**”) and related prepetition loan documents (collectively, the “**Prepetition Loan Documents**” and the term loan evidenced thereby, the “**Prepetition Term Loan**”).

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Prepetition Term Loan Lenders: Those lenders who are parties to the Prepetition Credit Agreement as of the Petition Date (the “***Prepetition Term Loan Lenders***”).

DIP Agent: Cantor Fitzgerald Securities, in its capacity as Administrative Agent under the DIP Facility (the “***DIP Agent***”).

DIP Lenders: Those Prepetition Term Loan Lenders who elect to participate in the DIP Facility (the “***Electing Lenders***”); RXR FP Investor LP (“***RXR FP Investor***”), RXR FP Investor II LP (“***RXR FP Investor II***”), RXR FP Investor III LP (“***RXR FP Investor III***”), RXR FP Investor IV LP (“***RXR FP Investor IV***”), RXR FP GP LLC (“***RXR***” and, together with RXR FP Investor, RXR FP Investor II, RXR FP Investor III and RXR FP Investor IV and/or any of their foregoing direct or indirect investors, the “***RXR Lender***”); and CF Principal Investments, LLC or CFV Investments, LLC, and/or any Affiliates thereof (the “***CF Lender***”, together with the Electing Lenders and the RXR Lender, the “***DIP Lenders***”), including pursuant to the respective commitments set forth on **Schedule 2** hereto.

Required DIP Lenders: CF Lender and RXR (the “***Required DIP Lenders***”).

Petition Date: The date the Debtors file their Chapter 11 petitions (the “***Petition Date***”).

DIP Facility: The DIP Lenders will provide to the Debtors a priming, senior secured, super-priority debtor-in-possession credit facility (the “***DIP Facility***”) consisting of a delayed draw term loan facility in the aggregate maximum principal amount of up to \$17.5 million (the “***DIP Facility Commitment***,” and the amounts borrowed under the DIP Facility, the “***DIP Facility Loans***”).

The delayed draw term loan facility will be made available in two (2) draws over the term of the DIP Facility.

An initial maximum aggregate amount of up to \$10.0 million (the “***Initial Advance***”) shall be made available to the Borrower to meet the Debtors’ cash expenditures following entry of the Interim Order (defined below) to meet the Debtors’ cash requirements pending the Final Hearing and as needed to maintain a minimum cash balance of \$7.5 million. The balance of the DIP Facility will be available upon and after entry of the Final Order (defined below) (such advance, the “***Subsequent Advance***” and together with the Initial Advance, the collectively the “***Advances***”). Pending the entry of the Final Order, the DIP Agent and the DIP Lenders shall be afforded all of the protections contained herein and in the Interim Order.

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The DIP Facility Documentation¹ shall (a) contain customary terms for debtor-in-possession financing transactions of this type, including, without limitation, those terms set forth in this DIP Term Sheet and (b) shall be acceptable in form and substance to the Required DIP Lenders in all respects and subject to the consent rights set forth in the Restructuring Support Agreement.²

Use of Proceeds:

The DIP Facility may be used only for (i) post-petition working capital purposes of the Debtors, (ii) current interest and fees under the DIP Facility, (iii) the payment of adequate protection payments to the Prepetition Term Loan Agent and the Prepetition Term Loan Lenders, including fees payable under the Prepetition Credit Agreement, (iv) the allowed administrative costs and expenses of the Chapter 11 Cases, and (v) as otherwise agreed, in each case, solely in accordance with the Approved Budget (subject to the Variance Limit) and the Financing Orders (each as defined below) incorporating the terms hereof.

DIP Facility Interest Rate and Fees:

The DIP Facility shall accrue interest at a rate per annum equal to Term SOFR (as defined in the Prepetition Agreement) plus 7.50% which shall be payable monthly in cash; *provided* that at the Debtors' option, interest may be paid-in-kind and shall accrue and be added to the principal balance on a monthly basis at an interest rate per annum equal to Term SOFR (as defined in the Prepetition Agreement) plus 14.00%; with a default interest rate of 2.0%.

The DIP Facility shall provide for a (i) closing fee of 3.00% payable in cash on the date of the closing of the DIP Facility to the DIP Lenders based on the DIP Facility Commitment (ii) a commitment fee in an amount equal to 2.00% per annum of the undrawn amount of the DIP Facility Commitments, payable on a monthly basis in cash.

Priority and Security:

Subject to the Carve-Out, all obligations of the Debtors under the DIP Facility (the "***DIP Obligations***") shall be:

- i. entitled to super-priority claim status under section 364(c)(1) of the Bankruptcy Code with priority over all administrative expense claims and unsecured

¹ "***DIP Facility Documentation***" means, collectively, this DIP Term Sheet, the Financing Orders, the DIP Facility Loans, and the other DIP Documents (if any), and other documents required or requested by the Required DIP Lenders to be executed or delivered by or in connection with the DIP Facility, each of which shall be acceptable in form and substance to the Required DIP Lenders.

² "***Restructuring Support Agreement***" means that certain Restructuring Support Agreement, dated as of the date hereof, by and among the Company Parties and the Consenting Stakeholders thereto, to which this term sheet is attached as Exhibit D.

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claims now existing or hereafter arising under the Bankruptcy Code, including, without limitation, the prepetition claims and adequate protection claims of the Prepetition Term Loan Agent on behalf of the Prepetition Term Loan Lenders. The super-priority claims of the DIP Lenders may be repaid from any cash of the Debtors, including without limitation, Cash Collateral and the proceeds of any Avoidance Action (as defined below), and property received or recovered thereby (the “**Avoidance Action Proceeds**”);

- ii. secured, pursuant to section 364(c)(2) of the Bankruptcy Code, by a first priority, perfected lien on all of the Debtors’ rights in property of the Debtors’ estates as of the Petition Date that, as of the Petition Date, were unencumbered (and do not become perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code);
- iii. secured, pursuant to section 364(c)(3) of the Bankruptcy Code, by a junior priority, perfected lien on all of the Debtors’ rights in property of the Debtors’ estates as of the Petition Date that, as of the Petition Date, were subject to a lien permitted under the terms of the Prepetition Credit Agreement that was perfected prior to the Petition Date or is perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code (other than the Liens securing the obligations under the Prepetition Credit Agreement), which liens are addressed in (iv) below); and
- iv. secured, pursuant to section 364(d)(1) of the Bankruptcy Code, by valid, enforceable, priming first priority, fully perfected security interests in and liens upon all of the Debtors’ rights in property of the Debtors’ estates as of the Petition Date and all of the Debtors’ rights in property acquired post-petition (and proceeds thereof), whether now existing or hereafter acquired or arising that secure the obligations under the Prepetition Credit Agreement (such lien, together with the liens described in clauses (ii) and (iii) above, the “**DIP Liens**” and the collateral described in clauses (ii)–(iv) above, collectively, the “**DIP Collateral**”).

DIP Collateral shall also include any and all rents, issues, products, offspring, proceeds and profits generated by any item of DIP Collateral, without the necessity of any further action of any kind or nature by the DIP Agent or the DIP Lenders in order to claim or perfect such rents, issues, products, offspring, proceeds and/or profits.

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The DIP Liens shall not be subject or subordinate to (i) 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, (ii) any liens arising after the Petition Date including, without limitation, any liens or security interests granted in favor of any federal, state, municipal or other governmental unit, commission, board or court for any liability of the Debtors, or (iii) any intercompany or affiliate liens of the Debtors.

The DIP Liens will automatically attach to the DIP Collateral and become valid and perfected immediately upon entry of the Interim Order without the requirement of any further action by the DIP Agent or the DIP Lenders.

Use of Cash Collateral:

All cash and cash equivalents of the Debtors, whenever or wherever acquired, and the proceeds of all collateral pledged to the DIP Agent constitute cash collateral, as contemplated by section 363 of the Bankruptcy Code (“***Cash Collateral***”).

Cash Collateral may be used only for (i) working capital purposes of the Debtors, (ii) interest and fees under the DIP Facility, (iii) payment of adequate protection payments to the Prepetition Term Loan Agent and Prepetition Term Loan Lenders, and (iv) the allowed costs and expenses of the Chapter 11 Cases, in each case, solely in accordance with the Approved Budget and the Financing Orders incorporating the terms hereof (subject to the Variance Limit).

Conditions Precedent

The closing of the DIP Facility, each Advance and the Debtors’ right to use Cash Collateral pursuant to the terms hereof, will be subject to the satisfaction of the following conditions precedent (including, without limitation, those conditions precedent set forth in the section entitled “***Conditions Precedent to All Advances***”):

- i. satisfactory completion of legal and collateral due diligence and transaction structuring, including due diligence concerning the Chapter 11 Cases and the receipt of all required court approvals of the DIP Facility and any other motions of the Debtors of concern to the Required DIP Lenders;
- ii. the RSA shall remain in full force and effect;
- iii. the DIP Agent shall have received executed counterparts to the DIP Facility Documentation from each DIP Lender;
- iv. no later than three (3) days prior to the Petition Date, the Required DIP Lenders shall have received a cash forecast for the period from the Petition Date through the Scheduled

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Maturity Date (as defined below) setting forth projected cash flows and disbursements, to be in form, scope and substance acceptable to the Required DIP Lenders (the “***Initial Approved Budget***”);

- v. the Debtors shall have provided the DIP Lenders with a copy of the “first day” motions, including the cash management motion, and proposed orders to be filed with the Bankruptcy Court in connection with the commencement of the Chapter 11 Cases;
- vi. orders approving all “first day” motions shall have been entered by the Bankruptcy Court, and, in the case of any “first day” motions and orders that affect the rights or duties of the DIP Agent or DIP Lenders (including without limitation the cash management order), shall be in form and substance acceptable to the Required DIP Lenders;
- vii. other than as set forth in the RSA, the Debtors shall not have executed, entered into or otherwise committed to any plan or restructuring support agreement or any other agreement or understanding concerning the terms of a chapter 11 plan or other exit strategy without the consent of the Required DIP Lenders;
- viii. an interim debtor-in-possession financing order, substantially on the terms contemplated in this DIP Term Sheet and otherwise in form and substance acceptable to the Required DIP Lenders (the “***Interim Order***”), shall have been entered by the Bankruptcy Court within three (3) days following the Petition Date and shall not have been stayed, modified or appealed without prior written consent of the Required DIP Lenders. For the avoidance of doubt, the DIP Facility (as defined herein) shall include all terms set forth in the proposed Interim Order attached to the Restructuring Support Agreement, including, but not limited to those concerning collateral, lien and claim priority, adequate protection, and releases. In the event of a conflict between this DIP Term Sheet and any of the Financing Orders (as defined below), the Financing Orders shall control.
- ix. the representations and warranties of the Debtors contained in the section entitled “Representations and Warranties” shall be true and correct as described therein;

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- x. except as disclosed to DIP Lenders in writing, since the date of the Interim Order, there shall have been no Material Adverse Effect³;
- xi. reimbursement in full in cash of the reasonable and documented fees and expenses of the DIP Agent, DIP Lender, and, solely to the extent provided for in the Prepetition Credit Agreement, Prepetition Term Loan Agent and Prepetition Term Loan Lenders.
- xii. the DIP Agent shall have received (for distribution to the DIP Lenders), by at least five (5) business days prior to the Closing Date “know your customer” and anti-money laundering rules and regulations, including the Patriot Act, beneficial ownership and other similar information that may be required by any DIP Lender; and
- xiii. there shall not exist any action, suit, investigation, litigation or proceeding pending or threatened (other than the Chapter 11 Cases) in any court or before any governmental authority that, in the discretion of the Required DIP Lenders, materially and adversely affects any of the transactions contemplated hereby, or that has or could be reasonably likely to result in a Material Adverse Effect.

Modifications of the Interim Order shall require approval of the Required DIP Lenders in their sole discretion.

Conditions Precedent to All Advances

The obligation of each DIP Lender to make any Advance, including the availability of any Subsequent Advance and any further availability of the balance of the DIP Facility, will be subject to the satisfaction of each of the following conditions precedent, on and as of the date of each such Advance:

- i. (a) with respect to the Initial Advance, the Interim Order shall have been entered and shall be in full force and effect, shall not have been vacated or reversed, and shall not be subject to any stay and (b) with respect to any Subsequent Advance, a final debtor-in-possession financing/use of cash collateral order, substantially on the terms contemplated by this DIP Term Sheet and in form and substance acceptable to the Required DIP Lenders (the “**Final Order**” and, together with the Interim Order, collectively, the “**Financing Orders**”) shall have been entered within three (3)

³ “***Material Adverse Effect***” means a material adverse effect on (a) the business, assets, financial condition or results of operations, in each case, of the Debtors and their Subsidiaries, taken as a whole, (b) the rights and remedies of the DIP Agent under the DIP Facility Documentation or (c) the ability of any Debtor to perform its obligations under the applicable DIP Facility Documentation.

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business days following the Petition Date, and shall not have been vacated or reversed, and shall not be subject to any stay. Notwithstanding anything to the contrary contained herein, funding of the Initial Advance shall be subject to entry of the Interim Order and funding of any Subsequent Advance shall be subject to the entry of the Final Order, which shall not have been vacated, reversed or stayed, appealed (and for which the appeal period has expired or has been waived), or modified or amended without the prior written consent of the Required DIP Lender;

- ii. the RSA shall remain in full force and effect;
- iii. the DIP Agent shall have received a duly executed notice of borrowing;
- iv. no later than three (3) calendar days prior to the Petition Date, the DIP Agent and the Required DIP Lenders shall have received a cash forecast for the period from the Petition Date through the Scheduled Maturity Date (as defined below) setting forth projected cash flows and disbursements, to be in form, scope and substance acceptable to the Required DIP Lenders (the ***“Initial Approved Budget”***);
- v. other than as set forth in the RSA, the Debtors shall not have executed, entered into or otherwise committed to any plan or restructuring support agreement or any other agreement or understanding concerning the terms of a chapter 11 plan or other exit strategy without the consent of the Required DIP Lenders;
- vi. except as disclosed the DIP Lenders in writing, since the date of the Interim Order, there shall have been no Material Adverse Effect;
- vii. reimbursement in full in cash of the DIP Agent’s and DIP Lenders’ reasonable and documented fees and expenses;
- viii. there shall not exist any action, suit, investigation, litigation or proceeding pending or threatened (other than the Chapter 11 Cases) in any court or before any governmental authority that, in the reasonable opinion of the Required DIP Lenders, materially and adversely affects any of the transactions contemplated hereby, or that has or

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could be reasonably likely to result in a Material Adverse Effect;

- ix. the Debtors shall be in compliance with the Milestones and the Financing Orders, as applicable;
- x. such other customary deliverables as the Required DIP Lenders may reasonably require, including, but not limited to, related security agreement(s) and guarantees, security documents, and other agreements, instruments and documents, if any, in each case if reasonably requested by the Required DIP Lenders (collectively, the “**DIP Documents**”) shall have been executed and delivered by the Debtors to the DIP Agent and the DIP Lenders, in form and substance acceptable to the Required DIP Lenders;
- xi. the Debtors shall have provided a certificate confirming that all of the representations and warranties of the Debtors in this DIP Term Sheet or the DIP Facility Documentation, as applicable, remain true and correct, unless otherwise agreed by the Required DIP Lenders;
- xii. all security and collateral documents (as necessary and to be mutually agreed) evidencing or perfecting the DIP Agent liens and security interests on the DIP Collateral (in each case for the benefit of the DIP Lenders) shall be executed in form and substance reasonably acceptable to the Required DIP Lenders; and
- xiii. there shall be no defaults or Events of Default under this DIP Term Sheet or the DIP Facility Documentation, as applicable, or any defaults or Events of Default shall have been waived by the Required DIP Lenders or cured pursuant to the terms thereof.

Modifications of the Financing Orders shall require approval of the Required DIP Lenders in their sole discretion.

Representations and Warranties:

Each of the Debtors under the DIP Facility Documentation will make each of the representations and warranties set forth in Article III of the Prepetition Credit Agreement (other than Sections 3.12, 3.14 and 3.19 thereof), as applied in all respects to this DIP Term Sheet and the DIP Facility *mutatis mutandis* (including, without limitation, that (x) any reference to the “Loan Documents” in the provisions of Article III and in any underlying defined terms shall be deemed a reference to the DIP

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Facility Documentation, (y) any reference to “Loans” in the provisions of Article III and in any underlying defined terms shall be deemed a reference to DIP Facility Loans and (z) the Cases shall be deemed excluded from the representations and warranties set forth in Section 3.06(a)) shall be true and correct in all material respects; provided that (i) in the case of any representation and warranty which expressly relates to a given date or period, such representation and warranty shall be true and correct in all material respects as of the date of the Interim Order and (ii) if any representation and warranty is qualified by or subject to a “material adverse effect”, “material adverse change” or similar term or qualification, such representation and warranty shall be true and correct in all respects), and the representations and warranties set forth below:

- i. orders of the Bankruptcy Court (including the Financing Orders) related to the financing contemplated by the DIP Facility remain in full force effect and effect and have not been vacated, stayed, reversed, modified or amended without the prior written consent of the Required DIP Lenders;
- ii. there are no defaults under (a) material agreements arising after the Petition Date, or (b) any executory contract or unexpired lease assumed pursuant to the Bankruptcy Code, in each case, that would, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect; and
- iii. the Debtors have not failed to disclose any material assumptions with respect to the Initial Approved Budget and, as of the Closing Date, affirm the reasonableness of the assumptions in the Initial Approved Budget in all material respects, subject to customary qualifiers.

Milestones:

Each of the Debtors will agree to comply with the following deadlines (each of which may be extended with the prior written consent of the Required DIP Lenders (email shall be sufficient) without further order of the Bankruptcy Court) (collectively, the “***Milestones***”):

- i. The Debtors shall file the Prepackaged Plan and Disclosure Statement in accordance with the RSA in form and substance acceptable to the Required DIP Lenders, in each case on the Petition Date;
- ii. the Debtors shall have filed a motion for approval of the Disclosure Statement on the Petition Date;

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- iii. the Bankruptcy Court shall have entered the Interim Order by the date that is no later than three days after the Petition Date;
- iv. the Bankruptcy Court shall have entered the Final Order by the date that is no later than 35 days after the Petition Date;
- v. the Disclosure Statement shall be approved by the Bankruptcy Court by the date that is no later than 45 days after the Petition Date;
- vi. the Bankruptcy Court shall have entered an order confirming the Prepackaged Plan by the date that is no later than 45 days after the Petition Date; and
- vii. the effective date of the Prepackaged Plan shall have occurred by the date that is no later than 60 days after the Petition Date.

Mandatory Prepayments:

The following mandatory prepayments will be required to be made toward the DIP Facility within three (3) Business Days of receipt by any Debtor: (i) 100% of any net cash proceeds received from the incurrence or issuance of any indebtedness or equity by any Debtor; *provided* that no Debtor shall incur or issue any additional postpetition super-priority indebtedness or liens without the prior written consent of the Required DIP Lenders; (ii) 100% of the net cash proceeds received from any non-ordinary course asset sale or disposition; (iii) 100% of any cash proceeds received (a) under any insurance policy on account of damage or destruction of any assets or property of any Debtor and/or (b) due to any taking or condemnation of any assets or property; or (iv) 100% of any cash received by or paid to or for the account of any Debtor not in the ordinary course of business, including but not limited to tax refunds, pension plan reversions, indemnity payments and any purchase price adjustments.

Reporting and Information:

The Financing Orders and DIP Facility Documentation will contain the reporting and information covenants made by the Debtors under the Prepetition Credit Agreement and the other Prepetition Loan Documents, as applied in all respects to this DIP Term Sheet and the DIP Facility *mutatis mutandis*, and the Debtors shall also provide to the DIP Agent and the Required DIP Lenders the information and documentation set forth below:

- (i) within forty-five (45) days of month end, unaudited monthly balance sheet and income statement together with a compliance certificate; and

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(ii) any other business or financial information which may be reasonably requested by the DIP Agent and/or the Required DIP Lenders;

(iii) Variance Reports (as defined below); and

(iv) (a) copies of any motions to be filed by or on behalf of any Debtor in the Chapter 11 Cases at least five (5) business days prior to such filing (or, if not practicable, as soon as reasonably practicable), (b) all notices required to be given to all parties specified in any DIP Order; and (c) such other customary information (including access to the Debtors' books, records, personnel and advisors) as the DIP Agent and/or the Required DIP Lenders may reasonably request.

Budget; Variance Covenant;
Other Financial Covenants:

No later than the date of Closing, the Debtors shall prepare for the DIP Lenders' and DIP Agent's review and the Required DIP Lenders' consent (in their sole discretion) an updated thirteen-week (13-week) detailed cash projection, which shall be thereafter updated, as necessary, but shall not be updated less than once every four (4) weeks (each, a ***"Proposed Budget"***). Upon the Debtors' receipt of the Required DIP Lenders' consent to a Proposed Budget, which approval shall be in the Required DIP Lenders' sole discretion (and may be withheld for any reason), such budget shall become an ***"Approved Budget"*** and shall replace the then-operative Approved Budget for all purposes. The Initial Approved Budget shall be the Approved Budget until such time as a new Proposed Budget is approved, following which such approved Proposed Budget shall constitute the Approved Budget until a subsequent Proposed Budget is approved. The Debtors shall operate in accordance with the Approved Budget and all disbursements shall be consistent with the provisions of the Approved Budget (subject to the Variance Limit). The Debtors may submit additional Proposed Budgets to the DIP Agent and the Required DIP Lenders, but until the Required DIP Lenders consent to such Proposed Budget, it shall not become an Approved Budget and the Debtors shall continue to comply with the then-operative Approved Budget.

No later than 4:00 p.m. Eastern Time on the first Friday following the initial (4)-week anniversary of the Petition Date (***"Initial Variance Report Date"***), the Debtors shall provide to the DIP Lenders, the DIP Agent, and the Prepetition Term Loan Agent, for the period beginning on the Petition Date and ending on the week prior to the 4-week anniversary of the Petition Date, (***"Initial Testing Period"***) a report (the ***"Variance Report"***) detailing (i) aggregate receipts on a combined basis during the testing period, (ii) capital expenditures on a combined basis during the testing period; and (iii) all other operating disbursements (excluding capital expenditures and

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administrative costs of the Chapter 11 Cases) during the testing period and (iv) disbursements for Debtors' administrative expenses of the Chapter 11 cases including professionals' fees and (v) any variance (whether positive or negative, expressed as a percentage) between the receipts and disbursements made during testing period and the corresponding amounts as set forth in the applicable Approved Budget.

After the Initial Testing Period, beginning on the second Friday following the Initial Variance Report Date ("***Bi-weekly Testing Date***"), Debtor shall provide a Variance Report for the 2-week period ending the week preceding the Bi-weekly Testing Date.

The Debtors shall comply with the following (collectively, the "***Variance Covenant***"):

For both the Initial Variance Report Date and subsequent Bi-weekly Testing Dates, the Debtors shall not allow: (i) receipts received during the testing period, less the sum of (ii) capital expenditures on a combined basis since the Petition Date; and (iii) all other operating disbursements (excluding capital expenditures and administrative costs of the Chapter 11 Cases) since the Petition Date (the "***Cumulative Net Operating Cash Flow***") to be less than 105% of the sum of the estimated (i) cumulative receipts on a combined basis during the testing period, less the sum of (ii) capital expenditures on a combined basis during the testing period and (iii) all other operating disbursements (excluding capital expenditures,) during the testing period (such limitation, the "***Variance Limit***"); *provided* that any variances greater than the limits set forth above shall require advance approval from the Required DIP Lenders; *provided, further*, that the Required DIP Lenders shall consider in good faith weekly variances resulting from changes in the timing of particular receipts or disbursements and, in such cases, approval of such variances shall not be unreasonably withheld (solely to the extent the Approved Budget is not exceeded on a cumulative basis). Additional variances, if any, from the Approved Budget, and any proposed changes to the Approved Budget, shall be subject to the Required DIP Lenders' reasonable approval. For the avoidance of doubt, any reference to "written consent" hereunder shall include consent granted by email.

Affirmative Covenants:

The Debtors shall perform (i) the affirmative covenants set forth in Article V of the Prepetition Credit Agreement other than Sections 5.01(j), 5.14, 5.15 and 5.17 in each case, as applied to this DIP Term Sheet and the DIP Facility *mutatis mutandis*; *provided*, that (X) the quarterly financial statements required by Section 5.01(a) of the Prepetition Credit Agreement shall be due within 60 days after the end of each Fiscal Quarter, and (Y) the monthly "flash report" required by Section 5.01(g) of the

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Prepetition Credit Agreement shall be due within 45 days of the end of each calendar month and (ii) the affirmative covenants set forth below (each of which may be waived with the prior written consent of the Required DIP Lenders (email shall be sufficient)):

- (i) timely deliver, or cause to be delivered, to the DIP Agent and the Required DIP Lenders, the Approved Budget and Variance Reports;
- (ii) comply with the Variance Covenant;
- (iii) maintain proper books and records;
- (iv) cooperate, consult with, and provide to the Required DIP Lenders or DIP Agent, all such information as required under this DIP Term Sheet or the Financing Orders or as reasonably requested by the Required DIP Lenders or DIP Agent, and permit representatives and independent contractors on behalf of the Required DIP Lenders or DIP Agent to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors, officers, and independent public accountants;
- (v) comply in all material respects with the Restructuring Support Agreement;
- (vi) take, or cause to be taken, all appropriate action, to do or cause to be done all things necessary, proper or advisable under applicable law, and to execute and deliver such documents and other papers, as may be required or requested by the DIP Agent or Required DIP Lender to carry out the provisions of this DIP Term Sheet, the DIP Facility Documentation, or the Financing Orders;
- (vii) except to the extent contemplated by the Approved Budget or otherwise consented to by the Required DIP Lenders in writing, continue, and cause to be continued, the business of the Debtors, maintain, and cause to be maintained, the Debtors' existence and material relationships, rights, licenses and privileges, and comply with all material contractual obligations of the Debtors;
- (viii) take, or cause to be taken, all appropriate action to comply with all laws applicable to the Debtors or

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the DIP Collateral and all orders, writs, injunctions, decrees and judgments applicable to any Debtor or its business or property, unless failure to comply could not reasonably be expected to be material to the Debtors' business;

- (ix) cause the Debtors' senior management and legal and financial advisors to be available to conduct a telephonic conference at least once every calendar week at reasonable times and upon reasonable prior notice, if requested by the Required DIP Lenders or DIP Agent, to discuss the Proposed Budget, the Variance Report, the Cases, and the financial condition, performance and business affairs of the Debtors; and
- (x) comply in all material respects with their obligations under the Olive Branch Lease (as defined in the Prepetition Credit Agreement) and the MDA Loan (as defined in the Prepetition Credit Agreement) (including customary notice requirements with respect to any breach, default or other similar event thereunder).

For the avoidance of doubt, (i) any monthly financial statements provided by the Debtors hereunder shall not include all of the adjustments that are made to the quarterly financial statements provided by the Debtors (*e.g.*, revenue recognition, warranty reserve and tax accounting), (ii) the Debtor's revenue recognition in the quarterly financial statements hereunder will not be fully compliant with ASC 606 due to the Debtor's system and personnel limitations, and (iii) none of the Debtor's monthly financial statements or quarterly financial statements hereunder will be audited or include all of the disclosures required by GAAP.

Negative Covenants:

The Debtors shall not (without prior written consent of the Required DIP Lenders) cause to be done, do, permit to be done, allow to exist, or agree to do or cause to be done, (a) anything prohibited by the negative covenants set forth in Article VI of the Prepetition Credit Agreement and in each case not expressly permitted by clauses (b)(i)–(xi) below, in each case, as applied to this DIP Term Sheet and the DIP Facility *mutatis mutandis* or (b) any of the following:

- i. other than liens securing indebtedness required or permitted by this DIP Term Sheet and the Financing Orders, seek to or create, incur, assume or suffer to exist any lien upon any of its property, assets, income or profits, whether now owned or hereafter acquired, except (a) the Carve Out and (b) liens in connection with

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- the Prepetition Credit Agreement;
- ii. convey, sell, lease, assign, transfer or otherwise dispose of (including through a transaction of merger or consolidation) other than (a) in the ordinary course of business and expressly permitted by the Approved Budget and/or (b) as contemplated by the procedures for de minimis asset transactions authorized and approved by the Bankruptcy Court (including, without limitation, any sale and leaseback transaction and any disposition under Bankruptcy Code section 363);
 - iii. create, incur, assume or permit to exist any indebtedness, other than indebtedness existing as of the Petition Date and except as otherwise set forth in the DIP Term Sheet or the Financing Orders;
 - iv. amend, modify or compromise any material term or material amount owed under a material real property lease or material contract without the prior written consent of the Required DIP Lenders (including, without limitation the Olive Branch Lease and MDA Loan);
 - v. incur or make any expenditure, investment, loan, or other payment without the prior written consent of the Required DIP Lenders, other than in accordance with the Approved Budget;
 - vi. pay prepetition indebtedness, except as expressly provided for herein or pursuant to orders entered upon pleadings in form and substance satisfactory to the Required DIP Lenders;
 - vii. create or acquire any ownership interest in any subsidiaries without the prior written consent of the Required DIP Lenders;
 - viii. create or permit to exist any other claim which is pari passu with or senior to the claims of the Required DIP Lenders under the DIP Facility, except for the Carve Out and except as set forth in this DIP Term Sheet or the Financing Orders;
 - ix. modify or alter (a) in any material manner the nature and type of its business or the manner in which such business is conducted or (b) its organizational documents, except as required by the Bankruptcy Court or plan of reorganization consistent with the Restructuring Support Agreement, without the prior written consent of the Required DIP Lenders;

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- x. file or propose any plan of reorganization that is inconsistent with the Restructuring Support Agreement;
- xi. make any dividend, distribution, payment to any equity holders, repurchase of equity or other transfer of value to equity holders or enter into any new transactions with any direct or indirect equityholder;
- xii. entering into any key employee retention plan and incentive plan with any employees without the consent of the Required DIP Lenders; and
- xiii. assert any right of subrogation or contribution against any other Debtors until all borrowings under the DIP Facility are paid in full and the DIP Facility Commitments are terminated.

Final**Events of Default:**

“***Events of Default***” under the DIP Facility shall be the occurrence of any of the following without the advance written consent of the Required DIP Lenders:

- i. the Interim Order at any time ceases to be in full force and effect, or shall be vacated, reversed or stayed, or modified or amended without the prior written consent of the Required DIP Lenders;
- ii. the Final Order at any time ceases to be in full force and effect, or shall be vacated, reversed or stayed, modified or amended without the prior written consent of the Required DIP Lenders, or shall not have been entered within 28 days after the entry of the Interim Order; *provided* such time may be extended by agreement among the Borrower and the Required DIP Lenders;
- iii. the inaccuracy in any material respect of any representation or warranty of any Debtor when made or deemed made;
- iv. failure of any Debtor (a) to comply with the Variance Covenant, (b) to satisfy any Milestone, (c) to have an Approved Budget; or (d) to comply with any negative covenant or affirmative covenants or agreements in this DIP Term Sheet, the DIP Facility Documentation or with any other covenant or agreement contained in the Financing Orders in any respect;
- v. (a) any of the Chapter 11 Cases shall be dismissed or converted to a case under chapter 7 of the Bankruptcy Code; a Chapter 11 Trustee or an examiner (other than a fee examiner) with enlarged powers relating to the operation of the business of any Debtor (powers beyond those expressly set forth in section 1106(a)(3) and (4) of the Bankruptcy Code) shall be appointed, (b) any other super-priority claim (other than the Carve-Out (as defined below)) or grant of any other lien (including any adequate protection lien) which is *pari passu* with or senior to the claims and liens of the DIP Agent or the Prepetition Term Loan Agent shall be granted in any of the Chapter 11 Cases, or (c) the filing of any pleading by any Debtor seeking or otherwise consenting to or supporting any of the matters set forth in clause (a) or clause (b) of this subsection (v);
- vi. termination of the Restructuring Support Agreement by any party thereto;
- vii. other than payments authorized by the Bankruptcy Court and which are set forth in the Approved Budget

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- (A) in respect of accrued payroll and related expenses as of the commencement of the Chapter 11 Cases, (B) in respect of adequate protection payments set forth herein and consented to by the Required DIP Lenders or otherwise permitted under the terms of the Intercreditor Agreement (as defined below), or (C) in respect of certain critical vendors and other creditors, in each case to the extent authorized by one or more “first day” or other orders satisfactory to the Required DIP Lenders, any Debtor shall make any payment (whether by way of adequate protection or otherwise) of principal or interest or otherwise on account of any prepetition indebtedness or payables (including without limitation, reclamation claims);
- viii. the Bankruptcy Court shall enter one or more orders during the pendency of the Chapter 11 Cases granting relief from the automatic stay to the holder or holders of any lien to permit foreclosure (or the granting of a deed in lieu of foreclosure or the like) on assets of any Debtor or the Debtors that, individually or in the aggregate, have a value in excess of \$1 million without the prior written consent of the Required DIP Lenders;
 - ix. the Termination Date (as defined below) shall have occurred;
 - x. the Debtors’ “exclusive period” under section 1121 of the Bankruptcy Code for the filing of a plan of reorganization terminates for any reason;
 - xi. any Debtor petitions the Bankruptcy Court to obtain additional financing *pari passu* or senior to the DIP Facility without the consent of the Required DIP Lenders (other than the Carve-Out);
 - xii. failure of any Debtor to comply with the terms of the applicable DIP Order;
 - xiii. the consensual use of prepetition Cash Collateral is terminated;
 - xiv. (A) the Debtors engage in or support any challenge to the validity, perfection, priority, extent or enforceability of the DIP Facility or the Prepetition Loan Documents or the liens on or security interest in the assets of the Debtors securing the DIP Obligations or the Prepetition Obligations, including without limitation seeking to equitably subordinate or avoid the liens securing the such indebtedness or (B) the Debtors engage in or support any investigation or assert any claims or causes

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of action (or directly or indirectly support assertion of the same) against the DIP Agent, any DIP Lender, the Prepetition Term Loan Agent or any Prepetition Term Loan Lender; *provided* that, for the avoidance of doubt, the Debtors may respond to and facilitate diligence in connection with an investigation by any Committee;

- xv. any person shall obtain a section 506(a) judgment or similar determination with respect to the Prepetition Obligations;
- xvi. the allowance of any claim or claims under section 506(c) of the Bankruptcy Code against any of the DIP Collateral;
- xvii. the consummation of a sale of any material portion of the DIP Collateral (other than a sale in the ordinary course of business that is contemplated by the Approved Budget) without the advance written consent of the Required DIP Lenders if such sale or other transaction does not satisfy the DIP Obligations or Prepetition Senior Secured Term Loan in full in Cash;
- xviii. the confirmation of a plan of reorganization or liquidation that has not been approved, in form and substance, by the Required DIP Lenders, or any Debtor proposes or supports, or fails to contest in good faith, the entry of such a plan of reorganization or liquidation, unless such plan contemplates indefeasibly paying the DIP Obligations in full, in cash on the effective date of such plan;
- xix. entry of an order by the Bankruptcy Court in favor of any statutory committee of unsecured creditors (the “**Creditors’ Committee**”) appointed in the Chapter 11 Cases, any ad hoc committee, or any other party in interest (i) sustaining an objection to claims of the DIP Agent or any of the DIP Lenders, (ii) avoiding any liens held by the DIP Agent or any of the DIP Lenders, (iii) sustaining an objection to claims of the Prepetition Term Loan Agent or any of the Prepetition Term Loan Lenders, or (iv) avoiding any liens held by the Prepetition Term Loan Agent or any of the Prepetition Term Loan Lenders except as otherwise agreed by the Requisite Lenders (as defined in the Prepetition Term Loan Facility) in writing; or
- xx. if (a) that certain Participation and Intercreditor Agreement dated as of October 16, 2023 (as from time to time amended and restated) (the “**Intercreditor Agreement**”), by and among RXR FP GP LLC, the

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other RXR Consortium Members (as defined in the Intercreditor Agreement) party thereto and CF Principal Investments, LLC shall for any reason, except to the extent permitted by the terms thereof, cease to be in full force and effect and valid, binding and enforceable in accordance with its terms against any party thereto or any holder of the liens subordinated thereby, (b) any Debtor takes any action inconsistent with the terms of the Intercreditor Agreement (other than in connection with a Plan reasonably acceptable to the Required DIP Lenders), (c) any person bound by the Intercreditor Agreement takes any action inconsistent with the terms thereof and a Debtor shall fail to promptly take commercially reasonable actions necessary to oppose such action or (d) any order of any court of competent jurisdiction is granted which is materially inconsistent with the terms of the Intercreditor Agreement and is adverse to the interests of the Prepetition Term Loan Agent or Prepetition Term Loan Lenders.

Upon the occurrence and during the continuance of any Event of Default, upon the direction of the Required DIP Lenders, the DIP Agent shall accelerate the DIP Obligations and, thereafter, may take all or any of the following actions without further order of or application to the Bankruptcy Court, *provided* that in the case of the enforcement of liens or other remedies with respect to DIP Collateral pursuant to clause (ii) below, the DIP Agent (at the direction of the Required DIP Lenders) shall provide the Debtors (with a copy to counsel for the Creditors' Committee (if any) and to the United States Trustee) with two business days' prior written notice (the "***Enforcement Notice Period***") and file such notice on the docket in the Chapter 11 Cases, during which Enforcement Notice Period any such party must file a pleading in opposition to the DIP Agent's exercise of its rights and remedies and seek an emergency hearing prior to the conclusion of the Enforcement Notice Period and *provided further*, that in any hearing following such notice, the only issue that may be raised by any party in opposition to the actions proposed or available to be taken by the DIP Agent shall be whether, in fact, an Event of Default has occurred and is continuing:

- i. declare the principal of and accrued interest on the outstanding borrowings to be immediately due and payable and terminate, as applicable, any further commitments under the DIP Facility and/or terminate, as applicable, the right of the Debtors to use Cash Collateral; and
- ii. charge the default rate of interest under the DIP Facility and take any other action or exercise any other right or remedy (including without limitation,

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with respect to the liens in favor of the DIP Agent on behalf of the DIP Lenders) permitted under the DIP Facility Documentation or applicable law.

Unless during the Enforcement Notice Period the Bankruptcy Court determines that an Event of Default has not occurred (or that no Event of Default that has occurred is continuing), the DIP Agent (acting at the direction of the Required DIP Lenders) shall have relief from the automatic stay without further notice or order and may foreclose on all or any portion of the DIP Collateral or otherwise exercise remedies against the DIP Collateral.

The DIP Agent and DIP Lenders shall have the right of set off set forth in Section 9.09 of the Prepetition Credit Agreement as applied to this DIP Term Sheet and the DIP Facility *mutatis mutanda*.

Maturity/Termination Date:

Unless otherwise consented to in writing by the Required DIP Lenders, the DIP Facility and the Debtors' right to use Cash Collateral (as applicable) shall automatically terminate (the date of such termination, the "***Termination Date***") without further notice or court proceedings on the earliest to occur of:

- i. 90 days after the Petition Date (the "***Scheduled Maturity Date***");
- ii. the date of termination of the DIP Facility Commitment and/or acceleration of any outstanding borrowings under the DIP Facility pursuant to an Event of Default;
- iii. the first business day on which the Interim Order expires by its terms or is terminated, unless the Final Order has been entered and become effective prior thereto;
- iv. conversion of any of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code;
- v. dismissal of any of the Chapter 11 Cases;
- vi. the closing of a sale of substantially all of the equity or assets of the Debtors or any material asset of the Debtors;
- vii. the date of repayment in cash in full by the Debtors of all DIP Obligations and termination of the DIP Facility Commitment in accordance with the terms of the DIP Facility; and
- viii. the effective date of the Debtors' plan of reorganization confirmed in the Chapter 11 Cases.

Assignments and Participations:

The Lenders shall be permitted to assign DIP Facility Loans and DIP Facility Commitments under the DIP Facility with consent of the Required DIP Lenders and solely upon terms agreed between the Required DIP Lenders.

Final**Adequate Protection for
Prepetition Term Loan Agent
and Prepetition Term Loan
Lenders:**

The Prepetition Term Loan Agent shall receive the following as adequate protection for the benefit of the Prepetition Term Loan Lenders:

- i. a super-priority claim under Section 507(b) of the Bankruptcy Code, with priority over all administrative expense claims and unsecured claims now existing or after arising, *provided, however,* that such super-priority claim shall be junior and subject to the Carve-Out, and the super-priority claim of the DIP Agent for the benefit of the DIP Lenders in respect of the DIP Facility;
- ii. a second priority, valid, enforceable, fully perfected security interest in and replacement lien on the DIP Collateral, subordinate only to (a) the liens of the DIP Agent for the benefit of the DIP Lenders in respect of the DIP Facility, (b) Permitted Liens, and (c) the Carve-Out;
- iii. payment of (a) the reasonable, documented out-of-pocket fees, costs and expenses incurred or accrued by the Prepetition Term Loan Agent (the foregoing to include all unpaid prepetition fees, costs and expenses) in connection with any and all aspects of the Debtors' Chapter 11 Cases, and including the reasonable and documented out-of-pocket fees, costs, and expenses of the legal and financial advisors and investment bankers to the Prepetition Term Loan Agent, or other professionals, hired by or on behalf of the Requisite Lenders (as defined in the Prepetition Term Loan Facility); and (b) the reasonable and documented out-of-pocket fees, costs, and expenses incurred or accrued in connection with any and all aspects of the Debtors' Chapter 11 Cases by those certain legal and financial advisors to the Prepetition Term Loan Lenders engaged by the Prepetition Term Loan Lenders, subject to the consent of the Required DIP Lenders.
- iv. (a) upon closing of the DIP Facility, payment of all accrued and unpaid interest and fees (if any) at the default rate then owing under the Prepetition Credit Agreement, and (b) the current payment of post-petition interest and fees at the default rate as and when due and payable under the Prepetition Credit Agreement, each of which shall be paid-in-kind notwithstanding anything to the contrary in the Prepetition Credit Agreement; *provided, however,* that (x) the adequate protection claims and liens

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described in the preceding clauses (i) and (ii) shall be granted only to the extent of any diminution in the value of any Cash Collateral or other collateral arising as a result of (A) the use, sale, or lease of Cash Collateral or other collateral, (B) the granting of priming liens to secure the DIP Facility or (C) the imposition of the automatic stay.

The foregoing adequate protection liens shall be deemed automatically perfected as of the Petition Date without further action, although if the DIP Agent or the Prepetition Term Loan Agent determine to file any financing statements, notice of liens or similar instruments, the Debtors will cooperate and assist in any such filings and the automatic stay shall be lifted to allow such filings.

Carve-Out:

Upon the occurrence of the earlier of (i) the Debtors' receipt of notice of an Event of Default and continuance thereof and (ii) the Scheduled Maturity Date (each a "***Carve-Out Event***"), to the extent unencumbered funds are not available to pay administrative expenses in full, the claims and liens of the DIP Agent for the benefit of the DIP Lenders, on one hand, and the Prepetition Term Loan Agent for the benefit of the Prepetition Term Loan Lenders, on the other hand, shall be subject to payment of (a) the aggregate amount of any budgeted and unpaid fees, costs and expenses that were accrued or incurred prior to the Carve-Out Event by the professionals retained by the Debtors (collectively, the "***Debtor Professionals***") and any Creditors' Committee (together with the Debtor Professionals, the "***Professionals***") payable under sections 328, 330, and 331 of the Bankruptcy Code, to the extent allowed by an order of the Bankruptcy Court, *plus* (b) those fees, costs and expenses incurred by the Professionals after the Carve-Out Event, payable under sections 330 and 331 of the Bankruptcy Code and subsequently allowed by order of the Bankruptcy Court (and, if applicable, in compliance with the Approved Budget), in an aggregate amount not to exceed \$500,000, *plus* (c) all reasonable fees and expenses in an amount not to exceed \$25,000 incurred by any chapter 7 trustee under Bankruptcy Code 726(b), *plus* (d) fees required to be paid to the Clerk of the Court and to the United States Trustee pursuant to 28 U.S.C. § 1930 (the foregoing clauses (a), (b), (c), and (d), together, the "***Carve-Out***").

The foregoing Carve-Out shall not be reduced by the amount of any compensation and reimbursement of expenses paid or incurred (to the extent ultimately allowed by the Bankruptcy Court) prior to the occurrence of the carve-out date consistent with the terms of the Approved Budget; *provided* that following a Carve-Out Event, any amounts paid to Professionals by any means will reduce the Carve-Out on a dollar-for-dollar basis;

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provided further that nothing herein shall be construed to impair the ability of any party in interest to object to any of the fees, expenses, reimbursement or compensation sought by the Professionals or professionals retained by any other statutory committee appointed in the Chapter 11 Cases.

None of the Carve-Out, any Cash Collateral, the DIP Facility Loans, the DIP Collateral, or the Prepetition Collateral (as defined below) may be used to challenge the amount, validity, perfection, priority, or enforceability of, or assert any defense, counterclaim, or offset to, the DIP Facility Documentation or the Prepetition Loan Documents, or the security interests and liens securing any of the DIP Obligations or the Prepetition Term Loan, or to fund prosecution or assertion of any claims, or to otherwise litigate against the DIP Agent, any DIP Lender, the Prepetition Term Loan Agent, or any Prepetition Term Loan Lender; *provided* that up to \$50,000 shall be made available to the Creditors' Committee (if appointed) for investigation costs in respect of the stipulations contemplated below or otherwise set forth in the Financing Orders.

Estate Professional Fees:

Financing Orders to include language confirming that nothing in such orders or otherwise shall be construed as consent to the allowance of any fees, expenses, reimbursement or compensation sought by any professional retained by the Debtors or any Creditors' Committee, or shall affect the right of any party in interest, including any DIP Lender or the DIP Agent, to object to the allowance and payment of any such fees, expenses, reimbursement or compensation.

Section 506(c) Waiver:

The Final Order shall include a ruling that, except to the extent of the Carve-Out, no expenses of administration of the Cases or any future proceeding that may result therefrom, including liquidation in bankruptcy or other proceedings under the Bankruptcy Code, shall be charged against or recovered from any collateral pursuant to section 506(c) of the Bankruptcy Code or any similar principle of law, without the prior written consent of the Required DIP Lenders, and no such consent shall be implied from any other action, inaction, or acquiescence by the Required DIP Lenders.

No Marshaling:

The Final Order shall include a ruling that the DIP Agent, the DIP Lenders, the Prepetition Term Loan Agent, and the Prepetition Term Loan Lenders may exercise all remedies available under the DIP Facility Documentation and Prepetition Loan Documents, in a manner consistent with the Financing Orders, without any requirement first to look to exercise any of its or their rights against any particular collateral or party or to exhaust any remedies available to it or them against any particular collateral or party or to resort to any other source or means of obtaining payment of any of such obligations or to

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elect any other remedy. The Final Order shall include a ruling that in no event shall any of the DIP Agent, the DIP Lenders, the Prepetition Term Loan Agent or the Prepetition Term Loan Lenders be subject to the equitable doctrine of “marshaling” or any other similar doctrine with respect to the collateral securing the DIP Facility Loans or the Prepetition Term Loan.

Section 552(b):

The Final Order shall include a ruling that the DIP Agent, the DIP Lenders, the Prepetition Term Loan Agent and the Prepetition Term Loan Lenders are entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, the “equities of the case” exception under sections 552(b)(i) and (ii) of the Bankruptcy Code shall not apply to such parties with respect to the proceeds, products, rents, issues or profits of any of their collateral, and no expenses of administration of the Chapter 11 Cases or any future proceeding that may result therefrom, including liquidation in bankruptcy or other proceedings under the Bankruptcy Code, may be charged against proceeds, product, offspring or profits from any of the collateral under section 552(b) of the Bankruptcy Code.

Furthermore, the Final Order shall include a ruling that the Debtors and their estates shall be deemed to have irrevocably waived and have agreed not to assert any claim or right under sections 552 or 726 of the Bankruptcy Code to avoid the imposition of the liens of the DIP Agent, the DIP Lenders, the Prepetition Term Loan Agent or the Prepetition Term Loan Lenders on any property acquired by any of the Debtors or any of their estates or to seek to surcharge any costs or expenses incurred in connection with the preservation, protection or enhancement of, or realization by, the DIP Agent, the DIP Lenders, the Prepetition Term Loan Agent or the Prepetition Term Loan Lenders upon the DIP Collateral or the Prepetition Collateral, as applicable.

No Priming or Pari Passu Liens:

No order shall be entered authorizing or approving any liens or encumbrances on the DIP Collateral or the Prepetition Collateral, as applicable, senior to or *pari passu* with the liens of the Prepetition Term Loan Agent for the benefit of the Prepetition Term Loan Lenders, or the DIP Agent for the benefit of the DIP Lenders other than as otherwise contemplated herein.

Acknowledgement/Stipulations:

Valid and binding upon entry of an interim Financing Order, the Debtors shall stipulate and acknowledge (i) to the amount, validity, priority and enforceability of the Obligations (as defined in the Prepetition Credit Agreement) under the Prepetition Loan Documents, (ii) that the Prepetition Term Loan Agent for the benefit of the Prepetition Term Loan Lenders has a valid, enforceable and fully perfected first priority lien in all of the collateral under the Prepetition Loan Documents (the “***Prepetition Collateral***”), including Cash Collateral, and all

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proceeds thereof, subject only to the DIP Liens, the Permitted Liens, and the Carve-Out, and (iii) that the Prepetition Collateral is declining in value on a daily basis as the result of the Debtors' business operations, including current levels of resource extraction, capital expenditure, and cash flow. The Debtors shall provide a full release to the Prepetition Term Loan Agent and the Prepetition Term Loan Lenders (and their related parties and affiliates), which would not bind the Creditors' Committee or other party in interest until the expiration of the period described in the paragraph below titled "Challenge Period".

Challenge Period:

The Financing Orders shall establish a deadline that (i) in the case of a Creditors' Committee, is no earlier than 45 days after the appointment of such committee, but in any event is within 75 days of the Petition Date, or (ii) in the case of any other party in interest, is within 75 days of the Petition Date, by which any Creditors' Committee, or any creditor or other party-in-interest (in any case, which has obtained the requisite standing) must commence an adversary proceeding, if at all, against the Prepetition Term Loan Agent or the Prepetition Term Loan Lenders for the purpose of challenging the validity, extent, priority, perfection and enforceability of the prepetition secured debt under the Prepetition Credit Agreement or the other Prepetition Loan Documents, or the liens, claims and security interests in the Prepetition Collateral in favor of the Prepetition Term Loan Agent or the Prepetition Term Loan Lenders or otherwise asserting any claims or causes of action against the Prepetition Term Loan Agent or such Prepetition Term Loan Lenders on behalf of the Debtors' estates; *provided, however*, that nothing contained in this DIP Term Sheet, the DIP Facility Documentation or the Financing Orders shall be deemed to confer standing on any Creditors' Committee or any other party in interest to commence such an adversary proceeding. If such an adversary proceeding is not commenced within such period, then the Prepetition Term Loan Agent and the Prepetition Term Loan Lenders shall automatically receive full waivers and releases provided in the Financing Orders and the liens of the Prepetition Term Loan Agent on behalf of the Prepetition Term Loan Lenders shall be valid, perfected, enforceable and unavoidable without any further action by the Prepetition Term Loan Agent or Prepetition Term Loan Lenders under the terms of the Financing Orders.

None of the Carve-Out, any Cash Collateral, the DIP Facility Loans, the DIP Collateral or the Prepetition Collateral, may be used to challenge the amount, validity, perfection, priority or enforceability of, or assert any defense, counterclaim or offset to the Prepetition Loan Documents, or the security interests and liens securing any of the Prepetition Obligations, or to fund prosecution or assertion of any claims, or to otherwise litigate against the Prepetition Term Loan Agent or any Prepetition

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Term Loan Lender; *provided* that up to \$50,000 shall be made available to the Creditors' Committee (if appointed) for investigation costs in respect of the stipulations contemplated below or otherwise set forth in the Financing Orders.

Expenses:

The reasonable, documented out-of-pocket fees, costs and expenses incurred by the DIP Agent (the foregoing to include all unpaid prepetition fees, costs and expenses incurred by the DIP Agent in connection with the DIP Facility) in connection with any and all aspects of the Debtors' Cases, including, without limitation, the DIP Agent's fee of \$25,000 and the reasonable and documented out-of-pocket fees and expenses of Troutman Pepper Hamilton Sanders LLP as counsel to the DIP Agent, and the reasonable and documented out-of-pocket fees and expenses of Sidley Austin LLP and Gibson Dunn & Crutcher LLP, as co-counsels to the Required DIP Lenders and other professionals, hired by or on behalf of the Required DIP Lenders, shall, subject to the terms of the Financing Orders, be payable by the Debtors under the DIP Facility on a bi-weekly basis, promptly upon submission by such professional of a summary invoice setting forth such fees, costs and expenses.

Indemnification:

The Debtors shall indemnify and hold harmless the DIP Agent, the Prepetition Term Loan Agent, and the DIP Lenders and each of their respective affiliates and each of their respective officers, directors, employees, agents, advisors, attorneys and representatives (each, an "***Indemnified Party***") from and against any and all claims, damages, losses, liabilities and expenses (including, without limitation, reasonable and documented out-of-pocket fees and disbursements of counsel), that may be incurred by or asserted or awarded against any Indemnified Party (including, without limitation, in connection with any investigation, litigation or proceeding or the preparation of a defense in connection therewith), arising out of or in connection with or by reason of the transactions contemplated hereby (the "***Indemnified Liabilities***"). In the case of an investigation, litigation or other proceeding to which the indemnity in this paragraph applies, such indemnity shall be effective whether or not such investigation, litigation or proceeding is brought by any of the Debtors, any of their respective directors, security holders or creditors, an Indemnified Party or any other person or an Indemnified Party is otherwise a party thereto and whether or not the transactions contemplated hereby are consummated.

Governing Law:

The laws of the State of New York (excluding the laws applicable to conflicts or choice of law), except as governed by the Bankruptcy Code.

Schedule 1

Guarantors

1. View Operating Corporation
2. Iotium, Inc.

Schedule 2**DIP Lender Commitments**

Lender	Commitment
RXR FP Investor IV LP	\$ 3,604,265.36
Affiliates of RXR FP Investor IV LP	\$ -
Total RXR and affiliates	\$ 3,604,265.36
Anson Investments Master Fund LP	\$ 1,759,069.93
Anson East Master Fund LP	\$ 494,240.56
Anson North Star Tactical Equity Fund LP	\$ 36,490.80
Arch Anson Tactical Real Estate Fund LP	\$ 36,004.26
Arch Anson Tactical Real Estate NR Fund LP	\$ 61,304.49
Anson Opportunities Master Fund LP	\$ 325,912.06
Total Anson and affiliates	\$ 2,713,022.10
Bridger Holdings, LP	\$ 583,850.99
NBT Capital, LLC	\$ 194,617.05
Affinius Capital	\$ 973,084.93
Total Affinius, Bridger, and NBT	\$ 1,751,552.98
Future Solution Investments, LLC	\$ 583,850.99
Kaul Family Revocable Trust	\$ 48,654.29
Handler Revocable Trust	\$ 48,654.29
Total RXR Consortium	\$ 8,750,000.00
CFV Investments, LLC	\$ 8,750,000.00
Total	\$ 17,500,000.00

SCHEDULE 1

Initial DIP Budget

View, Inc ("View" or "The Company")

DIP Budget

(\$ Actuals)

Week Number CFF for Week Ending	Ch. 11 Filing		Forecast		Target DIP Final Order		Forecast		Target Plan Confirm		Forecast		Target Plan Effective	
	Forecast 1 4/5	2 4/12	Forecast 3 4/19	4 4/26	Forecast 5 5/3	6 5/10	Forecast 7 5/17							
Beginning Cash Balance	\$ 7,286,603	\$ 9,877,805	\$ 8,399,612	\$ 12,752,413	\$ 8,964,463	\$ 4,539,355	\$ 5,748,288							
Cash Receipts														
Collections from Current Aging	\$ 2,181,865	\$ 647,289	\$ 2,535,436	\$ 258,897	\$ 4,716,063	\$ 2,988,182	\$ 166,300							
Collections from subsequent billings	-	-	-	-	-	-	-							
Total Receipts	\$ 2,181,865	\$ 647,289	\$ 2,535,436	\$ 258,897	\$ 4,716,063	\$ 2,988,182	\$ 166,300							
Cash Disbursements														
Current Accounts Payable, incl. adjustments	(6,628,462)	(206,112)	(588,997)	(2,051,910)	(114,445)	(87,431)	(454,409)							
Payroll & Benefits	(70,479)	(200,000)	(1,670,506)	(466,000)	(2,154,909)	(200,000)	(1,820,506)							
Rent & Utilities	(396,895)	(368,000)	-	-	(367,502)	(368,000)	-							
COGS / Inventory	-	(745,000)	(910,063)	(904,256)	(934,000)	(745,000)	(745,000)							
VIS Subcontractors	(1,794,367)	(230,371)	(924,637)	(6,932)	(3,973,067)	(2,820)	(61,266)							
Warranty Costs	(75,000)	(75,000)	(75,000)	(75,000)	(75,000)	(75,000)	(75,000)							
R&D, G&A, S&M	(100,462)	(300,998)	(836,563)	(392,748)	(312,248)	(300,998)	(243,768)							
Total Operating Disbursements	\$ (9,065,663)	\$ (2,125,481)	\$ (5,005,765)	\$ (3,896,846)	\$ (7,931,171)	\$ (1,779,250)	\$ (3,399,949)							
Operating Cash Flow	\$ (6,883,798)	\$ (1,478,192)	\$ (2,470,329)	\$ (3,637,949)	\$ (3,215,108)	\$ 1,208,932	\$ (3,233,649)							
Non Operating Receipts														
DIP Financing	10,000,000	-	7,500,000	-	-	-	-							
Non Operating Receipts	\$ 10,000,000	\$ -	\$ 7,500,000	\$ -	\$ -	\$ -	\$ -							
Non Operating Disbursements														
Other Non-Operating Disbursements	(525,000)	-	(140,000)	(50,000)	(160,000)	-	(50,000)							
Non Operating Disbursements	\$ (525,000)	\$ -	\$ (140,000)	\$ (50,000)	\$ (160,000)	\$ -	\$ (50,000)							
Administrative Expenses	\$ -	\$ -	\$ (536,870)	\$ (100,000)	\$ (1,050,000)	\$ -	\$ (1,046,718)							
Net Cash Flow	\$ 2,591,202	\$ (1,478,192)	\$ 4,352,801	\$ (3,787,949)	\$ (4,425,108)	\$ 1,208,932	\$ (4,330,366)							
Cash Available for Operations														
Beginning Book Cash	7,286,603	9,877,805	8,399,612	12,752,413	8,964,463	4,539,355	5,748,288							
Net Cash Flow	2,591,202	(1,478,192)	4,352,801	(3,787,949)	(4,425,108)	1,208,932	(4,330,366)							
Ending Book Cash	\$ 9,877,805	\$ 8,399,612	\$ 12,752,413	\$ 8,964,463	\$ 4,539,355	\$ 5,748,288	\$ 1,417,922							

Notes

- Includes scheduled bonus payments pursuant to ordinary course 2023 Bonus Plan as disclosed in Company 10-K, with any bonus payments during the DIP budget period to be made after the final order, reflected in week 5 of the budget
- \$10M anticipated draw amount subject to interim DIP Order is the amount necessary to maintain minimum \$7.5M cash balance pursuant to DIP Financing Agreement; 3% closing fee on entire \$17.5M Facility (\$525K) paid at the time of the initial draw (WE 4/5) is reflected in non-operating disbursements
- Preliminary estimates of Administrative Expenses above are to be paid based on actual fees and expenses incurred and not capped to budget amounts. Any accrued but unpaid Debtor Professional Fees (including estimated amounts through the Confirmation Date) shall be funded into the Professional Fee Account and paid pursuant to the Plan of Reorganization
- Beginning cash balance as of 3/29/24