IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

FILED
11/18/24 4:31 pm
CLERK
U.S. BANKRUPTCY
COURT - WDPA

In Re: **POTTSVILLE OPERATIONS, LLC, *et al.*,**[1] **Debtors.**	**Case No.: 24-70418-JAD** **Chapter 11** ***Joint Administration Requested***
POTTSVILLE OPERATIONS, LLC, *et al.* **Movants,** **-vs-** **NO RESPONDENTS,** **Respondents.**	**Doc. No.:** 215 **Related to Document No.: 12** **Hearing Date: November 12, 2024** **Hearing Time: 11:00 AM (EST)** **Response Deadline: Committee: November 5, 2024 at 4:00 PM (EST); Others: October 29, 2024 at 4:00 PM (EST)**

FINAL ORDER GRANTING DEBTORS' EMERGENCY MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS (I) AUTHORIZING THE DEBTORS TO OBTAIN POST-PETITION FINANCING, (II) AUTHORIZING THE DEBTORS TO USE CASH COLLATERAL, (III) GRANTING LIENS AND PROVIDING SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS, (IV) APPROVING ADEQUATE PROTECTION, (V) MODIFYING THE AUTOMATIC STAY, (VI) SCHEDULING A FINAL HEARING, AND (VII) GRANTING RELATED RELIEF

Upon the motion (the "Motion")[2] of the above-captioned debtors and debtors in possession (collectively, the "Debtors") in the above-captioned chapter 11 cases (the "Chapter 11 Cases") commenced on October 15, 2024 (the "Petition Date") seeking entry of an interim order and final order (this "Final Order") pursuant to sections 105, 361, 362, 363(c)(2), 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, 11 U.S.C. §§ 101,

[1] The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor's federal tax identification number are: Pottsville Operations, LLC (9467); Pottsville Propco, LLC (8685); Hampton House Operations, LLC (8969); Hampton House Propco, LLC (7258); Kingston Operations, LLC (1787); Kingston Propco, LLC (8562); Williamsport North Operations, LLC (9927); Williamsport Propco, LLC (2039); Williamsport South Operations, LLC (0298); Yeadon Operations, LLC (9296); and Yeadon Propco, LLC (5785). The Debtors' address is 425 West New England Avenue, Suite 300, Winter Park, Florida 32789.
[2] Capitalized terms used herein but not otherwise defined shall have the meanings ascribed to them in the Motion.

et seq. (as amended, the "Bankruptcy Code"), Bankruptcy Rules 2002 and 4001 of the Federal Rules of Bankruptcy Procedure (as amended, the "Bankruptcy Rules") and Local Rule 4001-2 of the Local Bankruptcy Rules (the "Local Rules") for the United States Bankruptcy Court for the Western District of Pennsylvania (this "Court") providing as follows:

a. Accessing the DIP Facility – authorizing the Debtors, as borrowers, to obtain a post-petition loan facility in the aggregate principal amount of up to $7.782 million, $2.5 million of which will be a potential additional delayed draw tranche with availability determined solely in the DIP Lender's discretion (the "DIP Facility" and all extensions of credit and amounts made or deemed made under the DIP Facility, the "DIP Loans"), and to otherwise incur the DIP Obligations (defined below) on the terms and conditions set forth in this Final Order and the DIP credit agreement (the "DIP Credit Agreement" and together with all loan documents, the "DIP Loan Documents")[3];

b. Entry into DIP Loan Documents – authorizing the Debtors to execute and deliver the DIP Loan Documents and to perform their obligations thereunder and such other and further acts as may be necessary or appropriate in connection therewith;

c. Borrowing of Interim Funding Amount – authorizing the Debtors to borrow up to $3 million of DIP Loans on an interim basis (the "Interim Funding Amount") and use proceeds of such borrowings in accordance with the DIP Loan Documents, the Interim DIP Order, and the Budget (defined below);

d. Roll-Up – authorizing the Debtors, subject to entry of this Final Order, to access the full remaining balance of the DIP Facility, of which $282,000 shall be borrowed to permanently convert prepetition amounts the DIP Lender loaned to the Debtors (the "Roll-Up") to cover bankruptcy-related costs and expenses pursuant to the Prepetition Bankruptcy-Related Loan (defined below);

e. DIP Liens – authorizing the Debtors to provide a senior secured lien on all of the Debtors' accounts receivable (the "Accounts Receivable"), with dates of service arising both pre- and post-petition, to secure the DIP Obligations (defined below);

f. Use of Cash Collateral – authorizing the Debtors to use the cash collateral (as such term is defined in section 363(a) of the Bankruptcy Code, the "Cash Collateral") pursuant to section 363 of the Bankruptcy Code, subject to the Budget and the terms of this Final Order;

---

[3] For the avoidance of doubt, to the extent this Order conflicts with the terms of the DIP Loan Documents, this Order shall control.

g. Adequate Protection – authorizing the Debtors to make certain payments to Oxford Finance LLC ("Oxford") in accordance with the Budget on account of the Prepetition Loan Obligations;

h. Exercise of Remedies; Modification of Stay – authorizing the DIP Lender to exercise remedies under, and in accordance with, the DIP Loan Documents and the Final Order upon the occurrence and during the continuance of an Event of Default (defined below) and modification of the automatic stay to the extent necessary to permit such exercise of remedies;

i. Performance of DIP Obligations – authorizing the Debtors to perform their obligations under, and pay the fees set forth in, the DIP Credit Agreement and the other DIP Loan Documents;

j. Section 506(c) Waiver – approving, subject to entry of this Final DIP Order, the waiver by the Debtors of any right to seek to surcharge against the DIP Collateral (as defined herein) pursuant to section 506(c);

k. Scheduling a Final Hearing – scheduling, pursuant to Bankruptcy Rule 4001, a final hearing (the "Final Hearing") for this Court to consider entry of the Final DIP Order authorizing and approving on a final basis the relief requested herein; and

l. granting related relief.

The Final Hearing having been held by this Court on November 12, 2024, and upon the record made by the Debtors at the Final Hearing, including the admission into evidence of the *Declaration of Neil Luria, Chief Restructuring Officer of the Debtors, in Support of the Debtors' Emergency Motion for Interim and Final Orders (I) Authorizing the Debtors to Obtain Post-Petition Financing, (II) Authorizing the Debtors to Use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Approving Adequate Protection, (V) Modifying Automatic Stay, (VI) Scheduling a Final Hearing, and (VIII) Granting Related Relief* (the "DIP Financing Declaration") filed on the Petition Date, and the other evidence submitted or adduced and the arguments of counsel made at the Final Hearing, and after due deliberation and consideration and sufficient cause appearing therefor;

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

1. *Petition Date*. On the Petition Date, each of the Debtors filed with the Court a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors have continued in the management and operation of their businesses and properties as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

2. *Jurisdiction*. This Court has core jurisdiction over the Chapter 11 Cases, the Motion, and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157(b) and 1334. The Court may enter a final order consistent with Article III of the United States Constitution. The legal predicates for the relief sought herein are sections 105, 361, 362, 363, 364 and 507 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001, 6004 and 9014 and all applicable Local Rules.

3. *Notice*. Notice of the Motion, the relief requested therein and the Final Hearing was served by the Debtors on: (i) the United States Trustee for the Western District of Pennsylvania (the "U.S. Trustee"); (ii) the Debtors; (iii) the DIP Lender; (iv) all secured creditors; (v) the Office of the Attorney General of the State of Pennsylvania; (vi) the thirty (30) largest unsecured creditors for the Debtors on a consolidated basis; (vii) the Debtors' identified, interested taxing authorities, including the Internal Revenue Service; (viii) the Debtors' identified, interested government and regulating entities; (ix) other interested parties as identified by the Debtors; and (x) any known counsel for (i)-(ix) (collectively, the "Notice Parties"). Under the circumstances, the notice given by the Debtors of the Motion, the relief requested therein, and the Final Hearing constitutes due and sufficient notice thereof and complies with Bankruptcy Rules 2002, 4001(b), (c), and (d) and all applicable Local Rules, and no further notice of the relief sought at the Final Hearing is necessary or required.

4. *Debtors' Stipulations*. After consultation with their attorneys and financial advisors, and without prejudice to the rights of a Committee or other parties-in-interest as set forth

herein, including without limitation in paragraph 22 the Debtors, on their behalf and on behalf of their estates, admit, stipulate, acknowledge, and agree as follows (collectively, the "Stipulations"):

(a) as of the Petition Date, the Debtors were parties or otherwise obligated under the Prepetition Loan Documents and truly and justly indebted and liable to Oxford, without defense, objection, counterclaim, or offset of any kind, in the aggregate principal amount of not less than $49,118,523.64 with respect to the Prepetition Term Loan and $0 with respect to the Prepetition Revolver (collectively, the "Prepetition Loan Obligations");

(b) the Prepetition Loan Obligations constitute legal, valid, binding, and non-avoidable obligations against each of the Debtors and are not subject to any avoidance, recharacterization, effect, counterclaim, defense, offset, subordination, other claim, cause of action or other challenge of any kind or nature under the Bankruptcy Code, under applicable non-bankruptcy law or otherwise. No payments or transfers made to or for the benefit of (or obligations incurred to or for the benefit of) Oxford by or on behalf of any of the Debtors prior to the Petition Date under or in connection with any of the Prepetition Loan Documents is subject to avoidance, recharacterization, effect, counterclaim, defense, offset, subordination, other claim, cause of action, or other challenge of any kind or nature under the Bankruptcy Code, under applicable non-bankruptcy law or otherwise;

(c) the Prepetition Liens are: (i) legal, valid, binding, perfected, enforceable, first priority liens on and security interests in the Prepetition Collateral (except with respect to the DIP Lender's priming lien on the Accounts Receivable and the proceeds thereof up to the amount of the Prepetition Bankruptcy-Related Loan) to secure the Prepetition Loan Obligations, (ii) not subject to avoidance, recharacterization, offset or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law or other challenge, and (iii) after giving effect to this Final DIP

Order and subject to the Carve-Out, subject and subordinate only to other valid and unavoidable liens properly perfected prior to the Petition Date (or perfected after the Petition Date to the extent permitted by section 546(b) of the Bankruptcy Code) solely to the extent such liens are permitted under the Prepetition Loan Documents and Intercreditor Agreement to be senior to the liens securing the Prepetition Loan Obligations;

(d) neither the DIP Lender nor Oxford are control persons or insiders 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 DIP Facility, the DIP Loan Documents or the Prepetition Loan Documents; provided however, that this stipulation does not apply to acts or omissions unrelated to the DIP Facility, the DIP Loan Documents or the Prepetition Loan Documents;

(e) upon entry of this Final DIP Order, the Debtors, on behalf of themselves and their respective estates, forever and irrevocably release, discharge, and acquit the DIP Lender and Oxford, and each of their respective former, current and future officers, employees, directors, agents, representatives, owners, members, partners, financial and other advisors and consultants, legal advisors, shareholders, managers, consultants, accountants, attorneys, affiliates, and predecessors and successors in interest of the DIP Lender and Oxford (collectively, the "Releasees") of and from any and all claims, demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness and obligations, rights, assertions, allegations, actions, suits, controversies, proceedings, losses, damages, injuries, reasonable attorneys' fees, costs, expenses, or judgments of every type, whether known, unknown, asserted, unasserted, suspected, unsuspected, accrued, unaccrued, fixed, contingent, pending or threatened, including all legal and equitable theories of recovery, arising under common law, statute or regulation or by contract, of every nature and description, solely arising out of, in connection with, or relating to the DIP

Facility, the DIP Loan Documents, and/or the Prepetition Loan Documents, including (x) any so-called "lender liability" or equitable subordination or disallowance claims or defenses, (y) any and all claims and causes of action arising under the Bankruptcy Code, and (z) any and all claims and causes of action with respect to the validity, priority, perfection or avoidability of the liens or claims of the DIP Lender or Oxford, *provided* that the releases set forth in this section shall be limited to such claims arising prior to or including the date of the entry of this Final DIP Order. The Debtors further waive and release any defense, right of counterclaim, right of setoff or deduction of the payment of the Prepetition Loan Obligations and the DIP Obligations that the Debtors now have or may claim to have against the Releasees arising out of, connected with, or relating to any and all acts, omissions or events occurring prior to the entry of this Final DIP Order solely arising out of, in connection with, or relating to the DIP Facility, the DIP Loan Documents, and/or the Prepetition Loan Documents; and

(f) no portion of any of the Prepetition Loan Obligations shall be subject to contest, attack, avoidance, impairment, disallowance, defense, counterclaim, recharacterization, reduction, recoupment, setoff, recovery, or subordination (except as provided in the Intercreditor Agreement) pursuant to the Bankruptcy Code or applicable non-bankruptcy law.

5. *Findings Regarding the DIP Loans.*

(a) The Debtors seek authority to (i) upon entry of this Final DIP Order, enter into the DIP Facility on the terms described herein and in the DIP Loan Documents, and (ii) use Cash Collateral on the terms described herein to administer their Chapter 11 Cases and fund their operations.

(b) The priming of the existing liens on and security interests in the Debtors' Accounts Receivable and the proceeds thereof up to the amount of the aggregate of the DIP Loans and the Prepetition Bankruptcy-Related Loan under section 364(d) of the Bankruptcy Code, as contemplated by the DIP Loan Documents and as further described below, will enable the Debtors to obtain the DIP Facility and to continue to operate their businesses for the benefit of their estates.

(c) The Debtors have an immediate need to obtain credit on a final basis pursuant to the DIP Facility, and to use the Cash Collateral on a final basis, in order to, among other things, permit the orderly continuation of their businesses, preserve the going concern value of the Debtors, make payroll and satisfy other working capital and general corporate purposes of the Debtors (including fees, costs, and expenses related to the Chapter 11 Cases and the DIP Loan Documents and capital expenditures, as and to the extent set forth in this Final Order and in accordance with the Budget and the DIP Loan Documents). The ability of the Debtors to maintain business relationships with their vendors, suppliers, and customers, to pay their employees, and otherwise finance their operations requires the availability of working capital from the DIP Facility and the use of Cash Collateral, the absence of either of which would immediately and irreparably harm the Debtors, their estates, and parties-in-interest.

(d) The Debtors are unable to obtain financing on more favorable terms from sources other than the DIP Lender pursuant to, and for the purposes set forth in, the DIP Loan Documents and are unable to obtain adequate unsecured credit allowable under section 364(b) of the Bankruptcy Code as an administrative expense or having priority over that of administrative expenses of the kind specified in sections 503(b), 507(a) and 507(b) of the Bankruptcy Code. The Debtors also are unable to obtain secured credit allowable under sections 364(c)(1), 364(c)(2) and 364(c)(3) of the Bankruptcy Code without (x) granting priming liens under section 364(d)(1) of the Bankruptcy Code and the Superpriority Claims (as defined below) and (y) converting the Prepetition Bankruptcy-Related Loan amount into DIP Loans outstanding under the DIP Credit

Agreement on and subject to the terms and conditions set forth in this Final Order and the DIP Loan Documents.

(e) The terms and conditions of the DIP Facility pursuant to the DIP Loan Documents (including the payment of fees contemplated thereunder), including the Cash Collateral, pursuant to this Final DIP Order are fair, reasonable, and the best available to the Debtors under the circumstances, are ordinary and appropriate for secured financing to debtors in possession, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties and constitute reasonably equivalent value and fair consideration.

(f) The DIP Loan Documents, the use of Cash Collateral, and the grant of adequate protection hereunder have been the subject of extensive negotiations conducted in good faith and at arm's length among the Debtors, the DIP Lender, and Oxford, and all of the Debtors' obligations and indebtedness arising under or in connection with the DIP Loan Documents, this Final Order, and the amount of the Interim Funding authorized hereunder (collectively, including any other secured obligations, the "DIP Obligations") shall be deemed to have been extended by the DIP Lender in "good faith" as such term is used in section 364(e) of the Bankruptcy Code, and in express reliance upon the protections set forth therein, and shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that this Final Order or any provision hereof is vacated, reversed or modified on appeal or otherwise. Any such reversal, modification, or vacatur shall not affect the validity and enforceability of any advances previously made or made hereunder or any lien, claim, or priority authorized or created hereby. Any liens or claims granted to the DIP Lender hereunder arising prior to the effective date of any such reversal, modification, or vacatur of this Final DIP Order shall be governed in all respects by the original provisions of this Final Order, including entitlement to all rights, remedies, privileges, and benefits granted herein.

(g) Absent granting the final relief set forth in this Final Order, the Debtors' estates and their business operations will be immediately and irreparably harmed. The borrowing of the DIP Loans and the use of the Cash Collateral, in accordance with this Final Order and the DIP Loan Documents are, therefore, in the best interest of the Debtors' chapter 11 estates. Good cause has been shown for the immediate entry of this Final Order.

(h) Pursuant to the intercreditor agreement between the DIP Lender and Oxford (the "Intercreditor Agreement"), a copy of which shall be provided to the Committee upon reasonable request, Oxford has consented to the terms of the DIP Facility and the entry of this Final Order, including the priming of its prepetition lien on the Accounts Receivable and the proceeds thereof up to the amount of the aggregate of the DIP Loans and the Prepetition Bankruptcy-Related Loan.

6. *Adequate Notice.* Notice of the Final Hearing and the relief requested in the Motion has been provided by the Debtors, whether by facsimile, electronic mail, overnight courier or hand delivery, to the Notice Parties. The Debtors have made reasonable efforts to afford the best notice possible under the circumstances and no other notice is required in connection with the relief set forth in this Final Order.

7. *Authorization of the DIP Facility.*

(a) The DIP Facility, including the Roll-Up of the Prepetition Bankruptcy-Related Loan, is hereby approved on a final basis as set forth herein. The Debtors are hereby authorized (i) to enter into and perform under the DIP Loan Documents on a final basis, (ii) to borrow under the DIP Credit Agreement up to an aggregate principal amount of $7.782 million of the DIP Loans, the proceeds of which shall be used for, subject to the terms of this Final Order, the DIP Loan Documents and the Budget, working capital and other general corporate purposes of the Debtors, including fees, costs, and expenses related to the Chapter 11 Cases and the DIP Loan Documents, capital expenditures, and to pay interest, fees, and expenses in connection with the DIP Loans, including adequate protection payments as set forth herein, and (iii) to convert the Prepetition Bankruptcy-Related Loan amount into DIP Loans outstanding under the DIP Credit Agreement.

(b) In furtherance of the foregoing and without further approval of this Court, each Debtor is authorized and empowered to perform all acts and to execute and deliver all instruments and documents that the DIP Lender determines to be reasonably required or necessary for such Debtor's performance of its obligations under the applicable DIP Loan Documents, including:

(i) the execution, delivery, and performance of the DIP Loan Documents;

(ii) the execution, delivery and performance of one or more amendments, waivers, consents or other modifications to and under the DIP Loan Documents (in accordance with the terms of the applicable DIP Loan Documents and in such form as the Debtors, the DIP Lender, and Oxford may agree) and no further approval of this Court shall be required for any amendment, waiver, consent or other modification to and under the DIP Loan Documents that does not materially and adversely affect the Debtors or Oxford or which does not (A) shorten the scheduled maturity of the DIP Loans, (B) increase the principal amount of the DIP Facility or the rate of interest payable on the DIP Loans, or (C) change any Event of Default, add any covenants or amend the covenants therein, in any such case to be materially more restrictive on the Debtors; *provided*, *however*, that a copy of any such amendment, waiver, consent or other modification shall be filed by the Debtors with this Court and delivered by the Debtors to counsel for the Prepetition Agents, the U.S. Trustee, and counsel to any statutory committee of unsecured creditors (the "Committee") appointed in the Chapter 11 Cases within three (3) Business Days prior to its effectiveness in the event any such party objects to the same; and

(iii) the performance of all other acts required under or in connection with the DIP Loan Documents.

(c) Upon the execution thereof, the DIP Loan Documents shall constitute valid and binding obligations of the Debtors, enforceable against the Debtors in accordance with the terms of this Final Order and the DIP Loan Documents. To the fullest extent permissible under the Bankruptcy Code, no obligation, payment, transfer or grant of security by the Debtors under the DIP Loan Documents or this Final Order shall be voidable, avoidable, restrained, or recoverable under the Bankruptcy Code or under any applicable non-bankruptcy law (including under sections 502(d) or 548 of the Bankruptcy Code or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, or similar statute or common law), or subject to any defense, reduction, setoff, recoupment, or counterclaim.

(d) All borrowings under the DIP Facility and all use of Cash Collateral shall be in compliance with the Budget and this Final Order, and the Debtors shall not use any portion of the proceeds of the DIP Facility or any Cash Collateral, directly or indirectly, in excess of the amounts set forth in the Budget (subject to any permitted variance agreed upon by the Debtors and DIP Lender). The Budget may be updated and amended from time to time in accordance with the DIP Credit Agreement and subject to Oxford's consent and in consultation with the Committee, *provided* that the Debtors shall be required always to comply with the Budget as set forth in DIP Credit Agreement.

8. *Superpriority Claims.*

(a) Subject in all respects to the Carve-Out and further subject to the reservations set forth in paragraph 22 herein, pursuant to section 364(c)(1) of the Bankruptcy Code, all of the DIP Obligations shall constitute allowed senior administrative expense claims (the "Superpriority Claims") against the Debtors on a joint and several basis (without the need to file a proof of claim or request for payment) with priority over any and all administrative expenses, adequate protection claims, and all other claims against the Debtors, now existing or hereafter arising, of any kind whatsoever, including all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, and over any and all administrative expenses or other claims arising under sections 105, 326, 328, 330, 331, 364, 503(a), 503(b), 506(c), 507(a), 507(b), 726, 1113, or 1114 of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment, which allowed claims shall be payable from all pre- and post-petition property of each of the Debtors. Other than the Carve-Out, no priority claims are, or will be, senior to, prior to, or *pari passu* with the Superpriority Claims, or any of the DIP Obligations, or with any other claims of the DIP Lender arising hereunder or under the other DIP Loan Documents, or otherwise in connection with the DIP Facility.

9. *Carve-Out.*

(a) For purposes hereof, the "Carve-Out" means the aggregate amount of (i) all unpaid fees required to be paid in the Chapter 11 Case to the Clerk of the Bankruptcy Court and to the office of the United States Trustee under 28 U.S.C. § 1930(a)(6); (ii) the reasonable unpaid fees, costs, and disbursements of professionals retained by the Debtors and Committee in the Chapter 11 Case, including any third party CRO or similar officers working on behalf of the Debtors (the "Estate Professionals") that are provided for in the Budget and incurred prior to the delivery by the DIP Lender of a Carve-Out Trigger Notice (as defined below), and are allowed, if required, by the Bankruptcy Court (after notice and hearing) under §§ 327, 330, or 363 of the Bankruptcy Code and remain unpaid after application of any retainers being held by such professionals; and (iii) the reasonable unpaid fees, costs, and disbursements of the Estate Professionals that are incurred after the delivery of a Carve-Out Trigger Notice by the DIP Lender, that are allowed by the Bankruptcy Court (after notice and hearing) under §§ 327, 330, or 363 of the Bankruptcy Code after application of any retainers being held by such professionals, in an aggregate amount not to exceed $150,000 ("Carve-Out Trigger Funds"). For purposes hereof, "Carve-Out Trigger Notice" shall mean a written notice delivered by the DIP Lender to the Debtors' counsel, Committee counsel and the U.S. Trustee, which notice may be delivered at any time following the occurrence and during the continuation of an Event of Default (as defined in the DIP Credit Agreement), expressly stating that the Post-Default Carve-Out Cap is triggered. If the Debtor cures the Event of Default giving rise to a Carve-Out Trigger Notice, within five business (5) days of the receipt thereof, such Carve-Out Trigger Notice shall no longer be of force and effect. This Order does not cap compensation allowed or allowable under §§ 327, 330, or 363 of the Bankruptcy Code and is not a waiver of any rights or obligations under § 1129(a)(9) of the Bankruptcy Code. The Carve-Out and Carve-Out Trigger Funds shall be exclusively for the benefit of Estate Professionals whose retentions have been approved by the Court prior to appointment of a chapter 11 trustee or entry of an order converting these cases to cases under chapter 7 of the Bankruptcy Code.

(b) Immediately upon delivery by the DIP Lender of a Carve-Out Trigger Notice in accordance with this Final Order, the Carve-Out Trigger Notice shall be deemed a draw request and notice of borrowing by the Debtors for DIP Loans under the DIP Credit Agreement in an amount equal to the sum of the amounts set forth in the clauses of subparagraph (a)(i), (ii), and (iii) of this paragraph.

10. *DIP Liens*. As security for the DIP Obligations, effective and perfected upon the date of this Final Order and without the necessity of the execution by the Debtors (or recordation or other filing) of security agreements, control agreements, pledge agreements, financing statements, mortgages or other similar documents, or the possession or control by the DIP Lender of any property, the following security interests in and liens and mortgages upon all property identified in clauses (a), (b), and (c) below (the "DIP Collateral") are hereby granted to the DIP Lender, subject only to the Carve-Out in all respects (all such liens and security interests granted to the DIP Lender, pursuant to this Final Order and the DIP Loan Documents, the "DIP Liens"):

(a) Liens Priming the Liens of Oxford. Pursuant to section 364(d)(1) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected first priority, senior priming lien on, and security interest in, the Accounts Receivable and the proceeds thereof up to the amount of the aggregate of the DIP Loans and the Prepetition Bankruptcy-Related Loan.

(b) Liens Junior to Certain Existing Liens. Pursuant to section 364(c)(3) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected junior lien on, and security interest in, all tangible and intangible prepetition and post-petition property in which the Debtors have an interest (other than the property described in subparagraph (a) of this paragraph), whether now existing or hereafter acquired and all proceeds thereof, that is subject to valid, perfected, and unavoidable liens in existence immediately prior to the Petition Date, which explicitly include the Prepetition Liens.

(c) The DIP Liens shall be valid and enforceable against any trustee appointed in the Chapter 11 Cases, upon the conversion of any of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code or in any other proceedings related to any of the foregoing (such Chapter 11 Cases, chapter 7 case, or other proceedings, "Successor Cases"), and/or upon the dismissal of any of the Chapter 11 Cases. The DIP Liens shall not be subject to section 510 of the Bankruptcy Code (other than as set forth in the Intercreditor Agreement), to the "equities of the case" exception of section 552 of the Bankruptcy Code, or to section 506(c) of the Bankruptcy Code, or sections 549, 550 or 551 of the Bankruptcy Code. For the avoidance of doubt, the adequate protection liens and roll-up liens granted herein shall be subject to the Challenge Period (defined below) set forth in paragraph 22.

(d) Notwithstanding the foregoing, the DIP Lender shall not have a security interest in the following or proceeds thereof (i) any claims or causes of action against the DIP Lender or any affiliates of the DIP Lender; (ii) any claims or causes of action against the Debtors' owners (whether direct or indirect), managers, employees, affiliates, or affiliates of affiliates; or (iii) claims or causes of action arising under chapter 5 of the Bankruptcy Code.

11. *Roll-Up*. Upon entry of this Final Order, without any further action by the Debtors or any other party, and as a condition to the provision of liquidity under the DIP Facility, the Prepetition Bankruptcy-Related Loan shall automatically convert into the DIP Loans. Notwithstanding anything in paragraph 22 to the contrary, the Roll-Up and the liens granted thereto shall not be subject to Challenge.

12. *Budget*. All borrowings under the DIP Facility and all use of Cash Collateral shall

be in compliance with the budget attached to the DIP Credit Agreement, as the same may be modified from time to time by the consent of Oxford, DIP Lender, and the Debtors, and subject to consultation with and objection rights of the Committee, (the "Budget"), subject to the following (the "Permitted Variance") (a) the actual total cash receipts, determined on a cumulative rolling four-week basis, shall not be less than 90% of the projected total cumulative cash receipts as set forth in the approved Budget for the relevant period of determination, and (b) the actual total disbursements, determined on a cumulative basis on a weekly basis, shall not be greater than 110% of the projected disbursements as set forth in the approved Budget for the relevant period of determination. The Debtors shall provide a variance report to DIP Lender, Oxford, and the Committee by Friday of each week comparing the previous week's budget-to-actuals and shall provide backup information and documentation upon request. The Debtors shall not use any portion of the proceeds of the DIP Facility or any Cash Collateral, directly or indirectly, in excess of the Permitted Variance to the Budget. Any amendment to the Budget shall be filed promptly with the Court, and no such Budget shall authorize any payments on account of any prepetition claim except in accordance with the Budget or as otherwise permitted or required by an order of this Court.

13. *Event of Default*. The occurrence of any of the following events, unless waived by Oxford and DIP Lender in writing, shall constitute an event of default under this Order (an "Event of Default"): (a) any interim or final debtor order governing cash collateral is reversed, vacated, stayed, amended, supplemented, or otherwise modified in a manner which shall materially and adversely affect the rights of Oxford; (b) the Debtors' Chapter 11 cases are either dismissed or converted to cases under Chapter 7 pursuant to a final order of the Bankruptcy Court, the effect of which has not been stayed; (c) the Debtors fail to make any required adequate protection payment due to Oxford; (d) the Debtors fail to operate in accordance with the Budget (after taking into

account Permitted Variances); (e) a default or event of default occurs under the DIP Loan Documents; (f) the Debtors fail to comply with the Budget within the Permitted Variance or (g) the Debtors fail to otherwise materially comply with the terms of this Final Order.

14. *Remedies after Event of Default*. The automatic stay under section 362 of the Bankruptcy Code is vacated and modified to the extent necessary to permit the DIP Lender and/or Oxford to exercise the following rights:

(a) At the end of the Remedies Notice Period, unless and until the Bankruptcy Court has entered an order to the contrary (or has scheduled an expedited hearing as contemplated under subparagraph (d) below), or as otherwise agreed to between the Debtors, the DIP Lender, and Oxford, the Debtors' rights to use the DIP Facility or Cash Collateral shall immediately cease pending further order of the Bankruptcy Court, except as necessary to fund the Carve-Out;

(b) As to the DIP Lender, to immediately upon the occurrence and during the continuance of an Event of Default, exercise all rights and remedies against the Accounts Receivable and the proceeds thereof in accordance with the applicable DIP Loan Documents, other than those rights and remedies against the applicable Accounts Receivable and the proceeds thereof as provided in clause (d) below;

(c) As to Oxford, to immediately upon the occurrence and during the continuance of an Event of Default, exercise all rights and remedies against the Prepetition Collateral (other than against the Accounts Receivable and the proceeds thereof as provided in accordance with the applicable DIP Loan Documents or clause (d) below); and

(d) Upon the occurrence and during the continuance of an Event of Default, and the DIP Lender or Oxford may give written notice of such event of Default (the "<u>Default Notice</u>") to the Debtors (with a copy to counsel to the Debtors, counsel to Oxford, counsel to DIP Lender, the U.S. Trustee, and counsel to the Committee) (collectively, the "Notice Parties") (which notice shall be given by e-mail transmission, the automatic stay being deemed lifted for such purpose to the extent necessary). Upon delivery of a Default Notice, the Debtors and the DIP Lender consent to a hearing on an expedited basis to consider whether (i) an Event of Default has occurred; and (ii) any other appropriate relief or remedies on not less than five (5) business days' notice. During the five (5) business days following the date a Default Notice is delivered (such five (5) business day period before referred to as the "Remedies Notice Period"), the Debtors shall continue to have authority to use Cash Collateral and the DIP Facility's already advanced proceeds in accordance with the terms of this Final Order solely to pay necessary expenses set forth in the Budget to avoid immediate and irreparable harm to the Debtors' estates. During the Remedies Notice Period, the Debtors shall be permitted to (x) use the proceeds of the DIP Facility and/or the Cash Collateral first to fund the Carve-Out Account in full and, thereafter, for other expenditures in accordance with the Budget and this Order, (y) contest the occurrence and/or continuance of any Event of Default, and (z) to seek and obtain an emergency hearing before the Court. Neither the DIP Lender's or Oxford's delay or failure to exercise rights and remedies under the DIP Loan Documents or this Final Order shall constitute a waiver of the DIP Lender's rights hereunder, thereunder or otherwise, unless any such waiver is pursuant to a written instrument executed in accordance with the terms of the DIP Credit Agreement.

15. *Limitation on Charging Expense against Collateral.* Subject to and effective upon entry of this Final Order, except to the extent of the Carve-Out, no expenses of administration of the Chapter 11 Cases or any future proceeding that may result therefrom, including liquidation in bankruptcy or other proceedings under the Bankruptcy Code, shall be charged against or recovered from the DIP Collateral, as the case may be, pursuant to section 506(c) of the Bankruptcy Code or

any similar principle of law, without the prior written consent of the DIP Lender and no such consent shall be implied from any other action or inaction by the DIP Lender.

16. *Payments Free and Clear.* Subject to the reservation of rights set forth in paragraph 22 herein, any and all payments or proceeds remitted to the DIP Lender or to Oxford pursuant to the provisions of this Final Order shall be received free and clear of any claim, charge, assessment, or other liability, other than the Carve-Out.

17. *Cash Collateral.* Subject to paragraph 22, the Debtors' stipulate that all of the Debtors' cash as of the Petition Date on deposit or maintained by the Debtors in any account or accounts and any cash proceeds of the disposition of any Prepetition Collateral (as defined in the Motion) constitute proceeds of the Prepetition Collateral and, therefore, are Cash Collateral of Oxford (subject in all cases to the Intercreditor Agreement) within the meaning of section 363(a) of the Bankruptcy Code.

18. *Use of Cash Collateral.* The Debtors are hereby authorized to use the Cash Collateral for working capital and general corporate purposes, including fees, costs and expenses related to the Chapter 11 Cases and the DIP Loan Documents, capital expenditures, and to pay interest, fees, and expenses in connection with the DIP Loans, including adequate protection payments as set forth herein, in accordance with the terms and conditions of this Final Order and subject to compliance with the Budget; *provided* that (a) Oxford is granted adequate protection as set forth herein, and (b) except on the terms of this Final Order, the Debtors are not authorized to use the Cash Collateral.

19. *Adequate Protection.* Pursuant to sections 361, 363(c)(2), and 363(e) of the Bankruptcy Code and to the extent of any diminution in the value of its interest in the Prepetition Collateral, Oxford shall be entitled to receive the payments contemplated in the Budget on account

4869-1465-3177.2

of the Prepetition Loan Obligations. In addition, the Debtors hereby grant to Oxford continuing, valid, binding, enforceable, non-avoidable and automatically perfected post-petition replacement security interests in and liens on all of the Prepetition Collateral (subject to any senior liens on Accounts of the DIP Lender), with such liens having the same validity, enforceability, perfection and priority as any prepetition liens Oxford may have in the Prepetition Collateral. The foregoing shall be subject in all respects to the Carve-Out and paragraph 22 herein.

20. *Perfection of DIP Liens.*

(a) The DIP Lender is hereby authorized, but not required, to file or record financing statements, mortgages, notices of lien, or similar instruments in any jurisdiction, take possession of or control over, or take any other action in order to validate and perfect the DIP Liens granted to it hereunder, in each case, subject to the terms of the DIP Loan Documents, and the automatic stay is hereby lifted solely to permit such authorized actions. Whether or not the DIP Lender chooses to file such financing statements, mortgages, notices of lien, or similar instruments, take possession of or control over, or otherwise confirm perfection of the DIP Liens, such DIP Liens shall be deemed valid, perfected, allowed, enforceable, non-avoidable, and not subject to challenge, dispute or, other than as set forth in the Intercreditor Agreement, subordination as of the date of entry of this Final Order.

(b) A certified copy of this Final Order may, in the discretion of the DIP Lender, be filed with or recorded in filing or recording offices in addition to or in lieu of such financing statements, mortgages, notices of lien, or similar instruments, and all filing offices are hereby authorized to accept such certified copy of this Final Order for filing and recording.

(c) The Debtors shall execute and deliver to the DIP Lender, all such agreements, financing statements, instruments and other documents as the DIP Lender may reasonably request to evidence, confirm, validate, or perfect the DIP Liens.

21. *Preservation of Rights Granted Under the Order.*

(a) Unless all DIP Obligations shall have been indefeasibly paid in full in cash, it shall constitute an Event of Default and a termination of the right to use the Cash Collateral if (i) any of the Debtors seek, or if there is entered any modification of this Final Order without the prior written consent of the DIP Lender and Oxford, and no such consent shall be implied by any other action, inaction or acquiescence by the DIP Lender or Oxford, or (ii) an order is entered converting or dismissing any of the Chapter 11 Cases.

(b) If any or all of the provisions of this Final Order are hereafter reversed, modified, vacated, or stayed, such reversal, stay, modification, or vacatur shall not affect (i) the validity, priority or enforceability of any DIP Obligations incurred prior to the effective date of such reversal, stay, modification, or vacatur, or (ii) the validity, priority, or enforceability of the DIP Liens. Notwithstanding any such reversal, stay, modification, or vacatur, any use of the Cash Collateral, any DIP Obligations incurred by the Debtors to the DIP Lender prior to the effective date of such reversal, stay, modification, or vacatur shall be governed in all respects by the original provisions of this Final Order, and the DIP Lender shall be entitled to all of the rights, remedies, privileges, and benefits granted in section 364(e) of the Bankruptcy Code, this Final Order, the DIP Loan Documents (with respect to all DIP Obligations), and uses of the Cash Collateral.

(c) Except as expressly provided in this Final Order or in the DIP Loan Documents, the Carve-Out, the DIP Liens, the Superpriority Claims, and all other rights and remedies of the DIP Lender and Oxford granted by this Final Order and the DIP Loan Documents shall survive, and, subject to paragraph 22 herein, shall not be modified, impaired, or discharged by (i) the entry of an order converting any of the Chapter 11 Cases to a case under chapter 7 of the

Bankruptcy Code or dismissing any of the Chapter 11 Cases, or (ii) the entry of an order confirming a plan of reorganization in any of the Chapter 11 Cases and, pursuant to section 1141(d)(4) of the Bankruptcy Code, the Debtors have waived any discharge as to any remaining DIP Obligations. The terms and provisions of this Final Order and the DIP Loan Documents shall continue in the Chapter 11 Cases, in any Successor Cases, and the DIP Liens, the DIP Obligations, the Carve-Out, the Superpriority Claims, and the other administrative claims granted pursuant to this Final Order, and all other rights and remedies of the DIP Lender and Oxford granted by this Final Order and the DIP Loan Documents shall continue in full force and effect until all DIP Obligations are indefeasibly paid in full in cash.

22. *Effect of Stipulations on Third Parties.*

(a) The Stipulations contained in this Final Order shall be binding upon each Debtor under all circumstances.

(b) The stipulations and admissions contained in this Final Order shall be binding upon the estates and all other parties in interest unless:

(i) a party-in-interest (including the Committee, if any, or any chapter 7 or chapter 11 trustee appointed or elected for any of the Debtors) (each, a "Challenge Party") has timely filed an adversary proceeding, contested matter, or motion seeking derivative standing concerning the validity, extent, perfection, priority, or enforceability of Oxford's Prepetition Loan Obligations ("Lien Challenge Issues" and, as to a filed document initiating a proceeding, a "Lien Challenge Complaint") (subject to the limitations contained herein, including in this paragraph) by December 24, 2024 (the "Lien Challenge Deadline");

(ii) a Challenge Party has timely filed an adversary proceeding, contested matter, or motion seeking derivative standing concerning any action for preferences, fraudulent transfers or conveyances, other avoidance power claims, or any other claims, counterclaims, or causes of action, objections, contests, or defenses (other than the Lien Challenge Issues) as to Oxford or the DIP Lender (the "Non-Lien Challenge Issues" and, as to a filed document initiating a proceeding, a "Non-Lien Challenge Complaint") (subject to the limitations contained herein, including this paragraph) by the earlier of (i) sixty (60) calendar days after completion of a sale of substantially all of the Debtors' assets or (ii) twenty-one (21) days after the filing by the Debtors of disclosure statements (the "Non-Lien Challenge Deadline");

(iii) *provided* that if a chapter 11 trustee is appointed or the Chapter 11 Cases are converted to chapter 7 prior to the expiration of Lien Challenge Deadline or the Non-Lien Challenge Deadline, the chapter 11 trustee or chapter 7 trustee, as applicable shall have an additional fourteen (14) days to file a Lien Challenge Complaint or Non-Lien Challenge Complaint, as applicable, subject to any further extension by order of the Court;

(iv) *provided* further that any such period is subject to extension as may be specified by this Court for cause shown, or if Oxford or the DIP Lender, as applicable, agrees in writing to such an extension with respect to any Lien Claims Issues or Non-Lien Challenge Issues (collectively, "Challenge Issues" and any proceeding initiated by a Lien Challenge Complaint or Non-Lien Challenge Complaint being a "Challenge Proceeding"); or

(v) an order is entered and becomes final in favor of the Challenge Party sustaining any such Challenge Proceeding duly made in accordance with the foregoing.

(c) The filing of a motion for derivative standing or other similar relief by the Committee (a "Derivative Standing Motion") shall toll the Lien Challenge Deadline and Non-Lien Challenge Deadline until such time as the Court enters a final order with respect to the Derivative Standing Motion or as the Court may otherwise order.

(d) If no Challenge Proceeding is timely filed in respect of the Prepetition Loan Obligations, (x) the Prepetition Loan Obligations shall constitute allowed claims, not subject to counterclaim, setoff, subordination, defense, avoidance, impairment, disallowance, recharacterization, reduction, recoupment, recovery, for all purposes in the Chapter 11 Cases and any subsequent chapter 7 case, (y) the Prepetition Liens on the Prepetition Collateral securing the Prepetition Loan Obligations shall be deemed to have been, as of the Petition Date, and to be, legal, valid, binding, perfected and of the priority specified in herein (subject to the Intercreditor Agreement), not subject to setoff, subordination (subject to the Intercreditor Agreement), defense, avoidance, impairment, disallowance, recharacterization, reduction, recoupment, or recovery, and (z) the Prepetition Loan Obligations, Oxford, and the Prepetition Liens on the Prepetition Collateral granted to secure the Prepetition Loan Obligations shall not be subject to any other or further challenge by any party- in-interest (including the Committee), and every party-in-interest shall be enjoined from seeking to exercise the rights of the Debtors' estates, including any successor thereto (including any estate representative or a chapter 7 or 11 trustee appointed or elected for any of the Debtors).

(e) In the event of a successful Challenge Proceeding, the Court may fashion any appropriate remedy in accordance with applicable law.

23. *Limitation on Use of DIP Loans and DIP Collateral.* The Debtors shall use the DIP Loans and the Cash Collateral solely as provided in this Final Order, the Budget, and the DIP Loan Documents (including the Intercreditor Agreement). Notwithstanding anything herein or in any other order of this Court to the contrary, none of the DIP Loans, the DIP Collateral, the Cash Collateral, or the Carve-Out may be used to (a) object, contest or raise any defense to, the validity, perfection, priority, extent, or enforceability of any amount due under the DIP Loan Documents, or the liens or claims granted under this Final Order, or the DIP Loan Documents, (b) assert any claims and defenses or any other causes of action against the DIP Lender and its agents, affiliates, subsidiaries, directors, officers, representatives, attorneys, or advisors, (c) prevent, hinder, or otherwise delay the DIP Lender's assertion, enforcement or realization on the DIP Collateral in accordance with the DIP Loan Documents or this Final Order, (d) seek to modify any of the rights granted to the DIP Lender or Oxford hereunder or under the DIP Loan Documents or the Prepetition Loan Documents, in the case of each of the foregoing clauses (a) through (d), without such party's prior written consent, or (e) pay any amount on account of any claims arising prior to the Petition Date (except with respect to the roll-up of the Prepetition Bankruptcy-Related Loan) unless such payments are (i) approved by an order of this Court and (ii) permitted under the DIP Loan Documents; *provided* that notwithstanding anything to the contrary herein, no more than an aggregate of $50,000 of the Cash Collateral or proceeds of the DIP Loans may be used by the Committee to investigate the validity, enforceability, or priority of the Prepetition Loan Obligations or the liens on the Prepetition Collateral securing the Prepetition Loan Obligations or investigate any Claims and Defenses against Oxford.

24. *Milestones*. The Milestones in Schedule 11.18 of the DIP Credit Agreement are replaced in their entirety as follows:

1. On or before October 15, 2024, the Borrowers will file voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

2. On or before October 18, 2024, the Borrowers will obtain approval of the Interim DIP Order acceptable to the DIP Lender.

3. On or before November 1, 2024, the Borrowers will file the Sale and Procedures Motion acceptable to the DIP Lender.

4. On or before November 15, 2024, the Borrowers will obtain approval of a Bidding Procedures (as defined in the Sale and Procedures Motion) which shall require a sale closing no later than January 31, 2025 (except as otherwise set forth in the order approving Sale and Procedures Motion as to a non-stalking horse winning bidder).

5. On or before November 27, 2024, the Borrowers will obtain approval of the Final DIP Order acceptable to the DIP Lender.

6. On or before January 9, 2025 at 5:00 p.m. EST, the Bid Deadline shall occur.

7. On or before January 13, 2025 at 10:00 p.m. EST, the Auction (if any) shall occur.

8. On or before January 16, 2025, 2024, the Bankruptcy Court shall have entered an order approving the sale.

9. On or before January 31, 2025, the Borrowers shall have closed on the transactions authorized under the Sale Order.

25. *Professional Expenses*. The Debtors are authorized and directed to pay all reasonable and documented prepetition and postpetition fees and out-of-pocket expenses due and outstanding of the DIP Lender and Oxford relating to the DIP Loan and the bankruptcy cases. Payment of all such fees and expenses shall not be subject to allowance by the Court. Professionals for the DIP Lender and Oxford shall not be required to submit invoices in any particular format, however for any instance that such professionals seek payment of fees and expenses from the Debtors, each professional shall provide copies of its invoices (which shall not be required to contain time entries, except upon the reasonable request of the U.S. Trustee or counsel for a Committee, and in which case may be redacted or modified to the extent necessary to delete any

information subject to the attorney-client privilege, any information constituting attorney work product, or any other confidential information, and the provision of such invoices shall not constitute any waiver of the attorney-client privilege or of any of the benefits of the attorney work product doctrine) to the U.S. Trustee and counsel for the Committee contemporaneously with the delivery of such fee and expense statements to the Debtors. In the event of a dispute over the reasonableness of a request for compensation, the Court may resolve the same and the invoices subject to dispute shall not be publicly produced and shall be filed under seal pending resolution. Any objections raised by the Debtors, the U.S. Trustee or the Committee with respect to such invoices must be in writing and state with particularity the grounds therefor and must be submitted to the applicable professional within ten (10) days of the receipt of such invoice; if after ten (10) days such objection remains unresolved, it will be subject to resolution by the Court. Pending such resolution, the undisputed portion of any such invoice will be paid promptly by the Debtors. No attorney or advisor to the DIP Lender or Oxford shall be required to file an application seeking compensation for services or reimbursement of expenses with the Court. The DIP Lender's professional fees shall be limited to services provided to the DIP Lender that are directly arising out of, connected to, or related to the DIP Facility, this Final Order, and the DIP Lender's rights as a debtor in possession lender and shall not compensate the DIP Lender or any affiliates for professional services in any other capacity in these cases.

26. *Insurance*. The Debtors shall maintain insurance post-petition consistent with its prepetition practices. The Debtors shall maintain all insurance on all Prepetition Collateral and DIP Collateral as required under the Prepetition Loan Documents and DIP Loan Documents. To the extent Oxford is listed as loss payee under the Debtors' insurance policies, the DIP Lender is also deemed to be the loss payee under the Debtors' insurance policies and shall act in that capacity

and subject to the terms of the DIP Loan Documents, distribute any proceeds recovered or received in respect of any such insurance policies, first, to the payment of the Prepetition Loan Obligations until paid in full, and second, to the payment of the DIP Obligations, subject to and in accordance with the Intercreditor Agreement.

27. *No Marshaling/Applications of Proceeds*. Oxford shall not be subject to the equitable doctrine of "marshaling" or any other similar doctrine with respect to any of the Prepetition Collateral.

28. *Section 552(b)*. Oxford and DIP Lender shall be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and the "equities of the case" exception under section 552(b) of the Bankruptcy Code shall not apply to Oxford or DIP Lender with respect to proceeds, product, offspring or profits of any of the Prepetition Collateral.

29. *Order Governs.* In the event of any inconsistency between the provisions of this Final Order and the DIP Loan Documents, the provisions of this Final Order shall govern.

30. *Binding Effect; Successors and Assigns.* The terms and provisions of this Final Order shall be binding upon all parties-in-interest in the Chapter 11 Cases, including the DIP Lender, Oxford, and the Debtors and their respective successors and assigns, including any chapter 7 or chapter 11 trustee hereinafter appointed or elected for any of the Debtors, an examiner with expanded powers appointed pursuant to section 1104 of the Bankruptcy Code, or any other fiduciary appointed as a legal representative of any of the Debtors or with respect to the property of the estate of any of the Debtors, and shall inure to the benefit of the DIP Lender, Oxford, and the Debtors and their respective successors and assigns.

31. *Limitation of Liability.* In determining to make any loan under the DIP Credit Agreement, permitting the use of Cash Collateral, or in exercising any rights or remedies as and

when permitted pursuant to this Final Order or the DIP Loan Documents, nothing in this Final Order shall be construed to impose on the DIP Lender or Oxford any liability thereon by reason of being 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, 29 U.S.C. §§ 9601 *et seq.* as amended, or any similar federal or state statute). Furthermore, nothing in this Final Order or in the DIP Loan Documents shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Lender or Oxford of any liability for any claims arising from the prepetition or post-petition activities of any of the Debtors.

32. *Intercreditor Agreement.* The rights of the DIP Lender and Oxford shall at all times remain subject to the Intercreditor Agreement.

33. *Proofs of Claim*. The DIP Lender shall not be required to file proofs of claim in any of the Chapter 11 Cases or any Successor Cases for any claim allowed herein, and Oxford shall not be required to file proofs of claim or request payment of an administrative expense in any of the Chapter 11 Cases or any Successor Cases for any claim in respect of the Prepetition Loan Obligations. Any order entered by the Court in relation to the establishment of a bar date for any claim (including administrative claims) in any of the Chapter 11 Cases or any Successor Cases shall not apply to the DIP Lender or Oxford.

34. *Credit Bid.* Subject to Section 363(k) of the Bankruptcy Code, in connection with any sale process authorized by the Court, Oxford (either directly or through an acquisition vehicle) may credit bid up to the full amount of the outstanding Prepetition Loan Obligations, in each case including any accrued and unpaid interest and expenses (a “Credit Bid”) in any sale of any

Prepetition Collateral, whether such sale is effectuated through section 363 or section 1129 of the Bankruptcy Code, by a Chapter 7 trustee under section 725 of the Bankruptcy Code, or otherwise. Oxford shall be considered a "Qualified Bidder" with respect to its rights to acquire all or any of the Prepetition Collateral by Credit Bid. To the extent the Prepetition Collateral that is subject to sale includes Accounts subject to any senior liens held by DIP Lender, Oxford's Credit Bid will be subject to the provision of consideration sufficient to pay in full in cash any senior liens of DIP Lender.

35. *No Waiver*. The failure of the DIP Lender or Oxford to seek relief or otherwise exercise their rights and remedies under this Final Order, the DIP Loan Documents, or the Prepetition Loan Documents, or otherwise, as applicable, shall not constitute a waiver of any of the DIP Lenders' or Oxford's rights hereunder, thereunder, or otherwise. Except as expressly provided herein, the entry of this Final Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, or otherwise impair any of the rights, claims, privileges, objections, defenses or remedies of the DIP Lender or Oxford under the Bankruptcy Code or under non-bankruptcy law against any other person or entity in any court.

36. *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, third party, or incidental beneficiary.

37. *Effectiveness*. This Final Order shall constitute findings of fact and conclusions of law and shall take effect immediately upon entry hereof, and there shall be no stay of effectiveness of this Final Order.

Dated: November 18, 2024
Pittsburgh, Pennsylvania

jsf

The Honorable Jeffery A. Deller
United States Bankruptcy Judge

4869-1465-3177.2