IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
Biolase, Inc., *et al.*,[1]	Case No. 24-12245 (KBO)
Debtors.	(Jointly Administered)
	Re: Docket No. 17

ORDER (I) AUTHORIZING THE DEBTORS TO OBTAIN POSTPETITION FINANCING AND USE CASH COLLATERAL; (II) GRANTING ADEQUATE PROTECTION; (III) GRANTING RELATED RELIEF

Upon the motion (the "Motion") of the above-captioned debtors (the "Debtors") seeking, among other things:

(1) authority pursuant to sections 363 and 364(c) and (d) of the Bankruptcy Code to obtain debtor-in-possession secured financing (the "DIP Facility") pursuant to the following terms and agreements (collectively, the "DIP Facility Documents"): (a) this Order, and any final order entered by the Court with respect to the Motion (the "Final Order"), and (b) the *Biolase, Inc. Terms and Conditions of Proposed Senior Secured, Super-Priority Debtor-in-Possession Credit Facility*, attached hereto as Exhibit 2, as amended, modified, and/or supplemented (the "DIP Term Sheet"),[2] by and among the Debtors, SWK Funding LLC ("SWK"), as agent (the "DIP Agent") for the lenders and other financial institutions party to the DIP Term Sheet or which extend credit thereunder (the "DIP Lenders," and collectively with the DIP Agent, the "DIP Secured Parties");

(2) the grant to the DIP Agent, for the benefit of itself and the other DIP Lenders, of superpriority administrative claim status pursuant to sections 364(c)(1) and 507(b) of the Bankruptcy Code in accordance with the terms of this Order;

[1] The Debtors in these chapter 11 cases, together with the last four digits of each Debtor's federal tax identification number, are: Biolase, Inc. (2441); BL Acquisition Corp. (4140); BL Acquisition II, Inc. (6022); and Model Dental Office, LLC (9372). The Debtors' headquarters are located at 27042 Towne Centre Drive, Suite 270, Foothill Ranch, CA 92610-2811.

[2] Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the DIP Term Sheet.

(3) authorization for the Debtors use of cash collateral whenever or wherever acquired, and the proceeds of all collateral pledged to the Prepetition SWK Secured Parties (defined below), as contemplated by section 363 of the Bankruptcy Code in accordance with the terms set forth herein;

(4) a grant of adequate protection to the Prepetition SWK Secured Parties (defined below) under and in connection with the Prepetition SWK Loan Documents (defined below) in accordance with the terms set forth herein;

(5) modification of the automatic stay to the extent hereinafter set forth and waiving the fourteen (14) day stay provisions of Federal Rule of Bankruptcy Procedure 4001(a)(3) and 6004(h); and

(6) a final hearing setting for the Motion for entry of an order authorizing the DIP Facility and use of cash collateral on a final basis.

Notice of the Motion, the relief requested therein, and the Interim Hearing (defined below) (the "Notice") having been served by the Debtors in accordance with Bankruptcy Rule 4001(c) on: (a) the Office of the U.S. Trustee for the District of Delaware (the "U.S. Trustee"); (b) the Debtors' thirty largest unsecured creditors; (c) the Internal Revenue Service; (d) the Securities and Exchange Commission; (e) the United States Attorney's Office for the District of Delaware; (f) the state attorneys general for all states in which the Debtors conduct business; (g) Holland & Knight LLP, as counsel to the Prepetition SWK Secured Parties and the DIP Secured Parties; (h) Reed Smith, as counsel to the stalking horse bidder; (i) the U.S. Small Business Administration; (j) Banc of California; (k) Bank of America, N.A.; (l) any other party that has asserted a lien on or security interest in the Debtors' assets; and (m) any party that has requested notice pursuant to Bankruptcy Rule 2002.

The Court held an interim hearing with respect to the Motion on October 2, 2024 (the "Interim Hearing").

After the Motion and the proceedings before the Court at the Interim Hearing; and all objections, if any, to the interim relief requested in the Motion having been withdrawn, resolved

or overruled by the Court as reflected on the record established by the Debtors at the Interim Hearing;

THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:[3]

A. On October 1, 2024 (the "Petition Date"), the Debtors filed a voluntary petition for relief pursuant to Chapter 11 of title 11, United States Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code");[4]

B. The Debtors have continued in the management and operation of their business pursuant to sections 1107 and 1108, and no trustee or examiner has been appointed;

C. The Debtors gave notice of the Motion pursuant to Rule 9013-1(m) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware;

D. The Court has core jurisdiction over the Debtors' bankruptcy case, the Motion, and the parties and property affected by this Order pursuant to 28 U.S.C. §§ 157(b) and 1334, and venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409;

E. As of the date hereof, the United States Trustee has not yet appointed an official committee of unsecured creditors in this case pursuant to section 1102 (a "Statutory Committee");

F. The Debtors have admitted, represented and stipulated, without prejudice to the rights of third parties set forth in this Order, the following (collectively, the "Stipulations"):

(1) as of the Petition Date, the Debtors were party to one or more of:

[3] To the extent, any findings of fact constitute conclusions of law, they are adopted as such, and vice versa, pursuant to Fed. R. Bankr. P. 7052.

[4] Unless otherwise noted, all statutory references are to the Bankruptcy Code.

(x) a Credit Agreement dated as of November 9, 2018 (such agreement, as amended and existing immediately prior to the Petition Date, the "Prepetition Credit Agreement") with SWK as agent and the other lenders party thereto;

(y) the Guarantee and Collateral Agreement dated as of November 9, 2018 (such agreement, as amended and existing immediately prior to the Petition Date, the "Guarantee") in favor of SWK as agent;

(z) all other documents, instruments, and agreements executed in connection with the Prepetition Credit Agreement (such agreements, collectively with the Prepetition Credit Agreement and the Guarantee, the "Prepetition SWK Loan Documents");

(2) SWK serves as agent (in such capacity, the "Prepetition SWK Agent") under the Prepetition SWK Loan Documents. The other lenders party to each of the Prepetition SWK Loan Documents shall be referred to in this Order as the "Prepetition SWK Lenders", and the Prepetition SWK Lenders and the Prepetition SWK Agent shall collectively be referred to herein as the "Prepetition SWK Secured Parties";

(3) As of the Petition Date, the Debtors were indebted to the Prepetition SWK Secured Parties, without defense, counterclaim, recoupment or offset of any kind, in the approximate non-contingent liquidated amount of no less than $16,195,000 as of September 26, 2024, plus prepetition interest, fees, expenses, and other amounts arising in respect of the Prepetition SWK Loan Documents obligations existing immediately prior to the Petition Date (such obligations, the "Prepetition SWK Obligations");

(4) The Prepetition SWK Obligations were secured by valid, enforceable, properly perfected, first priority and unavoidable liens on and security interests (the

"Prepetition SWK Liens") encumbering all or substantially all assets of the Debtors existing immediately prior to the commencement of the Debtors' bankruptcy cases (the "Prepetition Collateral");

(5) the DIP Secured Parties are willing to provide postpetition financing to the Debtors through the DIP Facility and the DIP Facility Documents;

(6) the Prepetition SWK Secured Parties consent to the Debtors' use of the Prepetition Collateral and cash collateral (as such term is defined in section 363(a)) only upon the conditions contained in this Order and the DIP Facility Documents;

(7) the Debtors have no claims, offsets, or other rights or causes of action against the Prepetition SWK Secured Parties that would in any manner impair, reduce or otherwise modify the Prepetition SWK Obligations or the validly perfected Prepetition SWK Liens upon the Prepetition Collateral;

(8) the Prepetition SWK Obligations constitute valid, binding obligations of the Debtors, enforceable in accordance with their terms, and the Debtors and any of the guarantors will not assert any claims, counterclaims, setoffs, or defenses of any kind or nature, which in any way would affect the validity and enforceability of any of the Prepetition SWK Obligations and/or the security interests or liens of the Prepetition SWK Secured Parties upon the Prepetition Collateral, or which would in any way reduce the obligation of the Debtors to pay in full all of the Prepetition SWK Obligations;

(9) the Debtors reasonably and in good faith believe that the use of Cash Collateral (defined below) and the loans, advances, and other financial accommodations to be obtained pursuant to the DIP Facility are sufficient to fund all projected legitimate and

allowable expenses of their chapter 11 cases from the Petition Date during the period to which the Budget (as approved by the DIP Agent) pertains; and

(10) the Debtors are duly organized, validly existing corporations or limited liability companies and have the requisite power and authority to own, lease, and operate their property, including, without limitation, the DIP Collateral. Subject to the Court's approval, the Debtors have the requisite power and authority to enter into, execute, deliver, and perform their obligations under the DIP Facility Documents and this Order and to incur the obligations provided for therein. Except as may be explicitly required in the DIP Facility Documents, no consent or waiver of, filing with, authorization, approval or other action by any shareholder, any federal, state, or other governmental authority or regulatory body or any other Person (other than the DIP Secured Parties), which has not already been obtained or done, is required in connection with the execution, delivery and performance by the Debtors of any of the documents required as a condition to the validity or enforceability of the DIP Facility Documents, other than entry by this Court of this Order;

G. The Debtors are unable to obtain sufficient levels of unsecured credit allowable under section 503(b)(1) as an administrative expense necessary to maintain and conduct their business;

H. The Debtors are unable to obtain secured credit except under the terms and conditions provided in this Order;

I. All cash of the Debtors, wherever located on the Petition Date (the "Cash Collateral"), represents (i) proceeds of loans or other financial accommodations provided to the Debtors by the Prepetition SWK Secured Parties under the Prepetition SWK Loan Documents; or

(ii) proceeds of the Prepetition Collateral, and constitutes cash collateral within the meaning of section 363;

J. It is in the best interest of the Debtors' estates that they be allowed to enter into the DIP Facility to obtain postpetition secured financing from the DIP Secured Parties, and use the Prepetition Collateral and Cash Collateral subject to and in accordance with the terms of this Order and the DIP Facility Documents, and to grant adequate protection to the Prepetition SWK Secured Parties on account of the Prepetition SWK Obligations, on an interim basis under the terms and conditions set forth herein and in the DIP Facility Documents, as is necessary to avoid immediate and irreparable harm to the Debtors' estates pending the Final Hearing;

K. The Debtors believe that the extension of credit and financial accommodations under the DIP Facility and DIP Facility Documents are fair, reasonable, in good faith, negotiated at arm's length, reflect the Debtors' exercise of prudent business judgment, and are supported by reasonably equivalent value and fair consideration, and that the DIP Secured Parties are entitled to the protections of section 364(e);

L. The Debtors require access to the funding available under the DIP Facility and the DIP Facility Documents to satisfy administrative expenses associated with the operation of their business as a going concern and other costs relating to the administration of these chapter 11 cases, and to avoid immediate and irreparable harm to the Debtors' estates pending the Final Hearing;

M. The Prepetition SWK Secured Parties are unwilling to consent to use of the Prepetition Collateral by the Debtors, except under the terms of the DIP Facility Documents and this Order assuring that the liens and the various claims, superpriority claims, and other protections granted in this Order will not be affected by any subsequent reversal or modification of this Order or any other order, as provided in section 364(e), which is applicable to the postpetition financing

arrangement contemplated in the DIP Facility Documents and the use of Cash Collateral contemplated in this Order; and

N. Good and sufficient cause exists for the issuance of this Order, to prevent immediate and irreparable harm to the Debtors' estates.

Based upon the foregoing, and after due consideration and good cause appearing therefor; **IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:**

1. The Motion is granted on an interim basis, as set forth herein, effective as of the Petition Date. The Debtor is authorized, pursuant to sections 363 and 364, to enter into the DIP Facility and DIP Facility Documents, to execute such other and additional documents necessary or desired to implement the DIP Facility or DIP Facility Documents, to obtain postpetition secured financing from the DIP Secured Parties, and to use the Prepetition Collateral, Cash Collateral, and the proceeds and products thereof, pursuant to the terms and conditions of the DIP Facility Documents and this Order to avoid immediate and irreparable harm to the Debtors' estates pending the Final Hearing. The Debtors shall use the advances obtained under the DIP Facility and the DIP Collateral (including Cash Collateral) only for the purposes and in the amounts set forth in the DIP Term Sheet attached hereto as Exhibit 2 and the Budget attached hereto as Exhibit 1, subject to the terms and conditions set forth in the DIP Facility Documents. The DIP Secured Parties shall have no obligation to make DIP Facility advances in excess of the amounts and times set forth in the Draw Schedule, the Budget, and DIP Facility Documents.

2. With respect to the Budget:

(a) the Debtors' actual cash receipts and cash disbursements from operations line items (other than Professional Fees) shall each be adhered to, by line item, on a weekly basis and a cumulative basis for the Budget period then ending, subject to the Budget Variances described

below, provided, however, that amounts not disbursed in a line item shall be deemed to roll over to subsequent weeks;

(b) actual cash receipt and cash disbursement from operations line items (which shall not and do not include Professional Fees) shall not vary from the applicable Budget (including any amounts deemed to roll over from a previous week due to not being spent) by (i) more than ten percent (10%) by line item on a trailing three week basis or (ii) more than ten percent (10%) on a cumulative basis (such variances, the "Budget Variances");

(c) for all Professional Fees within the Budget (other than the professional fees of the DIP Secured Parties, which shall not be limited by the Budget), the Debtors shall not allow actual disbursements for each Professional Fee line item (and for the avoidance of doubt, each professional receiving Professional Fees shall be reflected on its own line item) to be more than the budgeted disbursements for such Professional Fee line item during the cumulative period from the Petition Date to the end of the period on the Budget attached as Exhibit 1.

3. No proceeds of the DIP Facility or Cash Collateral shall be used to (a) permit the Debtors or any other party-in-interest to challenge or institute any proceeding to determine (i) the validity, perfection, or priority of any security interests in favor of the Prepetition SWK Secured Parties or the DIP Secured Parties or (ii) the enforceability of the Debtors' obligations or the obligations of any guarantor under the Prepetition SWK Loan Documents or DIP Facility Documents; (b) investigate, commence, prosecute or defend (or support any other person or entity in investigating, commencing, prosecuting, or defending) any claim, motion, proceeding or cause of action against the Prepetition SWK Secured Parties or the DIP Secured Parties or any of their agents, attorneys, advisors or representatives, including, without limitation, claims or causes of action relating to lender liability or subordination claims; (c) investigate, commence, prosecute, or

defend (or support any other person or entity in investigating, commencing, prosecuting, or defending) any claim or proceeding or cause of action to disallow or challenge the obligations of the Debtors or any guarantor under the Prepetition SWK Loan Documents or the DIP Facility Documents, or (d) fund any acquisitions, capital expenditures, capital leases, or similar expenditures other than those specifically set forth in the Budget; provided, however, that a Statutory Committee (if any) and its professionals shall be allowed to use proceeds of the DIP Facility or Cash Collateral, in an amount not to exceed twenty-five thousand dollars ($25,000), to investigate the validity of the Prepetition SWK Liens (the "Committee Budget").

4. Pursuant to sections 363 and 364(c) and (d), the DIP Facility funds advanced pursuant to the terms of this Order (collectively, the "Interim DIP Advances") shall be allowed administrative expenses of the Debtors' estates, which shall have priority in payment over any other indebtedness and/or obligations now in existence or incurred hereafter by the Debtors and over all administrative expenses or charges against property arising in the Debtors' chapter 11 cases and any superseding chapter 7 case including, without limitation, and to the extent authorized by the Bankruptcy Code, those specified in Bankruptcy Code sections 105, 326, 328, 330, 331, 503(b), 506(c) (subject to the entry of the Final Order), 507(a), 507(b), 726, 1113 or 1114, subject and junior only to the Carve Out (defined below) (such claim, the "DIP Superpriority Claim"). The time of payment of the Interim DIP Advances shall not be altered, extended or impaired without the consent of the DIP Agent by any plan or plans of reorganization that may hereafter be accepted or confirmed or any further orders of the Court which hereafter may be entered.

5. Interest on the Prepetition SWK Obligations shall accrue from and after the Petition Date at the rate set forth in the Prepetition Credit Agreement and be payable along with interest accruing on the Interim DIP Advances, as set forth in the Budget and DIP Term Sheet. The

reasonable fees and expenses of the DIP Secured Parties shall be payable without further notice, motion, or application to, order of, or hearing before, the Court (except such notice as may be required in the DIP Term Sheet); provided, however, the DIP Agent shall submit copies of its professionals' invoices to the Debtors, the U.S. Trustee and counsel for any Statutory Committee and such parties shall have ten (10) calendar days following the receipt of such invoices to object to the reasonableness of the fees and expenses included in any such invoices.

6. Subject to entry of the Final Order granting such relief, any of the Prepetition SWK Obligations advanced to the Debtors from and after September 3, 2024 shall become DIP Facility obligations under the DIP Facility Documents; provided, however, that the roll-up of the Prepetition SWK Obligations into post-petition DIP Facility obligations shall be subject to Paragraph 27 of this Order.

7. Pursuant to sections 363, 364(c), and 364(d), as security for the Interim DIP Advances and other postpetition costs payable under the DIP Facility Documents, the Debtors are hereby authorized to and are hereby deemed to grant to the DIP Agent a valid, binding and enforceable lien, mortgage and/or security interest (a "Lien," and as so granted to the DIP Agent, the "DIP Credit Lien") in all of the Debtors' presently owned or hereafter acquired property and assets, whether such property and assets were acquired before or after the Petition Date, of any kind or nature whatsoever, whether real or personal, tangible or intangible, payment intangibles, supporting obligations, investment property, commercial tort claims, inventory, rolling stock, machinery, equipment, subsidiary capital stock, chattel paper, documents, instruments, deposit accounts, contract rights, or tax refunds of the Debtor, wherever located, and the proceeds and products thereof (collectively, the "DIP Collateral"), excluding any causes of action that could be brought pursuant to sections 544, 545, 547, 548 of the Bankruptcy Code, or any applicable state

fraudulent transfer, fraudulent conveyance or voidable transaction statutes (the "Avoidance Actions"), but, subject to entry of the Final Order granting such relief, including proceeds of (and property received in respect of) Avoidance Actions ("Avoidance Proceeds").

8. Pursuant to sections 364(c) and (d), the DIP Credit Lien shall be a first priority senior and priming lien on the DIP Collateral, subject and junior only to (a) the Carve Out and (b) valid, enforceable, properly perfected, and unavoidable prepetition Liens (including any Liens that are perfected after the Petition Date that are afforded priority due to the express relation back of the perfection of such lien to a date prior to the Petition Date as permitted by section 546(b)) that are senior to the Prepetition SWK Liens ("Senior Third Party Liens"). The DIP Credit Lien shall not be subject or subordinate to any Lien which is avoided and which would otherwise be preserved for the benefit of the Debtors' estates under section 551, and in no event shall any person or entity who pays (or causes to be paid) any of the obligations under the Prepetition SWK Loan Documents or DIP Facility Documents be subrogated, in whole or in part, to any rights, remedies, claims, privileges, liens or security interests granted to or in favor of, or conferred upon, the DIP Secured Parties by the terms of the DIP Facility Documents until such time as the obligations under the DIP Facility Documents and this Order are indefeasibly paid in full, in cash. The DIP Credit Lien shall not be subject or subordinate to Liens arising after the Petition Date, other than Liens granted pursuant to this Order to the extent set forth in this Order.

9. All rents, income, profits, cash in accounts and deposits derived from the Prepetition Collateral constitute Cash Collateral. Provided that each of the conditions set forth in this Paragraph are satisfied, the Debtors shall be authorized to use the Cash Collateral only in accordance with the terms of the Budget, this Order, and the other DIP Facility Documents. The satisfaction of each of the following conditions shall constitute a condition to the Debtors'

authorization to use any Cash Collateral: (i) no Event of Default under (and as defined in the DIP Term Sheet) shall exist or be continuing; and (ii) the Termination Date (as defined in the DIP Term Sheet) shall not have occurred. If, on any date, any of such conditions is not satisfied, then the Debtors shall not be authorized to use any Cash Collateral unless and until such use is consented to by the DIP Agent in its reasonable discretion. Subject to entry of a Final Order granting such relief, absent further order of the Court, if the Termination Date occurs, then the Debtors shall remit to the DIP Agent, subject to payment of the Carve Out, any Cash Collateral then in the Debtors' possession for application to the DIP Facility obligations and Prepetition SWK Obligations in a manner selected by the DIP Agent in its sole discretion.

10. Until the indefeasible payment in full of the Prepetition SWK Obligations, the Prepetition SWK Secured Parties are entitled to adequate protection of their interests in the Prepetition Collateral (including Cash Collateral) solely to the extent of the diminution in value of the Prepetition Collateral as a result of (a) the provisions of this Order granting first priority and/or priming liens on such Prepetition Collateral to the DIP Agent for the benefit of the DIP Secured Parties, (b) the Debtors' use of the Prepetition Collateral (including Cash Collateral), (c) the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code, or (d) otherwise, pursuant to sections 361(a), 363(c), and 364(d)(1) of the Bankruptcy Code. The Prepetition SWK Agent, on behalf of and for the benefit of the Prepetition SWK Secured Parties, is hereby granted, solely to the extent of diminution in value of the Prepetition SWK Liens in the Prepetition Collateral from and after the Petition Date the following:

A. a Lien in all DIP Collateral (the "Prepetition SWK Adequate Protection Lien") junior only to (i) the Carve Out, (ii) the DIP Credit Lien, and (iii) Senior Third Party Liens; and

B. a postpetition superpriority administrative expense claim (the "Prepetition SWK Adequate Protection Claim") against the Debtors with recourse to all prepetition and postpetition property of the Debtors and all proceeds[5] thereof under sections 503 and 507 against the Debtors' estates to the extent the Prepetition SWK Adequate Protection Lien does not adequately protect against the diminution in value of the Prepetition SWK Liens, which shall have priority in payment over any other indebtedness and/or obligations now in existence or incurred hereafter by the Debtors or their estates and over all other administrative expenses of any kind, including, without limitation, and to the extent authorized by the Bankruptcy Code, those specified in sections 105, 326, 328, 330, 331, 503(b), 506(c) (subject to entry of the Final Order), 507(a), 507(b), 726, 1113, or 1114 of the Bankruptcy Code, or otherwise and including those resulting from the conversion of these chapter 11 cases pursuant to section 1112 of the Bankruptcy Code; subject and junior only to the Carve Out and the Interim DIP Advances.

11. Nothing herein shall be deemed to be a waiver by any Prepetition SWK Secured Party of its right to request additional or further protection of its interests in any property of the Debtors, to move for relief from the automatic stay (if such relief is required), to seek the appointment of a trustee or examiner or the dismissal of any of the Debtors' bankruptcy case, or to request any other relief.

12. The automatic stay provisions of section 362 are hereby modified to permit (a) the Debtors and the DIP Agent to implement and perform the DIP Facility and the DIP Facility Documents, and (b) the creation and perfection of all Liens granted or permitted by this Order. The Debtors and the holders of any DIP Credit Lien or Prepetition SWK Adequate Protection Lien

[5] Recourse to Avoidance Proceeds shall be subject to entry of the Final Order.

shall not be required to enter into any additional security agreements to create, memorialize, and/or perfect any such liens, or to file UCC financing statements, mortgages, or other instruments with any other filing authority or take any other action to perfect any such Liens, which shall be and are deemed valid, binding, enforceable and automatically perfected by the docket entry of this Order by the Clerk of the Court. If, however, the holder of any DIP Credit Lien or Prepetition SWK Adequate Protection Lien in its sole and absolute discretion shall elect for any reason to enter into, file, record or serve any such financing statements or other documents with respect to any such Lien, then the Debtors shall execute same upon request and the filing, recording or service thereof (as the case may be) shall be deemed to have been made at the time and on the date of the docket entry of this Order by the Clerk of the Court or at such other time as the applicable recording offices are authorized to deem the recording to have been made. The holders of any DIP Credit Lien, Prepetition SWK Lien, or Prepetition SWK Adequate Protection Lien are hereby relieved of any requirement to file proofs of claim in the Debtors' bankruptcy case with respect to any such Liens and the claims secured thereby, but any such holder may in its sole and absolute discretion file any such proof of claim.

13. The DIP Credit Liens, DIP Superpriority Claims, Prepetition SWK Adequate Protection Liens, and Prepetition SWK Adequate Protection Claim shall be subject to right of payment of the following expenses (the following subparagraphs, collectively, the "Carve Out"):

A. all fees required to be paid to the Clerk of the Court and the U.S. Trustee pursuant to 28 U.S.C. § 1930(a) plus interest at the statutory rate (collectively, the "Statutory Fees"), which Statutory Fees shall not be limited by any Budget;

B. all reasonable fees and expenses up to $10,000 incurred by a trustee under section 726(b);

C. all unpaid postpetition fees and expenses of the professionals retained by the Debtors pursuant to sections 327, 328, or 363 of the Bankruptcy Code (the "Debtors' Professionals") and by the Committee (if any) pursuant to sections 328 or 1103 of the Bankruptcy Code (the "Committee Professionals" and, together with the Debtors' Professionals, the "Chapter 11 Professionals"), but only to the extent that such fees and expenses are (i) incurred before or on the first Business Day after delivery by the DIP Agent of a notice of a Termination Event, (ii) within the cumulative amounts set forth in the Budget approved by SWK for such Chapter 11 Professional as of the date of the Termination Event, and (iii) allowed at any time by the Bankruptcy Court under sections 330, 331, or 363 of the Bankruptcy Code; and

D. postpetition fees and expenses of (i) the Debtors' Professionals incurred after the first Business Day following delivery by the DIP Agent of a notice of the occurrence of a Termination Event in an aggregate amount not to exceed $100,000 to the extent such fees and expenses are allowed at any time by the Bankruptcy Court under sections 330, 331, or 363 of the Bankruptcy Code and (ii) the Committee Professionals incurred after the first Business Day following delivery by the DIP Agent of a notice of the occurrence of a Termination Event in an aggregate amount not to exceed $15,000, to the extent such fees and expenses are allowed at any time by the Bankruptcy Court under sections 330, 331, or 363 of the Bankruptcy Code.

provided, however, that in no event shall the Carve Out for each Chapter 11 Professional exceed the cumulative amounts for postpetition fees set forth for such Chapter 11 Professional in the Budget as of the applicable date of determination provided, further however, that the Carve Out for Chapter 11 Professional fees shall first be paid from any retainers or any professional expense

escrow account established by the Debtors. Any amounts paid from the DIP Collateral or the proceeds thereof, or funded by the DIP Agent or DIP Secured Parties with respect to the Carve Out prior to the entry of the Final Order shall be Interim DIP Advances and such obligations shall be secured by the DIP Credit Lien. As used in this Order, the term "Termination Event" shall mean the occurrence of the earlier of: (i) an Event of Default under the DIP Facility; or (ii) the Debtors' failure to comply with the terms of the DIP Financing Documents (including, without limitation, their failure to comply with the Budget, subject to any approved variances). Further, the payment of the fees or costs of any Professional and/or Statutory Committee (if any) shall be subject to court approval, and the DIP Agent and the DIP Secured Parties reserve the right to object to any Chapter 11 Professional's application for payment.

14. Neither the payment of any Chapter 11 Professional fees, nor the Carve Out shall include payment for any fees and expenses, if any, of the Chapter 11 Professionals incurred directly or indirectly, in respect of, arising from or relating to:

A. the initiation, joinder or prosecution of any action contesting the indebtedness owed to DIP Secured Parties or the Prepetition SWK Secured Parties, or the validity of any liens granted to any of such parties, provided, however, that a Statutory Committee (if any) and its professionals shall be allowed to use the Committee Budget to investigate the validity of the Prepetition SWK Liens;

B. preventing, hindering or otherwise delaying (or supporting any other person or entity in preventing, hindering or otherwise delaying), whether directly or indirectly, the exercise by the DIP Agent or the Prepetition SWK Agent of any of its rights and remedies under the Interim Order, Final Order, Prepetition SWK Loan Documents, or DIP Facility Documents;

C. the commencement, support, or prosecution of any action or proceeding of any claims, causes of action or defenses against the DIP Secured Parties, Prepetition SWK Secured Parties, or any of their respective officers, directors, employees, agents, attorneys, affiliates, successors or assigns, including, without limitation, any attempt to recover or avoid any claim or interest from the DIP Secured Parties or Prepetition SWK Secured Parties, or any of them, under Chapter 5 of the Bankruptcy Code;

D. any request to borrow money other than pursuant to the terms of the Interim Order, the Final Order, or the DIP Facility Documents;

E. with respect to the Debtors, any of the Debtors' Professionals, or any of their successors or assigns (including, without limitation, and subject to Paragraph 27 hereof, any trustee, responsible officer, examiner, estates administrator or representative, or similar person appointed in a case for the Debtors under any chapter of the Bankruptcy Code) performing or commencing any investigation or litigation (whether threatened or pending) by the Debtors with respect to any matter to be released, waived or specified as not subject to challenge by the Debtors pursuant to this Order or the Final Order (including, without limitation, Paragraphs 24, 25, and 26 herein); or

F. For any other purpose for which proceeds of the DIP Facility may not be used pursuant to the DIP Term Sheet.

15. Subject to the entry of the Final Order granting such relief, effective as of the time of commencement of the Debtors' chapter 11 cases on the Petition Date:

A. the Debtors waive irrevocably all claims and rights, if any, they or their estates might otherwise assert against the Prepetition Collateral or DIP Collateral pursuant to section 506(c), section 105(a), or any other applicable law;

B. except from and pursuant to the terms of the Carve Out, no entity in the course of the Debtors' bankruptcy case shall be permitted to recover from the DIP Collateral (whether directly or through the grant of derivative or equitable standing in the name of the Debtors or the Debtors' estates) any cost or expense of preservation or disposition of the Prepetition Collateral or DIP Collateral, including, without limitation, expenses and charges as provided in section 506(c), section 105(a), or any other applicable law;

C. except from and pursuant to the terms of the Carve Out, no entity shall be permitted to recover from the DIP Collateral or Prepetition Collateral, or assert against any DIP Secured Party or any Prepetition SWK Secured Party, any claim with respect to any unpaid administrative expense of the Debtors' bankruptcy case, whether or not the Debtors' payment of such administrative claim was contemplated by or included in the Budget; and

D. the Prepetition SWK Secured Parties and the DIP Secured Parties shall not be subject to the "equities of the case" exception of section 552(b), the equitable doctrine of "marshaling," or any similar claim or doctrine, with respect to any DIP Collateral or Prepetition Collateral.

16. So long as the DIP Facility obligations remain outstanding, unless consented to in writing by the DIP Agent, it shall be an Event of Default for the Debtors to seek entry of any further orders in their chapter 11 cases which authorize (a) under section 363, the use of Cash Collateral; (b) the obtaining of credit or the incurring of indebtedness pursuant to sections 364(c) or 364(d) that does not repay the DIP Facility in full, in cash, (c) the return of goods pursuant to section 546(h) to any creditor of the Debtors or to consent to any creditor taking any setoff against any of such creditor's prepetition indebtedness based upon any such return pursuant to section 553

or otherwise, or (d) any other grant of rights against the Debtors or their estates that is secured by a Lien on the DIP Collateral or is entitled to superpriority administrative status that does not repay the DIP Facility in full, in cash.

17. Upon the occurrence of: (i) an Event of Default (as such term is defined in the DIP Term Sheet); (ii) the Debtors' failure to comply with the terms of this Order or the Final Order (including, without limitation, their failure to comply with the Budget, subject to any approved variances); or (iii) the Debtors' failure to comply with any of the Milestones in the DIP Term Sheet, and the giving of written notice thereof by the DIP Agent to counsel to the Debtors, the Statutory Committee (if any), and the U.S. Trustee (which notice may be given by any manner of electronic transmission, the automatic stay being deemed lifted for such purpose) (the "Default Notice"), then the DIP Agent shall be fully authorized, in its sole discretion to (i) cease making DIP Facility advances to the Debtors; (ii) terminate the Debtors' use of Cash Collateral pursuant to this Order and the Budget; and (iii) immediately terminate the DIP Facility and demand repayment of the DIP Facility obligations then outstanding.

18. Further, upon the occurrence of an Event of Default and transmission of a Default Notice or upon the Termination Date:

A. with respect to an Event of Default as to which a Default Notice has been given, the Debtors, the Statutory Committee (if any), and the U.S. Trustee shall have five (5) business days from the date of the Default Notice (the "Remedy Notice Period") to seek an emergency hearing with the Court on notice to the DIP Agent (a) enjoining or restraining the DIP Secured Parties from taking action or exercising rights and remedies (other than any rights and remedies set forth in Paragraph 17 herein, which may be exercised immediately upon the satisfaction of the conditions set forth in such paragraph) based upon

the Event of Default specified in the Default Notice; or (b) challenging whether an Event of Default in the Default Notice has occurred or is continuing without cure (a "Restraint on Remedies"); *provided, however,* that if an emergency hearing is requested to be heard before the end of the Remedy Notice Period but is scheduled for a later date by the Court, then the Remedy Notice Period shall be automatically extended until the Court issues an order or other ruling with respect thereto. During the Remedy Notice Period, including as extended pursuant to the immediately preceding sentence of this Order, the DIP Agent shall refrain from exercising its rights and remedies (other than those set forth in Paragraph 17 and below). Immediately upon expiration of the Remedy Notice Period unless a Restraint on Remedies has timely been obtained from the Court, or with respect to and upon the Maturity Date, immediately apply:

(1) the DIP Agent shall have the right, free of the restrictions of section 362 or under any other section of the Bankruptcy Code or Bankruptcy Rules (including, without limitation, Bankruptcy Rule 4001(a)), to exercise contractual, legal and equitable rights and remedies as to all or such part of the DIP Collateral as it shall elect, and to apply the Proceeds (defined below) of the DIP Collateral to the repayment of the DIP Facility obligations and Prepetition SWK Obligations; and

(2) subject to applicable law, the DIP Agent, should it so elect in its sole and absolute discretion as exercised by the filing of an appropriate statement with the Court, shall be deemed to have been granted "peaceful possession" of, and right of access to, all or any portion of the DIP Collateral, by the Debtors.

19. The Debtors shall provide the DIP Agent with (i) all financial statements, certificates, and reports required pursuant to the DIP Term Sheet in accordance with the timeframes specified therein and (ii) such additional information as the DIP Agent shall request from the Debtors. The DIP Agent and its representatives shall have reasonable access during ordinary business hours and following reasonable advance notice to the Debtors' business premises and to the DIP Collateral in order to review and evaluate the physical condition of any of the DIP Collateral or to inspect the financial records and other records of the Debtors concerning the operation of the Debtors' business.

20. For purposes of this Order, (a) "Proceeds" shall mean both (i) proceeds (as defined in the Uniform Commercial Code of the State of New York) and (ii) any and all payments, proceeds or other consideration realized upon the sale, liquidation, realization, collection or other manner of disposition of the DIP Collateral, whether in the ordinary course of the Debtors' business (including without limitation accounts, receivables, and other proceeds arising from the Debtors' sales of goods and/or performance of services) or other than in the ordinary course of the Debtors' business, and (b) "Disposition" shall mean any sale, liquidation, realization, collection or other manner of disposition of DIP Collateral other than in the ordinary course of the Debtors' business, including without limitation any sale authorized pursuant to section 363.

21. The Debtors shall maintain in full force and effect the deposit or other accounts maintained by or on behalf of the Debtors pursuant to Prepetition SWK Loan Documents for the collection of cash obtained in the ordinary course of the Debtors' business, and the cash management systems, treasury management systems, and payment procedures under which such accounts and systems are administered. In furtherance of the foregoing, the DIP Agent shall be deemed to have control of all of the Debtors' bank accounts, and any financial institutions in which

such accounts of the Debtors are located are hereby authorized to act in accordance with any request of the DIP Agent concerning such accounts, including, without limitation, requests to turnover funds therein without offset or deduction of any kind.

22. The Debtors and any successors to the Debtors, including without limitation any successor trustee or trustees, shall assign or direct to the DIP Agent any and all Proceeds realized in any Disposition of any DIP Collateral, and immediately deliver any and all such Proceeds which come into their possession to the DIP Agent in the form received; provided, however, that the foregoing shall be subject in all respects to (a) the Budget, (b) payment of the Carve Out and (c) the priorities of the DIP Credit Lien granted by this Order. The foregoing is without prejudice to the rights of (a) the DIP Agent, the Statutory Committee (if any), or any other party to object to any proposed Disposition, (b) any third party with respect to the allocated Proceeds of any Disposition of Collateral encumbered by a Senior Third Party Lien, or (c) the rights of third parties set forth below with respect to a Challenge Action and the remedies that may result from a successful Challenge Action. Subject to section 363(k), the DIP Agent and, subject further to and effective upon the entry of a Final Order granting such relief and to Paragraph 27 hereof, the Prepetition SWK Agent are hereby authorized to credit bid all or any of the obligations under the DIP Facility and Prepetition SWK Loan Documents at any Disposition of any Prepetition Collateral and/or DIP Collateral.

23. All Proceeds retained by the DIP Agent shall be applied to the repayment of the Prepetition SWK Obligations and DIP Facility obligations, in a manner selected by the DIP Agent, until such obligations are paid in full; provided, however, that the foregoing shall be subject in all respects to the terms and the priorities of liens under this Order. Such applications of Proceeds shall be free and clear of any claim, charge, assessment or other liability; *provided that*,

applications of Proceeds to the repayment of the Prepetition SWK Obligations shall only be free and clear of any claim, charge, assessment or other liability subject to entry of a Final Order granting such relief and to Paragraph 27 hereof.

24. Subject to the right to bring a Challenge Action as set forth in Paragraph 27 below, upon entry of this Order:

A. the Stipulations shall be binding upon the Debtors and all other persons, entities, and/or parties in all circumstances;

B. the validity, extent, priority, perfection, enforceability and non-avoidability of the Prepetition SWK Secured Parties' validly perfected prepetition claims and liens against the Debtors and the Prepetition Collateral shall not be subject to challenge by the Debtors or any other person, entity, or party; and

C. neither the Debtors, nor any other person, entity, or party shall seek to avoid or challenge (whether pursuant to Chapter 5 of the Bankruptcy Code or otherwise) any transfer made by or on behalf of the Debtors to or for the benefit of any of the Prepetition SWK Secured Parties prior to the Petition Date.

25. In consideration of the furnishing of the DIP Facility, the Debtors, subject to the rights of another party to bring a Challenge Action during the Review Period, and further subject to and effective upon entry of the Final Order granting such relief, hereby absolutely release and forever discharge each of the Prepetition SWK Secured Parties and their affiliates, officers, directors, employees, attorneys, and other representatives (the "Releasees") from any and all claims and causes of action of every kind and nature that exist on the date hereof with respect to or relating to the Prepetition Credit Agreement or the Prepetition SWK Loan Documents, including (i) any so-called "lender liability" or equitable subordination claims or defenses, (ii) any and all

claims and causes of action arising under the Bankruptcy Code, and (iii) any and all claims and causes of action regarding the validity, priority, extent, enforceability, perfection, or avoidability of the liens or claims of the Prepetition SWK Secured Parties (collectively, the "Prepetition Released Claims"); provided, however, that such release shall not be effective with respect to the Debtors until entry of the Final Order, and with respect to the Debtors' bankruptcy estates, until the expiration of the Challenge Period without a Challenge Action being filed, and if filed, until such Challenge Action is subject to a final and non-appealable judgment and order entered in favor of the Prepetition SWK Secured Parties. In addition, and subject to entry of a Final Order granting such relief, upon the indefeasible payment, in full, in cash, of all DIP Facility obligations owed to the DIP Secured Parties arising under this Order and the DIP Facility Documents, the DIP Secured Parties shall be released by the Debtors and their estates from any and all obligations, actions, duties, responsibilities, and causes of action arising or occurring in connection with or related to the DIP Facility Documents.

26. Subject to entry of the Final Order, the Debtors hereby absolutely, unconditionally, and irrevocably covenant and agree with each Releasee that they will not sue (at law, in equity, or in any other proceeding) any Releasee on the basis of any Prepetition Released Claims released and discharged by the Debtors pursuant to this Order.

27. Notwithstanding any other provisions of this Order, any interested party (other than the Debtors or the Debtors' Professionals) in this case (including, without limitation, the Statutory Committee (if any)) shall have until seventy-five (75) calendar days after entry of this Order (such period, the "Challenge Period"), to commence an adversary proceeding or contested matter against the Prepetition SWK Secured Parties (as applicable) for the purpose (collectively, a "Challenge Action") of:

A. challenging the validity, extent, priority, perfection, enforceability and non-avoidability of the Prepetition SWK Secured Parties' Liens (as applicable) against the Debtors;

B. seeking to avoid or challenge (whether pursuant to Chapter 5 of the Bankruptcy Code or otherwise) any transfer made by or on behalf of the Debtors to or for the benefit of any of the Prepetition SWK Secured Parties (as applicable) prior to the Petition Date;

C. seeking damages or equitable relief against any of the Prepetition SWK Secured Parties (as applicable) arising from or related to their prepetition business and lending relationships with the Debtors, including without limitation equitable subordination, recharacterization, lender liability and deepening insolvency claims and causes of action; or

D. challenging any other matter to be waived or released pursuant to this Order (including, without limitation, pursuant to Paragraphs 24, 25, and 26) or any stipulations contained therein.

If a chapter 7 or chapter 11 trustee is appointed or elected during the Challenge Period, then such period with respect to such trustee only, shall be the later of (i) the last day of the Challenge Period and (ii) the date that is twenty (20) calendar days after the date on which such trustee is appointed or elected. For the avoidance of doubt, any chapter 7 or chapter 11 trustee appointed or elected in these cases shall, until the expiration of the applicable Challenge Period, and thereafter for the duration of any Challenge Action commenced pursuant to this Paragraph (whether commenced by such trustee or by any other party in interest on behalf of the Debtors' estates), be deemed to be a party other than the Debtors and shall not, for purposes of such Challenge Action, be bound by the

acknowledgements, admissions, confirmations and stipulations of the Debtors in this Interim Order.

28. All parties in interest, including without limitation the Statutory Committee (if any), that fail to act in accordance with the time periods set forth in the preceding paragraph shall be, and hereby are, barred forever from commencing a Challenge Action and shall be bound by the waivers, Stipulations, and terms set forth in this Order (including Paragraphs 24, 25, and 26 of this Order). Any Challenge Action filed shall prohibit application of this paragraph only to the extent of the specific matters set forth in such Challenge Action on the date of filing.

29. The respective legal and equitable claims, counterclaims, defenses and/or rights of offset and setoff of the Prepetition SWK Secured Parties in response to any such Challenge Action are reserved, and the ability of a party to commence a Challenge Action shall in no event revive, renew or reinstate any applicable statute of limitations which may have expired prior to the date of commencement of such Challenge Action. Notwithstanding anything to the contrary in this Order, the Court expressly reserves the right to unwind any discretionary roll-up of Prepetition SWK Obligations into post-petition DIP Facility obligations that is contemplated to be approved upon entry of the Final Order, or to order other appropriate relief against the Prepetition SWK Secured Parties in the event there is a timely and successful Challenge Action by any party in interest to the validity, enforceability, extent, perfection or priority of the Prepetition SWK Liens or the amount, validity, or enforceability of the Prepetition SWK Obligations.

30. Subject to entry of the Final Order, upon any closing of the 363 Sale, the Winning Bidder is directed to pay the amounts payable under the 363 Sale asset purchase agreement ***less*** any amounts agreed to fund the wind down of the Debtors' estates under the Budget, directly to the DIP Agent, for immediate application to the DIP Credit Facility Obligations, subject to

payment of the Carve-Out, which application shall become indefeasible with respect to any DIP Credit Facility Obligations that are not subject to a timely Challenge Action commenced prior to the expiration of the Challenge Period.

31. In making decisions to advance any extensions of credit to the Debtors pursuant to the DIP Facility (including, without limitation, the exercise of its approval rights with respect to any budget), the DIP Agent and the DIP Secured Parties shall have no liability to any third party and, subject to entry of a Final Order granting such relief, shall not be deemed to be in control of the operations of the Debtors or to be acting as a "control person," "responsible person" or other "owner or operator" with respect to the operation or management of the Debtors (as such terms, or any similar terms, are used in the Internal Revenue Code, the United States Comprehensive Environmental Response Compensation and Liability Act, as amended, or any similar Federal or state statute) by virtue of providing the DIP Facility, and the DIP Agent and the DIP Secured Parties' relationship with the Debtors shall not constitute or be deemed to constitute a joint venture or partnership of any kind between the DIP Secured Parties and the Debtors.

32. This Order shall be binding upon and inure to the benefit of the DIP Agent, the DIP Secured Parties, the Prepetition SWK Secured Parties, the Debtors, and their respective successors and assigns, including, without limitation, any trustee, responsible officer, examiner, estates administrator or representative, or similar person appointed in a case for the Debtors under any chapter of the Bankruptcy Code. Except as set forth herein with respect to a Challenge Action and the Carve Out, no rights are created under this Order for the benefit of any creditor of the Debtors, any other party in interest in the Debtors' bankruptcy case, or any other persons or entities, or any direct, indirect or incidental beneficiaries thereof.

33. Any order dismissing this chapter 11 case under section 1112 or otherwise shall be deemed to provide (in accordance with sections 105 and 349 of the Bankruptcy Code) that (a) the DIP Secured Parties' liens and security interests in the DIP Collateral shall continue in full force and effect notwithstanding such dismissal until the DIP Facility obligations are indefeasibly paid and satisfied in full, in cash; and (b) this Court shall retain jurisdiction, to the extent permissible under applicable law, notwithstanding such dismissal, for the purposes of enforcing the DIP Superpriority Claim, the DIP Credit Liens, the Prepetition SWK Adequate Protection Liens, and the Prepetition SWK Adequate Protection Claims.

34. To the extent that any of the provisions of this Order conflict with any provisions of the DIP Term Sheet, this Order shall control and supersede the conflicting provisions therein.

35. The terms and conditions of this Order shall be effective and immediately enforceable upon its entry by the Clerk of the Court notwithstanding any potential application of Fed. R. Bankr. P. 6004(h) or otherwise. Furthermore, to the extent applicable, the notice requirements and/or stays imposed by Fed R. Bankr. P. 4001(a)(3), 6003(b), and 6004(a) are hereby waived for good and sufficient cause.

36. Nothing in this Order shall preclude the Court from entering a Final Order containing provisions inconsistent with or contrary to the provisions of this Order, provided, however, that the DIP Secured Parties and Prepetition SWK Secured Parties shall be entitled to the benefits and protections of this Order, including (a) the adequate protection afforded to the Prepetition SWK Secured Parties set forth in this Order, and (b) the protections afforded pursuant to section 364(e), with respect to all loans, advances, and other financial, accommodations made by them pursuant to this Order. The DIP Credit Lien, the priority afforded the Interim DIP Advances, and the adequate protection afforded to the Prepetition SWK Secured Parties, as set

forth in this Order, shall be binding on the Debtors and any successor trustee or trustees even if this Order is reversed or modified on appeal with respect to all loans, advances, and other financial accommodations made by them pursuant to this Order. Except as provided herein, no Proceeds, Cash Collateral or Carve Out may be used by any party in interest seeking to modify any of the rights granted to the DIP Agent hereunder or in the DIP Facility Documents.

37. The Debtors and the DIP Agent may implement non-material modifications of the DIP Term Sheet without the need for notice or further approval of the Court, provided, however, that copies of such amendments will be provided to the U.S. Trustee and the Statutory Committee (if any). Any material modification of the DIP Term Sheet shall only be permitted upon notice and further order of the Court. The foregoing shall be without prejudice to the Debtors' right to seek approval from the Court of a material amendment, modification, waiver, or supplement on an expedited basis.

38. The Debtors are authorized to do and perform all acts, to make, execute and deliver all instruments and documents, and to pay all fees and expenses that may be required or necessary for the Debtors' performance under this Order or the DIP Facility Documents, including, without limitation, (a) the execution of the DIP Facility Documents, (b) the payment of the fees and other expenses described herein or in the DIP Facility Documents as such become due, including, without limitation, agent fees, commitment fees, letter of credit fees, and facility fees.

39. The Court has considered and determined the matters addressed herein pursuant to its powers under the Bankruptcy Code, including the power to authorize the Debtors to obtain credit on terms and conditions to which the Debtors and the DIP Agent have agreed. Thus, each of the terms and conditions constitutes a part of the authorization under sections 364 of the Bankruptcy Code, and is, therefore, subject to the protections in section 364(e) of the Bankruptcy

Code, regardless of (i) any stay, modification, amendment, vacating, or reversal of this Order or the DIP Facility Documents or any term hereunder or thereunder; (ii) the failure to obtain a final order pursuant to Bankruptcy Rule 4001(c)(2); or (iii) the dismissal or conversion of this chapter 11 case.

40. The Debtors are authorized to open a new bank account or designate an existing bank account that shall function as a segregated account held in trust for and exclusively available for the payment of fees and expenses of Chapter 11 Professionals pursuant to this Interim Order (the "Professional Fees Escrow Account") in the amount equal to, but not to exceed, the professional fees budgeted for professionals retained by the Debtor and a Committee, if any (the "Budgeted Professional Expenses"). Except for funding the Carve-Out from the DIP Collateral, neither the Prepetition SWK Secured Parties nor the DIP Secured Parties shall have any responsibility, liability, or obligation whatsoever to fund, direct payment or reimbursement of any fees or disbursements, or otherwise ensure that the Debtors fund the Professional Fees Escrow Account or that the Professional Fees Escrow Account has funds equal to the aggregate amount of the Budgeted Professional Expenses for any applicable period. The Debtors are authorized and directed to fund the Professional Fees Escrow Account on a weekly basis in an amount up to, but not to exceed, the Budgeted Professional Expenses for that week. Such funds shall be held in an identifiable segregated account for the benefit of the Professionals to be applied to the professional fees of the Chapter 11 Professionals that are approved for payment pursuant to one or more orders of this Court. Any professional fees payable to the Chapter 11 Professionals shall be paid first out of the Professional Fees Escrow Account. Any excess amounts in the Professional Fees Escrow Account after payment of such professional fees shall be subject in all respects to the DIP

Liens. The funds in the Professional Fees Escrow Account shall remain DIP Collateral (subject to the Carve-Out) unless and until such funds are paid to the Chapter 11 Professionals.

41. The final hearing on the Motion shall be held on October 28 2024, at 10:00 a.m., prevailing Eastern Time. The Debtors shall promptly mail copies of this Order (which shall constitute adequate notice of the Final Hearing) to the parties having been given notice of the Interim Hearing and to any other party that has filed a Rule 2002 request for service. Any objections or responses to entry of a final order on the Motion shall be filed with the Court, and served so as to be **received** by the following parties, **by no later than 4:00 p.m., prevailing Eastern Time, on October 21, 2024**: (i) proposed counsel to the Debtors, Pillsbury Winthrop Shaw Pittman LLP, Four Embarcadero Center, 22nd Floor, San Francisco, CA 94111-5998 (Attn: Joshua D. Morse (joshua.morse@pillsburylaw.com), Dania Slim (dania.slim@pillsburylaw.com), and Claire K. Wu (claire.wu@pillsburylaw.com)); (ii) Office of the United States Trustee, J. Caleb Boggs Federal Building, 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801 (Attn: Malcolm M. Bates (Malcolm.M.Bates@usdoj.gov)); (iii) counsel for the Prepetition Lender, Holland & Knight LLP, One Arts Plaza, 1722 Routh Street, Suite 1500, Dallas, TX 75201 (Attn: Brent McIlwain (Brent.McIlwain@hklaw.com) and Kameron Fleming (Kameron.Fleming@hklaw.com)) and Wilson Sonsini Goodrich & Rossti, PC, 222 Delaware Avenue, Suite 800, Wilmington, DE 19801 (Attn: Erin R. Fay (efay@wsgr.com)); and (iv) counsel to any Statutory Committee appointed in these cases.

Dated: October 3rd, 2024
Wilmington, Delaware

KAREN B. OWENS
UNITED STATES BANKRUPTCY JUDGE

Exhibit 1

Interim Approved Budget

(See Attached)

BIOLASE, Inc.

13 Week Cash Forecast	1 **Forecast** **W/E** **10/4/2024**	2 **Forecast** **W/E** **10/11/2024**	3 **Forecast** **W/E** **10/18/2024**	4 **Forecast** **W/E** **10/25/2024**	5 **Forecast** **W/E** **11/1/2024**	6 **Forecast** **W/E** **11/8/2024**	7 **Forecast** **W/E** **11/15/2024**	8 **Forecast** **W/E** **11/22/2024**	9 **Forecast** **W/E** **11/29/2024**	10 **Forecast** **W/E** **12/6/2024**	11 **Forecast** **W/E** **12/13/2024**	12 **Forecast** **W/E** **12/20/2024**	13 **Forecast** **W/E** **12/27/2024**
Cash, Beginning Balance	4,210,155	2,556,212	2,436,276	2,701,740	2,081,894	1,799,494	1,516,679	1,143,824	2,363,843	1,965,843	1,279,691	1,118,441	902,191
Customer receipts	659,634	661,180	899,975	1,161,975	942,600	887,850	1,027,850	-	-	-	-	-	-
SWK Funding Pre-Petition	-	-	-	-	-	-	-	-	-	-	-	-	-
SWK Funding Post-Petition	829,126	600,000	-	-	-	800,000	-	-	-	-	-	-	-
Asset Sale Proceeds (Estimated)								14,000,000					
Total Cash Beg Bal & Receipts	**5,698,915**	**3,817,392**	**3,336,251**	**3,863,715**	**3,024,494**	**3,487,344**	**2,544,529**	**15,143,824**	**2,363,843**	**1,965,843**	**1,279,691**	**1,118,441**	**902,191**
Vendor disbursements	(1,534,503)	(460,000)	(404,865)	(551,981)	(440,000)	(404,902)	(464,865)	(13,731)	(111,750)	(39,902)	-	-	-
Payroll & related disbursements	(967,200)	(521,116)	(64,646)	(869,840)	(205,000)	(525,762)	(605,840)	-	-	-	-	-	-
Sales Tax payments	-	(225,000)	-	-	-	(110,000)	-	-	-	(110,000)	-	-	-
Bankruptcy counsel & fees payments	(641,000)	(175,000)	(165,000)	(360,000)	(580,000)	(930,000)	(330,000)	(766,250)	(286,250)	(536,250)	(161,250)	(216,250)	(758,750)
Distribution to SWK								(12,000,000)					
Total Disbursements	**(3,142,704)**	**(1,381,116)**	**(634,511)**	**(1,781,821)**	**(1,225,000)**	**(1,970,664)**	**(1,400,705)**	**(12,779,981)**	**(398,000)**	**(686,152)**	**(161,250)**	**(216,250)**	**(758,750)**
Cash, Ending Balance	**2,556,212**	**2,436,276**	**2,701,740**	**2,081,894**	**1,799,494**	**1,516,679**	**1,143,824**	**2,363,843**	**1,965,843**	**1,279,691**	**1,118,441**	**902,191**	**143,441**

Exhibit 2

DIP Term Sheet

(See Attached)

Execution Version

Biolase, Inc.
Terms and Conditions of
Proposed Senior Secured, Super-Priority
Debtor-in-Possession Credit Facility

*The terms outlined below in this Terms and Conditions (this "**DIP Term Sheet**") are the terms and conditions for a senior secured, super-priority debtor-in-possession credit facility (hereinafter referred to as the "**DIP Facility**") to be made available to the Debtors (as defined below). This DIP Term Sheet, the Interim Order (as defined below), and the Final Order (as defined below) shall collectively constitute the exclusive and definitive documentation and agreement among the parties for the DIP Facility (the "**DIP Financing Documents**"). Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in that certain Credit Agreement, dated November 9, 2018, by and among the Debtors and SWK (as such agreement may be modified, amended, or restated from time to time, the "**Pre-Petition Credit Agreement**"):*

Borrowers:	Biolase, Inc., BL Acquisition Corp., BL Acquisition II, Inc., and Model Dental Office, LLC (the "**Debtors**").
Amount and Type of Facility:	After entry of the Interim Order (as defined below), the DIP Facility will consist of a consolidated, delayed, multi-draw term loan in the aggregate principal amount of no less than $5.0 million, (the "**DIP Loan Commitment**"), which amount is inclusive of certain amounts outstanding under the Pre-Petition Credit Agreement that were advanced from and after September 3, 2024 (estimated to be approximately $2.5 million) (the "**DIP Facility**").
Agent:	SWK Funding LLC ("**SWK**").
DIP Lenders:	SWK Funding LLC (the "**DIP Lenders**").
Borrowing Availability:	All new advances under the DIP Facility shall be limited by the Budget and the Draw Schedule, unless the Termination Date shall have occurred before any such new advance: Within this term sheet, the "**Draw Schedule**" shall mean: from the Petition Date through November 1, 2024 an aggregate amount of $1,429,126.00, with the remainder of the DIP Loan Commitment available after entry of the Final Order; provided, however, the funding necessary to wind down the Debtors' estates after the 363 Sale shall be subject to a budget agreed to by the Debtors and SWK and subject to the Final Order. The Draw Schedule may be modified and amended from

time to time only with the consent of SWK and the Debtors.

The availability under the DIP Facility may be reduced by reserves as may be established by SWK in its commercially reasonable discretion from time to time to reflect, among other things, contingencies or risks that arise after the date of this DIP Term Sheet that are reasonably likely to materially impact the DIP Collateral, the liens of SWK and the DIP Lenders upon such DIP Collateral, or the business and operations of the Debtors; *provided, however*, that the cumulative amount of any such reserves shall not exceed ten percent (10%) of the amount of the DIP Facility.

Budget and Variances: Subject to the Budget Variances (as defined below) (i) the Debtors' Budget line items for cash receipts and cash disbursements (excluding fees and expenses of third party professionals engaged by or for the benefit of Debtors or the DIP Lenders (collectively, "**Professional Fees**")) shall each be adhered to, by line item, on a weekly basis and a cumulative basis for the Budget (as defined below) period then ending as described below, provided, however, that amounts not disbursed in a line item shall be deemed to roll over to subsequent weeks and (ii) the Debtors' disbursements for Professional Fees (which shall be reported in a manner so that Professional Fees for each retained professional shall be reflected on its own line item) shall be adhered to on a cumulative basis for that portion of the Budget period then ending, except as to the DIP Lenders' Professional Fees (which DIP Lender Professional Fees shall not be limited by the Budget).

Actual amounts for each cash receipt and cash disbursement from operations line items (which shall not and does not include any Professional Fees) may not vary from the applicable Budget (including any amounts deemed to roll over from a previous week due to not being spent) by (i) more than ten percent (10%) by line item on a trailing three-week basis; or (ii) ten percent (10%) on a cumulative basis (collectively, the "**Budget Variances**").

On or before the third business day of each week, commencing with the first week following the Petition Date, the Debtors shall deliver to SWK an Approved Budget Variance Report.

Fees: Debtors agree to pay the costs and expenses of SWK as set

forth in the Section titled "Agent Fees and Expenses" below.

Termination Date:

The earliest to occur of: (a) the Maturity Date (as defined below); (b) twenty-eight (28) days after the Petition Date (as defined below) if the Final Order has not been entered; (c) acceleration of the obligations under the DIP Facility; (d) the effective date of a confirmed plan of reorganization or liquidation that provides for indefeasible payment in full, in cash of all obligations owing under the DIP Facility and is otherwise acceptable to SWK in its reasonable discretion; (e) the date which is the closing date of any sale of all or substantially all of the Debtors' assets; (f) the entry of an order by the Bankruptcy Court (as defined below) (i) granting relief from the automatic stay permitting foreclosure of any assets of the Debtors with a value in excess of $250,000 in the aggregate, (ii) granting any motion by SWK to terminate the use of cash collateral or lift the stay or otherwise exercise remedies against any cash collateral, (iii) appointing a trustee or an examiner with special powers, or (iv) dismissing or converting the Chapter 11 Case (as defined below); (g) the filing or support by Debtors of a plan of reorganization that (i) does not provide for indefeasible payment in full, in cash of all obligations owing under the DIP Facility and (ii) is not otherwise acceptable to SWK in its reasonable discretion; and (h) entry of a Bankruptcy Court order granting liens or claims that are senior or *pari passu* to the liens securing the DIP Facility. The date on which the earliest of clauses (a) through (h) above occurs and SWK provides notice thereof to the Debtors being referred to hereinafter as the "**Termination Date**." On the Termination Date, the DIP Facility shall be deemed terminated, and SWK shall have no further obligation to provide financing pursuant to the DIP Facility or DIP Financing Documents, except for funding of the Carve Out.

Non-Default Interest Rate and Payment Terms:

Interest on all outstanding advances under the DIP Facility shall accrue from and after the Petition Date at a per annum rate equal to the non-default rate of interest in force under the Pre-Petition Credit Agreement as of the Petition Date (the "**Non-Default Interest Rate**").

Interest with respect to any outstanding obligations under the Pre-Petition Credit Agreement shall, to the extent permitted by applicable bankruptcy law, accrue from and after the Petition Date at the rate of interest set forth in the

Pre-Petition Credit Agreement.

Default Interest Rate: Effective immediately upon the occurrence of an Event of Default unless waived in writing by SWK, interest on the outstanding loans under the DIP Facility shall accrue at a rate that is 2% per annum in excess of the Non-Default Interest Rate.

Loan Payments: The Debtors promise and agree to pay to SWK and the DIP Lenders all DIP Facility advances, together with interest thereon accruing pursuant to the DIP Financing Documents, in full, in cash, at the times set forth in the DIP Financing Documents, but no later than the Termination Date.

All unpaid principal, interest, fees, costs and expenses on the DIP Facility shall be due and payable in full by the Debtors on the Termination Date, whether at maturity, upon acceleration or otherwise and if such amounts are not paid in full in cash, interest, fees, costs, and expenses in respect of the DIP Facility shall continue to accrue until paid in full.

Use of Proceeds: Proceeds of the DIP Facility shall be used solely for the following purposes (and to the extent identified in the Budget): (a) to fund, after application of all other available cash, post-petition operating expenses and working capital needs of the Debtors, including, but not limited to, those activities required to remain in, or return to, compliance with laws in accordance with 28 U.S.C. § 1930; (b) to pay interest, fees and expenses to SWK in accordance with this DIP Term Sheet (whether or not such amounts are reflected in the Budget); (c) to fund fees and expenses incurred in connection with the 363 Sale (as defined below); (d) to pay permitted pre-petition claims and adequate protection payments, if any; (e) to pay Professional Fees provided for in the Budget, including the funding of the Carve Out; and (f) to pay other costs and expenses of administration of the Chapter 11 Case.

Proceeds of the DIP Facility or cash collateral shall not be used (a) to permit the Debtors, or any other party-in-interest or their representatives to challenge or otherwise contest or institute any proceeding to determine (i) the validity, perfection or priority of security interests in favor of SWK, the Pre-Petition Agent, the Pre-Petition Lenders or the DIP

Lenders or (ii) the enforceability of the obligations of the Debtors or any guarantor under the Pre-Petition Credit Agreement, any other Pre-Petition Loan Documents, or the DIP Facility, (b) to investigate, commence, prosecute or defend (or support any other person or entity in investigating, commencing, prosecuting, or defending) any claim, motion, proceeding or cause of action against SWK, the Pre-Petition Agent, the Pre-Petition Lenders, or the DIP Lenders and their agents, attorneys, advisors or representatives including, without limitation, any lender liability claims or subordination claims, (c) to investigate, commence, prosecute or defend (or support any other person or entity in investigating, commencing, prosecuting, or defending) any claim or proceeding or cause of action to disallow or challenge the obligations of the Debtors or any guarantor under Pre-Petition Credit Agreement, any other Pre-Petition Loan Documents or the DIP Financing Documents, or (d) to fund acquisitions, capital expenditures, capital leases, or any other similar expenditure other than capital expenditures specifically set forth in the Budget and approved by SWK, provided that a Committee (if any) and its professionals shall be permitted to investigate the liens, claims, and potential causes of action against the Pre-Petition Lenders in connection with the Pre-Petition Credit Agreement, with such investigation fees not to exceed $25,000.

Cash Management Collections and Remittances:

The Debtors shall use a cash management system that is the same as or substantially similar to its pre-petition cash management system. Any material changes from such pre-petition cash management system must be acceptable to SWK in its reasonable discretion. The Interim Order and Final Order shall provide SWK and the DIP Lenders with a valid and enforceable lien and security interest on the cash held in the Debtors' bank accounts.

Pre-Petition Obligations:

As of the date of this DIP Term Sheet, the Debtors owe certain obligations under the Pre-Petition Credit Agreement and other Pre-Petition Loan Documents. The lenders party to the Pre-Petition Credit Agreement are herein referred to collectively as the "**Pre-Petition Lenders**" and each individually a "**Pre-Petition Lender**") and SWK, in its role as Agent for the Pre-Petition Lenders, is hereinafter referred to as the "**Pre-Petition Agent**."

Upon entry of the Final Order, any amounts advanced to the Debtors in respect of the Pre-Petition Credit Agreement from and after September 3, 2024 (including accrued, unpaid interest from the Petition Date) shall be deemed obligations under the DIP Facility.

Super-Priority Administrative Claim:

Amounts owed by Debtors to SWK pursuant to the DIP Facility (including all accrued interest, fees, costs and expenses) shall constitute, in accordance with Section 364(c)(1) of the Bankruptcy Code (as defined below), a claim having priority over any or all administrative expenses of the kind specified in, among other sections, Sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 726, 1113, or 1114 of the Bankruptcy Code, subject to payment of the Carve Out.

Collateral Security:

The DIP Facility (including accrued interest, fees, costs and expenses) shall be secured, subject and subordinate only to any valid, properly perfected, enforceable, non-avoidable prior liens and security interests existing as of the Petition Date that are senior to the liens and security interests in favor of the Pre-Petition Agent and/or the Pre-Petition Lenders, subject to payment of the Carve Out, by first priority senior and priming liens and security interests (the "**DIP Liens**") in all of the Debtors' property, including, without limitation, all of Debtors' existing and future acquired property and interests of any nature whatsoever, real and personal, tangible and intangible, accounts receivable, general intangibles, payment intangibles, supporting obligations, investment property, commercial tort claims, inventory, rolling stock, machinery, equipment, subsidiary capital stock, chattel paper, documents, instruments, deposit accounts, contract rights, and tax refunds of the Debtors, excluding only Avoidance Actions, but including, subject to entry of the Final Order, Avoidance Proceeds (collectively, the "**DIP Collateral**").

Lien Validation and Perfection:

All liens authorized and granted pursuant to the Interim Order or the Final Order entered by the Bankruptcy Court approving the DIP Facility or with respect to adequate protection shall be deemed effective and perfected as of the Petition Date, and no further filing, notice or act will be required to effect such perfection.

The Debtors shall stipulate in the Interim Order and Final Order that (i) the liens of the Pre-Petition Agent and the

other Pre-Petition Lenders securing the Pre-Petition Credit Facility are valid, perfected, encumber all assets of the Debtors, and have first priority and (ii) the Debtors have no claims, offsets or any other causes of action against the Pre-Petition Agent or any of the Pre-Petition Lenders that would impair, in any manner, the liens of the Pre-Petition Agent or any of the Pre-Petition Lenders against the Debtors' assets or the obligations of the Debtors to the Pre-Petition Agent and Pre-Petition Lenders under the Pre-Petition Credit Facility. The Debtors' stipulations shall be binding upon all parties in interest in the Chapter 11 Case, including any committee that is appointed, unless (i) an adversary proceeding is filed by any party-in-interest prior to the expiration of seventy-five (75) days after entry of the Interim Order (the "**Review Period**") against the Pre-Petition Agent or the Pre-Petition Lenders (as applicable) challenging the Pre-Petition Agent or the Pre-Petition Lender's liens (as applicable) or otherwise asserting estate claims against the Pre-Petition Agent or the Pre-Petition Lenders (as applicable), and (ii) a final, non-appealable judgment is entered against the Pre-Petition Agent or the Pre-Petition Lenders (as applicable) in such adversary proceeding; provided, however, that any party-in-interest that fails to file an adversary proceeding within the Review Period shall be forever barred from asserting any claims against the Pre-Petition Agent and the Pre-Petition Lenders on behalf of the Debtors' estate, or challenging in any manner the liens and claims of the Pre-Petition Agent or the Pre-Petition Lenders against the Debtors. If a chapter 7 or chapter 11 trustee is appointed or elected during the Review Period, then such period with respect to such trustee only, shall be the later of (i) the last day of the Review Period and (ii) the date that is twenty (20) calendar days after the date on which such trustee is appointed or elected.

Release of Claims

In consideration of the furnishing of the DIP Facility, the Debtors, subject to the rights of another party to bring a Challenge Action during the Review Period, and upon entry of the Final Order, hereby absolutely releases and forever discharges each of the Pre-Petition Agent and Pre-Petition Lenders and their affiliates, officers, directors, employees, attorneys, and other representatives from any and all claims and causes of action of every kind and nature that exist on the date hereof, including, but not limited to with respect to or relating to the Pre-Petition Credit

Agreement or other Pre-Petition Loan Documents, including (i) any so-called "lender liability" or equitable subordination claims or defenses, (ii) any and all claims and causes of action arising under the Bankruptcy Code, and (iii) any and all claims and causes of action regarding the validity, priority, extent, enforceability, perfection, or avoidability of the liens or claims of the Pre-Petition Lenders or Pre-Petition Agent.

506(c) Surcharge/Equities of Case

Upon entry of the Final Order, the Debtors hereby waive any right to surcharge the prepetition collateral securing the Pre-Petition Credit Agreement or DIP Collateral, whether pursuant to Sections 506(c) or 105(a) of the Bankruptcy Code or any other applicable law.

Upon entry of the Final Order, SWK, the DIP Lenders, the Pre-Petition Agent and the Pre-Petition Lenders shall not be subject to the "equities-of-the case" exception of Section 552(b) of the Bankruptcy Code, the equitable doctrine of "marshaling," or any similar claim or doctrine with respect to any DIP Collateral or collateral securing the Pre-Petition Credit Agreement.

Adequate Protection:

As adequate protection and in consideration for being primed by the DIP Lenders' claims and liens, to the extent of diminution in the Pre-Petition Lenders' interests in the Debtors' collateral securing the amounts due under the Pre-Petition Credit Agreement following the Petition Date on account of granting the Super-Priority Administrative Claim, granting the DIP Liens, the Debtors' use of cash collateral, the subordination of the Pre-Petition Credit Agreement liens thereto and to the Carve Out, the imposition or enforcement of the automatic stay under Section 362(a) of the Bankruptcy Code, and/or otherwise pursuant to Sections 361(a), 363(c) and 364(d)(1) of the Bankruptcy Code, the Pre-Petition Agent and Pre-Petition Lenders (a) shall receive a claim having priority over any and all expenses of the kind specified in, among other sections of the Bankruptcy Code, Sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 726, and 1114, subject to payment of the Carve Out and subject to the super-priority administrative claims of SWK and the DIP Lenders under the DIP Facility; and (b) shall have valid, binding, enforceable and perfected liens in all DIP Collateral, subject to payment of the Carve Out and the DIP Liens (the "**SWK Adequate Protection Liens**").

The SWK Adequate Protection Liens granted herein in

	favor of the Pre-Petition Agent and Pre-Petition Lenders shall not encumber Avoidance Actions, but, subject to entry of the Final Order, shall encumber Avoidance Proceeds.
Agent Fees and Expenses:	The Debtors shall promptly pay or reimburse SWK when invoiced for all reasonable costs and expenses of counsel (including, without limitation, Delaware counsel) and financial advisors for SWK, which fees and expenses relate to the DIP Facility and the administration and interpretation of, and the enforcement of remedies under, the DIP Facility, regardless of whether such amounts were incurred before or after the Petition Date, including but not limited to, due-diligence, duplication or printing costs, consultation, travel, and attendance at court hearings, regardless of whether the DIP Facility is consummated. SWK shall have the right to charge the DIP Facility for any such fees and costs. Failure to pay such fees and expenses within ten (10) Business Days of delivery of the applicable invoice shall be an Event of Default under the DIP Facility, provided that SWK shall concurrently provide summary invoices to the U.S. Trustee and the Committee and allow such parties at least ten (10) calendar days to review and object to any fees or expenses requested therein. If any objection is asserted, the Bankruptcy Court shall decide the issue and the Debtors shall not be required to pay any disputed portion of such fees or expenses until the matter is resolved.
Conditions Precedent to Initial DIP Facility Advance:	The closing of the DIP Facility shall be subject to (a) approval of the Interim Budget (as defined below) and Budget by SWK and receipt of all financial information and projections regarding the Debtors requested by SWK, all in form and substance satisfactory to SWK in its reasonable discretion, (b) entry of an Interim Order and the Final Order approving the DIP Facility, its superpriority administrative claims and all first priority (subject only to the Carve Out) and other liens securing the DIP Facility, and containing such other orders and findings as SWK may require, including automatic modification of the automatic stay upon the occurrence of an Event of Default enabling SWK to exercise certain rights and remedies against the DIP Collateral, which Interim Order or Final Order, as applicable, shall not have been modified or amended without approval of SWK, and shall not have been reversed, vacated or stayed pending appeal, in form and substance satisfactory to SWK in its reasonable discretion, (c) SWK's approval of all material motions and orders filed in the Chapter 11 Case requiring

the expenditure of cash, and (d) continuation of Debtors' present cash management system.

Additional Conditions to Each Borrowing Under the DIP Facility:

The funding of each DIP Facility advance shall be subject to the following conditions precedent: (a) There shall exist no Event of Default (or event that would constitute an Event of Default with the giving of notice or lapse of time) under any of the DIP Financing Documents, and the representations and warranties therein shall be true and correct in all material respects when made; (b) There shall have occurred no material adverse change in the Debtors' operations (financial, environmental, or otherwise), performance, or properties (other than as a result of the commencement of the Chapter 11 Case), since the date of this DIP Term Sheet, that has or could be expected to have a Material Adverse Effect on the rights and remedies of SWK or on the ability of the Debtors to perform its obligations under the DIP Facility; (c) Compliance with Bankruptcy Rule 4001 and any applicable Local Bankruptcy Rules, the entry of the Interim Order and the Final Order (as applicable), together with any other order requested by SWK authorizing and approving the DIP Facility in form, substance and amount and providing for the DIP Collateral, all acceptable to SWK in its reasonable discretion; (d) Payment of all fees and expenses owing to SWK in connection with and as provided in the DIP Facility; and (e) The DIP Financing Documents and the Interim and Final Orders shall include such waivers, indemnities, and other provisions as are acceptable to SWK in its reasonable discretion.

Affirmative and Negative Covenants:

Debtors shall comply with the following affirmative and negative covenants: (a) compliance with Budget covenants consistent with the section titled "Budget and Variances," (b) the Debtors shall, from and after the Petition Date, satisfy the Milestones; (c) the Debtors shall not make any expenditures or authorize any employee or agent of the Debtors to expend any time with respect to the assets listed on Schedule 1.1(b) of the Stalking Horse Asset Purchase Agreement; (d) the Debtors shall, contemporaneously with closing a sale of substantially all of its assets, remit the net proceeds of such sale to SWK for immediate application to the obligations owed to SWK, the DIP Lenders, and the Pre-Petition Lenders, subject to payment of the Carve Out, the Budget and any agreed wind-down budget; and (e) the Debtors shall not take (or refrain from taking) any action that

could reasonably be expected to have a Material Adverse Effect.

Bankruptcy Court Filings: As soon as practicable in advance of filing with the Bankruptcy Court, Debtors shall furnish to SWK (i) the motion seeking approval of and proposed forms of the Interim Order and the Final Order, which motion shall be in form and substance satisfactory to SWK and the Debtors, (ii) the motions seeking approval of the bidding procedures and the 363 Sale, and the proposed forms of the orders related thereto, which shall be in form and substance satisfactory to SWK and the Debtors, (iii) all other proposed orders and pleadings related to the DIP Facility, which orders and pleadings shall be in form and substance satisfactory to SWK and the Debtors, (iv) any plan of reorganization or liquidation, and/or any disclosure statement related to such plan (which plan or disclosure statement shall comply with the requirements set forth herein), which shall be in form and substance satisfactory to SWK and the Debtors, (v) any motion and proposed form of order seeking to extend or otherwise modify the Debtors' exclusive periods set forth in Section 1121 of the Bankruptcy Code, (vi) any motion seeking approval of any sale of the Debtors' assets and any proposed form of a related bidding procedures order and sale order (other than those with respect to the bidding procedures and the 363 Sale), and (vii) any other motion filed seeking approval of any matter requiring material expenditures of DIP Collateral must comply with the Budget (each of which must be in form and substance satisfactory to SWK and the Debtors).

Sale Process: The Debtors shall conduct a sale process for the sale of substantially all of its assets in accordance with the Milestones defined below.

The management team of the Debtors shall oversee the sale process on behalf of the Debtors and shall exercise its commercially reasonable best efforts to provide SWK with access to all potential bidders and other interested parties and any information provided to the Debtors by such parties.

In addition to the reporting required under the Pre-Petition Credit Agreement, the Debtors shall, upon request, provide or cause to be provided to SWK updates and reports regarding the status of the marketing and sale process of the Debtors. Debtors shall also cause its management team to be made available during ordinary business hours and following

reasonable advance notice to provide periodic telephonic updates of such reports to SWK from time to time, as reasonably requested by SWK.

Milestones. The Debtors shall be required to comply with the following (the "**Milestones**"):

(a) On or within two (2) days of the Petition Date, or such later date to which SWK consents in writing in its sole discretion, the Debtors shall file a motion, in form and substance acceptable to SWK, requesting entry of the Sale Procedure Order (as defined below) and seeking approval of the sale in accordance with the Stalking Horse Asset Purchase Agreement to the Stalking Horse Bidder, or such higher bidder as may be identified through the procedures approved in the Sale Procedure Order as the Winning Bidder;

(b) On or before the date that is twenty-one (21) days after the Petition Date, or such later date to which SWK consents in writing in its sole discretion, the Bankruptcy Court shall have entered the Sale Procedure Order;

(c) On or before the date that is thirty-one (31) days after the Petition Date, or such later date to which SWK consents in writing in its sole discretion, all competing bids under the Sale Procedure Order shall have been submitted;

(d) On or before the date that is thirty-five (35) days after the Petition Date, or such later date to which SWK consents in writing in its sole discretion, an auction under the Sale Procedure Order shall have occurred (as applicable);

(e) On or before the date that is forty-two (42) days after the Petition Date, or such later date to which SWK consents in writing in its sole discretion, the Bankruptcy Court shall have conducted a hearing to approve the 363 Sale;

(f) On or before the date that is forty-five (45) days after the Petition Date, or such later date to which SWK consents in writing in its sole discretion, the Bankruptcy Court shall have entered the Sale Order approving the 363 Sale; and

(g) On or before the date that is five (5) days after entry of the Sale Order, provided that the Bankruptcy Court has waived the stay imposed by Bankruptcy Rule 6004(h) or

such later date to which SWK consents in writing in its sole discretion, the 363 Sale shall be closed, with proceeds of the 363 Sale paid directly to SWK to be applied to the obligations under the DIP Facility and Pre-Petition Credit Agreement, subject to payment of the Carve Out.

Notwithstanding anything to the contrary herein, the Bankruptcy Court may set dates with respect to the Milestones beyond the outer dates specified above to accommodate its own schedule and to the extent the Bankruptcy Court makes such an extension, the Milestones hereunder shall be automatically extended by the same period as the Bankruptcy Court's extension.

SWK shall have the right to "credit bid" any secured obligations owed to it by the Debtors in any sale of the Debtors' assets.

Remedies:

Following the Termination Date and provided that the Bankruptcy Court does not enter any order to the contrary, within five (5) Business Days following the Debtors' receipt of a Default Notice as defined below, SWK shall have customary remedies, including, without limitation, the right to realize on all DIP Collateral, the right to exercise any remedy available under applicable law, without the necessity of obtaining any further relief or order from the Bankruptcy Court. Consistent with the foregoing sentence, section 362 relief from the stay in favor of SWK shall be embodied in any order approving the DIP Facility and the use of cash collateral.

Events of Default:

The term "**Default**" and "**Event of Default**" shall mean the occurrence of any of the following:

- The Chapter 11 Case shall be converted to a case under Chapter 7 of the Bankruptcy Code or be dismissed or a motion requesting such relief shall have been filed which the Debtors fail to timely oppose.
- Filing or support of a proposed plan of reorganization by the Debtors that does not provide for the indefeasible payment in full and in cash of Debtors' obligations outstanding under the DIP Facility, unless otherwise agreed in writing by SWK in its sole discretion.
- Entry of an order confirming (or the filing of any motion or pleading requesting confirmation of) a plan

of reorganization that does not require the indefeasible repayment in full, in cash of the DIP Facility as of the effective date of the plan, unless otherwise agreed in writing by SWK in its sole discretion.

- Appointment of a trustee under Section 1104 of the Bankruptcy Code without the express written consent of SWK, or the filing of any motion or other pleading requesting such relief which the Debtors fail to timely oppose.
- Appointment of an examiner with enlarged powers (powers beyond those set forth in Section 1106(a)(3) and (4) of the Bankruptcy Code) under Section 1106(b) of the Bankruptcy Code without the prior written consent of SWK, or the filing of a motion or other pleading requesting such relief which the Debtors fail to timely oppose.
- Entry of an order by the Bankruptcy Court amending, supplementing, staying, vacating or otherwise modifying the DIP Facility, the Interim Order, or Final Order, without the prior written consent of SWK or the filing of a motion or other pleading requesting such relief which the Debtors fail to timely oppose.
- Any attempt by Debtors to obtain, or if any other party in interest obtains, an order of the Bankruptcy Court or other judgment, and the effect of such order or judgment is to, invalidate, reduce or otherwise impair SWK's claims, or to subject any of SWK's collateral to a surcharge pursuant to Section 506(c) of the Bankruptcy Code.
- The Debtors shall request approval of any postpetition financing, other than the DIP Facility, that would not immediately repay all DIP Facility obligations, in full, in cash, on the date of the closing of such postpetition financing.
- Debtors shall apply for an order substituting any assets (other than cash) for all or any portion of the DIP Collateral.
- Other than with respect to the Carve-Out, entry of an order granting liens or claims that are senior or *pari passu* to the liens granted on the DIP Collateral in favor of SWK and/or the DIP Lenders under the DIP Financing Documents.

- The Debtors shall assert that any of the DIP Liens are invalid, or any DIP Liens granted to the DIP Agent or DIP Lender shall be determined to be invalid.
- Any payment on, or application for authority to pay any pre-petition claim owing to terminated employees or lease rejection damages without prior written consent of SWK or as otherwise set forth in the Budget.
- If at any time prior to the conclusion of the sale process, SSG ceases to be engaged by the Debtors, ceases to be involved in the sale process, or the sale process is halted without the DIP Agent's consent.
- A final order is entered granting any secured creditor (other than SWK) with a claim in excess of $250,000 relief from the automatic stay.
- Failure to make all payments under the DIP Facility when due (and after giving effect to any applicable grace period).
- Failure to pay any post-petition material indebtedness when due (and after giving effect to any applicable grace period).
- Breach of any covenant set forth in any DIP Financing Document.
- Any material representation or warranty by Debtors is incorrect or misleading in any material respect when made.
- Exclusivity shall have been terminated by the Debtors or the Debtors shall have agreed to any such termination.
- After entry thereof, either of the Sale Procedure Order or the Sale Order shall cease to be in full force and effect, shall have been reversed, stayed, vacated or subject to stay pending appeal or shall have been modified or amended without the prior written consent of SWK.
- Debtors shall take (or support any other Person in taking) any action in order to restrict or prohibit SWK or any DIP Lender or Pre-Petition Lender from submitting a "credit bid" for any assets of the Debtors used as all or part of its bid an amount of secured

obligations owed to it by the Debtors.

- Any Challenge Action (as such term is defined in the Interim Order or the Final Order) is commenced by the Debtors against the Pre-Petition Agent or any Pre-Petition Lender.
- The commencement of an action or filing of a motion by the Debtors challenging the rights and remedies of SWK or the DIP Lenders under the DIP Financing Documents or that is otherwise inconsistent with the DIP Financing Documents.
- The Debtors fail to disburse the sale proceeds to the DIP Lenders substantially contemporaneously with the closing of the 363 Sale, subject to payment of the Carve Out.

Indemnification: The Debtors shall indemnify and hold SWK, the DIP Lenders, and their officers, directors, employees and formally engaged formally engaged agents (including all of their professionals) (each an "**Indemnified Party**") harmless from and against any and all claims, damages, losses, liabilities and expenses (including, without limitation, all reasonable fees and disbursements of attorneys and other professionals) to which any Indemnified Party may become liable or which may be incurred by or asserted against any Indemnified Party, in each case in connection with or arising out of or by reason of any investigation, litigation or proceeding arising out of or relating to or in connection with the DIP Facility, the DIP Financing Documents, any obligation, or any act, event or transaction related or attendant thereto or any use or intended use of the proceeds of the DIP Facility, except to the extent the same is found in a final, nonappealable judgment by a court of competent jurisdiction to have resulted from such Indemnified Party's gross negligence, fraud, willful misconduct, or breach of their obligations under the DIP Facility. Notwithstanding the foregoing, the Debtors shall not indemnify any Indemnified Party for costs, expenses, or liabilities incurred in connection with a successful Challenge Action brought in accordance with Paragraph 27 of the Interim Order. The indemnification terms and conditions of the Pre-Petition Credit Agreement are hereby incorporated in this DIP Term Sheet.

Governing Law: The DIP Financing Documentation shall be governed by the laws of the state of New York, subject to applicable federal bankruptcy laws.

Other Definitions:

"**363 Sale**" means the sale of all or substantially all of the assets of the Debtors under Section 363 of the Bankruptcy Code.

"**Approved Budget Variance Report**" means a current report that: (i) details the actual amount of cash receipts and disbursements for the prior week for each line item included in the Budget (on a weekly and cumulative basis), (ii) compares such actual cash receipts and disbursements (on a line item by line item basis) with the weekly and cumulative budgeted amounts for each such line item set forth in the Budget for such period, and (iii) provides an explanation for all variances between budgeted and actual amounts. Each Approved Budget Variance Report will be certified as true and correct by the Debtors' chief financial officer or chief executive officer.

"**Auction**" means an auction held in connection with the 363 Sale and in accordance with the provisions set forth in the Sale Procedure Order.

"**Avoidance Actions**" means any causes of action that could be brought under Sections 544-548 of the Bankruptcy Code or any applicable state fraudulent transfer or similar statute.

"**Avoidance Proceeds**" means the proceeds received from, or property recovered in respect of, Avoidance Actions.

"**Bankruptcy Code**" means Title 11 of the United States Code (11 U.S.C. § 101 et seq.), as amended.

"**Bankruptcy Court**" means the United States Bankruptcy Court for the District of Delaware presiding over the Chapter 11 Case.

"**Budget**" means the budget of Debtors relative to the operations of the Debtors in the Chapter 11 Case for any fiscal period, as delivered to SWK in form and substance satisfactory to SWK. A Budget for the first 8 weeks of the Chapter 11 Case (the "**Interim Budget**") must be approved by SWK and must be attached to the Interim Order. A Budget covering the period from the date of entry of the Final Order through the Maturity Date must be delivered by the Debtors to SWK (and approved by SWK in its sole discretion) at least two (2) Business Days before any hearing related to final approval of the DIP Facility and

must be attached to the Final Order.

"**Carve Out**" means the sum of:

(a) all fees required to be paid to the Clerk of the Court and the U.S. Trustee pursuant to 28 U.S.C. § 1930(a) plus interest at the statutory rate (collectively, the "**Statutory Fees**");

(b) all reasonable fees and expenses up to $10,000 incurred by a trustee under Section 726(b) of the Bankruptcy Code;

(c) all unpaid postpetition fees and expenses of the professionals retained by the Debtors pursuant to Sections 327, 328, or 363 of the Bankruptcy Code (the "**Debtor Professionals**") and by the Committee (if any) pursuant to Sections 328 or 1103 of the Bankruptcy Code (the "**Committee Professionals**" and, together with the Debtor Professionals, the "**Chapter 11 Professionals**"), but only to the extent that such fees and expenses are (i) incurred before or on the first Business Day after delivery by the DIP Agent of a notice of a Termination Event, (ii) within the cumulative amounts set forth in the Budget approved by SWK for such Chapter 11 Professional as of the date of the Termination Event, and (iii) allowed at any time by the Bankruptcy Court under Sections 330, 331, or 363 of the Bankruptcy Code;

(d) postpetition fees and expenses of (i) the Debtor Professionals incurred after the first Business Day following delivery by the DIP Agent of a notice of the occurrence of a Termination Event in an aggregate amount not to exceed $100,000 to the extent such fees and expenses are allowed at any time by the Bankruptcy Court under Sections 330, 331, or 363 of the Bankruptcy Code and (ii) the Committee Professionals incurred after the first Business Day following delivery by the DIP Agent of a notice of the occurrence of a Termination Event in an aggregate amount not to exceed $15,000, to the extent such fees and expenses are allowed at any time by the Bankruptcy Court under Sections 330, 331, or 363 of the Bankruptcy Code.

Provided, however, that in no event shall the Carve Out for each Chapter 11 Professional exceed the cumulative

amounts for postpetition fees set forth for such professional in the Budget.

Provided, further, however, that the Carve Out for Chapter 11 Professionals shall be first paid from any retainers or any professional expense escrow account established by the Debtors.

The Carve Out shall not include payment for any fees and expenses, if any, of the Chapter 11 Professionals incurred directly or indirectly, in respect of, arising from or relating to:

(i) the initiation, joinder, support, or prosecution of any action contesting the indebtedness owed to SWK, the DIP Lenders, the Pre-Petition Agent, or the Pre-Petition Lenders, or the validity of any liens granted to SWK, the DIP Lenders, the Pre-Petition Agent, or the Pre-Petition Lenders;

(ii) preventing, hindering or otherwise delaying (or supporting any other person or entity in preventing, hindering or otherwise delaying), whether directly or indirectly, the exercise by SWK or the Pre-Petition Agent of any of its rights and remedies under the Interim Order, Final Order, or documents comprising the DIP Facility, DIP Financing Documents, Pre-Petition Credit Agreement, or other Pre-Petition Loan Documents;

(iii) the commencement, support, or prosecution of any action or proceeding of any claims, causes of action or defenses against SWK, the DIP Lenders, the Pre-Petition Agent, the Pre-Petition Lenders or any of their respective officers, directors, employees, agents, attorneys, affiliates, successors or assigns, including, without limitation, any attempt to recover or avoid any claim or interest from SWK, the DIP Lenders, the Pre-Petition Agent, or the Pre-Petition Lender;

(iv) any request to borrow money other than pursuant to the terms of the Interim Order, the Final Order, or the DIP Financing Documents;

(v) with respect to the Debtors, any of the Debtor Professionals, or any of their successors or assigns (including, without limitation, any trustee, responsible

officer, examiner, estate administrator or representative or similar person appointed in a case for the Debtors under any chapter of the Bankruptcy Code) performing or commencing any investigation or litigation (whether threatened or pending) by the Debtors with respect to any matter released or to be released, waived, or to be waived, or specified as not subject to challenge by the Debtors pursuant to the Interim Order or Final Order; or

(vi) for any other purpose for which proceeds of the DIP Facility may not be used pursuant to this DIP Term Sheet.

"**Chapter 11 Case**" means the voluntary Chapter 11 case commenced by the Debtors in the Bankruptcy Court.

"**Committee**" means any statutory committee appointed in the Chapter 11 Case.

"**Final Order**" means a final, non-appealable order of the Bankruptcy Court, that, without limitation, approves the DIP Facility and grants the liens and security interests contained therein, on terms satisfactory to SWK in its reasonable discretion.

"**Interim Order**" means an interim order of the Bankruptcy Court authorizing Debtors, among other things, to obtain interim financing and incur post-petition indebtedness on terms satisfactory to SWK in its reasonable discretion.

"**Material Adverse Effect**" means (a) a material adverse change in, or a material adverse effect upon, the operations, business, assets, properties, liabilities (actual or contingent) or financial condition of the Debtors; (b) a material impairment of the rights and remedies of any of the DIP Agent, DIP Lender, Pre-Petition Agent, or Pre-Petition Lenders under any of the DIP Financing Documents, Pre-Petition Credit Agreement, or other Pre-Petition Loan Documents, (c) a material adverse effect on the Debtors' ability to perform any of its material obligations under the DIP Financing Documents, Pre-Petition Credit Agreement, or other Pre-Petition Loan Documents , or (d) a material adverse effect upon the legality, validity, binding effect, or enforceability against the Debtors of any of the DIP Financing Documents, Pre-Petition Credit Agreement, or other Pre-Petition Loan

Documents.

"**Maturity Date**" means the date that is one hundred twenty (120) days after the Petition Date, or such later date to which SWK consents in writing.

"**Petition Date**" means the date on which the Chapter 11 Case was filed with the Bankruptcy Court.

"**Pre-Petition Loan Documents**" means, collectively, the Pre-Petition Credit Agreement, and each other document relating to, and executed in connection with, the credit facility governed by the Pre-Petition Credit Agreement.

"**Sale Order**" means the order entered by the Bankruptcy Court that is either (i) in form and substance satisfactory to SWK and the Debtors or (ii) that pays in full the DIP Obligations, and that, among other things, approves the 363 Sale, the results of the Auction (if applicable) and the Winning Bidder's bid.

"**Sale Procedure Order**" means an order in form and substance satisfactory to SWK approving the bidding procedures to be applicable to the 363 Sale.

"**SSG**" means SSG Capital Advisors, Inc.

"**Stalking Horse Asset Purchase Agreement**" means an asset purchase agreement by and among the Debtors and the Stalking Horse Bidder that provides for the purchase and sale of substantially all of the assets of the Debtors, which third party purchaser and asset purchase agreement are satisfactory to SWK in its reasonable discretion.

"**Stalking Horse Bidder**" shall mean PIPStek LLC.

"**Termination Event**" means the occurrence of the earlier of:

(i) an Event of Default under the DIP Facility; or

(ii) the Debtors' failure to comply with the terms of the DIP Financing Documents (including, without limitation, their failure to comply with the Budget, subject to the Budget Variances and any other approved variances).

"**Winning Bidder**" means the bidder that (a) agrees (at the Auction if applicable) to purchase all or substantially all of the assets of the Debtors pursuant to the Stalking Horse Purchase Agreement, and (b) is acceptable to SWK.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their duly authorized officers as of the date first set forth above.

BORROWERS:

BIOLASE, INC.

Signed by:
By: John R. Beaver
229EF2629069497...
Name: John R. Beaver
Title: President and CEO

BL ACQUISITION I, INC.

Signed by:
By: John R. Beaver
229EF2629069497...
Name: John R. Beaver
Title: President and CEO

BL ACQUISITION II, INC.

Signed by:
By: John R. Beaver
229EF2629069497...
Name: John R. Beaver
Title: President and CEO

MODEL DENTAL OFFICE, LLC.

Signed by:
By: John R. Beaver
229EF2629069497...
Name: John R. Beaver
Title: President and CEO

AGENT:
SWK FUNDING LLC

By: Signed by: Jody Staggs 1B78353BA558464...
Name: Jody Staggs
Title: President and CEO

LENDER:
SWK FUNDING LLC

By: Signed by: Jody Staggs 1B78353BA558464...
Name: Jody Staggs
Title: President and CEO