

**Telephonic Hearing Date: April 29, 2020 at 11:00 a.m. (Prevailing Eastern Time)**  
**Objection Deadline: April 23, 2020 at 4:00 p.m. (Prevailing Eastern Time)**

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*Counsel for Debtors and Debtors in Possession*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

-----	<b>X</b>	
<b><i>In re</i></b>	<b>:</b>	<b>Chapter 11</b>
	<b>:</b>	
<b>THE McCLATCHY COMPANY, <i>et al.</i>,</b>	<b>:</b>	<b>Case No. 20-10418 (MEW)</b>
	<b>:</b>	
<b>Debtors.<sup>1</sup></b>	<b>:</b>	<b>(Jointly Administered)</b>
	<b>:</b>	
-----	<b>X</b>	

<sup>1</sup> The last four digits of Debtor The McClatchy Company’s tax identification number are 0478. Due to the large number of debtor entities in these jointly administered chapter 11 cases, a complete list of the debtor entities and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors’ claims and noticing agent at <http://www.kccllc.net/McClatchy>. The location of the Debtors’ service address for purposes of these chapter 11 cases is: 2100 Q Street, Sacramento, California 95816.

**NOTICE OF TELEPHONIC HEARING ON DEBTORS' MOTION FOR  
MODIFICATION OF FINAL DEBTOR-IN-POSSESSION POSTPETITION  
FINANCING ORDER AND GRANTING RELATED RELIEF**

**PLEASE TAKE NOTICE** that on April 8, 2020, the McClatchy Company and its affiliates, the debtors and debtors in possession in the above-captioned cases (collectively, the “**Debtors**”) filed the *Debtors’ Motion for Modification of Final Debtor-in-Possession Postpetition Financing Order an Granting Related Relief* (the “**Motion**”).

**PLEASE TAKE FURTHER NOTICE** that a telephonic hearing on the Motion to consider the entry of an order approving the Motion will be held before the Honorable Michael E. Wiles, United States Bankruptcy Judge in the United States Bankruptcy Court for the Southern District of New York, One Bowling Green, Courtroom 617, New York, New York 10004 (the “**Bankruptcy Court**”), on **April 29, 2020 at 11:00 a.m. (Prevailing Eastern Time)** (the “**Hearing**”), or as soon thereafter as counsel may be heard.

**PLEASE TAKE FURTHER NOTICE** that pursuant to General Order M-543 dated March 20, 2020, all hearings and conferences scheduled to be held at the Bankruptcy Court will be conducted telephonically pending further order of the Bankruptcy Judge assigned to the matter. Any party wishing to appear at the hearing must make arrangements with Court Solutions LLC, [www.court-solutions.com](http://www.court-solutions.com) to sign up for an account and to register for a live line. Registration for a hearing must occur no later than 12:00 p.m. on the business day prior to the hearing date.

**PLEASE TAKE FURTHER NOTICE** that any responses or objections (the “**Objections**”) to the Motion must be in writing, shall confirm to the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules, and shall be filed with the Bankruptcy Court (a) by attorneys practicing in the Bankruptcy Court, including attorneys admitted *pro hac*

vice, electronically in accordance with General Order M-399 (which can be found at [www.nysb.uscourts.gov](http://www.nysb.uscourts.gov)), and (b) by all other parties in interest, with an electronic copy emailed directly to Chambers at [wiles.chambers@nysb.uscourts.gov](mailto:wiles.chambers@nysb.uscourts.gov), in accordance with the Judge's chambers instructions, and served in accordance with General Order M-399 and the *Order Pursuant to 11 U.S.C. § 105(a) and Fed. R. Bankr. P. 1015(c), 2002(m), and 9007 Implementing Certain Notice and Case Management Procedures* [ECF No. 106] so as to be received no later than **April 23, 2020 at 4:00 p.m. (Prevailing Eastern Time)** (the "**Objection Deadline**").

**PLEASE TAKE FURTHER NOTICE** that if no Objections are timely filed and served with respect to the Motion, the Debtors may, on or after the Objection Deadline, submit to the Bankruptcy Court an order substantially in the form of the proposed order annexed to the Motion, which order may be entered with no further notice or opportunity to be heard.

**PLEASE TAKE FURTHER NOTICE** that a copy of the Motion can be obtained through the Bankruptcy Court's electronic case filing system at [www.nysb.uscourts.gov](http://www.nysb.uscourts.gov) using a PACER password (to obtain a PACER password, go to the PACER website, [www.pacer.gov](http://www.pacer.gov)) or the website maintained by the Debtors' noticing agent, Kurtzman Carson Consultants LLC, at <http://www.kccllc.net/McClatchy>.

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Dated: New York, New York  
April 9, 2020

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**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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<i>In re</i>	:	<b>Chapter 11</b>
	:	
<b>THE McCLATCHY COMPANY, et al.,</b>	:	<b>Case No. 20-10418 (MEW)</b>
	:	
<b>Debtors.<sup>1</sup></b>	:	<b>(Jointly Administered)</b>
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<sup>1</sup> The last four digits of Debtor The McClatchy Company’s tax identification number are 0478. Due to the large number of debtor entities in these jointly administered chapter 11 cases, a complete list of the debtor entities and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors’ claims and noticing agent at <http://www.kccllc.net/McClatchy>. The location of the Debtors’ service address for purposes of these chapter 11 cases is: 2100 Q Street, Sacramento, California 95816.

**DEBTORS' MOTION FOR MODIFICATION OF FINAL DEBTOR-IN-  
POSSESSION POSTPETITION FINANCING ORDER AND RELATED RELIEF**

The McClatchy Company and certain of its affiliates, the debtors and debtors in possession in the above-captioned cases (collectively, the “**Debtors**,” the “**Company**,” or “**McClatchy**”), hereby move (this “**Motion**”) this Court for (a) reconsideration of the *Final Order (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Use Cash Collateral, (II) Granting (A) Liens and Providing Superpriority Administrative Expense Status and (B) Adequate Protection to Certain Prepetition Lenders, (III) Modifying the Automatic Stay and (IV) Granting Related Relief* [Docket No. 233] (the “**Final DIP Order**”) and (b) entry an order, substantially in the form attached hereto as **Exhibit A** (the “**Modified Final DIP Order**”). A redline reflecting proposed changes from the Final DIP Order is attached hereto as **Exhibit B**. In support of the Motion, the Debtors, by and through their undersigned counsel, respectfully represent as follows:

**PRELIMINARY STATEMENT**

1. As the parties in this case are by now well aware, we find ourselves in unprecedented times with the coronavirus (“**COVID-19**”) resulting in largely global “shelter-in-place” directives and the mandated closure of “non-essential” businesses across the United States. Businesses across the United States – even otherwise healthy businesses – are struggling to operate in this environment, and the Debtors are experiencing many of those challenges as well, despite journalism being labelled as “essential.” The impact of COVID-19 has required the Debtors to reevaluate their business plans, and the Debtors are taking actions to preserve value and liquidity so that they can continue to pursue a value-maximizing outcome for the benefit of all stakeholders.

2. The Debtors file this Motion for modification of the Final DIP Order regarding two narrow aspects of the Final DIP Order. First, until further order of the Court, the Debtors seek to reduce the monthly Adequate Protection Payments (including payments to the First Lien AP Professionals) by 15 percent. Second, until further order of the Court, the Debtors seek to limit payment of the Case Professional fees by a like amount, reduced to 65 percent of approved monthly fee statements (instead of the 80 percent permitted under the Interim Compensation Order (as defined below)). The Debtors propose a corresponding reduction to the Reserves (as defined in the DIP Credit Agreement) and the DIP Carve-Out Cap to 85 percent of reported fee accruals for Case Professionals until receipt of the Tax Refund (defined below).

3. As a consequence of the recent stimulus legislation passed by the U.S. government in response to the pandemic crisis, the Debtors expect to receive a tax refund of approximately \$10 million in the coming months (the “**Tax Refund**”). Once received, the Debtors propose that the proceeds of the Tax Refund would be distributed as follows (a) *first*, provided that no Default or Event of Default under the DIP Credit Agreement has occurred and is not waived, to the First Lien Notes Creditors to satisfy any shortfall in the Adequate Protection Payments required by the Final DIP Order that remain outstanding as a result of the Modified DIP Final Order and (b) *second*, the Case Professionals shall be paid an additional 15 percent of approved monthly fees (up to 80 percent of the monthly fees identified in approved fee statements) that they would otherwise have been paid in accordance with the Interim Compensation Order.

4. Consistent with these austerity measures, and as further adequate protection for the Debtors’ secured creditors and to maximize value for other creditors and stakeholders, the Debtors’ board today also approved compensation adjustments across the entire pool of its senior

executives. In order to ensure alignment of the various stakeholders' interests, the board conditioned its approval of these measures on the approval of the relief sought in the Motion. Specifically, the austerity measures include forfeiture of all compensation earned during the first measurement period under the Debtors' Key Employee Incentive Program, adopted in October 2019 plus other voluntary compensation reductions (through September 30, 2020). The total cash impact of these savings will be more than \$1 million.

5. Without the concessions the Debtors are seeking in the Modified Final DIP Order, the Debtors would likely be forced to seek more extraordinary relief in connection with these Chapter 11 Cases to preserve value and liquidity. *See e.g., In re Pier 1 Imports, Inc.*, Case No. 20- 30805 (KRH) (Bankr. E.D. Va. Apr. 6, 2020) (approving a limited 30-day case suspension); *In re Modell's Sporting Goods, Inc.*, Case No. 20-14179 (VFP) (Bankr. D.N.J. Mar. 27, 2020) (same). Accordingly, the Debtors believe that modifying the Final DIP Order as set forth above provides the Debtors with the best path forward and will allow them to continue to pursue a value maximizing outcome for their stakeholders. Indeed, the relief requested herein provides the First Lien Notes Creditors better and longer term adequate protection (in the form of enhanced overall liquidity and therefore optionality) than the modest reduction in Adequate Protection Payments would otherwise provide (at best) on a limited and near-term basis.

#### **RELIEF REQUESTED**

6. Under these unprecedented circumstances, the Debtors seek modification of the Final DIP Order pursuant to entry of the Modified DIP Order.

#### **JURISDICTION AND VENUE**

7. This Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated January 31, 2012. The Debtors confirm their



consent, pursuant to Rule 7008 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

This is a core proceeding under 28 U.S.C. § 157(b).

8. Venue of these cases and this Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

9. The legal predicates for the relief requested herein are sections 105, 361, 362, 363, 364, 503, and 507 of Title 11 of the United States Code (the “**Bankruptcy Code**”), Rules 2002, 4001, 6004, 9006, and 9023 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Rule 4001-2 of the Local Bankruptcy Rules for the Southern District of New York (the “**Local Bankruptcy Rules**”).

## BACKGROUND

### I. The Chapter 11 Cases.

10. On February 13, 2020<sup>2</sup> (the “**Petition Date**”), each Debtor commenced a case by filing a petition for relief under chapter 11 of the Bankruptcy Code (collectively, the “**Chapter 11 Cases**”). The Chapter 11 Cases are jointly administered.

11. The Debtors continue to operate their businesses and manage their properties as debtors and debtors in possession pursuant to Bankruptcy Code sections 1107(a) and 1108.

<sup>2</sup> On March 24, 2020 (the “**Additional Petition Date**”) the Debtors’ affiliate, Oak Street Redevelopment Corporation (“**Oak Street**”), also commenced a case by filing a chapter 11 petition. As used herein, the term “**Petition Date**” encompasses the Additional Petition Date and the term “**Chapter 11 Cases**” includes the Oak Street chapter 11 case, which is being jointly administered with the Debtors’ chapter 11 cases commenced on February 13, 2020. See Order (I) Directing Joint Administration of Cases and (II) Waiving Requirements of Bankruptcy Code Section 342(c)(1) and Bankruptcy Rules 1005 and 2002(n) [Docket No. 265].

12. On February 26, 2020, the Office of the United States Trustee for the Southern District of New York (the “**U.S. Trustee**”) appointed the Official Committee of Unsecured Creditors (the “**Committee**”) pursuant to section 1102 of the Bankruptcy Code. No trustee or examiner has been appointed in these Chapter 11 Cases.

13. The McClatchy Company and its direct and indirect Debtor subsidiaries are a diversified digital and print media business, focused on providing strong, independent local journalism to 30 communities across 14 states, as well as national news coverage through the Debtors’ Washington D.C. based bureau. The Debtors also provide a full suite of both local and nationwide digital marketing services. The Debtors’ businesses are comprised of websites and mobile applications, mobile news and advertising, video products, a digital marketing agency, daily newspapers, niche publications, other print and digital direct marketing services and community newspapers. The Company’s business operations, corporate and capital structures, and restructuring efforts are described in greater detail in the *Declaration of Sean M. Harding in Support of Chapter 11 Petitions and First Day Papers* [Docket No. 23], filed with the Court on February 13, 2020.

## **II. The Debtors’ Post-Petition Debtor-In-Possession Financing**

14. On the Petition Date, the Debtors filed their *Motion for Interim and Final Orders (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Authorizing the Debtors to Use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection, (V) Modifying the Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief* [Docket No. 11] (the “**DIP Motion**”). The interim hearing on the DIP Motion was held on February 14, and on February 14, the Court entered the *Interim Order (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Use Cash Collateral, (II) Granting (A) Liens and Providing Superpriority Administrative*

*Expense Status and (B) Adequate Protection to Certain Prepetition Lenders, (III) Modifying the Automatic Stay, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief* [Docket No. 64].

15. On final hearing on the DIP Motion was held on March 25, and on March 26, the Court entered the Final DIP Order.

### **BASIS FOR RELIEF REQUESTED AND APPLICABLE AUTHORITY**

#### **I. The Court Should Modify the Final DIP Order**

16. Pursuant to sections 105(a), 361, 363 and 364 of the Bankruptcy Code and Bankruptcy Rule 9023, the Debtors respectfully request that the Court modify the Final DIP Order to the limited extent set forth herein.

17. Bankruptcy Rule 9023, which makes Rule 59 of the Federal Rules of Civil Procedure (the “**Federal Rules**”) applicable to the Final DIP Order, governs a motion for modification or amendment of judgments or orders. *See* Fed. R. Bankr. P. 9023; Fed. R. Civ. P. 59. Specifically, a party may make a motion for a new trial or to alter or amend a judgment within 14 days after entry of a judgment. Fed. R. Bankr. P. 9023. A motion to alter or amend a judgment under Rule 59(e) must be grounded on (a) an intervening change in controlling law; (b) the availability of new evidence; or (c) the need to correct clear error of law or prevent manifest injustice. *See Max’s Seafood Café v. Quinteros*, 176 F.3d 669, 677 (3d Cir. 1999) (grounds for reconsideration of an order include the need to correct clear error of law or prevent manifest injustice); *Hollander v. Members of the Bd. of Regents of the Univ. of the State of N.Y.*, 524 Fed. Appx. 727, 729 (2d Cir. 2013) (same); *see also Fireman’s Fund Ins. Co. v. Great Am. Ins. Co.*, 10 F.Supp.3d 460, 475 (S.D.N.Y. 2014) (motion to reconsider may be granted if “the moving party can point to controlling decisions or data that the court overlooked-matters, in other words that might reasonably be expected to alter the conclusion reached by the court”) (citing *Goonan*

*v. Fed. Reserve Bank of N.Y.*, No. 12 Civ. 3859 (JPO), 2013 WL 1386933, at \*1 (S.D.N.Y. Apr. 5, 2013) (citations and quotations omitted)).

18. Here, the Debtors are seeking modification of the Final DIP Order because, given the unprecedented impact of COVID-19 and the Debtors' developing understanding of how it will impact the Debtors' business plans, the landscape of the Chapter 11 Cases has changed dramatically even in the short time since the Court entered the Final DIP Order on March 26, 2020. Specifically, as soon as reasonably practicable after the Debtors became aware of the shelter-in-place orders and mandates to close non-essential businesses, the Debtors undertook a review of their projections and business plans. Upon such review, the Debtors determined that to preserve value for the Debtors' constituents and minimize the impact of the anticipated significant decline in revenues as a result of COVID-19, the Debtors would need to undertake cost-cutting and other measures to preserve liquidity and a value-maximizing outcome of the Chapter 11 Cases.

19. As part of those efforts, the Debtors have determined to limit expenditures that do not directly promote revenue, margin, liquidity or continuation of the Debtors' operations. Accordingly, the Debtors are seeking to modify the Final DIP Order until further order of the court, to reduce Adequate Protection Payments (including payments to First Lien AP Professionals) by 15 percent, reduce payments to Case Professionals on account of monthly fee accruals by 15 percent, and to reduce the Reserves under the DIP Credit Agreement and likewise the DIP Carve-Out Cap to only include 85 percent of reported fee accruals for Case Professionals.

20. The Debtors also expect an approximately \$10 million tax refund as a result of the stimulus package approved by the U.S. government. Accordingly, once the Debtors receive the

Tax Refund, the Debtors are seeking authority to use the proceeds of the Tax Refund to catch up the deferred payments otherwise required by the Final DIP Order for the First Lien Notes Creditors and Case Professionals. Specifically, first, so long as no Default or Event of Default is occurring under the DIP Loan Documents that is not waived, the Debtors would use the Tax Refund to catch up the Adequate Protection Payments. Second, the Debtors would use the Tax Refund to catch up approved monthly professional fee payments for up to 80 percent of fees identified in monthly fee statements in accordance with the Interim Compensation Order.

21. The Debtors submit that it would be manifestly unjust to deny a modification of the Final DIP Order to implement the aforementioned reduction in payments in light of the significant impact COVID-19 will have on the Debtors' revenues, work force, and ultimately, stakeholders in these Chapter 11 Cases. Nonetheless, the Debtors continue to review other cost-cutting measures to address the impact of COVID-19. It is the Debtors' business judgment that a coordinated approach to addressing COVID-19 is critical to success, and that is why the Debtors' board conditioned certain cost-cutting measures on the approval of the relief requested herein.

22. As noted above, the steps that the Debtors propose to implement are designed to provide additional adequate protection to the First Lien Notes Creditors, not less. Indeed, "adequate protection" is a flexible concept, and the enumerated examples of adequate protection in section 361 of the Bankruptcy Code are non-exhaustive. *See In re 495 Cent. Park Ave. Corp.*, 136 B.R. 626 (Bankr. S.D.N.Y. 1992) ("Although 11 U.S.C. § 361 presents some specific illustrations of adequate protection, the statute is not exclusive. Rather, it suggests a broad and flexible definition."); *In re Pine Lake Village Apartment Co.*, 19 B.R. 819, 828 (Bankr. S.D.N.Y. 1982) ("[A]dequate protection is a flexible concept which requires a Court to make decisions in a case-by-case basis, after full consideration of the peculiar characteristics common to each

proceeding.") (quoting *In re Monroe Park*, 17 B.R. 934, 940 (D. Del. 1982)); *In re N.J. Affordable Homes Corp.*, No. 05-60442, 2006 WL 2128624, at \*14 (Bankr. D.N.J. June 29, 2006) ("The term 'adequate protection' is intended to be a flexible concept."<sup>3</sup>)

23. The Debtors' DIP Lender has consented to the modifications to the Final DIP Order requested herein. The Debtors have likewise consulted with the First Lien Notes Creditors and the Committee, and such parties are continuing to review and analyze the relief requested herein.

### **MOTION PRACTICE**

24. This Motion includes citations to the applicable rules and statutory authorities upon which the relief requested herein is predicated, and a discussion of their application to the Motion. Accordingly, the Debtors submit that this Motion satisfies Local Bankruptcy Rule 9013-1(a).

### **RESERVATION OF RIGHTS**

25. Nothing in this Motion should be construed as (a) authority to assume or reject any executory contract or unexpired lease of real property, or as a request for the same; (b) an admission as to the validity, priority, or character of any claim or other asserted right or obligation, or a waiver or other limitation on the Debtors' or any other party in interest's ability to contest the same on any ground permitted by bankruptcy or applicable non-bankruptcy law; (c) a promise to pay any claim; (d) granting third party beneficiary status or bestowing any additional rights on any third party; or (e) being otherwise enforceable by any third party.

<sup>3</sup> In fact, at least one court has found that the preservation of ongoing businesses operations itself constitutes adequate protection. See *In re Patriot Coal Corp.*, Case No. 15-32450 (KLP) (Bankr. E.D. Va. June 3, 2015), Hr'g Tr. at 131:24-132:6-7 (stating that "preservation of the going concern adequately protects the . . . lenders' interests").

**NOTICE**

26. Notice of this Motion will be provided in accordance with the *Order Pursuant to 11 U.S.C. §105(a) and Fed. R. Bankr. P. 1015(c), 2002(m), and 9007 Implementing Certain Notice and Case Management Procedures* [Docket No. 106]. The Debtors submit that, in view of the facts and circumstances, such notice is sufficient and no other or further notice need be provided.

**NO PRIOR REQUEST**

27. No previous request for the relief sought therein has been made to this Court or any other court.

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## CONCLUSION

The Debtors respectfully request that this Court reconsider the DIP Motion and enter the Order, substantially in the form attached hereto as **Exhibit A**, granting the relief requested herein and further relief as may be just and proper.

Dated: New York, New York  
April 9, 2020

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*Counsel to Debtors and Debtors in Possession*



**EXHIBIT A**

**Proposed Modified Final DIP Order**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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<i>In re</i>	:	<b>Chapter 11</b>
	:	
<b>THE McCLATCHY COMPANY, et al.,</b>	:	<b>Case No. 20-10418 (MEW)</b>
	:	
<b>Debtors.<sup>1</sup></b>	:	<b>(Jointly Administered)</b>
	:	
-----	x	<b>Ref. Docket Nos. 11, 12, 13, 64 &amp; 233</b>

**MODIFIED FINAL ORDER (I) AUTHORIZING THE DEBTORS TO (A) OBTAIN  
POSTPETITION FINANCING AND (B) USE CASH COLLATERAL, (II) GRANTING  
(A) LIENS AND PROVIDING SUPERPRIORITY ADMINISTRATIVE EXPENSE  
STATUS AND (B) ADEQUATE PROTECTION TO CERTAIN PREPETITION  
LENDERS, (III) MODIFYING THE AUTOMATIC STAY  
AND (IV) GRANTING RELATED RELIEF**

Upon the motion (the “**Motion**”)<sup>2</sup> of The McClatchy Company (“**Parent**”), McClatchy Newspapers, Inc. (“**Lead Borrower**”), and the various other Debtors who are “Loan Parties” as defined in that certain DIP Credit Agreement (as defined below), each as a debtor and debtor in possession (collectively, the “**Debtors**”)<sup>3</sup> in the Debtors’ chapter 11 cases (collectively, the “**Chapter 11 Cases**”) for entry of an interim order and a final order (the “**Final Order**”) pursuant

<sup>1</sup> The last four digits of Debtor The McClatchy Company’s tax identification number are 0478. Due to the large number of debtor entities in these chapter 11 cases, a complete list of the debtor entities and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors’ claims and noticing agent at <http://www.kccllc.net/McClatchy>. The location of the Debtors’ service address for purposes of these chapter 11 cases is: 2100 Q Street, Sacramento, California 95816.

<sup>2</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Motion, or if not defined therein, the DIP Loan Documents (as defined below).

<sup>3</sup> All of the Debtors shall be obligors under the DIP Credit Agreement, except for the following entities: El Dorado Newspapers; Herald Custom Publishing of Mexico, S. de R.L. de C.V.; McClatchy Big Valley, Inc.; McClatchy International Inc.; McClatchy News Services, Inc.; McClatchy Property, Inc.; McClatchy Resources, Inc.; McClatchy Shared Services, Inc.; N & O Holdings, Inc.; Newsprint Ventures, Inc.; Tribune Newsprint Company; Tru Measure, LLC; and Wingate Paper Company. For the avoidance of doubt, for all purposes of this Final Order, the term “Debtors” shall not include any entities that are not “Loan Parties” as defined in the DIP Credit Agreement or the Prepetition Credit Documents (as defined below).

to sections 105, 361, 362, 363, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), 364(e), 503 and 507 of title 11 of the United States Code (the “**Bankruptcy Code**”), Rules 2002, 4001, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Rule 4001-2 of the Local Bankruptcy Rules for the Southern District of New York (the “**Local Bankruptcy Rules**”):

- (i) authorizing, under sections 364(c) and 364(d) of the Bankruptcy Code and Bankruptcy Rule 4001(c), the Debtors to obtain secured, superpriority postpetition loans, advances and other financial accommodations (the “**DIP Facility**” and the loans thereunder, the “**DIP Loans**”), on a final basis, pursuant to the terms and conditions of that certain Debtor-In-Possession Credit Agreement (as amended, restated, supplemented or otherwise modified from time to time, the “**DIP Credit Agreement**”) by and among (a) the Parent, (b) the Lead Borrower, (c) the other Borrowers party thereto from time to time, (d) Encina Business Credit, LLC, as administrative agent (in such capacity herein, the “**DIP Agent**”) for its own benefit and the benefit of the Lender Group, and (e) the Lenders from time to time party thereto (the “**DIP Lenders**” and each a “**DIP Lender**”; the DIP Agent, the DIP Lenders and the other members of the Lender Group under the DIP Loan Documents (as defined below) are collectively referred to herein as the “**DIP Credit Parties**”), attached as **Exhibit 2** to the *Interim Order (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Use Cash Collateral, (II) Granting (A) Liens and Providing Superpriority Administrative Expense Status and (B) Adequate Protection to Certain Prepetition Lenders, (III) Modifying the Automatic Stay, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief* [Docket No. 64] (the “**Interim Order**”);
- (ii) authorizing the Debtors to execute and deliver the DIP Credit Agreement and all other related documents and agreements, including, without limitation, security agreements, deposit account control agreements, pledge agreements, guaranties and promissory notes (collectively, the “**DIP Loan Documents**”) and to perform such other acts as may be necessary or desirable in connection with the DIP Loan Documents;
- (iii) until the Termination Declaration Date (as defined herein), and subject to the terms, conditions, limitations on availability and reserves set forth in the DIP Loan Documents, the DIP Facility and this Final Order, authorizing the Debtors, to request extensions of credit and borrow under the DIP Facility up to an aggregate principal amount of \$50,000,000 at any one time outstanding (the “**DIP Financing**”);
- (iv) granting allowed superpriority administrative expense claim status pursuant to section 364(c)(1) of the Bankruptcy Code in each of the Chapter 11 Cases and any Successor Cases (as defined herein) to all obligations owing under the DIP Credit Agreement and the other DIP Loan Documents (collectively, and including all “**Obligations**” as described in the DIP Credit Agreement, including, without

limitation, all obligations with respect to Letters of Credit deemed issued under the DIP Credit Agreement, respectively, and, together, the “**DIP Obligations**”), subject to the priorities set forth herein;

- (v) authorizing the Debtors to use “Cash Collateral,” as defined in section 363(a) of the Bankruptcy Code, that the Debtors are holding or may obtain, pursuant to Bankruptcy Code section 361 and 363 and Bankruptcy Rules 4001(b) and 6004 and in accordance with the Approved Budget (as defined below);
- (vi) granting to the DIP Agent, for the benefit of the DIP Credit Parties, automatically perfected security interests in and liens on all of the DIP Collateral (as defined herein), including, without limitation, all property constituting Cash Collateral, which liens shall be subject to the priorities set forth herein;
- (vii) authorizing and directing the Debtors to pay the principal, interest, fees, costs, expenses and other amounts payable under each of the DIP Loan Documents as they become due, including, without limitation, unused line fees, closing fees, administrative fees, any additional fees set forth in the DIP Loan Documents, the reasonable and documented fees and disbursements of the DIP Credit Parties’ attorneys, advisers, accountants, and other consultants, and all related expenses of the DIP Credit Parties;
- (viii) authorizing and directing the Debtors, upon entry of the Interim Order and as set forth herein, to satisfy the Prepetition ABL Obligations (as defined herein) and to cash collateralize (x) the Postpetition Letters of Credit (as defined herein), (y) any Bank Products (as defined herein) continuing after the Prepetition ABL Payoff Date (as defined herein) that are provided by a Prepetition ABL Secured Lender to any Debtor and (z) any Prepetition ABL Reimbursement and Indemnity Obligation (as defined herein) (the remaining Prepetition ABL Obligations described in clauses (x), (y) and (z) above, the “**Remaining Prepetition ABL Obligations**”), in each case on or before the Prepetition ABL Payoff Date (as defined herein), converting the Surviving Letters of Credit (as defined herein) into post-petition Letters of Credit (such outstanding letters of credit, the “**Postpetition Letters of Credit**”), and granting the Prepetition ABL Agent, on behalf of itself and the Prepetition ABL Secured Lenders providing the Postpetition Letters of Credit and Bank Products (as defined in the Prepetition ABL Credit Agreement) automatically, perfected superpriority security interests in and liens on the ABL Carve-Out Collateral (as defined herein) on the terms set forth herein;
- (ix) authorizing the Debtors to provide adequate protection to the Prepetition Secured Creditors (as defined herein) for any Diminution in Value (as defined below) of their respective interests in the Prepetition Collateral (including Cash Collateral), which adequate protection shall include certain adequate protection liens, claims and payments described herein;
- (x) approving certain stipulations by the Debtors with respect to the Prepetition Credit Documents and the Prepetition Collateral as set forth herein;

- (xi) waiving any applicable stay and provisions for immediate effectiveness of this Final Order;
- (xii) vacating and modifying the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of the DIP Loan Documents and this Final Order; and
- (xiii) granting related relief.

The Court having considered the Motion, the *Declaration of Sean M. Harding in Support of Chapter 11 Petitions and First Day Papers* [Docket No. 23], including the Motion and the exhibits attached thereto, the *Declaration of Sean M. Harding in Support of the Motion* [Docket No. 13] and the *Declaration of Bo S. Yi in Support of the Motion*, [Docket No. 12], the DIP Loan Documents, and the evidence submitted or adduced and the arguments of counsel made at the interim hearing held on the Motion on February 14, 2020 (the “**Interim Hearing**”) and at the final hearing held on the Motion (the “**Final Hearing**”); and the Court having entered its Interim Order providing for approval of the Motion on an interim basis as set forth therein; and notice of the Final Hearing having been given in accordance with Bankruptcy Rules 4001(b), (c) and (d), 9014, Local Bankruptcy Rule 4001-2 and the Interim Order; and the Final Hearing to consider the final relief requested in the Motion having been held and concluded on March 25, 2020; and the Court having considered the *Debtors’ Motion for Modification of Final Debtor-In-Possession Postpetition Financing Order and Related Relief* (the “**DIP Modification Motion**”) and the evidence submitted or adduced and arguments of counsel made at the hearing held on the DIP Modification Motion; and all objections, if any, to the final relief requested in the Motion and DIP Modification Motion having been withdrawn, resolved or overruled by the Court; and it appearing to the Court that, pursuant to Bankruptcy Rule 4001(c)(2), granting the final relief requested is necessary to avoid immediate and irreparable harm to the Debtors and their estates, and otherwise is fair and reasonable and in the best interests of the Debtors, their estates, and their creditors and

equity holders, and is essential for the continued operation of the Debtors' businesses; and after due deliberation and consideration, and for good and sufficient cause appearing therefor;

BASED UPON THE RECORD ESTABLISHED AT THE INTERIM HEARING AND THE FINAL HEARING BY THE DEBTORS, INCLUDING THE SUBMISSIONS OF DECLARATIONS AND THE REPRESENTATIONS OF COUNSEL, THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:<sup>4</sup>

A. Petition Date. On February 13, 2020 (the "**Petition Date**"), each of the Debtors filed a separate voluntary petition under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York (the "**Court**") commencing the Chapter 11 Cases.

B. Debtors in Possession. The Debtors are continuing in the management and operation of their businesses and properties as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Chapter 11 Cases.

C. Jurisdiction and Venue. This Court has jurisdiction, pursuant to 28 U.S.C. §§ 157(b) and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated January 31, 2012, over these proceedings, and over the persons and property affected hereby. Consideration of the Motion constitutes a core proceeding under 28 U.S.C. § 157(b)(2) and this Court may enter a final order consistent with Article III of the United States Constitution. Venue for the Chapter 11 Cases and proceedings on the Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. The bases for the relief sought in the Motion and granted in this Final Order are sections 105, 361, 362, 363, 364,

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<sup>4</sup> The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

503 and 507 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001, 6004 and 9014, and Local Bankruptcy Rule 4001-2.

D. Committee Formation. On February 26, 2020, the United States Trustee for the Southern District of New York (the “**U.S. Trustee**”) appointed an official committee of unsecured creditors, in the Chapter 11 Cases of the Debtors and their affiliated debtors and debtors-in-possession pursuant to section 1102 of the Bankruptcy Code (the “**Committee**”).

E. Prepetition Secured Credit Facilities. Without prejudice to the rights of the parties-in-interest as set forth in paragraphs 31 and 43 herein, as of the Petition Date, the Debtors were party to the following credit facilities:

(i) Prepetition ABL Obligations. The Parent, Lead Borrower, certain of the other Debtors (collectively, the “**Prepetition ABL Obligors**”), Wells Fargo Bank, National Association, as administrative agent (in such capacity herein, the “**Prepetition ABL Agent**”) for its own benefit and the benefit of the “Lender Group” (as defined therein) and the “Bank Product Providers” (as defined therein), and the Lenders from time to time party thereto (the “**Prepetition ABL Lenders**,” and together with the Prepetition ABL Agent and the other members of the “Lender Group” and the “Bank Product Providers” under the Prepetition ABL Credit Documents, collectively, the “**Prepetition ABL Secured Lenders**”) are party to that certain Credit Agreement dated as of July 16, 2018 (as amended, modified and supplemented from time to time, the “**Prepetition ABL Credit Agreement**,” and together with all related documents, guaranties and agreements and the Prepetition ABL Payoff Letter (as defined herein), collectively, the “**Prepetition ABL Credit Documents**”). Pursuant to the Prepetition ABL Credit Documents, the Prepetition ABL Secured Lenders provided revolving credit, certain banking products and other financial accommodations to, and issued letters of credit for the account of, the Prepetition ABL

Obligors. Under the Prepetition ABL Credit Documents, the Prepetition ABL Secured Lenders provided the Prepetition ABL Obligors with, among other things up to \$65,000,000 in Revolver Commitments (as defined in the Prepetition ABL Credit Agreement), and up to \$35,000,000 in Pledged Cash Letter of Credit Commitments (as defined in the Prepetition ABL Credit Agreement). As of the Petition Date, there were no outstanding Revolving Loans under the Prepetition ABL Credit Agreement, however, there were issued and outstanding Pledged Cash Letters of Credit (as defined in the Prepetition ABL Credit Agreement) in the face amount of \$26,650,000 (the “**Surviving Letters of Credit**”) and other outstanding Obligations under the Prepetition ABL Credit Documents, including, without limitation, reimbursement obligations (contingent or otherwise) in respect of letters of credit, any fees, expenses and disbursements (including, without limitation, attorneys’ fees, accountants’ fees, auditor fees, appraisers’ fees and financial advisors’ fees, and related expenses and disbursements), treasury, cash management, bank product and derivative obligations, indemnification obligations, guarantee obligations, and other charges, amounts and costs of whatever nature owing, whether or not contingent, whenever arising, accrued, arising, due, owing or chargeable in respect of any of the Prepetition ABL Obligors’ obligations pursuant to, or secured by, the Prepetition ABL Credit Documents (collectively, the “**Prepetition ABL Obligations**”). The Prepetition ABL Obligations are secured by (a) first priority security interests in and liens on the ABL Priority Collateral (as defined in the ABL Intercreditor Agreement (as defined below)), and (b) second priority security interests in and liens on the Notes Priority Collateral (as defined in the ABL Intercreditor Agreement) (the liens and security interest in clauses (a) and (b), the “**Prepetition ABL Liens**”).

(ii) *Prepetition First Lien Secured Notes Obligations.* The Parent, as issuer (“**First Lien Notes Issuer**”), and certain of the Debtors as guarantors (collectively with the First



Lien Notes Issuer, the “**First Lien Notes Obligors**”) and The Bank of New York Mellon Trust Company, N.A. as trustee and notes collateral agent (collectively in such capacities, the “**First Lien Notes Trustee**”) entered into that certain Indenture dated as of July 16, 2018 (the “**First Lien Notes Indenture**”) pursuant to which the First Lien Notes Issuer issued certain 9.000% senior secured notes due 2026 (the “**First Lien Notes**,” and together with the First Lien Notes Indenture and all related documents, guaranties, and agreements, collectively, the “**First Lien Notes Documents**”). As of the Petition Date, the First Lien Notes Obligors were obligated under the First Lien Notes Documents to the Holders (as defined in the First Lien Notes Indenture) (the Holders together with the First Lien Notes Trustee collectively referred to herein as the “**First Lien Notes Creditors**”) in the approximate outstanding principal amount of \$262.9 million, plus all interest accrued and accruing at the rates set forth in the First Lien Notes Documents, costs, fees and any other amounts owing (of whatever nature, whether or not contingent, whenever arising, accrued, accruing, due, owing, or chargeable) to the First Lien Notes Creditors under the First Lien Notes Documents (“**First Lien Notes Obligations**”). The First Lien Notes Creditors have asserted that the First Lien Notes Obligations are secured by (a) first priority security interests in and liens on the Notes Priority Collateral and (b) second priority security interests in and liens on the ABL Priority Collateral (the collateral referenced in clauses (a) and (b), the “**Prepetition First Lien Notes Collateral**” and, the liens and security interests in clauses (a) and (b), the “**Prepetition First Lien Notes Liens**”).

(iii) *Prepetition Second Lien Term Loan Agreement Obligations.* The Parent, as borrower, and certain of the other Debtors as guarantors (collectively, the “**Second Lien Term Loan Obligors**”), The Bank of New York Mellon Trust Company, N.A, as administrative agent and collateral agent (collectively in such capacities, the “**Second Lien Term Loan Agent**”) for its

own benefit and the lenders, and the lenders from time to time party thereto (collectively with the Second Lien Term Loan Agent, the “**Second Lien Term Loan Creditors**”) are party to that certain Second Lien Term Loan Credit Agreement dated as of July 16, 2018 (as amended, modified and supplemented from time to time, the “**Second Lien Term Loan Credit Agreement**,” and together with all related documents, guaranties and agreements, the “**Second Lien Term Loan Documents**” and the term loan facility thereunder, the “**Second Lien Term Loan Facility**”). As of the Petition Date, the Second Lien Term Loan Obligors were obligated under the Second Lien Term Loan Credit Agreement to the Second Lien Term Creditors in the approximate outstanding principal amount of \$157.1 million, plus all interest accrued and accruing at the rates set forth in the Second Lien Term Loan Documents, costs, fees and any other amounts owing (of whatever nature, whether or not contingent, whenever arising, accrued, accruing, due, owing, or chargeable) to the Second Lien Term Loan Creditors under the Second Lien Term Loan Documents (the “**Second Lien Term Loan Obligations**”). The Second Lien Term Loan Creditors have asserted that, the Second Lien Term Loan Obligations are secured by third priority security interests in and liens on all the Debtors’ assets, subject to certain exclusions set forth in the Second Lien Term Loan Documents (such collateral, the “**Second Lien Term Loan Collateral**” and, the liens on and security interests in such Prepetition Second Lien Term Loan Collateral, the “**Prepetition Second Lien Term Loan Liens**”).

(iv) *Prepetition Third Lien Notes Obligations.* The Parent, as issuer, (“**Third Lien Notes Issuer**”) and certain of the Debtors as guarantors (collectively with the Third Lien Notes Issuer, the “**Third Lien Notes Obligors**,” and together with the Prepetition ABL Obligors, the First Lien Notes Obligors, and the Second Lien Term Loan Obligors, the “**Prepetition Obligors**”) and The Bank of New York Mellon Trust Company, N.A. as trustee and notes

collateral agent (collectively in such capacities, the “**Third Lien Notes Trustee**” and together with the Prepetition ABL Agent, the First Lien Notes Trustee and the Second Lien Term Loan Agent, the “**Prepetition Agents**”) entered into that certain Indenture dated as of December 18, 2018 (the “**Third Lien Notes Indenture**”) pursuant to which the Third Lien Notes Issuer issued certain 6.875% senior secured notes due 2031 (the “**Third Lien Notes**” and together with the Third Lien Notes Indenture and all related documents, guaranties, and agreements, the “**Third Lien Notes Documents**” and, collectively, with the Prepetition ABL Credit Documents, the First Lien Notes Documents, and the Second Lien Term Loan Documents, the “**Prepetition Credit Documents**”). As of the Petition Date, the Third Lien Notes Obligors were obligated under the Third Lien Notes Documents to the Holders (as defined in the Third Lien Notes Indenture) (the Holders, together with the Third Lien Notes Trustee, collectively referred to herein as the “**Third Lien Notes Creditors**” and together with the Prepetition ABL Secured Lenders, the First Lien Notes Creditors, and the Second Lien Term Loan Creditors, the “**Prepetition Secured Creditors**”) in the approximate outstanding principal amount of \$268.4 million, plus all interest accrued and accruing at the rates set forth in the Third Lien Notes Documents, costs, fees and any other amounts owing (of whatever nature, whether or not contingent, whenever arising, accrued, accruing, due, owing, or chargeable) to the Third Lien Notes Creditors under the Third Lien Notes Documents (“**Third Lien Notes Obligations**” and together with the Prepetition ABL Obligations, the First Lien Notes Obligations, and the Second Lien Term Loan Obligations, the “**Prepetition Secured Obligations**”). The Third Lien Notes Creditors have asserted that the Third Lien Notes Obligations are secured by fourth priority security interests in and liens on all of the Debtors’ assets, subject to certain exclusions set forth in the Third Lien Notes Documents (such collateral,

the “**Prepetition Third Lien Notes Collateral**” and, the liens on and security interests in such Prepetition Third Lien Notes Collateral, the “**Prepetition Third Lien Notes Liens**”).<sup>5</sup>

(v) *Intercreditor Agreements.* Pursuant to that certain ABL Notes Intercreditor Agreement dated as of July 16, 2018 (as amended, modified and supplemented from time to time, the “**ABL Intercreditor Agreement**”), by and between the Prepetition ABL Agent and the First Lien Notes Trustee, the Prepetition ABL Agent and the First Lien Notes Trustee have agreed, among other things and as more specifically set forth therein, on the respective rights, interests, obligations, priority, and positions of the Prepetition ABL Secured Lenders and First Lien Notes Creditors with respect to the Prepetition Collateral. Pursuant to that certain Intercreditor Agreement dated as of July 16, 2018 (as amended, modified and supplemented from time to time, the “**Junior Lien Intercreditor Agreement**,” and together with the ABL Intercreditor Agreement, the “**Intercreditor Agreements**”), by and between the Prepetition ABL Agent, the First Lien Notes Trustee, and Second Lien Term Loan Agent, the Prepetition ABL Agent, the First Lien Notes Trustee and the Second Lien Term Loan Agent have agreed, among other things and as more specifically set forth therein, on the respective rights, interests, obligations, priority and positions of the Prepetition Secured Creditors with respect to the Prepetition Collateral. Pursuant to that certain Permitted Junior Exchange Notes Joinder Agreement dated as of December 18, 2018, the Third Lien Notes Trustee became party to the Junior Lien Intercreditor Agreement. The Intercreditor Agreements are “subordination agreements” within the meaning of section 510(a) of the Bankruptcy Code. The DIP Credit Agreement shall constitute a “Refinancing” (as such term

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<sup>5</sup> The Prepetition ABL Collateral, the Prepetition First Lien Notes Collateral, the Prepetition Second Lien Term Loan Collateral, and the Prepetition Third Lien Notes Collateral are collectively referred to herein as the “**Prepetition Collateral**”. The Prepetition ABL Liens, the Prepetition First Lien Notes Liens, the Prepetition Second Lien Term Loan Liens and the Prepetition Third Lien Notes Liens are collectively referred to herein as the “**Prepetition Liens**”.

is defined in the applicable Intercreditor Agreement). As a result thereof, the DIP Credit Parties' interests in the Prepetition Collateral and DIP Collateral shall be the same as the Prepetition ABL Agent prior to such Refinancing and shall be governed by the Intercreditor Agreements unless otherwise expressly provided by this Final Order. The Intercreditor Agreements are, in each case, binding and enforceable against the Prepetition Secured Creditors in accordance with their terms.

(vi) *Cash Collateral.* Under the terms of the agreements that govern the foregoing financings, all of the Debtors' cash, including, without limitation, the cash in their deposit accounts, wherever located, whether as original collateral or proceeds of other Prepetition Collateral, constitutes Cash Collateral within the meaning of section 363(a) of the Bankruptcy Code and is Prepetition Collateral of the Prepetition Secured Creditors.

(vii) *No Control.* None of the DIP Agent, the DIP Lenders, the Prepetition Agents, or the Prepetition Secured Creditors, including (i) the managed funds and accounts of Chatham Asset Management, LLC in their respective capacities as Prepetition Secured Creditors (the "**Chatham Parties**"), and (ii) the managed funds and accounts of Brigade Capital Management in their respective capacities as First Lien Notes Creditors (the "**Brigade Parties**") and together with the Chatham Parties, the "**Supporting Creditors**"), controls the Debtors or their operations, has authority to determine the manner in which any of the Debtors' operations are conducted or is a control person or insider of the Debtors or any of their affiliates by virtue of any of the actions taken with respect to, in connection with, related to, or arising from the Interim Order, this Final Order, the DIP Facility, the DIP Loan Documents.

F. *Findings Regarding the Postpetition Financing.*

(i) *Request for Postpetition Financing.* The Debtors seek authority on a final basis to: (a) enter into, and access and use the liquidity provided under, the DIP Facility on the

terms described herein and in the DIP Loan Documents and (b) use Cash Collateral on the terms described herein to administer their cases and fund operations.

(ii) *Priming of Certain Prepetition Liens; Consent to Use of Cash Collateral.*

The priming of certain of the Prepetition Liens on certain of the Prepetition Collateral by the DIP Liens, as contemplated by the DIP Facility and to the extent set forth in this Final Order, will enable the Debtors to obtain the DIP Facility and to continue to operate their businesses for the benefit of their estates and creditors. For the avoidance of doubt, the DIP Liens shall not prime, and shall instead be subject and subordinate in all respects to, (i) the Prepetition First Lien Notes Liens on the Notes Priority Collateral and (ii) the ABL Priority Liens (all Prepetition Liens held by the Prepetition Secured Creditors other than those described in clauses (i) and (ii), the “**Primed Liens**”). With respect to the Primed Liens, the Prepetition Secured Creditors have either consented, or are deemed to consent, to priming by the DIP Liens, to the Debtors’ use of Cash Collateral, and to the subordination of the Primed Liens to the DIP Carve-Out (up to the DIP Carve-Out Cap) on the terms and conditions set forth in this Final Order. The Prepetition Secured Creditors are each entitled to receive adequate protection of their interests, as more fully described below.

(iii) *Immediate Need for Postpetition Financing and Use of Cash Collateral.*

The Debtors’ immediate need to use Cash Collateral and to obtain credit pursuant to the DIP Facility as provided for herein is necessary and critical in order to enable the Debtors to continue operations and to administer and preserve the value of their estates. The ability of the Debtors to finance their operations, to maintain business relationships with their vendors, suppliers, and customers, to pay their employees, to protect the value of their assets, and to otherwise finance their operations requires the availability of working capital from the DIP Facility

and the use of Cash Collateral. Without the ability to access the DIP Facility or Cash Collateral, the Debtors, their estates, their creditors, their equity holders, and the possibility for a successful reorganization would suffer immediate and irreparable harm. The Debtors do not have sufficient available sources of working capital and financing to operate their businesses or maintain their properties in the ordinary course of business without the DIP Facility and authorized use of Cash Collateral.

(iv) *No Credit Available on More Favorable Terms.* Given their current financial condition, financing arrangements and capital structure, the Debtors are unable to obtain financing from sources other than the DIP Credit Parties on terms more favorable than the DIP Facility. The Debtors have been unable to obtain unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense. The Debtors have also been unable to obtain credit: (a) having priority over that of administrative expenses of the kind specified in sections 503(b), 507(a) and 507(b) of the Bankruptcy Code; (b) secured by a lien on property of the Debtors and their estates that is not otherwise subject to a lien; or (c) secured solely by a junior lien on property of the Debtors and their estates that is subject to a lien. The Debtors made inquiries of third parties seeking alternative funding proposals and no viable offers of financing were obtained. Financing on a postpetition basis is not otherwise available under sections 364(c)(1), 364(c)(2) and 364(c)(3) without granting the DIP Agent, for the benefit of the DIP Credit Parties, (x) perfected security interests in and liens on (each as provided herein) all of the Debtors' existing and after-acquired assets with the priorities and to the extent set forth herein, (y) superpriority claims and priming liens, and (z) the other protections set forth in this Final Order, and without incurring the Adequate Protection Superpriority Claims and Adequate Protection Liens described herein.

(v) *Adequacy of the Approved Budget.* As set forth in the DIP Loan Documents, the Debtors have prepared and delivered to the DIP Credit Parties and the Supporting Creditors a budget, a copy of which is annexed as Exhibit B to the Motion (as the same may be modified from time to time consistent with the terms of the DIP Loan Documents and this Final Order, the “**Approved Budget**”).<sup>6</sup> The Approved Budget has been thoroughly reviewed by the Debtors, their management, and their advisors. The Debtors, their management, and their advisors believe the Approved Budget and the estimate of administrative expenses due or accruing during the period covered by the Approved Budget were developed using reasonable assumptions, and based on those assumptions, the Debtors believe there should be sufficient available assets to pay all administrative expenses due or accruing during the period covered by the Approved Budget. As a condition to entry into the DIP Credit Agreement, the extensions of credit under the DIP Facility, and the authorization to use Cash Collateral, the DIP Credit Parties require, and the Debtors have agreed, that proceeds of the DIP Facility and the Cash Collateral shall be used in a manner consistent with the terms and conditions of the DIP Loan Documents and this Final Order and in accordance with the Approved Budget for (i) postpetition ongoing debtor-in-possession working capital expenditures, operating expenses, and other general corporate purposes, (ii) certain transaction fees and expenses, (iii) permitted payment of costs of administration of the Chapter 11 Cases, including, without limitation, professional fees, (iv) adequate protection payments to the Prepetition Secured Creditors as set forth herein, (v) satisfying outstanding Prepetition ABL Obligations and funding the ABL Pledged L/C Account, the Bank Product Cash Collateral and the Prepetition ABL Indemnity Reserve pursuant to the Prepetition ABL Payoff Letter (each as defined below), and (vi) as otherwise permitted under the DIP Loan Documents, as applicable.

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<sup>6</sup> For the avoidance of doubt, the Approved Budget is one of the DIP Loan Documents.



(vi) *Certain Conditions to DIP Facilities.* The DIP Lenders' willingness to make the DIP Loans is conditioned upon, among other things: (a) the Debtors obtaining Court approval to enter into the DIP Loan Documents and to incur all of the respective obligations thereunder, and to confer upon the DIP Credit Parties all applicable rights, powers, and remedies thereunder in each case as modified by this Final Order; (b) the provision of adequate protection, as set forth herein, of the Prepetition Secured Creditors' interests in the Prepetition Collateral pursuant to sections 361, 363, and 364 of the Bankruptcy Code; (c) the DIP Credit Parties being granted, as security for the prompt payment of the DIP Facility and all other obligations of the Debtors under the DIP Loan Documents, subject to the priorities described in **Exhibit 1** annexed hereto, superpriority perfected security interests in and liens upon the DIP Collateral (as defined below).

G. *ABL Payments.* Contemporaneously with the closing of the DIP Credit Agreement, commitments under the Prepetition ABL Credit Documents will be terminated, Surviving Letters of Credit shall continue in place and all obligations under and in connection with such Surviving Letters of Credit will be deemed to and shall convert into Postpetition Letters of Credit and be secured by (a) the "Pledged Cash" in the "Pledged L/C Account" (as each such term is defined in the Prepetition ABL Credit Agreement), which account shall be subject to the exclusive access and control of the Prepetition ABL Agent and subject to control agreements in favor of the Prepetition ABL Agent, and (b) the Additional Pledged Cash in the Additional Pledged L/C Account (each as defined below). The Debtors shall deposit cash in an amount equal to (x) 2% of the face amount of the Postpetition Letters of Credit, *plus* (y) \$117,220.00 for early withdrawal fees in respect of Eligible CDs (as defined in the Prepetition ABL Credit Agreement) (the amounts set forth in the foregoing clauses (x) and (y), collectively, the "**Additional Pledged Cash**," and,

together with the Pledged Cash, the “**Pledged L/C Cash Collateral**”) into an account maintained at Wells Fargo Bank, NA (the “**Additional Pledged L/C Account**,” and together with the Pledged L/C Account, the “**ABL Pledged L/C Account**”), which account shall be subject to the exclusive access and control of the Prepetition ABL Agent and subject to a control agreement in favor of the Prepetition ABL Agent. The Debtors will also deposit \$6,125,000 (the “**Bank Product Cash Collateral**”) to fully collateralize obligations under the Bank Products continuing after the Prepetition ABL Payoff Date, whether incurred prepetition or postpetition, which will be held in an account with Wells Fargo Bank, NA and subject to the exclusive access and control of the Prepetition ABL Agent and subject to a control agreement in favor of the Prepetition ABL Agent, for the benefit of the Bank Product Providers (as defined in the Prepetition ABL Credit Agreement), for so long as the Bank Product Providers provide Bank Products under the Prepetition ABL Credit Agreement. Finally, as additional protection for the Prepetition ABL Secured Lenders, the Debtors will fund a Prepetition ABL Indemnity Reserve to collateralize any Prepetition ABL Reimbursement and Indemnity Obligations (as defined below) under the Prepetition ABL Credit Documents. All other Prepetition ABL Obligations, including all Revolving Loans and related interest, fees, and expenses, were satisfied upon the Prepetition ABL Payoff Date in accordance with the Prepetition ABL Payoff Letter (as defined herein). The Debtors are seeking authorization to (i) pay any letter of credit fees with respect to the Postpetition Letters of Credit,<sup>7</sup> and (ii) to provide cash collateral to secure the Remaining Prepetition ABL Obligations during these Chapter 11 Cases by funding the Pledged L/C Cash Collateral, the Bank Product Cash Collateral, and the Prepetition ABL Indemnity Reserve (collectively, the “**ABL**

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<sup>7</sup> For the avoidance of doubt, the Prepetition ABL Secured Lenders shall have no obligation to amend, renew or extend any Postpetition Letters of Credit.

**Carve-Out Collateral**”) as set forth herein and during the Chapter 11 Cases. No liens granted under the Interim Order or this Final Order, including, but not limited to, the DIP Liens and the Adequate Protection Liens (as defined below), shall extend or have recourse to the ABL Carve-Out Collateral until the Remaining Prepetition ABL Obligations are satisfied in full; *provided that* upon the satisfaction in full of the Remaining Prepetition ABL Obligations in accordance with the Prepetition ABL Payoff Letter and this Final Order, the ABL Carve-Out Collateral shall immediately and automatically become DIP Collateral that is ABL Priority Collateral and the DIP Liens and Adequate Protection Liens shall attach to such ABL Carve-Out Collateral without further action by the Debtors, DIP Agent, or Prepetition Secured Creditors or the need for further approval of the Court. The ABL Priority Liens (as defined herein) or the ABL Carve-Out Collateral shall not be subject or subordinate to the DIP Carve-Out.

H. *First Lien Notes, Second Lien Term Loans, and Third Lien Notes Adequate Protection.* The First Lien Notes Creditors, Second Lien Term Loan Creditors, and the Third Lien Notes Creditors (collectively, the “**Remaining Prepetition Secured Creditors**”) are entitled to receive adequate protection pursuant to sections 361, 362, 363 and 364 of the Bankruptcy Code and as set forth in paragraph 13 of this Final Order to the extent of any post-petition diminution in the value of their respective interests in the Prepetition Collateral resulting from the (a) provisions of the Interim Order and this Final Order granting the DIP Liens, (b) use of the Cash Collateral, (c) use, sale, or lease of the Prepetition Collateral, and/or (d) the imposition of the automatic stay under the Bankruptcy Code (a “**Diminution in Value**”). The terms of the adequate protection being provided in this Final Order reflect the Debtors’ prudent exercise of business judgment and constitute a reasonable compromise for the use of the Prepetition Collateral, including the Cash Collateral; *provided that*, nothing in this Final Order or the DIP Documents shall (x) be construed

as the affirmative consent by the Remaining Prepetition Secured Creditors for the use of Cash Collateral other than on the terms set forth in this Final Order and in the context of the DIP Financing authorized by this Final Order to the extent such consent has been or will be given, (y) to be construed as a consent by any party to the terms of any other financing or any other lien encumbering the Prepetition Collateral (whether senior or junior) or (z) prejudice, limit, or otherwise impair the rights of any of the Prepetition Secured Creditors, subject to any applicable provisions of the Intercreditor Agreements, to seek new, different or additional adequate protection or assert the interests of any of the Prepetition Secured Creditors; *provided further* that, nothing in this Final Order shall prohibit or restrict the Debtors from seeking alternative postpetition debtor-in-possession financing subject to payment in full of the DIP Obligations or to use Cash Collateral on terms and conditions different from those contained in this Final Order subject to the rights of the DIP Lenders, the DIP Agent, and the Prepetition Secured Creditors to object thereto which rights shall be subject to the Intercreditor Agreements, to the extent applicable. As adequate protection, the Remaining Prepetition Secured Creditors shall receive, subject to the Intercreditor Agreements and the priorities set forth in **Exhibit 1** hereto, among other things, the Adequate Protection Liens (as defined herein) to secure the applicable Prepetition Secured Obligations, the Adequate Protection Superpriority Claims (as defined herein) with respect to the applicable Prepetition Secured Obligations, and the Adequate Protection Payments (as defined herein).

I. Sections 506(c) and 552(b). The Debtors have agreed as a condition to obtaining financing under the DIP Facility and the use of Cash Collateral that as a material inducement to the DIP Credit Parties' agreement to provide the DIP Facility and the Prepetition Secured Creditors' consent to the use of Cash Collateral, and in exchange for (a) the DIP Credit Parties' willingness to provide the DIP Facility to the extent set forth herein, (b) the DIP Credit Parties'

and the Prepetition Secured Creditors' agreement to subordinate the Primed Liens and the DIP Liens, respectively, to the DIP Carve-Out (up to the DIP Carve-Out Cap), and (c) the consensual use of Cash Collateral consistent with the Approved Budget, the terms of the DIP Loan Documents, and the terms of this Final Order, each of the DIP Credit Parties and the Prepetition Secured Creditors are entitled to receive (x) a waiver of any equities of the case exceptions or claims under section 552(b) of the Bankruptcy Code and a waiver of unjust enrichment and similar equitable relief as set forth below, and (y) a waiver of the provisions of section 506(c) of the Bankruptcy Code, in each case, subject to the terms set forth in paragraphs 34 and 36 of this Final Order.

J. *Good Faith of the DIP Credit Parties.*

(i) *Willingness to Provide Financing.* Each of the DIP Credit Parties has indicated a willingness to provide financing to the Debtors subject to: (a) the entry by this Court of this Final Order; (b) approval by this Court of the terms and conditions of the DIP Facility and the DIP Loan Documents and satisfaction of the Prepetition ABL Obligations and termination of the Prepetition ABL Credit Agreement as contemplated by the Interim Order, this Final Order and the Prepetition ABL Payoff Letter; and (c) entry of findings by this Court that such financing is essential to the Debtors' estates, that each of the DIP Credit Parties is extending credit to the Debtors pursuant to the DIP Loan Documents in good faith, and that each of the DIP Credit Parties' claims, superpriority claims, security interests, liens, rights, and other protections granted pursuant to the Interim Order, this Final Order and the DIP Loan Documents will have the protections provided in section 364(e) of the Bankruptcy Code and will not be affected by any subsequent reversal, modification, vacatur, amendment, reargument or reconsideration of this Final Order or

any other order, which findings were deemed effective on a final basis upon entry of the Interim Order.

(ii) *Business Judgment and Good Faith Pursuant to Section 364(e)*. The terms and conditions of this Final Order, the DIP Loan Documents, the extension of credit and the fees paid and to be paid thereunder (a) are fair, reasonable, and the best available to the Debtors under the circumstances, (b) reflect the Debtors' exercise of prudent and sound business judgment consistent with their fiduciary duties, and (c) are supported by reasonably equivalent value and consideration. The DIP Facility and the use of Cash Collateral were negotiated in good faith and at arms' length among the Debtors and the DIP Credit Parties. The use of Cash Collateral and credit to be extended under the DIP Loan Documents shall be deemed to have been so allowed, advanced, made, used, and extended in good faith, and for valid business purposes and uses, within the meaning of section 364(e) of the Bankruptcy Code, and each of the DIP Credit Parties is therefore entitled to the protection and benefits of section 364(e) of the Bankruptcy Code and this Final Order.

K. *Good Cause*. Good cause has been shown for the entry of this Final Order. The relief requested in the Motion is necessary, essential, and appropriate and is in the best interest of and will benefit the Debtors, their creditors, and their estates, as its implementation will, among other things, provide the Debtors with the necessary liquidity to (i) minimize disruption to the Debtors' businesses and on-going operations, (ii) preserve and maximize the value of the Debtors' estates for the benefit of all the Debtors' creditors, and (iii) avoid immediate and irreparable harm to the Debtors, their creditors, their businesses, their employees, and their assets. The terms of the DIP Facility is fair and reasonable, reflect each Debtor's exercise of its business judgment, and are supported by reasonably equivalent value and fair consideration. The DIP Facility is the product

of reasonable, arm's length, good faith negotiations between the Debtors and the DIP Credit Parties.

L. Notice. Notice of the Final Hearing and the emergency relief requested in the Motion has been provided by the Debtors, whether by facsimile, email, overnight courier, or hand delivery in accordance with the Interim Order. The Debtors have made reasonable efforts to afford the best notice possible under the circumstances and such notice is good and sufficient to permit the relief set forth in this Final Order, and no other or further notice is or shall be required.

M. Immediate Entry. Good and sufficient cause exists for immediate entry of this Final Order pursuant to Bankruptcy Rule 4001(c)(2).

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

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

1. Motion Granted; DIP Financing Approved. The Motion is granted on a final basis, the DIP Financing is authorized and approved on a final basis, and the use of Cash Collateral on a final basis is authorized, in each case subject to the terms and conditions set forth in this Final Order.<sup>8</sup>

2. Objections Overruled. All objections to the DIP Financing and/or entry of this Final Order to the extent not withdrawn or resolved are hereby overruled on the merits.

**DIP Facility Authorization**

3. Authorization of the DIP Financing and DIP Loan Documents. The Debtors are expressly and immediately authorized and empowered (a) to execute and deliver the DIP Loan

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<sup>8</sup> For the avoidance of doubt, nothing in this Final Order shall be deemed an approval by the Bankruptcy Court of the proposed terms and conditions of the "Exit Financing" set forth in the DIP Credit Agreement.

Documents, (b) to incur and to perform the DIP Obligations in accordance with, and subject to, the terms of this Final Order and the DIP Loan Documents (including the Approved Budget), (c) to deliver all instruments and documents that may be necessary or required for performance by the Debtors under the DIP Facility and the creation and perfection of the DIP Liens described in and provided for by this Final Order and the DIP Loan Documents, and (d) to satisfy the Prepetition ABL Obligations and fully collateralize any Remaining Prepetition ABL Obligations under the Prepetition ABL Credit Documents, and deliver all instruments and documents that may be necessary or required by the creation and perfection of all liens granted to the Prepetition ABL Agent on behalf of the Prepetition ABL Secured Lenders to secure the Remaining Prepetition ABL Obligations. The Debtors are hereby authorized to pay the principal, interest, fees, expenses and other amounts described in the DIP Loan Documents as such become due and without need to obtain further Court approval, including, without limitation, commitment fees, closing fees, administrative fees, unused line fees, any additional fees and other amounts set forth in the DIP Loan Documents, and the reasonable and documented fees and disbursements of the DIP Credit Parties' attorneys, advisers, accountants, and other consultants, all to the extent provided in the DIP Loan Documents, with invoices to be provided in accordance with paragraph 26 below. All collections and proceeds, of "ABL Priority Collateral" (as defined below), whether from ordinary course collections, asset sales, debt issuances, insurance recoveries, condemnations or otherwise, will be deposited and applied as required by this Final Order and the DIP Loan Documents. Upon execution and delivery, the DIP Loan Documents shall represent valid and binding, and joint and several, obligations of the Debtors, enforceable against each of the Debtors and their estates in accordance with the terms of the DIP Loan Documents. The Debtors are also hereby authorized, without need to obtain further Court approval, to (i) make the Adequate Protection Payments (as



defined below); and (ii) pay any interest, fees, expenses and other amounts as such become due for any Remaining Prepetition ABL Obligations as set forth in the Prepetition ABL Credit Documents, to provide cash collateral to secure the Remaining Prepetition ABL Obligations and pay the reasonable and documented fees and disbursements of the Prepetition ABL Agent's and the other Prepetition ABL Secured Lenders' attorneys, advisers, accountants, and other consultants, all to the extent provided in the Prepetition ABL Credit Documents.

4. Authorization to Borrow. Until the Termination Declaration Date (as defined in paragraph 23(d) below), and subject to the terms, conditions, limitations on availability and reserves set forth in the DIP Loan Documents, the DIP Facility and this Final Order, the Debtors are hereby authorized to request extensions of credit and borrow under the DIP Facility up to an aggregate principal amount of \$50,000,000 at any one time outstanding. No other corporate authority is required for the Debtors to execute and deliver the DIP Loan Documents, perform their obligations thereunder or request any extension of credit under the DIP Facility as set forth herein.

5. DIP Obligations. The DIP Loan Documents and this Final Order shall constitute and evidence the validity and binding effect of the Debtors' DIP Obligations, which DIP Obligations shall be enforceable against the Debtors, their estates and any successors thereto, including, without limitation, any trustee or other estate representative appointed in the Chapter 11 Cases, or any case under chapter 7 of the Bankruptcy Code upon the conversion of any of the Chapter 11 Cases (collectively, "Successor Cases"). Upon entry of this Final Order, the DIP Obligations will include all loans and any other indebtedness or obligations, contingent or absolute, which may now or from time to time be owing by any of the Debtors to any of the DIP Credit Parties under the DIP Loan Documents or this Final Order, including, without limitation, all principal, accrued interest, costs, fees, expenses and other amounts owed pursuant to the DIP Loan

Documents, and shall be joint and several obligations of the Debtors in all respects. No obligation, payment, transfer or grant of security under the DIP Credit Agreement, the other DIP Loan Documents or this Final Order shall be stayed, restrained, voidable, or recoverable under the Bankruptcy Code or under any applicable law (including, without limitation, under section 502(d) of the Bankruptcy Code), or be subject to any defense, reduction, setoff, recoupment or counterclaim (except as to the review of invoices in accordance with paragraph 26 below).

6. Postpetition Liens and Collateral.

(a) Effective immediately upon the entry of the Interim Order, except with respect to clauses (xvii) and (xviii) below, which shall only be effective upon entry of this Final Order, pursuant to sections 364(c)(2), 364(c)(3), and 364(d) of the Bankruptcy Code, the Debtors were or are authorized to grant, as applicable, and did or do hereby grant, as applicable, to the DIP Agent (for the benefit of itself and the other DIP Credit Parties under the DIP Loan Documents) continuing valid, binding, enforceable, non-avoidable, and automatically and properly perfected postpetition security interests in and liens on (collectively, the “**DIP Liens**”) any and all presently owned and hereafter acquired assets and real and personal property of the Debtors, including, without limitation, the following (the “**DIP Collateral**”):<sup>9</sup>

- (i) all Accounts;
- (ii) all Goods, including, without limitation, Equipment, Inventory and Fixtures;
- (iii) all Documents, Instruments and Chattel Paper;

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<sup>9</sup> All defined terms in the description of DIP Collateral shall have the meanings ascribed thereto in the DIP Loan Documents. All terms not specifically defined in the DIP Loan Documents shall have the meanings ascribed to such terms in Article 8 or 9 of the Uniform Commercial Code, as applicable.

- (iv) all Letters of Credit and Letter-of-Credit Rights (other than the Postpetition Letters of Credit);
- (v) all Securities Collateral;
- (vi) all Investment Property;
- (vii) all Intellectual Property Collateral;
- (viii) all Commercial Tort Claims;
- (ix) all General Intangibles (including, without limitation, all Payment Intangibles);
- (x) all Deposit Accounts;
- (xi) all Supporting Obligations;
- (xii) all money, cash or cash equivalents;
- (xiii) all credit balances, deposits and other property now or hereafter held or received by or in transit to the DIP Agent or at any other depository or other institution from or for the account of any Debtor, whether for safekeeping, pledge, custody, transmission, collection or otherwise;
- (xiv) all proceeds of leases of real property;<sup>10</sup>
- (xv) all owned real property;
- (xvi) all proceeds of claims or causes of action that the Debtors may be entitled to assert under section 549 of the Bankruptcy Code and any and all recoveries and settlements thereof;

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<sup>10</sup> For the avoidance of doubt, the DIP Liens extend only to the proceeds of leased real property and are not direct liens on the Debtors' leases of real property unless such liens are expressly permitted pursuant to the underlying lease documents.

(xvii) all proceeds, recoveries and settlements (the “**Bankruptcy Recoveries**”) of claims or causes of action that the Debtors may be entitled to assert by reason of any avoidance or other power vested in or on behalf of the Debtors or the estates of the Debtors under chapter 5 or section 724(a) of the Bankruptcy Code, other than those arising under section 549 of the Bankruptcy Code (the “**Avoidance Actions**”);

(xviii) the Debtors’ rights under section 506(c) of the Bankruptcy Code and the proceeds thereof;

(xix) to the extent not otherwise described above, all receivables and all present and future claims, rights, interests, assets and properties recovered by or on behalf of any Debtor;

(xx) all books, records, and information relating to any of the foregoing and/or to the operation of any Debtor’s business, and all rights of access to such books, records, and information, and all property in which such books, records and information are stored, recorded and maintained; and

(xxi) to the extent not otherwise covered by clause (i) through (xx) above, all other personal property of each Debtor, whether tangible or intangible and all Proceeds and products of each of the foregoing and all accessions to, substitutions and replacements for, and rents, profits and products of each of the foregoing, and any and all proceeds of any insurance, indemnity, warranty or guaranty payable to such Debtor from time to time with respect to any of the foregoing. DIP Collateral that is of a type that would be ABL Priority Collateral (as defined the ABL Intercreditor Agreement) and Bankruptcy Recoveries other than Net Proceeds of Notes Priority Bankruptcy Recoveries (as defined below) and the proceeds and products thereof shall, in each case, constitute “**ABL Priority Collateral,**” and DIP Collateral that is of a type that would be Notes Priority Collateral (as defined in the ABL Intercreditor Agreement), and Bankruptcy

Recoveries with respect to prepetition transfers of any Notes Priority Collateral net of any costs, fees, and expenses, incurred in connection with such Bankruptcy Recoveries (the “**Net Proceeds of Notes Priority Bankruptcy Recoveries**”), and the proceeds and products thereof and shall, in each case, constitute “**Notes Priority Collateral.**” Notwithstanding anything to the contrary in this Final Order (x) the DIP Agent shall not apply any proceeds of Bankruptcy Recoveries to the DIP Obligations until such time as the substantially all the Accounts and Inventory of the Debtors have been liquidated; and (y) the DIP Liens shall not extend to, and the term DIP Collateral shall not include, (1) any “Excluded Property” as that term is defined in the DIP Loan Documents or (2) any ABL Carve-Out Collateral until such time as the Remaining Prepetition ABL Obligations are satisfied in full; *provided* that upon the satisfaction in full of the Remaining Prepetition ABL Obligations in accordance with this Final Order and the Prepetition ABL Payoff Letter, the ABL Carve-Out Collateral shall become DIP Collateral that is ABL Priority Collateral.

(xxii) The Prepetition ABL Agent shall be granted and the Debtors do hereby grant to the Prepetition ABL Agent (for the benefit of itself and the other Prepetition ABL Secured Lenders to the extent provided under the Prepetition ABL Credit Documents with respect to the Remaining Prepetition ABL Obligations (including the Postpetition Letters of Credit and Bank Products)) continuing valid, binding, enforceable, non-avoidable, and automatically and properly perfected postpetition security interests in and first priority liens on the ABL Carve-Out Collateral (such security interests and liens, the “**ABL Priority Liens**”).

(b) Effective upon the entry of the Interim Order, other than the ABL Carve-Out Collateral (including, but not limited to, any blocked account agreements or control agreements in respect thereof), all existing blocked account agreements, deposit account control agreements, securities account control agreements, credit card acknowledgements, credit card

agreements, collateral access agreements, landlord agreements, warehouse agreements, bailee agreements, carrier agency agreements, customs broker agency agreements, subordination agreements (including, without limitation, any intercompany subordination agreements), and freight forwarder agreements entered into or in connection with Prepetition ABL Credit Documents in each case were deemed to be and are delivered in connection with the DIP Facility, constitute DIP Loan Documents and remain in full force and effect without any further action by the Debtors (except to the extent that the DIP Agent and the Debtors agree that such documents shall be terminated), the DIP Agent or any other person, and in each case the DIP Agent was deemed to be and is a party thereto, any and all references in any such agreements or documents referred to in clause (ii) above to the "Credit Agreement" were thereafter deemed to and do mean and refer to the DIP Credit Agreement, and any and all references in any such agreements or documents referred to in clause (ii) above to the "Loan Documents" were thereafter deemed to and do mean and refer to the DIP Loan Documents, as amended, modified, supplemented or restated and in effect from time to time.

7. DIP Lien Priority in DIP Collateral.

(a) *DIP Liens.* The DIP Lien on the DIP Collateral securing the DIP Obligations shall be first and senior in priority to all other interest and liens of every kind, nature, and description, whether created consensually, by an order of the Court or otherwise, including, without limitation, liens or security interests granted in favor of third parties in conjunction with sections 363, 364 or any other section of the Bankruptcy Code or applicable law; provided, however, that the DIP Liens on (i) the ABL Priority Collateral (whether in existence on the Petition Date or hereafter arising) shall be subject to (A) the DIP Carve-Out up to the DIP Carve-Out Cap and (B) any liens or security interests as of the Petition Date that were valid,

binding, enforceable, properly perfected, and non-avoidable, held by parties other than the Prepetition Secured Creditors (the “**Prepetition Permitted Liens**”); and (ii) the Notes Priority Collateral (whether in existence on the Petition Date or hereafter arising) shall be subject to (A) the Prepetition Permitted Liens, (B) the Prepetition First Lien Notes Liens, (C) the First Lien Notes AP Liens, and (D) the DIP Carve-Out up to the DIP Carve-Out Cap; and (iii) any other assets of the Debtors except "Excluded Property" (as defined in the DIP Credit Agreement) shall be subject to (A) the DIP Carve-Out and (B) to the extent such collateral is of a type that would be Notes Priority Collateral, the First Lien Notes AP Liens, in each case as such priorities are set forth in **Exhibit 1** attached hereto.

(b) Other than as set forth herein, the DIP Liens, the DIP Superpriority Claim, the DIP Carve-Out, the ABL Priority Liens, the Adequate Protection Liens, and the Adequate Protection Superpriority Claims (i) shall not be made subject to or *pari passu* with (A) any lien, security interest, or claim heretofore or hereinafter granted in any of the Chapter 11 Cases or any Successor Cases or any claim for reclamation or return (whether asserted pursuant to section 546(c) of the Bankruptcy Code or otherwise), and shall be valid and enforceable against the Debtors, their estates, any trustee, or any other estate representative appointed or elected in the Chapter 11 Cases or any Successor Cases and/or upon the dismissal of any of the Chapter 11 Cases or any Successor Cases; (B) any lien that is avoided and preserved for the benefit of the Debtors and their Estates under section 551 of the Bankruptcy Code or otherwise; and (C) any intercompany or affiliate lien or claim; and (ii) shall not be subject to challenge under sections 510, 549, 550, or 551 of the Bankruptcy Code.

(c) *Continuing Effect of Intercreditor Agreements.* Except as otherwise expressly set out herein: (i) the DIP Agent, the DIP Lenders, First Lien Notes Trustee, Second

Lien Term Loan Agent, Third Lien Notes Trustee, and the Prepetition Secured Creditors shall be bound by the terms and conditions set forth in the Intercreditor Agreements, including with respect to the Prepetition Collateral and the DIP Collateral; (ii) nothing contained in this Final Order shall be deemed to abrogate or limit the respective rights, claims and obligations of each of the DIP Agent, the DIP Lenders, First Lien Notes Trustee, Second Lien Term Loan Agent, Third Lien Notes Trustee, and the Remaining Prepetition Secured Creditors under the Intercreditor Agreements; and (z) the Intercreditor Agreements shall apply and govern the respective rights, obligations, and priorities of each of the DIP Agent, the DIP Lenders, First Lien Notes Trustee, Second Lien Term Loan Agent, Third Lien Notes Trustee, and the Remaining Prepetition Secured Creditors with respect to the Prepetition Collateral and the DIP Collateral in the Chapter 11 Cases. All loans, borrowings and advances made by the DIP Agent and/or DIP Lenders pursuant to and under, and proceeds of, the DIP Facility and all other DIP Obligations outstanding thereunder shall be deemed to be ABL Obligations under the ABL Intercreditor Agreement and First Lien Obligations under the Junior Lien Intercreditor Agreement. The DIP Agent shall be deemed to be the successor to the Prepetition ABL Agent under the terms of the Intercreditor Agreements and shall have all of the rights, remedies and obligations accorded to the “ABL Collateral Agent” under the ABL Intercreditor Agreement and “ABL Agent” under the Junior Lien Intercreditor Agreement.<sup>11</sup>

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<sup>11</sup> Notwithstanding anything in this Final Order or the DIP Loan Documents to the contrary, the DIP Agent (and its successors or assigns) shall not consent to any increase in the DIP Carve-Out or the DIP Carve-Out Cap, or any alternative carve-out in connection with a DIP Financing (as defined in the ABL Intercreditor Agreement), without the consent of the holders of 66.67% of the First Lien Notes (pursuant to the terms of the First Lien Notes Indenture), such consent not to be unreasonably withheld, conditioned, or delayed; *provided* that the foregoing shall not bind any lender or agent party to a refinancing of the DIP Facility; *provided further* that the First Lien Notes Creditors reserve all rights, including under the Intercreditor Agreement, with respect to any lender or agent party to such a refinancing.



8. DIP Superpriority Claim.

(a) *DIP Agent Superpriority Claim.* Subject to **Exhibit 1** and the DIP Carve-Out (up to the DIP Carve-Out Cap), on account of all DIP Obligations now existing or hereafter arising pursuant to this Final Order, the DIP Loan Documents, or otherwise, the DIP Agent (for the benefit of itself and the other DIP Credit Parties under the DIP Loan Documents) is hereby granted, pursuant to sections 364(c)(1), 503 and 507 of the Bankruptcy Code, an allowed superpriority administrative expense claim in each of the Chapter 11 Cases and any Successor Cases (collectively, the “**DIP Superpriority Claim**”) for all DIP Obligations. Subject to paragraph 8(b) of this Final Order, the DIP Superpriority Claim shall have priority over any and all other obligations, liabilities and indebtedness of each Debtor, whether now in existence or hereafter incurred by such Debtor including without limitation administrative expenses of the kinds specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 503(a), 503(b), 506(c), 507(a), 507(b), 546(c), 546(d), 726 and 1114 of the Bankruptcy Code, which allowed DIP Superpriority Claim shall be payable from and have recourse to all prepetition and postpetition property of the Debtor and all proceeds thereof, other than the ABL Carve-Out Collateral until such time as the Remaining Prepetition ABL Obligations are satisfied in full in accordance with this Final Order and the Prepetition ABL Payoff Letter.

(b) *Priority of DIP Superpriority Claim.* The DIP Superpriority Claim shall be payable from and have recourse to all prepetition and postpetition property of the Debtors and all proceeds thereof, including, without limitation, the Bankruptcy Recoveries, subject only to (i) the payment in full in cash of the DIP Obligations, (ii) the DIP Carve-Out (up to the DIP Carve-Out Cap), (iii) with respect to the ABL Carve-Out Collateral, satisfaction of the Remaining Prepetition ABL Obligations in full in accordance with this Final Order and the Prepetition Payoff Letter, (iv)

to the extent paid from identifiable proceeds of the Notes Priority Collateral, the First Lien Notes Obligations, and (v) to the extent paid from identifiable proceeds of the assets subject to any Prepetition Permitted Liens, amounts secured by such Prepetition Permitted Liens.

9. No Obligation to Extend Credit. No DIP Credit Party shall have any obligation to make any loan or advance or issue any letter of credit under the DIP Loan Documents unless all of the conditions precedent to the making of such extension of credit under the applicable DIP Loan Documents and this Final Order have been satisfied in full or waived in accordance with the DIP Loan Documents by the DIP Agent.

10. Use of DIP Facility Proceeds. From and after the date hereof, the Debtors shall use advances of credit under the DIP Facility only for the purposes and in the amounts specifically set forth in this Final Order and the DIP Loan Documents, including as contemplated in the Approved Budget, and solely for: (a) postpetition ongoing debtor-in-possession working capital expenditures, operating expenses, and other general corporate purposes, (b) certain transaction fees and expenses, (c) payment of costs of administration of the Chapter 11 Cases, including, without limitation, professional fees, (d) adequate protection payments to the Prepetition Secured Creditors as set forth herein, and (e) as otherwise permitted under the DIP Loan Documents, as applicable.

11. Refinancing of Prepetition ABL Obligations.

(a) The satisfaction of Prepetition ABL Obligations outstanding as of the Petition Date in connection with the Debtors' entry into the DIP Facility is approved. The Debtors were authorized and directed upon entry of the Interim Order, which authorization and direction are deemed ratified on a final basis pursuant to this Final Order, to (a) execute and deliver the Prepetition ABL Payoff Letter and (b) use proceeds of the DIP Financing to (i) pay in full in cash outstanding Prepetition ABL Obligations, including all principal, interest, fees and expenses due

and chargeable under the Prepetition ABL Credit Documents through the date of payment; (ii) cash collateralize obligations under Bank Products continuing after the Prepetition ABL Payoff Date in an amount equal to the Bank Product Cash Collateral, (iii) cash collateralize the Postpetition Letters of Credit in an amount equal to the Pledged L/C Cash Collateral, (iv) fund for the benefit of the Prepetition ABL Agent and the other Prepetition ABL Secured Lenders, the amount of \$300,000 (the “**Prepetition ABL Indemnity Reserve**”) into a non-interest bearing account maintained with and held by the Prepetition ABL Agent to secure the Prepetition ABL Reimbursement and Indemnity Obligations; and (v) pay such other reasonable amounts in respect of or related to the Prepetition ABL Credit Documents, as more fully set out in the Prepetition ABL Payoff Letter. The amounts in clauses (i)-(v) of this paragraph 11 shall be referred to in this Final Order as, collectively, the “**Prepetition ABL Payoff Amount**,” and the date of the payment of the Prepetition ABL Payoff Amount shall be referred to as the “**Prepetition ABL Payoff Date**.” The Prepetition ABL Agent delivered to the Debtors a letter (including any documents related thereto, the “**Prepetition ABL Payoff Letter**”) which set forth the calculation of the Prepetition ABL Payoff Amount. For the avoidance of doubt, nothing in this Final Order shall discharge or otherwise impair the Prepetition ABL Reimbursement and Indemnity Obligations, which shall survive the repayment of the Prepetition ABL Obligations and the termination of any “Commitments” (as defined in the Prepetition ABL Credit Agreement).

(b) Funds remaining in the Prepetition ABL Indemnity Reserve shall be released to the Debtors (and to the extent the DIP Obligations remain outstanding shall become DIP Collateral) (x) upon the indefeasible repayment in full in cash of all Prepetition ABL Obligations (including the Remaining Prepetition ABL Obligations) in accordance with the Prepetition ABL Payoff Letter and satisfaction of all prepetition and postpetition obligations

between the Debtors and the Prepetition ABL Secured Lenders, and (y) upon the earlier of (a) receipt by the Prepetition ABL Agent of releases from the Debtors (including any party acting on behalf of any of the Debtors or their estates, if applicable) in form and substance satisfactory to the Prepetition ABL Agent, (b) the Challenge Deadline (as defined below) if there has been no Challenge (as defined below) of the Prepetition ABL Obligations on or prior to the Challenge Deadline, or (c) satisfaction of terms otherwise satisfactory to the Prepetition ABL Agent.

(c) The Debtors are authorized to continue to use the commercial card program under the WellsOne Commercial Card Agreement, dated on or around May 3, 2019 (as amended, restated, supplemented or otherwise modified from time to time, the “**Card Agreement**”), between the Debtors and Wells Fargo Bank, N.A. (“**Wells Fargo**”) subject to the terms and conditions thereof and hereof. Wells Fargo is authorized to make advances from time to time to the Debtors with a maximum exposure at any time up to \$5 million. All prepetition charges and fees are authorized and required to be paid. Wells Fargo may rely on the representations of the Debtors with respect to their use of the commercial card program pursuant to the Card Agreement, and Wells Fargo shall not have any liability to any party for relying on such representations by the Debtors and as provided for herein. Wells Fargo shall continue to have a valid and perfected non-avoidable first-priority lien and security interest in the Bank Product Cash Collateral pursuant to Bankruptcy Code section 364(d)(1) with respect to the indebtedness owed by Debtors to Wells Fargo in respect of the Card Agreement. Such lien shall not be primed by any lien granted to any post-petition lender or other person.

**Authorization to Use Cash Collateral**

12. Authorization to Use Cash Collateral. Subject to the terms and conditions of this Final Order and the DIP Loan Documents, and in compliance with the Approved Budget, the Debtors are authorized to use Cash Collateral until the Termination Declaration Date (as defined

in paragraph 23(d) below), provided that the Prepetition Secured Creditors are granted the Adequate Protection Superpriority Claims, Adequate Protection Liens, Adequate Protection Payments, and other forms of adequate protection set forth herein; provided, however, that during the Remedies Notice Period (as defined in paragraph 23(d) below) the Debtors may use Cash Collateral to pay expenses critical to the preservation of the Debtors and their estates as agreed by the DIP Agent (such agreement not to be unreasonably withheld), in each case in accordance with the terms and provisions of the Approved Budget. Notwithstanding the foregoing, upon the occurrence of the Termination Declaration Date, the Debtors may use Cash Collateral to meet ordinary course payroll (excluding severance) and payroll taxes in accordance with the terms and provisions of the Approved Budget. Nothing in this Final Order shall authorize the disposition of any assets of the Debtors or their estates outside the ordinary course of business (which shall be subject to further Orders of this Court), or any Debtor's use of any Cash Collateral or other proceeds resulting therefrom, except as expressly permitted in this Final Order and the DIP Loan Documents and in accordance with the Approved Budget.

### **Adequate Protection Provisions**

13. Adequate Protection Liens; Adequate Protection Payments; Access to Records. As adequate protection against a Diminution in Value of Prepetition Secured Creditors' respective security interests in the Prepetition Collateral (including Cash Collateral) during the pendency of the Chapter 11 Cases, the Prepetition Secured Creditors shall receive adequate protection as follows:

(a) *Creation of Adequate Protection Liens.* To the extent of any Diminution in Value of the interest of the Prepetition Secured Creditors' in the Prepetition Collateral during the Chapter 11 Cases in each case of the subparagraphs of this paragraph 13(a), each of the Prepetition

ABL Agent (for the benefit of itself and the other Prepetition ABL Secured Lenders), the First Lien Notes Trustee (for the benefit of itself and the other First Lien Notes Creditors), the Second Lien Term Loan Agent (for the benefit of itself and the other Second Lien Term Loan Creditors), and the Third Lien Notes Trustee (for the benefit of itself and the other Third Lien Notes Creditors) is hereby granted, pursuant to sections 361, 363(e) and 364(d) of the Bankruptcy Code, valid, binding, enforceable, non-avoidable and perfected replacement and additional postpetition security interests in, and liens on all of the Debtors' right, title and interest in, to and under all DIP Collateral and any other assets (including the proceeds of such assets), of the Debtors except (a) "Excluded Property" as defined in the DIP Credit Agreement or (b) with respect to a particular Prepetition Secured Creditor, any Bankruptcy Recoveries from any Avoidance Actions that are brought with respect to the liens or claims held by or on behalf of such Prepetition Secured Creditor (the "**Adequate Protection Liens**").

(i) The Adequate Protection Liens granted to the Prepetition ABL Agent (the "**ABL AP Liens**") shall secure the Remaining Prepetition ABL Obligations and shall be subject to and subordinate to (A) the DIP Carve-Out (up to the DIP Carve-Out Cap), (B) the DIP Liens, (C) the Prepetition Permitted Liens, (D) solely with respect to the Notes Priority Collateral, the Prepetition First Lien Notes Liens and the First Lien Notes AP Liens (as defined below), but shall be senior to (X) solely with respect to the ABL Priority Collateral, the Prepetition First Lien Notes Liens and the First Lien Notes AP Liens (as defined below), (Y) the Prepetition Second Lien Term Loan Liens and the Second Lien Term Loan AP Liens (as defined below) , and (Z) the Prepetition Third Lien Notes Liens and the Third Lien Notes AP Liens (as defined below).

(ii) The Adequate Protection Liens granted to the First Lien Notes Trustee (the "**First Lien Notes AP Liens**") shall secure the First Lien Notes Obligations and shall be subject

to and subordinate to (A) the Prepetition Permitted Liens, (B) the ABL Priority Liens, (C) solely with respect to the ABL Priority Collateral, the DIP Carve-Out (up to the DIP Carve-Out Cap), the DIP Liens, and the ABL AP Liens, but shall be senior to (X) solely with respect to the Notes Priority Collateral, the DIP Carve-Out, the DIP Liens, and the ABL AP Liens, (Y) the Prepetition Second Lien Term Loan Liens and the Adequate Protection Liens granted to the Second Lien Term Loan Agent to secure the Second Lien Term Loan Obligations (the “**Second Lien Term Loan AP Liens**”), and (Z) the Prepetition Third Lien Notes Liens and Adequate Protection Liens granted to the Third Lien Notes Trustee to secure the Third Lien Notes Obligations (the “**Third Lien Notes AP Liens**”).

(iii) The Second Lien Term Loan AP Liens shall secure the Second Lien Term Loan Obligations and shall be subject to and subordinate to the (A) the DIP Carve-Out (up to the DIP Carve-Out Cap), (B) the Prepetition Permitted Liens, (C) the DIP Liens, (D) the ABL Priority Liens, (E) the ABL AP Liens, (F) the Prepetition First Lien Notes Liens, and (G) the First Lien Notes AP Liens, but senior to the (X) Prepetition Third Lien Notes Liens and (Y) Third Lien Notes AP Liens.

(iv) The Third Lien Notes AP Liens shall secure the Third Lien Notes Obligations and shall be subject to and subordinate to the (A) the DIP Carve-Out (up to the DIP Carve-Out Cap), (B) the Prepetition Permitted Liens, (C) the DIP Liens, (D) the ABL Priority Liens, (E) the ABL AP Liens, (F) the Prepetition First Lien Notes Liens, (G) the First Lien Notes AP Liens, (H) the Prepetition Second Lien Term Loan Liens, and (I) the Second Lien Term Loan AP Liens.

(v) The Adequate Protection Liens shall be (A) deemed to be valid, binding, non-avoidable, enforceable and fully perfected as of the Petition Date, (B) in all instances, subject

to the Intercreditor Agreements, and (C) in each case, for the avoidance of doubt, have the priorities set forth in **Exhibit 1** hereto. Other than as set forth herein, until the indefeasible payment in full in cash of the Prepetition Secured Obligations, the Adequate Protection Liens shall not be made subject to or *pari passu* with any lien or security interest by any court order heretofore or hereinafter granted in the Chapter 11 Cases or any Successor Cases, and shall be valid and enforceable against any trustee or other estate representative appointed in the Chapter 11 Cases or any Successor Cases, upon the conversion of any of the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code (or in any other Successor Cases), and/or upon the dismissal of any of the Chapter 11 Cases or Successor Cases. The Adequate Protection Liens shall not be subject to Bankruptcy Code sections 506(c), 510, 549, or 550. No lien or interest avoided and preserved for the benefit of any Debtor's estate pursuant to Bankruptcy Code section 551 shall be made *pari passu* with or senior to the Adequate Protection Liens.

(b) *Adequate Protection Payments.*

(i) The Prepetition Secured Creditors shall receive additional adequate protection against a Diminution in Value in the form of the following: (A) in the case of the First Lien Notes Creditors, (1) during the pendency of the Chapter 11 Cases, payment of all accrued and unpaid interest on a monthly basis, which interest shall accrue at the non-default rate as provided in the applicable First Lien Notes Documents and (2) payment or reimbursement in cash by the Debtors of all reasonable and documented fees, costs, expenses and charges of (x) Paul, Weiss, Rifkind, Wharton & Garrison LLP ("**Paul Weiss**"), as counsel to the Chatham Parties, Ducera Partners LLC, as financial advisor to the Chatham Parties (upon the terms of the engagement letter in place as of February 13, 2020), and Quinn Emanuel Urquhart Oliver & Hedges LLP ("**Quinn Emanuel**"), as litigation counsel to the Chatham Parties (provided that



Quinn Emanuel shall not bill the estate for services that are duplicative of services performed by Paul Weiss), and subject to the approval of the Debtors (such approval not to be unreasonably withheld, conditioned, or delayed) and the Court, such other advisors or professionals as may be retained by or on behalf of the Chatham Parties, (y) Kramer Levin Naftalis & Frankel LLP, as counsel to the Brigade Parties, GLC Advisors & Co., as financial advisor to the Brigade Parties (upon the terms of the engagement letter in place as of February 13, 2020), and subject to the approval of the Debtors (such approval not to be unreasonably withheld, conditioned, or delayed) and the Court, such other advisors or professionals as may be retained by or on behalf of the Brigade Parties, (z) the Bank of New York Mellon Trust Company, N.A. as the First Lien Notes Trustee, including the fees and expenses of Emmet, Marvin & Martin, LLP as counsel thereto (such professionals, the **“First Lien AP Professionals”** and such fees and expenses, collectively, the **“First Lien AP Professional Fees and Expenses”**), incurred and/or accrued in connection with the Debtors and/or the Chapter 11 Cases, whether accrued pre-petition or post-petition, all without further notice, motion or application to, order of, or hearing before, this Court; and (B) in the case of the Prepetition ABL Secured Lenders, payment of any contingent indemnification, reimbursement or similar surviving obligations arising under the Prepetition ABL Credit Agreement or any other Prepetition ABL Credit Document, and any fees and expenses for attorneys and other professionals related thereto, whether accrued prepetition or postpetition, all without further notice, motion, or application to, or order of, or hearing before, this Court, including without limitation, the fees and expenses of Morgan, Lewis & Bockius LLP, as counsel to the Prepetition ABL Agent (the **“ABL AP Professionals,”** and together with the First Lien AP Professionals, the **“Adequate Protection Professionals,”** and such fees and expenses, the **“ABL AP Professional Fees and Expenses,”** and together with the First Lien AP Professional Fees and

Expenses, the “**Adequate Protection Professional Fees and Expenses,**” and the amounts described in (B) of this paragraph, collectively, the “**Prepetition ABL Reimbursement and Indemnity Obligations,**” and payments contemplated by clauses (A) and (B) of this paragraph, collectively, the “**Adequate Protection Payments**”). The Prepetition ABL Agent may, but shall not be required to, apply amounts in the Prepetition ABL Indemnity Reserve against the ABL AP Professional Fees and Expenses as and when they arise, without further notice to or consent from the Debtors, the Committee, or any other parties in interest and without further order of this Court. The Debtors are expressly and immediately authorized and empowered to make the Adequate Protection Payments provided for by this Final Order.

(ii) Notwithstanding anything in this Final Order to the contrary, until further order of this Court, and subject to paragraph 55 of this Final Order, only 85 percent of the Adequate Protection Payments described in section (b)(i)(A) of this paragraph 13 (inclusive, for the avoidance of doubt, the First Lien AP Professional Fees and Expenses) shall be paid to the First Lien Notes Creditors. The remaining 15 percent of such Adequate Protection Payments described in section (b)(i)(A) of this paragraph 13 shall be referred to herein as the “**Deferred Adequate Protection Payments**”.

(iii) *Adequate Protection Professional Fees and Expenses.* With respect to Adequate Protection Professional Fees and Expenses incurred postpetition, such Adequate Protection Professionals shall deliver an invoice in summary form (which shall not be required to include time entry detail and may be redacted for privileged information) to the Debtors, the U.S. Trustee, and the Committee, except as reasonably requested to confirm no duplication of efforts, with a copy of such invoices delivered simultaneously to the DIP Agent. If no written objection is received by 12:00 p.m., prevailing Eastern Time, on the date that is ten (10) days after delivery

of such invoice to the Debtors, the U.S. Trustee, and the Committee, the Debtors shall promptly pay such fees and expenses in full. If an objection to a professional's invoice is timely received, the Debtors shall promptly pay the undisputed amount of the invoice, and this Court shall have jurisdiction to determine the disputed portion of such invoice if the parties are unable to resolve the dispute consensually. The Adequate Protection Professionals shall not be required to comply with the U.S. Trustee fee guidelines or file applications or motions with, or obtain approval of, the Court for the payment of any of their fees or out-of-pocket expenses (other than with respect to disputed amounts). Payments of any amounts set forth in this paragraph may be subject to recharacterization, avoidance, subordination, or disgorgement.

(c) *Adequate Protection Superpriority Claims.*

(i) *Superpriority Claims of the Prepetition ABL Agent, First Lien Notes Trustee, Second Lien Term Loan Agent, and Third Lien Notes Trustee.* As further adequate protection of the interests of (A) the Prepetition ABL Agent and the other Prepetition ABL Secured Lenders with respect to the Prepetition ABL Obligations, (B) the First Lien Notes Trustee and the other First Lien Notes Creditors with respect to the First Lien Notes Obligations, (C) the Second Lien Term Loan Agent and the other Second Lien Term Loan Creditors with respect to the Second Lien Term Loan Obligations, and (D) the Third Lien Notes Trustee and the other Third Lien Notes Creditors with respect to the Third Lien Notes Obligations, each of Prepetition ABL Agent (for the benefit of itself and the other Prepetition ABL Secured Lenders), the First Lien Notes Trustee (for the benefit of itself and the other First Lien Notes Creditors), the Second Lien Term Loan Agent (for the benefit of itself and the other Second Lien Term Loan Creditors), and the Third Lien Notes Trustee (for the benefit of itself and the other Third Lien Notes Creditors) is hereby granted an allowed administrative claim against the Debtors' estates under section 503 of the

Bankruptcy Code, with priority over all administrative expense claims and unsecured claims against the Debtors and their estates as provided for by section 507(b) of the Bankruptcy Code (the “**Adequate Protection Superpriority Claims**”), to the extent that the Adequate Protection Liens do not adequately protect against any Diminution in Value of the Prepetition ABL Agent's, First Lien Notes Trustee's, the Second Lien Term Loan Agent's, and the Third Lien Notes Trustee's respective interests in the Prepetition Collateral.

(ii) *Priority of Adequate Protection Superpriority Claims.* The Adequate Protection Superpriority Claim granted to: (A) the Prepetition ABL Agent and the First Lien Notes Trustee shall each be senior in all respects to the Adequate Protection Superpriority Claim granted to (1) the Second Lien Term Loan Agent, and (2) the Third Lien Notes Trustee; and (B) the Second Lien Term Loan Agent shall be senior in all respects to the Adequate Protection Superpriority Claim granted to the Third Lien Notes Trustee. The Adequate Protection Superpriority Claims granted to each of the Prepetition ABL Agent, First Lien Notes Trustee (other than with respect to the Notes Priority Collateral and prior unencumbered assets of the type that would be Notes Priority Collateral), the Second Lien Term Loan Agent, and the Third Lien Notes Trustee shall be junior in all respects to the DIP Carve-Out (up to the DIP Carve-Out Cap) and DIP Superpriority Claim, but shall have priority over any and all administrative expenses and all other claims against the Debtors now existing or hereafter arising, of any kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, and all other administrative expenses or other claims arising under any other provision of the Bankruptcy Code, including, without limitation, sections 105, 326, 327, 328, 330, 331, 503(b), 507(a), 507(b), or 1114 of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other nonconsensual lien, levy, or attachment. The Adequate Protection Superpriority Claims shall be payable from and have recourse to all pre-

and post-petition property of the Debtors, subject to the priorities set forth in **Exhibit 1**; *provided*, however that the Adequate Protection Superpriority Claims of any party other than Prepetition ABL Agent shall not be payable from or have recourse to the ABL Carve-Out Collateral until such collateral becomes DIP Collateral in accordance with this Final Order and the Prepetition ABL Payoff Letter; *provided further*, the Adequate Protection Superpriority Claims of a Prepetition Secured Creditor shall not be payable from or have recourse to any Bankruptcy Recoveries from any Avoidance Actions that are brought with respect to the liens or claims held by or on behalf of such Prepetition Secured Creditor.

(d) *Reporting*. The Debtors shall timely provide the Prepetition Agents, the Prepetition Secured Creditors and the Committee with copies of all financial and other written reporting provided to the DIP Credit Parties pursuant to the DIP Loan Documents substantially simultaneously with such delivery to the DIP Credit Parties.

(e) *Reservations of Rights*.<sup>12</sup> Subject only to the DIP Carve-Out (up to the DIP Carve-Out Cap) described in paragraph 30 hereof (other than with respect to the ABL Carve-Out Collateral), and subject to the Intercreditor Agreements, nothing contained herein shall impair or modify the Prepetition Secured Creditors' rights under section 507(b) of the Bankruptcy Code in the event that the adequate protection provided to the Prepetition Secured Creditors in this Final Order is insufficient to compensate for the Diminution in Value of the interest of the Prepetition Secured Creditors' in the Prepetition Collateral during the Chapter 11 Cases or any Successor Cases. Nothing contained in this Final Order shall be construed as an admission as to the extent of any Diminution in Value, if any, in the interest of any Remaining Prepetition Secured Creditors in the Prepetition Collateral and nothing shall impair or modify the rights of any party to contest

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<sup>12</sup> Court's addition regarding ability to fashion remedy re A/P addressed in paragraph on Challenges (¶ 43).

any assertion of Diminution in Value or contest any request for additional adequate protection. Notwithstanding anything contained in this Final Order, all parties' rights are reserved with respect to recharacterization or allocation of any Adequate Protection Payments provided for in this Final Order with respect to any allowed secured claims of any parties receiving such Adequate Protection Payments. Notwithstanding anything contained in this Final Order, the First Lien Creditors' rights are reserved to seek (and any other parties' rights are reserved to object to or contest) payment of postpetition interest at the default rate of interest (as provided in the applicable First Lien Notes Documents).

#### **Provisions Common to DIP Financing and Use of Cash Collateral Authorizations**

14. *Amendments.* Subject to the terms and conditions of the DIP Loan Documents, the DIP Loan Documents may from time to time be amended, modified or supplemented in non-material or ministerial respects (a “**Non-Material Amendment**”) by the parties thereto and the DIP Credit Parties may waive any provisions in the DIP Loan Documents, in each case without further approval of the Court; provided, that (a) (i) any such Non-Material Amendment has been consented to by the DIP Agent and the Debtors in writing and (ii) counsel to the Committee shall receive a copy of such Non-Material Amendment, and (b) solely with respect to any amendment, modification or supplement that is either material or not ministerial (a “**Material DIP Amendment**”), such Material DIP Amendment shall be filed with the Court, and the Debtors shall provide prior written notice of such Material DIP Amendment to (A) counsel to the DIP Agents, (B) counsel to the Supporting Creditors, (C) counsel to the Prepetition Agents, (D) counsel to the Committee, (E) the U.S. Trustee, and (F) all parties who have filed a notice of appearance and request for service of papers pursuant to Bankruptcy Rule 2002 (the “**Amendment Notice Parties**”); provided, further, that the Debtors and the DIP Agent may file such Material DIP Amendment under notice of presentment with the Court for Court approval on seven (7) days’

notice (the “**Notice of Presentment**”) and that, if no objections to the approval of such Material DIP Amendments are timely filed and received by the deadline set forth in such Notice of Presentment, the order granting the relief requested in the Notice of Presentment may be entered without further notice or opportunity to be heard. Additionally, the Debtors must receive written consent as to any Material DIP Amendment prior to filing notice thereof with the Court (x) from the applicable DIP Credit Parties and (y) from the applicable Prepetition Secured Creditors for any amendment, modification, supplement, or waiver that materially adversely affects Prepetition Collateral, ABL Carve-Out Collateral, Adequate Protection Payments, or the priorities set forth in **Exhibit 1**. Any amendment that extends the Termination Date to a later date shall be considered a Non-Material Amendment. Any amendment, modification, or supplement to the DIP Loan Documents shall be filed by the Debtors within three (3) days of such amendment, modification, or supplement becomes effective, or if not timely filed by the Debtors, the DIP Agent within three (3) days after the last day for the Debtors to file such amendment, modification, or supplement.

15. **Approved Budget**. The Debtors shall consult with the Supporting Creditors and the Committee regarding any modification to, or amendment or update of, the Approved Budget. The Approved Budget and any modification to, or amendment or update of, the Approved Budget shall be in form and substance reasonably satisfactory to and approved by (a) the DIP Agent in its Permitted Discretion (as defined in the DIP Credit Agreement) and (b) solely to the extent that a restructuring support agreement with the Supporting Creditors is in full force and effect, the Supporting Creditors in their reasonable discretion; provided that any modification to the Committee professionals’ fee line item in the initial Approved Budget, or updated budget shall require the prior written consent of the Committee.

16. Modification of Automatic Stay. The automatic stay imposed under section 362(a) of the Bankruptcy Code is hereby modified as necessary to effectuate all of the terms and provisions of this Final Order, including, without limitation to permit: (a) the Debtors to grant the DIP Liens, the ABL Priority Liens, the Adequate Protection Liens, the DIP Superpriority Claim, and the Adequate Protection Superpriority Claims; (b) the Debtors to incur all liabilities and obligations to the DIP Agent as contemplated under the DIP Loan Documents; (c) the Prepetition ABL Agent, on behalf of itself and the Prepetition ABL Secured Lenders, to administer the Postpetition Letters of Credit and the Remaining Prepetition ABL Obligations in accordance with the terms of the Prepetition ABL Credit Documents (including drawing on the ABL Pledged L/C Account, the Bank Product Cash Collateral account, or any other reserve account provided to the Prepetition ABL Agent hereunder, without the need for any further order of the Court); and (d) the Debtors to pay, and the DIP Credit Parties and Prepetition Secured Creditors to retain and apply, all amounts referred to, required under, and in accordance with the terms of this Final Order and the DIP Loan Documents.

17. Perfection of DIP Liens and Adequate Protection Liens.

(a) The Interim Order and this Final Order shall be sufficient and conclusive evidence of the priority, perfection, and validity of the DIP Liens, the ABL Priority Liens, the Adequate Protection Liens, and the other security interests granted therein or herein, effective as of the Petition Date, without any further act and without regard to any other federal, state, or local requirements or law requiring notice, filing, registration, recording, or possession of the DIP Collateral or the ABL Carve-Out Collateral (as applicable), or other act to validate or perfect such security interest or lien, including, without limitation, control agreements with any financial institution(s) party to a control agreement or other depository account consisting of DIP Collateral



or ABL Carve-Out Collateral, as applicable, or requirement to register liens on any certificates of title (a “**Perfection Act**”). Notwithstanding the foregoing, if any DIP Agent or Prepetition Agents, as applicable, shall, in its sole discretion, elect for any reason to file, record, or otherwise effectuate any Perfection Act, then such DIP Agent or Prepetition Agent, as applicable, is authorized to perform such act, and the Debtors are authorized and directed to perform such act to the extent necessary or required by the DIP Loan Documents or the Prepetition ABL Payoff Letter, which act or acts shall be deemed to have been accomplished as of the date and time of entry of the Interim Order notwithstanding the date and time actually accomplished, and, in such event, the subject filing or recording office is authorized to accept, file, or record any document in regard to such act in accordance with applicable law. The DIP Agent or Prepetition Agents, as applicable, may choose to file, record, or present a certified copy of this Final Order in the same manner as a Perfection Act, which shall be tantamount to a Perfection Act, and, in such event, the subject filing or recording office is authorized to accept, file, or record such certified copy of this Final Order in accordance with applicable law. Should any DIP Agent or Prepetition Agent, as applicable, so choose and attempt to file, record, or perform a Perfection Act, no defect or failure in connection with such attempt shall in any way limit, waive, or alter the validity, enforceability, attachment, priority, or perfection of the postpetition liens and security interests granted by the Interim Order and herein by virtue of the entry of the Interim Order and this Final Order. In connection herewith, the DIP Agent, the Debtors, and Wells Fargo Bank, National Association (“**Wells Fargo**”), as depository bank, intend to enter into deposit account control agreements. Wells Fargo may, without further order of this Court, take or refrain from taking any action permitted under such deposit control agreement and implement changes to the deposit account control agreement in the

ordinary course of business pursuant to the terms of such control agreement, including, without limitation, termination of such control agreement.

(b) To the extent that any applicable non-bankruptcy law otherwise would restrict the granting, scope, enforceability, attachment, or perfection of any liens and security interests granted and created by the Interim Order and this Final Order (including the DIP Liens, the ABL Priority Liens, and the Adequate Protection Liens) or otherwise would impose filing or registration requirements with respect to such liens and security interests, such law is hereby preempted to the maximum extent permitted by the Bankruptcy Code, applicable federal or foreign law; provided, however, that nothing herein shall excuse the Debtors from payment of any local fees, if any, required in connection with such liens. By virtue of the terms of this Final Order, to the extent that any DIP Agent or Prepetition Agent, as applicable, has filed Uniform Commercial Code financing statements, mortgages, deeds of trust, or other security or perfection documents under the names of any of the Debtors, such filings shall be deemed to properly perfect its liens and security interests granted and confirmed by this Final Order without further action by the applicable DIP Agent or Prepetition Agent.

18. Application of Proceeds of DIP Collateral. Subject to the DIP Carve-Out (up to the DIP Carve-Out Cap) and the limitations set forth in the Intercreditor Agreements, the priority rights of the holders of the Prepetition Permitted Liens in particular DIP Collateral, and the rights of the Prepetition ABL Agent and the Prepetition ABL Secured Lenders to the ABL Carve-Out Collateral: (a) the proceeds of ABL Priority Collateral shall be applied as follows: *first*, to payment of fees, costs and expenses payable and reimbursable by the Debtors under the DIP Credit Agreement and the other DIP Loan Documents; *second*, to payment in full of all DIP Obligations (other than those DIP Obligations arising from undrawn outstanding Letters of Credit) in

accordance with the DIP Loan Documents; *third*, to cash collateralize Letters of Credit in accordance with the DIP Loan Documents; *fourth*, upon indefeasible payment in full in cash of the DIP Obligations including the cash collateralization of any such obligations to the extent permitted under the DIP Loan Documents, to payment of the First Lien Notes Obligations in accordance with the terms of the First Lien Notes Documents (and adequate protection, including the Adequate Protection Payments, with respect thereto); *fifth*, upon payment in full in cash of the First Lien Notes Obligations (and adequate protection, including the Adequate Protection Payments, with respect thereto), to the payment of the Second Lien Term Loan Obligations; *sixth*, upon payment in full in cash of the Second Lien Term Loan Obligations, to the payment of the Third Lien Notes Obligations; and *seventh*, upon payment in full of the Third Lien Notes Obligations, to the Debtors' operating account, or for the account of and paid to whoever may be lawfully entitled thereto; and (b) the proceeds of Notes Priority Collateral shall be applied as follows: *first*, to payment of fees, costs and expenses, including, without limitation, of the First Lien Notes Creditors, payable and reimbursable by the Debtors under the First Lien Notes Documents, and any other Adequate Protection Payments owed to the First Lien Notes Creditors; *second*, to payment in full of all First Lien Notes Obligations in accordance with the First Lien Notes Documents; *third*, upon the indefeasible payment in full in cash of the First Lien Notes Obligations, to payment in full of all DIP Obligations (other than those DIP Obligations arising from undrawn outstanding Letters of Credit) in accordance with the DIP Loan Documents; *fourth*, upon payment in full in cash of the DIP Obligations including the cash collateralization of any such obligations to the extent permitted under the DIP Loan Documents, to payment of the Second Lien Term Loan Obligations in accordance with the terms of the Second Lien Term Loan Documents; *fifth*, upon payment in full in cash of the Second Lien Term Loan Obligations, to the payment of the Third Lien Notes

Obligations; and *sixth*, upon payment in full in cash of the Third Lien Notes Obligations, to the Debtors' operating account, or for the account of and paid to whoever may be lawfully entitled thereto. The Debtors shall not, directly or indirectly, voluntarily purchase, redeem, defease, or prepay any principal of, premium, if any, interest or other amount payable in respect of any indebtedness prior to its scheduled maturity, other than the DIP Obligations, the Adequate Protection Payments required under this Final Order, and obligations authorized by an order of the Court (which may include, without limitation, obligations secured by Prepetition Permitted Liens and the ABL Priority Liens).

19. Proceeds of Subsequent Financing. If the Debtors, any trustee, any examiner with enlarged powers, any responsible officer or any other estate representative subsequently appointed in the Chapter 11 Cases or any Successor Cases shall obtain credit or incur debt pursuant to sections 364(b), 364(c) or 364(d) of the Bankruptcy Code in violation of the DIP Loan Documents at any time prior to the repayment in full in cash of all DIP Obligations, and the termination of the DIP Credit Parties' obligations to extend credit under the DIP Facility, including subsequent to the confirmation of any plan of reorganization or liquidation with respect to any or all of the Debtors and the Debtors' estates, then all the cash proceeds derived from such credit or debt shall immediately be turned over to the DIP Agent to be applied as set forth in paragraph 18 herein.

20. Maintenance of DIP Collateral and Prepetition Collateral. Until the indefeasible payment in full in cash of all Prepetition Secured Obligations and all DIP Obligations and the termination of the DIP Credit Parties' obligations to extend credit under the DIP Loan Documents, as provided therein, the Debtors shall (a) insure the Prepetition Collateral and the DIP Collateral as required under the DIP Facility and the Prepetition Credit Documents, and (b) maintain the cash management system in effect as of the Petition Date or as otherwise agreed to by the DIP Agent.

For the avoidance of doubt, if the Company opens any new accounts, the DIP Liens and Adequate Protection Liens shall apply to any such new accounts with the priorities set forth in **Exhibit 1**.

21. **Termination Declaration Date.** On the Termination Declaration Date (as defined below), (i) all DIP Obligations shall be immediately due and payable, (ii) all commitments to extend credit under the DIP Facility will terminate, and (iii) all authority to use Cash Collateral shall cease, provided, however, that during the Remedies Notice Period (as defined in paragraph 23(d) below), the Debtors may use Cash Collateral solely as set forth in paragraph 12 herein.

22. **Events of Default.** The occurrence of an “Event of Default” under the DIP Credit Agreement shall constitute an event of default under this Final Order (each, an “**Event of Default**”); provided, however, notwithstanding any term to the contrary in subsections (a), (b), (e), (g), (i) or (j) of section 8.4 of the DIP Credit Agreement, the mere filing of a motion or an application seeking a specific form of relief shall not constitute an Event of Default unless and until an Order is entered that grants such relief.

23. **Rights and Remedies Upon Event of Default.**

(a) *DIP Facility Termination.* Immediately upon the occurrence and during the continuance of an Event of Default, the DIP Agent may in its sole discretion (or at the direction of the Required Lenders (as defined in the DIP Credit Agreement)) (i) declare the DIP Facility terminated (such declaration, a “**Termination Declaration**”) or (ii) send a reservation of rights notice to the Debtors, which notice may advise the Debtors that any further advances under the DIP Facility will be made in the sole discretion of the DIP Agent (“**Reservation of Rights**”).

(b) Upon the issuance of a Reservation of Rights: (i) all or any portion of the Commitments of the DIP Credit Parties to make loans or otherwise extend credit may be suspended or terminated in accordance with the DIP Loan Documents; (ii) all DIP Obligations may be

deemed immediately due and payable in accordance with the DIP Loan Documents; (iii) after expiration of the Remedies Notices Period (as defined below), the DIP Agent and the DIP Lenders may exercise all other rights and remedies available to them under the DIP Credit Agreement; and (iv) after expiration of the Remedies Notice Period, any right or ability of the Debtors to use any Cash Collateral may be terminated, reduced or restricted by the DIP Agent, provided, that during the Remedies Notice Period, the Debtors may use Cash Collateral solely as set forth in paragraph 12 herein.

(c) With respect to the DIP Collateral, following the Termination Declaration, subject to the Remedies Notice Period, the DIP Credit Parties may exercise all rights and remedies available to them under the DIP Loan Documents or applicable law against the DIP Collateral in each case subject to the applicable Intercreditor Agreements, and without limiting the foregoing, the DIP Credit Parties may, subject to the Remedies Notice Period, (i) enter onto the premises of any Debtor in connection with an orderly liquidation of the DIP Collateral in accordance with paragraph 24 herein; and/or (ii) exercise any rights and remedies provided under the DIP Loan Documents or at law or equity, including, without limitation, all remedies provided under the Bankruptcy Code and pursuant to this Final Order.

(d) *Notice of Termination.* Any Termination Declaration shall be given by electronic mail to the Debtors, counsel to the Debtors, counsel to the Prepetition Agents, counsel to the Supporting Creditors, counsel to the Committee and the U.S. Trustee (the date such Termination Declaration is made shall be referred to herein as the “**Termination Declaration Date**”). The DIP Obligations shall be due and payable, without notice or demand, and the use of Cash Collateral shall cease, on the Termination Declaration Date, except as provided in paragraphs 12 and this paragraph 23 of this Final Order. Any automatic stay otherwise applicable to the DIP

Credit Parties is hereby modified so that seven (7) days after the Termination Declaration Date (the “**Remedies Notice Period**”) the DIP Credit Parties shall be entitled to exercise all rights and remedies against the DIP Collateral in accordance with the DIP Loan Documents, any applicable Intercreditor Agreements, and this Final Order, and shall be permitted to satisfy the DIP Liens and the DIP Superpriority Claims, subject only to the DIP Carve-Out (up to the DIP Carve-Out Cap), the ABL Priority Liens, the Prepetition Permitted Liens, and, solely with respect to the Notes Priority Collateral, the Prepetition First Lien Notes Liens and the First Lien Notes AP Liens. During the Remedies Notice Period, the Debtors shall be entitled to seek an emergency hearing with the Court. Unless the Court during the Remedies Notice Period orders otherwise, the automatic stay shall automatically be terminated at the end of the Remedies Notice Period without further notice or order, and the DIP Credit Parties shall be permitted to exercise all remedies set forth herein, in the DIP Credit Agreement, the DIP Loan Documents, and as otherwise available at law against the DIP Collateral, without further order of or application or motion to the Court, and without restriction or restraint by any stay under sections 105 or 362 of the Bankruptcy Code, or otherwise, against the enforcement of the liens and security interest in the DIP Collateral or any other rights and remedies granted to the DIP Agent with respect thereto pursuant to the DIP Credit Agreement, the other DIP Loan Documents or this Final Order.

24. Access to Leased Premises. The DIP Agent’s, exercise of its remedies pursuant to paragraph 23 shall be subject to: (i) any agreement in writing between the DIP Agent or Prepetition Agents, and any applicable landlord, (ii) pre-existing rights of the DIP Agent or Prepetition Agents, and any applicable landlord under applicable non-bankruptcy law, (iii) consent of the applicable landlord, or (iv) further order of the Court following notice and a hearing.

25. Good Faith Under Section 364 of the Bankruptcy Code; No Modification or Stay of this Final Order. The DIP Credit Parties and Prepetition Secured Creditors have acted in good faith in connection with the Interim Order and this Final Order and their reliance on the Interim Order and this Final Order is in good faith. Based on the findings set forth in this Final Order and the record made during the Interim Hearing and the Final Hearing, and in accordance with section 364(e) and section 363(m) of the Bankruptcy Code, in the event any or all of the provisions of this Final Order are hereafter reversed, modified, amended or vacated by a subsequent order of this Court, or any other court, the DIP Credit Parties and Prepetition Secured Creditors are entitled, on a final basis, to the protections provided in section 364(e) of the Bankruptcy Code. Any such reversal, modification, amendment or vacatur shall not affect the validity and enforceability of any advances previously made or made hereunder, or lien, claim or priority authorized or created by the Interim Order or hereby, provided that the Interim Order and this Final Order were not stayed by court order after due notice had been given to the DIP Agent, the Prepetition ABL Agent, the First Lien Notes Trustee, the Second Lien Term Loan Agent, and the Third Lien Notes Trustee at the time the advances were made or the liens, claims or priorities were authorized and/or created. Any liens or claims granted to the DIP Credit Parties and Prepetition Secured Creditors under the Interim Order or hereunder arising prior to the effective date of any such reversal, modification, amendment or vacatur of this Final Order shall be governed in all respects by the original provisions of this Final Order, including, without limitation, entitlement to all rights, remedies, privileges and benefits granted herein, provided, that the Interim Order and this Final Order were not stayed by court order after due notice had been given to the DIP Agent, the Prepetition ABL Agent, the First Lien Notes Trustee, the Second Lien Term Loan Agent, and the Third Lien Notes



Trustee at the time the advances were made or the liens, claims or priorities were authorized and/or created.

26. DIP and Other Expenses. The Debtors are authorized and directed to pay all reasonable and documented out-of-pocket costs and expenses (and the DIP Agent is authorized to make advances or charges against the loan account to pay such costs and expenses of the DIP Credit Parties) of the DIP Credit Parties in connection with the DIP Facility (including, without limitation, costs and expenses incurred prior to the Petition Date), as provided in the DIP Loan Documents. Payment of all such costs and expenses shall not be subject to allowance by the Court and professionals for the DIP Credit Parties shall not be required to comply with the U.S. Trustee fee guidelines. The professionals for the DIP Credit Parties shall deliver an invoice in summary form (which shall not be required to include time entry detail and may be redacted for privileged information) to the Debtors, the U.S. Trustee, and the Committee. If no written objection is received by 12:00 p.m., prevailing Eastern Time, on the date that is ten (10) days after delivery of such invoice to the Debtors, the U.S. Trustee, and the Committee, the Debtors shall promptly pay such fees and expenses in full. If an objection to a professional's invoice is timely received, the Debtors shall promptly pay the undisputed amount of the invoice, and this Court shall have jurisdiction to determine the disputed portion of such invoice if the parties are unable to resolve the dispute consensually. The DIP Credit Parties' professionals shall not be required to comply with the U.S. Trustee fee guidelines or file applications or motions with, or obtain approval of, the Court for the payment of any of their fees or out-of-pocket expenses (other than with respect to disputed amounts).

27. Indemnification.

(a) *Generally.* The Debtors shall indemnify and hold harmless the DIP Agent and each other DIP Credit Party, and each of their respective heirs, predecessors, successors, assigns, affiliates, subsidiaries, parents, officers, shareholders, directors, employees, members, managers, attorneys, advisors, professionals and agents, past, present and future, and their respective heirs, predecessors, successors and assigns, from and against any and all damages, losses, settlement payments, obligations, liabilities, claims, actions or causes of action, whether groundless or otherwise, and reasonable costs and expenses incurred, suffered, sustained or required to be paid by an indemnified party of every nature and character arising out of or related to the DIP Loan Documents, the DIP Facility or the transactions contemplated thereby and by this Final Order, whether such indemnified party is party thereto, as provided in and pursuant to the terms of the DIP Loan Documents and as further described therein and herein, or in connection with these Chapter 11 Cases, any plan, or any action or inaction by the Debtors; provided, that such indemnity shall not, as to any indemnified party, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted directly from the gross negligence or willful misconduct of such indemnified party. The indemnity includes indemnification for the DIP Agent's exercise of discretionary rights granted under the DIP Facility. In all such litigation, or the preparation therefor, each of the DIP Agent and each other DIP Credit Party shall be entitled to select its own counsel and, in addition to the foregoing indemnity, the Debtors agree to promptly pay the reasonable and documented fees and expenses of such counsel.

28. Proofs of Claim. Any order entered by the Court in relation to the establishment of a bar date for any claims (including, without limitation, administrative claims) in any of the

Chapter 11 Cases or Successor Cases shall not apply to the DIP Credit Parties or the Prepetition Secured Creditors. None of the DIP Credit Parties or the Prepetition Secured Creditors will be required to file proofs of claim or requests for approval of administrative expenses in any of the Chapter 11 Cases or Successor Cases, and the provisions of this Final Order relating to the DIP Obligations, the DIP Superpriority Claims, the ABL Priority Claims, the Adequate Protection Superpriority Claims, and the Prepetition Secured Obligations shall constitute timely filed proofs of claim and/or administrative expense requests in each of the Chapter 11 Cases.

29. Rights of Access and Information. Without limiting the rights of access and information afforded the DIP Credit Parties under the DIP Loan Documents, the Debtors shall be, and hereby are, required to afford representatives, agents and/or employees of the DIP Agent, the Prepetition Agents, the Committee and the Supporting Creditors reasonable access to the Debtors' premises and their books and records in accordance with (as and to the extent applicable) the DIP Loan Documents and the Prepetition Credit Documents (as applicable) and shall reasonably cooperate, consult with, and provide to such persons all such information as may be reasonably requested. In addition, the Debtors authorize FTI Consulting, Inc., Evercore Group L.L.C., and Skadden, Arps, Slate, Meagher & Flom LLP (the "**Debtor Advisors**") to provide to the DIP Agent, the Prepetition Agents, the Committee and the Supporting Creditors, all such information as may be reasonably requested with respect to the business, results of operations and financial condition of any Debtor; provided, that such Debtor Advisors shall not be required to provide information that is in "draft" or "work product" form or that is subject to any privilege.

30. DIP Carve-Out.

(a) *DIP Carve-Out.* As used in this Final Order, the "**DIP Carve-Out**" means, collectively, the sum of: all allowed administrative expenses pursuant to (i) 28 U.S.C.

§ 1930(a)(6) and 31 U.S.C. § 3717 for fees payable to the Office of the United States Trustee, as determined by agreement of the U.S. Trustee or by final order of the Court (“**U.S. Trustee Fees**”), and (ii) 28 U.S.C. § 156(c) for fees required to be paid to the Clerk of the Court; (iii) all reasonable and documented fees and expenses of up to \$25,000 incurred by a trustee under section 726(b) of the Bankruptcy Code; (iv) all unpaid fees and expenses allowed at any time by the Court, whether by interim order, procedural order, or otherwise (the “**Allowed Professional Fees**”), and incurred by professionals retained by the Debtors and the Committee in accordance with an order of the Court (which order has not been reversed, vacated or stayed) under sections 327(a) or 1103(a) of the Bankruptcy Code, (collectively the “**Case Professionals**”), incurred at any time prior to the delivery of a Carve-Out Trigger Notice (as defined below); and (v) Allowed Professional Fees of Case Professionals incurred after the delivery of a Carve-Out Trigger Notice to the extent allowed at any time, whether by interim order, procedural order, or otherwise. For purposes of the foregoing, “**Carve-Out Trigger Notice**” shall mean a written notice delivered by email (or other electronic means) by the DIP Agent to the Debtors, the Prepetition Agents, the Supporting Creditors, the Committee and the U.S. Trustee, which notice may be delivered only following the occurrence and during the continuation of an Event of Default. The DIP Credit Parties’ obligations to fund the DIP Carve-Out in accordance with this paragraph 30(a) shall be limited to the DIP Carve-Out Cap (as defined herein) and shall terminate upon the payment in full, in cash, of the DIP Obligations. For the avoidance of doubt, the DIP Agent shall at all times maintain, as part of the Reserves (as defined in the DIP Credit Agreement), a reserve in an amount not less than the sum of (x) the then current amounts described in (a)(i), (a)(ii), and (a)(iii) of this paragraph 30, it being understood that the amount of \$75,000 shall be reserved and deemed sufficient for amounts owing thereunder, and (a)(iv) of this paragraph 30, limited to an

amount not to exceed the balance of (A) (i) 85 percent any Reported Fee Accruals (as defined in the DIP Credit Agreement) reported to the DIP Agent until the Deferral End Date<sup>13</sup>; and (ii) any Reported Fee Accruals reported to the DIP Agent on and after the Deferral End Date, in each case prior to delivery of a Carve-Out Trigger Notice less (B) any Allowed Professional Fees that have been paid to the applicable Case Professionals prior to delivery of a Carve-Out Trigger Notice, whether by interim order, procedural order, or otherwise; and (y) on account of Allowed Professional Fees of Case Professionals incurred after the delivery of a Carve-Out Trigger Notice, to the extent allowed at any time, whether by interim order, procedural order, or otherwise, (A) \$500,000 for the DIP Credit Parties' claims and liens; and (B) an additional \$500,000, for an aggregate amount of \$1,000,000, for the Prepetition Secured Creditors' claims and liens (the sum of (x) and, as applicable, (y)(A) and/or (y)(B), the "**DIP Carve-Out Cap**"). Notwithstanding anything in this Final Order or the DIP Loan Documents to the contrary, the DIP Agent shall not consent to any increase in the DIP Carve-Out or the DIP Carve-Out Cap, or any alternative carve-out in connection with a DIP Financing (as defined in the ABL Intercreditor Agreement), without the consent of the holders of 66.67% of the First Lien Notes (pursuant to the terms of the First Lien Notes Indenture), such consent not to be unreasonably withheld, conditioned, or delayed; *provided* that the foregoing shall not bind any lender or agent party to a refinancing of the DIP Facility; *provided further* that the First Lien Notes Creditors reserve all rights, including under the Intercreditor Agreement, with respect to any lender or agent party to such a refinancing. Notwithstanding anything in this Final Order or the DIP Loan Documents to the contrary, to the extent any liens or claims are subordinated to the DIP Carve-

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<sup>13</sup> "Deferral End Date" shall mean the last day of the week of receipt of the Tax Refund as defined below.

Out, they shall be subordinate to the DIP Carve-Out solely up to the amount of the applicable DIP Carve-Out Cap.

(b) *Carve Out Reserve.* On the date on which a Carve Out Trigger Notice is given, the Debtors shall utilize all cash on hand as of such date and any available cash thereafter held by any Debtor to fund a reserve in an amount equal to the DIP Carve-Out (up to the DIP Carve-Out Cap). The Debtors shall deposit and hold such amounts in a segregated account in trust to pay all then unpaid Allowed Professional Fees of the Case Professionals (subject to the DIP Carve-Out Cap) prior to any and all other claims (the “**Carve Out Reserves**”). Notwithstanding anything contained herein to the contrary, following delivery of a Carve Out Trigger Notice, the DIP Credit Parties and the Prepetition Secured Creditors shall not sweep or foreclose on cash (including cash received as a result of the sale or other disposition of any assets) of the Debtors until the Carve Out Reserves have been fully funded, but shall have a security interest in any residual interest in the Carve Out Reserves, with any excess paid to the DIP Credit Parties in accordance with the DIP Loan Documents, subject to the Intercreditor Agreements and this Final Order. Further, notwithstanding the foregoing, the requirement of the DIP Credit Parties to fund the portion of the Carve Out Reserve on account of Allowed Professional Fees of Case Professionals incurred after the delivery of a Carve-Out Trigger Notice and the limitations with respect to the DIP Credit Parties sweeping or foreclosing on cash set forth above until the Carve Out Reserve is funded shall be limited to the amount of \$500,000. Further, notwithstanding anything contained herein or in the DIP Loan Documents to the contrary, (i) the failure of the Carve Out Reserves to satisfy in full the Allowed Professional Fees of Case Professionals shall not affect the priority of the DIP Carve-Out, (ii) nothing contained in the Interim Order, this Final Order, the DIP Loan Documents or the Prepetition Credit Documents (including the Approved

Budget (or any other budget), the DIP Carve-Out, the DIP Carve-Out Cap, the Carve Out Reserves, or any of the foregoing), (x) shall in any way prohibit, impair, limit the incurrence or allowance of, or serve as a cap on the amount of, the fees and expenses of the Case Professionals (which includes, for the avoidance of doubt, the fees and expenses of the Committee's professionals), or (y) otherwise prohibit, limit or impair the ability of the Committee's professionals to (1) assert administrative expense claims on account of such fees and expenses against each each of the Debtors and their affiliated debtors and debtors-in-possession, or (2) to be compensated during the pendency of the Chapter 11 Cases (subject to any interim compensation procedures order entered by the Court) with any advances or borrowings made under or pursuant to, or proceeds of, the DIP Facility.

(c) *No Direct Obligation to Pay Professional Fees.* Other than funding the DIP Carve-Out Cap as and when required in paragraph 30(a), none of the DIP Credit Parties shall be responsible for the funding, direct payment or reimbursement of any fees or disbursements of any Case Professionals incurred in connection with the Cases or any Successor Cases. Nothing in this Final Order or otherwise shall be construed to obligate the DIP Credit Parties or the Prepetition Secured Creditors in any way to pay compensation to or to reimburse expenses of any Case Professional, or to guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement. Nothing in this Final Order or otherwise shall be construed to increase the DIP Carve-Out Cap if actual fees, disbursements, costs and expenses incurred of any Case Professional are higher in fact than the estimated fees and disbursements reflected in the Approved Budget. Notwithstanding anything to the contrary contained in this Final Order, the Approved Budget or the DIP Loan Documents, none of the DIP Credit Parties or the Prepetition Secured Creditors shall be responsible for funding any "success", "restructuring", "transaction" or similar fee payable to

the Debtors' investment banker or financial advisor, and in no event shall any such amounts be paid out of the DIP Carve-Out other than after the repayment in full in cash of the DIP Obligations in connection with or as a result of a transaction pursuant to section 363 of the Bankruptcy Code and as limited by the DIP Carve-Out Cap). At any time there are any outstanding DIP Obligations, following the Termination Declaration Date, Allowed Professional Fees of any Case Professional shall be paid solely from the DIP Carve-Out and any retainer, as applicable.

(d) *Payment of DIP Carve-Out.* The funding of the DIP Carve-Out (up to the DIP Carve-Out Cap) shall be added to and made a part of the DIP Obligations and secured by the DIP Collateral and otherwise entitled to the protections granted under this Final Order, the DIP Loan Documents, the Bankruptcy Code and applicable law.

(e) Notwithstanding anything in this Final Order or the Court's Order Granting Debtors Motion for Order Pursuant to Bankruptcy Code Sections 105(a) and 331, Bankruptcy Rule 2016, and Local Bankruptcy Rule 2016-1 Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals [Docket No. 176] (the "**Interim Compensation Order**") to the contrary, until further order of the Court, at the expiration of the fifteen day period following the filing of a Monthly Statement (as defined in the Interim Compensation Order), the Debtors shall pay only 65 percent of the fees and 100 percent of the expenses identified in each Monthly Statement to which no objection has been served in accordance with paragraph (d) of the Interim Compensation Order. For the avoidance of doubt the foregoing shall also apply to the payment of any monthly fees incurred by any Case Professional retained under section 328 of the Bankruptcy Code, including Evercore. The remainder of any Case Professional fees not paid in accordance with the Interim Compensation Order shall be referred to herein as the "**Deferred Professional Fees**".



31. Limitations on the DIP Facility, the DIP Collateral, the Cash Collateral and the DIP Carve-Out. The DIP Facility, the DIP Collateral, the Cash Collateral, the Prepetition Collateral, and the DIP Carve-Out may not be used: (a) in connection with or to finance in any way any action, suit, arbitration, proceeding, application, investigation, motion or other litigation of any type (i) adverse to or against the interests of the DIP Credit Parties, the Prepetition Agents or the Prepetition Secured Creditors, or their rights and remedies under the DIP Loan Documents, the Interim Order or this Final Order, including, without limitation, for the payment of any services rendered by the professionals retained by the Debtors, the Committee or any other person in connection with the assertion of or joinder in any claim, counterclaim, action, proceeding, application, motion, objection, defense or other contested matter, the purpose of which is to seek, or the result of which would be to obtain, any order, judgment, determination, declaration or similar relief adverse to or against the interests of the DIP Credit Parties or the Prepetition Secured Creditors or their rights and remedies under the DIP Loan Documents, (ii) invalidating, investigating, setting aside, avoiding, subordinating or otherwise challenging, in whole or in part, any DIP Obligations or the Prepetition Secured Obligations, (iii) for monetary, injunctive or other affirmative relief against the DIP Credit Parties or the Prepetition Secured Creditors, or their respective collateral, (iv) preventing, hindering or otherwise delaying the exercise by the DIP Credit Parties or the Prepetition Secured Creditors of any rights and remedies under the Interim Order or this Final Order, the DIP Loan Documents, or applicable law, or the enforcement or realization (whether by foreclosure or further order of the Court or otherwise) by the DIP Agent upon any of the DIP Collateral, or by the Prepetition Agents, as applicable, with respect to the Prepetition Collateral, except as provided for in the Interim Order or this Final Order, (v) asserting that the value of the Prepetition Collateral is less than the

Prepetition Secured Obligations, (vi) to pursue any litigation against any DIP Credit Party, the Prepetition Agents or any other Prepetition Secured Creditor, or (vii) investigating or asserting claims or potential causes of action related to, or arising out of, the incurrence of the Prepetition Secured Obligations, as it may relate to any party including, but not limited to, the Debtors or their affiliates; (b) to make any distribution under a plan of reorganization in any Chapter 11 Case; (c) to make any payment in settlement of any claim, action or proceeding, before any court, arbitrator or other governmental body to the extent not expressly permitted under the DIP Loan Documents; (d) to pay any fees or similar amounts to any person who has proposed or may propose to purchase interests in any of the Debtors; (e) objecting to, contesting, or interfering with, in any way, the DIP Credit Parties' enforcement or realization upon any of the DIP Collateral once an Event of Default has occurred, except as provided for in the Interim Order or this Final Order; (f) using or seeking to use Cash Collateral while the DIP Obligations remain outstanding in a manner inconsistent with the Approved Budget; (g) using or seeking to use any insurance proceeds constituting DIP Collateral without the consent of the DIP Agent, as applicable; (h) incurring Indebtedness (as defined in the DIP Credit Agreement) outside the ordinary course of business, except as permitted under the DIP Loan Documents; (i) objecting to, investigating, or challenging in any way the DIP Liens, Prepetition Liens, or claims or interests held by or on behalf of the DIP Credit Parties or the Prepetition Secured Creditors; (j) asserting, commencing or prosecuting any claims or causes of action whatsoever, including, without limitation, any actions under chapter 5 of the Bankruptcy Code or any other avoidance actions under the Bankruptcy Code, against the DIP Credit Parties or the Prepetition Secured Creditors; or (k) prosecuting an objection to, contesting in any manner, or raising any defenses to, the validity, extent, amount, perfection, priority, or enforceability of any of the DIP Obligations, the

Prepetition Secured Obligations, the DIP Liens, the Prepetition Liens or any other rights or interests of the DIP Credit Parties or the Prepetition Secured Creditors; *provided* that the foregoing limitations shall not encompass any Challenge (as defined below) to the Prepetition Secured Obligations conducted by the Case Professionals by the Challenge Deadline (as defined below); *provided, further* that the aggregate amount of costs, fees, and expenses incurred in connection with the investigation in connection with any such Challenge by (x) the Committee's Case Professionals shall not exceed \$750,000 (the "Committee Investigation Budget"), it being understood and agreed that the costs, fees, and expenses incurred by Committee's Case Professionals in responding to information requests, document demands or other discovery or similar requests from third parties in connection with any such Challenge<sup>14</sup> shall not be subject to the Investigation Budget (as defined below) and (y) the Debtors' Case Professionals shall not exceed \$250,000 (the "Debtor Investigation Budget," and together with the Committee Investigation Budget, the "Investigation Budget"), it being understood and agreed that the costs, fees, and expenses incurred by the Debtors' Case Professionals in responding to information requests, document demands, or other discovery or similar requests in connection with any such Challenge shall not be subject to the Investigation Budget; *provided, further*, that notwithstanding the foregoing, the Case Professionals may assert administrative expense claims for any fees and expenses incurred, including, but not limited to, fees and expenses incurred by the Case Professionals in excess of the Investigation Budget.

32. Payment of Compensation. Nothing herein shall be construed as consent to the allowance of any professional fees or expenses of any Case Professionals or shall affect the right

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<sup>14</sup> For the avoidance of doubt, this only applies to responses by the Committee (and not its individual members) to requests for information made to the Committee (and not its individual members).

of the DIP Credit Parties or the Prepetition Secured Creditors to object to the allowance and payment of such fees and expenses.

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

34. Section 506(c) Claims. No costs or expenses of administration which have been or may be incurred in the Chapter 11 Cases or Successor Cases at any time shall be charged against the DIP Credit Parties or the DIP Collateral or the Prepetition Secured Creditors or the Prepetition Collateral pursuant to sections 105 or 506(c) of the Bankruptcy Code, or otherwise; *provided, however,* that the foregoing shall not apply to any Prepetition Secured Creditor (other than the Prepetition ABL Secured Lenders) or Prepetition Collateral, to the extent such creditor or collateral is the subject of a successful Challenge.

35. No Marshaling/Applications of Proceeds. None of the DIP Credit Parties or the Prepetition Secured Creditors shall be subject to the equitable doctrine of “marshaling” or any other similar doctrine with respect to any of the DIP Collateral or Prepetition Collateral; *provided, however,* that the foregoing shall not apply to any Prepetition Secured Creditor (other than the Prepetition ABL Secured Lenders) or Prepetition Collateral, to the extent such creditor or collateral is the subject of a successful Challenge.

36. Section 552(b). The DIP Agent and the other DIP Credit Parties shall be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code. The “equities of the case” exception under section 552(b) of the Bankruptcy Code shall not apply to the DIP Credit Parties or the Prepetition Secured Creditors with respect to proceeds, products, offspring or profits of any of the DIP Collateral or Prepetition Collateral; *provided, however,* that the foregoing shall

not apply to any Prepetition Secured Creditor (other than the Prepetition ABL Secured Lenders) or Prepetition Collateral, to the extent such creditor or collateral is the subject of a successful Challenge.

37. Limits on Lender Liability. Nothing in this Final Order, any of the DIP Loan Documents, or any other documents relate thereto shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Agent, the DIP Lenders, or the Prepetition Secured Creditors of any liability for any claims arising from any activities by the Debtors in the operation of their businesses or in connection with the administration of these Chapter 11 Cases. The DIP Agent, the DIP Lenders, and the Prepetition Secured Creditors shall not, solely by reason of having made loans under the DIP Facility or permitting the use of Cash Collateral, be deemed in control of the operations of the Debtors or to be acting as a “responsible person” or “owner or operator” with respect to the operation or management of the Debtors (as such terms, or any similar terms, are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 *et seq.*, as amended, or any similar federal or state statute). Nothing in this Final Order or the DIP Loan Documents, shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Agent, the DIP Lenders, or any of the Prepetition Secured Creditors of any liability for any claims arising from the prepetition or postpetition activities of any of the Debtors. Notwithstanding anything to the contrary in this paragraph 36, this paragraph 36 shall not apply to any Prepetition Secured Creditor for any prepetition activities of any of the Debtors to the extent such creditor is the subject of a successful Challenge.

38. Joint and Several Liability. Nothing in this Final Order shall be construed to constitute a substantive consolidation of any of the Debtors’ estates, it being understood, however,

that the Debtors shall be jointly and severally liable for the obligations hereunder and in accordance with the terms of the DIP Facility and the DIP Loan Documents.

39. No Superior Rights of Reclamation. Based on the findings and rulings herein concerning the integrated nature of the DIP Facility and the Prepetition ABL Credit Documents and the relation back of the DIP Liens, in no event shall any alleged right of reclamation or return (whether asserted under section 546(c) of the Bankruptcy Code or otherwise) be deemed to have priority over the DIP Liens or the ABL Priority Liens.

40. Discharge Waiver. The DIP Obligations, the DIP Superpriority Claim, the DIP Liens, the ABL Priority Liens, and the obligations of the Debtors with respect to adequate protection hereunder, including granting the Adequate Protection Liens and the Adequate Protection Superpriority Claims, shall not be discharged by the entry of an order confirming any plan of reorganization in any of the Chapter 11 Cases, notwithstanding the provisions of section 1141(d) of the Bankruptcy Code, unless such obligations have been indefeasibly paid in full in cash and all Postpetition Letters of Credit cancelled (or otherwise terminated) by the Prepetition ABL Agent, on or before the effective date of such confirmed plan of reorganization, or each of the DIP Secured Parties or the Prepetition Secured Creditors, as applicable, has otherwise agreed in writing. None of the Debtors shall propose or support any plan or sale of all or substantially all of the Debtors' assets or entry of any confirmation order or sale order that is not conditioned upon the payment in full in cash, on the effective date of such plan of all DIP Obligations, all Obligations under the Prepetition ABL Credit Documents, and Adequate Protection Superpriority Claims.

41. Rights Preserved. Notwithstanding anything herein to the contrary, the entry of this Final Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly:  
(a) the DIP Credit Parties' or the Prepetition Secured Creditors' right (subject to the Intercreditor

Agreements) to seek any other or supplemental relief in respect of the Debtors (including, the right to seek additional or different adequate protection); (b) the rights of any of the Prepetition Secured Creditors to seek the payment by the Debtors of post-petition interest or fees pursuant to section 506(b) of the Bankruptcy Code; or (c) any of the rights of the DIP Credit Parties or the Prepetition Secured Creditors under the Bankruptcy Code or under non-bankruptcy law, including, without limitation, the right to (i) request modification of the automatic stay of section 362 of the Bankruptcy Code, (ii) request dismissal of any of the Chapter 11 Cases or Successor Cases, conversion of any of the Chapter 11 Cases to cases under chapter 7, or appointment of a chapter 11 trustee or examiner with expanded powers, (iii) seek an injunction, (iv) oppose any request for use of Cash Collateral subject to the Intercreditor Agreements, (v) object to any sale of assets subject to the Intercreditor Agreements, or (vi) propose, subject to the provisions of section 1121 of the Bankruptcy Code, a chapter 11 plan or plans. Other than as expressly set forth in this Final Order, any other rights, claims or privileges (whether legal, equitable or otherwise) of the DIP Credit Parties and the Prepetition Secured Creditors are preserved.

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

43. Challenge Period. Subject only to the terms of this paragraph 43, the grant of adequate protection payments, liens or claims to the Prepetition Secured Creditors and the statements contained in paragraph E hereof shall be without prejudice to the rights of the Committee to seek to recharacterize, disgorge, disallow or assert any other Challenge with respect to all or a portion of the Prepetition Secured Creditors' claims in respect of the Prepetition Credit

Documents, pursue any claims or seek appropriate remedies against the Prepetition Secured Creditors in connection with the Prepetition Credit Documents or avoid, subordinate or assert any other Challenge with respect to any or all of the security interests or liens in the Prepetition Collateral or in any other asset or property of Debtors in which the Prepetition Secured Creditors claim an interest, including any claim, action, or proceeding brought against the Prepetition Secured Creditors in accordance with this paragraph 43 that requires the Prepetition Secured Creditors to give up adequate protection liens and superpriority claims, to disgorge adequate protection interest payments received or accruals credited, or to disgorge as repaid pursuant to this Final Order as a result of any of the Prepetition Secured Creditors' claims against Debtors or liens upon and security interests in the assets and properties of Debtors (including the Prepetition Collateral) being invalidated, avoided, subordinated, impaired or compromised in any way, either by an order of the Court (or other court of competent jurisdiction) or by settlement. Any party, including the Committee, must commence, as appropriate, a contested matter or adversary proceeding raising any objection, claim, defense, suit, or other challenge (each, a "**Challenge**") with respect to any claim, security interest, or any other rights of the Prepetition Secured Creditors under the applicable Prepetition Credit Documents, including in the nature of a setoff, counterclaim, or defense on or before the earlier of (i) the date of entry of an order confirming a plan of reorganization, (ii) the date of entry of an order approving the sale of all or substantially all of the Debtors' assets, or (iii) the date that is ninety (90) days from the date of entry of this Final Order (the earliest to occur of clauses (i), (ii), and (iii), as applicable, the "**Challenge Deadline**"), as such applicable date may be extended in writing from time to time in the sole discretion of the Prepetition ABL Agent (with respect to the Prepetition ABL Credit Documents), the First Lien Notes Trustee (with respect to the First Lien Notes Documents), the Second Lien



Term Loan Agent (with respect to the Second Lien Term Loan Documents), and the Third Lien Notes Trustee (with respect to the Third Lien Notes Documents), or by this Court for good cause shown pursuant to an application filed by a party in interest prior to the expiration of the Challenge Deadline. Notwithstanding anything contained herein to the contrary, the Challenge Deadline will be tolled for the Committee if it formally moves for an order of this Court conferring such standing or authority (the “**Standing Motion**”) prior to the initial Challenge Deadline from the date the Committee so moves until such time as standing is granted or denied pursuant to an order of the Court with regard to such Standing Motion; provided that the Challenge Deadline will only be tolled (a) if such motion attaches a proposed complaint identifying the specific Challenges that the Committee proposes to assert and the defendants against whom such Challenges are proposed to be asserted and (b) will only be tolled with respect to such Challenges and defendants specifically identified therein.

44. Binding Effect of Final Order. Immediately upon entry by this Court (notwithstanding any applicable law or rule to the contrary), the stipulations, terms and provisions of this Final Order (including, without limitation, the Adequate Protection Liens, Adequate Protection Payments and the Adequate Protection Superpriority Claims) shall become valid and binding upon and inure to the benefit of the Debtors, the DIP Credit Parties, the Prepetition Secured Creditors, all other creditors of any of the Debtors, the Committee and all other parties in interest and their respective successors and assigns, including, without limitation, any trustee or other fiduciary hereafter appointed in any of the Chapter 11 Cases, any Successor Cases, or upon dismissal of any Case or Successor Case, and the Debtors, the DIP Credit Parties, the Prepetition Secured Creditors, all other creditors of any of the Debtors, the Committee and all other parties in interest and their respective successors and assigns, including, without limitation, any trustee or

other fiduciary hereafter appointed in any of the Chapter 11 Cases, any Successor Cases, or upon dismissal of any Case or Successor Case shall be forever barred, estopped and enjoined from pursuing a Challenge or otherwise contesting the DIP Obligations and Prepetition Secured Obligations unless, and solely to the extent that, (a) the Committee or a party in interest has commenced a Challenge by the Challenge Deadline, and (b) this Court enters judgment in favor of the plaintiff or movant in any such timely commenced Challenge proceeding and any such judgment has become a final judgment that is not subject to any further review or appeal. Nothing in this Final Order shall be construed as limiting the power of the Court to annul or modify any Adequate Protection Lien or Adequate Protection Superiority Claim, or to require a return of or recharacterization of any Adequate Protection Payment, in the event that any such Challenge or avoidance shall be successful.

45. Any order dismissing one or more of the Chapter 11 Cases or Successor Cases under section 1112 of the Bankruptcy Code or otherwise shall be deemed to provide (in accordance with Bankruptcy Code sections 105 and 349) that (a) the DIP Liens, ABL Priority Liens, Prepetition Liens and Adequate Protection Liens shall continue in full force and effect notwithstanding such dismissal until the DIP Obligations, Remaining Prepetition ABL Obligations, Prepetition Secured Obligations and/or Adequate Protection Superiority Claims (as applicable) are indefeasibly paid and satisfied in full and (b) this Court shall retain jurisdiction, to the extent permissible under applicable law, notwithstanding such dismissal, for the purposes of enforcing the DIP Superpriority Claim, DIP Liens, DIP Carve-Out, ABL Priority Liens, Adequate Protection Superpriority Claims, Adequate Protection Liens and the Prepetition Liens and the Intercreditor Agreements.

46. No Modification of Final Order. Until and unless the DIP Obligations have been paid in full in cash (such payment being without prejudice to any terms or provisions contained in the DIP Facility which survive such discharge by their terms), and all commitments to extend credit under the DIP Facility have been terminated, the Debtors irrevocably waive the right to seek and shall not seek or consent to, directly or indirectly: (a) without the prior written consent of the DIP Agent and the Supporting Creditors (i) any reversal, modification, stay, vacatur or amendment to this Final Order; or (ii) a priority claim for any administrative expense or unsecured claim against the Debtors (now existing or hereafter arising of any kind or nature whatsoever, including, without limitation, any administrative expense of the kind specified in sections 503(b), 507(a) or 507(b) of the Bankruptcy Code) in any of the Chapter 11 Cases or Successor Cases, equal or superior to the DIP Superpriority Claim or the Adequate Protection Superpriority Claims, other than the DIP Carve-Out; (b) any order, other than this Final Order, allowing use of Cash Collateral resulting from DIP Collateral (except as may be provided by further order of the Court); and (c) except as set forth in this Final Order, any lien on any of the DIP Collateral or Prepetition Collateral with priority equal or superior to the DIP Liens, the ABL Priority Liens or, subject to further order of this Court, the Prepetition Liens. The Debtors irrevocably waive any right to seek any amendment, modification or extension of this Final Order without the prior written consent, as provided in the foregoing, of the DIP Agent and the Supporting Creditors (and with respect to the Prepetition ABL Obligations and the Remaining Prepetition ABL Obligations, the prior written consent of the Prepetition ABL Agent) and no such consent shall be implied by any other action, inaction or acquiescence of the DIP Agent, the Prepetition ABL Agent, or the Supporting Creditors, as applicable.

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

48. Survival. The provisions of this Final Order and any actions taken pursuant hereto shall survive entry of any order which may be entered: (a) confirming any plan of reorganization in any of the Chapter 11 Cases; (b) converting any of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code; (c) dismissing any of the Chapter 11 Cases or any Successor Cases; or (d) pursuant to which this Court abstains from hearing any of the Chapter 11 Cases or Successor Cases. The terms and provisions of this Final Order, including, without limitation, the claims, liens, security interests and other protections granted to the DIP Credit Parties and Prepetition Secured Creditors pursuant to this Final Order and/or the DIP Loan Documents, notwithstanding the entry of any such order, shall continue in the Chapter 11 Cases, in any Successor Cases, or following dismissal of the Chapter 11 Cases or any Successor Cases, and shall maintain their priority as provided by this Final Order until (i) all DIP Obligations have been indefeasibly paid in full in cash and all commitments to extend credit under the DIP Facility are terminated, (ii) all Prepetition Secured Obligations have been indefeasibly paid in full in cash, and (iii) all Postpetition Letters of Credit have been cancelled or otherwise terminated. The terms and provisions in this Final Order concerning indemnification of the DIP Credit Parties shall continue in the Chapter 11 Cases and in any Successor Cases, following dismissal of the Chapter 11 Cases or any Successor Cases, following termination of the DIP Loan Documents and/or the repayment of the DIP Obligations.

49. Notice of Entry of Final Order. On or before [•], 2020, the Debtors shall serve, by United States mail, first-class postage prepaid, a copy of this Final Order upon the notice parties

required to be served under Local Bankruptcy Rule 4001-2 who do not receive electronic notice of the entry of this Final Order pursuant to Local Bankruptcy Rule 4001-2.

50. Treatment of Proceeds from Sale of Texas Assets. Notwithstanding any provisions of the Interim Order or any final orders pertaining to post-petition financing, use of cash collateral, the sale of the debtors' assets, or any agreements validated by any such orders, the liens currently held by the Local Texas Tax Authorities (Tarrant County, Harris County, Lewisville ISD, Northwest ISD and Roanoke) or which shall arise during the course of this case pursuant to applicable non-bankruptcy law on DIP Collateral, shall neither be primed by nor subordinated to any liens granted thereby or pursuant to this Final Order.

51. Dow Jones & Company. Reference is made to those certain Master Services Agreements, as amended, entered into between Dow Jones & Company, Inc. and certain of the Debtors, collectively, the "MSAs". The Debtors and DIP Credit Parties each acknowledge and agree that none of the Debtors have title to or ownership interest in (i) Dow Jones' newsprint stored or otherwise held by the Debtors at a Service Location(as defined in the MSAs; (ii) Publication Content (as defined in Section 9.1 of each of the MSAs); (iii) Dow Jones Intellectual Property Rights (as defined in Section 9.1 of each of the MSAs); or (iv) the Color Equipment (as defined in Section 4.5 of certain of the MSAs) and related documentation.

52. DIP Credit Agreement Amendments. The DIP Credit Agreement shall be amended by (a) replacing Schedule 5.23 thereof in its entirety with Schedule 5.23 annexed to this Final Order, and (b) deleting the terms "Prepetition Obligations" and "Prepetition Liens" from Sections 6.19(c) and (d).

53. Nunc Pro Tunc Effect of this Final Order. This Final Order shall take effect and be enforceable *nunc pro tunc* to the Petition Date immediately upon entry thereof.

54. Retention of Jurisdiction. The Court has and will retain jurisdiction to enforce this Final Order according to its terms.

55. Distribution of Proceeds from Tax Refund. Upon receipt of any tax refund for the fiscal year 2019 (“Tax Refund”), the proceeds shall be distributed (a) *first*, provided that no Default or Event of Default under the DIP Credit Agreement has occurred which has not been waived, to the First Lien Notes Creditors for any accrued and unpaid Deferred Adequate Protection Payments and (b) *second*, to Case Professionals for accrued and unpaid Deferred Professional Fees, which shall be paid in accordance with the Interim Compensation Order or other order of this Court approving payment of Case Professional fees.

Dated: \_\_\_\_\_, 2020  
New York, NY

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THE HONORABLE MICHAEL E. WILES  
UNITED STATES BANKRUPTCY JUDGE

**EXHIBIT 1**

**Lien and Claim Priority**

<b>Order of Priority</b>	<b>ABL Carve-Out Collateral</b>	<b>ABL Priority Collateral (whether in existence on the Petition Date or thereafter arising)</b>	<b>Notes Priority Collateral (whether in existence on the Petition Date or thereafter arising)</b>	<b>DIP Collateral that Consists of Prior Unencumbered Assets</b>
<b>1st</b>	Remaining Prepetition ABL Obligations	DIP Carve-Out (up to the DIP Carve-Out Cap)	First Lien Notes Obligations (and adequate protection with respect thereto)	DIP Carve-Out (up to the DIP Carve-Out Cap) with respect to collateral that is of the type of ABL Priority Collateral  Adequate Protection for First Lien Notes Obligations with respect to collateral that is of the type that would be Notes Priority Collateral
<b>2nd</b>	After the Postpetition Letters of Credit have been cancelled or otherwise terminated and the Remaining Prepetition Obligations satisfied in full in accordance with the Final Order and the Prepetition ABL Payoff Letter, DIP Carve-Out (up to the DIP Carve-Out Cap)	DIP Facility	DIP Carve-Out (up to the DIP Carve-Out Cap)	DIP Facility with respect to collateral that is of the type of ABL Priority Collateral  DIP Carve-Out (up to the DIP Carve-Out Cap) with respect to collateral that is of the type of Notes Priority Collateral
<b>3rd</b>	DIP Facility	Remaining Prepetition ABL Obligations (and adequate protection with respect thereto)	DIP Facility	Adequate Protection for Remaining Prepetition ABL Obligations with respect to

				Collateral that is of the type of ABL Priority Collateral  DIP Facility with respect to collateral that is of a type that is Notes Priority Collateral
<b>4th</b>	First Lien Notes Obligations (and adequate protection with respect thereto)	First Lien Notes Obligations (and adequate protection with respect thereto)	Remaining Prepetition ABL Obligations (and adequate protection with respect thereto)	Adequate Protection for First Lien Notes Obligations with respect to collateral that is of the type that would be ABL Priority Collateral  Adequate Protection for Remaining Prepetition ABL Obligations with respect to Collateral that is of the type of Notes Priority Collateral
<b>5th</b>	Second Lien Term Loan Obligations (and adequate protection with respect thereto)	Second Lien Term Loan Obligations (and adequate protection with respect thereto)	Second Lien Term Loan Obligations (and adequate protection with respect thereto)	Adequate Protection for Second Lien Term Loan Obligations
<b>6th</b>	Third Lien Notes Obligations (and adequate protection with respect thereto)	Third Lien Notes Obligations (and adequate protection with respect thereto)	Third Lien Notes Obligations (and adequate protection with respect thereto)	Adequate Protection for Third Lien Notes Obligations



**EXHIBIT B**

**Redline Changes Modified Final DIP Order**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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-	
<i>In re</i>	: <b>Chapter 11</b>
	:
<b>THE McCLATCHY COMPANY, et al.,</b>	: <b>Case No. 20-10418 (MEW)</b>
	:
<b>Debtors.<sup>1</sup></b>	: <b>(Jointly Administered)</b>
	:
-----	x <b>Ref. Docket Nos. 11, 12, 13-<del>&amp;</del>, <u>64</u> &amp; <u>233</u></b>
-	

**MODIFIED FINAL ORDER (I) AUTHORIZING THE DEBTORS TO (A) OBTAIN  
POSTPETITION FINANCING AND (B) USE CASH COLLATERAL, (II) GRANTING  
(A) LIENS AND PROVIDING SUPERPRIORITY ADMINISTRATIVE EXPENSE  
STATUS AND (B) ADEQUATE PROTECTION TO CERTAIN PREPETITION  
LENDERS, (III) MODIFYING THE AUTOMATIC STAY  
AND (IV) GRANTING RELATED RELIEF**

Upon the motion (the “**Motion**”)<sup>2</sup> of The McClatchy Company (“**Parent**”), McClatchy Newspapers, Inc. (“**Lead Borrower**”), and the various other Debtors who are “Loan Parties” as defined in that certain DIP Credit Agreement (as defined below), each as a debtor and debtor in possession (collectively, the “**Debtors**”)<sup>3</sup> in the Debtors’ chapter 11 cases (collectively, the

<sup>1</sup> The last four digits of Debtor The McClatchy Company’s tax identification number are 0478. Due to the large number of debtor entities in these chapter 11 cases, ~~for which the Debtors have requested joint administration,~~ a complete list of the debtor entities and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors’ ~~proposed~~ claims and noticing agent at <http://www.kccllc.net/McClatchy>. The location of the Debtors’ service address for purposes of these chapter 11 cases is: 2100 Q Street, Sacramento, California 95816.

<sup>2</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Motion, or if not defined therein, the DIP Loan Documents (as defined below).

<sup>3</sup> All of the Debtors shall be obligors under the DIP Credit Agreement, except for the following entities: El Dorado Newspapers; Herald Custom Publishing of Mexico, S. de R.L. de C.V.; McClatchy Big Valley, Inc.; McClatchy International Inc.; McClatchy News Services, Inc.; McClatchy Property, Inc.; McClatchy Resources, Inc.; McClatchy Shared Services, Inc.; N & O Holdings, Inc.; Newsprint Ventures, Inc.; Tribune Newsprint Company; Tru Measure, LLC; and Wingate Paper Company. For the avoidance of doubt, for all purposes of this Final Order, the term “Debtors” shall not include any entities that are not “Loan Parties” as defined in the DIP Credit Agreement or the Prepetition Credit Documents (as defined below).

“**Chapter 11 Cases**”) for entry of an interim order and a final order (the “**Final Order**”) pursuant to sections 105, 361, 362, 363, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), 364(e), 503 and 507 of title 11 of the United States Code (the “**Bankruptcy Code**”), Rules 2002, 4001, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Rule 4001-2 of the Local Bankruptcy Rules for the Southern District of New York (the “**Local Bankruptcy Rules**”):

- (i) authorizing, under sections 364(c) and 364(d) of the Bankruptcy Code and Bankruptcy Rule 4001(c), the Debtors to obtain secured, superpriority postpetition loans, advances and other financial accommodations (the “**DIP Facility**” and the loans thereunder, the “**DIP Loans**”), on a final basis, pursuant to the terms and conditions of that certain Debtor-In-Possession Credit Agreement (as amended, restated, supplemented or otherwise modified from time to time, the “**DIP Credit Agreement**”) by and among (a) the Parent, (b) the Lead Borrower, (c) the other Borrowers party thereto from time to time, (d) Encina Business Credit, LLC, as administrative agent (in such capacity herein, the “**DIP Agent**”) for its own benefit and the benefit of the Lender Group, and (e) the Lenders from time to time party thereto (the “**DIP Lenders**” and each a “**DIP Lender**”; the DIP Agent, the DIP Lenders and the other members of the Lender Group under the DIP Loan Documents (as defined below) are collectively referred to herein as the “**DIP Credit Parties**”), attached as **Exhibit 2** to the *Interim Order (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Use Cash Collateral, (II) Granting (A) Liens and Providing Superpriority Administrative Expense Status and (B) Adequate Protection to Certain Prepetition Lenders, (III) Modifying the Automatic Stay, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief* [Docket No. 64] (the “**Interim Order**”);
- (ii) authorizing the Debtors to execute and deliver the DIP Credit Agreement and all other related documents and agreements, including, without limitation, security agreements, deposit account control agreements, pledge agreements, guaranties and promissory notes (collectively, the “**DIP Loan Documents**”) and to perform such other acts as may be necessary or desirable in connection with the DIP Loan Documents;
- (iii) until the Termination Declaration Date (as defined herein), and subject to the terms, conditions, limitations on availability and reserves set forth in the DIP Loan Documents, the DIP Facility and this Final Order, authorizing the Debtors, to request extensions of credit and borrow under the DIP Facility up to an aggregate

principal amount of \$50,000,000 at any one time outstanding (the “**DIP Financing**”);

- (iv) granting allowed superpriority administrative expense claim status pursuant to section 364(c)(1) of the Bankruptcy Code in each of the Chapter 11 Cases and any Successor Cases (as defined herein) to all obligations owing under the DIP Credit Agreement and the other DIP Loan Documents (collectively, and including all “Obligations” as described in the DIP Credit Agreement, including, without limitation, all obligations with respect to Letters of Credit deemed issued under the DIP Credit Agreement, respectively, and, together, the “**DIP Obligations**”), subject to the priorities set forth herein;
- (v) authorizing the Debtors to use “Cash Collateral,” as defined in section 363(a) of the Bankruptcy Code, that the Debtors are holding or may obtain, pursuant to Bankruptcy Code section 361 and 363 and Bankruptcy Rules 4001(b) and 6004 and in accordance with the Approved Budget (as defined below);
- (vi) granting to the DIP Agent, for the benefit of the DIP Credit Parties, automatically perfected security interests in and liens on all of the DIP Collateral (as defined herein), including, without limitation, all property constituting Cash Collateral, which liens shall be subject to the priorities set forth herein;
- (vii) authorizing and directing the Debtors to pay the principal, interest, fees, costs, expenses and other amounts payable under each of the DIP Loan Documents as they become due, including, without limitation, unused line fees, closing fees, administrative fees, any additional fees set forth in the DIP Loan Documents, the reasonable and documented fees and disbursements of the DIP Credit Parties’ attorneys, advisers, accountants, and other consultants, and all related expenses of the DIP Credit Parties;
- (viii) authorizing and directing the Debtors, upon entry of the Interim Order and as set forth herein, to satisfy the Prepetition ABL Obligations (as defined herein) and to cash collateralize (x) the Postpetition Letters of Credit (as defined herein), (y) any Bank Products (as defined herein) continuing after the Prepetition ABL Payoff Date (as defined herein) that are provided by a Prepetition ABL Secured Lender to any Debtor and (z) any Prepetition ABL Reimbursement and Indemnity Obligation (as defined herein) (the remaining Prepetition ABL Obligations described in clauses (x), (y) and (z) above, the “**Remaining Prepetition ABL Obligations**”), in each case on or before the Prepetition ABL Payoff Date (as defined herein), converting the Surviving Letters of Credit (as defined herein) into post-petition Letters of Credit (such outstanding letters of credit, the “**Postpetition Letters of Credit**”), and granting the Prepetition ABL Agent, on behalf of itself and the Prepetition ABL Secured Lenders providing the Postpetition Letters of Credit and Bank Products (as defined in the Prepetition ABL Credit Agreement) automatically, perfected superpriority security interests

in and liens on the ABL Carve-Out Collateral (as defined herein) on the terms set forth herein;

- (ix) authorizing the Debtors to provide adequate protection to the Prepetition Secured Creditors (as defined herein) for any Diminution in Value (as defined below) of their respective interests in the Prepetition Collateral (including Cash Collateral), which adequate protection shall include certain adequate protection liens, claims and payments described herein;
- (x) approving certain stipulations by the Debtors with respect to the Prepetition Credit Documents and the Prepetition Collateral as set forth herein;
- (xi) waiving any applicable stay and provisions for immediate effectiveness of this Final Order;
- (xii) vacating and modifying the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of the DIP Loan Documents and this Final Order; and
- (xiii) granting related relief.

The Court having considered the Motion, the *Declaration of Sean M. Harding in Support of Chapter 11 Petitions and First Day Papers* [Docket No. 23], including the Motion and the exhibits attached thereto, the *Declaration of Sean M. Harding in Support of the Motion* [Docket No. 13] and the *Declaration of Bo S. Yi in Support of the Motion*, [Docket No. 12], the DIP Loan Documents, and the evidence submitted or adduced and the arguments of counsel made at the interim hearing held on the Motion on February 14, 2020 (the “**Interim Hearing**”) and at the final hearing held on the Motion (the “**Final Hearing**”); and the Court having entered its Interim Order providing for approval of the Motion on an interim basis as set forth therein; and notice of the Final Hearing having been given in accordance with Bankruptcy Rules 4001(b), (c) and (d), 9014, Local Bankruptcy Rule 4001-2 and the Interim Order; and the Final Hearing to consider the final relief requested in the Motion having been held and concluded on March 25, 2020; and the Court having considered the Debtors’ Motion for Modification of Final Debtor-In-

*Possession Postpetition Financing Order and Related Relief (the “DIP Modification Motion”)*  
and the evidence submitted or adduced and arguments of counsel made at the hearing held on the  
DIP Modification Motion; and all objections, if any, to the final relief requested in the Motion  
and DIP Modification Motion having been withdrawn, resolved or overruled by the Court; and it  
appearing to the Court that, pursuant to Bankruptcy Rule 4001(c)(2), granting the final relief  
requested is necessary to avoid immediate and irreparable harm to the Debtors and their estates,  
and otherwise is fair and reasonable and in the best interests of the Debtors, their estates, and  
their creditors and equity holders, and is essential for the continued operation of the Debtors’  
businesses; and after due deliberation and consideration, and for good and sufficient cause  
appearing therefor;

BASED UPON THE RECORD ESTABLISHED AT THE INTERIM HEARING AND  
THE FINAL HEARING BY THE DEBTORS, INCLUDING THE SUBMISSIONS OF  
DECLARATIONS AND THE REPRESENTATIONS OF COUNSEL, THE COURT HEREBY  
MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:<sup>4</sup>

A. *Petition Date*. On February 13, 2020 (the “**Petition Date**”), each of the Debtors  
filed a separate voluntary petition under Chapter 11 of the Bankruptcy Code in the United States  
Bankruptcy Court for the Southern District of New York (the “**Court**”) commencing the  
Chapter 11 Cases.

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<sup>4</sup> The findings and conclusions set forth herein constitute the Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

B. Debtors in Possession. The Debtors are continuing in the management and operation of their businesses and properties as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Chapter 11 Cases.

C. Jurisdiction and Venue. This Court has jurisdiction, pursuant to 28 U.S.C. §§ 157(b) and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated January 31, 2012, over these proceedings, and over the persons and property affected hereby. Consideration of the Motion constitutes a core proceeding under 28 U.S.C. § 157(b)(2) and this Court may enter a final order consistent with Article III of the United States Constitution. Venue for the Chapter 11 Cases and proceedings on the Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. The bases for the relief sought in the Motion and granted in this Final Order are sections 105, 361, 362, 363, 364, 503 and 507 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001, 6004 and 9014, and Local Bankruptcy Rule 4001-2.

D. Committee Formation. On February 26, 2020, the United States Trustee for the Southern District of New York (the “**U.S. Trustee**”) appointed an official committee of unsecured creditors, in the Chapter 11 Cases of the Debtors and their affiliated debtors and debtors-in-possession pursuant to section 1102 of the Bankruptcy Code (the “**Committee**”).

E. Prepetition Secured Credit Facilities. Without prejudice to the rights of the parties-in-interest as set forth in paragraphs 31 and 43 herein, as of the Petition Date, the Debtors were party to the following credit facilities:

(i) *Prepetition ABL Obligations.* The Parent, Lead Borrower, certain of the other Debtors (collectively, the “**Prepetition ABL Obligors**”), Wells Fargo Bank, National Association, as administrative agent (in such capacity herein, the “**Prepetition ABL Agent**”) for its own benefit and the benefit of the “Lender Group” (as defined therein) and the “Bank Product Providers” (as defined therein), and the Lenders from time to time party thereto (the “**Prepetition ABL Lenders**,” and together with the Prepetition ABL Agent and the other members of the “Lender Group” and the “Bank Product Providers” under the Prepetition ABL Credit Documents, collectively, the “**Prepetition ABL Secured Lenders**”) are party to that certain Credit Agreement dated as of July 16, 2018 (as amended, modified and supplemented from time to time, the “**Prepetition ABL Credit Agreement**,” and together with all related documents, guaranties and agreements and the Prepetition ABL Payoff Letter (as defined herein), collectively, the “**Prepetition ABL Credit Documents**”). Pursuant to the Prepetition ABL Credit Documents, the Prepetition ABL Secured Lenders provided revolving credit, certain banking products and other financial accommodations to, and issued letters of credit for the account of, the Prepetition ABL Obligors. Under the Prepetition ABL Credit Documents, the Prepetition ABL Secured Lenders provided the Prepetition ABL Obligors with, among other things up to \$65,000,000 in Revolver Commitments (as defined in the Prepetition ABL Credit Agreement), and up to \$35,000,000 in Pledged Cash Letter of Credit Commitments (as defined in the Prepetition ABL Credit Agreement). As of the Petition Date, there were no outstanding Revolving Loans under the Prepetition ABL Credit Agreement, however, there were issued and outstanding Pledged Cash Letters of Credit (as defined in the Prepetition ABL Credit Agreement) in the face amount of \$26,650,000 (the “**Surviving Letters of Credit**”) and other



outstanding Obligations under the Prepetition ABL Credit Documents, including, without limitation, reimbursement obligations (contingent or otherwise) in respect of letters of credit, any fees, expenses and disbursements (including, without limitation, attorneys' fees, accountants' fees, auditor fees, appraisers' fees and financial advisors' fees, and related expenses and disbursements), treasury, cash management, bank product and derivative obligations, indemnification obligations, guarantee obligations, and other charges, amounts and costs of whatever nature owing, whether or not contingent, whenever arising, accrued, arising, due, owing or chargeable in respect of any of the Prepetition ABL Obligors' obligations pursuant to, or secured by, the Prepetition ABL Credit Documents (collectively, the "**Prepetition ABL Obligations**"). The Prepetition ABL Obligations are secured by (a) first priority security interests in and liens on the ABL Priority Collateral (as defined in the ABL Intercreditor Agreement (as defined below)), and (b) second priority security interests in and liens on the Notes Priority Collateral (as defined in the ABL Intercreditor Agreement) (the liens and security interest in clauses (a) and (b), the "**Prepetition ABL Liens**").

(ii) *Prepetition First Lien Secured Notes Obligations.* The Parent, as issuer ("**First Lien Notes Issuer**"), and certain of the Debtors as guarantors (collectively with the First Lien Notes Issuer, the "**First Lien Notes Obligors**") and The Bank of New York Mellon Trust Company, N.A. as trustee and notes collateral agent (collectively in such capacities, the "**First Lien Notes Trustee**") entered into that certain Indenture dated as of July 16, 2018 (the "**First Lien Notes Indenture**") pursuant to which the First Lien Notes Issuer issued certain 9.000% senior secured notes due 2026 (the "**First Lien Notes**," and together with the First Lien Notes Indenture and all related documents, guaranties, and agreements, collectively, the "**First Lien**

**Notes Documents**”). As of the Petition Date, the First Lien Notes Obligors were obligated under the First Lien Notes Documents to the Holders (as defined in the First Lien Notes Indenture) (the Holders together with the First Lien Notes Trustee collectively referred to herein as the “**First Lien Notes Creditors**”) in the approximate outstanding principal amount of \$262.9 million, plus all interest accrued and accruing at the rates set forth in the First Lien Notes Documents, costs, fees and any other amounts owing (of whatever nature, whether or not contingent, whenever arising, accrued, accruing, due, owing, or chargeable) to the First Lien Notes Creditors under the First Lien Notes Documents (“**First Lien Notes Obligations**”). The First Lien Notes Creditors have asserted that the First Lien Notes Obligations are secured by (a) first priority security interests in and liens on the Notes Priority Collateral and (b) second priority security interests in and liens on the ABL Priority Collateral (the collateral referenced in clauses (a) and (b), the “**Prepetition First Lien Notes Collateral**” and, the liens and security interests in clauses (a) and (b), the “**Prepetition First Lien Notes Liens**”).

(iii) *Prepetition Second Lien Term Loan Agreement Obligations.* The Parent, as borrower, and certain of the other Debtors as guarantors (collectively, the “**Second Lien Term Loan Obligors**”), The Bank of New York Mellon Trust Company, N.A, as administrative agent and collateral agent (collectively in such capacities, the “**Second Lien Term Loan Agent**”) for its own benefit and the lenders, and the lenders from time to time party thereto (collectively with the Second Lien Term Loan Agent, the “**Second Lien Term Loan Creditors**”) are party to that certain Second Lien Term Loan Credit Agreement dated as of July 16, 2018 (as amended, modified and supplemented from time to time, the “**Second Lien Term Loan Credit Agreement**,” and together with all related documents, guaranties and agreements,

the “**Second Lien Term Loan Documents**” and the term loan facility thereunder, the “**Second Lien Term Loan Facility**”). As of the Petition Date, the Second Lien Term Loan Obligors were obligated under the Second Lien Term Loan Credit Agreement to the Second Lien Term Creditors in the approximate outstanding principal amount of \$157.1 million, plus all interest accrued and accruing at the rates set forth in the Second Lien Term Loan Documents, costs, fees and any other amounts owing (of whatever nature, whether or not contingent, whenever arising, accrued, accruing, due, owing, or chargeable) to the Second Lien Term Loan Creditors under the Second Lien Term Loan Documents (the “**Second Lien Term Loan Obligations**”). The Second Lien Term Loan Creditors have asserted that, the Second Lien Term Loan Obligations are secured by third priority security interests in and liens on all the Debtors’ assets, subject to certain exclusions set forth in the Second Lien Term Loan Documents (such collateral, the “**Second Lien Term Loan Collateral**” and, the liens on and security interests in such Prepetition Second Lien Term Loan Collateral, the “**Prepetition Second Lien Term Loan Liens**”).

(iv) *Prepetition Third Lien Notes Obligations.* The Parent, as issuer, (“**Third Lien Notes Issuer**”) and certain of the Debtors as guarantors (collectively with the Third Lien Notes Issuer, the “**Third Lien Notes Obligors,**” and together with the Prepetition ABL Obligors, the First Lien Notes Obligors, and the Second Lien Term Loan Obligors, the “**Prepetition Obligors**”) and The Bank of New York Mellon Trust Company, N.A. as trustee and notes collateral agent (collectively in such capacities, the “**Third Lien Notes Trustee**” and together with the Prepetition ABL Agent, the First Lien Notes Trustee and the Second Lien Term Loan Agent, the “**Prepetition Agents**”) entered into that certain Indenture dated as of December 18, 2018 (the “**Third Lien Notes Indenture**”) pursuant to which the Third Lien

Notes Issuer issued certain 6.875% senior secured notes due 2031 (the “**Third Lien Notes**” and together with the Third Lien Notes Indenture and all related documents, guaranties, and agreements, the “**Third Lien Notes Documents**” and, collectively, with the Prepetition ABL Credit Documents, the First Lien Notes Documents, and the Second Lien Term Loan Documents, the “**Prepetition Credit Documents**”). As of the Petition Date, the Third Lien Notes Obligors were obligated under the Third Lien Notes Documents to the Holders (as defined in the Third Lien Notes Indenture) (the Holders, together with the Third Lien Notes Trustee, collectively referred to herein as the “**Third Lien Notes Creditors**” and together with the Prepetition ABL Secured Lenders, the First Lien Notes Creditors, and the Second Lien Term Loan Creditors, the “**Prepetition Secured Creditors**”) in the approximate outstanding principal amount of \$268.4 million, plus all interest accrued and accruing at the rates set forth in the Third Lien Notes Documents, costs, fees and any other amounts owing (of whatever nature, whether or not contingent, whenever arising, accrued, accruing, due, owing, or chargeable) to the Third Lien Notes Creditors under the Third Lien Notes Documents (“**Third Lien Notes Obligations**” and together with the Prepetition ABL Obligations, the First Lien Notes Obligations, and the Second Lien Term Loan Obligations, the “**Prepetition Secured Obligations**”). The Third Lien Notes Creditors have asserted that the Third Lien Notes Obligations are secured by fourth priority security interests in and liens on all of the Debtors’ assets, subject to certain exclusions set forth in the Third Lien Notes Documents (such collateral, the “**Prepetition Third Lien Notes Collateral**” and, the liens on and security interests in such Prepetition Third Lien Notes Collateral, the “**Prepetition Third Lien Notes Liens**”).<sup>5</sup>

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<sup>5</sup> The Prepetition ABL Collateral, the Prepetition First Lien Notes Collateral, the Prepetition Second Lien Term Loan Collateral, and the Prepetition Third Lien Notes Collateral are collectively referred to herein as

(v) *Intercreditor Agreements.* Pursuant to that certain ABL Notes Intercreditor Agreement dated as of July 16, 2018 (as amended, modified and supplemented from time to time, the “**ABL Intercreditor Agreement**”), by and between the Prepetition ABL Agent and the First Lien Notes Trustee, the Prepetition ABL Agent and the First Lien Notes Trustee have agreed, among other things and as more specifically set forth therein, on the respective rights, interests, obligations, priority, and positions of the Prepetition ABL Secured Lenders and First Lien Notes Creditors with respect to the Prepetition Collateral. Pursuant to that certain Intercreditor Agreement dated as of July 16, 2018 (as amended, modified and supplemented from time to time, the “**Junior Lien Intercreditor Agreement,**” and together with the ABL Intercreditor Agreement, the “**Intercreditor Agreements**”), by and between the Prepetition ABL Agent, the First Lien Notes Trustee, and Second Lien Term Loan Agent, the Prepetition ABL Agent, the First Lien Notes Trustee and the Second Lien Term Loan Agent have agreed, among other things and as more specifically set forth therein, on the respective rights, interests, obligations, priority and positions of the Prepetition Secured Creditors with respect to the Prepetition Collateral. Pursuant to that certain Permitted Junior Exchange Notes Joinder Agreement dated as of December 18, 2018, the Third Lien Notes Trustee became party to the Junior Lien Intercreditor Agreement. The Intercreditor Agreements are “subordination agreements” within the meaning of section 510(a) of the Bankruptcy Code. The DIP Credit Agreement shall constitute a “Refinancing” (as such term is defined in the applicable

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the “**Prepetition Collateral**”. The Prepetition ABL Liens, the Prepetition First Lien Notes Liens, the Prepetition Second Lien Term Loan Liens and the Prepetition Third Lien Notes Liens are collectively referred to herein as the “**Prepetition Liens**”.

Intercreditor Agreement). As a result thereof, the DIP Credit Parties' interests in the Prepetition Collateral and DIP Collateral shall be the same as the Prepetition ABL Agent prior to such Refinancing and shall be governed by the Intercreditor Agreements unless otherwise expressly provided by this Final Order. The Intercreditor Agreements are, in each case, binding and enforceable against the Prepetition Secured Creditors in accordance with their terms.

(vi) *Cash Collateral.* Under the terms of the agreements that govern the foregoing financings, all of the Debtors' cash, including, without limitation, the cash in their deposit accounts, wherever located, whether as original collateral or proceeds of other Prepetition Collateral, constitutes Cash Collateral within the meaning of section 363(a) of the Bankruptcy Code and is Prepetition Collateral of the Prepetition Secured Creditors.

(vii) *No Control.* None of the DIP Agent, the DIP Lenders, the Prepetition Agents, or the Prepetition Secured Creditors, including (i) the managed funds and accounts of Chatham Asset Management, LLC in their respective capacities as Prepetition Secured Creditors (the "**Chatham Parties**"), and (ii) the managed funds and accounts of Brigade Capital Management in their respective capacities as First Lien Notes Creditors (the "**Brigade Parties**" and together with the Chatham Parties, the "**Supporting Creditors**"), controls the Debtors or their operations, has authority to determine the manner in which any of the Debtors' operations are conducted or is a control person or insider of the Debtors or any of their affiliates by virtue of any of the actions taken with respect to, in connection with, related to, or arising from the Interim Order, this Final Order, the DIP Facility, the DIP Loan Documents.

F. Findings Regarding the Postpetition Financing.

(i) *Request for Postpetition Financing.* The Debtors seek authority on a final basis to: (a) enter into, and access and use the liquidity provided under, the DIP Facility on the terms described herein and in the DIP Loan Documents and (b) use Cash Collateral on the terms described herein to administer their cases and fund operations.

(ii) *Priming of Certain Prepetition Liens; Consent to Use of Cash Collateral.*

The priming of certain of the Prepetition Liens on certain of the Prepetition Collateral by the DIP Liens, as contemplated by the DIP Facility and to the extent set forth in this Final Order, will enable the Debtors to obtain the DIP Facility and to continue to operate their businesses for the benefit of their estates and creditors. For the avoidance of doubt, the DIP Liens shall not prime, and shall instead be subject and subordinate in all respects to, (i) the Prepetition First Lien Notes Liens on the Notes Priority Collateral and (ii) the ABL Priority Liens (all Prepetition Liens held by the Prepetition Secured Creditors other than those described in clauses (i) and (ii), the “**Primed Liens**”). With respect to the Primed Liens, the Prepetition Secured Creditors have either consented, or are deemed to consent, to priming by the DIP Liens, to the Debtors’ use of Cash Collateral, and to the subordination of the Primed Liens to the DIP Carve-Out (up to the DIP Carve-Out Cap) on the terms and conditions set forth in this Final Order. The Prepetition Secured Creditors are each entitled to receive adequate protection of their interests, as more fully described below.

(iii) *Immediate Need for Postpetition Financing and Use of Cash Collateral.*

The Debtors’ immediate need to use Cash Collateral and to obtain credit pursuant to the DIP Facility as provided for herein is necessary and critical in order to enable the Debtors to

continue operations and to administer and preserve the value of their estates. The ability of the Debtors to finance their operations, to maintain business relationships with their vendors, suppliers, and customers, to pay their employees, to protect the value of their assets, and to otherwise finance their operations requires the availability of working capital from the DIP Facility and the use of Cash Collateral. Without the ability to access the DIP Facility or Cash Collateral, the Debtors, their estates, their creditors, their equity holders, and the possibility for a successful reorganization would suffer immediate and irreparable harm. The Debtors do not have sufficient available sources of working capital and financing to operate their businesses or maintain their properties in the ordinary course of business without the DIP Facility and authorized use of Cash Collateral.

(iv) *No Credit Available on More Favorable Terms.* Given their current financial condition, financing arrangements and capital structure, the Debtors are unable to obtain financing from sources other than the DIP Credit Parties on terms more favorable than the DIP Facility. The Debtors have been unable to obtain unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense. The Debtors have also been unable to obtain credit: (a) having priority over that of administrative expenses of the kind specified in sections 503(b), 507(a) and 507(b) of the Bankruptcy Code; (b) secured by a lien on property of the Debtors and their estates that is not otherwise subject to a lien; or (c) secured solely by a junior lien on property of the Debtors and their estates that is subject to a lien. The Debtors made inquiries of third parties seeking alternative funding proposals and no viable offers of financing were obtained. Financing on a postpetition basis is not otherwise available under sections 364(c)(1), 364(c)(2) and 364(c)(3) without granting the DIP Agent, for the benefit of



the DIP Credit Parties, (x) perfected security interests in and liens on (each as provided herein) all of the Debtors' existing and after-acquired assets with the priorities and to the extent set forth herein, (y) superpriority claims and priming liens, and (z) the other protections set forth in this Final Order, and without incurring the Adequate Protection Superpriority Claims and Adequate Protection Liens described herein.

(v) *Adequacy of the Approved Budget.* As set forth in the DIP Loan Documents, the Debtors have prepared and delivered to the DIP Credit Parties and the Supporting Creditors a budget, a copy of which is annexed as Exhibit B to the Motion (as the same may be modified from time to time consistent with the terms of the DIP Loan Documents and this Final Order, the “**Approved Budget**”).<sup>6</sup> The Approved Budget has been thoroughly reviewed by the Debtors, their management, and their advisors. The Debtors, their management, and their advisors believe the Approved Budget and the estimate of administrative expenses due or accruing during the period covered by the Approved Budget were developed using reasonable assumptions, and based on those assumptions, the Debtors believe there should be sufficient available assets to pay all administrative expenses due or accruing during the period covered by the Approved Budget. As a condition to entry into the DIP Credit Agreement, the extensions of credit under the DIP Facility, and the authorization to use Cash Collateral, the DIP Credit Parties require, and the Debtors have agreed, that proceeds of the DIP Facility and the Cash Collateral shall be used in a manner consistent with the terms and conditions of the DIP Loan Documents and this Final Order and in accordance with the Approved Budget for (i) postpetition ongoing

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<sup>6</sup> For the avoidance of doubt, the Approved Budget is one of the DIP Loan Documents.

debtor-in-possession working capital expenditures, operating expenses, and other general corporate purposes, (ii) certain transaction fees and expenses, (iii) permitted payment of costs of administration of the Chapter 11 Cases, including, without limitation, professional fees, (iv) adequate protection payments to the Prepetition Secured Creditors as set forth herein, (v) satisfying outstanding Prepetition ABL Obligations and funding the ABL Pledged L/C Account, the Bank Product Cash Collateral and the Prepetition ABL Indemnity Reserve pursuant to the Prepetition ABL Payoff Letter (each as defined below), and (vi) as otherwise permitted under the DIP Loan Documents, as applicable.

(vi) *Certain Conditions to DIP Facilities.* The DIP Lenders' willingness to make the DIP Loans is conditioned upon, among other things: (a) the Debtors obtaining Court approval to enter into the DIP Loan Documents and to incur all of the respective obligations thereunder, and to confer upon the DIP Credit Parties all applicable rights, powers, and remedies thereunder in each case as modified by this Final Order; (b) the provision of adequate protection, as set forth herein, of the Prepetition Secured Creditors' interests in the Prepetition Collateral pursuant to sections 361, 363, and 364 of the Bankruptcy Code; (c) the DIP Credit Parties being granted, as security for the prompt payment of the DIP Facility and all other obligations of the Debtors under the DIP Loan Documents, subject to the priorities described in **Exhibit 1** annexed hereto, superpriority perfected security interests in and liens upon the DIP Collateral (as defined below).

G. ABL Payments. Contemporaneously with the closing of the DIP Credit Agreement, commitments under the Prepetition ABL Credit Documents will be terminated, Surviving Letters of Credit shall continue in place and all obligations under and in connection with such Surviving Letters of Credit will be deemed to and shall convert into Postpetition Letters of Credit and be secured by (a) the “Pledged Cash” in the “Pledged L/C Account” (as each such term is defined in the Prepetition ABL Credit Agreement), which account shall be subject to the exclusive access and control of the Prepetition ABL Agent and subject to control agreements in favor of the Prepetition ABL Agent, and (b) the Additional Pledged Cash in the Additional Pledged L/C Account (each as defined below). The Debtors shall deposit cash in an amount equal to (x) 2% of the face amount of the Postpetition Letters of Credit, *plus* (y) \$117,220.00 for early withdrawal fees in respect of Eligible CDs (as defined in the Prepetition ABL Credit Agreement) (the amounts set forth in the foregoing clauses (x) and (y), collectively, the “**Additional Pledged Cash,**” and, together with the Pledged Cash, the “**Pledged L/C Cash Collateral**”) into an account maintained at Wells Fargo Bank, NA (the “**Additional Pledged L/C Account,**” and together with the Pledged L/C Account, the “**ABL Pledged L/C Account**”), which account shall be subject to the exclusive access and control of the Prepetition ABL Agent and subject to a control agreement in favor of the Prepetition ABL Agent. The Debtors will also deposit \$6,125,000 (the “**Bank Product Cash Collateral**”) to fully collateralize obligations under the Bank Products continuing after the Prepetition ABL Payoff Date, whether incurred prepetition or postpetition, which will be held in an account with Wells Fargo Bank, NA and subject to the exclusive access and control of the Prepetition ABL Agent and subject to a control agreement in favor of the Prepetition ABL Agent, for the benefit of the Bank Product Providers

(as defined in the Prepetition ABL Credit Agreement), for so long as the Bank Product Providers provide Bank Products under the Prepetition ABL Credit Agreement. Finally, as additional protection for the Prepetition ABL Secured Lenders, the Debtors will fund a Prepetition ABL Indemnity Reserve to collateralize any Prepetition ABL Reimbursement and Indemnity Obligations (as defined below) under the Prepetition ABL Credit Documents. All other Prepetition ABL Obligations, including all Revolving Loans and related interest, fees, and expenses, were satisfied upon the Prepetition ABL Payoff Date in accordance with the Prepetition ABL Payoff Letter (as defined herein). The Debtors are seeking authorization to (i) pay any letter of credit fees with respect to the Postpetition Letters of Credit,<sup>7</sup> and (ii) to provide cash collateral to secure the Remaining Prepetition ABL Obligations during these Chapter 11 Cases by funding the Pledged L/C Cash Collateral, the Bank Product Cash Collateral, and the Prepetition ABL Indemnity Reserve (collectively, the “**ABL Carve-Out Collateral**”) as set forth herein and during the Chapter 11 Cases. No liens granted under the Interim Order or this Final Order, including, but not limited to, the DIP Liens and the Adequate Protection Liens (as defined below), shall extend or have recourse to the ABL Carve-Out Collateral until the Remaining Prepetition ABL Obligations are satisfied in full; *provided* that upon the satisfaction in full of the Remaining Prepetition ABL Obligations in accordance with the Prepetition ABL Payoff Letter and this Final Order, the ABL Carve-Out Collateral shall immediately and automatically become DIP Collateral that is ABL Priority Collateral and the DIP Liens and Adequate Protection Liens

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<sup>7</sup> For the avoidance of doubt, the Prepetition ABL Secured Lenders shall have no obligation to amend, renew or extend any Postpetition Letters of Credit.

shall attach to such ABL Carve-Out Collateral without further action by the Debtors, DIP Agent, or Prepetition Secured Creditors or the need for further approval of the Court. The ABL Priority Liens (as defined herein) or the ABL Carve-Out Collateral shall not be subject or subordinate to the DIP Carve-Out.

H. *First Lien Notes, Second Lien Term Loans, and Third Lien Notes Adequate Protection.* The First Lien Notes Creditors, Second Lien Term Loan Creditors, and the Third Lien Notes Creditors (collectively, the “**Remaining Prepetition Secured Creditors**”) are entitled to receive adequate protection pursuant to sections 361, 362, 363 and 364 of the Bankruptcy Code and as set forth in paragraph 13 of this Final Order to the extent of any post-petition diminution in the value of their respective interests in the Prepetition Collateral resulting from the (a) provisions of the Interim Order and this Final Order granting the DIP Liens, (b) use of the Cash Collateral, (c) use, sale, or lease of the Prepetition Collateral, and/or (d) the imposition of the automatic stay under the Bankruptcy Code (a “**Diminution in Value**”). The terms of the adequate protection being provided in this Final Order reflect the Debtors’ prudent exercise of business judgment and constitute a reasonable compromise for the use of the Prepetition Collateral, including the Cash Collateral; *provided* that, nothing in this Final Order or the DIP Documents shall (x) be construed as the affirmative consent by the Remaining Prepetition Secured Creditors for the use of Cash Collateral other than on the terms set forth in this Final Order and in the context of the DIP Financing authorized by this Final Order to the extent such consent has been or will be given, (y) to be construed as a consent by any party to the terms of any other financing or any other lien encumbering the Prepetition Collateral (whether senior or junior) or (z) prejudice, limit, or otherwise impair the rights of any of the Prepetition Secured Creditors, subject to any applicable provisions of the Intercreditor Agreements, to seek new, different or additional adequate protection or assert the interests of any of the Prepetition Secured Creditors; *provided further* that, nothing in this Final Order shall prohibit or restrict the Debtors from seeking alternative postpetition debtor-in-possession financing subject to payment

in full of the DIP Obligations or to use Cash Collateral on terms and conditions different from those contained in this Final Order subject to the rights of the DIP Lenders, the DIP Agent, and the Prepetition Secured Creditors to object thereto which rights shall be subject to the Intercreditor Agreements, to the extent applicable. As adequate protection, the Remaining Prepetition Secured Creditors shall receive, subject to the Intercreditor Agreements and the priorities set forth in **Exhibit 1** hereto, among other things, the Adequate Protection Liens (as defined herein) to secure the applicable Prepetition Secured Obligations, the Adequate Protection Superpriority Claims (as defined herein) with respect to the applicable Prepetition Secured Obligations, and the Adequate Protection Payments (as defined herein).

I. Sections 506(c) and 552(b). The Debtors have agreed as a condition to obtaining financing under the DIP Facility and the use of Cash Collateral that as a material inducement to the DIP Credit Parties' agreement to provide the DIP Facility and the Prepetition Secured Creditors' consent to the use of Cash Collateral, and in exchange for (a) the DIP Credit Parties' willingness to provide the DIP Facility to the extent set forth herein, (b) the DIP Credit Parties' and the Prepetition Secured Creditors' agreement to subordinate the Primed Liens and the DIP Liens, respectively, to the DIP Carve-Out (up to the DIP Carve-Out Cap), and (c) the consensual use of Cash Collateral consistent with the Approved Budget, the terms of the DIP Loan Documents, and the terms of this Final Order, each of the DIP Credit Parties and the Prepetition Secured Creditors are entitled to receive (x) a waiver of any equities of the case exceptions or claims under section 552(b) of the Bankruptcy Code and a waiver of unjust enrichment and similar equitable relief as set forth below, and (y) a waiver of the provisions of section 506(c) of

the Bankruptcy Code, in each case, subject to the terms set forth in paragraphs 34 and 36 of this Final Order.

J. *Good Faith of the DIP Credit Parties.*

(i) *Willingness to Provide Financing.* Each of the DIP Credit Parties has indicated a willingness to provide financing to the Debtors subject to: (a) the entry by this Court of this Final Order; (b) approval by this Court of the terms and conditions of the DIP Facility and the DIP Loan Documents and satisfaction of the Prepetition ABL Obligations and termination of the Prepetition ABL Credit Agreement as contemplated by the Interim Order, this Final Order and the Prepetition ABL Payoff Letter; and (c) entry of findings by this Court that such financing is essential to the Debtors' estates, that each of the DIP Credit Parties is extending credit to the Debtors pursuant to the DIP Loan Documents in good faith, and that each of the DIP Credit Parties' claims, superpriority claims, security interests, liens, rights, and other protections granted pursuant to the Interim Order, this Final Order and the DIP Loan Documents will have the protections provided in section 364(e) of the Bankruptcy Code and will not be affected by any subsequent reversal, modification, vacatur, amendment, reargument or reconsideration of this Final Order or any other order, which findings were deemed effective on a final basis upon entry of the Interim Order.

(ii) *Business Judgment and Good Faith Pursuant to Section 364(e).* The terms and conditions of this Final Order, the DIP Loan Documents, the extension of credit and the fees paid and to be paid thereunder (a) are fair, reasonable, and the best available to the Debtors under the circumstances, (b) reflect the Debtors' exercise of prudent and sound business judgment consistent with their fiduciary duties, and (c) are supported by reasonably equivalent



value and consideration. The DIP Facility and the use of Cash Collateral were negotiated in good faith and at arms' length among the Debtors and the DIP Credit Parties. The use of Cash Collateral and credit to be extended under the DIP Loan Documents shall be deemed to have been so allowed, advanced, made, used, and extended in good faith, and for valid business purposes and uses, within the meaning of section 364(e) of the Bankruptcy Code, and each of the DIP Credit Parties is therefore entitled to the protection and benefits of section 364(e) of the Bankruptcy Code and this Final Order.

K. Good Cause. Good cause has been shown for the entry of this Final Order. The relief requested in the Motion is necessary, essential, and appropriate and is in the best interest of and will benefit the Debtors, their creditors, and their estates, as its implementation will, among other things, provide the Debtors with the necessary liquidity to (i) minimize disruption to the Debtors' businesses and on-going operations, (ii) preserve and maximize the value of the Debtors' estates for the benefit of all the Debtors' creditors, and (iii) avoid immediate and irreparable harm to the Debtors, their creditors, their businesses, their employees, and their assets. The terms of the DIP Facility is fair and reasonable, reflect each Debtor's exercise of its business judgment, and are supported by reasonably equivalent value and fair consideration. The DIP Facility is the product of reasonable, arm's length, good faith negotiations between the Debtors and the DIP Credit Parties.

L. Notice. Notice of the Final Hearing and the emergency relief requested in the Motion has been provided by the Debtors, whether by facsimile, email, overnight courier, or hand delivery in accordance with the Interim Order. The Debtors have made reasonable efforts to afford the best notice possible under the circumstances and such notice is good and sufficient to

permit the relief set forth in this Final Order, and no other or further notice is or shall be required.

M. Immediate Entry. Good and sufficient cause exists for immediate entry of this Final Order pursuant to Bankruptcy Rule 4001(c)(2).

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

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

1. Motion Granted; DIP Financing Approved. The Motion is granted on a final basis, the DIP Financing is authorized and approved on a final basis, and the use of Cash Collateral on a final basis is authorized, in each case subject to the terms and conditions set forth in this Final Order.<sup>8</sup>

2. Objections Overruled. All objections to the DIP Financing and/or entry of this Final Order to the extent not withdrawn or resolved are hereby overruled on the merits.

**DIP Facility Authorization**

3. Authorization of the DIP Financing and DIP Loan Documents. The Debtors are expressly and immediately authorized and empowered (a) to execute and deliver the DIP Loan Documents, (b) to incur and to perform the DIP Obligations in accordance with, and subject to, the terms of this Final Order and the DIP Loan Documents (including the Approved Budget), (c) to deliver all instruments and documents that may be necessary or required for performance by the Debtors under the DIP Facility and the creation and perfection of the DIP Liens described in

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<sup>8</sup> For the avoidance of doubt, nothing in this Final Order shall be deemed an approval by the Bankruptcy Court of the proposed terms and conditions of the "Exit Financing" set forth in the DIP Credit Agreement.

and provided for by this Final Order and the DIP Loan Documents, and (d) to satisfy the Prepetition ABL Obligations and fully collateralize any Remaining Prepetition ABL Obligations under the Prepetition ABL Credit Documents, and deliver all instruments and documents that may be necessary or required by the creation and perfection of all liens granted to the Prepetition ABL Agent on behalf of the Prepetition ABL Secured Lenders to secure the Remaining Prepetition ABL Obligations. The Debtors are hereby authorized to pay the principal, interest, fees, expenses and other amounts described in the DIP Loan Documents as such become due and without need to obtain further Court approval, including, without limitation, commitment fees, closing fees, administrative fees, unused line fees, any additional fees and other amounts set forth in the DIP Loan Documents, and the reasonable and documented fees and disbursements of the DIP Credit Parties' attorneys, advisers, accountants, and other consultants, all to the extent provided in the DIP Loan Documents, with invoices to be provided in accordance with paragraph 26 below. All collections and proceeds, of "ABL Priority Collateral" (as defined below), whether from ordinary course collections, asset sales, debt issuances, insurance recoveries, condemnations or otherwise, will be deposited and applied as required by this Final Order and the DIP Loan Documents. Upon execution and delivery, the DIP Loan Documents shall represent valid and binding, and joint and several, obligations of the Debtors, enforceable against each of the Debtors and their estates in accordance with the terms of the DIP Loan Documents. The Debtors are also hereby authorized, without need to obtain further Court approval, to (i) make the Adequate Protection Payments (as defined below); and (ii) pay any interest, fees, expenses and other amounts as such become due for any Remaining Prepetition ABL Obligations as set forth in the Prepetition ABL Credit Documents, to provide cash collateral to secure the

Remaining Prepetition ABL Obligations and pay the reasonable and documented fees and disbursements of the Prepetition ABL Agent's and the other Prepetition ABL Secured Lenders' attorneys, advisers, accountants, and other consultants, all to the extent provided in the Prepetition ABL Credit Documents.

4. Authorization to Borrow. Until the Termination Declaration Date (as defined in paragraph 23(d) below), and subject to the terms, conditions, limitations on availability and reserves set forth in the DIP Loan Documents, the DIP Facility and this Final Order, the Debtors are hereby authorized to request extensions of credit and borrow under the DIP Facility up to an aggregate principal amount of \$50,000,000 at any one time outstanding. No other corporate authority is required for the Debtors to execute and deliver the DIP Loan Documents, perform their obligations thereunder or request any extension of credit under the DIP Facility as set forth herein.

5. DIP Obligations. The DIP Loan Documents and this Final Order shall constitute and evidence the validity and binding effect of the Debtors' DIP Obligations, which DIP Obligations shall be enforceable against the Debtors, their estates and any successors thereto, including, without limitation, any trustee or other estate representative appointed in the Chapter 11 Cases, or any case under chapter 7 of the Bankruptcy Code upon the conversion of any of the Chapter 11 Cases (collectively, "Successor Cases"). Upon entry of this Final Order, the DIP Obligations will include all loans and any other indebtedness or obligations, contingent or absolute, which may now or from time to time be owing by any of the Debtors to any of the DIP Credit Parties under the DIP Loan Documents or this Final Order, including, without limitation, all principal, accrued interest, costs, fees, expenses and other amounts owed pursuant

to the DIP Loan Documents, and shall be joint and several obligations of the Debtors in all respects. No obligation, payment, transfer or grant of security under the DIP Credit Agreement, the other DIP Loan Documents or this Final Order shall be stayed, restrained, voidable, or recoverable under the Bankruptcy Code or under any applicable law (including, without limitation, under section 502(d) of the Bankruptcy Code), or be subject to any defense, reduction, setoff, recoupment or counterclaim (except as to the review of invoices in accordance with paragraph 26 below).

6. Postpetition Liens and Collateral.

(a) Effective immediately upon the entry of the Interim Order, except with respect to clauses (xvii) and (xviii) below, which shall only be effective upon entry of this Final Order, pursuant to sections 364(c)(2), 364(c)(3), and 364(d) of the Bankruptcy Code, the Debtors were or are authorized to grant, as applicable, and did or do hereby grant, as applicable, to the DIP Agent (for the benefit of itself and the other DIP Credit Parties under the DIP Loan Documents) continuing valid, binding, enforceable, non-avoidable, and automatically and properly perfected postpetition security interests in and liens on (collectively, the “**DIP Liens**”) any and all presently owned and hereafter acquired assets and real and personal property of the Debtors, including, without limitation, the following (the “**DIP Collateral**”):<sup>9</sup>

- (i) all Accounts;

<sup>9</sup> All defined terms in the description of DIP Collateral shall have the meanings ascribed thereto in the DIP Loan Documents. All terms not specifically defined in the DIP Loan Documents shall have the meanings ascribed to such terms in Article 8 or 9 of the Uniform Commercial Code, as applicable.

- (ii) all Goods, including, without limitation, Equipment, Inventory and  
Fixtures;
- (iii) all Documents, Instruments and Chattel Paper;
- (iv) all Letters of Credit and Letter-of-Credit Rights (other than the  
Postpetition Letters of Credit);
- (v) all Securities Collateral;
- (vi) all Investment Property;
- (vii) all Intellectual Property Collateral;
- (viii) all Commercial Tort Claims;
- (ix) all General Intangibles (including, without limitation, all Payment  
Intangibles);
- (x) all Deposit Accounts;
- (xi) all Supporting Obligations;
- (xii) all money, cash or cash equivalents;
- (xiii) all credit balances, deposits and other property now or hereafter held or  
received by or in transit to the DIP Agent or at any other depository or other institution from or  
for the account of any Debtor, whether for safekeeping, pledge, custody, transmission, collection  
or otherwise;
- (xiv) all proceeds of leases of real property;<sup>10</sup>

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<sup>10</sup> For the avoidance of doubt, the DIP Liens extend only to the proceeds of leased real property and are not direct liens on the Debtors' leases of real property unless such liens are expressly permitted pursuant to the underlying lease documents.

(xv) all owned real property;

(xvi) all proceeds of claims or causes of action that the Debtors may be entitled to assert under section 549 of the Bankruptcy Code and any and all recoveries and settlements thereof;

(xvii) all proceeds, recoveries and settlements (the “**Bankruptcy Recoveries**”) of claims or causes of action that the Debtors may be entitled to assert by reason of any avoidance or other power vested in or on behalf of the Debtors or the estates of the Debtors under chapter 5 or section 724(a) of the Bankruptcy Code, other than those arising under section 549 of the Bankruptcy Code (the “**Avoidance Actions**”);

(xviii) the Debtors’ rights under section 506(c) of the Bankruptcy Code and the proceeds thereof;

(xix) to the extent not otherwise described above, all receivables and all present and future claims, rights, interests, assets and properties recovered by or on behalf of any Debtor;

(xx) all books, records, and information relating to any of the foregoing and/or to the operation of any Debtor’s business, and all rights of access to such books, records, and information, and all property in which such books, records and information are stored, recorded and maintained; and

(xxi) to the extent not otherwise covered by clause (i) through (xx) above, all other personal property of each Debtor, whether tangible or intangible and all Proceeds and products of each of the foregoing and all accessions to, substitutions and replacements for, and rents, profits and products of each of the foregoing, and any and all proceeds of any insurance, indemnity, warranty or guaranty payable to such Debtor from time to time with respect to any of

the foregoing. DIP Collateral that is of a type that would be ABL Priority Collateral (as defined in the ABL Intercreditor Agreement) and Bankruptcy Recoveries other than Net Proceeds of Notes Priority Bankruptcy Recoveries (as defined below) and the proceeds and products thereof shall, in each case, constitute “**ABL Priority Collateral**,” and DIP Collateral that is of a type that would be Notes Priority Collateral (as defined in the ABL Intercreditor Agreement), and Bankruptcy Recoveries with respect to prepetition transfers of any Notes Priority Collateral net of any costs, fees, and expenses, incurred in connection with such Bankruptcy Recoveries (the “**Net Proceeds of Notes Priority Bankruptcy Recoveries**”), and the proceeds and products thereof and shall, in each case, constitute “**Notes Priority Collateral**.” Notwithstanding anything to the contrary in this Final Order (x) the DIP Agent shall not apply any proceeds of Bankruptcy Recoveries to the DIP Obligations until such time as the substantially all the Accounts and Inventory of the Debtors have been liquidated; and (y) the DIP Liens shall not extend to, and the term DIP Collateral shall not include, (1) any “Excluded Property” as that term is defined in the DIP Loan Documents or (2) any ABL Carve-Out Collateral until such time as the Remaining Prepetition ABL Obligations are satisfied in full; *provided* that upon the satisfaction in full of the Remaining Prepetition ABL Obligations in accordance with this Final Order and the Prepetition ABL Payoff Letter, the ABL Carve-Out Collateral shall become DIP Collateral that is ABL Priority Collateral.

(xxii) The Prepetition ABL Agent shall be granted and the Debtors do hereby grant to the Prepetition ABL Agent (for the benefit of itself and the other Prepetition ABL Secured Lenders to the extent provided under the Prepetition ABL Credit Documents with respect to the Remaining Prepetition ABL Obligations (including the Postpetition Letters of



Credit and Bank Products)) continuing valid, binding, enforceable, non-avoidable, and automatically and properly perfected postpetition security interests in and first priority liens on the ABL Carve-Out Collateral (such security interests and liens, the “**ABL Priority Liens**”).

(b) Effective upon the entry of the Interim Order, other than the ABL Carve-Out Collateral (including, but not limited to, any blocked account agreements or control agreements in respect thereof), all existing blocked account agreements, deposit account control agreements, securities account control agreements, credit card acknowledgements, credit card agreements, collateral access agreements, landlord agreements, warehouse agreements, bailee agreements, carrier agency agreements, customs broker agency agreements, subordination agreements (including, without limitation, any intercompany subordination agreements), and freight forwarder agreements entered into or in connection with Prepetition ABL Credit Documents in each case were deemed to be and are delivered in connection with the DIP Facility, constitute DIP Loan Documents and remain in full force and effect without any further action by the Debtors (except to the extent that the DIP Agent and the Debtors agree that such documents shall be terminated), the DIP Agent or any other person, and in each case the DIP Agent was deemed to be and is a party thereto, any and all references in any such agreements or documents referred to in clause (ii) above to the “Credit Agreement” were thereafter deemed to and do mean and refer to the DIP Credit Agreement, and any and all references in any such agreements or documents referred to in clause (ii) above to the “Loan Documents” were thereafter deemed to and do mean and refer to the DIP Loan Documents, as amended, modified, supplemented or restated and in effect from time to time.

7. DIP Lien Priority in DIP Collateral.

(a) *DIP Liens.* The DIP Lien on the DIP Collateral securing the DIP Obligations shall be first and senior in priority to all other interest and liens of every kind, nature, and description, whether created consensually, by an order of the Court or otherwise, including, without limitation, liens or security interests granted in favor of third parties in conjunction with sections 363, 364 or any other section of the Bankruptcy Code or applicable law; provided, however, that the DIP Liens on (i) the ABL Priority Collateral (whether in existence on the Petition Date or hereafter arising) shall be subject to (A) the DIP Carve-Out up to the DIP Carve-Out Cap and (B) any liens or security interests as of the Petition Date that were valid, binding, enforceable, properly perfected, and non-avoidable, held by parties other than the Prepetition Secured Creditors (the “**Prepetition Permitted Liens**”); and (ii) the Notes Priority Collateral (whether in existence on the Petition Date or hereafter arising) shall be subject to (A) the Prepetition Permitted Liens, (B) the Prepetition First Lien Notes Liens, (C) the First Lien Notes AP Liens, and (D) the DIP Carve-Out up to the DIP Carve-Out Cap; and (iii) any other assets of the Debtors except “Excluded Property” (as defined in the DIP Credit Agreement) shall be subject to (A) the DIP Carve-Out and (B) to the extent such collateral is of a type that would be Notes Priority Collateral, the First Lien Notes AP Liens, in each case as such priorities are set forth in **Exhibit 1** attached hereto.

(b) Other than as set forth herein, the DIP Liens, the DIP Superpriority Claim, the DIP Carve-Out, the ABL Priority Liens, the Adequate Protection Liens, and the Adequate Protection Superpriority Claims (i) shall not be made subject to or *pari passu* with (A) any lien, security interest, or claim heretofore or hereinafter granted in any of the Chapter 11 Cases or any

Successor Cases or any claim for reclamation or return (whether asserted pursuant to section 546(c) of the Bankruptcy Code or otherwise), and shall be valid and enforceable against the Debtors, their estates, any trustee, or any other estate representative appointed or elected in the Chapter 11 Cases or any Successor Cases and/or upon the dismissal of any of the Chapter 11 Cases or any Successor Cases; (B) any lien that is avoided and preserved for the benefit of the Debtors and their Estates under section 551 of the Bankruptcy Code or otherwise; and (C) any intercompany or affiliate lien or claim; and (ii) shall not be subject to challenge under sections 510, 549, 550, or 551 of the Bankruptcy Code.

(c) *Continuing Effect of Intercreditor Agreements.* Except as otherwise expressly set out herein: (i) the DIP Agent, the DIP Lenders, First Lien Notes Trustee, Second Lien Term Loan Agent, Third Lien Notes Trustee, and the Prepetition Secured Creditors shall be bound by the terms and conditions set forth in the Intercreditor Agreements, including with respect to the Prepetition Collateral and the DIP Collateral; (ii) nothing contained in this Final Order shall be deemed to abrogate or limit the respective rights, claims and obligations of each of the DIP Agent, the DIP Lenders, First Lien Notes Trustee, Second Lien Term Loan Agent, Third Lien Notes Trustee, and the Remaining Prepetition Secured Creditors under the Intercreditor Agreements; and (z) the Intercreditor Agreements shall apply and govern the respective rights, obligations, and priorities of each of the DIP Agent, the DIP Lenders, First Lien Notes Trustee, Second Lien Term Loan Agent, Third Lien Notes Trustee, and the Remaining Prepetition Secured Creditors with respect to the Prepetition Collateral and the DIP Collateral in the Chapter 11 Cases. All loans, borrowings and advances made by the DIP Agent and/or DIP Lenders pursuant to and under, and proceeds of, the DIP Facility and all other DIP Obligations

outstanding thereunder shall be deemed to be ABL Obligations under the ABL Intercreditor Agreement and First Lien Obligations under the Junior Lien Intercreditor Agreement. The DIP Agent shall be deemed to be the successor to the Prepetition ABL Agent under the terms of the Intercreditor Agreements and shall have all of the rights, remedies and obligations accorded to the “ABL Collateral Agent” under the ABL Intercreditor Agreement and “ABL Agent” under the Junior Lien Intercreditor Agreement.<sup>11</sup>

8. DIP Superpriority Claim.

(a) *DIP Agent Superpriority Claim.* Subject to **Exhibit 1** and the DIP Carve-Out (up to the DIP Carve-Out Cap), on account of all DIP Obligations now existing or hereafter arising pursuant to this Final Order, the DIP Loan Documents, or otherwise, the DIP Agent (for the benefit of itself and the other DIP Credit Parties under the DIP Loan Documents) is hereby granted, pursuant to sections 364(c)(1), 503 and 507 of the Bankruptcy Code, an allowed superpriority administrative expense claim in each of the Chapter 11 Cases and any Successor Cases (collectively, the “**DIP Superpriority Claim**”) for all DIP Obligations. Subject to paragraph 8(b) of this Final Order, the DIP Superpriority Claim shall have priority over any and all other obligations, liabilities and indebtedness of each Debtor, whether now in existence or hereafter incurred by such Debtor including without limitation administrative expenses of the

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<sup>11</sup> Notwithstanding anything in this Final Order or the DIP Loan Documents to the contrary, the DIP Agent (and its successors or assigns) shall not consent to any increase in the DIP Carve-Out or the DIP Carve-Out Cap, or any alternative carve-out in connection with a DIP Financing (as defined in the ABL Intercreditor Agreement), without the consent of the holders of 66.67% of the First Lien Notes (pursuant to the terms of the First Lien Notes Indenture), such consent not to be unreasonably withheld, conditioned, or delayed; *provided* that the foregoing shall not bind any lender or agent party to a refinancing of the DIP Facility; *provided further* that the First Lien Notes Creditors reserve all rights, including under the Intercreditor Agreement, with respect to any lender or agent party to such a refinancing.

kinds specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 503(a), 503(b), 506(c), 507(a), 507(b), 546(c), 546(d), 726 and 1114 of the Bankruptcy Code, which allowed DIP Superpriority Claim shall be payable from and have recourse to all prepetition and postpetition property of the Debtor and all proceeds thereof, other than the ABL Carve-Out Collateral until such time as the Remaining Prepetition ABL Obligations are satisfied in full in accordance with this Final Order and the Prepetition ABL Payoff Letter.

(b) *Priority of DIP Superpriority Claim.* The DIP Superpriority Claim shall be payable from and have recourse to all prepetition and postpetition property of the Debtors and all proceeds thereof, including, without limitation, the Bankruptcy Recoveries, subject only to (i) the payment in full in cash of the DIP Obligations, (ii) the DIP Carve-Out (up to the DIP Carve-Out Cap), (iii) with respect to the ABL Carve-Out Collateral, satisfaction of the Remaining Prepetition ABL Obligations in full in accordance with this Final Order and the Prepetition Payoff Letter, (iv) to the extent paid from identifiable proceeds of the Notes Priority Collateral, the First Lien Notes Obligations, and (v) to the extent paid from identifiable proceeds of the assets subject to any Prepetition Permitted Liens, amounts secured by such Prepetition Permitted Liens.

9. No Obligation to Extend Credit. No DIP Credit Party shall have any obligation to make any loan or advance or issue any letter of credit under the DIP Loan Documents unless all of the conditions precedent to the making of such extension of credit under the applicable DIP Loan Documents and this Final Order have been satisfied in full or waived in accordance with the DIP Loan Documents by the DIP Agent.

10. Use of DIP Facility Proceeds. From and after the date hereof, the Debtors shall use advances of credit under the DIP Facility only for the purposes and in the amounts specifically set forth in this Final Order and the DIP Loan Documents, including as contemplated in the Approved Budget, and solely for: (a) postpetition ongoing debtor-in-possession working capital expenditures, operating expenses, and other general corporate purposes, (b) certain transaction fees and expenses, (c) payment of costs of administration of the Chapter 11 Cases, including, without limitation, professional fees, (d) adequate protection payments to the Prepetition Secured Creditors as set forth herein, and (e) as otherwise permitted under the DIP Loan Documents, as applicable.

11. Refinancing of Prepetition ABL Obligations.

(a) The satisfaction of Prepetition ABL Obligations outstanding as of the Petition Date in connection with the Debtors' entry into the DIP Facility is approved. The Debtors were authorized and directed upon entry of the Interim Order, which authorization and direction are deemed ratified on a final basis pursuant to this Final Order, to (a) execute and deliver the Prepetition ABL Payoff Letter and (b) use proceeds of the DIP Financing to (i) pay in full in cash outstanding Prepetition ABL Obligations, including all principal, interest, fees and expenses due and chargeable under the Prepetition ABL Credit Documents through the date of payment; (ii) cash collateralize obligations under Bank Products continuing after the Prepetition ABL Payoff Date in an amount equal to the Bank Product Cash Collateral, (iii) cash collateralize the Postpetition Letters of Credit in an amount equal to the Pledged L/C Cash Collateral, (iv) fund for the benefit of the Prepetition ABL Agent and the other Prepetition ABL Secured Lenders, the amount of \$300,000 (the "**Prepetition ABL Indemnity Reserve**") into a non-

interest bearing account maintained with and held by the Prepetition ABL Agent to secure the Prepetition ABL Reimbursement and Indemnity Obligations; and (v) pay such other reasonable amounts in respect of or related to the Prepetition ABL Credit Documents, as more fully set out in the Prepetition ABL Payoff Letter. The amounts in clauses (i)-(v) of this paragraph 11 shall be referred to in this Final Order as, collectively, the “**Prepetition ABL Payoff Amount**,” and the date of the payment of the Prepetition ABL Payoff Amount shall be referred to as the “**Prepetition ABL Payoff Date**.” The Prepetition ABL Agent delivered to the Debtors a letter (including any documents related thereto, the “**Prepetition ABL Payoff Letter**”) which set forth the calculation of the Prepetition ABL Payoff Amount. For the avoidance of doubt, nothing in this Final Order shall discharge or otherwise impair the Prepetition ABL Reimbursement and Indemnity Obligations, which shall survive the repayment of the Prepetition ABL Obligations and the termination of any “Commitments” (as defined in the Prepetition ABL Credit Agreement).

(b) Funds remaining in the Prepetition ABL Indemnity Reserve shall be released to the Debtors (and to the extent the DIP Obligations remain outstanding shall become DIP Collateral) (x) upon the indefeasible repayment in full in cash of all Prepetition ABL Obligations (including the Remaining Prepetition ABL Obligations) in accordance with the Prepetition ABL Payoff Letter and satisfaction of all prepetition and postpetition obligations between the Debtors and the Prepetition ABL Secured Lenders, and (y) upon the earlier of (a) receipt by the Prepetition ABL Agent of releases from the Debtors (including any party acting on behalf of any of the Debtors or their estates, if applicable) in form and substance satisfactory to the Prepetition ABL Agent, (b) the Challenge Deadline (as defined below) if there has been no

Challenge (as defined below) of the Prepetition ABL Obligations on or prior to the Challenge Deadline, or (c) satisfaction of terms otherwise satisfactory to the Prepetition ABL Agent.

(c) The Debtors are authorized to continue to use the commercial card program under the WellsOne Commercial Card Agreement, dated on or around May 3, 2019 (as amended, restated, supplemented or otherwise modified from time to time, the “**Card Agreement**”), between the Debtors and Wells Fargo Bank, N.A. (“**Wells Fargo**”) subject to the terms and conditions thereof and hereof. Wells Fargo is authorized to make advances from time to time to the Debtors with a maximum exposure at any time up to \$5 million. All prepetition charges and fees are authorized and required to be paid. Wells Fargo may rely on the representations of the Debtors with respect to their use of the commercial card program pursuant to the Card Agreement, and Wells Fargo shall not have any liability to any party for relying on such representations by the Debtors and as provided for herein. Wells Fargo shall continue to have a valid and perfected non-avoidable first-priority lien and security interest in the Bank Product Cash Collateral pursuant to Bankruptcy Code section 364(d)(1) with respect to the indebtedness owed by Debtors to Wells Fargo in respect of the Card Agreement. Such lien shall not be primed by any lien granted to any post-petition lender or other person.

**Authorization to Use Cash Collateral**

12. Authorization to Use Cash Collateral. Subject to the terms and conditions of this Final Order and the DIP Loan Documents, and in compliance with the Approved Budget, the Debtors are authorized to use Cash Collateral until the Termination Declaration Date (as defined in paragraph 23(d) below), provided that the Prepetition Secured Creditors are granted the Adequate Protection Superpriority Claims, Adequate Protection Liens, Adequate Protection



Payments, and other forms of adequate protection set forth herein; provided, however, that during the Remedies Notice Period (as defined in paragraph 23(d) below) the Debtors may use Cash Collateral to pay expenses critical to the preservation of the Debtors and their estates as agreed by the DIP Agent (such agreement not to be unreasonably withheld), in each case in accordance with the terms and provisions of the Approved Budget. Notwithstanding the foregoing, upon the occurrence of the Termination Declaration Date, the Debtors may use Cash Collateral to meet ordinary course payroll (excluding severance) and payroll taxes in accordance with the terms and provisions of the Approved Budget. Nothing in this Final Order shall authorize the disposition of any assets of the Debtors or their estates outside the ordinary course of business (which shall be subject to further Orders of this Court), or any Debtor's use of any Cash Collateral or other proceeds resulting therefrom, except as expressly permitted in this Final Order and the DIP Loan Documents and in accordance with the Approved Budget.

**Adequate Protection Provisions**

13. Adequate Protection Liens; Adequate Protection Payments; Access to Records.

As adequate protection against a Diminution in Value of Prepetition Secured Creditors' respective security interests in the Prepetition Collateral (including Cash Collateral) during the pendency of the Chapter 11 Cases, the Prepetition Secured Creditors shall receive adequate protection as follows:

(a) *Creation of Adequate Protection Liens.* To the extent of any Diminution in Value of the interest of the Prepetition Secured Creditors' in the Prepetition Collateral during the Chapter 11 Cases in each case of the subparagraphs of this paragraph 13(a), each of the Prepetition ABL Agent (for the benefit of itself and the other Prepetition ABL Secured Lenders),

the First Lien Notes Trustee (for the benefit of itself and the other First Lien Notes Creditors), the Second Lien Term Loan Agent (for the benefit of itself and the other Second Lien Term Loan Creditors), and the Third Lien Notes Trustee (for the benefit of itself and the other Third Lien Notes Creditors) is hereby granted, pursuant to sections 361, 363(e) and 364(d) of the Bankruptcy Code, valid, binding, enforceable, non-avoidable and perfected replacement and additional postpetition security interests in, and liens on all of the Debtors' right, title and interest in, to and under all DIP Collateral and any other assets (including the proceeds of such assets), of the Debtors except (a) "Excluded Property" as defined in the DIP Credit Agreement or (b) with respect to a particular Prepetition Secured Creditor, any Bankruptcy Recoveries from any Avoidance Actions that are brought with respect to the liens or claims held by or on behalf of such Prepetition Secured Creditor (the "**Adequate Protection Liens**").

(i) The Adequate Protection Liens granted to the Prepetition ABL Agent (the "**ABL AP Liens**") shall secure the Remaining Prepetition ABL Obligations and shall be subject to and subordinate to (A) the DIP Carve-Out (up to the DIP Carve-Out Cap), (B) the DIP Liens, (C) the Prepetition Permitted Liens, (D) solely with respect to the Notes Priority Collateral, the Prepetition First Lien Notes Liens and the First Lien Notes AP Liens (as defined below), but shall be senior to (X) solely with respect to the ABL Priority Collateral, the Prepetition First Lien Notes Liens and the First Lien Notes AP Liens (as defined below), (Y) the Prepetition Second Lien Term Loan Liens and the Second Lien Term Loan AP Liens (as defined below) , and (Z) the Prepetition Third Lien Notes Liens and the Third Lien Notes AP Liens (as defined below).

(ii) The Adequate Protection Liens granted to the First Lien Notes Trustee (the "**First Lien Notes AP Liens**") shall secure the First Lien Notes Obligations and shall be

subject to and subordinate to (A) the Prepetition Permitted Liens, (B) the ABL Priority Liens, (C) solely with respect to the ABL Priority Collateral, the DIP Carve-Out (up to the DIP Carve-Out Cap), the DIP Liens, and the ABL AP Liens, but shall be senior to (X) solely with respect to the Notes Priority Collateral, the DIP Carve-Out, the DIP Liens, and the ABL AP Liens, (Y) the Prepetition Second Lien Term Loan Liens and the Adequate Protection Liens granted to the Second Lien Term Loan Agent to secure the Second Lien Term Loan Obligations (the “**Second Lien Term Loan AP Liens**”), and (Z) the Prepetition Third Lien Notes Liens and Adequate Protection Liens granted to the Third Lien Notes Trustee to secure the Third Lien Notes Obligations (the “**Third Lien Notes AP Liens**”).

(iii) The Second Lien Term Loan AP Liens shall secure the Second Lien Term Loan Obligations and shall be subject to and subordinate to the (A) the DIP Carve-Out (up to the DIP Carve-Out Cap), (B) the Prepetition Permitted Liens, (C) the DIP Liens, (D) the ABL Priority Liens, (E) the ABL AP Liens, (F) the Prepetition First Lien Notes Liens, and (G) the First Lien Notes AP Liens, but senior to the (X) Prepetition Third Lien Notes Liens and (Y) Third Lien Notes AP Liens.

(iv) The Third Lien Notes AP Liens shall secure the Third Lien Notes Obligations and shall be subject to and subordinate to the (A) the DIP Carve-Out (up to the DIP Carve-Out Cap), (B) the Prepetition Permitted Liens, (C) the DIP Liens, (D) the ABL Priority Liens, (E) the ABL AP Liens, (F) the Prepetition First Lien Notes Liens, (G) the First Lien Notes AP Liens, (H) the Prepetition Second Lien Term Loan Liens, and (I) the Second Lien Term Loan AP Liens.

(v) The Adequate Protection Liens shall be (A) deemed to be valid, binding, non-avoidable, enforceable and fully perfected as of the Petition Date, (B) in all instances, subject to the Intercreditor Agreements, and (C) in each case, for the avoidance of doubt, have the priorities set forth in **Exhibit 1** hereto. Other than as set forth herein, until the indefeasible payment in full in cash of the Prepetition Secured Obligations, the Adequate Protection Liens shall not be made subject to or *pari passu* with any lien or security interest by any court order heretofore or hereinafter granted in the Chapter 11 Cases or any Successor Cases, and shall be valid and enforceable against any trustee or other estate representative appointed in the Chapter 11 Cases or any Successor Cases, upon the conversion of any of the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code (or in any other Successor Cases), and/or upon the dismissal of any of the Chapter 11 Cases or Successor Cases. The Adequate Protection Liens shall not be subject to Bankruptcy Code sections 506(c), 510, 549, or 550. No lien or interest avoided and preserved for the benefit of any Debtor's estate pursuant to Bankruptcy Code section 551 shall be made *pari passu* with or senior to the Adequate Protection Liens.

(b) *Adequate Protection Payments.*

(i) The Prepetition Secured Creditors shall receive additional adequate protection against a Diminution in Value in the form of the following: (A) in the case of the First Lien Notes Creditors, (1) during the pendency of the Chapter 11 Cases, payment of all accrued and unpaid interest on a monthly basis, which interest shall accrue at the non-default rate as provided in the applicable First Lien Notes Documents and (2) payment or reimbursement in cash by the Debtors of all reasonable and documented fees, costs, expenses and charges of (x) Paul, Weiss, Rifkind, Wharton & Garrison LLP ("**Paul Weiss**"), as counsel to the Chatham Parties,

Ducera Partners LLC, as financial advisor to the Chatham Parties (upon the terms of the engagement letter in place as of February 13, 2020), and Quinn Emanuel Urquhart Oliver & Hedges LLP (“**Quinn Emanuel**”), as litigation counsel to the Chatham Parties (provided that Quinn Emanuel shall not bill the estate for services that are duplicative of services performed by Paul Weiss), and subject to the approval of the Debtors (such approval not to be unreasonably withheld, conditioned, or delayed) and the Court, such other advisors or professionals as may be retained by or on behalf of the Chatham Parties, (y) Kramer Levin Naftalis & Frankel LLP, as counsel to the Brigade Parties, GLC Advisors & Co., as financial advisor to the Brigade Parties (upon the terms of the engagement letter in place as of February 13, 2020), and subject to the approval of the Debtors (such approval not to be unreasonably withheld, conditioned, or delayed) and the Court, such other advisors or professionals as may be retained by or on behalf of the Brigade Parties, (z) the Bank of New York Mellon Trust Company, N.A. as the First Lien Notes Trustee, including the fees and expenses of Emmet, Marvin & Martin, LLP as counsel thereto (such professionals, the “**First Lien AP Professionals**” and such fees and expenses, collectively, the “**First Lien AP Professional Fees and Expenses**”), incurred and/or accrued in connection with the Debtors and/or the Chapter 11 Cases, whether accrued pre-petition or post-petition, all without further notice, motion or application to, order of, or hearing before, this Court; and (B) in the case of the Prepetition ABL Secured Lenders, payment of any contingent indemnification, reimbursement or similar surviving obligations arising under the Prepetition ABL Credit Agreement or any other Prepetition ABL Credit Document, and any fees and expenses for attorneys and other professionals related thereto, whether accrued prepetition or postpetition, all without further notice, motion, or application to, or order of, or hearing before, this Court,

including without limitation, the fees and expenses of Morgan, Lewis & Bockius LLP, as counsel to the Prepetition ABL Agent (the “**ABL AP Professionals**,” and together with the First Lien AP Professionals, the “**Adequate Protection Professionals**,” and such fees and expenses, the “**ABL AP Professional Fees and Expenses**,” and together with the First Lien AP Professional Fees and Expenses, the “**Adequate Protection Professional Fees and Expenses**,” and the amounts described in (B) of this paragraph, collectively, the “**Prepetition ABL Reimbursement and Indemnity Obligations**,” and payments contemplated by clauses (A) and (B) of this paragraph, collectively, the “**Adequate Protection Payments**”). The Prepetition ABL Agent may, but shall not be required to, apply amounts in the Prepetition ABL Indemnity Reserve against the ABL AP Professional Fees and Expenses as and when they arise, without further notice to or consent from the Debtors, the Committee, or any other parties in interest and without further order of this Court. The Debtors are expressly and immediately authorized and empowered to make the Adequate Protection Payments provided for by this Final Order.

(ii) Notwithstanding anything in this Final Order to the contrary, until further order of this Court, and subject to paragraph 55 of this Final Order, only 85 percent of the Adequate Protection Payments described in section (b)(i)(A) of this paragraph 13 (inclusive, for the avoidance of doubt, the First Lien AP Professional Fees and Expenses) shall be paid to the First Lien Notes Creditors. The remaining 15 percent of such Adequate Protection Payments described in section (b)(i)(A) of this paragraph 13 shall be referred to herein as the “**Deferred Adequate Protection Payments**”.

(iii) Adequate Protection Professional Fees and Expenses. With respect to Adequate Protection Professional Fees and Expenses incurred postpetition, such Adequate

Protection Professionals shall deliver an invoice in summary form (which shall not be required to include time entry detail and may be redacted for privileged information) to the Debtors, the U.S. Trustee, and the Committee, except as reasonably requested to confirm no duplication of efforts, with a copy of such invoices delivered simultaneously to the DIP Agent. If no written objection is received by 12:00 p.m., prevailing Eastern Time, on the date that is ten (10) days after delivery of such invoice to the Debtors, the U.S. Trustee, and the Committee, the Debtors shall promptly pay such fees and expenses in full. If an objection to a professional's invoice is timely received, the Debtors shall promptly pay the undisputed amount of the invoice, and this Court shall have jurisdiction to determine the disputed portion of such invoice if the parties are unable to resolve the dispute consensually. The Adequate Protection Professionals shall not be required to comply with the U.S. Trustee fee guidelines or file applications or motions with, or obtain approval of, the Court for the payment of any of their fees or out-of-pocket expenses (other than with respect to disputed amounts). Payments of any amounts set forth in this paragraph may be subject to recharacterization, avoidance, subordination, or disgorgement.

(c) *Adequate Protection Superpriority Claims.*

(i) *Superpriority Claims of the Prepetition ABL Agent, First Lien Notes Trustee, Second Lien Term Loan Agent, and Third Lien Notes Trustee.* As further adequate protection of the interests of (A) the Prepetition ABL Agent and the other Prepetition ABL Secured Lenders with respect to the Prepetition ABL Obligations, (B) the First Lien Notes Trustee and the other First Lien Notes Creditors with respect to the First Lien Notes Obligations, (C) the Second Lien Term Loan Agent and the other Second Lien Term Loan Creditors with respect to the Second Lien Term Loan Obligations, and (D) the Third Lien Notes Trustee and

the other Third Lien Notes Creditors with respect to the Third Lien Notes Obligations, each of Prepetition ABL Agent (for the benefit of itself and the other Prepetition ABL Secured Lenders), the First Lien Notes Trustee (for the benefit of itself and the other First Lien Notes Creditors), the Second Lien Term Loan Agent (for the benefit of itself and the other Second Lien Term Loan Creditors), and the Third Lien Notes Trustee (for the benefit of itself and the other Third Lien Notes Creditors) is hereby granted an allowed administrative claim against the Debtors' estates under section 503 of the Bankruptcy Code, with priority over all administrative expense claims and unsecured claims against the Debtors and their estates as provided for by section 507(b) of the Bankruptcy Code (the "**Adequate Protection Superpriority Claims**"), to the extent that the Adequate Protection Liens do not adequately protect against any Diminution in Value of the Prepetition ABL Agent's, First Lien Notes Trustee's, the Second Lien Term Loan Agent's, and the Third Lien Notes Trustee's respective interests in the Prepetition Collateral.

(ii) *Priority of Adequate Protection Superpriority Claims.* The Adequate Protection Superpriority Claim granted to: (A) the Prepetition ABL Agent and the First Lien Notes Trustee shall each be senior in all respects to the Adequate Protection Superpriority Claim granted to (1) the Second Lien Term Loan Agent, and (2) the Third Lien Notes Trustee; and (B) the Second Lien Term Loan Agent shall be senior in all respects to the Adequate Protection Superpriority Claim granted to the Third Lien Notes Trustee. The Adequate Protection Superpriority Claims granted to each of the Prepetition ABL Agent, First Lien Notes Trustee (other than with respect to the Notes Priority Collateral and prior unencumbered assets of the type that would be Notes Priority Collateral), the Second Lien Term Loan Agent, and the Third Lien Notes Trustee shall be junior in all respects to the DIP Carve-Out (up to the DIP Carve-Out



Cap) and DIP Superpriority Claim, but shall have priority over any and all administrative expenses and all other claims against the Debtors now existing or hereafter arising, of any kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, and all other administrative expenses or other claims arising under any other provision of the Bankruptcy Code, including, without limitation, sections 105, 326, 327, 328, 330, 331, 503(b), 507(a), 507(b), or 1114 of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other nonconsensual lien, levy, or attachment. The Adequate Protection Superpriority Claims shall be payable from and have recourse to all pre- and post-petition property of the Debtors, subject to the priorities set forth in **Exhibit 1**; *provided*, however that the Adequate Protection Superpriority Claims of any party other than Prepetition ABL Agent shall not be payable from or have recourse to the ABL Carve-Out Collateral until such collateral becomes DIP Collateral in accordance with this Final Order and the Prepetition ABL Payoff Letter; *provided further*, the Adequate Protection Superpriority Claims of a Prepetition Secured Creditor shall not be payable from or have recourse to any Bankruptcy Recoveries from any Avoidance Actions that are brought with respect to the liens or claims held by or on behalf of such Prepetition Secured Creditor.

(d) *Reporting.* The Debtors shall timely provide the Prepetition Agents, the Prepetition Secured Creditors and the Committee with copies of all financial and other written reporting provided to the DIP Credit Parties pursuant to the DIP Loan Documents substantially simultaneously with such delivery to the DIP Credit Parties.

(e) *Reservations of Rights.*<sup>12</sup> Subject only to the DIP Carve-Out (up to the DIP Carve-Out Cap) described in paragraph 30 hereof (other than with respect to the ABL Carve-Out Collateral), and subject to the Intercreditor Agreements, nothing contained herein shall impair or modify the Prepetition Secured Creditors' rights under section 507(b) of the Bankruptcy Code in the event that the adequate protection provided to the Prepetition Secured Creditors in this Final Order is insufficient to compensate for the Diminution in Value of the interest of the Prepetition Secured Creditors' in the Prepetition Collateral during the Chapter 11 Cases or any Successor Cases. Nothing contained in this Final Order shall be construed as an admission as to the extent of any Diminution in Value, if any, in the interest of any Remaining Prepetition Secured Creditors in the Prepetition Collateral and nothing shall impair or modify the rights of any party to contest any assertion of Diminution in Value or contest any request for additional adequate protection. Notwithstanding anything contained in this Final Order, all parties' rights are reserved with respect to recharacterization or allocation of any Adequate Protection Payments provided for in this Final Order with respect to any allowed secured claims of any parties receiving such Adequate Protection Payments. Notwithstanding anything contained in this Final Order, the First Lien Creditors' rights are reserved to seek (and any other parties' rights are reserved to object to or contest) payment of postpetition interest at the default rate of interest (as provided in the applicable First Lien Notes Documents).

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<sup>12</sup> Court's addition regarding ability to fashion remedy re A/P addressed in paragraph on Challenges (¶ 43).

**Provisions Common to DIP Financing and Use of Cash Collateral Authorizations**

14. *Amendments.* Subject to the terms and conditions of the DIP Loan Documents, the DIP Loan Documents may from time to time be amended, modified or supplemented in non-material or ministerial respects (a “**Non-Material Amendment**”) by the parties thereto and the DIP Credit Parties may waive any provisions in the DIP Loan Documents, in each case without further approval of the Court; provided, that (a) (i) any such Non-Material Amendment has been consented to by the DIP Agent and the Debtors in writing and (ii) counsel to the Committee shall receive a copy of such Non-Material Amendment, and (b) solely with respect to any amendment, modification or supplement that is either material or not ministerial (a “**Material DIP Amendment**”), such Material DIP Amendment shall be filed with the Court, and the Debtors shall provide prior written notice of such Material DIP Amendment to (A) counsel to the DIP Agents, (B) counsel to the Supporting Creditors, (C) counsel to the Prepetition Agents, (D) counsel to the Committee, (E) the U.S. Trustee, and (F) all parties who have filed a notice of appearance and request for service of papers pursuant to Bankruptcy Rule 2002 (the “**Amendment Notice Parties**”); provided, further, that the Debtors and the DIP Agent may file such Material DIP Amendment under notice of presentment with the Court for Court approval on seven (7) days’ notice (the “**Notice of Presentment**”) and that, if no objections to the approval of such Material DIP Amendments are timely filed and received by the deadline set forth in such Notice of Presentment, the order granting the relief requested in the Notice of Presentment may be entered without further notice or opportunity to be heard. Additionally, the Debtors must receive written consent as to any Material DIP Amendment prior to filing notice thereof with the Court (x) from the applicable DIP Credit Parties and (y) from the applicable

Prepetition Secured Creditors for any amendment, modification, supplement, or waiver that materially adversely affects Prepetition Collateral, ABL Carve-Out Collateral, Adequate Protection Payments, or the priorities set forth in Exhibit 1. Any amendment that extends the Termination Date to a later date shall be considered a Non-Material Amendment. Any amendment, modification, or supplement to the DIP Loan Documents shall be filed by the Debtors within three (3) days of such amendment, modification, or supplement becomes effective, or if not timely filed by the Debtors, the DIP Agent within three (3) days after the last day for the Debtors to file such amendment, modification, or supplement.

15. Approved Budget. The Debtors shall consult with the Supporting Creditors and the Committee regarding any modification to, or amendment or update of, the Approved Budget. The Approved Budget and any modification to, or amendment or update of, the Approved Budget shall be in form and substance reasonably satisfactory to and approved by (a) the DIP Agent in its Permitted Discretion (as defined in the DIP Credit Agreement) and (b) solely to the extent that a restructuring support agreement with the Supporting Creditors is in full force and effect, the Supporting Creditors in their reasonable discretion; provided that any modification to the Committee professionals' fee line item in the initial Approved Budget, or updated budget shall require the prior written consent of the Committee.

16. Modification of Automatic Stay. The automatic stay imposed under section 362(a) of the Bankruptcy Code is hereby modified as necessary to effectuate all of the terms and provisions of this Final Order, including, without limitation to permit: (a) the Debtors to grant the DIP Liens, the ABL Priority Liens, the Adequate Protection Liens, the DIP Superpriority Claim, and the Adequate Protection Superpriority Claims; (b) the Debtors to incur all liabilities

and obligations to the DIP Agent as contemplated under the DIP Loan Documents; (c) the Prepetition ABL Agent, on behalf of itself and the Prepetition ABL Secured Lenders, to administer the Postpetition Letters of Credit and the Remaining Prepetition ABL Obligations in accordance with the terms of the Prepetition ABL Credit Documents (including drawing on the ABL Pledged L/C Account, the Bank Product Cash Collateral account, or any other reserve account provided to the Prepetition ABL Agent hereunder, without the need for any further order of the Court); and (d) the Debtors to pay, and the DIP Credit Parties and Prepetition Secured Creditors to retain and apply, all amounts referred to, required under, and in accordance with the terms of this Final Order and the DIP Loan Documents.

17. Perfection of DIP Liens and Adequate Protection Liens.

(a) The Interim Order and this Final Order shall be sufficient and conclusive evidence of the priority, perfection, and validity of the DIP Liens, the ABL Priority Liens, the Adequate Protection Liens, and the other security interests granted therein or herein, effective as of the Petition Date, without any further act and without regard to any other federal, state, or local requirements or law requiring notice, filing, registration, recording, or possession of the DIP Collateral or the ABL Carve-Out Collateral (as applicable), or other act to validate or perfect such security interest or lien, including, without limitation, control agreements with any financial institution(s) party to a control agreement or other depository account consisting of DIP Collateral or ABL Carve-Out Collateral, as applicable, or requirement to register liens on any certificates of title (a “**Perfection Act**”). Notwithstanding the foregoing, if any DIP Agent or Prepetition Agents, as applicable, shall, in its sole discretion, elect for any reason to file, record, or otherwise effectuate any Perfection Act, then such DIP Agent or Prepetition Agent, as

applicable, is authorized to perform such act, and the Debtors are authorized and directed to perform such act to the extent necessary or required by the DIP Loan Documents or the Prepetition ABL Payoff Letter, which act or acts shall be deemed to have been accomplished as of the date and time of entry of the Interim Order notwithstanding the date and time actually accomplished, and, in such event, the subject filing or recording office is authorized to accept, file, or record any document in regard to such act in accordance with applicable law. The DIP Agent or Prepetition Agents, as applicable, may choose to file, record, or present a certified copy of this Final Order in the same manner as a Perfection Act, which shall be tantamount to a Perfection Act, and, in such event, the subject filing or recording office is authorized to accept, file, or record such certified copy of this Final Order in accordance with applicable law. Should any DIP Agent or Prepetition Agent, as applicable, so choose and attempt to file, record, or perform a Perfection Act, no defect or failure in connection with such attempt shall in any way limit, waive, or alter the validity, enforceability, attachment, priority, or perfection of the postpetition liens and security interests granted by the Interim Order and herein by virtue of the entry of the Interim Order and this Final Order. In connection herewith, the DIP Agent, the Debtors, and Wells Fargo Bank, National Association (“**Wells Fargo**”), as depository bank, intend to enter into deposit account control agreements. Wells Fargo may, without further order of this Court, take or refrain from taking any action permitted under such deposit control agreement and implement changes to the deposit account control agreement in the ordinary course of business pursuant to the terms of such control agreement, including, without limitation, termination of such control agreement.

(b) To the extent that any applicable non-bankruptcy law otherwise would restrict the granting, scope, enforceability, attachment, or perfection of any liens and security interests granted and created by the Interim Order and this Final Order (including the DIP Liens, the ABL Priority Liens, and the Adequate Protection Liens) or otherwise would impose filing or registration requirements with respect to such liens and security interests, such law is hereby pre-empted to the maximum extent permitted by the Bankruptcy Code, applicable federal or foreign law; provided, however, that nothing herein shall excuse the Debtors from payment of any local fees, if any, required in connection with such liens. By virtue of the terms of this Final Order, to the extent that any DIP Agent or Prepetition Agent, as applicable, has filed Uniform Commercial Code financing statements, mortgages, deeds of trust, or other security or perfection documents under the names of any of the Debtors, such filings shall be deemed to properly perfect its liens and security interests granted and confirmed by this Final Order without further action by the applicable DIP Agent or Prepetition Agent.

18. Application of Proceeds of DIP Collateral. Subject to the DIP Carve-Out (up to the DIP Carve-Out Cap) and the limitations set forth in the Intercreditor Agreements, the priority rights of the holders of the Prepetition Permitted Liens in particular DIP Collateral, and the rights of the Prepetition ABL Agent and the Prepetition ABL Secured Lenders to the ABL Carve-Out Collateral: (a) the proceeds of ABL Priority Collateral shall be applied as follows: *first*, to payment of fees, costs and expenses payable and reimbursable by the Debtors under the DIP Credit Agreement and the other DIP Loan Documents; *second*, to payment in full of all DIP Obligations (other than those DIP Obligations arising from undrawn outstanding Letters of Credit) in accordance with the DIP Loan Documents; *third*, to cash collateralize Letters of Credit in accordance with the DIP Loan Documents; *fourth*, upon indefeasible payment in full in cash of the DIP Obligations including the cash collateralization of any such obligations to the extent permitted under the DIP Loan Documents, to payment of the First Lien Notes Obligations in accordance with the terms of the First Lien Notes Documents (and adequate protection, including the Adequate Protection Payments, with respect thereto); *fifth*, upon payment in full in cash of the First Lien Notes Obligations (and adequate protection, including the Adequate Protection Payments, with respect thereto), to the payment of the Second Lien Term Loan Obligations; *sixth*, upon payment in full in cash of the Second Lien Term Loan Obligations, to the payment of the Third Lien Notes Obligations; and *seventh*, upon payment in full of the Third Lien Notes Obligations, to the Debtors' operating account, or for the account of and paid to whoever may be lawfully entitled thereto; and (b) the proceeds of Notes Priority Collateral shall be applied as follows: *first*, to payment of fees, costs and expenses, including, without limitation, of the First Lien Notes Creditors, payable and reimbursable by the Debtors under the First Lien Notes



Documents, and any other Adequate Protection Payments owed to the First Lien Notes Creditors; *second*, to payment in full of all First Lien Notes Obligations in accordance with the First Lien Notes Documents; *third*, upon the indefeasible payment in full in cash of the First Lien Notes Obligations, to payment in full of all DIP Obligations (other than those DIP Obligations arising from undrawn outstanding Letters of Credit) in accordance with the DIP Loan Documents; *fourth*, upon payment in full in cash of the DIP Obligations including the cash collateralization of any such obligations to the extent permitted under the DIP Loan Documents, to payment of the Second Lien Term Loan Obligations in accordance with the terms of the Second Lien Term Loan Documents; *fifth*, upon payment in full in cash of the Second Lien Term Loan Obligations, to the payment of the Third Lien Notes Obligations; and *sixth*, upon payment in full in cash of the Third Lien Notes Obligations, to the Debtors' operating account, or for the account of and paid to whoever may be lawfully entitled thereto. The Debtors shall not, directly or indirectly, voluntarily purchase, redeem, defease, or prepay any principal of, premium, if any, interest or other amount payable in respect of any indebtedness prior to its scheduled maturity, other than the DIP Obligations, the Adequate Protection Payments required under this Final Order, and obligations authorized by an order of the Court (which may include, without limitation, obligations secured by Prepetition Permitted Liens and the ABL Priority Liens).

19. Proceeds of Subsequent Financing. If the Debtors, any trustee, any examiner with enlarged powers, any responsible officer or any other estate representative subsequently appointed in the Chapter 11 Cases or any Successor Cases shall obtain credit or incur debt pursuant to sections 364(b), 364(c) or 364(d) of the Bankruptcy Code in violation of the DIP Loan Documents at any time prior to the repayment in full in cash of all DIP Obligations, and the

termination of the DIP Credit Parties' obligations to extend credit under the DIP Facility, including subsequent to the confirmation of any plan of reorganization or liquidation with respect to any or all of the Debtors and the Debtors' estates, then all the cash proceeds derived from such credit or debt shall immediately be turned over to the DIP Agent to be applied as set forth in paragraph 18 herein.

20. Maintenance of DIP Collateral and Prepetition Collateral. Until the indefeasible payment in full in cash of all Prepetition Secured Obligations and all DIP Obligations and the termination of the DIP Credit Parties' obligations to extend credit under the DIP Loan Documents, as provided therein, the Debtors shall (a) insure the Prepetition Collateral and the DIP Collateral as required under the DIP Facility and the Prepetition Credit Documents, and (b) maintain the cash management system in effect as of the Petition Date or as otherwise agreed to by the DIP Agent. For the avoidance of doubt, if the Company opens any new accounts, the DIP Liens and Adequate Protection Liens shall apply to any such new accounts with the priorities set forth in Exhibit 1.

21. Termination Declaration Date. On the Termination Declaration Date (as defined below), (i) all DIP Obligations shall be immediately due and payable, (ii) all commitments to extend credit under the DIP Facility will terminate, and (iii) all authority to use Cash Collateral shall cease, provided, however, that during the Remedies Notice Period (as defined in paragraph 23(d) below), the Debtors may use Cash Collateral solely as set forth in paragraph 12 herein.

22. Events of Default. The occurrence of an "Event of Default" under the DIP Credit Agreement shall constitute an event of default under this Final Order (each, an "**Event of Default**"); provided, however, notwithstanding any term to the contrary in subsections (a), (b),

(e), (g), (i) or (j) of section 8.4 of the DIP Credit Agreement, the mere filing of a motion or an application seeking a specific form of relief shall not constitute an Event of Default unless and until an Order is entered that grants such relief.

23. Rights and Remedies Upon Event of Default.

(a) *DIP Facility Termination.* Immediately upon the occurrence and during the continuance of an Event of Default, the DIP Agent may in its sole discretion (or at the direction of the Required Lenders (as defined in the DIP Credit Agreement)) (i) declare the DIP Facility terminated (such declaration, a “**Termination Declaration**”) or (ii) send a reservation of rights notice to the Debtors, which notice may advise the Debtors that any further advances under the DIP Facility will be made in the sole discretion of the DIP Agent (“**Reservation of Rights**”).

(b) Upon the issuance of a Reservation of Rights: (i) all or any portion of the Commitments of the DIP Credit Parties to make loans or otherwise extend credit may be suspended or terminated in accordance with the DIP Loan Documents; (ii) all DIP Obligations may be deemed immediately due and payable in accordance with the DIP Loan Documents; (iii) after expiration of the Remedies Notices Period (as defined below), the DIP Agent and the DIP Lenders may exercise all other rights and remedies available to them under the DIP Credit Agreement; and (iv) after expiration of the Remedies Notice Period, any right or ability of the Debtors to use any Cash Collateral may be terminated, reduced or restricted by the DIP Agent, provided, that during the Remedies Notice Period, the Debtors may use Cash Collateral solely as set forth in paragraph 12 herein.

(c) With respect to the DIP Collateral, following the Termination Declaration, subject to the Remedies Notice Period, the DIP Credit Parties may exercise all rights and remedies available to them under the DIP Loan Documents or applicable law against the DIP Collateral in each case subject to the applicable Intercreditor Agreements, and without limiting the foregoing, the DIP Credit Parties may, subject to the Remedies Notice Period, (i) enter onto the premises of any Debtor in connection with an orderly liquidation of the DIP Collateral in accordance with paragraph 24 herein; and/or (ii) exercise any rights and remedies provided under the DIP Loan Documents or at law or equity, including, without limitation, all remedies provided under the Bankruptcy Code and pursuant to this Final Order.

(d) *Notice of Termination.* Any Termination Declaration shall be given by electronic mail to the Debtors, counsel to the Debtors, counsel to the Prepetition Agents, counsel to the Supporting Creditors, counsel to the Committee and the U.S. Trustee (the date such Termination Declaration is made shall be referred to herein as the “**Termination Declaration Date**”). The DIP Obligations shall be due and payable, without notice or demand, and the use of Cash Collateral shall cease, on the Termination Declaration Date, except as provided in paragraphs 12 and this paragraph 23 of this Final Order. Any automatic stay otherwise applicable to the DIP Credit Parties is hereby modified so that seven (7) days after the Termination Declaration Date (the “**Remedies Notice Period**”) the DIP Credit Parties shall be entitled to exercise all rights and remedies against the DIP Collateral in accordance with the DIP Loan Documents, any applicable Intercreditor Agreements, and this Final Order, and shall be permitted to satisfy the DIP Liens and the DIP Superpriority Claims, subject only to the DIP Carve-Out (up to the DIP Carve-Out Cap), the ABL Priority Liens, the Prepetition Permitted

Liens, and, solely with respect to the Notes Priority Collateral, the Prepetition First Lien Notes Liens and the First Lien Notes AP Liens. During the Remedies Notice Period, the Debtors shall be entitled to seek an emergency hearing with the Court. Unless the Court during the Remedies Notice Period orders otherwise, the automatic stay shall automatically be terminated at the end of the Remedies Notice Period without further notice or order, and the DIP Credit Parties shall be permitted to exercise all remedies set forth herein, in the DIP Credit Agreement, the DIP Loan Documents, and as otherwise available at law against the DIP Collateral, without further order of or application or motion to the Court, and without restriction or restraint by any stay under sections 105 or 362 of the Bankruptcy Code, or otherwise, against the enforcement of the liens and security interest in the DIP Collateral or any other rights and remedies granted to the DIP Agent with respect thereto pursuant to the DIP Credit Agreement, the other DIP Loan Documents or this Final Order.

24. Access to Leased Premises. The DIP Agent's, exercise of its remedies pursuant to paragraph 23 shall be subject to: (i) any agreement in writing between the DIP Agent or Prepetition Agents, and any applicable landlord, (ii) pre-existing rights of the DIP Agent or Prepetition Agents, and any applicable landlord under applicable non-bankruptcy law, (iii) consent of the applicable landlord, or (iv) further order of the Court following notice and a hearing.

25. Good Faith Under Section 364 of the Bankruptcy Code; No Modification or Stay of this Final Order. The DIP Credit Parties and Prepetition Secured Creditors have acted in good faith in connection with the Interim Order and this Final Order and their reliance on the Interim Order and this Final Order is in good faith. Based on the findings set forth in this Final

Order and the record made during the Interim Hearing and the Final Hearing, and in accordance with section 364(e) and section 363(m) of the Bankruptcy Code, in the event any or all of the provisions of this Final Order are hereafter reversed, modified, amended or vacated by a subsequent order of this Court, or any other court, the DIP Credit Parties and Prepetition Secured Creditors are entitled, on a final basis, to the protections provided in section 364(e) of the Bankruptcy Code. Any such reversal, modification, amendment or vacatur shall not affect the validity and enforceability of any advances previously made or made hereunder, or lien, claim or priority authorized or created by the Interim Order or hereby, provided that the Interim Order and this Final Order were not stayed by court order after due notice had been given to the DIP Agent, the Prepetition ABL Agent, the First Lien Notes Trustee, the Second Lien Term Loan Agent, and the Third Lien Notes Trustee at the time the advances were made or the liens, claims or priorities were authorized and/or created. Any liens or claims granted to the DIP Credit Parties and Prepetition Secured Creditors under the Interim Order or hereunder arising prior to the effective date of any such reversal, modification, amendment or vacatur of this Final Order shall be governed in all respects by the original provisions of this Final Order, including, without limitation, entitlement to all rights, remedies, privileges and benefits granted herein, provided, that the Interim Order and this Final Order were not stayed by court order after due notice had been given to the DIP Agent, the Prepetition ABL Agent, the First Lien Notes Trustee, the Second Lien Term Loan Agent, and the Third Lien Notes Trustee at the time the advances were made or the liens, claims or priorities were authorized and/or created.

26. DIP and Other Expenses. The Debtors are authorized and directed to pay all reasonable and documented out-of-pocket costs and expenses (and the DIP Agent is authorized

to make advances or charges against the loan account to pay such costs and expenses of the DIP Credit Parties) of the DIP Credit Parties in connection with the DIP Facility (including, without limitation, costs and expenses incurred prior to the Petition Date), as provided in the DIP Loan Documents. Payment of all such costs and expenses shall not be subject to allowance by the Court and professionals for the DIP Credit Parties shall not be required to comply with the U.S. Trustee fee guidelines. The professionals for the DIP Credit Parties shall deliver an invoice in summary form (which shall not be required to include time entry detail and may be redacted for privileged information) to the Debtors, the U.S. Trustee, and the Committee. If no written objection is received by 12:00 p.m., prevailing Eastern Time, on the date that is ten (10) days after delivery of such invoice to the Debtors, the U.S. Trustee, and the Committee, the Debtors shall promptly pay such fees and expenses in full. If an objection to a professional's invoice is timely received, the Debtors shall promptly pay the undisputed amount of the invoice, and this Court shall have jurisdiction to determine the disputed portion of such invoice if the parties are unable to resolve the dispute consensually. The DIP Credit Parties' professionals shall not be required to comply with the U.S. Trustee fee guidelines or file applications or motions with, or obtain approval of, the Court for the payment of any of their fees or out-of-pocket expenses (other than with respect to disputed amounts).

27. Indemnification.

(a) *Generally.* The Debtors shall indemnify and hold harmless the DIP Agent and each other DIP Credit Party, and each of their respective heirs, predecessors, successors, assigns, affiliates, subsidiaries, parents, officers, shareholders, directors, employees, members, managers, attorneys, advisors, professionals and agents, past, present and future, and their

respective heirs, predecessors, successors and assigns, from and against any and all damages, losses, settlement payments, obligations, liabilities, claims, actions or causes of action, whether groundless or otherwise, and reasonable costs and expenses incurred, suffered, sustained or required to be paid by an indemnified party of every nature and character arising out of or related to the DIP Loan Documents, the DIP Facility or the transactions contemplated thereby and by this Final Order, whether such indemnified party is party thereto, as provided in and pursuant to the terms of the DIP Loan Documents and as further described therein and herein, or in connection with these Chapter 11 Cases, any plan, or any action or inaction by the Debtors; provided, that such indemnity shall not, as to any indemnified party, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted directly from the gross negligence or willful misconduct of such indemnified party. The indemnity includes indemnification for the DIP Agent's exercise of discretionary rights granted under the DIP Facility. In all such litigation, or the preparation therefor, each of the DIP Agent and each other DIP Credit Party shall be entitled to select its own counsel and, in addition to the foregoing indemnity, the Debtors agree to promptly pay the reasonable and documented fees and expenses of such counsel.

28. Proofs of Claim. Any order entered by the Court in relation to the establishment of a bar date for any claims (including, without limitation, administrative claims) in any of the Chapter 11 Cases or Successor Cases shall not apply to the DIP Credit Parties or the Prepetition Secured Creditors. None of the DIP Credit Parties or the Prepetition Secured Creditors will be required to file proofs of claim or requests for approval of administrative expenses in any of the



Chapter 11 Cases or Successor Cases, and the provisions of this Final Order relating to the DIP Obligations, the DIP Superpriority Claims, the ABL Priority Claims, the Adequate Protection Superpriority Claims, and the Prepetition Secured Obligations shall constitute timely filed proofs of claim and/or administrative expense requests in each of the Chapter 11 Cases.

29. Rights of Access and Information. Without limiting the rights of access and information afforded the DIP Credit Parties under the DIP Loan Documents, the Debtors shall be, and hereby are, required to afford representatives, agents and/or employees of the DIP Agent, the Prepetition Agents, the Committee and the Supporting Creditors reasonable access to the Debtors' premises and their books and records in accordance with (as and to the extent applicable) the DIP Loan Documents and the Prepetition Credit Documents (as applicable) and shall reasonably cooperate, consult with, and provide to such persons all such information as may be reasonably requested. In addition, the Debtors authorize FTI Consulting, Inc., Evercore Group L.L.C., and Skadden, Arps, Slate, Meagher & Flom LLP (the "**Debtor Advisors**") to provide to the DIP Agent, the Prepetition Agents, the Committee and the Supporting Creditors, all such information as may be reasonably requested with respect to the business, results of operations and financial condition of any Debtor; provided, that such Debtor Advisors shall not be required to provide information that is in "draft" or "work product" form or that is subject to any privilege.

30. DIP Carve-Out.

(a) *DIP Carve-Out.* As used in this Final Order, the "**DIP Carve-Out**" means, collectively, the sum of: all allowed administrative expenses pursuant to (i) 28 U.S.C. § 1930(a)(6) and 31 U.S.C. § 3717 for fees payable to the Office of the United States Trustee, as

determined by agreement of the U.S. Trustee or by final order of the Court (“**U.S. Trustee Fees**”), and (ii) 28 U.S.C. § 156(c) for fees required to be paid to the Clerk of the Court; (iii) all reasonable and documented fees and expenses of up to \$25,000 incurred by a trustee under section 726(b) of the Bankruptcy Code; (iv) all unpaid fees and expenses allowed at any time by the Court, whether by interim order, procedural order, or otherwise (the “**Allowed Professional Fees**”), and incurred by professionals retained by the Debtors and the Committee in accordance with an order of the Court (which order has not been reversed, vacated or stayed) under sections 327(a) or 1103(a) of the Bankruptcy Code, (collectively the “**Case Professionals**”), incurred at any time prior to the delivery of a Carve-Out Trigger Notice (as defined below); and (v) Allowed Professional Fees of Case Professionals incurred after the delivery of a Carve-Out Trigger Notice to the extent allowed at any time, whether by interim order, procedural order, or otherwise. For purposes of the foregoing, “**Carve-Out Trigger Notice**” shall mean a written notice delivered by email (or other electronic means) by the DIP Agent to the Debtors, the Prepetition Agents, the Supporting Creditors, the Committee and the U.S. Trustee, which notice may be delivered only following the occurrence and during the continuation of an Event of Default. The DIP Credit Parties’ obligations to fund the DIP Carve-Out in accordance with this paragraph 30(a) shall be limited to the DIP Carve-Out Cap (as defined herein) and shall terminate upon the payment in full, in cash, of the DIP Obligations. For the avoidance of doubt, the DIP Agent shall at all times maintain, as part of the Reserves (as defined in the DIP Credit Agreement), a reserve in an amount not less than the sum of (x) the then current amounts described in (a)(i), (a)(ii), and (a)(iii) of this paragraph 30, it being understood that the amount of \$75,000 shall be reserved and deemed sufficient for amounts owing thereunder, and (a)(iv) of this paragraph 30, limited to an

amount not to exceed the balance of (A) (i) 85 percent any Reported Fee Accruals (as defined in the DIP Credit Agreement) reported to the DIP Agent until the Deferral End Date<sup>13</sup>; and (ii) any Reported Fee Accruals reported to the DIP Agent on and after the Deferral End Date, in each case prior to delivery of a Carve-Out Trigger Notice less (B) any Allowed Professional Fees that have been paid to the applicable Case Professionals prior to delivery of a Carve-Out Trigger Notice, whether by interim order, procedural order, or otherwise; and (y) on account of Allowed Professional Fees of Case Professionals incurred after the delivery of a Carve-Out Trigger Notice, to the extent allowed at any time, whether by interim order, procedural order, or otherwise, (A) \$500,000 for the DIP Credit Parties' claims and liens; and (B) an additional \$500,000, for an aggregate amount of \$1,000,000, for the Prepetition Secured Creditors' claims and liens (the sum of (x) and, as applicable, (y)(A) and/or (y)(B), the "**DIP Carve-Out Cap**"). Notwithstanding anything in this Final Order or the DIP Loan Documents to the contrary, the DIP Agent shall not consent to any increase in the DIP Carve-Out or the DIP Carve-Out Cap, or any alternative carve-out in connection with a DIP Financing (as defined in the ABL Intercreditor Agreement), without the consent of the holders of 66.67% of the First Lien Notes (pursuant to the terms of the First Lien Notes Indenture), such consent not to be unreasonably withheld, conditioned, or delayed; *provided* that the foregoing shall not bind any lender or agent party to a refinancing of the DIP Facility; *provided further* that the First Lien Notes Creditors reserve all rights, including under the Intercreditor Agreement, with respect to any lender or agent party to such a refinancing. Notwithstanding anything in this Final Order or the DIP Loan Documents to

<sup>13</sup> "Deferral End Date" shall mean the last day of the week of receipt of the Tax Refund as defined below.

the contrary, to the extent any liens or claims are subordinated to the DIP Carve-Out, they shall be subordinate to the DIP Carve-Out solely up to the amount of the applicable DIP Carve-Out Cap.

(b) *Carve Out Reserve.* On the date on which a Carve Out Trigger Notice is given, the Debtors shall utilize all cash on hand as of such date and any available cash thereafter held by any Debtor to fund a reserve in an amount equal to the DIP Carve-Out (up to the DIP Carve-Out Cap). The Debtors shall deposit and hold such amounts in a segregated account in trust to pay all then unpaid Allowed Professional Fees of the Case Professionals (subject to the DIP Carve-Out Cap) prior to any and all other claims (the “**Carve Out Reserves**”). Notwithstanding anything contained herein to the contrary, following delivery of a Carve Out Trigger Notice, the DIP Credit Parties and the Prepetition Secured Creditors shall not sweep or foreclose on cash (including cash received as a result of the sale or other disposition of any assets) of the Debtors until the Carve Out Reserves have been fully funded, but shall have a security interest in any residual interest in the Carve Out Reserves, with any excess paid to the DIP Credit Parties in accordance with the DIP Loan Documents, subject to the Intercreditor Agreements and this Final Order. Further, notwithstanding the foregoing, the requirement of the DIP Credit Parties to fund the portion of the Carve Out Reserve on account of Allowed Professional Fees of Case Professionals incurred after the delivery of a Carve-Out Trigger Notice and the limitations with respect to the DIP Credit Parties sweeping or foreclosing on cash set forth above until the Carve Out Reserve is funded shall be limited to the amount of \$500,000. Further, notwithstanding anything contained herein or in the DIP Loan Documents to the contrary, (i) the failure of the Carve Out Reserves to satisfy in full the Allowed Professional Fees

of Case Professionals shall not affect the priority of the DIP Carve-Out, (ii) nothing contained in the Interim Order, this Final Order, the DIP Loan Documents or the Prepetition Credit Documents (including the Approved Budget (or any other budget), the DIP Carve-Out, the DIP Carve-Out Cap, the Carve Out Reserves, or any of the foregoing), (x) shall in any way prohibit, impair, limit the incurrence or allowance of, or serve as a cap on the amount of, the fees and expenses of the Case Professionals (which includes, for the avoidance of doubt, the fees and expenses of the Committee's professionals), or (y) otherwise prohibit, limit or impair the ability of the Committee's professionals to (1) assert administrative expense claims on account of such fees and expenses against each each of the Debtors and their affiliated debtors and debtors-in-possession, or (2) to be compensated during the pendency of the Chapter 11 Cases (subject to any interim compensation procedures order entered by the Court) with any advances or borrowings made under or pursuant to, or proceeds of, the DIP Facility.

(c) *No Direct Obligation to Pay Professional Fees.* Other than funding the DIP Carve-Out Cap as and when required in paragraph 30(a), none of the DIP Credit Parties shall be responsible for the funding, direct payment or reimbursement of any fees or disbursements of any Case Professionals incurred in connection with the Cases or any Successor Cases. Nothing in this Final Order or otherwise shall be construed to obligate the DIP Credit Parties or the Prepetition Secured Creditors in any way to pay compensation to or to reimburse expenses of any Case Professional, or to guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement. Nothing in this Final Order or otherwise shall be construed to increase the DIP Carve-Out Cap if actual fees, disbursements, costs and expenses incurred of any Case Professional are higher in fact than the estimated fees and disbursements

reflected in the Approved Budget. Notwithstanding anything to the contrary contained in this Final Order, the Approved Budget or the DIP Loan Documents, none of the DIP Credit Parties or the Prepetition Secured Creditors shall be responsible for funding any “success”, “restructuring”, “transaction” or similar fee payable to the Debtors’ investment banker or financial advisor, and in no event shall any such amounts be paid out of the DIP Carve-Out other than after the repayment in full in cash of the DIP Obligations in connection with or as a result of a transaction pursuant to section 363 of the Bankruptcy Code and as limited by the DIP Carve-Out Cap). At any time there are any outstanding DIP Obligations, following the Termination Declaration Date, Allowed Professional Fees of any Case Professional shall be paid solely from the DIP Carve-Out and any retainer, as applicable.

(d) *Payment of DIP Carve-Out.* The funding of the DIP Carve-Out (up to the DIP Carve-Out Cap) shall be added to and made a part of the DIP Obligations and secured by the DIP Collateral and otherwise entitled to the protections granted under this Final Order, the DIP Loan Documents, the Bankruptcy Code and applicable law.

(e) Notwithstanding anything in this Final Order or the Court’s Order Granting Debtors Motion for Order Pursuant to Bankruptcy Code Sections 105(a) and 331, Bankruptcy Rule 2016, and Local Bankruptcy Rule 2016-1 Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals [Docket No. 176] (the “Interim Compensation Order”) to the contrary, until further order of the Court, at the expiration of the fifteen day period following the filing of a Monthly Statement (as defined in the Interim Compensation Order), the Debtors shall pay only 65 percent of the fees and 100 percent of the expenses identified in each Monthly Statement to which no objection has been served in

accordance with paragraph (d) of the Interim Compensation Order. For the avoidance of doubt the foregoing shall also apply to the payment of any monthly fees incurred by any Case Professional retained under section 328 of the Bankruptcy Code, including Evercore. The remainder of any Case Professional fees not paid in accordance with the Interim Compensation Order shall be referred to herein as the “Deferred Professional Fees”.

31. Limitations on the DIP Facility, the DIP Collateral, the Cash Collateral and the DIP Carve-Out. The DIP Facility, the DIP Collateral, the Cash Collateral, the Prepetition Collateral, and the DIP Carve-Out may not be used: (a) in connection with or to finance in any way any action, suit, arbitration, proceeding, application, investigation, motion or other litigation of any type (i) adverse to or against the interests of the DIP Credit Parties, the Prepetition Agents or the Prepetition Secured Creditors, or their rights and remedies under the DIP Loan Documents, the Interim Order or this Final Order, including, without limitation, for the payment of any services rendered by the professionals retained by the Debtors, the Committee or any other person in connection with the assertion of or joinder in any claim, counterclaim, action, proceeding, application, motion, objection, defense or other contested matter, the purpose of which is to seek, or the result of which would be to obtain, any order, judgment, determination, declaration or similar relief adverse to or against the interests of the DIP Credit Parties or the Prepetition Secured Creditors or their rights and remedies under the DIP Loan Documents, (ii) invalidating, investigating, setting aside, avoiding, subordinating or otherwise challenging, in whole or in part, any DIP Obligations or the Prepetition Secured Obligations, (iii) for monetary, injunctive or other affirmative relief against the DIP Credit Parties or the Prepetition Secured Creditors, or their respective collateral, (iv) preventing, hindering or otherwise delaying the

exercise by the DIP Credit Parties or the Prepetition Secured Creditors of any rights and remedies under the Interim Order or this Final Order, the DIP Loan Documents, or applicable law, or the enforcement or realization (whether by foreclosure or further order of the Court or otherwise) by the DIP Agent upon any of the DIP Collateral, or by the Prepetition Agents, as applicable, with respect to the Prepetition Collateral, except as provided for in the Interim Order or this Final Order, (v) asserting that the value of the Prepetition Collateral is less than the Prepetition Secured Obligations, (vi) to pursue any litigation against any DIP Credit Party, the Prepetition Agents or any other Prepetition Secured Creditor, or (vii) investigating or asserting claims or potential causes of action related to, or arising out of, the incurrence of the Prepetition Secured Obligations, as it may relate to any party including, but not limited to, the Debtors or their affiliates; (b) to make any distribution under a plan of reorganization in any Chapter 11 Case; (c) to make any payment in settlement of any claim, action or proceeding, before any court, arbitrator or other governmental body to the extent not expressly permitted under the DIP Loan Documents; (d) to pay any fees or similar amounts to any person who has proposed or may propose to purchase interests in any of the Debtors; (e) objecting to, contesting, or interfering with, in any way, the DIP Credit Parties' enforcement or realization upon any of the DIP Collateral once an Event of Default has occurred, except as provided for in the Interim Order or this Final Order; (f) using or seeking to use Cash Collateral while the DIP Obligations remain outstanding in a manner inconsistent with the Approved Budget; (g) using or seeking to use any insurance proceeds constituting DIP Collateral without the consent of the DIP Agent, as applicable; (h) incurring Indebtedness (as defined in the DIP Credit Agreement) outside the ordinary course of business, except as permitted under the DIP Loan Documents; (i) objecting



to, investigating, or challenging in any way the DIP Liens, Prepetition Liens, or claims or interests held by or on behalf of the DIP Credit Parties or the Prepetition Secured Creditors; (j) asserting, commencing or prosecuting any claims or causes of action whatsoever, including, without limitation, any actions under chapter 5 of the Bankruptcy Code or any other avoidance actions under the Bankruptcy Code, against the DIP Credit Parties or the Prepetition Secured Creditors; or (k) prosecuting an objection to, contesting in any manner, or raising any defenses to, the validity, extent, amount, perfection, priority, or enforceability of any of the DIP Obligations, the Prepetition Secured Obligations, the DIP Liens, the Prepetition Liens or any other rights or interests of the DIP Credit Parties or the Prepetition Secured Creditors; *provided* that the foregoing limitations shall not encompass any Challenge (as defined below) to the Prepetition Secured Obligations conducted by the Case Professionals by the Challenge Deadline (as defined below); *provided, further* that the aggregate amount of costs, fees, and expenses incurred in connection with the investigation in connection with any such Challenge by (x) the Committee’s Case Professionals shall not exceed \$750,000 (the “Committee Investigation Budget”), it being understood and agreed that the costs, fees, and expenses incurred by Committee’s Case Professionals in responding to information requests, document demands or other discovery or similar requests from third parties in connection with any such Challenge<sup>4314</sup> shall not be subject to the Investigation Budget (as defined below) and (y) the Debtors’ Case Professionals shall not exceed \$250,000 (the “Debtor Investigation Budget,” and together with

<sup>4314</sup> For the avoidance of doubt, this only applies to responses by the Committee (and not its individual members) to requests for information made to the Committee (and not its individual members).

the Committee Investigation Budget, the “Investigation Budget”), it being understood and agreed that the costs, fees, and expenses incurred by the Debtors’ Case Professionals in responding to information requests, document demands, or other discovery or similar requests in connection with any such Challenge shall not be subject to the Investigation Budget; *provided, further*, that notwithstanding the foregoing, the Case Professionals may assert administrative expense claims for any fees and expenses incurred, including, but not limited to, fees and expenses incurred by the Case Professionals in excess of the Investigation Budget.

32. Payment of Compensation. Nothing herein shall be construed as consent to the allowance of any professional fees or expenses of any Case Professionals or shall affect the right of the DIP Credit Parties or the Prepetition Secured Creditors to object to the allowance and payment of such fees and expenses.

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

34. Section 506(c) Claims. No costs or expenses of administration which have been or may be incurred in the Chapter 11 Cases or Successor Cases at any time shall be charged against the DIP Credit Parties or the DIP Collateral or the Prepetition Secured Creditors or the Prepetition Collateral pursuant to sections 105 or 506(c) of the Bankruptcy Code, or otherwise; *provided, however*, that the foregoing shall not apply to any Prepetition Secured Creditor (other than the Prepetition ABL Secured Lenders) or Prepetition Collateral, to the extent such creditor or collateral is the subject of a successful Challenge.

35. No Marshaling/Applications of Proceeds. None of the DIP Credit Parties or the Prepetition Secured Creditors shall be subject to the equitable doctrine of “marshaling” or any other similar doctrine with respect to any of the DIP Collateral or Prepetition Collateral; *provided, however*, that the foregoing shall not apply to any Prepetition Secured Creditor (other than the Prepetition ABL Secured Lenders) or Prepetition Collateral, to the extent such creditor or collateral is the subject of a successful Challenge.

36. Section 552(b). The DIP Agent and the other DIP Credit Parties shall be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code. The “equities of the case” exception under section 552(b) of the Bankruptcy Code shall not apply to the DIP Credit Parties or the Prepetition Secured Creditors with respect to proceeds, products, offspring or profits of any of the DIP Collateral or Prepetition Collateral; *provided, however*, that the foregoing shall not apply to any Prepetition Secured Creditor (other than the Prepetition ABL Secured Lenders) or Prepetition Collateral, to the extent such creditor or collateral is the subject of a successful Challenge.

37. Limits on Lender Liability. Nothing in this Final Order, any of the DIP Loan Documents, or any other documents relate thereto shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Agent, the DIP Lenders, or the Prepetition Secured Creditors of any liability for any claims arising from any activities by the Debtors in the operation of their businesses or in connection with the administration of these Chapter 11 Cases. The DIP Agent, the DIP Lenders, and the Prepetition Secured Creditors shall not, solely by reason of having made loans under the DIP Facility or permitting the use of Cash Collateral, be deemed in control of the operations of the Debtors or to be acting as a “responsible person” or “owner or

operator” with respect to the operation or management of the Debtors (as such terms, or any similar terms, are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 *et seq.*, as amended, or any similar federal or state statute). Nothing in this Final Order or the DIP Loan Documents, shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Agent, the DIP Lenders, or any of the Prepetition Secured Creditors of any liability for any claims arising from the prepetition or postpetition activities of any of the Debtors. Notwithstanding anything to the contrary in this paragraph 36, this paragraph 36 shall not apply to any Prepetition Secured Creditor for any prepetition activities of any of the Debtors to the extent such creditor is the subject of a successful Challenge.

38. Joint and Several Liability. Nothing in this Final Order shall be construed to constitute a substantive consolidation of any of the Debtors’ estates, it being understood, however, that the Debtors shall be jointly and severally liable for the obligations hereunder and in accordance with the terms of the DIP Facility and the DIP Loan Documents.

39. No Superior Rights of Reclamation. Based on the findings and rulings herein concerning the integrated nature of the DIP Facility and the Prepetition ABL Credit Documents and the relation back of the DIP Liens, in no event shall any alleged right of reclamation or return (whether asserted under section 546(c) of the Bankruptcy Code or otherwise) be deemed to have priority over the DIP Liens or the ABL Priority Liens.

40. Discharge Waiver. The DIP Obligations, the DIP Superpriority Claim, the DIP Liens, the ABL Priority Liens, and the obligations of the Debtors with respect to adequate protection hereunder, including granting the Adequate Protection Liens and the Adequate

Protection Superpriority Claims, shall not be discharged by the entry of an order confirming any plan of reorganization in any of the Chapter 11 Cases, notwithstanding the provisions of section 1141(d) of the Bankruptcy Code, unless such obligations have been indefeasibly paid in full in cash and all Postpetition Letters of Credit cancelled (or otherwise terminated) by the Prepetition ABL Agent, on or before the effective date of such confirmed plan of reorganization, or each of the DIP Secured Parties or the Prepetition Secured Creditors, as applicable, has otherwise agreed in writing. None of the Debtors shall propose or support any plan or sale of all or substantially all of the Debtors' assets or entry of any confirmation order or sale order that is not conditioned upon the payment in full in cash, on the effective date of such plan of all DIP Obligations, all Obligations under the Prepetition ABL Credit Documents, and Adequate Protection Superpriority Claims.

41. Rights Preserved. Notwithstanding anything herein to the contrary, the entry of this Final Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly: (a) the DIP Credit Parties' or the Prepetition Secured Creditors' right (subject to the Intercreditor Agreements) to seek any other or supplemental relief in respect of the Debtors (including, the right to seek additional or different adequate protection); (b) the rights of any of the Prepetition Secured Creditors to seek the payment by the Debtors of post-petition interest or fees pursuant to section 506(b) of the Bankruptcy Code; or (c) any of the rights of the DIP Credit Parties or the Prepetition Secured Creditors under the Bankruptcy Code or under non-bankruptcy law, including, without limitation, the right to (i) request modification of the automatic stay of section 362 of the Bankruptcy Code, (ii) request dismissal of any of the Chapter 11 Cases or Successor Cases, conversion of any of the Chapter 11 Cases to cases under

chapter 7, or appointment of a chapter 11 trustee or examiner with expanded powers, (iii) seek an injunction, (iv) oppose any request for use of Cash Collateral subject to the Intercreditor Agreements, (v) object to any sale of assets subject to the Intercreditor Agreements, or (vi) propose, subject to the provisions of section 1121 of the Bankruptcy Code, a chapter 11 plan or plans. Other than as expressly set forth in this Final Order, any other rights, claims or privileges (whether legal, equitable or otherwise) of the DIP Credit Parties and the Prepetition Secured Creditors are preserved.

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

43. Challenge Period. Subject only to the terms of this paragraph 43, the grant of adequate protection payments, liens or claims to the Prepetition Secured Creditors and the statements contained in paragraph E hereof shall be without prejudice to the rights of the Committee to seek to recharacterize, disgorge, disallow or assert any other Challenge with respect to all or a portion of the Prepetition Secured Creditors' claims in respect of the Prepetition Credit Documents, pursue any claims or seek appropriate remedies against the Prepetition Secured Creditors in connection with the Prepetition Credit Documents or avoid, subordinate or assert any other Challenge with respect to any or all of the security interests or liens in the Prepetition Collateral or in any other asset or property of Debtors in which the Prepetition Secured Creditors claim an interest, including any claim, action, or proceeding brought against the Prepetition Secured Creditors in accordance with this paragraph 43 that

requires the Prepetition Secured Creditors to give up adequate protection liens and superpriority claims, to disgorge adequate protection interest payments received or accruals credited, or to disgorge as repaid pursuant to this Final Order as a result of any of the Prepetition Secured Creditors' claims against Debtors or liens upon and security interests in the assets and properties of Debtors (including the Prepetition Collateral) being invalidated, avoided, subordinated, impaired or compromised in any way, either by an order of the Court (or other court of competent jurisdiction) or by settlement. Any party, including the Committee, must commence, as appropriate, a contested matter or adversary proceeding raising any objection, claim, defense, suit, or other challenge (each, a "**Challenge**") with respect to any claim, security interest, or any other rights of the Prepetition Secured Creditors under the applicable Prepetition Credit Documents, including in the nature of a setoff, counterclaim, or defense on or before the earlier of (i) the date of entry of an order confirming a plan of reorganization, (ii) the date of entry of an order approving the sale of all or substantially all of the Debtors' assets, or (iii) the date that is ninety (90) days from the date of entry of this Final Order (the earliest to occur of clauses (i), (ii), and (iii), as applicable, the "**Challenge Deadline**"), as such applicable date may be extended in writing from time to time in the sole discretion of the Prepetition ABL Agent (with respect to the Prepetition ABL Credit Documents), the First Lien Notes Trustee (with respect to the First Lien Notes Documents), the Second Lien Term Loan Agent (with respect to the Second Lien Term Loan Documents), and the Third Lien Notes Trustee (with respect to the Third Lien Notes Documents), or by this Court for good cause shown pursuant to an application filed by a party in interest prior to the expiration of the Challenge Deadline. Notwithstanding anything contained herein to the contrary, the Challenge Deadline will be tolled for the Committee if it formally

moves for an order of this Court conferring such standing or authority (the “Standing Motion”) prior to the initial Challenge Deadline from the date the Committee so moves until such time as standing is granted or denied pursuant to an order of the Court with regard to such Standing Motion; provided that the Challenge Deadline will only be tolled (a) if such motion attaches a proposed complaint identifying the specific Challenges that the Committee proposes to assert and the defendants against whom such Challenges are proposed to be asserted and (b) will only be tolled with respect to such Challenges and defendants specifically identified therein.

44. Binding Effect of Final Order. Immediately upon entry by this Court (notwithstanding any applicable law or rule to the contrary), the stipulations, terms and provisions of this Final Order (including, without limitation, the Adequate Protection Liens, Adequate Protection Payments and the Adequate Protection Superpriority Claims) shall become valid and binding upon and inure to the benefit of the Debtors, the DIP Credit Parties, the Prepetition Secured Creditors, all other creditors of any of the Debtors, the Committee and all other parties in interest and their respective successors and assigns, including, without limitation, any trustee or other fiduciary hereafter appointed in any of the Chapter 11 Cases, any Successor Cases, or upon dismissal of any Case or Successor Case, and the Debtors, the DIP Credit Parties, the Prepetition Secured Creditors, all other creditors of any of the Debtors, the Committee and all other parties in interest and their respective successors and assigns, including, without limitation, any trustee or other fiduciary hereafter appointed in any of the Chapter 11 Cases, any Successor Cases, or upon dismissal of any Case or Successor Case shall be forever barred, estopped and enjoined from pursuing a Challenge or otherwise contesting the DIP Obligations and Prepetition Secured Obligations unless, and solely to the extent that, (a) the Committee or a



party in interest has commenced a Challenge by the Challenge Deadline, and (b) this Court enters judgment in favor of the plaintiff or movant in any such timely commenced Challenge proceeding and any such judgment has become a final judgment that is not subject to any further review or appeal. Nothing in this Final Order shall be construed as limiting the power of the Court to annul or modify any Adequate Protection Lien or Adequate Protection Superiority Claim, or to require a return of or recharacterization of any Adequate Protection Payment, in the event that any such Challenge or avoidance shall be successful.

45. Any order dismissing one or more of the Chapter 11 Cases or Successor Cases under section 1112 of the Bankruptcy Code or otherwise shall be deemed to provide (in accordance with Bankruptcy Code sections 105 and 349) that (a) the DIP Liens, ABL Priority Liens, Prepetition Liens and Adequate Protection Liens shall continue in full force and effect notwithstanding such dismissal until the DIP Obligations, Remaining Prepetition ABL Obligations, Prepetition Secured Obligations and/or Adequate Protection Superpriority Claims (as applicable) are indefeasibly paid and satisfied in full and (b) this Court shall retain jurisdiction, to the extent permissible under applicable law, notwithstanding such dismissal, for the purposes of enforcing the DIP Superpriority Claim, DIP Liens, DIP Carve-Out, ABL Priority Liens, Adequate Protection Superpriority Claims, Adequate Protection Liens and the Prepetition Liens and the Intercreditor Agreements.

46. No Modification of Final Order. Until and unless the DIP Obligations have been paid in full in cash (such payment being without prejudice to any terms or provisions contained in the DIP Facility which survive such discharge by their terms), and all commitments to extend credit under the DIP Facility have been terminated, the Debtors irrevocably waive the right to

seek and shall not seek or consent to, directly or indirectly: (a) without the prior written consent of the DIP Agent and the Supporting Creditors (i) any reversal, modification, stay, vacatur or amendment to this Final Order; or (ii) a priority claim for any administrative expense or unsecured claim against the Debtors (now existing or hereafter arising of any kind or nature whatsoever, including, without limitation, any administrative expense of the kind specified in sections 503(b), 507(a) or 507(b) of the Bankruptcy Code) in any of the Chapter 11 Cases or Successor Cases, equal or superior to the DIP Superpriority Claim or the Adequate Protection Superpriority Claims, other than the DIP Carve-Out; (b) any order, other than this Final Order, allowing use of Cash Collateral resulting from DIP Collateral (except as may be provided by further order of the Court); and (c) except as set forth in this Final Order, any lien on any of the DIP Collateral or Prepetition Collateral with priority equal or superior to the DIP Liens, the ABL Priority Liens or, subject to further order of this Court, the Prepetition Liens. The Debtors irrevocably waive any right to seek any amendment, modification or extension of this Final Order without the prior written consent, as provided in the foregoing, of the DIP Agent and the Supporting Creditors (and with respect to the Prepetition ABL Obligations and the Remaining Prepetition ABL Obligations, the prior written consent of the Prepetition ABL Agent) and no such consent shall be implied by any other action, inaction or acquiescence of the DIP Agent, the Prepetition ABL Agent, or the Supporting Creditors, as applicable.

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

48. Survival. The provisions of this Final Order and any actions taken pursuant hereto shall survive entry of any order which may be entered: (a) confirming any plan of reorganization in any of the Chapter 11 Cases; (b) converting any of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code; (c) dismissing any of the Chapter 11 Cases or any Successor Cases; or (d) pursuant to which this Court abstains from hearing any of the Chapter 11 Cases or Successor Cases. The terms and provisions of this Final Order, including, without limitation, the claims, liens, security interests and other protections granted to the DIP Credit Parties and Prepetition Secured Creditors pursuant to this Final Order and/or the DIP Loan Documents, notwithstanding the entry of any such order, shall continue in the Chapter 11 Cases, in any Successor Cases, or following dismissal of the Chapter 11 Cases or any Successor Cases, and shall maintain their priority as provided by this Final Order until (i) all DIP Obligations have been indefeasibly paid in full in cash and all commitments to extend credit under the DIP Facility are terminated, (ii) all Prepetition Secured Obligations have been indefeasibly paid in full in cash, and (iii) all Postpetition Letters of Credit have been cancelled or otherwise terminated. The terms and provisions in this Final Order concerning indemnification of the DIP Credit Parties shall continue in the Chapter 11 Cases and in any Successor Cases, following dismissal of the Chapter 11 Cases or any Successor Cases, following termination of the DIP Loan Documents and/or the repayment of the DIP Obligations.

49. Notice of Entry of Final Order. On or before [•], 2020, the Debtors shall serve, by United States mail, first-class postage prepaid, a copy of this Final Order upon the notice parties required to be served under Local Bankruptcy Rule 4001-2 who do not receive electronic notice of the entry of this Final Order pursuant to Local Bankruptcy Rule 4001-2.

50. Treatment of Proceeds from Sale of Texas Assets. Notwithstanding any provisions of the Interim Order or any final orders pertaining to post-petition financing, use of cash collateral, the sale of the debtors' assets, or any agreements validated by any such orders, the liens currently held by the Local Texas Tax Authorities (Tarrant County, Harris County, Lewisville ISD, Northwest ISD and Roanoke) or which shall arise during the course of this case pursuant to applicable non-bankruptcy law on DIP Collateral, shall neither be primed by nor subordinated to any liens granted thereby or pursuant to this Final Order.

51. Dow Jones & Company. Reference is made to those certain Master Services Agreements, as amended, entered into between Dow Jones & Company, Inc. and certain of the Debtors, collectively, the "MSAs". The Debtors and DIP Credit Parties each acknowledge and agree that none of the Debtors have title to or ownership interest in (i) Dow Jones' newsprint stored or otherwise held by the Debtors at a Service Location(as defined in the MSAs; (ii) Publication Content (as defined in Section 9.1 of each of the MSAs); (iii) Dow Jones Intellectual Property Rights (as defined in Section 9.1 of each of the MSAs); or (iv) the Color Equipment (as defined in Section 4.5 of certain of the MSAs) and related documentation.

52. DIP Credit Agreement Amendments. The DIP Credit Agreement shall be amended by (a) replacing Schedule 5.23 thereof in its entirety with Schedule 5.23 annexed to this Final Order, and (b) deleting the terms "Prepetition Obligations" and "Prepetition Liens" from Sections 6.19(c) and (d).

53. Nunc Pro Tunc Effect of this Final Order. This Final Order shall take effect and be enforceable *nunc pro tunc* to the Petition Date immediately upon entry thereof.

54. Retention of Jurisdiction. The Court has and will retain jurisdiction to enforce this Final Order according to its terms.

55. Distribution of Proceeds from Tax Refund. Upon receipt of any tax refund for the fiscal year 2019 (“Tax Refund”), the proceeds shall be distributed (a) first, provided that no Default or Event of Default under the DIP Credit Agreement has occurred which has not been waived, to the First Lien Notes Creditors for any accrued and unpaid Deferred Adequate Protection Payments and (b) second, to Case Professionals for accrued and unpaid Deferred Professional Fees, which shall be paid in accordance with the Interim Compensation Order or other order of this Court approving payment of Case Professional fees.

Dated: March \_\_\_\_\_, 2020  
New York, NY

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THE HONORABLE MICHAEL E. WILES  
UNITED STATES BANKRUPTCY JUDGE

**EXHIBIT 1**

**Lien and Claim Priority**

<b>Order of Priority</b>	<b>ABL Carve-Out Collateral</b>	<b>ABL Priority Collateral (whether in existence on the Petition Date or thereafter arising)</b>	<b>Notes Priority Collateral (whether in existence on the Petition Date or thereafter arising)</b>	<b>DIP Collateral that Consists of Prior Unencumbered Assets</b>
<b>1st</b>	Remaining Prepetition ABL Obligations	DIP Carve-Out (up to the DIP Carve-Out Cap)	First Lien Notes Obligations (and adequate protection with respect thereto)	DIP Carve-Out (up to the DIP Carve-Out Cap) with respect to collateral that is of the type of ABL Priority Collateral  Adequate Protection for First Lien Notes Obligations with respect to collateral that is of the type that would be Notes Priority Collateral
<b>2nd</b>	After the Postpetition Letters of Credit have been cancelled or otherwise terminated and the Remaining Prepetition Obligations satisfied in full in accordance with the Final Order and the Prepetition ABL Payoff Letter, DIP Carve-Out (up to the DIP Carve-Out Cap)	DIP Facility	DIP Carve-Out (up to the DIP Carve-Out Cap)	DIP Facility with respect to collateral that is of the type of ABL Priority Collateral  DIP Carve-Out (up to the DIP Carve-Out Cap) with respect to collateral that is of the type of Notes Priority Collateral
<b>3rd</b>	DIP Facility	Remaining Prepetition ABL Obligations (and adequate	DIP Facility	Adequate Protection for Remaining Prepetition ABL

		protection with respect thereto)		Obligations with respect to Collateral that is of the type of ABL Priority Collateral  DIP Facility with respect to collateral that is of a type that is Notes Priority Collateral
<b>4th</b>	First Lien Notes Obligations (and adequate protection with respect thereto)	First Lien Notes Obligations (and adequate protection with respect thereto)	Remaining Prepetition ABL Obligations (and adequate protection with respect thereto)	Adequate Protection for First Lien Notes Obligations with respect to collateral that is of the type that would be ABL Priority Collateral  Adequate Protection for Remaining Prepetition ABL Obligations with respect to Collateral that is of the type of Notes Priority Collateral
<b>5th</b>	Second Lien Term Loan Obligations (and adequate protection with respect thereto)	Second Lien Term Loan Obligations (and adequate protection with respect thereto)	Second Lien Term Loan Obligations (and adequate protection with respect thereto)	Adequate Protection for Second Lien Term Loan Obligations
<b>6th</b>	Third Lien Notes Obligations (and adequate protection with respect thereto)	Third Lien Notes Obligations (and adequate protection with respect thereto)	Third Lien Notes Obligations (and adequate protection with respect thereto)	Adequate Protection for Third Lien Notes Obligations

<b>Summary report:</b>	
<b>Litera® Change-Pro for Word 10.8.2.11 Document comparison done on 4/9/2020 2:33:38 PM</b>	
<b>Style name:</b> Option 3b (Opt 3 + No Format)	
<b>Intelligent Table Comparison:</b> Active	
<b>Original DMS:</b> dm://PALSR01A/623148/8A	
<b>Description:</b> MNI -- Final DIP Order	
<b>Modified DMS:</b> dm://PALSR01A/625284/4	
<b>Description:</b> Modified Final DIP Order	
<b>Changes:</b>	
Add	20
Delete	9
Move From	0
Move To	0
Table Insert	0
Table Delete	0
Table moves to	0
Table moves from	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
<b>Total Changes:</b>	<b>29</b>