

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

In re:	)	
	)	Chapter 11
	)	
TARONIS FUELS, INC., <i>et al.</i> , ¹	)	Case No. 22-11121 (BLS)
	)	
Debtors.	)	(Jointly Administered)
	)	
	)	Re: Docket No. 13

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

Upon the *Debtors' Motion for Entry of Interim and Final Orders (A) Authorizing the Debtors to (I) Obtain Postpetition Financing, (II) Granting Liens and Providing Superpriority Expense Status, (III) Authorizing Use of Cash Collateral, (IV) Granting Adequate Protection, (V) Modifying Automatic Stay, and (VI) Granting Related Relief and (B) Scheduling a Final Hearing* dated November 13, 2022 (the "Motion") of the above-captioned debtors and debtors in possession (individually and collectively, the "Debtors") in the above-captioned jointly administered Chapter 11 cases (collectively, the "Case"), requesting entry of an order (this "Interim Order") pursuant to sections 105, 361, 362, 363, 364(c)(1), 364(c)(2), 364(c)(3), 364(d), 364(e), 503, 506(c) and 507 of chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"), Rules 2002, 4001, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and the

¹ The Debtors in these chapter 11 cases, along with the last four digits (if any) of each Debtor's federal tax identification number include: Taronis Fuels, Inc. (7454), MagneGas Welding Supply – West, LLC (6662), Taronis Sub III LLC (5826), MagneGas Welding Supply – South, LLC (8686), MagneGas Real Estate Holdings, LLC (7412), MagneGas IP, LLC (0988), MagneGas Production, LLC (7727), Taronis Sub I LLC (4205), Taronis-TAS, LLC (2356), Taronis-TAH, LLC (3542), and Taronis Sub II LLC (9673). The location of the Debtors' service address in these chapter 11 cases is 24980 N. 83rd Avenue, Suite 100, Peoria, Arizona 85383.

Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”) seeking, among other relief:

(i) the authorization for the Debtors to incur senior secured postpetition financing (“DIP Financing”) on a superpriority basis consisting of a senior secured superpriority credit facility in the aggregate principal amount of \$11,000,000 (the “DIP Facility”) consisting of (a) a \$5,600,000 postpetition multi-draw loan, and (b) a roll-up of the Prepetition Obligations (as defined below) into loans under the DIP Facility (the “DIP Roll-Up Loans”) subject to the terms and conditions of this Interim Order and that certain Loan and Security Agreement, dated as of October 21, 2020, as amended from time to time including the Third Modification to Loan and Security Agreement [Debtor-in-Possession], dated as of November 13, 2022 (as the same may be amended, restated, supplemented, waived or otherwise modified from time to time, the “DIP Loan Agreement”),² by and among the Borrower and Tech Capital, LLC (“DIP Lender”),³ substantially in the form of Exhibit A-1, attached hereto;

(ii) authorizing the Debtors to execute and deliver the DIP Loan Agreement and any other agreements, instruments, pledge agreements, guarantees, control agreements and other Loan Documents and documents related thereto (including any security agreements, intellectual property security agreements, control agreements, or notes) (as amended, restated, supplemented, waived, and/or modified from time to time, and collectively, with the DIP Loan Agreement, the “DIP Documents”) and to perform such other acts as may be necessary or desirable in connection with the DIP Documents;

(iii) granting to the DIP Lender valid, enforceable, non-avoidable and automatically perfected security interests in and liens on all of the Collateral (as defined herein), including all

² Capitalized terms used but not otherwise defined in this Interim Order shall have the respective meanings ascribed to such terms in the DIP Loan Agreement.

³ The term “DIP Lender” shall also include the Prepetition Lender (as defined herein).

property constituting “cash collateral” as defined in section 363(a) of the Bankruptcy Code, which liens shall be on the terms and subject to the relative priorities set forth in the DIP Documents and this Interim Order;

(iv) granting to the DIP Lender on account of the DIP Facility and all DIP Obligations (as defined herein) allowed superpriority administrative expense claim status in the Case and any Successor Case (as defined herein);

(v) authorizing the Debtors to use the Prepetition Collateral (as defined herein), including the Cash Collateral of the Prepetition Lender (as defined herein) under the Prepetition Loan Documents, and providing adequate protection to the Prepetition Lender;

(vi) vacating and modifying the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of the DIP Documents and this Interim Order;

(vii) scheduling a final hearing (the “Final Hearing”) within thirty (30) days of the Petition Date to consider the relief requested in the Motion on a final basis and approving the form of notice with respect to the Final Hearing;

(viii) waiving any applicable stay with respect to effectiveness and enforceability of this Interim Order (including under Bankruptcy Rule 6004); and

(ix) granting the Debtors such other and further relief as is just and proper.

Having considered the Motion, the DIP Documents, the *Declaration of R. Jered Ruyle in Support of Debtors’ Chapter 11 Petitions and First Day Pleadings* (“First Day Declaration”), and the evidence submitted and argument made at the interim hearing held on November 15, 2022 (the “Interim Hearing”); and notice of the Interim Hearing having been given in accordance with Bankruptcy Rules 2002, 4001(b), (c) and (d), and Local Rule 9013-1(m); and the Interim Hearing having been held and concluded; and all objections, if any, to the interim relief requested in the Motion having been withdrawn, resolved or overruled by the Court; and it appearing that approval

of the interim relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates, and otherwise is fair and reasonable and in the best interests of the Debtors, their estates, their creditors and equity holders, and all parties-in-interest, and is essential for the continued operation of the Debtors' businesses and the preservation of the value of the Debtors' assets; and it appearing that the Debtors' entry into the DIP Loan Agreement is a sound and prudent exercise of the Debtors' business judgment; and after due deliberation and consideration, and good and sufficient cause appearing therefor;

BASED UPON THE RECORD ESTABLISHED AT THE INTERIM HEARING, THE COURT MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:⁴

A. **Petition Date.** On November 11, 2022 (the "Petition Date"), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the District of Delaware (the "Court").

B. **Debtors in Possession.** The Debtors have continued in the management and operation of their businesses and properties as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in these cases.

C. **Jurisdiction and Venue.** This Court has jurisdiction over the Case, the Motion, and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157 and 1334. Venue for the Case and proceedings on the Motion is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. Consideration of the Motion constitutes a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The Court may enter a final order consistent with Article III of the United States Constitution. The statutory bases for the relief sought herein are sections 105, 361, 362, 263, 364, 503, and 507 of

⁴ Findings of fact shall be construed as conclusions of law, and conclusions of law shall be construed as findings of fact, pursuant to Bankruptcy Rule 7052.

the Bankruptcy Code, Bankruptcy Rules 2002, 4001, 6003, 6004, and 9014, and Local Rules 4001-2 and 9013-1(m).

D. **Notice.** Notice of the Motion and the Interim Hearing has been provided in accordance with the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules.

E. **Findings Regarding Prepetition Obligations and Prepetition Lien.** After consultation with its attorneys and financial advisors, and without prejudice to the rights of any party-in-interest or an official committee of unsecured creditors in this Case pursuant to section 1102 of the Bankruptcy Code (a “Committee”) as set forth in paragraph 18 herein, the Debtors, on their behalf and on behalf of their estates, admit, stipulate, acknowledge, and agree as follows (paragraphs E(i) through E(vi) and paragraph F below are referred to herein, collectively, as the “Debtors’ Stipulations”):

(i) **Prepetition Credit Facility.** Pursuant to that certain Loan and Security Agreement, dated as of October 21, 2020 (as amended, restated, amended and restated, supplemented, waived, or otherwise modified from time to time, the “Prepetition Loan Agreement”, the Secured Promissory Note, dated as of December 14, 2020 and collectively with the other Loan Documents (as defined in the Prepetition Loan Agreement) and any other agreements and documents executed or delivered in connection therewith, each as may be amended, restated, supplemented, waived or otherwise modified from time to time, the “Prepetition Loan Documents”), among (a) the Debtors identified in the Prepetition Loan Agreement as “Borrower” (in such capacities, individually and collectively, the “Borrower”), (b) the guarantors from time to time party thereto, as guarantors (together with the Borrower, the “Prepetition Loan Parties”), and (c) Tech Capital, LLC as prepetition lender (the “Prepetition Lender” or “Lender”) that provided revolving loans and credit accommodation to the Borrower pursuant to the Prepetition Loan Documents (the “Prepetition Credit Facility”).

(ii) **Prepetition Obligations.** As of the Petition Date, the Prepetition Loan Parties

were justly and lawfully indebted and liable to the Prepetition Lender, without defense, counterclaim or offset of any kind, in the aggregate principal amount of not less than \$5,577,443 (collectively, together with accrued and unpaid interest on such obligation, any reimbursement obligations (contingent or otherwise), any fees, expenses and disbursements (including attorneys' fees, accountants' fees, auditor fees, and appraisers' fees, and related expenses and disbursements), indemnification obligations, guarantee obligations, and other charges, amounts and costs of whatever nature owing, whether or not contingent, whenever arising, accrued, accruing, due, owing, or chargeable in respect of any of the Prepetition Loan Parties' obligations pursuant to, or secured by, the Prepetition Loan Agreement, including all Obligations (as defined in the Prepetition Loan Agreement), all other amounts that may become allowable under section 506(b) of the Bankruptcy Code) and, to the extent not included therein, any and all interest, fees, expenses, prepayment premiums, early termination fees, costs, indemnities and other charges not included therein (collectively, the "Prepetition Obligations").

(iii) Prepetition Overadvances. Without limiting the foregoing, the Prepetition Obligations includes certain Overadvances (as defined in the Prepetition Loan Agreement) provided by the Prepetition Lender to the Debtors under the Prepetition Loan Agreement in an aggregate principal amount of \$2,916,000.00 (not including all accrued interest, fees, expenses, prepayment premiums, early termination fees, costs, indemnities and other charges, the "Prepetition Overadvances"). The Prepetition Overadvances were negotiated between the Prepetition Loan Parties and the Prepetition Lender in good faith and at arm's length and were provided to the Borrower in accordance with the terms of the Prepetition Loan Agreement to provide the Debtors with sufficient liquidity to support its operations through and an orderly restructuring or liquidation process, including the filing of the Case.

(iv) Prepetition Liens and Prepetition Collateral. As of the Petition Date, the Prepetition Obligations were secured by certain liens and security interests in favor of the Lender

(the “Prepetition Liens”). The Prepetition Liens (a) encumber all of the Debtors’ right, title and interest in assets described in the Prepetition Loan Agreement and existing as of the Petition Date (the “Prepetition Collateral”), (b) secure performance of the Prepetition Obligations pursuant to the Prepetition Loan Documents, (c) constitute legal, valid, enforceable, non- avoidable and duly perfected first and senior priority security interests and liens in and upon the Prepetition Collateral in favor of Lender subject only to certain “Permitted Liens” (as defined in the Prepetition Loan Agreement), (d) are not subject to any offsets, recoupments, challenges, objections, defenses, claims or counterclaims of any kind or nature, and no portion of the Prepetition Liens or Prepetition Obligations is subject to any challenge or defense, including avoidance, disallowance, disgorgement, recharacterization or subordination (equitable or otherwise) pursuant to the Bankruptcy Code or applicable non-bankruptcy law, and (e) were granted by the Borrower in its sound business judgment, for fair and sufficient consideration and reasonably equivalent value, contemporaneously with the making of the loans or commitments to make loans and other financial accommodations secured thereby. The Prepetition Collateral includes Cash Collateral (as defined herein). Nothing herein shall constitute a finding or ruling by this Court that any alleged Permitted Lien is valid, senior, enforceable, prior, perfected, or non-avoidable. Moreover, nothing herein shall prejudice the rights of any party-in-interest to challenge the validity, priority, enforceability, seniority, avoidability, perfection, or extent of any alleged Permitted Lien and/or security interests. To the extent provided for in the Prepetition Loan Agreement, the right of a seller of goods to reclaim such goods under section 546(c) of the Bankruptcy Code is not a Permitted Lien and is expressly subject to the Prepetition Liens and DIP Liens to the extent permitted by applicable law. The Prepetition Liens, and the DIP Liens that prime the Prepetition Liens, are continuing liens and the Collateral is and will continue to be encumbered by such liens in light of the integrated nature of the DIP Facility, the DIP Documents and the Prepetition Loan Documents.

(v) No Claims. The Debtors and its estate(s) have no claims, objections,

challenges, causes of action, and/or choses in action, including, without limitation, “lender liability” causes of action or avoidance claims under Chapter 5 of the Bankruptcy Code, whether arising under applicable state law or federal law (including, without limitation, any recharacterization, subordination, avoidance, disgorgement, recovery or other claims arising under or pursuant to sections 105, 510, or 542 through 552 of the Bankruptcy Code) against the Prepetition Lender or any of their respective affiliates, agents, attorneys, advisors, professionals, officers, directors and employees arising out of, based upon or related to any Prepetition Loan Document; (f) the Debtors waive, discharge, and release any right to challenge any of the Prepetition Obligations, the priority of the Debtors’ obligations thereunder, and the validity, extent, and priority of the Prepetition Liens securing any Prepetition Obligations; and (g) the Prepetition Obligations constitute allowed, secured claims within the meaning of sections 502 and 506 of the Bankruptcy Code to the extent of the value of the Prepetition Collateral.

(vi) Default by the Debtors. The Debtors acknowledge and stipulate that they have been and are in default of their obligations under the Prepetition Loan Agreement, including as a result of the Case, and that Events of Default have occurred under the Prepetition Loan Agreement. As of the Petition Date, therefore, interest is accruing on the Prepetition Obligations at the default rate.

F. Cash Collateral. All cash, securities or other property of the Debtors (and the proceeds therefrom) in existence on the Petition Date (and subject to the Prepetition Liens), including, without limitation, all amounts on deposit or maintained by the Debtors in any deposit account with Prepetition Lender are subject to valid and enforceable rights of setoff and valid, perfected, enforceable liens, under the Prepetition Loan Documents and applicable law, and are included in the Prepetition Collateral, and therefore all of the Debtors’ cash, including any cash in deposit accounts (whether subject to control agreements or otherwise) constitutes “cash collateral” of the Prepetition Lender within the meaning of section 363(a) of the Bankruptcy Code. All such

cash (including, without limitation, all proceeds of the Prepetition Collateral of the Debtors) and any and all cash proceeds of Collateral is referred to herein as the “Cash Collateral.” All control agreements (established pursuant to the Prepetition Loan Agreement) in effect as of the Petition Date shall remain in full force and effect notwithstanding the entry of this Interim Order and any subsequent orders amending this Interim Order, and all such control agreements shall be deemed to also be in favor of the DIP Lender in respect of the DIP Obligations. Nothing in this Interim Order or the DIP Documents shall (x) be construed as the affirmative consent by the Prepetition Lender for the use of Cash Collateral other than on the terms set forth in this Interim Order and in the context of the DIP Financing authorized by this Interim Order to the extent such consent has been or will be given, (y) be construed as a consent by any party to the terms of any other financing or any other lien encumbering the Prepetition Collateral (whether senior or junior) or (z) prejudice, limit or otherwise impair the rights of any of the Prepetition Lender to seek new, different or additional adequate protection or to contest whether the adequate protection provided herein constitute sufficient “adequate protection” within the meaning of section 361 of the Bankruptcy Code.

G. **Findings Regarding Corporate Authority.** The Debtors have all requisite corporate power and authority to execute and deliver the DIP Documents to which they are party and to perform their obligations thereunder.

H. **Intercreditor Agreements.** Pursuant to section 510 of the Bankruptcy Code, all intercreditor agreements and applicable intercreditor or subordination provisions contained in any of the Prepetition Loan Documents, if any, shall (i) remain in full force and effect, (ii) continue to govern the relative priorities, rights, and remedies of the Prepetition Lender (including the relative priorities, rights and remedies of such parties with respect to the replacement liens and administrative expense claims and superpriority administrative expense claims granted, or amounts payable, by the Debtors under this Interim Order or otherwise and the modification of the

automatic stay), and (iii) not be deemed to be amended, altered, or modified by the terms of this Interim Order or the DIP Documents, unless expressly set forth herein or therein, and all parties' rights, obligations, claims and causes of action under such documents are preserved. Subject to entry of a Final Order, any repayment of the Prepetition Obligations pursuant to this Interim Order shall not be deemed to constitute a payment in full of the Prepetition Obligations for purposes of any intercreditor agreements, and the DIP Facility shall be subject to and have the benefit of the terms of such intercreditor agreement to the same extent as the Prepetition Credit Facility.

I. Findings Regarding Postpetition Financing.

(i) Request for Postpetition Financing. The Debtors seek authority to (a) use Cash Collateral on the terms described herein, and (b) enter into the DIP Facility on the terms described herein and in the DIP Documents to substitute and exchange a portion of the Prepetition Obligations for DIP Roll-Up Loans, to administer their Case, and to fund their operations. At the Final Hearing, the Debtors will seek final approval of the DIP Financing and use of Cash Collateral arrangements pursuant to a proposed final order (the "Final Order"), which shall be in form and substance acceptable to the DIP Lender. Notice of the Final Hearing and Final Order will be provided in accordance with this Interim Order.

(ii) Priming of the Prepetition Liens. The priming of the Prepetition Liens on the Prepetition Collateral under section 364(d) of the Bankruptcy Code, as contemplated by the DIP Facility and as further described below, will enable the Debtors to obtain the DIP Facility and to continue to operate their businesses to the benefit of their estates and creditors.

(iii) Need for Postpetition Financing and Use of Cash Collateral. The Debtors have an immediate and ongoing need to use Cash Collateral on an interim basis and to obtain credit on an interim basis pursuant to the DIP Facility in order to, among other things, administer and preserve the value of its estate. The ability of the Debtors to maintain business relationships with their vendors, suppliers, and customers and otherwise finance their operations requires the

availability of working capital from the DIP Facility and the use of Cash Collateral, the absence of either of which would immediately and irreparably harm the Debtors, their estates, and parties-in-interest. The Debtors do not have sufficient available sources of working capital and financing to operate their businesses or maintain their properties in the ordinary course of business in the Interim Period (as defined below) without the DIP Facility and authorized use of Cash Collateral.

(iv) No Credit Available on More Favorable Terms. Given its current financial condition, financing arrangements, and capital structure, the Debtors have been and continue to be unable to obtain financing from sources other than the DIP Lender on terms more favorable than those under the DIP Facility. The Debtors are unable to obtain unsecured credit allowable under Bankruptcy Code section 503(b)(1) as an administrative expense. The Debtors have also been unable to obtain: (a) unsecured credit having priority over that of administrative expenses of the kind specified in sections 503(b), 507(a) and 507(b) of the Bankruptcy Code; (b) credit secured solely by a lien on property of the Debtors and their estates that is not otherwise subject to a lien; or (c) credit secured solely by a junior lien on property of the Debtors and their estates that is subject to a lien. As described in the First Day Declaration, financing on a postpetition basis on better terms is not otherwise available without granting the DIP Lender: (1) perfected security interests in and liens on (each as provided herein) all of the Debtors' existing and after-acquired assets with the priorities set forth in this Interim Order; (2) superpriority claims and liens; (3) the other protections set forth in this Interim Order; and (4) the substitution and exchange of certain Prepetition Obligations for DIP Roll-Up Loans.

(v) Use of Proceeds of the DIP Facility. As a condition to entry into the DIP Loan Agreement, the extension of credit under the DIP Facility and the authorization to use Cash Collateral, the DIP Lender and the Debtors have agreed, that proceeds of the DIP Facility shall be used, in each case in a manner consistent with the terms and conditions of this Interim Order and the DIP Documents and in accordance with the budget attached as Exhibit 1 hereto (as the same

may be updated from time to time with the prior written consent of the DIP Lender, the “Budget”). The DIP Lender is relying upon the Budget in entering into the DIP Loan Agreement and the other DIP Documents and providing the DIP Facility. All references in this Interim Order restricting the use of Advances (as defined in the DIP Loan Agreement) to payment of amounts consistent with the Budget shall mean the most recent approved Budget.

(vi) Application of Proceeds of Collateral. As a condition to entry into the DIP Loan Agreement, the extension of credit under the DIP Facility and authorization to use Cash Collateral, the Debtors, and the DIP Lender have agreed that as of and commencing on the date of the Interim Hearing, the Debtors shall apply the proceeds of Collateral (as defined herein) in accordance with this Interim Order, the Budget, and as provided in the DIP Documents.

(vii) Roll-up of Prepetition Obligations. Upon entry of this Interim Order, without any further action by the Debtors or any other party, and subject to the challenge rights in paragraph 18 below, an aggregate amount of outstanding Prepetition Obligations (equal to the sum of the total Account Collections and the DIP Advances made) owing to Prepetition Lender, shall be substituted and exchanged for DIP Roll-Up Loans to effect a roll-up (the “Roll-Up”) of a portion of the Prepetition Obligations into DIP Obligations under and as further described in the DIP Documents (the “DIP Roll-Up Obligations”). The Roll-Up shall be authorized as compensation for, in consideration for, and solely on account of, the agreement of the Prepetition Lender who is also the DIP Lender to fund amounts and consent to use of Cash Collateral, and provide other consideration to the Debtors, under the DIP Facility and not as payments under, adequate protection for, or otherwise on account of, any Prepetition Obligations. The Prepetition Lender would not otherwise consent to the use of their Cash Collateral or the subordination of their liens to the DIP Liens, and the DIP Lender would not be willing to provide the DIP Facility or extend credit to the Debtors thereunder without the inclusion of the DIP Roll-Up Obligations in the DIP Obligations. Moreover, the Roll-Up (a) will benefit the Debtors and their estates as a result of the

DIP Lender's agreement to provide "new money" availability under the DIP Facility in a manner favorable to the Debtors and (b) will enable the Debtors to obtain urgently needed financing that they need to administer this Case and fund its operations. The Roll-Up reflects the Debtors' exercise of prudent business judgment consistent with their fiduciary duties.

L. **Proceeds of Prepetition Collateral.** To the extent the Debtors continues to collect cash, rents, income, offspring, products, proceeds, and profits generated from the Prepetition Collateral and acquire equipment, inventory and other personal property, such proceeds constitute Prepetition Collateral under the Prepetition Loan Documents that are subject to the Prepetition Lender's security interests as set forth in the Prepetition Loan Documents.

M. **Adequate Protection.** The Prepetition Collateral constitutes "cash collateral" of the DIP Lender within the meaning of section 363(a). The DIP Lender is entitled to adequate protection of its interests in the Prepetition Collateral pursuant to section 361 of the Bankruptcy Code in connection with or resulting from the Debtors' use of the Cash Collateral, the DIP Facility and the imposition of the automatic stay. The adequate protection in favor of the Lender as set forth in this Interim Order (the "**Adequate Protection**") and the use of the Cash Collateral as authorized by this Order are fair and reasonable; provided, however, nothing herein shall limit the Lender's rights to seek additional or different adequate protection or to contest whether the Adequate Protection constitutes sufficient "adequate protection" within the meaning of section 361 of the Bankruptcy Code.

N. **Sections 506(c) and 552(b).** In light of: (i) the DIP Lender's willingness to provide the DIP Facility and consent to use of Cash Collateral as provided herein, and (ii) fund the payment of expenses as set forth in the Budget in accordance with and subject to the terms and conditions of this Interim Order and the DIP Documents, (a) upon entry of a Final Order providing for such relief, the Prepetition 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 Prepetition Lender with respect to proceeds, product, offspring or profits with respect to any of the Prepetition Collateral, and (b) upon entry of a Final Order providing for such relief, the DIP Lender and Prepetition Lender are each entitled to a waiver of the provisions of section 506(c) of the Bankruptcy Code.

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

(i) Willingness to Provide Financing. The DIP Lender has indicated a willingness to provide financing to the Debtors subject to, among other things: (a) entry of this Interim Order and the Final Order; (b) approval of the terms and conditions of the DIP Facility and the DIP Documents; (c) satisfaction of the closing conditions set forth in the DIP Documents; and (d) findings by this Court that the DIP Facility is essential to the Debtors' estates, that the DIP Lender is extending credit to the Debtors pursuant to the DIP Documents in good faith, and that the DIP Lender's claims, superpriority claims, security interests and liens and other protections granted pursuant to this Interim Order and the DIP Documents will have the protections provided by section 364(e) of the Bankruptcy Code. Based upon the record presented at the Interim Hearing, the DIP Facility has been negotiated in good faith and at arm's length between the Debtors, on the one hand, and the DIP Lender, on the other. All of the DIP Obligations, the Adequate Protection and all other liabilities and obligations of the Debtors under this Interim Order and the DIP Documents or in respect of overdrafts and other liabilities arising from treasury, depository, credit card, and cash management services, or in connection with any automated clearinghouse transfers of funds owing to the DIP Lender shall be deemed to have been extended by the DIP Lender in "good faith," as such term is used in section 364(e) of the Bankruptcy Code, and in express reliance upon the protections offered by section 364(e) of the Bankruptcy Code. The DIP Lender and the Prepetition Lender shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that this Interim Order or any provision hereof is vacated, reversed, or modified, on appeal or otherwise.

(ii) Business Judgment and Good Faith Pursuant to Section 364(e). The terms and conditions of the DIP Facility and the DIP Documents, and the interest and fees paid and to be paid thereunder, are fair, reasonable, and the best available to the Debtors under the circumstances, are ordinary and appropriate for secured financing to debtors-in-possession, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties, and are supported by reasonably equivalent value and consideration. The terms and conditions of the DIP Facility and the use of Cash Collateral were negotiated in good faith and at arms' length among the Debtors, the DIP Lender, and the Prepetition Lender, with the assistance and counsel of their respective advisors. Use of Cash Collateral and credit to be extended under the DIP Facility shall be deemed to have been allowed, advanced, made, or extended in good faith by the DIP Lender and the Prepetition Lender within the meaning of section 364(e) of the Bankruptcy Code, and the DIP Lender and the Prepetition Lender are entitled to the protection and benefits of section 364(e) of the Bankruptcy Code and this Interim Order.

P. Immediate Entry. Sufficient cause exists for immediate entry of this Interim Order pursuant to Bankruptcy Rule 4001(c)(2). Absent the immediate grant by the Court of the interim relief sought by the Motion, the Debtors' estates will be immediately and irreparably harmed pending the Final Hearing. The Debtors' obtaining the DIP Facility in accordance with the terms of this Interim Order and the DIP Documents is in the best interests of the Debtors' estates and is consistent with the Debtors' exercise of their fiduciary duties.

Q. Interim Hearing. Notice of the Interim Hearing and the relief requested in the Motion has been provided by the Debtors, whether by facsimile, electronic mail, overnight courier or hand delivery, to certain parties-in-interest, including: (i) the U.S. Trustee; (ii) the holders of the thirty (30) largest unsecured claims against the Debtors (on a consolidated basis); (iii) counsel to Tech Capital, LLC; (iv) the Office of the Attorney General for the State of Delaware; (v) the United States Attorney's Office for the District of Delaware; (vi) the Internal Revenue Service;

(vii) the Securities Exchange Commission; (viii) any party that has requested notice pursuant to Bankruptcy Rule 2002; and (ix) all other parties entitled to notice pursuant to Local Rule 9013-1(m). The Debtors have complied with Bankruptcy Rules 4001(b) and (c) and applicable Local Rules and no other notice is required in connection with the relief set forth in this Interim Order.

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

IT IS HEREBY ORDERED that:

1. **Motion Granted.** The Motion is granted as set forth herein, the interim financing as set forth in this Interim Order is authorized and approved, and the use of Cash Collateral on an interim basis is authorized, in each case subject to the terms and conditions set forth in the DIP Documents and this Interim Order. All objections to this Interim Order to the extent not withdrawn, waived, settled, or resolved are hereby denied and overruled on the merits in their entirety.

2. **DIP Loan Documents and DIP Protections.**

(a) **DIP Loan Documents.** The Debtors are expressly and immediately authorized to execute, deliver and perform under the DIP Loan Documents and to incur the DIP Obligations in accordance with, and subject to, the terms of this Interim Order and the other DIP Loan Documents, and to execute, deliver and perform under all other instruments, certificates, agreements and documents which may be required or necessary for the performance by the Debtors under the DIP Loan Documents and the creation and perfection of the DIP Lien described in, and provided for by, this Interim Order and the other DIP Loan Documents. The Debtors are hereby authorized to do and perform all acts and pay the principal, interest, fees, expenses and other amounts described in the DIP Loan Documents as such become due pursuant to the DIP Loan Documents, including all closing fees, administrative fees, commitment fees and reasonable

attorneys', financial advisors', and accountants' fees, costs and expenses, and disbursements arising under the DIP Loan Documents, which amounts shall not be subject to further approval of this Court and shall be nonrefundable; provided, however, that the payment of the fees and expenses of the DIP Lender Professionals (as defined below) incurred on or after the Petition Date shall be subject to the provisions of paragraph 19(a). Upon their execution and delivery, the DIP Loan Documents shall represent valid and binding obligations of the Debtors and estates enforceable against the Debtors and their estates in accordance with their terms. Each responsible officer of the Debtors acting singly is hereby authorized to execute and deliver each of the DIP Loan Documents, such execution and delivery to be conclusive of their respective authority to act in the name of and on behalf of the Debtors.

(b) DIP Obligations. For purposes of this Interim Order, the term "DIP Obligations" shall mean all amounts and other obligations and liabilities owing or arising under the DIP Loan Documents (including, without limitation, all "DIP Obligations," "DIP Roll-Up Advances" and "Postpetition Obligations" (as defined in the DIP Loan Agreement)) and shall include, without limitation, the principal of, interest on and fees, costs, expenses and other charges owing in respect of, such amounts (including any reasonable attorneys' accountants', financial advisors' and other fees, costs and expenses), and any obligations in respect of indemnity and reimbursement claims, whether contingent or otherwise (and collectively with the Prepetition Obligations, the "Obligations"). The DIP Loan Documents shall constitute and evidence valid and binding DIP Obligations of the Debtors, which DIP Obligations shall be enforceable against the Debtors, their estates and any successors thereto (including any trustee or other estate representative in any Successor Case), and their creditors, in accordance with their terms. Subject to the challenge rights in paragraph 18 below, no obligation, payment, transfer or grant of security under the DIP Loan Documents shall be stayed, restrained, voidable, avoidable or recoverable under the Bankruptcy Code or under any applicable law (including under sections 502(d), 544,

547, 548 or 549 of the Bankruptcy Code or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or similar statute or common law), or subject to any avoidance, reduction, setoff, recoupment, offset, recharacterization, subordination (whether equitable, contractual or otherwise), counterclaim, crossclaim, defense or any other challenge under the Bankruptcy Code or any applicable law or regulation by any person or entity.

(c) Authorization to Incur DIP Obligations. During the period from the entry of this Interim Order through and including the date of entry of the Final Order (such period, the “Interim Period”), the Debtors are hereby authorized to incur indebtedness to the DIP Lender and to borrow under the DIP Facility during such Interim Period in an aggregate outstanding principal amount not to exceed the budgeted borrowing amounts set forth in the Budget during the Interim Period and to effectuate the Roll-Up, in each case subject to the terms and conditions of this Interim Order and the other DIP Loan Documents. Following the expiration of the Interim Period, the Debtors’ authority to request and/or obtain further borrowings or other financial accommodations under the DIP Facility and to use “cash collateral,” as defined in section 363(a) of the Bankruptcy Code (“Cash Collateral”) will be governed by the terms of the Final Order (if entered) and the DIP Loan Documents.

(d) Interest, Fees, Costs and Expenses. The DIP Obligations shall bear interest at the rates, and be due and payable (and paid), as set forth in, and in accordance with the terms and conditions of, the DIP Loan Documents, in each case without further notice, motion or application to, order of, or hearing before, this Court. Subject to the provisions of paragraph 19(a) of this Interim Order, as applicable, the Debtors shall pay all fees, costs, expenses (including reasonable legal and other professional fees and expenses of the DIP Lender and its affiliates) and other charges payable under the terms of the DIP Loan Documents without regard to the amounts set forth with respect thereto in the Budget. Subject to the challenge rights in paragraph 18 below, all such fees, costs, expenses and disbursements, whether incurred, paid or required to be paid

prepetition or post- petition, are hereby affirmed, ratified, authorized and payable (and any funds held by the DIP Lender and/or its professionals as of the Petition Date for payment of such fees, costs, expenses and disbursements may be, but are not required to be, applied for payment) as contemplated in the DIP Loan Documents, and shall be nonrefundable.

(e) Use of DIP Facility Proceeds. During the Interim Period, the Debtors are authorized to use borrowings under the DIP Facility and Cash Collateral (i) only for the specific purposes set forth in the Budget and only during the weeks contemplated for such purposes in the Budget and subject to the terms and conditions of the DIP Loan Agreement, (ii) to effectuate the Roll-Up, and (iii) such other use as permitted by the DIP Loan Agreement. The DIP Lender shall have been deemed to have made advances under the DIP Facility equal to the full amount of and in satisfaction of the Prepetition Obligations, subject to recharacterization as provided in paragraph 2(g) of this Interim Order. Except as expressly set forth in paragraph 8(c) hereof, neither proceeds or loans under the DIP Facility nor any Cash Collateral, the Carve-Out or the Texas Hold-Back shall be used for any purpose relating to or in furtherance of an Adverse Action (as defined in the DIP Loan Agreement), including without limitation the payment of fees and costs incurred by the Estate Professionals (as defined below) in connection therewith.

(f) Application of Payments. The DIP Lender shall apply any and all proceeds of the Collateral, including Cash Collateral, or any other payments or consideration received by Lender in accordance with the DIP Loan Documents, which includes the application of Collateral first to Prepetition Obligations until the Prepetition Obligations are paid and satisfied in full, and then to the DIP Obligations.

(g) Recharacterization. In the event that the Court enters an order determining that one or more of the Prepetition Liens securing the Prepetition Obligations was not valid or perfected such that the result of such determination is that the total Prepetition Obligations were not fully secured as of the Petition Date with respect to the remaining Prepetition Collateral,

the Court may amend the Interim Order to provide, for relief including that a certain portion of the advances made under the DIP Facility that was applied after the Petition Date to reduce the Prepetition Obligations pursuant to this Interim Order may be recharacterized as payments on Postpetition Obligations.

3. Cash Collateral.

(a) Authorization to Use Cash Collateral. The Debtors are authorized on an interim basis to use Cash Collateral during the Interim Period (as defined below) solely in accordance with and to the extent set forth in the Budget (as defined below) and this Interim Order during the period commencing on the date of this Interim Order through the Termination Date (as defined below) in an amount not to exceed at any time (i) subject to variances as permitted in the DIP Loan Agreement, with respect to “Operating Disbursements” line items, the aggregate amount of disbursements projected in the “Operating Disbursements” line items of the Budget, (ii) subject to variances as permitted in the DIP Loan Agreement, with respect to “Non-Operating Disbursements” line items, the aggregate amount of disbursements projected in the “Non-Operating Disbursements,” line items of the Budget, and (iii) with respect to “Chapter 11 Related Cash Flow” line items, the aggregate amount of disbursements projected in the “Chapter 11 Related Cash Flow” line items of the Budget.

(b) Budget. The Debtors may use Cash Collateral during the Interim Period through the Termination Date (as defined below), subject to Paragraph 3(e) herein, up to the amounts only to pay the amount and type of expenses set forth in the Budget during the periods covered by the Budget in which such expenses are projected to be paid. The Budget shall depict, on a weekly basis and line item basis (i) projected cash receipts, (ii) projected disbursements (including ordinary course operating expenses, non-operating expenses, bankruptcy-related expenses (including professional fees of the Debtors’ professionals and advisors), asset sales and any other fees and expenses), and (iii) net cash flow, for the first approximately thirteen (13)-week

period from the Petition Date, and such initial Budget shall be approved by, and in form and substance satisfactory to the DIP Lender, in its sole discretion (it being acknowledged and agreed that the initial Budget attached hereto is approved by and satisfactory to the DIP Lender), each in the detail provided in the initial Budget. Each Budget delivered to the DIP Lender shall be accompanied by such customary supporting documentation as reasonably requested by the DIP Lender and shall be prepared in good faith based upon assumptions the Debtors believe to be reasonable at the time of delivery. A copy of any Budget or updated Budget, once approved by the DIP Lender, shall be delivered by the Debtors simultaneously to the counsel for a Committee (if appointed) and the U.S. Trustee. All Cash Collateral use must be strictly in accordance with the terms of the Budget, subject to the permitted variances as are permitted by this Interim Order and the DIP Loan Agreement or as otherwise agreed to in writing by the DIP Lender.

(c) Not later than 11:59 (prevailing Eastern Time) on November 18, 2022, and each Friday thereafter, the Debtors shall furnish to DIP Lender a weekly report containing without limitation the following: the actual cash receipts, sales journals, disbursements on a line item basis and check registers for the preceding week (and on a cumulative basis since the Petition Date), the dollar amount and percentage variance of such amounts from those set forth on the Budget for the preceding week (and on a cumulative basis since the Petition Date) and such other information required by the DIP Loan Agreement.

(d) The DIP Lender, in its sole discretion, may agree in writing (which writing may be in e-mail) to the use of the Cash Collateral in a manner or amount which does not conform to the Budget (other than the permitted variances). If such written consent is given by the DIP Lender, the Debtors shall be authorized pursuant to this Interim Order to expend Cash Collateral for any such non-conforming use without further Court approval, and the DIP Lender shall be entitled to all of the protections specified in this Interim Order for any such use of Cash Collateral; provided that each such permitted non-conforming use shall be deemed a modification to the

Budget for all covenant testing purposes. Prior to expending Cash Collateral for any such non-conforming use, the Debtors shall file on the docket and provide notice of any such non-conforming use to the U.S. Trustee and counsel to the Committee.

4. DIP Collateral and Priority Claim.

(a) DIP Lien. The DIP Lender is granted, as security for the DIP Obligations, a Lien (as defined below) pursuant to sections 364(c)(2), (c)(3) and (d) of the Bankruptcy Code, on all of the property of the Debtors and the estates (as further described below, the “DIP Lien”), now existing or hereinafter acquired, including all Cash Collateral, cash and cash equivalents, money, inventory, goods, accounts receivable, other rights to payment, intercompany loans and other investments, investment property, contracts, contract rights (including, without limitation, all rights under any agreement, lease or similar or related agreement), properties, plants, equipment, machinery, general intangibles, payment intangibles, accounts, deposit accounts, documents, instruments, chattel paper, documents of title, letters of credit, letter of credit rights, supporting obligations, leases and other interests in leaseholds, real property, fixtures, patents, copyrights, trademarks, trade names, other intellectual property, intellectual property licenses, capital stock of subsidiaries, tax and other refunds, insurance proceeds, commercial tort claims, all other “property of the estate” (within the meaning of the Bankruptcy Code) of any kind or nature, real or personal, tangible, intangible or mixed, and all rents, products, substitutions, accessions, profits, replacements and cash and noncash proceeds of all of the foregoing (which, subject to entry of a Final Order providing such relief, shall also include the Debtors’ claims and causes of action under sections 502(d), 544, 545, 547, 548, 549, 550 and 553 of the Bankruptcy Code and any other avoidance or similar action under the Bankruptcy Code or similar state law, and all proceeds of the foregoing (the “Avoidance Actions”) (all of the foregoing collateral, collectively, the “Collateral”), as follows:

(i) First Lien on Unencumbered Property. Pursuant to section 364(c)(2) of the Bankruptcy Code, a first priority security interest in and Lien upon all unencumbered Collateral;

(ii) Liens Junior to Certain Other Liens. Pursuant to section 364(c)(3) of the Bankruptcy Code, a security interest in and Lien upon all Collateral that is subject and subordinate solely to any valid, prior, perfected and non-avoidable Liens on Collateral existing immediately prior to the Petition Date or perfected on or after the Petition Date pursuant to section 546(b) of the Bankruptcy Code, and only to the extent such Liens remain valid, perfected and are not otherwise avoided (collectively, “Permitted Prepetition Liens”); and

(iii) Priming Liens. Pursuant to section 364(d)(1) of the Bankruptcy Code, a first priority priming security interest and Lien upon any Collateral which is subject to the Prepetition Lien in favor of the DIP Lender.

(b) Prepetition Lien Securing DIP Obligations. Subject to entry of a Final Order providing such relief, in addition to the DIP Lien, the Prepetition Lien shall encumber the Collateral to secure the DIP Obligations in addition to the Prepetition Obligations.

(c) Replacement Lien. In addition to the DIP Lien, the Lender is granted a Lien on all of the Collateral as a replacement lien pursuant to section 361 of the Bankruptcy Code to provide adequate protection of Lender’s interest in the Collateral to the extent of any diminution in value of the Collateral resulting or arising from the use of Cash Collateral, the DIP Financing, or the imposition of the automatic stay (the “Replacement Lien,” and collectively with the DIP Lien and the Prepetition Lien to the extent it secures the DIP Obligations, the “Postpetition Liens”);

(d) Postpetition Lien Priority. Notwithstanding anything to the contrary contained in this Interim Order or the other DIP Loan Documents, the Postpetition Liens shall in each and every instance be a first priority and senior Lien that (i) is subject and subordinate only to the Permitted Prepetition Liens, and (ii) other than the Permitted Prepetition Liens, is otherwise senior to all prepetition and postpetition Liens of any other person or entity pursuant to section 364(c)(3) and (d) of the Bankruptcy Code. The Postpetition Liens and the Super-Priority Claims (as defined below) (A) shall not be subject to sections 510, 549, 550 or 551 of the Bankruptcy Code, (B) shall not be subordinate to, or *pari passu* with, any intercompany or affiliate security

interest or Lien, and (C) shall be valid and enforceable against any trustee or any other estate representative appointed in the Case, or, upon conversion to a case under chapter 7 of the Bankruptcy Code (defined herein as a “Successor Case”) against any trustee or any other estate representative appointed in any Successor Case, and/or upon the dismissal of the Case. Except as otherwise expressly permitted by the DIP Loan Documents, no claim or Lien having a priority superior to or *pari passu* with those granted by this Interim Order with respect to the DIP Obligations shall be granted or allowed until (x) all DIP Obligations have been indefeasibly paid in full in cash and (y) all commitments under the DIP Loan Documents have been terminated. As used herein, a “Lien” means a mortgage, deed of trust, pledge, hypothecation, assignment, encumbrance, lien, security interest or other security arrangement.

(e) Automatic Postpetition Lien Perfection. The Postpetition Liens shall, immediately and without any further action, be valid, binding, fully perfected, continuing, enforceable and non-avoidable upon the entry of this Interim Order by the Court. This Interim Order shall be sufficient and conclusive evidence of the validity, enforceability, perfection and priority of the Postpetition Liens without the necessity of (a) 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 (b) taking any other action to validate or perfect the Postpetition Liens or to entitle the Postpetition Liens to the priorities granted herein. Notwithstanding the foregoing, the DIP Lender, as the case may be, may, in its sole discretion, file financing statements, 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, mortgages, security agreements, notices and other agreements or documents shall be deemed to have been filed or recorded at the time and on the Petition Date and shall constitute DIP Loan Documents. The Debtors shall execute and deliver to the DIP Lender all such financing statements, mortgages, notices and other documents

as the DIP Lender may reasonably request to evidence and confirm the existence and validity of the Postpetition Liens and/or the priority of the Postpetition Liens granted pursuant to this Interim Order. Without limiting the foregoing, the DIP Lender, in its discretion, may file a photocopy of this Interim 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 Interim Order. Any provision of any lease, loan document, easement, use agreement, proffer, covenant, license, contract, organizational document, or other instrument or agreement that requires the payment of any fees or obligations to any governmental entity or nongovernmental entity in order for the Debtors to pledge, grant, mortgage, sell, assign, or otherwise transfer any fee or leasehold interest or the proceeds thereof or other Collateral, is and shall be deemed to be inconsistent with the provisions of the Bankruptcy Code, and shall have no force or effect with respect to the Liens on such leasehold interests or other applicable Collateral or the proceeds of any assignment and/or sale thereof by the Debtors, in favor of the DIP Lender in accordance with the terms of the DIP Loan Documents.

5. **Super-Priority Administrative Claim Status.** In addition to the DIP Lien granted herein, effective immediately upon entry of this Interim Order, all of the DIP Obligations shall constitute allowed super-priority administrative claims pursuant to section 364(c)(1) of the Bankruptcy Code, which shall have priority senior to all other administrative expense claims, adequate protection and other diminution claims, unsecured claims and all other claims against the Debtors, now existing or hereafter arising, of any kind or nature whatsoever, including administrative expenses or other claims of the kinds specified in, or ordered pursuant to, sections 105, 326, 328, 330, 331, 503 (including 503(b)(9)), 506 (with respect to section 506(c)), subject to entry of a Final Order providing such relief), 507, 546, 726, 1113 and 1114 or any other provision of the Bankruptcy Code or otherwise (the “DIP Super-Priority Claims”). The DIP Super-Priority

Claims shall for purposes of section 1129(a)(9)(A) of the Bankruptcy Code be considered administrative expenses allowed under section 503(b) of the Bankruptcy Code, shall be against the Debtors, and shall be payable from and have recourse to all prepetition and postpetition property of the Debtors and all proceeds thereof, including, subject to entry of a Final Order providing such relief, Avoidance Actions. No costs or expenses of administration, including professional fees allowed and payable under sections 328, 330, 331 and 503 of the Bankruptcy Code, or otherwise, that have been or may be incurred in this Case or in any Successor Case, and no administrative priority claims or other priority claims are, or will be, senior to, prior to or pari passu with, the DIP Lien or the DIP Super-Priority Claims, or with any other claims of the DIP Lender and its affiliates arising under the DIP Loan Documents.

6. **Section 507(b) Priority.** Subject to entry of a Final Order, in addition to, and without limiting the DIP Lien and the DIP Super-Priority Claims, the Lender shall have a priority unsecured claim pursuant to section 507(b) to the extent of any diminution in value of the Collateral and can be satisfied from Avoidance Action recoveries (the “507(b) Claim,” and collectively with the “DIP Super-Priority Claims, the “Super-Priority Claims”).

7. **[Intentionally Omitted.]**

8. **Carve-Out.** Subject to the terms and conditions contained in this paragraph 8, the DIP Lien, DIP Super-Priority Claims, the Prepetition Liens, and the Prepetition Obligations shall be subject and subordinate in all respects to payment of the Carve-Out (as defined below):

(a) **Carve Out.** For purposes of this Interim Order, “Carve-Out” means (i) all unpaid fees required to be paid in this Case to the Clerk of the Court and to the office of the United States Trustee under 28 U.S.C. § 1930 and 31 U.S.C. § 3717, whether arising prior to or after the delivery of the Carve-Out Trigger Notice (as defined below); (ii) all reasonable and documented unpaid fees, costs, disbursements and expenses (the “Debtor Professional Fees”) of professionals retained by the Debtors in this Case (collectively, the “Debtors’ Professionals”) that (A) are

incurred in accordance with the Budget and earned *prior* to the first business day after the delivery by the DIP Lender of a Carve-Out Trigger Notice, (B) are allowed by the Court under sections 105(a), 328, 330 or 331 of the Bankruptcy Code (whether allowed by the Court prior to or after delivery of a Carve-Out Trigger Notice) and (C) remain unpaid after application of any retainers and any available funds remaining in the Debtors' estates for such creditors; (iii) all reasonable and documented unpaid fees and expenses (the "Committee Professional Fees," and together with the Debtor Professional Fees, the "Professional Fees") of professionals retained by the Committee in this Case (collectively, the "Committee's Professionals," and together with the Debtors' Professionals, the "Estate Professionals") and all reasonable out-of-pocket expenses of any member of the Committee that (A) are incurred in accordance with the Budget and earned *prior* to the first business day after the delivery by the DIP Lender of a Carve-Out Trigger Notice, (B) are allowed by the Court under sections 105(a), 330 or 331 of the Bankruptcy Code (whether allowed by the Court prior to or after delivery of a Carve-Out Trigger Notice) and (C) remain unpaid after application of any available funds remaining in the Debtors' estates for such creditors; (iv) all reasonable and documented unpaid fees, costs, disbursements and expenses of the Debtors' Professionals and Committee's Professionals that (A) are incurred and earned on or *after* the first business day after the delivery by the DIP Lender of a Carve-Out Trigger Notice, (B) are allowed by the Court under sections 105(a), 328, 330 or 331 of the Bankruptcy Code and (C) remain unpaid after application of any retainers and any available funds remaining in the Debtors' estates for such creditors, up to an aggregate amount for all such Professional Fees not to exceed \$100,000.00 (the "Carve-Out Cap"); and (v) in the event of a conversion of the Case to a case under chapter 7 of the Bankruptcy Code, the payment of fees and expenses incurred by a trustee and any professionals retained by such trustee in an aggregate amount not to exceed \$25,000 (clauses (i) through (v), collectively, the "Carve-Out"). Pursuant to the terms of the DIP Loan Agreement, the Debtors shall fund Debtor Professional Fees and Committee Professional Fees provided for in the Budget into a

segregated account established by the Debtors (the “Carve-Out Account”) in the amounts of the line items for such Debtor Professional Fees and Committee Professional Fees in the Budget. Promptly following the delivery of a Carve-Out Trigger Notice, the Debtors shall immediately fund into the Carve-Out Account an amount equal to the aggregate unpaid amount accrued under the Carve-Out prior to the delivery of the Carve-Out Trigger Notice, plus the amount of the Carve-Out Cap. If there are insufficient funds on the date the Carve-Out Trigger Notice is delivered to fund the Carve-Out Account, any additional cash proceeds thereafter received by the Debtors, from whatever source, shall be transferred by the Debtors into the Carve-Out Account prior to making any distributions to creditors until the Carve-Out Account is fully funded in accordance with this paragraph 8. All funds in the Carve-Out Account shall be used first to pay the obligations set forth in clauses (i) through (iii) of the definition of Carve-Out in subsection (a), above, and then, to pay the obligations set forth in clause (iv) of the definition of Carve-Out set forth in subsection (a) above. All amounts deposited in the Carve-Out Account shall continue to be subject to the DIP Lien and DIP Super-Priority Claims such that, upon final payment of all allowed amounts due and owing under the Carve-Out, including the Carve-Out Cap, as determined by further order of the Court, any funds remaining in the Carve-Out Account shall be remitted to the Debtors and governed by the terms of this Interim Order. Notwithstanding anything to the contrary in this Interim Order, all Liens and claims granted pursuant to the Interim Order shall be subject to the Carve-Out. The term “Carve-Out Trigger Notice” shall mean a written notice delivered by the DIP Lender or its counsel to the Debtors’ restructuring counsel, the U.S. Trustee and lead counsel to the Committee appointed in this Case, which notice may be delivered at any time following the occurrence and during the continuation of any Event of Default, expressly stating that the Carve-Out is invoked. The date the Carve-Out Trigger Notice is delivered shall be referred to as the “Termination Date.”

(b) Estate Professionals Payments. Any payments actually made pursuant to Bankruptcy Code sections 327, 328, 330, 331, 503 or 1103 or otherwise to any of the Estate Professionals shall (i) not be paid from the proceeds of any Collateral (including Cash Collateral) until such time as all retainers, if any, held by all Estate Professionals have been reduced to zero and (ii) in the case of any payments made on account of any fees and expenses described in clause (iv) of the definition of Carve-Out, reduce the applicable Carve-Out Cap on a dollar-for-dollar basis. So long as no Carve-Out Trigger Notice has been delivered to the Debtors, the Debtors are authorized to use advances under the DIP Facility and Cash Collateral, in accordance with and limited to the amounts set forth on the Budget, on a cumulative basis by all Estate Professionals to escrow such compensation and expense reimbursements of the Debtors' Professionals and the Committee's Professionals in accordance with the Budget and the DIP Loan Agreement (but regardless of when such compensation and reimbursement of expenses are so allowed) and such Debtor Professional Fees and Committee Professional Fees shall be paid to such professionals from the Carve-Out Account pursuant to the terms of any interim compensation procedures order or other order of the Court. Any compensation and expenses previously paid, or accrued but unpaid, prior to the delivery of the Carve-Out Trigger Notice shall not reduce the Carve-Out Cap.

(c) Carve-Out Restrictions. Notwithstanding any other term of this Interim order or the Budget, no portion of the Carve-Out, Collateral proceeds, or any proceeds of the DIP Facility may be used for the payment of the fees, costs and expenses of any person, including any Estate Professional, incurred in connection with an Adverse Action (as defined in the DIP Loan Agreement). Furthermore, none of the Carve-Out, Collateral proceeds, or any proceeds of the DIP

Facility shall be used to prevent, hinder or delay the DIP Lender and/or its designee from enforcing or realizing upon the Collateral once a default or Event of Default has occurred and is continuing under the DIP Loan Documents in accordance with this Interim Order; provided, however, an amount up to \$25,000 of the Carve-Out nevertheless may be used exclusively by the Committee Professionals solely to investigate the foregoing matters within the Challenge Period.

(d) Reservation of Rights re Estate Professionals Fees. Nothing herein shall be construed as consent to the allowance of any Debtor Professional Fees, Committee Professional Fees or the professional fees or expenses of any unofficial committee or any other party in interest, or shall affect the right of the DIP Lender to object to the allowance and payment of such fees and expenses.

(e) No Responsibility re Estate Professionals Fees. Other than as set forth above, the DIP Lender shall not be responsible for the direct payment or reimbursement of any Estate Professional Fees incurred in this Case or any Successor Case. Nothing in this Interim Order or otherwise shall be construed (i) to obligate the DIP Lender in any way to pay compensation or to reimburse expenses of any Estate Professional or to guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement; (ii) to increase the Carve-Out if the actual Estate Professional Fees are higher than reflected in the Budget or there are otherwise permitted by this Interim Order; or (iii) as consent to the allowance of any Professional Fees. Any funding of the Carve-Out shall be added to and made a part of the DIP Obligations and secured by the Collateral and otherwise entitled to the DIP Protections and all other rights, interests, benefits and protections granted under this Interim Order, the other DIP Loan Documents, the Bankruptcy Code and applicable law. Notwithstanding anything to the contrary herein, the DIP Lender shall have the right to establish a reserve against its commitments under the DIP Facility in an amount equal to the Carve-Out (including the Carve-Out Cap), as such amount may change from time to time.

9. **Credit Bid.** Subject to the challenge rights in paragraph 18 below, the DIP Lender shall have the unqualified right to credit bid all or any portion of the DIP Obligations under or pursuant to (i) section 363 of the Bankruptcy Code, (ii) a plan of reorganization or plan of liquidation under section 1129 of the Bankruptcy Code (including as part of any reorganization plan subject to confirmation under section 1129(b)(2)(A)(i)(iii) of the Bankruptcy Code), or (iii) a sale or other disposition by a chapter 7 trustee for the Debtors under section 725 of the Bankruptcy Code.

10. **Texas Hold-Back.** If the Texas Hold-Back is required to be established, it shall remain subject to the DIP Lien and DIP Super-Priority Claims. The Texas Hold-Back funds shall be held in a segregated account established by the Debtors in the amount calculated and payable pursuant to the DIP Loan Agreement. The Texas Hold-Back shall otherwise be subject to terms and condition of the DIP Loan Agreement.

11. **Protection of DIP Lender's Rights.**

(a) In addition to the Events of Default delineated in the DIP Loan Agreement, the following shall constitute Events of Default: entry of any order in this Case or in any Successor Case which authorizes (i) the obtaining of credit or the incurring of indebtedness that is secured by a security, mortgage, or collateral interest or other Lien on all or any portion of the Collateral or that is entitled to administrative priority status, in each case which is superior to or *pari passu* with the Postpetition Liens or Super-Priority Claims granted pursuant to this Interim Order; or (ii) the use of Collateral or DIP Facility proceeds for any purpose other than in accordance with the Budget and the DIP Loan Documents.

(b) The Debtors and their employees (and/or their legal and financial advisors in the case of clauses (ii) through (iv) below) will (i) maintain books, records and accounts, in which full, true and correct entries in conformity with generally accepted accounting principles, consistently applied, shall be made of all financial transactions and matters involving the assets

and business of the Debtors, (ii) cooperate, consult with, and provide to the DIP Lender and its affiliates and advisors all such information as required or allowed under the DIP Loan Documents (including this paragraph), including providing any pleadings proposed to be filed by the Debtors in this Case for the DIP Lender to review prior to filing unless exigent circumstances dictate otherwise, (iii) permit representatives of the DIP Lender and its affiliates to (y) have full and complete access to, and to visit and inspect, any of the facilities or any assets owned or used in connection with the Debtors' businesses, any of the computer, accounting or operational systems owned or used in connection with the Debtors' businesses, and any of the books and records relating to the Debtors' businesses, and (z) discuss any matter relating to the Debtors' business affairs, operations and the sale process with the Debtors, their officers, directors, employees and advisors and other professionals, as often as may be reasonably requested. To the extent any affiliate of the Debtors have any facilities or assets or any computer, accounting or operational systems used in connection with the Debtors' businesses or any books and records relating to the Debtors' businesses, the DIP Lender shall (i) have full and complete access to, and shall be entitled to visit and inspect, any such facilities or assets of such affiliate and any such computer, accounting or operational systems of such affiliate and any such books and records of such affiliate and (ii) shall be entitled to discuss any matter relating to the Debtors' business affairs, operations and the sale process with such affiliate, its officers, directors, employees and advisors and other professionals, as often as may be reasonably requested.

(c) Subject to the challenge rights in paragraph 18 below, the Debtors expressly stipulate, and the Court finds and adjudicates that, the DIP Obligations shall not be discharged or otherwise impaired by the entry of an order confirming any plan of reorganization, notwithstanding the provisions of sections 524 and/or 1141(d) of the Bankruptcy Code, unless the DIP Obligations have been indefeasibly paid in full in cash on or before the effective date of a confirmed plan of reorganization and all commitments under the DIP Facility have been terminated.

12. **Proceeds of Subsequent Financing.** If at any time prior to the indefeasible payment in full in cash of all DIP Obligations and the termination of the DIP Facility, the Debtors, their estates, any trustee, any examiner with enlarged powers or any responsible officer subsequently appointed shall obtain credit or incur debt pursuant to sections 364(b), 364(c), 364(d) or any other provision of the Bankruptcy Code or other applicable law in violation of the DIP Loan Documents (including this Interim Order), then all of the cash proceeds derived from such credit or debt and all Cash Collateral shall immediately be turned over to the DIP Lender until indefeasible payment in full in cash of the DIP Obligations.

13. **Disposition of Collateral; Additional Negative Covenants.**

(a) Other than in the ordinary course of business, the Debtors shall not sell, transfer, lease, encumber or otherwise dispose of any portion of the Collateral without the prior written consent of the DIP Lender (and no such consent shall be implied from any other action, inaction or acquiescence by the DIP Lender or any order of this Court), except (i) as expressly permitted in the DIP Loan Documents, and (ii) as approved by the Court to the extent required under applicable bankruptcy law after notice and a hearing. Notwithstanding anything to the contrary in this Interim Order, any sale or other disposition of all or substantially all of the Debtors' assets or stock that does not provide for the indefeasible payment of the DIP Obligations in full in cash at closing shall be subject to the prior written consent of the DIP Lender, which consent may be withheld in the DIP Lender's Sole Discretion.

(b) If the Debtors shall at any time (i) sell any Collateral outside of the ordinary course of business (and for avoidance of doubt, a sale pursuant to a discount sale program, a liquidation or partial liquidation sale, a bulk sale or consignment shall be deemed to be not in the ordinary course), or (ii) suffer any loss, destruction or damage of property, including any actual, pending or threatened institution of any proceedings for the condemnation or seizure, or for the exercise of any right of eminent domain, of the Debtors' property (the events in clause (ii),

collectively, an “Event of Loss”), then the Debtors shall promptly notify the DIP Lender of such proposed disposition or Event of Loss (including the amount of the estimated insurance or other proceeds to be received) and within one business day of receipt of such proceeds, the Debtor shall deliver, or cause to be delivered, 100% of the proceeds (net of reasonable transaction-related expenses determined acceptable by the DIP Lender) to the DIP Lender as a prepayment of the DIP Obligations; provided, however, that no mandatory prepayment shall be required in respect of any insurance payment received in respect of any loss of or damage to any vehicles in the course of its usage by any rental customer.

14. **Events of Default.** The following shall constitute an event of default under this Interim Order, unless waived in writing by the DIP Lender (the “Events of Default”):

(a) The occurrence of an “Event of Default” under, and as defined in, the DIP Loan Agreement.

(b) The Debtors propose or support, directly or indirectly, any plan of reorganization or sale of all or substantially all of the Debtors’ assets or entry of any confirmation order or sale order that is not conditioned upon the indefeasible payment in full in cash, upon the consummation of such plan of reorganization or such sale, of all DIP Obligations.

(c) Any other breach or violation by the Debtors of the terms and provisions of this Interim Order.

(d) The taking of any act in connection with or relation to an Adverse Action or a Prepetition Challenge (as defined herein) including any Avoidance Action against the DIP Lender.

(e) The termination or expiration of the Debtors’ authority or ability to borrow under the DIP Facility or the DIP Lender’s commitment to provide financing under the DIP Facility, for reason and whether occurring automatically or upon exercise or notice by the DIP Lender pursuant to the DIP Loan Documents.

15. **Rights and Remedies Upon Event of Default.**

(a) Immediately upon the occurrence and during the continuation of an Event of Default, unless such Event of Default has been waived in writing by the DIP Lender, the DIP Lender may, (i) (1) declare all or any portion of the DIP Obligations to be immediately due and payable, (2) declare the termination, reduction or restriction of any further commitment to extend credit to the Debtors, to the extent any such commitment remains, and (3) terminate the DIP Facility and the DIP Loan Documents as to any future liability or obligation of the DIP Lender, but without affecting any of the DIP Obligations, the Postpetition Liens, Super-Priority Claims or the other DIP Protections; and (ii) declare a termination, reduction or restriction on the ability of the Debtors to use any Cash Collateral (any such declaration shall be made in writing to the Debtors, the Creditors Committee and the U.S. Trustee, and shall be referred to herein as a “Termination Declaration” and the date of such Termination Declaration being herein referred to as the “Termination Declaration Date”).

(b) In addition to the remedies described above and other customary remedies, five days following the Termination Declaration Date, the DIP Lender shall have relief from the automatic stay without further notice or order of this Court and may foreclose on all or any portion of the Collateral, collect accounts receivable and apply the proceeds thereof to the DIP Obligations, occupy the Debtors’ premises to sell or otherwise dispose of the Collateral or otherwise exercise remedies against the Collateral permitted by applicable non-bankruptcy law. During such five-day period, the Debtors, the Committee or other party-in-interest shall be entitled to seek an emergency hearing before the Court for the sole purpose of contesting whether an Event of Default has occurred; provided, however, the Committee or other party-in-interest may raise additional arguments. Unless the Court at such hearing orders otherwise, the automatic stay, as to the DIP Lender (and, if applicable, its designee), shall automatically terminate at the end of such five-day period together with such other relief that may be ordered by the Court, without further notice or

order. Neither section 105 of the Bankruptcy Code nor any other provision of the Bankruptcy Code shall be utilized to preclude or restrict the DIP Lender (or its designee) from exercising its default-related rights and remedies under the DIP Loan Documents and applicable law. Notwithstanding the foregoing, nothing herein shall preclude the DIP Lender from seeking an order from the Court authorizing the DIP Lender to exercise any enforcement rights or remedies with respect to the Collateral on less than five days' notice.

(c) Subject to the funding of the Carve-Out, all proceeds realized in connection with the exercise of the rights and remedies of the DIP Lender shall be for application to the Obligations under, and in accordance with the provisions of, the DIP Loan Documents until indefeasible payment in full in cash of the Obligations.

(d) Subject to entry of a Final Order and notwithstanding anything contained herein to the contrary, and without limiting any other rights or remedies of the DIP Lender contained in the DIP Loan Documents, or otherwise available at law or in equity, upon reasonable prior written notice to the Debtor and any landlord, lienholder, licensor or other third party owner of any leased or licensed premises or intellectual property that an Event of Default has occurred and is continuing, the DIP Lender, subject to applicable law and any lease agreements (i) may, unless otherwise provided in any separate agreement by and between the applicable landlord or licensor and the DIP Lender, enter upon any leased or licensed premises of the Debtor for the purpose of exercising any remedy with respect to Collateral located thereon and (ii) shall be entitled to all of the Debtor's rights and privileges as lessee or licensee under the applicable lease or license and to use any and all trademarks, trade names, copyrights, licenses, patents or any other similar assets of the Debtor, which are owned by or subject to a Lien of any third party and which are used by Debtor in its businesses, in all cases without interference from lienholders, lessors or licensors thereunder, provided, however, that the DIP Lender shall pay only rent and additional rent, fees, royalties or other obligations of the Debtor that first arise after delivery of the written

notice referenced above from the DIP Lender and that are payable during the period of such occupancy or use by such DIP Lender calculated on a per diem basis. Nothing herein shall require the Debtor or the DIP Lender to assume any lease or license under section 365(a) of the Bankruptcy Code as a precondition to the rights afforded to the DIP Lender in this paragraph 15(e).

(e) The automatic stay imposed under section 362(a) of the Bankruptcy Code is hereby modified pursuant to the terms of the DIP Loan Documents as necessary to (i) permit the Debtors to grant the Postpetition Liens and to incur all liabilities and obligations to the DIP Lender under the DIP Loan Documents, (ii) authorize the DIP Lender to retain and apply payments hereunder, and (iii) as otherwise necessary to implement and effectuate the provisions of this Interim Order.

16. **Preservation of Rights Granted Under the Interim Order.**

(a) No Non-Consensual Modification or Extension of Interim Order. Unless all DIP Obligations shall have been indefeasibly paid in full in cash and the DIP Facility shall have been terminated, the Debtors shall not seek, and it shall constitute an Event of Default, if there is entered (i) an order amending, supplementing, extending or otherwise modifying this Interim Order or (ii) an order converting or dismissing the Case, in each case, without the prior written consent of the DIP Lender, which consent shall not be implied by any other action, inaction or acquiescence.

(b) Dismissal. If any order dismissing the Case under section 1112 of the Bankruptcy Code or otherwise is at any time entered, such order shall provide (in accordance with sections 105 and 349 of the Bankruptcy Code), and shall be deemed to provide if not expressly provided, to the fullest extent permitted by law that (i) the DIP Protections shall continue in full force and effect and shall maintain their priorities as provided in this Interim Order until all DIP Obligations have been indefeasibly paid in full in cash and the DIP Facility is terminated (and that all DIP Protections shall, notwithstanding such dismissal, remain binding on all parties in interest),

and (ii) this Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing such DIP Protections and DIP Obligations and other terms of this Interim Order.

(c) Modification of Interim Order. Based on the findings set forth in this Interim Order and in accordance with section 364(e) of the Bankruptcy Code, which is applicable to the DIP Facility contemplated by this Interim Order, in the event any or all of the provisions of this Interim Order are hereafter reversed, modified, vacated or stayed by a subsequent order of this Court or any other court, the DIP Lender shall be entitled to the protections provided in section 364(e) of the Bankruptcy Code, and no such reversal, modification, vacatur or stay shall affect (i) the validity, priority or enforceability of any DIP Protections granted or incurred prior to the actual receipt of written notice by the DIP Lender of the effective date of such reversal, modification, vacatur or stay or (ii) the validity or enforceability of any Lien, claim, or priority authorized or created hereby or pursuant to the DIP Loan Documents. Notwithstanding any such reversal, modification, vacatur or stay, any DIP Obligations incurred by the Debtors prior to the actual receipt of written notice by the DIP Lender of the effective date of such reversal, modification, vacatur or stay shall be governed in all respects by the original provisions of this Interim Order, and the DIP Lender shall be entitled to all of the DIP Protections, and all other rights, remedies, claims, interests, Liens, priorities, privileges, protections and benefits granted in section 364(e) of the Bankruptcy Code, this Interim Order and pursuant to the other DIP Loan Documents with respect to all DIP Obligations.

(d) Survival of Interim Order. The provisions of this Interim Order, the other DIP Loan Documents, any actions taken pursuant hereto or thereto, and all of the DIP Protections, and all other rights, remedies, claims, interests, Liens, priorities, privileges, protections and benefits granted to any or all of the DIP Lender and its affiliates shall survive, and shall not be modified, impaired or discharged by, the entry of any order confirming any plan of reorganization in the Case, converting the Case to a case under chapter 7, dismissing the Case, withdrawal of the

reference as to the Case or any Successor Case or providing for abstention from handling or retaining of jurisdiction of the Case in this Court, or terminating the joint administration of this Case or by any other act or omission. The terms and provisions of this Interim Order, including all of the DIP Protections and all other rights, remedies, claims, interests, Liens, priorities, privileges, protections and benefits granted to the DIP Lender, shall continue in full force and effect notwithstanding the entry of any such order, and such DIP Protections shall continue in these proceedings and in any Successor Case, and shall maintain their respective priorities as provided by this Interim Order.

17. **Debtors' Waivers.**

(a) Waiver of Section 506(c) Claims. Subject to entry of a Final Order providing such relief, as a further inducement to, and condition of, the DIP Lender providing the DIP Facility and consenting to the Carve-Out to the extent provided herein, the Debtors and any successors thereto or any representatives thereof, including any trustees appointed in the Case or any Successor Case, shall be deemed to have waived any rights, claims, 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 and/or any Collateral. Nothing contained in this Interim Order or in any Final Order shall be deemed a consent by the DIP Lender to any charge, Lien, assessment or claim against the Collateral under section 506(c) of the Bankruptcy Code or otherwise.

(b) Debtors' Waivers. The Debtors irrevocably waive any rights (i) to seek authority prior to satisfaction of the Obligations in full, to incur indebtedness or obtain loans or other financial accommodations pursuant to section 364(c) or (d) other than from the DIP Lender unless such authority results in the Obligations being indefeasibly paid in full, (ii) to challenge the application of any payments authorized by this Order pursuant to section 506(b), or to assert that the value of the Prepetition Collateral was or is less than the Prepetition Obligations, (iii) to propose or support a plan of reorganization that is inconsistent with the DIP Loan Documents

unless the DIP Lender otherwise consents, and (iv) in connection with or relation to an Adverse Action or a Prepetition Challenge (as defined herein) including any Avoidance Action against the DIP Lender.

18. **Prepetition Claim Challenge.** (a) Any objection or challenge to the legality, validity, perfection, enforceability, priority of the Prepetition Obligations or Prepetition Lien, including any avoidance thereof and including any setoff, recoupment, counterclaim, deduction or claim of any kind, or (b) any claim, cause of action, or obligation against the DIP Lender, or its successors and assigns, arising or existing as of or at any time prior to the Petition Date, related to or arising out of the Prepetition Loan Documents or Lender's financing relationship with the Debtors, or (c) any claim, causes of action or objection under Chapter 5 of the Bankruptcy Code or any attempt to recover on an Avoidance Action against DIP Lender or its affiliates (collectively, a "Prepetition Challenge"), must be filed by the Committee or any other party (other than the Debtors) with the Court no later than 75 days after the Petition Date (the "Challenge Period"). Except as and to the extent expressly provided in an order of the Court with respect to a Prepetition Challenge, the Prepetition Obligations shall be deemed allowed in full, shall not be subject to any setoff, recoupment, counterclaim, deduction or claim of any kind, and the Prepetition Lien shall be deemed legal, valid, perfected, enforceable and unavoidable for all purposes and of first and senior priority subject to only the Permitted Senior Liens, and neither the Prepetition Obligations nor the Prepetition Lien shall be subject to any further objection or challenge by the Debtors or any other party at any time. To the extent either the Prepetition Obligations or the Prepetition Lien are disallowed in whole or in part by the Court, such disallowance shall not affect the DIP Lender's right to collect such amounts due from any other person or entity. Further, (a) the Court may fashion any appropriate remedy in the event of a successful challenge; (b) if a chapter 7 or 11 trustee is appointed prior to the expiration of the Challenge Period, such trustee shall have to the later of the expiration of the Challenge Period or 21 calendar days after appointment to assert a

Prepetition Challenge; and (c) if a chapter 7 trustee is appointed after the Committee has commenced a Prepetition Challenge, the trustee shall stand in the shoes of the Committee for purposes of the Prepetition Challenge.

19. **Other Rights and Obligations.**

(a) Expenses. All prepetition and postpetition fees, costs and expenses of the DIP Lender (including, without limitation, the fees, costs and expenses of any legal counsel, consultants, accounting firms, auditors, financial advisors or other advisors and professionals retained by the DIP Lender from time to time) incurred in connection with this Case, the diligencing, negotiation, documentation, consummation, administration or any other aspect of the DIP Facility and the DIP Loan Documents, the diligencing, negotiation, documentation, consummation or any other aspect of any credit bid or other bid by the DIP Lender or any sale process sought to be approved in this Case, or incurred in connection with the enforcement of rights and remedies under the DIP Loan Documents or applicable law are to be reimbursed on a current basis by the Debtors and shall in any event constitute part of the DIP Obligations. All such fees and expenses incurred by the DIP Lender shall be reimbursed without regard to the amounts or other terms set forth in the Budget with respect thereto and without regard to whether such amounts were incurred prior to or after the Petition Date. All such obligations shall constitute DIP Obligations. Professionals for the DIP Lender and its affiliates (collectively, the “DIP Lender Professionals”) shall not be required to comply with the U.S. Trustee fee rules and guidelines. The DIP Lender shall provide statement summaries of any such fees of the DIP Lender Professionals to be reimbursed or included as part of the DIP Obligations (to include the total number of hours billed by an attorney or other professional but shall not be required to comply with any particular format, may be in summary form and may include redactions necessary to maintain privilege and shall provide information sufficient to enable the U.S. Trustee and the Committee to assess the reasonableness of such fees) to counsel for the Debtors, the U.S. Trustee and counsel to any

Committee; *provided, however* that the Court shall have jurisdiction over any objections raised by the Debtors, the U.S. Trustee, or any Committee to the invoiced amount of the fees, costs, and expenses proposed to be paid, which objections must be raised within seven (7) calendar days from delivery of such invoices to the Debtors, the U.S. Trustee, and counsel to any Creditors' Committee. In the event that within ten (10) calendar days from delivery of a monthly invoice, the Debtors, the U.S. Trustee, or any Creditors' Committee raises an objection to such invoice, and the parties are unable to resolve such objection, the Court shall hear and determine such dispute. Any and all amounts paid by the Debtors or added to the DIP Obligations on account of fees and expenses of the DIP Lender Professionals are deemed permitted uses of Collateral hereunder and not subject to the Budget or any Budget variance limitations.

(b) Binding Effect. The provisions of this Interim Order, including all findings herein, and the other DIP Loan Documents shall be binding upon all parties in interest in this Case, including the DIP Lender, all prepetition creditors, whether or not secured, the Creditors Committee and the Debtors and their respective successors and assigns (including any chapter 7 or chapter 11 trustee hereinafter appointed or elected for the estates of the Debtors, any examiner appointed pursuant to section 1104 of the Bankruptcy Code or any other fiduciary or responsible person appointed as a legal representative of the Debtors or with respect to the property of the estates of the Debtors), whether in the Case, in any Successor Case, or upon dismissal of any such Case or Successor Case; *provided, however*, except as expressly provided herein, that the DIP Lender shall have no obligation to permit the use of Cash Collateral or to extend any financing to any chapter 7 or chapter 11 trustee or other responsible person appointed for the estates of the Debtors in the Case or Successor Case.

(c) No DIP Lender Waiver. The failure of the DIP Lender to seek relief or otherwise exercise its rights and remedies under the DIP Loan Documents or otherwise (or any delay in seeking or exercising same), shall not constitute a waiver of any of such parties' rights

hereunder, thereunder, or otherwise. Except as expressly provided herein, nothing contained in this Interim Order shall impair or modify any rights, claims or defenses available in law or equity to the DIP Lender, including rights of setoff (or the right of a Debtors to contest such assertion). The entry of this Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, or otherwise impair, the ability of the DIP Lender under the Bankruptcy Code or under non-bankruptcy law to (i) request conversion of the Case to a case under Chapter 7, dismissal of the Case, or the appointment of a trustee in the Case, (ii) propose, subject to the provisions of section 1121 of the Bankruptcy Code, any chapter 11 plan or plans with respect to the Debtors, or (iii) exercise any of the rights, claims or privileges (whether legal, equitable or otherwise) of the DIP Lender.

(d) No Third Party Rights. Except as explicitly provided for herein, this Interim Order does not create any rights for the benefit of any third party, creditor, equity holder or any direct, indirect, or incidental beneficiary. In determining to make any loan (whether under the DIP Loan Agreement or otherwise) or in exercising any rights or remedies as and when permitted pursuant to the DIP Loan Documents, the DIP Lender shall not (i) be deemed to be in control of the operations of the Debtors, or (ii) owe any fiduciary duty to the Debtors, their creditors, shareholders or the estate.

(e) No Marshaling. Subject to entry of a Final Order providing such relief, the DIP Lender shall not be subjected to, and the Debtors shall not attempt to subject the DIP Lender to, the equitable doctrine of “marshaling” or any other similar doctrine with respect to any of the Collateral, as applicable.

(f) Amendments. The Debtors are authorized and empowered, without further notice and hearing or approval of this Court, to amend, modify, supplement or waive any provision of the DIP Loan Documents or any term, condition, covenant or provision therein. In the event of a non-material amendment or modification, such amendment shall be deemed approved pursuant

to this Interim Order and shall be fully effective without any further notice, motion, hearing or order so long as the Debtors or the DIP Lender files a notice of the proposed amendment with the Court. In the event of a material amendment or modification, a noticed motion must be filed seeking such approval and the Debtors shall be entitled to seek an emergency or shortened notice hearing as the circumstances dictate.

(g) Inconsistency. In the event of any inconsistency between the terms and conditions of the other DIP Loan Documents and of this Interim Order, the provisions of this Interim Order shall govern and control.

(h) Enforceability. This Interim Order shall constitute findings of fact and conclusions of law pursuant to the Bankruptcy Rule 7052 and shall take effect and be fully enforceable effective as of the Petition Date immediately upon execution hereof. Notwithstanding Bankruptcy Rules 4001(a)(3), 6004(h), 6006(d), 7062 or 9024 or any other Bankruptcy Rule or Local Rule or Rule 62(a) of the Federal Rules of Civil Procedure, this Interim Order shall be immediately effective and enforceable upon its entry, and there shall be no stay of execution or effectiveness of this Interim Order.

(i) Headings. Paragraph headings used herein are for convenience only and are not to affect the construction of or to be taken into consideration in interpreting this Interim Order.

20. **Final Hearing**. The Final Hearing to consider entry of the Final Order and final approval of the DIP Facility is scheduled for **December 9, 2022, at 10:30 a.m., prevailing Eastern Time** before the Honorable Brendan L. Shannon, United States Bankruptcy Judge at the United States Bankruptcy Court for the District of Delaware. On or before November 16, 2022, the Debtors shall serve, by United States mail, first-class postage prepaid, notice of the entry of this Interim Order and of the Final Hearing (the “Final Hearing Notice”), together with copies of this Interim Order and the DIP Motion, on: (a) the parties having been given notice of the Interim Hearing; (b) counsel for a Committee (if appointed); and (c) any party which has filed prior to

such date a request for notices with this Court. The Final Hearing Notice shall state that any party in interest objecting to the entry of the proposed Final Order shall file written objections with the Clerk of the Court no later than on **December 2, 2022, at 4:00 p.m., prevailing Eastern Time**, which objections shall be served so as to be received on or before such date by: (a) the U.S. Trustee; (b) entities listed as holding the 30 largest unsecured claims against the Debtors (on a consolidated basis); (c) the Debtors, Attn: R. Jered Ruyle, 24980 N. 83rd Avenue, Suite 100, Peoria, Arizona 85383; (d) counsel to the Debtors, Potter, Anderson & Corroon LLP, 1313 N. Market Street, 6th Floor, Wilmington, DE 19801 (Attn: Jeremy Ryan and L. Katherine Good); (e) counsel to the DIP Lender, Hemar, Rousso & Heald, LLP 15910 Ventura Blvd., 12th Floor, Encino, CA 91436 (Attn.: J. Alexandra Rhim and Jacqueline James); (f) local counsel to the DIP Lender, Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, DE 19801 (Attn: Allison S. Mielke); and (g) any other party that has filed a request for notices with this Court.

21. **Retroactive Effect.** This Interim Order shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 and shall take effect and be enforceable effective as of the Petition Date immediately upon execution thereof.

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

Dated: November 16th, 2022
Wilmington, Delaware

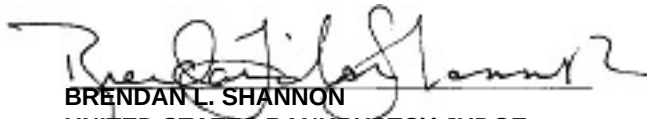

BRENDAN L. SHANNON
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT A

	Week #													13-Week Ch 11 Total
	Forecast 1 11/11/2022	Forecast 2 11/18/2022	Forecast 3 11/25/2022	Forecast 4 12/2/2022	Forecast 5 12/9/2022	Forecast 6 12/16/2022	Forecast 7 12/23/2022	Forecast 8 12/30/2022	Forecast 9 1/6/2023	Forecast 10 1/13/2023	Forecast 11 1/20/2023	Forecast 12 1/27/2023	Forecast 13 2/3/2023	
Operating Cash Receipts	-	\$ 362,000	\$ 300,000	\$ 309,000	\$ 318,000	\$ 238,000	\$ 253,000	\$ 249,000	\$ 264,000	\$ 233,000	\$ 244,000	\$ 245,000	\$ -	3,015,000
Operating Disbursements	-	(160,000)	(60,000)	(60,000)	(60,000)	(37,000)	(37,000)	(37,000)	(37,000)	(37,000)	(37,000)	(37,000)	(37,000)	(599,000)
Gas Purchases	-	(252,000)	(113,000)	(138,000)	(126,000)	(97,000)	(84,000)	(97,000)	(84,000)	(97,000)	(84,000)	(97,000)	(84,000)	(1,270,000)
Other Material Purchases	-	(12,000)	(37,000)	(6,000)	(16,000)	(3,000)	(3,000)	(3,000)	(3,000)	(3,000)	(3,000)	(3,000)	(3,000)	(134,000)
Store Overhead	-	(242,000)	(168,000)	(121,000)	(121,000)	(68,000)	(95,000)	(68,000)	(68,000)	(68,000)	(68,000)	(95,000)	(95,000)	(1,277,000)
Payroll & Benefits	-	-	-	(110,000)	-	-	-	-	(48,000)	-	-	-	-	(158,000)
Store and Equipment Rent	-	(666,000)	(378,000)	(436,000)	(323,000)	(205,000)	(240,000)	(205,000)	(240,000)	(205,000)	(192,000)	(253,000)	(95,000)	(3,438,000)
Total Operating Disbursements	-	(304,000)	(78,000)	(127,000)	(5,000)	33,000	13,000	44,000	24,000	28,000	52,000	(8,000)	(95,000)	(423,000)
Operating Cash Flow (Deficit)	-	(304,000)	(78,000)	(127,000)	(5,000)	33,000	13,000	44,000	24,000	28,000	52,000	(8,000)	(95,000)	(423,000)
Corporate Disbursements	-	(96,000)	(68,000)	(48,000)	(48,000)	(48,000)	(68,000)	(48,000)	(48,000)	(48,000)	(48,000)	(68,000)	(68,000)	(704,000)
Payroll Contract Labor & Benefits	-	(8,000)	-	(60,000)	-	(4,000)	-	-	(60,000)	-	(4,000)	-	-	(136,000)
Rent, Mortgage, Other Debt Service	-	(90,000)	(29,000)	(29,000)	-	-	-	(29,000)	(29,000)	-	-	-	-	(148,000)
Business Insurance	-	(50,000)	(25,000)	(50,000)	(25,000)	(25,000)	(25,000)	(25,000)	(25,000)	(25,000)	(25,000)	(25,000)	(25,000)	(350,000)
Other Corporate	-	-	(85,000)	-	-	-	(85,000)	-	-	-	(85,000)	-	-	(255,000)
Taxes	-	(244,000)	(178,000)	(187,000)	(73,000)	(77,000)	(178,000)	(73,000)	(162,000)	(73,000)	(162,000)	(93,000)	(93,000)	(1,593,000)
Total Corporate Disbursements	-	(548,000)	(256,000)	(314,000)	(78,000)	(44,000)	(165,000)	(29,000)	(138,000)	(45,000)	(110,000)	(101,000)	(188,000)	(2,016,000)
Cash Flow (Deficit) Before Other	-	(548,000)	(256,000)	(314,000)	(78,000)	(44,000)	(165,000)	(29,000)	(138,000)	(45,000)	(110,000)	(101,000)	(188,000)	(2,016,000)
Other (Disbursement) Receipts	-	(25,704)	541,000	539,000	353,000	(3,671,000)	642,000	504,000	398,000	522,000	280,000	(5,306,000)	-	(5,223,704)
DIP Loan Draws (Repayments)	-	-	-	(50,000)	-	-	-	(40,000)	-	-	-	(34,000)	-	(124,000)
DIP Loan Interest	-	-	(285,000)	(175,000)	(175,000)	(185,000)	(327,000)	(160,000)	(160,000)	(327,000)	(170,000)	(526,000)	(210,000)	(2,700,000)
Debtor Professional Fees	-	-	-	-	-	(100,000)	-	-	-	(100,000)	-	(50,000)	-	(250,000)
DIP Lender Professional Fees	-	-	-	-	-	-	-	-	-	-	-	(75,000)	-	(75,000)
UCC Professional Fees	-	-	-	-	-	-	-	-	-	-	-	(72,000)	-	(72,000)
UST Fees	-	-	-	-	-	-	-	-	-	-	-	(85,000)	-	(85,000)
KERP	-	-	-	-	-	-	-	-	-	-	-	-	-	(800,000)
Critical Vendor Payments	-	-	-	-	(100,000)	(250,000)	(150,000)	(150,000)	(100,000)	(50,000)	-	9,000,000	-	13,250,000
Asset Sales (Net)	-	-	-	-	-	4,250,000	-	-	-	-	-	-	-	-
Misc. Cash Receipts	-	130,000	-	-	-	-	-	-	-	-	-	-	-	130,000
Total Other (Disbursement) Receipts	-	104,296	256,000	314,000	78,000	44,000	165,000	79,000	138,000	45,000	110,000	2,852,000	(210,000)	3,975,296
Net Cash Flow	-	(443,704)	-	-	-	-	-	50,000	-	-	-	2,751,000	(398,000)	1,959,296
Beginning Cash	\$ 693,704	\$ 693,704	\$ 250,000	\$ 250,000	\$ 250,000	\$ 250,000	\$ 250,000	\$ 250,000	\$ 300,000	\$ 300,000	\$ 300,000	\$ 300,000	\$ 3,051,000	\$ 693,704
Ending Cash	\$ 693,704	\$ 250,000	\$ 250,000	\$ 250,000	\$ 250,000	\$ 250,000	\$ 250,000	\$ 300,000	\$ 300,000	\$ 300,000	\$ 300,000	\$ 3,051,000	\$ 2,653,000	\$ 2,653,000

EXHIBIT A-1

DIP Loan Agreement

THIRD MODIFICATION TO LOAN AND SECURITY AGREEMENT [DEBTOR IN POSSESSION]

This Third Modification to Loan and Security Agreement [Debtor In Possession] (the “Amendment”) is entered into as of November __, 2022 by and between **Tech Capital, LLC, a California limited liability company** (the “Lender”), on the one hand, and **Taronis Fuels, Inc., a Delaware corporation** (“Parent”), **Taronis Sub III LLC, a Florida limited liability company** formerly known as **MagneGas Welding Supply – Southeast, LLC** (“MagneGas Southeast”), **MagneGas Welding Supply – South, LLC, a Texas limited liability company** (“MagneGas South”), **MagneGas Welding Supply – West, LLC, a California limited liability company** (“MagneGas West”), **Taronis Sub II LLC, a Texas limited liability company** formerly known as **Tech-Gas Solutions, LLC** (“TGS”), **Taronis - TAS, LLC, a Florida limited liability company** (“Taronis-TAS”), and **Taronis – TAH, LLC, a Florida limited liability company** (“Taronis-TAH”, together with Parent, MagneGas Southeast, MagneGas South, MagneGas West, TGS, and Taronis-TAS, individually and collectively, “Borrower”), **MagneGas Production, LLC, a Delaware limited liability company** (“MagneGas Production”), **MagneGas Real Estate Holdings, LLC, a Delaware limited liability company** (“MagneGas Real Estate”), **MagneGas IP LLC, Delaware limited liability company** (“MagneGas IP”), **MagneGas Limited, an English private limited company** (“MagneGas Ltd.”), **MagneGas Ireland Limited, an Irish private limited company** (“MagneGas Ireland”), **Taronis Sub I LLC, a Delaware limited liability company** formerly known as **Taronis – TGS, LLC** (“Taronis-TGS”), and **Taronis Netherlands B.V., a Dutch private limited company** (“Taronis-Netherlands”; and together with MagneGas Production, MagneGas Real Estate, MagneGas IP, MagneGas Ltd., MagneGas Ireland, and Taronis-TGS, shall be individually and collectively referred to as “Guarantors”; and Guarantors together with Borrower shall be individually and collectively referred to as “Obligors”), on the other hand. Lender together with Obligors shall be referred to jointly herein as “Parties” and individually as “Party.” This Amendment is based on the following facts:

WITNESSETH

WHEREAS, Lender and Borrower have previously entered into that certain Loan and Security Agreement, dated as of October 21, 2020 (as amended, modified and supplemented from time to time thereafter, the “Prepetition Agreement”), and related documents (collectively, the “Loan Documents”), pursuant to which Lender agreed to make and did make certain loans and provide certain financing to Borrower;

WHEREAS, on November 11, 2022, certain Obligors filed voluntary petitions under chapter 11 of the Bankruptcy Code with the Bankruptcy Court commencing the Bankruptcy Cases (as such terms are defined herein);

WHEREAS, Borrower has requested that Lender continue to provide financing to Borrower during the Bankruptcy Cases under the Prepetition Agreement as amended and assumed by Borrower as debtor in possession by this Amendment, and Lender has agreed with such requests on the condition that Borrower execute and deliver this Amendment and comply with all of the terms and conditions set forth herein;

WHEREAS, Lender has agreed to amend and restate the Prepetition Agreement pursuant to this Amendment to continue to make available to Borrower a facility upon the terms and conditions set forth herein and the Prepetition Agreement.

NOW, THEREFORE, in consideration of the premises herein contained and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Borrower and Lender hereby agree as follows:

1. DEFINITIONS AND CONSTRUCTION. All initially capitalized terms used but not defined herein shall have the meanings assigned to such terms in the Prepetition Agreement, as the context requires.

2. AMENDMENTS.

(a) Lender shall *hereafter* cease making any further Advances under Section 1 of the Prepetition Agreement.

(b) Sections 1.1 and 1.2 are *hereafter* added to the Prepetition Agreement as follows:

“1.1 Subject to the terms of this Agreement, upon Borrower’s request, Lender shall from time to time advance sums to Borrower on a non-revolving basis in the total aggregate amount not to exceed \$11,000,000.00 (each, an “Advance” and collectively, “Advances”) to pay the following:

(a) The budgeted expenses set forth in the Budget (the “DIP Advances”), subject to permitted variances of ten percent (10%) per line item to be measured on a rolling two-week basis with any positive variance being available to offset any negative variance or used for other operating budgeted expenses¹; provided, further, that (i) DIP Advances may only be used for the specific purposes set forth in the Budget, (ii) such DIP Advances shall only be made during the week they are scheduled to be paid in the Budget and Lender shall directly advance budgeted amounts to fully fund the Professional Fee Escrows each week, (iii) such DIP Advances shall not exceed the aggregate amount of \$5,600,000.00; (iv) by week ending December 9, 2022, the Obligations cannot exceed the aggregate amount of \$8,000,000.00; and (v) the amount of each DIP Advance will be reduced by the amount the received Account Collections exceed the projected amounts set forth in the Budget.

(b) A roll-up of the Prepetition Obligations will occur and equal the amount of and upon each receipt of Account Collections and the making of each DIP Advance (collectively, the “DIP Roll-Up Advances”). The Prepetition Obligations shall be substituted and exchanged through the DIP Roll-Up Advances which shall constitute and be deemed Postpetition Obligations outstanding hereunder on and after entry of an applicable Financing Order.”

“1.2 Advances made and any amounts deemed borrowed or exchanged pursuant to Sections 1.1 and 1.2 may not be reborrowed. Notwithstanding any proceeds received from the Sale Transactions (as defined below), Advances will continue to be available under Sections 1.1 and 1.2 subject to the terms of this Agreement.”

(c) Section 3 of the Prepetition Agreement is *hereafter* amended and restated in its entirety to read as follows:

“3. Except as provided below, each Advance and the Obligations to Lender shall be paid by the receipt by, and/or the delivery to, Lender of all payments on Accounts (including, without limitation, deposits relating thereto and collections on cash sales) and proceeds of other Collateral (including, without limitation, the Sale Proceeds). In addition, all Obligations, whenever and however created, shall become immediately due and payable without demand (a) upon the occurrence of an Event of Default (as defined in Paragraph 29) that is not cured prior to the expiration of any cure period applicable to same, if any, or (b) in the case of termination (as set forth in Paragraph 32), whether by notice, lapse of time or otherwise, whichever occurs first. Payments received on Prime Accounts shall be applied to the Obligations first against fees and costs, if any, then against interest and then against principal and with any credit balance to be retained and held by Lender for application against future committed Advances to be made by Lender. Payments received from any other source (including, without limitation, from the application of Sales Proceeds to the payment of the Obligations) that is not proceeds from a Prime Account shall be applied in the same manner as payments received from a Prime Account as set forth herein. Payments shall be credited against the Obligations no later than the next business day following the business day payments are received but for purposes of computing interest shall be deemed made as set forth in Paragraph 4, with all payments subject to reversal upon dishonor. Borrower shall be provided on-line internet access (or other access in Lender’s discretion) to information regarding the Obligations, and such information shall be conclusively presumed to be correct and constitute an account stated unless, within thirty (30) days following any such information first becoming available, Borrower delivers (pursuant to Paragraph 35) written objection thereto to Lender.” With the exception of Account Collections, all payments of Collateral, proceeds of other Collateral (including, without limitation, the Sale Proceeds) or other consideration received or collected from a Borrower or for the account of any Borrower shall be deemed to be applied to Prepetition Obligations first, if any, and then to Obligations arising after the Petition Date; provided, further, the Account Collections may be retained and used by Borrower as “Cash Collateral” solely for budgeted expenses set forth in the Budget and subject to Section 1.1(a) and the Financing Orders.”

¹ For avoidance of doubt, the ten percent (10%) variance shall not apply to any Professionals’ fees or Professional Fee Escrows.

(d) Section 4 of the Prepetition Agreement is *hereafter* amended and restated in its entirety to read as follows:

“4. Advances (including Overadvances, if any) and other Obligations hereunder shall bear interest, on the average daily outstanding balance, at the rate (the “Rate”) of **six percentage point(s) (6.00%)** per annum over and above the rate announced as the “prime” rate in the Western Edition of the Wall Street Journal which is in effect from time to time (the “Prime Rate”); provided that the Prime Rate shall at all times be deemed to be not less than three and one-quarter percent (3.25%) per annum (the “Deemed Prime Rate”) and provided that the minimum amount of interest payable together with the Administrative Fee (as defined in Paragraph 5) shall in no event be less than Ten Thousand and 00/100 Dollars (\$10,000.00) per month (the “Minimum Monthly Interest Payment”). In the event that the Prime Rate is changed, the adjustment in the Rate charged shall be made on the day such change occurs. Interest shall be computed on the basis of a 360-day year for the actual number of days elapsed. Interest shall be due and payable monthly on the first day of each month, and if not so paid, shall bear interest at the Rate. At Lender’s option, accrued interest may be charged as an Advance hereunder and added to the Obligations regardless of whether an Overadvance will result. Notwithstanding anything to the contrary contained in this Agreement, for the purpose of computing interest, no payment made by check or any other means including, without limitation, by wire or credit card receipts, shall be deemed made until three (3) business days after receipt thereof by Lender, to allow for and subject to, clearance of funds (such timer period “Clearance Days”).”

(e) A new subsection (h) is *hereafter* added to Section 5 of the Prepetition Agreement with the remainder of the paragraph to remain unchanged and in full force and effect:

“(h) Facility Fee – On the date that an initial Advance is made under this Agreement, Borrower agrees to pay Lender a facility fee in the amount of two percent (2.0%) of the maximum commitment for Advances made under Section 1.1(a) hereunder.

(f) Section 6 of the Prepetition Agreement is *hereafter* amended and restated in its entirety to read as follows:

“6. This Agreement is made to secure Borrower’s payment and performance of the Obligations. To secure payment and performance of the Obligations, Borrower hereby pledges and grants a continuing security interest in all of Borrower’s assets and interest in assets and proceeds thereof now owned or hereafter acquired, together with all assets now or hereafter described in any UCC-1 financing statement filed against Borrower naming Lender as the secured party, including without limitation the following: (1) all Accounts; (2) all Chattel Paper including without limitation Electronic Chattel Paper; (3) all Inventory; (4) all Equipment; (5) all trade fixtures and all Fixtures if real property collateral is involved; (6) all Instruments; (7) all Financial Assets, including without limitation, Investment Property; (8) all Documents; (9) all Deposit Accounts; (10) all Letter of Credit Rights; (11) all General Intangibles including without limitation copyrights, trademarks, and patents in all countries, Payment Intangibles and Software, and all rights in and to domain names in whatever form, and all derivative URLs; (12) all Supporting Obligations; (13) any Commercial Tort Claim listed on any schedule provided herewith or hereafter; (14) all returned or repossessed goods arising from or relating to any Accounts or Chattel Paper; (15) all certificates of title and certificates of origin or manufacturers statements of origin relating to any of the foregoing, now owned or hereafter acquired; (16) all property similar to any of the foregoing hereafter acquired by Borrower; (17) all ledger sheets, files, records, documents, instruments, and other books and records (including without limitation related electronic data processing Software) evidencing an interest in or relating to the above; (18) all money, cash or cash equivalents; (19) real property interests; (20) recoveries from any Avoidance Actions; and (21) to the extent not otherwise included in the foregoing, all proceeds, products, insurance claims, and other rights to payment and all accessions to, replacements for, substitutions for, and rents and profits of, and noncash proceeds of each of the foregoing (all of the foregoing collectively, the “Collateral”). All of the foregoing terms, capitalized or otherwise, shall have the meaning given in the California Uniform Commercial Code, as amended from time to time (the “UCC”). Notwithstanding any contrary term of this Agreement, Collateral shall not include any waste or other materials that have been or may be designated as toxic or hazardous. Each new Advance and other Obligation(s) (and all prior Advances and other Obligations) shall be secured by this Agreement and all other security agreements that Borrower has then given or caused to be given, or thereafter gives or causes to be given, to Lender.”

(g) A new Section 10.1 is added to the Prepetition Agreement as follows:

“10.1 So long as any Obligations remain outstanding, Borrower warrants, represents, and agrees that:

(a) Borrower shall promptly furnish to counsel for Lender all pleadings, motions, applications, judicial information, financial information and other documents filed by or on behalf of Borrower with the Bankruptcy Court or served upon the United States Trustee in the Bankruptcy Cases or other non-confidential material documents distributed by or on behalf of Borrower to any Committee appointed in the Bankruptcy Cases. Borrower shall promptly advise and provide reasonable access to, and discuss with, Lender and its counsel any and all material information and developments in connection with any proposed chapter 11 plan or Sale Transaction, including without limitation, any letters of intent, commitment letters or engagement letters received by Borrower, any asset valuation and disclosure statement, and any other event or condition which is reasonably likely to have a material effect on Borrower or the Bankruptcy Cases. As pertaining to any Sale Transaction, Borrower shall provide Lender status reports not less frequently than on a weekly basis regarding efforts to consummate any Sale Transaction.

(b) Borrower shall not use proceeds of the Advances or the Texas Hold-Back in connection with, pertaining to, or relating to an Adverse Action.

(c) Borrower shall not incur, create, assume, suffer or permit any claim or lien or encumbrance against it or any of its property or assets in the Bankruptcy Cases (other than the claims specifically referred to in the Financing Orders but only to the extent therein described) to be pari passu with or senior to the interest and claims of Lender against Borrower, or apply to the Bankruptcy Court for authority to do so, except to the extent permitted herein.

(d) All fees or expenses of Professionals at any time shall be paid pursuant to an order approving the allowance and payment of such fees and reimbursement of such expenses, or establishing procedures for such payments or approval of such fees and reimbursement.

(e) Borrower shall not request, seek or consent to, and shall oppose and contest (unless otherwise consented to by Lender), any modification, stay, vacating of or amendment of any Financing Order or Loan Documents.

(f) Except as otherwise expressly provided by the Financing Orders, Borrower shall not seek or support any approval of the granting of any priority for any administrative expense, secured claim or unsecured claim (now existing or hereafter arising of any kind or nature whatsoever) which is equal or superior to the priority in respect of the Obligations unless otherwise expressly consented to by Lender in writing.

(g) Prior to the date on which the Obligations have been paid in full in cash and any commitment of Lender to provide Advances, loans or any other financial accommodation hereunder has been terminated, Borrower shall not pay any administrative priority expenses except for the allowed fees and expenses of Professionals and other administrative priority expenses as provided and otherwise not prohibited herein or in the Budget.

(h) Borrower shall not make any payments or transfers of any property on account of claims asserted by any vendors of Borrower for reclamation in accordance with Section 2-702 of any applicable UCC and Section 546(c) of the Bankruptcy Code, unless otherwise ordered by the Court or consented to by Lender in writing.

(i) Upon and in the event of the termination of Lender's commitment to make Advances, loans or provide financial accommodations hereunder, Borrower shall not request or support any request for the use of Collateral or Cash Collateral pursuant to Section 363 of the Bankruptcy Code or other applicable law that would extend beyond January 20, 2023 under any circumstance without Lender's further express, written consent.

(j) In accordance with and to the extent permitted by the Financing Orders, Borrower hereby waives any claims to surcharge the Collateral under Section 506(c) of the Bankruptcy Code.

(k) Borrower shall achieve and satisfy all acts and events relating to the California Asset Sale and the Texas Asset Sale in accordance with the California Sale Timeline and the Texas Sale Timeline, respectively.

(l) Borrower shall commence the Avoidance Actions within thirty (30) days after the Petition Date and diligently prosecute such actions.”

(h) Section 23 is *hereafter* amended by adding the following as the last sentence thereto with the remainder of the paragraph to remain unchanged and in full force and effect:

“Borrower shall deliver to Lender a weekly report, in form and substance satisfactory to Lender, reflecting without limitation the following: the actual cash receipts, sales journals, disbursements on a line item basis and check registers for the preceding week (and on a cumulative basis since the Petition Date), the dollar amount and percentage variance of such amounts from those set forth on the Budget for the preceding week (and on a cumulative basis since the Petition Date).”

(i) A new Section 29.1 is *hereafter* added to the Prepetition Agreement as follows:

“29.1 The occurrence of any of the following in connection with the Bankruptcy Cases shall also constitute an Event of Default notwithstanding any applicable cure periods:

(a) the entry of an order in the Bankruptcy Cases: authorizing Borrower in the Bankruptcy Cases to incur indebtedness (except as expressly permitted under this Agreement) or additional financing under Section 364(c) or (d) of the Bankruptcy Code other than from Lender or without the express prior written consent of Lender; authorizing any party to recover from any material portions of the Collateral; authorizing any costs or expenses under Section 506(c) of the Bankruptcy Code as a surcharge against the Collateral; authorizing the use of Cash Collateral without Lender’s prior written consent under Section 363(c) of the Bankruptcy Code (except as provided herein or in the Financing Orders); appointing an interim or permanent trustee, or an examiner having enlarged powers relating to the operation of the businesses of Borrower under Section 1106(b) of the Bankruptcy Code; dismissing the Bankruptcy Cases, absent Lender’s prior written consent, or converting the Bankruptcy Cases to proceedings under chapter 7 of the Bankruptcy Code; granting relief from or modifying the automatic stay of Section 362 of the Bankruptcy Code to allow any party to execute upon or enforce a lien on or exercise any right with respect to any material portion of the Collateral or to the extent it would result in a material adverse effect on Borrower, Borrower’s financial or operational condition, or Borrower’s prospects; absent Lender’s prior written consent, amending, supplementing, staying, reversing, vacating or otherwise modifying any Financing Order, this Agreement or any other Loan Document, or Lender’s rights, benefits, privileges or remedies under the Financing Orders, this Agreement or any other Loan Document; approving or allowing any other administrative expense claim (other than as specifically provided herein) having any priority over, or being *pari passu* with the administrative expense priority of the Obligations incurred after the Petition Date);

(b) the Court shall fail to enter a Final Financing Order by December 9, 2022;

(c) the filing by Borrower or other Obligor of a chapter 11 plan that does not provide for the indefeasible payment (or cash collateralization in the case of contingent obligations) of all Obligations in full in cash or the unimpairment of all Obligations on the effective date thereof;

(d) the occurrence of any condition or event which permits Lender to exercise any of the remedies set forth in the Financing Orders, including, without limitation, any “Default” or “Event of Default”, as defined in the Financing Orders;

(e) the termination or non-renewal of the Prepetition Agreement as provided herein or in the Financing Orders;

(f) the discontinuance, cessation or termination, at any time, by a proposed buyer resulting in Borrower's inability to complete the events relating to the California Asset Sale and the Texas Asset Sale in accordance with the California Sale Timeline and the Texas Sale Timeline, respectively.

(g) Borrower suspends or discontinues or is enjoined by any court or governmental agency from continuing to conduct all or any material part of its business or if a trustee, receiver or custodian is appointed for any Borrower or any of its properties; or

(h) any act, condition or event occurring after the date of the commencement of the Bankruptcy Cases that has a material adverse effect on Borrower or the Collateral or the rights and remedies of Lender under this Agreement or any other Loan Document, or otherwise causes a material adverse effect on Borrower, Borrower's financial or operational condition, or Borrower's prospects.

Notwithstanding anything contained in this Agreement to the contrary, Lender may, upon the occurrence of an Event of Default, subject to the Financing Orders, exercise and all rights and remedies pursuant to the laws of the State of California, the UCC, the Loan Documents or other applicable law, and Lender may immediately cease making Advances or extending credit to or for the benefit of Borrower under this Agreement, the Loan Documents or any other agreement between Borrower and Lender without affording any cure period (unless otherwise specified in the Agreement), notice, application, or motion to, or order of, the Bankruptcy Court."

(j) Section 32 of the Prepetition Agreement is *hereafter* amended by inserting the last sentence as follows with the remainder :

"Notwithstanding anything to the contrary, this Agreement shall only become effective upon execution and delivery by Borrower and Lender and shall continue in full force and effect until the earlier of: (1) January 20, 2023 or such later date determined by Lender in its Sole Discretion; (2) upon the consummation of a Sale Transaction by Borrower with all proceeds realized immediately delivered to Lender upon consummation of such sale(s), in amounts sufficient to satisfy all Obligations in full; (3) indefeasible satisfaction of all (or cash collateralization in the case of contingent obligations) Obligations in full and the termination of Lender's commitment to provide Advances, loans or financial accommodations hereunder; (4) termination upon the occurrence of an Event of Default (after the expiration of any applicable cure or notice periods); or (5) such earlier date of termination as provided for in this Agreement."

(k) Section 37 of the Prepetition Agreement is hereafter amended and restated in its entirety to read as follows:

"37. Borrower promises and agrees as follows:

(a) Borrower, on behalf of itself and subject to the terms of the Financing Orders, acknowledges, confirms and agrees that it has no defense, counterclaim, offset, cross-complaint, claim or demand of any kind or nature whatsoever that can be asserted to reduce or eliminate all or any part of Borrower's liability to repay Lender or to seek affirmative relief or damages of any kind or nature from Lender. Borrower, together with its successors, assigns, subsidiaries and affiliates (collectively, the "Releasing Parties"), hereby fully, finally and forever release and discharge Lender (including in its respective capacity as Prepetition Lender) and all of each of such party's past and present officers, directors, servants, agents, attorneys, assigns, heirs, parents, subsidiaries, and each person acting for or on behalf of any of them (collectively, "Lender Parties") of and from any and all past and present actions, causes of action, demands, suits, claims, liabilities, liens, lawsuits, adverse consequences, amounts paid in settlement, costs, damages, debts, diminution in value, expenses, losses and other obligations of any kind or nature whatsoever, whether in law, equity or otherwise (including without limitation those arising under 11 U.S.C. §§ 541-550 and interest or other carrying costs, penalties, legal, accounting and other professional fees and expenses), whether known or unknown, fixed or contingent, direct or indirect, asserted or unasserted, foreseen or unforeseen, suspected or unsuspected, now existing or heretofore existing against any of the Lender Parties, whether held in a personal or representative capacity, and which are based on any act, fact, event or omission or other matter, cause or thing occurring at or from any time prior to and including the date hereof in any way, directly or indirectly arising out of, connected with or relating to the Prepetition Financing Agreements and the transactions contemplated hereby, and all other agreements, certificates, instruments and other documents and statements related to any of the foregoing. Effective upon the execution hereof, and notwithstanding any failure of

Borrower to satisfy any of the conditions precedent set forth herein, the Releasing Parties hereby agree that, without any further act, Lender, together with each of its officers, directors, employees, counsel, agents, and attorneys in fact, are fully and forever released and discharged from any and all claims for damages or losses to the Releasing Parties (whether these damages or losses are known or unknown, foreseen or unforeseen) including, without limitation, tort claims, demands, actions and causes of action of any nature, whatsoever arising under or relating to the Prepetition Financing Agreements or any of the transactions related thereto, prior to the date hereof, and the Releasing Parties waive application of California Civil Code Section 1542. The Releasing Parties certify that they have read the following provisions of California Civil Code Section 1542:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

(b) The Releasing Parties understand and acknowledge that the significance and consequence of this waiver of California Civil Code Section 1542 is that even if it should eventually suffer additional damages arising out of the facts referred to above, it will not be able to make any claim for those damages. Furthermore, the Releasing Parties acknowledge that they intend these consequences even as to claims for damages that may exist as of the date of this release but which they do not know exist, and which, if known, would materially affect their decision to execute this Agreement, regardless of whether their lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause. The Releasing Parties understand, acknowledge and agree that the release set forth above may be pleaded as a full and complete defense and may be used as a basis for an injunction against any action, suit or other proceeding which may be instituted, prosecuted or attempted in breach of the provisions of such release.

(c) Each Releasing Party, on behalf of itself and its successors, assigns, and other legal representatives, hereby absolutely, unconditionally and irrevocably, covenants and agrees with each Lender Party that it will not sue (at law, in equity, in any regulatory proceeding or otherwise) any Lender Party on the basis of any claim released, remised and discharged by any Releasing Party pursuant to this Section 37. If any Releasing Party violates the foregoing covenant, the Releasing Parties agree to pay, in addition to such other damages as any Lender Party may sustain as a result of such violation, all reasonable attorneys' fees and costs incurred by any Lender Party as a result of such violation. Borrower further agrees to indemnify the Lender Parties against, and hold each of them harmless from, any liability of any kind or nature, including attorneys' fees and Lender Expenses which may be imposed upon, incurred by, or asserted against any of the Lender Parties, in any way relating to or arising out of this Agreement or the transactions contemplated hereby, except to the extent of any liability caused by any of the Lender Parties' gross negligence or willful misconduct as finally determined by a court of competent jurisdiction. The releases pursuant to this Section 37 are effective notwithstanding anything contrary contained in the Loan Documents and with the foregoing indemnity and hold harmless to survive termination of this Agreement and payment and performance of the Obligations and continue thereafter.

(l) Section 40 of the Prepetition Agreement is *hereafter* amended by adding the following as the last sentence thereto with the remainder of the paragraph to remain unchanged and in full force and effect:

"If an Event of Default occurs, and to the extent Lender is permitted to exercise its rights and remedies pursuant to the Financing Orders, other order of the Bankruptcy Court, or law, Borrower hereby waives all rights to notice and hearing prior to the exercise by Lender of its right to repossess the Collateral without judicial process or to replevy attach or levy upon the Collateral without notice of hearing. Obligors each further hereby irrevocably waive personal service of any summons, complaint or other process in connection with such action and agree that service thereof may be made by certified or registered mail directed to it at the address listed in this Agreement."

(m) Section 49 of the Prepetition Agreement is *hereafter* amended by adding the following as the last sentence thereto with the remainder of the paragraph to remain unchanged and in full force and effect

“Notwithstanding the foregoing, the parties agree that all actions or proceedings arising in connection with this Agreement and/or the Loan Documents shall be tried and litigated only in the Bankruptcy Court.”

(n) A new Section 52 is *hereafter* added to the Prepetition Agreement as follows:

“52. For purposes of this Agreement:

“Account Collections” shall mean payments, collections, proceeds, or any other consideration received on Accounts.

“Advances” shall have the meaning set forth in Section 1.1 and include DIP Advances and DIP Roll-Up Advances.

“Adverse Action” shall mean (a) an assertion or joinder in any claim, counter-claim, action, proceeding, application, motion, objection, defense or other contested matter, the purpose of which is to seek any order, judgment, determination or similar relief: (i) challenging or contesting the legality, validity, priority, amount or enforceability of the Obligations, (ii) challenging or contesting the legality, validity, priority or enforceability, or seeking to invalidate, set aside, avoid or subordinate, in whole or in part, any lien or interest in favor of Prepetition Lender or Lender in the Collateral, or (iii) seeking to prevent, hinder or delay the assertion or enforcement by Prepetition Lender or Lender of any right, remedy, claim, benefit, or privilege of, or lien or interest in favor of such party in the Collateral or realization upon any Collateral, (b) a request to use cash collateral without Lender’s consent, except as provided herein, (c) any negotiation, solicitation or attempt to obtain postpetition loans or other financial accommodations (other than indebtedness that would be used to pay all Obligations in full or otherwise permitted hereunder) pursuant to Section 364(c) or (d) other than from Lender or such other party without Lender’s consent, (d) the commencement or prosecution of any action or proceeding of any claims, causes of action or defenses against Prepetition Lender or Lender, or any of its respective officers, directors, employees, agents, attorneys, affiliates, assigns or successors, including without limitation any attempt to recover on an Avoidance Action from any such party, or (e) any act which has or could have the effect of materially modifying or compromising any right, remedy, claim, benefit or privilege of Prepetition Lender or Lender, or which is contrary to any term or condition set forth in or acknowledged by the Prepetition Financing Agreements, or the Loan Documents.

“Avoidance Actions” shall mean claims, actions, causes of action, and proceeds thereof arising pursuant to Sections 544, 545, 547, 548, 549, 550, or 551 of the Bankruptcy Code and, to the extent applicable under the foregoing, Section 550 of the Bankruptcy Code, but specifically excluding claims, actions, or causes of action under Section 549 of the Bankruptcy Code and any proceeds relating thereto or arising therefrom.

“Bankruptcy Cases” shall mean the cases commenced by Borrower under chapter 11 of the Bankruptcy Code before the Bankruptcy Court sought to be jointly administrated under case no. 22-11121 (BLS).

“Bankruptcy Court” shall mean the United States Bankruptcy Court for the District of Delaware.

“Budget” shall mean the week-by-week projections for Borrower in the form attached hereto as Exhibit A, in form and substance satisfactory to Lender, setting the projected information to include, on a consolidated basis for Borrower, (i) projected weekly operating cash receipts for each week commencing with the week ending on November 11, 2022; (ii) projected weekly operating cash disbursements commencing for each week commencing with the week ending on November 18, 2022; and (iii) such other information, at such intervals, as may be requested by Lender in order to evaluation compliance with the terms of this Agreement.²

² The projected Sale Proceeds reflected in the Budget are for illustrative purposes only. The amounts indicated are not in any way to be construed as a limitation on the Sale Proceeds to be remitted to Lender. Further, amounts indicated in the Budget regarding the amount of the Obligations are estimates and for illustrative purposes only.

“California Asset Sale” shall mean the sale or disposition by Borrower pursuant to Section 363 of the Bankruptcy Code of all, substantially all, or a significant portion of the assets of MagneGas West (other than sales or other dispositions of assets in the ordinary course of MagneGas West’s business) resulting in cash proceeds promptly delivered to Lender to indefeasibly pay the Obligations in accordance with the California Sale Timeline.

“California Sale Motion” shall mean a motion (together with an executed, definitive asset purchase agreement in form and substance acceptable to Lender) filed in the Bankruptcy Cases seeking approval by the Bankruptcy Court of the California Asset Sale pursuant to the California Sale Timeline.

“California Sale Timeline” means the following schedule of events by which the California Asset Sale is to occur and be accomplished:

(a) On or before seven (7) calendar days after the Petition Date, Borrower shall have filed in the Bankruptcy Cases the California Sale Motion;

(b) On or before twenty-eight (28) calendar days after the Petition Date, an order acceptable to Lender shall be entered in the Bankruptcy Cases approving the California Sale Motion.

(c) On or before thirty-five (35) calendar days after the Petition Date, Lender shall have received all cash proceeds derived from the California Asset Sale in a sum not less than \$4,250,000.00 (or such other amount acceptable to Lender at its Sole Discretion) available to reduce the Obligations.

(d) The deadlines in subparagraphs (b) and (c) above comprising the California Sale Timeline may be extended by up to three (3) business days for good cause as determined by Lender in its Sole Discretion.

“Cash Collateral” shall mean the cash and noncash rents, issues, profits and proceeds of the Collateral, of any kind and nature, within the meaning of Section 363(a) of the Bankruptcy Code.

“Committee” shall mean any official committee appointed in the Bankruptcy Case under Section 1102 of the Bankruptcy Code.

“Final Financing Order” shall mean an order, and related findings of fact and conclusions of law in support thereof, of the Bankruptcy Court entered in the Bankruptcy Case after a final hearing pursuant to Bankruptcy Rule 4001(c)(2) authorizing on or after the Petition Date, the incurrence of indebtedness by Borrower, the provision of loans, advances and other financial accommodations by Lender to Borrower, and the granting of liens, interests, priority claims and other rights in favor of Lender pursuant to the Loan Documents, pursuant to Section 364 of the Bankruptcy Code and other applicable sections of the Bankruptcy Code, in form and substance acceptable to Lender in its sole and absolute discretion, as the same may be amended, supplemented or otherwise modified from time to time with the express written consent of Borrower, and Lender as may be required to approve such modifications, and that is not subject to any stay or injunction pending any appeal or petition for certiorari, review, rehearing or reconsideration, or otherwise.

“Financing Order(s)” shall mean, individually and collectively, the Interim Financing Order, the Final Financing Order, and such other orders, and related findings of fact and conclusions of law in support thereof, relating thereto or authorizing on or after the Petition Date, the incurrence of indebtedness by Borrower, the provision of loans, advances and other financial accommodations by Lender to Borrower, the granting of liens, interests, priority claims and other rights in favor of Lender pursuant to the Loan Documents, on an emergency, interim, final or other basis pursuant to Section 364 of the Bankruptcy Code and other applicable sections of the Bankruptcy Code as may be issued or entered in the Bankruptcy Case, each and all in form and substance acceptable to Lender in its sole and absolute discretion.

“Interim Financing Order” shall mean an order, and related findings of fact and conclusions of law in support of such order, of the Bankruptcy Court entered in the Bankruptcy Cases after a hearing held within 15 days after service of a motion requesting issuance and entry of a Financing Order under Bankruptcy Rule 4001(b)(2) and (c)(2), authorizing on or after the Petition Date, the incurrence of indebtedness by Borrower,

the provision of loans, advances and other financial accommodations by Lender to Borrower, and the granting of liens, interests, priority claims, and other rights in favor of Lender pursuant to the Loan Documents, pursuant to Section 364 of the Bankruptcy Code and other applicable sections of the Bankruptcy Code, in form and substance acceptable to Lender in its sole and absolute discretion, as the same may be amended, supplemented or otherwise modified from time to time with the express written consent of Lender as may be required to approve such modifications, that is not subject to any stay or injunction pending any appeal or petition for certiorari, review, rehearing, or reconsideration or otherwise.

“Lender Expenses” shall have the meaning set forth in Section 26.

“Loan Documents” shall mean collectively, the Prepetition Agreement, and all notes, other guarantees, security agreements, subordination agreements, the Financing Orders, and other agreements, documents and instruments now or at any time hereafter executed and/or delivered by Borrower or any Obligor in connection with this Agreement or the Prepetition Agreement, or otherwise, as the same now exist or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced.

“Obligations” shall mean: (a) all Prepetition Obligations, Postpetition Obligations and all Advances (including any advances made to fund fees and expenses of Professionals); (b) all of Borrower’s other present and future obligations to Lender, including contingent obligations and indemnification obligations; (c) the repayment of (i) any amounts that Lender may advance or spend for the maintenance or preservation of the Collateral (as defined herein below) or any collateral provided by any Guarantor (as defined in Paragraph 23); and (ii) any other expenditures that Lender may make under the provisions of this Agreement or for the benefit of Borrower including the Texas Hold-Back; (d) all amounts owed under any modifications, renewals or extensions of any of the foregoing obligations whether or not of the nature contemplated at the date hereof, both prior and subsequent to the commencement of the Bankruptcy Cases; (e) all other amounts now or in the future owed by Borrower or any Guarantor to Lender whether for the payment of money, whether direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising; (f) Lender Expenses; (g) any of the foregoing, interest, fees and costs that, but for the commencement of the Bankruptcy Cases, would have accrued and be due and payable; and (h) interest on the preceding amounts as set forth in this Agreement or the Loan Documents, or if no such agreement, at the maximum rate permitted by law.

“Obligor” shall mean the entities individually and collectively defined as “Obligors” in the preamble hereto.

“Petition Date” shall mean the date of the commencement of the Bankruptcy Cases.

“Postpetition Obligations” shall mean all Obligations existing, arising and occurring after the Petition Date including DIP Advances and DIP Roll-Up Advances.

“Prepetition Agreement” shall mean that certain Loan and Security Agreement, dated as of October 21, 2020, between Borrower and Prepetition Lender, as amended, modified, supplemented and restated as of the Petition Date.

“Prepetition Collateral” shall mean “Collateral” as defined in the Prepetition Agreement other than Collateral acquired after the Petition Date within the meaning of Section 552(a) of the Bankruptcy Code.

“Prepetition Financing Agreements” means, collectively, the Prepetition Agreement, the Secured Promissory Note, dated December 14, 2020, and any other agreements, instruments, certificates or other documents entered into in connection with the Prepetition Agreement, including collateral documents, letter of credit agreements, security agreements, pledges, guaranties, mortgages, deeds of trust, assignments, and subordination agreements, and any other agreements executed by Borrower, any guarantor or any affiliate of Borrower pursuant hereto or in connection herewith.

“Prepetition Lender” shall mean Lender under the Prepetition Financing Agreement.

“Prepetition Liens” shall mean all liens on and security interests in the Prepetition Collateral in favor of Prepetition Lender.

“Prepetition Obligations” shall mean all Obligations existing before the Petition Date.

“Professionals” shall mean any and all attorneys, accountants, advisors, consultants, appraisers, brokers, investment bankers, and other professionals retained or employed under Section 327 or 1103(a) by Borrower or any official committee appointed in the Bankruptcy Cases under Section 1102 of the Bankruptcy Code.

“Professional Fee Escrows” shall mean the amounts specified as being “(Escrowed)” in accounts for certain Professionals as delineated in the “Chapter 11 Related Cash Flow” section of the Budget.

“Releasing Parties” shall have the meaning set forth in Section 37.

“Sale Proceeds” means the sale proceeds resulting from the California Asset Sale and/or the Texas Asset Sale.

“Sale Transaction” shall mean the sale or disposition by Borrower pursuant to Section 363 of the Bankruptcy Code of all, substantially all, or a significant portion of the assets of Borrower (other than sales or other dispositions of assets in the ordinary course of Borrower’s business) by one or more individuals sales or dispositions such as the California Asset Sale and Texas Asset Sale, providing Borrower with cash proceeds in an aggregate amount sufficient to indefeasibly pay all Obligations in full and which are promptly delivered to Lender to pay Obligations in full; provided, further, the closing of the Sale Transactions shall be handled through escrow pursuant to commercially reasonable terms or such other reasonable procedure acceptable to Lender.

“Texas Asset Sale” shall mean the sale or disposition by Borrower pursuant to Section 363 of the Bankruptcy Code of all, substantially all, or a significant portion of the assets of MagneGas South (other than sales or other dispositions of assets in the ordinary course of MagneGas South’s business) resulting in cash proceeds promptly delivered to Lender and sufficient to indefeasibly pay the Obligations in full in accordance with the Texas Sale Timeline.

“Texas Hold-Back” means in the event the Sale Proceeds derived from the Texas Asset Sale are insufficient to fully satisfy the Obligations and remaining budgeted but unpaid administrative expenses of the Case, an amount will be held back from such sale proceeds [to satisfy such unpaid budgeted administrative expenses that are reasonable and documented amounts allowed by the Court as administrative expenses owed to Professionals or is otherwise a line item in the Budget and have not been paid prior to closing of the Texas Asset Sale; and, such amount to be held back shall *equal*: **\$1,800,000.00** less the aggregate of: (x) amounts delineated for Professional Fee Escrows (including amounts already funded for such escrows or previously been paid); and (y) any available Account Collections. The held back funds shall be held in accounts in a manner acceptable to Lender and be subject to release to such administrative claimants upon Court order; and any held back funds not authorized for release shall be remitted promptly back to Lender.

“Texas Sale Motion” shall mean a motion (together with an executed, definitive asset purchase agreement in form and substance acceptable to Lender) filed in the Bankruptcy Cases seeking approval by the Bankruptcy Court of the Texas Asset Sale pursuant to the Texas Sale Timeline.

“Texas Sale Procedures” means certain procedures by which Borrower shall accomplish the Texas Asset Sale pursuant to the Texas Sale Timeline, including without limitation, the solicitation of competing offers and transaction structures, the review and evaluation of offers, the conduct of an auction or other process to competitively value the proposed transactions, the deadline for filing of responses to the Texas Sale Motion and replies thereto, and the time periods by which such events or tasks are to be accomplished or occur under terms and conditions acceptable to Lender.

“Texas Sale Timeline” means the following schedule of events by which the Texas Asset Sale is to occur and be accomplished:

(a) On or before seven (7) calendar days after the Petition Date, Borrower shall have filed in the Bankruptcy Cases a motion seeking approval by the Bankruptcy Court of the Texas Sale Procedures and the Texas Sale Motion.

(b) On or before twenty-eight (28) calendar days after the filing of the motion seeking approval of the Texas Sale Procedures, an order acceptable to Lender shall be entered in the Bankruptcy Cases approving such motion and also on or before twenty-eight (28) calendar days after the filing of such motion, in the event the Texas Asset Sale contemplates the sale or disposition of all, substantially all, or a significant portion of the assets of MagneGas South, Borrower shall (i) have received binding or non-binding indications of interest for the purchase of such assets, which may pursuant to the Texas Sale Procedures designate a buyer as the “stalking horse” bidder for the purchase of such assets (together with an executed, definitive asset purchase agreement in form and substance acceptable to Lender) containing a minimum “stalking horse” bid, without contingencies other than approval of such bid or a higher and better bid by the Bankruptcy Court or (ii) schedule such other sale hearing or procedures as are acceptable to Lender.

(c) On or before fifty-six (56) calendar days after the filing of the Texas Sale Motion, an order acceptable to Lender shall be entered in the Bankruptcy Cases approving the Texas Sale Motion.

(d) On or before sixty-three (63) calendar days after the filing of the Texas Sale Motion, Lender shall have received cash proceeds realized from the Texas Asset Sale in an amount sufficient to indefeasibly pay all Obligations in full; and such net sale proceeds shall not be less than \$9,000,000.00.

(e) The deadlines in subparagraphs (b) through (d) above comprising the Texas Sale Timeline may be extended by up to three (3) business days for good cause as determined by Lender in its sole discretion.

(o) A new Section 53 is *hereafter* added to the Prepetition Agreement as follows:

“53. The obligation of Lender to make Advances hereunder is subject to the satisfaction of, or waiver of, immediately prior to or concurrently with the making of such Advances, the following conditions precedent:

(a) UCC Filings - Any documents (including without limitation, financing statements) required to be filed in order to create, in favor of Lender, a first and exclusive perfected security interest in the Collateral with respect to which a security interest may be perfected by a filing under the UCC shall have been properly filed in each office in each jurisdiction required in order to create in favor of Lender a perfected lien on the Collateral. Lender shall have received acknowledgment copies of all such filings (or, in lieu thereof, Lender shall have received other evidence reasonably satisfactory to Lender that all such filings have been made); and Lender shall have received evidence that all necessary filing fees, taxes and other expenses related to such filings have been paid in full.

(b) Further Assurances; Additional Documents – Borrower and Obligors shall have executed and delivered to Lender all the Loan Documents necessary to consummate the lending arrangement contemplated hereunder.

(c) Interim Financing Order – Lender shall have received a certified copy of the Interim Financing Order, which shall have been entered, together with all “first day” pleadings in connection with the Bankruptcy Cases, and Lender shall be satisfied with all such pleadings which would have a material effect on the Lender, including, without limitation, any pleadings concerning the repayment of the Obligations.

(d) Pendency of Bankruptcy Cases - No order shall have been entered, or requested or supported by Borrower, (i) for appointment of a trustee or examiner with enlarged powers with respect to the operation of Borrower’s business beyond those set forth in subsections 1106(a)(3) and 1106(a)(4) of the Bankruptcy Code, or (ii) to convert the Bankruptcy Cases to Chapter 7 or to dismiss the Bankruptcy Cases.

(e) Effectiveness of Financing Orders - The Interim Financing Order (if the Final Financing Order is not entered and is not a final order) or the Final Financing Order, as the case may be, in form and substance satisfactory to Lender, shall be in full force and effect and shall not have been reversed, stayed, modified or amended, except for such modifications and amendments mutually agreed to by Borrower and Lender, and there shall have been no material objections to either Financing Order by any interested party which remain subject to appeal.

(f) Absence of Default and Material Adverse Change - No Default, Event of Default or material adverse change in the financial condition, business, profits, operations or assets of Borrower shall have occurred.

(g) Legal Restraints/Litigation - At the date of execution of this Agreement, there shall be no i) (with the exception of the action entitled Tyler B. Wilson v. Taronis Fuels, Inc. pending in the United States District Court for the District of Arizona bearing case no. 2:22-cv-00229-SPL and the action by the United States Securities and Exchange Commission pending in the United States District Court for the Middle District of Florida bearing case no. 9:22-cv-01939 and related matters), litigation, investigation or proceeding (judicial or administrative) pending or threatened against Borrower or its assets, by any agency, division or department of any county, city, state or federal government arising out of this Agreement, ii) injunction, writ or restraining order restraining or prohibiting the consummation of the financing arrangements contemplated under this Agreement or iii) to the best knowledge of Borrower, suit, action, investigation or proceeding (judicial or administrative) pending or threatened against Borrower or its assets, which, in the reasonable opinion of Borrower if adversely determined could reasonably be expected to have a material adverse effect on the business, operation, assets, financial condition or Collateral of Borrower and its subsidiaries, taken as a whole.

(p) Unless otherwise provided in this Agreement, all notices or demands by Borrower or Lender to the other relating to this Agreement or any other Loan Document shall be in writing and (except for financial statements and other informational documents which may be sent by electronic mail) shall be personally delivered or sent by registered or certified mail (postage prepaid, return receipt requested), overnight courier, electronic mail, or telefacsimile as set forth below:

If to Obligors: Taronis Fuels, Inc.
24980 N. 83rd Avenue, Suite 100
Peoria, Arizona 85383
Attn: [_____]

-and-

Potter Anderson & Corroon LLP
1313 N. Market Street, 6th Floor
Wilmington, DE 19801-6108
Attn: Jeremy Ryan and Katherine Good
(302) 984-6049 Phone
(302) 658-1193 Fax
jryan@potteranderson.com
kgood@potteranderson.com

If to Lender: Tech Capital, LLC
2010 North First Street, Suite 300
San Jose, CA 95131
Attn: Hank Noon
(408) 487-7577
(408) 467-2393 Fax
hnoon@techcu.com

-and-

Hemar, Rousso, & Heald, LLP
15910 Ventura Blvd., 12th Floor
Encino, CA 91436
Attn: Alexandra Rhim and Jacqueline James
(818) 907-3135 Phone
(818) 501-2985 Fax
arhim@hrhlaw.com
jjames@hrhlaw.com

3. ACKNOWLEDGEMENT OF PREPETITION OBLIGATIONS. As of the Petition Date, (i) the Prepetition Obligations were due and outstanding pursuant to the Prepetition Financing Agreements in the principal amount of not less than approximately \$5,577,443, plus accrued interest, fees, costs and charges, including without limitation, reasonable attorneys' fees, in the aggregate, all of which Prepetition Obligations are unconditionally owing by Borrower to Prepetition Lender, without offset, defense or counterclaim of any kind, nature and description whatsoever; (ii) Borrower does not have any defense to, set off, counterclaim or other basis to challenge the Prepetition Obligations; (iii) the Prepetition Obligations are secured by valid perfected liens on all of the Prepetition Collateral; (iv) the Prepetition Liens encumbering the Prepetition Collateral are not avoidable in any way, including without limitation, by operation of any section of the Bankruptcy Code, including without limitation sections 541-550 of the Bankruptcy Code or any other law; (v) the Prepetition Obligations and the Prepetition Liens are not subject to subordination in favor of any other person on any basis except as specifically provided in the Prepetition Agreement.

4. ASSUMPTION AND RESTATEMENT. Effective as of the date hereof, Borrower hereby agree to become a borrower, debtor, and obligor under, and to bind itself to, the Prepetition Financing Agreement to which Borrower is bound generally (in each case, as modified and restated hereby), and, in such capacity, to assume and bind itself to all Obligations of Borrower thereunder (as modified and restated hereby). The terms, conditions, agreements, covenants, representations and warranties set forth in and relating to the Prepetition Agreement are hereby amended and restated in their entirety, and as so amended and restated, replaced and superseded, by the terms, conditions, agreements, covenants, representations and warranties set forth in this Agreement. This Agreement does not extinguish the obligations, including, without limitation, obligations for the payment of money outstanding under the Prepetition Agreement or other Loan Documents or discharge or release the obligations or the liens or priority of any mortgage, pledge, security agreement or any other security therefor, which shall continue, as modified and restated hereby, without interruption and in full force and effect. Nothing herein contained shall be construed as a substitution or novation of the obligations outstanding under the Prepetition Agreement or other Loan Documents or instruments securing the same, which shall remain in full force and effect, except as modified hereby or by instruments executed concurrently herewith. Nothing expressed or implied in this Amendment shall be construed as a release or other discharge of any Borrower or Obligor from any of their obligations or liabilities under the Prepetition Financing Agreement or any of the security agreements, pledge agreements, mortgages, guaranties or other Loan Documents executed in connection therewith. Obligors hereby ratify, assume, adopt, confirm and agree that (i) the Prepetition Financing Agreement or other Loan Documents to which it is a party are, and shall continue to be, in full force and effect as amended hereby and are hereby ratified and confirmed in all respects; and (ii) to the extent that any such Prepetition Financing Agreement or other Loan Document purports to assign or pledge to Lender a security interest in or lien on, any Collateral as security for the Obligations existing in respect of the Prepetition Agreement, such pledge, assignment or grant of the security interest or lien is hereby ratified and confirmed in all respects in favor of Lender in connection with this Amendment and the Loan Documents to secure the Obligations.

[SIGNATURES CONTINUED ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the date first set forth above.

LENDER

Tech Capital, LLC,
a California limited liability company

By: _____
Name: Hank Noon
Its: Sr. V.P. – Head of Asset Based Lending

OBLIGORS

Taronis Fuels, Inc.,
a Delaware corporation

By: _____
Name: Jered Ruyle
Its:

Taronis Sub III LLC,
a Florida limited liability company

By: _____
Name: Jered Ruyle
Its:

MagneGas Welding Supply – South, LLC,
a Texas limited liability company

By: _____
Name: Jered Ruyle
Its:

MagneGas Welding Supply – West, LLC,
a California limited liability company

By: _____
Name: Jered Ruyle
Its:

Taronis Sub II LLC,
a Texas limited liability company

By: _____
Name: Jered Ruyle
Its:

[SIGNATURES CONTINUED ON NEXT PAGE]

Taronis - TAS, LLC,
a Florida limited liability company

By: _____
Name: Jered Ruyle
Its:

Taronis – TAH, LLC,
a Florida limited liability company

By: _____
Name: Jered Ruyle
Its:

MAGNEGAS IP, LLC,
a Delaware limited liability company

By: _____
Name: Jered Ruyle
Its:

MAGNEGAS PRODUCTION, LLC,
a Delaware limited liability company

By: _____
Name: Jered Ruyle
Its:

MAGNEGAS REAL ESTATE HOLDINGS, LLC,
a Delaware limited liability company

By: _____
Name: Jered Ruyle
Its:

TARONIS SUB I LLC,
a Delaware limited liability company

By: _____
Name: Jered Ruyle
Its:

[SIGNATURES CONTINUED ON NEXT PAGE]

MAGNEGAS IRELAND LIMITED,
an Irish private limited company

By: _____
Name: Jered Ruyle
Its:

MAGNEGAS LIMITED,
an English private limited company

By: _____
Name: Jered Ruyle
Its:

TARONIS NETHERLANDS B.V.,
A Dutch private limited liability company

By: _____
Name: Jered Ruyle
Its:

Exhibit A

[INSERT BUDGET]