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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

In re VERITY HEALTH SYSTEM OF CALIFORNIA, INC., *et al.*,[1] Debtors	District Court Case Number: 2:18-cv-10675-RGK Bankruptcy Court Case Number: 2:18-bk-20151-ER

[1] The other Debtors in the chapter 11 cases, being jointly administered under Lead Case No. 2:18-bk-20151-ER, are O'Connor Hospital 2:18-bk-20168-ER, Saint

Official Committee of Unsecured Creditors of Verity Health System of California, Inc. Appellant v. Verity Health System of California, Inc. Appellee -and- UMB Bank, N.A., as master indenture trustee and Wells Fargo Bank, National Association, as indenture trustee, and U.S. Bank National Association, as Series 2015 Note Trustee and Series 2017 Note Trustee, Intervening Appellees	Adversary Case Number: N/A **JOINT BRIEF OF INTERVENING APPELLEES UMB BANK, N.A., WELLS FARGO BANK, NATIONAL ASSOCIATION, AND U.S. BANK, NATIONAL ASSOCIATION, AS INDENTURE TRUSTEES**

Louise Regional Hospital 2:18-bk-20162-ER, St. Francis Medical Center 2:18-cv-20165-ER, St. Vincent Medical Center 2:18-bk-20164-ER, Seton Medical Center 2:18-cv-20167-ER, O'Connor Hospital Foundation 2:18-bk-20179-ER, Saint Louise Regional Hospital Foundation 2:18-cv-20172-ER, St. Francis Medical Center of Lynwood Foundation 2:18-cv-20178-ER, St. Vincent Foundation 2:18-cv-20180-ER, St. Vincent Dialysis Center, Inc. 2:18-cv-20171- ER Seton Medical Center Foundation 2:18-cv-20175-ER, Verity Business Services 2:18-cv-20173-ER, Verity Medical Foundation 2:18-cv-20169-ER, Verity Holdings, LLC 2:18-cv-20163-ER, DePaul Ventures, LLC 2:18-cv-20176-ER, and DePaul Ventures - San Jose Dialysis, LLC 2:18-cv-20181-ER.

CORPORATE DISCLOSURE STATEMENT PURSUANT TO FED. R. BANKR. P. 8012

Pursuant to Fed R. Bankr. P. 8012, (i) UMB Bank, N.A. states that it is a federally chartered banking institution and is a wholly owned subsidiary of UMB Financial Corporation, a publicly held corporation, and (ii) Wells Fargo Bank, National Association states that it is a federally chartered banking institution, that it has no parent corporation, and that there is no publicly held corporation which owns 10% or more of its stock.

Dated: April 15, 2019

MINTZ LEVIN COHN FERRIS GLOVSKY AND POPEO, P.C.

/s/ Abigail V. O'Brient
Abigail V. O'Brient

and

Daniel S. Bleck *(pro hac vice)*
Paul J. Ricotta *(pro hac vice)*
Ian A. Hammel *(pro hac vice)*

Attorneys for UMB Bank, N.A. as master indenture trustee and Wells Fargo Bank, National Association, as indenture trustee

CORPORATE DISCLOSURE STATEMENT PURSUANT TO FED. R. BANKR. P. 8012

Pursuant to Federal Rule of Bankruptcy Procedure 8012, U.S. Bank National Association states that it is a subsidiary of U.S. Bancorp, and that no publicly traded corporation other than U.S. Bancorp owns 10% or more of it.

Dated: April 15, 2019

MCDERMOTT WILL & EMERY LLP

By: /s/ Jason D. Strabo
Jason D. Strabo

and

MASLON LLP

By: /s/ Jason M. Reed
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Attorneys for U.S. Bank National Association, not individually but as Series 2015 Note Trustee and Series 2017 Note Trustee, respectively

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UMB Bank, N.A., solely in its capacity as master indenture trustee, and Wells Fargo Bank, National Association, and U.S. Bank National Association, solely in their respective capacities as indenture trustees (the "Prepetition Secured Creditors"), having been granted authority by this Court to intervene in this appeal, hereby submit their joint brief in opposition to Appellant's initial brief filed by the Official Committee of Unsecured Creditors of Verity Health System of California, Inc., et al. (the "Committee"). The Prepetition Secured Creditors respectfully request that the Court deny the relief sought by the Committee and affirm the *Final Order (A) Authorizing the Debtors to Obtain Post-petition Financing; (B) Authorizing the Debtors to Use Cash Collateral; and (C) Granting Adequate Protection to Prepetition Secured Creditors Pursuant to 11 U.S.C. §§ 105, 363, 364, 1107 and 1108*, entered by the United States Bankruptcy Court for the Central District of California (the "Bankruptcy Court") on October 4, 2018 (Committee's Appx. No. 34; Bankruptcy Docket No. 409), as subsequently modified by the Bankruptcy Court (the "Final DIP Order").

I. STATEMENT OF THE CASE

A. Introduction

These bankruptcy cases were filed on an urgent basis to facilitate a going concern sale of the Debtors' highly leveraged hospitals which were facing a liquidity crisis due to ongoing operating losses. Following hard-fought negotiations over a number of weeks, including two court hearings as well as a number of proposals and counter-proposals exchanged among the parties, the Debtors presented the Bankruptcy Court with an order that had been agreed upon with the Prepetition Secured Creditors and others which (i) authorized post-petition financing from Ally Bank N.A. (the "DIP Lender") in an amount up to $185 million (the "DIP Facility") that would be secured by a lien on all of the Debtors' assets and would prime the existing, first priority lien of the Prepetition Secured Creditors; (ii) authorized the Debtors to use post-petition cash collateral which had been pledged to the Prepetition

Secured Creditors; and (iii) provided the Prepetition Secured Creditors with an adequate protection package that was intended to preserve their status as oversecured creditors having a collateral value (as determined by the Bankruptcy Court) that exceeds their secured claim by 26% - 40%, all in return for their consent to the DIP Facility and the DIP Lender's priming lien, as well as their consent to the use by the Debtors of their cash collateral. After considering the evidence, hearing the argument of counsel, and reviewing the terms of the agreed-upon order, the Bankruptcy Court properly exercised its discretion to enter the Final DIP Order, holding that the compromises reached by the parties were fair and in the best interest of the Debtors, their estates and their creditors, while also protecting the interests of the Prepetition Secured Creditors and the DIP Lender. Despite the delicate balance of competing rights agreed upon by the parties and approved by the Bankruptcy Court, the Committee has now cherry-picked for appeal two provisions of the Final DIP Order relating to the adequate protection package granted by the Bankruptcy Court to the Prepetition Secured Creditors.

Specifically, the Committee challenges the Bankruptcy Court's approval of the Debtors' agreement to (i) waive their potential ability to seek to surcharge the Prepetition Secured Creditors' collateral for any costs and expenses of preserving or disposing of such collateral during the bankruptcy cases pursuant to Section 506(c) of the Bankruptcy Code (the "Section 506(c) Waiver"), and (ii) waive their potential ability to seek to disallow otherwise valid and enforceable prepetition liens of the Prepetition Secured Creditors in any post-petition proceeds of prepetition collateral based upon the so-called "equities of the case" exception of Section 552(b) of the Bankruptcy Code (the "Section 552(b) Waiver").[2] The Committee does not appeal any other provision of the Final DIP Order and, accordingly, must be bound by its findings and provisions.

[2] The Section 506(c) Waiver and the Section 552(b) Waiver are referred to collectively herein as the "Waivers."

The adequate protection package contained in the Final DIP Order is the result of arms' length negotiations between the Debtors, the Prepetition Secured Creditors, the DIP Lender, and other parties-in-interest. The Waivers are an integral part of this compromise and cannot be stripped from the Final DIP Order on a piecemeal basis. The Prepetition Secured Creditors were initially presented with a draft of the DIP Order that did not contain a number of standard provisions, such as the Waivers, which customarily appear in bankruptcy court financing orders. The Prepetition Secured Creditors rejected that draft. Following subsequent negotiations, the parties ultimately agreed upon the terms and provisions of the Final DIP Order, which included the Waivers. Without the Waivers, the Prepetition Secured Creditors do not consent to be primed by the DIP Lender or to the use of their cash collateral, which consents were expressly required by the DIP Lender and the DIP Facility documentation as a precondition to the DIP Facility.

The Bankruptcy Court's exercise of discretion in approving the compromises that were incorporated into the Final DIP Order was appropriate and warranted. Given that the Prepetition Secured Creditors are oversecured, the Debtors and their unsecured creditors would gain nothing by attempting to make a claim under Section 506(c). Case law and logic dictate that Section 506(c) is a very narrow remedy that can be invoked only when the expenditure of unencumbered estate funds is strictly necessary to preserve the value of a secured creditor's collateral. Here, the Prepetition Secured Creditors are oversecured and would be paid in full regardless of whether the bankruptcy estate expends funds to preserve or protect their collateral. Therefore, such expenditures by the Debtors are not necessary, within the meaning of Section 506(c), for the Prepetition Secured Creditors to be paid in full, and any potential right to bring a claim under Section 506(c) would be futile. Similarly, there is no detriment to the unsecured creditors on account of the Section 552(b) Waiver because, under the facts of this case, there is no viable claim under that section. According to the Committee, Section 552(b) is meant to reimburse unsecured

creditors if unencumbered post-petition estate assets (which would otherwise benefit unsecured creditors) are used to preserve or enhance the value of encumbered assets which benefit the secured party. The Committee, however, failed to appeal that portion of the Final DIP Order which expressly granted a lien to the Prepetition Secured Creditors in all of the post-petition properties and assets of the Debtors as part of the adequate protection package. Accordingly, the Committee is bound by the fact that there are no unencumbered, post-petition assets which could theoretically be used to enhance the value of the Prepetition Secured Creditors' collateral.

Although the Prepetition Secured Creditors believe that there would be no merit to any claim under either Section 506(c) or Section 552(b), the Waivers still add value to the adequate protection package because, at a minimum, they would prevent frivolous claims and suits that would need to be defended or could, conceivably, be used in an attempt to coerce the Prepetition Secured Creditors into paying a settlement.

Finally, the Committee ignores the fact that the Prepetition Secured Creditors provided real, additional value to the Debtors through their consent to the DIP Facility and, especially, by agreeing to allow their security interest to be primed. Bankruptcy courts in both this jurisdiction and throughout the country have for many years routinely included the Waivers as part of adequate protection packages granted to lenders such as the Prepetition Secured Creditors, especially where such creditors have agreed to allow their otherwise first priority lien position to be primed by security interests granted to a new lender. Such consent is, as an economic and mathematical matter, the functional equivalent by the Prepetition Secured Creditors of agreeing to provide new or additional credit to the Debtors because the priming loan must be paid first, in full, before any payment whatsoever is made to the Prepetition Secured Creditors. Even the Committee admits in its brief that, where a creditor is taking on additional credit risk (here, the risk that the DIP Lender with its

priority position will not be paid in full), such creditor would be entitled to the Waivers.

B. Factual Background

On August 31, 2018 (the "Petition Date"), the Debtors in these jointly administrated cases each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). (Committee's Appx. No. 1; Bankr. Docket No. 1). Since the commencement of their cases, the Debtors have been operating their businesses as debtors-in-possession pursuant to 11 U.S.C. §§ 1107 and 1108.

Debtor, VHS, is a California nonprofit public benefit corporation and is the sole corporate member of five California nonprofit public benefit corporations that operate six acute care hospitals (the "Hospitals") and other facilities in the state of California, each of which is named as a Debtor in this case. (Committee's Appx. No. 4; Bankr. Docket No. 8 at ¶ 11).

VHS, the Hospitals and their affiliated entities operate approximately 1,680 inpatient beds, six active emergency rooms, a trauma center, eleven medical office buildings, and a host of medical specialties, including tertiary and quaternary care. *Id.* at ¶ 12.

UMB Bank, N.A. serves as successor master trustee for the holders of nine series of debt securities comprising the largest secured claim against the Debtors, totaling in excess of $461 million. (Committee's Appx. No. 3, Bankr. Docket No. 32 at 3-4). Wells Fargo Bank, National Association, serves as indenture trustee for three of those series of debt instruments issued in 2005 in an outstanding amount exceeding $259 million. *Id.* U.S. Bank, National Association, serves as indenture trustee for both the 2015 Notes and the 2017 Notes issued in an outstanding amount exceeding $202 million. *Id.* The aggregate debt owed to the Prepetition Secured Creditors is secured by liens and security interests on the Debtors' primary assets, including, without limitation, all five of the Debtors' acute care hospitals, a host of

related facilities, and other assets such as receivables, equipment, inventory, and intangibles.

As of the Petition Date, the Debtors alleged that they had an immediate need for access to additional credit in the form of debtor-in-possession financing, and the need to use the pre- and post-petition cash collateral generated from the prepetition liens of the Prepetition Secured Creditors. (Committee's Appx. No. 3; Bankr. Docket No. 32 at ¶¶ 12-13). Without the Bankruptcy Court's approval of the new financing and the Debtors' use of the Prepetition Secured Creditors' cash collateral, the Debtors alleged that the existence of the Hospitals would have been threatened and their ability to survive as a going concern would have been irreparably harmed. *Id.* at ¶ 11A.

Prior to the Petition Date, the Debtors had solicited offers to secure post-petition financing, and had determined that the $185 million DIP Facility proposed by Ally Bank, the DIP Lender, represented the best offer. (Committee's Appx. No. 3; Bankr. Docket No. 32 at ¶¶ 17-18). The DIP Facility grants to the DIP Lender valid, perfected, continuing, enforceable, non-avoidable first priority liens and security interests (the "Priming Liens") on literally all of the Debtors' assets (the "Collateral"), which Priming Liens prime all other liens and security interests on the Collateral in existence as of the Petition Date, including the liens of the Prepetition Secured Creditors. *Id.* at ¶ 40. Importantly, the terms of the DIP Facility documentation required, as a precondition to its effectiveness, *inter alia,* that the Prepetition Secured Creditors voluntarily consent to, or not oppose or appeal, entry of the Interim DIP Order or the Final DIP Order. *Id.* at Ex. 3, § 3.3(b).

On the Petition Date, the Debtors filed their *Emergency Motion of Debtors for Interim and Final Orders (A) Authorizing The Debtors To Obtain Post Petition Financing (B) Authorizing The Debtors To Use Cash Collateral And (C) Granting Adequate Protection To Prepetition Secured Creditors Pursuant To 11 U.S.C. §§ 105, 363, 364, 1107 And 1108* (the "Financing Motion") (Committee's Appx. No.

2; Bankr. Docket No. 31). Among other things, the proposed form of order that accompanied the Financing Motion lacked customary waivers, including the Waivers presently at issue. The Prepetition Secured Creditors desired and expected such waivers as part of their adequate protection package and as part of the *quid pro quo* for being asked to consent to the terms of the DIP Financing and the priming of their first priority lien. *Id.* at Ex. A.

The Prepetition Secured Creditors informally objected to the initial Financing Motion and, after a number of meetings, consultations and negotiations with the Debtors and other interested parties, the Debtors agreed to include the Waivers in their proposed initial financing order. Accordingly, the Waivers were included in the Interim DIP Order that was entered by the Bankruptcy Court following a hearing on September 6, 2018. (Committee's Appx. No. 9; Bankr. Docket No. 86 at 19).

After entry of the Interim DIP Order, negotiations among the parties continued with respect to the form of a final financing order. In addition to their efforts at a negotiated resolution, the Prepetition Secured Creditors also filed written objections and attended and presented oral arguments at the Bankruptcy Court hearing regarding consideration of the final order. Contrary to the Committee's assertion, the Prepetition Secured Creditors, on behalf of one of their largest bondholders, offered, both during the negotiations and in open court at the final hearing, to provide post-petition financing to the Debtors under terms similar to, or better than those provided by the DIP Lender. (Committee's Appx. No. 28, Bankr. Docket No. 380 at 9-10; Committee's Appx. No. 35 at 11:12-19; 15:13-17:14).

The final hearing with respect to the Financing Motion was held on October 3, 2018. At that hearing, the Prepetition Secured Creditors and the Debtors ultimately agreed upon language to be utilized in the final order and consented to a form of order that was thereupon entered by the Bankruptcy Court as the Final DIP Order. (Committee's Appx. Tab 35; Bankr. Docket No. 428 at 25). In determining to approve the agreed-upon terms of the Final DIP Order, the Bankruptcy Court

relied upon evidentiary declarations by the Debtors' chief executive officer, its chief financial officer, and its lead financial and investment adviser. (Committee's Appx. Nos. 16, 35, 4, 21, 3, and 21; Bankruptcy Docket Nos. 273, 428, 8, 309 at Ex. 3, 32, and 309 at Ex. 2), as well as extensive oral argument presented by the parties, including the Committee. Notably, the Committee failed to present any evidence in opposition to the Final DIP Order or object to the declarations and other evidence presented by the Debtors. Accordingly, the Committee waived any evidentiary objections to the Bankruptcy Court's Final DIP Order. *See* Rule 9013-1(i) (2) of the Local Bankruptcy Rules of the United States Bankruptcy Court for the Central District of California. After hearing the Committee's oral argument, the Bankruptcy Court specifically overruled the objections made by the Committee which are now the subject of this appeal. (Committee's Appx. No. 29; Bankr. Docket No. 392 at p. 10-11).

As part of its ruling at the final hearing, the Bankruptcy Court adopted its so-called tentative ruling, dated October 3, 2018 (the "Tentative Ruling"). (Committee's Appx. No. 29; Bankr. Docket No. 392). The Tentative Ruling includes findings that the DIP Facility provides the Debtors with a "realistic opportunity to sell their assets for a price that will yield between $150–$225 million in excess of existing secured debt." (Committee's Appx. No. 29; Bankr. Docket No. 392 at p. 8). The Committee has not appealed this finding that the Prepetition Secured Creditors are oversecured.

Among other things, the Tentative Ruling also determined that the inclusion of the Waivers in the adequate protection package was a necessary inducement for the parties to come to an agreement on the language in the Final DIP Order. (Committee's Appx. No. 29; Bankr. Docket No. 392 at p. 9); *id.* at 11 (overruling Committee's objection to the Section 506(c) Waiver as it was necessary to induce the lenders to extend financing); *id.* (overruling Committee's objection to the Section 552(b) Waiver as such waivers are "routinely granted" and are reasonable in light of

obtaining the consent of the Prepetition Secured Creditors).

The findings made by the Court in the Final DIP Order explicitly recognize that the Prepetition Secured Creditors are entitled to the adequate protection package, and that they had made a number of valuable concessions and compromises that will benefit the Debtors and the unsecured creditors. For example, the Final DIP Order found that:

- the Prepetition Secured Creditors are "entitled to receive adequate protection as set forth in this Final Order pursuant to sections 361, 363, and 364 of the Bankruptcy Code, for any [future] Diminution in Value (as defined herein) of … of their … interests in the Prepetition Collateral (including Cash Collateral)." *Id.* at ¶ K(i), p. 10;

- the DIP Facility is necessary to allow the Debtors to provide vital patient care and to preserve the value of their estates. *Id.* at ¶ K(ii), p. 10;

- the Priming Liens, as consented to by the Prepetition Secured Creditors, "will enable the Debtors to continue borrowing under the DIP Facility and to continue operating their businesses for the benefit of their estates and creditors." (Committee's Appx. No. 34; Bankr. Docket No. 409 at ¶ K(i), p. 10);

- the Prepetition Secured Creditors only "consented to the use of their respective interests in Cash Collateral, subject to the terms and conditions set forth in this Order." *Id.* at ¶ R, p. 15;

- the DIP Lender and the Prepetition Secured Creditors all acted in good faith in connection with negotiating the DIP Facility, and the DIP Lender and the Prepetition Secured Creditors were all acting in reliance on the consents and findings reflected in the Final DIP Order. (Committee's Appx. No. 34; Bankr. Docket No. 409 at ¶ 5(a)-(g) and ¶ 28, p. 37-38); and

- even if the Debtors' cases did not proceed as planned, administrative creditors would still benefit from the Prepetition Secured Creditors' subordination of their liens to the Carve Out (an amount available to pay the professional fees of the Debtors and the Committee). (Committee's Appx. No. 34; Bankr. Docket No. 409 at ¶ N, p. 13).

Most importantly, the Bankruptcy Court specifically found and determined that the Prepetition Secured Creditors were entitled to the Waivers on account of their agreements to "be subject to the Carve Out and subordinate to the DIP Liens." (Committee's Appx. No. 34; Bankr. Docket No. 409 at ¶ 5(f), p. 25).

II. STANDARD OF REVIEW

Where an issue or remedy is committed to the bankruptcy court's equitable powers, the bankruptcy court's decision is to be reviewed under an abuse of discretion standard. *See In re Lee*, Case No. 18-6851 (JFW), 2018 U.S. Dist. LEXIS 223420, *7 (C.D. Cal. Dec. 7, 2018) (holding a choice of equitable remedies was to be reviewed on an abuse of discretion standard). Adequate protection is considered a remedy subject to the abuse of discretion standard. *See In re Sunnymead Shopping Ctr. Co.*, 178 B.R. 809, 814 (B.A.P. 9th Cir. 1995) (noting that "adequate protection payments… serve as a way to protect [a creditor's] interest in bankruptcy, where state remedies are not available," and finding bankruptcy court's decision regarding adequate protection did not constitute an abuse of discretion); *see also People's Capital & Leasing Corp. v. Big3D, Inc. (In re Big3D, Inc.)*, 438 B.R. 214, 291 (B.A.P. 9th Cir. 2010) (citing *Paccom Leasing Corp. v. Deico Elects., Inc. (In re Deico Elects., Inc.*, 139 B.R. 945, 947 (B.A.P. 9th Cir. 1992) ("A bankruptcy court's decision regarding adequate protection is reviewed for abuse of discretion.").

When considering the exercise of discretion, "a 'reviewing court cannot reverse unless it has a definite and firm conviction that the court below committed a clear error of judgment in the conclusion it reached upon a weighing of the relevant factors.'" *Sunnymead*, 178 B.R. at 814 (quoting *In re Goldberg*, 168 B.R. 382, 384 (B.A.P. 9th Cir. 1994)).

III. ARGUMENT

A. The Adequate Protection Package Approved by the Bankruptcy Court, Including the Waivers, Was Granted as Part of an Appropriate Exercise of the Bankruptcy Court's Discretion

It is undisputed that entry of the Final DIP Order was dependent upon receiving the voluntary consent of the Prepetition Secured Creditors. The DIP Lender and the documentation evidencing the DIP Facility made such consent a precondition of closing. Absent consent or a finding that a secured creditor is adequately protected, a debtor is not authorized to offer priming liens to a new lender or to use the cash collateral of an existing lender. *See* 11 U.S.C. § 363(c)(2) (authorizing debtor in possession to use cash collateral only upon secured creditor's consent or pursuant to court order); *id.* § 363(e) (debtor is prohibited from using secured creditor's collateral absent adequate protection); *id.* § 364(d)(1) (authorizing debtor in possession to incur superpriority senior secured or "priming" liens only if (a) the debtor is unable to obtain financing from another source, and (b) the interests of the secured creditors whose liens are being primed by the post-petition financing are adequately protected); *see also Hari Ram, Inc. v. Magnolia Portfolio, LLC (In re Hari Ram, Inc.)*, 507 B.R. 114, 120 (Bankr. M.D. Pa. 2014) (noting that either consent or adequate protection is required); *Scottsdale Medical Pavilion v. Mutual Benefit Life Ins. Co. (In re Scottsdale Medical Pavilion)*, 159 B.R. 295, 302 (B.A.P. 9th Cir. 1993) (same).

It is well recognized that adequate protection may take many forms and is determined on a case-by-case basis. *See, e.g., In re Am. Mariner Indus., Inc.*, 27 B.R. 1004, 1006-07 (B.A.P. 9th Cir. 1983) (citing 2 Collier on Bankruptcy ¶ 361.01[1] (15th ed.)) ("[T]he ultimate meaning of the term [adequate protection] will be developed in a case-by-case basis, in each instance with the relief being tailored to the fact situation."); *In re Pelham Street Assocs.*, 131 B.R. 260, 263 (Bankr. D. R.I. 1991) (citations omitted) ("'[A]dequate protection' under the Code

is a flexible concept, to be tailored to the particular facts and circumstances of each case."); *In re Briggs Transp. Co.*, 35 B.R. 210, 217 (Bankr. D. Minn. 1983) (same).

In this case, the Prepetition Secured Creditors permitted their liens to be primed by the DIP Facility, and also consented to the use of their cash collateral during the pendency of the bankruptcy cases, on the express condition that such consent was in return for the adequate protection package that they had negotiated in the final version of the Final DIP Order. The Waivers, which are an integral part of that adequate protection package, were not simply an afterthought or part of boilerplate language. The Debtors and the Prepetition Secured Creditors engaged in extensive negotiations regarding every aspect of the adequate protection package, including the Waivers. Put simply, the Bankruptcy Court determined, in the exercise of its discretion and after considering the evidence and the arguments, that the adequate protection package embodied in the Final DIP Order *is* the proper adequate protection based on the facts and circumstances of this case and the results of the arms' length negotiations of the parties.

The Committee argues that the Prepetition Secured Creditors are not entitled to the Waivers because their interests are otherwise adequately protected. At best, this is circular reasoning. The Committee is arguing that the Waivers should be stricken because the value of the Prepetition Secured Creditors' collateral is not at risk and, therefore, by definition, the secured claims of the Prepetition Secured Creditors will assuredly be paid in full from such collateral; but, the clear intent and purpose of the Committee's demand to strike the Waivers is, in fact, to create that very risk, *i.e.*, that the Prepetition Secured Creditors will not be paid in full from their collateral because the Committee may either seek to surcharge the collateral under Section 506(c) or restrict the scope of the collateral under Section 552(b). The Committee cannot have it both ways. It cannot, on the one hand, argue that the Waivers are unnecessary overkill because full payment is assured and, on the other hand, argue that the Waivers should be stricken so as to create the risk that full

payment is not assured.

None of the cases cited by the Committee support its position that the adequate protection package approved by the Bankruptcy Court was an abuse of discretion. In fact, a number of cases actually undercut the Committee's argument. For example, the Committee argues that the sole purpose of adequate protection is to protect against diminution to the secured creditor's equity cushion, not to improve that cushion, citing the Tenth Circuit B.A.P.'s unpublished decision in *In re Bluejay Props., LLC*, BAP No. KS-12-105, 2014 Bankr. LEXIS 949 (B.A.P. 10th Cir. Mar. 12, 2014). *Bluejay* does not stand for the proposition alleged by the Committee. The bankruptcy court below had determined that even though the mortgage lender was significantly oversecured by the value of the debtor's real property, it was also entitled to a replacement lien in future rents and ongoing interest payments as further adequate protection. The court's reasoning was based upon its view that the collateral package of the lender should be considered as a whole. *Id*. at *14. The lender appealed, claiming that it was entitled to separate adequate protection for its mortgage interest in the real property and for its security interest in the rents. *Id.* at *12. The appellate court rejected this argument and upheld the cash collateral order, as the bankruptcy court's findings were not clear error. *Id*. at *20-21. This directly undercuts the Committee's argument that, since the Prepetition Secured Creditors have an equity cushion, they are not entitled to any further adequate protection such as the Waivers. *Bluejay* does not even mention waivers under Section 506(c) or 552(b) and, moreover, it contradicts the Committee's argument that the applicable standard of review is *de novo*. *Id*. at *7.

Even if *Bluejay* did stand for the proposition alleged by the Committee – it does not – the equity cushion of the Prepetition Secured Creditors as determined by the Bankruptcy Court is not improved by the Waivers. The Waivers simply ensure that such equity cushion is preserved and cannot be eroded by frivolous legal challenges, which is exactly the purpose and rationale for the concept of adequate

protection under the Bankruptcy Code. Under any reasonable interpretation, cases such as *Bluejay* simply do not support the Committee's argument; instead, they buttress the conclusion that the Final DIP Order should be affirmed.

The inability of the Committee to cite authority which stands for the proposition that a Bankruptcy Court cannot approve Section 506(c) and 552(b) waivers when a secured creditor is oversecured is not surprising. Courts in the Ninth Circuit and elsewhere routinely include Section 506(c) and 552(b) waivers in orders approving a debtor's use of both cash collateral and post-petition financing. In fact, it is the experience of the Prepetition Secured Creditors that it is the rare and unusual case in which such waivers (assuming they are requested) are not approved.

B. The Bankruptcy Court Properly Exercised Its Discretion in Approving the 506(c) Waiver.

The general rule in bankruptcy proceedings is that, absent an express agreement to the contrary, the expenses associated with administering a bankruptcy estate must be borne by the unencumbered assets of the estate rather than charged to a secured creditor's collateral. *See In re Cascade Hydraulics & Utility Service, Inc.*, 815 F.2d 546, 548 (9th Cir. 1987); *see also* 4 Collier on Bankruptcy ¶ 506.05 (16th ed. 2019). Section 506(c) of the Bankruptcy Code provides an exception to that general rule, and permits a trustee to recover administrative expenses from a secured creditor's collateral only if (1) the expenses are strictly "necessary" to preserve or dispose of the collateral; (2) they are "reasonable;" and (3) the incurrence of the expenses provided a direct "concrete and quantifiable benefit" to the secured creditor. *See Debbie Reynolds Hotel & Casino, Inc. v. Calstar Corp. (In re Debbie Reynolds Hotel & Casino, Inc.)*, 255 F.3d 1061, 1068 (9th Cir. 2001).

A claim under Section 506(c) may only be brought by the debtor-in-possession or the trustee; individual creditors may not bring such an action to recover expenses. *See Hartford Underwriters Ins. Co. v. Union Planters Bank*, 530 U.S. 1, 9 (2000). The Ninth Circuit has taken the Supreme Court's ruling in *Hartford*

Underwriters a step further by holding that an individual creditor does not have standing to object to a settlement agreement that prevents it from bringing a surcharge action under Section 506(c). *See Debbie Reynolds*, 255 F.3d at 1065.

1. The Scope of Section 506(c) Is Extremely Narrow, and It Is Unlikely That Any Such Claim Would be Successful, Especially Given the Prepetition Secured Creditors' Admitted Equity Cushion.

The Committee drastically overstates the likelihood and circumstances under which courts permit the use and application of Section 506(c) and, in doing so, grossly exaggerates the probability that it would be entitled to surcharge the Prepetition Secured Creditors' collateral. The Section 506(c) exception is exceptionally narrow and subjects the debtor to an "onerous burden of proof." *See Debbie Reynolds*, 255 F.2d at 1068 (noting that the Section 506(c) standard is "not an easy standard to meet"). In order to satisfy the requirements of Section 506(c), the trustee "must establish in quantifiable terms that it expended funds directly to protect and preserve the collateral," as "Section 506(c) is not intended as a substitute for the recovery of administrative expenses normally the responsibility of the estate." *Cascade Hydraulics*, 815 F.2d at 548 (citations omitted) (finding that to the extent the secured creditor benefited from the estate's purchase of out-of-stock inventory and bi-monthly statements, such benefits were "incidental" and did not "fall within the scope of section 506(c)"). A Section 506(c) claim, therefore, can only survive upon a high evidentiary showing.

The showing necessary to establish a viable Section 506(c) claim becomes even more difficult when a creditor is oversecured, such as in the case of the Prepetition Secured Creditors. The logic is simple. If the creditor has an equity cushion in excess of its secured claim, it is unlikely that any expenditures by the debtors made to preserve or dispose of the creditor's collateral were necessary to ensure that such secured claim was paid in full. By definition, even without the debtor's expenditures, the secured creditor would have been paid in full; therefore,

such expenditures are not strictly "necessary" to enable full payment.

The Committee admits, and the Bankruptcy Court explicitly held, that the value of the Prepetition Secured Creditors' collateral significantly exceeds the amount of their secured claims. In a case such as this, it would be difficult or impossible to establish a meritorious Section 506(c) claim because there is very likely sufficient value in the collateral to satisfy the Prepetition Secured Creditors' claim in full even absent the intervening bankruptcy and any expenses incurred as part of the bankruptcy proceeding. Given that the Prepetition Secured Creditors would be paid in full regardless of whether the bankruptcy process occurred, the Prepetition Secured Creditors are not receiving any direct benefit from the expense of administering the bankruptcy case, and such expenditures are not "necessary" to ensure full payment under the test of Section 506(c). *See, e.g., In re OccMeds Billing Servs.*, Case No. 07-28444-A-11, 2007 Bankr. LEXIS 4136, at *12 (Bankr. E.D. Cal. Dec. 1, 2007) (noting that if creditor is oversecured, costs incurred to maintain its collateral do not benefit the secured creditor, because such a creditor will be paid in full plus costs as long as the collateral's value exceeds the secured creditor's claim); *In re Ware,* Case No. 12-30566-KLP, 2014 Bankr. LEXIS 2437, at *17 n. 19 (Bankr. E.D. Va. Jun. 3, 2014) ("Courts generally refuse to charge the costs of preserving and disposing of collateral to the secured creditor if disposition of the property generates a sufficient amount to pay both the expenses and the secured claim in full."); *Toledo Trust Co. v. Roberts (In re Nicholson Indus., Inc.),* 73 B.R. 266, 270 (Bankr. N.D. Ohio 1987) (same).

Once again, the Committee has cited cases that not only fail to support its arguments, but actually undermine its position. The Committee cites *In re Codesco, Inc.,* 18 B.R. 225 (Bankr. S.D.N.Y. 1982) for the proposition that Section 506(c) was intended to require that the secured creditor bear any of the costs associated with maintaining or disposing of its collateral during a bankruptcy case. The court in *Codesco*, however, actually *denied* the motion to surcharge the creditor's collateral,

noting that

> [w]here the proceeds from a trustee's sale of encumbered property are sufficient to cover the actual costs associated with the sale and to pay the secured claim in full, it has been held that Code § 506(c) does **not** authorize charging the encumbered assets with foreclosure costs because the lienholder received no benefit and would have realized full satisfaction of its claim without the intervention of the trustee.

(emphasis added). *Codesco, Inc.*, 18 B.R. at 228-29 (citing *In re Robertson*, 14 B.R. 706 (Bankr. N.D. Ga. 1981)).

Likewise, in *Compton Impressions, Ltd. v. Queen City Bank N.A. (In re Compton Impressions)*, 217 F.3d 1256, 1260-61 (9th Cir. 2000), the Ninth Circuit held that the debtor's costs to complete the development and sale of residential units subject to the secured creditors' liens were not necessary under Section 506(c) because the secured creditors were oversecured. Had they simply foreclosed at the outset of the bankruptcy cases, the secured creditors would have been paid in full. Any unreimbursed expenses incurred by the debtor and its professionals only served the debtor in its attempt to salvage some equity. Those efforts could not have been beneficial to the secured creditors or helpful to the secured creditors' recovery, as such recovery was already assured because the value of the secured creditors' collateral significantly exceeded the amount of the secured claims. *Id.* at 1261.[3]

Much like the secured creditors in *Compton Impressions*, the Prepetition Secured Creditors have the benefit of an equity cushion of between 26% and 40%. (Committee's Appx. No. 29 at 9). Any funds expended to preserve, market and sell the Prepetition Secured Creditors' collateral are not necessary, within the meaning of Section 506(c), for the Prepetition Secured Creditors to receive full recovery. Rather, after paying secured claims in full, any additional value generated as a result of the Debtors' preservation, marketing and selling expenses will inure to the benefit

[3] The *Compton Impressions* court affirmed the bankruptcy court's order as affirmed by the district court, which denied the debtor's surcharge motion except to the extent of a $10,000 surcharge regarding certain attorney's fees.

of the unsecured creditors. Since the ultimate beneficiaries of such expenditures are not the Prepetition Secured Creditors, it is extremely unlikely that any such costs would be recoverable against them under Section 506(c). In fact, it would be irrational to conclude that the law requires the Prepetition Secured Creditors to bear the burden of expenses that were incurred not to benefit them, but to benefit the unsecured creditors.

Given the low likelihood that any claim under Section 506(c) would be meritorious, the Section 506(c) Waiver does not substantively impair the rights of the unsecured creditors, despite the protestations of the Committee. On the other hand, the 506(c) Waiver is valuable to the Prepetition Secured Creditors because it is always possible that they could be subject to frivolous litigation. The Prepetition Secured Creditors would also be entitled to increase their secured claim by the amount of any defense costs, thereby lowering the recovery to other creditors. For these reasons, the Bankruptcy Court properly exercised its discretion in approving the adequate protection package negotiated by the parties and implemented by the Final DIP Order.

2. Section 506(c) Waivers Are Commonplace and Not Contrary to Public Policy.

Waivers of the potential to recover a surcharge under Section 506(c) are customary in Chapter 11 cases. In fact, such waivers are so prevalent that the local rules for the United States Bankruptcy Court for the District of Delaware, the court in which many large Chapter 11 cases are filed, contain a special provision regarding Section 506(c) waivers. *See* Del. Bankr. Ct. Loc. R. 4001-2 (a)(1)(c) (including Section 506(c) waivers among other provisions to be highlighted in financing motions).

The Committee's assertion that Section 506(c) waivers are routinely held to be unenforceable is a gross misstatement of the law. The Committee once again cites to case law which is, at best, irrelevant. For example, the Committee cites

In re InteliQuest Media Corp., 326 B.R. 825, 830 n. 31 (B.A.P. 10th Cir. 2005) for the proposition that Section 506(c) waivers are "unenforceable per se." The *InteliQuest* Court actually ***affirmed*** the order of the bankruptcy court which ***denied*** a motion to compel the trustee to bring an action under Section 506(c), on the grounds that the applicable financing order contained a 506(c) waiver. *InteliQuest* expressly rejected the holding of the ***one*** district court that had found Section 506(c) waivers contrary to public policy. *Id.* at 831 (rejecting *McAlpine v. Comerica Bank-Detroit (In re Brown Brothers Inc.)*, 136 B.R. 470 (W.D. Mich. 1991)).

In reality, courts in the Ninth Circuit and, specifically, in this district routinely approve adequate protection packages that include a waiver of the debtor's potential ability to surcharge a secured lender's collateral pursuant to Section 506(c). Such waivers have been granted in circumstances that are similar to this case, namely circumstances where the secured creditor has consented to the debtor's use of cash collateral and in cases involving consent to additional debtor-in-possession financing. *See, e.g., Weinstein v. Gill (In re Cooper Commons LLC)*, 512 F.3d 553 (9th Cir. 2008) (upholding Section 506(c) waiver negotiated by lender and debtor); *In re Gardens Reg'l Hosp. & Med. Ctr, Inc.*, Case No. 2:16-bk-17463-ER, 2016 Bankr. LEXIS 4715, at *43 (Bankr. C.D. Cal. Jul. 28, 2016) (approving Section 506(c) waiver as part of adequate protection package in return for consent to use of cash collateral and to post-petition financing); *In re Downey Reg'l Med. Center-Hospital, Inc.*, Case No. 09-bk-34714-BB, 2010 Bankr. LEXIS 5205 (Bankr. C.D. Cal. Sept. 17, 2010) (approving Section 506(c) waiver as part of adequate protection package in final cash collateral order for the benefit of indenture trustee in consideration of trustee's consent to debtor's use of cash collateral as well as consent to allow trustee's first-priority security interest to be primed by post-petition lender's lien); *In re 944 Media, LLC*, Case No. 2:10-23240-AA, 2010 Bankr. LEXIS 3904, at *12 (Bankr. C.D. Cal. May 7, 2010) (entering final DIP and cash collateral order including 506(c) waiver); *In re Walking Co.*, 9:09-bk-15138-RR, 2010 Bankr.

LEXIS 5194, at *21 (Bankr. C.D. Cal. Jan. 14, 2010) (approving debtors' motion to obtain new credit facility and to use cash collateral, which included waiver of 506(c) claims against both prepetition secured parties and secured lenders providing DIP financing).

Section 506(c) waivers are also routinely approved in financing orders entered in some of the largest bankruptcy cases in the nation. *See, e.g., In re Sears Holdings Corp., et al.*, Case No. 18-23538 (RDD) (Bankr. S.D.N.Y. Nov. 30, 2018), *Final Order (I) Authorizing the Debtors to (A) Obtain Post-Petition Financing, (B) Grant Senior Secured Priming Liens and Superpriority Administrative Expense Claims, and (C) Utilize Cash Collateral; (II) Granting Adequate Protection to the Prepetition Secured Parties; (III) Modifying the Automatic Stay; and (IV) Granting Related Relief* [ECF No. 955] ("Sears Financing Order")[4] at 30 (waiving rights to surcharge DIP and certain prepetition lenders' collateral under Section 506(c)); *In re iHeartMedia, Inc., et al.*, Case No. 18-31274 (MI) (Bankr. S.D. Tex. Apr. 12, 2018), *Final Order (I) Authorizing Post-petition Use of Cash Collateral and (II) Granting Adequate Protection to Prepetition Lenders Pursuant to 11 U.S.C.§§ 105, 361, 362, 263, and 507, Bankruptcy Rules 2002, 4001, and 9014, and Local Bankruptcy Rules 4001-1(b) and 4002-1* [ECF No. 452] ("iHeart Cash Collateral Order") at 35 (waiving all rights to surcharge prepetition lenders' collateral under Section 506(c)); *In re Gen. Motors Corp., et al.*, Case No. 09-50026(REG) (Bankr. S.D.N.Y. Jun. 25, 2009), *Final Order Pursuant to Bankruptcy Code Sections 105(a), 361, 362, 363, 364 and 507 and Bankruptcy Rules 2002, 4001 and 6004 (A) Approving a DIP Credit Facility and Authorizing the Debtors to Obtain Post-Petition Financing Pursuant Thereto, (B) Granting Related Liens and Super-Priority Status, (C) Authorizing the Use of Cash Collateral and (D) Granting Adequate Protection to Certain Prepetition Secured Parties* [ECF No. 2529] at 14-

[4] Copies of orders cited herein that are unavailable on LEXIS or Westlaw are attached, without exhibits, hereto as Exhibit A.

15 (waiving 506(c) claims).

3. The Prepetition Secured Creditors Are Effectively Funding the Bankruptcy Cases as a Result of Their Consent to be Primed by the DIP Lender and Are Therefore Entitled to the Section 506(c) Waiver.

The Committee admits that the DIP Lender is entitled to the Section 506(c) Waiver because it is providing post-petition credit to the Debtors, but that the Prepetition Secured Lenders are not entitled to the same rights because they are not providing any new consideration. The Committee incorrectly states that the Prepetition Secured Creditors "were offered but declined the opportunity to provide such financing, sought out the adequate protection they received simply to sit out the Chapter 11 Cases and ride the coattails of the DIP Lender to maximize their recovery." Committee Br. at 33. In point of fact, the Prepetition Secured Creditors, on behalf of one of the largest bondholders, ***did*** offer to provide post-petition financing to the Debtors, which offer was rejected. (Committee's Appx. No. 28, Bankr. Docket No. 380 at 9-10; Committee's Appx. No. 35 at 11:12-19; 15:13-17:14).

When that offer was rejected, as an alternative, the Prepetition Secured Creditors consented, in exchange for the adequate protection package set forth in the Final DIP Order, to be primed by the DIP Lender to the extent of $185 million. By such consent, the Prepetition Secured Creditors allowed the Debtors to have the new financing that they required in order to continue ordinary course operations and conduct sales of the Hospitals and their other assets as a going concern. By consenting to the priming lien demanded by the DIP Lender, the Prepetition Secured Creditors effectively provided new consideration to the Debtors equivalent to the new financing provided by the DIP Lender. Whether the DIP Facility had been provided by the DIP Lender or through the Prepetition Secured Creditors, the economic and mathematical effect was the same: the Debtors had $185 million more in financing, and the secured claim of the Prepetition Secured Creditors would not

be paid unless and until $185 million was first paid to the lender providing debtor-in-possession financing. The Prepetition Secured Creditors are not "riding the coattails" of the DIP Lender. They have agreed to take on an additional $185 million of risk by subordinating their lien, which is the economic equivalent of providing new financing. In fact, that consent will also likely enable the Debtors to further increase the sale proceeds of the estates' assets which, in turn, will enable the unsecured creditors, represented by the Committee, to increase their recovery.

Given the consent to the DIP Lender's priming lien and to the DIP Facility, and the additional risk thereby incurred by the Prepetition Secured Lenders, the case law relied upon by the Bankruptcy Court in approving the Section 506(c) Waiver as "necessary to induce the lender to extend the necessary credit" also serves as ample authority justifying the approval of the Section 506(c) Waiver in order to induce the Prepetition Secured Creditors to provide their consents. (Committee's Appx. No. 29 at 11). *See In re Real Mex Restaurants, Inc.*, Case No. 11-13122 (BLS) [ECF No. 392] (Bankr. D. Del. Nov. 4, 2011) (waiving Section 506(c) claims for the benefit of prepetition lenders consenting to use of cash collateral and agreement to be primed); *In re Metaldyne Corp.*, Case No. 09-13412(MG), 2009 Bankr. LEXIS 1533 (Bankr. S.D.N.Y. Jun. 23, 2009) (overruling committee's objection to Section 506(c) waiver because the lenders were funding the bankruptcy cases); *In re Antico Mfg. Co.*, 31 B.R. 103, 106 n. 1 (Bankr. E.D.N.Y. 1983) (upholding the Section 506(c) waiver in the financing order as it induced the lender to continue funding the bankruptcy cases).

4. The Bankruptcy Court Weighed the Propriety of the Section 506(c) Waiver in Light of the Expenses to be Incurred in This Case and Found It Appropriate and Justified.

Since the Debtors filed their bankruptcy cases, there has been no question that the Debtors intended to pursue a sale of substantially all of their assets pursuant to Section 363 of the Bankruptcy Code. *See Declaration of Richard G. Adcock in*

Support of Emergency First-Day Motions, dated August 31, 2018 (Committee's Appx. No. 4; Bankr. Docket No. 8 at ¶¶ 128-130). On the first day of these cases, the Debtors immediately disclosed that they had been engaged in "substantial efforts to market and sell their assets" prior to the bankruptcy filing. *Id.* at ¶ 128. The Debtors had engaged investment bankers to identify potential buyers of the Debtors' assets, prepared a Confidential Investment Memorandum, and created an online data room in order to share information with potential buyers. *Id.* at ¶ 129. The Debtors represented to the Bankruptcy Court that they were continuing the sale process post-petition and shortly anticipated presenting a sale of the Debtors' assets pursuant to Section 363 of the Bankruptcy Code. *Id.* ¶ 130. The Committee itself admits that the purpose of the bankruptcy filings was to sell the Hospitals and the Debtors' other health care facilities. *See* Committee Br. at 1.

As a result of the disclosures made by the Debtors, there was never any mystery regarding the types or magnitude of expenses the Debtors would incur in connection with the sale of the Prepetition Secured Creditors' collateral, including fees for an investment banker, financial advisor and counsel to assist with the marketing and sale of the assets of a major hospital system. With full knowledge of the type, scope and potential magnitude of the expenses that the Debtors would likely incur, the Bankruptcy Court, exercising its discretion, approved the inclusion of the 506(c) Waiver in the Final DIP Order. Accordingly, there can be no credible argument that the Bankruptcy Court was unaware of the ramifications of the Section 506(c) Waiver, or that it failed to exercise proper discretion because it failed to consider those ramifications with respect to the unsecured creditors.

C. The Bankruptcy Court Properly Exercised Its Discretion in Approving the 552(b) Waiver

Section 552(a) of the Bankruptcy Code provides the general rule that the prepetition security interest of a secured creditor does not cover assets of the debtor acquired after commencement of the case. However, Section 552(b) provides an

exception to the rule of Section 552(a). Section 552(b) states that a prepetition security interest does cover post-petition proceeds of prepetition collateral, "except to the extent that the court, after notice and a hearing and based on the equities of the case, orders otherwise." 11 U.S.C. § 552(b).

The Committee alleges that the purpose of the so-called "Equities of the Case" exception to Section 552(b) is to prevent a secured creditor from reaping the benefits of an increase in the value of collateral which has been caused by the post-petition use of unencumbered estate assets (the value of which would otherwise have been available for unsecured creditors). Committee's Br. at 35-36 (quoting *In re Muma Servs.*, 322 B.R. 541, 558-59 (Bankr. D. Del. 2008)). In effect, the Committee would have to demonstrate that the value of the Prepetition Secured Creditors' collateral was enhanced by the post-petition use of unencumbered assets of the Debtors. *See, e.g., In re Photo Promotion Assocs.*, 61 B.R. 936, 939 (Bankr. S.D.N.Y. 1986) (limiting the secured creditor's security interest in proceeds of its prepetition collateral based on the Section 552(b) Equities of the Case exception because those proceeds arose on account of the use of unencumbered estate property, *i.e.*, funds from another financing source not subject to the secured creditor's lien in proceeds).

Based upon a decision that is actually cited by the Committee, it follows that, if all of a debtor's assets are encumbered, there can be no "equities of the case" claim under Section 552(b). In those circumstances, no unencumbered assets exist which could conceivably be used to enhance the value of collateral. There is no detriment to unsecured creditors and no deprivation of any distribution because all of the debtor's assets are subject to a lien. *See Muma*, 322 B.R. at 558-59. In rejecting the Section 552(b) Equities of the Case argument, the *Muma* Court explained that "since all assets were the security of the [prepetition lender], it was only through the use of the [prepetition lender's] cash collateral (and the financing provided by the [post-petition DIP lender]) that the estate was able to continue to operate and maintain the value of the assets." *Id.* at 559.

As in *Muma*, there are no unencumbered assets of the Debtors' bankruptcy estates that could be utilized to increase the value of the Prepetition Secured Creditors' prepetition collateral at the expense of the unsecured creditors. Because the Committee did not appeal the provisions of the Final DIP Order which grant replacement and adequate protection liens to the Prepetition Secured Creditors which expressly cover all of the assets and property of the Debtors, the Committee cannot contend that any of the Debtors post-petition assets are unencumbered. Accordingly, there can be no argument that any post-petition unencumbered assets exist which could conceivably increase the value of the prepetition collateral of the Prepetition Secured Creditors.

Further, because of the ample security cushion which existed on the Petition Date, there is no circumstance in which the Prepetition Secured Creditors could obtain a windfall that would need to be remedied by the Section 552(b) Equities of the Case exception. An oversecured creditor is only entitled to the value of its claim plus post-petition interest and fees; it may not receive more than 100% of its claim amount regardless of the value of its collateral. *See, e.g., In re Pine Lake Village Apartment Co.*, 19 B.R. 819, 825 (Bankr. S.D.N.Y. 1982) (citations omitted) (noting that "if a creditor is undersecured, the lien will be equal to the value of the collateral," but if the creditor "is oversecured, it is the amount of the debt plus interest and expenses"). Therefore, any appreciation in the value of the collateral of the Prepetition Secured Creditors during the pendency of these cases will necessarily inure solely to the benefit of the unsecured creditors, not to the Prepetition Secured Creditors. Because they are already oversecured, the Prepetition Secured Creditors can only recover the amount of their secured claim. In short, there can be no benefit to the unsecured creditors from the 552(b) Equities of the Case exception, and there is no detriment to the unsecured creditors by including the 552(b) Waiver in the Final DIP Order.

Similar to the 506(c) Waiver, cash collateral and financing orders frequently include a Section 552(b) waiver.[5] *See, e.g., Downey Reg'l Med. Center-Hospital*, 2010 Bankr. LEXIS, at *43 (granting Section 552(b) waiver in final cash collateral order); *Walking Co.*, 2010 Bankr. LEXIS, at *70 (granting 552(b) waivers with respect to both prepetition secured parties and secured parties providing DIP financing); Sears Financing Order at 30 (granting Section 552(b) waiver to both prepetition and post-petition lenders in final financing order); iHeart Cash Collateral Order at 14-15 (waiving Section 552(b) Equities of the Case exception with respect to prepetition lenders); *In re Gen. Growth Props., Inc.*, Case No. 09-11977 (ALG), 2010 Bankr. LEXIS 5552 (Bankr. S.D.N.Y. Jul. 22, 2010) (granting 552(b) waiver in final financing order); *In re Spheris Inc.*, Case No. 10-10352(KG), 2010 Bankr. LEXIS 5764, at *14-15 (Bankr. D. Del. Feb. 23, 2010) (granting 552(b) waiver in final cash collateral and DIP financing order); *In re Majestic Star Casino, LLC*, Case No. 09-14136(KG), 2009 Bankr. LEXIS 5014, at *48-49 (Bankr. D. Del. Nov. 30, 2009) (granting 552(b) waiver in interim cash collateral and DIP financing order, which waivers became effective upon entry of the final order).

Because there is no detriment to the unsecured creditors by including the 552(b) Waiver in the Final DIP Order, the fact that such waivers have been approved under similar circumstances as part of adequate protection packages, and such waivers are frequently approved in financing orders in this district as well as nationally, the Bankruptcy Court was justified, in the exercise of its discretion, in approving the 552(b) Waiver as part of the negotiated adequate protection package embodied in the Final DIP Order.

[5] As is the case with Section 506(c) waivers, Section 552(b) waivers are so prevalent that there is also a specific provision with respect to such waivers in the local bankruptcy rules in Delaware. *See* Del. Bankr. Ct. Loc. R. 4001-2 (a)(1)(h) (including Section 552(b) waivers among other provisions to be highlighted in financing motions).

IV. CONCLUSION

For the foregoing reasons, this Court should (i) deny the relief sought by the Committee; (ii) affirm the Final DIP Order as entered by the Bankruptcy Court, and (iii) grant Appellees such other and further relief as is just and proper.

Dated: April 15, 2019

MINTZ LEVIN COHN FERRIS GLOVSKY AND POPEO, P.C.

/s/ Abigail V. O'Brient
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and

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Attorneys for U.S. Bank National Association, not individually but as Series 2015 Note Trustee and Series 2017 Note Trustee, respectively

*Pursuant to Local Rule 5-4.3.4(a)(2)(i), Abigail V. O'Brient hereby attests that all other signatories listed, and on whose behalf the filing is submitted, concur in the filing's content and have authorized the filing.

CERTIFICATE OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 2029 Century Park East, Suite 3100, Los Angeles, California 90067.

I hereby certify that on April 15, 2019, I electronically filed the **JOINT BRIEF OF INTERVENING APPELLEES UMB BANK, N.A., WELLS FARGO BANK, NATIONAL ASSOCIATION, AND U.S. BANK, NATIONAL ASSOCIATION, AS INDENTURE TRUSTEES** with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to all CM/ECF registered parties.

I declare under penalty of perjury that the foregoing is true and correct. Executed on April 15, 2019, at Los Angeles, California.

Diane Hashimoto

DIANE HASHIMOTO

EXHIBIT A

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	
	:	**Chapter 11**
SEARS HOLDINGS CORPORATION, *et al.*,	:	
	:	**Case No. 18-23538 (RDD)**
	:	
Debtors. [1]	:	**(Jointly Administered)**

FINAL ORDER (I) AUTHORIZING THE DEBTORS TO (A) OBTAIN POST-PETITION FINANCING, (B) GRANT SENIOR SECURED PRIMING LIENS AND SUPERPRIORITY ADMINISTRATIVE EXPENSE CLAIMS, AND (C) UTILIZE CASH COLLATERAL; (II) GRANTING ADEQUATE PROTECTION TO THE PREPETITION SECURED PARTIES; (III) MODIFYING THE AUTOMATIC STAY; AND (IV) GRANTING RELATED RELIEF

Upon the motion (the "Motion") of Sears Holdings Corporation ("Holdings") and its affiliated debtors, as debtors and debtors-in-possession (collectively, the "Debtors") in the above-captioned chapter 11 cases (the "Chapter 11 Cases") pending in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") seeking entry

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are as follows: Sears Holdings Corporation (0798); Kmart Holding Corporation (3116); Kmart Operations LLC (6546); Sears Operations LLC (4331); Sears, Roebuck and Co. (0680); ServiceLive Inc. (6774); SHC Licensed Business LLC (3718); A&E Factory Service, LLC (6695); A&E Home Delivery, LLC (0205); A&E Lawn & Garden, LLC (5028); A&E Signature Service, LLC (0204); FBA Holdings Inc. (6537); Innovel Solutions, Inc. (7180); Kmart Corporation (9500); MaxServ, Inc. (7626); Private Brands, Ltd. (4022); Sears Development Co. (6028); Sears Holdings Management Corporation (2148); Sears Home & Business Franchises, Inc. (6742); Sears Home Improvement Products, Inc. (8591); Sears Insurance Services, L.L.C. (7182); Sears Procurement Services, Inc. (2859); Sears Protection Company (1250); Sears Protection Company (PR) Inc. (4861); Sears Roebuck Acceptance Corp. (0535); Sears, Roebuck de Puerto Rico, Inc. (3626); SYW Relay LLC (1870); Wally Labs LLC (None); SHC Promotions LLC (9626); Big Beaver of Florida Development, LLC (None); California Builder Appliances, Inc. (6327); Florida Builder Appliances, Inc. (9133); KBL Holding Inc. (1295); KLC, Inc. (0839); Kmart of Michigan, Inc. (1696); Kmart of Washington LLC (8898); Kmart Stores of Illinois LLC (8897); Kmart Stores of Texas LLC (8915); MyGofer LLC (5531); Sears Brands Business Unit Corporation (4658); Sears Holdings Publishing Company, LLC. (5554); Sears Protection Company (Florida), L.L.C. (4239); SHC Desert Springs, LLC (None); SOE, Inc. (9616); StarWest, LLC (5379); STI Merchandising, Inc. (0188); Troy Coolidge No. 13, LLC (None); BlueLight.com, Inc. (7034); Sears Brands, L.L.C. (4664); Sears Buying Services, Inc. (6533); Kmart.com LLC (9022); and Sears Brands Management Corporation (5365). The location of the Debtors' corporate headquarters is 3333 Beverly Road, Hoffman Estates, Illinois 60179.

of an interim order (the "Interim Order") and a final order (this "Final Order" and, together with the Interim Order, the "DIP Orders") providing for, among other things, the following relief:

(i) authorizing Sears Roebuck Acceptance Corp., a Delaware corporation, ("SRAC"), and Kmart Corporation, a Michigan corporation ("Kmart", and together with SRAC, the "DIP ABL Borrowers") to borrow, and each of the other Loan Parties (as defined in the DIP ABL Credit Agreement), to guarantee (in such capacity and together the with the DIP ABL Borrowers, the "DIP ABL Loan Parties"), a senior secured superpriority priming non-amortizing debtor-in-possession asset-based credit facility (the "DIP ABL Facility"), in an aggregate principal amount of up to $1,830,378,380 on the terms and conditions set forth, initially, in the DIP ABL Term Sheet, an execution copy of which is attached to the Motion as Exhibit B (including any subsequent amendments thereto, the "DIP ABL Term Sheet") and, from and after the Final Closing Date (as defined in the DIP ABL Term Sheet), the Superpriority Senior Secured Debtor-In-Possession Asset-Based Credit Agreement (the "DIP ABL Credit Agreement"), among the Debtors, Bank of America, N.A., as administrative agent (in such capacity, the "DIP ABL Administrative Agent"), Bank of America, N.A. and Wells Fargo Bank, National Association, each as a co-collateral agent (each in such capacity, a "DIP ABL Co-Collateral Agent", and together with the DIP ABL Administrative Agent, the "DIP ABL Agents"), the revolving lenders from time to time party thereto (the "DIP ABL Revolving Lenders"), and the term lenders from time to time party thereto (the "DIP ABL Term Lenders", and together with the DIP ABL Revolving Lenders, the "DIP ABL Lenders" and, together with the DIP ABL Agents and the DIP ABL Cash Management/Bank Product Providers, the "DIP ABL Credit Parties") attached hereto as Exhibit A, allocated and made available to the DIP ABL Borrowers as follows:

(a) upon entry of the Interim Order, subject to the terms and conditions set forth in the DIP ABL Term Sheet and the Interim Order, (x) an asset-based revolving credit facility with aggregate initial commitments of $188,110,759 (such commitments, the "Incremental DIP ABL Revolving Commitments," the advances made pursuant thereto, the "Incremental DIP ABL Revolving Advances," and such facility, the "Incremental DIP ABL Revolver"), including (i) a $50 million letter of credit subfacility made available upon entry of the Interim Order (the "Incremental DIP ABL L/C Subfacility"), and (ii) a $25 million discretionary swingline subfacility (the "Incremental DIP ABL Swingline Subfacility", the Incremental DIP ABL Revolving Advances, together with the obligations under the Incremental DIP ABL L/C Subfacility and the Incremental DIP ABL Swingline Subfacility, the "Incremental DIP ABL Revolving Extensions of Credit"), and (y) an asset-based term loan facility in an aggregate initial principal amount of $111,889,241 (the "Incremental DIP ABL Term Loan", and together with the Incremental DIP ABL Revolving Extensions of Credit", the "Incremental DIP ABL Obligations");

(b) upon entry of this Final Order, subject to the terms and conditions set forth in the DIP ABL Credit Agreement, the DIP ABL Loan Documents (as defined below), and this Final Order, a roll up of (i) all of the Prepetition ABL Revolving Extensions of Credit (as defined below) beneficially owned by the DIP ABL Revolving Lenders that have agreed to participate in the Incremental DIP ABL Revolver (together with their permitted assignees, the "Roll Up DIP ABL Revolving Lenders"), at 11:59 p.m. (prevailing Eastern time) on November 5, 2018 (the "Roll Up DIP ABL Revolving Extensions of Credit", and together with the Incremental DIP ABL Revolving Extensions of Credit, the "DIP ABL Revolving Extensions of Credit"; and such loans, the "Roll Up DIP ABL Revolving Advances", and together with the Incremental DIP ABL Revolving Advances, the "DIP ABL Revolving Advances", the commitments to make such DIP ABL Revolving Advances, the "DIP ABL Revolving Commitments"), which, with respect to participations in prepetition letters of credit issued under the Prepetition ABL Credit Agreement, such participations shall roll into a letter of credit subfacility (the Incremental DIP ABL L/C Subfacility, together with such rolled up participations, the "DIP ABL L/C Subfacility") and any prepetition letters of credit shall be deemed issued under the DIP ABL L/C Subfacility, (ii) all of the Prepetition ABL Term Loans (as defined below) beneficially owned by (a) the DIP ABL Term Lenders that have agreed to participate in the Incremental DIP ABL Term Loan and make such loan on the Effective Date (as defined in the DIP ABL Credit Agreement) and (b) the Sears Holdings Pension Trust (together with their permitted assignees, the "Roll Up DIP ABL Term Lenders", and together with the Roll Up DIP ABL Revolving Lenders, the "Roll Up DIP ABL Lenders"), in each case, at 11:59 p.m. (prevailing Eastern time) on November 5, 2018 (the "Roll Up DIP ABL Term Loans", and together with the Incremental DIP ABL Term Loan, the "DIP ABL Term Loans" and the Roll Up DIP ABL Term Loans together with the Roll Up DIP ABL Revolving Extensions of Credit, the "Roll Up DIP ABL Obligations," and such transactions, the "ABL Roll Up"), and (iii) bank products (other than those under the Prepetition LC Facility Agreement (as defined below)) and cash management obligations entered into with any Prepetition ABL Cash Management/Bank Product Provider (as defined below) (the "Roll Up DIP ABL Cash Management/Bank Product Obligations") outstanding under the Prepetition ABL Credit Agreement (the Roll Up DIP ABL Cash Management/Bank Product Obligations, collectively with Bank Products (as defined in the DIP ABL Credit Agreement) and Cash Management Obligations (as defined in the DIP ABL Credit Agreement, the "DIP ABL Cash Management/Bank Product Obligations") entered into with any DIP ABL Lender, any DIP ABL Agent or any of their respective affiliates as of the Petition Date or at the time of entering into such arrangements (each, a "DIP ABL Cash Management/Bank Product Provider"), the Roll Up DIP ABL Obligations, the Incremental DIP ABL Obligations, the DIP ABL

Cash Management/Bank Product Obligations and all other obligations under the DIP ABL Loan Documents, the "DIP ABL Secured Obligations");

(ii) authorizing the DIP ABL Loan Parties to execute, deliver and abide by (w) the DIP ABL Term Sheet pending entry of this Final Order, (x) the DIP ABL Credit Agreement upon entry of this Final Order, (y) the DIP Intercreditor Agreement (as defined below), and (z) any other agreements, instruments, pledge agreements, guarantees, control agreements and other loan documents related to any of the foregoing (including any security agreements, intellectual property security agreements, notes, blocked account agreements, deposit account control agreements, securities account control agreements, credit card acknowledgements, credit card agreements, collateral access agreements, landlord agreements, warehouse agreements, bailee agreements, carrier agency agreements, customs broker agency agreements, subordination agreements (including any intercompany subordination agreements), and freight forwarder agreements, and all Uniform Commercial Code filings and all filings with the United States Patent and Trademark Office or the United States Copyright Office with respect to the recordation of an interest in the intellectual property of the Debtors) (each of the foregoing, as amended, restated, supplemented, waived, and/or modified from time to time, and collectively, with the DIP ABL Term Sheet (prior to the date of the Final Order) and the DIP ABL Credit Agreement (after entry of this Final Order), the "DIP ABL Loan Documents"), and to perform such other acts as may be necessary or desirable in connection with the DIP ABL Loan Documents;

(iii) authorizing the DIP ABL Administrative Agent to terminate any of its obligations under the DIP ABL Loan Documents upon the occurrence and continuance of a Termination Event (as defined below), which includes an Event of Default (as defined in the DIP ABL Loan Documents);

(iv) as collateral security for all DIP ABL Secured Obligations, granting to the DIP ABL Control Co-Collateral Agent, for itself and for the benefit of all DIP ABL Credit Parties, in accordance with the relative priorities set forth in the DIP Orders and in that certain DIP Intercreditor Agreement (the "DIP Intercreditor Agreement"), by and among the DIP ABL Agents and the Junior DIP Agent (as defined below), and in each case subject to the Carve-Out (as defined below):

(a) pursuant to sections 364(c)(1), 503(b), and 507(a)(2) of title 11 of the United States Code (the "Bankruptcy Code"), joint and several superpriority allowed administrative priority expense claims in each of the DIP ABL Loan Parties' Chapter 11 Cases and any Successor Cases (as defined below); *provided, however*, that such claims shall be of equal priority to the Junior DIP Superpriority Claims granted to the Junior DIP Agent under the Junior DIP Order;

(b) pursuant to section 364(c)(2) of the Bankruptcy Code, an automatically perfected first priority security interest in and lien on all property of the DIP ABL Loan Parties' estates (including proceeds thereof) that is not

subject to a valid and perfected lien on the Petition Date and, upon entry of this Final Order, the Avoidance Action Proceeds (as defined below), subject to Senior Permitted Liens (as defined below);

(c) pursuant to section 364(c)(3) of the Bankruptcy Code, an automatically perfected junior security interest in and lien on all property (including all proceeds thereof) of the DIP ABL Loan Parties' estates (other than Prepetition ABL Collateral (as defined below)) that is subject to valid and perfected security interests in and liens on in favor of third parties existing on the Petition Date (as defined below), subject to (i) such valid and perfected security interests in and liens on such property in favor of such third parties as of the Petition Date, and (ii) Senior Permitted Liens (as defined below); and

(d) pursuant to section 364(d) of the Bankruptcy Code, a perfected first priority priming security interest and lien on the Prepetition ABL Collateral, subject only to any "Senior Permitted Liens" (as defined in the DIP ABL Credit Agreement) (the "Senior Permitted Liens");

(v) authorizing and directing the DIP ABL Loan Parties to pay the principal, interest, fees, expenses and other amounts payable under the DIP ABL Loan Documents as they are earned, due and payable in accordance with the terms of the DIP ABL Loan Documents and the DIP Orders;

(vi) authorizing the DIP ABL Loan Parties, solely in accordance with the Approved Budget (as defined below), the DIP ABL Loan Documents and the DIP Orders, to use the Prepetition ABL Collateral, including "Cash Collateral" (as defined in section 363 of the Bankruptcy Code) of the Prepetition Credit Parties;

(vii) granting adequate protection to the Prepetition Credit Parties (as defined below) for any diminution in value resulting from the imposition of the automatic stay, the DIP ABL Loan Parties' use, sale, or lease of the Prepetition Collateral and the priming of their respective liens and interests in the Prepetition Collateral (including by the Carve-Out);

(viii) solely upon entry of this Final Order, the waiver by the DIP ABL Loan Parties of (a) any right to surcharge the DIP ABL Collateral and the Prepetition ABL Collateral pursuant to section 506(c) of the Bankruptcy Code, (b) any rights under the "equities of the case" exception in section 552(b) of the Bankruptcy Code, and (c) the equitable doctrine of "marshaling" or any similar doctrine with respect to the DIP ABL Collateral and Prepetition ABL Collateral;

(ix) vacating and modifying the automatic stay under section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms of the DIP Orders and the DIP ABL Loan Documents; and

(x) pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2), requesting an initial hearing on the Motion be held before the Bankruptcy Court to consider entry of

the Interim Order (the "Interim Hearing") to authorize on an interim basis (a) borrowing under the DIP ABL Loan Documents in an aggregate amount of up to $300 million and (b) the use of the Prepetition ABL Collateral, including Cash Collateral in accordance with the Approved Budget; and

(xi) scheduling a final hearing (the "Final Hearing") to approve the Motion and consider entry of the Final Order.

The Interim Hearing having been held before the Bankruptcy Court on October 15, 2018 and the Final Hearing having been held before the Bankruptcy Court on November 27, 2018, each pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2), and upon the record made by the DIP ABL Loan Parties at the Interim Hearing and the Final Hearing and the representations made thereat; and after due deliberation and consideration and sufficient cause appearing therefor:

THE BANKRUPTCY COURT HEREBY FINDS AND CONCLUDES AS FOLLOWS:[2]

A. ***Petition Date***. On October 15, 2018 (the "Petition Date"), each of the Debtors except for SHC Licensed Business LLC and SHC Promotions LLC filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the Bankruptcy Court. On October 18, 2018, SHC Licensed Business LLC filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the Bankruptcy Court. On October 22, 2018, SHC Promotions LLC filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the Bankruptcy Court.

B. ***Joint Administration***. On the Petition Date, the Bankruptcy Court entered an order approving the joint administration of the Chapter 11 Cases. On November 6, 2018, the Bankruptcy Court entered an order approving the joint administration of the chapter 11 cases of

[2] The findings and conclusions set forth herein constitute the Bankruptcy Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052. To the extent any findings of fact constitute conclusions of law, they are adopted as such. To the extent any conclusions of law constitute findings of fact, they are adopted as such.

SHC Licensed Business LLC and SHC Promotions LLC with the other Debtors' chapter 11 cases.

C. ***Debtors in Possession***. The Debtors are continuing in the management and operation of their businesses and properties as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

D. ***Official Committees***. No trustee or examiner has been appointed in these Chapter 11 Cases as of the date of this Final Order. The Official Committee of Unsecured Creditors (the "Creditors' Committee") was appointed in these Chapter 11 Cases on October 24, 2018 [Docket No. 276].

E. ***Jurisdiction and Venue***. The Bankruptcy Court has jurisdiction over these proceedings pursuant to 28 U.S.C. §§ 157(a)-(b) and 1334(b). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The Bankruptcy Court may enter a final order consistent with Article III of the United States Constitution. Venue for the Chapter 11 Cases is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. The predicates for the relief set forth herein are sections 105, 361, 362, 363(c), 363(e), 364(c), 364(d), 364(e), 503, 506 and 507 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001, 6003, 6004 and 9014, and Rule 4001-2 of the Local Bankruptcy Rules for the Southern District of New York (the "Local Bankruptcy Rules").

F. ***Notice***. Adequate and sufficient notice of the Motion has been provided in accordance with the Bankruptcy Code, the Bankruptcy Rules and the Local Bankruptcy Rules, and no other or further notice of the Motion or the entry of the Interim Order or this Final Order shall be required.

G. ***Junior DIP Facility***. Substantially concurrently herewith, the Bankruptcy Court entered the *Interim Junior DIP Order (I) Authorizing The Debtors To (A) Obtain Post-Petition*

Financing And (B) Grant Secured Priming Liens And Superpriority Administrative Expense Claims; (II) Modifying The Automatic Stay; (III) Scheduling Final Hearing; And (IV) Granting Related Relief (the "Interim Junior DIP Order," and any order approving the Debtors' entry into the Junior DIP Facility on a final basis, the "Final Junior DIP Order," and together with the Interim Junior DIP Order, the "Junior DIP Order"). Pursuant to the Interim Junior DIP Order, the DIP ABL Loan Parties have been authorized, on an interim basis, to enter into Junior DIP Credit Agreement (as defined in the Interim Junior DIP Order, the "Junior DIP Credit Agreement," and such credit facility, the "Junior DIP Facility"), among the Junior DIP Loan Parties (as defined in the Interim Junior DIP Order, the "Junior DIP Loan Parties"), the Junior DIP Lenders (as defined in the Interim Junior DIP Order, the "Junior DIP Lenders") and Cantor Fitzgerald Securities, as administrative agent (as defined in the Interim Junior DIP Order, the "Junior DIP Agent" and together with the Junior DIP Lenders and the other "Credit Parties" as defined in the Junior DIP Credit Agreement, the "Junior DIP Credit Parties"). Pursuant to the Junior DIP Credit Agreement and the other "Loan Documents" (as defined in the Junior DIP Credit Agreement, the "Junior DIP Loan Documents"), in respect of the "Obligations" (as defined in the Junior DIP Credit Agreement, the "Junior DIP Secured Obligations"), the Junior DIP Loan Parties will grant to the Junior DIP Credit Parties certain superpriority claims (the "Junior DIP Superpriority Claims") and liens (the "Junior DIP Liens") as described in the Interim Junior DIP Order, subject in all respects to this Final Order.

H. ***Debtors' Stipulations***. After consultation with their attorneys and financial advisors, the Debtors, on their behalf and on behalf of their estates, admit, acknowledge, agree, and stipulate to the following (collectively, the "Debtors' Stipulations"), subject to the provisions of paragraphs 41 and 42 and subsection (g) below:

a. ***Prepetition ABL Credit Facilities***. Pursuant to the Third Amended and Restated Credit Agreement, dated as of July 21, 2015 (as amended, restated, supplemented or otherwise modified from time to time prior to the Petition Date, the "Prepetition ABL Credit Agreement" and, together with all Loan Documents (as defined in the Prepetition ABL Credit Agreement), each as has been or may be amended, restated, supplemented, waived or otherwise modified from time to time prior to the Petition Date, the "Prepetition ABL Loan Documents"), by and among (i) SRAC and Kmart, as borrowers (the "Prepetition ABL Borrowers"), (ii) Holdings, as a guarantor (Holdings, together with the "Subsidiary Guarantors" (as defined in the Prepetition ABL Credit Agreement), the "Prepetition ABL Guarantors" and, together with the Prepetition ABL Borrowers, the "Prepetition ABL Loan Parties"), (iii) the banks, financial institutions and other institutional lenders from time to time party thereto, as lenders (collectively, the "Prepetition ABL Lenders"), (iv) the "Issuing Lenders" (as defined in the Prepetition ABL Credit Agreement) from time to time party thereto (the "Prepetition ABL Issuing Lenders"), (v) Bank of America, N.A., as administrative agent (in such capacity, the "Prepetition ABL Administrative Agent"), as a co-collateral agent, and as swingline lender, (vi) Wells Fargo Bank, National Association, as a co-collateral agent (in such capacity, together with Bank of America, N.A. in such capacity, the "Prepetition ABL Co-Collateral Agents", and together with the Prepetition ABL Administrative Agent, the "Prepetition ABL Agents", and the Prepetition ABL Agents together with the Prepetition ABL Lenders, the swingline lender the Prepetition ABL Issuing Lenders, and the Prepetition ABL Cash Management/Bank Product Providers (as defined below) and the Prepetition LC Facility Credit Parties (as defined below), the "Prepetition ABL Credit Parties"), and (vii) the other parties from time to time party thereto, the Prepetition ABL Credit Parties provided the Prepetition ABL Loan Parties with a $1.5 billion

asset-based revolving credit facility including a $1.0 billion letter of credit subfacility (the "Prepetition ABL Revolving Facility"), a term loan facility in an aggregate original principal amount of $1 billion (the "Prepetition ABL Term Loan Facility"), a term loan facility in an aggregate original principal amount of $750 million (the "Prepetition ABL 2016 Term Loan Facility"), and a "first-in, last-out" facility in an aggregate original principal amount of $125 million (the "Prepetition ABL 2018 FILO Facility," and the lenders under the Prepetition ABL 2018 FILO Facility, the "2018 FILO Lenders," and the Prepetition ABL 2018 FILO Facility, together with the Prepetition ABL Revolving Facility, the Prepetition ABL Term Loan Facility, and the Prepetition ABL 2016 Term Loan Facility, the "Prepetition ABL Facilities").

b. ***Prepetition ABL Obligations.*** As of the Petition Date, the aggregate principal amount outstanding under the Prepetition ABL Facilities was $1,530,378,380, comprised of (i) $836,034,649 outstanding amount of all Advances, including Swingline Advances under, and each as defined in, the Prepetition ABL Revolving Facility (the "Prepetition ABL Revolving Advances"); (ii) $123,567,481 outstanding amount of all L/C Obligations under, and as defined in, the Prepetition ABL Revolving Facility (together with the Prepetition ABL Revolving Advances, the "Prepetition ABL Revolving Extensions of Credit"); (iii) $0 outstanding principal amount of term loans under the Prepetition ABL Term Loan Facility; (iv) $570,776,250 outstanding principal amount of term loans under the Prepetition ABL 2016 Term Loan Facility (the "Prepetition ABL Term Loans"); and (v) $125,000,000 outstanding principal amount of the Prepetition ABL 2018 FILO Facility; and together with accrued and unpaid interest, outstanding letters of credit and bankers' acceptances, any fees, expenses and disbursements (including attorneys' fees, accountants' fees, auditor fees, appraisers' fees and financial advisors' fees, and related expenses and disbursements), indemnification

obligations, guarantee obligations, and other charges, amounts and costs of whatever nature owing, whether or not contingent, whenever arising, accrued, accruing, due, owing, or chargeable in respect of any of the Prepetition ABL Borrowers' or the Prepetition ABL Guarantors' obligations pursuant to, or secured by, the Prepetition ABL Loan Documents, cash management services and bank products (the "Prepetition ABL Cash Management/Bank Product Obligations") entered into with any Prepetition ABL Lender, any Prepetition ABL Agent or any of their respective affiliates (each, a "Prepetition ABL Cash Management/Bank Product Provider"), including all obligations under that certain Letter of Credit and Reimbursement Agreement, dated as of December 28, 2016 (as amended, restated, supplemented or otherwise modified from time to time prior to the Petition Date, the "Prepetition LC Facility Agreement" and which constitutes a Prepetition ABL Loan Document), among Holdings, the Prepetition ABL Borrowers, JPP, LLC, JPP II, LLC, Crescent 1, L.P., Canary SC Fund, L.P., CYR Fund, L.P., CMH VI, L.P., and Cyrus Heartland, L.P., as L/C lenders (the "Prepetition LC Lenders"), and Citibank, N.A., as administrative agent and as issuing bank (in such capacity, the "Prepetition LC Facility Administrative Agent," and together with the Prepetition LC Lenders, the "Prepetition LC Facility Credit Parties"), under which, as of the Petition Date, $271 million of letters of credit are outstanding thereunder, and which obligations constitute Bank Products and an "Other LC Facility" under and as defined in the Prepetition ABL Credit Agreement, and including all "Obligations" as defined in the Prepetition ABL Credit Agreement, and all other amounts that may become allowed or allowable under section 506(b) of the Bankruptcy Code, including interest, fees, prepayment premiums, costs and other charges, (the "Prepetition ABL Obligations").

c. ***Prepetition ABL Liens and Prepetition ABL Collateral.*** Pursuant to the Prepetition ABL Credit Agreement and the other applicable Prepetition ABL Loan Documents, each of the Prepetition ABL Guarantors unconditionally guaranteed, on a joint and several basis, the punctual and complete performance, payment and satisfaction when due and at all times thereafter of all of the Prepetition ABL Obligations. Pursuant to the Prepetition ABL Credit Agreement and the other applicable Prepetition ABL Loan Documents, the Prepetition ABL Borrowers and the Prepetition ABL Guarantors granted to Bank of America, N. A., in its capacity as a Prepetition ABL Co-Collateral Agent and as agent for the other Prepetition ABL Co-Collateral Agent (in such capacity, the "Prepetition ABL Control Co-Collateral Agent"), for the benefit of itself and all of the other Prepetition ABL Credit Parties, a first priority security interest in and continuing lien on (the "Prepetition ABL Liens") all of the collateral identified in the Prepetition ABL Loan Documents, including, but not limited to, inventory, credit card accounts receivables, pharmacy receivables, prescription lists, deposit accounts, cash and cash equivalents, and proceeds, insurance claims and supporting obligations of the foregoing, together with Cash Collateral, in all cases whether then owned or existing or thereafter acquired (including any such property acquired after the Petition Date) and wherever located (but excluding, for the avoidance of doubt, any Cash Collateral posted to the Prepetition LC Facility Administrative Agent, in its capacity as issuing bank, by the Prepetition LC Lenders under the Prepetition LC Facility Agreement) (collectively, the "Prepetition ABL Collateral").

d. ***Agreement Among Lenders.*** JPP, LLC, JPP II, LLC, GACP II, L.P., and Benefit Street 2018 LLC, as 2018 FILO lenders, ESL Investments, Inc., Wells Fargo Bank, National Association, as a Prepetition ABL Co-Collateral agent, and Bank of America, N.A., as Prepetition ABL Administrative Agent and as a Prepetition ABL Co-Collateral Agent, entered

into an Agreement Among Lenders, dated as of March 21, 2018 (as amended, restated, supplemented or otherwise modified from time to time prior to the Petition Date, the "Agreement Among Lenders").

e. ***Validity, Perfection, and Priority of Prepetition ABL Liens and Prepetition ABL Obligations***. The Debtors hereby further acknowledge and agree that as of the Petition Date:

(i) The Prepetition ABL Obligations constitute legal, valid, binding, and non-avoidable obligations of the Prepetition ABL Loan Parties enforceable in accordance with the terms of the Prepetition ABL Loan Documents;

(ii) The Prepetition ABL Liens on the Prepetition ABL Collateral are valid, binding, enforceable, non-avoidable, and properly perfected and were granted to the Prepetition ABL Control Co-Collateral Agent, for the benefit of itself and all of the other Prepetition ABL Credit Parties for fair consideration and reasonably equivalent value;

(iii) The Prepetition ABL Liens are senior in priority over any and all other liens on the Prepetition ABL Collateral, subject only to certain liens senior by operation of law or otherwise permitted to be senior under the Prepetition ABL Loan Documents (solely to the extent any such permitted liens were valid, properly perfected, non-avoidable, and senior in priority to the Prepetition ABL Liens as of the Petition Date) (the "Permitted Prior Liens");

(iv) No portion of the Prepetition ABL Liens, the Prepetition ABL Obligations or any payments made to any Prepetition ABL Credit Party or applied to or paid on account of the Prepetition ABL Obligations prior to the Petition Date is subject to any contest, set-off, avoidance, impairment, disallowance, recharacterization, reduction, subordination (whether equitable, contractual, or otherwise), recoupment, recovery, rejection, attack, effect, counterclaims, cross-claims, defenses, or any other challenge or claim (as defined in the Bankruptcy Code) of any kind, any cause of action or any other challenge of any nature under or pursuant to the Bankruptcy Code or any other applicable domestic or foreign law or regulation or otherwise by any person or entity;

(v) The Debtors and their estates have no claims, objections, challenges, causes of action, and/or choses in action, including any Avoidance Actions, against any of the Prepetition ABL Credit Parties or any of their respective Representatives;

(vi) The Debtors have, on behalf of each of their estates and any party that may try to claim by, through, or on behalf of the Debtors' estates, waived,

discharged, and released any right to challenge any of the Prepetition ABL Obligations or the validity, extent and priority of the Prepetition ABL Liens;

(vii) The Prepetition ABL Obligations constitute allowed, secured claims within the meaning of sections 502 and 506 of the Bankruptcy Code; and

(viii) The Debtors have been and are in default of their obligations under the Prepetition ABL Loan Documents, including as a result of the Chapter 11 Cases, and an Event of Default (as defined in the Prepetition ABL Credit Agreement) has occurred and is continuing.

f. ***Intercreditor Agreement.*** The Prepetition ABL Agents, for themselves and the other Prepetition ABL Credit Parties, and the Prepetition Second Lien Collateral Agent, for itself and the other Prepetition Second Lien Credit Parties, entered into a Second Amended and Restated Intercreditor Agreement, dated as of March 20, 2018 (as amended, restated, supplemented or otherwise modified from time to time prior to the Petition Date, the "Intercreditor Agreement").

g. ***Application to ESL***. None of the Debtors' Stipulations shall apply to ESL Investments, Inc. or any of its affiliates (including any fund in which ESL or any affiliate of ESL acts as investment manager, investment advisor, general partner, managing member or in any similar capacity, the "ESL Affiliates," and together with ESL Investments, Inc., "ESL") or any other insider or such insider's affiliates (a "Non-ESL Insider"). For the avoidance of doubt, any reference to "insider" or "Non-ESL Insider" in this Final Order, shall not include the Sears Holdings Pension Plan.

I. ***Certain Second Lien Debt.*** The following descriptions are set forth herein for definitional purposes only:

a. ***Prepetition Second Lien 2010 Notes.*** Pursuant to the Indenture, dated as of October 12, 2010 (as amended, restated, supplemented or otherwise modified from time to

time prior to the Petition Date, the "Prepetition Second Lien 2010 Indenture" and, together with all notes, agreements and other documents executed or delivered in connection therewith, each as has been or may be amended, restated, supplemented, waived or otherwise modified from time to time prior to the Petition Date, the "Prepetition Second Lien 2010 Indenture Documents", together with the Prepetition Second Lien 2018 Indenture Documents (as defined below), the "Prepetition Second Lien Notes Documents"), by and among (i) Holdings, as issuer (in such capacity, and as issuer of the Prepetition Second Lien Convertible Notes (as defined below), the "Prepetition Second Lien Notes Issuer"), (ii) certain subsidiaries of Holdings, as guarantors (in such capacity, and as guarantors of the Prepetition Second Lien Convertible Notes (as defined below), the "Prepetition Second Lien Notes Guarantors") and (iii) Wilmington Trust, National Association, as trustee (in such capacity, the "Prepetition Second Lien 2010 Indenture Trustee") and as collateral agent (in such capacity, the "Prepetition Second Lien Collateral Agent"), the Prepetition Second Lien Notes Issuer issued 6 5/8% Senior Secured Notes (as defined in the Prepetition Second Lien 2010 Indenture), due 2018 (together with any Exchange Securities (as defined in the Prepetition Second Lien 2010 Indenture) and any Additional Notes (as defined in the Prepetition Second Lien 2010 Indenture) issued under the Prepetition Second Lien 2010 Indenture, the "Prepetition Second Lien 2010 Notes" and the holders of such Prepetition Second Lien 2010 Notes, the "Prepetition Second Lien 2010 Notes Holders") and, pursuant to an Offering Memorandum (as defined in the Prepetition Second Lien 2010 Indenture), the Prepetition Second Lien Notes Issuer exchanged some of the Prepetition Second Lien 2010 Notes for the Prepetition Second Lien Convertible Notes (as defined below).

b. ***Prepetition Second Lien 2010 Notes Obligations.*** As of the Petition Date, according to the Debtors' books and records, certain principal amounts of the obligations in

respect of the Prepetition Second Lien 2010 Notes totaling approximately $89 million were outstanding, together with accrued and unpaid interest, costs, fees and expenses (the "Prepetition Second Lien 2010 Notes Obligations").

c. ***Prepetition Second Lien Convertible Notes.*** Pursuant to the Indenture, dated as of March 20, 2018, (as amended, restated, supplemented or otherwise modified from time to time prior to the Petition Date, the "Prepetition Second Lien 2018 Indenture" and, together with all notes, agreements and other documents executed or delivered in connection therewith, each as has been or may be amended, restated, supplemented, waived or otherwise modified from time to time prior to the Petition Date, the "Prepetition Second Lien 2018 Indenture Documents"), by and among (i) the Prepetition Second Lien Notes Issuer, (ii) the Prepetition Second Lien Notes Guarantors and (iii) Computershare Trust Company, N.A. as trustee (in such capacity, the "Prepetition Second Lien 2018 Indenture Trustee" and, together with the Prepetition Second Lien 2010 Indenture Trustee, the "Prepetition Second Lien Trustees", and, the Prepetition Second Lien Trustees, together with the Prepetition Second Lien Credit Agreement Agent and the Prepetition Second Lien Collateral Agent, the "Prepetition Second Lien Agents" and, together with the Prepetition ABL Administrative Agent, and the Prepetition LC Facility Administrative Agent, the "Prepetition Agents"), the Prepetition Second Lien Notes Issuer issued 6 5/8% Senior Secured Convertible PIK Toggle Notes due 2019 (as defined in the Prepetition Second Lien 2018 Indenture) (together with any PIK Interest Notes (as defined in the Prepetition Second Lien 2018 Indenture) (or any increase in the principal amount of a Global Note (as defined in the Prepetition Second Lien 2018 Indenture) related to PIK Interest (as defined in the Prepetition Second Lien 2018 Indenture)) and any Additional Notes (as defined in the Prepetition Second Lien 2018 Indenture) issued under the Prepetition Second Lien

2018 Indenture, the "Prepetition Second Lien Convertible Notes" and the holders of such Prepetition Second Lien Convertible Notes, the "Prepetition Second Lien Convertible Notes Holders" and, together with the Prepetition Second Lien 2010 Notes Holders, the "Prepetition Second Lien Notes Holders").

d. ***Prepetition Second Lien Convertible Notes Obligations.*** As of the Petition Date, according to the Debtors' books and records, certain principal amounts of obligations were outstanding in respect of the Prepetition Second Lien Convertible Notes, together with accrued and unpaid interest, costs, fees and expenses (the "Prepetition Second Lien Convertible Notes Obligations", together with the Prepetition Second Lien 2010 Notes Obligations, the "Prepetition Second Lien Notes Obligations").

e. ***Prepetition Second Lien Credit Agreement.*** Pursuant to the Second Lien Credit Agreement, dated as of September 1, 2016 (as amended, restated, supplemented or otherwise modified from time to time prior to the Petition Date, the "Prepetition Second Lien Credit Agreement" and, together with all Loan Documents (as defined in the Prepetition Second Lien Credit Agreement) and all other agreements and documents executed or delivered in connection therewith, each as has been or may be amended, restated, supplemented, waived or otherwise modified from time to time prior to the Petition Date, the "Prepetition Second Lien Credit Agreement Documents"), by and among (i) Sears Roebuck Acceptance Corp. and Kmart Corporation, as borrowers (the "Prepetition Second Lien Credit Agreement Borrowers"), (ii) Holdings and the other Guarantors party thereto (as defined in the Prepetition Second Lien Credit Agreement) (the "Prepetition Second Lien Credit Agreement Guarantors" and, together with the Prepetition Second Lien Credit Agreement Borrowers, the "Prepetition Second Lien Credit Agreement Loan Parties", and the Prepetition Second Lien Credit Agreement Loan Parties,

together with the Prepetition Second Lien Notes Issuer and the Prepetition Second Lien Notes Guarantors, the "Prepetition Second Lien Loan Parties"), (iii) the lenders from time to time party thereto (collectively, the "Prepetition Second Lien Credit Agreement Lenders"), (iv) JPP, LLC, as administrative agent and collateral administrator (in such capacities, the "Prepetition Second Lien Credit Agreement Agent", together with the Prepetition Second Lien Credit Agreement Lenders and the Prepetition Second Lien Collateral Agent, the "Prepetition Second Lien Credit Agreement Credit Parties" and, the Prepetition Second Lien Credit Agreement Credit Parties, together with the Prepetition Second Lien Trustees and the Prepetition Second Lien Notes Holders, the "Prepetition Second Lien Credit Parties", and, the Prepetition Second Lien Credit Parties, together with the Prepetition ABL Credit Parties, the "Prepetition Credit Parties") and (vi) the other parties from time to time party thereto, the Prepetition Second Lien Credit Agreement Credit Parties provided the Prepetition Second Lien Credit Agreement Borrowers with a secured term loan (the "Prepetition Second Lien Credit Agreement Term Facility"), and line of credit loans (the "Prepetition Second Lien Credit Agreement Line of Credit Facility" and, collectively with the Prepetition Second Lien Credit Agreement Term Facility, the "Prepetition Second Lien Credit Agreement Facilities").

f. ***Prepetition Second Lien Credit Agreement Facilities Obligations.*** As of the Petition Date, according to the Debtors' books and records, certain principal amounts were outstanding under the Prepetition Second Lien Credit Agreement Facilities, comprised of (i) certain amounts under the Prepetition Second Lien Credit Agreement Term Facility and (ii) certain amounts under the Prepetition Second Lien Credit Agreement Line of Credit Facility, together with accrued and unpaid interest, outstanding letters of credit and bankers' acceptances, any fees, expenses and disbursements (including attorneys' fees, accountants' fees, auditor fees,

appraisers' fees and financial advisors' fees, and related expenses and disbursements), treasury, cash management, bank product and derivative obligations, indemnification obligations, guarantee obligations, and other charges, amounts and costs of whatever nature owing, whether or not contingent, whenever arising, accrued, accruing, due, owing, or chargeable in respect of any of the Prepetition Second Lien Credit Agreement Borrowers' or the Prepetition Second Lien Credit Agreement Guarantors' obligations pursuant to, or secured by, the Prepetition Second Lien Credit Agreement Documents, including all "Obligations" as defined in the Prepetition Second Lien Credit Agreement, and all other amounts that may become allowable under section 506(b) of the Bankruptcy Code, including interest, fees, prepayment premiums, costs and other charges, the "Prepetition Second Lien Credit Agreement Obligations", together with the Prepetition Second Lien Notes Obligations, the "Prepetition Second Lien Obligations", and, together with the Prepetition ABL Obligations, the "Prepetition Obligations").

g. ***Prepetition Second Lien Facilities Liens and Prepetition Second Lien Facility Collateral.*** Pursuant to the Prepetition Second Lien Notes Documents and the Prepetition Second Lien Credit Agreement Documents (collectively, the "Prepetition Second Lien Credit Documents" and, together with the Prepetition ABL Loan Documents and the Intercreditor Agreement, the "Prepetition Loan Documents"), each of the Prepetition Second Lien Notes Guarantors and the Prepetition Second Lien Credit Agreement Guarantors (collectively, the "Prepetition Second Lien Guarantors") unconditionally guaranteed, on a joint and several basis, the due and punctual payment of all the Prepetition Second Lien Obligations. Pursuant to the Prepetition Second Lien Credit Documents, the Prepetition Second Lien Notes Guarantors and the Prepetition Second Lien Credit Agreement Credit Parties granted to the Prepetition Second Lien Collateral Agent, for the benefit of itself, all of the Prepetition Second

Lien Credit Parties, a second priority security interest in and continuing lien on (the "Prepetition Second Lien Facilities Liens", and together with the Prepetition ABL Liens, the "Prepetition Liens") all of the collateral identified in the Prepetition Second Lien Credit Documents, in all cases whether then owned or existing or thereafter acquired (collectively, the "Prepetition Second Lien Collateral," and together with the Prepetition ABL Collateral, the "Prepetition Collateral," and the property that constitutes Prepetition ABL Collateral, but which is not Prepetition Second Lien Collateral, the "Specified Non-Prepetition Second Lien Collateral").

J. ***Validity of Prepetition Second Lien Obligations/Prepetition Second Lien Facilities Liens.*** Nothing herein shall constitute a finding or ruling by this Court that any alleged Prepetition Second Lien Obligation and/or Prepetition Second Lien Facilities Lien is valid, senior, enforceable, prior, perfected, or non-avoidable. Moreover, nothing shall prejudice the rights of any party-in-interest, including, but not limited to the Debtors or, the Creditors' Committee, to challenge the validity, priority, enforceability, seniority, avoidability, perfection, or extent of any alleged Prepetition Second Lien Obligation, Prepetition Second Lien Facilities Lien and/or security interests, *provided*, *however*, no such challenge shall have any effect or impact on the Prepetition ABL Obligations or Prepetition ABL Liens, or any adequate protection granted to the Prepetition ABL Credit Parties. For the avoidance of doubt, solely after the payment in full of the DIP ABL Secured Obligations and the Prepetition ABL Obligations, nothing herein shall be deemed a waiver of (a) the provisions of section 506(c) of the Bankruptcy Code, (b) any "equities of the case" under section 552(b) of the Bankruptcy Code, or (c) the equitable doctrine of "marshaling" or any similar doctrine with respect to the Prepetition Second Lien Obligations, Prepetition Second Lien Facilities Liens or Prepetition Second Lien Collateral.

K. *Validity of Prepetition Obligations/Prepetition Collateral related to ESL and Any Other Insider.* Nothing herein shall constitute a finding or ruling by this Court in favor of ESL, or any Non-ESL Insider, that any Prepetition Obligation and/or Prepetition Lien in respect of any Prepetition Obligations owned by ESL (collectively, the "ESL Debt"), or any Non-ESL Insider, is valid, senior, enforceable, prior, perfected, or non-avoidable, *provided*, however there shall be no effect or impact on (i) any Prepetition ABL Obligations owed to any person or entity other than ESL, or any Non-ESL Insider, (ii) any of the Prepetition ABL Liens, or (iii) any adequate protection granted to the Prepetition ABL Credit Parties pursuant to and in accordance with the terms of the DIP ABL Orders; notwithstanding anything to the contrary herein, with respect to (ii) or (iii) of this proviso, ESL, or any Non-ESL Insider, shall not be entitled to any proceeds or other distributions on account of such Prepetition ABL Liens, Adequate Protection Liens, prepetition claims, or Adequate Protection Claims absent further order of the Bankruptcy Court; *provided* that this sentence shall not apply to the cash payment of post-petition interest on the Prepetition ABL Obligations as adequate protection, subject to any rights of the Debtors or the Creditors' Committee to seek disgorgement of any such adequate protection payments from ESL, any Non-ESL Insider, or any of their respective immediate or mediate transferees. Moreover, nothing shall prejudice the rights of any party-in-interest, including, but not limited to the Debtors or the Creditors' Committee, to challenge the validity, priority, enforceability, seniority, avoidability, perfection, or extent of any alleged ESL Debt and/or related security interests or Prepetition Obligations and/or related security interests owned by any Non-ESL Insiders, *provided*, however there shall be no effect or impact on (i) any Prepetition ABL Obligations owed to any person or entity other than ESL, or any Non-ESL Insider, (ii) any of the Prepetition ABL Liens, or (iii) any Adequate Protection Liens granted to the Prepetition ABL

Credit Parties; notwithstanding anything to the contrary herein, with respect to (ii) or (iii) of this proviso, ESL, or any Non-ESL Insider, shall not be entitled to any proceeds or other distributions on account of such Prepetition ABL Liens, Adequate Protection Liens, prepetition claims, or Adequate Protection Claims absent further order of the Bankruptcy Court; *provided* that this proviso shall not apply to the cash payment of post-petition interest on the Prepetition ABL Obligations as adequate protection, subject to any rights of the Debtors or the Creditors' Committee to seek disgorgement of any such adequate protection payments from ESL, any Non-ESL Insider, or any of their respective immediate or mediate transferees. For the avoidance of doubt, nothing herein shall be deemed a waiver of (a) the provisions of section 506(c) of the Bankruptcy Code, (b) any "equities of the case" under section 552(b) of the Bankruptcy Code, or (c) the equitable doctrine of "marshaling" or any similar doctrine with respect to any ESL Debt or Prepetition Obligations owned by any Non-ESL Insider, collateral securing any ESL Debt, or Prepetition Obligations owned by Non-ESL Insider, in each case, after payment in full of all DIP ABL Secured Obligations and Prepetition ABL Obligations not constituting ESL Debt or Prepetition Obligations owned by any Non-ESL Insider. Nothing in this paragraph shall affect or impact the Prepetition ABL Obligations that are not owned by ESL, or any Non-ESL Insider, or Prepetition ABL Liens securing such obligations, or any adequate protection granted to the Prepetition ABL Credit Parties other than ESL or any Non-ESL Insider.

L. ***Cash Collateral.*** The DIP ABL Loan Parties represent that all of the DIP ABL Loan Parties' cash, including the cash in their deposit accounts, wherever located, whether as original collateral or proceeds of other Prepetition ABL Collateral, constitutes Cash Collateral and is Prepetition ABL Collateral but not Prepetition Second Lien Collateral.

M. ***Permitted Prior Liens.*** Nothing herein shall constitute a finding or ruling by this Court that any alleged Permitted Prior Lien is valid, senior, enforceable, prior, perfected, or non-avoidable. Moreover, nothing shall prejudice the rights of any party-in-interest, including, but not limited to the Debtors, the DIP ABL Credit Parties, the Junior DIP Credit Parties, the Prepetition Credit Parties, or the Creditors' Committee, to challenge the validity, priority, enforceability, seniority, avoidability, perfection, or extent of any alleged Permitted Prior Lien and/or security interests. For the avoidance of doubt, nothing herein shall be deemed a waiver of (a) the provisions of section 506(c) of the Bankruptcy Code, (b) any "equities of the case" under section 552(b) of the Bankruptcy Code, or (c) the equitable doctrine of "marshaling" or any similar doctrine with respect to the Permitted Prior Liens, *provided that* the lack of such a waiver shall not adversely affect in any manner the Prepetition ABL Credit Parties, the DIP ABL Credit Parties, or the Junior DIP Credit Parties, *provided*, *further* that any attempts or efforts to invoke the provisions referenced in clauses (a) through (c) of this sentence shall be subject in all respects to the prior written consent of the DIP ABL Agents and the Prepetition ABL Agents until the payment in full in cash of all DIP ABL Secured Obligations and Prepetition ABL Obligations, respectively.

N. ***Agreement Among Lenders and Intercreditor Agreement.*** Pursuant to section 510 of the Bankruptcy Code, the Agreement Among Lenders, the Intercreditor Agreement and any other intercreditor or subordination provisions contained in the Prepetition ABL Loan Documents shall (i) remain in full force and effect, (ii) continue to govern the relative priorities, rights, and remedies of, in the case of the Intercreditor Agreement, the Prepetition Credit Parties, and, in the case of the Agreement Among Lenders, the Prepetition ABL Credit Parties (including the relative priorities, rights and remedies of such parties with respect to the

replacement liens and administrative expense claims and superpriority administrative expense claims granted, or amounts payable, by the Debtors under the DIP Orders or otherwise and the modification of the automatic stay), and (iii) not be deemed to be amended, altered, or modified by the terms of the DIP Orders or the DIP ABL Loan Documents, unless expressly set forth herein or therein. Solely for purposes of the Intercreditor Agreement, any repayment of the Prepetition ABL Obligations pursuant to the DIP Orders shall not be deemed to constitute a "Discharge of ABL Obligations" as such term is used in the Intercreditor Agreement.

O. ***Findings Regarding DIP Financing and Use of Cash Collateral.***

a. ***Good Cause.*** Good cause has been shown for the entry of this Final Order, each Debtor's decision to seek to obtain such relief is an exercise of good business judgment, and the Debtors have satisfied each of the applicable requirements of section 364 of the Bankruptcy Code in connection therewith.

b. ***Request for Post-Petition Financing and Use of Cash Collateral.*** The DIP ABL Loan Parties have sought authority to enter into the DIP ABL Loan Documents. The DIP ABL Credit Parties shall have no obligation to make or be deemed to have made loans, advances or other extensions of credit under the DIP ABL Facility except to the extent required under the respective DIP ABL Loan Documents and shall have no obligation to waive any conditions required thereunder. The DIP ABL Loan Parties have sought authority to use Cash Collateral on the terms described herein, and in accordance with the Approved Budget, to administer their Chapter 11 Cases and fund their operations.

c. ***Need for Post-Petition Financing and Use of Cash Collateral.*** The Debtors' need to use Cash Collateral and to obtain credit as set forth in the DIP ABL Loan Documents is immediate and critical in order to, among other things, enable the Debtors to

continue operations and to administer and preserve the value of their estates. The ability of the Debtors to maintain business relationships, pay employees, protect the value of their assets and otherwise finance their operations requires the availability of working capital from the DIP ABL Facility and the use of Cash Collateral, the absence of either of which would immediately and irreparably harm the Debtors, their estates, creditors and other stakeholders, and the possibility for maximizing the value of their businesses. The Debtors do not have sufficient available sources of working capital and financing to operate their business or to maintain their properties in the ordinary course of business without the DIP ABL Facility and continued use of Cash Collateral. Consummation of the financing contemplated by the DIP ABL Loan Documents and the use of the Prepetition ABL Collateral, including Cash Collateral, pursuant to the terms of the DIP Orders therefore are in the best interests of the Debtors' estates.

d. ***No Credit Available on More Favorable Terms.*** Given their current financial condition, financing arrangements, and capital structure, despite diligent efforts, the DIP ABL Loan Parties are unable to reasonably obtain post-petition financing from sources other than the DIP ABL Lenders on terms more favorable than those set forth in the DIP ABL Loan Documents. The DIP ABL Loan Parties have been unable to obtain adequate unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense. The DIP ABL Loan Parties have also been unable to obtain secured credit from other sources on better terms: (a) solely having priority over that of administrative expenses of the kind specified in sections 503(b), 507(a) and 507(b) of the Bankruptcy Code; (b) secured only by a lien on property of the DIP ABL Loan Parties and their estates that is not otherwise subject to a lien; or (c) secured solely by a junior lien on property of the DIP ABL Loan Parties and their estates that is already subject to a prepetition lien. Further, the Required Lenders (as defined in the

Prepetition ABL Credit Agreement) are supportive of the priming of the Prepetition ABL Liens and the use of their Cash Collateral only to the extent provided herein and under the DIP ABL Loan Documents. Financing on a post-petition basis is not otherwise available without: (x) granting the DIP ABL Control Co-Collateral Agent, for itself and for the benefit of all of the other DIP ABL Credit Parties (i) perfected security interests in and liens on (each as provided herein) all of the DIP ABL Loan Parties' existing and after-acquired assets with the priorities set forth herein; (ii) superpriority claims; and (iii) the other protections set forth in the DIP Orders, and (y) upon entry of this Final Order, providing for the roll up of (i) all of the Prepetition ABL Revolving Extensions of Credit beneficially owned by the applicable DIP ABL Revolving Lenders and (ii) all of the Prepetition ABL Term Loans beneficially owned by the applicable DIP ABL Term Lenders, in each case, upon the terms set forth in this Final Order and in the DIP ABL Credit Agreement.

e. ***Use of Proceeds; Approved Budget.*** As a condition to entry into the DIP ABL Loan Documents, the extensions of credit under the DIP ABL Facility and the authorization to use Cash Collateral, the DIP ABL Lenders and Prepetition ABL Agents require, and the DIP ABL Loan Parties have agreed, that proceeds of the DIP ABL Facility and Cash Collateral shall be used in accordance with the terms of the DIP ABL Loan Documents, including the Approved Budget, which shall be subject to (a) such variances as may be permitted by the DIP ABL Loan Documents, (b) the DIP Orders, and (c) the Carve-Out. The DIP ABL Loan Parties shall not directly or indirectly pay any expense or other disbursement other than those set forth herein, in the Approved Budget or the Carve-Out. The proceeds of the DIP ABL Facility and Cash Collateral shall be used solely as provided in the DIP ABL Loan Documents and solely in accordance with the Approved Budget (subject to the Carve-Out), including, to the

extent provided therein, (i) for the ongoing working capital and general corporate purposes of the DIP ABL Loan Parties, in each case consistent with, subject to, and within the limitations contained in, the Approved Budget; (ii) to pay fees, costs and expenses incurred in connection with the transactions contemplated hereby and other administration costs incurred in connection with the Chapter 11 Cases (including all fees, charges and disbursements of all counsel and advisors to the DIP ABL Agents and the DIP ABL Lenders to the extent provided in the DIP ABL Loan Documents) as set forth in the DIP ABL Loan Documents; (iii) payment of other such prepetition obligations as set forth in the Approved Budget, and as approved by the Bankruptcy Court; and (iv) payment of certain adequate protection amounts to the Prepetition ABL Credit Parties as set forth in paragraph 19 hereof.

f. ***Willingness to Provide Financing.*** The DIP ABL Lenders have indicated a willingness to provide financing to the DIP ABL Loan Parties, conditioned upon entry of this Final Order, including findings that such financing and use of Cash Collateral is essential to the DIP ABL Loan Parties' estates, that the DIP ABL Lenders are extending credit to the DIP ABL Loan Parties as set forth in the DIP ABL Loan Documents in good faith, that the Prepetition ABL Credit Parties are permitting the use of Cash Collateral in good faith, and that the DIP ABL Credit Parties' and the Prepetition ABL Credit Parties' claims, superpriority claims, security interests, liens, rights, and other protections will have the protections provided in section 364(e) of the Bankruptcy Code and will not be affected by any subsequent reversal, modification, vacatur, amendment, reargument or reconsideration of the Interim Order, this Final Order or any other order. As a condition to the entry into the DIP ABL Loan Documents and the extensions of credit under the DIP ABL Facility, the DIP ABL Loan Parties, the DIP ABL Agents, and the other DIP ABL Credit Parties have agreed that proceeds of DIP ABL Collateral and all payments

and collections received by the DIP ABL Loan Parties shall be applied solely as set forth in the DIP ABL Loan Documents and the DIP Orders.

g. ***Business Judgment and Good Faith Pursuant to Section 364(e).*** The extension of credit under the DIP ABL Facility and the DIP ABL Loan Documents, and the authorization to use Cash Collateral on the terms set forth herein, are fair, reasonable, and the best available to the DIP ABL Loan Parties under the circumstances, reflect the DIP ABL Loan Parties' exercise of sound and prudent business judgment, are supported by reasonably equivalent value and consideration, and were entered into at arm's-length, under no duress, and without undue influence, negligence or violation of public policy or law. The DIP ABL Loan Documents, the DIP ABL Facility and the provisions regarding the use of Cash Collateral were negotiated in good faith and at arm's length among the DIP ABL Loan Parties, certain of the Prepetition ABL Credit Parties and the DIP ABL Credit Parties, under no duress, and without undue influence, in respect of all actions taken by them in connection with or related in any way to negotiating, implementing, documenting, or obtaining the requisite approvals of the DIP ABL Facility, and the use of Cash Collateral, including in respect of the granting of the DIP ABL Liens and the Adequate Protection Liens (as defined below), any challenges or objections to the DIP ABL Facility or the use of Cash Collateral, and all documents related to any and all transactions contemplated by the foregoing. Use of Cash Collateral and any credit to be extended as set forth in either of the DIP Orders and in the DIP ABL Loan Documents shall be deemed to have been so allowed, advanced, made, used or extended in good faith, and for valid business purposes and uses, within the meaning of section 364(e) of the Bankruptcy Code, and the DIP ABL Credit Parties and the Prepetition ABL Credit Parties are therefore entitled to the protections and benefits of section 364(e) of the Bankruptcy Code and the DIP Orders, and

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therefore, the claims, security interests, liens, and other protections granted pursuant to the DIP Orders should be preserved to the extent provided for in the DIP Orders.

h. ***Priming of Prepetition Liens.*** The priming of the Prepetition Liens on the Prepetition ABL Collateral by the DIP ABL Liens to the extent set forth in the DIP ABL Loan Documents and the DIP Orders will enable the DIP ABL Loan Parties to obtain the DIP ABL Facility and to continue to operate their businesses for the benefit of their estates and creditors. The Required Lenders (as defined in the Prepetition ABL Credit Agreement) support such priming liens solely to the extent set forth in the DIP ABL Loan Documents and the DIP Orders, subject to receipt of adequate protection of their respective interests in the Prepetition ABL Collateral as set forth herein. The Required Lenders (as defined in the Prepetition ABL Credit Agreement) have acted in good faith in supporting the (i) DIP ABL Loan Parties' use of the Prepetition ABL Collateral, including Cash Collateral, pursuant to the terms of the DIP Orders, (ii) priming of the Prepetition Liens by the DIP ABL Liens on Prepetition ABL Collateral to the extent set forth in the DIP ABL Loan Documents and the DIP Orders, and (iii) entry of the DIP Orders and the granting of the relief set forth therein, and their reliance on the assurances referred to herein is in good faith.

i. ***Adequate Protection for Prepetition Credit Parties.*** The Prepetition Credit Parties are entitled to, and shall receive, adequate protection as set forth in paragraphs 17 through 19 below solely to the extent of the aggregate net diminution in value of their interests in the Prepetition ABL Collateral, pursuant to sections 361, 362, 363, 364 and 507(b) of the Bankruptcy Code. The adequate protection provided to the Prepetition Credit Parties pursuant to the terms of the DIP Orders are necessary and appropriate in light of, among other things, (a) the DIP ABL Loan Parties' proposed use and sale of the Prepetition ABL Collateral, including Cash

Collateral, (b) the granting of priming liens on the Prepetition ABL Collateral in connection with the DIP ABL Facility, (c) the potential decline in the value of the Prepetition ABL Collateral, (d) the imposition of the automatic stay, and (e) the subordination of the Prepetition Obligations to the Carve-Out.

j. ***Sections 506(c) and 552(b).*** The Debtors waive, for the benefit of the DIP ABL Credit Parties and the Prepetition ABL Credit Parties, (a) the provisions of section 506(c) of the Bankruptcy Code, (b) any "equities of the case" under section 552(b) of the Bankruptcy Code, and (c) the equitable doctrine of "marshaling" or any similar doctrine with respect to the DIP ABL Collateral and the Prepetition ABL Collateral, except to the extent set forth in paragraph 13 below and with respect to their rights under the DIP Intercreditor Agreement, in light of (i) the subordination of their liens and superpriority claims, as applicable, to the Carve-Out, (ii) the use of Cash Collateral and the subordination of the Prepetition Obligations, Prepetition Liens, Adequate Protection Claims (as defined below) and Adequate Protection Liens (as defined below) to the Carve-Out, the DIP ABL Liens and the DIP ABL Superpriority Claims (as defined below), as applicable, and (iii) the Approved Budget covering all administrative costs projected by the DIP ABL Loan Parties.

k. ***Notice.*** Notice of the Final Hearing and the relief requested in the Motion has been provided by the Debtors, whether by facsimile, email, overnight courier or hand delivery, to certain parties in interest as set forth in the Motion and the Interim Order. The notice given by the Debtors of the Motion, the relief requested therein, and the Final Hearing constitutes adequate notice thereof and complies with Bankruptcy Rules 4001(b) and (c) and the Local Bankruptcy Rules, and no further notice of the relief granted herein is necessary or required.

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

IT IS HEREBY ORDERED that:

1. ***Motion Granted.*** The Motion is granted on a final basis to the extent set forth herein.

2. ***Use of Prepetition ABL Collateral Approved.*** Subject to and consistent with the terms of the DIP ABL Loan Documents, the DIP Orders, and the Approved Budget, the DIP ABL Loan Parties are hereby authorized to use the Prepetition ABL Collateral (including Cash Collateral) until the Termination Date to the extent set forth herein; provided, however, that during the Remedies Notice Period (as defined herein), the DIP ABL Loan Parties may use Cash Collateral solely to meet payroll obligations (but not severance obligations) and pay expenses that the DIP ABL Agents approve as critical to keeping the DIP ABL Loan Parties' business operating in accordance with the Approved Budget, or as otherwise agreed by the DIP ABL Agents in their sole and absolute discretion, and the Carve-Out shall be funded following delivery of the Carve-Out Trigger Notice (as defined herein) as provided in paragraph 21 of this Final Order.

3. ***Objections Overruled.*** All objections to and reservations of rights with respect to the relief sought in the Motion and to the entry of this Final Order to the extent not withdrawn or resolved are hereby overruled on the merits in their entirety.

DIP ABL Facility Authorization

4. ***Authorization of the DIP ABL Loan Documents.*** The DIP ABL Loan Parties are hereby authorized to execute, issue, deliver, enter into, and adopt, as the case may be, the DIP ABL Loan Documents to be delivered pursuant hereto or thereto or in connection

herewith or therewith. The DIP ABL Loan Parties are hereby authorized to borrow money and issue letters of credit under the applicable DIP ABL Loan Documents, on a final basis in accordance with and subject to the terms and conditions of the DIP Orders and the DIP ABL Loan Documents, and to perform all other obligations hereunder and thereunder.

5. ***ABL Roll Up.*** Upon entry of this Final Order, the following transactions will be deemed to take place: (a) all Prepetition ABL Revolving Extensions of Credit beneficially owned by a Roll Up DIP ABL Revolving Lender as of 11:59 p.m. Eastern Time on November 5, 2018 shall be converted to Roll Up DIP ABL Revolving Extensions of Credit, and with respect to participations in prepetition letters of credit issued under the Prepetition ABL Credit Agreement, such participations and letters of credit shall be deemed issued under the DIP ABL L/C Subfacility, (b) all Prepetition ABL Term Loans beneficially owned by a Roll Up DIP ABL Term Lender at 11:59 p.m. Eastern Time on November 5, 2018 shall be converted to Roll Up DIP ABL Term Loans, and (c) Roll Up DIP ABL Cash Management/Bank Product Obligations shall become obligations under the DIP ABL Facility; *provided* that the transactions described in this paragraph shall be subject to the reservation of rights of parties in interest in paragraphs 41 and 42 below, and upon expiration of the Challenge Period (as defined below) without a Challenge Proceeding (as defined below) having been brought, or the final resolution of a Challenge Proceeding brought in compliance with the provisions of the DIP Orders (where such Challenge Proceeding did not have the effect of successfully impairing any of the Prepetition ABL Revolving Extensions of Credit, the Prepetition ABL Term Loans or the liens securing any of such obligations), the DIP ABL Loan Parties' ABL Roll Up shall be deemed indefeasible (or, in the event that such a Challenge Proceeding is timely and properly commenced in respect of the Prepetition ABL Revolving Extensions of Credit, the Prepetition

ABL Term Loans or the liens securing any of such obligations, on the date on which any order entered by the Bankruptcy Court in favor of the applicable Prepetition ABL Credit Party in such Challenge Proceeding becomes final and non-appealable). Notwithstanding anything to the contrary contained in this Final Order, in the event there is a timely and successful Challenge Proceeding by any party in interest in accordance with paragraph 41 hereof, this Court may unwind the ABL Roll Up with respect to the applicable Prepetition ABL Obligations to the extent that (i) the ABL Roll Up resulted in the conversion of any Prepetition ABL Obligations consisting of an unsecured claim or other claim or amount not allowable under Section 502 of the Bankruptcy Code into a DIP ABL Secured Obligation, and (ii) such conversion unduly advantaged the applicable Prepetition ABL Credit Party. Notwithstanding the foregoing, but subject to the preceding sentence, a successful Challenge Proceeding shall not in any way affect the validity, enforceability or priority of the DIP ABL Secured Obligations or the DIP ABL Liens and no obligation, payment, transfer or grant of security under the DIP ABL Credit Agreement, the other DIP ABL Loan Documents or this Final Order shall be stayed, restrained, voidable, or recoverable under the Bankruptcy Code or under any applicable law (including, without limitation, under section 502(d) of the Bankruptcy Code), or be subject to any defense, reduction, setoff, recoupment or counterclaim.

6. ***Syndication of Commitments and Loans.*** The procedures for syndicating the DIP ABL Facility set forth in Exhibit B hereto are hereby approved (the "Procedures"). Allocations of the DIP ABL Revolver, the DIP ABL Term Loan and the Roll Up DIP ABL Obligations made by the DIP ABL Administrative Agent in accordance with the Procedures will be final and binding. In furtherance of the foregoing and in connection with the consummation of the DIP ABL Facility, the ABL Roll Up and the related DIP ABL Loan Documents, the

performance of such acts as set forth in the Procedures and related documentation is hereby authorized and approved. For the avoidance of doubt, ESL shall neither be a permitted assignee of the DIP ABL Credit Parties nor a permitted participant in the DIP ABL Secured Obligations pursuant to the Procedures or otherwise.

7. ***Authorized Action.*** In furtherance of the foregoing and without further approval of this Court, each Debtor is authorized to perform all acts, to make, execute and deliver all instruments and documents that may be necessary or required for performance by the DIP ABL Loan Parties under the DIP ABL Loan Documents and the creation and perfection of the DIP ABL Liens described in, provided for and perfected by the DIP Orders and the DIP ABL Loan Documents. Subject to paragraphs 19(f) and 20(a), the DIP ABL Loan Parties are hereby authorized to pay, in accordance with the DIP Orders, the principal, interest, fees, expenses and other amounts described in the DIP ABL Loan Documents as such become due and without need to obtain further Court approval, including administrative agent fees, underwriting fees, commitment fees, letter of credit fees, and the fees and disbursements of the DIP ABL Agents' attorneys, advisers, accountants and other consultants. All fees shall be payable in accordance with the DIP ABL Loan Documents.

8. ***Validity of DIP ABL Secured Obligations.*** The DIP ABL Loan Documents represent valid, binding and unavoidable obligations of the DIP ABL Loan Parties, enforceable against the DIP ABL Loan Parties and their estates in accordance with their terms, subject to the terms of the DIP Orders and the DIP Intercreditor Agreement. The DIP ABL Loan Documents and the DIP Orders constitute and evidence the validity and binding effect of the DIP ABL Secured Obligations of the DIP ABL Loan Parties, which DIP ABL Secured Obligations shall be enforceable, jointly and severally, against the DIP ABL Loan Parties, their estates and

any successors thereto, including any trustee or other estate representative appointed in the Chapter 11 Cases or any case under chapter 7 of the Bankruptcy Code upon the conversion of any of the Chapter 11 Cases (each, a "Successor Case"). Subject to paragraphs 41 and 42, no obligation, payment, transfer, or grant of a security or other interest to the DIP ABL Control Co-Collateral Agent or any other DIP ABL Credit Party under the DIP ABL Loan Documents or the DIP Orders shall be stayed, restrained, voidable, or recoverable under the Bankruptcy Code or any applicable law (including under sections 502(d), 544, 548 or 549 of the Bankruptcy Code), or subject to any defense, reduction, set-off, recoupment, claim or counterclaim. The DIP ABL Secured Obligations include all loans and any other indebtedness or obligations, contingent or absolute, now existing or hereafter arising, which may from time to time be or become owing by the DIP ABL Loan Parties to the DIP ABL Credit Parties under the DIP ABL Loan Documents, all DIP ABL Cash Management/Bank Product Obligations, and, in the case of each of the foregoing, including all principal, interest, costs, fees, expenses and other amounts owed in connection therewith or otherwise pursuant to the DIP ABL Loan Documents.

9. ***No Obligation to Extend Credit.*** The DIP ABL Credit Parties shall have no obligation to make loans or advances under the DIP ABL Facility unless and until the conditions precedent to the closing and the making of such extensions of credit under the DIP ABL Loan Documents have been satisfied in full or waived in accordance with the terms of the DIP ABL Loan Documents.

10. ***Use of DIP ABL Facility Proceeds.*** From and after the Petition Date, the DIP ABL Loan Parties are authorized, subject to the satisfaction of the terms and conditions set forth in the DIP ABL Loan Documents, to use proceeds of extensions of credit under the DIP ABL Facility only for the purposes specifically set forth in the DIP Orders and the DIP ABL

Loan Documents (i) for the ongoing working capital and general corporate purposes of the DIP ABL Loan Parties, in each case consistent with, subject to, and within the limitations contained in, the Approved Budget; and (ii) to pay fees, costs and expenses incurred in connection with the transactions contemplated hereby and other administration costs incurred in connection with the Chapter 11 Cases (including all fees, charges and disbursements of all counsel and advisors to the DIP ABL Agents and the DIP ABL Lenders).

11. ***No Obligation to Monitor.*** No DIP ABL Credit Party shall have any obligation or responsibility to monitor any Debtor's use of the DIP ABL Facility, and each DIP ABL Credit Party may rely upon each Debtor's representations that the amount of debtor-in-possession financing requested at any time, and the use thereof, are in accordance with the requirements of the DIP Orders and the DIP ABL Loan Documents.

12. ***DIP ABL Superpriority Claims.*** Subject to the Carve-Out and the last sentence of this paragraph 12, pursuant to section 364(c)(1) of the Bankruptcy Code, all of the DIP ABL Secured Obligations shall constitute allowed administrative expense claims against each of the DIP ABL Loan Parties' estates, jointly and severally, with equal priority to the Junior DIP Superpriority Claims and otherwise with priority over any and all administrative expenses, including any superpriority claims associated with any other postpetition financing facility, all Adequate Protection Claims and, to the fullest extent permitted under the Bankruptcy Code, all other claims against the DIP ABL Loan Parties, now existing or hereafter arising, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy, or attachment (the "DIP ABL Superpriority Claims"), which DIP ABL Superpriority Claims shall be payable from and have recourse to all prepetition and post-petition property of the DIP ABL Loan Parties and their estates and all proceeds thereof, subject only to liens secured

thereby and the Carve-Out. The DIP ABL Superpriority Claims shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that this Final Order or any provision hereof is vacated, reversed, amended or otherwise modified, on appeal or otherwise. Notwithstanding anything to the contrary herein, the DIP ABL Superpriority Claims shall be of equal priority to the Junior DIP Superpriority Claims.

DIP ABL Liens and DIP ABL Collateral.

13. Effective immediately upon entry of the Interim Order and as more fully set forth in the DIP ABL Loan Documents, as security for the full and prompt performance and payment when due (whether at the stated maturity, by acceleration or otherwise) of the DIP ABL Secured Obligations, the DIP ABL Control Co-Collateral Agent was granted, for itself and for the benefit of all of the DIP ABL Credit Parties, continuing valid, binding, enforceable, non-avoidable, automatically and properly perfected, post-petition security interests in and liens (the "DIP ABL Liens") on all DIP ABL Collateral *nunc pro tunc* to the Petition Date without the necessity of the execution by the DIP ABL Loan Parties (or recordation or other filing or notice) of security agreements, control agreements, pledge agreements, copyright security agreements, trademark security agreements, patent security agreements, financing statements, mortgages, schedules or other similar documents, or the possession or control by the DIP ABL Agents or any other DIP ABL Credit Party of any DIP ABL Collateral. The term "DIP ABL Collateral" means Prepetition ABL Collateral and all other assets of the DIP ABL Loan Parties, whether now owned or hereafter acquired, and all proceeds thereof, including all deposit accounts, securities accounts, cash and cash equivalents of the DIP ABL Loan Parties; *provided*, *that* DIP ABL Collateral excludes any of the following (collectively, the "Excluded Property"): (i) (a) leases of real property except as permitted in the applicable lease or pursuant to applicable non-bankruptcy law (but in no event shall DIP ABL Collateral exclude the proceeds of such leases),

and (b) any security deposits or the Debtors' interests, if any, in pre-paid rent, unless liens on such security deposits or pre-paid rent are expressly permitted pursuant to the underlying lease documents; *provided, however,* that solely in the event the Debtors subsequently seek by separate motion and obtain by final order liens on all of their leases of real property in connection with a debtor-in-possession financing facility other than the DIP ABL Facility (including in connection with the Junior DIP Facility), the DIP ABL Collateral shall include all leases of real property and the DIP ABL Liens and Adequate Protection Liens shall be first in priority and senior to any other liens thereon (other than leases of real property that are Specified Collateral which the Junior DIP Liens and DIP ABL Liens shall share pari passu); (ii) the DIP ABL Loan Parties' claims and causes of action arising under sections 502(d), 544, 545, 547, 548, 549, 550, and 553 of the Bankruptcy Code and any other avoidance or similar action under the Bankruptcy Code or similar state law (the "Avoidance Actions"), but not the proceeds thereof ("Avoidance Action Proceeds"); *provided*, for the avoidance of doubt, that the DIP ABL Collateral shall include any proceeds or property recovered, unencumbered or otherwise the subject of successful Avoidance Actions whether by judgment, settlement or otherwise, (iii) any Intellectual Property (as defined in the DIP ABL Credit Agreement) consisting of intent-to-use trademark applications and rights in and to such applications, prior to the filing of a "Statement of Use" or "Amendment to Allege Use" to the extent that a grant of security interest in such application would impair validity or enforceability, (iv) any property to the extent that the grant of a security interest therein would violate applicable law, require a consent not obtained of any Governmental Authority (as defined in the DIP ABL Credit Agreement) or constitute a breach or default under, or result in the termination of or require a consent not obtained under, any contract, non-real property lease, license or other agreement evidencing or giving rise to such

property, or result in the invalidation of such property or provide any party to such contract, non-real property lease, license or agreement with a right of termination of such contract, non-real property lease, license or agreement (in each case, after giving effect to applicable provisions of the New York UCC, the Bankruptcy Code or other applicable law), (v) any and all claims or causes of action against current or former directors and officers of any DIP ABL Loan Party, including without limitation, any claim for or relating to a breach of fiduciary duty by any such director or officer (the "D&O Claims"), but not proceeds thereof, (vi) the Carve-Out Account, and (vii) proceeds and products of any of the foregoing Excluded Property described in clauses (i), (iii) through (iv) above solely to the extent such proceeds and products would constitute property or assets of the type described in clauses (i), (iii) through (iv) above; *provided that* in each case of property described in clause (iv) of this definition, such property shall constitute "Excluded Property" only to the extent and for so long as such contract, non-real property lease, license or other agreement or applicable law prohibits the creation of a lien on such property in favor of the DIP ABL Control Co-Collateral Agent, and, upon termination of such prohibition, such property shall cease to constitute "Excluded Property". Each of the Junior DIP Agent, DIP ABL Agents, their respective lenders and the Debtors are bound by the DIP Intercreditor Agreement; *provided*, that the DIP ABL Agents and the Junior DIP Agent and each of their respective lenders are contractually obligated to comply with the DIP Intercreditor Agreement, and the DIP ABL Agents and DIP ABL Lenders may enforce such agreement against the Junior DIP Agent and its respective lenders in these Chapter 11 Cases without the need for any further order of the Bankruptcy Court; *provided, further*, that the Debtors and their estates shall be deemed to be express third party beneficiaries of, and shall be entitled to enforce the provisions of Section 4.1(b)(iii) and Section 4.1(b)(iv) of the DIP Intercreditor Agreement and the

immediately succeeding sentence of this paragraph 13 (collectively, the "Reverse Marshaling Provisions"), which Reverse Marshaling Provisions shall remain enforceable by the Debtors and their estates until the repayment in full in cash of the DIP ABL Obligations and the Junior DIP Obligations. The DIP ABL Agents shall not apply proceeds of any Prepetition Unencumbered Collateral received in connection with any Exercise of Secured Creditor Remedies (as defined in the DIP Intercreditor Agreement) or from any sale, transfer or other disposition of such assets pursuant to section 363 or section 1129 of the Bankruptcy Code (or any similar provision under the law applicable to the Chapter 11 Cases or any other Insolvency Proceeding (as defined in the DIP Intercreditor Agreement) or under a court order in respect of measures granted with similar effect under any foreign Debtor Relief Laws (as defined in the DIP Intercreditor Agreement)) to the repayment of obligations under the DIP ABL Facility until (x) all but a de minimis amount of Prepetition ABL Collateral of the type that is eligible to be included in the term "Borrowing Base" in the DIP ABL Credit Agreement as in effect on the date of the DIP Intercreditor Agreement (but without giving effect to any changes or adjustments to the Borrowing Base or the eligibility criteria therefor, in each case, that any DIP ABL Agent may make in its "Permitted Discretion" (as defined in the DIP ABL Credit Agreement as in effect on the date of the DIP Intercreditor Agreement)) has been sold, transferred or otherwise been disposed of and the proceeds thereof applied in accordance with the DIP Intercreditor Agreement or (y) all but a de minimis amount of Prepetition ABL Collateral of the type that is eligible to be included in the term "Borrowing Base" in the DIP ABL Credit Agreement as in effect on the date of the DIP Intercreditor Agreement (but without giving effect to any changes or adjustments to the Borrowing Base or the eligibility criteria therefor, in each case, that any DIP ABL Agent may make in its "Permitted Discretion" (as defined in the DIP ABL Credit Agreement as in effect on

the date of the DIP Intercreditor Agreement)) is otherwise no longer available to be used to apply to and satisfy the DIP ABL Secured Obligations; *provided, however,* that if the proceeds of any Prepetition Unencumbered Collateral (including Specified Collateral) are used to satisfy any DIP ABL Secured Obligations or Prepetition ABL Obligations in accordance with this paragraph 13, notwithstanding anything in this Final Order to the contrary, after the Discharge of Senior DIP Obligations and the Discharge of Prepetition ABL Obligations (as each such term is defined in the DIP Intercreditor Agreement), all ensuing proceeds of Prepetition ABL Collateral shall be deemed to be proceeds of Prepetition Unencumbered Collateral (including Specified Collateral) until such proceeds equal the amount of Prepetition Unencumbered Collateral (including Specified Collateral) that were used to satisfy any DIP ABL Secured Obligations or Prepetition ABL Obligations. No amendment, modification or waiver of the Reverse Marshaling Provisions, Section 7.4 of the DIP Intercreditor Agreement or clause (y) of Section 7.10 of the DIP Intercreditor Agreement, nor consent to any departure of such provisions by any person, shall be effective, nor shall any amendment or modification to any defined term used or incorporated by reference in the Reverse Marshaling Provisions, or any component definition thereof, be given effect in such Reverse Marshaling Provisions, unless in each case it is in a written agreement executed by the Debtors and approved by the Creditors' Committee or the Bankruptcy Court. In addition, no amendment, modification or waiver of Section 4.1(b)(i) or Section 4.1(b)(ii) of the DIP Intercreditor Agreement, nor any consent to any departure of such provisions by any person, shall be effective, nor shall any amendment or modification to any defined term used or incorporated by reference in Section 4.1(b)(i) or Section 4.1(b)(ii) of the DIP Intercreditor Agreement, or any component definition thereof, be given effect in such Section 4.1(b)(i) or Section 4.1(b)(ii) of the DIP Intercreditor Agreement, unless in each case the

Creditors' Committee has been given at least three (3) days prior written notice of such proposed amendment, modification, waiver or departure.

<u>Priority of DIP ABL Liens</u>

14. The DIP ABL Liens on the DIP ABL Collateral shall in each case be subject to the Carve-Out and otherwise have the following priority:

(a) pursuant to section 364(c)(2) of the Bankruptcy Code, first priority liens on and security interests in all DIP ABL Collateral that is not otherwise subject to a valid, perfected and non-avoidable security interest or lien as of the Petition Date (collectively, the "<u>Prepetition Unencumbered Collateral</u>"), which liens shall be *pari passu* with the Junior DIP Liens on Prepetition Unencumbered Collateral which constitute "Specified Collateral" (as defined in the DIP Intercreditor Agreement, the "<u>Specified Collateral</u>") but subject to any Senior Permitted Liens; *provided*, that the proceeds of such Specified Collateral shall be shared by the Junior DIP Lenders and the DIP ABL Credit Parties pro rata based on the aggregate commitment amount under the Junior DIP Facility (<u>i.e.</u>, $350,000,000) and aggregate incremental commitments and extensions of credit under the DIP ABL Facility (<u>i.e.</u>, $300,000,000) without giving regard to the roll-up portion thereof, respectively;

(b) pursuant to section 364(c)(3) of the Bankruptcy Code, junior liens on and security interests in all DIP ABL Collateral (other than Prepetition ABL Collateral) that is not subject to Prepetition ABL Liens but is subject to valid and perfected security interests in favor of third parties as of the Petition Date (the "<u>Prepetition Encumbered Collateral</u>") and any Senior Permitted Liens; and

(c) pursuant to section 364(d) of the Bankruptcy Code, first priority priming security interests and liens on the Prepetition ABL Collateral of each Debtor on which the Prepetition ABL Lenders held a first priority security interest and lien (such liens and security interests, the "<u>DIP ABL Priming Liens</u>"), in each case to the extent that such Prepetition ABL Collateral is subject to Prepetition ABL Liens and such DIP ABL Priming Liens shall be (x) senior in all respects to the interests in such property of the Prepetition ABL Credit Parties under the Prepetition ABL Credit Agreement and the other "secured parties" referred to therein, (y) senior to the Adequate Protection Liens, and (z) subject to any Senior Permitted Liens.

15. Notwithstanding anything to the contrary herein, the following table sets forth the relative priorities of the Carve-Out, the Senior Permitted Liens, the DIP ABL Liens, the

Junior DIP Liens, the Adequate Protection Liens, and the Prepetition Liens on the DIP ABL Collateral:

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Prepetition ABL Collateral	Prepetition Encumbered Collateral[3]	Prepetition Unencumbered Collateral (Other than Specified Collateral)	Specified Collateral
Carve-Out	Carve-Out	Carve-Out	Carve-Out
Senior Permitted Liens	All valid and perfected security interests in favor of third parties as of the Petition Date and any Senior Permitted Liens	Senior Permitted Liens	Senior Permitted Liens
DIP ABL Liens	DIP ABL Liens	DIP ABL Liens	DIP ABL Liens, *pari passu* with Junior DIP Liens
Prepetition ABL Facilities Adequate Protection Liens	Junior DIP Liens	Junior DIP Liens	Prepetition ABL Facilities Adequate Protection Liens
2018 FILO Adequate Protection Liens	Prepetition ABL Facilities Adequate Protection Liens	Prepetition ABL Facilities Adequate Protection Liens	2018 FILO Adequate Protection Liens
Prepetition LC Facility Adequate Protection Liens	2018 FILO Adequate Protection Liens	2018 FILO Adequate Protection Liens	Prepetition LC Facility Adequate Protection Liens
Prepetition ABL Liens	Prepetition LC Facility Adequate Protection Liens	Prepetition LC Facility Adequate Protection Liens	Postpetition Intercompany Liens
Postpetition Intercompany Liens	Postpetition Intercompany Liens	Postpetition Intercompany Liens	Prepetition Second Lien Adequate Protection Liens (only with respect to property of Prepetition Second Lien Loan Parties)

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[3] The priorities set forth in this column are subject to paragraph 65.

Prepetition Second Lien Adequate Protection Liens	Prepetition Second Lien Adequate Protection Liens (only with respect to property of Prepetition Second Lien Loan Parties)	Prepetition Second Lien Adequate Protection Liens (only with respect to property of Prepetition Second Lien Loan Parties)	
Prepetition Second Lien Facilities Liens (except on Specified Non-Prepetition Second Lien Collateral)			
Junior DIP Liens			

16. ***Treatment of DIP ABL Liens.*** Other than as set forth herein, the DIP ABL Liens shall not be made subject to or *pari passu* with any lien or security interest heretofore or hereafter granted in the Chapter 11 Cases or any Successor Case. The DIP ABL Liens shall be valid and enforceable against any trustee or other estate representative appointed in the Chapter 11 Cases or any Successor Case, upon the conversion of any of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code (or in any other Successor Case), and/or upon the dismissal of any of the Chapter 11 Cases or any Successor Case. No lien or interest avoided and preserved for the benefit of the DIP ABL Loan Parties' estates pursuant to section 551 of the Bankruptcy Code shall be *pari passu* with or senior to the DIP ABL Liens.

Adequate Protection

17. ***Adequate Protection Liens.***

(a) *Prepetition ABL Adequate Protection Liens.* Pursuant to sections 361, 363(e) and 364(d)(1) of the Bankruptcy Code, as adequate protection of the interests of the Prepetition ABL Credit Parties (other than the 2018 FILO Lenders and the Prepetition LC Facility Credit Parties) in the Prepetition ABL Collateral, including Cash Collateral, against the

aggregate net diminution in value of the Prepetition ABL Credit Parties' (other than the 2018 FILO Lenders and the Prepetition LC Facility Credit Parties) interests in the entirety of the Prepetition ABL Collateral resulting from the DIP ABL Loan Parties' use, sale or lease (or other decline in value to the extent permitted under the Bankruptcy Code) of such collateral, the imposition of the automatic stay, the priming of the Prepetition ABL Liens and the subordination to the Carve-Out (collectively, "ABL Diminution in Value"), the DIP ABL Loan Parties, pursuant to the Interim Order, granted and hereby grant to the Prepetition ABL Control Co-Collateral Agent on behalf of itself and all of the other Prepetition ABL Credit Parties (other than the 2018 FILO Lenders and the Prepetition LC Facility Credit Parties) to the extent of any ABL Diminution in Value, if any, a valid and perfected replacement and additional security interest in, and liens on (the "Prepetition ABL Facilities Adequate Protection Liens") all DIP ABL Collateral. The Prepetition ABL Facilities Adequate Protection Liens are and shall be valid, binding, enforceable and fully perfected *nunc pro tunc* to the Petition Date (without the necessity of the execution by the DIP ABL Loan Parties of mortgages, control agreements, security agreements, pledge agreements, financing statements, or other agreements) and shall (i) solely with respect to the Prepetition ABL Collateral, be subject and subordinate only to the Carve-Out, the Senior Permitted Liens and the DIP ABL Liens, (ii) solely with respect to the Prepetition Encumbered Collateral, be subject to the Carve-Out, valid and perfected security interests in favor of third parties as of the Petition Date (including any Senior Permitted Liens), the DIP ABL Liens, and the Junior DIP Liens, (iii) solely with respect to Prepetition Unencumbered Collateral, subject to the Carve-Out, any Senior Permitted Liens, the DIP ABL Liens, and the Junior DIP Liens and (iv) otherwise be senior to all other security interests in, liens on, or claims against any of the DIP ABL Collateral.

(b) *Prepetition 2018 FILO Adequate Protection Liens*. Pursuant to sections 361, 363(e) and 364(d)(1) of the Bankruptcy Code, as adequate protection of the interests of the 2018 FILO Lenders in the Prepetition ABL Collateral, including Cash Collateral, against the aggregate net diminution in value of the 2018 FILO Lenders' interests in the entirety of the Prepetition ABL Collateral resulting from the DIP ABL Loan Parties' use, sale or lease (or other decline in value to the extent permitted under the Bankruptcy Code) of such collateral, the imposition of the automatic stay, the priming of the Prepetition ABL Liens and the subordination to the Carve-Out (collectively, the "2018 FILO ABL Diminution in Value"), the DIP ABL Loan Parties, pursuant to the Interim Order, granted and hereby grant to the Prepetition ABL Control Co-Collateral Agent, on behalf of the 2018 FILO Lenders to the extent of any 2018 FILO ABL Diminution in Value, if any, a valid and perfected replacement and additional security interest in, and liens on (the "2018 FILO Adequate Protection Liens") all DIP ABL Collateral. The 2018 FILO Adequate Protection Liens are and shall be valid, binding, enforceable and fully perfected *nunc pro tunc* to the Petition Date (without the necessity of the execution by the DIP ABL Loan Parties of mortgages, control agreements, security agreements, pledge agreements, financing statements, or other agreements) and shall (i) solely with respect to the Prepetition ABL Collateral, be subject and subordinate only to the Carve-Out, the Senior Permitted Liens, the DIP ABL Liens, and the Prepetition ABL Facilities Adequate Protection Liens, (ii) solely with respect to the Prepetition Encumbered Collateral, be subject to the Carve-Out, valid and perfected security interests in favor of third parties as of the Petition Date (including any Senior Permitted Liens), the DIP ABL Liens, the Junior DIP Liens and the Prepetition ABL Facilities Adequate Protection Liens, (iii) solely with respect to Prepetition Unencumbered Collateral, subject to the Carve-Out, any Senior Permitted Liens, the DIP ABL

Liens, the Junior DIP Liens, and the Prepetition ABL Facilities Adequate Protection Liens and (iv) otherwise be senior to all other security interests in, liens on, or claims against any of the DIP ABL Collateral.

(c) *Prepetition LC Facility Adequate Protection Liens.* Pursuant to sections 361, 363(e) and 364(d)(1) of the Bankruptcy Code, as adequate protection of the interests of the Prepetition LC Facility Credit Parties in the Prepetition ABL Collateral, including Cash Collateral, against the aggregate net diminution in value of the Prepetition LC Facility Credit Parties' interests in the entirety of the Prepetition ABL Collateral resulting from the Prepetition LC Facility Credit Parties' use, sale or lease (or other decline in value to the extent permitted under the Bankruptcy Code) of such collateral, the imposition of the automatic stay, the priming of the Prepetition ABL Liens and the subordination to the Carve-Out (collectively, the "Prepetition LC ABL Diminution in Value"), the DIP ABL Loan Parties, pursuant to the Interim Order, granted and hereby grant to the Prepetition LC Facility Administrative Agent on behalf of itself and all of the other Prepetition LC Facility Credit Parties to the extent of any Prepetition LC ABL Diminution in Value, if any, a valid and perfected replacement and additional security interest in, and liens on (the "Prepetition LC Facility Adequate Protection Liens") all DIP ABL Collateral. The Prepetition LC Facility Adequate Protection Liens are and shall be valid, binding, enforceable and fully perfected *nunc pro tunc* to the Petition Date (without the necessity of the execution by the DIP ABL Loan Parties of mortgages, control agreements, security agreements, pledge agreements, financing statements, or other agreements) and shall (i) solely with respect to the Prepetition ABL Collateral, be subject and subordinate only to the Carve-Out, the Senior Permitted Liens, the DIP ABL Liens, the Prepetition ABL Facilities Adequate Protection Liens, and the 2018 FILO Adequate Protection Liens, (ii) solely

with respect to the Prepetition Encumbered Collateral, be subject to the Carve-Out, valid and perfected security interests in favor of third parties as of the Petition Date (including any Senior Permitted Liens), the DIP ABL Liens, the Junior DIP Liens, the Prepetition ABL Facilities Adequate Protection Liens and the 2018 FILO Adequate Protection Liens, (iii) solely with respect to Prepetition Unencumbered Collateral, subject to the Carve-Out, any Senior Permitted Liens, the DIP ABL Liens, the Junior DIP Liens, the Prepetition ABL Facilities Adequate Protection Liens and the 2018 FILO Adequate Protection Liens, and (iv) otherwise be senior to all other security interests in, liens on, or claims against any of the DIP ABL Collateral.

(d) *Second Lien Adequate Protection Liens*. Pursuant to sections 361, 363(e) and 364(d)(1) of the Bankruptcy Code, as adequate protection of the interests of the Prepetition Second Lien Credit Parties in the Prepetition Second Lien Collateral, against the aggregate net diminution in value, if any, resulting from the DIP ABL Loan Parties' use, sale or lease (or other decline in value to the extent permitted under the Bankruptcy Code) of such collateral, the imposition of the automatic stay, the priming of the Prepetition Second Lien Facilities Liens and the subordination to the Carve-Out (collectively, the "Second Lien Diminution in Value," and, collectively with the ABL Diminution in Value, the 2018 FILO ABL Diminution in Value and the Prepetition LC ABL Diminution in Value, the "Diminution in Value"), each Prepetition Second Lien Loan Party, pursuant to the Interim Order, granted and hereby grants to the Prepetition Second Lien Collateral Agent on behalf of itself and the other Prepetition Second Lien Credit Parties to the extent of any applicable Second Lien Diminution in Value, if any, a valid and perfected replacement and additional security interest in, and liens on (the "Prepetition Second Lien Adequate Protection Liens," and together with the Prepetition ABL Facilities Adequate Protection Liens, the 2018 FILO Adequate Protection Liens, and the

Prepetition LC Facility Adequate Protection Liens, the "Adequate Protection Liens") all DIP ABL Collateral owned by the Prepetition Second Lien Loan Parties. For the avoidance of doubt, notwithstanding the Interim Order, the Prepetition Second Lien Adequate Protection Liens shall solely attach to property or other interests of the Prepetition Second Lien Loan Parties. The Prepetition Second Lien Adequate Protection Liens are and shall be valid, binding, enforceable and fully perfected *nunc pro tunc* to the Petition Date (without the necessity of the execution by the Prepetition Second Lien Loan Parties of mortgages, control agreements, security agreements, pledge agreements, financing statements, or other agreements) and shall (i) solely with respect to the Prepetition ABL Collateral, be subject and subordinate only to the Carve-Out, the Senior Permitted Liens, the DIP ABL Liens, the Prepetition ABL Facilities Adequate Protection Liens, the 2018 FILO Adequate Protection Liens, the Prepetition LC Facility Adequate Protection Liens the Prepetition ABL Liens, and the Post-Petition Intercompany Liens (ii) solely with respect to the Prepetition Encumbered Collateral, be subject to the Carve-Out, valid and perfected security interests in favor of third parties as of the Petition Date (including any Senior Permitted Liens), the DIP ABL Liens, the Junior DIP Liens, the Prepetition ABL Facilities Adequate Protection Liens, the 2018 FILO Adequate Protection Liens, the Prepetition LC Facility Adequate Protection Liens, and the Post-Petition Intercompany Liens (iii) solely with respect to Prepetition Unencumbered Collateral, subject to the Carve-Out, any Senior Permitted Liens, the DIP ABL Liens, the Junior DIP Liens, the Prepetition ABL Facilities Adequate Protection Liens, the 2018 FILO Adequate Protection Liens, the Prepetition LC Facility Adequate Protection Liens and the Post-Petition Intercompany Liens and (iv) otherwise be senior to all other security interests in, liens on, or claims against any of the DIP ABL Collateral. The Prepetition Second Lien Secured Parties shall not apply proceeds of any Prepetition Unencumbered Collateral to satisfy any

adequate protection claims hereunder until all of the Prepetition Second Lien Collateral has been sold, transferred or otherwise been disposed of or is otherwise no longer available to be used to apply to, or is determined by the Bankruptcy Court to be insufficient to satisfy the Prepetition Second Lien Obligations.

(e) *Treatment of Adequate Protection Liens.* Other than as set forth in the DIP Orders, the Adequate Protection Liens shall not be made subject to or *pari passu* with any lien or security interest heretofore or hereinafter granted in the Chapter 11 Cases or any Successor Case. The Adequate Protection Liens shall be valid and enforceable against any trustee or other estate representative appointed in the Chapter 11 Cases or any Successor Case, upon the conversion of any of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code (or in any other Successor Case), and/or upon the dismissal of any of the Chapter 11 Cases or any Successor Case. The Adequate Protection Liens shall not be subject to sections 510, 549 or 550 of the Bankruptcy Code. No lien or interest avoided and preserved for the benefit of the estate pursuant to section 551 of the Bankruptcy Code shall be *pari passu* with or senior to the Prepetition Liens or the Adequate Protection Liens.

18. ***Adequate Protection Superpriority Claims.***

(a) *Prepetition ABL Superpriority Claims.* Pursuant to section 507(b) of the Bankruptcy Code, as adequate protection of the interests of the Prepetition ABL Credit Parties (other than the 2018 FILO Lenders and the Prepetition LC Facility Credit Parties) in the Prepetition ABL Collateral, including Cash Collateral, the Prepetition ABL Control Co-Collateral Agent, for itself and for the benefit of all of the other Prepetition ABL Credit Parties (other than the 2018 FILO Lenders and the Prepetition LC Facility Credit Parties), pursuant to the Interim Order, was granted an allowed administrative claim against the DIP ABL Loan

Parties' estates under section 503(b) of the Bankruptcy Code with superpriority pursuant to section 507(a) and (b) of the Bankruptcy Code (the "Prepetition ABL Adequate Protection Claims") to the extent of any ABL Diminution in Value. Except as set forth herein, the Prepetition ABL Adequate Protection Claims shall have priority over all administrative expense claims and priority general unsecured claims against the DIP ABL Loan Parties or their estates, now existing or hereafter arising, to the fullest extent permitted under the Bankruptcy Code; provided, however, that the Prepetition ABL Adequate Protection Claims shall be junior to (i) the Carve-Out, (ii) the DIP ABL Superpriority Claims, and (iii) the Junior DIP Superpriority Claims.

(b) *Prepetition 2018 FILO Superpriority Claims.* Pursuant to section 507(b) of the Bankruptcy Code, as adequate protection of the interests of the 2018 FILO Lenders in the Prepetition ABL Collateral, including Cash Collateral, the Prepetition ABL Control Co-Collateral Agent, on behalf of the 2018 FILO Lenders, pursuant to the Interim Order, was granted an allowed administrative claim against the DIP ABL Loan Parties' estates under section 503(b) of the Bankruptcy Code with superpriority pursuant to section 507(a) and (b) of the Bankruptcy Code (the "Prepetition 2018 FILO Adequate Protection Claims") to the extent of any 2018 FILO Diminution in Value. Except as set forth herein, the Prepetition 2018 FILO Adequate Protection Claims shall have priority over all administrative expense claims and priority general unsecured claims against the DIP ABL Loan Parties or their estates, now existing or hereafter arising, to the fullest extent permitted under the Bankruptcy Code; *provided, however*, that the Prepetition 2018 FILO Adequate Protection Claims shall be junior to (i) the Carve-Out, (ii) the DIP ABL Superpriority Claims, (iii) the Junior DIP Superpriority Claims, and (iv) the Prepetition ABL Adequate Protection Claims.

(c) *Prepetition LC Facility Superpriority Claims.* Pursuant to section 507(b) of the Bankruptcy Code, as adequate protection of the interests of the Prepetition LC Facility Credit Parties in the Prepetition ABL Collateral, including Cash Collateral, the Prepetition LC Facility Administrative Agent, for itself and for the benefit of all of the other Prepetition LC Facility Credit Parties, pursuant to the Interim Order, was granted an allowed administrative claim against the DIP ABL Loan Parties' estates under section 503(b) of the Bankruptcy Code with superpriority pursuant to section 507(a) and (b) of the Bankruptcy Code (the "Prepetition LC Facility Adequate Protection Claims") to the extent of any Prepetition LC Diminution in Value. Except as set forth herein, the Prepetition LC Facility Adequate Protection Claims shall have priority over all administrative expense claims and priority general unsecured claims against the DIP ABL Loan Parties or their estates, now existing or hereafter arising, to the fullest extent permitted under the Bankruptcy Code; provided, however, that the Prepetition LC Facility Adequate Protection Claims shall be junior to (i) the Carve-Out, (ii) the DIP ABL Superpriority Claims, (iii) the Junior DIP Superpriority Claims, (iv) the Prepetition ABL Adequate Protection Claims, and (v) the Prepetition 2018 FILO Adequate Protection Claims.

(d) *Second Lien Facilities Superpriority Claims.* Pursuant to section 507(b) of the Bankruptcy Code, as adequate protection of the interests of the Prepetition Second Lien Credit Parties in the Prepetition Second Lien Collateral, including any Cash Collateral, on behalf of itself and the other Prepetition Second Lien Credit Parties, the Prepetition Second Lien Collateral Agent, pursuant to the Interim Order, was granted an allowed administrative claim against the Prepetition Second Lien Loan Parties' estates under section 503(b) of the Bankruptcy Code with superpriority pursuant to section 507(a) and (b) of the Bankruptcy Code to the extent of any Second Lien Diminution in Value (the "Prepetition Second Lien Facilities Adequate

Protection Claims," and together with the Prepetition ABL Adequate Protection Claims, the Prepetition 2018 FILO Adequate Protection Claims, and the Prepetition LC Facility Adequate Protection Claims, the "Adequate Protection Claims") to the extent that the Prepetition Second Lien Adequate Protection Liens are insufficient to protect the Prepetition Second Lien Credit Parties' interests in the Prepetition Second Lien Collateral. For the avoidance of doubt, notwithstanding the Interim Order, the Prepetition Second Lien Facilities Adequate Protection Claims shall only be against the estates of the Prepetition Second Lien Loan Parties. Except as set forth herein, the Prepetition Second Lien Facilities Adequate Protection Claims shall have priority over all administrative expense claims and priority general unsecured claims against the Prepetition Second Lien Loan Parties or their estates, now existing or hereafter arising, to the fullest extent permitted under the Bankruptcy Code; provided, however, that the Prepetition Second Lien Facilities Adequate Protection Claim shall be junior to (i) the Carve-Out, (ii) the DIP ABL Superpriority Claims, (iii) the Junior DIP Superpriority Claims, (iv) the Prepetition ABL Adequate Protection Claims, (v) the Prepetition LC Facility Adequate Protection Claims, (vi) the Prepetition 2018 FILO Adequate Protection Claims, and (vii) the Postpetition Intercompany Obligations (as defined below).

19. ***Additional Adequate Protection.***

(a) *Prepetition ABL Credit Parties*. As additional adequate protection of the Prepetition ABL Credit Parties' security interests in the Prepetition ABL Collateral, the DIP ABL Loan Parties are authorized and directed to provide adequate protection in the form of (i) current cash reimbursement of reasonable and documented fees and expenses and other disbursements of the Prepetition ABL Administrative Agent, the Prepetition ABL Co-Collateral Agents, and the Prepetition LC Facility Administrative Agent whether incurred before, on or

after the Petition Date, including the reasonable documented fees and expenses of its professional advisors subject to the procedures set forth in paragraph 19(f) hereof, Skadden, Arps, Slate, Meagher & Flom LLP, Choate, Hall & Stewart LLP, Davis Polk & Wardwell LLP and Berkeley Research Group, LLC, whether incurred before, on or after the Petition Date; (ii) continued maintenance and insurance of the Prepetition ABL Collateral and the DIP ABL Collateral in amounts and for the risks, and by the entities, as required under the Prepetition ABL Loan Documents, the DIP ABL Loan Documents and the DIP Orders; (iii) reporting and information rights equivalent to those granted to the DIP ABL Agents pursuant to the DIP ABL Loan Documents, the Prepetition ABL Loan Documents and paragraph 22 of this Final Order; (iv) cash payment of post-petition interest on the Prepetition ABL Obligations under the Prepetition ABL Credit Agreement and the Prepetition LC Facility Agreement as such interest becomes due and payable at the applicable non-default rate thereunder; *provided* that in the event of a final determination that the Prepetition ABL Credit Parties or the Prepetition LC Facility Credit Parties, as applicable are undersecured as of the Petition Date, payments received by the applicable undersecured Prepetition ABL Credit Parties or the Prepetition LC Facility Credit Parties, pursuant to this clause (iv) may be recharacterized and applied as payments of principal and may be subject to disgorgement; and (v) the DIP ABL Borrowers' daily calculation, reporting and certification to the Prepetition ABL Administrative Agent of, and compliance with, the Maximum Loan to Value (Term/Revolver) Ratio and the Maximum Loan to Value (Prepetition) Ratio (each as defined below).

(b) If on any day the DIP ABL Loan Parties are not in compliance with the Maximum Loan to Value (Term/Revolver) Ratio or the Maximum Loan to Value (Prepetition) Ratio, the DIP ABL Loan Parties shall immediately and irrevocably repay in cash

(i) first, DIP ABL Revolving Advances until paid in full, (ii) second, to cash collateralize letters of credit under the DIP ABL Facility, (iii) third, to the DIP ABL Term Loans until paid in full (with a pro rata reduction in DIP ABL Revolving Commitments), and (iv) after the payment in full of the DIP ABL Facility, the Prepetition ABL Obligations, in each case, until the DIP ABL Loan Parties are in compliance with the Maximum Loan to Value (Term/Revolver) Ratio or the Maximum Loan to Value (Prepetition) Ratio, as applicable. In the case of clause (iv), such amounts shall be paid to the Prepetition ABL Administrative Agent and applied in accordance with Section 6.4 of the Collateral and Guarantee Agreement (as defined in the Prepetition ABL Credit Agreement). For the avoidance of doubt, a failure of the DIP ABL Borrowers to deliver to the DIP ABL Administrative Agent or Prepetition ABL Administrative Agent, as applicable, the cash when and in such amounts required in accordance with the immediately preceding sentence shall constitute a Termination Event (as defined below) hereunder, and the DIP ABL Administrative Agent or the Prepetition ABL Administrative Agent, as applicable, shall be permitted to exercise all rights and remedies available pursuant to the DIP ABL Loan Documents or Prepetition ABL Loan Documents, as applicable, and the DIP Orders subject to the terms of paragraphs 33 and 34.

(c) The "Maximum Loan to Value (Term/Revolver) Ratio" means that the DIP ABL Loan Parties shall not permit the sum of (a) the outstanding principal amount of Advances (as defined in the Prepetition ABL Credit Agreement), plus (b) the outstanding principal amount of Swingline Advances (as defined in the Prepetition ABL Credit Agreement), plus (c) the amount of L/C Obligations (as defined in the Prepetition ABL Credit Agreement), plus (d) the outstanding principal amount of the outstanding 2016 Term Loans (as defined in the Prepetition ABL Credit Agreement) (the sum of clauses (a) through (d), the "Prepetition

Revolving/Term Exposure"), plus (e) Total Extensions of Credit (as defined in the DIP ABL Loan Documents), plus (f) Availability Reserves (as defined in the DIP ABL Loan Documents), plus (g) the Borrowing Base Carve-Out Reserve (as defined in the DIP ABL Loan Documents), plus (h) the Prepetition FILO Reserve (as defined in the DIP ABL Loan Documents), at any time to exceed 87.5% of the sum of (1) the aggregate outstanding Eligible Credit Card Receivables (as defined in the DIP ABL Loan Documents) at such time, plus (2) the aggregate Eligible Pharmacy Receivables (as defined in the DIP ABL Loan Documents) at such time, plus (3) (i) the Net Orderly Liquidation Value (as defined in the DIP ABL Loan Documents) of Net Eligible Inventory (as defined in the DIP ABL Loan Documents) (other than Eligible Inventory (as defined in the DIP ABL Loan Documents) at stores to be closed pursuant to Specified Store Closing Sales (as defined in the DIP ABL Loan Documents)) at such time and (ii) the Store Closing Net Orderly Liquidation Value (as defined in the DIP ABL Loan Documents) of Net Eligible Inventory at Stores to be closed pursuant to Specified Store Closing Sales at such time (the sum of clauses (1) through (3), the "LTV Formula Amount").

(d) The "Maximum Loan to Value (Prepetition) Ratio" means that the DIP ABL Loan Parties shall not permit the sum of Prepetition Revolving/Term Exposure, plus the outstanding 2018 FILO Extensions of Credit (as defined in the Prepetition ABL Credit Agreement), plus the Total Extensions of Credit (as defined in the DIP ABL Loan Documents), plus Availability Reserves (as defined in the DIP ABL Loan Documents), plus the Borrowing Base Carve-Out Reserve (as defined in the DIP ABL Loan Documents), plus the Prepetition FILO Reserve (as defined in the DIP ABL Loan Documents), at any time to exceed 97.5% of the LTV Formula Amount at such time.

(e) *Second Lien Credit Parties.* As additional adequate protection of certain of the Prepetition Second Lien Credit Parties' security interest in the Prepetition Second Lien Collateral, the Prepetition Second Lien Loan Parties are authorized and directed to provide adequate protection in the form of (i) current cash reimbursement of up to $250,000 of reasonable and documented fees and expenses and other disbursements of the Prepetition Second Lien 2010 Indenture Trustee, including the reasonable and documented fees and expenses of Seyfarth Shaw LLP, subject to the procedures set forth in paragraph 19(f) hereof, whether incurred before, on or after the Petition Date, and (ii) reporting and information rights for the Prepetition Second Lien Agents equivalent to those granted to the DIP ABL Agents pursuant to paragraph 22 of this Final Order.

(f) Payment of all professional fees and expenses of the DIP ABL Credit Parties, the Prepetition ABL Administrative Agent, the Prepetition LC Facility Administrative Agent, the Prepetition Second Lien 2010 Indenture Trustee (subject to the limitations set forth in paragraph 19(e) hereof) and the Prepetition Consolidated Loan Agent addressed in the DIP Orders shall not be subject to allowance by the Bankruptcy Court. Notwithstanding the foregoing, at the same time such invoices are delivered to the Debtors, the professionals for the DIP ABL Credit Parties, the Prepetition ABL Administrative Agent, the Prepetition LC Facility Administrative Agent, the Prepetition Second Lien 2010 Indenture Trustee and the Prepetition Consolidated Loan Agent shall deliver a copy of their respective invoices to counsel for any Creditors' Committee, the U.S. Trustee (as defined below), and the DIP ABL Administrative Agent. The invoices for such fees and expenses shall not be required to comply with any particular format and may be in summary form only and may include redactions. For the avoidance of doubt, the provision of such invoices shall not constitute a

waiver of the attorney-client privilege or any benefits of the attorney work product doctrine. The DIP ABL Loan Parties or, with respect to invoices received in respect of fees and expenses payable to professionals for the Prepetition Consolidated Loan Agent, the Prepetition Consolidated Loan Parties, shall pay such invoice within ten (10) calendar days (if no written objection is received within such ten calendar day period) after such professional has delivered such invoice to the DIP ABL Loan Parties, the Creditors' Committee, the DIP ABL Administrative Agent, and the U.S. Trustee. Any written objections raised by the DIP ABL Loan Parties, the U.S. Trustee, the DIP ABL Administrative Agent or any Creditors' Committee with respect to such invoices within ten (10) calendar days of receipt thereof will be resolved by the Bankruptcy Court (absent prior consensual resolution thereof). Pending such resolution, the undisputed portion of any such invoice shall be promptly paid by the DIP ABL Loan Parties or, with respect to invoices received in respect of fees and expenses payable to professionals for the Prepetition Consolidated Loan Agent, the Prepetition Consolidated Loan Parties. The fees and expenses subject to the procedures in this paragraph 19(f) shall not be subject to any offset, defense, claim, counterclaim or diminution of any type, kind or nature whatsoever, and shall not be subject to compliance with the U.S. Trustee fee guidelines or the provisions of sections 327, 328, 329, 330 or 331 of the Bankruptcy Code. Notwithstanding the foregoing, the Debtors are authorized and directed to pay on the Effective Date (as defined in the DIP ABL Credit Agreement) all costs and expenses of the DIP ABL Credit Parties required to be paid as a condition precedent to the effectiveness of the DIP ABL Credit Agreement without the need for any professional engaged by such parties to first deliver a copy of its invoice as set forth in this paragraph 19(f).

20. ***Costs, Fees, Expenses, and Indemnification.***

(a) *DIP ABL Credit Parties.* The DIP ABL Loan Parties are authorized to pay any and all reasonable and documented fees and expenses of the DIP ABL Agents (including, without limitation, the reasonable and documented fees and expenses of Skadden, Arps, Slate, Meagher & Flom LLP, Choate, Hall & Stewart LLP, and Berkeley Research Group LLC) in connection with the DIP ABL Facility and as provided for in the DIP ABL Loan Documents, whether incurred before, on or after the Petition Date and whether or not the transactions contemplated hereby are consummated or such fees and expenses are set forth in the Approved Budget, including fees and expenses incurred in connection with (i) the preparation, negotiation and execution of the DIP ABL Loan Documents; (ii) the syndication and funding of the DIP ABL Facility; (iii) the creation, perfection or protection of the liens under the DIP ABL Loan Documents (including all search, filing and recording fees); (iv) the on-going administration of the DIP ABL Loan Documents (including the preparation, negotiation and execution of any amendments, consents, waivers, assignments, restatements or supplements thereto) and the Chapter 11 Cases; (v) the enforcement of the DIP ABL Loan Documents; (vi) any refinancing or restructuring of the DIP ABL Facility; and (vii) any legal proceeding relating to or arising out of the DIP ABL Facility or the other transactions contemplated by the DIP ABL Loan Documents, including the Chapter 11 Cases. Payment of all such professional fees and expenses shall not be subject to allowance by the Bankruptcy Court or to the U.S. Trustee guidelines, but shall be subject to the procedures set forth in paragraph 19(f) herein. Such fees and expenses shall not be subject to any offset, defense, claim, counterclaim or diminution of any type, kind or nature whatsoever.

(b) *Indemnification of DIP ABL Credit Parties.* The DIP ABL Credit Parties shall have no liability to any third party relating to the DIP ABL Loan Documents, the

DIP ABL Facility and DIP ABL Loan Parties' use of the financing provided thereunder, and shall not, by virtue of making the extensions of credit under the DIP ABL Facility, extending funds thereunder, or otherwise complying with the DIP ABL Loan Documents, be deemed to be in control of the operations of Debtors, to owe any fiduciary duty to the Debtors, their respective creditors, shareholders, or estates or to be acting as a "responsible person" or managing agent with respect to the operation or management of the Debtors. The DIP ABL Loan Parties shall, and are hereby authorized to, indemnify and hold harmless the DIP ABL Credit Parties and their respective affiliates and Representatives from and against all losses, liabilities, claims, damages, penalties, actions, judgments, suits, expenses or disbursements of any nature whatsoever arising out of or relating to the DIP ABL Loan Documents, including the syndication of any obligations thereunder, and the DIP ABL Loan Parties' use of the financing provided thereunder, *provided, however*, that the foregoing indemnity shall not apply to any actions of any indemnified parties determined in a final non-appealable judgment of a court of competent jurisdiction to constitute gross negligence or willful misconduct. This indemnification shall survive and continue for the benefit of all such persons or entities.

Provisions Common to DIP Financing and Use of Cash Collateral Authorizations

21. ***Carve-Out.***

(a) *Carve-Out*. As used in this Final Order and the DIP ABL Loan Documents, the "Carve-Out" shall be comprised of the following components:

(i) Clerk and U.S. Trustee Fees. All fees required to be paid to the Clerk of this Court and to the Office of the United States Trustee (the "U.S. Trustee") under section 1930(a) of title 28 of the United States Code and 31 U.S.C. § 3717 (collectively, "Clerk and UST Fees").

(ii) Chapter 7 Trustee Fees. All reasonable fees and expenses up to $500,000 incurred by a trustee under section 726(b) of the Bankruptcy Code (the "Chapter 7 Trustee Fee Cap").

(iii) Committee Member Expenses. All reasonable, documented, out-of-pocket expenses of individual members of the Committee solely in their capacity as such (but expressly excluding any and all fees and expenses of professional persons employed by such committee members individually) in an aggregate amount not to exceed $200,000 (the "Committee Member Expense Cap").

(iv) Allowed Professional Fees Incurred Prior to a Carve-Out Trigger Notice. To the extent allowed at any time, whether by interim order, final order, procedural order, or otherwise, all paid and earned and accrued and unpaid fees and expenses (the "Allowed Professional Fees") incurred by persons or firms retained by the Debtors, including the Subcommittee of the Debtors' Restructuring Committee, pursuant to section 327, 328 or 363 of the Bankruptcy Code (the "Debtor Professionals") and the Creditors' Committee pursuant to section 328 or 1103 of the Bankruptcy Code (together with the Debtor Professionals, the "Professional Persons") at any time before or on the date of delivery by the DIP ABL Administrative Agent of a Carve-Out Trigger Notice (as defined below), whether allowed by this Court prior to or after delivery of a Carve-Out Trigger Notice. For purposes of the Carve-Out, Allowed Professional Fees shall exclude (i) any restructuring, sale, consummation, success or similar fee of any Professional Person and (ii) fees and expenses of any third party professionals employed by any individual member of the Creditors' Committee.

(iv) Allowed Professional Fees Incurred After a Carve-Out Trigger Notice. Allowed Professional Fees of Professional Persons incurred on and after the first business day following delivery by the DIP ABL Administrative Agent of the Carve-Out Trigger Notice shall be subject to an aggregate cap of $20 million (the "Post Trigger Notice Carve-Out Fee Cap").

(b) *Carve-Out Trigger Notice.* Upon the occurrence and during the continuance of any Termination Event, the DIP ABL Administrative Agent may deliver a written notice invoking the Post Trigger Notice Carve-Out Fee Cap (the "Carve-Out Trigger Notice") to the Debtors, the Debtors' lead restructuring counsel, the U.S. Trustee, and lead counsel for the Creditors' Committee. The Carve-Out Trigger Notice may be delivered by email (or any other means permitted under the DIP ABL Loan Documents).

(c) *Delivery of Weekly Fee Estimates.* Not later than 7:00 p.m. New York time on the third business day of each week starting with the first full calendar week following the Petition Date, each Professional Person shall deliver to the Debtors a statement (each such statement, a "Weekly Statement") setting forth a good-faith estimate of the amount of fees and expenses incurred during the preceding week by such Professional Person (through

Saturday of such week, the "Calculation Date"), along with a good-faith estimate of the cumulative total amount of unpaid fees and expenses incurred through the applicable Calculation Date (collectively, "Estimated Fees and Expenses") and a statement of the amount of such fees and expenses that have been paid to date by the Debtors from the Carve-Out Account (as defined below). No later than one business day after the delivery of a Carve-Out Trigger Notice, each Professional Person shall deliver one additional statement to the Debtors setting forth a good-faith estimate of the amount of fees and expenses incurred during the period commencing on the calendar day after the most recent Calculation Date for which a Weekly Statement has already been delivered and concluding on the date of the Carve-Out Trigger Notice.

(d) *Failure to Deliver Weekly Fee Estimates*. If any Professional Person fails to deliver a Weekly Statement when due (such Professional Person, a "Defaulting Professional Person"), such Professional Person's entitlement (if any) to any amount of the Carve-Out with respect to the aggregate unpaid amount of Allowed Professional Fees for the applicable periods for which such Professional Person failed to deliver a Weekly Statement shall be limited to the aggregate unpaid amount of Allowed Professional Fees for such Professional Person included in the Approved Budget, *provided* that such Defaulting Professional Person may cure its failure to provide a Weekly Statement so long as a Carve-Out Trigger Notice has not been delivered.

(e) *Carve-Out Reserve*. The DIP ABL Administrative Agent shall be entitled to maintain at all times a reserve (the "Carve-Out Reserve") in an amount (the "Carve-Out Reserve Amount") equal to the sum of the following: (i) estimated amounts for Clerk and UST Fees, the Chapter 7 Trustee Fee Cap, and the Committee Member Expense Cap, plus (ii) the Post Trigger Notice Carve-Out Fee Cap, plus (iii) the aggregate amount of Allowed

Professional Fees in the Approved Budget remaining unpaid through the most recent Calculation Date or, if greater, the aggregate unpaid amount of Estimated Fees and Expenses included in all Weekly Statements timely received by the Debtors and reported to the DIP ABL Administrative Agent, plus (iv) an amount equal to the Allowed Professional Fees set forth in the Approved Budget for the two-week period occurring after the most recent Calculation Date, plus (v) $29.5 million less any Permitted Carve-Out Success Fees (as defined below) paid by the Debtors pursuant to an order of the Bankruptcy Court. Not later than 7:00 p.m. New York time on the fourth business day of each week starting with the first full calendar week following the Petition Date, the Debtors shall deliver to the DIP ABL Administrative Agent a report setting forth the Carve-Out Reserve Amount as of such time, and, in setting the Carve-Out Reserve, the DIP ABL Administrative Agent shall be entitled to, but shall not be required to, rely upon such reports in determining the Carve-Out Reserve.

(f) *Carve-Out Account*. Upon the entry of the Interim Order, the Debtors established a segregated account with the DIP ABL Administrative Agent (the "Carve-Out Account"), which was and shall continue to be funded in an amount up to the Carve-Out Reserve Amount less (i) the Clerk and UST Fees, (ii) the Chapter 7 Trustee Fee Cap, (iii) the Committee Member Expense Cap, (iv) the Post Trigger Notice Carve-Out Fee Cap (the "Carve-Out Account Required Balance") first with cash on hand and any availability or proceeds of any other postpetition financing facility, and if such sources are insufficient to fully fund the Carve-Out Account, with borrowings under the DIP ABL Facility. Bank of America shall not be responsible or have any liability for, or have any duty to ascertain, inquire into, monitor or enforce, compliance with the Carve-Out Account. Amounts in the Carve-Out Account shall be held in trust to pay all amounts included the Carve-Out. On each Friday after the date hereof (or

if such day is not a business day, then the next business day), the Debtors shall deposit into the Carve-Out Account an amount sufficient to cause the balance in the Carve-Out Account to equal the Carve-Out Account Required Balance. All Allowed Professional Fees of Professional Persons shall be paid to the applicable Professional Person first from the Carve-Out Account in accordance with the order or orders of the Bankruptcy Court allowing such Allowed Professional Fees. Notwithstanding anything to the contrary in this or any other Court order, the Carve-Out Account and the amounts on deposit in the Carve-Out Account shall be available and used only to satisfy obligations of Professional Persons benefitting from the Carve-Out, and, thereafter, as provided in paragraph 21(g)(v). Prior to a Carve-Out Trigger Notice, in no event shall the total balance in the Carve-Out Account ever exceed the Carve-Out Account Required Balance. The failure of the Carve-Out Account to satisfy Allowed Professional Fees in full shall not affect the priority of the Carve-Out.

(g) *Carve-Out Funding After a Carve-Out Trigger Notice*. The following provisions with respect to the Carve-Out Account shall apply only upon delivery of a Carve-Out Trigger Notice:

(i) On the date of the Carve-Out Trigger Notice, the Carve-Out Trigger Notice shall be deemed to constitute a demand to the Debtors to utilize all cash on hand as of such date and any availability or proceeds of any other postpetition financing facility to fund the Carve-Out Account in an amount equal to the full Carve-Out Reserve Amount (to the extent not previously funded into the Carve-Out Account) to be held in trust to pay all amounts included the Carve-Out.

(ii) On or after the date of a Carve-Out Trigger Notice, the DIP ABL Administrative Agent shall not sweep or foreclose on cash of the Debtors (including cash received as a result of the sale or other disposition of any assets) until the Carve-Out Account has been fully funded. To the extent such cash on hand and availability and/or proceeds of any other postpetition financing facility are not sufficient to fully fund the Carve-Out Account, the Carve-Out Trigger Notice shall be deemed to constitute a draw request and notice of borrowing by the Debtors for DIP ABL Revolving Advances under the DIP ABL Loan Documents (on a pro rata basis based on the then outstanding DIP ABL Revolving Commitments) to fully fund the Carve-Out Account. On the first business day after delivery of the Carve-Out Trigger Notice,

notwithstanding anything in the DIP ABL Loan Documents to the contrary, including with respect to the existence of a Default (as defined in the DIP ABL Loan Documents) or Event of Default (as defined in the DIP ABL Loan Documents), the failure of the Debtors to satisfy any or all of the conditions precedent for DIP ABL Revolving Advances under the DIP ABL Revolver, any termination of the commitments thereunder following an Event of Default at the direction of the DIP ABL Administrative Agent, each DIP ABL Revolving Lender with an outstanding DIP ABL Revolving Commitments (on a pro rata basis based on the then outstanding DIP ABL Revolving Commitments) shall make available to the DIP ABL Administrative Agent such DIP ABL Revolving Lender's pro rata share with respect to the borrowings required to fully fund the Carve-Out Account in accordance with the DIP ABL Revolver; *provided*, *however*, that in no event shall the DIP ABL Credit Parties be required to fund the Carve-Out Account to the extent such funding would cause Excess Availability (as defined in the DIP ABL Loan Documents and determined as if the DIP ABL Revolving Commitments were not terminated due to an Event of Default (as defined in the DIP ABL Loan Documents)) to be less than zero. Any such funding of the Carve-Out shall be added to, and made a part of, the DIP ABL Secured Obligations secured by the DIP ABL Collateral and shall otherwise be entitled to the protections granted under the DIP Orders, the DIP ABL Loan Documents, the Bankruptcy Code, and applicable law.

(iii) In no event shall the DIP ABL Administrative Agent or the DIP ABL Lenders be required to (x) extend DIP ABL Revolving Advances to fund the Carve-Out other than pursuant to this paragraph 21(g), (y) extend DIP ABL Revolving Advances pursuant to a deemed draw and borrowing pursuant to this paragraph in an aggregate amount exceeding the Carve-Out Reserve Amount, or (z) pay in the aggregate more than the Carve-Out Reserve Amount for all fees and expenses included in the Carve-Out.

(iv) All funds in the Carve-Out Account shall be used first to pay the obligations set forth in the definition of the Carve-Out set forth above until paid in full. All payments and reimbursements made from the Carve-Out Account shall permanently reduce the Carve-Out on a dollar-for-dollar basis.

(v) To the extent any funds remain in the Carve-Out Account after payment of all amounts included in the Carve-Out, such funds shall first be used to pay the DIP ABL Administrative Agent for the benefit of the DIP ABL Lenders, unless the DIP ABL Secured Obligations have been indefeasibly paid in full, in cash, all commitments under the DIP ABL Facility have been terminated, and all Letters of Credit (as defined in the DIP ABL Loan Documents) have been cancelled (or all such Letters of Credit have been fully cash collateralized or otherwise backstopped to the satisfaction of the DIP ABL Administrative Agent in its sole and absolute discretion), in which case any such excess shall next be paid to the Prepetition Credit Parties and/or the Junior DIP Agent in accordance with their rights and priorities under this Final Order and the Junior DIP Order.

(h) *Carve-Out Limitations.* For purposes of the Carve-Out, (i) any success, restructuring, consummation, sale or other similar fees shall not be included except for such fees in an aggregate amount up to $19.5 million that become Allowed Professional Fees of

Lazard Freres & Co. LLC, M-III Advisory Partners, LP and/or Houlihan Lokey Capital Inc. (the "Permitted Carve-Out Consummation Fees") or any other success, restructuring, consummation, sale or other similar fees agreed to by the DIP ABL Agents in their sole and absolute discretion and (ii) Allowed Professional Fees shall exclude fees and expenses of any third party professionals employed by any individual member of the Creditors' Committee. Further notwithstanding anything to the contrary herein, the Carve-Out shall not include, apply to or be available for any fees or expenses incurred by any party in connection with (a) the investigation, initiation or prosecution of any claims, causes of action, adversary proceedings or other litigation (i) against any of the DIP ABL Credit Parties, Prepetition ABL Credit Parties,[4] or any Representatives of any of the foregoing, or (ii) challenging the amount, validity, perfection, priority or enforceability of or asserting any defense, counterclaim or offset to, the obligations and the liens and security interests granted under the DIP ABL Loan Documents or, the Prepetition ABL Loan Documents, including, in each case for lender liability or pursuant to sections 105, 510, 544, 547, 548, 549, 550, or 552 of the Bankruptcy Code, applicable non-bankruptcy law or otherwise; (b) attempts to modify any of the rights granted to the DIP ABL Credit Parties or the Prepetition ABL Credit Parties under the DIP ABL Loan Documents, the Prepetition ABL Loan Documents or the DIP Orders; (c) attempts to prevent, hinder or otherwise delay any of the DIP ABL Credit Parties' or the Prepetition ABL Credit Parties' assertion,

[4] Notwithstanding anything to the contrary in this Final Order, the DIP ABL Loan Documents, or the Prepetition Loan Documents, but subject to the Approved Budget, the Debtors, acting through the Restructuring Committee and Restructuring Subcommittee, as applicable, of the Board of Directors of Holdings, and the Creditors' Committee shall not be prohibited from investigating or pursuing any estate causes of action against ESL Investments, Inc., in any capacity, or any of its affiliates, or from funding such actions from the proceeds of the DIP ABL Facility or the Carve-Out so long as it does not affect in any manner the Prepetition ABL Credit Parties or the DIP ABL Credit Parties, in each case, other than ESL Investments, Inc. For purposes of this paragraph 20(h), the Prepetition ABL Credit Parties do not include ESL Investments, Inc. in any capacity or any of its affiliates.

enforcement or realization upon any of the Prepetition Collateral or DIP ABL Collateral in accordance with the DIP ABL Loan Documents, the Prepetition ABL Loan Documents, and the DIP Orders other than to seek a determination that a Termination Event has not occurred or is not continuing; (d) paying any amount on account of any claims arising before the commencement of the Chapter 11 Cases unless such payments are specifically approved by an order of the Bankruptcy Court; (e) any success, completion, back-end or similar fees other than the Permitted Carve-Out Success Fees or any other success, restructuring, consummation, sale or other similar fees agreed to by the DIP ABL Agents in their sole and absolute discretion; and/or (f) anything else prohibited by the DIP ABL Loan Documents, the Prepetition ABL Loan Documents or any order of the Bankruptcy Court, as applicable. In no way shall the Carve-Out, the Carve-Out Account, the Approved Budget or any of the forgoing be construed as a cap or limitation on the amount of Allowed Professional Fees due and payable by the Debtors or the amount of Allowed Professional Fees that may be allowed by the Bankruptcy Court at any time (whether by interim order, final order or otherwise).

(i) *No Direct Obligation to Pay Allowed Fees; No Waiver of Right to Object to Fees.* Other than the funding of the Carve-Out with the proceeds of the DIP ABL Facility as provided herein and in the DIP ABL Loan Documents, the DIP ABL Credit Parties shall not be responsible for the payment or reimbursement of any fees or disbursements of any Professional Person incurred in connection with these Chapter 11 Cases, any Successor Cases, or otherwise. Nothing in the DIP Orders, the Junior DIP Order or otherwise shall be construed: (i) to obligate the DIP ABL Credit Parties, the Junior DIP Credit Parties, or the Prepetition ABL Credit Parties, in any way, to pay compensation to, or to reimburse expenses of, any Professional Person or to guarantee that the Debtors have sufficient funds to pay such compensation or

reimbursement, other than the Carve-Out Reserve Amount; (ii) as consent to the allowance of any fees and expenses of Professional Persons; or (iii) to affect the rights of the DIP ABL Credit Parties, the Junior DIP Credit Parties, the Prepetition ABL Credit Parties or any other party-in-interest to object to the allowance and payment of such fees and expenses.

(j) *Payment of Compensation.* The Debtors shall be permitted to pay fees and expenses allowed and payable by order of the Bankruptcy Court (that has not been vacated or stayed, unless the stay has been vacated) under sections 330 and 331 of the Bankruptcy Code, as the same may be due and payable from the Carve-Out Account. Such payments prior to a Carve-Out Trigger Notice shall not reduce the Post Trigger Notice Carve-Out Fee Cap.

22. ***Budget and Borrowing Base Reporting; Budget Compliance***

(a) The DIP ABL Loan Parties have delivered and/or shall deliver to the Creditors' Committee, DIP ABL Agents and the DIP ABL Lenders: (i) a budget depicting, on a weekly and line item basis, (1) (A) projected cash receipts (including from asset sales), (B) projected disbursements (including ordinary course operating expenses, bankruptcy-related expenses (including professional fees and expenses of the professionals and advisors of the Debtors and the Creditors' Committee), and any other fees and expenses relating to the DIP ABL Loan Documents or the Junior DIP Loan Documents), (C) projected Net Cash Flow (as defined below), (D) projected inventory receipts and levels, and (E) the projected Borrowing Base (as defined in the DIP ABL Loan Documents) and Excess Availability (as defined in the DIP ABL Loan Documents), (2) a report listing the stores subject to Specified Store Closing Sales and the other remaining stores, and (3) such other information requested by the DIP ABL Agents for the first thirteen (13) week period from the Petition Date (the "Approved Budget"), (ii) on October

31, 2018 and every Wednesday thereafter, a Budget for the immediately following consecutive 13 weeks (each, a "Rolling Budget"), (iii) on October 31, 2018 and every Wednesday thereafter, reports detailing operating and financial performance (the "Weekly Flash Reporting Package") which shall include cash flow performance compared to the Approved Budget for the previous week together with accompanying schedules supporting line items included in the weekly cash flow results (such as roll-forward of inventory sales and receipts, roll-forward of merchandise and other payables of each DIP ABL Loan Party as of the end of the prior week, in each case, in reasonable detail), (iv) other customary information and documents, including approval rights with respect thereto, to be set forth in the DIP ABL Loan Documents, and (v) other information as may be reasonably requested by the DIP ABL Agents or the Creditors' Committee. The DIP ABL Loan Parties shall be required to comply with such Approved Budget, including having made all scheduled payments to the Prepetition ABL Credit Parties and the DIP ABL Credit Parties, as applicable, and when required, subject to the Permitted Variance (as defined below). The Approved Budget is attached hereto as Exhibit C. The Approved Budget shall be updated, modified or supplemented by the DIP ABL Loan Parties (x) with the written consent of the DIP ABL Agent and each DIP ABL Co-Collateral Agent in their sole and absolute discretion and (y) upon the request of DIP ABL Agent or any DIP ABL Co-Collateral Agent from time to time (which request may, without limitation, be made in connection with any Specified Transaction or the commencement, or during the continuation, of the Specified Stores Closing Sales (each as defined in the DIP ABL Credit Agreement)); *provided, however*, that in the event the DIP ABL Agent, the DIP ABL Co-Collateral Agents and the DIP ABL Loan Parties cannot agree as to an updated, modified or supplemented budget, the then current Approved Budget shall continue in effect, with weekly details for any periods after the 13-week period covered by the then current

Approved Budget to be derived in a manner satisfactory to the DIP ABL Agent and the DIP ABL Co-Collateral Agents in their sole and absolute discretion based on the then current Approved Budget (each such period so approved, an "Extended Budget Period"), and such disagreement shall give rise to an Event of Default upon the later of (x) the end of the period covered by the then current Approved Budget and (y) the end of the then current Extended Budget Period.

(b) The DIP ABL Loan Parties shall deliver to the DIP ABL Administrative Agent and the Creditors' Committee a borrowing base certificate presenting the DIP ABL Borrowers' computation of the Borrowing Base (as defined in the DIP ABL Loan Documents) (including appropriate supporting data therefor) (a "Borrowing Base Certificate") as soon as available, but in no event later (i) in the case of a draft of the Borrowing Base Certificate, 5:00 p.m. (Central Time) on Wednesday of each week and (ii) in the case of a final Borrowing Base Certificate, 5:00 p.m. (Central Time) on Thursday of each week (or, if Thursday is not a business day, on the next succeeding business day), in each case, as of the close of business on the immediately preceding Saturday. The initial Borrowing Base Certificate was delivered as a condition precedent to the Initial Closing Date (as defined in the DIP ABL Term Sheet). In connection with any disposition or series of related dispositions of any DIP ABL Collateral of a type that is included in the Borrowing Base with a value in excess of $7,500,000 in the aggregate (other than inventory in the ordinary course of business and intercompany transfers among DIP ABL Loan Parties), the DIP ABL Loan Parties shall deliver to the DIP ABL Administrative Agent a roll forward of Eligible Inventory and pro forma Borrowing Base Certificate giving effect to such sale at least one (1) business day prior to the closing of such sale. In addition, not later than the tenth (10^{th}) day of each month (or later with the consent of the DIP ABL Agents),

commencing with the first full month immediately following the Petition Date, an updated inventory appraisal shall be delivered to the DIP ABL Administrative Agent.

(c) The DIP ABL Loan Parties shall also provide a budget variance report (the "Budget Variance Report") for delivery to the DIP ABL Agents and the Creditors' Committee by Wednesday of every week for the most recently ended four-week period included in the Approved Budget showing by line item actual cash receipts, disbursements, inventory receipts and consignment receipts for such four-week period, in comparable form to the Approved Budget, noting therein all the variance, on a cumulative basis, of the DIP ABL Borrowers' total net cash flow excluding proceeds from asset sales (except for proceeds from the sale of inventory) and excluding fees and expenses of the professionals and advisors of the Debtors and the Creditors' Committee, and financing related items (the "Net Cash Flow") for such four-week period in the Approved Budget, including explanations for any material variance (including whether such variance is permanent in nature or timing related) for such four-week period. Each Budget Variance Report delivered following a Budget Testing Date (as defined below) shall contain an analysis demonstrating compliance with the Approved Budget subject to the Permitted Variance. The DIP ABL Borrowers will supplement the Weekly Flash Reporting Package and the Budget Variance Report from time to time upon the request of the DIP ABL Agents or the Creditors' Committee.

(d) The DIP ABL Loan Parties shall be required to comply with each Approved Budget in all material respects, including having made all scheduled payments to the DIP ABL Credit Parties and the Prepetition ABL Credit Parties, as applicable, as and when required, subject to the following (the "Permitted Variance"): the DIP ABL Borrowers' Net Cash Flow shall not be less than an amount equal to the Net Cash Flow set forth in the Approved

Budget minus $42 million. Such covenant shall be tested on Saturday each second week (commencing on November 10, 2018) (but shall be reported each week) on a cumulative basis from the Petition Date until the fourth (4th) week after the Petition Date and then on a rolling four (4) week basis, in accordance with the Budget Variance Report delivered by the DIP ABL Borrowers to the DIP ABL Agents and the Creditors' Committee (each such date, a "Budget Testing Date").

(e) The DIP ABL Loan Parties shall arrange for separate weekly (unless waived by the DIP ABL Agents and the Creditors' Committee in their sole and absolute discretion) conference calls with the DIP ABL Agents and their professional advisors and the Creditors' Committee's professional advisors discussing and analyzing (A) the Approved Budget or the Budget Variance Reports and/or any other reports or information delivered pursuant to the DIP ABL Loan Documents, (B) the financial operations and performance of the DIP ABL Loan Parties' business, (C) the status of landlord negotiations, (D) the status of any Specified Store Closing Sales, (E) the status of the Chapter 11 Cases generally, (F) progress in achieving compliance with the Case Milestones (as defined below) and the Go Forward Plan (as defined in the DIP ABL Loan Documents) or (G) such other matters relating to the Debtors as the DIP ABL Agents or the Creditors' Committee (or either of their respective agents or advisors) shall reasonably request.

23. ***Winddown Account.*** (a) Upon the consummation of any sales of Prepetition Unencumbered Collateral, the DIP ABL Loan Parties shall (i) deposit or cause to be deposited the net aggregate cash proceeds in respect of such sales into the Winddown Account[5]

[5] The Winddown Account will be held at Bank of America, N.A. in an account ending in 8965.

until $240,000,000 in the aggregate has been funded into the Winddown Account; *provided* that in no event shall more than $240,000,000 be funded into such account, (ii) deposit or cause to be deposited any remaining net aggregate cash proceeds in respect of such sales into a cash collateral account maintained with Bank of America, N.A. (the "Senior DIP Cash Collateral Account") to secure the payment of the DIP ABL Secured Obligations (including (A) with respect to amounts available to be drawn under outstanding letters of credit issued or deemed issued under the DIP ABL Facility (or indemnities or other undertakings issued pursuant thereto in respect of such outstanding letters of credit), an amount equal to 105% of the aggregate undrawn amount of such letters of credit, and (B) with respect to Bank Products and Cash Management Services (each as defined in the DIP ABL Loan Documents) included in the DIP ABL Secured Obligations (or indemnities or other undertakings issued pursuant thereto in respect thereof), an amount of cash collateral in compliance with the terms of the DIP ABL Credit Agreement), and (iii) upon and after the indefeasible payment in full in cash of the DIP ABL Secured Obligations as described in clause (ii) above, deposit or cause to be deposited any remaining net cash proceeds in respect of such sales into a cash collateral account designated by the Junior DIP Agent (the "Junior DIP Cash Collateral Account") to secure the payment of the Junior DIP Facility, and (b) upon the consummation of any sales of Specified Collateral, the Junior DIP Obligors shall (i) as contemplated in paragraph 23(a)(i), deposit or cause to be deposited the net cash proceeds in respect of such sales into the Winddown Account until $240,000,000 in the aggregate has been funded into the Winddown Account; *provided* that in no event shall more than $240,000,000 be funded into such account, and (ii) deposit or cause to be deposited any remaining net cash proceeds in respect of such sales to the Senior DIP Cash Collateral Account and to the Junior DIP Cash Collateral Account, on a pro rata basis based on

the aggregate commitment under the Junior DIP Facility (i.e., $350,000,000) and the aggregate incremental commitments and extensions of credit under the DIP ABL Facility (i.e., $300,000,000) without giving regard to the roll-up portion thereof, until either the indefeasible payment in full in cash of the DIP ABL Secured Obligations or the Junior DIP Obligations has occurred, after which all such net cash proceeds shall be applied to the payment of the DIP ABL Secured Obligations or the Junior DIP Obligations, respectively, provided that nothing contained in this paragraph 23 shall impair or modify the Reverse Marshaling Provisions and no payments shall be made on the DIP ABL Secured Obligations or the Junior DIP Obligations in contravention thereof. "Winddown Account" shall mean a deposit account at Bank of America, N.A. that, prior to the discharge and indefeasible payment in full of all obligations under the DIP ABL Facility and the Junior DIP Facility, may only be used to pay winddown costs of the DIP ABL Loan Parties at the discretion of the DIP ABL Loan Parties following entry of this Final Order. Notwithstanding anything to the contrary in this or any other Bankruptcy Court order, the Winddown Account and the amounts on deposit in the Winddown Account shall be available and used only to satisfy winddown costs and shall not be subject to any prepetition liens or any liens or superpriority claims granted hereunder, including liens or superpriority claims granted to the DIP ABL Credit Parties or Junior DIP Credit Parties or as Adequate Protection. For the avoidance of doubt, the Winddown Account and the amounts on deposit in the Winddown Account shall not constitute DIP ABL Collateral, Junior DIP Collateral or Cash Collateral. Bank of America shall not be responsible or have any liability for, or have any duty to ascertain, inquire into, monitor or enforce, compliance with the provisions of this definition.

24. ***Modification of DIP ABL Loan Documents***. Upon no less than three (3) business days' notice to the Creditors' Committee and the Junior DIP Agent (in each case, only to

the extent reasonably practicable), the DIP ABL Loan Parties and the DIP ABL Agents are hereby authorized, subject to the DIP ABL Loan Documents, to implement, in accordance with the terms of the respective DIP ABL Loan Documents, any amendments, waivers, consents or other modifications to or under the DIP ABL Loan Documents (including any change in the number or composition of the DIP ABL Lenders) without further order of this Court unless such amendment, waiver, consent or other modification (a) restricts, limits or prohibits any payments required pursuant to paragraph 19 of this Final Order, (b) shortens the maturity or the scheduled termination date thereunder or (c) effects or relates to the Reverse Marshaling Provisions.

25. ***Right to Credit Bid.*** Subject to Section 363(k) of the Bankruptcy Code, the DIP ABL Agent and the Prepetition ABL Administrative Agent (subject to obtaining any required consent or direction of the requisite number or percentage of the Prepetition ABL Credit Parties) shall have the right to "credit bid" up to the full allowed amount of their respective claims and outstanding obligations in connection with any sale of all or any portion of the DIP ABL Collateral, including any sale occurring pursuant to section 363 of the Bankruptcy Code or included as part of a restructuring plan subject to confirmation under section 1129(b)(2)(A)(ii) of the Bankruptcy Code or a sale or disposition by a chapter 7 trustee for any Debtor under section 725 of the Bankruptcy Code or otherwise. For the avoidance of doubt, any such credit bid for all or any portion of the DIP ABL Collateral must, upon closing of such sale transaction, provide for payment in full of all senior security interests in and liens on all of the DIP ABL Collateral being acquired in such sale transaction, absent waiver by the DIP ABL Agents.

26. ***Automatic Perfection of DIP ABL Liens and Adequate Protection Liens.***

(a) This Final Order shall be sufficient and conclusive evidence of the validity, perfection, and priority of all liens granted herein, including the DIP ABL Liens and the

Adequate Protection Liens, without the necessity of filing or recording financing statements, intellectual property filings, mortgages, notices of lien or similar instruments in any jurisdiction, taking possession of or control over cash, deposit accounts, securities, or other assets, or the taking of any other action (including, for the avoidance of doubt, entering into any deposit account control agreement, customs broker agreement or freight forwarding agreement) to validate or perfect (in accordance with applicable non-bankruptcy law) the DIP ABL Liens and the Adequate Protection Liens, or to entitle the DIP ABL Credit Parties or the Prepetition Credit Parties to the priorities granted herein.

(b) Notwithstanding the foregoing, the DIP ABL Agents and the Prepetition Agents each are hereby authorized, but not required, to file or record (and to execute in the name of the applicable DIP ABL Loan Parties, as their true and lawful attorneys, with full power of substitution, to the maximum extent permitted by law) financing statements, intellectual property filings, mortgages, notices of lien or similar instruments in any jurisdiction, take possession of or control over cash, deposit accounts, securities, or other assets, or take any other action, as they may elect, in order to validate and perfect the liens and security interests granted to them hereunder. Whether or not the DIP ABL Agents or the Prepetition Agents (as applicable) choose, in their sole discretion, to file such financing statements, intellectual property filings, mortgages, notices of lien or similar instruments, take possession of or control over any cash, deposit accounts, securities, or other assets, or otherwise confirm perfection of the liens and security interests granted to the DIP ABL Control Co-Collateral Agent and the Prepetition ABL Control Co-Collateral Agent, respectively, hereunder, such liens and security interests were deemed valid, perfected, allowed, enforceable, non-avoidable and not subject to challenge,

dispute or subordination (subject to the priorities set forth in this Final Order) immediately upon entry of this Final Order, except as set forth in Paragraphs 41 and 42.

(c) The DIP ABL Loan Parties are authorized to execute and deliver promptly upon demand to the DIP ABL Agents or the Prepetition Agents all such financing statements, mortgages, control agreements, notices and other documents as the DIP ABL Agents or the Prepetition Agents may reasonably request. The DIP ABL Loan Parties are authorized to, and shall, execute and deliver to the DIP ABL Agents and the Prepetition Agents such agreements, financing statements, mortgages, instruments and other documents as the DIP ABL Agents or the Prepetition Agents may reasonably request to evidence, confirm, validate, or perfect the DIP ABL Liens or the Adequate Protection Liens; and the failure by the DIP ABL Loan Parties to execute or deliver any documentation relating to the DIP ABL Liens or the Adequate Protection Liens shall in no way affect the validity, enforceability, nonavoidability, perfection, or priority of such liens.

(d) As set forth in the DIP ABL Loan Documents, Wells Fargo Bank, National Association has appointed Bank of America, N.A., in its capacity as a DIP ABL Co-Collateral Agent, as agent to the DIP ABL Co-Collateral Agents for purposes of filing financing statements, mortgages, control agreements, notices and other documents, in connection with the perfection of a security interest in the DIP ABL Collateral which was granted for the benefit of the DIP ABL Credit Parties (the "DIP ABL Control Co-Collateral Agent"). Each Debtor acknowledges that any and all actions to be taken by the DIP ABL Co-Collateral Agents under the DIP Orders and the DIP ABL Loan Documents, may be taken individually by the DIP ABL Control Co-Collateral Agent, and all such actions shall have the full force and effect as though taken jointly by both of the DIP ABL Co-Collateral Agents. The financing statements described

above may describe the DIP ABL Collateral in the same manner as described herein, in the DIP ABL Term Sheet and in the DIP ABL Credit Agreement, or may contain an indication or description of the DIP ABL Collateral that describes such property in any other manner as the DIP ABL Control Co-Collateral Agent may determine is necessary, advisable or prudent, including describing such property as "all assets and all personal property whether now owned or hereafter acquired" of the applicable Debtor or words of similar effect.

(e) The DIP ABL Agents and the Prepetition Agents, each in their discretion, may file a photocopy of this Final Order as a financing statement or other notice of lien or similar instrument, with any filing or recording office or with any registry of deeds or similar office, and accordingly, each officer is authorized to accept and record the photocopy of this Final Order, in addition to or in lieu of such financing statements, notices of lien or similar instrument. Each Debtor is authorized to execute and deliver to the DIP ABL Agents or Prepetition Agents, mortgages in recordable form with respect to any real estate constituting DIP ABL Collateral and identified by any of the DIP ABL Agents or Prepetition Agents on terms reasonably satisfactory to the DIP ABL Agents or Prepetition Agents, as applicable.

27. ***Other Automatic Perfection Matters.*** To the extent that any Prepetition Agent is the secured party under any account control agreements, listed as loss payee or additional insured under any of the DIP ABL Loan Parties' insurance policies, or is the secured party under any Prepetition Loan Document, each of the DIP ABL Agents, for itself and on behalf of the DIP ABL Credit Parties is also deemed to be the secured party under such account control agreements, loss payee or additional insured under the DIP ABL Loan Parties' insurance policies, and the secured party under each such Prepetition Loan Document (in any such case with the same priority of liens and claims thereunder relative to the priority of (a) the DIP ABL

Liens, and (b) the Prepetition Liens and Adequate Protection Liens, in each case, as set forth in this Final Order), and shall have all rights and powers in each case attendant to that position (including rights of enforcement but subject in all respects to the terms of this Final Order), and shall act in that capacity and distribute any proceeds recovered or received in accordance with the terms of the DIP Orders and the DIP ABL Loan Documents. The Prepetition ABL Control Co-Collateral Agent or the Prepetition Second Lien Collateral Agent, as applicable, shall serve as agent for the DIP ABL Agents for purposes of perfecting the DIP ABL Agents' security interests in and liens on all DIP ABL Collateral that is of a type such that perfection of a security interest therein may be accomplished only by possession or control by a secured party. All existing blocked account agreements, deposit account control agreements, securities account control agreements, credit card acknowledgements, credit card agreements, collateral access agreements, landlord agreements, warehouse agreements, bailee agreements, carrier agency agreements, customs broker agency agreements, subordination agreements (including any intercompany subordination agreements), and freight forwarder agreements constituting Prepetition ABL Loan Documents, and all existing Uniform Commercial Code filings and all existing filings with the United States Patent and Trademark Office or the United States Copyright Office with respect to the recordation of an interest in the intellectual property of the Debtors, which in each case were filed by any Prepetition ABL Agent, shall in each case be deemed to be delivered and/or filed in connection with the DIP ABL Facility, shall constitute DIP ABL Loan Documents and shall remain in full force and effect without any further action by the Debtors, any DIP ABL Agent or any other person, and in each case the DIP ABL Agents shall be deemed to be a party thereto.

28. ***Proceeds of Subsequent Financing.*** If any of the DIP ABL Loan Parties, any trustee, any examiner with enlarged powers, any responsible officer or any other estate representative subsequently appointed in any of the Chapter 11 Cases or any Successor Case, shall obtain credit or incur debt in breach of the DIP ABL Loan Documents, at any time prior to the repayment in full in cash of all DIP ABL Secured Obligations, or all Prepetition ABL Obligations, including subsequent to the confirmation of any plan of reorganization or liquidation with respect to the DIP ABL Loan Parties and the DIP ABL Loan Parties' estates, then all cash proceeds derived from such credit or debt shall immediately be turned over to the DIP ABL Agents, or if the DIP ABL Secured Obligations have been paid in full in cash, to the Prepetition ABL Administrative Agent, to be applied in accordance with the this Final Order and the DIP ABL Loan Documents, the Prepetition ABL Loan Documents and the Prepetition Loan Documents, as applicable.

29. ***Maintenance and Disposition of DIP ABL Collateral / Cash Management.*** Until the indefeasible payment in full in cash of all DIP ABL Secured Obligations, and the termination of the obligation of the DIP ABL Credit Parties to extend credit under the DIP ABL Facility, the DIP ABL Loan Parties shall (a) maintain and insure the DIP ABL Collateral in amounts, for the risks, and by the entities as required under the DIP ABL Loan Documents, (b) except as set forth in this paragraph 29, maintain their cash management system as in effect as of the Petition Date, (i) subject to the DIP ABL Loan Documents; (ii) subject to the Cash Management Order,[6] as may be modified, with the prior written consent

[6] "Cash Management Order" means an interim or final order granting the *Motion Of Debtors For Authority To (I) Continue Using Existing Cash Management System, Bank Accounts, And Business Forms, (II) Implement Ordinary Course Changes To Cash Management System, (III) Continue Intercompany Transactions, And (IV) Provide Administrative Expense Priority For Postpetition Intercompany Claims And Related Relief.*

of the DIP ABL Agents by any order that may be entered by this Court; and (iii) in a manner which, in any event, shall be satisfactory to the DIP ABL Agents. Other than as expressly required pursuant to the DIP ABL Loan Documents, the Cash Management Order or the DIP Orders, no modifications to the DIP ABL Loan Parties' cash management system existing as of the Petition Date may be made without the prior approval of the DIP ABL Agents. Further, the DIP ABL Loan Parties shall not sell, transfer, lease, encumber or otherwise dispose of any portion of the DIP ABL Collateral or Prepetition ABL Collateral other than in the ordinary course of business without the prior consent of the DIP ABL Agents and Prepetition ABL Agents, as applicable (and no consent shall be implied, from any other action, inaction or acquiescence by the DIP ABL Agents or Prepetition ABL Agents, or from any order of this Court), except as otherwise provided for in the DIP ABL Loan Documents or otherwise ordered by the Bankruptcy Court.

30. ***Bank Products and Cash Management Services.*** From and after the date of the entry of the Interim Order, and consistent with the DIP Orders and the DIP ABL Loan Documents in all respects, any DIP ABL Cash Management/Bank Product Provider is deemed a Secured Party (as defined in the DIP ABL Loan Documents) and a DIP ABL Credit Party with respect to any claims related to such Bank Products and Cash Management Services (each as defined under the DIP ABL Loan Documents) to the extent provided for under the DIP ABL Loan Documents, and any such Bank Products and Cash Management Services shall constitute a DIP ABL Secured Obligation. From and after the date of the entry of the Interim Order, the DIP ABL Loan Parties were and continue to be authorized to request the continuation of letters of credit issued under the Prepetition LC Facility Agreement that are outstanding as of the Petition Date (but no new letters of credit), subject to and in accordance with the terms of the Prepetition

LC Facility Agreement. Claims of the Prepetition LC Facility Credit Parties under the Prepetition LC Facility Agreement shall continue to be secured by the Prepetition ABL Liens in the Prepetition ABL Collateral.

31. ***Application of Proceeds of Collateral, Payments and Collections.*** After repayment in full in cash of all DIP ABL Secured Obligations, any remaining proceeds of the DIP ABL Collateral shall be applied to the DIP ABL Loan Parties' remaining outstanding and unpaid obligations, in a manner consistent with the Bankruptcy Code and, except as may be otherwise ordered in one or more orders of this Court, in accordance with the rights and priorities set forth in the DIP Orders.

32. ***Case Milestones.*** The DIP ABL Loan Parties shall comply with the case milestones set forth in the DIP ABL Loan Documents (as may be amended from time to time in accordance with the DIP ABL Loan Documents, the "Case Milestones"). For the avoidance of doubt, the failure of the DIP ABL Loan Parties to comply with any of the Case Milestones shall (a) constitute an Event of Default under the DIP ABL Loan Documents and this Final Order; (b) subject to the expiration of the Remedies Notice Period (as defined below), result in the automatic termination of the DIP ABL Loan Parties' authority to use Cash Collateral under this Final Order; and (c) permit the DIP ABL Administrative Agent, subject to paragraph 34, to exercise the rights and remedies provided for in this Final Order and the DIP ABL Loan Documents.

33. ***Termination Event.*** (a) The occurrence of any Event of Default (as defined in the DIP ABL Loan Documents), or (b) noncompliance of the DIP ABL Loan Parties in any material respect or in a manner adverse to the DIP ABL Credit Parties with any of the

terms, provisions, conditions, covenants or obligations under the DIP Orders are each referred to herein as a "Termination Event."

34. ***Rights and Remedies Following a Termination Event.***

(a) *Termination*. Immediately upon the occurrence and during the continuation of a Termination Event, with no further action of this Court, the DIP ABL Administrative Agent may (or at the direction of the Required Lenders (as defined in the DIP ABL Loan Documents) shall), notify the DIP ABL Loan Parties, the Junior DIP Agent and the Creditors' Committee in writing that a Termination Event has occurred and is continuing (such notice, a "Termination Notice," and the date of any such notice, the "Termination Notice Date").

(b) *Notice of Termination*. Any Termination Notice shall be given by electronic mail (or other electronic means) to counsel to the Debtors, counsel to the Junior DIP Agent, counsel to the Creditors' Committee, the U.S. Trustee, and counsel to each of the Prepetition Agents. The Remedies Notice Period shall commence on the Termination Notice Date and shall expire five (5) business days after the Termination Notice Date (the "Remedies Notice Period" and the date of the expiration of the Remedies Notice Period, the "Termination Date").

(c) Without limiting the rights and remedies of the DIP ABL Agents and the other DIP ABL Credit Parties under the DIP ABL Loan Documents, the DIP ABL Administrative Agent may, at its option, and/or shall, upon the direction of the Required Lenders (as defined in the DIP ABL Loan Documents), as applicable, immediately upon the occurrence of and during the continuation of a Termination Event following the issuance of a Termination Notice, *inter alia*, without notice and unless the Bankruptcy Court orders otherwise, (a) declare, subject to expiration of the Remedies Notice Period, all obligations owing under the applicable

DIP ABL Loan Documents to be immediately due and payable, without presentment, demand, protest, or other notice of any kind, all of which are expressly waived by the DIP ABL Loan Parties, (b) declare the termination, reduction or restriction of any further commitment to extend credit to the DIP ABL Loan Parties to the extent any such commitment remains, (c) terminate the DIP ABL Facility and the applicable DIP ABL Loan Documents as to any future liability or obligation of the DIP ABL Agents, any DIP ABL Lender, or any other DIP ABL Credit Party, but without affecting any of the liens or the obligations and/or (d) declare a termination, reduction or restriction on the ability of the DIP ABL Loan Parties to use any Cash Collateral and exercise all other rights and remedies provided in the DIP ABL Loan Documents and applicable law, including to require the DIP ABL Loan Parties to cash collateralize any letters of credit outstanding under the DIP ABL Facility in accordance with the DIP ABL Loan Documents (any of the actions set forth in the foregoing (a), (b), (c) and (d), a "Termination").

(d) During the Remedies Notice Period, the DIP ABL Loan Parties shall be entitled to seek an emergency hearing with this Court for the purpose of contesting a Termination or for the contested use of Cash Collateral; *provided* that the sole issues that may be raised before the Bankruptcy Court at such emergency hearing are whether a Termination Event has occurred and/or is continuing and the contested use of Cash Collateral. During the Remedies Notice Period, the DIP ABL Loan Parties may continue to use the DIP ABL Collateral, including Cash Collateral, solely to meet payroll obligations (excluding any severance obligations) and pay expenses that the DIP ABL Agents approve as critical to keeping the DIP ABL Loan Parties' business operating in accordance with the Approved Budget, or as otherwise agreed by the DIP ABL Administrative Agent in its sole and absolute discretion and it being understood that none of the DIP ABL Credit Parties shall have any obligation to make an extension of credit under the

DIP ABL Facility, or otherwise to fund the Carve-Out Account. Upon expiration of the Remedies Notice Period, the DIP ABL Credit Parties or, upon payment in full of the DIP ABL Secured Obligations, the Prepetition ABL Credit Parties, shall be permitted to exercise all remedies set forth herein, in the DIP ABL Loan Documents or the Prepetition ABL Loan Documents, as applicable, and as otherwise available at law without further order of or application or motion to the Bankruptcy Court. Upon the occurrence and during the continuation of a Termination Event and the expiration of the Remedies Notice Period, the DIP ABL Administrative Agent, or upon payment in full of the DIP ABL Secured Obligations, the Prepetition ABL Administrative Agent, and any liquidator or other professional acting on their behalf will have the right to access and utilize, on a royalty-free basis, any trade names, trademarks, copyrights or other intellectual property and any warehouse, distribution centers, store or other locations that the DIP ABL Loan Parties have a right to occupy to the extent necessary or appropriate in order to sell, lease or otherwise dispose of any of the DIP ABL Collateral, including pursuant to any Court approved sale process. Notwithstanding the foregoing, the DIP ABL Agents' or Prepetition ABL Agents' exercise of remedies pursuant to this paragraph with respect to real property leases shall be subject to: (i) any agreement in writing between any of the DIP ABL Agents or the Prepetition ABL Agents, as applicable, and any applicable landlord, (ii) pre-existing rights of any of the DIP ABL Agents or any of the Prepetition ABL Agents, as applicable, and any applicable landlord under applicable non-bankruptcy law, (iii) consent of the applicable landlord, or (iv) further order of the Bankruptcy Court following notice and a hearing.

35. ***Modification of Automatic Stay.*** The automatic stay imposed under section 362(a) of the Bankruptcy Code is hereby modified as necessary to effectuate all of the

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terms and provisions of the DIP Orders, including to (a) permit the DIP ABL Loan Parties to grant the DIP ABL Liens, the DIP ABL Superpriority Claims, the Adequate Protection Liens and the Adequate Protection Claims; (b) permit the DIP ABL Agents, the Prepetition LC Facility Administrative Agent, or the Prepetition ABL Agents, as applicable, to take any actions permitted hereunder, including but not limited to the actions set forth in paragraph 26 hereof; and (c) authorize the DIP ABL Loan Parties to pay, and the DIP ABL Credit Parties and the Prepetition ABL Credit Parties to retain and apply, payments made in accordance with the DIP Orders and the DIP Intercreditor Agreement.

36. ***Good Faith***.

(a) *Good Faith Under Section 364 of the Bankruptcy Code*. The DIP ABL Credit Parties have acted in good faith in connection with the DIP Orders, including the negotiation and approval of the DIP Intercreditor Agreement, the Interim Junior DIP Order, the Junior DIP Loan Documents and their reliance on the DIP Orders, the Interim Junior DIP Order, the Junior DIP Loan Documents and DIP Intercreditor Agreement is in good faith. Based on the findings set forth in the DIP Orders and the record made during the Interim Hearing and the Final Hearing, and in accordance with section 364(e) of the Bankruptcy Code, in the event any or all of the provisions of the DIP Orders are hereafter modified, amended or vacated by a subsequent order of the Bankruptcy Court, or any other court, the DIP ABL Credit Parties are entitled to the protections provided in section 364(e) of the Bankruptcy Code. Any such modification, amendment or vacatur shall not affect the validity and enforceability of the DIP ABL Secured Obligations or any lien, claim or priority authorized or created thereby, the DIP Intercreditor Agreement, and/or any of the DIP ABL Documents. Any liens or claims granted to the DIP ABL Credit Parties hereunder arising prior to the effective date of any such

modification, amendment or vacatur of the DIP Orders shall be governed in all respects by the original provisions of the DIP Orders, including entitlement to all rights, remedies, privileges and benefits granted therein.

(b) *Prepetition ABL Credit Parties*. The Prepetition ABL Credit Parties have acted in good faith in connection with the DIP Orders, the Interim Junior DIP Order, the Junior DIP Loan Documents and their reliance on the DIP Orders, Interim Junior DIP Order, and Junior DIP Loan Documents is in good faith. Based on the findings set forth in the DIP Orders and the record made during the Interim Hearing and the Final Hearing, and in accordance with section 364(e) of the Bankruptcy Code, in the event any or all of the provisions of the DIP Orders are hereafter modified, amended or vacated by a subsequent order of the Bankruptcy Court, or any other court, the Prepetition ABL Credit Parties are entitled to the protections provided in section 364(e) of the Bankruptcy Code. Any such modification, amendment or vacatur shall not affect the validity and enforceability of the Prepetition ABL Obligations, or any lien, claim or priority authorized or created thereby. Any liens or claims granted to the Prepetition ABL Credit Parties hereunder arising prior to the effective date of any such modification, amendment or vacatur of the DIP Orders shall be governed in all respects by the original provisions of the DIP Orders, including entitlement to all rights, remedies, privileges and benefits granted therein.

37. ***Proofs of Claim.*** Any order entered by the Bankruptcy Court establishing a bar date for any claims (including administrative claims) in any of the Chapter 11 Cases or any Successor Case shall not apply to any DIP ABL Credit Party or any Prepetition ABL Credit Party (for purposes of this paragraph 37, in their respective capacities as such). The DIP ABL Credit Parties and the Prepetition ABL Credit Parties shall not be required to file proofs of claim

or requests for approval of administrative expenses authorized by the DIP Orders in any of the Chapter 11 Cases or any Successor Case, and the provisions of the DIP Orders relating to the amount of the DIP ABL Secured Obligations, the Prepetition ABL Obligations, the Adequate Protection Claims, the Adequate Protection Liens, any adequate protection payments pursuant to the DIP Orders, the Prepetition ABL Liens, the DIP ABL Liens and the DIP ABL Superpriority Claims shall constitute a sufficient and timely filed proof of claim and/or administrative expense request in respect of such obligations and such secured status. For the avoidance of doubt, subject to the reservation of rights set forth in paragraphs 41 and 42 hereof, the books and records of the DIP ABL Agents, the Prepetition ABL Administrative Agent and the Prepetition LC Facility Administrative Agent and each of their respective successors and assigns shall be deemed conclusive as to the amount of the claims of each such party. However, in order to facilitate the processing of claims, to ease the burden upon the Bankruptcy Court and to reduce an unnecessary expense to the DIP ABL Loan Parties' estates, the Prepetition ABL Administrative Agent is authorized, but not directed or required, to file in the Prepetition ABL Loan Parties' lead chapter 11 case, a single, master proof of claim on behalf of themselves and the Prepetition ABL Credit Parties on account of any and all of their respective claims arising under the Prepetition ABL Loan Documents, as applicable, and hereunder (the "Master Proof of Claim") against each of the Prepetition ABL Loan Parties. Upon the filing of the Master Proof of Claim against each of the Prepetition ABL Loan Parties, the Prepetition ABL Administrative Agent, and the Prepetition ABL Credit Parties, shall be deemed to have filed a proof of claim in the amount set forth opposite its name therein in respect of its claim of any type or nature whatsoever with respect to the Prepetition ABL Loan Documents, and the claim of each Prepetition ABL Credit Party (and each of its respective successors and assigns) named in the

Master Proof of Claim shall be treated as if such entity had filed a separate proof of claim in each of the applicable Chapter 11 Cases. The Prepetition ABL Administrative Agent shall not be required to identify whether any Prepetition ABL Credit Party acquired its claim from another party and the identity of any such party or to amend the Master Proof of Claim to reflect a change in the holders of the claims set forth therein or a reallocation among such holders of the claims asserted therein resulting from the transfer of all or any portion of such claims. The provisions of this paragraph 37 and the Master Proof of Claim are intended solely for the purpose of administrative convenience and shall not affect the right of any Prepetition ABL Credit Party (or its successor in interest) to vote separately on any plan proposed in any of the applicable Prepetition ABL Loan Parties' Chapter 11 Cases. The Prepetition ABL Administrative Agent shall not be required to attach any instruments, agreements or other documents evidencing the obligations owing by each of the Prepetition ABL Loan Parties to the Prepetition ABL Credit Parties, as applicable, which instruments, agreements or other documents will be provided upon written request to counsel to the Prepetition ABL Administrative Agent.

38. ***Rights of Access and Information.*** Without limiting the rights of access and information afforded the DIP ABL Credit Parties under the DIP ABL Loan Documents, the DIP ABL Loan Parties shall be, and hereby are, required to afford Representatives, agents and/or employees of the DIP ABL Agents reasonable access to: (a) the DIP ABL Loan Parties' premises, (b) knowledgeable officers of the DIP ABL Loan Parties, (c) the DIP ABL Loan Parties' books and records, and (d) the DIP ABL Loan Parties' properties and other collateral of any Debtor against whom such parties are granted DIP ABL Liens, DIP ABL Superpriority Claims, Adequate Protection Liens, or Adequate Protection Claims under the DIP Orders and the DIP ABL Loan Parties shall reasonably cooperate, consult with, and provide to such persons all

such information as may be reasonably requested. Without limiting any other rights or remedies of the DIP ABL Agents or the other DIP ABL Credit Parties, or otherwise available at law or in equity, and subject to the terms of the DIP ABL Loan Documents unless otherwise ordered by the Bankruptcy Court, upon three (3) business days' written notice to counsel to the DIP ABL Loan Parties, counsel to the Creditors' Committee and any landlord, lienholder, licensor, or other third party owner of any leased or licensed premises or intellectual property, after the expiration of the Remedies Notice Period, that a Termination Event has occurred and is continuing, the DIP ABL Agents, (i) may, unless otherwise expressly provided in any separate agreement by and between the applicable landlord or licensor and the DIP ABL Agents (the terms of which shall be reasonably acceptable to the parties thereto), enter upon any leased or licensed premises of the DIP ABL Loan Parties for the purpose of exercising any remedy with respect to DIP ABL Collateral located thereon, and (ii) shall be entitled to all of the DIP ABL Loan Parties' 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 DIP ABL Loan Parties, which are owned by or subject to a lien of any third party and which are used by DIP ABL Loan Parties in their businesses, in either the case of (i) or (ii), without interference from lienholders or licensors thereunder; *provided*, *however*, that the DIP ABL Agents (on behalf of the applicable DIP ABL Lenders) shall pay only rent and additional rent, fees, royalties, or other monetary obligations of the DIP ABL Loan Parties under, and solely as required by, the applicable lease and any amendments thereto that accrue during the period of such occupancy or actual use by DIP ABL Agents calculated on a per diem basis. Nothing herein shall require the DIP ABL Loan Parties, the DIP ABL Agents or the other DIP ABL Credit Parties, to assume any lease or license under Bankruptcy Code section 365(a) as a precondition to the rights afforded to

the DIP ABL Agents and the other DIP ABL Credit Parties herein. Notwithstanding the foregoing, the DIP ABL Agents' or Prepetition ABL Agents' exercise of remedies pursuant to this paragraph with respect to real property leases shall be subject to: (i) any agreement in writing between any of the DIP ABL Agents or the Prepetition ABL Agents, as applicable, and any applicable landlord, (ii) pre-existing rights of any of the DIP ABL Agents or any of the Prepetition ABL Agents, as applicable, and any applicable landlord under applicable non-bankruptcy law, (iii) consent of the applicable landlord, or (iv) further order of the Bankruptcy Court following notice and a hearing.

39. ***Intercompany Obligations.*** To the extent any Debtor owes any post-petition intercompany obligation or indebtedness to any other Debtor (the "Intercompany Obligations"), such Intercompany Obligations shall, subject to the reservation of rights set forth in paragraphs 41 and 42 hereof, be subordinated only to the DIP ABL Secured Obligations, until the DIP ABL Secured Obligations are indefeasibly repaid in full in cash and the Junior DIP Secured Obligations until the Junior DIP Secured Obligations are indefeasibly paid in full. All Intercompany Obligations incurred after the Petition Date ("Postpetition Intercompany Obligations") shall be secured by an automatically perfected security interest in and lien on, as to any Debtor transferee, all DIP ABL Collateral including all Prepetition ABL Collateral, Prepetition Encumbered Collateral and Prepetition Unencumbered Collateral of the transferee for the benefit of the Debtor transferor (the "Postpetition Intercompany Liens") junior to the Carve-Out, the DIP ABL Liens, the Senior Permitted Liens, the Junior DIP Liens, the Adequate Protection Liens (other than the Prepetition Second Lien Adequate Protection Liens), and the Prepetition ABL Liens, and senior to all other liens, and as to any non-Debtor transferee, liens on all assets and property of such transferee. For the avoidance of doubt, any reference in this Final

Order to payment (or repayment) in full shall mean: (a) indefeasible repayment of all outstanding obligations in full in cash, (b) termination or expiration of all commitments under any applicable DIP ABL Loan Documents or Prepetition ABL Loan Documents and termination or expiration of any other commitment of any DIP ABL Credit Parties or Prepetition ABL Credit Parties to make extensions of credit to any of the DIP ABL Loan Parties under any such DIP ABL Loan Documents or Prepetition ABL Loan Documents, respectively, (c) all letters of credit issued or deemed issued under the DIP ABL Loan Documents have been canceled or have expired, and all amounts drawn thereunder have been reimbursed in full in cash (or other arrangements with respect thereto satisfactory to the DIP ABL Agents in their sole discretion shall have been made), and (d) solely with respect to the Prepetition ABL Obligations (i) if no Challenge Proceeding has been timely and properly commenced with respect to the prepetition obligations subject to the ABL Roll Up, the expiration of the Challenge Period, or (ii) the date on which any order entered by the Bankruptcy Court in favor of the applicable secured party in such Challenge Proceeding becomes final and non-appealable. For the avoidance of doubt, any Intercompany Obligations shall be subordinated to the DIP ABL Secured Obligations, the DIP ABL Liens, the Adequate Protection Liens (other than Second Lien Facilities Adequate Protection Liens), and the Adequate Protection Claims (other than Second Lien Facilities Superpriority Claims), except to the extent set forth on the lien priority chart in paragraph 15. The Debtors shall establish reasonable procedures (reasonably acceptable to the Creditors' Committee, the DIP ABL Agents, and the Prepetition Second Lien Credit Parties) to trace cash proceeds from the sale of inventory of the Debtors and to track liabilities and payables of the Debtors, including shared services and professional fees and costs (collectively, the "Allocable Costs"), on an entity by entity basis, including without limitation between obligors and non-obligors under the Prepetition Second

Lien Obligations, and to report the same to the Creditors' Committee, the DIP ABL Agents and the Prepetition Second Lien Credit Parties on a monthly basis. At the time of repayment or treatment of the Postpetition Intercompany Obligations pursuant to a chapter 11 plan or otherwise, the Debtors, the Creditors' Committee, the DIP ABL Agents and the Prepetition Second Lien Credit Parties agree to cooperate in good faith to propose and adopt a fair and reasonable allocation of all Allocable Costs on an entity by entity basis.

40. ***Prohibited Use of DIP ABL Facility, DIP ABL Collateral, Cash Collateral, Carve-Out, etc***. Notwithstanding anything herein, prior to indefeasible payment in full in cash of the DIP ABL Secured Obligations and the Prepetition ABL Obligations, except as otherwise expressly provided in this Final Order, the DIP ABL Facility, the DIP ABL Collateral, the Cash Collateral, the Prepetition ABL Collateral, proceeds of any of the foregoing, and the Carve-Out may not be used:

(a) for the payment of interest and principal with respect to Prepetition Obligations or any other prepetition indebtedness of the Debtors, except for: (i) the Carve-Out; (ii) prepetition employee wages, benefits and related employee taxes as of the Petition Date; (iii) prepetition sales, use and real property taxes; (iv) prepetition amounts due in respect of insurance financings, premiums and brokerage fees; (v) payment of certain expenses (which expenses shall include fees and expenses of professionals) of the Prepetition ABL Agents and the Prepetition ABL Credit Parties (solely as required under the Prepetition Loan Documents); (vi) other "first day" interim and final orders permitting payment of prepetition claims, in the case of (ii) through (vi) pursuant to an order or orders of the Bankruptcy Court in form and substance acceptable to the DIP ABL Agents in their sole and absolute discretion and subject to and in accordance with the Approved Budget; (vii) the ABL Roll Up; and (viii) other indebtedness to the extent authorized by the Bankruptcy Court and set forth in the Approved Budget;

(b) subject to this Final Order in connection with or to finance in any way any action, suit, arbitration, proceeding, application, motion or other litigation or threatened litigation (including any investigation in connection with

such litigation or threatened litigation) of any type adverse to the rights, remedies, claims or defenses of the DIP ABL Credit Parties[7] or the Joint Lead Arrangers under the DIP ABL Loan Documents or the Prepetition ABL Credit Parties under the Prepetition ABL Loan Documents, and/or the DIP Orders, including for the payment of any services rendered by the professionals retained by the Debtors or the Creditors' Committee in connection with the assertion of or joinder in any claim, counterclaim, action, proceeding, application, motion, objection, defense or other contested matter, the purpose of which is to seek, or the result of which would be to obtain, any order, judgment determination, declaration or similar relief (A) invalidating, setting aside, avoiding, challenging, or subordinating, in whole or in part, the DIP ABL Secured Obligations, DIP ABL Liens, the Prepetition ABL Obligations, the Prepetition ABL Liens, the Adequate Protection Claims, the Adequate Protection Liens, or any adequate protection payments pursuant to the DIP Orders; (B) for monetary, injunctive, declarative or other affirmative relief against the DIP ABL Credit Parties or the Prepetition ABL Credit Parties or their respective collateral; or (C) preventing, hindering or otherwise delaying the exercise by the DIP ABL Credit Parties or the Prepetition ABL Credit Parties of any rights and remedies under the DIP Orders, the DIP ABL Loan Documents, the Prepetition ABL Loan Documents or applicable law, or the enforcement or realization (whether by foreclosure, credit bid, further order of the Bankruptcy Court or otherwise) by the DIP ABL Credit Parties or the Prepetition ABL Credit Parties upon any of their respective collateral;

(c) to make any payment in settlement of any claim, action or proceeding, before any court, arbitrator or other governmental body, without prior written consent of the DIP ABL Agents, unless otherwise set forth in the Approved Budget;

(d) to pay any fees or similar amounts to any person who has proposed or may propose to purchase interests of the Debtors (including so-called "topping fees," "exit fees" and other similar amounts), except as approved by the Bankruptcy Court, without prior written consent by the DIP ABL Agents, unless otherwise included in the Approved Budget;

(e) to object to, contest, or interfere with, in any way, the DIP ABL Credit Parties' or the Prepetition ABL Credit Parties' enforcement or realization upon any of the Prepetition ABL Collateral or DIP ABL Collateral once a Termination Event has occurred, except as provided for in the DIP Orders, or seek to prevent the DIP ABL Credit Parties or the Prepetition ABL Credit Parties from credit bidding in connection with any proposed plan of

[7] For the purposes of this paragraph 40 and paragraphs 41, 44, 45 and 46 the Prepetition ABL Credit Parties do not include ESL or any Non-ESL Insider, in any capacity.

reorganization or liquidation or any proposed transaction pursuant to section 363 of the Bankruptcy Code;

(f) unless in connection with the repayment in full, in cash of the DIP ABL Facility, or the Prepetition ABL Obligations, as applicable, to use or seek to use Cash Collateral while the DIP ABL Secured Obligations, the Prepetition ABL Obligations and/or any of the DIP ABL Credit Parties' commitments under the DIP ABL Loan Documents remain outstanding, without the consent of the DIP ABL Agents, or the Prepetition ABL Administrative Agent, as applicable, other than during the Remedies Notice Period during which period the DIP ABL Loan Parties may only use Cash Collateral in accordance with the terms of the DIP Orders;

(g) to use or seek to use any insurance or tax refund proceeds constituting DIP ABL Collateral or Prepetition ABL Collateral other than solely in accordance with the Approved Budget and the DIP ABL Loan Documents;

(h) to incur indebtedness other than in accordance with the Approved Budget or the DIP ABL Loan Documents without the prior consent of the DIP ABL Agent;

(i) to object to or challenge in any way the claims, liens, or interests held by or on behalf of the DIP ABL Credit Parties or the Prepetition ABL Credit Parties; provided, however, that not more than $100,000 in the aggregate of proceeds of the Carve-Out, any Cash Collateral, or any proceeds of the DIP ABL Facility, the DIP ABL Collateral or the Junior DIP Facility may be used by the Creditors' Committee for purposes of investigating such claims, liens, or interests of the Prepetition ABL Credit Parties pursuant to paragraphs 41 and 42 (but not to litigate any of the foregoing);

(j) to assert, commence, prosecute or support any claims or causes of action whatsoever, including any Avoidance Action, against the DIP ABL Credit Parties or the Prepetition ABL Credit Parties; *provided*, that the foregoing shall not be construed to prohibit the Debtors from responding to discovery requests as required in their reasonable business judgment in consultation with legal counsel;

(k) to prosecute an objection to, contest in any manner, or raise any defenses to, the validity, perfection, priority, or enforceability of, or seek equitable relief from any of the Adequate Protection Claims, the Adequate Protection Liens, any adequate protection payments pursuant to the DIP Orders or any other rights or interests of the DIP ABL Credit Parties or the Prepetition ABL Credit Parties;

(l) to prosecute an objection to, contest in any manner, or raise any defenses to, the validity, extent, amount, perfection, priority, or enforceability of, or seek equitable relief from, any of the DIP ABL Secured Obligations, the DIP ABL Liens, the Prepetition ABL Obligations, the Prepetition ABL Liens, or the DIP ABL Superpriority Claims;

(m) to sell or otherwise dispose of the DIP ABL Collateral or the Prepetition ABL Collateral other than as contemplated by the DIP ABL Loan Documents or the Prepetition ABL Loan Documents, as applicable; or

(n) for any purpose otherwise limited by the DIP ABL Loan Documents or the Prepetition ABL Loan Documents, as applicable.

41. ***Reservation of Certain Third-Party Rights and Bar of Challenges and Claims.*** The stipulations and admissions contained in the DIP Orders, including the Debtors' Stipulations, shall be binding on the Debtors and any successors thereto in all circumstances. The Debtors' Stipulations shall be binding on the Debtors' estates and each other party in interest, including the Creditors' Committee, unless, and solely to the extent that (a) any such party in interest, including any statutory or non-statutory committees appointed or formed in these Chapter 11 Cases (including the Creditors' Committee), and any other person or entity acting or seeking to act on behalf of the Debtors' estates, including any chapter 7 or chapter 11 trustee or examiner appointed or elected for any of the Debtors, with standing and requisite authority, has timely commenced an adversary proceeding (subject to the limitations set forth in paragraphs 41 and 42 hereof) against the Prepetition ABL Credit Parties or their respective subsidiaries, officers, directors, managers, principals, employees, agents, financial advisors, attorneys, accountants, investment bankers, consultants, representatives and other professionals and the respective successors and assigns thereof, in each case in their respective capacity as such (the "Representatives") in connection with any matter related to the Prepetition ABL Loan Documents or the Prepetition ABL Collateral (a "Challenge Proceeding") by no later than on or before 60 days after entry of this Final Order (the "Challenge Period"); and (b) there is a final and non-appealable order in favor of the plaintiff in any such timely filed Challenge Proceeding, *provided that* in the event that the Creditors' Committee files a motion seeking standing to pursue a Challenge Proceeding against any Prepetition Credit Party (a "Standing Motion") by no later

than on or before 60 days after entry of this Final Order, the Challenge Period shall be extended, solely with respect to the Challenge Proceeding for which the Creditors' Committee seeks standing pursuant to the Standing Motion, to the date that is the earlier of entry of a final non-appealable order (i) denying any Standing Motion or (ii) finding against the Creditors' Committee in connection with any Challenge Proceeding; *provided, further*, that the hearing with respect to the Standing Motion shall not be adjourned without the written consent of the DIP ABL Agents unless otherwise ordered by the Bankruptcy Court. Any complaint or motion for standing filed in, or in connection with, any Challenge Proceeding shall set forth with specificity the basis for such challenge or claim and include a substantially final complaint, and any challenges or claims not so specified in the standing motion shall be deemed forever waived, released, and barred and the Challenge Period shall not be extended for such challenges or claims. Upon the expiration of the Challenge Period, without the filing of a Challenge Proceeding:

(a) any and all such Challenge Proceedings and objections by any party (including any Creditors' Committee, any chapter 11 trustee, and/or any examiner or other estate representative appointed in the Chapter 11 Cases, and any chapter 7 trustee and/or examiner or other estate representative appointed in any Successor Case), shall be deemed to be forever waived, released and barred;

(b) all matters not subject to the Challenge Proceedings, including all findings, the Debtors' Stipulations, all waivers, releases, affirmations and other stipulations as to the priority, extent, and validity as to the Prepetition ABL Credit Parties' claims, liens, and interests shall be of full force and effect and forever binding upon the Debtors, the Debtors' estates and all creditors, interest holders, and other parties in interest in the Chapter 11 Cases and any Successor Case;

(c) any and all prepetition claims or causes of action against the Prepetition ABL Credit Parties, as applicable, relating in any way to the Prepetition ABL Loan Parties or the Prepetition ABL Loan Documents, as applicable, shall be forever waived and released by the Debtors, the Debtors' estates, all creditors, interest holders and other parties in interest in the Chapter 11 Cases and any Successor Case;

(d) to the extent not theretofore repaid, the Prepetition ABL Obligations shall constitute allowed claims, not subject to counterclaim, setoff, subordination, recharacterization, reduction (except as may be provided by section 506(a) of the Bankruptcy Code), defense or avoidance, for all purposes in these Chapter 11 Cases or any Successor Case;

(e) the Prepetition ABL Liens on the Prepetition ABL Collateral shall be deemed to have been, as of the Petition Date, and to be, legal, valid, binding, perfected, not subject to defense, counterclaim, recharacterization, subordination or avoidance; and

(f) the obligations under the Prepetition ABL Loan Documents and the Prepetition ABL Liens on the Prepetition ABL Collateral shall not be subject to any other or further challenge by the Debtors, the Creditors' Committee or any other party in interest, each of whom shall be enjoined from seeking to exercise the rights of the Debtors' estates, including any successor thereto (including any estate representative or a chapter 7 or chapter 11 trustee and/or examiner appointed or elected for any of the Debtors with respect thereto).

42. If any Challenge Proceeding is timely commenced, the admissions and stipulations contained in the DIP Orders, including the Debtors' Stipulations, shall nonetheless remain binding and preclusive (as provided in this paragraph) on the Debtors, the Creditors' Committee, and any other person or entity, except as to any such findings and admissions that were expressly and successfully challenged (pursuant to a final, non-appealable order) in such Challenge Proceeding. Nothing in the DIP Orders vests or confers on any Person (as defined in the Bankruptcy Code), including the Creditors' Committee, standing or authority to pursue any cause of action belonging to the Debtors or their estates, including claims and defenses with respect to the Prepetition ABL Loan Documents and the Prepetition ABL Liens on the Prepetition ABL Collateral. Notwithstanding anything to the contrary in the DIP Orders, the DIP ABL Loan Documents, or the Prepetition Loan Documents, but subject to the Approved Budget, none of the Debtors, acting through the Restructuring Committee and Restructuring Subcommittee, as applicable, of the Board of Directors of Holdings or the Creditors' Committee shall be prohibited from investigating or pursuing any estate causes of action against ESL, in any

capacity, or from funding such actions from the proceeds of the DIP ABL Facility or the Carve-Out so long as it does not affect in any manner the Prepetition ABL Credit Parties or the DIP ABL Credit Parties, in each case, other than ESL.

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

44. ***Limitations on Charging Expenses.*** No costs or expenses of administration which have been or may be incurred in the Chapter 11 Cases or any Successor Cases at any time shall be charged against the DIP ABL Credit Parties with respect to the DIP ABL Collateral or the Prepetition ABL Credit Parties with respect to the Prepetition ABL Collateral (including Cash Collateral) pursuant to sections 105 or 506(c) of the Bankruptcy Code or any other legal or equitable doctrine (including unjust enrichment) or any similar principle of law, without the prior written consent of each of the DIP ABL Agents, any DIP ABL Credit Party, and/or any Prepetition ABL Credit Party, as applicable, and no such consent shall be implied from this Final Order or any other action, inaction, or acquiescence by any such agents or lenders.

45. ***Section 552(b).*** The "equities of the case" exception under section 552(b) of the Bankruptcy Code shall not apply to the DIP ABL Credit Parties or the Prepetition ABL Credit Parties, with respect to proceeds, products, offspring or profits of any of the Prepetition ABL Collateral or the DIP ABL Collateral.

46. ***No Marshaling/Applications of Proceeds.*** Neither the DIP ABL Credit Parties nor the Prepetition ABL Credit Parties shall be subject to the equitable doctrine of

"marshaling" or any other similar doctrine with respect to any of the DIP ABL Collateral or the Prepetition ABL Collateral except as set forth herein.

47. ***Discharge Waiver.*** The Debtors expressly stipulate, and the Bankruptcy Court finds and adjudicates that, none of the DIP ABL Secured Obligations, the DIP ABL Superpriority Claims, the DIP ABL Liens, the Adequate Protection Claims, the Adequate Protection Liens, or any adequate protection payment obligations pursuant to the DIP Orders, shall be discharged by the entry of an order confirming any plan of reorganization, notwithstanding the provisions of section 1141(d) of the Bankruptcy Code, unless the DIP ABL Secured Obligations and the Adequate Protection Claims have been indefeasibly paid in full in cash on or before the effective date of a confirmed plan of reorganization.

48. ***Rights Preserved.*** Other than as expressly set forth in the DIP Orders, any other rights, claims or privileges (whether legal, equitable or otherwise) of the DIP ABL Credit Parties and the Prepetition ABL Credit Parties are preserved. Nothing contained herein shall be deemed to prevent the Prepetition ABL Credit Parties from requesting additional adequate protection or from arguing that the adequate protection granted herein does not in fact adequately protect the Prepetition ABL Credit Parties against any post-petition diminution in value of the Prepetition ABL Collateral.

49. ***Release.*** Subject to paragraphs 41 and 42 and as further set forth in the DIP ABL Loan Documents, the Debtors, on behalf of themselves and their estates (including any successor trustee or other estate representative in these Chapter 11 Cases or any Successor Case) and any party acting by, through, or under any of the Debtors or any of their estates, hereby stipulate and agree that they forever and irrevocably (a) release, discharge, waive, and acquit the current or future DIP ABL Agents and other current or future DIP ABL Credit Parties, the Joint

Lead Arrangers (as defined in the DIP ABL Loan Documents), the current or future Prepetition ABL Administrative Agent, Prepetition LC Facility Administrative Agent and other current or future Prepetition ABL Credit Parties and each of their respective participants and each of their respective affiliates, and each of their respective Representatives (each of the foregoing only in their capacity as such), from any and all claims, demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness, and obligations, rights, assertions, allegations, actions, suits, controversies, proceedings, losses, damages, injuries, attorneys' fees, costs, expenses, or judgments of every type, whether known, unknown, asserted, unasserted, suspected, unsuspected, accrued, unaccrued, fixed, contingent, pending, or threatened, including all legal and equitable theories of recovery, arising under common law, statute or regulation or by contract, of every nature and description, arising out of, in connection with, or relating to the DIP ABL Facility, the DIP ABL Loan Documents, the Prepetition ABL Facility, the Prepetition ABL Loan Documents, or the transactions and relationships contemplated hereunder or thereunder, including (i) any so-called "lender liability" or equitable subordination claims or defenses, (ii) any and all claims and causes of action arising under the Bankruptcy Code, and (iii) any and all claims and causes of action regarding the validity, priority, perfection, or avoidability of the liens or secured claims of the DIP ABL Agents, the other DIP ABL Credit Parties, the Prepetition ABL Agents, the Prepetition LC Facility Administrative Agent and the other Prepetition ABL Credit Parties; and (b) waive any and all defenses (including offsets and counterclaims of any nature or kind) as to the validity, perfection, priority, enforceability, and nonavoidability of the DIP ABL Secured Obligations, the DIP ABL Liens, the DIP ABL Superpriority Claims, the Prepetition ABL Obligations, the Prepetition ABL Liens, the Adequate Protection Claims, the Adequate Protection Liens, and any adequate protection payment

obligations pursuant to the DIP Orders, *provided, however*, that the foregoing release shall not release any claims for fraud or willful misconduct, *provided, further* that ESL or any Non-ESL Insider, in any capacity, shall not be entitled to a release pursuant to this paragraph; *provided further*, that ESL shall not be permitted to become a DIP ABL Credit Party, other than in its capacity as a Prepetition LC Facility Credit Party, without a further order of the Bankruptcy Court. For the avoidance of doubt, the foregoing release shall not constitute a release of any rights arising under the DIP ABL Loan Documents or of ESL or any Non-ESL Insider. Furthermore, any releases or exculpation required to be granted under an Acceptable Plan of Reorganization, as defined in the in the DIP ABL Credit Agreement, shall not be required to include ESL and Non-ESL Insiders.

50. ***No Waiver by Failure to Seek Relief.*** The failure or delay of the DIP ABL Credit Parties or the Prepetition Credit Parties to seek relief or otherwise exercise their respective rights and remedies under the DIP Orders, the Prepetition Loan Documents, the DIP ABL Loan Documents, or applicable law, as the case may be, shall not constitute a waiver of any of the rights hereunder, thereunder, or otherwise of the DIP ABL Credit Parties or the Prepetition Credit Parties.

51. ***Binding Effect of Final Order; Successors and Assigns.*** Immediately upon entry by the Bankruptcy Court (notwithstanding any applicable Bankruptcy Rules or any other law or rule to the contrary), the terms and provisions of this Final Order, including the liens granted herein shall, *nunc pro tunc* to the Petition Date, become valid and binding upon and inure to the benefit of the Debtors, the DIP ABL Credit Parties, and the Prepetition ABL Credit Parties, and their respective successors and assigns; *provided* that ESL shall not be permitted to have any interest in any DIP ABL Secured Obligations either directly or indirectly, including by

participation or otherwise, and any such interest shall be void *ab initio*. The DIP ABL Agents shall not be responsible or have any liability for, or have any duty to ascertain, inquire into, monitor or enforce, compliance with the provisions of this Final Order or the DIP ABL Loan Documents relating to whether a prospective transferee, assignee or participant is an eligible assignee or permitted participant, nor shall the DIP ABL Agents have any liability with respect to or arising out of any assignment or participation of loans or commitments, or disclosure of confidential information, to any person that is not an eligible assignee; *provided* that any transfer, assignment, participation or other similar transaction to a person that is not an eligible assignee shall be void *ab initio*. To the extent there is any applicable stay of this Final Order, it is hereby waived.

52. ***No Modification of Final Order.*** The Debtors irrevocably waive the right to seek and shall not seek or consent, directly or indirectly without the prior written consent of the DIP ABL Agents and the Prepetition ABL Agents, which consent of the DIP ABL Agents or Prepetition ABL Agents may be refused in their sole and absolute discretion: (a) any modification, stay, vacatur or amendment to the DIP Orders; (b) other than the Carve-Out, a priority claim for any administrative expense or unsecured claim against the Debtors to the fullest extent permitted under the Bankruptcy Code in the Chapter 11 Cases or any Successor Case, equal or superior to the Adequate Protection Claims and the DIP ABL Superpriority Claims; (c) any order allowing use of Cash Collateral constituting DIP ABL Collateral other than the DIP Orders; (d) any lien on any of the DIP ABL Collateral, with priority equal or superior to the Adequate Protection Liens (other than the Permitted Prior Liens and the DIP ABL Liens). The Debtors irrevocably waive any right to seek any amendment, modification or extension of the DIP Orders without the prior written consent of the DIP ABL Agents and the Prepetition

ABL Agents, as applicable, and no such consent shall be implied by any other action, inaction or acquiescence of the Prepetition ABL Credit Parties or the DIP ABL Credit Parties.

53. ***Final Order Controls.*** In the event of any inconsistency between the terms and conditions of the DIP ABL Loan Documents or this Final Order, the provisions of this Final Order shall govern and control.

54. ***Survival.*** The provisions of this Final Order and any actions taken pursuant hereto shall survive entry of any order which may be entered: (a) confirming any plan of reorganization in the Chapter 11 Cases; (b) converting any of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code; (c) dismissing any of the Chapter 11 Cases or any Successor Case; or (d) pursuant to which the Bankruptcy Court abstains from hearing the Chapter 11 Cases or any Successor Case. The terms and provisions of this Final Order, subject to paragraphs 41 and 42, including the claims, liens, security interests and other protections granted to the Prepetition Credit Parties and the DIP ABL Credit Parties pursuant to this Final Order and/or the Prepetition Loan Documents (other than as modified hereby), notwithstanding the entry of any such order, shall continue in the Chapter 11 Cases, in any Successor Case, or following dismissal of any of the Chapter 11 Cases or any Successor Case, and shall maintain their priority as provided by this Final Order until all DIP ABL Secured Obligations, all Prepetition ABL Obligations, all Prepetition Second Lien Obligations, all Adequate Protection Claims, and any adequate protection payment obligations pursuant to this Final Order, have been paid in full.

55. ***Preservation of Rights Granted Under this Final Order***.

(a) Except as expressly provided herein or in the DIP ABL Loan Documents, no claim (to the fullest extent permitted under the Bankruptcy Code) or lien having a

priority senior to or *pari passu* with that granted by the DIP Orders to the DIP ABL Credit Parties shall be granted while any portion of the DIP ABL Secured Obligations remain outstanding, and the DIP ABL Liens shall not be subject to or junior to any lien or security interest that is avoided and preserved for the benefit of the Debtors' estates under section 551 of the Bankruptcy Code or subordinate to or made *pari passu* with any other lien or security interest, whether under section 364(d) of the Bankruptcy Code or otherwise.

(b) Unless all DIP ABL Secured Obligations and Prepetition ABL Obligations shall have been indefeasibly paid in full in cash, the Debtors shall not seek, and it shall constitute an Event of Default under the DIP ABL Loan Documents and shall terminate the right of the DIP ABL Loan Parties to use Cash Collateral if any of the Debtors seek, or if there is entered (i) any stay, vacatur, rescission, modification, amendment, or extension of the Interim Order or this Final Order without the prior written consent of the DIP ABL Agents, and no such consent shall be implied by any other action, inaction or acquiescence by the DIP ABL Agents; (ii) an order converting any of these Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code or dismissing any of these Chapter 11 Cases; (iii) [reserved]; or (iv) any other order granting adequate protection or authorizing the use of Cash Collateral without the prior written consent of the DIP ABL Agents and the Prepetition ABL Agents, and no such consent shall be implied by any other action, inaction, or acquiescence by any of the DIP ABL Agents and the Prepetition ABL Agents. If an order dismissing or converting any of these Chapter 11 Cases under section 1112 of the Bankruptcy Code or otherwise is at any time entered this Court shall retain jurisdiction, to the extent it has jurisdiction, notwithstanding such dismissal or conversion, for the purposes of enforcing the claims, liens and security interests referred to paragraph 54.

(c) If any or all of the provisions of the DIP Orders are hereafter reversed, modified, vacated or stayed or any order is entered dismissing any of the Chapter 11 Cases or converting any of these Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code, such reversal, stay, modification, vacatur, conversion, or dismissal shall not affect (i) the validity, priority or enforceability of any DIP ABL Secured Obligations, the Adequate Protection Claims, or any adequate protection payment obligations pursuant to the DIP Orders incurred prior to the actual receipt of written notice by the DIP ABL Agents or the Prepetition Agents, as applicable, of the effective date of such reversal, stay, modification or vacatur, or (ii) the validity, priority, or enforceability of the DIP ABL Liens or the Adequate Protection Liens. Notwithstanding any such reversal, stay, modification or vacatur, any use of DIP ABL Collateral and Prepetition ABL Collateral (including Cash Collateral), any DIP ABL Secured Obligations, any Adequate Protection Claims, or any adequate protection payment obligations pursuant to the DIP Orders incurred by the DIP ABL Loan Parties to the DIP ABL Agents, the other DIP ABL Credit Parties, the Prepetition ABL Agents, and/or the Prepetition ABL Credit Parties, as the case may be, prior to the actual receipt of written notice by the DIP ABL Agents and/or the Prepetition ABL Agents, as the case may be, of such reversal, stay, modification or vacatur shall be governed in all respects by the original provisions of the DIP Orders, and the DIP ABL Credit Parties and the Prepetition ABL Credit Parties shall be entitled to all of the rights, remedies, privileges and benefits granted in section 364(e) of the Bankruptcy Code, the DIP Orders, and pursuant to the DIP ABL Loan Documents with respect to all such uses of the DIP ABL Collateral (including the Cash Collateral), all DIP ABL Secured Obligations, all Adequate Protection Claims, and all adequate protection payment obligations pursuant to the DIP Orders.

56. ***Retention of Jurisdiction***. The Bankruptcy Court shall retain jurisdiction to enforce this Final Order according to its terms to the fullest extent permitted by applicable law.

Reservations of Rights

57. ***Chubb.*** For the avoidance of doubt, (i) the DIP ABL Credit Parties shall not have a security interest or lien on any collateral provided by or on behalf of the Debtors to ACE American Insurance Company and ACE Fire Underwriters Insurance Company (together, with each of their affiliates and each of their and their affiliates' successors, "Chubb"), (ii) the Debtors may not grant liens and/or security interests in such property to any other party, (iii) this Final Order does not grant the Debtors any right to use any property (or the proceeds thereof) held by Chubb as collateral to secure obligations under insurance policies and related agreements; *provided* that to the extent any such property reverts to the Debtors, such property shall be subject to the terms of this Final Order; and (iv) nothing, including the DIP ABL Credit Agreement and/or this Final Order, alters or modifies (a) the terms and conditions of any insurance policies or related agreements issued by Chubb or any notices of non-renewal related thereto; (b) Chubb's right to decline to renew any insurance policies or to decline to issue replacement insurance policies for any expiring insurance policies, or (c) the expiration of any insurance policies issued by Chubb pursuant to their terms or any notices of non-renewal related thereto.

58. ***United States of America.***

(a) In determining to make any loan under the DIP ABL Credit Agreement or in exercising any rights or remedies as and when permitted pursuant to this Final Order or the DIP ABL Loan Documents, the DIP ABL Credit Parties shall not be deemed to be in control of the operations of the Debtors or to

be acting as a "responsible person" or "owner or operator" with respect to the operation or management of the Debtors, so long as the DIP ABL Credit Parties' actions do not constitute, within the meaning of 42 U.S.C. § 9601(20)(F), actual participation in the management or operational affairs of a vessel or facility owned or operated by a Debtor, or otherwise cause liability to arise to the federal or state government or the status of responsible person or managing agent to exist under applicable law (as such terms, or any similar terms, are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq., as amended, or any similar federal or state statute).

(b) Nothing in this Final Order or the DIP ABL Loan Documents shall permit the Debtors to violate 28 U.S.C. § 959(b).

(c) As to the United States, its agencies, departments, or agents, nothing in this Final Order or the DIP ABL Loan Documents shall discharge, release or otherwise preclude any valid right of setoff or recoupment that any such entity may have, and the Debtors and all other parties in interest, including the DIP ABL Credit Parties, reserve all rights to challenge the validity of any such purported right of setoff or recoupment.

59. ***Setoff and Recoupment.*** Except as specifically set forth in paragraph 41(d) with respect to the Prepetition ABL Obligations, notwithstanding anything to the contrary in this Final Order, nothing herein is intended to, and shall not: (a) waive, modify, prejudice, limit or otherwise impair the right of any party to exercise rights of setoff or recoupment, if any, under the Bankruptcy Code (including, without limitation, pursuant to section 553 of the Bankruptcy Code) or any other applicable non-bankruptcy law, subject, however, to section 546(c) of the Bankruptcy Code, (b) provide any party with any greater or lesser setoff or recoupment rights, if any, than they would have under the Bankruptcy Code or any other applicable non-bankruptcy law, or eliminate the need to seek relief from the automatic stay where required before exercising any such rights, or (c) waive, modify, prejudice, limit or otherwise impair any defenses or objections of the DIP ABL Agents or any of the other DIP ABL Credit Parties, the Prepetition ABL Agents or any of the other Prepetition ABL Credit

Parties, the Debtors and any other party in interest to such setoff and recoupment rights or the exercise thereof.

60. ***Reclamation***. To the extent a seller of goods (a "Reclamation Creditor") asserts rights of reclamation pursuant to and in accordance with both section 2-702(2) of the Uniform Commercial Code (the "UCC") and section 546(c) of the Bankruptcy Code (each a "Reclamation Claim" and, collectively, the "Reclamation Claims") requesting that the Debtors return certain goods identified in the Reclamation Claims (the "Reclamation Goods"), the rights of such Reclamation Creditor (the "Reclamation Rights") in either Reclamation Goods or the proceeds thereof (the "Reclamation Proceeds") and the priority of such Reclamation Rights as against any other interest in the Reclamation Goods or the Reclamation Proceeds shall be preserved solely to the extent a Challenge Proceeding with respect to the Prepetition ABL Revolving Extensions of Credit, the Prepetition ABL Term Loans or the liens securing any of such obligations has been successfully brought in compliance with the provisions of this Final Order and determined by an order entered by the Bankruptcy Court that becomes final and non-appealable; *provided that* in no event shall any alleged Reclamation Claim or Reclamation Right be deemed or treated hereunder as a Permitted Prior Lien rather, any such alleged Reclamation Claim or Reclamation Right shall have the same rights and priority with respect to the DIP ABL Facility, DIP ABL Liens and DIP ABL Collateral as such rights and claims had with respect to the Prepetition ABL Facilities, Prepetition ABL Liens and Prepetition ABL Collateral (subject to paragraphs 41 and 42 of this Order). Notwithstanding anything herein to the contrary, nothing herein shall determine, or be deemed a determination of the validity or extent of any Reclamation Rights or Reclamation Claims and all parties rights with respect thereto are expressly reserved.

61. ***Specified Governmental Unit Assets.*** As adequate protection for the claims of the Specified Governmental Units,[8] the Debtors either will pay such claims directly or fund a segregated account (the "Specified Governmental Units Account"), in each case from the proceeds of the Store Closing Sales located in the jurisdictions subject to the authority of the Specified Governmental Units. The liens asserted by the Specified Governmental Units shall attach to the Specified Governmental Units Account in the same amount, to the same extent and with the same priority, validity and enforceability, and subject to the same defenses, as the liens the Specified Governmental Units now have against such assets of the Debtors. Further, nothing in this Final Order or any final orders with respect to post-petition financing, use of cash collateral, the closing of certain store locations or the sale of debtors' assets shall affect the priority of the ad valorem tax liens of the Specified Governmental Units, if any, which may arise during the pendency of these cases. The Specified Governmental Units Account shall be maintained solely for the purpose of providing adequate protection and shall constitute neither

[8] For purposes of this Order "Specified Governmental Units" means Allen ISD, Angelina County, Aransas Count, Atascosa County, Atlanta, Atlanta ISD, Bee County, Bexar County, Blanco CAD, Cameron County, Cleveland ISD, Cypress-Fairbanks ISD, Dallas County, Del Rio, Eagle Pass, Eagle Pass ISD, El Paso, Ellis County, Fort Bend County, Frisco, Galveston County, Grayson County, Gregg County, Harlingen, Harlingen CISD, Harris County, Hidalgo County, Hood CAD, Hopkins County, Hunt County, Irving ISD, Jasper County, Jefferson County, Jim Wells CAD, Kaufman County, Lewisville ISD, Matagorda County, McAllen, McLennan County, Montgomery County, Navarro County, Nueces County, Parker CAD, Pecos County, Pleasanton, Polk County, Rockwall CAD, San Patricio County, Smith County, Stephenville, Stephenville ISD, Sulphur Springs, Sulphur Springs ISD, Tarrant County, Tom Green CAD, Val Verde County, Van Zandt CAD, Victoria County, Wharton Co. Jr. College Dist., Wilson County, Wise CAD, Wise County, Wood County, Nolan County, City Sweetwater, Sweetwater Independent School District (ISD), Palo Pinto County, City Mineral Wells, Mineral Wells ISD, Johnson County, City Cleburne, Cleburne ISD, Arlington ISD, Crowley ISD, Eagle Mountain-Saginaw ISD, City Grapevine, Grapevine-Colleyville ISD, Richardson ISD, Carrollton-Farmers Branch ISD, City of Garland, Lubbock Central Appraisal District, Midland County, Tyler ISD, Cass County, Houston County, Mineola ISD, Nacogdoches County ISD, Austin County Appraisal District, Brazoria County Tax Office, Brazoria County Municipal Utility District (MUD) #35, Brazoria County Tax Office, Fort Bend ISD, Fort Bend County Levee Improvement District #2, First Colony MUD #10, Clear Creek ISD, Galveston County Mgmt. Dist. #1, Dickinson ISD, Interstate MUD, Clear Creek ISD, Galveston County Mgmt Dist. #1, Dickinson ISD, Interstate MUD, Clear Creek ISD, City of Houston, Galena Park ISD, HC MUD 285, Clear Creek ISD, City of Houston, Galena Park ISD, Spring Branch ISD, Spring ISD, Alief ISD, Tomball ISD, City of Tomball, Midtown Mgmt District, City of Jasper, City of Cleveland, Bay City ISD, Kerr County, Kendall County, Fayette County, Maverick County, Uvalde County, Weslaco City, Weslaco ISD, Randall County Tax Office, Potter County Tax Office, Gray County Tax Office, Garland ISD, Humble ISD, Harris County MUD 109, and Maricopa County Treasurer.

the allowance of the claims of the Specified Governmental Units, nor a floor or cap on the amounts the Specified Governmental Units may be entitled to receive. All parties' rights to object to the priority, validity, amount, and extent of the claims and liens asserted by the Specified Governmental Units are fully preserved. Funds in the Specified Governmental Units Account may be distributed upon agreement between the Specified Governmental Units and the Debtors, with the consent of the DIP ABL Administrative Agent, or by subsequent order of the Bankruptcy Court, duly noticed to the Specified Governmental Units.

62. ***Consignment Merchandise*** To the extent of any conflict between paragraphs 36 through 41 of the *Final Order Approving (I) Procedures For Store Closing Sales And (II) Assumption Of Liquidation Consulting Agreement* [Docket No. 876] (the "GOB Order") and this Final Order, paragraphs 36 through 41 of the GOB Order shall control.

63. ***American Greetings Corporation.*** Nothing in this Final Order shall affect or impair (i) the rights of American Greetings Corporation and its affiliates ("AG") in and to certain greetings cards and related products sold by AG to the Debtors on a scan-based method of sale (the "AG Products"), (ii) AG's rights in the proceeds of the AG Products (the "AG Proceeds"), (iii) AG's claims against the Debtors, the DIP ABL Lenders, or any other party relating to the AG Products, including, without limitation, AG's claims to recover the AG Proceeds, or (iv) any defenses or objections to such claims or rights that may be asserted by the Debtors, the DIP ABL Lenders or any other party in interest, all of which rights, claims, defenses and objections are hereby preserved.

64. ***School District Unit 300.*** Notwithstanding anything to the contrary contained herein, and consistent with the record of the hearing held before the Court on

November 28, 2018, all rights of Community Unit School District 300 with respect to any ongoing stayed litigation and the transactions and events referenced therein, including the right to assert a constructive trust or a senior secured lien, and all defenses or objections of the Debtors and/or any and all other parties thereto, shall be preserved, and nothing herein shall waive, modify, prejudice, limit or otherwise impair any such rights, defenses or objections as the case may be, or be deemed a determination as to the validity, priority or extent of any such rights, claims or liens (if any) and all parties' rights with respect thereto are also expressly reserved.

65. ***SHLD, Cyrus and Relator Carl Ireland.*** Notwithstanding anything to the contrary contained herein (including, but not limited to, paragraphs iv, 14, and 15 hereof), nothing herein, including the Carve-Out, shall be deemed to prime or otherwise made senior or *pari passu* to any valid, perfected and non-avoidable security interests or liens held by (i) SHLD Lendco, LLC or Cyrus Capital Partners, L.P. under the IP/Ground Lease Term Loan, or (ii) Relator Carl Ireland, Administrator of the Estate of James Garbe, and the other parties to the Garbe settlement agreement sharing in that security interest with Garbe (such security interests and liens the "Specified Security Interests"). All parties' rights to object to the priority, validity, amount, and extent of the Specified Security Interests and the claims secured thereby (and all objections and defenses of the holders of the Specified Security Interests) are hereby fully preserved. All rights and remedies of the Debtors in respect of the Specified Security Interests, including, but not limited to, the right to seek to surcharge and to seek to impose the remedy of marshaling (and, in each case, all objections and defenses of the holders of the Specified Security Interests) are hereby fully preserved. All rights of the holders of the Specified Security Interests to seek relief from the automatic stay of section 362 of the Bankruptcy Code, to seek adequate protection of the Specified Security Interests, and/or other permissible secured creditor rights,

including the right to object to any relief sought pursuant to the Debtors' reserved rights, are hereby fully reserved.

66. ***Clover.*** Notwithstanding anything to the contrary contained herein, all rights of Clover Technologies Group, LLC ("Clover") with respect to any proceeds remitted to the Debtors prior to the Petition Date pursuant to that certain agreement between Clover and certain of the Debtors governing the distribution and retail sales of certain inventory on a scan-based trading method of sales (as further described the objection filed by Clover under ECF No. 212) shall be preserved, and the rights of the Debtors and any other party in interest to object are also hereby preserved.

67. ***Luxottica.*** At the time of submission of this Order, the Debtors, the DIP Agents and Luxottica Retail North America, Inc. ('Luxottica") are continuing to formulate language addressing the issues raised by Luxottica's objection (ECF No. 757) (the "Luxottica Objection"). If the Debtors, the DIP Agents and Luxottica reach an agreement on that language, the Debtors will file a stipulation with the Bankruptcy Court, which stipulation shall govern to the extent of any inconsistency with this order. If the Debtors, the DIP Agents and Luxottica cannot agree on such language, the parties will request a hearing before the Bankruptcy Court. Neither the entry of this Order nor passage of time shall prejudice the Luxottica Objection in any way. In addition, neither the entry of this Order nor the passage of time shall prejudice Luxottica's right to argue that an agreement resolving the Luxottica Objection was reached, and further shall not prejudice Luxottica's ability to enforce the terms of such agreement; provided that the Debtors' and the DIP Agents' rights to object to the same shall be preserved in every respect.

Dated: November 30, 2018
White Plains, New York

/s/Robert D. Drain
Robert D. Drain
United States Bankruptcy Judge

ENTERED
04/12/2018

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

In re:	)	Chapter 11
IHEARTMEDIA, INC., *et al.*,[1]	)	Case No. 18-31274 (MI)
Debtors.	)	(Jointly Administered)
	)	**Re: Docket No. 17, 101, 317**

FINAL ORDER (I) AUTHORIZING POSTPETITION USE OF CASH COLLATERAL AND (II) GRANTING ADEQUATE PROTECTION TO PREPETITION LENDERS PURSUANT TO 11 U.S.C. §§ 105, 361, 362, 363, AND 507, BANKRUPTCY RULES 2002, 4001, AND 9014, AND LOCAL BANKRUPTCY RULES 4001-1(b) AND 4002-1

Upon the motion dated March 15, 2018 [Docket No. 17] (the "Motion")[2] of the above-captioned debtors, as debtors in possession (collectively, the "Debtors"), pursuant to sections 105, 361, 362, 363, and 507 of title 11 of the United States Code (the "Bankruptcy Code"), rules 2002, 4001, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), rules 4001-1(b) and 4002-1 of the Bankruptcy Local Rules for the Southern District of Texas (the "Bankruptcy Local Rules"), and the Procedures for Complex Chapter 11 Bankruptcy Cases (the "Complex Case Rules") promulgated by the United States Bankruptcy Court for the Southern District of Texas (the "Court") for entry of a first interim order [Docket No. 101] (the "First Interim Order"), a second interim order [Docket No. 317] (the "Second Interim Order" and

[1] Due to the large number of Debtors in these chapter 11 cases, for which joint administration has been granted, a complete list of the Debtors and the last four digits of their tax identification, registration, or like numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors' claims and noticing agent at https://cases.primeclerk.com/iheartmedia. The location of Debtor iHeartMedia, Inc.'s principal place of business and the Debtors' service address is: 20880 Stone Oak Parkway, San Antonio, Texas 78258.

[2] Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Motion or further herein, as applicable.

together with the First Interim Order, the "Interim Orders"), and a final order (this "Final Order", and, together with the Interim Orders, the "Orders"), seeking, among other things:

(a) authorization for the Debtors to use the cash collateral, as such term is defined in section 363(a) of the Bankruptcy Code, that constitutes Prepetition Collateral (as defined below) ("Cash Collateral") of: (i) TPG Specialty Lending, Inc., as administrative agent (the "ABL Agent"), for the benefit of itself and the lenders and letter of credit issuers party to the ABL Credit Agreement (as defined below) (collectively, the "ABL Lenders", and together with the ABL Agent, the "ABL Secured Parties"); (ii) Citibank N.A., as administrative agent (the "Bank Facility Agent") for the lenders (the "Bank Facility Lenders" and, together with the Bank Facility Agent, the "Bank Facility Secured Parties") party to the Term Loan Credit Facility (as defined below), and (iii) Deutsche Bank Trust Company Americas as collateral agent (the "Notes Collateral Agent" for the benefit of the trustees (the "Notes Trustees") and, together with the ABL Agent and the Bank Facility Agent, the "Prepetition Administrative Parties") and the noteholders (the "Noteholders" and, together with the Notes Trustees and the Notes Collateral Agent, the "Notes Secured Parties" and, together with the ABL Secured Parties and the Bank Facility Secured Parties, collectively, the "Prepetition Secured Parties") party to the indentures for the PGNs (as defined below), on a final basis and subject to the terms of this Final Order during the period following the date of commencement of these Chapter 11 Cases (as defined below);

(b) the granting of adequate protection to (i) the ABL Agent, for itself and for the benefit of the ABL Secured Parties, (ii) the Bank Facility Agent, for itself and for the benefit of the Bank Facility Lenders, and (iii) the Notes Collateral Agent and the Notes Trustees, for themselves and for the benefit of the Notes Secured Parties, pursuant to sections 361, 362 and 363(e) of the Bankruptcy Code, for any diminution in the value of their interests in the Prepetition Collateral resulting from the Debtors' use of the Cash Collateral, and the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code;

(c) the modification of the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to permit the Debtors and the Prepetition Administrative Parties and the Prepetition Secured Parties to implement and effectuate the terms and provisions of this Final Order;

(d) except to the extent of the Carve Out (as defined below), a waiver of (i) the Debtors' ability to surcharge against the Prepetition Collateral or the Adequate Protection Collateral (as defined below) pursuant to section 506(c) of the Bankruptcy Code or any other applicable principle of equity or law; and (ii) the applicability of the "equities of the case" exception under section 552(b) of the Bankruptcy Code; and

(e) the waiver of any applicable stay (including under Bankruptcy Rule 6004) and provision for immediate effectiveness of this Final Order;

and due and appropriate notice of the Motion, the relief requested therein, and the Interim Hearings (as defined below) having been served by the Debtors on (i) the Office of the United States Trustee for the Southern District of Texas (the "U.S. Trustee"); (ii) entities listed as holding the 30 largest unsecured claims against the Debtors (on a consolidated basis); (iii) the agent for the Debtors' receivables based credit facility and counsel thereto; (iv) the agent for the Debtors' term loan credit facility and counsel thereto; (v) the indenture trustees for the Debtors' priority guarantee notes, 14.0% senior notes due 2021, 6.875% senior notes due 2018, and 7.25% senior notes due 2027; (vi) counsel to an ad hoc group of lenders under the Debtors' term loan credit facility and priority guarantee noteholders; (vii) counsel to an ad hoc group of lenders under the Debtors' term loan credit facility; (viii) counsel to the indenture trustee for the 6.875% senior notes due 2018 and 7.25% senior notes due 2027; (ix) counsel to an ad hoc group of holders of 14.0% senior notes due 2021; (x) the Office of the United States Attorney for the Southern District of Texas; (xi) the state attorneys general for states in which the Debtors conduct business; (xii) the Internal Revenue Service; (xiii) the Securities and Exchange Commission; and (xiv) any party that has requested notice pursuant to Bankruptcy Rule 2002; and it appearing that no other or further notice need be provided; and the Court having reviewed the Motion, and an initial interim hearing having been held by this Court on March 15, 2018 (the "First Interim Hearing") at which time the Debtors presented and introduced into evidence, among other things, the *Declaration of Justin Schmaltz In Support of the Debtors' Emergency Motion for Interim and Final Orders Authorizing (I) Postpetition Use of Cash Collateral, (II) Granting Adequate Protection to Prepetition Lenders Pursuant To 11 U.S.C. §§ 105, 361, 362, 363, and 507, Bankruptcy Rules 2002, 4001, and 9014, and Bankruptcy Local Rules 4001-1(b) and 4002-1, and (III) Scheduling A Final Hearing Pursuant to Bankruptcy Rule 4001(B)*, (the

"Declaration"); and a second interim hearing having been held by this Court on March 27, 2018 (the "Second Interim Hearing," and together with the First Interim Hearing, the "Interim Hearings"); and the Court having conducted a hearing for final relief on the Motion (the "Final Hearing"); and the Court having entered the First Interim Order on March 15, 2018 and the Second Interim Order on March 27, 2018, approving certain of the relief requested in the Motion on an interim basis; and the Court having reviewed the Declaration, the Motion, the other evidence adduced by the parties, the representations of counsel, and the entire record made at the Interim Hearings and Final Hearing; and it appearing to the Court that granting the relief sought in the Motion, on the terms and conditions contained herein, is necessary and essential to enable the Debtors to preserve the value of their businesses and assets, and facilitate the reorganization of the Debtors' businesses, and that such relief is fair and reasonable and in the best interests of the Debtors' estates, their creditors, and all parties in interest, and is a sound and prudent exercise of the Debtors' business judgment; and after due deliberation and consideration, and good and sufficient cause appearing therefor:

THE COURT MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:[3]

A. This Court has jurisdiction over these proceedings and the parties and property affected hereby pursuant to 28 U.S.C. §§ 1334. The Motion and proceedings in connection therewith constitute a core proceeding as defined in 28 U.S.C. §§ 157(b)(2). Venue for the Chapter 11 Cases and the proceedings on the Motion is permissible in this district pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief sought in the Motion and

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

granted in this Final Order are Sections 105, 361, 362, 363 and 507 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001, 6004 and 9014, Bankruptcy Local Rules 4001-1(b) and 4002-1, and the Complex Case Rules.

B. On March 14, 2018 (the "Petition Date"), iHeartMedia, Inc. ("iHeart") and each of the other Debtors filed a voluntary petition for relief with this Court under chapter 11 of the Bankruptcy Code (collectively, the "Chapter 11 Cases"). The Chapter 11 Cases are being jointly administered under Case No. 18-31274 (MI).

C. The Debtors are continuing in possession of their properties and are operating and managing their businesses as debtors in possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Chapter 11 Cases. On March 21, 2018, the U.S. Trustee appointed an official committee of unsecured creditors (the "Committee") in the Chapter 11 Cases [Docket No. 244].

D. Without prejudice to the rights of any other party in interest (but subject to the limitations thereon contained in paragraphs 23 and 24 below) the Debtors admit, stipulate, and agree that:

> 1. The ABL Agent, the ABL Lenders, iHeartCommunications, Inc. ("iHeartCommunications"), as Parent Borrower, the Several Subsidiary Borrowers thereto,[4] and iHeartMedia Capital I, LLC, as holdings ("Holdings") (among others) are parties to that certain Credit Agreement dated as of November 30, 2017 (as amended, restated, amended and restated, supplemented or otherwise modified prior to the commencement of these Chapter 11 Cases, the "ABL Credit Agreement"). Pursuant to that certain ABL Receivables Pledge and Security Agreement dated as of November 30, 2017 among the Grantors identified therein and the ABL Agent (the "First Lien Pledge Agreement", and together with all other documentation executed, delivered or created in connection with the First Lien Pledge Agreement, each as amended, restated, amended and restated, supplemented or otherwise modified prior to the commencement of these Chapter 11 Cases, the "First Lien Collateral Agreements"), each of the Debtors granted a

[4] The current subsidiary borrowers under the ABL Credit Agreement are: AMFM Broadcasting, Inc.; AMFM Texas Broadcasting, LP; Capstar Radio Operating Company; Christal Radio Sales, Inc.; Citicasters Co.; iHeartMedia + Entertainment, Inc.; Katz Communications, Inc.; Katz Millennium Sales & Marketing, Inc.; and Premiere Networks, Inc.

valid, binding, perfected and enforceable first-priority lien on and security interest in the Article 9 Collateral (as defined in Section 3.01 of the First Lien Pledge Agreement as of the date hereof) (the "Prepetition First Priority Liens") existing on the Petition Date (the "Prepetition Collateral") to the ABL Secured Parties. Pursuant to the ABL Credit Agreement and the First Lien Collateral Agreements (collectively, the "ABL Loan Documents"), the Debtors are jointly and severally indebted and liable to the ABL Secured Parties for all Obligations (as defined in the ABL Credit Agreement) arising under the ABL Loan Documents and (i) such Obligations are legal, valid, binding and enforceable against the Debtors and (ii) constitute "allowed claims" within the meaning of section 502 of the Bankruptcy Code (the "ABL Indebtedness"). The Debtors are in default under the ABL Loan Documents. As of the Petition Date, there were no security interests or liens on the Prepetition Collateral other than as permitted by the ABL Loan Documents.

2. The Bank Facility Agent, the Bank Facility Lenders, iHeartCommunications, and Holdings, are parties to that certain Credit Agreement dated as of May 13, 2008, as Amended and Restated as of February 23, 2011, and as amended by Amendment No. 1 dated as of October 25, 2012, Amendment No. 2 dated as of May 31, 2013 and Amendment No. 3 dated as of December 18, 2013 (as further amended, supplemented or otherwise modified prior to the commencement of these Chapter 11 Cases, the "Term Loan Credit Facility") and the Obligations (as defined in the Term Loan Credit Facility) described therein and payable thereunder (the "Bank Facility Indebtedness"). The Term Loan Credit Facility is guaranteed by Holdings and each existing and future material wholly-owned domestic restricted subsidiary of the Parent Borrower, subject to certain exceptions and secured by various security and pledge agreements.[5] Among other things, pursuant to that certain Receivables Collateral Security Agreement, dated as of February 23, 2011 (together with similar security documents entered into by any loan party and the Bank Facility Agent in respect of the Prepetition Collateral owned by such loan party and all other documentation executed in connection with any of the foregoing, each as amended, restated, supplemented or otherwise modified prior to the commencement of these Chapter 11 Cases, the "Bank Facility Collateral Agreements"), the Debtors have granted second-priority liens and security interests (the "Bank Facility Second Priority Liens") in and against the Prepetition Collateral (including, without limitation, the Cash Collateral), subject in each case to the Intercreditor Agreement (as defined herein), to the Bank Facility Agent for the benefit of the Bank Facility Secured Parties (the Term Loan Credit Facility, the Bank

[5] The current subsidiary guarantors of the Term Loan Credit Facility, the ABL Credit Agreement, and the PNG Credit Facility (as defined below) are: AMFM Broadcasting, Inc.; AMFM Broadcasting Licenses, LLC; AMFM Operating Inc.; AMFM Radio Licenses, LLC; AMFM Texas Licenses, LLC; AMFM Texas, LLC; AMFM Texas Broadcasting LP; Capstar Radio Operating Company; Capstar TX LLC; CC Broadcast Holdings, Inc.; CC Finco Holdings, LLC; CC Licenses, LLC; Christal Radio Sales, Inc.; Cine Guarantors II, Inc.; Citicasters Co.; Citicasters Licenses, Inc.; Clear Channel Broadcasting Licenses, Inc.; Clear Channel Holdings, Inc.; Clear Channel Investments, Inc.; Clear Channel Metro, LLC; Clear Channel Mexico Holdings, Inc.; Clear Channel Real Estate, LLC; Critical Mass Media, Inc.; iHeartMedia + Entertainment, Inc.; iHeartMedia Management Services, Inc.; iHM Identity, Inc.; Katz Communications, Inc.; Katz Media Group, Inc.; Katz Millennium Sales & Marketing, Inc.; Katz Net Radio Sales, Inc.; M Street Corporation; Premiere Networks, Inc.; Terrestrial RF Licensing, Inc.; TTWN Networks, LLC; and TTWN Media Networks, LLC.

Facility Collateral Agreements, and any collateral and ancillary documents executed in connection therewith, collectively, the "Bank Facility Loan Documents"). Pursuant to the Bank Facility Loan Documents, the Debtors are jointly and severally indebted and liable to the Bank Facility Secured Parties for all Obligations (as defined in the Term Loan Credit Facility) arising under the Bank Facility Loan Documents and (i) such Obligations are legal, valid, binding and enforceable against the Debtors and (ii) constitute "allowed claims" within the meaning of section 502 of the Bankruptcy Code; provided, that nothing in the Orders shall be deemed to be an admission on the part of the Debtors that the Collateral Flip (as defined in the First Day Declaration)[6] occurred and the Debtors' and the Prepetition Secured Parties' rights related to the Collateral Flip are expressly reserved.

3. The Notes Collateral Agent, Wilmington Trust FSB as trustee or successor trustee, as the case may be, iHeartCommunications, Holdings, and each of the other guarantors party thereto are parties to that certain (i) Indenture, dated as of October 25, 2012, providing for the issuance of an unlimited aggregate principal amount of 9.0% Priority Guarantee Notes Due 2019, as supplemented by that First Supplemental Indenture dated as of November 28, 2016 (as further amended, supplemented or otherwise modified prior to the commencement of these Chapter 11 Cases, the "9.0% PGN Due 2019 Facility"), (ii) Indenture, dated as of February 23, 2011, providing for the issuance of an unlimited aggregate principal amount of 9.0% Priority Guarantee Notes Due 2021, as supplemented by that First Supplemental Indenture dated as of June 14, 2011 and that Second Supplemental Indenture dated as of November 28, 2016 (as further amended, supplemented or otherwise modified prior to the commencement of these Chapter 11 Cases, the "9.0% PGN Due 2021 Facility"), and (iii) Indenture, dated as of September 10, 2014, providing for the issuance of an unlimited aggregate principal amount of 9.0% Priority Guarantee Notes Due 2022, as supplemented by that First Supplemental Indenture dated as of September 29, 2014 and that Second Supplemental Indenture dated as of November 28, 2016 (as further amended, supplemented or otherwise modified prior to the commencement of these Chapter 11 Cases, the "9.0% PGN Due 2022 Facility"). The Notes Collateral Agent, UMB Bank, National Association as successor trustee, iHeartCommunications and Holdings and each of the other guarantors party thereto are parties to that certain Indenture, dated as of February 28, 2013, providing for the issuance of an unlimited aggregate principal amount of 11.25% Priority Guarantee Notes Due 2019, as supplemented by that First Supplemental Indenture dated as of November 28, 2016 and that Second Supplemental Indenture dated as of February 7, 2017 (as further amended, supplemented or otherwise modified prior to the commencement of these Chapter 11 Cases, the "11.25% PGN Due 2019 Facility"). The Notes Collateral Agent, U.S. Bank National Association as trustee, iHeartCommunications and Holdings and each of the other guarantors party thereto are parties to that certain Indenture, dated as of February 26, 2015, providing for the issuance of an unlimited aggregate principal amount of 10.625% Priority Guarantee Notes Due 2023, as supplemented by that First Supplemental Indenture dated as of November 28,

[6] The *Declaration of Brian Coleman, Senior Vice President and Treasurer of iHeartMedia, Inc., in Support of the Chapter 11 Petitions and First Day Motions*, (the "First Day Declaration").

2016 (as further amended, supplemented or otherwise modified prior to the commencement of these Chapter 11 Cases, the "10.625% PGN Due 2023 Facility"; together with the 9.0% PGN Due 2021 Facility, 9.0% PGN Due 2019 Facility, 11.25% PGN Due 2019 Facility, 9.0% PGN Due 2022 Facility and 10.625% PGN Due 2023 Facility, the "PGN Facility"). The PGN Facility is guaranteed by iHeartCommunications and each of its existing and future material wholly-owned domestic restricted subsidiaries, subject to certain exceptions, and secured by various security and pledge agreements. Among other things, pursuant to that certain (i) Receivables Collateral Security Agreement, dated as of February 23, 2011 (together similar security documents entered into by any grantor and the Notes Collateral Agent in respect of the Prepetition Collateral owned by such grantor and all other documentation executed in connection with any of the foregoing, each as amended, restated, supplemented or otherwise modified prior to the commencement of these Chapter 11 Cases, the "9.0% PGN Due 2021 Collateral Agreements"), (ii) Receivables Collateral Security Agreement, dated as of October 25, 2012 (together with any similar security documents entered into by any grantor and the Notes Collateral Agent in respect of the Prepetition Collateral owned by such grantor and all other documentation executed in connection with any of the foregoing, each as amended, restated, supplemented or otherwise modified prior to the commencement of these Chapter 11 Cases, the "9.0% PGN Due 2019 Collateral Agreements"), (iii) Receivables Collateral Security Agreement, dated as of February 28, 2013 (together with any similar security documents entered into by any grantor and the Notes Collateral Agent in respect of the Prepetition Collateral owned by such grantor and all other documentation executed in connection with any of the foregoing, each as amended, restated, supplemented or otherwise modified prior to the commencement of these Chapter 11 Cases, the "11.25% PGN Due 2019 Collateral Agreements"), (iv) Receivables Collateral Security Agreement, dated as of September 10, 2014 (together with any similar security documents entered into by any grantor and the Notes Collateral Agent in respect of the Prepetition Collateral owned by such grantor and all other documentation executed in connection with any of the foregoing, each as amended, restated, supplemented or otherwise modified prior to the commencement of these Chapter 11 Cases, the "9.0% PGN Due 2022 Collateral Agreements"), and (v) Receivables Collateral Security Agreement, dated as of February 26, 2015 (together with any similar security documents entered into by any grantor and the Notes Collateral Agent in respect of the Prepetition Collateral owned by such grantor and all other documentation executed in connection with any of the foregoing, each as amended, restated, supplemented or otherwise modified prior to the commencement of these Chapter 11 Cases, the "10.625% PGN Due 2023 Collateral Agreements"; together with the 9.0% PGN Due 2021 Collateral Agreements, 9.0% PGN Due 2019 Collateral Agreements, 11.25% PGN Due 2019 Collateral Agreements, 9.0% PGN Due 2022 Collateral Agreements and 10.625% PGN Due 2023 Collateral Agreements, the "PGN Collateral Documents"), the Debtors have granted second-priority liens and security interests (the "PGN Facility Second Priority Liens" and together with the Bank Facility Second Priority Liens, the "Prepetition Second Priority Liens") in and against the Prepetition Collateral (including, without limitation, the Cash Collateral), subject in each case to the Intercreditor Agreement (as defined herein), to the Notes Collateral Agent for the benefit of the Notes Secured Parties (the PGN Facility, the PGN Collateral

Agreements, and any collateral and ancillary documents executed in connection therewith, collectively, the "PGN Notes Documents"; and together with the ABL Loan Documents and the Bank Facility Loan Documents, the "Prepetition Credit Documents"), and the Obligations (as defined in the PGN Credit Facility) described therein and payable thereunder (the "PGN Indebtedness"; together with the Bank Facility Indebtedness, the "Second Lien Indebtedness"; and the Second Lien Indebtedness together with the ABL Indebtedness, the "Prepetition Indebtedness"). Pursuant to the PGN Notes Documents, the Debtors are jointly and severally indebted and liable to the PGN Secured Parties for all Obligations (as defined in the PGN Credit Facility) arising under the PGN Notes Documents and (i) such Obligations are legal, valid, binding and enforceable against the Debtors and (ii) constitute "allowed claims" within the meaning of section 502 of the Bankruptcy Code; provided, that nothing in the Orders shall be deemed to be an admission on the part of the Debtors that the Collateral Flip occurred and the Debtors' and the Prepetition Secured Parties' rights related to the Collateral Flip are expressly reserved.

4. Pursuant to that certain amended and restated ABL Intercreditor Agreement, dated as of July 30, 2008, as Amended and Restated as of February 23, 2011 (as further amended, restated, amended and restated, supplemented or otherwise modified from time to time and with all supplements, joinders, and exhibits thereto, the "Intercreditor Agreement"), by and among ABL Agent (as successor to Citibank, N.A.), Bank Facility Agent, Notes Collateral Agent and the other parties thereto, with respect to the Prepetition Collateral, the Prepetition First Priority Liens have priority over and are senior in all respects to the Prepetition Second Priority Liens. The Intercreditor Agreement is a subordination agreement as referenced by section 510(a) of the Bankruptcy Code.

5. As of the Petition Date, in accordance with the terms of the ABL Loan Documents, the Debtors were each jointly and severally indebted and liable to the ABL Secured Parties for all of the ABL Indebtedness, comprised of (among other things) the Loans (as defined in the ABL Credit Agreement) made by the ABL Lenders in the aggregate principal amount of not less than $371,000,000 under the ABL Credit Agreement and not less than $66,697,782.67 in face amount of undrawn Letters of Credit (as defined in the ABL Credit Agreement) issued by the L/C Issuers (as defined in the ABL Credit Agreement), together with all accrued and unpaid interest, fees, expenses (including, without limitation, the reasonable and documented fees and expenses of the ABL Secured Parties' attorneys, consultants, accountants, experts and financial advisors required to be reimbursed by the Debtors pursuant to the ABL Credit Agreement, and including $60,000 for the reasonable and documented fees and expenses of counsel to the representative of the Revolving Credit Lenders (as defined in the ABL Credit Agreement), costs, other charges or amounts paid, incurred or accrued prior to the Petition Date (including the Prepayment Premium, as defined in the ABL Credit Agreement as of the date hereof), and other obligations incurred in connection therewith, in each case in accordance with the terms of the ABL Loan Documents, plus all interest, fees, costs and other charges allowable under section 506(b) of the Bankruptcy Code. Each of the ABL Loan Documents is valid, binding, and enforceable in accordance with its terms. The ABL Indebtedness is secured by valid, binding, properly perfected,

enforceable, non-avoidable, first-priority liens and security interests in and against the Prepetition Collateral (including, without limitation, Cash Collateral). There exists no basis upon which the Debtors can properly challenge or avoid the validity, enforceability, priority or perfection of the ABL Indebtedness or the Prepetition First Priority Liens, and the Debtors shall not assert any claim, challenge or counterclaim in respect of the ABL Indebtedness, the Prepetition First Priority Liens or the amounts paid to the ABL Secured Parties. No portion of the ABL Indebtedness, the Prepetition First Priority Liens, or any amounts paid to the ABL Secured Parties or applied to the obligations owing under the ABL Loan Documents prior to the Petition Date is subject to avoidance, subordination (whether equitable, contractual or otherwise), recharacterization, recovery, attack, offset, counterclaim, cross-claims, disallowance, impairment, recoupment, defense, challenge, objection, reduction, disgorgement, or claim (as defined in section 101(5) of the Bankruptcy Code) of any kind pursuant to the Bankruptcy Code or applicable non-bankruptcy law. As of the Petition Date, the value of the Prepetition Collateral securing the ABL Indebtedness exceeded the amount of the ABL Indebtedness, and accordingly the ABL Indebtedness constitutes allowed secured claims within the meaning of Section 506 of the Bankruptcy Code, together with accrued and unpaid and hereafter accruing interest, reasonable and documented fees (including, without limitation, attorneys' and other professionals' reasonable fees and related expenses), costs, charges and contingent indemnification obligations arising under or related to the ABL Loan Documents.

6. All cash proceeds of the Prepetition Collateral and the Adequate Protection Collateral, including all such cash proceeds of such Prepetition Collateral or Adequate Protection Collateral held at any time and from time to time in any of the Debtors' banking, checking or other deposit accounts with financial institutions (in each case, other than trust, escrow and custodial funds held as of the Petition Date in properly established trust, escrow and custodial accounts), are and will be Cash Collateral of the Prepetition Secured Parties within the meaning of section 363(a) of the Bankruptcy Code.

7. As of the Petition Date, in accordance with the terms of the Bank Facility Loan Documents, the Debtors were each jointly and severally indebted and liable to the Bank Facility Secured Parties for all of the Bank Facility Indebtedness. Each of the Bank Facility Loan Documents is valid, binding, and enforceable in accordance with its terms. The Bank Facility Indebtedness is secured by valid, binding, properly perfected, enforceable, non-avoidable, second-priority liens and security interests in and against the Prepetition Collateral (including, without limitation, Cash Collateral). There exists no basis upon which the Debtors can properly challenge or avoid the validity, enforceability, priority or perfection of the Bank Facility Indebtedness or the Bank Facility Second Priority Liens, and the Debtors shall not assert any claim, challenge or counterclaim in respect of the Bank Facility Indebtedness, the Bank Facility Second Priority Liens or the amounts paid to the Bank Facility Secured Parties. No portion of the Bank Facility Indebtedness, the Bank Facility Second Priority Liens, or any amounts paid to the Bank Facility Secured Parties or applied to the obligations owing under the Bank Facility Loan Documents prior to the Petition Date is subject to avoidance, subordination (whether equitable, contractual or otherwise), recharacterization, recovery, attack, offset, counterclaim, cross-claims, disallowance, impairment, recoupment, defense, challenge, objection, reduction, disgorgement, or claim (as defined in section 101(5) of the

Bankruptcy Code) of any kind pursuant to the Bankruptcy Code or applicable non-bankruptcy law; provided, that nothing in the Orders shall be deemed to be an admission on the part of the Debtors that the Collateral Flip occurred and the Debtors' and the Prepetition Secured Parties' rights related to the Collateral Flip are expressly reserved.

8. As of the Petition Date, in accordance with the terms of the PGN Notes Documents, the Debtors were each jointly and severally indebted and liable to the Notes Secured Parties for all of the PGN Indebtedness. Each of the PGN Notes Documents is valid, binding, and enforceable in accordance with its terms. The PGN Indebtedness is secured by valid, binding, properly perfected, enforceable, non-avoidable, second-priority liens and security interests in and against the Prepetition Collateral (including, without limitation, Cash Collateral). There exists no basis upon which the Debtors can properly challenge or avoid the validity, enforceability, priority or perfection of the PGN Indebtedness or the PGN Facility Second Priority Liens, and the Debtors shall not assert any claim, challenge or counterclaim in respect of the PGN Indebtedness, the PGN Facility Second Priority Liens or the amounts paid to the PGN Secured Parties. No portion of the PGN Indebtedness, the PGN Facility Second Priority Liens, or any amounts paid to the PGN Secured Parties or applied to the obligations owing under the PGN Notes Documents prior to the Petition Date is subject to avoidance, subordination (whether equitable, contractual or otherwise), recharacterization, recovery, attack, offset, counterclaim, cross-claims, disallowance, impairment, recoupment, defense, challenge, objection, reduction, disgorgement, or claim (as defined in section 101(5) of the Bankruptcy Code) of any kind pursuant to the Bankruptcy Code or applicable non-bankruptcy law; provided, that nothing in the Orders shall be deemed to be an admission on the part of the Debtors that the Collateral Flip occurred and the Debtors' and the Prepetition Secured Parties' rights related to the Collateral Flip are expressly reserved.

E. Subject to paragraphs 17, 18, and 22 of this Final Order, each of the Debtors and the Debtors' estates, on its own behalf and on behalf of its past, present and future predecessors, successors, heirs, subsidiaries, and assigns hereby to the maximum extent permitted by applicable law, unconditionally, irrevocably and fully forever release, remise, acquit, relinquish, irrevocably waive and discharge each of the ABL Secured Parties, and each of their respective former, current, or future officers, employees, directors, agents, representatives, owners, members, partners, financial advisors, legal advisors, shareholders, managers, consultants, accountants, attorneys, affiliates, and predecessors in interest of and from any and all claims, demands, liabilities, responsibilities, disputes, remedies, objections, challenges, counterclaims, setoff rights, rights to subordinate, recoupment, causes of action, indebtedness and obligations,

rights, assertions, allegations, actions, suits, controversies, proceedings, losses, damages, injuries, attorneys' fees, costs, expenses, or judgments of every type, whether known, unknown, asserted, unasserted, suspected, unsuspected, accrued, unaccrued, fixed, contingent, pending, or threatened including, without limitation, all legal and equitable theories of recovery, arising under common law, statute or regulation or by contract, of every nature and description that exist on the date hereof arising out of, relating to or in connection with the Debtors or any of the ABL Loan Documents, or the transactions contemplated under such ABL Loan Documents, including, without limitation, (i) any so-called "lender liability" or equitable subordination claims or defenses, (ii) any and all claims and causes of action arising under title 11 of the United States Code, and (iii) any and all claims and causes of action regarding the validity, priority, perfection or avoidability of the liens or the claims of the ABL Secured Parties. The Debtors' acknowledgements, stipulations and releases are binding on the Debtors and their respective representatives, successors and assigns and, subject to any action timely commenced by the Committee or other party in interest before the end of the Challenge Period (as defined below), on each of the Debtors' estates, all creditors thereof and each of their respective representatives, successors and assigns, including, without limitation, any trustee or other representative appointed in the Chapter 11 Cases, whether such trustee or representative is appointed in chapter 11 or chapter 7.

F. Good cause has been shown for the entry of this Final Order. The Debtors have an ongoing need to use the Cash Collateral to, among other things, fund the orderly continuation of their businesses, maintain the confidence of their customers and vendors, pay their operating expenses, and preserve their going-concern value, consistent with the Budget (as defined below). The terms for the Debtors' use of Cash Collateral pursuant to this Final Order are fair and

reasonable, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties, and constitute reasonably equivalent value and fair consideration. The terms for the Debtors' use of Cash Collateral pursuant to this Final Order have been the subject of extensive negotiations conducted in good faith and at arm's length among the Debtors and the Prepetition Secured Parties and, pursuant to Bankruptcy Code sections 105, 361 and 363, the Prepetition Secured Parties are hereby found to be entities that have acted in "good faith" in connection with the negotiation and entry of this Final Order, and each is entitled to the protection provided under Bankruptcy Code section 363(m).

G. The Debtors have requested entry of this Final Order pursuant to Bankruptcy Rule 4001(b)(2) and (d). Absent granting the relief sought by this Final Order, the Debtors' estates could be irreparably harmed. The use of Cash Collateral in accordance with this Final Order is therefore in the best interest of the Debtors' estates, their creditors and other parties in interest.

H. The Debtors desire to use the cash, rents, income, offspring, products, proceeds and profits that constitute Cash Collateral under section 363(a) of the Bankruptcy Code of the (i) ABL Agent and other ABL Secured Parties, (ii) Bank Facility Agent and other Bank Facility Secured Parties, and (iii) the PGN Secured Parties.

I. The ABL Agent, on behalf of the ABL Secured Parties has consented to the Debtors' use of the Cash Collateral subject to the terms and conditions set forth herein and for the duration of this Final Order. Such consent is binding upon the Bank Facility Secured Parties and the Notes Secured Parties (collectively, the "Second Lien Secured Parties") pursuant to and to the extent set forth in the Intercreditor Agreement.

J. The adequate protection provided to the Prepetition Secured Parties, as set forth more fully in paragraphs 7, 8, 9, and 10 of this Final Order, for any diminution in the value of the Prepetition Secured Parties' interest in the Prepetition Collateral from and after the Petition Date from the use, sale, or lease of the Prepetition Collateral and the imposition of the automatic stay pursuant to section 362(a) of the Bankruptcy Code is consistent with and authorized by the Bankruptcy Code and is offered by the Debtors to protect such parties' interests in the Prepetition Collateral in accordance with sections 361, 362 and 363 of the Bankruptcy Code. The adequate protection provided herein and other benefits and privileges contained herein are necessary in order to (i) protect the Prepetition Secured Parties from any diminution of their interests in the value of the Prepetition Collateral and (ii) obtain the foregoing consents and agreements.

K. The Debtors stipulate, and the Court finds, that in permitting the Debtors to use Cash Collateral or in taking any other actions permitted by this Final Order, none of the Prepetition Secured Parties or the Prepetition Administrative Parties shall (i) have liability to any third party or be deemed to be in control of the operation of any of the Debtors or to be acting as a "controlling person," "responsible person," or "owner" or "operator" with respect to the operation or management of any of the Debtors (as such term, or any similar terms, is used in the Internal Revenue Code, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, or any other federal or state statute) or (ii) owe any fiduciary duty to any of the Debtors, their creditors or their estates, or shall constitute or be deemed to constitute a joint venture or partnership with any of the Debtors.

L. Each of the Prepetition Secured Parties shall be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code. The "equities of the case" exception under

section 552(b) of the Bankruptcy Code shall not apply to them with respect to proceeds, product, offspring or profits with respect to any of the Prepetition Collateral.

M. Notice of the requested relief sought at the Final Hearing was provided by the Debtors to: (i) the U.S. Trustee; (ii) entities listed as holding the 30 largest unsecured claims against the Debtors (on a consolidated basis); (iii) the agent for the Debtors' receivables based credit facility and counsel thereto; (iv) the agent for the Debtors' term loan credit facility and counsel thereto; (v) the indenture trustees for the Debtors' priority guarantee notes, 14.0% senior notes due 2021, 6.875% senior notes due 2018, and 7.25% senior notes due 2027; (vi) counsel to an ad hoc group of lenders under the Debtors' term loan credit facility and priority guarantee noteholders; (vii) counsel to an ad hoc group of lenders under the Debtors' term loan credit facility; (viii) counsel to an ad hoc group of holders of 6.875% senior notes due 2018 and 7.25% senior notes due 2027; (ix) counsel to an ad hoc group of holders of 14.0% senior notes due 2021; (x) the Office of the United States Attorney for the Southern District of Texas; (xi) the state attorneys general for states in which the Debtors conduct business; (xii) the Internal Revenue Service; (xiii) the Securities and Exchange Commission; (xiv) any party that has requested notice pursuant to Bankruptcy Rule 2002; and (xv) counsel to the Committee.

N. Sufficient and adequate notice of the Motion and the hearing thereon was provided pursuant to Bankruptcy Rules 2002, 4001(b) and (d), and 9006, as required by sections 361 and 363 of the Bankruptcy Code and Local Bankruptcy Rule 4002-1. No further notice of, or hearing on, the relief sought in the Motion is necessary or required.

O. The Debtors have requested entry of this Final Order pursuant to Bankruptcy Rule 4001. The Court concludes that entry of this Final Order is in the best interests of the Debtors' estates and creditors as its implementation will, among other things, allow the Debtors

to preserve and maintain the value of their assets and businesses and enhance the Debtors' prospects for a successful reorganization.

P. On March 15, 2018, following the Interim Hearing, the Court entered the First Interim Order, which, among other things, granted the relief sought in the Motion on an interim basis, pending entry of this Final Order. Subsequently, on March 27, 2018, the Court held the Second Interim Hearing and entered the Second Interim Order, which, among other things, granted the relief sought in the Motion on an interim basis, pending entry of this Final Order. To the extent not addressed in this Final Order, the Prepetition Secured Parties shall be entitled to all of their rights, priorities, protections, and benefits under the Interim Orders.

Based upon the foregoing findings, stipulations, and conclusions, and upon the record made before the Court at the Final Hearing, and good and sufficient cause appearing therefor;

NOW, THEREFORE, IT IS HEREBY ADJUDGED AND ORDERED:

1. Motion and Disposition. The Motion is granted, subject to the terms and conditions set forth in this Final Order. The Debtors shall not use any Cash Collateral except as expressly authorized and permitted herein or by subsequent order of the Court. Any objections to the Motion with respect to the entry of this Final Order that have not been withdrawn, waived, or resolved at the Final Hearing, and (except as set forth herein) all reservations of rights included therein, are hereby denied and overruled.

2. Use of Cash Collateral. Subject to the terms and conditions of this Final Order, including the Carve Out, the Debtors are hereby authorized to use Cash Collateral during the period beginning on the Petition Date and ending on the Termination Date (as defined below)

pursuant to the following terms. Each budget provided by the Debtors to the ABL Agent will be a 13-week budget (such period, a "Budget Period").

(a) The Initial Budget. During the Budget Period commencing on the Petition Date, the Debtors are authorized to use Cash Collateral for disbursements of the type set forth in the budget attached as **Exhibit A** to the First Interim Order (which budget was approved by the ABL Agent on an unconsolidated basis and as such budgets may be modified from time to time by the Debtors, on no less than five (5) business days' advance notice to the Committee (which notice period may be waived in writing by the Committee) and with the prior written consent of the ABL Agent, not to be unreasonably withheld, the "Initial Budget"), subject in each case to any Non-Conforming Use permitted herein (as such term is defined below).

(b) Subsequent Budgets. For each subsequent Budget Period, at the end of each Testing Period (as defined below) the Debtors shall provide the ABL Agent with a proposed budget (each, a "Proposed Budget"). Upon written approval of such budget by the ABL Agent, not to be unreasonably withheld, the Debtors shall be authorized to use Cash Collateral for disbursements of the type set forth in such budget (which budget will be approved by the ABL Agent on an unconsolidated basis and as such budgets may be modified from time to time by the Debtors with no less than five (5) business days' advance notice to the Committee (which notice period may be waived in writing by the Committee) and the prior written consent of the ABL Agent, not to be unreasonably withheld, and together with the Initial Budget, the "Budget"), subject in each case to any Non-Conforming Use permitted herein.

3. Liquidity Compliance. The Debtors shall at all times maintain Consolidated Liquidity (as defined below) of not less than: (x) $30,000,000 until the end of the fourth full week after the date of entry of the First Interim Order, (y) $40,000,000 commencing on the first day of the fifth full week after the date of entry of the First Interim Order until the end of the eighth full week after the date of entry of the First Interim Order, and (z) $50,000,000 at any time thereafter. "Consolidated Liquidity" means, on any date, the sum of (i) unrestricted cash and Cash Equivalents (as defined in the ABL Credit Agreement as of the date hereof) of the Debtors and (ii) Excess Availability (as defined below). "Excess Availability" means, as of any date of determination thereof, an amount which in any case, shall not be less than zero, and which shall be calculated as (a) the Borrowing Base as determined from time to time in accordance with the ABL Credit Agreement as of the date hereof (after giving effect to the

Reserve Block) *minus* (b) the outstanding principal amount of ABL Indebtedness outstanding on such date (excluding any Prepayment Premium), *minus* (c) for purposes of calculating Excess Availability after the months of February and March, the Post-Carve Out Trigger Notice Cap described in clause (iv) of the definition of Carve Out, *minus* (d) the amount, if any, then on deposit in the Success Fee Reserve (as defined below), or then required to be deposited into the Success Fee Reserve.

4. Non-Conforming Use of Cash Collateral. On no less than five (5) business days' advance notice to the Committee (which notice period may be waived in writing by the Committee), the ABL Agent may, in its sole discretion, agree in writing to the use of the Cash Collateral in a manner or amount which does not conform to the manner or amount, as applicable, set forth in the Budget (each such approved non-conforming use of Cash Collateral, a "Non-Conforming Use"), with such consent not to be unreasonably withheld. If no objection is interposed by the Committee during the five (5) business day notice period above and such written consent is given by the ABL Agent, the Debtors shall be authorized pursuant to this Final Order to use Cash Collateral for any such Non-Conforming Use without further Court approval, and the Prepetition Secured Parties shall be entitled to all of the protections specified in this Final Order for any such Non-Conforming Use. If an objection is interposed by the Committee during the five (5) business day notice period above, the Committee consents to having such objection heard telephonically and on shortened notice. The Debtors shall provide substantially contemporaneous notice of any Non-Conforming Use to (a) counsel for the Committee, (b) counsel to the Bank Facility Agent, (c) counsel to the Notes Collateral Agent, (d) counsel to each of the Notes Trustees, (e) Jones Day, (f) counsel to the Ad Hoc Term Lenders (as defined below), and (g) the U.S. Trustee.

5. Entitlement to Adequate Protection. The Prepetition Secured Parties are entitled, pursuant to sections 361, 362, 363(c)(2) and 363(e) of the Bankruptcy Code, to adequate protection of their interests in the Cash Collateral, solely to the extent of the aggregate postpetition diminution in value of such Prepetition Secured Party's interest in the Prepetition Collateral (including the Cash Collateral) (the "Adequate Protection Obligations"), including, without limitation, any diminution in value resulting from (a) the sale, lease or use by the Debtors of Cash Collateral, (b) the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code, or (c) the subordination of the Prepetition Secured Parties' interests in the Prepetition Collateral to the Carve Out ("Collateral Diminution"). Cash payments from the proceeds of Prepetition Collateral made to the Prepetition Administrative Parties for the benefit of themselves or the other Prepetition Secured Parties on account of Adequate Protection Obligations under paragraphs 7, 8, and 9 shall not be deemed to result in Collateral Diminution. For the avoidance of doubt, and notwithstanding anything contained in this Final Order, any Adequate Protection Obligations shall only be assertable, on a joint and several basis, against those Debtors that had a legal interest in the Prepetition Collateral and solely on account of Collateral Diminution.

6. Carve Out.

(a) As used in this Final Order, the "Carve Out" means the sum of (i) all fees required to be paid to the Clerk of the Court and to the Office of the U.S. Trustee under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate (without regard to the notice set forth in (iii) below); (ii) all reasonable fees and expenses up to $50,000 incurred by a trustee under section 726(b) of the Bankruptcy Code (without regard to the notice set forth in (iii) below); (iii) to the extent allowed at any time, whether by interim order, procedural order, or

otherwise, (x) all unpaid fees and expenses (excluding any success or similar fees; the "Allowed Professional Fees") incurred by persons or firms retained by the Debtors pursuant to section 327, 328, or 363 of the Bankruptcy Code (the "Debtor Professionals") and the Committee pursuant to section 328 or 1103 of the Bankruptcy Code (the "Committee Professionals" and, together with the Debtor Professionals, the "Professional Persons") and (y) unpaid expenses of members of the Committee (including fees and expenses of no more than one law firm to each Committee member, not to exceed $200,000 per Committee member in the aggregate) solely to the extent incurred in connection with such Committee member's service on the Committee) ("Committee Member Expenses") at any time before or on the first business day following delivery by the ABL Agent of a Carve Out Trigger Notice (as defined below), whether allowed by the Court prior to or after delivery of a Carve Out Trigger Notice; and (iv) Allowed Professional Fees of Professional Persons and Committee Member Expenses in an aggregate amount not to exceed $20,000,000 incurred after the first business day following delivery by the ABL Agent of the Carve Out Trigger Notice, to the extent allowed at any time, whether by interim order, procedural order, or otherwise (the amounts set forth in this clause (iv) being the "Post-Carve Out Trigger Notice Cap"). For purposes of the foregoing, "Carve Out Trigger Notice" shall mean a written notice delivered by email (or other electronic means) by the ABL Agent to the Debtors, their lead restructuring counsel, counsel to the Bank Facility Agent, counsel to each of the Notes Trustees, the U.S. Trustee, and counsel to the Committee, which notice may be delivered following the occurrence and during the continuation of a Termination Event under this Final Order, stating that the Post-Carve Out Trigger Notice Cap has been invoked.

(b) Carve Out Reserves.

(i) On the day on which a Carve Out Trigger Notice is given by the ABL Agent to the Debtors, their lead restructuring counsel, counsel to the Bank Facility

Agent, the U.S. Trustee and counsel to the Committee (the "Termination Declaration Date"), the Carve Out Trigger Notice shall constitute a demand to the Debtors to utilize all cash on hand as of such date and any available cash thereafter held by any Debtor to fund a reserve in an amount equal to the then unpaid amounts of the Allowed Professional Fees and Committee Member Expenses. The Debtors shall deposit and hold such amounts in a segregated account in trust to pay such then unpaid Allowed Professional Fees and Committee Member Expenses (the "Pre-Carve Out Trigger Notice Reserve") prior to any and all other claims. On the Termination Declaration Date, after funding the Pre-Carve Out Trigger Notice Reserve, the Debtors shall utilize all remaining cash on hand as of such date and any available cash thereafter held by any Debtor to fund a reserve in an amount equal to the Post-Carve Out Trigger Notice Cap (the "Post Carve Out Trigger Notice Reserve" and, together with the Pre-Carve Out Trigger Notice Reserve, the "Carve Out Reserves") prior to any and all other claims. All funds in the Pre-Carve Out Trigger Notice Reserve shall be used first to pay the obligations set forth in clauses (i) through (iii) of the definition of Carve Out set forth above (the "Pre-Carve Out Amounts"), but not, for the avoidance of doubt, the Post-Carve Out Trigger Notice Cap, until paid in full, and then, to the extent the Pre Carve Out Trigger Notice Reserve has not been reduced to zero, to pay the ABL Agent for the benefit of the ABL Lenders, unless the ABL Indebtedness has been indefeasibly paid in full, in cash, in which case any such excess shall be paid to the Bank Facility Agent for the benefit of the Second Lien Secured Parties. All funds in the Post-Carve Out Trigger Notice Reserve shall be used first to pay the obligations set forth in clause (iv) of the definition of Carve Out set forth above (the "Post-Carve Out Amounts"), and then, to the extent the Post Carve Out Trigger Notice Reserve has not been reduced to zero, to pay the ABL Agent for the benefit of the ABL Lenders, unless the ABL Indebtedness has been indefeasibly paid in full, in cash, in which case any such excess shall be paid to the Bank Facility Agent for the benefit of the Second Lien Secured Parties. Notwithstanding anything to the contrary in the ABL Loan Documents, or the Interim Orders or this Final Order, if either of the Carve Out Reserves is not funded in full in the amounts set forth in this paragraph 6(b), then, any excess funds in one of the Carve Out Reserves following the payment of the Pre-Carve Out Amounts and Post-Carve Out Amounts, respectively, shall be used to fund the other Carve Out Reserve, up to the applicable amount set forth in this paragraph 6(b), prior to making any payments to the ABL Agent or any of the Debtors' creditors, as applicable. Notwithstanding anything to the contrary in the ABL Loan Documents or the Interim Orders or this Final Order, following delivery of a Carve Out Trigger Notice, the ABL Agent shall not sweep or foreclose on cash (including cash received as a result of the sale or other disposition of any assets) of the Debtors until the Carve Out Reserves have been fully funded, but shall have a security interest in any residual interest in the Carve Out Reserves, with any excess paid to the ABL Agent for application in accordance with the ABL Loan Documents and the Intercreditor Agreement, unless the ABL Indebtedness has been indefeasibly paid in full, in cash, in which case any such excess shall be paid to the Bank

Facility Agent for the benefit of the Second Lien Secured Parties. Further, notwithstanding anything to the contrary in the Interim Orders or this Final Order, (i) disbursements by the Debtors from the Carve Out Reserves shall not constitute Loans (as defined in the ABL Loan Documents) or increase or reduce the ABL Indebtedness, (ii) the failure of the Carve Out Reserves to satisfy in full the Allowed Professional Fees shall not affect the priority of the Carve Out, and (iii) in no way shall the Initial Budget, Budget, Carve Out, Post-Carve Out Trigger Notice Cap, Carve Out Reserves, or any of the foregoing be construed as a cap or limitation on the amount of the Allowed Professional Fees or Committee Member Expenses due and payable by the Debtors. For the avoidance of doubt and notwithstanding anything to the contrary in the Interim Orders or this Final Order or in any Prepetition Credit Document, the Carve Out shall be senior to all liens and claims.

(ii) Upon the entry of any order authorizing and approving any transaction that would result in an obligation of the Debtors to pay any success or similar fee that would benefit from the Carve-Out, the Debtors shall deposit unrestricted cash on hand to fund a reserve (the "Success Fee Reserve") in an amount equal to such success or similar fee. The Debtors shall hold such amount in a segregated account in trust to pay such success or similar fee as and when due; *provided*, that a Success Fee Reserve shall not be created if the order approving any applicable transaction includes a requirement that a reserve be created from the proceeds of such transaction to provide for the payment of success or similar fees for Professional Persons. For the avoidance of doubt, any amounts deposited into the Success Fee Reserve shall not reduce the amounts that may be required to be funded into or paid by the Carve Out Reserves. All amounts deposited in the Success Fee Reserve shall be used solely to pay such success or similar fees, provided, that to the extent the amounts on deposit in the Success Fee Reserve exceed the success or similar fees to be paid therefrom, the balance shall be paid to the ABL Agent for the benefit of the ABL Lenders, unless the ABL Indebtedness has been indefeasibly paid in full, in cash, in which case any such excess shall be paid to the Bank Facility Agent for the benefit of the Second Lien Secured Parties.

(c) Payment of Allowed Professional Fees and Committee Member Expenses Prior to the Termination Declaration Date. Any payment or reimbursement made prior to the occurrence of the Termination Declaration Date in respect of any Allowed Professional Fees and Committee Member Expenses shall not reduce the Carve Out.

(d) No Direct Obligation To Pay Allowed Professional Fees or Committee Member Expenses. None of the Prepetition Secured Parties shall be responsible for the payment or reimbursement of any fees or disbursements of any Professional Person or Committee

member incurred in connection with the Chapter 11 Cases or any Successor Cases (as defined herein) under any chapter of the Bankruptcy Code. Nothing in this Final Order or otherwise shall be construed to obligate the Prepetition Secured Parties, in any way, to pay compensation to, or to reimburse expenses of, any Professional Person or any Committee member or to guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement.

(e) Payment of Carve Out On or After the Termination Declaration Date. Any payment or reimbursement made on or after the occurrence of the Termination Declaration Date in respect of any Allowed Professional Fees and Committee Member Expenses shall permanently reduce the Carve Out on a dollar-for-dollar basis.

7. Adequate Protection for the ABL Agent and ABL Secured Parties. As adequate protection, the ABL Agent and the other ABL Secured Parties are hereby granted the following claims, liens, rights, and benefits, solely to the extent of any Collateral Diminution:

> (a) ABL Section 507(b) Claim. Subject and subordinate only to the Carve Out, the Adequate Protection Obligations due to the ABL Agent and the other ABL Secured Parties (the "ABL Adequate Protection Obligations") shall constitute allowed joint and several superpriority administrative claims against those Debtors that hold a legal interest in the Prepetition Collateral as provided in section 507(b) of the Bankruptcy Code, with priority in payment over any and all unsecured claims and administrative expense claims against such Debtors, now existing or hereafter arising in the Chapter 11 Cases, including all claims of the kinds specified or ordered pursuant to any provision of the Bankruptcy Code, including without limitation, sections 105, 326, 328, 330, 331, 503(b), 506(c) (solely to the extent permitted in this Final Order), 507(a), 507(b), 726, 1113 or 1114, and shall at all times be senior to the rights of the Debtors, and any successor trustee or any creditor, in the Chapter 11 Cases or any subsequent proceedings, including, without limitation, any chapter 7 proceeding, under the Bankruptcy Code (the "ABL 507(b) Claim"), which administrative claims shall have recourse to and be payable from all prepetition and postpetition property of such Debtors other than any Avoidance Actions and licenses granted by the Federal Communications Commission ("FCC Licenses"); provided, that such administrative claims shall have recourse to and be payable from proceeds and property recovered in respect of any Avoidance Actions and proceeds of FCC Licenses.[7]

[7] "Avoidance Actions" shall mean the estates' claims and causes of action arising under sections 544, 545, 547, 548, 549 and 550 of the Bankruptcy Code or any other state or federal law.

(b) ABL Adequate Protection Liens. Subject and subordinate only to the Carve Out, and effective as of the Petition Date, solely to the extent of the ABL Adequate Protection Obligations, and in each case perfected without the necessity of the execution by the Debtors (or recordation or other filing) of security agreements, control agreements, pledge agreements, financing statements, mortgages or other similar documents, or the possession or control by the ABL Agent of any Adequate Protection Collateral (as defined below), the ABL Agent for the benefit of the ABL Secured Parties is hereby granted valid, binding, continuing, enforceable, fully-perfected, non-avoidable first priority liens and/or replacement liens on, and security interest in, all of the Article 9 Collateral (as defined in Section 3.01 of the First Lien Pledge Agreement) now owned and hereafter arising or acquired by each of the Debtors that hold a legal interest in the Prepetition Collateral, and all accounts into which the proceeds of any Article 9 Collateral may be deposited, but in any case, excluding any "Excluded Assets" (as such term is defined in the First Lien Pledge Agreement) (the "Adequate Protection Collateral," and the liens and security interests therein, the "ABL Adequate Protection Liens"). Subject and subordinate only to the Carve Out, the ABL Adequate Protection Liens shall not be (i) subject or subordinate to any lien or security interest that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code or (ii) subordinated to or made *pari passu* with any other lien or security interest under sections 363 or 364 of the Bankruptcy Code or otherwise.

8. Additional ABL Adequate Protection. As additional adequate protection:

(a) Payments: The Debtors are authorized to pay to the ABL Agent for the ratable benefit of the ABL Secured Parties, adequate protection payments on the earlier of (i) any applicable Interest Payment Date (as defined in the ABL Credit Agreement), or (ii) the closing of any refinancing of the ABL Indebtedness, in each case, in an amount equal to all accrued and unpaid postpetition interest on account of ABL Indebtedness (accruing at the non-default interest rate), fees and costs due and payable under the ABL Credit Agreement (including, without limitation, interest on loans, breakage costs and fees that become due and payable to the ABL Secured Parties), such payments to be calculated based on the Eurocurrency Rate plus the Applicable Rate for Eurocurrency Rate Loans as specified in the ABL Credit Agreement as of the date hereof (and accruing at the non-default interest rate), with interest periods of 1 month or 3 months selected for Eurocurrency Rate Loans. The aforementioned payments shall constitute adequate protection payments in accordance with Section 361 of the Bankruptcy Code and shall not constitute or be deemed to constitute an acknowledgement by the ABL Secured Parties as to the rate of interest applicable to the ABL Indebtedness from and after the Petition Date. The ABL Secured Parties reserve any and all rights with respect to the rate of interest applicable to the ABL Indebtedness from and after the Petition Date, including with respect to the payment of default interest and the payment of interest at any other rates (including the Base Rate plus the Applicable Rate applicable to Base Rate Loans (each as specified in the ABL Credit Agreement)) in accordance with the applicable governing documents.

(b) Fees and Expenses: The Debtors are authorized to pay, on the terms set forth in this paragraph, the reasonable and documented fees, expenses and

disbursements, including, but not limited to, contractual agency fees and the reasonable fees, disbursements, and other charges of counsel (limited to those of one counsel to the ABL Agent and ABL Secured Parties (and one local counsel in each applicable jurisdiction and, in the event of any actual conflict of interest, one additional counsel to the affected parties)) and financial consultants arising prior to, on or subsequent to the Petition Date of the ABL Agent on behalf of the ABL Secured Parties under the ABL Credit Agreement (including, without limitation, the fees and expenses of Schulte Roth & Zabel LLP and Jones Walker LLP and including $60,000 for the payment of the fees and expenses of counsel to the representative of the Revolving Credit Lenders (as defined in the ABL Credit Agreement)). Within two (2) business days of the later to occur of delivery of an invoice or the entry of the First Interim Order, the Debtors shall pay in cash all invoiced reasonable and documented out-of-pocket fees, expenses, and disbursements set forth in this paragraph that have accrued as of the Petition Date. The payment of the fees, expenses and disbursements set forth in this paragraph accruing on and after the Petition Date shall be made within ten (10) business days after the receipt by the Debtors, the Committee, and the U.S. Trustee (the "Review Period") of invoices thereof (the "Invoiced Fees") (subject in all respects to applicable privilege or work product doctrines) and without the necessity of filing formal fee applications. The invoices for such Invoiced Fees shall include the total aggregate number of hours billed and a summary description of services provided and the expenses incurred by the applicable professional; provided, however, that the Debtors, the Committee, and the U.S. Trustee may preserve their right to dispute the payment of any portion of the Invoiced Fees (the "Disputed Invoiced Fees") if, within the Review Period, (i) the Debtors pay in full the Invoiced Fees, including the Disputed Invoiced Fees, and (ii) the Debtors, the Committee, or the U.S. Trustee file with the Court a motion or other pleading, on at least ten (10) days' prior written notice to the ABL Agent of any hearing on such motion or other pleading, setting forth the specific objections to the Disputed Invoiced Fees. The ABL Agent and the ABL Lenders shall not be required to comply with the U.S. Trustee fee guidelines.

(c) Reporting: The Debtors shall comply with the minimum Consolidated Liquidity covenant, the Budget reporting requirements and all reporting requirements set forth in the ABL Credit Agreement (including timely provision of Borrowing Base Certificates and certain financial statements as required under Sections 6.01 and 6.02 thereof, and giving effect to any grace periods set forth therein, and in any case, without giving effect to any events of default that have occurred on or prior to the Petition Date and/or as a result of the commencement Chapter 11 Cases), all of which reports shall be provided to the Prepetition Administrative Parties, Jones Day and PJT Partners (collectively, the "Specified Second Lien Secured Party Professionals"), the advisors to the Ad Hoc Term Lenders, Arnold & Porter Kaye Scholer LLP and Ducera Partners LLC (the "Ad Hoc Term Lender Professionals"), and the advisors to the Committee; provided, that with regard to the requirements under Section 6.01(a) thereof, the requirement to deliver annual audited financials for the fiscal year ended December 31, 2017 may instead be satisfied by delivering unaudited financial statements certified by a financial officer of iHeartCommunications as fairly presenting in all material respects, the financial condition of iHeartCommunications and its subsidiaries in accordance with GAAP, subject only to changes resulting from normal year-end adjustments and the absences of

footnotes, within one-hundred and twenty (120) days after the end of such fiscal year, and delivery of the annual audited financials at the time iHeartCommunications' Form 10-K is publicly filed (which filing shall satisfy such requirement), which audit may be qualified by the auditors that have prepared such financial statements and/or include an emphasis of matter paragraph, and provided, further that the Debtors shall not be required to comply with Section 6.01(c) thereof. In addition, and subject to appropriate confidentiality provisions, the Debtors shall provide the following additional reporting to the Prepetition Administrative Parties, the Specified Second Lien Secured Party Professionals, the Ad Hoc Term Lender Professionals, and the Committee:

(i) (A) On or before the fifth (5th) business day following the conclusion of the previous Testing Period (as defined below), (1) an updated rolling 13-week cash flow forecast of the Debtors substantially in the form of the Initial Budget, which Proposed Budget, upon written approval by the ABL Agent, such approval not to be unreasonably withheld or delayed, shall become the Budget effective as of the first day of that Testing Period, and (2) a cash report detailing daily cash balances for each deposit account of the Debtors for each day during the Testing Period, and (B) on or before each third business day of each other calendar week, (1) a report of total receipts, total disbursements and a reconciliation of actual disbursements with those set forth in the Budget for the prior two weeks and (2) a statement setting forth in reasonable detail the cash balance for each deposit account of the Debtors as of the previous Friday. "Testing Period" means, initially the period from the Petition Date to but excluding the date that is four weeks following the Petition Date and, thereafter, each subsequent four week period beginning on the date immediately following the end of the prior Testing Period (such date, the "Subsequent Start Date") to but excluding the date that is four weeks following the Subsequent Start Date;

(ii) If the Debtors' Consolidated Liquidity falls below $50,000,000 at any time, then the Debtors shall (x) promptly provide notice of such event to the Prepetition Administrative Parties and (y) thereafter provide to the Prepetition Administrative Parties each day a cash report detailing the cash balances for each deposit account of the Debtors at the end of each day until Consolidated Liquidity is above $50,000,000;

(iii) Promptly provide copies of all written reports provided by the Debtors to the Committee, the U.S. Trustee, the Second Lien Secured Parties, or any other party in interest in the Chapter 11 Cases; and

(iv) Such other reports and information as the ABL Agent may reasonably request; provided, that all reports provided to the ABL

Agent shall be provided to the other Prepetition Administrative Parties.

(d) In addition to, and without limiting, whatever rights to access the ABL Agent and ABL Secured Parties have under the ABL Credit Agreement (including the rights set forth in Section 6.10 of the ABL Credit Agreement (including, without limitation, to conduct appraisals and field exams at the expense of the Debtors in accordance with the ABL Credit Agreement), upon reasonable prior written notice, at reasonable times during normal business hours, and otherwise not to be unreasonably withheld, the Debtors shall permit representatives, advisors, agents, and employees of the ABL Agent (1) to have access to and inspect the Debtors' properties, (2) to examine the Debtors' books and records, and (3) discuss the Debtors' affairs, finances, and condition with the Debtors' officers, management, financial advisors and counsel; provided, that, this covenant shall not require the Debtors, and their respective officers, to disclose any information for which confidentiality is owed to third parties, information subject to attorney client or similar privilege or where such disclosure would not be permitted by any applicable requirements of law.

(e) The Debtors shall at all times remain in compliance with the Borrowing Base as contemplated by Sections 2.01 and 2.05(b)(ii) and (iii) of the ABL Credit Agreement, provided, that in lieu of making any mandatory prepayment otherwise required pursuant to Section 2.05(b)(ii) or (iii) of the ABL Credit Agreement, the Debtors shall, within 2 Business Days of the date of any such noncompliance, fund a segregated cash reserve account, subject to the ABL Adequate Protection Liens, in an amount equal to the difference between the principal amount of ABL Indebtedness outstanding on such date (excluding any Prepayment Premium (as defined in the ABL Credit Agreement)) and the Borrowing Base as determined from time to time in accordance with the ABL Credit Agreement; provided further that, at all times during the Chapter 11 Cases there shall be a reserve to the Borrowing Base in an amount equal to (x) $35 million, for the Borrowing Base calculated for the months of February and March of 2018 and (y) $50 million for each subsequent month (the "Reserve Block"), which Reserve Block (x) may be modified from time to time in accordance with the ABL Credit Agreement and (y) shall be in addition to any other reserves permitted to be instituted against the Borrowing Base in accordance with the ABL Credit Agreement. For the avoidance of doubt, if it is subsequently determined that the Debtors are thereafter in compliance with the Borrowing Base as determined from time to time in accordance with the ABL Credit Agreement without giving effect to the segregated cash reserve account (or that a lesser amount than the amount then on deposit is required to be in compliance) the Debtors shall be entitled to withdraw from such account the excess amount.

9. Adequate Protection for the Second Lien Secured Parties. As adequate protection, the Second Lien Secured Parties are hereby granted the following claims, liens, rights, and benefits (the "Second Lien Adequate Protection Obligations"), solely to the extent of any Collateral Diminution; provided that the Second Lien Adequate Protection Obligations shall

be determined by and not exceed the aggregate of (i) Collateral Diminution and (ii) the diminution in the value of the Second Lien Secured Parties' interest in any other property of the Debtors (the "Second Lien Prepetition Collateral") from and after the Petition Date from the use, sale, or lease of such Second Lien Prepetition Collateral and the imposition of the automatic stay pursuant to section 362(a) of the Bankruptcy Code:

(a) Second Lien Adequate Protection Claims. Subject to the reservation of rights regarding the Collateral Flip, and subject to and subordinate only to the Carve Out and the ABL Adequate Protection Obligations, the Second Lien Secured Parties are hereby granted allowed joint and several superpriority administrative claims against those Debtors that hold a legal interest in the Prepetition Collateral and the Second Lien Prepetition Collateral as provided in section 507(b) of the Bankruptcy Code, with priority in payment over any and all unsecured claims and administrative expense claims against such Debtors, now existing or hereafter arising in the Chapter 11 Cases, including all claims of the kinds specified or ordered pursuant to any provision of the Bankruptcy Code, including without limitation, sections 105, 326, 328, 330, 331, 503(b), 506(c) (solely to the extent permitted in this Final Order), 507(a), 507(b), 726, 1113 or 1114, and shall at all times be senior to the rights of the Debtors, and any successor trustee or any creditor, in the Chapter 11 Cases or any subsequent proceedings, including, without limitation, any chapter 7 proceeding, under the Bankruptcy Code (the "Second Lien 507(b) Claims", and together with the ABL 507(b) Claims, the "507(b) Claims"), which administrative claims shall have recourse to and be payable from all prepetition and postpetition property of such Debtors other than any Avoidance Actions and FCC Licenses; provided, that such administrative claims shall have recourse to and be payable from proceeds and property recovered in respect of any Avoidance Actions and proceeds of FCC Licenses.

(b) Fees and Expenses: As additional adequate protection, the Debtors are authorized to pay, on the terms set forth in this paragraph, the reasonable and documented fees, expenses and disbursements, including, but not limited to, trustee fees, contractual agency fees and the reasonable fees, disbursements, and other charges of counsel and financial consultants arising prior to, on or subsequent to the Petition Date of: (A) Cahill Gordon & Reindel LLP, and one local counsel, as counsel to the Bank Facility Agent, (B) the Ad Hoc Term Lender Professionals (Arnold & Porter Kaye Scholer LLP and Ducera Partners LLC), and one local counsel, (C) the Specified Second Lien Secured Party Professionals, and one local counsel, as advisors for certain Second Lien Secured Parties, and (D) primary counsel and one local counsel to each of Wilmington Trust, UMB Bank, and U.S. Bank; provided, however, that (i) the foregoing payments in item (D) shall be subject to a payment limit of $50,000 per month for each of Wilmington Trust, UMB Bank, and U.S. Bank (provided that any unused amounts in any month shall be applied to accrued excess fees and expenses and then be carried over into future periods), and (ii) any monthly payment under item (D) shall not, under any circumstances, constitute a limit on the aggregate amount of fees, costs, and expenses

payable to Wilmington Trust, UMB Bank, and U.S. Bank as a Notes Trustee under the applicable Prepetition Credit Documents; and, in the event of any actual conflict of interest for counsel in (B) and (C) above, one additional counsel to the affected parties. Within two (2) business days of the later to occur of delivery of an invoice or the entry of the First Interim Order, the Debtors shall pay in cash all invoiced reasonable and documented out-of-pocket fees, expenses, and disbursements set forth in this paragraph that have accrued as of the Petition Date. The payment of the fees, expenses and disbursements set forth in this paragraph accruing on and after the Petition Date shall be made within the Review Period of Invoiced Fees (subject in all respects to applicable privilege or work product doctrines) and without the necessity of filing formal fee applications. The invoices for such Invoiced Fees shall include the total aggregate number of hours billed (for the charges of counsel) and a summary description of services provided and the expenses incurred by the applicable professional; provided, however, that the Debtors, the Committee, and the U.S. Trustee may preserve their right to dispute the payment of any portion of the Disputed Invoiced Fees if, within the Review Period, (i) the Debtors pay in full the Invoiced Fees, including the Disputed Invoiced Fees, and (ii) the Debtors, the Committee, or the U.S. Trustee file with the Court a motion or other pleading, on at least ten (10) days' prior written notice to the parties listed under (A) through (D) of this subparagraph, as applicable, of any hearing on such motion or other pleading, setting forth the specific objections to the Disputed Invoiced Fees. The advisors subject to this paragraph shall not be required to comply with the U.S. Trustee fee guidelines.

10. Second Lien Adequate Protection Liens. Effective as of the Petition Date, subject to the reservation of rights regarding the Collateral Flip, and subject to and subordinate only to the Carve Out, the ABL Adequate Protection Liens, and the Prepetition First Priority Liens, solely to the extent of the Collateral Diminution, and in each case perfected without the necessity of the execution by the Debtors (or recordation or other filing) of security agreements, control agreements, pledge agreements, financing statements, mortgages or other similar documents, or the possession or control by the Second Lien Secured Parties of any Adequate Protection Collateral, the Second Lien Secured Parties are hereby granted valid, binding, continuing, enforceable, fully-perfected, non-avoidable second priority liens and/or replacement liens on, and security interest in, all of the Adequate Protection Collateral (the "Second Lien Adequate Protection Liens", and together with the ABL Adequate Protection Liens, the "Adequate Protection Liens"). Subject to the reservation of rights regarding the Collateral Flip, and subject

to and subordinate only, to the Carve Out and the ABL Adequate Protection Liens, the Second Lien Adequate Protection Liens shall not be (i) subject or subordinate to any lien or security interest that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code or (ii) subordinated to or made *pari passu* with any other lien or security interest under sections 363 or 364 of the Bankruptcy Code or otherwise.

11. Intercreditor Agreement. For the avoidance of doubt and notwithstanding any other provision of this Final Order, the priorities and rights of the ABL Adequate Protection Obligations, the ABL Adequate Protection Liens, the Second Lien Adequate Protection Obligations and the Second Lien Adequate Protection Liens shall be governed by the terms of the Intercreditor Agreement; provided that to the extent any subsequent debtor in possession financing refinances the ABL Indebtedness, the Debtors may incur obligations and grant liens in connection with such subsequent debtor in possession financing that are senior to the Second Lien Adequate Protection Obligations, senior to the Second Lien Adequate Protection Liens and the Bank Facility Second Priority Liens, and otherwise in accordance with the terms of the Intercreditor Agreement.

12. Termination. The Debtors' right to use the Cash Collateral pursuant to this Final Order shall terminate (the date of any such termination, the "Termination Date") without further notice or court proceeding on the earliest to occur of (i) the one year anniversary of the Petition Date, (ii) the effective date of a plan of reorganization; and (iii) five (5) business days (any such five business-day period of time, the "Default Notice Period") following the delivery of a written notice (any such notice, a "Default Notice") by the ABL Agent to the Debtors, the U.S. Trustee, the Bank Facility Agent, the Specified Second Lien Secured Party Professionals, the Ad Hoc Term Lender Professionals, the Notes Collateral Agent, the Notes Trustees, and the Committee

of the occurrence of any of the events set forth in any of clauses (a) through (o) below unless such occurrence is cured by the Debtors prior to the expiration of such Default Notice Period; provided, that, during the Default Notice Period, the Debtors shall be entitled to continue to use the Cash Collateral in accordance with the terms of this Final Order (the events set forth in clauses (a) through (o) below are collectively referred to herein as the "Termination Events"):

(a) Failure of the Debtors to make any payment under this Final Order to the ABL Agent or ABL Secured Parties when due;

(b) Failure of the Debtors to (i) observe or perform any of the material terms or material provisions contained herein; or (ii) comply with any other covenant or agreement specified in this Final Order (other than those described in clause (b)(i) above), including, without limitation, the terms, provisions and covenants set forth in paragraphs 8-10 of this Final Order, in each case, in any material respect;

(c) The Debtors shall grant, create, incur or suffer to exist any postpetition liens or security interests other than: (i) those granted pursuant to this Final Order and the *Stipulation and Order Granting Adequate Protection* filed by the Debtors on the Petition Date [Docket No. 15] (the "AP Stipulation"); (ii) carriers', mechanics', operator's, warehousemen's, repairmen's or other similar liens arising in the ordinary course of business for amounts outstanding as of the Petition Date, even if recorded after the Petition Date; (iii) pledges or deposits in connection with workers' compensation, unemployment insurance and other social security legislation; (iv) deposits to secure the payment of any postpetition statutory obligations, performance bonds and other obligations of a like nature incurred in the ordinary course of business; and (v) any other liens or security interests that the Debtors are permitted to incur under the ABL Loan Documents except with respect to Indebtedness for borrowed money;

(d) The Debtors' failure to comply with their obligations set forth in paragraph 3 of this Final Order;

(e) An order shall be entered reversing, adversely amending, adversely supplementing, staying, vacating or otherwise adversely modifying any material provision of this Final Order without the written consent of the ABL Agent;

(f) There shall be a breach by any Debtor of any material provisions of this Final Order, or this Final Order shall cease to be in full force and effect or shall have been reversed, modified, amended, stayed, vacated or subject to stay pending appeal, in the case of any modification or amendment;

(g) The Debtors shall create, incur or suffer any other claim which is *pari passu* with or senior to the ABL Adequate Protection Claims, other than those provided in the AP Stipulation;

(h) The Court shall have entered an order dismissing any of the Chapter 11 Cases, unless the ABL Agent has consented to such order in writing;

(i) The filing by the Debtors of a chapter 11 plan that does not provide for the indefeasible payment in full in cash of all amounts due and owing under the ABL Credit Agreement (unless a chapter 11 plan is filed that provides for alternate treatment with the written consent of the ABL Agent) on the effective date of such chapter 11 plan;

(j) The Court shall have entered an order converting any of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code, unless the ABL Agent has consented to such order in writing;

(k) The Court shall have entered an order authorizing the appointment or election of a trustee or examiner with expanded powers or any other representative with expanded powers relating to the operation of the businesses in the Chapter 11 Cases, unless consented to in writing by the ABL Agent;

(l) The Court shall have entered an order granting relief from the automatic stay imposed by section 362 of the Bankruptcy Code to any entity other than the ABL Agent or any of the ABL Secured Parties or, subject to the terms of the Intercreditor Agreement, the Second Lien Notes Trustee, Bank Facility Agent or any of the Bank Facility Secured Parties or the Notes Collateral Agent or any Noteholder, with respect to any material Prepetition Collateral or Cash Collateral without the written consent of the ABL Agent, which consent may be withheld by each in its sole discretion;

(m) A filing by any Debtor of any motion, pleading, application or adversary proceeding challenging the validity, enforceability, perfection or priority of the liens securing the ABL Indebtedness or asserting any other cause of action against and/or with respect to the ABL Indebtedness, the Prepetition Collateral, or the ABL Agent, any of the ABL Secured Parties (or if the Debtors support any such motion, pleading, application or adversary proceeding commenced by any third party);

(n) The Debtors shall use Cash Collateral in any manner inconsistent with the terms of this Final Order, including, without limitation, paragraphs 2 and 4 hereof; or

(o) The Court shall have entered an order avoiding, disallowing, subordinating or recharacterizing any claim, lien, or interest held by any Prepetition Secured Party arising under the ABL Credit Agreement, unless (i) the Debtors have sought a stay of such order within five (5) business days after the date of such issuance, and such order is stayed, reversed or vacated within ten (10) business days after the date of such issuance or (ii) the ABL Agent has consented to such order in writing.

13. Remedies upon the Termination Date. During the Default Notice Period, the Debtors shall be entitled to use Cash Collateral pursuant to the terms of this Final Order and in accordance with the Budget and the minimum Consolidated Liquidity covenant. Upon the

expiration of the Default Notice Period and the occurrence of the Termination Date, and subject in all respects to the Debtors' reservation of rights included in paragraph 19, (a) the Debtors shall immediately cease using Cash Collateral, (b) the Adequate Protection Obligations, if any, shall become due and payable, and (c) the ABL Agent and each ABL Secured Party may exercise the rights and remedies available under the ABL Loan Documents, the Intercreditor Agreement, this Final Order, or applicable law, as applicable (subject only to the Carve Out), including, without limitation, foreclosing upon and selling all or a portion of the Prepetition Collateral or Adequate Protection Collateral in order to collect and satisfy the Adequate Protection Obligations, and ABL Indebtedness, in accordance with this Final Order and the Intercreditor Agreement. The automatic stay under section 362 of the Bankruptcy Code is hereby deemed modified and vacated to the extent necessary to permit such actions; provided, that during the Default Notice Period, unless the Court orders otherwise, the automatic stay under section 362 of the Bankruptcy Code (to the extent applicable) shall remain in effect. Any delay or failure of the ABL Agent or ABL Secured Parties to exercise rights under the ABL Loan Documents or this Final Order shall not constitute a waiver of their respective rights hereunder, thereunder or otherwise, unless any such waiver is pursuant to a written instrument executed in accordance with the terms of the applicable document. In any hearing regarding any exercise of rights or remedies, the only issues that may be raised by any of the Debtors or the Committee in opposition thereto shall be (a) whether, in fact, the Termination Date shall have occurred, and (b) what is the magnitude of the Collateral Diminution, and each of the Debtors hereby waives any right to seek relief, including, without limitation, under Bankruptcy Code section 105, to the extent such relief would in any way impair or restrict the rights and remedies of the ABL Agent and ABL Secured Parties set forth in this Final Order; provided, that at any such hearing, the

burden will be on the party seeking to exercise its rights or remedies to demonstrate good cause for allowing the exercise of such rights and remedies. Without limiting the Debtors' rights under, and subject in all respects to, paragraph 19, subject and subordinate only to the Carve Out and as otherwise set forth herein, the ABL Agent shall be entitled to apply the payments or proceeds of the Prepetition Collateral and the Adequate Protection Collateral in accordance with the provisions of the ABL Loan Documents and the Intercreditor Agreement, as applicable. Notwithstanding the occurrence of the Termination Date or anything herein, all of the rights, remedies, benefits and protections provided to the ABL Agent and the ABL Secured Parties under this Final Order shall survive the Termination Date. Notwithstanding anything to the contrary in this Final Order, following termination of consensual use of Cash Collateral, (including following the occurrence and continuation of a Termination Event), nothing shall limit the Debtors' right to seek continued use of Cash Collateral on a nonconsensual basis. In any hearing related to such nonconsensual use of Cash Collateral, the Debtors, the Prepetition Administrative Parties and the Prepetition Secured Parties may raise, assert, prosecute, or otherwise advance any and all rights and arguments that could be asserted at such hearing. During and after the Default Notice Period, upon three (3) business days' prior written notice to counsel to any landlord of leased real property, the ABL Agent may, enter any leased premises of the Debtors to inspect such premises and to remove or photocopy any books and records at the leased premises without unreasonable interference from landlords; provided, that the ABL Agent shall have no rights to use or occupy the leased premises. For the avoidance of doubt, (a) all of the Debtors' obligations under any lease and any right to seek to enforce such obligations by a landlord against the Debtors shall not be affected, limited, or otherwise modified by the access

rights granted to the ABL Agent pursuant to this paragraph, and (b) any affected landlord shall retain all remedies available under section 365 of the Bankruptcy Code.

14. Limitation on Charging Expenses Against Collateral. All rights to surcharge any Prepetition Collateral or Adequate Protection Collateral under section 506(c) of the Bankruptcy Code or any other applicable principle or equity or law shall be and are hereby finally and irrevocably waived, and such waiver shall be binding upon the Debtors and all parties in interest in the Chapter 11 Cases. Neither the Prepetition Administrative Parties nor the Prepetition Secured Parties' consent to the Budget nor anything else herein shall be deemed or construed as agreement by the Prepetition Administrative Parties or the Prepetition Secured Parties to be surcharged under section 506(c) or any other provision of the Bankruptcy Code or equitable doctrine.

15. Payments Free and Clear. Subject to paragraphs 17, 22, and 23 of this Final Order, any and all payments or proceeds remitted to any Prepetition Administrative Party on behalf of the applicable Prepetition Secured Parties pursuant to the provisions of the Orders or any subsequent order of the Court shall be irrevocable, received free and clear of any claim, charge, assessment or other liability, including without limitation, any such claim or charge arising out of or based on, directly or indirectly, sections 506(c) (whether asserted or assessed by, through or on behalf of the Debtors) or 552(b) of the Bankruptcy Code, and solely in the case of payments made or proceeds remitted after the delivery of a Carve Out Trigger Notice, subject to the Carve Out in all respects.

16. Bankruptcy Code Section 552(b). The Prepetition Secured Parties shall each be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code and the "equities of the case" exception under section 552(b) of the Bankruptcy Code shall not apply to

the Prepetition Secured Parties with respect to proceeds, products, offspring or profits of any of the Prepetition Collateral.

17. All Parties' Reservation of Rights. Notwithstanding anything to the contrary in this Final Order, and subject to the Intercreditor Agreement, all parties reserve their respective rights and related remedies to argue that, to the extent that any cash payment or accrual of interest, fees and/or expenses is not allowed under section 506(b) of the Bankruptcy Code or on any other basis (including, without limitation, on account of the Debtors' use of Prepetition Collateral and/or that there has been no Collateral Diminution), such payments should be recharacterized and applied as payments of principal owed under the applicable Prepetition Credit Documents or disgorged, provided, that the applicable Prepetition Administrative Parties and Prepetition Secured Parties reserve their rights to assert defenses to any such arguments and to otherwise oppose any remedy sought with respect to such adequate protection payments.

18. Reservation of Rights of the Prepetition Administrative Parties and Prepetition Secured Parties. Notwithstanding any other provision hereof, the grant of adequate protection to the Prepetition Secured Parties pursuant hereto is without prejudice to the rights of the Prepetition Secured Parties to seek (subject to the terms of the Intercreditor Agreement) modification of the grant of adequate protection provided hereby so as to provide different or additional adequate protection with respect to Collateral Diminution from and after the Petition Date, and without prejudice to the right of the Debtors or any other party in interest to contest any such modification. Any additional adequate protection granted to the Prepetition Secured Parties shall be subject to the Intercreditor Agreement. Nothing herein shall be deemed to waive, modify, or otherwise impair the respective rights of the Prepetition Administrative Parties or the Prepetition Secured Parties under the Prepetition Credit Documents, and the Intercreditor

Agreement, or under equity or law, and the Prepetition Administrative Parties and the Prepetition Secured Parties expressly reserve all of their respective rights and remedies whether now existing or hereafter arising under the Prepetition Credit Documents, respectively, and/or equity or law in connection with all Defaults and Events of Default (as defined in the Prepetition Credit Documents, respectively, and whether arising prior to or after the Petition Date).

19. Debtors' Reservation of Rights. Notwithstanding anything to the contrary in this Final Order, following receipt of a Default Notice, and at any time before or after the occurrence of the Termination Date, including without limitation as a result of a Termination Event pursuant to paragraph 12 of this Final Order, the Debtors may seek authority to use the Cash Collateral without the consent of the Prepetition Administrative Parties or Prepetition Secured Parties, and the Prepetition Administrative Parties and Prepetition Secured Parties reserve all rights to contest such request.

20. Modification of Automatic Stay. The Debtors are authorized and directed to perform all acts and to make, execute and deliver any and all instruments as may be reasonably necessary to implement the terms and conditions of this Final Order and the transactions contemplated hereby. The stay of section 362 of the Bankruptcy Code is hereby modified to permit the Debtors and each of the Prepetition Administrative Parties and Prepetition Secured Parties to accomplish the transactions contemplated by this Final Order.

21. Perfection of Adequate Protection Liens.

(a) The Prepetition Secured Parties are hereby authorized, but not required, to file or record financing statements, intellectual property filings, mortgages, depository account control agreements, notices of lien or similar instruments in any jurisdiction in order to validate and perfect the liens and security interests granted hereunder. Whether or not any Prepetition Secured Party, in its sole discretion, chooses to file such financing statements, intellectual property filings, mortgages, notices of lien or similar instruments, such liens and security interests shall be deemed valid, perfected, allowed, enforceable, non-avoidable and not subject to challenge, dispute or

subordination as of the date of entry of the First Interim Order. If a Prepetition Secured Party determines to file or execute any financing statements, agreements, notice of liens or similar instruments, the Debtors will cooperate and assist in any such execution and/or filings as reasonably requested by such Prepetition Secured Party and the automatic stay shall be modified to allow such filings.

(b) A certified copy of this Final Order may, in the discretion of any Prepetition Administrative Party, be filed with or recorded in filing or recording offices in addition to or in lieu of such financing statements, mortgages, notices of lien or similar instruments, and all filing offices are hereby authorized to accept such certified copy of this Final Order for filing and recording; provided, that, notwithstanding the date of any such filing, the date of such perfection shall be the date of entry of the First Interim Order.

(c) For the avoidance of doubt and notwithstanding what is set forth in paragraph 21(a), without the necessity of the filing of financing statements, security agreements, federal or state notices, pledge agreements, recordings, mortgages or other documents or taking possession or control of any Prepetition Collateral, this Final Order shall be sufficient evidence of the Prepetition Secured Parties' perfected security interests and liens granted in the Adequate Protection Collateral pursuant to this Final Order. Furthermore, notwithstanding the foregoing, the Debtors are authorized and directed to execute such documents including, without limitation, mortgages, pledges and Uniform Commercial Code financing statements and to use Cash Collateral to pay such costs and expenses as may be reasonably requested by the Prepetition Secured Parties to provide further evidence of the perfection of the Prepetition Secured Parties' security interests and liens in the Adequate Protection Collateral as provided for herein. All such documents shall be deemed to have been recorded and filed as of the Petition Date.

22. Preservation of Rights Granted Under this Final Order.

(a) Except as expressly provided in this Final Order, and subject to the Intercreditor Agreement, no claim or lien having a priority senior to or *pari passu* with those granted by this Final Order to the ABL Agent and ABL Secured Parties shall be granted or allowed, and the ABL Adequate Protection Liens shall not be subordinated to or made *pari passu* with any other lien or security interest, whether under section 364(d) of the Bankruptcy Code or otherwise.

(b) Notwithstanding any order dismissing any of the Chapter 11 Cases under section 1112 of the Bankruptcy Code or otherwise entered at any time (x) the 507(b) Claims, the other administrative claims granted pursuant to this Final Order and the Adequate Protection Liens shall continue in full force and effect and shall maintain their priorities as provided in this Final Order until all Adequate Protection Obligations shall have been paid and satisfied in full in cash (and such 507(b) Claims, the other administrative claims granted pursuant to this Final Order and the Adequate Protection Liens shall, notwithstanding such dismissal, remain binding on all parties in interest); and (y) the Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing the claims, liens and security interests referred to in clause (x) above.

(c) If any or all of the provisions of this Final Order are hereafter reversed, modified, vacated or stayed, such reversal, stay, modification or vacatur shall not affect: (i) the validity, priority or enforceability of any Adequate Protection Obligations incurred prior to the actual receipt of written notice by the Prepetition Secured Parties, of the effective date of such reversal, stay, modification or vacatur; or (ii) the validity, priority or enforceability of the Adequate Protection Liens. Notwithstanding any such reversal, stay, modification or vacatur, any use of the Cash Collateral or any Adequate Protection Obligations incurred by the Debtors hereunder, as the case may be, prior to the actual receipt of written notice by the Prepetition Secured Parties of the effective date of such reversal, stay, modification or vacatur shall be governed in all respects by the original provisions of this Final Order, and the Prepetition Secured Parties shall be entitled to all of the rights, remedies, privileges and benefits granted herein and to the protections afforded in section 363(m) of the Bankruptcy Code with respect to all uses of the Cash Collateral and all Adequate Protection Obligations.

(d) Subject to paragraphs 17 and 23 of this Final Order, the adequate protection payments made pursuant to the Orders shall not be subject to counterclaim, setoff, subordination, recharacterization, defense or avoidance in the Chapter 11 Cases or any subsequent chapter 7 cases (other than a defense that the payment has actually been made).

(e) Except as expressly provided in this Final Order, the Adequate Protection Obligations, the 507(b) Claims and the Adequate Protection Liens and all other rights and remedies of the Prepetition Secured Parties granted by the provisions of this Final Order shall survive, and shall not be modified, impaired or discharged by the entry of an order converting any of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code, dismissing any of the Chapter 11 Cases, or by any other act or omission. The terms and provisions of this Final Order shall continue in the Chapter 11 Cases, in any Successor Cases if the Chapter 11 Cases cease to be jointly administered, or in any superseding chapter 7 cases under the Bankruptcy Code, and the Adequate Protection Liens, the 507(b) Claims, the other administrative claims granted pursuant to this Final Order, and all other rights and remedies of the Prepetition Secured Parties granted by the provisions of this Final Order shall continue in full force and effect until all Adequate Protection Obligations are indefeasibly paid in full in cash.

23. Effect of Stipulations. As a result of the Debtors' review of the Prepetition Credit Documents and the facts relating thereto, the Debtors have admitted, stipulated, and agreed to the various stipulations and admissions contained in the Orders, including, without limitation, the stipulations and admissions included in paragraph D of this Final Order, which stipulations and admissions shall be binding upon the Debtors and any successors thereto in all circumstances (although such stipulations are not findings of the Court); provided, that nothing in the Orders

shall be deemed to be an admission on the part of the Debtors that the Collateral Flip occurred and the Debtors' and the Prepetition Secured Parties' rights related to the Collateral Flip are expressly reserved. The stipulations and admissions contained in the Orders, including without limitation, in paragraph D of this Final Order, shall also be binding upon all other parties in interest, including the Committee or any chapter 7 or chapter 11 trustee appointed or elected for any of the Debtors (a "Trustee"), for all purposes unless (a) such party (subject in all respects to any agreement or applicable law which may limit or affect such entity's right or ability to do so) has properly filed a claim objection or a motion seeking standing to file an adversary proceeding (provided, that such motion includes any applicable adversary complaint), as required under the Bankruptcy Rules (subject in either case to the limitations contained herein, including, without limitation, in paragraph 24) by no later than the date that is seventy-five (75) days from the date of entry of the First Interim Order (or, in the case of the Committee and Wilmington Savings Fund Society, FSB, (i) sixty (60) days from the date of the appointment of the Committee with respect to the ABL Agent and ABL Secured Parties and (ii) one-hundred (100) days from the date of the appointment of the Committee with respect to the other Prepetition Secured Parties (as applicable, the "Challenge Period"))[8] (x) challenging the amount, validity, enforceability, priority or extent of the amount of the Prepetition Indebtedness or the liens on the Prepetition Collateral securing the Prepetition Indebtedness, or (y) otherwise asserting any other claims, counterclaims, causes of action, objections, contests or defenses against the ABL Agent and ABL Secured Parties with respect to the ABL Credit Agreement, First Lien Pledge Agreement, Prepetition First Priority Liens, the Prepetition Collateral, or the ABL Indebtedness (collectively, the "Claims and Defenses"), and (b) the Court rules in favor of the plaintiff sustaining any such

[8] The Debtor and the parties who are protected by the Challenge Period must reasonably and promptly provide requested documents in discovery, including the pre-challenge investigation.

challenge or claim in connection with any such claim objection or duly filed adversary proceeding; provided, that, as to the Debtors, all such Claims and Defenses are hereby irrevocably waived and relinquished effective as of the Petition Date. If no such claim objection or motion seeking standing to file an adversary proceeding is timely filed prior to the expiration of the Challenge Period, without further order of the Court: (1) the Debtors' stipulations, admissions and releases contained in this Final Order shall be binding on all parties in interest, including the Committee and any Trustee; (2) the Prepetition Indebtedness shall constitute allowed claims, not subject to counterclaim, setoff, subordination, recharacterization, defense or avoidance, for all purposes in the Chapter 11 Cases and any subsequent chapter 7 case; (3) subject to the reservation of rights regarding the Collateral Flip, the Prepetition Administrative Parties' liens on the Prepetition Collateral shall be deemed to have been, as of the Petition Date, legal, valid, binding, perfected, and of the priority specified in paragraph D, not subject to defense, counterclaim, recharacterization, subordination or avoidance; and (4) the Prepetition Indebtedness, the Prepetition Administrative Parties' liens on the Prepetition Collateral, and the Prepetition Secured Parties (and their respective agents, affiliates, subsidiaries, directors, officers, representatives, attorneys or advisors) shall not be subject to any other or further challenge by the Committee or any other party in interest, and any such Committee or party in interest shall be enjoined from seeking to exercise the rights of the Debtors' estates, including without limitation, any successor thereto (including, without limitation, any estate representative or a Trustee, whether such Trustee is appointed or elected prior to or following the expiration of the Challenge Period) subject to any order of a court with proper jurisdiction finding that the Collateral Flip has occurred; provided, that if the Chapter 11 Cases are converted to chapter 7 or a Trustee is appointed prior to the expiration of the Challenge Period, any such estate

representative or Trustee shall receive the full benefit of any remaining Challenge Period, subject to the limitations described herein. If any such claim objection or motion seeking standing to file an adversary proceeding (provided, that such motion includes any applicable adversary complaint) is timely filed prior to the expiration of the Challenge Period, the stipulations and admissions contained in this Final Order, including without limitation, in paragraph D of this Final Order, shall nonetheless remain binding and preclusive (as provided in the second sentence of this paragraph) on the Committee and any other person, including any Trustee, except as to any such findings and admissions that were expressly challenged in such claim objection or motion seeking standing to file an adversary proceeding (and applicable adversary complaint). Nothing in this Final Order vests or confers on any person, including a Committee or any Trustee, standing or authority to pursue any cause of action belonging to the Debtors or their estates. In the event that there is a timely successful challenge brought pursuant to this paragraph, the Court shall retain jurisdiction to fashion an appropriate remedy. The stipulations and admissions contained in this Final Order, including without limitation, in paragraph D of this Final Order, shall be binding upon the Debtors, their estates, all parties in interest in the Chapter 11 Cases and their respective successors and assigns, including any trustee or other fiduciary appointed in the Chapter 11 Cases or any subsequently converted bankruptcy case(s) of any Debtors and shall inure to the benefit of the Prepetition Secured Parties and the Debtors and their respective successors and assigns (collectively, the "Successor Cases").

24. Limitation on Use of Cash Collateral. The Debtors shall use the proceeds of the Prepetition Collateral solely as provided in this Final Order. No Cash Collateral may be used to: (a) object, contest or raise any defense to, the validity, perfection, priority, extent or enforceability of the Prepetition Indebtedness, or the liens or claims granted under this Final

Order or the Prepetition Credit Documents; (b) assert any Claims and Defenses against the Prepetition Administrative Parties or any of the other Prepetition Secured Parties or their respective agents, affiliates, representatives, attorneys or advisors; (c) seek to modify any of the rights granted to the Prepetition Administrative Parties and the other Prepetition Secured Parties hereunder, or (d) pay any amount on account of any claims arising prior to the Petition Date unless in accordance with the Budget and such payments are approved by an order of the Court, provided, that, notwithstanding anything to the contrary herein, no more than $250,000 of the Prepetition Collateral in the aggregate may be used by the Committee to investigate the validity, enforceability or priority of the Prepetition Indebtedness or the liens on the Prepetition Collateral or investigate any Claims and Defenses or other causes action against the Prepetition Administrative Parties or any of the other Prepetition Secured Parties; provided, for the avoidance of doubt, that any fees and/or expenses in excess of $250,000 incurred in connection with the foregoing and allowed by the Bankruptcy Court under Bankruptcy Code sections 328, 330, 331 and/or 503(b) shall be permitted to be paid in accordance with applicable orders of this Court including any interim compensation orders, provided that the administrative expenses in respect thereof shall be subordinate in all respects to the Carve Out and the Adequate Protection Obligations.

25. Legacy Noteholder Rights. If the Legacy Noteholders (whose rights will include any rights of the Legacy Indenture Trustee) or the holders of the 2021 Notes are determined to have had an unavoidable interest in the Prepetition Collateral as of the Petition Date, then the adequate protections granted in the Orders shall be adjusted to (i) protect the rights of the Legacy Noteholders and the holders of the 2021 Notes to the same extent and priority as existed on the Petition Date (which is stipulated to be junior to the rights of the ABL Secured Parties, including

the rights that existed as of the Petition Date and the rights granted in the Orders); and (ii) adjust adequate protection awarded to the Bank Facility Secured Parties and Notes Secured Parties, but only to the extent that the rights of the Legacy Noteholders or holders of the 2021 Notes were impaired by the rights given in the Orders to the holders of the Bank Facility Secured Parties and Notes Secured Parties. The rights of the holders of the 2021 Notes will be determined in light of any applicable and binding subordination agreements.

26. Binding Effect; Successors and Assigns. The provisions of this Final Order, including all findings herein, shall be binding upon all parties in interest in the Chapter 11 Cases, including without limitation, the Prepetition Administrative Parties and the Prepetition Secured Parties, the Committee, and the Debtors and their respective successors and assigns (including any Trustee hereinafter appointed or elected for the estate of any Debtor, an examiner appointed pursuant to section 1104 of the Bankruptcy Code, or any other fiduciary appointed as a legal representative of any of the Debtors or with respect to the property of the estate of any of the Debtors) and shall inure to the benefit of the Prepetition Administrative Parties, the Prepetition Secured Parties and the Debtors and their respective successors and assigns, provided, that except to the extent expressly set forth in this Final Order, the Prepetition Administrative Parties and the Prepetition Secured Parties shall have no obligation to permit the use of the Prepetition Collateral or extend any financing to any Trustee or similar responsible person appointed for the estate of any Debtor. For all adequate protection and stay relief purposes throughout the Debtors' Chapter 11 Cases, the Prepetition Administrative Parties and Prepetition Secured Parties shall be deemed to have requested relief from the automatic stay and adequate protection as of the Petition Date.

27. Limitation of Liability. In permitting the use of the Prepetition Collateral or in exercising any rights or remedies as and when permitted pursuant to this Final Order, the Prepetition Administrative Parties and the Prepetition Secured Parties shall not be deemed to be in control of the operations of the Debtors or to be acting as a "responsible person" or "owner or operator" with respect to the operation or management of the Debtors (as such terms, or any similar terms, are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 29 U.S.C. §§ 9601 et seq. as amended, or any similar federal or state statute). Furthermore, nothing in this Final Order shall in any way be construed or interpreted to impose or allow the imposition upon the Prepetition Administrative Parties or the Prepetition Secured Parties of any liability for any claims arising from the prepetition or postpetition activities of any of the Debtors and their respective affiliates (as defined in section 101(2) of the Bankruptcy Code).

28. Intercreditor Agreement. Nothing in this Final Order shall amend or otherwise modify the terms and enforceability of the Intercreditor Agreement. The rights of the Prepetition Administrative Parties and Prepetition Secured Parties shall at all times remain subject to the Intercreditor Agreement.

29. No Marshalling. Neither the ABL Agent nor the ABL Secured Parties shall be subject to the equitable doctrine of "marshalling" or any other similar doctrine with respect to any of the Prepetition Collateral (including Cash Collateral); provided, that the doctrine of "marshalling" shall never apply to adequate protection granted under this Final Order.

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

31. Effectiveness. This Final Order shall constitute findings of fact and conclusions of law and shall take effect immediately upon entry hereof, and there shall be no stay of execution of effectiveness of this Final Order. To the extent that any finding of fact shall be determined to be a conclusion of law it shall be so deemed and vice versa.

32. Proofs of Claim. Neither the Prepetition Administrative Parties nor any Prepetition Secured Party will be required to file proofs of claim in the Chapter 11 Cases or Successor Cases, and the Debtors' stipulations in paragraph 1(a)(a)(i)D herein shall be deemed to constitute a timely filed proof of claim against the applicable Debtor(s) on account of the Prepetition Indebtedness. Any order entered by the Court in relation to the establishment of a bar date for any claim (including without limitation, administrative claims) in any of the Chapter 11 Cases or Successor Cases shall not apply to the Prepetition Administrative Parties or the other Prepetition Secured Parties with respect to the Obligations under each Prepetition Credit Document. Notwithstanding the foregoing, each Prepetition Administrative Party (on behalf of itself and the applicable Prepetition Secured Parties it represents) is hereby authorized and entitled at the direction of the Required Lenders (as defined in the Term Loan Credit Facility) (or, in the case of any other Prepetition Credit Document, as provided under such Prepetition Credit Document), but not required, to file (and amend and/or supplement, as it sees fit) in the Debtors' lead Chapter 11 Case—*In re iHeartMedia, Inc.*, *et al.*, (Case No. 18-31274 (MI)), a single master proof of claim in the Chapter 11 Cases for any claims arising under the applicable Prepetition Credit Document and hereunder (each a "Master Proof of Claim"). Upon the filing of the Master Proof of Claim (if any), which shall be deemed asserted against each of the applicable Debtors that are borrowers, obligors, or guarantors of the Prepetition Indebtedness, the applicable Prepetition Secured Parties and each of their respective successors and assigns,

shall be deemed to have filed a proof of claim in the amount set forth opposite its name therein in respect of its claims (which names may be redacted in the publicly filed version of the Master Proof of Claim) against each of the applicable Debtors that are borrowers, obligors, or guarantors of the Prepetition Indebtedness of any type or nature whatsoever with respect to the applicable Prepetition Credit Document, and the claim of each applicable Prepetition Secured Party (and each of its respective successors and assigns), named in the Master Proof of Claim shall be treated as if such entity had filed a separate proof of claim in each of these Chapter 11 Cases. Each Master Proof of Claim, if filed, shall not be required to identify whether any Prepetition Secured Party acquired its claim from another party and the identity of any such party or be amended to reflect a change in the holders of the claims set forth therein or a reallocation among such holders of the claims asserted therein resulting from the transfer of all or any portion of such claims. The provisions of this paragraph and the Master Proof of Claim are intended solely for the purpose of administrative convenience. Each Master Proof of Claim, if filed, shall not be required to attach any instruments, agreements or other documents evidencing the obligations owing by each of the Debtors to the applicable Secured Parties, which instruments, agreements or other documents will be provided upon written request to counsel to the applicable Prepetition Administrative Party.

33. Taxing Authorities. Notwithstanding any other provisions included in the Interim Orders or this Final Order, or any agreements approved hereby, any statutory liens ("Tax Liens") of Angelina County, Bexar County, Cameron County, Cleveland ISD, Cypress-Fairbanks ISD, Dallas County, City of El Paso, Fort Bend County, Frio Hospital District, Harris County, Hays County, Hidalgo County, Irving ISD, Jefferson County, Lewisville ISD, City of McAllen, McLennan County, Nueces County, Pearsall ISD , Rockwall CAD, San Marcos CISD, San

Patricio County, Smith County, Tarrant County, Tom Green CAD, and Victoria County (the "Taxing Authorities") shall not be primed by nor made subordinate to any liens granted to any party hereby to the extent such Tax Liens are valid, senior, perfected, and unavoidable, and all parties' rights to object to the priority, validity, amount, and extent of the claims and liens asserted by the Taxing Authorities are fully preserved.

34. Controlling Effect of Final Order. To the extent any provision of this Final Order conflicts or is inconsistent with any provision of the Motion, the provisions of this Final Order shall control to the extent of such conflict.

35. Order Immediately Effective. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Final Order are immediately effective and enforceable upon its entry.

36. Debtor Authorization to Effectuate Relief. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Final Order in accordance with the Motion.

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

IT IS SO ORDERED.

Signed: April 12, 2018

Marvin Isgur
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	::	Chapter 11
	::	Case No. 09-50026 (REG)
General Motors Corporation, *et al.*,	::	
	::	(Jointly Administered)
Debtors.	::	

FINAL ORDER PURSUANT TO BANKRUPTCY CODE SECTIONS 105(a), 361, 362, 363, 364 AND 507 AND BANKRUPTCY RULES 2002, 4001 AND 6004 (A) APPROVING A DIP CREDIT FACILITY AND AUTHORIZING THE DEBTORS TO OBTAIN POST-PETITION FINANCING PURSUANT THERETO, (B) GRANTING RELATED LIENS AND SUPER-PRIORITY STATUS, (C) AUTHORIZING THE USE OF CASH COLLATERAL AND (D) GRANTING ADEQUATE PROTECTION TO CERTAIN PRE-PETITION SECURED PARTIES

THIS MATTER having come before this Court by the motion dated June 1, 2009 (the "**Motion**") of General Motors Corporation ("**GM**") and its affiliated debtors in the above-captioned cases, as debtors and debtors-in-possession (collectively with GM, the "**Debtors**"),[1] seeking, among other things, entry of a final order (the "**Final Order**"):

(i) Authorizing the Debtors, pursuant to sections 105, 362, 363 and 364 of title 11 of the United States Code (the "**Bankruptcy Code**"), Rules 2002, 4001 and 6004 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), and Rule 4001 of the Local Bankruptcy Rules for the Southern District of New York (the "**Local Bankruptcy Rules**"), to enter into the Secured Superpriority Debtor-in-Possession Credit Agreement, by and among GM, as borrower, and The United States Department of the Treasury ("**U.S. Treasury**") and Export Development Canada ("**EDC**"), as lenders

[1] The Debtors in these cases include: GM, Saturn, LLC, Saturn Distribution Corporation, and Chevrolet-Saturn of Harlem, Inc.

(together, the "**DIP Lenders**"), in substantially the form annexed hereto as Exhibit 1 (as the same may be amended, supplemented, restated or otherwise modified from time to time, and together with all related agreements and documents, the "**DIP Credit Facility**"), and to obtain post-petition financing on a secured and super-priority basis pursuant to the terms and conditions thereof, up to a maximum aggregate amount of $33.3 billion (the "**Commitment**");

(ii) Authorizing the Debtors to execute and deliver the DIP Credit Facility and to perform such other acts as may be reasonably necessary or desirable in order to give effect to the provisions of the DIP Credit Facility, including the unconditional, joint and several guaranty of the obligations of GM under the DIP Credit Facility by each other Debtor (each, a "**Guarantor**", and collectively, the "**Guarantors**");

(iii) Providing, pursuant to sections 364(c)(1) and 507(b) of the Bankruptcy Code, that all obligations owing to the DIP Lenders under the DIP Credit Facility shall be accorded administrative expense status in each of these cases, and shall, subject only to the Carve-Out (as defined below), have priority over any and all other administrative expenses arising in these cases; provided, however, that subsequent to the closing of the Related Section 363 Transactions (as defined in the DIP Credit Facility), claims against the Debtors' estates that have priority under Sections 503(b) or 507(a) of the Bankruptcy Code, including costs and expenses of administration that are attendant to the formulation and confirmation of a liquidating chapter 11 plan, whether incurred prior or subsequent to the consummation of the Related Section 363 Transactions (the "**Old GM Administrative and Priority Claims**") shall have priority over such obligations (up to the aggregate amount of $950,000,000; provided, however, that any greater amount shall

be subject to approval by the DIP Lenders) owing to the DIP Lenders under the DIP Credit Facility; and

(iv) Granting the DIP Lenders security interests in and liens on (the "**DIP Liens**") all property and assets of each of the Debtors, of every kind or type whatsoever, including tangible, intangible, real, personal or mixed, whether now owned or hereafter acquired or arising, wherever located, all property of the estates of each of the Debtors within the meaning of section 541 of the Bankruptcy Code and all proceeds, rents and products of the foregoing, (including all avoidance actions arising under chapter 5 of the Bankruptcy Code and applicable state law except avoidance actions against the Prepetition Senior Facilities Secured Parties (as defined below)) with the exception of (a) any stocks, warrants, options or other equity interests issued to or held by any Debtor pursuant to the Related Section 363 Transactions (the "**New GM Equity Interests**"), (b) any leasehold interest of the Debtors in (i) the real property located at and commonly known as 301 Freedom Drive, City of Roanoke, Denton County, Texas or (ii) the real property located at and commonly known as 475 Brannan Street, City and County of San Francisco, California; and (c) certain Excluded Collateral (as defined in the DIP Credit Facility) (collectively, "**Property**") as follows:

(A) pursuant to section 364(c)(2) of the Bankruptcy Code, valid, perfected, first-priority security interests in and liens on all Property that is not subject to non-avoidable, valid and perfected liens in existence as of the Petition Date (as defined herein) (or to non-avoidable valid liens in existence as of the Petition Date that are subsequently perfected as permitted by section 546(b) of the Bankruptcy Code), in each case subject

only to (1) the Permitted Liens (as defined in the DIP Credit Facility), (2) the Carve-Out, (3) the adequate protection liens granted in connection with the Prepetition Revolving Credit Agreement pursuant to paragraph 6(b)(1)(x) of the Interim Order (the "**Prepetition Revolving Credit Agreement Order**") Under 11 U.S.C. §§ 105, 361, 362, 363 and FED. R. BANKR. P. 2002, 4001 And 9014 (I) Authorizing Debtors to Use Cash Collateral, (II) Granting Adequate Protection to Prepetition Revolver Secured Parties and (III) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001(B) (the "**Prepetition Revolving Credit Agreement Adequate Protection Liens**"), and (4) the adequate protection liens granted in connection with the Prepetition Term Loan Agreement pursuant to paragraph 5(b)(i) of the Interim Order (the "**Prepetition Term Loan Facility Order**", and together with the Prepetition Revolving Credit Agreement Order, the "**Prepetition Revolving And Term Loan Orders**") Under 11 U.S.C. §§ 105, 361, 362, 363 and FED. R. BANKR. P. 2002, 4001 and 9014 (I) Granting Adequate Protection to Term Loan Secured Parties and (II) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001(B) (the "**Prepetition Term Loan Adequate Protection Liens**", and together with the Prepetition Revolving Credit Agreement Adequate Protection Liens, the "**Prepetition Revolving And Term Adequate Protection Liens**");

(B) pursuant to section 364(c)(3) of the Bankruptcy Code, valid, perfected junior security interests in and liens on all Property that is subject to non-

avoidable, valid and perfected liens in existence as of the Petition Date, or to non-avoidable valid liens in existence as of the Petition Date that are subsequently perfected as permitted by section 546(b) of the Bankruptcy Code, subject only to the Carve-Out; and

(C) nothing in this Final Order, the Interim Order or the DIP Credit Facility shall in any way be construed to authorize or permit the DIP Lenders to seek recourse against the New GM Equity Interests at any time.

(v) Authorizing the application of a portion of the proceeds of the DIP Credit Facility toward payment in full of all principal, interest, letter of credit reimbursement obligations (including obligations to cash collateralize undrawn letters of credit) and other amounts due or outstanding under (A) that certain Term Loan Agreement, dated as of November 29, 2006, among GM, Saturn Corporation and JPMorgan Chase Bank, N.A., as administrative agent, and the lenders party thereto from time to time (as may be amended, restated, supplemented or otherwise revised from time to time, and together with all related agreements and documents, the "**Prepetition Term Loan Agreement**") secured by a first-priority lien on certain Property (the "**Prepetition Term Loan Collateral**"), (B) that certain Amended and Restated Credit Agreement, dated as of July 20, 2006, among GM, General Motors of Canada, Limited ("**GMCL**"), Saturn Corporation, Citicorp USA, Inc., as administrative agent, and the lenders party thereto from time to time (as may be amended, restated, supplemented or otherwise revised from time to time, and together with all related agreements and documents, the "**Prepetition Revolving Credit Agreement**") secured by a first-priority lien on certain Property (the "**Prepetition Revolving Credit Agreement Collateral**"), and (C) that certain Loan and

Security Agreement, dated as of October 2, 2006, among GM and Gelco Corporation (d/b/a GE Fleet Services) (as may be amended, restated, supplemented or otherwise revised from time to time, and together with all related agreements and documents, the "**Prepetition Gelco Loan Agreement**", and together with the Prepetition Term Loan Agreement and the Prepetition Revolving Credit Agreement, the "**Prepetition Senior Facilities**") secured by a first-priority lien on certain Property (the "**Prepetition Gelco Loan Agreement Collateral**", and together with the Prepetition Term Loan Collateral and the Prepetition Revolving Credit Agreement Collateral, the "**Prepetition Senior Facilities Collateral**");

(vi) Authorizing the Debtors to use cash collateral of the Existing UST Secured Parties (as defined below) (the "**Cash Collateral**");

(vii) Granting to the Existing UST Secured Parties (as defined below), as adequate protection for the potential diminution in value of their respective liens on and security interests in Property, (A) a claim as contemplated by section 507(b) of the Bankruptcy Code (the "**Adequate Protection Claim**"), which Adequate Protection Claim shall have a priority immediately junior to the Super-priority Claim (as defined below) and pari passu with the super-priority claims granted under the Prepetition Revolving And Term Loan Orders, (B) liens on and security interests in the Property (the "**Adequate Protection Liens**"), only to the extent of and on account of any diminution in the value of the Existing UST Secured Parties' interests in the Debtors' interests in the Property on and after the Petition Date, which Adequate Protection Liens shall have a priority immediately junior to the DIP Liens on the Property, and (C) reimbursement by the Debtors of all reasonable expenses incurred in the course of these

chapter 11 cases by the Existing UST Secured Parties and their respective professional advisors and counsel. "**Existing UST Secured Parties**" shall mean the secured parties under (1) that certain Loan and Security Agreement, dated as of December 31, 2008, by and between GM and the U.S. Treasury (as may be amended, restated, supplemented or otherwise revised from time to time, and together with all related agreements and documents, the "**TARP Loan Agreement**") and (2) that certain Credit Agreement, dated as of April 2, 2009, by and between GM Supplier Receivables LLC and the U.S. Treasury (as may be amended, restated, supplemented or otherwise revised from time to time, and together with all related agreements and documents, the "**Supplier Receivables Facility**", and together with the TARP Loan Agreement, the "**Existing UST Loan Agreements**"). For the avoidance of doubt, the Adequate Protection Liens shall be pari passu with any adequate protection liens granted under the Prepetition Revolving And Term Loan Orders except the Prepetition Revolving And Term Adequate Protection Liens as detailed in paragraph (iv)(A) above;

(viii) Authorizing and directing the Debtors to pay, without further order of this Court, the principal, interest, reasonable fees, expenses and other amounts (including the Additional Notes (as defined in the DIP Credit Facility)) payable to the DIP Lenders and their professional advisors and counsel under the DIP Credit Facility, as the same become due, including all reasonable expenses incurred in the course of these chapter 11 cases by the DIP Lenders and their professional advisors and counsel, all as and to the extent provided in the DIP Credit Facility; provided, that copies of the invoices for reimbursement by the Debtors of such expenses and fees (if any) are to be provided to

the Committee, any other statutory committee appointed in the Debtors' chapter 11 cases, and the United States Trustee on a confidential basis; and

(ix) Vacating and modifying the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of the DIP Credit Facility and this Final Order.

This Court having considered the Motion, the DIP Credit Facility, the pleadings in support thereof and the pleadings in response thereto; and due and proper notice of the Motion having been provided in accordance with Bankruptcy Rules 2002, 4001, and 6004, and Local Bankruptcy Rule 4001 as reflected in the Affidavit of Service (Docket No. 134) filed with the Court on June 1, 2009; and a hearing pursuant to Bankruptcy Rule 4001(c)(2) having been held and concluded on June 1, 2009 (the "**Interim Hearing**") to consider the interim relief requested in the Motion; and the Court having entered an order granting the interim relief requested in the Motion (the "**Interim Order**"); and the Court having held a final hearing with respect to the Motion on June 25, 2009 (the "**Final Hearing**"); and it appearing that granting the relief requested in the Motion is appropriate, fair and reasonable and in the best interests of the Debtors, their estates, creditors and other parties in interest, and is essential for the Debtors' continued operations; and all objections to the relief requested in the Motion having been withdrawn, resolved or overruled on the merits by this Court; and upon consideration of the evidence presented, proffered or adduced at the Interim Hearing, the Final Hearing and in the Affidavit of Frederick A. Henderson, which was filed pursuant to Local Bankruptcy Rule 1007-2 on the Petition Date, the Declaration of William C. Repko in Support of Debtors' Proposed Debtor in Possession Financing Facility, the Statement of the United States of America Upon The Commencement Of General Motors Corporation's Chapter 11 Case [Docket No. 37] and

any other evidence presented at the Interim Hearing and the Final Hearing; and upon the record of the Interim Hearing and the Final Hearing; and upon the arguments of counsel; and after due deliberation and consideration and good and sufficient cause appearing therefor:

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

A. On June 1, 2009 (the "**Petition Date**"), the Debtors each filed a voluntary petition under chapter 11 of the Bankruptcy Code in this Court, commencing these cases. The Debtors continue to manage and operate their businesses and properties as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in these cases; the United States Trustee appointed the Official Committee of Unsecured Creditors (the "**Committee**") on June 3, 2009.

B. Jurisdiction and Venue. This Court has jurisdiction over these proceedings, and over the property affected hereby, pursuant to 28 U.S.C. §§ 157(b) and 1334. Consideration of the Motion constitutes a core proceeding as defined in and pursuant to 28 U.S.C. § 157(b)(2). Venue for these cases and for the proceedings on the Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

C. Need for Post-petition Financing. The Debtors have demonstrated a need for immediate and continuing access to post-petition financing pursuant to sections 363 and 364 of the Bankruptcy Code and Bankruptcy Rule 4001(c)(2). In the absence of this access, the Debtors will be unable to continue operating their business, causing immediate and irreparable loss or damage the Debtors' estates, to the detriment of the Debtors, their estates, their creditors and other parties in interest in these cases. The Debtors do not have sufficient unrestricted cash

and other financing available to operate their businesses, maintain the estates' properties, and administer these cases absent the relief provided in this Final Order.

D. No Credit Available on More Favorable Terms. Given the Debtors' current financial condition, available assets and current and projected liabilities, as well as current conditions in the automotive and credit markets, the Debtors are unable to obtain financing from any other lender on terms more favorable than those provided by the DIP Lenders in the DIP Credit Facility. Other than pursuant to the DIP Credit Facility, the Debtors have been unable to obtain credit that either (i) was allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense, (ii) would have priority over all other administrative expenses specified in sections 503(b) and 507(b) of the Bankruptcy Code, (iii) would be secured solely by a lien on property of the Debtors' estates that is not otherwise subject to a lien, or (iv) would be secured only by a junior lien on property of the Debtors' estates that is subject to a lien.

E. Good Faith of DIP Lenders. The Debtors chose the DIP Lenders as post-petition lenders in good faith and after obtaining the advice of experienced counsel and other professionals. The Debtors and the DIP Lenders proposed and negotiated the terms and provisions of the DIP Credit Facility, the Interim Order and this Final Order in good faith, at arm's length, without collusion and with the intention that all obligations owed under the DIP Credit Facility would be valid claims accorded the priority and secured by the liens set forth herein. The loans and extensions of credit authorized in the Interim Order and this Final Order are supported by reasonably equivalent value and fair consideration and the terms and provisions of the DIP Credit Facility, the Interim Order and this Final Order are fair and reasonable and reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties.

Any credit extended, loans made, or funds advanced to the Debtors pursuant to this Final Order, the Interim Order or the DIP Credit Facility is deemed to be so extended, made or permitted to be used in good faith by the DIP Lenders as required by and within the meaning of section 364(e) of the Bankruptcy Code. As good faith lenders, the DIP Lenders' claims, super-priority status, security interests and liens and other protections arising from or granted pursuant to this Final Order and the DIP Credit Facility will not be affected by any subsequent reversal, modification, vacatur or amendment of this Final Order or any other order, as provided in section 364(e) of the Bankruptcy Code.

F. Authority for the DIP Credit Facility. The U.S. Treasury has extended credit to, and acquired a security interest in, the Debtors as set forth in the DIP Credit Facility and as authorized by the Interim Order and this Final Order. Before entering into the DIP Credit Facility, the Secretary of the Treasury, in consultation with the Chairman of the Board of Governors of the Federal Reserve System and as communicated to the appropriate committees of Congress, found that the extension of credit to the Debtors is "necessary to promote financial market stability," and is a valid use of funds pursuant to the statutory authority granted to the Secretary of the Treasury under the Emergency Economic Stabilization Act of 2008, 12 U.S.C. §§ 5201 et. seq. ("**EESA**"). The U.S. Treasury's extension of credit to, and resulting security interest in, the Debtors as set forth in the DIP Credit Facility and as authorized in the Interim Order and this Final Order is a valid use of funds pursuant to EESA.

G. Waiver. Upon entry of this Final Order, each of the Debtors hereby forever releases, waives and discharges the Existing UST Secured Parties and DIP Lenders, together with their respective officers, directors, employees, agents, attorneys, professionals, affiliates, subsidiaries, assigns and/or successors (collectively, the "**Released Parties**") from any

and all claims and causes of action arising out of, based upon or related to, in whole or in part, (i) the Existing UST Loan Agreements, (ii) any aspect of the prepetition relationship, or any prepetition transaction, between any Debtor, on the one hand, and any Released Party, on the other hand, or (iii) any acts or omissions by any or all of the Released Parties in connection with any prepetition relationship or transaction with any Debtor or any affiliate thereof including, without limitation, any claims or defenses as to the extent, validity, characterization, priority or perfection of the liens and security interests granted to any Existing UST Secured Parties pursuant to the Existing UST Loan Agreements, "lender liability" and similar claims and causes of action, any actions, claims or defenses arising under chapter 5 of the Bankruptcy Code or any other claims or causes of action. The waivers described in this paragraph were binding on the Debtors immediately upon entry of the Interim Order, and shall be binding upon the Committee or any other statutory committee and all other parties in interest sixty (60) days after entry of this Final Order if, prior to the expiration of such sixty (60) day period, the Committee or other party in interest has not commenced, or filed a motion with this Court for authority to commence, a proceeding asserting a claim or cause of action waived under this paragraph.

H. Notice. Due and proper notice of the Motion, the DIP Credit Facility, and the time and location of the Final Hearing has been provided in accordance with the Interim Order. Such notice was adequate and sufficient, and no other or further notice need be provided.

BASED UPON THE FOREGOING FINDINGS AND CONCLUSIONS, AND UPON THE MOTION AND THE RECORD MADE BEFORE THIS COURT AT THE INTERIM HEARING AND THE FINAL HEARING, AND GOOD AND SUFFICIENT CAUSE APPEARING THEREFOR, IT IS HEREBY ORDERED THAT:

1. The Motion is granted to the extent provided in this Final Order. All objections to the Motion heretofore not withdrawn or resolved by the Final Order are overruled

on the merits in all respects. The Debtors are authorized, pursuant to section 364(c) of the Bankruptcy Code, to obtain post-petition financing on a final basis up to the maximum aggregate amount of the Commitment, on a super-priority and secured basis, pursuant and subject to the terms and conditions of the DIP Credit Facility and this Final Order including, without limitation, the Initial Budget (as defined in the DIP Credit Facility) and the DIP Credit Facility is approved in all respects.

2. The Debtors are hereby authorized to (A) enter into the DIP Credit Facility and are authorized and directed to perform all obligations under the DIP Credit Facility and this Final Order, including paying the principal, interest, fees, expenses, and other amounts (including the Additional Notes) due to the DIP Lenders and their professional advisors and counsel pursuant to the DIP Credit Facility or this Final Order as the same become due, which payments shall not otherwise be subject to the approval of this Court, and (B) unconditionally guaranty such payments on a joint and several basis as provided in the DIP Credit Facility.

3. Upon execution and delivery of the DIP Credit Facility and entry of this Final Order, the Debtors' obligations under the DIP Credit Facility (including the Additional Notes) shall constitute final, valid and binding obligations of the Debtors, enforceable against each Debtor and its estate in accordance with the terms thereof. No obligation, payment, transfer or grant of security under the DIP Credit Facility or this Final Order shall be stayed, restrained, voided or recovered under any provision of the Bankruptcy Code (including section 502(d) of the Bankruptcy Code) or other applicable law, or shall be subject to any defense, reduction, setoff, recoupment or counterclaim.

4. Except for the Carve-Out, and upon entry of this Final Order, no costs or expenses of administration of these cases or any future proceeding that may result therefrom,

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including liquidation in bankruptcy or other proceedings under any chapter of the Bankruptcy Code, shall be imposed or charged against, or recovered from, the DIP Lenders or any of the Property under section 506(c) of the Bankruptcy Code or any similar principle of law, and each of the Debtors hereby waives for itself and on behalf of its estate any and all rights under section 506(c) of the Bankruptcy Code or otherwise to assert or impose, or seek to assert or impose, any such costs or expenses of administration against the DIP Lenders or the Property.

5. The DIP Lenders are hereby granted, pursuant to section 364(c)(1) of the Bankruptcy Code, an allowed super-priority administrative expense claim in each of these cases (the "**Super-priority Claim**") for all loans, reimbursement obligations and any other indebtedness or obligations, contingent or absolute, which may now or from time to time be owing by any of the Debtors to the DIP Lenders under the DIP Credit Facility or hereunder, including, without limitation, all principal, accrued interest, costs, fees, expenses and all other amounts (including the Additional Notes) due under the DIP Credit Facility, which Super-priority Claim (A) shall have priority over any and all administrative expense claims and unsecured claims (including without limitation, the Adequate Protection Claim) against each Debtor or its estate in these cases, now existing or hereafter arising, of any kind or nature whatsoever including, without limitation, administrative expenses and claims of the kind specified in or ordered pursuant to Bankruptcy Code sections 105, 326, 328, 330, 331, 503(a), 503(b), 506(c) 507(a), 507(b), 546(c), 546(d), 726, 1113, and 1114, and any other provision of the Bankruptcy Code, as provided under section 364(c)(1) of the Bankruptcy Code, and (B) shall at all times be senior to the rights of each Debtor or its estate, and any successor trustee or other representative of any Debtor's estate in these cases or in any subsequent proceeding or case under the Bankruptcy Code, to the extent permitted by law; provided, however, that subsequent

to the closing of the Related Section 363 Transactions, claims against the Debtors' estates that have priority under sections 503(b) or 507(a) of the Bankruptcy Code, including costs and expenses of administration that are attendant to the formulation and confirmation of a liquidating chapter 11 plan, whether incurred prior or subsequent to the consummation of the Related Section 363 Transactions, shall have priority over the remaining obligations owing to the DIP Lenders under the DIP Credit Facility (up to the aggregate amount of $950,000,000; provided, however, that any greater amount shall be subject to approval by the DIP Lenders). The Super-priority Claim shall be subject and subordinate only to the Carve-Out and the claims set forth in the preceding proviso.

6. The DIP Lenders are hereby granted, pursuant to sections 364(c)(2) and 364(c)(3) of the Bankruptcy Code, continuing, valid, binding, enforceable, and automatically perfected DIP Liens in and on any and all of the Property, with the priorities set forth in paragraph (iv) above, to secure all repayment and other obligations of the Debtors under the DIP Credit Facility and this Final Order, including the Additional Notes. Except as expressly provided in the DIP Credit Facility or this Final Order, the DIP Liens shall not be made subject to or pari passu with any lien on, or security interest in, the Property, and shall be valid and enforceable against any trustee appointed in these cases, in any successor case, or upon the dismissal of any of these cases. The DIP Liens shall not be subject to sections 510, 549, 550 or 551 of the Bankruptcy Code. Except as provided in the DIP Credit Facility, this Final Order, or as otherwise agreed to by the DIP Lenders, the Debtors shall not grant any liens on the Property junior to the DIP Liens. In addition, except as permitted in the DIP Credit Facility, this Final Order, or as otherwise agreed to by the DIP Lenders, the Debtors shall not incur any debt with priority equal to or greater than the DIP Credit Facility. For the avoidance of doubt,

notwithstanding anything to the contrary in this Final Order, the Interim Order or the DIP Credit Facility, the Permitted Liens shall include any valid, perfected, non-avoidable prepetition senior liens in any Property of the Debtors' estates (or non-avoidable valid liens in existence as of the Petition Date that are subsequently perfected only as permitted by section 546(b) of the Bankruptcy Code), including, but not limited to, valid, perfected, non-avoidable prepetition senior statutory and possessory liens, and recoupment and setoff rights. Further, nothing in this Final Order, the Interim Order or the DIP Credit Facility shall in any way impair the right of any claimant with respect to any alleged reclamation right or impair the ability of a claimant to seek adequate protection with respect to any alleged reclamation right; provided, however, that nothing in this Final Order, the Interim Order or the DIP Credit Facility shall prejudice any rights, defenses, objections or counterclaims that the Debtors, the DIP Lenders, any agent under the Prepetition Senior Facilities, the lender under the TARP Loan Agreement, the Committee or any other party in interest may have with respect to the validity or priority of such asserted liens or rights, or with respect to any claim for adequate protection; provided, further, that nothing in this Final Order, the Interim Order or the DIP Credit Facility shall in any way be construed to permit or authorize the DIP Lenders to seek recourse against the New GM Equity Interests at any time. Notwithstanding the foregoing, the DIP Liens shall be subject and subordinate to valid and enforceable liens of governmental units for personal property taxes, real property taxes, special taxes, special assessments, and infrastructure improvement taxes arising after the Petition Date to the extent that such liens of governmental units take priority over previously granted and perfected consensual liens or security interests in property of the Debtors under applicable non-bankruptcy law.

7. Except as expressly agreed by the DIP Lenders, the obligations of the Debtors, including, without limitation, all obligations under the Notes (as defined in the DIP Credit Facility), shall be unconditionally guaranteed on a joint and several basis by each of the entities listed on Schedule 1.1B to the DIP Credit Facility. Except as otherwise expressly agreed to by each DIP Lender, the obligations of the Debtors shall further be unconditionally guaranteed on a joint and several basis by each and every subsequently acquired or organized direct or indirect domestic subsidiary of any Debtor (other than GMCL and direct and indirect subsidiaries of GMCL), each of which shall be made a guarantor under the DIP Credit Facility immediately upon its acquisition and/or organization as provided in the DIP Credit Facility.

8. The Existing UST Secured Parties are hereby granted, pursuant to sections 361, 362, 363, 364 and 507 of the Bankruptcy Code, the Adequate Protection Claim and the Adequate Protection Liens with the priorities set forth in paragraph (vii) hereof, in each case to the extent of any diminution in the value of the relevant Existing UST Secured Party's interests in the Debtors' interests in the Property (including Cash Collateral) occurring on or after the Petition Date.

9. The Debtors are hereby authorized to use the Cash Collateral in accordance with the Initial Budget, until the DIP Lenders have exercised remedies as a result of an Event of Default under, and as defined in, the DIP Credit Facility.

10. The DIP Liens, the Super-priority Claim, the Adequate Protection Liens and the Adequate Protection Claim shall continue in any superseding case or cases for any or all of the Debtors under any chapter of the Bankruptcy Code, and such liens, security interests and claims shall maintain their priorities as provided in this Final Order. If an order dismissing any of these cases, pursuant to section 1112 of the Bankruptcy Code or otherwise, is at any time

entered, such order shall provide that (A) the DIP Liens, the Super-priority Claim, the Adequate Protection Liens and the Adequate Protection Claim shall continue in full force and effect, shall remain binding on all parties in interest in these cases, and shall maintain their priorities as provided in this Final Order, until all obligations of the Debtors under the DIP Credit Facility (with respect to the DIP Liens and the Super-priority Claim) and the Existing UST Loan Agreements (with respect to the Adequate Protection Liens and the Adequate Protection Claim) have been paid and satisfied in full. Notwithstanding the dismissal of any or all of these cases, this Court shall retain jurisdiction with respect to enforcing the DIP Liens and the Super-priority Claim and the DIP Lenders' rights with respect thereto, and the Adequate Protection Liens and the Adequate Protection Claim and the Existing UST Secured Parties' rights with respect thereto.

11. Except as provided in this Final Order or in the DIP Credit Facility, the DIP Liens, the Super-priority Claim, the Adequate Protection Liens and the Adequate Protection Claim, and all rights and remedies of the DIP Lenders, shall not be modified, impaired or discharged by the entry of an order or orders confirming a plan or plans of reorganization in any or all of these cases and, pursuant to section 1141(d)(4) of the Bankruptcy Code, each Debtor waives any discharge as to any remaining obligations under the DIP Credit Facility and this Final Order including, without limitation, the Additional Notes.

12. This Final Order shall be sufficient and conclusive evidence of the validity, perfection and priority of the DIP Liens and the Adequate Protection Liens, without the necessity of filing or recording any financing statement or other instrument or document, or the taking of any other act that otherwise may be required under state or federal law, rule, or regulation of any jurisdiction to validate or perfect the DIP Liens or the Adequate Protection Liens or to entitle the DIP Lenders and the Existing UST Secured Parties to the priorities set

forth herein. The DIP Liens and the Super-priority Claim granted to the DIP Lenders pursuant to this Final Order and the DIP Credit Facility with respect to the property of the Debtors' estates were perfected by operation of law upon entry of the Interim Order by the Court. The Debtors may execute, and the DIP Lenders or the Existing UST Secured Parties, as applicable, are hereby authorized to file or record financing statements or other instruments to evidence the DIP Liens and the Adequate Protection Liens, and the Debtors are hereby authorized and directed, promptly upon demand by any DIP Lender or Existing UST Secured Party, to execute, file and record any such statements or instruments as the DIP Lenders or such Existing UST Secured Party may request; provided, however, that no such execution, filing, or recordation shall be necessary or required in order to create or perfect the DIP Liens or any Adequate Protection Lien, and further, if the DIP Lenders or any Existing UST Secured Party, each in its sole discretion, shall choose to file such financing statements, mortgages, notices of lien or similar instruments or otherwise confirm perfection of such liens, all such documents shall be deemed to have been filed or recorded as of the Petition Date. A certified copy of this Final Order may, in the discretion of the DIP Lenders or any Existing UST Secured Party, as applicable, be filed with or recorded in any filing or recording office in addition to or in lieu of such financing statements, notices of lien or similar instruments, and all filing offices are hereby authorized to accept a certified copy of this Final Order for filing and recording, and to deem this Final Order to be in proper form for filing and recording.

13. Each and every federal, state, and local governmental agency, department or office is hereby authorized and directed to accept this Final Order and any and all documents and instruments necessary or appropriate to consummate the transactions contemplated by this Final Order or the DIP Credit Facility.

14. The automatic stay imposed by section 362(a) of the Bankruptcy Code is hereby modified to permit (A) the Debtors to grant the DIP Liens, the Super-priority Claim, the guaranties and other security provided for in the DIP Credit Facility, and to perform such acts as the DIP Lenders may request to assure the perfection and priority of the DIP Liens, (B) the Debtors to grant the Adequate Protection Liens and the Adequate Protection Claim, and to perform such acts as any Existing UST Secured Party may request to assure the perfection and priority of the Adequate Protection Liens, (C) the implementation of the terms of this Final Order and the DIP Credit Facility, (D) the repayment of the Prepetition Senior Facilities as detailed in paragraph 19 hereof, and (E) immediately upon the occurrence of an Event of Default under the DIP Credit Facility or the maturity of the credit extensions provided thereunder, the exercise by the DIP Lenders of all rights and remedies under such agreement or applicable law without further application to or order of this Court; provided, however, that prior to exercising any setoff of amounts held in any accounts maintained by any Debtor or enforcing any liens or other remedies with respect to the Property, the DIP Lenders shall provide to the Debtors (with copies to the Committee, any other statutory committee and the United States Trustee) five business days' prior written notice; provided further, however, that upon receipt of any such notice, the Debtors may only make disbursements in the ordinary course of business and with respect to the Carve-Out, but may not make any other disbursements. Upon the occurrence and during the continuance of an Event of Default under the DIP Credit Facility, the DIP Lenders and their respective representatives shall be granted access to all locations in support of the enforcement and exercise of their remedies.

15. Upon the occurrence and during the continuance of any Event of Default under the DIP Credit Facility, and subject to the five business day notice provision set forth in

paragraph 14 above, the DIP Lenders may compel any Debtor to exercise such Debtor's rights (if any) to sell any or all of the Property in its possession pursuant to section 363(b) of the Bankruptcy Code or any other applicable law, the DIP Lenders shall be entitled to exercise their right (if any) to credit bid the DIP Liens in any such sale pursuant to section 363(k) or other applicable provision of the Bankruptcy Code, or other applicable law, and the Debtors shall use best efforts (subject to applicable law) to exercise their rights (if any) to sell such Property if requested by the DIP Lenders (pursuant to section 363 of the Bankruptcy Code or otherwise).

16. As used in this Final Order, "**Carve-Out**" means, following the occurrence and during the continuance of an Event of Default under the DIP Credit Facility, an amount sufficient for payment of (A) allowed professional fees and disbursements incurred by professionals retained by the Debtors, the Committee and any other statutory committee (after application of all outstanding retainers held by those professionals) and allowed expenses of members of the Committee and any other statutory committee in an aggregate amount not to exceed $20,000,000 (plus all such professional fees and disbursements, and expenses of members of the Committee and any other statutory committee that are unpaid after application of all outstanding retainers, and that were accrued or incurred prior to the occurrence of the Event of Default, to the extent allowed by this Court at any time), (B) fees pursuant to 28 U.S.C. § 1930 and any fees payable to the clerk of this Court, (C) fees and disbursements incurred by a chapter 7 trustee (if any) not to exceed $2,000,000, and (D) fees and expenses incurred by a privacy ombudsman retained by Appointment of Ombudsman dated June 10, 2009 [Docket No. 565]; provided, however, that, so long as an Event of Default has not occurred, the Debtors shall be permitted to pay fees and expenses allowed and payable under 11 U.S.C. §§ 330 and 331, as the same may become due and payable, and the same shall not reduce the Carve-Out;

provided further, however, that the Carve-Out shall not include any fees or disbursements related to the investigation of, preparation for, or commencement or prosecution of, any claims or proceedings against the DIP Lenders, the Existing UST Secured Parties or EDC, in its capacity as lender under the Canadian Facility (as defined in the DIP Credit Facility) and on behalf of the Governments of Ontario and Canada, or other Canadian Lender Consortium Member (as defined in the DIP Credit Facility), or the claims or security interests in or liens on the property granted under the Canadian Facility, or their claims or security interests in or liens on the Property granted under the DIP Credit Facility or this Final Order.

17. The DIP Lenders have acted in good faith in connection with the DIP Credit Facility, the Interim Order and this Final Order and their reliance on the provisions of this Final Order when extending credit under the DIP Credit Facility will be in good faith. Accordingly, if any provision of this Final Order is hereafter modified, vacated, or stayed by subsequent order of this Court or any other court for any reason, the DIP Lenders are entitled to the protections provided in section 364(e) of the Bankruptcy Code. The DIP Credit Facility may not be recharacterized as an equity investment or otherwise.

18. The DIP Lenders may exercise their right (if any) to credit bid the loans and the Additional Notes under the DIP Credit Facility (pursuant to section 363(k) or other applicable provision of the Bankruptcy Code, or other applicable law), in whole or in part, in connection with any sale or other disposition of some or all of the Property in these cases.

19. (a) Upon entry of this Final Order, the Debtors shall be authorized to apply and shall apply the proceeds of the DIP Credit Facility to repay amounts outstanding under the Prepetition Senior Facilities and all second lien Hedging Obligations (as defined in the Prepetition Revolving Credit Agreement), including principal, accrued and unpaid interest, fees,

letter of credit reimbursement obligations (including obligations to cash collateralize undrawn letters of credit) and any other amounts due or owed by the Debtors thereunder within three business days of entry of this Final Order.

(b) Upon payment ("**Payment**") of all obligations under the Prepetition Senior Facilities, all commitments under each of the Prepetition Senior Facilities shall be deemed irrevocably terminated. Further, upon Payment, except as set forth in subsection (c) below, the holders of such obligations (the "**Prepetition Senior Facilities Secured Parties**") shall have no further rights with respect to the Debtors, the DIP Lenders, the Property or any claims or liens relating thereto (all of which liens and claims shall be deemed automatically satisfied and released without further action), whether such claims or liens arise under the Prepetition Term Loan Agreement, Prepetition Revolving Credit Agreement, the Prepetition Gelco Loan Agreement or related documentation, and the Debtors and their estates shall have no further obligations to the Prepetition Senior Facilities Secured Parties in connection with the Prepetition Senior Facilities. Nothing in this Order shall be deemed to alter, amend, release or waive any liens against, or obligations of, any non-Debtor affiliate under the Prepetition Revolving Credit Agreement and documents related thereto.

(c) The Prepetition Senior Facilities Secured Parties' liens, claims and interests in the Property and any adequate protection claims or adequate protection liens, shall expire upon the Payment. In the event that the Committee investigates any liens of any of the Prepetition Senior Facilities Secured Parties or any third party brings an action against a Prepetition Senior Facilities Secured Party that is entitled to indemnification by the Debtors under the applicable Prepetition Senior Facility, then, notwithstanding any other provision of this Final Order, (i) the Debtors shall pay (in accordance with Paragraph 6(d) of the Prepetition

Revolving Credit Agreement Order and Paragraph 5(d) of the Prepetition Term Loan Facility Order), the reasonable fees, costs and charges incurred by the agents for the Prepetition Senior Facilities (and, in the case of Gelco, reasonable fees, costs and charges incurred by Gelco, so long as Gelco complies with the expense reimbursement procedures applicable to the agents under the other Prepetition Senior Facilities) in responding to such investigation or in defending any challenge to such liens or to their ability to retain any Payment, and (ii) the super-priority adequate protection claims granted pursuant to the Prepetition Revolving and Term Adequate Protection Orders shall remain in effect with respect to such expense reimbursement obligations, provided that such claims shall not have recourse to the New GM Equity Interests and Gelco is hereby granted superpriority adequate protection claims equivalent to those provided to the agents under the other Prepetition Senior Facilities. Nothing in this order shall affect the rights and remedies, if any, of the Prepetition Senior Facility Secured Lenders (other than Gelco and the agents under the other Prepetition Senior Facilities, whose rights and remedies shall be as described herein) to seek reimbursement of their reasonable fees, costs, and charges incurred in responding to any such investigation or in defending any challenge to such liens or Payment. Without limiting the generality of the foregoing, upon Payment, the Prepetition Senior Facilities Secured Parties (i) authorize the Debtors to file Uniform Commercial Code termination statements, mortgage releases and all other documents necessary to evidence the release of the liens against the Debtors securing the obligations under the Prepetition Senior Facilities and (ii) will take all such action and deliver all such other instruments and documents as may be reasonably requested by the Debtors or the agents under the Prepetition Senior Facilities to effectuate or evidence the termination of all such claims of the Prepetition Senior Facilities Secured Parties, in each case, at the sole cost and expense of the Debtors.

(d) Effective upon entry of this Final Order, the Debtors (on behalf of their estates) and any successor thereto release the Prepetition Senior Facilities Secured Parties and each of their directors, officers, appointees, counsel, advisors and employees serving in any capacity or function, including as a fiduciary, agents, advisors, shareholders, subsidiaries, affiliates, heirs, executors, administrators, attorneys, advisors, successors and assigns from, against and with respect to any and all actual or potential demands, claims, actions, causes of action (including derivative causes of action), suits, assessments, liabilities, losses, costs, damages, penalties, fees, charges, expenses and all other forms of liability whatsoever, in law or equity, whether asserted or unasserted, known or unknown, foreseen or unforeseen, arising under the Bankruptcy Code, state law or otherwise now existing or hereafter arising, directly or indirectly related to the Prepetition Senior Facilities and any and all dealings between the Prepetition Senior Facilities Secured Parties in connection with the Prepetition Senior Facilities, provided, however, that such release shall not apply to the Committee with respect only to the perfection of first priority liens of the Prepetition Senior Facilities Secured Parties (it being agreed that if the Prepetition Senior Facilities Secured Parties, after Payment, assert or seek to enforce any right or interest in respect of any junior liens, the Committee shall have the right to contest such right or interest in such junior lien on any grounds, including (without limitation) validity, enforceability, priority, perfection or value) (the "**Reserved Claims**"). The Committee shall have automatic standing and authority to both investigate the Reserved Claims and bring actions based upon the Reserved Claims against the Prepetition Senior Facilities Secured Parties not later than July 31, 2009 (the "**Challenge Period**"), provided, that upon the filing of any adversary proceeding prosecuting any Reserved Claim, the Challenge Period shall be extended with respect to such adversary proceeding through and until a court of competent jurisdiction

dismisses such adversary proceeding. The grant of automatic standing shall be without any further order of this Court or any requirement that the Committee file a motion seeking standing or authority to file a motion seeking standing or authority before prosecuting any such challenge. Any Prepetition Senior Facilities Secured Party accepting Payment shall submit to the jurisdiction of the Bankruptcy Court, it being understood that the respective administrative and collateral agents for the Prepetition Senior Facilities shall have no responsibility or liability for amounts paid to any Prepetition Senior Facilities Secured Parties and such agents shall be exculpated for any and all such liabilities, excluding only such funds as are retained by each such agent solely in its respective role as a lender.

(e) Immediately upon Payment, the DIP Lenders shall be deemed to have obtained a secured, non-avoidable, perfected security interest in and lien on the Prepetition Senior Facilities Collateral.

20. Notwithstanding anything herein to the contrary, none of the proceeds of any extension of credit under the DIP Credit Facility shall be used in connection with (a) any investigation (including discovery proceedings), initiation or prosecution of any claims, causes of action, adversary proceedings or other litigation against the DIP Lenders or the Existing UST Secured Parties or EDC, in its capacity as lender under the Canadian Facility and on behalf of the Governments of Ontario and Canada, (b) the initiation or prosecution of any claims, causes of action, adversary proceedings or other litigation against the DIP Lenders or the Existing UST Secured Parties or EDC, in its capacity as lender under the Canadian Facility and on behalf of the Governments of Ontario and Canada, or any of their respective affiliates with respect to any loans, extensions of credit or other financial accommodations made to any Debtor prior to, on or after the Petition Date, or (c) any loans, advances, extensions of credit, dividends or other

investments to any person not a Borrower or Guarantor other than for certain permitted exceptions set forth in the DIP Credit Facility.

21. On or substantially contemporaneous with the closing of the Related Section 363 Transactions, the Tranche C Term Loan (as such term is defined in the DIP Credit Facility) in an amount not less than $950,000,000 shall be provided to the Borrower in accordance with section 2.14 of the DIP Credit Facility to fund the wind-down of the Debtors (the "**Wind-Down Facility**"). The funding of the Wind-Down Facility shall be subject to an appropriate amendment to the DIP Credit Facility, acceptable to the Debtors and the DIP Lenders, which amendment shall be subject to approval by this Court on three days notice after the filing of a motion seeking approval of the Wind-Down Facility. The Committee shall be copied on all drafts of the credit agreement related to the Wind-Down Facility and the Wind-Down Budget (as defined in the DIP Credit Facility) that are circulated between the Debtors and the DIP Lenders and shall be included in all substantive negotiations of the Wind-Down Facility and the Wind-Down Budget between the Debtors and the DIP Lenders.

22. In the event of any inconsistency between the terms and conditions of the DIP Credit Facility or the Interim Order and this Final Order, the terms and conditions of this Final Order shall control.

23. The parties to the DIP Credit Facility may, from time to time, enter into waivers or consents with respect thereto without further order of this Court. In addition, the parties to the DIP Credit Facility may, from time to time, enter into amendments with respect thereto without further order of this Court; provided, that, (A) the DIP Credit Facility, as amended, is not materially different from the form approved by this Final Order, (B) notice of all amendments is filed with this Court, and (C) notice of all amendments (other than those that are

ministerial or technical and do not adversely affect the Debtors) are provided in advance to counsel for the Committee and any other statutory committee, all parties requesting notice in these cases and the United States Trustee. For purposes hereof, a "material" difference from the form approved by this Final Order shall mean any difference resulting from a modification that operates to (1) shorten the maturity of the extensions of credit under the DIP Credit Facility or otherwise require more rapid principal amortization than is currently required under the DIP Credit Facility, (2) increase the aggregate amount of any of the commitments thereunder, (3) increase the rate of interest or any other fees or charges payable thereunder (other than to the extent contemplated in the DIP Credit Facility as in effect on the date of this Final Order), (4) add specific new Events of Default (as defined in the DIP Credit Facility) or shorten the notice or grace period in respect to any Default (as defined in the DIP Credit Facility) or Event of Default currently in the DIP Credit Facility, (5) enlarge the nature and extent of default remedies available to the DIP Lenders or agents under the DIP Credit Facility following the occurrence and during the continuance of an Event of Default, (6) add additional financial covenants or make any financial covenant or other negative or affirmative covenant or representation and warranty more restrictive on the Debtors, or (7) otherwise modify the DIP Credit Facility in a manner materially less favorable to the Debtors and their estates.

24. This Final Order shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding by Bankruptcy Rule 9014, and shall be deemed effective and enforceable immediately upon its entry and nunc pro tunc to the Petition Date.

25. The rights, benefits, and privileges granted pursuant to this Final Order (including, without limitation, the DIP Liens, the Super-priority Claim, the Adequate Protection

Liens and the Adequate Protection Claim granted herein) shall attach and be enforceable against the bankruptcy estate of any direct or indirect subsidiary of the Debtors that is a party to the DIP Credit Facility and which hereafter becomes a debtor in these procedurally consolidated cases automatically and without further court order on a final basis. Except as may be provided in this Final Order, such subsidiary shall be deemed a "Debtor" hereunder effective as of the date such subsidiary files a petition and becomes a debtor in these cases.

26. Except as otherwise provided in this Final Order, the provisions of the DIP Credit Facility and the provisions of this Final Order, including all findings of fact and conclusions of law set forth herein, shall, immediately upon entry of this Final Order in these cases, become valid and binding upon the Debtors, the DIP Lenders, the Existing UST Secured Parties, all other creditors of the Debtors, the Committee, any other statutory committee and all other parties in interest in these cases and their respective successors and assigns, including any trustee or other fiduciary hereafter appointed as a legal representative of any Debtor's estate in these cases or in any subsequent chapter 7 case. In no event shall the DIP Lenders, whether in connection with the exercise of any rights or remedies under the DIP Credit Facility, hereunder or otherwise, be deemed to be in control of the operations of the Debtors or to be acting as a "responsible person" or "owner or operator" with respect to the operation or management of the Debtors, so long as the actions of the DIP Lenders do not constitute, within the meaning of 42 U.S.C. § 9601(20)(F), actual participation in the management or operational affairs of a vessel or facility owned or operated by a Debtor, or otherwise cause liability to arise to the federal or state government or the status of responsible person or managing agent to exist under applicable law (as such terms, or any similar terms, are used in the Comprehensive Environmental Response,

Compensation and Liability Act, sections 9601 et seq. of title 42, United States Code, as amended, or any similar federal or state statute).

27. The Committee shall receive the same reports provided by the Debtors to the DIP Lenders under section 5.2 of the DIP Credit Facility.

28. The Debtors have provided adequate and sufficient notice of the Final Hearing and this Final Order as required under section 364 of the Bankruptcy Code, Rule 4001 of the Bankruptcy Rules and Rule 4001-2 of the Local Bankruptcy Rules.

29. The Final Hearing was held pursuant to Rule 4001 of the Bankruptcy Rules.

30. This Court shall retain exclusive jurisdiction to interpret and enforce the provisions of the DIP Credit Facility, the Interim Order and this Final Order in all respects; provided, however, that in the event this Court abstains from exercising or declines to exercise jurisdiction with respect to any matter provided for in this paragraph or is without jurisdiction, such abstention, refusal, or lack of jurisdiction shall have no effect upon and shall not control, prohibit or limit the exercise of jurisdiction of any other court having competent jurisdiction with respect to any such matter.

Dated: ***June 25, 2009***
New York, New York

/s/ Robert E. Gerber
HON. ROBERT E. GERBER
UNITED STATES BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
REAL MEX RESTAURANTS, INC. *et al.*,[1]	Case No. 11-13122 (BLS)
	Jointly Administered
Debtors.	Doc. Ref. Nos. 18, 86

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

Upon the motion, dated October 4, 2011 (the "DIP Motion"), of the DIP Borrowers (as defined below), and the other debtors and debtors-in-possession (collectively, the "Debtors"), in the above-referenced chapter 11 cases (the "Cases"), seeking entry of an interim order (the "Interim Order")[2] and this final order (this "Final Order") pursuant to sections 105, 361, 362, 363(b), 363(c)(2), 364(c)(l), 364(c)(2), 364(c)(3), 364(d)(l), 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

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1 The Debtors in these chapter 11 cases, along with the last four digits of each of the Debtors' federal tax identification numbers, are: Real Mex Restaurants, Inc. (2902); RM Restaurant Holding Corp. (2217); Acapulco Mark Corp. (3570); Acapulco Restaurant of Downey, Inc. (2910); Acapulco Restaurant of Moreno Valley, Inc. (4606); Acapulco Restaurant of Ventura, Inc. (3626); Acapulco Restaurant of Westwood, Inc. (1162); Acapulco Restaurants, Inc. (4897); ALA Design, Inc. (8584); Chevys Restaurants, LLC (2992); CKR Acquisition Corp. (8287); El Paso Cantina, Inc. (0112); El Torito Franchising Company (2754); El Torito Restaurants, Inc. (7059); Murray Pacific (1596); Real Mex Foods, Inc. (8585); and Tarv Incorporated (8081). The Debtors' headquarters and mailing address is: 5660 Katella Avenue, Cypress, CA 90630.

2 Based upon the Motion, the exhibits thereto, the DIP Loan Documents, and the evidence submitted at the Interim Hearing, the Court approved and entered the Interim Order. The findings made in Paragraphs F, G, J, and K of the Interim Order are incorporated herein by reference.

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:

(i) authorizes on a final basis the Debtors designated as "Borrowers" under, and as defined in, the DIP Credit Agreement (as defined below) (collectively, the "DIP Borrowers") to obtain, and the Parent (as defined below) and the other guarantors (the "DIP Guarantors") under the DIP Loan Documents (as defined below) to unconditionally guaranty, jointly and severally, the DIP Borrowers' obligations in respect of, senior secured priming and superpriority postpetition financing, consisting of (i) a letter of credit facility for up to $20,000,000 (the "LC Facility") and (ii) a revolving credit facility for up to $29,000,000 (the "Revolver Facility," and together with the LC Facility, the "DIP Facility") pursuant to the terms of (x) this Final Order, (y) that certain Senior Secured Priming and Superpriority Revolving Credit Agreement, dated as of October 6, 2011 (as the same may be amended, restated, supplemented, or otherwise modified from time to time in accordance with its terms, the "DIP Credit Agreement"),[3] by and among the DIP Borrowers, the DIP Guarantors, General Electric Capital Corporation ("GECC"), as administrative agent and collateral agent (in such capacity, the "DIP Agent"), and GE Franchise Finance Commercial LLC 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) fund, among other

[3] Unless otherwise specified, all capitalized terms used herein without definition shall have the respective meanings given to such terms in the DIP Credit Agreement.

things, ongoing working capital, general corporate expenditures, letters of credit and other financing needs of the Debtors, (B) automatically upon entry of this Final Order, convert all outstanding Prepetition First Lien Obligations (as defined below) to DIP Obligations subject to this Final Order and the DIP Loan Documents, (C) grant, as of the Petition Date and in accordance with the relative priorities set forth herein, certain adequate protection to the Prepetition First Lien Secured Parties and to the Prepetition Second Lien Secured Parties (each term as defined below) as described below, (D) pay certain transaction fees and other costs and expenses of administration of the Cases, and (E) pay fees and expenses (including, without limitation, reasonable attorneys' fees and expenses) owed to the DIP Agent and the DIP Lenders under the DIP Loan Documents and this Final Order;

(ii) approves the terms of, and authorizes the Debtors to execute and deliver, and perform under, the DIP Credit Agreement and the other DIP Loan Documents and to perform such other and further acts as may be required in connection with the DIP Loan Documents and this Final Order;

(iii) grants (x) to the DIP Agent, for the benefit of itself and the other DIP Secured Parties, Liens (as defined in the DIP Credit Agreement) on all of the DIP Collateral (as defined below) pursuant to sections 364(c)(2), (c)(3) and (d) of the Bankruptcy Code, which Liens shall be senior to the Primed Liens (as defined below) and shall be junior solely to any valid, enforceable and non-avoidable Liens that are (A) in existence on the Petition Date, (B) 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 (C) senior in priority to the Prepetition First Liens (as defined below) after giving effect to any intercreditor or subordination agreement (all such liens, collectively, the "Prepetition Prior Liens") and (y) to the DIP Secured Parties

pursuant to section 364(c)(1) of the Bankruptcy Code superpriority administrative claims having recourse to all prepetition and postpetition property of the Debtors' estates, now owned or hereafter acquired, including any Debtors' rights under section 506(c) of the Bankruptcy Code and the proceeds thereof;

(iv) authorizes the Debtors to use "cash collateral," as such term is defined in section 363 of the Bankruptcy Code (the "Cash Collateral"), including, without limitation, Cash Collateral in which the Prepetition Secured Parties (as defined below) and/or the DIP Secured Parties have a Lien or other interest, in each case whether existing on the Petition Date, arising pursuant to this Final Order or otherwise, and provides the Prepetition Secured Parties (as defined below) the Prepetition Secured Parties' Adequate Protection (as defined below) as set forth herein;

(v) vacates the automatic stay imposed by section 362 of the Bankruptcy Code solely to the extent necessary to implement and effectuate the terms and provisions of the DIP Loan Documents and this Final Order; and

(vi) waives any applicable stay (including under Bankruptcy Rule 6004) and provides for immediate effectiveness of this Final Order.

Having considered the DIP Motion, the DIP Credit Agreement, the Declaration of Michael Jerbich in support of the DIP Motion (the "Jerbich Declaration"), the Declaration of Marc A. Bilbao and Supplemental Declaration of Mark Bilbao in support of the DIP Motion (the "Bilbao Declarations" and, together with the Jerbich Declaration, the "DIP Motion Declarations"), the Declaration of Richard P. Dutkiewicz, Executive Vice President and Chief Financial Officer of the Debtors, in Support of First Day Motions, and the evidence submitted or proffered at the hearing on the Interim Order held on October 5, 2011 (the "Interim Hearing")

and on this Final Order (the "Final Hearing"); and 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 Final Hearing having been provided pursuant to Bankruptcy Rule 4001(b)(1)(C); the Final Hearing having been held and concluded on November 3 and 4, 2011; and it appearing that approval of the final relief requested in the DIP Motion is necessary to avoid immediate and irreparable harm to the Debtors 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 after due deliberation and consideration, and for good and sufficient cause appearing therefor:

THE COURT MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:[4]

A. **Petition Date**. On October 4, 2011 (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. On October 14, 2011, the United States Trustee for the District of Delaware (the "United States Trustee") appointed the Official Committee of Unsecured Creditors in the Cases pursuant to section 1102 of the Bankruptcy Code (the "Committee"). No 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

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4 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.

pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief sought herein are sections 105, 361, 362, 363, 364, 507 and 552 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001, 6004, and 9014 and the Local Rules.

C. **Notice**. The Final Hearing was held pursuant to the authorization of Bankruptcy Rule 4001 and Local Rule 4001-2(b). Notice of the Final Hearing and the 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 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 First Lien Secured Agent (as defined below), (iv) the Prepetition First Lien Secured Agent, (v) the DIP Agent, (vi) counsel to the DIP Agent, (vii) the Prepetition Second Lien Trustee (as defined below), (viii) counsel to the Prepetition Second Lien Trustee, (ix) counsel to the Majority Prepetition Second Lien Secured Noteholders (as defined below), (x) Wilmington Trust National Association, as administrative agent (the "Unsecured Prepetition Agent") under that certain Second Amended and Restated Credit Agreement, dated as of July 7, 2009, by and among Real Mex (as defined below), the Parent (as defined below), the lenders party thereto, and Wilmington Trust National Association (successor administrative agent to Credit Suisse, Cayman Island Branch), (xi) counsel to the Unsecured Prepetition Agent, and (xii) counsel to the Committee. Under the circumstances, such notice of the DIP Motion, the relief requested therein and the Final Hearing complies with Bankruptcy Rule 4001(b), (c) and (d) and the Local Rules, and no other notice need be provided for entry of this Final Order.

D. **Debtors' Stipulations Regarding the Prepetition Secured Credit Facility**. Without prejudice to the rights of parties in interest to the extent set forth in Paragraph

7 below, the Debtors admit, stipulate, acknowledge, and agree (Paragraphs D and E hereof shall be referred to herein collectively as the "Debtors' Stipulations") as follows:

(i) Prepetition First Lien Secured Credit Facility. Pursuant to that certain Second Amended and Restated Revolving Credit Agreement, dated as of January 29, 2007 (as amended, restated or otherwise modified from time to time prior to the Petition Date, the "Prepetition First Lien Secured Credit Agreement," collectively with any other agreements and documents executed or delivered in connection therewith, including, without limitation, the "Loan Documents" as defined therein, each as may be amended, restated, supplemented, or otherwise modified from time to time, the "Prepetition First Lien Loan Documents"), among (a) Real Mex Restaurants, Inc., formerly known as Acapulco Acquisition Corp. ("Real Mex"), Acapulco Restaurants, Inc. ("ARI"), El Torito Franchising Company ("ETFI"), El Torito Restaurants, Inc. ("ETRI"), TARV, Inc. ("TARV"), Acapulco Restaurant of Ventura, Inc. ("ARV"), Acapulco Restaurant of Westwood, Inc. ("ARW"), Acapulco Mark Corp. ("AMC"), Murray Pacific ("MP"), ALA Design, Inc. ("ALAD"), Real Mex Foods, Inc., formerly known as ALA Foods, Inc. ("RMF"), Acapulco Restaurant of Downey, Inc. ("ARD"), Acapulco Restaurant of Moreno Valley, Inc. ("AMV"), El Paso Cantina, Inc. ("EPC"), CKR Acquisition Corp. ("CKR"), and Chevys Restaurants, LLC ("Chevys"), as borrowers (collectively, the "Borrowers"), (b) GE Franchise Finance Commercial LLC ("GE Franchise") (by assignment from General Electric Capital Corporation) and the other financial institutions party thereto, as "Lenders" (collectively, with GE Franchise, the "Prepetition First Lien Secured Lenders"), and (c) General Electric Capital Corporation, as administrative agent and collateral agent (in such capacities, the "Prepetition First Lien Secured Agent" and, together with the Prepetition First Lien Secured Lenders and any other party to which Prepetition First Lien Obligations (as defined

below) are owed, the "Prepetition First Lien Secured Parties"), the Prepetition First Lien Secured Parties agreed to extend loans and other financial accommodations to, and issue letters of credit for the account of, the Borrowers pursuant to the Prepetition First Lien Secured Credit Agreement. Pursuant to an Amended and Restated Guaranty, dated as of January 29, 2007 (as amended, restated and otherwise modified in accordance with its terms, the "Parent Guaranty"), RM Restaurant Holding Corp. (the "Parent") unconditionally guaranteed the Borrowers' obligations under the Prepetition First Lien Loan Documents. All obligations of the Debtors arising under the Prepetition First Lien Secured Credit Agreement (including, without limitation, the "Obligations" as defined therein) or the other Prepetition First Lien Loan Documents shall collectively be referred to herein as the "Prepetition First Lien Obligations."

(ii) Prepetition First Liens and Prepetition Collateral. Pursuant to the Security Documents (as defined in the Prepetition First Lien Secured Credit Agreement) (as such documents are amended, restated, supplemented, or otherwise modified from time to time prior to the Petition Date, the "Prepetition First Lien Collateral Documents"), by and between each of the Borrowers, the Parent, and the Prepetition First Lien Secured Agent, each Borrower and the Parent granted to the Prepetition First Lien Secured Agent, for the benefit of itself and the Prepetition First Lien Secured Lenders, to secure the Prepetition First Lien Obligations, a first priority security interest in and continuing lien (the "Prepetition First Liens") on substantially all of such Borrower's and the Parent's assets and properties (which, for the avoidance of doubt, includes Cash Collateral) and all proceeds, products, accessions, rents, and profits thereof, in

each case whether then owned or existing or thereafter acquired or arising.[5] All "Collateral" as defined in the Prepetition First Lien Secured Credit Agreement granted or pledged by such Borrowers and the Parent pursuant to any Prepetition First Lien Collateral Document or any other Prepetition First Lien Loan Document shall collectively be referred to herein as the "Prepetition First Lien Collateral." As of the Petition Date, (I) the Prepetition First Liens (a) are valid, binding, enforceable, and perfected liens, (b) were granted to, or for the benefit of, the Prepetition First Lien 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 subject and subordinate only to (A) the DIP Liens (as defined below), (B) the Carve-Out (as defined below), and (C) the Prepetition Prior Liens (as defined below), and (II) (w) the Prepetition First Lien Obligations constitute legal, valid, and binding obligations of the applicable Debtors, enforceable in accordance with the terms of the applicable Prepetition First Lien Loan Documents (other than in respect of the stay of enforcement arising from section 362 of the Bankruptcy Code), (x) no setoffs, recoupments, offsets, defenses, or counterclaims to any of the Prepetition First Lien Obligations exist, (y) no portion of the Prepetition First Lien Obligations or any payments made to any or all of the Prepetition First Lien 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, and (z) the Parent Guaranty shall continue in full force

[5] As of the Petition Date, the Debtors were unable to complete their confirmatory diligence with respect to whether certain of the Debtors' leased premises were subject to leasehold mortgages in favor of the Prepetition First Lien Secured Agent. Accordingly, except with respect to those leasehold interests listed on Exhibit B hereto (which leasehold interests are subject to the Prepetition First Liens), the Debtors' rights with respect to whether their leased premises were subject to leasehold mortgages in favor of the Prepetition First Lien Secured Agent as of the Petition Date are preserved during the Challenge Period (as defined below) but shall be subject to Paragraph 7 below. The leased premises that are not listed on Exhibit B shall be referred to herein as the "Unscheduled Leases."

and effect to unconditionally guaranty the Prepetition First Lien Obligations notwithstanding any use of Cash Collateral permitted hereunder or any financing and financial accommodations extended by the DIP Secured Parties to the Debtors pursuant to the terms of this Final Order or the DIP Loan Documents.

(iii) Amounts Owed under Prepetition First Lien Loan Documents. As of the Petition Date, the applicable Debtors owed the Prepetition First Lien Secured Parties, pursuant to the Prepetition First Lien Loan Documents, without defense, counterclaim, or offset of any kind, in respect of loans made and letters of credit issued by the Prepetition First Lien Secured Parties, an aggregate principal amount of not less than $19,949,073 with respect to the Letter of Credit Facility (as defined in the Prepetition First Lien Secured Credit Agreement) and not less than $17,500,000 with respect to the Revolving Credit Loan Facility (as defined in the Prepetition First Lien Secured Credit Agreement), *plus* all accrued and hereafter accruing and unpaid interest thereon and any additional fees, expenses (including any reasonable attorneys', accountants', appraisers', and financial advisors' fees and expenses that are chargeable or reimbursable under the Prepetition First Lien Loan Documents), and other amounts now or hereafter due under the Prepetition First Lien Secured Credit Agreement and the other Prepetition First Lien Loan Documents.

(iv) Release of Claims. Subject to the reservation of rights set forth in Paragraph 7 below, each Debtor and its estate shall be deemed to have forever waived, discharged, and released each of the Prepetition First Lien Secured Parties in their respective capacities as such and their respective members, managers, equity holders, affiliates, agents, attorneys, financial advisors, consultants, officers, directors, and employees (all of the foregoing, collectively, the "Prepetition First Lien 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 First Lien Secured Party Releasees, whether arising at law or in equity, relating to and/or otherwise in connection with the Prepetition First Lien Obligations, the Prepetition First Liens, or the debtor-creditor relationship between any of the Prepetition First Lien Secured Parties in their respective capacities as such, on the one hand, and any of the Borrowers or the Parent, 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 First Lien Obligations or any payments made on account of the Prepetition First Lien Obligations, or the validity, enforceability, priority, or non-avoidability of the Prepetition First Liens securing the Prepetition First Lien Obligations.

(v) Intercreditor Agreement. The Prepetition First Lien Secured Agent and the Prepetition Second Lien Trustee (as defined below) are parties to that certain Intercreditor Agreement, dated as of July 7, 2009 (as amended, restated, supplemented, or otherwise modified in accordance with its terms, the "Intercreditor Agreement"), which sets forth subordination and other provisions governing the relative priorities and rights of the Prepetition First Lien Obligations and the Prepetition First Liens, on the one hand, and the Prepetition Second Lien Obligations (as defined below) and the Prepetition Second Liens, on the other hand. The Debtors admit, stipulate, and agree that the Intercreditor Agreement was entered into in good faith and is fair and reasonable to the parties thereto and enforceable in accordance with the terms thereof.

E. **Debtors' Stipulations Regarding the Second Lien Secured Notes.** Without prejudice to the rights of parties in interest to the extent set forth in Paragraph 7 below, the Debtors further admit, stipulate, acknowledge, and agree as follows:

(i) Prepetition Second Lien Secured Notes. The Debtors and U.S. Bank, National Association, as successor trustee and collateral agent (together with any successor or assign, the "Prepetition Second Lien Trustee"), entered into that certain Indenture, dated as of July 7, 2009 (as amended, restated, supplemented, or otherwise modified prior to the Petition Date, the "Prepetition Second Lien Indenture" and, together with the Note Documents (as defined in the Prepetition Second Lien Indenture), the "Prepetition Second Lien Loan Documents" and, together with the Prepetition First Lien Loan Documents, collectively the "Prepetition Secured Loan Documents"), pursuant to which Real Mex (in such capacity, the "Prepetition Second Lien Borrower") issued to certain holders (collectively, the "Prepetition Second Lien Secured Noteholders" and, together with the Prepetition Second Lien Trustee, the "Prepetition Second Lien Secured Parties" and, together with the Prepetition First Lien Secured Parties, the "Prepetition Secured Parties") 14% second lien senior secured notes (the "Prepetition Second Lien Secured Notes") in an aggregate original principal amount of $130 million maturing on January 1, 2013 (guaranteed by the Parent, ARI, ETFI, ETRI, TARV, ARV, ARW, AMC, MP, ALAD, RMF, ARD, AMV, EPC, CKR, and Chevy's (collectively the "Prepetition Second Lien Guarantors"). All obligations of the Debtors arising under the Prepetition Second Lien Loan Documents shall collectively be referred to herein as the "Prepetition Second Lien Obligations" and, together with the Prepetition First Lien Obligations, the "Prepetition Secured Obligations."

(ii) Prepetition Second Liens. The Prepetition Second Lien Obligations

are secured by Liens granted to the Prepetition Second Lien Trustee, for the benefit of the Prepetition Second Lien Secured Parties (the "Prepetition Second Liens" and, together with the Prepetition First Liens, the "Prepetition Liens"), on substantially all of the Debtors' assets and properties (which, for the avoidance of doubt, includes Cash Collateral) as set forth in the Prepetition Second Lien Loan Documents, whether then owned or existing or thereafter acquired or arising. All "Collateral" as defined in the Prepetition Second Lien Indenture granted or pledged by the Debtors pursuant to any Prepetition Second Lien Loan Documents shall collectively be referred to herein as the "Prepetition Second Lien Collateral" and, together with the Prepetition First Lien Collateral, collectively, the "Prepetition Collateral."[6] As of the Petition Date, (I) the Prepetition Second Liens (a) are valid, binding, enforceable, and perfected liens, (b) were granted to, or for the benefit of, the Prepetition Second Lien 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 as otherwise permitted under the Intercreditor Agreement), and (d) are subject and subordinate only to (A) the DIP Liens (as defined below), (B) the Carve-Out (as defined below), (C) the First Lien Adequate Protection Replacement Liens (as defined below), (D) the Prepetition First Liens, and (E) the Prepetition Prior Liens, and (II) (x) the Prepetition Second Lien Obligations constitute legal, valid, and binding obligations of the applicable Debtors, enforceable in accordance with the terms of the applicable Prepetition Second Lien Loan 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 Second Lien Obligations exist, and

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6 All references to the Prepetition Second Lien Collateral shall be deemed to exclude the Debtors' leaseholds and owned real property.

(z) no portion of the Prepetition Second Lien Obligations or any payments made to any or all of the Prepetition Second Lien Secured Parties are subject to avoidance, recharacterization, recovery, subordination, attack, recoupment, offset, counterclaim, defense, or "claim" (as defined in the Bankruptcy Code) of any kind pursuant to the Bankruptcy Code or applicable non-bankruptcy law, except for the priming contemplated herein and as otherwise permitted by the Intercreditor Agreement.

(iii) Amounts Owed under Prepetition Second Lien Loan Documents. As of the Petition Date, the applicable Debtors owed the Prepetition Second Lien Secured Parties, pursuant to the Prepetition Second Lien Loan Documents, without defense, counterclaim, or offset of any kind, an aggregate principal amount of not less than $130,000,000, *plus* all prepetition accrued or, subject to section 506(b) of the Bankruptcy Code, postpetition accruing and unpaid interest thereon and any additional reasonable fees and expenses (including any reasonable attorneys', accountants', appraisers', and financial advisors' fees and expenses that are chargeable or reimbursable under the Prepetition Second Lien Loan Documents), and other amounts now or hereafter due under the Prepetition Second Lien Loan Documents.

(iv) Release of Claims. Subject to the reservation of rights set forth in Paragraph 7 below, each Debtor and its estate shall be deemed to have forever waived, discharged, and released each of the Prepetition Second Lien Secured Parties in their respective capacities as such and their respective affiliates, members, managers, equity security holders, agents, attorneys, financial advisors, consultants, officers, directors, and employees (all of the foregoing, collectively, the "Prepetition Second Lien Secured Party Releasees") of any and all "claims" (as defined in the Bankruptcy Code), counterclaims, causes of action (including causes of action in the nature of "lender liability" causes of action), defenses, setoff, recoupment, or

other offset rights against any and all of the Prepetition Second Lien Secured Party Releasees, whether arising at law or in equity, relating to and/or otherwise in connection with the Prepetition Second Lien Obligations and the Prepetition Second Liens, or the debtor creditor relationship between the Prepetition Second Lien Secured Parties in their respective capacities as such, on the one hand, and the Prepetition Second Lien Borrower and the Prepetition Second Lien Guarantors, 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 Second Lien Obligations or any payments made on account of the Prepetition Second Lien Obligations, or the validity, enforceability, priority, or non-avoidability of the Prepetition Second Liens securing the Prepetition Second Lien Obligations.

F. **Findings Regarding the DIP Facility**.

(i) 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 continuation of the operation of their businesses, to maintain business relationships with vendors, suppliers, and customers, to make payroll, to make capital expenditures, to satisfy other working capital and operation needs, to complete the Debtors' marketing and sale process and to otherwise preserve the enterprise value of the Debtors' estates. The Debtors' access to sufficient working capital and liquidity through the use of Cash Collateral and borrowing under the DIP Facility is vital to a successful sale and/or to otherwise preserve the enterprise value of the Debtors' 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 Final Order and the DIP Loan Documents.

(ii) No Credit Available on More Favorable Terms. As set forth in the DIP Motion and in the Bilbao Declarations in support thereof, the Debtors have determined, at the time hereof, that no acceptable financing on more favorable terms from sources other than the DIP Secured Parties under the DIP Loan Documents and this Final Order is available. The Debtors 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, letters of credit, 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. **Financing**. 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, and the terms and conditions of, this Final Order, (ii) the terms and conditions of the DIP Loan Documents, and (iii) findings by the Court that such postpetition financing and use of Cash

Collateral is essential to the Debtors' estates, that the terms of such 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 Final Order and the DIP Loan Documents with respect to such financing and use of Cash Collateral will not be affected by any subsequent reversal, modification, vacatur, or amendment of this Final Order or any other order, as provided in section 364(e) of the Bankruptcy Code or this Final Order. The DIP Agent, the other DIP Secured Parties and the respective 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 a final basis as contemplated by this Final Order and the DIP Loan Documents, and the reliance by the DIP Agent, the other DIP Secured Parties and the respective Prepetition Secured Parties on the assurances referred to above is in good faith.

H. **Adequate Protection for Prepetition Secured Parties**. The Prepetition First Lien Secured Agent, the Prepetition Second Lien Trustee, and the Majority Prepetition Second Lien Secured Noteholders 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 First Lien Secured Agent, Prepetition Second Lien Trustee, and the Majority Prepetition Second Lien Secured Noteholders have agreed to permit the Debtors to use the Prepetition Collateral, including the Cash Collateral 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 a 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, including, with respect to the Prepetition First Lien Secured Parties, the Prepetition First Lien Roll-Up (as defined below), 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 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 business judgment, and constitute reasonably equivalent value and fair consideration for the consent of the respective Prepetition Secured Parties.

I. **Section 552**. Subject to Paragraph 7 (except with respect to the DIP Secured Parties), in light of the subordination of their Liens and superpriority administrative claims to (i) the Carve-Out (as defined below) in the case of the DIP Secured Parties, (ii) the Carve-Out and the DIP Liens in the case of the Prepetition First Lien Secured Parties, and (iii) the Carve-Out, the DIP Liens, the First Lien Adequate Protection Replacement Liens (as defined below), and the Prepetition First Liens in the case of the Prepetition Second Lien Secured Parties, each of the DIP Secured Parties, the Prepetition First Lien Secured Parties, and the Prepetition Second Lien Secured Parties is entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and the "equities of the case" exception shall not apply.

J. **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 Final Order.

(ii) The terms and conditions of the DIP Facility as set forth in the DIP Loan Documents and this 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.

(iii) The DIP Facility and the DIP Loan Documents were negotiated in good faith and at arm's length among the Debtors and the DIP Secured Parties with the assistance and counsel of their respective advisors, and all of the DIP Obligations shall be deemed to have been extended by the DIP Secured Parties and their affiliates 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 or this Final Order, and the DIP Liens, the DIP Superpriority Claims (as defined below) and the other DIP Protections shall be entitled to the full protection of section 364(e) of the Bankruptcy Code and this Final Order in the event this Final Order or any other order or any provision hereof or thereof is vacated, reversed, amended, or modified, on appeal or otherwise.

K. **Relief Essential; Best Interest**. For the reasons stated above, the Debtors have requested immediate entry of this Final Order pursuant to Bankruptcy Rules 4001(b)(2), 4001(c)(2), and the Local Rules. Absent granting the relief set forth in this Final Order, the Debtors' estates and their ability to successfully sell their assets or otherwise preserve the enterprise value of the Debtors' estates will be immediately and irreparably harmed. Consummation of the DIP Facility and authorization of the use of Cash Collateral in accordance with this 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, on the DIP Motion and the record before this Court with respect to the DIP Motion, and with the consent of the Debtors, the Prepetition First Lien Secured Agent

(on behalf of the Prepetition First Lien Secured Parties), the Prepetition Second Lien Trustee (on behalf of the Prepetition Second Lien Secured Parties) and the DIP Agent (on behalf of the DIP Secured Parties) to the form and entry of this Final Order, and good and sufficient cause appearing therefor,

IT IS ORDERED that:

1. **Motion Granted**. The DIP Motion is hereby granted in accordance with the terms and conditions set forth in this Final Order and the DIP Loan Documents. Any objections to the DIP Motion with respect to the entry of this 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, on a final basis, to establish the DIP Facility, to execute, deliver, and perform under the DIP Loan Documents and this Final Order, to incur the DIP Obligations (as defined below) in accordance with, and subject to, the terms of this Final Order and the DIP Loan Documents, and to execute, deliver, and perform under all other instruments, certificates, agreements, and documents which may be required or necessary for the performance by the applicable Debtors under the DIP Loan Documents and the creation and perfection of the DIP Liens described in, and provided for, by this Final Order and the DIP Loan Documents. The Debtors are hereby, on a final basis, 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 pursuant to the DIP Loan Documents and this Final Order, including, without limitation, all closing fees, administrative fees, commitment fees, and reasonable attorneys', financial advisors', and accountants' fees, and disbursements arising under the DIP

Loan Documents and this Final Order, which amounts shall not be subject to further approval of this Court and shall be non-refundable. 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, on a final basis, 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. Notwithstanding anything to the contrary herein, no portion of the Exit Financing Fee Reserve provided for, and defined in, Section 2.1(b) of the DIP Credit Agreement shall be used for any purpose without further order of this Court following notice and a hearing.

(b) DIP Obligations. For purposes of this Final Order, the term "DIP Obligations" shall mean all amounts and other obligations and liabilities owing by the 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 reasonable attorneys', accountants', financial advisors', and other fees, costs, and expenses that are chargeable or reimbursable under the DIP Loan Documents and/or this Final Order), and any obligations in respect of indemnity claims, whether contingent or otherwise. The DIP Obligations are hereby deemed to be an allowed secured claim within the meaning of section 506 of the Bankruptcy Code.

(c) Authorization to Incur DIP Obligations. To enable the Debtors to continue to operate their business, during the period from the entry of this Final Order through and including the earlier to occur of (i) the Cash Collateral Termination Date and (ii) the DIP

Maturity Date (as defined in the DIP Credit Agreement), and subject to the terms and conditions of this Final Order and the DIP Loan Documents, including, without limitation, the Budget Covenants as defined and contained in Paragraph 2(e) below, the DIP Borrowers are hereby authorized, on a final basis, to borrow all amounts under the DIP Loan Documents to fund the Debtors' working capital and other general corporate needs and pay such other amounts required or allowed to be paid pursuant to the DIP Loan Documents, this Final Order, and any other orders of this Court, including, but not limited to, any amounts outstanding with respect to the Prepetition First Lien Obligations, which shall be converted to DIP Obligations upon entry of this Final Order.

(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, (ii) weekly projected disbursements and outstanding Letters of Credit (including ordinary course operating expenses, bankruptcy-related expenses under the Cases, capital expenditures, asset sales, issuances of any letter of credit, including the fees relating thereto, and estimated fees and expenses of the DIP Agent (including counsel and financial advisors therefor), the Prepetition First Lien Secured Agent (including counsel and financial advisors therefor), the Prepetition Second Lien Trustee (including counsel therefor), the fees and expenses of Prepetition Second Lien Secured Noteholders representing a majority in aggregate principal amount of the Second Lien Notes (the "Majority Prepetition Second Lien Secured Noteholders") (including counsel and financial advisors therefor), and any other fees and expenses relating to the DIP Facility), (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 loans made under the DIP Facility (including the

principal amount of the Prepetition First Lien Roll-Up from and after the entry of this Final Order (labeled as "Revolver Borrowed Balance" in the Approved Budget (as defined below))). Commencing on October 21, 2011 and continuing every second Friday thereafter (i.e., every two weeks), the Debtors shall prepare and deliver simultaneously to the DIP Agent, the Prepetition First Lien Secured Agent, the Prepetition Second Lien Trustee, the Majority Prepetition Second Lien Secured Noteholders, and the Committee's professionals: (i) an updated "rolling" 13-week budget, which, once approved in writing by each of the DIP Agent, the Prepetition First Lien Secured Agent and the Majority Prepetition Second Lien Secured Noteholders in their respective sole discretion, shall 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 each of the DIP Agent, the Prepetition First Lien Secured Agent and the Majority Prepetition Second Lien Secured Noteholders, a "Supplemental Approved Budget") without further notice, motion, or application to, order of, or hearing before, this Court; provided, however, that the DIP Agent, the Prepetition First Lien Secured Agent and the Majority Prepetition Second Lien Secured Noteholders shall each have one week to approve each updated "rolling budget" (any such party that fails to timely provide the Debtors and each of the other aforementioned parties written notice of any objection to such updated "rolling budget" shall be deemed to have approved such updated "rolling budget"); provided, further, however, that unless and until each of the DIP Agent, the Prepetition First Lien Secured Agent and the Majority Prepetition Second Lien Secured Noteholders have approved (or be deemed to have approved as provided above) such updated budget, the Debtors shall still be subject to and be governed by the terms of the Initial Approved Budget or Supplemental Approved Budget, as applicable, then in effect, and the DIP Agent, the other DIP Secured Parties, and the Prepetition Secured Parties shall, as

applicable, have no obligation to fund to such updated "rolling budget" or permit the use of Cash Collateral with respect thereto, as applicable; and (ii) a variance report/reconciliation report certified by the Chief Financial Officer or Vice President of Finance of the Debtors, in form acceptable to the DIP Agent, the Prepetition First Lien Secured Agent and the Majority Prepetition Second Lien Secured Noteholders, setting forth (A) the actual cash receipts, expenditures, disbursements, and outstanding revolving loan balance (including the amount of the Prepetition First Lien Roll-Up) of the Debtors for such immediately preceding four week period on a line-item basis and the Aggregate Liquidity as of the end of such four-week period, and (B) the variance in dollar amounts of the actual expenditures, disbursements, and outstanding revolving loan balance for each four-week period from those budgeted amounts for the corresponding period reflected in the Approved Budget. The aggregate, without duplication, of all items in the Initial Approved Budget and any Supplemental Approved Budgets shall constitute the "Approved Budget." Notwithstanding anything to the contrary in this Final Order, the reasonable professional fees, costs and expenses of the DIP Agent's advisors and the Prepetition First Lien Secured Agent's advisors, respectively, shall be due, payable and paid in accordance with the terms of this Final Order notwithstanding any budgeted amounts for such fees, costs and expenses set forth in the Approved Budget.

(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, subject to the following permitted variances, which were tested initially on October 21, 2011 and which shall continue to be tested on each second Friday thereafter (each, a "Testing Date") (in each case, testing the trailing four week period ending on the Friday before the applicable Testing Date

(each, a "Four Week Testing Period")): (i) for each Testing Date, the sum of all actual operating disbursements of the Debtors (calculated in the same manner as the "Total Operating Disbursements" in the Approved Budget were calculated) for the immediately preceding Four Week Testing Period shall not exceed 110% of the sum of the "Total Operating Disbursements" for such Four Week Testing Period as set forth in the Approved Budget; and (ii) for each Testing Date, the sum of actual receipts of the Debtors for the immediately preceding Four Week Testing Period shall not be less than 90% of the sum of the "Total Receipts" for such Four Week Testing Period as set forth in the Approved Budget. Notwithstanding the foregoing, in no event shall the actual "Revolver Borrowed Balance" (calculated in the same manner as the budgeted "Revolver Borrowed Balance" set forth in the Approved Budget) as of any Testing Date exceed 115% of the budgeted "Revolver Borrowed Balance" set forth under the Four Week Testing Period immediately preceding such Testing Date in the Approved Budget. The foregoing budget-related covenants are collectively referred to herein as the "Budget Covenants."

(f) Termination Events. The occurrence of any of the following events, unless waived in writing by each of the DIP Agent, the Prepetition First Lien Secured Agent, and the Majority Prepetition Second Lien Secured Noteholders, in their sole discretion, shall constitute a termination event under this Final Order and the DIP Loan Documents (each, a "Termination Event"):

> (i) (a) reversal, vacatur, or modification of this Final Order without the express prior written consent of the DIP Agent, in its sole discretion, or (b) reversal, vacatur, or modification of any provision of this Final Order directly and adversely affecting the rights of the Prepetition First Lien Secured Parties or Prepetition Second Lien Secured Parties, as applicable, without the express prior written consent of the Prepetition First Lien Secured Agent in the case of adversely affected Prepetition First Lien Secured Parties, and the Majority Prepetition Second Lien Secured Noteholders in the case of adversely affected Prepetition Second Lien Secured Parties, as applicable, each in their respective sole discretion;

(ii) dismissal of any of the Cases or conversion of any of the Cases to chapter 7 cases, or appointment of a chapter 11 trustee or examiner or other responsible person in any of the Cases;

(iii) the occurrence of any Event of Default (as defined in the DIP Credit Agreement), or the occurrence of any Default following the passage of any applicable notice or cure period set forth in the DIP Credit Agreement regardless of any acts or omissions of the DIP Secured Parties that would otherwise have resulted in such Default not becoming an Event of Default by virtue of such passage of any applicable notice or cure period (the "DIP Default Termination Event");

(iv) the failure by the Debtors to timely perform, in any respect, any of the terms, provisions, conditions, covenants, or other obligations under this Final Order;

(v) the failure of the Debtors to timely comply with any of the following sale process milestones (collectively, the "Sale Process Deadlines") or the failure of the Debtors to incorporate such milestones into a bid procedures motion and order, each of which shall be in form and substance acceptable to the DIP Agent, the Prepetition First Lien Secured Agent, and the Majority Prepetition Second Lien Secured Noteholders (the "Bid Procedures Motion" and "Bid Procedures Order," respectively):

a) on the Petition Date, file the Bid Procedures Motion and proposed form of Bid Procedures Order;

b) hearing on the Bid Procedures Motion on or prior to November 4, 2011 (with the form asset purchase agreement to be filed not less than five days prior to such hearing);

c) entry of the Bid Procedures Order on or prior to November 9, 2011;

d) on or prior to 4:00 p.m. (Pacific Time) on January 20, 2012, all qualified bids (which bids, among other things, shall not contain any financing or diligence conditions) shall be due (which bid deadline shall not be extended without the consent of each of the DIP Agent, the Prepetition First Lien Secured Agent, and the Majority Prepetition Second Lien Secured Noteholders, except as otherwise provided below) (the "Qualified Bid Deadline");

e) the auction shall, if necessary, be conducted on or prior to January 26, 2012 at 10:00 a.m. (Pacific Time);

f) hearing to approve the sale to the winning bidder on or prior to January 30, 2012 at 10:00 a.m. (Eastern Time) (it being understood

that (I) the proceeds of such sale shall be used to Pay in Full all Prepetition First Lien Obligations and DIP Obligations promptly upon the closing thereof or such sale shall otherwise be on terms, and pursuant to definitive documentation, acceptable to the DIP Agent and the Prepetition First Lien Secured Agent), and (II) after the Prepetition First Lien Obligations and DIP Obligations have been Paid in Full (as defined below), the proceeds of such sale allocable to the Prepetition Second Lien Collateral shall be used to repay in cash all Prepetition Second Lien Obligations, provided, however, that repayment in cash of the Prepetition Second Lien Obligations shall be subject to the ordinary course administrative fees and expenses of the estates (pending resolution of the allocation determination) and a carve-out, in amounts for such administrative fees and expenses and additional carve-out to be agreed upon by the Debtors and the Majority Prepetition Second Lien Secured Noteholders to be used for the wind-down of the Cases (the "Acceptable Wind-Down Budget") and, if the Committee does not agree to the Acceptable Wind-Down Budget it shall have three (3) business days after receipt of the Acceptable Wind-Down Budget to file a motion with the Court or be deemed to have agreed; provided further, however, that the Majority Prepetition Second Lien Secured Noteholders hereby reserve all of their rights to assert that value allocated to unencumbered assets, as opposed to value allocated to the Prepetition Second Lien Collateral, shall be used first to pay the administrative expenses of the estates, and the Debtors and the Committee hereby reserve all of their rights to oppose such assertion;

g) on or prior to February 27, 2012, such sale shall have been consummated.

(vi) the failure of the Debtors to (a) on or prior to the earlier of (I) fifty (50) days following the Petition Date, and (II) the first date on which the Debtors move the Bankruptcy Court to assume or reject any other unexpired lease and/or executory contract, file a motion in form and substance acceptable to the DIP Agent seeking Court approval, pursuant to an order in form and substance acceptable to the DIP Agent (the "Lease Assumption Order"), to assume all unexpired leases between the Debtors and the affiliates of the DIP Agent on the previously agreed terms set forth in schedule 4 to the DIP Credit Agreement (collectively, the "DIP Agent Affiliate Leases"); provided, however, that notwithstanding the foregoing, the filing, by the Debtors, of the *Debtors' First Omnibus Motion for Order Authorizing Assumption of Executory Contracts* [Docket No. 151] shall not constitute a Termination Event under the Interim Order or this Final Order or a Default or an Event of Default under the DIP Credit Agreement; provided further, however, that assignment of such DIP Agent Affiliate Leases during the Cases shall be subject to section 365 of the

Bankruptcy Code notwithstanding any provision of such DIP Agent Affiliate Lease that would otherwise be enforceable had such DIP Agent Affiliate Lease not been assumed; and (b) on or prior to December 9, 2011, obtain the Lease Assumption Order. Notwithstanding the foregoing, the Majority Prepetition Second Lien Secured Noteholders and the Committee reserve all of their respective rights to object to entry of the Lease Assumption Order.

(vii) the failure of the Debtors to timely perform their obligations under any DIP Agent Affiliate Lease (including payment of rent and other charges as and when due under such leases without regard to whether such rent or other charges arose or accrued before, on or after the Petition Date) notwithstanding any provision of the Bankruptcy Code to the contrary.

(viii) the filing of any motion seeking to reject any DIP Agent Affiliate Lease or seeking to assume any such DIP Agent Affiliate Lease on terms other than those agreed to by the parties and described in schedule 4 to the DIP Credit Agreement.

(g) 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 Final Order and the DIP Loan Documents, in each case without further notice, motion, or application to, order of, or hearing before, this Court. The Debtors were authorized by the Interim Order to pay on demand all fees, costs, expenses (including reasonable out-of-pocket legal and other professional fees and expenses of the DIP Agent) and other charges payable under the terms of the DIP Loan Documents during the Interim Period, including, without limitation, the fees described in (i) that certain Fee Letter, dated as of October 3, 2011, by and between the DIP Borrowers, on the one hand, the DIP Agent and an affiliate, on the other hand; and (ii) that certain Fee Letter, dated as of October 3, 2011, by and between the DIP Borrowers and Sun Cantinas Finance, LLC (collectively, the "Fee Letters"), which fees were disclosed to the Court and the United States Trustee in camera or under seal, as applicable, at the hearing on the Interim Order. Notwithstanding any provision herein to the contrary, all fees described in the respective Fee Letters were, upon the entry of the Interim Order, fully earned, all paid portions of such fees are finally allowed and non-refundable, all unpaid portions

of such fees, if any, are immediately payable by the Debtors upon entry of this Final Order (except as otherwise provided in the Fee Letters), and the payment of such fees, costs, and expenses are not subject to Challenge pursuant to Paragraph 7 hereof or otherwise. Notwithstanding anything to the contrary in this Final Order, the fee payable to Sun Cantinas Finance, LLC, equal to $250,000 (the "Sun Fee"), shall be fully-earned in accordance with the Fee Letter; $100,000 was approved pursuant to the Interim Order and was payable and non-refundable on the effectiveness of the DIP Credit Agreement and is hereby approved on a final basis and $150,000 is approved pursuant to this Final Order and shall be payable on the Maturity Date (as defined in the DIP Credit Agreement); provided, however, that the Committee shall have the right to challenge payment of all or any portion of the $150,000 portion of the Sun Fee by filing of a motion setting forth the bases for such challenge on or prior to December 4, 2011 (with all challenges to the Sun Fee letter not raised by such date being forever waived by the Committee).

(h) Use of DIP Facility and Proceeds of DIP Collateral. The DIP Borrowers shall apply the proceeds of all DIP Collateral (as defined below) solely in accordance with this Final Order and the applicable provisions of the DIP Loan Documents. Without limiting the foregoing, the Debtors shall not be permitted to make any payments on account of any prepetition debt or obligation prior to the effective date of a chapter 11 plan or plans with respect to any of the Debtors, except with respect to (a) the Prepetition Secured Obligations as set forth in this Final Order and the DIP Agent Affiliate Leases (which payments under the DIP Agent Affiliate Leases are hereby authorized); (b) as provided in the First Day Orders, which First Day Orders shall be in form and substance acceptable to the DIP Agent; (c) as provided in other motions, orders, and requests for relief, each in form and substance acceptable to the DIP Agent

prior to such motion, order, or request for such relief being filed; or (d) as otherwise provided in the DIP Credit Agreement.

(i) Conditions Precedent. The DIP Secured Parties and Prepetition First Lien Secured Parties each have no obligation to extend credit under the DIP Facility or permit use of any DIP Collateral proceeds, including Cash Collateral, as applicable, 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 Final Order have been satisfied in full or waived by the requisite DIP Secured Parties and the Prepetition First Lien Secured Agent in accordance with the DIP Loan Documents and this Final Order.

(j) DIP Liens. As security for the DIP Obligations, the following security interests and liens, which shall immediately and without any further action by any Person, be valid, binding, permanent, perfected, continuing, enforceable, and non-avoidable upon the entry of this Final Order, are hereby 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, documents, instruments, chattel paper, documents of title, letters of credit, letter of credit rights, supporting obligations, leases and other interests in leaseholds provided, however, that to the extent that a lease prohibits the granting of a lien thereon, or otherwise prohibits hypothecation of the lease or leasehold interest, then, and in such event, the DIP

Secured Parties shall be granted only a lien on the proceeds of the sale or other disposition of the lease or leasehold interest (including, without limitation, the value attributable to such leasehold interests under any plan of reorganization), real property, fixtures, patents, copyrights, trademarks, trade names, other intellectual property, intellectual property licenses, capital stock of subsidiaries, tax and other refunds, insurance proceeds, commercial tort claims, Postpetition Transfer Avoidance Actions (as defined below) and proceeds relating thereto, rights under section 506(c) of the Bankruptcy Code, 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, excluding only Avoidance Actions other than Postpetition Transaction Avoidance Actions 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 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 the Debtors' claims and causes of action under section 549 of the Bankruptcy Code relating to postpetition transfers and the proceeds relating thereto (the "Postpetition Transfer Avoidance Actions"), which, for the avoidance of doubt, shall not include the Debtors' claims and causes of action under sections 502(d), 544, 545, 547, 548, 550 and 553 of the Bankruptcy Code and any other avoidance or similar action under the Bankruptcy Code or similar state law and the proceeds thereof ("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 Prior Liens, 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 Prior Liens.

(k) DIP Lien Priority. Notwithstanding anything to the contrary contained in this 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 shall in each and every case be first priority senior liens that (i) are subject only to the Prepetition Prior Liens, and to the extent provided in the provisions of this Final Order and the DIP Loan Documents, shall also be subject to the Carve-Out, and (ii) except as provided in sub-clause (i) of this clause (k), 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). 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 (y) any intercompany or affiliate liens 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. Without limiting the foregoing, the DIP Obligations shall also be secured by the Prepetition First Liens, which shall remain in full force and effect and continue

from and after the Petition Date to secure both the DIP Obligations and the Prepetition First Lien Obligations (with the DIP Obligations having priority in accordance with the terms of this Final Order). The definition of "DIP Liens" shall include the Prepetition First Liens solely to the extent that they secure the DIP Obligations as provided herein.

(l) Enforceable Obligations. The DIP Loan Documents shall constitute and evidence the valid and binding DIP Obligations of the Debtors, which DIP Obligations shall be enforceable against the Debtors, their estates and any successors thereto (including, without limitation, any trustee or other estate representative in any Successor Case), and their creditors, in accordance with their terms. No obligation, payment, transfer, or grant of security under the DIP Credit Agreement, the other DIP Loan Documents, 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 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.

(m) Superpriority Administrative Claim Status. In addition to the DIP Liens granted herein, effective immediately upon entry of this Final Order, all of the DIP Obligations 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, over all administrative expense claims, adequate protection and other diminution claims (including the 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), 507(a), 507(b), 546, 726, 1113, and 1114 or any other 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 provided in the DIP Credit Agreement and this Final 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 and professional fees of the respective Prepetition Second Lien Secured Parties described in Paragraph 5(iii) hereof, 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 hereunder.

3. **Authorization to Use Cash Collateral and Proceeds of the DIP Facility**. Subject to the terms and conditions of this Final Order and the DIP Loan Documents, including without limitation, the Budget Covenants set forth in Paragraph 2(e), (a) the Debtors are authorized, on a final basis, to use proceeds of credit extended under the DIP Facility from and after the Closing Date, and (b) the Debtors are authorized to use Cash Collateral; provided, however, that each Debtor shall be prohibited from at any time using proceeds of DIP Collateral (including Cash

Collateral) or advances under the DIP Facility, in each case, except in accordance with the terms and conditions of this Final Order and the DIP Loan Documents. To fund the Debtors' working capital and other general corporate needs, in accordance with the terms of this Final Order, the DIP Loan Documents, and the Approved Budget, the Debtors may request advances and other financial accommodations under the DIP Facility. Upon entry of this Final Order, all Prepetition First Lien Obligations shall be deemed automatically converted to DIP Obligations and incurred under the DIP Facility pursuant to Paragraph 4(i) hereof, and thereafter, the Debtors shall continue to use the DIP Facility and Cash Collateral to fund the Debtors' working capital and other general corporate needs in accordance with the terms of this Final Order and the DIP Loan Documents. 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 15 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 15 below), any of the Prepetition First Lien Secured Agent (on behalf of the Prepetition First Lien Secured Parties) and/or the Majority Prepetition Second Lien Secured Noteholders (on behalf of the Prepetition Second Lien 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 Agent, the Prepetition First Lien Secured Agent, and the Majority Prepetition Second Lien Secured Noteholders under this 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 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 First Lien Secured Parties**. In consideration for the use of the Prepetition Collateral (including Cash Collateral) and the priming of the Prepetition First Liens, the Prepetition First Lien Secured Parties shall receive the following adequate protection (collectively referred to as the "Prepetition First Lien Secured Parties' Adequate Protection"):

(i) Prepetition First Lien Roll-Up. Upon entry of this Final Order, all Prepetition First Lien Obligations shall immediately, automatically, and irrevocably be deemed to have been converted into DIP Obligations and incurred under the DIP Facility (the "Prepetition First Lien Roll-Up"); provided, that in the event the Majority Prepetition Second Lien Noteholders, or their respective affiliates, members, managers, equity security holders, agents, attorneys, financial advisors, consultants, officers, directors, and employees under the control of any of the Majority Prepetition Second Lien Noteholders, individually or collectively, acquire the DIP Lenders' interests in the DIP Obligations, such parties (or any agent or trustee therefor at their direction) shall only have the right to credit bid such DIP Obligations against Prepetition Second Lien Collateral in any going concern sale of the DIP Collateral; provided, further, that the preceding caveat does not apply if such DIP Obligations are acquired by such parties after an Event of Default (as defined in the DIP Credit Agreement), subject to the Court's comments on the record at the hearing on November 4, 2011.

(ii) First Lien Adequate Protection Replacement Liens. To the extent there is a diminution in value of the interests of the Prepetition First Lien 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, the granting of the DIP Liens, the subordination of the Prepetition First Liens thereto and to the Carve-Out, and the imposition or enforcement of the automatic stay of section 362(a) of the Bankruptcy Code ("Diminution in Prepetition First Lien Collateral Value"), the Prepetition First Lien Agent, for the benefit of all the Prepetition First Lien Secured Parties, is hereby granted, on a final basis, 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, except Avoidance Actions other than Postpetition Transfer Avoidance Actions (such adequate protection replacement liens, the "First Lien Adequate Protection Replacement Liens"), which First Lien Adequate Protection Replacement Liens on such DIP Collateral shall be subject and subordinate only to the DIP Liens, the Prepetition Prior Liens, and the Carve-Out and shall be senior in priority to the Prepetition First Liens, the Second Lien Adequate Protection Replacement Liens (as defined below), and the Prepetition Second Liens. The First Lien Adequate Protection Replacement Liens and the First Lien 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 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 (y) any intercompany or affiliate liens 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.

(iii) First Lien Adequate Protection Superpriority Claims. To the extent

of Diminution in Value of the Prepetition First Lien Collateral, the Prepetition First Lien Secured Parties are hereby further granted, on a final basis, allowed superpriority administrative claims (such adequate protection superpriority claims, the "First Lien 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 or 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(c), 507(a), 507(b), 546(c), 546(d), 726 (to the extent permitted by law), 1113, and 1114 and any other 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 of the DIP Collateral; provided, however, that the Prepetition First Lien Secured Parties shall not receive or retain any payments, property, or other amounts in respect of the First Lien 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 Adequate Protection Superpriority Claims against each Debtor shall be against each Debtor on a joint and several basis. For purposes of this Final Order, the terms "Paid in Full," "Repaid in Full," "Repay in Full," and "Payment in Full" shall mean, with respect to any referenced DIP Obligations, Prepetition First Lien Obligations and/or Prepetition Second Lien 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, Prepetition First Lien Loan Documents and/or Prepetition Second Lien Loan Documents, as applicable.

(iv) Further Adequate Protection. As further Adequate Protection, the

Debtors (A) have committed, as set forth in this Final Order, to adhere to the Sale Process Deadlines and (B) shall simultaneously provide copies of any reports sent to the DIP Agent or the Prepetition Second Lien Secured Parties as may be required under this Final Order or the DIP Credit Agreement to the Prepetition First Lien Secured Agent (with a copy to counsel for the Committee).

(v) Interest and Professional Fees. As further adequate protection, and without limiting any rights of the Prepetition First Lien Secured Agent and the other Prepetition First Lien Secured Parties under section 506(b) of the Bankruptcy Code which are hereby preserved, and in consideration, and as a requirement, for obtaining the consent of the Prepetition First Lien Secured Parties to the entry of this Final Order and the Debtors' consensual use of Cash Collateral as provided herein, the Debtors shall (i) pay or reimburse currently the Prepetition First Lien Secured Agent for any and all of its accrued and past-due fees, costs, expenses, and charges to the extent, and at the times, payable under the Prepetition First Lien Loan Documents, (ii) on the last day of each calendar month commencing after the Closing Date, pay to the Prepetition First Lien Secured Agent for prompt distribution to the applicable Prepetition First Lien Secured Parties any and all of the interest accruing on the Prepetition First Lien Obligations under the Prepetition First Lien Secured Credit Agreement at the non-default rate (without prejudice to the rights of the Prepetition First Lien Secured Agent and other Prepetition First Lien Secured Parties to subsequently seek and obtain payment of all or any of such interest at the default rate retroactive to the Petition Date), and (iii) pay currently all reasonable out-of-pocket fees, costs, and expenses of the Prepetition First Lien Secured Agent (including, without limitation, the fees, costs, and expenses of counsel and financial advisors for the Prepetition First Lien Secured Agent), in the case of each of sub-clauses (i), (ii), and (iii)

above, all whether accrued prepetition or postpetition and whether or not budgeted in the Approved Budget, and without further notice (except as provided in Paragraph 20(b) below with respect to postpetition professional fees, costs, and expenses), motion, or application to, order of, or hearing before, this Court.

(vi) Consent to Priming and Adequate Protection. The Prepetition First Lien Secured Agent, on behalf of the other Prepetition First Lien Secured Parties, consents to the Prepetition First Lien Secured Parties' Adequate Protection and the priming provided for herein; provided, however, that such consent of the Prepetition First Lien Secured Agent to the priming of the Prepetition First Liens, the use of Cash Collateral, and the sufficiency of the Prepetition First Lien Secured Parties' Adequate Protection provided for herein is expressly conditioned upon the entry of this 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 Final 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 First Lien Secured Agent and the Prepetition First Lien Secured Lenders) or the DIP Loan Documents and DIP Facility as set forth herein are not approved; and provided, further, that in the event of the occurrence of the Maturity Date (as defined in the DIP Credit Agreement), nothing herein shall alter the burden of proof set forth in the applicable provisions of the Bankruptcy Code at any hearing concerning the continued use of Prepetition Collateral (including Cash Collateral) by the Debtors.

(vii) Right to Credit Bid. Each of the DIP Agent (on behalf of the DIP Secured Parties) and the Prepetition First Lien Secured Agent (on behalf of the Prepetition First

Lien Secured Parties) or their respective assignees, designees, or successors, shall have the right to "credit bid" up to the amount of the DIP Obligations and the Prepetition First Lien Obligations (including the First Lien Adequate Protection Superpriority Claim to the extent such First Lien Adequate Protection Superpriority Claim has any value) during any sale of all or any portion of the DIP Collateral, including, without limitation, sales occurring pursuant to section 363 of the Bankruptcy Code or included as part of any reorganization plan subject to confirmation under section 1129(b)(2)(A)(iii) of the Bankruptcy Code; provided that each of the DIP Agent (on behalf of the DIP Secured Parties) and the Prepetition First Lien Secured Agent (on behalf of the Prepetition First Lien Secured Parties) or their respective assignees, designees, or successors may credit bid any of the Prepetition First Lien Obligations (or First Lien Adequate Protection Superpriority Claim) if such claim is allowed, deemed allowed or is not disallowed by order of the Court prior to the Qualified Bid Deadline. The DIP Agent and the Prepetition First Lien Secured Agent have the absolute right to assign, transfer, sell, or otherwise dispose of their rights to credit bid.

5. **Adequate Protection for Prepetition Second Lien Secured Parties**. In consideration for the use of the Prepetition Collateral (including Cash Collateral) and the priming of the Prepetition Second Liens, the Prepetition Second Lien Secured Parties shall receive the following adequate protection (collectively referred to as the "Prepetition Second Lien Secured Parties' Adequate Protection" and, together with the Prepetition First Lien Secured Parties' Adequate Protection, the "Prepetition Secured Parties' Adequate Protection"):

(i) Second Lien Adequate Protection Replacement Liens. To the extent there is a diminution in value of the interests of the Prepetition Second Lien Secured Parties in the Prepetition Second Lien Collateral (including Cash Collateral) from and after the Petition Date

resulting from the use, sale, or lease by the Debtors of the Prepetition Second Lien Collateral (including Cash Collateral), the granting of the DIP Superpriority Claims and the First Lien Adequate Protection Superpriority Claims, the granting of the priming DIP Liens and the granting of the First Lien Adequate Protection Replacement Liens, the subordination of the Prepetition Second Liens thereto and to the Carve-Out, and the imposition or enforcement of the automatic stay of section 362(a) of the Bankruptcy Code ("Diminution in Value of the Prepetition Second Lien Collateral," and collectively with the Diminution in Value of the Prepetition First Lien Collateral, "Diminution in Value"), the Prepetition Second Lien Trustee, for the benefit of all the Prepetition Second Lien Secured Parties, is hereby granted, on a final basis, 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, except Avoidance Actions other than Postpetition Transfer Avoidance Actions (such adequate protection replacement liens, the "Second Lien Adequate Protection Replacement Liens" and, together with the First Lien Adequate Protection Replacement Liens, the "Adequate Protection Replacement Liens"), which Second Lien Adequate Protection Replacement Liens on such DIP Collateral shall be subject and subordinate only to the DIP Liens, the Prepetition Prior Liens, the Carve-Out, the First Lien Adequate Protection Replacement Liens, and the Prepetition First Liens and shall be senior in priority to the Prepetition Second Liens. The Second Lien Adequate Protection Replacement Liens and the Second Lien 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 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 (y) any intercompany or

affiliate liens 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.

(ii) Second Lien Adequate Protection Superpriority Claims. To the extent of Diminution in Value of the Prepetition Second Lien Collateral, the Prepetition Second Lien Secured Parties are hereby further granted, on a final basis, allowed superpriority administrative claims (such adequate protection superpriority claims, the "Second Lien Adequate Protection Superpriority Claims" and, together with the First Lien Adequate Protection Superpriority Claims, the "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 or 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(c), 507(a), 507(b), 546(c), 546(d), 726 (to the extent permitted by law), 1113, and 1114 and any other provision of the Bankruptcy Code, junior only to the DIP Superpriority Claim, the Carve-Out, the First Lien Adequate Protection Superpriority Claims, and the Prepetition First Lien Obligations as provided herein, and payable from and having recourse to all of the DIP Collateral; provided, however, that the Prepetition Second Lien Secured Parties shall not, without the prior written consent of the DIP Agent and Prepetition First Lien Secured Agent, receive or retain any payments, property, or other amounts in respect of the Second Lien Adequate Protection Superpriority Claims unless and until (x) all DIP Obligations have been Paid in Full, (y) all credit commitments under the DIP Loan Documents have been Paid in Full, and (z) the Prepetition First Lien Obligations have been Paid in Full. Subject to the relative

priorities set forth above, the Second Lien Adequate Protection Superpriority Claims against each Debtor shall be against each Debtor on a joint and several basis.

(iii) Professional Fees. As further adequate protection, and without limiting any rights of the Prepetition Second Lien Trustee and the Prepetition Second Lien Noteholders under section 506(b) of the Bankruptcy Code which are hereby preserved, and in consideration, and as a requirement, for obtaining the consent of the Prepetition Second Lien Secured Parties to the entry of this Final Order and the Debtors' consensual use of Cash Collateral as provided herein, the Debtors shall pay currently, the reasonable fees, costs, expenses, and charges, whether accrued prepetition or postpetition, of (a) one lead counsel and one local counsel for the Majority Prepetition Second Lien Secured Noteholders (the "Majority Prepetition Second Lien Noteholders' Counsel"), in an amount not to exceed, collectively and in the aggregate, $1,050,000 (exclusive of amounts paid prepetition), but no more than $210,000 per month shall be payable from the Approved Budget, (b) one financial advisor, for the Majority Prepetition Second Lien Secured Noteholders, in an amount not to exceed, in the aggregate, $900,000 (exclusive of amounts paid prepetition and not inclusive of such financial advisor's reasonable and documented expenses), but no more than $150,000 per month plus such financial advisor's reasonable and documented expenses shall be payable from the Approved Budget, and (c) one lead counsel and one local counsel, for the Second Lien Indenture Trustee (the "Second Lien Indenture Trustee's Counsel"), in an amount not to exceed, collectively and in the aggregate, $75,000 (exclusive of amounts paid prepetition), but no more than $15,000 per month shall be payable from the Approved Budget; provided, however, that in the event that the Majority Prepetition Second Lien Secured Noteholders' Counsel shall be retained as the Second Lien Indenture Trustee's Counsel, then the Debtors shall instead pay currently, the reasonable fees,

costs, expenses, and charges, whether accrued prepetition or postpetition, of the Second Lien Indenture Trustee's Counsel in an amount not to exceed, collectively and in the aggregate, $1,125,000 (inclusive of amounts already paid, at the time of such retention, to both Majority Prepetition Second Lien Secured Noteholders' Counsel and the Second Lien Trustee's Counsel), and the Debtors shall have no further obligation to pay, as adequate protection, the reasonable fees, costs, expenses and charges of the Majority Prepetition Second Lien Secured Noteholders' Counsel. To the extent that any of the Majority Prepetition Second Lien Secured Noteholders' Counsel and the Second Lien Indenture Trustee's Counsel do not incur fees in the amount budgeted for such counsel during the applicable budget period, the unused portion of the fees budgeted for each such counsel, as applicable, shall be rolled over into the next budget period. All parties reserve all rights to assert that any of the foregoing payments may be recharacterized as principal repayments on account of the Second Lien Notes. All defenses of the Majority Prepetition Second Lien Secured Noteholders and the Second Lien Indenture Trustee to any effort to recharacterize such payments are expressly reserved. Nothing in this subparagraph (iii) is intended to, nor shall be deemed to, be a cap on what the Majority Prepetition Second Lien Secured Noteholders and Prepetition Second Lien Trustee may assert is owed under the Prepetition Second Lien Loan Documents. Notwithstanding anything to the contrary in this Final Order, but subject in all respects to the Carve-Out, upon a Termination Event, the Majority Prepetition Second Lien Secured Noteholders' Counsel and financial advisor and the Second Lien Indenture Trustee's Counsel (collectively, the "Noteholder/Trustee Professionals") shall be entitled to, and the Debtors shall pay, the reasonable fees, costs, expenses, and charges that have accrued and are unpaid as of the date on which such Termination Event has occurred subject to amounts set forth on the Approved Budget, which amount shall be calculated on a per diem basis

(the "Pre-Termination Fee True-Up Payment"). The Pre-Termination True-Up Payment shall be paid by the Debtors to the Noteholder/Trustee Professionals on the date that payment of fees would otherwise be payable under the Approved Budget. The Debtors shall have no further obligation to pay the fees, costs, and expenses of the Noteholder/Trustee Professionals as adequate protection pursuant to this Final Order after the occurrence of a Termination Event unless the Majority Prepetition Second Lien Secured Noteholders and/or the Second Lien Indenture Trustee, as applicable, waive such Termination Event.

(iv) Further Adequate Protection. As further Adequate Protection, the Debtors (A) have committed, as set forth in this Final Order, to adhere to the Sale Process Deadlines and (B) shall simultaneously provide copies of any reports sent to the DIP Agent or the Prepetition First Lien Secured Parties as may be required under this Final Order or the DIP Credit Agreement to counsel to the Majority Prepetition Second Lien Secured Noteholders (with a copy to counsel for the Committee).

(v) Consent to Priming and Adequate Protection. The Prepetition Second Lien Trustee and the Majority Prepetition Second Lien Secured Noteholders consent to the Prepetition Second Lien Secured Parties' Adequate Protection and the priming provided for herein; provided, however, that such consent of the Prepetition Second Lien Secured Parties to the priming of their Prepetition Second Liens, the use of Cash Collateral, and the sufficiency of the Prepetition Second Lien Secured Parties' Adequate Protection provided for herein is expressly conditioned upon the entry of this Final Order, and such consent shall not be deemed to extend to any 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 Final 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 Second Lien Trustee and the Majority Prepetition Second Lien Secured Noteholders) or the DIP Loan Documents and DIP Facility as set forth herein are not approved; and provided, further, that in the event of the occurrence of the Maturity Date (as defined in the DIP Credit Agreement), nothing herein shall alter the burden of proof set forth in the applicable provisions of the Bankruptcy Code at any hearing concerning the continued use of Prepetition Collateral (including Cash Collateral) by the Debtors.

(vi) Right to Credit Bid. The Second Lien Indenture Trustee (on behalf of the Prepetition Second Lien Secured Noteholders) or its assignee, designee, or successor, shall have the right to "credit bid" up to the amount of the Prepetition Second Lien Obligations (including its Second Lien Adequate Protection Superpriority Claim to the extent such Second Lien Adequate Protection Superpriority Claim has any value) during any sale of all or any portion of the Prepetition Collateral and DIP Collateral (in the case of the DIP Collateral, only to the extent of the value of the Second Lien Adequate Protection Superpriority Claim resulting from a postpetition Diminution in Value of the Prepetition Second Lien Collateral as provided herein), or any deposit in connection with such sale, subject to the Court approved bid procedures and the Court's comments on the record at the hearing on November 4, 2011, including, without limitation, sales occurring pursuant to section 363 of the Bankruptcy Code or included as part of any reorganization plan subject to confirmation under section 1129(b)(2)(A)(iii) of the Bankruptcy Code; provided, that any such "credit bid" provides for Payment in Full of all DIP Obligations and Prepetition First Lien Obligations at the closing of such transaction; provided further the Second Lien Indenture Trustee (on behalf of the Prepetition Second Lien Secured Noteholders) or its assignee, designee, or successor may credit bid any of the Prepetition Second

Lien Obligations (or Second Lien Adequate Protection Superpriority Claim) if such claim is allowed, deemed allowed or is not disallowed by order of the Court prior to the Qualified Bid Deadline. The Second Lien Indenture Trustee has the absolute right to assign, transfer, sell, or otherwise dispose of its right to credit bid at the direction of the holders of a majority in principal amount of the Prepetition Secured Second Lien Notes.

(vii) Section 507(b) Reservation. 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 respective Prepetition Secured Parties. Nothing herein shall impair or modify the application of section 507(b) of the Bankruptcy Code in the event that the adequate protection provided herein to the Prepetition Secured Parties is insufficient to compensate for any Diminution in Value of each of their respective interests in the Prepetition Collateral during the Cases or any Successor Cases; provided, however, any such additional section 507(b) claims shall be subject to the same relative priority as such party's Adequate Protection Superpriority Claims, as provided in this Final Order.

6. **Automatic Postpetition Lien Perfection.** This Final Order shall be sufficient and conclusive evidence of the validity, enforceability, perfection, and priority of the DIP Liens and the Adequate Protection Replacement 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 Adequate Protection Replacement Liens or to entitle the DIP Liens and the Adequate Protection Replacement 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 Adequate Protection Replacement 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, the Prepetition First Lien Secured Agent, and/or the Prepetition Second Lien Trustee, 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 Adequate Protection Replacement Liens, as applicable, granted pursuant hereto. Without limiting the foregoing, each of the DIP Agent, the Prepetition First Lien Secured Agent, and the Prepetition Second Lien Trustee, each in its discretion, may file a photocopy of this 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 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 in accordance with the terms of the DIP Loan Documents and this Final Order or in favor of the Prepetition Secured Parties in accordance with this Final Order. To the extent that the Prepetition First Lien Secured 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 Secured Loan 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 Secured Loan 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, second, subsequent to Payment in Full of all DIP Obligations, for the benefit of the Prepetition First Lien Secured Parties, and third, subsequent to Payment in Full of all Prepetition First Lien Obligations, for the benefit of the Prepetition Second Lien Secured Parties. The Prepetition First Lien Secured 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.

7. **Reservation of Certain Third Party Rights and Bar of Challenges and Claims**. The Debtors' Stipulations and Paragraph I of this Final Order were binding upon the Debtors in all circumstances upon entry of the Interim Order and remain binding on the Debtors from and after the entry of this Final Order. The Debtors' Stipulations and Paragraph I of this Final Order 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 trustee appointed) 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 December 13, 2011 (such time period, as the same may be extended in accordance with this Paragraph 7, 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 properly raised during the Challenge Period or (ii) with respect only to those parties who properly 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 Secured Obligations, or the actions or inactions of any of the Prepetition Secured Parties arising out of or related to the Prepetition Secured 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 Secured 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) ((A) and (B) 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, upon 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 Final 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; provided, however, that solely as against the Prepetition Second Lien Secured Parties (but not the DIP Secured Parties or Prepetition First Lien Secured Parties), any dispute as to the value of the Prepetition Collateral or the DIP Collateral shall not be deemed waived by the Debtors or any other party in interest; (iii) the Prepetition First Lien Obligations shall be deemed to be a fully allowed secured claim within the meaning of section 506 of the Bankruptcy Code (which claim and liens shall have been deemed satisfied in full by the repayment of the Prepetition First Lien Obligations as provided herein), (iv) the Prepetition Second Lien Obligations shall be deemed to be a fully allowed claim (subject to the provisions set forth in this Final Order), (v) the Debtors' Stipulations, including the release provisions therein, shall be binding on all parties in interest, including the Committee. Notwithstanding the foregoing, to the extent any Challenge is timely asserted in any such adversary proceeding or contested matter, the Debtors' Stipulations and the other provisions in clauses (i) through (v) in the immediately preceding sentence shall nonetheless remain binding and preclusive on the Committee and on 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 (v) of the immediately preceding sentence were expressly challenged in such adversary proceeding, contested matter, or other action. The Challenge Period may only be extended (i) with the written consent of the Prepetition First Lien Secured Agent or the Prepetition Second Lien Trustee, as applicable and in their sole discretion or (ii) by order of this Court, for cause. Notwithstanding any provision to the contrary herein, nothing in this Final Order shall be construed to grant standing on any party in interest, including the Committee, to bring any Challenge on behalf of the Debtors' estates. The failure of any party in interest, including the Committee, to obtain an order of this Court 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 7; provided, however, that the Committee shall have the right to file a motion, prior to the expiration of the Challenge Period, for entry of a further order of this Court, following notice and a hearing (which the Committee shall have the right to schedule on an expedited basis without further leave from this Court), seeking (i) an extension of the Challenge Period; and (ii) an order providing that the filing of the standing motion will toll the Challenge Period Termination Date until adjudication of the standing motion. For purposes of this Paragraph 7 (other than the first sentence hereof regarding the effectiveness of the other Debtor Stipulations upon entry of the Interim Order), the Debtors' Stipulations in favor of the Prepetition First Lien Secured Parties shall be deemed to cover the Unscheduled Leases in all respects and any Challenges to the Prepetition First Lien Secured Parties' liens on the Unscheduled Leases shall be governed by this Paragraph 7.

8. **Carve-Out**. Subject to the terms and conditions contained in this Paragraph 8, each of the DIP Liens, the DIP Superpriority Claims, the Prepetition Liens, the Adequate Protection Replacement Liens, and the Adequate Protection Superpriority Claims shall be subject and subordinate to payment of the Carve-Out (as defined below):

(i) Carve-Out. For purposes of this Final 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); (b) subject to the terms and conditions of this Final Order, the unpaid fees, costs, and disbursements of professionals retained by the Debtors in these Cases and 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) and that are allowed 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 Final Order, 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 expenses of the members of the Committee ("Committee Members") that are incurred prior to the delivery by the DIP Agent of a Carve-Out Trigger Notice and in accordance with the Approved Budget, and that are allowed 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, in an aggregate amount (for both Committee Members and the Committee's Professionals) not to exceed $750,000 (the "Committee Pre-Termination Carve-Out"); (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, in an aggregate amount not to exceed $1,000,000 (inclusive of any prepetition retainers held by such professionals) (the "Debtors' Professionals 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 $200,000 (inclusive of any retainers held by such professionals) (the "Committee Carve-Out Cap" and, together with the Debtors' Professionals Carve-Out Cap, the "Post-Default Carve-Out Cap") (clauses (a), (b), (c), (d), and (e), collectively, the "Carve-Out"). Notwithstanding the foregoing, with respect solely to the Prepetition Second Lien Secured Parties, the Carve-Out shall also include, to the extent approved by the Court, (y) amounts due and owing on account of the management incentive program, and (z) any success fee due and owing to the Debtors' financial advisor, Imperial Capital, LLC ("Imperial"), set forth in its engagement letter, dated June 13, 2011, with the Debtors, and (z) provided that the DIP Agent, the Prepetition First Lien Secured Agent, and the Majority Prepetition Second Lien Secured Noteholders shall have the right to object to any motion seeking to approve any such success fee, any management incentive program as well as the Debtors' application to employ Imperial. 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 the Committee, 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 or Prepetition Collateral thereafter realized by or remitted to the DIP Agent or any of the Prepetition Secured Parties that, but for the Carve-Out, would be utilized by the DIP Agent or the Prepetition Secured Parties to permanently repay the DIP Obligations or any of the Prepetition Secured Obligations, as applicable, (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 First Lien Secured Obligations. All amounts deposited in the Carve-Out Account shall continue to be subject to the DIP Liens and Adequate Protection Liens such that, upon final payment of all amounts due and owing under the Carve-Out, then any funds remaining in the Carve-Out Account shall be remitted to the DIP Agent, the Prepetition First Lien Secured Agent, or the Prepetition Second Lien Trustee, as applicable, in accordance with this Final Order, for application in accordance with this Final Order. The DIP Agent shall be entitled to establish and maintain reserves against borrowing availability under the DIP Facility on account of the Carve-Out in accordance with the terms of the DIP Credit Agreement. 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, the Prepetition First Lien Secured Agent, and the Majority Prepetition Second Lien Secured Noteholders.

(ii) No Direct Obligation to Pay Professional Fees; No Waiver of Right to Object to Fees. The Prepetition First Lien Secured Agent and the other Prepetition First Lien

Secured Parties, and the Prepetition Second Lien Trustee and the other Prepetition Second Lien Secured Parties, shall not 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 Final Order or otherwise shall be construed (i) to obligate the Prepetition First Lien Agent or any other Prepetition Secured Parties 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 Final Order. Notwithstanding any provision in this Paragraph 8 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 16 hereof. Nothing herein shall be construed as consent to the allowance of any professional fees or expenses of any of the Debtors, the 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 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.

9. **Waiver of 506(c) Claims**. 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), 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 Prepetition Secured Parties, the Prepetition Collateral, and the Cash Collateral pursuant to section 506(c) of the Bankruptcy Code or otherwise, without the prior written consent of the Prepetition First Lien Secured Agent, or the Prepetition Second Lien Trustee, as the case may be, and no such consent shall be implied from any other action, inaction, or acquiescence of any or all of the Prepetition First Lien Secured Parties and the Prepetition Second Lien Secured Parties.

10. **After-Acquired Property**. Except as otherwise provided in this Final Order, pursuant to section 552(a) of the Bankruptcy Code, all property acquired by the Debtors on or after the Petition Date is not, and shall not be, subject to any Lien of any person or entity resulting from any security agreement entered into by the Debtors prior to the Petition Date, except to the extent that such property constitutes proceeds of property of the Debtors that is subject to a valid, enforceable, perfected, and unavoidable Lien as of the Petition Date which is not subject to subordination under the Bankruptcy Code or other provisions or principles of applicable law.

11. **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 the other DIP Protections granted pursuant to 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 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 Agent and the Prepetition Secured Parties all such information as required or allowed under the DIP Loan Documents or the provisions of this Final Order, (iii) permit representatives of the DIP Agent and the Prepetition Secured Parties 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, and provide advice with respect to, their respective affairs, finances, properties, business operations, and accounts with their respective officers, employees, and independent public accountants as and to the extent required by the DIP Loan Documents, and (iv) permit the DIP Agent, the Prepetition First Lien Secured Agent, the Majority Prepetition Second Lien Secured Noteholders and their respective representatives, and the Committee's professionals to consult with the Debtors'

management and advisors on matters concerning the general status of the Debtors' businesses, financial condition, and operations.

12. **Proceeds of Subsequent Financing**. Without limiting the provisions and protections of Paragraph 11 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.

13. **Cash Collection**. From and after the date of the entry of this Final Order, all collections and proceeds of any DIP Collateral or 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 same bank accounts into which the collections and proceeds of the Prepetition Collateral were deposited under the Prepetition Secured Loan Documents (or in such other accounts as are designated by the DIP Agent from time to time).

14. **Disposition of DIP Collateral**. Unless the DIP Obligations and the Prepetition First Lien Obligations are Paid in Full upon the closing of a sale, 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 First Lien Secured Agent (and no

such consent shall be implied from any other action, inaction, or acquiescence by any DIP Secured Party or Prepetition First Lien Secured Party or any order of this Court), except as permitted in the DIP Loan Documents and/or the Prepetition First Lien Loan Documents, as applicable, and this Final Order. Except as otherwise expressly provided in the DIP Loan Documents, all proceeds of any disposition of DIP Collateral shall be remitted to the DIP Agent upon the closing of such disposition and applied to the DIP Obligations, subject to the Debtors' right to reborrow and use such proceeds in accordance with the Approved Budget (including any permitted variances) in accordance with the terms of this Final Order.

15. **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 2(f) of this Final 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 15(b) below), including Cash Collateral derived solely from the proceeds of DIP Collateral (any such declaration to be made in

writing by facsimile or electronic mail to the Debtors, the Prepetition First Lien Secured Agent, the Prepetition Second Lien Trustee, the Majority Prepetition Second Lien Secured Noteholders, the respective lead counsel to the 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 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. During the 5 Business Day period after a Termination Declaration Date, the Debtors, the DIP Agent, the Prepetition First Lien Secured Agent, the Majority Prepetition Second Lien Secured Noteholders, and the Committee shall be entitled to an emergency hearing before the Court for the sole purpose of contesting whether a Termination Event has occurred and section 105 of the Bankruptcy Code may not be invoked by the Debtors, the Committee, or any other party in interest in an effort to restrict or preclude any DIP Secured Party from exercising any rights or remedies set forth in this Final Order or the DIP Loan Documents. Unless during such 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 5 Business Day period, without further notice or order. During such 5 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 the Approved Budget.

(c) Upon the occurrence and during the continuance of a Termination Event, each of the Prepetition First Lien Agent and the Majority Prepetition Second Lien Secured Noteholders may declare a termination, reduction, or restriction on the ability of the Debtors to use any Cash Collateral by providing notice of such Termination Event to the Debtors, the DIP Agent, the Prepetition First Lien Secured Agent or Majority Prepetition Second Lien Noteholders, as applicable, the lead counsel to the Committee, and the United States Trustee (a "Cash Collateral Termination Declaration," and the date on which such notice is given shall be referred to as the "Cash Collateral Termination Declaration Date"). Subject to paragraph 15(d) of this Final Order, on the Cash Collateral Termination Declaration Date, the Debtors' right to use Cash Collateral shall automatically cease.

(d) Within five (5) Business Days following a Cash Collateral Termination Declaration Date, the Debtors and the Committee shall be entitled to seek an emergency hearing before the Court (to be held on the first available date on the Court's calendar) to request use of Cash Collateral without the consent of the Prepetition Second Lien Secured Parties in accordance with the Bankruptcy Code. Unless the Court determines that the Debtors may use Cash Collateral, (i) the Debtors' right to use of Cash Collateral under, but no other provision of, this Final Order shall automatically terminate at the time the Court so orders, and (ii) the automatic stay, as to the Prepetition Second Lien Secured Parties, shall automatically terminate at the time the Court so orders, without further notice or order; provided, however, that the exercise of remedies by the Prepetition Second Lien Secured Parties shall be subject to the limitations, if

any, in this Final Order and the Intercreditor Agreement. Until the Court determines that the Debtors may not use Cash Collateral, the Debtors may not use Cash Collateral or any amounts under the DIP Facility except to pay payroll and other expenses critical to keep the business of the Debtors operating in accordance with the Approved Budget.

(e) 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.

(f) Upon entry of this Final Order, and 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 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 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 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 15(f) 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 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 15(d). The provisions of this Order and Paragraph 15 in general, and subparagraphs 15 (b) and (f) in particular, to the contrary notwithstanding, with regard to access to or use of any leasehold premises, such access and use shall be limited to such access or use as is permitted in accordance with applicable state law, as is set forth in the affected lease, as agreed to by the affected landlord (including prior agreements such as a Waiver of Lien Agreement) or as ordered by this Court after notice and a hearing.

(g) The automatic stay imposed under Bankruptcy Code section 362(a) is hereby modified pursuant to the terms of this Final Order and the DIP Loan Documents as necessary to (i) permit the Debtors to grant the Adequate Protection Replacement Liens and the

DIP Liens and to incur all liabilities and obligations to the Prepetition Secured Parties and the DIP Secured Parties under the DIP Loan Documents, the DIP Facility, and this Final Order, (ii) authorize the DIP Secured Parties and the Prepetition Secured Parties to retain and apply payments hereunder, and (iii) otherwise to the extent necessary to implement and effectuate the provisions of this Final Order.

(h) Upon the occurrence of any Termination Event other than a DIP Default Termination Event that is not cured within three (3) Business Days of the occurrence thereof (regardless of whether such Termination Event is waived by the DIP Agent or the Prepetition First Lien Secured Parties), the Majority Prepetition Second Lien Noteholders may seek a court order on three (3) Business Days' notice, to accelerate any or all of the Sale Process Deadlines that are set for at least twenty-five (25) calendar days following receipt of the Deadline Acceleration Notice by twenty (20) calendar days; provided, that in no event shall the Bid Deadline be sooner than January 6, 2011. Upon the occurrence of any DIP Default Termination Event (regardless of whether such DIP Default Termination Event is waived by the DIP Agent or the Prepetition First Lien Secured Parties), and each of the DIP Agent, the Prepetition First Lien Secured Agent and the Majority Prepetition Second Lien Secured Noteholders may seek a court order, on five (5) Business Days' notice, to terminate the use of Cash Collateral. From and after the entry of a Final Order, if the Debtors' aggregate legal counsel fees in any given Four Week Testing Period or cumulatively throughout the Cases (i) exceed 150% of their budgeted amounts and (ii) are above budget by $400,000 or more, the Debtors shall not have the right to extend the Qualified Bid Deadline and the deadlines thereafter by two weeks as provided for herein, and any of the DIP Agent, the Prepetition First Lien Secured Agent, or the Majority Prepetition Second Lien Secured Noteholders may seek a court order, on five (5) Business Days' notice, to

terminate the use of Cash Collateral. The Majority Prepetition Second Lien Secured Noteholders shall provide a written notice (a "Deadline Acceleration Notice") of the occurrence of each of the foregoing to the Debtors, the DIP Agent, the Prepetition First Lien Secured Agent, and the Committee upon the occurrence thereof. For the avoidance of doubt, nothing in this Paragraph 15(h) shall limit the remedies of the DIP Secured Parties and the Prepetition First Lien Secured Parties, respectively, provided for in this Final Order and the DIP Loan Documents upon a Termination Event.

16. **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 prepetition retainer held by any professionals for the below-referenced parties), Prepetition Collateral, or any portion of the Carve-Out may be used by (a) the Committee or 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) to investigate or prosecute any litigation in connection with the value of the Prepetition Collateral or the DIP Collateral; and (b) any of the Debtors, the 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(c) or (d), or otherwise, other than from the DIP Secured Parties; (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 in their respective capacities as such, the Prepetition Secured Parties in their respective capacities as such, 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 discovery proceedings in anticipation thereof), including, without limitation, (A) any Challenges and any Avoidance Actions or other actions arising under chapter 5 of the Bankruptcy Code; (B) any action with respect to the validity, enforceability, priority, and extent of the DIP Obligations and/or the Prepetition Secured Obligations, or the validity, extent, and priority of the DIP Liens, the Prepetition Liens, or the Adequate Protection Replacement Liens (including, with respect to the Prepetition First Lien Secured Parties only, the value of the DIP Collateral); (C) any action seeking to invalidate, set aside, avoid, or subordinate, in whole or in part, the DIP Liens, the other DIP Protections, the Prepetition Liens, the Adequate Protection Replacement Liens, or the other Prepetition First Lien Secured Parties' Adequate Protection or Prepetition Second Lien Secured Parties' Adequate Protection; (D) except to contest the occurrence or continuance of any Termination Event as permitted in Paragraph 15, 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 First Lien Secured Parties', and after the Payment in Full of the Prepetition First Lien Obligations, the Prepetition Second Lien Secured Parties') assertion, enforcement, or realization on the Cash Collateral or the DIP Collateral in accordance with the DIP Loan Documents or the Prepetition Secured Loan Documents, as applicable, or this Final Order; and/or (E) 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 in their respective capacities as such and the Prepetition First Lien Secured Parties in their respective capacities as

such hereunder or under the DIP Loan Documents or the Prepetition Secured Loan Documents, as applicable; provided, however, up to $75,000 of the aggregate of the Carve-Out, any DIP Collateral, any Prepetition Collateral, any Cash Collateral or proceeds of the DIP Facility may be used by the Committee (to the extent such committee is appointed) to investigate (but not prosecute) the extent, validity, and priority of the Prepetition Secured Obligations, the Prepetition Liens, or any other claims against the Prepetition Secured Parties so long as such investigation occurs within the Challenge Period (the "Committee Investigation Cap"); (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 Secured Parties or the Prepetition Secured Parties, as applicable.

17. **Proofs of Claim**. The Prepetition First Lien Secured Parties and the Prepetition Second Lien Secured Parties shall not be 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 First Lien Secured Parties and the Prepetition Second Lien Secured Parties and upon approval of this Final Order, the Prepetition Secured Parties shall be treated under section 502(a) of the Bankruptcy Code as if they each have filed a proof of claim. Notwithstanding any order entered by the Court in relation to the establishment of a bar date in any of the Cases or Successor Cases to the contrary, the Prepetition First Lien Secured Agent for the benefit of itself and the Prepetition First Lien Secured Lenders, and the Prepetition Second Lien Trustee, for the benefit of itself and the Prepetition Second Lien Noteholders, are hereby authorized and entitled, in their sole discretion, but not required, to file

(and amend and/or supplement, as they see fit) a proof of claim and/or aggregate proofs of claim in each of the Cases or Successor Cases for any claim allowed herein.

18. **Preservation of Rights**.

(a) No Non-Consensual Modification or Extension of Final Order. The Debtors irrevocably waive any right to seek any amendment, modification, or extension of this Final Order without the prior written consent of the DIP Agent and the Prepetition First Lien Secured 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 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 Final Order and in accordance with section 364(e) of the Bankruptcy Code, which is applicable to the DIP Facility contemplated by this Final Order, in the event any or all of the provisions of this 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, the Prepetition First Lien Secured Agent, or the Prepetition Second Lien Trustee, as the case may be, of the effective date of such reversal, modification, vacatur, or stay or (ii) the validity or enforceability 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, the Prepetition First Lien Secured Agent, or the Prepetition Second Lien Trustee, 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 Final 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 Final 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), to the fullest extent permitted by law, that (i) the DIP Protections, the Prepetition Secured Parties' Adequate Protection, and the Carve-Out shall continue in full force and effect and shall maintain their priorities as provided in this Final Order until, subject to the Carve-Out, all DIP Obligations have been Paid in Full, the Prepetition First Lien Obligations have been Paid in Full, and the Prepetition Second Lien Obligations have been Paid in Full in cash or otherwise satisfied 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, the Prepetition Secured Parties' Adequate Protection, and the Carve-Out.

(d) Survival of Final Order. The provisions of this Final 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 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 Final 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 Final Order. Subject to the provisions of this 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.

19. **Insurance Policies**. Upon entry of this Final 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 on each insurance policy maintained by the Debtors which in any way relates to the Collateral.

20. **Other Rights and Obligations**.

(a) Expenses. As provided in the DIP Loan Documents, the applicable Debtors will pay all reasonable expenses incurred by the DIP Agent (including, without limitation, the reasonable fees and disbursements of all counsel for the DIP Agent and any internal or third-party appraisers, consultants, and auditors advising the DIP Agent) in connection with the preparation, execution, delivery, and administration of the DIP Loan Documents, this Final Order, and any other agreements, instruments, pleadings, or other documents prepared or reviewed in connection with any of the foregoing, whether or not any or all of the transactions contemplated hereby or by the DIP Loan Documents are consummated.

(b) Notice of Professional Fees. Professionals for the DIP Agent, the Prepetition First Lien Secured Parties, and the Prepetition Second Lien Secured Parties (collectively, the "Lender Professionals") shall not be required to comply with the United States Trustee fee guidelines or submit invoices to the Court, United States Trustee, the Committee or any other party-in-interest absent further court order. Copies of summary invoices submitted to the Debtors by such Lender Professionals shall be forwarded by the Debtors to the United States Trustee, counsel for the Committee, and such other parties as the Court may direct. The summary invoices shall be sufficiently detailed to enable a determination as to the reasonableness of such fees and expenses; provided, however, that such summary invoices may be redacted to the extent necessary to delete any information subject to the attorney-client

privilege, any information constituting attorney work product, or any other confidential information, and the provision of such summary invoices shall not constitute any waiver of the attorney-client privilege or of any benefits of the attorney work product doctrine. If the Debtors, United States Trustee, or counsel for the Committee object to the fees and expenses of any of the Lender Professionals and cannot resolve such objection within fifteen (15) days of receipt of such invoices, the Debtors, United States Trustee, or the Committee, as the case may be, shall file with the Court and serve on such Lender Professionals an objection (the "Fee Objection"). Notwithstanding any provision herein to the contrary, any objection and any hearing on an objection to payment of any fees, costs, and expenses set forth in a professional fee invoice, shall in each case, be limited to the reasonableness or necessity of the particular items or categories of the fees, costs, and expenses which are the subject of such objection, provided that the United States Trustee may object on any other basis under applicable law. The Debtors shall timely pay in accordance with the terms and conditions of this Final Order the undisputed fees, costs, and expenses reflected on any invoice to which a Fee Objection has been timely filed. The Debtors shall indemnify the DIP Agent and the DIP Lenders (and other applicable parties) to the extent set forth in the DIP Loan Documents, including, without limitation, as provided in Section 18.2 of the DIP Credit Agreement. All such unpaid fees, costs, expenses, charges, and 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) in accordance with the terms hereof shall constitute DIP Obligations and shall be secured by the DIP Collateral as specified in this 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.

(c) Binding Effect. Subject to Paragraph 7 above, the provisions of this 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, the 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.

(d) No Waiver. Neither the failure of the Prepetition Secured Parties to seek relief or otherwise exercise their rights and remedies under this Final Order, the Prepetition Secured Loan 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 Final 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 Final Order (including, without limitation, the authorization of the use of any Cash Collateral) shall impair or modify any rights, claims, or

defenses available in law or equity to any Prepetition Secured Party or any DIP Secured Party, including, without limitation, rights of a party to a swap agreement, securities contract, commodity contract, forward contract, or repurchase agreement with a Debtor to assert rights of setoff or other rights with respect thereto as permitted by law (or the right of a Debtor to contest such assertion). Except as prohibited by this Final Order, the entry of this Final Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, or otherwise impair, the ability of the Prepetition Secured Parties or the DIP Secured Parties under the Bankruptcy Code or under non-bankruptcy law to (i) request conversion of the Cases to cases under chapter 7, dismissal of the Cases, or the appointment of a trustee in the Cases, (ii) propose, subject to the provisions of section 1121 of the Bankruptcy Code, any Chapter 11 plan or plans with respect to any of the Debtors, or (iii) except as expressly provided herein, exercise any of the rights, claims, or privileges (whether legal, equitable, or otherwise) of the DIP Secured Parties or the Prepetition Secured Parties, respectively. Except to the extent otherwise expressly provided in this Final Order, neither the commencement of the Cases nor the entry of this Final Order shall limit or otherwise modify the rights and remedies of the Prepetition Secured Parties with respect to non-Debtor entities or their respective assets, whether such rights and remedies arise under the Prepetition Secured Loan Documents, applicable law, or equity.

(e) No Third Party Rights. Except as explicitly provided for herein, this Final Order does not create any rights for the benefit of any third party, creditor, equity holder, or any direct, indirect, or incidental beneficiary. Subject to the entry of the Final Order, 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 Final 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. 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 amend, modify, supplement, or waive any provision of the DIP Loan Documents in accordance with the provisions thereof, in each case unless such amendment, modification, supplement, or waiver (i) increases the interest rate (other than as a result of the imposition of the default rate), (ii) increases the aggregate lending commitments of all of the DIP Lenders in respect of the DIP Facility, (iii) changes the Maturity Date (as defined in the DIP Credit Agreement), or (iv) adds or amends (in any respect unfavorable to the Debtors) any Event of Default; provided, however, that notice of any material modification or amendment of the DIP Documents shall be provided to the United States Trustee and the Committee (with a copy to its counsel), each of whom shall have five (5) Business Days from receipt of such notice within which to object in writing to such material modification or amendment except in the circumstances where the Debtors determine, in their reasonable discretion, and set forth in the notice, that entry into such material modification or amendment of the DIP Documents is exigent, in which case the United States Trustee and the Committee shall have three (3) Business Days from receipt of such notice within which to object in writing to such material modification or amendment. If the Committee or the United States Trustee timely objects to any material modification or amendment to the DIP Documents, such modification or amendment shall only be permitted pursuant to an order of this Court unless such objection is

otherwise resolved among the parties. No waiver, modification, or amendment of any of the provisions hereof shall be effective unless set forth in writing, signed by or on behalf of all the Debtors and the DIP Agent (after having obtained the approval of the DIP Lenders) and, except as provided herein, approved by this Court. Notwithstanding the foregoing, no waiver, modification or amendment of any of the provisions of this Final Order or the DIP Loan Documents that would directly and adversely affect the rights or interests of the Prepetition First Lien Secured Parties or the Prepetition Second Lien Secured Parties, as applicable, shall be effective unless also consented to in writing by the adversely affected Prepetition First Lien Secured Agent (on behalf of the Prepetition First Lien Secured Parties) and/or the Majority Prepetition Second Lien Secured Noteholders (on behalf of the Prepetition Second Lien Trustee and the Prepetition Second Lien Secured Parties), as applicable.

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

(i) Enforceability. This 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 Bankruptcy Rule, or Rule 62(a) of the Federal Rules of Civil Procedure, this Final Order shall be immediately effective and enforceable upon its entry, and there shall be no stay of execution or effectiveness of this Final Order.

(j) Reservation of Rights. Nothing in this Final Order shall be deemed to constitute the consent of the DIP Secured Parties, the Prepetition First Lien Secured Parties, or

the Prepetition Second Lien 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 First Lien Obligations, the Prepetition First Lien Secured Parties' Adequate Protection, the Prepetition Second Lien Obligations and the Prepetition Second Lien 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 Final Order.

(l) General Cooperation From Debtors; Access to Information. Without limiting any of the Debtors' other obligations in this Final Order or the DIP Loan Documents, each Debtor shall, and shall cause its senior officers, directors and financial advisors to, reasonably cooperate with the DIP Agent, the Prepetition First Lien Secured Agent, and the Majority Prepetition Second Lien Secured Noteholders in furnishing documents and information as and when reasonably requested by such parties regarding the DIP Collateral or the Debtors' financial affairs, finances, financial condition, business, and operations. Notwithstanding anything to the contrary contained herein, the Debtors do not waive any right to attorney-client, work product, or similar privilege, and the Debtors shall not be required to provide the DIP Agent, the Prepetition First Lien Secured Agent, the Majority Prepetition Second Lien Secured Noteholders, or their respective financial advisors with any information subject to attorney-client privilege or consisting of attorney work product.

21. The amounts of the Committee Pre-Termination Carve Out, the Committee Carve-Out Cap and the Committee Investigation Cap are subject to the Court's comments on the record at the conclusion of the submission of evidence and presentation of argument at the hearing on November 4, 2011.

22. **Retention of Jurisdiction**. The Bankruptcy Court has and will retain jurisdiction to enforce this Final Order according to its terms.

Dated: Nov 9, 2011
Wilmington, Delaware

HONORABLE BRENDAN L. SHANNON,
UNITED STATES BANKRUPTCY JUDGE