



9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) and rule 4001-2 of the Local Rules of Bankruptcy Procedure for the Northern District of New York (the “**Bankruptcy Local Rules**”) for the United States Bankruptcy Court for the Northern District of New York (this “**Court**”) seeking entry of a final order (the “**Final Order**”)<sup>2</sup> granting the following relief to among other things:

1. authorization and approval for the Debtor to obtain up to the lesser of the (a) the Borrowing Base (as defined in the DIP Credit Agreement) and (b) \$13.0 million in principal of post-petition revolving credit debtor-in-possession financing and other financial accommodations (the “**DIP Facility**”), and the revolving loans made under such facility, the “**DIP Loans**”), pursuant to and in accordance with the terms and conditions set forth in that certain *Super-priority Senior Secured Debtor-In-Possession Revolving Credit and Security Agreement* (as it may be amended, modified, supplemented, extended, restated or replaced from time to time, the “**DIP Credit Agreement**”) substantially in the form filed with the DIP Motion and incorporated by reference in the First Interim Order as Exhibit 2, by and among the Debtor, as borrower, and KeyBank National Association (“**Lender**”), as lender;

2. authorization for the Debtor to use the proceeds of the DIP Facility, DIP Collateral and Pre-Petition Collateral (each as defined herein) (collectively, the “**Revolving Credit Cash Collateral**”), in accordance with the terms of the DIP Orders and the DIP Loan Documents (as defined herein), and as limited by the Approved Budget (as defined herein), for, *inter alia*: (a) general operating, corporate, and working capital purposes of the Debtor in the ordinary course of business; (b) the costs and expenses of administering the Chapter 11 Case, including funding the Carve Out and the Carve Out Reserve Accounts (each as defined in Section V herein); (c) reasonable and documented costs, fees, and other expenses of Lender; (d) to make Adequate Protection Payments (as defined herein); (e) to make any other payments expressly authorized by the DIP Orders and the Approved Budget (f) applying Revolving Credit Cash Collateral collected following the Petition Date to the Pre-Petition Obligations (as defined herein) (“**Roll-Up**”) and the DIP Obligations outstanding in accordance with the terms of the DIP Loan Documents and the DIP Orders, in such order and manner determined by the Lender in its sole and absolute discretion;

3. approval of, authorization and direction for Debtor to (a) enter into, execute and perform under (i) the DIP Credit Agreement and (ii) all security agreements, pledge agreements, notes, guarantees, mortgages, deeds of trust, control agreements, Uniform Commercial Code financing statements, certificates, reports and other agreements, documents and instruments either or both executed and/or delivered with or to the Lender in connection with or related thereto (collectively, as amended, modified, supplemented, extended, restated or replaced from time to time, in accordance with their respective terms, the “**DIP Loan Documents**”), and (b) take and

---

<sup>2</sup> The Court previously entered interim orders with respect to the DIP Motion on December 13, 2024 (the “**First Interim Order**”) and December 20, 2024, (the “**Second Interim Order**” and together with the First Interim Order the “**Interim Orders**” and the Interim Orders together with the Final Order the “**DIP Orders**”).

perform all other acts and steps as may be required or contemplated by or in connection with the DIP Loan Documents and the DIP Orders;

4. granting to (a) the Lender, priming, valid, perfected and enforceable liens (as defined in Bankruptcy Code section 101(37)) in and upon all of the DIP Collateral to secure all existing and future obligations and liabilities of every kind or nature (including without limitation, principal of, and accrued interest on, amounts advanced to the Debtor under the DIP Facility, bank products, reimbursement obligations, and fees in respect of Letters of Credit (as defined in the DIP Credit Agreement), and all other fees, and indemnity obligations, reimbursement obligations, any other Obligations (as defined in the DIP Credit Agreement) under or in connection with the DIP Loan Documents, whether due or to become due, absolute or contingent, (collectively, the “**DIP Obligations**”) as provided by and more fully defined in, the DIP Loan Documents;

5. granting to the Lender allowed superpriority administrative expense claim status for the DIP Obligations, pursuant to Bankruptcy Code section 364(c)(1) and 507(b), subject to the terms of the DIP Orders;

6. authorizing the Debtor’s use, in accordance with the terms of the DIP Orders and DIP Loan Documents, and as limited by the Approved Budget, of all Revolving Credit Cash Collateral (as defined herein) and DIP Loans;

7. granting adequate protection, including without limitation, Adequate Protection Liens, Adequate Protection Claims, and Adequate Protection Payments (each as defined herein and collectively, the “**Adequate Protection Obligations**”) to (a) Lender under that certain Credit Agreement dated as of December 8, 2009 (as amended, restated, amended and restated, modified, supplemented, or extended from time to time, in accordance with its terms, the “**Pre-Petition Credit Agreement**”) by and among the Borrower and the Lender, and all security agreements, pledge agreements, notes, mortgages, guarantees, control agreements, collateral access agreements, and related agreements and documents (collectively, with the Pre-Petition Credit Agreement, as amended, modified, supplemented, extended, restated, amended and restated, or replaced from time to time, in accordance with their respective terms, the “**Pre-Petition Loan Documents**”);

8. approving the application of collections and proceeds of all of the Revolving Credit Cash Collateral and DIP Collateral and the payment of certain Pre-Petition Obligations and DIP Obligations, in each case, in the manner and on the terms set forth in the DIP Credit Agreement and the DIP Orders;

9. waiver of: (a) the ability of the Debtor and its bankruptcy estate (as defined under Bankruptcy Code section 541, the “**Estate**”) to surcharge against the DIP Collateral with respect to the Lender and the Pre-Petition Collateral with respect to the Lender pursuant to Bankruptcy Code section 506(c); (b) the applicability of the “equities of the case” exception under Bankruptcy Code section 552(b) with respect to the proceeds, products, offspring or profits of the DIP Collateral and Pre-Petition Collateral;

10. waiver of the equitable doctrine of “marshaling” and any similar equitable doctrine with respect to (a) any of the DIP Collateral (as defined herein) for the benefit of any party other

than the Lender, and (b) any of the Pre-Petition Collateral (as defined herein), for the benefit of any party other than the Lender;

11. modifying the automatic stay imposed by Bankruptcy Code section 362 to the extent hereinafter set forth and waiving the fourteen (14) day stay provisions of Bankruptcy Rule 4001(a)(3); and

12. waiving the 21-day provision of Bankruptcy Rule 6003(b), the notice requirements of Bankruptcy Rule 6004(a), waiving any applicable stay (including under Bankruptcy Rule 6004) and providing for immediate effectiveness of this Interim Order.

Notice of the DIP Motion, the relief requested therein, and the Final Hearing (as defined herein) (“**Notice**”) having been served by the Debtor in accordance with Bankruptcy Rule 4001(c) on: (i) the United States Trustee for the Northern District of New York (“**U.S. Trustee**”); (ii) the holders of the twenty (20) largest unsecured claims against the Debtor’s Estate; (iii) the Lender and counsel thereto; (iv) the Internal Revenue Service; (v) other governmental agencies having a regulatory or statutory interest in this case; (vi) all parties known to the Debtor that hold any liens or security interests in the Debtor’s assets, including those parties that have filed UCC-1 financing statements against the Debtor, or that, to the Debtor’s knowledge, have asserted any liens on any of the Debtor’s assets; (vii) all landlords and warehousemen of the Debtor; (viii) all creditors known to the Debtor to be holding a judgment against the Debtor; and (ix) any other parties known to the Debtor to be claiming an interest in the Pre-Petition Collateral (defined below) (collectively, the “**Noticed Parties**”). In light of the nature of the relief requested, no other or further notice is required.

A final hearing on the DIP Motion having been held by this Court and concluded (the “**Final Hearing**” and together with the prior hearings on the DIP Motion the “**DIP Hearings**”); this Court having considered the relief requested in the DIP Motion, the First Day Declaration,<sup>3</sup>

---

<sup>3</sup> The term “**First Day Declaration**” means that certain *Declaration of John Shiesley in Support of Chapter 11 Petitions and First Day Pleadings*.

and the arguments of counsel made at the DIP Hearings; all objections and reservations of rights, if any, to the relief requested in the DIP Motion having been withdrawn, resolved, or overruled by this Court; it appearing that approval of the relief requested in the DIP Motion is fair and reasonable and in the best interests of the Debtor and its Estate, and is necessary to avoid immediate and irreparable harm to the Debtor and its Estate; it appearing that the Debtor's entry into and performance under the DIP Loan Documents and the other transactions contemplated by the DIP Orders is a sound and prudent exercise of the Debtor's business judgment; and after due deliberation and consideration, and good and sufficient cause appearing therefor:

**BASED UPON THE RECORD ESTABLISHED AT THE DIP HEARINGS, THE COURT MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:<sup>4</sup>**

A. Disposition. The relief requested in the DIP Motion is **GRANTED** to the extent set forth herein in accordance with the terms of this Final Order. Any objections to the DIP Motion with respect to the entry of the DIP Orders that have not been withdrawn, waived, or settled, and all reservations of rights included therein, are hereby denied and overruled. This Final Order shall become effective immediately upon its entry and any applicable stay (including under Bankruptcy Rule 6004) is waived to permit such effectiveness.

B. Petition Date. On December 12, 2024 (the "**Petition Date**"), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

C. Debtor in Possession. The Debtor continues to operate its business and manage its properties as a debtor-in-possession pursuant to Bankruptcy Code sections 1107(a) and 1108. No

---

<sup>4</sup> The findings and conclusions set forth herein constitute this 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.

trustee or examiner has been appointed in the Chapter 11 Case. An official committee of unsecured creditors (a “Creditors’ Committee”) has been appointed in this Chapter 11 Case.

D. Jurisdiction and Venue. The Court has jurisdiction of this Chapter 11 Case, the DIP Motion, the DIP Orders and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157(b) and 1334. This Court’s consideration of the DIP Motion constitutes a “core” proceeding as defined in 28 U.S.C. §§ 157(b)(2)(A), (D) and (M). This Court may enter this Final Order consistent with Article III of the United States Constitution. Venue of the Chapter 11 Case and the DIP Motion in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory and procedural bases for the relief sought in the DIP Motion and granted in this Final Order are Bankruptcy Code sections 105, 361, 362, 363, 364, 503, 506, 507, and 552, Bankruptcy Rules 2002, 4001, 6003, 6004, and 9014.

E. Notice. Upon the record presented to this Court at the DIP Hearings, and under the circumstances set forth therein and in the DIP Motion, the First Day Declaration, notice of the DIP Motion and the relief requested thereby and granted in this Final Order has been provided in accordance with Bankruptcy Rules 2002, 4001(b) and 4001(c)(1), which notice was appropriate under the circumstances and sufficient for entry of this Final Order. No other or further notice of the DIP Motion is required for entry of this Final Order.

F. Debtor’s Acknowledgement and Agreement. Without prejudice to the rights of all parties-in-interest other than the Debtor, but subject to the limitations contained in Section VIII below, the Debtor admits, stipulates, acknowledges, and agrees (the “Debtor’s Stipulations”) that:

(1) *Pre-Petition Loan Documents.* Prior to the commencement of the Chapter 11 Case, the Lender made loans and advances, and provided other financial accommodations, pursuant to the Pre-Petition Loan Documents to the Borrower. The Pre-Petition Obligations (as

defined herein) were automatically accelerated on the Petition Date as a result of the commencement of the Chapter 11 Case in accordance with the terms of the Pre-Petition Loan Documents, and all commitments of the Lender as the Lender under the Pre-Petition Loan Documents are terminated.

(2) *Pre-Petition Obligations.*

(a) As of the Petition Date, the Borrower was justly and lawfully indebted and liable to the Lender as the Pre-Petition Lender, without defense, counterclaim or offset of any kind, in the aggregate principal amount of not less than \$10,279,063.41, including, without limitation, (i) \$8,626,491.41 in outstanding principal amount of Loans (as defined in the Pre-Petition Credit Agreement; referred to herein as the “**Pre-Petition Revolving Loans**”), (ii) outstanding Letters of Credit in the aggregate amount of \$1,652,572.00, and (iii) all accrued unpaid interest, any fees, costs, expenses and disbursements (including attorneys’ fees, and related expenses and disbursements), indemnification obligations, hedging obligations, guarantee obligations, and other charges, amounts and costs of whatever nature owing, whether or not contingent, whenever arising, accrued, accruing, due, owing, or chargeable in respect of any of the Borrower’s obligations pursuant to, or secured by, the Pre-Petition Loan Documents, including all Obligations (as defined in the Pre-Petition Credit Agreement) (collectively, the “**Pre-Petition Obligations**”).

(b) The Pre-Petition Obligations constitute allowed, legal, valid, binding, enforceable, and non-avoidable obligations of Debtor, and are not subject to any offset, deduction, defense, counterclaim, avoidance, recovery, recharacterization, or subordination pursuant to the Bankruptcy Code or any other applicable law, and the Debtor does not possess, and shall not assert, any claim, counterclaim, setoff, deduction, or defense of any kind, nature, or

description that would in any way impair, reduce, or affect the validity, enforceability, and non-avoidability of any of the Pre-Petition Obligations.

(3) *Pre-Petition Collateral (for Pre-Petition Obligations).*

(a) As of the Petition Date, the Pre-Petition Obligations were secured pursuant to the Pre-Petition Loan Documents by valid, binding, perfected, enforceable, and non-avoidable security interests and liens (“**Pre-Petition Revolving Liens**”) granted by the Debtor to the Lender upon the “Collateral” (as defined in the Pre-Petition Credit Agreement) in existence as of the Petition Date (hereafter, the “**Pre-Petition Collateral**”).

(b) The Lender has valid, binding, and perfected non-avoidable security interests in and first priority liens on all of the Pre-Petition Collateral, including all amounts on deposit in all of the Borrower’s banking, checking, and other deposit accounts with the Lender, whether as original collateral or as proceeds of other Pre-Petition Collateral; provided, however, that the Lender has valid, binding, and perfected non-avoidable security interests in and second priority liens on the specific assets of the Debtor in which the parties identified on Exhibit 2 hold valid, enforceable, and unavoidable first priority liens, if any.

(c) Debtor does not possess, and will not assert, any claim, counterclaim, setoff, deduction, or defense of any kind, nature, or description that would in any way impair, reduce, or affect the validity, enforceability, and non-avoidability of any of the Lender’s liens, claims, or security interests in the Pre-Petition Collateral, which liens and security interests are not subject to subordination or avoidance pursuant to the Bankruptcy Code or any other applicable law.

(d) Subject to the Committee’s review and Challenge rights under paragraph 20 of this Final Order, The New York Urban Development Corporation d/b/a Empire State

Development (“ESD”) failed to perfect a lien on the Subordinated Creditor Collateral (as defined in that certain Intercreditor Agreement dated as of December 8, 2009 between the Debtor, ESD and Lender (the “Intercreditor Agreement”)) prior to the Petition Date and, consequently, does not have a valid, enforceable, or properly perfected lien on the Subordinated Creditor Collateral, nor is ESD entitled to receive any payment, recovery, or Distribution (as defined in the Intercreditor Agreement) from sale proceeds of the Subordinated Creditor Collateral or any of the Subordinated Creditor Collateral itself under the terms of the Intercreditor Agreement, applicable law, or otherwise, except and only to the extent the Subordinated Indebtedness is allowed as a general unsecured claim and distributions are made on a *pro rata* basis to holders of allowed general unsecured claims in this Chapter 11 Case or any Successor Case (as defined below) after payment in full of all other higher priority claims under the Bankruptcy Code.

G. Adequate Protection.

(1) Based on the DIP Motion, the First Day Declaration, and the record presented to this Court at the DIP Hearings, the terms of the adequate protection granted to the Lender as provided in this Final Order are fair and reasonable under the circumstances, reflect the Debtor’s exercise of prudent business judgment consistent with its fiduciary duties, and provide the Debtor with reasonably equivalent value and fair consideration.

(2) *Adequate Protection Obligations.* Debtor acknowledges and agrees that the Lender is entitled to and being provided with adequate protection (including the Adequate Protection Obligations) with respect to the aggregate diminution in value (“**Diminution in Value**”) of the Lender’s interests in the Pre-Petition Collateral for any reason for which adequate protection may be granted under the Bankruptcy Code, including as a result of the: (a) provisions of this Final Order granting either or both first priority and priming liens on the Pre-Petition Collateral to the

Lender, with respect to the DIP Facility; (b) use of the Revolving Credit Cash Collateral; (c) use, sale, lease, decrease, or depreciation of the Pre-Petition Collateral; (d) subordination to the Carve Out solely as provided for herein; and (e) the imposition of the automatic stay under Bankruptcy Code section 362(a) or otherwise pursuant to Bankruptcy Code sections 361(a), 363(c), 364(c), and 364(d)(1). Pursuant to Bankruptcy Code sections 361, 363 and 507(b), as adequate protection for any Diminution in Value, the Debtor has agreed to provide the Lender with the Adequate Protection Liens, the Adequate Protection Claim and the Adequate Protection Payments (each as defined herein), which Adequate Protection Payments shall be payable from the proceeds of DIP Loans and the proceeds of the Revolving Credit Cash Collateral.

(3) In exchange for such adequate protection (including the Adequate Protection Obligations), the Lender has agreed to the Debtor's use of the Revolving Credit Cash Collateral on the terms set forth in this Final Order and the DIP Credit Agreement.

(4) *Necessity for Adequate Protection.* The adequate protection being provided pursuant to this Final Order is authorized by the Bankruptcy Code, is consistent with the Debtor's need for the DIP Facility and will facilitate the Debtor's ability to continue its business operations.

H. No Control. Lender does not now control (nor has Lender in the past controlled) the Debtor or its properties or operations, have authority to determine the manner in which the Debtor's operations are conducted or are control persons or insiders of the Debtor by virtue of any of the actions taken with respect to, in connection with, related to or arising from the Pre-Petition Loan Documents or otherwise.

I. Findings Regarding the DIP Facility and Use of Revolving Credit Cash Collateral.

(1) *Request for DIP Financing.* Debtor has requested that the Lender extend loans, advances, and other financial accommodations and the Lender is only willing to do so as

more particularly described, and subject to the terms and conditions set forth, in this Final Order and the DIP Loan Documents.

(2) *Need for DIP Financing.* As set forth in the First Day Declaration, the Debtor does not have sufficient available sources of working capital to fund its ongoing operations or the orderly sale/liquidation of the Debtor's business in the ordinary course without the DIP Facility and the ability to use Revolving Credit Cash Collateral, or to fund this Chapter 11 Case without the DIP Facility, all on the terms set forth in the DIP Loan Documents and this Final Order. Debtor's ability to maintain business relationships with its vendors, suppliers, and customers, to pay its employees, and to otherwise fund its operations is essential to the viability of the Debtor and this Chapter 11 Case. The ability of the Debtor to obtain sufficient working capital and liquidity through the proposed DIP Facility and the use of Revolving Credit Cash Collateral on the terms set forth in the DIP Loan Documents and this Final Order is vital to the preservation and maximization of the going concern value of the Debtor's currently operating business pending sale(s) of such assets. Accordingly, the Debtor has an immediate need to obtain funds from the DIP Facility and authorization to use Revolving Credit Cash Collateral for the purposes and on the terms and subject to the limitations set forth herein and in the DIP Loan Documents, including the Approved Budget (defined herein), in order to, among other things, (a) maintain business relationships; (b) permit the continued operation of its business; (c) make Adequate Protection Payments; (d) pay the costs of administration of this Chapter 11 Case and satisfy its other working capital and general corporate purposes; (e) minimize disruption of its business operations; and (f) manage and preserve the assets of the Debtor's Estate in order to maximize the value of such assets and the recoveries to creditors of the Estate.

(3) *No Credit Available on More Favorable Terms.* As stated in the First Day Declaration, the Debtor is unable to procure financing or other financial accommodations on more favorable terms from sources other than from the Lender under the DIP Loan Documents and this Final Order, and is unable to obtain satisfactory unsecured credit allowable under Bankruptcy Code section 364(a) or 364(b) and 503(b)(1) as an administrative expense. Debtor also is unable to obtain secured credit for the purposes set forth in the DIP Loan Documents and the consensual use of Revolving Credit Cash Collateral on more favorable terms without the grant of liens (including priming liens) on all or substantially all of the Debtor's assets pursuant to Bankruptcy Code sections 364(c) and (d), subject to the Carve Out solely as provided for herein. In the Debtor's business judgment, the Debtor cannot procure the necessary financing on terms more favorable than the financing offered by the Lender pursuant to the DIP Loan Documents and this Final Order.

(4) *Budget.* Based upon the record presented to this Court by the Debtor, (a) the Debtor prepared and delivered the Initial Budget (as defined in the DIP Credit Agreement and attached to the First Interim Order). Attached hereto as Exhibit 1 is the current Approved Budget (the Initial Budget and each subsequent budget approved in writing by the Lender in its sole discretion shall constitute without duplication, the "**Approved Budget**"), (b) the Approved Budget was prepared by the Debtor, with the assistance of its professional advisors and management, and (c) the Approved Budget (as the same may be amended or extended solely as expressly provided for herein) sets forth, among other things, the projected cash receipts and disbursements for the periods covered thereby. The Initial Budget and any supplemental Approved Budget may be modified, amended, and updated from time to time in accordance with the DIP Credit Agreement, and once approved in writing by the Lender in its sole discretion pursuant to the DIP Credit

Agreement, shall supplement and replace the Initial Budget or the then Approved Budget. Debtor believes in good faith that the Approved Budget, subject to such variances as permitted in the DIP Credit Agreement is achievable and will allow the Debtor to operate in chapter 11 without the accrual of unpaid post-petition administrative expenses during the term of the Approved Budget. Lender is relying upon the Debtor's compliance with the Approved Budget, subject to such variances, in determining to consent to the use of Revolving Credit Cash Collateral solely as contemplated in this Final Order and to enter into (or as the case may be, consent to) the DIP Facility as provided for in this Final Order.

(5) *Business Judgment and Good Faith Pursuant to Section 364(e) and Section 363(m).* Based on the record before this Court, including the Debtor's Stipulations, (a) the Debtor and the Lender have negotiated at arms' length and in good faith regarding the terms of the DIP Loan Documents, the DIP Facility, and the Debtor's use of the Revolving Credit Cash Collateral, respectively, all subject to the terms of this Final Order and (b) the terms of the DIP Loan Documents, and the DIP Facility are fair and reasonable, reflect the Debtor's exercise of prudent business judgment consistent with its fiduciary duties, and constitute reasonably equivalent value and fair consideration. Any credit extended under the terms of the DIP Orders shall be deemed to have been extended in "good faith" (as that term is used in Bankruptcy Code sections 364(e) and 363(m)) by the Lender.

(6) *No Objection.* Lender has no objection to the use of Revolving Credit Cash Collateral on the terms and conditions set forth in this Final Order. Nothing in this Final Order, including, without limitation, any of the provisions herein with respect to adequate protection, shall constitute, or be deemed to constitute, a finding that the interests of the Lender are or will be

adequately protected with respect to any non-consensual use of Pre-Petition Collateral, or any other Revolving Credit Cash Collateral.

(7) *No Responsible Person.* Debtor stipulates that in making the decision to finance the Debtor's continued business operations through the DIP Facility, to permit the Debtor to use Revolving Credit Cash Collateral for the limited purposes expressly set forth herein, in administering any loans, in approving the Initial Budget, or in taking any actions permitted by this Final Order or the DIP Loan Documents, the Lender shall not be deemed to be in control of the operations of the Debtor or to be acting as a "responsible person," "owner or operator," or part of any "control group" with respect to any of the Debtor or the management of the Debtor or owe any fiduciary duty to the Debtor, its creditors, shareholders, or Estate.

(8) *Good Cause.* Good and sufficient cause has been shown for the entry of this Final Order and for authorizing the Debtor to obtain financing pursuant to the DIP Facility and to use the Revolving Credit Cash Collateral of the Lender (solely to the extent consistent with the Approved Budget) and to authorize the provision of adequate protection. The relief requested in the DIP Motion is necessary, essential, and appropriate, and is in the best interest of and will benefit the Debtor and its Estate, as its implementation will, among other things, provide the Debtor with the necessary liquidity to: (a) minimize disruption to the Debtor's efforts for the continued operations of their business; (b) preserve and maximize the value of the Debtor's Estate; and (c) avoid immediate and irreparable harm to the Debtor, its business, employees, and assets.

(9) *Immediate Entry.* Good and sufficient cause exists for immediate entry of this Final Order pursuant to Bankruptcy Rules 4001(b)(2) and (c)(2), 6003(b), and, to the extent applicable, 6004(h). Absent the grant by this Court of the relief sought by the DIP Motion, the Debtor's Estate will be immediately and irreparably harmed. Consummation of the DIP Facility

and the use of Revolving Credit Cash Collateral, in accordance with the terms of this Final Order, the Approved Budget and the DIP Loan Documents, are in the best interests of the Debtor's Estate and are consistent with the Debtor's exercise of its fiduciary duties.

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

**IT IS HEREBY ORDERED THAT:**

**I. Authorization and Terms of Financing.**

1. DIP Motion Granted. The relief sought in the DIP Motion is granted, the financing described herein is authorized and approved, and the use of Revolving Credit Cash Collateral is authorized, in each case subject to the terms and conditions set forth in the DIP Loan Documents, the Approved Budget and this Final Order. All objections to this Final Order to the extent not withdrawn, waived, settled, or resolved are hereby denied and overruled. This Final Order shall become effective immediately upon its entry.

2. Authorization to Borrow and Use Loan Proceeds. To prevent immediate and irreparable harm to the Debtor's Estate, the Debtor is hereby expressly authorized and empowered to immediately borrow, and obtain, DIP Loans under the DIP Facility and to honor its obligations with respect to the Letters of Credit issued under the Pre-Petition Loan Documents and the Debtor is hereby authorized and empowered to incur all other indebtedness and obligations owing to the Lender on the terms and subject to the conditions and limitations set forth in the DIP Loan Documents and this Final Order up to the maximum aggregate amount for any week in the Approved Budget (with any variances permitted thereto under the terms and conditions of the DIP Credit Agreement) and the Letters of Credit through and including the Termination Date (as defined in the DIP Credit Agreement).

3. Financing Documents.

(a) *Authorization.* Debtor is hereby authorized to execute, deliver, enter into and, as applicable, perform all of its obligations under the DIP Loan Documents. Debtor is hereby authorized to borrow money pursuant to the DIP Credit Agreement, which shall be used for all limited purposes expressly permitted hereunder (and subject to and in accordance with the Approved Budget). Upon entry of this Final Order, in furtherance of the foregoing and without further approval of this Court, the Debtor is hereby authorized and empowered, and the automatic stay imposed by Bankruptcy Code section 362 is hereby lifted to the extent necessary, to: (i) enter into, execute, deliver, perform, and comply with all of the terms, conditions, and covenants of the DIP Loan Documents; (ii) execute and deliver all certificates, reports, statements, and other agreements and documents required or contemplated by the DIP Orders or the DIP Loan Documents (including, without limitation, documents required for the Debtor's performance of its obligations under this Final Order and the DIP Loan Documents and the creation and perfection of liens granted or contemplated herein or in any other document); and (iii) pay all obligations incurred under the DIP Loan Documents in accordance herewith (whether principal, interest, fees, costs, expenses, indemnities, or other amounts described in the DIP Loan Documents as such amounts become earned, due, and payable and without need to obtain further Court approval, including, without limitation any and all, closing fees, commitment fees, letter of credit fees, appraisal fees, liquidator fees, prepayment premiums, and the fees and disbursements of the Lender's attorneys, advisors, accountants, and other consultants, whether or not such fees arose before or after the Petition Date), and perform all other undertakings and acts required or contemplated by, the DIP Orders or the DIP Loan Documents.

(b) *Approval of Financing Documents.* The DIP Loan Documents (and all certificates, reports, statements, and other agreements and documents) are approved.

(c) *Amendment of DIP Loan Documents.* The Debtor and the Lender are hereby authorized to approve and implement, in accordance with the terms of the DIP Loan Documents, any modification of the DIP Loan Documents; *provided, however,* that any material modification or amendment to the DIP Loan Documents that is materially adverse to the interests of the Debtor or its Estate shall be subject to providing notice of such material modification or amendment to counsel to the Creditors' Committee and the U.S. Trustee, each of which shall have three (3) business days from the date of such notice within which to object in writing to such modification or amendment unless the Creditors' Committee or the U.S. Trustee agrees in writing to a shorter period. If no timely objection is raised by the Creditors' Committee or the U.S. Trustee to any material modification or amendment to the DIP Loan Documents, then such modification or amendment shall become effective upon the expiration of the aforementioned notice period. If a timely objection is interposed, the Court shall resolve such objection prior to such modification or amendment becoming effective.

(d) *Application of DIP Facility Proceeds.* The advances under the DIP Facility and Revolving Credit Cash Collateral shall be used in each case solely in a manner consistent with the terms and conditions of the DIP Loan Documents and the DIP Orders, and in accordance with and as may be limited by the Approved Budget (subject to any variances thereto permitted under the terms and conditions of the DIP Credit Agreement), solely as follows:

(i) to pay fees, costs, and expenses as provided in the DIP Loan Documents, including amounts incurred in connection with the preparation, negotiation, execution and delivery of the DIP Loan Documents;

(ii) for general operating and working capital purposes, for the payment of fees, expenses, and costs incurred in connection with the Chapter 11 Case, and other proper corporate purposes of the Debtor not otherwise prohibited by the terms hereof for working capital, and other lawful corporate purposes of the Debtor;

(iii) for making other payments as expressly provided in the DIP Orders and the Approved Budget; and

(v) to fund the Carve Out Reserve Accounts on the terms described herein.

(e) *Conditions Precedent.* Lender shall have no obligation to make any loan or advance (or, issue any new letter of credit) under the DIP Credit Agreement unless the conditions precedent to such loan or extension of credit under the DIP Credit Agreement have been satisfied in full or waived in accordance with the DIP Credit Agreement.

(f) *Budget Maintenance.* Debtor's proposed budget shall become the "Approved Budget" upon written approval of such budget by the Lender in its sole discretion, and the Debtor shall update the Approved Budget each week unless otherwise agreed to by the Lender, subject to written approval of the Lender. A copy of any updated Approved Budget shall be filed with the Court within one (1) business day after it has been approved in writing by the Lender.

4. Payments and Application of Payments. Debtor is authorized to make all payments and transfers of the Estate's property to the Lender as provided, permitted, or required under the DIP Loan Documents and the DIP Orders, which payments, proceeds, and other amounts shall be applied either to the Pre-Petition Obligations or the DIP Obligations in such order and manner determined by the Lender's sole and absolute discretion, including to effectuate the Roll-Up. The DIP Loan Documents shall constitute legal, valid, binding, and non-avoidable obligations of the

Debtor, enforceable in accordance with the terms of the DIP Orders and the other DIP Loan Documents, against the Debtor, or in any case under chapter 7 of the Bankruptcy Code upon the conversion of the Chapter 11 Case or any other chapter of the Bankruptcy Code, or in any other proceedings superseding or related to any of the foregoing (collectively, the “**Successor Cases**”). No obligation, payment, transfer, or grant of security hereunder or under the DIP Loan Documents to the Lender shall be stayed, restrained, voidable, avoidable, or recoverable under the Bankruptcy Code or under applicable law (including, without limitation, under Bankruptcy Code sections 502(d), 544, and 547 to 550 or under any applicable state Uniform Voidable Transactions Act, Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, or similar statute or common law), or subject to any defense, avoidance, reduction, setoff, recoupment, offset, recharacterization, subordination (whether equitable, contractual, or otherwise), disallowance, impairment, claim, counterclaim, cross-claim, or challenge, whether under the Bankruptcy Code or any other applicable law or regulation by any person or entity for any reason. Without limiting the generality of the foregoing, and subject to the provisos in paragraph 3(d)(i) above, the Debtor is authorized, without further Order of this Court, to (i) pay all principal, interest, fees, and indemnities when due, under the DIP Loan Documents and (ii) pay or reimburse the Lender, in accordance with the DIP Loan Documents for all present and future costs and expenses, including, without limitation, all reasonable and documented professional fees, consultant fees, and legal fees and expenses paid or incurred by the Lender in connection with the financing transactions as provided in the DIP Loan Documents and the DIP Orders regardless of whether such amounts are in the Approved Budget. Within ten (10) business days after delivery by Lender of a redacted summary invoice (subject in all respects to applicable privilege or work product doctrines) for all professional, consulting, and legal fees and expenses incurred by Lender related to the DIP Loan

Documents to the Debtor and its counsel, the U.S. Trustee and the Creditors' Committee or its counsel (or such shorter time period agreed to by the Lender, Debtor, the U.S. Trustee, and the Creditors' Committee), Debtor shall pay such reasonable professional, consulting, and legal fees and costs from the DIP Loans or Revolving Credit Cash Collateral, *provided, however*, that to the extent an objection has been raised to certain professional, consulting, or legal fees and costs within such ten (10) business days, Debtor shall pay only such fees and costs to which no objection has been raised, *provided further*, that such ten (10) business day notice period shall not apply to the payment of any such fees and costs paid at or in connection with (i) the closing of the DIP Facility, (ii) the effective date of a confirmed plan of reorganization or liquidation (the "**Chapter 11 Plan**"), or (iii) the closing of any sale of Debtor's assets that results in the payment in full of all Pre-Petition Obligations and Post-Petition Obligations owed to the Lender. To the extent there is an objection with respect to any such professional, consultant, or legal fees, costs and expenses that is not consensually resolved, this Court may resolve the objection. None of such fees and expenses payable pursuant to this paragraph shall be subject to the United States Trustee Guidelines or shall require approval by the Court unless an objection is interposed that cannot be resolved by the parties. No recipient of any such payment shall be required to file with respect thereto any interim or final fee application with the Court.

5. Interest and Fees. The rate(s) of interest to be charged for the DIP Loans, under the DIP Facility, shall be the rates set forth in the DIP Credit Agreement, and shall be calculated in the manner and payable at the times set forth therein. The fees charged under the DIP Facility shall be those set forth in the DIP Credit Agreement and shall be unconditionally payable in the amounts and at the times set forth in the DIP Credit Agreement, including, without limitation, the closing fee, commitment fees, letter of credit fees, appraisal fees, liquidator fees, prepayment

premiums, which closing fee shall be absolutely and unconditionally earned upon entry of the First Interim Order and execution of the DIP Credit Agreement, and which shall be non-refundable. Debtor is hereby authorized and directed to pay, in accordance with the DIP Orders, the principal, interest, fees, payments, expenses, and other amounts described above and in the DIP Loan Documents as such amounts become due and without need to obtain further Court approval, and the Debtor shall be obligated to pay all such amounts, and satisfy all such obligations, which in each case shall constitute DIP Obligations hereunder and under the applicable DIP Loan Documents.

6. Application of Collections.

(a) All cash, collections, and proceeds of the Revolving Credit Cash Collateral shall be applied to reduce the Pre-Petition Obligations and the DIP Obligations in accordance with the terms of the DIP Loan Documents and the Pre-Petition Loan Documents, as applicable, and this Final Order, in such order and manner determined by the Lender in its sole and absolute discretion.

7. Continuation of Pre-Petition Procedures. All pre-petition practices and procedures for the payment and collection of proceeds of Revolving Credit Cash Collateral, whether Pre-Petition Collateral or DIP Collateral, including the turnover of Revolving Credit Cash Collateral to the Lender for application in accordance with the DIP Orders, and the use of any lockbox or blocked depository bank account arrangements, will be unchanged, remain in place, and be identical under the DIP Loan Documents for the benefit of the Lender and are hereby approved and shall continue without interruption after the commencement of the Chapter 11 Case.

8. Roll-Up. Without any further action by the Debtor or any other party, subject to the rights of parties set forth in Section VIII below with respect to Pre-Petition Obligations, the

Revolving Credit Cash Collateral collected by the Debtor shall be applied first to the Pre-Petition Obligations until repaid in full and then to the DIP Obligations outstanding, in each case, in such order and manner determined by the Lender in its sole and absolute discretion; *provided, however*, that any proceeds from any sale or other disposition of the Collateral (other than to the extent such sale or disposition is made in the Debtor's ordinary course of business) shall be first applied to the payment of the DIP Obligations until repaid in full and then to the Pre-Petition Obligations.

## **II. Collateralization and Superpriority Administrative Claim Status.**

### 9. Collateralization.

(a) *DIP Lien Grant.* To secure the prompt payment and performance of any and all DIP Obligations of the Debtor to the Lender of whatever kind, nature, or description, absolute or contingent, now existing or hereafter arising, the Lender shall have and is hereby granted, effective as of and from the Petition Date, valid, binding, enforceable, continuing, non-avoidable and perfected security interests and liens (such security interests and liens collectively, "**DIP Liens**") in and upon all property and rights and interests in property of the Debtor and its Estate of any kind or nature whatsoever in existence as of the Petition Date as well as thereafter created or acquired, and wherever located, including, without limitation: (i) all Pre-Petition Collateral; (ii) all accounts and accounts receivable, inventory, chattel paper, equipment, fixtures, machinery, commercial tort claims, deposit accounts, instruments, documents, cash and cash equivalents, investment property (including without limitation all equity interests in any subsidiaries), books and records, patents, trademarks, trade names, copyrights, rights under license agreements and all other intellectual property, rights, rebates, refunds and other claims under and with respect to insurance policies, tax refunds, deposits, rebates, contract rights and other general intangibles, software, letter of credit rights, money, and inter-company claims or receivables (whether or not evidenced by notes) at any time owing to Debtor; (iii) if not otherwise described

above, all of the property or rights in property identified as Collateral (as defined in the Pre-Petition Credit Agreement) and Collateral (as defined in the DIP Credit Agreement); (iv) and all proceeds thereof and the property received thereby whether by judgment, settlement, or otherwise, whether pursuant to federal law or applicable state law; (v) subject to Section V of this Final Order, the reversionary interest in the Carve Out Reserve Accounts and all funds on deposit in the Carve Out Reserve Accounts (subject to the payment of Carve Out Expenses) and the reversionary interests in all other segregated or reserve accounts; (vi) all other personal property of the Debtor and its Estate of every kind and nature; and (vii) as to all of the foregoing, all rents, issues, products, proceeds (including insurance policies), and profits of, from, or generated by any of the foregoing, in whatever form (all of the foregoing being collectively referred to in the DIP Orders as “**DIP Collateral**”).

(b) The DIP Liens shall be:

(i) *Liens on Unencumbered Property.* Pursuant to Bankruptcy Code section 364(c)(2), continuing valid, perfected, enforceable, and non-avoidable, and fully perfected liens on and security interests in all now owned or hereafter acquired assets and property of the Debtor and/or its Estate that is not otherwise encumbered by a validly perfected security interest or lien as of the Petition Date and proceeds thereof;

(ii) *Liens on Encumbered Assets.* Pursuant to Bankruptcy Code section 364(c)(3), a continuing valid, enforceable, and non-avoidable, and fully perfected lien on and security interest (other than as set forth in clauses (iii) and (iv) below) in all now owned or hereafter acquired assets and property of the Debtor and/or its Estate that is subject to, as of the Petition Date, a valid, enforceable, and unavoidable lien, and the DIP Liens shall only be junior to any

valid, enforceable, and unavoidable lien that is senior to the Pre-Petition Revolving Liens under applicable law and any relevant subordination/intercreditor agreement;

(iii) *Priming Liens on Encumbered Assets.* Pursuant to Bankruptcy Code section 364(d), valid, enforceable, non-avoidable, and fully perfected priming security interests in and priming liens upon all now owned or hereafter acquired assets and property of the Debtor and/or its Estate, *provided, however,* that the DIP Liens shall not prime, and shall be subordinate to, the valid, enforceable, and unavoidable liens (if any) of the parties identified on Exhibit 2 and solely with respect to applicable assets of the Debtor subject thereto;

(iv) *Liens Senior to Certain Other Liens.* Notwithstanding anything to the contrary contained in this Final Order, the DIP Liens and the Adequate Protection Liens (as defined herein) shall not be subject to (A) avoidance or subordination (equitable or otherwise) under Bankruptcy Code sections 510, 549, or 550, or any other provision of the Bankruptcy Code or applicable law (B) any lien or security interest that is avoided or preserved for the benefit of the Debtor or its Estate under Bankruptcy Code section 551, (C) any liens arising after the Petition date provided for herein or (D) any intercompany or affiliate liens of the Debtor, if any, provided, however, the DIP Liens and Adequate Protection Liens shall be subject to the Carve Out.

(c) *Post-Petition Lien Perfection.* This Final Order shall be sufficient and conclusive evidence of the priority, perfection, and validity of the post-petition liens and security interests granted 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 other act to validate or perfect such security interest or lien, including, without limitation, control agreements with any financial institution(s) holding any deposit account of the Debtor (a "**Perfection Act**"). Notwithstanding the foregoing,

if the Lender elects for any reason to file, record, or otherwise effectuate any Perfection Act, the Lender is authorized to perform such Perfection Act, and the Debtor is authorized to perform such Perfection Acts to the extent necessary or required by the Lender which act or acts shall be deemed to have been accomplished as of the Petition Date 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. Lender may choose to direct the Debtor, 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 the Lender 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 DIP Liens or the Adequate Protection Liens granted herein by virtue of the entry of this Final Order.

10. Superpriority Administrative Expense.

(a) For the DIP Obligations, whether now existing or hereafter arising pursuant to this Final Order, the applicable DIP Loan Documents, or otherwise, the Lender is granted an allowed superpriority administrative expense claim in the Debtor's Estate pursuant to Bankruptcy Code section 364(c)(1), having priority in right of payment over any and all other obligations, liabilities, and indebtedness of Debtor, whether now in existence or hereafter incurred by the Debtor, of every kind or nature, including any and all unsecured claims, administrative expenses (other than Carve Out Expenses (as defined in Section V herein) subject to the Carve Out), adequate protection claims, priority claims or any other claims of the kind specified in, or ordered

pursuant to, the Bankruptcy Code, including without limitation, *inter alia*, Bankruptcy Code sections 105, 326, 328, 330, 331, 503(b), 507, 364(c)(1), 546(c), 726, or 1114 and, upon entry of a Final Order, sections 506(c) and 552(b) (the “**DIP Superpriority Claims**”).

(b) With respect to rights preserved under Bankruptcy Code section 506(c), no costs or expenses of administration, other than Carve Out Expenses only to the extent expressly provided for in paragraph 13 of this Final Order, that have been or may be incurred in the Chapter 11 Case, or in any Successor Cases shall be chargeable against the DIP Collateral or the Pre-Petition Collateral. Subject only to the Carve Out for Carve Out Expenses, no priority claims are, or will be, senior to, prior to, or *pari passu* with the DIP Superpriority Claims or the DIP Obligations or with any other claims of the Lender arising hereunder.

### **III. Authorization to Use Revolving Credit Cash Collateral.**

11. Pursuant to Bankruptcy Code section 363(c)(2), the Debtor is authorized to use Revolving Credit Cash Collateral subject to the terms and conditions of this Final Order and in accordance with the DIP Credit Agreement as may be limited by the Approved Budget (subject to variances permitted under the DIP Credit Agreement).

### **IV. Adequate Protection for Lender.**

12. Pre-Petition Adequate Protection. As adequate protection for the interests of the Lender in the Pre-Petition Collateral, on account of the Adequate Protection Obligations, the Lender is being provided with adequate protection as set forth below.

(a) *Adequate Protection Liens.* Solely to the extent of any Diminution in Value of such interests pursuant to Bankruptcy Code section 361 and 363(c), the Debtor hereby grants the Lender, valid and perfected replacement security interests in, and liens on (the “**Adequate Protection Liens**”) the DIP Collateral.

(i) The Adequate Protection Liens shall be deemed to be valid, binding, enforceable and fully-perfected as of the Petition Date and, subject to Section VIII below, not subject to subordination (other than to the Carve Out as expressly provided in this Final Order) or avoidance for any cause or purpose in this Chapter 11 Case.

(ii) The Adequate Protection Liens shall be enforceable against the Debtor, its Estate and any successors thereto, including without limitation, any trustee or other Estate representative appointed or elected in the Chapter 11 Case or any Successor Cases. Except with respect to the Carve Out for Carve Out Expenses as expressly provided in this Final Order, the Adequate Protection Liens (A) shall not be made subject to or *pari passu* with any lien or security interest by any court Order heretofore or hereafter entered in this Chapter 11 Case (unless with the consent of the Lender); (B) shall not be subject to Bankruptcy Code section 506(c); (C) shall not be subject to Bankruptcy Code sections 510, 549, or 550; and (D) no lien or interest avoided and preserved for the benefit of the Estate pursuant to Bankruptcy Code section 551 shall be made *pari passu* with or senior to the Adequate Protection Liens.

(b) *Adequate Protection Claim.* As further adequate protection, the Lender is hereby granted, to the extent of Diminution in Value, an allowed superpriority administrative expense claim (the “**Adequate Protection Claim**” and together with the Adequate Protection Liens, the “**Adequate Protection**”) in this Chapter 11 Case or any Successor Cases against the Debtor’s Estate under Bankruptcy Code sections 503 and 507(b) that shall have priority over all other administrative expense claims (other than Carve Out Expenses subject to the Carve Out as expressly provided in this Final Order), priority claims, and unsecured claims against the Debtor or its Estate, which are now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, administrative expenses and priority or other claims of the kinds

specified in or ordered pursuant to Bankruptcy Code sections 105, 326, 328, 330, 331, 364, 365, 503(a), 503(b), 506(c) (upon entry of a Final Order), 507(a), 507(b), 546(c), 546(d), 726, 1113, and 1114.

(c) *Interest.* As further adequate protection, the Lender shall be entitled to interest accruing on account of the outstanding Pre-Petition Obligations at the default rate set forth in the Pre-Petition Loan Documents, which was in effect as of the Petition Date and which shall accrue and be paid at the times and in the manner set forth in the Pre-Petition Loan Documents.

(d) *Adequate Protection Payments.* As further adequate protection, and without limiting any rights of the Lender under Bankruptcy Code section 506(b) (which rights are hereby preserved), the Debtor shall pay or reimburse the Lender (the “**Adequate Protection Payments**”) for any and all of its reasonable fees, costs, expenses, and charges accrued and payable under the Pre-Petition Loan Documents, including, without limitation, the fees, costs and expenses of the Lender (including attorneys’ fees and costs) as provided in section 10.4 of the Pre-Petition Credit Agreement, whether accrued and unpaid pre-petition or accrued and unpaid post-petition, all without further notice, motion, or application to, Order of, or hearing before, this Court; *provided, however,* that the Lender shall be permitted to include such fees and expenses in the DIP Obligations and make a DIP Loan for the purposes of effectuating such payment by the Debtor. Except as provided herein, any and all fees, costs, and expenses charged under the Pre-Petition Loan Documents shall be as set forth in the Pre-Petition Loan Documents and shall be payable upon request by the Lender and as provided in paragraph (e) below.

(e) *Payment of Professional, Consulting, and Legal Fees as Adequate Protection Payments.* Within ten (10) business days after delivery by Lender of a redacted summary invoice (subject in all respects to applicable privilege or work product doctrines) for all

professional, consulting, and legal fees and expenses incurred by Lender related to the Pre-Petition Loan Documents to the Debtor and its counsel, the U.S. Trustee and the Creditors' Committee or its counsel (or such shorter time period agreed to by the Lender, Debtor, the U.S. Trustee and the Creditors' Committee), the Debtor shall pay such reasonable professional, consulting, and legal fees and costs from the DIP Loans or Revolving Credit Cash Collateral, *provided, however*, that to the extent an objection has been raised to certain professional, consulting, or legal fees and costs within such ten (10) business days, Debtor shall pay only such fees and costs to which no objection has been raised, *provided further*, that such ten (10) business day notice period shall not apply to the payment of any such fees and costs paid at or in connection with (i) the closing of the DIP Facility, (ii) pursuant to, and on or about the effective date of, a Chapter 11 Plan in this Chapter 11 Case, or (iii) the closing of any sale of Debtor's assets that results in the payment in full of all Pre-Petition Obligations and Post-Petition Obligations owed to the Lender. To the extent there is an objection with respect to such costs and fees that is not consensually resolved, the Court may resolve the objection. Such written invoices shall include the invoices of Thompson Hine LLP, as counsel to the Lender, and any other professional, advisor, or agent retained by the Lender or its counsel in connection with the Chapter 11 Case and as permitted by the Pre-Petition Loan Documents or DIP Loan Documents; *provided, however*, that none of such fees and expenses paid pursuant to this paragraph shall be subject to the United States Trustee Guidelines or shall require approval by the Court unless an objection is interposed that cannot be resolved by the parties. No recipient of any such payment shall be required to file with respect thereto any interim or final fee application with the Court.

**V. Carve Out.**

13. Each of the DIP Obligations, DIP Liens, Pre-Petition Obligations, Pre-Petition Revolving Liens, DIP Superpriority Claims, Adequate Protection Liens, and Adequate Protection

Claims shall be subject and subordinate to the right of payment and priority (the “**Carve Out**”) for Carve Out Expenses (as defined below). The Carve Out shall be senior to all claims and liens over all assets of the Debtor, including any DIP Collateral and Pre-Petition Collateral.

(a) As used in this Final Order, the “**Carve Out Expenses**” means the sum of the following:

- (i) all fees required to be paid to the Clerk of the Court and to the U.S. Trustee pursuant to 28 U.S.C. § 1930(a)(6), together with the statutory rate of interest, which shall not be limited by any budget;
- (ii) all reasonable Court-allowed fees and expenses up to \$25,000 incurred by a trustee under section 726(b) of the Bankruptcy Code;
- (iii) all allowed payments pursuant to any key employee incentive plan approved by the Court (“**KEIP Payments**”) earned prior to the occurrence of an Event of Default and the Termination Date, not to exceed the lesser of (A) \$312,000.00 and (B) the aggregate amounts budgeted to be funded for such KEIP Payments in accordance with the Approved Budget; and
- (iv) all allowed fees and expenses (“**Allowed Professional Fees**”) actually incurred by Bond, Schoeneck & King, PLLC (“**Bond**”) and any other professional whose retention is approved by this Court pursuant to Bankruptcy Code section 327, 328, 363, or 1103 (each a “**Professional**” and collectively, the “**Professionals**”) (A) for the period prior to the delivery of a Carve Out Trigger Notice to the Debtor and each such Professional, in an amount for each Professional equal to the lesser of (x) the aggregate amounts budgeted to be funded in advance for such Professional in accordance with the Approved Budget and (y) the actual amount of Allowed Professional Fees for such Professional incurred on or after the Petition Date up through and including the date a Carve Out Trigger Notice is delivered to such Professional (the “**Pre-Trigger Professional Carve Out Cap**”) and (B) following the delivery of a Carve Out Trigger Notice, an amount for Bond equal to the lesser of \$30,000 and the Allowed Professional Fees incurred on or after delivery of the Carve Out Trigger Notice and an aggregate amount for all other Professionals equal to \$10,000.00 (the “**Post-Trigger Professional Carve Out Cap**” and together with the Pre-Trigger Professional Carve Out Cap, the “**Professional Carve Out Cap**”). The Pre-Trigger Professional Carve Out Cap shall be calculated on a Professional-by-Professional basis based on the amounts allocated

for each Professional pursuant to clause (A) of the foregoing sentence.

(b) **“Carve Out Trigger Notice”** means written notice (which for avoidance of doubt may be by electronic mail) of the occurrence of an Event of Default (as defined herein) or the Termination Date (as defined in the DIP Credit Agreement) given by Lender to the Debtor and each Professional.

(c) For the avoidance of doubt, (i) subject to the Professional Carve Out Cap, the Debtor shall be permitted to pay Allowed Professional Fees as the same may be due and payable in accordance with this Final Order; and (ii) nothing herein shall be construed to impair the ability of any party (including the Lender) to object to the fees, expenses, reimbursement or compensation described herein.

14. **Excluded Professional Fees.** Notwithstanding anything to the contrary in this Final Order, neither the Carve Out, nor the proceeds of the DIP Facility or DIP Collateral shall be used to pay any Allowed Professional Fees or any other fees or expenses incurred by any Professional or any chapter 11 or chapter 7 trustee or such trustee’s Professionals in connection with any of the following: (a) an assertion or joinder in any claim, counter-claim, action, proceeding, application, motion, objection, defense, or other contested matter seeking any Order, judgment, determination, or similar relief: (i) challenging the legality, validity, priority, perfection, or enforceability of the Pre-Petition Obligations, the DIP Obligations, Lender’s liens on and security interests in any of the Pre-Petition Collateral or DIP Collateral, as applicable; (ii) seeking to invalidate, set aside, avoid, or subordinate, in whole or in part, the Pre-Petition Obligations or DIP Obligations or the Lender’s liens on and security interests in the Pre-Petition Collateral or the DIP Collateral, as applicable; or (iii) preventing, hindering, or delaying the Lender’s assertion or enforcement of any lien, claim, right, or security interest or realization upon any Pre-Petition Collateral or DIP

Collateral, as applicable, in accordance with the terms and conditions of this Final Order; (b) without the consent of the Lender, a request to use Revolving Credit Cash Collateral or DIP Loans in any manner except to the extent expressly permitted in the DIP Orders; (c) a request, without the prior written consent of Lender, for authorization to obtain debtor-in-possession financing or other financial accommodations pursuant to Bankruptcy Code section 364(c) or 364(d) other than from the Lender as contemplated herein, unless such other debtor-in-possession financing or financial accommodation is used, in whole or in part, to indefeasibly pay and satisfy in full in cash all Pre-Petition Obligations and DIP Obligations owed to the Lender; (d) the commencement or prosecution of any action or proceeding of any claims, causes of action, or defenses against the Lender, or any of its present, former, or future officers, directors, employees, agents, attorneys, affiliates, successors, or assigns, including, without limitation, any attempt to avoid any claim, lien, or interest of, or obtain any recovery from the Lender, under Chapter 5 of the Bankruptcy Code; *provided, however,* that, subject to the Carve Out Cap, an amount not to exceed \$35,000 in the aggregate of the indebtedness incurred pursuant to the DIP Facility may be used to pay the Allowed Professional Fees of the Creditors' Committee (if any) to investigate (but not prosecute) claims or any Challenge against and possible objections with respect to the Pre-Petition Obligations, and the Pre-Petition Revolving Liens and security interests of, the Lender (including, without limitation, issues regarding validity, perfection, priority, or enforceability of the secured claims of the Lender).

15. *Payment of Carve Out.*

(a) The Debtor shall maintain, for each Professional, a separate, segregated escrow account with Bond exclusively for the payment of the Allowed Professional Fees of such Professional (each, a "**Carve Out Reserve Account**"), which account(s) shall be funded by or on behalf of the Debtor, including through borrowings under the DIP Facility in accordance with the

Approved Budget on a weekly basis, in advance, until the delivery of a Carve Out Trigger Notice. Any retainer funds held by a Professional that are not applied against such Professional's pre-petition fees and expenses shall be transferred to the Carve Out Reserve Account established for the benefit of such Professional and shall reduce, on a dollar-for-dollar basis, any obligation to fund such account by or on behalf of the Debtor. Prior to the delivery of a Carve Out Trigger Notice, the Carve Out Reserve Accounts shall be funded, up to the Pre-Trigger Professional Carve Out Cap. Following the delivery of a Carve Out Trigger Notice, the Carve Out Reserve Accounts shall continue to be funded up to the Professional Carve Out Cap. Professionals shall be paid their Allowed Professional Fees from funds in their respective Carve Out Reserve Accounts, in compliance with any orders of the Court approving such Allowed Professional Fees and in accordance with the Approved Budget. For avoidance of doubt, any amounts held in Carve Out Reserve Accounts shall not constitute a cap on the Allowed Professional Fees included in the Carve Out and, subject to the applicable Professional Carve Out Cap, any Allowed Professional Fees owing to a Professional in excess of the amount available in their respective Carve Out Reserve Account shall be paid from the proceeds of the Pre-Petition Collateral and the DIP Collateral.

(b) In the event that (i) Lender issues a Carve Out Trigger Notice prior to payment in full of the Pre-Petition Obligations and DIP Obligations, and (ii) the aggregate Allowed Professional Fees owed to a Professional (x) through the date of the Carve Out Trigger Notice plus (y) following the date of the Carve Out Trigger Notice (up to the Post-Trigger Professional Carve Out Cap) are less than the amounts funded into the Carve Out Reserve Account established for such Professional, the excess amounts in the Carve Out Reserve Account shall be remitted to the Lender to apply to reduce either or both the Pre-Petition Obligations and the DIP Obligations at Lender's sole discretion. For the avoidance of doubt, in making disbursements from the Carve Out

Reserve Accounts, Bond shall be entitled to conclusively rely upon written certifications of each Professional as to the amount due and owing to such Professional from their respective Carve Out Reserve Account and in accordance with the Approved Budget and Bond shall have no liability to any party based upon any reliance on such certifications, *provided further*, that in the event the Termination Date (as defined in the DIP Credit Agreement) has occurred, and to the extent the Carve Out Reserve Accounts have been fully funded as required in this Section V and in accordance with the Approved Budget, all obligations of the Lender with respect to the Carve Out shall be terminated.

(c) The Carve Out Cap for each Professional shall be reduced, on a dollar-for-dollar basis, by any amounts actually paid to such Professional on account of the Carve Out, and shall be increased, on a dollar-for-dollar basis, by any amounts included on any updates to the Approved Budget. To the extent any Carve Out Reserve Account has not been funded in accordance with the Approved Budget prior to the delivery of a Carve Out Trigger Notice, the Lender shall consent to the remittance of the difference plus the applicable Post-Trigger Professional Carve Out Cap amount to the Carve Out Reserve Account from proceeds of DIP Collateral and the Pre-Petition Collateral. Payment of any amounts on account of the Carve Out, which shall be by the Lender to the extent the Lender has received proceeds from the DIP Collateral or the Pre-Petition Collateral after the Petition Date in an amount equal to or in excess of such difference, shall not and shall not be deemed to, reduce the Pre-Petition Obligations or the DIP Obligations, and shall not be deemed to, subordinate any of the Lender's liens and security interests in the DIP Collateral or the DIP Superpriority Claim to any junior pre-or post-petition lien, interest, or claim in favor of any other party, other than claims of Professionals for their Allowed Professional Fees. Except as expressly provided in this Section V, Lender shall not be

responsible for the payment or reimbursement of any fees or disbursements of any Professionals incurred in connection with the Chapter 11 Case or Successor Cases under any chapter of the Bankruptcy Code, and nothing in this Section V shall be construed to obligate Lender to pay compensation to or to reimburse expenses of any Professional in excess of the applicable Professional Carve Out Cap or provide financial accommodations to the Debtor or the Estate to do so.

(d) Nothing in this Final Order shall be construed as a consent to the allowance of the fees and expenses of any Professional or shall affect the right of the Lender to object to the allowance and payment of such fees and expenses. So long as no Event of Default has occurred or is continuing, the Debtor shall be permitted to pay Allowed Professional Expenses pursuant to any Order of the Court, including any Order approving such compensation on an interim basis, as the same may be due and payable, solely to the extent and not to exceed the amounts provided for in the Approved Budget; *provided, however*, that any such payment shall be subject to entry of a final Order of the Court of each Professional's final application for allowance of such fees and expenses.

#### **VI. Right to Credit Bid.**

16. To the extent applicable with respect to the Pre-Petition Obligations, Section VIII hereof, in connection with any sale of assets by Debtor outside of the ordinary course of business, pursuant to Bankruptcy Code section 363(k), the Lender shall be entitled to credit bid for the Pre-Petition Collateral and the DIP Collateral up to the outstanding aggregate amount of the Pre-Petition Obligations and DIP Obligations in respect of any such sale.

#### **VII. Default; Rights and Remedies; Relief from Stay.**

17. Events of Default. The following shall constitute an "**Event of Default**" under this Final Order:

- (a) the occurrence of any Event of Default as defined and under the DIP Credit Agreement;
- (b) the Debtor seeking approval of a sale, outside the ordinary course of business, of all or a portion of the Debtor's property that is not acceptable to the Lender; or
- (c) the sale of all or substantially all of the Debtor's property without the order approving such sale providing for the indefeasible payment and satisfaction in full in cash of the Pre-Petition Obligations and the DIP Obligations.

18. Rights and Remedies Upon Event of Default/Relief from Stay.

- (a) Upon the occurrence of and during the continuance of an Event of Default, and without the necessity of seeking relief from the automatic stay or any further Order of the Court or providing an Enforcement Notice (as defined below): (i) the Lender shall no longer have any obligation to make any Revolving Loans (or otherwise extend credit) under the DIP Facility; (ii) all amounts outstanding under the DIP Loan Documents shall, at the option of the Lender, be accelerated and become immediately due and payable; (iii) the Lender shall be entitled to immediately terminate the Debtor's right to use Revolving Credit Cash Collateral, without further application or Order of this Court, *provided, however*, that Debtor shall have the right to use Revolving Credit Cash Collateral to pay its weekly ordinary course payroll included in the Approved Budget through the date on which such Event of Default occurs and to pay expenses set forth in the Approved Budget that accrued prior to the date of occurrence of the Event of Default; (iv) the Debtor shall be bound by all post-default restrictions, prohibitions, and other terms as provided in this the DIP Orders, the DIP Credit Agreement and the other DIP Loan Documents and the Pre-Petition Loan Documents; and (v) the Lender shall be entitled to charge the default rate of interest under the DIP Credit Agreement.

(b) Notwithstanding the foregoing or anything in paragraph 18(a) above, Lender may continue to apply proceeds received into the lockbox or collection account to reduce the Pre-Petition Obligations or the DIP Obligations in any order at the sole discretion of the Lender during the Remedies Notice Period.

(c) Additionally, upon the occurrence and during the continuance of an Event of Default, expiration of the Remedies Notice Period, and the exercise by the Lender of its rights and remedies under the DIP Orders, the DIP Loan Documents, or Pre-Petition Loan Documents, the Debtor shall cooperate with the Lender in the exercise of such rights and remedies and assist the Lender in effecting any sale or other disposition of the DIP Collateral required by Lender, including any sale of DIP Collateral pursuant to Bankruptcy Code section 363 or assumption and assignment of DIP Collateral consisting of contracts and leases pursuant to Bankruptcy Code section 365, in each case, upon such terms that are acceptable to the Lender.

(d) Upon the occurrence and during the continuance of an Event of Default, and subject to the Remedies Notice Period provided for above, in connection with a liquidation of any of the Pre-Petition Collateral or DIP Collateral as provided for herein, the Lender (or any of its employees, agents, consultants, contractors, or other professionals), shall have the right, at the sole cost and expense of the Debtor, to: (i) enter upon, occupy, and use any real or personal property, fixtures, equipment, leasehold interests, or warehouse arrangements owned or leased by the Debtor; and (ii) use any and all trademarks, tradenames, copyrights, licenses, patents, equipment, or any other similar assets of the Debtor, or assets that are owned by or subject to a lien of any third party and that are used by the Debtor in its business. The Debtor will be responsible for the payment of any applicable fees, rentals, royalties, or other amounts owing to such lessor, licensor or owner of

such property for the period of time that Lender occupies any real property or uses the equipment or the intellectual property.

(f) The rights and remedies of the Lender specified herein are cumulative and not exclusive of any rights or remedies that the Lender may have under the DIP Loan Documents or Pre-Petition Loan Documents, as applicable, or otherwise and may be exercised in whole or in part in any order. With respect to the exercise of such rights and remedies, the fourteen-day stay provisions of Bankruptcy Rules 6004(h) and 4001(a)(3) are hereby waived.

19. Waiver Agreements. Subject to entry of a Final Order, all rights, options, and remedies granted to the Lender in either or both of any landlord or warehouseman's waiver and/or consent executed and delivered in connection with the Pre-Petition Obligations and Pre-Petition Credit Agreement, as applicable, including the right to access any premises leased by Debtor and access the Pre-Petition Collateral, shall be deemed to be continuing, enforceable, and applicable to and binding upon the landlord(s) and other parties to such waiver or consent agreements with respect to the Pre-Petition Collateral and DIP Collateral.

### **VIII. Challenges to Pre-Petition Obligations.**

20. The Debtor has admitted, stipulated, and agreed to the various stipulations and admissions contained in the DIP Orders, including, without limitation, the Debtor's Stipulations included in Paragraph F(3)(d) and Paragraph G, which stipulations and admissions are and shall be binding upon the Debtor. Upon the earliest to occur of (i) the effective date of any plan, (ii) two days prior to closing of any asset sale of all or substantially all of the Debtor's assets pursuant to Bankruptcy Code section 363, and (iii) for all parties other than the Creditors Committee, the date that is forty-five (45) days from entry of the Second Interim Order, and for the Creditors' Committee the date that is 45 days from the entry of this Final Order (as applicable for clauses (i) through (iii), the "Challenge Period"), the stipulations and admissions contained in the DIP

Orders, including without limitation, the Debtor's Stipulations, shall also be binding upon the Debtor's Estate, all creditors, and all parties in interest, including without limitation, the Creditors' Committee and any other person or entity acting or seeking to act on behalf of the Debtor's Estate, and any chapter 7 or chapter 11 trustee appointed or elected for the Debtor (a "**Trustee**") for all purposes, unless (a) during the Challenge Period the Creditors' Committee or any other party interest, in each case with appropriate standing, has properly and timely filed an adversary proceeding as required under the Bankruptcy Rules (x) challenging the amount, validity, enforceability, priority or extent of the Pre-Petition Obligations, the Pre-Petition Revolving Liens of Lender on the Pre-Petition Collateral securing the Pre-Petition Obligations or (y) asserting any other claims, counterclaims, causes of action, objections, contests, or defenses against the Lender on behalf of the Debtor's Estate ((x) and (y), collectively, referred to herein as "**Challenges**") in connection with the matters related to the Pre-Petition Loan Documents, the Pre-Petition Obligations, the Pre-Petition Revolving Liens, or the Pre-Petition Collateral, and (b) there is a final non-appealable order in favor of the plaintiff sustaining any such Challenge or claim in any such timely filed adversary proceeding; *provided, however*, that, as to the Debtor, the Guarantors of Payment, including the Individual Guarantors of Payment, and all affiliates and related parties, all such Challenges are hereby irrevocably waived and relinquished effective as of the Petition Date. If no such Challenge is timely filed prior to the expiration of the Challenge Period, without further order of the Court: (1) the Debtor's stipulations, admissions and releases contained in the DIP Orders (including the Debtor's Stipulations and the releases set forth in paragraph 23 below) shall be binding on all creditors and parties in interest, including, without limitation, the Debtor's Estate, the Creditors' Committee, and any subsequently appointed Trustee, case fiduciary, or other successors and assigns of the Debtor and the Debtor's Estate; (2) the Pre-Petition Obligations shall

constitute allowed claims, not subject to counterclaim, setoff, subordination, recharacterization, defense or avoidance, for all purposes in this Chapter 11 Case and any Successor Cases, including, without limitation, any subsequent chapter 7 case; (3) the Lender's liens on the Pre-Petition Collateral shall be deemed to have been, as of the Petition Date, and to be, legal, valid, binding, perfected, and with the priority specified in the Debtor's Stipulations, not subject to defense, counterclaim, recharacterization, subordination or avoidance; and (4) the Pre-Petition Obligations, the Lender's Pre-Petition Revolving Liens on the Pre-Petition Collateral; and the Lender (and its agents, affiliates, subsidiaries, directors, officers, representatives, attorneys or advisors) shall not be subject to any other or further Challenge by any creditor or party in interest, including, without limitation, the Creditors' Committee or representative of the Debtor's Estate (including, without limitation, any estate representative or a Trustee, whether such Trustee is appointed or elected prior to or following the expiration of the Challenge Period) and any such creditor or party in interest shall be enjoined from seeking to assert a Challenge. If any Challenge or motion for standing, as applicable, is timely and properly filed prior to the expiration of the Challenge Period, the releases, stipulations, and admissions (including without limitation, in the Debtor's Stipulations), contained in the DIP Orders shall nonetheless remain binding and preclusive (as provided in the second sentence of this paragraph) on creditors and parties in interest, except as to any such findings and admissions that were expressly challenged as set forth with specificity in the original complaint initiating the adversary proceeding, and any claims or challenges not so specified shall be deemed forever, waived, released and barred, including any amended or additional claims that may or could have been asserted thereafter through an amended complaint under Federal Rule of Civil Procedure 15 or otherwise. For purposes of clarity and the avoidance of doubt, other than with respect to the requirements regarding obtaining standing and the time frame by which the Committee must file

a motion seeking standing to bring a Challenge, none of the stipulations and/or findings in the DIP Orders or this Final Order, including, but not limited to those contained in Paragraph F and G, shall prejudice the Committee's ability to bring and assert a Challenge or any relief that may be granted as a result thereof had such stipulations and/or findings not been made. Nothing in this Final Order vests or confers on any person, including the Creditors' Committee, any Trustee, or any other party in interest, standing or authority to pursue any claim or cause of action belonging to the Debtor or its Estate. To the extent the Committee files a motion for standing to pursue a Challenge prior to the expiration of the Challenge Period, the Challenge Period automatically shall be extended while such motion for standing is pending and for two (2) additional business days in the event the Court grants the Committee's motion for standing. The Committee agrees to file any motion for standing on an expedited basis, which request for expedited relief shall be supported by the Debtor and Lender.

**IX. Debtor's Waivers and Releases.**

21. Section 506(c) Claims and 552(b) Equities. No costs or expenses of administration that have been or may be incurred in the Chapter 11 Case or Successor Cases at any time shall be charged against the Lender, its claims, or the DIP Collateral or Pre-Petition Collateral, as applicable, pursuant to Bankruptcy Code section 506(c) without the prior written consent of the Lender (and no such consent shall be implied from any other action, inaction or acquiescence by the Lender). The Lender is entitled to all of the rights and benefits of Bankruptcy Code section 552(b), and the "equities of the case" exception under Bankruptcy Code section 552(b) shall not apply to the Lender with respect to proceeds, products, offspring, or profits of any of the Pre-Petition Collateral or DIP Collateral, as applicable.

22. Release.

(a) In consideration of and as a condition to the Lender making the DIP Facility available under the DIP Credit Agreement, the consent by the Lender to the use of Revolving Credit Cash Collateral, and providing other credit and financial accommodations to the Debtor, in each case, pursuant to the provisions of the DIP Orders and the DIP Loan Documents (including the Carve Out provisions), the Debtor, on behalf of itself, and its successors and assigns and its Estate (collectively, the “**Releasors**”), hereby absolutely releases and forever discharges and acquits Lender and each of its successors, participants, and assigns, and each of the foregoing’s present, former, and future shareholders, agents, affiliates, subsidiaries, divisions, predecessors, directors, officers, attorneys, employees, and other representatives (the Lender and all such other parties being hereinafter referred to collectively as the “**Releasees**”) of and from any and all claims, demands, causes of action, suits, covenants, contracts, controversies, agreements, promises, sums of money, accounts, bills, reckonings, damages, and any and all other claims, counterclaims, cross claims, defenses, rights of set-off, demands, and liabilities whatsoever (individually, a “**Pre-Petition Released Claim**” and collectively, the “**Pre-Petition Released Claims**”) of every kind, name, nature and description, known or unknown, foreseen or unforeseen, matured or contingent, liquidated or unliquidated, primary or secondary, suspected or unsuspected, both at law and in equity, including, without limitation, any so-called “lender liability” claims or defenses, that any Releasor may now or hereafter own, hold, have, or claim to have against the Releasees, or any of them for, upon, or by reason of any nature, cause, or thing whatsoever that arose or may have arisen at any time on or prior to the date of this Final Order, arising out of, relating to, or in connection with, any of the Pre-Petition Obligations, the Pre-Petition Loan Documents, any Pre-Petition Revolving Loans, or other financial accommodations under the Pre-Petition Loan

Documents; *provided*, that such releases shall not apply to any causes of action bought by the Creditor's Committee on behalf of the Estate until the expiration of the Challenge Period as provided in paragraph 23. In addition, upon the indefeasible payment and satisfaction in full of all Obligations (as defined in the DIP Loan Documents) owed to the Lender by the Debtor, and termination of the rights and obligations arising under the DIP Orders, and the DIP Loan Documents (which payment and termination shall be on terms and conditions acceptable to the Lender), the Lender shall be automatically deemed to be absolutely and forever released and discharged from any and all obligations, liabilities, actions, duties, responsibilities, commitments, claims, and causes of action arising, occurring in connection with, or related to the DIP Loan Documents, the DIP Orders (whether known or unknown, direct or indirect, matured or contingent, foreseen or unforeseen, due or not due, primary or secondary, liquidated or unliquidated).

(b) Subject to Section VIII with respect to all applicable parties other than the Debtor, each Releasor hereby absolutely, unconditionally and irrevocably covenants and agrees with each Releasee that it will not sue (at law, in equity, in any regulatory proceeding, or otherwise) any Releasee on the basis of any Pre-Petition Released Claim that has been released and discharged by each Releasor pursuant to clause 23(a) above. If any Releasor violates the forgoing covenant, Debtor agrees to pay, in addition to such other damages as any Releasee may sustain as a result of such violation, all attorneys' fees and costs incurred by any Releasee as a result of such violation.

#### **X. Other Rights and Obligations.**

23. No Modification or Stay of this Final Order. Based upon the record presented to the Court by the Debtor, notwithstanding (a) any stay, modification, amendment, supplement, *vacatur*, revocation, or reversal of this Final Order, the DIP Loan Documents or any term hereunder or thereunder, or (c) the dismissal or conversion of the Chapter 11 Case, the Lender shall retain and be entitled to all of the rights, remedies, privileges, and benefits in favor of the

Lender pursuant to Bankruptcy Code section 364(e), the DIP Orders, and the DIP Loan Documents as of the date any event referred to in clauses (a), (b) or (c) shall have occurred.

24. Power to Waive Rights; Duties to Third Parties. Lender shall have the right, in its sole discretion, to waive any of the terms, rights, and remedies provided or acknowledged in the DIP Orders, the Pre-Petition Credit Agreement, or the DIP Credit Agreement (“**Lender Rights**”) with respect to each of them, as applicable, and shall have no obligation or duty to any other party with respect to the exercise or enforcement, or failure to exercise or enforce, any Lender Right(s). Any waiver by Lender of any Lender Rights shall be in writing and apply solely to the Lender Right so waived and shall not be or constitute a continuing waiver. Any delay in or failure to exercise or enforce any Lender Right shall neither constitute a waiver of such Lender Right, nor cause or enable any other party to rely upon or in any way seek to assert as a defense to any obligation owed by the Debtor to Lender.

25. Reservation of Rights. The terms, conditions, and provisions of this Final Order are in addition, and without prejudice, to the rights of the Lender to pursue any and all rights and remedies under the Bankruptcy Code, the DIP Loan Documents, the Pre-Petition Loan Documents, or any other applicable agreement or law, including, without limitation, rights to seek either or both adequate protection and additional or different adequate protection, to seek relief from the automatic stay, to seek an injunction, to oppose any request for use of Revolving Credit Cash Collateral, other Pre-Petition Collateral or the proceeds of the DIP Facility (other than as permitted under this Final Order and the DIP Credit Agreement) or the granting of any interest in the DIP Collateral (other than as contemplated herein or permitted under the DIP Loan Documents), to object to any sale of assets, and to object to applications for either or both allowance and payment

of compensation of Professionals or other parties seeking compensation or reimbursement from the Estate.

26. Modification of the Automatic Stay. The automatic stay under Bankruptcy Code section 362(a) is hereby modified as necessary to effectuate all of the terms and provisions of this Final Order.

27. Binding Effect.

(a) The provisions of this Final Order and the DIP Loan Documents, the DIP Superpriority Claims, DIP Liens, Adequate Protection Liens, Adequate Protection Claims, the DIP Obligations and the rights, remedies, privileges, and benefits in favor of the Lender provided or acknowledged in the DIP Orders, and any actions taken pursuant thereto, shall be effective immediately upon entry of this Final Order pursuant to Bankruptcy Rules 6004(g) and 7062, shall continue in full force and effect, and shall survive entry of any such other Order, including, without limitation, any order that may be entered confirming any plan of reorganization, converting the Chapter 11 Case to any other chapter under the Bankruptcy Code, or dismissing the Chapter 11 Case.

(b) Any order dismissing the Chapter 11 Case under Bankruptcy Code section 1112 or otherwise shall be deemed to provide (in accordance with Bankruptcy Code sections 105 and 349) that (i) the Lender's liens on, and security interests in, the DIP Collateral shall continue in full force and effect notwithstanding such dismissal until the DIP Obligations, Adequate Protection Obligations, and Pre-Petition Obligations, as applicable, owed to Lender are indefeasibly paid and satisfied in full, and (ii) this Court shall retain jurisdiction, to the extent permissible under applicable law, notwithstanding such dismissal, for the purposes of enforcing

the DIP Superpriority Claims, DIP Liens, Adequate Protection Liens, and Adequate Protection Claims of the Lender.

(c) This Final Order shall be binding upon the Debtor, its Estate, all parties in interest in the Chapter 11 Case, and their respective successors and assigns, including any trustee or other fiduciary appointed in the Chapter 11 Case or any Successor Cases of the Debtor, and shall inure to the benefit of the Lender, the Debtor, and their respective successors and assigns, subject to the rights of any party in interest or trustee under Section VIII above.

28. Marshaling. In no event shall the Lender be subject to the equitable doctrine of “marshaling” or any similar equitable doctrine with respect to the Pre-Petition Collateral or the DIP Collateral; *provided, however*, that equitable marshaling shall be permitted for the limited purpose of allowing the Committee to cause the Lender to apply any sale proceeds from the sale or other disposition of the Collateral (other than in the ordinary course of the Debtor’s business) first to the payment of the DIP Obligations and to look to such proceeds before seeking payment from any other sources.

29. Proofs of Claim. Notwithstanding the entry of an order establishing a bar date in this Chapter 11 Case, or the conversion of this Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code, the Lender shall not be required to file proofs of claim in the Chapter 11 Case or Successor Cases with respect to, as applicable, any of Pre-Petition Obligations, Adequate Protection Obligations, Adequate Protection Liens, DIP Obligations, DIP Liens, DIP Superpriority Claims, or any other claims or liens granted hereunder or created by this Final Order. Lender is hereby authorized and entitled, in its sole and absolute discretion, but in no event is required, to file (and amend and/or supplement, as it sees fit) proofs of claim in the Chapter 11 Case on behalf of itself in respect of the Pre-Petition Obligations and the DIP Obligations. Any proof of claim so

filed shall be deemed to be in addition to, and not in lieu of, any other proof of claim that may be filed by the Lender.

30. Waiver of Bankruptcy Rule 6003(b), 6004(a) and 6004(h). The 21-day provision of Bankruptcy Rule 6003(b), the notice requirements of Bankruptcy Rule 6004(a), and the 14-day stay of 6004(h) are hereby waived.

31. Order Controls. In the event of a conflict between (a) the terms and provisions of the DIP Loan Documents or the Pre-Petition Loan Documents, as applicable, and (b) the terms and provisions of this Final Order, then in each case the terms and provisions of this Final Order shall govern.

32. Calculation of Dates. All time periods set forth in this Final Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

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. North River Insurance Company. Notwithstanding any other provisions of this Final Order, including but not limited to paragraph 9(b)(iv) of this Final Order, or any other order, nothing herein or in any prior orders (or any financing documents) shall prime any setoff and/or recoupment rights of The North River Insurance Company or any interest of the North River Insurance Company in collateral pursuant to that certain Paid Loss Deductible Agreement dated October 23, 2024 between the North River Insurance Company and the Debtor or any other prior similar agreement between The North River Insurance Company and the Debtor.

35. Extension of Milestones and Sale Timeline. The deadline for submitting bids under the Bid Procedures is extended from January 30, 2025, to February 13, 2025, the auction date is

rescheduled to February 21, 2025 at 10:00 a.m., and the hearing on the Sale shall be held on February 25, 2025 at 10:00 a.m. The Milestone in Section 5.48(e) of the DIP Credit Agreement relating to the entry of the Sale Order (as defined in the DIP Credit Agreement) shall be extended to February 26, 2025. The other milestones in the DIP Credit Agreement including Section 5.48(h) are not being modified or extended.

36. No Lien on Chapter 5 Actions, Commercial Tort Claims or Proceeds of Such Actions. The Lender shall have no lien, interest, right or share in any super priority administrative claim, in any claim or cause of action under chapter 5 of the Bankruptcy Code or section 724 of the Bankruptcy Code, in any commercial tort claim, or in any proceeds of the foregoing.

37. Utility Escrow Account. For the avoidance of doubt, the funds in the escrow account that is to be created in connection with the order approving the Debtor's *Motion for Continuation of Utility Service and Approval of Adequate Assurance of Payment to Utility Company Under Section 366(b) (Motion for Interim and Final Orders (A) Prohibiting Utility Companies from Altering, Refusing or Discontinuing Services to and/or Discriminating Against the Debtor on Account of Prepetition Amounts Due, (B) Determining that the Debtor's Utilities are Adequately Assured of Future Payment, (C) Authorizing the Debtor to Pay Adequate Assurance Deposits and (D) Establishing Procedures for Objecting or Requesting Additional Assurance of Payment) Filed by Crucible Industries, LLC.* (Docket No. 7) to provide adequate protection to certain utilities and funded by draws on certain Letters of Credit issued by Lender and/or DIP Loan from Lender are subject to the Lender's liens including the DIP Liens granted under the DIP Orders.

###

**Exhibit 1**

**Budget**

	Week 6 Forecasted Wk Ending 01/19/25	Week 7 Forecasted Wk Ending 01/26/25	Week 8 Forecasted Wk Ending 02/02/25	Week 9 Forecasted Wk Ending 02/09/25	Week 10 Forecasted Wk Ending 02/16/25	Week 11 Forecasted Wk Ending 02/23/25	Week 12 Forecasted Wk Ending 03/02/25
<b>Cash Receipts</b>							
Accounts receivable	\$ 408	\$ 837	\$ 325	\$ 550	\$ 591	\$ 622	\$ 448
Cash Receipts -- Non AVR	-	-	-	-	-	-	-
<b>Total</b>	<b>\$ 408</b>	<b>\$ 837</b>	<b>\$ 325</b>	<b>\$ 550</b>	<b>\$ 591</b>	<b>\$ 622</b>	<b>\$ 448</b>
<b>Notice Agent</b>							
<b>Disbursements</b>							
Payroll & Related Costs	\$ 217	\$ 101	\$ 206	\$ 62	\$ 192	\$ 50	\$ 166
Payroll OT	\$ 5	\$ 4	\$ 3	\$ 4	\$ 2	\$ 2	\$ 2
Payroll Taxes Employer and 401K Match	\$ 24	\$ 12	\$ 23	\$ 7	\$ 21	\$ 6	\$ 18
<b>Payroll total</b>	<b>\$ 246</b>	<b>\$ 117</b>	<b>\$ 232</b>	<b>\$ 73</b>	<b>\$ 215</b>	<b>\$ 59</b>	<b>\$ 187</b>
Health Care Insurance Premiums	\$ 117	\$ 2	\$ 37	\$ 2	\$ 82	\$ 2	\$ 32
Utilities & Mfg. Gases	\$ 202	\$ 256	-	\$ 5	\$ 245	-	\$ 10
Outside Purchases & Other Manufacturing							
- Raw material/outside converters	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
- Supplies (plant)	\$ 41	\$ 41	\$ 41	\$ 37	\$ 28	\$ 28	\$ 28
- Supplies (office)	\$ 2	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
- Capex	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
<b>Purchase &amp; Other Manufacturing Total</b>	<b>\$ 43</b>	<b>\$ 41</b>	<b>\$ 41</b>	<b>\$ 37</b>	<b>\$ 28</b>	<b>\$ 28</b>	<b>\$ 28</b>
<b>Labor and Mfg total</b>	<b>\$ 609</b>	<b>\$ 416</b>	<b>\$ 310</b>	<b>\$ 117</b>	<b>\$ 570</b>	<b>\$ 89</b>	<b>\$ 257</b>
Property Taxes, Sales Taxes and Other	\$ 5	\$ 13	\$ 13	\$ 13	\$ 13	\$ 13	\$ 13
Repairs and Maintenance	\$ 237	\$ 145	\$ 130	\$ 138	\$ 86	\$ 85	\$ -
Professional Services	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Trustee Fees	\$ 10	\$ 10	\$ 10	\$ -	\$ 10	\$ 10	\$ 10
Freight	\$ 30	\$ 29	\$ 32	\$ 30	\$ -	\$ 29	\$ 19
Leases (copiers, equip)	\$ 5	\$ 5	\$ 5	\$ 5	\$ 5	\$ 5	\$ 5
Environmental	\$ 10	\$ 93	\$ 30	\$ 30	\$ 7	\$ 105	\$ 0
Property Insurance/WC	\$ 310	\$ 295	\$ 220	\$ 216	\$ 121	\$ 252	\$ 47
<b>Operating Expenses Total</b>	<b>\$ 600</b>	<b>\$ 600</b>	<b>\$ 60</b>	<b>\$ 3</b>	<b>\$ 3</b>	<b>\$ -</b>	<b>\$ 60</b>
Loan Repayment w/interest	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Loan interest	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Loan fee - Key Bank/NYS	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Bank fees	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
<b>Bank Interest and Fees Total</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>
<b>Disbursements exclusive of Raw Materials / Utilities</b>	<b>\$ 1,317</b>	<b>\$ 455</b>	<b>\$ 590</b>	<b>\$ 331</b>	<b>\$ 446</b>	<b>\$ 341</b>	<b>\$ 353</b>
<b>Grand Total Disbursements</b>	<b>\$ 1,519</b>	<b>\$ 711</b>	<b>\$ 590</b>	<b>\$ 336</b>	<b>\$ 691</b>	<b>\$ 341</b>	<b>\$ 363</b>
<b>Net Cash Flow</b>	<b>\$ (1,111)</b>	<b>\$ 126</b>	<b>\$ (264)</b>	<b>\$ 214</b>	<b>\$ (100)</b>	<b>\$ 282</b>	<b>\$ 85</b>
<b>Cumulative Cash Flow</b>	<b>\$ (995)</b>	<b>\$ (869)</b>	<b>\$ (1,134)</b>	<b>\$ (920)</b>	<b>\$ (1,020)</b>	<b>\$ (739)</b>	<b>\$ (654)</b>

**Crucible Industries LLC**  
**2024 13 Wk Cash Flow Projection (in thousands)**  
**1/21/25**

**Key Bank Borrowing Base Information:**

	Week 6 Forecasted Wk Ending 01/19/25	Week 7 Forecasted Wk Ending 01/26/25	Week 8 Forecasted Wk Ending 02/02/25	Week 9 Forecasted Wk Ending 02/09/25	Week 10 Forecasted Wk Ending 02/16/25	Week 11 Forecasted Wk Ending 02/23/25	Week 12 Forecasted Wk Ending 03/02/25
Accounts Receivable:							
Beginning A/R (Gross)	2,365	2,647	2,306	2,766	2,707	2,497	2,482
Less: Collections	408	837	325	550	591	622	448
Plus: New Sales	690	496	785	491	381	607	325
Ending A/R (Gross)	2,647	2,306	2,766	2,707	2,497	2,482	2,359
Less: Ineligible A/R	572	572	572	572	572	572	572
Ending A/R (Net)	2,075	1,734	2,194	2,135	1,925	1,910	1,787
A/R Advance Rate	85%	85%	85%	85%	85%	85%	85%
Net Eligible AR	1,764	1,474	1,865	1,815	1,637	1,624	1,519

**Inventory:**

Raw Material Inventory	7,517	7,567	7,617	7,667	7,717	7,767	7,817
Less: Ineligible Inv	619	619	619	619	619	619	619
Net Raw Materials	6,898	6,948	6,998	7,048	7,098	7,148	7,198
Work in Process Inventory	8,865	8,607	8,176	7,922	7,713	7,369	7,194
Less: Ineligible Inv	2,195	2,195	2,195	2,195	2,195	2,195	2,195
Net Work in Process	6,670	6,412	5,981	5,727	5,518	5,174	4,999

**Net Eligible Inventory**

(WIP 65% / RM 58.5%)  
**Inventory Cap = \$15MM**

**Gross A/R & Inventory Availability- Cap \$20MM**

	8,371	8,233	7,982	7,846	7,739	7,545	7,460
	8,371	8,233	7,982	7,846	7,739	7,545	7,460
	10,135	9,707	9,846	9,660	9,376	9,168	8,979

**Revolver/Cash**

Revolver Loan - Beginning Balance	(7,080)	(8,191)	(8,065)	(8,330)	(8,116)	(8,216)	(7,935)
Net Cash Flow	(1,111)	126	(264)	214	(100)	282	85
Ending Revolver Balance	(8,191)	(8,065)	(8,330)	(8,116)	(8,216)	(7,935)	(7,850)

**Gross A/R & Inventory Availability- Cap \$20MM**

Gross A/R & Inventory Availability	10,135	9,707	9,846	9,660	9,376	9,168	8,979
Less: Key Bank Revolver Balance	8,191	8,065	8,330	8,116	8,216	7,935	7,850
Less: Standby Letter of Credit	1,052	1,052	1,052	1,052	1,052	1,052	1,052
Less: Block/Reserve	0	0	0	0	0	0	0
Net Revolver Availability	\$ 892	\$ 589	\$ 465	\$ 483	\$ 107	\$ 182	\$ 77

**Crucible Industries LLC**  
**2024 13 Wk Cash Flow Projection (in thousands)**  
 1/21/25

**Cash Receipts**

Accounts receivable	514								
Cash Receipts -- Non A/R	10,491								
<b>Total</b>	<b>\$ 11,005</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>

Notice Agent

**Disbursements**

Payroll & Related Costs	\$ 42	\$ 150	\$ 20	\$ 86	\$ 11	\$ 86
Payroll OT	\$ 2	\$ 1	\$ 1	\$ 1	\$ 1	\$ 1
Payroll Taxes Employer and 401K Match	\$ 5	\$ 17	\$ 2	\$ 9	\$ 1	\$ 9
<b>Payroll total</b>	<b>\$ 49</b>	<b>\$ 167</b>	<b>\$ 22</b>	<b>\$ 96</b>	<b>\$ 13</b>	<b>\$ 96</b>
Health Care Insurance Premiums	\$ 2	\$ 55	\$ 2	\$ 32	\$ 29	\$ 55
Utilities & Mfg. Gases	\$ 3	\$ 17	\$ -	\$ 5	\$ 15	\$ -
Outside Purchases & Other Manufacturing	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
- Raw material/outside converters	\$ 10	\$ 10	\$ 10	\$ 10	\$ 10	\$ 10
- Supplies (plant)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
- Supplies (office)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
- Capex	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
<b>Purchase &amp; Other Manufacturing Total</b>	<b>\$ 10</b>	<b>\$ 10</b>	<b>\$ 10</b>	<b>\$ 10</b>	<b>\$ 10</b>	<b>\$ 10</b>

**Labor and Mfg total**

Property Taxes, Sales Taxes and Other	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Repairs and Maintenance	\$ 13	\$ 5	\$ 5	\$ 5	\$ 5	\$ 5
Professional Services	\$ 137	\$ 378	\$ -	\$ -	\$ -	\$ -
Trustee Fees	\$ -	\$ 43	\$ -	\$ -	\$ -	\$ -
Freight	\$ 10	\$ 10	\$ -	\$ -	\$ -	\$ -
Leases (copiers, equip)	\$ 30	\$ 13	\$ 29	\$ 19	\$ 43	\$ -
Environmental	\$ 5	\$ 5	\$ 5	\$ 5	\$ 5	\$ 5
Property Insurance/WC	\$ 30	\$ 0	\$ 105	\$ 0	\$ 30	\$ 0
<b>Operating Expenses Total</b>	<b>\$ 225</b>	<b>\$ 454</b>	<b>\$ 144</b>	<b>\$ 29</b>	<b>\$ 83</b>	<b>\$ 40</b>

Loan Repayment w/interest

Loan interest						\$ 67
Loan fee - Key Bank/NYS						
Bank fees	3					3

**Bank Interest and Fees Total**

	\$ 3	\$ -	\$ -	\$ -	\$ -	\$ 70
<b>Disbursements exclusive of Raw Materials / Utilities</b>	<b>\$ 289</b>	<b>\$ 687</b>	<b>\$ 179</b>	<b>\$ 166</b>	<b>\$ 205</b>	<b>\$ 201</b>

**Grand Total Disbursements**

	\$ 292	\$ 704	\$ 179	\$ 171	\$ 220	\$ 201
--	--------	--------	--------	--------	--------	--------

**Net Cash Flow**

	\$ 10,713	\$ (704)	\$ (179)	\$ (171)	\$ (220)	\$ (201)
--	-----------	----------	----------	----------	----------	----------

**Cumulative Cash Flow**

	\$ 10,059	\$ 9,356	\$ 9,177	\$ 9,006	\$ 8,786	\$ 8,585
--	-----------	----------	----------	----------	----------	----------

**Crucible Industries LLC**  
**2024 13 Wk Cash Flow Projection (in thousands)**  
**1/21/25**

**Key Bank Borrowing Base Information:**

**Accounts Receivable:**

	Week 13 Forecasted Wk Ending 03/09/25	Week 14 Forecasted Wk Ending 03/16/25	Week 15 Forecasted Wk Ending 03/23/25	Week 16 Forecasted Wk Ending 03/30/25	Week 17 Forecasted Wk Ending 04/06/25	Week 18 Forecasted Wk Ending 04/13/25
Beginning A/R (Gross)	2,359	2,268	2,487	2,487	2,487	2,487
Less: Collections	514	-	-	-	-	-
Plus: New Sales	423	219	-	-	-	-
Ending A/R (Gross)	2,268	2,487	2,487	2,487	2,487	2,487
Less: Ineligible A/R	572	572	572	572	572	572
Ending A/R (Net)	1,696	1,915	1,915	1,915	1,915	1,915
A/R Advance Rate	85%	85%	85%	85%	85%	85%
<b>Net Eligible AR</b>	<b>1,442</b>	<b>1,628</b>	<b>1,628</b>	<b>1,628</b>	<b>1,628</b>	<b>1,628</b>

**Inventory:**

Raw Material Inventory	7,867	7,917	7,967	8,017	8,067	8,117
Less: Ineligible Inv	619	619	619	619	619	619
Net Raw Materials	7,248	7,298	7,348	7,398	7,448	7,498
Work in Process Inventory	6,960	6,849	6,869	6,889	6,909	6,929
Less: Ineligible Inv	2,195	2,195	2,195	2,195	2,195	2,195
Net Work in Process	4,765	4,654	4,674	4,694	4,714	4,734

**Net Eligible Inventory**  
**(WIP 65% / RM 58.5%)**

Inventory Cap = \$15MM

Gross A/R & Inventory Availability- Cap \$20MM

	Week 13 Forecasted Wk Ending 03/09/25	Week 14 Forecasted Wk Ending 03/16/25	Week 15 Forecasted Wk Ending 03/23/25	Week 16 Forecasted Wk Ending 03/30/25	Week 17 Forecasted Wk Ending 04/06/25	Week 18 Forecasted Wk Ending 04/13/25
<b>Revolver/Cash</b>						
Revolver Loan - Beginning Balance	(7,850)	2,863	2,160	1,981	1,810	1,590
Net Cash Flow	222	(704)	(179)	(171)	(220)	(201)
<b>Ending Revolver Balance</b>	<b>(7,628)</b>	<b>2,160</b>	<b>1,981</b>	<b>1,810</b>	<b>1,590</b>	<b>1,389</b>
<b>Gross A/R &amp; Inventory Availability- Cap \$20MM</b>	<b>8,779</b>	<b>8,922</b>	<b>8,964</b>	<b>9,007</b>	<b>9,049</b>	<b>9,091</b>
Less: Key Bank Revolver Balance	7,628					
Less: Standby Letter of Credit	1,052					
Less: Block/Reserve	0					
<b>Net Revolver Availability</b>	<b>\$ 99</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>



**Exhibit 2**

**Non-Primed Liens**

Major Metals Corp.

G.O. Carlson Inc. d/b/a Electralloy

VOSS Metals Company, Inc.

Michael F. Corbett & Ann Marie Corbutt

Stratton Metal Resources LTD.

Brant and Deborah Tomushunas

Comsource, Inc.

First Niagara Leasing, Inc.

Alliance Bank, N.A.

Summit Funding Group, Inc.

Susquehanna Commercial Finance, Inc.

PNC Equipment Finance

TCF Equipment Finance

VFS Leasing Co.

Commercial Credit Group, Inc.

Auxilior Capital Partners, Inc.