



*Their Chapter 11 Cases to Cases under Chapter 7 of the Bankruptcy Code and (II) Granting Related Relief* [D.I. 2357] (the “Conversion Motion”).

As it does not seek to impair their rights, the Pre-Petition Agent and UBE are not taking a position with respect to the Conversion Motion, but file this Reservation of Rights in order to highlight certain issues relating to the administration of the Debtors’ estates that will need to be addressed regardless of whether the Conversion Motion is granted. In connection with this Reservation of Rights, the Pre-Petition Agent and UBE respectfully state as follows:

1. At the request of the Debtors to, among other things, support an orderly sale process to maximize the value of all of the Debtors’ assets in the Chapter 11 Cases, MUFG and certain of the Pre-Petition Lenders provided the DIP Facility, which was approved on a final basis in the Final DIP Order entered by the Court on April 19, 2018. The sale of substantially all of the Debtors’ assets was approved by orders of the Court (collectively, the “Final Sale Order”) and the closing of the transactions contemplated in the Final Sale Order (the “Closing”) occurred on July 13, 2018. Following the Closing, and pursuant to the Final DIP Order and Final Sale Order, the DIP Obligations were indefeasibly paid in full and the Pre-Petition Obligations and the UBE Obligations were paid in full subject to, *inter alia*, certain ongoing obligations of the Debtors under the terms of the Pre-Petition Loan Documents (the “Continuing Pre-Petition Obligations”) and the UBE Loan Documents (the “Continuing UBE Obligations”). The Continuing Pre-Petition Obligations and the Continuing UBE Obligations include, without limitation, claims under the indemnification and fee reimbursement provisions of the Pre-Petition Loan Documents and the UBE Loan Documents.

2. The Continuing Pre-Petition Obligations continue to (i) be secured by, *inter alia*, the Adequate Protection Liens and (ii) constitute Adequate Protection Superpriority Claims with

such liens and claims having automatically attached to the proceeds of the Sale Transaction in favor of the Pre-Petition Agent on behalf of the Pre-Petition Lenders with the same validity, force, priority, and effect of the pre-petition claims, liens and security interests against the Purchased Assets (the “Continuing Pre-Petition Liens and Claims”). Consistent with the foregoing, the Unencumbered Cash and Unencumbered Collateral, including any additional Unencumbered Cash and Unencumbered Collateral to be collected by the Debtors, and any remaining proceeds drawn from the DIP Loan at Closing are subject to, and encumbered by, the Continuing Pre-Petition Liens and Claims (the “Post-Closing Cash Collateral”) and the Debtors are authorized to use the Post-Closing Cash Collateral solely in accordance with the Approved Budget, which is set to expire on May 31, 2019.

3. Further, pursuant to paragraph 9 of that certain *Order (I) Authorizing the Sale of All or Substantially All of the Debtors’ Assets Free and Clear of All Liens, Claims, Interests, Encumbrances and Other Interests, (II) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection Therewith, and (III) Granting Related Relief* [D.I. 846] (the “Original Sale Order”), among other things, the Debtors were required to establish a reserve from the net sale proceeds (the “Sale Proceeds”), as adequate protection, for post-Closing professional fees and expenses for the Pre-Petition Secured Parties that would continue to accrue after the Closing (together with any remaining pre-petition reserves, the “Professional Fee Reserve”).

4. In addition, the Pre-Petition Agent’s claims for the Continuing Pre-Petition Obligations constitute secured claims under the Pre-Petition Loan Documents, and UBE’s claims for the Continuing UBE Obligations constitute secured claims under the UBE Loan Documents.

5. On June 2, 2018, AI International Holdings (BVI) Ltd. (“Access”) filed an adversary proceeding against MUFG and UBE seeking various counts for relief, including a determination of the extent of the defendants’ liens and the amount of the Sale Proceeds purportedly required to be disgorged (the “Access Litigation”). On June 4, 2018, various writer, director and screen actor guilds (collectively, the “Guilds”) filed an adversary proceeding against MUFG and UBE asserting claims similar to those in the Access Litigation, but such claims were resolved pursuant to a settlement agreement approved by the Court on January 8, 2019 [D.I. 1956]. While all other claims against MUFG and UBE have been waived, released or finally resolved (including any and all claims of the Debtors), the Access Litigation remains outstanding following an unsuccessful attempt to mediate the matter. The Pre-Petition Agent, as the party with the primary economic risk, has taken the lead in the Access Litigation pursuant to an intercreditor agreement with UBE.

6. Since the Closing, the Debtors have been authorized to use Post-Closing Cash Collateral pursuant to that certain *Stipulation Regarding Supplemental Use of Cash Collateral* (the “Initial Stipulation”), which was approved by the Court on October 9, 2018 [D.I. 1577] and that certain *Second Stipulation Regarding Supplemental Use of Cash Collateral*, which was approved by the Court on March 29, 2019 [D.I. 2238] (the “Second Stipulation,” and together with the Initial Stipulation, the “Post-Closing Stipulations”). In order to relieve the administrative burden on the Debtors’ estates, the Post-Closing Stipulations also waived various obligations of the Debtors under the Pre-Petition Credit Agreement, including financial covenants, monitoring, and reporting rights. The Debtors’ Approved Budget for use of Post-Closing Cash Collateral under the Second Stipulation is set to expire on May 31, 2019.

7. In anticipation of this upcoming expiration date, the Debtors, MUFG and UBE have engaged in constructive discussions regarding the Debtors' use of Post-Closing Cash Collateral in the event the Conversion Motion is not granted. If the Conversion Motion is granted, MUFG and UBE would expect to engage in similar discussions with the chapter 7 trustee for the Debtors' estates.

8. Given the post-Closing litigation activity (including the \$1.0 million settlement payment to the Guilds and the pending Access Litigation), the Professional Fee Reserve is virtually depleted. Moreover, UBE has incurred significant unreimbursed litigation costs. The Debtors remain liable to the Pre-Petition Agent and UBE for the obligations that have been (and will continue to be) incurred pursuant to the indemnification and fee reimbursement provisions of the Pre-Petition Credit Agreement and the UBE Credit Agreement, together with certain orders of the Court, including the adequate protection provisions and other obligations set forth in the Final DIP Order and the Final Sale Order. These obligations include, without limitation, the legal, financial and expert fees and expenses of all professionals engaged by the Pre-Petition Agent and UBE in connection with the Access Litigation and the Chapter 11 Cases.

9. Accordingly, the Pre-Petition Agent and UBE reserve all of their rights and enforcement remedies, including with respect to events of default that may exist or arise in the future.

Dated: May 28, 2019  
Wilmington, Delaware

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