

ENTERED

January 08, 2025

Nathan Ochsner, Clerk

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

In re:

INDEPENDENCE CONTRACT
DRILLING, INC., et al.¹

Debtors.

Chapter 11

Case No. 24-90612 (ARP)

(Jointly Administered)

FINAL DIP ORDER (A) AUTHORIZING THE DEBTORS TO (I) OBTAIN SENIOR SECURED SUPERPRIORITY POSTPETITION FINANCING AND (II) USE CASH COLLATERAL; (B) GRANTING LIENS AND PROVIDING CLAIMS WITH SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS; (C) GRANTING ADEQUATE PROTECTION TO PREPETITION SECURED PARTIES; (D) MODIFYING THE AUTOMATIC STAY; AND (E) GRANTING RELATED RELIEF

Upon the motion (the “DIP Motion”)² of the above-captioned debtors and debtors in possession (the “Debtors”), pursuant to sections 105, 361, 362, 363, 364, 503, 506, and 507 of title 11 of the United States Code (the “Bankruptcy Code”), Rules 2002, 4001, 6003, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rules 2002-1, 4001-1(b), 4002-1 and 9013-1 of the Bankruptcy Local Rules of the United States Bankruptcy Court for the Southern District of Texas and the Procedures for Complex Chapter 11 Bankruptcy Cases (together, the “Bankruptcy Rules”) promulgated by the United States Bankruptcy Court for the Southern District of Texas, Houston Division (the “Court”), seeking entry of the Interim DIP Order (as defined below) and this final order (this “Final DIP Order”), among other things:

- (a) authorizing the Debtors to obtain postpetition financing on a superpriority senior secured basis (the “DIP Financing”, and the loans made, advanced or deemed

¹ The Debtors in these chapter 11 cases, together with the last four digits of each Debtor’s federal tax identification number, are: Independence Contract Drilling, Inc. (3648) and Sidewinder Drilling LLC (1024). The Debtors’ service address is 20475 SH 249, Suite 300, Houston, Texas 77070.

² Capitalized terms used but not otherwise defined herein have the meanings ascribed to such terms in the DIP Motion or DIP Term Sheet (as defined below), as applicable.

advanced thereunder, the “DIP Loans”) in the form of a super-priority senior secured term loan facility in an aggregate principal amount of up to \$32.5 million (the “DIP Facility”), pursuant to which (i) upon entry of the Interim DIP Order and satisfaction of all applicable conditions precedent described in the DIP Term Sheet (as defined below), an aggregate principal amount of \$27.5 million was made available (the “Interim DIP Loans”) and the Borrower is entitled to make draws of the DIP Loans in accordance with the DIP Term Sheet and the Approved Budget (as defined below) (subject to Permitted Variances (as defined in the DIP Term Sheet) and (ii) following entry of this Final DIP Order (as defined below) and satisfaction of the conditions precedent set forth in the DIP Term Sheet, the remaining aggregate principal amount under the DIP Facility shall be made available, in one or more borrowings (each such borrowing, including the Interim DIP Loans, a “DIP Loan” and, collectively, the “DIP Loans”) in accordance with and subject to the terms and conditions (including, without limitation, any conditions precedent to each of the DIP Loans) set forth in (x) that certain *Senior Secured Superpriority Debtor-in-Possession Credit Facility Term Sheet*, substantially in the form attached to the *Interim DIP Order (A) Authorizing the Debtors to (I) Obtain Senior Secured Superpriority Postpetition Financing and (II) Use Cash Collateral; (B) Granting Liens and Providing Claims with Superpriority Administrative Expense Status; (C) Granting Adequate Protection to Prepetition Secured Parties; (D) Modifying the Automatic Stay; (E) Scheduling a Final Hearing; and (F) Granting Related Relief* [ECF No. 42] (the “Interim DIP Order”) and together with this Final DIP Order, the “DIP Orders”) as **Exhibit 1** (as may be amended, amended and restated, supplemented, or otherwise modified from time to time in accordance with the terms hereof and thereof, the “DIP Term Sheet”) and, together with the Approved Budget all other agreements, guarantees, pledge, collateral and security agreements, deeds, charges, control agreements, instruments, certificates, notes, any separate fee letter agreements between any of the Debtors, on the one hand, and the DIP Lenders, on the other hand, and other documents executed, filed and/or delivered in connection therewith (each as amended, amended and restated, supplemented, or otherwise modified from time to time in accordance with the terms hereof and thereof, together with the DIP Term Sheet, collectively, the “DIP Documents”), by and among Independence Contract Drilling, Inc. (“ICD” or the “Borrower”), as borrower, Sidewinder Drilling LLC, as guarantor (“Sidewinder” or the “DIP Guarantor”, and together with ICD, the “DIP Loan Parties”), and Glendon Capital Management, L.P., and MSD Partners, L.P., as the lenders (together with their respective successors and permitted assigns, the “DIP Lenders”), and (y) this Final DIP Order;

- (b) authorizing the DIP Loan Parties to (i) execute, deliver, and perform under each of the DIP Documents, (ii) incur all loans, advances, extensions of credit, financial accommodations, indemnification and reimbursement obligations and other obligations, and pay all principal, interest, premiums, fees, costs, expenses, charges and all other amounts payable under the DIP Documents, including without limitation, all DIP Obligations (as defined in the DIP Term Sheet), and (iii) perform such other and further acts as may be necessary, required or desirable to implement

and effectuate the terms of the DIP Orders, the DIP Documents, and the transactions contemplated hereunder and thereunder;

- (c) authorizing ICD to incur, and the DIP Guarantor to guarantee, all DIP Obligations, in accordance with the DIP Orders and the DIP Documents;
- (d) granting to the DIP Lenders the DIP Liens (as defined below) in all DIP Collateral (as defined in the DIP Term Sheet), as set forth in the DIP Orders, subject to the Carve-Out, the WFB Cash Collateral Lien and the Prior Liens (each as defined below) subject to the relative priorities set forth in the DIP Orders;
- (e) authorizing the DIP Loan Parties' immediate use of a portion of the proceeds of the DIP Facility to repay in cash in full (i) all outstanding Prepetition Revolving ABL Debt (as defined herein) (the "Prepetition ABL Paydown"), including interest, costs and fees (through the date of repayment (at the non-default contract rate), but maintaining the Prepetition ABL Loan Documents (as defined herein) in full force and effect; and (ii) with respect to the Existing Letter of Credit (as defined below) and the Cash Management Obligations (as defined below) the cash collateralization thereof with the WFB Cash Collateral (as defined below) as effectuated upon the entry of the Interim DIP Order and approved herein on a final basis;
- (f) authorizing the Debtors to use Prepetition Collateral, and Cash Collateral (as defined below), and providing adequate protection to the Prepetition Secured Parties for any diminution in value of their respective interests in the applicable Prepetition Collateral (including Cash Collateral), for any reason provided for in the Bankruptcy Code;
- (g) granting to the DIP Lenders allowed super-priority administrative expense claims against each of the Debtors, on a joint and several basis, in respect of all DIP Obligations, subject in each case to the Carve-Out, as set forth in the DIP Orders;
- (h) authorizing the Debtors to use the proceeds of the DIP Facility and the DIP Collateral, including any cash collateral, as defined in section 363(a) of the Bankruptcy Code, solely in accordance with the terms and conditions set forth in the DIP Orders and the DIP Documents, including the Approved Budget, subject to the Permitted Variances;
- (i) approving the waiver of the right to surcharge the DIP Collateral pursuant to sections 105(a) and 506(c) of the Bankruptcy Code or otherwise;
- (j) approving the Debtors' waiver of the equitable doctrine of marshaling and other similar doctrines with respect to the DIP Collateral; and
- (k) modifying or vacating the automatic stay imposed by sections 105(a) and 362 of the Bankruptcy Code or otherwise, to the extent necessary, required or desirable to implement and effectuate the terms and provisions of the DIP Orders and the DIP Documents, as set forth herein, waiving any applicable stay with respect to the effectiveness and enforceability of the DIP Orders, providing for the immediate effectiveness of this Final DIP Order, and granting related relief.

The interim hearing on the DIP Motion having been held by this Court on December 4, 2024 (the “Interim Hearing”) and this Court, having considered the DIP Motion, the DIP Term Sheet, the other DIP Documents, the exhibits attached thereto, the evidence submitted and arguments proffered or adduced at the Interim Hearing, and upon the record of the Chapter 11 Cases; and the Court having entered the Interim DIP Order; and it appearing that no other or further notice need be provided; and all objections, if any, to the relief requested in the DIP Motion having been withdrawn, resolved, or overruled by this Court; this Court having determined that the legal and factual bases set forth in the DIP Motion and at the Interim Hearing and the Final Hearing established just cause for the relief granted herein; and it appearing to this Court that granting the final relief requested in the DIP Motion is fair and reasonable and in the best interests of the Debtors, their estates, their creditors, and all other parties in interest, represents a sound exercise of the Debtors’ business judgment, is necessary to preserve and maximize the value of the Debtors and their estates; and the Debtors having provided notice of the DIP Motion as set forth in the DIP Motion and Interim DIP Order; and after due deliberation and consideration, and for good and sufficient cause appearing therefor,

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

A. *Petition Date.* On December 2, 2024 (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in this Court commencing the Chapter 11 Cases.

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

B. *Debtors in Possession.* The Debtors continue to manage and operate 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 any of the Chapter 11 Cases.

C. *Committee Formation.* As of the date hereof, the Office of the United States Trustee (the “U.S. Trustee”) has not appointed any official statutory committee of creditors in the Chapter 11 Cases pursuant to section 1102 of the Bankruptcy Code (to the extent appointed in the Chapter 11 Cases, any such committee, the “Official Committee”).

D. *Jurisdiction and Venue.* This Court has core jurisdiction over the Chapter 11 Cases, the DIP Motion, and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157(a)–(b) and the *Amended Standing Order of Reference from the United States District Court for the Southern District of Texas*, dated May 24, 2012. Consideration of the DIP 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. Venue for the Chapter 11 Cases and the proceedings on the DIP Motion is proper in this district pursuant to 28 U.S.C. § 1408. The predicates for the relief set forth herein are sections 105, 361, 362, 363, 364, 503, 506, and 507 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001, 6003, 6004, and 9014, and Bankruptcy Rule 4001-2.

E. *Notice.* Proper, timely, sufficient and appropriate notice of the DIP Motion has been provided in accordance with the Interim DIP Order, the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules, and no other or further shall be required to enter this Final DIP Order.

F. *Cash Collateral.* As used herein, the term “Cash Collateral” shall mean all of the Debtors’ cash, wherever located and held, including cash in deposit accounts, that constitutes or

will constitute “cash collateral” of any of the Prepetition Secured Parties (as defined below) and DIP Lenders within the meaning of section 363(a) of the Bankruptcy Code.

G. *Debtors’ Stipulations.* Subject to the provisions and limitations contained in paragraph 22 hereof (including the Challenge Period, as defined therein), and after consultation with their attorneys and financial advisors, the Debtors admit, stipulate and agree that:

(i) *Prepetition Indenture.* Pursuant to that certain Indenture dated as of March 18, 2022 (as amended, modified, or supplemented from time to time, the “Prepetition Indenture” and, collectively with the other Note Documents (as defined in the Prepetition Indenture) and any other agreements and documents executed or delivered in connection therewith, each as may be amended, restated, amended and restated, supplemented, waived, or otherwise modified prior to the Petition Date, the “Prepetition Notes Documents”), by and among ICD, as issuer, each of the guarantors party thereto from time to time, and U.S. Bank Trust Company, National Association, as trustee and collateral agent (collectively, in such capacities, together with any successor trustee or collateral agent, the “Prepetition Notes Trustee”) and collateral agent pursuant to which (a) ICD issued Floating Rate Convertible Senior Secured PIK Toggle Notes due 2026 to the noteholders (the “Prepetition Noteholders,” together with the Prepetition Notes Trustee, the “Prepetition Secured Notes Parties”) and the obligations to the Prepetition Secured Notes Parties, in their capacity as such thereunder (the “Prepetition Notes Obligations”) and (b) Sidewinder guaranteed ICD’s obligations under the Prepetition Indenture.

(ii) *Prepetition Revolving ABL Facility.* Pursuant to that certain Credit Agreement, dated as of October 1, 2018 (the “Prepetition Revolving ABL Credit Agreement” and, collectively with the other Loan Documents (as defined in the Prepetition Revolving ABL Credit Agreement) and any other agreements and documents executed or delivered in connection

therewith, each as may be amended, restated, amended and restated, supplemented, waived, or otherwise modified prior to the Petition Date, the “Prepetition Revolving ABL Documents” and together with the Prepetition Notes Documents, the “Prepetition Debt Documents”), by and among ICD, as lead borrower, Sidewinder, and the other affiliates of ICD party thereto from time to time as borrowers, the guarantors party thereto from time to time, Wells Fargo Bank, National Association (“WFB”), as administrative agent (the “Prepetition Revolving ABL Agent”), and the lenders party thereto from time to time (the “Prepetition Revolving ABL Lenders,” and together with the Prepetition Revolving ABL Agent, the “Prepetition Revolving ABL Secured Parties, and, the Prepetition Revolving ABL Secured Parties together with the Prepetition Secured Notes Parties, collectively, the “Prepetition Secured Parties”) the Prepetition Revolving ABL Lenders provided revolving loans and other financial accommodations (the “Prepetition Revolving ABL Loans” and such facility, the “Prepetition Revolving ABL Facility”) to and for the benefit of the Debtors, and the guarantors party thereto guaranteed on a joint and several basis the Prepetition Revolving ABL Facility. The Prepetition Revolving ABL Facility was indefeasibly paid in full on December 6, 2024, pursuant to the Prepetition ABL Paydown.

(iii) *Prepetition Intercreditor Agreement.* Pursuant to that certain Intercreditor Agreement, dated as of March 18, 2022 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the “Intercreditor Agreement”) by and among the Prepetition Notes Trustee and the Prepetition Revolving ABL Agent, and acknowledged by the Debtors) the parties thereto agreed, among other things, to: (a) be bound by the waterfall and turnover provisions contained therein with respect to, as applicable, the ABL Priority Collateral and Note Priority Collateral (each as defined therein), (b) consent to, or not oppose, certain actions taken, or rights asserted, by the Prepetition Notes Trustee or Prepetition

Revolving ABL Agent (on behalf of the Prepetition Noteholders and Prepetition Revolving ABL Lenders, respectively), and (c) refrain from taking certain actions with respect to the ABL Priority Collateral (in the case of the Prepetition Notes Trustee) and the Note Priority Collateral (in the case of the Prepetition Revolving ABL Agent).

(iv) *Prepetition Indenture Debt.* The Debtors were justly and lawfully indebted and liable (including pursuant to guarantee obligations) to the Prepetition Secured Notes Parties without defense, challenge, objection, claim, counterclaim, or offset of any kind, in the aggregate principal amount of not less than \$206,774,305.49 as of the Petition Date, plus any accrued and unpaid interest thereon (at the non-default contract rate, for interest accrued prepetition, and at the default contract rate, for interest accrued postpetition) and any fees, expenses and disbursements (including any attorneys' fees, accountants' fees, appraisers' fees, auditors' fees, and financial advisors' fees and related expenses and disbursements, in each case, that are chargeable or reimbursable under the Prepetition Notes Documents), costs, charges, indemnities and other "Obligations" (as defined in the Prepetition Indenture) (whether arising before, on or after the Petition Date) as provided in the Prepetition Notes Documents (collectively, the "Prepetition Indenture Debt").

(v) *Prepetition Revolving ABL Debt.* The Debtors were justly and lawfully indebted and liable (including pursuant to guarantee obligations) to the Prepetition Revolving ABL Secured Parties without defense, challenge, objection, claim, counterclaim, or offset of any kind, in the aggregate principal amount of not less than \$14,251,265.66 as of the Petition Date, plus any accrued and unpaid interest thereon and, any fees, expenses and disbursements (including any attorneys' fees, accountants' fees, appraisers' fees, auditors' fees, and financial advisors' fees and related expenses and disbursements, in each case, that are chargeable or reimbursable under the

Prepetition Revolving ABL Documents), costs, charges, indemnities and other “Obligations” (as defined in the Prepetition Revolving ABL Credit Agreement) (whether arising before, on or after the Petition Date) as provided in the Prepetition Revolving ABL Documents (collectively, the “Prepetition Revolving ABL Debt” and, together with the Prepetition Indenture Debt, the “Prepetition Secured Debt”). The Prepetition Revolving ABL Debt was indefeasibly paid in full on December 6, 2024 pursuant to the Prepetition ABL Paydown.

(vi) *Validity of Prepetition Secured Debt.* The Prepetition Secured Debt constitutes legal, valid, binding, and non-avoidable obligations of the Debtors, as applicable, enforceable in accordance with their respective terms and no portion of the Prepetition Secured Debt or any payment made to the Prepetition Secured Parties or applied to or paid on account of the obligations owing under the Prepetition Debt Documents prior to the Petition Date is subject to any contest, attack, rejection, recovery, reduction, defense, counterclaim, offset, subordination, recharacterization, avoidance or other claim (as such term is used in the Bankruptcy Code), cause of action (including any claims or Avoidance Actions), choses in action or other challenge of any nature under the Bankruptcy Code or applicable non-bankruptcy law.

(vii) *Validity, Perfection and Priority of Prepetition Liens.* As of the Petition Date, pursuant to and in connection with the Prepetition Debt Documents, (a) the Debtors granted to the Prepetition Notes Trustee, for the benefit of itself and the other Prepetition Secured Notes Parties, a security interest in and continuing lien (the “Prepetition Notes Liens”) and (b) the Debtors granted to the Prepetition Revolving ABL Agent, for the benefit of itself and the other Prepetition Revolving ABL Secured Parties, a security interest in and continuing lien (the “Prepetition Revolving ABL Facility Liens” and, together with the Prepetition Notes Liens, the “Prepetition Liens”), on the Collateral (as defined in the Prepetition Intercreditor Agreement)

(which, for the avoidance of doubt, includes certain Cash Collateral) and all proceeds, products, accessions, rents, and profits thereof, in each case whether then owned or existing or thereafter acquired or arising (collectively, the “Prepetition Collateral”), which Prepetition Liens are (x) valid, binding, properly perfected and enforceable, (y) not subject to avoidance, recharacterization, subordination (whether equitable, contractual, or otherwise (other than as set forth in the Prepetition Intercreditor Agreement)), recovery, attack, disgorgement, effect, rejection, reduction, disallowance, impairment, counterclaim, offset, crossclaim, defense or claim of any nature under the Bankruptcy Code or applicable non-bankruptcy law, and (z) subject and subordinate only to (I) in the case of the Prepetition Notes Liens, the Prepetition Revolving ABL Liens to the extent set forth in the Prepetition Intercreditor Agreement, (II) in the case of the Prepetition Revolving ABL Liens, the Prepetition Notes Liens to the extent set forth in the Prepetition Intercreditor Agreement and (III) certain other liens senior by operation of law or otherwise permitted by the Prepetition Debt Documents, solely to the extent any such permitted liens were expressly permitted, valid, binding, enforceable, properly perfected, non-avoidable and senior in priority to the Prepetition Liens as of the Petition Date (such liens described in this clause (III), the “Prepetition Permitted Liens”) on the Prepetition Collateral, and the Debtors waive, discharge and release any right to challenge any of the Prepetition Secured Debt or any of the Prepetition Liens.

(viii) *No Control*. None of the Prepetition Secured Parties (a) control (or have in the past controlled) the Debtors or their properties or operations, (b) have authority to determine the manner in which any Debtors’ operations are conducted or (c) are control persons or insiders of the Debtors, in each case, by virtue of any actions taken with respect to, in connection with, related to or arising from the Prepetition Debt Documents.

(ix) *No Claims or Causes of Action.* No claims or causes of action held by the Debtors or their estates exist against, or with respect to, the Prepetition Secured Parties or any of their respective Representatives (as defined herein) (in each case, in their capacity as such) under or relating to any agreements by and among the Debtors and any Prepetition Secured Party as of the Petition Date.

(x) *Release.* Each of the Debtors and (subject to the Challenge Period in paragraph 22) the Debtors' estates, on its own behalf and on behalf of its and their respective past, present and future predecessors, successors, heirs, subsidiaries, and assigns, hereby (a) reaffirms the releases granted pursuant to paragraph G(x) of the Interim DIP Order and (b) absolutely, unconditionally and irrevocably releases and forever discharges and acquits each of the Prepetition Secured Parties, the DIP Lenders, and each of their respective Representatives (collectively, the "Released Parties") from any and all obligations and liabilities to the Debtors (and their successors and assigns) and from any and all claims, counterclaims, demands, defenses, offsets, debts, accounts, contracts, liabilities, actions and causes of action of any kind, nature or description, whether matured or unmatured, known or unknown, asserted or unasserted, foreseen or unforeseen, accrued or unaccrued, suspected or unsuspected, liquidated or unliquidated, pending or threatened, arising in law or equity, upon contract or tort or under any state or federal law or otherwise, in each case arising out of or related to (as applicable) the Prepetition Debt Documents or the DIP Documents, the negotiation thereof or of the transactions and agreements reflected thereby, or the financial or other obligations owing or made thereunder, in each case that the Debtors at any time had, now have or may have, or that their predecessors, successors or assigns at any time had or hereafter can or may have against any of the Released Parties for or by reason of any act, omission, matter, cause or thing whatsoever arising at any time on or prior to the date of this Final DIP Order.

For the avoidance of doubt, nothing in this release shall relieve any of the Prepetition Secured Parties, the DIP Lenders, or the Debtors of their obligations under the DIP Term Sheet or other DIP Documents.

H. *Findings Regarding the DIP Financing and Use of Cash Collateral.*

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

(ii) *Need for Postpetition Financing and Use of Cash Collateral.* The Debtors have a critical need to obtain the DIP Facility and use Cash Collateral to, among other things, (i) permit the orderly continuation and operation of their businesses, (ii) maintain business relationships with customers, vendors, and suppliers, (iii) provide working capital for their businesses, (iv) pay the expenses of the Chapter 11 Cases, (v) to consummate the Prepetition ABL Paydown (as provided in the Interim DIP Order), and (vi) for general corporate purposes, in each case, in accordance with and subject to the terms and conditions of the DIP Orders and the DIP Documents, including the Approved Budget (subject to Permitted Variances). The Prepetition Revolving ABL Lenders' consent is required in order for the Debtors to obtain the financing under the DIP Facility, and accordingly, the Prepetition ABL Paydown effectuated pursuant to the Interim DIP Order is necessary and appropriate to ensure that the Debtors obtain the financing provided under the DIP Facility to avoid irreparable harm. The Debtors require access to sufficient working capital and liquidity through the incurrence of loans and other financial accommodations under the DIP Facility in order to preserve, maintain, and maximize the Debtors' going concern value. Without access to the DIP Facility and the authorized use of Cash Collateral upon the terms set forth herein, the Debtors and their estates will be immediately and irreparably harmed.

(iii) *Prepetition Revolving ABL Secured Parties Consent to DIP Facility.* In consideration for the protections afford to the Prepetition Revolving ABL Secured Parties under the DIP Orders, the Prepetition Revolving ABL Agent (on behalf of the other Prepetition Revolving ABL Secured Parties) has consented to (a) the Prepetition ABL Paydown, (b) the Debtors entry into the DIP Facility, and (c) all rights and remedies of the DIP Lenders under the DIP Documents, including the enforcement and other exercise of remedies, subject to the terms and conditions contained in the DIP Orders.

(iv) *No Credit Available on More Favorable Terms.* The Debtors are unable to obtain financing on more favorable terms from sources other than the DIP Lenders under the DIP Documents and are unable to obtain adequate unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense. The Debtors are also unable to obtain secured credit allowable under section 364(c)(1), 364(c)(2) or 364(c)(3) of the Bankruptcy Code without granting to the DIP Lenders the DIP Liens and the DIP Superpriority Claims (as defined herein) and incurring the Adequate Protection Obligations (as defined herein), in each case subject to the Carve-Out to the extent set forth herein, under the terms and conditions set forth in the DIP Orders and in the DIP Documents.

(v) *Use of Proceeds of DIP Facility and Cash Collateral.* The Debtors continue to collect cash, rents, income, offspring, products, proceeds, and profits generated from the Prepetition Collateral and acquire equipment, inventory and other personal property, all of which constitutes Prepetition Collateral under the Prepetition Debt Documents that is subject to the Prepetition Secured Parties' security interests as set forth in the Prepetition Debt Documents, as applicable. The Debtors desire to use in their business operations a portion of the cash, rents, income, offspring, products, proceeds and profits described in the preceding paragraph that

constitute Cash Collateral of the Prepetition Secured Parties under section 363(a) of the Bankruptcy Code. Certain prepetition rents, income, offspring, products, proceeds, and profits, in existence as of the Petition Date or hereafter created or arising, including balances of funds in the Debtors' prepetition and postpetition operating bank accounts, also constitute Cash Collateral. As a condition to providing the DIP Facility (including Cash Collateral), the DIP Lenders require, and the Debtors have agreed, that all proceeds of the DIP Loans and any Cash Collateral shall be used and/or applied solely for the purposes expressly permitted in, and in a manner consistent with, the Approved Budget (subject to Permitted Variances) including (i) to pay the costs of administration of the Chapter 11 Cases, (ii) for general corporate and working capital purposes, (iii) to pay professional fees and expenses in accordance with the DIP Orders, and (iv) to pay fees, expenses, interest, and other amounts payable under the DIP Facility, in each case, subject to the terms and conditions of the DIP Orders and the DIP Documents.

I. *Adequate Protection.* The Prepetition Secured Parties are entitled to the Adequate Protection (as defined herein) provided in this Final DIP Order as and to the extent set forth herein pursuant to sections 361, 362, 363 and 364 of the Bankruptcy Code. Based on the DIP Motion, the First Day Declaration, the Denham Declaration and the record presented to the Court at the Interim Hearing, the terms of the DIP Facility, the terms of the adequate protection granted to the Prepetition Secured Parties as provided in paragraph 15 of this Final DIP Order (the "Adequate Protection"), and the terms on which the Debtors may continue to use the Prepetition Collateral (including Cash Collateral) pursuant to this Final DIP Order and the DIP Documents are fair and reasonable, reflect the DIP Loan Parties' exercise of prudent business judgment consistent with their fiduciary duties, constitute reasonably equivalent value and fair consideration, and, to the extent their consent is required, the requisite Prepetition Secured Parties have consented or are

deemed hereby to have consented to the use of the Prepetition Collateral (including the Cash Collateral) on the terms set forth in this Final DIP Order and the priming of the Prepetition Notes Liens by the DIP Liens pursuant to the terms set forth in this Final DIP Order and the DIP Documents; *provided* that nothing in this Final DIP Order or the DIP Documents shall (x) be construed as the affirmative consent by any of the Prepetition Secured Parties for the use of Cash Collateral other than on the terms set forth in the DIP Orders and in the context of the DIP Facility authorized by the DIP Orders to the extent such consent has been or is deemed to have been 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) other than as contemplated by the DIP Facility authorized by this Final DIP Order, or (z) prejudice, limit or otherwise impair the rights of any of the Prepetition Secured Parties to seek new, different or additional adequate protection or assert any rights of any of the Prepetition Secured Parties, and the rights of any other party in interest, including the DIP Loan Parties, to object to such relief are hereby preserved.

J. *Approved Budget and Variance.* The Debtors have prepared and delivered to the advisors to the DIP Lenders an initial budget (the “Initial DIP Budget”), attached as **Schedule 1** to the Interim DIP Order. The Initial DIP Budget reflects, among other things, the Prepetition ABL Paydown, the Debtors’ anticipated operating receipts, operating disbursements, non-operating disbursements, net operating cash flow and liquidity for each calendar week covered thereby, in form and substance acceptable to the DIP Lenders. The Initial DIP Budget may be modified, amended, extended, and updated from time to time in accordance with the DIP Documents, and such modified, amended, extended and/or updated budget, once approved by the DIP Lenders in accordance with the DIP Documents, shall modify, replace, supplement or supersede, as applicable, the Initial DIP Budget for the periods covered thereby (the Initial DIP Budget and each subsequent

approved budget shall constitute, without duplication, an “Approved Budget”). The Debtors believe that the Initial DIP Budget is reasonable under the circumstances. The DIP Lenders are relying, in part, upon the DIP Loan Parties’ agreement to comply with the Approved Budget (subject to Permitted Variances), this Final DIP Order and the DIP Documents in determining to enter into the postpetition financing arrangements provided for in the DIP Orders.

K. *Good Faith.* The DIP Financing, the Adequate Protection and the use of the Prepetition Collateral (including Cash Collateral) have been negotiated in good faith and at arm’s length among the DIP Loan Parties, the DIP Lenders, and the Prepetition Secured Parties, and all of the DIP Loan Parties’ obligations and indebtedness arising under, in respect of, or in connection with, the DIP Financing and the DIP Documents, including, without limitation, all loans made to and guarantees issued by the DIP Lenders pursuant to the DIP Documents and any other DIP Obligations shall be deemed to have been extended by the DIP Lenders and their respective affiliates in good faith, as that 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, and the DIP Lenders (and the successors and assigns thereof) shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that the DIP Orders or any provision thereof is vacated, reversed or modified, on appeal or otherwise. The Prepetition Secured Parties have acted in good faith regarding the DIP Financing and the Debtors’ continued use of the Prepetition Collateral (including Cash Collateral) to fund the administration of the Debtors’ estates and continued operation of their businesses (including the incurrence and payment of and performance under the Adequate Protection Obligations and the granting of the Adequate Protection Liens (as defined herein)), in accordance with the terms hereof, and the Prepetition Secured Parties (and the successors and assigns thereof) shall be entitled to the full protection of sections 363(m) and 364(e)

of the Bankruptcy Code in the event that the DIP Orders or any provision thereof is vacated, reversed or modified, on appeal or otherwise.

L. *Proper Exercise of Business Judgment.* Based on the DIP Motion, the record presented to the Court at the Interim Hearing, the Final Hearing, and in the Chapter 11 Cases, the terms of the DIP Facility and the DIP Documents, and the terms upon which the Debtors may use Cash Collateral pursuant to the terms of the DIP Orders and the DIP Documents (i) were negotiated in good faith and at arm's length among the DIP Loan Parties and the DIP Lenders, (ii) are fair, reasonable, and the best available to the Debtors under the circumstances, (iii) reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties, and (iv) are supported by reasonably equivalent value and fair consideration. The Prepetition ABL Paydown reflects the DIP Loan Parties' exercise of prudent business judgment consistent with fiduciary duties. The DIP Facility and the Prepetition ABL Paydown are necessary steps to implementation of the consensually supported and comprehensive restructuring of the Debtors that is embodied in the *Debtors' Joint Prepackaged Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code* (as may be modified, amended, or supplemented (the "Plan")). The DIP Lenders and their affiliates include the Prepetition Noteholders that constitute the sole impaired third-party creditor class under the Plan and, as described in the First Day Declaration, the Prepetition Noteholders have voted overwhelmingly to accept the Plan. All other classes of claims (other than intercompany claims to the extent reinstated under the terms of the Plan) are unimpaired by the Plan. As such, the Prepetition ABL Paydown will benefit the Debtors and their estates because it will facilitate the value maximizing restructuring transactions pursuant to the Plan that render all non-intercompany claims unimpaired, other than the claims of the Prepetition Noteholders, which class of claims has already voted to accept the Plan and which creditors are the parties (or affiliates

of the parties) that are providing the DIP Facility, which is being used (in part) for the Prepetition ABL Paydown.

M. *Section 506(c) and Marshaling Waivers.* Each of the Prepetition Secured Parties 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 Secured Parties with respect to proceeds, product, offspring, or profits with respect to any of the Prepetition Collateral. As a material inducement to the DIP Lenders’ agreement to provide the DIP Facility, and in consideration of (i) the DIP Lenders’ agreement to subordinate its DIP Liens to the Carve-Out, (ii) the DIP Lenders’ agreement to provide funding through the DIP Facility, which the Debtors will use to pay the expenses of the administration of the Chapter 11 Cases, subject to the Approved Budget (subject to Permitted Variances), and (iii) the prepetition Secured Parties consent to the use of the Prepetition Collateral (including Cash Collateral), and in accordance with the terms of the DIP Orders and the DIP Documents, (a) the Debtors waive their right to surcharge any costs or expenses incurred in connection with the preservation, protection or enhancement of, or realization by the DIP Lenders or the DIP Collateral, or the Prepetition Secured Parties or the Prepetition Collateral, whether pursuant to section 506(c) of the Bankruptcy Code or otherwise, and (b) the DIP Lenders Prepetition Secured Parties shall not be subject to the equitable doctrine of “marshaling” or any similar doctrine with respect to the DIP Collateral or the Prepetition Collateral.

N. *Relief Essential; Best Interests.* Consummation of the DIP Financing and the permitted use of Prepetition Collateral (including Cash Collateral), in accordance with the DIP Orders and the DIP Documents, are therefore in the best interests of the Debtors’ estates and

consistent with the Debtors' exercise of their fiduciary duties. The DIP Motion and this Final DIP Order comply with the requirements of Local Rule 4001-1(b).

O. *Prepetition Permitted Liens; Continuation of Prepetition Liens.* Nothing herein shall constitute a finding or ruling by this Court that any alleged Prepetition Permitted Lien is valid, senior, enforceable, prior, perfected, or non-avoidable. Moreover, nothing herein shall prejudice the rights of any party-in-interest, including, but not limited to, the DIP Loan Parties, the DIP Lenders, or the Prepetition Secured Parties, to challenge the validity, priority, enforceability, seniority, avoidability, perfection, or extent of any alleged Prepetition Permitted Lien. The right of a seller of goods to reclaim goods under section 546(c) of the Bankruptcy Code is not a Prior Lien, as used herein, and is expressly subject to the DIP Liens and the Prepetition Liens. The Prepetition Liens and the DIP Liens are continuing liens and the Prepetition Collateral and the DIP Collateral, as applicable, are and will continue to be encumbered by such liens.

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

IT IS HEREBY ORDERED THAT:

1. *Motion Granted.* The DIP Facility and the use of Cash Collateral is hereby authorized and approved, in each case, on a final basis and upon the terms and conditions set forth in this Final DIP Order, the DIP Term Sheet, and the other DIP Documents. Any objections to any of the relief set forth in this Final DIP Order that have not been withdrawn, waived, or settled, and all reservations of rights or other statements inconsistent with this Final DIP Order, are hereby denied and overruled. This Final DIP Order shall become effective and enforceable immediately upon its entry.

2. *Authorization of the DIP Financing and the DIP Documents.*

(a) *Authorization of DIP Documents.* The DIP Loan Parties were, by the Interim DIP Order, and hereby are authorized to (i) execute, deliver, enter into and perform all of their obligations, and to pay all fees, costs, expenses, indemnities, and other amounts contemplated, under the DIP Documents and this Final DIP Order, and (ii) perform all acts, to make, execute, deliver, enter into and perform under any and all other agreements, instruments, certificates, and other documents (including, without limitation, the execution and/or recordation of any collateral, pledge and security documents, deeds of trust, account control agreements, financing statements, or other documents), and to perform all such other and further acts, that may be necessary, required or desirable for the DIP Loan Parties to perform their obligations under the DIP Facility, the DIP Documents, and this Final DIP Order and to implement the transactions contemplated thereunder and hereunder, including, without limitation, the performance of all other acts required under or in connection with the DIP Documents, including the granting of the DIP Liens and the DIP Superpriority Claims and perfection of the DIP Liens as permitted herein and therein, and to perform such other and further acts as may be necessary, desirable or appropriate in connection therewith, in each case in accordance with the terms of the DIP Documents. All provisions of the DIP Term Sheet and other DIP Documents are incorporated herein and approved in their entirety, whether explicitly referenced or not.

(b) *Authorization to Borrow.* ICD was, by the Interim DIP Order, and hereby is authorized to borrow, and the DIP Guarantor, was, by the Interim DIP Order, and hereby is authorized to guarantee the Payment in Full⁴ in cash of such borrowing with respect to, the

⁴ For purposes hereof, the term “**Payment in Full**” or “**Paid in Full**” means, with respect to the DIP Obligations, the irrevocable and indefeasible payment in full in cash of all DIP Obligations, other than contingent indemnification and expense reimbursement obligations for which no claim or demand has been asserted, and all

principal amount of \$32.5 million (plus applicable interest (including interest and other amounts payable-in-kind, and default interest), premiums, payments, fees (including professional fees and expenses), costs, expenses, charges, and other amounts to the extent payable under the DIP Orders and the DIP Documents in connection with such borrowing), under the DIP Facility, subject to the terms and conditions (including any conditions precedent to such borrowing) set forth in the DIP Documents and the DIP Orders. The Debtors are hereby authorized to use the proceeds of the DIP Facility and all Cash Collateral solely in the manner and for the purposes expressly permitted in the Approved Budget (subject to Permitted Variances), the DIP Documents, and the DIP Orders, including, without limitation, the Prepetition ABL Paydown.

(c) *DIP Fees and Expenses.* The DIP Loan Parties are authorized and directed to pay any and all (i) fees, premiums or other payments payable under the DIP Documents, and other payments, fees, or amounts provided therein, (ii) amounts due (or that may become due) to the DIP Lenders in respect of the indemnification obligations under the DIP Orders and the DIP Documents, and (iii) any other amounts payable in connection with the DIP Facility, including, without limitation, fees and expenses of the professionals retained by, or on behalf of, any of the DIP Lenders including without limitation, the payment of all reasonable, documented out of pocket costs, expenses, and disbursements of (A) Latham & Watkins LLP and Hunton Andrews Kurth LLP, retained by the DIP Lenders and (B) any other professionals that may be retained by the DIP Lenders, with the consent of the Debtors, such consent not to be unreasonably withheld or delayed, which consent of the Debtors shall not be required after the occurrence of an Event of Default (as defined herein), (collectively, the “DIP Fees and Expenses”). without the need to file retention

commitments thereunder shall have irrevocably, permanently and finally expired or shall have been terminated, cancelled and discharged.

motions or fee applications, in each case, whether any such fees, expenses, or amounts arose before, on or after the Petition Date, and whether or not the transactions contemplated hereby are consummated, and, upon payment thereof, shall not be subject to any contest, attack, rejection, recoupment, reduction, defense, counterclaim, offset, subordination, recharacterization, avoidance, disallowance, impairment, or other claim, cause of action or other challenge of any nature under the Bankruptcy Code, applicable non-bankruptcy law or otherwise by any person or Entity).

(d) *Indemnification.* The Prepetition Secured Parties and the DIP Lenders have acted in good faith and without negligence, misconduct, or violation of public policy or law, in respect of all actions taken by them in connection with or related in any way to negotiating, implementing, documenting, or obtaining requisite approvals of the DIP Financing and the use of Cash Collateral, including in respect of the granting of the DIP Liens and the Adequate Protection Liens, any challenges or objections to the DIP Financing or the use of Cash Collateral, the DIP Documents, and all other documents related to and all transactions contemplated by the foregoing. Accordingly, without limitation to any other right to indemnification, the Prepetition Secured Parties and the DIP Lenders shall be and hereby are indemnified (as applicable) as provided in the Prepetition Debt Documents and the DIP Documents, as applicable. The Debtors agree that no exception or defense in contract, law, or equity exists as of the date of this Final DIP Order to any obligation set forth, as the case may be, in this paragraph 2(d), in paragraph 2(d) of the Interim DIP Order, or otherwise in the DIP Documents, or in the Prepetition Debt Documents to indemnify and/or hold harmless any DIP Lender or any Prepetition Secured Party, as the case may be, and any such defenses are hereby waived.

(e) *Modification of DIP Documents.* The DIP Loan Parties are hereby authorized to execute, deliver and perform under one or more amendments, waivers, consents, or

other modifications to and under the DIP Documents, in each case, in accordance with the provisions of the DIP Documents governing amendments thereto, each without further application to or order of the Court; *provided, however*, that any amendment to the DIP Documents shall require, at a minimum, the prior written consent of the DIP Lenders. Updates, modifications, and supplements to the Approved Budget shall not require any further approval of this Court. In the event the DIP Lenders in their sole discretion and in accordance with the DIP Term Sheet, request that the Debtors execute definitive financing documentation with respect to the DIP Facility, including, without limitation, guarantees and security documents, in each case, reasonably satisfactory in form and substance to the DIP Lenders and the Debtors, the Debtors are authorized to execute, deliver and perform under such definitive financing documents.

(f) *Perfection in Cash.* Subject to the Carve-Out and the WFB Cash Collateral Lien, and subject to the Remedies procedures outlined in paragraph 9(d) of this Final DIP Order, all financial institutions with which the DIP Loan Parties maintain accounts containing any of the DIP Loan Parties' cash or Cash Collateral are authorized and directed to comply with any request of the DIP Lenders to turn over to the DIP Lenders all cash or Cash Collateral therein without offset or deduction of any kind upon the occurrence and during the continuation of an Event of Default (as defined below). The DIP Lenders shall be entitled to all of the rights and benefits of all deposit account control agreements, blocked account control agreements, securities account control agreements, and similar agreements to which any of the DIP Loan Parties may be a party, without the need to enter into any such agreements. Notwithstanding (and without limiting) the foregoing, the DIP Loan Parties are authorized to enter into, and cause the financial institutions servicing or maintaining the DIP Loan Parties' deposit accounts (or other accounts) to enter into,

such deposit account control agreements and other collateral agreements with the DIP Lenders and such financial institutions as the DIP Lenders may request.

3. *DIP Obligations.* Upon the execution and delivery of the DIP Documents, the DIP Documents constituted (and, as of the date of entry of this Final DIP Order, continue to constitute) legal, valid, binding and non-avoidable obligations of the DIP Loan Parties, enforceable against each DIP Loan Party and their estates in accordance with the terms of this Final DIP Order, the DIP Term Sheet, and the other DIP Documents, and any successors thereto, including any trustee appointed in the Chapter 11 Cases, or in any case under chapter 7 of the Bankruptcy Code upon the conversion of any of the Chapter 11 Cases, or in any other proceedings superseding or related to any of the foregoing (collectively, the “Successor Cases”). Upon execution and delivery of the DIP Documents, the DIP Obligations included (and, as of the date of entry of this Final DIP Order, continue to include) all loans and any other indebtedness or obligations, contingent or absolute, which may now or from time to time be owing by any of the DIP Loan Parties to any of the DIP Lenders, in such capacities, in each case, under, or secured by, the DIP Documents (including the DIP Orders), including all principal, interest, costs, fees, expenses, premiums, indemnities and other amounts under the DIP Documents (including the DIP Orders). The DIP Loan Parties shall be jointly and severally liable for the DIP Obligations. Except as permitted hereby, no obligation, payment, transfer, or grant of security hereunder or under the other DIP Documents to the DIP Lenders (including their Representatives) shall be stayed, restrained, voidable, avoidable, or recoverable, under the Bankruptcy Code or under any applicable law (including, without limitation, under any of sections 502(d), 544 and 547 to 550 of the Bankruptcy Code or under any applicable state Uniform Voidable Transactions Act, Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, or similar statute or common law), or subject to any defense, avoidance,

reduction, setoff, recoupment, offset, recharacterization, subordination (whether equitable, contractual, or otherwise), disallowance, impairment, claim, counterclaim, cross-claim, or any other challenge under the Bankruptcy Code or any applicable law or regulation by any person or Entity.

4. *Prepetition ABL Paydown.* Upon entry of the Interim DIP Order, authorized on a final basis by this Final DIP Order, the Debtors immediately used proceeds of the DIP Loans to indefeasibly pay in full all outstanding Prepetition Revolving ABL Loans. The Debtors and the DIP Lenders acknowledge and agree that (i) the Debtors were, by the Interim DIP Order, and are authorized on a final basis by this Final DIP Order, to execute, deliver, enter into and perform all of their obligations in that certain payoff letter agreement in favor of Prepetition Revolving ABL Agent and Prepetition Revolving ABL Lenders, (ii) the Prepetition ABL Loan Documents shall not terminate and shall remain in full force and effect, including, without limitation, the right of the Prepetition Revolving ABL Agent to charge when due all fees and charges that accrue in accordance with terms of the Prepetition ABL Revolving Documents, (iii) the Prepetition Revolving ABL Lenders shall have no further obligation to make any Revolving Loans (as defined in the Prepetition Revolving ABL Credit Agreement), including to provide any other Letters of Credit or other financial accommodations (except to allow the Existing Letter of Credit (as defined herein) to continue in full force and effect) or have any other duties or responsibilities in connection with the Prepetition Revolving ABL Documents, except as otherwise provided by the Interim DIP Orders (*provided*, that the Issuing Bank and the Bank Product Provider (as each term is defined in the Prepetition Revolving ABL Credit Agreement), as applicable, shall have no obligation to extend the expiration date of any Letter of Credit or any Bank Product (as defined in the Prepetition Revolving ABL Credit Agreement), as applicable, or agree to any other amendment thereof),

(iv) the Debtors have deposited with WFB cash in the amount of \$276,738.87 (the “WFB Cash Collateral”) in order to cash collateralize the Debtors’ following obligations: (A) in respect of the Debtors’ existing letter of credit (the “Existing Letter of Credit”) (issued under the Prepetition Revolving ABL Credit Agreement by WFB (in such capacity, the “Prepetition Letter of Credit Issuer”)) and (B) the Debtors’ Bank Product Obligations (as defined in the Prepetition Revolving ABL Credit Agreement), including any outstanding balances under the Debtors’ commercial card program (the “Cash Management Obligations”), and hereby grant to WFB a first priority security interest in and lien on, all of the Debtors’ right, title and interest in and to the WFB Cash Collateral (such lien, the “WFB Cash Collateral Lien”) in accordance with the terms of the Cash Management Order. WFB is authorized to access and reimburse itself with the WFB Cash Collateral, without further order of the Court, in respect of the Existing Letter of Credit, to the extent drawn (in whole or in part) by the beneficiary thereof, and in respect of any fees and expenses in respect of the Existing Letter of Credit and in respect of any Bank Product Obligations that arise after the entry of the Interim DIP Order, together with any fees, charges, costs and expenses incurred in connection therewith. The Prepetition Revolving ABL Agent (on behalf of the other Prepetition Revolving ABL Secured Parties) consents to the Revolving ABL Paydown, entry of the Interim DIP Order and this Final DIP Order, the Debtors’ entry into the DIP Facility, and all rights and remedies of the DIP Lenders under the DIP Documents, including the enforcement and other exercise of remedies, subject to the terms and conditions contained herein.

5. *Carve-Out.*

(a) Notwithstanding anything to the contrary herein, the Debtors’ obligations to the DIP Lenders and the Prepetition Secured Parties, and the liens, security interests and superpriority claims granted by the DIP Orders or under the Prepetition Revolving ABL Credit

Agreement, Prepetition Indenture, and the DIP Documents, and the payment of all such obligations, shall be subject and subordinate in all respects to payment of the following fees and expenses: (1) the payment of unpaid fees required to be paid to the Clerk of the Court and to the U.S. Trustee pursuant to 28 U.S.C. § 1930(a); (2) fees and expenses up to \$50,000 incurred by a trustee under section 726(b) of the Bankruptcy Code; (3) Allowed Professional Fees (as defined below) of the Estate Professionals (as defined below) prior to the delivery by the DIP Lenders of a Carve-Out Trigger Notice (defined below) (the amounts set forth in this clause (3) being the “Pre-Carve-Out Trigger Notice Cap”); and (4) the Allowed Professional Fees of Debtor Professionals in an aggregate amount not to exceed \$2,000,000 incurred on or after the later of (A) the first business day following delivery by the DIP Lenders of the Carve-Out Trigger Notice or (B) determination of the Court that an Event of Default has occurred, after a hearing thereon (the amounts set forth in this clause (4) being the “Post-Carve-Out Trigger Notice Cap” and together with the Pre Carve-Out Trigger Notice Cap and the amounts set forth in clauses (1) and (2), the “Carve-Out Cap”); (the foregoing clauses (1) through (4), collectively, the “Carve-Out”).

(i) As used in this paragraph, persons or firms retained by (x) the Debtors pursuant to section 327, 328, or 363 of the Bankruptcy Code are referred to as “Debtor Professionals”), and (y) any Official Committee are referred to as “Committee Professionals” and, together with the Debtor Professionals, the “Estate Professionals”.

(ii) The term “Allowed Professional Fees” means fees and expenses incurred prior to the applicable event set forth in this paragraph, to the extent allowed at any time, whether by interim order, procedural order, or otherwise, but subject to final allowance by the Court, without regard to whether such fees and expenses are provided for in any Approved Budget or were invoiced after the Carve-Out Trigger Notice Date. To the extent that professional fees and

expenses of the Estate Professionals have been incurred by the Debtors or the Official Committee at any time before or on the first business day after delivery by the DIP Lenders of a Carve-Out Trigger Notice but have not yet been allowed by the Court, such professional fees and expenses of the Estate Professionals shall constitute Allowed Professional Fees benefiting from the Carve-Out upon their allowance by the Court, whether by interim or final compensation order, and the Carve-Out Account shall be funded to include such professional fees and expenses as set forth herein.

(iii) A “Carve-Out Trigger Notice” means a written notice delivered by email (or other electronic means) by the DIP Lenders to the Debtors, lead bankruptcy counsel for the Debtors, counsel to the Prepetition Notes Trustee, counsel to the Prepetition Revolving ABL Agent, the U.S. Trustee, and counsel to any Committee stating that the Post-Carve-Out Trigger Notice Cap has been invoked, which notice may be delivered following the occurrence and during the continued existence of an Event of Default (as defined herein) under the terms of this Final DIP Order.

(iv) “Carve-Out Trigger Notice Date” means the day on which a Carve-Out Trigger Notice is received by the Debtors.

(v) “Carve-Out Account” means a separate segregated account not subject to the control of the Trustee or any of the DIP Lenders or Prepetition Secured Parties.

(b) Within five (5) business days of the initial funding of the DIP Loans, the Debtors funded into a Carve-Out Account for Debtor Professionals in an amount equal to the total budgeted Debtor Professionals’ fees for the first two (2) weeks set forth in the Approved Budget. Thereafter, the Debtors may use such funds held in the Carve-Out Accounts to pay Debtor Professional fees as they become allowed and payable pursuant to interim or final orders of the

Court; *provided* that the Debtors' obligations to pay the Allowed Professional Fees of the Debtor Professionals shall not be limited or deemed limited to funds held in the Carve-Out Account.

(c) On the Carve-Out Trigger Notice Date, the Carve-Out Trigger Notice shall constitute a demand to the Debtors to fund the Carve-Out Account in cash in an amount equal to the Carve-Out Cap, and immediately following receipt of a Carve-Out Trigger Notice, and prior to the payment of any Obligations, the Debtors shall be required to deposit into the Carve-Out Account cash in an amount equal to the difference between the applicable Carve-Out Cap (which shall be determined by the applicable Debtor Professionals in their reasonable discretion based on the amount of then-unpaid Allowed Professional Fees, and may include a reasonable estimate of the applicable Debtor Professionals' then-incurred fees and expenses not yet allowed) and the balance held in the applicable Carve-Out Account as of the Carve-Out Trigger Notice Date. Notwithstanding anything to the contrary herein or in the DIP Documents, following delivery of a Carve-Out Trigger Notice, the DIP Lenders shall not sweep or foreclose on cash (including cash received as a result of the sale or other disposition of any assets) of the Debtors until the Carve-Out Account has been fully funded as required herein in an amount equal to all obligations benefitting from the Carve-Out. Any payment or reimbursement made to any Debtor Professional in respect of any Allowed Professional Fees prior to the delivery of the Carve Out Trigger Notice shall not reduce the Carve-Out.

(d) The amounts in the Carve-Out Account shall be available only to satisfy Allowed Professional Fees and other amounts included in the Carve-Out until such amounts are paid in full. Notwithstanding anything to the contrary herein, (i) the failure of the Carve-Out Account to satisfy in full the amount set forth in the Carve-Out shall not affect the priority of the Carve-Out and (ii) in no way shall the Carve-Out, the Carve-Out Account, or any Approved Budget

be construed as a cap or limitation on the amount of the Allowed Professional Fees due and payable by the Debtors or that may be allowed by the Bankruptcy Court at any time (whether by interim order, final order, or otherwise). All funds in the Carve-Out Account shall be used first to pay all obligations benefitting from the Pre Carve-Out Trigger Notice Cap, until paid in full, and then the obligations benefitting from the Post Carve-Out Trigger Notice Cap; *provided* that the amount in the Carve-Out Account shall be reduced on a dollar-for-dollar basis for Allowed Professional Fees that are paid after the delivery of the Carve-Out Trigger Notice, and the Carve-Out Account shall not be replenished for such amounts so paid.

(e) Payments from the Carve-Out shall be subject to any terms and conditions of the engagement agreements and appurtenant orders for the employment of each Estate Professional. The Debtors shall be permitted to pay compensation and reimbursement of expenses incurred prior to the occurrence of an Event of Default or delivery of a Default Notice to the extent allowed and payable under sections 330 and 331 of the Bankruptcy Code.

(f) Notwithstanding anything to the contrary herein or elsewhere, the Carve-Out shall be senior to all claims and liens, including liens securing the DIP Facility as well as any adequate protection liens and claims described herein, and the DIP Collateral shall exclude the Carve-Out Account; *provided* that if, after paying all amounts set forth in the definition of Carve-Out, the Carve-Out Account(s) have not been reduced to zero, all remaining funds shall be distributed (a) first, to DIP Lenders on account of the DIP Loans, unless the DIP Loans have been indefeasibly Paid in Full; (c) second, to the Prepetition Secured Notes Parties on account of the Prepetition Notes Obligations; and (d) third, to the Debtors.

(g) The DIP Lenders and the Prepetition Secured Parties shall not be responsible for the direct payment or reimbursement of any fees or expenses of any Estate

Professionals incurred in connection with the Chapter 11 Cases or any Successor Case under any chapter of the Bankruptcy Code, regardless of whether payment of such fees or disbursement has been allowed by the Bankruptcy Court. Nothing in this Final DIP Order or otherwise shall be construed to obligate any of the DIP Lenders or the Prepetition Secured Parties in any way to pay compensation to or reimburse expenses of any Estate Professional, or to guarantee that the Debtors have sufficient funds to pay such compensation or expense reimbursement.

6. *DIP Superpriority Claims.* Pursuant to section 364(c)(1) of the Bankruptcy Code, subject to the Carve-Out, all of the DIP Obligations shall constitute allowed superpriority administrative expense claims against the DIP Loan Parties on a joint and several basis (without the need to file any proof of claim) with priority over any and all claims against the DIP Loan Parties, now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code and any and all administrative expenses or other claims arising under section 105, 326, 327, 328, 330, 331, 365, 503(b), 506(c), 507(a), 507(b), 726, 1113 or 1114 of the Bankruptcy Code (including the Adequate Protection Obligations), whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment, which allowed claims (the “DIP Superpriority 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, and which DIP Superpriority Claims shall be payable from and have recourse to all prepetition and postpetition property of the DIP Loan Parties and all proceeds thereof, and claims and causes of action under section 502(d), 544, 545, 547, 548, 549, 550 or 553 of the Bankruptcy Code, or any other avoidance actions under the Bankruptcy Code (collectively, “Avoidance Actions”) and any proceeds or property recovered, unencumbered or otherwise, from

Avoidance Actions, whether by judgment, settlement or otherwise (“Avoidance Proceeds”)) in accordance with the DIP Orders and the other DIP Documents. The DIP Superpriority Claims shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that the Interim DIP Order or this Final DIP Order or any provision hereof or thereof is vacated, reversed or modified, on appeal or otherwise.

7. *DIP Liens.* As security for the DIP Obligations, effective and automatically and properly perfected upon the date of the Interim DIP Order and without the necessity of the execution, recordation or filing by the DIP Loan Parties or any of the DIP Lenders of mortgages, security agreements, control agreements, pledge agreements, financing statements, intellectual property filing or other similar documents, any notation of certificates of title for titled goods or other similar documents, instruments, deeds, charges or certificates, or the possession or control by the DIP Lenders of, or over, any DIP Collateral, without any further action by the DIP Lenders, the following valid, binding, continuing, enforceable and non-avoidable security interests and liens (all security interests and liens granted to the DIP Lenders, the “DIP Liens”) were, by the Interim DIP Order, and hereby are granted to the DIP Lenders:

(a) *First Priority Liens on Unencumbered Property.* Pursuant to section 364(c)(2) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully perfected first-priority senior security interest (subject only to the Carve-Out) in, and lien upon, all tangible and intangible prepetition and postpetition property of the DIP Loan Parties or their estates, whether existing on the Petition Date or thereafter acquired, and the proceeds, products, rents, and profits thereof, that, on or as of the Petition Date, is not subject to (a) a valid, perfected and non-avoidable lien or (b) a valid and non-avoidable lien in existence as of the Petition Date that is perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code (such liens

described in clause (a) and (b), excluding any Prepetition Liens, including without limitation the liens held by the Prepetition Secured Parties, collectively, “Prior Liens”), including, without limitation, any and all unencumbered cash of the DIP Loan Parties (whether maintained with any of the DIP Lenders or otherwise) and any investment of cash, inventory, accounts receivable, accounts, investment property, other rights to payment whether arising before or after the Petition Date, contracts, properties, plants, fixtures, machinery, equipment, general intangibles, documents, instruments, securities, goodwill, causes of action, insurance policies and rights, claims and proceeds from insurance, commercial tort claims and claims that may constitute commercial tort claims (known and unknown), chattel paper (including electronic chattel paper and tangible chattel paper), interests in leaseholds, real properties, deposit accounts, patents, copyrights, trademarks, trade names, rights under license agreements and other intellectual property, equity interests of subsidiaries, joint ventures and other entities, wherever located, and the proceeds, products, rents and profits of the foregoing, whether arising under section 552(b) of the Bankruptcy Code or otherwise (the “Unencumbered Property”), in each case, Unencumbered Property shall include Avoidance Actions and the Proceeds thereof).

(b) *Liens Priming Certain Secured Parties’ Liens.* Pursuant to section 364(d)(1) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully perfected first-priority senior priming security interest in, and lien upon, all tangible and intangible prepetition and postpetition property of the DIP Loan Parties or their estates that is Prepetition Collateral, regardless of where located (the “DIP Priming Liens”), which liens shall be (notwithstanding anything herein to the contrary): (i) senior in all respects to the Prepetition Notes Liens and the Adequate Protection Liens on DIP Collateral, (ii) subordinate to the Carve-Out, any Prepetition Permitted Liens, and the WFB Cash Collateral Lien, and (iii) not subordinate to any lien, security

interest or mortgage that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code.

(c) *Liens Junior to Certain Other Liens.* Pursuant to section 364(c)(3) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully perfected security interest in and lien upon all tangible and intangible prepetition and postpetition property of the DIP Loan Parties or their estates (other than property described in the foregoing subparagraph (a) or (b)), which shall be (a) junior and subordinate to the Carve-Out, (b) immediately junior and subordinate to any Prior Liens, (c) senior in all respects to the Adequate Protection Liens, and (d) with respect to the WFB Cash Collateral, junior and subordinated to the lien granted by the Debtors in favor of WFB.

(d) *Liens Senior to Certain Other Liens.* The DIP Liens shall not be subject or subordinate to or made *pari passu* with (ai) any lien or security interest that is avoided and preserved for the benefit of the Debtors or their estates under section 551 of the Bankruptcy Code, (b) unless otherwise provided for in this Final DIP Order or the other DIP Documents, any liens or security interests arising after the Petition Date, including, without limitation, any liens or security interests granted in favor of any federal, state, municipal or other governmental unit (including any regulatory body), commission, board or court for any liability of the DIP Loan Parties, (c) any intercompany or affiliate liens of the DIP Loan Parties or security interests of the DIP Loan Parties; or (d) any other lien or security interest under section 361, 363 or 364 of the Bankruptcy Code.

8. *DIP Collateral.* The term “DIP Collateral” means, subject to the Carve-Out, the WFB Cash Collateral Lien and the Prior Liens, and except as otherwise provided in this Final DIP Order each DIP Loan Party’s right, title and interest in, to and under all the Loan Parties’ assets, including, but not limited to the following, in each case, whether owned or existing as of the

Petition Date or thereafter acquired, created or arising and wherever located: all assets and property of such Loan Party and its estate, real or personal, tangible or intangible, now owned or hereafter acquired, whether arising before or after the Petition Date, including, without limitation, all contracts, contract rights, licenses, general intangibles, instruments, equipment, accounts, documents, goods, inventory, fixtures, documents, cash, cash equivalents, chattel paper, letters of credit and letter of credit rights, investment property, arbitration awards, money, insurance, receivables, receivables records, deposit accounts, collateral support, supporting obligations and instruments, fixtures, all interests in leaseholds and real properties, all patents, copyrights, trademarks, all trade names and other intellectual property (whether such intellectual property is registered in the United States or in any foreign jurisdiction), together with all books and records relating to the foregoing, all proceeds, products, accessions, rents and profits of or in respect of any of the foregoing (as such terms are defined in the Uniform Commercial Code as in effect from time to time in the State of New York) and (A) all Avoidance Actions, (B) proceeds of actions brought under section 549 of the Bankruptcy Code to recover any postpetition transfer of DIP Collateral, and (C) Avoidance Proceeds. To the maximum extent permitted by the Bankruptcy Code, any provision of any lease, loan document, easement, use agreement, proffer, covenant, license, contract, organizational document or other agreement that requires the consent or approval of one or more landlords, licensors or other parties, or requires the payment of any fees or obligations to any governmental entity, non-governmental entity or any other person or entity, in order for any Debtor to sell, assign, or otherwise transfer any interest therein (including any fee or leasehold interest), any proceeds thereof or other DIP Collateral, shall have no force or effect with respect to the granting of the DIP Liens in any such interest therein or other DIP Collateral, or in

the proceeds of any assignment and/or sale thereof by any Debtor in favor of the DIP Lenders in accordance with the DIP Documents and the DIP Orders.

9. *Protection of DIP Lenders' and Prepetition Secured Parties' Rights.*

(a) So long as there are any DIP Obligations outstanding or the DIP Lenders have any outstanding commitments under the DIP Documents, the Prepetition Secured Parties, shall: (i) have no right to and shall take no action to foreclose upon, or recover in connection with, the liens granted thereto pursuant to the Prepetition Debt Documents or the DIP Orders, or otherwise seek to exercise or enforce any rights or remedies against the DIP Collateral, including in connection with the Adequate Protection Liens, other than their respective rights under the Bankruptcy Code; (ii) be deemed to have consented to any transfer, disposition or sale of, or release of liens on, the DIP Collateral, not subject to a Prior Lien (but not any proceeds of such transfer, disposition or sale to the extent remaining after Payment in Full of the DIP Obligations), to the extent such transfer, disposition, sale or release is authorized under the DIP Documents; (iii) not file any further financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments, or otherwise take any action to perfect their security interests in the DIP Collateral other than, solely as to this clause (iii), (x) the Prepetition Secured Parties filing financing statements or other documents to perfect the liens granted pursuant to the DIP Orders, (y) such financing statements, filings, releases, amendments, notices or other instruments as may be required or advisable and as requested by the DIP Lenders in order to effect or evidence the payoff, termination and/or release of the liens under the Prepetition Revolving ABL Documents in connection with the Prepetition ABL Paydown or (z) as may be required by applicable state law or foreign law to complete a previously commenced process of perfection or to continue the perfection of valid and non-avoidable liens or security interests existing as of the Petition Date;

and (iv) deliver or cause to be delivered, at the DIP Loan Parties' cost and expense, any termination statements, releases and/or assignments in favor of the DIP Lenders or other documents necessary to effectuate and/or evidence the release, termination and/or assignment of liens on any portion of the DIP Collateral subject to any sale or disposition permitted by the DIP Orders and the other DIP Documents.

(b) To the extent any Prepetition Secured Party has possession of any Prepetition Collateral or DIP Collateral or has control with respect to any Prepetition Collateral or DIP Collateral, or has been noted as a secured party on any certificate of title for a titled good constituting Prepetition Collateral or DIP Collateral, then such Prepetition Secured Party shall be deemed to maintain such possession or notation or exercise such control as a gratuitous bailee and/or gratuitous agent for perfection for the benefit of the DIP Lenders, and such Prepetition Secured Party, as applicable, shall comply with the instructions of the DIP Lenders with respect to such notation or the exercise of such control or possession, subject to the terms and conditions of the DIP Orders.

(c) Except as otherwise provided in this Final Order, any proceeds of Prepetition Collateral received by any Prepetition Secured Party, whether in connection with the exercise of any right or remedy (including setoff) relating to the Prepetition Collateral or otherwise received by a Prepetition Secured Party, shall be segregated and held in trust for the benefit of and forthwith paid over to the DIP Lenders in the same form as received, with any necessary endorsements, or as a court of competent jurisdiction may otherwise direct. The DIP Lenders are hereby authorized to make any such endorsements as agent for any such Prepetition Secured Parties. This authorization is coupled with an interest and is irrevocable.

(d) Upon the occurrence and during the continuation of an Event of Default (as defined in the DIP Term Sheet) that has not been waived by the DIP Lenders and following delivery of written notice (a “Termination Notice”) (including by e-mail), on not less than five (5) business days’ notice (such five (5) business day period, the “DIP Lenders Remedies Notice Period”) to lead restructuring counsel to each of the Debtors, the Prepetition Revolving ABL Agent, the Prepetition Notes Trustee, the Official Committee (if any) and the U.S. Trustee, (the “Remedies Notice Parties”), the DIP Lenders may (and any stay otherwise applicable to the DIP Lenders, whether arising under section 105 or 362 of the Bankruptcy Code or otherwise, but subject to the terms of this Final DIP Order (including this paragraph) is hereby modified for such purpose), without further notice to, hearing of, or order from this Court, to: (i) immediately terminate and/or revoke the Debtors’ right under this Final DIP Order and any DIP Documents to use any Cash Collateral (subject to the Carve-Out); (ii) terminate the DIP Facility and any DIP Document as to any future liability or obligation of the DIP Lenders but without affecting any of the DIP Obligations or the DIP Liens securing such DIP Obligations; (iii) declare all DIP Obligations to be immediately due and payable; and (iv) invoke the right to charge interest at the default rate under the DIP Documents. Upon delivery of such Termination Notice by the DIP Lenders, without further notice or order of this Court, the DIP Lenders’ and the Prepetition Secured Parties’ consent to use Cash Collateral (subject to the Carve-Out and related provisions) and the Debtors’ ability to incur additional DIP Obligations hereunder will, subject to the expiration of the DIP Lenders Remedies Notice Period and unless this Court orders otherwise, automatically terminate and the DIP Lenders will have no obligation to provide any DIP Loans or other financial accommodations. As soon as reasonably practicable following receipt of a Termination Notice, the Debtors shall file a copy of same on the docket. During the DIP Lenders Remedies Notice

Period, the Debtors, the Official Committee (if appointed) and/or any party in interest shall be entitled to seek an emergency hearing with this Court for the purpose of contesting whether, in fact, an Event of Default has occurred and is continuing. If the Court is not available to hold such hearing during the DIP Lenders Remedies Notice Period, the DIP Lenders Remedies Notice Period shall be extended until the earlier of the hearing or the date that is seven (7) business days after delivery of the Termination Notice.

(e) During the continuation of an Event of Default and following the delivery of the Termination Notice, but prior to exercising the remedies set forth in this sentence below or any other remedies (other than those set forth in paragraph 9(d)), the DIP Lenders shall be required to file a motion with the Court seeking emergency relief (the “Stay Relief Motion”) on not less than five (5) business days’ notice to the Remedies Notice Parties (which may run concurrently with the DIP Lenders Remedies Notice Period) for a further order of this Court modifying the automatic stay in the Chapter 11 Cases to permit the DIP Lenders to, subject to the Carve-Out and related provisions: (i) freeze or sweep monies or balances in the Debtors’ accounts; (ii) immediately set-off any and all amounts in accounts maintained by the Debtors with the DIP Lenders against the DIP Obligations, (iii) enforce any and all rights against the DIP Collateral, including, without limitation, foreclosure on all or any portion of the DIP Collateral, occupying the Debtors’ premises, sale or disposition of the DIP Collateral; and (iv) take any other actions or exercise any other rights or remedies permitted under the DIP Orders, the DIP Documents or applicable law; *provided* that the Debtors’ rights to contest any such relief are reserved. The rights and remedies of the DIP Lenders specified herein are cumulative and not exclusive of any rights or remedies that the DIP Lenders have under the DIP Documents or otherwise. If the DIP Lenders are permitted by this Court to take any enforcement action with respect to the DIP Collateral

following the hearing on the Stay Relief Motion, the Debtors shall cooperate with the DIP Lenders in their efforts to enforce their security interest in the DIP Collateral, and shall not take or direct any person or Entity to take any action designed or intended to hinder or restrict in any respect such DIP Lenders from enforcing their security interests in the DIP Collateral. Until such time that the Stay Relief Motion has been adjudicated by this Court, the Debtors may use the proceeds of the DIP Facility to the extent drawn prior to the occurrence of Event of Default or Cash Collateral to fund operations in accordance with the Approved Budget and the terms of the DIP Documents. The Debtors shall promptly cause a copy of any Stay Relief Motion to be served on any party that has filed a request for notices with this Court.

(f) No rights, protections or remedies of the DIP Lenders or the Prepetition Secured Parties granted by the provisions of the DIP Orders or the other DIP Documents shall be limited, modified or impaired in any way by: (i) any actual or purported withdrawal of the consent of any party to the Debtors' authority to continue to use Cash Collateral; (ii) any actual or purported termination of the Debtors' authority to continue to use Cash Collateral; or (iii) the terms of any other order or stipulation related to the Debtors' continued use of Cash Collateral or the provision of adequate protection to any party.

10. *Limitation on Charging Expenses Against Collateral.* Except to the extent of the Carve-Out, no costs or expenses of administration of the Chapter 11 Cases or any Successor Cases or any future proceeding that may result therefrom, including liquidation in bankruptcy or other proceedings under the Bankruptcy Code, shall be charged against or recovered from the DIP Collateral (including Cash Collateral) or Prepetition Collateral pursuant to section 506(c) of the Bankruptcy Code or any similar principle of law, without the prior written consent of the DIP Lenders, and the Prepetition Secured Parties (as applicable) and no consent shall be implied from

any other action, inaction or acquiescence by the DIP Lenders or the Prepetition Secured Parties, and nothing contained in the Interim DIP Order or this Final DIP Order shall be deemed to be a consent by the DIP Lenders or the Prepetition Secured Parties to any charge, lien, assessment or claims against the DIP Collateral under section 506(c) of the Bankruptcy Code or otherwise.

11. *No Marshaling.* In no event shall any of the DIP Lenders or the Prepetition Secured Parties be subject to the equitable doctrine of “marshaling” or any similar doctrine with respect to the DIP Collateral, the DIP Obligations, the Prepetition Secured Debt, or the Prepetition Collateral. Further, in no event shall the “equities of the case” exception in section 552(b) of the Bankruptcy Code apply to any of the Prepetition Secured Parties with respect to proceeds, products, offspring or profits of any Prepetition Collateral.

12. *Payments Free and Clear.* Any and all payments or proceeds remitted to the DIP Lenders or the Prepetition Secured Parties pursuant to the provisions of the DIP Orders, the other DIP Documents or any subsequent order of the Court shall be irrevocable, received free and clear of any claim, charge, assessment or other liability, including without limitation, any such claim or charge arising out of or based on, directly or indirectly, section 506(c) or 552(b) of the Bankruptcy Code, whether asserted or assessed by through or on behalf of the Debtors.

13. *Use of Cash Collateral.* The Debtors were, by the Interim DIP Order, and hereby are, subject to the terms and conditions of this Final DIP Order, authorized to use all Cash Collateral in accordance with the DIP Documents and Approved Budget (subject to Permitted Variances); *provided* that (a) the Prepetition Secured Parties are granted the Adequate Protection as hereinafter set forth and (b) except on the terms and conditions of this Final DIP Order, the Debtors shall be enjoined and prohibited from at any times using the Cash Collateral absent further order of the Court.

14. *Disposition of DIP Collateral.* The DIP Loan Parties shall not sell, transfer, lease, encumber or otherwise dispose of any portion of the DIP Collateral, except as otherwise permitted by the DIP Documents.

15. *Adequate Protection of Prepetition Secured Notes Parties.* The Prepetition Secured Notes Parties are entitled, pursuant to sections 361, 362, 363(e), 364(d)(1) and 507 of the Bankruptcy Code, to adequate protection of their respective interests in the Prepetition Collateral (including Cash Collateral) for the aggregate diminution in the value of their respective interests in the Prepetition Collateral (including Cash Collateral) from and after the Petition Date for any reason provided for under the Bankruptcy Code, including, without limitation, any such diminution resulting from the sale, lease or use by the Debtors of the Prepetition Collateral, the priming of the Prepetition Notes Liens by the DIP Liens pursuant to the DIP Orders and the other DIP Documents, the payment of any amounts under the Carve-Out or pursuant to this Final DIP Order or any other order of the Court or provision of the Bankruptcy Code or otherwise, and the imposition of the automatic stay (the “Prepetition Indenture Adequate Protection Claims”). In consideration of the foregoing, the Prepetition Notes Trustee, for the benefit of the Prepetition Secured Notes Parties, was, by the Interim DIP Order, and hereby is granted the following as Adequate Protection on account of their Prepetition Indenture Adequate Protection Claims, and as an inducement to the Prepetition Secured Notes Parties to consent to the priming of the Prepetition Notes Liens and use of the Prepetition Collateral (including Cash Collateral) (collectively, the “Prepetition Indenture Adequate Protection Obligations”):

(a) *Prepetition Indenture Adequate Protection Liens.* The Prepetition Notes Trustee, for itself and for the benefit of the Prepetition Secured Notes Parties, was by the Interim DIP Order, and hereby is granted (effective and perfected upon the date of the Interim DIP Order

and without the necessity of the execution of any mortgages, security agreements, pledge agreements, financing statements or other agreements) on account of its Prepetition Indenture Adequate Protection Claims, a valid, perfected replacement security interest in and lien upon all of the DIP Collateral (including, Avoidance Actions and Avoidance Proceeds) (the “Prepetition Indenture Adequate Protection Liens”), senior to all other liens but subject and subordinate only to (i) Prior Liens, (ii) the Carve-Out, and (iii) the DIP Liens.

(b) *Prepetition Secured Notes Parties’ Section 507(b) Claim.* The Prepetition Notes Trustee, for itself and for the benefit of the Prepetition Secured Notes Parties, was by the Interim DIP Order, and hereby is granted, subject to the Carve-Out, an allowed superpriority administrative expense claim in each of the Chapter 11 Cases on account of the Prepetition Indenture Adequate Protection Claims as provided for in section 507(b) of the Bankruptcy Code (the “507(b) Claims”), which 507(b) Claims shall be payable from and have recourse to all DIP Collateral and all proceeds thereof (including, without limitation, the Avoidance Actions and Avoidance Proceeds). The 507(b) Claims shall be subject and subordinate only to (i) the Carve-Out and (ii) the DIP Superpriority Claims.

(c) *Prepetition Secured Notes Parties Adequate Protection Fees and Expenses.* As further adequate protection, subject to the Carve-Out as set forth in this Final DIP Order, the DIP Loan Parties shall provide current cash payments of all reasonable and documented prepetition and postpetition fees and expenses of (i) the Prepetition Notes Trustee, including, but not limited to, the reasonable and documented fees and out-of-pocket expenses of Shipman & Goodwin LLP and special and local counsel (in each applicable jurisdiction) to the Prepetition Notes Trustee, and (ii) the Prepetition Noteholders, including, but not limited to, the reasonable and documented fees and out-of-pocket expenses of Latham & Watkins LLP, Hunton Andrews Kurth, LLP and each

other special, conflicts or local counsel (in each applicable jurisdiction) and other advisors to the Prepetition Noteholders (such fees and expenses described in the foregoing clauses (i) and (ii), collectively, the “Prepetition Indenture Adequate Protection Fees and Expenses”), subject to the review procedures set forth in paragraph 21 of this Final DIP Order; and

(d) *Prepetition Indenture Adequate Protection Information Rights.* The Debtors shall provide to the Prepetition Notes Trustee at the same time as such reporting is provided to the DIP Lenders all reporting required to be provided to the DIP Lenders under the DIP Documents. The Debtors shall provide the Prepetition Notes Trustee with all other reporting required under the Prepetition Indenture when due in accordance with its terms.

16. *Adequate Protection of Prepetition Revolving ABL Parties.* The Prepetition Revolving ABL Parties are entitled, pursuant to sections 361, 362, 363(e), and 507 of the Bankruptcy Code, to adequate protection of their respective interests in the Prepetition Collateral (including Cash Collateral), to the extent of any obligations that arise and accrue under the Prepetition Revolving ABL Credit Agreement after the Revolving ABL Paydown, for the aggregate diminution in the value of their respective interests in the Prepetition Collateral (including Cash Collateral) from and after the Petition Date for any reason provided for under the Bankruptcy Code, including, without limitation, any such diminution resulting from the sale, lease or use by the Debtors of the Prepetition Collateral, or otherwise, and the imposition of the automatic stay (the “Prepetition Revolving ABL Adequate Protection Claims,” together with the Prepetition Indenture Adequate Protection Claims, collectively, the “Adequate Protection Claims”). In consideration of the foregoing, the Prepetition Revolving ABL Agent, for the benefit of the Prepetition Revolving ABL Secured Parties, is hereby granted the following as the Prepetition Revolving ABL Adequate Protection on account of their Adequate Protection Claims,

and as an inducement to the Prepetition Revolving ABL Parties to consent to the use of the Prepetition Collateral (including Cash Collateral) (the “Prepetition Revolving ABL Adequate Protection Obligations,” together with Prepetition Indenture Adequate Protection Obligations, collectively, the “Adequate Protection Obligations”):

(a) *Prepetition Revolving ABL Adequate Protection Liens.* The Prepetition Revolving ABL Agent, for itself and for the benefit of the Prepetition Revolving ABL Secured Parties, was by the Interim DIP Order, and hereby is granted (effective and perfected upon the date of the Interim DIP Order and without the necessity of the execution of any mortgages, security agreements, pledge agreements, financing statements or other agreements) on account of its Prepetition Revolving ABL Adequate Protection Claims, a valid, perfected replacement security interest in and lien upon all of the DIP Collateral (including, Avoidance Actions and Avoidance Proceeds) (the “Prepetition Revolving Adequate Protection Liens,” together with Prepetition Indenture Adequate Protection Liens, collectively, the “Adequate Protection Liens”), senior to all other liens but subject and subordinate only to (i) Prior Liens, (ii) the Carve-Out, (iii) the DIP Liens, and (iv) the Prepetition Indenture Adequate Protection Liens and the Prepetition Notes Liens with respect to Note Priority Collateral subject to the terms, conditions and priorities of the Intercreditor Agreement;

(b) *Prepetition Revolving ABL Secured Parties’ Section 507(b) Claim.* The Prepetition Revolving ABL Agent, for itself and for the benefit of the Prepetition Revolving ABL Secured Parties, was by the Interim DIP Order, and hereby is granted, an allowed superpriority administrative expense claim in each of the Chapter 11 Cases on account of the Prepetition Revolving ABL Adequate Protection Claims as provided for in section 507(b) of the Bankruptcy Code (the “Prepetition Revolving ABL 507(b) Claims”), which Prepetition Revolving ABL 507(b)

Claims shall be payable from and have recourse to all DIP Collateral and all proceeds thereof (including, without limitation, the Avoidance Actions and Avoidance Proceeds), subject and subordinate only to (i) Prior Liens, (ii) the Carve-Out, (iii) the DIP Liens, and (iv) the Prepetition Indenture Adequate Protection Liens and the Prepetition Notes Liens with respect to Note Priority Collateral subject to the terms, conditions and priorities of the Intercreditor Agreement;

(c) *Prepetition Revolving ABL Secured Parties Adequate Protection Fees and Expenses.* As further adequate protection, the DIP Loan Parties shall provide current cash payments of all reasonable and documented prepetition and postpetition fees and expenses of (i) the Prepetition Revolving ABL Agent, including, but not limited to, the reasonable and documented fees and out-of-pocket expenses of Otterbourg, PC and Bracewell LLP (in each applicable jurisdiction) (such fees and expenses, collectively, the “Prepetition Revolving ABL Adequate Protection Fees and Expenses,” together with Prepetition Indenture Adequate Protection Fees and Expenses, collectively, the “Adequate Protection Fees and Expenses”), subject to the review procedures set forth in paragraph 21 of this Final DIP Order; and

(d) *Prepetition Revolving ABL Adequate Protection Information Rights.* The Debtors shall provide to the Prepetition Revolving ABL Agent at the same time as such reporting is provided to the DIP Lenders all reporting required to be provided to the DIP Lenders under the DIP Documents. The Debtors shall continue to provide the Prepetition Revolving ABL Revolving Agent with all other reporting required under the Prepetition Revolving ABL Credit Agreement, including without limitation, the Borrowing Base Certificate and supporting documentation when due in accordance with its terms.

17. *Maintenance of Collateral.* The DIP Loan Parties shall continue to maintain and insure the Prepetition Collateral and DIP Collateral in amounts, for the risks, and by the entities required under the Prepetition Debt Documents and the DIP Documents.

18. *Reservation of Rights of Prepetition Secured Parties.* Under the circumstances and given that the above-described adequate protection is consistent with the Bankruptcy Code, including section 506(b) thereof, the Court finds that the adequate protection provided herein is reasonable and sufficient to protect the interests of the Prepetition Secured Parties; *provided* that any of the Prepetition Secured Parties (subject to any applicable contractual limitations on such rights) may request further or different adequate protection and the DIP Loan Parties or any other party in interest may contest any such request.

19. *Perfection of DIP Liens and Adequate Protection Liens.*

(a) This Final DIP Order shall be sufficient and conclusive evidence of the attachment, validity, perfection, and priority of all liens and security interests granted under the Interim DIP Order, this Final DIP Order and under the DIP Documents, including, without limitation, the DIP Liens, without the necessity of the execution, recordation or filing of any pledge, collateral or security agreements, mortgages, deeds of trust, lockbox or control agreements, financing statements, notations of certificates of title for titled goods, or any other document or instrument, or the taking of any other action (including, without limitation, entering into any deposit account control agreement or other act to take possession or control of any DIP Collateral), to attach, validate, perfect or prioritize such liens and security interests, or to entitle the DIP Lenders to the priorities granted herein (other than, to the extent applicable, any such filings required under applicable non-U.S. law to attach, validate, perfect or prioritize such liens).

(b) Without in any way limiting the automatically effective perfection of the liens and security interests granted under this Final DIP Order, the Interim DIP Order, and the DIP Documents, the DIP Lenders were, by the Interim DIP Order, and hereby are authorized, but not required, in its sole discretion, to execute, file and record (and to execute in the name of the DIP Loan Parties, as their true and lawful attorneys, with full power of submission, to the maximum extent permitted under applicable law) financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments in any jurisdiction or take possession or control over cash or securities (consistent with the terms of the DIP Orders), or to amend or modify security documents, or to subordinate existing liens and any other similar action or action in connection therewith, or take any other action in order to validate, perfect, preserve and enforce the liens and security interests granted to it hereunder or under the DIP Documents or to otherwise evidence such liens and security interests in all DIP Collateral (each, a “Perfection Action”); *provided, however*, whether or not the DIP Lenders determine, in their sole discretion, to take any Perfection Action with respect to any liens or security interests granted hereunder, such liens and security interests shall nonetheless be deemed valid, perfected, allowed, enforceable, non-avoidable as of the entry of the Interim DIP Order. Upon the request of the DIP Lenders, the DIP Loan Parties, without any further consent of any party, were, by the Interim DIP Order, and hereby are authorized and directed to take, execute, deliver and file such instruments (in each case, without representation or warranty of any kind) to enable the DIP Lenders to further validate, perfect, preserve and enforce the DIP Liens. All such documents will be deemed to have been recorded and filed as of the Petition Date.

(c) A certified copy of the Interim DIP Order or this Final DIP Order may, as the DIP Lenders may determine in their discretion, be filed with or recorded in filing or recording

offices in addition to or in lieu of any financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments, and all filing offices are hereby authorized and directed to accept such certified copy of the Interim DIP Order or this Final DIP Order for filing and/or recording, as applicable. The automatic stay of section 362(a) of the Bankruptcy Code shall be modified to the extent necessary to permit the DIP Lenders and DIP Loan Parties to take all actions, as applicable, referenced in this paragraph.

20. *Preservation of Rights Granted Under this Final DIP Order.*

(a) Other than the Carve-Out and other claims and liens expressly granted or permitted by this Final DIP Order, no claim or lien having a priority senior to or *pari passu* with those granted by the Interim DIP Order or this Final DIP Order to the DIP Lenders or the Prepetition Secured Parties shall be permitted while any of the DIP Obligations or the Adequate Protection Obligations remain outstanding, and, except as otherwise expressly provided in or permitted under this Final DIP Order, the DIP Liens, the WFB Cash Collateral Lien, and the Adequate Protection Liens shall not be subject or subordinated to or made *pari passu* with (i) any lien or security interest that is avoided and preserved for the benefit of the Debtors' estates under section 551 of the Bankruptcy Code; (ii) any other lien or security interest, whether under section 361, 363 or 364 of the Bankruptcy Code or otherwise; (iii) any liens arising after the Petition Date, including, without limitation, any liens or security interests granted in favor of any federal, state, municipal or other domestic or foreign governmental unit (including any regulatory body), commission, board or court for any liability of the DIP Loan Parties; or (iv) any intercompany or affiliate liens or security interests of the DIP Loan Parties.

(b) The occurrence and continuance of any Event of Default (as defined in the DIP Term Sheet) shall, after notice by the DIP Lenders in writing to the Borrower, counsel to the

Borrower, the U.S. Trustee, counsel to the Prepetition Notes Trustee, counsel to Prepetition Revolving ABL Agent, and lead counsel to the Official Committee (if any) constitute an event of default under this Final DIP Order (each, an “Event of Default”) and, upon such notice of any such Event of Default, interest, including, where applicable, default interest, shall accrue and be paid as set forth in the DIP Term Sheet. Notwithstanding any order that may be entered dismissing any of the Chapter 11 Cases under section 1112 of the Bankruptcy Code or converting these Chapter 11 Cases to cases under chapter 7: (i) the DIP Superpriority Claims, the DIP Liens, the WFB Cash Collateral Lien, the Adequate Protection Claims, the Adequate Protection Liens and the other Adequate Protection Obligations, and any claims related to the foregoing shall continue in full force and effect and shall maintain their priorities as provided in this Final DIP Order until all DIP Obligations, Cash Management Obligations, and Adequate Protection Obligations shall have been Paid in Full (and such DIP Superpriority Claims, DIP Liens, WFB Cash Collateral Lien, Adequate Protection Claims, Adequate Protection Liens and other Adequate Protection Obligations shall, notwithstanding such dismissal or conversion, remain binding on all parties in interest); (ii) the other rights granted by this Final DIP Order, including with respect to the Carve-Out, shall not be affected; and (iii) this Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing the claims, liens and security interests referred to in this paragraph and otherwise in this Final DIP Order.

(c) If any or all of the provisions of this Final DIP Order are hereafter reversed, modified, vacated or stayed, such reversal, modification, vacatur or stay shall not affect: (i) the validity, priority or enforceability of any DIP Obligations, Cash Management Obligations, or Adequate Protection Obligations incurred prior to the DIP Lenders’, the Prepetition Notes Trustee’s, or the Prepetition Revolving ABL Agent’s, as applicable, actual receipt of written notice

of the effective date of such reversal, modification, vacatur or stay; or (ii) the validity, priority or enforceability of the DIP Liens or the Adequate Protection Liens. Notwithstanding any such reversal, modification, vacatur or stay of any use of Cash Collateral, any DIP Obligations, DIP Liens, Adequate Protection Claims, Adequate Protection Liens or other Adequate Protection Obligations incurred by the DIP Loan Parties and granted to the DIP Lenders or the Prepetition Secured Parties, as the case may be, prior to the DIP Lenders', the Prepetition Notes Trustee's, or the Prepetition Revolving ABL Agent's as applicable, actual receipt of written notice of the effective date of such reversal, modification, vacatur or stay shall be governed in all respects by the original provisions of this Final DIP Order, and the DIP Lenders and the Prepetition Secured Parties shall be entitled to, and are hereby granted, all the rights, remedies, privileges and benefits arising under sections 364(e) and 363(m) of the Bankruptcy Code, this Final DIP Order and the other DIP Documents with respect to all uses of Cash Collateral, DIP Obligations and Adequate Protection Obligations.

(d) Except as expressly provided in this Final DIP Order or in the other DIP Documents, the DIP Liens, the WFB Cash Collateral Lien, the DIP Superpriority Claims, the Adequate Protection Claims, the Adequate Protection Liens, the other Adequate Protection Obligations and all other rights and remedies of the DIP Lenders and the other Prepetition Secured Parties granted by the provisions of this Final DIP Order and the other DIP Documents shall survive, and shall not be modified, impaired or discharged by: (i) the entry of an order converting any of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code, dismissing any of the Chapter 11 Cases or terminating the joint administration of these Chapter 11 Cases or by any other act or omission; (ii) the entry of an order approving the sale of any DIP Collateral pursuant to section 363(b) of the Bankruptcy Code (except to the extent permitted by the DIP Documents);

or (iii) the entry of an order confirming a chapter 11 plan in any of the Chapter 11 Cases and, pursuant to section 1141(d)(4) of the Bankruptcy Code, the DIP Loan Parties have waived any discharge as to any remaining DIP Obligations or Adequate Protection Obligations. The terms and provisions of this Final DIP Order and the other DIP Documents shall continue in these Chapter 11 Cases (including if these Chapter 11 Cases cease to be jointly administered) and in any Successor Cases, and the DIP Liens, the DIP Superpriority Claims, the Adequate Protection Claims, the Adequate Protection Liens, the other Adequate Protection Obligations and all other rights and remedies of the DIP Lenders and the Prepetition Secured Parties granted by the provisions of this Final DIP Order and the other DIP Documents shall continue in full force and effect until the DIP Obligations and the Adequate Protection Obligations are Paid in Full, as set forth herein and in the other DIP Documents, and the commitments under the DIP Facility have been terminated (and, in the case of rights and remedies of the Prepetition Secured Parties, shall remain in full force and effect thereafter, subject to the terms of this Final DIP Order).

21. *Payment of Fees and Expenses.* The DIP Loan Parties were, by the Interim DIP Order, and hereby are authorized to and shall pay the Adequate Protection Fees and Expenses. Subject to the review procedures set forth in this paragraph 21, payment of all Adequate Protection Fees and Expenses shall not be subject to allowance or review by the Court or subject to the U.S. Trustee's fee guidelines, and no attorney or advisor to the DIP Lenders shall be required to file an application seeking compensation for services or reimbursement of expenses with the Court; *provided, however*, that any time such professionals seek payment of fees and expenses from the Debtors from and after entry of the Interim DIP Order, but prior to the effective date of any confirmed chapter 11 plan, each such professional shall provide summary copies of its invoices for professional fees and expenses (which shall not be required to contain time entries and which

may be redacted or modified to the extent necessary to delete any information subject to the attorney-client privilege, any information constituting attorney work product, or any other confidential information, and the provision of their invoices shall not constitute any waiver of the attorney-client privilege or of any benefits of the attorney work product doctrine) to lead restructuring counsel to the Debtors, the U.S. Trustee, counsel to the DIP Lenders, and lead restructuring counsel to the Official Committee (if any) (collectively, the “Review Parties”); *provided, however*, that the U.S. Trustee reserves its rights to reasonably request additional detail regarding the services rendered and expenses incurred by such professionals. Any objections raised by any Review Party with respect to such invoices must be in writing and state with particularity the grounds therefor and must be submitted to the affected professional within ten (10) calendar days after delivery of such invoices to the Review Parties (such ten (10) day calendar period, the “Review Period”). If no written objection is received prior to the expiration of the Review Period from the Review Parties, the Debtors shall pay such invoices within five (5) business days following the expiration of the Review Period. If an objection to a professional’s invoice is received within the Review Period, the DIP Loan Parties shall pay within five (5) business days the undisputed amount of the invoice without the necessity of filing formal fee applications, regardless of whether such amounts arose or were incurred before or after the Petition Date, and this Court shall have jurisdiction to determine the disputed portion of such invoice if the parties are unable to resolve the dispute consensually. Notwithstanding the foregoing, the Debtors were, by the Interim DIP Order, authorized and directed to pay upon entry of the Interim DIP Order any DIP Fees and Expenses and Adequate Protection Fees and Expenses incurred on or prior to such date without the need for any professional to first deliver a copy of its invoice or other supporting documentation to the Review Parties (other than the Debtors). No attorney or advisor

to any DIP Lender or any Prepetition Secured Party shall be required to file an application seeking compensation for services or reimbursement of expenses with the Court. Any and all fees, costs, and expenses paid prior to the Petition Date by any of the Debtors to or for the benefit of the DIP Lenders, the Prepetition Notes Trustee, or the Prepetition Revolving ABL Agent, in connection with or with respect to the DIP Facility or these Chapter 11 Cases, are hereby approved in full and shall not be subject to recharacterization, avoidance, subordination, disgorgement or any similar form of recovery by the Debtors or any other person. For the avoidance of doubt, the reasonable and documented fees and expenses of the Prepetition Revolving ABL Agent payable under the Prepetition Revolving ABL Credit Agreement shall be and were paid in connection with the Prepetition ABL Paydown and shall not be subject to this paragraph 21.

22. *Effect of Stipulations on Third Parties.* The Debtors' stipulations, admissions, agreements and releases contained in the DIP Orders shall be binding upon the Debtors in all circumstances and for all purposes. The Debtors' stipulations, admissions, agreements and releases contained in the DIP Orders shall be binding upon all other parties in interest, including, without limitation, any statutory or non-statutory committees appointed or formed in the Chapter 11 Cases and any other person or Entity acting or seeking to act on behalf of the Debtors' estates including any chapter 7 or chapter 11 trustee or examiner appointed or elected for any of the Debtors, in all circumstances and for all purposes unless: except as otherwise provided under any confirmation order or confirmed chapter 11 plan in these Chapter 11 Cases, (a) such committee or any other party in interest with requisite standing (subject in all respects to any agreement or applicable law that may limit or affect such Entity's right or ability to do so) has timely filed an adversary proceeding or contested matter (subject to the limitations contained herein, including, *inter alia*, in this paragraph) on or before the earlier of (a) two (2) Business Days prior to any scheduled

Confirmation hearing and (b) the later of (i) (A) as to the Official Committee only, sixty (60) calendar days after the formation of the Official Committee, (B) if the Chapter 11 Cases are converted to chapter 7 and a chapter 7 trustee or a chapter 11 trustee is appointed or elected prior to the end of the Challenge Period, then the Challenge Period for any such chapter 7 trustee or chapter 11 trustee shall be extended (solely as to such chapter 7 trustee and chapter 11 trustee) to the date that is the later of (I) seventy-five (75) calendar days after entry of the Interim DIP Order, and (II) thirty (30) calendar days after its appointment, and (C) as to all other parties in interest, seventy-five (75) calendar days after entry of the Interim DIP Order; and (ii) any such later date as (A) has been agreed to by (I) the DIP Lenders (in all instances), (II) the Prepetition Revolving ABL Agent with respect to the Prepetition Revolving ABL Secured Parties, the Prepetition Revolving ABL Debt or the Prepetition Revolving ABL Liens and (III) the Prepetition Notes Trustee (acting at the direction of Prepetition Noteholders) with respect to the Prepetition Secured Notes Parties, the Prepetition Indenture Debt or the Prepetition Notes Liens, or (B) has been ordered by this Court for cause upon a motion filed and served within any applicable period (the time period established by the foregoing clauses (i)-(ii), the “Challenge Period”), (x) objecting to or challenging the amount, validity, perfection, enforceability, priority or extent of the Prepetition Secured Debt or the Prepetition Liens, or (y) otherwise asserting or prosecuting any action for preferences, fraudulent transfers or conveyances, other avoidance power claims or any other claims, counterclaims or causes of action, objections, contests or defenses (collectively, the “Challenges”) against the Prepetition Secured Parties or their respective subsidiaries, affiliates, officers, directors, managers, principals, employees, agents, financial advisors, attorneys, accountants, investment bankers, consultants, representatives and other professionals and the respective successors and assigns thereof, in each case in their respective capacity as such (each,

a “Representative” and, collectively, the “Representatives”) in connection with matters related to the Prepetition Debt Documents, the Prepetition Secured Debt, the Prepetition Liens or the Prepetition Collateral; and (b) there is a final non-appealable order in favor of the plaintiff sustaining any such Challenge in any such timely filed adversary proceeding or contested matter; *provided, however*, that any pleadings filed in connection with any Challenge shall set forth with specificity the basis for such challenge or claim, and any challenges or claims not so specified prior to the expiration of the Challenge Period shall be deemed forever, waived, released and barred. If no such Challenge is timely and properly filed during the Challenge Period or the Court does not rule in favor of the plaintiff in any such proceeding then: (1) the Debtors’ stipulations, admissions, agreements and releases contained in the DIP Orders shall be binding on all parties in interest; (2) the obligations of the DIP Loan Parties under the Prepetition Debt Documents, including the Prepetition Secured Debt, shall constitute allowed claims not subject to defense avoidance, reduction, setoff, recoupment, recharacterization, subordination (whether equitable, contractual, or otherwise, except under the Prepetition Intercreditor Agreement), disallowance, impairment, claim, counterclaim, cross-claim, or any other challenge under the Bankruptcy Code or any applicable law or regulation by any person or Entity for all purposes in the Chapter 11 Cases, and any subsequent chapter 7 case(s); (3) the Prepetition Liens on the Prepetition Collateral shall be deemed to have been, as of the Petition Date, legal, valid, binding and perfected security interests and liens, not subject to defense, avoidance, reduction, setoff, recoupment, recharacterization, subordination (whether equitable, contractual (other than pursuant to the Prepetition Intercreditor Agreement), or otherwise), disallowance, impairment, claim, counterclaim, cross-claim, or any other challenge under the Bankruptcy Code or any applicable law or regulation by any person or Entity, including any statutory or non-statutory committees

appointed or formed in the Chapter 11 Cases or any other party in interest acting or seeking to act on behalf of the Debtors' estates, including, without limitation, any successor thereto (including, without limitation, any chapter 7 trustee or chapter 11 trustee or examiner appointed or elected for any of the Debtors) and any defense, avoidance, reduction, setoff, recoupment, recharacterization, subordination (whether equitable, contractual, or otherwise), disallowance, impairment, claim, counterclaim, cross-claim, or any other challenge under the Bankruptcy Code or any applicable law or regulation by any statutory or non-statutory committees appointed or formed in the Chapter 11 Cases or any other party acting or seeking to act on behalf of the Debtors' estates, including, without limitation, any successor thereto (including, without limitation, any chapter 7 trustee or chapter 11 trustee or examiner appointed or elected for any of the Debtors), whether arising under the Bankruptcy Code or otherwise, against any of the Prepetition Secured Parties or their Representatives arising out of or relating to any of the Prepetition Debt Documents, the Prepetition Secured Debt, the Prepetition Liens or the Prepetition Collateral shall be deemed forever waived, released and barred. If any such Challenge is timely filed during the Challenge Period, the stipulations, admissions, agreements and releases contained in the DIP Orders shall nonetheless remain binding and preclusive (as provided in the second sentence of this paragraph) on each other statutory or nonstatutory committee appointed or formed in the Chapter 11 Cases and on any other person or Entity, except (solely with respect to the party filing the Challenge) to the extent that such stipulations, admissions, agreements and releases were expressly and successfully challenged in such Challenge as set forth in a final, non-appealable order of a court of competent jurisdiction. Nothing in the DIP Orders vests or confers on any Entity (as defined in the Bankruptcy Code), including any statutory or non-statutory committees appointed or formed in these Chapter 11 Cases, standing or authority to pursue any claim or cause of action belonging to the Debtors or their

estates, including, without limitation, Challenges with respect to the Prepetition Debt Documents, the Prepetition Secured Debt or the Prepetition Liens, and any ruling on standing (including any appeals thereof) shall not stay or otherwise delay the Chapter 11 Cases or confirmation of any plan of reorganization.

23. *Limitation on Use of DIP Financing Proceeds and Collateral.* Notwithstanding any other provision of this Final DIP Order or any other order entered by this Court, no portion or proceeds of any DIP Loans, DIP Collateral, Prepetition Collateral (including Cash Collateral) or the Carve-Out, may be used directly or indirectly, including without limitation through reimbursement of professional fees of any non-Debtor party, in connection with (a) the investigation, threatened initiation or prosecution of any claims, causes of action, adversary proceedings or other litigation (i) against any of the DIP Lenders or the Prepetition Secured Parties, or their respective predecessors-in-interest or Representatives, in each case in their respective capacities as such, or any action purporting to do the foregoing in respect of the DIP Obligations, DIP Liens, DIP Superpriority Claims, Prepetition Secured Debt, Prepetition Liens, and/or the Adequate Protection Claims, Adequate Protection Liens and other Adequate Protection Obligations granted to the Prepetition Secured Parties, as applicable, or (ii) challenging the amount, validity, perfection, priority or enforceability of or asserting any defense, counterclaim or offset with respect to the DIP Obligations, the Prepetition Secured Debt and/or the liens, claims, rights, or security interests granted under the DIP Orders, the other DIP Documents or the Prepetition Debt Documents in respect of the DIP Obligations or the Prepetition Secured Debt, including, in the case of each (i) and (ii), without limitation, for lender liability or pursuant to section 105, 510, 544, 547, 548, 549, 550 or 552 of the Bankruptcy Code, applicable non-bankruptcy law or otherwise (*provided that*, notwithstanding anything to the contrary herein, the proceeds of the DIP

Loans and/or DIP Collateral (including Cash Collateral) may be used by the Official Committee to investigate but not to prosecute (x) the claims and liens of the Prepetition Secured Parties and (y) potential claims, counterclaims, causes of action or defenses against the Prepetition Secured Parties, up to an aggregate cap of no more than \$25,000); (b) attempts to prevent, hinder, or otherwise delay or interfere with the Prepetition Secured Parties' or the DIP Secured Parties', as applicable, enforcement or realization on the Prepetition Secured Debt, Prepetition Collateral, DIP Obligations, DIP Collateral, and the liens, claims and rights granted to such parties under the Interim DIP Order or the Final DIP Order, as applicable, each in accordance with the DIP Orders, the other DIP Documents and the Prepetition Debt Documents; (c) attempts to seek to modify any of the rights and remedies granted to the Prepetition Secured Parties or the DIP Lenders under the DIP Orders, the other DIP Documents or the Prepetition Debt Documents, as applicable, other than in accordance with this Final DIP Order; (d) to apply to this Court for authority to approve superpriority claims or grant liens (other than the liens and claims granted hereunder or permitted pursuant to the other DIP Documents) or security interests in the DIP Collateral or any portion thereof that are senior to, or on parity with, the DIP Liens, the DIP Superpriority Claims, the Adequate Protection Claims, the Adequate Protection Liens or the other Adequate Protection Obligations; or (e) to pay or to seek to pay any amount on account of any claims arising prior to the Petition Date unless such payments are agreed to in writing by the DIP Lenders or are expressly permitted under this Final DIP Order or under the other DIP Documents (including the Approved Budget, subject to Permitted Variances), or unless all DIP Obligations, Prepetition Secured Debt, Adequate Protection Obligations, and claims granted to the DIP Lenders and Prepetition Secured Parties under this Final DIP Order have been refinanced or Paid In Full (including the cash collateralization of any letters of credit).

24. *Indemnification.* The Prepetition Secured Parties and the DIP Lenders have acted in good faith and without negligence, misconduct, or violation of public policy or law, in respect of all actions taken by them in connection with or related in any way to negotiating, implementing, documenting, or obtaining requisite approvals of the DIP Financing and the use of Cash Collateral, including in respect of the granting of the DIP Liens and the Adequate Protection Liens, any challenges or objections to the DIP Financing or the use of Cash Collateral, the DIP Documents, and all other documents related to and all transactions contemplated by the foregoing. Accordingly, without limitation to any other right to indemnification, the Prepetition Secured Parties and the DIP Lenders shall be and hereby are indemnified (as applicable) as provided in the Prepetition Debt Documents and the DIP Documents, as applicable. The Debtors agree that no exception or defense in contract, law, or equity exists as of the date of this Final DIP Order to any obligation set forth, as the case may be, in this paragraph 24, in paragraph 24 of the Interim DIP Order, or otherwise in the DIP Documents, or in the Prepetition Debt Documents to indemnify and/or hold harmless any DIP Lender or any Prepetition Secured Party, as the case may be, and any such defenses are hereby waived.

25. *Final DIP Order Governs.* In the event of any inconsistency between the provisions of this Final DIP Order, the Interim DIP Order, the other DIP Documents (including, but not limited to, with respect to the Adequate Protection Obligations) or the Prepetition Debt Documents, the provisions of this Final DIP Order shall govern. Notwithstanding the relief granted in any other order by this Court, (a) all payments and actions by any of the Debtors pursuant to the authority granted therein shall be subject to this Final DIP Order, including compliance with the Approved Budget (subject to Permitted Variances) and all other terms and conditions hereof, and (b) to the extent there is any inconsistency between the terms of such other

order and this Final DIP Order, this Final DIP Order shall control, in each case, except to the extent expressly provided otherwise in such other order.

26. *Binding Effect; Successors and Assigns.* The DIP Documents, including the provisions of this Final DIP Order, including all findings herein, shall be binding upon all parties in interest in these Chapter 11 Cases, including, without limitation, the DIP Lenders, the Prepetition Secured Parties, any statutory or non-statutory committees appointed or formed in these Chapter 11 Cases, the Debtors and their respective successors and assigns (including any chapter 7 or chapter 11 trustee hereinafter appointed or elected for the estate of any of the Debtors, an examiner appointed pursuant to section 1104 of the Bankruptcy Code, or any other fiduciary appointed as a legal representative of any of the Debtors or with respect to the property of the estate of any of the Debtors) and shall inure to the benefit of the DIP Lenders, the Prepetition Secured Parties and the Debtors and their respective successors and assigns; *provided* that the DIP Lenders and the Prepetition Secured Parties shall have no obligation to permit the use of the Prepetition Collateral (including Cash Collateral) by, or to extend any financing to, any chapter 7 trustee, chapter 11 trustee or similar responsible person appointed for the estates of the Debtors.

27. *Exculpation.* Nothing in the DIP Orders, the other DIP Documents, the Prepetition Debt Documents or any other documents related to the transactions contemplated hereby shall in any way be construed or interpreted to impose or allow the imposition upon any DIP Lender or Prepetition Secured Party of any liability for any claims arising from the prepetition or postpetition activities of the Debtors in the operation of their businesses, or in connection with their restructuring efforts. The DIP Lenders and Prepetition Secured Parties shall not, in any way or manner, be liable or responsible for (a) the safekeeping of the DIP Collateral or Prepetition Collateral, (b) any loss or damage thereto occurring or arising in any manner or fashion from any

cause, (c) any diminution in the value thereof or (d) any act or default of any carrier, servicer, bailee, custodian, forwarding agency or other person, and all risk of loss, damage or destruction of the DIP Collateral or Prepetition Collateral shall be borne by the Debtors.

28. *Limitation of Liability.* In determining to make any loan or other extension of credit under the DIP Documents, to permit the use of the DIP Collateral or Prepetition Collateral (including Cash Collateral) or in exercising any rights or remedies as and when permitted pursuant to the DIP Orders or the other DIP Documents or Prepetition Debt Documents, none of the DIP Lenders or Prepetition Secured Parties shall (a) have any liability to any third party or be deemed to be in “control” of the operations of the Debtors; (b) owe any fiduciary duty to the Debtors, their respective creditors, shareholders or estates; or (c) be deemed to be acting as a “Responsible Person” or “Owner” or “Operator” or “managing agent” with respect to the operation or management of any of the Debtors (as such terms or similar terms are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601, *et seq.*, as amended, or any other federal or state statute, including the Internal Revenue Code). Furthermore, nothing in the Interim DIP Order or this Final DIP Order shall in any way be construed or interpreted to impose or allow the imposition upon any of the DIP Lenders or Prepetition Secured Parties of any liability for any claims arising from the prepetition or postpetition activities of any of the Debtors and their respective affiliates (as defined in section 101(2) of the Bankruptcy Code).

29. *Master Proofs of Claim.* The Prepetition Secured Parties shall not be required to file proofs of claim in the Chapter 11 Cases or any Successor Case in order to assert claims on behalf of themselves or the other Prepetition Secured Parties for payment of the Prepetition Secured Debt arising under the Prepetition Debt Documents, including, without limitation, any principal, unpaid interest, fees, expenses and other amounts under the Prepetition Debt Documents

or the Adequate Protection Obligations arising under the DIP Orders and the other DIP Documents. The statements of claim in respect of such indebtedness set forth in this Final DIP Order is deemed sufficient to and does constitute proofs of claim in respect of such debt and such secured status. Any order entered by this Court in relation to the establishment of a bar date for any claim (including, without limitation, administrative claims) in any of the Chapter 11 Cases or any Successor Cases shall not apply to the Prepetition Secured Parties with respect to the Prepetition Secured Debt and the Adequate Protection Obligations. However, in order to facilitate the processing of claims, the Prepetition Notes Trustee (at the direction of the Prepetition Noteholders) and the Prepetition Revolving ABL Agent (at the direction of the Required Revolving ABL Lenders, to the extent the Prepetition ABL Paydown has not occurred) was, by the Interim DIP Order, and hereby are each authorized, but not directed or required, to file in the Debtors' lead chapter 11 case, Case No. 24-90612 (ARP), a single master proof of claim on behalf of the applicable Prepetition Secured Parties on account of any and all of their respective claims against any of the Debtors arising under the applicable Prepetition Debt Documents and hereunder (each, a "Master Proof of Claim"). Upon the filing of a Master Proof of Claim, it shall be deemed to have filed a proof of claim in the amount set forth therein in respect of its claims against each of the Debtors of any type or nature whatsoever with respect to the applicable Prepetition Debt Documents, and the claim of each applicable Prepetition Secured Party (and each of its respective successors and assigns) specified in a Master Proof of Claim shall be treated as if it had filed a separate proof of claim in each of these Chapter 11 Cases. The Master Proofs of Claim shall not be required to identify whether any Prepetition Secured Party acquired its claim from another party or the identity of any such party or to be amended to reflect a change in the holders of the claims set forth therein or a reallocation among the holders of the claims asserted therein resulting from

the transfer of all or any portion of such claims. The provisions of this paragraph 29 and each Master Proof of Claim are intended solely for the purpose of administrative convenience and shall not affect the right of each Prepetition Secured Party (or its successors in interest) to vote separately on any plan proposed in these Chapter 11 Cases (as applicable). The Master Proofs of Claim shall not be required to attach any instruments, agreements or other documents evidencing the obligations owing by each of the Debtors to the applicable Prepetition Secured Parties, which instruments, agreements or other documents will be provided upon written request to counsel to the Prepetition Notes Trustee or the Prepetition Revolving ABL Agent, as applicable. The DIP Lenders shall similarly not be required to file proofs of claim with respect to their DIP Obligations under the DIP Documents, and the evidence presented with the DIP Motion and the record established at the Interim Hearing are deemed sufficient to, and do, constitute proofs of claim with respect to their obligations, secured status, and priority.

30. *Insurance.* To the extent that the Prepetition Notes Trustee or the Prepetition Revolving ABL Agent is listed as loss payee under the Borrower's or DIP Guarantor's insurance policies, the DIP Lenders are also deemed to be the loss payee under the insurance policies (in any such case with the same priority of liens and claims thereunder relative to the priority of (x) the Prepetition Liens and Adequate Protection Liens and (y) the DIP Liens, as set forth herein) and shall act in that capacity and distribute any proceeds recovered or received in respect of the insurance policies, to the indefeasible payment in full of the DIP Obligations (other than contingent indemnification obligations as to which no claim has been asserted) and termination of the commitments under the DIP Facility and thereafter to the payment of the applicable Prepetition Secured Debt.

31. *Credit Bidding.* Subject to section 363(k) of the Bankruptcy Code and the lien priorities set forth herein, (a) the DIP Lenders, shall have the right to credit bid, in accordance with the DIP Documents, up to the full amount of the DIP Obligations in any sale of the DIP Collateral (or any portion thereof) and (b) subject to the Challenge Period, the Prepetition Notes Trustee (acting at the direction of Prepetition Noteholders)) shall have the right, consistent with the provisions of the Prepetition Notes Documents (and providing for the DIP Obligations to be Paid in Full and the termination of all commitments under the DIP Facility), to credit bid up to the full amount of the Prepetition Indenture Debt (including any Adequate Protection Obligations) in the sale of the Prepetition Collateral (or any portion thereof), in each case without the need for further Court order authorizing the same and whether any such sale is effectuated through section 363(k), 1123 or 1129(b) of the Bankruptcy Code, by a chapter 7 trustee under section 725 of the Bankruptcy Code, or otherwise; *provided* that neither the DIP Obligations nor any Prepetition Indenture Debt may be credit bid in any disposition of the Prepetition Collateral unless the Prepetition ABL Paydown has occurred.

32. *Treatment of DIP Claims.* On the Maturity Date, the Borrower shall pay in cash the then unpaid and outstanding amount of the DIP Obligations pursuant to the provisions of the DIP Documents.

33. *Joint and Several Liability.* Nothing in this Final DIP Order shall be construed to constitute or authorize a substantive consolidation of any of the Debtors' estates, it being understood, however, that the Debtors shall be jointly and severally liable for all obligations (including all DIP Obligations) under the DIP Orders and the DIP Documents.

34. *Effectiveness.* Notwithstanding Bankruptcy Rule 4001(a)(3) and 6004(h), any Bankruptcy Local Rule or Rule 62(a) of the Federal Rules of Civil Procedure, this Final DIP Order

shall be immediately effective and enforceable upon its entry and there shall be no stay of execution or effectiveness of this Final DIP Order.

35. *Headings.* Section headings used herein are for convenience only and are not to affect the construction of or to be taken into consideration in interpreting this Final DIP Order. When used in the DIP Orders, the word “including” shall not imply limitation.

36. *Payments Held in Trust.* Except as expressly permitted in this Final DIP Order or the DIP Documents and except with respect to the DIP Loan Parties, in the event that any person or Entity receives any payment on account of a security interest in or lien on DIP Collateral, receives any DIP Collateral or any proceeds of DIP Collateral or receives any other payment with respect thereto from any other source, in each case prior to indefeasible Payment in Full of all DIP Obligations and termination of all commitments under the DIP Facility in accordance with the DIP Documents, such person or Entity shall be deemed to have received, and shall hold, any such payment or proceeds of DIP Collateral in trust for the benefit of the DIP Lenders and shall immediately turn over the proceeds to the DIP Lenders, or as otherwise instructed by this Court, for application in accordance with the DIP Orders and the DIP Documents.

37. *Texas Taxing Authorities.* Notwithstanding any other provisions in this Final DIP Order or any final orders pertaining to post-petition financing or the use of cash collateral in these Chapter 11 Cases, any statutory liens on account of ad valorem taxes held by the Texas Taxing Authorities⁵ (the “Tax Liens”) shall neither be primed by nor made subordinate to any liens

⁵ For purposes of this Final DIP Order, the term “Texas Taxing Authorities” shall refer to: Ector CAD, Harris County Emergency Service District #01, Harris County Emergency Service District #11, Harris County Emergency Service District #13, Harris County Emergency Service District #20, City of Houston (for those accounts collected by Linebarger), Houston Community College System, Houston Independent School District, Lone Star College System, Midland CAD, Midland County, Klein Independent School District, City of Houston (for those accounts collected by Perdue), Tomball Independent School District and Harris County MUD #286.

granted to any party hereunder to the extent the Tax Liens are valid, senior, properly-perfected, binding, enforceable, and non-avoidable, and are granted priority over a prior perfected security interest or lien under applicable non-bankruptcy law, and all parties' rights to challenge or dispute the foregoing are preserved.

38. *Bankruptcy Rules.* The requirements of Bankruptcy Rules 4001 and 6004, in each case to the extent applicable, are satisfied by the contents of the DIP Motion.

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

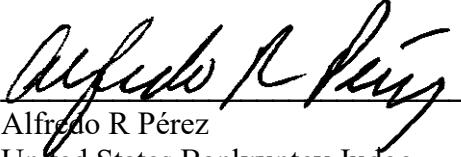
40. *Necessary Action.* The DIP Loan Parties and the DIP Lenders are authorized to take any and all such actions as are necessary, required or appropriate to implement and effectuate the terms of this Final DIP Order, the DIP Documents, and the transactions contemplated hereunder and thereunder.

41. *Retention of Jurisdiction.* The Court retains jurisdiction to hear, determine and enforce the terms of any and all matters arising from or related to the DIP Facility, the DIP Documents, and this Final DIP Order, and the Court's jurisdiction shall survive confirmation and consummation of any chapter 11 plan for any of the Debtors notwithstanding the terms or provisions of any such chapter 11 plan or any order confirming any such chapter 11 plan.

42. *Interim DIP Order.* Except as specifically amended, superseded, or modified hereby, the provisions of the Interim DIP Order and any actions taken by the Debtors, the DIP

Secured Parties or the Prepetition Secured Parties in accordance therewith shall remain in effect and are hereby ratified by this Final DIP Order.

Signed: January 08, 2025



Alfredo R Pérez
United States Bankruptcy Judge

Schedule 1

Approved Budget

Exhibit 1

DIP Term Sheet