

**EXHIBIT B**

**Blacklined Proposed Order**

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

	)	
In re:	)	Case No. 17-10064 (KG)
	)	
Chieftain Sand and Proppant, LLC, <i>et al.</i> ,	)	Chapter 11
	)	
Debtors. <sup>1</sup>	)	(Jointly Administered)
	)	<b>Re: Docket No. 13</b>

**INTERIM~~FINAL~~ ORDER (I) AUTHORIZING DEBTORS TO OBTAIN  
POSTPETITION FINANCING PURSUANT TO SECTION 364 OF  
THE BANKRUPTCY CODE, (II) AUTHORIZING THE USE OF CASH  
COLLATERAL PURSUANT TO SECTION 363 OF THE BANKRUPTCY  
CODE, (III) GRANTING ADEQUATE PROTECTION TO THE  
PREPETITION SECURED PARTIES PURSUANT TO SECTIONS 361, 362,  
363 AND 364 OF THE BANKRUPTCY CODE, (IV) GRANTING LIENS AND  
SUPERPRIORITY CLAIMS, AND (V) MODIFYING AUTOMATIC STAY, ~~AND (VI)~~  
~~SCHEDULING A FINAL HEARING~~**

Upon the motion, dated January 9, 2017 (the “DIP Motion”) (Docket No. 13) filed by Chieftain Sand and Proppant, LLC and Chieftain Sand and Proppant Barron, LLC (collectively, the “Debtors”), in the above-referenced chapter 11 cases (the “Cases”), seeking entry of ~~an~~ interim final order (this “InterimFinal Order”) pursuant to sections 105, 361, 362, 363(b), 363(c)(2), 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), 364(e), 507, and 552 of chapter 11 of title 11 of the United States Code (as amended, the “Bankruptcy Code”), Rules 2002, 4001, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Rule 4001-2 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), that, among other things:

<sup>1</sup> The Debtors in these chapter 11 cases, and the last four digits of their respective federal tax identification numbers, are Chieftain Sand and Proppant, LLC (1729) and Chieftain Sand and Proppant Barron, LLC (0418). The Debtors’ service address is: 331 27<sup>th</sup> Street, New Auburn, WI 54757.

- (i) authorizes the Debtor designated as “Borrower” under, and as defined in, the DIP Credit Agreement (as defined below) (the “Borrower”) to obtain, and the guarantor (the “Guarantor”) under the DIP Loan Documents (as defined below) to unconditionally guaranty the Borrower’s obligations in respect of, senior secured priming and superpriority postpetition financing, which ~~if approved on a final basis,~~ would consist of a term loan facility for up to \$2,100,785 (the “DIP Facility”) pursuant to the terms of (x) this ~~Interim~~Final Order, (y) that certain Credit Agreement, dated as of January 9, 2017 (as the same may be amended, restated, supplemented, or otherwise modified from time to time in accordance with its terms, the “DIP Credit Agreement”),<sup>2</sup> by and among the Borrower, Energy Capital Partners Mezzanine Opportunities Fund A, LP, as administrative agent and collateral agent (in such capacities, the “DIP Agent”), and the other financial institutions party to the DIP Credit Agreement as “Lenders” under, and as defined in, the DIP Credit Agreement (the “DIP Lenders,” and together with the DIP Agent and any other party to which DIP Obligations (as defined below) are owed, the “DIP Secured Parties”), in substantially the form attached to the DIP Motion, and (z) any and all other Loan Documents (as defined in the DIP Credit Agreement, and together with the DIP Credit Agreement, collectively, the “DIP Loan Documents”), to: (A) finance working capital and other costs associated with general corporate purposes of the Debtors, (B) grant, as of the Petition Date and in accordance with the relative priorities set forth herein, certain adequate protection to the Prepetition Secured Parties (each term as defined below) as described below, (C) pay certain transaction fees and other costs and expenses of administration of the Cases, and (D) pay fees and expenses under the DIP Loan Documents and this ~~Interim~~Final Order; and
- (ii) authorizes the Debtors to use “cash collateral,” as such term is defined in section 363 of the Bankruptcy Code (the “Cash Collateral”).

~~This Court having considered~~Due and appropriate notice of the DIP Motion, the documents filed therewith, including the DIP Credit Agreement<sup>3</sup>, and the *Declaration of Victor A. Serri in Support of Voluntary Petitions and First Day Motions* (the “Serri Declaration”), ~~and the evidence submitted or proffered at the hearing on this Interim Order (the~~

<sup>2</sup> Unless otherwise specified, all capitalized terms used herein without definition shall have the respective meanings given to such terms in the DIP Credit Agreement. A copy of the DIP Credit Agreement is attached hereto as Exhibit B.

<sup>3</sup> All terms not defined herein shall have the meanings given to them in the DIP Motion.

~~“Interim Hearing”); and~~ having been given in accordance with Bankruptcy Rules 2002, 4001(b), (c), and (d) and 9014 and all applicable Local Rules, ~~notice of the DIP Motion and the Interim Hearing having been provided pursuant to~~ and the interim hearing having been conducted by this Court on January 10, 2017 (the “Interim Hearing”), and this Court having entered the interim order (the “Interim Order”) granting the relief requested in the DIP Motion on an interim basis on January 10, 2017; and the Court having considered the DIP Motion, the evidence submitted by the Debtors at the Interim Hearing and at the final hearing held on February 3, 2017 (the “Final Hearing”) to consider entry of this Final Order granting the relief requested in the DIP Motion on a final basis, authorizing the balance of the borrowings under the DIP Loan Documents on a final basis and granting other relief as more fully set forth in this Final Order; and due and appropriate notice of the Final Hearing having been given in accordance with Bankruptcy ~~Rule~~ Rules 2002, 4001(b), ~~(1c)~~, ~~(C); the Interim Hearing having been held and concluded~~ d) and 9014 and all applicable Local Rules; and it appearing that approval of the ~~interim~~ relief requested in the DIP Motion ~~is necessary to avoid immediate and irreparable harm to the Debtors pending the Final Hearing and otherwise~~ is fair and reasonable and in the best interests of the Debtors, their creditors, their estates and all parties in interest, and is essential for the continued operation of the Debtors’ business; and it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that the Motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and the Court may enter a final order consistent with Article III of the United States Constitution; and it appearing that venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. §§

1408 and 1409; and after due deliberation and consideration, and for good and sufficient cause appearing therefor:

**IT IS HEREBY FOUND AND DETERMINED THAT:<sup>4</sup>**

A. **Petition Date.** On January 9, 2017 (the "Petition Date"), each of the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the District of Delaware (this "Court"). The Debtors have continued in the management and operation of their businesses and properties as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No statutory committee of unsecured creditors (to the extent such committee is appointed, the "Committee"), trustee, or examiner has been appointed in the Cases.

B. **Jurisdiction and Venue.** This Court has core jurisdiction over the Cases, the DIP Motion and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157(b) and 1334. Venue for the Cases and proceedings on the DIP Motion is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

C. **Notice.** ~~The Interim Hearing is being held pursuant to the authorization of Bankruptcy Rule 4001.~~ Notice of the **InterimFinal** Hearing and the ~~emergency~~ relief requested in the DIP Motion has been provided by the Debtors, ~~whether by facsimile, electronic mail, overnight courier or hand delivery, to certain parties in interest, including: (i) the Office of the United States Trustee for the District of Delaware~~

<sup>4</sup> Findings of fact shall be construed as conclusions of law, and conclusions of law shall be construed as findings of fact, as appropriate, pursuant to Bankruptcy Rule 7052. In the event of any inconsistency between the terms and conditions of any of the DIP Loan Documents, the provisions of any other order entered by this Court in these Chapter 11 Cases, and this Interim Order, the provisions of this Interim Order shall govern and control.

~~(the “United States Trustee”), (ii) those entities or individuals included on the Debtors’ list of 20 largest unsecured creditors on a consolidated basis, (iii) counsel to the Prepetition Agent (as defined below), (iv) the Prepetition Agent, (v) counsel to the DIP Agent, (vi) the DIP Agent, and (vii) any party that has requested notice pursuant to Bankruptcy Rule 2002. Under the circumstances, such notice of the DIP Motion, the relief requested therein and the Interim Hearing complies in accordance~~ with Bankruptcy ~~Rule~~Rules 2002, 4001(b), (c) and (d) and ~~the~~9014 and all applicable Local Rules, and no other notice need be provided for entry of this ~~Interim~~Final Order.

D. Debtors’ Stipulations Regarding the Prepetition Credit Facility.

Without prejudice to the rights of parties in interest solely to the extent set forth in Paragraph 6 below, the Debtors, on their behalf and on behalf of their estates, admit, stipulate, acknowledge, and agree (Paragraph D hereof shall be referred to herein as the “Debtors’ Stipulations”) as follows:

(i) Prepetition Credit Facility. Pursuant to that certain Credit and Security Agreement (as amended, restated or otherwise modified from time to time prior to the Petition Date, the “Prepetition Credit Agreement,” and collectively with any other agreements and documents executed or delivered in connection therewith, each as may be amended, restated, supplemented, or otherwise modified from time to time, the “Prepetition Credit Documents”), among (a) Chieftain Sand and Proppant, LLC, as Borrower (in such capacity, the “Prepetition Borrower”), (b) Chieftain Sand and Proppant Barron, LLC, as Guarantor (in such capacity, the “Prepetition Guarantor”), (c) the financial institutions party thereto as “Lenders” as defined therein (collectively, the “Prepetition Lenders”), and (d) Energy Capital Partners Mezzanine Opportunities Fund A, LP, as administrative agent and collateral agent for

the Prepetition Lenders (in such capacities, the “Prepetition Agent” and, together with the Prepetition Lenders, the “Prepetition Secured Parties”), the Prepetition Lenders agreed to extend loans and other financial accommodations to the Prepetition Borrower. Pursuant to the Prepetition Credit Documents, the Prepetition Guarantor unconditionally guaranteed the obligations owed by the Prepetition Borrower under the Prepetition Credit Agreement. All “Obligations” of the Debtors arising under the Prepetition Credit Agreement or the other Prepetition Loan Documents shall collectively be referred to herein as the “Prepetition Credit Obligations.”

(ii) Prepetition First Priority Liens and Prepetition Collateral. Pursuant to the Collateral Documents (as defined in the Prepetition Credit Agreement) (as such documents are amended, restated, supplemented, or otherwise modified from time to time prior to the Petition Date, the “Prepetition Collateral Documents”), by and among the Prepetition Borrower, the Prepetition Guarantor, and the Prepetition Agent, each of the Prepetition Borrower and the Prepetition Guarantor granted to the Prepetition Agent, for the benefit of itself and the Prepetition Secured Parties, to secure the Prepetition Credit Obligations, a first priority security interest in and continuing lien (the “Prepetition First Priority Liens”) on substantially all of the respective Prepetition Borrower’s and the Prepetition Guarantor’s assets and properties (which, for the avoidance of doubt, includes the Accounts and Collateral Accounts (each as defined in the Prepetition Credit Agreement) and all right, title, and interest of the Prepetition Borrower and the Prepetition Guarantor in and to such accounts, and the proceeds and products thereof) and all other proceeds, products, accessions, rents, and profits thereof, in each case whether then owned or existing or thereafter acquired or arising. All “Collateral” as defined in the Prepetition Credit Agreement granted or pledged by the

Prepetition Borrower and the Prepetition Guarantor pursuant to any Prepetition Collateral Document or any other Prepetition Credit Document shall collectively be referred to herein as the “Prepetition Collateral.” As of the Petition Date, (I) the Prepetition First Priority Liens (a) are valid, binding, enforceable, and perfected liens, (b) were granted to, or for the benefit of, the Prepetition Secured Parties for fair consideration and reasonably equivalent value, (c) are not subject to avoidance, recharacterization, or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law (except for the priming contemplated herein), and (d) are under this **Interim**Final Order to be subject and subordinate only to (A) the DIP Liens (as defined below), (B) the Carve-Out (as defined below), and (C) any valid, enforceable and non-avoidable Liens that are (i) in existence on the Petition Date, (ii) either perfected as of the Petition Date or perfected subsequent to the Petition Date solely to the extent permitted by section 546(b) of the Bankruptcy Code, and (iii) senior in priority to the Prepetition First Priority Liens (as defined below) after giving effect to any intercreditor or subordination agreement (all such liens, collectively, the “Prepetition Senior Permitted Encumbrances”), and (II) (x) the Prepetition Credit Obligations constitute legal, valid, and binding obligations of the applicable Debtors, enforceable in accordance with the terms of the applicable Prepetition Credit Documents (other than in respect of the stay of enforcement arising from section 362 of the Bankruptcy Code), (y) no setoffs, recoupments, offsets, defenses, or counterclaims to any of the Prepetition Credit Obligations exist, and (z) no portion of the Prepetition Credit Obligations or any payments made to any or all of the Prepetition Secured Parties are subject to avoidance, recharacterization, recovery, subordination, attack, offset, counterclaim, defense, or “claim” (as defined in the Bankruptcy Code) of any kind pursuant to the Bankruptcy Code or applicable non-bankruptcy law.



(iii) Amounts Owed under Prepetition Loan Documents. As of the Petition Date, (a) the applicable Debtors owed the Prepetition Secured Parties an aggregate principal amount of not less than \$60,235,856, *plus* all accrued and hereafter accruing and unpaid interest thereon in the aggregate amount of not less than \$5,489,800 *plus* any additional fees, expenses (including any reasonable attorneys', accountants', appraisers', and financial advisors' fees and expenses that are chargeable or reimbursable under the Prepetition Credit Documents), and other amounts now or hereafter due under the Prepetition Credit Agreement and the other Prepetition Credit Documents.

(iv) Release of Claims. Subject to the reservation of rights set forth in Paragraph 6 below, each Debtor and its estate shall be deemed to have forever waived, discharged, and released Energy Capital Partners Mezzanine Opportunities Fund A, LP and its affiliates, and each of their respective members, managers, equity holders, affiliates, agents, attorneys, financial advisors, consultants, officers, directors, employees and other representatives (all of the foregoing, collectively, the "Prepetition Secured Party Releasees") of any and all "claims" (as defined in the Bankruptcy Code), counterclaims, causes of action (including, without limitation, causes of action in the nature of "lender liability"), defenses, setoff, recoupment, or other offset rights against any and all of the Prepetition Secured Party Releasees, whether arising at law or in equity, relating to and/or otherwise in connection with the Prepetition Credit Obligations, the Prepetition First Priority Liens, or the debtor-creditor relationship between any of the Prepetition Secured Parties, on the one hand, and any of the Debtors, on the other hand, including, without limitation, (I) any recharacterization, subordination, avoidance, or other claim arising under or pursuant to section 105 or chapter 5 of the Bankruptcy Code or under any other similar provisions of applicable state law, federal

law, or municipal law and (II) any right or basis to challenge or object to the amount, validity, or enforceability of the Prepetition Credit Obligations or any payments made on account of the Prepetition Credit Obligations, or the validity, enforceability, priority, or non-avoidability of the Prepetition First Priority Liens securing the Prepetition Credit Obligations.

E. Need for Postpetition Financing. The Debtors ~~have an immediate~~ need to obtain the DIP Facility and use Cash Collateral to, among other things, permit the orderly sale of their businesses, ~~maintain business relationships with vendors, suppliers, and customers, make payroll,~~ satisfy other working capital and operation needs, including certain letter of credit obligations, ~~maintain employee morale,~~ and preserve the value of the Debtors' estates. ~~The Debtors' access to sufficient liquidity through the use of Cash Collateral and borrowing under the DIP Facility is vital to otherwise preserve the enterprise value of the Debtors and their estates. Immediate and irreparable harm will be caused to the Debtors and their estates if immediate financing is not obtained and permission to use Cash Collateral is not granted, in each case in accordance with the terms of this Interim Order and the DIP Loan Documents.~~

F. No Credit Available on More Favorable Terms. ~~As set forth in the DIP Motion and in the Serri Declaration in support thereof, the~~The Debtors ~~have determined, at the time hereof, that no acceptable~~are unable to secure financing on more favorable terms from sources other than the DIP Secured Parties under the DIP Loan Documents and this ~~Interim~~Final Order ~~is available. The Debtors~~and are unable to obtain unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense. The Debtors are also unable to obtain secured credit on terms acceptable to the Debtors allowable only under sections 364(c)(1), 364(c)(2), or 364(c)(3) of

the Bankruptcy Code. The Debtors are unable to obtain secured credit under section 364(d)(1) of the Bankruptcy Code without (a) granting ~~to~~ the DIP Secured Parties the rights, ~~remedies, privileges, benefits,~~ and protections provided herein ~~and in the DIP Loan Documents,~~ including, without limitation, the DIP Liens and the DIP Superpriority Claims (each as defined below), (b) allowing the DIP Secured Parties to provide the loans and other financial accommodations under the DIP Facility on the terms set forth herein and in the DIP Loan Documents (all of the foregoing described in clauses (a) and (b) above, ~~including, without limitation, the DIP Liens and the DIP Superpriority Claims,~~ collectively, the “DIP Protections”), and (c) providing the Prepetition Secured Parties the adequate protection more fully described in Paragraphs 4 and 5 below.

~~G. Interim Financing. During the Interim Period (as defined below), the DIP Agent, the other DIP Secured Parties, and, as applicable, the Prepetition Secured Parties, are willing to provide financing to the Debtors and/or consent to the use of Cash Collateral by the Debtors, as applicable, subject to (i) the entry of this Interim Order, (ii) the terms and conditions of the DIP Loan Documents, and (iii) findings by the Court that such interim postpetition financing and use of Cash Collateral is essential to the Debtors’ estates, that the terms of such interim financing and use of Cash Collateral were negotiated in good faith and at arm’s length, and that the DIP Liens, the DIP Superpriority Claims, and the other protections granted pursuant to this Interim Order and the DIP Loan Documents with respect to such interim financing and use of Cash Collateral will not be affected by any subsequent reversal, modification, vacatur, or amendment of this Interim Order or any other order, as provided in section 364(e) of the Bankruptcy Code or this Interim Order. Without limiting the foregoing, any advances~~

~~made to the Debtors and Cash Collateral use by the Debtors under the DIP Loan Documents and this Interim Order during the Interim Period shall be entitled to the protections provided by section 364(e) of the Bankruptcy Code. The DIP Agent, the other DIP Secured Parties and the Prepetition Secured Parties have each acted in good faith in, as applicable, negotiating, consenting to, and agreeing to provide the postpetition financing arrangements and/or use of Cash Collateral on an interim basis as contemplated by this Interim Order and the DIP Loan Documents, and the reliance by the DIP Agent, the other DIP Secured Parties and the Prepetition Secured Parties on the assurances referred to above is in good faith.~~

G. ~~H. Adequate Protection for Prepetition Secured Parties.~~ The Prepetition Secured Parties have negotiated in good faith regarding the Debtors' use of the Prepetition Collateral (including the Cash Collateral) to fund the administration of the Debtors' estates and continued operation of their businesses. ~~The Prepetition Secured Parties have agreed to permit the Debtors to use the Prepetition Collateral, including the Cash Collateral, during the Interim Period, subject to the terms and conditions set forth herein, including the protections afforded a party acting in "good faith" under section 364(e) of the Bankruptcy Code. In addition, the~~ DIP Facility contemplated hereby provides for the priming of the Prepetition Liens pursuant to section 364(d) of the Bankruptcy Code. The Prepetition Secured Parties are entitled to the adequate protection as set forth herein pursuant to sections 361, 362, 363, and 364 of the Bankruptcy Code. Based on the DIP Motion and on the record presented to the Court at the ~~Interim~~Final Hearing, the terms of the proposed adequate protection arrangements, use of the Cash Collateral, and the DIP Facility contemplated hereby are fair and reasonable, reflect the

Debtors' prudent exercise of their business judgment, and constitute reasonably equivalent value and fair consideration for the consent of the Prepetition Secured Parties.

**H. ~~I.~~ Business Judgment and Good Faith Pursuant to Section 364(e).**

~~(i) The DIP Secured Parties have indicated a willingness to provide postpetition secured financing via the DIP Facility to the Debtors in accordance with the DIP Loan Documents and this Interim Order.~~

(i) ~~(ii)~~—The terms and conditions of the DIP Facility as set forth in the DIP Loan Documents, the Interim Order, and this ~~Interim~~Final Order, and the fees paid and to be paid thereunder, are fair, reasonable, and the best available under the circumstances, and the Debtors' agreement to the terms and conditions of the DIP Loan Documents and to the payment of such fees reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties. Such terms and conditions are supported by reasonably equivalent value and fair consideration.

(ii) ~~(iii)~~—The DIP Facility, the DIP Loan Documents and the Prepetition Secured Parties' Adequate Protection (as defined below) were negotiated in good faith and at arm's length among the Debtors, the DIP Secured Parties and the Prepetition Secured Parties, respectively, with the assistance and counsel of their respective advisors, and all of the DIP Obligations and Prepetition Secured Parties' Adequate Protection (as defined below) shall be deemed to have been extended by the DIP Secured Parties and their affiliates and consented to by the requisite Prepetition Secured Parties for valid business purposes and uses and in good faith, as that term is used in section 364(e) of the Bankruptcy Code, and in express reliance upon the protections offered by section 364(e) of the Bankruptcy Code, the Interim Order, or this ~~Interim~~Final Order, and the DIP Liens, the DIP Superpriority Claims

(as defined below), the other DIP Protections and the Prepetition Secured Parties' Adequate Protection (as defined below) shall be entitled to the full protection of section 364(e) of the Bankruptcy Code ~~and this, the~~ Interim Order, and this Final Order in the event this Final Order, the Interim Order or any other order or any provision hereof or thereof is vacated, reversed, amended, or modified, on appeal or otherwise.

**I. J. Relief Essential; Best Interest.** For the reasons stated above, the Debtors have requested ~~immediate~~ entry of this ~~Interim~~Final Order pursuant to Bankruptcy Rules 4001(b)(2), 4001(c)(2), and the Local Rules. Absent granting the relief set forth in this ~~Interim~~Final Order, the Debtors' estates and their ability to preserve the enterprise value of the Debtors and their estates will be immediately and irreparably harmed. Consummation of the DIP Facility and authorization of the use of Cash Collateral in accordance with this ~~Interim~~Final Order and the DIP Loan Documents is therefore in the best interests of the Debtors' estates and consistent with their fiduciary duties.

**NOW, THEREFORE, IT IS ORDERED** that:

1. **Motion Granted.** The DIP Motion is hereby granted on the terms and conditions set forth in this ~~Interim~~Final Order. Any objections to the DIP Motion with respect to the entry of this ~~Interim~~Final Order that have not been withdrawn, waived, or settled, and all reservations of rights included therein, are hereby denied and overruled.

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

(a) **Approval of DIP Loan Documents.** The Debtors are expressly ~~and immediately~~ authorized to ~~establish the DIP Facility, to~~ execute, deliver, and ~~perform~~continue performing under the DIP Loan Documents (and all other documents that may be required or necessary to implement the DIP Facility and to create and perfect the DIP

Liens) and ~~this Interim Order, to incur the DIP Obligations (as defined below) in accordance with, and subject to, the terms of this Interim Order and the~~all such DIP Loan Documents, are hereby approved. The Debtors are hereby authorized and directed to do and perform all acts and pay the principal, interest, fees, expenses, and other amounts described in the DIP Loan Documents as such become due, which amounts shall not be subject to further approval of this Court and shall be non-refundable and not subject to challenge in any respect. Upon their execution and delivery, the DIP Loan Documents shall represent valid and binding obligations of the applicable Debtors enforceable against such Debtors in accordance with their terms. Each officer of a Debtor acting singly is hereby authorized to execute and deliver each of the DIP Loan Documents, such execution and delivery to be conclusive of such officer's respective authority to act in the name of and on behalf of the Debtors.

(b) DIP Obligations. For purposes of this ~~Interim~~Final Order, the term "DIP Obligations" shall mean all amounts and other obligations and liabilities owing by the respective Debtors under the DIP Credit Agreement and other DIP Loan Documents (including, without limitation, all "Obligations" as defined in the DIP Credit Agreement) and shall include, without limitation, the principal of, interest on, fees, costs, expenses, and other charges owing in respect of, such amounts ~~(including, without limitation, any fees, costs, and expenses that are chargeable or reimbursable under the DIP Loan Documents and/or this Interim Order)~~, and any obligations in respect of indemnity claims, whether contingent or otherwise.

(c) Authorization to Incur DIP Obligations ~~During the Interim Period. During the period from the entry of this Interim Order through and including the earliest to occur of (i) the entry of the Final Order, or (ii) the Cash Collateral Termination Date, in~~

~~each case unless extended by written agreement of the DIP Agent and the Prepetition Agent (the period from the entry of this Interim Order through and including such earliest date, the “Interim Period”), and, The Borrower is,~~ subject to the terms ~~and conditions of this Interim Order and~~ of the DIP Loan Documents, ~~the Borrower is hereby authorized to use Cash Collateral and~~ and this Final Order, entitled to borrow all amounts under the DIP ~~Facility in an aggregate outstanding principal amount for all such borrowings and Cash Collateral usage not to exceed \$1,250,785 under the DIP Facility.~~ All DIP Obligations shall be unconditionally guaranteed by the Guarantor. Loan Documents.

(d) Budget. Attached hereto as Exhibit A is a rolling 13-week cash flow budget (the “Initial Approved Budget”) which reflects on a line-item basis the Debtors’ (i) weekly projected cash receipts from all sources, (ii) all weekly projected disbursements (including fees and costs), (iii) the sum of weekly unused availability under the DIP Facility plus unrestricted cash on hand (collectively, “Aggregate Liquidity”), and (iv) the weekly outstanding principal balance of the loan made under the DIP Facility. Each Wednesday (or the following Business Day, if applicable) by 12:00 p.m. (prevailing Eastern Time), the Borrower shall prepare and deliver simultaneously to the DIP Agent and the DIP Lenders:

- ~~(I)~~ (I) an updated “rolling” 13-week budget (the “Proposed Budget”), which shall reflect the Borrower’s good faith projections, reflect reversal of any timing variances set forth in any Variance Report (as defined below), include a description of changes from the previously approved Proposed Budget and be in form and detail consistent with the Initial Approved Budget.
- ~~(II)~~ (II) Such Proposed Budget shall be subject to the approval of the DIP Agent and the Majority Lenders (as defined in the DIP Credit Agreement).
- ~~(III)~~ (III) The DIP Agent, at the direction of the Majority Lenders, shall have three Business Days to approve each Proposed Budget. If no written objections are provided within that period, such Proposed Budget shall be deemed to be



approved. Any portion of the Proposed Budget that was previously approved, and is unchanged or that relates to prior periods shall be automatically deemed approved. The Borrower, the DIP Agent, and the Majority Lenders may mutually agree to modify previously approved line items.

● ~~(IV)~~ Once approved in writing by the DIP Agent and the Majority Lenders, the Proposed Budget shall automatically supplement and replace the Approved Budget or Supplemental Approved Budget, as applicable, then in effect (each such updated budget that has been approved in writing by the DIP Agent and the Majority Lenders, a “Supplemental Approved Budget”).

● ~~(V)~~ Until the DIP Agent has approved a Proposed Budget, the Initial Approved Budget or Supplemental Approved Budget, as applicable, in effect shall govern, and there shall be no obligation to fund the Proposed Budget or permit the use of Cash Collateral with respect thereto, as applicable.

● ~~(VI)~~ upon receipt of a notice of rejection of a Proposed Budget, the Borrower shall, within twenty four (24) hours of receipt of such notice, engage in good faith negotiations with the DIP Agent and Majority Lenders, and the Borrower shall submit a revised Proposed Budget within two ~~(2)~~ Business Days of the Borrower’s receipt of a notice of rejection.

● ~~(VII)~~ The Debtor shall prepare a variance report, in form acceptable to the DIP Agent and the Majority Lenders, setting forth the actual cash receipts and actual expenditures for each line item in the Approved Budget (as defined below) covering each of the previous calendar week and the period commencing on the Petition Date and ending on the date of such Variance Report, and comparing the foregoing amounts with the budgeted cash receipts and budgeted expenditures, respectively, set forth in the Approved Budget for such line item during such one week period. The Variance Report shall include an explanation as to any variance identified in such report in accordance with the foregoing that is greater than \$5,000 or varies by 10% from the budgeted amount. Such explanation shall include, among other things, whether such variance is permanent or relates solely to timing and, to the extent related to timing, when such variance is expected to be corrected.

● ~~(VIII)~~ The aggregate, without duplication, of all items in the Initial Approved Budget and any Supplemental Approved Budgets shall constitute the “Approved Budget.”

● ~~(IX)~~ Notwithstanding anything to the contrary in this ~~Interim~~Final Order, to the extent the DIP agent’s fees and expenses are paid by the estates, the reasonable professional fees, costs and expenses of the DIP Agent’s advisors shall be due, payable and paid in accordance with the terms of this ~~Interim~~Final Order notwithstanding any budgeted amounts for such fees, costs and expenses set forth in the Approved Budget. A reasonably detailed statement of such

advisors' fees shall be provided to the Office of the United States Trustee and to any official committee formed in these cases, and such parties shall have 10 days to object to payment of such fees.

(e) Budget Covenants. The Debtors shall only incur DIP Obligations and expend Cash Collateral and other DIP Collateral proceeds in accordance with the specific purposes, and at the specific time periods, set forth in the Approved Budget and as approved by this **InterimFinal** Order. On each Wednesday following the Petition Date: (i) the Debtors' total expenditures during the period commencing on the Petition Date and ending on such Wednesday shall not have exceeded 110% of the amount of total expenditures for such period as set forth in the Approved Budget; and (ii) the Debtors' net cash receipts, on an aggregate basis, for such period were not less than 90% of the aggregate amount of cash receipts included in the Approved Budget for such four week period. The foregoing budget-related covenants are collectively referred to herein as the "Budget Covenants."

(f) Interest, Fees, Costs and Expenses. The DIP Obligations shall bear interest at the rates, and be due and payable (and paid), as set forth in, and in accordance with the terms and conditions of, this **InterimFinal** Order and the DIP Loan Documents. The Debtors shall pay on demand all fees, costs, expenses and other charges payable under the terms of the DIP Loan Documents. All such fees, costs, expenses and disbursements, whether incurred, paid or required to be paid prepetition or post-petition, are hereby affirmed, ratified, authorized and payable ~~(and any funds held by the DIP Agent as of the Petition Date for payment of such fees, costs, expenses and disbursements may be applied for payment)~~ as contemplated in this **InterimFinal** Order and the DIP Loan Documents filed with the Court, and shall be non-refundable and not subject to challenge in any respect.

(g) Use of DIP Facility and Proceeds of DIP Collateral. The Debtors shall, in accordance with the applicable provisions of the DIP Loan Documents, and subject to the Carve-Out, pay, or cause to be paid, all proceeds of any sale of all or a portion of the DIP Collateral outside the ordinary course of business *first*, (1) to a segregated account held by the Debtors (the "Wind-Down Account"), solely in an amount necessary to fund the wind-down of the Debtors' estates and the closure of the Chapter 11 Cases, in accordance with a wind-down budget prepared by the Debtors and agreed to by the DIP Agent and the Majority Lenders as of the closing date of any sale of all or a portion of the DIP Collateral (such budget, the "Approved Wind-Down Budget"), provided that the amount in the Approved Wind-Down Budget shall not exceed \$1,135,069; *second*, to the DIP Agent for application in accordance with the DIP Loan Documents and this **InterimFinal** Order until the DIP Obligations are Paid in Full; and *third*, to the Prepetition Agent for application in accordance with the DIP Loan Documents and this **InterimFinal** Order until the Prepetition Credit Obligations are Paid in Full. The Debtors shall make no other payments on account of any prepetition debt or obligation prior to the effective date of a confirmed chapter 11 plan or plans in these Chapter 11 Cases except as set forth herein or in other orders of this Court.<sup>5</sup>

(h) Conditions Precedent. The DIP Secured Parties and Prepetition Secured Parties each have no obligation to extend credit under the DIP Facility or permit use of any DIP Collateral proceeds, including Cash Collateral ~~during the Interim Period,~~ unless and until all conditions precedent to the extension of credit and/or use of DIP Collateral or proceeds thereof under the DIP Loan Documents and this **InterimFinal** Order have been satisfied in full or waived by the requisite DIP Secured Parties and the Prepetition Secured Parties in

accordance with the DIP Loan Documents or Prepetition Credit Agreement, as applicable, and this ~~Interim~~Final Order.

(i) DIP Liens. Subject and subordinate to the Carve-Out and the Prepetition Senior Permitted Encumbrances, as security for the DIP Obligations, the following security interests and liens, which ~~shall~~are immediately and without any further action by any Person, ~~be~~ valid, binding, permanent, perfected, continuing, enforceable, and non-avoidable and, upon the entry of ~~this~~the Interim Order, ~~are~~ were, and upon entry of this Final Order hereby are, granted by the Debtors to the DIP Agent, for its own benefit and the ratable benefit of the DIP Secured Parties, on all property of the Debtors, now existing or hereinafter acquired, including, without limitation, all cash and cash equivalents (whether maintained with the DIP Agent or otherwise), and any investment in such cash or cash equivalents, money, inventory, goods, accounts receivable, other rights to payment, intercompany loans and other investments, investment property, contracts, contract rights, properties, plants, equipment, machinery, general intangibles, payment intangibles, accounts, deposit accounts (including the Wind-Down Account, the Carve-Out Account, the Loan Account, the Operating Account, the Utility Account, and all right, title, and interest of the Borrower and the Guarantor in and to such accounts, and the proceeds and products thereof), documents, instruments, chattel paper, documents of title, letters of credit, letter of credit rights, supporting obligations, leases and other interests in leaseholds, real property, fixtures, patents, copyrights, trademarks, trade names, other intellectual property, intellectual property licenses, capital stock of subsidiaries, tax and other refunds, insurance proceeds, causes of action, commercial tort claims, proceeds of Avoidance Actions (as defined below) ~~(upon entry of a Final Order)~~, rights under section 506(c) of the Bankruptcy Code ~~(upon entry of a Final Order)~~, all other Collateral (as defined

in the DIP Loan Documents), and all other “property of the estate” (as defined in section 541 of the Bankruptcy Code) of any kind or nature, real or personal, tangible, intangible, or mixed, now existing or hereafter acquired or created, and all rents, products, substitutions, accessions, profits, replacements, and cash and non-cash proceeds of all of the foregoing, as provided below (all of the foregoing collateral collectively referred to as the “DIP Collateral,” and all such Liens granted to the DIP Agent for the benefit of all the DIP Secured Parties pursuant to ~~this~~the Interim Order, this Final Order, and the DIP Loan Documents, the “DIP Liens”):

(I) pursuant to section 364(c)(2) of the Bankruptcy Code, a perfected, binding, continuing, enforceable, and non-avoidable first priority Lien on all unencumbered DIP Collateral and, ~~upon entry of a Final Order~~, all proceeds of the Debtors’ claims and causes of action under sections 502(d), 544, 545, 547-550 and 553 of the Bankruptcy Code and any other avoidance or similar action under the Bankruptcy Code or similar state or municipal law and the proceeds of each of the foregoing (collectively, the “Avoidance Actions”), whether received by judgment, settlement, or otherwise;

(II) pursuant to section 364(c)(3) of the Bankruptcy Code, a perfected, binding, continuing, enforceable, and non-avoidable junior Lien upon all DIP Collateral that is subject solely to the Prepetition Senior Permitted Encumbrances, other than liens which are expressly stated to be primed by the liens to be granted to the DIP Agent described in clause (III) below; and

(III) pursuant to section 364(d)(1) of the Bankruptcy Code, a perfected first priority, senior priming lien on all DIP Collateral (including, without limitation, Cash Collateral) that is senior to the Adequate Protection Replacement Liens (as defined below) and senior and priming to (x) the Prepetition Liens and (y) any Liens that are junior to the Prepetition Liens and the Adequate Protection Replacement Liens, after giving effect to any intercreditor or subordination agreements (the liens referenced in clauses (x) and (y), collectively, the “Primed Liens”); provided, however, that the liens described in this subsection (III) shall be junior solely to the Carve-Out and the Prepetition Senior Permitted Encumbrances.

(j) DIP Lien Priority. Notwithstanding anything to the contrary contained in this ~~Interim~~Final Order or the DIP Loan Documents, for the avoidance of doubt, the DIP Liens granted to the DIP Agent for the ratable benefit of the DIP Secured Parties are and shall be in

each and every case ~~be~~ first priority senior liens that (i) are subject only to the Prepetition Senior Permitted Encumbrances, and to the extent provided in this ~~Interim~~Final Order and the DIP Loan Documents, shall also be subject to the Carve-Out, and (ii) except as provided in the immediately preceding sub-clause (i), are senior to all prepetition and postpetition liens of any other person or entity (including, without limitation, the Primed Liens and the Adequate Protection Replacement Liens). Except as otherwise provided herein, the DIP Liens and the DIP Superpriority Claims (as defined below): (A) shall not be subject to sections 506, 510, 549, 550, or 551 of the Bankruptcy Code or the “equities of the case” exception of section 552 of the Bankruptcy Code, (B) shall not be subordinate to, or *pari passu* with, (x) any lien that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code or otherwise or (y) any intercompany or affiliate liens or claims of the Debtors, and (C) shall be valid and enforceable against any trustee or any other estate representative appointed in the Cases, upon the conversion of any of the Cases to a case under chapter 7 of the Bankruptcy Code or in any other proceedings related to any of the foregoing (each, a “Successor Case”), and/or upon the dismissal of any of the Cases.

(k) Enforceable Obligations. The DIP Loan Documents shall constitute and evidence the valid and binding DIP Obligations of the Debtors, and are enforceable against the Debtors, their estates and any successors thereto (including, without limitation, any trustee or other estate representative in any Successor Case). No obligation, payment, transfer, or grant of security interest under the DIP Credit Agreement, the other DIP Loan Documents, ~~or~~ ~~this~~the Interim Order, or this Final Order shall be stayed, restrained, voidable, avoidable, or recoverable under the Bankruptcy Code or under any applicable law ~~(including, without limitation, under sections 502(d), 544, 547, 548, or 549 of the Bankruptcy Code or under~~

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

(l) Superpriority Administrative Claim Status. In addition to the DIP Liens granted ~~herein~~ pursuant to the Interim Order and this Final Order, effective immediately upon entry of ~~this~~ the Interim Order, all of the DIP Obligations do and, pursuant to this Final Order shall, constitute allowed superpriority administrative claims pursuant to section 364(c)(1) of the Bankruptcy Code, which shall have priority, subject only to the payment of the Carve-Out in accordance with this ~~Interim~~ Final Order, over all administrative expense claims, adequate protection and other diminution claims (including the Prepetition Adequate Protection Superpriority Claims (as defined below)), unsecured claims, and all other claims against the Debtors, now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, administrative expenses or other claims of the kinds specified in, or ordered pursuant to, ~~sections 105, 326, 328, 330, 331, 503(a), 503(b), 506(c) (subject to entry of a Final Order), 507(a), 507(b), 546, 726, 1113, and 1114 or any other~~ any provision of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy, or attachment (the “DIP Superpriority Claims”). The DIP Superpriority Claims shall, for purposes of section 1129(a)(9)(A) of the Bankruptcy Code, be considered administrative expenses allowed under section 503(b) of the Bankruptcy Code, shall be against each Debtor on a joint and several basis, and shall be payable from and have recourse to all prepetition and postpetition property

of the Debtors and all proceeds thereof. Other than as expressly provided in the DIP Credit Agreement and/or this **InterimFinal** Order with respect to the Carve-Out, no costs or expenses of administration, including, without limitation, professional fees allowed and payable under sections 328, 330, and 331 of the Bankruptcy Code or otherwise, that have been or may be incurred in these proceedings, or in any Successor Cases, and no priority claims are, or will be, senior to, prior to, or on a parity with the DIP Superpriority Claims or the DIP Obligations, or with any other claims of the DIP Secured Parties arising under the DIP Loan Documents the Interim Order and/or this **InterimFinal** Order.

3. **Authorization to Use Cash Collateral and Proceeds of the DIP Facility.**

Subject to the terms and conditions of this **InterimFinal** Order and the DIP Loan Documents, (a) the Debtors are authorized to use proceeds of credit extended under the DIP Facility from and after the Closing Date (as defined in the DIP Credit Agreement), (b) the Debtors are authorized to use Cash Collateral, and (c) the Debtors may request advances and other financial accommodations under the DIP Facility. The DIP Agent and the other DIP Secured Parties may terminate the applicable Debtors' right to use proceeds of extensions of credit under the DIP Facility, DIP Collateral, Prepetition Collateral, and Cash Collateral without further notice, motion, or application to, ~~order of, or hearing before,~~ the Court, in accordance with Paragraph 14 below, immediately upon notice to such effect by the DIP Agent to the Debtors after the occurrence and during the continuance of any Termination Event. Upon the occurrence and during the continuance of a Termination Event (subject to Paragraph 14 below), any of the DIP Agent (on behalf of the DIP Secured Parties) and the Prepetition Agent (on behalf of the Prepetition Secured Parties) may terminate the consensual Cash Collateral use arrangement contained herein without further notice, motion, or application to,



~~order of, or hearing before,~~ the Court; provided, that the rights of the DIP Secured Parties and the Prepetition Secured Parties under this ~~Interim~~Final Order or otherwise shall not be affected by the waiver of any Termination Event by any other party. The earliest date upon which the consensual Cash Collateral use arrangement described in this ~~Interim~~Final Order is terminated pursuant to this Paragraph 3 shall be referred to herein as the “Cash Collateral Termination Date.”

4. **Adequate Protection for Prepetition Secured Parties.** In consideration for the use of the Prepetition Collateral (including Cash Collateral) and the priming of the Prepetition First Priority Liens, the Prepetition Agent, for the benefit of the Prepetition Secured Parties, shall receive the following adequate protection (collectively referred to as the “Prepetition Secured Parties’ Adequate Protection”):

(i) **Prepetition Adequate Protection Liens.** To the extent there is a diminution in value of the interests of the Prepetition Secured Parties in the Prepetition Collateral (including Cash Collateral) from and after the Petition Date resulting from the use, sale, or lease by the Debtors of the applicable Prepetition Collateral—~~(including Cash Collateral)~~, the granting of the DIP Superpriority Claims, and the ~~granting of the~~ DIP Liens, the subordination of the Prepetition First Priority Liens thereto and to the Carve-Out, and the imposition or enforcement of the automatic stay of section 362(a) of the Bankruptcy Code (regardless of whether a motion asserting a lack of adequate protection due to the imposition of the automatic stay is filed by any of the Prepetition Secured Parties) (“Diminution in Prepetition Collateral Value”), the Prepetition Agent, for the benefit of all the Prepetition Secured Parties, is hereby granted, subject to the terms and conditions set forth below, pursuant to sections 361, 363(e), and 364 of the Bankruptcy Code, replacement Liens upon all

of the DIP Collateral (such adequate protection replacement liens, the “Prepetition Adequate Protection Liens”), which Prepetition Adequate Protection Liens on such DIP Collateral shall be subject and subordinate only to the DIP Liens, the Prepetition Senior Permitted Encumbrances, and the Carve-Out and shall be senior in priority to the Prepetition First Priority Liens. The Prepetition Adequate Protection Liens and the Prepetition Adequate Protection Superpriority Claim (as defined below) (A) shall not be subject to sections [506\(c\)](#), 510, 549, 550, or 551 ~~of the Bankruptcy Code or, subject to entry of the Final Order, section 506(e)~~ of the Bankruptcy Code or the “equities of the case” exception of section 552 of the Bankruptcy Code, (B) shall not be subordinate to, or *pari passu* with, (x) any lien that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code or otherwise or (y) any intercompany or affiliate liens or claims of the Debtors, and (C) shall be valid and enforceable against any trustee or any other estate representative appointed in the Cases or any Successor Cases, and/or upon the dismissal of any of the Cases. The Prepetition Adequate Protection Liens (including the ~~Prepetition~~[Prepetition Adequate Protection Superiorpriority Claims](#)) shall, in all cases, be junior and subject to the Carve-Out.

(ii) Prepetition Adequate Protection Superpriority Claims. To the extent of Diminution in Prepetition Collateral Value, the Prepetition Secured Parties are hereby further granted allowed superpriority administrative claims (such adequate protection superpriority claims, the “Prepetition Adequate Protection Superpriority Claims”), pursuant to section 507(b) of the Bankruptcy Code, with priority over all administrative expense claims and unsecured claims against the Debtors and their estates, now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, administrative expenses of the kind

specified in or ordered pursuant to ~~sections 105, 326, 328, 330, 331, 503(a), 503(b), 506(e) (subject to entry of a Final Order), 507(a), 507(b), 546(c), 546(d), 726 (to the extent permitted by law), 1113, and 1114 and any other~~any provision of the Bankruptcy Code, junior only to the DIP Superpriority Claims and the Carve-Out to the extent provided herein and in the DIP Loan Documents, and payable from and having recourse to all prepetition and postpetition property of the Debtors and all proceeds thereof; ~~provided, however, that the Prepetition Secured Parties shall not receive or retain any payments, property, or other amounts in respect of the Prepetition Adequate Protection Superpriority Claims unless and until all DIP Obligations have been Paid in Full (as defined below).~~ Subject to the relative priorities set forth above, the Prepetition Adequate Protection Superpriority Claims against each Debtor shall be against each Debtor on a joint and several basis. ~~For purposes of this Interim Order, the~~The terms “Paid in Full,” “Repaid in Full,” “Repay in Full,” and “Payment in Full” shall mean, with respect to any referenced DIP Obligations and/or Prepetition Credit Obligations, (i) the indefeasible payment in full in cash of such obligations and (ii) the termination of all credit commitments under the DIP Loan Documents and/or Prepetition Credit Documents, as applicable.

(iii) Consent to Priming and Adequate Protection. The Prepetition Agent, on behalf of the Prepetition Secured Parties, consents to the Prepetition Secured Parties’ Adequate Protection and the priming provided for herein; provided, however, that such consent ~~of the Prepetition Agent to the priming of the Prepetition First Priority Liens, the use of Cash Collateral, and the sufficiency of the Prepetition Secured Parties’ Adequate Protection provided for herein~~ is expressly conditioned upon the entry of this ~~Interim~~Final Order, and such consent shall not be deemed to extend to any other Cash

Collateral usage or other replacement financing or debtor-in-possession financing other than the DIP Facility provided under the DIP Loan Documents; and provided, further, that such consent shall be of no force and effect in the event this **InterimFinal** Order is not entered or is entered and subsequently reversed, modified, stayed, or amended (unless such reversal, modification, stay, or amendment is acceptable to the Prepetition Agent and the Prepetition Lenders in their respective sole discretion) or the DIP Loan Documents and DIP Facility as set forth herein are not approved.

(iv) Right to Seek Additional Adequate Protection. Under the circumstances and given that the above-described adequate protection is consistent with the Bankruptcy Code, ~~including section 506(b) thereof,~~ the Court finds that the adequate protection provided herein is reasonable and sufficient to protect the interests of the Prepetition Lenders. However, the Prepetition Agent, on behalf of the Prepetition Secured Parties, may request Court approval for additional or alternative adequate protection, without prejudice to any objection of the Debtors or any other party in interest to the grant of any additional or alternative adequate protection; provided that any such additional or alternative adequate protection shall at all times be subordinate and junior to the claims and Liens of the DIP Lenders granted under ~~this~~the Interim Order, this Final Order, and the DIP Loan Documents.

5. Automatic Postpetition Lien Perfection. This **InterimFinal** Order shall be sufficient and conclusive evidence of the validity, enforceability, perfection, and priority of the DIP Liens and the Prepetition Adequate Protection Liens without the necessity of (a) filing or recording any financing statement, deed of trust, mortgage, or other instrument or document which may otherwise be required under the law of any jurisdiction or (b) taking any other action to validate or perfect the DIP Liens and the Prepetition Adequate Protection Liens or to

entitle the DIP Liens and the Prepetition Adequate Protection Liens to the priorities granted herein. Notwithstanding the foregoing, each of the DIP Agent and the Prepetition Secured Parties (in the latter case, solely with respect to the Prepetition Adequate Protection Liens) may, each in their sole discretion, enter into and file, as applicable, financing statements, mortgages, security agreements, notices of liens, and other similar documents, and is hereby granted relief from the automatic stay of section 362 of the Bankruptcy Code in order to do so, and all such ~~financing statements, mortgages, security agreements, notices, and other agreements or~~ documents shall be deemed to have been filed or recorded at the time and on the Petition Date. The applicable Debtors shall execute and deliver to the DIP Agent and/or the Prepetition Agent, as applicable, all such ~~financing statements, mortgages, notices, and other~~ documents as such parties may reasonably request to evidence and confirm the contemplated priority of, the DIP Liens and the Prepetition Adequate Protection Liens, as applicable, granted pursuant hereto. Without limiting the foregoing, (a) each of the DIP Agent and the Prepetition Agent may in its discretion, file a photocopy of this ~~Interim~~Final Order as a financing statement with any recording officer designated to file financing statements or with any registry of deeds or similar office in any jurisdiction in which any Debtor has real or personal property, and in such event, the subject filing or recording officer shall be authorized to file or record such copy of this ~~Interim~~Final Order, and (b) ~~subject to the entry of the Final Order,~~ any provision of any lease, loan document, easement, use agreement, proffer, covenant, license, contract, organizational document, or other instrument or agreement that requires the payment of any fees or obligations to any governmental entity or non-governmental entity in order for the Debtors to pledge, grant, mortgage, sell, assign, or otherwise transfer any fee or leasehold interest or the proceeds thereof or other DIP Collateral,

is and shall be deemed to be inconsistent with the provisions of the Bankruptcy Code, and shall have no force or effect with respect to the Liens on such leasehold interests or other applicable DIP Collateral or the proceeds of any assignment and/or sale thereof by any Debtor, in favor of the DIP Secured Parties or the Prepetition Secured Parties in accordance with the terms of the DIP Loan Documents and this ~~Interim Order or in favor of the Prepetition Secured Parties in accordance with this Interim Order~~ Final Order, as applicable. For the avoidance of doubt, nothing in the foregoing sentence shall abrogate the rights of any governmental entity with respect to any filing requirement or the payment of any fees. To the extent that the Prepetition Agent is the secured party under any security agreement, ~~mortgage, leasehold~~ mortgage, landlord waiver, financing statement, or account control agreements, listed as loss payee under any of the Debtors' insurance policies, or is the secured party under any of the Prepetition Credit Documents, the DIP Agent shall also be deemed to be the secured party under such account control agreements, loss payee under the Debtors' insurance policies, and the secured party under each such Prepetition Credit Document, shall have all rights and powers attendant to that position ~~(including, without limitation, rights of enforcement)~~, and shall act in that capacity and distribute any proceeds recovered or received ~~first, for the benefit of the DIP Secured Parties~~ in accordance with the DIP Loan Documents and ~~second, subsequent to Payment in Full of all DIP Obligations, for the benefit of the Prepetition Secured Parties~~ this Final Order. The Prepetition Agent shall serve as agent for the DIP Agent for purposes of perfecting its respective Liens on all DIP Collateral that is of a type such that perfection of a lien therein may be accomplished only by possession or control by a secured party.

6. **Reservation of Certain Third Party Rights and Bar of Challenges and Claims.** The Debtors' Stipulations shall be binding upon the Debtors in all circumstances upon entry of this **InterimFinal** Order. The Debtors' Stipulations shall be binding upon each other party in interest, including the Committee, unless such Committee or any other party in interest (including any Chapter 11 **or Chapter 7** trustee appointed **in these Cases or any Successor Case**) other than the Debtors ~~(or if the Cases are converted to cases under chapter 7 prior to the expiration of the Challenge Period (as defined below), the chapter 7 trustee in such Successor Case)~~, *first*, commences, by the earlier of (x) with respect to any Committee, sixty (60) calendar days from the formation of any Committee, or (y) with respect to other parties in interest other than the Debtors or any Committee, seventy-five (75) calendar days following the date of entry of the Interim Order (such time period established by the earlier of clauses (x) and (y), as the same may be extended in accordance with this Paragraph 6, shall be referred to as the "Challenge Period," and the date that is the next calendar day after the termination of the Challenge Period in the event that either (i) no Challenge (as defined below) is raised during the Challenge Period or (ii) with respect only to those parties who file a Challenge (as defined below), such Challenge is fully and finally adjudicated, shall be referred to as the "Challenge Period Termination Date"), (A) a contested matter, adversary proceeding, or other action or "claim" (as defined in the Bankruptcy Code) challenging or otherwise objecting to the admissions, stipulations, findings, or releases included in the Debtors' Stipulations, or (B) a contested matter, adversary proceeding, or other action against any or all of the Prepetition Secured Parties in connection with or related to the Prepetition Credit Obligations, or the actions or inactions of any of the Prepetition Secured Parties arising out of or related to the Prepetition Credit Obligations or otherwise, including, without limitation, any

claim against any or all of the Prepetition Secured Parties in the nature of a “lender liability” cause of action, setoff, counterclaim, or defense to the Prepetition Credit Obligations (including, but not limited to, those under sections 506, 544, 547, 548, 549, 550, and/or 552 of the Bankruptcy Code or by way of suit against any of the Prepetition Secured Parties) (clauses (i) and (ii) collectively, the “Challenges” and, each individually, a “Challenge”), and *second*, obtains a final, non-appealable order in favor of such party in interest sustaining any such Challenge in any such timely-filed contested matter, adversary proceeding, or other action. If a Chapter 7 trustee or a Chapter 11 trustee is appointed during the Challenge Period, the Challenge Period Termination Date with respect to such trustee only, shall be the later of (i) the last day of the Challenge Period and (ii) the date that is twenty (20) days after the date on which such trustee is appointed. Except as otherwise expressly provided herein, from and after the Challenge Period Termination Date and for all purposes in these Cases and any Successor Cases, (i) all payments made to or for the benefit of the Prepetition Secured Parties **pursuant to, or otherwise authorized by, this Interim Order or otherwise** (whether made prior to, on, or after the Petition Date) shall be indefeasible and not be subject to counterclaim, set-off, subordination, recharacterization, defense, or avoidance, (ii) any and all such Challenges by any party in interest shall be deemed to be forever released, waived, and barred; (iii) the Prepetition Credit Obligations shall be deemed to be a fully allowed secured claim within the meaning of section 506 of the Bankruptcy Code and (iv) the Debtors’ Stipulations, including the release provisions therein, shall be binding on all parties in interest, including any Committee. Notwithstanding the foregoing, to the extent any Challenge is timely asserted in any such adversary proceeding, contested matter or other action or proceeding, the Debtors’ Stipulations and the other provisions in clauses (i) through (iv) in the immediately preceding sentence shall



nonetheless remain binding upon and preclusive of any Committee or any other party in interest from and after the Challenge Period Termination Date, except to the extent that such Debtors' Stipulations or the other provisions in clauses (i) through (iv) of the immediately preceding sentence were expressly challenged with particularity in such adversary proceeding, contested matter, or other action. The Challenge Period may only be extended with the written consent of the Prepetition Agent in its sole discretion. Notwithstanding any provision to the contrary herein, nothing in this ~~Interim~~Final Order shall be construed to grant standing on any party in interest, including any Committee, to bring any Challenge on behalf of the Debtors' estates. The failure of any party in interest, including any Committee, to obtain an order of this Court prior to the Challenge Period Termination Date granting standing to bring any Challenge on behalf of the Debtors' estates shall not be a defense to failing to commence a Challenge prior to the Challenge Period Termination Date as required under this Paragraph 6.

7. Carve-Out. Subject to the terms and conditions contained in this Paragraph 7, each of the DIP Liens, the DIP Superpriority Claims, the Prepetition Liens, the Prepetition Adequate Protection Liens, and the Prepetition Adequate Protection Superpriority Claims shall be subject and subordinate to payment of the Carve-Out (as defined below) in accordance with the terms of this ~~Interim~~Final Order:

(i) ~~Carve-Out~~. "Carve-Out" means:

~~Carve-Out. For purposes of this Interim Order, "Carve-Out" means~~ (a) all unpaid fees required to be paid in these Cases to the clerk of the Bankruptcy Court and to the office of the United States Trustee under 28 U.S.C. § 1930(a)(6), together with the statutory rate of interest;

(b) ~~subject to the terms and conditions of this Interim Order, the~~the unpaid fees, costs, and disbursements of professionals retained by the Debtors in these Cases other than the Debtors' ordinary course professionals (collectively, the "Debtors' Professionals") that are incurred prior to the delivery by the DIP Agent of a Carve-Out Trigger Notice (as defined below), are in accordance with

and limited by the Approved Budget, and are allowed either prior to or after the delivery by the DIP Agent of a Carve-Out Trigger Notice (as defined below) pursuant to an order of the Court under sections 327, 330, or 363 of the Bankruptcy Code and remain unpaid after application of any retainers being held by such professionals;

(c) ~~subject to the terms and conditions of this Interim Order, the~~the reasonable unpaid fees, costs, and disbursements of professionals retained by the Committee in these Cases (collectively, the “Committee’s Professionals”) and all reasonable unpaid out-of-pocket expenses of the members of any Committee (“Committee Members”), in each case that are incurred prior to the delivery by the DIP Agent of a Carve-Out Trigger Notice (as defined below) and in accordance with and limited by the Approved Budget, and that are allowed either prior to or after the delivery by the DIP Agent of a Carve-Out Trigger Notice (as defined below) by the Court under sections 328, 330, or 1103 of the Bankruptcy Code and remain unpaid after application of any retainers being held by such professionals;

(d) the reasonable unpaid fees, costs, and disbursements of the Debtors’ Professionals that are incurred after the delivery of a Carve-Out Trigger Notice, that are allowed by the Court under sections 327 or 363 of the Bankruptcy Code and that are in accordance with the Budget, in an aggregate amount not to exceed \$250,000.00 (inclusive of any unapplied retainers held by such professionals) (the “Debtors’ Professionals Post-Default Carve-Out Cap”); and

(e) the reasonable unpaid fees, costs, and disbursements of the Committee Professionals and the reasonable unpaid expenses of Committee Members that are incurred after the delivery of a Carve-Out Trigger Notice, that are allowed by the Court under sections 328 or 1103 of the Bankruptcy Code, in an aggregate amount (for both Committee Members and the Committee’s Professionals) not to exceed \$50,000.00 (inclusive of any unapplied retainers held by such professionals) (the “Committee Post-Default Carve-Out Cap” and, together with the Debtors’ Professionals Post-Default Carve-Out Cap, the “Post-Default Carve-Out Cap”) (clauses (a), (b), (c), (d), and (e), collectively, the “Carve-Out”).

~~(f)~~—The term “Carve-Out Trigger Notice” shall mean a written notice delivered by the DIP Agent to the Debtors’ lead counsel, the United States Trustee, and lead counsel to any Committee appointed in these Cases, which notice may be delivered at any time following the occurrence and during the continuation of any Termination Event. Upon the delivery of a Carve-Out Trigger Notice, (A) the Debtors shall immediately fund into the Carve-Out Account

(as defined below) an amount equal to the Post-Default Carve-Out Cap, and (B) until the Carve-Out Account (as defined below) has been funded in an additional amount equal to the unpaid fees and expenses that were incurred prior to the delivery of the Carve-Out Trigger Notice in accordance with (b) and (c) above, that have not been disallowed by the Court and for which such Debtors' Professionals or Committee's Professionals have submitted a copy of an application to the Court or monthly fee statement, net proceeds of the DIP Collateral thereafter realized by or remitted to the Prepetition Agent that, but for the Carve-Out, would be utilized by the Prepetition Agent to permanently repay the Prepetition Credit Obligations (x) shall be transferred by the Debtors into a segregated account established by the Debtors (the "Carve-Out Account") and (y) shall not reduce the Prepetition Credit Obligations. All amounts deposited in the Carve-Out Account shall be senior to the DIP Liens, the Prepetition Adequate Protection Liens and the Prepetition First Priority Liens; provided that, upon final payment of all allowed amounts due and owing under the Carve-Out, then any funds remaining in the Carve-Out Account shall be remitted to the DIP Agent or the Prepetition Agent, as applicable, in accordance with this ~~Interim Order, for application in accordance with this Interim Order and the DIP Loan Documents or Prepetition Credit Documents, as applicable~~ Final Order. No amounts set forth in this subparagraph (i) with respect to the Post-Default Carve-Out Cap may be modified without the prior written consent of the DIP Agent and the Prepetition Agent.

(ii) No Direct Obligation to Pay Professional Fees; No Waiver of Right to Object to Fees. Neither the DIP Secured Parties nor the Prepetition Secured Parties shall be responsible for the direct payment or reimbursement of any fees or disbursements of any of the Debtors' Professionals or Committee's Professionals incurred in connection with the Cases or

any Successor Cases under any chapter of the Bankruptcy Code. Nothing ~~in this Interim Order or otherwise shall be construed (i) to obligate any DIP Secured Party or any Prepetition Secured Party in any way to pay compensation to, or to reimburse expenses of, any of the Debtors' Professionals or Committee's Professionals, or to guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement or (ii) to increase the Carve-Out if actual allowed fees and expenses of any of the Debtors' Professionals or Committee's Professionals are higher in fact than the Carve-Out Cap. The respective Prepetition Secured Parties' liens and claims shall be subject to the Carve-Out as set forth in this Interim Order. Notwithstanding any provision in this Paragraph 7 to the contrary, no portion of the Carve-Out, Cash Collateral, Prepetition Collateral, DIP Collateral or proceeds of the DIP Facility shall be utilized for the payment of professional fees and disbursements to the extent restricted under Paragraph 15 hereof.~~ Nothing herein shall be construed as consent to the allowance of any professional fees or expenses of any of the Debtors, any Committee, any other official or unofficial committee in these Cases, or of any other person or entity, or shall affect the right of any DIP Secured Party or any Prepetition Secured Party to object to the allowance and payment of such fees and expenses.

(iii) Payment of Allowed Professional Fees Prior to the Termination Declaration Date. Prior to the occurrence of the Termination Declaration Date, the Debtors shall be permitted to pay allowed fees of the Debtors' Professionals and the Committee's Professionals ~~(to the extent the fees of the Debtors' Professionals and the Committee's Professionals were incurred~~ in accordance with the Approved Budget), subject to the Bankruptcy Code, the Bankruptcy Rules, the Local Rules and any interim compensation

procedures order entered by this Court. The amounts paid prior to the Carve-Out Trigger Notice shall not reduce the Carve-Out.

8. **Waiver of 506(c) Claims.** ~~Subject to the entry of the Final Order, as a further condition of the DIP Facility and any obligation of the DIP Secured Parties to make credit extensions pursuant to the DIP Loan Documents (and their consent to the payment of the Carve-Out to the extent provided herein) and as a further condition to the Debtors' use of Cash Collateral pursuant to this Interim Order and a Final Order,~~ ~~no~~No costs or expenses of administration of the Cases or any Successor Cases shall be charged against or recovered from or against any or all of the DIP Secured Parties and/or the Prepetition Secured Parties, the Prepetition Collateral, the DIP Collateral and the Cash Collateral, in each case pursuant to section 506(c) of the Bankruptcy Code or otherwise, without the prior written consent of the Prepetition Agent and the DIP Agent, and no such consent shall be implied from any other action, inaction, or acquiescence of any or all of the Prepetition Secured Parties and the DIP Secured Parties.

9. **Protection of DIP Secured Parties' Rights.**

(a) Unless the requisite DIP Secured Parties under the DIP Loan Documents shall have provided their prior written consent or all DIP Obligations have been Paid in Full, there shall not be entered in these proceedings, or in any Successor Cases, any order which authorizes any of the following: (i) the obtaining of credit or the incurring of indebtedness that is secured by a security, mortgage, or collateral interest or other Lien on all or any portion of the DIP Collateral and/or that is entitled to administrative priority status, in each case which is superior to or *pari passu* with the DIP Liens, the DIP Superpriority Claims, and/or the other DIP Protections granted pursuant to ~~this~~the Interim Order and/or this Final Order to the DIP

Secured Parties; or (ii) the use of Cash Collateral for any purpose other than to Pay in Full the DIP Obligations or as otherwise permitted in the DIP Loan Documents and this ~~Interim~~Final Order.

(b) The Debtors ~~(and/or their legal and financial advisors in the case of clauses (ii) through (iv) below)~~ will (i) maintain books, records, and accounts to the extent and as required by the DIP Loan Documents, (ii) reasonably cooperate, consult with, and provide to the DIP Secured Parties and the Prepetition Secured Parties all such information as required or allowed under the DIP Loan Documents or the provisions of this ~~Interim~~Final Order, and (iii) permit representatives of the DIP Agent and the Prepetition Agent ~~such rights~~ to visit and inspect any of the Debtors' respective properties, to examine and make abstracts or copies from any of their respective books and records, to conduct a collateral audit and analysis of their respective inventory and accounts, ~~to tour the Debtors' business premises and other properties,~~ and to discuss, consult, and provide advice with respect to, their respective affairs, ~~finances, properties,~~ business operations, financial condition, assets, and accounts with their respective officers, management, employees, advisors, and independent public accountants as and to the extent required by the DIP Loan Documents ~~(with the Prepetition Agent being granted the same access and cooperation rights as the DIP Agent for purposes of this subsection (b)), and (iv) permit the DIP Agent and the Prepetition Agent and their respective representatives to consult with the Debtors' management and advisors on matters concerning the Debtors' businesses, financial condition, operations and assets.~~

10. Proceeds of Subsequent Financing. Without limiting the provisions and protections of Paragraph 9 above, if at any time prior to the Payment in Full of all the DIP Obligations ~~(including subsequent to the confirmation of any Chapter 11 plan or plans~~

~~with respect to any of the Debtors~~), the Debtors' estates, any trustee, any examiner with enlarged powers, or any responsible officer subsequently appointed shall obtain credit or incur debt pursuant to sections 364(b), 364(c), 364(d), or any other provision of the Bankruptcy Code in violation of the DIP Loan Documents, then all of the cash proceeds derived from such credit or debt and all Cash Collateral shall immediately be turned over to the DIP Agent until Payment in Full of the DIP Obligations.

11. **Cash Collection.** From and after the date of the entry of this ~~Interim~~Final Order, all cash and Cash Equivalents (as defined in the DIP Credit Agreement) received by any Debtor, ~~including collections and proceeds of any DIP Collateral and Prepetition Collateral or services provided by any Debtor and all Cash Collateral which shall at any time come into the possession, custody, or control of any Debtor, or to which any Debtor is now or shall become entitled at any time,~~ shall be promptly deposited in the Loan Account (as defined in the DIP Credit Agreement) (or in such other accounts as are designated by the DIP Agent from time to time).

12. **Disposition of DIP Collateral.** Unless the DIP Obligations and the Prepetition Credit Obligations are Paid in Full upon the closing of a sale or other disposition, the Debtors shall not sell, transfer, lease, encumber, or otherwise dispose of any portion of the DIP Collateral (or enter into any binding agreement to do so) without the prior written consent of the requisite DIP Secured Parties under the DIP Loan Documents and the Prepetition Agent (and no such consent shall be implied from any other action, inaction, or acquiescence by any DIP Secured Party or Prepetition Secured Party or any order of this Court), except as permitted in the DIP Loan Documents and/or the Prepetition Credit Documents, as applicable, and this ~~Interim~~Final Order.

13. **Termination Events.** The following shall constitute a termination event under this ~~Interim~~Final Order and the DIP Loan Documents unless waived in writing by each of the DIP Agent, the Majority Lenders, and the Prepetition Agent (each, a “Termination Event”):

~~(a)~~(a) The occurrence of an “Event of Default” under the DIP Credit Agreement, as set forth therein (a “DIP Default Termination Event”).

~~(b)~~(b) Any other breach, default or other violation by any of the Debtors of the terms and provisions of this ~~Interim~~Final Order.

~~(c)~~(c) The Debtors’ failure to timely and strictly comply with the obligations and deadlines set forth in Exhibit C attached hereto (the “Sale Milestones”).



14. **Rights and Remedies Upon Termination Event.**

(a) Any automatic stay otherwise applicable to the DIP Secured Parties is hereby modified, without requiring prior notice to or authorization of this Court, to the extent necessary to permit the DIP Secured Parties to exercise the following remedies immediately upon the occurrence and during the continuance of any Termination Event (as set forth in section 3 of this **InterimFinal** Order): (i) terminate the DIP Obligations; (ii) declare the principal amount then outstanding of, and the accrued interest on, the DIP Obligations and all other amounts payable by the Debtors under the DIP Loan Documents to be forthwith due and payable, whereupon such amounts shall be immediately due and payable without presentment, demand, protest, or other formalities of any kind, all of which are hereby expressly waived by the Debtors; (iii) terminate the DIP Facility and any DIP Loan Document as to any future liability or obligation of the DIP Secured Parties, but without affecting any of the DIP Obligations or the DIP Liens securing the DIP Obligations; (iv) declare a termination, reduction, or restriction on the ability of the Debtors to use any Cash Collateral (except as permitted in Paragraph 14(b) below), ~~including Cash Collateral derived solely from the proceeds of DIP Collateral~~ (any such declaration to be made in writing to the Debtors, the Prepetition Agent, the respective lead counsel to any Committee, and the United States Trustee shall be referred to herein as a “Termination Declaration” and the date which is the earliest to occur of any such Termination Declaration being herein referred to as the “Termination Declaration Date”); (v) reduce any claim to judgment; (vi) take any other action permitted by law; and/or (vii) take any action permitted to be taken by the DIP Loan Documents during the continuance of any Termination Event.

(b) Five (5) Business Days following a Termination Declaration Date, the DIP Agent shall be deemed to have relief from the automatic stay and may foreclose on all or any portion of the DIP Collateral, collect accounts receivable, and apply the proceeds thereof to the DIP Obligations, occupy the Debtors' premises to sell or otherwise dispose of the DIP Collateral, or otherwise exercise remedies against the DIP Collateral permitted by applicable nonbankruptcy law. Unless during such five Business Day period the Court determines that a Termination Event has not occurred and/or is not continuing, the automatic stay, as to the DIP Secured Parties, shall automatically terminate at the end of such five Business Day period, without further notice or order. During such five Business Day period, the Debtors may not use Cash Collateral or any amounts under the DIP Credit Facility except to pay payroll and other expenses critical to keep the business of the Debtors operating in accordance with and otherwise due under the Approved Budget.

(c) All proceeds realized in connection with the exercise of the rights and remedies of the DIP Secured Parties or the Prepetition Secured Parties shall be turned over to the DIP Agent for application to the other DIP Obligations under, and in accordance with, the provisions of the DIP Loan Documents until Payment in Full of the DIP Obligations; provided, that in the event of the liquidation of the Debtors' estates after the occurrence and during the continuance of a Termination Event, the Carve-Out shall be funded into a segregated account exclusively (i) first, from proceeds of any unencumbered assets of the Debtors, and (ii) then from Cash Collateral received by the DIP Agent subsequent to the date of termination of the DIP Obligations and prior to the distribution of any such Cash Collateral to any other parties in interest.

(d) ~~Subject to entry of the Final Order, and notwithstanding~~Notwithstanding anything contained herein to the contrary, and without limiting any other rights or remedies of the DIP Agent or the other DIP Secured Parties contained in this ~~Interim~~Final Order or the DIP Loan Documents, or otherwise available at law or in equity, and subject to the terms of the DIP Loan Documents, upon five (5) Business Days' written notice to the Debtors and any landlord, lienholder, licensor, or other third party owner of any leased or licensed premises or intellectual property that a Termination Event has occurred and is continuing, the DIP Agent (i) may, unless otherwise provided in any separate agreement by and between the applicable landlord or licensor and the DIP Agent (the terms of which shall be reasonably acceptable to the parties thereto), enter upon any leased or licensed premises of the Debtors for the purpose of exercising any remedy with respect to DIP Collateral located thereon and (ii) shall be entitled to all of the Debtors' rights and privileges as lessee or licensee under the applicable license and to use any and all trademarks, trade names, copyrights, licenses, patents, or any other similar assets of the Debtors, which are owned by or subject to a Lien of any third party and which are used by Debtors in their businesses, in either the case of subparagraph (i) or (ii) of this Paragraph 14(d) without interference from lienholders or licensors thereunder, subject to such lienholders' or licensors' rights under applicable law; provided, however, that the DIP Agent, on behalf of the DIP Secured Parties, shall pay only rent and additional rent, fees, royalties, or other monetary obligations of the Debtors that first arise after the written notice referenced above from the DIP Agent and that accrue during the period of such occupancy or use by such DIP Agent calculated on a *per diem* basis. Nothing herein shall require the Debtors, the DIP Agent, or the other DIP Secured Parties to assume any lease or license under Bankruptcy

Code section 365(a) as a precondition to the rights afforded to the DIP Agent and the other DIP Secured Parties in this Paragraph 14(d).

15. **Restriction on Use of Proceeds.** Notwithstanding anything herein to the contrary, no loans and/or proceeds from the DIP Facility, DIP Collateral, Cash Collateral (including any retainer held by any professionals for the below-referenced parties), Prepetition Collateral, or any portion of the Carve-Out may be used by ~~(a) any Committee or trustee or other estate representative appointed in the Cases or any Successor Cases, or any other~~ person, party, or entity (or to pay any professional fees and disbursements incurred in connection therewith) to (a) investigate or prosecute any litigation or other action in connection with the value of the Prepetition Collateral or the DIP Collateral at any time; ~~and~~ ~~(b) any of the Debtors, any Committee, and any trustee or other estate representative appointed in the Cases or any Successor Cases, or any other person, party, or entity to (or to pay any professional fees and disbursements incurred in connection therewith): (i)~~ request authorization to obtain postpetition loans or other financial accommodations ~~pursuant to Bankruptcy Code section 364(e) or (d), or otherwise~~, other than from the DIP Secured Parties; ~~(ii)~~ (ii) investigate (except as set forth below), assert, join, commence, support, or prosecute any action for any claim, counter-claim, action, proceeding, application, motion, objection, defense, or other contested matter seeking any order, judgment, determination, or similar relief against, or adverse to the interests of, in any capacity, any or all of the DIP Secured Parties, the Prepetition Secured Parties, and their respective officers, directors, employees, agents, attorneys, affiliates, assigns, or successors, with respect to any transaction, occurrence, omission, action, or other matter (including formal or informal discovery proceedings in anticipation thereof), including, without limitation, ~~(A)~~ (A) any Challenges and any

Avoidance Actions or other actions arising under chapter 5 of the Bankruptcy Code; **(Bii)** any action with respect to the validity, enforceability, priority, and extent of the DIP Obligations ~~and/or~~, the Prepetition Credit Obligations, ~~or the validity, extent, and priority of~~ the DIP Liens, the Prepetition First Priority Liens, ~~and/or~~ the Prepetition Adequate Protection Liens ~~(including, with respect to the Prepetition Secured Parties only, the value of the DIP Collateral)~~; **(Ciii)** any action seeking to invalidate, set aside, avoid, or subordinate, in whole or in part, the DIP Liens, the other DIP Protections, the Prepetition First Priority Liens, the Prepetition Adequate Protection Liens, or the other Prepetition Secured Parties' Adequate Protection; **(Diy)** except to contest the occurrence or continuance of any Termination Event as permitted in Paragraph 14, any action seeking, or having the effect of, preventing, hindering, or otherwise delaying any or all of the DIP Secured Parties' (and, after the Payment in Full of the DIP Obligations, the Prepetition Secured Parties') assertion, enforcement, or realization on the Cash Collateral or the DIP Collateral in accordance with the DIP Loan Documents or the Prepetition Credit Documents, as applicable, or this ~~Interim~~**Final** Order); and/or **(Ey)** any action seeking to modify any of the rights, remedies, priorities, privileges, protections, and benefits granted to any or all of the DIP Secured Parties and the Prepetition Secured Parties hereunder or under the DIP Loan Documents or the Prepetition Credit Documents, as applicable; provided, however, up to \$50,000 in the aggregate of the Carve-Out, any DIP Collateral, any Prepetition Collateral, any Cash Collateral and proceeds of the DIP Facility (the "Committee Investigation Cap") may be used by the Committee ~~(to the extent such Committee is appointed)~~ to investigate (but not document suit or otherwise prosecute) the extent, validity, and priority of the Prepetition Credit Obligations, the Prepetition First Priority Liens, or any other claims against the Prepetition Secured Parties so long as such investigation

occurs within the Challenge Period, provided, further, that, ~~subject to entry of a Final Order,~~ any amounts incurred by the Committee in excess of the Committee Investigation Cap shall not constitute an allowed administrative expense for purposes of Section 1129(a)(9)(A) of the Bankruptcy Code; ~~(iii)~~ pay any fees or similar amounts to any person (other than the Prepetition Secured Parties) who has proposed or may propose to purchase interests in any of the Debtors without the prior written consent of the DIP Agent; or ~~(iv)~~ use or seek to use Cash Collateral or sell or otherwise dispose of DIP Collateral, unless otherwise permitted hereby, without the consent of the DIP Agent and the Prepetition Agent, as applicable.

16. **Proofs of Claim.** The Prepetition Secured Parties are not required to file proofs of claim in any of the Cases or Successor Cases for any claim allowed herein. The Debtors' Stipulations shall be deemed to constitute a timely filed proof of claim for the Prepetition Secured Parties. The Prepetition Agent, for the benefit of itself and the other Prepetition Lenders, is hereby authorized and entitled, in its sole discretion, but not required, to file (and amend and/or supplement, as it sees fit) a proof of claim and/or aggregate proofs of claim in each of the Cases or Successor Cases for any claim allowed herein.

17. Preservation of Rights Granted Under the ~~Interim~~Final Order.

(a) No Non-Consensual Modification ~~or Extension of Interim of Final~~ Order. The Debtors irrevocably waive any right to seek any amendment, or modification, ~~or extension~~ of this ~~Interim~~Final Order without the prior written consent of the DIP Agent and the Prepetition Agent, and no such consent shall be implied by any other action, inaction, or acquiescence of the DIP Secured Parties or any of the Prepetition Secured Parties. In the event any or all of the provisions of this ~~Interim~~Final Order are hereafter modified, amended, or vacated by a subsequent order of this Court or any other court, such modification, amendment, or vacatur shall not affect the validity, perfection, priority, allowability, enforceability, or non-avoidability of any advances, payments, or use of cash whether previously or hereunder, or lien, claim, or priority authorized or created hereby. Based on the findings set forth in this ~~Interim~~Final Order and in accordance with section 364(e) of the Bankruptcy Code, ~~which is applicable to the DIP Facility contemplated by this Interim Order,~~ in the event any or all of the provisions of this ~~Interim~~Final Order are hereafter reversed, modified, vacated, or stayed by a subsequent order of this Court or any other court, the DIP Secured Parties and the Prepetition Secured Parties shall be entitled to the protections provided in section 364(e) of the Bankruptcy Code, and no such reversal, modification, vacatur, or stay shall affect (i) the validity, priority, or enforceability of any DIP Protections and the Prepetition Secured Parties' Adequate Protection granted or incurred prior to the actual receipt of written notice by the DIP Agent or the Prepetition Agent, as the case may be, of the effective date of such reversal, modification, vacatur, or stay or (ii) the validity, enforceability and non-avoidability of any lien or priority authorized or created hereby or pursuant to the DIP Loan Documents with respect to any DIP Obligations and the Prepetition Secured Parties' Adequate Protection. Notwithstanding any such reversal, modification,



vacatur, or stay, any use of Cash Collateral or any DIP Obligations or Prepetition Secured Parties' Adequate Protection incurred or granted by the Debtors prior to the actual receipt of written notice by the DIP Agent or the Prepetition Agent, as applicable, of the effective date of such reversal, modification, vacatur, or stay shall be governed in all respects by the original provisions of this **InterimFinal** Order, and the DIP Secured Parties and the Prepetition Secured Parties shall be entitled to all of the DIP Protections and Prepetition Secured Parties' Adequate Protection, as the case may be, and all other rights, remedies, liens, priorities, privileges, protections, and benefits granted in section 364(e) of the Bankruptcy Code, this **InterimFinal** Order, and pursuant to the DIP Loan Documents with respect to all uses of Cash Collateral and all DIP Obligations and Prepetition Secured Parties' Adequate Protection.

(b) Dismissal. If any order dismissing any of the Cases ~~under section 1112 of the Bankruptcy Code or otherwise~~ is at any time entered, such order shall provide (in accordance with sections 105 and 349 of the Bankruptcy Code), that (i) the DIP Protections and the Prepetition Secured Parties' Adequate Protection shall continue in full force and effect and shall maintain their priorities as provided in this **InterimFinal** Order until all DIP Obligations have been Paid in Full, the Prepetition Credit Obligations have been Paid in Full ~~(and that all DIP Protections and the Prepetition Secured Parties' Adequate Protection shall, notwithstanding such dismissal, remain binding on all parties in interest)~~, and (ii) this Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing such DIP Protections and the Prepetition Secured Parties' Adequate Protection.

(~~dc~~) Survival of **InterimFinal** Order. The provisions of this **InterimFinal** Order and the DIP Loan Documents, any actions taken pursuant hereto or thereto, and all of the DIP Protections, the Prepetition Secured Parties' Adequate Protection, and all other rights,

remedies, liens, priorities, privileges, protections, and benefits granted to any or all of the DIP Secured Parties and the Prepetition Secured Parties, respectively, shall survive, and shall not be modified, impaired, or discharged by, the entry of any order confirming any plan of reorganization in any Case, converting any Case to a case under chapter 7, dismissing any of the Cases, withdrawing of the reference of any of the Cases or any Successor Cases or providing for abstention from handling or retaining of jurisdiction of any of the Cases in this Court, or terminating the joint administration of these Cases or by any other act or omission.

~~The terms and provisions of this Interim Order, including all of the DIP Protections, the Prepetition Secured Parties' Adequate Protection, and all other rights, remedies, liens, priorities, privileges, protections, and benefits granted to any or all of the DIP Secured Parties and the Prepetition Secured Parties, shall continue in full force and effect notwithstanding the entry of any such order, and such DIP Protections and Prepetition Secured Parties' Adequate Protection shall continue in these proceedings and in any Successor Cases, and shall maintain their respective priorities as provided by this Interim Order.~~ Subject to the provisions of this ~~Interim~~[Final](#) Order and the DIP Loan Documents that permit the treatment of the DIP Obligations under the DIP Facility pursuant to ~~the Plan or any other~~ Chapter 11 plan with respect to any of the Debtors, the DIP Obligations shall not be discharged by the entry of an order confirming ~~the Plan or any other~~ such Chapter 11 plan, the Debtors having waived such discharge pursuant to section 1141(d)(4) of the Bankruptcy Code.

~~18. Insurance Policies. Upon entry of this Interim Order, the DIP Agent and the DIP Lenders shall be, and shall be deemed to be, without any further action or notice,~~

~~named as additional insureds and loss payees, as applicable, on each insurance policy maintained by the Debtors which in any way relates to the DIP Collateral.~~

**18.** ~~**19.**~~ **Other Rights and Obligations.**

(a) The Debtors shall indemnify the DIP Agent and the other DIP Secured Parties (and other applicable parties) to the extent set forth in the DIP Loan Documents, including, without limitation, as provided in Section 9.05 of the DIP Credit Agreement. All unpaid indemnities of the DIP Agent that have not been disallowed by this Court on the basis of an objection filed by the United States Trustee or the Committee (or any subsequent trustee of the Debtors' estates) shall constitute DIP Obligations and shall be secured by the DIP Collateral as specified in this ~~Interim~~**Final** Order. Any and all fees, commissions, costs, and expenses paid prior to the Petition Date by any Debtor to the DIP Agent or the DIP Lenders in connection with or with respect to the DIP Facility, the DIP Credit Agreement, or the other DIP Loan Documents are hereby approved in full and non-refundable.

(b) Binding Effect. Subject to Paragraph 6 above, the provisions of this ~~Interim~~**Final** Order, including all findings herein, and the DIP Loan Documents shall be binding upon all parties in interest in these Cases, ~~including, without limitation, the DIP Secured Parties, the Prepetition Secured Parties, any Committee, and the Debtors~~ and their respective successors and assigns (including any chapter 7 or chapter 11 trustee hereinafter appointed or elected for the estate of any of the Debtors, an examiner appointed pursuant to section 1104 of the Bankruptcy Code, or any other fiduciary or responsible person appointed as a legal representative of any of the Debtors or with respect to the property of the estate of any of the Debtors), whether in any of the Cases, in any Successor Cases, or upon dismissal of any such Case or Successor Case; provided, however, that the DIP Secured Parties and the Prepetition

Secured Parties shall have no obligation to permit the use of Cash Collateral or to extend any financing to any chapter 7 or chapter 11 trustee or other responsible person appointed for the estates of the Debtors in any Case or Successor Case.

(c) No Waiver. Neither the failure of the DIP Secured Parties or the Prepetition Secured Parties to seek relief or otherwise exercise their rights and remedies under this InterimFinal Order, the DIP Loan Documents, the Prepetition Credit Documents, or otherwise (or any delay in seeking or exercising same), ~~nor the failure of the DIP Secured Parties to seek relief or otherwise exercise their respective rights and remedies under this Interim Order, the DIP Loan Documents, or otherwise (or any delay in seeking or exercising same)~~, shall constitute a waiver of any of such parties' rights hereunder, thereunder, or otherwise. Nothing contained in this ~~Interim Order (including, without limitation, the authorization of the use of Cash Collateral)~~ Final Order shall impair or modify any rights, claims or defenses available in law or equity to any DIP Secured Party or Prepetition Secured Party ~~or any DIP Secured Party~~, including with respect to non-Debtor entities or their respective assets.

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

(~~f~~) No Marshaling. ~~Upon entry of a final order, neither~~ Neither the DIP Secured Parties nor the Prepetition Secured Parties shall be subject to the equitable doctrine of “marshaling” or any other similar doctrine with respect to any of the DIP Collateral or the Prepetition Collateral, as applicable.

(~~g~~) Amendments. The Debtors are authorized and empowered, without further notice and hearing or approval of this Court, to make non-material amendments, modifications, supplements, or waivers to any provision of the DIP Loan Documents in accordance with the provisions thereof. The Debtors shall seek Court authority for any increase in the interest rate (other than as a result of the imposition of the default rate), increase in lending commitments, change to the Maturity Date (as defined in the DIP Credit Agreement), or changes in or additions to Events of Default unfavorable to the Debtors. Any and all waivers, modifications, or amendments must be in writing and signed by or on behalf of all the Debtors and the DIP Agent (pursuant to the terms of the DIP Credit Agreement).

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

(g) Interim Order; Inconsistency. Except as specifically modified hereby, all of the provisions of the Interim Order shall remain in effect and are hereby ratified by this Final Order. In the event of any inconsistency between the terms and conditions of the DIP Loan Documents and/or the Interim Order, on the one hand, and this Final Order, on the other hand, the provisions of this Final Order shall govern and control.

(~~i~~) Enforceability. This ~~Interim~~Final Order shall constitute findings of fact and conclusions of law pursuant to the Bankruptcy Rule 7052 and shall take effect and be fully

enforceable *nunc pro tunc* to the Petition Date immediately upon execution hereof.

Notwithstanding ~~Bankruptcy Rules 4001(a)(3), 6004(h), 6006(d), 7062 or 9024 or any other~~any Bankruptcy Rule, or Rule 62(a) of the Federal Rules of Civil Procedure, this ~~Interim~~Final Order shall be immediately effective and enforceable upon its entry, and there shall be no stay of execution or effectiveness of this ~~Interim~~Final Order.

(j) Reservation of Rights. Nothing in this ~~Interim~~Final Order shall be deemed to constitute the consent of the DIP Secured Parties or the Prepetition Secured Parties, and each of the foregoing expressly reserve the right to object, to entry of any Order of the Bankruptcy Court that provides for the sale of all or substantially all of the assets of the Debtors to any party ~~unless, in connection and concurrently with any such event, the proceeds of such sale are or will be sufficient to Pay in Full the DIP Obligations, the Prepetition Credit Obligations, the Prepetition Secured Parties' Adequate Protection and all of the foregoing are Paid in Full on the closing date of such sale.~~

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

~~20. Final Hearing~~

~~(a) The Final Hearing to consider entry of the Final Order and final approval of the DIP Facility is scheduled for \_\_\_\_\_, 2017, at \_\_\_\_\_ (prevailing Eastern time) at the United States Bankruptcy Court for the District of Delaware. If no objections to the relief sought in the Final Hearing are filed and served in accordance with this Interim Order, no Final Hearing may be held, and a separate Final Order may be presented by the Debtors and entered by this Court.~~

~~(b) Final Hearing Notice. Within three days of entry of this Interim Order, the Debtors shall serve, by United States mail, first-class postage prepaid, (such service constituting adequate notice of the Final Hearing) (i) notice of the entry of this Interim Order and of the Final Hearing (the "Final Hearing Notice") and (ii) a copy of this Interim Order, on the parties having been given notice of the Interim Hearing and to any other party that has filed a request for notices with this Court and to any Committee after the same has been appointed, or Committee counsel, if the same shall have been appointed. The Final Hearing Notice shall state that any party in interest objecting to the entry of the proposed Final Order shall file written objections with the Clerk of the Bankruptcy Court no later than \_\_\_\_\_, 2017, which objections shall: (i) be in writing; (ii) conform to the Bankruptcy Rules and the Local Rules; and (iii) be filed with the Clerk of the United States Bankruptcy Court for the District of Delaware no later than seven (7) business days before the Final Hearing and served upon the following parties so as to be actually received no later than seven (7) business days before the Final Hearing: (a) proposed counsel for the Debtors: Gibbons P.C., 300 Delaware Avenue, Suite 1015 (Attn: Howard A. Cohen, Esq.) and (b) counsel for the DIP Agent: Latham & Watkins LLP, 885 Third Avenue, New York, NY 10022-4834~~

~~(Attn: Mitchell A. Seider, Esq. and Annemarie V. Reilly, Esq.) and Richards, Layton & Finger, P.A., 920 North King Street, Wilmington, DE 19801 (Attn: Mark D. Collings, Esq.).~~

19. ~~21.~~ Retention of Jurisdiction. The Bankruptcy Court has and will retain jurisdiction to enforce this ~~Interim~~Final Order according to its terms.

Dated: \_\_\_\_\_, 2017  
Wilmington, Delaware

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UNITED STATES BANKRUPTCY JUDGE



**EXHIBIT A**

**Initial Approved Budget**

**EXHIBIT B**

**DIP Credit Agreement**

**EXHIBIT C**

**Milestones**

- 1) On or before the date that is thirty (30) days after the Petition Date, or such later date to which the DIP Agent and the Majority Lenders consent in writing in their respective sole discretion, the Bankruptcy Court shall have entered a sales procedures order (the "Sale Procedures Order") approving the bidding procedures contained in the Sale Procedures Motion, which Sale Procedures Order shall be acceptable to the DIP Agent and the Majority Lenders in their respective sole discretion.
  
- 2) Unless the DIP Agent and the Majority Lenders shall have otherwise provided their prior written consent in their respective sole discretion, on or before March 31, 2017, the Bankruptcy Court shall have entered an order (the "Sale Order"), in form and substance satisfactory to the DIP Agent and the Majority Lenders, in their respective sole discretion, among other things, approving the 363 Sale.

<b>Summary report:</b>	
<b>Litéra® Change-Pro TDC 7.5.0.145 Document comparison done on 1/25/2017 8:42:53 AM</b>	
<b>Style name:</b> Keith	
<b>Intelligent Table Comparison:</b> Active	
<b>Original DMS:</b> iw://US-DOCS/US-DOCS/77997895/1	
<b>Modified DMS:</b> iw://US-DOCS/US-DOCS/77997895/3	
<b>Changes:</b>	
<b>Add</b>	221
<b>Delete</b>	257
<i>Move From</i>	0
<i>Move To</i>	0
<b>Table Insert</b>	0
<b>Table Delete</b>	0
<i>Table moves to</i>	0
<i>Table moves from</i>	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
<b>Total Changes:</b>	<b>478</b>