United States Bankruptcy Court
Southern District of Texas
ENTERED
January 07, 2025
Nathan Ochsner, Clerk

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

In re:	)	Chapter 11
	)	
	)	Case No. 24-90572 (CML)
SPICEY PARTNERS REAL ESTATE HOLDINGS, LLC, *et al.*,[1]	)	(Jointly Administered)
	)	
Debtors.	)	**Re: Docket Nos. 70, 71, 73 & 121**

FINAL ORDER (I) AUTHORIZING DEBTORS TO OBTAIN POSTPETITION FINANCING, (II) GRANTING PRIMING LIENS AND PROVIDING SUPERPRIORITY ADMINISTRATIVE EXPENSE CLAIMS, (III) MODIFYING AUTOMATIC STAY, AND (IV) GRANTING RELATED RELIEF

Upon consideration of the motion, dated December 3, 2024 [Docket No. 70] (the "Motion")[2] of the above-captioned debtors and debtors in possession (the "Debtors") in the above-captioned chapter 11 cases (the "Chapter 11 Cases"), pursuant to sections 105, 362, 363, 364, 364, 503, 506, 507 and 552 of chapter 11 of title 11 of the United States Code (as amended, the "Bankruptcy Code"), Rules 2002, 4001, 6003, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (as amended, the "Bankruptcy Rules") and Rules 2002-1, 4001-1(b), 4002-1, and 9013-1 of the Bankruptcy Local Rules of the United States Bankruptcy Court for the Southern District of Texas and the Procedures for Complex Chapter 11 Bankruptcy Cases (the "Local Bankruptcy Rules") promulgated by the United States Bankruptcy Court for the Southern District of Texas, Houston Division (the "Court"), seeking entry of the Interim Order [Docket No. 121] (the "Interim Order") and a final order (this "Final Order") authorizing, among other things:

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[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number are: Spicey Partners Real Estate Holdings, LLC (6459) and Cosmed Group, Inc. (8781). The location of the Debtors' service address is: 28 Narragansett Ave., Jamestown, RI 02835.

[2] Each capitalized term that is not defined herein shall have the meaning ascribed to such term in the Motion or DIP Credit Agreement (each as defined below), as applicable.

(i) the Debtors Cosmed Group, Inc. ("Cosmed") and Spicey Partners Real Estate Holdings, LLC ("SPRE"), as borrowers (Cosmed and SPRE, together, the "Borrowers"), to obtain a senior secured superpriority debtor-in-possession financing facility (the "DIP Facility") pursuant to the terms and conditions herein, the terms and conditions set forth in that certain *Secured Superpriority Debtor in Possession Financing Summary of Terms and Conditions* attached as an exhibit to the Interim Order (the "DIP Term Sheet"), upon entry of this Final Order, that certain *Senior Secured Superpriority Debtor-in-Possession Loan Agreement* (as may be amended, restated, supplemented or otherwise modified from time to time, in each case with the consent of the DIP Lender (as defined below), the "DIP Credit Agreement," substantially in the form attached to this Final Order as **Exhibit 1**), this Final Order, the Interim Order, the Approved Budget (as defined below), and all other agreements, documents, and instruments delivered or executed in connection therewith to the extent that the DIP Lender determines there is a need for such other agreements, documents, and instruments (in each case, as amended, restated, supplemented, or otherwise modified from time to time, the "DIP Documents") provided by Zimmer, Inc., as lender (in such capacity, together with any successors and assigns permitted under the DIP Documents, the "DIP Lender," and together with the Borrowers, the "DIP Loan Parties"), which DIP Facility (1) was previously made available pursuant to the Interim Order as an initial draw in the amount of $1,200,000 (the "Interim Advance") and (2) subject to the terms and conditions set forth herein, and in the other DIP Documents (including the DIP Credit Agreement), shall be made available in the amount of an additional $6,300,000 (the "Final Advances") (the Interim Advance and Final Advances, collectively, the "DIP Facility Loans") for a total DIP Facility of $7,500,000;

(ii) the DIP Loan Parties to (i) execute (to the extent not previously executed), deliver, and perform, as applicable, under the DIP Credit Agreement and each of the other DIP Documents, (ii) incur all loans, advances, extensions of credit, financial accommodations, indemnification and reimbursement obligations and other obligations, and pay all principal, interest, premiums, fees, costs, expenses, charges (including the reasonable and documented fees and expenses of the attorneys and financial advisor to the DIP Lender and all other amounts payable under the DIP Documents, including without limitation, all obligations set forth in the DIP Credit Agreement) (collectively, the "DIP Obligations"), whenever the same shall become due or payable, whether at stated maturity, by prepayment, declaration, acceleration or otherwise, in each case, in accordance with the DIP Documents and this Final Order, and (iii) perform such other and further acts as may be necessary, required or desirable to implement and effectuate the terms of this Final Order, the DIP Documents and the transactions contemplated hereunder and thereunder;

(iii) the Debtors to use proceeds of the DIP Facility Loans solely in accordance with the Approved Budget (annexed to this Final Order as **Exhibit 2**) and cash flow forecast prepared by the Debtors, subject to the variances permitted under the DIP Credit Agreement and as otherwise provided herein and in the other DIP Documents;

(iv) the Debtors to grant to the DIP Lender, in respect of the DIP Obligations, a superpriority administrative expense claim pursuant to section 364(c)(1) of the Bankruptcy Code and first priority priming liens on and security interests in substantially all assets and property of the Debtors (now owned or hereafter acquired) pursuant to 364(c)(2), (c)(3) and (d)(1) of the Bankruptcy Code, in each case as and to the extent, set forth more fully below and in the DIP Documents;

(v) certain stipulations waivers, and releases by the Debtors with respect to, *inter alia*, the DIP Lender, the DIP Documents, the DIP Liens, the DIP Obligations and the DIP Collateral, in each case, subject to the terms and provisions of this Final Order;

(vi) the Debtors' waiver of (a) the right to surcharge the DIP Collateral as to the DIP Lender, pursuant to section 506(c) of the Bankruptcy Code or otherwise, (b) the equitable doctrine of "marshaling" and other similar doctrines with respect to the DIP Collateral as to the DIP Lender, and (c) the "equities of the case" exception under section 552(b) of the Bankruptcy Code with respect to the DIP Collateral as to the DIP Lender and the DIP Obligations, in each case, upon the terms set forth in this Final Order; and

(vii) the modification or waiver by the Court of the automatic stay imposed by section 362 of the Bankruptcy Code and any other applicable stay (including Bankruptcy Rule 6004) to the extent necessary to implement and effectuate the terms and provisions of the DIP Facility and this Final Order and the other DIP Documents, and to provide for the immediate effectiveness of this Final Order.

The Court having considered the Motion, the terms of the DIP Facility and the DIP Documents (including the DIP Credit Agreement), the *Declaration of David G. Howe in Support of Emergency Motion of Debtors for Interim and Final Orders (I) Authorizing Debtors to Obtain Postpetition Financing, (II) Granting Priming Liens and Providing Superpriority Administrative Expense Claims, (III) Modifying Automatic Stay, (IV) Scheduling Final Hearing, and (V) Granting Related Relief* (the "DIP Declaration"), the *Declaration of David G. Howe, of the Debtors, in Support of Chapter 11 Petitions and First Day Motions* (the "First Day Declaration"), the evidence submitted at the hearing held before this Court on December 10, 2024, to consider entry of the Interim Order (the "Interim Hearing"), the evidence submitted at the hearing before this Court on

January 7, 2025, to consider entry of this Final Order (the "Final Hearing"); the Court after the Interim Hearing having issued the Interim Order; and upon the record of the Chapter 11 Cases; and due and proper notice of the Final Hearing having been given in accordance with Bankruptcy Rules 4001 and 9014 and all applicable Local Bankruptcy Rules; and all objections, if any, to the relief requested in the Motion having been withdrawn, resolved, or overruled by the Court; and it appearing that approval of the final relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and is otherwise fair and reasonable and in the best interests of the Debtors, their creditors, and their estates, and essential for the continued operation of the Debtors' businesses and maximization of the value of the Debtors' assets; and it appearing that the Debtors' entry into the DIP Credit Agreement and DIP Documents is a sound and prudent exercise of the Debtors' business judgment; and after due deliberation and consideration; and for good and sufficient cause appearing therefor:

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

A. **Petition Date**. On November 14, 2024, (the "Petition Date"), the Debtors filed voluntary petitions under Chapter 11 of the Bankruptcy Code in this Court.

B. **Debtors in Possession**. The Debtors have continued in the management and operation of their businesses and property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Chapter 11 Cases.

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

C. **Jurisdiction and Venue**. The Court has jurisdiction over the Chapter 11 Cases, the Motion, and the parties and property affected hereby pursuant to 28 U.S.C. § 1334. Consideration of the Motion constitutes a core proceeding under 28 U.S.C. § 157(b)(2), and the Court may enter a final order consistent with Article III of the United States Constitution. Venue for the Chapter 11 Cases and the proceeding on the Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

D. **Committee Formation**. On December 16, 2024, the United States Trustee for the Southern District of Texas (the "U.S. Trustee") appointed an official committee of unsecured creditors in these Chapter 11 Cases pursuant to section 1102 of the Bankruptcy Code (the "Committee").

E. **Notice**. The Final Hearing was held pursuant to Bankruptcy Rule 4001(b)(2) and (c)(2). Proper, timely, adequate, and sufficient notice of the Final Hearing and the relief requested in the Motion has been provided to (a) the U.S. Trustee, (b) counsel to the DIP Lender, (c) all other parties asserting a lien on or a security interest in the assets of the Debtors to the extent reasonably known to the Debtors, (d) the United States Attorney's Office for the Southern District of Texas, (e) the Internal Revenue Service, (f) those creditors holding the 30 largest unsecured claims against the Debtors' estates (excluding insiders), (g) counsel to the Committee; (h) the state attorneys general for states in which the Debtors conduct business; and (i) all parties who have filed a notice of appearance and request for service of papers pursuant to Bankruptcy Rule 2002 (the "Notice Parties"). Under the circumstances, such notice of the Final Hearing and the relief requested in the Motion constitutes due, sufficient, and appropriate notice and complies with the Bankruptcy Code, Bankruptcy Rules 2002 and 4001(b), (c), and (d), and the Local Bankruptcy Rules, and no other or further notice need be provided for entry of this Final Order.

F. **Findings Regarding Corporate Authority**. The Debtors have all requisite corporate power and authority to enter into, ratify, and perform all of their obligations under the DIP Documents (including the DIP Credit Agreement) to which they are a party.

G. **Findings Regarding the DIP Facility**.

(i) **Good Cause**. Good and sufficient cause has been shown for the entry of this Final Order and for the Debtors to obtain postpetition financing pursuant to the terms hereof and the DIP Documents.

(ii) **Immediate Need for Postpetition Financing**. An immediate need exists for the Debtors to obtain credit pursuant to the terms and conditions of this Final Order, the DIP Credit Agreement, and the other DIP Documents in order to, among other things, enable the orderly continuation of their operations and to administer and preserve the value of their estates. In the absence of the availability of such funds and liquidity in accordance with the terms hereof, the ability of the Debtors to maintain business relationships with their vendors, suppliers, licensors, licensees, and customers, to retain and pay their employees and otherwise finance their operations, including to continue to operate as a going concern, would not be possible, and immediate and irreparable harm to the Debtors and their estates and creditors would occur. Thus, the ability of the Debtors to preserve and maintain the value of their assets and maximize returns for creditors requires the availability of working capital from the DIP Facility Loans.

(iii) **No Credit Available on More Favorable Terms**. The DIP Facility is the best source of debtor-in-possession financing available to the Debtors. Given their current financial condition, financing arrangements, and capital structure, the Debtors have been unable to obtain credit on more favorable terms and conditions than those provided in this Final Order, including for (a) adequate unsecured credit allowable under section 503(b)(1) of the Bankruptcy

Code as an administrative expense, (b) credit for money borrowed with priority over any or all administrative expenses of the kind specified in sections 503(b) or 507(b) of the Bankruptcy Code, (c) credit for money borrowed secured by a lien on property of the estates that is not otherwise subject to a lien, or (d) credit for money borrowed secured by a junior lien on property of the estates which is subject to a lien. The Debtors are unable to obtain credit for borrowed money without granting the DIP Liens and the DIP Superpriority Claims to (or for the benefit of) the DIP Lender and without granting the adequate protection as set forth herein (in each case, subject to the Carve Out (as defined below)).

(iv) **Use of Proceeds of the DIP Facility**. As a condition to providing the DIP Facility, the DIP Lender requires, and the Debtors have agreed, that all proceeds of the DIP Facility Loans shall be used or applied solely for the purposes expressly permitted in, and in a manner consistent with, the Approved Budget (subject to Permitted Variances) and the other DIP Documents, including (i) to pay post-petition working capital and maintenance capital expenditure purposes of the Debtors, (ii) to pay current fees and expenses under the DIP Facility, (iii) to pay allowed administrative costs and expenses of the Chapter 11 Cases, including professional fees and expenses, (iv) to pay prepetition claims and expenses as authorized by the Court (v) to pay any forecasted cash outlays included in any Approved Budget (as defined below), and (vi) as otherwise agreed, in each case, other than (iii) above, subject to the terms and conditions of this Final Order and the DIP Documents.

(v) **Approved Budget**. The Debtors have prepared and delivered to the DIP Lender the initial itemized cash flow forecast set forth on **Exhibit 2** attached hereto, which has been approved by the DIP Lender (the "Initial Approved Budget", as amended, supplemented or updated by the Debtors, and approved by the DIP Lender, in writing, from time to time in

accordance with the terms of this Final Order and the DIP Credit Agreement, the "Approved Budget"). The Initial Approved Budget is an integral part of this Final Order, and the DIP Lender is relying, in part, upon the Debtors' agreement to comply with the Approved Budget (subject to Permitted Variances) in determining to enter into the DIP Facility and to allow the Debtors' use of proceeds of the DIP Facility in accordance with the terms of this Final Order and the DIP Documents.

(vi) **Section 506(c), Section 552(b), and Marshaling**. In light of and in exchange for (i) the DIP Lender's willingness to provide the DIP Facility to the extent set forth herein, (ii) the DIP Lender's agreement that its liens and superpriority claims shall be subject and subordinate to the Carve Out, as set forth herein, (iii) the consensual use of proceeds of the DIP Facility consistent with the Approved Budget (subject to the Permitted Variance) and the terms of this Final Order, and (iv) the DIP Lender's agreement to the payment, in a manner consistent with the Approved Budget (subject to permitted variances as provided in the DIP Credit Agreement and subject to the terms and conditions of this Final Order), of certain expenses of administration of these Chapter 11 Cases, the DIP Lender is entitled to a waiver of any "equities of the case" exception under section 552(b) of the Bankruptcy Code and a waiver of the provisions of section 506(c) of the Bankruptcy Code and of the equitable doctrine of marshaling (subject to the terms and conditions of this Final Order).

(vii) **Extension of Financing**. The DIP Lender has indicated a willingness to provide financing to the Debtors in accordance with the DIP Documents (including the DIP Credit Agreement and the Approved Budget) and subject to (i) the entry of this Final Order, (ii) approval of the terms and provisions of this Final Order and the DIP Documents (including the DIP Credit Agreement), including the milestones set forth in the DIP Credit Agreement (the "Milestones")

and the waivers set forth herein, and (iii) findings by this Court that such financing is essential to the Debtors' estates, that the DIP Lender is a good faith financier, and that the reversal or modification on appeal of the authorization hereunder for the Debtors to incur the debt under the DIP Facility, or the grant hereunder of the priority of the DIP Liens, does not affect the validity of such debt or any priority of any such lien so granted as provided in section 364(e) of the Bankruptcy Code.

(viii) **Limitation of Liability**. The Debtors stipulate and, subject to paragraph 11, this Court finds that in making decisions to advance loans to the Debtors, in administering any loans, in accepting the Approved Budget, or in taking any other actions permitted by the Interim Order, this Final Order, or the other DIP Documents (including the DIP Credit Agreement), the DIP Lender shall not be deemed to be in control of the operations of the Debtors or to be acting as a "responsible person" or "owner or operator" with respect to the operation or management of the Debtors.

(ix) **Business Judgment and Good Faith Pursuant to Section 364(e)**.

(a) The terms and conditions of the DIP Facility, and the interest and fees paid and to be paid thereunder, are fair, reasonable, and the best available to the Debtors under the circumstances, reflect the Debtors' exercise of prudent business judgment, consistent with their fiduciary duties, and are supported by reasonably equivalent value and fair consideration;

(b) all obligations incurred, payments made, and transfers or grants of security set forth in this Final Order, the Interim Order, and the other DIP Documents (including the DIP Credit Agreement) by the Debtors are granted to or for the benefit of the DIP Lender for fair consideration and reasonably equivalent value and are granted

contemporaneously with the making of the loans and commitments and other financial accommodations secured thereby;

(c) the DIP Facility was negotiated in good faith and at arm's length among the Debtors and the DIP Lender; and

(d) the use of the proceeds previously extended and the proceeds to be extended under the DIP Facility were and will be so extended in good faith and for valid business purposes and uses, as a consequence of which the DIP Lender is entitled to the protection and benefits of section 364(e) of the Bankruptcy Code.

(x) **Indemnity**. The DIP Lender and its Related Parties (as defined below) have acted in good faith and without negligence, misconduct, or violation of public policy or law, in respect of all actions taken by them in connection with or related in any way to negotiating, implementing, documenting, or obtaining requisite approvals of the DIP Facility, including in respect of the granting of the DIP Liens, the DIP Superpriority Claims, and any of the other rights, privileges, remedies, and protections granted hereunder or under the DIP Documents (including the DIP Credit Agreement), any challenges or objections to the DIP Facility, and all documents related to and all transactions contemplated by the foregoing. Accordingly, without limitation to any other right to indemnification, the DIP Lender and each of its respective affiliates, officers, directors, fiduciaries, employees, agents, advisors, attorneys, and representatives (collectively, the "Related Parties") shall be and hereby are indemnified and held harmless by the Debtors in respect of any claim or liability incurred in respect thereof or in any way related thereto. No exception or defense in contract, law, or equity exists as to any obligation set forth, as the case may be, in this paragraph G(x), or in the DIP Documents, to indemnify and/or hold harmless the DIP Lender and any Related Party, as the case may be, and any such defenses are hereby waived.

(xi) **No Control**. The DIP Lender is not a control person or insider of the Debtors or any of their affiliates by virtue of any of the actions taken with respect to, in connection with, related to, or arising from the DIP Facility and the DIP Documents (including the DIP Credit Agreement).

(xii) **No Claims, Causes of Action**. As of the date hereof, there exist no claims or causes of action against the DIP Lender or its Related Parties with respect to, in connection with, related to, or arising from the DIP Documents (including the DIP Credit Agreement) that may be asserted by the Debtors or any other person or entity.

(xiii) **Release**. Effective as of the date of entry of this Final Order, the Debtors and their estates hereby forever and irrevocably release, discharge, and acquit the former, current and future (a) DIP Lender, (b) the Related Parties, and predecessors and successors in interest of the DIP Lender and its affiliates, in each case acting in their respective capacities as such (collectively, the "Releasees") of and from any and all claims, demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness and obligations, rights, assertions, allegations, actions, suits, controversies, proceedings, losses, damages, injuries, attorneys' fees, costs, expenses, or judgments of every type, whether known, unknown, asserted, unasserted, suspected, unsuspected, accrued, unaccrued, fixed, contingent, pending or threatened including, without limitation, all legal and equitable theories of recovery, arising under common law, statute or regulation or by contract, of every nature and description, arising out of, in connection with, or relating to the DIP Facility, the DIP Documents (including the DIP Credit Agreement), and/or the transactions contemplated hereunder or thereunder including, without limitation, (x) any so-called "lender liability" or equitable subordination claims or defenses, (y) any and all claims and causes of action arising under the Bankruptcy Code, and (z) any and all claims and causes of action with

respect to the validity, priority, perfection, or avoidability of the liens or claims of the DIP Lender (the "Releases"); *provided* that nothing in this paragraph is intended to limit or release any commitments and obligations of the DIP Lender under the DIP Credit Agreement or this Final Order. The Debtors further waive and release any defense, right of counterclaim, right of setoff or deduction to the payment of the DIP Obligations, which the Debtors now have or may claim to have against the Releasees arising out of, connected with, or relating to any and all acts, omissions, or events occurring prior to the entry of this Final Order by the Court.

(xiv) **Sale and Credit Bidding**. The DIP Lender shall have the right to credit bid up to the full amount of the applicable outstanding DIP Obligations including, without limitation, any accrued interest and fees, in a sale of any DIP Collateral (as defined below), and whether such sale is effectuated through sections 363 or 1129 of the Bankruptcy Code, or otherwise; *provided, however,* the Committee reserves its right, subject to the Challenge Period, to challenge the DIP Lender's ability to credit bid; *provided, further,* to the extent the DIP Lender submits a credit bid in connection with the sale of the Debtors' assets and is the successful bidder for those assets, the DIP Lender waives the ability to assert a diminution in value claim in respect of the DIP Collateral.

(xv) **Relief Essential; Best Interest**. The relief requested in the Motion (and provided in this Final Order) is necessary, essential, and appropriate for the continued operation of the Debtors' businesses and the management and preservation of the Debtors' assets and property and satisfies the requirements of Bankruptcy Rule 6003. It is in the best interest of the Debtors' estates and consistent with the Debtors' exercise of their fiduciary duties that the Debtors are allowed to enter into the DIP Facility, incur the DIP Obligations, grant the liens and claims contemplated herein and under the Interim Order and the other DIP Documents (including the DIP Credit Agreement) to the DIP Lender.

(xvi) **Immediate Entry**. The Debtors have requested, and the Court hereby finds that sufficient cause exists for, the immediate entry of this Final Order pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2) and the Local Bankruptcy Rules.

NOW, THEREFORE, on the Motion of the Debtors and the record before this Court with respect to the Motion, including the record made during the Interim Hearing and the Final Hearing, and with the consent of the Debtors and the DIP Lender, and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. **Motion Granted**. The Motion is granted on a final basis in accordance with the terms and conditions set forth in this Final Order. Any objections to the Motion with respect to entry of this Final Order, to the extent not withdrawn, waived, settled, or otherwise resolved, and all reservation of rights included therein, are hereby denied and overruled. This Final Order shall become effective and enforceable immediately upon its entry.

2. **DIP Facility**.

(a) **DIP Obligations**. The Debtors were, pursuant to the Interim Order, and hereby are expressly and immediately authorized and empowered to enter into the DIP Facility and to incur and to perform the DIP Obligations in accordance with and subject to this Final Order, the Interim Order, and the other DIP Documents, to execute and deliver all DIP Documents and all other related instruments, certificates, agreements, and documents (in each case, to the extent not previously executed and delivered), and to take all actions which may be reasonably required or otherwise necessary for the performance by the Debtors under the DIP Facility, including the creation and perfection of the DIP Liens described and provided for herein and in the Interim Order. The Debtors were, pursuant to the Interim Order, and hereby continue to be, authorized

and directed to pay all DIP Obligations, as such shall accrue and become due hereunder or thereunder, subject to paragraph 2(h) hereof. The DIP Credit Agreement, the other DIP Documents, and all DIP Obligations shall represent, constitute, and evidence, as the case may be, valid and binding obligations of the Debtors, enforceable against the Debtors, their estates, and any successor thereto in accordance with their terms. All obligations incurred, payments made, and transfers or grants of security set forth in this Final Order, in the Interim Order, and in the other DIP Documents by any DIP Loan Party have been and are granted to or for the benefit of the DIP Lender for fair consideration and reasonably equivalent value and were and are granted contemporaneously with the making of the loans and commitments and other financial accommodations secured thereby. Except as provided in or contemplated by this Final Order, no obligation, payment, transfer, or grant of security under the DIP Documents as approved under this Final Order shall be voided, voidable, or recoverable under the Bankruptcy Code or under any applicable non-bankruptcy law, or subject to any defense, reduction, setoff, recoupment, or counterclaim. The term of the DIP Facility commenced on the date of entry of the Interim Order and shall end on the Termination Date (as defined below), subject to the terms and conditions set forth herein and in the DIP Documents.

(b) **Authorization to Borrow**. In order to continue to operate its business, subject to the terms and conditions of this Final Order and the DIP Documents, the Debtors are hereby authorized to borrow the DIP Facility Loans and to incur the DIP Obligations.

(c) **Conditions Precedent**. The DIP Lender shall have no obligation to make the DIP Facility Loans or any other financial accommodation hereunder or under the DIP Documents (and the Debtors shall not make any request therefor) unless all conditions precedent to making DIP

Facility Loans under the DIP Credit Agreement have been satisfied or waived in accordance with the terms of the DIP Credit Agreement.

(d) **DIP Collateral**. As used herein, "DIP Collateral" shall mean all assets, interests, rights, and property of any nature whatsoever of the Debtors, including, without limitation, all property in which the Debtors and their estates have an interest (whether tangible, intangible, real, personal or mixed), whether now owned or hereafter acquired and wherever located, before or after the Petition Date, including, without limitation, all accounts, proceeds of leases, inventory, equipment, equity interests or capital stock in subsidiaries, investment property, instruments, chattel paper, contracts, patents, copyrights, trademarks and other general intangibles, commercial litigation claims, cash, any investment of such cash, inventory, accounts receivable, including intercompany accounts (and all rights associated therewith), other rights to payment whether arising before or after the Petition Date, any deposit accounts, "cash collateral accounts", and, in each case all amounts on deposit therein from time to time, the proceeds of all claims or causes of action, and all rents, products, offspring, profits, proceeds, and substitutions thereof (including, without limitation, all claims or causes of action of the Borrowers arising under sections 502(d), 542, 544, 545, 547, 548, 549, 550, and 553 of the Bankruptcy Code and any other avoidance or similar action under the Bankruptcy Code (the "Avoidance Actions") *provided that* the lien on Avoidance Actions shall be limited to the proceeds and property recovered in connection therewith); *provided, however,* that the DIP Collateral shall not include, and the DIP Liens shall not encumber, any claims or causes of action, of any type or kind, of the Borrowers asserted against, or that could be asserted against, current or former "insiders" or "affiliates" as such terms are defined in Sections 101(2) and 101(31) of the Bankruptcy Code or, if any such insider or affiliate is an individual, any trust associated with that insider or affiliate (the "Insider Claims");

provided, further, and notwithstanding anything set forth herein or in the DIP Documents to the contrary, the DIP Lender shall seek repayment of the DIP Obligations (i) first, from proceeds of any sale of the Debtors' assets, (ii) second, from DIP Collateral other than Avoidance Actions (or the proceeds thereof), and, if a balance remains outstanding on the DIP Obligations following commercially reasonable efforts to secure repayment under (i) and (ii), (iii) third, from Avoidance Actions (or the proceeds thereof).

(e) **DIP Liens**. Effective immediately upon the entry of the Interim Order with such effectiveness continued and ratified by this Final Order, as set forth more fully in this Final Order and the Interim Order, the DIP Lender was and hereby continues to be granted the following security interests and liens, which shall immediately be valid, binding, perfected, continuing, enforceable, and non-avoidable without the need for execution by the Borrowers or the recordation or other filing by the DIP Lender of security agreements, control agreements, pledge agreements, financing statements, or other similar documents or the possession or control by the DIP Lender of any DIP Collateral (all liens and security interests granted to the DIP Lender pursuant to the Interim Order, this Final Order, the DIP Credit Agreement, and the other DIP Documents, the "DIP Liens"):

(i) pursuant to section 364(c)(2) of the Bankruptcy Code, valid, binding, continuing, enforceable, non-avoidable, fully and automatically perfected first-priority liens on and security interests in all DIP Collateral that is not subject to any liens or encumbrances immediately prior to the Petition Date, subject only to the Carve Out; and

(ii) pursuant to section 363(c)(3) and 364(d)(1) of the Bankruptcy Code, valid, binding, continuing, enforceable, fully perfected first priority, priming liens on and security interests in all other DIP Collateral, which liens and security interests shall be subject only to (a) any valid, enforceable, perfected, and non-avoidable lien or security interest in favor of any person other than the Prepetition Lenders[4] that was in existence immediately prior to the Petition Date or that is perfected as permitted by Section 546(b) of the Bankruptcy

[4] The defined term "Prepetition Lenders" shall have the meaning ascribed to such defined term in the DIP Motion.

Code, in each case, with respect to any DIP Collateral comprised of Prepetition Collateral, solely to the extent such lien is senior to the Prepetition Liens (a "Permitted Prior Lien")[5] and (b) the Carve Out, and senior to all other liens and encumbrances in respect of the DIP Collateral.

(f) **Other Provisions Relating to the DIP Liens**. Effective immediately upon the entry of the Interim Order, with such effectiveness continued and ratified by this Final Order, the DIP Liens shall secure all of the DIP Obligations, to the extent and subject to the priorities set forth herein, and such liens (and any superpriority claims and other senior liens, including adequate protection liens, granted hereunder) shall at all times have a higher priority and shall remain senior to the rights of the Debtors, any chapter 7 or chapter 11 trustee, and any secured, administrative priority, unsecured or other claims of any party in these Chapter 11 Cases under the Bankruptcy Code (except as (and solely to the extent) expressly provided herein), and the DIP Liens and the DIP Superpriority Claims granted herein and under the Interim Order shall not be made or become subject, junior, or subordinated to any "priming" or other liens, nor made *pari passu* with any other lien, security interest, or claim heretofore or hereafter granted under section 364 of the Bankruptcy Code or otherwise, in these Chapter 11 Cases (except as (and solely to the extent) expressly provided herein) or any Successor Case (as defined below), including to (i) any lien or security interest that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code, (ii) any lien or security interest existing on or arising on or after the Petition Date, including, without limitation, any lien or security interests granted in favor of any federal, state, municipal or other domestic or foreign governmental unit (including any regulatory body), commission, board or court for any liability of the Debtors, (iii) any intercompany or

[5] Nothing herein or in the Interim Order shall constitute a finding or ruling by this Court that any such Permitted Prior Lien is valid, senior, enforceable, prior, perfected, or non-avoidable. Moreover, nothing shall prejudice the rights of any party in interest, including but not limited to the Debtors, the DIP Lender, the Prepetition Lenders, or Committee, to challenge the validity, priority, enforceability, seniority, avoidability, perfection, or extent of any alleged Permitted Prior Lien and/or security interest.

affiliate lien or claim; or (iv) any other lien, claim, or security interest under sections 361, 363, or 364 of the Bankruptcy Code or otherwise, in each case other than as (and solely to the extent) expressly set forth herein. The DIP Liens shall be valid and enforceable against any trustee appointed in the Chapter 11 Cases, upon the conversion of the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code or in any other proceedings related to any of the foregoing (each such case or proceeding, a "Successor Case"), and/or upon the dismissal of the Chapter 11 Cases. Except as provided for in or contemplated by this Final Order, the DIP Liens shall not be subject to section 510 of the Bankruptcy Code, to the "equities of the case" exception of section 552 of the Bankruptcy Code, or to sections 506(c), 549, 550, or 551 of the Bankruptcy Code.

(g) **Superpriority Administrative Claim Status**. Effective immediately upon the entry of the Interim Order, with such effectiveness continued and ratified by this Final Order, the DIP Obligations shall, pursuant to section 364(c)(1) of the Bankruptcy Code, at all times constitute allowed superpriority administrative expense claims (the "DIP Superpriority Claims") of the DIP Lender against the Debtors, and be payable from and have recourse to all assets and properties of the Debtors, with priority over any and all other administrative expenses, adequate protection claims, diminution in value claims, and all other claims asserted against the Debtors now existing or hereafter arising of any kind whatsoever, including, without limitation, all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, and over any and all other administrative expenses or other claims arising under any other provisions of the Bankruptcy Code, including sections 105, 326, 327, 328, 330, 331, 363, 364, 365, 503, 506(b), 506(c), 507(a), 507(b), 507(d), 546, 726, 1113, or 1114 of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other nonconsensual lien, levy, or attachment, subject only to the Carve Out, which DIP Superpriority Claims, for purposes of

section 1129(a)(9)(A) of the Bankruptcy Code, are and shall be considered an administrative expense allowed under section 503(b) of the Bankruptcy Code and shall be payable from and have recourse to all pre- and postpetition assets and property, whether existing on the Petition Date or thereafter acquired, of the Debtors and all proceeds thereof. The DIP Superpriority Claims shall be subject and subordinate only to the Carve Out. Other than as expressly provided herein, including in paragraph 12 hereof with respect to the Carve Out, no costs or expenses of administration, including, without limitation, professional fees allowed and payable under sections 328, 330, and 331 of the Bankruptcy Code, or otherwise, that have been or may be incurred in these Chapter 11 Cases or in any Successor Case and no priority claims are or will be senior to, prior to, or *pari passu* with the DIP Liens, the DIP Superpriority Claims, or any of the DIP Obligations or with any other claims of the DIP Lender arising hereunder or under the DIP Documents (including the DIP Credit Agreement), or otherwise in connection with the DIP Facility; *provided, however,* unless the DIP Lender can establish a diminution in the value of the DIP Collateral (prove up only permitted if the DIP Lender does not credit bid or credit bids but is not the successful bidder) and the DIP Collateral is otherwise not sufficient to repay the DIP Obligations in full, the DIP Superpriority Claims shall not be senior to the claims of other creditors in respect of the proceeds of any Insider Claims.

(h) **Professional Fees and Expenses**. The Debtors are authorized and directed to pay, as adequate protection, all accrued and unpaid fees and reasonable and documented disbursements incurred, whether accrued before, on, or after the Petition Date, by the legal and financial advisors to the DIP Lender (the "DIP Lender Advisors"). The DIP Lender Advisors shall not be required to file applications seeking compensation for services or reimbursement of expenses with the Court or comply with the U.S. Trustee fee guidelines; *however*, any time that such professionals seek

payment of fees and expenses from the Debtors, each professional shall provide summary copies of its fee and expense statements or invoices (which shall include a general description of the nature of the matters for which services were performed, a list of professionals who worked on the matter, their hourly rate (if such professionals bill at an hourly rate) and the number of hours each professional billed and which may be redacted or modified to the extent necessary to delete any information subject to the attorney-client privilege, any information constituting attorney work product, or any other confidential information, and the provision of such invoices shall not constitute any waiver of the attorney-client privilege or of any benefits of the attorney work-product doctrine) to the U.S. Trustee and counsel to the Committee, contemporaneously with the delivery of such fee and expense statements to the Debtors. After delivery of a fee and expense statement or invoice, the Debtors, the U.S. Trustee, and the Committee shall have ten (10) calendar days to raise an objection thereto. Any objection to the payment of such fees or expenses shall be made only on the basis of "reasonableness," and shall specify in writing the amount of the contested fees and expenses and the detailed basis for such objection. To the extent an objection only contests a portion of an invoice, the undisputed portion thereof shall be promptly paid. If any such objection to payment of an invoice (or any portion thereof) is not otherwise resolved between the objecting party and the issuer of the invoice, either party may submit such dispute to the Court for a determination as to the reasonableness of the relevant disputed fees and expenses set forth in the invoice. This Court shall resolve any dispute as to the reasonableness of any fees and expenses. For the avoidance of doubt and without limiting any of the foregoing or any other provision of this Final Order, the DIP Lender Advisors' fees are, upon entry of this Final Order and irrespective of any subsequent order approving or denying the DIP Facility or any other financing pursuant to section 364 of the Bankruptcy Code, entitled to all of the protections of section 364(e) of the

Bankruptcy Code that may apply to such fees, and are deemed fully earned, indefeasibly paid, non-refundable, irrevocable and non-avoidable as of the date of this Final Order.

3. **Authorization and Approval to Use Proceeds of DIP Facility**. Subject to the terms and conditions of this Final Order and the other DIP Documents, the Debtors are authorized to request and use proceeds of the DIP Facility Loans, as set forth in the Approved Budget (subject to variances permitted under the DIP Documents) and in accordance with this Final Order and the other DIP Documents (including the DIP Credit Agreement). Notwithstanding anything herein to the contrary, subject only to the Debtors' rights under paragraph 20(b) hereof and the Carve Out, the Debtors' right (a) to request proceeds of the DIP Facility Loans shall terminate on the earlier of (i) the date the DIP Facility Loans are fully funded or reduced to zero and (ii) the Termination Date (as defined below) and (b) to use proceeds of the DIP Facility Loans shall terminate on the Termination Date. Nothing in this Final Order, the Interim Order, or in the other DIP Documents shall authorize the disposition of any assets of the Debtors or their estates or proceeds resulting therefrom outside the ordinary course of business except as expressly permitted herein and in the other DIP Documents (subject to any required Court approval).

4. **The Approved Budget**.

(a) The Approved Budget attached hereto as **Exhibit 2** constitutes an "Approved Budget" under the DIP Credit Agreement, provided that nothing herein shall limit the DIP Lender's right to review and object to any fee statement, interim application, or monthly application issued or filed by the Estate Professionals as set forth in Section 12(c) in this Final Order. Following entry of the Interim Order, the Debtors were permitted to, in a manner consistent with the DIP Credit Agreement, propose updated budgets, which could become "Approved Budgets" as specified in and in accordance with the DIP Credit Agreement. Any approved Budget

shall remain the Approved Budget until a proposed updated budget becomes an Approved Budget in accordance with the terms of the DIP Credit Agreement. The Approved Budget may only be amended, supplemented, modified, restated, replaced, or extended in accordance with this Final Order and the other DIP Documents (including the DIP Credit Agreement). Any such amendment, supplement, modification, restatement, replacement, or extension in accordance with the DIP Credit Agreement may be effected without further order of the Court, so long as approved by the DIP Lender with notice to the Committee. The Approved Budget is an integral part of this Final Order and has been relied upon by the DIP Lender to provide the DIP Facility and consent to this Final Order.

(b) Pursuant to the terms of the DIP Documents, beginning on Monday, January 6, 2024 (the "Initial Reporting Date, and with each subsequent Monday, collectively and individually, each a "Reporting Date"), the Borrowers shall deliver to the DIP Lender (with a copy to the Committee), in a form consistent with the form of the Approved Budget, a variance report describing in reasonable detail, by line item (including capital expenditures and professional fees, excluding the fees of Lender's professionals), (i) the actual disbursements of the Debtors and actual receipts during the applicable Testing Period (as defined below); (ii) any variance (whether positive or negative, expressed as a percentage) between the actual receipts or disbursements, as applicable, during such Testing Period against the estimated receipts or disbursements, as applicable, for the applicable Testing Period, as set forth in the applicable Approved Budget (each a "Variance Report"); and (iii) comments relating to any variances between budgeted and actual disbursements/receipts (the "FA Reports"). The term "Testing Period" shall mean the cumulative period from the beginning date of the Approved Budget through the Sunday that is eight calendar

days prior to the applicable Reporting Date. The last day of each Testing Period shall be a "Testing Date".

(c) As of any applicable Testing Date, actual cumulative disbursements (excluding DIP Lender professional fees) on an aggregate basis (the "Actual Disbursement Variance") shall not exceed budgeted cumulative disbursements (excluding DIP Lender professional fees) on an aggregate basis as reflected in the Approved Budget for such period, by more than 15.0% (the "Permitted Disbursement Variance"); *provided that* the actual cumulative Cash receipts on an aggregate basis (the "Actual Cash Variance," together with the Actual Disbursement Variance, the "Actual Variances") shall not exceed budgeted cumulative Cash receipts on an aggregate basis as reflected in the Approved Budget for such period, by more than 50.0% (the "Permitted Cash Variance," together with the Permitted Disbursement Variance, the "Permitted Variances"). If the Actual Variances for such period are less than or equal to the Permitted Variances, the amount by which each Actual Variance is less than the Permitted Variance shall be carried forward to the next Testing Date and added to the Permitted Variance for such next Testing Date.

(d) The Borrowers shall be deemed to be in compliance with the Approved Budget for all purposes under this Final Order and the DIP Documents unless, as of any Testing Date, the Borrowers' actual disbursements or actual Cash receipts vary from the Approved Budget by more than the applicable Permitted Variances as measured on any Testing Date (the "Variance Covenant").

(e) The DIP Lender shall have no obligation to permit the use of proceeds of DIP Facility Loans, and the Borrowers shall have no authority to use proceeds of DIP Facility Loans, other than in accordance with the latest Approved Budget, subject to the Permitted Variance and the Variance Covenant, and as set forth in this Final Order.

5. **Monitoring of Collateral**. The DIP Lender and its consultants and advisors shall be given reasonable access to the Debtors' books, records, assets, and properties for purposes of monitoring and inspecting the Debtors' businesses and the value of the DIP Collateral at the Debtors' cost and expense during normal business hours and upon reasonable notice.

6. **Financial Reporting**. Without limitation of the requirements of the DIP Documents, the Debtors shall provide to the DIP Lender, with a copy to the Committee (and, in each case, its consultants, advisors, and professionals) all financial information required under the DIP Documents. The Debtors shall also provide such reports and information required to be provided in the DIP Documents and reasonably cooperate, discuss with, and provide to the DIP Lender (and, in each case, its professionals) all such information as may be reasonably requested. In addition, the Debtors hereby authorizes their accountants, attorneys, financial advisors, bankruptcy professionals, and consultants to cooperate, consult with, and provide to the DIP Lender (and its consultants, advisors and professionals) all such information as may be reasonably requested with respect to the business, results of operations and financial condition of the Debtors consistent with the requirements set forth in the DIP Documents.

7. **Milestones**. It is a condition to the DIP Facility that the Debtors shall comply with the Milestones. The failure to comply with any Milestone shall constitute an Event of Default (as defined in the DIP Credit Agreement) in accordance with the DIP Credit Agreement.

8. **Subordination of Intercompany, Affiliate Liens**. All intercompany or affiliate liens of the Debtors, if any (other than any liens granted to the DIP Lender), will be contractually subordinated to the DIP Liens granted pursuant to the Interim Order, this Final Order, and under the DIP Credit Agreement, on terms satisfactory to the DIP Lender.

9. **DIP Lien Perfection**. Automatically upon entry of the Interim Order and continued and ratified by this Final Order, the DIP Liens were and shall continue to be deemed valid, binding, perfected, enforceable, non-avoidable, and effective by operation of law, and not subject to challenge, without the need of any further action of any kind. This Final Order and the Interim Order shall be sufficient and conclusive evidence of the validity, perfection, and priority of the DIP Liens without the necessity of filing or recording any financing statement, deed of trust, mortgage, or other instrument or document which may otherwise be required under the law of any jurisdiction or the taking of any other action to validate or perfect the DIP Liens or to entitle the DIP Liens to the priorities granted herein and in the Interim Order. Notwithstanding the foregoing, the DIP Lender may, in its sole discretion, file such financing statements, deeds of trust, mortgages, security agreements, notices of liens, and other similar documents and is hereby granted relief from the automatic stay of section 362 of the Bankruptcy Code in order to do so, and all such financing statements, deeds of trust, mortgages, security agreements, notices, and other agreements or documents shall be deemed to have been filed or recorded at the time and on the date of the filing of the DIP Motion. The Debtors shall execute and deliver to the DIP Lender all such financing statements, mortgages, security agreements, notices and other documents as the DIP Lender may reasonably request to evidence, confirm, validate, or perfect or to insure the contemplated priority of the DIP Liens, and the Debtors shall take all such further actions that may be required under any applicable law or that the DIP Lender, as applicable, may reasonably request in order to grant, preserve, protect or perfect the DIP Liens granted pursuant to this Final Order and the Interim Order. The DIP Lender, in its sole discretion, may file a photocopy of this Final Order as a financing statement with any recording officer designated to file financing statements or with any registry of deeds or similar office in any jurisdiction in which the Debtors have real or personal

property and, in such event, the subject filing or recording officer shall be authorized to file or record such copy of this Final Order.

10. **Stipulations and Admissions**.

(a) The Debtors' stipulations, admissions, agreements, releases, and waivers (the "Stipulations") contained in this Final Order are and shall be irrevocably binding upon the Debtors and any and all of the Debtors' successors in interest and assigns (subject to the Challenge Period, including, without limitation, any chapter 7 or chapter 11 trustee, responsible person, examiner with expanded powers, or other estate representative) in all circumstances and for all purposes.

(b) The Stipulations and all other admissions, agreements, releases, and waivers set forth in this Final Order are and shall be binding upon all other persons and entities (including any Committee) and each of their respective successors in interest and assigns in all circumstances and for all purposes, unless, and solely to the extent that (i) such parties in interest (including any Committee) in each case with standing and requisite authority to do so (subject in all respects to any agreement or applicable law which may limit or affect such entity's right or ability to do so) have timely filed the proper pleadings, and timely commenced the appropriate proceedings under the Bankruptcy Code and Bankruptcy Rules, including, without limitation, as required pursuant to Part VII of the Bankruptcy Rules (in each case subject to the limitations set forth below in paragraph 10), objecting to or challenging any of the Stipulations (each such proceeding or appropriate pleading commencing a proceeding or other contested matter, a "Challenge"), by forty-five (45) calendar days after the entry of this Final Order by the Bankruptcy Court for any party in interest with requisite standing (such period, the "Challenge Period" and the date that is the next calendar day after the termination of the Challenge Period shall be referred to as the "Challenge Period Termination Date"), as such date may be extended to any such party in interest

by agreement of both the Debtors and the DIP Lender or by any such later date as has been ordered by the Court for cause upon a motion filed and served within the Challenge Period (before giving effect to such extension) and (ii) the Court enters judgment in favor of the plaintiff or movant in any such timely and properly commenced Challenge proceeding, and any such judgment has become final and is not subject to any further review or appeal.

(c) Notwithstanding anything in this Final Order, nothing in this Final Order shall be deemed to waive, impair, or in any way affect any claims or causes of action that may be asserted in connection with any Challenge prior to the Challenge Period Termination Date and the Court can fashion any appropriate remedy. Any Challenge not asserted by the timely and proper filing of a pleading by a party in interest with the requisite standing and authority as contemplated herein prior to the Challenge Period Termination Date (or any extension thereto) shall be deemed forever waived, released, and barred with respect to such party in interest. To the extent a party in interest with requisite standing and authority timely and properly commences a Challenge prior to the Challenge Period Termination Date, all claims, causes of action and other matters not specifically set forth in such Challenge shall be deemed forever waived, released, and barred with respect to such party in interest unless, under applicable rules of procedure and law, such claims, causes of action and other matters not specifically set forth in such Challenge are deemed to relate back in connection with any timely amendment to a Challenge.

(d) To the extent any Stipulations are (i) not subject to a Challenge timely and properly commenced prior to the Challenge Period Termination Date or (ii) subject to a Challenge timely and properly commenced prior to the Challenge Period Termination Date, to the extent any such Challenge does not result in a final and non-appealable judgment or order of the Court that is inconsistent with such Stipulations, then, in each case, without further notice, motion or application

to, or order of, or hearing before this Court and without the need or requirement to file any proof of claim: (1) any and all such Challenges by any Committee or any other party in interest shall be deemed to be forever waived, released, and barred (including in any Successor Case), and (2) all of the Stipulations and all other waivers, releases, and affirmations set forth in this Final Order (or any not properly and timely challenged) shall be in full force and effect and shall be binding, conclusive, and final on any person, entity, or party in interest, including any Committee, (in each case, and their successors and assigns) in these Chapter 11 Cases and in any Successor Case for all purposes, without any further order of the Court, and shall not be subject to challenge or objection by the Committee or any other party in interest, including, without limitation, any other statutory committee, any trustee, responsible individual, examiner with expanded powers or other representative of the Debtors' estates.

(e) If any Challenge is timely and properly filed during the Challenge Period, the Stipulations and all other waivers, releases, and affirmations contained in this Final Order shall nonetheless remain binding and preclusive, as provided in paragraph 10, on all other parties in interest (including any Committee) and on any other person or entity, except for the plaintiff or movant (including any Committee) timely and successfully asserting such Challenge, as set forth in a final, non-appealable order of a court of competent jurisdiction. Notwithstanding anything to the contrary herein, the right to commence any Challenge under this Final Order is preserved only in respect of the Stipulations to the extent such Challenge is commenced timely and properly prior to the Challenge Period Termination Date and, in respect of such Stipulations, is otherwise waived except as set forth in paragraph 10.

(f) All remedies or defenses of any party with respect to any Challenge are hereby preserved. Nothing in this Final Order vests or confers on any person (as defined in the Bankruptcy

Code), including any Committee (if any) appointed in these Chapter 11 Cases, standing or authority to pursue any cause of action belonging to the Debtors or their estates, including, without limitation, any Challenges with respect to the Prepetition Obligations, and an order of the Court (or any other court of competent jurisdiction) conferring such standing on a Committee or other party in interest shall be a prerequisite for the prosecution of a Challenge by the Committee or such other party in interest.

11. **Limitations on Use of DIP Facility**. Notwithstanding anything herein to the contrary, no portion of the proceeds of the DIP Facility, the DIP Collateral, and no disbursements set forth in the latest Approved Budget may be used, in any way, directly or indirectly (a) for any investigation, adversary action, suit, arbitration, proceeding, application, motion, objection, defense, other contested matter, or other litigation of any type adverse to the interests of the DIP Lender or their respective rights and remedies under the DIP Facility, the Interim Order, this Final Order, or the DIP Documents, including without limitation (i) any action arising under the Bankruptcy Code, (ii) any so-called "lender liability" claims and causes of action, (iii) any action with respect to the validity and extent of the DIP Obligations or the validity, extent, perfection and priority of the DIP Liens, (iv) any action seeking to invalidate, set aside, avoid, reduce, set off, offset, recharacterize, subordinate (whether equitable, contractual, or otherwise), recoup against, disallow, impair, raise any defenses, cross-claims, or counterclaims, or raise any other challenges under the Bankruptcy Code or any other applicable domestic or foreign law or regulation against or with respect to the DIP Liens, in whole or in part, or (v) appeal or otherwise challenge the Interim Order or this Final Order; *provided* that no more than $25,000 in the aggregate of the proceeds of the DIP Facility and the DIP Collateral (including any proceeds of the DIP Facility or the DIP Collateral used to fund the Carve Out) may be used by the Committee to investigate

prosecute, challenge, commence, or initiate the prosecution of, any challenge, including the preparation of any complaint or motion on account of, or objection to the stipulations in the Final Order (provided, that this paragraph shall not be applicable in any way to Insider Claims), (b) for any other action, which with the giving of notice or passing of time, would result in an Event of Default under the DIP Facility, (c) for any purpose that is prohibited under the Bankruptcy Code, DIP Documents, the Interim Order, or this Final Order or that is not in accordance with the latest Approved Budget (subject to the Permitted Variance), (d) to make any payment, advance, intercompany advance or transfer, or any other remittance or transfer whatsoever (including any intercompany loans and investments) that is not in accordance with the express terms of the latest Approved Budget, (e) to make any payment in settlement of any claim, action, or proceeding without Bankruptcy Court approval, (f) to prevent, hinder, impede, or delay the DIP Lender's enforcement or realization upon or exercise of rights in respect of any of the DIP Collateral in accordance with the DIP Documents, the Interim Order, or this Final Order, or (g) to seek to amend or modify any of the rights or interests granted to the DIP Lender under the Interim Order, this Final Order, the DIP Credit Agreement or the other DIP Documents, in a manner adverse to the DIP Lender, without the prior written consent of the DIP Lender.

12. **Carve Out**.

(a) Priority of Carve Out. Each of the DIP Liens and the DIP Superpriority Claims shall be subject and subordinate to payment of the Carve Out. The Carve Out shall be senior to all claims and liens over all assets of the Debtors, including any DIP Collateral, as set forth in this Final Order.

(b) Carve Out. As used in this Final Order, the "Carve Out" means the sum of (i) all statutory fees payable to the Clerk of the Court and the U.S. Trustee pursuant to section 1930(a)(6)

of title 28 of the United States Code, (ii) all Court-allowed fees and expenses of a trustee appointed under section 726(b) or section 1104 of the Bankruptcy Code in an amount not to exceed $50,000,[6] (iii) to the extent allowed by the Court at any time, whether by interim order, final order, or other order, all accrued but unpaid fees and expenses (excluding any restructuring, sale, success, or other transaction fee of any investment bankers or financial advisors) (the "Allowed Estate Professional Fees") incurred by persons or firms retained by the (x) Debtors pursuant to section 327, 328, or 363 of the Bankruptcy Code (the "Debtor Professionals") (the "Allowed Debtor Professionals Fees") and (y) the Committee pursuant to section 328 or 1103 of the Bankruptcy Code, with up to $750,000 specifically allocated for Committee Professionals, in accordance with and funded pursuant to the Approved Budget, with budgeted but unutilized amounts each week rolling forward (the "Committee Professionals," and together with the Debtor Professionals, the "Estate Professionals") (the "Allowed Committee Professionals Fees") at any time on or before the date of delivery by the DIP Lender of a Carve Out Notice, whether allowed by the Court prior to or after delivery of a Carve Out Notice (the amounts set forth in the foregoing clauses (i), (ii) and (iii), the "Pre-Carve Out Notice Amount"), and (iv) Allowed Estate Professional Fees of Estate Professionals incurred after the date of delivery by the DIP Lender of the Carve Out Notice, to the extent allowed at any time, whether by interim order, final order, or other court order, in an aggregate amount not to exceed $500,000 incurred by (x) Debtor Professionals or (y) Committee Professionals, *provided* that the total allocated to the Committee Professionals in connection with this paragraph shall in no event exceed $750,000 (the amount set forth in this clause (iv) being the "Post-Carve Out Notice Amount", and together with the Pre-Carve Out Notice Amount, the Carve Out Amount"); *provided*, however, that nothing herein or in the Interim Order shall be construed

[6] This $50,000 amount is inclusive of, and not in addition to, any similar Carve Out amount for a chapter 7 trustee authorized under any interim or final order approving the Debtors' use of cash collateral.

to impair the ability of any party-in-interest to object to the fees, expenses, reimbursement, or compensation described herein on any grounds. For purposes of this Final Order, the "Carve Out Notice" shall mean a written notice (which may be via electronic mail) delivered by the DIP Lender to the Remedies/Carve Out Notices Parties, which notice may be delivered only following the occurrence and during the continuation of an Event of Default, stating that the Post-Carve Out Notice Amount has been invoked.

(c) Pre-Carve Out Notice. Prior to the delivery of a Carve Out Notice, (i) the Debtors shall, on a weekly basis, transfer cash proceeds from amounts previously drawn under the DIP Facility into a segregated account held in trust for and exclusively available for the payment of fees and expenses of the Estate Professional (the "Estate Professional Fees Escrow Account") in an amount equal to the aggregate amount forecasted for such Estate Professional in the latest Approved Budget, and (ii) each Estate Professional shall deliver to the Debtors, the DIP Lender, and their respective advisors a monthly statement (each, a "Monthly Statement") following the end of each month beginning on January 10, 2025 and thereafter on the third business day following each month (i.e., Feb. 5, 2025, March 5, 2025, etc.) setting forth a good-faith estimate of the amount of accrued but unpaid fees and expenses incurred by such Estate Professional during the preceding month (the "Monthly Estimated Fees and Expenses"). Following receipt of the Monthly Estimated Fees and Expenses, and to the extent necessary, the Debtors shall true-up the Estate Professional Fee Escrow Account, subject to the terms of this Order. The Debtors shall use funds held in the Estate Professional Fees Escrow Account exclusively to pay Allowed Estate Professional Fees as they become allowed and payable pursuant to the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules, in accordance with any interim or final orders of the Court; *provided*, *however*, that the Debtors' obligations to pay Allowed Estate Professional

Fees shall not be limited or be deemed limited to funds held in the Estate Professional Fees Escrow Account; *provided*, *further*, that the Debtors shall use funds budgeted for and held in the Estate Professional Fee Escrow Account for (i) Committee Professional Fees, to pay Committee Professional Fees, and (ii) Debtor Professional Fees, to pay Debtor Professional Fees.

(d) Post-Carve Out Notice. On the date on which a Carve Out Notice is delivered in accordance with paragraph 12 of this Final Order, (the "Carve Out Trigger Date"), the Carve Out Notice shall constitute a demand to the Debtors to utilize all cash on hand (including the proceeds of DIP Facility Loans) to fund into the Estate Professional Fees Escrow Account an amount equal to (i) the Pre-Carve Out Notice Amount (to the extent not previously funded to the Estate Professional Fees Escrow Account), and (ii) the Post-Carve Out Notice Amount. No later than three (3) Business Days after the delivery of a Carve Out Notice, each Estate Professional shall deliver one (1) additional statement to the Debtors, the DIP Lender, and their respective advisors setting forth a good-faith estimate of the amount of accrued but unpaid fees and expenses incurred by such Estate Professional during the period following the period covered by the most recent Monthly Statement previously delivered by such Estate Professional through and including the Carve Out Trigger Date (as defined below), and the Debtors shall transfer such amounts to the Estate Professional Fees Escrow Account (as defined herein) subject to the terms of paragraph 12.

(e) Notwithstanding anything to the contrary in this Final Order or the other DIP Documents, following delivery of a Carve Out Notice, the DIP Lender shall not sweep or foreclose on cash (including cash received as a result of the sale or other disposition of any assets) of the Debtors until the Estate Professional Fees Escrow Account has been fully funded in an amount equal to all respective obligations benefitting from the Carve Out as set forth herein. The Estate Professional Fees Escrow Account shall not be subject to the control of the DIP Lender, and the

funds transferred to the Estate Professional Fees Escrow Account shall not be subject to the DIP Liens, nor constitute DIP Collateral; *provided*, *however*, that the DIP Liens shall automatically attach to any residual interest in the Estate Professional Fees Escrow Account (which liens were and shall continue to be deemed automatically perfected senior first priority liens as of entry of the Interim Order), with any excess paid to the DIP Lender for application to the DIP Obligations in accordance with the DIP Documents until the DIP Obligations are Paid in Full (unless the DIP Lender has otherwise agreed to in writing), and any excess remaining thereafter shall be applied in accordance with this Final Order.

(f) Notwithstanding anything to the contrary in this Final Order, (i) disbursements by the Debtors from the Estate Professional Fees Escrow Account shall not constitute loans or indebtedness under the DIP Documents or otherwise increase or reduce the DIP Obligations, (ii) the failure of the Estate Professional Fees Escrow Account to satisfy in full the Allowed Estate Professional Fees shall not affect the priority of the Carve Out, and (iii) nothing contained herein shall constitute a cap or limitation on the amount that the Estate Professionals may assert as administrative expense claims against the Debtors on account of Allowed Estate Professional Fees incurred by such Estate Professionals.

(g) Payment of Carve Out on or After the Carve Out Trigger Date. Any payment or reimbursement made on or after the occurrence of the Carve Out Trigger Date in respect of any Allowed Estate Professional Fees incurred after the occurrence of the Carve Out Trigger Date shall permanently reduce the Carve Out Amount on a dollar-for-dollar basis.

(h) No Direct Obligation to Pay Allowed Estate Professional Fees. The DIP Lender shall not be responsible for the payment or reimbursement of any fees or disbursements of any Estate Professional incurred in connection with the Chapter 11 Cases or any Successor Cases under

any chapter of the Bankruptcy Code, regardless of whether such fees or expenses have been allowed by the Court. Nothing in the Interim Order, this Final Order, or otherwise shall be construed to obligate the DIP Lender, in any way, to pay compensation to, or to reimburse expenses of, any Estate Professional or to guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement.

13. **Payment of Compensation**. Nothing herein or in the Interim Order shall be construed as a consent to the allowance of any professional fees or expenses of any of the Debtors or the Committee or shall limit or otherwise affect the right of the DIP Lender or any other party in interest to object to the allowance and payment of any such fees and expenses. No professional fees shall be paid absent a Court order allowing such payment, pursuant to a fee application or fee statement on notice, or other procedure permitted by any Court order allowing interim compensation or the payment of fees of ordinary course professionals.

14. **Section 506(c) Claims**. As a further condition of the DIP Facility, any obligation of the DIP Lender to make DIP Facility Loans and the consent of the DIP Lender to the payment of the Carve Out to the extent provided herein, the Debtors (and any successors thereto or any representatives thereof, including any trustees appointed in the Chapter 11 Cases or any Successor Case) shall be deemed to have waived any rights, benefits, or causes of action under section 506(c) of the Bankruptcy Code as they may relate to or be asserted against the DIP Lender, the DIP Liens, and the DIP Collateral and, except to the extent of the Carve Out, nothing contained in the Interim Order, this Final Order, or the other DIP Documents shall be deemed a consent by the DIP Lender to any charge, lien, assessment, or claim against or in respect of the DIP Collateral under sections 105 or 506(c) of the Bankruptcy Code or otherwise, and no such consent shall be implied from any other action, inaction, or acquiescence by any by any such parties.

15. **Collateral Rights; Limitations in Respect of Subsequent Court Orders**. Without limiting any other provisions of the Interim Order or this Final Order, unless the DIP Lender has provided its prior written consent, no credit shall be obtained, or indebtedness incurred that is secured by a security, mortgage, or collateral interest or other lien on all or any portion of the DIP Collateral or entitled to priority administrative status which is superior to or *pari passu* with those granted pursuant to this Final Order and the Interim Order to or for the benefit of the DIP Lender. Further, the proceeds of the DIP Facility shall not be used for any purpose other than as permitted under the DIP Documents and consistent with this Final Order and the latest Approved Budget.

16. **Proceeds of Subsequent Financing**. Without limiting the provisions and protections of paragraph 15 hereof, if at any time prior to the Termination Date, the Debtors, the Debtors' estates, any trustee, any examiner with enlarged powers or any responsible officer subsequently appointed shall obtain credit or incur debt in violation of this Final Order and the other DIP Documents (including the DIP Credit Agreement), then all of the cash proceeds derived from such credit or debt in the amount necessary to satisfy all DIP Obligations then outstanding shall immediately be turned over to the DIP Lender for the indefeasible repayment and satisfaction in full in cash of all DIP Obligations then outstanding. For the avoidance of doubt, if the Debtors, any trustee, any examiner with expanded powers, or any responsible officer subsequently appointed in these Chapter 11 Cases or any Successor Case shall obtain credit or incur debt pursuant to section 364(d) of the Bankruptcy Code at any time prior to the Termination Date, the DIP Lender's rights to object to the Debtors' use of proceeds from the DIP Facility shall be fully preserved.

17. **Cash Management**. Until such time as all DIP Obligations are Paid in Full, the Debtors shall maintain the cash management system in accordance with the applicable "first day" order, which shall be in form and substance acceptable to the DIP Lender. Except as expressly provided herein, the Debtors shall not open any new deposit or securities account that is not subject to the liens and security interests of the DIP Lender (in which case they shall be subject to the lien priorities and other provisions set forth in this Final Order and the Interim Order).

18. **Disposition of DIP Collateral**. It shall constitute an Event of Default (as defined in the DIP Credit Agreement) if the Debtors sell (including, without limitation, any sale and leaseback transaction), transfer (including any assignment of rights), lease, encumber or otherwise dispose of any portion of the DIP Collateral other than in the ordinary course of business, except as permitted under the DIP Credit Agreement.

19. **Survival of Certain Provisions**. In the event of the entry of any order converting any of these Chapter 11 Cases into a Successor Case, the DIP Liens, the DIP Superpriority Claims, and the Carve Out shall continue in this proceeding and in any Successor Case, and such DIP Liens, DIP Superpriority Claims, and Carve Out shall maintain their respective priorities as provided by this Final Order and the Interim Order.

20. **Events of Default; Termination Date; Rights and Remedies Upon Event of Default**.

(a) Any automatic stay otherwise applicable to the DIP Lender, whether arising under sections 105 or 362 of the Bankruptcy Code or otherwise, is hereby modified so that, upon the occurrence and during the continuance of an Event of Default, the DIP Lender, in its sole and absolute discretion, but subject to the terms and conditions of this Final Order and the Interim Order (and the Default Notice Period), may immediately deliver a Termination Notice (as defined

below). Immediately following the giving of notice by the DIP Lender to counsel to the Debtors, the U.S. Trustee, and counsel to the Committee, of the occurrence of an Event of Default under the DIP Documents (the "Termination Notice") (i) the DIP Lender may issue a Carve Out Notice; (ii) the DIP Lender may declare all DIP Obligations to be immediately due and payable and the Debtors shall have no right to request or use any proceeds of any DIP Facility Loans or DIP Collateral, other than towards the satisfaction of the DIP Obligations and the Carve Out, as provided in this Final Order, the Interim Order and the other DIP Documents (including the DIP Credit Agreement); *provided* that, during the Default Notice Period (as defined below), the Debtors shall be permitted solely to continue to use drawn proceeds of the DIP Facility, in accordance with the Approved Budget, for any critical business-related expenses necessary to operate the Debtors' businesses and preserve the DIP Collateral as determined by the Debtors in their reasonable discretion and in good faith; *provided, further* that the only basis on which the Debtors, the Committee, or any other party in interest shall have the right to contest a Termination Notice shall be with respect to the validity of the Event of Default giving rise to such Termination Notice (i.e., whether or not such Event of Default has occurred or not), (iii) the DIP Lender may declare the suspension or termination of the DIP Facility as to any further liability or obligation of the DIP Lender thereunder, but without affecting the DIP Liens or DIP Obligations; and (iv) the DIP Lender may charge the default rate of interest under the DIP Facility, as provided for in the DIP Credit Agreement.

(b) The Debtors and the Committee shall be entitled to an emergency hearing before this Court within five (5) business days after the Termination Notice is sent by the DIP Lender to the Debtors, the U.S. Trustee, and counsel to the Committee (such 5-calendar-day period, the "Default Notice Period"). If the Debtors, the Committee, or any other party in interest does not

contest the occurrence of the Event of Default within the Default Notice Period or if there is a timely contest of the occurrence of an Event of Default and the Court after notice and a hearing declines to stay the enforcement thereof, the Termination Date (as defined below) shall be deemed to have occurred for all purposes and the automatic stay shall be modified to permit the DIP Lender to exercise all remedies under the Interim Order, this Final Order, the other DIP Documents (including the DIP Credit Agreement), and applicable law, including, without limitation, to (i) set-off any and all amounts in accounts maintained by the Debtors with the DIP Lender against the DIP Obligations, (ii) to otherwise enforce any and all rights against the DIP Collateral, including, without limitation, disposition of the DIP Collateral solely for application towards the DIP Obligations; and (iii) take any other actions or exercise any other rights or remedies permitted under the Interim Order, this Final Order, the other DIP Documents (including the DIP Credit Agreement), or applicable law to effect the repayment of the DIP Obligations. Nothing herein shall preclude the DIP Lender from seeking an order from the Court upon written notice (which may be sent by e-mail) to the U.S. Trustee, counsel to the Debtors, and counsel to the Committee authorizing the DIP Lender to exercise any enforcement rights or remedies with respect to the DIP Collateral on less than five (5) business days' notice or the Debtors' right to contest such relief.

(c) After delivery of a Termination Notice and expiration of the Default Notice Period, the DIP Lender, in its sole and absolute discretion, may immediately (i) (x) terminate any pending DIP Facility Loans; (y) sweep all cash in any controlled accounts, and (z) terminate the DIP Facility and all commitments thereunder and (ii) upon and after the occurrence of the Termination Date, the DIP Lender shall, without further notice to, hearing of, or order from this Court, to the extent necessary to permit the DIP Lender to take any or all of the foregoing actions, at the same time or different times, unless the Court orders otherwise, and subject only to subparagraph (b) of

paragraph 20, as applicable, be immediately entitled to exercise all of their rights and remedies in respect of the DIP Collateral, in accordance with this Final Order, the Interim Order and the DIP Documents, as applicable.

(d) The term "Termination Date" shall mean the date which is the earliest of (a) the Scheduled Maturity Date (as defined in the DIP Credit Agreement), (b) the effective date of a plan of reorganization or liquidation for the Debtors confirmed in the Chapter 11 Cases, (c) the occurrence of any Event of Default (as defined in the DIP Credit Agreement), after delivery of a Termination Notice and expiration of the Default Notice Period, (d) the first business day on which this Final Order expires by its terms or is terminated, (e) the conversion of any of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code unless otherwise consented to in writing (which may be e-mail) by the DIP Lender, (f) the dismissal of any of the Chapter 11 Cases, unless otherwise consented to in writing (which may be e-mail) by the DIP Lender; or (g) the repayment in full in cash of all obligations and termination of all commitments under the DIP Facility.

(e) The automatic stay imposed under section 362(a) of the Bankruptcy Code was, pursuant to the Interim Order, and hereby continues to be modified pursuant to the terms of this Final Order and the other DIP Documents as necessary to (i) permit the Debtors to grant the DIP Liens and to incur all DIP Obligations and all liabilities and obligations to the DIP Lender hereunder, under the Interim Order, and under the DIP Credit Agreement and the other DIP Documents, as the case may be, and (ii) authorize the DIP Lender to retain and apply payments and otherwise enforce their respective rights and remedies hereunder, subject to the provisions of paragraphs 20(a), (b) and (c) hereof.

(f) The Debtors shall reasonably cooperate with the DIP Lender in its efforts to enforce their liens and security interests in the DIP Collateral in accordance with this Final Order and

(other than the right to contest whether a Termination Event has occurred and is continuing) the Debtors shall not take or direct any entity to take any action designed or intended to hinder or restrict in any respect such party from enforcing its rights or remedies in the DIP Collateral.

(g) Nothing included herein shall prejudice, impair, or otherwise affect the DIP Lender's rights to seek any other or supplemental relief in respect of the Debtors (including, as the case may be, other or additional adequate protection); *provided, however*, the Committee's right to object to any such requested relief is hereby preserved.

21. **Applications of Proceeds of Collateral, Payments and Collections**.

(a) As a condition to the DIP Facility Loans and the authorization to use Cash Collateral, the Debtors have agreed that proceeds of any DIP Collateral, any amounts held on account of the DIP Collateral, and all payments and collections received by the Debtors with respect to all proceeds of DIP Collateral, shall be used and applied in accordance with the DIP Documents (including repayment and reduction of the DIP Obligations), the Budget (subject to variances permitted under the DIP Documents) and this Final Order.

(b) Subject to the Debtors' rights under paragraph 20(b) hereof and the funding of the Carve Out, upon and after the occurrence of the Termination Date, all proceeds of DIP Collateral, whenever received, shall be paid and applied as follows: (i) *first*, to permanently and indefeasibly repay and reduce the DIP Obligations then due and owing in accordance with the DIP Documents, until paid and satisfied in full in cash; and (ii) *second*, to the Debtors' estates. For avoidance of doubt, nothing in this Final Order or in the Interim Order shall be construed to limit the voluntary and mandatory repayment provisions set forth in the DIP Documents.

22. **Proofs of Claim, etc**. The DIP Lender shall not be required to file a proof of claim in the Chapter 11 Cases or any Successor Case for any claim described herein. Notwithstanding

any order entered by the Court in relation to the establishment of a bar date in the Chapter 11 Cases or any Successor Case to the contrary, the DIP Lender is hereby authorized and entitled, in its sole and absolute discretion but not required, to file (and amend or supplement, as each sees fit) a proof of claim or aggregate proofs of claim in the Chapter 11 Cases or any Successor Case for any claim described herein. Any order entered by the Court in relation to the establishment of a bar date for any claim (including without limitation administrative claims) in the Chapter 11 Cases or any Successor Case shall not apply to the DIP Lender.

23. **Payments Free and Clear**. Any and all payments or proceeds remitted to the DIP Lender pursuant to the provisions of this Final Order, the Interim Order, the DIP Documents (including the DIP Credit Agreement) or any subsequent order of the Court shall be irrevocable, received free and clear of any claim, charge, assessment or other liability.

24. **Other Rights and Obligations**.

(a) **Good Faith Under Section 364(e) of the Bankruptcy Code; No Modification or Stay of this Final Order**. The DIP Lender has acted in good faith in connection with the DIP Facility, the DIP Facility Loans, the DIP Documents (including the DIP Credit Agreement), the Interim Order, and this Final Order and is entitled to rely upon the protections granted herein and by section 364(e) of the Bankruptcy Code. Based on the findings set forth in the Interim Order and this Final Order and in accordance with section 364(e) of the Bankruptcy Code, which is applicable to the DIP Facility as approved by this Final Order and the Interim Order, and notwithstanding any modification, amendment, reversal, vacatur, or stay of any or all of this Final Order or the Interim Order by a subsequent order of the Court or any other court, the DIP Lender is entitled to the protections provided in section 364(e) of the Bankruptcy Code, and no such appeal, modification, amendment, reversal, vacatur, or stay shall affect the validity and

enforceability of any DIP Obligation, DIP Lien, DIP Superpriority Claim or any other advances made hereunder or the claims, liens, security interest, or priority authorized or created hereby or pursuant to the DIP Documents (including the DIP Credit Agreement). Notwithstanding any such modification, amendment, reversal, vacatur, or stay, any claim granted to the DIP Lender hereunder arising prior to the effective date of such modification, amendment, reversal vacatur, or stay of any DIP Liens or of the DIP Superpriority Claims granted to or for the benefit of the DIP Lender shall be governed in all respects by the original provisions of this Final Order, and the DIP Lender shall be entitled to all of the rights, remedies, privileges, and benefits, including the DIP Liens and the DIP Superpriority Claims granted herein, with respect to any such claim.

(b) **Credit Bid**. The DIP Lender shall have the right to credit bid (either directly or through one or more acquisition vehicles) up to the full amount of the DIP Obligations (as to the DIP Collateral) in connection with any sale of all or any portion of the DIP Collateral, including (without limitation) any sale occurring pursuant to section 363 of the Bankruptcy Code or included as part of any chapter 11 plan subject to confirmation under section 1129(b)(2)(A)(ii)-(iii) of the Bankruptcy Code, by the Debtors, by a chapter 7 trustee under section 725 of the Bankruptcy Code, or otherwise, without the need for further court order authorizing the same. The Debtors shall not object to any such credit bidding up to the full amount of the applicable outstanding DIP Obligations, in each case including any accrued interest, fees, and expenses, in any sale of any DIP Collateral, as applicable, whether such sale is effectuated through sections 363 or 1129 of the Bankruptcy Code, by a chapter 7 trustee under section 725 of the Bankruptcy Code, or otherwise. If the DIP Lender (either directly or through one or more affiliates) makes a credit bid in connection with any auction or other sale process relating to the sale or other disposition of any DIP Collateral, then for purposes of such auction or sale process or any applicable order of this

Court, the DIP Lender (or one or more of its affiliates) shall be deemed to be a "qualified bidder" and its bid shall be a "qualified bid" regardless of whether any qualified bidder or qualified bid requirements are satisfied. In connection with the foregoing, the DIP Lender shall have the right to assign its respective rights to "credit bid" all or any portion of the applicable outstanding DIP Obligations to a newly formed acquisition vehicle. Notwithstanding the foregoing or any other provision of this Final Order, any credit bid by the DIP Lender is subject to Section 363(k) of the Bankruptcy Code and the Committee's right to challenge any such bid(s) is expressly preserved, subject to the Challenge Period.

(c) **DIP Lenders Not Responsible Persons**. In (i) making the decision to make the DIP Facility Loans, (ii) administering the DIP Facility and the DIP Facility Loans, (iii) extending other financial accommodations to the Debtors under the DIP Documents, and (iv) making the decision to collect the indebtedness and obligations of the Debtors, the DIP Lender shall not be considered to (x) owe any fiduciary obligation to the Debtors or any other party with respect to their exercise of any consent or other rights afforded them under the DIP Documents, the Interim Order, or this Final Order or (y) be exercising control over any operations of the Debtors or acting in any way as a responsible person, or as an owner or operator under any applicable law, including without limitation, any environmental law (including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601, *et seq.*, and the Resource Conservation and Recovery Act, 42 U.S.C. 6901, *et seq.*, as either may be amended from time to time, or any similar federal or state statute).

(d) **Binding Effect**. The provisions of this Final Order shall be binding upon and inure to the benefit of the DIP Lender, the Debtors, and their successors and assigns (including any trustee or other fiduciary hereinafter appointed as a legal representative of the Debtors or with

respect to the property of the estates of the Debtors) whether in the Chapter 11 Cases, in any Successor Case, or upon dismissal of any such Chapter 11 or Chapter 7 case.

(e) **No Waiver**.

(xvii) The failure of the DIP Lender to seek relief or otherwise exercise their rights and remedies under this Final Order, the Interim Order, or the other DIP Documents, as applicable, shall not constitute a waiver of any of the DIP Lender's rights hereunder, thereunder, or otherwise. Notwithstanding anything herein, the entry of this Final Order is without prejudice to and does not constitute a waiver of, expressly or implicitly, or otherwise impair any of the rights, claims, privileges, objections, defenses, or remedies of the DIP Lender under the Bankruptcy Code or under non-bankruptcy law against any other person or entity in any court, including without limitation, the rights of the DIP Lender (1) to request conversion of the Chapter 11 Cases to a case under Chapter 7, dismissal of the Chapter 11 Cases, or the appointment of a trustee in the Chapter 11 Cases, (2) to propose, subject to the provisions of section 1121 of the Bankruptcy Code, a Plan, or (3) to exercise any of the rights, claims or privileges (whether legal, equitable, or otherwise).

(xviii) The failure or delay on the part of the DIP Lender to seek relief or otherwise exercise their rights and remedies under this Final Order, the Interim Order, the other DIP Documents (including the DIP Credit Agreement), or applicable law, as the case may be, shall not constitute a waiver of any of their respective rights hereunder, thereunder, or otherwise. No delay on the part of any party in the exercise of any right or remedy under this Final Order or under the Interim Order shall preclude any other or further exercise of any such right or remedy or the exercise of any other right or remedy. None of the rights or remedies of any party under this Final Order shall be deemed to have been amended, modified, suspended, or waived unless such amendment, modification, suspension, or waiver is express, in writing and signed by the party

against whom such amendment, modification, suspension, or waiver is sought. No consents required hereunder by the DIP Lender shall be implied by any inaction or acquiescence by the DIP Lender.

(f) **No Third-Party Rights**. Except as explicitly provided for herein, neither this Final Order nor the Interim Order creates any rights for the benefit of any third party, creditor, equity holder or any direct, indirect, third party, or incidental beneficiary.

(g) **Limitation on Surcharge**. Without limiting the terms of the Carve Out, no costs or expenses of administration which have been or may be incurred in the Chapter 11 Cases or any Successor Case at any time shall be surcharged against, and no person may seek to surcharge any costs or expenses of administration against the DIP Lender, the Carve Out (other than parties entitled to assert a right to be paid under the Carve Out), the DIP Collateral, pursuant to sections 105 or 506(c) of the Bankruptcy Code or otherwise, without the prior written consent of the DIP Lender (and the beneficiaries of the Carve Out in the case of a surcharge against the Carve Out). No action, inaction or acquiescence by the DIP Lender shall be deemed to be or shall be considered evidence of any alleged consent to a surcharge against the DIP Lender or the DIP Collateral.

(h) **No Marshaling**. The DIP Lender shall not be subject to the equitable doctrine of "marshaling" or any other similar doctrine with respect to any of the DIP Collateral.

(i) **Section 552(b)**. The DIP Lender shall be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code; and the "equities of the case" exception under section 552(b) of the Bankruptcy Code shall not apply to the DIP Lender with respect to proceeds, product, offspring, or profits of any of the DIP Collateral.

(j) **Amendment**. The Debtors and the DIP Lender may amend, modify, supplement, or waive any provision of the DIP Credit Agreement or other DIP Document (a "DIP Loan

Amendment") without further approval of the Court; *provided* that (i) such DIP Loan Amendment is not material (for purposes hereof, a "Material DIP Loan Amendment" shall mean any modification or amendment that (1) increases the interest rate (other than as a result of the imposition of the default rate) or fees charged in connection with the DIP Facility, (2) increases the commitments of the DIP Lender to make DIP Facility Loans under the DIP Documents, or (3) changes the Termination Date) and is undertaken in good faith by the DIP Lender and (ii) the Debtors provide written notice of the DIP Loan Amendment on the docket. Any Material DIP Loan Amendment to any DIP Document must be set forth in writing, signed by, or on behalf of the Debtors and the DIP Lender and approved by the Court on five (5) days' notice to parties in interest in order to be effective, *provided* that the DIP Lender and the Debtors reserve the right to seek approval of any Material DIP Loan Amendment on an expedited basis.

(k) **Priority of Terms**. To the extent of any conflict between or among (i) the express terms or provisions of any of the DIP Documents, the Motion, or any other agreements, on the one hand, and (b) the terms and provisions of this Final Order, on the other hand, unless such term or provision herein is phrased in terms of "defined in" or "as set forth in" the DIP Documents, the terms and provisions of this Final Order prevail.

(l) **Survival of Final Order**. The provisions of this Final Order and any actions taken pursuant hereto shall survive entry of any order which may be entered (i) confirming any plan in the Chapter 11 Cases, (ii) converting of the Chapter 11 Cases to cases under Chapter 7 of the Bankruptcy Code, (iii) to the extent authorized by applicable law, dismissing the Chapter 11 Cases, (iv) withdrawing of the reference of the Chapter11 Cases from this Court, or (v) providing for abstention from handling or retaining of jurisdiction of the Chapter 11 Cases in this Court. The terms and provisions of this Final Order, the other DIP Documents, including the DIP Liens and

DIP Superpriority Claims granted pursuant to the Interim Order, this Final Order, the DIP Credit Agreement, and the other DIP Documents and any priorities and protections granted to or for the benefit of the DIP Lender hereunder and thereunder shall continue in full force and effect to the fullest extent provided by section 364(e) of the Bankruptcy Code.

(m) **Enforceability**. This Final Order shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 and shall take effect and be fully enforceable *nunc pro tunc* to the Petition Date immediately upon execution hereof.

(n) **Assignment.** The DIP Lender may assign the DIP Obligations (or any participation therein) in accordance with the DIP Credit Agreement; *provided, however,* the DIP Lender shall provide the Committee advance notice (at least 5 business days) of any assignment to any current or former insider or affiliate of the Debtors (as such are described in paragraph 2(d) above).

(o) **No Waivers or Modification of Final Order**. The Debtors irrevocably waive any right to seek any modification or extension of this Final Order without the prior written consent of the DIP Lender, and no such consent shall be implied by any other action, inaction, or acquiescence of the DIP Lender. The Debtors may not seek to modify or to alter relative lien priority of the DIP Liens or DIP Superpriority Claims set forth in this Final Order.

(p) **Waiver of any Applicable Stay**. Any applicable stay (including, without limitation, under Bankruptcy Rule 6004(h)) is hereby waived and shall not apply to this Final Order.

25. **Reservation of Rights**. Nothing in this Final Order shall be deemed to be a finding, or a ruling, as to the Debtors' estates' interest, or not, in any claims or causes of action against any current or former Insiders or Affiliates of the Debtor (as such terms are defined in Bankruptcy Code §§ 101(2) and (31)). All parties' rights to argue, dispute, or assert that any claims against

such parties are or are not property of the Debtors or the Debtors' estates are fully preserved, and this Final Order shall not prejudice the rights of any party to contend that any claims against such parties are not property of the Debtors or the Debtors' estates.

26. **Retention of Jurisdiction**. The Court has and will retain jurisdiction to enforce this Final Order according to its terms.

Signed: January 07, 2025

Christopher Lopez
United States Bankruptcy Judge

EXHIBIT 1

DIP CREDIT AGREEMENT

SENIOR SECURED SUPERPRIORITY
DEBTOR-IN-POSSESSION LOAN AGREEMENT

This **SENIOR SECURED SUPERPRIORITY DEBTOR-IN-POSSESSION LOAN AGREEMENT** (this "Agreement") is made as of January [●], 2025, by and among COSMED GROUP, INC., a Delaware corporation ("Cosmed"), SPICEY PARTNERS REAL ESTATE HOLDINGS, LLC, a Texas limited liability company ("SPRE," and together with Cosmed, the "Borrowers"), and ZIMMER, INC., a Delaware corporation (the "Lender").

RECITALS

WHEREAS, on November 14, 2024 (the "Petition Date"), each of the Borrowers filed a petition under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code") with the United States Bankruptcy Court for the Southern District of Texas, Houston Division (the "Chapter 11 Cases"). The Borrowers have requested the Lender to provide a debtor-in-possession, super-priority, senior secured loan credit facility, consisting of a multiple-draw delayed draw term loan facility in the aggregate maximum principal amount of up to $7,500,000, as more fully described herein (the "DIP Facility"). Subject to the terms and conditions set forth herein, the Lender has agreed to provide the DIP Facility.

WHEREAS, to provide for the repayment of the Loan (as hereinafter defined), and the payment of the other Obligations (as hereinafter defined) of the Borrowers hereunder and under the Financing Documents (as hereinafter defined), the Borrowers will provide and grant to the Lender certain rights and protections pursuant to the terms hereof, security interests and Liens (as hereinafter defined) pursuant to sections 364(c) and 364(d) of the Bankruptcy Code and superpriority administrative expense claims pursuant to section 364(c)(1) of the Bankruptcy Code, in each case having the relative priorities as set forth herein and in the DIP Orders, and other rights and protections as more fully described herein and in the DIP Orders.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

ARTICLE I
Definitions

Certain capitalized terms are defined below:

"Actual Variance" has the meaning specified in Section 6.1(d)(i).

"Affiliate" means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

"Agreement" this Agreement as amended and in effect from time to time in accordance with the terms hereof.

"Approved Budget" means the most recent Budget that has been approved by Lender in its sole discretion pursuant to Section 6.1(b).

"Asset Sale" means the sale by any Borrower or any Subsidiary to any Person of any assets.

"Avoidance Actions" means all claims or causes of action of the Borrowers arising under sections 502(d), 542, 544, 545, 547, 548, 549, 550, and 553 of the Bankruptcy Code and any other avoidance or similar action under the Bankruptcy Code.

"Bankruptcy Code" has the meaning set forth in the recitals.

"Bankruptcy Court" means the United States Bankruptcy Court for the Southern District of Texas, Houston Division.

"Base Rate" has the meaning set forth in Section 2.2.

"Borrowers" has the meaning set forth in the preamble, which term shall include the Borrowers as debtors and debtors-in-possession as contemplated by this Agreement.

"Budget" means a 13-week detailed rolling cash projection of the Borrowers similar in form to the Initial Approved Budget, and in form, detail and substance acceptable to the Lender in its sole discretion.

"Business Day" means a day other than a Saturday, Sunday, or other day on which commercial banks in New York are authorized or required by law to close.

"Carve-Out" has the meaning assigned to such term in the Interim DIP Order, or, upon entry, the Final DIP Order.

"Carve-Out Notice" has the meaning assigned to such term in the Interim DIP Order, or, upon entry, the Final DIP Order.

"Casualty Event" means any loss of, damage to or destruction of, or any condemnation or other taking for public use of, any assets of any Borrower or any Subsidiary.

"Chapter 11 Cases" has the meaning given thereto in the Recitals to this Agreement.

"Collateral" means all of the assets (tangible, intangible, real, personal or mixed) of each Borrower, whether now existing or hereafter acquired or arising, including, without limitation, accounts, inventory, equipment, Equity Interests, money, deposit accounts, securities accounts and other investment property, instruments, chattel paper, real estate, leasehold interests, contracts, patents, copyrights, trademarks, causes of action (including Avoidance Actions), and other general intangibles, and all products and proceeds thereof, including without limitation (x) all unencumbered assets of each Borrower, and (y) any other collateral in which the Lender is granted a Lien under the DIP Orders. Notwithstanding the foregoing, Lender's Lien on Avoidance Actions (1) shall be limited to the proceeds and property recovered in connection therewith, and (2) shall not extend to any claims or causes of action of the Borrowers asserted against, or that could be asserted against, current or former "insiders" or "affiliates" as such terms are defined in Sections 101(2) and 101(31) of the Bankruptcy Code or, if any such insider or affiliate is an individual, any trust associated with that insider or affiliate

"Commitment" means the commitment of the Lender to make Loan and advances hereunder in an aggregate principal amount (excluding the PIK Amounts) not to exceed $7,500,000. For the avoidance of doubt, as of the Effective Date after giving effect to the Interim Advance deemed made hereunder, the remaining undrawn Lender's Commitment is $6,300,000.

"Committee" means an official or statutory committee of unsecured creditors appointed by the United States Trustee pursuant to section 1102 of the Bankruptcy Code in the Chapter 11 Cases, if any.

"Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. "Controlling" and "Controlled" have meanings correlative thereto. Without limiting the generality of the foregoing, a Person shall be deemed to be Controlled by another Person if such other Person possesses, directly or indirectly, power to vote five percent (5%) or more of the Equity Interests having ordinary voting power for the election of directors, managing general partners or the equivalent or such other governing body of such Person.

"Default" means an event or act which, with the giving of notice and/or the lapse of time, would become an Event of Default.

"DIP Orders" means the Interim DIP Order and the Final DIP Order.

"Effective Date" means the first date on which all conditions specified in Sections 5.1 and 5.2 are satisfied (or waived in writing by the Lender in its sole discretion).

"Environmental Laws" means all laws pertaining to the environment, preservation or reclamation of natural resources, hazardous materials, or other environmental, health or safety matters, including without limitation the Resource Conservation and Recovery Act, the Comprehensive Environmental Response Compensation and Liability Act of 1980, the Superfund Amendments and Reauthorization Acts of 1986, the Federal Clean Water Act, the Federal Clean Air Act, the Federal Oil Pollution Act, the Toxic Substances Control Act or equivalent laws in non-U.S. jurisdictions, in each case as amended, and all rules, regulations, judgments, decrees, orders and licenses arising or promulgated under all such laws.

"Equity Interests" means shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity or ownership interests in a Person, and any warrants, options or other rights entitling the holder thereof to purchase or acquire any of the foregoing, but excluding any debt securities convertible into any of the foregoing.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, and all rules, regulations, judgments, decrees, and orders arising or promulgated thereunder.

"Event of Default" has the meaning set forth in Article VII.

"Extraordinary Receipts" has the meaning set forth in the definition of Prepayment Event.

"Final DIP Order" means the order of the Bankruptcy Court in the Chapter 11 Cases approving this Agreement on a final basis in form and substance satisfactory to the Lender in its sole discretion, as the same may be amended, modified or supplemented from time to time with the prior written consent of the Lender.

"Financing Documents" means this Agreement, the DIP Orders, and the Security Documents, all of the instruments, agreements and documents executed in connection therewith, in each case of the foregoing as amended, restated, supplemented or otherwise modified from time to time in accordance with the terms hereof and thereof.

"GAAP" means U.S. generally accepted accounting principles consistent with those adopted by the Financial Accounting Standards Board and its predecessor, as in effect from time to time, consistently applied.

"Governmental Consent" means, in respect of any Person, any permit, license or exemption from, approval, consent of, registration or filing with any governmental or regulatory agency or authority

(whether local, state, federal, or pertaining to the government of any other nation) required under applicable law.

"Indebtedness" means, as to any Person at a particular time, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP: (a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments; (b) all direct or contingent obligations of such Person arising under or in respect of (i) letters of credit (including standby and commercial), bankers' acceptances, demand guarantees and similar independent undertakings and (ii) surety bonds, performance bonds and similar instruments issued or created by or for the account of such Person; (c) net obligations of such Person under any swap or hedging agreement; (d) all obligations of such Person to pay the deferred purchase price of property or services (other than trade accounts payable in the ordinary course of business); (e) indebtedness (excluding prepaid interest thereon) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse; (f) all obligations of such Person under any capital lease or finance lease; and (g) all guarantees of such Person in respect of any of the foregoing.

"Indemnified Party" has the meaning specified in Section 9.2.

"Initial Approved Budget" means the Budget that was approved by the Lender in connection with the filing and entering of the Interim DIP Order, which is attached to the Interim DIP Order as **Exhibit 2**.

"Intellectual Property" means domestic and foreign patents, patent applications, invention disclosures, trade secrets, proprietary information including software and computer models used to predict properties of the technology known as catalytic extraction processing, trade names, registered and unregistered trademarks and service marks and related applications for registration, copyrights, franchises, licenses and other intellectual property rights.

"Interim Advance" has the meaning set forth in Section 2.1(a)(ii).

"Interim DIP Order" means the *Interim Order (I) Authorizing Debtors to Obtain Postpetition Financing, (II) Granting Priming Liens and Providing Superpriority Administrative Expense Claims, (III) Modifying the Automatic Stay, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief* entered by the Bankruptcy Court on December 11, 2024 in the Chapter 11 Cases [ECF No. 112], as the same may be amended, modified or supplemented from time to time with the consent of the Lender.

"Lender" has the meaning set forth in the preamble.

"Lien" means any mortgage, pledge, hypothecation, collateral assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to real property, and any financing lease having substantially the same economic effect as any of the foregoing).

"Loan" has the meaning set forth in Section 2.1(a)(i).

"Material Adverse Effect" means (a) a material adverse change in, or a material adverse effect on, the operations, business, properties, liabilities (actual or contingent), or financial condition of Borrowers, taken as a whole (excluding the effect of filing the Chapter 11 Cases and the events and conditions leading up thereto); or (b) a material adverse effect on (i) the ability of Borrowers, taken as a whole, to perform the Obligations, (ii) the legality, validity, binding effect or enforceability against any Borrower of any

Financing Document to which it is a party, (iii) the Collateral, or the Lender's Liens on the Collateral or the priority of such Liens or (iv) the rights, remedies and benefits available to, or conferred upon, the Lender under any Financing Document; *provided, however,* loss of revenue in an amount of not more than 50% as measured against the DIP Budget shall not be deemed a Material Adverse Effect.

"Material Indebtedness" means, with respect to any Person, Indebtedness of such Person incurred under or evidenced by a single agreement or instrument or a series of related agreements and instruments, in each case in a principal outstanding amount in excess of $100,000, other than Indebtedness incurred under this Agreement, the other Financing Documents, and any other currently existing indebtedness of the Borrowers.

"Net Cash Proceeds" means, with respect to any Prepayment Event, (a) in case of any Asset Sale or Casualty Event, cash received by any Borrower or any Subsidiary from such Asset Sale or as insurance proceeds, condemnation awards or other payments or proceeds from such Casualty Event (in each case, including any cash received in respect of any non-cash proceeds, including, without limitation, (x) any cash received by way of deferred payment pursuant to a promissory note or otherwise, but only as and when received, and (y) any purchase price adjustment or earn-out in respect of such Asset Sale), after (1) deduction of an amount equal to estimated federal, state, and local taxes in connection with such Asset Sale or Casualty Event, and determined in good faith by the Borrowers, and (2) payment of all usual and customary brokerage commissions and all other reasonable fees and expenses related to such Asset Sale (including reasonable attorneys' fees and closing costs incurred in connection with such Asset Sale), (b) in case of the incurrence or issuance of any Indebtedness or Equity Interests by any Borrower, cash received by any Borrower or any Subsidiary therefrom (including any cash received in respect of any non-cash proceeds), after payment of reasonable and customary fees and expenses related thereto, and (c) in case of any Extraordinary Receipts, all such Extraordinary Receipts after deduction of an amount equal to estimated federal, state, and local taxes in connection therewith as determined in good faith by the Borrowers.

"Obligations" means all indebtedness, obligations and liabilities of the Borrowers to the Lender, arising or incurred under or in connection with this Agreement or any other Financing Document, existing on the date of this Agreement or arising thereafter, direct or indirect, joint or several, absolute or contingent, matured or unmatured, liquidated or unliquidated, including, without limitation, principal, interest, indemnification obligations, fees, and expenses.

"Organizational Documents" means, in respect of any Person, the charter, articles or certificate of organization or incorporation and bylaws or operating, management or partnership agreement, or other organizational or governing documents of such Person.

"Permitted Liens" has the meaning set forth in Section 6.2(d).

"Permitted Prior Liens" has the meaning set forth in Section 3.1(c).

"Permitted Variance" has the meaning set forth in Section 6.1(d)(i).

"Person" means any natural person, corporation, limited liability company, trust, business trust, joint venture, association, company, partnership, governmental or regulatory authority, or other entity.

"Petition Date" has the meaning set forth in the recitals.

"PIK Amounts" means, collectively, all PIK Interests and the Commitment Fee. For the avoidance of doubt, any reference in this Agreement or any other Financing Document to the Loan, the principal balance of the Loan or the Obligations shall include the PIK Amounts.

"Plan" means a plan of reorganization or liquidation filed by any Borrower with the Bankruptcy Court that provides for payment in full in cash of the Obligations on the effective date of such plan.

"Prepayment Event" mean (a) any Asset Sale, (b) any Casualty Event; (c) the incurrence or issuance of any Indebtedness or Equity Interests by any Borrower, or (d) receipt by or payment to or for the account of any Borrower of any proceeds or cash not in the ordinary course of business, including but not limited to insurance proceeds, tax refunds, pension plan reversions, indemnity payments and any purchase price adjustments (other than casualty and condemnation event proceeds) (the "Extraordinary Receipts").

"Proposed Budget" has the meaning assigned to such term in Section 6.1(b).

"Requirement of Law" means, in respect of any Person, any law, treaty, rule, regulation, order, Sanction or determination of an arbitrator, court, or other governmental authority, in each case applicable to or binding upon such Person or affecting any of its property.

"Security Agreement" means the Security Agreement of even date herewith between the Borrowers and the Lender, as amended, restated, supplemented or otherwise modified from time to time in accordance with the terms hereof and thereof.

"Security Documents" means the Security Agreement and all other security agreements, pledge agreements, collateral assignments, mortgages, deeds of trust, assignments, financing statements, or other instruments or documents, in form and substance satisfactory to the Lender, pursuant to which any Borrower grants (or confirms the grant of) to the Lender a Lien on any or all of the Collateral, each as amended, restated, supplemented or otherwise modified from time to time in accordance with the terms hereof and thereof.

"Subsidiary" means, with respect to any Person (the "parent") at any date, any corporation, limited liability company, partnership, association or other entity the accounts of which would be consolidated with those of the parent in the parent's consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any other corporation, limited liability company, partnership, association or other entity (a) of which Equity Interests representing more than 50% of the equity or more than 50% of the ordinary voting power or, in the case of a partnership, more than 50% of the general partnership interests are, as of such date, owned, controlled or held, or (b) that is, as of such date, otherwise Controlled by the parent and/or by the parent and one or more Subsidiaries of the parent. As used herein, unless the context otherwise requires, a "Subsidiary" shall mean a direct or indirect Subsidiary of a Borrower.

"Term Loan Advance" and "Term Loan Advances" have the meanings set forth in Section 2.1(b).

"Termination Date" means, unless extended with the prior written consent of the Lender (which may be by e-mail), the earliest to occur of: (a) the date that is six (6) months after entry of the Interim DIP Order (the "Scheduled Maturity Date"), (b) the effective date of a plan of reorganization or liquidation for the Borrower confirmed in the Chapter 11 Cases, (c) the date of termination of the Commitments of the Lender and/or acceleration of any outstanding Obligations, in each case, by the Lender following the occurrence of an Event of Default and upon the delivery of a Termination Notice to the Remedies Notice Parties, in each case, subject to the Borrowers' right to use Cash Collateral during the Remedies Notice Period as set forth in this Agreement, and pending the outcome of the Stay Relief Hearing; (d) [reserved]; (e) the conversion of any of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code unless otherwise consented to in writing (which may be e-mail) by the Lender; (f) the dismissal of any of the Chapter 11 Cases, unless otherwise consented to in writing (which may be e-mail) by the Lender; (g) the

repayment in full in cash of all Obligations and termination of all Commitments of the Lender hereunder; or (h) closing or consummation of the 363 Sale.

"Uniform Commercial Code" means the Uniform Commercial Code as in effect from time to time in the State of New York; provided that if perfection or the effect of perfection or non-perfection or the priority of any security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, "Uniform Commercial Code" means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

ARTICLE II
DIP Facility

2.1 **DIP Facility Loan.**

(a) DIP Facility Loan.

(i) Upon the terms and subject to the conditions of this Agreement, and further subject to the terms of and to any limitations on borrowing or other extensions of credit contained in the Interim DIP Order or the Final DIP Order, whichever is then in effect, the Lender agrees to make loans to the Borrowers by making advances in an aggregate amount not to exceed the Lender's Commitment until (but excluding) the Termination Date (collectively, the "Loan"). The obligation of the Borrowers to repay the aggregate unpaid principal amount of the Loan, together with interest and fees thereon, shall, at the request of the Lender, be evidenced by a Note payable to the order of the Lender.

(ii) Upon and subject to the terms and conditions of the Interim DIP Order, the Lender made an advance to the Borrowers prior to the Effective Date in the amount of $1,200,000 (the "Interim Advance"). Effective as of the Effective Date, without further action, the Interim Advance shall be deemed a Term Loan Advance and part of the Loan for all purposes hereunder.

(b) Subject to the satisfaction of all conditions precedent herein, the remaining portion of the Loan shall be made by Lender to the Borrowers by making advances of the principal thereof (each a "Term Loan Advance" and collectively, the "Term Loan Advances"). In no event shall the Lender be required to make more than one Term Loan Advance in any two-week period, absent exigent circumstances demonstrated by the Borrowers and in accordance with the Approved Budget. Term Loan Advances, once repaid or prepaid, may not be reborrowed.

(c) To request a Term Loan Advance, the Borrowers shall notify the Lender of such request in writing not later than 2:00 PM (New York, New York time), three (3) Business Days (or such shorter period in the Lender's sole discretion) before the date of the proposed advance. Each such notice shall be made in writing and in substantially the form attached hereto as **Exhibit A** (or such other form satisfactory to the Lender in its sole discretion) (a "Notice of Borrowing"). Each such request shall specify (among other things): (i) the aggregate amount of the requested Term Loan Advance, (ii) the account to which funds are to be disbursed; (iii) proposed use of the requested Term Loan Advance within the two week period following the date of funding in accordance with the Approved Budget; (iv) to the extent applicable, any proposed use of the requested Term Loan Advance not in accordance with the Approved Budget (for the avoidance of doubt, without limiting the Borrowers' obligations under this Agreement relating to compliance with the Approved Budget), and (iv) the date of such Term Loan Advance, which shall be a Business Day. Each Notice of Borrowing shall be irrevocable.

2.2 **Interest**. So long as no Event of Default has occurred and is continuing, the Borrowers shall pay interest on the aggregate outstanding principal balance of the Loan (including all Term Loan Advances and all PIK Amounts) at a rate per annum equal to eight percent (8%) per annum (the "Base Rate"). Following the occurrence and during the continuation of an Event of Default, the Borrowers shall pay interest on the aggregate outstanding principal balance of the Loan (including all Term Loan Advances and all PIK Amounts) at a rate per annum equal to the Base Rate plus two percent (2%) per annum. Interest will be calculated on the basis of a year of 365 days and will be payable for the actual number of days elapsed (including the first day but excluding the last day). Except as otherwise set forth in this Agreement, accrued interest shall be due in arrears on the first Business Day of each calendar month (each an "Interest Payment Date"),which accrued interest shall be paid in kind and capitalized by adding (on each Interest Payment Date) to the outstanding principal amount of the Loan (such capitalized interest, "PIK Interest").

2.3 **Repayments**. The Borrowers hereby unconditionally, jointly and severally agree to pay the Lender on the Termination Date the entire unpaid amount of the Obligations and all accrued and unpaid interest thereon.

2.4 **Prepayments**.

(a) Voluntary Prepayments. The Borrowers may, upon prior written or telephonic notice given to the Lender by 12:00 Noon (New York, New York time) on the date of the proposed prepayment and, if given by telephone, promptly confirmed in writing to the Lender, at any time and from time to time prepay, without premium or penalty, the Loan on any Business Day. Notice of prepayment having been given as aforesaid, the principal amount of the Loan specified in such notice and all accrued and unpaid interest thereon shall become due and payable on the prepayment date specified therein. Any such voluntary prepayment shall be applied to reduce the outstanding principal balance of the Loan and may not be reborrowed.

(b) Mandatory Prepayments. Until such time as the Obligations have been repaid in full in cash and the termination of all Commitments of the Lender, the Obligations shall be prepaid in an amount equal to (i) 100% of the Net Cash Proceeds of any Asset Sale (in one or a series of related transactions) (other than Asset Sales permitted under Section 6.2(h)), after payment of Indebtedness to the extent secured by Permitted Prior Liens, (ii) 100% of the Net Cash Proceeds of any Casualty Event (other than any Casualty Event permitted under Section 6.2(h)), (iii) 100% of the Net Cash Proceeds of the incurrence or issuance of any Indebtedness or Equity Interests by any Borrower (other than any Indebtedness permitted under Section 6.2(c)), and (iv) 100% of the Net Cash Proceeds of any Extraordinary Receipts. All mandatory prepayments of the Loan shall be made promptly and in any event no later than 3 Business Days after receipt by the Borrowers of such Net Cash Proceeds. All mandatory prepayments of the Loan shall be applied (i) *first*, to accrued and unpaid fees and expenses under the Financing Documents, (ii) *second*, to any accrued and unpaid interest on the Obligations through the date of such prepayment, and (iii) *third*, to the outstanding principal balance of the Loan. Any such mandatory prepayment may not be reborrowed. For the avoidance of doubt, payment of any such mandatory prepayment by any Borrower shall not be deemed to cure, or otherwise constitute a waiver of, any Default or Event of Default that may give rise to such mandatory prepayment obligation.

2.5 **Commitment Fee; Exit Fee**.

(a) Commitment Fee. Pursuant to or in connection with the Interim DIP Order, the Borrowers agreed to pay to the Lender a commitment fee equal to 1.5% of the Commitment of $7,500,000 (the "Commitment Fee"). The Commitment Fee was fully earned and added to the principal amount of the

Loan pursuant to the Interim DIP Order. On the Effective Date, without further action, the Commitment Fee shall be added to and deemed part of the principal balance of the Loan hereunder.

(b) Exit Fee. Pursuant to or in connection with the Interim DIP Order, the Borrowers agreed to pay to the Lender an exit fee equal to 1.5% of the Commitment of $7,500,000 (the "Exit Fee"). The Exit Fee shall be paid upon the earlier of (i) the Termination Date (provided, however, if the Termination Date has occurred solely as a result of the occurrence and continuation of an Event of Default, then the Exit Fee shall not be payable until the Obligations have been accelerated by the Lender) or (ii) payment in full of the Obligations.

2.6 **Costs and Payments.**

(a) All payments to be made by the Borrowers hereunder or under any of the other Financing Documents shall be made in U.S. dollars in immediately available funds to such account as the Lender may designate from time to time in writing to the Borrowers not later than 12:00 Noon (New York, New York time) on the date when due without setoff or counterclaim and without any withholding or deduction whatsoever. If any payment hereunder is required to be made on a day which is not a Business Day, it shall be paid on the immediately succeeding Business Day, with interest and any applicable fees adjusted accordingly. All computations of interest shall be made by the Lender on the basis of actual days elapsed over a 365-day year and actual days elapsed. Except as expressly set forth herein, all payments and any proceeds of Collateral received by the Lender shall be applied (i) *first*, to accrued and unpaid fees and expenses under the Financing Documents, (ii) *second*, to any accrued and unpaid interest on the Obligations through the date of such prepayment, and (iii) *third*, to the outstanding principal balance of the Loan.

(b) Any and all payments by or on account of any obligation of any Borrower under any Financing Document shall be made without deduction or withholding for any taxes, except as required by applicable law. If any Borrower is required to withhold or deduct any taxes, including backup withholding taxes, from any payment to the Lender, then (i) such Borrower shall pay the full amount that it determines is to be withheld or deducted to the relevant governmental authority in accordance with applicable law, and (ii) the sum payable by the Borrowers shall be increased as necessary so that the Lender receives an amount equal to the sum it would have received had no such withholding or deduction been made.

(c) The Borrower hereby irrevocably authorizes the Lender, subject to the requirements under the DIP Order, to make Term Loan Advances for the purpose of paying each payment of Obligations as it becomes due under the Financing Documents and the DIP Orders (including, without limitation, for payment of any reimbursable costs and expenses), and agrees that all such amounts charged shall constitute part of the Loan outstanding hereunder, and that each such Term Loan Advance shall be deemed to have been requested pursuant to a Notice of Borrowing.

2.7 **Termination or Reduction of Commitments.**

(a) Unless previously terminated, all Commitments of the Lender shall automatically terminate on the earlier of the date that it is fully drawn and the Termination Date.

(b) The Borrowers may, at any time upon no less than 2 Business Days' prior written notice to the Lender, reduce or terminate the unused portion of the Commitments. Each such notice shall be irrevocable; *provided*, that a notice of termination of the Commitments delivered by the Borrowers may state that such notice is conditioned upon the effectiveness of other credit facilities or other transactions specified therein, in which case such notice may be revoked by the Borrowers if such condition is not satisfied.

ARTICLE III
Priority and Liens

3.1 **Superpriority Claims and Collateral Security**. Subject to the Carve-Out, all Obligations of the Borrowers shall be:

(a) entitled to superpriority claim status under section 364(c)(1) of the Bankruptcy Code with priority over all administrative expense claims now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, of the kinds specified in or ordered pursuant to sections 105, 326, 327, 328, 330, 331, 361, 362, 363, 364, 365, 503(a), 503(b), 506(c), 507(a), 507(b), 546(c), 546(d), 552(b), 726, 1113, 1114 and any other provision of the Bankruptcy Code, subject only to the Carve-Out (the "DIP Superpriority Claims"). The DIP Superpriority Claims may be repaid from any cash of the Borrowers, including without limitation, cash collateral and, following entry of the Final DIP Order, the proceeds of any Avoidance Actions and property received or recovered thereby (the "Avoidance Action Proceeds") except against Insider Claims (as defined below);

(b) secured, pursuant to section 364(c)(2) of the Bankruptcy Code, by valid, enforceable, first-priority, fully perfected security interests in and Liens on all of the Borrowers' rights in property of the Borrowers' estates as of the Petition Date that, as of the Petition Date, were unencumbered (and do not become perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code) including, following entry of the Final DIP Order, Avoidance Action Proceeds, except with respect to claims and causes of action, of any type or kind, of the Borrowers asserted against, or that could be asserted against, current or former "insiders" or "affiliates" as such terms are defined in Sections 101(2) and 101(31) of the Bankruptcy Code or, if any such insider or affiliate is an individual, any trust associated with that insider or affiliate (the "Insider Claims") (such Liens, subject only to the Carve-Out); and

(c) secured, pursuant to section 364(c)(3) and 364(d)(1) of the Bankruptcy Code, by valid, enforceable, fully perfected security interests in and Liens on all of the Borrowers' rights in property of the Borrowers' estates as of the Petition Date that, as of the Petition Date, were subject to valid, perfected and non-avoidable Liens and unavoidable Liens in existence immediately prior to the Petition Date, if any, that are perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code (the "Permitted Prior Liens"), which Permitted Prior Liens as set forth in Schedule 6.2(c) hereto, which security interests and Liens of the Lender shall be junior and subordinate only to such Permitted Prior Liens and the Carve-Out.

The Liens securing any Obligations shall not be subject or subordinate to (i) any Lien or security interest that is avoided and preserved for the benefit of any Borrower and their estates under section 551 of the Bankruptcy Code, (ii) any Liens arising after the Petition Date including, without limitation, any Liens or security interests granted in favor of any federal, state, municipal or other governmental unit, commission, board or court for any liability of any Borrower, or (iii) any Liens in favor of any Affiliate of a Borrower or intercompany or Affiliate Liens of any Borrower.

Without limiting the terms of the Security Agreement and the Liens granted to the Lender thereunder, each Borrower acknowledges, agrees and reaffirms that Liens in favor of the Lender automatically attached to the Collateral as security for the Obligations and became valid and perfected immediately upon entry of the Interim DIP Order without the requirement of any further action by the Lender; *provided that* if the Lender at any time determines to file any financing statements, notice of liens or similar instruments, the Borrowers will cooperate and assist in any such filings as Lender may reasonably request.

Each of the Borrowers hereby represents, warrants and covenants that, (x) all Obligations of the Borrowers are, and shall at all times be, entitled to the priorities and secured by the Lender's Liens on the Collateral, each as described in this Section 3.1, and (y) all Lender's Liens securing any Obligations are, and shall at all times be, attached to all Collateral, duly perfected and entitled to priorities, each as described in this Section 3.1.

3.2 **Collateral Security Perfection**. Each of the Borrowers agrees to take all actions that the Lender may reasonably request to perfect and protect the Lender's Liens upon the Collateral and for such Liens to obtain the priority contemplated hereby, including, without limitation, delivering such financing statements, providing such notices to third parties, obtaining such governmental approvals and providing such other instruments and documents in recordable form as the Lender may reasonably request.

3.3 **No Discharge; Survival of Claims**. Each of the Borrowers agrees that, except as agreed in writing by the Lender in its sole discretion, (i) the Obligations shall not be discharged by the entry of an order confirming a plan of reorganization or liquidation (and each of the Borrowers pursuant to section 1141(d)(4) of the Bankruptcy Code, hereby waives any such discharge), (ii) the DIP Superpriority Claim granted to the Lender pursuant to the DIP Orders and the Liens granted to the Lender pursuant to the DIP Orders or the Financing Documents shall not be affected in any manner by the entry of an order confirming a plan of reorganization or liquidation, (iii) the Borrowers shall not propose or enter into any credit facility pursuant to which a lender, other than the Lender, is granted a priority claim or Lien pursuant to section 364 of the Bankruptcy Code, except simultaneously with and subject to payment in full in cash of the Obligations and the termination of all Commitments of the Lender, and (iv) to the extent the Obligations have not been repaid prior, the Borrowers shall not propose or support any plan of reorganization or liquidation that is not conditioned upon the payment in full in cash, on or prior to the earlier to occur of (A) the effective date of such plan and (B) thirty (30) days following the confirmation date of such plan, of all of the Obligations.

3.4 **Joint & Several Obligation; Borrowers' Waivers**. All Obligations of the Borrowers and all other obligations of the Borrowers under the Financing Documents are joint and several. Each of the Borrowers hereby (i) waives any and all suretyship defenses relating to any action or omission to act by the Lender with respect to any of the other Borrowers, and (ii) until the final and indefeasible payment in full in cash of all of the Obligations (whether contingent or otherwise) and the termination of all Commitments, (A) subordinates all rights of such Borrower to contribution from any other Borrower and (B) agrees that such Borrower shall not be entitled to be subrogated to any claim, interest, right or remedy of the Lender against any other Borrower or its property.

3.5 **Credit Bidding**. Subject to the entry of the Final DIP Order, the Lender shall have the right to credit bid (either directly or through one or more acquisition vehicles) up to the full amount of the Obligations (as to the Collateral) in connection with any sale of all or any portion of the Collateral, including (without limitation) any sale occurring pursuant to section 363 of the Bankruptcy Code or included as part of any chapter 11 plan subject to confirmation under section 1129(b)(2)(A)(ii)-(iii) of the Bankruptcy Code, by the Borrowers, by a chapter 7 trustee under section 725 of the Bankruptcy Code, or otherwise, without the need for further court order authorizing the same. The Borrowers shall not object to any such credit bidding up to the full amount of the applicable outstanding Obligations, in each case including any accrued interest, fees, and expenses, in any sale of any Collateral, as applicable, whether such sale is effectuated through sections 363 or 1129 of the Bankruptcy Code, by a chapter 7 trustee under section 725 of the Bankruptcy Code, or otherwise. If the Lender (either directly or through one or more affiliates) makes a credit bid in connection with any auction or other sale process relating to the sale or other disposition of any Collateral, then for purposes of such auction or sale process or any applicable order of the Bankruptcy Court, the Lender (or one or more of its affiliates) shall be deemed to be a "qualified bidder" and its bid shall be a "qualified bid" regardless of whether any qualified bidder or qualified bid requirements are

satisfied. In connection with the foregoing, the Lender shall have the right to assign its respective rights to "credit bid" all or any portion of the applicable outstanding Obligations to a newly formed acquisition vehicle. Notwithstanding the foregoing or any other provision of this Agreement, any credit bid by the Lender is subject to Section 363(k) of the Bankruptcy Code and, subject to the terms of the DIP Orders, the Committee's right to challenge any such bid(s) is expressly preserved.

ARTICLE IV
Representations and Warranties

Each of the Borrowers represents and warrants to the Lender on the date hereof and on the date of each Term Loan Advance:

(a) Existence, Qualification and Power. Each of the Borrowers is duly organized, validly existing, and in good standing under the laws of its jurisdiction of organization and is duly qualified and in good standing in every other jurisdiction where it is doing business and the failure to be so qualified would not reasonably be expected to have a Material Adverse Effect, and the execution, delivery and performance by each of the Borrowers each of the Financing Documents to which it is a party and consummation of the transactions contemplated hereby and thereby (i) are within its corporate or limited liability company power and authority and (ii) have been duly authorized by all necessary corporate or limited liability company action.

(b) Execution and Delivery; Binding Effect. Each Financing Document to which any Borrower is a party has been duly executed and delivered by such Borrower and constitutes the legal, valid and binding obligation of such Borrower, subject to bankruptcy, insolvency, or similar laws relating to creditors' rights generally laws and subject to general principles of equity.

(c) Ownership of Properties. Each of the Borrowers has good and marketable title to all its assets, free and clear of all Liens other than the Permitted Liens, and possesses all assets, including Intellectual Property and Governmental Consents, necessary for the conduct of its business as now conducted, without conflict with any rights of others except where such conflict would not reasonably be expected to have a Material Adverse Effect.

(d) Insurance. The Borrowers maintain insurance from financially responsible insurers covering such risks, in such amounts and with such deductibles as are customary and appropriate for companies engaged in the same or similar businesses operating in the same or similar locations.

(e) Litigation; Taxes. Except for the commencement of the Chapter 11 Cases or as set forth on Schedule 4(d), there are no legal or other proceedings or investigations pending or to Borrowers' knowledge threatened in writing against any Borrower or any Subsidiary before any court, tribunal or regulatory or legislative authority. Except as set forth on Schedule 4(d), the Borrowers and each Subsidiary have paid all federal taxes and all other material state and municipal taxes as are due and payable (except (x) those being contested in good faith by appropriate proceedings and for which adequate reserves have been taken, or (y) those the nonpayment of which is excused, permitted, or required by the Bankruptcy Code) and have funded all employee payrolls (including all required withholdings) on a periodic basis in the ordinary course of their businesses and as required by law.

(f) Governmental Consents; No Contravention. Except for entry of the Final DIP Order, the execution, delivery, performance of its obligations, and exercise of its rights under the Financing Documents by each Borrower, including borrowing under this Agreement, (i) do not and will not require any Governmental Consents; and (ii) are not and will not be in conflict with or prohibited or prevented by (A) any Requirement of Law, (B) any of its Organizational Documents, or (C) any provision of any

indenture, agreement or other instrument (other than pre-petition contracts duly rejected by the Borrowers in the Chapter 11 Cases pursuant to the Bankruptcy Code), in each case binding on such Borrower or affecting the property of such Borrower, in each case, except to the extent any such item referred to in clauses (i) or (ii) preceding would not reasonably be expected to have a Material Adverse Effect.

(g) Compliance. Except as specifically disclosed in Schedule 4(f), no Borrower or Subsidiary is in violation of (A) any of its Organizational Documents, (B) any indenture, agreement or other instrument (other than pre-petition contracts duly rejected by the Borrowers in the Chapter 11 Cases pursuant to the Bankruptcy Code), in each case binding on it or affecting its property, or (C) any Requirement of Law, including, without limitation, all applicable federal and state tax laws, ERISA and Environmental Laws, in each case (except for the foregoing clause (A)), unless failure to comply would not reasonably be expected to have a Material Adverse Effect. No Borrower or Subsidiary is a party to a collective bargaining agreement.

(h) Security Interests. The Interim DIP Order (and, upon entry thereof, the Final DIP Order) and the provisions of this Agreement and the other Financing Documents create legal and valid Liens on all the Collateral in favor of the Lender, and such Liens constitute perfected and continuing Liens on the Collateral, securing the Obligations, enforceable against the Borrowers and all third parties, and having the priority contemplated herein.

(i) No Default. No Default or Event of Default has occurred and is continuing.

(j) Investment Company. No Borrower is an "investment company" as defined in, or subject to regulation under, the Investment Company Act of 1940.

(k) Use of Proceeds. The proceeds of the Loans have been used and will be used, whether directly or indirectly, as set forth in Section 6.1(j).

(l) DIP Orders. Each of the Interim DIP Order and, upon entry thereof, the Final DIP Order is in full force and effect and has not been vacated, stayed, reversed, modified or amended without the prior written consent of the Lender.

(m) Budgets. The Borrowers have not failed to disclose any material assumptions with respect to the Initial Approved Budget or any Proposed Budget or Approved Budget and affirm the current Approved Budget in all material respects was prepared in good faith based upon assumptions believed to be reasonable at the time made (it being understood that actual results may vary from the projected financial information (and such variations may be material) and are not a guarantee of performance)..

(n) Sanctions; Anti-Corruption Laws. None of the Borrowers, any of their Subsidiaries or any director or officer of any Borrower or Subsidiary, to the knowledge of the Borrower, any employee, agent, or Affiliate of any Borrower or Subsidiary is a Person that is, or is owned or controlled by Persons that are: (i) the subject or target of any sanctions administered or enforced by the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC"), the U.S. Department of State, the United Nations Security Council, the European Union, His Majesty's Treasury, or other relevant sanctions authority (collectively, "Sanctions"), or (ii) located, organized or resident in a country or territory that is the subject of Sanctions. Each Borrower, and its Subsidiaries and their respective directors and officers and, to the knowledge of the Borrowers, the employees and agents of each Borrower and its Subsidiaries are in compliance with all applicable Sanctions and with the Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder (the "FCPA") and any other applicable anti-corruption law (together with FCPA, the "Anti-Corruption Laws"), in all material respects. Each Borrower

and its Subsidiaries have instituted and maintains policies and procedures designed to ensure continued compliance with applicable Sanctions and the Anti-Corruption Laws.

ARTICLE V
Conditions Precedent

5.1 **Conditions Precedent to Initial Advance (other than Interim Advance)**. The obligations of the Lender to make the first Term Loan Advance hereunder (other than the Interim Advance made prior to the date hereof) are subject to satisfaction by the Borrowers (or waiver by the Lender in its sole discretion) of the following conditions precedent, in addition to those set forth in Section 5.2:

(a) This Agreement, the Security Agreement and each other Financing Document required by the Lender on the date hereof shall have been duly executed and delivered by the respective parties hereto and thereto, and all Financing Documents shall be in full force and effect, shall be in form and substance satisfactory to the Lender in its sole discretion, and the Borrower shall be in compliance with the terms thereunder.

(b) All corporate or limited liability company action and all third-party or governmental consents and approvals necessary for the valid execution, delivery and performance by each of the Borrowers of each of the Financing Documents to which it is a party shall have been duly and effectively taken or obtained (as the case may be) and remain in effect as of the date hereof and evidence thereof satisfactory to the Lender shall have been provided to the Lender.

(c) To the extent requested by the Lender, all Uniform Commercial Code financing statements, releases (except with respect to Permitted Liens) and notices and assents shall have been executed and delivered (in recordable form where applicable) to the Lender, all relevant insurances shall have been modified to include the Lender, as assignee, additional insured or lender loss payee, as applicable, all Collateral in which a security interest may be perfected only by the secured party's possession shall, if so requested by the Lender, have been delivered to the Lender or its nominee, and all other actions necessary or in the reasonable opinion of the Lender desirable for the perfection and protection and to achieve the priority contemplated hereby, of all Liens in favor of the Lender shall have been taken to the satisfaction of the Lender.

(d) [Reserved].

(e) The Borrowers shall, in accordance with the Final DIP Order, agree to pay to the Lender the fees, costs and expenses earned or otherwise due and payable on the date hereof under the Financing Documents (including, without limitation, the fees, costs and expenses of counsel to the Lender incurred in connection with the Chapter 11 Cases and the negotiation, preparation, execution and delivery of the Financing Documents).

5.2 **Conditions Precedent to All Advances**. The obligations of the Lender to make any Term Loan Advance hereunder (including the first Term Loan Advance) is subject to the satisfaction by Borrowers (or waiver by the Lender in its sole discretion) of the following further conditions precedent:

(a) Each of the representations and warranties of each of the Borrowers to the Lender herein or in any of the other Financing Documents or any document, certificate or other paper or notice in connection herewith or therewith shall be true and correct in all material respects immediately prior to, and after giving effect to, such Term Loan Advance, except to the extent that any such representation or warranty expressly relates only to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects, on such earlier date.

(b) The making of such Term Loan Advance shall not violate any Requirement of Law and shall not be enjoined, temporarily, preliminarily or permanently by any governmental authority.

(c) The Final DIP Order shall be in full force and effect and shall not have been reversed, vacated or stayed and shall not have been amended, supplemented or otherwise modified without the prior written consent of the Lender.

(d) Each Borrower shall be in compliance with the terms of the DIP Orders.

(e) The Approved Budget shall demonstrate, subject to Permitted Variances, a need for the funds to be advanced under such Term Loan Advance within two-week period following such funding date.

(f) The Borrowers shall have delivered a Notice of Borrowing to the Lender in accordance with Section 2.1(c); provided that in no event shall the Lender be required to make more than one Term Loan Advance in any two-week period, absent exigent circumstances demonstrated by the Borrowers and in accordance with the Approved Budget.

(g) No Default or Event of Default shall have occurred and be continuing or result from the making of such Term Loan Advance.

(h) The Borrowers shall be in compliance with the Approved Budget subject only to Permitted Variance.

(i) The Borrowers shall be in compliance with the Milestones.

(j) The Borrowers shall have delivered an officer's certificate to the Lender, in form and substance reasonably satisfactory to the Lender, certifying that all representations and warranties herein and in the DIP Orders remain true and correct in all material respects as of the date of such Term Loan Advance (or, if any such representation or warranty expressly relates to an earlier date, as of such date).

(k) The Lender shall have received all other documentation and information to which it is entitled under the DIP Orders , in form and substance reasonably acceptable to the Lender.

Any request for a Term Loan Advance by any Borrower shall be deemed to be a representation and warranty by each Borrower that each condition set forth in this Article V has been satisfied on the date of such request and the date of such Term Loan Advance.

ARTICLE VI
Covenants

6.1 **Affirmative Covenants**. Each of the Borrowers agrees that until the payment and satisfaction in full in cash of all of the Obligations and the termination of all Commitments of the Lender, each Borrower will, and will cause each of its Subsidiaries to, comply with its obligations as set forth throughout this Agreement and:

(a) Reporting. The Borrowers shall furnish to the Lender:

(i) as soon as reasonably available copies of all reports or other documents filed or required to be filed with the Office of the United States Trustee; and

(ii) from time to time all such information as the Lender may reasonably request in writing concerning any Borrower, any Subsidiary, any assets, business, results of operations and financial condition of the foregoing, or any of the Chapter 11 Cases.

(b) Budgets. The Borrowers shall furnish to the Lender, no less than two (2) weeks prior to the end of the 13-week period covered by the current Approved Budget (and, if the current Approved Budget is the Initial Approved Budget, no later than March 2, 2025), an updated Budget (each, a "Proposed Budget") for Lender's approval. Upon receipt of the Lender's approval (in its sole and exclusive discretion, and which approval may be provided via e-mail from counsel to the Lender to counsel to the Borrowers), such Proposed Budget shall become the Approved Budget and shall replace the then-operative Approved Budget for all purposes herein. The Lender's failure to respond to any submitted Proposed Budget within two (2) Business Days following submission thereof by the Borrowers to the Lender shall be deemed to be Lender's approval of such Proposed Budget, whereupon such Proposed Budget shall constitute the Approved Budget; *provided*, however, that Lender shall not be deemed to have failed to respond to any submitted Proposed Budget hereunder if the Lender has provided written notice (which may be via e-mail) to any Borrower within two (2) Business Days following such submission of such Proposed Budget that such Proposed Budget is under consideration. The Borrowers shall operate in accordance with the Approved Budget and all disbursements shall be consistent with the provisions of the Approved Budget (subject to the Permitted Variances).

(i) The Approved Budget in the form attached to the Final DIP Order shall be deemed to be the Approved Budget until such time as a new Proposed Budget is approved by the Lender pursuant to the terms hereof, following which such approved Proposed Budget shall constitute the Approved Budget until a subsequent Proposed Budget is approved by the Lender pursuant to the terms hereof.

(ii) The Borrowers may submit additional Proposed Budget to the Lender from time to time, but until the Lender approves such Proposed Budget in accordance with the terms hereof, such Proposed Budget shall not become an Approved Budget and the Borrowers shall continue to comply with the then-operative Approved Budget.

(c) Variance Reports. Beginning on Monday, January 6, 2025 (the "Initial Reporting Date"; together with each subsequent Monday thereafter, each a "Reporting Date") and subject to Section 6.1(c)(ii), the Borrowers shall deliver to the Lender, in a form consistent with the form of the Approved Budget, a variance report describing in reasonable detail, by line item (including capital expenditures and professional fees, excluding the fees of Lender's professionals), (i) the actual disbursements of the Borrowers and actual receipts during the applicable Testing Period; (ii) any variance (whether positive or negative, expressed as a percentage) between the actual receipts or disbursements, as applicable, during such Testing Period against the estimated receipts or disbursements, as applicable, for the applicable Testing Period, as set forth in the applicable Approved Budget; and (iii) comments relating to any variances between budgeted and actual disbursements/receipts (each such variance report, a "Variance Report").

(i) As used herein, "Testing Period" shall mean the cumulative period from the beginning date of the Approved Budget through the Sunday that is eight (8) calendar days prior to the applicable Reporting Date. The last day of each Testing Period shall be a "Testing Date".

(ii) The Variance Report provided no later than the Initial Reporting Date shall report on the Testing Period ended December 15, 2024 (such Testing Period to be referred to as "Week 1"). The Variance Reports for the two Testing Periods ended December 22, 2024 and December 29, 2024 (referred to as "Week 2" and "Week 3," respectively) shall be provided to the Lender on January 13, 2025.

The Variance Report for the Testing Period ended January 5, 2025 (referred to as "Week 4") shall be provided to the Lender on January 21, 2025. Beginning with the Testing Period ended January 12, 2025 (referred to as "Week 5") and for each subsequent Testing Period thereafter, each Variance Report shall be provided on a weekly basis no later than the Monday of the week that is a full week after the week for which the Variance Reports relate.

(d) Variance Covenant. The Borrowers shall at all times comply with, and operate in accordance with, the Approved Budget and all disbursements shall be consistent with the provisions of the Approved Budget, subject to the Permitted Variances described below:

(i) As of each Testing Date, actual cumulative disbursements (excluding Lender's professional fees) of the Borrowers on an aggregate basis shall not exceed budgeted cumulative disbursements (excluding Lender's professional fees) of the Borrowers on an aggregate basis as reflected in the Approved Budget for such period (the "Actual Disbursement Variance"), by more than 15.0% (the "Permitted Disbursement Variance"); *provided that* the actual cumulative cash receipts of the Borrowers on an aggregate basis shall not be less than the budgeted cumulative cash receipts of the Borrowers on an aggregate basis as reflected in the Approved Budget for such period (the "Actual Cash Variance"; together with the Actual Disbursement Variance, the "Actual Variances"), by more than 50.0% (the "Permitted Cash Variance"; together with the Permitted Disbursement Variance, the "Permitted Variances"). Borrowers' covenant set forth in this Section 6.1(d)(i) is referred to as the "Variance Covenant".

(ii) If the Actual Variances for such period are less than or equal to the Permitted Variances, the amount by which each Actual Variance is less than the Permitted Variance shall be carried forward to subsequent Testing Dates and added to the Permitted Variances for each subsequent Testing Dates.

(e) Lender Calls.

(i) The Borrowers and their financial advisor(s) shall hold weekly calls with the Lender and its financial advisor to discuss the Budget and relevant portions of the Chapter 11 Cases, including actual performance against the Approved Budget, status of the 363 Sale process, and business updates.

(ii) Upon the retention of Riparian Partners LLC (the "Investment Banker"), the Borrowers shall cause the Investment Banker to provide weekly process reporting to the Lender and its financial advisor and hold weekly calls with the Lender and its financial advisor.

(f) Books and Records; Inspection Rights. Each Borrower shall, and shall cause each of its Subsidiaries to, (i) keep true and accurate (in all material respects) books of account in accordance with GAAP, (ii) maintain its current fiscal year, (iii) provide reasonable access to the Lender and its financial advisor to the Borrowers' financial advisors, management team and books and records and other information (including historical information), in all cases, including with respect to strategic planning, cash, and liquidity management, and operational and restructuring activities, during normal business hours and upon reasonable notice, and (iv) permit the Lender or its designated representatives during normal business hours and upon reasonable notice to inspect such Borrower's or Subsidiary's premises and to examine and be advised as to such Borrower's or Subsidiary's business records.

(g) Existence; Property; Operation; Insurance; Compliance. Each Borrower shall, and shall cause each of its Subsidiaries to, (i) maintain, preserve, renew and keep in full force and effect its corporate or limited liability company existence (as applicable), (ii) keep and maintain all business and assets material or necessary to the conduct of its business in good working order and condition, ordinary

wear and tear excepted, except to the extent that failure to comply would not reasonably be expected to have a Material Adverse Effect, (iii) carry on and conduct its business in the ordinary course of business in substantially the same manner as it is presently conducted, (iv) keep its business and assets adequately insured by financially responsible insurers covering such risks, in such amounts and with such deductibles as are customary for companies engaged in the same or similar businesses operating in the same or similar locations and consistent with past practices, (v) on a current basis (including all withholdings), pay all federal and other material taxes as and when due and payable (except (x) those being contested in good faith by appropriate proceedings and for which adequate reserves have been taken, or (y) those the nonpayment of which is excused, permitted, or required by the Bankruptcy Code), and (vi) comply with all other Requirements of Law (including without limitation the Environmental Laws, Sanctions, Anti-Corruption Laws, the DIP Orders and each other order entered by the Bankruptcy Court in the Chapter 11 Cases) except where the failure to so comply would not reasonable be expected to have a Material Adverse Effect.

(h) Notices of Material Events. The Borrowers shall notify the Lender promptly in writing of: (i) the occurrence of any Default or Event of Default, (ii) [reserved], (iii) any change of address of any Borrower's chief executive office or principal place of business, (iv) any pending or, to the knowledge of the Borrowers, threatened (in writing) litigation or similar proceeding affecting any Borrower or any Subsidiary or any material change in any such litigation or proceeding previously reported, (v) any material post-petition claims against any assets or properties of the Borrowers, (vi) [reserved], (vii) to the knowledge of the Borrowers, any threatened motions to seek to lift the stay against any property of any Borrower, and (viii) any other development that results in, or would reasonably be expected to result in, a Material Adverse Effect. Each notice delivered under this Section 6.1(h) shall be accompanied by the details of the event or development requiring such notice and any action taken or proposed to be taken by the Borrowers with respect thereto.

(i) Specified Bankruptcy Provisions. The Borrowers shall comply with all of the requirements of sections 1113 and 1114 of the Bankruptcy Code.

(j) Use of Proceeds. Subject to Section 6.2(k), the Borrowers shall use the proceeds of the Loan solely for: (i) post-petition working capital and maintenance capital expenditure purposes of the Borrowers; (ii) current fees and expenses under the DIP Facility; (iii) the allowed administrative costs and expenses of the Chapter 11 Cases, including professional fees and expenses; (iv) prepetition claims and expenses as authorized by the Bankruptcy Court; (v) any forecasted cash outlays included in the Approved Budget; or (vi) as otherwise approved by the Lender, in each case of the foregoing, solely in accordance with the Approved Budget (subject to Permitted Variances) and the applicable DIP Order.

(k) Further Assurance. The Borrowers shall, and shall cause each Subsidiary to, cooperate with the Lender, take such action, execute such documents (including security documents), and provide such information as the Lender may from time to time reasonably request in order to further effect the transactions contemplated by, and the purposes of, the Financing Documents and, if requested by the Lender following the occurrence of an Event of Default and the Lender's exercise of remedies hereunder or in accordance with the DIP Orders, deliver to the Lender, at the Borrowers' expense, upon a request specific as to a property of the Debtors, appraisals, title insurance, surveys or environmental assessments relating to any real estate of any Borrower or any Subsidiary that are in the possession or control of any Borrower or Subsidiary.

(l) Sanctions; Anti-Corruption Laws. Each Borrower will maintain in effect policies and procedures designed to promote compliance by such Borrower, its Subsidiaries, and their respective directors, officers, employees, and agents with applicable Sanctions and Anti-Corruption Laws.

(m) Bankruptcy Matters.

(i) The Borrowers will deliver to the Lender (i) copies of any pleadings or motions to be filed by or on behalf of any Borrower in the Chapter 11 Cases at least three (3) days prior to such filing (or, if not practicable, as soon as reasonably practicable) and (ii) all notices required to be given to all parties specified in the Final DIP Order.

(ii) In the event that the Investment Banker is not retained pursuant to an order of the Bankruptcy Court within twenty-one (21) days after entry of the Final DIP Order, or, after being retained, ceases to be retained prior to the consummation of a 363 Sale, the Borrowers shall retain a new investment banker that is reasonably satisfactory to the Lender.

(n) Milestones. Subject to Bankruptcy Court availability, each of the Borrowers agrees to comply with the following deadlines and to take such actions, and to cause all such actions to be taken by the applicable Persons, by such deadlines (each of which may be extended or waived with the prior written consent of the Lender in its sole discretion, which may be by e-mail, without further order of the Bankruptcy Court) (collectively, the "Milestones"):

(i) The Bankruptcy Court shall have entered the Final DIP Order by the date that is no later than thirty (30) days after the entry of the Interim DIP Order.

(ii) The Borrowers shall file, by the date that is no later than forty-five (45) days after the Petition Date, a motion to sell all or substantially all of the Borrowers' assets through a sale pursuant to section 363 of the Bankruptcy Code in form and substance reasonably acceptable to the Lender (the "363 Sale Motion").

(iii) The Bankruptcy Court shall have entered an order approving the bidding procedures of the sale contemplated by the 363 Sale Motion (the "363 Sale") by the date that is no later than sixty-five (65) days after the Petition Date.

(iv) The Bankruptcy Court shall have entered an order approving the 363 Sale by the date that is no later than one-hundred and ten (110) days after the Petition Date.

(v) The 363 Sale shall be consummated by the date that is no later than one-hundred and twenty (120) days after the Petition Date.

(vi) A liquidating chapter 11 plan, in form and substance satisfactory to the Lender, in or pursuant to the Chapter 11 Cases shall be consummated by the date that is no later than ninety (90) days after consummation of the 363 Sale.

For purposes under this Agreement, with respect to any covenant of any Borrower to "cause" or "permit" any Person to take (or not take) any action, the actual or alleged inability of such Borrower to control such Person (e.g., because such Borrower holds no Equity Interests in such Person) shall not be a defense to any breach of such covenant.

6.2 **Negative Covenants**. Each of the Borrowers agrees that until the payment and satisfaction in full of all the Obligations and the termination of all Commitments of the Lender, the Borrowers will not, and will not cause or permit any Subsidiary to:

(a) DIP Orders. Seek, consent, cause or suffer to exist any modification, appeal, stay, vacation or amendment to any of the DIP Orders, without the prior written consent of the Lender.

(b) Priority Claims; Priority Liens. Seek, consent, cause or suffer to exist (i) a priority claim for any administrative expense or unsecured claim against the Borrowers (now existing or hereafter arising of any kind or nature whatsoever, including without limitation any administrative expense of the kind specified in section 503(b), 506(c) or 507(b) of the Bankruptcy Code) equal or superior to the priority claim of the Lender in respect of the Obligations, except for the Carve-Out; (ii) a priority claim pursuant to section 364 of the Bankruptcy Code equal or superior to the priority claim of the Lender in respect of the Obligations; and (iii) any Lien on any Collateral, having a priority equal or superior to the Liens in favor of the Lender in respect of the Obligations, except for Permitted Prior Liens.

(c) Indebtedness. Create, incur, assume or suffer to exist any Indebtedness of any Borrower or any Subsidiary, other than (i) Indebtedness to the Lender arising under the Financing Documents; (ii) Indebtedness existing on the date hereof and set forth on Schedule 6.2(c) hereto; and (iii) Indebtedness (A) resulting from a bank or other financial institution honoring a check, draft or similar instrument in the ordinary course of business or (B) arising under or in connection with cash management services in the ordinary course of business.

(d) Liens. Create, incur or suffer to exist any Liens on any of or assets of any Borrower or any Subsidiary, except (collectively, "Permitted Liens"): (i) Liens in favor of the Lender securing the Obligations; (ii) Permitted Prior Liens existing on the date hereof and set forth on Schedule 6.2(d) hereto; provided that (A) such Liens shall not apply to any other property or asset of the Borrower or any Subsidiary and (B) such Lien shall secure only those obligations which it secures on the date hereof; (iii) Liens securing taxes or other governmental charges that are (A) not yet due, (B) being contested in good faith by appropriate proceedings and for which adequate reserves have been taken, or (C) those the nonpayment of which is excused, permitted, or required by the Bankruptcy Code; (iv) deposits for utilities, reasonable retainers to professionals, deposits or pledges made in connection with workmen's compensation, unemployment insurance or other social security obligations in the ordinary course of business of any of the Borrowers consistent with past practices; (v) easements, zoning restrictions, rights-of-way and similar encumbrances on real property imposed by law or arising in the ordinary course of business that do not secure any obligation for borrowed money and do not materially detract from the value of the affected property or interfere with the ordinary conduct of business of the Borrower or any Subsidiary; (vi) judgment Liens arising solely as a result of the existence of judgments, orders, or awards not constituting an Event of Default; (vii) the interests of lessors under leases and non-exclusive licensors under license agreements; (viii) Liens arising by operation of law in favor of warehousemen, landlords, carriers, mechanics, laborers, materialmen, or suppliers, incurred in the ordinary course of business; and (ix) rights of setoff or bankers' liens upon deposits of funds in favor of banks or other financial institutions to the extent incurred in connection with the maintenance of any account with such financial institution.

(e) Investments; Acquisitions. (i) Purchase, hold or acquire (including pursuant to any merger, consolidation or amalgamation) any Equity Interests, evidences of indebtedness or other securities of, make or permit to exist any loans or advances to or guarantees of the obligations of, or make or permit to exist any investment or any other interest in, any other Person, or (ii) purchase, lease or otherwise acquire (in one transaction or a series of transactions) all or any substantial part of the assets of any other Person or any division, unit or business of any other Person, other than (1) investments in or advances to the other Borrower, (2) investments in any Subsidiary, which investments were in existence as of the Petition Date and set forth in Schedule 6.2(e), or (3) investments in the forms of government securities, commercial paper, repos and other cash equivalent securities, in each case having maturities of thirty days or less and reasonably acceptable to the Lender.

(f) Fundamental Changes. Merge into, or consolidate or amalgamate with, any other Person, or permit any other Person to merge into or consolidate with it, or sell, transfer, license, lease or otherwise dispose of (in one transaction or in a series of transactions) all or substantially all of its assets, or

liquidate, divide or dissolve, in each case, other than as expressly contemplated by the Milestones in connection with the 363 Sale or as otherwise approved by the Lender in its sole discretion.

(g) Equity Interests. Issue, sell, transfer or otherwise dispose of any Equity Interests of any Borrower or any Subsidiary.

(h) Asset Dispositions. Without the prior written consent of the Lender, sell, transfer, license, lease or otherwise dispose of (in one transaction or in a series of transactions) any of its material assets, other than (i) asset sales approved by an order of the Bankruptcy Court that is in form and substance acceptable to the Lender in its reasonable discretion or is otherwise in accordance with the Approved Budget, (ii) asset sales in the ordinary course of business and consistent with past practice, and (iii) dispositions of obsolete, worn out, used, or surplus property in the ordinary course of business and consistent with past practice.

(i) Prohibited Activities. Without the prior written consent of the Lender, use any portion of the Loan (or proceeds thereof), the Collateral, the Carve-Out or any "cash collateral" as defined in section 363(a) of the Bankruptcy Code, (i) for any purpose that is prohibited under the Bankruptcy Code or the DIP Orders; (ii) to make any payment in settlement of any claim requiring Bankruptcy Court approval under Bankruptcy Rule 9019 without obtaining a Bankruptcy Court order; or (iii) to challenge the amount, validity, perfection, priority or enforceability of, or assert any defense, counterclaim or offset to, the DIP Facility, any Financing Document, any Obligations, or any Liens securing any of the Obligations, or to fund prosecution or assertion of any claims, or to otherwise litigate against the Lender, *provided that* up to $25,000 shall be made available to the Committee (if any) for investigation costs in respect of the stipulations set forth in the DIP Orders.

(j) Other DIP Financing. Seek any other debtor-in-possession financing with Liens senior or pari passu to any Lien in favor of the Lender during the pendency of the Chapter 11 Cases unless such financing is sufficient in amount and is actually used to fully repay all Obligations and all other post-petition Indebtedness of each Borrower to the Lender.

(k) Use of Proceeds. (i) Use any Term Loan Advance or any proceeds of the Loan in a manner or for a purpose other than in accordance the Approved Budget or on such other terms as the Lender may agree, or (ii) directly or indirectly, use any Term Loan Advance or any proceeds of the Loan, or lend, contribute or otherwise make available such proceeds to any Subsidiary, joint venture partner or other Person, (A) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Law, (B) to fund any activities or business of or with any Person, or in any country or territory, that, at the time of such funding, is the subject of Sanctions, or (C) in any other manner that would result in a violation of Sanctions by any Person (including any Person participating in the Loan, whether as the Lender, underwriter, advisor, investor, or otherwise).

(l) New Accounts. Open any new deposit or securities accounts; *provided* however, the Borrowers may open deposit or securities accounts upon written consent of the Lender and such account shall be subject to the DIP Liens granted herein and in the DIP Orders.

(m) Restricted Payments. Incur, declare or make any dividend or distribution (whether in cash, property, securities or otherwise) with respect to any Equity Interests in any Borrower, investment, loan or other payment without the prior written consent of the Lender, other than as expressly contemplated under the Approved Budget.

(n) Material Changes. Modify or alter (i) in any material manner the nature and type of its business or the manner in which such business is conducted or (ii) in any material manner its Organizational Documents, except as required by the Bankruptcy Code or a Plan and otherwise acceptable to the Lender.

(o) Leases. Without the prior written consent of the Lender, which consent may not be unreasonably withheld, assume or reject any material executory contract or unexpired lease.

(p) Transfers to Subsidiaries. Transfer any assets of any Borrower to a Subsidiary without the prior written approval of the Lender, other than as expressly contemplated under the Approved Budget.

Each covenant of the Borrowers contained herein shall be construed (absent express provision to the contrary) as being independent of each other covenant of the Borrowers contained herein, so that compliance by any Borrower with any one covenant shall not (absent such an express contrary provision) be deemed to excuse (or constitute) its compliance with any other covenant of such Borrower.

ARTICLE VII
Events of Default: Acceleration

If any of the following events ("Events of Default") shall occur:

(a) the Borrowers shall fail to pay any principal or interest (whether at stated maturity, by acceleration, by notice of voluntary prepayment, by mandatory prepayment, or otherwise), or any other Obligation due under any of the Financing Documents, when the same becomes due and payable hereunder or thereunder;

(b) the Borrowers shall default in the observance or performance of any covenant, agreement, obligation, or restriction set forth in Article III, Sections 6.1(b)-(d)(subject to a cure period of five (5) Business Days), 6.1(g)(i), 6.1(i)-(j), 6.1(l)-(n) (subject to a cure period of five (5) Business Days), or 6.2 of this Agreement;

(c) the Borrowers shall default in the observance or performance of any other covenant, agreement, obligation or restriction set forth in this Agreement or any of the other Financing Documents after a period of fourteen (14) Business Days has passed without such failure having been cured or remedied;

(d) any representation or warranty of the Borrowers in any of the Financing Documents or in any document, certificate, Budget or other paper or notice given in connection therewith or with any DIP Order shall have been false or misleading in any material respect at any time made or deemed to have been made or deemed made;

(e) (i) any Borrower shall fail to pay any principal or interest under any Material Indebtedness that is not otherwise subject to the automatic stay under section 362 of the Bankruptcy Code in the Chapter 11 Cases, when due and payable, and after giving effect to any applicable grace period in the agreement or instrument evidencing such Material Indebtedness or under which such Material Indebtedness has been incurred, or (ii) unless the payment thereof is subject to the automatic stay under section 362 of the Bankruptcy Code in the Chapter 11 Cases, any event or condition occurs that results in any Material Indebtedness becoming due and payable or required to be prepaid, redeemed, purchased or defeased, in each case prior to its stated maturity or that enables or permits (with or without the giving of notice, the lapse of time or both) the holder or holders of any Material Indebtedness or any trustee or agent

on its or their behalf to cause such Material Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its stated maturity;

(f) (i) any material provision of the Financing Documents for any reason shall cease or fail to be in full force and effect, or any Borrower shall challenge the enforceability of any Financing Document or shall assert in writing, or engage in any action or inaction that evidences its assertion, that any provision of any of the Financing Documents has ceased to be or otherwise is not valid, binding and enforceable in accordance with its terms, or (ii) except pursuant to the express terms thereof, (A) any Financing Document shall for any reason fail to create a valid Lien on any Collateral purported to be covered thereby, or (B) the Lender's Liens on any Collateral shall fail to be perfected in any material respect at any time, or shall fail to have the priority contemplated by any Financing Document (including Article III of this Agreement) at any time;

(g) the Final DIP Order (i) at any time after the entry thereof ceases to be in full force and effect, (ii) shall be vacated, reversed, stayed, modified or amended without the prior written consent of the Lender, or (iii) shall not have been entered within thirty (30) days after the Interim DIP Order was entered;

(h) failure of any Borrower to comply in any material respect with the terms of the applicable DIP Order;

(i) a plan of reorganization shall be proposed by any Borrower or approved by the Bankruptcy Court in any of the Chapter 11 Cases which does not satisfy the requirements of Section 3.3 of this Agreement;

(j) other than payments authorized by the Bankruptcy Court, and which are set forth in the Approved Budget to the extent authorized by one or more "first day" or other orders reasonably satisfactory to the Lender, any Borrower shall make any payment (whether by way of adequate protection or otherwise) of principal or interest or otherwise on account of any prepetition Indebtedness or payables;

(k) (i) any of the Chapter 11 Cases shall be dismissed or converted to a case under Chapter 7 of the Bankruptcy Code; (ii) a Chapter 11 trustee or an examiner (other than a fee examiner) with enlarged powers relating to the operation of the business of any Borrower (powers beyond those expressly set forth in section 1106(a)(3) and (4) of the Bankruptcy Code) shall be appointed, (iii) any other superpriority claim or grant of any other Lien (including any adequate protection Lien) other than as provided for herein which is *pari passu* with or senior to the claims and Liens of the Lender shall be granted in any of the Chapter 11 Cases, or (iv) the filing of any pleading by any Borrower seeking or otherwise consenting to or supporting any of the matters set forth in clause (i), (ii) or (iii) of this subsection (k);

(l) the Bankruptcy Court shall enter one or more orders during the pendency of the Chapter 11 Cases granting relief from the automatic stay to the holder or holders of any Lien evidencing or securing Indebtedness in excess of $200,000 to permit foreclosure (or the granting of a deed in lieu of foreclosure or the like) on assets of any Borrower;

(m) any Borrowers petition the Bankruptcy Court to obtain additional financing *pari passu* or senior to the DIP Facility;

(n) the Borrowers' "exclusive period" under section 1121 of the Bankruptcy Code for the filing of a plan of reorganization terminates;

(o) the consummation of a sale of any material portion of the Collateral without the Lender's prior written consent (other than through the contemplated Sale or a sale in the ordinary course of business that is contemplated by the Approved Budget);

(p) the confirmation of a plan of reorganization or liquidation that does not provide for payment in full in cash of the Obligations or such other treatment acceptable to Lender, or any Borrower proposes or supports, or fails to contest in good faith, the entry of such a plan of reorganization or liquidation;

(q) any Borrower (i) engages in or supports any challenge to the validity, perfection, priority, extent or enforceability of any Financing Document, the DIP Facility or the Liens on or security interest in the assets of the Borrowers securing the Obligations, including without limitation seeking to equitably subordinate or avoid the Liens securing such Indebtedness or (ii) engages in or supports any investigation or asserts any claims or causes of action (or directly or indirectly support assertion of the same) against the Lender, other than the Committee's right to investigate under the terms of the Final DIP Order;

(r) the entry of an order by the Bankruptcy Court in favor of any Committee, any ad hoc committee, or any other party in interest, (i) granting such party standing to pursue any claims against the Lender, (ii) sustaining an objection to claims of the Lender, or (iii) avoiding any Liens held by the Lender;

(s) the allowance of any claim or claims under section 506(c) of the Bankruptcy Code against any of the Collateral;

(t) the failure to meet any Milestone (subject to a cure period of five (5) Business Days with email notice to the Lender);

(u) [reserved];

(v) the Termination Date (as defined below) shall have occurred; or

(w) [reserved];

THEN, without further application to the Bankruptcy Court, pursuant to the DIP Orders, the automatic stay provisions of section 362 of the Bankruptcy Code shall be vacated and modified to the extent necessary to permit the Lender to take any of the following actions, at the same or different time:

(1) issue a written notice (the "Remedies Notice") (which may be by e-mail) to the Borrowers and their counsel, counsel for any Committee, and the U.S. Trustee (the "Remedies Notice Parties") declaring the occurrence of the Termination Date;

(2) issue a Carve-Out Notice;

(3) declare all Obligations to be immediately due and payable without presentment, demand or protest or other notice of any kind, all of which are expressly waived by the Borrower;

(4) declare the suspension or termination of any Commitment, liability or obligation of the Lender hereunder, but without affecting the Obligations or the Liens securing the Obligations (the "Termination Notice"); and/or

(5) charge the default rate of interest set forth hereunder.

During the five (5) Business Days immediately following the date the Lender delivers a Remedies Notice to the Remedies Notice Parties (the "Remedies Notice Period"), the Lender and/or Borrowers may seek an emergency hearing (a "Stay Relief Hearing") to determine whether an Event of Default has occurred, and the filing of any such motion shall toll the Remedies Notice Period. In the event the Bankruptcy Court determines during a Stay Relief Hearing that an Event of Default has occurred, the Bankruptcy Court may fashion an appropriate remedy, which may include the exercise of any and all rights available to the Lender under any Financing Document, the Interim DIP Order, and/or the Final DIP Order, as applicable.

Upon expiration of the Remedies Notice Period, if a motion seeking emergency relief has not been filed or unless ordered otherwise by the Bankruptcy Court, the automatic stay provisions of section 362 of the Bankruptcy Code shall be vacated and modified without further order of the Bankruptcy Court to the extent necessary to permit the Lender to exercise any and all remedies against the Collateral permitted under state law.

During the Remedies Notice Period, the Borrowers shall be authorized to use cash collateral in accordance with the Approved Budget.

If an Event of Default occurs and notwithstanding anything in section 362 of the Bankruptcy Code, the Lender may, subject to the provisions hereof and of the DIP Orders, exercise the rights and remedies which the Lender may have hereunder or under any of the other Financing Documents or at law (including but not limited to the Bankruptcy Code and the Uniform Commercial Code) or in equity or otherwise. No remedy herein conferred upon the Lender is intended to be exclusive of any other remedy and each and every remedy shall be cumulative and in addition to every other remedy hereunder, now or hereafter existing at law or in equity or otherwise.

ARTICLE VIII
Lender as Party in Interest

The Borrowers hereby stipulate and agree that the Lender is and shall remain a party in interest in the Chapter 11 Cases and shall have the right to participate, object and be heard in any motion or proceeding in connection therewith and to appeal therefrom. Neither the failure to so participate, object or be heard nor anything in this Agreement or any other Financing Document shall be deemed to be a waiver of the Lender's rights or remedies thereunder or under applicable law. Without limitation of the foregoing, the Lender shall have the right to make any motion or raise any objection which it deems to be in its interest (specifically including but not limited to objections to use of proceeds of the Loan, payment of professional fees and expenses or the amount thereof, sales or other transactions outside the ordinary course of business or assumption or rejection of any executory contract or lease) whether or not the action or inaction by the Borrowers which is the subject of such motion or objection violates or is expressly permitted by any covenant or provisions of this Agreement or any other Financing Document.

ARTICLE IX
Miscellaneous

9.1 **Costs and Expenses**. To the extent allowed by applicable law (and in accordance with the DIP Orders), the Borrowers agree to pay, on demand, all reasonable and documented out-of-pocket costs and expenses incurred or accrued by Lender (including all reasonable and documented fees, expenses and disbursements of counsel, financial advisors and consultants) in connection with the Chapter 11 Cases, including, without limitation in connection with the preparation, negotiation, execution, delivery and administration of this Agreement and the other Financing Documents and the funding of the Loan, any amendment or waiver of any provision of this Agreement and the other Financing Documents, and/or in

connection with the enforcement or protection of any rights and remedies of the Lender under this Agreement or any other Financing Document.

9.2 **Indemnification**. The Borrowers shall indemnify and hold harmless the Lender and each of its Affiliates and each of the respective officers, directors, members, partners, employees, agents, advisors, attorneys and representatives of each (each, an "Indemnified Party") from and against any and all claims, damages, losses, liabilities and reasonable expenses including, without limitation, fees and disbursements of counsel (including, without limitation, reasonable and documented fees and out-of-pocket expenses of counsel), that may be incurred by or asserted or awarded against any Indemnified Party (including, without limitation, in connection with or relating to any investigation, litigation or proceeding or the preparation of any defense in connection therewith), in each case arising out of or in connection with or by reason of the Loan, this Agreement, any other Financing Document or any of the transactions contemplated hereby or thereby, or any actual or proposed use of the proceeds of the Loan, except to the extent such claim, damage, loss, liability or expense is found by a court of competent jurisdiction to have resulted from such Indemnified Party's gross negligence or willful misconduct as determined by the final non-appealable judgment of a court of competent jurisdiction. In the case of an investigation, litigation or other proceedings to which the indemnity in this Section 9.2 applies, such indemnity shall be effective whether or not such investigation, litigation or proceeding is brought by any Borrower, any of their directors, security holders or creditors, an Indemnified Party or any other person, or an Indemnified Party is otherwise a party thereto and whether or not the transactions contemplated hereby are consummated. The Borrowers further agree that no Indemnified Party shall have any liability (whether direct or indirect, in contract, tort, or otherwise) to the Borrowers or any of their Affiliates, Subsidiaries, security holders or creditors for or in connection with the transactions contemplated hereby, except for direct damages (as opposed to special, indirect, consequential or punitive damages including, without limitation, any loss of profits, business or anticipated savings, which are hereby expressly waived) determined by the final, non-appealable judgment of a court of competent jurisdiction to have resulted from such Indemnified Party's gross negligence, bad faith, or willful misconduct. The foregoing indemnity shall survive the occurrence of the Termination Date, the termination of the Financing Documents, the termination of the Commitments of the Lender hereunder and the repayment, satisfaction or discharge of all Obligations.

9.3 **Notices**. Any communication to be made hereunder shall (i) be made in writing, but unless otherwise stated, may be made by facsimile or email, and (ii) be made or delivered to the address of the party receiving notice which is identified below (unless such party has, by written notice, specified another address), and shall be deemed made or delivered, when dispatched, delivered, or five (5) days after being mailed, postage prepaid, to such address.

Address of the Borrowers:

Cosmed Group, Inc.
28 Narragansett Avenue
Jamestown, Rhode Island 02835
Attention: David Howe
Email: dhowe@cosmedgroup.com

Address of the Lender:

Zimmer Inc.
345 E Main Street
Warsaw, Indiana 46580
Attention: General Counsel
Email: Legal.americas@zimmerbiomet.com

9.4 **Successors and Assigns**. This Agreement shall be binding upon and inure to the benefit of each party hereto and its successors and assigns, but no Borrower may sell, assign or transfer any of its rights or obligations hereunder or under any other Financing Document, or any portion thereof, including such Borrower's rights, title, interests, remedies, powers, and duties hereunder or thereunder, without the Lender's prior written consent, which consent can be withheld for any reason or no reason whatsoever. The Lender may assign any or all of the Obligations or any participation therein; provided, that no such assignment shall be made to a natural person (or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural person).

9.5 **Release**. Each of the Borrowers and their estates hereby forever and irrevocably releases, discharges, and acquits the former and current (a) Lender, (b) Affiliates of the Lender, and (c) officers, employees, directors, agents, administrators, representatives, owners, members, partners, trustees, financial and other advisors and consultants, legal advisors, shareholders, managers, consultants, accountants, attorneys, investment committee members, sub-advisors and predecessors and successors in interest of the Lender and its Affiliates, in each case acting in their respective capacities as such (collectively, the "Releasees") of and from any and all claims, demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness and obligations, rights, assertions, allegations, actions, suits, controversies, proceedings, losses, damages, injuries, attorneys' fees, costs, expenses, or judgments of every type, whether known, unknown, asserted, unasserted, suspected, unsuspected, accrued, unaccrued, fixed, contingent, pending or threatened including, without limitation, all legal and equitable theories of recovery, arising under common law, statute or regulation or by contract, of every nature and description, arising out of, in connection with, or relating to the DIP Facility, any Financing Document, any DIP Order, and/or the transactions contemplated hereunder or thereunder, in each case, arising out of, connected with, or relating to any acts, omissions, or events occurring prior to the date hereof, including, without limitation, (x) any so-called "lender liability" or equitable subordination claims or defenses, (y) any and all claims and causes of action arising under the Bankruptcy Code, and (z) any and all claims and causes of action with respect to the validity, priority, perfection, or avoidability of the Liens or claims of the Lender (the "Releases"), except for the Committee's rights under the terms of the Final DIP Order; provided that nothing in this paragraph is intended to limit or release any Commitments and obligations of the Lender expressly set forth under this Agreement or any other Financing Document. The Borrowers further waive and release any defense, right of counterclaim, right of setoff or deduction to the payment of the Obligations which the Borrowers now have or may claim to have against the Releasees arising out of, connected with, or relating to any and all acts, omissions, or events occurring prior to the date hereof.

9.6 **No Waiver; Severability; Headings; Entire Agreement; Counterparts; Governing Law; Jury Waiver**. This Agreement may not be amended or waived except by a written instrument signed by the Borrowers and the Lender, and any such amendment or waiver shall be effective only for the specific purpose given. No failure or delay by the Lender to exercise any right or remedy hereunder or any other Financing Document shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege preclude any other right, power or privilege. The rights and remedies of the Lender hereunder and under any other Financing Document are cumulative and are not exclusive of any rights or remedies that they would otherwise have. The provisions of this Agreement are severable and if any one provision hereof shall be held invalid or unenforceable in whole or in part in any jurisdiction, such invalidity or unenforceability shall affect only such provisions in such jurisdiction. Article and Section headings used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement. This Agreement, together with the other Financing Documents, expresses the entire understanding of the parties with respect to the transactions contemplated hereby and thereby. This Agreement and any amendment hereof may be executed in several counterparts, each of which shall be an original, and all of which shall constitute one agreement. In proving this Agreement, it shall not be necessary to produce more than one such counterpart

executed by the party to be charged. Delivery of any executed counterpart of a signature page hereto by facsimile or other electronic means (e.g., "pdf" or "tif") shall be effective as delivery of a manually executed counterpart. **THIS AGREEMENT AND THE OTHER FINANCING DOCUMENTS (EXCEPT, AS TO ANY OTHER FINANCING DOCUMENT, AS EXPRESSLY SET FORTH THEREIN) SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF NEW YORK (EXCEPT TO THE EXTENT SUPERSEDED BY THE BANKRUPTCY CODE). EACH OF THE BORROWERS, AS AN INDUCEMENT TO THE LENDER TO ENTER INTO THIS AGREEMENT, HEREBY WAIVES ITS RIGHT TO A JURY TRIAL WITH RESPECT TO ANY ACTION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER FINANCING DOCUMENT.**

[Remainder of Page Left Intentionally Blank]

Each of the undersigned has caused this Agreement to be executed and delivered as of the date first written above.

BORROWERS

COSMED GROUP, INC.

By: _____
Name:
Title:

SPICEY PARTNERS REAL ESTATE HOLDINGS, LLC

By: _____
Name:
Title:

LENDER

ZIMMER, INC.

By: _____
Name:
Title

EXHIBIT 2

APPROVED BUDGET

Cosmed Group Inc and Subsidiary
13 Week Cash Flow Projection

revised 1/3/25

	1	2	3	4	5	6	7	8	9	10	11	12	13	
	Projected Wk Ended 12/15/24	*Projected* Wk Ended 12/22/24	*Projected* Wk Ended 12/29/24	*Projected* Wk Ended 1/5/25	*Projected* Wk Ended 1/12/25	*Projected* Wk Ended 1/19/25	*Projected* Wk Ended 1/26/25	*Projected* Wk Ended 2/2/25	*Projected* Wk Ended 2/9/25	*Projected* Wk Ended 2/16/25	*Projected* Wk Ended 2/23/25	*Projected* Wk Ended 3/2/25	*Projected* Wk Ended 3/9/25	*Total* 13 Weeks
Cash Receipts														
AR Collections- Sterilization	288,813	288,813	288,813	288,813	288,813	288,813	288,813	304,563	304,563	304,563	304,563	304,563	304,563	3,849,063
AR Collections - Chamber	-	-	-	-	-	-	-	-	720,000					720,000
total Collections	288,813	288,813	288,813	288,813	288,813	288,813	288,813	304,563	1,024,563	304,563	304,563	304,563	304,563	4,569,063
Cash Disbursements:														
Operating:														
Purchases	-	93,355	-	-	-	-	81,219	-	-	-	81,219	-	-	255,792
Supplies	-	47,025	-	-	-	-	47,025	-	-	-	47,025	-	-	141,076
Lab Services	-	9,521	-	-	-	-	9,521	-	-	-	9,521	-	-	28,563
Cost of Sales -Other	-	8,430	-	-	-	-	8,430	-	-	-	8,430	-	-	25,289
Chamber Production	232,031	7,031	7,031	7,031	7,031	232,031	7,031	7,031	7,031	232,031	7,031	7,031	7,031	766,406
Wages & Payroll Taxes	310,964	70,627	70,627	209,460	73,981	73,981	73,759	209,238	73,759	73,759	73,759	209,238	73,759	1,596,907
Employee Benefits	-	-	85,600	-	-	-	85,600	-	-	-	85,600	-	-	256,800
Repair & Maintenance	-	65,914	-	-	-	-	65,914	-	-	-	65,914	-	-	197,743
Rent	171,875	-	-	211,802	-	-	-	211,802	-	-	-	211,802	-	807,281
Property Taxes	13,219	-	-	18,944	-	-	-	18,944	-	-	-	18,944	-	70,052
Utilities	-	83,424	-	-	-	-	83,424	-	-	-	83,424	-	-	250,271
Insurance	-	-	4,721	-	7,554	-	-	7,221	7,554	58,016	-	4,721	7,554	97,340
Professional Fees - OCP	-	-	125,000	-	-	-	-	125,000	-	-	-	-	-	250,000
Temp Labor				15,000				15,000				15,000		45,000
Office Expense	-	36,744	-	-	-	-	36,744	-	-	-	36,744	-	-	110,232
T&E	-	3,379	-	-	-	-	3,379	-	-	-	3,379	-	-	10,136
Automobile Expense	-	6,028	-	-	-	-	6,028	-	-	-	6,028	-	-	18,083
SG&A-Other	-	53,073	-	-	-	-	53,073	-	-	-	53,073	-	-	159,218
Contingency	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	65,000
total - Operating Disbursements	733,089	489,550	297,979	467,237	93,566	311,012	566,146	599,236	93,343	368,806	566,146	471,736	93,343	5,151,190
Oper. Cash Flow	(444,276)	(200,737)	(9,166)	(178,425)	195,247	(22,199)	(277,333)	(294,674)	931,219	(64,244)	(261,583)	(167,174)	211,219	(582,127)
Debt Service:														
First Lienholder-P&I	-	-	-	91,466	-	-	-	91,466	-	-	-	30,754	-	213,686
DIP Financing - costs	-	-	-	-	-	-	-	-	-	-	-	-	-	-
total debt service	-	-	-	91,466	-	-	-	91,466	-	-	-	30,754	-	213,686
Cash flow before Bk expenses	**(444,276)**	**(200,737)**	**(9,166)**	**(269,891)**	**195,247**	**(22,199)**	**(277,333)**	**(386,140)**	**931,219**	**(64,244)**	**(261,583)**	**(197,928)**	**211,219**	**(795,813)**

Cosmed Group Inc and Subsidiary
13 Week Cash Flow Projection

revised 1/3/25

	1	2	3	4	5	6	7	8	9	10	11	12	13	
	Projected Wk Ended 12/15/24	*Projected* Wk Ended 12/22/24	*Projected* Wk Ended 12/29/24	*Projected* Wk Ended 1/5/25	*Projected* Wk Ended 1/12/25	*Projected* Wk Ended 1/19/25	*Projected* Wk Ended 1/26/25	*Projected* Wk Ended 2/2/25	*Projected* Wk Ended 2/9/25	*Projected* Wk Ended 2/16/25	*Projected* Wk Ended 2/23/25	*Projected* Wk Ended 3/2/25	*Projected* Wk Ended 3/9/25	*Total* 13 Weeks
Bankruptcy Related expenses														
Legal Fees - Bk Counsel-Debtor				125,000	125,000	125,000	125,000	125,000	125,000	125,000	125,000	125,000	125,000	1,250,000
Financial Advisor- Debtor							30,000	30,000	30,000	30,000	30,000	30,000	30,000	210,000
Claims Agent fees					50,000	50,000	50,000	50,000	50,000	50,000	50,000	50,000	50,000	450,000
Investment Banker	62,500			62,500				62,500				-		187,500
Utilities Adequate Assurance	16,819													16,819
US Trustee Fees						23,684								23,684
Critical Vendor Payments		45,000												45,000
Professional Fees-Committee				75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	750,000
total restructuring related fees	79,319	45,000	-	262,500	250,000	273,684	280,000	342,500	280,000	280,000	280,000	280,000	280,000	2,933,003
Net Cash Flow	(523,595)	(245,737)	(9,166)	(532,391)	(54,753)	(295,884)	(557,333)	(728,640)	651,219	(344,244)	(541,583)	(477,928)	(68,781)	(3,728,817)
Beginning Cash - estimated	42,544	(481,052)	(726,789)	(735,955)	(1,268,346)	(1,323,099)	(1,618,983)	(2,176,316)	(2,904,956)	(2,253,737)	(2,597,981)	(3,139,564)	(3,617,492)	42,544
Net Cash Flow	(523,595)	(245,737)	(9,166)	(532,391)	(54,753)	(295,884)	(557,333)	(728,640)	651,219	(344,244)	(541,583)	(477,928)	(68,781)	(3,728,817)
Ending Cash	(481,052)	(726,789)	(735,955)	(1,268,346)	(1,323,099)	(1,618,983)	(2,176,316)	(2,904,956)	(2,253,737)	(2,597,981)	(3,139,564)	(3,617,492)	(3,686,273)	(3,686,273)