

**UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION**

In re

DBMP LLC,<sup>1</sup>

Debtor.

Chapter 11

Case No. 20-30080 (JCW)

**REPLY IN SUPPORT OF MOTION OF  
THE DEBTOR FOR AN ORDER AUTHORIZING IT TO ENTER  
INTO SECOND AMENDED AND RESTATED FUNDING AGREEMENT**

DBMP LLC, the debtor and debtor in possession in the above-captioned chapter 11 case (the “Debtor” or “DBMP”), files this Reply in support of the *Motion of the Debtor for an Order Authorizing It to Enter into Second Amended and Restated Funding Agreement* [Dkt. 1051] (the “Funding Agreement Motion”)<sup>2</sup> and in response to (a) the *Objection of the Official Committee of Asbestos Personal Injury Claimants to Debtor’s Motion to Approve Second Amended Funding Agreement* [Dkt. 1083] (the “ACC Objection”) and (b) the *Future Claimants’ Representative’s Joinder to the Objection of the Official Committee of Asbestos Personal Injury Claimants to Debtor’s Motion to Approve Second Amended Funding Agreement* [Dkt. 1084] (the “FCR Joinder”) and, together with the ACC Objection, the “Objections”).<sup>3</sup>

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<sup>1</sup> The last four digits of the Debtor’s taxpayer identification number are 8817. The Debtor’s address is 20 Moores Road, Malvern, Pennsylvania 19355.

<sup>2</sup> Capitalized terms not defined herein have the meanings given to them in the Funding Agreement Motion.

<sup>3</sup> Although the Future Claimants’ Representative joins the ACC Objection and requests that the Court deny the Funding Agreement Motion, it also states that it “does not oppose the proposed revisions to the Funding Agreement.” FCR Joinder at 1.

### **Preliminary Statement**

1. The Debtor seeks approval of the Second Amended Funding Agreement in an effort to address concerns raised by the Court and the Claimant Representatives and further make clear that New CT (as always intended) will provide the promised funding for this Chapter 11 Case and a section 524(g) trust. The Debtor believes this best promotes the progress of this restructuring and will allow the parties to focus on the central issue in this case—the Debtor’s liability for asbestos claims and the negotiation of a plan with appropriate trust funding.

2. The Objections, on the other hand, reveal that the Claimant Representatives are committed to engaging in time-consuming and costly litigation to challenge the Corporate Restructuring despite the clear commitment by New CT to provide adequate funding. The litigation approach of the Claimant Representatives will only prolong this Chapter 11 Case for no benefit to asbestos claimants or the Debtor’s estate. Further, the Objections ignore that the Second Amended Funding Agreement bolsters the protections afforded to the Debtor’s estate *without imposing any obligations on the Debtor*. Thus, whether analyzed under either the business judgment or entire fairness standard, the approval of the Second Amended Funding Agreement and entry of the Proposed Agreed Order are in the best interests of the Debtor’s estate and are appropriate. The fact that the Claimant Representatives have a wish list of additional changes is not a basis to deny the Funding Agreement Motion. By opposing this relief, the Asbestos Committee in particular seeks to discard these benefits to its constituency in an apparent effort to promote its unnecessary litigation alternative.<sup>4</sup>

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<sup>4</sup> Of course, granting the Funding Agreement Motion would not determine the Claimant Representatives’ ability to obtain standing to pursue litigation if they can meet the applicable legal standard. The Claimant Representatives’ motion for standing [Dkt. 1008] remains pending before the Court. The Debtor has made clear that (with or without amendments to the Funding Agreement), it does not believe granting such standing is appropriate at this juncture. *See Debtor’s Opp’n to Claimant Representatives’ Mot. for Leave, Standing, and Authority to Investigate, Commence, Prosecute, and Settle Certain Claims* [Dkt. 1072].

**Argument**

**I. THE CLAIMANT REPRESENTATIVES' OBJECTIONS IGNORE BENEFITS TO THE ESTATE IN LIEU OF THEIR PREFERENCE FOR LITIGATION.**

3. The Claimant Representatives' Objections generally are founded upon complaints about the Corporate Restructuring and groundless assertions regarding the Debtor's alleged intent to undermine litigation over that restructuring. *See, e.g.*, ACC Obj. at 18; FCR Joinder at 1-2. To be clear, the Debtor does not believe there are any viable challenges to the Corporate Restructuring, with or without the amendments to the Funding Agreement. But the Claimant Representatives' apparent preference for enhancing their litigation narrative over allowing the estate to obtain the benefits in the proposed Second Amended Funding Agreement is telling. *See* ACC Obj. at 18 ("It is simply a stratagem intended to preclude the Committee and FCR from pursuing any cause of action or remedy to unwind the Corporate Restructuring").

4. Whatever the views of the Claimant Representatives on the Corporate Restructuring, ACC Obj. ¶¶ 4, 22; FCR Joinder at 1-2, it is undeniable that the clarifications and amendments to the Funding Agreement do not harm, but instead benefit, the Debtor and the claimants, and do not impose financial obligations or restrictions on the Debtor (such obligations and restrictions instead are imposed on New CT). Assertions that the Debtor is agreeing to the amendments with no meaningful consideration in return ignore this fundamental fact.

5. Further, in an effort to resolve certain of the Claimant Representatives' objections relating to the findings contained in the Proposed Agreed Order, the Debtor has revised the Proposed Agreed Order, a copy of which is attached hereto as Exhibit A (the "Revised Agreed Order") along with a blackline showing the changes as Exhibit B.<sup>5</sup> As an example, the Asbestos

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<sup>5</sup> The Revised Agreed Order is attached without its exhibit, the Second Amended Funding Agreement, which is unchanged from the version attached to the Funding Agreement Motion.

Committee erroneously asserted that approval of the Second Amended Funding Agreement will “extinguish potentially valuable causes of action under chapter 5 of the Bankruptcy Code and other estate-held claims.” ACC Obj. at ¶ 22. But the amendments to the Funding Agreement are only intended to bolster the Funding Agreement to meet its intended purpose. To address the Asbestos Committee’s concerns on this front, the Debtor has added language to the Revised Agreed Order clarifying that nothing in the order constitutes a finding regarding the viability of any claims that may be asserted on behalf of the estate under chapter 5 of the Bankruptcy Code or other estate-held claims. *See* Revised Agreed Order ¶ 7. In addition, to avoid any confusion on this issue, the Debtor has removed the finding that the “terms of the Second Amended Funding Agreement are fair and reasonable, and contain adequate protections for the Debtor’s estates and creditors” from the Revised Agreed Order.

## **II. THE SECOND AMENDED FUNDING AGREEMENT IS IN THE BEST INTEREST OF THE DEBTOR’S ESTATE AND CREDITORS.**

6. The Asbestos Committee asserts that the proposed amendments in the Second Amended Funding Agreement are “mere window-dressing” and fail to correct the alleged structural subordination of asbestos claimants. *See* ACC Obj. Part I; *id.* ¶ 22. The Debtor, however, disputes that there is or ever has been any structural subordination of asbestos claimants and, other than charged rhetoric, the Asbestos Committee has failed to provide any evidence of harm to asbestos claimants. *See, e.g.,* Rebuttal Expert Report of Stephen Coulombe (Oct. 26, 2020) [Adv. Pro. No. 20-03004, Adv. Pro. Dkt. 236, A-43], ¶ 7 (“Structural subordination has no relevance to the asbestos claimants of DBMP who will not have to wait until distributions are made in respect of CT Holdings’ equity interest in New CT and who are not subordinated in any way to other unsecured creditors of New CT. Through the Funding Agreement, DBMP has direct access to the assets and liquidity of New CT and that access is *pari passu* with the claims of other

unsecured creditors of New CT. In short, because of the Funding Agreement, asbestos claimants have access to the same assets, in the same order of priority, as they did before the Corporate Restructuring.”).

7. Contrary to the Asbestos Committee’s assertions, the amendments and clarifications in the Second Amended Funding Agreement provide further assurances that the promised benefits of the Funding Agreement will be available and enforceable by the estate for the benefit of stakeholders, including those represented by the Claimant Representatives. As explained in the Funding Agreement Motion, the amendments, among other things, remove any uncertainty in the language about the ability to fund amounts needed by the Debtor, prohibit New CT from issuing dividends (other than to satisfy tax obligations) and prohibit New CT and its subsidiaries from forgiving obligations owed to them by affiliates. Funding Agreement Mot. ¶ 12. The Claimant Representatives, however, disregard these benefits. They focus instead on issues like the length of the cure periods for New CT to resolve an Event of Default. The Asbestos Committee complains that the reduced cure period “is still too long,” ACC Obj. ¶ 14, but ignores that this issue was not raised previously and the new cure period is substantially shorter than what was previously provided, which benefits the estate. That the Claimant Representatives would have preferred additional or different revisions to the Funding Agreement does not lessen the benefits provided by, or the propriety of, the amendments contained in the Second Amended Funding Agreement, nor do the Claimant Representatives’ preferences prove that there is any flaw in the agreement as amended. *See* FCR Joinder at 2; ACC Obj. ¶ 4.

8. The Asbestos Committee also complains that the Second Amended Funding Agreement still permits New CT to participate in the Saint-Gobain cash management system by providing for intercompany loans. But there is nothing inappropriate about New CT operating its

business in the ordinary course and participating in the cash management system of its corporate enterprise, which system long-preceded the Corporate Restructuring and was not altered by it. In any event, the loans complained of by the Asbestos Committee, ACC Obj. ¶¶ 4-7, are payable on demand by New CT, and the Second Amended Funding Agreement prohibits these amounts from being forgiven. *See* Second Amended Funding Agreement § 4(c)(ii). Therefore, these amounts remain available to New CT (and hence to the Debtor) at any time to provide funding under the Second Amended Funding Agreement.

9. In addition, the Asbestos Committee's concerns regarding New CT's ability to incur debt and engage in transfers disregard that, subject to applicable fraudulent transfer laws, Old CT had the same ability to incur debt senior to unsecured, contingent asbestos claims and enter into corporate transactions of various kinds. The Corporate Restructuring effected no changes on this front. And there is no evidence that any transaction is contemplated by New CT that could harm asbestos claimants or New CT's ability to provide funding under the Second Amended Funding Agreement.<sup>6</sup> The concerns are purely speculative and theoretical. Similarly, the Claimant Representatives' assertions that the Funding Agreement is deficient because it is not guaranteed or secured ignores the rights held by asbestos claimants before and after the Corporate Restructuring. The Corporate Restructuring did not change that these claimants hold unsecured, contingent tort claims with no legal right to collateral or a guarantee.

10. The Claimant Representatives also make much of the fact that the anti-assignment clause was not amended in the Second Amended Funding Agreement. *See* ACC Obj.

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<sup>6</sup> To the contrary, New CT has honored all funding requests under the Funding Agreement to date. Funding Agreement Mot. ¶ 9. And there is no reason to think that New CT would engage in a sale or financing transaction without receiving fair value in return (which could not be distributed as a dividend to Saint-Gobain). Likewise, any new secured financing would provide cash to New CT (in the amount of the financing) that could not be distributed as a dividend under the Second Amended Funding Agreement.

¶¶ 8-9; FCR Joinder at 2. But the anti-assignment clause does not impact the Debtor's or the Claimant Representatives' ability to propose a viable section 524(g) plan of reorganization, and assignment of the Funding Agreement is not needed to fund a plan. New CT has committed to fund the full amount needed for an asbestos trust, after the use of DBMP's assets, under *any* section 524(g) plan confirmed by final non-appealable orders of this Court and the District Court. This is true regardless of whether New CT or the Debtor agrees to such plan (a point that also has been clarified in the Second Amended Funding Agreement in the revised definition of "Permitted Funding Use"). *See* Second Amended Funding Agreement at 6. Still, the Debtor's goal remains to confirm a fully consensual plan, and the Debtor reiterates its open invitation for the Claimant Representatives to engage in negotiations over such a plan.

11. Despite these misplaced complaints, the fundamental fairness of the proposed amendments is not challenged (and the Future Claimants' Representative indicates that he has no issues with these changes). The clarifications and amendments to the Second Amended Funding Agreement strengthen the protections and benefits afforded to the Debtor's estate, at no additional cost to the estate. As a result, the Second Amended Funding Agreement is undeniably in the best interest of the estate.

### **III. THE SECOND AMENDED FUNDING AGREEMENT IS APPROPRIATE REGARDLESS OF THE STANDARD UNDER WHICH IT IS ANALYZED.**

12. The Asbestos Committee complains about the Debtor's argument that the proposed amendments to the Funding Agreement satisfy the business judgment standard, rather than the entire fairness standard that the Asbestos Committee insists applies for an agreement between affiliates. Whether the Court analyzes the Debtor's entry into the Second Amended

Funding Agreement under the business judgment or the entire fairness standard, the agreement is appropriate.<sup>7</sup>

13. Courts often approve agreements and transactions among affiliates based on the appropriate exercise of business judgment, including as part of relief granted at the outset of a bankruptcy case. *See In re Chemtura Corp.*, Case No. 09-11233 (REG), 2009 WL 10671579, at \*1-2 (Bankr. S.D.N.Y. July 28, 2009) (authorizing debtors to make intercompany loans and capital contributions to non-debtor subsidiaries); *In re ASARCO LLC*, No. 05-21207, Dkt. 9227, at ¶¶ 4, 5 (Bankr. S.D. Tex. Sept. 19, 2008) (authorizing debtor's entry into debtor-in-possession financing agreement, which would allow the debtor to make an intercompany loan to its subsidiary debtors because it was a "valid exercise of [the debtor's] business judgment and [was] in the best interest of the [debtor's] estate"); *see also Am. Order Authorizing the Debtor to Perform Under Certain Intercompany Agreements with Non-Debtor Affiliates*, Dkt. 204 at 2 (Bankr. W.D.N.C. Mar. 17, 2020) (finding "Debtor's continued performance and receipt of services under the Intercompany Agreements is a reasonable exercise of the Debtor's business judgment and is in the best interests of the Debtor's estate").

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The cases cited by the Asbestos Committee in support of its argument that the Debtor cannot invoke the business judgment standard and that the entire fairness standard must apply are inapposite to this case. *In re LATAM Airlines Grp. S.A.*, 620 B.R. 722 (Bankr. S.D.N.Y. 2020), involved approval of a debtor-in-possession financing motion. Of note, the court in that case did not deny the motion because it involved a transaction between the debtor and insiders. Instead, it found that the debtors had satisfied their burden under the entire fairness test because the proposed agreements resulted from fair dealing and a fair price, but denied the motion on other grounds. *Id.* at 792. *In re HyLoft, Inc.*, 451 B.R. 104 (Bankr. D. Nev. 2011), involved a motion to approve a settlement agreement proposed by a trustee in a chapter 7 case. *In re Flour City Bagels, LLC*, 557 B.R. 53 (Bankr. W.D.N.Y. 2016), involved denial of an asset sale motion given lack of evidence on valuation. *In re Bidermann Indus. U.S.A., Inc.*, 203 B.R. 547 (Bankr. S.D.N.Y. 1997), involved denial of an asset sale motion given the insufficient record demonstrating best interest of the estate, in part because of the lack of a marketing process. In these cases, the transactions at issue all imposed obligations on the Debtor, a far cry from the situation here where the Second Amended Funding Agreement imposes no obligation on the Debtor and only benefits the estate.



14. Here, the Second Amended Funding Agreement does not require any direct expenditure of estate funds or result in the reduction of any assets available to the estate; instead it bolsters a key asset of the estate by, among other things, removing any unintended ambiguity in the language regarding funding, making clear when funding is available and expressly submitting the Debtor and New CT to the jurisdiction of the Court for enforcement of the agreement. *See* Funding Agreement Mot. ¶ 18. The benefits to the estate are clear and come at no additional costs. Thus, the business judgment standard is satisfied.

15. Moreover, this is not a situation where an insider stands to benefit at the expense of the debtor, contrary to arguments by the Asbestos Committee. *See* ACC Obj. ¶ 22. As noted in the Funding Agreement Motion, the amendments and clarifications impose obligations and restrictions *on New CT, not the Debtor*. Even if the Court were to apply the entire fairness standard, the Second Funding Agreement is appropriate. Because the Second Amended Funding Agreement requires no direct expenditure of estate funds and promises only to enhance the estate, it is manifestly at “a fair price.” The entire fairness standard, therefore, is also satisfied.

#### **IV. THE SECOND AMENDED FUNDING AGREEMENT IS ENFORCEABLE.**

16. Surprisingly, the Asbestos Committee argues against the proposed finding that the Second Amended Funding Agreement is a valid and enforceable agreement. This is an untenable position. Because the Funding Agreement is a principal asset of the Debtor that provides for New CT to backstop the amounts necessary to establish a section 524(g) trust, it is beneficial to make clear that the Second Amended Funding Agreement is enforceable, as was always intended by the parties. Such a finding manifestly benefits the estate and creditors. And courts have found that intercompany agreements such as the Funding Agreement are enforceable. *See In re GulfMark Offshore, Inc.*, Case No. 17–11125 (KG), 2017 WL 5473683 at \*\*5-6, 13 (Bankr. D. Del. June 15, 2017) (authorizing entry into intercompany debtor-in-possession financing

agreement and finding intercompany finance documents to be enforceable); *In re Nortel Networks, Inc.*, 532 B.R. 494, 502 (Bankr. D. Del. 2015) (determining allocation of sales proceeds under interim funding and settlement agreement that was entered into by debtors and non-debtor affiliates and approved by the bankruptcy court); *In re Centaur PA Land, LP*, No. 09–13760 (KJC), 2009 WL 7226973, at \*\*1-2 (Bankr. D. Del. Dec. 4, 2009) (authorizing debtors’ entry into intercompany financing with non-debtor affiliate and finding such financing to be subject to intercompany note). Here, New CT has stipulated to the finding of enforceability, and the Court can and should enter the Revised Agreed Order with this finding.

17. The Asbestos Committee cites the Court’s finding in its preliminary injunction opinion regarding the enforceability of the Funding Agreement, but that finding did not focus on whether the Funding Agreement was enforceable as to New CT, which it clearly is. Instead, that finding provided that the enforceability of the Funding Agreement “vis a vis third parties is doubtful.”<sup>8</sup> See ACC Obj. ¶ 28. The Debtor respectfully submits that the Revised Agreed Order eliminates any doubt about this issue by granting the Claimant Representatives, after an Event of Default, an express right to enforce the agreement if the Debtor fails to do so (whether or not the Court grants the Claimant Representatives standing). The Future Claimants’ Representative still complains that “the Debtor’s proposed order simply restates the standard for creditor standing—it does not give the Claimants’ Representatives any mechanism for enforcing the Funding Agreement that they did not already have.” FCR Joinder at 2. This is not the case at all. The Debtor and New CT have agreed to a mechanism for the Claimant Representatives to

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<sup>8</sup> The court in *Schmoll v. ACandS, Inc.*, 703 F. Supp. 868 (D. Or. 1988), *aff’d*, 977 F.2d 499 (9th Cir. 1992), did not state that intercompany agreements were unenforceable, but rather took issue with a corporate restructuring that cut off asbestos claimants’ access to valuable assets in the context of successor liability. The Funding Agreement ensures *the opposite* here, and the Second Amended Funding Agreement provides further assurances on this issue.

enforce the Second Amended Funding Agreement, tantamount to a contractual right, without the need to obtain standing. Revised Agreed Order ¶ 6.

**Conclusion**

For all of these reasons and those set forth in the Funding Agreement Motion, the Court should enter the Revised Agreed Order approving the Second Amended Funding Agreement and grant such other and further relief to the Debtor as is just and appropriate.

Dated: October 11, 2021  
Charlotte, North Carolina

Respectfully submitted,

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ATTORNEYS FOR DEBTOR AND  
DEBTOR IN POSSESSION

**EXHIBIT A**

**REVISED AGREED ORDER**

**UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION**

In re

DBMP LLC,<sup>1</sup>

Debtor.

Chapter 11

Case No. 20-30080 (JCW)

**AGREED ORDER AUTHORIZING THE DEBTOR TO ENTER  
INTO SECOND AMENDED AND RESTATED FUNDING AGREEMENT**

This matter coming before the Court on the *Motion of the Debtor for an Order Authorizing It to Enter Into Second Amended and Restated Funding Agreement* [Dkt. 1051] (the “Motion”),<sup>2</sup> filed by the debtor and debtor in possession in the above-captioned case (the “Debtor”); the Court having reviewed the Motion and having considered the statements of counsel and the evidence adduced with respect to the Motion at a hearing before the Court (the “Hearing”); the Court finding that (a) the Court has jurisdiction over this matter pursuant to

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<sup>1</sup> The last four digits of the Debtor’s taxpayer identification number are 8817. The Debtor’s address is 20 Moores Road, Malvern, Pennsylvania 19355.

<sup>2</sup> Capitalized terms not otherwise defined herein have the meanings given to them in the Motion.

28 U.S.C. §§ 157 and 1334, (b) venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409, (c) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), (d) notice of the Motion and the Hearing was sufficient under the circumstances, (e) the Debtor's entry into the Second Amended Funding Agreement is a reasonable exercise of the Debtor's business judgment and is in the best interests of the Debtor's estate and creditors, and (f) the Second Amended Funding Agreement is a valid contract, enforceable in accordance with its terms; the Debtor and New CT having stipulated and agreed to the terms of this Agreed Order, as indicated by the signatures of their respective counsel below; and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED.
2. Pursuant to sections 105(a) and 363(b) of the Bankruptcy Code, the Debtor is authorized to enter into and perform all of its obligations, and receive all benefits, under the Second Amended Funding Agreement, substantially in the form attached hereto as Exhibit A. All transactions contemplated by the Second Amended Funding Agreement are approved.
3. The Debtor shall provide to counsel for the Claimant Representatives copies of the financial information received from New CT under Section 4(a) of the Second Amended Funding Agreement within five business days after receiving such information.
4. The Debtor shall provide to counsel for the Claimant Representatives copies of (a) any notices received from New CT under the Second Amended Funding Agreement within five business days after receiving such notice and (b) any notices given by the Debtor to New CT (including any Notices of Default) under the Second Amended Funding Agreement within three business days after giving such notice.

5. The Debtor shall provide to counsel for the Claimant Representatives (a) copies of all funding requests under Section 2(b) of the Amended Funding Agreement within three business days of the Debtor making such request and (b) copies of proof of funding of each such funding request within five business days of such proof becoming available to the Debtor.

6. If, upon an Event of Default under Section 6 of the Second Amended Funding Agreement, the Debtor fails to take action to enforce its remedies as Payee against New CT as Payor, then the Debtor and New CT agree that the Claimant Representatives may take such actions as are necessary or appropriate on behalf the Payee to pursue remedies in this Court to address such Event of Default after first giving the Debtor and its counsel 10 business days' advance written notice. Any disagreement between the Debtor and the Claimant Representatives about whether there is an Event of Default under the Second Amended Funding Agreement shall be resolved by the Bankruptcy Court.

7. For the avoidance of doubt, nothing herein shall constitute a finding regarding the viability of any claims that may be asserted on behalf of the estate under chapter 5 of the Bankruptcy Code or other estate-held claims.

8. The Debtor is authorized and empowered to take all actions necessary to implement the relief granted in this Order.

9. This Court shall retain exclusive jurisdiction over any and all matters arising from or related to the implementation, enforcement or interpretation of this Order and, during the pendency of this case, the enforcement of the Second Amended Funding Agreement.

STIPULATED AND AGREED AS TO  
FORM AND SUBSTANCE BY:



/s/ Jeffrey B. Ellman

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ATTORNEYS FOR DEBTOR AND  
DEBTOR IN POSSESSION

This Order has been signed electronically.  
The Judge's signature and Court's seal appear  
at the top of the Order.

/s/ Richard M. Wyner

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ATTORNEYS FOR CERTAINTEED LLC

United States Bankruptcy Court

**EXHIBIT B**

**BLACKLINE**

**UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION**

In re

DBMP LLC,<sup>1</sup>

Debtor.

Chapter 11

Case No. 20-30080 (JCW)

**AGREED ORDER AUTHORIZING THE DEBTOR TO ENTER  
INTO SECOND AMENDED AND RESTATED FUNDING AGREEMENT**

This matter coming before the Court on the *Motion of the Debtor for an Order Authorizing It to Enter Into Second Amended and Restated Funding Agreement* [Dkt. [—1051](#)] (the “Motion”),<sup>2</sup> filed by the debtor and debtor in possession in the above-captioned case (the “Debtor”); the Court having reviewed the Motion and having considered the statements of counsel and the evidence adduced with respect to the Motion at a hearing before the Court

<sup>1</sup> The last four digits of the Debtor’s taxpayer identification number are 8817. The Debtor’s address is 20 Moores Road, Malvern, Pennsylvania 19355.

<sup>2</sup> Capitalized terms not otherwise defined herein have the meanings given to them in the Motion.

(the “Hearing”); the Court finding that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (b) venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409, (c) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), (d) notice of the Motion and the Hearing was sufficient under the circumstances, (e) the Debtor’s entry into the Second Amended Funding Agreement is a reasonable exercise of the Debtor’s business judgment and is in the best interests of the Debtor’s estate and creditors, and ~~(f) the terms of the Second Amended Funding Agreement are fair and reasonable, and contain adequate protections for the Debtor’s estate and its creditors, and (g)~~ the Second Amended Funding Agreement is a valid contract, enforceable in accordance with its terms; the Debtor and New CT having stipulated and agreed to the terms of this Agreed Order, as indicated by the signatures of their respective counsel below; and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED.
2. Pursuant to sections 105(a) and 363(b) of the Bankruptcy Code, the Debtor is authorized to enter into and perform all of its obligations, and receive all benefits, under the Second Amended Funding Agreement, substantially in the form attached hereto as Exhibit A. All transactions contemplated by the Second Amended Funding Agreement are approved.
3. The Debtor shall provide to counsel for the Claimant Representatives copies of the financial information received from New CT under Section 4(a) of the Second Amended Funding Agreement within five business days after receiving such information.

4. The Debtor shall provide to counsel for the Claimant Representatives copies of (a) any notices received from New CT under the Second Amended Funding Agreement within five business days after receiving such notice and (b) any notices given by the Debtor to New CT (including any Notices of Default) under the Second Amended Funding Agreement within three business days after giving such notice.

5. The Debtor shall provide to counsel for the Claimant Representatives (a) copies of all funding requests under Section 2(b) of the Amended Funding Agreement within three business days of the Debtor making such request and (b) copies of proof of funding of each such funding request within five business days of such proof becoming available to the Debtor.

6. If, upon an Event of Default under Section 6 of the Second Amended Funding Agreement, the Debtor fails to take action to enforce its remedies as Payee against New CT as Payor, then the Debtor and New CT agree that the Claimant Representatives may take such actions as are necessary or appropriate on behalf the Payee to pursue remedies in this Court to address such Event of Default after first giving the Debtor and its counsel 10 business days' advance written notice. Any disagreement between the Debtor and the Claimant Representatives about whether there is an Event of Default under the Second Amended Funding Agreement shall be resolved by the Bankruptcy Court.

7. For the avoidance of doubt, nothing herein shall constitute a finding regarding the viability of any claims that may be asserted on behalf of the estate under chapter 5 of the Bankruptcy Code or other estate-held claims.

~~7~~8. The Debtor is authorized and empowered to take all actions necessary to implement the relief granted in this Order.

89. This Court shall retain exclusive jurisdiction over any and all matters arising from or related to the implementation, enforcement or interpretation of this Order and, during the pendency of this case, the enforcement of the Second Amended Funding Agreement.

STIPULATED AND AGREED AS TO  
FORM AND SUBSTANCE BY:

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ATTORNEYS FOR CERTAINTEED LLC

This Order has been signed electronically.  
The Judge's signature and Court's seal appear at  
the top of the Order.

United States Bankruptcy Court