

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

In re:

BURGERFI INTERNATIONAL, INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 24-12017 (CTG)

(Joint Administration Requested)

Related Docket Nos. 27 and 65

**FINAL ORDER (I) AUTHORIZING THE DEBTORS TO (A) OBTAIN
SENIOR SECURED POSTPETITION FINANCING AND (B) UTILIZE
CASH COLLATERAL, (II) GRANTING LIENS AND SUPERPRIORITY
ADMINISTRATIVE EXPENSE CLAIMS, (III) MODIFYING THE
AUTOMATIC STAY, (IV) SCHEDULING A FINAL HEARING, (V) GRANTING
ADEQUATE PROTECTION, AND (VI) GRANTING RELATED RELIEF**

Upon consideration of the motion [D.I. 27] (the “**DIP Motion**”)² of the debtors and debtors in possession (collectively, the “**Debtors**”) in the above-captioned chapter 11 cases (collectively, the “**Chapter 11 Cases**”) seeking entry of an order granting relief on a final basis (the “**Final Order**”), pursuant to sections 105, 362, 363, 364(c)(1), 364(c)(2), 364(c)(3), 364(e), 506, 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 Rule 4001-2 of the Local Rules for the United States Bankruptcy Court, District of Delaware (the “**Local Rules**”), *inter alia*:

- i. authorizing the Debtors to enter into a senior secured, superpriority, multiple draw credit facility (the “**DIP Facility**”) with TREW Capital Management Private Credit 2

¹ The last four digits of the tax identification number of BurgerFi International, Inc. and of Anthony’s Pizza Holding Company, LLC are 8815 and 4718, respectively. A list of all Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, is available at <https://cases.stretto.com/BFI>. The Debtors’ mailing address is 200 E Las Olas Blvd, Suite 1400, Fort Lauderdale, FL 33301.

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

- LLC (“**TREW**” or the “**Prepetition Lender**” or the “**DIP Lender**”) pursuant to the terms and conditions of that certain *Senior Secured Superpriority Debtor-in-Possession Credit and Security Agreement* (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time, the “**DIP Credit Agreement**”, and together with the schedules and exhibits attached thereto, and all agreements, documents, instruments, and amendments executed and delivered in connection therewith, the “**DIP Documents**”), by and among the Debtors, as borrowers (the “**Borrowers**”) and the DIP Lender, substantially in the form attached to the DIP Motion as Exhibit A, providing for (a) a multiple-draw credit facility in an aggregate principal amount of up to \$6,746,501 (the “**New Money DIP Loan**”) and (b) a term loan “roll up” which shall refinance an equivalent amount of \$13,493,002 of Prepetition Obligations (as defined below) under the Prepetition Credit Agreement (as defined below) (the “**Roll Up DIP Loan**,” and together with the New Money DIP Loan, the “**DIP Loans**”);
- ii. authorizing the Debtors, through and including the DIP Termination Date (as defined below), subject to the terms, conditions, limitations on availability, and reserves set forth in the DIP Documents and this Final Order, to request extensions of credit up to the aggregate availability of the New Money DIP Loan, and to incur the Roll Up DIP Loan, pursuant to the terms of the DIP Documents and this Final Order;
 - iii. authorizing the Debtors to execute and deliver the DIP Credit Agreement and any other agreements and documents related thereto, and to perform such other acts as may be necessary or desirable in connection with the DIP Documents;

- iv. subject to the terms of this Final Order, authorizing the Debtors to enter into the DIP Facility and to incur all obligations owing thereunder and under the DIP Documents to the DIP Lender (including the fees and expenses of the Lender Professionals and all other Indebtedness, the “**DIP Obligations**”), and granting the DIP Lender allowed superpriority administrative expense claim status in each of the Chapter 11 Cases and in any Successor Case (as defined herein), subject to the Carve Out (as defined herein);
- v. granting to the DIP Lender automatically perfected security interests in and liens on all of the DIP Collateral (as defined herein), which liens shall have the priorities set forth herein and shall be subject to the Carve Out;
- vi. authorizing the Debtors to use proceeds of the DIP Facility in accordance with this Final Order and the DIP Documents, including in accordance with the Budget (subject to Permitted Variances, unless otherwise expressly specified in the DIP Credit Agreement) as required herein;
- vii. authorizing and directing the Debtors to pay the principal, interest, fees, expenses, and other amounts payable and reimbursable under the DIP Documents or this Final Order as such become due, including, without limitation, the reasonable fees and disbursements of the DIP Lender (including without limitation the Lender Professionals), as and to the extent provided in, and in accordance with, the applicable DIP Documents and this Final Order;
- viii. authorizing the Debtors to use the proceeds of the DIP Loans and the Prepetition Collateral (as defined herein), including Cash Collateral, in accordance with the terms hereof, as further described herein, to pay for working capital needs of the Debtors in the ordinary course of business and for the costs and expenses of administering the

- Chapter 11 Cases, including for payment of any Adequate Protection Obligations (as defined below), *provided, however*, to the extent that it is determined on a final basis by the Court that the Prepetition Lender is not oversecured for purposes of Section 506(b) of the Bankruptcy Code, the Committee reserves the right to seek an equitable remedy, including, without limitation, requiring the Prepetition Lender(s) to reallocate payments of fees and interest to the principal amount of the Prepetition Obligations owed to that Lender, the Prepetition Lender reserves the right to object to any such remedy (the “**506(b) Remedy**”);
- ix. granting adequate protection, with respect to each of the Debtors, to the Prepetition Lender for an amount equal to the aggregate diminution in value of its interests in the Prepetition Collateral, including cash collateral, from and after the Petition Date for any reason provided under the Bankruptcy Code (collectively, the “**Diminution in Value**”);
 - x. modifying the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of the DIP Documents and this Final Order, and to provide for the immediate effectiveness of this Final Order; and
 - xi. scheduling a final hearing (the “**Final Hearing**”) to consider the relief requested in the DIP Motion and approving the form of notice with respect to the Final Hearing.

The Court having considered the DIP Motion, the exhibits attached thereto, the First Day Declaration, the DIP Credit Agreement, and the evidence submitted and arguments made at the Final Hearing; and notice of the Final Hearing having been given in accordance with Bankruptcy Rules 2002, 4001, and all applicable Local Rules; and the Final Hearing having been held and concluded; and all objections, if any, to the relief requested in the DIP Motion having been withdrawn, resolved, or overruled by the Court; and it appearing that approval of the relief

requested in the DIP Motion is fair and reasonable and in the best interests of the Debtors, their estates, and all parties-in-interest, and is essential for the continued operation of the Debtors' businesses and the preservation of the value of the Debtors' assets; and it appearing that the Debtors' entry into the DIP Credit Agreement is a sound and prudent exercise of the Debtors' business judgment; and after due deliberation and consideration, and good and sufficient cause appearing therefor;

BASED UPON THE RECORD ESTABLISHED AT THE FINAL HEARING, THE COURT MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:³

A. **Petition Date.** September 11, 2024 (the "**Petition Date**"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the District of Delaware (the "**Court**").

B. **Debtors in Possession.** The Debtors have continued in the management and operation of their businesses and properties as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

C. **Jurisdiction and Venue.** This Court has jurisdiction over the Chapter 11 Cases, the DIP Motion, and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157 and 1334. Consideration of the Motion constitutes a core proceeding pursuant to 28 U.S.C. § 157(b)(2). This Court may enter a final order consistent with Article III of the United States Constitution.

³ 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.

Venue for the Chapter 11 Cases and proceedings on the DIP Motion is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

D. **Committee Formation.** The Office of the United States Trustee for the District of Delaware (the “**U.S. Trustee**”) appointed an official committee of unsecured creditors in these Chapter 11 Cases pursuant to section 1102 of the Bankruptcy Code on September 27, 2024 (the “**Creditors’ Committee**”).

E. **Notice.** Proper and sufficient notice of the Motion has been provided in accordance with the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules.

F. **Findings Regarding Prepetition Obligations**

(i) *Prepetition Secured Obligations.* Prior to the Petition Date, debtors BurgerFi International, Inc. (“**BFI**”) and Plastic Tripod, Inc. (“**Plastic Tripod**” and collectively with BFI, the “**Prepetition Borrowers**”) entered into that certain credit agreement dated as of December 15, 2015 (as amended, restated, supplemented, amended and restated or otherwise modified from time to time, and together with ancillary agreements, the “**Prepetition Credit Agreement**”) with TREW, as lender, and TREW, as administrative agent and collateral agent. Substantially all of BFI’s subsidiaries are guarantors of the Prepetition Credit Agreement. The Prepetition Credit Agreement provides for funded debt obligations secured by security interests in and liens on all or substantially all of the Debtors’ assets. As of the Petition Date, the Prepetition Lender is owed not less than \$60,253,470.95 by the Prepetition Borrowers under the Prepetition Credit Agreement, consisting of the aggregate principal amount outstanding thereunder together with accrued, interest, fees, expenses, and disbursements;

(ii) *Prepetition Liens and Prepetition Collateral.* Prior to the Petition Date, pursuant to the Prepetition Credit Agreement, the Prepetition Borrowers granted to the Prepetition

Lender a lien on and security in substantially all of their assets, including without limitation all tangible or intangible personal property, all as set forth in the Prepetition Credit Agreement (the “**Prepetition Collateral**”); and

(iii) *Cash Collateral*. Substantially all of the Debtors’ cash, including cash and other amounts on deposit or maintained in any account or accounts by the Debtors, existing as of the Petition Date, and any amounts generated by the collection of accounts receivable or other disposition of the Prepetition Collateral, existing as of the Petition Date, and the proceeds of any of the foregoing, wherever located, is the Prepetition Lender’s cash collateral within the meaning of section 363(a) of the Bankruptcy Code (the “**Cash Collateral**”).

G. **Findings Regarding Postpetition Financing and the Use of Cash Collateral**

(i) *Request for Postpetition Financing*. The Debtors seek authority to enter into the DIP Facility on the terms described herein and in the DIP Documents and for authority to use the Prepetition Lender’s Cash Collateral to administer their Chapter 11 Cases and fund their operations in accordance with the Budget (as defined herein), subject to Permitted Variances (as defined herein) and unless otherwise expressly specified in the DIP Credit Agreement.

(ii) *Need for Postpetition Financing*. The Debtors have need to obtain credit and to continue the use of Cash Collateral in order to, among other things, enable the orderly continuation of their operations and administer these Chapter 11 Cases. The ability of the Debtors to maintain business relationships with their vendors, suppliers, customers, and other commercial counterparties, to pay their employees, and otherwise to finance their operations requires the use of Cash Collateral and the availability of the DIP Facility for working capital, the absence of which would not be in the best interests of the Debtors, their estates, and parties-in-interest. The Debtors do not have sufficient available sources of working capital and/or financing to operate their

businesses or maintain their properties in the ordinary course of business without the DIP Facility and authorized use of Cash Collateral.

(iii) *No Credit Available on More Favorable Terms.* The DIP Facility is the best source of debtor in possession financing available to the Debtors. Given their current financial condition, financing arrangements, and capital structure, the Debtors have been and continue to be unable to obtain financing from sources other than the DIP Lender and the consensual use of Cash Collateral on terms more favorable than the DIP Facility. The Debtors are unable to obtain unsecured credit allowable under Bankruptcy Code section 503(b)(1) as an administrative expense. The Debtors have also been unable to obtain (a) unsecured credit having priority over that of administrative expenses of the kind specified in sections 503(b), 507(a), and 507(b) of the Bankruptcy Code, or (b) credit secured solely by a lien on property of the Debtors and their estates that is not otherwise subject to a lien. Financing on a postpetition basis is not otherwise available without granting the DIP Lender (1) perfected security interests in and liens on (each as provided herein) all of the Debtors' existing and after-acquired assets with the priorities set forth below, (2) superpriority claims and liens, and (3) the other protections set forth in this Final Order.

(iv) *Use of Proceeds of the DIP Facility.* As a condition to the Debtors' entry into the DIP Documents and the extensions of credit under the DIP Facility, the DIP Lender and the Debtors have agreed that the proceeds of the DIP Facility shall be used, in each case in a manner consistent with the terms and conditions of this Final Order and the DIP Documents, in accordance with the approved budget in connection therewith as the same may be modified from time to time consistent with the terms of the DIP Documents and subject to such variances as permitted in the

DIP Credit Agreement (such variances, “**Permitted Variances**,” and such budget, the “**Budget**”),⁴ and as otherwise provided in this Final Order and the DIP Documents, solely for the purpose of: (a) payment of the DIP Lender’s costs and expenses (including the fees and expenses of the Lender Professionals in accordance with the DIP Credit Agreement); (b) refinancing of certain Prepetition Obligations; and (c) general corporate purposes and administrative expenses as contemplated by and in accordance in all material respects with the terms of the Budget (subject to Permitted Variances).

(v) *Application of Proceeds of Collateral.* As a condition to entry into the DIP Credit Agreement and the extension of credit under the DIP Facility, the Debtors and the DIP Lender have agreed that the Debtors shall apply the proceeds of DIP Collateral in accordance with this Final Order and the DIP Loan Documents.

H. **Section 506(c) Waiver.** In light of the DIP Lender’s agreement that its liens and superpriority claims shall be subject to the Carve Out, the DIP Lender is granted a waiver of the provisions of section 506(c) of the Bankruptcy Code as set forth herein.

I. **Good Faith of the DIP Lender.**

(i) *Business Judgment and Good Faith Pursuant to Section 364(e).* The extensions of credit under the DIP Facility and the DIP Documents, and the fees to be paid thereunder, and the terms of the consensual use of Cash Collateral, are fair, reasonable, and the best available to the Debtors under the circumstances, are appropriate for secured financing to debtors in possession, reflect the Debtors’ exercise of prudent business judgment consistent with their fiduciary duties, and are supported by reasonably equivalent value and consideration. The

⁴ A copy of the Budget is attached hereto as **Exhibit 1**, any updates or changes to which shall be in accordance with the DIP Credit Agreement and otherwise must be acceptable to the Lender in its sole and absolute discretion.

terms and conditions of the DIP Facility and the consensual use of Cash Collateral were negotiated in good faith and at arms' length among the Debtors and the DIP Lender with the assistance and counsel of their respective advisors. Credit to be extended under the DIP Facility shall be deemed to have been allowed, advanced, made, or extended in good faith by the DIP Lender within the meaning of section 364(e) of the Bankruptcy Code.

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

J. **Debtors' Stipulations.** In requesting the DIP Facility, and in exchange for and as a material inducement to the DIP Lender to agree to provide the DIP Facility and access to the DIP Lender's prepetition cash collateral and Prepetition Collateral, and as a condition to providing financing under the DIP Facility, but without prejudice to the rights of other parties in interest, including, without limitation the Creditors' Committee, to initiate a Challenge (as defined in paragraph 16 below), the Debtors admit, stipulate, acknowledge, and agree that (i) the Debtors' obligations under the Prepetition Credit Agreement (the "**Prepetition Obligations**") and the security interests granted thereunder in favor of the Prepetition Lender on the Debtors' assets to secure the Prepetition Obligations (the "**Prepetition Collateral**") are (a) valid, enforceable, and perfected security interests in and continuing liens upon such assets, with a first priority on such

assets except for certain existing valid, perfected and non-avoidable permitted liens under the terms of the Prepetition Credit Agreement, and (b) not subject to offset, deduction, claim, counterclaim, or defense of any kind, nature, or description whatsoever; and (ii) the use of Cash Collateral to fund the fees and costs of the Professional Persons (as defined below) constitutes a Diminution in Value.

K. **Use of Cash Collateral.** The Debtors are hereby authorized to use all Cash Collateral solely in accordance with this Final Order and the DIP Loan Documents, to the extent set forth in the Budget, including, without limitation, to make payments on account of the Adequate Protection Obligations and other obligations provided for in this Final Order and the DIP Loan Documents, including, for the avoidance of doubt, for working capital needs of the Debtors in the ordinary course of business and for the costs and expenses of administering the Cases, including for payment of any Adequate Protection Obligations, including, subject to any 506(b) Remedy, all outstanding and unpaid fees and expenses of the Prepetition Lender and the Lender Professionals in accordance with the terms of this Final Order. Except on the terms and conditions of this Final Order, or as otherwise agreed to by the DIP Lender, the Debtors shall be enjoined and prohibited from at any time using the Cash Collateral.

L. **Adequate Protection.** Subject to any 506(b) Remedy, the Prepetition Lender is entitled to adequate protection as and to the extent set forth herein pursuant to sections 361, 362, 363 and 364 of the Bankruptcy Code. Based on the DIP Motion and on the record presented to the Court, the terms of the Adequate Protection Obligations are fair and reasonable, reflect the Debtors' prudent exercise of business judgment and constitute reasonably equivalent value and fair consideration for the use of Prepetition Collateral, including cash collateral.

M. **Immediate Entry.** Sufficient cause exists for immediate entry of this Order pursuant to Bankruptcy Rule 4001(c)(2).

N. **Notice of Final Hearing.** Notice of this Final Hearing and the relief requested in the DIP Motion has been provided by the Debtors, whether by facsimile, electronic mail, overnight courier, or hand delivery, to certain parties-in-interest, including, among others: (a) the Office of the United States Trustee for the District of Delaware; (b) the United States Attorney for the District of Delaware; (c) the attorney generals for all states in which the Debtors conduct business; (d) the Internal Revenue Service; (e) counsel for the DIP Lender and the Prepetition Lender; (f) the holders of the 50 largest claims against the Debtors on a consolidated basis; (g) counsel for the Creditors' Committee; and (h) any such other party entitled to notice under the Bankruptcy Rules and Local Rules.

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

IT IS HEREBY ORDERED THAT:

1. **Motion Granted.** The DIP Motion is granted on a final basis as set forth herein, and the DIP Facility, consisting of the New Money DIP Loan in the aggregate principal amount of \$6,746,501 and the Roll Up DIP Loan in the amount of \$13,493,002, are authorized and approved, and the use of Cash Collateral and provision of adequate protection, is authorized, in each case, subject to the terms and conditions set forth in the DIP Documents or this Final Order, as applicable. All objections to this Final Order to the extent not withdrawn, waived, settled, sustained or resolved are hereby denied and overruled. This Final Order shall become effective immediately upon entry.

2. Authorization of the DIP Facility. The Debtors are authorized and empowered to execute and deliver the DIP Documents, and to incur and perform the DIP Obligations (as defined in the DIP Credit Agreement) in accordance with, and subject to, the terms of this Final Order and the DIP Documents, and to deliver all instruments, certificates, agreements, and documents which may be required or necessary for the performance by the Debtors under the DIP Facility and the creation and perfection of the DIP Liens described in and provided for by this Final Order and the DIP Documents. The Debtors are hereby deemed to have incurred the full amount of the Roll Up DIP Loan in accordance with the terms of the DIP Facility. The Debtors are hereby authorized and directed to, in accordance with this Final Order, pay any principal, interest, fees, expenses, and other amounts described in the DIP Documents or this Final Order, as such amounts become due and owing, subject to the terms of this Final Order without need to obtain further Court approval, including, without limitation, any reasonable and documented fees and disbursements of the Lender Professionals, as set forth in Paragraph 25 herein and to the extent provided in the DIP Credit Agreement, whether or not such professional fees and disbursements arose before or after the Petition Date, to implement all applicable reserves and to take any other actions that may be necessary or appropriate, all to the extent provided in this Final Order and the DIP Documents. The DIP Documents represent valid and binding obligations of the Debtors, enforceable against each of the Debtors and their estates in accordance with their terms.

3. Authorization to Borrow. From the entry of this Final Order through and including the DIP Termination Date, and subject to the terms, conditions, limitations on availability, and reserves set forth in the DIP Documents and this Final Order, the Debtors are hereby authorized to draw all availability under the New Money DIP Loan.

4. DIP Obligations. The DIP Documents and this Final Order shall constitute and evidence the validity and binding effect of the Debtors' DIP Obligations, which DIP Obligations shall be enforceable against the Debtors, their estates and any successors thereto, including without limitation, 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**"). The DIP Obligations will include all loans and any other indebtedness or obligations, contingent or absolute, which may now or from time to time be owing by any of the Debtors to the DIP Lender pursuant to the DIP Documents or this Final Order, including, without limitation, all principal, accrued and unpaid interest, costs, fees, expenses, and other amounts under the DIP Documents. The Debtors shall be jointly and severally liable for the DIP Obligations. The DIP Obligations shall be due and payable, without notice or demand, on the DIP Termination Date, subject to the Carve Out requirements in paragraph 28 herein. No obligation, payment, transfer, or grant of collateral security hereunder or under the DIP Documents (including any DIP Obligation or DIP Liens (as defined herein)) shall be stayed, restrained, voidable, avoidable, or recoverable, under the Bankruptcy Code or under any applicable law (including, without limitation, under sections 502(d), 544, and 547 to 550 of the Bankruptcy Code or under any applicable state Uniform Voidable Transactions Act, Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, or similar statute or common law), or subject to any avoidance, reduction, setoff, recoupment, offset, recharacterization, subordination (whether equitable, contractual, or otherwise), counterclaim, cross-claim, defense, or any other challenge under the Bankruptcy Code or any applicable law or regulation by any person or entity.

5. DIP Liens. In order to secure the DIP Obligations, effective immediately upon entry of this Final Order, pursuant to sections 361, 362, 364(c)(2), and 364(c)(3) of the Bankruptcy Code, the DIP Lender is hereby granted continuing, valid, binding, enforceable, non-avoidable, and automatically and properly perfected postpetition security interests in and liens (collectively, the “**DIP Liens**”), with the priorities set forth in paragraph 6 herein, as set forth in Article X of the DIP Credit Agreement, on all of the Debtors’ property and assets, whether now existing or hereafter arising and wherever located, tangible and intangible (the “**DIP Collateral**”), including without limitation: all Accounts; all contract rights; all chattel paper; all documents; all instruments; all supporting obligations and letter-of-credit rights, all General Intangibles (including payment intangibles, intercompany accounts, intellectual property and software); all deposit accounts, bank deposits, prepayments, deferred assets, refunds, credits or overpayments, and similar cash items, including all tax credits and rights arising from any refunds due from federal, state, or local Governmental Authorities with respect to taxes paid by the Debtors for periods ending on or before the Petition Date; all inventory and other goods, all motor vehicles, equipment and fixtures, financial assets and all securities accounts; all money, cash, cash equivalents, securities, and other property of any kind; all notes, and all documents of title; all books, records and other property related to or referring to any of the foregoing, including books, records, account ledgers, data processing records, computer software and other property, and all General Intangibles at any time evidencing or relating to any of the foregoing; all assets, including all of the Debtors’ interests in deposit accounts, money, cash, cash equivalents, securities, or other property interests serving as collateral or funding sources for any other obligation; all real property and rights therein; all other personal property of the Debtors, and all accessions to, substitutions for, and replacements, products and proceeds of any of the foregoing, including, but not limited

to, dividends or distributions on Investment Property, rents, profits, income and benefits, proceeds of any insurance policies, claims against third parties, and condemnation or requisition payments with respect to all or any of the foregoing; *provided that* the DIP Collateral shall not include: (a) any causes of action under sections 502(d), 544, 545, 547, 548, 549, 550, 551, or 553 of the Bankruptcy Code or similar causes of action under applicable non-bankruptcy law for the avoidance and recovery of any transfers (collectively, the “**Avoidance Actions**”); (b) any proceeds of property recovered in connection with the successful prosecution or settlement of Avoidance Actions (the “**Avoidance Proceeds**”); (c) all commercial tort claims and any proceeds of property recovered in connection with the successful prosecution or settlement of commercial tort claims, including without limitation any claims or rights to payments with respect to the Visa/Mastercard class action settlements, including those in connection with the action *Mackmin v. Visa Inc.*, D.D.C., No. 1:11-cv-01831, and *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation*, E.D.N.Y., MDL 1720(MKB)(JO); (d) all “Causes of Action”⁵ against the Debtors’ current and former officers, directors, members, managers, partners, principals, advisors, accountants, investment bankers, consultants, representatives, management companies, fund advisors, and other professionals; (e) any lease, license, or agreement to the extent that grant of a security interest therein would invalidate such lease, license, or agreement or similar arrangement, violate the terms of such lease, or create a right of termination in favor of any other party thereto

⁵ “Causes of Action” means all claims, actions, causes of action, choses in action, Avoidance Actions, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, remedies, rights of set-off, third-party claims, subrogation claims, contribution claims, reimbursement claims, indemnity claims, counterclaims, and crossclaims based in law or equity, whether direct, indirect, derivative, or otherwise, whether arising before, on or after the Petition Date. For the avoidance of doubt, Causes of Action includes: (a) any right of setoff, counterclaim or recoupment and any claim on contracts or for breaches of duties imposed by Law or in equity; (b) the right to object to claims or interests; (c) any claim pursuant to section 362 or chapter 5 of the Bankruptcy Code; and (d) any claim or defense, including fraud, mistake, duress and usury, and any other defenses set forth in section 558 of the Bankruptcy Code.

notwithstanding the operation of the Bankruptcy Code; (f) the Carve-Out reserve account for Allowed Professional Expenses, with such account to be funded on a weekly basis in accordance with the Budget and with such funding being allocable to, and held for the benefit of, the Professional Persons on a line-item basis as set forth in the Budget; or (g) any account established to provide a deposit pursuant to section 366 of the Bankruptcy Code (collectively, the “**Excluded Collateral**”). Notwithstanding anything to the contrary in this Final Order, for purposes of this Final Order, DIP Liens and Adequate Protection Liens shall not encumber and DIP Collateral shall not include (i) leasehold interests of non-residential real property that prohibit or restrict the granting of such liens in the applicable lease except as permitted pursuant to applicable non-bankruptcy law (but shall include the proceeds of the sale or disposition of such leases) and (ii) any security deposits (in possession of the Debtors or the landlord) or the Debtors’ interests, if any, in pre-paid rent, unless liens on such security deposits or pre-paid rent are expressly permitted pursuant to the underlying lease documents; provided that, the DIP Liens and Adequate Protection Liens shall extend to any such security deposits or pre-paid rent upon reversion thereof to the Debtors, if at all, as well as any proceeds or value of such leasehold interests whether by sale, financing, or other disposition or form of transfer, termination or transaction.

6. DIP Lien Priority. The DIP Liens are valid, automatically fully-perfected, and non-avoidable. Pursuant to section 364(c)(2) of the Bankruptcy Code, the DIP Liens constitute first priority liens on, and security interest in, all DIP Collateral that (i) as of the Petition Date, is not subject to a valid, perfected and non-avoidable lien (and does not become perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code) or (ii) that becomes unencumbered upon the satisfaction of any prior secured obligations of the Debtors or release of any prior security interests. Pursuant to section 364(c)(3) of the Bankruptcy Code, the DIP Liens

constitute junior liens solely with respect to any DIP Collateral that is subject to (i) any valid, perfected and unavoidable senior liens in existence immediately prior to the Petition Date and (ii) any such valid and unavoidable senior liens in existence immediately prior to the Petition Date that are perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code. The DIP Liens shall constitute first priority security interests in and liens on all DIP Collateral pursuant to section 364(d) of the Bankruptcy Code. Notwithstanding anything to the contrary in this Final Order or the DIP Documents, the DIP Liens shall be subject in all respects to the Carve Out. Other than as set forth in this Final Order or in the DIP Documents, the DIP Liens shall not be made subject to or *pari passu* with any lien or security interest heretofore or hereinafter granted in the Chapter 11 Cases or any Successor Cases, and shall be valid and enforceable against any trustee appointed in the Chapter 11 Cases or any Successor Cases, upon the conversion of any of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code (or in any other Successor Case), and/or upon the dismissal of any of the Chapter 11 Cases or Successor Cases. The DIP Liens shall not be subject to section 510, 549, or 550 of the Bankruptcy Code. No lien or interest avoided and preserved for the benefit of the estate pursuant to section 551 of the Bankruptcy Code shall be *pari passu* with or senior to the DIP Liens. If a lien is avoided under Section 522, 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code, and the DIP Facility is irrevocably paid in full, then the avoided lien is preserved under section 551 of the Bankruptcy Code for the benefit of the Debtors' estates but only with respect to property of the estate.

7. Superpriority Claims. The DIP Lender is hereby granted, pursuant to section 364(c)(1) of the Bankruptcy Code, an allowed superpriority administrative expense claim in each of the Chapter 11 Cases and any Successor Cases (a “**DIP Superpriority Claim**”) for all DIP Obligations: (a) except as set forth herein, with priority over any and all administrative

expense claims and unsecured claims against the Debtors or their estates in any of the Chapter 11 Cases and any Successor Cases, at any time existing or arising, of any kind or nature as and to the extent provided for by sections 503(b) and 507(b) of the Bankruptcy Code; and (b) which shall at all times be senior to the rights of the Debtors and their estates, and any successor trustee or other estate representative to the extent permitted by law. Notwithstanding anything to the contrary in this Final Order or the DIP Documents, the DIP Superpriority Claim and the DIP Liens shall be subject in all respects to the Carve Out and shall not include the Excluded Collateral.

8. Adequate Protection. Without prejudice to the rights of the Creditors' Committee to initiate a Challenge as set forth in paragraph 16 below, from the Petition Date, pursuant to Bankruptcy Code sections 361, 362, 363(c)(2), 363(e), 364(d)(1), 364(e), and 507, the Prepetition Lender shall receive the following, in all cases solely to the extent of the Diminution in Value (the "**Adequate Protection Obligations**"), but without prejudice to the Prepetition Lender's right to seek further or different adequate protection following notice and a hearing:

(i) *Adequate Protection Liens*. Solely to the extent of any Diminution in Value arising after entry of an order approving the sale of substantially all of the Debtors' assets (without limiting the foregoing, a sale of substantially all assets of the Anthony's Coal Fired Pizza business shall constitute a sale of substantially all of the Debtors' assets for purposes of paragraph 8(i) and (8)(ii) of this Final Order), the Prepetition Lender is hereby granted additional and replacement valid, binding, enforceable, non-avoidable, effective and automatically perfected postpetition security interests in, and liens on, (the "**Adequate Protection Liens**"), without the necessity of the execution by the Debtors (or recordation or other filing) of security agreements, control agreements, pledge agreements, financing statements, mortgages or other similar documents, all prepetition and postpetition property of the Debtors, including, for the avoidance

of doubt, the DIP Collateral, whether existing on the Petition Date or thereafter created, acquired or arising, and wherever located, including, without limitation, property that (x) is of the same nature, scope, and type as the Prepetition Collateral that is subject to any of the Prepetition Liens securing the Prepetition Obligations, and (y) on or as of the Petition Date is not subject to valid, perfected and nonavoidable liens (or perfected after the Petition Date to the extent permitted by Bankruptcy Code section 546(b)). The Adequate Protection Liens shall be subject and junior to the DIP Liens (including any liens to which the DIP Liens are junior) and the Carve Out, and otherwise be senior to all other security interests in, liens on, or claims against any of the Prepetition Collateral, including the Prepetition Liens and any lien or security interest that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code, *provided*, that to the extent that certain Prepetition Collateral is released from the Prepetition Liens in connection with a final order of the Court granting any Challenge with respect to such certain Prepetition Collateral, then the Committee may seek to have the Adequate Protection Liens on such certain Prepetition Collateral released to the same extent without prejudice to the Prepetition Lender's right to oppose any such release. Notwithstanding anything to the contrary in this Final Order, for purposes of this Final Order, DIP Liens and Adequate Protection Liens shall not encumber and DIP Collateral shall not include: (i) the Excluded Collateral; (ii) leasehold interests of non-residential real property that prohibit or restrict the granting of such liens in the applicable lease except as permitted pursuant to applicable non-bankruptcy law (but shall include the proceeds of the sale or disposition of such leases); and (iii) any security deposits (in possession of the Debtors or the landlord) or the Debtors' interests, if any, in pre-paid rent, unless liens on such security deposits or pre-paid rent are expressly permitted pursuant to the underlying lease documents; provided that, the DIP Liens and Adequate Protection

Liens shall extend to any such security deposits or pre-paid rent upon reversion thereof to the Debtors, if at all, as well as any proceeds or value of such leasehold interests whether by sale, financing, or other disposition or form of transfer, termination or transaction.

(ii) *Adequate Protection Superpriority.* Solely to the extent of any Diminution in Value arising after entry of an order approving the sale of substantially all of the Debtors' assets, the Prepetition Lender is hereby granted an allowed superpriority administrative expense claim in each of the Chapter 11 Cases: (a) except as set forth herein, with priority over any and all administrative expense claims and unsecured claims against the Debtors or their estates in any of the Chapter 11 Cases, at any time existing or arising, of any kind or nature as and to the extent provided for by sections 503(b) and 507(b) of the Bankruptcy Code; and (b) which shall at all times be senior to the rights of the Debtors and their estates, and any successor trustee or other estate representative to the extent permitted by law. Notwithstanding anything to the contrary in this Final Order or the DIP Documents, the Adequate Protection superpriority claim shall be subject and subordinate in all respects to the Carve Out and the DIP Superpriority Claim. The Adequate Protection claims shall be payable from and have recourse to all prepetition and postpetition property of the Debtors and all proceeds thereof (excluding the Excluded Collateral). Subject to the Carve Out and the DIP Superpriority Claims in all respects, the Adequate Protection claims will not be junior or *pari passu* to any claims and shall have priority over all administrative expense claims against each of the Debtors, now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, administrative expense claims of the kinds specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 365, 503(a), 506(c), 507(a), 507(b), 546(d), 726, 1113 and 1114 of the Bankruptcy Code. The Prepetition Lender shall not receive or retain any payments, property or other amounts in respect of the Adequate Protection claims from

Debtors under Bankruptcy Code section 507(b) granted hereunder unless and until the DIP Obligations have been indefeasibly paid in full, in cash, or as otherwise provided in the DIP Loan Documents, *provided, however*, that the Prepetition Lender's 507(b) Claims granted hereunder shall not attach to or be payable from or have recourse to any of the Excluded Collateral.

(iii) Fees and Expenses. Subject to the Challenge rights under paragraph 16 below and any 506(b) Remedy, as further adequate protection, the Debtors are authorized and directed to pay, without further Court order, the reasonable and documented fees and expenses, whether incurred before or after the Petition Date, of the Prepetition Lender, including, without limitation, the reasonable and documented fees and expenses of the Lender Professionals as set forth herein.

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

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

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

12. Budget Maintenance and Compliance. After entry of this Final Order, and no later than five business days after the end of each week thereafter, the Debtors will deliver to the DIP Lender and the Lender Professionals, and to Committee Professionals (as defined below), a variance report showing for the immediately preceding week the amount of variance and percentage variance of actual disbursements of the type of each line item set forth on the Budget (on a line item basis) from those disbursements and other amounts reflected in the Budget for the corresponding periods, and an explanation of the reason for any such variance and compliance or

non-compliance with the requirements set forth in Section 6.02(d) of the DIP Credit Agreement. The Budget may be modified, amended, and updated from time to time, but a copy (which may be provided through electronic mail) of any modifications, amendments, and updates shall be provided at least three (3) Business Days in advance to the Notice Parties and such amendment, modification or supplement shall be without prejudice to the right of any Notice Party to be heard regarding such proposed amendment, modification, or supplement.

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

14. Perfection of DIP Liens. This Final Order shall be sufficient and conclusive evidence of the creation, validity, perfection, and priority of the DIP Liens, without the necessity of filing or recording any financing statement, mortgage, notice, or other instrument or document which may otherwise be required under the law or regulation of any jurisdiction or the taking of any other action (including, for the avoidance of doubt, entering into any deposit account control agreement, securities account control agreement, or other similar agreement) to grant, attach, validate or perfect (in accordance with applicable non-bankruptcy law) the DIP Liens, or to entitle the DIP Lender to the priorities granted herein. Notwithstanding the foregoing, the DIP Lender is

authorized, but not required, to file, subject to the terms and priorities of this Final Order, as the DIP Lender in its sole discretion deems necessary or advisable, such financing statements, security agreements, mortgages, notices of liens, and other similar documents to perfect in accordance with applicable non-bankruptcy law or to otherwise evidence the DIP Liens, and all such financing statements, mortgages, notices, and other documents shall be deemed to have been filed or recorded as of the Petition Date; *provided, however*, that no such filing or recordation shall be necessary or required in order to create or perfect the DIP Liens. The Debtors, without further consent of any party, are authorized to execute and deliver, upon request of the DIP Lender, all such financing statements, mortgages, notices, and other documents as the DIP Lender may reasonably request. The DIP Lender, in its discretion, may file a copy of this Final Order as a financing statement with any filing or recording office or with any registry of deeds or similar office, in addition to or in lieu of such financing statements, notices of lien or similar instrument.

15. Application of Proceeds to Collateral. As a condition to the entry into the DIP Documents and the extensions of credit under the DIP Facility, the Debtors shall apply all net proceeds of DIP Collateral in accordance with the DIP Credit Agreement until the DIP Obligations have been indefeasibly paid in full, in cash.

16. Debtors' Stipulations.

(i) The Debtors' stipulations, and the findings of Paragraphs F, G, J, and L of this Final Order, shall be immediately binding upon the Debtors and any successor thereto. The Debtors' stipulations, and the findings of Paragraphs F, G, J, and L of this Final 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 appointed or elected for any of the Debtors), in all circumstances and for all purposes, subject only to challenge (“**Challenge**”) by appropriate pleading validly brought, filed and/or commenced no later than November 30, 2024, unless such Challenge period is extended in a writing signed by each of the DIP Lender and/or Prepetition Lender (as applicable) and the Creditors’ Committee and filed with the Court; *provided, however*, that if a chapter 7 or chapter 11 trustee is appointed for any of the Debtors prior to such date, then the deadline for any such chapter 7 or chapter 11 trustee to commence a challenge shall be extended to forty-five days after the date of their appointment.

(ii) Notwithstanding anything to the contrary in Paragraph 16(i), as part of, and in furtherance of, the settlement between the Creditors’ Committee, on one hand, and the Prepetition Lender and DIP Lender, on the other hand, read into the record at the Final Hearing (the “Settlement”), the Creditors’ Committee has agreed to a standstill of its investigation and Challenge rights with respect to the Prepetition Lender and the DIP Lender pending the Court’s entry of an order confirming a plan of liquidation that includes the Settlement, in consideration of which the Creditors’ Committee’s November 30, 2024 Challenge period deadline is extended and tolled to a date that is calculated as follows. If the Settlement is not approved or a plan of liquidation that includes the Settlement is not confirmed, then the standstill agreement will be lifted and the Creditors’ Committee may commence a Challenge on or before the date that is 46 days from the date of an order denying approval of the Settlement or denying confirmation of a plan of liquidation seeking approval of the Settlement.

(iii) For the avoidance of doubt, nothing herein vests or confers on any Creditors’ Committee or any other person or entity standing and authority to bring, assert, commence, continue, prosecute, or litigate any cause of action belonging to the Debtors or their

estates against the Prepetition Lender or the DIP Lender, and all rights of the Prepetition Lender and the DIP Lender to object to any such request for such standing are expressly reserved; *provided* that the Creditors' Committee may seek an expedited hearing regarding any request for standing on at least five (5) Business Day's notice to the Debtors and the DIP Lender, and *provided further* that in the event that the Creditors' Committee files a motion seeking standing to pursue a Challenge prior to the end of the Challenge period, the Challenge period shall be extended, solely with respect to the Challenges for which the Committee seeks standing, to five (5) Business Days after entry of an order granting or denying such motion, and solely with respect to the Challenges that the Committee is granted standing to pursue by such order.

(iv) If any such Challenge is timely commenced within the Challenge period, the agreements, stipulations and findings contained in the Interim Order and this Final Order shall nonetheless remain binding and preclusive on the Debtors and their estates and their creditors, the Creditors' Committee, equity holders, and all other parties in interest in these Chapter 11 Cases, except to the extent that such findings or admissions are expressly and successfully challenged and the Court enters a final order with respect thereto.

(v) Notwithstanding anything to the contrary herein: (i) in the event that the DIP Lender or Prepetition Lender (or an affiliate thereof) acquires substantially all assets of either the BurgerFi business or the Anthony's Coal Fired Pizza business (or both), then the Challenge period for the Creditors' Committee with respect to a credit bid by the DIP Lender or the Prepetition Lender or the cash proceeds of such sale shall expire upon the closing of such sale, except with respect to any claims for fraud or willful misconduct that are discovered after such closing.

(vi) Any chapter 7 trustee appointed or elected for any of the Debtors has automatic standing by virtue of section 323 of the Bankruptcy Code. For the avoidance of doubt, any trustee appointed or elected in these Chapter 11 Cases shall, until the expiration of the period provided herein for asserting challenges, and thereafter for the duration of any adversary proceeding or contested matter commenced pursuant to this paragraph (whether commenced by such trustee or commenced by any other party in interest on behalf of the Debtors' estates), be deemed to be a party other than the Debtors and shall not, for purposes of such adversary proceeding or contested matter, be bound by the acknowledgments, admissions, confirmations and stipulations of the Debtors in this Final Order.

(vii) In the event of a successful Challenge, and the Court's entry of a final order with respect thereto, the Court shall retain the authority to fashion an appropriate remedy for the Debtors' estates.

17. Protections of Rights of DIP Lender.

(i) The Debtors will, until the DIP Termination Date, (A) maintain books, records, and accounts to the extent and as required by the DIP Documents, (B) reasonably cooperate with, consult with, and provide to the DIP Lender all such information and documents that any or all of the Debtors are obligated (including upon the request by the DIP Lender) to provide under the DIP Documents or the provisions of this Final Order, (C) upon reasonable advance notice, permit consultants, advisors, and other representatives of the DIP Lender to visit and inspect any of the Debtors' respective properties, to examine and make abstracts or copies from any of their respective books and records, to tour the Debtors' business premises and other properties, and to discuss, and provide advice with respect to, their respective affairs, finances, properties, business operations, and accounts with their respective officers, employees,

independent public accountants, and other professional advisors (other than legal counsel) as and to the extent required by the DIP Documents, (D) permit the DIP Lender and the Creditors' Committee and any of their respective consultants, advisors and other representatives to consult with the Debtors' management and advisors on matters concerning the Debtors' business, financial condition, operations and assets as and to the extent required by the DIP Documents or as reasonably requested by the Creditors' Committee, (E) upon reasonable advance notice, permit the DIP Lender to conduct, at its reasonable discretion and at the Debtors' cost and expense, field audits, collateral examinations, liquidation valuations and inventory appraisals at reasonable times in respect of any or all of the DIP Collateral as and to the extent required by the DIP Documents, (F) provide the DIP Lender with a current list of all platforms used by the Borrowers for accounting, managing cash and bank balances, and data management (such as food management, inventory tracking, labor management, and sales tracking) and provide the DIP Lender with at least seven (7) Business Days written notice before making any additions, deletions, or material alterations to such platforms; and (G) provide the DIP Lender at all times with a unique username and password providing continuous, real time, read-only access to its deposit accounts and its cash and bank account information.

(ii) In any sale of the DIP Collateral or the Prepetition Collateral, the Prepetition Lender and DIP Lender, including through an affiliated designee, shall have the right to credit bid the Prepetition Obligations and DIP Obligations, in accordance with section 363(k) of the Bankruptcy Code, subject to: (a) the rights of any party, including the Creditor's Committee, to make a Challenge pursuant to Paragraph 16; and (b) the rights of the Creditors' Committee and any party in interest (other than the Debtors) arising under Bankruptcy Code section 363(k) to object to such credit bid in connection with the sale of the Debtors' assets or any sale process or

disposition of collateral, whether conducted pursuant to sections 363 or 1129 of the Bankruptcy Code, by a chapter 7 trustee under section 725 of the Bankruptcy Code, or otherwise. The Debtors agree that any motion filed by the Debtors seeking approval of a Section 363 Sale (or the related procedures) will contain a request for approval of the right of the DIP Lender to credit bid the DIP Obligations and Prepetition Obligations as set forth herein. The foregoing agreement shall operate as a finding that the DIP Lender shall have the right to credit bid the DIP Obligations then outstanding and the Prepetition Obligations in accordance with section 363(k) of the Bankruptcy Code as set forth above, and the right of the DIP Lender to credit bid in accordance with this subsection shall not be modified or altered by any event, without the prior written consent of the DIP Lender, subject to the rights of any party in interest (other than the Debtors) arising under section 363(k) of the Bankruptcy Code.

18. Proceeds of Subsequent Financing. If the Debtors, any trustee, any examiner with expanded powers, or any responsible officer subsequently appointed in these Chapter 11 Cases or any Successor Cases, shall obtain credit or incur debt pursuant to Bankruptcy Code sections 364(b), 364(c), or 364(d) in violation of the DIP Documents at any time prior to the indefeasible repayment in full of all DIP Obligations, and the termination of the DIP Lender's obligation to extend credit under the DIP Facility, and such facilities are secured by any DIP Collateral, then all the cash proceeds derived from such credit or debt shall immediately be turned over to the DIP Lender to be applied in accordance with this Final Order and the DIP Documents.

19. Cash Collection. The Debtors shall maintain cash management consistent with prepetition practices and in accordance with any order of the Court authorizing the continuation of such practices (the "**Cash Management Order**"). Except as otherwise permitted in the Cash Management Order or otherwise agreed to in writing by the DIP Lender, the Debtors

shall maintain no accounts except those identified, or opened or closed in accordance with the procedures set forth in the Cash Management Order and the DIP Credit Agreement. The Debtors and the financial institutions where the Debtors maintain deposit accounts (as identified in any Cash Management Order), are authorized and directed to remit, without offset or deduction, funds in such deposit accounts upon receipt of any direction to that effect from the DIP Lender in accordance with the terms of this Final Order upon or following delivery of a Termination Declaration to the Debtors, a copy of which direction will be concurrently provided to the Committee.

20. Maintenance of DIP Collateral. Until the indefeasible payment in full of all DIP Obligations and the termination of the DIP Lender's obligation to extend credit under the DIP Facility, the Debtors shall: (a) insure the DIP Collateral as required under the DIP Facility, as applicable; and (b) maintain the cash management system in accordance with the Cash Management Order, as modified by any order that may be entered by the Court or as otherwise required by the DIP Documents.

21. DIP Termination Date. On the DIP Termination Date, subject to the Carve Out, all DIP Obligations shall be immediately due and payable, all commitments to extend credit under the DIP Facility will terminate, other than with respect to the Carve Out, and all consent or authorization for the use of Cash Collateral shall automatically cease.

22. Events of Default. Until the DIP Obligations are indefeasibly paid in full and all commitments thereunder are terminated (the "**DIP Repayment**"), the occurrence of any of the following events, unless waived by the DIP Lender in writing and in accordance with the terms of the DIP Credit Agreement, shall constitute an event of default (collectively, the "**Events of Default**") under this Final Order: (a) the failure of the Debtors to perform, in any material respect,

any of the terms, provisions, conditions, covenants, or obligations under this Final Order (except where such failure would not adversely affect the DIP Lender), or (b) the occurrence of any other “Event of Default” under, and as defined in, the DIP Credit Agreement.

23. Rights and Remedies Upon Event of Default. (a) The automatic stay provisions of section 362 of the Bankruptcy Code are hereby modified to the extent necessary to permit the DIP Lender to enforce all of its rights under this Final Order and the DIP Documents and, immediately upon the occurrence and during the continuation of an Event of Default and subject to the giving by the DIP Lender to the Debtors and to the Notice Parties of five (5) calendar days’ prior written notice (the “**Termination Notice**”; and such notice period, the “**Remedies Notice Period**,”) provided that such period may be extended by written agreement between the Debtors and the DIP Lender, in their respective sole discretion, delivered to counsel to the Debtors, with copies to the U.S. Trustee and counsel to the Creditors’ Committee, subject in all respects to the terms of this Final Order, including clause (b) below, the DIP Lender may declare (any such declaration, a “**Termination Declaration**”) (1) all DIP Obligations owing under the DIP Documents to be immediately due and payable, (2) the termination, reduction or restriction of any further commitment to extend credit to the Debtors to the extent any such commitment remains outstanding under the DIP Facility, (3) termination of the DIP Credit Agreement and the DIP Documents as to any future liability or obligation of the DIP Lender, but without affecting any of the DIP Liens or the DIP Obligations, and (4) that the application of the Carve Out has occurred through the delivery of the Carve Out Trigger Notice (as defined herein) to the Debtors (the date which is the earliest date a Termination Declaration is delivered following the expiration of the Remedies Notice Period, the “**DIP Termination Date**”). During the Remedies Notice Period, the Debtors and the Committee shall be entitled to seek an emergency hearing with the Court for

appropriate relief. Upon the DIP Termination Date, unless the Court orders otherwise, and subject to clause (b) below, the DIP Lender shall be entitled to exercise all rights and remedies in accordance with the DIP Documents and this Final Order and shall be permitted to satisfy the relevant DIP Obligations, DIP Superpriority Claim and DIP Liens, subject to the Carve Out, and subject to and consistent with this Final Order. Unless the Court orders otherwise, the automatic stay, as to the DIP Lender, shall automatically be terminated at the end of the Remedies Notice Period without further notice or order. Upon expiration of the Remedies Notice Period, unless the Court orders otherwise, and subject to the Carve Out in all respects, including the requirements of paragraph 28 hereof, the DIP Lender shall be permitted to exercise all remedies set forth herein, in the DIP Documents and as otherwise available at law without further order of or application or motion to the Court.

(b) Notwithstanding anything to the contrary in this Final Order or the DIP Documents (i) during the Remedies Notice Period, the Debtors shall be permitted to use proceeds of the DIP Facility and other DIP Collateral, to (1) pay any amounts in accordance with the Carve Out, (2) pay accrued wages and any other critical employee-related expenses, and (3) subject to the consent of the DIP Lender, pay any other critical business-related expenses necessary to operate the Debtors' business or preserve the DIP Collateral as determined by the Debtors in their reasonable discretion and in good faith, and (ii) the Debtors are authorized to pay accrued and unpaid administrative expenses under the Budget through the DIP Termination Date.

24. Good Faith Under Section 364(e) of the Bankruptcy Code; No Modification or Stay of this Final Order. The DIP Lender has acted in good faith in connection with this Final Order and is entitled to rely upon the protections granted herein and by section 364(e) of the Bankruptcy Code. Based on the findings set forth in this Final Order and the record made during

the Final Hearing, and in accordance with section 364(e) of the Bankruptcy Code, in the event any or all of the provisions of this Final Order are hereafter reversed or modified on appeal, the DIP Lender is entitled to the protections provided in section 364(e) of the Bankruptcy Code. Any such reversal or modification shall not affect the validity and enforceability of any advances previously made hereunder, or any lien, claim or priority authorized or created hereby.

25. DIP and Other Expenses. Subject to the terms set forth in this paragraph, the Debtors are authorized and directed to pay all reasonable and documented prepetition and postpetition fees and expenses of the DIP Lender in connection with the DIP Facility (including without limitation the Lender Professionals, as and to the extent provided in the DIP Documents), whether or not the transactions contemplated hereby are consummated, including attorneys' fees, financial advisory fees, fees and expenses of other consultants, and indemnification and reimbursement of fees and expenses, in each case to the extent provided for in this Final Order or the DIP Documents, with payment of all such fees and expenses not subject to further order or allowance by the Court. Any time Lender Professionals seek payment of fees and expenses from the Debtors, each professional shall provide copies of its fee and expense statements or invoices in summary form (which may be redacted or modified to the extent necessary to delete any information subject to the attorney-client privilege, any information constituting attorney work product, or any other confidential information, and the provision of such invoices shall not constitute any waiver of the attorney-client privilege or of any benefits of the attorney work product doctrine) to the U.S. Trustee and counsel for a Creditors' Committee contemporaneously with the delivery of such fee and expense statements to the Debtors. No Lender Professional shall be required to file an application seeking compensation for services or reimbursement of expenses with the Court. If the Debtors, the U.S. Trustee, or a Creditors' Committee objects to the

reasonableness of the fees and expenses of the DIP Lender, and such objection cannot be resolved, the Debtors, the U.S. Trustee, or the Creditors' Committee, as the case may be, shall file with the Court and serve on counsel for the DIP Lender (with a copy to the Debtors), within ten calendar days of receipt of such invoices, an objection limited to the reasonableness of such fees and expenses and detailing with specificity which fees and/or expenses are being objected to (each, a **"Fee Objection"**). The Debtors shall pay to the DIP Lender, in accordance with the terms and conditions of this Final Order, within 15 calendar days after receipt of the applicable invoice, (a) the full amount invoiced if no Fee Objection has been timely filed, and (b) the undisputed fees, costs, and expenses reflected on any invoice to which a Fee Objection has been timely filed, in each case regardless of whether such amounts are in excess of the amounts set forth in the Budget. For the avoidance of doubt, the professional fees of the DIP Lender shall not be subject to the provisions of sections 327, 328, 329 or 331 of the Bankruptcy Code.

26. Indemnification. The Debtors shall indemnify and hold harmless the DIP Lender, solely in its capacity as such, in accordance with the terms and conditions of the DIP Credit Agreement, and subject to the limitations set forth therein; *provided, however*, that notwithstanding anything to the contrary in the DIP Credit Agreement, the Debtors shall not be required to indemnify any Indemnitee (as that term is defined in the DIP Credit Agreement) for any costs or fees of any kind that an Indemnitee incurs in connection with a successful Challenge brought pursuant to paragraph 16 of this Final Order.

27. Proofs of Claim. The DIP Lender, and Prepetition Lender, will not be required to file proofs of claim in any of the Chapter 11 Cases or Successor Cases for any claim on account of DIP Obligations or Prepetition Obligations; *provided, however*, that the Prepetition Lender shall file a proof of claim for any Diminution in Value no later than the earlier of any

deadline for the filing of administrative expense claims that is established in these Chapter 11 Cases and the date that is fourteen (14) days prior to the date of the confirmation hearing on any plan of reorganization or plan of liquidation.

28. Carve Out.

(a) Notwithstanding anything to the contrary in the DIP agreement, as used in this Final Order, the “**Carve Out**” means the sum of (i) all fees required to be paid to the Clerk of the Court and to the U.S. Trustee under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate (without regard to the notice set forth in (iii) below); (ii) all reasonable fees and expenses up to \$25,000 incurred by a trustee under section 726(b) of the Bankruptcy Code; (iii) to the extent allowed at any time and consistent with the Budget, whether by interim order, procedural order, or otherwise, all unpaid fees and expenses (the “**Allowed Professional Fees**”) incurred by persons or firms retained by the Debtors pursuant to section 327, 328, or 363 of the Bankruptcy Code (the “**Debtor Professionals**”) and the Creditors’ Committee pursuant to section 328 or 1103 of the Bankruptcy Code (the “**Committee Professionals**” and, together with the Debtor Professionals, the “**Professional Persons**”) at any time before or on the first business day following delivery by the DIP Lender of a Carve Out Trigger Notice (as defined below), whether allowed by the Court prior to or after delivery of a Carve Out Trigger Notice; and (iv) Allowed Professional Fees of Professional Persons in an aggregate amount of \$100,000 for Debtor Professionals and \$25,000 for the Committee Professionals incurred after the first business day following delivery by the DIP Lender of the Carve Out Trigger Notice, to the extent allowed at any time, whether by interim order, procedural order, or otherwise (the amounts set forth in this clause (iv) being the “**Post-Carve Out Trigger Notice Cap**”). For purposes of the foregoing, “**Carve Out Trigger Notice**” shall mean a written notice delivered by email (or other electronic

means) by the DIP Lender to the Debtors, their counsel, the U.S. Trustee, and counsel to the Creditors' Committee, which notice may be delivered following the occurrence and during the continuation of an Event of Default in connection with the issuance of a Termination Declaration and acceleration of the DIP Obligations under the DIP Facility, stating that the Post-Carve Out Trigger Notice Cap has been invoked.

(b) On the day on which a Carve Out Trigger Notice is given by the DIP Lender to the Debtors with a copy to counsel to the U.S. Trustee and counsel to the Creditors' Committee (the "**Carve Out Trigger Notice Date**"), the Carve Out Trigger Notice shall constitute a demand to the Debtors to utilize all cash on hand constituting DIP Collateral as of such date and any such cash thereafter held by any Debtor to pay and/or establish a reserve for the payment of all unpaid statutory fees described in paragraph 28(a)(i) of this Final Order and Allowed Professional Fees prior to any and all other claims. The Debtors shall also hold in trust for the benefit of the Professional Persons an amount equal to the Post-Carve Out Trigger Notice Cap, which shall exclusively be used to pay such Allowed Professional Fees benefiting from the Post-Carve Out Trigger Notice Cap. Within five (5) business days following the Carve Out Trigger Notice Date, the Debtors and the Creditors' Committee shall deliver a statement to the DIP Lender, with copies to the Creditors' Committee and the Debtors, respectively, setting forth their estimate of the total Allowed Professional Fees incurred prior to the Carve Out Trigger Notice Date.

(c) Notwithstanding anything to the contrary in the DIP Documents or this Final Order, following delivery of a Carve Out Trigger Notice, if the DIP Lender sweeps or forecloses on cash (including cash received as a result of the sale or other disposition of any assets) of the Debtors, the DIP Lender shall promptly deposit cash swept or foreclosed upon after delivery of the Carve Out Trigger Notice (including cash received as a result of the sale or other disposition

of assets) into an account designated by the Debtors up to an amount equal to the sum of the Allowed Professional Fees plus any unpaid statutory fees described in paragraph 28(a)(i) of this Final Order plus \$125,000.

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

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

(f) Upon entry of this Final Order, the Debtors shall establish a reserve account for Allowed Professional Expenses, with such account to be funded at least weekly in accordance with the Budget and with such funding being allocable to, and held for the benefit of, the Professional Persons on a line-item basis as set forth in the Budget. For the avoidance of doubt, any funds deposited into such reserve account shall remain property of the Debtors unless and until they are paid to the Professional Persons after Court approval of a fee application seeking approval of same. Prior to the Carve Out Trigger Notice Date, the Debtors shall be permitted to pay compensation and reimbursement of all Allowed Professional Fees of Professional Persons, as the same may be due and payable from such reserve account, and such payments shall not reduce the Carve Out. Upon the receipt of the Carve Out Trigger Notice, the right of the Debtors to pay professional fees outside the Carve Out shall terminate and the Debtors shall provide immediate

notice to all Professional Persons informing them that such notice was delivered and further advising them that the Debtors' ability to pay such Professional Persons is subject to and limited by the Carve Out.

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

(h) Any Carve Out amounts allocated or set aside in accordance with this paragraph for the benefit of Committee Professionals may be used for the necessary and reasonable expenses of Creditors' Committee members that are otherwise reimbursable by the estates.

29. Limitations on Use of DIP Proceeds, DIP Collateral, Cash Collateral, and Carve Out. The DIP Facility, the DIP Collateral, the Cash Collateral, and the Carve Out may not be used in connection with: (a) selling or otherwise disposing of DIP Collateral without the consent of the DIP Lender other than as permitted in the DIP Documents and this Final Order; (b) using or seeking to use any insurance proceeds constituting DIP Collateral outside the ordinary course of business without the consent of the DIP Lender; (c) incurring indebtedness without the prior consent of the DIP Lender, except to the extent permitted under the DIP Credit Agreement; (d) seeking to amend or modify any of the rights granted to the DIP Lender under this Final Order or the DIP Documents without its consent; (e) objecting to or challenging in any way the DIP Liens, the DIP Obligations, the DIP Superpriority Claim, the DIP Collateral, or any other claims or liens, held by or on behalf of the DIP Lender or the Prepetition Lender; (f) asserting,

commencing or prosecuting any claims or causes of action whatsoever, including, without limitation, any actions under Chapter 5 of the Bankruptcy Code or applicable state law equivalents, any so-called “lender liability” claims and causes of action, or actions to recover or disgorge payments, against the DIP Lender or Prepetition Lender, or any of its respective affiliates, successors and assigns and the partners, shareholders, controlling persons, directors, officers, employees, agents, trustees, administrators, managers, advisors, attorneys and representatives, solely in their capacities as such; (g) litigating, objecting to, challenging, or contesting in any manner, or raising any defenses to, the validity, extent, amount, perfection, priority, or enforceability of any of the DIP Obligations, the DIP Liens, the DIP Superpriority Claim, or any rights or interests of the DIP Lender granted under this Final Order or the DIP Documents or any rights or interests of the Prepetition Lender; or (h) seeking to subordinate, recharacterize, disallow or avoid the DIP Obligations, the DIP Liens or the DIP Superpriority Claim or any other claims or liens held by or on behalf of the Prepetition Lender. Notwithstanding the foregoing, and subject to the Budget for the Creditors’ Committee’s professionals: (i) the Committee may investigate potential Challenge claims against the DIP Lender and Prepetition Lender, and (ii) the Carve Out, the proceeds of any DIP Loans, DIP Collateral and Prepetition Collateral (including Cash Collateral) may be used for the allowed fees and expenses incurred by the Creditors’ Committee and its professionals in furtherance of its duties as set forth under section 1103 of the Bankruptcy Code, including, but not limited to, any objection filed to the DIP Motion, any objection to credit bidding, any objection filed to any disclosure statement or plan of reorganization or liquidation filed in these Chapter 11 Cases, and any objection or other pleading contesting whether the DIP Lender or Prepetition Lender have the right to the exercise of remedies, including the prosecution of any such motions and objections; *provided that* no more than an aggregate of \$100,000 of the

DIP Loans, the DIP Collateral, the Prepetition Collateral, the proceeds of the foregoing, and the Carve Out may be used to investigate or pursue any Challenge as set forth in Paragraph 16.

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

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

32. Section 506(c) Claims. Subject to paragraph 39 of this Final Order, no costs or expenses of administration which have been or may be incurred in the Chapter 11 Cases at any time shall be charged against the DIP Lender or any of its claims, the DIP Collateral, or the DIP Superpriority Claim, or any claims or liens held by on behalf of the Prepetition Lender, pursuant to sections 105 or 506(c) of the Bankruptcy Code, or otherwise.

33. No Marshaling/Applications of Proceeds. The DIP Lender shall not be subject to the equitable doctrine of “marshaling” or any other similar doctrine with respect to any of the DIP Collateral, and proceeds shall be received and applied pursuant to this Final Order and the DIP Documents notwithstanding any other agreement or provision to the contrary.

34. Equities of the Case. Effective as of the Petition Date, in light of, among other things, the agreement of the DIP Lender and the Prepetition Secured Lender to allow the Debtors to use Cash Collateral on the terms set forth herein (i) the DIP Lender and the Prepetition Lender shall be entitled to the rights and benefits of section 552(b) of the Bankruptcy Code, if any, and (ii) the “equities of the case” exception under section 552(b) of the Bankruptcy Code shall not apply to such parties with respect to the proceeds, products, offspring or profits of any of the

Prepetition Collateral or the DIP Collateral, as applicable, *provided, however*, the Committee may seek an appropriate remedy in the event there is a successful Challenge under paragraph 16 of this Final Order and the Prepetition Lender and DIP Lender may oppose any such request.

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

36. Limits on Lender Liability. Nothing in this Final Order or in any of the DIP Documents or any other documents related thereto shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Lender, in such capacity, of any liability for any claims arising from any activities by the Debtors in the operation of their business or in connection

with the restructuring efforts and the administration of these Chapter 11 Cases. The DIP Lender, solely in its capacity as such, shall not be deemed in control of the operations of the Debtors or to be acting as a “responsible person” or “owner or operator” with respect to the operation or management of the Debtors as a result of or in connection with the Final Order or the DIP Documents by virtue of making the DIP Loans. Nothing in this Final Order or the DIP Documents shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Lender, in its capacity as such, of any liability for any claims arising from the prepetition or postpetition activities of any of the Debtors.

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

38. PACA Claims.

(i) Notwithstanding anything to the contrary herein or in the DIP Documents, nothing in this Final Order or the DIP Documents shall be construed to prime, subordinate, diminish or impair the rights of valid trust beneficiaries existing under the Perishable Agricultural Commodities Act, 7 U.S.C. § 499e (“PACA”), and nothing contained in this Final Order or the DIP Documents shall be construed to require that valid PACA trust beneficiaries must bring a Challenge in order to assert or preserve such rights. Notwithstanding anything to the contrary herein or in the DIP Documents, the DIP Collateral shall not include any assets subject to

a valid PACA trust to the extent of such PACA trust. In the event of a dispute over the validity, amount and/or extent of any asserted PACA claim, or the related rights of any party, then upon written request by any party in interest, the Court will order appropriate relief.

(ii) The DIP Facility shall include not less than \$310,000 of availability that shall not be used or drawn for any purpose except, in the event that substantially all assets of the Debtors are sold in the Debtors' pending sale process but as of the closing the buyer has not assumed or satisfied the valid PACA claims of Produce Alliance, LLC, then the Debtors are authorized and directed to draw on such additional availability to the extent necessary to pay all such valid PACA claims to Produce Alliance, LLC within 3 business days. The DIP Lender's obligation to fund such additional availability is independent of its obligations under any asset purchase agreement, and the DIP Lender shall be required to fund such amounts regardless of whether it is ultimately the buyer of the Debtors' assets.

39. Stub Rent Claims. For the avoidance of doubt, the DIP Budget is increased to include an additional amount sufficient to pay all obligations arising under unexpired leases of real property relating to the period from September 11, 2024 through September 30, 2024 that are not assumed and assigned to a buyer and paid as cure costs by either the sale closing or the expiration of any applicable designation rights period. The DIP Lender's obligation to fund the Stub Rent for locations that are not assumed and assigned is independent of its obligations under any Asset Purchase Agreement, and the DIP Lender shall be required to fund such amounts regardless of whether it is ultimately the buyer of the Debtors' assets, and the Debtors shall be authorized and directed to pay the Stub Rent to the landlords of any unexpired real property leases within three business days following the rejection of the applicable lease. Notwithstanding anything to the contrary herein, in the event the DIP Lender fails to fund the Stub Rent pursuant

to the DIP Budget, the Debtors or any other party with or granted standing shall retain the right to surcharge the DIP Lenders' collateral pursuant to Section 506(c) for the costs of any unpaid Stub Rent.

40. Taxes. Notwithstanding any other language in this Final Order, nothing in this Final Order shall prime or otherwise alter any valid and enforceable tax lien held by Broward County, Florida.

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

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

43. No Waiver by Failure to Seek Relief. The failure of the DIP Lender to seek relief or otherwise exercise their rights and remedies under this Final Order, the DIP Documents

or applicable law, as the case may be, shall not constitute a waiver of any of the rights hereunder, thereunder, or otherwise of the DIP Lender.

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

45. No Modification of Final Order. Until and unless the DIP Obligations have been indefeasibly paid in full in cash (such payment being without prejudice to any terms or provisions contained in the DIP Facility which survive such discharge by their terms), and all commitments to extend credit under the DIP Facility have been terminated, the Debtors irrevocably waive the right to seek and shall not seek or consent to, directly or indirectly: (a) without the prior written consent of the DIP Lender, (i) any modification, stay, vacatur or amendment to this Final 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), 506(c), 507(a) or 507(b) of the Bankruptcy Code) in any of the Chapter 11 Cases or Successor Cases, equal or superior in priority to the DIP Superpriority Claim, other than the Carve Out; (b) without the prior written consent of the DIP Lender, any lien on any of the DIP Collateral with priority equal or superior to the DIP Liens, except as specifically provided herein and in the other DIP Documents;

or (c) without the prior written consent of the DIP Lender, any modification, stay, vacatur or amendment to this Final Order affecting the rights, duties or obligations of the DIP Lender. It shall be an Event of Default if the Debtors seek any amendment, modification or extension of this Final Order without the prior written consent, as provided in the foregoing, and no such consent shall be implied by any other action, inaction or acquiescence of the DIP Lender.

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

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

48. Survival. The provisions of this Final Order and any actions taken pursuant hereto shall survive entry of any order which may be entered: (a) confirming any plan of reorganization in any of the Chapter 11 Cases; (b) converting any of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code; (c) dismissing any of the Chapter 11 Cases or any Successor Cases; or (d) pursuant to which this Court abstains from hearing any of the Chapter 11 Cases or Successor Cases. The terms and provisions of this Final Order, including the claims, liens, security interests, and other protections granted to the DIP Lender, shall continue in the Chapter 11 Cases, in any Successor Cases, or following dismissal of the Chapter 11 Cases or any Successor Cases, and shall maintain their priority as provided by this Final Order until all the DIP

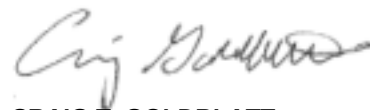
Obligations, pursuant to the DIP Documents and this Final Order, have been indefeasibly paid in full in cash and all commitments have been terminated. The terms and provisions concerning the indemnification of the DIP Lender, solely in its capacity as such, shall continue in the Chapter 11 Cases or any Successor Cases, following dismissal of the Chapter 11 Cases or any Successor Cases, and following termination of the DIP Documents or the indefeasible repayment of the DIP Obligations.

49. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Final Order are immediately effective and enforceable upon its entry.

50. The Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Final Order.

51. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation, interpretation, or enforcement of this Final Order.

Dated: October 17th, 2024
Wilmington, Delaware



CRAIG T. GOLDBLATT
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT 1

Budget

BFI + ACFP Combined Cash Flow Forecast
Actual + Budget Cash Transactions

October 15, 2024

Week Ending -->

	Actual	Actual	Actual	Actual	Actual	Fcst	Fcst	Fcst	Fcst	Fcst	Fcst	Fcst	Total
	Week1 09/13/24	Week2 09/20/24	Week3 09/27/24	Week4 10/04/24	Week5 10/11/24	Week6 10/18/24	Week7 10/25/24	Week8 11/01/24	Week9 11/08/24	Week10 11/15/24	Week11 11/22/24	Week12 11/29/24	
Cash Inflows													
Business Operations Inflows	1,049,452	2,623,751	2,651,047	2,595,496	2,541,410	2,697,855	2,735,381	2,637,113	2,278,182	0	0	0	21,809,689
Vendor Rebates				0	0	0	0	0	0	0	0	0	0
CASH INFLOWS	1,049,452	2,623,751	2,651,047	2,595,496	2,541,410	2,697,855	2,735,381	2,637,113	2,278,182	0	0	0	21,809,689
Operating Disbursements													
Personnel Costs	-3,120	2,262,255	104,530	1,961,284	194,776	2,213,568	828,778	2,091,991	86,503	0	0	0	9,740,564
Employee Tip Funding	0	125,000	125,000	150,000	150,000	150,000	150,000	150,000	150,000	0	0	0	1,150,000
Food & Beverage	-485	61,235	75,293	57,813	439,450	727,525	727,525	778,452	800,278	0	0	0	3,667,085
Restaurant Supplies	0	7,781	9,472	20,000	42,013	64,400	80,000	60,125	71,918	0	0	0	355,709
Facility Rent	0	593	0	1,138,018	18,985	0	0	0	1,158,182	0	0	0	2,315,778
Utilities	0	895	361	52,067	1,800	51,328	92,391	97,524	102,657	0	0	0	399,024
Repair, Maintenance & Capex	1,258	5,951	6,031	23,728	11,294	75,000	90,000	75,000	90,000	0	0	0	378,262
Equipment Lease	0	0	0	20,930	42,009	0	0	0	0	0	0	0	62,939
Purchased Services	-1,490	8,517	55,257	36,692	133,538	175,000	150,000	175,000	150,000	0	0	0	882,515
Marketing	0	0	3,794	95,688	9,456	80,322	94,865	51,312	15,616	0	0	0	351,052
Office Supplies	0	0	0	0	0	0	0	0	0	0	0	0	0
Insurance, Taxes & Fees	192	1,737,147	19,799	228,573	21,842	801,102	0	41,200	227,223	0	0	0	3,077,079
Insurance Refund	0	0	0	0	0	0	0	0	0	0	0	0	0
Other	182	93	-102	12,547	11,423	14,478	11,845	13,819	12,503	0	0	0	76,788
Pre-Petition Offset	-137,233	-99,376	962	-143	-3,032	0	0	0	0	0	0	0	-238,823
OPERATING DISBURSEMENTS	-140,697	4,110,091	400,399	3,797,197	1,073,554	4,352,722	2,225,404	3,534,423	2,864,879	0	0	0	22,217,972
Operating Cash Flow	1,190,150	-1,486,339	2,250,649	-1,201,701	1,467,856	-1,654,867	509,977	-897,311	-586,697	0	0	0	-408,283
Professional Fees													
Debtors' Professionals													
Raines Feldman Littrell LLP	0	250,000	125,000	125,000	125,000	125,000	125,000	125,000	125,000	125,000	125,000	125,000	1,500,000
Force 10 Partners LLC	0	200,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	1,200,000
Investment Banker (Kroll)	0	0	0	0	0	0	0	0	0	0	0	0	0
Culhane (Trew Counsel)	0	0	0	0	95,000	0	0	60,000	0	0	0	0	155,000
Noticing Agent (Stretto)	0	50,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	300,000
Committee													
Committee Professionals	0	0	0	27,778	27,778	113,400	113,400	113,400	113,400	113,400	113,400	114,044	850,000
PROFESSIONAL FEES	0	500,000	250,000	277,778	372,778	363,400	363,400	423,400	363,400	363,400	363,400	364,044	4,005,000
Restructuring													
503(b)(9) Payments / Adequate Assurance	0	126,817	347,944	238,534	62,350	24,219	1,462,404	0	0	0	0	0	2,262,268
PACA Provision	0	0	0	0	0	0	0	0	0	310,000	0	0	310,000
Post-Petition September Rent Provision	0	0	0	0	0	0	0	0	0	756,501	0	0	756,501
Board of Directors	0	0	0	15,100	15,000	0	0	30,000	0	0	0	30,000	90,100
Utility Deposits	0	0	0	4,276	0	105,000	49,251	0	0	0	0	0	158,527
US Trustee Fees	0	0	0	0	0	0	73,506	0	0	0	0	222,985	296,491
RESTRUCTURING	0	126,817	347,944	257,910	77,350	129,219	1,585,161	30,000	0	1,066,501	0	252,985	3,873,887
TOTAL DISBURSEMENTS	-140,697	\$4,736,907	\$998,343	\$4,332,884	\$1,523,682	\$4,845,342	\$4,173,965	\$3,987,823	\$3,228,279	\$14,29,901	\$363,400	\$617,029	\$30,096,859
Financing													
Projected DIP Draws	0	3,500,000	0	0	0	1,680,000	500,000	0	0	1,066,501	0	0	6,746,501
Cumulative DIP Financing	0	3,500,000	3,500,000	3,500,000	3,500,000	5,180,000	5,680,000	5,680,000	5,680,000	6,746,501	6,746,501	6,746,501	6,746,501
Cash													
Beginning Cash	1,558,997	2,749,147	4,135,991	5,788,696	4,051,308	5,069,035	4,601,549	3,662,965	2,312,254	1,362,157	998,757	635,357	1,558,997
Ending Cash	2,749,147	4,135,991	5,788,696	4,051,308	5,069,035	4,601,549	3,662,965	2,312,254	1,362,157	998,757	635,357	18,328	18,328

NOTE:

Timing & amount of insurance refund is uncertain; ratable refund estimate is \$672k

Provision for PACA and Provision for post-petition September rent are estimates and additional draws up to these amounts are contemplated if the relevant underlying obligations are not assumed