IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	Chapter 11
BURGESS BIOPOWER, LLC, *et al.*[1]	Case No. 24-10235 (LSS)
Debtors.	(Jointly Administered)

FINAL ORDER (I) AUTHORIZING THE DEBTORS TO OBTAIN POSTPETITION FINANCING, (II) AUTHORIZING THE DEBTORS TO USE CASH COLLATERAL, (III) GRANTING LIENS AND PROVIDING SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS, (IV) GRANTING ADEQUATE PROTECTION TO THE PREPETITION SECURED PARTIES, (V) MODIFYING THE AUTOMATIC STAY, AND (VI) GRANTING RELATED RELIEF

The Court has considered the *Motion of the Debtors for Entry of Interim and Final Orders (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Authorizing the Debtors to Use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection to the Prepetition Secured Parties, (V) Modifying the Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief* (the "DIP Motion")[2] of Burgess BioPower, LLC ("Burgess") and Berlin Station, LLC ("Berlin" or the "Borrower"), 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 interim order (the "Interim DIP Order") and a final order (this "Final DIP Order," and together with the Interim DIP Order, the "DIP Orders") pursuant to sections 105, 361, 362, 363, 364(c)(l), 364(c)(2),

[1] The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor's federal tax identification number are: Burges BioPower, LLC (0971) and Berlin Station, LLC (1913). The Debtors' corporate headquarters are located at c/o CS Operations, Inc., 631 US Hwy 1, #300, North Palm Beach, FL 33408.

[2] Capitalized terms used herein but not otherwise defined have the meanings ascribed to such terms in the Interim DIP Order, the DIP Motion, the DIP Credit Agreement, or the Prepetition Senior Secured NPA, each as defined herein, as applicable.

364(c)(3), 364(d), 364(e), 506, 507, and 552 of chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the "Bankruptcy Code"), Rules 2002, 4001, 6003, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), Rules 2002-1 and 4001-2 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), *inter alia*:

(i) authorizing the Debtors to obtain senior secured postpetition financing on a superpriority basis consisting of a senior secured superpriority debtor-in-possession priming credit facility (the "DIP Facility") in the aggregate principal amount of up to $54 million (the "DIP Facility") consisting of: (a) a new money delayed-draw term loan facility in the aggregate principal amount of up to $18 million including (i) up to $4.4 million available to the Borrower on an interim basis (the "Interim DIP Term Loan") and (ii) up to $18 million (inclusive of all amounts funded by the DIP Lenders on account of the Interim DIP Term Loan), on a final basis (the "Final DIP Term Loans," and together with the Interim DIP Term Loan, the "DIP Term Loans"), and (b) roll-up loans to refinance on a pro rata basis across the holdings of the Prepetition Obligations (as defined below) of the Prepetition Noteholders (as defined below) who choose to participate in the DIP Facility as lenders (in each case, including any successors and permitted assignees, each, a "DIP Lender" and, collectively, the "DIP Lenders"), (x) upon entry of the Interim DIP Order, on a 2:1 ratio times the principal amount of the committed Interim DIP Term Loans (the "Interim Roll-Up Loans") and (y) upon entry of this Final DIP Order, on a 2:1 ratio times the committed principal amount of the Final DIP Term Loans on a final basis (the "Final Roll-Up Loans" and, together with the Interim Roll-Up Loans, the "Roll-Up Loans;" and the DIP Term Loans, together with the Roll-Up Loans, collectively, the "DIP Loans"), pursuant to that certain *Senior Secured Superpriority Debtor-In-Possession Credit Agreement* (the "DIP Credit Agreement"), substantially in the form attached as Exhibit C to the DIP Motion, by and among the Borrower, UMB Bank, National Association ("UMB Bank" in its capacities as the Administrative Agent and Collateral Agent (in such capacities, collectively, the "DIP Agent")), and the Prepetition Noteholders (as defined below) who participate in the DIP Facility as lenders (in each case, including any successors and permitted assignees, each, a "DIP Lender" and, collectively, the "DIP Lenders" and together with the DIP Agent, the "DIP Secured Parties");

(ii) authorizing the Debtors, as applicable, to execute and deliver the DIP Credit Agreement and each of the other agreements, documents, notes and instruments as shall be required by the DIP Secured Parties to be entered into in connection with the DIP Credit Agreement, each in form and substance acceptable to the DIP Secured Parties (collectively, and as the same may be amended or otherwise modified from time to time, the "DIP Loan Documents," and together with the DIP Orders and any other agreements, instruments, pledge agreements, guarantees, control agreements and other loan documents and documents related thereto

(including any security agreements, mortgages, intellectual property security agreements, control agreements, or notes) (as amended, restated, supplemented, waived, and/or modified from time to time, and collectively, with the DIP Credit Agreement, the ("DIP Documents"))) and to perform such other acts as may be necessary or desirable in connection with the DIP Documents;

(iii) granting the DIP Facility and all obligations owing thereunder and under, or secured by, the DIP Documents to the DIP Secured Parties (collectively, including all obligations described in the DIP Documents, the "DIP Obligations") allowed superpriority administrative expense claim status in each of the Chapter 11 Cases and any Successor Cases (as defined herein);

(iv) granting to the DIP Agent, for the benefit of itself and the DIP Lenders under the DIP Documents, automatically perfected security interests in and liens on all of the DIP Collateral (as defined herein), including, without limitation, all property of the Debtors constituting "Cash Collateral" as defined in section 363(a) of the Bankruptcy Code ("Cash Collateral"), which liens shall be subject to the priorities set forth herein;

(v) authorizing and directing the Debtors to pay the principal, interest, fees, expenses and other amounts payable under the DIP Documents as such become due and payable, including, without limitation, letter of credit fees (including issuance and other related charges), DIP Agent's fees, the reasonable fees and disbursements of the DIP Lenders' and the DIP Agent's attorneys, advisors, accountants and other consultants, all to the extent provided in, and in accordance with, the DIP Documents and DIP Orders;

(vi) authorizing the Debtors to use, on the terms described herein, the Prepetition Collateral (as defined herein), including the Cash Collateral of the Prepetition Secured Parties under the Prepetition Senior Secured Note Documents (each as defined herein);

(vii) providing adequate protection to the Prepetition Agent (as defined below), for the benefit of itself and the Prepetition Noteholders, for any diminution in value of their interests in the Prepetition Collateral, including Cash Collateral, for any reason provided for under the Bankruptcy Code, including the imposition of the automatic stay, the Debtors' use, sale, or lease of the Prepetition Collateral, including Cash Collateral, and the priming of their respective interests in the Prepetition Collateral (including by the Carve-Out (as defined herein)) pursuant to the terms and conditions set forth herein ("Diminution in Value");

(viii) vacating and 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 DIP Order; and

(ix) deeming a portion of the Prepetition Senior Notes (as defined below) to be Roll-Up Loans issued and outstanding under the DIP Documents and all obligations in

connection with such Rolled-up Notes to constitute DIP Obligations for all purposes thereof.

The Court having considered the DIP Motion, the exhibits attached thereto, the Vomero Declaration, the Victor Declaration, the DIP Documents, and the evidence submitted and arguments made at the hearings held on February 13, 2024 (the "February 13th Hearing"), February 21, 2024 (the "February 21st Hearing") and all subsequent hearings considering the interim relief sought in the DIP Motion (collectively, the "Interim Hearings") and the final hearing held on March 13, 2024 (the "Final Hearing"); and the Court having entered the Interim DIP Order [Docket No. 200]; and notice of the Final Hearing having been given in accordance with Bankruptcy Rules 2002, 4001(b), (c) and (d), and all applicable Local Rules and the Interim DIP Order; and the Interim Hearings 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 necessary for the Debtors and their estates, and otherwise 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 maximization of the value of the Debtors' assets; and it appearing that the Debtors' entry into the DIP Documents, including 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 INTERIM HEARINGS AND FINAL HEARING, THE COURT MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:[3]

[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

A. **Petition Date**. February 9, 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. § 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012. 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. This is a core proceeding pursuant to 28 U.S.C. § 157(b). The predicates for the relief set forth herein are sections 105, 361, 362, 363, 364(c)(l), 364(c)(2), 364(c)(3), 364(d), 364(e), 506, 507, and 552 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001, 6003, 6004, and 9014 and Local Rules 2002-1 and 4001-2.

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

E. **Notice**. Notice of the DIP Motion and the Final Hearing have been provided in accordance with the Bankruptcy Code, the Bankruptcy Rules and the Local Rules, and no other or

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.

further notice of the DIP Motion with respect to the relief requested at the Final Hearing or the entry of this Final DIP Order shall be required.

F. **Debtors' Stipulations**. After consultation with their attorneys and financial advisors, and without prejudice to the rights of parties in interest as set forth in Paragraph 42 herein, the Debtors, on their behalf and on behalf of their estates, admit, stipulate, acknowledge, and agree as follows (Paragraphs F(i)through F(viii) below are referred to herein, collectively, as the "Debtors' Stipulations"):

(i) *Prepetition Senior Notes*. Pursuant to that certain (a) *Note Purchase Agreement* dated as of September 2, 2011 (as amended, restated, supplemented, or otherwise modified from time to time, the "Prepetition Senior Secured NPA"),[4] by and among the Borrower and the various financial institutions from time to time party thereto, as purchasers (collectively, the "Prepetition Noteholders") and (b) *Collateral Agency, Subordination, and Intercreditor Agreement*, dated as of September 2, 2011, as amended by that certain *Amended and Restated Collateral Agency, Subordination and Intercreditor Agreement*, dated as of October 25, 2012, the "Prepetition Collateral Agency Agreement"), by and among the Borrower, the Prepetition Noteholders, Deutsche Bank Trust Company Americas ("DBTCA"), in its capacity as collateral agent for the Prepetition Noteholders and the Subordinated Lenders (as defined herein) and as Depositary under or in connection with the Prepetition Senior Secured NPA (in such capacities and in its capacity as a party to any other Prepetition Senior Secured Notes Documents (as defined below), collectively, including its successors and assigns, the "Prepetition Agent," and together with the Prepetition Noteholders, the "Prepetition Secured Parties"), the Prepetition Secured Parties provided for the issuance by Berlin of the Prepetition Senior Notes (as defined below) and other financial accommodations to the Prepetition Secured Parties (the "Prepetition Financing").

(ii) *Facility Lease.* Pursuant to that certain *Lease* dated as of September 2, 2011 (as amended, restated, supplemented, or otherwise modified from time to time, the "Facility Lease," and collectively with the Prepetition Senior Secured NPA, the Prepetition Collateral Agency Agreement, the Prepetition Security Documents (as defined below), the other Financing Documents (as defined in the Prepetition Senior Secured NPA) and any other agreements and documents executed or

[4] The Prepetition Senior Secured NPA has been amended on six (6) separate occasions by (a) that certain Consent and Amendment dated as of October 25, 2012; (b) that certain Amendment No. 2 to the Note Purchase Agreement dated as of March 30, 2015; (c) that certain Amendment No. 1 to Amended and Restated Depositary and Security Agreement dated as of March 30, 2015; (d) that certain Amendment No. 1 to Depositary and Security Agreement dated March 30, 2015; (e) that certain Waiver, Consent and Amendment dated April 11, 2016; and (f) that certain Waiver, Consent and Amendment dated March 17, 2017.

delivered in connection with any of the foregoing, each as may be amended, restated, supplemented, waived or otherwise modified from time to time, the "Prepetition Senior Secured Note Documents"), among Berlin, as lessor, and Burgess, as lessee, Berlin leased to Burgess the Premises (as defined in the Facility Lease). All obligations of Burgess arising under the Facility Lease shall collectively be referred to herein as the "Facility Lease Obligations."

(iii) *Prepetition Obligations*. The Prepetition Financing provided Berlin with, among other things, up to $200 million in aggregate principal amount of Notes comprised of (a) 7.00% Series A Senior Secured Fixed Rate Notes in the initial aggregate principal amount of $57,000,000 (the "Series A Fixed Rate Notes"), (b) 7.50% Series B Senior Secured Fixed Rate Notes in the initial aggregate principal amount of $93,000,000 (the "Series B Fixed Rate Notes"), and (c) Senior Secured Floating Rate Notes in the aggregate principal amount of $50,000,000 (the "Floating Rate Notes" and, together with the Series A Fixed Rate Notes and the Series B Fixed Rate Notes, the "Prepetition Senior Notes"). As of the Petition Date, the aggregate principal amount outstanding on the Prepetition Financing was not less than approximately $115 million[5] (collectively, together with accrued and unpaid interest, outstanding letters of credit, any reimbursement obligations (contingent or otherwise) in respect of letters of credit, any fees, expenses and disbursements (including, without limitation, attorneys' fees, accountants' fees, auditor fees, appraisers' fees and financial advisors' fees, and related expenses and disbursements), treasury, cash management, bank product and derivative obligations, indemnification obligations, guarantee obligations, and other charges, amounts and costs of whatever nature owing, whether or not contingent, whenever arising, accrued, accruing, due, owing, or chargeable in respect of any of the Debtors' obligations pursuant to, or secured by, the Prepetition Senior Secured Note Documents and all interest, fees, prepayment premiums, costs and other charges allowable under section 506(b) of the Bankruptcy Code, collectively, the "Prepetition Obligations").

(iv) *Prepetition Liens and Prepetition Collateral*. Pursuant to the:

(a) *First Mortgage with Assignment of Leases, Contracts and Rents, and Fixture Filing*, dated as of September 2, 2011 ("First Mortgage"), Berlin granted to the Prepetition Agent, for itself and for the benefit of the Prepetition Secured Parties, to secure the Prepetition Obligations, a continuing first-priority mortgage lien and security interest in on all real property and fixtures located at the Premises and an assignment of leases and rents pursuant to which Berlin absolutely assigned all rents, income and

[5] Such amount does not include all secured obligations under the Prepetition Senior Notes, including, without limitation, costs, expenses, fees (including attorneys' fees), indemnities, reimbursement obligations and other charges and obligations that may be due and payable under the Prepetition Senior Secured Note Documents.

profits from the Premises to the Prepetition Agent (collectively, as defined under the First Mortgage, the "Property");

(b) *Security Agreement*, dated as of September 2, 2011 (as amended, restated, supplemented, or otherwise modified from time to time, the "Berlin Security Agreement"),[6] Berlin granted to the Prepetition Agent, for the benefit of itself in its capacity as a Depository under the Berlin Depository and Security Agreement and Burgess Depository and Security Agreement (each term as defined below) and the Prepetition Secured Parties, to secure the Prepetition Obligations, a continuing first-priority lien and security interest in substantially all of the property and assets of Berlin, and the proceeds thereof, whether now owned or existing or hereafter acquired or arising, regardless of where located, other than the Excluded Collateral (as defined in the Berlin Security Agreement), (collectively, the "Berlin Collateral");

(c) *Security Agreement*, dated as of September 2, 2011 (as amended, restated, supplemented, or otherwise modified from time to time, the "Burgess Security Agreement"), Burgess granted to Berlin, to secure the Facility Lease Obligations, a continuing first-priority lien and security interest in substantially all of the property and assets of Burgess, and the proceeds thereof, whether now owned or existing or hereafter acquired or arising, regardless of where located, other than the Excluded Collateral (as defined in the Burgess Security Agreement), (collectively, the "Burgess Collateral");

(d) *Depository and Security Agreement*, dated as of September 2, 2011 (as amended, restated, supplemented, or otherwise modified from time to time, the "Berlin Depository and Security Agreement"), Berlin granted to the Prepetition Agent, for the benefit of itself as Depository and the Prepetition Secured Parties, to secure the Prepetition Obligations, a continuing first-priority lien and security interest in, among other things, certain accounts of Berlin and any cash balances, securities and other investment property, supporting property and other property from time to time credited to such accounts and any and all proceeds thereof (collectively, the "Berlin Account Collateral");

(e) *Depository and Security Agreement*, dated as of September 2, 2011 (as amended, restated, supplemented, or otherwise modified from time to time, the "Burgess Depository and Security Agreement"),[7] Burgess granted to the

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[6] The Berlin Security Agreement was amended by that certain Amended and Restated Security Agreement dated as of October 25, 2012.

[7] The Burgess Depositary and Security Agreement has been amended by that certain Consent, Amendment No. 2 to Note Purchase Agreement, Amendment No. 1 to Amended and Restated Depositary and Security Agreement and Amendment No. 1 to Depositary and Security Agreement, dated March 30, 2015.

Prepetition Agent, for the benefit of itself as Depository and the Prepetition Secured Parties, to secure the Facility Lease Obligations, a continuing first-priority lien and security interest in, among other things, certain accounts of Burgess and any cash balances, securities and other investment property, supporting property and other property from time to time credited to such accounts and any and all proceeds thereof (collectively, the "Burgess Account Collateral");

(f) *Pledge and Security Agreement*, dated as of September 2, 2011 (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time, the "Berlin Pledge Agreement"), BBP #1, LLC and BBP #2, LLC pledged to the Prepetition Agent, for its benefit as Depository under the Berlin Depository and Security Agreement and the Burgess Depository and Security Agreement and the benefit of the Prepetition Noteholders, to secure the Prepetition Obligations, a continuing first-priority lien and security interest in all of the Pledged Collateral (as defined in the Berlin Pledge Agreement), which includes, among other things, 100% of all shares in Berlin (collectively, the "Berlin Pledged Collateral"); and

(g) *Pledge and Security Agreement*, dated as of September 2, 2011 (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time, the "Burgess Pledge Agreement" and together with the First Mortgage, the Berlin Security Agreement, the Burgess Security Agreement, Berlin Depository and Security Agreement, the Burgess Depository and Security Agreement, the Berlin Pledge Agreement, the Burgess Pledge Agreement and any other security agreement or document executed or delivered in connection therewith or in connection with the Prepetition Senior Notes, collectively, the "Prepetition Security Documents"), Burgess Holding, LLC pledged to the Prepetition Agent, for its benefit as Depository under the Berlin Depository and Security Agreement and the Burgess Depository and Security Agreement and the benefit of the Prepetition Noteholders, to secure the Prepetition Obligations, a continuing first-priority lien and security interest in all of the Pledged Collateral (as defined in the Burgess Pledge Agreement), which includes, among other things, 100% of all shares in Burgess (collectively, the "Burgess Pledged Collateral").

All security interests and liens granted under and pursuant to the Prepetition Security Documents shall collectively be referred to herein as the "Prepetition Liens."

All Property (as defined in the First Mortgage), Berlin Collateral, Burgess Collateral, Berlin Account Collateral, Burgess Account Collateral, Berlin Pledged Collateral, Burgess Pledged Collateral and any other collateral granted, assigned or pledged under the Prepetition Security Documents shall collectively be referred to herein as the "Prepetition Collateral."

Pursuant to the Prepetition Collateral Agency Agreement, certain Subordinated Lenders (collectively, as defined therein, the "Subordinated Lenders") agreed that, among other things, their liens and claims against the Prepetition Collateral are junior to the Prepetition Liens and claims of the Prepetition Secured Parties.

(v) *Validity, Perfection, and Priority of Prepetition Liens and Prepetition Obligations.* The Debtors acknowledge and agree that (a) the Prepetition Liens on the Prepetition Collateral are valid, binding, enforceable, non-avoidable, and properly perfected and were granted to, or for the benefit of, the Prepetition Secured Parties for fair consideration and reasonably equivalent value; (b) the Prepetition Liens are senior in priority over any and all other liens on the Prepetition Collateral, subject only to certain liens senior by operation of law (solely to the extent such liens were valid, non-avoidable, and senior in priority to the Prepetition Liens as of the Petition Date and properly perfected prior to the Petition Date or perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code) or otherwise permitted by the Prepetition Senior Secured Note Documents (collectively, the "Permitted Prior Liens"), if any; (c) the Prepetition Obligations constitute legal, valid, binding, and non-avoidable obligations of the Debtors enforceable in accordance with the terms of the applicable Prepetition Senior Secured Note Documents; (d) no offsets, recoupments, challenges, objections, defenses, claims, or counterclaims of any kind or nature to any of the Prepetition Liens or Prepetition Obligations exist, and no portion of the Prepetition Liens or Prepetition Obligations is subject to any challenge or defense including, without limitation, avoidance, disallowance, disgorgement, recharacterization, or subordination (equitable or otherwise) pursuant to the Bankruptcy Code or any other applicable law; (e) the Debtors and their estates have no claims, objections, challenges, causes of action, and/or choses in action, including, without limitation, avoidance claims under Chapter 5 of the Bankruptcy Code or applicable state law equivalents or actions for recovery or disgorgement, against any of the Prepetition Secured Parties or any of their respective affiliates, agents, attorneys, advisors, professionals, officers, directors, and employees arising out of, based upon or related to the Prepetition Financing; and (f) the Debtors waive, discharge, and release any right to challenge any of the Prepetition Obligations, the priority of the Debtors' obligations thereunder, and the validity, extent, and priority of the Prepetition Liens.

(vi) *Release*. The Debtors hereby stipulate and agree that they forever and irrevocably release, discharge, and acquit the DIP Secured Parties, the Prepetition Secured Parties, and each of their respective successors, assigns, affiliates, subsidiaries, parents, officers, shareholders, directors, employees, attorneys and agents, past, present and future, and their respective heirs, predecessors, successors and assigns (collectively, the "Releasees") of and from any and all claims, controversies, disputes, liabilities, obligations, demands, damages, expenses (including reasonable attorneys' fees), debts, liens, actions and causes of action of any and every nature whatsoever relating to, as applicable, the DIP Orders, the DIP Facility, the DIP Documents, the Prepetition Financing, the Prepetition Senior Secured Note Documents, and/or the transactions contemplated hereunder or thereunder occurring prior to entry of this Final DIP Order, including (x) any so-called "lender

liability" or equitable subordination or recharacterization claims or defenses, (y) any and all claims and causes of action arising under the Bankruptcy Code, and (z) any and all claims and causes of action with respect to the validity, priority, perfection or avoidability of the liens or claims of the DIP Secured Parties and the Prepetition Secured Parties. The Debtors further waive and release any defense, right of counterclaim, right of set-off or deduction to the payment of the Prepetition Obligations and the DIP Obligations which the Debtors may now have or may claim to have against the Releasees, arising out of, connected with or relating to any and all acts, omissions or events occurring prior to this Court entering this Final DIP Order.

(vii) *Default by the Debtors.* The Debtors acknowledge and stipulate that Events of Default have occurred and are continuing under the Prepetition Senior Secured Note Documents as a result of, among other things, defaults occurring prior to the Petition Date in addition to the filing of the Chapter 11 Cases, and that the Debtors have been and are in default of their obligations under the Prepetition Senior Secured Note Documents. As of the Petition Date, interest is accruing on the Prepetition Obligations at the default rate in accordance with the provisions of the Prepetition Senior Secured Note Documents, subject to any limitations imposed by the Bankruptcy Code.

(viii) *Cash Collateral*. All of the Debtors' cash and cash equivalents, including any cash in deposit accounts of the Debtors, wherever located, constitutes Cash Collateral of the Prepetition Secured Parties.

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

H. **Continuation of Prepetition Liens**. In light of the integrated nature of the DIP Facility, the DIP Documents, and the Prepetition Senior Secured Note Documents, the Prepetition Liens, and the DIP Liens (as defined below) that prime certain of the Prepetition Liens, are continuing liens, and the DIP Collateral is and will continue to be encumbered by such liens.

I. **Findings Regarding Corporate Authority**. Each Debtor has all requisite corporate power and authority to execute and deliver the DIP Documents to which it is a party and to perform its obligations thereunder.

J. **Findings Regarding Postpetition Financing**

(i) *Request for Postpetition Financing*. The Debtors seek authority on a final basis to (a) continue borrowing under the DIP Facility on the terms described herein and in the DIP Documents and (b) continue to use Cash Collateral on the terms described herein to administer the Chapter 11 Cases and fund their operations.

(ii) *Priming of the Prepetition Liens*. The priming of the Prepetition Liens on the Prepetition Collateral under section 364(d) of the Bankruptcy Code, as contemplated by the DIP Facility and as further described below, will enable the Debtors to obtain the DIP Facility and to continue to operate their businesses to the benefit of their estates and creditors. The Prepetition Agent, for the benefit of itself and the other Prepetition Secured Parties, is entitled to receive adequate protection as set forth in the DIP Orders pursuant to sections 361, 363, and 364 of the Bankruptcy Code, for any Diminution in Value of each of the Prepetition Secured Parties' respective interests in the Prepetition Collateral (including Cash Collateral).

(iii) *Need for Postpetition Financing and Use of Cash Collateral*. The Debtors have a continuing critical need to use Cash Collateral and to continue to obtain credit pursuant to the DIP Facility in order to, among other things, enable the orderly continuation of their operations and to administer and preserve the value of their estates. The ability of the Debtors to maintain business relationships with their vendors, contractors, suppliers, and customers, to sell power into the market, and otherwise to finance their operations requires the availability of working capital from the DIP Facility and the use of Cash Collateral, the absence of either of which would

immediately and irreparably harm the Debtors, their estates, and parties in interest. The Debtors do not have sufficient available sources of working capital and 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.

(iv) *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 Lenders on terms more favorable than the DIP Facility. The Debtors are unable to obtain unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense. The Debtors have also been unable to obtain: (a) unsecured credit solely having priority over that of administrative expenses of the kind specified in sections 503(b), 507(a), and 507(b) of the Bankruptcy Code; (b) credit secured solely by a lien on property of the Debtors and their estates that is not otherwise subject to a lien; or (c) credit secured solely by a junior lien on property of the Debtors and their estates that is subject to a lien. Financing on a postpetition basis on better terms is not otherwise available without granting the DIP Agent, for the benefit of themselves and the other DIP Secured Parties: (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 herein; (2) superpriority claims and liens; and (3) the other protections set forth in the DIP Orders.

(v) *Use of Proceeds of the DIP Facility*. As a condition to entry into the DIP Credit Agreement and other DIP Documents, the extension of credit under the DIP Facility and the authorization to use Cash Collateral, the DIP Secured Parties and the Prepetition Secured Parties require, and the Debtors have agreed, that proceeds of the DIP Facility and the Cash

Collateral shall be used, in each case in a manner consistent with the terms and conditions of this Final DIP Order, the DIP Credit Agreement, and the other DIP Documents and in accordance with the budget (as the same may be modified from time to time consistent with the terms of this Final DIP Order and the DIP Documents and subject to such variances and other exclusions as permitted in this Final DIP Order and the DIP Credit Agreement, the "Budget").[8]

(vi) *Application of Proceeds of Collateral*. As a condition to entry into the DIP Credit Agreement, the continued extension of credit under the DIP Facility, and authorization to use Cash Collateral, the Debtors, the DIP Secured Parties, and the Prepetition Secured Parties have agreed that the Debtors shall apply the proceeds of DIP Collateral in accordance with this Final DIP Order and the Budget.

(vii) *Refinancing of Certain Prepetition Obligations.* Consistent with the terms of the Interim DIP Order, concurrently with the Debtors' incurrence of the Interim DIP Term Loan and the Interim Roll-Up Loans, the Debtors used the Interim Roll-Up Loan to refinance, on a two-to-one ratio times the committed principal amount of the Interim DIP Term Loan, the Prepetition Obligations held by the Prepetition Secured Parties. Concurrently with the Debtors' incurrence of the Final DIP Term Loans and the Final Roll-Up Loans, the Debtors shall use the Final Roll-Up Loans to refinance, on a two-to-one ratio times the committed principal amount of the Final DIP Term Loan, the Prepetition Obligations held by the Prepetition Secured Parties on a final basis. Notwithstanding anything to the contrary in the DIP Orders, all Prepetition Obligations and Roll-Up Loans are subject to Challenge (as defined below) of parties in interest to the extent set forth in Paragraph 42 of this Final DIP Order.

K. **Adequate Protection**. Until such time as the Prepetition Obligations are Paid in

[8] A copy of the current Budget is attached to the Interim DIP Order as **Exhibit 1**.

Full,[9] the Prepetition Agent, for the benefit of itself and the other Prepetition Secured Parties, is entitled to receive adequate protection solely to the extent of any Diminution in Value of its respective interests in the Prepetition Collateral as set forth in this Final DIP Order.

L. **Sections 506(c) and 552(b).** In light of: (i) the DIP Secured Parties' agreement that their liens and superpriority claims shall be subject to the Carve-Out; (ii) the Prepetition Secured Parties' agreement that their liens shall be subject to the Carve-Out and subordinate to the DIP Liens; and (iii) the payment of prepetition claims and/or expenses as set forth in the Budget and first day motions in accordance with and subject to the terms and conditions of this Final DIP Order and the DIP Documents, (a) the Prepetition Secured Parties are each entitled to a waiver of any "equities of the case" exception under section 552(b) of the Bankruptcy Code, and (b) the DIP Secured Parties and the Prepetition Secured Parties are each entitled to a waiver of the provisions of section 506(c) of the Bankruptcy Code.

M. **Good Faith of the DIP Agent and DIP Lenders**.

(i) *Willingness to Provide Financing*. The DIP Lenders have indicated a willingness to provide financing to the Debtors subject to: (a) entry of the DIP Orders; (b) approval of the terms and conditions of the DIP Facility and the DIP Documents; (c) satisfaction of the

[9] "Paid in Full" means the indefeasible repayment in full in cash of all obligations (including principal, interest, fees, prepayment premiums, expenses, indemnities, other than contingent indemnification obligations for which no claim has been asserted) under the applicable credit documents, the cash collateralization or repayment in full in cash of all treasury and cash management obligations, hedging obligations, and bank product obligations, and the cancelation, replacement, backing, or cash collateralization of letters of credit, in each case, in accordance with the terms of the applicable credit documents. No facility or loan shall be deemed to have been Paid in Full until such time as, with respect to the applicable facility, (a) the commitments to lend thereunder have been terminated, (b) with respect to the Challenge Deadline (i) the Challenge Deadline (as defined in Paragraph 42 of this Final DIP Order) shall have occurred without the timely and proper commencement of a Challenge or (ii) if a Challenge is timely and properly asserted prior to the Challenge Deadline, upon the final, non-appealable disposition of such Challenge; and (c) with respect to the Prepetition Obligations and DIP Obligations, as applicable, the Prepetition Agent and other Prepetition Secured Parties, or DIP Lenders, as applicable, have received (i) a countersigned payoff letter in form and substance satisfactory to such party and (ii) releases in form and substance satisfactory to such party, each in its sole discretion.

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 Secured Parties are extending credit to the Debtors pursuant to the DIP Documents in good faith, and that the DIP Secured Parties' claims, superpriority claims, security interests, and liens and other protections and releases granted pursuant to the DIP Orders and the DIP Documents will have the protections provided by section 364(e) of the Bankruptcy Code.

(ii) *Business Judgment and Good Faith Pursuant to Section 364(e) of the Bankruptcy Code*. The terms and conditions of the DIP Facility and the DIP Documents, and the fees paid and to be paid thereunder, are fair, reasonable, and the best available to the Debtors under the circumstances, are ordinary and 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 terms and conditions of the DIP Facility and the use of Cash Collateral were negotiated in good faith and at arms' length among the Debtors, the DIP Secured Parties, and the Prepetition Secured Parties, with the assistance and counsel of their respective advisors. Use of Cash Collateral and 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 Secured Parties and the Prepetition Secured Parties within the meaning of section 364(e) of the Bankruptcy Code.

Based upon the foregoing findings and conclusions, the DIP Motion, the Vomero Declaration, the Victor Declaration, 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. DIP Financing Approved. The DIP Motion is granted as set forth herein. The DIP Facility and Roll-Up Loans are authorized and approved and the use of Cash Collateral basis is authorized, in each case on a final basis, subject to the terms and conditions set forth in the DIP Documents, the Budget and this Final DIP Order. Any objections to this Final DIP Order to the extent not withdrawn, waived, settled, or resolved are hereby denied and overruled.

DIP Facility Authorization

2. Authorization of the DIP Facility. The Debtors are expressly and immediately authorized and empowered to execute and deliver the DIP Documents and to incur and to perform the DIP Obligations in accordance with, and subject to, the terms of this Final DIP Order and the DIP Documents, and to deliver all instruments, certificates, agreements, and documents that may be required, necessary or advisable for the performance by the Debtors under the DIP Facility and the creation and perfection of the DIP Liens (as defined herein) described in and provided for by this Final DIP Order and the DIP Documents. The Debtors are hereby authorized and directed to pay, in accordance with this Final DIP Order (including Paragraph 34 herein) and the DIP Documents, the principal, interest, fees, payments, expenses, and other amounts described in the DIP Documents as such amounts become due and payable and without need to obtain further approval from the Court, including DIP Agent's fees, the reasonable and documented fees and disbursements of the DIP Lenders and DIP Agent and their respective attorneys, advisors, accountants, and other consultants, in such cases, reimbursable under the DIP Documents, whether or not such fees arose before or after the Petition Date, and to take any other actions that may be necessary or appropriate, all to the extent provided in this Final DIP Order or the DIP Documents. All collections and proceeds, whether from ordinary course collections, asset sales, insurance recoveries, condemnations, or otherwise, will be deposited and applied as required by this Final

DIP Order and the DIP Documents. Upon execution and delivery, the DIP Documents shall 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 and Guarantee. From the entry of this Final DIP Order through and including the DIP Termination Date (as defined below), and subject to the terms, conditions, and limitations on availability (as applicable) set forth in the DIP Documents and this Final DIP Order, Berlin is hereby authorized, on a final basis, to continue borrowing under the DIP Facility, and Burgess is hereby authorized, on a final basis, to continue unconditionally guaranteeing the DIP Obligations thereunder.[10]

4. DIP Obligations. The DIP Documents and this Final DIP Order shall constitute and evidence the validity and binding effect of the DIP Obligations, which shall be enforceable against the Debtors, their estates, and any successors thereto, including any trustee appointed in the Chapter 11 Cases, or in any case under chapter 7 of the Bankruptcy Code upon the conversion of any of the Chapter 11 Cases, or in any other proceedings superseding or related to any of the foregoing (collectively, the "Successor Cases"). Upon entry of this Final DIP Order, the DIP Obligations will include all loans, letter of credit reimbursement obligations, 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 any of the DIP Secured Parties, in each case, under, or secured by, the DIP Documents or the DIP Orders, including all principal, accrued interest (at the rate set out in the DIP Facility), costs, fees, expenses and other amounts as provided in the DIP Documents. The Debtors shall be jointly and severally liable for the DIP Obligations, which shall be due and

[10] Pursuant to the Interim DIP Order, upon Berlin's receipt of the proceeds from the Interim DIP Term Loan, the $1.2 million backstop by the Prepetition Noteholders from the proceeds of a certain restricted account, as more fully described at the February 13th Hearing and February 21st Hearing, was deemed moot and unenforceable.

payable, without notice or demand, and the use of Cash Collateral shall automatically cease on the DIP Termination Date in each case, except as provided in Paragraph 29 herein. No obligation, payment, transfer, or grant of collateral security hereunder or under the DIP Documents (including any DIP Obligation or DIP Liens, and including in connection with any adequate protection provided to the Prepetition Secured Parties hereunder) shall be stayed, restrained, voidable, avoidable, or recoverable, under the Bankruptcy Code or under any applicable law (including 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 the Interim DIP Order and subject only to the Carve-Out, pursuant to sections 361, 362, 364(c)(2), 364(c)(3), and 364(d) of the Bankruptcy Code, the DIP Agent, for the benefit of itself and the DIP Secured Parties, was granted (and is hereby granted on a final basis), continuing, valid, binding, enforceable, non-avoidable, and automatically and properly perfected postpetition security interests in and liens (collectively, the "DIP Liens") on all real and personal property, whether now existing or hereafter arising and wherever located, tangible and intangible, of each of the Debtors (the "DIP Collateral"), including (a) all cash, cash equivalents, deposit accounts, securities accounts, accounts, other receivables (including credit card receivables), chattel paper, contract rights, inventory (wherever located), instruments, documents, securities (whether or not marketable) and investment property (including, without limitation, all of the issued and

outstanding capital stock or equivalents of each of its subsidiaries), hedge agreements, furniture, fixtures, equipment (including documents of title), goods, franchise rights, trade names, trademarks, servicemarks, copyrights, patents, license rights, intellectual property, general intangibles (including, for the avoidance of doubt, payment intangibles), rights to the payment of money (including, without limitation, tax refunds and any other extraordinary payments), supporting obligations, guarantees, letter of credit rights, claims and causes of action (including without limitation claims and causes of action against Eversource Energy d/b/a PSNH), and all substitutions, indemnification rights, all present and future intercompany debt, books and records related to the foregoing, accessions and proceeds of the foregoing, wherever located, including insurance or other proceeds; (b) all proceeds of leased real property, including the Premises; (c) all proceeds of actions brought under section 549 of the Bankruptcy Code to recover any postpetition transfer of DIP Collateral; (d) all commercial tort claims regardless of whether identified by name or case number, (e) all proceeds of the Debtors' rights under section 506(c) (solely to the extent such rights result from the use of the DIP Facility or the DIP Collateral and are, therefore, enforceable against parties other than the DIP Agent, DIP Lenders or the Prepetition Secured Parties) of the Bankruptcy Code; (f) all property of every description, in the possession or custody of or in transit to the Prepetition Agent or such Prepetition Noteholder for any purpose, including safekeeping, collection or pledge, for the account of such Debtor or as to which such Debtor may have any right or power, and all products and proceeds thereof; (g) upon entry of this Final DIP Order, all proceeds of, or property and interests recovered in respect of, claims or causes of action of the estates pursuant to the Bankruptcy Code or other applicable law, including, without limitation, those arising under sections 510, 544, 545, 547, 548, 549, 550 and 553(b) of the United States Bankruptcy Code; and (h) all DIP Collateral that was not otherwise subject to valid,

perfected, enforceable, and unavoidable liens on the Petition Date, but excluding any specified assets (other than those assets that are subject to liens granted pursuant to the Prepetition Senior Secured Note Documents) as to which a valid, perfected and unavoidable lien in favor of a third-party existed as of the Petition Date and any deposits being held as adequate assurance for utilities subject to and as approved by an order of the Court, each as to which assets an immediately junior lien shall be granted pursuant to section 364(c)(3) of the Bankruptcy Code.

6. DIP Lien Priority. The DIP Liens are valid, automatically perfected, non-avoidable, senior in priority, and superior to any security, mortgage, collateral interest, lien, or claim to any of the DIP Collateral, except that the DIP Liens shall be subject to the Carve-Out as set forth in this Final DIP Order and shall otherwise be junior only to Permitted Prior Liens, if any. Other than as set forth herein 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.

7. DIP Superpriority Claims. Effective immediately upon entry of the Interim DIP Order, the DIP Secured Parties were granted (and are hereby granted on a final basis), 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 (collectively, the "DIP Superpriority

Claims") for all DIP Obligations. The DIP Superpriority Claims shall have priority over any and all other obligations, liabilities and indebtedness of each Debtor of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, including, to the extent allowed under the Bankruptcy Code, 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 whatsoever, including, without limitation, administrative expenses of the kinds specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 364, 503(a), 503(b), 507(a), 507(b), 546(c), 546(d), 726, 1113 and 1114 of the Bankruptcy Code, and any other provision of the Bankruptcy Code, to the extent provided under section 364(c)(1) of the Bankruptcy Code, other than the Carve-Out. 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 Superpriority Claims. The DIP Superpriority Claims shall have priority, to the extent provided by section 507(b) of the Bankruptcy Code, over all administrative expense claims and unsecured claims against the Debtors or their estates, now existing or hereafter arising, of any kind or nature whatsoever, other than the Carve-Out.

8. No Obligation to Extend Credit. The DIP Secured Parties shall have no obligation to make any loan or advance, or to issue, amend, renew, or extend any letters of credit under the DIP Documents, unless all of the conditions precedent to the making of such extension of credit or the issuance, amendment, renewal, or extension of such letter of credit or bankers' acceptance be deemed issued under and subject to the DIP Documents and this Final DIP Order have been satisfied in full or waived by the DIP Secured Parties in accordance with the terms of the DIP Documents.

9. Use of Proceeds of DIP Facility. From and after the Petition Date, the Debtors shall

use advances of credit under the DIP Facility, in accordance with the Budget (subject to such variances and other exceptions as permitted in this Final DIP Order and the DIP Credit Agreement), only for the purposes specifically set forth in this Final DIP Order, the DIP Documents, and the Budget and in compliance with the terms and conditions in this Final DIP Order and the DIP Documents.

10. DIP Roll-Up Loans. Upon entry of this Final DIP Order, without any further action by the Debtors or any other party, and as a condition to the provision of liquidity under the DIP Facility, concurrently with the Debtors' incurrence of the Final DIP Term Loans and the Final Roll-Up Loans, the Debtors shall use the Final Roll-Up Loans to refinance, on a two-to-one ratio times the committed principal amount of Final DIP Term Loan, the Prepetition Obligations held by the Prepetition Secured Parties on a final basis. Upon entry of this Final DIP Order, the portion of the Prepetition Obligations refinanced by the Roll-Up Loans shall (a) no longer constitute a Prepetition Obligation under the Prepetition Senior Secured Note Documents and (b) be deemed a DIP Obligation under the DIP Documents (subject in all cases to Paragraph 42).

Authorization to Use Cash Collateral

11. Authorization to Use Cash Collateral. Subject to the terms and conditions of this Final DIP Order, the DIP Facility, and the DIP Documents and in accordance with the Budget (subject to such variances and other exceptions as permitted in this Final DIP Order and the DIP Documents), the Debtors are authorized on a final basis to continue using Cash Collateral until the DIP Termination Date; *provided, however*, that, upon the Termination Declaration Date (as defined below), the Carve-Out shall be funded and available to satisfy Allowed Professional Fees (as defined herein); *provided, further*, that during the DIP Remedies Notice Period (as defined

herein), the Debtors may use Cash Collateral (subject to the Budget) to satisfy expenses that are critical to keeping the Debtors' business operating as approved by the DIP Lenders or approved by the Court. Nothing in this Final DIP Order shall authorize the disposition of any assets of the Debtors or their estates outside the ordinary course of business, or any Debtor's use of any Cash Collateral or other proceeds resulting therefrom, except as permitted in this Final DIP Order, the DIP Facility, the DIP Documents, and in accordance with the Budget (subject to such variances and other exceptions as permitted in this Final DIP Order and the DIP Documents).

12. Prepetition Adequate Protection Liens. Pursuant to sections 361, 363(e), and 364(d) of the Bankruptcy Code, as adequate protection of the interests of the Prepetition Secured Parties in the Prepetition Collateral to the extent of any Diminution in Value of such interests in the Prepetition Collateral, the Debtors hereby grant to the Prepetition Agent, for itself and for the benefit of the Prepetition Secured Parties, continuing, valid, binding, enforceable, and perfected postpetition security interests in and liens (the "Adequate Protection Liens") on the DIP Collateral.

13. Priority of Adequate Protection Liens. The Adequate Protection Liens shall be subject to the Carve Out and otherwise shall be immediately junior only to: (i) the DIP Liens and (ii) Permitted Prior Liens. The Adequate Protection Liens shall be senior to all other security interests in, liens on, or claims against any of the DIP Collateral. Except as provided herein, the Adequate Protection Liens shall not be made subject to or *pari passu* with any lien or security interest heretofore or hereinafter in the Chapter 11 Cases or any Successor Cases and shall be valid and enforceable against any trustee appointed in any of the Chapter 11 Cases or any Successor Cases, or upon the dismissal of any of the Chapter 11 Cases or Successor Cases. The Adequate Protection Liens shall not be subordinated to or made *pari passu* with any lien, security interest or administrative claim under section 364 of the Bankruptcy Code or otherwise; *provided, however,*

that the Debtors shall not create, incur or suffer to exist any postpetition liens or security interests other than: (i) those granted pursuant to this Final DIP Order; (ii) carriers', mechanics', operators', warehousemen's, repairmen's or other similar ordinary course liens arising in the ordinary course of business; (iii) pledges and deposits in connection with any applicable social security legislation; and (iv) deposits to secure the payment of any postpetition statutory obligations and performance bonds. For the avoidance of doubt, notwithstanding anything contained in this Final DIP Order to the contrary, the Adequate Protection Liens and the Adequate Protection Superpriority Claims (as defined below) shall not prime, affect, impair, or limit any Permitted Prior Liens. The Adequate Protection Liens shall not be subject to sections 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 Prepetition Liens or the Adequate Protection Liens.

14. Adequate Protection Superpriority Claims. As further adequate protection of the interests of the Prepetition Secured Parties in the Prepetition Collateral to the extent of any Diminution in Value of such interests in the Prepetition Collateral, the Debtors shall grant to the Prepetition Agent, on behalf of itself and the Prepetition Secured Parties, as and to the extent provided by section 507(b) of the Bankruptcy Code, an allowed superpriority administrative expense claim in the Chapter 11 Cases and any successor cases (the "Adequate Protection Superpriority Claims").

15. Priority of the Adequate Protection Superpriority Claims. Except as set forth in this Final DIP Order, the Adequate Protection Superpriority Claims shall have priority, to the extent provided by section 507(b) of the Bankruptcy Code, over all administrative expense claims and unsecured claims against the Debtors or their estates, now existing or hereafter arising, of any

kind or nature whatsoever, including, without limitation, administrative expenses of the kinds specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 364, 503(a), 503(b), 507(a), 507(b), 546(c), 546(d), 726, 1113 and 1114 of the Bankruptcy Code; *provided, however*, the Adequate Protection Superpriority Claims shall be subject to the Carve-Out and shall have priority in the following order: (a) the DIP Superpriority Claims, and (b) the Adequate Protection Superpriority Claims.

16. Adequate Protection Fees and Expenses and Protections for Prepetition Secured Parties. As further adequate protection (the "Adequate Protection Fees and Expenses"), the Debtors are authorized and directed to provide adequate protection to the Prepetition Secured Parties in the form of payment in cash (and as to fees and expenses, without the need for the filing of a formal fee application) immediately upon entry of this Final DIP Order, payment of the reasonable and documented fees, out-of-pocket expenses, and disbursements (including the reasonable and documented fees, out-of-pocket expenses, and disbursements of counsel, financial advisors, auditors, third-party consultants, and other vendors) incurred by the Prepetition Secured Parties (a) arising prior to the Petition Date and reimbursable under the Prepetition Senior Secured Note Documents including reasonable and documented fees and expenses of, including, without limitation (1) Greenberg Traurig, LLP, (2) Hogan Lovells US LLP, (3) Bernstein Shur Sawyer & Nelson, P.A, (4) Richards, Layton & Finger, PA, and (5) FTI Consulting LLP (collectively, the "Prepetition Senior Secured Party Advisors"), and (b) in accordance with the procedures set forth in Paragraph 34 hereof, arising subsequent to the Petition Date and reimbursable under the Prepetition Senior Secured Note Documents, including reasonable and documented fees and expenses of the Prepetition Secured Party Advisors.

17. Adequate Protection Reservation. Nothing herein shall impair or modify the application of section 507(b) of the Bankruptcy Code in the event that the adequate protection provided hereunder to the Prepetition Secured Parties is insufficient to compensate for any Diminution in Value of their respective interests in the Prepetition Collateral. The receipt by the Prepetition Secured Parties of the adequate protection provided herein shall not be deemed an admission that the interests of the Prepetition Secured Parties are adequately protected. Further, this Final DIP Order shall not prejudice or limit the rights of the Prepetition Secured Parties to seek additional relief with respect to the use of Cash Collateral or for additional adequate protection, and all parties in interests' rights are reserved with respect thereto.

Provisions Common to
DIP Financing and Use of Cash Collateral

18. 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 the amendment, modification, or supplement is (a) immaterial or non-adverse to the Debtors, their estates and/or any third parties and (b) in accordance with the DIP Documents, with a copy of any such amendment, modification, or supplement to be provided promptly by the Debtors to a Committee, if appointed. In the case of a material amendment, modification, waiver, or supplement to the DIP Documents that is adverse to the Debtors, their estates or stakeholders, the Debtors shall provide notice (which may be provided through electronic mail or facsimile) to counsel to a Committee, if appointed, the U.S. Trustee and any party that has requested notice pursuant to Bankruptcy Rule 2002, at least five (5) days prior to the proposed effectiveness of such amendment, modification, or supplement; *provided*, that executed waivers need only be provided to such parties substantially concurrently with the effectiveness thereof; *provided, further, however*, any such material or adverse amendment, modification, or supplement shall be filed with

the Court and not effective unless and until authorized by the Court, and waiver of compliance with any covenant or extension of the period for compliance shall not be deemed to be adverse to the Debtors or their estates.

19. Budget Maintenance. The use of borrowings under the DIP Facility and the use of Cash Collateral shall be in accordance with the Budget, subject in all respects to the variances and other exceptions set forth in the DIP Credit Agreement. The Budget shall depict all line items required under the DIP Credit Agreement, and such Budget shall be approved by, and in form and substance satisfactory to the DIP Lenders and the Prepetition Secured Parties, each in their sole discretion (it being acknowledged and agreed that the Budget attached hereto has been approved by the DIP Lenders and the Prepetition Secured Parties) and as otherwise required in accordance with the DIP Documents. The Budget shall be transmitted to the Lender Advisors (as defined below). Each such updated, modified, or supplemented budget shall be approved in writing (including by email) by, and shall be in form and substance satisfactory to, the DIP Lenders and the Prepetition Secured Parties (each in their sole discretion), and no such updated, modified, or supplemented budget shall be effective until so approved, and once so approved shall be deemed the Budget.

20. Budget Compliance: Obligations of the Debtors to the DIP Secured Parties. The Debtors shall at all times comply with the Budget, subject to the variances and other exceptions set forth in the DIP Credit Agreement. The Debtors shall provide all reports and other information, including any Variance Reports (as defined in the DIP Credit Agreement) as required in the DIP Documents. The Debtors' failure to comply with the Budget (including the variances and other exceptions set forth in the DIP Credit Agreement) or to provide the reports and other information required in the DIP Documents shall constitute a DIP Event of Default (as defined herein)

following the expiration of any applicable cure period set forth in the applicable DIP Document unless waived in accordance with the terms of the DIP Documents.

21. 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 DIP Order, including, without limitation, to: (a) permit the Debtors to grant the DIP Liens, Adequate Protection Liens, DIP Superpriority Claims, and Adequate Protection Superpriority Claims; (b) permit the Debtors to perform such acts as the DIP Agent, DIP Lenders, or Prepetition Secured Parties, as applicable, may reasonably request to assure the perfection and priority of the liens granted herein; (c) permit the DIP Agent, DIP Lenders, and/or Prepetition Secured Parties to perform such acts as they may reasonably determine to assure the perfection and priority of the lines granted herein; (d) permit the Debtors to incur all liabilities and obligations to the DIP Secured Parties, and the Prepetition Secured Parties under the DIP Documents, the DIP Facility, and this Final DIP Order, as applicable; and (e) authorize the Debtors to pay, and the DIP Secured Parties and the Prepetition Secured Parties to retain and apply, payments made in accordance with the terms of the DIP Documents, Prepetition Senior Secured Note Documents and this Final DIP Order.

22. Perfection of DIP Liens and Adequate Protection Liens. This Final DIP Order shall be sufficient and conclusive evidence of the creation, validity, perfection, and priority of all liens granted herein, including the DIP Liens and the Adequate Protection Liens, without the necessity of filing or recording any financing statement, mortgage, notice, or other instrument or document which may otherwise be required under the law or regulation of any jurisdiction or the taking of any other action (including, for the avoidance of doubt, entering into any deposit account control agreement, securities account control agreement, or mortgage) to validate or perfect (in accordance

with applicable non-bankruptcy law) the DIP Liens and the Adequate Protection Liens, or to evidence or entitle the DIP Secured Parties and the Prepetition Secured Parties to the priorities granted herein. Notwithstanding the foregoing, the DIP Agent and Prepetition Agent (acting in their capacities as collateral agents), as applicable, are authorized to file, in the applicable registries of deeds and other appropriate public records, as they in their sole discretion deem necessary or advisable, such financing statements, security agreements, mortgages, leasehold 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 the Adequate Protection Liens, as applicable, and all such financing statements, mortgages, leasehold 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 or the Adequate Protection Liens. The Debtors are authorized and directed to execute and deliver promptly upon demand to the DIP Agent and the Prepetition Agent, as applicable, all such financing statements, deposit account control agreements, securities account control agreement, mortgages, leasehold mortgages, notices, and other documents and/or applicable amendments as the DIP Agent or the Prepetition Agent may reasonably request. Each of the DIP Agent and the Prepetition Agent may file a copy of this Final DIP 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. To the extent that the Prepetition Agent is the secured party under any security agreement, mortgage, leasehold mortgage, landlord waiver, credit card processor notices or agreements, financing statement, account control agreements, or any other Prepetition Senior Secured Note Documents or is listed as loss payee or additional insured under any of the Debtors' insurance policies, the

DIP Agent shall also be deemed to be the secured party under such documents or to be the loss payee or additional insured, as applicable. The Prepetition Agent shall serve as agent for the DIP Agent for purposes of perfecting the DIP Agent's liens on all DIP Collateral that, without giving effect to the Bankruptcy Code and this Final DIP Order, is of a type such that perfection of a lien therein may be accomplished only by possession or control by a secured party, and such perfection shall be deemed to be automatic upon the entry of this Final DIP Order without the need for any further action on the part of the Prepetition Agent.

23. Application of Proceeds of Collateral. As a condition to the entry of the DIP Documents, the extension of credit under the DIP Facility, and the authorization to use Cash Collateral, from the date of the Interim Hearing, the Debtors shall apply all net proceeds of DIP Collateral, including whether sold in the ordinary course or otherwise, as provided in the DIP Documents.

24. Protections of Rights of the Prepetition Secured Parties.

(a) Without the prior written consent of each of the DIP Secured Parties and the Prepetition Secured Parties, unless all DIP Obligations and Prepetition Obligations (excluding contingent indemnification obligations for which no claim has been asserted) have been, or contemporaneously will be, Paid in Full and the lending commitments under the DIP Facility have terminated, in any of the Chapter 11 Cases, any Successor Cases, the Debtors shall neither seek entry of, nor support any motion or application seeking entry of, and otherwise shall object to any motion or application seeking entry of, any order (including any order confirming any plan of reorganization or liquidation) that authorizes any of the following: (i) the obtaining of credit or the incurring of indebtedness that is secured by a security, mortgage, or collateral interest or other lien on all or any portion of the DIP Collateral or Prepetition Collateral and/or that is entitled to

administrative priority status, in each case that is superior to or *pari passu* with the DIP Liens, the DIP Superpriority Claims, the Prepetition Liens, the Adequate Protection Liens, and/or the Adequate Protection Superpriority Claims except as expressly set forth in this Final DIP Order or the DIP Documents; (ii) the use of Cash Collateral for any purpose other than as permitted in the DIP Documents and this Final DIP Order; or (iii) any modification of any of the DIP Secured Parties' or the Prepetition Secured Parties' rights under this Final DIP Order, the DIP Documents or the Prepetition Senior Secured Note Documents with respect any DIP Obligations or Prepetition Obligations. It shall be an Event of Default under the DIP Documents under this Final DIP Order if, in any of the Chapter Cases or any Successor Cases, the Debtors take or fail to take any of the actions contemplated with respect to provisions (i) through (iii) of the previous sentence or if any order is entered granting any of the relief enumerated in provisions (i) through (iii) of the previous sentence.

(b) No Debtor shall object to any DIP Secured Parties, or any Prepetition Secured Parties (subject to the rights preserved in Paragraph 42), credit bidding up to the full amount of the applicable outstanding DIP Obligations and Prepetition Obligations, in each case including any accrued interest, fees, and expenses, in any sale of any DIP Collateral or Prepetition Collateral, as applicable, whether such sale is effectuated through sections 363 or 1129 of the Bankruptcy Code, by a chapter 7 trustee under section 725 of the Bankruptcy Code, or otherwise.

25. Credit Bidding. Subject to the rights preserved in Paragraph 42, in connection with any sale process authorized by the Court, (a) the DIP Secured Parties (or any such party's designee), and (b) the Prepetition Secured Parties (or any such party's designee) may credit bid, consistent with the applicable DIP Documents and/or Prepetition Senior Secured Note Documents, some or all of their claims for their respective priority collateral (each a "Credit Bid") pursuant to

section 363(k) of the Bankruptcy Code. Each of the DIP Secured Parties (or any such party's designee) and, subject to the rights preserved in Paragraph 42, the Prepetition Secured Parties (or any such party's designee) shall each be considered a "Qualified Bidder" with respect to its respective rights to acquire all or any of their collateral by Credit Bid.

26. Proceeds of Subsequent Financing. If the Debtors, any trustee, any examiner with expanded powers, or any responsible officer subsequently appointed in the Chapter 11 Cases or any Successor Cases, shall obtain credit or incur debt pursuant to sections 364(b), 364(c), or 364(d) of the Bankruptcy Code or in violation of the DIP Documents and this Final DIP Order at any time prior to the DIP Obligations and Prepetition Obligations being Paid in Full, and the termination of the DIP Secured Parties' obligation to extend credit under the DIP Facility, including subsequent to the confirmation of any plan with respect to any or all of the Debtors and the Debtors' estates, 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 Secured Parties to be applied in accordance with this Final DIP Order, the DIP Documents and the Prepetition Senior Secured Note Documents, as applicable.

27. Cash Collection. From and after the date of the entry of the Interim DIP Order, all collections and proceeds of any DIP Collateral or Prepetition Collateral and all Cash Collateral that shall at any time come into the possession, custody, or control of any Debtor, or to which any Debtor is now or shall become entitled at any time, shall, to the extent required by the DIP Documents, be promptly deposited in the account(s) designated in the DIP Documents (or in such other accounts as are designated by the DIP Lenders from time to time), which accounts (except as otherwise set forth in the applicable DIP Documents) shall be subject to the sole dominion and control of the DIP Agent in accordance with the applicable DIP Documents (and, for the avoidance

of doubt, the DIP Agent shall be authorized to issue notices of exclusive control or similar notices under existing control agreements). The Debtors shall maintain no accounts except those specifically authorized by the DIP Lenders and as designated in any cash management order consented to by the DIP Agent and DIP Lenders and approved by the Court and in accordance with applicable U.S. Trustee Guidelines.

28. Disposition of DIP Collateral. The Debtors shall not sell, transfer, lease, encumber, or otherwise dispose of any portion of the DIP Collateral or the Prepetition Collateral other than in the ordinary course of business without the prior written consent of the DIP Lenders and the Prepetition Secured Parties unless the DIP Obligations and the Prepetition Obligations will be Paid in Full from the proceeds of such transaction (and no such consent shall be implied, from any other action, inaction or acquiescence by the DIP Lenders, the Prepetition Secured Parties, or from any order of this Court), except as expressly provided for in the DIP Documents or otherwise ordered by the Court.

29. DIP Maturity Date. On the DIP Maturity Date: (a) all DIP Obligations shall be immediately due and payable, all commitments to extend credit under the DIP Facility will terminate, other than as may be required in Paragraph 39 with respect to the Carve-Out, (b) any treasury and cash management, hedging obligations and bank product obligations constituting DIP Obligations shall be cash collateralized, and such cash collateral shall not be subject to any right of offset or recoupment but shall be subject to the Carve-Out; (c) all authority to use DIP Collateral shall cease, *provided, however*, that upon the DIP Maturity Date, the Carve-Out shall be funded and available to satisfy Allowed Professional Fees (as defined in Paragraph 39 of this Final DIP Order) and (d) upon the expiration of the DIP Remedies Notice Period, the DIP Agent, acting at the direction of the DIP Lenders, shall be entitled to otherwise exercise the rights and remedies

under the DIP Documents in accordance with this Final DIP Order (including Paragraph 30). For the purposes of the this Final DIP Order, the "DIP Maturity Date" shall mean the Maturity Date (as defined in the DIP Credit Agreement).

30. DIP Events of Default. The occurrence of any of the following events, unless waived by all DIP Lenders in advance, in writing, and in accordance with the terms of the DIP Documents, shall constitute an event of default (collectively, the "DIP Events of Default"): (a) the failure of the Debtors to perform, in any respect, any of the terms, provisions, conditions, covenants, or obligations under this Final DIP Order (regardless of whether such term, provision, condition, covenant or obligation expressly provides that such failure constitutes a DIP Event of Default); (b) the failure of the Debtors to meet any of the milestones set forth herein, in the DIP Documents or that certain Restructuring Support Agreement; or (c) the occurrence of a "DIP Event of Default" under this Final DIP Order or an "Event of Default" under the DIP Credit Agreement.

31. Rights and Remedies Upon DIP Event of Default. Immediately upon (a) the occurrence and during the continuation of a DIP Event of Default or (b) the Maturity Date, notwithstanding the provisions of section 362 of the Bankruptcy Code, without any application, motion, or notice to, hearing before, or order from the Court, but subject to the terms of this Final DIP Order, the DIP Documents and the DIP Remedies Notice Period (as defined below), the DIP Agent, at the direction of the DIP Lenders, shall (a) declare (any such declaration to be referred to herein as a "DIP Termination Declaration") (i) all DIP Obligations owing under the DIP Documents to be immediately due and payable, (ii) the termination, reduction or restriction of any further commitment to extend credit to the Debtors to the extent any such commitment remains under the DIP Facility, (iii) termination of the DIP Facility and any other DIP Documents as to any future liability or obligation of the DIP Agent and the DIP Lenders, but without affecting any

of the DIP Liens or the DIP Obligations, and (iv) that the application of the Carve-Out has occurred through the delivery of the Carve Out Trigger Notice (as defined below) to the Debtors; and (b) the DIP Agent may declare a termination, reduction or restriction on the ability of the Debtors to use Cash Collateral (the date which is the earliest to occur of any such date a DIP Termination Declaration is delivered and shall be referred to herein as the "DIP Termination Date"). The DIP Termination Declaration shall be given by electronic mail (or other electronic means) to counsel to the Debtors, the U.S. Trustee, and counsel to a Committee (if appointed). The automatic stay in the Chapter 11 Cases otherwise applicable to the DIP Secured Parties and the Prepetition Secured Parties is hereby modified so that five (5) business days after the date a DIP Termination Declaration is delivered (the "DIP Remedies Notice Period"): (a) the DIP Agent and the DIP Lenders shall be entitled to exercise their rights and remedies in accordance with the DIP Documents and this Final DIP Order to satisfy the DIP Obligations, DIP Superpriority Claims and DIP Liens, subject to the Carve-Out; (b) the applicable Prepetition Secured Parties shall be entitled to exercise their rights and remedies in accordance with the applicable Prepetition Senior Secured Note Documents and this Final DIP Order to satisfy the Prepetition Obligations, Adequate Protection Superpriority Claims and the Adequate Protection Liens, subject to the Carve-Out (to the extent applicable).

32. During the DIP Remedies Notice Period, the Debtors and/or any party in interest shall be entitled to seek an emergency hearing within the DIP Remedies Notice Period with the Court. Unless the Court orders otherwise, the automatic stay, as to all of the DIP Secured Parties and Prepetition Secured Parties, shall automatically be terminated at the end of the DIP Remedies Notice Period without further notice or order. Upon expiration of the DIP Remedies Notice Period and unless the Court has entered an order otherwise, each of the DIP Secured Parties and the

Prepetition Secured Parties shall be permitted to exercise all remedies set forth herein, in the DIP Documents, the Prepetition Senior Secured Note Documents, and as otherwise available at law without further order of or application or motion to the Court consistent with the DIP Documents, as applicable, and this Paragraph 32 of this Final DIP Order.

33. Good Faith Under Section 364(e) of the Bankruptcy Code; No Modification or Stay of this Final DIP Order. The DIP Secured Parties and Prepetition Secured Parties have acted at arms' length in good faith in connection with this Final DIP Order and are entitled to, and may rely upon, the protections granted herein and by section 364(e) of the Bankruptcy Code.

34. DIP Fees, and Other Expenses. The Debtors are authorized and directed to pay (i) all reasonable and documented prepetition and postpetition fees and out of pocket expenses of the DIP Agent and DIP Lenders in connection with the DIP Facility, including reasonable and documented attorneys' fees, monitoring and appraisal fees, financial advisory fees, fees and expenses of other consultants, and indemnification and reimbursement of reasonable and documented fees and expenses of, including with limitation, Greenberg Traurig LLP, Locke Lord LLP, Richards, Layton & Finger PA, Bernstein Shur Sawyer & Nelson, P.A, and FTI Consulting LLP (the "DIP Secured Party Advisors," and together with the Prepetition Secured Parties Advisors, the "Lender Advisors"), subject solely with respect to the postpetition fees and expenses referenced above of the DIP Secured Party Advisors, to the review procedures set forth in this Paragraph 34, (ii) the prepetition Adequate Protection Fees and Expenses referenced in clause (a) of Paragraph 16 (which fees and expenses are not subject to the review procedures set forth in this Paragraph 34), and (iii) the postpetition Adequate Protection Fees and Expenses referenced in clause (b) of Paragraph 16, subject, solely with respect to the Prepetition Secured Parties Advisors, to the review procedures set forth in this Paragraph 34. Subject to the review procedures set forth

in this Paragraph 34, payment of all reasonable and documented invoiced out-of-pocket fees and expenses provided for herein (and of the DIP Agent and Prepetition Agent) shall not be required to comply with the U.S. Trustee guidelines or file fee applications with the Court and invoices shall be in summary form only (and shall not be required to contain time entries and 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), and shall be provided to counsel to the Debtors and the U.S. Trustee (the "Fee Notice Parties"). If no objection to payment of the requested fees and expenses required to be submitted to the Fee Notice Parties is made in writing by any of the Fee Notice Parties within ten (10) days after delivery of such invoices (the "Fee Objection Period"), then, without further order of, or application to, the Court or notice to any other party, such fees and expenses shall be promptly paid by the Debtors and, in any case, within five (5) days after expiration of the Fee Objection Period. If an objection is made by any of the Fee Notice Parties within the Fee Objection Period to payment of the requested fees and expenses, then only the disputed portion of such fees and expenses shall not be paid until the objection is resolved by the applicable parties in good faith or by order of the Court, and the undisputed portion shall be promptly paid by the Debtors. Payments of any amounts set forth in this Paragraph 34 shall not be subject to recharacterization, subordination, or disgorgement, subject to the rights preserved in Paragraph 42 solely with respect to the fees and expenses of the Prepetition Secured Party Advisors.

35. Milestones. As a condition to the DIP Facility and the use of Cash Collateral, the Debtors shall comply with the milestones (the "Milestones") set forth in Section 5.17 of the RSA

and Annex I to the DIP Credit Agreement. For the avoidance of doubt, the failure of the Debtors to comply with any of the Milestones: (a) shall, unless waived, constitute an Event of Default under Section 8.01 of the DIP Credit Agreement, (b) subject to the expiration of the DIP Remedies Notice Period, result in the automatic termination of the Debtors' authority to use Cash Collateral under this Final DIP Order, and (c) permit the DIP Agent and the Prepetition Agent, subject to Paragraph 31, to exercise the rights and remedies provided for in this Final DIP Order, the DIP Facility and the Prepetition Senior Secured Note Documents.

36. Indemnification. The Debtors shall indemnify and hold harmless the DIP Secured Parties in accordance with the terms and conditions of the DIP Documents.

37. Proofs of Claim. Notwithstanding any order entered by this Court in relation to the establishment of a bar date in any of the Chapter 11 Cases or any Successor Cases to the contrary, DBTCA, the DIP Agent, the DIP Lenders, the Prepetition Agent, and the Prepetition Secured Parties are not required to file proofs of claim in any of the Chapter 11 Cases or Successor Cases for any claims arising under the DIP Documents, the Prepetition Senior Secured Note Documents, any related account or customer agreements, or any other agreements executed and/or delivered in connection with any of the foregoing. The Debtors' stipulations, admissions, and acknowledgments and the provisions of this Final DIP Order shall be deemed to constitute a timely filed proof of claim for the DIP Secured Parties and the Prepetition Secured Parties with regard to all claims arising under the DIP Documents or the Prepetition Senior Secured Note Documents, as the case may be. Notwithstanding the foregoing, each of the Prepetition Secured Parties is authorized, in its sole discretion, but not required, to file (and amend and/or supplement, as it sees fit) a proof of claim and/or aggregate or master proof of claim in each of the Chapter 11 Cases or Successor Cases for any claim described herein (with any such aggregate or master proof of claim

filed in any of the Chapter 11 Cases deemed to be filed in all Cases of each of the Debtors and asserted against all of the applicable Debtors). Any proof of claim filed by any Prepetition Secured Party shall be deemed to be in addition to and not in lieu of any other proof of claim that may be filed by any of the Prepetition Secured Parties. Any order entered by the Court in relation to the establishment of a bar date in any of the Chapter 11 Cases or Successor Cases shall not apply to any claim of the DIP Secured Parties or the Prepetition Secured Parties. The provisions set forth in this Paragraph are intended solely for the purpose of administrative convenience and shall not affect the substantive rights of any party-in-interest or their respective successors-in-interest.

38. Rights of Access and Information. Without limiting the rights of access and information afforded the DIP Secured Parties (under the DIP Documents) or the Prepetition Secured Parties (under the Prepetition Senior Secured Note Documents), the Debtors shall be, and hereby are, required to afford representatives, agents and/or employees of the DIP Secured Parties and representatives, agents, and/or employees of the Prepetition Secured Parties reasonable access to the Debtors' premises and their books and records in accordance with the DIP Documents and Prepetition Senior Secured Note Documents, as applicable, and shall reasonably cooperate, consult with, and provide to such persons all such information as may be reasonably requested. In addition, the Debtors authorize their financial advisors, investment bankers and other financial consultants to provide to the DIP Secured Parties and the Prepetition Secured Parties all such information as may be reasonably requested with respect to the business, results of operations and financial condition of any of the Debtors.

39. Carve-Out.

(a) Carve-Out. As used in this Final DIP Order, the "Carve-Out" means the sum of (i) all fees required to be paid to the Clerk of the Court and to the Office of the United

States 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 $50,000 incurred by a trustee under section 726(b) of the Bankruptcy Code (without regard to the notice set forth in (iii) below); (iii) to the extent allowed at any time, whether by interim order, procedural order, or otherwise, all unpaid fees and expenses incurred by persons or firms retained by the Debtors pursuant to section 327, 328, or 363 of the Bankruptcy Code at any time before or on the first business day following delivery by the DIP Agent or the Prepetition Agent of a Carve-Out Trigger Notice, whether allowed by the Court prior to or after delivery of a Carve-Out Trigger Notice, not to exceed the lesser of (x) the actual amounts, and (y) the amounts set forth for such professionals in the Approved Budget for such period (including any permitted variances) (the "Allowed Professional Fees"), such Allowed Professional Fees not to include any restructuring, sale, success, or other transaction fee of any investment bankers or financial advisors of the Debtors; and (iv) Allowed Professional Fees in an aggregate amount not to exceed $300,000 incurred after the first business day following delivery 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 Lenders or the Prepetition Agent to the Debtors, their lead restructuring counsel, the U.S. Trustee, and counsel to a Committee, if appointed, which notice may be delivered following the occurrence and during the continuation of a DIP Event of Default and acceleration of the DIP Obligations under the DIP Facility, stating that the Post-Carve-Out Trigger Notice Cap has been invoked. Notwithstanding the exclusion of restructuring, sale, success, or other transaction fees from the Carve-Out, (a) in the event of the closing of a Court-

approved sale of substantially all of the assets of the Debtors pursuant to section 363 of the Bankruptcy Code, the Sale Fee (as defined in the Engagement Agreement, by and between the Debtors and to SSG Advisors, LLC ("SSG"), as amended and as authorized by this Court, the "SSG Engagement") due and payable to SSG shall be paid from the proceeds of that sale and (b) in the event of confirmation of a plan of reorganization in accordance with the RSA (or as otherwise consented to by the DIP Agent and DIP Lenders) the Restructuring Fee (as defined in the SSG Engagement) due and payable to SSG shall be paid on or before the effective date, provided that the retention of SSG has been approved by the Court, and further provided that the Sale Fee or Restructuring Fee payable to SSG shall be subject to the Court's approval of a final fee application.

(b) Carve-Out Reserves. For the avoidance of doubt, the DIP Secured Parties shall be entitled to maintain at all times a reserve (the "Carve-Out Reserve") in an amount (the "Carve-Out Reserve Amount") equal to the sum of (i) the aggregate amount of Allowed Professional Fees contemplated to be unpaid in the Budget at the applicable time (including any permitted variances), *plus* (ii) the Post-Carve-Out Trigger Notice Cap, *plus* (iii) the amounts contemplated under Paragraph 39(a)(i) and 39(a)(ii) above. Promptly upon request by the DIP Lenders, and in no event later than two (2) business days after such request, the Debtors shall deliver to the DIP Lenders a report setting forth the Carve-Out Reserve Amount as of the date of such request, and the DIP Lenders shall be entitled to rely upon such reports in accordance with the DIP Documents.

(c) Termination Declaration Date. On the day on which a Carve-Out Trigger Notice is given by the DIP Lenders to the Debtors with a copy to the U.S. Trustee (the "Termination Declaration Date"), the Carve-Out Trigger Notice (i) shall be deemed a draw request

and notice of borrowing by the Debtors for DIP Loans under the DIP Documents in an amount equal to the sum of (x) the amounts set forth in Paragraphs 39(a)(i) and 39(a)(ii) above, and (y) the then unpaid amounts of the Allowed Professional Fees pursuant to the Budget (including any permitted variances) (any such amounts actually advanced shall constitute DIP Loans) and (ii) shall also constitute a demand to the Debtors, and authorization for the Debtors, to utilize all cash on hand as of such date and any available cash thereafter held by any Debtor to fund a reserve in an amount equal to the sum of the amounts set forth in Paragraphs 39(a)(i) and 39(a)(ii), and unpaid amounts of the Allowed Professional Fees pursuant to the Budget (which cash amounts shall reduce, on a dollar for dollar basis, the draw requests and applicable DIP Loans pursuant to clause (i) of this Paragraph (c)). The Debtors shall deposit and hold such amounts in an account designated by the DIP Lenders and, if applicable, the cash on hand exclusively to pay such unpaid Allowed Professional Fees (each, a "Pre-Carve-Out Trigger Notice Reserve") prior to any and all other claims. On the Termination Declaration Date, the Carve-Out Trigger Notice (iii) shall also be deemed a request by the Debtors for DIP Loans under the DIP Documents in an amount equal to the Post-Carve-Out Trigger Notice Cap (any such amounts actually advanced shall constitute DIP Loans), and (iv) shall also constitute a demand to the Debtors to utilize all cash on hand as of such date and any available cash thereafter held by any Debtor, after funding the Pre-Carve-Out Trigger Notice Reserve, to fund a reserve in an amount equal to the Post-Carve-Out Trigger Notice Cap (which cash amounts shall reduce, on a dollar for dollar basis, the draw requests and applicable DIP Loans pursuant to clause (iii) of this Paragraph (c)). The Debtors shall deposit and hold such amounts in an account designated by the DIP Lenders under the DIP Documents in trust in respect of amounts funded by the DIP Lenders and, if applicable, cash on hand exclusively to pay such Allowed Professional Fees benefiting from the Post-Carve-Out Trigger Notice Cap (each, a "Post-

Carve-Out Trigger Notice Reserve" and, together with the Pre-Carve-Out Trigger Notice Reserve(s), the "Carve-Out Reserves") prior to any and all other claims. On the first business day following the Termination Declaration Date and the deemed requests for the making of DIP Loans as provided in this Paragraph (c), notwithstanding anything in the DIP Credit Agreement to the contrary, including with respect to (1) the existence of a Default (as defined in the DIP Documents) or Event of Default, (2) the failure of the Debtors to satisfy any or all of the conditions precedent for the making of any DIP Loan under the DIP Documents, (3) any termination of the Commitments (as defined in the DIP Credit Agreement) following an Event of Default, or (4) the occurrence of a DIP Termination Date, each DIP Lender with an outstanding Commitment shall make available such DIP Lender's *pro rata* share of such DIP Loans.

(d) Application of Carve-Out Reserves.

(i) All funds in the Pre-Carve-Out Trigger Notice Reserve shall be used first to pay the obligations set forth in Subparagraphs (a)(i) through (a)(iii) of the definition of Carve-Out set forth above (the "Pre-Carve-Out Amounts"), but not, for the avoidance of doubt, the Post-Carve-Out Trigger Notice Cap, until paid in full. If after payment in full of the Pre-Carve-Out Amounts, the Pre-Carve-Out Trigger Notice Reserve has not been reduced to zero, subject to clause (iii) below, all remaining funds in the account funded by (x) the DIP Lenders and/or from proceeds of DIP Collateral shall be distributed (A) *first*, to the DIP Lenders on account of the DIP Obligations until such obligations have been Paid in Full, and (B) *second*, to the Prepetition Secured Parties on account of the Prepetition Obligations until such obligations have been Paid in Full.

(ii) All funds in the Post-Carve-Out Trigger Notice Reserve shall be used first to pay the obligations set forth in clause (iv) of the definition of Carve-Out set forth in Paragraph

39(a) above (the "Post-Carve-Out Amounts"). If, after such application, the Post-Carve-Out Trigger Notice Reserve has not been reduced to zero, subject to clause (iii) below, all remaining funds in the account funded by the DIP Lenders and/or from proceeds of DIP Collateral shall be distributed (A) *first*, to the DIP Lenders on account of the DIP Obligations until such obligations have been Paid in Full and (B) *second*, to the Prepetition Secured Parties on account of the Prepetition Obligations until such obligations have been Paid in Full.

(iii) Notwithstanding anything to the contrary in the DIP Documents or this Final DIP Order, if either of the Carve-Out Reserves is not funded in full in the amounts set forth in this Paragraph 39, then, any excess funds in one of the Carve-Out Reserves following the payment of the Pre-Carve-Out Amounts and Post-Carve-Out Amounts, respectively, shall be used to fund the other Carve-Out Reserve to the extent of any shortfall in funding prior to making any payments to the DIP Lenders.

(iv) Notwithstanding anything to the contrary in the DIP Documents or this Final DIP Order, following delivery of a Carve-Out Trigger Notice, the DIP Agent shall not sweep or foreclose on cash (including cash received as a result of the sale or other disposition of any assets) of the Debtors until the Carve-Out Reserves have been fully funded, but shall have a security interest in any residual interest in the Carve-Out Reserves, with any excess paid as provided in Subparagraphs (i), (ii), and (iii) above of this Paragraph 39(d).

(v) Notwithstanding anything to the contrary in this Final DIP Order, the failure of the Carve-Out Reserves to satisfy in full the Allowed Professional Fees shall not affect the priority of the Carve-Out with respect to any shortfall (as described below), and, in no way shall any Budget, Post-Carve Out Trigger Notice Cap or Carve-Out Reserves be construed as a cap or limitation on the amount of the Allowed Professional Fees due and payable by the Debtors, but

shall affect the priority thereof, which shall be governed solely by the Budget and the Carve-Out. For the avoidance of doubt and notwithstanding anything to the contrary in this Final DIP Order, or in the DIP Documents, or in the Prepetition Senior Secured Note Documents, the Carve-Out shall be senior to all liens and claims securing the DIP Facility, the Adequate Protection Liens, and the Adequate Protection Superpriority Claims, and any and all other forms of adequate protection, liens, or claims securing the DIP Obligations or the obligations under the Prepetition Senior Secured Note Documents.

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

(f) Payment of Allowed Professional Fees Prior to the Termination Declaration Date. Any payment or reimbursement made prior to the occurrence of the Termination Declaration Date in respect of any Allowed Professional Fees shall not reduce the Carve-Out.

(g) Payment of Carve-Out on or After the Termination Declaration Date. Following the delivery of the Carve-Out Trigger Notice, all Allowed Professional Fees shall be paid from the applicable Carve-Out Reserve, and no Professional Person shall seek payment of any Allowed Professional Fees from any other source until the applicable Carve-Out Reserve has been exhausted. Any payment or reimbursement made on or after the occurrence of the Termination

Declaration Date in respect of any Allowed Professional Fees 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 Final DIP Order, the DIP Documents, the Bankruptcy Code, and applicable law.

(h) The Carve-Out shall not be available to pay any such Allowed Professional Fees incurred in connection with the initiation or prosecution of any claims, causes of action, adversary proceedings or other litigation against the DIP Agent or the DIP Lenders or the DIP Agent or the DIP Lenders' professionals and nothing herein shall impair the right of any party to object to the reasonableness of any such fees or expenses to be paid by the Debtors' estates.

40. Limitations on Use of DIP Proceeds, Cash Collateral, and Carve-Out. The DIP Facility, the DIP Collateral, the Prepetition Collateral, the Cash Collateral, and the Carve-Out may not be used in connection with: (a) paying any prepetition claim except in accordance with the Budget, (b) preventing, hindering, or delaying any of the DIP Secured Parties or the Prepetition Secured Parties' permitted enforcement or realization upon any of the DIP Collateral or Prepetition Collateral; (c) using or seeking to use Cash Collateral except as provided for in this Final DIP Order and the DIP Documents; (d) selling or otherwise disposing of DIP Collateral without the consent of the DIP Agent, acting at the direction of the DIP Lenders, or Prepetition Collateral without the consent of the Prepetition Agent, acting at the direction of the Prepetition Senior Secured Lenders; (e) using or seeking to use any insurance proceeds constituting DIP Collateral except as provided for in this Final DIP Order and the DIP Documents without the consent of the DIP Agent, acting at the direction of the DIP Lenders, or the Prepetition Agent, acting at the direction of the Prepetition Senior Secured Lenders; (f) incurring Indebtedness (as defined in the

applicable DIP Documents) without the prior consent of the DIP Lenders, except to the extent permitted under the DIP Documents; (g) seeking to amend or modify any of the rights granted to the DIP Secured Parties or the Prepetition Secured Parties under this Final DIP Order, the DIP Documents, or the Prepetition Senior Secured Note Documents, including seeking to use Cash Collateral and/or DIP Collateral on a contested basis; (h) objecting to or challenging in any way the DIP Liens, DIP Obligations, Prepetition Liens, Prepetition Obligations, DIP Collateral (including Cash Collateral) or, as the case may be, Prepetition Collateral, or any other claims or liens, held by or on behalf of any of the DIP Secured Parties or the Prepetition Secured Parties, respectively; *provided* that solely in the event a Committee is appointed, up to $50,000 may be used to investigate but not to prosecute or litigate the foregoing as set forth in this clause (h); (i) asserting, commencing, or prosecuting any claims or causes of action whatsoever, including any actions under Chapter 5 of the Bankruptcy Code or applicable state law equivalents or actions to recover or disgorge payments, against any of the DIP Secured Parties, the Prepetition Secured Parties, or any of their respective affiliates, agents, attorneys, advisors, professionals, officers, directors, and employees; (j) 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 Prepetition Liens, Prepetition Obligations, or any other rights or interests of any of the DIP Secured Parties or the Prepetition Secured Parties; or (k) seeking to subordinate, recharacterize, disallow, or avoid the DIP Obligations, or the Prepetition Obligations.

41. 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 Secured Parties or the Prepetition Secured Parties to object to the allowance and

payment of such fees and expenses. The Debtors shall be permitted to pay fees and expenses allowed and payable by final order (that has not been vacated or stayed, unless the stay has been vacated) under sections 328, 330, 331, and 363 of the Bankruptcy Code, as the same may be due and payable.

42. Effect of Stipulations on Third Parties.

(a) *Generally*. For purposes of this Final DIP Order, the admissions, stipulations, agreements, releases, and waivers set forth in Paragraph F of this Final DIP Order (collectively, the "Prepetition Lien and Claim Matters") are and shall be binding on the Debtors, any subsequent trustee, responsible person, examiner with expanded powers, any other estate representative, and all creditors and parties in interest and all of their successors in interest and assigns, including a Committee, if appointed, unless and to the extent that a party in interest with proper standing granted by order of the Court (or other court of competent jurisdiction) has properly filed an adversary proceeding or contested matter under the Bankruptcy Rules (other than the Debtors, as to which any Challenge (as defined below) is irrevocably waived and relinquished) and (i) has timely filed the appropriate pleadings, and timely commenced the appropriate proceeding required under the Bankruptcy Code and Bankruptcy Rules, including as required pursuant to Part VII of the Bankruptcy Rules (in each case subject to the limitations set forth in this Paragraph 42) challenging the Prepetition Lien and Claim Matters (including any challenge with respect to the Roll-Up Loans) (each such proceeding or appropriate pleading commencing a proceeding or other contested matter, a "Challenge") by no later than the earlier of (a) seventy-five (75) days after the date of entry of the Interim DIP Order (the "Challenge Deadline") or (b) the date of entry of an order confirming a plan of reorganization or liquidation, provided, however, that the Prepetition Secured Parties stipulate and agree that each of the Prepetition Secured Parties will not raise as a

defense in connection with any Challenge the ability of creditors to file derivative suits on behalf of limited liability companies under the Limited Liability Company Act of Delaware; provided further, that nothing herein prohibits the Prepetition Secured Parties from contesting any request to obtain standing on any other grounds that applicable law permits. The Challenge Deadline may be extended in writing from time to time (email shall suffice) in the sole discretion of the Prepetition Secured Parties or by this Court for good cause shown pursuant to an application filed by a party in interest prior to the expiration of the Challenge Deadline, and (ii) this Court has entered judgment in favor of the plaintiff or movant in any such timely and properly commenced Challenge proceeding and any such judgment has become a final judgment that is not subject to any further review or appeal.

(b) *Binding Effect*. To the extent no Challenge is timely commenced by the Challenge Deadline, or to the extent such proceeding does not result in a final and non-appealable judgment or order of this Court that is inconsistent with the Prepetition Lien and Claim Matters, then, without further notice, motion, or application to, order of, or hearing before, this Court and without the need or requirement to file any proof of claim, the Prepetition Lien and Claim Matters shall, pursuant to this Final DIP Order, become binding, conclusive, and final on any person, entity, or party in interest in the Chapter 11 Cases, and their successors and assigns, and in any Successor Case for all purposes and shall not be subject to challenge or objection by any party in interest, including a trustee, responsible individual, examiner with expanded powers, or other representative of the Debtors' estates. Notwithstanding anything to the contrary herein, if any such proceeding is timely commenced, the Prepetition Lien and Claim Matters shall nonetheless remain binding on all other parties in interest and preclusive as provided in Subparagraph (a) above except to the extent that any of such Prepetition Lien and Claim Matters is expressly the subject of a

timely filed Challenge, which Challenge is successful as set forth in a final judgment as provided in Subparagraph (a) above, and only as to plaintiffs or movants that have complied with the terms hereof. To the extent any such Challenge proceeding is timely and properly commenced, the Prepetition Secured Parties shall be entitled to payment of the related costs and expenses, including, but not limited to, reasonable attorneys' fees, incurred under the Prepetition Senior Secured Note Documents in defending themselves in any such proceeding as adequate protection. Upon a successful Challenge brought pursuant to this Paragraph 42, the Court may fashion any appropriate remedy, including, without limitation, denial of such costs and expenses incurred by the Prepetition Noteholders in defending themselves in such successful Challenge.

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

44. Section 506(c) Claims. 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 Secured Parties, the Prepetition Secured Parties, or any of their respective claims, the DIP Collateral, or the Prepetition Collateral pursuant to sections 105 or 506(c) of the Bankruptcy Code, or otherwise, without the prior written consent of the DIP Secured Parties or the Prepetition Secured Parties, as applicable, and no such consent shall be implied from any other action, inaction, or acquiescence by any such parties.

45. No Marshaling/Applications of Proceeds. The DIP Secured Parties and the Prepetition Secured Parties shall not be subject to the equitable doctrine of "marshaling" or any other similar doctrine with respect to any of the DIP Collateral or the Prepetition Collateral, as the

case may be, and proceeds shall be received and applied pursuant to this Final DIP Order and the DIP Documents, notwithstanding any other agreement or provision to the contrary.

46. Section 552(b). The Prepetition Secured Parties shall each be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and the "equities of the case" exception under section 552(b) of the Bankruptcy Code shall not apply to the Prepetition Secured Parties, with respect to proceeds, products, offspring or profits of any of the Prepetition Collateral.

47. Access to DIP Collateral. Upon entry of this Final DIP Order and subject to the rights and procedures included in Paragraphs 32 and 33 hereof and any applicable regulatory approvals, upon expiration of the DIP Remedies Notice Period, the DIP Secured Parties and the Prepetition Secured Parties shall be permitted to (a) access and recover any and all DIP Collateral, and (b) enter onto any leased premises of any Debtor that constitutes DIP Collateral and exercise all of the Debtors' rights and privileges as lessor or lessee under such lease in connection with an orderly liquidation of the DIP Collateral..

48. Limits on Lender Liability. Nothing in this Final DIP Order, any of the DIP Documents, the Prepetition Senior Secured Note Documents, or any other documents related thereto shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Secured Parties or the Prepetition Secured Parties of any liability for any claims arising from any activities by the Debtors in the operation of their businesses or in connection with the administration of the Chapter 11 Cases. The DIP Secured Parties and the Prepetition Secured Parties shall not, solely by reason of having made loans under the DIP Facility or the Prepetition Senior Secured Note Documents or permitted the use of Cash Collateral, be deemed in control of the operations of the Debtors or to be acting as a "responsible person" or "owner or operator" with respect to the operation or management of the Debtors (as such terms, or any similar terms, are

used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 *et seq.*, as amended, or any similar federal or state statute). Nothing in this Final DIP Order or the DIP Documents, shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Secured Parties or any of the Prepetition Secured Parties of any liability for any claims arising from the prepetition or postpetition activities of any of the Debtors.

49. Insurance Proceeds and Policies. Until all DIP Obligations and all Prepetition Obligations are Paid in Full, and the DIP Secured Parties' obligation to extend credit under the DIP Facility has terminated, the Debtors shall obtain and maintain insurance with respect to the DIP Collateral as required under the DIP Facility and the Prepetition Collateral as required under the Prepetition Senior Secured Note Documents. Upon entry of this Final DIP Order and to the fullest extent provided by applicable law, the DIP Agent (on behalf of the DIP Secured Parties) and the Prepetition Agent (on behalf of the Prepetition Secured Parties) were and shall continue to 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 in any way relates to the DIP Collateral (the "DIP Collateral Insurance Policies"). Notwithstanding the foregoing, to the extent not already completed, upon entry of this Final DIP Order, the Debtors shall immediately take any and all steps necessary under the DIP Collateral Insurance Policies to name both the DIP Agent (on behalf of the DIP Secured Parties) and the Prepetition Agent (on behalf of the Prepetition Secured Parties) as additional insureds and loss payees on each DIP Collateral Insurance Policy.

50. Joint and Several Liability. Nothing in this Final DIP 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.

51. No Superior Rights of Reclamation. Based on the findings and rulings herein regarding the integrated nature of the DIP Facility and the Prepetition Senior Secured Note Documents, the notice provided by the Debtors and the lack of any objection by any potential reclamation claimant prior to the hearing on entry of this Final DIP Order, the right of a seller of goods to reclaim such goods under section 546(c) of the Bankruptcy Code is not a Permitted Prior Lien; rather, any such alleged claims arising or asserted as a right of reclamation (whether asserted under section 546(c) of the Bankruptcy Code or otherwise) shall have the same rights and priority with respect to the DIP Liens as such claim had with the Prepetition Liens.

52. Rights Preserved. Notwithstanding anything herein to the contrary, the entry of this Final DIP Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, subject to the Prepetition Senior Secured Note Documents: (a) the DIP Secured Parties' and Prepetition Secured Parties' right to seek any other or supplemental relief in respect of the Debtors; (b) any of the rights of any of the DIP Secured Parties and/or the Prepetition Secured Parties under the Bankruptcy Code or under any other applicable law, including 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 any of the DIP Secured Parties or Prepetition Secured Parties. Notwithstanding anything herein to the contrary, the entry of this Final DIP Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, the Debtors', a Committee's (if appointed), or

any party in interest's right to oppose any of the relief requested in accordance with the immediately preceding sentence except as expressly set forth in this Final DIP Order.

53. No Waiver by Failure to Seek Relief. The failure, or delay for any period, of the DIP Secured Parties or Prepetition Secured Parties to seek relief or otherwise exercise their rights and remedies under this Final DIP Order, the DIP Documents, the Prepetition Senior Secured Note 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 Secured Parties or the Prepetition Secured Parties.

54. Binding Effect of Final DIP Order. Immediately upon execution by this Court, the terms and provisions of this Final DIP Order shall become valid and binding upon and inure to the benefit of the Debtors, the DIP Secured Parties, the Prepetition Secured Parties, all other creditors of any of the Debtors, or any court appointed committee, 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.

55. United States of America. Notwithstanding anything in this Final DIP Order or any DIP Documents, nothing in this Final DIP Order or any DIP Documents shall modify or impair the United States of America's rights and defenses of setoff and recoupment, if any.

56. Replacement of Prepetition Agent. Pursuant to the Interim DIP Order, the Prepetition Noteholders were authorized to replace DBTCA as Prepetition Agent with UMB Bank. To the extent not already completed, the Prepetition Noteholders, the Debtors, the DIP Lenders, UMB Bank, DBTCA and each of their officers, directors, managers, members, attorneys, accountants, agents, employees, affiliates, independent contractors, and agents are authorized to execute any documents (including without limitation an agreement of resignation, appointment

and acceptance) and take all actions necessary or appropriate to effectuate the transition of the Prepetition Agent from DBTCA to UMB Bank, including making such changes as are reasonably requested by the DIP Lenders, the Debtors, DBTCA, the DIP Agent, and/or UMB Bank to effectuate the transition and transferring any and all restricted and unrestricted funds of the Debtors held at DBTCA to UMB Bank without prejudice to, and preserving the rights of DBTCA as Prepetition Agent.

57. Notwithstanding anything herein to the contrary, any and all property taxes of the City of Berlin ("City"), whether calculated pursuant to a certain Payment In Lieu Of Taxes Agreement Between The City Of Berlin, New Hampshire And Berlin Station, LLC, dated August 30, 2011 (the "PILOT Agreement"), any renegotiated payment in lieu of a property tax agreement, or assessed pursuant to New Hampshire's standard ad valorem property taxation process due and payable as of the Petition Date (collectively, "Existing Property Taxes") and all future Property Taxes, including those that relate back to an earlier assessment or due date ("Future Property Taxes" and together with the Existing Property Taxes, "Berlin Property Taxes"), shall have and retain the same lien, priority and administrative claim status as they would otherwise have in accordance with State or otherwise applicable law, and the DIP Facility will not disturb that status. To the extent that the Berlin Property Taxes are encompassed within the term Permitted Prior Liens, they shall be unaffected by the DIP Orders. The City reserves all rights with respect to the Berlin Property Taxes. Nothing in the DIP Orders shall impair any Berlin Property Taxes that are senior to the DIP Liens and Claims under State or otherwise applicable law.

58. No Modification of Final DIP Order. Until and unless the DIP Obligations and the Prepetition Obligations have been Paid in Full (such payment being without prejudice to any terms or provisions contained in the DIP Facility which survive such discharge by their terms) the

Debtors shall not seek or consent to, directly or indirectly: (a) without the prior written consent of the DIP Lenders, (i) any modification, stay, vacatur, or amendment to this Final DIP 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 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 to the DIP Superpriority Claims or Adequate Protection Superpriority Claims, other than the Carve-Out; (b) without the prior written consent of the DIP Lenders, any order allowing use of Cash Collateral (other than as permitted during the DIP Remedies Notice Period) resulting from DIP Collateral or Prepetition Collateral in a manner inconsistent with this Final DIP Order; (c) without the prior written consent of the DIP Agent, acting at the direction of the DIP Lenders, any lien on any of the DIP Collateral with priority equal or superior to the DIP Liens, except as specifically provided in the DIP Documents, other than the Carve-Out; or (d) without the prior written consent of the Prepetition Agent, any lien on any of the DIP Collateral with priority equal or superior to the Prepetition Liens or Adequate Protection Liens, other than the Carve-Out. The Debtors shall not seek or consent to, directly or indirectly any amendment, modification, or extension of this Final DIP Order without the prior written consent, as provided in the foregoing, of the DIP Lenders and/or the DIP Agent, as applicable, and no such consent shall be implied by any other action, inaction or acquiescence of the DIP Lenders and/or the DIP Agent, as applicable.

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

60. Discharge. The DIP Obligations and the obligations of the Debtors with respect to the adequate protection provided herein 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 Paid in Full, on or before the effective date of such confirmed plan of reorganization, or each of the DIP Secured Parties and the Prepetition Secured Parties, as applicable, has otherwise agreed in writing. None of the Debtors shall propose or support any plan of reorganization or sale of all or substantially all of the Debtors' assets, or order confirming such plan or approving such sale, that does not require that all DIP Obligations be Paid in Full, and the payment of the Debtors' obligations with respect to the adequate protection provided for herein, in full in cash within a commercially reasonable period of time (and in no event later than the effective date of such plan of reorganization or sale) (a "Prohibited Plan or Sale") without the written consent of each of the DIP Secured Parties and the Prepetition Secured Parties, as applicable. For the avoidance of doubt, the Debtors' proposal or support of a Prohibited Plan or Sale, or the entry of an order with respect thereto, shall constitute a DIP Event of Default hereunder and an Event of Default under the DIP Documents.

61. Survival. The provisions of this Final DIP 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 DIP Order, including the claims, liens, security interests, and other protections granted to the DIP Secured Parties and Prepetition Secured Parties pursuant to the DIP Orders and/or the DIP Documents, notwithstanding the entry

of any such orders described in (a)-(d), above, 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 DIP Order until: (x) respect of the DIP Facility, all the DIP Obligations, pursuant to the DIP Documents and this Final DIP Order, have been Paid in Full (such payment being without prejudice to any terms or provisions contained in the DIP Facility which survive such discharge by their terms); and (y) in respect of the Prepetition Financing, all of the Prepetition Obligations pursuant to the Prepetition Senior Secured Note Documents and this Final DIP Order, have been Paid in Full. The terms and provisions concerning the indemnification of the DIP Agent and DIP Lenders shall continue in the Chapter 11 Cases, in any Successor Cases, following dismissal of the Chapter 11 Cases or any Successor Cases, following termination of the DIP Documents and/or the indefeasible repayment of the DIP Obligations.

62. Retention of Jurisdiction. The Court has and will retain jurisdiction to enforce the terms of any and all matters arising from or related to the DIP Facility and/or this Final DIP Order.

Dated: March 13th, 2024
Wilmington, Delaware

LAURIE SELBER SILVERSTEIN
UNITED STATES BANKRUPTCY JUDGE