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**IN THE UNITED STATES BANKRUPTCY COURT FOR THE
DISTRICT OF UTAH CENTRAL DIVISION**

In re:

VOBEV, LLC, LC, a Utah limited liability
company,

Debtor-in-Possession.

Bankruptcy Case No. 24-26346

Chapter 11

Honorable Joel T. Marker
[Filed Electronically]

**DEBTOR’S MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS
(I) AUTHORIZING THE DEBTOR TO OBTAIN POSTPETITION SENIOR SECURED
FINANCING, (II) AUTHORIZING THE DEBTOR TO USE CASH COLLATERAL ON
A LIMITED BASIS, (III) GRANTING LIENS AND PROVIDING SUPERPRIORITY
ADMINISTRATIVE EXPENSE STATUS, (IV) GRANTING ADEQUATE
PROTECTION, (V) MODIFYING THE AUTOMATIC STAY, (VI) SCHEDULING A
FINAL HEARING, AND (VII) GRANTING RELATED RELIEF**

Vobev, LLC (the “Debtor”), the debtor and debtor in possession in the above-captioned chapter 11 case, by and through its undersigned proposed counsel, hereby submit this motion (this “Motion”) pursuant to sections 105, 361, 362, 363, 364(c)(1), 364(c)(2), 364(c)(3), 364(d), 364(e), 503, 507 and 552 of title 11 of the United States Code (the “Bankruptcy Code”), Rules 2002, 4001, 6003, and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rules 2002-1, 4001-2 and 9013-1 of the Local Rules for the United States Bankruptcy Court for the District of Utah (the “Local Rules”) for entry of interim and final orders granting the relief requested below. In support hereof, the Debtor relies on the (a) *Declaration of Alan Boyko, Chief Transformation Officer of the Debtor, in Support of Debtor’s Chapter 11 Petition and First Day Motions* (the “First Day Declaration”)¹ and (b) *Declaration of John Popehn in Support of the Debtor’s Motion to Obtain Postpetition Debtor in Possession Financing and the Debtor’s Bidding Procedures Motion* (the “Popehn Declaration”), both filed in connection herewith and incorporated herein for reference, and further represent as follows:

PRELIMINARY STATEMENT

1. As set forth in the First Day Declaration, the Debtor filed this chapter 11 case to effectuate a sale of substantially all of its assets to maximize value for all stakeholders. The Debtor began marketing the Company’s (as defined herein) assets, in addition to soliciting offers for

¹ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the First Day Declaration, the DIP Term Sheet (as defined herein), or the Interim Order (as defined herein), as applicable.

alternative financing, prior to the filing of this chapter 11 case. The prepetition marketing process generated an actionable offer for the purchase of the Company's assets, subject to a bidding process to ensure that the Debtor receives the highest or otherwise best offer for those assets. With the assistance of its advisors, the Debtor is actively working to finalize an asset purchase agreement for the proposed transaction in the very near-term. Consistent with the milestones set forth herein, the Debtor anticipates filing a motion to approve the bidding process contemporaneously with the Motion.

2. The DIP Facility is a consensual senior secured superpriority debtor-in-possession term loan credit facility in the aggregate principal amount of \$115,377,477.92, consisting of (a) a multiple draw new money term loan (the "New Money DIP Loan") in the aggregate principal amount of up to \$37,250,000 (the "DIP Commitment"), of which (x) up to \$14,000,000 of the DIP Commitment would be made available in weekly drawings in accordance with the Approved Budget (as defined herein) upon entry of the Interim Order (the "Interim Amount" and, each weekly draw, an "Interim Draw"), and (y) the remaining \$23,250,000 of the DIP Commitment would be made available in weekly draws in accordance with the Approved Budget upon entry of the Final Order (each borrowing, a "Subsequent Draw"), and (b) upon entry of the Final Order, a "roll up" on a cashless dollar-for-dollar basis of (x) Prepetition Revolving Loans (the "ABL Roll-Up Loans") in the amount of \$40,877,477.92 *plus* (y) \$37,250,000 of Prepetition Term Loans held by the DIP Lenders (or their affiliates) on a *pro rata* basis (the "Term Loan Roll-Up Loans"). The Interim Amount will be available immediately upon entry of the Interim Order, subject to the terms of the DIP Term Sheet and the Interim Order. The Debtor has had significant liquidity issues for several months and approval of the Interim Amount is necessary to prevent immediate and irreparable harm to the Debtor and its reorganization efforts. It is critically important that the

Debtor is sufficiently funded during this chapter 11 case to restore the Debtor's ability to obtain materials from suppliers to allow the Debtor to complete inventory and deliver products to customers, which will in turn enhance the enterprise value of the Debtor for the benefit of their stakeholders. The DIP Facility, if approved, would allow the Debtor to secure necessary postpetition financing and utilize Cash Collateral in conformance with the Bankruptcy Code, allowing the Debtor to continue operating and ensuring payments to employees, third-party vendors, utilities, taxing authorities, and insurance companies, as well as the timely payment of administrative expenses. Moreover, as evidenced by the marketing process for the DIP Facility, the DIP Facility is the best financing available to the Debtor and no other funding is available on better or comparable terms.

3. The sale process, the DIP Facility, and the consensual use of Cash Collateral provides the Debtor with a smooth transition into this chapter 11 case and a viable path forward through the continuation of a sales process that will maximize the value of the Debtor's assets for the benefit of all creditors. For these reasons, and for the reasons set forth herein, the Debtor respectfully requests that the Court (as defined herein) grant the relief requested.

JURISDICTION AND VENUE

4. The United States Bankruptcy Court for the District of Utah (the "Court") has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334. The Debtor confirms its consent to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

5. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of this Chapter 11 Case and this Motion is proper in this district under 28 U.S.C. §§ 1408 and 1409.

6. The statutory bases for the relief requested herein are sections 105, 361, 362, 363, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), 364(e), 503, and 507 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001, 6003 and 9014, and Local Rule 4001-2.

RELIEF REQUESTED

7. The Debtor respectfully requests entry of an interim order substantially in the form attached hereto as **Exhibit A** (the “Interim Order”) and a final order (the “Final Order,” and together with the Interim Order, the “DIP Orders”):

- (a) authorizing the Debtor to obtain senior secured postpetition financing on a superpriority basis (the “DIP Facility”, and the loans provided to Vobev thereunder, the “DIP Loans”) pursuant to the terms and conditions of that certain Senior Secured Superpriority DIP Financing Term Sheet filed as **Exhibit B** hereto (as the same may be amended, supplemented, restated or otherwise modified from time to time, the “DIP Term Sheet”), by and among Vobev, LLC, as borrower (“Vobev” or the “Borrower”) and as guarantor of the DIP Facility, Ares Capital Corporation, as administrative agent and collateral agent (in such capacities, the “DIP Agent”), and the lenders from time to time party thereto (the “DIP Lenders,” and together with the DIP Agent, the “DIP Secured Parties”);
- (b) approving the terms of and authorizing the Debtor to enter into and perform under the DIP Term Sheet and any other agreements, instruments, and documents related thereto or in connection therewith (collectively, the “DIP Documents”), which shall be on terms consistent with the terms set forth in the DIP Term Sheet and otherwise in form and substance acceptable to the Required DIP Lenders (or as otherwise provided in the DIP Documents), and to perform such other acts as may be necessary or desirable in connection with the DIP Documents;
- (c) authorizing the Debtor to enter into the DIP Term Sheet and to incur all obligations under the DIP Documents to the DIP Secured Parties, including the Roll-Up Obligations (collectively, the “DIP Obligations”), and granting the DIP Agent and DIP Lenders allowed superpriority administrative expense claim status in the Chapter 11 Case and any Successor Case, subject only to the Carve-Out;
- (d) subject to the terms of the Interim Order, granting to the DIP Agent (on behalf of the DIP Secured Parties) automatically perfected security interests in and priming liens on all of the DIP Collateral, including, without limitation, all property constituting “cash collateral” as such term is defined in section 363(a) of the Bankruptcy Code (including, without limitation, all cash and cash equivalents and other amounts from time to time on deposit or maintained by the Debtor in any deposit or securities account or accounts as of the Petition Date (as defined below))

and any cash or cash equivalents received by the Debtor after the Petition Date as proceeds of the Prepetition Collateral (collectively, "Cash Collateral");

- (e) authorizing the Debtor to use proceeds of the DIP Facility and Cash Collateral to: (a) provide financing for working capital and other general corporate purposes, including for bankruptcy-related costs and expenses, all to the extent provided in, and in accordance with, the Approved Budget, this Interim Order, and the DIP Documents; (b) make permitted adequate protection payments; (c) pay the principal, interest, fees, expenses, and other amounts payable and reimbursable under the DIP Documents or the Interim Order as such become due, including, without limitation, the DIP Fees and the fees and expenses of the DIP Professionals, and (d) any other purposes agreed upon in the DIP Documents, in each case solely in accordance with the Approved Budget, this Interim Order, and the DIP Documents;
- (f) authorizing the Debtor to use the Prepetition Collateral (as defined below), including the Cash Collateral, on an interim basis in accordance with both the Approved Budget and the DIP Documents, and providing, among other things, adequate protection to the Prepetition Secured Parties for any Diminution of their interests in the Prepetition Collateral, including the Cash Collateral;
- (g) modifying the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of the DIP Documents and the Interim Order;
- (h) authorizing the DIP Agent, at the direction of the Required DIP Lenders, upon the occurrence of an Event of Default (as defined below): to (1) terminate the funding obligations under the DIP Documents in accordance with their terms; (2) declare the DIP Obligations to be immediately due and payable in full, to the extent permitted by the terms thereof; and (3) subject to the Interim Order, be granted relief from the automatic stay to foreclose on the DIP Liens and DIP Collateral;
- (i) approving the stipulations in paragraph G of the Interim Order by the Debtor with respect to the Prepetition Loan Documents and the liens and security interests arising therefrom subject to the Challenge Period described in paragraph 43 thereof;
- (j) authorizing payment of the DIP Fees (as defined herein);
- (k) waiving any applicable stay (including under Bankruptcy Rule 6004) with respect to the effectiveness and enforceability of the Interim Order and providing for the immediate effectiveness of the Interim Order;
- (l) scheduling a final hearing (the "Final Hearing") to consider the relief requested in the Motion and approving the form of notice with respect to the Final Hearing; and
- (m) granting related relief.

BACKGROUND

I. CHAPTER 11 CASE

8. On December 9, 2024 (the “Petition Date”), the Debtor filed a voluntary petition for relief pursuant to chapter 11 of the Bankruptcy Code. The Debtor is operating its businesses and managing its properties as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in this chapter 11 case, and no official committee of unsecured creditors has been appointed in this chapter 11 case.

9. Based in Salt Lake City, Utah, the Company is an innovator in the beverage industry, offering integrated beverage can production, filling and warehousing capacity at a single location. The Company’s state-of-the art custom production and filling facility came online in 2022, and now produces and fills tens of millions of aluminum beverage cans per year for some of the most well-known beverage companies in the world. The Company also provides beverage formulation and mixing services. The Company’s integration of can production, beverage formulation and can filling services eliminates customers’ need to transport cans between production and filling sites, reducing freight costs. In addition, the Company operates two onsite warehouses for finished goods, cans and raw materials to provide warehousing logistics services for its customers.

10. Additional factual background regarding the Debtor, including its business operations, corporate and capital structure, and the events leading to the filing of this chapter 11 case, is set forth in detail in the First Day Declaration, filed concurrently herewith and incorporated herein by reference.

II. PREPETITION INDEBTEDNESS

11. As of the Petition Date, the Debtor has approximately \$402,018,730.06 of funded principal debt obligations, consisting of obligations arising from the Prepetition Loans (as defined below) under the Prepetition Credit Agreement (as defined below).

12. On April 20, 2023, Debtor Vobev, as borrower, entered into that certain Credit and Guaranty Agreement (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Prepetition Credit Agreement”, and collectively with all other agreements, instruments and documents executed or delivered in connection therewith or otherwise evidencing or securing any Prepetition Term Loan Obligations (as defined below) and any Prepetition ABL Obligations (as defined below), each as may be amended, restated, supplemented, or otherwise modified from time to time, the “Prepetition Loan Documents”), by and among (a) Vobev Holdings LLC (“Parent”), (b) Vobev, (c) certain subsidiaries of Parent from time to time party thereto as guarantors, (d) Ares Capital Corporation, as administrative agent (in such capacity, together with any successor thereto, the “Prepetition Administrative Agent”), (e) ACF Finco I LP, as revolving agent and collateral agent (in such capacities, together with any successors thereto, the “Prepetition Revolving Agent” and “Prepetition Collateral Agent”, respectively; the Prepetition Administrative Agent, the Prepetition Revolving Agent, and the Prepetition Collateral Agent, collectively, the “Prepetition Agents”), and (f) certain lenders party thereto from time to time who have made Prepetition Term Loans (as defined below) (the “Prepetition Term Loan Lenders,” and together with the Prepetition Administrative Agent, collectively, the “Prepetition Term Loan Parties”).

13. As of the Petition Date, the Debtor was indebted to the Prepetition Term Loan Parties in the aggregate principal amount outstanding under the Prepetition Term Loan Facility of not less than \$361,141,252.14 consisting of (a) initial term loans in an aggregate principal amount

of \$197,666,427.70 (the “Prepetition Initial Term Loans”) and (b) \$163,474,824.44 of delayed draw term loans (the “Prepetition Delayed Draw Term Loans” and, together with the Prepetition Initial Term Loans, the “Prepetition Term Loans”, together with accrued and unpaid interest, any fees, expenses and disbursements (including, without limitation, any accrued and unpaid attorneys’ fees, accountants’ fees, appraisers’ fees and financial advisors’ fees, and related expenses and disbursements), indemnification obligations, and other charges, amounts and costs of whatever nature owing, whether or not contingent, whenever arising, accrued, accruing, due, owing, or chargeable in respect of any of the Debtor’s obligations in connection with the Prepetition Term Loan Facility pursuant to the Prepetition Loan Documents, collectively, the “Prepetition Term Loan Obligations”).

14. Pursuant to the Prepetition Credit Agreement, certain lenders party thereto from time to time (the “Prepetition ABL Lenders” and, together with the Prepetition Revolving Agent and Prepetition Collateral Agent, collectively, the “Prepetition ABL Parties” and, together with the Prepetition Term Loan Parties, collectively, the “Prepetition Secured Parties”) provided a secured, superpriority asset-based revolving credit facility to the Borrower (the “Prepetition ABL Facility”, and together with the Prepetition Term Loan Facility, the “Prepetition Facilities”).

15. As of the Petition Date, the Debtor was indebted and liable to the Prepetition ABL Parties in the aggregate amount outstanding under the Prepetition ABL Facility of not less than \$40,877,477.92 (including accrued and unpaid interest, any fees, expenses and disbursements (including, without limitation, any accrued and unpaid attorneys’ fees, accountants’ fees, appraisers’ fees and financial advisors’ fees, and related expenses and disbursements), indemnification obligations, and other charges, amounts and costs of whatever nature owing, whether or not contingent, whenever arising, accrued, accruing, due, owing, or chargeable in

respect of any of the Debtor's obligations in connection with the Prepetition ABL Facility pursuant to the Prepetition Loan Documents, the "Prepetition ABL Obligations", and together with the Prepetition Term Loan Obligations, the "Prepetition Obligations"). For the avoidance of doubt, as of the Petition Date, the Revolving Credit Commitments (as defined in the Prepetition Credit Agreement) have been terminated.

16. As more fully set forth in the Prepetition Loan Documents, prior to the Petition Date, to secure the Prepetition Obligations, the Debtor granted to the Prepetition Collateral Agent for the benefit of the Prepetition Secured Parties and as security for the Prepetition Obligations (the "Prepetition Liens") a first priority security interest in and continuing lien on all of the Debtor's right, title and interest in substantially all of its assets (the "Prepetition Collateral").

RELIEF REQUESTED

I. THE DEBTOR'S URGENT AND IMMEDIATE LIQUIDITY NEEDS

17. The Debtor requires immediate access to liquidity to ensure that it is able to continue operating during this chapter 11 case and preserve the value of its estate for the benefit of all stakeholders. *See* First Day Decl. ¶ 36. Without prompt access to postpetition financing and to Cash Collateral, the Debtor will be unable to continue to pay vendors and administer this chapter 11 case, causing immediate and irreparable harm to the value of the Debtor's estate, and any sale value, to the detriment of all stakeholders. *See id.*

18. The Debtor, in consultation with FTI Consulting, Inc. ("FTI"), the Debtor's proposed financial advisor, reviewed and analyzed the Approved Budget outlining the Debtor's postpetition cash needs in the initial weeks of these cases. The Debtor believes that the Approved Budget and its projections provide an accurate reflection of their funding requirements over the identified period, will allow them to meet their obligations—including the administrative expenses

of this chapter 11 case—and are reasonable and appropriate under the circumstances. Popehn Decl. ¶ 24.

19. The Debtor relied on these forecasts to determine the amount of postpetition financing required to administer this chapter 11 case. The DIP Facility is critical to the Debtor’s ability to smoothly operate postpetition, including by providing sufficient liquidity to fund the administrative cost of this chapter 11 case. Thus, the Debtor believes that the DIP Facility and use of Cash Collateral will enable them to fund these payments and continue the sale process postpetition. *See id.* ¶ 25.

20. With insufficient cash on hand, the Debtor requires interim approval of the DIP Facility to obtain access to mission-critical financing. Absent the immediate relief requested by this Motion, the Debtor faces a material risk of substantial, irreparable, and ongoing harm. *Id.* ¶ 12.

II. ALTERNATIVE SOURCES OF FINANCING ARE NOT AVAILABLE ON BETTER TERMS

A. THE MARKETING PROCESS

21. The Debtor does not have alternative sources of financing on better or comparable terms readily available. *See* Popehn Decl. ¶ 12. The Prepetition Secured Parties have liens on substantially all of the Prepetition Loan Parties’ assets, which, along with the Debtor’s precarious liquidity position, restricts the availability of, and options for, postpetition financing.

22. On May 31, 2024, the Debtor engaged Houlihan Lokey Capital, Inc. (“Houlihan”) to assist them in evaluating strategic and financial alternatives to improve liquidity. In addition to approaching the Prepetition Secured Parties, the Debtor, with the assistance of Houlihan, solicited indications of interest from third-party sources of alternative financing (including specialty lenders and those that routinely provide debtor-in-possession financing), to gauge their interest in

providing financing alternatives to the Debtor. *See* Popehn Decl. ¶ 17. None of the parties contacted indicated a willingness to provide DIP financing on an unsecured or junior-lien basis. *See id.* In fact, the third-party alternative financing sources did not provide any alternative DIP financing proposal. Accordingly, the Debtor determined that the DIP Facility was the best option, and the Debtor therefore focused its efforts on negotiating the terms of postpetition financing with the DIP Lenders.

23. The terms of the DIP Facility and the DIP Orders provide the Debtor with access to the necessary liquidity to fund operations through this chapter 11 case. Based on the terms of the DIP Facility and the DIP Orders, the Debtor determined that entry into the DIP Loan Documents and agreement to the terms of the DIP Orders is reasonable, fair, and in the best interests of the Debtor and its estate.

B. THE DIP FACILITY HAS BEEN HEAVILY NEGOTIATED

24. The Debtor's management team and legal and financial advisors were actively involved throughout the negotiations with the DIP Lenders for debtor in possession financing, which were conducted at arm's length and in good faith. First Day Decl. ¶ 41. The Debtor and its advisors worked to negotiate the most favorable terms of the DIP Facility available to the Debtor given the Debtor's lack of alternative third-party financing and pressing liquidity needs. *Id.* Ultimately, the DIP Lenders were unwilling to lend on terms other than those specifically set forth in the DIP Term Sheet. *Id.*

A. THE RATES AND FEES OF THE DIP FACILITY ARE REASONABLE

25. Pursuant to the DIP Documents, the Debtor has agreed, subject to Court approval, to pay certain interest and fees to the DIP Agent and the DIP Lenders. Popehn Decl. ¶ 22. Specifically, the Debtor has agreed to an interest rate of: (a) for the DIP Loans that are New Money DIP Loans, 9.00% *plus* SOFR per annum, compounded monthly and paid in kind, (b) for DIP

Loans that are Term Loan Roll-Up Loans, the non-default rate on the corresponding Prepetition Loans as in effect on the Petition Date under the Prepetition Credit Agreement, paid in kind, and (c) for DIP Loans that are ABL Roll-Up Loans, the non-default rate on the corresponding Prepetition Loans as in effect on the Petition Date under the Prepetition Credit Agreement, paid in cash (together, the “Applicable Rate”). *Id.* Upon the occurrence and during the continuation of an Event of Default under the DIP Facility, interest would accrue at 2.00% plus the Applicable Rate. *Id.* In addition, the Debtor has agreed to pay to the DIP Agent, for the benefit of the DIP Lenders, the: (i) Upfront Fee, equal to 1.00% on the principal amount of the New Money DIP Loan, and (ii) Exit Fee, equal to 1.00% on the principal amount of the New Money DIP Loan, payable on the Maturity Date (collectively, the “DIP Fees”). *Id.* ¶ 23. The DIP Fees are both fully earned upon entry of the Interim Order, and the Upfront Fee shall be netted against the first Interim Draw on the DIP Facility.

26. The Applicable Rate and the DIP Fees provided for in the DIP Facility are reasonable under the circumstances as compared to similar debtor in possession financings in the market as well as the attendant interest rates and fees in comparable debtor in possession financing facilities. *Id.* at ¶ 24. The Applicable Rate and DIP Fees are customary, usual, and in line with debtor in possession financings of this kind. *Id.* The Debtor and its advisors considered the Applicable Rate and the DIP Fees when determining whether the DIP Facility constituted the best alternative reasonably available to the Debtor. *Id.* at ¶ 24. As a result, the Debtor’s payment of the Applicable Rate and DIP Fees in order to obtain the DIP Facility is in the best interests of the estates.

27. The Debtor and the DIP Lenders agree that the terms, covenants, interest rates, and fees were subject to negotiation and are an integral component of the overall terms of the DIP

Facility. *Id.* ¶ 25. Under the Debtor’s circumstances, the interest rates and fees reflected in the DIP Term Sheet are reasonable and constitute the best terms on which the Debtor could obtain the financing necessary to maintain their ongoing business operations and fund its chapter 11 case and are an integral component of the overall terms of the DIP Facility. *Id.*

B. THE MILESTONES THAT THE DEBTOR MUST MEET UNDER THE TERMS OF THE DIP FACILITY ARE REASONABLE

28. The DIP Facility contemplates, as a product of negotiation with and as required by the DIP Lenders as a condition to providing the DIP Facility, certain milestones that the Debtor must meet throughout its chapter 11 case (the “Milestones”), the failure of which would constitute an Event of Default under the DIP Facility. These Milestones were heavily negotiated and required by the DIP Lenders as conditions to providing the DIP Facility. Popehn Decl. ¶ 26.

29. The DIP Facility serves as an important component of this chapter 11 case because it provides the Debtor with the stability and certainty that they need to smoothly transition into chapter 11 and continue to operate in the ordinary course of business, all while facilitating and hopefully consummating a sale of their business as a going concern. *Id.* The continued and viable operation of the Debtor’s businesses would not be possible absent access to the DIP Facility. *Id.* The DIP Facility, and the Debtor’s ability to achieve the Milestones contemplated therein, if approved, would prevent interruptions to the Debtor’s operations, preserve the Debtor’s ability to maintain ordinary course relationships with, among other parties in interest, employees, customers, and vendors, satisfy working capital needs in the ordinary course, of the Debtor’s businesses, and enable the Debtor to facilitate the sale process and consummate a sale transaction. *Id.*

III. MATERIAL TERMS OF THE DIP FACILITY²

30. The following chart contains a summary of: (i) the material terms of the DIP Facility; and (ii) use of the Prepetition Secured Parties' Cash Collateral, each with references to the applicable sections of the relevant source documents, as required by Bankruptcy Rules 4001(b)(1)(B) and 4001(c)(1)(B), and Local Rule 4001-2.

SUMMARY OF MATERIAL TERMS OF THE DIP FACILITY		
Borrower Bankruptcy Rule 4001(c)(1)(B)	Vobev, LLC	DIP Term Sheet § 1
Administrative Agent Bankruptcy Rule 4001(c)(1)(B)	Ares Capital Corporation	DIP Term Sheet § 6
Lenders Bankruptcy Rule 4001(c)(1)(B)	Certain Prepetition Lenders who elect to provide DIP financing	DIP Term Sheet § 5
Commitment Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(2)	Each DIP Lender with a New Money DIP Loan Commitment severally agrees to lend to the Borrower a multiple draw new money term loan in accordance with the Approved Budget in the aggregate principal amount of up to \$37,250,000 (the " <u>DIP Commitment</u> "); <i>provided</i> that no DIP Lender shall be obligated to make New Money DIP Loans in an amount in excess of the portion of the DIP Commitment set forth next to such DIP Lender's name in the table set forth on <u>Exhibit A</u> to the DIP Term Sheet.	DIP Term Sheet § 3, Ex. A
Cross Collateralization Local Rule 4001-2(a)(1)(A)	The DIP Term Sheet and Interim Order do not provide for any cross-collateralization of the Debtor's funded debt.	N/A
Roll Ups Local Rule 4001-2(a)(1)(E)	The DIP Facility provides for the Roll-Up Loans upon entry of the Final Order consisting of (a) \$40,877,477.92 of the Prepetition Revolving Loans and (b) \$37,250,000 of the Prepetition Term Loans held by the DIP Lenders (or their affiliates) on a pro rata basis, in each case, to be deemed incurred upon entry of the Final Order.	DIP Term Sheet § 3

² The following summary of the DIP Facility is qualified in its entirety by reference to the applicable provisions of the relevant DIP Documents, the DIP Term Sheet, or the Interim Order, as applicable. To the extent there are any inconsistencies between this summary and the provisions of the DIP Documents, the DIP Term Sheet, or the Interim Order, the provisions of the DIP Documents, the DIP Term Sheet, or the Interim Order, as applicable, shall control. Any capitalized terms used but not otherwise defined in this summary shall have the respective meanings ascribed to such terms in the DIP Documents, the DIP Term Sheet, or the Interim Order, as applicable. The Debtor reserves the right to supplement the statements made pursuant to Bankruptcy Rule 4001 and Local Rule 4001-2 herein.

Maturity Date Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(2)	The earliest to occur of (a) the 90th day following the Petition Date, (b) the 30th day following the Petition Date if the Final Order has not been entered by the Bankruptcy Court on or prior to such date, (b) the date a sale of all or substantially all of the assets of the Debtor is consummated, (c) the termination of the Asset Purchase Agreement for a material breach thereof by any seller thereunder without the prior written consent of the Required DIP Lenders, (d) the effective date of a plan of reorganization or liquidation, (e) entry of an order by the Bankruptcy Court approving (i) a motion seeking conversion or dismissal of the Chapter 11 Case or (ii) a motion seeking the appointment or election of a trustee, a responsible officer or examiner with enlarged powers relating to the operation of the Debtor's business, and (f) the date any or all of the DIP Obligations are accelerated in accordance with the DIP Orders. Simultaneously with the consummation of the sale that results in the occurrence of the Maturity Date pursuant to clause (c) above, the Debtor shall pay (or cause to be paid) the outstanding amount of the DIP Loans (together with all other DIP Obligations) from the proceeds of such sale, reserving proceeds (a) sufficient to pay accrued, unpaid and allowed administrative expenses (as of the date of the closing of such sale) to the extent set forth in the Approved Budget and (b) in an amount negotiated in good faith by the Required DIP Lenders and the Debtor that is necessary to fund costs for the wind-down of Debtor's bankruptcy estates following the closing of such sale.	DIP Term Sheet § 11
Use of Proceeds Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(2)	The proceeds of the DIP Facility will be used in compliance with the terms of the Approved Budget: (a) to pay transaction costs, fees and expenses which are incurred in connection with the DIP Facility, (b) to pay professional fees of the Debtor and their estates and the Committee (as defined herein) in accordance with the Approved Budget, and (c) for working capital and other general corporate purposes of the Debtor, all subject to certain restrictions to be set forth in the Interim Order or Final Order, as applicable, and the DIP Documents. Subject in all respects to Section 8.3 of the Prepetition Credit Agreement, the deemed proceeds of the Roll-Up Loans shall be used to refinance an equal amount on a dollar-for-dollar basis of the Prepetition Loans held by the DIP Lenders (or their affiliates) reducing the amount of the "Obligations" (as defined under the Prepetition Credit Agreement, the "<u>Prepetition Obligations</u>") by such amount.	DIP Term Sheet § 21

Interest Rate Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(2)	<u>Interest Rate:</u> <u>New Money DIP Loan:</u> SOFR + 9.00% per annum, compounded monthly, paid in kind. <u>Term Loan Roll-Up Loans:</u> Same as the non-default rate on the corresponding Prepetition Loans as in effect on the Petition Date under the Prepetition Credit Agreement, paid in kind. <u>ABL Roll-Up Loans:</u> Same as the non-default rate on the corresponding Prepetition Loans as in effect on the Petition Date under the Prepetition Credit Agreement, paid in cash. <u>Default Interest Rate:</u> At all times following the occurrence and during the continuance of an Event of Default and notice from the Required DIP Lenders to the Borrower, principal, interest and all other amounts due on the DIP Loans shall bear interest at a rate equal to 2.00% per annum in excess of the interest rate set forth under “Interest Rate” above.	DIP Term Sheet §§ 7–8
Fees Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(2)	<u>Upfront Fee:</u> 1.00% on the principal amount of the New Money DIP Loan. <u>Exit Fee:</u> 1.00% on the principal amount of the New Money DIP Loan, payable on the Maturity Date. No DIP Fees shall be earned on account of any of the Roll-Up Loans.	DIP Term Sheet § 12
Priority, Collateral Under the DIP Facility Bankruptcy Rule 4001(c)(1)(B)(i), 4001(c)(1)(B)(ii) Local Rule 4001-2(a)(2)	To secure the DIP Obligations, the DIP Secured Parties are hereby granted pursuant to and in accordance with Sections 364(c)(2), 364(c)(3), and 364(d)(1) of the Bankruptcy Code, valid, enforceable and fully perfected DIP Liens on the DIP Collateral. “<u>DIP Collateral</u>” means: all property of the estate under section 541 of the Bankruptcy Code, including all real and personal property, whether now existing or hereafter arising and wherever located, tangible and intangible, of each of the Debtor, including: (a) all cash, cash equivalents, deposit accounts, securities accounts, accounts, other receivables (including credit card receivables), chattel paper, contract rights, inventory (wherever located), instruments, documents, securities (whether or not marketable) and investment property (including all of the issued and outstanding capital stock of each of its subsidiaries), hedge agreements, real estate, furniture, fixtures, equipment (including documents of title), goods, franchise rights, trade names, trademarks, servicemarks, copyrights, patents, license rights, intellectual property, general intangibles (including, for the avoidance of doubt, payment intangibles), rights to the payment of money (including	DIP Term Sheet § 9; Interim Order ¶¶ 5–6

	tax refunds and any other extraordinary payments), supporting obligations, guarantees, letter of credit rights, commercial tort claims, causes of action, and all substitutions, indemnification rights, all present and future intercompany debt, books and records related to the foregoing, accessions and proceeds of the foregoing, wherever located, including insurance or other proceeds; (b) subject to entry of a Final Order providing for such relief, the proceeds of any avoidance actions brought pursuant to Chapter 5 of the Bankruptcy Code or applicable state law equivalents; (c) proceeds from the Debtor's exercise of rights under section 506(c) and 550 of the Bankruptcy Code; (d) all Prepetition Collateral, (e) all property of the Debtor that was not otherwise subject to valid, perfected, enforceable and unavoidable liens on the Petition Date, and (f) all proceeds from the sale, assignment, or other disposition of (i) any leased real property and (ii) the Debtor's right to select, identify, and designate which commercial leases may be assumed and assigned under section 365 of the Bankruptcy Code. Notwithstanding the foregoing, DIP Collateral shall not include the Debtor's real property leases (but shall include all proceeds of such leases) solely to the extent that the grant of a DIP Lien is prohibited or restricted by the terms of such real property lease or applicable nonbankruptcy law to attach to any such real property lease. The DIP Liens shall be subject only to validly perfected, enforceable and non-avoidable liens existing as of the Petition Date to which the liens securing the obligations under the Prepetition Credit Agreement were subject and which are listed on a schedule to the DIP Orders (the "<u>Prepetition Permitted Liens</u>"). Notwithstanding the foregoing, the DIP Liens shall not extend to, and the DIP Collateral shall not consist of, avoidance actions brought pursuant to Chapter 5 of the Bankruptcy Code or applicable state law equivalents, but (subject to entry of the Final Order) shall include the proceeds therefrom. For the avoidance of doubt, the DIP Liens shall include and the DIP Collateral shall consist of (subject to entry of the Final Order) all proceeds of real property, including non-residential leaseholds.	
Carve-Out Bankruptcy Rule 4001(b)(1)(B)(iii) Local Rule 4001-2(a)(2)	The Interim Order provides for a "Carve-Out" of certain statutory fees, allowed professional fees of the Debtor, and any official committee of unsecured creditors (the "<u>Committee</u>") appointed under section 1102 of the Bankruptcy Code, appointed in this Chapter 11 Case pursuant to section 328 or 1103 of the Bankruptcy Code, including a Professional Fee Reserve and a Post-Carve-Out Trigger Notice Cap, all as defined and detailed in the Interim Order.	DIP Term Sheet § 10; Interim Order ¶ 35
Adequate Protection Bankruptcy Rules 4001(b)(1)(B)(iv), 4001(c)(1)(B)(ii)	As adequate protection for any diminution of the Prepetition Secured Parties' interest in the "Collateral" (as defined in the Prepetition Credit Agreement) including without limitation any diminution resulting	DIP Term Sheet § 22; Interim Order ¶ 14

Local Rule 4001-2(a)(2)	from the subordination of existing liens to the DIP Liens and/or the Debtor's use of cash collateral pursuant to the DIP Orders, the Prepetition Collateral Agent shall receive, for the benefit of the Prepetition Secured Parties, the adequate protection granted to the Prepetition Secured Parties (A) pursuant to the DIP Orders (which shall include, without limitation, (i) payments of the reasonable fees, costs and expenses of the Prepetition Secured Parties (including professional fees), (ii) subject to recharacterization as principal under the Prepetition Credit Agreement, monthly payment in cash of interest to the Prepetition Lenders at the non-default rate as in effect on the Petition Date under the Prepetition Credit Agreement; (iii) replacement liens on the DIP Collateral that shall be junior only to the DIP Liens and any Prepetition Permitted Liens, (iv) superpriority administrative expense claims with priority over any and all administrative expenses, whether heretofore or hereafter incurred, of the kind specified in sections 503(b) or 507(a) of the Bankruptcy Code, other than the superpriority administrative expense claims of the DIP Lenders and DIP Agent and the Carve-Out, subject to payment priority consistent with Section 8.3 of the Prepetition Credit Agreement, and (v) an acknowledgement of the unconditional right to credit bid the Prepetition Obligations as further set forth in the Term Sheet and (B) as otherwise required by the Bankruptcy Court pursuant to sections 361, 507, 363(e) and 364(d)(1) of the Bankruptcy Code or otherwise.	
Milestones Bankruptcy Rule 4001(c)(1)(B)(vi) Local Rule 4001-2(a)(2)	The Debtor shall conduct the 363 Sale Process and Chapter 11 Case in accordance with the following milestones (each, a "<u>Milestone</u>") and unless waived, modified or extended by the Required DIP Lenders in their sole discretion, the failure of the Debtor to meet Milestones by the applicable specified deadlines set forth therefor (the "<u>Specified Deadline</u>") shall constitute an Event of Default: (a) no later than December 9, 2024, the Company shall have commenced the Chapter 11 Case; (b) no later than one (1) business day after the Petition Date, the Debtor shall file with the Bankruptcy Court a motion, in form and substance acceptable to the Required DIP Lenders, seeking approval of (i) a Sale (the "<u>Sale Motion</u>") and, the transaction in respect thereof, the "<u>Sale Transaction</u>"), (ii) entry into the Asset Purchase Agreement based on certain terms and conditions set forth in a Sale term sheet to be appended to the Sale Motion, (iii) bidding procedures in connection with approval of the Sale Transaction (the "<u>Bidding Procedures Motion</u>");	DIP Term Sheet § 19; Interim Order ¶ 29

	(c) no later than three (3) business days after the Petition Date, the Interim Order approving the DIP Facility shall be entered by the Bankruptcy Court; (d) no later than 18 days after the Petition Date, the Company shall have executed the Asset Purchase Agreement pursuant to which the Stalking Horse Purchaser will purchase substantially all assets of the Company free and clear of all liens, claims, interests and encumbrances, subject only to higher or otherwise better offers; (e) no later than 30 days after the Petition Date, the Bankruptcy Court shall have entered an order establishing bidding procedures consistent with the Bidding Procedures Motion (such order, the “<u>Bidding Procedures Order</u>”), which order shall be acceptable in form and substance to the DIP Agent and Required DIP Lenders; (f) no later than 30 days after the Petition Date, the Final Order approving the DIP Facility shall be entered by the Bankruptcy Court; (g) no later than 50 days after the Petition Date, the Borrower shall have held an auction, if applicable, in connection with the Sale Transaction; (h) no later than 55 days after the Petition Date, the Bankruptcy Court shall have entered an order approving the Sale Transaction (the “<u>Sale Order</u>”), which order shall be satisfactory in form and substance to the DIP Agent and the Required DIP Lenders; and (i) no later than 60 days after the Petition Date, the Borrower shall have consummated the Sale Transaction in accordance with the Sale Order that results in net proceeds allocated to the DIP Collateral sufficient to repay the DIP Obligations and Prepetition Loans in full in cash or such other consideration acceptable to the DIP Agent and Required DIP Lenders in their sole discretion (the “<u>Approved Sale</u>”).	
Loan Covenants Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(2)	At the option of the Required DIP Lenders, DIP Documents, such as transaction documents, subordination agreements, intercreditor agreements, and other material agreements, shall be, in each case, usual and customary for DIP financings of this type and in form and substance substantially similar to the applicable documents entered into connection with the Prepetition Credit Agreement.	DIP Term Sheet § 4

Events of Default Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(2)	Each of following constitutes an “<u>Event of Default</u>” under the DIP Facility: (i) the entry of an Interim Order or Final Order in form and substance that is not acceptable to the DIP Agent and the Required DIP Lenders in their sole discretion; (ii) failure by any Debtor to be in compliance in all respects with provisions of the DIP Term Sheet, the DIP Documents and/or the DIP Orders; (iii) any request made by the Debtor for, or the reversal, modification, amendment, stay, reconsideration or vacatur of a DIP Order, as entered by the Bankruptcy Court, without the prior written consent of the DIP Agent and each DIP Lender; (iv) failure of any of the Milestones to be satisfied by the Specified Deadline; (v) failure of any representation or warranty to be true and correct in all material respects (or, to the extent qualified by materiality, in all respects) when made; (vi) the filing of any application by the Debtor (other than the application for financing provided by a third party which seeks authority to pay all of the DIP Obligations in full in cash upon entry of the order approving such financing) for the approval of (or an order is entered by the Court approving) any claim arising under Section 507(b) of the Bankruptcy Code or any other provision of the Bankruptcy Code or any security, mortgage, collateral interest or other lien in the Chapter 11 Case which is <i>pari passu</i> with or senior to the DIP Liens, excluding liens arising under the DIP Orders or pursuant to any other financing agreement made with the prior written consent of the DIP Agent and each DIP Lender; (vii) the commencement of any action by the Debtor or other authorized person (other than an action permitted by the DIP Orders) against any of the DIP Agent or any DIP Lender or any of their agents and employees to subordinate or avoid any liens made in connection with the DIP Orders; (viii) (1) the Debtor files a pleading in any court seeking or supporting an order to revoke, reverse, stay, vacate, amend, supplement or otherwise modify any DIP Order, the DIP Documents, or the DIP Term Sheet or to disallow the DIP Obligations, in whole or in part, or (2) any material provision of the DIP Orders, the DIP Documents, or the DIP	DIP Term Sheet § 25
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	Term Sheet or any other order of the Bankruptcy Court approving the Debtor's use of Cash Collateral (as defined in the DIP Orders), shall for any reason cease to be valid and binding (without the prior written consent of the DIP Agent and each DIP Lender); (ix) the filing with the Bankruptcy Court of a motion seeking approval of a sale under Section 363 (other than approval of a sale pursuant to the terms of the Asset Purchase Agreement) or a plan of reorganization or liquidation in the Chapter 11 Case that, in any such case, does not provide for indefeasible payment in full in cash to the DIP Agent and the DIP Lenders of the DIP Loans and all other amounts outstanding under the DIP Term Sheet, the DIP Documents and the DIP Orders on closing of such sale or the effective date of such plan, without the prior written consent of the DIP Agent and each DIP Lender; (x) the appointment in the Chapter 11 Case of a trustee, receiver, examiner, or responsible officer with enlarged powers relating to the operation of the business of the Debtor (powers beyond those set forth in sections 1106(a)(3) and (a)(4) of the Bankruptcy Code); (xi) the granting of relief from the automatic stay by the Bankruptcy Court to any other creditor or party in interest in the Chapter 11 Case with respect to any portion of the DIP Collateral exceeding \$100,000 in value in the aggregate; (xii) the failure to pay principal, cash interest (subject to a three (3) business day grace period, solely with respect to cash interest) or other DIP Obligations in full when due, including without limitation, on the Maturity Date; (xiii) the payment of, or application by any Debtor for authority to pay, any prepetition claim without prior written consent of the DIP Agent and the Required DIP Lenders other than amounts set forth in the Approved Budget (subject to any Permitted Variances); and (xiv) the failure to comply with the Approved Budget (subject to any Permitted Variances).	
Closing Conditions to Interim Draw Bankruptcy Rule 4001(c)(1)(B)	The funding of each Interim Draw shall be conditioned upon the satisfaction of the following conditions precedent unless waived by the DIP Agent and each DIP Lender in its sole and absolute discretion:	DIP Term Sheet § 14

Local Rule 4001-2(a)(2)	(i) Debtor shall have timely delivered to the DIP Agent the Approved Budget or any update thereto required to be delivered in accordance with the DIP Term Sheet and the Interim Order; (ii) the Debtor has not failed to disclose any material assumptions with respect to the Approved Budget; (iii) the Debtor shall have delivered to the DIP Agent a notice of borrowing in connection with such Interim Draw request no later than 11:00 AM ET one (1) business day prior to the requested funding date for such Interim Draw (or such later time as the DIP Agent may agree to in its sole discretion); (iv) such Interim Draw shall be in a maximum amount not to exceed the forecasted amount of cash required to comply with the Approved Budget for the applicable week; (v) the Interim Order shall have been entered by the Bankruptcy Court in the Chapter 11 Case (after a hearing on notice to all parties having or asserting a lien on all or any portion of the DIP Collateral), which Interim Order shall not have been reversed, modified, amended, stayed, vacated, or subject to a stay pending appeal, in each case, without the prior written consent of the Required DIP Lenders and the Debtor shall be in compliance in all respects with the Interim Order; (vi) the Chapter 11 Case shall have been commenced in the Bankruptcy Court and all of the “first day” motions, orders and related pleadings (including a cash management order encompassing the cash management arrangements currently in place under the Prepetition Credit Agreement) and all other pleadings which relate to the DIP Facility shall have been reviewed in advance by the DIP Agent and each DIP Lender and shall be reasonably satisfactory in form and substance to the DIP Agent and each DIP Lender; (vii) the DIP Agent shall be satisfied that the liens and security interests of the DIP Agent have been perfected in the DIP Collateral and shall constitute first-priority liens (subject only to Prepetition Permitted Liens); (viii) the Debtor shall have insurance (including, without limitation, commercial general liability and property insurance) with respect to the DIP Collateral in such amounts and scope as is reasonably acceptable to the DIP Agent and each DIP Lender (which shall be deemed satisfied if such	
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	insurance as required by the Prepetition Credit Agreement remains in place); (ix) upon entry of the Interim Order, the entry into the DIP Term Sheet shall not violate any requirement of law and shall not be enjoined, temporarily, preliminarily, or permanently; and (x) all applicable Milestones that are required to be complied with prior to or concurrently with the entry of the Interim Order and each Interim Draw shall have been complied with (or waived by the Required DIP Lenders).	
Closing Conditions to Subsequent Draws Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(2)	The funding of each Subsequent Draw shall be conditioned upon the satisfaction of the following conditions precedent unless waived by the DIP Agent and each DIP Lender in its sole and absolute discretion: (i) the Debtor shall have timely delivered to the DIP Agent the Approved Budget or any update thereto required to be delivered in accordance with the DIP Term Sheet and the DIP Orders and such other information (financial or otherwise) as may be reasonably requested by the Required DIP Lenders or the DIP Agent; (ii) the Debtor has not failed to disclose any material assumptions with respect to the Approved Budget; (iii) the Debtor shall have delivered to the DIP Agent a Notice of Borrowing in connection with such Subsequent Draw request no later than 11:00 AM ET one (1) business day prior to the requested funding date for such Subsequent Draw (or such later time as the DIP Agent may agree to in its sole discretion); (iv) Such Subsequent Draw shall be in a maximum amount not to exceed the forecasted amount of cash required to comply with the Approved Budget for the applicable week; (v) the Final Order shall have been entered by the Bankruptcy Court in the Chapter 11 Case, which Final Order shall not have been reversed, modified, amended, stayed, vacated, or subject to a stay pending appeal, in each case, without the prior written consent of the Required DIP Lenders and the Debtor shall be in compliance in all respects with the Final Order; (vi) the DIP Agent and each DIP Lender shall have received a copy of the fully-executed Asset Purchase Agreement, which shall be in form and	DIP Term Sheet § 15

	substance consistent with the terms hereof and otherwise acceptable to the DIP Agent and each DIP Lender in its sole and absolute discretion; and (vii) all applicable Milestones that are required to be complied with prior to or concurrently with the entry of the Final Order and each Subsequent Draw shall have been complied with (or waived by the Required DIP Lenders).	
Costs and Expenses; Indemnification Bankruptcy Rule 4001(c)(1)(B)(ix)	The Debtor shall reimburse the DIP Agent and the DIP Lenders for all reasonable and documented costs and expenses, including legal fees, financial advisor fees, and other similar fees, costs and expenses incurred in connection with the DIP Facility and the Chapter 11 Case, whether incurred on a prepetition or postpetition basis, which shall be payable by Borrower promptly upon written demand and without the requirement for Bankruptcy Court approval. A copy of the summary invoice shall be provided to counsel to the Debtor, the U.S. Trustee, and counsel to the Committee, if any. Debtor shall indemnify, pay and hold harmless the DIP Agent and each DIP Lender (and each of their respective directors, officers, members, employees, advisors and agents) against any loss, liability, cost or expense incurred in respect of the financing contemplated hereby or the use or the proposed use of proceeds thereof (except to the extent resulting from the gross negligence, bad faith or willful misconduct of the indemnified party, as determined by a final, non-appealable judgment of a court of competent jurisdiction).	DIP Term Sheet § 12; Interim Order ¶ 39
Approved Budget Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(2)	“Approved Budget” means a 9-week cash flow forecast of the Debtor showing anticipated receipts and disbursements in form and substance acceptable to the Required DIP Lenders, for which the Initial Budget is attached to the Interim Order, which shall set forth forecasted (A) cash receipts, (B) cash operating disbursements, (C) cash bankruptcy disbursements and (D) net cash flow.	DIP Term Sheet § 16; Interim Order ¶ 17
Variance Covenant Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(2)	The Debtor shall report weekly on actual performance versus the Approved Budget; <i>provided</i> that for purposes of compliance with the DIP Term Sheet and the DIP Orders, cumulative operating disbursements, capital expenditures, non-operating disbursements (including professional fees of the Debtor and the Committee, if any) shall be tested weekly and receipts shall be tested every two weeks (in each case, on a line-by-line basis and subject to a 15% permitted variance (a “<u>Permitted Variance</u>”)); <u>provided further</u> that to the extent (i) the Debtor’s actual cumulative operating disbursements or actual cumulative capital expenditures are less than the projected disbursements provided for such line items in the Approved Budget or (ii) the Debtor’s actual cumulative receipts are greater than the projected	DIP Term Sheet § 16; Interim Order ¶ 18

	receipts provided for such line item in the Approved Budget, such positive variance may be rolled forward to the immediately succeeding week for purposes of compliance with this Term Sheet and the DIP Orders. Without limited the foregoing, for informational purposes only, the Debtor shall prepare and deliver an Updated Budget to the DIP Agent on a weekly basis.	
Use of Cash Collateral; Entities with Interest in Cash Collateral Bankruptcy Rule 4001(b)(1)(B)(i) Local Rule 4001-2(a)(2)	The Debtor is authorized to use Cash Collateral subject to and in accordance with the terms, conditions, and limitations set forth in the Interim Order, the Approved Budget and the DIP Documents, without further approval by the Court.	Interim Order ¶ 12
Liens on Avoidance Actions Bankruptcy Rule 4001(c)(1)(b) Local Rule 4001-2(a)(1)(D)	The DIP Liens shall not extend to, and the DIP Collateral shall not consist of, avoidance actions brought pursuant to chapter 5 of the Bankruptcy Code or applicable state law equivalents, but, upon entry of the Final Order, shall include the proceeds therefrom.	DIP Term Sheet § 9
Challenge Period Bankruptcy Rule 4001(c)(1)(B), 4001(c)(1)(B)(viii) Local Rule 4001-2(a)(1)(B)	The Debtor's stipulations made in the Interim Order are subject to the rights of parties to assert standing to bring a Challenge (as defined in the Interim Order) within (i) solely with respect to any Committee (if any), the date that is sixty (60) calendar days from the date of the Committee's formation, and (ii) with respect to all other parties-in-interest, the date that is seventy-five (75) days following the entry of the Interim Order. Failure of the Committee or any other party in interest to file such a pleading with the Court shall forever bar such party from making such a Challenge.	Interim Order ¶ 43
Waivers/Modification of Automatic Stay Bankruptcy Rule 4001(c)(1)(B)(iv) Local Rule 4001-2(a)(2)	Upon the occurrence and during the continuance of any Event of Default, subject to five (5) business days' notice to the Debtor during which the Debtor may seek an emergency hearing before the Bankruptcy Court, the DIP Agent may (and, at the direction of the DIP Lenders, shall) take all or any of the following actions without further order of or application to the Bankruptcy Court, and notwithstanding the automatic stay: (a) declare all DIP Obligations (including principal of, and accrued interest on, any outstanding DIP Loans) to be immediately due and payable; (b) terminate any further commitment to lend to the Borrower; and/or (c) exercise rights and remedies pursuant to the terms of the DIP Orders, or applicable law (including, without limitation, direct the Debtor (or file a motion in the name of the Debtor)), (i) to enforce the terms and provisions of the DIP Documents, (ii) to collect accounts receivable, without setoff by any account debtor, including to direct the Debtor to collect such account receivables, (iii) to sell or otherwise dispose of any all of the DIP Collateral on	DIP Term Sheet § 26; Interim Order ¶¶ 30, 33

	terms and conditions reasonably acceptable to the DIP Agent and the DIP Lenders pursuant to Sections 363, 365 and other applicable provisions of the Bankruptcy Code (and, without limiting the foregoing, direct the Debtor (or file a motion in the name of the Debtor) to assume and assign any lease or executory contract included in the DIP Collateral to the DIP Agent's designees in accordance with and subject to Section 365 of the Bankruptcy Code) and (iv) enter into the premises of the Debtor in connection with the orderly sale or disposition of the DIP Collateral (including, without limitation, complete any work in process); <i>provided</i> that the Debtor shall take all action that is reasonably necessary to cooperate with the DIP Agent in the DIP Agent's exercise of its rights and remedies and facilitate the realization upon the DIP Collateral by the DIP Agent.	
Section 506(c), 552(b) "Equities of the Case," and Marshalling Waivers Bankruptcy Rule 4001(c)(1)(B)(x); Local Rule 4001-2	The Interim Order provides that the DIP Secured Parties and the Prepetition Secured Parties shall not be subject to the equitable doctrine of "marshaling" or any other similar doctrine with respect to any of the DIP Collateral or the Prepetition Collateral, as applicable. The Final Order shall provide for: (i) a waiver of the "equities of the case" exception to section 552(b) of the Bankruptcy Code, and (ii) a waiver of the ability to surcharge under section 506(c) of the Bankruptcy Code.	DIP Term Sheet § 23; Interim Order ¶¶ 46, 47, 48

31. Each of the foregoing terms is justified because the Debtor needs immediate access to financing and the use of Cash Collateral to continue in this chapter 11 case and facilitate the sale process. The DIP Facility, which was negotiated in good faith and at arm's length, is the only viable proposal to provide critical liquidity.

BASIS FOR RELIEF REQUESTED

I. ENTRY INTO THE DIP DOCUMENTS IS AN EXERCISE OF THE DEBTOR'S SOUND BUSINESS JUDGEMENT

32. The Court should authorize the Debtor, as an exercise of its sound business judgment, to enter into the DIP Documents, obtain access to the proceeds of the DIP Loans, and continue using the Cash Collateral. Section 364 of the Bankruptcy Code authorizes a debtor to obtain secured or superpriority financing under certain circumstances discussed in detail below. Courts grant debtors considerable deference in acting in accordance with their business judgment

in obtaining postpetition secured credit, so long as the agreement to obtain such credit does not run afoul of the provisions of, and policies underlying, the Bankruptcy Code. *See, e.g., In re Trans World Airlines, Inc.*, 163 B.R. 964, 974 (Bankr. D. Del. 1994) (approving a postpetition loan and receivables facility because such facility “reflect[ed] sound and prudent business judgment”); *In re Ames Dep’t Stores, Inc.*, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) (“[C]ases consistently reflect that the court’s discretion under section 364 [of the Bankruptcy Code] is to be utilized on grounds that permit [a debtor’s] reasonable business judgment to be exercised so long as the financing agreement does not contain terms that leverage the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to benefit a party-in-interest.”); *In re Utah 7000, L.L.C.*, No. 08-21869, 2008 WL 2654919, at *2 (Bankr. D. Utah July 3, 2008).

33. To determine whether the business judgment test is met, the Court need only “examine whether a reasonable business person would make a similar decision under similar circumstances.” *In re Dura Auto. Sys. Inc.*, No. 06-11202 (KJC), 2007 WL 7728109, at *97 (Bankr. D. Del. Aug. 15, 2007) (citation omitted). Bankruptcy courts generally will not second-guess a debtor’s business decisions when those decisions involve “a business judgment made in good faith, upon a reasonable basis, and within the scope of [its] authority under the [Bankruptcy] Code.” *In re Curlew Valley Assoc.’s*, 14 B.R. 506, 513–14 (Bankr. D. Utah. Oct 8, 1981) (noting that courts should not second guess a debtor’s business decision when that decision involves “a business judgment made in good faith, upon a reasonable basis, and within the scope of [the debtor’s] authority under the [Bankruptcy] Code”).

34. In determining whether the Debtor has exercised sound business judgment in entering into the DIP Documents, the Court should consider the economic terms of the DIP Facility under the totality of circumstances. *See Hr’g Tr.* at 734–35:24, *In re Lyondell Chem. Co.*, No. 09-

10023 (Bankr. S.D.N.Y. Feb. 27, 2009) (recognizing that “the terms that are now available for DIP financing in the current economic environment aren’t as desirable” as they once were previously, referring to the period following the 2008 financial markets collapse); *In re Farmland Indus., Inc.*, 294 B.R. 855, 886 (Bankr. W.D. Mo. 2003) (while many of the terms favored the DIP lenders, “taken in context, and considering the relative circumstances of the parties,” the court found them to be reasonable). Moreover, the Court may appropriately take into consideration non-economic benefits to the Debtor offered under the DIP Facility. *See In re ION Media Networks, Inc.*, No. 09-13125 (JMP), 2009 WL 2902568, at *4 (Bankr. S.D.N.Y. July 6, 2009) (holding that “a business decision to obtain credit from a particular lender is almost never based purely on economic terms . . . Relevant features of the financing must be evaluated, including non-economic elements such as the timing and certainty of closing, the impact on creditor constituencies and the likelihood of a successful reorganization . . .”).

35. The Debtor’s decision to enter into the DIP Facility is an exercise of its sound business judgment. As further discussed in the First Day Declaration, the DIP Facility was a product of an arms’-length negotiation and a careful evaluation of alternatives. First Day Decl. ¶ 41. The Debtor ultimately decided that moving forward with the proposed DIP Facility was an appropriate step given that the DIP Facility: (a) provides a path forward in chapter 11 by allowing the Debtor to facilitate the sale process with a stalking horse bidder, subject to higher and better bids and (b) allows the Debtor to operate in the ordinary course of business postpetition and fund the administration of the chapter 11 case for the benefit of the estate and all of the Debtor’s stakeholders. First Day Decl. ¶¶ 36, 38; Popehn Decl. ¶ 26. The DIP Facility allows the Debtor to obtain necessary liquidity on market terms and fund the sale process with the benefit of a Stalking Horse Bid. Popehn Decl. ¶ 24. The Debtor and its advisors therefore determined that

entry into the DIP Facility was the best path available and they have obtained the best terms currently achievable under the circumstances. *Id.* ¶ 27.

II. THE DEBTOR SHOULD BE AUTHORIZED TO GRANT LIENS AND SUPERPRIORITY CLAIMS

36. The Debtor proposes to obtain the DIP Facility by providing security interests and liens as set forth in the DIP Documents and described above. The Debtor satisfies the requirements for relief under section 364 of the Bankruptcy Code, which authorizes a debtor to incur secured or superpriority debt under certain circumstances. Specifically, section 364(c) of the Bankruptcy Code provides that:

If the trustee is unable to obtain unsecured credit allowable under section 503(b)(1) of this title as an administrative expense, the court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt:

- (1) with priority over any or all administrative expenses of the kind specified in section 503(b) or 507(b) of this title;
- (2) secured by a lien on property of the estate that is not otherwise subject to a lien; or
- (3) secured by a junior lien on property of the estate that is subject to a lien[.]

11 U.S.C. § 364(c).

37. To satisfy the requirements of section 364(c) of the Bankruptcy Code, a debtor need only demonstrate “by a good faith effort that credit was not available” to the debtor on an unsecured or administrative expense basis. *See In re Crouse Grp., Inc.*, 71 B.R. 544, 549 (Bankr. E.D. Pa. 1987) (secured credit under section 364(c) of the Bankruptcy Code is authorized, after notice and hearing, upon showing that unsecured credit cannot be obtained). “[Section 364(c)] imposes no duty to seek credit from every possible lender before concluding that such credit is unavailable.” *Bray v. Shenandoah Fed. Savs. & Loan Ass’n (In re Snowshoe Co.)*, 789 F.2d 1085, 1088 (4th Cir. 1986); *see also Pearl-Phil GMT (Far East) Ltd. v. Caldor Corp.*, 266 B.R. 575, 584

(S.D.N.Y. 2001) (superpriority administrative expenses authorized where debtor could not obtain credit as an administrative expense).

38. When few (or no) lenders are likely to be able or willing to extend the necessary credit to a debtor, “it would be unrealistic and unnecessary to require [the debtor] to conduct such an exhaustive search for financing.” *In re Sky Valley, Inc.*, 100 B.R. 107, 113 (Bankr. N.D. Ga. 1988), *aff’d sub nom., Anchor Savs. Bank FSB v. Sky Valley, Inc.*, 99 B.R. 117, 120 n. 4 (N.D. Ga. 1989); *see also In re Snowshoe Co.*, 789 F.2d 1085, 1088 (4th Cir. 1986) (demonstrating that credit was unavailable absent the senior lien by establishment of unsuccessful contact with other financial institutions in the geographic area); *In re Stanley Hotel, Inc.*, 15 B.R. 660, 663 (D. Colo. 1981) (bankruptcy court’s finding that two national banks refused to grant unsecured loans was sufficient to support conclusion that section 364 requirement was met); *In re Ames Dep’t Stores*, 115 B.R. at 40 (approving financing facility and holding that debtor made reasonable efforts to satisfy standards of section 364(c) where it approached four lending institutions, was rejected by two, and selected most favorable of two offers it received).

39. Courts have articulated a three-part test to determine whether a debtor is entitled to financing under section 364(c) of the Bankruptcy Code. Specifically, courts look to whether:

- a. the debtor is unable to obtain unsecured credit under section 364(b) of the Bankruptcy Code, *i.e.*, by allowing a lender only an administrative claim;
- b. the credit transaction is necessary to preserve the assets of the estate; and
- c. the terms of the transaction are fair, reasonable, and adequate, given the circumstances of the debtor-borrower and proposed lenders.

In re L.A. Dodgers LLC, 457 B.R. at 312; *In re Aqua Assocs.*, 123 B.R. 192, 195–96 (Bankr. E.D. Pa. 1991); *In re St. Mary Hosp.*, 86 B.R. 393, 401–02 (Bankr. E.D. Pa. 1988). Furthermore, in

the event that a debtor is unable to obtain unsecured credit allowable as an administrative expense under section 503(b)(1) of the Bankruptcy Code, section 364(c) of the Bankruptcy Code provides that a court “may authorize the obtaining of credit or the incurring of debt (1) with priority over any or all administrative expenses of the kind specified in section 503(b) or 507(b) of [the Bankruptcy Code]; (2) secured by a lien on property of the estate that is not otherwise subject to a lien; or (3) secured by a junior lien on property of the estate that is subject to a lien.” 11 U.S.C. § 364(c).

40. As described above, the Debtor is in need of an immediate infusion of liquidity to ensure sufficient working capital to operate its businesses and administer its estate. *See* First Day Decl. ¶ 35. From the outset, several factors made clear that the required new money infusion in the form of debtor in possession financing would be highly likely to originate from a member of the Debtor’s capital structure. First, substantially all of the Debtor’s assets were encumbered under the Prepetition Credit Documents, which restricted the availability of, and the Debtor’s options for, securing additional financing absent lender consent. Second, third-party unsecured financing was not a viable option due to the amount of existing secured debt relative to the Debtor’s financial position. Third, the Prepetition Lenders made clear they would not consent to “priming” alternative financing, and the absence of a sufficient equity cushion made it unlikely that priming debtor in possession financing could be obtained over the objection of the Prepetition Lenders and the Debtor’s precarious liquidity position made the prospect of a priming fight risky at best. Popehn Decl. at ¶ 18. Accordingly, the only available avenue for obtaining workable financing was with the Prepetition Lenders. *Id.*

41. As discussed above and as set forth in the Popehn Declaration, Houlihan solicited potential alternative financing from ten (10) well-known third-party DIP financing parties to develop alternatives to the DIP Lenders. Popehn Decl. ¶ 17. However, those efforts resulted in

the Debtor receiving no viable or actionable financing alternative, and as a result, no better financing is available. *Id.*

42. Further, section 364(d) of the Bankruptcy Code provides that a debtor may obtain credit secured by a senior or equal lien on property of the estate already subject to a lien, after notice and a hearing, when the debtor is “unable to obtain such credit otherwise” and “there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted.” 11 U.S.C. § 364(d)(1). Consent by the secured creditors to liens priming their interests in collateral obviates the need to show adequate protection. *See Anchor Savs. Bank FSB v. Sky Valley, Inc.*, 99 B.R. 117, 122 (N.D. Ga. 1989) (“[B]y tacitly consenting to the superpriority lien, those [undersecured] creditors relieved the debtor of having to demonstrate that they were adequately protected.”). Accordingly, the Debtor may incur “priming” liens under the DIP Agreement if either (a) the Prepetition Secured Parties support the priming or (b) the Prepetition Secured Parties’ interests in collateral are adequately protected.

43. Here, the Prepetition Secured Parties support priming their own prepetition liens in connection with the DIP Facility. Further, the Debtor does not believe any alternative financing is available on equal or better terms from the DIP Lenders. Popehn Decl. at ¶ 18. Therefore, the Debtor submits that the requirement of section 364 of the Bankruptcy Code that alternative credit on more favorable terms be unavailable to the Debtor is satisfied.

44. Finally, as evidenced by the First Day Declaration, the incremental liquidity provided under the DIP Term Sheet is needed to ensure adequate working capital and funding for other administrative expenses associated with this chapter 11 case. First Day Decl. ¶ 36. The Debtor, with the assistance of FTI and their other professionals, engaged in extensive, good-faith and arm’s-length negotiation with the DIP Lenders over the terms of the DIP Agreement. Those

negotiations resulted in fair and reasonable terms that are consistent with or better than terms generally available in the market for debtor in possession financing.

III. THE DEBTOR SHOULD BE AUTHORIZED TO USE CASH COLLATERAL

45. Section 363(c) of the Bankruptcy Code governs a debtor's use of a secured creditor's cash collateral. Section 363(c) provides, in pertinent part, that:

The trustee may not use, sell, or lease cash collateral . . . unless—

(A) each entity that has an interest in such cash collateral consents; or

(B) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of this section [363].

11 U.S.C. § 363(c)(2).

46. Here, the use of Cash Collateral is consensual. The Prepetition Secured Parties are deemed to consent to the Debtor's use of the Cash Collateral by virtue of the Prepetition Lenders expressly consenting to the use of Cash Collateral in accordance with the Approved Budget.

47. Parties with an interest in cash collateral are entitled to adequate protection under section 363(e) of the Bankruptcy Code. 11 U.S.C. § 363(e). Further, section 362(d)(1) of the Bankruptcy Code provides for adequate protection of interests in property due to the imposition of the automatic stay. *In re Cont'l Airlines*, 91 F.3d 553, 556 (3d Cir. 1996) (en banc). While section 361 of the Bankruptcy Code provides examples of forms of adequate protection, such as granting replacement liens and administrative claims, courts decide what constitutes sufficient adequate protection on a case-by-case basis. *In re O'Connor*, 808 F.2d 1393, 1397 (10th Cir. 1987); *In re Swedeland Dev. Grp., Inc.*, 16 F.3d 552, 564 (3d Cir. 1994); *In re Satcon Tech. Corp.*, No. 12-12869 (KG), 2012 WL 6091160, at *6 (Bankr. D. Del. Dec. 7, 2012); *In re Columbia Gas Sys., Inc.*, Nos. 91-803, 91-804, 1992 WL 79323, at *2 (Bankr. D. Del. Feb. 18, 1992); *see also In re Dynaco Corp.*, 162 B.R. 389, 394 (Bankr. D.N.H. 1993) (citing 2 Collier on Bankruptcy

¶ 361.01[1] at 361–66 (15th ed. 1993) (explaining that adequate protection can take many forms and “must be determined based upon equitable considerations arising from the particular facts of each proceeding”)).

48. As noted above, the Prepetition Secured Parties have consented to the use of Cash Collateral on the terms set forth in the Interim Order, and the Debtor proposes providing the Prepetition Secured Parties with adequate protection that is fair and reasonable and adequately protects against the diminution in value of their interest in the Prepetition Collateral. Specifically, the Prepetition Secured Parties are entitled to, among other things, (i) adequate protection liens (subject to the Carve-Out and the priorities set out in the Interim Order); (ii) allowed adequate protection superpriority claims under sections 507(b) of the Bankruptcy Code (subject to the Carve-Out and the priorities set out in the Interim Order); (iii) subject to recharacterization as principal under the Prepetition Credit Agreement, payment in cash of monthly interest under the Prepetition Credit Agreement; and (iv) adequate protection payments of the reasonable and documented fees, costs, and expenses of counsel and financial advisors for the Prepetition Agent (the “Prepetition Adequate Protection”).

49. The adequate protection obligations above are sufficient to protect the Prepetition Secured Parties from any potential diminution in value of their Prepetition Collateral, including the Cash Collateral. In light of the foregoing, the Debtor submits, and the Prepetition Secured Parties agree, that the proposed adequate protection to be provided is appropriate.

IV. THE DEBTOR SHOULD BE AUTHORIZED TO PAY THE FEES DUE UNDER THE DIP DOCUMENTS

50. The Debtor has agreed, subject to Court approval, to pay certain fees (including the Upfront Fee and the Exit Fee) to the DIP Agent for the benefit of the DIP Lenders for providing the DIP Facility. As set forth in the Popehn Declaration, the terms of the DIP Documents,

including the fees imposed thereunder, constitute the best terms on which the Debtor could obtain the financing necessary to maintain their ongoing business operations and fund this chapter 11 case and are an integral component of the overall terms of the DIP Facility. Popehn Decl. ¶ 25. Moreover, the fees are customary and usual and in line with debtor in possession financings of this kind. *Id.* at ¶ 24. The Debtor considered the fees when determining in its sound business judgment whether the DIP Facility constituted the best alternative reasonably available to the Debtor. The Debtor believes paying these fees in order to obtain the DIP Facility is in the best interests of the Debtor's estate. *Id.* Accordingly, the Court should authorize the Debtor to pay the fees.

V. THE DIP LENDERS SHOULD BE DEEMED GOOD FAITH LENDERS

51. Section 364(e) of the Bankruptcy Code protects a good faith lender's right to collect on loans extended to a debtor, and its right in any lien securing those loans, even if the authority of the debtor to obtain such loans or grant such liens is later reversed or modified on appeal. Section 364(e) of the Bankruptcy Code provides that:

The reversal or modification on appeal of an authorization under this section [364 of the Bankruptcy Code] to obtain credit or incur debt, or of a grant under this section of a priority or a lien, does not affect the validity of any debt so incurred, or any priority or lien so granted, to an entity that extended such credit in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and the incurring of such debt, or the granting of such priority or lien, were stayed pending appeal.

11 U.S.C. § 364(e).

52. Here, the Debtor believes the DIP Facility embodies the most favorable terms on which the Debtor could obtain postpetition financing. As further described in the First Day Declaration, negotiations of the terms of the DIP Agreement with the DIP Lenders were conducted in good faith and at arms' length. First Day Decl. ¶ 41. The terms and conditions of the DIP Documents are fair and reasonable, and the proceeds of the DIP Facility will be used only for

purposes that are permissible under the Bankruptcy Code, and in accordance with the DIP Orders and the DIP Documents, including, for the avoidance of doubt, the Approved Budget (subject to any Permitted Variances). Further, no consideration is being provided to any party to the DIP Documents other than as described herein and in the Popehn Declaration. Accordingly, the Court should find that the DIP Lenders are “good faith” lenders within the meaning of section 364(e) of the Bankruptcy Code, and are entitled to all of the protections afforded by that section.

VI. MODIFICATION OF THE AUTOMATIC STAY IS WARRANTED

53. The relief requested herein contemplates a modification of the automatic stay to permit the Debtor and the DIP Secured Parties, as applicable, to, among other things: (i) grant the security interests, liens, and superpriority claims described above and to perform such acts as may be requested to assure the perfection and priority of such security interests and liens; (ii) upon the occurrence of an Event of Default, subject to any applicable notice periods set forth in the DIP Orders, exercise any remedies available to them; and (iii) implement the terms of the proposed DIP Orders, including payment of all amounts referred to in the DIP Documents.

54. Stay modifications of this kind are ordinary and standard features of debtor in possession financing arrangements and, in the Debtor’s business judgment, are reasonable and fair under the circumstances of the chapter 11 case. *See, e.g., In re Infinia Corp.*, No. 13-30688 (WTT), 2013 WL 6222757, at *14 (Bankr. D. Utah Nov. 20, 2013); *In re Hardinge Inc.*, No. 24-11605 (JKS) (Bankr. D. Del. Jul. 31, 2024); *In re Never Slip Holdings, Inc.*, No. 24-10663 (LSS) (Bankr. D. Del. Apr. 26, 2024); *In re iMedia Brands, Inc.*, No. 23-10852 (KBO) (Bankr. D. Del. July 6, 2023); *In re OSG Group Holdings, Inc.*, No. 22-10718 (JTD) (Bankr. D. Del. Aug. 9, 2022); *In re RentPath Holdings, Inc.*, No. 20-10312 (BLS) (Bankr. D. Del. Mar. 10, 2020); *In re Blackhawk Mining LLC*, No. 19-11595 (LSS); (Bankr. D. Del. Aug. 13, 2019); *In re Z Gallerie*,

LLC, No. 19-10488 (LSS) (Bankr. D. Del. Apr. 9, 2019); *In re Checkout Holding Corp.*, No. 18-12794 (KG) (Bankr. D. Del. Jan. 17, 2019).

REQUEST FOR A FINAL HEARING

55. Pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2), the Debtor requests the Court set a date for the final hearing that is as soon as practicable, and in no event more than 30 days after the Petition Date in accordance with the Milestones, and fix the time and date prior to the final hearing for parties to file objections to this Motion.

IMMEDIATE AND UNSTAYED RELIEF IS NECESSARY

56. The Court may grant the relief requested in this Motion immediately if the “relief is necessary to avoid immediate and irreparable harm.” Bankruptcy Rule 6003; *In re First NLC Fin. Servs., LLC*, 382 B.R. 547, 549 (Bankr. S.D. Fla. 2008). The Tenth Circuit has interpreted the language “immediate and irreparable harm” in the context of preliminary injunctions. In that context, the Tenth Circuit has instructed that irreparable harm is that which “cannot be compensated after the fact by money damages.” *First W. Cap. Mgmt. Co. v. Malamed*, 874 F.3d 1136, 1141 (10th Cir. 2017). As explained above and in the First Day Declaration and the Popehn Declaration, access to the DIP Facility and the use of Cash Collateral, in the interim amounts proposed, are essential and the relief requested is narrowly tailored to only the relief that is necessary to prevent immediate and irreparable damage to the Debtor’s operations, and therefore, Bankruptcy Rule 6003 is satisfied.

BANKRUPTCY RULE 6004(a) AND (h) WAIVERS ARE APPROPRIATE

57. To implement the foregoing successfully, the Debtor requests that the Court find that notice of the Motion is adequate under Bankruptcy Rule 6004(a) under the circumstances, and waive the fourteen (14)-day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h). As explained above and in the First Day Declaration and the Popehn

Declaration, the relief requested herein is necessary to avoid immediate and irreparable harm to the Debtor. Accordingly, ample cause exists to justify finding that the notice requirements under Bankruptcy Rule 6004(a) have been satisfied and to grant a waiver of the fourteen (14) day stay imposed by Bankruptcy Rule 6004(h), to the extent such notice requirements and such stay apply.

RESERVATION OF RIGHTS

58. Except as otherwise provided in the DIP Orders, nothing contained in this Motion: (a) is intended or shall be deemed to constitute an assumption of any agreement pursuant to section 365 of the Bankruptcy Code or an admission as to the validity of any claim against the Debtor or its estate; (b) shall impair, prejudice, waive, or otherwise affect the rights of the Debtor or its estate to contest the validity, priority, or amount of any claim against the Debtor or its estate; (c) shall impair, prejudice, waive, or otherwise affect the rights of the Debtor or its estate with respect to any and all claims or causes of action against any third party; or (d) shall be construed as a promise to pay a claim or continue any applicable program postpetition, which decision shall be in the discretion of the Debtor. Any payment made pursuant to an order of the Court granting the relief requested herein is not intended to be nor should it be construed as an admission as to the validity of any claim or a waiver of the Debtor's rights to subsequently dispute such claim.

NOTICE

59. The Debtor will provide notice of this Motion to: (a) United States Trustee for the District of Utah; (b) the United States Attorney's Office for the District of Utah; (c) the state attorneys general for all states in which the Debtor conducts business; (d) the Internal Revenue Service; (e) the United States Securities and Exchange Commission; (f) the holders of the thirty (30) largest unsecured claims against the Debtor on a consolidated basis; (g) counsel to the DIP Agent and the DIP Lenders; (h) counsel to the Prepetition Secured Parties; (j) the banks and financial institutions where the Debtor maintains accounts; and (k) any party that has requested

notice pursuant to Bankruptcy Rule 2002. The Debtor respectfully submits that, in light of the nature of the relief requested, no further notice is necessary.

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CONCLUSION

WHEREFORE, the Debtor respectfully requests that the Court enter the Interim Order, substantially in the form annexed hereto as **Exhibit A**, and the Final Order, granting the relief requested herein and such other and further relief as the Court deems appropriate under the circumstances.

Dated: December 9, 2024.

Respectfully submitted,

RAY QUINNEY & NEBEKER P.C.

By: /s/ Michael R. Johnson

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*Proposed Counsel to the Debtor and
Debtor in Possession*

CERTIFICATE OF SERVICE

I hereby certify that on December 9, 2024, the foregoing document was filed with the Clerk of the Court in each of the foregoing Chapter 11 case using the CM/ECF filing system, which sent notice of electronic filing to all electronic filing users in each case.

/s/ Michael R. Johnson

Michael R. Johnson

EXHIBIT A

Interim Order

Prepared and Submitted by:

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**IN THE UNITED STATES BANKRUPTCY COURT FOR THE
DISTRICT OF UTAH CENTRAL DIVISION**

In re:

VOBEV, LLC, a Utah limited liability
company,

Debtor-in-Possession.

Bankruptcy Case No. 24-26346

Chapter 11

Honorable Joel T. Marker
[Filed Electronically]

INTERIM ORDER (I) AUTHORIZING THE DEBTOR TO OBTAIN POSTPETITION SENIOR SECURED FINANCING, (II) AUTHORIZING THE DEBTOR TO USE CASH COLLATERAL ON A LIMITED BASIS, (III) GRANTING LIENS AND PROVIDING SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS, (IV) GRANTING ADEQUATE PROTECTION, (V) MODIFYING THE AUTOMATIC STAY, (VI) SCHEDULING A FINAL HEARING, AND (VII) GRANTING RELATED RELIEF

Upon the motion, dated December 9, 2024 (the “Motion”) of Vobev, LLC (“Vobev”) as a debtor in possession (the “Debtor”) in the above-captioned chapter 11 case (the “Chapter 11 Case”), seeking entry of an interim order (this “Interim Order”) ¹ and a Final Order (as defined herein) pursuant to sections 105, 361, 362, 363, 364(c)(1), 364(c)(2), 364(c)(3), 364(d), 364(e), 503, 507, and 552 of title 11 of the United States Code (as amended, the “Bankruptcy Code”), Rules 2002, 4001, 6003, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rules 2002-1, 4001-2 and 9013-1 of the Local Rules (the “Local Rules”) for the United States Bankruptcy Court for the District of Utah (the “Court”), *inter alia*:

(i) authorizing the Debtor to obtain senior secured postpetition financing on a superpriority basis (the “DIP Facility” and the loans thereunder, the “DIP Loans”) consisting of (a) a new money multiple draw term loan facility in the aggregate principal amount of up to \$37,250,000 (such loans, the “New Money DIP Loans”) consisting of (1) \$14,000,000 available upon entry of the Interim Order (the “Interim Amount”), and (2) an additional \$23,250,000 available upon entry of the Final Order (the “Final Amount” and, together with the Interim Amount, the “New Money Amount”), and (b) a roll-up of certain Prepetition Obligations (as defined below) in the Roll-Up Amount (as defined below) on a cashless dollar-for-dollar basis into DIP Loans under the DIP Facility, in each case, pursuant to the terms and conditions of this Interim

¹ Capitalized terms used in this Interim Order but not defined herein shall have the meanings given to them in the DIP Term Sheet (as defined below).

Order, the Final Order, the Approved Budget (as defined below), and that certain term sheet attached hereto as **Exhibit A** (as the same may be amended, restated, supplemented, or otherwise modified from time to time, the “DIP Term Sheet”), by and among Vobev, as borrower, Ares Capital Corporation, as administrative agent and collateral agent (in such capacities, the “DIP Agent”), and the lenders party thereto from time to time (the “DIP Lenders,” and together with the DIP Agent, the “DIP Secured Parties”);

(ii) approving the terms of and authorizing the Debtor to enter into and perform under the DIP Term Sheet and any other agreements, instruments, and documents related thereto or in connection therewith (collectively, the “DIP Documents”), which shall be on terms consistent with the terms set forth in the DIP Term Sheet and otherwise in form and substance acceptable to the Required DIP Lenders (or as otherwise provided in the DIP Documents), and to perform such other acts as may be necessary or desirable in connection with the DIP Documents;

(iii) authorizing the Debtor to enter into the DIP Term Sheet and to incur all obligations under the DIP Documents to the DIP Secured Parties, including the Roll-Up Obligations (as defined below) (collectively, the “DIP Obligations”), and granting the DIP Agent and DIP Lenders allowed superpriority administrative expense claim status in the Chapter 11 Case and any Successor Case (as defined below), subject only to the Carve-Out (as defined below);

(iv) subject to the terms of this Interim Order, granting to the DIP Agent (on behalf of the DIP Secured Parties) automatically perfected security interests in and priming liens on all of the DIP Collateral (as defined below), including, without limitation, all property constituting “cash collateral” as such term is defined in section 363(a) of the Bankruptcy Code (including, without limitation, all cash and cash equivalents and other amounts from time to time on deposit or maintained by the Debtor in any deposit or securities account or accounts as of the Petition Date

(as defined below)) and any cash or cash equivalents received by the Debtor after the Petition Date as proceeds of the Prepetition Collateral (as defined below) (collectively, "Cash Collateral");

(v) authorizing the Debtor to use proceeds of the DIP Facility and Cash Collateral to:

(a) provide financing for working capital and other general corporate purposes, including for bankruptcy-related costs and expenses, all to the extent provided in, and in accordance with, the Approved Budget, this Interim Order, and the DIP Documents; (b) make permitted adequate protection payments as specified below; (c) pay the principal, interest, fees, expenses, and other amounts payable and reimbursable under the DIP Documents or this Interim Order as such become due, including, without limitation, the DIP Fees and the fees and expenses of the DIP Professionals (as defined below), and (d) any other purposes agreed upon in the DIP Documents, in each case solely in accordance with the Approved Budget, this Interim Order, and the DIP Documents;

(vi) authorizing the Debtor to use the Prepetition Collateral (as defined below), including the Cash Collateral, on an interim basis in accordance with both the Approved Budget and the DIP Documents, and providing, among other things, adequate protection to the Prepetition Secured Parties (as defined below) for any Diminution (as defined below) of their interests in the Prepetition Collateral, including the Cash Collateral;

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

(viii) authorizing the DIP Agent, at the direction of the Required DIP Lenders, upon the occurrence of an Event of Default (as defined below): to (1) terminate the funding obligations under the DIP Documents in accordance with their terms; (2) declare the DIP Obligations to be immediately due and payable in full, to the extent permitted by the terms thereof; and (3) subject

to this Interim Order, be granted relief from the automatic stay to foreclose on the DIP Liens and DIP Collateral;

(ix) approving the stipulations in paragraph G of this Interim Order by the Debtor with respect to the Prepetition Loan Documents and the liens and security interests arising therefrom subject to the Challenge Period described in paragraph 43 hereof;

(x) authorizing payment of the DIP Fees (as defined below);

(xi) waiving any applicable stay (including under Bankruptcy Rule 6004) with respect to the effectiveness and enforceability of this Interim Order and providing for the immediate effectiveness of this Interim Order;

(xii) scheduling a final hearing (the “Final Hearing”) to consider the relief requested in the Motion and approving the form of notice with respect to the Final Hearing; and

(xiii) granting related relief.

The Court having considered the Motion, the exhibits attached thereto, the *Declaration of Alan Boyko, Chief Transformation Officer of the Debtor, in Support of Debtor’s Chapter 11 Petitions and First Day Motions* (the “First Day Declaration”), and the *Declaration of John Popehn in Support of the Debtor’s Motion to Obtain Postpetition Debtor in Possession Financing and the Debtor’s Bidding Procedures Motion* (the “Popehn Declaration”), the DIP Term Sheet, all other DIP Documents, and the evidence submitted and argument made at the interim hearing (the “Interim Hearing”); and notice of the Interim Hearing having been provided in accordance with Bankruptcy Rules 2002, 4001(b), (c) and (d), and all applicable Local Rules; and the Interim Hearing having been held and concluded; and all objections, if any, to the interim relief requested in the Motion having been withdrawn, resolved or overruled by the Court; and it appearing that approval of the interim relief requested in the Motion is necessary to avoid immediate and

irreparable harm to the Debtor and its estate (the “Estate”) pending the Final Hearing, and otherwise is fair and reasonable and in the best interests of the Debtor, its Estate and all parties-in-interest, and is essential for the continued operation of the Debtor’s business and the preservation of the value of the Debtor’s assets; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and it appearing that the Debtor’s entry into the DIP Term Sheet and the other DIP Documents is a sound and prudent exercise of the Debtor’s business judgment; and after due deliberation and consideration, and good and sufficient cause appearing therefor;

Based upon the record established at the Interim Hearing, the Court makes the following findings of fact and conclusions of law:²

A. Disposition. The relief requested in the Motion is granted on an interim basis in accordance with the terms of this Interim Order. Any objections to the Motion with respect to the entry of this Interim Order that have not been withdrawn, waived or settled, and all reservations of rights included therein, are hereby denied and overruled on the merits. This Interim Order shall

² 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.

become effective immediately upon its entry and any applicable stay (including under Bankruptcy Rule 6004) is waived to permit such effectiveness.

B. Petition Date. On December 9, 2024 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code with the Court.

C. Debtor in Possession. The Debtor is operating its businesses and properties as a debtor in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. As of the date hereof, no trustee or examiner has been appointed.

D. Jurisdiction and Venue. This Court has jurisdiction over the Chapter 11 Case, the Motion and the parties and property affected hereby pursuant to 28 U.S.C. § 1334. Consideration of the Motion constitutes a core proceeding pursuant to 28 U.S.C. § 157(b)(2). This Court may enter a final order consistent with Article III of the United States Constitution. Venue for the Chapter 11 Case and the proceedings on the Motion is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409. The bases for the relief sought in the Motion are sections 105, 361, 362, 363, 364, 507 and 552 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001, 6003, 6004, and 9014, and the Local Rules.

E. Committee. As of the date hereof, no statutory committee has been appointed in the Chapter 11 Case pursuant to section 1102 of the Bankruptcy Code (a “Committee”).

F. Notice. Upon the record presented to the Court at the Interim Hearing, and under the exigent circumstances set forth in the Motion, notice of the Motion and the relief requested thereby and this Interim Order has been provided in accordance with Bankruptcy Rules 4001(b) and 4001(c)(1) to: (a) the Office of the United States Trustee for the District of Utah (the “U.S. Trustee”); (b) entities listed as holding the 30 largest unsecured claims against the Debtor (on a consolidated basis); (c) counsel to the DIP Agent and the DIP Lenders, (i) Proskauer Rose LLP,

Eleven Times Square, New York, New York 10036 (Attn: Vincent Indelicato (vindelicato@proskauer.com) and Matthew R. Koch (mkoch@proskauer.com)), and One International Place Boston, Massachusetts 02110 (Attn: Charles A. Dale (cdale@proskauer.com)), and (ii) Parr Brown Gee & Loveless, PC, 101 South 200 East, Suite 700, Salt Lake City, Utah 84111 (Attn: Joseph M.R. Covey (jcovey@parrbrown.com)); (d) the United States Attorney's Office for the District of Utah; (e) the Internal Revenue Service; (f) the state attorneys general for states in which the Debtor conducts business; (g) the United States Securities and Exchange Commission; (h) banks and financial institutions where the Debtor maintains accounts; and (i) any party that has requested notice pursuant to Bankruptcy Rule 2002 (collectively, the "Notice Parties"), which notice was appropriate under the circumstances and sufficient for the Motion. No other or further notice of, or hearing regarding, the entry of this Interim Order and the relief set forth herein is necessary or required. The interim relief granted herein is necessary to avoid immediate and irreparable harm to the Debtor and its Estate pending a Final Hearing.

G. Debtor's Stipulations. Subject to paragraph 43 hereof: (i) each stipulation, admission, and agreement contained in this Interim Order, including, without limitation, the Debtor's Stipulations (as defined below), shall be binding upon the Debtor, its Estate, and any successors thereto (including, without limitation, any chapter 7 or chapter 11 trustee appointed or elected for the Debtor) under all circumstances and for all purposes, and (ii) the Debtor is deemed to have irrevocably waived and relinquished all Challenges (as defined herein) as of the Petition Date. Without prejudice to the rights of parties in interest as expressly set forth in paragraph 43 herein, the Debtor, in requesting the DIP Facility, and in exchange for and as a material inducement to the DIP Secured Parties to provide the DIP Facility, on its own behalf and on behalf of its Estate

and all representatives of such Estate, admits, stipulates, acknowledges, and agrees as follows (paragraphs G(i) through G(vii) below are referred to, collectively, as the “Debtor’s Stipulations”):

- (i) *Prepetition Term Loan Facility.* Pursuant to that certain Credit and Guaranty Agreement, dated as of April 20, 2023 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Prepetition Credit Agreement”, and collectively with all other agreements, instruments and documents executed or delivered in connection therewith or otherwise evidencing or securing any Prepetition Term Loan Obligations (as defined below) and any Prepetition ABL Obligations (as defined below), each as may be amended, restated, supplemented, or otherwise modified from time to time, the “Prepetition Loan Documents”), by and among (a) Vobev Holdings LLC (the “Parent”) (b) Vobev, LLC (the “Borrower”), (c) certain subsidiaries of Parent from time to time party thereto as guarantors, (d) Ares Capital Corporation, as administrative agent (in such capacity, together with any successor thereto, the “Prepetition Administrative Agent”), (e) ACF Finco I LP, as revolving agent and collateral agent (in such capacities, together with any successors thereto, the “Prepetition Revolving Agent” and the “Prepetition Collateral Agent”, respectively; the Prepetition Administrative Agent, the Prepetition Revolving Agent, and the Prepetition Collateral Agent, collectively, the “Prepetition Agents”), and (f) certain lenders party thereto from time to time who have made Prepetition Term Loans (as defined below) (the “Prepetition Term Loan Lenders,” and together with the Prepetition Administrative Agent, collectively, the “Prepetition Term Loan Parties”), the Prepetition Term Loan Lenders provided senior secured term loans to the Borrower (the “Prepetition Term Loan Facility”).
- (ii) *Prepetition Term Loan Obligations.* As of the Petition Date, the Debtor was indebted and liable to the Prepetition Term Loan Parties in the aggregate principal amount outstanding under the Prepetition Term Loan Facility of not less than \$361,141,252.14 consisting of (a) initial term loans in an aggregate principal amount of \$197,666,427.70 (the “Prepetition Initial Term Loans”) and (b) \$163,474,824.44 of delayed draw term loans (the “Prepetition Delayed Draw Term Loans” and, together with the Prepetition Initial Term Loans, the “Prepetition Term Loans”, together with accrued and unpaid interest, any fees, expenses and disbursements (including, without limitation, any accrued and unpaid attorneys’ fees, accountants’ fees, appraisers’ fees and financial advisors’ fees, and related expenses and disbursements), indemnification obligations, and other charges, amounts and costs of whatever nature owing, whether or not contingent, whenever arising, accrued, accruing, due, owing, or chargeable in respect of the Debtor’s obligations in connection with the Prepetition Term Loan Facility pursuant to the Prepetition Loan Documents, collectively, the “Prepetition Term Loan Obligations”).

- (iii) *Prepetition ABL Facility*. Pursuant to the Prepetition Credit Agreement, certain lenders party thereto from time to time (the “Prepetition ABL Lenders” and, together with the Prepetition Revolving Agent and Prepetition Collateral Agent, collectively, the “Prepetition ABL Parties” and, together with the Prepetition Term Loan Parties, collectively, the “Prepetition Secured Parties”) provided a secured, superpriority asset-based revolving credit facility to the Borrower (the “Prepetition ABL Facility”, and together with the Prepetition Term Loan Facility, the “Prepetition Facilities”).
- (iv) *Prepetition ABL Obligations*. As of the Petition Date, the Debtor was indebted and liable to the Prepetition ABL Parties in the aggregate principal amount of outstanding revolving loans under the Prepetition ABL Facility of not less than \$40,877,477.92 (together with accrued and unpaid interest, any fees, expenses and disbursements (including, without limitation, any accrued and unpaid attorneys’ fees, accountants’ fees, appraisers’ fees and financial advisors’ fees, and related expenses and disbursements), indemnification obligations, and other charges, amounts and costs of whatever nature owing, whether or not contingent, whenever arising, accrued, accruing, due, owing, or chargeable in respect of the Debtor’s obligations in connection with the Prepetition ABL Facility pursuant to the Prepetition Loan Documents, the “Prepetition ABL Obligations”, and together with the Prepetition Term Loan Obligations, the “Prepetition Obligations”). For the avoidance of doubt, as of the Petition Date, the Revolving Credit Commitments (as defined in the Prepetition Credit Agreement) have been terminated.
- (v) *Prepetition Liens and Prepetition Collateral*. As more fully set forth in the Prepetition Loan Documents, prior to the Petition Date, to secure the Prepetition Obligations, the Debtor granted to the Prepetition Collateral Agent for the benefit of the Prepetition Secured Parties and as security for the Prepetition Obligations (the “Prepetition Liens”) a first priority security interest in and continuing lien on the Collateral (as defined in the Prepetition Credit Agreement).
- (vi) *Validity, Extent, Perfection and Priority of Prepetition Liens and Prepetition Obligations*. As of the Petition Date: (a) the Prepetition Liens on all of the Debtor’s right, title and interest in substantially all of its assets (the “Prepetition Collateral”) were valid, binding, enforceable, non-avoidable, and properly perfected and were granted to, or for the benefit of, the Prepetition Secured Parties for fair consideration and reasonably equivalent value; (b) the Prepetition Liens were senior in priority over any and all other liens on the Prepetition Collateral, subject only to certain liens senior by operation of law and otherwise permitted by the Prepetition Loan Documents (solely to the extent any such permitted liens (1) were in existence on the Petition Date, (2) are valid, unavoidable and properly perfected as of the Petition Date or perfected after the Petition Date as permitted by section 546(b) of the Bankruptcy Code, (3) are senior in priority to the Prepetition Obligations, (4)

are permitted to be incurred as senior priority liens under the Prepetition Loan Documents, and (5) are expressly identified on Schedule 1 hereto, the “Prepetition Permitted Liens”); (c) the Prepetition Obligations constitute legal, valid, binding, and non-avoidable obligations of the Debtor enforceable in accordance with the terms of the applicable Prepetition Loan Documents; (d) no offsets, recoupments, challenges, objections, defenses, claims, or counterclaims of any kind or nature, whether arising at law or in equity, to any of the Prepetition Liens or Prepetition Obligations exist, and no portion of the Prepetition Liens or Prepetition Obligations is subject to any challenge or defense including, without limitation, avoidance, disallowance, disgorgement, recharacterization, or subordination (equitable or otherwise) pursuant to the Bankruptcy Code or applicable non-bankruptcy law; (e) the Debtor and its Estate have no claims, objections, challenges, causes of action, and/or choses in action, including without limitation, avoidance claims under chapter 5 of the Bankruptcy Code or applicable state law equivalents or actions for recovery or disgorgement, against any of the Prepetition Secured Parties or any of their respective affiliates, agents, attorneys, advisors, professionals, officers, consultants, directors, and employees arising out of, based upon or related to the Prepetition Facilities; (f) the Debtor has waived, discharged, and released any right to, and is forever barred from bringing any, Challenge (as defined below) to any of the Prepetition Obligations, the priority of the Prepetition Obligations, and the legality, validity, extent, and priority of the Prepetition Liens; (g) the Prepetition Obligations constitute allowed, secured claims within the meaning of sections 502 and 506 of the Bankruptcy Code; and (h) all or substantially all of the Debtor’s cash and cash equivalents, including cash on deposit in any account or accounts as of the Petition Date, cash obtained at any time thereafter (including proceeds of the DIP Facility), securities or other property, wherever located, whether subject to control agreements or otherwise, whether as original collateral or proceeds of other Prepetition Collateral, constitutes Cash Collateral of the Prepetition Secured Parties.

- (vii) *No Control.* None of the DIP Secured Parties or Prepetition Secured Parties controls the Debtor or its properties or operations, has authority to determine the manner in which the Debtor’s operations are conducted, or is a control person or insider (as defined in the Bankruptcy Code) of the Debtor or any of its affiliates by virtue of any of the actions taken with respect to, in connection with, related to, or arising from this Interim Order, the DIP Facility, the DIP Liens, the DIP Obligations, the DIP Documents, the Prepetition Facilities, the Prepetition Liens, the Prepetition Obligations, the Prepetition Loan Documents, or the transactions contemplated hereunder or thereunder.

H. Releases. Subject to paragraph 43 hereof, the Debtor, on behalf of itself and its Estate (including any successor trustee or other estate representative in the Chapter 11 Case and any Successor Case (as defined herein), and any party acting by, through or under the Debtor or

its Estate), hereby stipulates and agrees that they absolutely and unconditionally release and forever and irrevocably discharge and acquit each of the DIP Secured Parties, the Prepetition Secured Parties and their respective affiliates and each of their respective former or current officers, partners, directors, managers, owners, members, principals, employees, agents, related funds, investors, financing sources, financial advisors, attorneys, accountants, investment bankers, consultants, representatives and other professionals and the respective successors and assigns thereof (collectively, the “Released Parties”) from any and all obligations and liabilities to the Debtor (and its successors and assigns) and from any and all claims, counterclaims, demands, debts, accounts, contracts, disputes, liabilities, allegations, suits, controversies, proceedings, actions and causes of action arising prior to the date of this Interim Order of any kind, nature or description, whether known or unknown, foreseen or unforeseen or liquidated or unliquidated, arising in law or equity or upon contract or tort or under any state or federal law or regulation or otherwise, arising out of or related to (as applicable) the DIP Documents, the Prepetition Loan Documents, the negotiation thereof and of the transactions contemplated thereby and the obligations owing and the financial obligations made thereunder, or otherwise related to the Debtor, in each case that the Debtor at any time had, now has or may have, or that its successors or assigns 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 Interim Order. The Debtor further waives and releases any defense, right of counterclaim, right of set-off, or deduction to the payment of the Prepetition Obligations that the Debtor may now have

or may claim to have against the Released Parties, arising out of, connected with, or relating to any and all acts, omissions, or events occurring prior to this Court entering this Interim Order.

I. Findings Regarding Postpetition Financing

(i) *Request for Postpetition Financing.* The Debtor seeks authority to (a) enter into the DIP Facility on the terms described herein and in the DIP Documents, and (b) use Cash Collateral on the terms described herein to administer its Chapter 11 Case and fund its operations in accordance with the Approved Budget (as defined below), the DIP Term Sheet, and any other DIP Documents. At the Final Hearing, the Debtor will seek final approval of the DIP Facility and use of Cash Collateral pursuant to a proposed final order (the “Final Order” and, together with this Interim Order, the “DIP Orders”), which shall be in form and substance acceptable to the Required DIP Lenders. Notice of the Final Hearing and Final Order will be provided in accordance with this Interim Order.

(ii) *Priming of the Prepetition Liens.* The priming of the Prepetition Liens on the Prepetition Collateral under section 364(d) of the Bankruptcy Code, as contemplated by the DIP Documents and as further described below, will enable the Debtor to obtain the DIP Facility and to continue to operate its business to the benefit of its Estate and creditors, and the Debtor would not be able to obtain debtor-in-possession financing in a sufficient amount without the Court granting such priming liens. Consistent with the requirements of section 364(d) of the Bankruptcy Code, the Prepetition Secured Parties shall receive adequate protection as set forth in this Interim Order pursuant to sections 361, 363, and 364 of the Bankruptcy Code, against any post-petition diminution in value of the Prepetition Secured Parties’ respective liens and interests in the Prepetition Collateral (including Cash Collateral) resulting from, among other things, (i) the use, sale, or lease by the Debtor of such collateral, (ii) the market value decline of such collateral,

(iii) the use of Cash Collateral by the Debtor, (iv) the imposition of the automatic stay, (v) the subordination of the Prepetition Liens and Prepetition Secured Obligations to the Carve-Out, the DIP Liens, and the DIP Obligations, in each case, as set forth in this Interim Order, and (vi) any other act or omission which causes diminution in the value of their respective liens or interests in the Prepetition Collateral (including Cash Collateral) (collectively, “Diminution”).

(iii) *Need for Postpetition Financing and Use of Cash Collateral.* The Debtor has an immediate and critical need to obtain the financing pursuant to the DIP Facility and to continue to use the Prepetition Collateral (including Cash Collateral) in order to, among other things, (i) pay the fees, costs and expenses incurred in connection with the Chapter 11 Case, (ii) fund any obligations benefitting from the Carve-Out, (iii) permit the orderly continuation of the operation of its business, (iv) maintain business relationships with customers, vendors and suppliers, (v) make payroll, and (vi) satisfy other working capital and operational needs. The incurrence of new debt under the DIP Documents and use of Cash Collateral is necessary and vital to the preservation and maintenance of the going concern value of the Debtor. Immediate and irreparable harm will be caused to the Debtor and its Estate if immediate financing is not obtained and permission to use Cash Collateral is not granted. The terms of the proposed financing are fair and reasonable, reflect the Debtor’s exercise of prudent business judgment, and are supported by reasonably equivalent value and fair consideration. The adequate protection provided in this Interim Order and other benefits and privileges contained herein are consistent with and authorized by the Bankruptcy Code.

(iv) *No Credit Available on More Favorable Terms.* The DIP Facility is the best source of debtor-in-possession financing available to the Debtor. Given its current financial condition, financing arrangements, capital structure, and the circumstances of this Chapter 11

Case, the Debtor has been and continues to be unable to obtain financing from sources other than the DIP Lenders on terms more favorable than the DIP Facility. Further, the Prepetition Secured Parties are adequately protected and/or have consented to the Debtor incurring debtor-in-possession financing, the priming of the Prepetition Liens, and the use of their Cash Collateral, only on the terms and subject to the conditions set forth in the DIP Documents and this Interim Order. The Debtor is unable to obtain unsecured credit allowable under Bankruptcy Code section 503(b)(1) as an administrative expense. The Debtor has also been unable to obtain: (a) unsecured credit having priority over that of administrative expenses of the kind specified in sections 503(b), 507(a) and 507(b) of the Bankruptcy Code; (b) credit secured solely by a lien on property of the Debtor and its Estate that is not otherwise subject to a lien; or (c) credit secured solely by a junior lien on property of the Debtor and its Estate that is subject to a lien. Financing on a postpetition basis is not otherwise available without granting the DIP Secured Parties: (1) perfected security interests in and liens on (each as provided herein) all of the Debtor's existing and after-acquired assets with the priorities set forth herein; (2) superpriority claims and priming liens to the extent set forth in this Interim Order, the DIP Term Sheet, and the other DIP Documents; and (3) the other protections set forth in this Interim Order.

(v) *Use of Cash Collateral and Proceeds of the DIP Facility.* As a condition to the Debtor's entry into the DIP Documents, the extension of credit under the DIP Facility and the authorization to use Prepetition Collateral, including Cash Collateral, the Debtor has agreed that Cash Collateral and the proceeds of the DIP Facility shall be used solely in accordance with the terms and conditions of this Interim Order and the DIP Documents and in accordance with the Approved Budget (as defined below), subject to Permitted Variances (as defined below).

(vi) *Application of Proceeds of Collateral.* As a condition to entry into the DIP Documents, the extension of credit under the DIP Facility and authorization to use Cash Collateral, the Debtor has agreed that, as of and commencing on the date of entry of this Interim Order, the Debtor shall apply the proceeds of DIP Collateral in accordance with this Interim Order and the DIP Documents.

(vii) *Roll-Up of Prepetition Obligations Into DIP Obligations.* Immediately upon entry of the Final Order, (a) the entirety of the outstanding Prepetition ABL Obligations (the “ABL Roll-Up Amount”) shall be “rolled up” and converted on a cashless dollar-for-dollar basis into principal obligations constituting DIP Obligations (the “ABL Roll-Up Loans”) and (b) \$37,250,000 of the Prepetition Term Loan Obligations (the “Term Loan Roll-Up Amount” and, together with the ABL Roll-Up Amount, the “Roll-Up Amount”) held by the DIP Lenders (or their affiliates) shall be “rolled up” and converted on a cashless dollar-for-dollar basis into principal obligations constituting DIP Obligations on a *pro rata* basis (the “Term Loan Roll-Up Loans” and, together with the ABL Roll-Up Loans, the “Roll-Up Loans”). Upon entry of the Final Order, the Roll-Up Amount shall be converted on a cashless dollar-for-dollar basis into principal obligations constituting DIP Obligations, without any further action by the Debtor or any other party (the “Roll-Up Obligations”). The conversion (or “roll-up”) shall be authorized as compensation for, in consideration for, and solely on account of, the agreement of the Prepetition ABL Lenders and the Prepetition Term Loan Lenders (the Prepetition ABL Lenders and the Prepetition Term Loan Lenders, collectively, the “Prepetition Lenders”), in each case as DIP Lenders, to fund amounts and provide other consideration to the Debtor under the DIP Facility and not as payments under, adequate protection for, or otherwise on account of, any Prepetition Obligations. Notwithstanding any other provision of this Interim Order or the DIP Documents, all rights of the Prepetition

Secured Parties shall be fully preserved. The Roll-Up Obligations are an inextricable component of the DIP Facility, and the Prepetition Secured Parties would not otherwise consent to the use of their Cash Collateral or the subordination of the Prepetition Liens to the DIP Liens, and the DIP Secured Parties would not be willing to provide the DIP Facility or extend credit to the Debtor thereunder without the inclusion of the Roll-Up Obligations in the DIP Obligations. The Roll-Up Obligations will enable the Debtor to obtain urgently needed financing to administer this Chapter 11 Case and fund its operations. Subject to entry of the Final Order, the ABL Roll-Up Loans shall (x) be senior in right of payment to the other DIP Obligations, including for the avoidance of doubt, the New Money Amount and (y) not be subject to a “borrowing base” during the Chapter 11 Case.

J. Adequate Protection. In exchange for their consent to (i) the priming of the Prepetition Liens by the DIP Liens and (ii) the use of Cash Collateral to the extent set forth in this Interim Order, the Prepetition Secured Parties shall receive adequate protection to the extent of any Diminution of their interests in the Prepetition Collateral, as more fully set forth in this Interim Order.

K. Good Faith of the DIP Secured Parties.

(i) *Willingness to Provide Financing.* The DIP Secured Parties have committed to provide financing to the Debtor subject to: (a) entry of this Interim Order and the Final Order; (b) approval of the terms and conditions of the DIP Facility and those set forth in the DIP Documents; (c) satisfaction of the closing conditions set forth in the DIP Documents; and (d) findings by this Court that the DIP Facility is essential to the Debtor’s Estate, that the DIP Lenders are extending credit to the Debtor pursuant to the DIP Documents in good faith, and that the DIP Secured Parties’ first priority secured claims, superpriority claims, security interests and

liens and other protections granted pursuant to this Interim Order and the DIP Documents will have the protections provided by section 364(e) of the Bankruptcy Code.

(ii) *Business Judgment and Good Faith Pursuant to Section 364(e)*. Based on the Motion, the First Day Declaration, the Popehn Declaration, and the record presented to the Court at the Interim Hearing, (a) the terms of the financing embodied in the DIP Facility, including the Roll-Up Obligations, fees, expenses, and other charges paid and to be paid thereunder or in connection therewith, (b) the adequate protection authorized by the Interim Order and DIP Documents and (c) the terms on which the Debtor may continue to use the Prepetition Collateral (including Cash Collateral), in each case pursuant to this Interim Order and the DIP Documents, are fair and reasonable, reflect the Debtor's exercise of prudent business judgment consistent with its fiduciary duties, constitute reasonably equivalent value and fair consideration, and represent the best financing (and terms) available under the circumstances.

(iii) *Good Faith Pursuant to Section 364(e)*. The terms and conditions of the DIP Facility and the use of Cash Collateral were negotiated in good faith and at arm's length among the Debtor, the DIP Secured Parties, and the Prepetition Secured Parties with the assistance and counsel of their respective advisors. Use of Cash Collateral and credit to be extended under the DIP Facility shall be deemed to have been allowed, advanced, made, or extended in good faith by the DIP Secured Parties and the Prepetition Secured Parties within the meaning of section 364(e) of the Bankruptcy Code.

(iv) *Consent to DIP Facility and Use of Cash Collateral*. The Prepetition Secured Parties have consented to the Debtor's use of Cash Collateral and the other Prepetition Collateral, and the Debtor's entry into the DIP Documents solely in accordance with and subject to the terms and conditions in this Interim Order and the DIP Documents.

L. Good Cause. Good cause has been shown for immediate entry of this Interim Order, and the entry of this Interim Order is in the best interests of the Debtor, the Estate and their stakeholders. Among other things, the relief granted herein will minimize disruption of the Debtor's business and permit the Debtor to fund payroll obligations, to pay amounts owed to vendors, suppliers, landlords and to satisfy other critical expenses, including the payment of premiums on insurance policies, each as necessary to maximize the value of the Estate and in accordance with the Approved Budget. The terms of the Debtor's DIP Facility, use of Cash Collateral and proposed adequate protection arrangements, as set forth in this Interim Order, are fair and reasonable under the circumstances, and reflect the Debtor's exercise of prudent business judgment.

M. Immediate Entry. Sufficient cause exists for immediate entry of this Interim Order pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2) and the applicable Local Rules.

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

IT IS HEREBY ORDERED THAT:

1. DIP Financing Approved. On an interim basis, entry into the DIP Term Sheet and other DIP Documents is authorized and approved, and the use of Cash Collateral is authorized, in each case, subject to the terms and conditions set forth in this Interim Order. All objections to this Interim Order to the extent not withdrawn, waived, settled, or resolved, and all reservations of rights included therein, are hereby denied and overruled on the merits. This Interim Order shall become effective immediately upon its entry.

DIP Facility Authorization

2. Authorization of the DIP Financing. The Debtor is expressly and immediately authorized and empowered to enter into, execute and deliver the DIP Documents and to incur and to perform the DIP Obligations in accordance with, and subject to, the terms of this Interim Order and the DIP Documents, and to execute, deliver, and perform under all instruments, certificates, agreements, and documents which may be required or necessary for the performance by the Debtor under the DIP Documents and the creation and perfection of the DIP Liens described in and provided for by this Interim Order and the DIP Documents. The Debtor is hereby authorized and directed to pay, in accordance with this Interim Order, any principal, interest, fees, expenses, and other amounts described in the DIP Documents and this Interim Order, as such amounts become due and owing, without need to obtain further Court approval (except as otherwise provided herein or in the DIP Documents) subject to and in accordance with the terms hereof and thereof, including, without limitation, the DIP Fees, as well as the reasonable and documented fees and disbursements of Proskauer Rose LLP, Parr Brown Gee & Loveless, PC, and any other DIP Professionals (as defined below), as set forth herein and in the DIP Documents, whether or not such professional fees and disbursements arose before or after the Petition Date and whether or not the transactions contemplated hereby are consummated, to implement all applicable reserves and to take any other actions that may be necessary or appropriate, all to the extent provided in this Interim Order and the DIP Documents. Upon execution and delivery, the DIP Documents shall represent legal, valid, and binding obligations of the Debtor, enforceable against the Debtor and its Estate in accordance with their terms. Each manager, member, or officer of the Debtor acting individually is hereby authorized to execute and deliver each of the DIP Documents, such execution and delivery to be conclusive evidence of such manager's, member's, or officer's respective authority to act in the

name of and on behalf of the Debtor; provided that the DIP Term Sheet shall be deemed executed and delivered upon entry of this Interim Order.

3. Authorization to Borrow. To prevent immediate and irreparable harm to the Debtor's Estate, and to enable the Debtor to continue to operate its business and preserve and maximize the value of its Estate, subject to the terms and conditions set forth in the DIP Documents and this Interim Order, the Debtor is hereby authorized to borrow the Interim Amount, subject to any limitations on, or conditions to, borrowing under the DIP Documents, which borrowings shall be used solely for purposes permitted under the DIP Documents, including, without limitation, to provide working capital for the Debtor and to pay interest, fees, costs, charges and expenses, in each case, in accordance with this Interim Order, the DIP Documents, and the Approved Budget.

4. DIP Obligations. The DIP Documents and this Interim Order shall constitute and evidence the validity and binding effect of the Debtor's DIP Obligations. All DIP Obligations shall be enforceable against the Debtor, its Estate, and any successors thereto, including without limitation, any trustee appointed in the Chapter 11 Case, or in any case under chapter 7 of the Bankruptcy Code upon the conversion of the Chapter 11 Case, or in any other proceedings superseding or related to any of the foregoing (collectively, the "Successor Case"). Upon entry of this Interim Order, the DIP Obligations will include all loans, guarantees, reimbursement obligations, and any other indebtedness or obligations, contingent or absolute, which may now or from time to time be owing by the Debtor to the DIP Secured Parties, including, without limitation, all principal, accrued interest, costs, charges, fees, expenses and other amounts under the DIP Documents. The Debtor shall be liable for the DIP Obligations. The DIP Obligations shall become due and payable, without notice or demand, on the Termination Date (as defined below). No obligation, payment, transfer, or grant of collateral security hereunder or under the DIP Documents

(including any DIP Obligation or DIP Lien) to the DIP Secured Parties, shall be stayed, restrained, voidable, avoidable, or recoverable, under the Bankruptcy Code or under any applicable law (including, without limitation, under sections 502(d), 544, and 547 to 550 of the Bankruptcy Code or under any applicable state Uniform Voidable Transactions Act, Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, or similar statute or common law), or be subject to any disgorgement, avoidance, reduction, setoff, recoupment, offset, recharacterization, subordination (whether equitable, contractual, or otherwise), claim, counterclaim, charge, assessment, cross-claim, defense, or any other liability or challenge under the Bankruptcy Code or any applicable law or regulation by any person or entity for any reason.

5. DIP Collateral. To secure the DIP Obligations, effective immediately upon entry of this Interim Order, pursuant to sections 361, 362, 364(c)(2), 364(c)(3), and 364(d) of the Bankruptcy Code, the DIP Agent (for the benefit of the DIP Lenders), is hereby granted continuing, valid, binding, enforceable, non-avoidable, and automatically and properly perfected postpetition first priority security interests in and liens on (collectively, the “DIP Liens”) the DIP Collateral, and all cash and non-cash proceeds, rents, profits, and offspring of DIP Collateral.³

³ “DIP Collateral” means: all property of the estate under section 541 of the Bankruptcy Code, including all real and personal property, whether now existing or hereafter arising and wherever located, tangible and intangible, of the Debtor, including: (a) all cash, cash equivalents, deposit accounts, securities accounts, accounts, other receivables (including credit card receivables), chattel paper, contract rights, inventory (wherever located), instruments, documents, securities (whether or not marketable) and investment property (including all of the issued and outstanding capital stock of each of its subsidiaries), hedge agreements, real estate, furniture, fixtures, equipment (including documents of title), goods, franchise rights, trade names, trademarks, servicemarks, copyrights, patents, license rights, intellectual property, general intangibles (including, for the avoidance of doubt, payment intangibles), rights to the payment of money (including tax refunds and any other extraordinary payments), supporting obligations, guarantees, letter of credit rights, commercial tort claims, causes of action, and all substitutions, indemnification rights, all present and future intercompany debt, books and records related to the foregoing, accessions and proceeds of the foregoing, wherever located, including insurance or other proceeds; (b) subject to entry of a Final Order providing for such relief, the proceeds of any avoidance actions brought pursuant to Chapter 5 of the Bankruptcy Code or applicable state law equivalents; (c) proceeds from the Debtor’s exercise of rights under section 506(c) and 550 of the

6. DIP Liens. The DIP Liens securing the DIP Obligations are valid, automatically perfected, non-avoidable, senior in priority to the Prepetition Liens on the Prepetition Collateral and are superior to any security, mortgage, collateral interest, lien, or claim to any of the DIP Collateral (whether currently existing or hereafter created), except that the DIP Liens shall be subject only to (i) the Carve-Out and (ii) the Prepetition Permitted Liens. Other than as set forth herein or in the DIP Documents, the DIP Liens shall not be made subject to or *pari passu* with any lien or security interest heretofore or hereinafter granted in the Chapter 11 Case or any Successor Case, and shall be valid and enforceable against any trustee appointed in the Chapter 11 Case or any Successor Case, upon the conversion of the Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code (or in any other Successor Case), and/or upon the dismissal of the Chapter 11 Case or any Successor Case. The DIP Liens shall not be subject to section 510, 549, or 550 of the Bankruptcy Code. No lien or interest avoided and preserved for the benefit of any Estate pursuant to section 551 of the Bankruptcy Code shall be *pari passu* with or senior to the DIP Liens.

7. DIP Superpriority Claims. Subject to the Carve-Out, upon entry of this Interim Order, the DIP Secured Parties are hereby granted, pursuant to section 364(c)(1) of the Bankruptcy Code, allowed superpriority administrative expense claims in the Chapter 11 Case and any Successor Case (collectively, the “DIP Superpriority Claims”) for all DIP Obligations: (a) except as set forth herein (including with respect to the Carve-Out), with priority over any and all administrative expense claims and unsecured claims against the Debtor or its Estate in the Chapter

Bankruptcy Code; (d) all Prepetition Collateral, (e) all property of the Debtor that was not otherwise subject to valid, perfected, enforceable and unavoidable liens on the Petition Date, and (f) all proceeds from the sale, assignment, or other disposition of (i) any leased real property and (ii) the Debtor’s right to select, identify, and designate which commercial leases may be assumed and assigned under section 365 of the Bankruptcy Code. Notwithstanding the foregoing, DIP Collateral shall not include the Debtor’s real property leases (but shall include all proceeds of such leases) solely to the extent that the grant of a DIP Lien is prohibited or restricted by the terms of such real property lease or applicable nonbankruptcy law to attach to any such real property lease.

11 Case and any Successor Case, at any time existing or arising, of any kind or nature whatsoever, including, without limitation, administrative expenses of the kinds specified in or ordered pursuant to Bankruptcy Code sections 105, 326, 328, 330, 331, 364, 503(a), 503(b), 507(a), 507(b), 546(c), 546(d), 726, 1113, and 1114, and any other provision of the Bankruptcy Code, as provided under section 364(c)(1) of the Bankruptcy Code; and (b) which shall at all times be senior to the rights of the Debtor and its Estate, and any successor trustee or other estate representative to the extent permitted by law.

8. DIP Roll-Up Obligations. Immediately upon entry of the Final Order, the Roll-Up Obligations shall be converted in an aggregate amount equal to the Roll-Up Amount on a cashless dollar-for-dollar basis into principal obligations constituting DIP Obligations without any further action by the Debtor or any other party.

9. No Obligation to Extend Credit. The DIP Secured Parties shall have no obligation to make any loan or advance under the DIP Documents unless all of the conditions precedent under the DIP Documents and this Interim Order have been satisfied in full or waived by the Required DIP Lenders in their sole discretion in accordance with the terms of the DIP Documents.

10. Use of Proceeds of DIP Facility. From and after the Petition Date, the Debtor shall use advances of credit under the DIP Facility only for the purposes specifically set forth in this Interim Order and the DIP Documents, and only in compliance with the Approved Budget (subject to the Permitted Variances (as defined below)) and the terms and conditions in this Interim Order and the DIP Documents (a) to pay transaction costs, fees and expenses that are incurred in connection with the DIP Facility, (b) to pay professional fees of the Debtor and its Estate and the Committee, if any, (c) for working capital and other general corporate purposes permitted by the DIP Documents, and (d) to pay Statutory Fees (as defined herein at paragraph 35(i)). Subject to

entry of the Final Order, the deemed proceeds of the Roll-Up Obligations shall be used to refinance an equal amount of the Prepetition Obligations held by the DIP Lenders in their capacity as Prepetition Lenders (or their affiliates) reducing the amount of the “Obligations” (as defined in the Prepetition Credit Agreement) by such amount.

11. No Monitoring Obligation. The DIP Secured Parties shall have no obligation or responsibility to monitor the Debtor’s use of the DIP Facility, and the DIP Secured Parties may rely upon the Debtor’s representation that the use of the DIP Facility at any time is in accordance with the requirements of this Interim Order and the DIP Documents.

Authorization to Use Cash Collateral

12. Authorization to Use Cash Collateral. Subject to the terms and conditions of this Interim Order and the DIP Documents, and in accordance with the Approved Budget (subject to the Permitted Variances), the Debtor is authorized to use Cash Collateral until the expiration of the Remedies Notice Period (as defined below) following the Termination Date. Nothing in this Interim Order shall authorize the disposition of any assets of the Debtor outside the ordinary course of business, or the Debtor’s use of any Cash Collateral or other proceeds resulting therefrom, except as expressly permitted by this Interim Order and the DIP Documents, and in accordance with the Approved Budget (subject to the Permitted Variances).

13. Consent of Prepetition Secured Parties. The Prepetition Secured Parties hereby consent to (a) the provisions of this Interim Order including the Debtor’s entry into the DIP Facility on an interim basis, (b) the granting of the DIP Liens and DIP Superpriority Claims on the terms and subject to the conditions set forth herein (including the Carve-Out), and (c) the Approved Budget.

14. Adequate Protection for Prepetition Secured Parties. As adequate protection for any Diminution of the Prepetition Secured Parties' interest in the Prepetition Collateral, the Prepetition Collateral Agent shall receive, for the benefit of the Prepetition Secured Parties,

- (a) continuing valid, binding, enforceable, and perfected postpetition liens and replacement liens pursuant to sections 361, 363(e), and 364(d)(l) of the Bankruptcy Code on the DIP Collateral, which shall be subject and subordinated only to the Carve-Out, the DIP Liens, and Prepetition Permitted Liens (the "Replacement Liens") and which (x) shall otherwise be senior to all other security interests in, liens on, or claims against the DIP Collateral, and (y) shall not be made subject to or *pari passu* with any lien or security interest heretofore or hereinafter granted in the Chapter 11 Case or any Successor Case and shall be valid and enforceable against any trustee appointed in the Chapter 11 Case or any Successor Case, and shall not be subject to sections 510, 549, or 550 of the Bankruptcy Code;
- (b) administrative superpriority expense claims in the Chapter 11 Case (the "Adequate Protection Superpriority Claims"), junior and subordinate only to the Carve-Out and the DIP Obligations (including the DIP Superpriority Claims), pursuant to section 507(b) with priority over any and all other administrative expenses, administrative expense claims and unsecured claims against the Debtor or its Estate, now existing or hereafter arising, of any kind or nature whatsoever as to and to the extent provided by sections 503(b) and 507(b) of the Bankruptcy Code (subject to payment priority consistent with Section 8.3 of the Prepetition Credit Agreement);

- (c) subject to recharacterization as principal under the Prepetition Credit Agreement pursuant to separate order of the Court (if any), payment in cash of monthly interest under the Prepetition Credit Agreement, calculated at the non-default rate of SOFR *plus* 7.00% in respect of the Prepetition Term Loans and the non-default rate of SOFR *plus* 5.00% in respect of the loans under the Prepetition ABL Facility;
- (d) subject to the procedures set forth in paragraph 38 of this Interim Order, payment of the Prepetition Secured Parties' reasonable fees, costs and expenses when due and payable in accordance with this Interim Order, including the professional fees and disbursements of Proskauer Rose LLP, Parr Brown Gee & Loveless, PC, and any other Prepetition Professionals (as defined below), without the need for the filing of formal fee applications, including as to any amounts arising before or after the Petition Date; and
- (e) the unconditional right to credit bid the Prepetition Obligations in connection with any sale of Prepetition Collateral, including, without limitation, as set forth in paragraph 40 hereof.

15. Adequate Protection Reservation. Nothing herein shall impair or modify the application of section 507(b) of the Bankruptcy Code in the event that the adequate protection provided to the Prepetition Secured Parties hereunder is insufficient to compensate for any Diminution of their respective interests in the Prepetition Collateral during the Chapter 11 Case or any Successor Case. The receipt by the Prepetition Secured Parties of the adequate protection provided herein shall not be deemed an admission that the interests of the Prepetition Secured Parties are adequately protected, and this Interim Order shall not prejudice or limit the rights of

the Prepetition Secured Parties to seek additional relief with respect to the use of Cash Collateral or for additional adequate protection.

Provisions Common to DIP Financing and Use of Cash Collateral

16. Amendment of the DIP Documents. The Debtor, the DIP Agent and the Required DIP Lenders (or such DIP Lenders as may otherwise be required in the DIP Documents) may enter into one or more amendments, waivers, consents, or other modifications to and under the DIP Documents, in each case in accordance with the terms of the applicable DIP Documents and in such form as the Debtor, the DIP Agent, and the Required DIP Lenders (or such DIP Lenders as may otherwise be required in the DIP Documents) agree, in such applicable DIP Lenders' sole discretion, and no further approval of this Court shall be required for any amendment, waiver, consent, or other modification to and under the DIP Documents (and any fees paid in connection therewith) that does not materially and adversely affect the Debtor or which does not (i) shorten the maturity of the DIP Facility, (ii) increase the principal amount of or the rate of interest on the DIP Facility, or (iii) change any event of default, add any covenants, or amend the covenants to be materially more restrictive; provided, however, any such material amendment, waiver, consent, or other modification shall be subject to further Court approval. Copies of all amendments and modifications to and under the DIP Documents, regardless of materiality, shall be provided to the U.S. Trustee and the Committee, if any. No consent to any such amendment, waiver, consent, or modification shall be implied by any action, inaction, or acquiescence of the DIP Secured Parties.

17. Approved Budget.

(i) Attached to this Interim Order as **Exhibit B** is a 9-week budget approved by the Required DIP Lenders, which sets forth, among other things, projected cash receipts and cash disbursements (the "Approved Budget"). By no later than 5:00 P.M. (Mountain Time) on the

Friday of the second full calendar week after the Petition Date, and by no later than 5:00 P.M. (Mountain Time) on the Friday every two weeks thereafter (each such date, an “Updated Budget Delivery Date”), the Debtor shall deliver to the DIP Agent a 9-week cash flow forecast beginning with the week immediately preceding such Updated Budget Delivery Date (each, an “Updated Budget”), in form substantially consistent with the Approved Budget. If such Updated Budget is in form and substance satisfactory to the DIP Agent (acting at the direction of the Required DIP Lenders), and upon the approval in writing of any such Updated Budget by the DIP Agent (acting at the direction of the Required DIP Lenders), it shall become the “Approved Budget” for purposes of the DIP Documents and this Interim Order. Any amendments, supplements, or modifications to the Approved Budget or an Approved Variance Report (as defined below) shall be subject to the prior written approval of the DIP Agent (acting at the direction of the Required DIP Lenders) prior to the implementation thereof. Until any such Updated Budget, amendment, supplement, or modification has been approved in writing by the DIP Agent (acting at the direction of the Required DIP Lenders), the Debtor shall be subject to and be governed by the terms of the Approved Budget then in effect. Without limiting the foregoing in any respect, for informational purposes only, the Debtor shall prepare and deliver an Updated Budget to the DIP Agent by no later than 5:00 P.M. (Mountain Time) on every Friday after the second full calendar week after the Petition Date.

(ii) The Approved Budget is approved on an interim basis. The proceeds of the DIP Facility and Cash Collateral under this Interim Order shall be used by the Debtor strictly in accordance with the Approved Budget (subject to Permitted Variances), this Interim Order, and the DIP Documents.

(iii) Other than with respect to the Carve-Out, none of the DIP Secured Parties’ and the Prepetition Secured Parties’ consent to, or acknowledgement of, the Approved Budget shall

be construed as consent to use the proceeds of the DIP Facility beyond the Maturity Date or the Termination Date (as defined below), as applicable, or the use of Cash Collateral beyond the expiration of the Remedies Notice Period (as defined below) following the Termination Date, regardless of whether the aggregate funds shown on the Approved Budget have been expended.

(iv) Notwithstanding anything to the contrary herein, the Debtor shall pay the fees, costs and expenses of the Lender Professionals (as defined below) in accordance with the DIP Documents and this Interim Order without reference to the Approved Budget.

18. Budget Reporting and Testing. The Debtor shall at all times comply with the Approved Budget, subject to the Permitted Variances (as defined below). By no later than 5:00 P.M. (Mountain Time) on the Friday of the second full calendar week following the Petition Date (the “First Testing Date”), and no later than 5:00 P.M. (Mountain Time) on each Friday after the First Testing Date (together with the First Testing Date, each a “Testing Date”), the Debtor shall deliver to the DIP Agent a variance report for the applicable Testing Period (as defined below) in form and detail acceptable to the DIP Agent (an “Approved Variance Report”) showing comparisons of (a) actual cumulative cash receipts of the Debtor for such Testing Period compared to the projected cumulative cash receipts of the Debtor for such Testing Period as set forth in the Approved Budget (any such difference, a “Receipts Variance”) and (b) actual cumulative operating disbursements, capital expenditures, and non-operating disbursements (including professionals fees of the Debtor and the Committee, if any) of the Debtor on a line-by-line basis for such Testing Period compared to the projected cumulative operating disbursements, capital expenditures, and non-operating disbursements (including professionals fees of the Debtor and the Committee, if any) of the Debtor on a line-by-line basis for such Testing Period as set forth in the Approved Budget (any such difference, a “Disbursements Variance”). The term “Testing Period” means (i)

with respect to receipts, the two-week period beginning on Sunday and ending on the Saturday immediately prior to the applicable Testing Date, and (ii) with respect to operating disbursements, capital expenditures, and non-operating disbursements (including professionals fees of the Debtor and the Committee, if any), the weekly period beginning on Sunday and ending on the Saturday immediately prior to the applicable Testing Date. Each Approved Variance Report shall indicate whether there has been any adverse Receipts Variance or Disbursements Variance that exceeds the Permitted Variance, in each case measured on a line-by-line basis for the applicable Testing Period. A “Permitted Variance” shall be 15.0% and shall be determined, as of any Testing Date, as follows: the Debtor shall certify in each Approved Variance Report (I) the difference of (w) the Debtor’s actual cumulative cash receipts for the applicable Testing Period on a line-by-line basis, *minus* (x) to the extent such amount is greater than \$0, the amount projected in the Approved Budget for each such line item for such Testing Period, and (II) the difference of (y) the Debtor’s actual cumulative operating disbursements, capital expenditures, and non-operating disbursements (including professionals fees of the Debtor and the Committee, if any) for the applicable Testing Period on a line-by-line basis, *minus* (z) to the extent such amount is greater than \$0, the amount projected in the Approved Budget for each such line item for such Testing Period. To the extent that the Debtor’s actual operating disbursements, capital expenditures, and/or non-operating disbursements (including professionals fees of the Debtor and the Committee, if any) for the Testing Period exceeds the projected disbursements for any corresponding line item within the Approved Budget for the applicable Testing Period by more than 15.0% for any Testing Period, an Event of Default shall have occurred. An Event of Default shall also have occurred if the Debtor’s projected cumulative cash receipts for the Testing Period as set forth in the Approved Budget exceeds the Debtor’s actual cumulative cash receipts for such Testing Period by more than 15.0%

for any Testing Period. Notwithstanding the foregoing, to the extent (a) the Debtor's actual cumulative operating disbursements or actual cumulative capital expenditures are less than the projected disbursements provided for such line items in the Approved Budget or (b) the Debtor's actual cumulative receipts are greater than the projected receipts provided for such line item in the Approved Budget, such positive variance may be rolled forward to the immediately succeeding week for purposes of compliance with this Interim Order.

19. Additional Reporting. From and after the Petition Date through the Maturity Date, not later than 5:00 p.m. (Mountain Time) on or before the fifth business day after the end of each calendar month, the Debtor shall deliver to the DIP Agent and the Prepetition Agents a borrowing base certificate, in form and substance, as required under Section 5.1(n) of the Prepetition Credit Agreement. The DIP Agent shall have rights consistent with Section 5.1(o) of the Prepetition Credit Agreement to request updated appraisals and field examinations during the Chapter 11 Case. For the avoidance of doubt, prior to the Maturity Date, there shall be no mandatory prepayment or Event of Default, and the DIP Lenders may not exercise remedies, based solely on the Total Revolving Credit Exposure (as defined in the Prepetition Credit Agreement) exceeding the borrowing base at any time during the Chapter 11 Case. The Debtor shall also make the Debtor's professionals reasonably available upon reasonable notice for telephonic or virtual meetings to update the DIP Agent, the DIP Lenders and the DIP Professionals on all matters affecting the Debtor and the Chapter 11 Case, including with respect to the efforts to market and sell the DIP Collateral.

20. Modification of Automatic Stay. The automatic stay of section 362 of the Bankruptcy Code is hereby modified and vacated to the extent necessary to permit the Debtor, the

DIP Secured Parties and the Prepetition Secured Parties to accomplish the transactions contemplated by this Interim Order.

21. Perfection of DIP Liens and Replacement Liens. This Interim Order shall be sufficient and conclusive evidence of the creation, validity, perfection, and priority of all liens granted herein, including the DIP Liens and the Replacement Liens, without the necessity of filing or recording any financing statement, mortgage, deed of trust, notice, or other instrument or document which may otherwise be required under the law or regulation of any jurisdiction or the taking of any other action (including, for the avoidance of doubt, entering into any deposit account control agreement) to validate or perfect (in accordance with applicable non-bankruptcy law) the DIP Liens and the Replacement Liens or to entitle the DIP Secured Parties and the Prepetition Secured Parties to the priorities granted herein. Notwithstanding the foregoing, the DIP Agent and the Prepetition Agents (for the benefit of the DIP Secured Parties and the Prepetition Secured Parties, respectively) are authorized, but not required, to file, as each deems necessary or advisable, such financing statements, security agreements, mortgages, notices of liens, and other similar documents to perfect in accordance with applicable non-bankruptcy law or to otherwise evidence the DIP Liens and the Replacement Liens, and all such financing statements, mortgages, notices, and other documents shall be deemed to have been filed or recorded as of the Petition Date; provided, however, that no such filing or recordation shall be necessary or required in order to create or perfect the DIP Liens or the Replacement Liens. The Debtor is authorized and directed to execute and deliver promptly upon demand to the DIP Agent and the Prepetition Agents all such financing statements, mortgages, notices and other documents as each may reasonably request, so long as the cost of maintaining or perfecting the security interest is not excessive in view of the benefits to be obtained. The DIP Agent and the Prepetition Agents may each, in its discretion, file

a photocopy of this Interim Order as a financing statement with any filing or recording office or with any registry of deeds or similar office in addition to or in lieu of such financing statements, notices of lien or similar instruments. To the extent that either Prepetition Agent is, with respect to the DIP Collateral, the secured party under any security agreement, mortgage, leasehold mortgage, landlord waiver, credit card processor notices or agreements, bailee letters, custom broker agreements, financing statement, account control agreements, or any other Prepetition Loan Documents or is listed as loss payee, lenders' loss payee or additional insured under any of the Debtor's insurance policies, the DIP Agent (for the benefit of the DIP Secured Parties) shall also be deemed to be the secured party or mortgagee, as applicable, under such documents or to be the loss payee or additional insured, as applicable. The Prepetition Agents shall act as agent for the DIP Secured Parties solely for purposes of perfecting the DIP Secured Parties' liens on all DIP Collateral that, without giving effect to the Bankruptcy Code and this Interim Order, is of a type such that perfection of a lien therein may be accomplished only by possession or control by a secured party (including any deposit account control agreement), and all of the Prepetition Agents' respective rights in such DIP Collateral shall inure to the benefit of and be exercisable exclusively by the DIP Agent until the DIP Obligations have been indefeasibly repaid in full in cash; *provided*, that the DIP Agent may, in its sole discretion, require the Debtor and the Prepetition Agents to (and the Debtor and the Prepetition Agents shall) use commercially reasonable efforts to provide the DIP Agent with such possession or control as is necessary to perfect the DIP Obligations and DIP Liens. Notwithstanding the foregoing, in the event the Chapter 11 Case or any Successor Case is dismissed prior to the indefeasible payment in full of the DIP Obligations, such order dismissing the Chapter 11 Case or any Successor Case shall not be effective for five (5) business days to permit the DIP Agent and the Prepetition Agents to enter into any agreements or file any documents

(including credit agreements, financing statements, mortgages, or other notices or documents) evidencing the DIP Obligations and the perfection and priority of the DIP Liens and Replacement Liens, and during such period, the Debtor shall comply with all reasonable requests of the DIP Agent and the Prepetition Agents to ensure the perfection of the DIP Liens and the Replacement Liens, as applicable.

22. Access to Books and Records. The Debtor will (i) maintain books, records, and accounts to the extent and as required by the DIP Documents, (ii) cooperate with, consult with, and, subject to attorney-client privilege, work product doctrine, and any similar applicable protections, provide to the DIP Agent and the DIP Lenders all such information and documents that the Debtor is obligated to provide under the DIP Documents or the provisions of this Interim Order or as otherwise reasonably requested by the DIP Agent and the DIP Lenders, (iii) during normal business hours, upon reasonable advance notice, permit consultants, advisors and other representatives (including third party representatives) of the DIP Agent and the DIP Lenders to visit and inspect any of the Debtor's properties, to examine and make abstracts or copies from any of the Debtor's books and records, to conduct a collateral audit and analysis of the Debtor's inventory and accounts, to tour the Debtor's business premises and other properties, and to discuss, and to engage in discussions with the Debtor's senior management and independent public accountants to the extent required by the DIP Documents or the Prepetition Loan Documents, and (iv) permit the DIP Secured Parties, and the Prepetition Secured Parties, and their respective consultants, advisors and other representatives, to consult with the Debtor's management and advisors on matters concerning the Debtor's businesses, financial condition, operations and assets.

23. Proceeds of Subsequent Financing. If the Debtor, any trustee, any examiner with expanded powers, or any responsible officer subsequently appointed in this Chapter 11 Case or

any Successor Case, shall obtain credit or incur debt pursuant to Bankruptcy Code sections 364(b), 364(c) or 364(d) or in violation of the DIP Documents or this Interim Order at any time prior to the indefeasible repayment in full in cash of all DIP Obligations and the termination of the DIP Lenders' obligation to extend credit under the DIP Facility, including subsequent to the confirmation of any plan with respect to the Debtor and the Debtor's Estate, and such facilities are secured by any DIP Collateral, then all cash proceeds derived from such credit or debt shall within two (2) business days be turned over to the DIP Agent (for the benefit of the DIP Secured Parties) to be distributed in accordance with this Interim Order and the DIP Documents. For the avoidance of doubt, if the Debtor, any trustee, any examiner with expanded powers, or any responsible officer subsequently appointed in the Chapter 11 Case, or any Successor Case, shall obtain credit or incur debt (other than the DIP Facility) pursuant to Bankruptcy Code section 364(d) at any time prior to the indefeasible repayment in full in cash of the Prepetition Obligations, the Prepetition Secured Parties' rights to object to the Debtor's use of Cash Collateral and assert a lack of adequate protection shall be fully preserved.

24. Cash Management. The Debtor shall maintain its cash management system in compliance with the terms and conditions of any interim and/or final order, which shall be acceptable to the DIP Agent and the Required DIP Lenders, granting the Debtor authorization to continue its cash management systems and certain related relief (as amended, supplemented, or otherwise modified, the "Cash Management Order"), the DIP Documents, and this Interim Order.

25. Maintenance of DIP Collateral. Until the indefeasible payment in full in cash of all DIP Obligations and Prepetition Obligations and the termination of the DIP Lenders' obligation to extend credit under the DIP Facility, the Debtor shall: (a) insure the DIP Collateral as required under the DIP Documents or the Prepetition Loan Documents, as applicable; and (b) maintain the

cash management system consistent with the terms and conditions of the Cash Management Order, the DIP Documents, and this Interim Order.

26. Disposition of DIP Collateral. The Debtor shall not sell, transfer, lease, encumber, or otherwise dispose of any portion of the DIP Collateral or Prepetition Collateral, other than in the ordinary course of business or as otherwise permitted by the DIP Documents, without the prior written consent of the Required DIP Lenders, or pursuant to a sale of all or substantially all of the Debtor's assets in accordance with the Bidding Procedures Motion and Sale Transaction (each as defined in the DIP Term Sheet). Except as may be provided in the DIP Documents, the Debtor is authorized and directed, upon the closing of a sale of any of the DIP Collateral, to pay all cash proceeds of any such sale within two (2) business days of receipt thereof to the DIP Agent (for the benefit of the DIP Secured Parties) and the Prepetition Agents (for the benefit of the Prepetition Secured Parties), first to satisfy the DIP Obligations and then to satisfy the Prepetition Obligations in accordance with this Interim Order and the DIP Documents, and any order approving the sale of such DIP Collateral shall provide that the sale is conditioned upon the payment in full of the DIP Obligations (except to the extent otherwise agreed in writing by the DIP Agent (on behalf of the Required DIP Lenders)).

27. Termination Date. On the Termination Date (defined below), all DIP Obligations shall be immediately due and payable, and all commitments to extend credit under the DIP Facility will terminate other than as permitted by the Carve-Out.

28. Events of Default. Until the DIP Obligations are indefeasibly paid in full in cash and all commitments thereunder are terminated in accordance with the DIP Documents, the occurrence of any of the following events, unless waived by the Required DIP Lenders (or as otherwise provided in the DIP Documents) in writing (which may be by electronic mail) and in

accordance with the terms of the DIP Documents, shall constitute an event of default (collectively, the “Events of Default”): (a) the failure of the Debtor to perform, in any material respect, any of the terms, provisions, conditions, covenants, or obligations under this Interim Order, including, without limitation, the failure to make any payment under this Interim Order when due, the failure to comply with any Milestone (as defined in the DIP Term Sheet), or the failure to comply with the Approved Budget (subject to the Permitted Variances); and (b) the occurrence and continuation of any Event of Default under, and as defined in, the DIP Term Sheet or any other DIP Documents (subject to any notice and cure periods set forth therein).

29. Milestones. As a condition to the DIP Facility and the use of Cash Collateral, the Debtor has agreed to the Milestones. For the avoidance of doubt, unless waived, modified or extended in writing by the Required DIP Lenders in their sole discretion, the failure of the Debtor to meet the Milestones by the Specified Deadlines (as defined in the DIP Term Sheet) shall constitute an Event of Default under the DIP Documents and this Interim Order.

30. Rights and Remedies Upon Event of Default. Upon the occurrence and during the continuation of any Event of Default, subject to five (5) business days’ notice to the Debtor during which the Debtor may seek an emergency hearing before the Bankruptcy Court (at which hearing the sole issue shall be whether or not an Event of Default has occurred or is continuing), notwithstanding the provisions of Bankruptcy Code section 362, without any application, motion or notice to, hearing before, or order from the Court, other than, subject to the terms of this Interim Order: (a) the DIP Agent (at the direction of the Required DIP Lenders, or as otherwise provided in the DIP Documents) may send a written notice to the Debtor, counsel to the Committee (if any), the Prepetition Agents, and the U.S. Trustee (any such declaration shall be referred to herein as a “Termination Declaration”), which shall be filed on the docket of the Chapter 11 Case, declaring

(1) all DIP Obligations owing under the DIP Documents and this Interim Order to be immediately due and payable, (2) the commitment of each DIP Lender to make New Money DIP Loans to be terminated, whereupon such commitments shall be terminated to the extent any such commitment remains under the DIP Facility, (3) the termination of the DIP Facility and the DIP Documents as to any future liability or obligation of the DIP Lenders or DIP Agent, but without affecting any of the DIP Liens or the DIP Obligations, and (4) the application of the Carve-Out has occurred following the delivery of the Carve-Out Trigger Notice (as defined below) to the Borrower; (b) interest, including, where applicable, default interest, shall accrue and be paid as set forth in the DIP Documents; and (c) upon delivery of the Termination Declaration, the DIP Agent (at the direction of the Required DIP Lenders) shall be deemed to have declared a termination, reduction, or restriction on the ability of the Debtor to use Cash Collateral, other than to pay expenses set forth in the Approved Budget that are necessary to avoid immediate and irreparable harm to the Debtor's Estate. The earliest date on which a Termination Declaration is delivered by the DIP Agent (at the direction of the Required DIP Lenders) and filed on the Docket shall be referred to herein as the "Termination Date." Following the Termination Date, no DIP Secured Party or Prepetition Secured Party shall be required to consent to the use of any Cash Collateral or provide any loans or other financial accommodations under the DIP Facility, absent further order of the Court. The Termination Declaration shall be given by electronic mail (or other electronic means) to counsel to the Debtor, counsel to the Committee (if any), and the U.S. Trustee.

31. No Waiver by Failure to Seek Relief. The rights and remedies of the DIP Secured Parties and the Prepetition Secured Parties are cumulative and not exclusive of any rights or remedies that the DIP Secured Parties or the Prepetition Secured Parties may have under the DIP Documents, the Prepetition Loan Documents, applicable law, or otherwise. The failure or delay

on the part of any of the DIP Secured Parties or the Prepetition Secured Parties to seek relief or otherwise exercise their rights and remedies under this Interim Order, the DIP Documents, the Prepetition Loan Documents, or applicable law, as the case may be, shall not constitute a waiver of any of their respective rights or be deemed as an admission that no Event of Default has occurred. No delay on the part of any party in the exercise of any right or remedy under this Interim Order, the DIP Documents, or the Prepetition Loan Documents shall preclude any other or further exercise of any such right or remedy or the exercise of any other right or remedy. Except as expressly set forth herein, none of the rights or remedies of any party under this Interim Order, the DIP Documents, and the Prepetition Loan Documents shall be deemed to have been amended, modified, suspended, or waived unless such amendment, modification, suspension, or waiver is express, in writing and signed by the requisite parties under the DIP Documents and the requisite parties under the Prepetition Loan Documents, as applicable. No consents required hereunder by any of the DIP Secured Parties or the Prepetition Secured Parties shall be implied by any inaction or acquiescence by any of the DIP Secured Parties or the Prepetition Secured Parties (as applicable).

32. Emergency Hearing. The Debtor may seek an emergency hearing on an expedited basis (the “Emergency Hearing”) during the five (5) business days following the date a Termination Declaration is delivered (such five (5) business day period, the “Remedies Notice Period”) for the sole purpose of determining whether an Event of Default has in fact occurred or is continuing, and the Debtor hereby waives its right to and shall not be entitled to seek relief, including, without limitation, under section 105 of the Bankruptcy Code, to the extent that such relief would in any way impair or restrict the rights and remedies of the DIP Secured Parties or, if applicable, the Prepetition Secured Parties; provided that if the Emergency Hearing is requested to

be heard prior to the expiration of the Remedies Notice Period but is scheduled for a later date by the Court, the Remedies Notice Period shall be automatically extended to the date of such hearing. During the Remedies Notice Period, the Debtor shall continue to have the right to use Cash Collateral in accordance with the terms of this Interim Order, solely to pay necessary expenses set forth in the Approved Budget to avoid immediate and irreparable harm to the Estate. At the end of the Remedies Notice Period, unless the Court has entered an order to the contrary, the Debtor's right to use Cash Collateral shall immediately cease, and the DIP Secured Parties shall have the rights set forth immediately below.

33. Certain Rights and Remedies Following Termination Date. Following the Termination Date and upon either the expiration of the Remedies Notice Period or pursuant to an order of the Court (which may authorize the remedies set forth in this paragraph or any other appropriate remedy as then determined by the Court) upon an emergency motion by the DIP Agent (at the direction of the Required DIP Lenders) to be heard on no less than five (5) business days' notice (and the Debtor shall not object to such shortened notice) (the "Termination Enforcement Order"), the DIP Agent (on behalf of the Required DIP Lenders) shall be entitled to exercise all rights and remedies in accordance with the DIP Documents, the DIP Orders, and applicable law and shall be permitted to satisfy the relevant DIP Obligations and DIP Liens based on the priorities set forth in the DIP Orders and the DIP Documents, subject to the Carve-Out and any Prepetition Permitted Liens. Following entry of the Termination Enforcement Order, except as otherwise ordered by the Court (including in any Termination Enforcement Order): (a) the Debtor is hereby authorized and directed to, with the exclusion of the Carve-Out, remit to the DIP Agent (for the benefit of the DIP Lenders) one-hundred percent (100%) of all collections, remittances, and proceeds of the DIP Collateral in accordance with the DIP Documents; (b) the DIP Agent (at the

direction of the Required DIP Lenders or as otherwise provided in the DIP Documents) may compel the Debtor to seek authority to, (i) sell or otherwise dispose of all or any portion of the DIP Collateral (or any other property of the Debtor to the extent a lien is not permitted by law to attach to such property, the proceeds of which are DIP Collateral) pursuant to Bankruptcy Code section 363 (or any other applicable provision) on terms and conditions pursuant to Bankruptcy Code sections 363, 365, and other applicable provisions of the Bankruptcy Code, and (ii) assume and assign any lease or executory contract included in the DIP Collateral to the DIP Agent's designees in accordance with and subject to Bankruptcy Code section 365, (c) the DIP Agent (at the direction of the Required DIP Lenders) may direct the Debtor to (and the Debtor shall comply with such direction to) dispose of or liquidate the DIP Collateral (or any other property of the Debtor to the extent a lien is not permitted by law to attach to such property, the proceeds which are DIP Collateral) via one or more sales of such DIP Collateral or property and/or the monetization of other DIP Collateral or property, (d) the DIP Agent may (at the direction of the Required DIP Lenders), or may direct the Debtor to (and the Debtor shall comply with such direction to), collect any and all accounts receivable, (e) the DIP Agent (for the benefit of the DIP Lenders) shall be authorized to succeed to any and all of the Debtor's rights and interests under any licenses for the use of any intellectual property in order to complete the production and sale of any inventory with respect to the DIP Collateral, and (f) the Debtor shall take all action that is reasonably necessary to cooperate with the DIP Lenders in the exercise of their rights and remedies and to facilitate the realization of the DIP Collateral by the DIP Lenders in a manner consistent with the priorities set forth in this Interim Order and the DIP Documents.

34. Access to DIP Collateral. Notwithstanding anything contained herein to the contrary and without limiting any other rights or remedies of the DIP Secured Parties under the

Interim Order, the DIP Documents and applicable law, after the occurrence of the Termination Date and either upon the expiration of the Remedies Notice Period or the entry of a Termination Enforcement Order, for the purpose of exercising any remedy with respect to any of the DIP Collateral, the DIP Agent (or any of its employees, agents, consultants, contractors, or other professionals) (collectively, the “Enforcement Agents”) shall have the right (to be exercised at the direction of the Required DIP Lenders), to: (i) enter upon, occupy, and use any real or personal property, fixtures, equipment, leasehold interests, or warehouse arrangements owned or leased by the Debtor; (ii) enter into the premises of the Debtor in connection with the orderly sale or disposition of the DIP Collateral (including, without limitation, to complete any work in process); (iii) exercise any rights of the Debtor to access any DIP Collateral (including inventory) held by any third party; provided, however, the Enforcement Agents may only be permitted to do so in accordance with (a) existing rights under applicable non-bankruptcy law, including, without limitation, applicable leases, (b) any prepetition (and, if applicable, post-petition) landlord waivers or consents, or (c) further order of this Court on motion and notice appropriate under the circumstances; and (iv) use any and all trademarks, tradenames, copyrights, licenses, patents, equipment or any other similar assets of the Debtor, or assets which are owned by or subject to a lien of any third party and which are used by the Debtor in its business; provided, however, the Enforcement Agents may only use such assets to the extent permitted by applicable non-bankruptcy law. The Enforcement Agents will be responsible for the payment of any applicable fees, rentals, royalties, or other amounts owing to such lessor, licensor or owner of such property (other than the Debtor) on a *per diem* basis and solely for the period of time that the Enforcement Agents actually occupy any real property or use the equipment or the intellectual property (but in no event for any accrued and unpaid fees, rentals, or other amounts owing for any period prior to

the date that the Enforcement Agents actually occupy or use such assets or properties). Nothing contained herein shall require the Enforcement Agents to assume any lease as a condition to the rights afforded in this paragraph 34.

35. Carve-Out. Each of the DIP Liens, the DIP Superpriority Claims, the Prepetition Liens, the Replacement Liens, and the Adequate Protection Superpriority Claims shall be subject to payment of the Carve-Out.

(i) “Carve-Out” means, collectively, the following fees and expenses: (a) all statutory fees required to be paid to the Clerk of the Court and to the Office of the United States Trustee pursuant to 28 U.S.C. § 1930(a) *plus* interest at the statutory rate, if any, pursuant to 31 U.S.C § 3717 (without regard to the Carve-Out Trigger Notice (as defined below)); (b) reasonable fees and expenses incurred by a trustee, if any, under section 726(b) of the Bankruptcy Code in an amount not exceeding \$25,000 (without regard to the Carve-Out Trigger Notice) (the amounts in these clauses (a) and (b), “Statutory Fees”); (c) subject in all cases to the Approved Budget, to the extent allowed at any time, whether by interim or final compensation order, procedural order or otherwise, all unpaid fees and expenses (including any restructuring, sale, success, or other transaction fee of any investment bankers or financial advisors of the Debtor) (the “Allowed Debtor Professional Fees”) incurred by persons or firms retained by the Debtor pursuant to section 327, 328 or 363 of the Bankruptcy Code (collectively, the “Debtor Professionals”) and unpaid fees and expenses (including any restructuring, sale, success, or other transaction fee of any investment bankers or financial advisors of the Committee) (the “Allowed Committee Professional Fees” and, together with the Allowed Debtor Professional Fees, collectively, the “Allowed Professional Fees”) incurred by persons or firms retained by the Committee (if any) pursuant to section 328 or 1103 of the Bankruptcy Code (the “Committee Professionals” and, together with the Debtor

Professionals, the “Professional Persons”) that are incurred on or prior to the first business day following delivery by the DIP Agent of a Carve-Out Trigger Notice (as defined below), whether allowed by the Court prior to or after delivery of a Carve-Out Trigger Notice (clauses (a) through (c), the “Pre-Carve-Out Amounts”); and (d) Allowed Professional Fees in an aggregate amount not to exceed \$500,000 for the Professional Persons, incurred after the first business day following delivery by the DIP Agent of the Carve-Out Trigger Notice (including any restructuring, sale, success, or other transaction fee earned or payable to any Professional Person) (the amounts set forth in this clause (d) being the “Post-Carve-Out Trigger Notice Cap”). For the avoidance of doubt, other than the Carve-Out, no other amounts owed by the Debtor to any party (including any amounts set forth in the Approved Budget) as of the date of Carve-Out Trigger Notice is delivered shall be payable from the Prepetition Collateral or the DIP Collateral. For purposes of the foregoing, “Carve-Out Trigger Notice” shall mean a written notice delivered by email (or other electronic means) by the DIP Agent to the Debtor’s lead counsel, the U.S. Trustee, and lead counsel to the Committee (if any), which notice may only be delivered following the occurrence and during the continuation of an Event of Default under the DIP Facility, stating that the Post-Carve-Out Trigger Notice Cap has been invoked. No portion of the Carve-Out, any Cash Collateral, any other DIP Collateral, or any proceeds of the DIP Facility, including any disbursements set forth in the Approved Budget or obligations benefitting from the Carve-Out, shall be used for the payment of Allowed Professional Fees, disbursements, costs or expenses incurred by any person, including, without limitation, any Committee, in connection with challenging the DIP Secured Parties’ or the Prepetition Secured Parties’ liens or claims, preventing, hindering or delaying any of the DIP Secured Parties’ or the Prepetition Secured Parties’ enforcement or realization upon any of the DIP Collateral or Prepetition Collateral, or initiating or prosecuting any claim or action against any DIP

Secured Party or Prepetition Secured Party; provided that notwithstanding anything herein to the contrary, proceeds from the DIP Facility and/or Cash Collateral not to exceed \$25,000 in the aggregate (the “Investigation Budget”) may be used on account of Allowed Professional Fees incurred by Committee Professionals (if any) during the Challenge Period (as defined below) in connection with the investigation of avoidance actions or any other claims or causes of action (but not the prosecution of such actions) on account of the Prepetition Facilities and Prepetition Secured Parties (but not the DIP Facility and DIP Secured Parties).

(ii) Carve-Out Reserve. Contemporaneously with the initial funding of the New Money DIP Loans, the Debtor will transfer cash proceeds from the DIP Facility in an amount equal to the total budgeted weekly fees and expenses incurred by the Debtor Professionals for the first two weekly periods set forth in the Approved Budget, and thereafter on a weekly basis the Debtor will transfer cash proceeds from draws from the DIP Facility and/or cash on hand equal to the total budgeted weekly fees and expenses incurred by the Debtor Professionals and Committee Professionals (if any) until receipt of a Carve-Out Trigger Notice, in each case, including any restructuring, sale, success or other transaction fee of any investment bankers or financial advisors of the Debtor or the Committee, into segregated escrow account held in trust solely for the benefit of the Professional Persons (the “Professional Fee Reserve”). Upon the delivery of a Carve-Out Trigger Notice, the Carve-Out Trigger Notice shall (i) be deemed a request by the Debtor for, and the DIP Lenders shall fund, DIP Loans under the DIP Facility, in an amount equal to (i) the sum of the aggregate unpaid amount of the total budgeted weekly fees of Professional Persons incurred before or on the first business day following delivery of a Carve-Out Trigger Notice (to the extent not previously funded to the Professional Fee Reserve) and (ii) the Post-Carve-Out Trigger Notice Cap (less any amounts already funded into the Professional Fee Reserve in respect of such

amounts) (any such amounts actually advanced shall constitute DIP Loans); and (ii) constitute a demand to the Debtor to utilize all cash on hand as of such date and any available cash thereafter held by the Debtor to fund a reserve in an amount equal to amounts set forth in clauses (i) and (ii) (less any amounts already funded into the Professional Fee Reserve in respect of such amounts). For the avoidance of doubt, in no event shall any DIP Lender be required to fund any amount in excess of its then-outstanding DIP Commitment. Amounts funded into the Professional Fee Reserve shall be considered used by the Debtor at such time as they are deposited into the Professional Fee Reserve for distribution to Professional Persons in accordance with orders of the Bankruptcy Court. The Debtor shall use funds held in the Professional Fee Reserve exclusively to pay Allowed Professional Fees accruing prior to the Termination Date as they become allowed and payable pursuant to the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and any interim or final orders of the Court. Any amounts remaining in the Professional Fee Reserve after payment of the Carve-Out shall be paid to the DIP Agent for the benefit of the DIP Lenders, unless the DIP Obligations have been indefeasibly paid in full in cash, and all DIP Commitments have been terminated, in which case any such excess shall be paid to the Prepetition Administrative Agent for the benefit of the Prepetition Secured Parties.

(iii) Funds transferred to the Professional Fee Reserve shall be subject to the DIP Liens, DIP Superpriority Claims, Replacement Liens, and Adequate Protection Superpriority Claims granted hereunder to the extent of such reversionary interest; provided that, for the avoidance of doubt, such liens and claims shall be subject in all respects to the Carve-Out.

(iv) Notwithstanding anything to the contrary in the DIP Documents, this Interim Order, or any other Court order, the Professional Fee Reserve and the amounts on deposit in the Professional Fee Reserve shall be available and used only to satisfy Allowed Professional

Fees accruing prior to the Termination Date benefitting from the Carve-Out, and the other obligations that are a part of the Carve-Out. The failure of the Professional Fee Reserve to satisfy Allowed Professional Fees in full shall not affect the priority of the Carve-Out; provided that to the extent the Professional Fee Reserve is actually funded, the Carve-Out shall be reduced by such funded amount on a dollar-for-dollar basis.

(v) No Direct Obligation to Pay Professional Fees; No Waiver of Right to Object to Fees. No DIP Secured Party or Prepetition Secured Party shall be responsible for the direct payment or reimbursement of any fees or disbursements of any of the Professional Persons incurred in connection with the Chapter 11 Case or any Successor Case under any chapter of the Bankruptcy Code. Nothing in this Interim Order or otherwise shall be construed to obligate any of the DIP Secured Parties or Prepetition Secured Parties in any way to compensate, or to reimburse expenses of, any of the Professional Persons, or to guarantee that the Debtor or its Estate have sufficient funds to pay such compensation or reimbursement. Nothing herein shall be construed as consent to the allowance of any professional fees or expenses of the Debtor, any Committee, any other official or unofficial committee in this Chapter 11 Case or any Successor Case, or of any other person or entity, or shall affect the right of any party to object to the allowance and payment of any such fees and expenses.

36. Good Faith Under Section 364(e) of the Bankruptcy Code; No Modification or Stay of this Interim Order. The DIP Secured Parties and the Prepetition Secured Parties have acted in good faith in connection with this Interim Order and are entitled to rely upon the protections granted herein and by section 364(e) of the Bankruptcy Code. Based on the findings set forth in this Interim Order and the record made during the Interim Hearing, and in accordance with section 364(e) of the Bankruptcy Code, in the event any or all of the provisions of this Interim Order are

hereafter modified, amended, or vacated by a subsequent order of this Court or any other court, the DIP Secured Parties and Prepetition Secured Parties are entitled to the protections provided in section 364(e) of the Bankruptcy Code. Any such modification, amendment, or vacatur shall not affect the validity and enforceability of any advances previously made or made hereunder, or lien, claim, or priority authorized or created hereby.

37. Approval of DIP Fees. In consideration for the DIP Facility and the consent to the use of Cash Collateral in accordance with the terms of this Interim Order, the DIP Secured Parties shall be paid all fees, expenses and other amounts payable under the DIP Documents as such become due, including, without limitation, the Upfront Fee and the Exit Fee, and all reasonable and documented out-of-pocket costs and expenses, including legal fees of the DIP Agent and the DIP Lenders, financial advisor fees, and other similar fees, costs and expenses incurred in connection with the DIP Facility and the Chapter 11 Case, including, without limitation, the reasonable and documented fees and expenses of (a) counsel to the DIP Secured Parties, (b) specialty or local counsel to the DIP Secured Parties in each relevant jurisdiction and (c) in the case of an actual or perceived conflict of interest with respect to any of the foregoing counsel, one additional counsel to each group of affected DIP Lenders similarly situated and taken as a whole (all such fees, together, the “DIP Fees”). The DIP Fees shall be fully earned and payable in accordance with the terms of the DIP Documents, without the need for any further order of this Court. The DIP Fees shall be part of the DIP Obligations. Any and all DIP Fees paid prior to the Petition Date by the Debtor to the DIP Secured Parties in connection with or with respect to the DIP Facility in each case is hereby approved in full.

38. Lender Professionals’ Fees. Professionals for the DIP Secured Parties (the “DIP Professionals”) and professionals for the Prepetition Secured Parties (the “Prepetition

Professionals,” and together with the DIP Professionals, the “Lender Professionals”) shall not be required to comply with the U.S. Trustee fee guidelines or file applications or motions with, or obtain approval of, this Court for compensation and reimbursement of fees and expenses. The Lender Professionals shall submit copies of summary invoices to the Debtor, the U.S. Trustee, and counsel to the Committee, if any. The invoices shall provide only the total aggregate number of hours billed and a summary description of services provided and the expenses incurred by the applicable party and/or professionals, and shall be subject to all applicable privilege and work product doctrines. If the Debtor, U.S. Trustee, or any Committee object to the reasonableness of the fees and expenses of any Lender Professional and the parties cannot resolve such objection by 4:00 P.M. (Mountain Time) on the date that is ten (10) days after electronic delivery of such invoices (the “Fee Objection Deadline”), then the Debtor, U.S. Trustee, or the Committee, as the case may be, shall file with this Court and serve on such Lender Professional a written objection (the “Fee Objection”), and any failure by any such party to file a Fee Objection by the Fee Objection Deadline shall constitute a waiver of any right of such party to object to the applicable invoice. Notwithstanding any provision herein to the contrary, any objection to, and any hearing on an objection to, payment of any fees, costs, and expenses set forth in a professional fee invoice in respect of the Lender Professionals shall be limited to the reasonableness of the particular items or categories of the fees, costs, and expenses that are the subject of such objection. The Debtor shall timely pay in accordance with the terms and conditions of this Interim Order (a) the undisputed fees, costs, and expenses reflected on any invoice to which a Fee Objection has been timely filed and (b) all fees, costs, and expenses on any invoice to which no Fee Objection has been timely filed.

39. Indemnification. The Debtor shall indemnify and hold harmless the DIP Secured Parties, each of their respective successors, assigns, affiliates, parents, subsidiaries, partners, controlling persons, representatives, agents, attorneys, advisors, financial advisors, consultants, professionals, officers, directors, members, managers, shareholders, and employees past, present, and future, and their respective heirs, predecessors, successors and assigns in accordance with, and subject to, the terms and conditions of this Interim Order and the DIP Documents except to the extent resulting from such party's gross negligence, bad faith, or willful misconduct as determined by a final non-appealable judgment of a court of competent jurisdiction.

40. Right to Credit Bid. In connection with any sale or other disposition of the DIP Collateral or Prepetition Collateral including any sales occurring under or pursuant to section 363 of the Bankruptcy Code, any plan of reorganization or plan of liquidation under section 1129 of the Bankruptcy Code, or a sale or disposition by a chapter 7 trustee for the Debtor (any of the foregoing sales or dispositions, a "Sale"), the DIP Agent (at the direction of the Required DIP Lenders) and the Prepetition Collateral Agent (at the direction of the Requisite Revolving Lenders (as defined in the Prepetition Credit Agreement) and Requisite Term Lenders (as defined in the Prepetition Credit Agreement)) shall be authorized subject to section 363(k) of the Bankruptcy Code to credit bid on a dollar-for-dollar basis any or all of the full amount of the respective outstanding DIP Obligations (including the Roll-Up Obligations) and Prepetition Obligations (and any other applicable obligations) up to the full amount of the DIP Obligations and Prepetition Obligations (and any other applicable obligations held by the DIP Lenders and Prepetition Lenders), respectively, including any accrued interest, expenses, and fees, in a Sale (including any deposit in connection with such sale) of any DIP Collateral or Prepetition Collateral, whether such sale is effectuated through section 363 or 1129 of the Bankruptcy Code, by a chapter 7 trustee, or

otherwise, without the need for further court authorization. The DIP Agent (at the direction of the Required DIP Lenders) and the Prepetition Collateral Agent (at the direction of the Requisite Revolving Lenders (as defined in the Prepetition Credit Agreement) and Requisite Term Lenders (as defined in the Prepetition Credit Agreement)) shall each have the absolute right to assign, transfer, sell, or otherwise dispose of their respective rights to credit bid to any acquisition vehicle formed in connection with such bid or other designee.

41. Proofs of Claim. Neither the DIP Secured Parties nor the Prepetition Secured Parties will be required to file proofs of claim in the Chapter 11 Case or any Successor Case for any claim arising under the DIP Documents or the Prepetition Loan Documents. The Debtor's stipulations, admissions, and acknowledgments and the provisions of this Interim Order shall be deemed to constitute timely filed proofs of claim for the DIP Secured Parties and the Prepetition Secured Parties with regard to all claims arising under the DIP Documents and the Prepetition Loan Documents, and, as a result, the DIP Obligations and the Prepetition Obligations shall be deemed allowed for all purposes in accordance with section 502(a) of the Bankruptcy Code.

42. Limitations on Use of DIP Proceeds, Cash Collateral and Carve-Out. Except as otherwise permitted in this Interim Order and the Approved Budget (including with respect to the Investigation Budget), the DIP Collateral, the Prepetition Collateral, the Cash Collateral, and the Carve-Out may not be used in connection with: (a) preventing, hindering, or delaying the DIP Secured Parties or the Prepetition Secured Parties' enforcement or realization upon any of the DIP Collateral or Prepetition Collateral; (b) using or seeking to use Cash Collateral or selling or otherwise disposing of DIP Collateral outside the ordinary course of business without the prior written consent of the Required DIP Lenders; (c) outside the ordinary course of business, using or seeking to use any insurance proceeds constituting DIP Collateral without the prior written consent

of the Required DIP Lenders; (d) incurring any indebtedness without the prior written consent of the Required DIP Lenders; (e) seeking to amend or modify any of the rights granted to the DIP Secured Parties or the Prepetition Secured Parties under this Interim Order, the DIP Documents, or the Prepetition Loan Documents; (f) objecting to or challenging in any way the DIP Liens, the DIP Obligations, the Prepetition Liens, the Prepetition Obligations, the DIP Collateral (including Cash Collateral) or, as the case may be, Prepetition Collateral, or any other claims or liens, held by or on behalf of any of the DIP Secured Parties or the Prepetition Secured Parties, respectively; (g) asserting, commencing, or prosecuting any claims or causes of action whatsoever, including, without limitation, any actions under chapter 5 of the Bankruptcy Code, applicable state law equivalents, any so-called “lender liability” claims and causes of action or other actions to recover or disgorge payments against the DIP Secured Parties, the Prepetition Secured Parties, or any of their respective affiliates, successors and assigns and the partners, shareholders, controlling persons, directors, officers, employees, agents, attorneys, advisors, and professionals; (h) litigating, objecting to, challenging, contesting in any manner, or raising any defenses to, the validity, extent, amount, perfection, priority, or enforceability of any of the DIP Obligations, the DIP Liens, the Prepetition Obligations, the Prepetition Liens, or any other rights or interests of the DIP Secured Parties or the Prepetition Secured Parties; or (i) seeking to subordinate, recharacterize, disallow, or avoid the DIP Obligations or the Prepetition Obligations.

43. Effect of Stipulations on Third Parties. The Debtor’s Stipulations contained in paragraph G and releases in paragraph H hereof shall be binding in all circumstances upon the Debtor upon entry of this Interim Order, and upon its Estate and any successor thereto in all circumstances for all purposes immediately upon entry of the Final Order. The Debtor’s Stipulations shall be binding upon each other party-in-interest, including the Committee, except to

the extent such party in interest *first* obtains standing (including any chapter 11 trustee or if the Chapter 11 Case is converted to a case under chapter 7 prior to the expiration of the Challenge Period (as defined below), the chapter 7 trustee in such Successor Case), by no later than (i) solely with respect to the Committee (if any), the date that is sixty (60) calendar days from the date of the Committee's formation; and (ii) with respect to all other parties-in-interest, the date that is seventy-five (75) calendar days following the date of entry of this Interim Order, in each case unless such period is shortened by order of the Court (such time period established by clauses (i) and (ii) shall be referred to as the "Challenge Period")⁴ and *second*, obtains a final, non-appealable order in favor of such party-in-interest sustaining any such Challenge (as defined below) in any such timely-filed contested matter or adversary proceeding (any such Challenge (as defined below) timely brought for which such a final and non-appealable order is so obtained, a "Successful Challenge"). For the purposes of this Interim Order, a "Challenge" shall mean a timely and properly filed contested matter or adversary proceeding challenging or otherwise objecting to the admissions, stipulations, findings, or releases set forth in this Interim Order, including the stipulations contained in the Debtor's Stipulations, including but not limited to those in relation to (a) the amount, validity, extent, priority, or perfection of the mortgages, security interests, and liens of the Prepetition Agents with respect to the Prepetition Collateral; (b) the validity, allowability and priority of the Prepetition Obligations; and (c) any releases set forth or agreed to herein or pursuant to the DIP Documents. The Challenge Period shall terminate on the date that is the next calendar day after the expiration of the Challenge Period in the event that either (i) no Challenge is raised during the Challenge Period or (ii) with respect only to those parties who file a Challenge,

⁴ At the Final Hearing, the Debtor will request that the Challenge Period expire upon the earlier of (i) seventy-five (75) calendar days following the date of entry of this Interim Order and (ii) the date of entry of the Sale Order (as defined in the DIP Term Sheet).

such Challenge is fully and finally adjudicated (collectively, the “Challenge Period Termination Date”). The filing of a motion seeking standing to file a Challenge before expiration of the Challenge Period, which attaches a proposed Challenge, shall extend the Challenge Period solely with respect to that party until two (2) business days after the Court approves the standing motion, or such other time period ordered by the Court in approving the standing motion. Except as otherwise expressly provided herein, from and after the Challenge Period Termination Date and for all purposes in this Chapter 11 Case and any Successor Case (and after the dismissal of the Chapter 11 Case or any Successor Case), and without further notice, motion, or application to, order of, or hearing before this Court, (i) any and all payments made to or for the benefit of the Prepetition Secured Parties or otherwise authorized by this Interim Order (whether made prior to, on, or after the Petition Date) shall be indefeasible and not be subject to counterclaim, set-off, subordination, recharacterization, defense, disallowance, recovery, or avoidance by any party in interest, (ii) any and all such Challenges by any party-in-interest shall be deemed to be forever released, waived, and barred, (iii) all of the Prepetition Obligations shall be deemed to be fully allowed claims within the meaning of section 506 of the Bankruptcy Code, and (iv) the Debtor’s Stipulations and releases shall be binding on all parties in interest in this Chapter 11 Case or any Successor Case, including any Committee or chapter 11 or chapter 7 trustee. Notwithstanding the foregoing, to the extent any Challenge is timely asserted, the Debtor’s Stipulations and the other provisions in clauses (i) through (iv) in the immediately preceding sentence shall nonetheless remain binding and preclusive on any Committee and on any other party-in-interest from and after the Challenge Period Termination Date, except to the extent that such Debtor’s Stipulations or the other provisions in clauses (i) through (iv) of the immediately preceding sentence were expressly challenged in such Challenge and such Challenge becomes a Successful Challenge.

Notwithstanding any provision to the contrary herein, nothing in this Interim Order shall be construed to grant standing on any party in interest, including any Committee, to bring any Challenge on behalf of the Debtor's Estate. The failure of any party-in-interest, including any Committee, to obtain an order of this Court prior to the Challenge Period Termination Date granting standing to bring any Challenge on behalf of the Debtor's Estate shall not be a defense to failing to commence a Challenge prior to the Challenge Period Termination Date as required under this paragraph 43 or to require or permit an extension of the Challenge Period Termination Date. To the extent any such Challenge is timely and properly commenced, the Prepetition Secured Parties shall be entitled to payment of the related costs and expenses, including, but not limited to, reasonable attorneys' fees, incurred in defending themselves and the other Prepetition Secured Parties in any such proceeding as adequate protection, except if a Challenge results in a determination that any part of the prepetition secured liens or encumbrances are invalid. The Court may fashion an appropriate remedy in the event of a Successful Challenge.

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

45. No Lender Liability. In determining to make any loan (whether under the DIP Documents or otherwise) or to permit the use of Cash Collateral or in exercising any rights or remedies as and when permitted pursuant to this Interim Order or the DIP Documents or taking any other act permitted under this Interim Order and the DIP Documents, none of the DIP Secured Parties or Prepetition Secured Parties shall (i) be considered or deemed to be in control of the operations of the Debtor or to be acting as a "responsible person" or "owner or operator" with respect to the operation or management of the Debtor (as such terms, or any similar terms, are used

in the *United States Comprehensive Environmental Response, Compensation and Liability Act*, 42 U.S.C. §§ 9601 *et seq.*, as amended, or any similar federal, state or local statute or regulation), (ii) shall be considered or deemed to be a joint employer with the Debtor, or (iii) owe any fiduciary duty to the Debtor, its creditors, shareholders, or Estate. Furthermore, nothing in this Interim Order shall in any way be construed or interpreted to impose or allow the imposition upon any of the DIP Secured Parties or the Prepetition Secured Parties of any liability for any claims arising from the prepetition or postpetition activities of the Debtor and its affiliates (as defined in section 101(2) of the Bankruptcy Code).

46. Section 506(c) Claims. Subject to entry of the Final Order and the provisions of the Carve-Out and as a further condition of the DIP Facility and any obligation of the DIP Lenders to make credit extensions pursuant to the DIP Documents (and the prior written consent of the DIP Secured Parties to the payment of the Carve-Out to the extent provided herein and the prior written consent of the Prepetition Secured Parties of the priming of the Prepetition Liens by the DIP Facility and the use of Cash Collateral) (a) no costs or expenses of administration of the Chapter 11 Case or any Successor Case shall be charged against or recovered from or against any or all of the DIP Secured Parties or the Prepetition Secured Parties with respect to the DIP Collateral or the Prepetition Collateral, in each case pursuant to section 105 or section 506(c) of the Bankruptcy Code or otherwise, without the prior written consent of the DIP Secured Parties or the Prepetition Secured Parties, as applicable and (b) no such consent shall be implied from any other action, inaction, or acquiescence of any or all of the DIP Secured Parties or the Prepetition Secured Parties.

47. No Marshaling. The DIP Secured Parties and the Prepetition Secured Parties shall not be subject to the equitable doctrine of “marshaling” or any other similar doctrine with respect to any of the DIP Collateral or the Prepetition Collateral, as applicable.

48. Section 552(b). Subject to entry of the Final Order, the DIP Secured Parties and the Prepetition Secured Parties shall each be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and the “equities of the case” exception under section 552(b) of the Bankruptcy Code shall not apply to the DIP Secured Parties or the Prepetition Secured Parties, as applicable with respect to proceeds, product, offspring or profits of any of the DIP Collateral or Prepetition Collateral, as applicable.

49. Exculpation. Nothing in this Interim Order or the DIP Documents shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Secured Parties or Prepetition Secured Parties any liability for any claims arising from the prepetition or postpetition activities of the Debtor, including with respect to the operation of its businesses, in connection with its restructuring efforts or administration of this Chapter 11 Case. In addition, (a) the DIP Secured Parties shall not in any way or manner be liable or responsible for: (i) the safe-keeping of the DIP Collateral, (ii) any loss or damage thereto occurring or arising in any manner or fashion from any cause, (iii) any Diminution thereof, or (iv) any act or default of any carrier, servicer, bailee, custodian, forwarding agency or other person, and (b) all risk of loss, damage, or destruction of the DIP Collateral shall be borne by the Debtor.

50. Release of DIP Secured Parties. Upon entry of this Interim Order, the Debtor, on its own behalf and its Estate, forever and irrevocably: (i) releases, discharges, and acquits each of the DIP Secured Parties and each of their former or current officers, employees, directors, agents, representatives, owners, members, partners, financial advisors, legal advisors, shareholders, managers, consultants, accountants, attorneys, affiliates, and predecessors-in-interest of and from any and all claims, demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness and obligations, of every type, including, without limitation, any so-called “lender

liability” or equitable subordination claims or defenses, solely with respect to or relating to the negotiation and entry into the DIP Documents; and (ii) waives, discharges and releases any and all defenses (including, without limitation, offsets and counterclaims of any nature or kind) as to the validity, perfection, priority, enforceability, and avoidability of the DIP Liens and the DIP Obligations.

51. Limitation on Liability. Nothing in this Interim Order or the DIP Documents shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Secured Parties or Prepetition Secured Parties any liability for any claims arising from the prepetition or postpetition activities of the Debtor, including with respect to the operation of its businesses, in connection with its restructuring efforts or administration of this Chapter 11 Case.

52. Insurance Proceeds and Policies. Upon entry of this Interim Order and to the fullest extent provided by applicable law, the DIP Agent (for the benefit of the DIP Lenders), shall be, and shall be deemed to be, without any further action or notice, named as additional insured and loss payee on each insurance policy maintained by the Debtor that in any way relates to the DIP Collateral.

53. No Waiver by Failure to Seek Relief. The failure of the DIP Secured Parties or Prepetition Secured Parties to seek relief or otherwise exercise their rights and remedies under this Interim Order, the DIP Documents, the Prepetition Loan Documents or applicable law, as the case may be, shall not constitute a waiver of any of the rights hereunder, thereunder, or otherwise.

54. Binding Effect of Interim Order. Immediately upon entry of this Interim Order by this Court, the terms and provisions of this Interim Order shall become valid and binding upon and inure to the benefit of the Debtor, the DIP Secured Parties, the Prepetition Secured Parties, all other creditors of the Debtor, any Committee (or any other court appointed committee) appointed in the

Chapter 11 Case, and all other parties-in-interest and their respective successors and assigns, including any trustee or other fiduciary hereafter appointed in the Chapter 11 Case, any Successor Case, or upon dismissal of the Chapter 11 Case or any Successor Case.

55. Discharge. Except as otherwise agreed in writing by the DIP Agent (acting at the direction of the Required DIP Lenders) and the Prepetition Administrative Agent (acting at the direction of the Required DIP Lenders, as that term is defined in the Prepetition Credit Agreement), the DIP Obligations and the obligations of the Debtor with respect to the adequate protection provided herein shall not be discharged by the entry of an order confirming any plan of reorganization in the Chapter 11 Case, notwithstanding the provisions of section 1141(d) of the Bankruptcy Code, unless such obligations have been indefeasibly paid in full in cash (and, in the case of DIP Obligations, indefeasibly paid in full as provided by the DIP Documents (including by credit bid)), on or before the effective date of such confirmed plan of reorganization. If the Debtor proposes or supports any plan of reorganization or sale of all or substantially all of the Debtor's assets, or order confirming such plan or approving such sale, that is not conditioned upon the indefeasible payment (including by credit bid) of the DIP Obligations, and the payment of the Debtor's obligations with respect to the adequate protection provided for herein, in full in cash within a commercially reasonable period of time (and in no event later than the effective date of such plan of reorganization or sale) (a "Non-Consensual Plan or Sale") without the written consent of the DIP Agent (acting at the direction of the Required DIP Lenders) and the Prepetition Administrative Agent (acting at the direction of the Requisite Lenders (as defined in the Prepetition Credit Agreement)), the Debtor's proposal or support of a Non-Consensual Plan or Sale, or the entry of an order with respect thereto, shall constitute an Event of Default hereunder and under the DIP Documents.

56. [Reserved].

57. Survival. The provisions of this Interim Order and any actions taken pursuant hereto shall survive entry of any order which may be entered: (a) confirming any plan of reorganization in the Chapter 11 Case; (b) converting the Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code; (c) dismissing the Chapter 11 Case or any Successor Case; or (d) pursuant to which this Court abstains from hearing the Chapter 11 Case or any Successor Case. The terms and provisions of this Interim Order, including the claims, liens, security interests and other protections granted to the DIP Secured Parties and the Prepetition Secured Parties pursuant to this Interim Order and the DIP Documents, shall continue in the Chapter 11 Case, in any Successor Case, or following dismissal of the Chapter 11 Case or any Successor Case, and shall maintain their priority as provided by this Interim Order until: (i) in respect of the DIP Facility, all the DIP Obligations, pursuant to the DIP Documents and this Interim Order, have been indefeasibly paid in full in cash (such payment being without prejudice to any terms or provisions contained in the DIP Facility which survive such discharge by their terms), and all commitments to extend credit under the DIP Facility are terminated; and (ii) in respect of the Prepetition Facilities, all of the Prepetition Obligations pursuant to the Prepetition Loan Documents and this Interim Order, have been indefeasibly paid in full in cash. The terms and provisions concerning the indemnification of the DIP Secured Parties shall continue in the Chapter 11 Case, in any Successor Case, following dismissal of the Chapter 11 Case or any Successor Case, and following termination of the DIP Documents and/or the indefeasible repayment of the DIP Obligations. In addition, the terms and provisions of this Interim Order shall continue in full force and effect for the benefit of the Prepetition Secured Parties notwithstanding the repayment in full or termination of the DIP Obligations until such time as the Prepetition Obligations have been indefeasibly paid in full.

58. Priority of Terms. To the extent of any conflict between or among (a) the express terms or provisions of any of the DIP Documents, the Motion, or the Cash Management Order, on the one hand, and (b) the terms and provisions of this Interim Order, on the other hand, unless such term or provision herein is phrased in terms of “as defined in” or “as set forth in” any of the DIP Documents, the Prepetition Credit Agreement, or other agreement or document, the terms and provisions of this Interim Order shall govern.

59. Final Hearing. **The Final Hearing on the Motion shall be held on _____, 2024, at __:00 __.M. (Mountain Time);** *provided* that the Final Hearing may be adjourned or otherwise postponed upon the Debtor filing a notice of such adjournment with the consent of the DIP Agent (acting at the direction of the Required DIP Lenders). The Debtor shall promptly serve copies of this Interim Order (which shall constitute adequate notice of the Final Hearing) to the parties having been given notice of the Interim Hearing, and to any other party that has filed a request for notices with this Court. **Any objections or responses to entry of the Final Order shall be filed on or before 4:00 P.M. (Mountain Time), on _____, 2024.**

60. Necessary Action. The Debtor is authorized to take any and all such actions and to make, execute and deliver any and all instruments as may be reasonably necessary to implement the terms and conditions of this Interim Order and the transactions contemplated hereby.

61. Enforceability. This Interim Order shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 and shall take effect and be enforceable immediately upon entry thereof. Notwithstanding Bankruptcy Rules 4001(a)(3), 6004(h), 6006(d), 7062, or 9014 of the Bankruptcy Rules, any applicable Local Rules, or Rule 62(a) of the Federal Rules of Civil Procedure, this Interim Order shall be immediately effective and enforceable upon its entry and there shall be no stay of execution or effectiveness of this Interim Order.

62. Binding Effect of Interim Order. Immediately upon entry of this Interim Order by this Court, the terms and provisions of this Interim Order shall become valid and binding upon and inure to the benefit of the Debtor, the DIP Secured Parties, the Prepetition Secured Parties, all other creditors of the Debtor, any Committee (or any other court appointed committee) appointed in the Chapter 11 Case and all other parties-in-interest and their respective successors and assigns, including any trustee or other fiduciary hereafter appointed in the Chapter 11 Case, any Successor Case, or upon dismissal of the Chapter 11 Case or any Successor Case.

63. Headings. The headings in this Interim Order are for purposes of reference only and shall not limit or otherwise affect the meaning of this Interim Order.

64. Retention of Jurisdiction. This Court has and will retain jurisdiction to enforce this Interim Order according to its terms.

-----**END OF DOCUMENT**-----

EXHIBIT A

DIP Term Sheet

VOBEV, LLC

Senior Secured Superpriority DIP Financing Term Sheet

THIS TERM SHEET (INCLUDING ALL SCHEDULES, ANNEXES AND EXHIBITS HERETO, THE “TERM SHEET”) DESCRIBES THE PRINCIPAL TERMS AND CONDITIONS OF A PROPOSED SENIOR SECURED SUPERPRIORITY DEBTOR-IN-POSSESSION CREDIT FACILITY TO BE PROVIDED BY THE DIP LENDERS (AS DEFINED BELOW) TO VOBEB, LLC, A UTAH LIMITED LIABILITY COMPANY (THE “BORROWER”) IN CONNECTION WITH THE CASE (THE “CHAPTER 11 CASE”) FILED BY THE BORROWER (AS DEFINED BELOW) (THE “COMPANY” OR THE “DEBTOR”) IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF UTAH (THE “BANKRUPTCY COURT”) PURSUANT TO CHAPTER 11 OF TITLE 11 OF THE UNITED STATES CODE (AS AMENDED, THE “BANKRUPTCY CODE”) ON DECEMBER 9, 2024 (THE “PETITION DATE”). THE DIP FACILITY (AS DEFINED BELOW) IS BEING PROVIDED BY THE DIP LENDERS IN RELIANCE UPON THE PROSECUTION AND CONSUMMATION OF THE 363 SALE PROCESS (AS DEFINED BELOW).

THIS TERM SHEET IS BEING PROVIDED ON A CONFIDENTIAL BASIS AND IT, ALONG WITH ITS CONTENTS AND EXISTENCE, MAY NOT BE DISTRIBUTED, DISCLOSED OR DISCUSSED WITH ANY OTHER PARTY BUT MAY BE FILED WITH THE BANKRUPTCY COURT IN CONNECTION WITH THE CHAPTER 11 CASE. THIS TERM SHEET IS NOT AN OFFER FOR THE PURCHASE, SALE OR SUBSCRIPTION OR INVITATION OF ANY OFFER TO BUY, SELL OR TO SUBSCRIBE FOR ANY SECURITIES. THE TERMS AND CONDITIONS SET FORTH IN THIS TERM SHEET DO NOT CONSTITUTE OR CREATE AN AGREEMENT, OBLIGATION OR COMMITMENT OF ANY KIND BY OR ON BEHALF OF ANY PARTY, UNLESS AND UNTIL THE INTERIM ORDER (AS DEFINED BELOW) IS ENTERED IN THE CHAPTER 11 CASE BY THE BANKRUPTCY COURT.

<i>Borrower:</i>	Vobev, LLC, a Utah limited liability company, as debtor and debtor-in-possession under the Bankruptcy Code.
<i>Prepetition Credit Agreement:</i>	The Borrower is a party to that certain Credit and Guaranty Agreement, dated as of April 20, 2023 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “ <u>Prepetition Credit Agreement</u> ” and the loans thereunder, the “ <u>Prepetition Loans</u> ”), by and among, <i>inter alia</i> , the Parent, the Borrower, certain other subsidiaries of the Parent, the financial institutions from time to time party thereto (the “ <u>Prepetition Lenders</u> ”), Ares Capital Corporation, as administrative agent (the “ <u>Prepetition Administrative Agent</u> ”) and ACF FINCO I LP, as revolving agent and collateral agent (the “ <u>Prepetition Revolving Agent</u> ” and “ <u>Prepetition Collateral Agent</u> ”, and together with the Prepetition Administrative Agent and the Prepetition Lenders, the “ <u>Prepetition Secured Parties</u> ”). The Prepetition Loans consist of (a) a secured superpriority asset-based revolving credit facility in an aggregate principal amount of \$40,877,477.92 (the “ <u>Prepetition Revolving Loans</u> ”), (b) initial term loans in an aggregate principal amount of \$197,666,427.70 (the “ <u>Prepetition Initial Term Loans</u> ”) and (c) \$163,474,824.44 of delayed draw term loans (the “ <u>Prepetition Delayed Draw Term Loans</u> ” and,

	together with the Prepetition Initial Term Loans, the “ <u>Prepetition Term Loans</u> ”).
<i>DIP Facility:</i>	A \$115,377,477.92 senior secured superpriority debtor-in-possession term loan credit facility (the “<u>DIP Facility</u>” and the obligations thereunder, the “<u>DIP Obligations</u>”), consisting of (a) a multiple draw new money term loan (the “<u>New Money DIP Loan</u>”) to be made and funded from time to time in accordance with the Approved Budget (as defined below) during the Availability Period (as defined below) in the aggregate principal amount of up to \$37,250,000 (the “<u>DIP Commitment</u>”), of which up to \$14,000,000 of the DIP Commitment shall be made available in weekly drawings in accordance with the Approved Budget upon entry of the interim order approving the DIP Facility (each borrowing, an “<u>Interim Draw</u>”), which order shall be satisfactory to the Required DIP Lenders (as defined below) (the “<u>Interim Order</u>”), and the remainder of the DIP Commitment being made available in weekly drawings in accordance with the Approved Budget upon entry of the final order approving the DIP Facility (each borrowing, a “<u>Subsequent Draw</u>”), which order shall be satisfactory to the Required DIP Lenders (the “<u>Final Order</u>” and, together with the Interim Order, the “<u>DIP Orders</u>”) and (b) upon entry of the Final Order, a deemed “roll up” on a cashless dollar-for-dollar basis of (x) the Prepetition Revolving Loans (the “<u>ABL Roll-Up Loans</u>”) <i>plus</i> (y) \$37,250,000 of the Prepetition Term Loans held by the DIP Lenders (or their affiliates) on a <i>pro rata</i> basis (the “<u>Term Loan Roll-Up Loans</u>”), in each case, to be deemed incurred as of the date of entry of the Final Order (the “<u>ABL Roll-Up Loans</u>” and the “<u>Term Loan Roll-Up Loans</u>”, collectively, the “<u>Roll-Up Loans</u>”; the Roll-Up Loans together with the New Money DIP Loan, collectively, the “<u>DIP Loans</u>”); <i>provided</i> that after giving effect to the principal balance of all New Money DIP Loans, the aggregate principal balance of all New Money DIP Loans shall not exceed the DIP Commitment; <i>provided, further</i>, that no DIP Lender shall be obligated to make New Money DIP Loans in an amount in excess of the portion of the DIP Commitment set forth next to such DIP Lender’s name in the table set forth on <u>Exhibit A</u> hereto. The ABL Roll-Up Loans shall (x) be senior in right of payment to the other DIP Obligations, including for the avoidance of doubt, the New Money DIP Loan and (y) not be subject to a “borrowing base” during the Chapter 11 Case. The proceeds of the New Money DIP Loans shall be funded into a deposit account of the Borrower. Such account shall be subject to the DIP Liens (as defined below) in favor of the DIP Agent, which shall be perfected pursuant to the DIP Orders and shall be subject to an account control agreement reasonably satisfactory to the DIP Agent if required by the DIP Agent. “<u>Availability Period</u>” means the period from the date of entry of the Interim Order to the earliest of (i) the Maturity Date (as defined below)

	and (ii) the date of termination of the DIP Facility pursuant to the terms hereof or the DIP Orders.
<i>DIP Loan Documentation:</i>	At the option of the Required DIP Lenders (as defined below), the Debtor shall execute definitive financing documentation with respect to the DIP Credit Facility, including, without limitation, a credit agreement (the “<u>DIP Credit Agreement</u>”), guarantees and security documents, in each case, satisfactory in form and substance to each of the DIP Agent, the Required DIP Lenders and the Debtor (collectively, the “<u>DIP Documents</u>”). The provisions of the DIP Documents shall, upon execution, supersede the provisions of this Term Sheet; <i>provided</i> that if the Required DIP Lenders determine not to require the Debtor to execute additional DIP Documents, the provisions of this Term Sheet and the DIP Orders shall govern the DIP Facility. The provisions of the DIP Documents shall be consistent with this Term Sheet and the DIP Orders. The DIP Credit Agreement shall contain representations and warranties, conditions precedent, affirmative and negative covenants, indemnities, events of default, and remedies in form and substance substantially similar to the Prepetition Credit Agreement (with such modifications as are (i) set forth herein, and (ii) usual and customary for DIP financings of this type). Other DIP Documents, such as transaction documents, subordination agreements, intercreditor agreements, and other material agreements, shall be, in each case, usual and customary for DIP financings of this type and in form and substance substantially similar to the applicable documents entered into in connection with the Prepetition Credit Agreement. The definition of “<u>Required DIP Lenders</u>” (or any equivalent term with respect to the DIP Facility) shall refer to DIP Lenders holding at least a majority in principal amount of the outstanding DIP Loans and unfunded DIP Commitment.
<i>DIP Lenders:</i>	Certain Prepetition Lenders who elect to provide DIP financing (the “ <u>DIP Lenders</u> ”). All Prepetition Lenders (or their affiliates) will be offered the right to participate in the DIP Facility <i>pro rata</i> with their holdings under the Prepetition Credit Agreement.
<i>DIP Agent:</i>	Ares Capital Corporation (in such capacity, the “ <u>DIP Agent</u> ” and, together with the DIP Lenders, the “ <u>DIP Secured Parties</u> ”).
<i>Interest Rate:</i>	<u>New Money DIP Loan</u>: SOFR + 9.00% per annum, compounded monthly, paid in kind. <u>Term Loan Roll-Up Loans</u>: Same as the non-default rate on the corresponding Prepetition Loans as in effect on the Petition Date under the Prepetition Credit Agreement, paid in kind. <u>ABL Roll-Up Loans</u>: Same as the non-default rate on the corresponding Prepetition Loans as in effect on the Petition Date under the Prepetition Credit Agreement, paid in cash.

<i>Default Rate:</i>	At all times following the occurrence and during the continuance of an Event of Default and notice from the Required DIP Lenders to the Borrower, principal, interest and all other amounts due on the DIP Loans shall bear interest at a rate equal to 2.00% per annum in excess of the interest rate set forth under “Interest Rate” above.
<i>Security and Priority:</i>	The DIP Secured Parties shall be granted, pursuant to sections 364(c)(2), 364(c)(3) and 364(d)(1) of the Bankruptcy Code, continuing, valid, binding, enforceable, non-avoidable, and automatically perfected, post-petition first priority security interests and liens (the “<u>DIP Liens</u>”) on all tangible, intangible, real and personal property of the Debtor (including without limitation, all prepetition and post-petition property and assets of the Debtor and all equity interests owned by the Debtor), and all other property of the Debtor of whatever kind, nature or description, whether acquired or created prepetition or post-petition to secure the DIP Obligations, and the proceeds, rents, profits, and offspring of each of the foregoing (the “<u>DIP Collateral</u>”), other than contracts, leases and licenses solely to the extent a lien is not permitted by law to attach to such property, in which case the proceeds of such contracts, leases and other licenses shall be DIP Collateral. The DIP Liens shall be subject only to validly perfected, enforceable and non-avoidable liens existing as of the Petition Date to which the liens securing the obligations under the Prepetition Credit Agreement were subject and which are listed on a schedule to the DIP Orders (the “<u>Prepetition Permitted Liens</u>”). Notwithstanding the foregoing, the DIP Liens shall not extend to, and the DIP Collateral shall not consist of, avoidance actions brought pursuant to Chapter 5 of the Bankruptcy Code or applicable state law equivalents, but (subject to entry of the Final Order) shall include the proceeds therefrom. For the avoidance of doubt, the DIP Liens shall include and the DIP Collateral shall consist of (subject to entry of the Final Order) all proceeds of real property, including non-residential leaseholds. For the avoidance of doubt, the DIP Liens shall prime and be senior to the lien of the Prepetition Agent, for the benefit of the Prepetition Secured Parties. The DIP Liens granted under Section 364(d)(1) of the Bankruptcy Code shall not be <i>pari passu</i> with, or subordinated to, any other liens or security interests (whether currently existing or hereafter created), subject in each case only to the Carve-Out and any Prepetition Permitted Liens. All DIP Obligations shall also constitute allowed superpriority administrative expense claims (the “<u>Superpriority Claims</u>”) in the Chapter 11 Case and shall have priority over all other claims and administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code. The DIP Liens and the Superpriority Claims shall be subject to the Carve-Out (as defined below). All of the liens described herein with respect to the assets of the Debtor shall be effective and perfected by the Interim Order and the Final Order and without the necessity of the execution of mortgages, security agreements, pledge agreements, financing statements or other agreements. Notwithstanding the foregoing, the Debtor shall take all action that may

	be reasonably necessary or desirable, or that the Required DIP Lenders or the DIP Agent may reasonably request, to at all times maintain the validity, perfection, enforceability and priority of the security interest and liens of the DIP Agent in the DIP Collateral, or to enable the DIP Agent to protect, exercise or enforce its rights hereunder, under the DIP Orders and in the DIP Collateral, so long as the cost of maintaining or perfecting the security interest is not excessive in view of the benefits to be obtained.
<i>Carve-Out:</i>	The Carve-Out shall be, collectively, (a) all fees required to be paid to the Clerk of the Bankruptcy Court and to the Office of the United States Trustee (the “<u>U.S. Trustee</u>”) pursuant to 28 U.S.C. §1930(a), (b) reasonable fees and expenses incurred by a trustee and payable under section 726(b) of the Bankruptcy Code in an aggregate amount not to exceed \$25,000, and (c) subject to the Approved Budget and to the extent allowed at any time, whether by interim order, procedural order, or otherwise, unpaid fees and expenses of the professionals (including any restructuring, sale, success, or other transaction fee of any investment bankers or financial advisors) retained by the Debtor and any official committee of unsecured creditors appointed in the Chapter 11 Case (the “<u>UCC</u>”), that (i) are incurred on or prior to the first business day following the date of delivery of the Carve-Out Trigger Notice (as defined below), or (ii) are incurred after the first business day following the date of delivery of a Carve-Out Trigger Notice, subject to a cap of \$500,000 in the aggregate for the Debtor’s professionals and the UCC’s professionals (the “<u>Carve-Out</u>”). On a weekly basis, budgeted fees, costs and expenses of professionals retained by the Debtor and the UCC, if any, shall be funded into a segregated escrow account held in trust in an amount as set forth in the Approved Budget (the “<u>Professional Fee Reserve</u>”). Amounts funded into the Professional Fee Reserve shall be considered used by the Debtor at such time as they are deposited into the Professional Fee Reserve for distribution to professionals in accordance with orders of the Bankruptcy Court. Any amounts remaining in the Professional Fee Reserve after payment of allowed fees and expenses shall be DIP Collateral. “<u>Carve-Out Trigger Notice</u>” shall mean a written notice delivered by email (or other electronic means) by the DIP Agent to the Debtor’s lead counsel, the U.S. Trustee, and lead counsel to the UCC (if any), which notice may only be delivered following the occurrence and during the continuation of an event of default under the DIP Facility.
<i>Maturity Date:</i>	The earliest to occur of (a) the 90th day following the Petition Date, (b) the 30th day following the Petition Date if the Final Order has not been entered by the Bankruptcy Court on or prior to such date, (b) the date a sale of all or substantially all of the assets of the Debtor is consummated, (c) the termination of the Asset Purchase Agreement for a material breach thereof by any seller thereunder without the prior written consent of the Required DIP Lenders, (d) the effective date of a plan of reorganization or liquidation, (e) entry of an order by the Bankruptcy Court approving (i) a motion seeking conversion or dismissal of the Chapter 11 Case or (ii) a

	motion seeking the appointment or election of a trustee, a responsible officer or examiner with enlarged powers relating to the operation of the Debtor's business, and (f) the date any or all of the DIP Obligations are accelerated in accordance with the DIP Orders. Notwithstanding anything in this Term Sheet or the DIP Orders to the contrary, simultaneously with the consummation of the sale that results in the occurrence of the Maturity Date pursuant to clause (c) above, the Debtor shall pay (or cause to be paid) the outstanding amount of the DIP Loans (together with all other DIP Obligations) from the proceeds of such sale, reserving proceeds (a) sufficient to pay accrued, unpaid and allowed administrative expenses (as of the date of the closing of such sale) to the extent set forth in the Approved Budget and (b) in an amount negotiated in good faith by the Required DIP Lenders and the Debtor that is necessary to fund costs for the wind-down of Debtor's bankruptcy estate following the closing of such sale.
<i>Fees and Expenses; Indemnity:</i>	(i) An upfront fee of 1.00% on the principal amount of the New Money DIP Loan (the "<u>Upfront Fee</u>"); and (ii) an exit fee of 1.00% on the principal amount of the New Money DIP Loan, payable on the Maturity Date (the "<u>Exit Fee</u>" and, together with the Upfront Fee, the "<u>DIP Fees</u>"). The DIP Fees shall be fully earned upon entry of the Interim Order and the Upfront Fee shall be netted against the first Interim Draw on the DIP Facility. The Debtor shall reimburse the DIP Agent and the DIP Lenders for all reasonable and documented costs and expenses, including legal fees, financial advisor fees, and other similar fees, costs and expenses incurred in connection with the DIP Facility and the Chapter 11 Case, whether incurred on a prepetition or postpetition basis, which shall be payable by Borrower promptly upon written demand and without the requirement for Bankruptcy Court approval. A copy of the summary invoice shall be provided to counsel to the Debtor, the U.S. Trustee, and counsel to the UCC, if any. The Debtor shall indemnify, pay and hold harmless the DIP Agent and each DIP Lender (and each of their respective directors, officers, members, employees, advisors and agents) against any loss, liability, cost or expense incurred in respect of the financing contemplated hereby or the use or the proposed use of proceeds thereof (except to the extent resulting from the gross negligence, bad faith or willful misconduct of the indemnified party, as determined by a final, non-appealable judgment of a court of competent jurisdiction). No DIP Fees shall be earned on account of any of the Roll-Up Loans.
<i>Releases</i>	The DIP Orders shall contain releases and exculpations for the DIP Agent, each DIP Lender and the Prepetition Secured Parties (in each case, in any capacity), in form and substance satisfactory to each such party, respectively, including, without limitation, releases from any avoidance

	actions, in each case subject to the investigation period provided in the DIP Orders.
<i>Closing Conditions to Interim Draws:</i>	The funding of each Interim Draw shall be conditioned upon the satisfaction of the following conditions precedent unless waived by the DIP Agent and each DIP Lender in its sole and absolute discretion: (i) the Debtor shall have timely delivered to the DIP Agent the Approved Budget or any update thereto required to be delivered in accordance with this Term Sheet and the Interim Order; (ii) the Debtor has not failed to disclose any material assumptions with respect to the Approved Budget; (iii) the Debtor shall have delivered to the DIP Agent a notice of borrowing in connection with such Interim Draw request no later than 11:00 AM ET one (1) business day prior to the requested funding date for such Interim Draw (or such later time as the DIP Agent may agree to in its sole discretion); (iv) Such Interim Draw shall be in a maximum amount not to exceed the forecasted amount of cash required to comply with the Approved Budget for the applicable week; (v) the Interim Order shall have been entered by the Bankruptcy Court in the Chapter 11 Case (after a hearing on notice to all parties having or asserting a lien on all or any portion of the DIP Collateral), which Interim Order shall not have been reversed, modified, amended, stayed, vacated, or subject to a stay pending appeal, in each case, without the prior written consent of the Required DIP Lenders and the Debtor shall be in compliance in all respects with the Interim Order; (vi) the Chapter 11 Case shall have been commenced in the Bankruptcy Court and all of the “first day” motions, orders and related pleadings (including a cash management order encompassing the cash management arrangements currently in place under the Prepetition Credit Agreement) and all other pleadings which relate to the DIP Facility shall have been reviewed in advance by the DIP Agent and each DIP Lender and shall be reasonably satisfactory in form and substance to the DIP Agent and each DIP Lender; (vii) The DIP Agent shall be satisfied that the liens and security interests of the DIP Agent have been perfected in the DIP Collateral and shall constitute first-priority liens (subject only to Prepetition Permitted Liens); (viii) the Debtor shall have insurance (including, without limitation, commercial general liability and property insurance) with respect to the DIP Collateral in such amounts and scope as is reasonably

	acceptable to the DIP Agent and each DIP Lender (which shall be deemed satisfied if such insurance as required by the Prepetition Credit Agreement remains in place); (ix) upon entry of the Interim Order, the entry into this Term Sheet shall not violate any requirement of law and shall not be enjoined, temporarily, preliminarily, or permanently; and (x) all applicable Milestones that are required to be complied with prior to or concurrently with the entry of the Interim Order and each Interim Draw shall have been complied with (or waived by the Required DIP Lenders).
<i>Closing Conditions to Subsequent Draws:</i>	The funding of each Subsequent Draw shall be conditioned upon the satisfaction of the following conditions precedent unless waived by the DIP Agent and each DIP Lender in its sole and absolute discretion: (i) the Debtor shall have timely delivered to the DIP Agent the Approved Budget or any update thereto required to be delivered in accordance with this Term Sheet and the DIP Orders and such other information (financial or otherwise) as may be reasonably requested by the Required DIP Lenders or the DIP Agent; (ii) the Debtor has not failed to disclose any material assumptions with respect to the Approved Budget; (iii) the Debtor shall have delivered to the DIP Agent a Notice of Borrowing in connection with such Subsequent Draw request no later than 11:00 AM ET one (1) business day prior to the requested funding date for such Subsequent Draw (or such later time as the DIP Agent may agree to in its sole discretion); (iv) Such Subsequent Draw shall be in a maximum amount not to exceed the forecasted amount of cash required to comply with the Approved Budget for the applicable week; (v) the Final Order shall have been entered by the Bankruptcy Court in the Chapter 11 Case, which Final Order shall not have been reversed, modified, amended, stayed, vacated, or subject to a stay pending appeal, in each case, without the prior written consent of the Required DIP Lenders and the Debtor shall be in compliance in all respects with the Final Order; (vi) the DIP Agent and each DIP Lender shall have received a copy of the fully-executed Asset Purchase Agreement, which shall be in form and substance consistent with the terms hereof and otherwise acceptable to the DIP Agent and each DIP Lender in its sole and absolute discretion; and (vii) all applicable Milestones that are required to be complied with prior to or concurrently with the entry of the Final Order and each

	Subsequent Draw shall have been complied with (or waived by the Required DIP Lenders).
<i>Budget:</i>	The Debtor shall prepare and deliver to the DIP Agent a 9-week cash flow forecast beginning with the week which includes the Petition Date through the ninth week thereafter showing anticipated receipts and disbursements in form and substance acceptable to the Required DIP Lenders (the “<u>Initial Budget</u>”), it being agreed that the Initial Budget attached to the Interim Order is in form and substance acceptable to the Required DIP Lenders. The Debtor shall provide updates thereto every two weeks (as updated, the “<u>Updated Budget</u>”) and report weekly on actual performance versus the Approved Budget (as defined below); <u>provided</u> that for purposes of compliance with this Term Sheet and the DIP Orders, cumulative operating disbursements, capital expenditures, non-operating disbursements (including professional fees of the Debtor and the UCC, if any) shall be tested weekly and receipts shall be tested every two weeks (in each case, on a line-by-line basis and subject to a 15% permitted variance (a “<u>Permitted Variance</u>”)); <u>provided further</u> that to the extent (i) the Debtor’s actual cumulative operating disbursements or actual cumulative capital expenditures are less than the projected disbursements provided for such line items in the Approved Budget or (ii) the Debtor’s actual cumulative receipts are greater than the projected receipts provided for such line item in the Approved Budget, such positive variance may be rolled forward to the immediately succeeding week for purposes of compliance with this Term Sheet and the DIP Orders. Without limiting the foregoing, for informational purposes only, the Debtor shall prepare and deliver an Updated Budget to the DIP Agent on a weekly basis. “<u>Approved Budget</u>” means, initially, the Initial Budget, and, thereafter, the most recent Updated Budget accepted by the Required DIP Lenders in writing.
<i>Reporting:</i>	From and after the Petition Date through the Maturity Date, not later than 5:00 p.m., New York City time, on or before the fifth business day after the end of each calendar month, the Debtor shall deliver a borrowing base certificate, in form and substance, as required under Section 5.1(n) of the Prepetition Credit Agreement. The DIP Agent shall have rights consistent with Section 5.1(o) of the Prepetition Credit Agreement to request updated appraisals and field examinations during the Chapter 11 Case. For the avoidance of doubt, prior to the Maturity Date, there shall be no mandatory prepayment or Event of Default, and the DIP Lenders may not exercise remedies, based solely on the Total Revolving Credit Exposure (as defined in the Prepetition Credit Agreement) exceeding the borrowing base at any time during the Chapter 11 Case.
<i>363 Sale Process:</i>	The Debtor shall consummate a sale process with respect to all or substantially all of its assets pursuant to Section 363 of the Bankruptcy Code (a “ <u>Sale</u> ”). In connection with the Sale, the Debtor and one or more

	affiliates of the DIP Lenders (including any acquisition vehicle formed in connection with a credit bid or other designee) (the “<u>Stalking Horse Purchaser</u>”) will enter into an asset purchase agreement (the “<u>Asset Purchase Agreement</u>”) in form and substance satisfactory to the DIP Agent and Required DIP Lenders. The process set forth above, including the designation of the Stalking Horse Purchaser, shall collectively be referred to as the “<u>363 Sale Process</u>”.
<i>Milestones:</i>	The Debtor shall conduct the 363 Sale Process and Chapter 11 Case in accordance with the following milestones (each, a “<u>Milestone</u>”) and unless waived, modified or extended by the Required DIP Lenders in their sole discretion, the failure of the Debtor to meet Milestones by the applicable specified deadlines set forth therefor (the “<u>Specified Deadline</u>”) shall constitute an Event of Default: • no later than December 9, 2024, the Company shall have commenced the Chapter 11 Case; • no later than one (1) business day after the Petition Date, the Debtor shall file with the Bankruptcy Court a motion, in form and substance acceptable to the Required DIP Lenders, seeking approval of (i) a Sale (the “<u>Sale Motion</u>”) and, the transaction in respect thereof, the “<u>Sale Transaction</u>”), (ii) entry into the Asset Purchase Agreement based on certain terms and conditions set forth in a Sale term sheet to be appended to the Sale Motion, (iii) bidding procedures in connection with approval of the Sale Transaction (the “<u>Bidding Procedures Motion</u>”); • no later than three (3) business days after the Petition Date, the Interim Order approving the DIP Facility shall be entered by the Bankruptcy Court; • no later than 18 days after the Petition Date, the Company shall have executed the Asset Purchase Agreement pursuant to which the Stalking Horse Purchaser will purchase substantially all assets of the Company free and clear of all liens, claims, interests and encumbrances, subject only to higher or otherwise better offers; • no later than 30 days after the Petition Date, the Bankruptcy Court shall have entered an order establishing bidding procedures consistent with the Bidding Procedures Motion (such order, the “<u>Bidding Procedures Order</u>”), which order shall be acceptable in form and substance to the DIP Agent and Required DIP Lenders; • no later than 30 days after the Petition Date, the Final Order approving the DIP Facility shall be entered by the Bankruptcy Court; • no later than 50 days after the Petition Date, the Borrower shall have held an auction, if applicable, in connection with the Sale Transaction;

	- no later than 55 days after the Petition Date, the Bankruptcy Court shall have entered an order approving the Sale Transaction (the “<u>Sale Order</u>”), which order shall be satisfactory in form and substance to the DIP Agent and the Required DIP Lenders; and - no later than 60 days after the Petition Date, the Borrower shall have consummated the Sale Transaction in accordance with the Sale Order that results in net proceeds allocated to the DIP Collateral sufficient to repay the DIP Obligations and Prepetition Loans in full in cash or such other consideration acceptable to the DIP Agent and Required DIP Lenders in their sole discretion (the “<u>Approved Sale</u>”).
<i>363 Credit Bid:</i>	The Interim Order shall provide that the DIP Lenders shall be permitted to credit bid, pursuant and subject to section 363(k) of the Bankruptcy Code or applicable law, the New Money DIP Loan in connection with any sale or disposition of assets in the Chapter 11 Case. The Final Order shall provide that the DIP Lenders shall be permitted to credit bid (pursuant to section 363(k) of the Bankruptcy Code or applicable law) the DIP Loans (including the Roll-Up Loans) and any Prepetition Loans (and any other applicable obligations) held by the DIP Lenders in connection with any sale or disposition of assets in the Chapter 11 Case (including any deposit in connection with such sale) and shall not be prohibited from making such credit bid “for cause” under section 363(k) of the Bankruptcy Code.
<i>Use of Proceeds:</i>	Proceeds of the DIP Facility will be used in compliance with the terms of the Approved Budget (a) to pay transaction costs, fees and expenses which are incurred in connection with the DIP Facility, (b) to pay professional fees of the Debtor and its estate and the UCC in accordance with the Approved Budget, and (c) for working capital and other general corporate purposes of the Debtor, all subject to certain restrictions to be set forth in the Interim Order or Final Order, as applicable, and the DIP Documents. Subject in all respects to Section 8.3 of the Prepetition Credit Agreement, the deemed proceeds of the Roll-Up Loans shall be used to refinance an equal amount on a dollar-for-dollar basis of the Prepetition Loans held by the DIP Lenders (or their affiliates) reducing the amount of the “Obligations” (as defined under the Prepetition Credit Agreement, the “<u>Prepetition Obligations</u>”) by such amount.
<i>Adequate Protection:</i>	As adequate protection for any diminution of the Prepetition Secured Parties’ interest in the “Collateral” (as defined in the Prepetition Credit Agreement) including without limitation any diminution resulting from the subordination of existing liens to the DIP Liens and/or the Debtor’s use of cash collateral pursuant to the DIP Orders, the Prepetition Collateral Agent shall receive, for the benefit of the Prepetition Secured Parties, the adequate protection granted to the Prepetition Secured Parties (A) pursuant to the DIP Orders (which shall include, without limitation, (i) monthly payments of the reasonable fees, costs and expenses of the Prepetition Secured Parties (including professional fees), (ii) subject to recharacterization as principal under the Prepetition Credit Agreement,

	monthly payment in cash of interest to the Prepetition Lenders at the non-default rate as in effect on the Petition Date under the Prepetition Credit Agreement, (iii) replacement liens on the DIP Collateral that shall be junior only to the DIP Liens and any Prepetition Permitted Liens, (iv) superpriority administrative expense claims with priority over any and all administrative expenses, whether heretofore or hereafter incurred, of the kind specified in sections 503(b) or 507(a) of the Bankruptcy Code, other than the superpriority administrative expense claims of the DIP Lenders and DIP Agent and the Carve-Out, subject to payment priority consistent with Section 8.3 of the Prepetition Credit Agreement, and (v) an acknowledgement of the unconditional right to credit bid the Prepetition Obligations as further set forth in this Term Sheet and (B) as otherwise required by the Bankruptcy Court pursuant to sections 361, 507, 363(e) and 364(d)(1) of the Bankruptcy Code or otherwise.
<i>Marshalling; 552(b) Waiver and Waiver of 506(c) Claims:</i>	Waiver of the equitable doctrine of “marshalling” as set forth in the Interim DIP Order and waivers of claims for necessary costs and expenses of preserving or disposing of property securing an allowed secured claim pursuant to section 506(c) and the section 552 “equities of the case” exception as set forth in the Final DIP Order.
<i>Mandatory Prepayments:</i>	The Debtor shall pay or prepay the DIP Loans and all other DIP Obligations (together with a cash reserve established by the DIP Agent to cover asserted contingent and indemnity obligations) until such obligations are paid in full immediately as follows: (i) 100% of the net cash proceeds of any sale or disposition of all or substantially all of Debtor’s assets pursuant to Section 363 of the Bankruptcy Code (other than the Sale Transaction to the Stalking Horse Purchaser pursuant to the Asset Purchase Agreement) simultaneous with the consummation thereof, after funding the Carve-Out and reserving proceeds sufficient to pay accrued, unpaid and allowed administrative expenses (as of the closing of such sale) to the extent set forth in the Approved Budget; (ii) 100% of the net cash proceeds of any other sale or other disposition by any Debtor of any assets, in a single transaction or series of related transactions (except for (a) de minimis asset sales approved by an order of the Bankruptcy Court that is in form and substance acceptable to the Required DIP Lenders or (b) sale of goods or services in the ordinary course of business); and (iii) 100% of the net cash proceeds of extraordinary receipts (including tax refunds, indemnity payments and insurance proceeds not included as proceeds of asset dispositions but excluding sales tax receipts contemplated to be received by the Debtor as set forth in the Approved Budget) by the Debtor. Any amounts so paid or prepaid may not be reborrowed. No reinvestment of the proceeds of any extraordinary receipts, asset sales or other proceeds

	described above shall be permitted without the prior written consent of the DIP Lenders. Subject in all respects to the senior right of payment of the ABL Roll-Up Loans vis-à-vis all other DIP Obligations (including, for the avoidance of doubt, the New Money DIP Loan), mandatory payments or prepayments and proceeds of DIP Collateral received by the Debtor outside the ordinary course of business will otherwise be applied in the following order of priority (unless otherwise determined by the DIP Lenders in their sole discretion), after giving effect to the Carve-Out and any other payments required pursuant to the DIP Orders: (1) <u>first</u>, to pay all documented out-of-pocket expenses of the DIP Lenders and the DIP Agent (including, without limitation, fees and expenses of counsel and external advisors); (2) <u>second</u>, to pay an amount equal to all accrued and unpaid interest owing to the DIP Lenders holding ABL Roll-Up Loans; (3) <u>third</u>, to repay any principal amounts outstanding in respect of the ABL Roll-Up Loans (including any amounts and interest that have been added to the principal balance); (4) <u>fourth</u>, to pay an amount equal to all accrued and unpaid interest owing to the DIP Lenders holding New Money DIP Loans; (5) <u>fifth</u>, to pay an amount equal to all accrued and unpaid interest owing to the DIP Lenders holding Term Loan Roll-Up Loans; (6) <u>sixth</u>, to repay any principal amounts outstanding in respect of the New Money DIP Loans (including any amounts and interest that have been added to the principal balance); (7) <u>seventh</u>, to repay any principal amounts outstanding in respect of the Term Loan Roll-Up Loans (including any amounts and interest that have been added to the principal balance); (8) <u>eighth</u>, all other amounts owing to the DIP Lenders and the DIP Agent; and (9) <u>last</u>, the balance, if any, after all of the DIP Obligations have been paid in full, to the Borrower subject in all respects to the rights, liens and claims of the Prepetition Collateral Agent for the benefit of the Prepetition Secured Parties.
<i>Events of Default:</i>	Each of following shall constitute an “<u>Event of Default</u>”: (i) the entry of an Interim Order or Final Order in form and substance that is not acceptable to the DIP Agent and the Required DIP Lenders in their sole discretion;

	(ii) failure by any Debtor to be in compliance in all respects with provisions of this Term Sheet, the DIP Documents and/or the DIP Orders; (iii) any request made by the Debtor for, or the reversal, modification, amendment, stay, reconsideration or vacatur of a DIP Order, as entered by the Bankruptcy Court, without the prior written consent of the DIP Agent and each DIP Lender; (iv) failure of any of the Milestones to be satisfied by the Specified Deadline; (v) failure of any representation or warranty to be true and correct in all material respects (or, to the extent qualified by materiality, in all respects) when made; (vi) the filing of any application by the Debtor (other than the application for financing provided by a third party which seeks authority to pay all of the DIP Obligations in full in cash upon entry of the order approving such financing) for the approval of (or an order is entered by the Court approving) any claim arising under Section 507(b) of the Bankruptcy Code or any other provision of the Bankruptcy Code or any security, mortgage, collateral interest or other lien in the Chapter 11 Case which is <i>pari passu</i> with or senior to the DIP Liens, excluding liens arising under the DIP Orders or pursuant to any other financing agreement made with the prior written consent of the DIP Agent and each DIP Lender; (vii) the commencement of any action by the Debtor or other authorized person (other than an action permitted by the DIP Orders) against any of the DIP Agent or any DIP Lender or any of their agents and employees to subordinate or avoid any liens made in connection with the DIP Orders; (viii) (1) the Debtor files a pleading in any court seeking or supporting an order to revoke, reverse, stay, vacate, amend, supplement or otherwise modify any DIP Order, the DIP Documents, or this Term Sheet or to disallow the DIP Obligations, in whole or in part, or (2) any material provision of the DIP Orders, the DIP Documents, or this Term Sheet or any other order of the Bankruptcy Court approving the Debtor's use of Cash Collateral (as defined in the DIP Orders), shall for any reason cease to be valid and binding (without the prior written consent of the DIP Agent and each DIP Lender); (ix) the filing with the Bankruptcy Court of a motion seeking approval of a sale under Section 363 (other than approval of a sale pursuant to the terms of the Asset Purchase Agreement) or a plan of reorganization or liquidation in the Chapter 11 Case that, in any such case, does not provide for indefeasible payment in full in cash to the DIP Agent and the DIP Lenders of the DIP Loans and all other amounts outstanding under the Term Sheet, the DIP Documents and
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	the DIP Orders on closing of such sale or the effective date of such plan, without the prior written consent of the DIP Agent and each DIP Lender; (x) the appointment in the Chapter 11 Case of a trustee, receiver, examiner, or responsible officer with enlarged powers relating to the operation of the business of the Debtor (powers beyond those set forth in sections 1106(a)(3) and (a)(4) of the Bankruptcy Code); (xi) the granting of relief from the automatic stay by the Bankruptcy Court to any other creditor or party in interest in the Chapter 11 Case with respect to any portion of the DIP Collateral exceeding \$100,000 in value in the aggregate; (xii) the failure to pay principal, cash interest (subject to a three (3) business day grace period, solely with respect to cash interest) or other DIP Obligations in full when due, including without limitation, on the Maturity Date; (xiii) the payment of, or application by the Debtor for authority to pay, any prepetition claim without prior written consent of the DIP Agent and the Required DIP Lenders other than amounts set forth in the Approved Budget (subject to any Permitted Variances); and (xiv) the failure to comply with the Approved Budget (subject to any Permitted Variances).
<i>Remedies Upon Event of Default:</i>	Upon the occurrence and during the continuance of any Event of Default, subject to five (5) business days' notice to the Debtor during which the Debtor may seek an emergency hearing before the Bankruptcy Court (at which hearing the sole issue shall be whether or not an Event of Default has occurred or is continuing), the DIP Agent may (and, at the direction of the DIP Lenders, shall) take all or any of the following actions without further order of or application to the Bankruptcy Court, and notwithstanding the automatic stay: (a) declare all DIP Obligations (including principal of, and accrued interest on, any outstanding DIP Loans) to be immediately due and payable; (b) terminate any further commitment to lend to the Borrower; and/or (c) exercise rights and remedies pursuant to the terms of the DIP Orders, or applicable law (including, without limitation, direct the Debtor (or file a motion in the name of the Debtor)), (i) to enforce the terms and provisions of the DIP Documents, (ii) to collect accounts receivable, without setoff by any account debtor, including to direct the Debtor to collect such account receivables, (iii) to sell or otherwise dispose of any all of the DIP Collateral on terms and conditions reasonably acceptable to the DIP Agent and the DIP Lenders pursuant to Sections 363, 365 and other applicable provisions of the Bankruptcy Code (and, without limiting the foregoing, direct the Debtor (or file

	a motion in the name of the Debtor) to assume and assign any lease or executory contract included in the DIP Collateral to the DIP Agent's designees in accordance with and subject to Section 365 of the Bankruptcy Code) and (iv) enter into the premises of any Debtor in connection with the orderly sale or disposition of the DIP Collateral (including, without limitation, complete any work in process); <i>provided</i> that the Debtor shall take all action that is reasonably necessary to cooperate with the DIP Agent in the DIP Agent's exercise of its rights and remedies and facilitate the realization upon the DIP Collateral by the DIP Agent.
<i>Agreement Among Lenders:</i>	Notwithstanding anything herein to the contrary, pursuant to Section 510 of the Bankruptcy Code, Sections 8.3 and 8.4 of the Prepetition Credit Agreement shall remain in full force and effect and shall continue to govern the relative payment priorities, rights and remedies of the Prepetition Secured Parties under the Prepetition Credit Agreement. The DIP Documents or DIP Orders will contain provisions consistent with Sections 8.3 and 8.4 of the Prepetition Credit Agreement in respect of the DIP Obligations held by holders of the ABL Roll-Up Loans and holders of all other DIP Loans.
<i>Governing Law:</i>	State of New York, except as governed by the Bankruptcy Code. In the event of a conflict or any inconsistency between the terms of this Term Sheet and the DIP Orders, the terms of the DIP Orders shall control.

EXHIBIT A

(DIP Commitment Schedule)

DIP Lender	DIP Commitment
AG Credit Strategies Fund	\$884,741.59
AO Middle Market Credit L.P.	\$3,634,146.74
Ares Capital Corporation	\$9,991,270.53
Ares Centre Street Partnership, L.P.	\$309,394.42
Ares Commercial Finance LP	\$199,909.01
Ares Credit Strategies Insurance Dedicated Fund Series Interests of the SALI Multi-Series Fund, L.P.	\$258,777.28
Ares Diversified Credit Strategies Fund (S), L.P.	\$217,906.38
ARES EUROPEAN CREDIT STRATEGIES FUND VIII (BUMA), L.P	\$181,707.54
Ares ND Credit Strategies Fund LLC	\$319,363.13
Ares Senior Direct Lending Master Fund II Designated Activity Company	\$11,584,623.45
Ares Senior Direct Lending Parallel Fund (L) II, L.P.	\$1,366,353.47
ARES SENIOR DIRECT LENDING PARALLEL FUND (U) II, L.P.	\$1,892,716.38
Ares SFERS Credit Strategies Fund LLC	\$1,041,816.16
Ares Strategic Income Fund	\$908,536.68
Chimney Tops Loan Fund, LLC	\$698,224.21
Cion Ares Diversified Credit Fund	\$2,461,799.43
Private Credit Fund C-1 Holdco, LLC - Series 1	\$84,054.37
SA Real Assets 20 Limited	\$1,214,659.23
Total	\$37,250,000.00

IN WITNESS WHEREOF, the undersigned, being the sole manager of Vobev, LLC,
has executed this Term Sheet as of the date first set forth above.

VOBEV, LLC

By

DocuSigned by:

Alan Carr

0DBFF0FF6164426...

Name: Alan J. Carr

Title: Manager

ARES CAPITAL CORPORATION,
as DIP Agent

By: 
Name: Mitchell Goldstein
Title: Authorized Signatory

ARES CAPITAL CORPORATION,

By: 
Name: Mitchell Goldstein
Title: Authorized Signatory

AG CREDIT STRATEGIES FUND,

By: Ares Capital Management LLC, as Investment
Manager

By: 
Name: Mitchell Goldstein
Title: Authorized Signatory

ARES CENTRE STREET PARTNERSHIP, L.P.,

By: Ares Centre Street GP, Inc., as general partner

By: 
Name: Mitchell Goldstein
Title: Authorized Signatory

ARES COMMERCIAL FINANCE, L.P.,

By: Ares Commercial Finance Management LP, as
manager

By: 
Name: Mitchell Goldstein
Title: Authorized Signatory

**ARES CREDIT STRATEGIES INSURANCE
DEDICATED FUND SERIES INTERESTS OF THE
SALI MULTI-SERIES FUND, L.P.,**

By: Ares Management LLC, its investment subadvisor

By: Ares Capital Management LLC, as subadvisor

By: 
Name: Mitchell Goldstein
Title: Authorized Signatory

ARES DIRECT FINANCE I, L.P.,

By: Ares Capital Management LLC, its investment
manager

By: 
Name: Mitchell Goldstein
Title: Authorized Signatory

**ARES DIVERSIFIED CREDIT STRATEGIES
FUND (S), L.P.,**

By: Ares Management LLC, its investment manager

By: Ares Capital Management LLC, its sub-advisor

By: 
Name: Mitchell Goldstein
Title: Authorized Signatory

**ARES EUROPEAN CREDIT STRATEGIES FUND
VIII (BUMA), L.P.,**

By: Ares Management Limited, its investment manager

By: Ares Capital Management LLC, its subadvisor

By: 

Name: Mitchell Goldstein
Title: Authorized Signatory

ARES ND CREDIT STRATEGIES FUND LLC,

By: Ares Capital Management LLC, its account manager

By: 

Name: Mitchell Goldstein
Title: Authorized Signatory

**ARES SENIOR DIRECT LENDING MASTER
FUND II DESIGNATED ACTIVITY COMPANY,**

By: Ares SDL II Capital Management LLC, its Manager

By: 

Name: Mitchell Goldstein
Title: Authorized Signatory

**ARES SENIOR DIRECT LENDING PARALLEL
FUND (L) II, L.P.,**

By: Ares SDL Capital Management LLC, its Manager

By: 

Name: Mitchell Goldstein
Title: Authorized Signatory

**ARES SENIOR DIRECT LENDING PARALLEL
FUND (U) II, L.P.,**

By: Ares SDL Capital Management LLC, its Manager

By: 

Name: Mitchell Goldstein
Title: Authorized Signatory

ARES SFERS CREDIT STRATEGIES FUND LLC,

By: Ares Capital Management LLC, its investment
manager

By: 

Name: Mitchell Goldstein
Title: Authorized Signatory

ARES STRATEGIC INCOME FUND,

By: 
Name: Mitchell Goldstein
Title: Authorized Signatory

CHIMNEY TOPS LOAN FUND, LLC,

By: Ares Capital Management LLC, its Account Manager

By: 
Name: Mitchell Goldstein
Title: Authorized Signatory

CION ARES DIVERSIFIED CREDIT FUND,

By: 
Name: Mitchell Goldstein
Title: Authorized Signatory

SA REAL ASSETS 20 LIMITED,

By: Ares Management LLC, its investment manager

By: Ares Capital Management LLC, as subadvisor

By: 
Name: Mitchell Goldstein
Title: Authorized Signatory

SDL II CREDIT B1 LP,

By: Ares SDL Capital Management LLC, its servicer

By: 

Name: Mitchell Goldstein
Title: Authorized Signatory

SDL II CREDIT B2 LP,

By: Ares Capital Management LLC, its servicer

By: 

Name: Mitchell Goldstein
Title: Authorized Signatory

IVY HILL REVOLVER FUNDING II LP,

By: Ivy Hill Asset Management, L.P., its Manager

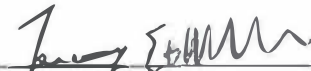
By: 

Name: Mitchell Goldstein
Title: Authorized Signatory

**AO MIDDLE MARKET CREDIT FINANCING
L.P.,**

By: AO Middle Market Credit Financing GP Ltd., its
general partner

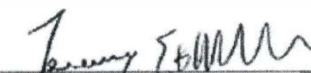
By: 
Name: K. Patel
Title: Director

By: 
Name: Jeremy Ehrlich
Title: Director

AO MIDDLE MARKET CREDIT L.P.,

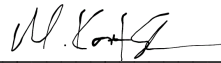
By: OCM Middle Market Credit G.P. Inc., its general
partner

By: 
Name: K. Patel
Title: Director

By: 
Name: Jeremy Ehrlich
Title: Director

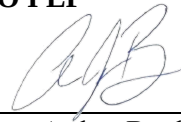
**PRIVATE CREDIT FUND C-1 HOLDCO, LLC –
SERIES 1**

By: Ares Capital Management LLC, its servicer

By: 
Name: M. Kort Schnabel
Title: Authorized Signatory

ACF FINCO I LP

By



Name: Arthur Boyle
Title: Authorized Signatory

ACF FINCO II LLC

By: Ares Commercial Finance Management LP,
as Investment Manager

By



Name: Arthur Boyle
Title: Authorized Signatory

EXHIBIT B

Approved Budget

Vobev

CF Forecast - 9W Budget

As of 12/08/24

Privileged & Confidential

(\$ in thousands, unless otherwise noted)

Year:	2024	2024	2024	2024	2025	2025	2025	2025	2025	
Month:	Dec	Dec	Dec	Dec	Jan	Jan	Jan	Jan	Feb	9W
Period Ended (Fri):	12/13/24	12/20/24	12/27/24	01/03/25	01/10/25	01/17/25	01/24/25	01/31/25	02/07/25	Total
Actual / Forecast:	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast

9W Overview

Cash Receipts	\$ 1,333	\$ 2,112	\$ 3,039	\$ 3,139	\$ 1,832	\$ 2,684	\$ 2,084	\$ 787	\$ 2,274	\$ 19,285
Operating Disbursements	(1,935)	(1,365)	(3,355)	(1,466)	(2,441)	(1,049)	(2,135)	(2,002)	(3,499)	(19,248)
Total Operating Cash Flow	\$ (602)	\$ 747	\$ (316)	\$ 1,673	\$ (609)	\$ 1,635	\$ (51)	\$ (1,215)	\$ (1,225)	\$ 37
Non-Operating Disbursements										
Capital Expenditure	(500)	-	(250)	-	(700)	(350)	-	(6,569)	-	(8,369)
Professional Fees	(442)	(655)	(482)	(447)	(856)	(419)	(419)	(419)	(3,666)	(7,805)
Other Non-Operating Disbursements	-	(2,100)	(1,500)	(1,500)	(1,500)	(1,000)	(855)	-	(5,665)	(14,120)
Total Non-Operating Disbursements	\$ (942)	\$ (2,755)	\$ (2,232)	\$ (1,947)	\$ (3,056)	\$ (1,769)	\$ (1,274)	\$ (6,987)	\$ (9,331)	\$ (30,294)
Total Interest & Fees	(373)	-	-	(3,305)	-	-	-	(3,043)	(993)	(7,713)
DIP Draws/Paydowns	2,000	3,172	2,548	3,579	3,665	134	1,325	11,245	9,583	37,250
Total Net Cash Flow	\$ 83	\$ 1,164	\$ -	\$ -	\$ -	\$ 0	\$ -	\$ -	\$ (1,967)	\$ (720)
Net Cash Balance										
Beginning Cash Balance	753	836	2,000	2,000	2,000	2,000	2,000	2,000	2,000	753
Net Cash Flow	83	1,164	-	-	-	0	-	-	(1,967)	(720)
Ending Cash Balance (Book)	\$ 836	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 33	\$ 33

Vobev

Privileged & Confidential

Professional Fee Accrual

As of 12/08/24

(\$ in thousands, unless otherwise noted)

Year:	2024	2024	2024	2024	2025	2025	2025	2025	2025	
Month:	Dec	Dec	Dec	Dec	Jan	Jan	Jan	Jan	Feb	9W
Period Ended (Fri):	12/13/24	12/20/24	12/27/24	01/03/25	01/10/25	01/17/25	01/24/25	01/31/25	02/07/25	Total
Actual / Forecast:	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast

Professional Fee Schedule (Accrual)

Debtor Counsel	\$ 95	\$ 160	\$ 95	\$ 95	\$ 160	\$ 95	\$ 95	\$ 95	\$ 414	\$ 1,300
FTI Consulting	134	134	124	100	110	110	110	110	260	1,191
Claims Agent	18	30	18	18	30	18	18	18	78	245
Debtor Advisor	\$ 151	\$ 164	\$ 141	\$ 118	\$ 140	\$ 128	\$ 128	\$ 128	\$ 338	\$ 1,436
Debtor Banker	\$ -	\$ -	\$ -	\$ 39	\$ 225	\$ -	\$ -	\$ -	\$ 1,856	\$ 2,119
Lender Counsel	\$ 167	\$ 282	\$ 167	\$ 167	\$ 282	\$ 167	\$ 167	\$ 167	\$ 732	\$ 2,300
UCC Counsel	18	31	18	18	31	18	18	18	80	250
UCC Financial Advisor	11	18	11	11	18	11	11	11	48	150
US Trustee	-	-	50	-	-	-	-	-	200	250
Committee Professionals	\$ 29	\$ 49	\$ 79	\$ 29	\$ 49	\$ 29	\$ 29	\$ 29	\$ 327	\$ 650
Total	\$ 442	\$ 655	\$ 482	\$ 447	\$ 856	\$ 419	\$ 419	\$ 419	\$ 3,666	\$ 7,805

SCHEDULE 1

(Prepetition Permitted Liens)

DEBTOR	FILING OFFICE	DATE OF FILING	FILE NUMBER	SECURED PARTY
Vobev, LLC	Utah	June 10, 2024	20241064321-6	Toyota Industries Commercial Finance, Inc.

EXHIBIT B

DIP Term Sheet

VOBEV, LLC

Senior Secured Superpriority DIP Financing Term Sheet

THIS TERM SHEET (INCLUDING ALL SCHEDULES, ANNEXES AND EXHIBITS HERETO, THE “TERM SHEET”) DESCRIBES THE PRINCIPAL TERMS AND CONDITIONS OF A PROPOSED SENIOR SECURED SUPERPRIORITY DEBTOR-IN-POSSESSION CREDIT FACILITY TO BE PROVIDED BY THE DIP LENDERS (AS DEFINED BELOW) TO VOBEB, LLC, A UTAH LIMITED LIABILITY COMPANY (THE “BORROWER”) IN CONNECTION WITH THE CASE (THE “CHAPTER 11 CASE”) FILED BY THE BORROWER (AS DEFINED BELOW) (THE “COMPANY” OR THE “DEBTOR”) IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF UTAH (THE “BANKRUPTCY COURT”) PURSUANT TO CHAPTER 11 OF TITLE 11 OF THE UNITED STATES CODE (AS AMENDED, THE “BANKRUPTCY CODE”) ON DECEMBER 9, 2024 (THE “PETITION DATE”). THE DIP FACILITY (AS DEFINED BELOW) IS BEING PROVIDED BY THE DIP LENDERS IN RELIANCE UPON THE PROSECUTION AND CONSUMMATION OF THE 363 SALE PROCESS (AS DEFINED BELOW).

THIS TERM SHEET IS BEING PROVIDED ON A CONFIDENTIAL BASIS AND IT, ALONG WITH ITS CONTENTS AND EXISTENCE, MAY NOT BE DISTRIBUTED, DISCLOSED OR DISCUSSED WITH ANY OTHER PARTY BUT MAY BE FILED WITH THE BANKRUPTCY COURT IN CONNECTION WITH THE CHAPTER 11 CASE. THIS TERM SHEET IS NOT AN OFFER FOR THE PURCHASE, SALE OR SUBSCRIPTION OR INVITATION OF ANY OFFER TO BUY, SELL OR TO SUBSCRIBE FOR ANY SECURITIES. THE TERMS AND CONDITIONS SET FORTH IN THIS TERM SHEET DO NOT CONSTITUTE OR CREATE AN AGREEMENT, OBLIGATION OR COMMITMENT OF ANY KIND BY OR ON BEHALF OF ANY PARTY, UNLESS AND UNTIL THE INTERIM ORDER (AS DEFINED BELOW) IS ENTERED IN THE CHAPTER 11 CASE BY THE BANKRUPTCY COURT.

<i>Borrower:</i>	Vobev, LLC, a Utah limited liability company, as debtor and debtor-in-possession under the Bankruptcy Code.
<i>Prepetition Credit Agreement:</i>	The Borrower is a party to that certain Credit and Guaranty Agreement, dated as of April 20, 2023 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “ <u>Prepetition Credit Agreement</u> ” and the loans thereunder, the “ <u>Prepetition Loans</u> ”), by and among, <i>inter alia</i> , the Parent, the Borrower, certain other subsidiaries of the Parent, the financial institutions from time to time party thereto (the “ <u>Prepetition Lenders</u> ”), Ares Capital Corporation, as administrative agent (the “ <u>Prepetition Administrative Agent</u> ”) and ACF FINCO I LP, as revolving agent and collateral agent (the “ <u>Prepetition Revolving Agent</u> ” and “ <u>Prepetition Collateral Agent</u> ”, and together with the Prepetition Administrative Agent and the Prepetition Lenders, the “ <u>Prepetition Secured Parties</u> ”). The Prepetition Loans consist of (a) a secured superpriority asset-based revolving credit facility in an aggregate principal amount of \$40,877,477.92 (the “ <u>Prepetition Revolving Loans</u> ”), (b) initial term loans in an aggregate principal amount of \$197,666,427.70 (the “ <u>Prepetition Initial Term Loans</u> ”) and (c) \$163,474,824.44 of delayed draw term loans (the “ <u>Prepetition Delayed Draw Term Loans</u> ” and,

	together with the Prepetition Initial Term Loans, the “ <u>Prepetition Term Loans</u> ”).
<i>DIP Facility:</i>	A \$115,377,477.92 senior secured superpriority debtor-in-possession term loan credit facility (the “<u>DIP Facility</u>” and the obligations thereunder, the “<u>DIP Obligations</u>”), consisting of (a) a multiple draw new money term loan (the “<u>New Money DIP Loan</u>”) to be made and funded from time to time in accordance with the Approved Budget (as defined below) during the Availability Period (as defined below) in the aggregate principal amount of up to \$37,250,000 (the “<u>DIP Commitment</u>”), of which up to \$14,000,000 of the DIP Commitment shall be made available in weekly drawings in accordance with the Approved Budget upon entry of the interim order approving the DIP Facility (each borrowing, an “<u>Interim Draw</u>”), which order shall be satisfactory to the Required DIP Lenders (as defined below) (the “<u>Interim Order</u>”), and the remainder of the DIP Commitment being made available in weekly drawings in accordance with the Approved Budget upon entry of the final order approving the DIP Facility (each borrowing, a “<u>Subsequent Draw</u>”), which order shall be satisfactory to the Required DIP Lenders (the “<u>Final Order</u>” and, together with the Interim Order, the “<u>DIP Orders</u>”) and (b) upon entry of the Final Order, a deemed “roll up” on a cashless dollar-for-dollar basis of (x) the Prepetition Revolving Loans (the “<u>ABL Roll-Up Loans</u>”) <i>plus</i> (y) \$37,250,000 of the Prepetition Term Loans held by the DIP Lenders (or their affiliates) on a <i>pro rata</i> basis (the “<u>Term Loan Roll-Up Loans</u>”), in each case, to be deemed incurred as of the date of entry of the Final Order (the “<u>ABL Roll-Up Loans</u>” and the “<u>Term Loan Roll-Up Loans</u>”, collectively, the “<u>Roll-Up Loans</u>”; the Roll-Up Loans together with the New Money DIP Loan, collectively, the “<u>DIP Loans</u>”); <i>provided</i> that after giving effect to the principal balance of all New Money DIP Loans, the aggregate principal balance of all New Money DIP Loans shall not exceed the DIP Commitment; <i>provided, further</i>, that no DIP Lender shall be obligated to make New Money DIP Loans in an amount in excess of the portion of the DIP Commitment set forth next to such DIP Lender’s name in the table set forth on <u>Exhibit A</u> hereto. The ABL Roll-Up Loans shall (x) be senior in right of payment to the other DIP Obligations, including for the avoidance of doubt, the New Money DIP Loan and (y) not be subject to a “borrowing base” during the Chapter 11 Case. The proceeds of the New Money DIP Loans shall be funded into a deposit account of the Borrower. Such account shall be subject to the DIP Liens (as defined below) in favor of the DIP Agent, which shall be perfected pursuant to the DIP Orders and shall be subject to an account control agreement reasonably satisfactory to the DIP Agent if required by the DIP Agent. “<u>Availability Period</u>” means the period from the date of entry of the Interim Order to the earliest of (i) the Maturity Date (as defined below)

	and (ii) the date of termination of the DIP Facility pursuant to the terms hereof or the DIP Orders.
<i>DIP Loan Documentation:</i>	At the option of the Required DIP Lenders (as defined below), the Debtor shall execute definitive financing documentation with respect to the DIP Credit Facility, including, without limitation, a credit agreement (the “<u>DIP Credit Agreement</u>”), guarantees and security documents, in each case, satisfactory in form and substance to each of the DIP Agent, the Required DIP Lenders and the Debtor (collectively, the “<u>DIP Documents</u>”). The provisions of the DIP Documents shall, upon execution, supersede the provisions of this Term Sheet; <i>provided</i> that if the Required DIP Lenders determine not to require the Debtor to execute additional DIP Documents, the provisions of this Term Sheet and the DIP Orders shall govern the DIP Facility. The provisions of the DIP Documents shall be consistent with this Term Sheet and the DIP Orders. The DIP Credit Agreement shall contain representations and warranties, conditions precedent, affirmative and negative covenants, indemnities, events of default, and remedies in form and substance substantially similar to the Prepetition Credit Agreement (with such modifications as are (i) set forth herein, and (ii) usual and customary for DIP financings of this type). Other DIP Documents, such as transaction documents, subordination agreements, intercreditor agreements, and other material agreements, shall be, in each case, usual and customary for DIP financings of this type and in form and substance substantially similar to the applicable documents entered into in connection with the Prepetition Credit Agreement. The definition of “<u>Required DIP Lenders</u>” (or any equivalent term with respect to the DIP Facility) shall refer to DIP Lenders holding at least a majority in principal amount of the outstanding DIP Loans and unfunded DIP Commitment.
<i>DIP Lenders:</i>	Certain Prepetition Lenders who elect to provide DIP financing (the “ <u>DIP Lenders</u> ”). All Prepetition Lenders (or their affiliates) will be offered the right to participate in the DIP Facility <i>pro rata</i> with their holdings under the Prepetition Credit Agreement.
<i>DIP Agent:</i>	Ares Capital Corporation (in such capacity, the “ <u>DIP Agent</u> ” and, together with the DIP Lenders, the “ <u>DIP Secured Parties</u> ”).
<i>Interest Rate:</i>	<u>New Money DIP Loan</u>: SOFR + 9.00% per annum, compounded monthly, paid in kind. <u>Term Loan Roll-Up Loans</u>: Same as the non-default rate on the corresponding Prepetition Loans as in effect on the Petition Date under the Prepetition Credit Agreement, paid in kind. <u>ABL Roll-Up Loans</u>: Same as the non-default rate on the corresponding Prepetition Loans as in effect on the Petition Date under the Prepetition Credit Agreement, paid in cash.

<i>Default Rate:</i>	At all times following the occurrence and during the continuance of an Event of Default and notice from the Required DIP Lenders to the Borrower, principal, interest and all other amounts due on the DIP Loans shall bear interest at a rate equal to 2.00% per annum in excess of the interest rate set forth under “Interest Rate” above.
<i>Security and Priority:</i>	The DIP Secured Parties shall be granted, pursuant to sections 364(c)(2), 364(c)(3) and 364(d)(1) of the Bankruptcy Code, continuing, valid, binding, enforceable, non-avoidable, and automatically perfected, post-petition first priority security interests and liens (the “<u>DIP Liens</u>”) on all tangible, intangible, real and personal property of the Debtor (including without limitation, all prepetition and post-petition property and assets of the Debtor and all equity interests owned by the Debtor), and all other property of the Debtor of whatever kind, nature or description, whether acquired or created prepetition or post-petition to secure the DIP Obligations, and the proceeds, rents, profits, and offspring of each of the foregoing (the “<u>DIP Collateral</u>”), other than contracts, leases and licenses solely to the extent a lien is not permitted by law to attach to such property, in which case the proceeds of such contracts, leases and other licenses shall be DIP Collateral. The DIP Liens shall be subject only to validly perfected, enforceable and non-avoidable liens existing as of the Petition Date to which the liens securing the obligations under the Prepetition Credit Agreement were subject and which are listed on a schedule to the DIP Orders (the “<u>Prepetition Permitted Liens</u>”). Notwithstanding the foregoing, the DIP Liens shall not extend to, and the DIP Collateral shall not consist of, avoidance actions brought pursuant to Chapter 5 of the Bankruptcy Code or applicable state law equivalents, but (subject to entry of the Final Order) shall include the proceeds therefrom. For the avoidance of doubt, the DIP Liens shall include and the DIP Collateral shall consist of (subject to entry of the Final Order) all proceeds of real property, including non-residential leaseholds. For the avoidance of doubt, the DIP Liens shall prime and be senior to the lien of the Prepetition Agent, for the benefit of the Prepetition Secured Parties. The DIP Liens granted under Section 364(d)(1) of the Bankruptcy Code shall not be <i>pari passu</i> with, or subordinated to, any other liens or security interests (whether currently existing or hereafter created), subject in each case only to the Carve-Out and any Prepetition Permitted Liens. All DIP Obligations shall also constitute allowed superpriority administrative expense claims (the “<u>Superpriority Claims</u>”) in the Chapter 11 Case and shall have priority over all other claims and administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code. The DIP Liens and the Superpriority Claims shall be subject to the Carve-Out (as defined below). All of the liens described herein with respect to the assets of the Debtor shall be effective and perfected by the Interim Order and the Final Order and without the necessity of the execution of mortgages, security agreements, pledge agreements, financing statements or other agreements. Notwithstanding the foregoing, the Debtor shall take all action that may

	be reasonably necessary or desirable, or that the Required DIP Lenders or the DIP Agent may reasonably request, to at all times maintain the validity, perfection, enforceability and priority of the security interest and liens of the DIP Agent in the DIP Collateral, or to enable the DIP Agent to protect, exercise or enforce its rights hereunder, under the DIP Orders and in the DIP Collateral, so long as the cost of maintaining or perfecting the security interest is not excessive in view of the benefits to be obtained.
<i>Carve-Out:</i>	The Carve-Out shall be, collectively, (a) all fees required to be paid to the Clerk of the Bankruptcy Court and to the Office of the United States Trustee (the “<u>U.S. Trustee</u>”) pursuant to 28 U.S.C. §1930(a), (b) reasonable fees and expenses incurred by a trustee and payable under section 726(b) of the Bankruptcy Code in an aggregate amount not to exceed \$25,000, and (c) subject to the Approved Budget and to the extent allowed at any time, whether by interim order, procedural order, or otherwise, unpaid fees and expenses of the professionals (including any restructuring, sale, success, or other transaction fee of any investment bankers or financial advisors) retained by the Debtor and any official committee of unsecured creditors appointed in the Chapter 11 Case (the “<u>UCC</u>”), that (i) are incurred on or prior to the first business day following the date of delivery of the Carve-Out Trigger Notice (as defined below), or (ii) are incurred after the first business day following the date of delivery of a Carve-Out Trigger Notice, subject to a cap of \$500,000 in the aggregate for the Debtor’s professionals and the UCC’s professionals (the “<u>Carve-Out</u>”). On a weekly basis, budgeted fees, costs and expenses of professionals retained by the Debtor and the UCC, if any, shall be funded into a segregated escrow account held in trust in an amount as set forth in the Approved Budget (the “<u>Professional Fee Reserve</u>”). Amounts funded into the Professional Fee Reserve shall be considered used by the Debtor at such time as they are deposited into the Professional Fee Reserve for distribution to professionals in accordance with orders of the Bankruptcy Court. Any amounts remaining in the Professional Fee Reserve after payment of allowed fees and expenses shall be DIP Collateral. “<u>Carve-Out Trigger Notice</u>” shall mean a written notice delivered by email (or other electronic means) by the DIP Agent to the Debtor’s lead counsel, the U.S. Trustee, and lead counsel to the UCC (if any), which notice may only be delivered following the occurrence and during the continuation of an event of default under the DIP Facility.
<i>Maturity Date:</i>	The earliest to occur of (a) the 90th day following the Petition Date, (b) the 30th day following the Petition Date if the Final Order has not been entered by the Bankruptcy Court on or prior to such date, (b) the date a sale of all or substantially all of the assets of the Debtor is consummated, (c) the termination of the Asset Purchase Agreement for a material breach thereof by any seller thereunder without the prior written consent of the Required DIP Lenders, (d) the effective date of a plan of reorganization or liquidation, (e) entry of an order by the Bankruptcy Court approving (i) a motion seeking conversion or dismissal of the Chapter 11 Case or (ii) a

	motion seeking the appointment or election of a trustee, a responsible officer or examiner with enlarged powers relating to the operation of the Debtor's business, and (f) the date any or all of the DIP Obligations are accelerated in accordance with the DIP Orders. Notwithstanding anything in this Term Sheet or the DIP Orders to the contrary, simultaneously with the consummation of the sale that results in the occurrence of the Maturity Date pursuant to clause (c) above, the Debtor shall pay (or cause to be paid) the outstanding amount of the DIP Loans (together with all other DIP Obligations) from the proceeds of such sale, reserving proceeds (a) sufficient to pay accrued, unpaid and allowed administrative expenses (as of the date of the closing of such sale) to the extent set forth in the Approved Budget and (b) in an amount negotiated in good faith by the Required DIP Lenders and the Debtor that is necessary to fund costs for the wind-down of Debtor's bankruptcy estate following the closing of such sale.
<i>Fees and Expenses; Indemnity:</i>	(i) An upfront fee of 1.00% on the principal amount of the New Money DIP Loan (the "<u>Upfront Fee</u>"); and (ii) an exit fee of 1.00% on the principal amount of the New Money DIP Loan, payable on the Maturity Date (the "<u>Exit Fee</u>" and, together with the Upfront Fee, the "<u>DIP Fees</u>"). The DIP Fees shall be fully earned upon entry of the Interim Order and the Upfront Fee shall be netted against the first Interim Draw on the DIP Facility. The Debtor shall reimburse the DIP Agent and the DIP Lenders for all reasonable and documented costs and expenses, including legal fees, financial advisor fees, and other similar fees, costs and expenses incurred in connection with the DIP Facility and the Chapter 11 Case, whether incurred on a prepetition or postpetition basis, which shall be payable by Borrower promptly upon written demand and without the requirement for Bankruptcy Court approval. A copy of the summary invoice shall be provided to counsel to the Debtor, the U.S. Trustee, and counsel to the UCC, if any. The Debtor shall indemnify, pay and hold harmless the DIP Agent and each DIP Lender (and each of their respective directors, officers, members, employees, advisors and agents) against any loss, liability, cost or expense incurred in respect of the financing contemplated hereby or the use or the proposed use of proceeds thereof (except to the extent resulting from the gross negligence, bad faith or willful misconduct of the indemnified party, as determined by a final, non-appealable judgment of a court of competent jurisdiction). No DIP Fees shall be earned on account of any of the Roll-Up Loans.
<i>Releases</i>	The DIP Orders shall contain releases and exculpations for the DIP Agent, each DIP Lender and the Prepetition Secured Parties (in each case, in any capacity), in form and substance satisfactory to each such party, respectively, including, without limitation, releases from any avoidance

	actions, in each case subject to the investigation period provided in the DIP Orders.
<i>Closing Conditions to Interim Draws:</i>	The funding of each Interim Draw shall be conditioned upon the satisfaction of the following conditions precedent unless waived by the DIP Agent and each DIP Lender in its sole and absolute discretion: (i) the Debtor shall have timely delivered to the DIP Agent the Approved Budget or any update thereto required to be delivered in accordance with this Term Sheet and the Interim Order; (ii) the Debtor has not failed to disclose any material assumptions with respect to the Approved Budget; (iii) the Debtor shall have delivered to the DIP Agent a notice of borrowing in connection with such Interim Draw request no later than 11:00 AM ET one (1) business day prior to the requested funding date for such Interim Draw (or such later time as the DIP Agent may agree to in its sole discretion); (iv) Such Interim Draw shall be in a maximum amount not to exceed the forecasted amount of cash required to comply with the Approved Budget for the applicable week; (v) the Interim Order shall have been entered by the Bankruptcy Court in the Chapter 11 Case (after a hearing on notice to all parties having or asserting a lien on all or any portion of the DIP Collateral), which Interim Order shall not have been reversed, modified, amended, stayed, vacated, or subject to a stay pending appeal, in each case, without the prior written consent of the Required DIP Lenders and the Debtor shall be in compliance in all respects with the Interim Order; (vi) the Chapter 11 Case shall have been commenced in the Bankruptcy Court and all of the “first day” motions, orders and related pleadings (including a cash management order encompassing the cash management arrangements currently in place under the Prepetition Credit Agreement) and all other pleadings which relate to the DIP Facility shall have been reviewed in advance by the DIP Agent and each DIP Lender and shall be reasonably satisfactory in form and substance to the DIP Agent and each DIP Lender; (vii) The DIP Agent shall be satisfied that the liens and security interests of the DIP Agent have been perfected in the DIP Collateral and shall constitute first-priority liens (subject only to Prepetition Permitted Liens); (viii) the Debtor shall have insurance (including, without limitation, commercial general liability and property insurance) with respect to the DIP Collateral in such amounts and scope as is reasonably

	acceptable to the DIP Agent and each DIP Lender (which shall be deemed satisfied if such insurance as required by the Prepetition Credit Agreement remains in place); (ix) upon entry of the Interim Order, the entry into this Term Sheet shall not violate any requirement of law and shall not be enjoined, temporarily, preliminarily, or permanently; and (x) all applicable Milestones that are required to be complied with prior to or concurrently with the entry of the Interim Order and each Interim Draw shall have been complied with (or waived by the Required DIP Lenders).
<i>Closing Conditions to Subsequent Draws:</i>	The funding of each Subsequent Draw shall be conditioned upon the satisfaction of the following conditions precedent unless waived by the DIP Agent and each DIP Lender in its sole and absolute discretion: (i) the Debtor shall have timely delivered to the DIP Agent the Approved Budget or any update thereto required to be delivered in accordance with this Term Sheet and the DIP Orders and such other information (financial or otherwise) as may be reasonably requested by the Required DIP Lenders or the DIP Agent; (ii) the Debtor has not failed to disclose any material assumptions with respect to the Approved Budget; (iii) the Debtor shall have delivered to the DIP Agent a Notice of Borrowing in connection with such Subsequent Draw request no later than 11:00 AM ET one (1) business day prior to the requested funding date for such Subsequent Draw (or such later time as the DIP Agent may agree to in its sole discretion); (iv) Such Subsequent Draw shall be in a maximum amount not to exceed the forecasted amount of cash required to comply with the Approved Budget for the applicable week; (v) the Final Order shall have been entered by the Bankruptcy Court in the Chapter 11 Case, which Final Order shall not have been reversed, modified, amended, stayed, vacated, or subject to a stay pending appeal, in each case, without the prior written consent of the Required DIP Lenders and the Debtor shall be in compliance in all respects with the Final Order; (vi) the DIP Agent and each DIP Lender shall have received a copy of the fully-executed Asset Purchase Agreement, which shall be in form and substance consistent with the terms hereof and otherwise acceptable to the DIP Agent and each DIP Lender in its sole and absolute discretion; and (vii) all applicable Milestones that are required to be complied with prior to or concurrently with the entry of the Final Order and each

	Subsequent Draw shall have been complied with (or waived by the Required DIP Lenders).
<i>Budget:</i>	The Debtor shall prepare and deliver to the DIP Agent a 9-week cash flow forecast beginning with the week which includes the Petition Date through the ninth week thereafter showing anticipated receipts and disbursements in form and substance acceptable to the Required DIP Lenders (the “<u>Initial Budget</u>”), it being agreed that the Initial Budget attached to the Interim Order is in form and substance acceptable to the Required DIP Lenders. The Debtor shall provide updates thereto every two weeks (as updated, the “<u>Updated Budget</u>”) and report weekly on actual performance versus the Approved Budget (as defined below); <u>provided</u> that for purposes of compliance with this Term Sheet and the DIP Orders, cumulative operating disbursements, capital expenditures, non-operating disbursements (including professional fees of the Debtor and the UCC, if any) shall be tested weekly and receipts shall be tested every two weeks (in each case, on a line-by-line basis and subject to a 15% permitted variance (a “<u>Permitted Variance</u>”)); <u>provided further</u> that to the extent (i) the Debtor’s actual cumulative operating disbursements or actual cumulative capital expenditures are less than the projected disbursements provided for such line items in the Approved Budget or (ii) the Debtor’s actual cumulative receipts are greater than the projected receipts provided for such line item in the Approved Budget, such positive variance may be rolled forward to the immediately succeeding week for purposes of compliance with this Term Sheet and the DIP Orders. Without limiting the foregoing, for informational purposes only, the Debtor shall prepare and deliver an Updated Budget to the DIP Agent on a weekly basis. “<u>Approved Budget</u>” means, initially, the Initial Budget, and, thereafter, the most recent Updated Budget accepted by the Required DIP Lenders in writing.
<i>Reporting:</i>	From and after the Petition Date through the Maturity Date, not later than 5:00 p.m., New York City time, on or before the fifth business day after the end of each calendar month, the Debtor shall deliver a borrowing base certificate, in form and substance, as required under Section 5.1(n) of the Prepetition Credit Agreement. The DIP Agent shall have rights consistent with Section 5.1(o) of the Prepetition Credit Agreement to request updated appraisals and field examinations during the Chapter 11 Case. For the avoidance of doubt, prior to the Maturity Date, there shall be no mandatory prepayment or Event of Default, and the DIP Lenders may not exercise remedies, based solely on the Total Revolving Credit Exposure (as defined in the Prepetition Credit Agreement) exceeding the borrowing base at any time during the Chapter 11 Case.
<i>363 Sale Process:</i>	The Debtor shall consummate a sale process with respect to all or substantially all of its assets pursuant to Section 363 of the Bankruptcy Code (a “ <u>Sale</u> ”). In connection with the Sale, the Debtor and one or more

	affiliates of the DIP Lenders (including any acquisition vehicle formed in connection with a credit bid or other designee) (the “<u>Stalking Horse Purchaser</u>”) will enter into an asset purchase agreement (the “<u>Asset Purchase Agreement</u>”) in form and substance satisfactory to the DIP Agent and Required DIP Lenders. The process set forth above, including the designation of the Stalking Horse Purchaser, shall collectively be referred to as the “<u>363 Sale Process</u>”.
<i>Milestones:</i>	The Debtor shall conduct the 363 Sale Process and Chapter 11 Case in accordance with the following milestones (each, a “<u>Milestone</u>”) and unless waived, modified or extended by the Required DIP Lenders in their sole discretion, the failure of the Debtor to meet Milestones by the applicable specified deadlines set forth therefor (the “<u>Specified Deadline</u>”) shall constitute an Event of Default: • no later than December 9, 2024, the Company shall have commenced the Chapter 11 Case; • no later than one (1) business day after the Petition Date, the Debtor shall file with the Bankruptcy Court a motion, in form and substance acceptable to the Required DIP Lenders, seeking approval of (i) a Sale (the “<u>Sale Motion</u>”) and, the transaction in respect thereof, the “<u>Sale Transaction</u>”), (ii) entry into the Asset Purchase Agreement based on certain terms and conditions set forth in a Sale term sheet to be appended to the Sale Motion, (iii) bidding procedures in connection with approval of the Sale Transaction (the “<u>Bidding Procedures Motion</u>”); • no later than three (3) business days after the Petition Date, the Interim Order approving the DIP Facility shall be entered by the Bankruptcy Court; • no later than 18 days after the Petition Date, the Company shall have executed the Asset Purchase Agreement pursuant to which the Stalking Horse Purchaser will purchase substantially all assets of the Company free and clear of all liens, claims, interests and encumbrances, subject only to higher or otherwise better offers; • no later than 30 days after the Petition Date, the Bankruptcy Court shall have entered an order establishing bidding procedures consistent with the Bidding Procedures Motion (such order, the “<u>Bidding Procedures Order</u>”), which order shall be acceptable in form and substance to the DIP Agent and Required DIP Lenders; • no later than 30 days after the Petition Date, the Final Order approving the DIP Facility shall be entered by the Bankruptcy Court; • no later than 50 days after the Petition Date, the Borrower shall have held an auction, if applicable, in connection with the Sale Transaction;

	- no later than 55 days after the Petition Date, the Bankruptcy Court shall have entered an order approving the Sale Transaction (the “<u>Sale Order</u>”), which order shall be satisfactory in form and substance to the DIP Agent and the Required DIP Lenders; and - no later than 60 days after the Petition Date, the Borrower shall have consummated the Sale Transaction in accordance with the Sale Order that results in net proceeds allocated to the DIP Collateral sufficient to repay the DIP Obligations and Prepetition Loans in full in cash or such other consideration acceptable to the DIP Agent and Required DIP Lenders in their sole discretion (the “<u>Approved Sale</u>”).
<i>363 Credit Bid:</i>	The Interim Order shall provide that the DIP Lenders shall be permitted to credit bid, pursuant and subject to section 363(k) of the Bankruptcy Code or applicable law, the New Money DIP Loan in connection with any sale or disposition of assets in the Chapter 11 Case. The Final Order shall provide that the DIP Lenders shall be permitted to credit bid (pursuant to section 363(k) of the Bankruptcy Code or applicable law) the DIP Loans (including the Roll-Up Loans) and any Prepetition Loans (and any other applicable obligations) held by the DIP Lenders in connection with any sale or disposition of assets in the Chapter 11 Case (including any deposit in connection with such sale) and shall not be prohibited from making such credit bid “for cause” under section 363(k) of the Bankruptcy Code.
<i>Use of Proceeds:</i>	Proceeds of the DIP Facility will be used in compliance with the terms of the Approved Budget (a) to pay transaction costs, fees and expenses which are incurred in connection with the DIP Facility, (b) to pay professional fees of the Debtor and its estate and the UCC in accordance with the Approved Budget, and (c) for working capital and other general corporate purposes of the Debtor, all subject to certain restrictions to be set forth in the Interim Order or Final Order, as applicable, and the DIP Documents. Subject in all respects to Section 8.3 of the Prepetition Credit Agreement, the deemed proceeds of the Roll-Up Loans shall be used to refinance an equal amount on a dollar-for-dollar basis of the Prepetition Loans held by the DIP Lenders (or their affiliates) reducing the amount of the “Obligations” (as defined under the Prepetition Credit Agreement, the “<u>Prepetition Obligations</u>”) by such amount.
<i>Adequate Protection:</i>	As adequate protection for any diminution of the Prepetition Secured Parties’ interest in the “Collateral” (as defined in the Prepetition Credit Agreement) including without limitation any diminution resulting from the subordination of existing liens to the DIP Liens and/or the Debtor’s use of cash collateral pursuant to the DIP Orders, the Prepetition Collateral Agent shall receive, for the benefit of the Prepetition Secured Parties, the adequate protection granted to the Prepetition Secured Parties (A) pursuant to the DIP Orders (which shall include, without limitation, (i) monthly payments of the reasonable fees, costs and expenses of the Prepetition Secured Parties (including professional fees), (ii) subject to recharacterization as principal under the Prepetition Credit Agreement,

	monthly payment in cash of interest to the Prepetition Lenders at the non-default rate as in effect on the Petition Date under the Prepetition Credit Agreement, (iii) replacement liens on the DIP Collateral that shall be junior only to the DIP Liens and any Prepetition Permitted Liens, (iv) superpriority administrative expense claims with priority over any and all administrative expenses, whether heretofore or hereafter incurred, of the kind specified in sections 503(b) or 507(a) of the Bankruptcy Code, other than the superpriority administrative expense claims of the DIP Lenders and DIP Agent and the Carve-Out, subject to payment priority consistent with Section 8.3 of the Prepetition Credit Agreement, and (v) an acknowledgement of the unconditional right to credit bid the Prepetition Obligations as further set forth in this Term Sheet and (B) as otherwise required by the Bankruptcy Court pursuant to sections 361, 507, 363(e) and 364(d)(1) of the Bankruptcy Code or otherwise.
<i>Marshalling; 552(b) Waiver and Waiver of 506(c) Claims:</i>	Waiver of the equitable doctrine of “marshalling” as set forth in the Interim DIP Order and waivers of claims for necessary costs and expenses of preserving or disposing of property securing an allowed secured claim pursuant to section 506(c) and the section 552 “equities of the case” exception as set forth in the Final DIP Order.
<i>Mandatory Prepayments:</i>	The Debtor shall pay or prepay the DIP Loans and all other DIP Obligations (together with a cash reserve established by the DIP Agent to cover asserted contingent and indemnity obligations) until such obligations are paid in full immediately as follows: (i) 100% of the net cash proceeds of any sale or disposition of all or substantially all of Debtor’s assets pursuant to Section 363 of the Bankruptcy Code (other than the Sale Transaction to the Stalking Horse Purchaser pursuant to the Asset Purchase Agreement) simultaneous with the consummation thereof, after funding the Carve-Out and reserving proceeds sufficient to pay accrued, unpaid and allowed administrative expenses (as of the closing of such sale) to the extent set forth in the Approved Budget; (ii) 100% of the net cash proceeds of any other sale or other disposition by any Debtor of any assets, in a single transaction or series of related transactions (except for (a) de minimis asset sales approved by an order of the Bankruptcy Court that is in form and substance acceptable to the Required DIP Lenders or (b) sale of goods or services in the ordinary course of business); and (iii) 100% of the net cash proceeds of extraordinary receipts (including tax refunds, indemnity payments and insurance proceeds not included as proceeds of asset dispositions but excluding sales tax receipts contemplated to be received by the Debtor as set forth in the Approved Budget) by the Debtor. Any amounts so paid or prepaid may not be reborrowed. No reinvestment of the proceeds of any extraordinary receipts, asset sales or other proceeds

	described above shall be permitted without the prior written consent of the DIP Lenders. Subject in all respects to the senior right of payment of the ABL Roll-Up Loans vis-à-vis all other DIP Obligations (including, for the avoidance of doubt, the New Money DIP Loan), mandatory payments or prepayments and proceeds of DIP Collateral received by the Debtor outside the ordinary course of business will otherwise be applied in the following order of priority (unless otherwise determined by the DIP Lenders in their sole discretion), after giving effect to the Carve-Out and any other payments required pursuant to the DIP Orders: (1) <u>first</u>, to pay all documented out-of-pocket expenses of the DIP Lenders and the DIP Agent (including, without limitation, fees and expenses of counsel and external advisors); (2) <u>second</u>, to pay an amount equal to all accrued and unpaid interest owing to the DIP Lenders holding ABL Roll-Up Loans; (3) <u>third</u>, to repay any principal amounts outstanding in respect of the ABL Roll-Up Loans (including any amounts and interest that have been added to the principal balance); (4) <u>fourth</u>, to pay an amount equal to all accrued and unpaid interest owing to the DIP Lenders holding New Money DIP Loans; (5) <u>fifth</u>, to pay an amount equal to all accrued and unpaid interest owing to the DIP Lenders holding Term Loan Roll-Up Loans; (6) <u>sixth</u>, to repay any principal amounts outstanding in respect of the New Money DIP Loans (including any amounts and interest that have been added to the principal balance); (7) <u>seventh</u>, to repay any principal amounts outstanding in respect of the Term Loan Roll-Up Loans (including any amounts and interest that have been added to the principal balance); (8) <u>eighth</u>, all other amounts owing to the DIP Lenders and the DIP Agent; and (9) <u>last</u>, the balance, if any, after all of the DIP Obligations have been paid in full, to the Borrower subject in all respects to the rights, liens and claims of the Prepetition Collateral Agent for the benefit of the Prepetition Secured Parties.
<i>Events of Default:</i>	Each of following shall constitute an “<u>Event of Default</u>”: (i) the entry of an Interim Order or Final Order in form and substance that is not acceptable to the DIP Agent and the Required DIP Lenders in their sole discretion;

	(ii) failure by any Debtor to be in compliance in all respects with provisions of this Term Sheet, the DIP Documents and/or the DIP Orders; (iii) any request made by the Debtor for, or the reversal, modification, amendment, stay, reconsideration or vacatur of a DIP Order, as entered by the Bankruptcy Court, without the prior written consent of the DIP Agent and each DIP Lender; (iv) failure of any of the Milestones to be satisfied by the Specified Deadline; (v) failure of any representation or warranty to be true and correct in all material respects (or, to the extent qualified by materiality, in all respects) when made; (vi) the filing of any application by the Debtor (other than the application for financing provided by a third party which seeks authority to pay all of the DIP Obligations in full in cash upon entry of the order approving such financing) for the approval of (or an order is entered by the Court approving) any claim arising under Section 507(b) of the Bankruptcy Code or any other provision of the Bankruptcy Code or any security, mortgage, collateral interest or other lien in the Chapter 11 Case which is <i>pari passu</i> with or senior to the DIP Liens, excluding liens arising under the DIP Orders or pursuant to any other financing agreement made with the prior written consent of the DIP Agent and each DIP Lender; (vii) the commencement of any action by the Debtor or other authorized person (other than an action permitted by the DIP Orders) against any of the DIP Agent or any DIP Lender or any of their agents and employees to subordinate or avoid any liens made in connection with the DIP Orders; (viii) (1) the Debtor files a pleading in any court seeking or supporting an order to revoke, reverse, stay, vacate, amend, supplement or otherwise modify any DIP Order, the DIP Documents, or this Term Sheet or to disallow the DIP Obligations, in whole or in part, or (2) any material provision of the DIP Orders, the DIP Documents, or this Term Sheet or any other order of the Bankruptcy Court approving the Debtor's use of Cash Collateral (as defined in the DIP Orders), shall for any reason cease to be valid and binding (without the prior written consent of the DIP Agent and each DIP Lender); (ix) the filing with the Bankruptcy Court of a motion seeking approval of a sale under Section 363 (other than approval of a sale pursuant to the terms of the Asset Purchase Agreement) or a plan of reorganization or liquidation in the Chapter 11 Case that, in any such case, does not provide for indefeasible payment in full in cash to the DIP Agent and the DIP Lenders of the DIP Loans and all other amounts outstanding under the Term Sheet, the DIP Documents and
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	the DIP Orders on closing of such sale or the effective date of such plan, without the prior written consent of the DIP Agent and each DIP Lender; (x) the appointment in the Chapter 11 Case of a trustee, receiver, examiner, or responsible officer with enlarged powers relating to the operation of the business of the Debtor (powers beyond those set forth in sections 1106(a)(3) and (a)(4) of the Bankruptcy Code); (xi) the granting of relief from the automatic stay by the Bankruptcy Court to any other creditor or party in interest in the Chapter 11 Case with respect to any portion of the DIP Collateral exceeding \$100,000 in value in the aggregate; (xii) the failure to pay principal, cash interest (subject to a three (3) business day grace period, solely with respect to cash interest) or other DIP Obligations in full when due, including without limitation, on the Maturity Date; (xiii) the payment of, or application by the Debtor for authority to pay, any prepetition claim without prior written consent of the DIP Agent and the Required DIP Lenders other than amounts set forth in the Approved Budget (subject to any Permitted Variances); and (xiv) the failure to comply with the Approved Budget (subject to any Permitted Variances).
<i>Remedies Upon Event of Default:</i>	Upon the occurrence and during the continuance of any Event of Default, subject to five (5) business days' notice to the Debtor during which the Debtor may seek an emergency hearing before the Bankruptcy Court (at which hearing the sole issue shall be whether or not an Event of Default has occurred or is continuing), the DIP Agent may (and, at the direction of the DIP Lenders, shall) take all or any of the following actions without further order of or application to the Bankruptcy Court, and notwithstanding the automatic stay: (a) declare all DIP Obligations (including principal of, and accrued interest on, any outstanding DIP Loans) to be immediately due and payable; (b) terminate any further commitment to lend to the Borrower; and/or (c) exercise rights and remedies pursuant to the terms of the DIP Orders, or applicable law (including, without limitation, direct the Debtor (or file a motion in the name of the Debtor)), (i) to enforce the terms and provisions of the DIP Documents, (ii) to collect accounts receivable, without setoff by any account debtor, including to direct the Debtor to collect such account receivables, (iii) to sell or otherwise dispose of any all of the DIP Collateral on terms and conditions reasonably acceptable to the DIP Agent and the DIP Lenders pursuant to Sections 363, 365 and other applicable provisions of the Bankruptcy Code (and, without limiting the foregoing, direct the Debtor (or file

	a motion in the name of the Debtor) to assume and assign any lease or executory contract included in the DIP Collateral to the DIP Agent's designees in accordance with and subject to Section 365 of the Bankruptcy Code) and (iv) enter into the premises of any Debtor in connection with the orderly sale or disposition of the DIP Collateral (including, without limitation, complete any work in process); <i>provided</i> that the Debtor shall take all action that is reasonably necessary to cooperate with the DIP Agent in the DIP Agent's exercise of its rights and remedies and facilitate the realization upon the DIP Collateral by the DIP Agent.
<i>Agreement Among Lenders:</i>	Notwithstanding anything herein to the contrary, pursuant to Section 510 of the Bankruptcy Code, Sections 8.3 and 8.4 of the Prepetition Credit Agreement shall remain in full force and effect and shall continue to govern the relative payment priorities, rights and remedies of the Prepetition Secured Parties under the Prepetition Credit Agreement. The DIP Documents or DIP Orders will contain provisions consistent with Sections 8.3 and 8.4 of the Prepetition Credit Agreement in respect of the DIP Obligations held by holders of the ABL Roll-Up Loans and holders of all other DIP Loans.
<i>Governing Law:</i>	State of New York, except as governed by the Bankruptcy Code. In the event of a conflict or any inconsistency between the terms of this Term Sheet and the DIP Orders, the terms of the DIP Orders shall control.

EXHIBIT A

(DIP Commitment Schedule)

DIP Lender	DIP Commitment
AG Credit Strategies Fund	\$884,741.59
AO Middle Market Credit L.P.	\$3,634,146.74
Ares Capital Corporation	\$9,991,270.53
Ares Centre Street Partnership, L.P.	\$309,394.42
Ares Commercial Finance LP	\$199,909.01
Ares Credit Strategies Insurance Dedicated Fund Series Interests of the SALI Multi-Series Fund, L.P.	\$258,777.28
Ares Diversified Credit Strategies Fund (S), L.P.	\$217,906.38
ARES EUROPEAN CREDIT STRATEGIES FUND VIII (BUMA), L.P	\$181,707.54
Ares ND Credit Strategies Fund LLC	\$319,363.13
Ares Senior Direct Lending Master Fund II Designated Activity Company	\$11,584,623.45
Ares Senior Direct Lending Parallel Fund (L) II, L.P.	\$1,366,353.47
ARES SENIOR DIRECT LENDING PARALLEL FUND (U) II, L.P.	\$1,892,716.38
Ares SFERS Credit Strategies Fund LLC	\$1,041,816.16
Ares Strategic Income Fund	\$908,536.68
Chimney Tops Loan Fund, LLC	\$698,224.21
Cion Ares Diversified Credit Fund	\$2,461,799.43
Private Credit Fund C-1 Holdco, LLC - Series 1	\$84,054.37
SA Real Assets 20 Limited	\$1,214,659.23
Total	\$37,250,000.00

IN WITNESS WHEREOF, the undersigned, being the sole manager of Vobev, LLC,
has executed this Term Sheet as of the date first set forth above.

VOBEV, LLC

By

DocuSigned by:

Alan Carr

0DBFF0FF6164426...

Name: Alan J. Carr

Title: Manager

ARES CAPITAL CORPORATION,
as DIP Agent

By: 
Name: Mitchell Goldstein
Title: Authorized Signatory

ARES CAPITAL CORPORATION,

By: 
Name: Mitchell Goldstein
Title: Authorized Signatory

AG CREDIT STRATEGIES FUND,

By: Ares Capital Management LLC, as Investment
Manager

By: 
Name: Mitchell Goldstein
Title: Authorized Signatory

ARES CENTRE STREET PARTNERSHIP, L.P.,

By: Ares Centre Street GP, Inc., as general partner

By: 
Name: Mitchell Goldstein
Title: Authorized Signatory

ARES COMMERCIAL FINANCE, L.P.,

By: Ares Commercial Finance Management LP, as
manager

By: 
Name: Mitchell Goldstein
Title: Authorized Signatory

**ARES CREDIT STRATEGIES INSURANCE
DEDICATED FUND SERIES INTERESTS OF THE
SALI MULTI-SERIES FUND, L.P.,**

By: Ares Management LLC, its investment subadvisor

By: Ares Capital Management LLC, as subadvisor

By: 

Name: Mitchell Goldstein
Title: Authorized Signatory

ARES DIRECT FINANCE I, L.P.,

By: Ares Capital Management LLC, its investment
manager

By: 

Name: Mitchell Goldstein
Title: Authorized Signatory

**ARES DIVERSIFIED CREDIT STRATEGIES
FUND (S), L.P.,**

By: Ares Management LLC, its investment manager

By: Ares Capital Management LLC, its sub-advisor

By: 

Name: Mitchell Goldstein
Title: Authorized Signatory

**ARES EUROPEAN CREDIT STRATEGIES FUND
VIII (BUMA), L.P.,**

By: Ares Management Limited, its investment manager

By: Ares Capital Management LLC, its subadvisor

By: 

Name: Mitchell Goldstein
Title: Authorized Signatory

ARES ND CREDIT STRATEGIES FUND LLC,

By: Ares Capital Management LLC, its account manager

By: 

Name: Mitchell Goldstein
Title: Authorized Signatory

**ARES SENIOR DIRECT LENDING MASTER
FUND II DESIGNATED ACTIVITY COMPANY,**

By: Ares SDL II Capital Management LLC, its Manager

By: 
Name: Mitchell Goldstein
Title: Authorized Signatory

**ARES SENIOR DIRECT LENDING PARALLEL
FUND (L) II, L.P.,**

By: Ares SDL Capital Management LLC, its Manager

By: 
Name: Mitchell Goldstein
Title: Authorized Signatory

**ARES SENIOR DIRECT LENDING PARALLEL
FUND (U) II, L.P.,**

By: Ares SDL Capital Management LLC, its Manager

By: 
Name: Mitchell Goldstein
Title: Authorized Signatory

ARES SFERS CREDIT STRATEGIES FUND LLC,

By: Ares Capital Management LLC, its investment
manager

By: 
Name: Mitchell Goldstein
Title: Authorized Signatory

ARES STRATEGIC INCOME FUND,

By: 
Name: Mitchell Goldstein
Title: Authorized Signatory

CHIMNEY TOPS LOAN FUND, LLC,

By: Ares Capital Management LLC, its Account Manager

By: 
Name: Mitchell Goldstein
Title: Authorized Signatory

CION ARES DIVERSIFIED CREDIT FUND,

By: 
Name: Mitchell Goldstein
Title: Authorized Signatory

SA REAL ASSETS 20 LIMITED,

By: Ares Management LLC, its investment manager

By: Ares Capital Management LLC, as subadvisor

By: 
Name: Mitchell Goldstein
Title: Authorized Signatory

SDL II CREDIT B1 LP,

By: Ares SDL Capital Management LLC, its servicer

By: 

Name: Mitchell Goldstein
Title: Authorized Signatory

SDL II CREDIT B2 LP,

By: Ares Capital Management LLC, its servicer

By: 

Name: Mitchell Goldstein
Title: Authorized Signatory

IVY HILL REVOLVER FUNDING II LP,

By: Ivy Hill Asset Management, L.P., its Manager

By: 

Name: Mitchell Goldstein
Title: Authorized Signatory

**AO MIDDLE MARKET CREDIT FINANCING
L.P.,**

By: AO Middle Market Credit Financing GP Ltd., its
general partner

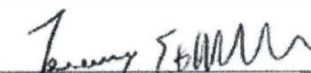
By: 
Name: K. Patel
Title: Director

By: 
Name: Jeremy Ehrlich
Title: Director

AO MIDDLE MARKET CREDIT L.P.,

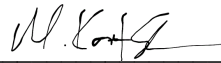
By: OCM Middle Market Credit G.P. Inc., its general
partner

By: 
Name: K. Patel
Title: Director

By: 
Name: Jeremy Ehrlich
Title: Director

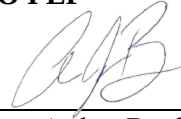
**PRIVATE CREDIT FUND C-1 HOLDCO, LLC –
SERIES 1**

By: Ares Capital Management LLC, its servicer

By: 
Name: M. Kort Schnabel
Title: Authorized Signatory

ACF FINCO I LP

By



Name: Arthur Boyle
Title: Authorized Signatory

ACF FINCO II LLC

By: Ares Commercial Finance Management LP,
as Investment Manager

By



Name: Arthur Boyle
Title: Authorized Signatory