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**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION**

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In re:

VISTA PROPPANTS AND LOGISTICS, LLC,  
et al.,

Debtors.<sup>1</sup>

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§  
§ Chapter 11  
§  
§ Case No. 20-42002-elm11  
§  
§  
§ (Jointly Administered)  
§

**SUPPLEMENT TO OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED  
CREDITORS TO DEBTORS' EMERGENCY MOTION FOR ENTRY OF INTERIM  
AND FINAL ORDERS (I) AUTHORIZING THE DEBTORS TO (A) OBTAIN  
POSTPETITION FINANCING PURSUANT TO 11 U.S.C. §§ 105, 361, 362, 363(c), 363(e),  
364(c), 364(d)(1) AND 364(e) AND (B) UTILIZE CASH COLLATERAL OF  
PREPETITION SECURED ENTITIES, (II) GRANTING ADEQUATE PROTECTION  
TO PREPETITION SECURED ENTITIES, (III) SCHEDULING A FINAL HEARING  
PURSUANT TO BANKRUPTCY RULES 4001(b) AND 4001(c),  
AND (IV) GRANTING RELATED RELIEF**

1. On July 3, 2020, the Committee filed the *Objection of the Official Committee of  
Unsecured Creditors to Debtors' Emergency Motion for Entry of Interim and Final Orders (I)*

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<sup>1</sup> The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor's federal tax identification number, include: Vista Proppants and Logistics, LLC (7817) ("Vista OpCo"); VPROP Operating, LLC (0269) ("VPROP"); Lonestar Prospects Management, L.L.C. (8451) ("Lonestar Management"); MAALT Specialized Bulk, LLC (2001) ("Bulk"); Denetz Logistics, LLC (8177) ("Denez"); Lonestar Prospects, Ltd. (4483) ("Lonestar Ltd."); and MAALT, LP (5198) ("MAALT"). The location of the Debtors' service address is 4413 Carey Street, Fort Worth, TX 76119-4219.



*Authorizing the Debtors to (A) Obtain Postpetition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 363(c), 363(e), 364(c), 364(d)(1), and 364(e) and (B) Utilize Cash Collateral of Prepetition Secured Entities, (II) Granting Adequate Protection to Prepetition Secured Entities, (III) Scheduling a Final Hearing Pursuant to Bankruptcy Rules 4001(b) and 4001(c), and (IV) Granting Related Relief* [Dkt. No. 157].

2. Attached hereto as **Exhibit A** is the Committee's proposed *Final Order (I) Authorizing the Debtors to (A) Obtain Post-Petition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 363(c), 363(e), 364(c), 364(d)(1), and 364(e) and (B) Utilize Cash Collateral of Prepetition Secured Entities, (II) Granting Adequate Protection to Prepetition Secured Entities, and (III) Granting Related Relief* (the "Committee's Proposed Final Order").

3. Attached hereto as **Exhibit B** is a redline version of the Committee's Proposed Final Order compared to the Interim DIP Order [Dkt. No. 80].

4. Attached hereto as **Exhibit C** is a redline version of the Committee's Proposed Final Order compared to the Debtors' proposed Final Order filed at Dkt. No. 181.

Dated: July 9, 2020  
Dallas, Texas

/s/ Patrick J. Carew

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*Proposed Counsel to the Official Committee of  
Unsecured Creditors of Vista Proppants and Logistics,  
LLC, et al.*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 9<sup>th</sup> day of July 2020, a true and correct copy of the foregoing document was served by electronic transmission upon all parties eligible to receive services through this Court's CM/ECF system.

/s/ Patrick J. Carew

Patrick J. Carew

## **EXHIBIT A**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION**

In re:

Vista Proppants and Logistics, LLC, et al.,

Debtors.<sup>1</sup>

Chapter 11

Case No. 20-42002-elm11

(Jointly Administered)

**FINAL ORDER (I) AUTHORIZING THE DEBTORS TO  
(A) OBTAIN POST-PETITION FINANCING PURSUANT TO 11 U.S.C. §§ 105,  
361, 362, 363(c), 363(e), 364(c), 364(d)(1) AND 364(e) AND (B) UTILIZE CASH  
COLLATERAL OF PREPETITION SECURED ENTITIES, (II) GRANTING  
ADEQUATE PROTECTION TO PREPETITION SECURED ENTITIES,  
(III) SCHEDULING A FINAL HEARING PURSUANT TO BANKRUPTCY  
RULES 4001(b) AND 4001(c), AND (IV) GRANTING RELATED RELIEF**

This matter is before the Court on the motion dated June 10, 2020 (the “Motion”)<sup>2</sup>  
of Vista Proppants and Logistics, LLC and its affiliated debtors, as debtors-in-possession

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<sup>1</sup> The Debtors in these Chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, include: Vista Proppants and Logistics, LLC (7817) (“Vista OpCo”); VPROP Operating, LLC (0269) (“VPROP”); Lonestar Prospects Management, L.L.C. (8451) (“Lonestar Management”); MAALT Specialized Bulk, LLC (2001) (“Bulk”); Denetz Logistics, LLC (8177) (“Denetz”); Lonestar Prospects, Ltd. (4483) (“Lonestar Ltd.”); and MAALT, LP (5198) (“MAALT”). The location of the Debtors’ service address is 4413 Carey Street, Fort Worth, TX 76119-4219.

(collectively, the “Debtors”) in the above-captioned chapter 11 cases (collectively, the “Chapter 11 Cases”), for entry of a final order (this “Final Order”), pursuant to sections 105, 361, 362, 363(c), 363(e), 364(c), 364(d)(1) and 364(e) of title 11 of the United States Code (the “Bankruptcy Code”), Rules 2002, 4001(b) and (c), 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rules 4001-1 and 9013-1 of the Local Rules of the United States Bankruptcy Court for the Northern District of Texas (together, the “Local Rules”), seeking, among other things:

- (i) authorization for VPROF, as a debtor and debtor-in-possession (the “DIP Borrower”), to obtain priming, senior secured, superpriority, debtor-in-possession post-petition financing and for the remaining Debtors (each, a “DIP Guarantor,” and collectively, the “DIP Guarantors”), as debtors and debtors-in-possession, to guarantee unconditionally the DIP Borrower’s obligations under a senior secured term loan credit facility (the “DIP Facility”) consisting of non-amortizing senior secured delayed draw term loans (the “DIP Loans”) in an aggregate principal amount of up to \$11.0 million (the “DIP Commitment”), in accordance with a debtor-in-possession credit agreement by and among the DIP Borrower, the DIP Guarantors, Ares Capital Corporation (“Ares”), as administrative agent (in such capacity, the “DIP Agent”), and the lenders party thereto (collectively, the “DIP Lenders” and together with the DIP Agent, the “DIP Secured Parties”), substantially similar to the form attached hereto as **Exhibit A** (as the same may be amended, restated, supplemented or otherwise modified from time to time pursuant to the terms thereof, the “DIP Credit Agreement”), and the other definitive documentation with respect to the DIP Facility (collectively with the DIP Credit Agreement and the related security documents, the “DIP Loan Documents”);
- (ii) authorization for the Debtors to (a) execute and enter into the DIP Loan Documents, (b) pay fees and reimburse expenses under the DIP Loan Documents, as and in the amounts described in the DIP Loan Documents from the proceeds of the DIP Facility, and (c) perform such other and further acts as may be required in connection with the DIP Loan Documents;
- (iii) authorization for the Debtors to grant (a) valid, enforceable, nonavoidable and fully perfected security interests and liens to the DIP Agent, for the benefit of the DIP Secured Parties, on all DIP Collateral (as defined below) to secure all obligations of the Debtors under and with respect to the DIP Facility (such obligations, the “DIP Obligations”) and (b) subject only to the Carve-Out and the

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<sup>2</sup> All defined terms shall have the meaning ascribed to them in the Motion or DIP Credit Agreement (as defined below) unless otherwise defined herein.

ABL Lender's and the MAALT Lender's credit bid and lien rights (as set forth herein), superpriority claims (including a superpriority administrative expense claim pursuant to section 364(c)(1) of the Bankruptcy Code) to the DIP Agent, for the benefit of the DIP Lenders, having recourse to all prepetition and postpetition property of the Debtors' estates, now owned or hereafter acquired;

(iv) authorization for the proceeds of the DIP Facility to be funded on each applicable funding date into the DIP Cash Collateral Account (as defined below); and for the Debtors' use of Cash Collateral (as defined below) solely in accordance with the Approved Budget (as defined below) then in effect (the initial version of which is attached hereto as **Exhibit B**), subject to the Budget Variance (as defined below), and the collection and application of Cash Collateral, in each case pursuant to the terms and conditions set forth in this Final Order and the DIP Credit Agreement;

(v) subject to the Carve-Out and the ABL Lender's and the MAALT Lender's credit bid and lien rights (as set forth herein), solely to the extent of the diminution in value of their collateral, authorization for the Term Loan Secured Obligors (as defined below) under the Term Loan Facility (as defined below) to provide the Term Loan Secured Parties (as defined below) adequate protection in the form of (a) a superpriority administrative expense claim as contemplated by section 507(b) of the Bankruptcy Code and validly perfected liens on and security interests in the DIP Collateral, all in accordance with the relative priorities set forth herein, and (b) the Adequate Protection Payments (as defined below);

(viii) the waiver by the Debtors of any right to surcharge any of the Term Loan Secured Parties' collateral pursuant to section 506(c) of the Bankruptcy Code;

(ix) modification of the automatic stay imposed under section 362 of the Bankruptcy Code to the extent necessary to permit the (i) Debtors, (ii) DIP Secured Parties, and (iii) Term Loan Secured Parties to implement the terms of this Final Order;

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

(xi) the scheduling of a final hearing (the "Final Hearing") on the Motion no later than 30 days after the Petition Date, to consider entry of a Final Order granting the relief requested in the Motion on a final basis.

The initial hearing on the Motion having been held by this Court on June 9, 2020; and this Court having found that, under the circumstances, due and sufficient notice of the Motion and Final Hearing was provided by the Debtors as set forth in Paragraph C of this Final Order, and this Court having considered all the pleadings filed with this Court; and having overruled all

unresolved objections to the relief granted in this Final Order; and upon the record made by the Debtors at the Final Hearing, and after due deliberation and consideration and good and sufficient cause appearing therefore:

**THIS COURT MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:<sup>3</sup>**

A. **Petition Date.** On June 9, 2020 (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 Northern District of Texas, Fort Worth Division (this “Court”). The Debtors continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No party has requested the appointment of a trustee or examiner in these Chapter 11 Cases. The official committee of unsecured creditors (the “Committee”) was appointed on June 23, 2020.

B. **Jurisdiction and Venue.** This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and the *Order of Reference of Bankruptcy Cases and Proceedings Nunc Pro Tunc* entered by the United States District Court for the Northern District of Texas, dated August 3, 1984. This is a core proceeding pursuant to 28 U.S.C. § 157(b), and the Debtors confirmed their consent to the entry of a final order by the Court in connection with the Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection with the Motion consistent with Article III of the United States Constitution. Venue of the Debtors’ Chapter 11 Cases and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief sought herein are sections 105, 361, 362, 363, and 364 of the Bankruptcy Code, Rule 4001(b) and (c) and 6004 of the Bankruptcy Rules, and Local Rules 4001-1 and 9013-1.



C. **Notice.** Notice of the Final Hearing has been provided by the Debtors to:

(i) the twenty (20) largest unsecured creditors for each of the Debtors; (ii) the Office of the United States Trustee for the Northern District of Texas (the “U.S. Trustee”); (iii) counsel to the proposed DIP Agent; (iv) counsel to the Term Loan Agent (as defined below); (v) counsel to the ABL Lender (as defined below); (vi) counsel to the MAALT Lender (as defined below); (vii) all known parties asserting a lien against the DIP Collateral (as defined below); (viii) counsel for any official committees appointed by this Court; (ix) all governmental agencies having a regulatory or statutory interest in these cases; (x) counsel to the Committee; and (xi) any other party that has filed a request for notice pursuant to Bankruptcy Rule 2002 or are required to receive notice under the Bankruptcy Rules and the Local Rules. Under the circumstances, such notice of the 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 the Final Order.

D. **Debtors’ Stipulations.** Subject to the rights specifically set forth in Paragraph 21 below, the Debtors, on their behalf and on behalf of their estates, admit, stipulate, acknowledge, and agree (the “Debtors’ Stipulations”) as follows:

i. **Term Loan Documents.** Prior to the Petition Date, the Term Loan Agent and the Term Loan Lenders made loans, advances and provided other financial accommodations under a term loan facility (the “Term Loan Facility”) to VPROP (in its capacity as borrower under the Term Loan Agreement, “Term Loan Borrower”) pursuant to the terms and conditions set forth in (1) that certain *Amended and Restated Senior Secured Credit Agreement* dated as November 9, 2017 (as amended, supplemented or otherwise modified prior to the

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<sup>3</sup> Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact, as appropriate pursuant to Bankruptcy Rule 7052.

Petition Date, the “Term Loan Agreement”) by and among Vista Proppants and Logistics, LLC, the Term Loan Borrower, the lenders from time to time party thereto (the “Term Loan Lenders”) and Ares, as administrative agent (in such capacity, the “Term Loan Agent” and together with the Term Loan Lenders, the “Term Loan Secured Parties”); and (2) all other agreements, documents and instruments executed and/or delivered with, to, or in favor of the Term Loan Agent or any Term Loan Lender in connection with the Term Loan Agreement, including, without limitation, certain security agreements, mortgages, financing statements, collateral agreements, collateral trust agreements, deposit account control agreements, blocked account control agreements, securities account control agreements, and other collateral documents and agreements (as amended, restated, supplemented or otherwise modified from time to time and in effect on the date hereof, collectively, the “Term Loan Documents”).

ii. Term Loan Obligations. As of the Petition Date, the DIP Borrower and the DIP Guarantors were truly and justly indebted to the Term Loan Agent and the Term Loan Lenders without defense, counterclaim or offset of any kind, pursuant to the Term Loan Documents, in the aggregate principal amount of \$369,300,998.02 in respect of the loans made under the Term Loan Agreement, plus accrued and unpaid interest with respect thereto and any additional fees, costs and expenses (including any fees and expenses of attorneys, financial advisors, and other professionals that are chargeable or reimbursable under the Term Loan Documents) now or hereafter due under the Term Loan Agreement and the other Loan Documents (as defined in the Term Loan Agreement) (collectively, together with all other obligations arising under the Term Loan Documents (including, without limitation, the “Obligations” (as defined in the Term Loan Agreement), the “Term Loan Obligations”). The Term Loan Obligations constitute allowed, legal, valid, binding, enforceable and non-avoidable

obligations of the DIP Borrower and DIP Guarantors, and are not subject to any offset, defense, counterclaim, avoidance, recharacterization or subordination pursuant to the Bankruptcy Code or any other applicable law, and Debtors do not possess, shall not assert, hereby forever release, and are forever barred from bringing any claim, counterclaim, setoff or defense of any kind, nature or description which would in any way affect the validity of the Term Loan Obligations.

iii. Term Loan Collateral. As of the Petition Date, the Term Loan Obligations were secured pursuant to the Term Loan Documents by valid, perfected, enforceable and non-avoidable liens upon and security interests in all the “Collateral” (as defined in the Term Loan Agreement and hereinafter referred to as the “Term Loan Collateral”), consisting of all or substantially all of the assets of VPROP, Lonestar Management and Lonestar Prospects (the “Term Loan Secured Obligors”), including without limitation, (x) first-priority liens on and security interests in all of the “Term Priority Collateral” (as defined in that certain Prepetition Intercreditor Agreement (as defined below)) owned by each Term Loan Secured Obligor (all such Term Loan Collateral in existence on the Petition Date, or the identifiable proceeds thereof, the “Term Loan Priority Collateral”) and (y) second-priority liens on and security interests in all accounts receivable and Finished Sand Inventory of Lonestar Prospects, any proceeds thereof, including bank accounts containing such proceeds, and general intangibles relating thereto in existence as of the Petition Date (the “ABL Priority Collateral” and (x) and (y) together, the “Term Loan Collateral”) subject only to (A) the liens specifically permitted under Section 9.04 of the Term Loan Agreement to the extent that such security interests, liens or encumbrances are (1) valid, perfected and non-avoidable security interests, liens or encumbrances existing as of the Petition Date, and (2) senior to and have not been or are not subject to being subordinated to the Term Loan Agent’s and Term Loan Lenders’ liens on and security interests in the Term Loan

Collateral under the Term Loan Documents or otherwise avoided, and, in each instance, only for so long as and to the extent that such encumbrances are and remain senior and outstanding (hereinafter referred to as the “Term Loan Liens”), and (B) the terms and conditions of the Prepetition Intercreditor Agreement (as defined below). The Debtors do not possess and will not assert any claim, counterclaim, setoff or defense of any kind, nature or description which would in any way affect the validity, enforceability and non-avoidability of the Term Loan Agent’s and Term Loan Lenders’ liens, claims or security interests in the Term Loan Collateral.

iv. Validity of Term Loan Liens. The Term Loan Obligations constitute legal, valid, and binding Obligations (as defined in the Term Loan Agreement) of the Debtors; no offsets, defenses or counterclaims to the Term Loan Obligations exist; no portion of the Term Loan Obligations is subject to avoidance, disallowance, reduction or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law; the Term Loan Documents are valid and enforceable by the Term Loan Agent for the benefit of the Term Loan Lenders against each of the Debtors; the liens and security interests of the Term Loan Secured Parties constitute valid, binding, enforceable and perfected liens in and to the Term Loan Collateral, having the priority set forth in the Term Loan Documents and subject and subordinate only to (after giving effect to any applicable intercreditor or subordination agreement) Permitted Liens (as defined below) and the ABL Lender’s (as defined below) liens with respect to the ABL Priority Collateral; the Term Loan Obligations constitute allowed secured claims against the applicable Debtors’ estates; and no claim or cause of action held by the Debtors exists against the Term Loan Agent, the Term Loan Lenders, or any of their respective agents, whether arising under applicable state or federal law (including, without limitation, any recharacterization, subordination, avoidance or other claims arising under or pursuant to sections 105, 510 or 542

through 553 of the Bankruptcy Code), or whether arising under or in connection with any of the Term Loan Documents (or the transactions contemplated thereunder), the Term Loan Obligations, or the Term Loan Secured Parties' liens, including without limitation, any right to assert any disgorgement or recovery;

v. Cash Collateral. All of the Debtors' cash, including any cash in all deposit accounts and collection accounts, wherever located, comprising proceeds of or otherwise arising from or relating to the Term Loan Collateral, constitutes "cash collateral" as such term is defined in section 363(a) of the Bankruptcy Code, of the Term Loan Secured Parties (collectively, the "Cash Collateral"); provided, however, that the ABL Lender has a senior lien on Cash Collateral that constitutes ABL Priority Collateral and the MAALT Lender has a senior lien on Cash Collateral that constitutes the MAALT Collateral. For the avoidance of doubt, and except as may be set forth in a separate order entered by the Court, nothing herein shall be deemed to authorize the Debtors' use of any Cash Collateral that constitutes ABL Priority Collateral or MAALT Collateral.<sup>4</sup>

E. Cash Collateral Account. Proceeds of the DIP Facility shall be funded on each applicable funding date into a cash collateral account at a bank to be mutually agreed upon by the DIP Agent and the DIP Borrower, over which the DIP Agent shall have a perfected security interest and into which account the Loans will be funded on the date of each Borrowing (as defined in the DIP Credit Agreement) (the "DIP Cash Collateral Account").

F. Intercreditor Agreement. That certain *Amended and Restated Intercreditor Agreement*, dated as of November 9, 2017 (as amended, supplemented or otherwise modified prior to the Petition Date, the "Prepetition Intercreditor Agreement") by and among

PlainsCapital Bank (the “ABL Lender”), the Term Loan Agent, and the Debtors party thereto sets forth subordination and other provisions governing the relative priorities and rights of the Term Loan Secured Parties and the ABL Lender.

G. **ABL Facility.** The ABL Lender and certain of the Debtors are a party to that certain prepetition *Amended and Restated Loan Agreement*, dated as of January 12, 2018 (as amended, supplemented or otherwise modified prior to the Petition Date, the “ABL Credit Agreement,” and the facility thereunder, the “ABL Facility”), by and among Lonestar Prospects, Ltd., Lonestar Prospects Holding Company, L.L.C., Gary B. Humphreys, Martin W. Robertson and the ABL Lender; and all other agreements, documents and instruments executed and/or delivered with, to, or in favor of the ABL Lender in connection with the ABL Credit Agreement, including, without limitation, certain security agreements, mortgages, financing statements, collateral agreements, collateral trust agreements, deposit account control agreements, blocked account control agreements, securities account control agreements, and other collateral documents and agreements (as amended, restated, supplemented or otherwise modified from time to time and in effect on the date hereof, collectively, the “ABL Documents”). Pursuant to the ABL Documents, the ABL Loan Obligors granted the ABL Lender (i) first priority liens in the ABL Priority Collateral and (ii) second priority liens in the Common Collateral (as defined in the Intercreditor Agreement) that is not ABL Priority Collateral (the “Second Priority ABL Collateral” and (i) and (ii) together, the “ABL Liens” in the “ABL Collateral”). The ABL Lender reserves all rights concerning the actual collateral pledged to secure the debts owed to the ABL Lender by any one or more of the Debtors. The defined terms in this Final Order concerning the extent of the ABL Lender’s collateral shall not be construed, deemed or interpreted to be

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<sup>4</sup> The Debtors are not seeking authorization to use any Cash Collateral that constitutes ABL Priority Collateral or MAALT Collateral. As such, any use of the term “Cash Collateral” does not include cash collateral that constitutes

definitive legal or factual conclusions concerning the actual collateral pledged to secured the debts owed to the ABL Lender by any one or more of the Debtors. Accordingly, the term “ABL Priority Collateral”, as used herein, means and shall be construed and interpreted to mean and include any property of any one or more of the Debtors that is pledged in favor of the ABL Lender in a first priority, senior position to secure the repayment of certain debts owed to the ABL Lender by one or more of the Debtors. Likewise, the term “Second Priority ABL Collateral,” as used herein, means and shall be construed and interpreted to mean and include any property of any one or more of the Debtors that is pledged in favor of the ABL Lender in a second priority, junior position to secure the repayment of certain debts owed to the ABL Lender by one or more of the Debtors. Collectively, the term “ABL Collateral”, as used herein, means and shall be construed and interpreted to mean and include all property of any one or more of the Debtors that is pledged in favor of the ABL Lender to secure the repayment of certain debts owed to the ABL Lender by one or more of the Debtors, without distinction as to the priority of such liens and security interests held by and conveyed to the ABL Lender in such pledged property.

H. **MAALT Facility**. The MAALT Lender and certain Debtors are parties to that certain prepetition *Loan Agreement*, dated as of June 15, 2014 (as amended, supplemented, or otherwise modified prior to the Petition Date, the “MAALT Credit Agreement,” and the facility thereunder, the “**MAALT Facility**”), by and among MAALT, L.P., Denetz Logistics, L.L.C., GHMR Operations, L.L.C., Gary B. Humphreys, Martin W. Robertson, the Trust Guarantors (as defined therein) and PlainsCapital Bank (the “**MAALT Lender**”, and together with the ABL Lender and the Term Loan Secured Parties, the “**Prepetition Secured Parties**”); and

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ABL Priority Collateral or MAALT Collateral.

all other agreements, documents and instruments executed and/or delivered with, to or in favor of the MAALT Lender in connection with the MAALT Credit Agreement, including, without limitation, certain security agreements, mortgages, financing statements, collateral agreements, collateral trust agreements, deposit account control agreements, and other collateral documents and agreements (as amended, restated, supplemented or otherwise modified from time to time and in effect on the date hereof, collectively, the “MAALT Documents”). Pursuant to the MAALT Documents, the MAALT Loan Obligors granted the MAALT Lender first priority liens in certain collateral (the “MAALT Collateral”).

**I. Findings Regarding the DIP Facility.**

i. Need for Postpetition Financing. Based upon the pleadings and proceedings of record in the Chapter 11 Cases, the Debtors do not have sufficient available sources of working capital and financing to carry on the operation of their businesses without the DIP Facility and authorized use of Cash Collateral as provided herein. As a result of the Debtors’ financial condition, the use of Cash Collateral alone will be insufficient to meet the Debtors’ immediate post-petition liquidity needs. The Debtors’ ability to maintain business relationships with their vendors, suppliers, and distributors, pay their employees, and otherwise finance their operations during the Chapter 11 Cases is essential to the Debtors’ continued viability and to their ability to continue operations while seeking confirmation of a plan of reorganization in order to maximize the value of their estates. In the absence of the DIP Facility and the authorization by this Court to use Cash Collateral as set forth herein, the Debtors’ businesses and estates would suffer immediate and irreparable harm, including, without limitation, a cessation of substantially all of their operations. The preservation, maintenance, and enhancement of the going concern value of the Debtors are of the utmost significance and



importance to a successful restructuring of the Debtors under chapter 11 of the Bankruptcy Code. Use of Cash Collateral and the DIP Facility will also permit the Debtors to preserve the enterprise value of their businesses pending the confirmation and consummation of a plan of reorganization.

ii. No Credit on More Favorable Terms. Based upon the pleadings and proceedings of record in the Chapter 11 Cases, the Debtors are unable to obtain sufficient interim and long-term financing from sources other than the DIP Lenders on terms more favorable than under the DIP Facility and the DIP Loan Documents, and are not able to obtain unsecured credit allowable as an administrative expense under section 503(b)(1) of the Bankruptcy Code. The Debtors are also unable to obtain secured credit allowable under sections 364(c)(1), 364(c)(2) and 364(c)(3) of the Bankruptcy Code for the purposes set forth in the DIP Credit Agreement without the Debtors (i) granting to the DIP Agent and the DIP Lenders, subject to the Carve-Out, (a) the DIP Superpriority Claims (as defined below) and (b) the DIP Liens (as defined below) in the DIP Collateral (as defined below), in each case under the terms and conditions set forth in this Final Order and the DIP Loan Documents, and (ii) providing the DIP Lenders the adequate protection as provided herein.

iii. Appropriateness of DIP Facility Terms. The terms of the DIP Facility, as described in this Final Order and the DIP Loan Documents, and the use of the Term Loan Collateral, DIP Collateral (as defined below), and Cash Collateral (other than ABL Priority Collateral and MAALT Collateral) pursuant to this Final Order are fair and reasonable, reflect the Debtors' exercise of sound business judgment consistent with their fiduciary duties, and constitute reasonably equivalent value and fair consideration.

J. **Final Financing.** During these Chapter 11 Cases, the DIP Lenders are willing to provide up to \$11.0 million for borrowing by the DIP Borrower. The Initial Borrowing (as defined in the Interim Order) and all other conditions to borrowing under the DIP Credit Agreement were satisfied, including the (i) execution of the DIP Credit Agreement by the DIP Borrower and each of the DIP Guarantors and delivery of such executed DIP Credit Agreement to the DIP Agent; and (ii) the other terms and conditions of the DIP Credit Agreement.

K. **Adequate Protection.** The adequate protection provided to (i) the Term Loan Secured Parties on account of any diminution in the value of such parties' interests in the Term Loan Collateral from and after the Petition Date, including, without limitation, resulting from the DIP Facility, is consistent with and authorized by the Bankruptcy Code and is offered by the Debtors to protect such parties' interests in the Term Loan Collateral in accordance with sections 361, 362 and 363 of the Bankruptcy Code. The consent of the Term Loan Secured Parties to the priming of their liens by the DIP Liens (1) does not constitute, and shall not be construed as constituting, an acknowledgment or stipulation by the Term Loan Secured Parties that their interests in the Term Loan Collateral are adequately protected pursuant to this Final Order or otherwise; and (2) is conditioned upon entry of this Final Order and does not and shall not be deemed to constitute consent to the priming of the Term Loan Liens other than pursuant to this Final Order and the terms set forth herein. The adequate protection provided herein and other benefits and privileges contained herein are necessary in order to (i) protect the Term Loan Secured Parties from the diminution in value of their Term Loan Collateral; and (ii) obtain the foregoing consents and agreements.

L. **Section 552(b).** In light of the subordination of their liens and superpriority administrative claims (i) in the case of the DIP Secured Parties to the Carve-Out and the Permitted Liens (as defined below), and (ii) in the case of the Term Loan Secured Parties to the Carve-Out and the DIP Liens, each of the DIP Secured Parties and the Term Loan Secured Parties are 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 to any of the DIP Secured Parties or the Term Loan Secured Parties with respect to the proceeds, products, rents, issues or profits of any of the DIP Collateral or the Term Loan Secured Parties’ collateral. Subject to and immediately upon entry of the Final Order, the Debtors shall be deemed to have irrevocably waived, and to have agreed not to assert, any claim or right under sections 552(b) of the Bankruptcy Code seeking to avoid the imposition of the DIP Liens, Term Loan Liens or the Adequate Protection Liens (as defined below) on any property acquired by any of the Debtors or any of their estates.

M. **Business Judgment and Good Faith Pursuant to Section 364(e).**

i. **Debtors’ Sound Business Judgment.** The DIP Lenders have indicated a willingness to provide postpetition secured financing via the DIP Facility to the Debtors in accordance with the terms of the DIP Loan Documents and this Final Order. The terms and conditions of the DIP Facility as set forth in the DIP Loan Documents and this Final Order, and the fees, expenses, and other charges paid and to be paid thereunder or in connection therewith, 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 sound business judgment consistent with their fiduciary duties. Such terms and conditions are supported by reasonably equivalent value and fair consideration.

ii. DIP Lenders' Good Faith. The DIP Lenders, the Term Loan Secured Parties and the Debtors, with the assistance of counsel and of their respective advisors, have acted in good faith and at arm's-length in, as applicable, negotiating, consenting to, and/or agreeing to, the DIP Facility, the Debtors' use of the Term Loan Secured Parties' collateral, the DIP Collateral (as defined below) and the Cash Collateral, the DIP Loan Documents and the protections set forth herein. The DIP Facility (including all advances that are made at any time to the Debtors under the DIP Loan Documents) and the Debtors' use of the Collateral and Cash Collateral shall be deemed to have been extended and/or consented to by the DIP Lenders 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 and good faith reliance upon the protections offered by section 364(e) of the Bankruptcy Code and this Final Order. Accordingly, the DIP Facility, adequate protection, and other protections identified herein shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event this Final Order or any provision hereof or thereof is vacated, reversed, amended, or modified on appeal or otherwise.

N. Relief Essential; Best Interest. The Debtors have requested immediate entry of this Final Order pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2) and Local Rules 2002-1 and 4001-1. Absent granting the relief set forth in this Final Order, the Debtors' estates, their business, and their ability to successfully reorganize or otherwise preserve the enterprise value of their operations will be immediately and irreparably harmed. Consummation of the DIP Facility and authorization of the use of Cash Collateral as set forth herein, in accordance with the DIP Facility and this Final Order, is therefore in the best interests of the Debtors' estates and consistent with their fiduciary duties. Based on all of the foregoing,

sufficient cause exists for immediate entry of the Final Order pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2) and the applicable Local Rules.

Based on the foregoing, and upon the record made before this Court at the Final Hearing, and good and sufficient cause appearing therefor,

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:**

1. **Motion Granted.** The Motion is granted on the terms and conditions set forth in this Final Order. Any objections to the relief granted in this Final Order that have not previously been withdrawn are hereby overruled. This Final Order shall become effective immediately upon its entry.

2. **Approval of DIP Loan Documents; Authority Thereunder.** The Debtors are hereby authorized to enter into the DIP Loan Documents, including the DIP Credit Agreement, and such additional documents, instruments and agreements as may be reasonably required or requested by the DIP Agent and the DIP Lenders to implement the terms or effectuate the purposes of this Final Order. The Debtors are authorized to comply with and perform all of the terms and conditions contained in the DIP Loan Documents, and authorized to repay amounts borrowed, together with interest and fees thereon (including, without limitation, the fees in section 3.04 of the DIP Credit Agreement), as well as any other outstanding obligations to the DIP Lenders in accordance with and subject to the terms and conditions set forth in the DIP Loan Documents and this Final Order.

3. **Authorization to Borrow DIP Facility Loans and Use Cash Collateral.** Upon finalizing and executing the DIP Credit Agreement and the other DIP Loan Documents, the DIP Borrower is immediately authorized to borrow from the DIP Lenders, and the Guarantors are immediately authorized to guaranty, initial borrowings under the DIP Facility of up to an aggregate principal amount of \$3.5 million of DIP Loans under the DIP Credit

Agreement, subject to and in accordance with the terms of this Final Order and the DIP Credit Agreement. The Debtors are authorized to use the proceeds of the DIP Loans and the Cash Collateral only for the purposes described in Paragraph 15 of this Final Order. The DIP Facility and the Debtors' authorization to use the proceeds of the DIP Loans and the Cash Collateral will terminate upon the earliest to occur of (such earliest date, the "Termination Date"): (a) the date that is 180 days after the Petition Date (the "Scheduled Maturity Date"); (b) the effective date of a plan of reorganization or liquidation in the Chapter 11 Cases; (c) the consummation of a sale of all or substantially all of the assets of the Debtors pursuant to section 363 of the Bankruptcy Code or otherwise; (d) dismissal of the Chapter 11 Cases or conversion of the Chapter 11 Cases into cases under chapter 7 of the Bankruptcy Code; (e) the appointment of a trustee or receiver in one or more of the Chapter 11 Cases; (f) without the DIP Lenders' prior written consent, the date of filing of or express written support by the DIP Borrower for a plan of reorganization that is not an Acceptable Plan (as defined below); (g) the date of termination of the DIP Lenders' commitments following the occurrence of an Event of Default under the DIP Credit Agreement; or (h) the acceleration of any outstanding DIP Loans in accordance with the terms of the DIP Credit Agreement and the DIP Loan Documents, unless such Termination Date is extended, as to the DIP Facility, with the prior written consent of the DIP Agent and the requisite lenders under the DIP Facility and, as to the use of Cash Collateral, with the prior written consent of the Term Loan Agent and the Required Lenders (as defined in the Term Loan Agreement).

4. **No Obligation to Fund.** The DIP Lenders and Term Loan Lenders each have no obligation to extend credit under the DIP Credit Agreement or permit the use of any DIP Collateral or Term Loan Collateral or any proceeds thereof, including Cash Collateral, as applicable, during the Chapter 11 Cases unless and until all conditions precedent to the extension

of credit and/or use of DIP Collateral, Term Loan Collateral, or proceeds thereof under the DIP Loan Documents and this Final Order have been satisfied in full or waived in writing by DIP Secured Parties and/or the Term Loan Agent, as applicable.

5. **Collections and Disbursements.** Except as otherwise set forth herein, from the Petition Date until the DIP Loans have been paid in full in cash, all cash receipts, Cash Collateral, and all proceeds from the sale or other disposition of, or other revenue of any kind attributable to, any DIP Collateral that is now in, or shall hereafter come into, the possession or control of any of the Debtors, or to which any of the Debtors is now or shall hereafter become entitled (i) shall be subject to the DIP Liens and the Adequate Protection Liens (and shall be treated in accordance with this Final Order and the DIP Credit Agreement) and (ii) shall be, to the extent related to or arising from or in connection with the DIP Facility, promptly deposited only into the DIP Cash Collateral Account and may be accessed by the DIP Borrower only for payment of expenses specified in the Approved Budget (subject to the Budget Variance). For the avoidance of doubt, and for the sake of clarity, (i) the DIP Liens and Adequate Protection Liens on the ABL Priority Collateral shall be junior to the ABL Liens on such ABL Priority Collateral, and (ii) any Cash Collateral that constitutes ABL Priority Collateral shall be segregated in a separate debtor-in-possession depository account (“ABL Priority Collateral Account”) and shall not be used for any purpose unless authorized by a separate order of this Court. For the avoidance of doubt, and for the sake of clarity, (i) the DIP Liens and Adequate Protection Liens on the MAALT Collateral shall be junior to the MAALT Liens on such MAALT Collateral, and (ii) any Cash Collateral that constitutes MAALT Collateral shall be segregated in a separate debtor-in-possession depository account (“MAALT Collateral Account”) and shall not be used for any purpose unless authorized by a separate order of this Court.

6. **Perfection in Cash.** Subject to the Carve Out and the rights of the ABL Lender with respect to the ABL Priority Collateral and the rights of the MAALT Lender with respect to the MAALT Collateral, all financial institutions with which the Debtors maintain accounts containing Cash Collateral are authorized and directed to comply with any request of the DIP Agent to turn over to the DIP Agent all Cash Collateral (other than Cash Collateral constituting ABL Priority Collateral or MAALT Collateral) therein without offset or deduction of any kind; provided that any such request by the DIP Agent for turn over of Cash Collateral is made in accordance with the terms of this Final Order and the DIP Loan Documents. The DIP Agent shall enjoy the benefit of (i) all deposit account control agreements, blocked account control agreements, securities account control agreements, and similar agreements to which the Term Loan Agent is a party, and (ii) all other deposit account control agreements, blocked account control agreements, securities account control agreements, and similar agreements to which any Debtor is a party. Notwithstanding and without minimizing the force of the foregoing, the Debtors are authorized and directed to enter into, and cause the financial institutions servicing the Debtors' deposit accounts to enter into, such deposit account control agreements and other collateral agreements with the DIP Agent and such financial institutions as the DIP Agent may require, or alternatively, the DIP Agent shall be entitled to enjoy the benefit of all control agreements to which the Debtor is a party, as set forth above, without the need to enter into any such new agreements.

7. **Interest on DIP Facility Loans.** The DIP Loans shall bear interest at the rates, which interest shall 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, and in each case shall be non-refundable and not subject to challenge in any respect and shall be payable without



further notice, motion, or application to, order of, or hearing before, this Court. The DIP Loans will bear interest at a rate, at Borrower's option, equal to LIBOR plus 9.50% per annum, payable monthly in arrears. All interest shall be calculated using a 360-day year and actual days elapsed and shall be payable in cash. At any time when an Event of Default under the DIP Facility has occurred and is continuing, all outstanding amounts under the DIP Facility shall bear interest, to the fullest extent permitted by law, at the interest rate applicable to base rate loans plus 2.00% per annum (the "DIP Default Rate") and shall be payable on demand. Interest on overdue amounts under the DIP Facility shall also accrue at the DIP Default Rate.

8. **Payment of DIP Fees and Expenses.**

(a) Professional Fees. The Debtors are authorized to pay (i) all fees when due under the DIP Credit Agreement (including, without limitation, any fees provided for under section 3.04 of the DIP Credit Agreement) in the amounts set forth in the DIP Credit Agreement and (ii) reasonable, documented fees, costs, and expenses incurred or accrued by the DIP Agent (the foregoing to include all unpaid prepetition fees, costs, and expenses incurred by the DIP Agent in connection with the DIP Facility) in connection with any and all aspects of the Chapter 11 Cases from the proceeds of the DIP Facility, including, without limitation, the reasonable fees and expenses of the DIP Agent's legal counsel, Sidley Austin LLP ("Sidley"), and financial advisor, FTI Consulting, Inc. ("FTI"), and other professionals hired by or on behalf of the DIP Agent (the "DIP Agent Professionals"). None of such fees, costs and expenses shall be subject to Court approval or U.S. Trustee guidelines, and no DIP Agent Professional shall be required to file with respect thereto any interim or final fee application with this Court. Copies of summary invoices submitted to the Debtors by such DIP Agent Professionals shall be forwarded to

the U.S. Trustee, the Committee, and such other parties as this 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 any benefits of the attorney work product doctrine or other applicable privilege. If the Debtors, Committee, or U.S. Trustee object to the reasonableness of the fees and expenses of any of the DIP Agent Professionals and cannot resolve such objection within fourteen (14) days of receipt of such invoices, then such party shall file with this Court and serve such objection (the “Fee Objection”) within seven (7) days thereafter, limited to the issue of the reasonableness of such fees and expenses, and any failure by any such Party to file a Fee Objection within such twenty-one (21) day period shall constitute a waiver of any right of such party to object to the applicable invoice. Notwithstanding any provision herein to the contrary, any objection to, and any hearing on an objection to, payment of any fees and expenses set forth in a professional fee invoice in respect of a DIP Agent Professional shall be limited to the reasonableness of the particular items or categories of the fees and expenses that are the subject of such objection. The Debtors shall timely pay in accordance with the terms and conditions of this Final Order (a) the undisputed fees, costs, and expenses reflected on any invoice to which a Fee Objection has been timely filed and (b) all fees, costs, and expenses on any invoice to which no Fee Objection has been timely filed. In addition, the Debtors are hereby authorized to indemnify the DIP Agent and the other DIP Secured

Parties (and each of their respective directors, officers, employees, agents, representatives, attorneys, consultants, advisors and controlling persons), in their respective capacities as DIP Agent and DIP Secured Parties, against any liability arising in connection with the DIP Loan Documents, to the extent set forth in the DIP Loan Documents, *provided, that* any such claims for indemnification shall be subject to approval by this Court. All such unpaid fees, costs, expenses and indemnities of the DIP Secured Parties shall (i) constitute DIP Obligations, (ii) be secured by the DIP Collateral, and (iii) be afforded all of the priorities and protections afforded to other the DIP Obligations under this Final Order and the DIP Loan Documents.

(b) DIP Fees. The Debtors shall pay all fees when due under the DIP Credit Agreement in the amounts set forth in the DIP Credit Agreement from the proceeds of the DIP Facility.

9. Conditions Precedent. The DIP Lenders shall have no obligation to extend credit under the DIP Facility during the Final Period unless and until all conditions precedent to the extension of credit under this Final Order and the DIP Loan Documents have been satisfied in full or waived in writing by the DIP Agent at the direction of the DIP Lenders.

10. Validity of DIP Loan Documents. Upon execution and delivery of the DIP Loan Documents, the DIP Loan Documents shall constitute, and are hereby deemed to be, legal, valid and binding obligations of the Debtors, enforceable against each Debtor in accordance with the terms thereof for all purposes during the Chapter 11 Cases, in any subsequently converted case of any Debtor under chapter 7 of the Bankruptcy Code, or after dismissal of any of the Chapter 11 Cases. Any DIP Loans advanced under the DIP Credit Agreement pursuant to this Final Order will be made only to fund: (a) with respect to the Initial

Borrowing, payments pursuant to any interim or final order entered by the Bankruptcy Court pursuant to any “first day” motions permitting the payment by the Debtors of any prepetition amounts then due and owing (the “First Day Orders”), provided that the form and substance of such First Day Orders shall be reasonably acceptable to the DIP Lenders; provided further that, with respect to each Borrowing after the Initial Borrowing, funding shall be provided only if the conditions to borrowing under the DIP Credit Agreement are satisfied; (b) postpetition working capital purposes of the Debtors; (c) current interest and fees under the DIP Facility; (d) the payment of adequate protection payments to the Term Loan Agent and the Term Loan Lenders; and (e) the allowed administrative costs and expenses of the Chapter 11 Cases, in each case, solely in accordance with the Approved Budget (subject to the Budget Variance) and this Final Order. No obligation, payment, transfer, or grant of security under the DIP Loan Documents or this Final Order shall be stayed, restrained, voided, voidable or recoverable under the Bankruptcy Code or under any applicable non-bankruptcy law, or subject to any defense, reduction, setoff, recoupment or counterclaim.

11. **DIP Superpriority Claims.** In accordance with Bankruptcy Code section 364(c)(1), the DIP Obligations shall constitute superpriority administrative expense claims (the “DIP Superpriority Claims”) against each of the Debtors with priority in payment over any and all administrative expenses, adequate protection claims, diminution claims, prepetition unsecured claims, and all other claims against the Debtors, now existing or hereafter arising, of any kind whatsoever, including, without limitation, any prepetition claims and adequate protection claims of the Term Loan Secured Parties, the ABL Lender and the MAALT Lender, respectively, and any and all administrative expenses or other claims of the kinds specified or ordered pursuant to any provision of the Bankruptcy Code, including, but not limited

to, Bankruptcy Code sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 546, 726, 1113, and 1114 or otherwise, including those resulting from the conversion of any of the Chapter 11 Cases pursuant to section 1112 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; provided, however, that the DIP Superpriority Claims shall be subject to (i) the Carve-Out, and (ii) the ABL Lender's and MAALT Lender's respective credit bid, lien rights and repayment rights in a sale or other disposition of any ABL Priority Collateral or MAALT Collateral (as set forth in this Final Order); provided further, however, that notwithstanding anything to the contrary in the Interim Order or this Final Order, the DIP Agent shall satisfy the DIP Superpriority Claims first from assets other than Unencumbered Property (as defined below). For the avoidance of doubt, the term "Unencumbered Property" includes Avoidance Action Proceeds (as defined below). 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 post-petition property of the Debtors and all proceeds thereof (including the Avoidance Action Proceeds), provided, that the DIP Superpriority Claims shall not have recourse to any Avoidance Actions themselves. Except as set forth in this Final Order or other order of this Court authorizing and approving the grant of a superpriority claim as adequate protection to the ABL Lender or the MAALT Lender (provided that such claim(s), if any, shall be subordinate to the DIP Superpriority Claims), no other superpriority claims shall be granted or allowed in these Chapter 11 Cases.

12. **DIP Priming Liens.** As security for the DIP Loans, the DIP Agent, on behalf and for the benefit of the DIP Lenders, is hereby granted (effective upon the date of this

Final Order, without any further action by the DIP Lenders, including the execution by the Debtors or the filing or recordation of security agreements, lockbox or control agreements, financing statements, or any other instruments or otherwise) valid, enforceable, binding, and fully perfected security interests in and liens (the “DIP Liens”) upon all of the assets of the Debtors (whether tangible, intangible, real, personal or mixed), now existing or hereafter acquired, and any proceeds and products thereof in whatever form received, including Avoidance Action Proceeds (collectively with all rents, issues, products, offspring, proceeds and profits of any or all of the foregoing, the “DIP Collateral”), subject only to the payment of the Carve-Out provided further, however, that notwithstanding anything to the contrary in the Interim Order or this Final Order, the DIP Agent shall satisfy the DIP Liens first from assets other than Unencumbered Property (as defined below). For the avoidance of doubt, the Debtors’ claims and causes of action under sections 502(d), 544, 545, 547, 548, 549, 550, and 553 of the Bankruptcy Code (collectively, the “Avoidance Actions”), whether now existing or hereafter acquired or arising and whether pursuant to federal law or applicable state law, shall not constitute DIP Collateral. The DIP Liens shall consist of:

(a) First Priority Lien on Unencumbered Property. Pursuant to section 364(c)(2) of the Bankruptcy Code, a continuing, enforceable, first priority, fully-perfected lien and security interest upon all of the Debtors’ right, title and interest in, to, and under all DIP Collateral that was not encumbered by a validly perfected, enforceable, and nonavoidable security interest or lien as of the Petition Date or a valid security interest perfected subsequent to the Petition Date to the extent permitted by section 546(b) of the Bankruptcy Code (collectively, the “Unencumbered Property”). Unencumbered Property shall include all proceeds of, recoveries related to, and property

received or recovered pursuant to the Avoidance Actions (whether by judgment, settlement, or otherwise, collectively, the “Avoidance Action Proceeds”), whether such Avoidance Actions are now existing or hereafter acquired or arising and whether pursuant to federal law or applicable state law.

(b) Liens Junior to Certain Other Liens. Pursuant to section 364(c)(3) of the Bankruptcy Code, a junior, perfected lien and security interest upon all of the Debtors’ right, title and interest in, to and under all DIP Collateral, whether now existing or hereafter acquired, that is subject to and subordinated to (i) the first priority, senior liens in favor of the ABL Lender on the ABL Priority Collateral, (including, without limitation, Cash Collateral constituting ABL Priority Collateral); (ii) the first priority, senior liens of the MAALT Lender in the MAALT Collateral; and (iii) any liens that (x) are valid, perfected, enforceable and nonavoidable as of the Petition Date or validly perfected subsequent to the Petition Date to the extent permitted by section 546(b) of the Bankruptcy Code, (y) under applicable law, are senior to, and have not been subordinated to, the Term Loan Liens, and (z) are not subject to avoidance, reduction, disgorgement, counterclaim, surcharge, or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law (each, a “Permitted Lien” and collectively, the “Permitted Liens”), including the Permitted Liens scheduled on Schedule 9.04 to the DIP Credit Agreement, and in each case is not subject to section 552(a) of the Bankruptcy Code.

(c) Liens Priming Prepetition Secured Parties’ Liens. Pursuant to section 364(d)(1) of the Bankruptcy Code, valid, enforceable, binding, continuing, fully perfected, first priority senior priming liens upon and security interests in all of the Debtors’ right, title and interest in, to, and under all DIP Collateral not covered by clauses

(a) and (b) above and, with respect to the ABL Priority Collateral and the MAALT Collateral: (i) valid, binding, continuing, enforceable, fully perfected, junior liens that are subordinate to the ABL Lender's continuing first priority, senior liens in all DIP Collateral constituting ABL Priority Collateral, (ii) valid, binding, continuing, enforceable, fully perfected, junior liens that are subordinate to the MAALT Lender's continuing first priority, senior liens in all DIP Collateral constituting MAALT Collateral; and (iii) valid, binding, continuing, enforceable, fully perfected, priming liens that are immediately senior to the Term Loan Lenders' liens on such ABL Priority Collateral;

(d) Continuing Priority of ABL Lender's and MAALT Lender's Liens.

Notwithstanding any other provisions contained herein or deemed, interpreted and/or construed, as applicable, to the contrary, and for the sake of clarity and for the avoidance of doubt, nothing contained herein will be deemed, intended, interpreted, construed and/or enforced to prime any preexisting first priority, senior liens as of the Petition Date of (i) the ABL Lender in the ABL Priority Collateral (including, without limitation, any and all Cash Collateral constituting ABL Priority Collateral); or (ii) the MAALT Lender in the MAALT Collateral (including, without limitation, any and all Cash Collateral constituting MAALT Collateral). The validity, priority and extent of the ABL Lender's ABL Liens in the ABL Priority Collateral and the MAALT Lender's liens in the MAALT Collateral, respectively, as such validity, priority and extent existed as of the Petition Date, shall not be altered, modified, subordinated, primed or otherwise affected in any way by the terms of this Final Order.



13. **Term Loan Secured Parties' Adequate Protection.** Until the indefeasible repayment in full in cash of the Term Loan Obligations, the Term Loan Secured Parties are entitled to adequate protection of their interests in the Term Loan Collateral on account of the diminution in the value thereof (the "Diminution in Term Loan Collateral Value") pursuant to sections 361(a), 362, 363(c) and 364(d)(1) of the Bankruptcy Code. For purposes of determining any Diminution in Term Loan Collateral Value, the starting point shall be the amount that the Term Loan Secured Parties would have obtained following a foreclosure on the Debtors' assets on the Petition Date. The Term Loan Agent, on behalf and for the benefit of the Term Loan Lenders, is hereby granted the following (collectively, the "Term Loan Adequate Protection Obligations"):

(a) **Term Adequate Protection Superpriority Claims.** The Term Loan Agent, on behalf and for the benefit of the Term Loan Lenders, is hereby granted superpriority administrative expense claims (the "Term Adequate Protection Superpriority Claims") under sections 503 and 507 of the Bankruptcy Code against the Debtors' estates, including Avoidance Actions Proceeds, to the extent of any Diminution in Term Loan Collateral Value, which Term Adequate Protection Superpriority Claims shall have priority in payment over any and all administrative expenses of the kinds specified or ordered pursuant to any provision of the Bankruptcy Code, including, but not limited to, Bankruptcy Code sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 726, 1113 and 1114, or otherwise and including those resulting from the conversion of any of the Chapter 11 Cases pursuant to section 1112 of the Bankruptcy Code; provided, however, that at all times while such claim is in full force and effect pursuant to this Final Order, the Term Adequate Protection Superpriority Claims shall be

junior in all respects to the DIP Superpriority Claims and subject to (i) the Carve-Out, and (ii) the ABL Lender's and MAALT Lender's respective credit bid rights, lien rights and repayment rights in the sale or other disposition of any ABL Priority Collateral or MAALT Collateral (as set forth in this Final Order).

(b) Term Adequate Protection Liens. The Term Loan Agent, on behalf and for the benefit of the Term Loan Lenders, is hereby granted valid, enforceable, unavoidable and fully perfected replacement liens and security interests in all DIP Collateral (the "Adequate Protection Liens"), to the extent of any Diminution in Term Loan Collateral Value, which replacement liens and security interests shall have a priority immediately junior to the DIP Liens, subject to, junior and subordinate to the priority of the ABL Lender's liens in the ABL Priority Collateral, the MAALT Lender's liens in the MAALT Collateral, and subject to the Carve-Out. The Term Adequate Protection Liens shall be deemed to be legal, valid, binding, enforceable, perfected liens, not subject to subordination or avoidance. Except as otherwise set forth herein and in accordance with the priority set forth in the immediately preceding sentence, or as otherwise provided in this Final Order, or in accordance with the Prepetition Intercreditor Agreement, the Term Adequate Protection Liens shall not be subordinated to or be made *pari passu* with any other lien under section 364(d) of the Bankruptcy Code or otherwise.

(c) Adequate Protection Payments. As further adequate protection, and in consideration, and as a requirement, for obtaining the consent of the Term Loan Secured Parties to the entry of the Interim Order, this Final Order, and the Debtors' consensual use of Cash Collateral (other than Cash Collateral constituting ABL Priority Collateral or MAALT Collateral) as provided herein: the Debtors shall pay the reasonable,

documented fees, costs, and expenses incurred or accrued by the Term Loan Agent, in its capacity as such, (the foregoing to include all unpaid prepetition fees, costs and expenses) in connection with any and all aspects of the Chapter 11 Cases, and including the reasonable fees and expenses of the legal and financial advisors to the Term Loan Agent (the “Adequate Protection Payments”) from the proceeds of the DIP Facility. Copies of any summary invoices of such professionals, including Sidley and FTL, with respect to such fees, expenses and costs shall be provided to the Debtor and forwarded to the U.S. Trustee and Committee consistent with the notice and objection procedures set forth in Paragraph 8(a) of this Final Order. To the extent the DIP Agent and the Term Loan Agent are the same and have a single set of advisors, such advisors may submit a single combined invoice for their aggregated services. The Committee shall have the right to seek recharacterization of the Adequate Protection Payments, which right shall not be subject to the Investigation Termination Date described herein.

(d) Financial Reporting. The Debtors shall provide the Term Loan Agent with the financial and other reporting provided to the DIP Agent pursuant to the DIP Credit Agreement.

(e) Right to Seek Additional Adequate Protection. This Final Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, the rights of the Term Loan Agent or the other Term Loan Lenders to seek additional forms of adequate protection pursuant to a pleading filed with the Court at any time and subject to the rights of any party in interest to object.

(f) Noninterference with DIP Obligations. For the avoidance of doubt, nothing in this Paragraph 13 shall affect or limit the obligation of the Debtors to pay the

fees, costs, and expenses incurred by the DIP Lenders as provided in the DIP Loan Documents from the proceeds of the DIP Facility.

(g) Continuing Priority of ABL Lender's and MAALT Lender's Liens.

Notwithstanding any other provisions contained herein or deemed, interpreted and/or construed, as applicable, to the contrary, and for the sake of clarity and for the avoidance of doubt, nothing contained herein will be deemed, intended, interpreted, construed and/or enforced to prime the preexisting first priority, senior liens of the ABL Lender in the ABL Priority Collateral (including, without limitation, any and all Cash Collateral constituting ABL Priority Collateral) or the liens of the MAALT Lender in the MAALT Collateral (including, without limitation, any and all Cash Collateral constituting MAALT Collateral). The validity, priority and extent of the ABL Lender's ABL Liens in the ABL Priority Collateral and the MAALT Lender's Liens in the MAALT Collateral, as such validity, priority and extent existed as of the Petition Date, shall not be altered, modified, subordinated, primed or otherwise affected in any way by the terms of this Final Order.

14. **Carve-Out.**

(a) Carve-Out. As used herein, "Carve-Out" means the sum of any (i) unpaid fees of the Clerk of the Court and the U.S. Trustee pursuant to 28 U.S.C. § 1930; (ii) to the extent allowed at any time, whether by interim order, procedural order, or otherwise, all unpaid fees and expenses accrued or incurred, as of the date of the delivery by the DIP Agent of a Carve-Out Trigger Notice (as defined below), by persons or firms retained by the Debtors and the Committee pursuant to an order of the Court under sections 327, 328, 363, or 1103(a) of the Bankruptcy Code (the "Professionals"), to the extent such fees and

expenses are (A) within the amounts set forth in the Approved Budget (subject to the Budget Variance), and (B) allowed by the Court under Sections 330, 331, or 363 of the Bankruptcy Code; (iii) all unpaid fees and expenses of the Professionals incurred after the date of the delivery by the DIP Agent of a Carve-Out Trigger Notice, in an aggregate amount not to exceed \$500,000 for Professionals retained by the Debtors and an aggregate amount not to exceed \$100,000 for Professional retained by the Committee, to the extent such fees and expenses are subsequently allowed by the Court under Sections 330, 331 or 363 of the Bankruptcy Code; (iv) reasonable and documented expenses of the members of the Committee (excluding any fees or expenses of professionals that are not retained pursuant to an order of the Court under sections 327, 328, 363, or 1103(a) of the Bankruptcy Code in an aggregate amount not to exceed \$10,000; (v) all reasonable and documented fees and expenses incurred by any trustee under section 726(b) of the Bankruptcy Code in an aggregate amount not to exceed \$25,000; and (vi) all unpaid expenses accrued or incurred, as of the date of the delivery by the DIP Agent of a Carve-Out Trigger Notice (as defined below), by creditors that supplied post-petition goods and services to the extent such expenses are set forth in the Approved Budget. As used herein, the term “Carve-Out Trigger Notice” shall mean a written notice delivered by the DIP Agent to the Debtors and their counsel, the U.S. Trustee, and counsel to the Committee, which notice may be delivered following the occurrence and during the continuation of an Event of Default (as defined below). In the event that these Chapter 11 Cases are converted to chapter 7, any unpaid fees and expenses subject to the Carve-Out shall be paid first from assets other than the Unencumbered Property.

(b) Funding. Any funding of the Carve-Out shall be secured by the DIP Collateral and shall be otherwise entitled to the protections granted under the this Final DIP Order, the DIP Loan Documents, the Bankruptcy Code and applicable law.

(c) Payment of Professional Fees Prior to Carve-Out Trigger Notice. Any payment or reimbursement made to Professionals prior to the delivery of a Carve-Out Trigger Notice shall not reduce the Carve-Out. Prior to the delivery of a Carve-Out Trigger Notice, the Debtors shall be permitted to pay the allowed fees and expenses of Professionals subject to this Final Order, the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and any interim compensation procedures entered by this Court.

(d) No Direct Obligation to Pay Professional Fees; No Waiver of Right to Object. The DIP Lenders shall not be responsible for the payment or reimbursement of any fees or disbursements of any Professional incurred in connection with these Chapter 11 Cases or any successor cases under any chapter of the Bankruptcy Code. Nothing in this Final Order or otherwise shall be construed to obligate the DIP Lenders in any way, to pay compensation to, or to reimburse expenses of, any Professional or to guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement. Nothing herein shall be construed as consent to the allowance of any professional fees or expenses of any of the Debtors, the Committee, any other official or unofficial committee in these Chapter 11 Cases or any successor cases, if any, or of any person or entity, or shall affect the right of any party to object to the allowance and payment of any such fees and expenses.

15. Budget for DIP Facility. Attached hereto as Exhibit B is a thirteen-week cash flow budget setting forth all projected cash receipts and cash disbursements (by line item)

on a weekly basis (the “Approved Budget”). No later than the date that is the four-week anniversary of the entry of the Interim DIP Order, the Debtors shall, in a manner consistent with the DIP Credit Agreement, propose an updated thirteen-week (13-week) detailed rolling cash projection, which shall be thereafter updated, as necessary, but not less than once every four weeks (each, a “Proposed Budget”); and which the Debtors will provide a copy of to the DIP Agent, the Committee, and their Professionals; provided, that the DIP Agent and Required Lenders shall have five (5) Business Days to approve any revised Proposed Budget, which consent the DIP Agent and Term Loan Agent may grant or withhold in their sole and exclusive discretion; provided, further, that if the DIP Agent, the Required Lenders, or the Committee do not approve any updated Proposed Budget by the sixth (6th) Business Day following receipt thereof, the previously delivered Budget shall remain in effect (or be deemed to be rolled forward in the discretion of the DIP Agent and in effect, as applicable) for purposes of the variance testing covenant and reporting; provided, further, that no Proposed Budget or Approved Budget may reduce the fees and expenses of the Committee’s Professionals in the then-applicable Approved Budget. The Approved Budget is an integral part of this Final Order and has been relied upon by the DIP Lenders to provide the DIP Facility and consent to this Final Order and by the Term Loan Secured Parties to permit the use of the Cash Collateral and consent to this Final Order. The Debtors represent and warrant to the DIP Agent, the DIP Lenders, the Term Loan Secured Parties and this Court that the Initial Approved Budget includes and contains the Debtors’ best estimate of all operational receipts and all operational disbursements, fees, costs and other expenses that will be payable, incurred and/or accrued by any of the Debtors during the period covered by the Initial Approved Budget and that such operational disbursements, fees, costs and other expenses will be timely paid in the ordinary course of

business solely pursuant to and in accordance with the Initial Approved Budget unless such operational disbursements, fees, costs and other expenses are not incurred or otherwise payable. The Debtors further represent that the Initial Approved Budget is achievable and will allow the Debtors to operate in the Chapter 11 Cases and pay post-petition obligations as they come due. Pursuant to the terms of the DIP Credit Agreement, the Debtors shall provide on a weekly basis to the DIP Agent, the Term Loan Agent and the Committee, a report detailing the actual disbursements and receipts for the preceding week versus the disbursements and receipts contained in the Approved Budget for such period. The Debtors shall be permitted a variance between the Approved Budget and the actual amount of expenditures by the Debtors without triggering the occurrence of an Event of Default (as defined in the DIP Credit Agreement) for any four-week rolling period as follows: the Debtors' expenditures shall not exceed projected expenditures as set forth in the Approved Budget by more than fifteen percent (15%) from the projected expenditures (including professional fees) for such period as set forth in the Approved Budget (the "Budget Variance"). Additional variances, if any, from the Approved Budget, and any proposed changes to the Approved Budget, shall be subject to the reasonable approval of the DIP Agent and the Required Lenders (as defined in the Term Loan Agreement). The Debtors shall operate solely in accordance with the Approved Budget (including professional fees) and all disbursements of the Debtors shall be consistent with the provisions of the Approved Budget, subject to the Budget Variance.

16. **Automatic Effectiveness of Liens.** The DIP Liens and the Adequate Protection Liens granted herein shall be deemed to be valid, perfected, enforceable, non-avoidable and effective by operation of law, and not subject to challenge as of the Petition Date, without the need for (x) filing any UCC-1 financing statements, security agreements, vehicle lien



applications, filings with the U.S. Patent and Trademark Office, the United States Copyright Office, or the Library of Congress, state or federal notice, or any other similar instrument or document in any state or public record or office, (y) taking possession or control of any collateral, or (z) further action of any kind (including execution of any security agreements, mortgages, financing statements, collateral agreements, collateral trust agreements, deposit account control agreements, blocked account control agreements, securities account control agreements, or other collateral documents and agreements). All DIP Collateral shall be free and clear of other liens, claims and encumbrances, except the Permitted Liens, Adequate Protection Liens, the Term Loan Liens, ABL Liens, MAALT Liens, and any other liens expressly permitted under the DIP Credit Agreement. If the DIP Agent or the Term Loan Agent hereafter requests that the Debtors execute and deliver to the DIP Agent or the Term Loan Agent financing statements, security agreements, collateral assignments, or other instruments and documents considered by such agent to be reasonably necessary or desirable to further evidence the perfection of the DIP Liens or the Adequate Protection Liens, as applicable, the Debtors are hereby authorized and directed to execute and deliver such financing statements, security agreements, collateral assignments, instruments, and documents, and the DIP Agent or the Term Loan Agent is hereby authorized to file or record such documents in its discretion without seeking modification of the automatic stay under section 362 of the Bankruptcy Code, in which event all such documents shall be deemed to have been filed or recorded at the time and on the date of entry of this Final Order.

17. **Milestones.** In addition to the Events of Default set forth in the DIP Credit Agreement, it shall be an Event of Default under the DIP Credit Agreement and this Final Order entitling the DIP Agent to exercise the remedies under the DIP Credit Agreement and this

Final Order if the Debtors shall fail to meet any of the following deadlines (collectively, the “Milestones”), unless such Milestones are extended by agreement of the Debtors and DIP Agent:

(a) On or before the date that is sixty-five (65) calendar days following the Petition Date, and subject to the Court’s availability, the Bankruptcy Court shall have entered an order approving the disclosure statement and plan solicitation procedures acceptable to the DIP Lenders, as confirmed by the DIP Agent in writing;

(b) On or before the date that is ninety-nine (99) calendar days following the Petition Date, the Bankruptcy Court shall have entered an order acceptable to the DIP Lenders, as confirmed by DIP Lenders in writing, confirming an plan of reorganization acceptable to the DIP Lenders in their sole and absolute discretion (an “Acceptable Plan”) as confirmed in writing by the DIP Agent; and

(c) On or before the date that is 113 calendar days following the Petition Date, an Acceptable Plan shall become effective.

18. **Credit Bid.**

(a) Subject to the terms of this Final Order, the DIP Agent, at the direction of the DIP Lenders, shall have the unqualified right to credit bid up to the full amount of the DIP Obligations in any sale of the DIP Collateral under or pursuant to (i) section 363(k) of the Bankruptcy Code, (ii) a plan of reorganization or a plan of liquidation under section 1129 of the Bankruptcy Code, or (iii) a sale or disposition by a chapter 7 trustee for any Debtor under section 725 of the Bankruptcy Code. The Committee shall have the right to object to any credit bid of the DIP Lenders or DIP Agent.

(b) Subject to the terms of the Prepetition Intercreditor Agreement and this Final Order, the Term Loan Agent, at the direction of the Term Loan Lenders, shall have the unqualified right to credit bid up to the full amount of any remaining Term Loan Obligations in any sale of DIP Collateral or Term Loan Collateral, as applicable, subject to the satisfaction of all DIP Obligations and all obligations secured by Permitted Liens, or as otherwise consented to by the DIP Lenders or such other holder of a Permitted Lien, as applicable, under or pursuant to (i) section 363(k) of the Bankruptcy Code, (ii) a plan of reorganization or a plan of liquidation under section 1129 of the Bankruptcy Code, or (iii) a sale or disposition by a chapter 7 trustee for any Debtor under section 725 of the Bankruptcy Code; provided, however, that such Term Loan Secured Parties' right to credit bid shall be subject to the investigation and Challenge provisions set forth in paragraph 21 of this Final Order. The Committee shall have the right to object to any credit bid of the Term Loan Lenders or Term Loan Agent.

(c) Notwithstanding any other provisions contained herein, with respect to any sale of any ABL Priority Collateral, whether through third party cash proceeds, the ABL Lender's credit bid or otherwise, any remaining obligations existing under the ABL Facility shall be satisfied first and shall not be subordinated to any priority or superpriority administrative expense claims of any party in this case, including, without limitation, the DIP Obligations, DIP Superpriority Claim or Term Adequate Protection Superpriority Claims, from the proceeds of the sale of any such ABL Priority Collateral. No portion of any outstanding DIP Obligations, DIP Superpriority Claim or Term Adequate Protection Superpriority Claims shall be senior to or prime the ABL Lender's credit bid rights in any sale of any ABL Priority Collateral.

The ABL Lender's credit bid rights are expressly reserved and preserved by this Final Order.

(d) Notwithstanding any other provisions contained herein, in regards to any sale of any MAALT Collateral, whether through third party cash proceeds, the MAALT Lender's credit bid or otherwise, any remaining obligations existing under the MAALT Facility shall be satisfied first and shall not be subordinated to any priority or superpriority administrative expense claims of any party in this case, including, without limitation, the DIP Obligations, DIP Superpriority Claim or Term Adequate Protection Superpriority Claims. No portion of any outstanding DIP Obligations, DIP Superpriority Claim or Term Adequate Protection Superpriority Claims shall be senior to or prime the MAALT Lender's credit bid rights in any sale of any MAALT Collateral. The MAALT Lender's credit bid rights are expressly reserved and preserved by this Final Order.

(e) Nothing in this Final Order shall limit or otherwise prevent the Committee from opposing a credit bid of any Prepetition Secured Party "for cause" (as such phrase is used in section 363(k) of the Bankruptcy Code).

19. **Events of Default.** The following shall constitute Events of Default under this Final Order and the DIP Loan Documents, unless waived in writing by the DIP Agent in its sole discretion (each an "Event of Default").

(a) **Payment Default.** The Debtors shall fail to pay, in each case as and when due and required to be paid under the DIP Loan Documents, any principal amount under the DIP Loan Documents immediately after such payment becomes due or payable.

(b) **Non-Payment Default.** Except for an Event of Default arising under Paragraph (a) above, the Debtors shall default in any material respect with the

performance of or compliance with any other covenant, condition, or provision of this Final Order or, the DIP Loan Documents or the impairment of the DIP Loan Documents or the security interests provided for therein.

(c) Bankruptcy. Any of the following occurs in any of the Chapter 11 Cases:

(i) dismissal of the Chapter 11 Cases or conversion of the Chapter 11 Cases into cases under chapter 7 of the Bankruptcy Code; (ii) a trustee or receiver shall have been appointed in one or more of the Chapter 11 Cases; (iii) appointment of a responsible officer or examiner with enlarged powers relating to the operation of the business of any Debtor, other than the Debtors' chief restructuring officer; (iv) entry of an order granting of relief from any stay of proceeding (including the automatic stay) so as to allow a third party to proceed with foreclosure (or granting of a deed in lieu of foreclosure) against any asset of the Debtors with a value in excess of \$500,000 in the aggregate, provided, that, such Event of Default shall not apply to an order granting relief from stay on behalf of the ABL Lender with respect to the ABL Priority Collateral or the MAALT Lender with respect to the MAALT Collateral; (v) entry of an order granting any superpriority claim which is senior to or *pari passu* with the DIP Lenders' claims under the DIP Facility without the prior consent of the DIP Lenders; (vi) entry of an order confirming (or the filing by the Debtors of any motion or pleading requesting confirmation of or otherwise in support of) a plan of reorganization with respect to any Debtor other than an Acceptable Plan; (vii) entry of an order staying, reversing, vacating, or otherwise modifying, without the prior written consent of the DIP Lenders, the DIP Facility or the Final Order, and such order is not stayed or reversed within two (2) business days after entry thereof; (viii) payment of, or granting adequate protection with respect to,

prepetition debt (other than as contemplated by the DIP Loan Documents, this Final Order, or other order of this Court authorizing and approving the grant of adequate protection to the ABL Lender or MAALT Lender) unless otherwise agreed by the DIP Lenders; and (ix) cessation of liens or superpriority claims granted with respect to the DIP Collateral securing the Debtors' obligations in respect of the DIP Facility to be valid, perfected and enforceable in all respects with the priority described herein.

20. **Automatic Stay.** As provided herein, subject only to the provisions of the DIP Credit Agreement and without further order from this Court, the automatic stay provisions of section 362 of the Bankruptcy Code are vacated and modified to the extent necessary to permit the DIP Agent to exercise, upon the occurrence and during the continuance of any Event of Default and upon the direction of the DIP Lenders, all rights and remedies provided for in the DIP Loan Documents and otherwise consistent with the terms of this Final Order, and to take any or all of the following actions without further order of or application to the Court: (a) declare the principal of and accrued interest on the outstanding borrowings to be immediately due and payable and terminate, reduce or restrict, as applicable, any further commitments under the DIP Facility to the extent any such commitment remains, and/or terminate, as applicable, the right of the Debtors to use Cash Collateral; and (b) charge the default rate of interest under the DIP Facility and take any other action or exercise any other right or remedy (including without limitation, with respect to the liens in favor of the DIP Agent on behalf of the DIP Lenders) permitted under the DIP Loan Documents or applicable law; provided, however, that in the case of the enforcement of liens or other remedies with respect to DIP Collateral pursuant to clause (b) above, the DIP Agent shall provide the Debtors (with a copy to counsel for Committee and the U.S. Trustee) with seven (7) calendar days' prior written

notice (the “Enforcement Notice Period”) and file such notice on the docket in the Chapter 11 Cases, during which Enforcement Notice Period any such party may file a pleading in opposition to the DIP Agent’s exercise of its rights and remedies and seek an emergency hearing prior to the conclusion of the Enforcement Notice Period. Unless, during the Enforcement Notice Period or, in the event a party requests an emergency hearing prior to the expiration of the Enforcement Notice Period but, solely due to the Court’s availability, the Court is unable to schedule a hearing within such Enforcement Notice Period, the earliest available date on which the Court can hold such emergency hearing, the Court reimposes the automatic stay or otherwise enjoins the exercise of such remedies, the DIP Agent shall have relief from the automatic stay without further notice or order and may foreclose on all or any portion of the DIP Collateral or otherwise exercise remedies against the DIP Collateral. Without limiting the foregoing, but subject to and only upon expiration of the Enforcement Notice Period, upon the occurrence and during the continuation of an Event of Default, each DIP Lender (and its respective affiliates, including its various branches and offices) shall have the authority, subject to obtaining the prior written consent of the DIP Agent and to the fullest extent permitted by applicable law, to set off and apply any and all deposits (of whatever type and in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such DIP Lender (or its affiliate) to or for the credit or account of any Borrower against any and all of the DIP Obligations of such Borrower to such Lender, subject to the terms of the DIP Credit Agreement. The foregoing right of setoff shall apply irrespective of whether such DIP Lender has made any demand under the DIP Loan Documents and even if the DIP Obligations of the Borrower are contingent or unmatured. The rights and remedies of the DIP Agent and DIP Secured Parties specified herein are cumulative and not exclusive of any rights or remedies that the DIP Agent and the DIP

Secured Parties may have under the DIP Loan Documents or otherwise. Subject to the provisions of the DIP Loan Documents and this Final Order, the Debtors shall cooperate fully with the DIP Agent and the DIP Secured Parties in their exercise of rights and remedies, whether against the DIP Collateral or otherwise. This Court shall retain exclusive jurisdiction to hear and resolve any disputes and enter any orders required by the provisions of this Paragraph 20 and relating to the application, re-imposition or continuance of the automatic stay as provided hereunder.

21. **Investigation Rights.** The (i) Committee shall have sixty (60) days from the date of its appointment, subject to extension by the Court for cause and (ii) all other non-debtor parties-in-interest (including a trustee, if appointed or elected prior to the Investigation Termination Date, as defined herein) shall have forty-five (45) days after the Petition Date (each, as applicable, the “Investigation Termination Date”) to investigate the validity, extent, priority, perfection, and enforceability of the Term Loan Facility and the respective liens of the Term Loan Secured Parties thereunder, and to assert any other claims or causes of action against the Term Loan Secured Parties. Notwithstanding anything to the contrary in the Interim Order or this Final Order, (i) the Investigation Termination Date may be extended (A) by mutual written agreement between the Debtors, the DIP Agent, the Committee and the Term Loan Agent or (B) by the Court for cause; and (ii) if, on or before the Investigation Termination Date, the Committee files a motion seeking standing to file a Challenge (as defined below), the Investigation Termination Date shall be automatically tolled with respect to the Committee upon the Committee’s filing of a motion seeking standing until the Court has ruled upon such motion, and provided further that in the event the Court enters an order conferring standing on the Committee to pursue a Challenge, the Investigation Termination Date shall be further extended



until the date that is three (3) business days after entry of such an order conferring standing on the Committee. The Committee or other non-debtor party-in-interest hereafter granted authority and standing by this Court shall be permitted to file and prosecute an objection or claim related thereto (each, a “Challenge”), and shall have only until the applicable Investigation Termination Date to file such Challenge (or otherwise initiate an appropriate action on behalf of the Debtors’ estates) setting forth the basis therefor; provided, however, that nothing contained in the DIP Loan Documents or this Final Order shall be deemed to confer standing on any Committee or any other party-in-interest to commence a Challenge. If a Challenge is not filed on or before the Investigation Termination Date, then, without further action by any party or any further order of this Court: (i) the agreements, acknowledgements and stipulations contained in Paragraph D of this Final Order, shall be deemed to be immediately and irrevocably binding on the Debtors, and the Debtors’ estates, the Committee, and all parties-in-interest and any and all successors-in-interest thereto shall thereafter be forever barred from bringing any Challenge; (ii) the liens and security interests of the Term Loan Secured Parties shall be deemed to constitute valid, binding, enforceable, and perfected liens and security interests not subject to avoidance or disallowance pursuant to the Bankruptcy Code or applicable non-bankruptcy law; (iii) the Term Loan Secured Parties’ obligations shall be deemed to be finally allowed claims for all purposes in the Chapter 11 Cases and any subsequent chapter 7 cases, in the amounts set forth in Paragraph D of this Final Order and its subparagraphs and shall not be subject to challenge by any party-in-interest as to validity, priority or otherwise; and (iv) the Debtors shall be deemed to have released, waived, and discharged each of the Term Loan Lenders, together with their respective officers, directors, employees, agents, attorneys, professionals, affiliates, subsidiaries, assigns and/or successors, from any and all claims and causes of action arising out of, based upon, or related to,

in whole or in part, the Term Loan Obligations or their prepetition relationship with such Debtor or any affiliate thereof relating to any of the Term Loan Documents or any transaction contemplated thereby, including, without limitation, any claims or defenses as to the extent, validity, priority, or enforceability of the existing Term Loan Liens or the Term Loan Obligations, any claims or defenses under chapter 5 of the Bankruptcy Code, or any other causes of action. Notwithstanding anything to the contrary herein, the Committee may use up to \$75,000 (the “Committee Investigation Budget”) in the aggregate prior to the Investigation Termination Date for investigation costs in respect of the Debtors’ stipulations set forth in paragraph D above; provided, however, that the proceeds of the DIP Facility shall not be used (i) to permit the Debtors or any other party-in-interest or their representatives to challenge or otherwise contest or institute any proceeding to determine (x) the validity, perfection or priority of security interests in favor of the DIP Agent, any of the DIP Lenders, or the Term Loan Secured Parties, or (y) the enforceability of the obligations of the Debtors under the DIP Facility or the Term Loan Facility; or (ii) to commence, prosecute or defend any claim, motion, proceeding or cause of action against the DIP Agent, any of the DIP Lenders, the Term Loan Agent, or any of the Term Loan Lenders (each in such capacity) and their respective agents, attorneys, advisors or representatives, including, without limitation, any lender liability claims, any subordination claims, or any claims under any non-disclosure or confidentiality agreement.

22. **Protection of DIP Lenders’ and Prepetition Secured Parties’ Rights.**

The DIP Lenders’ and Prepetition Secured Parties’ rights shall be protected as follows:

- (a) So long as there are any DIP Loans or DIP Obligations outstanding or the DIP Lenders have any outstanding commitments under the DIP Credit Agreement, the Prepetition Secured Parties: (i) shall not take any action to foreclose upon or recover in

connection with their respective liens and security interests, other agreements, or operation of law of this Final Order, or otherwise exercise remedies against any DIP Collateral, except to the extent authorized herein or by any other order of this Court, (ii) shall be deemed to have consented to any release of DIP Collateral authorized under the DIP Loan Documents, (iii) shall not file any further financing statements, trademark filings, copyright filings, patent filings, mortgages, notices of lien or similar instruments, enter into any control agreement, or otherwise take any action to perfect their security interests in the DIP Collateral unless, solely as to this clause (iii), the DIP Agent files financing statements or other documents to perfect the liens granted pursuant to this Final Order, or as may be required by applicable state law to continue the perfection of valid and unavoidable liens or security interests as of the Petition Date and (iv) not seek to terminate or modify the use of Cash Collateral as provided herein.

(b) The terms of the Prepetition Intercreditor Agreement remain unmodified by the terms of this Final Order, and each parties' respective rights and remedies thereunder are expressly reserved and preserved in all aspects.

23. **Asset Dispositions.** Subject to authorization from the Court (and, as applicable, the Carve-Out), the terms of the Intercreditor Agreement and the Committee's Challenge rights set forth in paragraph 21, the Debtors shall immediately pay, or cause to be paid, to the DIP Agent for application to the DIP Obligations, all of the proceeds of any sale, lease or other disposition of any DIP Collateral outside of the ordinary course of business of the Debtors' assets (an "Asset Disposition") to the extent required by and in the order set forth in the DIP Credit Agreement, and as a condition to approval of such Asset Disposition, and shall comply with all other provisions in the DIP Loan Documents and this Final Order in connection

with any such Asset Disposition. All proceeds of any Asset Disposition shall be applied in accordance with the terms and conditions of the DIP Credit Agreement and the Intercreditor Agreement. Nothing in this Final Order shall be deemed to constitute the consent of the DIP Secured Parties, Term Loan Secured Parties, ABL Lender, or MAALT Lender and each of the foregoing expressly reserves the right to object to entry of any order of the Court that provides any for an Asset Disposition 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 Term Loan Obligations, the ABL Obligations or the MAALT Obligations (as applicable) and the Prepetition Term Loan Adequate Protection Obligations, and all of the foregoing are paid in full on the closing date of such Asset Disposition. Notwithstanding anything to the contrary herein, the Committee's rights to object to any Asset Disposition to any party, including the application and allocation of proceeds resulting therefrom, are fully reserved.

24. **DIP Lenders' Financial Reporting.** The Debtors shall provide: (i) to the DIP Lenders, the ABL Lender, the MAALT Lender and the Committee the Proposed Budget for such periods in form and substance reasonably satisfactory to the DIP Agent and the Required Lenders; (ii) to the DIP Lenders, the ABL Lender, the MAALT Lender and the Committee a variance report tested as of the immediately preceding Friday for (1) the weekly period ending on such Friday and (2) the prior weekly cumulative period ending on such Friday and commencing with the first week of the most recent Approved Budget (each such period, a "Variance Testing Period") setting forth: (A) the aggregate disbursements of the Debtors during the applicable Variance Testing Period and (B) any variance (whether positive or negative, expressed as a percentage) between (1) the aggregate disbursements, on a line-item by line-item basis, made during such Variance Testing Period by the Debtors against the aggregate

disbursements for each such line-item for the Variance Testing Period set forth in the applicable Approved Budget and (2) the cumulative disbursements made during such Variance Testing Period to the cumulative disbursements for such Variance Testing Period set forth in the applicable Approved Budget, which variance report shall include a report from a Financial Officer of the Borrower identifying and addressing any variance of actual performance to projected performance for the prior week; (iii) to the DIP Lenders, the ABL Lender, the MAALT Lender and the Committee a rolling 13-week cash flow forecast, together with a reconciliation for the prior week, the prior 4-week cumulative period and the cumulative period from the Petition Date of actual expenses and disbursements (including professional fees) and sales receipts as to the amounts set forth in the then applicable Approved Budget for such periods in form and substance satisfactory to the DIP Agent; and (iv) concurrently to the Committee, all financial reporting as provided to the DIP Agent, the DIP Lenders, the ABL Lender, or the MAALT Lender under this Final Order, the DIP Credit Agreement or otherwise.

25. **Further Assurances.** The Debtors shall execute and deliver to the DIP Agent, the DIP Lenders, the Term Loan Agent, and the Term Loan Lenders all such agreements, financing statements, instruments and other documents as the DIP Agent, DIP Lenders, Term Loan Agent, and Term Loan Lenders may reasonably request to evidence, confirm, validate or perfect the DIP Liens or the Adequate Protection Liens granted pursuant hereto. Further, the Debtors are authorized to do and perform all acts, to make, execute and deliver all instruments and documents (including, without limitation, the execution of additional security agreements, mortgages, financing statements collateral agreements, collateral trust agreements, deposit account control agreements, blocked account control agreements, securities account control agreements, and other collateral documents and agreements), and to pay all fees and expenses

that may be required or necessary for the Debtors' performance under the DIP Loan Documents, including, without limitation, (i) the execution of the DIP Loan Documents and (ii) the payment of the fees, costs, and other expenses described in the DIP Loan Documents as and when such fees, costs, and expenses become due from the proceeds of the DIP Facility.

26. **Proofs of Claim.** Each of the Term Loan Agent and Term Loan Lenders will not be required to file proofs of claim in any of the Chapter 11 Cases or any successor cases for any claim allowed herein, other than a proof of claim for a Term Adequate Protection Superpriority Claim. The Debtors' Stipulations shall be deemed to constitute a timely filed proof of claim with respect to the Term Loan Documents and the Term Loan Obligations. Notwithstanding the foregoing, each of (i) the DIP Agent, for the benefit of the DIP Secured Parties; and (ii) the Term Loan Agent, for the benefit of the Term Loan Secured Parties is authorized and entitled, but not required, in its sole discretion, to file (and amend and/or supplement) in each of the Chapter 11 Cases or successor cases proofs of claim with respect to the DIP Loans and the Term Loans.

27. **Preservation of Rights.**

(a) **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 (including through any chapter 11 plan of reorganization) without the prior written consent of the DIP Lenders, and no such consent shall be implied by any other action, inaction, or acquiescence of the DIP Lenders. 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 authorized or made hereby or pursuant to the DIP Facility, or lien, claim, priority, or other DIP Protections (as defined below) authorized or created hereby or pursuant to the DIP Facility. Based on the findings set forth in this Final Order and in accordance with section 364(e) of the Bankruptcy Code 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 Lenders shall be entitled to the protections provided in section 364(e) of the Bankruptcy Code and, notwithstanding any such reversal, modification, vacatur, or stay, any use of Cash Collateral, DIP Loans, or any protections granted under this Final Order, the DIP Loan Documents, the Bankruptcy Code and applicable law (the “DIP Protections”) incurred or granted by the Debtors prior to the actual receipt of written notice by the DIP Agent of the effective date of such reversal, modification, vacatur, or stay shall remain in full force and effect and be binding on all parties in interest and be governed in all respects by the original provisions of this Final Order (and shall maintain their respective priorities as provided by this Final Order).

(b) Modifications of DIP Loan Documents. The Debtors, DIP Agent, and DIP Lenders are hereby authorized to implement, in accordance with the terms of the DIP Loan Documents, any non-material modifications (including without limitation, any change in the number or composition of the DIP Lenders) of the DIP Loan Documents without further Order of this Court; provided, that the Debtors shall provide the Committee notice of any such non-material amendments to the DIP Loan Documents.

(c) Dismissal. If any order dismissing any of these Chapter 11 Cases under section 1112 of the Bankruptcy Code or otherwise is at any time entered, then

notwithstanding any such dismissal (i) the DIP Protections and all other rights, remedies, liens, priorities, privileges, protections, and benefits granted to the DIP Lenders, shall remain in full force and effect and be binding on all parties in interest and be governed in all respects by the provisions of this Final Order (and shall maintain their respective priorities as provided by this Final Order) until all DIP Loans have been paid in full, and such order of dismissal shall so provide; and (ii) this Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing such DIP Protections and all other rights, remedies, liens, priorities, privileges, protections, and benefits granted to the DIP Lenders.

(d) Survival of the Final Order. The provisions of this Final Order, the DIP Loan Documents, any actions taken pursuant hereto or thereto, all of the DIP Protections, and all other rights, remedies, liens, priorities, privileges, protections, and benefits granted to the DIP Lenders shall survive, and shall not be modified, impaired, or discharged by, the entry of any order (i) confirming any plan of reorganization in any of these Chapter 11 Cases or successor cases; (ii) converting any of these Chapter 11 Cases to a case under chapter 7; (iii) dismissing any of these Chapter 11 Cases; (iv) withdrawing of the reference of any of these Chapter 11 Cases or any successor cases; (v) providing for abstention from handling or retaining of jurisdiction in any of these Chapter 11 Cases or any successor case in this Court; (vi) terminating the joint administration of these Chapter 11 Cases or any successor cases, or (vii) by any other act or omission. The terms and provisions of this Final Order, including all of the DIP Protections and all other rights, remedies, liens, priorities, privileges, protections, and benefits granted to the DIP Secured Parties shall continue in full force and effect and be



binding on all parties in interest notwithstanding the entry of any such order referenced above, shall continue in full force and effect in these proceedings and in any successor cases, and shall maintain their respective priorities as provided by this Final Order.

28. **Insurance Policies.** The DIP Agent shall be deemed to be, without any further action or notice, named as additional insureds and loss payees, as applicable, on each insurance policy maintained by the Debtors that in any way covers the DIP Collateral, other than any D&O policy the Debtors maintain, and subject to the rights of the ABL Lender with respect to the ABL Priority Collateral, and the Debtors shall take such actions as are reasonably requested by the DIP Agent from time to time to evidence or effectuate the foregoing.

29. **Authorized Signatories.** The signature of the Authorized Officer (as defined in the Debtors' corporate resolutions filed with the Petition) or any officer of the Debtors or Debtors' attorneys, appearing on any one or more of the DIP Loan Documents, shall be sufficient to bind the Debtors. No board of directors or other approval shall be necessary.

30. **No Requirement to Accept Title to Collateral.** The DIP Lenders and Term Loan Lenders shall not be obligated to accept title to any portion of the DIP Collateral or Term Loan Collateral in payment of the indebtedness owed to such parties by the Debtors, in lieu of payment in cash or cash equivalents, nor shall any of the DIP Lenders or Term Loan Lenders be obligated to accept payment in cash or cash equivalents that is encumbered by any interest of any person or entity other than the DIP Lenders or Term Loan Lenders.

31. **Binding Effect.** Subject only to Paragraph 21 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 Chapter 11 Cases, including the DIP Secured Parties, the Prepetition Secured Parties, any other secured or unsecured creditor, the Committee, and the

Debtors and their respective estates, 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 these Chapter 11 Cases, in any successor cases, or upon dismissal; provided however, that the DIP 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 these Chapter 11 Cases or any successor cases.

32. **506(c) Waiver.** Except to the extent of the Carve-Out, no expenses of administration of the Chapter 11 Cases or any future proceeding that may result therefrom, including liquidation in bankruptcy or other proceedings under the Bankruptcy Code, shall be charged against or recovered from (i) the Term Loan Priority Collateral or (ii) the DIP Collateral that is not ABL Priority Collateral or MAALT Collateral pursuant to section 506(c) of the Bankruptcy Code or any similar principle of law, without the prior written consent of the DIP Agent and the Prepetition Agent, and no such consent shall be implied from any other action, inaction, or acquiescence by the DIP Agent, the DIP Lenders, the Term Loan Agent or the Term Loan Lenders. The Debtors shall irrevocably waive and shall be prohibited from asserting any claim described in this Paragraph 32, under section 506(c) of the Bankruptcy Code or otherwise, for any costs and expenses incurred in connection with the preservation, protection or enhancement of, or realization by the Term Loan Secured Parties or the DIP Secured Parties upon the (i) the Term Loan Priority Collateral or (ii) the DIP Collateral that is not ABL Priority Collateral (as applicable) or MAALT Collateral (as applicable); provided, that nothing in this

Order shall prohibit the Debtors from asserting any claim described in this Paragraph 32, under section 506(c) of the Bankruptcy Code or otherwise, for any costs and expenses incurred in connection with the preservation, protection or enhancement of, or realization by the ABL Lender upon the ABL Priority Collateral or the MAALT Lender upon the MAALT Collateral. The waiver of section 506(c) of the Bankruptcy Code contained herein shall not apply for purposes of any hypothetical chapter 7 liquidation analysis contemplated by section 1129(a)(7)(A)(ii) of the Bankruptcy Code.

33. **No Waiver.** The failure of the DIP Secured Parties or the Prepetition Secured Parties to seek relief or otherwise exercise their rights and remedies under this Final Order, the Term Loan Agreement, the DIP Loan Documents, or otherwise (or any delay in seeking or exercising same) shall not constitute a waiver of any of such parties' rights hereunder, thereunder, or otherwise. Nothing contained in this Final Order (including the authorization of the use of any Cash Collateral) shall impair or modify any rights, claims, or defenses available in law or equity to the DIP Lenders to assert rights of setoff or other rights with respect thereto as permitted by law (or the right of a Debtors to contest such assertion). Except as prohibited by this Final Order, the entry of this Final Order is without prejudice to, does not constitute a waiver of, expressly or implicitly, and does not otherwise impair, any right or ability of the DIP Secured Parties, Term Loan Secured Parties, ABL Lender, and MAALT Lender under the Bankruptcy Code or under non-bankruptcy law to (i) request conversion of these Chapter 11 Cases to cases under chapter 7, dismissal of these Chapter 11 Cases, or the appointment of a trustee or examiner in these Chapter 11 Cases, or to oppose the use of Cash Collateral in any successor case or on terms other than those set forth in this Final Order; (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 seek early termination of the Debtors' exclusive rights to propose a plan under the Bankruptcy Code; or (iii) except as expressly provided herein, exercise any of the rights, claims, or privileges (whether legal, equitable, or otherwise) of the DIP Lenders under the DIP Loan Documents, the Bankruptcy Code, or other non-bankruptcy law. Except to the extent otherwise provided in this Final Order or by law, neither the commencement of these Chapter 11 Cases nor the entry of this Final Order shall limit or otherwise modify the rights and remedies of the DIP Secured Parties, Term Loan Secured Parties, ABL Lender, and MAALT Lender with respect to any non-Debtor entities or their respective assets, whether such rights and remedies arise under the Term Credit Agreement, applicable law, or equity.

34. **No Waiver of Prepetition Secured Parties' Agreement Provisions; Reservation of Rights.** Except as otherwise specifically provided in this Final Order, nothing contained in this Final Order shall be deemed a waiver or constitute a consent to the modification of any provision contained in the Term Loan Agreement by the Term Loan Lenders, the ABL Agreement by the ABL Lender, or the MAALT Facility by the MAALT Lender including, but not limited to, the incurrence or issuance of any indebtedness by the Debtors, the incurrence of any lien in connection therewith or the making of any payment by the Debtors.

(a) **No Third Party Rights.** Except as explicitly provided for herein or in the DIP Loan Documents, the ABL Loan Documents, or the MAALT Loan Documents, this Final Order does not create any rights for the benefit of any third party, creditor, equity holder, or direct, indirect, or incidental beneficiary. In determining to make any loan under the DIP Loan Documents 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 Lenders and the Term Loan Lenders shall not (i) 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; or (ii) owe any fiduciary duty to the Debtors, their respective creditors, shareholders, or estates.

(b) No Marshaling. Subject in all respects to paragraphs 11 and 12 of this Final Order, in no event shall the Term Loan Secured Parties, the DIP Agent or the DIP Lenders be subject to the equitable doctrine of “marshaling” or any similar doctrine with respect to the Collateral.

(c) 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.

(d) 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), 6003, or 6004, or any other Bankruptcy Rule or Bankruptcy Local Rule, 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.

(e) Reservation of Rights. The DIP Lenders, the Term Loan Lenders, the ABL Lender, the MAALT Lender each expressly reserve the right to object to entry of any order of the Court that provides for the sale or other disposition of all or substantially all of the assets of the Debtors (or any other sale or other disposition of assets of any of the Debtors outside the ordinary course of business) 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 respective priority balances due to each of (i) the ABL Lender for the ABL Facility in connection with any disposition of any ABL Priority Collateral, (ii) the MAALT Lender for the MAALT Facility in connection with any disposition of any MAALT Collateral, and (iii) the DIP Lenders in connection with the DIP Loans.

35. **Claims of Taxing Authorities.** Nothing in this Final Order or in any prior order shall be construed to grant or acknowledge claims and liens that prime the prepetition and postpetition liens and claims of Hood CAD, Pecos County, Reagan County, Reeves County, Tarrant County, Tom Green CAD, Dilley ISD, the Frio Hospital District, Ward County and Winkler County in connection with ad valorem property taxes or their right to the payment from the proceeds of their collateral in connection with a sale of the Debtors' assets.

36. **Retention of Jurisdiction.** This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Final Order.

**### END OF ORDER ###**

**Submitted by:**

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**PROPOSED ATTORNEYS FOR DEBTORS**

**Exhibit A**

**DIP Credit Agreement**

**Exhibit B**

**DIP Budget**



## **EXHIBIT B**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION**

In re:

Vista Proppants and Logistics, LLC, et al.,

Debtors.<sup>1</sup>

Chapter 11

Case No. 20-42002-elm11

(Jointly Administered)

**~~INTERIM~~ FINAL ORDER (I) AUTHORIZING THE DEBTORS TO  
(A) OBTAIN POST-PETITION FINANCING PURSUANT TO 11 U.S.C. §§ 105,  
361, 362, 363(c), 363(e), 364(c), 364(d)(1) AND 364(e) AND (B) UTILIZE CASH  
COLLATERAL OF PREPETITION SECURED ENTITIES, (II) GRANTING  
ADEQUATE PROTECTION TO PREPETITION SECURED ENTITIES,  
(III) SCHEDULING A FINAL HEARING PURSUANT TO BANKRUPTCY  
RULES 4001(b) AND 4001(c), AND (IV) GRANTING RELATED RELIEF**

<sup>1</sup> The Debtors in these Chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, include: Vista Proppants and Logistics, LLC (7817) ("Vista OpCo"); VPROP Operating, LLC (0269) ("VPROP"); Lonestar Prospects Management, L.L.C. (8451) ("Lonestar Management"); MAALT Specialized Bulk, LLC (2001) ("Bulk"); Denetz Logistics, LLC (8177) ("Denetz"); Lonestar Prospects, Ltd. (4483) ("Lonestar Ltd."); and MAALT, LP (5198) ("MAALT"). The location of the Debtors' service address is 4413 Carey Street, Fort Worth, TX 76119-4219.

This matter is before the Court on the motion dated June 10, 2020 (the “Motion”)<sup>2</sup> of Vista Proppants and Logistics, LLC and its affiliated debtors, as debtors-in-possession (collectively, the “Debtors”) in the above-captioned chapter 11 cases (collectively, the “Chapter 11 Cases”), for entry of ~~an interim order (this “Interim Order”) and a final order (the this “Final Order”)~~, pursuant to sections 105, 361, 362, 363(c), 363(e), 364(c), 364(d)(1) and 364(e) of title 11 of the United States Code (the “Bankruptcy Code”), Rules 2002, 4001(b) and (c), 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rules 4001-1 and 9013-1 of the Local Rules of the United States Bankruptcy Court for the Northern District of Texas (together, the “Local Rules”), seeking, among other things:

(i) authorization for VPROP, as a debtor and debtor-in-possession (the “DIP Borrower”), to obtain priming, senior secured, superpriority, debtor-in-possession post-petition financing and for the remaining Debtors (each, a “DIP Guarantor,” and collectively, the “DIP Guarantors”), as debtors and debtors-in-possession, to guarantee unconditionally the DIP Borrower’s obligations under a senior secured term loan credit facility (the “DIP Facility”) consisting of non-amortizing senior secured delayed draw term loans (the “DIP Loans”) in an aggregate principal amount of up to \$~~44~~11.0 million (the “DIP Commitment”), in accordance with a debtor-in-possession credit agreement by and among the DIP Borrower, the DIP Guarantors, Ares Capital Corporation (“Ares”), as administrative agent (in such capacity, the “DIP Agent”), and the lenders party thereto (collectively, the “DIP Lenders” and together with the DIP Agent, the “DIP Secured Parties”), substantially similar to the form attached hereto as **Exhibit A** (as the same may be amended, restated, supplemented or otherwise modified from time to time pursuant to the terms thereof, the “DIP Credit Agreement”), and the other definitive documentation with respect to the DIP Facility (collectively with the DIP Credit Agreement and the related security documents, the “DIP Loan Documents”);

(ii) authorization for the Debtors to (a) execute and enter into the DIP Loan Documents, (b) pay fees and reimburse expenses under the DIP Loan Documents, as and in the amounts described in the DIP Loan Documents from the proceeds of the DIP Facility, and (c) perform such other and further acts as may be required in connection with the DIP Loan Documents;

<sup>2</sup> All defined terms shall have the meaning ascribed to them in the Motion or DIP Credit Agreement (as defined below) unless otherwise defined herein.

(iii) authorization for the Debtors to grant (a) valid, enforceable, nonavoidable and fully perfected security interests and liens to the DIP Agent, for the benefit of the DIP Secured Parties, on all DIP Collateral (as defined below) to secure all obligations of the Debtors under and with respect to the DIP Facility (such obligations, the “DIP Obligations”) and (b) subject only to the Carve-Out and the ABL Lender’s and the MAALT Lender’s credit bid and lien rights (as set forth herein), superpriority claims (including a superpriority administrative expense claim pursuant to section 364(c)(1) of the Bankruptcy Code) to the DIP Agent, for the benefit of the DIP Lenders, having recourse to all prepetition and postpetition property of the Debtors’ estates, now owned or hereafter acquired;

(iv) authorization for the proceeds of the DIP Facility to be funded on each applicable funding date into the DIP Cash Collateral Account (as defined below); and for the Debtors’ use of Cash Collateral (as defined below) solely in accordance with the Approved Budget (as defined below) then in effect (the initial version of which is attached hereto as **Exhibit B**), subject to the Budget Variance (as defined below), and the collection and application of Cash Collateral, in each case pursuant to the terms and conditions set forth in this ~~Interim~~Final Order and the DIP Credit Agreement;

(v) subject to the Carve-Out and the ABL Lender’s and the MAALT Lender’s credit bid and lien rights (as set forth herein), solely to the extent of the diminution in value of their collateral, authorization for the Term Loan Secured Obligors (as defined below) under the Term Loan Facility (as defined below) to provide the Term Loan Secured Parties (as defined below) adequate protection in the form of (a) a superpriority administrative expense claim as contemplated by section 507(b) of the Bankruptcy Code and validly perfected liens on and security interests in the DIP Collateral, all in accordance with the relative priorities set forth herein, and (b) the Adequate Protection Payments (as defined below);

(viii) ~~subject to entry of a Final Order,~~ the waiver by the Debtors of any right to surcharge any of the Term Loan Secured Parties’ collateral pursuant to section 506(c) of the Bankruptcy Code;

(ix) modification of the automatic stay imposed under section 362 of the Bankruptcy Code to the extent necessary to permit the (i) Debtors, (ii) DIP Secured Parties, and (iii) Term Loan Secured Parties to implement the terms of this ~~Interim~~Final Order;

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

(xi) the scheduling of a final hearing (the “Final Hearing”) on the Motion no later than 30 days after the Petition Date, to consider entry of a Final Order granting the relief requested in the Motion on a final basis.

The initial hearing on the Motion having been held by this Court on June 9, 2020; and this Court having found that, under the circumstances, due and sufficient notice of the Motion and ~~Interim~~Final Hearing was provided by the Debtors as set forth in Paragraph C of this ~~Interim~~Final Order, and this Court having considered all the pleadings filed with this Court; and having overruled all unresolved objections to the relief granted in this ~~Interim~~Final Order; and upon the record made by the Debtors at the ~~Interim~~Final Hearing, and after due deliberation and consideration and good and sufficient cause appearing therefore:

**THIS COURT MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:<sup>3</sup>**

A. **Petition Date.** On June 9, 2020 (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 Northern District of Texas, Fort Worth Division (this “Court”). The Debtors continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No party has requested the appointment of a trustee or examiner in these Chapter 11 Cases, ~~and no statutory~~. The official committee of unsecured creditors (~~to the extent such committee is appointed,~~ the “Committee”) ~~has been~~was appointed on June 23, 2020.

B. **Jurisdiction and Venue.** This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and the *Order of Reference of Bankruptcy Cases and Proceedings Nunc Pro Tunc* entered by the United States District Court for the Northern District of Texas, dated August 3, 1984. This is a core proceeding pursuant to 28 U.S.C. § 157(b), and the Debtors confirmed their consent to the entry of a final order by the Court in connection with the Motion

<sup>3</sup> Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact, as appropriate pursuant to Bankruptcy Rule 7052.

to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection with the Motion consistent with Article III of the United States Constitution. Venue of the Debtors' Chapter 11 Cases and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief sought herein are sections 105, 361, 362, 363, and 364 of the Bankruptcy Code, Rule 4001(b) and (c) and 6004 of the Bankruptcy Rules, and Local Rules 4001-1 and 9013-1.

C. **Notice.** Notice of the ~~Interim~~Final Hearing ~~and the emergency relief requested in the Motion~~ has been provided by the Debtors to: (i) the twenty (20) largest unsecured creditors for each of the Debtors; (ii) the Office of the United States Trustee for the Northern District of Texas (the "U.S. Trustee"); (iii) counsel to the proposed DIP Agent; (iv) counsel to the Term Loan Agent (as defined below); (v) counsel to the ABL Lender (as defined below); (vi) counsel to the MAALT Lender (as defined below); (vii) all known parties asserting a lien against the DIP Collateral (as defined below); (viii) counsel for any official committees appointed by this Court; (ix) all governmental agencies having a regulatory or statutory interest in these cases; ~~and~~ (x) counsel to the Committee; and (xi) any other party that has filed a request for notice pursuant to Bankruptcy Rule 2002 or are required to receive notice under the Bankruptcy Rules and the Local Rules. Under the circumstances, such notice of the Motion, the relief requested therein, and the ~~Interim~~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 the ~~Interim~~Final Order.<sup>4</sup>

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<sup>4</sup> ~~Note to HB: update~~

D. **Debtors' Stipulations.** Subject to the rights specifically set forth in Paragraph 21 below, the Debtors, on their behalf and on behalf of their estates, admit, stipulate, acknowledge, and agree (the "Debtors' Stipulations") as follows:

i. **Term Loan Documents.** Prior to the Petition Date, the Term Loan Agent and the Term Loan Lenders made loans, advances and provided other financial accommodations under a term loan facility (the "Term Loan Facility") to VPROP (in its capacity as borrower under the Term Loan Agreement, "Term Loan Borrower") pursuant to the terms and conditions set forth in (1) that certain *Amended and Restated Senior Secured Credit Agreement* dated as November 9, 2017 (as amended, supplemented or otherwise modified prior to the Petition Date, the "Term Loan Agreement") by and among Vista Proppants and Logistics, LLC, the Term Loan Borrower, the lenders from time to time party thereto (the "Term Loan Lenders") and Ares, as administrative agent (in such capacity, the "Term Loan Agent" and together with the Term Loan Lenders, the "Term Loan Secured Parties"); and (2) all other agreements, documents and instruments executed and/or delivered with, to, or in favor of the Term Loan Agent or any Term Loan Lender in connection with the Term Loan Agreement, including, without limitation, certain security agreements, mortgages, financing statements, collateral agreements, collateral trust agreements, deposit account control agreements, blocked account control agreements, securities account control agreements, and other collateral documents and agreements (as amended, restated, supplemented or otherwise modified from time to time and in effect on the date hereof, collectively, the "Term Loan Documents").

ii. **Term Loan Obligations.** As of the Petition Date, the DIP Borrower and the DIP Guarantors were truly and justly indebted to the Term Loan Agent and the Term Loan Lenders without defense, counterclaim or offset of any kind, pursuant to the Term Loan

Documents, in the aggregate principal amount of \$369,300,998.02 in respect of the loans made under the Term Loan Agreement, plus accrued and unpaid interest with respect thereto and any additional fees, costs and expenses (including any fees and expenses of attorneys, financial advisors, and other professionals that are chargeable or reimbursable under the Term Loan Documents) now or hereafter due under the Term Loan Agreement and the other Loan Documents (as defined in the Term Loan Agreement) (collectively, together with all other obligations arising under the Term Loan Documents (including, without limitation, the “Obligations” (as defined in the Term Loan Agreement), the “Term Loan Obligations”). The Term Loan Obligations constitute allowed, legal, valid, binding, enforceable and non-avoidable obligations of the DIP Borrower and DIP Guarantors, and are not subject to any offset, defense, counterclaim, avoidance, recharacterization or subordination pursuant to the Bankruptcy Code or any other applicable law, and Debtors do not possess, shall not assert, hereby forever release, and are forever barred from bringing any claim, counterclaim, setoff or defense of any kind, nature or description which would in any way affect the validity of the Term Loan Obligations.

iii. Term Loan Collateral. As of the Petition Date, the Term Loan Obligations were secured pursuant to the Term Loan Documents by valid, perfected, enforceable and non-avoidable liens upon and security interests in all the “Collateral” (as defined in the Term Loan Agreement and hereinafter referred to as the “Term Loan Collateral”), consisting of all or substantially all of the assets of VPROP, Lonestar Management and Lonestar Prospects (the “Term Loan Secured Obligors”), including without limitation, (x) first-priority liens on and security interests in all of the “Term Priority Collateral” (as defined in that certain Prepetition Intercreditor Agreement (as defined below)) owned by each Term Loan Secured Obligor (all such Term Loan Collateral in existence on the Petition Date, or the identifiable proceeds thereof,



the “Term Loan Priority Collateral”) and (y) second-priority liens on and security interests in all accounts receivable and Finished Sand Inventory of Lonestar Prospects, any proceeds thereof, including bank accounts containing such proceeds, and general intangibles relating thereto in existence as of the Petition Date (the “ABL Priority Collateral” and (x) and (y) together, the “Term Loan Collateral”) subject only to (A) the liens specifically permitted under Section 9.04 of the Term Loan Agreement to the extent that such security interests, liens or encumbrances are (1) valid, perfected and non-avoidable security interests, liens or encumbrances existing as of the Petition Date, and (2) senior to and have not been or are not subject to being subordinated to the Term Loan Agent’s and Term Loan Lenders’ liens on and security interests in the Term Loan Collateral under the Term Loan Documents or otherwise avoided, and, in each instance, only for so long as and to the extent that such encumbrances are and remain senior and outstanding (hereinafter referred to as the “Permitted Term Loan Liens”), and (B) the terms and conditions of the Prepetition Intercreditor Agreement (as defined below). The Debtors do not possess and will not assert any claim, counterclaim, setoff or defense of any kind, nature or description which would in any way affect the validity, enforceability and non-avoidability of the Term Loan Agent’s and Term Loan Lenders’ liens, claims or security interests in the Term Loan Collateral.

iv. Validity of Term Loan Liens. The Term Loan Obligations constitute legal, valid, and binding Obligations (as defined in the Term Loan Agreement) of the Debtors; no offsets, defenses or counterclaims to the Term Loan Obligations exist; no portion of the Term Loan Obligations is subject to avoidance, disallowance, reduction or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law; the Term Loan Documents are valid and enforceable by the Term Loan Agent for the benefit of the Term Loan Lenders against each of the Debtors; the liens and security interests of the Term Loan ~~Lenders~~Secured

Parties constitute valid, binding, enforceable and perfected liens in and to the Term Loan Collateral, having the priority set forth in the Term Loan Documents and subject and subordinate only to (after giving effect to any applicable intercreditor or subordination agreement) Permitted Liens (as defined below) and the ABL Lender's (as defined below) liens with respect to the ABL Priority Collateral; the Term Loan Obligations constitute allowed secured claims against the applicable Debtors' estates; and no claim or cause of action held by the Debtors exists against the Term Loan Agent, the Term Loan Lenders, or any of their respective agents, whether arising under applicable state or federal law (including, without limitation, any recharacterization, subordination, avoidance or other claims arising under or pursuant to sections 105, 510 or 542 through 553 of the Bankruptcy Code), or whether arising under or in connection with any of the Term Loan Documents (or the transactions contemplated thereunder), the Term Loan Obligations, or the Term Loan ~~Lenders~~Secured Parties' liens, including without limitation, any right to assert any disgorgement or recovery;

v. Cash Collateral. All of the Debtors' cash, including any cash in all deposit accounts and collection accounts, wherever located, comprising proceeds of or otherwise arising from or relating to the Term Loan Collateral, constitutes "cash collateral" as such term is defined in section 363(a) of the Bankruptcy Code, of the Term Loan ~~Lenders~~Secured Parties (collectively, the "Cash Collateral"); provided, however, that the ABL Lender has a senior lien on Cash Collateral that constitutes ABL Priority Collateral and the MAALT Lender has a senior lien on Cash Collateral that constitutes the MAALT Collateral. For the avoidance of doubt, and except as may be set forth in a separate order entered by the Court, nothing herein shall be deemed to authorize the Debtors' use of any Cash Collateral that constitutes ABL Priority

Collateral or MAALT Collateral.<sup>54</sup>

<sup>54</sup> The Debtors are not seeking authorization to use any Cash Collateral that constitutes ABL Priority Collateral or MAALT Collateral. As such, any use of the term "Cash Collateral" does not include cash collateral that constitutes

E. **Cash Collateral Account.** Proceeds of the DIP Facility shall be funded on each applicable funding date into a cash collateral account at a bank to be mutually agreed upon by the DIP Agent and the DIP Borrower, over which the DIP Agent shall have a perfected security interest and into which account the Loans will be funded on the date of each Borrowing (as defined in the DIP Credit Agreement) (the “DIP Cash Collateral Account”).

F. **Intercreditor Agreement.** That certain *Amended and Restated Intercreditor Agreement*, dated as of November 9, 2017 (as amended, supplemented or otherwise modified prior to the Petition Date, the “Prepetition Intercreditor Agreement”) by and among PlainsCapital Bank (the “ABL Lender”), the Term Loan Agent, and the Debtors party thereto sets forth subordination and other provisions governing the relative priorities and rights of the Term Loan Secured Parties and the ABL Lender.

G. **ABL Facility.** The ABL Lender and certain of the Debtors are a party to that certain prepetition *Amended and Restated Loan Agreement*, dated as of January 12, 2018 (as amended, supplemented or otherwise modified prior to the Petition Date, the “ABL Credit Agreement,” and the facility thereunder, the “ABL Facility”), by and among Lonestar Prospects, Ltd., Lonestar Prospects Holding Company, L.L.C., Gary B. Humphreys, Martin W. Robertson and the ABL Lender; and all other agreements, documents and instruments executed and/or delivered with, to, or in favor of the ABL Lender in connection with the ABL Credit Agreement, including, without limitation, certain security agreements, mortgages, financing statements, collateral agreements, collateral trust agreements, deposit account control agreements, blocked account control agreements, securities account control agreements, and other collateral

MAALT Collateral. As such, any use of the term “Cash Collateral” does not include cash collateral that constitutes ABL Priority Collateral or MAALT Collateral.

documents and agreements (as amended, restated, supplemented or otherwise modified from time to time and in effect on the date hereof, collectively, the “ABL Documents”). Pursuant to the ABL Documents, the ABL Loan Obligors granted the ABL Lender (i) first priority liens in the ABL Priority Collateral and (ii) second priority liens in the Common Collateral (as defined in the Intercreditor Agreement) that is not ABL Priority Collateral (the “Second Priority ABL Collateral” and (i) and (ii) together, the “ABL Liens” in the “ABL Collateral”). The ABL Lender reserves all rights concerning the actual collateral pledged to secure the debts owed to the ABL Lender by any one or more of the Debtors. The defined terms in this ~~Interim~~Final Order concerning the extent of the ABL Lender’s collateral shall not be construed, deemed or interpreted to be definitive legal or factual conclusions concerning the actual collateral pledged to secured the debts owed to the ABL Lender by any one or more of the Debtors. Accordingly, the term “ABL Priority Collateral”, as used herein, means and shall be construed and interpreted to mean and include any property of any one or more of the Debtors that is pledged in favor of the ABL Lender in a first priority, senior position to secure the repayment of certain debts owed to the ABL Lender by one or more of the Debtors. Likewise, the term “Second Priority ABL Collateral,” as used herein, means and shall be construed and interpreted to mean and include any property of any one or more of the Debtors that is pledged in favor of the ABL Lender in a second priority, junior position to secure the repayment of certain debts owed to the ABL Lender by one or more of the Debtors. Collectively, the term “ABL Collateral”, as used herein, means and shall be construed and interpreted to mean and include all property of any one or more of the Debtors that is pledged in favor of the ABL Lender to secure the repayment of certain debts owed to the ABL Lender by one or more of the Debtors, without distinction as to the priority of

such liens and security interests held by and conveyed to the ABL Lender in such pledged property.

H. **MAALT Facility.** The MAALT Lender and certain Debtors are parties to that certain prepetition *Loan Agreement*, dated as of June 15, 2014 (as amended, supplemented, or otherwise modified prior to the Petition Date, the “MAALT Credit Agreement,” and the facility thereunder, the “MAALT Facility”), by and among MAALT, L.P., Denetz Logistics, L.L.C., GHMR Operations, L.L.C., Gary B. Humphreys, Martin W. Robertson, the Trust Guarantors (as defined therein) and PlainsCapital Bank (the “MAALT Lender”, and together with the ABL Lender and the Term Loan Secured Parties, the “Prepetition Secured Parties”); and all other agreements, documents and instruments executed and/or delivered with, to or in favor of the MAALT Lender in connection with the MAALT Credit Agreement, including, without limitation, certain security agreements, mortgages, financing statements, collateral agreements, collateral trust agreements, deposit account control agreements, and other collateral documents and agreements (as amended, restated, supplemented or otherwise modified from time to time and in effect on the date hereof, collectively, the “MAALT Documents”). Pursuant to the MAALT Documents, the MAALT Loan Obligors granted the MAALT Lender first priority liens in certain collateral (the “MAALT Collateral”).

I. **Findings Regarding the DIP Facility.**

i. **Need for Postpetition Financing.** Based upon the pleadings and proceedings of record in the Chapter 11 Cases, the Debtors do not have sufficient available sources of working capital and financing to carry on the operation of their businesses without the DIP Facility and authorized use of Cash Collateral as provided herein. As a result of the Debtors’ financial condition, the use of Cash Collateral alone will be insufficient to meet the

Debtors' immediate post-petition liquidity needs. The Debtors' ability to maintain business relationships with their vendors, suppliers, and distributors, pay their employees, and otherwise finance their operations during the Chapter 11 Cases is essential to the Debtors' continued viability and to their ability to continue operations while seeking confirmation of a plan of reorganization in order to maximize the value of their estates. In the absence of the DIP Facility and the authorization by this Court to use Cash Collateral as set forth herein, the Debtors' businesses and estates would suffer immediate and irreparable harm, including, without limitation, a cessation of substantially all of their operations. The preservation, maintenance, and enhancement of the going concern value of the Debtors are of the utmost significance and importance to a successful restructuring of the Debtors under chapter 11 of the Bankruptcy Code. Use of Cash Collateral and the DIP Facility will also permit the Debtors to preserve the enterprise value of their businesses pending the confirmation and consummation of a plan of reorganization.

ii. No Credit on More Favorable Terms. Based upon the pleadings and proceedings of record in the Chapter 11 Cases, the Debtors are unable to obtain sufficient interim and long-term financing from sources other than the DIP Lenders on terms more favorable than under the DIP Facility and the DIP Loan Documents, and are not able to obtain unsecured credit allowable as an administrative expense under section 503(b)(1) of the Bankruptcy Code. The Debtors are also unable to obtain secured credit allowable under sections 364(c)(1), 364(c)(2) and 364(c)(3) of the Bankruptcy Code for the purposes set forth in the DIP Credit Agreement without the Debtors (i) granting to the DIP Agent and the DIP Lenders, subject to the Carve-Out, (a) the DIP Superpriority Claims (as defined below) and (b) the DIP Liens (as defined below) in the DIP Collateral (as defined below), in each case under

the terms and conditions set forth in this ~~Interim~~Final Order and the DIP Loan Documents, and

(ii) providing the DIP Lenders the adequate protection as provided herein.

iii. Appropriateness of DIP Facility Terms. The terms of the DIP Facility, as described in this ~~Interim~~Final Order and the DIP Loan Documents, and the use of the Term Loan Collateral, DIP Collateral (as defined below), and Cash Collateral (other than ABL Priority Collateral and MAALT Collateral) pursuant to this ~~Interim~~Final Order are fair and reasonable, reflect the Debtors' exercise of sound business judgment consistent with their fiduciary duties, and constitute reasonably equivalent value and fair consideration.

J. ~~Interim~~Final Financing. During ~~the Interim Period~~these Chapter 11 Cases, the DIP Lenders are willing to provide up to \$~~3.5~~11.0 million for borrowing by the DIP Borrower ~~not later than one (1) business day following the entry of this.~~ The Initial Borrowing (as defined in the Interim Order) and ~~the satisfaction of~~ all other conditions to borrowing under the DIP Credit Agreement ~~(the "Initial Borrowing"), and to consent to the use of Cash Collateral by the Debtors, subject to~~ were satisfied, including the (i) execution of the DIP Credit Agreement by the DIP Borrower and each of the DIP Guarantors and delivery of such executed DIP Credit Agreement to the DIP Agent; and (ii) ~~entry of this Interim Order; and (iii)~~ the other terms and conditions of the DIP Credit Agreement.

K. Adequate Protection. The adequate protection provided to (i) the Term Loan Secured Parties on account of any diminution in the value of such parties' interests in the Term Loan Collateral from and after the Petition Date, including, without limitation, resulting from the DIP Facility, is consistent with and authorized by the Bankruptcy Code and is offered by the Debtors to protect such parties' interests in the Term Loan Collateral in accordance with sections 361, 362 and 363 of the Bankruptcy Code. The consent of the Term Loan Secured

Parties to the priming of their liens by the DIP Liens (1) does not constitute, and shall not be construed as constituting, an acknowledgment or stipulation by the Term Loan Secured Parties that their interests in the Term Loan Collateral are adequately protected pursuant to this ~~Interim~~Final Order or otherwise; and (2) is conditioned upon entry of this ~~Interim~~Final Order and does not and shall not be deemed to constitute consent to the priming of the Term Loan Liens other than pursuant to this ~~Interim~~Final Order and the terms set forth herein. The adequate protection provided herein and other benefits and privileges contained herein are necessary in order to (i) protect the Term Loan Secured Parties from the diminution in value of their Term Loan Collateral; and (ii) obtain the foregoing consents and agreements. ~~Nothing herein shall prevent the Term Loan Secured Parties from seeking additional adequate protection (i) to the extent permitted by law or (ii) to the extent permitted in the Prepetition Intercreditor Agreement.~~

L. **Section 552(b).** In light of the subordination of their liens and superpriority administrative claims (i) in the case of the DIP Secured Parties to the Carve-Out and the Permitted Liens (as defined below), and (ii) in the case of the Term Loan Secured Parties ~~(collectively, the “Prepetition Secured Parties”)~~ to the Carve-Out and the DIP Liens, each of the DIP Secured Parties and the ~~Prepetition~~Term Loan Secured Parties are entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and, ~~subject to the entry of the Final Order,~~ the “equities of the case” exception shall not apply to any of the DIP Secured Parties or the ~~Prepetition~~Term Loan Secured Parties with respect to the proceeds, products, rents, issues or profits of any of the DIP Collateral or the ~~Prepetition~~Term Loan Secured Parties’ collateral, ~~and no expenses of administration of the Chapter 11 Cases or any future proceeding that may result therefrom, including liquidation in bankruptcy or other proceedings under the Bankruptcy Code, may be charged against proceeds, product, offspring or profits from any of the DIP Collateral or~~



~~the Prepetition Secured Parties' Collateral under section 552(b) of the Bankruptcy Code.~~ Subject to and immediately upon entry of the Final Order, the Debtors shall be deemed to have irrevocably waived, and to have agreed not to assert, any claim or right under sections 552-~~or 726(b)~~ of the Bankruptcy Code seeking to avoid the imposition of the DIP Liens, ~~Prepetition Secured Parties' liens~~ ("Prepetition Secured Party Term Loan Liens") or the Adequate Protection Liens (as defined below) on any property acquired by any of the Debtors or any of their estates-~~or seeking to surcharge any costs or expenses incurred in connection with the preservation, protection or enhancement of, or realization by, the DIP Agent, the DIP Lenders, or the Prepetition Secured Parties upon the DIP Collateral or the Prepetition Secured Parties' collateral, as applicable.~~

M. **Business Judgment and Good Faith Pursuant to Section 364(e).**

i. ~~iv.~~ Debtors' Sound Business Judgment. The DIP Lenders have indicated a willingness to provide postpetition secured financing via the DIP Facility to the Debtors in accordance with the terms of the DIP Loan Documents and this ~~Interim~~Final Order. The terms and conditions of the DIP Facility as set forth in the DIP Loan Documents and this ~~Interim~~Final Order, and the fees, expenses, and other charges paid and to be paid thereunder or in connection therewith, 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 sound business judgment consistent with their fiduciary duties. Such terms and conditions are supported by reasonably equivalent value and fair consideration.

ii. ~~v.~~ DIP Lenders' Good Faith. The DIP Lenders, the ~~Prepetition~~Term Loan Secured Parties and the Debtors, with the assistance of counsel and of

their respective advisors, have acted in good faith and at arm's-length in, as applicable, negotiating, consenting to, and/or agreeing to, the DIP Facility, the Debtors' use of the ~~Prepetition~~Term Loan Secured Parties' collateral, the DIP Collateral (as defined below) and the Cash Collateral, the DIP Loan Documents and the protections set forth herein. The DIP Facility (including all advances that are made at any time to the Debtors under the DIP Loan Documents) and the Debtors' use of the Collateral and Cash Collateral shall be deemed to have been extended and/or consented to by the DIP Lenders 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 and good faith reliance upon the protections offered by section 364(e) of the Bankruptcy Code and this ~~Interim~~Final Order. Accordingly, the DIP Facility, adequate protection, and other protections identified herein shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event this ~~Interim~~Final Order or any provision hereof or thereof is vacated, reversed, amended, or modified on appeal or otherwise.

N. **Relief Essential; Best Interest.** The Debtors have requested immediate entry of this ~~Interim~~Final Order pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2) and Local Rules 2002-1 and 4001-1. Absent granting the relief set forth in this ~~Interim~~Final Order, the Debtors' estates, their business, and their ability to successfully reorganize or otherwise preserve the enterprise value of their operations will be immediately and irreparably harmed. Consummation of the DIP Facility and authorization of the use of Cash Collateral as set forth herein, in accordance with the DIP Facility and this ~~Interim~~Final Order, is therefore in the best interests of the Debtors' estates and consistent with their fiduciary duties. Based on all of the foregoing, sufficient cause exists for immediate entry of the ~~Interim~~Final Order pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2) and the applicable Local Rules.

Based on the foregoing, and upon the record made before this Court at the ~~Interim~~Final Hearing, and good and sufficient cause appearing therefor,

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:**

1. **Motion Granted.** The Motion is granted on the terms and conditions set forth in this ~~Interim~~Final Order ~~and the DIP Loan Documents~~. Any objections to the relief granted in this ~~Interim~~Final Order that have not previously been withdrawn are hereby overruled. This ~~Interim~~Final Order shall become effective immediately upon its entry.

2. **Approval of DIP Loan Documents; Authority Thereunder.** The Debtors are hereby authorized to enter into the DIP Loan Documents, including the DIP Credit Agreement, and such additional documents, instruments and agreements as may be reasonably required or requested by the DIP Agent and the DIP Lenders to implement the terms or effectuate the purposes of this ~~Interim~~Final Order. The Debtors are authorized to comply with and perform all of the terms and conditions contained in the DIP Loan Documents, and ~~directed~~authorized to repay amounts borrowed, together with interest and fees thereon (including, without limitation, the fees in section 3.04 of the DIP Credit Agreement), as well as any other outstanding obligations to the DIP Lenders in accordance with and subject to the terms and conditions set forth in the DIP Loan Documents and this ~~Interim~~Final Order.

3. **Authorization to Borrow DIP Facility Loans and Use Cash Collateral.** Upon finalizing and executing the DIP Credit Agreement and the other DIP Loan Documents, the DIP Borrower is immediately authorized to borrow from the DIP Lenders, and the Guarantors are immediately authorized to guaranty, initial borrowings under the DIP Facility of up to an aggregate principal amount of \$3.5 million of DIP Loans under the DIP Credit Agreement, subject to and in accordance with the terms of this ~~Interim~~Final Order and the DIP Credit

Agreement. The Debtors are authorized to use the proceeds of the DIP Loans and the Cash Collateral only for the purposes described in Paragraph 15 of this ~~Interim~~Final Order. The DIP Facility and the Debtors' authorization to use the proceeds of the DIP Loans and the Cash Collateral will terminate upon the earliest to occur of (such earliest date, the "Termination Date"): (a) the date that is 180 days after the Petition Date (the "Scheduled Maturity Date"); (b) ~~thirty (30) days after entry by this Court of this Interim Order approving the DIP Facility (the "Interim DIP Period")~~, if the Final DIP Order (as defined below) has not been entered by this Court prior to the expiration of such 30-day period; ~~(e) the~~the effective date of a plan of reorganization or liquidation in the Chapter 11 Cases; ~~(d)~~c the consummation of a sale of all or substantially all of the assets of the Debtors pursuant to section 363 of the Bankruptcy Code or otherwise; ~~(e)~~d dismissal of the Chapter 11 Cases or conversion of the Chapter 11 Cases into cases under chapter 7 of the Bankruptcy Code; ~~(f)~~e the appointment of a trustee or receiver in one or more of the Chapter 11 Cases; ~~(g)~~f without the DIP Lenders' prior written consent, the date of filing of or express written support by the DIP Borrower for a plan of reorganization that is not an Acceptable Plan (as defined below); ~~(h)~~g the date of termination of the DIP Lenders' commitments following the occurrence of an Event of Default under the DIP Credit Agreement; or ~~(i)~~h the acceleration of any outstanding DIP Loans in accordance with the terms of the DIP Credit Agreement and the DIP Loan Documents, unless such Termination Date is extended, as to the DIP Facility, with the prior written consent of the DIP Agent and the requisite lenders under the DIP Facility and, as to the use of Cash Collateral, with the prior written consent of the Term Loan Agent and the Required Lenders (as defined in the Term Loan Agreement).

4. **No Obligation to Fund.** The DIP Lenders and Term Loan Lenders each have no obligation to extend credit under the DIP Credit Agreement or permit the use of any DIP

Collateral or Term Loan Collateral or any proceeds thereof, including Cash Collateral, as applicable, during the ~~Interim Period~~Chapter 11 Cases unless and until all conditions precedent to the extension of credit and/or use of DIP Collateral, Term Loan Collateral, or proceeds thereof under the DIP Loan Documents and this ~~Interim~~Final Order have been satisfied in full or waived in writing by DIP Secured Parties and/or the Term Loan Agent, as applicable.

5. **Collections and Disbursements.** Except as otherwise set forth herein, from the Petition Date until the DIP Loans have been paid in full in cash, all cash receipts, Cash Collateral, and all proceeds from the sale or other disposition of, or other revenue of any kind attributable to, any DIP Collateral that is now in, or shall hereafter come into, the possession or control of any of the Debtors, or to which any of the Debtors is now or shall hereafter become entitled (i) shall be subject to the DIP Liens and the Adequate Protection Liens (and shall be treated in accordance with this ~~Interim~~Final Order and the DIP Credit Agreement) and (ii) shall be, to the extent related to or arising from or in connection with the DIP Facility, promptly deposited only into the DIP Cash Collateral Account and may be accessed by the DIP Borrower only for payment of expenses specified in the Approved Budget (subject to the Budget Variance). ~~All such amounts arising from or in connection with the Term Loan Priority Collateral (other than any amounts arising from or in connection with any ABL Priority Collateral or MAALT Collateral) shall be applied to the payment of outstanding DIP Loans in accordance with the DIP Credit Agreement.~~ For the avoidance of doubt, and for the sake of clarity, (i) the DIP Liens and Adequate Protection Liens on the ABL Priority Collateral shall be junior to the ABL Liens on such ABL Priority Collateral, and (ii) any Cash Collateral that constitutes ABL Priority Collateral shall be segregated in a separate debtor-in-possession depository account (“ABL Priority Collateral Account”) and shall not be used for any purpose

unless authorized by a separate order of this Court. For the avoidance of doubt, and for the sake of clarity, (i) the DIP Liens and Adequate Protection Liens on the MAALT Collateral shall be junior to the MAALT Liens on such MAALT Collateral, and (ii) any Cash Collateral that constitutes MAALT Collateral shall be segregated in a separate debtor-in-possession depository account (“MAALT Collateral Account”) and shall not be used for any purpose unless authorized by a separate order of this Court.

6. **Perfection in Cash.** Subject to the Carve Out and the rights of the ABL Lender with respect to the ABL Priority Collateral and the rights of the MAALT Lender with respect to the MAALT Collateral, all financial institutions with which the Debtors maintain accounts containing Cash Collateral are authorized and directed to comply with any request of the DIP Agent to turn over to the DIP Agent all Cash Collateral (other than Cash Collateral constituting ABL Priority Collateral or MAALT Collateral) therein without offset or deduction of any kind; provided that any such request by the DIP Agent for turn over of Cash Collateral is made in accordance with the terms of this ~~Interim~~Final Order and the DIP Loan Documents. The DIP Agent shall enjoy the benefit of (i) all deposit account control agreements, blocked account control agreements, securities account control agreements, and similar agreements to which the Term Loan Agent is a party, and (ii) all other deposit account control agreements, blocked account control agreements, securities account control agreements, and similar agreements to which any Debtor is a party. Notwithstanding and without minimizing the force of the foregoing, the Debtors are authorized and directed to enter into, and cause the financial institutions servicing the Debtors’ deposit accounts to enter into, such deposit account control agreements and other collateral agreements with the DIP Agent and such financial institutions as the DIP Agent may require, or alternatively, the DIP Agent shall be entitled to enjoy the benefit

of all control agreements to which the Debtor is a party, as set forth above, without the need to enter into any such new agreements.

7. **Interest on DIP Facility Loans.** The DIP Loans shall bear interest at the rates, which interest shall be due and payable (and paid), as set forth in, and in accordance with the terms and conditions of, this ~~Interim~~Final Order and the DIP Loan Documents, and in each case shall be non-refundable and not subject to challenge in any respect and shall be payable without further notice, motion, or application to, order of, or hearing before, this Court. The DIP Loans will bear interest at a rate, at Borrower's option, equal to LIBOR plus 9.50% per annum, payable monthly in arrears. All interest shall be calculated using a 360-day year and actual days elapsed and shall be payable in cash. At any time when an Event of Default under the DIP Facility has occurred and is continuing, all outstanding amounts under the DIP Facility shall bear interest, to the fullest extent permitted by law, at the interest rate applicable to base rate loans plus 2.00% per annum (the "DIP Default Rate") and shall be payable on demand. Interest on overdue amounts under the DIP Facility shall also accrue at the DIP Default Rate.

8. **Payment of DIP Fees and Expenses.**

(a) **Professional Fees.** The Debtors are authorized ~~and directed~~ to pay (i) all fees when due under the DIP Credit Agreement (including, without limitation, any fees provided for under section 3.04 of the DIP Credit Agreement) in the amounts set forth in the DIP Credit Agreement and (ii) reasonable, documented fees, costs, and expenses incurred or accrued by the DIP Agent (the foregoing to include all unpaid prepetition fees, costs, and expenses incurred by the DIP Agent in connection with the DIP Facility) in connection with any and all aspects of the Chapter 11 Cases from the proceeds of the DIP Facility, including, without limitation, the reasonable fees and expenses of the DIP

Agent's legal counsel, Sidley Austin LLP ("Sidley"), and financial advisor, FTI Consulting, Inc. ("FTI"), and other professionals hired by or on behalf of the DIP Agent (the "DIP Agent Professionals"). None of such fees, costs and expenses shall be subject to Court approval or U.S. Trustee guidelines, and no DIP Agent Professional shall be required to file with respect thereto any interim or final fee application with this Court. Copies of summary invoices submitted to the Debtors by such DIP Agent Professionals shall be forwarded to the U.S. Trustee, ~~any statutory committee appointed in these Chapter 11 Cases~~the Committee, and such other parties as this 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 any benefits of the attorney work product doctrine or other applicable privilege. If the Debtors, Committee, or U.S. Trustee object to the reasonableness of the fees and expenses of any of the DIP Agent Professionals and cannot resolve such objection within fourteen (14) days of receipt of such invoices, then such party shall file with this Court and serve such objection (the "Fee Objection") within seven (7) days thereafter, limited to the issue of the reasonableness of such fees and expenses, and any failure by any such Party to file a Fee Objection within such twenty-one (21) day period shall constitute a waiver of any right of such party to object to the applicable invoice. Notwithstanding any provision herein to the contrary, any objection to, and any hearing on an objection to, payment of any fees and expenses set forth in a



professional fee invoice in respect of a DIP Agent Professional shall be limited to the reasonableness of the particular items or categories of the fees and expenses that are the subject of such objection. The Debtors shall timely pay in accordance with the terms and conditions of this ~~Interim~~Final Order (a) the undisputed fees, costs, and expenses reflected on any invoice to which a Fee Objection has been timely filed and (b) all fees, costs, and expenses on any invoice to which no Fee Objection has been timely filed. In addition, the Debtors are hereby authorized ~~and directed~~ to indemnify the DIP Agent and the other DIP Secured Parties (and each of their respective directors, officers, employees, agents, representatives, attorneys, consultants, advisors and controlling persons), in their respective capacities as DIP Agent and DIP Secured Parties, against any liability arising in connection with the DIP Loan Documents, to the extent set forth in the DIP Loan Documents, *provided, that* any such claims for indemnification shall be subject to approval by this Court. All such unpaid fees, costs, expenses and indemnities of the DIP Secured Parties shall (i) constitute DIP Obligations, (ii) be secured by the DIP Collateral, and (iii) be afforded all of the priorities and protections afforded to other the DIP Obligations under this ~~Interim~~Final Order and the ~~Operative~~DIP Loan Documents.

(b) DIP Fees. The Debtors shall pay all fees when due under the DIP Credit Agreement in the amounts set forth in the DIP Credit Agreement from the proceeds of the DIP Facility.

9. Conditions Precedent. The DIP Lenders shall have no obligation to extend credit under the DIP Facility during the ~~Interim~~Final Period unless and until all conditions precedent to the extension of credit under this ~~Interim~~Final Order and the DIP Loan Documents

have been satisfied in full or waived in writing by the DIP Agent at the direction of the DIP Lenders.

10. **Validity of DIP Loan Documents.** Upon execution and delivery of the DIP Loan Documents, the DIP Loan Documents shall constitute, and are hereby deemed to be, legal, valid and binding obligations of the Debtors, enforceable against each Debtor in accordance with the terms thereof for all purposes during the Chapter 11 Cases, in any subsequently converted case of any Debtor under chapter 7 of the Bankruptcy Code, or after dismissal of any of the Chapter 11 Cases. Any DIP Loans advanced under the DIP Credit Agreement pursuant to this ~~Interim~~Final Order will be made only to fund: (a) with respect to the Initial Borrowing, payments pursuant to any interim or final order entered by the Bankruptcy Court pursuant to any “first day” motions permitting the payment by the Debtors of any prepetition amounts then due and owing (the “First Day Orders”), provided that the form and substance of such First Day Orders shall be reasonably acceptable to the DIP Lenders; provided further that, with respect to each Borrowing after the Initial Borrowing, funding shall be provided only if the conditions to borrowing under the DIP Credit Agreement are satisfied; (b) postpetition working capital purposes of the Debtors; (c) current interest and fees under the DIP Facility; (d) the payment of adequate protection payments to the Term Loan Agent and the Term Loan Lenders; and (e) the allowed administrative costs and expenses of the Chapter 11 Cases, in each case, solely in accordance with the Approved Budget (subject to the Budget Variance) and this ~~Interim~~Final Order. No obligation, payment, transfer, or grant of security under the DIP Loan Documents or this ~~Interim~~Final Order shall be stayed, restrained, voided, voidable or recoverable under the Bankruptcy Code or under any applicable non-bankruptcy law, or subject to any defense, reduction, setoff, recoupment or counterclaim.

11. **DIP Superpriority Claims.** In accordance with Bankruptcy Code section 364(c)(1), the DIP Obligations shall constitute superpriority administrative expense claims (the “DIP Superpriority Claims”) against each of the Debtors with priority in payment over any and all administrative expenses, adequate protection claims, diminution claims, prepetition unsecured claims, and all other claims against the Debtors, now existing or hereafter arising, of any kind whatsoever, including, without limitation, any prepetition claims and adequate protection claims of the Term Loan ~~Lenders~~Secured Parties, the ABL Lender and the MAALT Lender, respectively, and any and all administrative expenses or other claims of the kinds specified or ordered pursuant to any provision of the Bankruptcy Code, including, but not limited to, Bankruptcy Code sections 105, 326, 328, 330, 331, 503(b), 506(c) ~~(subject to, and upon entry of, the Final Order)~~, 507(a), 507(b), 546, 726, 1113, and 1114 or otherwise, including those resulting from the conversion of any of the Chapter 11 Cases pursuant to section 1112 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; provided, however, that the DIP Superpriority Claims shall be subject to (i) the Carve-Out, and (ii) the ABL Lender’s and MAALT Lender’s respective credit bid, lien rights and repayment rights in ~~the~~a sale or other disposition of any ABL Priority Collateral or MAALT Collateral (as set forth in this ~~Interim Order~~Final Order); provided further, however, that notwithstanding anything to the contrary in the Interim Order or this Final Order, the DIP Agent shall satisfy the DIP Superpriority Claims first from assets other than Unencumbered Property (as defined below). For the avoidance of doubt, the term “Unencumbered Property” includes Avoidance Action Proceeds (as defined below). 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 post-petition property of the Debtors, ~~including, subject to and upon entry of the Final Order, the Avoidance Actions and Avoidance Action Proceeds,~~ and all proceeds thereof (including the Avoidance Action Proceeds), provided, that the DIP Superpriority Claims shall not have recourse to any Avoidance Actions themselves. Except as set forth in this ~~Interim Order, the~~ Final Order, or other order of this Court authorizing and approving the grant of a superpriority claim as adequate protection to the ABL Lender or the MAALT Lender (provided that such claim(s), if any, shall be subordinate to the DIP Superpriority Claims), no other superpriority claims shall be granted or allowed in these Chapter 11 Cases.

12. **DIP Priming Liens.** As security for the DIP Loans, the DIP Agent, on behalf and for the benefit of the DIP Lenders, is hereby granted (effective upon the date of this ~~Interim~~ Final Order, without any further action by the DIP Lenders, including the execution by the Debtors or the filing or recordation of security agreements, lockbox or control agreements, financing statements, or any other instruments or otherwise) valid, enforceable, binding, and fully perfected security interests in and liens (the “DIP Liens”) upon all of the assets of the Debtors (whether tangible, intangible, real, personal or mixed), now existing or hereafter acquired, and any proceeds and products thereof in whatever form received, including, ~~subject to entry of a Final Order, all Avoidance Actions and~~ Avoidance Action Proceeds (collectively with all rents, issues, products, offspring, proceeds and profits of any or all of the foregoing, the “DIP Collateral”), subject only to the payment of the Carve-Out, ~~which~~ provided further, however, that notwithstanding anything to the contrary in the Interim Order or this Final Order, the DIP Agent shall satisfy the DIP Liens first from assets other than Unencumbered Property (as defined

below). For the avoidance of doubt, the Debtors' claims and causes of action under sections 502(d), 544, 545, 547, 548, 549, 550, and 553 of the Bankruptcy Code (collectively, the "Avoidance Actions"), whether now existing or hereafter acquired or arising and whether pursuant to federal law or applicable state law, shall not constitute DIP Collateral. The DIP Liens shall consist of:

(a) First Priority Lien on Unencumbered Property. Pursuant to section 364(c)(2) of the Bankruptcy Code, a continuing, enforceable, first priority, fully-perfected lien and security interest upon all of the Debtors' right, title and interest in, to, and under all DIP Collateral that was not encumbered by a validly perfected, enforceable, and nonavoidable security interest or lien as of the Petition Date or a valid security interest perfected subsequent to the Petition Date to the extent permitted by section 546(b) of the Bankruptcy Code (collectively, the "Unencumbered Property").

~~Subject only to and effective upon entry of the Final Order, Unencumbered Property shall also include the Debtors' claims and causes of action under sections 502(d), 544, 545, 547, 548, 549, 550, and 553 of the Bankruptcy Code and any other avoidance actions under the Bankruptcy Code, whether~~ include all proceeds of, recoveries related to, and property received or recovered pursuant to the Avoidance Actions (whether by judgment, settlement, or otherwise, collectively, the "Avoidance Action Proceeds"), whether such Avoidance Actions are now existing or hereafter acquired or arising and whether pursuant to federal law or applicable state law ~~(collectively, the "Avoidance Actions"), and all proceeds thereof, recoveries related thereto, and property received or recovered thereby, whether by judgment, settlement, or otherwise (the "Avoidance Action Proceeds").~~

(b) Liens Junior to Certain Other Liens. Pursuant to section 364(c)(3) of the Bankruptcy Code, a junior, perfected lien and security interest upon all of the Debtors' right, title and interest in, to and under all DIP Collateral, whether now existing or hereafter acquired, that is subject to and subordinated to (i) the first priority, senior liens in favor of the ABL Lender on the ABL Priority Collateral, (including, without limitation, Cash Collateral constituting ABL Priority Collateral); (ii) the first priority, senior liens of the MAALT Lender in the MAALT Collateral; and (iii) any liens that (x) are valid, perfected, enforceable and nonavoidable as of the Petition Date or validly perfected subsequent to the Petition Date to the extent permitted by section 546(b) of the Bankruptcy Code, (y) under applicable law, are senior to, and have not been subordinated to, the Term Loan Liens, and (z) are not subject to avoidance, reduction, disgorgement, counterclaim, surcharge, or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law (each, a "Permitted Lien" and collectively, the "Permitted Liens"), including the Permitted Liens scheduled on Schedule 9.04 to the DIP Credit Agreement, and in each case is not subject to section 552(a) of the Bankruptcy Code.

(c) Liens Priming Prepetition Secured Parties' Liens. Pursuant to section 364(d)(1) of the Bankruptcy Code, valid, enforceable, binding, continuing, fully perfected, first priority senior priming liens upon and security interests in all of the Debtors' right, title and interest in, to, and under all DIP Collateral not covered by clauses (a) and (b) above and, with respect to the ABL Priority Collateral and the MAALT Collateral: (i) valid, binding, continuing, enforceable, fully perfected, junior liens that are subordinate to the ABL Lender's continuing first priority, senior liens in all DIP Collateral constituting ABL Priority Collateral, (ii) valid, binding, continuing,

enforceable, fully perfected, junior liens that are subordinate to the MAALT Lender's continuing first priority, senior liens in all DIP Collateral constituting MAALT Collateral; and (iii) valid, binding, continuing, enforceable, fully perfected, priming liens that are immediately senior to the Term Loan Lenders' liens on such ABL Priority Collateral;

(d) Continuing Priority of ABL Lender's and MAALT Lender's Liens.

Notwithstanding any other provisions contained herein or deemed, interpreted and/or construed, as applicable, to the contrary, and for the sake of clarity and for the avoidance of doubt, nothing contained herein will be deemed, intended, interpreted, construed and/or enforced to prime ~~the~~any preexisting first priority, senior liens as of the Petition Date of (i) the ABL Lender in the ABL Priority Collateral (including, without limitation, any and all Cash Collateral constituting ABL Priority Collateral); or (ii) the MAALT Lender in the MAALT Collateral (including, without limitation, any and all Cash Collateral constituting MAALT Collateral). The validity, priority and extent of the ABL Lender's ABL Liens in the ABL Priority Collateral and the MAALT Lender's liens in the MAALT Collateral, respectively, as such validity, priority and extent existed as of the Petition Date, shall not be altered, modified, subordinated, primed or otherwise affected in any way by the terms of this ~~Interim~~Final Order.

13. Term Loan ~~Lenders~~Secured Parties' Adequate Protection. Until the indefeasible repayment in full in cash of the Term Loan Obligations, the Term Loan ~~Lenders~~Secured Parties are entitled to adequate protection of their interests in the Term Loan Collateral on account of the diminution in the value thereof ~~as a result of (i) the provisions of this Interim Order granting priming liens on such Term Loan Collateral (to the extent such Term~~

~~Loan Collateral does not constitute ABL Priority Collateral or MAALT Collateral) to the DIP Agent for the benefit of the DIP Lenders; (ii) the authorization of the use of Cash Collateral (other than Cash Collateral constituting ABL Priority Collateral or MAALT Collateral) and other Term Loan Collateral; (iii) the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code; and/or (iv) otherwise~~ (the “Diminution in Term Loan Collateral Value”); pursuant to sections 361(a), 362, 363(c) and 364(d)(1) of the Bankruptcy Code. For purposes of determining any Diminution in Term Loan Collateral Value, the starting point shall be the amount that the Term Loan Secured Parties would have obtained following a foreclosure on the Debtors’ assets on the Petition Date. The Term Loan Agent, on behalf and for the benefit of the Term Loan Lenders, is hereby granted the following (collectively, the “Term Loan Adequate Protection Obligations”):

(a) Term Adequate Protection Superpriority Claims. The Term Loan Agent, on behalf and for the benefit of the Term Loan Lenders, is hereby granted superpriority administrative expense claims (the “Term Adequate Protection Superpriority Claims”) under sections 503 and 507 of the Bankruptcy Code against the Debtors’ estates, including, ~~subject to and upon entry of the Final Order,~~ Avoidance Actions Proceeds, to the extent of any Diminution in Term Loan Collateral Value, which Term Adequate Protection Superpriority Claims shall have priority in payment over any and all administrative expenses of the kinds specified or ordered pursuant to any provision of the Bankruptcy Code, including, but not limited to, Bankruptcy Code sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 726, 1113 and 1114, or otherwise and including those resulting from the conversion of any of the Chapter 11 Cases pursuant to section 1112 of the Bankruptcy Code; provided, however, that at all



times while such claim is in full force and effect pursuant to this ~~Interim~~Final Order, the Term Adequate Protection Superpriority Claims shall be junior in all respects to the DIP Superpriority Claims and subject to (i) the Carve-Out, and (ii) the ABL Lender's and MAALT Lender's respective credit bid rights, lien rights and repayment rights in the sale or other disposition of any ABL Priority Collateral or MAALT Collateral (as set forth in this ~~Interim~~Final Order).

(b) Term Adequate Protection Liens. The Term Loan Agent, on behalf and for the benefit of the Term Loan Lenders, is hereby granted valid, enforceable, unavoidable and fully perfected replacement liens and security interests in all DIP Collateral (the "Adequate Protection Liens"), to the extent of any Diminution in Term Loan Collateral Value, which replacement liens and security interests shall have a priority immediately junior to the DIP Liens, subject to, junior and subordinate to the priority of the ABL Lender's liens in the ABL Priority Collateral, the MAALT Lender's liens in the MAALT Collateral, and subject to the Carve-Out. The Term Adequate Protection Liens shall be deemed to be legal, valid, binding, enforceable, perfected liens, not subject to subordination or avoidance. Except as otherwise set forth herein and in accordance with the priority set forth in the immediately preceding sentence, or as otherwise provided in this ~~Interim~~Final Order, or in accordance with the Prepetition Intercreditor Agreement, the Term Adequate Protection Liens shall not be subordinated to or be made *pari passu* with any other lien under section 364(d) of the Bankruptcy Code or otherwise.

(c) Adequate Protection Payments. As further adequate protection, and in consideration, and as a requirement, for obtaining the consent of the Term Loan ~~Lenders~~Secured Parties to the entry of ~~this~~the Interim Order, this Final Order, and the

Debtors' consensual use of Cash Collateral (other than Cash Collateral constituting ABL Priority Collateral or MAALT Collateral) as provided herein: the Debtors shall pay the reasonable, documented fees, costs, and expenses incurred or accrued by the Term Loan Agent, in its capacity as such, (the foregoing to include all unpaid prepetition fees, costs and expenses) in connection with any and all aspects of the Chapter 11 Cases, and including the reasonable fees and expenses of the legal and financial advisors to the Term Loan Agent (the "Adequate Protection Payments") from the proceeds of the DIP Facility. Copies of any summary invoices of such professionals, including Sidley and FTI, with respect to such fees, expenses and costs shall be provided to the Debtor and forwarded to the U.S. Trustee and Committee consistent with the notice and objection procedures set forth in Paragraph 8(a) of this ~~Interim~~Final Order. To the extent the DIP Agent and the Term Loan Agent are the same and have a single set of advisors, such advisors may submit a single combined invoice for their aggregated services. The Committee shall have the right to seek recharacterization of the Adequate Protection Payments, which right shall not be subject to the Investigation Termination Date described herein.

(d) Financial Reporting. The Debtors shall provide the Term Loan Agent with the financial and other reporting provided to the DIP Agent pursuant to the DIP Credit Agreement.

(e) Right to Seek Additional Adequate Protection. This ~~Interim~~Final Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, the rights of the Term Loan Agent or the other Term Loan Lenders to seek additional forms of adequate protection pursuant to a pleading filed with the Court at any time and subject to the rights of any party in interest to object.

(f) Noninterference with DIP Obligations. For the avoidance of doubt, nothing in this Paragraph 13 shall affect or limit the obligation of the Debtors to pay the fees, costs, and expenses incurred by the DIP Lenders as provided in the DIP Loan Documents from the proceeds of the DIP Facility.

(g) Continuing Priority of ABL Lender's and MAALT Lender's Liens. Notwithstanding any other provisions contained herein or deemed, interpreted and/or construed, as applicable, to the contrary, and for the sake of clarity and for the avoidance of doubt, nothing contained herein will be deemed, intended, interpreted, construed and/or enforced to prime the preexisting first priority, senior liens of the ABL Lender in the ABL Priority Collateral (including, without limitation, any and all Cash Collateral constituting ABL Priority Collateral) or the liens of the MAALT Lender in the MAALT Collateral (including, without limitation, any and all Cash Collateral constituting MAALT Collateral). The validity, priority and extent of the ABL Lender's ABL Liens in the ABL Priority Collateral and the MAALT Lender's Liens in the MAALT Collateral, as such validity, priority and extent existed as of the Petition Date, shall not be altered, modified, subordinated, primed or otherwise affected in any way by the terms of this ~~Interim~~Final Order.

14. **Carve-Out.**

(a) Carve-Out. ~~to be paid to the~~As used herein, "Carve-Out" means the sum of any (i) unpaid fees of the Clerk of the Court and the U.S. Trustee pursuant to 28 U.S.C. § 1930; ~~(b)~~ii) to the extent allowed at any time, whether by interim order, procedural order, or otherwise, all unpaid fees and expenses accrued or incurred, as of the date of the delivery by the DIP Agent of a Carve-Out Trigger Notice (as defined below),

by persons or firms retained by the Debtors and the Committee ~~(if any)~~ pursuant to an order of the Court under sections 327, 328, 363, or 1103(a) of the Bankruptcy Code (the “Professionals”), to the extent such fees and expenses are ~~(i)~~<sup>A</sup> within the amounts set forth in the Approved Budget (subject to the Budget Variance), and ~~(ii)~~<sup>B</sup> allowed by the Court under Sections 330, 331, or 363 of the Bankruptcy Code; ~~(e)~~<sup>iii</sup> all unpaid fees and expenses of the Professionals incurred after the date of the delivery by the DIP Agent of a Carve-Out Trigger Notice, in an aggregate amount not to exceed \$500,000 for Professionals retained by the Debtors and an aggregate amount not to exceed \$100,000 for Professional retained by the Committee ~~(if any)~~, to the extent such fees and expenses are subsequently allowed by the Court under Sections 330, 331 or 363 of the Bankruptcy Code; ~~and (d)~~<sup>(iv)</sup> reasonable and documented expenses of the members of the Committee (excluding any fees or expenses of professionals that are not retained pursuant to an order of the Court under sections 327, 328, 363, or 1103(a) of the Bankruptcy Code in an aggregate amount not to exceed \$10,000; <sup>(v)</sup> all reasonable and documented fees and expenses incurred by any trustee under section 726(b) of the Bankruptcy Code in an aggregate amount not to exceed \$25,000; and (vi) all unpaid expenses accrued or incurred, as of the date of the delivery by the DIP Agent of a Carve-Out Trigger Notice (as defined below), by creditors that supplied post-petition goods and services to the extent such expenses are set forth in the Approved Budget. As used herein, the term “Carve-Out Trigger Notice” shall mean a written notice delivered by the DIP Agent to the Debtors and their counsel, the U.S. Trustee, and counsel to the Committee ~~(if any)~~, which notice may be delivered following the occurrence and during the continuation of an Event of Default (as defined below). In the event that these Chapter 11 Cases are

converted to chapter 7, any unpaid fees and expenses subject to the Carve-Out shall be paid first from assets other than the Unencumbered Property.

(b) Funding. Any funding of the Carve-Out shall be secured by the DIP Collateral and shall be otherwise entitled to the protections granted under the this ~~Interim DIP Order,~~ the Final DIP Order, the DIP Loan Documents, the Bankruptcy Code and applicable law; ~~provided, however, that no part of the Carve-Out shall include fees, costs, or expenses incurred by any party related in any way to the investigation or challenge of any claim or lien of, or obligation to, the DIP Agent, the DIP Lenders, or the Term Loan Lenders or any attempts to prevent, hinder, or otherwise delay any enforcement or realization upon any DIP Collateral.~~

(c) Payment of Professional Fees Prior to ~~an Event of Default~~Carve-Out Trigger Notice. Any payment or reimbursement made to Professionals prior to the delivery of a Carve-Out Trigger Notice shall not reduce the Carve-Out. Prior to the delivery of a Carve-Out Trigger Notice, the Debtors shall be permitted to pay the allowed fees and expenses of Professionals subject to this ~~Interim~~Final Order, the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and any interim compensation procedures entered by this Court.

(d) No Direct Obligation to Pay Professional Fees; No Waiver of Right to Object. The DIP Lenders shall not be responsible for the payment or reimbursement of any fees or disbursements of any Professional incurred in connection with these Chapter 11 Cases or any successor cases under any chapter of the Bankruptcy Code. Nothing in this ~~Interim~~Final Order or otherwise shall be construed to obligate the DIP Lenders in any way, to pay compensation to, or to reimburse expenses of, any

Professional or to guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement. Nothing herein shall be construed as consent to the allowance of any professional fees or expenses of any of the Debtors, the Committee, ~~if any,~~ any other official or unofficial committee in these Chapter 11 Cases or any successor cases, if any, or of any person or entity, or shall affect the right of any party to object to the allowance and payment of any such fees and expenses.

15. **Budget for DIP Facility.** Attached hereto as **Exhibit B** is a thirteen-week cash flow budget setting forth all projected cash receipts and cash disbursements (by line item) on a weekly basis (the “~~Initial Approved Budget~~”). ~~Following the entry of this Interim Order, and no~~No later than the date that is the four-week anniversary of the ~~Closing Date~~entry of the Interim DIP Facility Order, the Debtors shall, in a manner consistent with the DIP Credit Agreement, propose an updated thirteen-week (13-week) detailed rolling cash projection, which shall be thereafter updated, as necessary, but not less than once every four weeks (each, a “Proposed Budget”); ~~provided~~and which the Debtors will provide a copy of to the DIP Agent, the Committee, and their Professionals; provided, that the DIP Agent and ~~the~~ Required Lenders shall have five (5) Business Days to approve any revised Proposed Budget, which consent the DIP Agent and Term Loan Agent may grant or withhold in their sole and exclusive discretion; provided, further, that if the DIP Agent ~~and,~~ the Required Lenders, or the Committee do not approve any updated Proposed Budget by the sixth (6th) Business Day following receipt thereof, the previously delivered Budget shall remain in effect (or be deemed to be rolled forward in the discretion of the DIP Agent and in effect, as applicable) for purposes of the variance testing covenant and reporting. ~~—The Initial Approved Budget shall be the “Approved Budget” until such time as the DIP Agent and Term Loan Agent consent to a Proposed Budget in writing;~~

~~which consent the DIP Agent and Term Loan Agent may grant or withhold in their sole and exclusive discretion, at which time such consented to Proposed Budget shall become the Approved Budget and replace the then-operative Approved Budget for all purposes. The Initial;~~  
provided, further, that no Proposed Budget or Approved Budget may reduce the fees and expenses of the Committee's Professionals in the then-applicable Approved Budget. The  
 Approved Budget is an integral part of this ~~Interim~~Final Order and has been relied upon by the  
 DIP Lenders to provide the DIP Facility and consent to this ~~Interim~~Final Order and by the Term  
 Loan Secured Parties to permit the use of the Cash Collateral and consent to this ~~Interim~~Final  
 Order. The Debtors represent and warrant to the DIP Agent, the DIP Lenders, the Term Loan  
 Secured Parties and this Court that the Initial Approved Budget includes and contains the  
 Debtors' best estimate of all operational receipts and all operational disbursements, fees, costs  
 and other expenses that will be payable, incurred and/or accrued by any of the Debtors during the  
 period covered by the Initial Approved Budget and that such operational disbursements, fees,  
 costs and other expenses will be timely paid in the ordinary course of business solely pursuant to  
 and in accordance with the Initial Approved Budget unless such operational disbursements, fees,  
 costs and other expenses are not incurred or otherwise payable. The Debtors further represent  
 that the Initial Approved Budget is achievable and will allow the Debtors to operate in the  
 Chapter 11 Cases and pay post-petition obligations as they come due. Pursuant to the terms of  
 the DIP Credit Agreement, the Debtors shall provide on a weekly basis to the DIP Agent ~~and,~~ the  
 Term Loan Agent and the Committee, a report detailing the actual disbursements and receipts for  
 the preceding week versus the disbursements and receipts contained in the Approved Budget for  
 such period. The Debtors shall be permitted a variance between the Approved Budget and the  
 actual amount of expenditures by the Debtors without triggering the occurrence of an Event of

Default (as defined in the DIP Credit Agreement) for any four-week rolling period as follows: the Debtors' expenditures shall not exceed projected expenditures as set forth in the Approved Budget by more than fifteen percent (15%) from the projected expenditures (including professional fees) for such period as set forth in the Approved Budget (the "Budget Variance"). Additional variances, if any, from the Approved Budget, and any proposed changes to the Approved Budget, shall be subject to the reasonable approval of the DIP Agent and the Required Lenders (as defined in the Term Loan Agreement). The Debtors shall operate solely in accordance with the Approved Budget (including professional fees) and all disbursements of the Debtors shall be consistent with the provisions of the Approved Budget, subject to the Budget Variance.

16. **Automatic Effectiveness of Liens.** ~~Automatically upon entry of this Interim Order, the~~ The DIP Liens and the Adequate Protection Liens granted herein shall be deemed to be valid, perfected, enforceable, non-avoidable and effective by operation of law, and not subject to challenge as of the Petition Date, without the need for (x) filing any UCC-1 financing statements, security agreements, vehicle lien applications, filings with the U.S. Patent and Trademark Office, the United States Copyright Office, or the Library of Congress, state or federal notice, or any other similar instrument or document in any state or public record or office, (y) taking possession or control of any collateral, or (z) further action of any kind (including execution of any security agreements, mortgages, financing statements, collateral agreements, collateral trust agreements, deposit account control agreements, blocked account control agreements, securities account control agreements, or other collateral documents and agreements). All DIP Collateral shall be free and clear of other liens, claims and encumbrances, except the Permitted Liens, Adequate Protection Liens, the Term Loan Liens, ABL Liens,



MAALT Liens, and any other liens expressly permitted under the DIP Credit Agreement. If the DIP Agent or the Term Loan Agent hereafter requests that the Debtors execute and deliver to the DIP Agent or the Term Loan Agent financing statements, security agreements, collateral assignments, or other instruments and documents considered by such agent to be reasonably necessary or desirable to further evidence the perfection of the DIP Liens or the Adequate Protection Liens, as applicable, the Debtors are hereby authorized and directed to execute and deliver such financing statements, security agreements, collateral assignments, instruments, and documents, and the DIP Agent or the Term Loan Agent is hereby authorized to file or record such documents in its discretion without seeking modification of the automatic stay under section 362 of the Bankruptcy Code, in which event all such documents shall be deemed to have been filed or recorded at the time and on the date of entry of this ~~Interim~~Final Order.

17. **Milestones.** In addition to the Events of Default set forth in the DIP Credit Agreement, it shall be an Event of Default under the DIP Credit Agreement and this ~~Interim~~Final Order entitling the DIP Agent to exercise the remedies under the DIP Credit Agreement and this ~~Interim~~Final Order if the Debtors shall fail to meet any of the following deadlines (collectively, the “Milestones”), unless such Milestones are extended by agreement of the Debtors and DIP Agent:

~~(a) On or before the date that is thirty (30) calendar days following the entry of this Interim Order, a Final Order approving the DIP Facility on a final basis in form and substance satisfactory to the DIP Lenders as confirmed by the DIP Agent in writing shall have been entered by the Bankruptcy Court;~~

~~(b) On or before the date that is twenty one (21) calendar days following the Petition Date (the “Plan Agreement Date”), the Debtors shall have filed a~~

~~plan of reorganization and related disclosure statement acceptable to the DIP Lenders in their sole and absolute discretion as confirmed in writing by the DIP Agent (an “Acceptable Plan”);~~

(~~ea~~) On or before the date that is ~~fifty~~sixty-five (~~50~~65) calendar days following the Petition Date, and subject to the Court’s availability, the Bankruptcy Court shall have entered an order approving the disclosure statement and plan solicitation procedures acceptable to the DIP Lenders, as confirmed by the DIP Agent in writing;

(~~db~~) On or before the date that is ~~eighty~~ninety-nine (~~80~~99) calendar days following the Petition Date, the Bankruptcy Court shall have entered an order acceptable to the DIP Lenders, as confirmed by DIP Lenders in writing, confirming an plan of reorganization acceptable to the DIP Lenders in their sole and absolute discretion (an “Acceptable Plan”) as confirmed in writing by the DIP Agent; and

(~~ec~~) On or before the date that is ~~ninety-two~~ (~~92~~)113 calendar days following the Petition Date, an Acceptable Plan shall become effective.

#### 18. **Credit Bid.**

(a) ~~The~~Subject to the terms of this Final Order, the DIP Agent, at the direction of the DIP Lenders, shall have the unqualified right to credit bid up to the full amount of the DIP Obligations in any sale of the DIP Collateral under or pursuant to (i) section 363(k) of the Bankruptcy Code, (ii) a plan of reorganization or a plan of liquidation under section 1129 of the Bankruptcy Code, or (iii) a sale or disposition by a chapter 7 trustee for any Debtor under section 725 of the Bankruptcy Code. The Committee shall have the right to object to any credit bid of the DIP Lenders or DIP Agent.

(b) Subject to the terms of the Prepetition Intercreditor Agreement and this Final Order, the Term Loan Agent, at the direction of the Term Loan Lenders, shall have the unqualified right to credit bid up to the full amount of any remaining Term Loan Obligations in any sale of DIP Collateral or Term Loan Collateral, as applicable, subject to the satisfaction of all DIP Obligations and all obligations secured by Permitted Liens, or as otherwise consented to by the DIP Lenders or such other holder of a Permitted Lien, as applicable, under or pursuant to (i) section 363(k) of the Bankruptcy Code, (ii) a plan of reorganization or a plan of liquidation under section 1129 of the Bankruptcy Code, or (iii) a sale or disposition by a chapter 7 trustee for any Debtor under section 725 of the Bankruptcy Code; provided, however, that such Term Loan Secured Parties' right to credit bid shall be subject to the investigation and Challenge provisions set forth in paragraph 21 of this Final Order. The Committee shall have the right to object to any credit bid of the Term Loan Lenders or Term Loan Agent.

(c) ~~Subject to the terms of the Prepetition Intercreditor Agreement, the ABL Lender shall have the unqualified right to credit bid up to the full amount of any remaining obligations existing under the ABL Facility in any sale of any ABL Collateral. The ABL Lender shall be satisfied first from any existing ABL Priority Collateral or the proceeds thereof and, with respect to the ABL Priority Collateral, shall not be subordinated to any outstanding DIP Obligations, DIP Superpriority Claim or Term Adequate Protection Superpriority Claims concerning the ABL Lender's credit bid in any sale of any ABL Priority Collateral.~~ Notwithstanding any other provisions contained herein, with respect to any sale of any ABL Priority Collateral, whether through third party cash proceeds, the ABL Lender's credit bid or otherwise, any remaining obligations

existing under the ABL Facility shall be satisfied first and shall not be subordinated to any priority or superpriority administrative expense claims of any party in this case, including, without limitation, the DIP Obligations, DIP Superpriority Claim or Term Adequate Protection Superpriority Claims, from the proceeds of the sale of any such ABL Priority Collateral. No portion of any outstanding DIP Obligations, DIP Superpriority Claim or Term Adequate Protection Superpriority Claims shall be senior to or prime the ABL Lender's credit bid rights in any sale of any ABL Priority Collateral. The ABL Lender's credit bid rights are expressly reserved and preserved by this ~~Interim Order, as applicable, under or pursuant to the applicable terms of the Prepetition Intercreditor Agreement and (i) section 363 of the Bankruptcy Code, (ii) a plan of reorganization or a plan of liquidation under section 1129 of the Bankruptcy Code, or (iii) a sale or disposition by a chapter 7 trustee for any Debtor under section 725 of the Bankruptcy Code.~~ Final Order.

(d) ~~The MAALT Lender shall have the unqualified right to credit bid up to the full amount of any remaining obligations existing under the MAALT Facility in any sale of any MAALT Collateral. The MAALT Lender shall be satisfied first from any existing MAALT Collateral or the proceeds thereof and, with respect to the MAALT Collateral, shall not be subordinated to any outstanding DIP Obligations, DIP Superpriority Claim or Term Adequate Protection Superpriority Claims concerning the MAALT Lender's credit bid in any sale of any MAALT Collateral.~~ Notwithstanding any other provisions contained herein, in regards to any sale of any MAALT Collateral, whether through third party cash proceeds, the MAALT Lender's credit bid or otherwise, any remaining obligations existing under the MAALT Facility shall be satisfied first and

shall not be subordinated to any priority or superpriority administrative expense claims of any party in this case, including, without limitation, the DIP Obligations, DIP Superpriority Claim or Term Adequate Protection Superpriority Claims. No portion of any outstanding DIP Obligations, DIP Superpriority Claim or Term Adequate Protection Superpriority Claims shall be senior to or prime the MAALT Lender's credit bid rights in any sale of any MAALT Collateral. The MAALT Lender's credit bid rights are expressly reserved and preserved by this ~~Interim Order, as applicable, under or pursuant to (i) section 363 of the Bankruptcy Code, (ii) a plan of reorganization or a plan of liquidation under section 1129 of the Bankruptcy Code, or (iii) a sale or disposition by a chapter 7 trustee for any Debtor under section 725 of the Bankruptcy Code.~~ Final Order.

(e) Nothing in this Final Order shall limit or otherwise prevent the Committee from opposing a credit bid of any Prepetition Secured Party "for cause" (as such phrase is used in section 363(k) of the Bankruptcy Code).

19. **Events of Default.** The following shall constitute Events of Default under this ~~Interim~~Final Order and the DIP Loan Documents, unless waived in writing by the DIP Agent in its sole discretion (each an "Event of Default").

(a) **Payment Default.** The Debtors shall fail to pay, in each case as and when due and required to be paid under the DIP Loan Documents, any principal amount under the DIP Loan Documents immediately after such payment becomes due or payable.

(b) **Non-Payment Default.** Except for an Event of Default arising under Paragraph (a) above, the Debtors shall default in any material respect with the performance of or compliance with any other covenant, condition, or provision of this

~~Interim~~Final Order or, the DIP Loan Documents or the impairment of the DIP Loan Documents or the security interests provided for therein.

(c) Bankruptcy. Any of the following occurs in any of the Chapter 11 Cases:

(i) dismissal of the Chapter 11 Cases or conversion of the Chapter 11 Cases into cases under chapter 7 of the Bankruptcy Code; (ii) a trustee or receiver shall have been appointed in one or more of the Chapter 11 Cases; (iii) appointment of a responsible officer or examiner with enlarged powers relating to the operation of the business of any Debtor, other than the Debtors' chief restructuring officer; (iv) entry of an order granting of relief from any stay of proceeding (including the automatic stay) so as to allow a third party to proceed with foreclosure (or granting of a deed in lieu of foreclosure) against any asset of the Debtors with a value in excess of \$500,000 in the aggregate, provided, that, such Event of Default shall not apply to an order granting relief from stay on behalf of the ABL Lender with respect to the ABL Priority Collateral or the MAALT Lender with respect to the MAALT Collateral; (v) entry of an order granting any superpriority claim which is senior to or *pari passu* with the DIP Lenders' claims under the DIP Facility without the prior consent of the DIP Lenders; (vi) entry of an order confirming (or the filing by the Debtors of any motion or pleading requesting confirmation of or otherwise in support of) a plan of reorganization with respect to any Debtor other than an Acceptable Plan; (vii) entry of an order staying, reversing, vacating, or otherwise modifying, without the prior written consent of the DIP Lenders, the DIP Facility, ~~the Interim Order~~, or the Final Order, and such order is not stayed or reversed within two (2) business days after entry thereof; (viii) payment of, or granting adequate protection with respect to, prepetition debt (other than as contemplated by the DIP Loan Documents, this

~~Interim~~Final Order, or other order of this Court authorizing and approving the grant of adequate protection to the ABL Lender or MAALT Lender) unless otherwise agreed by the DIP Lenders; and (ix) cessation of liens or superpriority claims granted with respect to the DIP Collateral securing the Debtors' obligations in respect of the DIP Facility to be valid, perfected and enforceable in all respects with the priority described herein; ~~and (xi) any shareholder (or shareholder affiliate) shall challenge or contest in any respect the provisions of the DIP Credit Agreement.~~

20. **Automatic Stay.** As provided herein, subject only to the provisions of the DIP Credit Agreement and without further order from this Court, the automatic stay provisions of section 362 of the Bankruptcy Code are vacated and modified to the extent necessary to permit the DIP Agent to exercise, upon the occurrence and during the continuance of any Event of Default and upon the direction of the DIP Lenders, all rights and remedies provided for in the DIP Loan Documents and otherwise consistent with the terms of this ~~Interim~~Final Order, and to take any or all of the following actions without further order of or application to the Court:

(a) declare the principal of and accrued interest on the outstanding borrowings to be immediately due and payable and terminate, reduce or restrict, as applicable, any further commitments under the DIP Facility to the extent any such commitment remains, and/or terminate, as applicable, the right of the Debtors to use Cash Collateral; and (b) charge the default rate of interest under the DIP Facility and take any other action or exercise any other right or remedy (including without limitation, with respect to the liens in favor of the DIP Agent on behalf of the DIP Lenders) permitted under the DIP Loan Documents or applicable law; provided, however, that in the case of the enforcement of liens or other remedies with respect to DIP Collateral pursuant to clause (b) above, the DIP Agent shall provide the Debtors (with a copy to counsel for ~~any~~ Committee

and the U.S. Trustee) with seven (7) calendar days' prior written notice (the "Enforcement Notice Period") and file such notice on the docket in the Chapter 11 Cases, during which Enforcement Notice Period any such party may file a pleading in opposition to the DIP Agent's exercise of its rights and remedies and seek an emergency hearing prior to the conclusion of the Enforcement Notice Period, ~~and provided further, that in any hearing following such notice, the only issue that may be raised by any party in opposition to the actions proposed or available to be taken by the DIP Agent shall be whether, in fact, an Event of Default has occurred and is continuing.~~ Unless, during the Enforcement Notice Period or, in the event a party requests an emergency hearing prior to the expiration of the Enforcement Notice Period but, solely due to the Court's availability, the Court is unable to schedule a hearing within such Enforcement Notice Period, the earliest available date on which the Court can hold such emergency hearing, the Court ~~determines that an Event of Default has not occurred (or that no Event of Default is continuing)~~ reimposes the automatic stay or otherwise enjoins the exercise of such remedies, the DIP Agent shall have relief from the automatic stay without further notice or order and may foreclose on all or any portion of the DIP Collateral or otherwise exercise remedies against the DIP Collateral. ~~Upon entry of this Interim Order, no party in interest shall have the right to contest the enforcement of the remedies set forth in this Interim Order and the DIP Loan Documents on any basis other than an assertion that no Event of Default has occurred, and, except with respect to such an assertion, no party in interest shall have the right to enjoin any such enforcement under section 105 of the Bankruptcy Code or otherwise, or to seek any injunctive relief inconsistent with the provisions of this Interim Order or the DIP Loan Documents.~~ Without limiting the foregoing, but subject to and only upon expiration of the Enforcement Notice Period, upon the occurrence and during the continuation of an Event of



Default, each DIP Lender (and its respective affiliates, including its various branches and offices) shall have the authority, subject to obtaining the prior written consent of the DIP Agent and to the fullest extent permitted by applicable law, to set off and apply any and all deposits (of whatever type and in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such DIP Lender (or its affiliate) to or for the credit or account of any Borrower against any and all of the DIP Obligations of such Borrower to such Lender, subject to the terms of the DIP Credit Agreement. The foregoing right of setoff shall apply irrespective of whether such DIP Lender has made any demand under the DIP Loan Documents and even if the DIP Obligations of the Borrower are contingent or unmatured. The rights and remedies of the DIP Agent and DIP Secured Parties specified herein are cumulative and not exclusive of any rights or remedies that the DIP Agent and the DIP Secured Parties may have under the DIP Loan Documents or otherwise. Subject to the provisions of the DIP Loan Documents and this ~~Interim~~Final Order, the Debtors shall cooperate fully with the DIP Agent and the DIP Secured Parties in their exercise of rights and remedies, whether against the DIP Collateral or otherwise. This Court shall retain exclusive jurisdiction to hear and resolve any disputes and enter any orders required by the provisions of this Paragraph 20 and relating to the application, re-imposition or continuance of the automatic stay as provided hereunder.

21. **Investigation Rights.** The (i) Committee shall have ~~thirty~~sixty (~~30~~60) days ~~after~~from the date of its appointment ~~of such committee~~, subject to extension by the Court for cause, ~~but not to exceed forty-five (45) days after the appointment of such Committee~~, and (ii) all other non-debtor parties-in-interest (including a trustee, if appointed or elected prior to the Investigation Termination Date, as defined herein) shall have forty-five (45) days after the Petition Date (each, as applicable, the “Investigation Termination Date”) to investigate the

validity, extent, priority, perfection, and enforceability of the Term Loan Facility, ~~ABL Facility~~ and ~~MAALT Facility~~ and the respective liens of the ~~lenders~~ Term Loan Secured Parties thereunder, and to assert any other claims or causes of action against the ~~Prepetition~~ Term Loan Secured Parties. ~~If any Committee, or any non-debtor party in interest hereafter granted authority and standing by this Court, determines that there may be a challenge to any of the Prepetition Secured Parties' liens or Prepetition Secured Parties' obligations by~~ Notwithstanding anything to the contrary in the Interim Order or this Final Order, (i) the Investigation Termination Date may be extended (A) by mutual written agreement between the Debtors, the DIP Agent, the Committee and the Term Loan Agent or (B) by the Court for cause; and (ii) if, on or before the Investigation Termination Date, then upon five (5) days' written notice to the Debtors and the Prepetition Secured Parties, such the Committee files a motion seeking standing to file a Challenge (as defined below), the Investigation Termination Date shall be automatically tolled with respect to the Committee upon the Committee's filing of a motion seeking standing until the Court has ruled upon such motion, and provided further that in the event the Court enters an order conferring standing on the Committee to pursue a Challenge, the Investigation Termination Date shall be further extended until the date that is three (3) business days after entry of such an order conferring standing on the Committee. The Committee or other non-debtor party-in-interest hereafter granted authority and standing by this Court shall be permitted to file and prosecute an objection or claim related thereto (each, a "Challenge"), and shall have only until the applicable Investigation Termination Date to file such ~~objection or claim~~ Challenge (or otherwise initiate an appropriate action on behalf of the Debtors' estates) setting forth the basis ~~of any such challenge, claim or cause of action~~ therefor; provided, however, that nothing contained in the DIP Loan Documents or this ~~Interim~~ Final Order shall be deemed to confer

standing on any Committee or any other party-in-interest to commence a Challenge. If a Challenge is not filed on or before the Investigation Termination Date, then, without further action by any party or any further order of this Court: (i) the agreements, acknowledgements and stipulations contained in Paragraph D of this ~~Interim~~Final Order, shall be deemed to be immediately and irrevocably binding on the Debtors, and the Debtors' estates, the Committee, and all parties-in-interest and any and all successors-in-interest thereto shall thereafter be forever barred from bringing any Challenge; (ii) the liens and security interests of the ~~Prepetition~~Term Loan Secured Parties shall be deemed to constitute valid, binding, enforceable, and perfected liens and security interests not subject to avoidance or disallowance pursuant to the Bankruptcy Code or applicable non-bankruptcy law; (iii) the ~~Prepetition~~Term Loan Secured Parties' obligations shall be deemed to be finally allowed claims for all purposes in the Chapter 11 Cases and any subsequent chapter 7 cases, in the amounts set forth in Paragraph D of this ~~Interim~~Final Order and its subparagraphs and shall not be subject to challenge by any party-in-interest as to validity, priority or otherwise; and (iv) the Debtors shall be deemed to have released, waived, and discharged each of the Term Loan Lenders ~~(whether in their prepetition or postpetition capacity)~~, together with their respective officers, directors, employees, agents, attorneys, professionals, affiliates, subsidiaries, assigns and/or successors, from any and all claims and causes of action arising out of, based upon, or related to, in whole or in part, the Term Loan Obligations or their prepetition relationship with such Debtor or any affiliate thereof relating to any of the Term Loan Documents or any transaction contemplated thereby, including, without limitation, any claims or defenses as to the extent, validity, priority, or enforceability of the ~~Existing~~existing Term Loan Liens or the Term Loan Obligations, any claims or defenses under chapter 5 of the Bankruptcy Code, or any other causes of action. Notwithstanding anything to

the contrary herein, the Committee may use up to \$~~25,000~~75,000 (the “Committee Investigation Budget”) in the aggregate prior to the Investigation Termination Date for investigation costs in respect of the Debtors’ stipulations set forth in paragraph D above; provided, however, that the proceeds of the DIP Facility shall not be used (i) to permit the ~~DIP Borrower, any Guarantor~~Debtors or any other party-in-interest or their representatives to challenge or otherwise contest or institute any proceeding to determine (x) the validity, perfection or priority of security interests in favor of the DIP Agent, any of the DIP Lenders, or the ~~Prepetition~~Term Loan Secured Parties, or (y) the enforceability of the obligations of the ~~DIP Borrower or any Guarantor~~Debtors under the DIP Facility, or the Term Loan Facility, ~~the ABL Facility or the MAALT Facility, or;~~ or (ii) to commence, prosecute or defend any claim, motion, proceeding or cause of action against the DIP Agent, any of the DIP Lenders, the Term Loan Agent, or any of the Term Loan Lenders ~~or any of the other Prepetition Secured Parties,~~(each in such capacity,) and their respective agents, attorneys, advisors or representatives, including, without limitation, any lender liability claims, any subordination claims, or any claims under any non-disclosure or confidentiality agreement.

**22. Protection of DIP Lenders’ and Prepetition Secured Parties’ Rights.**

The DIP Lenders’ and Prepetition Secured Parties’ rights shall be protected as follows:

- (a) So long as there are any DIP Loans or DIP Obligations outstanding or the DIP Lenders have any outstanding commitments under the DIP Credit Agreement, the Prepetition Secured Parties: (i) shall not take any action to foreclose upon or recover in connection with their respective liens and security interests, other agreements, or operation of law of this ~~Interim~~Final Order, or otherwise exercise remedies against any DIP Collateral, except to the extent authorized herein or by any other order of this Court,

(ii) shall be deemed to have consented to any release of DIP Collateral authorized under the DIP Loan Documents, (iii) shall not file any further financing statements, trademark filings, copyright filings, patent filings, mortgages, notices of lien or similar instruments, enter into any control agreement, or otherwise take any action to perfect their security interests in the DIP Collateral unless, solely as to this clause (iii), the DIP Agent files financing statements or other documents to perfect the liens granted pursuant to this ~~Interim~~Final Order, or as may be required by applicable state law to continue the perfection of valid and unavoidable liens or security interests as of the Petition Date and (iv) not seek to terminate or modify the use of Cash Collateral as provided herein.

(b) The terms of the Prepetition Intercreditor Agreement remain unmodified by the terms of this ~~Interim~~Final Order, and each parties' respective rights and remedies thereunder are expressly reserved and preserved in all aspects.

23. **Asset Dispositions.** Subject to authorization from the Court (and, as applicable, the Carve-Out)-~~and~~, the terms of the Intercreditor Agreement, and the Committee's Challenge rights set forth in paragraph 21, the Debtors shall immediately pay, or cause to be paid, to the DIP Agent for application to the DIP Obligations, all of the proceeds of any sale, lease or other disposition of any DIP Collateral outside of the ordinary course of business of the Debtors' assets (an "Asset Disposition") to the extent required by and in the order set forth in the DIP Credit Agreement, and as a condition to approval of such Asset Disposition, and shall comply with all other provisions in the DIP Loan Documents and this ~~Interim~~Final Order in connection with any such Asset Disposition. All proceeds of any Asset Disposition shall be applied in accordance with the terms and conditions of the DIP Credit Agreement and the Intercreditor Agreement. Nothing in this ~~Interim~~Final Order shall be deemed to constitute the

consent of the DIP Secured Parties, Term Loan Secured Parties, ABL Lender, or MAALT Lender and each of the foregoing expressly reserves the right to object to entry of any order of the Court that provides any for an Asset Disposition 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 Term Loan Obligations, the ABL Obligations or the MAALT Obligations (as applicable) and the Prepetition Term Loan Adequate Protection Obligations, ~~Prepetition ABL Adequate Protection Obligations, Prepetition MAALT Adequate Protection Obligations~~ and all of the foregoing are paid in full on the closing date of such Asset Disposition. Notwithstanding anything to the contrary herein, the Committee's rights to object to any Asset Disposition to any party, including the application and allocation of proceeds resulting therefrom, are fully reserved.

24. **DIP Lenders' Financial Reporting.** The Debtors shall provide: (i) to the DIP Lenders, the ABL Lender ~~and~~ the MAALT Lender ~~-(i) and the Committee~~ the Proposed Budget for such periods in form and substance reasonably satisfactory to the DIP Agent and the Required Lenders; (ii) to the DIP Lenders, the ABL Lender, the MAALT Lender and the Committee a variance report tested as of the immediately preceding Friday for (1) the weekly period ending on such Friday and (2) the prior weekly cumulative period ending on such Friday and commencing with the first week of the most recent Approved Budget (each such period, a "Variance Testing Period") setting forth: (A) the aggregate disbursements of the Debtors during the applicable Variance Testing Period and (B) any variance (whether positive or negative, expressed as a percentage) between (1) the aggregate disbursements, on a line-item by line-item basis, made during such Variance Testing Period by the Debtors against the aggregate disbursements for each such line-item for the Variance Testing Period set forth in the applicable

Approved Budget and (2) the cumulative disbursements made during such Variance Testing Period to the cumulative disbursements for such Variance Testing Period set forth in the applicable Approved Budget, which variance report shall include a report from a Financial Officer of the Borrower identifying and addressing any variance of actual performance to projected performance for the prior week; ~~and~~ (iii) to the DIP Lenders, the ABL Lender, the MAALT Lender and the Committee a rolling 13-week cash flow forecast, together with a reconciliation for the prior week, the prior 4-week cumulative period and the cumulative period from the Petition Date of actual expenses and disbursements (including professional fees) and sales receipts as to the amounts set forth in the then applicable Approved Budget for such periods in form and substance satisfactory to the DIP Agent; and (iv) concurrently to the Committee, all financial reporting as provided to the DIP Agent, the DIP Lenders, the ABL Lender, or the MAALT Lender under this Final Order, the DIP Credit Agreement or otherwise.

25. **Further Assurances.** The Debtors shall execute and deliver to the DIP Agent, the DIP Lenders, the Term Loan Agent, and the Term Loan Lenders all such agreements, financing statements, instruments and other documents as the DIP Agent, DIP Lenders, Term Loan Agent, and Term Loan Lenders may reasonably request to evidence, confirm, validate or perfect the DIP Liens or the Adequate Protection Liens granted pursuant hereto. Further, the Debtors are authorized ~~and directed~~ to do and perform all acts, to make, execute and deliver all instruments and documents (including, without limitation, the execution of additional security agreements, mortgages, financing statements collateral agreements, collateral trust agreements, deposit account control agreements, blocked account control agreements, securities account control agreements, and other collateral documents and agreements), and to pay all fees and expenses that may be required or necessary for the Debtors' performance under the DIP Loan

Documents, including, without limitation, (i) the execution of the DIP Loan Documents and (ii) the payment of the fees, costs, and other expenses described in the DIP Loan Documents as and when such fees, costs, and expenses become due from the proceeds of the DIP Facility.

26. **Proofs of Claim.** Each of the Term Loan Agent and Term Loan Lenders; ~~the ABL Lender, and the MAALT Lender~~ will not be required to file proofs of claim in any of the Chapter 11 Cases or any successor cases for any claim allowed herein, other than a proof of claim for a Term Adequate Protection Superpriority Claim. The Debtors' Stipulations shall be deemed to constitute a timely filed proof of claim with respect to the Term Loan Documents and the Term Loan Obligations; ~~the ABL Loan Documents and the ABL Obligations, and the MAALT Loan Documents and the MAALT Obligations~~. Notwithstanding the foregoing, each of (i) the DIP Agent, for the benefit of the DIP Secured Parties; and (ii) the Term Loan Agent, for the benefit of the Term Loan Secured Parties; ~~(iii) the ABL Lender; and (iv) the MAALT Lender,~~ is authorized and entitled, but not required, in its sole discretion, to file (and amend and/or supplement) in each of the Chapter 11 Cases or successor cases proofs of claim with respect to the DIP Loans; and the Term Loans; ~~the ABL Obligations and the MAALT Obligations~~.

27. **Preservation of Rights.**

(a) **Non-Consensual Modification or Extension of InterimFinal Order.** The Debtors irrevocably waive any right to seek any amendment, modification, or extension of this ~~Interim~~Final Order (including through any chapter 11 plan of reorganization) without the prior written consent of the DIP Lenders, and no such consent shall be implied by any other action, inaction, or acquiescence of the DIP Lenders. In the event any or all of the provisions of this ~~Interim~~Final Order are hereafter modified, amended, or vacated by a subsequent order of this Court or any other court, such modification,



amendment, or vacatur shall not affect the validity, perfection, priority, allowability, enforceability, or non-avoidability of any advances, payments, or use of cash authorized or made hereby or pursuant to the DIP Facility, or lien, claim, priority, or other DIP Protections (as defined below) authorized or created hereby or pursuant to the DIP Facility. Based on the findings set forth in this ~~Interim~~Final Order and in accordance with section 364(e) of the Bankruptcy Code in the event any or all of the provisions of this ~~Interim~~Final Order are hereafter reversed, modified, vacated, or stayed by a subsequent order of this Court or any other court, the DIP Lenders shall be entitled to the protections provided in section 364(e) of the Bankruptcy Code and, notwithstanding any such reversal, modification, vacatur, or stay, any use of Cash Collateral, DIP Loans, or any protections granted under this ~~Interim~~Final Order, the DIP Loan Documents, the Bankruptcy Code and applicable law (the “DIP Protections”) incurred or granted by the Debtors prior to the actual receipt of written notice by the DIP Agent of the effective date of such reversal, modification, vacatur, or stay shall remain in full force and effect and be binding on all parties in interest and be governed in all respects by the original provisions of this ~~Interim~~Final Order (and shall maintain their respective priorities as provided by this ~~Interim~~Final Order).

(b) Modifications of DIP Loan Documents. The Debtors, DIP Agent, and DIP Lenders are hereby authorized to implement, in accordance with the terms of the DIP Loan Documents, any non-material modifications (including without limitation, any change in the number or composition of the DIP Lenders) of the DIP Loan Documents without further Order of this Court; provided, that the Debtors shall provide the Committee notice of any such non-material amendments to the DIP Loan Documents.

(c) Dismissal. If any order dismissing any of these Chapter 11 Cases under section 1112 of the Bankruptcy Code or otherwise is at any time entered, then notwithstanding any such dismissal (i) the DIP Protections and all other rights, remedies, liens, priorities, privileges, protections, and benefits granted to the DIP Lenders, shall remain in full force and effect and be binding on all parties in interest and be governed in all respects by the provisions of this ~~Interim~~Final Order (and shall maintain their respective priorities as provided by this ~~Interim~~Final Order) until all DIP Loans have been paid in full, and such order of dismissal shall so provide; and (ii) this Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing such DIP Protections and all other rights, remedies, liens, priorities, privileges, protections, and benefits granted to the DIP Lenders.

(d) Survival of the ~~Interim~~Final Order. The provisions of this ~~Interim~~Final Order, the DIP Loan Documents, any actions taken pursuant hereto or thereto, all of the DIP Protections, and all other rights, remedies, liens, priorities, privileges, protections, and benefits granted to the DIP Lenders shall survive, and shall not be modified, impaired, or discharged by, the entry of any order (i) confirming any plan of reorganization in any of these Chapter 11 Cases or successor cases; (ii) converting any of these Chapter 11 Cases to a case under chapter 7; (iii) dismissing any of these Chapter 11 Cases; (iv) withdrawing of the reference of any of these Chapter 11 Cases or any successor cases; (v) providing for abstention from handling or retaining of jurisdiction in any of these Chapter 11 Cases or any successor case in this Court; (vi) terminating the joint administration of these Chapter 11 Cases or any successor cases, or (vii) by any other act or omission. The terms and provisions of this ~~Interim~~Final Order, including all

of the DIP Protections and all other rights, remedies, liens, priorities, privileges, protections, and benefits granted to the DIP Secured Parties shall continue in full force and effect and be binding on all parties in interest notwithstanding the entry of any such order referenced above, shall continue in full force and effect in these proceedings and in any successor cases, and shall maintain their respective priorities as provided by this ~~Interim~~Final Order.

28. **Insurance Policies.** ~~Upon entry of this Interim Order, the~~The DIP Agent shall be deemed to be, without any further action or notice, named as additional insureds and loss payees, as applicable, on each insurance policy maintained by the Debtors that in any way covers the DIP Collateral, other than any D&O policy the Debtors maintain, and subject to the rights of the ABL Lender with respect to the ABL Priority Collateral, and the Debtors shall take such actions as are reasonably requested by the DIP Agent from time to time to evidence or effectuate the foregoing.

29. **Authorized Signatories.** The signature of the Authorized Officer (as defined in the Debtors' corporate resolutions filed with the Petition) or any officer of the Debtors or Debtors' attorneys, appearing on any one or more of the DIP Loan Documents, shall be sufficient to bind the Debtors. No board of directors or other approval shall be necessary.

30. **No Requirement to Accept Title to Collateral.** The DIP Lenders and Term Loan Lenders shall not be obligated to accept title to any portion of the DIP Collateral or Term Loan Collateral in payment of the indebtedness owed to such parties by the Debtors, in lieu of payment in cash or cash equivalents, nor shall any of the DIP Lenders or Term Loan Lenders be obligated to accept payment in cash or cash equivalents that is encumbered by any interest of any person or entity other than the DIP Lenders or Term Loan Lenders.

31. **Binding Effect.** Subject only to Paragraph 21 above, the provisions of this ~~Interim~~Final Order, including all findings herein, and the DIP Loan Documents shall be binding upon all parties in interest in these Chapter 11 Cases, including the DIP Secured Parties, the Prepetition Secured Parties, any other secured or unsecured creditor, the Committee, ~~if any,~~ and the Debtors and their respective estates, 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 these Chapter 11 Cases, in any successor cases, or upon dismissal; provided however, that the DIP 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 these Chapter 11 Cases or any successor cases.

32. **506(c) Waiver.** ~~Upon the entry of the Final Order, and except~~Except to the extent of the Carve-Out, no expenses of administration of the Chapter 11 Cases or any future proceeding that may result therefrom, including liquidation in bankruptcy or other proceedings under the Bankruptcy Code, shall be charged against or recovered from (i) the Term Loan Priority Collateral or (ii) the DIP Collateral that is not ABL Priority Collateral or MAALT Collateral pursuant to section 506(c) of the Bankruptcy Code or any similar principle of law, without the prior written consent of the DIP Agent and the Prepetition Agent, and no such consent shall be implied from any other action, inaction, or acquiescence by the DIP Agent, the DIP Lenders, the Term Loan Agent or the Term Loan Lenders. The Debtors shall irrevocably waive and shall be prohibited from asserting any claim described in this Paragraph 32, under

section 506(c) of the Bankruptcy Code or otherwise, for any costs and expenses incurred in connection with the preservation, protection or enhancement of, or realization by the Term Loan Secured Parties or the DIP Secured Parties upon the (i) the Term Loan Priority Collateral or (ii) the DIP Collateral that is not ABL Priority Collateral (as applicable) or MAALT Collateral (as applicable); provided, that nothing in this Order shall prohibit the Debtors from asserting any claim described in this Paragraph 32, under section 506(c) of the Bankruptcy Code or otherwise, for any costs and expenses incurred in connection with the preservation, protection or enhancement of, or realization by the ABL Lender upon the ABL Priority Collateral or the MAALT Lender upon the MAALT Collateral. [The waiver of section 506\(c\) of the Bankruptcy Code contained herein shall not apply for purposes of any hypothetical chapter 7 liquidation analysis contemplated by section 1129\(a\)\(7\)\(A\)\(ii\) of the Bankruptcy Code.](#)

33. **No Waiver.** The failure of the DIP Secured Parties or the Prepetition Secured Parties to seek relief or otherwise exercise their rights and remedies under this ~~Interim~~[Final](#) Order, the Term Loan Agreement, the DIP Loan Documents, or otherwise (or any delay in seeking or exercising same) shall not constitute a waiver of any of such parties' rights hereunder, thereunder, or otherwise. Nothing contained in this ~~Interim~~[Final](#) Order (including the authorization of the use of any Cash Collateral) shall impair or modify any rights, claims, or defenses available in law or equity to the DIP Lenders to assert rights of setoff or other rights with respect thereto as permitted by law (or the right of a Debtors to contest such assertion). Except as prohibited by this ~~Interim~~[Final](#) Order, the entry of this ~~Interim~~[Final](#) Order is without prejudice to, does not constitute a waiver of, expressly or implicitly, and does not otherwise impair, any right or ability of the DIP Secured Parties, Term Loan Secured Parties, ABL Lender, and MAALT Lender under the Bankruptcy Code or under non-bankruptcy law to (i) request

conversion of these Chapter 11 Cases to cases under chapter 7, dismissal of these Chapter 11 Cases, or the appointment of a trustee or examiner in these Chapter 11 Cases, or to oppose the use of Cash Collateral in any successor case or on terms other than those set forth in this ~~Interim~~Final Order; (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 seek early termination of the Debtors' exclusive rights to propose a plan under the Bankruptcy Code; or (iii) except as expressly provided herein, exercise any of the rights, claims, or privileges (whether legal, equitable, or otherwise) of the DIP Lenders under the DIP Loan Documents, the Bankruptcy Code, or other non-bankruptcy law. Except to the extent otherwise provided in this ~~Interim~~Final Order or by law, neither the commencement of these Chapter 11 Cases nor the entry of this ~~Interim~~Final Order shall limit or otherwise modify the rights and remedies of the DIP Secured Parties, Term Loan Secured Parties, ABL Lender, and MAALT Lender with respect to any non-Debtor entities or their respective assets, whether such rights and remedies arise under the Term Credit Agreement, applicable law, or equity.

34. **No Waiver of Prepetition Secured Parties' Agreement Provisions; Reservation of Rights.** Except as otherwise specifically provided in this ~~Interim~~Final Order, nothing contained in this ~~Interim~~Final Order shall be deemed a waiver or constitute a consent to the modification of any provision contained in the Term Loan Agreement by the Term Loan Lenders, the ABL Agreement by the ABL Lender, or the MAALT Facility by the MAALT Lender including, but not limited to, the incurrence or issuance of any indebtedness by the Debtors, the incurrence of any lien in connection therewith or the making of any payment by the Debtors.

(a) No Third Party Rights. Except as explicitly provided for herein or in the DIP Loan Documents, the ABL Loan Documents, or the MAALT Loan Documents, this ~~Interim~~Final Order does not create any rights for the benefit of any third party, creditor, equity holder, or direct, indirect, or incidental beneficiary. In determining to make any loan under the DIP Loan Documents or to permit the use of Cash Collateral or in exercising any rights or remedies as and when permitted pursuant to this ~~Interim~~Final Order or the DIP Loan Documents, the DIP Lenders and the Term Loan Lenders shall not (i) 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; or (ii) owe any fiduciary duty to the Debtors, their respective creditors, shareholders, or estates.

(b) No Marshaling. ~~Upon to the entry of the~~Subject in all respects to paragraphs 11 and 12 of this Final Order, in no event shall the Term Loan Secured Parties, the DIP Agent or the DIP Lenders, ~~the ABL Lender or the MAALT Lender~~ be subject to the equitable doctrine of “marshaling” or any similar doctrine with respect to the Collateral.

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

(d) Enforceability. This ~~Interim~~Final Order shall constitute findings of fact and conclusions of law pursuant to the Bankruptcy Rule 7052 and shall take effect and be fully enforceable *nunc pro tunc* to the Petition Date immediately upon execution hereof. Notwithstanding Bankruptcy Rules 4001(a)(3), 6003, or 6004, or any other Bankruptcy

Rule or Bankruptcy Local Rule, this ~~Interim~~Final Order shall be immediately effective and enforceable upon its entry, and there shall be no stay of execution or effectiveness of this ~~Interim~~Final Order.

(e) Reservation of Rights. The DIP Lenders, the Term Loan Lenders, the ABL Lender~~and~~, the MAALT Lender each expressly reserve the right to object to entry of any order of the Court that provides for the sale or other disposition of all or substantially all of the assets of the Debtors (or any other sale or other disposition of assets of any of the Debtors outside the ordinary course of business) 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 respective priority balances due to each of (i) the ABL Lender for the ABL Facility in connection with any disposition of any ABL Priority Collateral, (ii) the MAALT Lender for the MAALT Facility in connection with any disposition of any MAALT Collateral, and (iii) the DIP Lenders in connection with the DIP Loans.

~~35. Final Hearing. A final hearing to consider the relief requested in the Motion on a final basis shall be held on July 6, 2020, at 2:30 p.m. (Prevailing Central Time); any objections or responses to the Motion shall be filed and served so as to be actually received on or prior to, July 1, 2020, at 5:00 p.m. (Prevailing Central Time); and any replies to any objections or responses to the Motion shall be filed and served so as to be actually received on or prior to July 3, 2020, at 5:00 p.m. (Prevailing Central Time).~~

35. Claims of Taxing Authorities. Nothing in this Final Order or in any prior order shall be construed to grant or acknowledge claims and liens that prime the prepetition and postpetition liens and claims of Hood CAD, Pecos County, Reagan County, Reeves County,



Tarrant County, Tom Green CAD, Dilley ISD, the Frio Hospital District, Ward County and Winkler County in connection with ad valorem property taxes or their right to the payment from the proceeds of their collateral in connection with a sale of the Debtors' assets.

36. **Retention of Jurisdiction.** This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this ~~Interim~~Final Order.

**### END OF ORDER ###**

**Submitted by:**

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**PROPOSED ATTORNEYS FOR DEBTORS**

**Exhibit A**

**DIP Credit Agreement**

**Exhibit B**

**DIP Budget**

<b>Summary report:</b> <b>Litera® Change-Pro for Word 10.6.0.7 Document comparison done on</b> <b>7/9/2020 11:58:34 AM</b>	
<b>Style name:</b> Default Style	
<b>Intelligent Table Comparison:</b> Active	
<b>Original filename:</b> Vista - Interim DIP Order.doc	
<b>Modified DMS:</b> iw://DMSUS/US2008/17084689/16	
<b>Changes:</b>	
<u>Add</u>	267
<del>Delete</del>	285
<u>Move From</u>	10
<u>Move To</u>	10
<u>Table Insert</u>	0
<del>Table Delete</del>	0
<u>Table moves to</u>	0
<del>Table moves from</del>	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
<b>Total Changes:</b>	<b>572</b>

## **EXHIBIT C**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION**

In re:

Vista Proppants and Logistics, LLC, et al.,

Debtors.<sup>1</sup>

Chapter 11

Case No. 20-42002-elm11

(Jointly Administered)

**FINAL ORDER (I) AUTHORIZING THE DEBTORS TO  
(A) OBTAIN POST-PETITION FINANCING PURSUANT TO 11 U.S.C. §§ 105,  
361, 362, 363(c), 363(e), 364(c), 364(d)(1) AND 364(e) AND (B) UTILIZE CASH  
COLLATERAL OF PREPETITION SECURED ENTITIES, (II) GRANTING  
ADEQUATE PROTECTION TO PREPETITION SECURED ENTITIES,  
(III) SCHEDULING A FINAL HEARING PURSUANT TO BANKRUPTCY  
RULES 4001(b) AND 4001(c), AND (IV) GRANTING RELATED RELIEF**

<sup>1</sup> The Debtors in these Chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, include: Vista Proppants and Logistics, LLC (7817) ("Vista OpCo"); VPROP Operating, LLC (0269) ("VPROP"); Lonestar Prospects Management, L.L.C. (8451) ("Lonestar Management"); MAALT Specialized Bulk, LLC (2001) ("Bulk"); Denetz Logistics, LLC (8177) ("Denetz"); Lonestar Prospects, Ltd. (4483) ("Lonestar Ltd."); and MAALT, LP (5198) ("MAALT"). The location of the Debtors' service address is 4413 Carey Street, Fort Worth, TX 76119-4219.

This matter is before the Court on the motion dated June 10, 2020 (the “Motion”)<sup>2</sup> of Vista Proppants and Logistics, LLC and its affiliated debtors, as debtors-in-possession (collectively, the “Debtors”) in the above-captioned chapter 11 cases (collectively, the “Chapter 11 Cases”), for entry of a final order (this “Final Order”), pursuant to sections 105, 361, 362, 363(c), 363(e), 364(c), 364(d)(1) and 364(e) of title 11 of the United States Code (the “Bankruptcy Code”), Rules 2002, 4001(b) and (c), 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rules 4001-1 and 9013-1 of the Local Rules of the United States Bankruptcy Court for the Northern District of Texas (together, the “Local Rules”), seeking, among other things:

(i) authorization for VPROP, as a debtor and debtor-in-possession (the “DIP Borrower”), to obtain priming, senior secured, superpriority, debtor-in-possession post-petition financing and for the remaining Debtors (each, a “DIP Guarantor,” and collectively, the “DIP Guarantors”), as debtors and debtors-in-possession, to guarantee unconditionally the DIP Borrower’s obligations under a senior secured term loan credit facility (the “DIP Facility”) consisting of non-amortizing senior secured delayed draw term loans (the “DIP Loans”) in an aggregate principal amount of up to \$11.0 million (the “DIP Commitment”), in accordance with a debtor-in-possession credit agreement by and among the DIP Borrower, the DIP Guarantors, Ares Capital Corporation (“Ares”), as administrative agent (in such capacity, the “DIP Agent”), and the lenders party thereto (collectively, the “DIP Lenders” and together with the DIP Agent, the “DIP Secured Parties”), substantially similar to the form attached hereto as **Exhibit A** (as the same may be amended, restated, supplemented or otherwise modified from time to time pursuant to the terms thereof, the “DIP Credit Agreement”), and the other definitive documentation with respect to the DIP Facility (collectively with the DIP Credit Agreement and the related security documents, the “DIP Loan Documents”);

(ii) authorization for the Debtors to (a) execute and enter into the DIP Loan Documents, (b) pay fees and reimburse expenses under the DIP Loan Documents, as and in the amounts described in the DIP Loan Documents from the proceeds of the DIP Facility, and (c) perform such other and further acts as may be required in connection with the DIP Loan Documents;

<sup>2</sup> All defined terms shall have the meaning ascribed to them in the Motion or DIP Credit Agreement (as defined below) unless otherwise defined herein.

(iii) authorization for the Debtors to grant (a) valid, enforceable, nonavoidable and fully perfected security interests and liens to the DIP Agent, for the benefit of the DIP Secured Parties, on all DIP Collateral (as defined below) to secure all obligations of the Debtors under and with respect to the DIP Facility (such obligations, the “DIP Obligations”) and (b) subject only to the Carve-Out and the ABL Lender’s and the MAALT Lender’s credit bid and lien rights (as set forth herein), superpriority claims (including a superpriority administrative expense claim pursuant to section 364(c)(1) of the Bankruptcy Code) to the DIP Agent, for the benefit of the DIP Lenders, having recourse to all prepetition and postpetition property of the Debtors’ estates, now owned or hereafter acquired;

(iv) authorization for the proceeds of the DIP Facility to be funded on each applicable funding date into the DIP Cash Collateral Account (as defined below); and for the Debtors’ use of Cash Collateral (as defined below) solely in accordance with the Approved Budget (as defined below) then in effect (the initial version of which is attached hereto as **Exhibit B**), subject to the Budget Variance (as defined below), and the collection and application of Cash Collateral, in each case pursuant to the terms and conditions set forth in this Final Order and the DIP Credit Agreement;

(v) subject to the Carve-Out and the ABL Lender’s and the MAALT Lender’s credit bid and lien rights (as set forth herein), solely to the extent of the diminution in value of their collateral, authorization for the Term Loan Secured Obligors (as defined below) under the Term Loan Facility (as defined below) to provide the Term Loan Secured Parties (as defined below) adequate protection in the form of (a) a superpriority administrative expense claim as contemplated by section 507(b) of the Bankruptcy Code and validly perfected liens on and security interests in the DIP Collateral, all in accordance with the relative priorities set forth herein, and (b) the Adequate Protection Payments (as defined below);

(viii) the waiver by the Debtors of any right to surcharge any of the Term Loan Secured Parties’ collateral pursuant to section 506(c) of the Bankruptcy Code;

(ix) modification of the automatic stay imposed under section 362 of the Bankruptcy Code to the extent necessary to permit the (i) Debtors, (ii) DIP Secured Parties, and (iii) Term Loan Secured Parties to implement the terms of this Final Order;

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

(xi) the scheduling of a final hearing (the “Final Hearing”) on the Motion no later than 30 days after the Petition Date, to consider entry of a Final Order granting the relief requested in the Motion on a final basis.



The initial hearing on the Motion having been held by this Court on June 9, 2020; and this Court having found that, under the circumstances, due and sufficient notice of the Motion and Final Hearing was provided by the Debtors as set forth in Paragraph C of this Final Order, and this Court having considered all the pleadings filed with this Court; and having overruled all unresolved objections to the relief granted in this Final Order; and upon the record made by the Debtors at the Final Hearing, and after due deliberation and consideration and good and sufficient cause appearing therefore:

**THIS COURT MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:<sup>3</sup>**

A. **Petition Date.** On June 9, 2020 (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 Northern District of Texas, Fort Worth Division (this “Court”). The Debtors continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No party has requested the appointment of a trustee or examiner in these Chapter 11 Cases. The official committee of unsecured creditors (the “Committee”) was appointed on June 23, 2020.

B. **Jurisdiction and Venue.** This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and the *Order of Reference of Bankruptcy Cases and Proceedings Nunc Pro Tunc* entered by the United States District Court for the Northern District of Texas, dated August 3, 1984. This is a core proceeding pursuant to 28 U.S.C. § 157(b), and the Debtors confirmed their consent to the entry of a final order by the Court in connection with the Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter

<sup>3</sup> Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact, as appropriate pursuant to Bankruptcy Rule 7052.

final orders or judgments in connection with the Motion consistent with Article III of the United States Constitution. Venue of the Debtors' Chapter 11 Cases and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief sought herein are sections 105, 361, 362, 363, and 364 of the Bankruptcy Code, Rule 4001(b) and (c) and 6004 of the Bankruptcy Rules, and Local Rules 4001-1 and 9013-1.

C. **Notice.** Notice of the Final Hearing has been provided by the Debtors to: (i) the twenty (20) largest unsecured creditors for each of the Debtors; (ii) the Office of the United States Trustee for the Northern District of Texas (the "U.S. Trustee"); (iii) counsel to the proposed DIP Agent; (iv) counsel to the Term Loan Agent (as defined below); (v) counsel to the ABL Lender (as defined below); (vi) counsel to the MAALT Lender (as defined below); (vii) all known parties asserting a lien against the DIP Collateral (as defined below); (viii) counsel for any official committees appointed by this Court; (ix) all governmental agencies having a regulatory or statutory interest in these cases; (x) counsel to the Committee; and (xi) any other party that has filed a request for notice pursuant to Bankruptcy Rule 2002 or are required to receive notice under the Bankruptcy Rules and the Local Rules. Under the circumstances, such notice of the 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 the Final Order.

D. **Debtors' Stipulations.** Subject to the rights specifically set forth in Paragraph 21 below, the Debtors, on their behalf and on behalf of their estates, admit, stipulate, acknowledge, and agree (the "Debtors' Stipulations") as follows:

i. **Term Loan Documents.** Prior to the Petition Date, the Term Loan Agent and the Term Loan Lenders made loans, advances and provided other financial

accommodations under a term loan facility (the “Term Loan Facility”) to VPROP (in its capacity as borrower under the Term Loan Agreement, “Term Loan Borrower”) pursuant to the terms and conditions set forth in (1) that certain *Amended and Restated Senior Secured Credit Agreement* dated as November 9, 2017 (as amended, supplemented or otherwise modified prior to the Petition Date, the “Term Loan Agreement”) by and among Vista Proppants and Logistics, LLC, the Term Loan Borrower, the lenders from time to time party thereto (the “Term Loan Lenders”) and Ares, as administrative agent (in such capacity, the “Term Loan Agent” and together with the Term Loan Lenders, the “Term Loan Secured Parties”); and (2) all other agreements, documents and instruments executed and/or delivered with, to, or in favor of the Term Loan Agent or any Term Loan Lender in connection with the Term Loan Agreement, including, without limitation, certain security agreements, mortgages, financing statements, collateral agreements, collateral trust agreements, deposit account control agreements, blocked account control agreements, securities account control agreements, and other collateral documents and agreements (as amended, restated, supplemented or otherwise modified from time to time and in effect on the date hereof, collectively, the “Term Loan Documents”).

ii. Term Loan Obligations. As of the Petition Date, the DIP Borrower and the DIP Guarantors were truly and justly indebted to the Term Loan Agent and the Term Loan Lenders without defense, counterclaim or offset of any kind, pursuant to the Term Loan Documents, in the aggregate principal amount of \$369,300,998.02 in respect of the loans made under the Term Loan Agreement, plus accrued and unpaid interest with respect thereto and any additional fees, costs and expenses (including any fees and expenses of attorneys, financial advisors, and other professionals that are chargeable or reimbursable under the Term Loan Documents) now or hereafter due under the Term Loan Agreement and the other Loan

Documents (as defined in the Term Loan Agreement) (collectively, together with all other obligations arising under the Term Loan Documents (including, without limitation, the “Obligations” (as defined in the Term Loan Agreement), the “Term Loan Obligations”). The Term Loan Obligations constitute allowed, legal, valid, binding, enforceable and non-avoidable obligations of the DIP Borrower and DIP Guarantors, and are not subject to any offset, defense, counterclaim, avoidance, recharacterization or subordination pursuant to the Bankruptcy Code or any other applicable law, and Debtors do not possess, shall not assert, hereby forever release, and are forever barred from bringing any claim, counterclaim, setoff or defense of any kind, nature or description which would in any way affect the validity of the Term Loan Obligations.

iii. Term Loan Collateral. As of the Petition Date, the Term Loan Obligations were secured pursuant to the Term Loan Documents by valid, perfected, enforceable and non-avoidable liens upon and security interests in all the “Collateral” (as defined in the Term Loan Agreement and hereinafter referred to as the “Term Loan Collateral”), consisting of all or substantially all of the assets of VPROP, Lonestar Management and Lonestar Prospects (the “Term Loan Secured Obligors”), including without limitation, (x) first-priority liens on and security interests in all of the “Term Priority Collateral” (as defined in that certain Prepetition Intercreditor Agreement (as defined below)) owned by each Term Loan Secured Obligor (all such Term Loan Collateral in existence on the Petition Date, or the identifiable proceeds thereof, the “Term Loan Priority Collateral”) and (y) second-priority liens on and security interests in all accounts receivable and Finished Sand Inventory of Lonestar Prospects, any proceeds thereof, including bank accounts containing such proceeds, and general intangibles relating thereto in existence as of the Petition Date (the “ABL Priority Collateral” and (x) and (y) together, the “Term Loan Collateral”) subject only to (A) the liens specifically permitted under Section 9.04

of the Term Loan Agreement to the extent that such security interests, liens or encumbrances are (1) valid, perfected and non-avoidable security interests, liens or encumbrances existing as of the Petition Date, and (2) senior to and have not been or are not subject to being subordinated to the Term Loan Agent's and Term Loan Lenders' liens on and security interests in the Term Loan Collateral under the Term Loan Documents or otherwise avoided, and, in each instance, only for so long as and to the extent that such encumbrances are and remain senior and outstanding (hereinafter referred to as the "Term Loan Liens"), and (B) the terms and conditions of the Prepetition Intercreditor Agreement (as defined below). The Debtors do not possess and will not assert any claim, counterclaim, setoff or defense of any kind, nature or description which would in any way affect the validity, enforceability and non-avoidability of the Term Loan Agent's and Term Loan Lenders' liens, claims or security interests in the Term Loan Collateral.

iv. Validity of Term Loan Liens. The Term Loan Obligations constitute legal, valid, and binding Obligations (as defined in the Term Loan Agreement) of the Debtors; no offsets, defenses or counterclaims to the Term Loan Obligations exist; no portion of the Term Loan Obligations is subject to avoidance, disallowance, reduction or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law; the Term Loan Documents are valid and enforceable by the Term Loan Agent for the benefit of the Term Loan Lenders against each of the Debtors; the liens and security interests of the Term Loan Secured Parties constitute valid, binding, enforceable and perfected liens in and to the Term Loan Collateral, having the priority set forth in the Term Loan Documents and subject and subordinate only to (after giving effect to any applicable intercreditor or subordination agreement) Permitted Liens (as defined below) and the ABL Lender's (as defined below) liens with respect to the ABL Priority Collateral; the Term Loan Obligations constitute allowed secured claims against the

applicable Debtors' estates; and no claim or cause of action held by the Debtors exists against the Term Loan Agent, the Term Loan Lenders, or any of their respective agents, whether arising under applicable state or federal law (including, without limitation, any recharacterization, subordination, avoidance or other claims arising under or pursuant to sections 105, 510 or 542 through 553 of the Bankruptcy Code), or whether arising under or in connection with any of the Term Loan Documents (or the transactions contemplated thereunder), the Term Loan Obligations, or the Term Loan Secured Parties' liens, including without limitation, any right to assert any disgorgement or recovery;

v. Cash Collateral. All of the Debtors' cash, including any cash in all deposit accounts and collection accounts, wherever located, comprising proceeds of or otherwise arising from or relating to the Term Loan Collateral, constitutes "cash collateral" as such term is defined in section 363(a) of the Bankruptcy Code, of the Term Loan Secured Parties (collectively, the "Cash Collateral"); provided, however, that the ABL Lender has a senior lien on Cash Collateral that constitutes ABL Priority Collateral and the MAALT Lender has a senior lien on Cash Collateral that constitutes the MAALT Collateral. For the avoidance of doubt, and except as may be set forth in a separate order entered by the Court, nothing herein shall be deemed to authorize the Debtors' use of any Cash Collateral that constitutes ABL Priority Collateral or MAALT Collateral.<sup>4</sup>

E. Cash Collateral Account. Proceeds of the DIP Facility shall be funded on each applicable funding date into a cash collateral account at a bank to be mutually agreed upon by the DIP Agent and the DIP Borrower, over which the DIP Agent shall have a perfected

<sup>4</sup> The Debtors are not seeking authorization to use any Cash Collateral that constitutes ABL Priority Collateral or MAALT Collateral. As such, any use of the term "Cash Collateral" does not include cash collateral that constitutes ABL Priority Collateral or MAALT Collateral.

security interest and into which account the Loans will be funded on the date of each Borrowing (as defined in the DIP Credit Agreement) (the “DIP Cash Collateral Account”).

F. **Intercreditor Agreement.** That certain *Amended and Restated Intercreditor Agreement*, dated as of November 9, 2017 (as amended, supplemented or otherwise modified prior to the Petition Date, the “Prepetition Intercreditor Agreement”) by and among PlainsCapital Bank (the “ABL Lender”), the Term Loan Agent, and the Debtors party thereto sets forth subordination and other provisions governing the relative priorities and rights of the Term Loan Secured Parties and the ABL Lender.

G. **ABL Facility.** The ABL Lender and certain of the Debtors are a party to that certain prepetition *Amended and Restated Loan Agreement*, dated as of January 12, 2018 (as amended, supplemented or otherwise modified prior to the Petition Date, the “ABL Credit Agreement,” and the facility thereunder, the “ABL Facility”), by and among Lonestar Prospects, Ltd., Lonestar Prospects Holding Company, L.L.C., Gary B. Humphreys, Martin W. Robertson and the ABL Lender; and all other agreements, documents and instruments executed and/or delivered with, to, or in favor of the ABL Lender in connection with the ABL Credit Agreement, including, without limitation, certain security agreements, mortgages, financing statements, collateral agreements, collateral trust agreements, deposit account control agreements, blocked account control agreements, securities account control agreements, and other collateral documents and agreements (as amended, restated, supplemented or otherwise modified from time to time and in effect on the date hereof, collectively, the “ABL Documents”). Pursuant to the ABL Documents, the ABL Loan Obligors granted the ABL Lender (i) first priority liens in the ABL Priority Collateral and (ii) second priority liens in the Common Collateral (as defined in the Intercreditor Agreement) that is not ABL Priority Collateral (the “Second Priority ABL

Collateral” and (i) and (ii) together, the “ABL Liens” in the “ABL Collateral”). The ABL Lender reserves all rights concerning the actual collateral pledged to secure the debts owed to the ABL Lender by any one or more of the Debtors. The defined terms in this Final Order concerning the extent of the ABL Lender’s collateral shall not be construed, deemed or interpreted to be definitive legal or factual conclusions concerning the actual collateral pledged to secured the debts owed to the ABL Lender by any one or more of the Debtors. Accordingly, the term “ABL Priority Collateral”, as used herein, means and shall be construed and interpreted to mean and include any property of any one or more of the Debtors that is pledged in favor of the ABL Lender in a first priority, senior position to secure the repayment of certain debts owed to the ABL Lender by one or more of the Debtors. Likewise, the term “Second Priority ABL Collateral,” as used herein, means and shall be construed and interpreted to mean and include any property of any one or more of the Debtors that is pledged in favor of the ABL Lender in a second priority, junior position to secure the repayment of certain debts owed to the ABL Lender by one or more of the Debtors. Collectively, the term “ABL Collateral”, as used herein, means and shall be construed and interpreted to mean and include all property of any one or more of the Debtors that is pledged in favor of the ABL Lender to secure the repayment of certain debts owed to the ABL Lender by one or more of the Debtors, without distinction as to the priority of such liens and security interests held by and conveyed to the ABL Lender in such pledged property.

H. **MAALT Facility.** The MAALT Lender and certain Debtors are parties to that certain prepetition *Loan Agreement*, dated as of June 15, 2014 (as amended, supplemented, or otherwise modified prior to the Petition Date, the “MAALT Credit Agreement,” and the facility thereunder, the “MAALT Facility”), by and among MAALT, L.P., Denetz Logistics,



L.L.C., GHMR Operations, L.L.C., Gary B. Humphreys, Martin W. Robertson, the Trust Guarantors (as defined therein) and PlainsCapital Bank (the “MAALT Lender”, and together with the ABL Lender and the Term Loan Secured Parties, the “Prepetition Secured Parties”); and all other agreements, documents and instruments executed and/or delivered with, to or in favor of the MAALT Lender in connection with the MAALT Credit Agreement, including, without limitation, certain security agreements, mortgages, financing statements, collateral agreements, collateral trust agreements, deposit account control agreements, and other collateral documents and agreements (as amended, restated, supplemented or otherwise modified from time to time and in effect on the date hereof, collectively, the “MAALT Documents”). Pursuant to the MAALT Documents, the MAALT Loan Obligors granted the MAALT Lender first priority liens in certain collateral (the “MAALT Collateral”).

**I. Findings Regarding the DIP Facility.**

i. Need for Postpetition Financing. Based upon the pleadings and proceedings of record in the Chapter 11 Cases, the Debtors do not have sufficient available sources of working capital and financing to carry on the operation of their businesses without the DIP Facility and authorized use of Cash Collateral as provided herein. As a result of the Debtors’ financial condition, the use of Cash Collateral alone will be insufficient to meet the Debtors’ immediate post-petition liquidity needs. The Debtors’ ability to maintain business relationships with their vendors, suppliers, and distributors, pay their employees, and otherwise finance their operations during the Chapter 11 Cases is essential to the Debtors’ continued viability and to their ability to continue operations while seeking confirmation of a plan of reorganization in order to maximize the value of their estates. In the absence of the DIP Facility and the authorization by this Court to use Cash Collateral as set forth herein, the Debtors’

businesses and estates would suffer immediate and irreparable harm, including, without limitation, a cessation of substantially all of their operations. The preservation, maintenance, and enhancement of the going concern value of the Debtors are of the utmost significance and importance to a successful restructuring of the Debtors under chapter 11 of the Bankruptcy Code. Use of Cash Collateral and the DIP Facility will also permit the Debtors to preserve the enterprise value of their businesses pending the confirmation and consummation of a plan of reorganization.

ii. No Credit on More Favorable Terms. Based upon the pleadings and proceedings of record in the Chapter 11 Cases, the Debtors are unable to obtain sufficient interim and long-term financing from sources other than the DIP Lenders on terms more favorable than under the DIP Facility and the DIP Loan Documents, and are not able to obtain unsecured credit allowable as an administrative expense under section 503(b)(1) of the Bankruptcy Code. The Debtors are also unable to obtain secured credit allowable under sections 364(c)(1), 364(c)(2) and 364(c)(3) of the Bankruptcy Code for the purposes set forth in the DIP Credit Agreement without the Debtors (i) granting to the DIP Agent and the DIP Lenders, subject to the Carve-Out, (a) the DIP Superpriority Claims (as defined below) and (b) the DIP Liens (as defined below) in the DIP Collateral (as defined below), in each case under the terms and conditions set forth in this Final Order and the DIP Loan Documents, and (ii) providing the DIP Lenders the adequate protection as provided herein.

iii. Appropriateness of DIP Facility Terms. The terms of the DIP Facility, as described in this Final Order and the DIP Loan Documents, and the use of the Term Loan Collateral, DIP Collateral (as defined below), and Cash Collateral (other than ABL Priority Collateral and MAALT Collateral) pursuant to this Final Order are fair and reasonable, reflect

the Debtors' exercise of sound business judgment consistent with their fiduciary duties, and constitute reasonably equivalent value and fair consideration.

J. **Final Financing.** During these Chapter 11 Cases, the DIP Lenders are willing to provide up to \$11.0 million for borrowing by the DIP Borrower. The Initial Borrowing (as defined in the Interim Order) and all other conditions to borrowing under the DIP Credit Agreement were satisfied, including the (i) execution of the DIP Credit Agreement by the DIP Borrower and each of the DIP Guarantors and delivery of such executed DIP Credit Agreement to the DIP Agent; and (ii) the other terms and conditions of the DIP Credit Agreement.

K. **Adequate Protection.** The adequate protection provided to (i) the Term Loan Secured Parties on account of any diminution in the value of such parties' interests in the Term Loan Collateral from and after the Petition Date, including, without limitation, resulting from the DIP Facility, is consistent with and authorized by the Bankruptcy Code and is offered by the Debtors to protect such parties' interests in the Term Loan Collateral in accordance with sections 361, 362 and 363 of the Bankruptcy Code. The consent of the Term Loan Secured Parties to the priming of their liens by the DIP Liens (1) does not constitute, and shall not be construed as constituting, an acknowledgment or stipulation by the Term Loan Secured Parties that their interests in the Term Loan Collateral are adequately protected pursuant to this Final Order or otherwise; and (2) is conditioned upon entry of this Final Order and does not and shall not be deemed to constitute consent to the priming of the Term Loan Liens other than pursuant to this Final Order and the terms set forth herein. The adequate protection provided herein and other benefits and privileges contained herein are necessary in order to (i) protect the Term Loan

Secured Parties from the diminution in value of their Term Loan Collateral; and (ii) obtain the foregoing consents and agreements.

L. **Section 552(b)**. In light of the subordination of their liens and superpriority administrative claims (i) in the case of the DIP Secured Parties to the Carve-Out and the Permitted Liens (as defined below), and (ii) in the case of the Term Loan Secured Parties to the Carve-Out and the DIP Liens, each of the DIP Secured Parties and the ~~Prepetition~~Term Loan Secured Parties are 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 to any of the DIP Secured Parties or the ~~Prepetition~~Term Loan Secured Parties with respect to the proceeds, products, rents, issues or profits of any of the DIP Collateral or the ~~Prepetition~~Term Loan Secured Parties’ collateral, ~~and no expenses of administration of the Chapter 11 Cases or any future proceeding that may result therefrom, including liquidation in bankruptcy or other proceedings under the Bankruptcy Code, may be charged against proceeds, product, offspring or profits from any of the DIP Collateral or the Prepetition Secured Parties’ Collateral under section 552(b) of the Bankruptcy Code.~~ Subject to and immediately upon entry of the Final Order, the Debtors shall be deemed to have irrevocably waived, and to have agreed not to assert, any claim or right under sections 552-~~or 726~~(b) of the Bankruptcy Code seeking to avoid the imposition of the DIP Liens, ~~Prepetition Secured Parties’ liens (“Prepetition Secured Party~~Term Loan ~~Liens”)~~ or the Adequate Protection Liens (as defined below) on any property acquired by any of the Debtors or any of their estates ~~or seeking to surcharge any costs or expenses incurred in connection with the preservation, protection or enhancement of, or realization by, the DIP Agent, the DIP Lenders, or the Prepetition Secured Parties upon the DIP Collateral or the Prepetition Secured Parties’ collateral, as applicable.~~

M. **Business Judgment and Good Faith Pursuant to Section 364(e).**

i. **Debtors' Sound Business Judgment.** The DIP Lenders have indicated a willingness to provide postpetition secured financing via the DIP Facility to the Debtors in accordance with the terms of the DIP Loan Documents and this Final Order. The terms and conditions of the DIP Facility as set forth in the DIP Loan Documents and this Final Order, and the fees, expenses, and other charges paid and to be paid thereunder or in connection therewith, 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 sound business judgment consistent with their fiduciary duties. Such terms and conditions are supported by reasonably equivalent value and fair consideration.

ii. **DIP Lenders' Good Faith.** The DIP Lenders, the ~~Prepetition~~Term Loan Secured Parties and the Debtors, with the assistance of counsel and of their respective advisors, have acted in good faith and at arm's-length in, as applicable, negotiating, consenting to, and/or agreeing to, the DIP Facility, the Debtors' use of the ~~Prepetition~~Term Loan Secured Parties' collateral, the DIP Collateral (as defined below) and the Cash Collateral, the DIP Loan Documents and the protections set forth herein. The DIP Facility (including all advances that are made at any time to the Debtors under the DIP Loan Documents) and the Debtors' use of the Collateral and Cash Collateral shall be deemed to have been extended and/or consented to by the DIP Lenders 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 and good faith reliance upon the protections offered by section 364(e) of the Bankruptcy Code and this Final Order. Accordingly, the DIP Facility, adequate protection, and other protections identified herein shall be entitled to

the full protection of section 364(e) of the Bankruptcy Code in the event this Final Order or any provision hereof or thereof is vacated, reversed, amended, or modified on appeal or otherwise.

N. **Relief Essential; Best Interest.** The Debtors have requested immediate entry of this Final Order pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2) and Local Rules 2002-1 and 4001-1. Absent granting the relief set forth in this Final Order, the Debtors' estates, their business, and their ability to successfully reorganize or otherwise preserve the enterprise value of their operations will be immediately and irreparably harmed. Consummation of the DIP Facility and authorization of the use of Cash Collateral as set forth herein, in accordance with the DIP Facility and this Final Order, is therefore in the best interests of the Debtors' estates and consistent with their fiduciary duties. Based on all of the foregoing, sufficient cause exists for immediate entry of the Final Order pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2) and the applicable Local Rules.

Based on the foregoing, and upon the record made before this Court at the Final Hearing, and good and sufficient cause appearing therefor,

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:**

1. **Motion Granted.** The Motion is granted on the terms and conditions set forth in this Final Order. Any objections to the relief granted in this Final Order that have not previously been withdrawn are hereby overruled. This Final Order shall become effective immediately upon its entry.

2. **Approval of DIP Loan Documents; Authority Thereunder.** The Debtors are hereby authorized to enter into the DIP Loan Documents, including the DIP Credit Agreement, and such additional documents, instruments and agreements as may be reasonably required or requested by the DIP Agent and the DIP Lenders to implement the terms or effectuate

the purposes of this Final Order. The Debtors are authorized to comply with and perform all of the terms and conditions contained in the DIP Loan Documents, and ~~directed~~authorized to repay amounts borrowed, together with interest and fees thereon (including, without limitation, the fees in section 3.04 of the DIP Credit Agreement), as well as any other outstanding obligations to the DIP Lenders in accordance with and subject to the terms and conditions set forth in the DIP Loan Documents and this Final Order.

3. **Authorization to Borrow DIP Facility Loans and Use Cash Collateral.**

Upon finalizing and executing the DIP Credit Agreement and the other DIP Loan Documents, the DIP Borrower is immediately authorized to borrow from the DIP Lenders, and the Guarantors are immediately authorized to guaranty, initial borrowings under the DIP Facility of up to an aggregate principal amount of \$3.5 million of DIP Loans under the DIP Credit Agreement, subject to and in accordance with the terms of this Final Order and the DIP Credit Agreement. The Debtors are authorized to use the proceeds of the DIP Loans and the Cash Collateral only for the purposes described in Paragraph 15 of this Final Order. The DIP Facility and the Debtors' authorization to use the proceeds of the DIP Loans and the Cash Collateral will terminate upon the earliest to occur of (such earliest date, the "Termination Date"): (a) the date that is 180 days after the Petition Date (the "Scheduled Maturity Date"); (b) the effective date of a plan of reorganization or liquidation in the Chapter 11 Cases; (c) the consummation of a sale of all or substantially all of the assets of the Debtors pursuant to section 363 of the Bankruptcy Code or otherwise; (d) dismissal of the Chapter 11 Cases or conversion of the Chapter 11 Cases into cases under chapter 7 of the Bankruptcy Code; (e) the appointment of a trustee or receiver in one or more of the Chapter 11 Cases; (f) without the DIP Lenders' prior written consent, the date of filing of or express written support by the DIP Borrower for a plan of reorganization that is not

an Acceptable Plan (as defined below); (g) the date of termination of the DIP Lenders' commitments following the occurrence of an Event of Default under the DIP Credit Agreement; or (h) the acceleration of any outstanding DIP Loans in accordance with the terms of the DIP Credit Agreement and the DIP Loan Documents, unless such Termination Date is extended, as to the DIP Facility, with the prior written consent of the DIP Agent and the requisite lenders under the DIP Facility and, as to the use of Cash Collateral, with the prior written consent of the Term Loan Agent and the Required Lenders (as defined in the Term Loan Agreement).

4. **No Obligation to Fund.** The DIP Lenders and Term Loan Lenders each have no obligation to extend credit under the DIP Credit Agreement or permit the use of any DIP Collateral or Term Loan Collateral or any proceeds thereof, including Cash Collateral, as applicable, during the Chapter 11 Cases unless and until all conditions precedent to the extension of credit and/or use of DIP Collateral, Term Loan Collateral, or proceeds thereof under the DIP Loan Documents and this Final Order have been satisfied in full or waived in writing by DIP Secured Parties and/or the Term Loan Agent, as applicable.

5. **Collections and Disbursements.** Except as otherwise set forth herein, from the Petition Date until the DIP Loans have been paid in full in cash, all cash receipts, Cash Collateral, and all proceeds from the sale or other disposition of, or other revenue of any kind attributable to, any DIP Collateral that is now in, or shall hereafter come into, the possession or control of any of the Debtors, or to which any of the Debtors is now or shall hereafter become entitled (i) shall be subject to the DIP Liens and the Adequate Protection Liens (and shall be treated in accordance with this Final Order and the DIP Credit Agreement) and (ii) shall be, to the extent related to or arising from or in connection with the DIP Facility, promptly deposited only into the DIP Cash Collateral Account and may be accessed by the DIP Borrower only for



payment of expenses specified in the Approved Budget (subject to the Budget Variance). ~~All such amounts arising from or in connection with the Term Loan Priority Collateral (other than any amounts arising from or in connection with any ABL Priority Collateral or MAALT Collateral) shall be applied to the payment of outstanding DIP Loans in accordance with the DIP Credit Agreement.~~ For the avoidance of doubt, and for the sake of clarity, (i) the DIP Liens and Adequate Protection Liens on the ABL Priority Collateral shall be junior to the ABL Liens on such ABL Priority Collateral, and (ii) any Cash Collateral that constitutes ABL Priority Collateral shall be segregated in a separate debtor-in-possession depository account (“ABL Priority Collateral Account”) and shall not be used for any purpose unless authorized by a separate order of this Court. For the avoidance of doubt, and for the sake of clarity, (i) the DIP Liens and Adequate Protection Liens on the MAALT Collateral shall be junior to the MAALT Liens on such MAALT Collateral, and (ii) any Cash Collateral that constitutes MAALT Collateral shall be segregated in a separate debtor-in-possession depository account (“MAALT Collateral Account”) and shall not be used for any purpose unless authorized by a separate order of this Court.

6. **Perfection in Cash.** Subject to the Carve Out and the rights of the ABL Lender with respect to the ABL Priority Collateral and the rights of the MAALT Lender with respect to the MAALT Collateral, all financial institutions with which the Debtors maintain accounts containing Cash Collateral are authorized and directed to comply with any request of the DIP Agent to turn over to the DIP Agent all Cash Collateral (other than Cash Collateral constituting ABL Priority Collateral or MAALT Collateral) therein without offset or deduction of any kind; provided that any such request by the DIP Agent for turn over of Cash Collateral is made in accordance with the terms of this Final Order and the DIP Loan Documents. The DIP

Agent shall enjoy the benefit of (i) all deposit account control agreements, blocked account control agreements, securities account control agreements, and similar agreements to which the Term Loan Agent is a party, and (ii) all other deposit account control agreements, blocked account control agreements, securities account control agreements, and similar agreements to which any Debtor is a party. Notwithstanding and without minimizing the force of the foregoing, the Debtors are authorized and directed to enter into, and cause the financial institutions servicing the Debtors' deposit accounts to enter into, such deposit account control agreements and other collateral agreements with the DIP Agent and such financial institutions as the DIP Agent may require, or alternatively, the DIP Agent shall be entitled to enjoy the benefit of all control agreements to which the Debtor is a party, as set forth above, without the need to enter into any such new agreements.

7. **Interest on DIP Facility Loans.** The DIP Loans shall bear interest at the rates, which interest shall 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, and in each case shall be non-refundable and not subject to challenge in any respect and shall be payable without further notice, motion, or application to, order of, or hearing before, this Court. The DIP Loans will bear interest at a rate, at Borrower's option, equal to LIBOR plus 9.50% per annum, payable monthly in arrears. All interest shall be calculated using a 360-day year and actual days elapsed and shall be payable in cash. At any time when an Event of Default under the DIP Facility has occurred and is continuing, all outstanding amounts under the DIP Facility shall bear interest, to the fullest extent permitted by law, at the interest rate applicable to base rate loans plus 2.00% per annum (the "DIP Default Rate") and shall be payable on demand. Interest on overdue amounts under the DIP Facility shall also accrue at the DIP Default Rate.

8. **Payment of DIP Fees and Expenses.**

(a) **Professional Fees.** The Debtors are authorized ~~and directed~~ to pay (i) all fees when due under the DIP Credit Agreement (including, without limitation, any fees provided for under section 3.04 of the DIP Credit Agreement) in the amounts set forth in the DIP Credit Agreement and (ii) reasonable, documented fees, costs, and expenses incurred or accrued by the DIP Agent (the foregoing to include all unpaid prepetition fees, costs, and expenses incurred by the DIP Agent in connection with the DIP Facility) in connection with any and all aspects of the Chapter 11 Cases from the proceeds of the DIP Facility, including, without limitation, the reasonable fees and expenses of the DIP Agent's legal counsel, Sidley Austin LLP ("Sidley"), and financial advisor, FTI Consulting, Inc. ("FTI"), and other professionals hired by or on behalf of the DIP Agent (the "DIP Agent Professionals"). None of such fees, costs and expenses shall be subject to Court approval or U.S. Trustee guidelines, and no DIP Agent Professional shall be required to file with respect thereto any interim or final fee application with this Court. Copies of summary invoices submitted to the Debtors by such DIP Agent Professionals shall be forwarded to the U.S. Trustee, the Committee, and such other parties as this 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 any benefits of the attorney work product doctrine or other applicable privilege. If the Debtors,

Committee, or U.S. Trustee object to the reasonableness of the fees and expenses of any of the DIP Agent Professionals and cannot resolve such objection within fourteen (14) days of receipt of such invoices, then such party shall file with this Court and serve such objection (the “Fee Objection”) within seven (7) days thereafter, limited to the issue of the reasonableness of such fees and expenses, and any failure by any such Party to file a Fee Objection within such twenty-one (21) day period shall constitute a waiver of any right of such party to object to the applicable invoice. Notwithstanding any provision herein to the contrary, any objection to, and any hearing on an objection to, payment of any fees and expenses set forth in a professional fee invoice in respect of a DIP Agent Professional shall be limited to the reasonableness of the particular items or categories of the fees and expenses that are the subject of such objection. The Debtors shall timely pay in accordance with the terms and conditions of this Final Order (a) the undisputed fees, costs, and expenses reflected on any invoice to which a Fee Objection has been timely filed and (b) all fees, costs, and expenses on any invoice to which no Fee Objection has been timely filed. In addition, the Debtors are hereby authorized ~~and directed to~~ indemnify the DIP Agent and the other DIP Secured Parties (and each of their respective directors, officers, employees, agents, representatives, attorneys, consultants, advisors and controlling persons), in their respective capacities as DIP Agent and DIP Secured Parties, against any liability arising in connection with the DIP Loan Documents, to the extent set forth in the DIP Loan Documents, *provided, that* any such claims for indemnification shall be subject to approval by this Court. All such unpaid fees, costs, expenses and indemnities of the DIP Secured Parties shall (i) constitute DIP Obligations, (ii) be secured by the DIP Collateral, and (iii) be afforded all of the priorities and

protections afforded to other the DIP Obligations under this Final Order and the DIP Loan Documents.

(b) DIP Fees. The Debtors shall pay all fees when due under the DIP Credit Agreement in the amounts set forth in the DIP Credit Agreement from the proceeds of the DIP Facility.

9. Conditions Precedent. The DIP Lenders shall have no obligation to extend credit under the DIP Facility during the Final Period unless and until all conditions precedent to the extension of credit under this Final Order and the DIP Loan Documents have been satisfied in full or waived in writing by the DIP Agent at the direction of the DIP Lenders.

10. Validity of DIP Loan Documents. Upon execution and delivery of the DIP Loan Documents, the DIP Loan Documents shall constitute, and are hereby deemed to be, legal, valid and binding obligations of the Debtors, enforceable against each Debtor in accordance with the terms thereof for all purposes during the Chapter 11 Cases, in any subsequently converted case of any Debtor under chapter 7 of the Bankruptcy Code, or after dismissal of any of the Chapter 11 Cases. Any DIP Loans advanced under the DIP Credit Agreement pursuant to this Final Order will be made only to fund: (a) with respect to the Initial Borrowing, payments pursuant to any interim or final order entered by the Bankruptcy Court pursuant to any “first day” motions permitting the payment by the Debtors of any prepetition amounts then due and owing (the “First Day Orders”), provided that the form and substance of such First Day Orders shall be reasonably acceptable to the DIP Lenders; provided further that, with respect to each Borrowing after the Initial Borrowing, funding shall be provided only if the conditions to borrowing under the DIP Credit Agreement are satisfied; (b) postpetition working capital purposes of the Debtors; (c) current interest and fees under the DIP Facility; (d) the

payment of adequate protection payments to the Term Loan Agent and the Term Loan Lenders; and (e) the allowed administrative costs and expenses of the Chapter 11 Cases, in each case, solely in accordance with the Approved Budget (subject to the Budget Variance) and this Final Order. No obligation, payment, transfer, or grant of security under the DIP Loan Documents or this Final Order shall be stayed, restrained, voided, voidable or recoverable under the Bankruptcy Code or under any applicable non-bankruptcy law, or subject to any defense, reduction, setoff, recoupment or counterclaim.

11. **DIP Superpriority Claims.** In accordance with Bankruptcy Code section 364(c)(1), the DIP Obligations shall constitute superpriority administrative expense claims (the “DIP Superpriority Claims”) against each of the Debtors with priority in payment over any and all administrative expenses, adequate protection claims, diminution claims, prepetition unsecured claims, and all other claims against the Debtors, now existing or hereafter arising, of any kind whatsoever, including, without limitation, any prepetition claims and adequate protection claims of the Term Loan Secured Parties, the ABL Lender and the MAALT Lender, respectively, and any and all administrative expenses or other claims of the kinds specified or ordered pursuant to any provision of the Bankruptcy Code, including, but not limited to, Bankruptcy Code sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 546, 726, 1113, and 1114 or otherwise, including those resulting from the conversion of any of the Chapter 11 Cases pursuant to section 1112 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; provided, however, that the DIP Superpriority Claims shall be subject to (i) the Carve-Out, and (ii) the ABL Lender’s and MAALT Lender’s respective credit bid, lien rights and repayment rights in a sale or other disposition of any ABL Priority Collateral or MAALT

Collateral (as set forth in this Final Order); provided further, however, that notwithstanding anything to the contrary in the Interim Order or this Final Order, the DIP Agent shall satisfy the DIP Superpriority Claims first from assets other than Unencumbered Property (as defined below). For the avoidance of doubt, the term “Unencumbered Property” includes Avoidance Action Proceeds (as defined below). 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 post-petition property of the Debtors and all proceeds thereof (including the Avoidance Action Proceeds ~~(as defined herein))~~), provided, that the DIP Superpriority Claims shall not have recourse to any Avoidance Actions themselves. Except as set forth in this Final Order or other order of this Court authorizing and approving the grant of a superpriority claim as adequate protection to the ABL Lender or the MAALT Lender (provided that such claim(s), if any, shall be subordinate to the DIP Superpriority Claims), no other superpriority claims shall be granted or allowed in these Chapter 11 Cases.

12. **DIP Priming Liens.** As security for the DIP Loans, the DIP Agent, on behalf and for the benefit of the DIP Lenders, is hereby granted (effective upon the date of this Final Order, without any further action by the DIP Lenders, including the execution by the Debtors or the filing or recordation of security agreements, lockbox or control agreements, financing statements, or any other instruments or otherwise) valid, enforceable, binding, and fully perfected security interests in and liens (the “DIP Liens”) upon all of the assets of the Debtors (whether tangible, intangible, real, personal or mixed), now existing or hereafter acquired, and any proceeds and products thereof in whatever form received, including Avoidance

Action Proceeds (collectively with all rents, issues, products, offspring, proceeds and profits of any or all of the foregoing, the “DIP Collateral”), subject only to the payment of the Carve-Out; ~~which~~ provided further, however, that notwithstanding anything to the contrary in the Interim Order or this Final Order, the DIP Agent shall satisfy the DIP Liens first from assets other than Unencumbered Property (as defined below). For the avoidance of doubt, the Debtors’ claims and causes of action under sections 502(d), 544, 545, 547, 548, 549, 550, and 553 of the Bankruptcy Code (collectively, the “Avoidance Actions”), whether now existing or hereafter acquired or arising and whether pursuant to federal law or applicable state law, shall not constitute DIP Collateral. The DIP Liens shall consist ~~only~~ of:

(a) First Priority Lien on Unencumbered Property. Pursuant to section 364(c)(2) of the Bankruptcy Code, a continuing, enforceable, first priority, fully-perfected lien and security interest upon all of the Debtors’ right, title and interest in, to, and under all DIP Collateral that was not encumbered by a validly perfected, enforceable, and nonavoidable security interest or lien as of the Petition Date or a valid security interest perfected subsequent to the Petition Date to the extent permitted by section 546(b) of the Bankruptcy Code (collectively, the “Unencumbered Property”). Unencumbered Property shall ~~also include the Debtors’ claims and causes of action under sections 502(d), 544, 545, 547, 548, 549, 550, and 553 of the Bankruptcy Code and any other avoidance actions under the Bankruptcy Code, whether~~ include all proceeds of, recoveries related to, and property received or recovered pursuant to the Avoidance Actions (whether by judgment, settlement, or otherwise, collectively, the “Avoidance Action Proceeds”), whether such Avoidance Actions are now existing or hereafter acquired or arising and whether pursuant to federal law or applicable state law



~~(collectively, the “Avoidance Actions”), and all proceeds thereof, recoveries related thereto, and property received or recovered thereby, whether by judgment, settlement, or otherwise (the “Avoidance Action Proceeds”).~~

(b) Liens Junior to Certain Other Liens. Pursuant to section 364(c)(3) of the Bankruptcy Code, a junior, perfected lien and security interest upon all of the Debtors’ right, title and interest in, to and under all DIP Collateral, whether now existing or hereafter acquired, that is subject to and subordinated to (i) the first priority, senior liens in favor of the ABL Lender on the ABL Priority Collateral, (including, without limitation, Cash Collateral constituting ABL Priority Collateral); (ii) the first priority, senior liens of the MAALT Lender in the MAALT Collateral; and (iii) any liens that (x) are valid, perfected, enforceable and nonavoidable as of the Petition Date or validly perfected subsequent to the Petition Date to the extent permitted by section 546(b) of the Bankruptcy Code, (y) under applicable law, are senior to, and have not been subordinated to, the Term Loan Liens, and (z) are not subject to avoidance, reduction, disgorgement, counterclaim, surcharge, or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law (each, a “Permitted Lien” and collectively, the “Permitted Liens”), including the Permitted Liens scheduled on Schedule 9.04 to the DIP Credit Agreement, and in each case is not subject to section 552(a) of the Bankruptcy Code.

(c) Liens Priming Prepetition Secured Parties’ Liens. Pursuant to section 364(d)(1) of the Bankruptcy Code, valid, enforceable, binding, continuing, fully perfected, first priority senior priming liens upon and security interests in all of the Debtors’ right, title and interest in, to, and under all DIP Collateral not covered by clauses (a) and (b) above and, with respect to the ABL Priority Collateral and the MAALT

Collateral: (i) valid, binding, continuing, enforceable, fully perfected, junior liens that are subordinate to the ABL Lender's continuing first priority, senior liens in all DIP Collateral constituting ABL Priority Collateral, (ii) valid, binding, continuing, enforceable, fully perfected, junior liens that are subordinate to the MAALT Lender's continuing first priority, senior liens in all DIP Collateral constituting MAALT Collateral; and (iii) valid, binding, continuing, enforceable, fully perfected, priming liens that are immediately senior to the Term Loan Lenders' liens on such ABL Priority Collateral;

(d) Continuing Priority of ABL Lender's and MAALT Lender's Liens.

Notwithstanding any other provisions contained herein or deemed, interpreted and/or construed, as applicable, to the contrary, and for the sake of clarity and for the avoidance of doubt, nothing contained herein will be deemed, intended, interpreted, construed and/or enforced to prime ~~the~~any preexisting first priority, senior liens as of the Petition Date of (i) the ABL Lender in the ABL Priority Collateral (including, without limitation, any and all Cash Collateral constituting ABL Priority Collateral); or (ii) the MAALT Lender in the MAALT Collateral (including, without limitation, any and all Cash Collateral constituting MAALT Collateral). The validity, priority and extent of the ABL Lender's ABL Liens in the ABL Priority Collateral and the MAALT Lender's liens in the MAALT Collateral, respectively, as such validity, priority and extent existed as of the Petition Date, shall not be altered, modified, subordinated, primed or otherwise affected in any way by the terms of this Final Order.

13. Term Loan Secured Parties' Adequate Protection. Until the indefeasible repayment in full in cash of the Term Loan Obligations, the Term Loan Secured

Parties are entitled to adequate protection of their interests in the Term Loan Collateral on account of the diminution in the value thereof ~~as a result of (i) the provisions of this Final Order granting priming liens on such Term Loan Collateral (to the extent such Term Loan Collateral does not constitute ABL Priority Collateral or MAALT Collateral) to the DIP Agent for the benefit of the DIP Lenders; (ii) the authorization of the use of Cash Collateral (other than Cash Collateral constituting ABL Priority Collateral or MAALT Collateral) and other Term Loan Collateral; (iii) the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code; and/or (iv) otherwise~~ (the “Diminution in Term Loan Collateral Value”) pursuant to sections 361(a), 362, 363(c) and 364(d)(1) of the Bankruptcy Code. For purposes of determining any Diminution in Term Loan Collateral Value, the starting point shall be the amount that the Term Loan Secured Parties would have obtained following a foreclosure on the Debtors’ assets on the Petition Date. The Term Loan Agent, on behalf and for the benefit of the Term Loan Lenders, is hereby granted the following (collectively, the “Term Loan Adequate Protection Obligations”):

(a) Term Adequate Protection Superpriority Claims. The Term Loan Agent, on behalf and for the benefit of the Term Loan Lenders, is hereby granted superpriority administrative expense claims (the “Term Adequate Protection Superpriority Claims”) under sections 503 and 507 of the Bankruptcy Code against the Debtors’ estates, including ~~Avoidance Actions and~~ Avoidance Actions Proceeds, to the extent of any Diminution in Term Loan Collateral Value, which Term Adequate Protection Superpriority Claims shall have priority in payment over any and all administrative expenses of the kinds specified or ordered pursuant to any provision of the Bankruptcy Code, including, but not limited to, Bankruptcy Code sections 105, 326, 328,

330, 331, 503(b), 506(c), 507(a), 507(b), 726, 1113 and 1114, or otherwise and including those resulting from the conversion of any of the Chapter 11 Cases pursuant to section 1112 of the Bankruptcy Code; provided, however, that at all times while such claim is in full force and effect pursuant to this Final Order, the Term Adequate Protection Superpriority Claims shall be junior in all respects to the DIP Superpriority Claims and subject to (i) the Carve-Out, and (ii) the ABL Lender's and MAALT Lender's respective credit bid rights, lien rights and repayment rights in the sale or other disposition of any ABL Priority Collateral or MAALT Collateral (as set forth in this Final Order).

(b) Term Adequate Protection Liens. The Term Loan Agent, on behalf and for the benefit of the Term Loan Lenders, is hereby granted valid, enforceable, unavoidable and fully perfected replacement liens and security interests in all DIP Collateral (the "Adequate Protection Liens"), to the extent of any Diminution in Term Loan Collateral Value, which replacement liens and security interests shall have a priority immediately junior to the DIP Liens, subject to, junior and subordinate to the priority of the ABL Lender's liens in the ABL Priority Collateral, the MAALT Lender's liens in the MAALT Collateral, and subject to the Carve-Out. The Term Adequate Protection Liens shall be deemed to be legal, valid, binding, enforceable, perfected liens, not subject to subordination or avoidance. Except as otherwise set forth herein and in accordance with the priority set forth in the immediately preceding sentence, or as otherwise provided in this Final Order, or in accordance with the Prepetition Intercreditor Agreement, the Term Adequate Protection Liens shall not be subordinated to or be made *pari passu* with any other lien under section 364(d) of the Bankruptcy Code or otherwise.

(c) Adequate Protection Payments. As further adequate protection, and in consideration, and as a requirement, for obtaining the consent of the Term Loan Secured Parties to the entry of the Interim Order, this Final Order, and the Debtors' consensual use of Cash Collateral (other than Cash Collateral constituting ABL Priority Collateral or MAALT Collateral) as provided herein: the Debtors shall pay the reasonable, documented fees, costs, and expenses incurred or accrued by the Term Loan Agent, in its capacity as such, (the foregoing to include all unpaid prepetition fees, costs and expenses) in connection with any and all aspects of the Chapter 11 Cases, and including the reasonable fees and expenses of the legal and financial advisors to the Term Loan Agent (the "Adequate Protection Payments") from the proceeds of the DIP Facility. Copies of any summary invoices of such professionals, including Sidley and FTI, with respect to such fees, expenses and costs shall be provided to the Debtor and forwarded to the U.S. Trustee and Committee consistent with the notice and objection procedures set forth in Paragraph 8(a) of this Final Order. To the extent the DIP Agent and the Term Loan Agent are the same and have a single set of advisors, such advisors may submit a single combined invoice for their aggregated services. The Committee shall have the right to seek recharacterization of the Adequate Protection Payments, which right shall not be subject to the Investigation Termination Date described herein.

(d) Financial Reporting. The Debtors shall provide the Term Loan Agent with the financial and other reporting provided to the DIP Agent pursuant to the DIP Credit Agreement.

(e) Right to Seek Additional Adequate Protection. This Final Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, the

rights of the Term Loan Agent or the other Term Loan Lenders to seek additional forms of adequate protection pursuant to a pleading filed with the Court at any time and subject to the rights of any party in interest to object.

(f) Noninterference with DIP Obligations. For the avoidance of doubt, nothing in this Paragraph 13 shall affect or limit the obligation of the Debtors to pay the fees, costs, and expenses incurred by the DIP Lenders as provided in the DIP Loan Documents from the proceeds of the DIP Facility.

(g) Continuing Priority of ABL Lender's and MAALT Lender's Liens. Notwithstanding any other provisions contained herein or deemed, interpreted and/or construed, as applicable, to the contrary, and for the sake of clarity and for the avoidance of doubt, nothing contained herein will be deemed, intended, interpreted, construed and/or enforced to prime the preexisting first priority, senior liens of the ABL Lender in the ABL Priority Collateral (including, without limitation, any and all Cash Collateral constituting ABL Priority Collateral) or the liens of the MAALT Lender in the MAALT Collateral (including, without limitation, any and all Cash Collateral constituting MAALT Collateral). The validity, priority and extent of the ABL Lender's ABL Liens in the ABL Priority Collateral and the MAALT Lender's Liens in the MAALT Collateral, as such validity, priority and extent existed as of the Petition Date, shall not be altered, modified, subordinated, primed or otherwise affected in any way by the terms of this Final Order.

14. **Carve-Out.**

(a) Carve-Out. As used herein, "Carve-Out" means the sum of any (i) unpaid fees of the Clerk of the Court and the U.S. Trustee pursuant to 28 U.S.C. § 1930; (ii) to

the extent allowed at any time, whether by interim order, procedural order, or otherwise, all unpaid fees and expenses accrued or incurred, as of the date of the delivery by the DIP Agent of a Carve-Out Trigger Notice (as defined below), by persons or firms retained by the Debtors and the Committee pursuant to an order of the Court under sections 327, 328, 363, or 1103(a) of the Bankruptcy Code (the “Professionals”), to the extent such fees and expenses are (A) within the amounts set forth in the Approved Budget (subject to the Budget Variance), and (B) allowed by the Court under Sections 330, 331, or 363 of the Bankruptcy Code; (iii) all unpaid fees and expenses of the Professionals incurred after the date of the delivery by the DIP Agent of a Carve-Out Trigger Notice, in an aggregate amount not to exceed \$500,000 for Professionals retained by the Debtors and an aggregate amount not to exceed \$100,000 for Professional retained by the Committee, to the extent such fees and expenses are subsequently allowed by the Court under Sections 330, 331 or 363 of the Bankruptcy Code; (iv) reasonable and documented expenses of the members of the Committee (excluding any fees or expenses of professionals that are not retained pursuant to an order of the Court under sections 327, 328, 363, or 1103(a) of the Bankruptcy Code) in an aggregate amount not to exceed \$10,000; ~~and~~ (v) all reasonable and documented fees and expenses incurred by any trustee under section 726(b) of the Bankruptcy Code in an aggregate amount not to exceed \$25,000; and (vi) all unpaid expenses accrued or incurred, as of the date of the delivery by the DIP Agent of a Carve-Out Trigger Notice (as defined below), by creditors that supplied post-petition goods and services to the extent such expenses are set forth in the Approved Budget. As used herein, the term “Carve-Out Trigger Notice” shall mean a written notice delivered by the DIP Agent to the Debtors and their counsel, the U.S.

Trustee, and counsel to the Committee ~~(if any)~~, which notice may be delivered following the occurrence and during the continuation of an Event of Default (as defined below). In the event that these Chapter 11 Cases are converted to chapter 7, any unpaid fees and expenses subject to the Carve-Out shall be paid first from assets other than the Unencumbered Property.

(b) Funding. Any funding of the Carve-Out shall be secured by the DIP Collateral and shall be otherwise entitled to the protections granted under the this Final DIP Order, the DIP Loan Documents, the Bankruptcy Code and applicable law; ~~provided, however, that no part of the Carve-Out shall include fees, costs, or expenses incurred by any party related in any way to the investigation or challenge of any claim or lien of, or obligation to, the DIP Agent, the DIP Lenders, or the Term Loan Lenders or any attempts to prevent, hinder, or otherwise delay any enforcement or realization upon any DIP Collateral.~~

(c) Payment of Professional Fees Prior to Carve-Out Trigger Notice. Any payment or reimbursement made to Professionals prior to the delivery of a Carve-Out Trigger Notice shall not reduce the Carve-Out. Prior to the delivery of a Carve-Out Trigger Notice, the Debtors shall be permitted to pay the allowed fees and expenses of Professionals subject to this Final Order, the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and any interim compensation procedures entered by this Court.

(d) No Direct Obligation to Pay Professional Fees; No Waiver of Right to Object. The DIP Lenders shall not be responsible for the payment or reimbursement of any fees or disbursements of any Professional incurred in connection with these Chapter 11 Cases or any successor cases under any chapter of the Bankruptcy Code.



Nothing in this Final Order or otherwise shall be construed to obligate the DIP Lenders in any way, to pay compensation to, or to reimburse expenses of, any Professional or to guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement. Nothing herein shall be construed as consent to the allowance of any professional fees or expenses of any of the Debtors, the Committee, any other official or unofficial committee in these Chapter 11 Cases or any successor cases, if any, or of any person or entity, or shall affect the right of any party to object to the allowance and payment of any such fees and expenses.

15. **Budget for DIP Facility.** Attached hereto as **Exhibit B** is a thirteen-week cash flow budget setting forth all projected cash receipts and cash disbursements (by line item) on a weekly basis (the “Approved Budget”). No later than the date that is the four-week anniversary of the entry of the Interim DIP Order, the Debtors shall, in a manner consistent with the DIP Credit Agreement, propose an updated thirteen-week (13-week) detailed rolling cash projection, which shall be thereafter updated, as necessary, but not less than once every four weeks (each, a “Proposed Budget”); and which the Debtors will provide a copy of to the DIP Agent, the Committee, and their Professionals; provided, that the DIP Agent and Required Lenders shall have five (5) Business Days to approve any revised Proposed Budget, which consent the DIP Agent and Term Loan Agent may grant or withhold in their sole and exclusive discretion; provided, further, that if the DIP Agent, the Required Lenders, or the Committee do not approve any updated Proposed Budget by the sixth (6th) Business Day following receipt thereof, the previously delivered Budget shall remain in effect (or be deemed to be rolled forward in the discretion of the DIP Agent and in effect, as applicable) for purposes of the variance testing covenant and reporting; provided, further, that ~~the Committee shall be provided~~

~~with notice and five (5) Business Days to object to any~~no Proposed Budget ~~that materially reduces~~or Approved Budget may reduce the fees and expenses of the Committee's Professionals in the then-applicable Approved Budget. The Approved Budget is an integral part of this Final Order and has been relied upon by the DIP Lenders to provide the DIP Facility and consent to this Final Order and by the Term Loan Secured Parties to permit the use of the Cash Collateral and consent to this Final Order. The Debtors represent and warrant to the DIP Agent, the DIP Lenders, the Term Loan Secured Parties and this Court that the Initial Approved Budget includes and contains the Debtors' best estimate of all operational receipts and all operational disbursements, fees, costs and other expenses that will be payable, incurred and/or accrued by any of the Debtors during the period covered by the Initial Approved Budget and that such operational disbursements, fees, costs and other expenses will be timely paid in the ordinary course of business solely pursuant to and in accordance with the Initial Approved Budget unless such operational disbursements, fees, costs and other expenses are not incurred or otherwise payable. The Debtors further represent that the Initial Approved Budget is achievable and will allow the Debtors to operate in the Chapter 11 Cases and pay post-petition obligations as they come due. Pursuant to the terms of the DIP Credit Agreement, the Debtors shall provide on a weekly basis to the DIP Agent, the Term Loan Agent and the Committee, a report detailing the actual disbursements and receipts for the preceding week versus the disbursements and receipts contained in the Approved Budget for such period. The Debtors shall be permitted a variance between the Approved Budget and the actual amount of expenditures by the Debtors without triggering the occurrence of an Event of Default (as defined in the DIP Credit Agreement) for any four-week rolling period as follows: the Debtors' expenditures shall not exceed projected expenditures as set forth in the Approved Budget by more than fifteen percent (15%) from the

projected expenditures (including professional fees) for such period as set forth in the Approved Budget (the “Budget Variance”). Additional variances, if any, from the Approved Budget, and any proposed changes to the Approved Budget, shall be subject to the reasonable approval of the DIP Agent and the Required Lenders (as defined in the Term Loan Agreement). The Debtors shall operate solely in accordance with the Approved Budget (including professional fees) and all disbursements of the Debtors shall be consistent with the provisions of the Approved Budget, subject to the Budget Variance.

16. **Automatic Effectiveness of Liens.** The DIP Liens and the Adequate Protection Liens granted herein shall be deemed to be valid, perfected, enforceable, non-avoidable and effective by operation of law, and not subject to challenge as of the Petition Date, without the need for (x) filing any UCC-1 financing statements, security agreements, vehicle lien applications, filings with the U.S. Patent and Trademark Office, the United States Copyright Office, or the Library of Congress, state or federal notice, or any other similar instrument or document in any state or public record or office, (y) taking possession or control of any collateral, or (z) further action of any kind (including execution of any security agreements, mortgages, financing statements, collateral agreements, collateral trust agreements, deposit account control agreements, blocked account control agreements, securities account control agreements, or other collateral documents and agreements). All DIP Collateral shall be free and clear of other liens, claims and encumbrances, except the Permitted Liens, Adequate Protection Liens, the Term Loan Liens, ABL Liens, MAALT Liens, and any other liens expressly permitted under the DIP Credit Agreement. If the DIP Agent or the Term Loan Agent hereafter requests that the Debtors execute and deliver to the DIP Agent or the Term Loan Agent financing statements, security agreements, collateral assignments, or other instruments and documents

considered by such agent to be reasonably necessary or desirable to further evidence the perfection of the DIP Liens or the Adequate Protection Liens, as applicable, the Debtors are hereby authorized and directed to execute and deliver such financing statements, security agreements, collateral assignments, instruments, and documents, and the DIP Agent or the Term Loan Agent is hereby authorized to file or record such documents in its discretion without seeking modification of the automatic stay under section 362 of the Bankruptcy Code, in which event all such documents shall be deemed to have been filed or recorded at the time and on the date of entry of this Final Order.

17. **Milestones**. In addition to the Events of Default set forth in the DIP Credit Agreement, it shall be an Event of Default under the DIP Credit Agreement and this Final Order entitling the DIP Agent to exercise the remedies under the DIP Credit Agreement and this Final Order if the Debtors shall fail to meet any of the following deadlines (collectively, the “Milestones”), unless such Milestones are extended by agreement of the Debtors and DIP Agent:

(a) On or before the date that is sixty-five (65) calendar days following the Petition Date, and subject to the Court’s availability, the Bankruptcy Court shall have entered an order approving the disclosure statement and plan solicitation procedures acceptable to the DIP Lenders, as confirmed by the DIP Agent in writing;

(b) On or before the date that is ~~101~~ninety-nine (99) calendar days following the Petition Date, the Bankruptcy Court shall have entered an order acceptable to the DIP Lenders, as confirmed by DIP Lenders in writing, confirming an plan of reorganization acceptable to the DIP Lenders in their sole and absolute discretion (an “Acceptable Plan”) as confirmed in writing by the DIP Agent; and

(c) On or before the date that is ~~115~~113 calendar days following the Petition Date, an Acceptable Plan shall become effective.

18. **Credit Bid.**

(a) ~~The~~Subject to the terms of this Final Order, the DIP Agent, at the direction of the DIP Lenders, shall have the unqualified right to credit bid up to the full amount of the DIP Obligations in any sale of the DIP Collateral under or pursuant to (i) section 363(k) of the Bankruptcy Code, (ii) a plan of reorganization or a plan of liquidation under section 1129 of the Bankruptcy Code, or (iii) a sale or disposition by a chapter 7 trustee for any Debtor under section 725 of the Bankruptcy Code. The Committee shall have the right to object to any credit bid of the DIP Lenders or DIP Agent.

(b) Subject to the terms of the Prepetition Intercreditor Agreement and this Final Order, the Term Loan Agent, at the direction of the Term Loan Lenders, shall have the unqualified right to credit bid up to the full amount of any remaining Term Loan Obligations in any sale of DIP Collateral or Term Loan Collateral, as applicable, subject to the satisfaction of all DIP Obligations and all obligations secured by Permitted Liens, or as otherwise consented to by the DIP Lenders or such other holder of a Permitted Lien, as applicable, under or pursuant to (i) section 363(k) of the Bankruptcy Code, (ii) a plan of reorganization or a plan of liquidation under section 1129 of the Bankruptcy Code, or (iii) a sale or disposition by a chapter 7 trustee for any Debtor under section 725 of the Bankruptcy Code; provided, however, that such Term Loan Secured Parties' right to credit bid shall be subject to the investigation and Challenge provisions set forth in

paragraph 21 of this Final Order. The Committee shall have the right to object to any credit bid of the Term Loan Lenders or Term Loan Agent.

(c) ~~Subject to the terms of the Prepetition Intercreditor Agreement, the ABL Lender shall have the unqualified right to credit bid up to the full amount of any remaining obligations existing under the ABL Facility in any sale of any ABL Collateral. The ABL Lender shall be satisfied first from any existing ABL Priority Collateral or the proceeds thereof and, with respect to the ABL Priority Collateral, shall not be subordinated to any outstanding DIP Obligations, DIP Superpriority Claim or Term Adequate Protection Superpriority Claims concerning the ABL Lender's credit bid in any sale of any ABL Priority Collateral.~~ Notwithstanding any other provisions contained herein, with respect to any sale of any ABL Priority Collateral, whether through third party cash proceeds, the ABL Lender's credit bid or otherwise, any remaining obligations existing under the ABL Facility shall be satisfied first and shall not be subordinated to any priority or superpriority administrative expense claims of any party in this case, including, without limitation, the DIP Obligations, DIP Superpriority Claim or Term Adequate Protection Superpriority Claims, from the proceeds of the sale of any such ABL Priority Collateral. No portion of any outstanding DIP Obligations, DIP Superpriority Claim or Term Adequate Protection Superpriority Claims shall be senior to or prime the ABL Lender's credit bid rights in any sale of any ABL Priority Collateral. The ABL Lender's credit bid rights are expressly reserved and preserved by this Final Order, ~~as applicable, under or pursuant to the applicable terms of the Prepetition Intercreditor Agreement and (i) section 363 of the Bankruptcy Code, (ii) a plan of reorganization or a plan of liquidation under section 1129 of the Bankruptcy Code, or (iii) a sale or~~

~~disposition by a chapter 7 trustee for any Debtor under section 725 of the Bankruptcy Code.~~

(d) ~~The MAALT Lender shall have the unqualified right to credit bid up to the full amount of any remaining obligations existing under the MAALT Facility in any sale of any MAALT Collateral. The MAALT Lender shall be satisfied first from any existing MAALT Collateral or the proceeds thereof and, with respect to the MAALT Collateral, shall not be subordinated to any outstanding DIP Obligations, DIP Superpriority Claim or Term Adequate Protection Superpriority Claims concerning the MAALT Lender's credit bid in any sale of any MAALT Collateral.~~ Notwithstanding any other provisions contained herein, in regards to any sale of any MAALT Collateral, whether through third party cash proceeds, the MAALT Lender's credit bid or otherwise, any remaining obligations existing under the MAALT Facility shall be satisfied first and shall not be subordinated to any priority or superpriority administrative expense claims of any party in this case, including, without limitation, the DIP Obligations, DIP Superpriority Claim or Term Adequate Protection Superpriority Claims. No portion of any outstanding DIP Obligations, DIP Superpriority Claim or Term Adequate Protection Superpriority Claims shall be senior to or prime the MAALT Lender's credit bid rights in any sale of any MAALT Collateral. The MAALT Lender's credit bid rights are expressly reserved and preserved by this Final Order, ~~as applicable, under or pursuant to (i) section 363 of the Bankruptcy Code, (ii) a plan of reorganization or a plan of liquidation under section 1129 of the Bankruptcy Code, or (iii) a sale or disposition by a chapter 7 trustee for any Debtor under section 725 of the Bankruptcy Code.~~

(e) Nothing in this Final Order shall limit or otherwise prevent the Committee from opposing a credit bid of any Prepetition Secured Party “for cause” (as such phrase is used in section 363(k) of the Bankruptcy Code).

19. **Events of Default.** The following shall constitute Events of Default under this Final Order and the DIP Loan Documents, unless waived in writing by the DIP Agent in its sole discretion (each an “Event of Default”).

(a) **Payment Default.** The Debtors shall fail to pay, in each case as and when due and required to be paid under the DIP Loan Documents, any principal amount under the DIP Loan Documents immediately after such payment becomes due or payable.

(b) **Non-Payment Default.** Except for an Event of Default arising under Paragraph (a) above, the Debtors shall default in any material respect with the performance of or compliance with any other covenant, condition, or provision of this Final Order or, the DIP Loan Documents or the impairment of the DIP Loan Documents or the security interests provided for therein.

(c) **Bankruptcy.** Any of the following occurs in any of the Chapter 11 Cases: (i) dismissal of the Chapter 11 Cases or conversion of the Chapter 11 Cases into cases under chapter 7 of the Bankruptcy Code; (ii) a trustee or receiver shall have been appointed in one or more of the Chapter 11 Cases; (iii) appointment of a responsible officer or examiner with enlarged powers relating to the operation of the business of any Debtor, other than the Debtors’ chief restructuring officer; (iv) entry of an order granting of relief from any stay of proceeding (including the automatic stay) so as to allow a third party to proceed with foreclosure (or granting of a deed in lieu of foreclosure) against any asset of the Debtors with a value in excess of \$500,000 in the aggregate, provided, that,



such Event of Default shall not apply to an order granting relief from stay on behalf of the ABL Lender with respect to the ABL Priority Collateral or the MAALT Lender with respect to the MAALT Collateral; (v) entry of an order granting any superpriority claim which is senior to or *pari passu* with the DIP Lenders' claims under the DIP Facility without the prior consent of the DIP Lenders; (vi) entry of an order confirming (or the filing by the Debtors of any motion or pleading requesting confirmation of or otherwise in support of) a plan of reorganization with respect to any Debtor other than an Acceptable Plan; (vii) entry of an order staying, reversing, vacating, or otherwise modifying, without the prior written consent of the DIP Lenders, the DIP Facility or the Final Order, and such order is not stayed or reversed within two (2) business days after entry thereof; (viii) payment of, or granting adequate protection with respect to, prepetition debt (other than as contemplated by the DIP Loan Documents, this Final Order, or other order of this Court authorizing and approving the grant of adequate protection to the ABL Lender or MAALT Lender) unless otherwise agreed by the DIP Lenders; and (ix) cessation of liens or superpriority claims granted with respect to the DIP Collateral securing the Debtors' obligations in respect of the DIP Facility to be valid, perfected and enforceable in all respects with the priority described herein; ~~and (x) any shareholder (or shareholder affiliate) shall successfully challenge or contest in any material respect the provisions of the DIP Credit Agreement.~~

20. **Automatic Stay.** As provided herein, subject only to the provisions of the DIP Credit Agreement and without further order from this Court, the automatic stay provisions of section 362 of the Bankruptcy Code are vacated and modified to the extent necessary to permit the DIP Agent to exercise, upon the occurrence and during the continuance of any Event

of Default and upon the direction of the DIP Lenders, all rights and remedies provided for in the DIP Loan Documents and otherwise consistent with the terms of this Final Order, and to take any or all of the following actions without further order of or application to the Court: (a) declare the principal of and accrued interest on the outstanding borrowings to be immediately due and payable and terminate, reduce or restrict, as applicable, any further commitments under the DIP Facility to the extent any such commitment remains, and/or terminate, as applicable, the right of the Debtors to use Cash Collateral; and (b) charge the default rate of interest under the DIP Facility and take any other action or exercise any other right or remedy (including without limitation, with respect to the liens in favor of the DIP Agent on behalf of the DIP Lenders) permitted under the DIP Loan Documents or applicable law; provided, however, that in the case of the enforcement of liens or other remedies with respect to DIP Collateral pursuant to clause (b) above, the DIP Agent shall provide the Debtors (with a copy to counsel for ~~the~~ Committee and the U.S. Trustee) with seven (7) calendar days' prior written notice (the "Enforcement Notice Period") and file such notice on the docket in the Chapter 11 Cases, during which Enforcement Notice Period any such party may file a pleading in opposition to the DIP Agent's exercise of its rights and remedies and seek an emergency hearing prior to the conclusion of the Enforcement Notice Period, ~~and provided further, that in any hearing following such notice, the only issue that may be raised by any party in opposition to the actions proposed or available to be taken by the DIP Agent shall be whether, in fact, an Event of Default has occurred and is continuing.~~ Unless, during the Enforcement Notice Period or, in the event a party requests an emergency hearing prior to the expiration of the Enforcement Notice Period but, solely due to the Court's availability, the Court is unable to schedule a hearing within such Enforcement Notice Period, the earliest available date on which the Court can hold such emergency hearing, the

Court ~~determines that an Event of Default has not occurred (or, in the case of an Event of Default described in Paragraph 19(b), above, that such Event of Default is not continuing)~~reimposes the automatic stay or otherwise enjoins the exercise of such remedies, the DIP Agent shall have relief from the automatic stay without further notice or order and may foreclose on all or any portion of the DIP Collateral or otherwise exercise remedies against the DIP Collateral. ~~No party in interest shall have the right to contest the enforcement of the remedies set forth in this Final Order and the DIP Loan Documents on any basis other than an assertion that no Event of Default has occurred, and, except with respect to such an assertion, no party in interest shall have the right to enjoin any such enforcement under section 105 of the Bankruptcy Code or otherwise, or to seek any injunctive relief inconsistent with the provisions of this Final Order or the DIP Loan Documents.~~ Without limiting the foregoing, but subject to and only upon expiration of the Enforcement Notice Period, upon the occurrence and during the continuation of an Event of Default, each DIP Lender (and its respective affiliates, including its various branches and offices) shall have the authority, subject to obtaining the prior written consent of the DIP Agent and to the fullest extent permitted by applicable law, to set off and apply any and all deposits (of whatever type and in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such DIP Lender (or its affiliate) to or for the credit or account of any Borrower against any and all of the DIP Obligations of such Borrower to such Lender, subject to the terms of the DIP Credit Agreement. The foregoing right of setoff shall apply irrespective of whether such DIP Lender has made any demand under the DIP Loan Documents and even if the DIP Obligations of the Borrower are contingent or unmatured. The rights and remedies of the DIP Agent and DIP Secured Parties specified herein are cumulative and not exclusive of any rights or remedies that the DIP Agent and the DIP Secured Parties may

have under the DIP Loan Documents or otherwise. Subject to the provisions of the DIP Loan Documents and this Final Order, the Debtors shall cooperate fully with the DIP Agent and the DIP Secured Parties in their exercise of rights and remedies, whether against the DIP Collateral or otherwise. This Court shall retain exclusive jurisdiction to hear and resolve any disputes and enter any orders required by the provisions of this Paragraph 20 and relating to the application, re-imposition or continuance of the automatic stay as provided hereunder.

21. **Investigation Rights.** The (i) Committee shall have ~~forty~~sixty (~~40~~60) days from the date of its appointment, subject to extension by the Court for cause, ~~but not to exceed forty-five (45) days after the appointment of such Committee,~~ and (ii) all other non-debtor parties-in-interest (including a trustee, if appointed or elected prior to the Investigation Termination Date, as defined herein) shall have forty-five (45) days after the Petition Date (each, as applicable, the “Investigation Termination Date”) to investigate the validity, extent, priority, perfection, and enforceability of the Term Loan Facility, ~~ABL Facility and MAALT Facility~~ and the respective liens of the ~~lenders~~Term Loan Secured Parties thereunder, and to assert any other claims or causes of action against the ~~Prepetition~~Term Loan Secured Parties. Notwithstanding anything to the contrary in the Interim Order or this Final Order, (i) the Investigation Termination Date may be extended (A) by mutual written agreement between the Debtors, the DIP Agent, the Committee, and the Term Loan Agent, ~~the ABL Lender, and the MAALT Lender~~ or (B) by the Court for cause; and (ii) if, on or before the Investigation Termination Date, the Committee files a motion seeking standing to file a Challenge (as defined below), the Investigation Termination Date shall be automatically tolled with respect to the Committee upon the Committee’s filing of a motion seeking standing until the Court has ruled upon such motion, and provided further that in the event the Court enters an order conferring standing on the

Committee to pursue a Challenge, the Investigation Termination Date shall be further extended until the date that is three (3) business days after entry of such an order conferring standing on the Committee. The Committee or other non-debtor party-in-interest hereafter granted authority and standing by this Court shall be permitted to file and prosecute an objection or claim related thereto (each, a “Challenge”), and shall have only until the applicable Investigation Termination Date to file such Challenge (or otherwise initiate an appropriate action on behalf of the Debtors’ estates) setting forth the basis therefor; provided, however, that nothing contained in the DIP Loan Documents or this Final Order shall be deemed to confer standing on any Committee or any other party-in-interest to commence a Challenge. If a Challenge is not filed on or before the Investigation Termination Date, then, without further action by any party or any further order of this Court: (i) the agreements, acknowledgements and stipulations contained in Paragraph D of this Final Order, shall be deemed to be immediately and irrevocably binding on the Debtors, and the Debtors’ estates, the Committee, and all parties-in-interest and any and all successors-in-interest thereto shall thereafter be forever barred from bringing any Challenge; (ii) the liens and security interests of the ~~Prepetition~~Term Loan Secured Parties shall be deemed to constitute valid, binding, enforceable, and perfected liens and security interests not subject to avoidance or disallowance pursuant to the Bankruptcy Code or applicable non-bankruptcy law; (iii) the ~~Prepetition~~Term Loan Secured Parties’ obligations shall be deemed to be finally allowed claims for all purposes in the Chapter 11 Cases and any subsequent chapter 7 cases, in the amounts set forth in Paragraph D of this Final Order and its subparagraphs and shall not be subject to challenge by any party-in-interest as to validity, priority or otherwise; and (iv) the Debtors shall be deemed to have released, waived, and discharged each of the Term Loan Lenders, together with their respective officers, directors, employees, agents, attorneys, professionals, affiliates,

subsidiaries, assigns and/or successors, from any and all claims and causes of action arising out of, based upon, or related to, in whole or in part, the Term Loan Obligations or their prepetition relationship with such Debtor or any affiliate thereof relating to any of the Term Loan Documents or any transaction contemplated thereby, including, without limitation, any claims or defenses as to the extent, validity, priority, or enforceability of the existing Term Loan Liens or the Term Loan Obligations, any claims or defenses under chapter 5 of the Bankruptcy Code, or any other causes of action. Notwithstanding anything to the contrary herein, the Committee may use up to ~~\$35,000~~75,000 (the “Committee Investigation Budget”) in the aggregate prior to the Investigation Termination Date for investigation costs in respect of the Debtors’ stipulations set forth in paragraph D above; provided, however, that the proceeds of the DIP Facility shall not be used (i) to permit the Debtors or any other party-in-interest or their representatives to challenge or otherwise contest or institute any proceeding to determine (x) the validity, perfection or priority of security interests in favor of the DIP Agent, any of the DIP Lenders, or the ~~Prepetition~~Term Loan Secured Parties, or (y) the enforceability of the obligations of the Debtors under the DIP Facility; or the Term Loan ~~Facility, the ABL Facility or the MAALT~~ Facility; or (ii) to commence, prosecute or defend any claim, motion, proceeding or cause of action against the DIP Agent, any of the DIP Lenders, the Term Loan Agent, or any of the Term Loan Lenders; ~~or any of the other Prepetition Secured Parties~~ (each in such capacity) and their respective agents, attorneys, advisors or representatives, including, without limitation, any lender liability claims, any subordination claims, or any claims under any non-disclosure or confidentiality agreement.

## 22. Protection of DIP Lenders’ and Prepetition Secured Parties’ Rights.

The DIP Lenders’ and Prepetition Secured Parties’ rights shall be protected as follows:

(a) So long as there are any DIP Loans or DIP Obligations outstanding or the DIP Lenders have any outstanding commitments under the DIP Credit Agreement, the Prepetition Secured Parties: (i) shall not take any action to foreclose upon or recover in connection with their respective liens and security interests, other agreements, or operation of law of this Final Order, or otherwise exercise remedies against any DIP Collateral, except to the extent authorized herein or by any other order of this Court, (ii) shall be deemed to have consented to any release of DIP Collateral authorized under the DIP Loan Documents, (iii) shall not file any further financing statements, trademark filings, copyright filings, patent filings, mortgages, notices of lien or similar instruments, enter into any control agreement, or otherwise take any action to perfect their security interests in the DIP Collateral unless, solely as to this clause (iii), the DIP Agent files financing statements or other documents to perfect the liens granted pursuant to this Final Order, or as may be required by applicable state law to continue the perfection of valid and unavoidable liens or security interests as of the Petition Date and (iv) not seek to terminate or modify the use of Cash Collateral as provided herein.

(b) The terms of the Prepetition Intercreditor Agreement remain unmodified by the terms of this Final Order, and each parties' respective rights and remedies thereunder are expressly reserved and preserved in all aspects.

23. **Asset Dispositions.** Subject to authorization from the Court (and, as applicable, the Carve-Out)-~~and~~<sub>2</sub>, the terms of the Intercreditor Agreement<sub>7</sub>, and the Committee's Challenge rights set forth in paragraph 21 ~~hereof~~, the Debtors shall immediately pay, or cause to be paid, to the DIP Agent for application to the DIP Obligations, all of the proceeds of any sale, lease or other disposition of any DIP Collateral outside of the ordinary course of business of the

Debtors' assets (an "Asset Disposition") to the extent required by and in the order set forth in the DIP Credit Agreement, and as a condition to approval of such Asset Disposition, and shall comply with all other provisions in the DIP Loan Documents and this Final Order in connection with any such Asset Disposition. All proceeds of any Asset Disposition shall be applied in accordance with the terms and conditions of the DIP Credit Agreement and the Intercreditor Agreement. Nothing in this Final Order shall be deemed to constitute the consent of the DIP Secured Parties, Term Loan Secured Parties, ABL Lender, or MAALT Lender and each of the foregoing expressly reserves the right to object to entry of any order of the Court that provides any for an Asset Disposition 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 Term Loan Obligations, the ABL Obligations or the MAALT Obligations (as applicable) and the Prepetition Term Loan Adequate Protection Obligations, ~~Prepetition ABL Adequate Protection Obligations, Prepetition MAALT Adequate Protection Obligations~~ and all of the foregoing are paid in full on the closing date of such Asset Disposition. Notwithstanding anything to the contrary herein, the Committee's rights to object to any Asset Disposition to any party, including the application and allocation of proceeds resulting therefrom, are fully reserved.

24. **DIP Lenders' Financial Reporting.** The Debtors shall provide: (i) to the DIP Lenders, the ABL Lender, the MAALT Lender and the Committee the Proposed Budget for such periods in form and substance reasonably satisfactory to the DIP Agent and the Required Lenders; (ii) to the DIP Lenders, the ABL Lender, the MAALT Lender and the Committee a variance report tested as of the immediately preceding Friday for (1) the weekly period ending on such Friday and (2) the prior weekly cumulative period ending on such Friday and commencing with the first week of the most recent Approved Budget (each such period, a "Variance Testing



Period”) setting forth: (A) the aggregate disbursements of the Debtors during the applicable Variance Testing Period and (B) any variance (whether positive or negative, expressed as a percentage) between (1) the aggregate disbursements, on a line-item by line-item basis, made during such Variance Testing Period by the Debtors against the aggregate disbursements for each such line-item for the Variance Testing Period set forth in the applicable Approved Budget and (2) the cumulative disbursements made during such Variance Testing Period to the cumulative disbursements for such Variance Testing Period set forth in the applicable Approved Budget, which variance report shall include a report from a Financial Officer of the Borrower identifying and addressing any variance of actual performance to projected performance for the prior week; (iii) to the DIP Lenders, the ABL Lender, the MAALT Lender and the Committee a rolling 13-week cash flow forecast, together with a reconciliation for the prior week, the prior 4-week cumulative period and the cumulative period from the Petition Date of actual expenses and disbursements (including professional fees) and sales receipts as to the amounts set forth in the then applicable Approved Budget for such periods in form and substance satisfactory to the DIP Agent; and (iv) concurrently to the Committee, all financial reporting as provided to the DIP Agent, the DIP Lenders, the ABL Lender, or the MAALT Lender under this Final Order, the DIP Credit Agreement or otherwise.

25. **Further Assurances.** The Debtors shall execute and deliver to the DIP Agent, the DIP Lenders, the Term Loan Agent, and the Term Loan Lenders all such agreements, financing statements, instruments and other documents as the DIP Agent, DIP Lenders, Term Loan Agent, and Term Loan Lenders may reasonably request to evidence, confirm, validate or perfect the DIP Liens or the Adequate Protection Liens granted pursuant hereto. Further, the Debtors are authorized ~~and directed~~ to do and perform all acts, to make, execute and deliver all

instruments and documents (including, without limitation, the execution of additional security agreements, mortgages, financing statements collateral agreements, collateral trust agreements, deposit account control agreements, blocked account control agreements, securities account control agreements, and other collateral documents and agreements), and to pay all fees and expenses that may be required or necessary for the Debtors' performance under the DIP Loan Documents, including, without limitation, (i) the execution of the DIP Loan Documents and (ii) the payment of the fees, costs, and other expenses described in the DIP Loan Documents as and when such fees, costs, and expenses become due from the proceeds of the DIP Facility.

26. **Proofs of Claim.** Each of the Term Loan Agent and Term Loan Lenders will not be required to file proofs of claim in any of the Chapter 11 Cases or any successor cases for any claim allowed herein, other than a proof of claim for a Term Adequate Protection Superpriority Claim. The Debtors' Stipulations shall be deemed to constitute a timely filed proof of claim with respect to the Term Loan Documents and the Term Loan Obligations. Notwithstanding the foregoing, each of (i) the DIP Agent, for the benefit of the DIP Secured Parties; and (ii) the Term Loan Agent, for the benefit of the Term Loan Secured Parties is authorized and entitled, but not required, in its sole discretion, to file (and amend and/or supplement) in each of the Chapter 11 Cases or successor cases proofs of claim with respect to the DIP Loans and the Term Loans.

27. **Preservation of Rights.**

(a) **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 (including through any chapter 11 plan of reorganization) without the prior written consent of the DIP Lenders, and no such consent shall be implied by any other

action, inaction, or acquiescence of the DIP Lenders. 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 authorized or made hereby or pursuant to the DIP Facility, or lien, claim, priority, or other DIP Protections (as defined below) authorized or created hereby or pursuant to the DIP Facility. Based on the findings set forth in this Final Order and in accordance with section 364(e) of the Bankruptcy Code 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 Lenders shall be entitled to the protections provided in section 364(e) of the Bankruptcy Code and, notwithstanding any such reversal, modification, vacatur, or stay, any use of Cash Collateral, DIP Loans, or any protections granted under this Final Order, the DIP Loan Documents, the Bankruptcy Code and applicable law (the “DIP Protections”) incurred or granted by the Debtors prior to the actual receipt of written notice by the DIP Agent of the effective date of such reversal, modification, vacatur, or stay shall remain in full force and effect and be binding on all parties in interest and be governed in all respects by the original provisions of this Final Order (and shall maintain their respective priorities as provided by this Final Order).

(b) Modifications of DIP Loan Documents. The Debtors, DIP Agent, and DIP Lenders are hereby authorized to implement, in accordance with the terms of the DIP Loan Documents, any non-material modifications (including without limitation, any change in the number or composition of the DIP Lenders) of the DIP Loan Documents

without further Order of this Court; provided, that the Debtors shall provide the Committee notice of any such non-material amendments to the DIP Loan Documents.

(c) Dismissal. If any order dismissing any of these Chapter 11 Cases under section 1112 of the Bankruptcy Code or otherwise is at any time entered, then notwithstanding any such dismissal (i) the DIP Protections and all other rights, remedies, liens, priorities, privileges, protections, and benefits granted to the DIP Lenders, shall remain in full force and effect and be binding on all parties in interest and be governed in all respects by the provisions of this Final Order (and shall maintain their respective priorities as provided by this Final Order) until all DIP Loans have been paid in full, and such order of dismissal shall so provide; and (ii) this Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing such DIP Protections and all other rights, remedies, liens, priorities, privileges, protections, and benefits granted to the DIP Lenders.

(d) Survival of the Final Order. The provisions of this Final Order, the DIP Loan Documents, any actions taken pursuant hereto or thereto, all of the DIP Protections, and all other rights, remedies, liens, priorities, privileges, protections, and benefits granted to the DIP Lenders shall survive, and shall not be modified, impaired, or discharged by, the entry of any order (i) confirming any plan of reorganization in any of these Chapter 11 Cases or successor cases; (ii) converting any of these Chapter 11 Cases to a case under chapter 7; (iii) dismissing any of these Chapter 11 Cases; (iv) withdrawing of the reference of any of these Chapter 11 Cases or any successor cases; (v) providing for abstention from handling or retaining of jurisdiction in any of these Chapter 11 Cases or any successor case in this Court; (vi) terminating the joint

administration of these Chapter 11 Cases or any successor cases, or (vii) by any other act or omission. The terms and provisions of this Final Order, including all of the DIP Protections and all other rights, remedies, liens, priorities, privileges, protections, and benefits granted to the DIP Secured Parties shall continue in full force and effect and be binding on all parties in interest notwithstanding the entry of any such order referenced above, shall continue in full force and effect in these proceedings and in any successor cases, and shall maintain their respective priorities as provided by this Final Order.

28. **Insurance Policies.** The DIP Agent shall be deemed to be, without any further action or notice, named as additional insureds and loss payees, as applicable, on each insurance policy maintained by the Debtors that in any way covers the DIP Collateral, other than any D&O policy the Debtors maintain, and subject to the rights of the ABL Lender with respect to the ABL Priority Collateral, and the Debtors shall take such actions as are reasonably requested by the DIP Agent from time to time to evidence or effectuate the foregoing.

29. **Authorized Signatories.** The signature of the Authorized Officer (as defined in the Debtors' corporate resolutions filed with the Petition) or any officer of the Debtors or Debtors' attorneys, appearing on any one or more of the DIP Loan Documents, shall be sufficient to bind the Debtors. No board of directors or other approval shall be necessary.

30. **No Requirement to Accept Title to Collateral.** The DIP Lenders and Term Loan Lenders shall not be obligated to accept title to any portion of the DIP Collateral or Term Loan Collateral in payment of the indebtedness owed to such parties by the Debtors, in lieu of payment in cash or cash equivalents, nor shall any of the DIP Lenders or Term Loan Lenders be obligated to accept payment in cash or cash equivalents that is encumbered by any interest of any person or entity other than the DIP Lenders or Term Loan Lenders.

31. **Binding Effect.** Subject only to Paragraph 21 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 Chapter 11 Cases, including the DIP Secured Parties, the Prepetition Secured Parties, any other secured or unsecured creditor, the Committee, and the Debtors and their respective estates, 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 these Chapter 11 Cases, in any successor cases, or upon dismissal; provided however, that the DIP 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 these Chapter 11 Cases or any successor cases.

32. **506(c) Waiver.** Except to the extent of the Carve-Out, no expenses of administration of the Chapter 11 Cases or any future proceeding that may result therefrom, including liquidation in bankruptcy or other proceedings under the Bankruptcy Code, shall be charged against or recovered from (i) the Term Loan Priority Collateral or (ii) the DIP Collateral that is not ABL Priority Collateral or MAALT Collateral pursuant to section 506(c) of the Bankruptcy Code or any similar principle of law, without the prior written consent of the DIP Agent and the Prepetition Agent, and no such consent shall be implied from any other action, inaction, or acquiescence by the DIP Agent, the DIP Lenders, the Term Loan Agent or the Term Loan Lenders. The Debtors shall irrevocably waive and shall be prohibited from asserting any claim described in this Paragraph 32, under section 506(c) of the Bankruptcy Code or otherwise,

for any costs and expenses incurred in connection with the preservation, protection or enhancement of, or realization by the Term Loan Secured Parties or the DIP Secured Parties upon the (i) the Term Loan Priority Collateral or (ii) the DIP Collateral that is not ABL Priority Collateral (as applicable) or MAALT Collateral (as applicable); provided, that nothing in this Order shall prohibit the Debtors from asserting any claim described in this Paragraph 32, under section 506(c) of the Bankruptcy Code or otherwise, for any costs and expenses incurred in connection with the preservation, protection or enhancement of, or realization by the ABL Lender upon the ABL Priority Collateral or the MAALT Lender upon the MAALT Collateral.

The waiver of section 506(c) of the Bankruptcy Code contained herein shall not apply for purposes of any hypothetical chapter 7 liquidation analysis contemplated by section 1129(a)(7)(A)(ii) of the Bankruptcy Code.

33. **No Waiver.** The failure of the DIP Secured Parties or the Prepetition Secured Parties to seek relief or otherwise exercise their rights and remedies under this Final Order, the Term Loan Agreement, the DIP Loan Documents, or otherwise (or any delay in seeking or exercising same) shall not constitute a waiver of any of such parties' rights hereunder, thereunder, or otherwise. Nothing contained in this Final Order (including the authorization of the use of any Cash Collateral) shall impair or modify any rights, claims, or defenses available in law or equity to the DIP Lenders to assert rights of setoff or other rights with respect thereto as permitted by law (or the right of a Debtors to contest such assertion). Except as prohibited by this Final Order, the entry of this Final Order is without prejudice to, does not constitute a waiver of, expressly or implicitly, and does not otherwise impair, any right or ability of the DIP Secured Parties, Term Loan Secured Parties, ABL Lender, and MAALT Lender under the Bankruptcy Code or under non-bankruptcy law to (i) request conversion of these Chapter 11 Cases to cases

under chapter 7, dismissal of these Chapter 11 Cases, or the appointment of a trustee or examiner in these Chapter 11 Cases, or to oppose the use of Cash Collateral in any successor case or on terms other than those set forth in this Final Order; (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 seek early termination of the Debtors' exclusive rights to propose a plan under the Bankruptcy Code; or (iii) except as expressly provided herein, exercise any of the rights, claims, or privileges (whether legal, equitable, or otherwise) of the DIP Lenders under the DIP Loan Documents, the Bankruptcy Code, or other non-bankruptcy law. Except to the extent otherwise provided in this Final Order or by law, neither the commencement of these Chapter 11 Cases nor the entry of this Final Order shall limit or otherwise modify the rights and remedies of the DIP Secured Parties, Term Loan Secured Parties, ABL Lender, and MAALT Lender with respect to any non-Debtor entities or their respective assets, whether such rights and remedies arise under the Term Credit Agreement, applicable law, or equity.

34. **No Waiver of Prepetition Secured Parties' Agreement Provisions; Reservation of Rights.** Except as otherwise specifically provided in this Final Order, nothing contained in this Final Order shall be deemed a waiver or constitute a consent to the modification of any provision contained in the Term Loan Agreement by the Term Loan Lenders, the ABL Agreement by the ABL Lender, or the MAALT Facility by the MAALT Lender including, but not limited to, the incurrence or issuance of any indebtedness by the Debtors, the incurrence of any lien in connection therewith or the making of any payment by the Debtors.

(a) **No Third Party Rights.** Except as explicitly provided for herein or in the DIP Loan Documents, the ABL Loan Documents, or the MAALT Loan Documents, this Final Order does not create any rights for the benefit of any third party, creditor, equity



holder, or direct, indirect, or incidental beneficiary. In determining to make any loan under the DIP Loan Documents 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 Lenders and the Term Loan Lenders shall not (i) 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; or (ii) owe any fiduciary duty to the Debtors, their respective creditors, shareholders, or estates.

(b) No Marshaling. ~~Upon to the entry of the~~ Subject in all respects to paragraphs 11 and 12 of this Final Order, in no event shall the Term Loan Secured Parties, the DIP Agent or the DIP Lenders, ~~the ABL Lender or the MAALT Lender~~ be subject to the equitable doctrine of “marshaling” or any similar doctrine with respect to the Collateral.

(c) 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.

(d) 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), 6003, or 6004, or any other Bankruptcy Rule or Bankruptcy Local Rule, 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.

(e) Reservation of Rights. The DIP Lenders, the Term Loan Lenders, the ABL Lender, ~~and~~ the MAALT Lender each expressly reserve the right to object to entry of any order of the Court that provides for the sale or other disposition of all or substantially all of the assets of the Debtors (or any other sale or other disposition of assets of any of the Debtors outside the ordinary course of business) 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 respective priority balances due to each of (i) the ABL Lender for the ABL Facility in connection with any disposition of any ABL Priority Collateral, (ii) the MAALT Lender for the MAALT Facility in connection with any disposition of any MAALT Collateral, and (iii) the DIP Lenders in connection with the DIP Loans.

35. Claims of Taxing Authorities. Nothing in this Final Order or in any prior order shall be construed to grant or acknowledge claims and liens that prime the prepetition and postpetition liens and claims of Hood CAD, Pecos County, Reagan County, Reeves County, Tarrant County, Tom Green CAD, Dilley ISD, the Frio Hospital District, Ward County and Winkler County in connection with ad valorem property taxes or their right to the payment from the proceeds of their collateral in connection with a sale of the Debtors' assets.

36. Retention of Jurisdiction. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Final Order.

**### END OF ORDER ###**

**Submitted by:**

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**PROPOSED ATTORNEYS FOR DEBTORS**

**Exhibit A**

**DIP Credit Agreement**

**Exhibit B**

**DIP Budget**

<b>Summary report:</b> <b>Litera® Change-Pro for Word 10.6.0.7 Document comparison done on</b> <b>7/9/2020 1:29:35 PM</b>	
<b>Style name:</b> Default Style	
<b>Intelligent Table Comparison:</b> Active	
<b>Original filename:</b> Vista - Final DIP Order, 4849-1314-0930 5.doc	
<b>Modified DMS:</b> iw://DMSUS/US2008/17084689/16	
<b>Changes:</b>	
<u>Add</u>	51
<del>Delete</del>	72
<u>Move From</u>	3
<u>Move To</u>	3
<u>Table Insert</u>	0
<del>Table Delete</del>	0
<u>Table moves to</u>	0
<del>Table moves from</del>	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
<b>Total Changes:</b>	129