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FORM 49
[RULE 13.19]



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**IN THE MATTER OF THE *COMPANIES'*
CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c
C-36, as amended**

**APPLICATION OF BJ SERVICES HOLDINGS
CANADA, ULC**

DOCUMENT

AFFIDAVIT

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS
DOCUMENT

BENNETT JONES LLP
Barristers and Solicitors
4500 Bankers Hall East
855-2nd Street SW
Calgary, Alberta T2P 4K7

Attention: Kelsey Meyer / Keely Cameron
Telephone No.: 403-298-3323 / 403-298-3324
Fax No.: 403-265-7219
Client File No.: 78081-9

AFFIDAVIT #2 OF ANTHONY C. SCHNUR

Sworn on October 9th, 2020

I, Anthony C. Schnur, of Houston, Texas, SWEAR AND SAY THAT:

1. I am the Chief Restructuring Officer of BJ Services, LLC ("**BJ Services**") and a Senior Managing Director with Ankura Consulting Group, LLC ("**Ankura**"), restructuring advisors to BJ Services, LLC, BJ Services Holdings Canada, ULC ("**BJ Canada**"), BJ Management Services, L.P. and BJ Services Management Holdings Corp. (collectively, the "**Chapter 11 Debtors**") and therefore have personal knowledge of the matters

deposed to herein except where otherwise stated to be based upon information and belief, in which case I verily believe the same to be true.

2. I make this Affidavit (my "**Affidavit #2**") supplementary to my previous Affidavit in these proceedings. Capitalized terms used in my Affidavit #2 that are not otherwise defined herein shall bear the meanings given in my Affidavit #1 sworn August 21, 2020.

The Chapter 11 Proceedings Update

3. As is set out in my Affidavit #1, the Chapter 11 Debtors and their other affiliates (collectively, the "**Company**") are, collectively, a leading provider of hydraulic fracturing and cementing services to upstream oil and gas companies engaged in the exploration and production ("**E&P**") of North American oil and natural gas resources (the "**Fracturing Business**" and the "**Cementing Business**", respectively).
4. The Chapter 11 Debtors have successfully completed sales processes and a number of sales which have resulted in sale approval orders by both the U.S. Bankruptcy Court and this Honourable Court.
5. On September 2, 2020, the U.S. Bankruptcy Court granted an Agreed Order With Respect to GACP Finance Co., LLC's Emergency Motion for Relief from the Automatic Stay (the "**GACP Order**"). A true copy of the GACP Order is attached hereto as **Exhibit "1"**.
6. On September 10, 2020, the U.S. Bankruptcy Court granted a Fifth Interim Order (I) Authorizing Debtors to Use Cash Collateral Pursuant to Section 363(c) of the Bankruptcy Code; (II) Granting Adequate Protection to the Prepetition Secured Parties; (III) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001(b); and (IV) Granting Related Relief (the "**Fifth Interim Cash Collateral Order**"). A true copy of the Fifth Interim Cash Collateral Order is attached hereto as **Exhibit "2"**.
7. On September 25, 2020, the U.S. Bankruptcy Court granted a Sixth Interim Order (I) Authorizing Debtors to Use Cash Collateral Pursuant to Section 363(c) of the Bankruptcy Code; (II) Granting Adequate Protection to the Prepetition Secured Parties;

(III) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001(b); and (IV) Granting Related Relief (the "**Sixth Interim Cash Collateral Order**"). A true copy of the Sixth Interim Cash Collateral Order is attached hereto as **Exhibit "3"**.

8. On October 2, 2020, the U.S. Bankruptcy Court granted an Agreed Order Granting Limited Relief From the Automatic Stay to Donlen Corporation, Donlen Trust, and Donlen Fleet Leasing Ltd. (the "**Donlen Order**"). A true copy of the Donlen Order is attached hereto as **Exhibit "4"**.
9. On October 9, 2020, the U.S. Bankruptcy Court granted a Seventh Interim Cash Collateral Order (I) Authorizing Debtors to Use Cash Collateral Pursuant to Section 363(c) of the Bankruptcy Code; (II) Granting Adequate Protection to the Prepetition Secured Parties; (III) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001(b); and (IV) Granting Related Relief (the "**Seventh Interim Cash Collateral Order**"). A true copy of the Seventh Interim Cash Collateral Order is attached hereto as **Exhibit "5"**.
10. The Chapter 11 Debtors are working towards seeking U.S. Bankruptcy Court approval of a plan which (a) provides for the full and final resolution of certain funded debt obligations; (b) contemplates the creation of Liquidating Trust and appointment of a Liquidation Trustee to (i) wind down the Chapter Debtors' businesses and affairs; (ii) pay and reconcile Claims; and (iii) administer the Plan in an efficacious manner; (c) provides for Cash distributions in accordance with the Plan; and (d) pays Allowed Administrative and Priority Claims (the "**Confirmation Order**"). The Chapter 11 Debtors believe that confirmation of the plan will avoid the lengthy delay and additional cost of liquidation under chapter 7 of the Bankruptcy Code.
11. Following the granting of a Confirmation Order, I understand that BJ Canada intends to seek Canadian recognition of the Confirmation Order.

Relief Sought

12. In an effort to further ensure consistency, efficiency and cooperation, BJ Canada as Foreign Representative seeks recognition by this Honourable Court of the Fifth Interim

Cash Collateral Order, the Sixth Interim Cash Collateral Order, the Donlen Order, and the GACP Order.

Recognition of the Fifth Interim Cash Collateral Order

13. BJ Canada seeks an Order recognizing in Canada and enforcing the Fifth Interim Cash Collateral Order. The motion for the Cash Collateral Order is attached as Exhibit "14" to the Affidavit #1 of Warren Zemlak. The motion for the Cash Collateral Order sets out the grounds for the same, and the Fifth Interim Cash Collateral Order, *inter alia*: (a) authorizes the Chapter 11 Debtors to continue to use the cash collateral of the Prepetition ABL Secured Parties, CLMG Collateral of the CLMG Secured Parties and GACP Collateral of the GACP Secured Parties (as those terms are defined therein) in accordance with the terms and conditions set forth therein, (b) grants superpriority claims and automatically perfected liens, security interests and other adequate protection, as applicable, to the Prepetition ABL Secured Parties, CLMG Secured Parties and the GACP Secured Parties to the extent of any diminution in value of their interest in the Prepetition ABL Collateral, including Cash Collateral, in the CLMG Collateral, as applicable, or in the GACP Collateral, as applicable, under or in connection with the Prepetition ABL Loan Documents, the CLMG Term Loan Agreement, or the GACP Term Loan Agreement (as those terms are defined therein), (c) subject to certain challenge rights of certain parties in interest, approves certain stipulations by the Chapter 11 Debtors with respect to the Prepetition ABL Loan Documents, CLMG Term Loan Credit Agreement, and the liens and security interests arising therefrom; (d) vacates and modifies the automatic stay imposed by section 362 of the U.S. Bankruptcy Code; (e) waives the Chapter 11 Debtors' right to assert with respect to the Prepetition ABL Collateral, the Cash Collateral or the Adequate Protection Collateral (as defined therein), any claims to surcharge pursuant to section 506(c) of the U.S. Bankruptcy Code, any "equities of the case" exception pursuant to section 552(b) of the U.S. Bankruptcy Code and the equitable doctrine of marshalling or any similar doctrine, (f) schedules pursuant to Bankruptcy Rule 4001(b) a final hearing to consider entry of the Final Order; (g) waives any applicable stay with respect to the effectiveness and enforceability of the

Fifth Interim Cash Collateral Order and as later applicable the Final Cash Collateral Order, and (h) grants related relief.

Recognition of the Sixth Interim Cash Collateral Order

14. BJ Canada seeks an Order recognizing in Canada and enforcing the Sixth Interim Cash Collateral Order. The motion for the Cash Collateral Order is attached as Exhibit "14" to the Affidavit #1 of Warren Zemlak. The motion for the Cash Collateral Order sets out the grounds for the same, and the Sixth Interim Cash Collateral Order, *inter alia*: (a) authorizes the Chapter 11 Debtors to continue to use the cash collateral of the Prepetition ABL Secured Parties, CLMG Collateral of the CLMG Secured Parties and GACP Collateral of the GACP Secured Parties (as those terms are defined therein) in accordance with the terms and conditions set forth therein, (b) grants superpriority claims and automatically perfected liens, security interests and other adequate protection, as applicable, to the Prepetition ABL Secured Parties, CLMG Secured Parties and the GACP Secured Parties to the extent of any diminution in value of their interest in the Prepetition ABL Collateral, including Cash Collateral, in the CLMG Collateral, as applicable, or in the GACP Collateral, as applicable, under or in connection with the Prepetition ABL Loan Documents, the CLMG Term Loan Agreement, or the GACP Term Loan Agreement (as those terms are defined therein), (c) subject to certain challenge rights of certain parties in interest, approves certain stipulations by the Chapter 11 Debtors with respect to the Prepetition ABL Loan Documents, CLMG Term Loan Credit Agreement, and the liens and security interests arising therefrom; (d) vacates and modifies the automatic stay imposed by section 362 of the U.S. Bankruptcy Code; (e) waives the Chapter 11 Debtors' right to assert with respect to the Prepetition ABL Collateral, the Cash Collateral or the Adequate Protection Collateral (as defined therein), any claims to surcharge pursuant to section 506(c) of the U.S. Bankruptcy Code, any "equities of the case" exception pursuant to section 552(b) of the U.S. Bankruptcy Code and the equitable doctrine of marshalling or any similar doctrine, (f) schedules pursuant to Bankruptcy Rule 4001(b) a final hearing to consider entry of the Final Order; (g) waives any applicable stay with respect to the effectiveness and enforceability of the

Sixth Interim Cash Collateral Order and as later applicable the Final Cash Collateral Order, and (h) grants related relief.

Recognition of the Seventh Interim Cash Collateral Order

15. BJ Canada seeks an Order recognizing in Canada and enforcing the Seventh Interim Cash Collateral Order. The motion for the Cash Collateral Order is attached as Exhibit "14" to the Affidavit #1 of Warren Zemlak. The motion for the Cash Collateral Order sets out the grounds for the same, and the Seventh Interim Cash Collateral Order, *inter alia*: (a) authorizes the Chapter 11 Debtors to continue to use the cash collateral of the Prepetition ABL Secured Parties, CLMG Collateral of the CLMG Secured Parties and GACP Collateral of the GACP Secured Parties (as those terms are defined therein) in accordance with the terms and conditions set forth therein, (b) grants superpriority claims and automatically perfected liens, security interests and other adequate protection, as applicable, to the Prepetition ABL Secured Parties, CLMG Secured Parties and the GACP Secured Parties to the extent of any diminution in value of their interest in the Prepetition ABL Collateral, including Cash Collateral, in the CLMG Collateral, as applicable, or in the GACP Collateral, as applicable, under or in connection with the Prepetition ABL Loan Documents, the CLMG Term Loan Agreement, or the GACP Term Loan Agreement (as those terms are defined therein), (c) subject to certain challenge rights of certain parties in interest, approves certain stipulations by the Chapter 11 Debtors with respect to the Prepetition ABL Loan Documents, CLMG Term Loan Credit Agreement, and the liens and security interests arising therefrom; (d) vacates and modifies the automatic stay imposed by section 362 of the U.S. Bankruptcy Code; (e) waives the Chapter 11 Debtors' right to assert with respect to the Prepetition ABL Collateral, the Cash Collateral or the Adequate Protection Collateral (as defined therein), any claims to surcharge pursuant to section 506(c) of the U.S. Bankruptcy Code, any "equities of the case" exception pursuant to section 552(b) of the U.S. Bankruptcy Code and the equitable doctrine of marshalling or any similar doctrine, (f) schedules pursuant to Bankruptcy Rule 4001(b) a final hearing to consider entry of the Final Order; (g) waives any applicable stay with respect to the effectiveness and enforceability of the

Seventh Interim Cash Collateral Order and as later applicable the Final Cash Collateral Order, and (h) grants related relief.

16. The previous four interim cash collateral orders granted by the U.S. Bankruptcy Court in the Chapter 11 Proceedings have been recognized by this Honourable Court, with the Fourth Interim Cash Collateral Order (as defined in the Affidavit #8 of Warren Zemlak sworn September 3, 2020) having being recognized by this Honourable Court on September 9, 2020.

Recognition of the Donlen Order

17. BJ Canada seeks an Order recognizing in Canada and enforcing the Donlen Order. The motion for the Donlen Order is attached hereto and marked as **Exhibit "6"**. The motion for the Donlen Order sets out the grounds for the same, and the Donlen Order, *inter alia*: (a) authorizes BJ Services, LLC to file certain rejection notices in accordance with Assumption/Rejection Procedures Order; (b) upon filing of the rejection notices modifies the stay to permit Donlen to recover the Leased Vehicles pursuant to the Donlen Agreements as defined therein; (c) does not extinguish any claims by the Chapter 11 Debtors or Donlen; and (d) grants other relief.

Recognition of the GACP Order

18. BJ Canada seeks an Order recognizing in Canada and enforcing the GACP Order. The motion for the GACP Order is attached hereto and marked as **Exhibit "7"**. The motion for the GACP Order sets out the grounds for the same, and the GACP Order, *inter alia*: (a) lifts the automatic stay with respect to the Stay Relief Collateral as defined therein; (b) authorizing the Agent as defined therein to exercise all of its rights under applicable non-bankruptcy law; (c) permits the Agent to use the Chapter 11 Debtors' name and logo for the limited purpose of facilitating sales of the Stay Relief Collateral; (d) subject to the Committee's rights permits the Agent to retain the Net Sale Proceeds until the Obligations (as defined in the Equipment Term Loan Documents) until such time as all of the Obligations under the Equipment Term Loan Documents have been indefeasibly paid in

full, in cash with any excess amounts being promptly remitted to the Chapter Debtors' estates; and (e) grants other relief.

19. BJ Canada also seeks an Order directing that GACP Finance Co., LLC as Agent (as defined in the GACP Order) be authorized to sell, convey, transfer, lease or assign the Stay Relief Collateral (as defined in the GACP Order) or any part or parts thereof, without the further approval of this Court, and that in each case notice under section 244(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3 (the "**BIA**") and Part V of the *Personal Property Security Act*, RSA 2000, c. P-7 or any similar legislation in any other province or territory shall not be required, and in doing so, the Agent shall not be or deemed to be a Receiver in respect of the Debtors for purposes of Part XI of the BIA.

Approval of Professional Fees of the Foreign Representative

20. BJ Canada, with the assistance of its legal counsel, has worked diligently in its position as Foreign Representative to keep this Court apprised of the Chapter 11 Proceedings and has sought Canadian recognition of orders of the U.S. Bankruptcy Court where necessary or appropriate. Canadian legal counsel to BJ Canada has also assisted and provided legal advice with respect to the Donlen Order, the GACP Order, and other matters and issues that have arisen in the Chapter 11 Proceedings and these Canadian recognition proceedings. The following is a summary of the legal fees, disbursements and other charges of Canadian legal counsel to BJ Canada incurred from August 4, 2020 to and including October 1, 2020:

Invoice Number	1356987
Invoice Date	October 6, 2020
Professional Services	CDN \$59,685.46
Disbursements and Other Charges	CDN \$1,158.50
GST	CDN \$3,037.20
Total Including GST	CDN \$63,881.16

21. Now shown to me and marked as **Exhibit "8"** is a true copy of Invoice No. 1356987 received by BJ Canada from its Canadian legal counsel for the legal services provided in relation to these proceedings, for the time period indicated. A copy of Exhibit "12" will

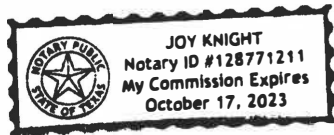
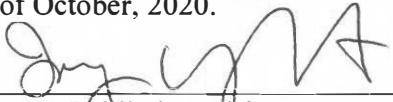
be available to this Honourable Court for review, if required. In the circumstances, the Chapter 11 Debtors view the fees as fair and reasonable and seek Court approval of the invoice.

Conclusion

22. This Affidavit is sworn in support of the relief requested in the Application scheduled to be heard on October 16, 2020 and for no other or improper purpose.

SWORN BEFORE ME
at Houston, Texas this 9th
day of October, 2020.

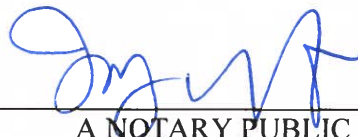
A Notary Public in and for
the State of Texas



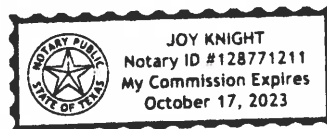
ANTHONY C. SCHNUR

EXHIBIT 1

THIS IS **EXHIBIT "1"** REFERRED TO IN THE
AFFIDAVIT OF ANTHONY C. SCHNUR
SWORN BEFORE ME THIS 9th DAY OF OCTOBER, 2020



A NOTARY PUBLIC
IN AND FOR THE STATE OF TEXAS





ENTERED
09/02/2020

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

In re:

BJ Services, LLC, *et al.*¹

Debtors.

Chapter 11

Case No. 20-33627 (MI)

(Jointly Administered)

Ref. Docket No. 290

**AGREED ORDER WITH RESPECT TO GACP FINANCE CO., LLC'S
EMERGENCY MOTION FOR RELIEF FROM THE AUTOMATIC STAY**

Upon the motion (the “Motion”)² of GACP Finance Co., LLC, Administrative Agent under that certain Term Loan Credit and Guaranty Agreement, dated as of January 28, 2019, among BJ Services, LLC, as the Borrower, the Other Borrowers from Time to Time Party Thereto, the Guarantors from Time to Time Party Thereto, GACP Finance Co., LLC, as Administrative Agent (the “Term Loan Agreement”) and in its capacity as collateral agent under that certain U.S. Security Agreement and that certain Canadian Security Agreement (collectively, the “Security Agreements” and together with the Term Loan Agreement and any documents executed in connection therewith, the “Equipment Term Loan Documents”), both of even date therewith (in all such capacities, the “Agent”), seeking relief from the automatic stay with respect to certain of the Agent’s collateral, as more fully described in the Motion; and the Court having reviewed the

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: BJ Services, LLC (3543); BJ Management Services, L.P. (8396); BJ Services Holdings Canada, ULC (6181); and BJ Services Management Holdings Corporation (0481). The Debtors’ service address is: 11211 Farm to Market 2920 Road, Tomball, Texas 77375.

² Capitalized terms used but not yet defined herein shall have the meanings ascribed to such terms in the Motion, the Declaration of Warren Zemplak, Chief Executive Officer of BJ Services, LLC, in Support of Chapter 11 Petitions and First Day Motions [Docket No. 22], or later in this Order, as applicable.

Motion and conducted a hearing on August 26, 2020 (the “Hearing”), and upon the objections filed by the Debtors and the Official Committee of Unsecured Creditors (the “Committee”); and for the reasons set forth on the record at the Hearing and the agreements of the parties set forth herein, it is hereby **ORDERED** that

1. The Motion is **GRANTED** as set forth herein. Except as otherwise expressly set forth herein, any objections to the Motion not withdrawn are overruled.

I. Termination of Automatic Stay

2. The automatic stay is hereby lifted with respect to all of the Agent’s collateral (the “Collateral”) other than that portion of the Collateral (such Collateral, the “Excluded Collateral”) sold by the Debtors pursuant to the sales approved by the Court [Docket Nos. [493, 452, 462] and the 300 truck tractors subject to the order approving the retention of Ritchie Bros. Auctioneers (America) Inc. (the “Liquidator Retention Order”) [Docket No. 492] (each, an “Approved Sale” and, collectively, the “Approved Sales”), as set forth herein (the Collateral, minus the Excluded Collateral, is referred to hereafter as the “Stay Relief Collateral”).
3. The Agent is authorized to exercise all of its rights under applicable non-bankruptcy law with respect to the Stay Relief Collateral, including, without limitation or expanding upon such non-bankruptcy law, all rights to assemble, repossess, foreclose upon, market for private or public sale (in each case that is not a credit bid as allowed herein, in arms’-length transactions to non-insider third-parties in a commercially reasonable manner), and liquidate the Stay Relief Collateral wherever located and by whomsoever held under applicable non-bankruptcy law and the Equipment Term Loan Documents, and sell the same. The Committee shall

have the consultation and other rights described herein and provided for in the Liquidator Retention Order.

4. The Debtors and their agents, professionals, and representatives shall reasonably cooperate with (but, subject to Paragraph 20 below, shall not be required to pay for any additional costs or expenses in connection with) the Agent's assembly, repossession, collection, marketing, and liquidation efforts, and the sale of the Stay Relief Collateral in one or more lots, including by, without limitation and to the extent applicable, (a) providing all keys, security codes, title documents, and related instruments or documents relating to the Stay Relief Collateral, and (b) identifying to the Agent the locations at which the Stay Relief Collateral is located and, with respect to each such location and, only to the extent reasonably applicable, (i) providing access to each such location at mutually agreeable times during ordinary business hours; (ii) providing a copy of all leases, occupancy rights, easements, licenses, and any other documentation related to the Debtors' rights to occupy such location; (iii) providing contact information for the owners and/or lessors for each such location; (iv) identifying all insurance policies applicable to each such location; and (v) identifying all the security measures applicable to each such location.
5. Subject to Paragraphs 10 and 20 below, the Debtors, their estates, or their successors and assigns shall not pay any costs or liability associated with the lifting of the automatic stay as contemplated by this Order and the Agent shall pay for all costs and expenses chargeable to or incurred in connection with the Stay Relief Collateral from and after the entry of this Order. The Agent and the Debtors (in

consultation with the Committee and the Prepetition ABL Agent) shall negotiate in good faith regarding an agreed transition services agreement that includes an indemnification provision whereby the Agent indemnifies the Debtors and their successors and assigns (the "Lift Stay TSA") relating to any costs or expenses that the Agent believes would be more efficiently provided by the Debtors or incurred in the Debtors' name (*i.e.*, employee costs, insurance, etc.), which amounts will either be paid in advance by the Agent (in its sole discretion) or from the proceeds of the Approved Sales with and to the extent of the Agent's prior written approval. Any dispute regarding whether any particular cost should be covered by the Debtors or the Agent, to the extent not mutually resolved, shall be resolved by the Bankruptcy Court and the Debtors shall not be obligated to make any payments on account of such disputed costs until ordered otherwise by the Bankruptcy Court. All parties (and their successors or assigns) reserve all right related to any liability of any kind related to or in connection with any, damage, deterioration in value, loss, costs, expenses, or amounts owed (in each case, under any theory) in connection with the Stay Relief Collateral.

6. Subject to Paragraph 20 below, the Agent shall be responsible for and shall reimburse the Debtors for any uninsured damage caused by the Agent or its representatives, and any deductible amounts, self-insured retentions, or similar obligations with respect to insured damage caused by the Agent or its representatives, to any property, or any liability incurred, in connection with removing the Stay Relief Collateral, from the entry of this Order until such time as the Stay Relief Collateral is removed from the Debtors' property in accordance with

applicable law; *provided, however*, that the Agent shall not be liable or responsible for the gross negligence or willful misconduct of third parties not under the Agent's control.

7. For the avoidance of doubt, in consultation with the Debtors, the Agent and CLMG Corp., in its capacity as agent under the Debtors' real estate term loan facility, are permitted to communicate and coordinate efforts regarding the location of the Stay Relief Collateral, the removal of any Stay Relief Collateral from the Debtors' real property, and the terms and conditions (including costs to be included in the Lift Stay TSA) for any storage of the Stay Relief Collateral on the Debtors' real property.

II. Intellectual Property

8. The Agent (or its representatives) may use (on a non-exclusive basis) the Debtors' name and logo for the limited purpose of facilitating sales of the Stay Relief Collateral under applicable law; *provided that* the name and logo may not be used by any purchaser of such Stay Relief Collateral under any circumstances and Agent or its representatives are directed to take all reasonable efforts to inform purchaser of such.

III. Repayment and Proceeds of Approved Sales

9. Subject to the Committee's rights referenced in paragraph 15 below, the Agent shall be entitled to retain Net Sales Proceeds³ it receives in respect of the Stay Relief Collateral, and may apply such Net Sale Proceeds to the Obligations (as defined in the Equipment Term Loan Documents) until such time as all of the Obligations (as

³ "Net Sale Proceeds" means the proceeds of sales less all identifiable, reasonable, and documented customary costs directly related to the closing of the sale of any Stay Relief Collateral.

reduced by any credit bid for Collateral or acceptance of Collateral as full or partial satisfaction of the Obligations, or by separate order of any court) under the Equipment Term Loan Documents have been indefeasibly paid in full, in cash (the “Payoff Amount”). Any Net Sale Proceeds received by the Agent from the sale of the Collateral in excess of the Payoff Amount shall be remitted promptly to the Debtors’ estates (or its successors or assigns).

10. Subject to Paragraph 20 below, promptly upon applying the Payoff Amount to the Obligations under the Term Loan Documents, the Agent shall notify the Debtors’, the Prepetition ABL Agent’s,⁴ and the Committee’s (or their successors’ and assigns’) retained professionals or advisors of the Agent’s receipt of the Payoff Amount (the tenth business day following the date of such notification being the “Payoff Notice Date”), and the Agent shall turn over any proceeds in excess of the Payoff Amount to the Debtors (or their successors or assigns) and coordinate access to any remaining Stay Relief Collateral (the “Excess Collateral”) in a commercially reasonable manner. The Agent shall not be responsible for, or be charged any, fees or expenses related to or associated with the Excess Collateral from and after the date that the Agent provides reasonably coordinated access and possession to the Excess Collateral to the Debtors (or their successors or assigns), which date shall not be later than the Payoff Notice Date, unless otherwise ordered by the Court (upon a motion filed by the Debtors or the Committee (or their successors or assigns) or agreed by the parties).

⁴ As defined in the third interim order authorizing the Debtors’ use of cash collateral [Docket No. 505] (the “Cash Collateral Order”).

11. The Debtors, the Agent, the Prepetition ABL Agent, and the Committee shall negotiate in good-faith regarding an amount (the “Settlement Amount”) to be released to the Debtors’ estates (or their successors or assigns) from the proceeds of the Approved Sales in consideration of a full waiver of any and all claims under sections 506(c) and 552(b) of the Bankruptcy Code (collectively, the “Claims”). In the event such parties do not reach a resolution of the Settlement Amount by 4:00 p.m. on September 4, 2020, the Debtors shall file a motion by 11:59 p.m. on that date asserting in detail any Claims seeking to resolve such dispute. The Agent reserves all defenses, rights of set-off, and counterclaims related thereto.
12. [Reserved]

IV. Reporting

13. From the entry of this Order until the Payoff Notice Date, the Agent shall host such periodic update/status calls for the advisors to the Debtors and the Committee (or their successors and assigns) as reasonably necessary (but not less than one such call per week during the first month, bi-weekly for the subsequent three months, and at least once per month thereafter, unless agreed otherwise) to keep them informed of the status of the liquidation of the Stay Relief Collateral, and the Agent shall provide reasonable reporting (not less than one report per month, unless agreed otherwise) to the Debtors and the Committee on the collection and application of Net Sale Proceeds, the balance of the remaining Payoff Amount, the status of the Stay Relief Collateral (which reporting may include copies of reports or updates prepared by the Agent’s liquidators or other third parties). The Committee may reasonably request any additional reporting. To the extent that the

Agent does not provide such reporting, the Committee (or its successors and assigns) may seek relief from the Court related thereto.

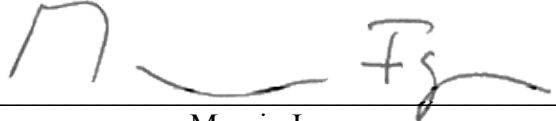
V. Other Matters

14. Prior to the Payoff Notice Date, the Agent shall not abandon any of the Stay Relief Collateral without consent of the Debtors, the Committee, and the Prepetition ABL Agent (or their successors and assigns) or order of the Court.
15. Nothing in this Order shall be, nor be deemed to be, a waiver of the Debtors', the Prepetition ABL Agent's, or the Committee's rights under section 552 or 506 of the Bankruptcy Code with respect to the Collateral prior to the lifting of the stay, or any other claims against the Agent or lenders and any and all such rights and claims are reserved.
16. Nothing in this Order shall be, nor be deemed to be, a waiver of the Committee's rights with respect to the Agent, including such rights that are set forth in paragraphs 31 and 32 of the Cash Collateral Order (or any similar provision of any later entered cash collateral order) and all such rights are hereby expressly preserved.
17. Nothing in this Order shall be, nor be deemed to be, a waiver of any of the Agent's rights under applicable law to credit bid for the Agent's collateral, or to accept collateral in full or partial satisfaction of its claims, and all such rights are hereby expressly preserved. The rights of the Debtors and the Committee (or their successors and assigns) regarding any such credit bid or acceptance of collateral in full or partial satisfaction of claims under applicable law are expressly reserved.

18. Notwithstanding anything herein to the contrary, the entry of this Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, the Prepetition ABL Secured Parties' (as defined in the third interim order authorizing the Debtors' use of cash collateral [Docket No. 505] (the "Cash Collateral Order")) rights to pursue any and all rights and remedies under the Bankruptcy Code or any other applicable law, or seek any other or supplemental relief against any parties in these chapter 11 proceedings, including the Debtors and/or the Agent.
19. Notwithstanding anything herein to the contrary, the entry of this Order shall not affect the validity or enforceability of the Adequate Protection Liens of the Prepetition ABL Secured Parties (each as defined in Cash Collateral Order), which shall attach to the proceeds of any sales attributable to the property (including the Stay Relief Collateral) against which such liens, claims, interests, and encumbrances applied, in the same order of priority and with the same validity, force, and effect that such liens, claims, interests, and encumbrances applied prior to such sales, subject to any rights, claims, and defenses of the Debtors or their estates, as applicable.
20. Notwithstanding anything herein to the contrary, the Agent reserves all rights under the Equipment Term Loan Documents. For the avoidance of doubt, the Agent's payment of any costs and expenses in connection with this Agreed Order or otherwise is not a waiver of, and shall be without prejudice to any claims that the Agent may now or in the future assert are part of the Obligations or to receiving indefeasible payment in cash in full of all Obligations owing, whenever arising, under the Equipment Term Loan Documents. The Debtors, the Committee and all other parties reserve all rights related thereto.

21. Notwithstanding any provision in the Bankruptcy Rules to the contrary, including but not limited to Bankruptcy Rule 4001(a)(3), the Court finds that there is no reason for delay in the implementation of this Order and that this Order shall not be stayed but shall instead be immediately effective and enforceable upon entry.
22. The Debtors are authorized and directed to comply with their obligations under this Order, including by obtaining recognition of this Order in the Debtors' Canadian proceedings before the Court of Queen's Bench of Alberta.
23. The Court retains exclusive jurisdiction over the interpretation, implementation, and enforcement of this Order.

Signed: September 02, 2020



Marvin Isgur
United States Bankruptcy Judge

AGREED AS TO FORM AND SUBSTANCE:

/s/ Christopher T. Greco

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Counsel to GACP Finance Co., LLC

/s/ Dennis M. Twomey

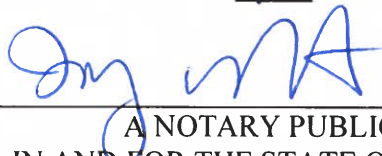
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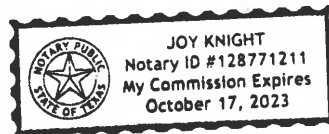
Counsel to JPMorgan Chase Bank, N.A.

EXHIBIT 2

THIS IS **EXHIBIT "2"** REFERRED TO IN THE
AFFIDAVIT OF ANTHONY C. SCHNUR
SWORN BEFORE ME THIS 9th DAY OF OCTOBER, 2020



A NOTARY PUBLIC
IN AND FOR THE STATE OF TEXAS





ENTERED
09/10/2020

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

In re:

BJ SERVICES, LLC, *et al.*,¹

Debtors.

)
) Chapter 11
)
) Case No. 20-33627 (MI)
)
) (Jointly Administered)
)
) **Re: Docket Nos. 40, 170, 261, 505, 551**

FIFTH INTERIM ORDER

**(I) AUTHORIZING DEBTORS TO USE CASH COLLATERAL
PURSUANT TO SECTION 363(c) OF THE BANKRUPTCY CODE;
(II) GRANTING ADEQUATE PROTECTION TO THE PREPETITION
SECURED PARTIES; (III) SCHEDULING A FINAL HEARING PURSUANT TO
BANKRUPTCY RULE 4001(b); AND (IV) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)² of BJ Services, LLC (“BJS”) and its affiliated debtors, each as debtor and debtor in possession (collectively, the “Debtors”) in the above captioned-cases for entry of interim and final orders (the “Interim Order” and a “Final Order,” respectively) pursuant to sections 105(a), 361, 362, 363, 503 and 507 of title 11 of the United States Code (the “Bankruptcy Code”), rules 2002, 4001, 6003, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), rules 4002-1 and 9013-1 of the Bankruptcy Local Rules for the Southern District of Texas (the “Bankruptcy Local Rules”), and the Procedures for Complex Chapter 11 Cases in the Southern District of Texas (the “Complex Case Rules”), seeking, among other things, the following relief:

- a. authorization for the Debtors, pursuant to sections 105, 361, 362, 363, and 507 of the Bankruptcy Code, to continue to use the Cash Collateral of the Prepetition ABL

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: BJ Services, LLC (3543); BJ Management Services, L.P. (8396); BJ Services Holdings Canada, ULC (6181); and BJ Services Management Holdings Corporation (0481). The Debtors’ service address is: 11211 Farm to Market 2920 Road, Tomball, Texas 77375.

² Capitalized terms used but not defined herein have the meaning ascribed to such terms in the Motion.

Secured Parties (each as defined below), CLMG Collateral of the CLMG Secured Parties (each as defined below) and GACP Collateral of the GACP Secured Parties (each as defined below) in accordance with the terms and conditions set forth below;

- b. the grant of superpriority claims and the grant of automatically perfected liens, security interests, and other adequate protection, as applicable, to the Prepetition ABL Secured Parties, CLMG Secured Parties, and the GACP Secured Parties to the extent of any diminution in value of their interest in the Prepetition ABL Collateral, including Cash Collateral, in the CLMG Collateral, as applicable, or in the GACP Collateral, as applicable, under or in connection with the Prepetition ABL Loan Documents (as defined below) the CLMG Term Loan Agreement (as defined below), or the GACP Term Loan Agreement (as defined below);
- c. subject to certain challenge rights of certain parties in interest (subject to the limitations specified herein), approving certain stipulations by the Debtors with respect to (i) the Prepetition ABL Loan Documents (as hereinafter defined below); (ii) the CLMG Term Loan Credit Agreement; and (iii) the liens and security interests arising therefrom;
- d. vacating and modifying the automatic stay imposed by section 362 of the Bankruptcy Code to the extent set forth herein;
- e. subject to and effective upon entry of a Final Order, waiving the Debtors' right to assert with respect to the Prepetition ABL Collateral, the Cash Collateral, or the Adequate Protection Collateral (as defined below) (i) any claims to surcharge pursuant to section 506(c) of the Bankruptcy Code, (ii) any "equities of the case" exception pursuant to section 552(b) of the Bankruptcy Code, and (iii) the equitable doctrine of "marshalling" or any similar doctrine;
- f. scheduling, pursuant to Bankruptcy Rule 4001(b) and Bankruptcy Local Rule 4001-2(c), a final hearing (the "Final Hearing") to consider entry of the Final Order approving the relief requested in the Motion on a final basis;
- g. waiving any applicable stay with respect to the effectiveness and enforceability of this Fifth Interim Order and, as later applicable, the Final Order (including a waiver pursuant to Bankruptcy Rule 6004(h)); and
- h. granting related relief.

This Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and this Court having found this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests

of the Debtors' estates, their creditors, and other parties in interest; and upon the Court's entry of the order approving the Motion on an interim basis on July 21, 2020 [Docket No. 88] (the "First Interim Order"), granting the relief requested in the Motion; and upon the Court's entry of the agreed first supplemental interim order on July 26, 2020 [Docket No. 170] (the "First Supplemental Interim Order"), modifying the budget included in the First Interim Order; and upon the Court's entry of the order approving the Motion on a further interim basis on August 3, 2020 [Docket No. 261] (the "Second Interim Order"); and upon the Court's entry of the order approving the Motion on a further interim basis on August 27, 2020 [Docket No. 505]; and upon the Court's entry of the order approving the Motion on a further interim basis on September 2, 2020 [Docket No. 551]; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed this Interim Order (this "Fifth Interim Order") and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor,

IT IS FOUND, DETERMINED, ORDERED AND ADJUDGED, that:

1. *The Motion.* The relief requested in the Motion is granted on a further interim basis in accordance with the terms of, and to the extent set forth in, this Fifth Interim Order. Any and all objections to the Motion with respect to the entry of this Fifth Interim Order that have not been withdrawn, waived or resolved, and all reservations of rights, are hereby denied and overruled on the merits, except as may be set forth herein; provided that, for the avoidance of doubt, the

Creditors' Committee's objections to the Final Order are expressly reserved for the Final Hearing. This Fifth Interim Order shall become effective immediately upon its entry.

2. *Jurisdiction.* This Court has core jurisdiction over the Debtors' chapter 11 cases commenced on July 20, 2020 (the "Chapter 11 Cases," and such date, the "Petition Date"), the Motion, and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157(b) and 1334. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

3. *Notice.* Under the circumstances of these cases, proper, timely, adequate and sufficient notice of the Motion, the Hearing, and this Fifth Interim Order has been provided in accordance with the Bankruptcy Code, the Bankruptcy Rules, and the Bankruptcy Local Rules, and no other or further notice of the Motion, the Hearing, or this Fifth Interim Order shall be required. The interim relief granted herein is necessary to avoid immediate and irreparable harm to the Debtors and their estates pending the Final Hearing.

4. *Debtors' Stipulations.* In requesting use of their Cash Collateral and the other Prepetition ABL Collateral, and in exchange for and as a material inducement to the Prepetition ABL Secured Parties' agreement to permit consensual use of their Cash Collateral and the other Prepetition ABL Collateral, the Debtors acknowledge, represent, stipulate, and agree, subject to the challenge rights set forth in paragraph 32 below (but subject to the limitations thereon contained herein), as follows with respect to the Prepetition ABL Facility (the "ABL Stipulations"). The Debtors also acknowledge, represent, stipulate, and agree, subject to the challenge rights set forth in paragraph 32 below, as follows with respect to the Prepetition CLMG Obligations and Prepetition GACP Obligations (together with the ABL Stipulations, collectively defined as the "Debtors' Stipulations"):

a. *ABL Stipulations.*

- (i) *Prepetition ABL Credit Facility.* On May 30, 2017, BJS entered into that certain Revolving Credit and Guaranty Agreement (as amended by the Limited Waiver and First Amendment to Revolving Credit and Guaranty Agreement dated October 3, 2018, and further amended by the Second Amendment to Revolving Credit and Guaranty Agreement and First Amendment to Canadian Security Agreement and U.S. Security Agreement, dated January 28, 2019, and as otherwise amended, supplemented, or modified prior to the date hereof, the “Prepetition ABL Credit Agreement,” and further supplemented and modified by those certain Limited Waivers, dated as of June 2, 2020, June 12, 2020, and June 23, 2020, and together with all mortgage, security, pledge and guaranty agreements and all other Loan Documents (as defined in the Prepetition ABL Credit Agreement) and all other documentation executed by any Debtor in connection with any of the foregoing, each as amended, restated, amended and restated, supplemented, or otherwise modified from time to time, the “Prepetition ABL Loan Documents”), with JPMorgan Chase Bank, N.A., in its capacity as administrative agent (the “Prepetition ABL Agent”), and the lenders party thereto (the “Prepetition ABL Lenders,” and together with the Prepetition ABL Agent, the “Prepetition ABL Secured Parties”).
- (ii) *Prepetition ABL Obligations.* As of the Petition Date, pursuant to the Prepetition ABL Loan Documents and applicable law, the Prepetition ABL Secured Parties hold valid, enforceable, secured, and allowable claims against the Debtors in an aggregate amount equal to \$101,550,000 plus any and all other accrued and unpaid interest, fees, expenses (including advisors fees and expenses, in each case, that are chargeable or reimbursable under the Prepetition ABL Loan Documents), disbursements, charges, claims, indemnities and other costs and obligations of whatever nature incurred in connection therewith which are chargeable or otherwise reimbursable under the Prepetition ABL Loan Documents or applicable law, whether arising before or after the Petition Date, including any “Obligations” (as defined in the Prepetition ABL Credit Agreement), of any kind or nature, whether or not evidenced by any note, agreement or other instrument, whether or not contingent, whenever arising, accrued, accruing, due, owing, or chargeable in respect of any of the Debtors’ obligations under the Prepetition ABL Loan Documents (collectively defined as the “Prepetition ABL Obligations”).
- (iii) *Prepetition ABL Liens.* The Prepetition ABL Obligations are secured by continuing, legal, valid, binding, properly perfected, enforceable, non-avoidable first priority liens on and security

interests in (the “Prepetition ABL Liens”) all of the “Collateral” as defined in the Prepetition ABL Credit Agreement (the “Prepetition ABL Collateral”), including all of the Debtors’ cash (including the cash in their deposit accounts and other accounts, wherever located, whether as original collateral or proceeds of other Prepetition ABL Collateral except for Excluded Property (as defined in the Prepetition ABL Credit Agreement)) that constitutes Cash Collateral (as defined below). As of the Petition Date, the aggregate book value of the Prepetition ABL Collateral exceeded the aggregate amount of the Prepetition ABL Obligations.

- (iv) *Validity, Perfection, and Priority of Prepetition ABL Liens and Prepetition ABL Obligations.* The Debtors acknowledge and agree that, as of the Petition Date: (i) the Prepetition ABL Liens on the Prepetition ABL Collateral were valid, binding, and enforceable in accordance with the terms of the applicable Prepetition ABL Loan Documents, non-avoidable and properly perfected and were granted to, or for the benefit of, the Prepetition ABL Secured Parties for fair consideration and reasonably equivalent value; (ii) the Prepetition ABL Liens were and remain senior in priority over any and all other liens on and security interests in the Prepetition ABL Collateral, subject only to (x) the Carve Out (as defined below) and (y) valid, perfected and unavoidable liens permitted under Section 7.01 of the Prepetition ABL Credit Agreement to the extent that such liens or security interests are senior to or *pari passu* with the Prepetition ABL Liens (including, for the avoidance of doubt, valid and unavoidable liens in existence as of the Petition Date that are perfected after the Petition Date as permitted by section 546(b) of the Bankruptcy Code) (a “Permitted Encumbrance”); (iii) the Prepetition ABL Obligations constituted legal, valid, binding and non-avoidable obligations of the Debtors, enforceable in accordance with the terms of the applicable Prepetition Loan Documents; (iv) no portion of the Prepetition ABL Obligations or any payments made to the Prepetition ABL Secured Parties or applied to or paid on account of the obligations owing under the Prepetition ABL Loan Documents prior to the Petition Date is subject to any contest, avoidance, reduction, recharacterization, subordination (whether equitable, contractual or otherwise), recovery, reduction, recoupment, disallowance, impairment, rejection, attack, effect, counterclaim, cross-claim, set-off, offset, defense or any other claim (as defined in the Bankruptcy Code) of any kind, cause of action or any other challenge of any kind or nature under the Bankruptcy Code or any other applicable law or regulation or otherwise and the Debtors do not possess, and shall not assert, any claim, counterclaim, setoff or defense of any kind, nature or description that would in any way affect the validity, enforceability and non-avoidability of any Prepetition ABL Obligations; and (v) the

Debtors waive, discharge, and release any right to challenge any of the Prepetition Obligations, the priority of the Debtors' obligations thereunder and the validity, extent, and priority of the Prepetition ABL Liens.

- b. *Validity, Perfection, and Priority of Liens and Obligations under the CLMG Term Loan Agreement.* The Debtors acknowledge and agree that, as of the Petition Date: (i) the CLMG Secured Parties' (as defined below) liens on the CLMG Collateral (such liens, the "Prepetition CLMG Liens") were valid, binding, and enforceable in accordance with the terms of the CLMG Term Loan Agreement (as defined below), non-avoidable and properly perfected and were granted to, or for the benefit of, the CLMG Secured Parties for fair consideration and reasonably equivalent value; (ii) the Prepetition CLMG Liens were and remain senior in priority over any and all other liens on and security interests in the CLMG Collateral (as defined below); (iii) the prepetition obligations owed to the CLMG Secured Parties under the CLMG Term Loan Agreement, including any "Obligations" as defined in the CLMG Term Loan Agreement, of any kind or nature, whether or not evidenced by any note, agreement, or other instrument, whether or not contingent, whenever arising, accrued, accruing, due, owing, or chargeable in respect of any of the Debtors' obligations (collectively, the "Prepetition CLMG Obligations") constituted legal, valid, binding, and non-avoidable obligations of the Debtors, enforceable in accordance with the terms of the CLMG Term Loan Agreement; (iv) no portion of the Prepetition CLMG Obligations or any payments made to the CLMG Secured Parties or applied to or paid on account of the obligations owing under the CLMG Term Loan Agreement prior to the Petition Date is subject to any contest, avoidance, reduction, recharacterization, subordination (whether equitable, contractual or otherwise), recovery, reduction, recoupment, disallowance, impairment, rejection, attack, effect, counterclaim, cross-claim, set-off, offset, defense or any other claim (as defined in the Bankruptcy Code) of any kind, cause of action or any other challenge of any kind or nature under the Bankruptcy Code or any other applicable law or regulation or otherwise and the Debtors do not possess, and shall not assert, any claim, counterclaim, setoff or defense of any kind, nature or description that would in any way affect the validity, enforceability and non-avoidability of any Prepetition CLMG Obligations; and (v) the Debtors waive, discharge, and release any right to challenge any of the Prepetition CLMG Obligations, the priority of the Debtors' obligations thereunder and the validity, extent, and priority of the Prepetition CLMG Liens.
- c. *Validity, Perfection, and Priority of Liens and Obligations under the GACP Term Loan Agreement.* The Debtors acknowledge and agree that, as of the Petition Date: (i) the GACP Secured Parties' (as defined below) liens on the GACP Collateral (such liens, the "Prepetition GACP Liens") were valid, binding, and enforceable in accordance with the terms of the GACP Term

Loan Agreement (as defined below), non-avoidable and properly perfected and were granted to, or for the benefit of, the GACP Secured Parties for fair consideration and reasonably equivalent value; (ii) the Prepetition GACP Liens were and remain senior in priority over any and all other liens on and security interests in the GACP Collateral (as defined below); (iii) the prepetition obligations owed to the GACP Secured Parties under the GACP Term Loan Agreement, including any “Obligations” as defined in the GACP Term Loan Agreement, of any kind or nature, whether or not evidenced by any note, agreement, or other instrument, whether or not contingent, whenever arising, accrued, accruing, due, owing, or chargeable in respect of any of the Debtors’ obligations (collectively, the “Prepetition GACP Obligations”) constituted legal, valid, binding, and non-avoidable obligations of the Debtors, enforceable in accordance with the terms of the GACP Term Loan Agreement; (iv) no portion of the Prepetition GACP Obligations or any payments made to the GACP Secured Parties or applied to or paid on account of the obligations owing under the GACP Term Loan Agreement prior to the Petition Date is subject to any contest, avoidance, reduction, recharacterization, subordination (whether equitable, contractual or otherwise), recovery, reduction, recoupment, disallowance, impairment, rejection, attack, effect, counterclaim, cross-claim, set-off, offset, defense or any other claim (as defined in the Bankruptcy Code) of any kind, cause of action or any other challenge of any kind or nature under the Bankruptcy Code or any other applicable law or regulation or otherwise and the Debtors do not possess, and shall not assert, any claim, counterclaim, setoff or defense of any kind, nature or description that would in any way affect the validity, enforceability and non-avoidability of any Prepetition GACP Obligations; and (v) the Debtors waive, discharge, and release any right to challenge any of the Prepetition GACP Obligations, the priority of the Debtors’ obligations thereunder and the validity, extent, and priority of the Prepetition GACP Liens

5. *Cash Collateral.* For purposes of this Fifth Interim Order, the term “Cash Collateral” shall mean and include all “cash collateral,” as defined in section 363 of the Bankruptcy Code, in or on which the Prepetition ABL Secured Parties have a lien, security interest or other interest (including, without limitation, any adequate protection liens or security interests), and shall include, without limitation, all Prepetition ABL Collateral that is cash of the Debtors’ estates and all cash equivalents, whether in the form of negotiable instruments, documents of title, securities, deposit accounts, commodity accounts, securities accounts, investment accounts, or in any other form, that were on the Petition Date in any of the Debtors’ possession, custody or control (or

persons in privity with any of the Debtors) or which present income, proceeds, products, rents, or profits of any of the Prepetition ABL Collateral, including to the extent the Debtors obtain an interest in such funds after the Petition Date in the case of each of the foregoing, except for any Excluded Property (as defined in the Prepetition ABL Credit Agreement). The Prepetition ABL Agent has, for the benefit of the Prepetition ABL Lenders, first-priority, perfected liens in the Cash Collateral pursuant to the applicable provisions of the Prepetition ABL Loan Documents, sections 363(a) and 552(b) of the Bankruptcy Code, and this Fifth Interim Order.

6. *Findings Regarding the Use of Cash Collateral and Prepetition ABL Collateral.*

- a. Good cause has been shown for the entry of this Fifth Interim Order.
- b. The Debtors have an immediate need to use the Prepetition ABL Collateral, including Cash Collateral to, among other things, fund the ongoing orderly sale of their assets, pay their operating expenses, and preserve the value of the Debtors' estates.
- c. The terms of the use of the Prepetition ABL Collateral pursuant to this Fifth Interim Order are fair and reasonable, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties and constitute reasonably equivalent value and fair consideration.
- d. The terms of the use of the Prepetition ABL Collateral pursuant to this Fifth Interim Order have been the subject of extensive negotiations conducted in good faith and at arm's length among the Debtors, the Prepetition ABL Agent, and other Prepetition ABL Secured Parties and, pursuant to sections 105, 361, and 363 of the Bankruptcy Code, the Prepetition ABL Agent and the other Prepetition ABL Secured Parties are hereby found to be entities that have acted in "good faith" in connection with the negotiation and entry of this Fifth Interim Order, and each is entitled to the protection provided under section 363(m) of the Bankruptcy Code.
- e. The Debtors have requested entry of this Fifth Interim Order pursuant to Bankruptcy Rule 4001(b)(2) and (d) of the Complex Case Procedures. Absent granting the interim relief sought by this Fifth Interim Order, the Debtors' estates could be immediately and irreparably harmed. The use of the Prepetition ABL Collateral in accordance with this Fifth Interim Order is in the best interest of the Debtors' estates.

7. *Need for Limited Use of Cash Collateral.* The Debtors have an immediate and critical need to continue to use the Prepetition ABL Collateral (including Cash Collateral) in order to permit, among other things, the ongoing marketing and sale of their assets, to make payroll, to satisfy other working capital and operational needs and fund the Chapter 11 Cases, in each such case in accordance with the terms of this Fifth Interim Order, including in accordance with the Budget (as defined below). The access of the Debtors to sufficient working capital and liquidity through the use of Cash Collateral and other Prepetition ABL Collateral is necessary to preserve and maintain the value of the Debtors' estates. Without the use of Cash Collateral, the Debtors would likely not have sufficient liquidity to continue to operate their organization and effectuate an orderly wind-down of the Debtors' businesses. Entry of this Fifth Interim Order will preserve the assets of each Debtor's estate and its value and is in the best interests of the Debtors, their creditors, and their estates. The Adequate Protection Liens, the Adequate Protection Superpriority Claims, the ABL Adequate Protection Payments, and the ABL Adequate Protection Fees and Expenses (each as defined herein) are consistent with and authorized by the Bankruptcy Code. Absent authorization to immediately access and use Cash Collateral, the Debtors, the estates, and their creditors would suffer immediate and irreparable harm.

8. *Consent by the Prepetition ABL Agent.* The Prepetition ABL Agent consents to the Debtors' use of Cash Collateral, in accordance with and subject to the terms and conditions contained in this Fifth Interim Order, which consent has been supported or unopposed by the Required Lenders (as defined in the Prepetition ABL Credit Agreement) after receipt of notice and shall be deemed sufficient under the circumstances for purposes of this Fifth Interim Order. All use of Cash Collateral by the Debtors shall, subject to any Non-Conforming Use (as such term is defined below) permitted hereunder, be consistent with the cash flow budget attached hereto as

Exhibit 1, as may be amended or replaced pursuant to paragraph 17 hereof (the “Budget”); provided, however, that the actual aggregate cash balance, which shall be tested on a daily basis, shall not be less than the projected amount therefore set forth in the Budget for such applicable time period by more than 15%; provided that Allowed Professional Fees, the Adequate Protection Fees and Expenses (as defined in paragraph 11 below), and payments to the U.S. Trustee shall not be subject to such test; provided further, that Allowed Professional Fees shall not exceed the projected amount therefor set forth in the Budget for such applicable time period by more than 15% (any variance not exceeding the maximum amounts set forth above, a “Permitted Variance”) (provided that nothing herein shall operate as a limitation on the amount of professional fees a Professional Person may seek to be paid by the Debtors pursuant to an order of the Court, nor shall anything herein limit the Prepetition ABL Agent’s rights to oppose any request for payment of professional fees in excess of the Permitted Variance). Any transfer or use of Cash Collateral by the Debtors shall be conditioned upon the Debtors’ compliance with the Budget, including any Permitted Variances or Non-Conforming Uses. The Prepetition ABL Agent may (with the consent of the Required Lenders if the proposed amount is equal to or greater than \$1 million) agree in writing to the use or receipt of the Cash Collateral of the Prepetition ABL Lenders in a manner or amount which does not conform to the manner or amount, as applicable, set forth in the Budget (including, for the avoidance of doubt, any Permitted Variances) (each such approved non-conforming use of Cash Collateral, a “Non-Conforming Use”). If such written consent is given (which consent may be given through email by the Prepetition ABL Agent or the Prepetition ABL Agent’s counsel), the Debtors shall be authorized pursuant to this Fifth Interim Order to use Cash Collateral for any such Non-Conforming Use without further Court approval, and the Prepetition ABL Secured Parties shall be entitled to all of the protections specified in this Fifth Interim Order

for any such Non-Conforming Use; provided that each such permitted Non-Conforming Use shall be deemed a modification to the Budget for all testing purposes. For the avoidance of doubt and notwithstanding anything to the contrary in this Fifth Interim Order, the Prepetition ABL Agent does not consent to the Debtors' use of, and the Debtors shall not be permitted to use, the Cash Collateral constituting Prepetition ABL Collateral or ABL Adequate Protection Collateral (as defined below, and subject to satisfaction of claims on account of ABL Diminution in Value, if any) for (i) payment to any other secured party in these chapter 11 cases (including the GACP Secured Parties and CLMG Secured Parties), (ii) payment of any costs attributable to the GACP Collateral or CLMG Collateral (each as defined below), including costs and expenses (x) of preserving, or disposing of, the GACP Collateral or CLMG Collateral, (y) incurred in connection with any sale of such GACP Collateral or CLMG Collateral, or (z) costs and expenses on account of the GACP Collateral or CLMG Collateral in connection with, or following, relief from the automatic stay (if applicable) or any budget with respect thereto, or (iii) payment of any transition services to be provided under a transition service agreement in connection with any of the Debtors' asset sales.

9. *Use of Cash.* As a condition to the Prepetition ABL Secured Parties' consent to the use of Cash Collateral, the Debtors shall be required to first utilize unencumbered cash (or any other cash available to the Debtors for satisfaction of costs and expenses) available for use by the Debtors, if any, to satisfy the costs and expenses set forth in the Budget prior to using Cash Collateral; provided that if there is no unencumbered cash available for use by the Debtors or the Debtors' balance of unencumbered cash has been reduced to zero, the Debtors next shall be required to use proceeds available for use by the Debtors from any and all sales of the Debtors' assets or causes of action subject to the First Priority ABL Adequate Protection Liens (the "ABL

Adequate Protection Cash Collateral”), if any, to satisfy the costs and expenses set forth in the Budget; provided, further, that if there is no unencumbered cash or ABL Adequate Protection Cash Collateral available for use by the Debtors, or both the unencumbered cash and ABL Adequate Protection Cash Collateral have been reduced to zero, the Debtors are authorized to use the Cash Collateral constituting Prepetition ABL Collateral in accordance with this Fifth Interim Order and as set forth in the Budget.

10. *Entitlement of Prepetition ABL Secured Parties to Adequate Protection.* Pursuant to sections 361, 362, 363(c)(2), and 363(e) of the Bankruptcy Code, the Prepetition ABL Secured Parties are entitled to adequate protection of their interests in the Prepetition ABL Collateral, including the Cash Collateral, in an amount equal to the aggregate actual diminution in the value of the Prepetition ABL Secured Parties’ interests in the Prepetition ABL Collateral (including Cash Collateral) from and after the Petition Date, if any, for any reason provided for under the Bankruptcy Code, including, without limitation, any such diminution resulting from the sale, lease, or use by the Debtors of the Prepetition ABL Collateral (including Cash Collateral, whether pursuant to the Budget or otherwise), the subordination of their liens on the Prepetition ABL Collateral and Adequate Protection Superpriority Claims (as defined herein) to the Carve Out pursuant to this Fifth Interim Order and the Prepetition ABL Loan Documents, or the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code (“ABL Diminution in Value”).

11. *ABL Adequate Protection Claims and Liens.* The Prepetition ABL Secured Parties are hereby granted the following (collectively, the “ABL Adequate Protection Obligations”), solely to the extent of any ABL Diminution in Value; provided that the collateral set forth in this paragraph 11 shall not include assets or property (other than Prepetition ABL Collateral, including

Cash Collateral) upon which, and solely to the extent that, the grant of an Adequate Protection Lien as contemplated in this Fifth Interim Order, would constitute a default or event of default under any of the Debtors' contracts or leases, excluding, for the avoidance of doubt, the GACP Term Loan Agreement (and such default would not be excused or rendered ineffective by operation of the Bankruptcy Code or applicable nonbankruptcy law), but shall include the proceeds thereof:

- a. *ABL Adequate Protection Liens.* Pursuant to sections 361 and 363(e) of the Bankruptcy Code, as adequate protection against any actual ABL Diminution in Value (if any) of the Prepetition ABL Collateral, including Cash Collateral, effective as of the Petition Date and perfected without the need for execution by the Debtors or the recordation or other filing by the Prepetition ABL Agent of security agreements, control agreements, pledge agreements, mortgages or other Collateral Documents (as defined in the Prepetition ABL Credit Agreement) or financing statements or other similar documents, or the possession or control by the Prepetition ABL Agent of any Adequate Protection Collateral, the Prepetition ABL Agent is hereby granted for the ratable benefit of the Prepetition ABL Lenders, as security for the payment of the ABL Adequate Protection Obligations, subject and subordinate only to the Carve Out, the following security interests and liens (all such liens and security interests, the "ABL Adequate Protection Liens," and all property identified in clauses (i) - (iii) below being collectively referred to as the "ABL Adequate Protection Collateral"):
 - (i) First Priority ABL Adequate Protection Liens. Pursuant to sections 361(2) and 363(c)(2) of the Bankruptcy Code, binding, continuing, enforceable, fully perfected, first priority (subject to subparagraph 11(b)) senior replacement liens on and security interests in and upon (a) all Prepetition ABL Collateral, and (b) all assets and properties of the Debtors' estates other than (i) the CLMG Collateral (as defined below), (ii) the GACP Collateral (as defined below), and (iii) those assets and properties that are subject to any other (x) valid, perfected, non-avoidable, and enforceable liens in existence on or as of the Petition Date or (y) valid and unavoidable liens in existence as of the Petition Date that are perfected after the Petition Date as permitted by section 546(b) of the Bankruptcy Code, whether now owned or hereafter acquired, including, without limitation, all personal and real property of the Debtors' estates and all products, proceeds, rents, and profits thereof that, from and after the Petition Date, is not subject to any lien or security interest, if any, including upon entry of the Final Order, the proceeds of any claims and causes of action of the Debtors (but not on the actual claims and causes of action) arising under sections 544, 545, 547, 548, 549, and 550 of the Bankruptcy Code and any other avoidance or similar action

under the Bankruptcy Code or similar state law (collectively, the “Avoidance Actions”) (the foregoing liens being collectively referred to as the “First Priority ABL Adequate Protection Liens”).

- (ii) ABL Adequate Protection Liens Junior to Certain Existing Liens. Pursuant to sections 361(2) and 363(c)(2) of the Bankruptcy Code, valid, binding, continuing, enforceable, fully-perfected non-voidable junior priority liens on, and junior security interests in, all tangible and intangible assets, including without limitation, all prepetition and post-petition property of the Debtors’ estates, and all products and proceeds thereof, whether now existing or hereafter acquired, that is subject to (a) valid, perfected, and unavoidable liens in existence as of the Petition Date, including, without limitation, the liens of (i) GACP Finance Co., LLC (“GACP”), as administrative agent and collateral agent under the Term Loan Credit and Guaranty Agreement, dated as of January 28, 2019, by and among BJS, GACP, and the other parties thereto (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time, the “GACP Term Loan Agreement”), which encumber the “Collateral” as defined therein (the “GACP Collateral”) and (ii) CLMG Corp. (“CLMG”), as administrative agent and collateral agent under the Credit Agreement, dated as of December 31, 2019, by and among BJS, CLMG, and the other parties thereto (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time, the “CLMG Term Loan Agreement”), which encumber the “Collateral” as defined therein (the “CLMG Collateral”) or (b) valid and unavoidable liens in existence as of the Petition Date that are perfected after the Petition Date as permitted by section 546(b) of the Bankruptcy Code, which valid, perfected and unavoidable liens are senior in priority to the security interests and liens in favor of the Prepetition ABL Agent (the foregoing liens being collectively referred to as the “Junior ABL Adequate Protection Liens”).
 - (iii) ABL Adequate Protection Liens Senior to Prepetition ABL Liens. Pursuant to sections 361(2) and 363(c)(2) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected non-voidable priming lien on, and security interest in, all tangible and intangible assets comprising the Prepetition ABL Collateral, and all products and proceeds thereof, whether now existing or hereafter acquired.
- b. *Status of the ABL Adequate Protection Liens.* Subject in all respects to the Carve Out, the Adequate Protection Liens shall not be (i) subject or subordinate to (A) any lien or security interest that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code or (B) any lien or security interest arising after the Petition

Date, or (ii) except as otherwise set forth in clauses (a)(i)-(iii) of this paragraph 11, subordinated to or made *pari passu* with any other lien or security interest, now or hereafter existing and whether authorized under sections 363 or 364 of the Bankruptcy Code or otherwise.

- c. *Allocation of Proceeds.* Except as otherwise provided herein, all proceeds from Cementing Sale and sale of the Debtors' fracturing assets (the "Fracturing Sale") [Docket Nos. 452, 462] shall be reserved or distributed in accordance with the respective orders authorizing such sales or by subsequent order of the Court.
- d. *Enforceability.* Subject in all respects to the Carve Out, the ABL Adequate Protection Liens shall not be subject to sections 506(c) (upon entry of the Final Order), 510, 549, 550, or 551 of the Bankruptcy Code. The ABL Adequate Protection Liens shall be enforceable against and binding upon the Debtors, their estates and any successors thereto, including, without limitation, any trustee or other estate representative appointed in the Debtors' Chapter 11 Cases, or any case under chapter 7 of the Bankruptcy Code upon the conversion of any of the Debtors' Chapter 11 Cases, or in any other proceedings superseding or related to any of the foregoing (each, a "Successor Case").
- e. *Adequate Protection Superpriority Claims.* The ABL Adequate Protection Obligations due to the Prepetition ABL Agent shall constitute allowed superpriority administrative expense claims against the Debtors in the amount of any Diminution in Value of the Prepetition ABL Collateral, including Cash Collateral, as provided in section 507(b) of the Bankruptcy Code, with priority in payment over any and all unsecured claims and administrative expense claims against the Debtors, now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, administrative expenses of the kinds specified in or ordered pursuant to sections 105, 326, 327, 328, 330, 331, 361, 362, 363, 364, 365, 503(a), 503(b), 506(c), 507(a), 507(b), 546(c), 546(d), 552(b), 726, 1113, 1114 and any other provision of the Bankruptcy Code, and shall at all times be senior to the rights of the Debtors and any successor trustee or creditor in these Chapter 11 Cases or any Successor Case (the "ABL Adequate Protection Superpriority Claims"), subject and subordinate only to the Carve Out (as defined herein).

12. *ABL Additional Adequate Protection.* As additional adequate protection to the Prepetition ABL Agent and the Prepetition ABL Secured Parties:

- a. *Payment of Prepetition and Postpetition Interest.* The Debtors shall pay to the Prepetition ABL Agent for the benefit of the Prepetition ABL Lenders all accrued and unpaid interest (including, for the avoidance of doubt, interest accruing and becoming due after the Petition Date) at the

non-default rates and consistent with the ordinary course interest payment dates set forth in the Prepetition ABL Credit Agreement (the “ABL Adequate Protection Interest Payments”).

- b. *Payment of Prepetition ABL Agent Fees and Expenses.* As additional adequate protection, the Prepetition ABL Agent shall receive from the Debtors, for the benefit of the Prepetition ABL Lenders, current cash payments of all reasonable and documented prepetition and postpetition fees and expenses payable to the Prepetition ABL Secured Parties under the Prepetition ABL Loan Documents, including, but not limited to, the reasonable and documented prepetition and postpetition fees and disbursements of legal counsel, financial advisors, and other consultants (the “ABL Adequate Protection Fees and Expenses”). Payment of all such professional fees and expenses shall not be subject to allowance by the Court but shall be subject to the following process. At the same time such invoices are delivered to the Debtors, the professionals for the Prepetition ABL Secured Parties shall deliver a copy of their respective invoices to counsel for any official committee appointed in these cases pursuant to section 1102 of the Bankruptcy Code (a “Creditors’ Committee”) and the office of the United States Trustee (the “U.S. Trustee”). The invoices for such fees and expenses shall not be required to comply with any U.S. Trustee guidelines related to the payment of fees and expenses of retained estate professionals, may be in summary form only, and shall not be subject to application or allowance by the Court. Any objections raised by the Debtors, the U.S. Trustee, or the Creditors’ Committee with respect to such invoices within ten (10) days of receipt thereof (the “Invoice Review Period”) will be resolved by the Court (absent prior consensual resolution thereof). Pending such resolution, the undisputed portion of any such invoice shall be paid by the Debtors within three (3) days of the expiration of the Invoice Review Period. Except as otherwise ordered by the Court in the event an objection is timely filed, such fees and expenses shall not be subject to any setoff, defense, claim, counterclaim, or diminution of any type, kind, or nature whatsoever.
- c. *Paydown of Prepetition ABL Obligations.* The Debtors shall pay to the Prepetition ABL Agent for the benefit of the Prepetition ABL Lenders (i) an aggregate principal amount of \$2,000,000 to be paid on the following schedule: (x) \$1,000,000 to be paid on September 11, 2020, and (y) \$1,000,000 to be paid on September 18, 2020, (ii) an amount equal to 25% of any Debtor-owned gross account receivable collections in excess of \$12.9 million as measured from September 12, 2020, through 12 p.m. (prevailing Eastern Time) on September 25, 2020, up to a total maximum payment of \$2 million to be paid at the end of the forgoing period, (iii) an amount equal to 50% of any collection by the Debtors of amounts from the GACP Secured Parties on account of costs paid by the Debtors prior to the date hereof no later than one (1) business day following the Debtors’ receipt of such funds and to the extent the Debtors have sufficient available funds,

and (iv) an amount equal to 50% of any amounts determined by the Court to be proceeds of intellectual property or inventory from the Debtors' sale of fracturing assets [Docket No. 493] no later than one (1) business day following the date of such determination and to the extent the Debtors have sufficient available funds (together with the ABL Adequate Protection Interest Payments, collectively, the "ABL Adequate Protection Payments"); provided that such amounts shall be paid from the Cash Collateral constituting Prepetition ABL Collateral and will reduce the principal amount outstanding under the Prepetition ABL Obligations; provided, further, however, that any payments made pursuant to this paragraph 11(c) may be subject to disgorgement if a challenge action is brought against the Prepetition ABL Secured Parties in accordance with paragraph 32 and if any such payments are disgorged, the principal amount outstanding under the Prepetition ABL Obligations will be adjusted upward accordingly.

- d. *Other Covenants.* The Debtors shall maintain their cash management system in a manner consistent with this Fifth Interim Order, and any order of this Court approving the maintenance of the Debtors' cash management system. The Debtors shall not use, sell, or lease any material assets outside the ordinary course of business, or seek authority to this Court to do any of the foregoing, without prior consultation with the Prepetition ABL Agent at least seven (7) days prior to the date on which the Debtors seek authority of this Court for such use, sale, or lease. The Debtors shall comply with the covenants contained in section 6.07 of the Prepetition ABL Credit Agreement regarding the maintenance and insurance of the Prepetition ABL Collateral and the Adequate Protection Collateral.

13. *Entitlement of CLMG Secured Parties to Adequate Protection.* Pursuant to sections 361, 362, 363(c)(2), and 363(e) of the Bankruptcy Code, the CLMG Secured Parties are entitled to adequate protection of their interests in the CLMG Collateral, in an amount equal to the aggregate actual diminution in the value of the CLMG Secured Parties' interests in the CLMG Collateral from and after the Petition Date, if any, for any reason provided for under the Bankruptcy Code, including, without limitation, any such diminution resulting from the sale, lease, or use by the Debtors of the CLMG Collateral, or the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code. ("CLMG Diminution in Value").

14. *CLMG Adequate Protection Claims and Liens.* CLMG in its capacity as administrative agent (the "CLMG Agent"), and the lenders party thereto (the "CLMG Lenders,"

and together with the CLMG Agent, the “CLMG Secured Parties”) are hereby granted the following (collectively, the “CLMG Adequate Protection Obligations” and together with the ABL Adequate Protection Obligations, the “Adequate Protection Obligations”), solely to the extent of any CLMG Diminution in Value; provided that the collateral set forth in this paragraph 14 shall not include assets or property (other than CLMG Collateral) upon which, and solely to the extent that, the grant of an Adequate Protection Lien as contemplated in this Fifth Interim Order, would constitute a default or event of default under any of the Debtors’ contracts or leases (and such default would not be excused or rendered ineffective by operation of the Bankruptcy Code or applicable nonbankruptcy law), but shall include the proceeds thereof:

- a. *CLMG Adequate Protection Liens.* Pursuant to sections 361 and 363(e) of the Bankruptcy Code, as adequate protection against any actual CLMG Diminution in Value (if any) of the CLMG Collateral effective as of the Petition Date and perfected without the need for execution by the Debtors or the recordation or other filing by CLMG of security agreements, control agreements, pledge agreements, mortgages or other Collateral Documents (as defined in the CLMG Term Loan Credit Agreement) or financing statements or other similar documents, or the possession or control by CLMG of any Adequate Protection Collateral, CLMG is hereby granted, as security for the payment of the CLMG Adequate Protection Obligations, the following security interests and liens (all such liens and security interests, the “CLMG Adequate Protection Liens”):
 - (i) CLMG Adequate Protection Liens Junior to Certain Existing Liens and Junior to ABL Adequate Protection Liens. Pursuant to sections 361(2) and 363(c)(2) of the Bankruptcy Code, valid, binding, continuing, enforceable, fully-perfected non-voidable junior priority liens on, and junior security interests in, all tangible and intangible assets, including without limitation, all prepetition and postpetition property of the Debtors’ estates, and all products and proceeds thereof, whether now existing or hereafter acquired, that is subject to (a) valid, perfected, and unavoidable liens in existence as of the Petition Date, including, without limitation (i) the assets subject to the ABL Adequate Protection Liens (other than with respect the CLMG Collateral) and (ii) the GACP Collateral (which such liens on the GACP Collateral shall be junior to the ABL Adequate Protection Liens) or (b) valid and unavoidable liens in existence as of the Petition Date that are perfected after the Petition Date as permitted by section 546(b) of the Bankruptcy Code, which

valid, perfected and unavoidable liens are senior in priority to the security interests and liens in favor of CLMG (the foregoing liens being collectively referred to as the “Junior CLMG Adequate Protection Liens”).

(ii) Adequate Protection Liens Senior to Prepetition CLMG Liens. Pursuant to sections 361(2) and 363(c)(2) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected non-voidable priming lien on, and security interest in, all tangible and intangible assets comprising the CLMG Collateral, and all products and proceeds thereof, whether now existing or hereafter acquired.

b. *Status of the CLMG Adequate Protection Liens.* The CLMG Adequate Protection Liens shall be *pari passu* with the GACP Adequate Protection Liens and junior to the ABL Adequate Protections Liens in all respects and shall not otherwise be (i) subject or subordinate to (A) any lien or security interest that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code or (B) any lien or security interest arising after the Petition Date, or (ii) except as otherwise set forth in clauses (a)(i)-(ii) of this paragraph 14, subordinated to or made *pari passu* with any other lien or security interest, now or hereafter existing and whether authorized under sections 363 or 364 of the Bankruptcy Code or otherwise.

c. *Enforceability.* The CLMG Adequate Protection Liens shall not be subject to sections 510, 549, 550, or 551 of the Bankruptcy Code. The CLMG Adequate Protection Liens shall be enforceable against and binding upon the Debtors, their estates and any successors thereto, including, without limitation, any trustee or other estate representative appointed in the Debtors’ Chapter 11 Cases or any Successor Case.

15. *Entitlement of GACP Secured Parties to Adequate Protection.* Pursuant to sections 361, 362, 363(c)(2), and 363(e) of the Bankruptcy Code, the GACP Secured Parties are entitled to adequate protection of their interests in the GACP Collateral, in an amount equal to the aggregate actual diminution in the value of the GACP Secured Parties’ interests in the GACP Collateral from and after the Petition Date, if any, for any reason provided for under the Bankruptcy Code, including, without limitation, any such diminution resulting from the sale, lease, or use by the Debtors of the GACP Collateral, or the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code. (“GACP Diminution in Value”).

16. *GACP Adequate Protection Claims and Liens.* GACP, in its capacity as administrative agent (the “GACP Agent”), and the lenders party thereto (the “GACP Lenders,” and together with the GACP Agent, the “GACP Secured Parties,” and together with the Prepetition ABL Secured Parties and CLMG Secured Parties, the “Prepetition Secured Parties”) are hereby granted the following (collectively, the “GACP Adequate Protection Obligations” and together with the ABL Adequate Protection Obligations, the “Adequate Protection Obligations”), solely to the extent of any GACP Diminution in Value; provided that the collateral set forth in this paragraph 16 shall not include assets or property (other than GACP Collateral) upon which, and solely to the extent that, the grant of an Adequate Protection Lien as contemplated in this Fifth Interim Order, would constitute a default or event of default under any of the Debtors’ contracts or leases (and such default would not be excused or rendered ineffective by operation of the Bankruptcy Code or applicable nonbankruptcy law), but shall include the proceeds thereof:

- a. *GACP Adequate Protection Liens.* Pursuant to sections 361 and 363(e) of the Bankruptcy Code, as adequate protection against any actual GACP Diminution in Value (if any) of the GACP Collateral effective as of the Petition Date and perfected without the need for execution by the Debtors or the recordation or other filing by GACP of security agreements, control agreements, pledge agreements, mortgages or other Collateral Documents (as defined in the GACP Term Loan Credit Agreement) or financing statements or other similar documents, or the possession or control by GACP of any Adequate Protection Collateral, GACP is hereby granted, as security for the payment of the GACP Adequate Protection Obligations, the following security interests and liens (all such liens and security interests, the “GACP Adequate Protection Liens,” and together with the ABL Adequate Protection Liens and CLMG Adequate Protection Liens, the “Adequate Protection Liens”):
 - (i) GACP Adequate Protection Liens Junior to Certain Existing Liens and Junior to ABL Adequate Protection Liens. Pursuant to sections 361(2) and 363(c)(2) of the Bankruptcy Code, valid, binding, continuing, enforceable, fully-perfected non-voidable junior priority liens on, and junior security interests in, all tangible and intangible assets, including without limitation, all prepetition and postpetition property of the Debtors’ estates, and all products and proceeds thereof, whether now existing or hereafter acquired,

that is subject to (a) valid, perfected, and unavoidable liens in existence as of the Petition Date, including, without limitation (i) the assets subject to the ABL Adequate Protection Liens (other than with respect the GACP Collateral) and (ii) the GACP Collateral (which such liens on the GACP Collateral shall be junior to the ABL Adequate Protection Liens) or (b) valid and unavoidable liens in existence as of the Petition Date that are perfected after the Petition Date as permitted by section 546(b) of the Bankruptcy Code, which valid, perfected and unavoidable liens are senior in priority to the security interests and liens in favor of GACP (the foregoing liens being collectively referred to as the “Junior GACP Adequate Protection Liens”).

(ii) Adequate Protection Liens Senior to Prepetition GACP Liens. Pursuant to sections 361(2) and 363(c)(2) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected non-voidable priming lien on, and security interest in, all tangible and intangible assets comprising the GACP Collateral, and all products and proceeds thereof, whether now existing or hereafter acquired.

b. *Status of the GACP Adequate Protection Liens.* The GACP Adequate Protection Liens shall be *pari passu* with the CLMG Adequate Protection Liens and junior to the ABL Adequate Protections Liens in all respects and shall not otherwise be (i) subject or subordinate to (A) any lien or security interest that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code or (B) any lien or security interest arising after the Petition Date, or (ii) except as otherwise set forth in clauses (a)(i)-(ii) of this paragraph 16, subordinated to or made *pari passu* with any other lien or security interest, now or hereafter existing and whether authorized under sections 363 or 364 of the Bankruptcy Code or otherwise.

c. *Enforceability.* The GACP Adequate Protection Liens shall not be subject to sections 510, 549, 550, or 551 of the Bankruptcy Code. The GACP Adequate Protection Liens shall be enforceable against and binding upon the Debtors, their estates and any successors thereto, including, without limitation, any trustee or other estate representative appointed in the Debtors’ Chapter 11 Cases or any Successor Case.

17. *Reporting.* As adequate protection for the Debtors’ use of the Prepetition ABL Collateral (including Cash Collateral), the Debtors shall comply with the reporting requirements set forth in the Prepetition ABL Loan Documents, provided that notwithstanding anything to the contrary in this Fifth Interim Order or the Prepetition ABL Loan Documents, the Debtors shall not

be required to deliver any Borrowing Base Certificates (as defined in the Prepetition ABL Credit Agreement) to the Prepetition ABL Agent. For the avoidance of doubt, any forecast and financial reporting requirements under this Fifth Interim Order shall replace and be in lieu of any similar requirements under the Prepetition ABL Loan Documents. The Debtors shall provide the following additional reporting to the Prepetition ABL Agent, GACP, and the Creditors' Committee (as applicable):

- a. on or before 5:00 p.m. (Central Time) on every fourth Thursday (or, if such Thursday is not a business day, then the immediately succeeding business day), until earlier of (i) confirmation of a chapter 11 plan by the Debtors or (ii) the repayment of the Prepetition ABL Obligations indefeasibly in full in cash, an updated Budget with respect to the Debtors for the current calendar week then ended and the immediately following consecutive 12 weeks (collectively, 13 weeks), set forth on a weekly basis. Each proposed Budget provided to the Prepetition ABL Agent shall be of no force and effect unless and until it is approved by the Prepetition ABL Agent, which approval has been supported or unopposed by the Required Lenders (as defined in the Prepetition ABL Credit Agreement), and, until such approval is given, the prior Budget shall remain in effect. Any such proposed Budget, upon the approval of the Prepetition ABL Agent shall become, as of the date of such approval or such determination (and the Prepetition ABL Agent shall be deemed to have approved the Budget upon the passage of five (5) days with no objection) and for the period of time covered thereby, the Budget, and shall prospectively replace any prior Budget. If the Debtors and the Prepetition ABL Agent are unable to agree on a proposed Budget's terms, the Debtors reserve the right to seek an expedited hearing with the Court to resolve such disagreement. In that event, the Prepetition ABL Agent shall not oppose the request for expedited consideration provided that any such hearing is held on not less than 48 hours' notice to the Prepetition ABL Agent. In the event of any dispute regarding the terms of a Budget, the Debtors and the Prepetition ABL Agent reserve any and all rights under the Bankruptcy Code or applicable law;
- b. on or before 5:00 p.m. (prevailing Central Time) on every Thursday (or, if such Thursday is not a business day, then the immediately succeeding business day), the Debtors shall deliver to the Prepetition ABL Agent and GACP, on a line-by-line basis, a reconciliation report showing the variances comparing actual cash receipts and disbursements of the Debtors during the immediately-preceding calendar week with corresponding forecasted amounts for such week in the Budget, including written descriptions in reasonable detail explaining any material positive or negative variances;

- c. on or before 9:00 a.m. (prevailing Central Time) every business day, the Debtors shall deliver to the Prepetition ABL Agent a report showing the Debtors' cash balance as of the end of the preceding day;
- d. on or before 5:00 p.m. (prevailing Central Time) starting on September 4, 2020 (with respect to month ending July 31, 2020), and continuing thereafter the date that is 35 days from the prior month's end (or if such day is not a business day, then the immediately succeeding business day), the Debtors shall provide to the Prepetition ABL Agent the information constituting the Borrowing Base (as defined in the Prepetition ABL Credit Agreement) report; provided that notwithstanding anything to the contrary in this Fifth Interim Order or the Prepetition ABL Loan Documents, the Debtors shall not be required to deliver any Borrowing Base Certificates (as defined in the Prepetition ABL Credit Agreement) to the Prepetition ABL Agent;
- e. no less than three times a week, upon reasonable request the Debtors shall provide the Prepetition ABL Agent an update on the vendor settlement process, including, without limitation, updated "Trade Settlement Update" and "Lien Tracker" files;
- f. all financial reports, forecasts and all other financial documentation, pleadings and other filings that are reasonably requested by the Prepetition ABL Agent, GACP, the Creditors' Committee, or their representatives and agents, including, but not limited to any appraisals conducted by Hilco, GACP, or any other party, and any other materials that may value the Debtors' intellectual property or real estate assets;
- g. in addition to, and without limiting, whatever rights to access the Prepetition ABL Agent has under the Prepetition ABL Loan Documents, upon reasonable notice, at reasonable times during normal business hours, the Debtors shall (i) permit representatives of the Prepetition ABL Agent to visit and inspect any of their respective properties, to examine and make abstracts or copies from any of their respective books and records, to tour the Debtors' business premises and other properties, and (ii) cause their representatives and agents to make themselves reasonably available to discuss the Debtors' affairs, financial condition, properties, business, operations and accounts with the representatives and agents of the Prepetition ABL Agent.

18. *Carve Out.*

- a. *Carve Out.* As used in this Fifth Interim Order, the "Carve Out" means the sum of (i) all fees required to be paid to the Clerk of the Court and to the Office of the United States Trustee under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate (without regard to the notice set forth in (iii) below); (ii) all reasonable fees and expenses up to

\$75,000 incurred by a trustee under section 726(b) of the Bankruptcy Code (without regard to the notice set forth in (iii) below); (iii) to the extent allowed at any time, whether by interim order, procedural order, or otherwise, all unpaid fees and expenses (the “Allowed Professional Fees”) incurred by persons or firms retained by the Debtors pursuant to section 327, 328, or 363 of the Bankruptcy Code (the “Debtor Professionals”) and the Creditors’ Committee pursuant to section 328 or 1103 of the Bankruptcy Code (the “Committee Professionals” and, together with the Debtor Professionals, the “Professional Persons”) at any time before or on the first business day following delivery by the Prepetition ABL 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; and (iv) Allowed Professional Fees of Professional Persons in an aggregate amount not to exceed \$1 million incurred after the first business day following delivery by the Prepetition ABL Agent of the Carve Out Trigger Notice, to the extent allowed at any time, whether by interim order, procedural order, or otherwise (the amounts set forth in this clause (iv) being the “Post-Carve Out Trigger Notice Cap”). For purposes of the foregoing, “Carve Out Trigger Notice” shall mean a written notice delivered by email (or other electronic means) by the Prepetition ABL Agent to the Debtors, the Debtors’ lead restructuring counsel, the U.S. Trustee, and counsel to the Creditors’ Committee, which notice may be delivered following the occurrence and during the continuation of a Termination Event (as defined below) and upon termination of the Debtors’ right to use Cash Collateral by the Prepetition ABL Secured Parties, stating that the Post-Carve Out Trigger Notice Cap has been invoked.

- b. *Fee Estimates.* Not later than 7:00 p.m. New York time on the Wednesday of each week starting with the first full calendar week following the Petition Date, each Professional Person shall deliver to the Debtors a statement setting forth a good-faith estimate of the amount of fees and expenses incurred during the preceding week by such Professional Person (through Saturday of such week, the “Calculation Date”) (collectively, “Estimated Fees and Expenses”), along with a good-faith estimate of the cumulative total amount of unreimbursed fees and expenses incurred through the applicable Calculation Date and a statement of the amount of such fees and expenses that have been paid to date by the Debtors (each such statement, a “Weekly Statement”); provided that within one business day of the occurrence of the Termination Declaration Date (as defined below), each Professional Person shall deliver one additional statement (the “Final Statement”) setting forth a good-faith estimate of the amount of fees and expenses incurred during the period commencing on the calendar day after the most recent Calculation Date for which a Weekly Statement has been delivered and concluding on the Termination Declaration Date (and the Debtors shall cause such Weekly Statement and Final Statement to be delivered on the same day received to the Prepetition ABL Agent). If any Professional Person fails to deliver a Weekly Statement within three

calendar days after such Weekly Statement is due, such Professional Person's entitlement (if any) to any funds in the Carve Out Reserves (as defined below) with respect to the aggregate unpaid amount of Allowed Professional Fees for the applicable period(s) for which such Professional Person failed to deliver a Weekly Statement covering such period shall be limited to the aggregate unpaid amount of Allowed Professional Fees included in the Budget for such period for such Professional Person.

c. *Carve Out Reserves.*

- (i) Commencing with the week ended July 31, 2020, and on or before the Thursday of each week thereafter, the Debtors shall utilize all cash on hand as of such date and any available cash thereafter held by any Debtor to fund a reserve in an amount equal to the greater of (x) (i) for the week ending July 31, 2020, the aggregate amount of all Estimated Fees and Expenses reflected in all Weekly Statements delivered to the Debtors and the Prepetition ABL Agent between the Petition Date and the immediately prior Wednesday and (ii) for all weeks after the week ending July 31, 2020, the aggregate amount of all Estimated Fees and Expenses reflected in the Weekly Statement delivered on the immediately prior Wednesday to the Debtors and the Prepetition ABL Agent, and (y) (i) for the week ending July 31, 2020, the aggregate amount of Allowed Professional Fees contemplated to be incurred in the Budget during all prior weeks of the case and (ii) for all weeks after the week ending July 31, 2020, the aggregate amount of Allowed Professional Fees contemplated to be incurred in the Budget during such week. The Debtors shall deposit and hold such amounts in a segregated account in trust to pay such Allowed Professional Fees (the "Pre-Carve Out Trigger Notice Reserve") prior to any and all other claims, and all payments of Allowed Professional fees incurred prior to the Termination Declaration Date shall be paid first from such Pre-Carve Out Trigger Notice Reserve Account. Upon the foregoing funding, the Prepetition ABL Agent and Prepetition ABL Secured Parties shall have no further obligation to fund the Pre-Carve Out Trigger Notice Reserve or subordinate their liens and claims on account of any Allowed Professional Fees incurred through the Calculation Date for the most recent Weekly Statement delivered in accordance with Paragraph 18(b) above.
- (ii) On the day on which a Carve Out Trigger Notice is given by the Prepetition ABL Agent to the Debtors with a copy to counsel to any Creditors' Committee (the "Termination Declaration Date"), the Carve Out Trigger Notice shall constitute a demand to the Debtors to and the Debtors shall utilize all cash on hand as of such date and any available cash thereafter held by any Debtor to fund (A) the Pre-Carve Out Trigger Notice Reserve Account in an amount equal to

the aggregate amount of all Estimated Fees and Expenses reflected in the Final Reports delivered to Debtors and the Prepetition ABL Agent plus the amounts set forth in (a)(i) and (a)(ii) of this paragraph above, and (B) after funding the Pre-Carve Out Trigger Notice Reserve Account, a reserve in an amount equal to the Post-Carve Out Trigger Notice Cap (the “Post-Carve Out Trigger Notice Reserve” and, together with the Pre-Carve Out Trigger Notice Reserve, the “Carve Out Reserves”) prior to any and all other claims. All funds in the Pre-Carve Out Trigger Notice Reserve shall be used first to pay the obligations set forth in clauses (i) through (iii) of the definition of Carve Out set forth above (the “Pre-Carve Out Amounts”), but not, for the avoidance of doubt, the Post-Carve Out Trigger Notice Cap, until paid in full, and then, to the extent the Pre-Carve Out Trigger Notice Reserve has not been reduced to zero, to pay the Prepetition ABL Agent for the benefit of the Prepetition ABL Secured Parties, unless the Prepetition ABL Obligations have been indefeasibly paid in full, in cash, in which case any such excess shall be paid to the Debtors’ creditors in accordance with their rights and priorities as of the Petition Date. Upon the foregoing funding, the Prepetition ABL Agent and Prepetition ABL Secured Parties shall have no further obligation to fund the Pre-Carve Out Trigger Notice Reserve or Post-Carve Out Trigger Notice Reserve or subordinate their liens and claims on account of any Allowed Professional Fees.

- d. *Application to Carve Out Reserves.* All funds in the Post-Carve Out Trigger Notice Reserve shall be used first to pay the obligations set forth in paragraph 18(a)(iv) of the definition of Carve Out set forth above (the “Post-Carve Out Amounts”), and then, to the extent the Post-Carve Out Trigger Notice Reserve has not been reduced to zero, to pay the Prepetition ABL Secured Parties in accordance with their rights and priorities under applicable law, unless the Prepetition ABL Obligations have been indefeasibly paid in full, in cash, in which case any such excess shall be paid to the Debtors’ creditors in accordance with their rights and priorities as of the Petition Date. Notwithstanding anything to the contrary in the Prepetition ABL Loan Documents, or this Fifth Interim Order, if either of the Carve Out Reserves is not funded in full in the amounts set forth in paragraph 18(b), then, any excess funds in one of the Carve Out Reserves following the payment of the Pre-Carve Out Amounts and Post-Carve Out Amounts, respectively, shall be used to fund the other Carve Out Reserve, up to the applicable amount set forth in paragraph 18(a), prior to making any payments to the Prepetition ABL Agent, for the benefit of the Prepetition ABL Lenders, or any of the Debtors’ creditors, as applicable. Notwithstanding anything to the contrary in the Prepetition ABL Loan Documents or this Fifth Interim Order, following delivery of a Carve Out Trigger Notice, the Prepetition ABL Secured Parties shall not, and shall not direct any entity to, sweep or foreclose on cash (including cash

received as a result of the sale or other disposition of any assets) of the Debtors until the Carve Out Reserves have been fully funded, but shall have a security interest in any residual interest in the Carve Out Reserves, with any excess paid to the Prepetition ABL Agent, for the benefit of the Prepetition ABL Lenders, for application in accordance with the Prepetition ABL Loan Documents. Further, notwithstanding anything to the contrary in this Fifth Interim Order, (i) disbursements by the Debtors from the Carve Out Reserves shall not constitute Loans (as defined in the Prepetition ABL Loan Documents) or increase or reduce the Prepetition ABL Obligations, (ii) the failure of the Carve Out Reserves to satisfy in full the Allowed Professional Fees shall not affect the priority of the Carve Out, and (iii) in no way shall the Budget, Carve Out, Post-Carve Out Trigger Notice Cap, Carve Out Reserves, or any of the foregoing be construed as a cap or limitation on the amount of the Allowed Professional Fees due and payable by the Debtors. For the avoidance of doubt and notwithstanding anything to the contrary in this Fifth Interim Order or in any Prepetition ABL Loan Documents, the Carve Out shall be senior to all liens and claims securing the Prepetition ABL Collateral, the ABL Adequate Protection Liens, and the 507(b) Claim, and any and all other forms of adequate protection, liens, or claims securing the Prepetition ABL Obligations.

- e. *Payment of Allowed Professional Fees Prior to the Termination Declaration Date.* Any payment or reimbursement made prior to the occurrence of the Termination Declaration Date in respect of any Allowed Professional Fees shall not reduce the Carve Out.
- f. *No Direct Obligation to Pay Allowed Professional Fees.* None of the Prepetition ABL Secured Parties shall be responsible for the payment or reimbursement of any fees or disbursements of any Professional Person incurred in connection with the Chapter 11 Cases or any successor cases under any chapter of the Bankruptcy Code. Nothing in this Fifth Interim Order or otherwise shall be construed to obligate the Prepetition ABL Secured Parties, in any way, to pay compensation to, or to reimburse expenses of, any Professional Person or to guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement.
- g. *Payment of Carve Out On or After the Termination Declaration Date.* Any payment or reimbursement made on or after the occurrence of the Termination Declaration Date in respect of any Allowed Professional Fees shall permanently reduce the Carve Out on a dollar-for-dollar basis.

19. *Termination.* The Debtors' right to use Cash Collateral shall terminate (the date of any such termination, the "Termination Date"), without prior order of this Court or any further action by the Prepetition ABL Secured Parties (i) at 11:59 p.m. (prevailing Eastern Time) on

September 25, 2020, or (ii) three (3) business days following the delivery of a written notice (a “Default Notice”) by the Prepetition ABL Agent to Kirkland & Ellis LLP (any such three (3) business-day period of time, the “Default Notice Period”) of the occurrence of any of the events set forth in clauses (a) through (k) below (unless cured by the Debtors or waived by the Prepetition ABL Administrative Agent, with the consent of the Required Lenders, in writing (with email being sufficient) prior to expiration of the Default Notice Period); provided that, if a hearing to consider any appropriate relief in connection with delivery of the Default Notice or continued use of Cash Collateral (as may be held on an expedited basis) is requested to be heard within such three (3) business day period but is scheduled for a later date by the Court, the Default Notice Period shall be automatically extended to the date of such hearing (the events set forth in clauses (a) through (k) below are collectively referred to herein as the “Termination Events”):

- a. the failure to obtain entry of a further interim order or Final Order acceptable to the Prepetition ABL Agent on or before fourteen (14) days after entry of this Fifth Interim Order (unless such period is extended by mutual agreement between the Prepetition ABL Agent and the Debtors, which extension may be document by email);
- b. any Debtor’s failure to comply with any of the material terms or conditions of this Fifth Interim Order, including, but not limited to, (i) the use of Cash Collateral for any purpose other than as permitted in this Fifth Interim Order, (ii) failure to comply with the Budget (including any distributions in excess of the Permitted Variance that have not been resolved and approved, in writing, by the Prepetition ABL Agent), or (iii) failure to comply with the reporting requirements set forth in this Fifth Interim Order; provided that notwithstanding anything to the contrary in this Fifth Interim Order or the Prepetition ABL Loan Documents, the Debtors shall not be required to deliver any Borrowing Base Certificates (as defined in the Prepetition ABL Credit Agreement) to the Prepetition ABL Agent;
- c. the failure of the Debtors to make any payment under this Fifth Interim Order to the Prepetition ABL Agent within three (3) business days after such payment becomes due, other than payments required pursuant to paragraph 11(b) of this Fifth Interim Order, which payments shall be made as required therein;

- d. this Fifth Interim Order ceases, for any reason (other than by reason of the express written agreement by the Prepetition ABL Agent, which agreement has been supported or unopposed by the Required Lenders, or the supersession of this Fifth Interim Order by the Fifth Interim Order), to be in full force and effect in any material respect, or any Debtor so asserts in writing, or the Adequate Protection Liens or Adequate Protection Superpriority Claims created by this Fifth Interim Order cease in any material respect to be enforceable and of the same effect and priority purported to be created hereby or any Debtor so asserts in writing;
- e. the Court shall have entered an order reversing, amending, supplementing, staying, vacating, or otherwise modifying this Fifth Interim Order in a manner materially adverse to the Prepetition ABL Secured Parties without the prior written consent of the of the Prepetition ABL Agent, which consent may be provided by electronic mail;
- f. the date an application, motion, or other pleading is filed by the Debtors for the approval of, or the date the Court shall have entered an order recognizing or granting, any superpriority claim or any lien in these Chapter 11 Cases that is *pari passu* with or senior to the ABL Adequate Protection Superpriority Claims or the ABL Adequate Protection Liens without the prior written consent of the Prepetition ABL Secured Parties (other than the Carve Out);
- g. the date any of the Debtors files any pleading or commences any action against the Prepetition ABL Secured Parties challenging the validity or enforceability of the Prepetition ABL Obligations or the Prepetition ABL Liens or seeking to avoid, disallow, subordinate, or recharacterize any claim, lien, or interest held by any of the Prepetition ABL Secured Parties arising under or related to the Prepetition ABL Obligations (or if the Debtor supports any such motion, pleading, application or adversary proceeding commenced by any third party); provided that if the Debtors provide any response to any discovery request, or make a witness available for deposition, such action shall not be a violation of this subparagraph 19(g);
- h. the date any of the Debtors file or otherwise support any motion, pleading, or other document, including a chapter 11 plan, that (i) seeks to amend, modify, or supplement this Fifth Interim Order, or (ii) otherwise materially, negatively affects the Prepetition ABL Secured Parties, without the prior written consent of the Prepetition ABL Agent; provided, that the consent of the Prepetition ABL Agent shall not be required if, pursuant to a chapter 11 plan, the Prepetition ABL Obligations and Adequate Protection Obligations are indefeasibly paid in full in cash on the effective date of such plan.
- i. the date any of the Debtors file a motion seeking an order, or the date any court of competent jurisdiction enters an order, dismissing the Chapter 11 Cases, converting the Chapter 11 Cases to cases under chapter 7 of the

Bankruptcy Code, appointing a trustee, responsible officer, or examiner with expanded powers relating to the operation of the organization in the Chapter 11 Cases, or terminating the Debtors' exclusivity under Bankruptcy Code section 1121, unless consented to in writing by the Prepetition ABL Agent, which consent has been approved or unopposed by the Required Lenders;

- j. the filing of any pleading by any Debtor in support of (in any such case by way of any motion or other pleading filed with the Court or any other writing to another party in interest executed by or on behalf of any such Debtor) any other person's opposition to any motion filed in the Court by the Prepetition ABL Agent or the Prepetition ABL Lenders seeking confirmation of the amount of its claims or the validity or enforceability of the Prepetition ABL Liens or the Adequate Protection Liens, except with regard to good faith disputes over the payment of expenses and fees, provided that if the Debtors provided any response to any discovery request, or make a witness available for deposition, such action shall not be a violation of this subparagraph 19(j); or
- k. the Court shall have entered an order granting relief from the automatic stay (without the consent of the Prepetition ABL Lenders) to the holder or holders of any security interest to permit foreclosure (or the granting of a deed *in lieu* of foreclosure or the like) on any of the Prepetition ABL Collateral or Adequate Protection Collateral on which the Prepetition ABL Lenders have a first-priority security interest, which has an aggregate value in excess of \$50,000; provided however, that to the extent such lien can be satisfied by amounts contemplated to pay prepetition liens in the Budget, any relief granted on account of such liens shall not trigger a Termination Event.

20. *Rights and Remedies upon Termination Event.* Except as otherwise ordered by the Court, following the expiration of the Default Notice Period, notwithstanding the provisions of section 362 of the Bankruptcy Code, without any application, motion, or notice to, hearing before, or order from the Court, but subject to the terms of this Fifth Interim Order, any Adequate Protection Obligations determined by the Court to be due and owing as of the delivery of the Default Notice, if any, shall become due and payable and/or the Prepetition ABL Secured Parties shall be entitled to exercise their rights and remedies. Prior to exercising the remedies set forth in this sentence below, the Prepetition ABL Secured Parties shall be required to file a motion with the Court seeking emergency relief (the "Stay Relief Motion") on no less than three (3) business

days' written notice, which notice period may be concurrent with the Default Notice Period, to (i) the Court, (ii) counsel for the Debtors, (iii) counsel for the Creditors' Committee (if any), and (iv) the U.S. Trustee for a further order of the Court modifying the automatic stay in the Chapter 11 Cases to permit the Prepetition ABL Secured Parties to exercise their rights and remedies against the Prepetition ABL Collateral or Adequate Protection Collateral to the extent available in accordance with the applicable Prepetition ABL Loan Documents, this Fifth Interim Order, or applicable law, including (x) setting-off amounts in any account of the Debtors maintained with the Prepetition ABL Agent or Prepetition ABL Lenders with respect to which the Prepetition ABL Agent controls pursuant to a deposit account control agreement to the extent necessary for payment of the Adequate Protection Obligations determined by the Court to be due and payable as of the delivery of the Default Notice and (y) foreclosing upon and selling all or a portion of the Prepetition ABL Collateral or Adequate Protection Collateral in order to collect the Adequate Protection Obligations. Upon the Court's ruling on the Stay Relief Motion, the Court may fashion an appropriate remedy upon a determination that a Termination Event occurred, including that the Prepetition ABL Agent shall be entitled to exercise all rights and remedies with respect to the Collateral provided for in this Fifth Interim Order, including the right to foreclose on or otherwise exercise its rights with respect to all or any portion of the Collateral, as permitted by the Court. Upon the occurrence of the delivery of a Default Notice, the Debtors, the Prepetition ABL Agent, and each Prepetition ABL Secured Party consent to a hearing on an expedited basis to consider whether (a) a Termination Event has occurred and (b) any other appropriate relief (including, without limitation, the Debtors' non-consensual use of Cash Collateral). During the Default Notice Period, the Debtors shall be entitled to continue to use the Cash Collateral in accordance with the terms of the Budget and this Fifth Interim Order. Notwithstanding anything to the contrary herein,

upon a Termination Event, the delivery of a Default Notice, the expiration of the Default Notice Period, or the occurrence of the Termination Date, all of the rights, remedies, benefits, and protections provided to the Prepetition ABL Secured Parties under this Fifth Interim Order shall survive. Except as otherwise provided herein or ordered by the Court, neither section 105 of the Bankruptcy Code nor any other provision of the Bankruptcy Code or applicable law shall be utilized to prohibit the exercise, enjoyment and enforcement of any rights, benefits, privileges and remedies of the Prepetition ABL Secured Parties set forth in this paragraph.

21. *Modification of Automatic Stay.* Except as provided in paragraph 18 herein, the automatic stay under section 362(a) of the Bankruptcy Code is hereby modified to the extent necessary to effectuate all of the terms and provisions of this Fifth Interim Order, including, without limitation, to: (a) permit the Debtors to grant the Adequate Protection Liens and Adequate Protection Superpriority Claims; (b) permit the Debtors to perform such acts as the Prepetition ABL Secured Parties may reasonably request to assure the perfection and priority of the liens granted herein; (c) permit the Debtors to incur all liabilities and obligations to the Prepetition ABL Secured Parties under this Fifth Interim Order; (d) authorize the Debtors to pay, and the Prepetition ABL Secured Parties to retain and apply, any payments made in accordance with the terms of this Fifth Interim Order; and (e) permit the Prepetition ABL Secured Parties, subject to the terms of this Fifth Interim Order, to exercise all rights and remedies provided for hereunder; provided that during the Default Notice Period, unless otherwise ordered by the Court, the automatic stay under section 362 of the Bankruptcy Code shall remain in effect.

22. *Limitation on Charging Expenses Against Collateral.* Subject only to and effective upon entry of the Final Order, except to the extent of the Carve Out, no costs or expenses of administration which have been or may be incurred in these Chapter 11 Cases or any Successor

Case at any time shall be surcharged against, and no person may seek to surcharge any costs or expenses of administration against the Prepetition ABL Secured Parties, or any of the Prepetition ABL Obligations, the Carve Out, or the Prepetition ABL Collateral, pursuant to sections 105 or 506(c) of the Bankruptcy Code or otherwise, without the prior written consent of the Prepetition ABL Agent, which consent is approved or unopposed by the Required Lenders. Subject to the Carve Out, nothing contained in this Fifth Interim Order shall be deemed a consent by the Prepetition ABL Agent to any charge, lien, assessment, or claim against the Prepetition ABL Collateral, or the Adequate Protection Liens, or otherwise, and no action, inaction or acquiescence by the Prepetition ABL Agent shall be deemed to be or shall be considered evidence of any alleged consent to a surcharge against the Prepetition ABL Secured Parties, the Prepetition ABL Obligations, or the Prepetition ABL Collateral. Notwithstanding the foregoing and for the avoidance of doubt, the Debtors and the Prepetition ABL Secured Parties reserve all rights to seek to surcharge costs and expenses of administration against GACP, the GACP Collateral, CLMG and the CLMG Collateral pursuant to sections 105 or 506(c) of the Bankruptcy Code or otherwise. Subject to the Committee's investigation rights under paragraph 32 of this Fifth Interim Order, if the Debtors recover any costs and expenses from a secured party pursuant to sections 105 and/or 506(c) of the Bankruptcy Code (such recovery, "Surcharge Proceeds"), and the outlays on account of such recovered costs and expenses were paid using the Prepetition ABL Lenders' Cash Collateral, the Surcharge Proceeds shall replenish and be deemed to replenish the Prepetition ABL Lenders' Cash Collateral in the amount equal to the recovered costs and expenses paid out of such Cash Collateral; provided, however, that any such replenishment of the Cash Collateral from the Surcharge Proceeds shall not exceed the amount required to satisfy the Diminution in Value (if any) of the Prepetition ABL Collateral.

23. *Section 552(b) of the Bankruptcy Code.* Subject only to and effective upon entry of the Final Order, the Prepetition ABL Secured Parties shall be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and no person may assert an “equities of the case” claim under section 552(b) of the Bankruptcy Code against the Prepetition ABL Secured Parties with respect to proceeds, product, offspring, or profits of any of the Prepetition ABL Collateral in the Chapter 11 Cases or any Successor Case.

24. *Payments Free and Clear.* Subject and subordinate to the Carve Out, any and all proceeds remitted to the Prepetition ABL Agent pursuant to the terms of this Fifth Interim Order or any subsequent order of this Court shall be irrevocable (subject to paragraphs 32 and 33 of this Fifth Interim Order), received free and clear of any claim, charge, assessment, or other liability, including, without limitation, but subject to entry of the Final Order, any such claim or charge arising out of or based on, directly or indirectly, section 506(c) of the Bankruptcy Code or the “equities of the case” exception of section 552(b) of the Bankruptcy Code.

25. *All Parties’ Reservation of Rights.* All parties reserve their rights to argue that, to the extent that any cash payment of interest, fees, and expenses as adequate protection to the Prepetition ABL Secured Parties, the CLMG Secured Parties, or the GACP Secured Parties is not allowed under section 506(b) of the Bankruptcy Code and not allowed on any other basis (including, without limitation, (i) on account of the Debtors’ use of Prepetition ABL Collateral, CLMG Collateral, or GACP Collateral and (ii) that there has been ABL Diminution in Value, CLMG Diminution in Value, or GACP Diminution in Value), such payments should be recharacterized and applied as payments of principal owed under the applicable Prepetition ABL Loan Document, under the CLMG Term Loan Credit Agreement, or under the GACP Term Loan Credit Agreement, as applicable.

26. *Debtors' Reservation of Rights.* Notwithstanding anything to the contrary in this Fifth Interim Order, the entry of this Fifth Interim Order and the grant of adequate protection to the Prepetition ABL Secured Parties and the Prepetition ABL Agent pursuant to the terms hereof shall be without prejudice to the rights of the Debtors to, following the occurrence of the Termination Date, seek authority (at any time) to use Cash Collateral and the Prepetition ABL Collateral without the consent of the Prepetition ABL Secured Parties, and the Prepetition ABL Secured Parties reserve all of their respective rights with respect to contesting any such motion or request by the Debtors or any other person.

27. *No Marshaling.* Subject only to and effective upon entry of the Final Order, the Prepetition ABL Secured Parties shall not be subject to the equitable doctrine of “marshaling” or any other similar doctrine with respect to any of the Prepetition ABL Collateral, and proceeds of the Prepetition ABL Collateral shall be received and applied pursuant to this Fifth Interim Order and the Prepetition ABL Loan Documents notwithstanding any other agreement or provision to the contrary. Subject to the Carve Out, without limiting the generality of the immediately preceding sentence, no party shall be entitled, directly or indirectly, to direct the exercise of remedies or seek (whether by order of this Court or otherwise) to marshal or otherwise control the disposition of the Prepetition ABL Collateral after a Termination Event in the Chapter 11 Cases or any Successor Case.

28. *Continuation of Prepetition ABL Liens.* Subject to the rights set forth in paragraph 32, until the Prepetition ABL Secured Parties are Paid in Full, all liens and security interests of the Prepetition ABL Secured Parties (including, without limitation, the Adequate Protection Liens) shall remain valid and enforceable with the same continuing priority as described herein in the Chapter 11 Cases or any Successor Case. The term “Paid in Full” or “Payment in

Full” means except as otherwise agreed to by, the Prepetition ABL Secured Parties (including through entry of an order confirming a chapter 11 plan reasonably acceptable to the Prepetition ABL Secured Parties), all of the Prepetition ABL Obligations and Adequate Protection Obligations have been indefeasibly paid in full in cash and completely satisfied (including the cash collateralization of any letters of credit) and all Commitments (as defined in the Prepetition ABL Credit Agreement) have been terminated.

29. *Continuation of Prepetition CLMG Liens.* Until the Prepetition CLMG Obligations have been satisfied (including by payment in cash, turnover of collateral, or consent to release liens), all liens and security interests of the CLMG Secured Parties shall remain valid and enforceable with the same continuing priority as described herein.

30. *Continuation of the Prepetition GACP Liens.* Until the Prepetition GACP Obligations have been satisfied (including by payment in cash, turnover of collateral, or consent to release liens), all liens and security interests of the GACP Secured Parties shall remain valid and enforceable with the same continuing priority as described herein

31. *Perfection of ABL Adequate Protection Liens.*

- a. The Prepetition ABL Secured Parties are hereby authorized, but not required, to file or record financing statements, trademark filings, copyright filings, patent filings, mortgages, deeds of trust, notices of lien or similar instruments in any jurisdiction, or take possession of or control over cash or securities, or take any other action in order to validate and perfect the ABL Adequate Protection Liens; provided, however, that the Prepetition ABL Secured Parties may not take any aforementioned action to file or record such instruments against the CLMG Collateral or GACP Collateral. Whether or not the Prepetition ABL Secured Parties shall, each, in its sole discretion, choose to file such financing statements, trademark filings, copyright filings, patent filings, mortgages, deeds of trust, notices of lien or similar instruments, or take possession of or control over any cash, securities or any other property of the Debtors, or take any action that otherwise may be required under federal, state or local law in any jurisdiction to validate and perfect a security interest or lien, in any such case, the ABL Adequate Protection Liens shall be deemed valid, perfected,

allowed, enforceable, non-avoidable and not subject to challenge, dispute or subordination (subject to the priorities set forth in this Fifth Interim Order), at the time and on the date of entry of this Fifth Interim Order or thereafter. Upon the reasonable request of any of the Prepetition ABL Secured Parties, the Prepetition ABL Secured Parties and the Debtors, without any further consent of any party, are authorized to take, execute, deliver and file such instruments (in each case, without representation or warranty of any kind) to enable the Prepetition ABL Secured Parties to further validate, perfect, preserve and enforce the ABL Adequate Protection Liens. All such documents will be deemed to have been recorded and filed as of the Petition Date.

- b. A certified copy of this Fifth Interim Order (or the notice of the filing hereof) may, in the discretion of the Prepetition ABL Secured Parties, be filed with or recorded in filing or recording offices in addition to or *in lieu* of such financing statements, mortgages, deeds of trust, notices of lien or similar instruments, and all filing offices are hereby authorized to accept such certified copy of this Fifth Interim Order or notice for filing and/or recording, as applicable. The automatic stay of section 362(a) of the Bankruptcy Code shall be, and hereby is deemed, modified to the extent necessary to permit the Prepetition ABL Secured Parties to take all actions, as applicable, referenced in this paragraph 30(a) and 30(b).

32. *Effect of Stipulations on Third Parties.* Each of the Debtors' Stipulations and each of the Debtors' other admissions, agreements and releases contained in this Fifth Interim Order, including, without limitation, in paragraph 4 of this Fifth Interim Order, shall be binding upon the Debtors and all other parties in interest, including, without limitation, any statutory or non-statutory committees appointed or formed in these Chapter 11 Cases (including a Creditors' Committee, if any) and any other person or entity acting or seeking to act on behalf of the Debtors' estates, including any chapter 7 or chapter 11 trustee or examiner appointed or elected for any of the Debtors (a "Trustee"), in all circumstances and for all purposes unless: (a) any party in interest (including any Trustee) files a motion seeking standing (with a complaint attached thereto) to pursue an adversary proceeding or contested matter, as required under the Bankruptcy Rules (subject in either case to the limitations contained herein, including without limitation, in paragraph 33), challenging the validity, enforceability, priority, or extent of the Prepetition ABL

Obligations, the liens on the Prepetition ABL Collateral securing the Prepetition ABL Obligations, the Prepetition GACP Obligations, the Prepetition CLMG Obligations, the CLMG Collateral, or otherwise asserting or prosecuting any estate claims, counterclaims or causes of action, objections, contests or defenses (collectively, the “Claims and Defenses”) against the Prepetition ABL Agent, any of the other Prepetition ABL Secured Parties, the GACP Secured Parties, or the CLMG Secured Parties or their respective agents, affiliates, subsidiaries, directors, officers, representatives, attorneys or advisors in connection with any matter related to the Prepetition ABL Obligations, the Prepetition ABL Collateral, the Prepetition GACP Obligations, the GACP Collateral, the Prepetition CLMG Obligations, or the CLMG Collateral (as applicable) by no later than the date that is the earlier of (i) the date that is seventy-five (75) days after the date of entry of the Second Interim Order (i.e., October 19, 2020) (the “Challenge Deadline”), (ii) the effective date of a confirmed chapter 11 plan, or (iii) any such later date as has been ordered by the Court for cause upon a motion filed and served prior to the expiration of the deadline to commence a challenge (such time period, the “Challenge Period”), and (b) an order is entered by a court of competent jurisdiction and becomes final and non-appealable in favor of the plaintiff sustaining any such challenge or claim in any such duly filed adversary proceeding or contested matter; provided that, as to the Debtors, all such Claims and Defenses are hereby irrevocably waived and relinquished as of the Petition Date. If no such motion seeking standing to pursue an adversary proceeding or contested matter is timely filed prior to the expiration of the Challenge Period, without further order of this Court: (x) the Prepetition ABL Obligations, Prepetition CLMG Obligations, and the Prepetition GACP Obligations shall constitute allowed claims, not subject to counterclaim, setoff, subordination, recharacterization, defense or avoidance, for all purposes in the Chapter 11 Cases and any Successor Case; (y) the Prepetition ABL Agent’s liens on the

Prepetition ABL Collateral, CLMG's liens on the CLMG Collateral, and GACP's liens on the GACP Collateral shall be deemed to have been, as of the Petition Date, and to be, legal, valid, binding, perfected and of the priority specified in paragraph 4(d), not subject to defense, counterclaim, recharacterization, subordination or avoidance in the Chapter 11 Cases or any Successor Case; and (z) the Prepetition ABL Obligations, the Prepetition ABL Agent's liens on the Prepetition ABL Collateral, the other Prepetition ABL Secured Parties (and their respective agents, affiliates, subsidiaries, directors, officers, representatives, attorneys, or advisors); the Prepetition CLMG Obligations, CLMG's liens on the CLMG Collateral, and the other CLMG Secured Parties (and their respective agents, affiliates, subsidiaries, directors, officers, representatives, attorneys, or advisors); and the Prepetition GACP Obligations, GACP's liens on the GACP Collateral, and the other GACP Secured Parties (and their respective agents, affiliates, subsidiaries, directors, officers, representatives, attorneys, or advisors), shall not be subject to any other or further challenge by any party in interest, and any such party in interest shall be enjoined from seeking to exercise the rights of the Debtors' estates, including without limitation, any successor thereto (including, without limitation, any estate representative or a Trustee, whether such Trustee is appointed or elected prior to or following the expiration of the Challenge Period). If any motion seeking standing (with a complaint attached thereto) to pursue such adversary proceeding or contested matter is timely filed prior to the expiration of the Challenge Period, the stipulations and admissions contained in this Fifth Interim Order, including without limitation, in paragraph 4 of this Fifth Interim Order, shall nonetheless remain binding and preclusive (as provided in the second sentence of this paragraph) on any person, including any Trustee, except as to any such findings and admissions that were expressly and successfully challenged in such adversary proceeding or contested matter. Nothing in this Fifth Interim Order vests or confers on

any person, including a Trustee, standing or authority to pursue any cause of action belonging to the Debtors or their estates. In the event that there is a timely successful challenge brought pursuant to this paragraph 32, the Court shall retain jurisdiction to fashion an appropriate remedy.

33. *Limitation on Use of Collateral.* Subject to the Carve Out, notwithstanding anything herein or in any other order by this Court to the contrary, no Cash Collateral, Prepetition ABL Collateral, proceeds, products, or offspring of any of the foregoing or any portion of the Carve Out may be used to (except to the extent otherwise expressly agreed in writing by the Prepetition ABL Agent in response to a written request from the Debtors specifying the proposed use) pay any claims for services rendered by any of the professionals retained by the Debtors, any creditor or party in interest, any committee (including any Creditors' Committee), any Trustee, or any other person, party, or entity (or to pay any professional fees and disbursements in connection therewith) to: (a) apply to the Court for authority to approve superpriority claims or grant liens or security interests in the Prepetition ABL Collateral and Cash Collateral, or any portion thereof that are senior to, or on parity with, the Prepetition ABL Liens, unless the Prepetition ABL Obligations, and claims granted to the Prepetition ABL Secured Parties under this Fifth Interim Order, as applicable, have been Paid in Full or otherwise agreed to in writing by the Prepetition ABL Secured Parties; (b) prevent, hinder or otherwise delay the Prepetition ABL Secured Parties' assertion, enforcement or realization on the Prepetition ABL Collateral, including Cash Collateral, and liens, claims and rights granted to the Prepetition ABL Secured Parties under this Fifth Interim Order, in accordance with the Prepetition ABL Loan Documents or this Fifth Interim Order; (c) seek to modify any of the rights and remedies granted to the Prepetition ABL Secured Parties under this Fifth Interim Order or the Prepetition ABL Loan Documents; (e) pay any amount on account of any claims arising prior to the Petition Date unless such payments are provided for in the Budget

and approved by an order of this Court that is in form and substance reasonably satisfactory to the Prepetition ABL Agent; (f) subject to paragraph 32, investigate, assert, join, commence, support or prosecute any action or claim, counter-claim, action, proceeding, application, motion, objection, defense, or other contested matter seeking any order, judgment, determination or similar relief against the Prepetition ABL Secured Parties or their respective officers, directors, employees, agents, attorneys, affiliates, assigns, or successors, with respect to any transaction, occurrence, omission, or action, including, without limitation, (i) any avoidance actions or other actions arising under chapter 5 of the Bankruptcy Code, (ii) any action relating to any act, omission, or aspect of the relationship between the Prepetition ABL Secured Parties, on the one hand, and the Debtors or any of their affiliates, on the other, (iii) any action with respect to the validity and extent of the Prepetition ABL Obligations, or the validity, extent, and priority of the Prepetition ABL Liens or the Adequate Protection Liens, (iv) any action seeking to invalidate, set aside, avoid or subordinate, in whole or in part, the Prepetition ABL Liens or the Adequate Protection Liens granted under this Order, (v) except to contest the occurrence of a Termination Event as permitted in paragraph 19, any action that has the effect of preventing, hindering or delaying (whether directly or indirectly) the Prepetition ABL Secured Parties in respect of their liens and security interests in the Cash Collateral or the Prepetition ABL Collateral, (vi) pay any fees or similar amounts to any person to purchase the Prepetition ABL Secured Parties' interests in any of the Debtors' assets without the prior written consent of the Prepetition ABL Secured Parties, unless such person consummates or otherwise closes the purchase of the Prepetition ABL Secured Parties' interests in any of the Debtors' assets, or (vii) use or seek to use Cash Collateral unless otherwise permitted hereby, without the prior written consent of the Prepetition ABL Secured Parties; or (g) for objecting to, contesting, delaying, preventing, hindering or otherwise interfering

in any way with the exercise of rights or remedies by the Prepetition ABL Secured Parties with respect to any Prepetition ABL Collateral, including Cash Collateral, after the occurrence of an Termination Event, except as otherwise permitted hereby; provided that, notwithstanding anything to the contrary in this paragraph, the Creditors' Committee may use Cash Collateral, including the Prepetition ABL Collateral, solely to investigate, but not to prepare, initiate, litigate, prosecute, object to, or otherwise challenge (i) the claims and liens of the Prepetition Secured Parties and (ii) potential claims, counterclaims, causes of action, or defenses, including the Claims and Defenses, against the Prepetition Secured Parties; provided further that no more than an aggregate of \$75,000 of the Cash Collateral constituting Prepetition ABL Collateral, and the proceeds thereof, may be used by the Creditors' Committee with respect to the investigation of the ABL Stipulations as set forth in the preceding proviso (the "Investigation Budget").

34. *Release.* The release, discharge, waivers, settlements, compromises, and agreements set forth in this paragraph shall be deemed effective upon entry of this Fifth Interim Order and subject only to the challenge rights set forth in paragraph 32 above. The Debtors forever and irrevocably: (a) release, discharge, and acquit the Prepetition ABL Secured Parties and their affiliates and each of their and their affiliates' respective former, current or future officers, employees, directors, agents, representatives, owners, members, partners, financial advisors, legal advisors, shareholders, managers, consultants, accountants, attorneys, and predecessors in interest (each, a "Prepetition Releasee") of and from any and all claims, demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness, and obligations, of every type arising prior to the Petition Date, including, without limitation, any claims arising from any actions relating to any aspect of the relationship between the Prepetition ABL Secured Parties and the Debtors and their affiliates including any equitable subordination claims or defenses, with respect

to or relating to the Prepetition ABL Obligations, the Prepetition ABL Liens, the Prepetition ABL Loan Documents, the Debtors' attempts to restructure the Prepetition ABL Obligations, any and all claims and causes of action arising under title 11 of the United States Code or any other applicable law, and any and all claims regarding the validity, priority, perfection or avoidability of the liens or secured claims of the Prepetition ABL Secured Parties, in respect of events that occurred on or prior to the date hereof; and (b) waive any and all defenses (including, without limitation, offsets and counterclaims of any nature or kind) as to the validity, perfection, priority, enforceability and non-avoidability of the Prepetition ABL Obligations, the Prepetition ABL Liens. Nothing in this Fifth Interim Order shall release any claims against a Prepetition Releasee that a court of competent jurisdiction determines, pursuant to a final, non-appealable order, results primarily from the actual fraud, gross negligence, or willful misconduct of such Prepetition Releasee.

35. *Prohibition on Granting of Additional Liens and Interests, Use of Prepetition ABL Collateral.* No liens, claims, interests or priority status, other than the Carve Out and the Permitted Encumbrances, having a lien or administrative priority superior to or *pari passu* with that of the Adequate Protection Superpriority Claim, the Prepetition ABL Liens, or the Adequate Protection Liens shall be granted while any portion of the Prepetition ABL Obligations remain outstanding, or any commitment under the Prepetition ABL Loan Documents remains in effect, without the prior written consent of the Prepetition ABL Secured Parties. Nothing in this Fifth Interim Order shall authorize, other than in the ordinary course of the Debtors' business, the sale, transfer, lease, encumbrance, or other disposition of any assets that constitute Prepetition ABL Collateral, CLMG Collateral, or GACP Collateral of the Debtors or their estates without the prior written consent of the Prepetition ABL Secured Parties, CLMG Secured Parties, or GACP Secured Parties, as

applicable (and no such consent or direction shall be implied from any other action, inaction, or acquiescence by any Prepetition ABL Secured Party or any order of this Court), except as permitted in the Prepetition ABL Loan Documents, the CLMG Term Loan Agreement, the GACP Term Loan Agreement, and this Fifth Interim Order, and approved by the Court to the extent required under applicable bankruptcy law; provided that a Termination Event shall not be deemed to occur if the Debtors seek approval of debtor in possession financing, including, without limitation, debtor in possession financing which primes existing liens, to the extent (i) such debtor in possession financing provides for Payment in Full of the Prepetition ABL Obligations, and Adequate Protection Obligations or (ii) the Prepetition ABL Agent provides prior written consent, which consent is approved or unopposed by the Required Lenders, for financing that does not provide for Payment in Full of the Prepetition ABL Obligations and Adequate Protection Obligations.

36. *No Impairment of CLMG Collateral.* Unless otherwise provided in this Fifth Interim Order, nothing shall authorize the Debtors, the Prepetition ABL Lenders, or any other party in interest to take any action to impair, interfere with, or otherwise adversely impact, (i) the liens and security interests granted to the CLMG Secured Parties or (ii) the CLMG Collateral.

37. *No Impairment of GACP Collateral.* Unless otherwise provided in this Fifth Interim Order, nothing shall authorize the Debtors, the Prepetition ABL Lenders, or any other party in interest to take any action to impair, interfere with, or otherwise adversely impact, (i) the liens and security interests granted to the GACP Secured Parties or (ii) the GACP Collateral.

38. *Binding Effect of Fifth Interim Order.* Subject to paragraph 32, immediately upon entry by this Court (notwithstanding any applicable law or rule to the contrary), regardless of whether specifically articulated in each term and provision of this Fifth Interim Order, the terms

and provisions of this Fifth Interim Order, including all findings herein, shall be binding upon all parties in interest in these Chapter 11 Cases, including, without limitation, the Debtors, the Prepetition ABL Secured Parties, all other creditors of the Debtors, any Creditors' Committee, and each of their respective successors and assigns (including, without limitation, any trustee, examiner with expanded powers, responsible officer, estate administrator or representative, or similar person appointed in a case for any Debtor under any chapter of the Bankruptcy Code) and shall inure to the benefit of the Debtors, the GACP Secured Parties, CLMG Secured Parties, the Prepetition ABL Secured Parties, and their respective successors and assigns.

39. *Survival.* The provisions of this Fifth Interim Order and any actions taken pursuant hereto shall survive entry of any order (a) confirming any chapter 11 plan in any of these Chapter 11 Cases; (b) converting any of these cases to a case under chapter 7 of the Bankruptcy Code; (c) dismissing any of these cases or any Successor Case; or (d) pursuant to which this Court abstains from hearing any of the cases or any Successor Case. Notwithstanding the entry of any such order, the terms and provisions of this Fifth Interim Order, including the claims, liens, security interests and other protections granted to the Prepetition ABL Secured Parties pursuant to this Fifth Interim Order, shall continue in these cases, in any Successor Case, or following dismissal of these cases or any Successor Case, and shall maintain their priority as provided by this Fifth Interim Order and not be modified, altered or impaired in any way, whether by act or omission, until all of the Prepetition ABL Obligations and Adequate Protection Obligations have been Paid in Full, notwithstanding the occurrence of a Termination Event or any earlier termination of the Debtors' authorization to use the Prepetition ABL Collateral, including Cash Collateral.

40. *Limitation of Liability.* Subject to entry of the Fifth Interim Order, and solely in the Prepetition ABL Secured Parties' capacity as a lender under the Prepetition ABL Loan

Documents, in determining to permit the use of Cash Collateral, making and administering the loans and financial accommodations extended under the Prepetition ABL Loan Documents, extending other financial accommodations to the Debtors under this Fifth Interim Order and the Prepetition ABL Loan Documents, or in exercising any rights or remedies as and when permitted pursuant to this Fifth Interim Order or the Prepetition ABL Loan Documents, as applicable, the Prepetition ABL Secured Parties (in their capacity as such) or any successor of any of the foregoing shall not (a) be deemed to be in “control” of the operations of the Debtors or any of their affiliates; (b) owe any fiduciary duty to the Debtors, their respective creditors, shareholders or estates; and (c) be deemed to be acting as a “Responsible Person” or “Owner” or “Operator” with respect to the operation or management of the Debtors or any of their affiliates (as such terms or similar terms are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 29 U.S.C. §§ 9601, *et seq.*, as amended, or any similar federal or state statute). Furthermore, nothing in this Fifth Interim Order or the Prepetition ABL Loan Documents or any other documents related thereto shall in any way be construed or interpreted to impose or allow the imposition upon the Prepetition ABL Secured Parties, or any successor of any of the foregoing, of any liability for any claims arising from the prepetition or postpetition activities of the Debtors or any of their subsidiaries affiliates in the operation of their businesses or in connection with their restructuring efforts.

41. *No Waiver.* Other than as provided in this Fifth Interim Order, nothing in this Fifth Interim Order shall be construed in any way as a waiver or relinquishment of any rights that the Debtors or the Prepetition ABL Secured Parties may have to bring or be heard on any matter brought before this Court.

42. *Effectiveness.* This Fifth Interim Order shall constitute findings of fact and conclusions of law and shall take effect and be fully enforceable, *nunc pro tunc* to the Petition Date, immediately upon entry hereof. Notwithstanding any Bankruptcy Rule, any Bankruptcy Local Rule, any Federal Rule of Civil Procedure, or other applicable law, this Fifth Interim Order shall be immediately effective and enforceable upon its entry and there shall be no stay of execution or effectiveness of this Fifth Interim Order.

43. *Proofs of Claim.* Neither the Prepetition ABL Agent, the Prepetition ABL Lenders, the CLMG Secured Parties, nor the GACP Secured Parties, shall be required to file proofs of claim in any of the Debtors' Chapter 11 Cases or a Successor Case for any claim allowed herein. The Debtors' Stipulations shall be deemed to constitute a timely filed proof of claim for the Prepetition ABL Agent and the Prepetition ABL Lenders, the CLMG Secured Parties, the GACP Secured Parties upon approval of this Fifth Interim Order, and the Prepetition ABL Agent, the Prepetition ABL Lenders, the CLMG Secured Parties, and the GACP Secured Parties shall be treated under section 502(a) of the Bankruptcy Code as if they filed a proof of claim. Notwithstanding any order entered by the Court in relation to the establishment of a bar date in any of the Debtors' Chapter 11 Cases or a Successor Case to the contrary, the Prepetition ABL Agent, the Prepetition ABL Lenders, the CLMG Secured Parties, and the GACP Secured Parties are hereby authorized and entitled, in their sole discretion, but not required, to file (and amend and/or supplement, as they see fit) a proof of claim and/or aggregate proofs of claim in each of these Chapter 11 Cases or a Successor Case for any claim allowed herein.

44. *No Third Party Rights.* Except as explicitly provided for herein, this Fifth Interim Order does not create any rights for the benefit of any party, creditor, equity holder, other entity or any direct, indirect or incidental beneficiary other than (a) the Prepetition ABL Secured Parties

and their respective Representatives, (b) the Debtors, (c) the CLMG Secured Parties and their Representatives, (d) the GACP Secured Parties and their Representatives, and (e) the respective successors and assigns of each of the foregoing.

45. *Headings.* Section headings used herein are for convenience only and are not to affect the construction of or to be taken into consideration in interpreting this Fifth Interim Order.

46. *Rights Reserved.* Notwithstanding anything herein to the contrary, the entry of this Fifth Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly (a) the Prepetition ABL Secured Parties' rights to pursue any and all rights and remedies under the Bankruptcy Code, the Prepetition ABL Loan Documents or any other applicable agreement or law, or seek any other or supplemental relief in respect of the Debtors, including the right to seek new, different or additional adequate protection, as applicable, or the Debtors' or any other party in interest's rights to oppose such relief, or (b) any of the rights and remedies of the Debtors, the Prepetition ABL Secured Parties, or any other party in interest under the Prepetition ABL Loan Documents or other applicable agreement, the Bankruptcy Code or applicable nonbankruptcy law.

47. *CLMG Rights Reserved.* Notwithstanding anything herein to the contrary, the entry of this Fifth Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly (a) the CLMG Secured Parties' rights to pursue any and all rights and remedies under the Bankruptcy Code, the CLMG Term Loan Agreement or any other applicable agreement or law, or seek any other or supplemental relief in respect of the Debtors, including the right to seek new, different or additional adequate protection, as applicable, or the Debtors' or any other party in interest's rights to oppose such relief, or (b) any of the rights and remedies of the Debtors, the

CLMG Secured Parties, or any other party in interest under the CLMG Term Loan Agreement or other applicable agreement, the Bankruptcy Code or applicable nonbankruptcy law.

48. *GACP Rights Reserved.* Notwithstanding anything herein to the contrary, the entry of this Fifth Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly (a) the GACP Secured Parties' rights to pursue any and all rights and remedies under the Bankruptcy Code, the GACP Term Loan Agreement or any other applicable agreement or law, or seek any other or supplemental relief in respect of the Debtors, including the right to seek new, different or additional adequate protection, as applicable, or the Debtors' or any other party in interest's rights to oppose such relief, or (b) any of the rights and remedies of the Debtors, the GACP Secured Parties, or any other party in interest under the GACP Term Loan Agreement or other applicable agreement, the Bankruptcy Code or applicable nonbankruptcy law. Furthermore, notwithstanding anything herein to the contrary, nothing contained in this Fifth Interim Order shall constitute nor be construed as the GACP Secured Parties' consent to, nor this Court's approval of, any surcharge of the GACP Collateral or the Debtors' sale of any of the GACP Collateral or the Debtors' use of the proceeds thereof.

49. *Creditors' Committee Rights Reserved.* Notwithstanding anything herein to the contrary, the entry of this Fifth Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly (a) the Creditors' Committee's rights to pursue any and all rights and remedies under the Bankruptcy Code or any other applicable law, or seek any other or supplemental relief in respect of the Debtors, as applicable, or the Debtors' or any other party in interest's rights to oppose such relief, or (b) any of the rights and remedies of the Debtors, the Creditors' Committee, or any other party in interest under the Bankruptcy Code or applicable nonbankruptcy law.

50. *Bankruptcy Rules.* The requirements of Bankruptcy Rules 4001, 6003, and 6004, in each case to the extent applicable, are satisfied by the contents of the Motion.

51. *Necessary Action.* The Debtors are authorized to take all such actions as are necessary or appropriate to implement the terms of this Fifth Interim Order.

52. *Retention of Jurisdiction.* The Court shall retain jurisdiction to enforce the provisions of this Fifth Interim Order, and this Court shall retain jurisdiction over all matters pertaining to the implementation, interpretation and enforcement of this Fifth Interim Order, including following confirmation and consummation of any chapter 11 plan for any one or more of the Debtors.

53. *Interpretation.* To the extent of any inconsistency between the Motion, the terms of the First Interim Order, the terms of the First Supplemental Interim Order, and the terms of this Fifth Interim Order, the terms of this Fifth Interim Order shall control.

54. *Tax Liens.* Notwithstanding any other provisions included in the Fifth Interim Order, or any agreements approved hereby, any statutory liens (collectively, the “Tax Liens”), of the Taxing Authorities³ shall not be primed by nor made subordinate to any liens granted to any party hereby to the extent such Tax Liens are valid, senior, perfected, and unavoidable, and all parties’ rights to object to the priority, validity, amount, and extent of the claims and liens asserted by the Taxing Authorities are fully preserved. Nothing herein shall alter the rights of the Taxing Authorities in regards to distribution of proceeds from the sale of the Debtors’ tangible personal property or modify the orders entered by the court at Docket No. 452, Docket No. 462, or any


³ “Taxing Authorities” means collectively, Bexar County, Dallas County, Ector CAD, Fort Bend County, Harris County, Hood CAD, Liberty County, Victoria County, Brazos County, Medina County, and Erath County.

other order entered whereby a segregated account has been established as adequate protection for the Taxing Authorities' claims.

55. *Work-in-Process.* Notwithstanding anything to the contrary contained in this Fifth Interim Order, amounts payable to employees, materialmen, suppliers, workers, and others for postpetition goods and services on works-in-process as of August 3, 2020, shall be paid out of the proceeds of postpetition earned receivables prior to the rights of any other party.

56. *Final Hearing.* The Final Hearing on the Motion shall be held on September 25, 2020, at 1:30 p.m., prevailing Central Time.

Signed: September 10, 2020



Marvin Isgur
United States Bankruptcy Judge

Exhibit 1

Budget

BJS - Cash Collateral Budget - Daily

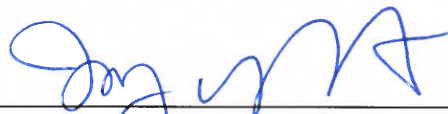
Prepared 9/09/2020

(\$ in millions)

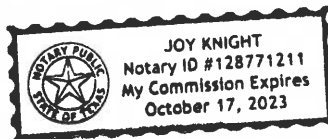
Week Ending:	Sun	Mon	Tue	Wed	Thu	Fri	Sat	Sun	Mon	Tue	Wed	Thu	Fri	Sat	Sun	Mon	Tue	Wed	Thu	Fri	Sat
	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast
	6-Sep	7-Sep	8-Sep	9-Sep	10-Sep	11-Sep	12-Sep	13-Sep	14-Sep	15-Sep	16-Sep	17-Sep	18-Sep	19-Sep	20-Sep	21-Sep	22-Sep	23-Sep	24-Sep	25-Sep	26-Sep
Opening Wind Down Cash	\$ 21.0	\$ 21.0	\$ 20.1	\$ 16.2	\$ 16.2	\$ 10.6	\$ 8.9	\$ 9.4	\$ 9.4	\$ 9.3	\$ 4.8	\$ 3.6	\$ 2.5	\$ 7.8	\$ 7.8	\$ 7.8	\$ 3.6	\$ 5.9	\$ 5.9	\$ 4.4	\$ 11.0
Receipts:																					
Gross A/R Collections	\$ -	\$ -	\$ 1.4	\$ -	\$ -	\$ 0.6	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 6.4	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 6.6	\$ -
Discounts/Settlement Payments	-	(0.8)	-	-	-	-	-	-	-	(3.7)	-	-	-	-	-	(4.2)	-	-	-	-	-
Net Collections	-	(0.8)	1.4	-	-	0.6	-	-	-	(3.7)	-	-	6.4	-	-	(4.2)	-	-	-	6.6	-
Proceeds from Term Lender	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Proceeds from Sale of Inventory	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Proceeds from Sale of Equipment	-	-	-	-	-	1.2	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Proceeds from Sale of Cement - Equipment	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Proceeds from Sale of Cement - Inventory	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Proceeds from Sale of Cement - Real Estate/IP	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Proceeds from Sale of R/E	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Proceeds from Sale to CSL - Equipment	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Proceeds from Sale to CSL - Other	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Proceeds from WIP	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Other Proceeds	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Receipts	\$ -	\$ (0.8)	\$ 1.4	\$ -	\$ -	\$ 1.8	\$ -	\$ -	\$ -	\$ (3.7)	\$ -	\$ -	\$ 6.4	\$ -	\$ -	\$ (4.2)	\$ -	\$ -	\$ -	\$ 6.6	\$ -
Disbursements:																					
Employee & Executive Compensation (Including Payroll Tax)	\$ -	\$ -	\$ (1.1)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ (0.0)	\$ -	\$ -	\$ -	\$ -
Pre-Petition Employee Compensation, T&E, 401k Remittance	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Pre Petition Payroll Tax and Payment Card Expense	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
PTO	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Trailing Employee Health Claims	-	-	(0.5)	-	-	-	-	-	-	(0.5)	-	-	-	-	-	-	(0.5)	-	-	-	-
Required Canadian Termination Benefits	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Sub-Total - Employee Related	\$ -	\$ -	\$ (1.6)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ (0.5)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ (0.5)	\$ -	\$ -	\$ -	\$ -
Accounting/Tax/Other Professionals	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ (0.3)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Facilities	-	-	-	-	(0.2)	-	-	-	-	-	-	-	-	-	-	-	(0.4)	-	-	-	-
Security	-	-	-	-	(0.5)	-	-	-	(0.1)	-	-	-	-	-	-	-	(0.1)	-	-	-	-
Information Technology	-	-	-	-	(0.1)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Insurance (Other Excl. Property Insurance)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	(0.3)	-	-	-	-
Sub-Total - Expenses	\$ -	\$ -	\$ -	\$ -	\$ (0.7)	\$ -	\$ -	\$ -	\$ (0.1)	\$ (0.3)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ (0.8)	\$ -	\$ -	\$ -	\$ -
Eq. Demobilization/Removal of Hazardous Materials	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Cementing completion and mobilization	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Cost of Stacking Equipment	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Sub-Total - Equipment	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Fracturing - New Operations	-	-	-	-	(4.9)	-	-	-	-	-	-	-	-	-	-	-	7.6	-	-	-	-
WIP - Fracturing	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	(4.0)	-	-	-	-
Sub-Total - WIP	\$ -	\$ -	\$ -	\$ -	\$ (4.9)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 3.6	\$ -	\$ -	\$ -	\$ -
ABL Paydown	\$ -	\$ -	\$ -	\$ -	\$ -	\$ (1.0)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ (1.0)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Professionals	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Addback for Funds Transferred to PE Account	-	-	(3.7)	-	-	(1.3)	-	-	-	-	-	(1.2)	-	-	-	-	-	-	(1.1)	-	-
US Trustee Fees	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Interest Payments	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
503(b)(9) - Claims	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Utility Deposit	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Sales and Use Tax/Other Taxes	-	-	-	-	-	-	-	-	-	-	(0.9)	-	-	-	-	-	-	-	-	-	-
Wind Down Contingency	-	-	-	-	-	-	-	-	-	(0.3)	-	-	-	-	-	-	-	-	(0.3)	-	-
Sub-Total - Chapter 11	\$ -	\$ -	\$ (3.7)	\$ -	\$ -	\$ (2.3)	\$ -	\$ -	\$ -	\$ (1.2)	\$ (1.2)	\$ (1.2)	\$ (1.0)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ (1.4)	\$ -	\$ -
Required Titan Payments	\$ -	\$ -	\$ (5.3)	\$ -	\$ (5.6)	\$ (2.3)	\$ -	\$ -	\$ (0.1)	\$ (0.8)	\$ (1.2)	\$ (1.2)	\$ (1.0)	\$ -	\$ -	\$ -	\$ 2.2	\$ -	\$ (1.4)	\$ -	\$ -
Total Disbursements	\$ -	\$ -	\$ (5.3)	\$ -	\$ (5.6)	\$ (2.3)	\$ -	\$ -	\$ (0.1)	\$ (0.8)	\$ (1.2)	\$ (1.2)	\$ (1.0)	\$ -	\$ -	\$ -	\$ 2.2	\$ -	\$ (1.4)	\$ -	\$ -
Cement Going Concern Net Cash Flow	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Net Cash Flow	\$ -	\$ (0.8)	\$ (3.9)	\$ -	\$ (5.6)	\$ (0.5)	\$ -	\$ -	\$ (0.1)	\$ (4.5)	\$ (1.2)	\$ (1.2)	\$ 5.4	\$ -	\$ -	\$ (4.2)	\$ 2.2	\$ -	\$ (1.4)	\$ 6.6	\$ -
Proceeds - Restricted	-	-	-	-	-	(1.2)	0.5	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Ending Wind Down Cash	\$ 21.0	\$ 20.1	\$ 16.2	\$ 16.2	\$ 10.6	\$ 8.9	\$ 9.4	\$ 9.4	\$ 9.3	\$ 4.8	\$ 3.6	\$ 2.5	\$ 7.8	\$ 7.8	\$ 7.8	\$ 3.6	\$ 5.9	\$ 5.9	\$ 4.4	\$ 11.0	\$ 11.0

EXHIBIT 3

THIS IS **EXHIBIT "3"** REFERRED TO IN THE
AFFIDAVIT OF ANTHONY C. SCHNUR
SWORN BEFORE ME THIS 9th DAY OF OCTOBER, 2020



A NOTARY PUBLIC
IN AND FOR THE STATE OF TEXAS





ENTERED
09/25/2020

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

In re:

BJ SERVICES, LLC, *et al.*,¹

Debtors.

)
) Chapter 11
)
) Case No. 20-33627 (MI)
)
) (Jointly Administered)
)
) **Re: Docket Nos. 40, 170, 261, 505, 551,
622**

SIXTH INTERIM ORDER

**(I) AUTHORIZING DEBTORS TO USE CASH COLLATERAL
PURSUANT TO SECTION 363(c) OF THE BANKRUPTCY CODE;
(II) GRANTING ADEQUATE PROTECTION TO THE PREPETITION
SECURED PARTIES; (III) SCHEDULING A FINAL HEARING PURSUANT TO
BANKRUPTCY RULE 4001(b); AND (IV) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)² of BJ Services, LLC (“BJS”) and its affiliated debtors, each as debtor and debtor in possession (collectively, the “Debtors”) in the above captioned-cases for entry of interim and final orders (the “Interim Order” and a “Final Order,” respectively) pursuant to sections 105(a), 361, 362, 363, 503 and 507 of title 11 of the United States Code (the “Bankruptcy Code”), rules 2002, 4001, 6003, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), rules 4002-1 and 9013-1 of the Bankruptcy Local Rules for the Southern District of Texas (the “Bankruptcy Local Rules”), and the Procedures for Complex Chapter 11 Cases in the Southern District of Texas (the “Complex Case Rules”), seeking, among other things, the following relief:

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: BJ Services, LLC (3543); BJ Management Services, L.P. (8396); BJ Services Holdings Canada, ULC (6181); and BJ Services Management Holdings Corporation (0481). The Debtors’ service address is: 11211 Farm to Market 2920 Road, Tomball, Texas 77375.

² Capitalized terms used but not defined herein have the meaning ascribed to such terms in the Motion.

- a. authorization for the Debtors, pursuant to sections 105, 361, 362, 363, and 507 of the Bankruptcy Code, to continue to use the Cash Collateral of the Prepetition ABL Secured Parties (each as defined below), CLMG Collateral of the CLMG Secured Parties (each as defined below) and GACP Collateral of the GACP Secured Parties (each as defined below) in accordance with the terms and conditions set forth below;
- b. the grant of superpriority claims and the grant of automatically perfected liens, security interests, and other adequate protection, as applicable, to the Prepetition ABL Secured Parties, CLMG Secured Parties, and the GACP Secured Parties to the extent of any diminution in value of their interest in the Prepetition ABL Collateral, including Cash Collateral, in the CLMG Collateral, as applicable, or in the GACP Collateral, as applicable, under or in connection with the Prepetition ABL Loan Documents (as defined below) the CLMG Term Loan Agreement (as defined below), or the GACP Term Loan Agreement (as defined below);
- c. subject to certain challenge rights of certain parties in interest (subject to the limitations specified herein), approving certain stipulations by the Debtors with respect to (i) the Prepetition ABL Loan Documents (as hereinafter defined below); (ii) the CLMG Term Loan Credit Agreement; and (iii) the liens and security interests arising therefrom;
- d. vacating and modifying the automatic stay imposed by section 362 of the Bankruptcy Code to the extent set forth herein;
- e. subject to and effective upon entry of a Final Order, waiving the Debtors' right to assert with respect to the Prepetition ABL Collateral, the Prepetition ABL Secured Parties' Cash Collateral, or the Adequate Protection Collateral (as defined below) (i) any claims to surcharge pursuant to section 506(c) of the Bankruptcy Code, (ii) any "equities of the case" exception pursuant to section 552(b) of the Bankruptcy Code, and (iii) the equitable doctrine of "marshalling" or any similar doctrine;
- f. scheduling, pursuant to Bankruptcy Rule 4001(b) and Bankruptcy Local Rule 4001-2(c), a final hearing (the "Final Hearing") to consider entry of the Final Order approving the relief requested in the Motion on a final basis;
- g. waiving any applicable stay with respect to the effectiveness and enforceability of this Sixth Interim Order and, as later applicable, the Final Order (including a waiver pursuant to Bankruptcy Rule 6004(h)); and
- h. granting related relief.

This Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and this Court having found this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408

and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and upon the Court's entry of the order approving the Motion on an interim basis on July 21, 2020 [Docket No. 88] (the "First Interim Order"), granting the relief requested in the Motion; and upon the Court's entry of the agreed first supplemental interim order on July 26, 2020 [Docket No. 170] (the "First Supplemental Interim Order"), modifying the budget included in the First Interim Order; and upon the Court's entry of the order approving the Motion on a further interim basis on August 3, 2020 [Docket No. 261] (the "Second Interim Order"); and upon the Court's entry of the order approving the Motion on a further interim basis on August 27, 2020 [Docket No. 505]; and upon the Court's entry of the order approving the Motion on a further interim basis on September 2, 2020 [Docket No. 551]; and upon the Court's entry of the order approving the Motion on a further interim basis on September 10, 2020 [Docket No. 622]; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed this Interim Order (this "Sixth Interim Order") and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor,

IT IS FOUND, DETERMINED, ORDERED AND ADJUDGED, that:

1. *The Motion.* The relief requested in the Motion is granted on a further interim basis in accordance with the terms of, and to the extent set forth in, this Sixth Interim Order. Any and all objections to the Motion with respect to the entry of this Sixth Interim Order that have not been

withdrawn, waived or resolved, and all reservations of rights, are hereby denied and overruled on the merits, except as may be set forth herein; provided that, for the avoidance of doubt, the Creditors' Committee's objections to the Final Order are expressly reserved for the Final Hearing. This Sixth Interim Order shall become effective immediately upon its entry.

2. *Jurisdiction.* This Court has core jurisdiction over the Debtors' chapter 11 cases commenced on July 20, 2020 (the "Chapter 11 Cases," and such date, the "Petition Date"), the Motion, and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157(b) and 1334. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

3. *Notice.* Under the circumstances of these cases, proper, timely, adequate and sufficient notice of the Motion, the Hearing, and this Sixth Interim Order has been provided in accordance with the Bankruptcy Code, the Bankruptcy Rules, and the Bankruptcy Local Rules, and no other or further notice of the Motion, the Hearing, or this Sixth Interim Order shall be required. The interim relief granted herein is necessary to avoid immediate and irreparable harm to the Debtors and their estates pending the Final Hearing.

4. *Debtors' Stipulations.* In requesting use of their Cash Collateral and the other Prepetition ABL Collateral, and in exchange for and as a material inducement to the Prepetition ABL Secured Parties' agreement to permit consensual use of their Cash Collateral and the other Prepetition ABL Collateral, the Debtors acknowledge, represent, stipulate, and agree, subject to the challenge rights set forth in paragraph 33 below (but subject to the limitations thereon contained herein), as follows with respect to the Prepetition ABL Facility (the "ABL Stipulations"). The Debtors also acknowledge, represent, stipulate, and agree, subject to the challenge rights set forth in paragraph 33 below, as follows with respect to the Prepetition CLMG Obligations and

Prepetition GACP Obligations (together with the ABL Stipulations, collectively defined as the “Debtors’ Stipulations”):

a. *ABL Stipulations.*

- (i) *Prepetition ABL Credit Facility.* On May 30, 2017, BJS entered into that certain Revolving Credit and Guaranty Agreement (as amended by the Limited Waiver and First Amendment to Revolving Credit and Guaranty Agreement dated October 3, 2018, and further amended by the Second Amendment to Revolving Credit and Guaranty Agreement and First Amendment to Canadian Security Agreement and U.S. Security Agreement, dated January 28, 2019, and as otherwise amended, supplemented, or modified prior to the date hereof, the “Prepetition ABL Credit Agreement,” and further supplemented and modified by those certain Limited Waivers, dated as of June 2, 2020, June 12, 2020, and June 23, 2020, and together with all mortgage, security, pledge and guaranty agreements and all other Loan Documents (as defined in the Prepetition ABL Credit Agreement) and all other documentation executed by any Debtor in connection with any of the foregoing, each as amended, restated, amended and restated, supplemented, or otherwise modified from time to time, the “Prepetition ABL Loan Documents”), with JPMorgan Chase Bank, N.A., in its capacity as administrative agent (the “Prepetition ABL Agent”), and the lenders party thereto (the “Prepetition ABL Lenders,” and together with the Prepetition ABL Agent, the “Prepetition ABL Secured Parties”).
- (ii) *Prepetition ABL Obligations.* As of the Petition Date, pursuant to the Prepetition ABL Loan Documents and applicable law, the Prepetition ABL Secured Parties hold valid, enforceable, secured, and allowable claims against the Debtors in an aggregate amount equal to \$101,550,000 plus any and all other accrued and unpaid interest, fees, expenses (including advisors fees and expenses, in each case, that are chargeable or reimbursable under the Prepetition ABL Loan Documents), disbursements, charges, claims, indemnities and other costs and obligations of whatever nature incurred in connection therewith which are chargeable or otherwise reimbursable under the Prepetition ABL Loan Documents or applicable law, whether arising before or after the Petition Date, including any “Obligations” (as defined in the Prepetition ABL Credit Agreement), of any kind or nature, whether or not evidenced by any note, agreement or other instrument, whether or not contingent, whenever arising, accrued, accruing, due, owing, or chargeable in respect of any of the Debtors’ obligations under the Prepetition ABL Loan Documents (collectively defined as the “Prepetition ABL Obligations”).

- (iii) *Prepetition ABL Liens.* The Prepetition ABL Obligations are secured by continuing, legal, valid, binding, properly perfected, enforceable, non-avoidable first priority liens on and security interests in (the “Prepetition ABL Liens”) all of the “Collateral” as defined in the Prepetition ABL Credit Agreement (the “Prepetition ABL Collateral”), including all of the Debtors’ cash (including the cash in their deposit accounts and other accounts, wherever located, whether as original collateral or proceeds of other Prepetition ABL Collateral except for Excluded Property (as defined in the Prepetition ABL Credit Agreement)) that constitutes Cash Collateral (as defined below). As of the Petition Date, the aggregate book value of the Prepetition ABL Collateral exceeded the aggregate amount of the Prepetition ABL Obligations.
- (iv) *Validity, Perfection, and Priority of Prepetition ABL Liens and Prepetition ABL Obligations.* The Debtors acknowledge and agree that, as of the Petition Date: (i) the Prepetition ABL Liens on the Prepetition ABL Collateral were valid, binding, and enforceable in accordance with the terms of the applicable Prepetition ABL Loan Documents, non-avoidable and properly perfected and were granted to, or for the benefit of, the Prepetition ABL Secured Parties for fair consideration and reasonably equivalent value; (ii) the Prepetition ABL Liens were and remain senior in priority over any and all other liens on and security interests in the Prepetition ABL Collateral, subject only to (x) the Carve Out (as defined below) and (y) valid, perfected and unavoidable liens permitted under Section 7.01 of the Prepetition ABL Credit Agreement to the extent that such liens or security interests are senior to or *pari passu* with the Prepetition ABL Liens (including, for the avoidance of doubt, valid and unavoidable liens in existence as of the Petition Date that are perfected after the Petition Date as permitted by section 546(b) of the Bankruptcy Code) (a “Permitted Encumbrance”); (iii) the Prepetition ABL Obligations constituted legal, valid, binding and non-avoidable obligations of the Debtors, enforceable in accordance with the terms of the applicable Prepetition Loan Documents; (iv) no portion of the Prepetition ABL Obligations or any payments made to the Prepetition ABL Secured Parties or applied to or paid on account of the obligations owing under the Prepetition ABL Loan Documents prior to the Petition Date is subject to any contest, avoidance, reduction, recharacterization, subordination (whether equitable, contractual or otherwise), recovery, reduction, recoupment, disallowance, impairment, rejection, attack, effect, counterclaim, cross-claim, set-off, offset, defense or any other claim (as defined in the Bankruptcy Code) of any kind, cause of action or any other challenge of any kind or nature under the Bankruptcy Code or any other applicable law or regulation or otherwise and the Debtors do not possess, and shall not assert, any claim,

counterclaim, setoff or defense of any kind, nature or description that would in any way affect the validity, enforceability and non-avoidability of any Prepetition ABL Obligations; and (v) the Debtors waive, discharge, and release any right to challenge any of the Prepetition Obligations, the priority of the Debtors' obligations thereunder and the validity, extent, and priority of the Prepetition ABL Liens.

- b. *Validity, Perfection, and Priority of Liens and Obligations under the CLMG Term Loan Agreement.* The Debtors acknowledge and agree that, as of the Petition Date: (i) the CLMG Secured Parties' (as defined below) liens on the CLMG Collateral (such liens, the "Prepetition CLMG Liens") were valid, binding, and enforceable in accordance with the terms of the CLMG Term Loan Agreement (as defined below), non-avoidable and properly perfected and were granted to, or for the benefit of, the CLMG Secured Parties for fair consideration and reasonably equivalent value; (ii) the Prepetition CLMG Liens were and remain senior in priority over any and all other liens on and security interests in the CLMG Collateral (as defined below); (iii) the prepetition obligations owed to the CLMG Secured Parties under the CLMG Term Loan Agreement, including any "Obligations" as defined in the CLMG Term Loan Agreement, of any kind or nature, whether or not evidenced by any note, agreement, or other instrument, whether or not contingent, whenever arising, accrued, accruing, due, owing, or chargeable in respect of any of the Debtors' obligations (collectively, the "Prepetition CLMG Obligations") constituted legal, valid, binding, and non-avoidable obligations of the Debtors, enforceable in accordance with the terms of the CLMG Term Loan Agreement; (iv) no portion of the Prepetition CLMG Obligations or any payments made to the CLMG Secured Parties or applied to or paid on account of the obligations owing under the CLMG Term Loan Agreement prior to the Petition Date is subject to any contest, avoidance, reduction, recharacterization, subordination (whether equitable, contractual or otherwise), recovery, reduction, recoupment, disallowance, impairment, rejection, attack, effect, counterclaim, cross-claim, set-off, offset, defense or any other claim (as defined in the Bankruptcy Code) of any kind, cause of action or any other challenge of any kind or nature under the Bankruptcy Code or any other applicable law or regulation or otherwise and the Debtors do not possess, and shall not assert, any claim, counterclaim, setoff or defense of any kind, nature or description that would in any way affect the validity, enforceability and non-avoidability of any Prepetition CLMG Obligations; and (v) the Debtors waive, discharge, and release any right to challenge any of the Prepetition CLMG Obligations, the priority of the Debtors' obligations thereunder and the validity, extent, and priority of the Prepetition CLMG Liens.
- c. *Validity, Perfection, and Priority of Liens and Obligations under the GACP Term Loan Agreement.* The Debtors acknowledge and agree that, as of the

Petition Date: (i) the GACP Secured Parties' (as defined below) liens on the GACP Collateral (such liens, the "Prepetition GACP Liens") were valid, binding, and enforceable in accordance with the terms of the GACP Term Loan Agreement (as defined below), non-avoidable and properly perfected and were granted to, or for the benefit of, the GACP Secured Parties for fair consideration and reasonably equivalent value; (ii) the Prepetition GACP Liens were and remain senior in priority over any and all other liens on and security interests in the GACP Collateral (as defined below); (iii) the prepetition obligations owed to the GACP Secured Parties under the GACP Term Loan Agreement, including any "Obligations" as defined in the GACP Term Loan Agreement, of any kind or nature, whether or not evidenced by any note, agreement, or other instrument, whether or not contingent, whenever arising, accrued, accruing, due, owing, or chargeable in respect of any of the Debtors' obligations (collectively, the "Prepetition GACP Obligations") constituted legal, valid, binding, and non-avoidable obligations of the Debtors, enforceable in accordance with the terms of the GACP Term Loan Agreement; (iv) no portion of the Prepetition GACP Obligations or any payments made to the GACP Secured Parties or applied to or paid on account of the obligations owing under the GACP Term Loan Agreement prior to the Petition Date is subject to any contest, avoidance, reduction, recharacterization, subordination (whether equitable, contractual or otherwise), recovery, reduction, recoupment, disallowance, impairment, rejection, attack, effect, counterclaim, cross-claim, set-off, offset, defense or any other claim (as defined in the Bankruptcy Code) of any kind, cause of action or any other challenge of any kind or nature under the Bankruptcy Code or any other applicable law or regulation or otherwise and the Debtors do not possess, and shall not assert, any claim, counterclaim, setoff or defense of any kind, nature or description that would in any way affect the validity, enforceability and non-avoidability of any Prepetition GACP Obligations; and (v) the Debtors waive, discharge, and release any right to challenge any of the Prepetition GACP Obligations, the priority of the Debtors' obligations thereunder and the validity, extent, and priority of the Prepetition GACP Liens.

5. *Cash Collateral.* For purposes of this Sixth Interim Order, the term "Cash Collateral" shall mean and include all "cash collateral," as defined in section 363 of the Bankruptcy Code, including cash collateral in or on which the Prepetition ABL Secured Parties have a lien, security interest or other interest (including, without limitation, any adequate protection liens or security interests), and shall include, without limitation, all Prepetition ABL Collateral that is cash of the Debtors' estates and all cash equivalents, whether in the form of negotiable instruments, documents of title, securities, deposit accounts, commodity accounts, securities accounts,

investment accounts, or in any other form, that were on the Petition Date in any of the Debtors' possession, custody or control (or persons in privity with any of the Debtors) or which present income, proceeds, products, rents, or profits of any of the Prepetition ABL Collateral, including to the extent the Debtors obtain an interest in such funds after the Petition Date in the case of each of the foregoing, except for any Excluded Property (as defined in the Prepetition ABL Credit Agreement). The Prepetition ABL Agent has, for the benefit of the Prepetition ABL Lenders, first-priority, perfected liens in the Cash Collateral pursuant to the applicable provisions of the Prepetition ABL Loan Documents, sections 363(a) and 552(b) of the Bankruptcy Code, and this Sixth Interim Order.

6. *Findings Regarding the Use of Cash Collateral and Prepetition ABL Collateral.*

- a. Good cause has been shown for the entry of this Sixth Interim Order.
- b. The Debtors have an immediate need to use the Prepetition ABL Collateral, including Cash Collateral to, among other things, fund the ongoing orderly sale of their assets, pay their operating expenses, and preserve the value of the Debtors' estates.
- c. The terms of the use of the Prepetition ABL Collateral pursuant to this Sixth Interim Order are fair and reasonable, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties and constitute reasonably equivalent value and fair consideration.
- d. The terms of the use of the Prepetition ABL Collateral pursuant to this Sixth Interim Order have been the subject of extensive negotiations conducted in good faith and at arm's length among the Debtors, the Prepetition ABL Agent, and other Prepetition ABL Secured Parties and, pursuant to sections 105, 361, and 363 of the Bankruptcy Code, the Prepetition ABL Agent and the other Prepetition ABL Secured Parties are hereby found to be entities that have acted in "good faith" in connection with the negotiation and entry of this Sixth Interim Order, and each is entitled to the protection provided under section 363(m) of the Bankruptcy Code.
- e. The Debtors have requested entry of this Sixth Interim Order pursuant to Bankruptcy Rule 4001(b)(2) and (d) of the Complex Case Procedures. Absent granting the interim relief sought by this Sixth Interim Order, the Debtors' estates could be immediately and irreparably harmed. The use of

the Prepetition ABL Collateral in accordance with this Sixth Interim Order is in the best interest of the Debtors' estates.

7. *Need for Limited Use of Cash Collateral.* The Debtors have an immediate and critical need to continue to use the Prepetition ABL Collateral (including Cash Collateral) in order to permit, among other things, the ongoing marketing and sale of their assets, to make payroll, to satisfy other working capital and operational needs and fund the Chapter 11 Cases, in each such case in accordance with the terms of this Sixth Interim Order, including in accordance with the Budget (as defined below). The access of the Debtors to sufficient working capital and liquidity through the use of Cash Collateral and other Prepetition ABL Collateral is necessary to preserve and maintain the value of the Debtors' estates. Without the use of Cash Collateral, the Debtors would likely not have sufficient liquidity to continue to operate their organization and effectuate an orderly wind-down of the Debtors' businesses. Entry of this Sixth Interim Order will preserve the assets of each Debtor's estate and its value and is in the best interests of the Debtors, their creditors, and their estates. The Adequate Protection Liens, the Adequate Protection Superpriority Claims, the ABL Adequate Protection Payments, and the ABL Adequate Protection Fees and Expenses (each as defined herein) are consistent with and authorized by the Bankruptcy Code. Absent authorization to immediately access and use Cash Collateral, the Debtors, the estates, and their creditors would suffer immediate and irreparable harm.

8. *Consent by the Prepetition ABL Agent.* The Prepetition ABL Agent consents to the Debtors' use of its Cash Collateral, in accordance with and subject to the terms and conditions contained in this Sixth Interim Order, which consent has been supported or unopposed by the Required Lenders (as defined in the Prepetition ABL Credit Agreement) after receipt of notice and shall be deemed sufficient under the circumstances for purposes of this Sixth Interim Order. All use of such Cash Collateral by the Debtors shall, subject to any Non-Conforming Use (as such

term is defined below) permitted hereunder, be consistent with the cash flow budget attached hereto as **Exhibit 1** (as may be amended or replaced pursuant to paragraph 17 hereof, the “Budget”), which Budget shall exclude any amounts to be paid by the GACP Secured Parties with respect to the relief from the automatic stay with respect to the Prepetition GACP Collateral granted by the Bankruptcy Court on September 2, 2020 [Docket No. 553]; provided, however, that the actual aggregate cash balance, which shall be tested on a daily basis, shall not be less than the projected amount therefore set forth in the Budget for such applicable time period by more than 15%; provided that Allowed Professional Fees, the Adequate Protection Fees and Expenses (as defined in paragraph 12 below), and payments to the U.S. Trustee shall not be subject to such test; provided further, that Allowed Professional Fees shall not exceed the projected amount therefor set forth in the Budget for such applicable time period by more than 15% (any variance not exceeding the maximum amounts set forth above, a “Permitted Variance”) (provided that nothing herein shall operate as a limitation on the amount of professional fees a Professional Person may seek to be paid by the Debtors pursuant to an order of the Court, nor shall anything herein limit the Prepetition ABL Agent’s rights to oppose any request for payment of professional fees in excess of the Permitted Variance). Any transfer or use of the Prepetition ABL Secured Parties’ Cash Collateral by the Debtors shall be conditioned upon the Debtors’ compliance with the Budget, including any Permitted Variances or Non-Conforming Uses. The Prepetition ABL Agent may (with the consent of the Required Lenders if the proposed amount is equal to or greater than \$1 million) agree in writing to the use or receipt of the Cash Collateral of the Prepetition ABL Lenders in a manner or amount which does not conform to the manner or amount, as applicable, set forth in the Budget (including, for the avoidance of doubt, any Permitted Variances) (each such approved non-conforming use of Cash Collateral, a “Non-Conforming Use”). If such written

consent is given (which consent may be given through email by the Prepetition ABL Agent or the Prepetition ABL Agent's counsel), the Debtors shall be authorized pursuant to this Sixth Interim Order to use Cash Collateral for any such Non-Conforming Use without further Court approval, and the Prepetition ABL Secured Parties shall be entitled to all of the protections specified in this Sixth Interim Order for any such Non-Conforming Use; provided that each such permitted Non-Conforming Use shall be deemed a modification to the Budget for all testing purposes. For the avoidance of doubt and notwithstanding anything to the contrary in this Sixth Interim Order, the Prepetition ABL Agent does not consent to the Debtors' use of, and the Debtors shall not be permitted to use, the Cash Collateral constituting Prepetition ABL Collateral or Adequate Protection Collateral (as defined below, and subject to satisfaction of claims on account of ABL Diminution in Value, if any) for (i) payment to any other secured party in these chapter 11 cases (including the GACP Secured Parties and CLMG Secured Parties), (ii) payment of any costs attributable to the GACP Collateral or CLMG Collateral (each as defined below), including costs and expenses (x) of preserving, or disposing of, the GACP Collateral or CLMG Collateral, (y) incurred in connection with any sale of such GACP Collateral or CLMG Collateral, or (z) costs and expenses on account of the GACP Collateral or CLMG Collateral in connection with, or following, relief from the automatic stay (if applicable) or any budget with respect thereto, or (iii) payment of any transition services to be provided under a transition service agreement in connection with any of the Debtors' asset sales.

9. *Use of Cash.* As a condition to the Prepetition ABL Secured Parties' consent to the use of their Cash Collateral, the Debtors shall be required to first utilize unencumbered cash (or any other cash available to the Debtors for satisfaction of costs and expenses) available for use by the Debtors, if any, to satisfy the costs and expenses set forth in the Budget prior to using their

Cash Collateral; provided that if there is no unencumbered cash available for use by the Debtors or the Debtors' balance of unencumbered cash has been reduced to zero, the Debtors next shall be required to use proceeds available for use by the Debtors from any and all sales of the Debtors' assets or causes of action subject to the First Priority ABL Adequate Protection Liens (the "ABL Adequate Protection Cash Collateral"), if any, to satisfy the costs and expenses set forth in the Budget; provided, further, that if there is no unencumbered cash or ABL Adequate Protection Cash Collateral available for use by the Debtors, or both the unencumbered cash and ABL Adequate Protection Cash Collateral have been reduced to zero, the Debtors are authorized to use the Cash Collateral constituting Prepetition ABL Collateral in accordance with this Sixth Interim Order and as set forth in the Budget. In addition, to the extent that the Pre-Carve Out Trigger Notice Reserve or Post-Carve Out Trigger Notice Reserve (together with the Pre-Carve Out Trigger Notice Reserve, the "Professional Fee Reserves") were funded by Cash Collateral constituting Prepetition ABL Collateral prior to the Debtors' receipt of unencumbered cash or Adequate Protection Cash Collateral, the funds in either Professional Fee Reserve constituting Prepetition ABL Collateral will be replaced by or deemed to be replaced by unencumbered cash or Adequate Protection Cash Collateral, as applicable, upon the Debtors' receipt of such unencumbered cash or Adequate Protection Cash Collateral and to the extent available.

10. *Entitlement of Prepetition ABL Secured Parties to Adequate Protection.* Pursuant to sections 361, 362, 363(c)(2), and 363(e) of the Bankruptcy Code, the Prepetition ABL Secured Parties are entitled to adequate protection of their interests in the Prepetition ABL Collateral, including the Cash Collateral, in an amount equal to the aggregate actual diminution in the value of the Prepetition ABL Secured Parties' interests in the Prepetition ABL Collateral (including Cash Collateral) from and after the Petition Date, if any, for any reason provided for under the

Bankruptcy Code, including, without limitation, any such diminution resulting from the sale, lease, or use by the Debtors of the Prepetition ABL Collateral (including Cash Collateral, whether pursuant to the Budget or otherwise), the subordination of their liens on the Prepetition ABL Collateral and Adequate Protection Superpriority Claims (as defined herein) to the Carve Out pursuant to this Sixth Interim Order and the Prepetition ABL Loan Documents, or the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code (“ABL Diminution in Value”).

11. *ABL Adequate Protection Claims and Liens.* The Prepetition ABL Secured Parties are hereby granted the following (collectively, the “ABL Adequate Protection Obligations”), solely to the extent of any ABL Diminution in Value; provided that the collateral set forth in this paragraph 11 shall not include assets or property (other than Prepetition ABL Collateral, including Cash Collateral) upon which, and solely to the extent that, the grant of an Adequate Protection Lien as contemplated in this Sixth Interim Order, would constitute a default or event of default under any of the Debtors’ contracts or leases, excluding, for the avoidance of doubt, the GACP Term Loan Agreement (and such default would not be excused or rendered ineffective by operation of the Bankruptcy Code or applicable nonbankruptcy law), but shall include the proceeds thereof:

- a. *ABL Adequate Protection Liens.* Pursuant to sections 361 and 363(e) of the Bankruptcy Code, as adequate protection against any actual ABL Diminution in Value (if any) of the Prepetition ABL Collateral, including Cash Collateral, effective as of the Petition Date and perfected without the need for execution by the Debtors or the recordation or other filing by the Prepetition ABL Agent of security agreements, control agreements, pledge agreements, mortgages or other Collateral Documents (as defined in the Prepetition ABL Credit Agreement) or financing statements or other similar documents, or the possession or control by the Prepetition ABL Agent of any Adequate Protection Collateral, the Prepetition ABL Agent is hereby granted for the ratable benefit of the Prepetition ABL Lenders, as security for the payment of the ABL Adequate Protection Obligations, subject and subordinate only to the Carve Out, the following security interests and liens (all such liens and security interests, the “ABL Adequate Protection Liens,”

and all property identified in clauses (i) - (iii) below being collectively referred to as the “Adequate Protection Collateral”):

- (i) First Priority ABL Adequate Protection Liens. Pursuant to sections 361(2) and 363(c)(2) of the Bankruptcy Code, binding, continuing, enforceable, fully perfected, first priority (subject to subparagraph 11(b)) senior replacement liens on and security interests in and upon (a) all Prepetition ABL Collateral, and (b) all assets and properties of the Debtors’ estates other than (i) the CLMG Collateral (as defined below), (ii) the GACP Collateral (as defined below), and (iii) those assets and properties that are subject to any other (x) valid, perfected, non-avoidable, and enforceable liens in existence on or as of the Petition Date or (y) valid and unavoidable liens in existence as of the Petition Date that are perfected after the Petition Date as permitted by section 546(b) of the Bankruptcy Code, whether now owned or hereafter acquired, including, without limitation, all personal and real property of the Debtors’ estates and all products, proceeds, rents, and profits thereof that, from and after the Petition Date, is not subject to any lien or security interest, if any, including upon entry of the Final Order, the proceeds of any claims and causes of action of the Debtors (but not on the actual claims and causes of action) arising under sections 544, 545, 547, 548, 549, and 550 of the Bankruptcy Code and any other avoidance or similar action under the Bankruptcy Code or similar state law (collectively, the “Avoidance Actions”) (the foregoing liens being collectively referred to as the “First Priority ABL Adequate Protection Liens”).
- (ii) ABL Adequate Protection Liens Junior to Certain Existing Liens. Pursuant to sections 361(2) and 363(c)(2) of the Bankruptcy Code, valid, binding, continuing, enforceable, fully-perfected non-voidable junior priority liens on, and junior security interests in, all tangible and intangible assets, including without limitation, all prepetition and post-petition property of the Debtors’ estates, and all products and proceeds thereof, whether now existing or hereafter acquired, that is subject to (a) valid, perfected, and unavoidable liens in existence as of the Petition Date, including, without limitation, the liens of (i) GACP Finance Co., LLC (“GACP”), as administrative agent and collateral agent under the Term Loan Credit and Guaranty Agreement, dated as of January 28, 2019, by and among BJS, GACP, and the other parties thereto (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time, the “GACP Term Loan Agreement”), which encumber the “Collateral” as defined therein (the “GACP Collateral”) and (ii) CLMG Corp. (“CLMG”), as administrative agent and collateral agent under the Credit Agreement, dated as of December 31, 2019, by and among BJS, CLMG, and the other parties thereto (as amended, restated, amended and restated,

supplemented, or otherwise modified from time to time, the “CLMG Term Loan Agreement”), which encumber the “Collateral” as defined therein (the “CLMG Collateral”) or (b) valid and unavoidable liens in existence as of the Petition Date that are perfected after the Petition Date as permitted by section 546(b) of the Bankruptcy Code, which valid, perfected and unavoidable liens are senior in priority to the security interests and liens in favor of the Prepetition ABL Agent (the foregoing liens being collectively referred to as the “Junior ABL Adequate Protection Liens”).

- (iii) ABL Adequate Protection Liens Senior to Prepetition ABL Liens. Pursuant to sections 361(2) and 363(c)(2) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected non-voidable priming lien on, and security interest in, all tangible and intangible assets comprising the Prepetition ABL Collateral, and all products and proceeds thereof, whether now existing or hereafter acquired.
- b. *Status of the ABL Adequate Protection Liens.* Subject in all respects to the Carve Out, the Adequate Protection Liens shall not be (i) subject or subordinate to (A) any lien or security interest that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code or (B) any lien or security interest arising after the Petition Date, or (ii) except as otherwise set forth in clauses (a)(i)-(iii) of this paragraph 11, subordinated to or made *pari passu* with any other lien or security interest, now or hereafter existing and whether authorized under sections 363 or 364 of the Bankruptcy Code or otherwise.
- c. *Allocation of Proceeds.* Except as otherwise provided herein, all proceeds from Cementing Sale and sale of the Debtors’ fracturing assets (the “Fracturing Sale”) [Docket Nos. 452, 462] shall be reserved or distributed in accordance with the respective orders authorizing such sales or by subsequent order of the Court.
- d. *Enforceability.* Subject in all respects to the Carve Out, the ABL Adequate Protection Liens shall not be subject to sections 506(c) (upon entry of the Final Order), 510, 549, 550, or 551 of the Bankruptcy Code. The ABL Adequate Protection Liens shall be enforceable against and binding upon the Debtors, their estates and any successors thereto, including, without limitation, any trustee or other estate representative appointed in the Debtors’ Chapter 11 Cases, or any case under chapter 7 of the Bankruptcy Code upon the conversion of any of the Debtors’ Chapter 11 Cases, or in any other proceedings superseding or related to any of the foregoing (each, a “Successor Case”).
- e. *Adequate Protection Superpriority Claims.* The ABL Adequate Protection Obligations due to the Prepetition ABL Agent shall constitute allowed

superpriority administrative expense claims against the Debtors in the amount of any Diminution in Value of the Prepetition ABL Collateral, including Cash Collateral, as provided in section 507(b) of the Bankruptcy Code, with priority in payment over any and all unsecured claims and administrative expense claims against the Debtors, now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, administrative expenses of the kinds specified in or ordered pursuant to sections 105, 326, 327, 328, 330, 331, 361, 362, 363, 364, 365, 503(a), 503(b), 506(c), 507(a), 507(b), 546(c), 546(d), 552(b), 726, 1113, 1114 and any other provision of the Bankruptcy Code, and shall at all times be senior to the rights of the Debtors and any successor trustee or creditor in these Chapter 11 Cases or any Successor Case (the “ABL Adequate Protection Superpriority Claims”), subject and subordinate only to the Carve Out (as defined herein).

12. *ABL Additional Adequate Protection.* As additional adequate protection to the Prepetition ABL Agent and the Prepetition ABL Secured Parties:

- a. *Payment of Prepetition and Postpetition Interest.* The Debtors shall pay to the Prepetition ABL Agent for the benefit of the Prepetition ABL Lenders all accrued and unpaid interest (including, for the avoidance of doubt, interest accruing and becoming due after the Petition Date) at the non-default rates and consistent with the ordinary course interest payment dates set forth in the Prepetition ABL Credit Agreement (the “ABL Adequate Protection Interest Payments”).
- b. *Payment of Prepetition ABL Agent Fees and Expenses.* As additional adequate protection, the Prepetition ABL Agent shall receive from the Debtors, for the benefit of the Prepetition ABL Lenders, current cash payments of all reasonable and documented prepetition and postpetition fees and expenses payable to the Prepetition ABL Secured Parties under the Prepetition ABL Loan Documents, including, but not limited to, the reasonable and documented prepetition and postpetition fees and disbursements of legal counsel, financial advisors, and other consultants (the “ABL Adequate Protection Fees and Expenses”). Payment of all such professional fees and expenses shall not be subject to allowance by the Court but shall be subject to the following process. At the same time such invoices are delivered to the Debtors, the professionals for the Prepetition ABL Secured Parties shall deliver a copy of their respective invoices to counsel for any official committee appointed in these cases pursuant to section 1102 of the Bankruptcy Code (a “Creditors’ Committee”) and the office of the United States Trustee (the “U.S. Trustee”). The invoices for such fees and expenses shall not be required to comply with any U.S. Trustee guidelines related to the payment of fees and expenses of retained estate professionals, may be in summary form only, and shall not be subject to application or allowance by the Court. Any objections raised by the

Debtors, the U.S. Trustee, or the Creditors' Committee with respect to such invoices within ten (10) days of receipt thereof (the "Invoice Review Period") will be resolved by the Court (absent prior consensual resolution thereof). Pending such resolution, the undisputed portion of any such invoice shall be paid by the Debtors within three (3) days of the expiration of the Invoice Review Period. Except as otherwise ordered by the Court in the event an objection is timely filed, such fees and expenses shall not be subject to any setoff, defense, claim, counterclaim, or diminution of any type, kind, or nature whatsoever.

- c. *Paydown of Prepetition ABL Obligations.* The Debtors shall pay to the Prepetition ABL Agent for the benefit of the Prepetition ABL Lenders (i) \$3 million no later than September 28, 2020, (ii) \$2 million no later than October 5, 2020, (iii) an amount equal to 80% of any collection by the Debtors of amounts from the GACP Secured Parties on account of costs paid by the Debtors prior to the date hereof no later than one (1) business day following the Debtors' receipt of such funds and to the extent the Debtors have sufficient available funds (or such later date as sufficient funds become available, as applicable), and (iv) an amount equal to 80% of any amounts determined by the Court to be proceeds of intellectual property or inventory from the Debtors' sale of fracturing assets [Docket No. 493] no later than one (1) business day following the date of such determination and to the extent the Debtors have sufficient available funds (or such later date as sufficient funds become available, as applicable) (together with the ABL Adequate Protection Interest Payments, collectively, the "ABL Adequate Protection Payments"); provided that such amounts shall be paid from the Cash Collateral constituting Prepetition ABL Collateral and will reduce the principal amount outstanding under the Prepetition ABL Obligations; provided, further, however, that any payments made pursuant to this paragraph 12(c) may be subject to disgorgement if a challenge action is brought against the Prepetition ABL Secured Parties in accordance with paragraph 33 and if any such payments are disgorged, the principal amount outstanding under the Prepetition ABL Obligations will be adjusted upward accordingly.
- d. *Other Covenants.* The Debtors shall maintain their cash management system in a manner consistent with this Sixth Interim Order, and any order of this Court approving the maintenance of the Debtors' cash management system. The Debtors shall not use, sell, or lease any material assets outside the ordinary course of business, or seek authority to this Court to do any of the foregoing, without prior consultation with the Prepetition ABL Agent at least seven (7) days prior to the date on which the Debtors seek authority of this Court for such use, sale, or lease. The Debtors shall comply with the covenants contained in section 6.07 of the Prepetition ABL Credit Agreement regarding the maintenance and insurance of the Prepetition ABL Collateral and the Adequate Protection Collateral.

13. *Entitlement of CLMG Secured Parties to Adequate Protection.* Pursuant to sections 361, 362, 363(c)(2), and 363(e) of the Bankruptcy Code, the CLMG Secured Parties are entitled to adequate protection of their interests in the CLMG Collateral, in an amount equal to the aggregate actual diminution in the value of the CLMG Secured Parties' interests in the CLMG Collateral from and after the Petition Date, if any, for any reason provided for under the Bankruptcy Code, including, without limitation, any such diminution resulting from the sale, lease, or use by the Debtors of the CLMG Collateral, or the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code. ("CLMG Diminution in Value").

14. *CLMG Adequate Protection Claims and Liens.* CLMG in its capacity as administrative agent (the "CLMG Agent"), and the lenders party thereto (the "CLMG Lenders," and together with the CLMG Agent, the "CLMG Secured Parties") are hereby granted the following (collectively, the "CLMG Adequate Protection Obligations" and together with the ABL Adequate Protection Obligations, the "Adequate Protection Obligations"), solely to the extent of any CLMG Diminution in Value; provided that the collateral set forth in this paragraph 14 shall not include assets or property (other than CLMG Collateral) upon which, and solely to the extent that, the grant of an Adequate Protection Lien as contemplated in this Sixth Interim Order, would constitute a default or event of default under any of the Debtors' contracts or leases (and such default would not be excused or rendered ineffective by operation of the Bankruptcy Code or applicable nonbankruptcy law), but shall include the proceeds thereof:

- a. *CLMG Adequate Protection Liens.* Pursuant to sections 361 and 363(e) of the Bankruptcy Code, as adequate protection against any actual CLMG Diminution in Value (if any) of the CLMG Collateral effective as of the Petition Date and perfected without the need for execution by the Debtors or the recordation or other filing by CLMG of security agreements, control agreements, pledge agreements, mortgages or other Collateral Documents (as defined in the CLMG Term Loan Credit Agreement) or financing statements or other similar documents, or the possession or control by

CLMG of any Adequate Protection Collateral, CLMG is hereby granted, as security for the payment of the CLMG Adequate Protection Obligations, the following security interests and liens (all such liens and security interests, the “CLMG Adequate Protection Liens”):

- (i) CLMG Adequate Protection Liens Junior to Certain Existing Liens and Junior to ABL Adequate Protection Liens. Pursuant to sections 361(2) and 363(c)(2) of the Bankruptcy Code, valid, binding, continuing, enforceable, fully-perfected non-voidable junior priority liens on, and junior security interests in, all tangible and intangible assets, including without limitation, all prepetition and postpetition property of the Debtors’ estates, and all products and proceeds thereof, whether now existing or hereafter acquired, that is subject to (a) valid, perfected, and unavoidable liens in existence as of the Petition Date, including, without limitation (i) the assets subject to the ABL Adequate Protection Liens (other than with respect the CLMG Collateral) and (ii) the GACP Collateral (which such liens on the GACP Collateral shall be junior to the ABL Adequate Protection Liens) or (b) valid and unavoidable liens in existence as of the Petition Date that are perfected after the Petition Date as permitted by section 546(b) of the Bankruptcy Code, which valid, perfected and unavoidable liens are senior in priority to the security interests and liens in favor of CLMG (the foregoing liens being collectively referred to as the “Junior CLMG Adequate Protection Liens”).
 - (ii) Adequate Protection Liens Senior to Prepetition CLMG Liens. Pursuant to sections 361(2) and 363(c)(2) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected non-voidable priming lien on, and security interest in, all tangible and intangible assets comprising the CLMG Collateral, and all products and proceeds thereof, whether now existing or hereafter acquired.
- b. *Status of the CLMG Adequate Protection Liens.* The CLMG Adequate Protection Liens shall be *pari passu* with the GACP Adequate Protection Liens and junior to the ABL Adequate Protections Liens in all respects and shall not otherwise be (i) subject or subordinate to (A) any lien or security interest that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code or (B) any lien or security interest arising after the Petition Date, or (ii) except as otherwise set forth in clauses (a)(i)-(ii) of this paragraph 14, subordinated to or made *pari passu* with any other lien or security interest, now or hereafter existing and whether authorized under sections 363 or 364 of the Bankruptcy Code or otherwise.

- c. *Enforceability.* The CLMG Adequate Protection Liens shall not be subject to sections 510, 549, 550, or 551 of the Bankruptcy Code. The CLMG Adequate Protection Liens shall be enforceable against and binding upon the Debtors, their estates and any successors thereto, including, without limitation, any trustee or other estate representative appointed in the Debtors' Chapter 11 Cases or any Successor Case.

15. *Entitlement of GACP Secured Parties to Adequate Protection.* Pursuant to sections 361, 362, 363(c)(2), and 363(e) of the Bankruptcy Code, the GACP Secured Parties are entitled to adequate protection of their interests in the GACP Collateral, in an amount equal to the aggregate actual diminution in the value of the GACP Secured Parties' interests in the GACP Collateral from and after the Petition Date, if any, for any reason provided for under the Bankruptcy Code, including, without limitation, any such diminution resulting from the sale, lease, or use by the Debtors of the GACP Collateral, or the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code. ("GACP Diminution in Value").

16. *GACP Adequate Protection Claims and Liens.* GACP, in its capacity as administrative agent (the "GACP Agent"), and the lenders party thereto (the "GACP Lenders," and together with the GACP Agent, the "GACP Secured Parties," and together with the Prepetition ABL Secured Parties and CLMG Secured Parties, the "Prepetition Secured Parties") are hereby granted the following (collectively, the "GACP Adequate Protection Obligations," and together with the ABL Adequate Protection Obligations, and CLMG Adequate Protection Obligations, the "Adequate Protection Obligations"), solely to the extent of any GACP Diminution in Value; provided that the collateral set forth in this paragraph 16 shall not include assets or property (other than GACP Collateral) upon which, and solely to the extent that, the grant of an Adequate Protection Lien as contemplated in this Sixth Interim Order, would constitute a default or event of default under any of the Debtors' contracts or leases (and such default would not be excused or rendered ineffective by operation of the Bankruptcy Code or applicable nonbankruptcy law), but

shall include the proceeds thereof; provided further, however, notwithstanding anything to the contrary herein, all parties' rights, claims, defenses and objections with respect to GACP's rights, if any, to additional GACP Adequate Protection Obligations with respect to the GACP Collateral, on account of any GACP Diminution in Value, if any, for any period of time following entry of the *Agreed Order with Respect to GACP Finance Co., LLC's Emergency Motion for Relief from the Automatic Stay* [Docket No. 553], are hereby preserved:

- a. *GACP Adequate Protection Liens.* Pursuant to sections 361 and 363(e) of the Bankruptcy Code, as adequate protection against any actual GACP Diminution in Value (if any) of the GACP Collateral effective as of the Petition Date and perfected without the need for execution by the Debtors or the recordation or other filing by GACP of security agreements, control agreements, pledge agreements, mortgages or other Collateral Documents (as defined in the GACP Term Loan Credit Agreement) or financing statements or other similar documents, or the possession or control by GACP of any Adequate Protection Collateral, GACP is hereby granted, as security for the payment of the GACP Adequate Protection Obligations, the following security interests and liens (all such liens and security interests, the "GACP Adequate Protection Liens," and together with the ABL Adequate Protection Liens and CLMG Adequate Protection Liens, the "Adequate Protection Liens"):
 - (i) GACP Adequate Protection Liens Junior to Certain Existing Liens and Junior to ABL Adequate Protection Liens. Pursuant to sections 361(2) and 363(c)(2) of the Bankruptcy Code, valid, binding, continuing, enforceable, fully-perfected non-voidable junior priority liens on, and junior security interests in, all tangible and intangible assets, including without limitation, all prepetition and postpetition property of the Debtors' estates, and all products and proceeds thereof, whether now existing or hereafter acquired, that is subject to (a) valid, perfected, and unavoidable liens in existence as of the Petition Date, including, without limitation (i) the assets subject to the ABL Adequate Protection Liens (other than with respect the GACP Collateral) and (ii) the GACP Collateral (which such liens on the GACP Collateral shall be junior to the ABL Adequate Protection Liens) or (b) valid and unavoidable liens in existence as of the Petition Date that are perfected after the Petition Date as permitted by section 546(b) of the Bankruptcy Code, which valid, perfected and unavoidable liens are senior in priority to the security interests and liens in favor of GACP (the foregoing liens being collectively referred to as the "Junior GACP Adequate Protection Liens").

(ii) Adequate Protection Liens Senior to Prepetition GACP Liens. Pursuant to sections 361(2) and 363(c)(2) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected non-voidable priming lien on, and security interest in, all tangible and intangible assets comprising the GACP Collateral, and all products and proceeds thereof, whether now existing or hereafter acquired.

- b. *Status of the GACP Adequate Protection Liens.* The GACP Adequate Protection Liens shall be *pari passu* with the CLMG Adequate Protection Liens and junior to the ABL Adequate Protections Liens in all respects and shall not otherwise be (i) subject or subordinate to (A) any lien or security interest that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code or (B) any lien or security interest arising after the Petition Date, or (ii) except as otherwise set forth in clauses (a)(i)-(ii) of this paragraph 16, subordinated to or made *pari passu* with any other lien or security interest, now or hereafter existing and whether authorized under sections 363 or 364 of the Bankruptcy Code or otherwise.
- c. *Enforceability.* The GACP Adequate Protection Liens shall not be subject to sections 510, 549, 550, or 551 of the Bankruptcy Code. The GACP Adequate Protection Liens shall be enforceable against and binding upon the Debtors, their estates and any successors thereto, including, without limitation, any trustee or other estate representative appointed in the Debtors' Chapter 11 Cases or any Successor Case.

17. *Reporting.* As adequate protection for the Debtors' use of the Prepetition ABL Collateral (including Cash Collateral), the Debtors shall comply with the reporting requirements set forth in the Prepetition ABL Loan Documents, provided that notwithstanding anything to the contrary in this Sixth Interim Order or the Prepetition ABL Loan Documents, the Debtors shall not be required to deliver any Borrowing Base Certificates (as defined in the Prepetition ABL Credit Agreement) to the Prepetition ABL Agent. For the avoidance of doubt, any forecast and financial reporting requirements under this Sixth Interim Order shall replace and be in lieu of any similar requirements under the Prepetition ABL Loan Documents. The Debtors shall provide the following additional reporting to the Prepetition ABL Agent, GACP, and the Creditors' Committee (as applicable):

- a. on or before 5:00 p.m. (Central Time) on every fourth Thursday (or, if such Thursday is not a business day, then the immediately succeeding business day), until earlier of (i) confirmation of a chapter 11 plan by the Debtors or (ii) the repayment of the Prepetition ABL Obligations indefeasibly in full in cash, an updated Budget with respect to the Debtors for the current calendar week then ended and the immediately following consecutive 12 weeks (collectively, 13 weeks), set forth on a weekly basis. Each proposed Budget provided to the Prepetition ABL Agent shall be of no force and effect unless and until it is approved by the Prepetition ABL Agent, which approval has been supported or unopposed by the Required Lenders (as defined in the Prepetition ABL Credit Agreement), and, until such approval is given, the prior Budget shall remain in effect. Any such proposed Budget, upon the approval of the Prepetition ABL Agent shall become, as of the date of such approval or such determination (and the Prepetition ABL Agent shall be deemed to have approved the Budget upon the passage of five (5) days with no objection) and for the period of time covered thereby, the Budget, and shall prospectively replace any prior Budget. If the Debtors and the Prepetition ABL Agent are unable to agree on a proposed Budget's terms, the Debtors reserve the right to seek an expedited hearing with the Court to resolve such disagreement. In that event, the Prepetition ABL Agent shall not oppose the request for expedited consideration provided that any such hearing is held on not less than 48 hours' notice to the Prepetition ABL Agent. In the event of any dispute regarding the terms of a Budget, the Debtors and the Prepetition ABL Agent reserve any and all rights under the Bankruptcy Code or applicable law;
- b. on or before 5:00 p.m. (prevailing Central Time) on every Thursday (or, if such Thursday is not a business day, then the immediately succeeding business day), the Debtors shall deliver to the Prepetition ABL Agent and GACP, on a line-by-line basis, a reconciliation report showing the variances comparing actual cash receipts and disbursements of the Debtors during the immediately-preceding calendar week with corresponding forecasted amounts for such week in the Budget, including written descriptions in reasonable detail explaining any material positive or negative variances;
- c. on or before 9:00 a.m. (prevailing Central Time) every business day, the Debtors shall deliver to the Prepetition ABL Agent a report showing the Debtors' cash balance as of the end of the preceding day;
- d. on or before 5:00 p.m. (prevailing Central Time) starting on September 4, 2020 (with respect to month ending July 31, 2020), and continuing thereafter the date that is 35 days from the prior month's end (or if such day is not a business day, then the immediately succeeding business day), the Debtors shall provide to the Prepetition ABL Agent the information constituting the Borrowing Base (as defined in the Prepetition ABL Credit Agreement) report; provided that notwithstanding anything to the contrary in this Sixth Interim Order or the Prepetition ABL Loan Documents, the

Debtors shall not be required to deliver any Borrowing Base Certificates (as defined in the Prepetition ABL Credit Agreement) to the Prepetition ABL Agent;

- e. no less than three times a week, upon reasonable request the Debtors shall provide the Prepetition ABL Agent an update on the vendor settlement process, including, without limitation, updated “Trade Settlement Update” and “Lien Tracker” files;
- f. all financial reports, forecasts and all other financial documentation, pleadings and other filings that are reasonably requested by the Prepetition ABL Agent, GACP, the Creditors’ Committee, or their representatives and agents, including, but not limited to any appraisals conducted by Hilco, GACP, or any other party, and any other materials that may value the Debtors’ intellectual property or real estate assets;
- g. in addition to, and without limiting, whatever rights to access the Prepetition ABL Agent has under the Prepetition ABL Loan Documents, upon reasonable notice, at reasonable times during normal business hours, the Debtors shall (i) permit representatives of the Prepetition ABL Agent to visit and inspect any of their respective properties, to examine and make abstracts or copies from any of their respective books and records, to tour the Debtors’ business premises and other properties, and (ii) cause their representatives and agents to make themselves reasonably available to discuss the Debtors’ affairs, financial condition, properties, business, operations and accounts with the representatives and agents of the Prepetition ABL Agent.

18. *Carve Out.*

- a. *Carve Out.* As used in this Sixth Interim Order, the “Carve Out” means the sum of (i) all fees required to be paid to the Clerk of the Court and to the Office of the United States Trustee under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate (without regard to the notice set forth in (iii) below); (ii) all reasonable fees and expenses up to \$75,000 incurred by a trustee under section 726(b) of the Bankruptcy Code (without regard to the notice set forth in (iii) below); (iii) to the extent allowed at any time, whether by interim order, procedural order, or otherwise, all unpaid fees and expenses (the “Allowed Professional Fees”) incurred by persons or firms retained by the Debtors pursuant to section 327, 328, or 363 of the Bankruptcy Code (the “Debtor Professionals”) and the Creditors’ Committee pursuant to section 328 or 1103 of the Bankruptcy Code (the “Committee Professionals” and, together with the Debtor Professionals, the “Professional Persons”) at any time before or on the first business day following delivery by the Prepetition ABL 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; and (iv) Allowed

Professional Fees of Professional Persons in an aggregate amount not to exceed \$1 million incurred after the first business day following delivery by the Prepetition ABL Agent of the Carve Out Trigger Notice, to the extent allowed at any time, whether by interim order, procedural order, or otherwise (the amounts set forth in this clause (iv) being the “Post-Carve Out Trigger Notice Cap”). For purposes of the foregoing, “Carve Out Trigger Notice” shall mean a written notice delivered by email (or other electronic means) by the Prepetition ABL Agent to the Debtors, the Debtors’ lead restructuring counsel, the U.S. Trustee, and counsel to the Creditors’ Committee, which notice may be delivered following the occurrence and during the continuation of a Termination Event (as defined below) and upon termination of the Debtors’ right to use Cash Collateral by the Prepetition ABL Secured Parties, stating that the Post-Carve Out Trigger Notice Cap has been invoked.

- b. *Fee Estimates.* Not later than 7:00 p.m. New York time on the Wednesday of each week starting with the first full calendar week following the Petition Date, each Professional Person shall deliver to the Debtors a statement setting forth a good-faith estimate of the amount of fees and expenses incurred during the preceding week by such Professional Person (through Saturday of such week, the “Calculation Date”) (collectively, “Estimated Fees and Expenses”), along with a good-faith estimate of the cumulative total amount of unreimbursed fees and expenses incurred through the applicable Calculation Date and a statement of the amount of such fees and expenses that have been paid to date by the Debtors (each such statement, a “Weekly Statement”); provided that within one business day of the occurrence of the Termination Declaration Date (as defined below), each Professional Person shall deliver one additional statement (the “Final Statement”) setting forth a good-faith estimate of the amount of fees and expenses incurred during the period commencing on the calendar day after the most recent Calculation Date for which a Weekly Statement has been delivered and concluding on the Termination Declaration Date (and the Debtors shall cause such Weekly Statement and Final Statement to be delivered on the same day received to the Prepetition ABL Agent). If any Professional Person fails to deliver a Weekly Statement within three calendar days after such Weekly Statement is due, such Professional Person’s entitlement (if any) to any funds in the Carve Out Reserves (as defined below) with respect to the aggregate unpaid amount of Allowed Professional Fees for the applicable period(s) for which such Professional Person failed to deliver a Weekly Statement covering such period shall be limited to the aggregate unpaid amount of Allowed Professional Fees included in the Budget for such period for such Professional Person.
- c. *Carve Out Reserves.*
 - (i) Commencing with the week ended July 31, 2020, and on or before the Thursday of each week thereafter, the Debtors shall utilize all

cash on hand as of such date, in accordance with the requirements set forth in paragraph 9, and any available cash thereafter held by any Debtor to fund a reserve in an amount equal to the greater of (x) the aggregate amount of all Estimated Fees and Expenses reflected in the Weekly Statement delivered on the immediately prior Wednesday to the Debtors and the Prepetition ABL Agent, and (y) (i) the aggregate amount of Allowed Professional Fees contemplated to be incurred in the Budget during such week. The Debtors shall deposit and hold such amounts in a segregated account in trust to pay such Allowed Professional Fees (the “Pre-Carve Out Trigger Notice Reserve”) prior to any and all other claims, and all payments of Allowed Professional fees incurred prior to the Termination Declaration Date shall be paid first from such Pre-Carve Out Trigger Notice Reserve. Upon the foregoing funding, the Prepetition ABL Agent and Prepetition ABL Secured Parties shall have no further obligation to fund the Pre-Carve Out Trigger Notice Reserve or subordinate their liens and claims on account of any Allowed Professional Fees incurred through the Calculation Date for the most recent Weekly Statement delivered in accordance with Paragraph 18(b) above.

- (ii) On the day on which a Carve Out Trigger Notice is given by the Prepetition ABL Agent to the Debtors with a copy to counsel to any Creditors’ Committee (the “Termination Declaration Date”), the Carve Out Trigger Notice shall constitute a demand to the Debtors to and the Debtors shall utilize all cash on hand as of such date, in accordance with the requirements set forth in paragraph 9, and any available cash thereafter held by any Debtor to fund (A) the Pre-Carve Out Trigger Notice Reserve in an amount equal to the aggregate amount of all Estimated Fees and Expenses reflected in the Final Reports delivered to Debtors and the Prepetition ABL Agent plus the amounts set forth in (a)(i) and (a)(ii) of this paragraph above, and (B) after funding the Pre-Carve Out Trigger Notice Reserve, a reserve in an amount equal to the Post-Carve Out Trigger Notice Cap (the “Post-Carve Out Trigger Notice Reserve” and, together with the Pre-Carve Out Trigger Notice Reserve, the “Carve Out Reserves”) prior to any and all other claims. All funds in the Pre-Carve Out Trigger Notice Reserve shall be used first to pay the obligations set forth in clauses (i) through (iii) of the definition of Carve Out set forth above (the “Pre-Carve Out Amounts”), but not, for the avoidance of doubt, the Post-Carve Out Trigger Notice Cap, until paid in full, and then, to the extent the Pre-Carve Out Trigger Notice Reserve has not been reduced to zero, to pay the Prepetition ABL Agent for the benefit of the Prepetition ABL Secured Parties, unless the Prepetition ABL Obligations have been indefeasibly paid in full, in cash, in which case any such excess shall be paid to the Debtors’ creditors in accordance with their rights and priorities as of

the Petition Date. Upon the foregoing funding, the Prepetition ABL Agent and Prepetition ABL Secured Parties shall have no further obligation to fund the Pre-Carve Out Trigger Notice Reserve or Post-Carve Out Trigger Notice Reserve or subordinate their liens and claims on account of any Allowed Professional Fees.

- d. *Application to Carve Out Reserves.* All funds in the Post-Carve Out Trigger Notice Reserve shall be used first to pay the obligations set forth in paragraph 18(a)(iv) of the definition of Carve Out set forth above (the “Post-Carve Out Amounts”), and then, to the extent the Post-Carve Out Trigger Notice Reserve has not been reduced to zero, to pay the Prepetition ABL Secured Parties in accordance with their rights and priorities under applicable law, unless the Prepetition ABL Obligations have been indefeasibly paid in full, in cash, in which case any such excess shall be paid to the Debtors’ creditors in accordance with their rights and priorities as of the Petition Date. Notwithstanding anything to the contrary in the Prepetition ABL Loan Documents, or this Sixth Interim Order, if either of the Carve Out Reserves is not funded in full in the amounts set forth in paragraph 18(b), then, any excess funds in one of the Carve Out Reserves following the payment of the Pre-Carve Out Amounts and Post-Carve Out Amounts, respectively, shall be used to fund the other Carve Out Reserve, up to the applicable amount set forth in paragraph 18(a), prior to making any payments to the Prepetition ABL Agent, for the benefit of the Prepetition ABL Lenders, or any of the Debtors’ creditors, as applicable. Notwithstanding anything to the contrary in the Prepetition ABL Loan Documents or this Sixth Interim Order, following delivery of a Carve Out Trigger Notice, the Prepetition ABL Secured Parties shall not, and shall not direct any entity to, sweep or foreclose on cash (including cash received as a result of the sale or other disposition of any assets) of the Debtors until the Carve Out Reserves have been fully funded, but shall have a security interest in any residual interest in the Carve Out Reserves, with any excess paid to the Prepetition ABL Agent, for the benefit of the Prepetition ABL Lenders, for application in accordance with the Prepetition ABL Loan Documents. Further, notwithstanding anything to the contrary in this Sixth Interim Order, (i) disbursements by the Debtors from the Carve Out Reserves shall not constitute Loans (as defined in the Prepetition ABL Loan Documents) or increase or reduce the Prepetition ABL Obligations, (ii) the failure of the Carve Out Reserves to satisfy in full the Allowed Professional Fees shall not affect the priority of the Carve Out, and (iii) in no way shall the Budget, Carve Out, Post-Carve Out Trigger Notice Cap, Carve Out Reserves, or any of the foregoing be construed as a cap or limitation on the amount of the Allowed Professional Fees due and payable by the Debtors. For the avoidance of doubt and notwithstanding anything to the contrary in this Sixth Interim Order or in any Prepetition ABL Loan Documents, the Carve Out shall be senior to all liens and claims securing

the Prepetition ABL Collateral, the ABL Adequate Protection Liens, and the 507(b) Claim, and any and all other forms of adequate protection, liens, or claims securing the Prepetition ABL Obligations.

- e. *Payment of Allowed Professional Fees Prior to the Termination Declaration Date.* Any payment or reimbursement made prior to the occurrence of the Termination Declaration Date in respect of any Allowed Professional Fees shall not reduce the Carve Out.
- f. *No Direct Obligation to Pay Allowed Professional Fees.* None of the Prepetition ABL Secured Parties shall be responsible for the payment or reimbursement of any fees or disbursements of any Professional Person incurred in connection with the Chapter 11 Cases or any successor cases under any chapter of the Bankruptcy Code. Nothing in this Sixth Interim Order or otherwise shall be construed to obligate the Prepetition ABL Secured Parties, in any way, to pay compensation to, or to reimburse expenses of, any Professional Person or to guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement.
- g. *Payment of Carve Out On or After the Termination Declaration Date.* Any payment or reimbursement made on or after the occurrence of the Termination Declaration Date in respect of any Allowed Professional Fees shall permanently reduce the Carve Out on a dollar-for dollar basis.

19. *Termination.* The Debtors' right to use Cash Collateral shall terminate (the date of any such termination, the "Termination Date"), without prior order of this Court or any further action by the Prepetition ABL Secured Parties (i) at 11:59 p.m. (prevailing Eastern Time) on October 9, 2020, or (ii) three (3) business days following the delivery of a written notice (a "Default Notice") by the Prepetition ABL Agent to Kirkland & Ellis LLP (any such three (3) business-day period of time, the "Default Notice Period") of the occurrence of any of the events set forth in clauses (a) through (k) below (unless cured by the Debtors or waived by the Prepetition ABL Administrative Agent, with the consent of the Required Lenders, in writing (with email being sufficient) prior to expiration of the Default Notice Period); provided that, if a hearing to consider any appropriate relief in connection with delivery of the Default Notice or continued use of Cash Collateral (as may be held on an expedited basis) is requested to be heard within such three (3) business day period but is scheduled for a later date by the Court, the Default Notice Period shall

be automatically extended to the date of such hearing (the events set forth in clauses (a) through (k) below are collectively referred to herein as the “Termination Events”):

- a. the failure to obtain entry of a further interim order or Final Order acceptable to the Prepetition ABL Agent on or before fourteen (14) days after entry of this Sixth Interim Order (unless such period is extended by mutual agreement between the Prepetition ABL Agent and the Debtors, which extension may be document by email);
- b. any Debtor’s failure to comply with any of the material terms or conditions of this Sixth Interim Order, including, but not limited to, (i) the use of Cash Collateral for any purpose other than as permitted in this Sixth Interim Order, (ii) failure to comply with the Budget (including any distributions in excess of the Permitted Variance that have not been resolved and approved, in writing, by the Prepetition ABL Agent), or (iii) failure to comply with the reporting requirements set forth in this Sixth Interim Order; provided that notwithstanding anything to the contrary in this Sixth Interim Order or the Prepetition ABL Loan Documents, the Debtors shall not be required to deliver any Borrowing Base Certificates (as defined in the Prepetition ABL Credit Agreement) to the Prepetition ABL Agent;
- c. the failure of the Debtors to make any payment under this Sixth Interim Order to the Prepetition ABL Agent within three (3) business days after such payment becomes due, other than payments required pursuant to paragraph 12(b) of this Sixth Interim Order, which payments shall be made as required therein;
- d. this Sixth Interim Order ceases, for any reason (other than by reason of the express written agreement by the Prepetition ABL Agent, which agreement has been supported or unopposed by the Required Lenders, or the supersession of this Sixth Interim Order by the Sixth Interim Order), to be in full force and effect in any material respect, or any Debtor so asserts in writing, or the Adequate Protection Liens or Adequate Protection Superpriority Claims created by this Sixth Interim Order cease in any material respect to be enforceable and of the same effect and priority purported to be created hereby or any Debtor so asserts in writing;
- e. the Court shall have entered an order reversing, amending, supplementing, staying, vacating, or otherwise modifying this Sixth Interim Order in a manner materially adverse to the Prepetition ABL Secured Parties without the prior written consent of the of the Prepetition ABL Agent, which consent may be provided by electronic mail;
- f. the date an application, motion, or other pleading is filed by the Debtors for the approval of, or the date the Court shall have entered an order recognizing or granting, any superpriority claim or any lien in these Chapter 11 Cases

that is *pari passu* with or senior to the ABL Adequate Protection Superpriority Claims or the ABL Adequate Protection Liens without the prior written consent of the Prepetition ABL Secured Parties (other than the Carve Out);

- g. the date any of the Debtors files any pleading or commences any action against the Prepetition ABL Secured Parties challenging the validity or enforceability of the Prepetition ABL Obligations or the Prepetition ABL Liens or seeking to avoid, disallow, subordinate, or recharacterize any claim, lien, or interest held by any of the Prepetition ABL Secured Parties arising under or related to the Prepetition ABL Obligations (or if the Debtor supports any such motion, pleading, application or adversary proceeding commenced by any third party); provided that if the Debtors provide any response to any discovery request, or make a witness available for deposition, such action shall not be a violation of this subparagraph 19(g);
- h. the date any of the Debtors file or otherwise support any motion, pleading, or other document, including a chapter 11 plan, that (i) seeks to amend, modify, or supplement this Sixth Interim Order, or (ii) otherwise materially, negatively affects the Prepetition ABL Secured Parties, without the prior written consent of the Prepetition ABL Agent; provided, that the consent of the Prepetition ABL Agent shall not be required if, pursuant to a chapter 11 plan, the Prepetition ABL Obligations and Adequate Protection Obligations are indefeasibly paid in full in cash on the effective date of such plan.
- i. the date any of the Debtors file a motion seeking an order, or the date any court of competent jurisdiction enters an order, dismissing the Chapter 11 Cases, converting the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code, appointing a trustee, responsible officer, or examiner with expanded powers relating to the operation of the organization in the Chapter 11 Cases, or terminating the Debtors' exclusivity under Bankruptcy Code section 1121, unless consented to in writing by the Prepetition ABL Agent, which consent has been approved or unopposed by the Required Lenders;
- j. the filing of any pleading by any Debtor in support of (in any such case by way of any motion or other pleading filed with the Court or any other writing to another party in interest executed by or on behalf of any such Debtor) any other person's opposition to any motion filed in the Court by the Prepetition ABL Agent or the Prepetition ABL Lenders seeking confirmation of the amount of its claims or the validity or enforceability of the Prepetition ABL Liens or the Adequate Protection Liens, except with regard to good faith disputes over the payment of expenses and fees, provided that if the Debtors provided any response to any discovery request, or make a witness available for deposition, such action shall not be a violation of this subparagraph 19(j); or

- k. the Court shall have entered an order granting relief from the automatic stay (without the consent of the Prepetition ABL Lenders) to the holder or holders of any security interest to permit foreclosure (or the granting of a deed *in lieu* of foreclosure or the like) on any of the Prepetition ABL Collateral or Adequate Protection Collateral on which the Prepetition ABL Lenders have a first-priority security interest, which has an aggregate value in excess of \$50,000; provided however, that to the extent such lien can be satisfied by amounts contemplated to pay prepetition liens in the Budget, any relief granted on account of such liens shall not trigger a Termination Event.

20. *Rights and Remedies upon Termination Event.* Except as otherwise ordered by the Court, following the expiration of the Default Notice Period, notwithstanding the provisions of section 362 of the Bankruptcy Code, without any application, motion, or notice to, hearing before, or order from the Court, but subject to the terms of this Sixth Interim Order, any Adequate Protection Obligations determined by the Court to be due and owing as of the delivery of the Default Notice, if any, shall become due and payable and/or the Prepetition ABL Secured Parties shall be entitled to exercise their rights and remedies. Prior to exercising the remedies set forth in this sentence below, the Prepetition ABL Secured Parties shall be required to file a motion with the Court seeking emergency relief (the “Stay Relief Motion”) on no less than three (3) business days’ written notice, which notice period may be concurrent with the Default Notice Period, to (i) the Court, (ii) counsel for the Debtors, (iii) counsel for the Creditors’ Committee (if any), and (iv) the U.S. Trustee for a further order of the Court modifying the automatic stay in the Chapter 11 Cases to permit the Prepetition ABL Secured Parties to exercise their rights and remedies against the Prepetition ABL Collateral or Adequate Protection Collateral to the extent available in accordance with the applicable Prepetition ABL Loan Documents, this Sixth Interim Order, or applicable law, including (x) setting-off amounts in any account of the Debtors maintained with the Prepetition ABL Agent or Prepetition ABL Lenders with respect to which the Prepetition ABL Agent controls pursuant to a deposit account control agreement to the extent necessary for payment

of the Adequate Protection Obligations determined by the Court to be due and payable as of the delivery of the Default Notice and (y) foreclosing upon and selling all or a portion of the Prepetition ABL Collateral or Adequate Protection Collateral in order to collect the Adequate Protection Obligations. Upon the Court's ruling on the Stay Relief Motion, the Court may fashion an appropriate remedy upon a determination that a Termination Event occurred, including that the Prepetition ABL Agent shall be entitled to exercise all rights and remedies with respect to the Collateral provided for in this Sixth Interim Order, including the right to foreclose on or otherwise exercise its rights with respect to all or any portion of the Collateral, as permitted by the Court. Upon the occurrence of the delivery of a Default Notice, the Debtors, the Prepetition ABL Agent, and each Prepetition ABL Secured Party consent to a hearing on an expedited basis to consider whether (a) a Termination Event has occurred and (b) any other appropriate relief (including, without limitation, the Debtors' non-consensual use of Cash Collateral). During the Default Notice Period, the Debtors shall be entitled to continue to use the Cash Collateral in accordance with the terms of the Budget and this Sixth Interim Order. Notwithstanding anything to the contrary herein, upon a Termination Event, the delivery of a Default Notice, the expiration of the Default Notice Period, or the occurrence of the Termination Date, all of the rights, remedies, benefits, and protections provided to the Prepetition ABL Secured Parties under this Sixth Interim Order shall survive. Except as otherwise provided herein or ordered by the Court, neither section 105 of the Bankruptcy Code nor any other provision of the Bankruptcy Code or applicable law shall be utilized to prohibit the exercise, enjoyment and enforcement of any rights, benefits, privileges and remedies of the Prepetition ABL Secured Parties set forth in this paragraph.

21. *Consent by CLMG.* CLMG consents to the Debtors' use of up to \$50,000 of its Cash Collateral (the "CLMG Reserve"), in accordance with and subject to the terms and conditions

contained in this paragraph. In no event will any cash distributed from the CLMG Reserve be used on or in respect of any collateral other than on or in respect of real estate collateral securing the loan to the applicable Debtors under which CLMG is Agent. Further, no amounts may be distributed from the CLMG Reserve unless pre-approved in writing by CLMG. CLMG may terminate its consent to the Debtors' use of the CLMG Reserve on not less than three (3) business days' notice; provided that the Debtors shall be allowed to use any portion of the CLMG Reserve previously pre-authorized for use in accordance with this paragraph. The Debtors will advise the Committee of the Debtors' uses of the CLMG Reserve and any changes to the amount available under the CLMG Reserve. Upon reasonable request by CLMG, but not greater than two (2) times a week, the Debtors shall provide CLMG an accounting of the CLMG Reserve. The Debtors and CLMG may increase the CLMG Reserve with the consent of CLMG without further authorization from the Court. For the avoidance of doubt and notwithstanding anything to the contrary in this Sixth Interim Order, (i) CLMG does not consent to the Debtors' use of its Cash Collateral other than as set forth in this paragraph, (ii) any breach or failure to perform by either the Debtors or CLMG pursuant to this paragraph shall not affect any other provision of this Order, including the Debtors' ability to use Cash Collateral of the Prepetition ABL Secured Parties pursuant to the terms of this Order; provided that each of the Debtors and CLMG shall be entitled to seek an emergency hearing before the Court on account of any disputes in respect of the CLMG Reserve, and (iii) nothing in this paragraph shall limit any party's rights, including in respect of asserting or challenging claims, on account of the CLMG Reserve and the Debtors' use thereof.

22. *Modification of Automatic Stay.* Except as provided in paragraph 19 herein, the automatic stay under section 362(a) of the Bankruptcy Code is hereby modified to the extent necessary to effectuate all of the terms and provisions of this Sixth Interim Order, including,

without limitation, to: (a) permit the Debtors to grant the Adequate Protection Liens and Adequate Protection Superpriority Claims; (b) permit the Debtors to perform such acts as the Prepetition ABL Secured Parties may reasonably request to assure the perfection and priority of the liens granted herein; (c) permit the Debtors to incur all liabilities and obligations to the Prepetition ABL Secured Parties under this Sixth Interim Order; (d) authorize the Debtors to pay, and the Prepetition ABL Secured Parties to retain and apply, any payments made in accordance with the terms of this Sixth Interim Order; and (e) permit the Prepetition ABL Secured Parties, subject to the terms of this Sixth Interim Order, to exercise all rights and remedies provided for hereunder; provided that during the Default Notice Period, unless otherwise ordered by the Court, the automatic stay under section 362 of the Bankruptcy Code shall remain in effect.

23. *Limitation on Charging Expenses Against Collateral.* Subject only to and effective upon entry of the Final Order, except to the extent of the Carve Out, no costs or expenses of administration which have been or may be incurred in these Chapter 11 Cases or any Successor Case at any time shall be surcharged against, and no person may seek to surcharge any costs or expenses of administration against the Prepetition ABL Secured Parties, or any of the Prepetition ABL Obligations, the Carve Out, or the Prepetition ABL Collateral, pursuant to sections 105 or 506(c) of the Bankruptcy Code or otherwise, without the prior written consent of the Prepetition ABL Agent, which consent is approved or unopposed by the Required Lenders. Subject to the Carve Out, nothing contained in this Sixth Interim Order shall be deemed a consent by the Prepetition ABL Agent to any charge, lien, assessment, or claim against the Prepetition ABL Collateral, or the Adequate Protection Liens, or otherwise, and no action, inaction or acquiescence by the Prepetition ABL Agent shall be deemed to be or shall be considered evidence of any alleged consent to a surcharge against the Prepetition ABL Secured Parties, the Prepetition ABL

Obligations, or the Prepetition ABL Collateral. Notwithstanding the foregoing and for the avoidance of doubt, the Debtors and the Prepetition ABL Secured Parties reserve all rights to seek to surcharge costs and expenses of administration against GACP, the GACP Collateral, CLMG and the CLMG Collateral pursuant to sections 105 or 506(c) of the Bankruptcy Code or otherwise. Subject to the Committee's investigation rights under paragraph 33 of this Sixth Interim Order, if the Debtors recover any costs and expenses from a secured party pursuant to sections 105 and/or 506(c) of the Bankruptcy Code (such recovery, "Surcharge Proceeds"), and the outlays on account of such recovered costs and expenses were paid using the Prepetition ABL Lenders' Cash Collateral, the Surcharge Proceeds shall replenish and be deemed to replenish the Prepetition ABL Lenders' Cash Collateral in the amount equal to the recovered costs and expenses paid out of such Cash Collateral; provided, however, that any such replenishment of the Cash Collateral from the Surcharge Proceeds shall not exceed the amount required to satisfy the Diminution in Value (if any) of the Prepetition ABL Collateral.

24. *Section 552(b) of the Bankruptcy Code.* Subject only to and effective upon entry of the Final Order, the Prepetition ABL Secured Parties shall be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and no person may assert an "equities of the case" claim under section 552(b) of the Bankruptcy Code against the Prepetition ABL Secured Parties with respect to proceeds, product, offspring, or profits of any of the Prepetition ABL Collateral in the Chapter 11 Cases or any Successor Case.

25. *Payments Free and Clear.* Subject and subordinate to the Carve Out, any and all proceeds remitted to the Prepetition ABL Agent pursuant to the terms of this Sixth Interim Order or any subsequent order of this Court shall be irrevocable (subject to paragraphs 33 and 34 of this Sixth Interim Order), received free and clear of any claim, charge, assessment, or other liability,

including, without limitation, but subject to entry of the Final Order, any such claim or charge arising out of or based on, directly or indirectly, section 506(c) of the Bankruptcy Code or the “equities of the case” exception of section 552(b) of the Bankruptcy Code.

26. *All Parties’ Reservation of Rights.* All parties reserve their rights to argue that, to the extent that any cash payment of interest, fees, and expenses as adequate protection to the Prepetition ABL Secured Parties, the CLMG Secured Parties, or the GACP Secured Parties is not allowed under section 506(b) of the Bankruptcy Code and not allowed on any other basis (including, without limitation, (i) on account of the Debtors’ use of Prepetition ABL Collateral, CLMG Collateral, or GACP Collateral and (ii) that there has been ABL Diminution in Value, CLMG Diminution in Value, or GACP Diminution in Value), such payments should be recharacterized and applied as payments of principal owed under the applicable Prepetition ABL Loan Document, under the CLMG Term Loan Credit Agreement, or under the GACP Term Loan Credit Agreement, as applicable.

27. *Debtors’ Reservation of Rights.* Notwithstanding anything to the contrary in this Sixth Interim Order, the entry of this Sixth Interim Order and the grant of adequate protection to the Prepetition ABL Secured Parties and the Prepetition ABL Agent pursuant to the terms hereof shall be without prejudice to the rights of the Debtors to, following the occurrence of the Termination Date, seek authority (at any time) to use Cash Collateral and the Prepetition ABL Collateral without the consent of the Prepetition ABL Secured Parties, and the Prepetition ABL Secured Parties reserve all of their respective rights with respect to contesting any such motion or request by the Debtors or any other person.

28. *No Marshaling.* Subject only to and effective upon entry of the Final Order, the Prepetition ABL Secured Parties shall not be subject to the equitable doctrine of “marshaling” or

any other similar doctrine with respect to any of the Prepetition ABL Collateral, and proceeds of the Prepetition ABL Collateral shall be received and applied pursuant to this Sixth Interim Order and the Prepetition ABL Loan Documents notwithstanding any other agreement or provision to the contrary. Subject to the Carve Out, without limiting the generality of the immediately preceding sentence, no party shall be entitled, directly or indirectly, to direct the exercise of remedies or seek (whether by order of this Court or otherwise) to marshal or otherwise control the disposition of the Prepetition ABL Collateral after a Termination Event in the Chapter 11 Cases or any Successor Case.

29. *Continuation of Prepetition ABL Liens.* Subject to the rights set forth in paragraph 33, until the Prepetition ABL Secured Parties are Paid in Full, all liens and security interests of the Prepetition ABL Secured Parties (including, without limitation, the Adequate Protection Liens) shall remain valid and enforceable with the same continuing priority as described herein in the Chapter 11 Cases or any Successor Case. The term “Paid in Full” or “Payment in Full” means except as otherwise agreed to by, the Prepetition ABL Secured Parties (including through entry of an order confirming a chapter 11 plan reasonably acceptable to the Prepetition ABL Secured Parties), all of the Prepetition ABL Obligations and Adequate Protection Obligations have been indefeasibly paid in full in cash and completely satisfied (including the cash collateralization of any letters of credit) and all Commitments (as defined in the Prepetition ABL Credit Agreement) have been terminated.

30. *Continuation of Prepetition CLMG Liens.* Until the Prepetition CLMG Obligations have been satisfied (including by payment in cash, turnover of collateral, or consent to release

liens), all liens and security interests of the CLMG Secured Parties shall remain valid and enforceable with the same continuing priority as described herein.

31. *Continuation of the Prepetition GACP Liens.* Until the Prepetition GACP Obligations have been satisfied (including by payment in cash, turnover of collateral, or consent to release liens), all liens and security interests of the GACP Secured Parties shall remain valid and enforceable with the same continuing priority as described herein

32. *Perfection of ABL Adequate Protection Liens.*

- a. The Prepetition ABL Secured Parties are hereby authorized, but not required, to file or record financing statements, trademark filings, copyright filings, patent filings, mortgages, deeds of trust, notices of lien or similar instruments in any jurisdiction, or take possession of or control over cash or securities, or take any other action in order to validate and perfect the ABL Adequate Protection Liens; provided, however, that the Prepetition ABL Secured Parties may not take any aforementioned action to file or record such instruments against the CLMG Collateral or GACP Collateral. Whether or not the Prepetition ABL Secured Parties shall, each, in its sole discretion, choose to file such financing statements, trademark filings, copyright filings, patent filings, mortgages, deeds of trust, notices of lien or similar instruments, or take possession of or control over any cash, securities or any other property of the Debtors, or take any action that otherwise may be required under federal, state or local law in any jurisdiction to validate and perfect a security interest or lien, in any such case, the ABL Adequate Protection Liens shall be deemed valid, perfected, allowed, enforceable, non-avoidable and not subject to challenge, dispute or subordination (subject to the priorities set forth in this Sixth Interim Order), at the time and on the date of entry of this Sixth Interim Order or thereafter. Upon the reasonable request of any of the Prepetition ABL Secured Parties, the Prepetition ABL Secured Parties and the Debtors, without any further consent of any party, are authorized to take, execute, deliver and file such instruments (in each case, without representation or warranty of any kind) to enable the Prepetition ABL Secured Parties to further validate, perfect, preserve and enforce the ABL Adequate Protection Liens. All such documents will be deemed to have been recorded and filed as of the Petition Date.
- b. A certified copy of this Sixth Interim Order (or the notice of the filing hereof) may, in the discretion of the Prepetition ABL Secured Parties, be filed with or recorded in filing or recording offices in addition to or *in lieu* of such financing statements, mortgages, deeds of trust, notices of lien or similar instruments, and all filing offices are hereby authorized to accept

such certified copy of this Sixth Interim Order or notice for filing and/or recording, as applicable. The automatic stay of section 362(a) of the Bankruptcy Code shall be, and hereby is deemed, modified to the extent necessary to permit the Prepetition ABL Secured Parties to take all actions, as applicable, referenced in this paragraph 31(a) and 31(b).

33. *Effect of Stipulations on Third Parties.* Each of the Debtors' Stipulations and each of the Debtors' other admissions, agreements and releases contained in this Sixth Interim Order, including, without limitation, in paragraph 4 of this Sixth Interim Order, shall be binding upon the Debtors and all other parties in interest, including, without limitation, any statutory or non-statutory committees appointed or formed in these Chapter 11 Cases (including a Creditors' Committee, if any) and any other person or entity acting or seeking to act on behalf of the Debtors' estates, including any chapter 7 or chapter 11 trustee or examiner appointed or elected for any of the Debtors (a "Trustee"), in all circumstances and for all purposes unless: (a) any party in interest (including any Trustee) files a motion seeking standing (with a complaint attached thereto) to pursue an adversary proceeding or contested matter, as required under the Bankruptcy Rules (subject in either case to the limitations contained herein, including without limitation, in paragraph 34), challenging the validity, enforceability, priority, or extent of the Prepetition ABL Obligations, the liens on the Prepetition ABL Collateral securing the Prepetition ABL Obligations, the Prepetition GACP Obligations, the Prepetition CLMG Obligations, the CLMG Collateral, or otherwise asserting or prosecuting any estate claims, counterclaims or causes of action, objections, contests or defenses (collectively, the "Claims and Defenses") against the Prepetition ABL Agent, any of the other Prepetition ABL Secured Parties, the GACP Secured Parties, or the CLMG Secured Parties or their respective agents, affiliates, subsidiaries, directors, officers, representatives, attorneys or advisors in connection with any matter related to the Prepetition ABL Obligations, the Prepetition ABL Collateral, the Prepetition GACP Obligations, the GACP Collateral, the Prepetition CLMG Obligations, or the CLMG Collateral (as applicable) by no later

than the date that is the earlier of (i) the date that is seventy-five (75) days after the date of entry of the Second Interim Order (i.e., October 19, 2020) (the “Challenge Deadline”), (ii) the effective date of a confirmed chapter 11 plan, or (iii) any such later date as has been ordered by the Court for cause upon a motion filed and served prior to the expiration of the deadline to commence a challenge (such time period, the “Challenge Period”), and (b) an order is entered by a court of competent jurisdiction and becomes final and non-appealable in favor of the plaintiff sustaining any such challenge or claim in any such duly filed adversary proceeding or contested matter; provided that, as to the Debtors, all such Claims and Defenses are hereby irrevocably waived and relinquished as of the Petition Date. If no such motion seeking standing to pursue an adversary proceeding or contested matter is timely filed prior to the expiration of the Challenge Period, without further order of this Court: (x) the Prepetition ABL Obligations, Prepetition CLMG Obligations, and the Prepetition GACP Obligations shall constitute allowed claims, not subject to counterclaim, setoff, subordination, recharacterization, defense or avoidance, for all purposes in the Chapter 11 Cases and any Successor Case; (y) the Prepetition ABL Agent’s liens on the Prepetition ABL Collateral, CLMG’s liens on the CLMG Collateral, and GACP’s liens on the GACP Collateral shall be deemed to have been, as of the Petition Date, and to be, legal, valid, binding, perfected and of the priority specified in paragraph 4(d), not subject to defense, counterclaim, recharacterization, subordination or avoidance in the Chapter 11 Cases or any Successor Case; and (z) the Prepetition ABL Obligations, the Prepetition ABL Agent’s liens on the Prepetition ABL Collateral, the other Prepetition ABL Secured Parties (and their respective agents, affiliates, subsidiaries, directors, officers, representatives, attorneys, or advisors); the Prepetition CLMG Obligations, CLMG’s liens on the CLMG Collateral, and the other CLMG Secured Parties (and their respective agents, affiliates, subsidiaries, directors, officers, representatives, attorneys,

or advisors); and the Prepetition GACP Obligations, GACP's liens on the GACP Collateral, and the other GACP Secured Parties (and their respective agents, affiliates, subsidiaries, directors, officers, representatives, attorneys, or advisors), shall not be subject to any other or further challenge by any party in interest, and any such party in interest shall be enjoined from seeking to exercise the rights of the Debtors' estates, including without limitation, any successor thereto (including, without limitation, any estate representative or a Trustee, whether such Trustee is appointed or elected prior to or following the expiration of the Challenge Period). If any motion seeking standing (with a complaint attached thereto) to pursue such adversary proceeding or contested matter is timely filed prior to the expiration of the Challenge Period, the stipulations and admissions contained in this Sixth Interim Order, including without limitation, in paragraph 4 of this Sixth Interim Order, shall nonetheless remain binding and preclusive (as provided in the second sentence of this paragraph) on any person, including any Trustee, except as to any such findings and admissions that were expressly and successfully challenged in such adversary proceeding or contested matter. Nothing in this Sixth Interim Order vests or confers on any person, including a Trustee, standing or authority to pursue any cause of action belonging to the Debtors or their estates. In the event that there is a timely successful challenge brought pursuant to this paragraph 33, the Court shall retain jurisdiction to fashion an appropriate remedy.

34. *Limitation on Use of Collateral.* Subject to the Carve Out, notwithstanding anything herein or in any other order by this Court to the contrary, no Cash Collateral, Prepetition ABL Collateral, proceeds, products, or offspring of any of the foregoing or any portion of the Carve Out may be used to (except to the extent otherwise expressly agreed in writing by the Prepetition ABL Agent in response to a written request from the Debtors specifying the proposed use) pay any claims for services rendered by any of the professionals retained by the Debtors, any

creditor or party in interest, any committee (including any Creditors' Committee), any Trustee, or any other person, party, or entity (or to pay any professional fees and disbursements in connection therewith) to: (a) apply to the Court for authority to approve superpriority claims or grant liens or security interests in the Prepetition ABL Collateral and Cash Collateral, or any portion thereof that are senior to, or on parity with, the Prepetition ABL Liens, unless the Prepetition ABL Obligations, and claims granted to the Prepetition ABL Secured Parties under this Sixth Interim Order, as applicable, have been Paid in Full or otherwise agreed to in writing by the Prepetition ABL Secured Parties; (b) prevent, hinder or otherwise delay the Prepetition ABL Secured Parties' assertion, enforcement or realization on the Prepetition ABL Collateral, including Cash Collateral, and liens, claims and rights granted to the Prepetition ABL Secured Parties under this Sixth Interim Order, in accordance with the Prepetition ABL Loan Documents or this Sixth Interim Order; (c) seek to modify any of the rights and remedies granted to the Prepetition ABL Secured Parties under this Sixth Interim Order or the Prepetition ABL Loan Documents; (e) pay any amount on account of any claims arising prior to the Petition Date unless such payments are provided for in the Budget and approved by an order of this Court that is in form and substance reasonably satisfactory to the Prepetition ABL Agent; (f) subject to paragraph 33, investigate, assert, join, commence, support or prosecute any action or claim, counter-claim, action, proceeding, application, motion, objection, defense, or other contested matter seeking any order, judgment, determination or similar relief against the Prepetition ABL Secured Parties or their respective officers, directors, employees, agents, attorneys, affiliates, assigns, or successors, with respect to any transaction, occurrence, omission, or action, including, without limitation, (i) any avoidance actions or other actions arising under chapter 5 of the Bankruptcy Code, (ii) any action relating to any act, omission, or aspect of the relationship between the Prepetition ABL Secured Parties, on the one hand, and the Debtors or

any of their affiliates, on the other, (iii) any action with respect to the validity and extent of the Prepetition ABL Obligations, or the validity, extent, and priority of the Prepetition ABL Liens or the Adequate Protection Liens, (iv) any action seeking to invalidate, set aside, avoid or subordinate, in whole or in part, the Prepetition ABL Liens or the Adequate Protection Liens granted under this Order, (v) except to contest the occurrence of a Termination Event as permitted in paragraph 19, any action that has the effect of preventing, hindering or delaying (whether directly or indirectly) the Prepetition ABL Secured Parties in respect of their liens and security interests in the Cash Collateral or the Prepetition ABL Collateral, (vi) pay any fees or similar amounts to any person to purchase the Prepetition ABL Secured Parties' interests in any of the Debtors' assets without the prior written consent of the Prepetition ABL Secured Parties, unless such person consummates or otherwise closes the purchase of the Prepetition ABL Secured Parties' interests in any of the Debtors' assets, or (vii) use or seek to use Cash Collateral unless otherwise permitted hereby, without the prior written consent of the Prepetition ABL Secured Parties; or (g) for objecting to, contesting, delaying, preventing, hindering or otherwise interfering in any way with the exercise of rights or remedies by the Prepetition ABL Secured Parties with respect to any Prepetition ABL Collateral, including Cash Collateral, after the occurrence of an Termination Event, except as otherwise permitted hereby; provided that, notwithstanding anything to the contrary in this paragraph, the Creditors' Committee may use Cash Collateral, including the Prepetition ABL Collateral, solely to investigate, but not to prepare, initiate, litigate, prosecute, object to, or otherwise challenge (i) the claims and liens of the Prepetition Secured Parties and (ii) potential claims, counterclaims, causes of action, or defenses, including the Claims and Defenses, against the Prepetition Secured Parties; provided further that no more than an aggregate of \$75,000 of the Cash Collateral constituting Prepetition ABL Collateral, and the proceeds

thereof, may be used by the Creditors' Committee with respect to the investigation of the ABL Stipulations as set forth in the preceding proviso (the "Investigation Budget").

35. *Release.* The release, discharge, waivers, settlements, compromises, and agreements set forth in this paragraph shall be deemed effective upon entry of this Sixth Interim Order and subject only to the challenge rights set forth in paragraph 33 above. The Debtors forever and irrevocably: (a) release, discharge, and acquit the Prepetition ABL Secured Parties and their affiliates and each of their and their affiliates' respective former, current or future officers, employees, directors, agents, representatives, owners, members, partners, financial advisors, legal advisors, shareholders, managers, consultants, accountants, attorneys, and predecessors in interest (each, a "Prepetition Releasee") of and from any and all claims, demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness, and obligations, of every type arising prior to the Petition Date, including, without limitation, any claims arising from any actions relating to any aspect of the relationship between the Prepetition ABL Secured Parties and the Debtors and their affiliates including any equitable subordination claims or defenses, with respect to or relating to the Prepetition ABL Obligations, the Prepetition ABL Liens, the Prepetition ABL Loan Documents, the Debtors' attempts to restructure the Prepetition ABL Obligations, any and all claims and causes of action arising under title 11 of the United States Code or any other applicable law, and any and all claims regarding the validity, priority, perfection or avoidability of the liens or secured claims of the Prepetition ABL Secured Parties, in respect of events that occurred on or prior to the date hereof; and (b) waive any and all defenses (including, without limitation, offsets and counterclaims of any nature or kind) as to the validity, perfection, priority, enforceability and non-avoidability of the Prepetition ABL Obligations, the Prepetition ABL Liens. Nothing in this Sixth Interim Order shall release any claims against a Prepetition Releasee that a

court of competent jurisdiction determines, pursuant to a final, non-appealable order, results primarily from the actual fraud, gross negligence, or willful misconduct of such Prepetition Releasee.

36. *Prohibition on Granting of Additional Liens and Interests, Use of Prepetition ABL Collateral.* No liens, claims, interests or priority status, other than the Carve Out and the Permitted Encumbrances, having a lien or administrative priority superior to or *pari passu* with that of the Adequate Protection Superpriority Claim, the Prepetition ABL Liens, or the Adequate Protection Liens shall be granted while any portion of the Prepetition ABL Obligations remain outstanding, or any commitment under the Prepetition ABL Loan Documents remains in effect, without the prior written consent of the Prepetition ABL Secured Parties. Nothing in this Sixth Interim Order shall authorize, other than in the ordinary course of the Debtors' business, the sale, transfer, lease, encumbrance, or other disposition of any assets that constitute Prepetition ABL Collateral, CLMG Collateral, or GACP Collateral of the Debtors or their estates without the prior written consent of the Prepetition ABL Secured Parties, CLMG Secured Parties, or GACP Secured Parties, as applicable (and no such consent or direction shall be implied from any other action, inaction, or acquiescence by any Prepetition ABL Secured Party or any order of this Court), except as permitted in the Prepetition ABL Loan Documents, the CLMG Term Loan Agreement, the GACP Term Loan Agreement, and this Sixth Interim Order, and approved by the Court to the extent required under applicable bankruptcy law; provided that a Termination Event shall not be deemed to occur if the Debtors seek approval of debtor in possession financing, including, without limitation, debtor in possession financing which primes existing liens, to the extent (i) such debtor in possession financing provides for Payment in Full of the Prepetition ABL Obligations, and Adequate Protection Obligations or (ii) the Prepetition ABL Agent provides prior written consent, which

consent is approved or unopposed by the Required Lenders, for financing that does not provide for Payment in Full of the Prepetition ABL Obligations and Adequate Protection Obligations.

37. *No Impairment of CLMG Collateral.* Unless otherwise provided in this Sixth Interim Order, nothing shall authorize the Debtors, the Prepetition ABL Lenders, or any other party in interest to take any action to impair, interfere with, or otherwise adversely impact, (i) the liens and security interests granted to the CLMG Secured Parties or (ii) the CLMG Collateral.

38. *No Impairment of GACP Collateral.* Unless otherwise provided in this Sixth Interim Order, nothing shall authorize the Debtors, the Prepetition ABL Lenders, or any other party in interest to take any action to impair, interfere with, or otherwise adversely impact, (i) the liens and security interests granted to the GACP Secured Parties or (ii) the GACP Collateral.

39. *Binding Effect of Sixth Interim Order.* Subject to paragraph 33, immediately upon entry by this Court (notwithstanding any applicable law or rule to the contrary), regardless of whether specifically articulated in each term and provision of this Sixth Interim Order, the terms and provisions of this Sixth Interim Order, including all findings herein, shall be binding upon all parties in interest in these Chapter 11 Cases, including, without limitation, the Debtors, the Prepetition ABL Secured Parties, all other creditors of the Debtors, any Creditors' Committee, and each of their respective successors and assigns (including, without limitation, any trustee, examiner with expanded powers, responsible officer, estate administrator or representative, or similar person appointed in a case for any Debtor under any chapter of the Bankruptcy Code) and shall inure to the benefit of the Debtors, the GACP Secured Parties, CLMG Secured Parties, the Prepetition ABL Secured Parties, and their respective successors and assigns.

40. *Survival.* The provisions of this Sixth Interim Order and any actions taken pursuant hereto shall survive entry of any order (a) confirming any chapter 11 plan in any of these

Chapter 11 Cases; (b) converting any of these cases to a case under chapter 7 of the Bankruptcy Code; (c) dismissing any of these cases or any Successor Case; or (d) pursuant to which this Court abstains from hearing any of the cases or any Successor Case. Notwithstanding the entry of any such order, the terms and provisions of this Sixth Interim Order, including the claims, liens, security interests and other protections granted to the Prepetition ABL Secured Parties pursuant to this Sixth Interim Order, shall continue in these cases, in any Successor Case, or following dismissal of these cases or any Successor Case, and shall maintain their priority as provided by this Sixth Interim Order and not be modified, altered or impaired in any way, whether by act or omission, until all of the Prepetition ABL Obligations and Adequate Protection Obligations have been Paid in Full, notwithstanding the occurrence of a Termination Event or any earlier termination of the Debtors' authorization to use the Prepetition ABL Collateral, including Cash Collateral.

41. *Limitation of Liability.* Subject to entry of the Sixth Interim Order, and solely in the Prepetition ABL Secured Parties' capacity as a lender under the Prepetition ABL Loan Documents, in determining to permit the use of Cash Collateral, making and administering the loans and financial accommodations extended under the Prepetition ABL Loan Documents, extending other financial accommodations to the Debtors under this Sixth Interim Order and the Prepetition ABL Loan Documents, or in exercising any rights or remedies as and when permitted pursuant to this Sixth Interim Order or the Prepetition ABL Loan Documents, as applicable, the Prepetition ABL Secured Parties (in their capacity as such) or any successor of any of the foregoing shall not (a) be deemed to be in "control" of the operations of the Debtors or any of their affiliates; (b) owe any fiduciary duty to the Debtors, their respective creditors, shareholders or estates; and (c) be deemed to be acting as a "Responsible Person" or "Owner" or "Operator" with respect to the operation or management of the Debtors or any of their affiliates (as such terms or similar

terms are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 29 U.S.C. §§ 9601, *et seq.*, as amended, or any similar federal or state statute). Furthermore, nothing in this Sixth Interim Order or the Prepetition ABL Loan Documents or any other documents related thereto shall in any way be construed or interpreted to impose or allow the imposition upon the Prepetition ABL Secured Parties, or any successor of any of the foregoing, of any liability for any claims arising from the prepetition or postpetition activities of the Debtors or any of their subsidiaries affiliates in the operation of their businesses or in connection with their restructuring efforts.

42. *No Waiver.* Other than as provided in this Sixth Interim Order, nothing in this Sixth Interim Order shall be construed in any way as a waiver or relinquishment of any rights that the Debtors or the Prepetition ABL Secured Parties may have to bring or be heard on any matter brought before this Court.

43. *Effectiveness.* This Sixth Interim Order shall constitute findings of fact and conclusions of law and shall take effect and be fully enforceable, *nunc pro tunc* to the Petition Date, immediately upon entry hereof. Notwithstanding any Bankruptcy Rule, any Bankruptcy Local Rule, any Federal Rule of Civil Procedure, or other applicable law, this Sixth Interim Order shall be immediately effective and enforceable upon its entry and there shall be no stay of execution or effectiveness of this Sixth Interim Order.

44. *Proofs of Claim.* Neither the Prepetition ABL Agent, the Prepetition ABL Lenders, the CLMG Secured Parties, nor the GACP Secured Parties, shall be required to file proofs of claim in any of the Debtors' Chapter 11 Cases or a Successor Case for any claim allowed herein. The Debtors' Stipulations shall be deemed to constitute a timely filed proof of claim for the Prepetition ABL Agent and the Prepetition ABL Lenders, the CLMG Secured Parties, the GACP Secured

Parties upon approval of this Sixth Interim Order, and the Prepetition ABL Agent, the Prepetition ABL Lenders, the CLMG Secured Parties, and the GACP Secured Parties shall be treated under section 502(a) of the Bankruptcy Code as if they filed a proof of claim. Notwithstanding any order entered by the Court in relation to the establishment of a bar date in any of the Debtors' Chapter 11 Cases or a Successor Case to the contrary, the Prepetition ABL Agent, the Prepetition ABL Lenders, the CLMG Secured Parties, and the GACP Secured Parties are hereby authorized and entitled, in their sole discretion, but not required, to file (and amend and/or supplement, as they see fit) a master proof of claim and/or aggregate proofs of claim in each of these Chapter 11 Cases or a Successor Case for any claim allowed herein.

45. *No Third Party Rights.* Except as explicitly provided for herein, this Sixth Interim Order does not create any rights for the benefit of any party, creditor, equity holder, other entity or any direct, indirect or incidental beneficiary other than (a) the Prepetition ABL Secured Parties and their respective Representatives, (b) the Debtors, (c) the CLMG Secured Parties and their Representatives, (d) the GACP Secured Parties and their Representatives, and (e) the respective successors and assigns of each of the foregoing.

46. *Headings.* Section headings used herein are for convenience only and are not to affect the construction of or to be taken into consideration in interpreting this Sixth Interim Order.

47. *Rights Reserved.* Notwithstanding anything herein to the contrary, the entry of this Sixth Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly (a) the Prepetition ABL Secured Parties' rights to pursue any and all rights and remedies under the Bankruptcy Code, the Prepetition ABL Loan Documents or any other applicable agreement or law, or seek any other or supplemental relief in respect of the Debtors, including the right to seek new, different or additional adequate protection, as applicable, or the Debtors' or any

other party in interest's rights to oppose such relief, or (b) any of the rights and remedies of the Debtors, the Prepetition ABL Secured Parties, or any other party in interest under the Prepetition ABL Loan Documents or other applicable agreement, the Bankruptcy Code or applicable nonbankruptcy law.

48. *CLMG Rights Reserved.* Notwithstanding anything herein to the contrary, the entry of this Sixth Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly (a) the CLMG Secured Parties' rights to pursue any and all rights and remedies under the Bankruptcy Code, the CLMG Term Loan Agreement or any other applicable agreement or law, or seek any other or supplemental relief in respect of the Debtors, including the right to seek new, different or additional adequate protection, as applicable, or the Debtors' or any other party in interest's rights to oppose such relief, or (b) any of the rights and remedies of the Debtors, the CLMG Secured Parties, or any other party in interest under the CLMG Term Loan Agreement or other applicable agreement, the Bankruptcy Code or applicable nonbankruptcy law.

49. *GACP Rights Reserved.* Notwithstanding anything herein to the contrary, the entry of this Sixth Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly (a) the GACP Secured Parties' rights to pursue any and all rights and remedies under the Bankruptcy Code, the GACP Term Loan Agreement or any other applicable agreement or law, or seek any other or supplemental relief in respect of the Debtors, including the right to seek new, different or additional adequate protection, as applicable, or the Debtors' or any other party in interest's rights to oppose such relief, or (b) any of the rights and remedies of the Debtors, the GACP Secured Parties, or any other party in interest under the GACP Term Loan Agreement or other applicable agreement, the Bankruptcy Code or applicable nonbankruptcy law. Furthermore, notwithstanding anything herein to the contrary, nothing contained in this Sixth Interim Order shall

constitute nor be construed as the GACP Secured Parties' consent to, nor this Court's approval of, any surcharge of the GACP Collateral or the Debtors' sale of any of the GACP Collateral or the Debtors' use of the proceeds thereof.

50. *Creditors' Committee Rights Reserved.* Notwithstanding anything herein to the contrary, the entry of this Sixth Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly (a) the Creditors' Committee's rights to pursue any and all rights and remedies under the Bankruptcy Code or any other applicable law, or seek any other or supplemental relief in respect of the Debtors, as applicable, or the Debtors' or any other party in interest's rights to oppose such relief, or (b) any of the rights and remedies of the Debtors, the Creditors' Committee, or any other party in interest under the Bankruptcy Code or applicable nonbankruptcy law.

51. *Bankruptcy Rules.* The requirements of Bankruptcy Rules 4001, 6003, and 6004, in each case to the extent applicable, are satisfied by the contents of the Motion.

52. *Necessary Action.* The Debtors are authorized to take all such actions as are necessary or appropriate to implement the terms of this Sixth Interim Order.

53. *Retention of Jurisdiction.* The Court shall retain jurisdiction to enforce the provisions of this Sixth Interim Order, and this Court shall retain jurisdiction over all matters pertaining to the implementation, interpretation and enforcement of this Sixth Interim Order, including following confirmation and consummation of any chapter 11 plan for any one or more of the Debtors.


54. *Interpretation.* To the extent of any inconsistency between the Motion, the terms of the First Interim Order, the terms of the First Supplemental Interim Order, and the terms of this Sixth Interim Order, the terms of this Sixth Interim Order shall control.

55. *Tax Liens.* Notwithstanding any other provisions included in the Sixth Interim Order, or any agreements approved hereby, any statutory liens (collectively, the “Tax Liens”), of the Taxing Authorities³ shall not be primed by nor made subordinate to any liens granted to any party hereby to the extent such Tax Liens are valid, senior, perfected, and unavoidable, and all parties’ rights to object to the priority, validity, amount, and extent of the claims and liens asserted by the Taxing Authorities are fully preserved. Nothing herein shall alter the rights of the Taxing Authorities in regards to distribution of proceeds from the sale of the Debtors’ tangible personal property or modify the orders entered by the court at Docket No. 452, Docket No. 462, or any other order entered whereby a segregated account has been established as adequate protection for the Taxing Authorities’ claims.

56. *Work-in-Process.* Notwithstanding anything to the contrary contained in this Sixth Interim Order, amounts payable to employees, materialmen, suppliers, workers, and others for postpetition goods and services on works-in-process as of August 3, 2020, shall be paid out of the proceeds of postpetition earned receivables prior to the rights of any other party.

57. *Final Hearing.* The Final Hearing on the Motion shall be held on 10/9/2020 at 10:30 a.m., prevailing Central Time.

Signed: September 25, 2020


 Marvin Isgur
 United States Bankruptcy Judge

³ “Taxing Authorities” means collectively, Bexar County, Dallas County, Ector CAD, Fort Bend County, Harris County, Hood CAD, Liberty County, Victoria County, Brazos County, Medina County, and Erath County.

Exhibit 1

Budget

BJS - Cash Collateral Budget - Daily
Prepared 9/25/2020
(\$ in millions)

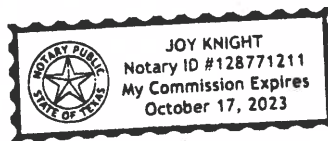
	Mon Forecast	Tue Forecast	Wed Forecast	Thu Forecast	Fri Forecast	Sat Forecast	Sun Forecast	Mon Forecast	Tue Forecast	Wed Forecast	Thu Forecast	Fri Forecast	Sat Forecast	Sun Forecast	Mon Forecast	Tue Forecast	Wed Forecast	Thu Forecast	Fri Forecast
Week Ending:	21-Sep	22-Sep	23-Sep	24-Sep	25-Sep	26-Sep	27-Sep	28-Sep	29-Sep	30-Sep	1-Oct	2-Oct	3-Oct	4-Oct	5-Oct	6-Oct	7-Oct	8-Oct	9-Oct
Opening Wind Down Cash	\$ 13.2	\$ 13.4	\$ 13.3	\$ 12.2	\$ 8.7	\$ 11.5	\$ 11.5	\$ 11.3	\$ 4.9	\$ 4.9	\$ 2.6	\$ 1.4	\$ 12.7	\$ 12.7	\$ 12.7	\$ 7.9	\$ 7.9	\$ 5.0	\$ 4.2
Receipts:																			
Gross A/R Collections	\$ 0.4	\$ 0.2			\$ 3.1							\$ 4.5							\$ 4.8
Discounts/Settlement Payments	(0.3)	(0.3)		(2.1)				(1.1)							(4.6)				
Net Collections	0.2	(0.1)		(2.1)	3.1			(1.1)				4.5			(4.6)				
Proceeds from Term Lender	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Proceeds from Sale of Inventory	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Proceeds from Sale of Equipment	-	-	-	-	1.2	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Proceeds from Sale of Cement - Equipment	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Proceeds from Sale of Cement - Inventory	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Proceeds from Sale of Cement - Real Estate/IP	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Proceeds from Sale of R/E	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Proceeds from Sale to CSL - Equipment	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Proceeds from Sale to CSL - Other	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Proceeds from WIP	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Other Proceeds	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Receipts	\$ 0.2	\$ (0.1)	\$ -	\$ (2.1)	\$ 4.3	\$ -	\$ -	\$ (1.1)	\$ -	\$ -	\$ -	\$ 4.5	\$ -	\$ -	\$ (4.6)	\$ -	\$ -	\$ -	\$ 4.8
Disbursements:																			
Employee & Executive Compensation (Including Payroll Tax)	\$ -	\$ -	\$ 0.1														\$ (0.1)		
Pre-Petition Employee Compensation, T&E, 401k Remittance	-	-	-																
Pre Petition Payroll Tax and Payment Card Expense	-	-	-																
PTO	-	-	(0.6)																
Trailing Employee Health Claims	-	-	(0.5)					(0.3)									(0.3)		
Required Canadian Termination Benefits	-	-	-																
Sub-Total - Employee Related	\$ -	\$ -	\$ (1.0)	\$ -	\$ -	\$ -	\$ -	\$ (0.3)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ (0.4)	\$ -	\$ -
Accounting/Tax/Other Professionals	\$ -	\$ -	\$ -	\$ (0.1)													\$ (0.3)		
Facilities	-	-	-	0.3													(0.4)		
Security	-	-	-	-													-		
Information Technology	-	-	-	0.8															
Insurance (Other Excl. Property Insurance)	-	-	-	(0.1)															
Sub-Total - Expenses	\$ -	\$ -	\$ -	\$ 0.8	\$ -	\$ -	\$ -	\$ -	\$ -	\$ (0.7)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ (0.7)	\$ -	\$ -
Eq. Demobilization/Removal of Hazardous Materials	\$ -	\$ -	\$ -																
Cementing completion and mobilization	-	-	-																
Cost of Stacking Equipment	-	-	-																
Sub-Total - Equipment	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Fracturing - New Operations	-	-	-																
WIP - Fracturing	-	-	-	(1.0)								6.8					(1.7)		
Sub-Total - WIP	\$ -	\$ -	\$ -	\$ (1.0)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ (0.8)	\$ -	\$ 6.8	\$ -	\$ -	\$ -	\$ -	\$ (1.7)	\$ -	\$ -
ABL Paydown	\$ -	\$ -	\$ -					\$ (5.0)											
Professionals	-	-	-	(1.1)															
US Trustee Fees	-	-	-																
Interest Payments	-	-	-																
503(b)(9) - Claims	-	-	-																
Utility Deposit	-	-	-																
Sales and Use Tax/Other Taxes	-	-	-																
Wind Down Contingency	-	-	-																
Sub-Total - Chapter 11	\$ -	\$ -	\$ -	\$ (1.1)	\$ (0.3)	\$ -	\$ (0.2)	\$ (5.0)	\$ -	\$ (0.8)	\$ (1.1)	\$ -	\$ -	\$ -	\$ (0.2)	\$ -	\$ -	\$ (0.7)	\$ -
Required Titan Payments																			
Total Disbursements	\$ -	\$ -	\$ (1.0)	\$ (1.3)	\$ (0.3)	\$ -	\$ (0.2)	\$ (5.3)	\$ -	\$ (2.3)	\$ (1.1)	\$ 6.8	\$ -	\$ -	\$ (0.2)	\$ -	\$ (2.8)	\$ (0.7)	\$ -
Cement Going Concern Net Cash Flow	-	-	-	(0.1)													(0.1)		
Net Cash Flow	\$ 0.2	\$ (0.1)	\$ (1.0)	\$ (3.5)	\$ 4.0	\$ -	\$ (0.2)	\$ (6.4)	\$ -	\$ (2.4)	\$ (1.1)	\$ 11.3	\$ -	\$ -	\$ (4.8)	\$ -	\$ (2.9)	\$ (0.7)	\$ 4.8
Proceeds - Restricted	-	-	-		(1.2)														
Ending Wind Down Cash	\$ 13.4	\$ 13.3	\$ 12.2	\$ 8.7	\$ 11.5	\$ 11.5	\$ 11.3	\$ 4.9	\$ 4.9	\$ 2.6	\$ 1.4	\$ 12.7	\$ 12.7	\$ 12.7	\$ 7.9	\$ 7.9	\$ 5.0	\$ 4.2	\$ 9.0

EXHIBIT 4

THIS IS **EXHIBIT "4"** REFERRED TO IN THE
AFFIDAVIT OF ANTHONY C. SCHNUR
SWORN BEFORE ME THIS 9th DAY OF OCTOBER, 2020



A NOTARY PUBLIC
IN AND FOR THE STATE OF TEXAS





ENTERED
10/02/2020

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

In re:)	
)	Chapter 11
BJ SERVICES, LLC, <i>et al.</i> , ¹)	Case No. 20-33627 (MI)
)	
Debtors.)	(Jointly Administered)
)	
)	Re: Docket No. 723, 745

**AGREED ORDER GRANTING LIMITED RELIEF FROM THE AUTOMATIC STAY TO
DONLEN CORPORATION, DONLEN TRUST, AND DONLEN FLEET LEASING LTD**

Upon the *Emergency Motion of Donlen Corporation and Donlen Trust for Relief from Automatic Stay* [Docket No. 723] and the *Emergency Motion of Donlen Fleet Leasing and Donlen Corporation for Relief from the Automatic Stay* [Docket No. 745] (collectively, the “Motions”); and this Court having jurisdiction over these matters pursuant to 28 U.S.C. § 1334; and this Court having found that these are core proceedings pursuant to 28 U.S.C. §§ 157(b)(2) and that this Court may enter final orders consistent with Article III of the United States Constitution; and this Court having found that venue of these proceedings and these Motions in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that notice of the Motions and opportunity for a hearing on the Motions were appropriate and no other notice need be provided; and this Court having reviewed the Motions; it is HEREBY ORDERED THAT:

1. On or before October 2, 2020, and in accordance with the rejection procedures set forth in the *Order (I) Authorizing and Approving Procedures to Assume, Assume and Assign, and Reject Executory Contracts and Unexpired Leases, and (II) Granting Related Relief (the*

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: BJ Services, LLC (3543); BJ Management Services, L.P. (8396); BJ Services Holdings Canada, ULC (6181); and BJ Services Management Holdings Corporation (0481). The Debtors’ service address is: 11211 Farm to Market 2920 Road, Tomball, Texas 77375.

“Assumption/Rejection Procedures Order”) [Docket No. 723], (i) BJ Services, LLC shall file a Rejection Notice for the Master Motor Vehicle Lease Agreement between Donlen Trust and BJ Services, LLC dated April 27, 2017 (the “MLA (US)”); (ii) BJ Services, LLC shall file a Rejection Notice for the Master Services Agreement between Donlen Corporation and BJ Services, LLC dated February 27, 2017 (the “MSA (US)”); (iii) BJ Services Holdings Canada, ULC shall file a Rejection Notice for the Master Motor Vehicle Lease Agreement between Donlen Fleet Leasing Ltd. and BJ Services Holdings Canada dated June 30, 2017 (the “MLA (Canada)”); and (iv) BJ Services Holdings Canada, ULC shall file a Rejection Notice for the Master Services Agreement (Canada) between Donlen Fleet Leasing Ltd. and BJ Services Holdings Canada dated June 30, 2017 (the “MSA (Canada)”) and, together with the MLA (US), the MSA (US), and the MLA (Canada), and all applicable amendments, attachments, and integrated agreements, the “Donlen Agreements”) (Donlen Corporation, Donlen Trust and Donlen Fleet Leasing, Ltd shall be referred to individually or collectively, as “Donlen” as the context may require).² The Rejection Notices with respect to the Donlen Agreements must contain an effective date for rejection of no later than October 2, 2020 (the “Rejection Date”).

2. The automatic stay of 11 U.S.C §362 shall be modified as of October 2, 2020, and Donlen shall be authorized to exercise any and all of its rights and remedies under the Donlen Agreements including, but not limited to, recovery of the Leased Vehicles (as that term is respectively defined in the MLA(US) and the MLA(Canada)) and Donlen may take all reasonable steps allowed under applicable law that are necessary to facilitate and effectuate such recovery. To the extent possible and feasible, the Debtors will make best efforts to cooperate and assist in the

² Donlen Corporation and Donlen Fleet Leasing, Ltd. are each debtors in their own Chapter 11 bankruptcy proceedings which are jointly administered (the “Donlen Bankruptcy Case”) in the United States Bankruptcy Court for the District of Delaware (the “Delaware Bankruptcy Court”) under Case No. 20-11218 (MFW).

surrender of the Leased Vehicles.

3. Nothing herein shall serve to waive, extinguish, allow or compromise any causes of action or monetary claims of the Debtors against Donlen, or any defenses and/or objections to claims that may be asserted by Donlen against the Debtors. Likewise, nothing herein shall serve to waive, extinguish, allow or compromise any cause of action or monetary claims of Donlen against the Debtors, or any defenses and/or objections to claims that may be asserted by the Debtors, or to vitiate, modify, waive, extinguish, cure or constitute an admission as to any pre-petition or post-petition noticed or non-noticed default(s) of the Debtors. The Debtors and Donlen agree to work in good faith to reconcile final amounts due to Donlen or the Debtors under the Donlen Agreements or applicable law, and the Debtors or their successors shall file a notice of any agreements resolving the monetary claims among the parties with this Court and/or the Donlen Bankruptcy Court as necessary and/or appropriate, and/or seek further hearing in this or a Court of competent jurisdiction in the event that such claims cannot be resolved by agreement.

4. Pursuant to the Assumption/Rejection Procedures Order, Donlen shall have thirty (30) days from the date hereof to file any proof of claim against any of the Debtors, which time period may be extended by written stipulation of the parties filed on the docket without further order of the Court.

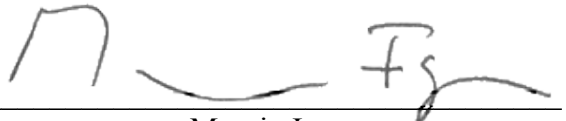
5. The terms and provisions of this Order shall be binding upon the Debtors and any subsequent trustee and shall survive dismissal of any of these jointly-administered bankruptcy cases.

6. After entry of this Order, the Debtors shall file an application for recognition of this Order in the Canadian insolvency proceedings of BJ Services Holdings Canada, ULC pursuant to Part IV of the *Companies' Creditors Arrangement Act*, RSC 1985, c. C-36, as amended, within a reasonable period of time.

7. The notice provisions of FED. R. BANKR. P. 4001(d) have been satisfied, complied with or otherwise excused. This Order shall be effective immediately upon entry and shall not be subject to the fourteen (14) day stay provided for under FED. R. BANKR. P. 4001(a)(3).

8. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order, subject to: (i) the Court of Queen's Bench of Alberta having jurisdiction in relation to recognition, implementation, interpretation and enforcement of this Order in Canada; and (ii) any approvals required by, or the exercise of concurrent jurisdiction by, the Donlen Bankruptcy Court. For the avoidance of doubt, nothing in this Order shall give this Court exclusive jurisdiction and/or control over property of any Donlen bankruptcy estate.

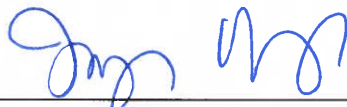
Signed: October 02, 2020



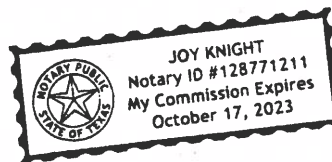
Marvin Isgur
United States Bankruptcy Judge

EXHIBIT 5

THIS IS **EXHIBIT "5"** REFERRED TO IN THE
AFFIDAVIT OF ANTHONY C. SCHNUR
SWORN BEFORE ME THIS 9th DAY OF OCTOBER, 2020



A NOTARY PUBLIC
IN AND FOR THE STATE OF TEXAS





ENTERED
10/09/2020

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

In re:)	
)	Chapter 11
)	
BJ SERVICES, LLC, <i>et al.</i> , ¹)	Case No. 20-33627 (MI)
)	
Debtors.)	(Jointly Administered)
)	
)	Re: Docket Nos. 40, 170, 261, 505, 551, 622, 750

**SEVENTH INTERIM ORDER
(I) AUTHORIZING DEBTORS TO USE CASH COLLATERAL
PURSUANT TO SECTION 363(c) OF THE BANKRUPTCY CODE;
(II) GRANTING ADEQUATE PROTECTION TO THE PREPETITION
SECURED PARTIES; (III) SCHEDULING A FINAL HEARING PURSUANT TO
BANKRUPTCY RULE 4001(b); AND (IV) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)² of BJ Services, LLC (“BJS”) and its affiliated debtors, each as debtor and debtor in possession (collectively, the “Debtors”) in the above captioned-cases for entry of interim and final orders (the “Interim Order” and a “Final Order,” respectively) pursuant to sections 105(a), 361, 362, 363, 503 and 507 of title 11 of the United States Code (the “Bankruptcy Code”), rules 2002, 4001, 6003, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), rules 4002-1 and 9013-1 of the Bankruptcy Local Rules for the Southern District of Texas (the “Bankruptcy Local Rules”), and the Procedures for Complex Chapter 11 Cases in the Southern District of Texas (the “Complex Case Rules”), seeking, among other things, the following relief:

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: BJ Services, LLC (3543); BJ Management Services, L.P. (8396); BJ Services Holdings Canada, ULC (6181); and BJ Services Management Holdings Corporation (0481). The Debtors’ service address is: 11211 Farm to Market 2920 Road, Tomball, Texas 77375.

² Capitalized terms used but not defined herein have the meaning ascribed to such terms in the Motion.

- a. authorization for the Debtors, pursuant to sections 105, 361, 362, 363, and 507 of the Bankruptcy Code, to continue to use the Cash Collateral of the Prepetition ABL Secured Parties (each as defined below), CLMG Collateral of the CLMG Secured Parties (each as defined below) and GACP Collateral of the GACP Secured Parties (each as defined below) in accordance with the terms and conditions set forth below;
- b. the grant of superpriority claims and the grant of automatically perfected liens, security interests, and other adequate protection, as applicable, to the Prepetition ABL Secured Parties, CLMG Secured Parties, and the GACP Secured Parties to the extent of any diminution in value of their interest in the Prepetition ABL Collateral, including Cash Collateral, in the CLMG Collateral, as applicable, or in the GACP Collateral, as applicable, under or in connection with the Prepetition ABL Loan Documents (as defined below) the CLMG Term Loan Agreement (as defined below), or the GACP Term Loan Agreement (as defined below);
- c. subject to certain challenge rights of certain parties in interest (subject to the limitations specified herein), approving certain stipulations by the Debtors with respect to (i) the Prepetition ABL Loan Documents (as hereinafter defined below); (ii) the CLMG Term Loan Credit Agreement; and (iii) the liens and security interests arising therefrom;
- d. vacating and modifying the automatic stay imposed by section 362 of the Bankruptcy Code to the extent set forth herein;
- e. subject to and effective upon entry of a Final Order, waiving the Debtors' right to assert with respect to the Prepetition ABL Collateral, the Prepetition ABL Secured Parties' Cash Collateral, or the Adequate Protection Collateral (as defined below) (i) any claims to surcharge pursuant to section 506(c) of the Bankruptcy Code, (ii) any "equities of the case" exception pursuant to section 552(b) of the Bankruptcy Code, and (iii) the equitable doctrine of "marshalling" or any similar doctrine;
- f. scheduling, pursuant to Bankruptcy Rule 4001(b) and Bankruptcy Local Rule 4001-2(c), a final hearing (the "Final Hearing") to consider entry of the Final Order approving the relief requested in the Motion on a final basis;
- g. waiving any applicable stay with respect to the effectiveness and enforceability of this Seventh Interim Order and, as later applicable, the Final Order (including a waiver pursuant to Bankruptcy Rule 6004(h)); and
- h. granting related relief.

This Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and this Court having found this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408

and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and upon the Court's entry of the order approving the Motion on an interim basis on July 21, 2020 [Docket No. 88] (the "First Interim Order"), granting the relief requested in the Motion; and upon the Court's entry of the agreed first supplemental interim order on July 26, 2020 [Docket No. 170] (the "First Supplemental Interim Order"), modifying the budget included in the First Interim Order; and upon the Court's entry of the order approving the Motion on a further interim basis on August 3, 2020 [Docket No. 261] (the "Second Interim Order"); and upon the Court's entry of the order approving the Motion on a further interim basis on August 27, 2020 [Docket No. 505]; and upon the Court's entry of the order approving the Motion on a further interim basis on September 2, 2020 [Docket No. 551]; and upon the Court's entry of the order approving the Motion on a further interim basis on September 10, 2020 [Docket No. 622]; and upon the Court's entry of the order approving the Motion on a further interim basis [Docket No. 750]; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion on a further interim basis were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed this Interim Order (this "Seventh Interim Order") and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor,

IT IS FOUND, DETERMINED, ORDERED AND ADJUDGED, that:

1. *The Motion.* The relief requested in the Motion is granted on a further interim basis in accordance with the terms of, and to the extent set forth in, this Seventh Interim Order. Any

and all objections to the Motion with respect to the entry of this Seventh Interim Order that have not been withdrawn, waived or resolved, and all reservations of rights, are hereby denied and overruled on the merits, except as may be set forth herein; provided that, for the avoidance of doubt, the Creditors' Committee's objections to the Final Order are expressly reserved for the Final Hearing. This Seventh Interim Order shall become effective immediately upon its entry.

2. *Jurisdiction.* This Court has core jurisdiction over the Debtors' chapter 11 cases commenced on July 20, 2020 (the "Chapter 11 Cases," and such date, the "Petition Date"), the Motion, and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157(b) and 1334. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

3. *Notice.* Under the circumstances of these cases, proper, timely, adequate and sufficient notice of the Motion, the Hearing, and this Seventh Interim Order has been provided in accordance with the Bankruptcy Code, the Bankruptcy Rules, and the Bankruptcy Local Rules, and no other or further notice of the Motion, the Hearing, or this Seventh Interim Order shall be required. The interim relief granted herein is necessary to avoid immediate and irreparable harm to the Debtors and their estates pending the Final Hearing.

4. *Debtors' Stipulations.* In requesting use of their Cash Collateral and the other Prepetition ABL Collateral, and in exchange for and as a material inducement to the Prepetition ABL Secured Parties' agreement to permit consensual use of their Cash Collateral and the other Prepetition ABL Collateral, the Debtors acknowledge, represent, stipulate, and agree, subject to the challenge rights set forth in paragraph 33 below (but subject to the limitations thereon contained herein), as follows with respect to the Prepetition ABL Facility (the "ABL Stipulations"). The Debtors also acknowledge, represent, stipulate, and agree, subject to the challenge rights set forth in paragraph 33 below, as follows with respect to the Prepetition CLMG

Obligations and Prepetition GACP Obligations (together with the ABL Stipulations, collectively defined as the “Debtors’ Stipulations”):

a. *ABL Stipulations.*

- (i) *Prepetition ABL Credit Facility.* On May 30, 2017, BJS entered into that certain Revolving Credit and Guaranty Agreement (as amended by the Limited Waiver and First Amendment to Revolving Credit and Guaranty Agreement dated October 3, 2018, and further amended by the Second Amendment to Revolving Credit and Guaranty Agreement and First Amendment to Canadian Security Agreement and U.S. Security Agreement, dated January 28, 2019, and as otherwise amended, supplemented, or modified prior to the date hereof, the “Prepetition ABL Credit Agreement,” and further supplemented and modified by those certain Limited Waivers, dated as of June 2, 2020, June 12, 2020, and June 23, 2020, and together with all mortgage, security, pledge and guaranty agreements and all other Loan Documents (as defined in the Prepetition ABL Credit Agreement) and all other documentation executed by any Debtor in connection with any of the foregoing, each as amended, restated, amended and restated, supplemented, or otherwise modified from time to time, the “Prepetition ABL Loan Documents”), with JPMorgan Chase Bank, N.A., in its capacity as administrative agent (the “Prepetition ABL Agent”), and the lenders party thereto (the “Prepetition ABL Lenders,” and together with the Prepetition ABL Agent, the “Prepetition ABL Secured Parties”).
- (ii) *Prepetition ABL Obligations.* As of the Petition Date, pursuant to the Prepetition ABL Loan Documents and applicable law, the Prepetition ABL Secured Parties hold valid, enforceable, secured, and allowable claims against the Debtors in an aggregate amount equal to \$101,550,000 plus any and all other accrued and unpaid interest, fees, expenses (including advisors fees and expenses, in each case, that are chargeable or reimbursable under the Prepetition ABL Loan Documents), disbursements, charges, claims, indemnities and other costs and obligations of whatever nature incurred in connection therewith which are chargeable or otherwise reimbursable under the Prepetition ABL Loan Documents or applicable law, whether arising before or after the Petition Date, including any “Obligations” (as defined in the Prepetition ABL Credit Agreement), of any kind or nature, whether or not evidenced by any note, agreement or other instrument, whether or not contingent, whenever arising, accrued, accruing, due, owing, or chargeable in respect of any of the Debtors’ obligations under the Prepetition ABL Loan Documents (collectively defined as the “Prepetition ABL Obligations”).

- (iii) *Prepetition ABL Liens.* The Prepetition ABL Obligations are secured by continuing, legal, valid, binding, properly perfected, enforceable, non-avoidable first priority liens on and security interests in (the “Prepetition ABL Liens”) all of the “Collateral” as defined in the Prepetition ABL Credit Agreement (the “Prepetition ABL Collateral”), including all of the Debtors’ cash (including the cash in their deposit accounts and other accounts, wherever located, whether as original collateral or proceeds of other Prepetition ABL Collateral except for Excluded Property (as defined in the Prepetition ABL Credit Agreement)) that constitutes Cash Collateral (as defined below). As of the Petition Date, the aggregate book value of the Prepetition ABL Collateral exceeded the aggregate amount of the Prepetition ABL Obligations.
- (iv) *Validity, Perfection, and Priority of Prepetition ABL Liens and Prepetition ABL Obligations.* The Debtors acknowledge and agree that, as of the Petition Date: (i) the Prepetition ABL Liens on the Prepetition ABL Collateral were valid, binding, and enforceable in accordance with the terms of the applicable Prepetition ABL Loan Documents, non-avoidable and properly perfected and were granted to, or for the benefit of, the Prepetition ABL Secured Parties for fair consideration and reasonably equivalent value; (ii) the Prepetition ABL Liens were and remain senior in priority over any and all other liens on and security interests in the Prepetition ABL Collateral, subject only to (x) the Carve Out (as defined below) and (y) valid, perfected and unavoidable liens permitted under Section 7.01 of the Prepetition ABL Credit Agreement to the extent that such liens or security interests are senior to or *pari passu* with the Prepetition ABL Liens (including, for the avoidance of doubt, valid and unavoidable liens in existence as of the Petition Date that are perfected after the Petition Date as permitted by section 546(b) of the Bankruptcy Code) (a “Permitted Encumbrance”); (iii) the Prepetition ABL Obligations constituted legal, valid, binding and non-avoidable obligations of the Debtors, enforceable in accordance with the terms of the applicable Prepetition Loan Documents; (iv) no portion of the Prepetition ABL Obligations or any payments made to the Prepetition ABL Secured Parties or applied to or paid on account of the obligations owing under the Prepetition ABL Loan Documents prior to the Petition Date is subject to any contest, avoidance, reduction, recharacterization, subordination (whether equitable, contractual or otherwise), recovery, reduction, recoupment, disallowance, impairment, rejection, attack, effect, counterclaim, cross-claim, set-off, offset, defense or any other claim (as defined in the Bankruptcy Code) of any kind, cause of action or any other challenge of any kind or nature under the Bankruptcy Code or any other applicable law or regulation or otherwise and the Debtors do not possess, and shall not assert, any claim,

counterclaim, setoff or defense of any kind, nature or description that would in any way affect the validity, enforceability and non-avoidability of any Prepetition ABL Obligations; and (v) the Debtors waive, discharge, and release any right to challenge any of the Prepetition Obligations, the priority of the Debtors' obligations thereunder and the validity, extent, and priority of the Prepetition ABL Liens.

- b. *Validity, Perfection, and Priority of Liens and Obligations under the CLMG Term Loan Agreement.* The Debtors acknowledge and agree that, as of the Petition Date: (i) the CLMG Secured Parties' (as defined below) liens on the CLMG Collateral (such liens, the "Prepetition CLMG Liens") were valid, binding, and enforceable in accordance with the terms of the CLMG Term Loan Agreement (as defined below), non-avoidable and properly perfected and were granted to, or for the benefit of, the CLMG Secured Parties for fair consideration and reasonably equivalent value; (ii) the Prepetition CLMG Liens were and remain senior in priority over any and all other liens on and security interests in the CLMG Collateral (as defined below); (iii) the prepetition obligations owed to the CLMG Secured Parties under the CLMG Term Loan Agreement, including any "Obligations" as defined in the CLMG Term Loan Agreement, of any kind or nature, whether or not evidenced by any note, agreement, or other instrument, whether or not contingent, whenever arising, accrued, accruing, due, owing, or chargeable in respect of any of the Debtors' obligations (collectively, the "Prepetition CLMG Obligations") constituted legal, valid, binding, and non-avoidable obligations of the Debtors, enforceable in accordance with the terms of the CLMG Term Loan Agreement; (iv) no portion of the Prepetition CLMG Obligations or any payments made to the CLMG Secured Parties or applied to or paid on account of the obligations owing under the CLMG Term Loan Agreement prior to the Petition Date is subject to any contest, avoidance, reduction, recharacterization, subordination (whether equitable, contractual or otherwise), recovery, reduction, recoupment, disallowance, impairment, rejection, attack, effect, counterclaim, cross-claim, set-off, offset, defense or any other claim (as defined in the Bankruptcy Code) of any kind, cause of action or any other challenge of any kind or nature under the Bankruptcy Code or any other applicable law or regulation or otherwise and the Debtors do not possess, and shall not assert, any claim, counterclaim, setoff or defense of any kind, nature or description that would in any way affect the validity, enforceability and non-avoidability of any Prepetition CLMG Obligations; and (v) the Debtors waive, discharge, and release any right to challenge any of the Prepetition CLMG Obligations, the priority of the Debtors' obligations thereunder and the validity, extent, and priority of the Prepetition CLMG Liens.

- c. *Validity, Perfection, and Priority of Liens and Obligations under the GACP Term Loan Agreement.* The Debtors acknowledge and agree that, as of the

Petition Date: (i) the GACP Secured Parties' (as defined below) liens on the GACP Collateral (such liens, the "Prepetition GACP Liens") were valid, binding, and enforceable in accordance with the terms of the GACP Term Loan Agreement (as defined below), non-avoidable and properly perfected and were granted to, or for the benefit of, the GACP Secured Parties for fair consideration and reasonably equivalent value; (ii) the Prepetition GACP Liens were and remain senior in priority over any and all other liens on and security interests in the GACP Collateral (as defined below); (iii) the prepetition obligations owed to the GACP Secured Parties under the GACP Term Loan Agreement, including any "Obligations" as defined in the GACP Term Loan Agreement, of any kind or nature, whether or not evidenced by any note, agreement, or other instrument, whether or not contingent, whenever arising, accrued, accruing, due, owing, or chargeable in respect of any of the Debtors' obligations (collectively, the "Prepetition GACP Obligations") constituted legal, valid, binding, and non-avoidable obligations of the Debtors, enforceable in accordance with the terms of the GACP Term Loan Agreement; (iv) no portion of the Prepetition GACP Obligations or any payments made to the GACP Secured Parties or applied to or paid on account of the obligations owing under the GACP Term Loan Agreement prior to the Petition Date is subject to any contest, avoidance, reduction, recharacterization, subordination (whether equitable, contractual or otherwise), recovery, reduction, recoupment, disallowance, impairment, rejection, attack, effect, counterclaim, cross-claim, set-off, offset, defense or any other claim (as defined in the Bankruptcy Code) of any kind, cause of action or any other challenge of any kind or nature under the Bankruptcy Code or any other applicable law or regulation or otherwise and the Debtors do not possess, and shall not assert, any claim, counterclaim, setoff or defense of any kind, nature or description that would in any way affect the validity, enforceability and non-avoidability of any Prepetition GACP Obligations; and (v) the Debtors waive, discharge, and release any right to challenge any of the Prepetition GACP Obligations, the priority of the Debtors' obligations thereunder and the validity, extent, and priority of the Prepetition GACP Liens.

5. *Cash Collateral.* For purposes of this Seventh Interim Order, the term "Cash Collateral" shall mean and include all "cash collateral," as defined in section 363 of the Bankruptcy Code, including cash collateral in or on which the Prepetition ABL Secured Parties have a lien, security interest or other interest (including, without limitation, any adequate protection liens or security interests), and shall include, without limitation, all Prepetition ABL Collateral that is cash of the Debtors' estates and all cash equivalents, whether in the form of negotiable instruments, documents of title, securities, deposit accounts, commodity accounts, securities accounts,

investment accounts, or in any other form, that were on the Petition Date in any of the Debtors' possession, custody or control (or persons in privity with any of the Debtors) or which present income, proceeds, products, rents, or profits of any of the Prepetition ABL Collateral, including to the extent the Debtors obtain an interest in such funds after the Petition Date in the case of each of the foregoing, except for any Excluded Property (as defined in the Prepetition ABL Credit Agreement). The Prepetition ABL Agent has, for the benefit of the Prepetition ABL Lenders, first-priority, perfected liens in the Cash Collateral pursuant to the applicable provisions of the Prepetition ABL Loan Documents, sections 363(a) and 552(b) of the Bankruptcy Code, and this Seventh Interim Order.

6. *Findings Regarding the Use of Cash Collateral and Prepetition ABL Collateral.*

- a. Good cause has been shown for the entry of this Seventh Interim Order.
- b. The Debtors have an immediate need to use the Prepetition ABL Collateral, including Cash Collateral to, among other things, fund the ongoing orderly sale of their assets, pay their operating expenses, and preserve the value of the Debtors' estates.
- c. The terms of the use of the Prepetition ABL Collateral pursuant to this Seventh Interim Order are fair and reasonable, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties and constitute reasonably equivalent value and fair consideration.
- d. The terms of the use of the Prepetition ABL Collateral pursuant to this Seventh Interim Order have been the subject of extensive negotiations conducted in good faith and at arm's length among the Debtors, the Prepetition ABL Agent, and other Prepetition ABL Secured Parties and, pursuant to sections 105, 361, and 363 of the Bankruptcy Code, the Prepetition ABL Agent and the other Prepetition ABL Secured Parties are hereby found to be entities that have acted in "good faith" in connection with the negotiation and entry of this Seventh Interim Order, and each is entitled to the protection provided under section 363(m) of the Bankruptcy Code.
- e. The Debtors have requested entry of this Seventh Interim Order pursuant to Bankruptcy Rule 4001(b)(2) and (d) of the Complex Case Procedures. Absent granting the interim relief sought by this Seventh Interim Order, the Debtors' estates could be immediately and irreparably harmed. The use of

the Prepetition ABL Collateral in accordance with this Seventh Interim Order is in the best interest of the Debtors' estates.

7. *Need for Limited Use of Cash Collateral.* The Debtors have an immediate and critical need to continue to use the Prepetition ABL Collateral (including Cash Collateral) in order to permit, among other things, the ongoing marketing and sale of their assets, to make payroll, to satisfy other working capital and operational needs and fund the Chapter 11 Cases, in each such case in accordance with the terms of this Seventh Interim Order, including in accordance with the Budget (as defined below). The access of the Debtors to sufficient working capital and liquidity through the use of Cash Collateral and other Prepetition ABL Collateral is necessary to preserve and maintain the value of the Debtors' estates. Without the use of Cash Collateral, the Debtors would likely not have sufficient liquidity to continue to operate their organization and effectuate an orderly wind-down of the Debtors' businesses. Entry of this Seventh Interim Order will preserve the assets of each Debtor's estate and its value and is in the best interests of the Debtors, their creditors, and their estates. The Adequate Protection Liens, the Adequate Protection Superpriority Claims, the ABL Adequate Protection Payments, and the ABL Adequate Protection Fees and Expenses (each as defined herein) are consistent with and authorized by the Bankruptcy Code. Absent authorization to immediately access and use Cash Collateral, the Debtors, the estates, and their creditors would suffer immediate and irreparable harm.

8. *Consent by the Prepetition ABL Agent.* The Prepetition ABL Agent consents to the Debtors' use of its Cash Collateral, in accordance with and subject to the terms and conditions contained in this Seventh Interim Order, which consent has been supported or unopposed by the Required Lenders (as defined in the Prepetition ABL Credit Agreement) after receipt of notice and shall be deemed sufficient under the circumstances for purposes of this Seventh Interim Order. All use of such Cash Collateral by the Debtors shall, subject to any Non-Conforming Use (as such

term is defined below) permitted hereunder, be consistent with the cash flow budget attached hereto as **Exhibit 1** (as may be amended or replaced pursuant to paragraph 17 hereof, the “Budget”), which Budget shall exclude any amounts to be paid by the GACP Secured Parties with respect to the relief from the automatic stay with respect to the Prepetition GACP Collateral granted by the Bankruptcy Court on September 2, 2020 [Docket No. 553]; provided, however, that the actual aggregate cash balance, which shall be tested on a daily basis, shall not be less than the projected amount therefore set forth in the Budget for such applicable time period by more than 15%; provided that Allowed Professional Fees, the Adequate Protection Fees and Expenses (as defined in paragraph 12 below), and payments to the U.S. Trustee shall not be subject to such test; provided further, that Allowed Professional Fees shall not exceed the projected amount therefor set forth in the Budget for such applicable time period by more than 15% (any variance not exceeding the maximum amounts set forth above, a “Permitted Variance”) (provided that nothing herein shall operate as a limitation on the amount of professional fees a Professional Person may seek to be paid by the Debtors pursuant to an order of the Court, nor shall anything herein limit the Prepetition ABL Agent’s rights to oppose any request for payment of professional fees in excess of the Permitted Variance). Any transfer or use of the Prepetition ABL Secured Parties’ Cash Collateral by the Debtors shall be conditioned upon the Debtors’ compliance with the Budget, including any Permitted Variances or Non-Conforming Uses. The Prepetition ABL Agent may (with the consent of the Required Lenders if the proposed amount is equal to or greater than \$1 million) agree in writing to the use or receipt of the Cash Collateral of the Prepetition ABL Lenders in a manner or amount which does not conform to the manner or amount, as applicable, set forth in the Budget (including, for the avoidance of doubt, any Permitted Variances) (each such approved non-conforming use of Cash Collateral, a “Non-Conforming Use”). If such written

consent is given (which consent may be given through email by the Prepetition ABL Agent or the Prepetition ABL Agent's counsel), the Debtors shall be authorized pursuant to this Seventh Interim Order to use Cash Collateral for any such Non-Conforming Use without further Court approval, and the Prepetition ABL Secured Parties shall be entitled to all of the protections specified in this Seventh Interim Order for any such Non-Conforming Use; provided that each such permitted Non-Conforming Use shall be deemed a modification to the Budget for all testing purposes. For the avoidance of doubt and notwithstanding anything to the contrary in this Seventh Interim Order, the Prepetition ABL Agent does not consent to the Debtors' use of, and the Debtors shall not be permitted to use, the Cash Collateral constituting Prepetition ABL Collateral or Adequate Protection Collateral (as defined below, and subject to satisfaction of claims on account of ABL Diminution in Value, if any) for (i) payment to any other secured party in these chapter 11 cases (including the GACP Secured Parties and CLMG Secured Parties), (ii) payment of any costs attributable to the GACP Collateral or CLMG Collateral (each as defined below), including costs and expenses (x) of preserving, or disposing of, the GACP Collateral or CLMG Collateral, (y) incurred in connection with any sale of such GACP Collateral or CLMG Collateral, or (z) costs and expenses on account of the GACP Collateral or CLMG Collateral in connection with, or following, relief from the automatic stay (if applicable) or any budget with respect thereto, or (iii) payment of any transition services to be provided under a transition service agreement in connection with any of the Debtors' asset sales.

9. *Use of Cash.* As a condition to the Prepetition ABL Secured Parties' consent to the use of their Cash Collateral, the Debtors shall be required to first utilize unencumbered cash (or any other cash available to the Debtors for satisfaction of costs and expenses) available for use by the Debtors, if any, to satisfy the costs and expenses set forth in the Budget prior to using their

Cash Collateral; provided that if there is no unencumbered cash available for use by the Debtors or the Debtors' balance of unencumbered cash has been reduced to zero, the Debtors next shall be required to use proceeds available for use by the Debtors from any and all sales of the Debtors' assets or causes of action subject to the First Priority ABL Adequate Protection Liens (the "ABL Adequate Protection Cash Collateral"), if any, to satisfy the costs and expenses set forth in the Budget; provided, further, that if there is no unencumbered cash or ABL Adequate Protection Cash Collateral available for use by the Debtors, or both the unencumbered cash and ABL Adequate Protection Cash Collateral have been reduced to zero, the Debtors are authorized to use the Cash Collateral constituting Prepetition ABL Collateral in accordance with this Seventh Interim Order and as set forth in the Budget. In addition, to the extent that the Pre-Carve Out Trigger Notice Reserve or Post-Carve Out Trigger Notice Reserve (together with the Pre-Carve Out Trigger Notice Reserve, the "Professional Fee Reserves") were funded by Cash Collateral constituting Prepetition ABL Collateral prior to the Debtors' receipt of unencumbered cash or Adequate Protection Cash Collateral, the funds in either Professional Fee Reserve constituting Prepetition ABL Collateral will be replaced by or deemed to be replaced by unencumbered cash or Adequate Protection Cash Collateral, as applicable, upon the Debtors' receipt of such unencumbered cash or Adequate Protection Cash Collateral and to the extent available.

10. *Entitlement of Prepetition ABL Secured Parties to Adequate Protection.* Pursuant to sections 361, 362, 363(c)(2), and 363(e) of the Bankruptcy Code, the Prepetition ABL Secured Parties are entitled to adequate protection of their interests in the Prepetition ABL Collateral, including the Cash Collateral, in an amount equal to the aggregate actual diminution in the value of the Prepetition ABL Secured Parties' interests in the Prepetition ABL Collateral (including Cash Collateral) from and after the Petition Date, if any, for any reason provided for under the

Bankruptcy Code, including, without limitation, any such diminution resulting from the sale, lease, or use by the Debtors of the Prepetition ABL Collateral (including Cash Collateral, whether pursuant to the Budget or otherwise), the subordination of their liens on the Prepetition ABL Collateral and Adequate Protection Superpriority Claims (as defined herein) to the Carve Out pursuant to this Seventh Interim Order and the Prepetition ABL Loan Documents, or the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code (“ABL Diminution in Value”).

11. *ABL Adequate Protection Claims and Liens.* The Prepetition ABL Secured Parties are hereby granted the following (collectively, the “ABL Adequate Protection Obligations”), solely to the extent of any ABL Diminution in Value; provided that the collateral set forth in this paragraph 11 shall not include assets or property (other than Prepetition ABL Collateral, including Cash Collateral) upon which, and solely to the extent that, the grant of an Adequate Protection Lien as contemplated in this Seventh Interim Order, would constitute a default or event of default under any of the Debtors’ contracts or leases, excluding, for the avoidance of doubt, the GACP Term Loan Agreement (and such default would not be excused or rendered ineffective by operation of the Bankruptcy Code or applicable nonbankruptcy law), but shall include the proceeds thereof:

- a. *ABL Adequate Protection Liens.* Pursuant to sections 361 and 363(e) of the Bankruptcy Code, as adequate protection against any actual ABL Diminution in Value (if any) of the Prepetition ABL Collateral, including Cash Collateral, effective as of the Petition Date and perfected without the need for execution by the Debtors or the recordation or other filing by the Prepetition ABL Agent of security agreements, control agreements, pledge agreements, mortgages or other Collateral Documents (as defined in the Prepetition ABL Credit Agreement) or financing statements or other similar documents, or the possession or control by the Prepetition ABL Agent of any Adequate Protection Collateral, the Prepetition ABL Agent is hereby granted for the ratable benefit of the Prepetition ABL Lenders, as security for the payment of the ABL Adequate Protection Obligations, subject and subordinate only to the Carve Out, the following security interests and liens (all such liens and security interests, the “ABL Adequate Protection Liens,”

and all property identified in clauses (i) - (iii) below being collectively referred to as the “Adequate Protection Collateral”):

- (i) First Priority ABL Adequate Protection Liens. Pursuant to sections 361(2) and 363(c)(2) of the Bankruptcy Code, binding, continuing, enforceable, fully perfected, first priority (subject to subparagraph 11(b)) senior replacement liens on and security interests in and upon (a) all Prepetition ABL Collateral, and (b) all assets and properties of the Debtors’ estates other than (i) the CLMG Collateral (as defined below), (ii) the GACP Collateral (as defined below), and (iii) those assets and properties that are subject to any other (x) valid, perfected, non-avoidable, and enforceable liens in existence on or as of the Petition Date or (y) valid and unavoidable liens in existence as of the Petition Date that are perfected after the Petition Date as permitted by section 546(b) of the Bankruptcy Code, whether now owned or hereafter acquired, including, without limitation, all personal and real property of the Debtors’ estates and all products, proceeds, rents, and profits thereof that, from and after the Petition Date, is not subject to any lien or security interest, if any, including upon entry of the Final Order, the proceeds of any claims and causes of action of the Debtors (but not on the actual claims and causes of action) arising under sections 544, 545, 547, 548, 549, and 550 of the Bankruptcy Code and any other avoidance or similar action under the Bankruptcy Code or similar state law (collectively, the “Avoidance Actions”) (the foregoing liens being collectively referred to as the “First Priority ABL Adequate Protection Liens”).
- (ii) ABL Adequate Protection Liens Junior to Certain Existing Liens. Pursuant to sections 361(2) and 363(c)(2) of the Bankruptcy Code, valid, binding, continuing, enforceable, fully-perfected non-voidable junior priority liens on, and junior security interests in, all tangible and intangible assets, including without limitation, all prepetition and post-petition property of the Debtors’ estates, and all products and proceeds thereof, whether now existing or hereafter acquired, that is subject to (a) valid, perfected, and unavoidable liens in existence as of the Petition Date, including, without limitation, the liens of (i) GACP Finance Co., LLC (“GACP”), as administrative agent and collateral agent under the Term Loan Credit and Guaranty Agreement, dated as of January 28, 2019, by and among BJS, GACP, and the other parties thereto (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time, the “GACP Term Loan Agreement”), which encumber the “Collateral” as defined therein (the “GACP Collateral”) and (ii) CLMG Corp. (“CLMG”), as administrative agent and collateral agent under the Credit Agreement, dated as of December 31, 2019, by and among BJS, CLMG, and the other parties thereto (as amended, restated, amended and restated,

supplemented, or otherwise modified from time to time, the “CLMG Term Loan Agreement”), which encumber the “Collateral” as defined therein (the “CLMG Collateral”) or (b) valid and unavoidable liens in existence as of the Petition Date that are perfected after the Petition Date as permitted by section 546(b) of the Bankruptcy Code, which valid, perfected and unavoidable liens are senior in priority to the security interests and liens in favor of the Prepetition ABL Agent (the foregoing liens being collectively referred to as the “Junior ABL Adequate Protection Liens”).

- (iii) ABL Adequate Protection Liens Senior to Prepetition ABL Liens. Pursuant to sections 361(2) and 363(c)(2) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected non-voidable priming lien on, and security interest in, all tangible and intangible assets comprising the Prepetition ABL Collateral, and all products and proceeds thereof, whether now existing or hereafter acquired.
- b. *Status of the ABL Adequate Protection Liens.* Subject in all respects to the Carve Out, the Adequate Protection Liens shall not be (i) subject or subordinate to (A) any lien or security interest that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code or (B) any lien or security interest arising after the Petition Date, or (ii) except as otherwise set forth in clauses (a)(i)-(iii) of this paragraph 11, subordinated to or made *pari passu* with any other lien or security interest, now or hereafter existing and whether authorized under sections 363 or 364 of the Bankruptcy Code or otherwise.
- c. *Allocation of Proceeds.* Except as otherwise provided herein, all proceeds from Cementing Sale and sale of the Debtors’ fracturing assets (the “Fracturing Sale”) [Docket Nos. 452, 462] shall be reserved or distributed in accordance with the respective orders authorizing such sales or by subsequent order of the Court.
- d. *Enforceability.* Subject in all respects to the Carve Out, the ABL Adequate Protection Liens shall not be subject to sections 506(c) (upon entry of the Final Order), 510, 549, 550, or 551 of the Bankruptcy Code. The ABL Adequate Protection Liens shall be enforceable against and binding upon the Debtors, their estates and any successors thereto, including, without limitation, any trustee or other estate representative appointed in the Debtors’ Chapter 11 Cases, or any case under chapter 7 of the Bankruptcy Code upon the conversion of any of the Debtors’ Chapter 11 Cases, or in any other proceedings superseding or related to any of the foregoing (each, a “Successor Case”).
- e. *Adequate Protection Superpriority Claims.* The ABL Adequate Protection Obligations due to the Prepetition ABL Agent shall constitute allowed

superpriority administrative expense claims against the Debtors in the amount of any Diminution in Value of the Prepetition ABL Collateral, including Cash Collateral, as provided in section 507(b) of the Bankruptcy Code, with priority in payment over any and all unsecured claims and administrative expense claims against the Debtors, now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, administrative expenses of the kinds specified in or ordered pursuant to sections 105, 326, 327, 328, 330, 331, 361, 362, 363, 364, 365, 503(a), 503(b), 506(c), 507(a), 507(b), 546(c), 546(d), 552(b), 726, 1113, 1114 and any other provision of the Bankruptcy Code, and shall at all times be senior to the rights of the Debtors and any successor trustee or creditor in these Chapter 11 Cases or any Successor Case (the “ABL Adequate Protection Superpriority Claims”), subject and subordinate only to the Carve Out (as defined herein).

12. *ABL Additional Adequate Protection.* As additional adequate protection to the Prepetition ABL Agent and the Prepetition ABL Secured Parties:

- a. *Payment of Prepetition and Postpetition Interest.* The Debtors shall pay to the Prepetition ABL Agent for the benefit of the Prepetition ABL Lenders all accrued and unpaid interest (including, for the avoidance of doubt, interest accruing and becoming due after the Petition Date) at the non-default rates and consistent with the ordinary course interest payment dates set forth in the Prepetition ABL Credit Agreement (the “ABL Adequate Protection Interest Payments”).
- b. *Payment of Prepetition ABL Agent Fees and Expenses.* As additional adequate protection, the Prepetition ABL Agent shall receive from the Debtors, for the benefit of the Prepetition ABL Lenders, current cash payments of all reasonable and documented prepetition and postpetition fees and expenses payable to the Prepetition ABL Secured Parties under the Prepetition ABL Loan Documents, including, but not limited to, the reasonable and documented prepetition and postpetition fees and disbursements of legal counsel, financial advisors, and other consultants (the “ABL Adequate Protection Fees and Expenses”). Payment of all such professional fees and expenses shall not be subject to allowance by the Court but shall be subject to the following process. At the same time such invoices are delivered to the Debtors, the professionals for the Prepetition ABL Secured Parties shall deliver a copy of their respective invoices to counsel for any official committee appointed in these cases pursuant to section 1102 of the Bankruptcy Code (a “Creditors’ Committee”) and the office of the United States Trustee (the “U.S. Trustee”). The invoices for such fees and expenses shall not be required to comply with any U.S. Trustee guidelines related to the payment of fees and expenses of retained estate professionals, may be in summary form only, and shall not be subject to application or allowance by the Court. Any objections raised by the

Debtors, the U.S. Trustee, or the Creditors' Committee with respect to such invoices within ten (10) days of receipt thereof (the "Invoice Review Period") will be resolved by the Court (absent prior consensual resolution thereof). Pending such resolution, the undisputed portion of any such invoice shall be paid by the Debtors within three (3) days of the expiration of the Invoice Review Period. Except as otherwise ordered by the Court in the event an objection is timely filed, such fees and expenses shall not be subject to any setoff, defense, claim, counterclaim, or diminution of any type, kind, or nature whatsoever.

- c. *Paydown of Prepetition ABL Obligations.* The Debtors shall pay to the Prepetition ABL Agent for the benefit of the Prepetition ABL Lenders (i) \$1.5 million no later than October 13, 2020, (ii) an amount equal to 80% of any collection by the Debtors of amounts from the GACP Secured Parties on account of costs paid by the Debtors prior to the date hereof no later than one (1) business day following the Debtors' receipt of such funds and to the extent the Debtors have sufficient available funds (or such later date as sufficient funds become available, as applicable), and (iii) an amount equal to 80% of any amounts determined by the Court to be proceeds of intellectual property or inventory from the Debtors' sale of fracturing assets [Docket No. 493] no later than one (1) business day following the date of such determination and to the extent the Debtors have sufficient available funds (or such later date as sufficient funds become available, as applicable) (together with the ABL Adequate Protection Interest Payments, collectively, the "ABL Adequate Protection Payments"); provided that such amounts shall be paid from the Cash Collateral constituting Prepetition ABL Collateral and will reduce the principal amount outstanding under the Prepetition ABL Obligations; provided, further, however, that any payments made pursuant to this paragraph 12(c) may be subject to disgorgement if a challenge action is brought against the Prepetition ABL Secured Parties in accordance with paragraph 33 and if any such payments are disgorged, the principal amount outstanding under the Prepetition ABL Obligations will be adjusted upward accordingly.
- d. *Other Covenants.* The Debtors shall maintain their cash management system in a manner consistent with this Seventh Interim Order, and any order of this Court approving the maintenance of the Debtors' cash management system. The Debtors shall not use, sell, or lease any material assets outside the ordinary course of business, or seek authority to this Court to do any of the foregoing, without prior consultation with the Prepetition ABL Agent at least seven (7) days prior to the date on which the Debtors seek authority of this Court for such use, sale, or lease. The Debtors shall comply with the covenants contained in section 6.07 of the Prepetition ABL Credit Agreement regarding the maintenance and insurance of the Prepetition ABL Collateral and the Adequate Protection Collateral.

13. *Entitlement of CLMG Secured Parties to Adequate Protection.* Pursuant to sections 361, 362, 363(c)(2), and 363(e) of the Bankruptcy Code, the CLMG Secured Parties are entitled to adequate protection of their interests in the CLMG Collateral, in an amount equal to the aggregate actual diminution in the value of the CLMG Secured Parties' interests in the CLMG Collateral from and after the Petition Date, if any, for any reason provided for under the Bankruptcy Code, including, without limitation, any such diminution resulting from the sale, lease, or use by the Debtors of the CLMG Collateral, or the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code. ("CLMG Diminution in Value").

14. *CLMG Adequate Protection Claims and Liens.* CLMG in its capacity as administrative agent (the "CLMG Agent"), and the lenders party thereto (the "CLMG Lenders," and together with the CLMG Agent, the "CLMG Secured Parties") are hereby granted the following (collectively, the "CLMG Adequate Protection Obligations" and together with the ABL Adequate Protection Obligations, the "Adequate Protection Obligations"), solely to the extent of any CLMG Diminution in Value; provided that the collateral set forth in this paragraph 14 shall not include assets or property (other than CLMG Collateral) upon which, and solely to the extent that, the grant of an Adequate Protection Lien as contemplated in this Seventh Interim Order, would constitute a default or event of default under any of the Debtors' contracts or leases (and such default would not be excused or rendered ineffective by operation of the Bankruptcy Code or applicable nonbankruptcy law), but shall include the proceeds thereof:

- a. *CLMG Adequate Protection Liens.* Pursuant to sections 361 and 363(e) of the Bankruptcy Code, as adequate protection against any actual CLMG Diminution in Value (if any) of the CLMG Collateral effective as of the Petition Date and perfected without the need for execution by the Debtors or the recordation or other filing by CLMG of security agreements, control agreements, pledge agreements, mortgages or other Collateral Documents (as defined in the CLMG Term Loan Credit Agreement) or financing statements or other similar documents, or the possession or control by

CLMG of any Adequate Protection Collateral, CLMG is hereby granted, as security for the payment of the CLMG Adequate Protection Obligations, the following security interests and liens (all such liens and security interests, the “CLMG Adequate Protection Liens”):

- (i) CLMG Adequate Protection Liens Junior to Certain Existing Liens and Junior to ABL Adequate Protection Liens. Pursuant to sections 361(2) and 363(c)(2) of the Bankruptcy Code, valid, binding, continuing, enforceable, fully-perfected non-voidable junior priority liens on, and junior security interests in, all tangible and intangible assets, including without limitation, all prepetition and postpetition property of the Debtors’ estates, and all products and proceeds thereof, whether now existing or hereafter acquired, that is subject to (a) valid, perfected, and unavoidable liens in existence as of the Petition Date, including, without limitation (i) the assets subject to the ABL Adequate Protection Liens (other than with respect the CLMG Collateral) and (ii) the GACP Collateral (which such liens on the GACP Collateral shall be junior to the ABL Adequate Protection Liens) or (b) valid and unavoidable liens in existence as of the Petition Date that are perfected after the Petition Date as permitted by section 546(b) of the Bankruptcy Code, which valid, perfected and unavoidable liens are senior in priority to the security interests and liens in favor of CLMG (the foregoing liens being collectively referred to as the “Junior CLMG Adequate Protection Liens”).
 - (ii) Adequate Protection Liens Senior to Prepetition CLMG Liens. Pursuant to sections 361(2) and 363(c)(2) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected non-voidable priming lien on, and security interest in, all tangible and intangible assets comprising the CLMG Collateral, and all products and proceeds thereof, whether now existing or hereafter acquired.
- b. *Status of the CLMG Adequate Protection Liens.* The CLMG Adequate Protection Liens shall be *pari passu* with the GACP Adequate Protection Liens and junior to the ABL Adequate Protections Liens in all respects and shall not otherwise be (i) subject or subordinate to (A) any lien or security interest that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code or (B) any lien or security interest arising after the Petition Date, or (ii) except as otherwise set forth in clauses (a)(i)-(ii) of this paragraph 14, subordinated to or made *pari passu* with any other lien or security interest, now or hereafter existing and whether authorized under sections 363 or 364 of the Bankruptcy Code or otherwise.

- c. *Enforceability.* The CLMG Adequate Protection Liens shall not be subject to sections 510, 549, 550, or 551 of the Bankruptcy Code. The CLMG Adequate Protection Liens shall be enforceable against and binding upon the Debtors, their estates and any successors thereto, including, without limitation, any trustee or other estate representative appointed in the Debtors' Chapter 11 Cases or any Successor Case.

15. *Entitlement of GACP Secured Parties to Adequate Protection.* Pursuant to sections 361, 362, 363(c)(2), and 363(e) of the Bankruptcy Code, the GACP Secured Parties are entitled to adequate protection of their interests in the GACP Collateral, in an amount equal to the aggregate actual diminution in the value of the GACP Secured Parties' interests in the GACP Collateral from and after the Petition Date, if any, for any reason provided for under the Bankruptcy Code, including, without limitation, any such diminution resulting from the sale, lease, or use by the Debtors of the GACP Collateral, or the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code. ("GACP Diminution in Value").

16. *GACP Adequate Protection Claims and Liens.* GACP, in its capacity as administrative agent (the "GACP Agent"), and the lenders party thereto (the "GACP Lenders," and together with the GACP Agent, the "GACP Secured Parties," and together with the Prepetition ABL Secured Parties and CLMG Secured Parties, the "Prepetition Secured Parties") are hereby granted the following (collectively, the "GACP Adequate Protection Obligations," and together with the ABL Adequate Protection Obligations, and CLMG Adequate Protection Obligations, the "Adequate Protection Obligations"), solely to the extent of any GACP Diminution in Value; provided that the collateral set forth in this paragraph 16 shall not include assets or property (other than GACP Collateral) upon which, and solely to the extent that, the grant of an Adequate Protection Lien as contemplated in this Seventh Interim Order, would constitute a default or event of default under any of the Debtors' contracts or leases (and such default would not be excused or rendered ineffective by operation of the Bankruptcy Code or applicable nonbankruptcy law), but

shall include the proceeds thereof; provided further, however, notwithstanding anything to the contrary herein, all parties' rights, claims, defenses and objections with respect to GACP's rights, if any, to additional GACP Adequate Protection Obligations with respect to the GACP Collateral, on account of any GACP Diminution in Value, if any, for any period of time following entry of the *Agreed Order with Respect to GACP Finance Co., LLC's Emergency Motion for Relief from the Automatic Stay* [Docket No. 553], are hereby preserved:

- a. *GACP Adequate Protection Liens.* Pursuant to sections 361 and 363(e) of the Bankruptcy Code, as adequate protection against any actual GACP Diminution in Value (if any) of the GACP Collateral effective as of the Petition Date and perfected without the need for execution by the Debtors or the recordation or other filing by GACP of security agreements, control agreements, pledge agreements, mortgages or other Collateral Documents (as defined in the GACP Term Loan Credit Agreement) or financing statements or other similar documents, or the possession or control by GACP of any Adequate Protection Collateral, GACP is hereby granted, as security for the payment of the GACP Adequate Protection Obligations, the following security interests and liens (all such liens and security interests, the "GACP Adequate Protection Liens," and together with the ABL Adequate Protection Liens and CLMG Adequate Protection Liens, the "Adequate Protection Liens"):
 - (i) GACP Adequate Protection Liens Junior to Certain Existing Liens and Junior to ABL Adequate Protection Liens. Pursuant to sections 361(2) and 363(c)(2) of the Bankruptcy Code, valid, binding, continuing, enforceable, fully-perfected non-voidable junior priority liens on, and junior security interests in, all tangible and intangible assets, including without limitation, all prepetition and postpetition property of the Debtors' estates, and all products and proceeds thereof, whether now existing or hereafter acquired, that is subject to (a) valid, perfected, and unavoidable liens in existence as of the Petition Date, including, without limitation (i) the assets subject to the ABL Adequate Protection Liens (other than with respect the GACP Collateral) and (ii) the GACP Collateral (which such liens on the GACP Collateral shall be junior to the ABL Adequate Protection Liens) or (b) valid and unavoidable liens in existence as of the Petition Date that are perfected after the Petition Date as permitted by section 546(b) of the Bankruptcy Code, which valid, perfected and unavoidable liens are senior in priority to the security interests and liens in favor of GACP (the foregoing liens being collectively referred to as the "Junior GACP Adequate Protection Liens").

- (ii) Adequate Protection Liens Senior to Prepetition GACP Liens. Pursuant to sections 361(2) and 363(c)(2) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected non-voidable priming lien on, and security interest in, all tangible and intangible assets comprising the GACP Collateral, and all products and proceeds thereof, whether now existing or hereafter acquired.
- b. *Status of the GACP Adequate Protection Liens.* The GACP Adequate Protection Liens shall be *pari passu* with the CLMG Adequate Protection Liens and junior to the ABL Adequate Protections Liens in all respects and shall not otherwise be (i) subject or subordinate to (A) any lien or security interest that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code or (B) any lien or security interest arising after the Petition Date, or (ii) except as otherwise set forth in clauses (a)(i)-(ii) of this paragraph 16, subordinated to or made *pari passu* with any other lien or security interest, now or hereafter existing and whether authorized under sections 363 or 364 of the Bankruptcy Code or otherwise.
- c. *Enforceability.* The GACP Adequate Protection Liens shall not be subject to sections 510, 549, 550, or 551 of the Bankruptcy Code. The GACP Adequate Protection Liens shall be enforceable against and binding upon the Debtors, their estates and any successors thereto, including, without limitation, any trustee or other estate representative appointed in the Debtors' Chapter 11 Cases or any Successor Case.

17. *Reporting.* As adequate protection for the Debtors' use of the Prepetition ABL Collateral (including Cash Collateral), the Debtors shall comply with the reporting requirements set forth in the Prepetition ABL Loan Documents, provided that notwithstanding anything to the contrary in this Seventh Interim Order or the Prepetition ABL Loan Documents, the Debtors shall not be required to deliver any Borrowing Base Certificates (as defined in the Prepetition ABL Credit Agreement) to the Prepetition ABL Agent. For the avoidance of doubt, any forecast and financial reporting requirements under this Seventh Interim Order shall replace and be in lieu of any similar requirements under the Prepetition ABL Loan Documents. The Debtors shall provide the following additional reporting to the Prepetition ABL Agent, GACP, and the Creditors' Committee (as applicable):

- a. on or before 5:00 p.m. (Central Time) on every fourth Thursday (or, if such Thursday is not a business day, then the immediately succeeding business day), until earlier of (i) confirmation of a chapter 11 plan by the Debtors or (ii) the repayment of the Prepetition ABL Obligations indefeasibly in full in cash, an updated Budget with respect to the Debtors for the current calendar week then ended and the immediately following consecutive 12 weeks (collectively, 13 weeks), set forth on a weekly basis. Each proposed Budget provided to the Prepetition ABL Agent shall be of no force and effect unless and until it is approved by the Prepetition ABL Agent, which approval has been supported or unopposed by the Required Lenders (as defined in the Prepetition ABL Credit Agreement), and, until such approval is given, the prior Budget shall remain in effect. Any such proposed Budget, upon the approval of the Prepetition ABL Agent shall become, as of the date of such approval or such determination (and the Prepetition ABL Agent shall be deemed to have approved the Budget upon the passage of five (5) days with no objection) and for the period of time covered thereby, the Budget, and shall prospectively replace any prior Budget. If the Debtors and the Prepetition ABL Agent are unable to agree on a proposed Budget's terms, the Debtors reserve the right to seek an expedited hearing with the Court to resolve such disagreement. In that event, the Prepetition ABL Agent shall not oppose the request for expedited consideration provided that any such hearing is held on not less than 48 hours' notice to the Prepetition ABL Agent. In the event of any dispute regarding the terms of a Budget, the Debtors and the Prepetition ABL Agent reserve any and all rights under the Bankruptcy Code or applicable law;
- b. on or before 5:00 p.m. (prevailing Central Time) on every Thursday (or, if such Thursday is not a business day, then the immediately succeeding business day), the Debtors shall deliver to the Prepetition ABL Agent and GACP, on a line-by-line basis, a reconciliation report showing the variances comparing actual cash receipts and disbursements of the Debtors during the immediately-preceding calendar week with corresponding forecasted amounts for such week in the Budget, including written descriptions in reasonable detail explaining any material positive or negative variances;
- c. on or before 9:00 a.m. (prevailing Central Time) every business day, the Debtors shall deliver to the Prepetition ABL Agent a report showing the Debtors' cash balance as of the end of the preceding day;
- d. on or before 5:00 p.m. (prevailing Central Time) starting on September 4, 2020 (with respect to month ending July 31, 2020), and continuing thereafter the date that is 35 days from the prior month's end (or if such day is not a business day, then the immediately succeeding business day), the Debtors shall provide to the Prepetition ABL Agent the information constituting the Borrowing Base (as defined in the Prepetition ABL Credit Agreement) report; provided that notwithstanding anything to the contrary in this Seventh Interim Order or the Prepetition ABL Loan Documents, the

Debtors shall not be required to deliver any Borrowing Base Certificates (as defined in the Prepetition ABL Credit Agreement) to the Prepetition ABL Agent;

- e. no less than three times a week, upon reasonable request the Debtors shall provide the Prepetition ABL Agent an update on the vendor settlement process, including, without limitation, updated “Trade Settlement Update” and “Lien Tracker” files;
- f. all financial reports, forecasts and all other financial documentation, pleadings and other filings that are reasonably requested by the Prepetition ABL Agent, GACP, the Creditors’ Committee, or their representatives and agents, including, but not limited to any appraisals conducted by Hilco, GACP, or any other party, and any other materials that may value the Debtors’ intellectual property or real estate assets;
- g. in addition to, and without limiting, whatever rights to access the Prepetition ABL Agent has under the Prepetition ABL Loan Documents, upon reasonable notice, at reasonable times during normal business hours, the Debtors shall (i) permit representatives of the Prepetition ABL Agent to visit and inspect any of their respective properties, to examine and make abstracts or copies from any of their respective books and records, to tour the Debtors’ business premises and other properties, and (ii) cause their representatives and agents to make themselves reasonably available to discuss the Debtors’ affairs, financial condition, properties, business, operations and accounts with the representatives and agents of the Prepetition ABL Agent.

18. *Carve Out.*

- a. *Carve Out.* As used in this Seventh Interim Order, the “Carve Out” means the sum of (i) all fees required to be paid to the Clerk of the Court and to the Office of the United States Trustee under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate (without regard to the notice set forth in (iii) below); (ii) all reasonable fees and expenses up to \$75,000 incurred by a trustee under section 726(b) of the Bankruptcy Code (without regard to the notice set forth in (iii) below); (iii) to the extent allowed at any time, whether by interim order, procedural order, or otherwise, all unpaid fees and expenses (the “Allowed Professional Fees”) incurred by persons or firms retained by the Debtors pursuant to section 327, 328, or 363 of the Bankruptcy Code (the “Debtor Professionals”) and the Creditors’ Committee pursuant to section 328 or 1103 of the Bankruptcy Code (the “Committee Professionals” and, together with the Debtor Professionals, the “Professional Persons”) at any time before or on the first business day following delivery by the Prepetition ABL 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; and (iv) Allowed

Professional Fees of Professional Persons in an aggregate amount not to exceed \$1 million incurred after the first business day following delivery by the Prepetition ABL Agent of the Carve Out Trigger Notice, to the extent allowed at any time, whether by interim order, procedural order, or otherwise (the amounts set forth in this clause (iv) being the “Post-Carve Out Trigger Notice Cap”). For purposes of the foregoing, “Carve Out Trigger Notice” shall mean a written notice delivered by email (or other electronic means) by the Prepetition ABL Agent to the Debtors, the Debtors’ lead restructuring counsel, the U.S. Trustee, and counsel to the Creditors’ Committee, which notice may be delivered following the occurrence and during the continuation of a Termination Event (as defined below) and upon termination of the Debtors’ right to use Cash Collateral by the Prepetition ABL Secured Parties, stating that the Post-Carve Out Trigger Notice Cap has been invoked.

- b. *Fee Estimates.* Not later than 7:00 p.m. New York time on the Wednesday of each week starting with the first full calendar week following the Petition Date, each Professional Person shall deliver to the Debtors a statement setting forth a good-faith estimate of the amount of fees and expenses incurred during the preceding week by such Professional Person (through Saturday of such week, the “Calculation Date”) (collectively, “Estimated Fees and Expenses”), along with a good-faith estimate of the cumulative total amount of unreimbursed fees and expenses incurred through the applicable Calculation Date and a statement of the amount of such fees and expenses that have been paid to date by the Debtors (each such statement, a “Weekly Statement”); provided that within one business day of the occurrence of the Termination Declaration Date (as defined below), each Professional Person shall deliver one additional statement (the “Final Statement”) setting forth a good-faith estimate of the amount of fees and expenses incurred during the period commencing on the calendar day after the most recent Calculation Date for which a Weekly Statement has been delivered and concluding on the Termination Declaration Date (and the Debtors shall cause such Weekly Statement and Final Statement to be delivered on the same day received to the Prepetition ABL Agent). If any Professional Person fails to deliver a Weekly Statement within three calendar days after such Weekly Statement is due, such Professional Person’s entitlement (if any) to any funds in the Carve Out Reserves (as defined below) with respect to the aggregate unpaid amount of Allowed Professional Fees for the applicable period(s) for which such Professional Person failed to deliver a Weekly Statement covering such period shall be limited to the aggregate unpaid amount of Allowed Professional Fees included in the Budget for such period for such Professional Person.
- c. *Carve Out Reserves.*
 - (i) Commencing with the week ended July 31, 2020, and on or before the Thursday of each week thereafter, the Debtors shall utilize all

cash on hand as of such date, in accordance with the requirements set forth in paragraph 9, and any available cash thereafter held by any Debtor to fund a reserve in an amount equal to the greater of (x) the aggregate amount of all Estimated Fees and Expenses reflected in the Weekly Statement delivered on the immediately prior Wednesday to the Debtors and the Prepetition ABL Agent, and (y) (i) the aggregate amount of Allowed Professional Fees contemplated to be incurred in the Budget during such week. The Debtors shall deposit and hold such amounts in a segregated account in trust to pay such Allowed Professional Fees (the “Pre-Carve Out Trigger Notice Reserve”) prior to any and all other claims, and all payments of Allowed Professional fees incurred prior to the Termination Declaration Date shall be paid first from such Pre-Carve Out Trigger Notice Reserve. Upon the foregoing funding, the Prepetition ABL Agent and Prepetition ABL Secured Parties shall have no further obligation to fund the Pre-Carve Out Trigger Notice Reserve or subordinate their liens and claims on account of any Allowed Professional Fees incurred through the Calculation Date for the most recent Weekly Statement delivered in accordance with Paragraph 18(b) above.

- (ii) On the day on which a Carve Out Trigger Notice is given by the Prepetition ABL Agent to the Debtors with a copy to counsel to any Creditors’ Committee (the “Termination Declaration Date”), the Carve Out Trigger Notice shall constitute a demand to the Debtors to and the Debtors shall utilize all cash on hand as of such date, in accordance with the requirements set forth in paragraph 9, and any available cash thereafter held by any Debtor to fund (A) the Pre-Carve Out Trigger Notice Reserve in an amount equal to the aggregate amount of all Estimated Fees and Expenses reflected in the Final Reports delivered to Debtors and the Prepetition ABL Agent plus the amounts set forth in (a)(i) and (a)(ii) of this paragraph above, and (B) after funding the Pre-Carve Out Trigger Notice Reserve, a reserve in an amount equal to the Post-Carve Out Trigger Notice Cap (the “Post-Carve Out Trigger Notice Reserve” and, together with the Pre-Carve Out Trigger Notice Reserve, the “Carve Out Reserves”) prior to any and all other claims. All funds in the Pre-Carve Out Trigger Notice Reserve shall be used first to pay the obligations set forth in clauses (i) through (iii) of the definition of Carve Out set forth above (the “Pre-Carve Out Amounts”), but not, for the avoidance of doubt, the Post-Carve Out Trigger Notice Cap, until paid in full, and then, to the extent the Pre-Carve Out Trigger Notice Reserve has not been reduced to zero, to pay the Prepetition ABL Agent for the benefit of the Prepetition ABL Secured Parties, unless the Prepetition ABL Obligations have been indefeasibly paid in full, in cash, in which case any such excess shall be paid to the Debtors’ creditors in accordance with their rights and priorities as of

the Petition Date. Upon the foregoing funding, the Prepetition ABL Agent and Prepetition ABL Secured Parties shall have no further obligation to fund the Pre-Carve Out Trigger Notice Reserve or Post-Carve Out Trigger Notice Reserve or subordinate their liens and claims on account of any Allowed Professional Fees.

- d. *Application to Carve Out Reserves.* All funds in the Post-Carve Out Trigger Notice Reserve shall be used first to pay the obligations set forth in paragraph 18(a)(iv) of the definition of Carve Out set forth above (the “Post-Carve Out Amounts”), and then, to the extent the Post-Carve Out Trigger Notice Reserve has not been reduced to zero, to pay the Prepetition ABL Secured Parties in accordance with their rights and priorities under applicable law, unless the Prepetition ABL Obligations have been indefeasibly paid in full, in cash, in which case any such excess shall be paid to the Debtors’ creditors in accordance with their rights and priorities as of the Petition Date. Notwithstanding anything to the contrary in the Prepetition ABL Loan Documents, or this Seventh Interim Order, if either of the Carve Out Reserves is not funded in full in the amounts set forth in paragraph 18(b), then, any excess funds in one of the Carve Out Reserves following the payment of the Pre-Carve Out Amounts and Post-Carve Out Amounts, respectively, shall be used to fund the other Carve Out Reserve, up to the applicable amount set forth in paragraph 18(a), prior to making any payments to the Prepetition ABL Agent, for the benefit of the Prepetition ABL Lenders, or any of the Debtors’ creditors, as applicable. Notwithstanding anything to the contrary in the Prepetition ABL Loan Documents or this Seventh Interim Order, following delivery of a Carve Out Trigger Notice, the Prepetition ABL Secured Parties shall not, and shall not direct any entity to, sweep or foreclose on cash (including cash received as a result of the sale or other disposition of any assets) of the Debtors until the Carve Out Reserves have been fully funded, but shall have a security interest in any residual interest in the Carve Out Reserves, with any excess paid to the Prepetition ABL Agent, for the benefit of the Prepetition ABL Lenders, for application in accordance with the Prepetition ABL Loan Documents. Further, notwithstanding anything to the contrary in this Seventh Interim Order, (i) disbursements by the Debtors from the Carve Out Reserves shall not constitute Loans (as defined in the Prepetition ABL Loan Documents) or increase or reduce the Prepetition ABL Obligations, (ii) the failure of the Carve Out Reserves to satisfy in full the Allowed Professional Fees shall not affect the priority of the Carve Out, and (iii) in no way shall the Budget, Carve Out, Post-Carve Out Trigger Notice Cap, Carve Out Reserves, or any of the foregoing be construed as a cap or limitation on the amount of the Allowed Professional Fees due and payable by the Debtors. For the avoidance of doubt and notwithstanding anything to the contrary in this Seventh Interim Order or in any Prepetition ABL Loan Documents, the Carve Out shall be senior to all liens and claims securing

the Prepetition ABL Collateral, the ABL Adequate Protection Liens, and the 507(b) Claim, and any and all other forms of adequate protection, liens, or claims securing the Prepetition ABL Obligations.

- e. *Payment of Allowed Professional Fees Prior to the Termination Declaration Date.* Any payment or reimbursement made prior to the occurrence of the Termination Declaration Date in respect of any Allowed Professional Fees shall not reduce the Carve Out.
- f. *No Direct Obligation to Pay Allowed Professional Fees.* None of the Prepetition ABL Secured Parties shall be responsible for the payment or reimbursement of any fees or disbursements of any Professional Person incurred in connection with the Chapter 11 Cases or any successor cases under any chapter of the Bankruptcy Code. Nothing in this Seventh Interim Order or otherwise shall be construed to obligate the Prepetition ABL Secured Parties, in any way, to pay compensation to, or to reimburse expenses of, any Professional Person or to guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement.
- g. *Payment of Carve Out On or After the Termination Declaration Date.* Any payment or reimbursement made on or after the occurrence of the Termination Declaration Date in respect of any Allowed Professional Fees shall permanently reduce the Carve Out on a dollar-for dollar basis.

19. *Termination.* The Debtors' right to use Cash Collateral shall terminate (the date of any such termination, the "Termination Date"), without prior order of this Court or any further action by the Prepetition ABL Secured Parties (i) at 11:59 p.m. (prevailing Eastern Time) on October 15, 2020, or (ii) three (3) business days following the delivery of a written notice (a "Default Notice") by the Prepetition ABL Agent to Kirkland & Ellis LLP (any such three (3) business-day period of time, the "Default Notice Period") of the occurrence of any of the events set forth in clauses (a) through (k) below (unless cured by the Debtors or waived by the Prepetition ABL Administrative Agent, with the consent of the Required Lenders, in writing (with email being sufficient) prior to expiration of the Default Notice Period); provided that, if a hearing to consider any appropriate relief in connection with delivery of the Default Notice or continued use of Cash Collateral (as may be held on an expedited basis) is requested to be heard within such three (3) business day period but is scheduled for a later date by the Court, the Default Notice Period shall

be automatically extended to the date of such hearing (the events set forth in clauses (a) through (k) below are collectively referred to herein as the “Termination Events”):

- a. the failure to obtain entry of a further interim order or Final Order acceptable to the Prepetition ABL Agent on or before seven (7) days after entry of this Seventh Interim Order (unless such period is extended by mutual agreement between the Prepetition ABL Agent and the Debtors, which extension may be document by email);
- b. any Debtor’s failure to comply with any of the material terms or conditions of this Seventh Interim Order, including, but not limited to, (i) the use of Cash Collateral for any purpose other than as permitted in this Seventh Interim Order, (ii) failure to comply with the Budget (including any distributions in excess of the Permitted Variance that have not been resolved and approved, in writing, by the Prepetition ABL Agent), or (iii) failure to comply with the reporting requirements set forth in this Seventh Interim Order; provided that notwithstanding anything to the contrary in this Seventh Interim Order or the Prepetition ABL Loan Documents, the Debtors shall not be required to deliver any Borrowing Base Certificates (as defined in the Prepetition ABL Credit Agreement) to the Prepetition ABL Agent;
- c. the failure of the Debtors to make any payment under this Seventh Interim Order to the Prepetition ABL Agent within three (3) business days after such payment becomes due, other than payments required pursuant to paragraph 12(b) of this Seventh Interim Order, which payments shall be made as required therein;
- d. this Seventh Interim Order ceases, for any reason (other than by reason of the express written agreement by the Prepetition ABL Agent, which agreement has been supported or unopposed by the Required Lenders, or the supersession of this Seventh Interim Order by the Seventh Interim Order), to be in full force and effect in any material respect, or any Debtor so asserts in writing, or the Adequate Protection Liens or Adequate Protection Superpriority Claims created by this Seventh Interim Order cease in any material respect to be enforceable and of the same effect and priority purported to be created hereby or any Debtor so asserts in writing;
- e. the Court shall have entered an order reversing, amending, supplementing, staying, vacating, or otherwise modifying this Seventh Interim Order in a manner materially adverse to the Prepetition ABL Secured Parties without the prior written consent of the of the Prepetition ABL Agent, which consent may be provided by electronic mail;
- f. the date an application, motion, or other pleading is filed by the Debtors for the approval of, or the date the Court shall have entered an order recognizing

or granting, any superpriority claim or any lien in these Chapter 11 Cases that is *pari passu* with or senior to the ABL Adequate Protection Superpriority Claims or the ABL Adequate Protection Liens without the prior written consent of the Prepetition ABL Secured Parties (other than the Carve Out);

- g. the date any of the Debtors files any pleading or commences any action against the Prepetition ABL Secured Parties challenging the validity or enforceability of the Prepetition ABL Obligations or the Prepetition ABL Liens or seeking to avoid, disallow, subordinate, or recharacterize any claim, lien, or interest held by any of the Prepetition ABL Secured Parties arising under or related to the Prepetition ABL Obligations (or if the Debtor supports any such motion, pleading, application or adversary proceeding commenced by any third party); provided that if the Debtors provide any response to any discovery request, or make a witness available for deposition, such action shall not be a violation of this subparagraph 19(g);
- h. the date any of the Debtors file or otherwise support any motion, pleading, or other document, including a chapter 11 plan, that (i) seeks to amend, modify, or supplement this Seventh Interim Order, or (ii) otherwise materially, negatively affects the Prepetition ABL Secured Parties, without the prior written consent of the Prepetition ABL Agent; provided, that the consent of the Prepetition ABL Agent shall not be required if, pursuant to a chapter 11 plan, the Prepetition ABL Obligations and Adequate Protection Obligations are indefeasibly paid in full in cash on the effective date of such plan.
- i. the date any of the Debtors file a motion seeking an order, or the date any court of competent jurisdiction enters an order, dismissing the Chapter 11 Cases, converting the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code, appointing a trustee, responsible officer, or examiner with expanded powers relating to the operation of the organization in the Chapter 11 Cases, or terminating the Debtors' exclusivity under Bankruptcy Code section 1121, unless consented to in writing by the Prepetition ABL Agent, which consent has been approved or unopposed by the Required Lenders;
- j. the filing of any pleading by any Debtor in support of (in any such case by way of any motion or other pleading filed with the Court or any other writing to another party in interest executed by or on behalf of any such Debtor) any other person's opposition to any motion filed in the Court by the Prepetition ABL Agent or the Prepetition ABL Lenders seeking confirmation of the amount of its claims or the validity or enforceability of the Prepetition ABL Liens or the Adequate Protection Liens, except with regard to good faith disputes over the payment of expenses and fees, provided that if the Debtors provided any response to any discovery request,

or make a witness available for deposition, such action shall not be a violation of this subparagraph 19(j); or

- k. the Court shall have entered an order granting relief from the automatic stay (without the consent of the Prepetition ABL Lenders) to the holder or holders of any security interest to permit foreclosure (or the granting of a deed *in lieu* of foreclosure or the like) on any of the Prepetition ABL Collateral or Adequate Protection Collateral on which the Prepetition ABL Lenders have a first-priority security interest, which has an aggregate value in excess of \$50,000; provided however, that to the extent such lien can be satisfied by amounts contemplated to pay prepetition liens in the Budget, any relief granted on account of such liens shall not trigger a Termination Event.

20. *Rights and Remedies upon Termination Event.* Except as otherwise ordered by the Court, following the expiration of the Default Notice Period, notwithstanding the provisions of section 362 of the Bankruptcy Code, without any application, motion, or notice to, hearing before, or order from the Court, but subject to the terms of this Seventh Interim Order, any Adequate Protection Obligations determined by the Court to be due and owing as of the delivery of the Default Notice, if any, shall become due and payable and/or the Prepetition ABL Secured Parties shall be entitled to exercise their rights and remedies. Prior to exercising the remedies set forth in this sentence below, the Prepetition ABL Secured Parties shall be required to file a motion with the Court seeking emergency relief (the “Stay Relief Motion”) on no less than three (3) business days’ written notice, which notice period may be concurrent with the Default Notice Period, to (i) the Court, (ii) counsel for the Debtors, (iii) counsel for the Creditors’ Committee (if any), and (iv) the U.S. Trustee for a further order of the Court modifying the automatic stay in the Chapter 11 Cases to permit the Prepetition ABL Secured Parties to exercise their rights and remedies against the Prepetition ABL Collateral or Adequate Protection Collateral to the extent available in accordance with the applicable Prepetition ABL Loan Documents, this Seventh Interim Order, or applicable law, including (x) setting-off amounts in any account of the Debtors maintained with the Prepetition ABL Agent or Prepetition ABL Lenders with respect to which the Prepetition ABL

Agent controls pursuant to a deposit account control agreement to the extent necessary for payment of the Adequate Protection Obligations determined by the Court to be due and payable as of the delivery of the Default Notice and (y) foreclosing upon and selling all or a portion of the Prepetition ABL Collateral or Adequate Protection Collateral in order to collect the Adequate Protection Obligations. Upon the Court's ruling on the Stay Relief Motion, the Court may fashion an appropriate remedy upon a determination that a Termination Event occurred, including that the Prepetition ABL Agent shall be entitled to exercise all rights and remedies with respect to the Collateral provided for in this Seventh Interim Order, including the right to foreclose on or otherwise exercise its rights with respect to all or any portion of the Collateral, as permitted by the Court. Upon the occurrence of the delivery of a Default Notice, the Debtors, the Prepetition ABL Agent, and each Prepetition ABL Secured Party consent to a hearing on an expedited basis to consider whether (a) a Termination Event has occurred and (b) any other appropriate relief (including, without limitation, the Debtors' non-consensual use of Cash Collateral). During the Default Notice Period, the Debtors shall be entitled to continue to use the Cash Collateral in accordance with the terms of the Budget and this Seventh Interim Order. Notwithstanding anything to the contrary herein, upon a Termination Event, the delivery of a Default Notice, the expiration of the Default Notice Period, or the occurrence of the Termination Date, all of the rights, remedies, benefits, and protections provided to the Prepetition ABL Secured Parties under this Seventh Interim Order shall survive. Except as otherwise provided herein or ordered by the Court, neither section 105 of the Bankruptcy Code nor any other provision of the Bankruptcy Code or applicable law shall be utilized to prohibit the exercise, enjoyment and enforcement of any rights, benefits, privileges and remedies of the Prepetition ABL Secured Parties set forth in this paragraph.

21. *Consent by CLMG.* CLMG consents to the Debtors' use of up to \$50,000 of its Cash Collateral (the "CLMG Reserve"), in accordance with and subject to the terms and conditions contained in this paragraph. In no event will any cash distributed from the CLMG Reserve be used on or in respect of any collateral other than on or in respect of real estate collateral securing the loan to the applicable Debtors under which CLMG is Agent. Further, no amounts may be distributed from the CLMG Reserve unless pre-approved in writing by CLMG. CLMG may terminate its consent to the Debtors' use of the CLMG Reserve on not less than three (3) business days' notice; provided that the Debtors shall be allowed to use any portion of the CLMG Reserve previously pre-authorized for use in accordance with this paragraph. The Debtors will advise the Committee of the Debtors' uses of the CLMG Reserve and any changes to the amount available under the CLMG Reserve. Upon reasonable request by CLMG, but not greater than two (2) times a week, the Debtors shall provide CLMG an accounting of the CLMG Reserve. The Debtors and CLMG may increase the CLMG Reserve with the consent of CLMG without further authorization from the Court. For the avoidance of doubt and notwithstanding anything to the contrary in this Seventh Interim Order, (i) CLMG does not consent to the Debtors' use of its Cash Collateral other than as set forth in this paragraph, (ii) any breach or failure to perform by either the Debtors or CLMG pursuant to this paragraph shall not affect any other provision of this Order, including the Debtors' ability to use Cash Collateral of the Prepetition ABL Secured Parties pursuant to the terms of this Order; provided that each of the Debtors and CLMG shall be entitled to seek an emergency hearing before the Court on account of any disputes in respect of the CLMG Reserve, and (iii) nothing in this paragraph shall limit any party's rights, including in respect of asserting or challenging claims, on account of the CLMG Reserve and the Debtors' use thereof.

22. *Modification of Automatic Stay.* Except as provided in paragraph 19 herein, the automatic stay under section 362(a) of the Bankruptcy Code is hereby modified to the extent necessary to effectuate all of the terms and provisions of this Seventh Interim Order, including, without limitation, to: (a) permit the Debtors to grant the Adequate Protection Liens and Adequate Protection Superpriority Claims; (b) permit the Debtors to perform such acts as the Prepetition ABL Secured Parties may reasonably request to assure the perfection and priority of the liens granted herein; (c) permit the Debtors to incur all liabilities and obligations to the Prepetition ABL Secured Parties under this Seventh Interim Order; (d) authorize the Debtors to pay, and the Prepetition ABL Secured Parties to retain and apply, any payments made in accordance with the terms of this Seventh Interim Order; and (e) permit the Prepetition ABL Secured Parties, subject to the terms of this Seventh Interim Order, to exercise all rights and remedies provided for hereunder; provided that during the Default Notice Period, unless otherwise ordered by the Court, the automatic stay under section 362 of the Bankruptcy Code shall remain in effect.

23. *Limitation on Charging Expenses Against Collateral.* Subject only to and effective upon entry of the Final Order, except to the extent of the Carve Out, no costs or expenses of administration which have been or may be incurred in these Chapter 11 Cases or any Successor Case at any time shall be surcharged against, and no person may seek to surcharge any costs or expenses of administration against the Prepetition ABL Secured Parties, or any of the Prepetition ABL Obligations, the Carve Out, or the Prepetition ABL Collateral, pursuant to sections 105 or 506(c) of the Bankruptcy Code or otherwise, without the prior written consent of the Prepetition ABL Agent, which consent is approved or unopposed by the Required Lenders. Subject to the Carve Out, nothing contained in this Seventh Interim Order shall be deemed a consent by the Prepetition ABL Agent to any charge, lien, assessment, or claim against the Prepetition ABL

Collateral, or the Adequate Protection Liens, or otherwise, and no action, inaction or acquiescence by the Prepetition ABL Agent shall be deemed to be or shall be considered evidence of any alleged consent to a surcharge against the Prepetition ABL Secured Parties, the Prepetition ABL Obligations, or the Prepetition ABL Collateral. Notwithstanding the foregoing and for the avoidance of doubt, the Debtors and the Prepetition ABL Secured Parties reserve all rights to seek to surcharge costs and expenses of administration against GACP, the GACP Collateral, CLMG and the CLMG Collateral pursuant to sections 105 or 506(c) of the Bankruptcy Code or otherwise. Subject to the Committee's investigation rights under paragraph 33 of this Seventh Interim Order, if the Debtors recover any costs and expenses from a secured party pursuant to sections 105 and/or 506(c) of the Bankruptcy Code (such recovery, "Surcharge Proceeds"), and the outlays on account of such recovered costs and expenses were paid using the Prepetition ABL Lenders' Cash Collateral, the Surcharge Proceeds shall replenish and be deemed to replenish the Prepetition ABL Lenders' Cash Collateral in the amount equal to the recovered costs and expenses paid out of such Cash Collateral; provided, however, that any such replenishment of the Cash Collateral from the Surcharge Proceeds shall not exceed the amount required to satisfy the Diminution in Value (if any) of the Prepetition ABL Collateral.

24. *Section 552(b) of the Bankruptcy Code.* Subject only to and effective upon entry of the Final Order, the Prepetition ABL Secured Parties shall be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and no person may assert an "equities of the case" claim under section 552(b) of the Bankruptcy Code against the Prepetition ABL Secured Parties with respect to proceeds, product, offspring, or profits of any of the Prepetition ABL Collateral in the Chapter 11 Cases or any Successor Case.

25. *Payments Free and Clear.* Subject and subordinate to the Carve Out, any and all proceeds remitted to the Prepetition ABL Agent pursuant to the terms of this Seventh Interim Order or any subsequent order of this Court shall be irrevocable (subject to paragraphs 33 and 34 of this Seventh Interim Order), received free and clear of any claim, charge, assessment, or other liability, including, without limitation, but subject to entry of the Final Order, any such claim or charge arising out of or based on, directly or indirectly, section 506(c) of the Bankruptcy Code or the “equities of the case” exception of section 552(b) of the Bankruptcy Code.

26. *All Parties’ Reservation of Rights.* All parties reserve their rights to argue that, to the extent that any cash payment of interest, fees, and expenses as adequate protection to the Prepetition ABL Secured Parties, the CLMG Secured Parties, or the GACP Secured Parties is not allowed under section 506(b) of the Bankruptcy Code and not allowed on any other basis (including, without limitation, (i) on account of the Debtors’ use of Prepetition ABL Collateral, CLMG Collateral, or GACP Collateral and (ii) that there has been ABL Diminution in Value, CLMG Diminution in Value, or GACP Diminution in Value), such payments should be recharacterized and applied as payments of principal owed under the applicable Prepetition ABL Loan Document, under the CLMG Term Loan Credit Agreement, or under the GACP Term Loan Credit Agreement, as applicable.

27. *Debtors’ Reservation of Rights.* Notwithstanding anything to the contrary in this Seventh Interim Order, the entry of this Seventh Interim Order and the grant of adequate protection to the Prepetition ABL Secured Parties and the Prepetition ABL Agent pursuant to the terms hereof shall be without prejudice to the rights of the Debtors to, following the occurrence of the Termination Date, seek authority (at any time) to use Cash Collateral and the Prepetition ABL Collateral without the consent of the Prepetition ABL Secured Parties, and the Prepetition ABL

Secured Parties reserve all of their respective rights with respect to contesting any such motion or request by the Debtors or any other person.

28. *No Marshaling.* Subject only to and effective upon entry of the Final Order, the Prepetition ABL Secured Parties shall not be subject to the equitable doctrine of “marshaling” or any other similar doctrine with respect to any of the Prepetition ABL Collateral, and proceeds of the Prepetition ABL Collateral shall be received and applied pursuant to this Seventh Interim Order and the Prepetition ABL Loan Documents notwithstanding any other agreement or provision to the contrary. Subject to the Carve Out, without limiting the generality of the immediately preceding sentence, no party shall be entitled, directly or indirectly, to direct the exercise of remedies or seek (whether by order of this Court or otherwise) to marshal or otherwise control the disposition of the Prepetition ABL Collateral after a Termination Event in the Chapter 11 Cases or any Successor Case.

29. *Continuation of Prepetition ABL Liens.* Subject to the rights set forth in paragraph 33, until the Prepetition ABL Secured Parties are Paid in Full, all liens and security interests of the Prepetition ABL Secured Parties (including, without limitation, the Adequate Protection Liens) shall remain valid and enforceable with the same continuing priority as described herein in the Chapter 11 Cases or any Successor Case. The term “Paid in Full” or “Payment in Full” means except as otherwise agreed to by, the Prepetition ABL Secured Parties (including through entry of an order confirming a chapter 11 plan reasonably acceptable to the Prepetition ABL Secured Parties), all of the Prepetition ABL Obligations and Adequate Protection Obligations have been indefeasibly paid in full in cash and completely satisfied (including the cash collateralization of any letters of credit) and all Commitments (as defined in the Prepetition ABL Credit Agreement) have been terminated.

30. *Continuation of Prepetition CLMG Liens.* Until the Prepetition CLMG Obligations have been satisfied (including by payment in cash, turnover of collateral, or consent to release liens), all liens and security interests of the CLMG Secured Parties shall remain valid and enforceable with the same continuing priority as described herein.

31. *Continuation of the Prepetition GACP Liens.* Until the Prepetition GACP Obligations have been satisfied (including by payment in cash, turnover of collateral, or consent to release liens), all liens and security interests of the GACP Secured Parties shall remain valid and enforceable with the same continuing priority as described herein

32. *Perfection of ABL Adequate Protection Liens.*

- a. The Prepetition ABL Secured Parties are hereby authorized, but not required, to file or record financing statements, trademark filings, copyright filings, patent filings, mortgages, deeds of trust, notices of lien or similar instruments in any jurisdiction, or take possession of or control over cash or securities, or take any other action in order to validate and perfect the ABL Adequate Protection Liens; provided, however, that the Prepetition ABL Secured Parties may not take any aforementioned action to file or record such instruments against the CLMG Collateral or GACP Collateral. Whether or not the Prepetition ABL Secured Parties shall, each, in its sole discretion, choose to file such financing statements, trademark filings, copyright filings, patent filings, mortgages, deeds of trust, notices of lien or similar instruments, or take possession of or control over any cash, securities or any other property of the Debtors, or take any action that otherwise may be required under federal, state or local law in any jurisdiction to validate and perfect a security interest or lien, in any such case, the ABL Adequate Protection Liens shall be deemed valid, perfected, allowed, enforceable, non-avoidable and not subject to challenge, dispute or subordination (subject to the priorities set forth in this Seventh Interim Order), at the time and on the date of entry of this Seventh Interim Order or thereafter. Upon the reasonable request of any of the Prepetition ABL Secured Parties, the Prepetition ABL Secured Parties and the Debtors, without any further consent of any party, are authorized to take, execute, deliver and file such instruments (in each case, without representation or warranty of any kind) to enable the Prepetition ABL Secured Parties to further validate, perfect, preserve and enforce the ABL Adequate Protection Liens. All such documents will be deemed to have been recorded and filed as of the Petition Date.

- b. A certified copy of this Seventh Interim Order (or the notice of the filing hereof) may, in the discretion of the Prepetition ABL Secured Parties, be filed with or recorded in filing or recording offices in addition to or *in lieu* of such financing statements, mortgages, deeds of trust, notices of lien or similar instruments, and all filing offices are hereby authorized to accept such certified copy of this Seventh Interim Order or notice for filing and/or recording, as applicable. The automatic stay of section 362(a) of the Bankruptcy Code shall be, and hereby is deemed, modified to the extent necessary to permit the Prepetition ABL Secured Parties to take all actions, as applicable, referenced in this paragraph 31(a) and 31(b).

33. *Effect of Stipulations on Third Parties.* Each of the Debtors' Stipulations and each of the Debtors' other admissions, agreements and releases contained in this Seventh Interim Order, including, without limitation, in paragraph 4 of this Seventh Interim Order, shall be binding upon the Debtors and all other parties in interest, including, without limitation, any statutory or non-statutory committees appointed or formed in these Chapter 11 Cases (including a Creditors' Committee, if any) and any other person or entity acting or seeking to act on behalf of the Debtors' estates, including any chapter 7 or chapter 11 trustee or examiner appointed or elected for any of the Debtors (a "Trustee"), in all circumstances and for all purposes unless: (a) any party in interest (including any Trustee) files a motion seeking standing (with a complaint attached thereto) to pursue an adversary proceeding or contested matter, as required under the Bankruptcy Rules (subject in either case to the limitations contained herein, including without limitation, in paragraph 34), challenging the validity, enforceability, priority, or extent of the Prepetition ABL Obligations, the liens on the Prepetition ABL Collateral securing the Prepetition ABL Obligations, the Prepetition GACP Obligations, the Prepetition CLMG Obligations, the CLMG Collateral, or otherwise asserting or prosecuting any estate claims, counterclaims or causes of action, objections, contests or defenses (collectively, the "Claims and Defenses") against the Prepetition ABL Agent, any of the other Prepetition ABL Secured Parties, the GACP Secured Parties, or the CLMG Secured Parties or their respective agents, affiliates, subsidiaries, directors, officers,

representatives, attorneys or advisors in connection with any matter related to the Prepetition ABL Obligations, the Prepetition ABL Collateral, the Prepetition GACP Obligations, the GACP Collateral, the Prepetition CLMG Obligations, or the CLMG Collateral (as applicable) by no later than the date that is the earlier of (i) the date that is seventy-five (75) days after the date of entry of the Second Interim Order (i.e., October 19, 2020) (the “Challenge Deadline”), (ii) the effective date of a confirmed chapter 11 plan, or (iii) any such later date as has been ordered by the Court for cause upon a motion filed and served prior to the expiration of the deadline to commence a challenge (such time period, the “Challenge Period”), and (b) an order is entered by a court of competent jurisdiction and becomes final and non-appealable in favor of the plaintiff sustaining any such challenge or claim in any such duly filed adversary proceeding or contested matter; provided that, as to the Debtors, all such Claims and Defenses are hereby irrevocably waived and relinquished as of the Petition Date. If no such motion seeking standing to pursue an adversary proceeding or contested matter is timely filed prior to the expiration of the Challenge Period, without further order of this Court: (x) the Prepetition ABL Obligations, Prepetition CLMG Obligations, and the Prepetition GACP Obligations shall constitute allowed claims, not subject to counterclaim, setoff, subordination, recharacterization, defense or avoidance, for all purposes in the Chapter 11 Cases and any Successor Case; (y) the Prepetition ABL Agent’s liens on the Prepetition ABL Collateral, CLMG’s liens on the CLMG Collateral, and GACP’s liens on the GACP Collateral shall be deemed to have been, as of the Petition Date, and to be, legal, valid, binding, perfected and of the priority specified in paragraph 4(d), not subject to defense, counterclaim, recharacterization, subordination or avoidance in the Chapter 11 Cases or any Successor Case; and (z) the Prepetition ABL Obligations, the Prepetition ABL Agent’s liens on the Prepetition ABL Collateral, the other Prepetition ABL Secured Parties (and their respective

agents, affiliates, subsidiaries, directors, officers, representatives, attorneys, or advisors); the Prepetition CLMG Obligations, CLMG's liens on the CLMG Collateral, and the other CLMG Secured Parties (and their respective agents, affiliates, subsidiaries, directors, officers, representatives, attorneys, or advisors); and the Prepetition GACP Obligations, GACP's liens on the GACP Collateral, and the other GACP Secured Parties (and their respective agents, affiliates, subsidiaries, directors, officers, representatives, attorneys, or advisors), shall not be subject to any other or further challenge by any party in interest, and any such party in interest shall be enjoined from seeking to exercise the rights of the Debtors' estates, including without limitation, any successor thereto (including, without limitation, any estate representative or a Trustee, whether such Trustee is appointed or elected prior to or following the expiration of the Challenge Period). If any motion seeking standing (with a complaint attached thereto) to pursue such adversary proceeding or contested matter is timely filed prior to the expiration of the Challenge Period, the stipulations and admissions contained in this Seventh Interim Order, including without limitation, in paragraph 4 of this Seventh Interim Order, shall nonetheless remain binding and preclusive (as provided in the second sentence of this paragraph) on any person, including any Trustee, except as to any such findings and admissions that were expressly and successfully challenged in such adversary proceeding or contested matter. Nothing in this Seventh Interim Order vests or confers on any person, including a Trustee, standing or authority to pursue any cause of action belonging to the Debtors or their estates. In the event that there is a timely successful challenge brought pursuant to this paragraph 33, the Court shall retain jurisdiction to fashion an appropriate remedy.

34. *Limitation on Use of Collateral.* Subject to the Carve Out, notwithstanding anything herein or in any other order by this Court to the contrary, no Cash Collateral, Prepetition ABL Collateral, proceeds, products, or offspring of any of the foregoing or any portion of the

Carve Out may be used to (except to the extent otherwise expressly agreed in writing by the Prepetition ABL Agent in response to a written request from the Debtors specifying the proposed use) pay any claims for services rendered by any of the professionals retained by the Debtors, any creditor or party in interest, any committee (including any Creditors' Committee), any Trustee, or any other person, party, or entity (or to pay any professional fees and disbursements in connection therewith) to: (a) apply to the Court for authority to approve superpriority claims or grant liens or security interests in the Prepetition ABL Collateral and Cash Collateral, or any portion thereof that are senior to, or on parity with, the Prepetition ABL Liens, unless the Prepetition ABL Obligations, and claims granted to the Prepetition ABL Secured Parties under this Seventh Interim Order, as applicable, have been Paid in Full or otherwise agreed to in writing by the Prepetition ABL Secured Parties; (b) prevent, hinder or otherwise delay the Prepetition ABL Secured Parties' assertion, enforcement or realization on the Prepetition ABL Collateral, including Cash Collateral, and liens, claims and rights granted to the Prepetition ABL Secured Parties under this Seventh Interim Order, in accordance with the Prepetition ABL Loan Documents or this Seventh Interim Order; (c) seek to modify any of the rights and remedies granted to the Prepetition ABL Secured Parties under this Seventh Interim Order or the Prepetition ABL Loan Documents; (e) pay any amount on account of any claims arising prior to the Petition Date unless such payments are provided for in the Budget and approved by an order of this Court that is in form and substance reasonably satisfactory to the Prepetition ABL Agent; (f) subject to paragraph 33, investigate, assert, join, commence, support or prosecute any action or claim, counter-claim, action, proceeding, application, motion, objection, defense, or other contested matter seeking any order, judgment, determination or similar relief against the Prepetition ABL Secured Parties or their respective officers, directors, employees, agents, attorneys, affiliates, assigns, or successors, with respect to any transaction, occurrence,

omission, or action, including, without limitation, (i) any avoidance actions or other actions arising under chapter 5 of the Bankruptcy Code, (ii) any action relating to any act, omission, or aspect of the relationship between the Prepetition ABL Secured Parties, on the one hand, and the Debtors or any of their affiliates, on the other, (iii) any action with respect to the validity and extent of the Prepetition ABL Obligations, or the validity, extent, and priority of the Prepetition ABL Liens or the Adequate Protection Liens, (iv) any action seeking to invalidate, set aside, avoid or subordinate, in whole or in part, the Prepetition ABL Liens or the Adequate Protection Liens granted under this Order, (v) except to contest the occurrence of a Termination Event as permitted in paragraph 19, any action that has the effect of preventing, hindering or delaying (whether directly or indirectly) the Prepetition ABL Secured Parties in respect of their liens and security interests in the Cash Collateral or the Prepetition ABL Collateral, (vi) pay any fees or similar amounts to any person to purchase the Prepetition ABL Secured Parties' interests in any of the Debtors' assets without the prior written consent of the Prepetition ABL Secured Parties, unless such person consummates or otherwise closes the purchase of the Prepetition ABL Secured Parties' interests in any of the Debtors' assets, or (vii) use or seek to use Cash Collateral unless otherwise permitted hereby, without the prior written consent of the Prepetition ABL Secured Parties; or (g) for objecting to, contesting, delaying, preventing, hindering or otherwise interfering in any way with the exercise of rights or remedies by the Prepetition ABL Secured Parties with respect to any Prepetition ABL Collateral, including Cash Collateral, after the occurrence of an Termination Event, except as otherwise permitted hereby; provided that, notwithstanding anything to the contrary in this paragraph, the Creditors' Committee may use Cash Collateral, including the Prepetition ABL Collateral, solely to investigate, but not to prepare, initiate, litigate, prosecute, object to, or otherwise challenge (i) the claims and liens of the Prepetition Secured Parties and

(ii) potential claims, counterclaims, causes of action, or defenses, including the Claims and Defenses, against the Prepetition Secured Parties; provided further that no more than an aggregate of \$75,000 of the Cash Collateral constituting Prepetition ABL Collateral, and the proceeds thereof, may be used by the Creditors' Committee with respect to the investigation of the ABL Stipulations as set forth in the preceding proviso (the "Investigation Budget").

35. *Release.* The release, discharge, waivers, settlements, compromises, and agreements set forth in this paragraph shall be deemed effective upon entry of this Seventh Interim Order and subject only to the challenge rights set forth in paragraph 33 above. The Debtors forever and irrevocably: (a) release, discharge, and acquit the Prepetition ABL Secured Parties and their affiliates and each of their and their affiliates' respective former, current or future officers, employees, directors, agents, representatives, owners, members, partners, financial advisors, legal advisors, shareholders, managers, consultants, accountants, attorneys, and predecessors in interest (each, a "Prepetition Releasee") of and from any and all claims, demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness, and obligations, of every type arising prior to the Petition Date, including, without limitation, any claims arising from any actions relating to any aspect of the relationship between the Prepetition ABL Secured Parties and the Debtors and their affiliates including any equitable subordination claims or defenses, with respect to or relating to the Prepetition ABL Obligations, the Prepetition ABL Liens, the Prepetition ABL Loan Documents, the Debtors' attempts to restructure the Prepetition ABL Obligations, any and all claims and causes of action arising under title 11 of the United States Code or any other applicable law, and any and all claims regarding the validity, priority, perfection or avoidability of the liens or secured claims of the Prepetition ABL Secured Parties, in respect of events that occurred on or prior to the date hereof; and (b) waive any and all defenses (including, without

limitation, offsets and counterclaims of any nature or kind) as to the validity, perfection, priority, enforceability and non-avoidability of the Prepetition ABL Obligations, the Prepetition ABL Liens. Nothing in this Seventh Interim Order shall release any claims against a Prepetition Releasee that a court of competent jurisdiction determines, pursuant to a final, non-appealable order, results primarily from the actual fraud, gross negligence, or willful misconduct of such Prepetition Releasee.

36. *Prohibition on Granting of Additional Liens and Interests, Use of Prepetition ABL Collateral.* No liens, claims, interests or priority status, other than the Carve Out and the Permitted Encumbrances, having a lien or administrative priority superior to or *pari passu* with that of the Adequate Protection Superpriority Claim, the Prepetition ABL Liens, or the Adequate Protection Liens shall be granted while any portion of the Prepetition ABL Obligations remain outstanding, or any commitment under the Prepetition ABL Loan Documents remains in effect, without the prior written consent of the Prepetition ABL Secured Parties. Nothing in this Seventh Interim Order shall authorize, other than in the ordinary course of the Debtors' business, the sale, transfer, lease, encumbrance, or other disposition of any assets that constitute Prepetition ABL Collateral, CLMG Collateral, or GACP Collateral of the Debtors or their estates without the prior written consent of the Prepetition ABL Secured Parties, CLMG Secured Parties, or GACP Secured Parties, as applicable (and no such consent or direction shall be implied from any other action, inaction, or acquiescence by any Prepetition ABL Secured Party or any order of this Court), except as permitted in the Prepetition ABL Loan Documents, the CLMG Term Loan Agreement, the GACP Term Loan Agreement, and this Seventh Interim Order, and approved by the Court to the extent required under applicable bankruptcy law; provided that a Termination Event shall not be deemed to occur if the Debtors seek approval of debtor in possession financing, including, without

limitation, debtor in possession financing which primes existing liens, to the extent (i) such debtor in possession financing provides for Payment in Full of the Prepetition ABL Obligations, and Adequate Protection Obligations or (ii) the Prepetition ABL Agent provides prior written consent, which consent is approved or unopposed by the Required Lenders, for financing that does not provide for Payment in Full of the Prepetition ABL Obligations and Adequate Protection Obligations.

37. *No Impairment of CLMG Collateral.* Unless otherwise provided in this Seventh Interim Order, nothing shall authorize the Debtors, the Prepetition ABL Lenders, or any other party in interest to take any action to impair, interfere with, or otherwise adversely impact, (i) the liens and security interests granted to the CLMG Secured Parties or (ii) the CLMG Collateral.

38. *No Impairment of GACP Collateral.* Unless otherwise provided in this Seventh Interim Order, nothing shall authorize the Debtors, the Prepetition ABL Lenders, or any other party in interest to take any action to impair, interfere with, or otherwise adversely impact, (i) the liens and security interests granted to the GACP Secured Parties or (ii) the GACP Collateral.

39. *Binding Effect of Seventh Interim Order.* Subject to paragraph 33, immediately upon entry by this Court (notwithstanding any applicable law or rule to the contrary), regardless of whether specifically articulated in each term and provision of this Seventh Interim Order, the terms and provisions of this Seventh Interim Order, including all findings herein, shall be binding upon all parties in interest in these Chapter 11 Cases, including, without limitation, the Debtors, the Prepetition ABL Secured Parties, all other creditors of the Debtors, any Creditors' Committee, and each of their respective successors and assigns (including, without limitation, any trustee, examiner with expanded powers, responsible officer, estate administrator or representative, or similar person appointed in a case for any Debtor under any chapter of the Bankruptcy Code) and

shall inure to the benefit of the Debtors, the GACP Secured Parties, CLMG Secured Parties, the Prepetition ABL Secured Parties, and their respective successors and assigns.

40. *Survival.* The provisions of this Seventh Interim Order and any actions taken pursuant hereto shall survive entry of any order (a) confirming any chapter 11 plan in any of these Chapter 11 Cases; (b) converting any of these cases to a case under chapter 7 of the Bankruptcy Code; (c) dismissing any of these cases or any Successor Case; or (d) pursuant to which this Court abstains from hearing any of the cases or any Successor Case. Notwithstanding the entry of any such order, the terms and provisions of this Seventh Interim Order, including the claims, liens, security interests and other protections granted to the Prepetition ABL Secured Parties pursuant to this Seventh Interim Order, shall continue in these cases, in any Successor Case, or following dismissal of these cases or any Successor Case, and shall maintain their priority as provided by this Seventh Interim Order and not be modified, altered or impaired in any way, whether by act or omission, until all of the Prepetition ABL Obligations and Adequate Protection Obligations have been Paid in Full, notwithstanding the occurrence of a Termination Event or any earlier termination of the Debtors' authorization to use the Prepetition ABL Collateral, including Cash Collateral.

41. *Limitation of Liability.* Subject to entry of the Seventh Interim Order, and solely in the Prepetition ABL Secured Parties' capacity as a lender under the Prepetition ABL Loan Documents, in determining to permit the use of Cash Collateral, making and administering the loans and financial accommodations extended under the Prepetition ABL Loan Documents, extending other financial accommodations to the Debtors under this Seventh Interim Order and the Prepetition ABL Loan Documents, or in exercising any rights or remedies as and when permitted pursuant to this Seventh Interim Order or the Prepetition ABL Loan Documents, as applicable, the Prepetition ABL Secured Parties (in their capacity as such) or any successor of any

of the foregoing shall not (a) be deemed to be in “control” of the operations of the Debtors or any of their affiliates; (b) owe any fiduciary duty to the Debtors, their respective creditors, shareholders or estates; and (c) be deemed to be acting as a “Responsible Person” or “Owner” or “Operator” with respect to the operation or management of the Debtors or any of their affiliates (as such terms or similar terms are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 29 U.S.C. §§ 9601, *et seq.*, as amended, or any similar federal or state statute). Furthermore, nothing in this Seventh Interim Order or the Prepetition ABL Loan Documents or any other documents related thereto shall in any way be construed or interpreted to impose or allow the imposition upon the Prepetition ABL Secured Parties, or any successor of any of the foregoing, of any liability for any claims arising from the prepetition or postpetition activities of the Debtors or any of their subsidiaries affiliates in the operation of their businesses or in connection with their restructuring efforts.

42. *No Waiver.* Other than as provided in this Seventh Interim Order, nothing in this Seventh Interim Order shall be construed in any way as a waiver or relinquishment of any rights that the Debtors or the Prepetition ABL Secured Parties may have to bring or be heard on any matter brought before this Court.

43. *Effectiveness.* This Seventh Interim Order shall constitute findings of fact and conclusions of law and shall take effect and be fully enforceable, *nunc pro tunc* to the Petition Date, immediately upon entry hereof. Notwithstanding any Bankruptcy Rule, any Bankruptcy Local Rule, any Federal Rule of Civil Procedure, or other applicable law, this Seventh Interim Order shall be immediately effective and enforceable upon its entry and there shall be no stay of execution or effectiveness of this Seventh Interim Order.

44. *Proofs of Claim.* Neither the Prepetition ABL Agent, the Prepetition ABL Lenders, the CLMG Secured Parties, nor the GACP Secured Parties, shall be required to file proofs of claim in any of the Debtors' Chapter 11 Cases or a Successor Case for any claim allowed herein. The Debtors' Stipulations shall be deemed to constitute a timely filed proof of claim for the Prepetition ABL Agent and the Prepetition ABL Lenders, the CLMG Secured Parties, the GACP Secured Parties upon approval of this Seventh Interim Order, and the Prepetition ABL Agent, the Prepetition ABL Lenders, the CLMG Secured Parties, and the GACP Secured Parties shall be treated under section 502(a) of the Bankruptcy Code as if they filed a proof of claim. Notwithstanding any order entered by the Court in relation to the establishment of a bar date in any of the Debtors' Chapter 11 Cases or a Successor Case to the contrary, the Prepetition ABL Agent, the Prepetition ABL Lenders, the CLMG Secured Parties, and the GACP Secured Parties are hereby authorized and entitled, in their sole discretion, but not required, to file (and amend and/or supplement, as they see fit) a master proof of claim and/or aggregate proofs of claim in each of these Chapter 11 Cases or a Successor Case for any claim allowed herein.

45. *No Third Party Rights.* Except as explicitly provided for herein, this Seventh Interim Order does not create any rights for the benefit of any party, creditor, equity holder, other entity or any direct, indirect or incidental beneficiary other than (a) the Prepetition ABL Secured Parties and their respective Representatives, (b) the Debtors, (c) the CLMG Secured Parties and their Representatives, (d) the GACP Secured Parties and their Representatives, and (e) the respective successors and assigns of each of the foregoing.

46. *Headings.* Section headings used herein are for convenience only and are not to affect the construction of or to be taken into consideration in interpreting this Seventh Interim Order.

47. *Rights Reserved.* Notwithstanding anything herein to the contrary, the entry of this Seventh Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly (a) the Prepetition ABL Secured Parties' rights to pursue any and all rights and remedies under the Bankruptcy Code, the Prepetition ABL Loan Documents or any other applicable agreement or law, or seek any other or supplemental relief in respect of the Debtors, including the right to seek new, different or additional adequate protection, as applicable, or the Debtors' or any other party in interest's rights to oppose such relief, or (b) any of the rights and remedies of the Debtors, the Prepetition ABL Secured Parties, or any other party in interest under the Prepetition ABL Loan Documents or other applicable agreement, the Bankruptcy Code or applicable nonbankruptcy law.

48. *CLMG Rights Reserved.* Notwithstanding anything herein to the contrary, the entry of this Seventh Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly (a) the CLMG Secured Parties' rights to pursue any and all rights and remedies under the Bankruptcy Code, the CLMG Term Loan Agreement or any other applicable agreement or law, or seek any other or supplemental relief in respect of the Debtors, including the right to seek new, different or additional adequate protection, as applicable, or the Debtors' or any other party in interest's rights to oppose such relief, or (b) any of the rights and remedies of the Debtors, the CLMG Secured Parties, or any other party in interest under the CLMG Term Loan Agreement or other applicable agreement, the Bankruptcy Code or applicable nonbankruptcy law.

49. *GACP Rights Reserved.* Notwithstanding anything herein to the contrary, the entry of this Seventh Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly (a) the GACP Secured Parties' rights to pursue any and all rights and remedies under the Bankruptcy Code, the GACP Term Loan Agreement or any other applicable agreement or law,

or seek any other or supplemental relief in respect of the Debtors, including the right to seek new, different or additional adequate protection, as applicable, or the Debtors', the Committee's, or any other party in interest's rights to oppose such relief, or (b) any of the rights and remedies of the Debtors, the GACP Secured Parties, the Committee, or any other party in interest under the GACP Term Loan Agreement or other applicable agreement, the Bankruptcy Code or applicable nonbankruptcy law. Furthermore, notwithstanding anything herein to the contrary, nothing contained in this Seventh Interim Order shall constitute nor be construed as the GACP Secured Parties' consent to, nor this Court's approval of, any surcharge of the GACP Collateral or the Debtors' sale of any of the GACP Collateral or the Debtors' use of the proceeds thereof and all of the GACP Secured Parties' rights and defenses with respect to any proposed surcharge of, or 552(b) claim against, the GACP Secured Parties or the GACP Collateral (including, without limitation, that any such amounts should instead have been sought from or charged to the Prepetition ABL Secured Parties or the Prepetition ABL Collateral) are hereby expressly preserved.

50. *Creditors' Committee Rights Reserved.* Notwithstanding anything herein to the contrary, the entry of this Seventh Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly (a) the Creditors' Committee's rights to pursue any and all rights and remedies under the Bankruptcy Code or any other applicable law, or seek any other or supplemental relief in respect of the Debtors, the GACP Secured Parties, the CLMG Secured Parties, as applicable, or the Debtors', the GACP Secured Parties', the CLMG Secured Parties', or any other party in interest's rights to oppose such relief, or (b) any of the rights and remedies of the Debtors, the Creditors' Committee, or any other party in interest under the Bankruptcy Code or applicable nonbankruptcy law.

51. *Bankruptcy Rules.* The requirements of Bankruptcy Rules 4001, 6003, and 6004, in each case to the extent applicable, are satisfied by the contents of the Motion.

52. *Necessary Action.* The Debtors are authorized to take all such actions as are necessary or appropriate to implement the terms of this Seventh Interim Order.

53. *Retention of Jurisdiction.* The Court shall retain jurisdiction to enforce the provisions of this Seventh Interim Order, and this Court shall retain jurisdiction over all matters pertaining to the implementation, interpretation and enforcement of this Seventh Interim Order, including following confirmation and consummation of any chapter 11 plan for any one or more of the Debtors.

54. *Interpretation.* To the extent of any inconsistency between the Motion, the terms of the First Interim Order, the terms of the First Supplemental Interim Order, and the terms of this Seventh Interim Order, the terms of this Seventh Interim Order shall control.

55. *Tax Liens.* Notwithstanding any other provisions included in the Seventh Interim Order, or any agreements approved hereby, any statutory liens (collectively, the “Tax Liens”), of the Taxing Authorities³ shall not be primed by nor made subordinate to any liens granted to any party hereby to the extent such Tax Liens are valid, senior, perfected, and unavoidable, and all parties’ rights to object to the priority, validity, amount, and extent of the claims and liens asserted by the Taxing Authorities are fully preserved. Nothing herein shall alter the rights of the Taxing Authorities in regards to distribution of proceeds from the sale of the Debtors’ tangible personal property or modify the orders entered by the court at Docket No. 452, Docket No. 462, or any

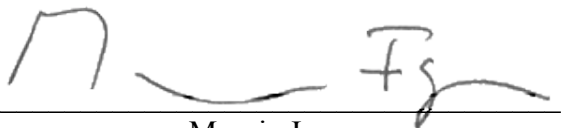
³ “Taxing Authorities” means collectively, Bexar County, Dallas County, Ector CAD, Fort Bend County, Harris County, Hood CAD, Liberty County, Victoria County, Brazos County, Medina County, and Erath County.

other order entered whereby a segregated account has been established as adequate protection for the Taxing Authorities' claims.

56. *Work-in-Process.* Notwithstanding anything to the contrary contained in this Seventh Interim Order, amounts payable to employees, materialmen, suppliers, workers, and others for postpetition goods and services on works-in-process as of August 3, 2020, shall be paid out of the proceeds of postpetition earned receivables prior to the rights of any other party.

57. *Final Hearing.* The Final Hearing on the Motion shall be held on October 15, 2020, at 2:00 p.m., prevailing Central Time.

Signed: October 09, 2020



Marvin Isgur
United States Bankruptcy Judge

Exhibit 1

Budget

BJS - Cash Collateral Budget - Daily

Prepared 10/7/2020

(\$ in millions)

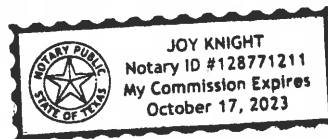
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EXHIBIT 6

THIS IS **EXHIBIT "6"** REFERRED TO IN THE
AFFIDAVIT OF ANTHONY C. SCHNUR
SWORN BEFORE ME THIS 9th DAY OF OCTOBER, 2020



A NOTARY PUBLIC
IN AND FOR THE STATE OF TEXAS



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

In re:

BJ Services, LLC, *et al.*¹

Debtors.

Chapter 11

Case No. 20-33627 (MI)
(Jointly Administered)

**EMERGENCY MOTION OF DONLEN FLEET LEASING AND DONLEN
CORPORATION FOR RELIEF FROM AUTOMATIC STAY**

THIS IS A MOTION FOR RELIEF FROM THE AUTOMATIC STAY. IF IT IS GRANTED, THE MOVANT MAY ACT OUTSIDE OF THE BANKRUPTCY PROCESS. IF YOU DO NOT WANT THE STAY LIFTED, IMMEDIATELY CONTACT THE MOVING PARTY TO SETTLE. IF YOU CANNOT SETTLE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY BEFORE THE HEARING. IF YOU CANNOT SETTLE, YOU MUST ATTEND THE HEARING. EVIDENCE MAY BE OFFERED AT THE HEARING AND THE COURT MAY RULE.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.

EMERGENCY RELIEF HAS BEEN REQUESTED. A HEARING IS REQUESTED ON THIS MATTER ON OCTOBER 2, 2020, AT 9:00 A.M. (CENTRAL TIME) IN COURTROOM 404, 4TH FLOOR, 515 RUSK STREET, HOUSTON, TEXAS 77002. YOU MAY PARTICIPATE IN THE HEARING EITHER IN PERSON OR BY AUDIO/VIDEO CONNECTION.

EMERGENCY RELIEF HAS BEEN REQUESTED. IF THE COURT CONSIDERS THE MOTION ON AN EMERGENCY BASIS, THEN YOU WILL HAVE LESS THAN 21 DAYS TO ANSWER. IF YOU OBJECT TO THE REQUESTED RELIEF OR IF YOU BELIEVE THAT THE EMERGENCY CONSIDERATION IS NOT WARRANTED, YOU SHOULD FILE AN IMMEDIATE RESPONSE

Donlen Fleet Leasing (“DFL”) and Donlen Corporation (“DC”) (DFL is a wholly owned subsidiary of DC and DC is the servicer on behalf of DFL. DC and DFL hereinafter, as the context may require, shall be referred to as “Donlen”), by and through their undersigned counsel,

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: BJ Services, LLC (3543); BJ Management Services, L.P. (8396); BJ Services Holdings Canada, ULC (6181); and BJ Services Management Holdings Corporation (0481). The Debtors other than BJ Services, LC are referred to collectively as the “Related Debtors”). The Debtor’s service address is: 11211 Farm to Market 2920 Road, Tomball, Texas 77375

respectfully submit this motion (the “Motion”) for relief from the automatic stay for authority to enforce Donlen’s rights and remedies under (i) that certain Master Motor Vehicle Lease dated June 30, 2017 (the “CAN Lease”) between debtor BJ Services Holdings Canada, ULC (the “Debtor” or “BJ CAN”) and DFL; and (ii) that certain Master Services Agreement dated June 30, 2017 between the Debtor and DFL, (the “CAN MSA” and, collectively with the CAN Lease and the US Donlen Agreements defined herein, the “Donlen Agreements”) which rights and remedies include, but are not limited to, termination of said agreements.

I. PRELIMINARY STATEMENT

1. Pursuant to the CAN Lease (attached as **Exhibit “A”** to the Certification of J.P. Machuta (the “Machuta Certif.” filed in conjunction herewith) BJ CAN is authorized to possess and have quiet enjoyment of certain automotive vehicles owned by Donlen (the “Leased Vehicles”) which Leased Vehicles are set forth at **Exhibit “B”** to the Machuta Certification. Pursuant to the CAN MSA (attached as **Exhibit “C”** to the Machuta Certif.) Donlen provides certain administrative services in connection with the Leased Vehicles (as well as certain vehicles owned by BJ Services (or its affiliates)) (the “Owned Vehicles”) including the facilitation with third party providers of other automotive related services incident to the Leased Vehicles and Owned Vehicles such as automotive maintenance and fuel purchasing privileges.

2. Donlen notes that Related Debtor BJ Services LLC is in post-petition default of its obligations to Donlen and/or its affiliates pursuant to a separate Master Motor Vehicle Lease and a separate Master Services Agreement.² The post-petition defaults of BJ Services LLC are set forth, *inter alia*, in the Motion for Relief from the Automatic Stay filed by Donlen Corporation and Donlen Trust in these jointly administered proceedings [Docket No. 723]. BJ

² Specifically (i) that certain Master Motor Vehicle Lease dated April 27, 2017 (the “BJ US Lease”) and (ii) that certain Master Services Agreement dated February 27, 2017 (the “BJ US MSA” and together with the BJ US Lease, the “US Donlen Agreements”).

CAN is in default of the CAN LEASE and the CAN MSA, *inter alia*, by virtue of the BJ Services defaults pursuant to certain cross-default provisions set forth in the CAN LEASE and the CAN MSA.

3. Despite its default(s) the Debtor continues to enjoy uninterrupted use of the Leased Vehicles in the post-petition period.

4. Additionally, the Related Debtors herein have already sought and received Bankruptcy Court approval for the sale of various sub-groupings of its assets and going-concern operations. These sales, and the proposed joint Combined Disclosure Statement and Plan of Reorganization filed by the Debtors in this case (the “Joint Plan”) [Docket No. 595] plainly establish that the Debtors are in liquidation mode and will not be conducting operations of any consequence post-confirmation. Additionally, going forward, the Debtor is unable to assume the Donlen Agreements because the lack of continuing operations precludes any showing that the Debtor can establish adequate assurances of future performance as required under 11 U.S.C. 365(b)(1).

5. In terms of potential assumption and assignment, the Leased Vehicles are spread between the various business units of the Debtor and the Related Debtors, the going-concern operations of which, according to Joint Plan, already have been sold to various and separate third parties. In the first place, Donlen has significant concerns as to the whereabouts and status of the Leased Vehicles during the sale transition period as only the Debtor and/or its affiliates are authorized to possess and use the Leased Vehicles. Additionally, however, there is only one CAN Lease and there is only one CAN MSA. While the Debtor has approached Donlen about assigning different subsets of its fleet of Leased Vehicles to three (3) different purchasers, the baseline fact is that there is only one CAN Lease and there is only one CAN MSA. It is well

established that a debtor can only assume, or assume and assign, a lease or executory contract in its entirety and cannot sub-divide or parse out elements of same. Here, the Debtors cannot assign the CAN Lease or CAN MSA to multiple purchasers, nor can it subdivide or bifurcate the Donlen Agreements and effectuate multiple assignments to several parties of these solitary agreements. The Debtor has also raised the possibility of Donlen entering into new leases with these purchasers for certain subsets of the Leased Vehicles but there can be no new leases unless and until the Debtor's interest in the CAN Lease and the CAN MSA are resolved.

6. The Debtor's inability to assume, or assume and assign the CAN Lease and CAN MSA represents a valid and sufficient basis for granting Donlen relief from the automatic stay. Following stay relief and termination of the Debtor's rights under the CAN Lease and the CAN MSA, Donlen also seeks to ensure and, if necessary, compel the Debtor to satisfy its non-monetary post-termination obligations to identify, locate and surrender the Leased Vehicles to Donlen and/or to cooperate with Donlen in the identification, location and surrender of the Leased Vehicles to Donlen. If the Debtor fails to comply with such obligations, Donlen seeks authority to enforce its post-termination rights including repossession of the Leased Vehicles and to assert any costs incurred in connection therewith as an administrative expense of the estate under 11 U.S.C. §503(b).

7. Emergency relief is sought through this motion to timely address the issues set forth herein prior to the scheduled confirmation hearing on October 9, 2020. Failure to timely hear this motion may result in undue prejudice to Donlen as its rights may be adversely affected if the status of the CAN Lease and the CAN MSA are not determined prior to confirmation. As yet, the Debtor has not sought to assume the CAN Lease or CAN MSA and, as set forth herein, Donlen does not believe that it can assume the lease. Absent a pre-confirmation disposition, the

CAN Lease and CAN MSA will be deemed rejected under the proposed Plan and, at that time, Donlen would still have to file a motion for stay relief in order to terminate. Only then could Donlen begin to navigate the logistical minefield of recovering hundreds of vehicles from a non-operating, post confirmation Debtor that has sold a majority of its assets to various third parties, including going concern units that may be in possession of Donlen's vehicles. To the extent these purchasers are already in possession of and/or using the Leased Vehicles that would be yet another and incurable default under the Lease and basis for termination.

II. JURISDICTION

8. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334. Consideration of this Motion is a core proceeding under 28 U.S.C. §§ 157(b)(2).

9. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

10. The statutory bases for the relief requested herein are 11 U.S.C. § 362(d) and 28 U.S.C. § 959(b).

III. RELEVANT FACTS³

A. The CAN Lease and the CAN MSA

11. Pursuant to the terms of the CAN Lease, BJ CAN is authorized to have possession of quiet enjoyment of the Leased Vehicles, all of which are owned by Donlen and titled in the name of Donlen.

12. The CAN Lease requires the Debtor to pay Donlen for its use of the Leased Vehicles on a monthly basis. Specifically, Section 2(c) of the CAN Lease provides that "Lessor shall deliver monthly invoices to Lessee electronically, via FleetWeb®, or by other reasonable means, on or prior to the first day of the applicable month The monthly invoice for each month shall include all

³ Unless otherwise noted, factual support for the statements contained in this Motion is contained in the Machuta Certif., which is being filed contemporaneously with the Motion.

amounts due through and including the end of such month for each Vehicle for which the Rental Start Date has occurred lessee shall pay the monthly invoice for each month, in advance, on or prior to the 10th day of such month, by electronic transfer into the bank account specified by Lessor.”

13. The CAN Lease also provides at Section 3 that “[t]his Agreement is one of leasing only and Lessee shall not have or acquire any right, title or interest in or to any Vehicle except the right to use and operate it as provided herein. This Agreement is intended to be and shall be treated by the parties hereto as a true lease. Neither the Lessee nor any of its agents or employees is in any way the agent of Lessor in possessing, using or operating any Vehicle. Neither party is a partner or joint venturer of the other. This Agreement evidences a net lease and Lessee’s obligation to pay rent and all other amounts payable by Lessee hereunder is absolute, unconditional and irrevocable and shall be paid without abatement, reduction, set-off or defense of any kind.” Notably, the CAN Lease **does not** include any purchase option on behalf of the Debtor/lessee and further sets forth a maximum lease term for each Leased Vehicle.

14. The CAN Lease further provides at Section 8 that “Vehicles leased hereunder shall be used and operated solely by Lessee and its affiliates in their respective trades and businesses and not any other third party.”

15. The CAN MSA likewise requires the Debtor to pay Donlen for services rendered in connection with the Leased Vehicles on a monthly basis. Specifically, Section 4(b) of the CAN MSA provides that “[m]onthly invoices will be made available to Client electronically, via Fleet Web® or by other means reasonably selected by Donlen on or about the first day of each month and shall be net of any rebate due by Donlen to Client pursuant to subsection (d) of this Section. Invoices will reflect regular monthly fees due through the end of such month and other obligations

due through such date. Client will pay Donlen the amount set forth on each invoice on or before 10 days from invoice date, without any deduction or offset for any reason whatsoever, by electronic transfer into the bank account specified by Donlen.”

16. Section 9(a) of the CAN MSA further provides that “Donlen does not have a commitment to extend credit and may reduce or eliminate the credit line provided to ...[BJ CAN] hereunder (with respect to third party costs incurred or financed by Donlen hereunder on behalf of ...[BJ CAN]) at any time.”

B. The Debtor’s Breaches of the CAN Lease/CAN MSA and the Bankruptcy Filing.

17. On July 20, 2020, BJ CAN along with the Related Debtors, filed voluntary Chapter 11 bankruptcy proceedings with this Court (the “Petition Date”). BJ CAN has continued to operate post-petition as a debtor in possession and in full control of its business and assets. No trustee has been appointed in these jointly administered cases.

C. Donlen’s Termination Rights.

18. Pursuant to Section 16 of the CAN Lease

“[i]f (a) the Lessee shall fail to pay ... any rent or other obligation when due hereunder, or (b) Lessee shall otherwise fail to observe or perform any other covenant or obligation to be observed or performed by lessee hereunder, ...or (h) Lessee or any affiliate of Lessee shall be in default under the terms of any lease or other agreement entered into with Lessor, or any of its affiliates (the "Other Agreements") ...then the Lessee shall be in default hereunder..... At any time after on or after the occurrence of a default, Lessor may notify the Lessee that all of the rights of Lessee hereunder and with respect to the Vehicles shall forthwith terminate and all Vehicles leased hereunder shall forthwith be surrendered to the Lessor or Lessor may repossess said Vehicles... In addition, at any time on or after a default hereunder, the Lessor may retain all resale proceeds and payments of any nature...received by Lessor including any resale proceeds...otherwise payable to Lessee...

19. Accordingly, Section 16 of the CAN Lease provides that Donlen may terminate all

rights with respect to the Leased Vehicles, for reasons including the non-payment of rental charges and the unauthorized usage of Leased Vehicles and, in so doing, become entitled to immediate possession of the Leased Vehicles. Additionally, this Section also provides that, upon such termination, the Leased Vehicles must be surrendered to Donlen and that, failing such voluntary surrender, Donlen is authorized to repossess the Leased Vehicles.

20. Pursuant to Section 8 (c) of the CAN MSA

If (i) Client shall fail to pay (or have available for PAD, if applicable) any payment obligation when due hereunder ...or (vii) Client or any affiliate or Client shall be in default under the terms of any lease, maintenance, services, or other agreement entered into with Donlen, Donlen Trust, or any of their respective affiliates (the "Other Agreements") ... then the Client shall be in default hereunder. If there is a default hereunder by Client, Donlen, at its sole option, may suspend services under this Agreement, or immediately terminate this Agreement...

D. The Debtor's Sale of its Assets and Ultimate Liquidation

21. On July 21, 2020, the Related Debtors Filed a motion seeking, *inter alia*, approval of bidding procedures for a sale of their cementing business as a going concern through an auction pursuant to section 363 of the Bankruptcy Code [Docket No. 39]. On July 24, 2020, the Related Debtors Filed a motion likewise seeking, among other things, approval of an auction/sale process under Section 363 as to certain of their fracturing equipment and intellectual property [Docket No. 160]. The Bidding Procedures Motion as to the fracturing assets also sought approval of a stalking horse bidder for such assets.

22. On July 29, 2020, the Bankruptcy Court entered orders [Docket Nos. 223, 224] approving the proposed bidding and sale procedures relative to the assets sought to be sold by the Related Debtors, and further designating a stalking horse bid for the Fracturing Business.

23. The Related Debtors, together with their professionals, continued the marketing process for the cementing and fracturing businesses as well as other ancillary assets. Ultimately, the Related Debtors selected stalking horse bidders for the cementing business and for a portion of the hydraulic fracturing business, and entertained bids for the ancillary assets.

24. After considering options at the auction, the Related Debtors determined that the stalking horse bidders had submitted the highest and best offers for the cementing business and fracturing equipment and further determined that separate third party had made the highest and best offer for the sale of certain additional cementing equipment and shared lab equipment. *See* Notice of Winning Bidders [Docket No. 401].

25. The Bankruptcy Court conducted a hearing on the proposed sales on August 14, 2020, ultimately approving the proposed sales and entering Orders approving same (the “Sale Orders”) [Docket Nos. 431 (as amended at 440 and 493) 452, and 462].

26. Per the recitations in the Joint Plan, the Related Debtors consummated the cementing going-concern Sale Transaction on August 27, 2020, the fracturing going-concern sale on August 28, 2020, and the sale of shared lab equipment on August 28, 2020. *See* Joint Plan at Article I; Section H (6).

27. The Joint Plan described a liquidating plan of reorganization whereby the Debtors remaining assets would be sold off and/or administered by a Liquidating Trustee and where the post-confirmation Debtor will not have continuing operations of consequence. *See e.g.* Joint Plan Article V: Section C (“the Post-Effective Date Debtors and Liquidation Trustee (if applicable) will liquidate substantially all of the Debtors’ remaining assets.”)

IV. RELIEF REQUESTED

28. By this Motion, Donlen respectfully requests an order granting Donlen relief from

the automatic stay for authority to enforce Donlen's rights and remedies under the CAN Lease and CAN MSA, which rights and remedies include the termination of the Donlen Agreements and the Debtor's rights thereunder, and to compel the Debtor to satisfy its post-termination obligations to surrender the Leased Vehicles to Donlen.

V. ARGUMENT

POINT I

DONLEN IS ENTITLED TO STAY RELIEF BECAUSE THE DEBTOR CANNOT DEMONSTRATE THAT DONLEN IS ADEQUATELY PROTECTED

29. The filing of a bankruptcy petition operates as a stay of "any action to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate." 11 U.S.C. § 362(a)(3). However, "[t]he fact that the automatic stay suspends termination" of an agreement, does not prevent termination indefinitely. In re Tudor Motor Lodge Assocs., Ltd. P'ship, 102 B.R. 936, 951 (Bankr. D.N.J. 1989).

30. An interested party may be granted relief from the automatic stay for "cause":

On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay –

- (1) for cause, including the lack of adequate protection of an interest in property of such party in interest.

11 U.S.C. § 362(d)(1).

31. "Cause" sufficient to modify the automatic stay pursuant to §362 (d)(1) is not defined in the Bankruptcy Code or detailed in applicable legislative history. In re M.J.& K. Co., 161 B.R. 586, 590 (Bankr. S.D.N.Y. 1993). Thus, what constitutes "cause" for stay relief purposes ". . . is an intentionally broad and flexible concept which must, of necessity, be determined on a case by case analysis." In re Holly's Inc., 140 B.R. 643, 687 (Bankr. W.D. Mich. 1992).

32. The moving party has the burden to make an initial showing of "cause" for relief from the stay. See In re Sonnax Indus., Inc., 907 F.2d 1280, 1285 (2d Cir. 1990). "Once cause is shown to exist, the debtor must prove that it is entitled to the protections afforded by the stay." In re M.J.& K. Co., 161 B.R. at 590. Only where the movant fails to make an initial showing of cause, however, may the court deny relief without requiring any showing from the debtor that it is entitled to continued protection of the automatic stay. In re Sonnax Indus., Inc., 907 F.2d at 1285 (*quoting*, 11 U.S.C. § 362(g)(1)); see also 3 Collier on Bankruptcy ¶ 362.10 (16th ed. 2016) (moving party required to make a showing of cause under §362(d)(1), then burden of proof, *i.e.* risk of nonpersuasion, shifts to party opposing motion).

33. Donlen is able to satisfy the initial burden of showing "cause" for relief from the automatic stay in that the Debtor is in continuing material breach of its obligations under the CAN Lease and the CAN MSA, by failing to make the required post-petition payment(s) of the charges due thereunder.

34. As of September 18, 2020, Related Debtor BJ Services was in default of its post-petition obligations under the BJ US Lease and the BJ US MSA to Donlen and/or its affiliates in an amount of over \$786,000 in combined post-petition charges. This is in addition to a default of more than \$400,000 in pre-petition charges that were outstanding as of the Petition Date. By virtue of the cross-default provisions in the CAN Lease and the CAN MSA, BJ CAN is likewise in default under the CAN Lease and the CAN MSA.

35. A debtor's failure to make payments on post-petition monetary obligations has long been determined to satisfy the "for cause" standard under §362(d)(1). See In re Skipworth, 69 B.R. 526 (Bankr. E.D. Pa. 1987); see also In re Ocaisio, 97 B.R. 825 (Bankr. E.D. Pa. 1989) (the party moving for relief from the stay satisfies initial burden of production by introducing evidence of

debtor's continued failure to tender periodic payments on debt; burden then shifts to debtor to prove that adequate protection exists); In re Hinchliff, 164 B.R. 45, 48-49 (Bankr. E.D. Pa. 1994) (mortgagee met its initial burden of producing evidence that "cause" existed for lifting stay by introducing evidence of chapter 11 debtors' failure to make post-petition installment payments on mortgage debt; burden then shifted to debtors to establish that creditor was adequately protected).

36. BJ CAN is in possession of the Leased Vehicles that are owned by Donlen and continues to use those vehicles on a post-petition basis. BJ CAN's Related Debtor affiliate has amassed a post-petition delinquency of over \$786,000. Nothing in the Bankruptcy Code allows the Debtor to demand that Donlen continue to honor the CAN Lease and CAN MSA while it breaches its material payment obligations under those same agreements.

37. Likewise, nothing in the Bankruptcy Code requires Donlen to continue to extend credit to the Debtor post-petition. Donlen has thus far expended approximately \$400,000 of its own money in the post-petition period on account of services received by the Related Debtor BJ Services under the BJ US MSA. The automatic stay does not require Donlen to go deeper into its own pocket, nor does it prohibit Donlen from declining to extend credit to the Debtor on a going forward basis. Donlen has advised BJ Services that absent payment of the Post-Petition Indebtedness, there will be no further credit extended under the MSA effective as of close of business on Thursday, September 24, 2020. Additionally, out of an abundance of caution, Donlen has referenced the unavailability of going forward credit to the Debtor in this Motion, and determined to otherwise maintain the status quo pending the resolution of its Motion for relief from the automatic stay. *See Citizens Bank of Maryland v. Strumpf*, 516 U.S. 16 (1995).

POINT II

**DONLEN IS ALSO ENTITLED TO STAY RELIEF UNDER
11 U.S.C. §362(d)(1) BECAUSE THE DONLEN AGREEMENTS
CANNOT BE ASSUMED OR ASSIGNED**

A. The Debtor Cannot Provide Adequate Assurances of Future Performance as Required by the Bankruptcy Code.

38. The Bankruptcy Code provides that, subject to court approval, a debtor may assume or reject any executory contract or unexpired lease to which it is a party. 11 U.S.C. § 365(a). A bankruptcy court order is required in order for a debtor to assume an unexpired lease or executory contract. 11 U.S.C. §365(a).

39. There is no doubt that the CAN Lease is an unexpired lease and that the CAN MSA is an executory contract. A contract is executory if the parties' obligations under the contract "are so far unperformed that the failure of either to complete performance would constitute a material breach excusing the performance of the other." In re Pacific Express, Inc., 780 F.2d 1482, 1487 (9th Cir. 1986) (citing Countryman, Executory Contracts in Bankruptcy: Part I, 57 Min. L. Rud. 439, 460) (1973)). Here, both Donlen and the Debtor have continuing performance obligations under the CAN MSA. Donlen has a contractual obligation to provide administrative services incident to the Leased Vehicles and Owned Vehicles. The Debtor obligated to pay Donlen for the services provided and/or reimburse Donlen for payments made to third party providers for services facilitated by Donlen. Additionally, inasmuch as Section 8 (e) of the CAN MSA provides that it is an integrated agreement with the other Donlen Agreements (including the CAN Lease) the Debtor's obligations under the CAN Lease (e.g., the Debtor's obligation to maintain the Leased Vehicles in good repair) is likewise a continuing obligation of the Debtor under the CAN MSA.

40. The legislative history indicates that, in permitting assumption, bankruptcy courts must protect the non-debtor's bargain, including nonmonetary considerations, under all contracts. H.R. Rep. No. 595, 95th Cong. 1st Sess. 348 (1977), reprinted in 1978 U.S.C.C.A.N. 5963, 6034-6305; see also, In re Ionosphere Clubs, Inc., 85 F. 3d 992, 999 (2d Cir. 1996) (Congress' intent in imposing cure and adequate assurance conditions on ability of bankruptcy debtor to assume executory contract was to ensure that contracting parties receive full benefit of the bargain if they are forced to continue performance).

41. Where there has been a default in an executory contract, as there has been with the CAN Lease and the CAN MSA, a debtor must clear three (3) specific hurdles as a condition of assumption: That is

(b)(1) If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee --

(A) cures, or provides adequate assurance that the trustee will promptly cure, such default . . . ;

(B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and

(C) provides adequate assurance of future performance under such contract or lease.

11 U.S.C. §365(b)(1).

42. Compliance with each requirement is required before assumption can be approved. See In re Rachels Industries, Inc., 109 B.R. 797, 802 (Bankr. W.D. Tenn. 1990) (citations omitted).

43. In this case, the Debtor is incapable of satisfying the third prong, providing adequate assurance of future performance under the CAN Lease and CAN MSA as required under 11 U.S.C.

§365(b)(1). Specifically, as set forth in the Joint Plan, the Debtor already has sold almost all of its assets including its going-concern operations. The Plan further professes that any lingering assets will be disposed of and liquidated by the post-confirmation Debtor and/or a Liquidating Trustee. Without any continuing operations, there can be no future performance at all, let alone adequate assurances thereof. There are no operations so there is no one to drive and maintain the Leased Vehicles. There are no operations so there is no income to pay rental, maintenance and insurance for the Leased Vehicles. That being the case, the Debtor cannot satisfy the third prong of Section 365(b)(1) and therefore cannot assume the CAN Lease or the CAN MSA. Accordingly, Donlen is entitled to relief from the automatic stay.

B. The Debtor Cannot Modify or Bifurcate the CAN Lease or the CAN MSA or Otherwise Assume and Assign a Single Contract to Multiple Purchaser/Assignees

44. An executory contract may not be assumed in part and rejected in part. Century Indem. Co. v. Nat'l Gypsum Co. Settlement Trust (In re National Gypsum Co.), 208 F.3d 498, 506 (5th Cir. 2000) (citing COLLIER ON BANKRUPTCY § 365.03[1]). “Where the debtor assumes an executory contract, it must assume the entire contract, *cum onere*—the debtor accepts both the obligations and the benefits of the executory contract.” In re National Gypsum Co., 208 F.3d at 506 (citing NLRB v. Bildisco & Bildisco, 465 U.S. 513, 531, 104 S.Ct. 1188, 79 L.Ed.2d 482 (1984)). A debtor may not assume parts of a single, indivisible agreement while rejecting other parts. It must assume or reject an agreement *in toto*. Sharon Steel Corp. v. Nat'l Fuel Gas Distribution Corp., 872 F.2d 36, 40 (3d Cir. 1989); In re Teligent, Inc., 268 B.R. 723 (Bankr. S.D.N.Y. 2001); In re Buffets Holdings, Inc., 387 B.R. 115, 119 (Bankr. D. Del. 2008).

45. In this case, the Debtor is well into the liquidation process, having sold most of its assets and virtually all of its going concern operations. The Leased Vehicles themselves are tied to various business units or assets that the Debtor has already sold and there are substantial

issues as to the location and possession of the Leased Vehicles. The Debtor has further inquired about allowing each of the purchasers to retain the Leased Vehicles attributable to the assets and/or operations purchased by them. The problem is one single lease and one single services agreement cannot be assigned to multiple separate parties. The Bankruptcy Code does not allow a single indivisible lease or executory contract to be bifurcated, divided, cloned, or otherwise modified. It can only be assumed as is and *en toto*, and, of course, subject to the requirements of 11 U.S.C. 365(b)(1). Here, there is no single party to which the Donlen Agreements can be assigned. Accordingly, assumption and assignment is not a possibility and Donlen is entitled to stay relief.

POINT III

DONLEN IS ALSO ENTITLED TO STAY RELIEF UNDER 11 U.S.C. §362(d)(2)

46. Donlen is separately entitled to stay relief under 11 U.S.C. §362(d)(2). This portion of the statute provides that stay relief shall be granted if:

- (A) the debtor does not have an equity in such property; and
- (B) such property is not necessary to an effective reorganization.

11 U.S.C. §362(d)(2).

47. The "property" at interest is the CAN Lease and the CAN MSA and the Debtor does not have "an equity" in either the CAN Lease or the CAN MSA. Moreover, the Debtor cannot, as a matter of law, assume either of the Donlen Agreements because it cannot provide adequate assurance of future performance as required under 11 U.S.C. 365 (b)(1) nor can it divide, bifurcate or otherwise modify the Donlen Agreements so they can be assigned to multiple assignees. Since the Donlen Agreements cannot be assumed, or assumed and assigned, they are not necessary to an effective reorganization.

POINT IV

**THE "NON-MONETARY PROVISIONS" OF THE CAN LEASE, A ARE
ENFORCEABLE BY DONLEN AGAINST THE DEBTOR AND
THE DEBTOR SHOULD COMPLY WITH THESE PROVISIONS**

48. Once the Debtor's rights under the CAN Lease are terminated as a result of the Debtor's breach(es), the Debtor is required to satisfy certain "non-monetary" obligations. For instance, pursuant to Section 16 of the CAN Lease, upon termination of lease rights, the Debtor no longer has any right to possess or use the Leased Vehicles and is required to immediately surrender same to Donlen. What's more, if the Debtor fails to surrender the Leased Vehicles, Donlen is authorized to repossess same.

49. Donlen requests that any Order granting stay relief also compels BJ CAN to comply with the post-termination, non-monetary obligations imposed under the CAN Lease with respect to the Leased Vehicles. Numerous courts have held that a debtor's post-termination obligations under a lease remain valid and are enforceable after termination. Dunkin Donuts v. Martinez, No. 01-3589-Civ, 2003WL 685875, at *12-13 (S.D. Fla. Feb. 21, 2003); *see also* Thor 725 8th Ave. LLC v. Goontilleke, No. 14 Civ. 4968 (PAE), 2015 WL 8784211, at *6 (S.D.N.Y Dec. 15, 2015); A. LoPresti & Sons, Inc. v. Gen. Car & Truck Leasing Sys., Inc., 79 F. App'x 764 (6th Cir. 2003).

50. Donlen therefore seeks the entry of an order compelling the Debtor to satisfy its post-termination obligations. Additionally, Donlen requests that any Order entered by the Court provide that (i) to the extent that the Debtor might fail to comply with its non-monetary, post-termination obligations within a certain defined time frame, Donlen be authorized to repossess the Leased Vehicles and (ii) the Order be effective immediately so that the arrears can be contained and the Leased Vehicles can be returned to their lawful owner.

CONCLUSION

Donlen respectfully submits that ample grounds exist for relief from the automatic stay under 11 U.S.C. § 362(d)(1) and respectfully requests that stay relief be granted to it for the purposes of terminating the Debtor's rights under the CAN Lease and CAN MSA. Donlen further requests that any Order granting stay relief also compels the Debtor to satisfy its post-termination non-monetary obligations, and in the event that the Debtor fails to do so, Donlen seeks authorization to enforce its post-termination remedies including, but not limited to, its rights to repossess the Leased Vehicles as provided for in the CAN Lease, with a reservation of its rights to seek allowance of an administrative claim for the costs associated therewith under 11 U.S.C. 503(b), as well as a reservation of any other rights and/or remedies it may possess.

Dated: September 24, 2020

By: /s/ Artoush Varshosaz

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*Counsel to Donlen Trust, a Delaware Business
Trust and Donlen Corporation*

CERTIFICATE OF SERVICE

I certify that on September 24, 2020, a copy of this document was served by electronic service on all counsel of record via the Court's CM/ECF system.

/s/ Artoush Varshosaz
Artoush Varshosaz

CERTIFICATE OF CONFERENCE

I certify that on September 22, 2020, I conferred with counsel for the debtors regarding the relief sought in this motion and was informed that the debtors are opposed.

/s/ David S. Catuogno
David S. Catuogno

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

In re:

BJ Services, LLC, *et al.*¹

Debtors.

Chapter 11

Case No. 20-33627 (MI)
(Jointly Administered)

**CERTIFICATION OF JOSEPH MACHUTA IN SUPPORT OF
MOTION OF DONLEN CORPORATION AND DONLEN FLEET
LEASING FOR RELIEF FROM AUTOMATIC STAY**

Joseph Machuta, of full age, hereby certifies pursuant to Title 28 of the United States Code, Section 1746:

1. I am employed by Donlen Corporation (Donlen Corporation and Donlen Fleet Leasing Ltd., as the context may require, hereinafter shall be referred to as “Donlen” or the “Lessor”) holding the title of Vice-President, Credit Risk Management.

2. I make this Certification based on my personal knowledge, a review of the records of Donlen, and information available through employees of Donlen. I am authorized to submit this Certification in support Donlen’s Motion for Relief from the Automatic Stay pursuant to 11 U.S.C. §362(d).

3. DFL and debtor BJ Services Holdings Canada, ULC (the “Debtor” or “BJ CAN”) are parties to (i) that certain Master Motor Vehicle Lease dated June 30, 2017 (the “CAN Lease”);

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: BJ Services, LLC (3543); BJ Management Services, L.P. (8396); BJ Services Holdings Canada, ULC (6181); and BJ Services Management Holdings Corporation (0481). The Debtors other than BJ Services, LC are referred to collectively as the “Related Debtors”). The Debtor’s service address is: 11211 Farm to Market 2920 Road, Tomball, Texas 77375

and (ii) that certain Master Services Agreement dated June 30, 2017 (the “CAN MSA” and, collectively with the CAN Lease and the US Donlen Agreements defined herein, the “Donlen Agreements”) A copy of the CAN Lease is attached hereto as **Exhibit “A”**.

4. Pursuant to the CAN Lease BJ CAN is authorized to possess and have quiet enjoyment of certain automotive vehicles owned by Donlen (the “Leased Vehicles”) which Leased Vehicles are set forth on the Schedules attached as **Exhibit “B”** hereto.

5. Pursuant to the CAN MSA Donlen provides certain financial and administrative services in connection with the Leased Vehicles and certain other vehicles owned by BJ CAN (the “Owned Vehicles”) including the facilitation with third party providers of other automotive related services incident to the Leased Vehicles and Owned Vehicles such as automotive maintenance and fuel purchasing privileges. A copy of the CAN MSA is attached hereto as **Exhibit “C”**.

6. The CAN Lease requires the Debtor to pay Donlen for its use of the Leased Vehicles on a monthly basis. Specifically, Section 2(c) of the CAN Lease provides that “Lessor shall deliver monthly invoices to Lessee electronically, via FleetWeb®, or by other reasonable means, on or prior to the first day of the applicable month The monthly invoice for each month shall include all amounts due through and including the end of such month for each Vehicle for which the Rental Start Date has occurred lessee shall pay the monthly invoice for each month, in advance, on or prior to the 10th day or such month, by electronic transfer into the bank account specified by Lessor.”

7. The CAN Lease also provides at Section 3 that “[t]his Agreement is one of leasing only and Lessee shall not have or acquire any right, title or interest in or to any Vehicle except the right to use and operate it as provided herein. This Agreement is intended to be and shall be treated

by the parties hereto as a true lease....This Agreement evidences a net lease and Lessee's obligation to pay rent and all other amounts payable by Lessee hereunder is absolute, unconditional and irrevocable and shall be paid without abatement, reduction, set-off or defense of any kind." The Lease does not include any purchase option on behalf of the Debtor/lessee and further sets forth a maximum lease term for each Leased Vehicle.

8. The CAN Lease further provides at Section 8 that "[v]ehicles leased hereunder shall be used and operated solely by Lessee and its affiliates in their respective trades and businesses and not any other third party.

9. The CAN MSA likewise requires the Debtor to pay Donlen for services rendered in connection with the Leased Vehicles on a monthly basis. Specifically, Section 4(b) of the CAN MSA provides that "[m]onthly invoices will be made available to Client electronically, via Fleet Web® or by other means reasonably selected by Donlen on or about the first day of each month and shall be net of any rebate due by Donlen to Client pursuant to subsection (d) of this Section. Invoices will reflect regular monthly fees due through the end of such month and other obligations due through such date. Client will pay Donlen the amount set forth on each invoice on or before 10 days from invoice date, without any deduction or offset for any reason whatsoever, by electronic transfer into the bank account specified by Donlen."

10. Section 9(a) of the CAN MSA further provides that "Donlen does not have a commitment to extend credit and may reduce or eliminate the credit line provided to ...[BJ CAN] hereunder (with respect to third party costs incurred or financed by Donlen hereunder on behalf of ...[BJ CAN]) at any time."

11. On July 20, 2020, BJ CAN along with the Related Debtors, filed voluntary Chapter 11 bankruptcy proceedings with this Court (the "Petition Date"). BJ CAN has continued to operate

post-petition as a debtor in possession and in full control of its business and assets. No trustee has been appointed in these jointly administered cases.

12. Related Debtor BJ Services LLC is in post-petition default of its obligations to Donlen and/or its affiliates pursuant to a separate Master Motor Vehicle Lease and a separate Master Services Agreement.² The post-petition defaults of BJ Services LLC are set forth, *inter alia*, in the Motion for Relief from the Automatic Stay filed by Donlen Corporation and affiliate Donlen Trust in these jointly administered proceedings [Docket No. 723]. BJ CAN is in default of the CAN LEASE and the CAN MSA, *inter alia*, by virtue of the BJ Services defaults pursuant to certain cross-default provisions set forth in the CAN LEASE and the CAN MSA.

13. Pursuant to Section 16 of the CAN Lease

“[i]f (a) the Lessee shall fail to pay ... any rent or other obligation when due hereunder, or (b) Lessee shall otherwise fail to observe or perform any other covenant or obligation to be observed or performed by lessee hereunder ...or (h) Lessee or any affiliate of Lessee shall be in default under the terms of any lease or other agreement entered into with Lessor, or any of its affiliates (the "Other Agreements") ...then the Lessee shall be in default hereunder..... At any time after on or after the occurrence of a default, Lessor may notify the Lessee that all of the rights of Lessee hereunder and with respect to the Vehicles shall forthwith terminate and all Vehicles leased hereunder shall forthwith be surrendered to the Lessor or Lessor may repossess said Vehicles... In addition, at any time on or after a default hereunder, the Lessor may retain all resale proceeds and payments of any nature...received by Lessor including any resale proceeds...otherwise payable to Lessee...

14. Section 16 of the CAN Lease provides that Donlen may terminate all rights with respect to the Leased Vehicles, for reasons including the non-payment of rental charges and the unauthorized usage of Leased Vehicles and, in so doing, become entitled to immediate possession

² Specifically (i) that certain Master Motor Vehicle Lease dated April 27, 2017 (the “BJ US Lease”) and (ii) that certain Master Services Agreement dated February 27, 2017 (the “BJ US MSA” and together with the BJ US Lease, the “US Donlen Agreements”).

of the Leased Vehicles. Additionally, this Section also provides that, upon such termination, the Leased Vehicles must be surrendered to Donlen and that, failing such voluntary surrender, Donlen is authorized to repossess the Leased Vehicles.

15. Pursuant to Section 8 (c) of the CAN MSA

If (i) Client shall fail to pay (or have available for PAD, if applicable) any payment obligation when due hereunder ...or (vii) Client or any affiliate or Client shall be in default under the terms of any lease, maintenance, services, or other agreement entered into with Donlen, Donlen Trust, or any of their respective affiliates (the "Other Agreements") ... then the Client shall be in default hereunder. If there is a default hereunder by Client, Donlen, at its sole option, may suspend services under this Agreement, or immediately terminate this Agreement...

I hereby certify that the foregoing statements made by me are true to the best of my knowledge and belief and that this certification is executed under penalty of perjury this 23rd day of September, 2020

/s/ Joseph Machuta
Joseph Machuta
Vice President, Credit Risk Management



MASTER MOTOR VEHICLE LEASE AGREEMENT

This Master Motor Vehicle Lease Agreement (this "Agreement") is dated as of June 30, 2017 (the "Effective Date"), and is by and between DONLEN FLEET LEASING LTD., a Canadian federal corporation with offices at 3000 Lakeside Drive, 2nd Floor, Bannockburn, Illinois 60015 ("Lessor") and BJ SERVICES HOLDINGS CANADA, ULC, whose address is 800, 215-9th Avenue SW, Calgary, AB T2P 1K3 ("Lessee"). Unless otherwise expressly indicated, all references in this Agreement to "\$" or "dollars" means Canadian dollars.

This Agreement is intended for the lease of multiple vehicles to be used in Lessee's vehicle fleet. Accordingly, prior to the initial order hereunder, Lessee shall provide Lessor with the fleet account number or fleet identification number (FIN/FAN) provided to Lessee by the applicable manufacturer for Lessee's fleet purchase program in Canada (with annual updates as described in Section 2(f) of this Agreement). Lessee shall also provide Lessor with its provincial licensing number for any province in which it orders vehicles hereunder prior to such order.

The parties further agree as follows:

1. LEASED VEHICLES; LEASE TERM.

- (a) Each vehicle to be leased hereunder shall be requested by Lessee from time to time either by placing an order for such vehicle on FleetWeb®, Lessor's internet-based fleet management system, or by such other means as is reasonably agreed by the parties. Lessor may order any such vehicles so requested by Lessee, and upon placement of an order, such order is noncancelable and Lessee shall be obligated to lease such vehicle pursuant to the terms hereof. As used herein, the term "Vehicle" shall mean each such vehicle ordered hereunder and shall include all equipment specified in the order or necessary for its lawful operation. In no event shall this Agreement constitute a commitment by Lessor to lease any vehicle to Lessee until delivery of any such vehicle to Lessee.
- (b) Each Vehicle shall be specifically identified (including VIN and individual pricing terms) in a supplement to this Agreement designated as "Schedule A", which forms a part of this Agreement as if set forth in full herein. Schedule A with respect to each Vehicle shall be made available to Lessee in electronic form (via FleetWeb® or by other commercially reasonable means) by Lessor on or prior to commencement of the Lease Term for such Vehicle and shall thereupon be binding on the parties hereto; provided, (i) Schedule A shall be consistent with the terms hereof, including the applicable agreed master pricing terms set forth in "Schedule B" hereto at such time; (ii) Lessor shall revise the terms of Schedule A to correct any manifest error thereon promptly upon discovery of such error; and (iii) any modification to Schedule A made by Lessor from time to time in a manner consistent with the terms hereof shall be binding upon the parties as soon as Schedule A, as so modified, is made available to Lessee.
- (c) The term of the lease (the "Lease Term") for each Vehicle shall begin on (i) for Vehicles factory-ordered through Lessor, the earlier of the date six days after such Vehicle arrives at the delivering dealer and the date that Lessee's representative takes possession of the Vehicle, and (ii) for all other Vehicles, the date that Lessor pays the seller for such Vehicle (the "Lease Commencement Date") and shall end on the date such Vehicle is surrendered or is deemed surrendered pursuant to Section 12(b) hereof (due to theft, casualty loss or similar event as described therein). The Schedule Term ("Schedule Term") shall begin on the Rental Start Date and shall extend for 367 days; provided, that the Schedule Term shall end early upon any such deemed surrender (due to theft, casualty loss or similar event) as described in the preceding sentence. The "Rental Start Date" shall commence on the first day of the calendar month immediately following the Lease Commencement Date (if the Lease Commencement Date occurs on or prior to the twentieth day of the calendar month) or otherwise on the first day of the next succeeding calendar month thereafter.
- (d) The Lessee shall surrender each Vehicle to the Lessor on or after the end of the Schedule Term and on or prior to the end of the intended maximum Lease Term for such Vehicle, unless Lessor consents to Lessee retaining possession thereafter. The intended maximum Lease Term shall be the period commencing on the Rental Start Date and continuing: (i) for automobiles, fifty (50) months; (ii) for light duty trucks, seventy-two (72) months and (iii) for medium and heavy-duty trucks, ninety-six (96) months.

2. PAYMENT TERMS.

- (a) Each Vehicle to be leased hereunder shall be priced in accordance with the master pricing schedule attached hereto as "Schedule B" and forming part hereof, as such schedule may be modified from time to time by notice from Lessor to and agreement from Lessee with respect to new vehicle orders.
- (b) Monthly rent is payable during the Lease Term for each Vehicle (and shall be prorated for partial months). Interim interest at the applicable financing rate for each Vehicle shall be payable by Lessee to compensate Lessor for financing the acquisition of such Vehicle from the date that Lessor pays for such Vehicle (which includes, with respect to Vehicles subject to upfitting/third party vendor modifications, partial payments for incomplete units or toward such modifications) through the first day of the Lease Term and from the last day of the Lease Term through the sale date (which may be paid from resale proceeds). All upfitting, special modifications and associated storage costs advanced by Lessor shall either be paid for by Lessee or shall be added to the capitalized cost of the Vehicle on Schedule A.
- (c) Lessor shall deliver monthly invoices to Lessee electronically, via FleetWeb®, or by other reasonable means, on or prior to the first day of the applicable month (currently available on or about the 20th day of the prior month). The monthly invoice for each month shall include all amounts due through and including the end of such month for each Vehicle for which the Rental Start Date has occurred (with the initial invoice for any Vehicle including all amounts accrued hereunder with respect to such Vehicle through such initial billing month). Lessee shall pay the monthly invoice for each month, in advance, on or prior to the 10th day of such month, by electronic transfer into the bank account specified by Lessor.

- (d) A late charge of 1.5% per month shall be added to any payment obligation not paid by Lessee to Lessor by the 15th day of the month for which such payment is due, and upon the occurrence of a default (after any applicable cure period has expired) under Section 16 hereof, the then applicable financing rate for each Vehicle shall be increased by 2%. No payment shall be made in excess of the maximum permitted by law.
 - (e) Except as otherwise agreed between the parties, any Vehicle surrendered prior to the end of the Schedule Term shall be subject to an early termination fee in the amount of the projected interest and administrative fee portion of the monthly rental that would have been due with respect to such Vehicle from the surrender date through the end of such Schedule Term, as calculated in good faith by Lessor. For avoidance of doubt, if the Schedule Term ends prior to twelve months due to theft, casualty loss or similar event as described in Section 1(c), no early termination fee shall apply hereunder.
 - (f) Lessee shall furnish Lessor all manufacturer incentive plans on an annual basis. If Lessee is provided the option by a vehicle manufacturer, Lessee shall select that all available discounts, rebates and other incentives provided by the manufacturer with respect to each Vehicle shall be taken off invoice in reduction of the purchase price paid for such Vehicle and not separately remitted to Lessee.
 - (g) All payments to be made by Lessee hereunder shall be made in the lawful currency of Canada (Canadian \$). If any payment is made in US dollars or any other currency other than Canadian dollars, Lessee shall pay to Lessor simultaneously therewith a processing fee equal to 5% of the amount of the applicable payment.
3. **LEASE ONLY.** This Agreement is one of leasing only and Lessee shall not have or acquire any right, title or interest in or to any Vehicle except the right to use and operate it as provided herein. This Agreement is intended to be and shall be treated by the parties hereto as a true lease. Neither the Lessee nor any of its agents or employees is in any way the agent of Lessor in possessing, using or operating any Vehicle. Neither party is a partner or joint venturer of the other. This Agreement evidences a net lease and Lessee's obligation to pay rent and all other amounts payable by Lessee hereunder is absolute, unconditional and irrevocable and shall be paid without abatement, reduction, set-off or defense of any kind.
4. **TAXES AND OTHER CHARGES.** Lessee shall be liable for all use, excise, goods and services, personal property, ad valorem, sales, gross receipts and other taxes (other than federal or provincial income taxes on Lessor's income) and governmental assessments, and all other costs, expenses, fees and charges with respect to the use, ownership, possession, rental, transportation, delivery or operation of each Vehicle. Lessee shall pay such liabilities directly or shall pay to Lessor the amount thereof if Lessor has advanced payment thereof (without regard to governmental credits that may be available to Lessor with respect to its fleet generally). Sales tax may be included in the capitalized cost of the Vehicle rather than charged separately to Lessee. Lessee shall keep each Vehicle free of all fines, liens and encumbrances and shall promptly pay or discharge all such fines, liens or encumbrances, including, without limitation, all fines and assessments arising out of toll or parking violations by its operators. In addition, Lessee shall pay to Lessor a reasonable administrative charge for each unpaid violation or other amount owed by Lessee that is paid by Lessor provided, if a Vehicle is enrolled in the toll management program offered by Donlen, no separate charge hereunder shall be assessed for toll violations or charges otherwise subject to such program.
5. **OPERATING EXPENSES; MAINTENANCE; RISK OF LOSS.** Lessee shall pay all costs and expenses of using and operating each Vehicle until it is surrendered hereunder, including without limitation, gasoline, oil, grease, anti-freeze, adjustments, repairs, tires, tubes, storage, parking, tolls, fines, towing and servicing. Lessee, at Lessee's own expense, shall at all times maintain each Vehicle in good working order and condition and make all necessary repairs and replacements thereto. Title to any parts, modifications, improvements, additions or replacements shall vest in Lessor as soon as installed in or attached to any Vehicle. Lessor shall in no way be liable for any direct or indirect damage or inconvenience resulting from any defect in or loss, theft, damage or destruction of each Vehicle or of the cargo or contents thereof or the time consumed in recovery, repairing, adjusting, servicing or replacing the same and there shall be no abatement or apportionment of rental during such time. Upon surrender, Lessee shall return the Vehicle to Lessor in good working condition, ordinary wear and tear excepted.
6. **QUIET ENJOYMENT; TERMINATION.** Lessee shall have the right to peaceably hold and quietly enjoy the Vehicles without interruption by Lessor or any person or entity lawfully claiming through Lessor at all times on or prior to termination of this Agreement, so long as no default pursuant to Section 16 hereof has occurred, and subject to applicable law and the terms and provisions of this Agreement. Either party may declare a termination date (the "Termination Date") under this Agreement upon thirty (30) days prior written notice to the other. All Vehicles on lease prior to the Termination Date shall continue to be governed by the terms hereof, and no such Termination Date shall affect the obligations of either party arising prior or subsequent thereto. This Agreement shall terminate on the date after the Termination Date in which all Vehicles have been surrendered and obligations due or accrued hereunder (liquidated or unliquidated, absolute or contingent) have been indefeasibly paid in full.
7. **REGISTRATIONS AND INSPECTIONS; UPFITTING.** Lessee shall pay for the initial registration, ownership and transfer documentation and licensing for each Vehicle and shall thereafter obtain and pay for all required plates, permits or licenses (in the name of Lessor as applicable) and for all inspections required by any governmental authority; provided, that Lessee shall only be obligated to perform registration renewal services hereunder with respect to a Vehicle at any time if such Vehicle is not enrolled at such time in an Active AutoTag Program (as hereafter defined). Lessor shall provide a power of attorney if needed for Lessee to act for it for such purposes. Solely if there is no Active AutoTag Program, Lessor may charge a reasonable administrative charge hereunder if Lessor performs any of the foregoing upon failure of Lessee to so perform (other than with respect to the initial registration, ownership documentation and licensing for each Vehicle). For purposes hereof, an "Active AutoTag Program" shall mean, at any time, a registration renewal services program offered by Donlen at such time pursuant to a separate services agreement that has not been terminated, unless such services have been suspended due to a default by Lessee under such services agreement. If Lessee requests that prior to delivery to Lessee, a Vehicle be delivered to an upfitter, body company, installer or other third party and/or obtain certain equipment or parts from a specific vendor, (i) Lessee assumes all risks of doing business with such third party, including, without limitation, the creditworthiness of such third party and (ii) the obligations of Lessee hereunder with respect to indemnities and insurance shall apply to such Vehicle during the period such Vehicle is with such vendor. Lessor makes no representations or warranties with respect to any work performed or parts and/or accessories added to any Vehicle by such third party. Lessee agrees that its obligation to pay rent and other amounts hereunder with respect to such Vehicles are unconditional and may not be reduced by claims against such third party. To the extent that it is necessary or advisable under applicable law for Lessor to register or file any notice with any governmental body or agency or department relating to this Agreement in order to protect or perfect its rights under this Agreement and in

and to the Vehicles, same shall be done by Lessor at Lessee's expense. For purposes of such filings, the Lessee hereby represents that its chief executive office is located in the province or state of British Columbia and its registered office or jurisdiction of incorporation is located in the province or state of British Columbia. The Lessee hereby agrees to notify the Lessor promptly upon any change in either of the foregoing locations.

8. **USAGE.** Lessee shall use and operate, and permit use and operation of each Vehicle in a careful manner and in compliance with all requirements of law and any governmental authority, including such requirements as pertain to the age and licensing of drivers and to disclosure of Lessor's interest in the Vehicle. In no event shall any Vehicle be used or operated for any illegal purpose, or by a person under the influence of alcohol or narcotics, or for the transportation of goods or persons for hire, or for towing any property other than in accordance with the manufacturer's specifications for any such Vehicle or, unless the Lessor has given its express consent, for transportation of explosive, radioactive, flammable or hazardous materials, or in any manner or for any purpose that would cause any insurance required hereunder to be canceled or suspended, or outside of Canada. Default of this provision by Lessee shall be deemed an incurable default, regardless of whether Lessee discontinues the proscribed usage constituting the default. Notwithstanding the foregoing, unless an event of default has occurred and is continuing or Lessor otherwise withdraws its consent, a Vehicle may be operated in the United States of America so long as, (i) the Vehicle is used principally and primarily within Canada and (ii) the insurance described in Section 10 hereof has full and uninterrupted coverage during such operation in the United States of America. In any event, Lessee agrees that it shall continue to be obligated to pay all rent and all other sums due hereunder even if such Vehicle is located or becomes stranded or impounded outside of Canada and shall pay (or reimburse Lessor) promptly upon demand for all costs and expense (including reasonable fees of local counsel) for obtaining possession of any Vehicle located, impounded, or stranded outside of Canada and transporting such Vehicle back to Canada. Vehicles leased hereunder shall be used and operated solely by Lessee and its affiliates in their respective trades or businesses and not any other third party. Lessee shall promptly supply Lessor with the name and address of each driver (if any) assigned to each Vehicle and the location of each Vehicle, and shall promptly update such information as it may change from time to time. Lessee shall permit Lessor to inspect any Vehicle during normal business hours and upon reasonable notice.

9. **INDEMNITY.** Lessee shall indemnify and hold harmless the Lessor and Lessor's affiliates and their respective officers, directors, employees and agents from and against any and all claims, whether arising as a result of any product liability, negligence or contract action and whether asserted against such indemnified party with or without litigation (including reasonable legal expenses), and any and all losses, damages, injuries, demands, costs, liabilities, and expenses (collectively, "Claims") arising out of or connected with this Agreement unless caused by the negligence, gross negligence or willful misconduct of the Lessor, and any Claims arising out of or connected with the lease, maintenance, use, condition, operation or storage of any vehicle or any accident or incident involving any vehicle. Lessor shall promptly notify Lessee of such asserted Claims, and if the interests of the Lessor and Lessee are not adverse, the Lessee shall be entitled to control the defense thereof as long as it provides Lessor with evidence satisfactory to Lessor (which may, at the request of Lessor, include evidence of insurance or a surety bond) that it has the financial ability to pay any potential amount that may be owed by Lessor. This provision shall survive termination of this Agreement and the applicable Lease Term for any Vehicle.

10. **INSURANCE.**

- (a) Without limiting any of the other provisions of this Agreement, Lessee shall, at Lessee's own expense, provide the following insurance on each of the Vehicles without interruption (in such form and with such deductibles as are satisfactory to Lessor): (i) comprehensive fire and theft insurance for the actual cash value of the Vehicle; (ii) collision insurance for the actual cash value of the Vehicle; and (iii) motor vehicle liability insurance in the amount specified from time to time by Lessor, which, if not otherwise specified, shall be a combined single limit of not less than \$2,000,000 for any one accident for bodily injury or property damage (or \$5,000,000 for Vehicles capable of transporting 9 or more passengers) provided, there shall be no self-insurance retention or other similar limitation on the responsibility of the insurance company with respect to such liability coverage; provided, further that such prohibition shall not apply to any commercially reasonable deductible (in form and amount approved by Lessor, which amount is currently approved by Lessor to be \$1,000 per incident) pursuant to which the insurance company may seek reimbursement from Lessee (as between such parties) but the insurance company remains liable to all third party claimants (and Lessor as additional insured) for all covered losses from the first dollar loss up to the required policy limit.
- (b) Lessee shall also, at Lessee's expense, provide any other insurance and post any bond that may be required by any governmental authority as a condition to or in connection with the use or operation of any Vehicle. Lessee shall procure and maintain workers' compensation insurance (or maintenance of a legally permitted and governmentally approved program of self-insurance) covering Lessee's employees pursuant to applicable workers' compensation laws for work related injuries suffered by employees of Lessee.
- (c) All insurance with respect to the Vehicles shall protect, as their interests may appear, the Lessee, the Lessor, any lender, lien-holder or similar party having an interest in the Vehicle through the Lessor (upon request of Lessor), and any person or organization responsible for the use or operation of the Vehicle.
- (d) Lessee will provide Lessor on the date hereof and annually hereafter with an updated certificate of insurance (w) evidencing the required coverages for the Vehicles as set forth above; (x) naming Lessor as an additional insured and loss payee to the extent of liabilities assumed hereunder; (y) providing a thirty (30) day cancellation, non-renewal or reduction in coverage notification to Lessor provision; and (z) stating each underwriter will waive all rights of recovery, under subrogation or otherwise, against Lessor. Failure of Lessor to demand any insurance certificate required hereunder or other evidence of full compliance with these insurance requirements or failure of Lessor to identify a deficiency from evidence provided will not be construed as a waiver of Lessee's obligation to maintain such insurance. All coverages required of Lessee will be primary over any insurance or self-insurance program carried by Lessor. Upon request by Lessor in connection with any actual or threatened litigation or for other valid business purposes, Lessee shall provide Lessor with certified copies of all insurance policies required hereunder.

- (e) Lessee shall provide the foregoing insurance through insurance companies that either have an AM Best rating of A- or better or are otherwise approved by Lessor; provided, however, that Lessee may self-insure for the risks described in clause (i) and clause (ii) of subsection (a) above solely if approved by Lessor in its discretion. Lessor may withdraw approval for such self-insurance at any time upon a default hereunder, upon any bankruptcy filing by Lessee or if, in the judgment of Lessor, Lessee can no longer bear financial responsibility for the liabilities covered by self-insurance.
- (f) All insurance policies (other than liability) with respect to the Vehicles (excluding self-insurance) shall provide that the proceeds payable thereunder shall be paid directly to Lessor or as Lessor otherwise directs. Lessee hereby authorizes Lessor to endorse Lessee's name on any insurance checks related to the Vehicles. Lessee shall cooperate with Lessor in all matters pertaining to claims involving any Vehicle. Any insurance proceeds received by Lessor for any loss or casualty shall be paid or applied in accordance with Section 12 hereof in the event of a total loss or otherwise shall be remitted to Lessee upon proof satisfactory to Lessor that such proceeds have been or will be applied to repair of such Vehicle unless Lessee is then in default in the fulfillment of any obligation hereunder or under any other agreement with Lessor or its affiliates, in which case such proceeds may, at option of Lessor, be held as cash collateral by Lessor or applied toward satisfaction of such obligations.
- (g) Lessee shall bear all risk of loss for damage, loss, theft or destruction of each Vehicle as set forth in this Agreement, regardless of the level of insurance coverage and regardless of whether or not the amount of the loss exceeds the cash value of any policy. By requiring insurance, Lessor does not represent that coverage and limits will necessarily be adequate to protect Lessee or Lessor. Insurance provided or procured by Lessee will not reduce or limit Lessee's contractual obligation to indemnify and defend Lessor to the extent set forth in this Agreement. To the extent Lessee has insurance which covers any of its obligations or liabilities under this Agreement, Lessee shall file a claim under its policy to cover such obligation or liability or, upon request of Lessor, diligently assist Lessor in filing same.

11. **REIMBURSEMENT.** If Lessee shall fail, for any reason, to perform any provision of Sections 4, 5, 7 or 10 hereof, Lessor may, at its option, perform the same and Lessee shall reimburse Lessor upon demand for all reasonable sums paid or incurred by Lessor.

12. SURRENDER AND SALE OF VEHICLES.

- (a) At any time on or after the completion of the Schedule Term for any Vehicle (subject to the terms hereof), Lessee shall surrender such Vehicle to Lessor for sale. Surrender of any Vehicle shall not be effective until Lessor or its agent has actual physical possession of such Vehicle and has received all license plates, registration certificates, ownership and transfer documentation, odometer and damage disclosures and other documentation necessary to sell such Vehicle. Any personal property in a Vehicle upon surrender shall be deemed abandoned and may be disposed of by Lessor or its agent without liability.
- (b) If any Vehicle shall be damaged to the extent that, in the Lessee's opinion, it does not warrant repairs or further maintenance, Lessee shall promptly notify Lessor of such event and hold the Vehicle or wreckage thereof for disposal by Lessor. Such Vehicle shall be deemed surrendered by Lessee to Lessor as of the date Lessor or its agent takes possession of such wreckage. Lessor shall, as soon as practicable, cause the Vehicle (or wreckage) to be sold. If any Vehicle is lost or stolen, or wreckage is not held by Lessee for disposal by Lessor, or any Vehicle (including any Vehicle that is not located in Canada) becomes impounded, stranded, seized or otherwise unavailable to Lessee, Lessee shall notify Lessor thereof and upon such notice the same shall be deemed to have been surrendered to Lessor, and sold at a price of zero; provided, however, that the indemnity obligations with respect to such Vehicle shall be ongoing and Lessee shall promptly, and in any event within twenty days of such notice, provide Lessor with a copy of a valid and duly filed police report with respect to any such stolen Vehicle, evidence of disposal, if any, and such other documents with respect to such Vehicle as are reasonably requested by Lessor.
- (c) Lessor shall sell each Vehicle surrendered by Lessee in the wholesale market within sixty (60) days after such surrender, or within such other period as Lessor deems necessary based on market conditions and other relevant factors. Any sale referred to in this Section 12 shall be for cash payable to Lessor in full upon the delivery of the Vehicle and the applicable ownership and transfer documentation to the purchaser. Lessor shall promptly render to Lessee an accounting of any sale made pursuant to this Section 12. As incentive for Lessee to maintain the Vehicle in good repair, and subject to the terms and conditions otherwise set forth in this Agreement, if the Net Proceeds of such sale exceed the Depreciated Value of the Vehicle, Lessor shall pay or credit the excess to Lessee as a refund of rentals less the Selling Fee. If the Net Proceeds of such sale are less than the Depreciated Value, Lessee shall pay the deficiency as additional rental to Lessor, plus the Selling Fee.
- (d) As used in this Agreement:
 - (i) "Net Proceeds" shall mean the amount received upon the sale of a Vehicle less: (1) all expenses paid or incurred by Lessor in connection with such Vehicle and the sale thereof from the time of surrender to the completion of the sale; (2) all sums due and owing to Lessor from Lessee under this Agreement; and (3) all sums for which Lessee is liable in connection with such Vehicle or its use or operation which, if not paid, would constitute a lien on the Vehicle or a liability of Lessor.
 - (ii) "Depreciated Value" shall mean the capitalized cost of a Vehicle less the aggregate depreciation component of monthly rent (rent not attributable to finance charges at the applicable financing rate or administrative fee component) for each full calendar month from the Rental Start Date through the end of the Lease Term.
 - (iii) "Selling Fee" shall mean a one hundred dollar (\$100) selling fee with respect to each Vehicle.

13. **OPERATING LEASE PROVISIONS.** Section 12 shall be subject to the following level of residual loss retention by Lessor. If the Net Proceeds are less than the Residual Floor (as hereafter defined), Lessor shall bear the loss equal to the difference between the Residual Floor and the Net Proceeds. In such event, Lessee shall bear the remaining loss pursuant to Section 12, which shall be equal to the difference between the Depreciated

Value (calculated upon surrender) and the Residual Floor. The "Residual Floor" shall be an amount equal to the Retention Percentage of the Reference Value. For Vehicles sold at the end of the Schedule Term, "Retention Percentage" shall mean 17% and "Reference Value" shall mean the capitalized cost of the Vehicle. For all other Vehicles, "Retention Percentage" shall mean 13% and "Reference Value" shall mean the Depreciated Value at the beginning of the last full calendar month prior to surrender.

14. **ODOMETER DISCLOSURE STATEMENT.** Pursuant to this Agreement and any applicable requirements of law, Lessee shall disclose the mileage of each Vehicle to Lessor in connection with the transfer of ownership of each Vehicle. Failure to complete an odometer disclosure statement or making a false statement may result in fines and/or imprisonment in accordance with law. Lessee agrees to pay an administrative fee reasonably determined by Lessor in its discretion if Lessee fails to provide a required odometer or damage disclosure statement at the time of surrender of any Vehicle.
15. **ASSIGNMENT OF WARRANTIES; NO CONSEQUENTIAL DAMAGES; FORCE MAJEURE.** The Lessor will assign or otherwise make available to the Lessee all of the Lessor's rights, if any, under the manufacturer's warranty on each Vehicle fully to the extent that such rights are assignable. Acceptance of delivery of a Vehicle by the Lessee's representative shall constitute Lessee's acknowledgment that: (i) the Vehicle is the make and model and is equipped as specified by Lessee and (ii) the Vehicle is an authorized addition under this Agreement. LESSOR IS NOT A PRODUCER, MANUFACTURER, DESIGNER OR DISTRIBUTOR OF THE VEHICLES AND LESSEE ACKNOWLEDGES THAT EACH VEHICLE ORDERED HEREUNDER IS OF A DESIGN SELECTED BY LESSEE AND IN ITS JUDGMENT IS SUITABLE FOR ITS PURPOSES. LESSEE HEREBY CONFIRMS AND AGREES THAT THE LESSOR HAS MADE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESSED OR IMPLIED, WITH RESPECT TO ANY VEHICLE AND LESSOR SHALL NOT BE LIABLE FOR ANY SUCH REPRESENTATIONS OR WARRANTIES INCLUDING WARRANTIES AS TO DESIGN, QUALITY OR CAPACITY, AND THERE IS NO IMPLIED WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR CONSEQUENTIAL, SPECIAL OR INCIDENTAL DAMAGES OF THE OTHER EXCEPT WITH RESPECT TO THIRD PARTY INDEMNITY CLAIMS. Neither party shall be liable for any failure or delay in the performance of any provision hereof (including, in the case of Lessor, delivery of any Vehicle) resulting from acts of God, acts of civil or military authority, acts of public enemy or terrorism, epidemic, civil disturbance, insurrection, explosion, earthquake, the elements, fire or other casualty, riots, strikes or other labor difficulties, governmental regulations or restrictions or any cause beyond such party's control provided that such party acts with reasonable diligence provided, however, in no event shall either party be excused pursuant to the terms of this Section from the performance of any payment obligation hereunder (which, in the event of a casualty loss, shall be as set forth in Section 12(b) hereof, compliance with law or, in the case of Lessee, compliance with the insurance requirements set forth herein.
16. **DEFAULT.** If (a) Lessee shall fail to pay (or have available for PADs) any rent or other payment obligation when due hereunder or fail to maintain insurance required hereunder, or (b) Lessee shall otherwise fail to observe or perform any other covenant or obligation to be observed or performed by Lessee hereunder, and such failure continues for a period of five days from the initial occurrence thereof, or (c) there shall be filed by or against Lessee or any guarantor any petition in bankruptcy under any provincial, state or federal law, or a receiver or trustee shall be appointed for its business or property or Lessee or any guarantor shall make an assignment for the benefit of creditors, or (d) Lessee or any guarantor shall cease to operate or shall sell all or substantially all of its assets to an entity not approved by Lessor in writing or that has not expressly assumed this Agreement, or (e) Lessee or any guarantor shall fail to be or remain solvent, or (f) Lessee shall make or permit any lien, attachment or levy to be asserted against any Vehicle which shall not be removed within five days, or (g) there shall be a material deterioration in the creditworthiness or financial condition of Lessee or any guarantor, including, without limitation, due to any consolidation or merger of such party with or into any other entity or Lessee or any guarantor shall otherwise not meet current credit standards of Lessor (including, without limitation, due to any change of control or deterioration of the credit condition of any parent company or any guarantor of Lessee), or (h) Lessee or any affiliate of Lessee shall be in default under the terms of any lease or other agreement entered into with Lessor, or any of its affiliates (the "Other Agreements"), or (i) Lessee, any parent company or any guarantor, or any principal owner, senior officer or director of any of the foregoing, is convicted of a felony, then the Lessee shall be in default hereunder. At any time on or after the occurrence of a default, Lessor may notify Lessee that all of the rights of Lessee hereunder and with respect to the Vehicles shall forthwith terminate and all Vehicles leased hereunder shall forthwith be surrendered to Lessor or Lessor may repossess said Vehicles without court order or other process of law, and for such purpose Lessor (or its designee) may enter upon any premises where the Vehicles may be and in compliance with all applicable laws, remove the same, and in connection with any such default, Lessor may exercise any other remedy at law or equity available to Lessor, notice thereof being expressly waived by Lessee. Lessor's action or failure to act on one remedy constitutes neither an election to be limited thereto nor a waiver of any other remedy or a release of Lessee from the liability to return the Vehicles or for any loss or claim by the Lessor or its affiliates with respect thereto. After the occurrence of a default, Lessor may, consistent with its ownership of the Vehicles and anything in this Agreement to the contrary notwithstanding, deal with the Vehicles in any manner it sees fit and may, without notice, but shall not be obligated to, sell Vehicles or any of them, at a public or private sale, upon such terms as Lessor may deem advisable, and in the event of any such sale or sales the Lessor shall, in addition to all other rights or remedies hereunder, be entitled to retain as owner of such Vehicles all proceeds of any and all such sales. In addition, at any time on or after a default hereunder, the Lessor may retain all resale proceeds and payments of any nature theretofore or thereafter received by Lessor including any resale proceeds, refunds and other sums, if any, otherwise payable to the Lessee under Section 12 hereof or any other provision of this Agreement. Lessor shall also be entitled to recover from the Lessee all unpaid monthly rental payments for the rental term as provided herein and all additional rents (as calculated pursuant to Section 12 but subject to Section 13) in respect of the Vehicles sold and all additional sums, if any, due and unpaid, together with costs and expenses, including reasonable attorneys' fees, incurred by Lessor in repossession of the Vehicles and in the enforcement of its rights and remedies under this Section 16 or any other provision of this Agreement. To the extent permitted by law, the parties hereto hereby agree that in the event that Lessee files for protection under applicable bankruptcy laws, the Lessee shall assume or reject this Agreement on or prior to the 60th day after the date of such filing.
17. **ASSIGNMENTS.** This Agreement may not be assigned nor any Vehicle subleased by Lessee without Lessor's prior written consent. In no event shall Lessee assign, lien, encumber or transfer any interest in any Vehicle leased hereunder or any interest in this Agreement to any third party. Lessor may assign this Agreement or any rentals or charges due or to become due hereunder at any time. After notice of any assignment, Lessee shall make all payments to the assignee(s). Lessor shall also have the right to place a security interest or assign as part of a financing this Agreement and

the Vehicles. Lessee agrees that any such security interest or assignment shall be superior to this Agreement and that it will not assert against any secured party or assignee any claim, defense or set-off it may have against the Lessor.

18. REPORTING; INTEGRATED AGREEMENTS; OTHER ADDITIONAL PROVISIONS.

- (a) If not publicly available, Lessee shall furnish to Lessor (x) within forty five (45) days after the end of each of the first three quarters of any fiscal year (beginning with the fiscal year 2018), the consolidated balance sheet and related statements of operations of Lessee and any guarantor, in each case, showing the consolidated financial condition as of the close of the fiscal quarter and the consolidated financial results during such fiscal quarter, certified by the Financial Officer as fairly presenting the consolidated financial condition and consolidated results of operations in accordance with generally accepted accounting principles (GAAP) (subject to normal year-end audit adjustments), and (y) within ninety (90) days after the end of each fiscal year, the consolidated or combined annual audit report of Lessee and any guarantor, in each case, prepared in accordance with generally accepted accounting principles (GAAP) by independent accountants of recognized national standing accompanied by an opinion of such accountants to the effect that such financial statements fairly present the financial condition and results of operations and (z) such other financial information with respect to itself or any guarantor reasonably requested by and satisfactory to Lessor. Lessee shall notify the Lessor, in writing, of any of the following events or any contractual arrangement to consummate any of the following events with respect to Lessee or any guarantor: (i) change in name, (ii) material change of ownership or control, (iii) merger, consolidation, amalgamation or transfer of all or substantially all of its assets and (iv) spin-off or sale of any operating division or affiliate that uses or has possession of any Vehicle at the time of such spin-off or sale (and the surrender date or re-assignment location for such Vehicles). Lessee shall execute or provide Lessor with all documents reasonably requested by Lessor to evidence what party is obligated (directly or as guarantor) hereunder following any of the foregoing events.
- (b) The parties hereto hereby acknowledge that this Agreement and each Other Agreement (as defined in Section 16 hereof) collectively are integrated agreements with each other and arise out of integrated business transactions. The Lessor and each of its affiliates, collectively, have a right of recoupment and set-off with respect to any obligations owing to Lessee under any such agreement and any obligations owing by Lessee under any such agreement (whether the obligations owing to Lessee arise under the same or different agreement as the obligations owing by Lessee). In addition, Lessor has the right to hold any credits and proceeds (from resale, insurance or otherwise) otherwise payable to Lessee hereunder as cash collateral to secure any obligations owed by Lessee or any affiliate hereunder or under any such Other Agreement, whether such obligations are then existing or may be thereafter arising until all such agreements have been terminated and all such obligations have been paid in full (and subject to retention of such amounts in accordance with Section 16 hereof), and Lessee hereby grants Lessor a security interest therein.
- (c) Lessee does hereby constitute and appoint Lessor (and any employee of Lessor with responsibility for the same) as its attorney in fact with full authority to sign and/or endorse in the name of Lessee and to file on behalf of Lessee, all documentation required or useful in connection with the disposition of a Vehicle, any police report for any lost or stolen Vehicle or other evidence that such Vehicle has been lost or stolen as Lessor shall deem necessary or desirable, any documentation required by any governmental authority with respect to each Vehicle and any insurance checks or other payments or proceeds related to the Vehicles. Lessee does hereby ratify and confirm all acts that may lawfully be done in pursuance of the foregoing power. Lessee further agrees to provide Lessor with a separate power of attorney with respect to a particular Vehicle and such other documentation as is reasonably requested by Lessor from time to time to further the legitimate purposes of this Agreement.
- (d) Lessee hereby acknowledges and agrees that in using FleetWeb® or other computer-based services of Lessor, it is bound by all terms and conditions of use set forth therein and all online agreements for users. Lessee shall bear the risk and hold harmless Lessor with respect to the accuracy and completeness of all information provided by Lessee on FleetWeb® or otherwise, including, without limitation, the selection of vehicles and components thereof in connection with any vehicle ordering hereunder.
- (e) Section 7 (Confidentiality) of the Master Services Agreement, between Lessee and Lessor, is hereby incorporated herein by this reference, *mutatis mutandis*, as if set forth herein at length and shall apply to the parties hereto with all references therein to "Donlen" to be construed as references to Lessor and all references to "Client" to be construed as references to Lessee for all such purposes.

19. MISCELLANEOUS PROVISIONS.

- (a) Any notice which may be required to be given hereunder shall be in writing and delivered personally, sent by registered or certified mail, return receipt requested, postage prepaid, or sent by overnight delivery by a nationally recognized air courier, such as, but not limited to Federal Express or UPS, or, in the case of notices sent by Lessor, sent by email or regular mail, postage prepaid, in any case, addressed to the parties at the respective addresses as set forth in the preamble to this Agreement (or a subsequent address for which either party shall have given written notice to the other thereof). Notices mailed by registered, certified or regular mail shall be effective three (3) business days after the date of mailing; notices sent by nationally recognized air courier shall be effective upon confirmed receipt. Email notices shall be effective when sent to any email address provided by a duly authorized representative of Lessee (with no automated out of office return).
- (b) This Agreement (together with all schedules and riders hereto) constitutes the entire agreement between the parties with respect to the subject matter hereof and cannot be modified, altered or otherwise changed except by either (i) written notice by Lessor to Lessee to which Lessee does not object in writing within 10 days after receipt or (ii) an agreement in writing signed by both parties. The parties acknowledge that the pricing and other economic terms have been determined on a pool-wide basis and this Agreement constitutes one integrated lease for multiple Vehicles. This Agreement shall supersede any predecessor agreement with respect to the subject matter hereof; provided, however, pricing shall continue to be determined in accordance with any applicable predecessor agreement and any Schedule A issued thereunder. If one or more provisions of this Agreement shall be for any reason unenforceable or invalid, then such provisions shall be deemed severable from the remaining provisions of this Agreement and shall in no way affect the validity or enforceability of such other provisions or the rights of the parties hereunder.

- (c) This Agreement shall be governed by and construed in accordance with the substantive laws of the Province of Ontario (without regard to its conflict of laws provisions), and the federal laws of Canada applicable therein. The parties hereto submit to the jurisdiction of the courts of the province of Ontario in respect of any proceedings in connection with this Agreement. This Agreement shall be governed by and construed in accordance with the substantive laws of the Province of Ontario, without regard to its conflict of law provisions, and the federal laws of Canada applicable therein. The parties hereto submit to the jurisdiction of the courts of the Province of Ontario in respect of any proceedings in connection with this Agreement. Both parties waive any and all right to any trial by jury in any such action. Lessee, if a corporation, waives the rights, benefits and protection given by *The Civil Enforcement Act* of Alberta and the *Judgment Enforcement Act* of Newfoundland or any amendment or successor legislation thereto and agrees that *The Limitation of Civil Rights Act* of Saskatchewan and the *Limitation Act* of Newfoundland or any amendment or successor legislation thereto shall not apply to this Agreement or to any agreement renewing or extending this Agreement or to the rights, powers or remedies of Lessor under this Agreement or under any agreement renewing or extending this Agreement. To the extent permitted by law, Lessee waives (i) the benefit of any statute which restricts Lessor's enforcement right to the recovery of money due and owing under this Agreement or to taking possession of the Vehicles or to the choice of such recovery or taking possession, and (ii) its rights under articles 1848 and 1849 of the *Civil Code of Québec*.
- (d) This Agreement shall be binding upon and inure to the benefit of the parties, their respective successors and assigns and upon all affiliates of Lessee, if any, which may use any Vehicle leased hereunder. No use by an affiliate of Lessee shall constitute a sublease or assignment to such affiliate. Each signatory as "Lessee" hereto and each such affiliate that may use a Vehicle shall be jointly and severally liable for all payment and performance obligations hereunder, and Lessee hereby guarantees performance by such affiliates until such time as all payments owed hereunder have been paid in full. Use of the Vehicles by such affiliate shall evidence acceptance of this subsection (d) without further action. This provision shall survive the termination of this Agreement.
- (e) In the event that Lessee files a bankruptcy case, Lessee will be obligated and shall pay to Lessor all costs and expenses, including reasonable attorneys' fees, incurred by the Lessor, in such bankruptcy proceeding to enforce this Agreement, collect amounts owed under this Agreement, protect the rights of Lessor under this Agreement, including the rights regarding assumption or rejection of this Agreement and/or protect the interests of Lessor in such bankruptcy proceeding.
- (f) The headings set forth in this Agreement are inserted for convenience of reference only and shall not be deemed to constitute part of the Agreement. This Agreement may be signed in any number of counterparts, each constituting a duplicate original. A facsimile or photocopy of a fully executed version of this Agreement shall have the same force and effect as an original. Each party agrees that electronic signatures of the parties on this Agreement and any Schedule B hereto will have the same force and effect as manual signatures.

The parties hereto acknowledge that they have required that the present Agreement, as well as all documents, notices and legal proceedings executed, given or instituted pursuant hereto or relating directly or indirectly hereto, be drawn up in English. *Les parties reconnaissent avoir exigé la rédaction en anglais de la présente convention, ainsi que de tous documents, avis et procédures judiciaires exécutés, donnés ou intentés, directement ou indirectement, à la suite de ou relativement à la présente convention.*

IN WITNESS WHEREOF, the parties have executed this Agreement through their duly authorized representatives as of the Effective Date.

LESSOR:

DONLEN FLEET LEASING LTD.

By: _____

Title: _____

LESSEE:

BJ SERVICES HOLDINGS CANADA, ULC

By: _____

Title: Evelyn Angelle/Chief Financial Officer

**PRICING SCHEDULE
(SCHEDULE B)**

☒ Original

☐ Revision

This schedule is made a part of the Master Motor Vehicle Lease Agreement (the "Lease") between **DONLEN FLEET LEASING LTD.**, as lessor ("Lessor"), and **BJ SERVICES HOLDINGS CANADA, ULC**, as lessee ("Lessee"), and terms used herein have the meanings ascribed thereto in the Lease. The pricing and financing for each vehicle type is set forth in the chart below. If a desired vehicle type is not on the chart, the vehicle will be priced and financed per individual quote. Unless otherwise expressly indicated, all references in this Schedule to "\$" or "dollars" means Canadian dollars. A processing fee for payments made in other than Canadian \$ shall be due as set forth in the Lease. Terms used in the chart have the meanings in the key that follows.

Vehicle Type	Base Capitalized Cost	Floating Rate Spread over Donlen Banker's Acceptance Rate	Minimum Monthly Depreciation Percentage
Factory/Dealer Order Passenger Vehicles/ Light Duty Trucks	Factory Invoice price plus dealer mark-up plus greater of 2% or \$250	300 bps	2.25%
Medium and Heavy Duty Trucks	Dealer invoice plus greater of 1.5% or \$1,000	300 bps	2.25%
PLUS upfitting/modifications	Vendor invoice plus greater of \$75 / 2%	--	--

KEY: "Donlen-Factory Order" refers to a Vehicle factory-ordered through Lessor. "Dealer Order" refers to any other Vehicle, including dealer stock or dealer direct orders. "Factory Invoice" price refers to industry-standard pricing terminology. Pricing terms reflect deductions due to commercial fleet incentives and other incentives provided to the Lessee by the manufacturer/dealer/vendor that are taken off invoice (upfront) by the manufacturer/dealer/vendor as part of the Lessee's incentive program only and not any other incentives, rebates or pricing adjustments unless expressly provided above. The capitalized cost will be adjusted if any applicable manufacturer/dealer/vendor changes or does not honor current incentive programs or incentive monies must be returned or disgorged in connection with any bankruptcy or insolvency proceeding of the applicable manufacturer/dealer/vendor. "Donlen Banker's Acceptance Rate" is the floating rate index determined by Lessor by reference to the Banker's Acceptance Rate published in Bloomberg (or any comparable publication or rate) on Lessor's invoice generation date, adjusted for day count and funding margin as in effect from time to time. The depreciation percentage may vary by month if Lessee and Lessor agree to a level pay option over a defined period for any Vehicle.

ADDITIONAL TERMS:

(a) **Capitalized Cost:** The capitalized cost of each Vehicle will equal the Base Capitalized Cost for the Vehicle and any related upfitting/modifications per chart above plus all other costs related to the Vehicle that the Lessor capitalizes hereunder, including, without limitation, dealer courtesy delivery fees, transportation charges, and interim interest, as shown on Schedule A for such Vehicle.

(b) **Monthly Rent:** Monthly rent will be comprised of (i) an amount equal to the depreciation percentage of the capitalized cost, (ii) a financing component determined based on the applicable financing rate, and (iii) an administrative fee component (see clause (c) below); provided, when the Depreciated Value of a Vehicle has been reduced to zero, the monthly rent for subsequent months may be reduced to the applicable minimum rent specified by Lessor, currently \$50 per month. In the event Lessee requests a fixed dollar amount (level pay) monthly rent (on an annual basis, full term basis or otherwise), the amount described in the foregoing clause (i) will be replaced with a variable percentage of the capitalized cost, determined under the applicable level pay formula using a specified calculation period over which a designated percentage of the capitalized cost would amortize (as used solely for purposes of such calculation).

(c) **Administrative Fee Component of Monthly Rent:** Monthly rent shall include an administrative fee component for each Vehicle through surrender, which shall be in the amount of "Applicable Percentage" of the Vehicle's capitalized cost for the Schedule Term. Applicable Percentage shall mean .035% for passenger vehicles/light duty trucks and medium/heavy duty trucks.

PRIOR SCHEDULE – This schedule supersedes and revokes any and all prior pricing schedules for future orders.

EFFECTIVE DATE – The effective date of this Schedule is June 30, 2017.

EA

DVN	Year	Description	In Service Date	Dep Rate	Orig Cost	Book Value
782686	2018	FORD F-150	2018-03-22	2.25	39816.54	12940.44
782687	2018	FORD F-150	2018-03-22	2.25	39816.54	12940.44
775075	2018	FORD F-150	2018-03-12	2.25	42739.36	12928.52
775076	2018	FORD F-350	2018-03-12	2.25	60969.19	18443.08
775103	2018	FORD F-350	2018-02-26	2.25	60455.45	18287.70
775104	2018	FORD F-350	2018-02-26	2.25	60455.45	18287.70
775105	2018	FORD F-350	2018-02-26	2.25	60455.45	18287.70
776924	2018	FORD F-550 Chassis	2018-02-21	2.25	62193.48	18813.63
776926	2018	FORD F-550 Chassis	2018-02-21	2.25	61394.82	18572.04
758954	2017	FORD F-350	2018-01-19	2.25	72287.16	18613.98
766752	2017	FORD F-350	2018-01-19	2.25	65206.87	16790.92
758955	2017	FORD F-350	2018-01-18	2.25	73114.60	18826.96
758958	2017	FORD F-350	2018-01-17	2.25	71695.44	18461.49
763696	2017	FORD F-350	2017-11-28	2.25	63742.08	14979.28
763699	2017	FORD F-350	2017-11-28	2.25	63742.08	14979.28
763701	2017	FORD F-350	2017-11-28	2.25	63742.08	14979.28
763702	2017	FORD F-350	2017-11-28	2.25	63436.08	14907.54
763703	2017	FORD F-350	2017-11-28	2.25	65003.55	15275.83
766649	2017	FORD F-350	2017-11-28	2.25	63955.26	15029.60
763933	2017	FORD F-350	2017-11-21	2.25	63003.01	14805.63
763934	2017	FORD F-350	2017-11-21	2.25	63188.29	14849.13
763935	2017	FORD F-350	2017-11-21	2.25	63210.64	14854.48
486046	2015	FORD F-350	2014-12-30	1.75	46182.32	0.00
420123	2013	FORD F-150	2013-08-05	1.75	38477.07	0.00
353561	2012	FORD F-550 Chassis	2012-12-14	2.00	83774.25	0.00
349152	2012	FORD F-350	2012-08-16	1.75	41822.53	0.00
349133	2012	FORD F-350	2012-08-07	1.75	41698.53	0.00
339260	2012	FORD F-150	2012-05-07	1.75	33961.62	0.00
331460	2012	FORD F-150	2012-02-28	1.75	36013.75	0.00

Months Billed	Driver Name	Driver City	Driver Province / Province	License Plate
30	Pool / Dave Hodgess - Frac	Clairmont	AB	BZF7455
30	POOL/Curtis Johnston	Clairmont	AB	BZF7454
31	Hodgess, David	Clairmont	AB	BZG3329
31	Cooper, Justin	Clairmont	AB	BZG3328
31	Arseneault, Davin	Clairmont	AB	BYY3527
31	Murray, Adam	Clairmont	AB	BYY3528
31	Collier, Alan	Clairmont	AB	BYY3529
31	Pool / Vanderkaa	Clairmont	AB	BYY3668
31	Pool / Vanderkaa	Clairmont	AB	BYY3667
33	Pool / Dave Hodgess - Frac	Clairmont	AB	BYV1712
33	Flavelle, Travis	Clairmont	AB	BZB8617
33	McInnis, James	Red Deer	AB	BYV1711
33	Gray, Dan	Red Deer	AB	BYV1710
34	Pool / Dave Hodgess - Frac	Clairmont	AB	BYR6535
34	Pool / Dave Hodgess - Frac	Clairmont	AB	BYR6532
34	Knight, Shuan	Clairmont	AB	BYR6533
34	Balmer, Kevin	Red Deer	AB	BYR6534
34	POOL/Jess Donahue	Red Deer	AB	BYR6531
34	Rye, Mark	Clairmont	AB	BYR6546
34	POOL/Jess Donahue	Red Deer	AB	BYP9412
34	POOL/Jess Donahue	Red Deer	AB	BYP9413
34	POOL/Jess Donahue	Red Deer	AB	BYP9414
70	Lewicki, Morris	Clairmont	AB	BYK9843
86	POOL/Jess Donahue	Red Deer	AB	BYK9853
94	POOL/James Evans	Clairmont	AB	BYK9998
98	POOL/Justin Aymont	Red Deer	AB	BYK9957
98	POOL/James Evans	Clairmont	AB	BYK9970
99	Pool / Chad Arnold - parts	Red Deer	AB	BYK9814
99	POOL/Curtis Johnston	Clairmont	AB	BYK9817

[illegible][illegible]



MASTER SERVICES AGREEMENT (CANADA)

This Master Services Agreement (Canada) (this "Agreement") is made and entered into this 30th day of June, 2017, by and among (i) BJ SERVICES HOLDINGS CANADA, ULC, whose notice address is 800, 215-9th Avenue SW, Calgary, AB T2P 1K3 ("Client") and (ii) DONLEN FLEET LEASING LTD/ Location de Flottes Donlen Ltee, a Canadian federal corporation, whose notice address is 3000 Lakeside Drive, 2nd Floor, Bannockburn, Illinois 60015 ("Donlen"). Unless otherwise expressly indicated, all references in this Agreement to "\$" or "dollars" are to Canadian dollars.

The parties agree as follows:

SECTION 1 SERVICES TO BE PROVIDED. Donlen agrees to provide to Client, or to any affiliates of Client as Client may designate from time to time, the services described on Attachment I to this Agreement (the "Services") with respect to vehicles (the "Vehicles") enrolled in the applicable programs (the "Programs") described in such Attachment I. Attachment I to this Agreement, and all terms and conditions set forth therein, will be and become part of this Agreement as if fully set forth herein (and references to "this Agreement" will expressly include such Attachment I). Individuals to whom Client assigns a Vehicle or permits use thereof are herein referred to as "Drivers."

SECTION 2 SERVICE COMMITMENT. Donlen will provide all Services hereunder in a timely, skillful and proficient manner. Donlen will conduct itself in accordance with the highest degree of ethics and professionalism in providing such Services.

SECTION 3 COMPLIANCE WITH LAW. Each of the parties hereto covenants and agrees to comply with all federal, provincial, and local laws applicable to it in connection with this Agreement. The Services of Donlen are intended to be administrative only, and no advice or Services provided by Donlen hereunder will relieve Client of the obligation to comply with all laws, rules and regulations applicable to Client in connection with the Programs (including, without limitation, lawful use of Driver Abstracts, if applicable).

SECTION 4 PAYMENTS.

(a) **Obligations.** Client agrees, in consideration for the Services to be provided by Donlen, to pay to Donlen (i) the fees and obligations set forth in Attachment I hereto (including the pricing schedule forming part thereof); (ii) all fees and charges for third-party services paid for by Donlen and third-party charges incurred by Donlen in connection with this Agreement; (iii) reasonable charge for overnight courier or other transmission services in connection with any Services; and (iv) all other sums due to Donlen pursuant to this Agreement. Client will bear all responsibility for all federal, provincial, local or special taxes, fees and assessments levied by any governmental authority in connection with any Programs or Vehicles (including, without limitation, use, excise, goods and services, personal property, ad valorem, sales, gross receipts and other taxes), excluding only federal and provincial income taxes payable by Donlen on its net income, and any penalties or fines which may be assessed as a result of any late payment by Client; provided, that Client will reimburse Donlen if Donlen pays any such amounts on behalf of Client hereunder and will pay any reasonable administrative fee for such service.

(b) **Invoice Terms.** Monthly invoices will be made available to Client electronically, via FleetWeb® or by other means reasonably selected by Donlen on or about the first day of each month and shall be net of any rebate due by Donlen to Client pursuant to subsection (d) of this Section. Invoices will reflect regular monthly fees due through the end of such month and other obligations due through such date. Client will pay Donlen the amount set forth on each invoice on or before 10 days from such invoice date, without any deduction or offset for any reason whatsoever, by electronic transfer into the bank account specified by Donlen. No delay in receipt by Client of invoices made available to Client or delay in payment by Donlen of third-party charges hereunder will in any manner excuse Client from paying Donlen in accordance with the terms of this Agreement. If any payment due hereunder is not received by Donlen within five (5) days of the due date therefor, Client will incur a late charge of 1½% of the past due amount for each month or partial month in which such payment remains past due, not to exceed the maximum amount permitted by law. Donlen will promptly investigate any disputed invoice and will promptly correct any billing error upon timely notice from Client or Donlen's discovery thereof.

(c) **Currency.** All payments to be made by Client hereunder shall be made in the lawful currency of Canada (Canadian \$). If any payment is made in US dollars or any other currency other than Canadian dollars, Client shall pay to Donlen simultaneously therewith a processing fee equal to 5% of the amount of the applicable payment.

(d) **Rebates.** Client will be entitled to a fuel rebate (the "Fuel Rebate") initially equal to fifty (50) basis points on all fuel purchases using a Fleet Card (as defined in Attachment I hereto), excluding diesel fuel purchased at locations offering a cash price discount or otherwise using the Comdata proprietary network. Donlen reserves the right to change the rebate in its discretion, including, without limitation, due to any change in terms between Donlen and the credit card issuer, reduction in monthly usage of the Fleet Cards, and/or failure of Client to make timely payments hereunder. Donlen agrees to promptly notify Client in writing if it changes the rebate.

SECTION 5 RELATIONSHIP OF CLIENT AND DONLEN. The relationship between Client and Donlen is that of independent contractor. This Agreement does not create any employer-employee, joint venture, or partnership relationship between Client and Donlen. Except as otherwise expressly set forth herein, neither party is an agent of the other.

SECTION 6 RELATIONSHIP WITH THIRD PARTIES; WARRANTY DISCLAIMERS. Donlen is providing an administrative service only and Donlen is not liable for, and makes no representations or warranties of any kind, expressed or implied, with respect to (i) the use, condition or operation of any vehicle (or any parts or accessories thereon), or (ii) the services provided by any third party, including, without limitation, third

parties that provide services to Client that are financed by Donlen hereunder and third parties that provide specialized services in connection with any Program such as (solely by way of example) any provincial registration office and all other governmental agencies and authorities, vehicle manufacturers, vehicle dealers, auctions and other resale vendors, national account vendors, parts and product suppliers, service centers/repair vendors, independent garages, license/tag agents, DA Vendors, regulatory compliance or safety training vendors, vehicle transport/drive-away companies, vehicle storage facilities, vehicle rental agencies, glass repair and replacement vendors, and emergency roadside assistance and towing services. EXCEPT AS EXPRESSLY SET FORTH HEREIN, DONLEN DOES NOT MAKE ANY WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO ITS SERVICES HEREUNDER. Without limiting the generality of the foregoing, Donlen makes no implied warranty of merchantability or fitness for a particular purpose in connection herewith.

SECTION 7 CONFIDENTIALITY. Each of the parties will regard and preserve as confidential and proprietary to the other party all such other party's Confidential Information, whether written, oral or computer based, to which it had access in connection with this Agreement. "Confidential Information" means any information that is disclosed by or on behalf of either party (the "Disclosing Party") to the other party (the "Receiving Party") that is identified as "confidential" or reasonably should be considered to be proprietary or confidential. Confidential Information includes, without limitation, the terms of this Agreement (including, with respect to Donlen as Disclosing Party, all pricing and charges hereunder and all data files provided in connection with the Services), all financial information, and technology and technology applications (including screen shots, reports and derivative products). "Confidential Information" does not include any information which: (a) the Receiving Party rightfully knew before the Disclosing Party disclosed it to the Receiving Party; (b) is or becomes generally available to the public through no wrongful act of the Receiving Party; (c) the Receiving Party develops independently and without the use of any Confidential Information of the Disclosing Party, or (d) the Receiving Party rightfully obtains from a third party who has the right to disclose it to the Receiving Party. The Receiving Party may disclose Confidential Information on a confidential basis to representatives, subcontractors, investors, lenders, rating agencies, and actual or prospective assignees. Upon termination of this Agreement, Donlen may retain one archival copy of Client's Confidential Information on a strictly confidential basis for audit purposes (and the terms of this subsection will survive termination of this Agreement with respect to such retained Confidential Information). Notwithstanding anything to the contrary set forth herein, the Receiving Party will have a right to comply with any court order, subpoena, or requirement of law in disclosing any Confidential Information. Breach of this Section may cause irreparable harm and the injured party will be entitled to injunctive relief for unauthorized disclosures.

SECTION 8 ADDITIONAL TERMS.

(a) **Indemnity.** Client shall indemnify and hold harmless Donlen and Donlen's affiliates and their respective officers, directors, employees and agents from and against any and all claims, whether arising as a result of any product liability, negligence or contract action and whether asserted against such indemnified party with or without litigation (including reasonable legal expenses), and any and all losses, damages, injuries, demands, costs and expenses (collectively, "Claims") arising out of or connected with this Agreement unless caused by the negligence, gross negligence or willful misconduct of Donlen, and any Claims arising out of or connected with the lease, maintenance, use, condition, operation or storage of any vehicle (including, without limitation, any rental vehicle) or any accident or incident involving any such vehicle, or the actions or inactions of any third party. Donlen shall promptly notify Client of such asserted Claims, and if the interests of Donlen and Client are not adverse, Client shall be entitled to control the defense thereof as long as it provides Donlen with evidence satisfactory to Donlen (which, at the request of Donlen, may include evidence of insurance or a surety bond) that it has the financial ability to pay any potential amount that may be owed by Donlen. This provision shall survive termination of this Agreement.

(b) **No Consequential Damages; Force Majeure.** IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR CONSEQUENTIAL, SPECIAL OR INCIDENTAL DAMAGES OF THE OTHER EXCEPT WITH RESPECT TO THIRD PARTY INDEMNITY CLAIMS. Neither party shall be liable for any failure or delay in the performance of any provision hereof resulting from acts of God, acts of civil or military authority, acts of public enemy or terrorism, epidemic, civil disturbance, insurrection, explosion, earthquake, the elements, fire or other casualty, riots, strikes or other labor difficulties, governmental regulations or restrictions or any cause beyond such party's control provided that such party acts with reasonable diligence and further provided, however, in no event shall either party be excused pursuant to the terms of this Section from the performance of any payment obligation hereunder or compliance with law.

(c) **Default.** If (i) Client shall fail to pay (or have available for PAD, if applicable) any payment obligation when due hereunder, or (ii) Client shall otherwise fail to observe or perform any other covenant or obligation to be observed or performed by Client hereunder, and such failure continues for a period of five days from the initial occurrence thereof, or (iii) there shall be filed by or against Client or any guarantor any petition in bankruptcy under any provincial or federal law, or a receiver or trustee shall be appointed for its business or property or Client or any guarantor shall make an assignment for the benefit of creditors, or (iv) Client or any guarantor shall cease to operate or shall sell all or substantially all of its assets to an entity not approved by Donlen in writing or that has not expressly assumed this Agreement, or (v) Client or any guarantor shall fail to be or remain solvent, or (vi) there shall be a material deterioration in the creditworthiness or financial condition of Client or any guarantor, including, without limitation, due to any consolidation or merger of such party with or into any other entity or Client shall otherwise not meet current credit standards of Donlen (including, without limitation, due to any change of control or deterioration of the credit condition of any parent of Client), or (vii) Client or any affiliate of Client shall be in default under the terms of any lease, maintenance, services, or other agreement entered into with Donlen, Donlen Trust, or any of their respective affiliates (the "Other Agreements"), then Client shall be in default hereunder. If there is a default hereunder by Client, Donlen, at its sole option, may suspend services under this Agreement, or immediately terminate this Agreement effective upon written notice to Client. Donlen may also take any such other actions available at law or in equity. Client will pay all costs and expenses (including court costs and reasonable attorney's fees) that may be incurred by Donlen in order to enforce its rights and remedies hereunder. Each and every remedy provided in this Agreement will be in addition to all other remedies available to a party and may be exercised by a party from time to time, simultaneously, and as often as such party will deem necessary.

(d) **Reporting.** If not publicly available, Client shall furnish, (x) within forty five (45) days after the end of each of the first three quarters of any fiscal year, the consolidated balance sheet and related statements of operations of Client and any guarantor, in each case, showing the consolidated financial condition as of the close of the fiscal quarter and the consolidated financial results during such fiscal quarter, certified by the Financial Officer as fairly presenting the consolidated financial condition and consolidated results of operations in accordance with generally accepted accounting principles (GAAP) (subject to normal year-end audit adjustments), and (y) within ninety (90) days after the end of each fiscal

year, the consolidated or combined annual audit report of Client and any guarantor, in each case, prepared in accordance with generally accepted accounting principles (GAAP) by independent accountants of recognized national standing accompanied by an opinion of such accountants to the effect that such financial statements fairly present the financial condition and results of operations and (z) such other financial information with respect to itself or any guarantor reasonably requested by and satisfactory to Donlen. Client shall notify Donlen, in writing, of any of the following events or any contractual arrangement to consummate any of the following events with respect to Client or any guarantor: (i) change in name, (ii) material change of ownership or control, (iii) merger, consolidation, amalgamation or transfer of all or substantially all of its assets and (iv) spin-off or sale of any operating division or affiliate that uses any of the Services described in this Agreement. Client shall execute or provide Donlen with all documents reasonably requested by Donlen to evidence what party is obligated (directly or as guarantor) hereunder following any of the foregoing events.

(e) **Integrated Agreements; Computer-Based Services.** The parties hereto hereby acknowledge that this Agreement and each Other Agreement (as defined in Section 8(c) hereof) collectively are integrated agreements with each other and arise out of integrated business transactions. Donlen and each of its affiliates, collectively, have a right of recoupment and set-off with respect to any obligations owing to Client or any affiliate under any such agreement and any obligations owing by Client or any affiliate under any such agreement (whether the obligations owing to Client or its affiliate arise under the same or different agreement as the obligations owing by Client or its affiliate and regardless of whether Donlen or one of its affiliates shall be the counterparty thereto). Client hereby acknowledges and agrees that in using FleetWeb® or other computer-based services of Donlen, it is bound by all terms and conditions of use set forth therein and all online agreements for users. Client shall bear the risk and hold harmless Donlen with respect to the accuracy and completeness of all information provided by Client on FleetWeb® or otherwise.

(f) **Notices.** Any notice which may be required to be given hereunder shall be in writing and delivered personally, sent by registered or certified mail, return receipt requested, postage prepaid, or sent by overnight delivery by a nationally recognized air courier, such as, but not limited to Federal Express or UPS, or, in the case of notices sent by Donlen, sent by electronic mail or regular mail, postage prepaid, in any case, addressed to the parties at the respective addresses as set forth in the preamble to the Agreement (or a subsequent address for which either party shall have given written notice to the other thereof). Notices mailed by registered, certified or regular mail shall be effective three (3) business days after the date of mailing; notices sent by nationally recognized air courier shall be effective the next business day after the date of mailing. E-mail notices shall be effective when sent to any e-mail address provided by a duly authorized representative of Client (with no automated out of office return).

(g) **Choice of Law.** This Agreement shall be governed by and construed in accordance with the substantive laws of the Province of Ontario, without regard to its conflict of law provisions, and the federal laws of Canada applicable therein. The parties hereto submit to the jurisdiction of the courts of the Province of Ontario in respect of any proceedings in connection with this Agreement. Both parties waive any and all right to any trial by jury in any such action. Client, if a corporation, waives the rights, benefits and protection given by *The Civil Enforcement Act* of Alberta and the *Judgment Enforcement Act* of Newfoundland or any amendment or successor legislation thereto and agrees that *The Limitation of Civil Rights Act* of Saskatchewan and the *Limitation Act* of Newfoundland or any amendment or successor legislation thereto shall not apply to this Agreement or to any agreement renewing or extending this Agreement or to the rights, powers or remedies of Donlen under this Agreement or under any agreement renewing or extending this Agreement.

SECTION 9 MISCELLANEOUS.

(a) **Termination.** This Agreement may be terminated by either party after twelve (12) months from the date hereof upon thirty (30) days prior written notice to the other; provided, that (if applicable) such termination may require ninety (90) days for registration renewal Services in process at the time of notice of termination, and Client will pay the related fees and costs in connection therewith. Notwithstanding the foregoing, Donlen does not have a commitment to extend credit and may reduce or eliminate the credit line provided to Client hereunder (with respect to third-party costs incurred or financed by Donlen hereunder on behalf of Client) at any time. No termination of this Agreement (whether with or without cause) will affect the obligations of either party arising prior or subsequent to the effective date of termination for any use or provision of Services or obligations hereunder, and all indemnities and other provisions that by their nature survive termination will so survive termination of this Agreement.

(b) **Integration; Severability; Counterparts; Execution.** This Agreement (expressly including Attachment I hereto) constitutes the entire agreement between the parties with respect to the subject matter hereof and shall supersede all previous agreements between Donlen and Client or any affiliate for the provision of services of the type herein described. If one or more provisions of this Agreement is for any reason held to be unenforceable or invalid, then such provisions will be deemed severable from the remaining provisions of this Agreement and will in no way affect the validity or enforceability of such other provisions or the rights of the parties hereunder. This Agreement may be signed in any number of counterparts, each constituting a duplicate original. A facsimile or photocopy of a fully executed version of this Agreement will have the same force and effect as an original. Each party agrees that electronic signatures of the parties on this Agreement will have the same force and effect as manual signatures.

(c) **Successors and Assigns; Affiliate Usage.** This Agreement will be binding upon and inure to the benefit of the parties, their respective successors and permitted assigns, and upon all affiliates of Client, if any, that may use any of the Services hereunder. In no event may Client assign this Agreement or any rights or obligations hereunder without the prior written consent of Donlen. No use of Services by an affiliate of Client will constitute an assignment to such affiliate; provided, that Client shall cause compliance of the terms hereof by each such affiliate, and Client and each such affiliate shall be jointly and severally (solidarily) liable for all payment and performance obligations of Client hereunder. Use of Services by an affiliate of Client will evidence acceptance of the foregoing without further action.

The parties hereto acknowledge that they have required that the present Agreement, as well as all documents, notices and legal proceedings executed, given or instituted pursuant hereto or relating directly or indirectly hereto, be drawn up in English. *Les parties reconnaissent avoir exigé la rédaction en anglais de la présente convention, ainsi que de tous documents, avis et procédures judiciaires exécutés, donnés ou intentés, directement ou indirectement, à la suite de ou relativement à la présente convention.*

IN WITNESS WHEREOF, the parties have executed this Agreement through their duly authorized representatives as of the Effective Date.

DONLEN:

DONLEN FLEET LEASING LTD/
Location de Flottes Donlen Ltée

By: 

Name: Don Collahee

Title: President

CLIENT:

BJ SERVICES HOLDINGS CANADA, ULC

By: 

Name: Evelyn Angelle

Title: Chief Executive Officer

**ATTACHMENT I
TO
MASTER SERVICES AGREEMENT (CANADA)**

THIS ATTACHMENT IS PART OF THE MASTER SERVICES AGREEMENT (CANADA) AND DEFINED TERMS USED HEREIN ARE AS SET FORTH IN THE MASTER SERVICES AGREEMENT (CANADA). THIS ATTACHMENT CONTAINS A DESCRIPTION OF "PROGRAMS" OFFERED BY DONLEN. PROGRAMS MAY BE ADDED UPON AGREEMENT BY THE PARTIES FROM TIME TO TIME AS EVIDENCED BY USE OF ANY SUCH PROGRAM. FEES FOR EACH PROGRAM ARE SET FORTH HEREIN, IN THE PRICING SCHEDULE HERETO, OR AS OTHERWISE AGREED BY THE PARTIES.

PART ONE: PROGRAM SELECTION

Client initially selects the Programs checked below:

- ☒ Fleet Maintenance Management Program (Payment/Consultation for Third Party Maintenance/Car Rental /Roadside Assistance Services)
- ☒ Fleet Card Program (Fuel)
- ☒ Accident Management Program (FNOL; Payment/Consultation for Third Party Repair/Towing/Car Rental Services; Claims Recovery)
- ☒ Fleet Administrative Services Program (Outsourced Fleet Manager)
- ☐ Taxable Benefits Report Program
- ☐ Driver Abstract Program
- ☒ AutoTag Program (Registration Renewal Service)
- ☐ Driver Ordering Program
- ☐ Vehicle Purchase Program (Coordination of Vehicle Purchases for Non-Leased Vehicles)

Client may use any of the following Programs upon request (without prior enrollment in such Program):

- Vehicle Transportation (Drive-Away) Program
- Vehicle (Non-Lease) Remarketing Program

ENROLLMENT. If Client enrolls in the Fleet Maintenance Management Program, Fleet Card Program, Accident Management Program or Fleet Administrative Services Program, Client shall not decrease its enrollment of Vehicles in any such Program by more than 10% of Client's maximum number of enrolled Vehicles during the first year of such Program without Donlen's prior written consent.

ATTACHMENT 1
TO
MASTER SERVICES AGREEMENT (CANADA)

PART TWO: PROGRAM DESCRIPTIONS

SECTION A. FLEET MAINTENANCE MANAGEMENT PROGRAM.

- (i) Donlen will provide maintenance cards ("Maintenance Cards") for use by Client's Drivers for purchases of vehicle maintenance, tires, parts, repairs and other automotive services (any of the foregoing, "Third Party Maintenance Services") provided by third party vendors on enrolled Vehicles and may also issue purchase orders for purchase of such Third Party Maintenance Services. Maintenance Cards may be co-branded with Jim Pattison Lease or another subcontractor (and references herein to Donlen also include the co-brander). Client shall have the sole and exclusive right to determine which third party vendor to use for Third Party Maintenance Services and is not bound in any respect by any Donlen vendor recommendation. Donlen reserves the right to block a Maintenance Card at any time, including if Donlen suspects unauthorized use or upon request of Client. It may take up to one business day for card blocks to become effective and are subject to third party vendor compliance with block notifications and below limit transactions.
- (ii) Donlen will provide a toll-free telephone number to the call center ("Donlen Call Center") maintained by either Donlen or its subcontractor with respect to Third Party Maintenance Services. Client and Donlen may determine price level at which Donlen will contact Client (by phone or e-mail) prior to approving a particular Third Party Maintenance Service, which will be embossed on each Maintenance Card.
- (iii) Services may be provided through in-network vendors identified by Donlen from time to time (although individual franchises may not participate). Donlen will also authorize purchase orders to finance services at driver-selected independent garages, service centers and dealerships. Maintenance intervals for particular services will be determined solely by Client (upon consultation with Donlen); provided, that Donlen will have no liability whatsoever for any losses or damages of any kind arising out of Client's choice of services and service intervals for its Vehicles.
- (iv) Donlen will finance and provide Client with access to daily truck or car rental services through either its rental company affiliate or an independent vehicle rental company. Client or Driver will be required to sign a standard rental contract regarding use of the rental vehicle.
- (v) Donlen will arrange 24-hour emergency roadside assistance upon request by any Driver of an enrolled Vehicle.

SECTION B. FLEET CARD PROGRAM (FUEL). Donlen will provide a specialized MasterCard® credit card ("Fleet Card") for each enrolled Vehicle. Fleet Cards are valid for the purchase of authorized products and services at approved participating MasterCard locations (third party fuel vendors). Donlen will have the exclusive right to select, reject and change the credit card issuer and processor. Client shall comply with all MasterCard® rules and rules of any issuer or processor with respect to use of any Fleet Card. Currently, the issuer of the Fleet Cards is National Bank of Canada, headquartered at 600 De La Gauchetiere Street West (11th Floor), Montreal, Quebec, H3B 4L2 (together with any successor, the "card issuer"). If Fleet Cards are no longer issued by the current card issuer, Donlen will provide replacement Fleet Cards issued by any successor card issuer as soon as they are available. Donlen reserves the right to cancel a Fleet Card at any time, including if Donlen suspects unauthorized use. Fleet Cards may contain transaction limits, and other limitations as directed by Client and available for such Fleet Card, but all such limitations will be subject to exceptions including automatic approval of below floor limit transactions.

SECTION C. ACCIDENT MANAGEMENT PROGRAM.

- (i) Donlen, directly or through a subcontractor, will provide accident management services for enrolled vehicles. Client must provide Donlen with a Certificate of Insurance where applicable. Program structure will be based on coordination between Donlen and the insurance provider with respect to all matters including authorizations, appraisals, and third party repair vendors. The Driver of an enrolled Vehicle may call the Donlen Call Center if an accident/incident involving such Vehicle has occurred, and Donlen will create a First Notice of Loss. Donlen will refer Driver to an independent third party repair vendor, which may include third party vendors in its repair vendor network (or, if required, in the network of the insurance provider). Donlen will provide payment and consultation services in connection with repair of the applicable Vehicle and purchase orders will be issued to such third party repair vendors for payment of the applicable repair services. Rental vehicles will be arranged for Drivers during repair period as described above.
- (ii) If an unrelated third party ("Responsible Third Party") is or may be liable for damages to an enrolled Vehicle subject to an accident/incident being managed by Donlen pursuant to clause (i) of this Section, Donlen may seek recovery reimbursement ("subrogation") from such Responsible Third Party for the benefit of Client (if not subject to insurance coverage). Client hereby authorizes Donlen to take all commercially reasonable actions to obtain recovery from a Responsible Third Party, including, without limitation, settling any claim for less than the full amount. Client hereby appoints Donlen and any designee of Donlen as its agent and attorney-in-fact with power of attorney to sign (in the name of or on behalf of Client) any release or other documentation required by a Responsible Third Party or its agent in connection with settlement of any such claim. No attorney will be hired by Donlen on behalf of Client in connection with any such claim unless Client specifically consents.

SECTION D. CERTAIN ADDITIONAL PROGRAM TERMS.

- (i) All Maintenance Cards, Fleet Cards, and other property delivered by Donlen to Client in connection with any Program ("Donlen Property") shall remain the property of Donlen and Client shall have no proprietary interest therein; provided, that Client will be responsible for all charges, costs and expenses incurred by use of any Donlen Property or Program, whether or not such charges are authorized or result from unauthorized use of any Donlen Property or Program, and Client shall indemnify and hold harmless Donlen from any liabilities, losses, claims or actions arising therefrom. Client will use Donlen Property in a manner that is consistent with any applicable restrictions and terms of use imposed by Donlen or by any credit card issuer or processor. Donlen is not responsible or liable for any results arising from any merchant's failure or refusal to accept Donlen Property or payment service or for any restrictions imposed by any merchant.
- (ii) Client agrees that in the event of a dispute with a third party vendor, it will notify Donlen promptly if it wishes Donlen to cooperate in resolution thereof and will also provide Donlen with all material details known to it relating to the dispute; provided, that disputed charges will remain the responsibility of the Client unless the dispute is favorably resolved with the applicable vendor. Client may request use of the MasterCard resolution procedures for any disputed Fleet Card transaction, subject to the timing and documentation requirements set forth in the MasterCard Rules as in effect and implemented by MasterCard from time to time.
- (iii) Client agrees to promptly notify the card issuer and Donlen of any Fleet Cards, Maintenance Cards or other Donlen Property that it knows or believes to be lost, stolen or fraudulently used. Client shall remove Donlen Property from any Vehicle prior to sale or other disposition. Client shall immediately discontinue use and return or destroy all Donlen Property upon termination of any Program, if the related Vehicle is no longer enrolled in such Program or otherwise upon request of Donlen. In connection with Donlen Property and the Programs provided by Donlen hereunder, Donlen may retain volume-based discounts or rebates provided to Donlen by the applicable third party vendors.

SECTION E. FLEET ADMINISTRATIVE SERVICES PROGRAM.

(i) Donlen will provide toll-free telephone access for Client and its Drivers during normal business hours to a dedicated Account Manager and a specialized support team to act as outsourced fleet manager for the Vehicles in Client's fleet. Donlen will assist and advise Client in the development of a profile of fleet policies and preferences (the "Client Fleet Profile") and assist Client in periodically updating such Client Fleet Profile. Fleet Administrative Services may include development of annual Vehicle selectors; Vehicle replacement recommendations; Vehicle ordering services; pre-order and post-order confirmations; Vehicle status reports; Vehicle surrender-related services; communications and distribution of documentation to Drivers, including Vehicle tickets and violations; and management of other Donlen Programs (including Driver Abstract Program and Taxable Benefits Reporting Program); provided, if Client is enrolled in the Driver Abstract Program, for provinces that only permit driving history records to be obtained by the driver (and not the employer), Donlen's involvement will be limited to assisting Client to upload any such records obtained by Client from its Drivers into the database containing Client's other driver records obtained hereunder from the other provinces.

(ii) Donlen may also provide one or more of the following Supplemental Fleet Administrative Services, as may be requested by Client from time to time (as individually priced): insurance card distribution; Driver surveys; customized Toll Free Number for Client's personnel only; processing transfers for Vehicles that are being moved between provinces (without duplication of any applicable AutoTag Program fee).

(iii) Client hereby authorizes Donlen to take all reasonable actions to implement the Fleet Administrative Services described herein and effectuate the Client Fleet Profile. Client will take all actions reasonably requested by Donlen in connection with such Services in order for Donlen to perform such Services hereunder. Client will provide Donlen with prompt and correct fleet information (to the extent necessary to perform such Services), including, without limitation, (a) Driver names, e-mail addresses, mail addresses and phone numbers; (b) Driver employment status and years of employment; (c) Vehicle locations and Vehicle status; and (d) additional information necessary or reasonably requested by Donlen for such purpose. Client will update Donlen upon any changes in such information. Client will provide appropriate ongoing internal communication to announce and educate its employees regarding the Services provided hereunder, and will encourage and support Driver promptness and timely cooperation with Donlen in performance of its Services.

SECTION F. AUTOTAG (REGISTRATION RENEWAL) PROGRAM.

(i) Donlen agrees to provide registration renewal and related services ("AutoTag Services") as described herein to (i) Vehicles leased by Client from Donlen or its affiliate ("Leased Vehicles") and/or (ii) additional vehicles ("Other Vehicles"), as selected by Client (separate pricing may apply for Leased Vehicles and Other Vehicles), on or after the Renewal Effective Date for each Vehicle. The "Renewal Effective Date" will mean, with respect to any Vehicle, the date occurring 90 days after the date that such Vehicle has been enrolled in the AutoTag Program and required information as described in clause (ii) of this Section has been provided to Donlen.

(ii) Vehicles enrolled by Client from time to time in the AutoTag Program will be added by Donlen to a master list (the "Renewal List"). Client will provide Donlen with all information requested by Donlen in connection with each such Vehicle including, without limitation, Driver name and address (if applicable), garage address and (for each Other Vehicle) a copy of the current year registration and the full 17 digit VIN. Client will also provide Donlen with any power of attorney requested by it to accomplish the purposes hereof. Client shall give Donlen notice if it does not wish Donlen to renew the registration for any such Vehicle, at which time Donlen will delete such Vehicle from the Renewal List. Client shall provide current and updated information to Donlen as to all Vehicles on the Renewal List and Drivers, including, without limitation, the sale or loss of a Vehicle; the addition of a new Vehicle and changes in Driver name or garage address. Such information will be provided to Donlen in writing or electronically with verifiable confirmation.

(iii) Donlen will coordinate renewal requirements through Client or, upon request of Client, directly with the applicable Driver. Donlen will have no obligation to renew the registration of any Vehicle until Client (or Driver) has supplied Donlen with evidence of compliance with any applicable provincial renewal requirements. Client recognizes that certain Provinces may impose requirements for registration renewals such as, but not limited to, emissions tests, vehicle inspections, certificates or proof of insurance, or certificates or proof of payment of tax that require either the presence of the vehicle or the performance of certain actions in the location of the driver or the vehicle, which requirements may change from time to time. Donlen will provide a letter (the "Renewal Notification Letter") to Client or the applicable Driver prior to the applicable renewal date for each enrolled Vehicle, which may include a description of provincial requirements, if any, known by Donlen. The Renewal Notification Letter may specify a date (which may be expressed as a designated number of days from the date of the letter) (the "Return Date") by which evidence of compliance with any applicable provincial requirements must be sent by Client or Driver to Donlen. Client agrees to comply with, or cause each Driver to comply with, all provincial requirements to registration renewal including all such requirements that are indicated in the Renewal Notification Letter for each renewal, and to provide, or cause each Driver to provide, to Donlen on or prior to the Return Date, evidence of compliance with any such provincial renewal requirements. In addition, Client will be solely responsible to obtain any and all local permits required for each Vehicle, such as stickers and parking permits and will otherwise comply with law. Notwithstanding the foregoing, Donlen may finance on behalf of Client and pay the personal property taxes due to any State or other governmental entity to the extent required as a condition to registration renewal as the parties shall mutually agree.

(iv) If Client complies with the requirements described in clause (iii) of this Section, including providing evidence of compliance with the renewal requirements by the applicable Return Date, then Donlen will use its best effort to renew the registration of each Vehicle listed on the Renewal List for which the renewal date occurs on or after the Renewal Effective Date and provide proof thereof to Client or its Driver prior to expiration of the then-current registration. If Client fails to comply with the requirements set forth in the Renewal Notification Letter by the Return Date, or if there is a delay or error on the part of the Province processing a registration renewal, proof of registration renewal may not be supplied to Client prior to the date of expiration of the renewal, and Donlen will have no liability with respect to failure to obtain such renewal. Accordingly, Client acknowledges that Donlen does not provide a warranty, either expressed or implied, that the registration to any Vehicle will be renewed prior to its expiration. Upon the request of Client, Donlen will pursue refunds on behalf of Client for Vehicles renewed unnecessarily. Upon the request of Client and timely performance by Client with all prerequisites required by any governmental authority, Donlen will also use its best efforts to (a) process Vehicle provincial relocation, and (b) obtain duplicate or corrected registration, license or other applicable documentation for such Vehicle.

(v) If on or after the Renewal Effective Date for any Vehicle, due solely to causes within Donlen's control, Donlen fails to renew a registration of any Vehicle that was included on a Renewal List and for which Donlen received evidence of compliance with all applicable registration requirements by the applicable Return Date, Donlen will either pay, or upon receipt of an invoice or other documentation from Client, will reimburse Client, for any tickets, penalties or late registration fees incurred as the result thereof as long as Donlen has received notice thereof in a timely manner to reasonably preclude continuing tickets, penalties or late registration fees. Donlen will have no other liability of any nature whatsoever with respect to failure of a renewal to be obtained hereunder (including, but not limited to, driver down time). Except as expressly set forth in this paragraph,

Donlen's liability in connection with the AutoTag Program is expressly limited to the corresponding fees paid to it by Client in connection with such AutoTag Program.

SECTION G. TRANSPORTATION AND DRIVEAWAY PROGRAM. Donlen will use its best efforts to arrange transportation, storage and other incidental services for Vehicles upon request of Client by a third party transportation or storage specialist (the "**Drive-Away Vendor**"). Client will provide information (such as VIN number, starting and ending location of vehicle and Driver information) and/or execute all documentation reasonably requested by the Drive-Away Vendor or Donlen with respect to each order. Client will pay Donlen the charges and expenses assessed by the Drive-Away Vendor and a reasonable administrative fee. Client represents that it maintains commercially reasonable insurance on all Vehicles for which it is requesting transportation and/or storage services.

SECTION H. REMARKETING PROGRAM. Whenever directed by Client and agreed by Donlen, Donlen will use commercially reasonable efforts to facilitate the wholesale sale of any Vehicle owned by Client in a commercially reasonable manner either directly or through a resale auction, dealer or other resale vendor (it being expressly understood that resale of any Vehicles leased from any affiliate of Donlen will be subject to the terms of the Lease and not this Agreement). If a Vehicle is not sold within 60 days of surrender, Donlen will notify Client and work with Client to resolve any issues delaying such sale. Each Vehicle will be sold "as is"; provided, that Client will pay all amounts necessary to discharge any lien upon the Vehicle or liability attached to such Vehicle prior to the sale. Each sale will be for cash payable in full upon the delivery of the Vehicle to the purchaser. Upon the completion of each sale of a Vehicle pursuant to the terms hereof, Donlen will promptly pay to Client the proceeds from such sale less all fees, costs and expenses (including, without limitation, any towing charges, reconditioning costs and dealer or auction fees) incurred in connection with the sale and a commercially reasonable selling fee; provided, Client will pay Donlen any of the foregoing to the extent not deducted from such sale proceeds. Donlen will also facilitate vehicle sales to employees or other individuals through client-directed or web-based offerings based upon reasonable supplemental selling fees for such programs. Client will furnish a power of attorney and such other information and documents requested by Donlen to enable Donlen to sell such Vehicles on behalf of Client.

**ATTACHMENT I
TO MASTER SERVICES AGREEMENT (CANADA)**

PART THREE: PRICING SCHEDULE

Client shall pay to Donlen all third party charges, related costs and expenses and specified Program fees as described above. In addition, Client shall pay to Donlen the following fees in connection with the applicable Program as set forth below. Fees may appear on invoices in an aggregate fashion under one Program name (for multiple Program monthly fees) or a generic name.

FLEET MAINTENANCE MANAGEMENT PROGRAM	PER VEHICLE PER MONTH FEES	OTHER FEES
Set-Up Fee		\$100
Monthly Program Fee	\$5.00 pvpm	
New Maintenance Cards		\$0.00 per card
Replacement Maintenance Cards		\$25.00 per card
Administrative Fee (other than in-network vendor transactions)		10% per transaction

FLEET CARD PROGRAM (FUEL)	PER VEHICLE PER MONTH FEES	OTHER FEES
New Fleet Card Issuance Fee		\$1.00 per card
Replacement Fleet Card Issuance Fee		\$3.00 per card
Monthly Fleet Card Fee	\$2.00 pvpm	

ACCIDENT MANAGEMENT PROGRAM	PER VEHICLE PER MONTH FEES	OTHER FEES
Claim Loss Notice		\$25.00 per notice
Independent Appraisal		Appraiser Fee + \$50
Recovery Reimbursement ("subro")		18% (40% if counsel retained)
Administrative Fee for non-network vendors		10% per transaction

FLEET ADMINISTRATIVE SERVICES PROGRAM	PER VEHICLE PER MONTH FEES	OTHER FEES
Standard Program	\$5.00 pvpm	

AUTOTAG PROGRAM	PER VEHICLE PER MONTH FEES	OTHER FEES
AutoTag Fee (registration renewal/renewal refund application (regardless of outcome)/plate return/ assignment/other related services)		\$3.00 pvpm (Leased Vehicles) \$3.00 pvpm (Other Vehicles)
Province Transfer		\$25.00 per occurrence
Personal Property Tax Payment Administration		\$25.00 per occurrence
Duplicate Registration		\$25.00 per occurrence
Ticket Processing		\$25.00 per occurrence

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

In re:

BJ Services, LLC, *et al.*¹

Debtors.

Chapter 11

Case No. 20-33627 (MI)
(Jointly Administered)

**ORDER GRANTING MOTION OF DONLEN CORPORATION AND DONLEN FLEET
LEASING FOR RELIEF FROM THE AUTOMATIC STAY AND FOR
AUTHORITY TO TERMINATE DEBTOR'S RIGHTS UNDER LEASE**

Upon the Motion (the "Motion") of Donlen Corporation ("DC") and Donlen Fleet Leasing, Ltd. ("DFL") (DC and DFL, hereinafter, as the context may require, shall be referred to as "Donlen") pursuant to 11 U.S.C. § 362(d) for, *inter alia*, the entry of an order for relief from the automatic stay authorizing Donlen to pursue its rights and remedies, inclusive of the termination, under (i) that certain Master Motor Vehicle Lease dated June 30, 2017 (the "CAN Lease") between debtor BJ Services Holdings Canada, ULC (the "Debtor" or "BJ CAN") and DFL; and (ii) that certain Master Services Agreement dated June 30, 2017 between the Debtor and DFL, (the "CAN MSA" and, collectively with the CAN Lease and the US Donlen Agreements defined herein, the "Donlen Agreements"); and this Court having jurisdiction over this matter pursuant to 28 U.S. C. §§ 157 and 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S. C. §§ 157(b)(2) and that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: BJ Services, LLC (3543); BJ Management Services, L.P. (8396); BJ Services Holdings Canada, ULC (6181); and BJ Services Management Holdings Corporation (0481). The Debtors other than BJ Services, LC are referred to collectively as the "Related Debtors". The Debtor's service address is: 11211 Farm to Market 2920 Road, Tomball, Texas 77375

district is proper pursuant to 28 U.S. C. §§ 1408 and 1409; and this Court having found that notice of the Motion and opportunity for a hearing on the Motion were appropriate and no other notice need be provided; and this Court having reviewed the Motion and the Certification of Joseph Machuta in support of the Motion, and having heard the statements in support of the relief requested therein at a hearing before this Court (the “Hearing”); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is GRANTED;
2. Within two (2) days following any notice of termination issued by Donlen, the Debtor shall surrender the automotive vehicles set forth in Exhibit B Certification of Joseph Machuta submitted in connection with the Motion (the “Leased Vehicles”) and/or cooperate in the location, surrender or repossession of the Leased Vehicles in the time and in the manner provided under the CAN Lease. To the extent necessary, the Related Debtors shall cooperate and assist in the surrender of the Leased Vehicles.
3. In the event that BJ CAN does not surrender the Leased Vehicles or otherwise cooperate in the surrender of the Leased Vehicles, Donlen is authorized to identify, locate and repossess all such Leased Vehicles in any manner or fashion that is consistent with the applicable law(s) of the jurisdiction where the Leased Vehicle(s) may be located. In the event that the Debtor does not satisfy its obligations with regard to surrender of the Leased Vehicles as set forth in the CAN Lease and/or this Order, Donlen shall be allowed a chapter 11 administrative claim for all reasonable costs and fees incurred by Donlen related to its efforts to identify, locate and repossess the Leased Vehicles.

4. Nothing herein shall serve to waive, extinguish or compromise the rights and/or monetary claims of Donlen, inclusive of its affiliates, against the Debtor and/or any of the Related Debtors, any guarantor(s) or any other individuals/entities. The rights of Donlen to assert an administrative claim, a rejection/termination claim, and/or an unsecured claim against the Debtor(s) and/or guarantors are expressly preserved.

5. Nothing contained herein shall be deemed or construed to: (a) limit Donlen to the relief granted herein; or (b) bar Donlen from seeking other and further relief (including without limitation relief from the terms of this Order) for cause shown on appropriate notice to parties-in-interest entitled to notice of same.

6. The terms and provisions of this Order shall be binding upon the Debtor and the Related Debtors and any subsequent trustee and/or committee that may be appointed in the respective Debtors' bankruptcy proceedings and shall survive dismissal of any of these jointly-administered bankruptcy cases.

7. The notice provisions of Fed. R. Bankr. P. 4001(d) have been satisfied, complied with or otherwise excused. This Order shall be effective immediately upon entry and shall not be subject to the fourteen (14) day stay provided for under Fed. R. Bankr. P. 4001(a)(3).

8. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

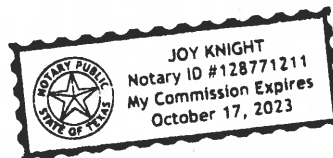
HONORABLE MARVIN ISGUR
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT 7

THIS IS **EXHIBIT "7"** REFERRED TO IN THE
AFFIDAVIT OF ANTHONY C. SCHNUR
SWORN BEFORE ME THIS 9th DAY OF OCTOBER, 2020



A NOTARY PUBLIC
IN AND FOR THE STATE OF TEXAS



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

In re:

BJ Services, LLC, *et al.*¹

Debtors.

Chapter 11

Case No. 20-33627 (MI)

(Jointly Administered)
(Emergency Hearing Requested)

**GACP FINANCE CO., LLC'S EMERGENCY MOTION
FOR RELIEF FROM THE AUTOMATIC STAY**

This motion seeks relief from the automatic stay. If you oppose the motion, you should immediately contact the moving party to resolve the dispute. If you and the moving party cannot agree, you must file a response and send a copy to the moving party. You must file and serve your response within 21 days of the date this was served on you. Your response must state why the motion should not be granted. If you do not file a timely response, the relief may be granted without further notice to you. If you oppose the motion and have not reached an agreement, you must attend the hearing. Unless the parties agree otherwise, the court may consider evidence at the hearing and may decide the motion at the hearing.

Represented parties should act through their attorney.

Emergency relief has been requested. If the Court considers the motion on an emergency basis, then you will have less than 21 days to answer. If you object to the requested relief or if you believe that the emergency consideration is not warranted, you should file an immediate response.

GACP Finance Co., LLC, Administrative Agent under that certain Term Loan Credit and Guaranty Agreement, dated as of January 28, 2019, among BJ Services, LLC, as the Borrower,

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: BJ Services, LLC (3543); BJ Management Services, L.P. (8396); BJ Services Holdings Canada, ULC (6181); and BJ Services Management Holdings Corporation (0481). The Debtors' service address is: 11211 Farm to Market 2920 Road, Tomball, Texas 77375.

the Other Borrowers from Time to Time Party Thereto, the Guarantors from Time to Time Party Thereto, GACP Finance Co., LLC, as Administrative Agent, and the Other Lender Party Thereto, Goldman Sachs Lending Partners LLC and JPMorgan Chase Bank, N.A., as Joint Lead Arrangers, Goldman Sachs Lending Partners LLC as Bookrunner and Canadian Imperial Bank of Commerce, Barclays Bank PLC, and Citibank, N.A., as Co-Managers (the “GACP Term Loan Agreement”) and in its capacity as collateral agent under that certain U.S. Security Agreement and that certain Canadian Security Agreement, both of even date therewith (in all such capacities, the “Agent” and together with the lenders under the GACP Term Loan Agreement, the “GACP Secured Parties”) respectfully files this Emergency Motion for Relief from the Automatic Stay (the “Motion”). In support thereof, the Agent respectfully states the following:

PRELIMINARY STATEMENT²

1. The Agent through this Motion seeks relief from the automatic stay as to the vast majority of its collateral, namely that subset of the machinery and equipment that sits idle in the Debtors’ yards, at garages, with repairmen, in storage lots or otherwise not being utilized by the Debtors and is not being marketed in connection with the Debtors’ motions to sell the Cementing Business and Fracturing Assets (Dkts. 39, 160) (collectively, the “Idle Equipment”). In addition, within the Idle Equipment, the Debtors own a fleet of more than 1400 trucks (the “Trucks”) as to which the Debtors have represented that they will seek to engage a liquidator in these cases to liquidate in the immediate future.³ In the event the Debtors fail promptly to pursue such relief and initiate such process, this Motion also seeks relief from stay as to the Trucks.

² Capitalized terms used but not otherwise defined in this section shall have the meanings given in the GACP Term Loan Agreement.

³ The Agent is not opposed to the Debtors retaining the same liquidators that the Agent would retain to liquidate the Trucks, which is what the Debtors have told the Agent that they intend to

2. The automatic stay is one of the most fundamental debtor protections under the Bankruptcy Code. It provides debtors with a “breathing spell” from creditors which not only benefits debtors, but also creditors by preventing a “rush to the courthouse” and the premature dismemberment of a debtor’s assets.

3. Notwithstanding this axiom, the automatic stay provides a debtor with only a *temporary* opportunity to assess its property and stave off creditors, and in recognition of its potential harm to secured creditors in particular, the Bankruptcy Code requires, among other things, that a debtor provide adequate protection to a secured creditor as a condition to the debtor’s use of such property. *See* 11 U.S.C. § 363(e).⁴ Additionally, the Bankruptcy Code mandates relief from stay when, among other things, there is a lack of adequate protection, *see* 11 U.S.C. § 362(d)(1), or when the debtor does not have equity in the property at issue and such property is not necessary to an effective reorganization. *See* 11 U.S.C. § 362(d)(2)).

4. In this case, the Agent holds a first priority, senior secured, valid, perfected, enforceable and unavoidable lien that secures a claim of over \$200 million outstanding as of the Petition Date against all of the Debtors’ machinery and equipment and the proceeds thereof. The Agent’s claim is the single largest claim in the Debtors’ cases. The Debtors have stipulated, among other things, to the validity, perfection, priority and unavoidability of the GACP Secured Parties’ liens and the obligations under the GACP Term Loan Agreement.

do. To be clear, however, the Agent does not believe that the Debtors are adding any value to the process of liquidating the Trucks, and the Agent does not consent to the Debtors’ use of any proceeds from the sale of the Trucks until such time as the GACP Secured Parties have been paid in full.

⁴ “Use” in this context includes retention for use. *See In re Chapter 13, Byrd*, 250 B.R. 449, 452 (Bankr. M.D. Ga. 2000).

5. In this case, the Debtors are admittedly liquidating and not reorganizing, as they are selling their only remaining going-concern operations (the Cementing Business and Fracturing Assets). Given the ongoing, historic crash in the Oil & Gas market and the precipitous decline in appraisal value of the collateral over the past 18 months — by the Debtors' most recent appraisal, from over \$700 million to an amount under the value of the GACP Secured Parties' claims — there can be no dispute that the value of the GACP Secured Parties' collateral has been deteriorating and is likely to continue to do so. Additionally, the Debtors' and the Prepetition ABL Lenders' statements and actions to date in these cases suggest that they believe that the Debtors have no equity in the GACP Secured Parties' collateral. In fact, the Debtors and the Prepetition ABL Lenders are so concerned about this lack of equity that they have repeatedly and consistently represented to this Court that the GACP Secured Parties need to share in the allocation of costs associated with the Debtors' chapter 11 cases and have reserved the right to seek to surcharge. These undisputed facts mandate stay relief in this case.

6. Notwithstanding that the GACP Secured Parties are entitled to relief from stay with respect to all of their collateral under the facts and circumstances of these cases, the GACP Secured Parties are willing to continue to allow the Debtors to utilize the portion of their collateral included in the Cementing Business and Fracturing Assets that the Debtors need to complete work-in-progress and to continue to operate as a going concern, provided that such equipment remains part of a going concern sales process that preserves the GACP Secured Parties' rights and ensures the GACP Secured Parties are adequately protected. Additionally, while the GACP Secured Parties continue to have serious concerns regarding (and objections to) the proposed sales of certain fracturing and cementing assets to insiders of the Debtors, the GACP Secured Parties are willing to allow the Debtors to try to sell those businesses as going concerns in an effort to preserve as

many jobs as possible, provided, again, that such equipment remains part of a going concern sales process, the GACP Secured Parties are adequately protected and that their rights in their collateral (including, among other things, their rights under 11 U.S.C. §§ 363(e), 363(f), 363(k) and 1111(b)) are respected.⁵

7. But there is no legitimate reason why the automatic stay should remain in place with respect to the Idle Equipment, which is depreciating in value on a daily basis, and is subject to risk of damage and loss because of the Debtors' inadequate maintenance and insurance. The Debtors should not be allowed to benefit from retaining the Idle Equipment, in which they have no equity and are not using in any business operations, while simultaneously threatening the GACP Secured Parties with the prospect of surcharge because they have failed to abandon the Idle Equipment consistent with their fiduciary duties under Fifth Circuit law. Simply put, the Debtors are attempting to use the automatic stay offensively, so they can continue to hold the GACP Secured Parties' collateral hostage in an effort to achieve benefits for other stakeholders, while retaining the option to bring an action to surcharge the GACP Secured Parties for the costs of their chapter 11 cases if the Debtors do not achieve their hoped for results.

8. Consequently, the automatic stay should be immediately lifted as to the Idle Equipment. With respect to all other remaining Equipment, the Debtors must provide the GACP Secured Parties with adequate protection that includes, among other things, a surcharge waiver.

⁵ The Agent's willingness to allow the Debtors to try to sell portions of the GACP Collateral as part of a going concern sales process on the terms set forth herein should not be construed as the Agent's agreement with the Debtors' strategy or consent to pay for all or any portion of any administrative expenses that the Debtors may be incurring in connection therewith. The Agent continues to believe that the Debtors should not be accruing administrative expenses if the Debtors do not believe they have the ability to pay for such expenses.

Absent such adequate protection, the GACP Secured Parties are entitled to relief from stay with respect to the remaining Equipment as well.

9. Finally, as previously stated, the GACP Secured Parties continue to have concerns about the proposed sales of the Cement Business and Fracturing Assets. In the event the Debtors seek to sell the GACP Secured Parties' collateral over the GACP Secured Parties' objections and without providing for payment in full of the GACP Secured Parties' claims then the GACP Secured Parties also seek through this motion stay relief as to the balance of such collateral.

JURISDICTION AND VENUE

10. The United States Bankruptcy Court for the Southern District of Texas (the "Court") has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b).

11. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

12. The bases for the relief requested herein are 11 U.S.C. §§ 105 and 362.

STATEMENT OF FACTS

A. Background Regarding the GACP Equipment Term Loan

The GACP Term Loan Agreement and Collateral

13. The Debtors are the Credit Parties under the GACP Term Loan Agreement, a true and correct copy of which is attached to the Declaration of Robert A. Louzan ("Louzan Declaration") (Dkt. 77) as Exhibit A. Louzan Decl. ¶ 4; *see also* Declaration of Warren Zemlak, Chief Executive Officer of BJ Services, LLC in Support of Chapter 11 Petitions and First Day Motions (the "Debtors' First Day Declaration"), Dkt. 22, at ¶ 37.

14. The GACP Term Loan Agreement provided a \$200 million term loan with an original maturity date of January 3, 2023. Debtors' First Day Declaration, ¶ 37. Upon information

and belief, the Debtors used all or substantially of the proceeds of the GACP Term Loan Agreement to pay down the Prepetition ABL Lenders.

15. The Debtors are also Grantors under the related Security Agreement, defined in the Louzan Declaration and copies of which attached thereto as Exhibits B and C. Louzan Decl. ¶¶ 5-6.

16. The Agent perfected its security interest by taking the steps required by law, such as by filing financing statements with the appropriate authorities and having its security interest noted on the titles to the Debtors' titled vehicles, certain copies of which are attached to the Louzan Declaration as Exhibit D⁶. Louzan Decl. ¶ 7-9. The Debtors have stipulated to the validity, perfection, priority and unavailability of the Agent's liens:

Validity, Perfection, and Priority of Liens and Obligations under the GACP Term Loan Agreement. The Debtors acknowledge and agree that, as of the Petition Date: (i) the GACP Secured Parties' (as defined below) liens on the GACP Collateral (such liens, the "Prepetition GACP Liens") were valid, binding, and enforceable in accordance with the terms of the GACP Term Loan Agreement (as defined below), non-avoidable and properly perfected and were granted to, or for the benefit of, the GACP Secured Parties for fair consideration and reasonably equivalent value; (ii) the Prepetition GACP Liens were and remain senior in priority over any and all other liens on and security interests in the GACP Collateral (as defined below); (iii) the prepetition obligations owed to the GACP Secured Parties under the GACP Term Loan Agreement, including any "Obligations" as defined in the GACP Term Loan Agreement, of any kind or nature, whether or not evidenced by any note, agreement, or other instrument, whether or not contingent, whenever arising, accrued, accruing, due, owing, or chargeable in respect of any of the Debtors' obligations (collectively, the "Prepetition GACP Obligations") constituted legal, valid, binding, and non-avoidable obligations of the Debtors, enforceable in accordance with the terms of the GACP Term Loan Agreement; (iv) no portion of the Prepetition GACP Obligations or any payments made to the GACP Secured Parties or applied to or paid on account of the obligations owing under the GACP Term Loan Agreement prior to the Petition Date is subject to any contest, avoidance, reduction, recharacterization, subordination (whether equitable, contractual or otherwise), recovery, reduction, recoupment, disallowance, impairment, rejection, attack, effect, counterclaim, cross-claim, set-off, offset, defense or any other claim (as defined in the Bankruptcy Code) of any kind, cause of action or any

⁶ Certain collateral are rolling stock and the documents evidencing perfection of the liens on such collateral are not attached because they are voluminous in nature. The Debtors have copies of all perfection notices and documents. The Agent will make the documents available upon request.

other challenge of any kind or nature under the Bankruptcy Code or any other applicable law or regulation or otherwise and the Debtors do not possess, and shall not assert, any claim, counterclaim, setoff or defense of any kind, nature or description that would in any way affect the validity, enforceability and non-avoidability of any Prepetition GACP Obligations; and (v) the Debtors waive, discharge, and release any right to challenge any of the Prepetition GACP Obligations, the priority of the Debtors' obligations thereunder and the validity, extent, and priority of the Prepetition GACP Liens.

Second Interim Order (I) Authorizing Debtors to Use Cash Collateral Pursuant to Section 363(c) of the Bankruptcy Code; (II) Granting Adequate Protection to the Prepetition ABL Secured Parties for the Use Thereof; (III) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001(b); and (IV) Granting Related Relief, Dkt. 261 at ¶ 4(f).

17. The collateral under the Security Agreements consists of “(a) all Equipment, (b) all Certificates of Title, books and records of such Grantor pertaining to any of the Equipment; and (c) to the extent not otherwise included, all Proceeds of any and all of the foregoing, in each case, to the extent identifiable,” excluding certain defined Excluded Property (collectively, the “GACP Collateral”). Security Agreement, Section 2; *see also* Debtors' First Day Declaration at ¶ 37 (“The obligations under the [GACP Term Loan Agreement] are secured by all machinery and equipment, any certificates of title, books and records pertaining to any equipment, and proceeds of any of the foregoing”).

The Debtors' Default Under the GACP Term Loan Agreement

18. Under the GACP Term Loan Agreement, the Debtors are obligated to make quarterly payments of principal and interest to the Agent. *See* GACP Term Loan Agreement, Sections 2.07-2.08. As of the Petition Date the Debtors failed timely to pay the installment of principal and interest due June 30, 2020. Louzan Decl., ¶ 11.

19. On July 17, 2020, during the occurrence and continuation of an Event of Default the GACP Secured Parties accelerated the obligations owing under the GACP Term Loan Agreement, thereby triggering the accrual of interest at the Default Rate, as defined in the GACP

Term Loan Agreement. *See, e.g.*, GACP Term Loan Agreement Sections 9.01-9.02; Louzan Decl., ¶ 13. Debtors' First Day Declaration, ¶ 37.

20. As of the Petition Date, the Debtors owed over \$200 million under the facility, including principal, interest, expenses, costs, premium, and other fees. Louzan Decl., ¶ 10; Debtors' First Day Declaration, ¶ 37.

21. Additionally, as a result of the occurrence and continuation of an Event of Default, the Agent has (i) "the right to enter and remain upon the various premises of [the Debtors] without cost or charge;" (ii) the right to use the "materials, supplies, books and records of [the Debtors] for the purpose of collecting and liquidating the Collateral, or for preparing for sale and conducting the sale of the Collateral;" and (iii) the right to "remove Collateral, or any part thereof, from such premises and/or any records with respect thereto." GACP Term Loan Agreement, Section 9.05b; *see also* Security Agreements, Section 21 (each authorizing the Agent to, among other things, exercise all rights and remedies under the GACP Term Loan Agreement, any other Loan Document, any other applicable Law, and any rights and remedies of the Grantors in connection with the Collateral).

The Current Location and Use of the GACP Collateral

22. The GACP Collateral consists of, among other things, drilling equipment, cementing equipment, pumps, vehicles, trailers, tractors, accessories and accessions thereto and other general goods and supplies used by the Debtors and the proceeds thereof. Upon information and belief, the following summary sets forth the type, number, and location of the Equipment that is included in the GACP Collateral:

Oilfield Equipment and Supplies	Count	Other Equipment	Count
Blenders	150	Drop Deck Trailers	44
Cementing Equipment	1,292	Light Duty Vehicles	24

Coiled Tubing	3	Mobile Equipment	68
Data Vans	109	Misc. Trailers	735
Fracking Pumps	903	Nitrogen Transports	9
Hydration Units	69	Truck Tractors	2,236
Iron	88	Van Trailers	29
Nitrogen	23	Misc. Support Equipment	855
Other Pumps	101	Total	4,000
Sand	345		
Total	3,083	Grand Total	7,083

Equipment Location	State	Count
Bridgeport	WV	25
Calgary	AB, Canada	42
Cheyenne	WY	170
Clairmont	AB, Canada	591
Clarksburg	WV	5
Dickinson	ND	654
Hobbs	NM	4
Liberal	KS	2
Liberty	TX	123
Massillon	OH	353
MillHall	PA	127
Odessa	TX	1,372
Red Deer	AB, Canada	100
Rifle	CO	151
San Antonio	TX	700
Santa Fe	NM	13
Searcy	AR	16
Shreveport	LA	546
Tomball	TX	289
Yukon	OK	219
Bryan (Idle Yard)	TX	75
Hobbs (Idle Yard)	NM	279
Tomball (Idle Yard)	TX	309
Weatherford (Idle Yard)	OK	274
Unknown ⁷		644
Grand Total		7,083

Louzan Decl. ¶ 12.⁸

⁷ Despite repeated requests from the Agent, the Debtors have not provided information on the disposition of the remaining 644 pieces of collateral.

⁸ The equipment location tables have been updated based on new information provided by the Debtors after the filing of the Louzan Declaration.

23. The Debtors have informed the GACP Secured Parties that the Debtors intend to use, and will continue only to use, a limited subset of the GACP Collateral to fulfill the Debtors' work in progress, which currently consists of approximately 6 fracturing fleets and the Cementing Business Equipment, which together contain a total of 442 different pieces of Equipment (the "In Use Equipment").⁹ Dkt. 160-1 at 41. The current In Use Equipment is approximately 6% of the number of units comprising the Equipment, but represents a disproportionately large portion of the total value of the Equipment.

24. The remainder of the Equipment that is not In Use Equipment, including in excess of 1400 Trucks, sits idle in various locations across North America and is subject to depreciation and loss in value (the "Idle Equipment"). The Idle Equipment is exposed to the environment and subject to damage and degradation. In addition, much of the Idle Equipment is mobile and could be taken. All of the Idle Equipment is valuable and could be liquidated. Louzan Decl. ¶ 20.

25. The Debtors' property and casualty insurance policy contains substantial deductibles that could leave the GACP Secured Parties exposed in the event of loss. The Debtors have a \$1,000,000 annual deductible, and then after that is met, there are other individual incident deductibles that typically range between \$25,000 and \$75,000 based on the type of loss, but also including a \$1,000,000 deductible for any loss at an operating wellsite. Louzan Decl. ¶ 37.

B. The Precipitous Decline in the Value of the GACP Collateral

26. At the time the GACP Term Loan was executed, just 18 months ago, the Equipment was appraised at approximately \$700 million.

27. As of December 2019, the Agent commissioned an appraisal that valued the GACP Collateral in excess of \$550 million. Louzan Decl. ¶ 15; *see also* Debtors' First Day Declaration,

⁹ This data is current as of the date the Motion was filed, but remains subject to change.

p.6 fn. 4 (“an appraisal conducted at the end of 2019 valued [the GACP Collateral] at nearly \$588 million”).

28. On information and belief, prepetition the Debtors sold certain Equipment for approximately \$20 million, but used the entirety of the proceeds to pay down the Prepetition ABL Lenders.¹⁰ The Debtors also claim to have “solicited interest from third parties in purchasing underutilized assets of the Company” prior to the Petition Date but “[d]emand for these assets dissipated when oil prices dropped (and drilling and fracturing decreased) as the market became oversaturated with companies looking to sell underutilized assets.” *See* Debtors First Day Declaration, ¶ 56.

29. On July 13, 2020, Hilco Valuation Services (“Hilco”), the Debtors’ advisor, and the Debtors provided the Agent with a valuation report concerning the GACP Collateral as of June 27, 2020 (the “Debtors’ Valuation”). Louzan Decl. ¶ 16. The Debtors’ Valuation concluded that the GACP Secured Parties were undersecured as of June 27, 2020, and Hilco recommended a nine (9) month sale process beginning immediately. *Id.*

30. Shortly after the Debtors provided the Agent with the Debtors’ Valuation, CSL Capital Management, L.P. (“CSL”), one of the Debtors’ existing equity sponsors and an insider, submitted a bid for a scaled down portion of the Debtors’ fracturing business, which included certain Equipment hand-picked by CSL for its quality and/or ability to be upgraded or customized. CSL and the Debtors encouraged the Agent to support the bid by noting that the portion of the purchase price allocated to the represented a 15% premium to the values ascribed to such

¹⁰ Under the GACP Term Loan Agreement, the Debtors were allowed to sell up to \$40,000,000 of Equipment under certain circumstances without incurring restrictions on the Debtors’ use of proceeds. As a result of the Debtors’ prepetition defaults, the Debtors no longer have that ability under the GACP Term Loan Agreement.

equipment in the Debtors' Valuation. On July 24, 2020, the Debtors filed a motion to approve bidding procedures for a sale of certain fracturing assets (the "Fracturing Assets"), attaching an asset purchase agreement setting forth a modified version of CSL's original bid (as modified, the "CSL Bid"). *See* Dkt. 160. Although the value ascribed to the GACP Collateral in the CSL Bid is marginally above the values ascribed to such equipment in the Debtors' Valuation, such modest "premium" is far short of the amount necessary to satisfy the GACP Secured Parties' claim. In fact, even if all of the GACP Collateral could be liquidated at the same premium allegedly reflected in the CSL Bid, the GACP Secured Parties would still be undersecured.

31. Although the Agent believes that the GACP Collateral is worth more than the Debtors' Valuation (and the CSL Bid), there can be no doubt that the GACP Secured Parties are not being adequately protected in these chapter 11 cases, or that the Debtors lack equity in the GACP Collateral when all liens are taken into account and the costs associated with liquidating the collateral are taken into account.

C. The Debtors' Requests for Funding From, and Threats to Surcharge, the GACP Secured Parties.

32. Hilco's conclusion that the GACP Secured Parties are undersecured is consistent with the Debtors' actions both prior to and after the Petition Date. The Debtors have not been able to secure any DIP financing from any party, regardless of whether secured by a junior lien on the GACP Collateral (or on any other terms). The GACP Secured Parties have been and remain unwilling to fund the Debtors' cases, because they do not believe that the going concern sale processes are accretive to their recoveries. Indeed, despite the Debtors' representations to the

contrary,¹¹ the Debtors' cash flow attached to the Second Interim Cash Collateral Order, Dkt. 261 at 51, appears to show that the operations of the Cement Business postpetition will cost the estates in excess of \$6 million, while not providing at least that amount in increased sale values, thereby causing the estates a substantial net loss.

33. Instead, the Debtors have made repeated requests of the GACP Secured Parties to fund the Debtors' ongoing operations and bankruptcy cases, coupled with the express or implied threat to surcharge the GACP Collateral if the GACP Secured Parties do not acquiesce to the Debtors' demands, while holding the GACP Collateral (including the Idle Equipment) hostage. Other parties, like the Prepetition ABL Lenders, have piled on notwithstanding that the Prepetition ABL Lenders' collateral position does not seem to be deteriorating very much, and the Prepetition ABL Lenders appear to be benefiting the most from a process that provides for the completion of work-in-progress and the payment of claims that would otherwise impair the value of accounts receivable. *See* Dkt. 261 at 51 (cash collateral budget). A non-exclusive list of the foregoing includes the following:

- “Simply put, the [GACP Secured Parties] ... need to share in the costs of these cases.” Debtors First Day Declaration, ¶ 10.
- “To be clear, the Debtors will object to [stay relief for the GACP Secured Parties].” *Id.* at ¶ 11.
- “The Debtors intend to continue to engage with their Equipment Term Lenders ... regarding an appropriate sharing of expenses related to preservation of collateral during the chapter 11 cases.” Debtors' Statement in Connection with the Mediation and Proposed Use of Cash Collateral, at ¶ 9. Dkt. No. 151.
- “The ABL Secured Parties support the Debtors' efforts to pursue an orderly liquidation of their businesses under chapter 11 so long as the costs of the chapter

¹¹ First Day Hearing Tr. at 21:5-6 (“there is revenue and it is cash flow positive, or projected to be cash flow positive, in the month of July”); July 29, 2020, Hearing Tr. at 30: 9-10 (“We collect in excess of what we spend”).

11 cases are shared equitably by all of the Debtors' stakeholders." Statement of Prepetition ABL Agent, at ¶ 2. Dkt. No. 42.

- "So, this is really the core dispute . . . once we knew that the reorganization deal had fallen apart, we were trying to get to an agreement on an orderly winddown plan allocation of costs. We realize that we might not get there, and in fact, we haven't gotten there yet." Debtors' Counsel, First Day Hearing Transcript at 21:19-25.
- "[The Term Lenders] have expressed some willingness to pay for some of those direct costs, but it still doesn't get to the question of if you look at the budget, costs that aren't directly attributable to the term loans and the equipment that's the collateral of the term lenders . . . we also on the ABL side are very concerned about a worse outcome if those costs aren't shared . . . we do want to reserve all of our rights, even with respect to costs and the budgets when it comes to potential surcharge under 506(c) or otherwise" ABL Secured Parties' Counsel, First Day Hearing Transcript at 56:18-22, 57:11-13, 57:24-25, 58:1-2.

34. The Debtors inability to secure funding to pay for their chapter 11 cases, coupled with their inability to solicit any interest in the GACP Collateral at prices that would yield a surplus, supports the conclusion that the Debtors lack equity in the GACP Collateral.

35. Additionally, the Debtors' repeated insistence that the GACP Secured Parties "share in the costs of these cases" is consistent with the Debtors' view that the GACP Secured Parties are undersecured, because if the Debtors truly believed that they had equity in the GACP Collateral, they would have been eager to work with the GACP Secured Parties to monetize that interest, rather than drag their feet about it. Furthermore, the consistent threats to surcharge the GACP Secured Parties, which the Bankruptcy Code does not countenance, and/or the GACP Collateral demonstrates that the Debtors are primarily interested in using the GACP Collateral as a piggy bank to fund general administrative expenses that are impermissible to surcharge under section 506(c). In other words, they want to syphon away the value of the GACP Collateral, not protect it. Accordingly, the GACP Secured Parties are not adequately protected in these bankruptcy cases and are entitled to relief from stay.

36. In summary, the GACP Secured Parties are not adequately protected; the Debtors have no equity in the Equipment, including the Idle Equipment; the Idle Equipment is not necessary to the Debtors' plans to sell their going concern businesses; and the Agent is capable of liquidating the Idle Equipment in a more cost-effective manner that will also help realize higher values. Relief from the automatic stay should therefore be granted under 11 U.S.C. §§ 362(d)(1) and (2).

RELIEF REQUESTED

37. The Agent respectfully requests that the Court enter the Proposed Order:

- a. Lifting the automatic stay with respect to the Idle Equipment and, if the Debtors have not moved to establish a sale process for the Trucks by August 19, 2020, lifting the automatic stay with respect to the Trucks;
- b. Authorizing the Agent to exercise all lawful rights to collect, repossess and liquidate the Equipment wherever located under applicable non-bankruptcy law;
- c. Ordering the Debtors to comply with their obligations under the GACP Term Loan Agreement and Security Agreement to cooperate with the Agent's collection and liquidation efforts, including by, without limitation, identifying to the Agent the locations at which the Equipment is located and, with respect to each such location, (i) providing a copy of all leases, occupancy rights, easements, licenses, and any other documentation related to the Debtors' rights to occupy such location; (ii) providing contact information for the owners and/or lessors for each such location; (iii) identifying all insurance policies applicable to each such location; and (iv) identifying all the security measures applicable to each such location; and
- d. the GACP Secured Parties also seek through this motion stay relief as to the balance of their collateral unless the GACP Secured Parties (i) consent to the sales of the Cementing Business and Fracturing Assets or (ii) the GACP Secured Parties' secured claim will be paid in full in connection with such sales.

ARGUMENT

38. Section 362(a) of the Bankruptcy Code imposes an automatic stay of “any act to obtain property of the estate or of property from the estate or to exercise control over property of the estate” and to “enforce any lien against property of the estate.” 11 U.S.C. § 362(a)(2)-(3).

39. Section 362(d) provides the bases for the Court to lift the automatic stay, two of which are relevant here. Under subsection (d)(1), the Court shall lift the automatic stay “for cause, including the lack of adequate protection of an interest in property of such party in interest.” 11 U.S.C. § 362(d)(1). Under subsection (d)(2), the Court shall lift the automatic stay with respect to an act against property when “(A) the debtor does not have equity in such property and (B) such property is not necessary to an effective reorganization.” 11 U.S.C. § 362(d)(2). If both factors of section 362(d)(2) are met, then relief is “mandatory.” *Nantucket Investors II v. California Fed. Bank (In re Indian Palms Assocs, Ltd.)*, 61 F.3d 197, 208 (3d Cir. 1995)

40. Under 11 U.S.C. § 362(g), “the party requesting relief has the burden of proof on the issue of the debtor’s equity in the property” and “the party opposing such relief has the burden of proof on all other issues.” That means, for purposes of this Motion, that the Debtors bear the burden to prove: (i) that the GACP Secured Parties are adequately protected; and (ii) that the Idle Equipment and Trucks are necessary to an effective reorganization. As discussed below, the Debtors cannot meet their burden with respect to either of these elements and therefore relief from stay should be granted.

I. The Court should lift the automatic stay for cause under section 362(d)(2) because the Debtors have no equity in the Idle Equipment and Trucks and will not be reorganizing around the Idle Equipment or Trucks.

A. *Section 362(d)(2)(A) is satisfied because the Debtors' have no equity in the Idle Equipment and Trucks*

41. “The classic test for determining equity under section 362(d)(2) focuses on a comparison between the total liens against the property and the property’s current value.” *Indian Palms*, 61 F.3d at 206; *Stewart v. Gurley*, 745 F.2d 1194, 1195 (9th Cir. 1984). *See United Savings Ass’n v. Timbers of Inwood Forest Assocs, Ltd.*, 808 F.2d 363, 370 (5th Cir. 1987) (reviewing the legislative history of section 362(d)). If the amount of all of the liens, including junior and statutory liens, against the property exceeds the property’s current value, then this factor is met. *Indian Palms*, 61 F.3d at 207-08 (rejecting the “equity cushion” analysis under section 362(d)(2)(A)). *See, e.g., In re New Era Co.*, 125 B.R. 725, 729 (S.D.N.Y. 1991) (“section 362(d)(2) only demands an analysis of the debtor’s equity in the property”) (also rejecting an “equity cushion” analysis and holding that section 362(d)(2)(A) satisfied where the liens on the property exceeded the value by \$180,000, or approximately 28%); *In re Moor*, 51 B.R. 640, 644 (Bankr. N.D. Miss. 1985) (holding that section 362(d)(2)(A) satisfied where the liens on the property exceeded the value by \$89,314.97, or approximately 11%).

42. When determining the amount of the liens, the Court should take into account the extent of the fees, costs, and other allowable charges under the lien that would continue to accrue if the property remained in the estate and the creditor is oversecured. *In re Garsal Realty, Inc.*, 98 B.R. 140, 154-55 (Bankr. N.D.N.Y. 1989). For example, in *Garsal Realty*, the bankruptcy court held that a debtor had no equity for the purpose of section 362(d)(2)(A) where, although the debtor had approximately \$44,832.28 of equity in the property based upon the difference between the appraised value of the property and the outstanding principal and interest, that equity it would be

quickly consumed by the lenders' claim for \$47,000 in legal fees and \$2,000 in costs related to the foreclosure, plus monthly post-petition interest accruing at the rate of \$1,200 per month. *Id.*

43. As of the Petition Date, the Debtors owed over \$200 million under the GACP Secured Loan Agreement, including principal, interest, expenses, costs, premium, and other fees. In addition, interest, expenses, costs, premium, make-whole, and other fees continue to accrue postpetition to the extent permissible under 11 U.S.C. § 506(b). For example, interest in the amount of \$62,013.89 continues to accrue daily.

44. In addition, the Equipment is subject to adequate protection liens and ad valorem tax liens.

45. A "debtor may admit there is no excess equity or insufficient equity in the property." *McCullough v. Horne (In re McCullough)*, 495 B.R. 692, 697 (W.D.N.C. 2013) (holding that a debtor's statement that "if there is equity, there's very little equity in the property" was sufficient to establish no equity in the property under section 362(d)(2)(A)); *In re Martens*, 331 B.R. 395, 398 (B.A.P. 8th Cir. 2005) (holding that a debtor's scheduled property value constituted an admission of lack of equity for the purpose of section 362(d)(2)(A)).

46. Hilco, the Debtors' appraiser, conducted an appraisal concerning the Equipment as of June 27, 2020. The Debtors' Valuation appraised all of the Equipment at less than the amount of the GACP Secured Parties' claims. Furthermore, the Debtors have stated their need for liquidity and intent to seek to use a portion of the proceeds from the sales of the Trucks¹², which the GACP Secured Parties have not consented to, and even if the GACP Secured Parties were to consent to that request, it would mean that the reduction in the GACP Secured Parties' claim will not be

¹² *Debtors' Statement in Connection with the Proposed Use of Cash Collateral and Disposition of Assets*, Dkt. 187 at ¶ 5.

reduced on a dollar-for-dollar basis against the value of the Trucks being sold. In effect, the Debtors will be deepening their insolvency. These admissions support the conclusion that the value of the Equipment is less than the amount of the GACP Secured Parties' claims. Factoring junior liens into the analysis, including liens for property taxes and adequate protection liens, further supports this conclusion.

47. Accordingly, the Court should find that the Debtors have no equity in the Equipment.

B. Section 362(d)(2)(B) is satisfied because the Idle Equipment is not necessary to the Debtors' liquidating plan.

48. Courts have consistently construed section 362(d)(2)(B) to require a showing by the debtor that there is a reasonable possibility of a successful reorganization within a reasonable time. "The mere indispensability of the property to the debtor's survival and the debtor's hopes of reorganization are insufficient to justify continuation of the stay when reorganization is not reasonably possible." *Timbers of Inwood Forest*, 808 F.2d at 370-71. When the chapter 11 debtor seeks a plan of liquidation, the debtor must further show that "the property at issue is necessary to an effective liquidation of the debtor." *Id.* at 371 n.14.

49. In this case, the Debtors are admittedly liquidating, and not reorganizing, around the Idle Equipment. There appears to be no reason for the Debtors to retain the Idle Equipment to facilitate their going concern sales. Indeed, the Debtors are permitting the Idle Equipment to waste and burden their estates, and except with respect to the Trucks, the Debtors are not in the process of selling the Idle Equipment. Accordingly, the Debtors' retention of the Idle Equipment cannot be "necessary" for the purpose of section 362(d)(2)(B). *Timbers of Inwood Forest*, 808 F.2d at 370-71.

50. Therefore, the Debtors have no equity in the Idle Equipment and, as the Idle Equipment is in fact idled and not part of the Debtors' going concern sales, both parts of section

362(d)(2) are satisfied. Accordingly, the Court should grant relief from the stay under section 362(d)(2).

II. The Court should lift the automatic stay for cause under section 362(d)(1) because the GACP Secured Parties are not adequately protected and will exclusively suffer the balance of harms if relief is not granted.

51. Under subsection (d)(1), the Court shall lift the automatic stay “for cause, including the lack of adequate protection of an interest in property of such party in interest.” 11 U.S.C. § 362(d)(1). Cause is not defined in the Bankruptcy Code, but is instead determined on a case-by-case basis. *In re Mosher*, 578 B.R. 765, 772 (Bankr. S.D. Tex. 2017). “Each case must be viewed on the basis of its own particular facts, and there must be a balancing of the interest of the debtor with the interest of the secured creditor in its collateral.” *Id.* (quotation omitted). “Factors generally looked to in determining whether to modify the stay for cause include interference with the bankruptcy, good or bad faith of the debtor, injury to the debtor and other creditors if the stay is modified, injury to the movant if the stay is not modified, and the proportionality of the harms from modifying or continuing the stay.” *Id.* (quotation omitted).

The GACP Secured Parties are not adequately protected and will be harmed if relief from the automatic stay is not granted.

52. A creditor’s “interest is not adequately protected if the security is depreciating during the term of the stay.” *United Savings Ass’n v. Timbers of Inwood Forest*, 484 U.S. 365, 369 (1988). For the purpose of section 362(d)(1), the ability to maintain an equity cushion of at least 20% is typically required for the secured creditor to be adequately protected. *In re Mendoza*, 111 F.3d 1264, 1272 (5th Cir. 1997). *See In re Woodbranch Energy Plaza One Ltd.*, 44 B.R. 733, 736 (Bankr. S.D. Tex. 1984) (finding lack of adequate protection and lifting stay when equity cushion was projected to be depleted within a year based on price declines, no market recovery “in the foreseeable future” and incurrence of other costs); *In re Cameron-811 Rusk LP*, No. 10-

31856 (Bankr. S.D. Tex. Jul. 12, 2010) (finding lack of adequate protection and lifting stay based in part on “evidence is that real property values are declining in the central business district of Houston”).

53. The GACP Secured Parties will be significantly injured if stay relief is not granted. First and foremost, the Debtors have no way to provide adequate protection payments to the GACP Secured Parties or any other form of adequate protection sufficient to satisfy the requirements of the Bankruptcy Code, and given the Debtors’ admission that the GACP Secured Parties are undersecured, the Debtors are nowhere close to having a 20% equity cushion. *Supra* at ¶ 44.

54. In addition, the valuations are not likely to improve. The Debtors admit that the market has become “oversaturated with companies looking to sell underutilized assets.” *See* Debtors First Day Declaration, ¶ 56. Given the ongoing, historic crash in the Oil & Gas market and the according precipitous decline in appraisal value of the collateral over the past 18 months — by the Debtors’ most recent appraisal, from over \$700 million to an amount under the value of the GACP Secured Parties’ claims — there can be no dispute that the value of the collateral has been deteriorating and is likely to continue to do so.

55. Absent relief from stay, the value of the Idle Equipment and Trucks will continue to diminish and the liquidation process will be unnecessarily delayed. The Debtors will likely incur additional administrative expenses that the Debtors have threatened to seek to recover from the value of the GACP Collateral. The GACP Secured Parties will continue to incur costs related to an unnecessary chapter 11 bankruptcy process, which will also increase the value of the GACP Secured Parties’ claims, and the Debtors’ cannot provide adequate protection to the GACP Secured Parties.

56. This factor weighs in favor of granting stay relief.

Whether granting stay relief will interfere with the bankruptcy

57. Lifting the stay with respect to the Idle Equipment, and potentially the Trucks, will have no impact on the Debtors' attempt to save jobs by facilitating going-concern sales of the Cementing Business and the Fracking Assets. As established above, the Debtors have no equity in any of the collateral and it is not necessary to the Debtors' plans. If anything, granting stay relief will benefit the estate because it will relieve the estate of having to incur the upfront costs associated with preserving the collateral, while being unfaced with the longer term and far more uncertain question concerning whether, and if so, to what extent, the Debtors can recover those expenses under section 506(c), while also incurring the related litigation costs. If anything, lifting the stay is beneficial to the estate, as the Agent will be responsible for liquidating the collateral and, should the proceeds exceed the amount necessary to fully satisfy the GACP Secured Parties' secured claims, the GACP Secured Parties will return such excess proceeds to the estate.

58. This factor weighs in favor of granting stay relief.

The Debtors' bad faith warrants relief from the automatic stay.

59. Common indicia of bad faith include a debtor whose assets are fully encumbered, no employees except for principals, little or no cash flow, no available sources of income to sustain a plan or make adequate protection payments, a relatively small number of unsecured creditors, allegations of wrongdoing by the debtor's principals, the debtor is using bankruptcy strategically to resolve a dispute with a single creditor or to preserve property on the eve of foreclosure. *Matter of Little Creek Dev. Co.*, 779 F.2d 1068, 1072-73 (5th Cir. 1986). When these circumstances are present, "resort to the protection of the bankruptcy laws is not proper . . . Neither the bankruptcy courts nor the creditors should be subjected to the costs and delays of a bankruptcy proceeding under such conditions." *Id.* at 1073.

60. Here, the Debtors' assets are fully encumbered, the Cementing Business (and possibly the Fracturing Assets) is operating at a loss, they have no available sources of funding for the case or to provide adequate protection, and are using the bankruptcy process for the improper purpose of holding the GACP Secured Parties' collateral hostage to facilitate the sale of estate property to an insider at a fire-sale price. To the extent the Debtors are able to sell the Cementing Business and Fracturing Assets at a price acceptable to the GACP Secured Parties, the GACP Secured Parties do not oppose going concern sales to help the affected employees maintain their jobs. The Debtors, however, should not be allowed to hold the Idle Equipment hostage as a strategy to facilitate their insider sale and to extract value from the GACP Collateral for the benefit of the Debtors, their insiders, and the Prepetition ABL Parties. The GACP Secured Parties propose that taking fully encumbered property hostage is *per se* bad faith and abusive of the bankruptcy system. *Little Creek*, 779 F.2d at 1073.

61. It is also a breach of the Debtors' duty not to administer fully encumbered assets. *See In re Domistyle, Inc.*, 811 F.3d 691, 699 (5th Cir. 2015) ("Where property is fully encumbered, abandonment is the order of the day."); Handbook for Chapter 7 Trustees, U.S. Department of Justice, Executive Office for United States Trustees, at 4-7, available at, https://www.justice.gov/ust/file/handbook_for_chapter_7_trustees.pdf/download ("when the property is fully encumbered and of nominal value to the estate, the trustee must immediately abandon the asset").

62. Here, the Debtors' desire to retain and administer the Idle Equipment and Trucks is precisely what the Fifth Circuit has directed estate fiduciaries not to do – rack up needless administrative costs to liquidate fully encumbered assets. Unlike in *Domistyle*, the Debtors have no reasonable basis for believing that they have any equity in the property. *Supra* at ¶ 44.

Continuing to administer the Idle Equipment and Trucks is a breach of their fiduciary duties under *Domistyle*.

63. This factor weighs in favor of granting stay relief.

Injury to the debtor and other creditors if the stay is modified

64. The Debtors will suffer no injury if the stay is lifted, as the Debtors are admittedly underwater on the Equipment. Neither the Debtors nor any creditors are entitled to any value of the collateral until and only upon the satisfaction in full of the GACP Secured Parties' secured claim.

65. The Debtors' unsubstantiated allegations that the GACP Secured Parties lack sufficient incentive to maximize the value for the Idle Equipment and that the Debtors are better placed to liquidate the Idle Equipment are nothing more than counter-intuitive speculation that warrants no weight. *New Era*, 125 B.R. at 729. The GACP Secured Parties have more than 200 million reasons to maximize the value of the Idle Equipment, as the Equipment is likely the only source of recovery for their more than \$200 million claim. Additionally, the GACP Secured Parties can liquidate the Idle Equipment far more efficiently than the Debtors can, as evidenced by the substantial administrative expenses (including professional fees that have nothing to do with liquidating the Idle Equipment and are in addition to any liquidation fees and expenses associated with liquidating same).

66. Consequently, this factor weighs in favor of granting stay relief.

The proportionality of the harms from modifying or continuing the stay

67. Continuing the stay will harm the GACP Secured Parties. Granting relief from the stay will abate that harm without causing any harm to the Debtors, who admittedly have no equity in the property.

68. This factor weighs in favor of granting relief from stay.

69. Accordingly, all factors weigh in favor of granting relief from stay for cause.

Conclusion

For these reasons, the GACP Secured Parties respectfully requests that the Court grant the Motion, enter the Proposed Order, and award any other relief that is appropriate under the circumstances.

[Signature Page Follows]

Respectfully submitted,

Dated: August 6, 2020

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Counsel to GACP Finance Co., LLC

Certificate of Service

I certify that on August 6, 2020, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Noah M. Schottenstein
Noah M. Schottenstein

Certificate of Conference

I certify that counsel for the Agent has conferred with the counsel for the Debtors and the Debtors are opposed to the relief requested in the Motion.

/s/ Noah M. Schottenstein
Noah M. Schottenstein

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

In re:

BJ Services, LLC, *et al.*¹

Debtors.

Chapter 11

Case No. 20-33627 (MI)

(Jointly Administered)

Ref. Docket No.

**ORDER GRANTING GACP FINANCE CO., LLC'S EMERGENCY MOTION
FOR RELIEF FROM THE AUTOMATIC STAY**

Upon the motion (the "Motion")² of GACP Finance Co., LLC, Administrative Agent under that certain Term Loan Credit and Guaranty Agreement, dated as of January 28, 2019, among BJ Services, LLC, as the Borrower, the Other Borrowers from Time to Time Party Thereto, the Guarantors from Time to Time Party Thereto, GACP Finance Co., LLC, as Administrative Agent, and the Other Lender Party Thereto, Goldman Sachs Lending Partners LLC and JPMorgan Chase Bank, N.A., as Joint Lead Arrangers, Goldman Sachs Lending Partners LLC as Bookrunner and Canadian Imperial Bank of Commerce, Barclays Bank PLC, and Citibank, N.A., as Co-Managers (the "Term Loan Agreement") and in its capacity as collateral agent under that certain U.S.

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: BJ Services, LLC (3543); BJ Management Services, L.P. (8396); BJ Services Holdings Canada, ULC (6181); and BJ Services Management Holdings Corporation (0481). The Debtors' service address is: 11211 Farm to Market 2920 Road, Tomball, Texas 77375.

² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

Security Agreement and that certain Canadian Security Agreement, both of even date therewith (in all such capacities, the “Agent”), seeking relief from the automatic stay with respect to certain Equipment, as more fully described in the Motion; and the Court having reviewed the Motion; and the Court having determined that the Motion should be GRANTED.

Therefore, it is HEREBY ORDERED THAT:

- a. the automatic stay is lifted with respect to the Idle Equipment;
- b. the Agent is authorized to exercise all lawful rights to collect, repossess and liquidate the Idle Equipment wherever located under applicable non-bankruptcy law; and
- c. the Debtors are directed to comply with their obligations under the GACP Term Loan Agreement and Security Agreement to cooperate with the Agent’s collection and liquidation efforts, including by, without limitation, identifying to the Agent the locations at which the Equipment is located and, with respect to each such location, (i) providing a copy of all leases, occupancy rights, easements, licenses, and any other documentation related to the Debtors’ rights to occupy such location; (ii) providing contact information for the owners and/or lessors for each such location; (iii) identifying all insurance policies applicable to each such location; and (iv) identifying all the security measures applicable to each such location.

This Court shall retain exclusive jurisdiction to enforce and interpret this order.

Dated: _____, 2020

UNITED STATES BANKRUPTCY JUDGE