

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF OHIO**

In re:	)	Chapter 11
	)	
Hopedale Mining LLC, <i>et al.</i> , <sup>1</sup>	)	Case No. 20-12043 (GRH)
	)	
	)	(Jointly Administered)
	)	
Debtors.	)	Honorable Guy R. Humphrey

**NOTICE OF FILING: (I) PROPOSED FINAL ORDER IN CONNECTION WITH THE  
DEBTORS' DEBTOR-IN-POSSESSION FINANCING MOTION (DOCKET NO. 23);  
AND (II) BLACKLINE TO INTERIM ORDER**

**PLEASE TAKE NOTICE** that on July 22, 2020, the above-captioned debtors and debtors-in-possession (collectively, the “**Debtors**”), by their undersigned proposed counsel, filed the *Debtors Motion for Entry of Interim and Final Orders: (i) Authorizing Post-Petition Secured Financing Pursuant to Sections 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), 364(e), 503(b) and 507(b) of the Bankruptcy Code; (ii) Authorizing the Debtors to Use Cash Collateral Pursuant to Section 363 of the Bankruptcy Code; (iii) Providing Adequate Protection to the Prepetition Lenders Parties Pursuant to Sections 361, 362, and 363 of the Bankruptcy Code; (iv) Modifying the Automatic Stay Pursuant to Section 362(d) of the Bankruptcy Code; (v) Scheduling a Final Hearing; and (vi) Providing Related Relief* (Docket No. 23) (the “**DIP Financing Motion**”).<sup>2</sup>

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<sup>1</sup> The Debtors in these Chapter 11 cases are (with the last four digits of their federal tax identification numbers in parentheses): Rhino GP LLC (8619), Rhino Resource Partners LP (7517), Rhino Energy LLC (6320), Rhino Trucking LLC (8773), Rhino Exploration LLC (8863), Triad Roof Support Systems LLC (1183), Springdale Land LLC (9816), McClane Canyon Mining LLC (3783), Rhino Northern Holdings LLC (1858), CAM-Ohio Real Estate LLC (1859), CAM-Colorado LLC (4269), Taylorville Mining LLC (5106), CAM Coal Trading LLC (4143), Castle Valley Mining LLC (9495), Jewell Valley Mining LLC (0270), Rhino Services LLC (3356), Rhino Oilfield Services LLC (8938), Rhino Technologies LLC (0994), CAM Mining LLC (2498), Rhino Coalfield Services LLC (3924), Hopedale Mining LLC (9060), CAM-Kentucky Real Estate LLC (9089), CAM-BB LLC (9097), Leesville Land LLC (7794), CAM Aircraft LLC (5467), Pennyrite Energy LLC (6095), Rhino Eastern LLC (1457), Rockhouse Land LLC (7702).

<sup>2</sup> Capitalized terms used herein but undefined shall have the meanings ascribed to them in the DIP Financing Motion.

**PLEASE TAKE FURTHER NOTICE** that on July 22, 2020, this Court entered the *Interim Order (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Use Cash Collateral, (II) Granting Liens and Providing Superpriority Administrative Expense Status, (III) Granting Adequate Protection to the Prepetition Secured Parties, (IV) Modifying the Automatic Stay, (V) Scheduling a Final Hearing, and (VI) Granting Related Relief* (Docket No. 23) (the “**Interim Order**”), which approved the DIP Financing Motion on an interim basis.

**PLEASE TAKE FURTHER NOTICE** that attached hereto as **Exhibit A** is a proposed order approving the DIP Financing Motion on a final basis (the “**Proposed Final Order**”).

**PLEASE TAKE FURTHER NOTICE** that attached hereto as **Exhibit B** is a redline comparison of the Proposed Final Order to the Interim Order.

Dated: August 12, 2020

Respectfully submitted,

/s/ A.J. Webb

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**PROPOSED ATTORNEYS FOR  
DEBTORS AND DEBTORS-IN-  
POSSESSION**

# EXHIBIT A

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF OHIO**

In re:	)	Chapter 11
	)	
Hopedale Mining LLC, <i>et al.</i> , <sup>1</sup>	)	Case No. 20-12043 (GRH)
	)	
	)	(Jointly Administered)
	)	
Debtors.	)	Honorable Judge Guy R. Humphrey

**FINAL ORDER (I) AUTHORIZING THE DEBTORS TO (A) OBTAIN  
POSTPETITION FINANCING AND (B) USE CASH COLLATERAL, (II) GRANTING  
LIENS AND PROVIDING SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS,  
(III) GRANTING ADEQUATE PROTECTION TO THE PREPETITION SECURED  
PARTIES, (IV) MODIFYING THE AUTOMATIC STAY, AND (V) GRANTING  
RELATED RELIEF [RELATED TO DOCKET NOS. 23 & 61]**

Upon the motion (the “**Motion**”)<sup>2</sup> of Rhino Energy LLC (the “**Company**”), and its affiliated debtors, each as a debtor and debtor in possession (collectively, the “**Debtors**”) in the above-captioned cases (the “**Chapter 11 Cases**”) pursuant to sections 105, 361, 362, 363(b), 363(c)(2), 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), 364(e), 503, and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “**Bankruptcy Code**”), Rules 2002, 4001, 6003, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) and the

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<sup>1</sup> The Debtors in these Chapter 11 cases are (with the last four digits of their federal tax identification numbers in parentheses): Rhino GP LLC (8619), Rhino Resource Partners LP (7517), Rhino Energy LLC (6320), Rhino Trucking LLC (8773), Rhino Exploration LLC (8863), Triad Roof Support Systems LLC (1183), Springdale Land LLC (9816), McClane Canyon Mining LLC (3783), Rhino Northern Holdings LLC (1858), CAM-Ohio Real Estate LLC (1859), CAM-Colorado LLC (4269), Taylorville Mining LLC (5106), CAM Coal Trading LLC (4143), Castle Valley Mining LLC (9495), Jewell Valley Mining LLC (0270), Rhino Services LLC (3356), Rhino Oilfield Services LLC (8938), Rhino Technologies LLC (0994), CAM Mining LLC (2498), Rhino Coalfield Services LLC (3924), Hopedale Mining LLC (9060), CAM-Kentucky Real Estate LLC (9089), CAM-BB LLC (9097), Leesville Land LLC (7794), CAM Aircraft LLC (5467), Pennyryle Energy LLC (6095), Rhino Eastern LLC (1457), Rockhouse Land LLC (7702).

<sup>2</sup> Capitalized terms used herein and not herein defined have the meaning ascribed to such terms in the Motion or the DIP Credit Agreement (as defined herein).

Local Bankruptcy Rules for the Southern District of Ohio (the “**Local Bankruptcy Rules**”)

seeking, among other things:

- (i) authorization for the DIP Borrowers<sup>3</sup> to obtain the obligations of the postpetition financing in an aggregate principal amount not to exceed \$11.75 million (the “**DIP Financing**”), under a superpriority senior secured priming debtor-in-possession credit facility (the “**DIP Facility**”) consisting of delayed draw term loans (collectively, the “**DIP Loans**”) to be provided by certain Prepetition Lenders (as defined below) (in their capacity as lenders under the DIP Credit Agreement (as defined below), the “**DIP Lenders**”);
- (ii) authorization for the DIP Guarantors<sup>4</sup> to guarantee the obligations arising under the DIP Credit Agreement related to the DIP Loans (the “**DIP Obligations**”);
- (iii) authorization for the Credit Parties<sup>5</sup> to (a) execute and enter into that certain *Super-priority Senior Secured Priming Debtor-In-Possession Financing Agreement*, dated on July 27, 2020 (as may be amended, restated, supplemented, waived or otherwise modified from time to time in accordance with the terms hereof and thereof, the “**DIP Credit Agreement**”), among the DIP Borrowers, as borrowers, the DIP Guarantors, as guarantors, the DIP Lenders, as lenders, Alter Domus (US) LLC, as the administrative agent for the DIP Facility (solely in such capacity, the “**DIP Administrative Agent**”) and as collateral agent for the DIP Facility (solely in such capacity, the “**DIP Collateral Agent**”; the DIP Administrative Agent, together with the DIP Collateral Agent the “**DIP Agents**”; and the DIP Agents together with the DIP Lenders, the “**DIP Secured Parties**”), substantially in the form attached to the Motion as **Exhibit B** and any other agreements, instruments, pledge agreements, guarantees, security agreements, intellectual property security agreements, control agreements, notes and other Loan Documents (as defined in the DIP Credit Agreement) and documents related thereto (as amended, restated, supplemented, waived, and/or modified from time to time in accordance with the terms hereof and thereof, and collectively with the DIP Credit Agreement, the “**DIP Documents**”) and (b) perform their respective

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<sup>3</sup> As used herein, the term “**DIP Borrowers**” shall mean Debtors Rhino Energy LLC, Rhino Exploration LLC, Springdale Land LLC, McClane Canyon Mining LLC, CAM-Ohio Real Estate LLC, CAM-Colorado LLC, Taylorville Mining LLC, Castle Valley Mining LLC, Rhino Technologies LLC, CAM Mining LLC, Hopedale Mining LLC, CAM-Kentucky Real Estate LLC, Leesville Land LLC, CAM Aircraft LLC, and Pennyryle Energy LLC.

<sup>4</sup> As used herein, the term “**DIP Guarantors**” shall mean Debtors Rhino GP, LLC, Rhino Resource Partners LP, Rhino Trucking LLC, Triad Roof Support Systems LLC, Rhino Northern Holdings LLC, CAM Coal Trading LLC, Rhino Services LLC, Rhino Oilfield Services LLC, Rhino Coalfield Services LLC, CAM-BB LLC, Jewel Valley Mining LLC, Rhino Eastern LLC, and Rockhouse Land LLC.

<sup>5</sup> As used herein, the term “**Credit Parties**” shall mean the DIP Borrowers and the DIP Guarantors.

obligations thereunder and all such other and further acts as may be necessary, appropriate, or desirable in connection with the DIP Documents;

- (iv) authorization for the Credit Parties (a) upon entry of the *Interim Order (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Use Cash Collateral, (II) Granting Liens and Providing Superpriority Administrative Expense Status, (III) Granting Adequate Protection to the Prepetition Secured Parties, (IV) Modifying the Automatic Stay, (V) Scheduling a Final Hearing, and (VI) Granting Related Relief* [Docket No. 61] (the “**Interim Order**”), to incur on the Closing Date (as defined in the DIP Credit Agreement) DIP Loans in an aggregate principal amount of up to \$3.5 million (the “**Initial DIP Loans**”) and (b) upon entry of this order (the “**Final Order**”), to incur DIP Loans in an aggregate principal amount of up to \$8.25 million (the “**Delayed Draw DIP Loans**”), for a total aggregate principal amount of up to \$11.75 million;
- (v) authorization for the Debtors to use proceeds of the DIP Loans to pay fees and expenses in connection with the transactions contemplated by the DIP Credit Agreement and to fund working capital of the DIP Borrowers in accordance with the terms of the DIP Documents and Approved Cash Flow Forecast (as defined below) and general corporate purposes;
- (vi) subject to the restrictions set forth in the DIP Documents and this Final Order, authorization for the Credit Parties to continue to use Cash Collateral (as defined below) and all other Prepetition Collateral (as defined below) in which any of the Prepetition Secured Parties (as defined below) has an interest, and to grant adequate protection to the Prepetition Secured Parties with respect to, *inter alia*, such use of Cash Collateral and other Prepetition Collateral;
- (vii) authorization for the Credit Parties to pay, on a final and irrevocable basis, the principal, interest, fees, expenses and other amounts payable under the DIP Documents as such become earned, due and payable, including, but not limited to, origination fees, exit fees, prepayment fees, agency fees, audit fees, appraisal fees, valuation fees, administrative agents’ fees, collateral agents’ fees, the reasonable fees and disbursements of the DIP Agents’ and DIP Lenders’ attorneys, advisors, accountants, appraisers, bankers, and other consultants, all to the extent provided in, and in accordance with, the DIP Documents and subject to the Approved Cash Flow Forecast (including Permitted Variances<sup>6</sup>);
- (viii) approval of certain stipulations by the Debtors with respect to the Prepetition Credit Documents (as defined below) and the liens and security interests arising therefrom;

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<sup>6</sup> “**Permitted Variances**” has the meaning set forth in the DIP Credit Agreement and also includes any variances approved by the DIP Secured Parties.

- (ix) subject only to the Carve-Out, the granting to the DIP Secured Parties of allowed superpriority claims pursuant to section 364(c)(1) of the Bankruptcy Code payable from and having recourse to all prepetition and postpetition property of the Credit Parties' estates and all proceeds thereof (other than Avoidance Actions<sup>7</sup> and Avoidance Proceeds<sup>8</sup>);
- (x) the granting to the DIP Agents (for the benefit of the DIP Secured Parties) of valid, enforceable, nonavoidable, and fully perfected security interests and liens (including liens pursuant to sections 364(c)(2) and 364(c)(3) of the Bankruptcy Code and priming liens pursuant to section 364(d) of the Bankruptcy Code) on all DIP Collateral, subject to (a) the Carve-Out, (b) the Permitted Liens (as defined in the DIP Credit Agreement), and (c) this Final Order;
- (xi) (a) a waiver of the Debtors' right to surcharge the Prepetition Collateral and the DIP Collateral (as defined below) (together, the "**Collateral**") pursuant to section 506(c) of the Bankruptcy Code, and (b) a waiver of any right of the Debtors under the "equities of the case" exception under section 552(b) of the Bankruptcy Code;
- (xii) modification of the automatic stay to the extent set forth herein and in the DIP Documents; and
- (xiii) waiver of any applicable stay (including under Bankruptcy Rule 6004) and provision for immediate effectiveness of this Final Order.

The Court having considered the interim relief requested in the Motion, the exhibits attached thereto, the Fairfield Declaration (as defined in the Motion), the Boone Declaration (as defined in the Motion), the DIP Documents, and the evidence submitted and arguments made at the interim hearing held on July 24, 2020 (the "**Interim Hearing**") and the final hearing held on August 12, 2020 (the "**Final Hearing**" and collectively with the Interim Hearing, the "**Hearings**"); and the Court having entered the Interim Order; and due and sufficient notice of the Final Hearing having been given in accordance with Bankruptcy Rules 2002, 4001(b), (c) and (d), and all applicable Local Bankruptcy Rules; and the Final Hearing having been held and

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<sup>7</sup> "**Avoidance Actions**" means, collectively, claims and causes of action under sections 502(d), 544, 545, 547, 548, 549, and 550 of the Bankruptcy Code, or any other avoidance actions under the Bankruptcy Code.

<sup>8</sup> "**Avoidance Proceeds**" means any proceeds or property recovered, unencumbered or otherwise, from Avoidance Actions, whether by judgment, settlement or otherwise.

concluded; and all objections, if any, to the final relief requested in the Motion having been withdrawn, resolved or overruled by the Court; and it appearing that approval of the final relief requested in the Motion is fair and reasonable and in the best interests of the Debtors and their estates, and is essential for the continued operation of the Debtors' businesses and the preservation of the value of the Debtors' assets; and it appearing that the Debtors' entry into the DIP Documents is a sound and prudent exercise of the Debtors' business judgment; and after due deliberation and consideration, and good and sufficient cause appearing therefor.

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

1. *Disposition.* The relief requested in the Motion is GRANTED ON A FINAL BASIS in accordance with the terms of this Final Order. Any and all objections to the Motion with respect to the entry of this Final Order that have not been withdrawn, waived, settled, or resolved and all reservations of rights included therein, are hereby denied and overruled on the merits. This Final Order shall become effective immediately upon its entry.

2. *Petition Date.* On July 22, 2020 (the "**Petition Date**"), each Debtor filed a voluntary petition (each, a "**Petition**") under chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the Southern District of Ohio (this "**Court**").

3. *Debtors in Possession.* The Debtors continue to operate their businesses and manage their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in any of the Chapter 11 Cases.

4. *Jurisdiction and Venue.* This Court has core jurisdiction over the Chapter 11 Cases, the Motion, and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157(a)-(b) and 1334 and the *General Order 30-2* from the United States Bankruptcy Court for the



Southern District of Ohio, dated October 10, 2019. Venue for the Chapter 11 Cases and proceedings on the Motion is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

5. *Committee Formation.* On July 30, 2020, the United States Trustee for the Southern District of Ohio (the “**U.S. Trustee**”) appointed an official committee of unsecured creditors in the Chapter 11 Cases pursuant to section 1102 of the Bankruptcy Code (the “**Creditors’ Committee**”) [Docket No. 128].

6. *Notice.* Appropriate notice of the Motion has been provided in accordance with the Bankruptcy Code, the Bankruptcy Rules and the Local Bankruptcy Rules, and no other or further notice of the Motion or the entry of this Final Order shall be required.

7. *Debtors’ Stipulations.* Without prejudice to the rights of any other party in interest and subject to the limitations thereon contained in paragraphs 27 and 31 below, the Debtors acknowledge, admit, stipulate, and agree that:

(a) pursuant to that certain *Financing Agreement*, dated as of December 27, 2017 (as amended, supplemented, restated or otherwise modified prior to the Petition Date, the “**Prepetition Credit Agreement**,” and collectively with any other agreements and documents executed or delivered in connection therewith, each as may be amended, restated, supplemented, waived or otherwise modified from time to time, the “**Prepetition Credit Documents**”), among (a) Rhino Resource Partners LP, as parent (“**Parent**”), (b) Rhino Energy LLC and certain of its subsidiaries (the “**Prepetition Borrowers**”), (c) Parent and certain of its subsidiaries (together with Parent, the “**Prepetition Guarantors**”), (d) Cortland Capital Market Services LLC, as administrative agent and collateral agent (the “**Prepetition Agent**” and the “**Prepetition Collateral Agent**”, as applicable, in each case solely in its capacity as such), (e) CB Agent

Services LLC, as origination agent (the “**Origination Agent**”), and (f) the lenders party thereto (the “**Prepetition Lenders**”, and collectively with the Prepetition Agent, the Prepetition Collateral Agent, and the Origination Agent, the “**Prepetition Secured Parties**”), the Prepetition Lenders provided loans to the Prepetition Borrowers pursuant to the Prepetition Credit Documents, and the Prepetition Guarantors guaranteed on a joint and several basis the obligations under the Prepetition Credit Agreement and the other Prepetition Credit Documents;

(b) as of the Petition Date, the Prepetition Borrowers and the Prepetition Guarantors were justly and lawfully indebted and liable to the Prepetition Secured Parties without defense, challenge, objection, claim, counterclaim, or offset of any kind, in the aggregate principal amount of not less than \$39.8 million in outstanding principal amount of Loans (as defined in the Prepetition Credit Agreement), which loans (the “**Prepetition Loans**”) were made by the Prepetition Lenders pursuant to, and in accordance with the terms of, the Prepetition Credit Documents, plus accrued and unpaid interest thereon and fees, expenses (including any attorneys’, accountants’, appraisers’, consultants’ and financial advisors’ fees and expenses, in each case, that are chargeable or reimbursable under the Prepetition Credit Documents), costs, charges, indemnities, and other obligations incurred in connection therewith (whether arising before or after the Petition Date) as more fully provided in the Prepetition Credit Documents (together with the other Prepetition Obligations, the “**Prepetition Debt**”), which Prepetition Debt and other Prepetition Obligations<sup>9</sup> have been guaranteed on a joint and several basis by all of the Prepetition Guarantors;

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<sup>9</sup> “**Prepetition Obligations**” means “Obligations” as defined in the Prepetition Credit Agreement.

(c) (i) the Prepetition Debt constitutes the legal, valid, binding, and non-avoidable obligations of the Prepetition Borrowers and the Prepetition Guarantors which constitute the Debtors, enforceable in accordance with its terms (other than in respect of the stay of enforcement arising from section 362 of the Bankruptcy Code) and (ii) no portion of the Prepetition Debt or any payment made to the Prepetition Secured Parties or applied to or paid on account of the obligations owing under the Prepetition Credit Documents prior to the Petition Date is subject to any contest, attack, rejection, recovery, reduction, defense, counterclaim, offset, subordination, recharacterization, avoidance or other claim (as such term is used in the Bankruptcy Code), cause of action or other challenge of any nature under the Bankruptcy Code or applicable non-bankruptcy law (a “**Claim**”);

(d) as of the Petition Date, pursuant to and in connection with the Prepetition Credit Documents, the Prepetition Borrowers and the Prepetition Guarantors granted to the Prepetition Collateral Agent, for the benefit of itself and the other Prepetition Secured Parties, a security interest in and continuing lien on (the “**Prepetition Liens**”) substantially all of their assets and property, including, without limitation, a valid, binding, properly perfected, enforceable, non-avoidable, first priority security interest in and continuing lien on the Collateral (as defined in the Prepetition Credit Documents) (which, for the avoidance of doubt, includes Cash Collateral (as defined below)) and all proceeds, products, accessions, rents, and profits thereof, in each case whether then owned or existing or thereafter acquired or arising (collectively, the “**Prepetition Collateral**”), which are not subject to avoidance, recharacterization, subordination (whether equitable, contractual, or otherwise), recovery, attack, disgorgement, effect, rejection, reduction, disallowance, impairment, counterclaim, offset,

crossclaim, defense or Claim under the Bankruptcy Code or applicable non-bankruptcy law, subject and subordinate only to certain liens expressly permitted by the Prepetition Credit Documents, solely to the extent any such permitted liens were valid, binding, enforceable, properly perfected, non-avoidable and senior in priority to the Prepetition Liens (the **“Prepetition Permitted Prior Liens”**)<sup>10</sup>;

(e) as of the Petition Date, except for the Prepetition Permitted Prior Liens, there were no liens on or security interests in the Prepetition Collateral other than the Prepetition Liens. Nothing herein shall constitute a finding or ruling by this Court that any alleged Prepetition Permitted Prior Lien or Permitted Lien is valid, senior, enforceable, prior, perfected, or non-avoidable. Moreover, nothing herein shall prejudice the rights of any party-in-interest, including, but not limited to the Debtors, the DIP Agents, the DIP Lenders, the Prepetition Secured Parties, or a Creditors’ Committee, to challenge the validity, priority, enforceability, seniority, avoidability, perfection, or extent of any alleged Prepetition Permitted Prior Lien or Permitted Lien. The right of a seller of goods to reclaim such goods under section 546(c) of the Bankruptcy Code is not a Prepetition Permitted Prior Lien or Permitted Lien and is expressly subject to the Prepetition Liens and the DIP Liens (as defined below);

(f) none of the Prepetition Secured Parties control the Debtors or their properties or operations, have authority to determine the manner in which any Debtor’s

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<sup>10</sup> Nothing herein shall constitute a finding or ruling by this Court that any such Prepetition Permitted Prior Liens are valid, senior, enforceable, prior, perfected or non-avoidable. Moreover, nothing herein shall prejudice the rights of any party-in-interest, including but not limited to, the Debtors, the DIP Agents, the DIP Lenders, any of the Prepetition Secured Parties or any Creditors’ Committee to challenge the validity, priority, enforceability, seniority, avoidability, perfection or extent of any such Prepetition Permitted Prior Liens and/or security interests (subject to the terms of this Final Order). Any alleged claim arising or asserted as a right of reclamation or return (whether asserted under Section 546(c) of the Bankruptcy Code or otherwise) shall have the same rights and priority with respect to the DIP Facility, the DIP Liens and the DIP Collateral as such claims had with respect to the Prepetition Liens in the Prepetition Collateral.

operations are conducted or are control persons or insiders of the Debtors by virtue of any of the actions taken with respect to, in connection with, related to or arising from the Prepetition Credit Documents;

(g) no claims, counterclaims, offsets, objections, defenses, challenges or causes of action exist against, or with respect to, the Prepetition Secured Parties or any of their respective affiliates, agents, subsidiaries, partners, controlling persons, agents, attorneys, advisors, professionals, officers, directors and employees, whether arising under applicable state or federal law (including, without limitation, any recharacterization, or other equitable relief that might otherwise impair the aforementioned parties or their interest in the Prepetition Collateral, subordination, avoidance or other claims, including any claims or causes of action arising under or pursuant to sections 105, 502(d), 510, 542 through 553(b) or 724(a) of the Bankruptcy Code), in connection with or arising under any Prepetition Credit Documents or the transactions contemplated thereunder or the Prepetition Debt or Prepetition Liens, including without limitation, any right to assert any disgorgement or recovery; and the Debtors and their estates hereby release and discharge any and all such claims, counterclaims, objections, defenses, set-off rights, challenges and causes of actions;

(h) the Debtors hereby absolutely, irrevocably, and unconditionally release and forever discharge and acquit the DIP Secured Parties, the Prepetition Secured Parties, and their respective Representatives (as defined below), in each case, solely in their capacities as such (collectively, the “**Released Parties**”), from any and all obligations and liabilities to the Debtors (and their successors and assigns) and from any and all claims, controversies, disputes, obligations, counterclaims, offsets, demands, debts, damages, expenses (including, without

limitation, reasonable attorneys' and financial advisors' fees and expenses), liens, accounts, contracts, liabilities, actions, and causes of action arising prior to the Petition Date (collectively, the "**Released Claims**") of any kind, nature or description, whether known or unknown, foreseen or unforeseen, matured or unmatured, accrued or unaccrued, or liquidated or unliquidated, arising in law or equity or upon contract or tort or under any state or federal law or otherwise, arising out of or related to (as applicable) the DIP Facility, the DIP Documents, the Prepetition Credit Documents, the obligations owing and the financial obligations made thereunder, the negotiation thereof and the transactions reflected and contemplated thereby (and the events leading up to entry into such documents), and the obligations and financial obligations made thereunder, in each case, that the Debtors at any time had, now have or may have, or that their successors or assigns hereafter can or may have against any of the Released Parties for or by reason of any act, omission, matter, cause or thing whatsoever arising at any time on or prior to the date of this Final Order, whether such Released Claims are matured, contingent, liquidated, unliquidated, unmatured, known, unknown or otherwise; provided, that, for the avoidance of doubt, the foregoing release shall not constitute a release of any rights of the Debtors arising under the DIP Documents after the date hereof;

(i) that certain Pledge and Security Agreement, dated as of December 27, 2017, by and among each of the Loan Parties (as defined therein) party thereto, in favor of Cortland Capital Market Services LLC, in its capacity as collateral agent for the Secured Parties (as defined therein) (the "**Pledge and Security Agreement**") is binding and enforceable against the Prepetition Borrowers, the Prepetition Guarantors and the Prepetition Secured Parties in accordance with its terms; and

(j) all cash, securities or other property of the Credit Parties (and the proceeds therefrom) as of the Petition Date, including, without limitation, all cash, securities or other property (and the proceeds therefrom) and other amounts on deposit or maintained by the Credit Parties in any account or accounts (collectively, the “**Depository Institutions**”) were subject to any applicable rights of set-off under the Prepetition Credit Documents and applicable law, for the benefit of the Prepetition Secured Parties. All proceeds of the Prepetition Collateral (including cash on deposit at the Depository Institutions as of the Petition Date, securities or other property, whether subject to control agreements or otherwise, in each case that constitutes Prepetition Collateral) are “**cash collateral**” of the Prepetition Secured Parties within the meaning of section 363(a) of the Bankruptcy Code (the “**Cash Collateral**”).

8. *Findings Regarding the DIP Financing and Use of Cash Collateral.*

(a) Good and sufficient cause has been shown for the entry of this Final Order and for authorization of the Credit Parties to obtain financing pursuant to the DIP Facility.

(b) The Credit Parties have a need to obtain the DIP Financing and to continue to use the Prepetition Collateral (including Cash Collateral) in order to, among other things, avoid the liquidation of these estates and solely in accordance with, and subject to, the Approved Cash Flow Forecast: (i) permit the orderly continuation of the operation of their businesses, including maintaining, amending, renewing, or modifying insurance policies and surety bonds in the ordinary course of business, (ii) maintain business relationships with customers, vendors and suppliers, including purchasing necessary materials and services to maintain compliance with all applicable regulatory and safety requirements, (iii) make payroll, (iv) satisfy other working capital, capital improvement and operational needs, (v) pay

professionals' fees, expenses, and obligations benefitting from the Carve-Out, and (vi) pay costs, fees, and expenses associated with or payable under the DIP Financing under the terms of the Interim Order, this Final Order and the DIP Documents. The Credit Parties' use of Cash Collateral alone would be insufficient to meet the Debtors' cash disbursement needs during the pendency of the Chapter 11 Cases. The access by the Credit Parties to sufficient working capital and liquidity through the use of Cash Collateral and other Prepetition Collateral, incurrence of new indebtedness under the DIP Documents and other financial accommodations provided under the DIP Documents are necessary and vital to avoid an immediate liquidation and for the preservation and maintenance of the going concern values of the Credit Parties and to a successful restructuring of the Credit Parties. The terms of the proposed DIP Financing pursuant to the DIP Documents and this Final Order are fair and reasonable, reflect each Credit Party's exercise of prudent business judgment, and are supported by reasonably equivalent value and fair consideration.

(c) The Credit Parties are unable to obtain financing on more favorable terms from sources other than the DIP Lenders under the DIP Documents and are unable to obtain adequate unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense. The Credit Parties are also unable to obtain secured credit allowable under sections 364(c)(1), 364(c)(2) and 364(c)(3) of the Bankruptcy Code without the Credit Parties granting to the DIP Secured Parties, subject to the Carve-Out, the Permitted Liens, the DIP Liens and the DIP Superpriority Claims (as defined below) and, subject to the Carve-Out, incurring the Adequate Protection Obligations (as defined below), in each case, under the terms and conditions set forth in this Final Order and in the DIP Documents.



(d) Based on the Motion, the declarations filed in support of the Motion, and the record presented to the Court at the Final Hearing, (i) the terms of the DIP Financing, (ii) the terms of the adequate protection granted to the Prepetition Secured Parties as provided in paragraph 18 of this Final Order (the “**Adequate Protection**”) and (iii) the terms on which the Credit Parties may continue to use the Prepetition Collateral (including Cash Collateral), in each case pursuant to this Final Order and the DIP Documents, are in each case fair and reasonable, reflect the Credit Parties’ exercise of prudent business judgment consistent with their fiduciary duties, constitute reasonably equivalent value and fair consideration, and represent the best financing available. The Adequate Protection provided in this Final Order and other benefits and privileges contained herein are consistent with and authorized by the Bankruptcy Code.

(e) To the extent such consent is required, the Prepetition Secured Parties have consented to the Credit Parties’ use of Cash Collateral and the other Prepetition Collateral, and the Credit Parties’ entry into the DIP Documents, in accordance with and subject to the terms and conditions in this Final Order and the DIP Documents.

(f) The DIP Financing, the Adequate Protection and the use of the Prepetition Collateral (including Cash Collateral) have been negotiated in good faith and at arm’s length among the Credit Parties, the DIP Secured Parties, and their respective advisors, and all of the Credit Parties’ obligations and indebtedness arising under, in respect of, or in connection with, the DIP Financing and the DIP Documents, including, without limitation, all loans made to and guarantees issued by the Credit Parties pursuant to the DIP Documents and any DIP Obligations shall be deemed to have been extended by the DIP Agents and the DIP Lenders and their respective affiliates in good faith, as that term is used in section 364(e) of the Bankruptcy Code

and in express reliance upon the protections offered by section 364(e) of the Bankruptcy Code, and the DIP Secured Parties (and the successors and assigns thereof) shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that the Interim Order or any provision thereof, or this Final Order or any provision hereof, are vacated, reversed or modified, on appeal or otherwise.

(g) The Prepetition Secured Parties have acted in good faith regarding the DIP Financing and the Credit Parties' continued use of the Prepetition Collateral (including Cash Collateral) to fund the administration of the Credit Parties' estates and continued operation of their businesses (including the incurrence and payment of the Adequate Protection Obligations and the granting of the Adequate Protection Liens (as defined herein)), in accordance with the terms hereof, and the Prepetition Secured Parties (and the successors and assigns thereof) shall be entitled to the full protection of section 363(m) of the Bankruptcy Code in the event that the Interim Order or any provision thereof, or this Final Order or any provision hereof, is vacated, reversed or modified, on appeal or otherwise.

(h) The Prepetition Secured Parties are entitled to the Adequate Protection provided in this Final Order as and to the extent set forth herein pursuant to sections 361, 362, 363 and 364 of the Bankruptcy Code. Based on the Motion, the declarations filed in support of the Motion, and the record presented to the Court at the Hearings, the terms of the proposed Adequate Protection arrangements and of the use of the Prepetition Collateral (including Cash Collateral) are fair and reasonable, reflect the Credit Parties' prudent exercise of business judgment and constitute reasonably equivalent value and fair consideration for the use of the Prepetition Collateral (including Cash Collateral); provided that nothing in this Final Order or

the DIP Documents shall (x) be construed as the affirmative consent by any of the Prepetition Secured Parties for the use of Cash Collateral other than on the terms set forth in this Final Order and the Approved Cash Flow Forecast (subject to Permitted Variances) and in the context of the DIP Financing authorized by this Final Order, (y) be construed as a consent by any Prepetition Secured Party to the terms of any other financing or any other lien encumbering the Prepetition Collateral (whether senior, *pari passu*, or junior) or (z) prejudice, limit or otherwise impair the rights of any of the Prepetition Secured Parties to seek modification of the grant of Adequate Protection provided hereby so as to provide new, different or additional adequate protection or assert the interests of any of the Prepetition Secured Parties, and without prejudice to the right of the Debtors and any other party in interest's rights to contest such modification.

(i) None of the DIP Secured Parties control the Debtors or their properties or operations, have authority to determine the manner in which any Debtor's operations are conducted or are control persons or insiders of the Debtors by virtue of any of the actions taken with respect to, in connection with, related to or arising from this Final Order or the DIP Documents;

(j) The Debtors have prepared and delivered to the DIP Agents and the DIP Secured Parties a 13-week cash flow forecast (the "**Initial Cash Flow Forecast**"<sup>11</sup>), a copy of which is attached hereto as **Exhibit 1**. The Initial Cash Flow Forecast reflects the Debtors' anticipated cash receipts and anticipated disbursements for the calendar week during which the Petition Date occurs and through and including the end of the twelfth (12th) calendar week following such week. The Initial Cash Flow Forecast may be modified, amended and updated

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<sup>11</sup> "**Initial Cash Flow Forecast**" is the "Initial Budget" referenced in the DIP Credit Agreement.

from time to time in accordance with the DIP Credit Agreement, with contemporaneous notice to the Creditors' Committee, and once approved by the DIP Requisite Lenders,<sup>12</sup> in form and substance reasonably satisfactory to them, shall supplement and replace the Initial Cash Flow Forecast (together with each subsequent approved 13-week cash flow forecast, shall constitute without duplication, an "**Approved Cash Flow Forecast**"<sup>13</sup>). The Debtors believe that the Initial Cash Flow Forecast is reasonable under the facts and circumstances known to them, taken as a whole, as of the Petition Date. The DIP Agents and the DIP Secured Parties are relying, in part, upon the Debtors' agreement to comply with the Approved Cash Flow Forecast (subject to Permitted Variances), the other DIP Documents, and this Final Order in determining to enter into the postpetition financing arrangements provided for in this Final Order.

(k) For the reasons set forth in the Motion, the declarations filed in support of the Motion, and the record presented to the Court at the Final Hearing, consummation of the DIP Financing and the use of Prepetition Collateral (including Cash Collateral), in accordance with this Final Order and the DIP Documents are therefore in the best interests of the Credit Parties, their estates and their creditors.

(l) The Motion and this Final Order comply with the requirements of Local Bankruptcy Rule 4001-2.

9. *Authorization of the DIP Financing and the DIP Documents.*

(a) Subject to the terms and conditions of this Final Order, the Credit Parties are hereby authorized to execute, enter into and perform all obligations under the DIP Documents. The DIP Documents and this Final Order shall govern the financial and credit

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<sup>12</sup> "**DIP Requisite Lenders**" means "Required Lenders" as defined in the DIP Credit Agreement.

<sup>13</sup> "**Approved Cash Flow Forecast**" is the "Approved Budget" referenced in the DIP Credit Agreement.

accommodations to be provided to the Debtors by the DIP Lenders in connection with the DIP Financing. The Borrower is hereby authorized to forthwith borrow money pursuant to the DIP Credit Agreement, and the Guarantors are hereby authorized to guarantee the Credit Parties' DIP Obligations with respect to such borrowings, in each case up to an aggregate principal amount equal to \$11.75 million DIP Loans, inclusive of amounts authorized by the Interim Order, and in each case, together with applicable interest, protective advances, expenses, fees and other charges payable in connection with the DIP Facility, subject to any limitations on borrowing or incurrence under the DIP Documents, which shall be used for all purposes permitted under the DIP Documents and this Final Order, including, without limitation, in accordance with, and subject to, the Approved Cash Flow Forecast and Permitted Variances: (i) general corporate and working capital purposes, including the orderly continuation of the operation of their businesses, (ii) payment of other expenses and payments in accordance with the Interim DIP Order, this Final DIP Order, and the DIP Documents, and (iii) the payment of fees, costs and expenses of the DIP Facility.

(b) In furtherance of the foregoing and without further approval of this Court, each Debtor is authorized and directed to perform all acts, to make, execute and deliver all instruments and documents (including, without limitation, the execution or recordation of pledge and security agreements, mortgages, deeds of trust and financing statements), and to pay all fees that may be reasonably required or necessary for the Credit Parties to implement the terms of, performance of their obligations under or effectuate the purposes of and transactions contemplated by this Final Order or the DIP Financing, including, without limitation:

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

(ii) the execution and delivery of, and performance under, one or more amendments, waivers, consents or other modifications to and under the DIP Documents, in each case, in such form as the Credit Parties and the DIP Administrative Agent, acting at the direction of the DIP Requisite Lenders pursuant to the terms of the DIP Documents, may agree, it being understood that no further approval of the Court shall be required for non-material authorizations, amendments, waivers, consents or other modifications to and under the DIP Documents (and any fees and other expenses (including any attorneys', accountants', appraisers', consultants' and financial advisors' fees, to the extent provided in, and in accordance with, the DIP Documents and subject to the Approved Cash Flow Forecast (including Permitted Variances)), amounts, charges, costs, indemnities and other obligations paid in connection therewith) that do not shorten the maturity of the extensions of credit thereunder or increase the aggregate commitments or the rate of interest payable thereunder; provided, for the avoidance of doubt, updates and supplements to the Approved Cash Flow Forecast required to be delivered by the Credit Parties under the DIP Documents shall not be considered amendments or modifications to the Approved Cash Flow Forecast or the DIP Documents; provided further that a copy (which may be provided through electronic mail or facsimile) of the amendment, modification, or supplement is provided to the U.S. Trustee and the Creditors' Committee;

(iii) the non-refundable and, upon entry of the Interim Order, irrevocable payment to the DIP Agents and/or the DIP Lenders, as the case may be, of all fees, whether paid pursuant to the Interim Order or this Final Order, including, without limitation, any origination fees, exit fees, prepayment fees, agency fees, administrative agents' fees, and collateral agents' fees, (which fees, in each case, were, and were deemed to have been, approved upon entry of the Interim Order, and which fees shall not be subject to any challenge, contest, attack, rejection, recoupment, reduction, defense, counterclaim, offset, subordination, recharacterization, avoidance or other claim, cause of action or other challenge of any nature under the Bankruptcy Code, under applicable non-bankruptcy law or otherwise) and any amounts due (or that may become due) in respect of the indemnification obligations, in each case referred to in the DIP Credit Agreement (and in any separate letter agreements between any or all Credit Parties, on the one hand, and any of the DIP Agents and/or DIP Lenders, on the other, in connection with the DIP Financing) and the costs and expenses as may be due from time to time, including, without limitation, fees and expenses of the following professionals retained by the DIP Agents and/or DIP Lenders, whether incurred before or after the Petition Date: (i) Stroock & Stroock & Lavan LLP ("**Stroock**"), counsel to the DIP Agents, (ii) one local bankruptcy counsel to the DIP Agent in the Southern District of Ohio (which may be the same local counsel to the DIP Lenders, as noted below), and, solely to the extent necessary to enforce rights and remedies under the DIP Documents, one counsel to the DIP Agent in each local jurisdiction, in each case which counsel may be the same as counsel representing the DIP Lenders in such capacity, (iii) Stroock, counsel to the DIP

Lenders; (iv) Jackson Kelly PLLC, as local counsel for the DIP Lenders; (v), in each case of the foregoing (i)-(iv), solely to the extent provided for in the DIP Documents (the “**DIP Fees and Expenses**”), without the need to file retention motions or fee applications or to provide notice to any party; and

(iv) the performance of all other acts required under or in connection with the DIP Documents, including the granting of the DIP Liens and DIP Superpriority Claims and perfection of the DIP Liens and DIP Superpriority Claims as permitted herein and therein.

(c) Upon execution and delivery of the DIP Documents, each of the DIP Documents shall constitute valid, binding, enforceable, and non-avoidable obligations of the Credit Parties, fully enforceable against each Credit Party in accordance with the terms of the DIP Documents and this Final Order. No obligation, payment, transfer or grant of security under the DIP Documents or this Final Order to the DIP Agents (including their Representatives) and/or the DIP Lenders and other DIP Secured Parties (including their Representatives) shall be stayed, restrained, voidable or recoverable under the Bankruptcy Code or under any applicable law (including, without limitation, under sections 502(d), 544, 548 or 549 of the Bankruptcy Code, any applicable Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or other similar state statute or common law), or subject to any defense, reduction, recoupment, recharacterization, subordination, disallowance, impairment, cross-claim, claim, counterclaim, or offset.

(d) No DIP Lender, DIP Administrative Agent or the DIP Collateral Agent shall have any obligation or responsibility to monitor any Credit Party’s use of the DIP



Financing, and each DIP Lender or each DIP Agent may rely upon each Credit Party's representations that the amount of DIP Financing requested at any time and the use thereof are in accordance with the requirements of this Final Order and the DIP Documents.

(e) Subject to the terms and conditions of this Final Order, the DIP Agents are hereby authorized and directed to execute, enter into and perform all rights and obligations under the DIP Documents.

10. *Carve-Out.*

(a) Notwithstanding anything to the contrary herein, the Debtors' obligations to the DIP Secured Parties and the liens, security interests and superpriority claims granted herein and/or under the DIP Documents, including the DIP Liens, the DIP Superpriority Claims, the Adequate Protection Liens, and the Adequate Protection 507(b) Claims, as well as the Prepetition Liens, shall be subject in all respects to the Carve-Out.

(b) Carve-Out. As used in this Final Order, the "**Carve-Out**" means the sum of (i) all fees required to be paid to the Clerk of the Court and to the Office of the United States Trustee under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate (without regard to the notice set forth in (iii) below); (ii) all reasonable fees and expenses up to \$20,000.00 incurred by a trustee under section 726(b) of the Bankruptcy Code (without regard to the notice set forth in (iii) below); (iii) to the extent allowed at any time, whether by interim order, procedural order, or otherwise, all unpaid fees and expenses (including any restructuring, sale, financing, or other success fee of any investment bankers or financial advisors of the Debtors or the Creditors' Committee, in each case solely to the extent such fee is earned pursuant to the terms of the applicable agreement giving rise to such fee, prior to delivery of a Carve-Out

Trigger Notice) (the “**Allowed Professional Fees**”) incurred by persons or firms retained by the Debtors pursuant to section 327, 328, or 363 of the Bankruptcy Code (the “**Debtor Professionals**”) and the Creditors’ Committee pursuant to section 328 or 1103 of the Bankruptcy Code (the “**Committee Professionals**” and, together with the Debtor Professionals, the “**Professional Persons**”), in each case, subject to the Approved Cash Flow Forecast only for purposes of payment but not for earning or accrual, at any time before the first business day following delivery by the DIP Administrative Agent of a Carve-Out Trigger Notice (as defined below), whether allowed by the Court prior to or after delivery of a Carve-Out Trigger Notice; and (iv) Allowed Professional Fees of Professional Persons in an aggregate amount not to exceed \$300,000.00 incurred on or after the first business day following delivery by the DIP Administrative Agent of the Carve-Out Trigger Notice, to the extent allowed at any time, whether by interim order, procedural order, or otherwise (the amounts set forth in this clause (iv) being the “**Post-Carve-Out Trigger Notice Cap**”). For purposes of the foregoing, “**Carve-Out Trigger Notice**” shall mean a written notice delivered by email (or other electronic means) by the DIP Administrative Agent to the Debtors, their lead restructuring counsel, the U.S. Trustee, and counsel to the Creditors’ Committee, which notice may be delivered upon the acceleration of the DIP Obligations under the DIP Facilities, stating that the Post-Carve-Out Trigger Notice Cap has been invoked.

(c) Any provisions of the Interim Order, this Final Order, or the DIP Credit Agreement to the contrary notwithstanding, including the grant of the DIP Superpriority Claims set forth in Paragraph 11 below and the grant of the DIP Liens set forth in Paragraph 12 below and the Adequate Protection Liens set forth in Paragraph 18 below, until the occurrence of a

Termination Declaration Date as defined below, the Debtors shall and are authorized to pay (a) compensation and reimbursement of expenses of the estate professionals, subject to the Approved Cash Flow Forecast only for purposes of payment but not for earning or accrual, to the extent allowed under Bankruptcy Code §§ 330 and 331 and payable pursuant to an order of this Court, as the same may be payable; and (b) the amount of money identified in the Approved Cash Flow Forecast for estate professionals' fees (excluding Permitted Variances) on a weekly basis into a segregated account established by the Debtors for purposes of funding the Carve-Out (the "**Funded Reserve Account**"). The funds in the Funded Reserve Account and the Post-Carve-Out Amounts (as defined below) shall be used to pay the allowed estate professionals' fees and expenses in accordance with orders entered by this Court and no cost or expense of administration under the Bankruptcy Code or otherwise, shall be senior to, or pari passu with, the payments that are authorized and consented to in this Paragraph 10.

(d) On the day on which a Carve-Out Trigger Notice is given by the DIP Administrative Agent to the Debtors with a copy to counsel to the Creditors' Committee (the "**Termination Declaration Date**"), the Carve-Out Trigger Notice shall constitute a demand to the Debtors to utilize all cash on hand as of such date and any available cash thereafter held by any Debtor to fund a reserve in an amount equal to the then unpaid amounts of the Allowed Professional Fees in excess of funds in the Funded Reserve Account; provided that in the event that a Termination Declaration Date occurs, Professional Persons shall have 2 business days to deliver additional good-faith estimates of the cumulative total amount of unreimbursed fees and expenses incurred in a preceding month (each such statement, a "**Fee Statement**") to the Debtors, and the Debtors shall fund into the Funded Reserve Account any additional amounts

equal to the difference between, as applicable, the Initial Funded Reserve Amount or the Monthly Funded Reserve Amount and the amount accrued and claimed in the applicable Fee Statement (each, a **“Top Off Amount”**). The Debtors shall hold the Funded Reserve Account in trust to pay such then unpaid Allowed Professional Fees (the **“Pre-Carve-Out Trigger Notice Reserve”**) prior to any and all other claims. On the Termination Declaration Date, after funding the Pre-Carve-Out Trigger Notice Reserve, the Debtors shall utilize all remaining cash on hand as of such date and any available cash thereafter held by any Debtor to fund a reserve in an amount equal to the Post-Carve-Out Trigger Notice Cap (the **“Post-Carve-Out Trigger Notice Reserve”** and, together with the Pre-Carve-Out Trigger Notice Reserve, the **“Carve-Out Reserves”**) prior to paying any and all other claims. All funds in the Pre-Carve-Out Trigger Notice Reserve shall be used first to pay the obligations set forth in clauses (i) through (iii) of the definition of Carve-Out set forth above (the **“Pre-Carve-Out Amounts”**), but not, for the avoidance of doubt, the Post-Carve-Out Trigger Notice Cap, until paid in full, and then, to the extent the Pre-Carve-Out Trigger Notice Reserve has not been reduced to zero, to pay the DIP Administrative Agent for the benefit of the DIP Lenders, unless the DIP Obligations have been indefeasibly paid in full, in cash, and all Commitments (as defined and used in the DIP Credit Agreement) (the **“DIP Commitments”**) have been terminated, in which case any such excess shall be paid to the Prepetition Secured Parties in accordance with their rights and priorities as of the Petition Date. All funds in the Post-Carve-Out Trigger Notice Reserve shall be used first to pay the obligations set forth in clause (iv) of the definition of Carve-Out set forth above (the **“Post-Carve-Out Amounts”**), and then, to the extent the Post-Carve-Out Trigger Notice Reserve has not been reduced to zero, to pay the DIP Administrative Agent for the benefit of the

DIP Lenders, unless the DIP Obligations have been indefeasibly paid in full, in cash, and all DIP Commitments have been terminated, in which case any such excess shall be paid to the Prepetition Secured Parties in accordance with their rights and priorities as of the Petition Date. Notwithstanding anything to the contrary in the DIP Documents or this Final Order, if either of the Carve-Out Reserves is not funded in full in the amounts set forth in this paragraph 12(d), then, any excess funds in one of the Carve-Out Reserves following the payment of the Pre-Carve-Out Amounts and Post-Carve-Out Amounts, respectively, shall be used to fund the other Carve-Out Reserve, up to the applicable amount set forth in this paragraph 12(d), prior to making any payments to the DIP Administrative Agent or the Prepetition Secured Parties, as applicable. Notwithstanding anything to the contrary in the DIP Documents or this Final Order, following delivery of a Carve-Out Trigger Notice, the DIP Administrative Agent and the Prepetition Secured Parties shall not sweep or foreclose on cash (including cash received as a result of the sale or other disposition of any assets) of the Debtors until the Carve-Out Reserves have been fully funded, but shall have a security interest in any residual interest in the Carve-Out Reserves, with any excess paid to the DIP Administrative Agent for application in accordance with the DIP Documents. Further, notwithstanding anything to the contrary in this Final Order, (i) disbursements by the Debtors from the Carve-Out Reserves shall not constitute Loans (as defined in the DIP Credit Agreement) or increase or reduce the DIP Obligations, (ii) the failure of the Carve-Out Reserves to satisfy in full the Allowed Professional Fees shall not affect the priority of the Carve-Out, and (iii) in no way shall the Approved Cash Flow Forecast, Carve-Out, Post-Carve-Out Trigger Notice Cap, Carve-Out Reserves, or any of the foregoing be construed as a cap or limitation on the amount of the Allowed Professional Fees due and payable by the

Debtors. For the avoidance of doubt and notwithstanding anything to the contrary in this Final Order, the DIP Facilities or in any Prepetition Credit Documents, the Carve-Out shall be senior to all liens and claims securing the DIP Facilities, the Adequate Protection Liens, the Adequate Protection 507(b) Claims, and any and all other forms of Adequate Protection, liens, or claims securing the DIP Obligations or the Prepetition Debt.

(e) Payment of Allowed Professional Fees Prior to the Termination Declaration Date. Any payment or reimbursement made prior to the occurrence of the Termination Declaration Date in respect of any Allowed Professional Fees shall not reduce the Carve-Out.

(f) No Direct Obligation To Pay Allowed Professional Fees. None of the DIP Agents, DIP Lenders, or the Prepetition Secured Parties shall be responsible for the payment or reimbursement of any fees or disbursements of any Professional Person incurred in connection with the Chapter 11 Cases or any successor cases under any chapter of the Bankruptcy Code. Nothing in this Final Order or otherwise shall be construed to obligate the DIP Agents, the DIP Lenders, or the Prepetition Secured Parties, in any way, to pay compensation to, or to reimburse expenses of, any Professional Person or to guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement.

(g) Payment of Carve-Out On or After the Termination Declaration Date. Any payment or reimbursement made on or after the occurrence of the Termination Declaration Date in respect of any Allowed Professional Fees shall permanently reduce the Carve-Out on a dollar-for-dollar basis.

(h) For the avoidance of doubt and notwithstanding anything in this Final Order, the DIP Facility or in the Prepetition Credit Documents to the contrary, the Carve-Out shall be senior to all liens and claims securing the DIP Facility, the Adequate Protection Liens, and the Adequate Protection Claims, and any and all other forms of Adequate Protection, liens, as well as Prepetition Liens, or claims securing the DIP Obligations or the Prepetition Obligations.

11. *DIP Superpriority Claims.*

(a) *DIP Superpriority Claims.* Pursuant to section 364(c)(1) of the Bankruptcy Code, all of the DIP Obligations shall constitute allowed superpriority administrative expense claims against the Credit Parties on a joint and several basis (without the need to file any proof of claim) with priority over any and all claims against each of the Credit Parties, now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code and any and all administrative expenses or other claims arising under sections 105, 326, 328, 330, 331, 365, 503(b), 506(c), 507(a), 507(b), 726, 1113 or 1114 of the Bankruptcy Code (including the Adequate Protection Obligations), whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment, which allowed claims (the “**DIP Superpriority Claims**”) shall for purposes of section 1129(a)(9)(A) of the Bankruptcy Code be considered administrative expenses allowed under section 503(b) of the Bankruptcy Code, and which DIP Superpriority Claims shall be payable from and have recourse to all pre- and postpetition property of the Credit Parties and all proceeds thereof (except for Avoidance Actions, Avoidance Proceeds and any commercial tort claims of the Debtors that are not subject

to a valid, properly perfected lien of the Prepetition Secured Parties as of the Petition Date (“**Unencumbered Commercial Tort Claims**”)) in accordance with the DIP Credit Agreement and this Final Order, subject only to the Carve-Out. The DIP Superpriority Claims shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that the Interim Order or any provision thereof, or this Final Order or any provision hereof, is vacated, reversed or modified, on appeal or otherwise. Subject to the Carve-Out in all respects, the DIP Superpriority Claims shall be senior to the Adequate Protection 507(b) Claims (as defined below).

12. *DIP Liens.*

(a) *DIP Liens.* As security for the DIP Obligations, effective and perfected upon the date of the Interim Order and without the necessity of the execution, recordation or filing by the Credit Parties or the DIP Collateral Agent of mortgages, security agreements, control agreements, pledge agreements, financing statements or other similar documents, any notation of certificates of title for a titled good or the possession or control by the DIP Collateral Agent of, or over, any DIP Collateral, or any other action, the following security interests and liens (all such liens and security interests granted to the DIP Collateral Agent, for its benefit and for the benefit of the DIP Lenders, pursuant to this Final Order and the DIP Documents (as defined in the Motion), the “**DIP Liens**”) are hereby granted to the DIP Collateral Agent for its own benefit and the benefit of the DIP Lenders (all property identified in clauses (i)-(iii) below being collectively referred to as the “**DIP Collateral**”):

(i) Liens on Unencumbered Property. Subject and subordinate in all respects to the Carve-Out, pursuant to section 364(c)(2) of the Bankruptcy Code, a valid,



binding, continuing, enforceable, fully-perfected first priority senior security interest in and lien upon all tangible and intangible pre- and postpetition property of the Credit Parties, whether existing on the Petition Date or thereafter acquired, and the proceeds, products, rents, and profits thereof, that, on or as of the Petition Date, is not subject to a valid, perfected and non-avoidable lien or is subject to a valid and non-avoidable lien in existence as of the Petition Date that is perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code, including, without limitation, any and all unencumbered cash of the Credit Parties (whether maintained with the DIP Collateral Agent or otherwise) and any investment of such cash, inventory, accounts receivable, other rights to payment whether arising before or after the Petition Date, contracts, properties, plants, fixtures, machinery, equipment, general intangibles, documents, instruments, securities, chattel paper, interests in leaseholds, real properties, deposit accounts, patents, copyrights, trademarks, trade names, rights under license agreements and other intellectual property, capital stock of subsidiaries, wherever located, and the proceeds, products, rents and profits of the foregoing, whether arising under section 552(b) of the Bankruptcy Code or otherwise, of all the foregoing (the “**Unencumbered Property**”), in each case other than the Avoidance Actions, Avoidance Proceeds and Unencumbered Commercial Tort Claims, but in each case subject and subordinate in all respects to the Carve-Out;

(ii) Liens Priming Certain Prepetition Secured Parties’ Liens. Pursuant to section 364(d)(1) of the Bankruptcy Code, and subject and subordinate in all respects to the Carve-Out, a valid, binding, continuing, enforceable, fully-perfected first priority

priming security interest in and lien upon all pre- and postpetition property of the Credit Parties of the same nature, scope, and type as the Prepetition Collateral, regardless of where located, regardless of whether or not any liens on such assets are voided, avoided, invalidated, lapsed or unperfected, which security interest and lien shall prime the Prepetition Liens (the “**DIP Priming Liens**”). Notwithstanding anything herein to the contrary, the DIP Priming Liens shall be (A) subject and junior to the Carve-Out in all respects and shall otherwise be junior only to Permitted Liens,<sup>14</sup> (B) senior in all respects to the other Prepetition Liens on DIP Collateral, (C) senior to any Adequate Protection Liens on DIP Collateral and (D) not subordinate to any lien, security interest or mortgage that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code. The Prepetition Liens with respect to the Prepetition Collateral shall be primed by and made subject and subordinate to the Carve-Out and the DIP Priming Liens;

(iii) Liens Junior to Certain Other Liens. Pursuant to section 364(c)(3) of the Bankruptcy Code, and subject and subordinate in all respects to the Carve-Out, a valid, binding, continuing, enforceable, fully-perfected junior security interest in and lien upon pre- and postpetition property of the Credit Parties that, on or as of the Petition Date, is subject to valid, perfected and non-avoidable senior Permitted Liens or valid and non-avoidable senior liens in existence immediately prior to the Petition Date that are perfected subsequent to the Petition Date as permitted by section 546(b) of the

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<sup>14</sup> Notwithstanding anything to the contrary in this Order, to the extent that Komatsu Financial Limited Partnership and Caterpillar Financial Services Corporation have valid, binding, enforceable, properly perfected, and unavoidable first priority security interests in their respective collateral, those security interests constitute Permitted Liens that are not primed by the DIP Priming Liens.

Bankruptcy Code; provided, that nothing in the foregoing shall limit the rights of the DIP Secured Parties under the DIP Documents to the extent such liens are not permitted thereunder;

(iv) Liens Senior to Certain Other Liens. The DIP Liens shall not be (i) subject or subordinate to or made *pari passu* with (A) any lien or security interest that is avoided and preserved for the benefit of the Credit Parties and their estates under section 551 of the Bankruptcy Code, (B) unless otherwise provided for in the DIP Documents or in this Final Order, any liens or security interests arising after the Petition Date, including, without limitation, any liens or security interests granted in favor of any federal, state, municipal or other governmental unit (including any regulatory body), commission, board or court for any liability of the Credit Parties, or (C) any intercompany or affiliate liens of the Credit Parties or security interests of the Credit Parties; or (ii) subordinated to or made *pari passu* with any other lien or security interest under section 363 or 364 of the Bankruptcy Code.

(b) Specified Leases. Notwithstanding anything to the contrary in the Motion, the DIP Documents, or this Final Order, for purposes of this Final Order, in no event shall the DIP Collateral include or the DIP Liens or Adequate Protection Liens granted under this Final Order attach to any lease or other real property right, to which any Debtor is a party or any of such relevant Debtor's rights or interests thereunder, if and for so long as the grant of such security interest would constitute or result in: (x) the abandonment, invalidation, unenforceability or other impairment of any right, title or interest of any Debtor therein, or (y) a breach or termination pursuant to the terms of, or a default under, any such lease or other real property

right pursuant to any provision thereof, unless, in the case of each of clauses (x) and (y), the applicable provision is rendered ineffective, unenforceable, and/or invalid by applicable non-bankruptcy law or the Bankruptcy Code (such leases the “**Specified Lease**”); provided that, the foregoing shall not preclude any counterparty to a Specified Lease from an opportunity to be heard in this Court on notice with respect to whether applicable non-bankruptcy law or the Bankruptcy Code renders such provision ineffective, unenforceable, and/or invalid if requested by this non-Debtor party to the Specified Lease, and the Court shall retain jurisdiction to hear and adjudicate issues related thereto; provided further that DIP Collateral shall include and the DIP Liens and Adequate Protection Liens granted under this Final Order shall attach to any proceeds of any Specified Lease.

(c) Automatic Effectiveness of Liens. The automatic stay imposed under section 362(a) of the Bankruptcy Code is hereby vacated and modified to effectuate all of the terms and provisions of this Final Order, including to (i) permit the Credit Parties to grant the liens and security interests to the DIP Collateral Agent, the other DIP Secured Parties and the Prepetition Secured Parties, and (ii) authorize the Credit Parties to pay, and the DIP Secured Parties and Prepetition Secured Parties to retain and apply, payments made in accordance with this Final Order, to the extent, in cases (i) and (ii), contemplated by this Final Order and the other DIP Documents.

13. *Protection of DIP Lenders’ Rights.*

(a) So long as there are any DIP Obligations outstanding or the DIP Secured Parties have any outstanding DIP Commitments, the Prepetition Secured Parties shall: (i) have no right to and shall take no action to foreclose upon, or recover in connection with, the liens

granted thereto pursuant to the Prepetition Credit Documents or the Interim Order, or otherwise seek to exercise or enforce any rights or remedies against such DIP Collateral, including in connection with the Prepetition Liens or the Adequate Protection Liens; (ii) be deemed to have consented to any transfer, disposition or sale of, or release of liens on, such DIP Collateral (but not any proceeds of such transfer, disposition or sale to the extent remaining after payment in cash in full of the DIP Obligations and termination of the DIP Commitments), to the extent such transfer, disposition, sale or release is authorized under the DIP Documents; (iii) not file any further financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments, or otherwise take any action to perfect their security interests in such DIP Collateral unless, solely as to this clause (iii), the DIP Collateral Agent or the DIP Lenders file financing statements or other documents to perfect the liens granted pursuant to this Final Order, or as may be required by applicable state law to continue the perfection of valid and non-avoidable liens or security interests as of the Petition Date and (iv) at the request of the DIP Collateral Agent, deliver or cause to be delivered, at the Credit Parties' cost and expense, any termination statements, releases and/or assignments in favor of the DIP Collateral Agent or the DIP Lenders or other documents necessary to effectuate and/or evidence the release, termination and/or assignment of liens on any portion of such DIP Collateral subject to any sale or disposition permitted by the DIP Documents and this Final Order; provided, however, that the foregoing shall not in any way limit the ability of the Prepetition Secured Parties from credit bidding at any sale of DIP Collateral or Prepetition Collateral.

(b) To the extent any Prepetition Secured Party has possession of any Prepetition Collateral or DIP Collateral or has control with respect to any Prepetition Collateral

or DIP Collateral, or has been noted as a secured party on any certificate of title for a titled good constituting Prepetition Collateral or DIP Collateral, then such Prepetition Secured Party shall be deemed to maintain such possession or notation or exercise such control as a gratuitous bailee and/or gratuitous agent for perfection for the benefit of the DIP Collateral Agent and the DIP Lenders and it shall comply with the instructions of the DIP Collateral Agent with respect to the exercise of such control. The Prepetition Collateral Agent is not and shall not be deemed to be a fiduciary of any kind for the DIP Agents, the DIP Lenders and the DIP Agents, on behalf of themselves and the DIP Lenders, is hereby deemed to waive and release the Prepetition Agent and the Prepetition Collateral Agent from all claims and liabilities arising pursuant to their role under this paragraph 13(b) as gratuitous bailee and agent with respect to the Prepetition Collateral or the DIP Collateral.

(c) Any proceeds of Prepetition Collateral received by any Prepetition Secured Party in connection with the exercise of any right or remedy relating to the Prepetition Collateral or otherwise received by any Prepetition Secured Party shall be segregated and held in trust for the benefit of and forthwith paid over to the DIP Collateral Agent for the benefit of the applicable DIP Secured Parties in the same form as received, with any necessary endorsements, or as a court of competent jurisdiction may otherwise direct. The DIP Collateral Agent is hereby authorized to make any such endorsements as agent for any such Prepetition Secured Party. This authorization is coupled with an interest and is irrevocable.

(d) The automatic stay provisions of section 362 of the Bankruptcy Code are hereby vacated and modified to the extent necessary to permit the DIP Secured Parties to enforce all of their rights under the applicable DIP Documents and take any or all of the following

actions, at the same or different time, in each case without further order or application of the Court: (i) the DIP Secured Parties may, upon the occurrence of an Event of Default (a) immediately terminate the Debtors' limited use of any Cash Collateral, (b) cease making any DIP Loans, and terminate, reduce or restrict any further DIP Commitment to the extent any such DIP Commitment remains, (c) declare all DIP Obligations immediately due, owing and payable, without presentment, demand, protest, or other notice of any kind, all of which are expressly waived by the Credit Parties, notwithstanding anything herein or in any DIP Document to the contrary, (d) freeze any monies or balances in the Debtors' accounts and sweep all funds in the Debtors' deposit accounts, (e) immediately setoff all amounts in accounts maintained by the Debtors with the DIP Agent or any DIP Lenders against the DIP Obligations, or otherwise enforce all rights against the DIP Collateral in the possession of the DIP Agent or DIP Lenders (including the disposition of DIP Collateral solely for application to DIP Obligations), and (f) take any other action or exercise any other remedy permitted under the DIP Orders, the DIP Documents, or applicable law, and (ii) Debtors waive any right to seek relief under the Bankruptcy Code, including section 105, to the extent such relief would impair or restrict the rights and remedies of the DIP Agent and DIP Lenders set forth in the DIP Orders (as defined in the Motion) and the DIP Documents; provided, however, that, prior to the exercise of any rights in clauses (i)(d), (e) and (f) of this paragraph, the DIP Agent or DIP Lenders, as applicable, shall be required to provide five (5) calendar days' notice to counsel to the Debtors, counsel to the Creditors' Committee, and the U.S. Trustee of their intent to exercise their rights and remedies (the "**Remedies Notice Period**").

(e) During the Remedies Notice Period, the Credit Parties shall be permitted to use Cash Collateral only to pay the following amounts and expenses in accordance with the Approved Cash Flow Forecast to (i) the Carve-Out, (ii) the expenses that the Debtors and the DIP Requisite Lenders have determined in good faith are in the ordinary course and critical to the preservation of the Debtors and their estates, and (iii) such other amounts as approved in advance in writing by the DIP Requisite Lenders. Before or during the Remedies Notice Period, (x) the Debtors shall be entitled to seek an emergency hearing with the Court before or within the Remedies Notice Period solely for the purpose of contesting whether, in fact, an Event of Default has occurred and is continuing, and (y) the DIP Lenders shall not contest holding such a hearing on an emergency basis.

(f) In no event shall the DIP Agents, the DIP Lenders, or the Prepetition Secured Parties be subject to the equitable doctrine of “marshaling” or any similar doctrine with respect to the Prepetition Collateral or the DIP Collateral. Further, in no event shall the “equities of the case” exception in section 552(b) of the Bankruptcy Code apply to the secured claims of the Prepetition Secured Parties.

(g) No rights, protections or remedies of the DIP Agents, the DIP Lenders, or the Prepetition Secured Parties granted by the provisions of this Final Order or the DIP Documents shall be limited, modified or impaired in any way by: (i) any actual or purported withdrawal of the consent of any party to the Debtors’ authority to continue to use Cash Collateral; (ii) any actual or purported termination of the Debtors’ authority to continue to use Cash Collateral; or (iii) the terms of any other order or stipulation related to the Debtors’ continued use of Cash Collateral or the provision of adequate protection to any party.



14. *Proceeds of Subsequent Financing.* Without limiting the provisions and protections provided for herein, but subject in all respects to the Carve-Out, if at any time prior to the repayment in full in accordance with the DIP Documents of all the DIP Obligations (including subsequent to the confirmation of any chapter 11 plan or plans with respect to any of the Debtors), the Debtors' estates, any trustee, any examiner with enlarged powers, or any responsible officer subsequently appointed shall obtain credit or incur debt pursuant to sections 364(b), 364(c), 364(d), or any other provision of the Bankruptcy Code in violation of this Final Order or the DIP Documents, then, unless otherwise agreed by the DIP Requisite Lenders, all of the cash proceeds derived from such credit or debt and all Cash Collateral shall immediately be turned over to the DIP Collateral Agent for application to the DIP Obligations until such DIP Obligations are paid in full.

15. *Limitation on Charging Expenses Against Collateral.* Except to the extent of the Carve Out, no costs or expenses of administration of the Chapter 11 Cases or any future proceeding that may result therefrom, including liquidation in bankruptcy or other proceedings under the Bankruptcy Code, shall be charged against or recovered from the Collateral (including Cash Collateral) pursuant to section 506(c) of the Bankruptcy Code or any similar principle of law, without the prior written consent of the DIP Agent or the Prepetition Agent, as applicable, and no such consent shall be implied from any other action, inaction or acquiescence by the DIP Secured Parties or the Prepetition Secured Parties, and nothing contained in this Final Order shall be deemed to be a consent by the DIP Secured Parties to any charge, lien, assessment or claims against the Collateral under section 506(c) of the Bankruptcy Code or otherwise; *provided, however,* that solely in the event that the DIP Commitments are not fully funded by the DIP

Lenders, any waiver under section 506(c) of the Bankruptcy Code by the Debtors shall not apply to claims arising prior to the Termination Declaration Date (defined below) from the furnishing of goods or services for which payment is provided for in accordance with the Approved Cash Flow Forecast.

16. *Payments Free and Clear.* Any and all payments or proceeds remitted to the DIP Agents by, through or on behalf of the DIP Secured Parties pursuant to the provisions of the Interim Order or this Final Order or the DIP Documents (including, without limitation, the Approved Cash Flow Forecast (subject to Permitted Variances)) shall be irrevocable, received free and clear of any claim, charge, assessment or other liability, including without limitation, any such claim or charge arising out of or based on, directly or indirectly, sections 506(c) (subject to paragraph 15 hereof) or 552(b) of the Bankruptcy Code, whether asserted or assessed by through or on behalf of the Debtors.

17. *Use of Cash Collateral.* The Debtors are hereby authorized, subject to the terms and conditions of this Final Order, to use Cash Collateral; provided, that (a) the Prepetition Secured Parties are granted the Adequate Protection as hereinafter set forth and (b) except on the terms and conditions of this Final Order, the Debtors shall be enjoined and prohibited from at any time using the Cash Collateral absent further order of the Court.

18. *Adequate Protection of Prepetition Secured Parties.* Subject to the Carve-Out in all respects, the Prepetition Secured Parties are entitled, pursuant to sections 361, 362, 363(e), 364(d)(1) and 507 of the Bankruptcy Code, to adequate protection of their interests in all Prepetition Collateral, including Cash Collateral, for and equal in amount to the aggregate diminution in the value of the Prepetition Secured Parties' interests in the Prepetition Collateral

(including Cash Collateral) from and after the Petition Date, if any (“**Diminution in Collateral Value**”), for any reason provided for under the Bankruptcy Code (the “**Adequate Protection Claims**”). To the extent of any Diminution in Collateral Value, the Prepetition Secured Parties are hereby granted the following, in each case subject to the Carve-Out (collectively, the “**Adequate Protection Obligations**”):

(a) Adequate Protection Liens. The Prepetition Collateral Agent, for itself and for the benefit of other Prepetition Secured Parties, is hereby granted (effective and perfected upon the date of the Interim Order and without the necessity of the execution of any mortgages, security agreements, pledge agreements, financing statements or other agreements), in the amount of the Prepetition Secured Parties’ Adequate Protection Claims, a valid, perfected replacement security interest in and lien upon all of the DIP Collateral (the “**Adequate Protection Liens**”), subject and subordinate to (i) the Carve-Out, (ii) the DIP Liens and any liens to which the DIP Liens are junior (including the Permitted Liens), and (iii) Prepetition Liens; provided, that to the extent that certain Prepetition Collateral is released from the Prepetition Liens in connection with a final order of the Court granting any Challenge, then the Adequate Protection Liens on such Prepetition Collateral shall be released to the same extent.

(b) Section 507(b) Claim. The Prepetition Agent, for itself and for the benefit of the Prepetition Lenders, is hereby granted, subject to the Carve-Out, an allowed superpriority administrative expense claim as provided for in section 507(b) of the Bankruptcy Code in the amount of the Prepetition Secured Parties’ Adequate Protection Claims (the “**Adequate Protection 507(b) Claims**”), which Adequate Protection 507(b) Claims shall be payable from and have recourse to all DIP Collateral and all proceeds thereof (except for Avoidance Actions,

Avoidance Proceeds and Unencumbered Commercial Tort Claims). The Adequate Protection 507(b) Claims shall be subject and subordinate only to the Carve-Out, the DIP Superpriority Claims, and the prepetition claims of the Prepetition Secured Parties. The Prepetition Secured Parties shall not receive or retain any payments, property or other amounts in respect of the Adequate Protection 507(b) Claims unless and until the DIP Obligations (other than contingent indemnification obligations as to which no claim has been asserted) and any claims having a priority superior to or *pari passu* with the DIP Superpriority Claims have indefeasibly been paid in cash in full and all DIP Commitments have been terminated.

(c) Adequate Protection Payments. As additional adequate protection, subject to the Carve-Out as set forth in this Final Order, the Prepetition Agent shall receive, for the benefit of the Prepetition Lenders, current payment of interest (at the contractual default rate) due under the Prepetition Credit Agreement (the “**Adequate Protection Payments**”), whether due prior to, on, or subsequent to the Petition Date, subject to the rights reserved in paragraph 27 below.

(d) Adequate Protection Fees and Expenses. As further adequate protection, subject to the Carve-Out as set forth in this Final Order, the Credit Parties shall provide current cash payments of the reasonable and documented prepetition and postpetition fees and expenses of the Prepetition Agent under the Prepetition Credit Documents and the Prepetition Lenders, including, but not limited to, the reasonable and documented fees and out-of-pocket expenses of Stroock, (in its capacity as counsel to the Prepetition Agent and Prepetition Lenders) and Jackson Kelly PLLC, (in its capacity as local counsel to the Prepetition Lenders) in accordance with the

Prepetition Credit Agreement (the “**Adequate Protection Fees and Expenses**”), subject to the review procedures set forth in paragraph 27 of this Final Order.

(e) Prepetition Secured Parties’ Information Rights. The Debtors shall promptly provide the Prepetition Agent, on behalf of itself and the Prepetition Secured Parties, with all required written financial reporting and other periodic reporting to the extent required to be provided to the DIP Agent or the DIP Secured Parties in accordance with the DIP Documents, including but not limited to the reporting required under section 7.01(a) of the DIP Credit Agreement and shall also provide such reporting to the Creditors’ Committee.

(f) Prepetition Secured Parties’ Adequate Protection Milestones. The Prepetition Secured Parties are hereby entitled to performance of the milestones set forth in Schedule 7.01(y) of the DIP Credit Agreement, as amended in connection with this Final Order (the “**Adequate Protection Milestones**”), which cannot be waived, amended, modified or extended from time to time, in each case as to the Prepetition Secured Parties, absent prior written consent of the Prepetition Requisite Lenders.<sup>15</sup>

(g) The Adequate Protection Milestones, reporting obligations above shall survive any termination of the DIP Credit Agreement or the DIP Commitments thereunder. Following any such termination of the DIP Credit Agreement or the DIP Commitments thereunder, the Adequate Protection Milestones may be waived, amended, modified or extended from time to time by the Prepetition Requisite Lenders (in their sole discretion).

19. *Reservation of Rights of Prepetition Secured Parties*. Under the circumstances and given that the above-described adequate protection is consistent with the Bankruptcy Code,

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<sup>15</sup> “**Prepetition Requisite Lenders**” means “Required Lenders” as defined in the Prepetition Credit Agreement,

the Court finds that the Adequate Protection provided herein is reasonable and sufficient to protect the interests of the Prepetition Secured Parties; provided that any of the Prepetition Secured Parties may request further or different adequate protection.

20. *Perfection of DIP Liens and Adequate Protection Liens.*

(a) The DIP Collateral Agent, the DIP Secured Parties and the Prepetition Secured Parties are hereby authorized, but not required, to file or record (and to execute in the name of the Credit Parties, as their true and lawful attorneys, with full power of substitution, to the maximum extent permitted by law) financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments in any jurisdiction, or take possession of or control over cash or securities or other property, or take any other action in order to validate and perfect the liens and security interests granted to them hereunder. Whether or not the DIP Collateral Agent (on behalf of the DIP Secured Parties) or the Prepetition Secured Parties shall, in their sole discretion, choose to file such financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments, or take possession of or control over any cash or securities or other property, or otherwise confirm perfection of the liens and security interests granted to them hereunder, such liens and security interests shall be deemed valid, perfected, allowed, enforceable, non-avoidable and not subject to challenge, dispute or subordination (subject to the priorities set forth in this Final Order), at the time and on the date of entry of this Final Order or thereafter. Upon the request of the DIP Collateral Agent or the Prepetition Collateral Agent, as applicable, each of the Prepetition Secured Parties and the Credit Parties, without any further consent of any party, is authorized to take, execute, deliver and file such instruments (in each case, without representation or warranty of any kind) to enable the DIP

Collateral Agent or the Prepetition Collateral Agent to further validate, perfect, preserve and enforce the DIP Liens and the applicable Adequate Protection Liens, respectively. All such documents will be deemed to have been recorded and filed as of the Petition Date.

(b) A certified copy of the Interim Order or this Final Order may, in the discretion of the DIP Collateral Agent or the Prepetition Collateral Agent, as applicable, be filed with or recorded in filing or recording offices in addition to or in lieu of such financing statements, mortgages, notices of lien or similar instruments, and all filing offices are hereby authorized to accept such certified copy of the Interim Order or this Final Order for filing and/or recording, as applicable. The automatic stay of section 362(a) of the Bankruptcy Code shall be modified to the extent necessary to permit the DIP Collateral Agent or the Prepetition Collateral Agent to take all actions, as applicable, referenced in this subparagraph (b) and the immediately preceding subparagraph (a).

(c) To the extent that any Prepetition Secured Party is the secured party under any account control agreements, listed as loss payee or additional insured under any of the Credit Parties' insurance policies or is the secured party under any other agreement, the DIP Collateral Agent, on behalf of the DIP Secured Parties, is also deemed to be the secured party under such account control agreements, loss payee or additional insured under the Credit Parties' insurance policies and the secured party under each such agreement (in any such case with the same priority of liens and claims thereunder relative to the priority of (x) the Prepetition Liens and Adequate Protection Liens and (y) the DIP Liens, as set forth herein), and shall have all rights and powers in each case attendant to that position (including, without limitation, rights of enforcement, but subject in all respects to the terms of this Final Order), and shall, subject to the

terms of this Final Order, act in that capacity and distribute any proceeds recovered or received in respect of any of the foregoing, first, to the payment in full of the DIP Obligations, and second, to the payment of the Prepetition Debt. In accordance with the terms of this Final Order and the other DIP Documents, the Prepetition Collateral Agent shall serve as agent for the DIP Collateral Agent for purposes of perfecting the DIP Collateral Agent's security interests in and liens on all Collateral that is of a type such that perfection of a security interest therein may be accomplished only by possession or control by a secured party.

21. *Preservation of Rights Granted Under This Final Order.*

(a) Other than (i) the Carve-Out, (ii) the Prepetition Permitted Prior Liens, (iii) Permitted Liens; and (iv) other claims and liens expressly granted by this Final Order, no claim or lien having a priority superior to or *pari passu* with those granted by this Final Order to the DIP Secured Parties or the Prepetition Secured Parties shall be permitted while any of the DIP Obligations or the Adequate Protection Obligations remain outstanding, and, except as otherwise expressly provided in paragraphs 10, 18, or 19 of this Final Order, the DIP Liens and the Adequate Protection Liens shall not be: (i) subject or junior to any lien or security interest that is avoided and preserved for the benefit of the Credit Parties' estates under section 551 of the Bankruptcy Code; (ii) subordinated to or made *pari passu* with any other lien or security interest, whether under section 364(d) of the Bankruptcy Code or otherwise; (iii) subordinated to or made *pari passu* with any liens arising after the Petition Date including, without limitation, any liens or security interests granted in favor of any federal, state, municipal or other domestic or foreign governmental unit (including any regulatory body), commission, board or court for



any liability of the Credit Parties; or (iv) subject or junior to any intercompany or affiliate liens or security interests of the Credit Parties.

(b) The occurrence of (a) any Event of Default (under and as defined in the DIP Credit Agreement) or (b) any violation of any of the terms of this Final Order, shall, after notice by the DIP Administrative Agent in writing to the Borrower (which may be electronic), constitute an event of default under this Final Order (each an “**Event of Default**”) and, subject to the Remedies Notice Period terminate the right of the Credit Parties to use Cash Collateral pursuant to this Final Order and upon any such Event of Default, interest, including, where applicable, default interest, shall accrue and be paid as set forth in the DIP Credit Agreement. Notwithstanding any order that may be entered dismissing any of the Chapter 11 Cases under section 1112 of the Bankruptcy Code: (A) the DIP Superpriority Claims, the Adequate Protection 507(b) Claims, the DIP Liens, and the Adequate Protection Liens, and any claims related to the foregoing, shall continue in full force and effect and shall maintain their priorities as provided in this Final Order until all DIP Obligations and Adequate Protection shall have been paid in full (and that such DIP Superpriority Claims, Adequate Protection 507(b) Claims, DIP Liens and Adequate Protection Liens shall, notwithstanding such dismissal, remain binding on all parties in interest); (B) the other rights granted by this Final Order shall not be affected; and (C) this Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing the claims, liens and security interests referred to in this paragraph and otherwise in this Final Order.

(c) If any or all of the provisions of this Final Order are hereafter reversed, modified, vacated or stayed, such reversal, modification, vacation or stay shall not affect: (i) the validity, priority or enforceability of any DIP Obligations or Adequate Protection Obligations

incurred prior to the actual receipt of written notice by the DIP Administrative Agent, the DIP Collateral Agent, the Prepetition Agent, or the Prepetition Collateral Agent, as applicable, of the effective date of such reversal, modification, vacation or stay; or (ii) the validity, priority or enforceability of the DIP Liens, the Adequate Protection Liens, the Prepetition Liens or the Prepetition Debt. Notwithstanding any such reversal, modification, vacation or stay of any use of Cash Collateral or Prepetition Collateral, any DIP Obligations, DIP Liens, Adequate Protection Obligations or Adequate Protection Liens incurred by the Credit Parties to the DIP Secured Parties or the Prepetition Secured Parties, as the case may be, prior to the actual receipt of written notice by the DIP Administrative Agent, the DIP Collateral Agent, the Prepetition Agent, or the Prepetition Collateral Agent, as applicable, of the effective date of such reversal, modification, vacation or stay shall be governed in all respects by the original provisions of this Final Order, and the DIP Agents, the DIP Lenders and the Prepetition Secured Parties shall be entitled to all the rights, remedies, privileges and benefits granted in section 364(e) of the Bankruptcy Code, this Final Order and the DIP Documents with respect to all uses of Cash Collateral, the DIP Obligations and Adequate Protection.

(d) Except as expressly provided in this Final Order or in the DIP Documents, the Carve-Out, the DIP Liens, the DIP Superpriority Claims, the Adequate Protection Liens, the Prepetition Liens, the Adequate Protection 507(b) Claim, the Prepetition Debt and the Adequate Protection and all other rights and remedies of the DIP Secured Parties and the Prepetition Secured Parties granted by the provisions of this Final Order and the DIP Documents shall survive, and shall not be modified, impaired or discharged by: (i) the entry of an order converting any of the Chapter 11 Cases to a case under chapter 7, dismissing any of the Chapter 11 Cases,

substantively consolidating any of the cases with another case, terminating the joint administration of these Chapter 11 Cases or by any other act or omission; (ii) the entry of an order approving the sale of any DIP Collateral pursuant to section 363(b) of the Bankruptcy Code (except to the extent permitted by the DIP Documents); or (iii) the entry of an order confirming a chapter 11 plan in any of the Chapter 11 Cases and, pursuant to section 1141(d)(4) of the Bankruptcy Code, the Credit Parties have waived any discharge as to any remaining DIP Obligations or Adequate Protection Obligations and with respect to the Prepetition Debt. The Credit Parties shall not propose or support any plan of reorganization or sale of all or substantially all of the Credit Parties' assets, or order confirming such plan or approving such sale, that is not conditioned upon the indefeasible payment in full in cash, no later than the effective date of such plan or sale, of (i) all Adequate Protection Claims of the Prepetition Secured Parties, and (ii) all other claims arising under the DIP Facility of the DIP Secured Parties, in each case in cash or such other consideration acceptable to the Prepetition Secured Parties, regardless of whether the Prepetition Debt becomes undersecured at any point during the Chapter 11 Cases and regardless of the value of the Prepetition Collateral. The terms and provisions of this Final Order and the DIP Documents shall continue in these Chapter 11 Cases, in any successor cases if these Chapter 11 Cases cease to be jointly administered and in any superseding chapter 7 cases under the Bankruptcy Code, and the DIP Liens, the DIP Superpriority Claims, the Adequate Protection Liens, the Prepetition Debt, the Prepetition Liens and the Adequate Protection Claims and all other rights and remedies of the DIP Secured Parties and the Prepetition Secured Parties granted by the provisions of this Final Order and the DIP

Documents shall continue in full force and effect until the DIP Obligations are paid in full, as set forth herein and in the DIP Documents, and the DIP Commitments have been terminated.

22. *Limitation on Use of DIP Financing Proceeds and Collateral.* Notwithstanding any other provision of this Final Order or any other order entered by the Court, no DIP Loans, DIP Collateral, Prepetition Collateral or any portion of the Carve-Out, may be used directly or indirectly by any Debtor, the Creditors' Committee, or any trustee appointed in the Chapter 11 Cases or any successor case, including any chapter 7 case, or any other person, party or entity (i) in connection with the investigation, initiation or prosecution of any claims, causes of action, adversary proceedings or other litigation (a) against the DIP Secured Parties, or the Prepetition Secured Parties, or their respective predecessors-in-interest, agents, affiliates, representatives, attorneys, or advisors, or any action purporting to do the foregoing in respect of the Prepetition Debt, liens on the Prepetition Collateral, DIP Obligations, DIP Liens, DIP Superpriority Claims and/or the adequate protection, adequate protection liens and superpriority claims granted to the Prepetition Secured Parties under the Interim Order or this Final Order, as applicable, or (b) challenging the amount, validity, perfection, priority or enforceability of or asserting any defense, counterclaim or offset with respect to, the Prepetition Debt, liens on the Prepetition Collateral, DIP Obligations, DIP Liens, DIP Superpriority Claims, and/or the liens, claims, rights, or security interests granted under the Interim Order, this Final Order, the DIP Documents or the Prepetition Credit Documents including, in each case, without limitation, for lender liability or pursuant to section 105, 510, 544, 547, 548, 549, 550, or 552 of the Bankruptcy Code, applicable non-bankruptcy law or otherwise; (ii) to prevent, hinder, or otherwise delay the Prepetition Secured Parties' or the DIP Secured Parties', as applicable, enforcement or

realization on the Prepetition Debt, Prepetition Collateral, DIP Obligations, DIP Collateral, and the liens, claims and rights granted to such parties under the Interim Order or this Final Order, as applicable, each in accordance with the DIP Documents, the Prepetition Credit Documents or this Final Order; (iii) to seek to modify any of the rights and remedies granted to the Prepetition Secured Parties or the DIP Secured Parties under this Final Order, the Prepetition Credit Documents or the DIP Documents, as applicable; (iv) to apply to the Court for authority to approve superpriority claims or grant liens (other than the liens permitted pursuant to the DIP Documents) or security interests in the DIP Collateral or any portion thereof that are senior to, or on parity with, the DIP Liens, DIP Superpriority Claims, adequate protection liens and superpriority claims and liens granted to the Prepetition Secured Parties, unless all DIP Obligations, Prepetition Debt, Adequate Protection, and claims granted to the DIP Secured Parties or Prepetition Secured Parties under this Final Order, have been refinanced or paid in full or otherwise agreed to in writing by the DIP Secured Parties; or (v) to seek to pay any amount on account of any claims arising prior to the Petition Date unless such payments are agreed to in writing by the DIP Lenders, in or are otherwise included in the “Approved Cash Flow Forecast” (subject to Permitted Variances); provided, that, notwithstanding anything to the contrary herein, the Creditors’ Committee may use the proceeds of the DIP Loans, DIP Collateral (including Cash Collateral) and/or the Carve-Out to investigate, but not prosecute, (i) the claims and liens of the Prepetition Secured Parties and (ii) potential claims, counterclaims, causes of action or defenses against the Prepetition Secured Parties; provided, further, that no more than \$75,000 of the proceeds of the DIP Loans, DIP Collateral (including Cash Collateral) and/or the Carve-Out (the “**Challenge Budget**”) may be used by the Creditors’ Committee to cover the aggregate

costs, fees and expenses incurred in connection with its investigation of (but not an objection or commencement of litigation with respect to) any Challenge (defined below).

23. *Real Property Leases.* As a requirement and precondition to the DIP Secured Parties' willingness to lend and in furtherance of the DIP Superpriority Claims provided for in this Final Order and pursuant to the DIP Documents, which are payable from and have recourse to all of the Debtors' pre- and post-petition property including, among other things, each leasehold interest in the Leases (as defined in the DIP Credit Agreement) to which a Debtor is a counterparty (each, a "**Real Property Lease**"), the DIP Secured Parties shall have the following protections with respect to the Debtors' Real Property Leases, regardless of whether any particular Real Property Lease or group of Real Property Leases constitutes Collateral, which protections shall be enforced by the DIP Agents or DIP Secured Parties as authorized, approved, and granted pursuant to the provisions of this Final Order and in accordance with the terms of the DIP Credit Agreement (and, after the indefeasible payment in full in cash of the DIP Obligations, (i) defined terms used in this paragraph 23 relating to the DIP Documents shall be deemed to be references to corresponding defined terms relating to the Prepetition Credit Documents, (ii) any notice herein required to be delivered pursuant to this paragraph 23 to the DIP Agents shall instead be required to be delivered to each of the Prepetition Agent and the Prepetition Collateral Agent, and (iii) the automatic stay provisions pursuant to section 362 of the Bankruptcy Code are vacated and modified to the extent necessary so as to permit the DIP Agents, the DIP Secured Parties, the Prepetition Agent and the Prepetition Collateral Agent, as applicable, and the Prepetition Secured Parties to exercise any of their rights with respect to Real Property Leases under this paragraph 23):

(a) Remedies Upon an Event of Default. If an Event of Default shall have occurred and be continuing, the DIP Agents for the benefit of the DIP Secured Parties shall, with respect to any Real Property Lease or group of Real Property Leases, be permitted, and are hereby authorized, approved, and granted the following rights and remedies: only to the extent permitted by applicable law, and after advance written notice to the counterparty to the Real Property Lease (and affording the Counterparty an opportunity to be heard in this Court on notice with respect to the foregoing), to access the leasehold interests of the Debtors or debtors in possession in any such Real Property Lease(s) for the purpose of (A) marketing such property or properties for sale and (B) removing any Collateral thereon or arranging for the Asset Sale of any such Collateral except to the extent prohibited by the terms of the Real Property Lease (unless the applicable provision is rendered ineffective by applicable non-bankruptcy law or the Bankruptcy Code); provided that the foregoing shall not preclude any counterparty to a Real Property Lease (each, a “**Counterparty**”) from an opportunity to be heard in this Court on notice with respect to the foregoing.

(b) Right to Credit Bid. Prior to any assumption and assignment of any Real Property Lease or group of Real Property Leases under Bankruptcy Code Sections 363 and 365, the Debtors shall first provide at least five (5) business days’ prior written notice (the “**Initial Notice Period**”) to the DIP Agents, unless such notice provision is waived by the DIP Agents and the DIP Requisite Lenders, which Initial Notice Period may be extended up to a further twenty-five (25) days by the DIP Agents or the DIP Requisite Lenders in each of their sole discretion by delivering written notice of such extension to the Debtors prior to expiration of the Initial Notice Period, and by any further period as is mutually agreeable between the DIP Agents

or the DIP Requisite Lenders and the Company (such notice period being the “**Aggregate Notice Period**”). During such notice period, the DIP Agents shall be permitted, subject to the terms of the DIP Documents and unless otherwise ordered by the Court, to participate in an auction sale for the Real Property Lease(s) and to credit bid forgiveness of some or all of the outstanding DIP Obligations (in an amount equal to at least the consideration offered by any other party in respect of such assignment) outstanding under the DIP Facilities as consideration in exchange for any such Real Property Lease(s) and pay to the Real Property Lease counterparty in cash all amounts necessary to cure any monetary defaults under the Real Property Leases, provided that to the extent the Company is entitled to retain a portion of the total consideration paid in respect of such assignment in accordance with the DIP Credit Agreement, the applicable portion of the consideration to be retained by Company shall be paid in cash (provided that such proceeds shall constitute DIP Collateral and Cash Collateral). In addition, and in connection with any sale of any Real Property Lease(s), the DIP Agents, on behalf of the DIP Lenders, shall be permitted to credit bid (subject to paragraph 27(a)(i) hereof) forgiveness of some or all of the outstanding DIP Obligations (in an amount equal to at least the consideration offered by any other party in respect of such sale or other Asset Sale) as consideration in exchange for such Real Property Lease(s), plus pay cash to the counterparty(ies) to the Real Property Lease(s) an amount necessary to cure any monetary defaults under the Real Property Lease(s). Pursuant to section 364(e) of the Bankruptcy Code, absent a stay pending appeal, the DIP Lenders’ right to credit bid shall not be affected by the reversal or modification on appeal of the Debtors’ authorization pursuant to this Final Order to obtain credit and incur debt as and in accordance with the terms set forth herein.



(c) DIP Lenders' Right to Cure Defaults. If any of the Debtors are required to cure any monetary defaults under any Real Property Lease pursuant to any order of this Court or otherwise in connection with any assumption or assumption and assignment of any such Real Property Lease pursuant to section 365(f) of the Bankruptcy Code, and such monetary default is not, within five (5) business days of the receipt by such Debtor of notice from the DIP Agents pursuant to the applicable provision(s) of the DIP Credit Agreement or any other notice from the DIP Agents requesting the cure of such monetary default, cured in accordance with the provisions of such applicable court order as arranged by the DIP Agents, the DIP Agents may cure any such monetary defaults on behalf of the applicable Debtor(s).

(d) Priorities. For the avoidance of doubt, nothing set forth in this paragraph 23 shall affect the relative priorities of liens and claims set forth herein.

24. *Approved Cash Flow Forecast*. The Approved Cash Flow Forecast is approved on a final basis. Proceeds of the DIP Facility and Cash Collateral under this Final Order shall be used by the Credit Parties in accordance with the DIP Credit Agreement and this Final Order and consistent with the Approved Cash Flow Forecast or as otherwise agreed by the DIP Agents (subject to Permitted Variances). None of the DIP Secured Parties' consent to, or acknowledgment of, the Approved Cash Flow Forecast shall be construed as consent to use of the proceeds of the DIP Facilities or Cash Collateral beyond the maturity date set forth in the DIP Credit Agreement, regardless of whether the aggregate funds shown on the Approved Cash Flow Forecast have been expended.

25. *Payment of Fees and Expenses*. The Credit Parties are authorized to pay the DIP Fees and Expenses, as provided in the DIP Documents and in accordance with the Approved

Cash Flow Forecast. Subject to the review procedures set forth in this paragraph 25, payment of all DIP Fees and Expenses and Adequate Protection Fees and Expenses shall not be subject to allowance or review by the Court. Professionals for the DIP Secured Parties and the Prepetition Secured Parties shall not be required to comply with the U.S. Trustee fee guidelines, however any time that such professionals seek payment of fees and expenses from the Debtors after the closing of the DIP Facility and prior to confirmation of a chapter 11 plan, each professional shall provide summary copies of its invoices (which shall not be required to contain time entries and which may be redacted or modified to the extent necessary to delete any information subject to the attorney-client privilege, any information constituting attorney work product, or any other confidential information, and the provision of such invoices shall not constitute any waiver of the attorney client privilege or of any benefits of the attorney work product doctrine) to the Debtors, the U.S. Trustee and counsel for the Creditors' Committee (together, the "**Review Parties**"). Any objections raised by the Review Parties with respect to such invoices must be in writing and state with particularity the grounds therefor and must be submitted to the applicable professional within ten (10) days of the receipt of such invoice (the "**Review Period**"). If no written objection is received by 12:00 p.m., prevailing Eastern Time, on the end date of the Review Period, the Credit Parties shall pay such invoices within three (3) days. If an objection to a professional's invoice is received within the Review Period, the Credit Parties shall promptly pay the undisputed amount of the invoice and this Court shall have jurisdiction to determine the disputed portion of such invoice if the parties are unable to resolve the dispute consensually. Notwithstanding the foregoing, the Debtors are authorized and directed to pay on or after the Closing Date the DIP Fees and Expenses and Adequate Protection Fees and Expenses incurred

on or prior to such date without the need for any professional engaged by the DIP Secured Parties or the Prepetition Secured Parties to first deliver a copy of its invoice or other supporting documentation to the Review Parties (other than the Debtors). No attorney to the DIP Secured Parties or any Prepetition Secured Party shall be required to file an application seeking compensation for services or reimbursement of expenses with the Court.

26. *Limits to Lender Liability.* Nothing in this Final Order, the DIP Documents, or any other documents related to these transactions shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Secured Parties (in each case, in their capacities as such) of any liability for any claims arising from the prepetition or postpetition activities of the Debtors in the operation of their business, or in connection with their restructuring efforts. So long as the DIP Secured Parties comply with their obligations under the DIP Documents and their obligations, if any, under applicable law (including the Bankruptcy Code), (a) the DIP Secured Parties shall not, in any way or manner, be liable or responsible for (i) the safekeeping of the DIP Collateral, (ii) any loss or damage thereto occurring or arising in any manner or fashion from any cause, (iii) any diminution in the value thereof or (iv) any act or default of any carrier, servicer, bailee, custodian, forwarding agency or other person and (b) all risk of loss, damage or destruction of the Collateral shall be borne by the Credit Parties.

27. *Effect of Stipulations on Third Parties.* The Debtors' stipulations, admissions, agreements and releases contained in this Final Order, including, without limitation, in paragraph 7 of this Final Order, shall be binding upon the Debtors and any successor thereto (including, without limitation, any chapter 7 or chapter 11 trustee or examiner appointed or elected for any of the Debtors) in all circumstances and for all purposes. The Debtors' stipulations, admissions,

agreements and releases contained in this Final Order, including, without limitation, in paragraph 7 of this Final Order, shall be binding upon all other parties in interest, including, without limitation, the Creditors' Committee, and any other person or entity acting or seeking to act on behalf of the Debtors' estates, in all circumstances and for all purposes unless: (a) such Creditors' Committee, or any other person or entity acting or seeking to act on behalf of the Debtors' estates, in each case with requisite standing (subject in all respects to any agreement or applicable law that may limit or affect such entity's right or ability to do so), has timely filed an adversary proceeding or contested matter (subject to the limitations contained herein, including, *inter alia*, in this paragraph) by no later than (i) with respect to any adversary proceeding or other contested matter objecting to or challenging the amount, validity, perfection, enforceability, priority or extent of the Prepetition Debt or the Prepetition Liens, or the allowance of any Prepetition Obligation based on the amount of such obligation (i.e., not including any challenge on a basis such as section 510(c) of the Bankruptcy Code), by August 27, 2020 at 4:00 p.m. (Eastern) (the "**Initial Challenges**"); provided, however, that for an Initial Challenge to be timely, the Creditors' Committee must provide written notice to the Prepetition Secured Parties' counsel of its intent to file any Initial Challenge and identify the specific Initial Challenges by August 25, 2020; and (ii) with respect to any other challenge to the Debtors' Stipulations, asserting or prosecuting any action for preferences, fraudulent transfers or conveyances, equitable subordination, other avoidance power claims or any other claims, counterclaims or causes of action, objections, contests or defenses ("**Second Period Challenges**" collectively with the Initial Challenges, the "**Challenges**") (x) the Creditors' Committee with requisite standing by October 9, 2020 (the "**Creditors' Committee's Second Challenge Deadline**"), (y) if no

Creditors' Committee has been appointed, by any party in interest with requisite standing, within 75 calendar days after entry of the Interim Order, and (z) such later date as may be agreed in writing by the Debtors and the DIP Lenders (the deadline established by the foregoing clauses (i) and (ii), the "**Challenge Deadlines**") against any of the Prepetition Secured Parties or their respective affiliates and subsidiaries and each of their respective former or current officers, partners, directors, managers, members, principals, employees, agents, related funds, investors, financing sources, financial advisors, attorneys, accountants, investment bankers, consultants, representatives and other professionals and the respective successors and assigns thereof, in each case in their respective capacity as such (each a "**Representative**" and, collectively, the "**Representatives**") in connection with matters related to the Prepetition Credit Documents, the Prepetition Debt, the Prepetition Liens and the Prepetition Collateral; and (b) there is a final non-appealable order in favor of the plaintiff sustaining any such Challenge in any such timely filed adversary proceeding or contested matter; provided, however, that any pleadings filed in connection with any Challenge shall set forth with specificity the basis for such challenge or claim and any challenges or claims not so specified by an interested party with requisite standing prior to the Challenge Deadline shall be deemed forever, waived, released and barred; and provided further that, solely to the extent an order of the Court is entered converting the Chapter 11 Cases to cases under chapter 7 prior to one of the Challenge Deadlines, the Challenge Deadline applicable to the Creditors' Committee shall be extended solely for the chapter 7 trustee to the later of (i) the Creditors' Committee's Challenge Deadline, or (ii) the date that is 21 days after the appointment of the chapter 7 trustee. Notwithstanding anything contained herein to the contrary, the Challenge Deadline for a Second Period Challenge will be tolled for the

Creditors' Committee if it formally moves for an order of this Court conferring such standing or authority (the "**Standing Motion**") prior to that Challenge Deadline from the date the Creditors' Committee so moves until such time as standing is granted or denied pursuant to an order of the Court with regard to such Standing Motion; provided that the Challenge Deadline will only be tolled (a) if such motion attaches a proposed complaint identifying the specific Challenge that the Creditors' Committee proposes to assert and the defendants against whom such Challenge is proposed to be asserted and (b) will only be tolled with respect to such Challenge and defendants specifically identified therein; provided further, that the Creditors' Committee shall have automatic standing and shall not be required to file a Standing Motion only with respect to any Initial Challenges; provided further, any adversary proceeding or contested matter commenced with respect to an Initial Challenge may be stayed upon the request of the Prepetition Secured Parties until the expiration of the Creditors' Committee's Second Challenge Deadline. If no such Challenge is timely and properly filed prior to the Challenge Deadlines or the Court does not rule in favor of the plaintiff in any such proceeding then: (a) the Debtors' stipulations, admissions, agreements and releases contained in this Final Order, including, without limitation, those contained in paragraph 7 of this Final Order, shall be binding on all parties in interest; (b) the obligations of the Credit Parties under the Prepetition Credit Documents, including the Prepetition Debt, shall constitute allowed claims not subject to defense, claim, counterclaim, recharacterization, subordination, offset or avoidance, for all purposes in the Chapter 11 Cases, and any subsequent chapter 7 case(s); (c) the Prepetition Liens on the Prepetition Collateral shall be deemed to have been, as of the Petition Date, legal, valid, binding, perfected, security interests and liens, not subject to recharacterization, subordination, avoidance or other defense; and (d) the

Prepetition Debt and the Prepetition Liens on the Prepetition Collateral shall not be subject to any other or further claim or challenge by the Creditors' Committee, or any other party in interest acting or seeking to act on behalf of the Debtors' estates, including, without limitation, any successor thereto (including, without limitation, any chapter 7 trustee or chapter 11 trustee or examiner appointed or elected for any of the Debtors) and any defenses, claims, causes of action, counterclaims and offsets by any Creditors' Committee, if any, or any other party acting or seeking to act on behalf of the Debtors' estates, including, without limitation, any successor thereto (including, without limitation, any chapter 7 trustee or chapter 11 trustee or examiner appointed or elected for any of the Debtors), whether arising under the Bankruptcy Code or otherwise, against any of the Prepetition Secured Parties and their Representatives arising out of or relating to any of the Prepetition Credit Documents shall be deemed forever waived, released and barred. If any such Challenge is timely filed prior to a Challenge Deadline, the stipulations, admissions, agreements and releases contained in this Final Order, including, without limitation, those contained in paragraph 7 of this Final Order, shall nonetheless remain binding and preclusive (as provided in the second sentence of this paragraph) on all parties in interest (other than the party that has brought such Challenge in connection therewith, and then only with respect to the stipulations, admissions, agreements and releases that are subject to the Challenge and not to any stipulations, admissions, agreements and releases not subject to the Challenge) except to the extent that such stipulations, admissions, agreements and releases were expressly and successfully challenged in such Challenge as set forth in a final, non-appealable order of a court of competent jurisdiction. Nothing in this Final Order vests or confers on any Person (as defined in the Bankruptcy Code), including any Creditors' Committee, standing or authority to

pursue any claim or cause of action belonging to the Debtors or their estates with respect to a Second Period Challenge. Any Standing Motion shall attach a draft complaint or other pleading that sets forth such Challenge, and any Challenge not included therein shall be deemed forever waived, released, and barred. For the avoidance of doubt, none of the foregoing challenge provisions set forth in this paragraph shall apply to any DIP Secured Party, in their capacities as such, and in no event shall the DIP Facility, DIP Obligations or DIP Liens be subject to challenge pursuant to this paragraph on avoidance or any other grounds by any party.

28. *Postpetition Release.* In addition, notwithstanding anything to the contrary set forth herein, upon the repayment of all DIP Obligations owed to the DIP Agents and the DIP Secured Parties by the Debtors and termination of the rights and obligations arising under the DIP Documents (which payment and termination shall be on terms and conditions acceptable to the DIP Agents), the DIP Agents and the DIP Lenders shall be released from any and all obligations, liabilities, actions, duties, responsibilities and causes of action arising or occurring, on or prior to the date of such repayment and termination, in connection with or related to the DIP Documents, or the Interim Order (including without limitation any obligation or responsibility (whether direct or indirect, absolute or contingent, due or not due, primary or secondary, liquidated or unliquidated) to pay or otherwise fund the Carve-Out on terms and conditions acceptable to the DIP Agents).

29. *Landlord Agreements; Access.*

(a) All collateral access agreements to which the Prepetition Collateral Agent is a party shall hereby continue to be deemed to be amended to include the DIP Agents as a beneficiary thereunder, and such agreements shall thereafter be additionally enforceable by the



DIP Agents against, and binding upon, each landlord party thereto. Any title, landlord's lien, right of distraint or levy, security interest or other interest that any landlord or mortgagee may have in any DIP Collateral or Prepetition Collateral of the Debtors located on such leased premises, to the extent the same is not avoidable under sections 544, 545, 547, 548, 549, 550, or 552 of the Bankruptcy Code, applicable non-bankruptcy law or otherwise, is hereby expressly subordinated to the liens of the DIP Secured Parties and the Prepetition Secured Parties.

(b) Without limiting any other rights or remedies of the DIP Agents or the other DIP Secured Parties set forth in this Final Order, the DIP Documents, or otherwise available at law or in equity, and subject to the terms of the DIP Documents, upon three (3) business days' written notice to counsel to the Debtors and any landlord, lienholder, licensor, or other third party owner of any leased or licensed premises or intellectual property, after the expiration of the Remedies Notice Period, that an Event of Default has occurred and is continuing, the DIP Agents, (i) may, unless otherwise expressly provided in any separate agreement by and between the applicable landlord or licensor and the DIP Agents, enter upon any leased or licensed premises of the Debtors for the purpose of exercising any remedy with respect to DIP Collateral located thereon, and (ii) shall be entitled to all of the Debtors' rights and privileges as lessee or licensee under the applicable license and to use any and all trademarks, trade names, copyrights, licenses, patents, or any other similar assets of the Debtors, which are owned by or subject to a lien of any third party and which are used by Debtors in their businesses, without unreasonable interference from landlords, lienholders, or licensors thereunder; provided, however, that the DIP Agents (on behalf of the DIP Lenders) shall pay only rent and additional rent, fees, royalties, or other monetary obligations of the Debtors that

first arise after the written notice referenced above from the DIP Agents and that accrue during the period of such occupancy or use by DIP Agents calculated on a per diem basis. For the avoidance of doubt, (A) all of the Debtors' obligations under any applicable lease or license shall not be affected, limited, or otherwise modified by the rights granted to the DIP Agents pursuant to this paragraph and (B) any affected landlords, lienholders, and/or licensors shall retain all remedies available under applicable non-bankruptcy law. Nothing herein shall require the Debtors, the DIP Agents or the other DIP Secured Parties, to assume any lease or license under Bankruptcy Code section 365(a) as a precondition to the rights afforded to the DIP Agents and the other DIP Secured Parties herein.

30. *Master Proof of Claim.* The Prepetition Agent shall not be required to file proofs of claim in the Chapter 11 Cases or any successor case in order to assert claims on behalf of itself and the applicable Prepetition Secured Parties for payment of the applicable Prepetition Debt arising under the applicable Prepetition Credit Documents, nor shall any other Prepetition Secured Party be required to file any proofs of claim in the Chapter 11 Cases or any successor case in order to assert claims on behalf of itself for payment of the Prepetition Debt arising under the Prepetition Credit Documents. The statements of claim in respect of the Prepetition Debt set forth in this Final Order, together with any evidence accompanying the Motion and presented at the Hearings, are deemed sufficient to and do constitute proofs of claim in respect of such debt and such secured status. However, in order to facilitate the processing of claims, to ease the burden upon the Court and to reduce an unnecessary expense to the Debtors' estates, the Prepetition Agent is authorized to file in the Debtors' lead chapter 11 case, *In re Hopedale Mining LLC, et al.*, Case No. 20-12043, a single, master proof of claim on behalf of the relevant

Prepetition Secured Parties on account of any and all of their respective claims arising under the applicable Prepetition Credit Documents and hereunder (each, a “**Master Proof of Claim**”), which shall be deemed asserted against each of the Debtors. Upon the filing of a Master Proof of Claim, insofar as deemed asserted against each of the Debtors, the Prepetition Agent and the Prepetition Secured Parties, and each of their respective successors and assigns, as applicable, shall be deemed to have filed a proof of claim in the amount set forth opposite its name therein in respect of its claims (which names may be redacted in the publicly filed version of the Master Proof of Claim) against each of the Debtors of any type or nature whatsoever with respect to the applicable Prepetition Credit Documents, and the claim of each Prepetition Secured Party (and each of its respective successors and assigns), named in a Master Proof of Claim shall be treated as if such entity had filed a separate proof of claim in each of these Chapter 11 Cases. The Master Proofs of Claim shall not be required to identify whether any Prepetition Secured Party acquired its claim from another party and the identity of any such party or to be amended to reflect a change in the holders of the claims set forth therein or a reallocation among such holders of the claims asserted therein resulting from the transfer of all or any portion of such claims. The provisions of this paragraph 34 and each Master Proof of Claim are intended solely for the purpose of administrative convenience and shall not affect the right of each Prepetition Secured Party (or its successors in interest) to vote separately on any plan proposed in these Chapter 11 Cases. The Master Proofs of Claim shall not be required to attach any instruments, agreements or other documents evidencing the obligations owing by each of the Debtors to the applicable Prepetition Secured Parties, which instruments, agreements or other documents will be provided upon written request to counsel to the Prepetition Agent.

31. *Final Order Governs.* In the event of any inconsistency between the provisions of the Final Order, the DIP Documents or any other order entered by this Court, the provisions of this Final Order shall govern. Notwithstanding anything to the contrary in any other order entered by this Court, any payment made pursuant to, or authorization contained in, any other order entered by this Court shall be consistent with and subject to the requirements set forth in this Final Order and the DIP Documents, including, without limitation, the Approved Cash Flow Forecast (subject to permitted variances).

32. *Binding Effect; Successors and Assigns.* Subject only to paragraph 27, the DIP Documents and the provisions of this Final Order, including all findings herein, shall be binding upon all parties in interest in these Chapter 11 Cases, including, without limitation, the DIP Secured Parties, the Prepetition Secured Parties, the Creditors' Committee, and the Debtors and their respective successors and assigns (including any chapter 7 or chapter 11 trustee hereinafter appointed or elected for the estate of any of the Debtors, an examiner appointed pursuant to section 1104 of the Bankruptcy Code, or any other fiduciary appointed as a legal representative of any of the Debtors or with respect to the property of the estate of any of the Debtors) and shall inure to the benefit of the DIP Secured Parties, the Prepetition Secured Parties and the Debtors and their respective successors and assigns; provided, that the DIP Secured Parties and the Prepetition Secured Parties shall have no obligation to permit the use of the Prepetition Collateral (including Cash Collateral) by, or to extend any financing to, any chapter 7 trustee, chapter 11 trustee or similar responsible person appointed for the estates of the Debtors.

33. *Exculpation.* Nothing in this Final Order, the DIP Documents, the existing agreements or any other documents related to the transactions contemplated hereby shall in any

way be construed or interpreted to impose or allow the imposition upon any DIP Secured Party or any Prepetition Secured Party of any liability for any claims arising from the prepetition or postpetition activities of the Credit Parties in the operation of their businesses, or in connection with their restructuring efforts.

34. *Limitation of Liability.* In determining to make any loan or other extension of credit under the DIP Credit Agreement, to permit the use of Cash Collateral or in exercising any rights or remedies as and when permitted pursuant to this Final Order or the DIP Documents, none of the DIP Secured Parties, or the Prepetition Secured Parties shall (i) be deemed to be in “control” of the operations or participating in the management of the Debtors; (ii) owe any fiduciary duty to the Debtors, their respective creditors, shareholders or estates; or (iii) be deemed to be acting as a “Responsible Person” or “Owner” or “Operator” with respect to the operation or management of the Debtors (as such terms or similar terms are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601, et seq., as amended, or any similar federal or state statute).

35. *Effectiveness.* This Final Order shall constitute findings of fact and conclusions of law<sup>16</sup> and shall take effect and be fully enforceable *nunc pro tunc* to the Petition Date immediately upon entry hereof. Notwithstanding Bankruptcy Rules 4001(a)(3), 6004(h), 6006(d), 7062, or 9014 of the Bankruptcy Rules, or any Local Bankruptcy Rule, or Rule 62(a) of the Federal Rules of Civil Procedure, this Final Order shall be immediately effective and enforceable upon its entry and there shall be no stay of execution or effectiveness of this Final Order.

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<sup>16</sup> Findings of fact shall be construed as conclusions of law, and conclusions of law shall be construed as findings of fact, pursuant to Bankruptcy Rule 7052.

36. *Modification of DIP Documents and Approved Cash Flow Forecast.* The Credit Parties are hereby authorized, without further order of this Court, to enter into agreements with the DIP Secured Parties providing for any consensual non-material modifications to the Approved Cash Flow Forecast or the DIP Documents, or of any other modifications to the DIP Documents necessary to conform the terms of the DIP Documents to this Final Order, in each case consistent with the amendment provisions of the DIP Documents, and shall provide contemporaneous notice of such modification to the Creditors' Committee.

37. *Headings.* Section headings used herein are for convenience only and are not to affect the construction of or to be taken into consideration in interpreting this Final Order.

38. *Payments Held in Trust.* Except as expressly permitted in this Final Order or the DIP Documents, in the event that any person or entity receives any payment on account of a security interest in Prepetition Collateral or DIP Collateral, receives any DIP Collateral or any proceeds of DIP Collateral or receives any other payment with respect thereto from any other source prior to payment in full of all DIP Obligations under the DIP Documents and termination of the DIP Commitments in accordance with the DIP Documents, such person or entity shall be deemed to have received, and shall hold, any such payment or proceeds of Collateral in trust for the benefit of the DIP Secured Parties (as applicable based on the specific asset at issue) and shall immediately turn over such proceeds to any DIP Agent, or as otherwise instructed by this Court, for application to the DIP Obligations in accordance with the DIP Documents and this Final Order.

39. *Credit Bidding.* Subject to paragraph 27(a)(i) hereof, unless otherwise ordered by the Court and notwithstanding anything contained herein to the contrary, (a) the DIP Collateral

Agent, on behalf of itself and the DIP Lenders, shall have the right to credit bid, in accordance with the DIP Documents, up to the full amount of the DIP Obligations in any sale of the DIP Collateral (or any part thereof); (b) the Prepetition Collateral Agent, on behalf of itself and the applicable Prepetition Secured Parties, shall have the right to credit bid up to the full amount of the Prepetition Debt in any sale of the Prepetition Collateral (or any part thereof), in each case of (a) and (b), as provided for in section 363(k) of the Bankruptcy Code, without the need for further Court order authorizing the same and whether any such sale is effectuated through section 363(k) or 1129(b) of the Bankruptcy Code, by a chapter 7 trustee under section 725 of the Bankruptcy Code, or otherwise. Each of the DIP Collateral Agent, on behalf of itself and the DIP Lenders, and the Prepetition Collateral Agent, on behalf of itself and the applicable Prepetition Secured Parties, shall have the right to assign its credit bidding rights to any party, in each case in its sole discretion.

40. *Certain Governmental Matters.*

(a) Notwithstanding anything to the contrary in this Final Order or DIP Documents, nothing in this Final Order or the DIP Documents shall relieve the Debtors of any obligations under federal, state or local police or regulatory laws or under 28 U.S.C. § 959(b), provided that nothing herein shall limit or impair the Debtors' rights to assert defenses under applicable law and nothing herein shall create new defenses to obligations under police or regulatory laws or 28 U.S.C. § 959(b).

(b) Notwithstanding anything to the contrary in this Final Order or the DIP Documents, nothing in this Final Order or the DIP Documents shall impair or adversely affect the United States of America's rights, claims and defenses of set-off and recoupment, or those of

any State or any of the foregoing's respective agencies, departments or agents, and all such rights, claims and defenses shall be preserved in their entirety.

(c) Stipulation 7(f) and paragraphs 26, 27, 28, 32, and 33 of this Final Order shall apply with respect to liabilities to governmental units under police or regulatory law only so long as the actions of the DIP Agent, DIP Lenders, or the Prepetition Secured Parties, as applicable, have not constituted and do not constitute, within the meaning of 42 U.S.C. § 9601(20)(F), actual participation in the management or operational affairs of a vessel or facility owned or operated by the Debtors, or otherwise caused lender liability to arise or the status of control, responsible person, owner, or operator to exist under applicable federal, state, or local law. For the avoidance of doubt, in determining to make any loan or other extension of credit under the DIP Credit Agreement, permitting the use of Cash Collateral, performing under this Order and the DIP Documents in the ordinary course, no DIP Agent, DIP Lender or Prepetition Secured Party shall be deemed to have participated in the management or operational affairs of a vessel or facility owned or operated by the Debtors, or to have otherwise caused lender liability to arise or assumed the status of control, responsible person, owner, or operator, *provided, however*, that foreclosing, exercising remedies, or becoming involved in decision-making on the Debtors' compliance with police or regulatory laws or regulations would not be ordinary course performance. Each DIP Agent, DIP Lender, and Prepetition Secured Party preserves and is not waiving any defenses it may have to any claims as set forth in 42 U.S.C. § 9601(20)(F) or comparable, federal, state, and local law.

(d) Notwithstanding anything to the contrary in this Final Order or the DIP Documents, nothing in this Final Order or the DIP Documents shall impair or adversely affect



any right under applicable law of any governmental unit with respect to any financial assurance, letter of credit, trust, or bond or limit any governmental unit in the exercise of its police powers in accordance with 11 U.S.C. § 362(b)(4).

(e) Notwithstanding anything to the contrary in this Final Order or the DIP Documents, nothing in this Final Order or the DIP Documents shall impair or adversely affect the right of the United States or any State to object to any credit bid for cause.

41. *DIP Credit Agreement Modifications.* The following provisions of the DIP Credit Agreement are hereby amended and restated in their entirety as follows:

(a) Section 9.01(w)(x): “the entry of an order by the Bankruptcy Court granting relief from or modifying the automatic stay of section 362 of the Bankruptcy Code (x) to allow any creditor to execute upon or enforce a Lien on any Collateral with a value in excess of \$250,000 with respect to any single such order or \$750,000 in the aggregate with respect to all such orders, or (y) with respect to any Lien of or the granting of any Lien on any Collateral to any state or local environmental or regulatory agency or authority having priority over the Liens in favor of the Agents;”

(b) Section 9.01(w)(xvii): “the entry of an order precluding the Collateral Agent from having the right to or being permitted to “credit bid” with respect to any of the assets of the Loan Parties constituting DIP Collateral or Prepetition Collateral, as applicable (excluding an order determining the extent of the Prepetition Secured Parties’ liens in connection with any Initial Challenge);”

(c) Schedule 7.01(y): Schedule 7.01(y) will be replaced in its entirety with the Schedule 7.01(y) annexed to this Final Order as **Exhibit 2**.

(d) Notwithstanding the terms of the DIP Documents, the DIP Lenders are not being granted a lien on Avoidance Actions, Avoidance Proceeds, or Unencumbered Commercial Tort Claims.

42. *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.

43. *Bankruptcy Rules.* The requirements of Bankruptcy Rules 4001, 6003 and 6004, in each case to the extent applicable, are satisfied by the contents of the Motion.

44. *Necessary Action.* The Debtors are authorized to take any and all such necessary actions as are reasonable and appropriate to implement the terms of this Final Order.

45. *Retention of Jurisdiction.* The Court shall retain jurisdiction to implement, interpret and enforce the provisions of this Final Order, and this retention of jurisdiction shall survive the confirmation and consummation of any chapter 11 plan for any one or more of the Debtors notwithstanding the terms or provisions of any such chapter 11 plan or any order confirming any such chapter 11 plan.

46. The Debtors shall serve this order in accordance with all applicable rules and orders and shall file a certificate of service evidencing compliance therewith.

[SO ORDERED]

Copies to Default List.

# EXHIBIT 1

Hopedale Mining LLC, et al.

Final DIP Budget

(\$ in 000's)											
	Pre	Post	Post	Post	Post	Post	Post	Post	Post	Post	
Week Number →	Week 1	Week 1	Week 2	Week 3	Week 4	Week 5	Week 6	Week 7	Week 8	Week 9	Total
Week Ending →	24-Jul	24-Jul	31-Jul	7-Aug	14-Aug	21-Aug	28-Aug	4-Sep	11-Sep	18-Sep	
(1) <b>Receipts</b>											
(4) <b>Total Receipts</b>	929	-	2,185	1,141	1,761	3,056	992	1,448	2,487	3,034	16,104
(5) <b>Operating Disbursements</b>											
(6) Payroll & Benefits	(622)	-	(1,119)	(1,089)	(1,119)	(916)	(1,169)	(1,125)	(1,335)	(2,041)	(9,913)
(7) Operating Expenses	(2,261)	(281)	(1,722)	(1,213)	(1,485)	(1,430)	(2,000)	(1,956)	(1,492)	(1,178)	(12,757)
(8) <b>Total Operating Disbursements</b>	(2,883)	(281)	(2,841)	(2,302)	(2,604)	(2,346)	(3,168)	(3,081)	(2,828)	(3,219)	(22,670)
(9) <b>Net Operating Cash Flows</b>	(1,954)	(281)	(656)	(1,161)	(843)	710	(2,176)	(1,633)	(341)	(185)	(6,566)
(10) <b>Restructuring Disbursements</b>											
(11) Professional Fees	(1,643)	-	(466)	(466)	(466)	(666)	(466)	(466)	(31)	(181)	(3,205)
(12) Shippers / Lienholders	-	-	(500)	(50)	-	(50)	-	-	-	-	(600)
(13) Utility Deposits	-	-	(100)	-	-	-	-	-	-	-	(100)
(14) US Trustee Fees / Filing Fees	-	-	-	-	-	-	-	-	-	(400)	(400)
(15) <b>Total Restructuring Disbursements</b>	(1,643)	-	(1,066)	(516)	(466)	(716)	(466)	(466)	(31)	(581)	(4,305)
(10) <b>Financing Activities</b>											
(16) Interest & Fees	-	-	(235)	-	(362)	-	-	-	(435)	(235)	(1,267)
(17) Draws	-	-	3,500	-	8,133	-	-	-	-	-	11,633
(18) Paydowns	-	-	-	-	-	-	-	-	-	-	-
(19) <b>Total Financing Activities</b>	-	-	3,265	-	7,770	-	-	-	(435)	(235)	10,365
(20) <b>Total Net Cash Flow</b>	(3,597)	(281)	1,544	(1,677)	6,462	(6)	(2,642)	(2,098)	(806)	(1,000)	(506)
(21) Beginning Cash	5,302	1,705	1,424	2,967	1,290	7,752	7,746	5,104	3,006	2,199	1,705
(22) Net Cash Flow	(3,597)	(281)	1,544	(1,677)	6,462	(6)	(2,642)	(2,098)	(806)	(1,000)	(506)
(23) <b>Ending Book Cash - Unrestricted</b>	1,705	1,424	2,967	1,290	7,752	7,746	5,104	3,006	2,199	1,199	1,199

Hopedale Mining LLC, et al.

13-Week Forecast: Professional Fees

Week Number →	Week 31	Week 32	Week 33	Week 34	Week 35	Week 36	Week 37	Week 38	
Week Ending →	31-Jul	7-Aug	14-Aug	21-Aug	28-Aug	4-Sep	11-Sep	18-Sep	Total
Actual / Forecast →	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast
(16) <b>Post-Petition Professional Fees Accrued</b>									
(17) Frost Brown Todd	\$ (150,000)	\$ (150,000)	\$ (150,000)	\$ (150,000)	\$ (150,000)	\$ (150,000)	\$ (150,000)	\$ (150,000)	\$ (1,200,000)
(17) Whiteford Taylor	\$ (18,750)	\$ (18,750)	\$ (18,750)	\$ (18,750)	\$ (18,750)	\$ (18,750)	\$ (18,750)	\$ (18,750)	\$ (150,000)
(18) Cambio	(46,875)	(46,875)	(46,875)	(46,875)	(46,875)	(46,875)	(46,875)	(46,875)	\$ (375,000)
(19) FTI	(37,500)	(37,500)	(37,500)	(37,500)	(37,500)	(37,500)	(37,500)	(37,500)	\$ (300,000)
(20) EVA	-	-	-	(200,000)	-	-	-	(150,000)	\$ (350,000)
(21) V&E	-	-	-	-	-	-	-	-	\$ -
(22) Epiq	(31,250)	(31,250)	(31,250)	(31,250)	(31,250)	(31,250)	(31,250)	(31,250)	\$ (250,000)
(23) UCC Counsel & FA	(75,000)	(75,000)	(75,000)	(75,000)	(75,000)	(75,000)	(75,000)	(75,000)	\$ (600,000)
(24) Stroock	(75,000)	(75,000)	(75,000)	(75,000)	(75,000)	(75,000)	(75,000)	(75,000)	\$ (600,000)
(25) Jackson Kelly	(31,250)	(31,250)	(31,250)	(31,250)	(31,250)	(31,250)	(31,250)	(31,250)	\$ (250,000)
(26) Professional retainers	-	-	-	-	-	-	435,000	435,000	\$ 870,000
(27) <b>Total professional fees accrued</b>	<b>\$ (465,625)</b>	<b>\$ (465,625)</b>	<b>\$ (465,625)</b>	<b>\$ (665,625)</b>	<b>\$ (465,625)</b>	<b>\$ (465,625)</b>	<b>\$ (30,625)</b>	<b>\$ (180,625)</b>	<b>\$ (3,205,000)</b>

**Wind Down Budget****Hopedale Mining LLC**

(Amounts in 000's)		<b>25-Sep</b>	<b>2-Oct</b>	<b>9-Oct</b>	<b>16-Oct</b>	<b>Total</b>
		<b><u>Week 10</u></b>	<b><u>Week 11</u></b>	<b><u>Week 12</u></b>	<b><u>Week 13</u></b>	<b><u>Disbursements</u></b>
Company Professional Fees	see below	82.5	82.5	82.5	82.5	330.0
Payroll /Contractors Part-time		10.0	10.0	10.0	10.0	40.0
IBNR Employee Healthcare Reserve Funding		750.0	-	-	-	750.0
Operating supplies		1.0	1.0	1.0	1.0	4.0
Rent / Lease Payments		2.5	2.5	2.5	2.5	10.0
Utilities						
Taxes & Insurance						
Other Operating Costs	see below	<u>13.0</u>	<u>10.5</u>	<u>13.0</u>	<u>20.5</u>	<u>57.0</u>
<b>Total Wind-Down Disbursement Costs</b>		<b>859.0</b>	<b>106.5</b>	<b>109.0</b>	<b>116.5</b>	<b>1,191.0</b>

**Company Professional fees:**

FBT	35.0	35.0	35.0	35.0	140.0
Cambio	25.0	25.0	25.0	25.0	100.0
EPIQ	12.5	12.5	12.5	12.5	50.0
Creditors Committee	10.0	10.0	10.0	10.0	40.0
FTI	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>
subtotal	82.5	82.5	82.5	82.5	330.0

**Other Operating Costs:**

Maintenance/ Data Storage	2.0	2.0	2.0	2.0	8.0
W-2 fees	-	-	-	10.0	10.0
Bank Fees	1.0	1.0	1.0	1.0	4.0
US Trustee	5.0	5.0	5.0	5.0	20.0
Misc	<u>5.0</u>	<u>2.5</u>	<u>5.0</u>	<u>2.5</u>	<u>15.0</u>
subtotal	13.0	10.5	13.0	20.5	57.0

# EXHIBIT 2

**Schedule 7.01(v)**

**Milestones**

The Debtors shall comply with the following chapter 11 milestones, which Milestones may be extended in writing by the Required Lenders in their sole and absolute discretion:

1. No later than one (1) calendar day after the Petition Date, the Debtors shall have filed with the Bankruptcy Court a motion seeking approval of the DIP Facility, and a motion seeking approval of bidding procedures, in each case in form and substance satisfactory to the Required Lenders;
2. No later than three (3) calendar days after the Petition Date, the Bankruptcy Court shall have entered the Interim Order;
3. No later than twenty-two (22) calendar days after the Petition Date, the Bankruptcy Court shall have entered the Final Order and an order approving the bidding procedures in form and substance satisfactory to the Required Lenders (the "Bidding Procedures");
4. No later than August 21, 2020, the bid deadline shall occur in accordance with the Bidding Procedures;
5. No later than August 31, 2020, the Debtors shall hold an auction, if required under the Bidding Procedures, for the sale of all or substantially all of their assets in accordance with the Bidding Procedures;
6. No later than September 4, 2020, the Bankruptcy Court shall have entered the sale order in form and substance satisfactory to the Required Lenders (the "Sale Order");
7. No later than September 10, 2020, the sale transaction(s) shall be consummated.

The Debtors shall promptly provide the Agent with any information or materials reasonably requested by the Agent in connection with the Debtors' progress on achieving any Milestones.



# EXHIBIT B

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF OHIO**

In re:	)	Chapter 11
	)	
Hopedale Mining LLC, <i>et al.</i> , <sup>1</sup>	)	Case No. 20-12043 (GRH)
	)	
	)	(Jointly Administered)
	)	
Debtors.	)	Honorable Judge Guy R. Humphrey

~~**INTERIM**~~**FINAL ORDER (I) AUTHORIZING THE DEBTORS TO (A) OBTAIN POSTPETITION FINANCING AND (B) USE CASH COLLATERAL, (II) GRANTING LIENS AND PROVIDING SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS, (III) GRANTING ADEQUATE PROTECTION TO THE PREPETITION SECURED PARTIES, (IV) MODIFYING THE AUTOMATIC STAY, ~~(V) SCHEDULING A FINAL HEARING,~~ AND (VIV) GRANTING RELATED RELIEF [RELATED TO DOCKET ~~NO~~**NOS. 23 & 61**]**

Upon the motion (the “**Motion**”)<sup>2</sup> of Rhino Energy LLC (the “**Company**”), and its affiliated debtors, each as a debtor and debtor in possession (collectively, the “**Debtors**”) in the above-captioned cases (the “**Chapter 11 Cases**”) pursuant to sections 105, 361, 362, 363(b), 363(c)(2), 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), 364(e), 503, and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “**Bankruptcy Code**”), Rules 2002, 4001, 6003, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) and the Local

<sup>1</sup> The Debtors in these Chapter 11 cases are (with the last four digits of their federal tax identification numbers in parentheses): Rhino GP LLC (8619), Rhino Resource Partners LP (7517), Rhino Energy LLC (6320), Rhino Trucking LLC (8773), Rhino Exploration LLC (8863), Triad Roof Support Systems LLC (1183), Springdale Land LLC (9816), McClane Canyon Mining LLC (3783), Rhino Northern Holdings LLC (1858), CAM-Ohio Real Estate LLC (1859), CAM-Colorado LLC (4269), Taylorville Mining LLC (5106), CAM Coal Trading LLC (4143), Castle Valley Mining LLC (9495), Jewell Valley Mining LLC (0270), Rhino Services LLC (3356), Rhino Oilfield Services LLC (8938), Rhino Technologies LLC (0994), CAM Mining LLC (2498), Rhino Coalfield Services LLC (3924), Hopedale Mining LLC (9060), CAM-Kentucky Real Estate LLC (9089), CAM-BB LLC (9097), Leesville Land LLC (7794), CAM Aircraft LLC (5467), Pennyryle Energy LLC (6095), Rhino Eastern LLC (1457), Rockhouse Land LLC (7702).

<sup>2</sup> Capitalized terms used herein and not herein defined have the meaning ascribed to such terms in the Motion or the DIP Credit Agreement (as defined herein).

Bankruptcy Rules for the Southern District of Ohio (the “**Local Bankruptcy Rules**”) seeking, among other things:

- (i) authorization for the DIP Borrowers<sup>3</sup> to obtain the obligations of the postpetition financing in an aggregate principal amount not to exceed \$11.75 million (the “**DIP Financing**”), under a superpriority senior secured priming debtor-in-possession credit facility (the “**DIP Facility**”) consisting of delayed draw term loans (collectively, the “**DIP Loans**”) to be provided by certain Prepetition Lenders (as defined below) (in their capacity as lenders under the DIP Credit Agreement (as defined below), the “**DIP Lenders**”);
- (ii) authorization for the DIP Guarantors<sup>4</sup> to guarantee the obligations arising under the DIP Credit Agreement related to the DIP Loans (the “**DIP Obligations**”);
- (iii) authorization for the Credit Parties<sup>5</sup> to (a) execute and enter into that certain *Super-priority Senior Secured Priming Debtor-In-Possession Financing Agreement*, ~~to be dated on or around~~ July 22~~27~~, 2020 (as may be amended, restated, supplemented, waived or otherwise modified from time to time in accordance with the terms hereof and thereof, the “**DIP Credit Agreement**”), among the DIP Borrowers, as borrowers, the DIP Guarantors, as guarantors, the DIP Lenders, as lenders, Alter Domus (US) LLC, as the administrative agent for the DIP Facility (solely in such capacity, the “**DIP Administrative Agent**”) and as collateral agent for the DIP Facility (solely in such capacity, the “**DIP Collateral Agent**”); the DIP Administrative Agent, together with the DIP Collateral Agent the “**DIP Agents**”; and the DIP Agents together with the DIP Lenders, the “**DIP Secured Parties**”), substantially in the form attached to the Motion as **Exhibit B** and any other agreements, instruments, pledge agreements, guarantees, security agreements, intellectual property security agreements, control agreements, notes and other Loan Documents (as defined in the DIP Credit Agreement) and documents related thereto (as amended, restated, supplemented, waived, and/or modified from time to time in accordance with the terms hereof and thereof, and collectively with the DIP Credit Agreement, the “**DIP Documents**”) and (b) perform their respective obligations thereunder and all such other and further acts

<sup>3</sup> As used herein, the term “**DIP Borrowers**” shall mean Debtors Rhino Energy LLC, Rhino Exploration LLC, Springdale Land LLC, McClane Canyon Mining LLC, CAM-Ohio Real Estate LLC, CAM-Colorado LLC, Taylorville Mining LLC, Castle Valley Mining LLC, Rhino Technologies LLC, CAM Mining LLC, Hopedale Mining LLC, CAM-Kentucky Real Estate LLC, Leesville Land LLC, CAM Aircraft LLC, and Pennyryle Energy LLC.

<sup>4</sup> As used herein, the term “**DIP Guarantors**” shall mean Debtors Rhino GP, LLC, Rhino Resource Partners LP, Rhino Trucking LLC, Triad Roof Support Systems LLC, Rhino Northern Holdings LLC, CAM Coal Trading LLC, Rhino Services LLC, Rhino Oilfield Services LLC, Rhino Coalfield Services LLC, CAM-BB LLC, Jewel Valley Mining LLC, Rhino Eastern LLC, and Rockhouse Land LLC.

<sup>5</sup> As used herein, the term “**Credit Parties**” shall mean the DIP Borrowers and the DIP Guarantors.

as may be necessary, appropriate, or desirable in connection with the DIP Documents;

- (iv) authorization for the Credit Parties (a) upon entry of ~~this~~the Interim Order (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Use Cash Collateral, (II) Granting Liens and Providing Superpriority Administrative Expense Status, (III) Granting Adequate Protection to the Prepetition Secured Parties, (IV) Modifying the Automatic Stay, (V) Scheduling a Final Hearing, and (VI) Granting Related Relief [Docket No. 61] (the **“Interim Order”**, ~~and such period between entry of the Interim Order and entry of the Final Order, the “Interim Period”~~), to incur on the Closing Date (as defined in the DIP Credit Agreement) DIP Loans in an aggregate principal amount of up to \$3.5 million (the **“Initial DIP Loans”**) and (b) upon entry of this order (the **“Final Order”** ~~(as defined below)~~), to incur DIP Loans in an aggregate principal amount of up to \$8.25 million (the **“Delayed Draw DIP Loans”**), for a total aggregate principal amount of up to \$11.75 million;
- (v) authorization for the Debtors to use proceeds of the DIP Loans to pay fees and expenses in connection with the transactions contemplated by the DIP Credit Agreement and to fund working capital of the DIP Borrowers in accordance with the terms of the DIP Documents and Approved Cash Flow Forecast (as defined below) and general corporate purposes;
- (vi) subject to the restrictions set forth in the DIP Documents and this ~~Interim~~Final Order, authorization for the Credit Parties to continue to use Cash Collateral (as defined below) and all other Prepetition Collateral (as defined below) in which any of the Prepetition Secured Parties (as defined below) has an interest, and to grant adequate protection to the Prepetition Secured Parties with respect to, *inter alia*, such use of Cash Collateral and other Prepetition Collateral;
- (vii) authorization for the Credit Parties to pay, on a final and irrevocable basis, the principal, interest, fees, expenses and other amounts payable under the DIP Documents as such become earned, due and payable, including, but not limited to, origination fees, exit fees, prepayment fees, agency fees, audit fees, appraisal fees, valuation fees, administrative agents’ fees, collateral agents’ fees, the reasonable fees and disbursements of the DIP Agents’ and DIP Lenders’ attorneys, advisors, accountants, appraisers, bankers, and other consultants, all to the extent provided in, and in accordance with, the DIP Documents and subject to the Approved Cash Flow Forecast (including Permitted Variances<sup>6</sup>);
- (viii) approval of certain stipulations by the Debtors with respect to the Prepetition Credit Documents (as defined below) and the liens and security interests arising therefrom;

<sup>6</sup> **“Permitted Variances”** has the meaning set forth in the DIP Credit Agreement and also includes any variances approved by the DIP Secured Parties.

- (ix) subject only to the Carve-Out, the granting to the DIP Secured Parties of allowed superpriority claims pursuant to section 364(c)(1) of the Bankruptcy Code payable from and having recourse to all prepetition and postpetition property of the Credit Parties' estates and all proceeds thereof (other than Avoidance Actions;<sup>7</sup> ~~but, subject to entry of the Final Order, including~~ and Avoidance Proceeds<sup>8</sup>);
- (x) the granting to the DIP Agents (for the benefit of the DIP Secured Parties) of valid, enforceable, nonavoidable, and fully perfected security interests and liens (including liens pursuant to sections 364(c)(2) and 364(c)(3) of the Bankruptcy Code and priming liens pursuant to section 364(d) of the Bankruptcy Code) on all DIP Collateral, subject to (a) the Carve-Out, (b) the Permitted Liens (as defined in the DIP Credit Agreement), and (c) this ~~Interim~~ Final Order;
- (xi) (a) ~~subject to any provisions of the Final Order with respect to costs or expenses incurred following the entry of such Final Order,~~ a waiver of the Debtors' right to surcharge the Prepetition Collateral and the DIP Collateral (as defined below) (together, the "Collateral") pursuant to section 506(c) of the Bankruptcy Code, and (b) ~~subject to entry of the Final Order,~~ a waiver of any right of the Debtors under the "equities of the case" exception under section 552(b) of the Bankruptcy Code;
- (xii) modification of the automatic stay to the extent set forth herein and in the DIP Documents; and
- (xiii) waiver of any applicable stay (including under Bankruptcy Rule 6004) and provision for immediate effectiveness of this ~~Interim~~ Final Order; ~~and~~
- ~~(xiv) the scheduling of a final hearing (the "Final Hearing") within twenty-two (22) days of the Petition Date to consider final approval of the DIP Facility and use of Cash Collateral pursuant to a proposed final order (the "Final Order"), as set forth in the Motion and the DIP Documents filed with this Court.~~

The Court having considered the interim relief requested in the Motion, the exhibits attached thereto, the Fairfield Declaration (as defined in the Motion), the Boone Declaration (as defined in the Motion), the DIP Documents, and the evidence submitted and arguments made at the interim hearing held on July 24, 2020 (the "Interim Hearing") and the final hearing held on August 12, 2020 (the "Final Hearing" and collectively with the Interim Hearing, the

<sup>7</sup> "Avoidance Actions" means, collectively, claims and causes of action under sections 502(d), 544, 545, 547, 548, 549, and 550 of the Bankruptcy Code, or any other avoidance actions under the Bankruptcy Code.

<sup>8</sup> "Avoidance Proceeds" means any proceeds or property recovered, unencumbered or otherwise, from Avoidance Actions, whether by judgment, settlement or otherwise.

“Hearings”); and the Court having entered the Interim Order; and due and sufficient notice of the ~~Interim~~Final Hearing having been given in accordance with Bankruptcy Rules 2002, 4001(b), (c) and (d), and all applicable Local Bankruptcy Rules; and the ~~Interim~~Final Hearing having been held and concluded; and all objections, if any, to the ~~interim~~final relief requested in the Motion having been withdrawn, resolved or overruled by the Court; and it appearing that approval of the ~~interim~~final relief requested in the Motion ~~is necessary to avoid immediate and irreparable harm to the Debtors and their estates pending the Final Hearing, otherwise~~ is fair and reasonable and in the best interests of the Debtors and their estates, and is essential for the continued operation of the Debtors’ businesses and the preservation of the value of the Debtors’ assets; and it appearing that the Debtors’ entry into the DIP Documents is a sound and prudent exercise of the Debtors’ business judgment; and after due deliberation and consideration, and good and sufficient cause appearing therefor.

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

1. *Disposition.* The relief requested in the Motion is GRANTED ON ~~AN~~INTERIMA FINAL BASIS in accordance with the terms of this ~~Interim~~Final Order. Any and all objections to the Motion with respect to the entry of this ~~Interim~~Final Order that have not been withdrawn, waived, settled, or resolved and all reservations of rights included therein, are hereby denied and overruled on the merits. This ~~Interim~~Final Order shall become effective immediately upon its entry.

2. *Petition Date.* On July 22, 2020 (the “**Petition Date**”), each Debtor filed a voluntary petition (each, a “**Petition**”) under chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the Southern District of Ohio (this “**Court**”).

3. *Debtors in Possession.* The Debtors continue to operate their businesses and manage their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in any of the Chapter 11 Cases.

4. *Jurisdiction and Venue.* This Court has core jurisdiction over the Chapter 11 Cases, the Motion, and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157(a)-(b) and 1334 and the *General Order 30-2* from the United States Bankruptcy Court for the Southern District of Ohio, dated October 10, 2019. Venue for the Chapter 11 Cases and proceedings on the Motion is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

5. *Committee Formation.* ~~As of the date hereof~~On July 30, 2020, the United States Trustee for the Southern District of Ohio (the ‘**U.S. Trustee**’) ~~has not~~ appointed an official committee of unsecured creditors in the Chapter 11 Cases pursuant to section 1102 of the Bankruptcy Code (the ‘**Creditors’ Committee**’)[Docket No. 128].

6. *Notice.* Appropriate notice of the Motion has been provided in accordance with the Bankruptcy Code, the Bankruptcy Rules and the Local Bankruptcy Rules, and no other or further notice of the Motion or the entry of this ~~Interim~~Final Order shall be required. ~~The interim relief granted herein is necessary to avoid immediate and irreparable harm to the Debtors and their estates pending the Final Hearing.~~

7. *Debtors’ Stipulations.* Without prejudice to the rights of any other party in interest and subject to the limitations thereon contained in paragraphs 27 and 31 below, the Debtors acknowledge, admit, stipulate, and agree that:

(a) pursuant to that certain *Financing Agreement*, dated as of December 27, 2017 (as amended, supplemented, restated or otherwise modified prior to the Petition Date, the

**“Prepetition Credit Agreement,”** and collectively with any other agreements and documents executed or delivered in connection therewith, each as may be amended, restated, supplemented, waived or otherwise modified from time to time, the **“Prepetition Credit Documents”**), among (a) Rhino Resource Partners LP, as parent (**“Parent”**), (b) Rhino Energy LLC and certain of its subsidiaries (the **“Prepetition Borrowers”**), (c) Parent and certain of its subsidiaries (together with Parent, the **“Prepetition Guarantors”**), (d) Cortland Capital Market Services LLC, as administrative agent and collateral agent (the **“Prepetition Agent”** and the **“Prepetition Collateral Agent”**, as applicable, in each case solely in its capacity as such), (e) CB Agent Services LLC, as origination agent (the **“Origination Agent”**), and (f) the lenders party thereto (the **“Prepetition Lenders”**, and collectively with the Prepetition Agent, the Prepetition Collateral Agent, and the Origination Agent, the **“Prepetition Secured Parties”**), the Prepetition Lenders provided loans to the Prepetition Borrowers pursuant to the Prepetition Credit Documents, and the Prepetition Guarantors guaranteed on a joint and several basis the obligations under the Prepetition Credit Agreement and the other Prepetition Credit Documents;

(b) as of the Petition Date, the Prepetition Borrowers and the Prepetition Guarantors were justly and lawfully indebted and liable to the Prepetition Secured Parties without defense, challenge, objection, claim, counterclaim, or offset of any kind, in the aggregate principal amount of not less than \$39.8 million in outstanding principal amount of Loans (as defined in the Prepetition Credit Agreement), which loans (the **“Prepetition Loans”**) were made by the Prepetition Lenders pursuant to, and in accordance with the terms of, the Prepetition Credit Documents, plus accrued and unpaid interest thereon and fees, expenses (including any attorneys’, accountants’, appraisers’, consultants’ and financial advisors’ fees and expenses, in



each case, that are chargeable or reimbursable under the Prepetition Credit Documents), costs, charges, indemnities, and other obligations incurred in connection therewith (whether arising before or after the Petition Date) as more fully provided in the Prepetition Credit Documents (together with the other Prepetition Obligations, the **“Prepetition Debt”**), which Prepetition Debt and other Prepetition Obligations<sup>9</sup> have been guaranteed on a joint and several basis by all of the Prepetition Guarantors;

(c) (i) the Prepetition Debt constitutes the legal, valid, binding, and non-avoidable obligations of the Prepetition Borrowers and the Prepetition Guarantors which constitute the Debtors, enforceable in accordance with its terms (other than in respect of the stay of enforcement arising from section 362 of the Bankruptcy Code) and (ii) no portion of the Prepetition Debt or any payment made to the Prepetition Secured Parties or applied to or paid on account of the obligations owing under the Prepetition Credit Documents prior to the Petition Date is subject to any contest, attack, rejection, recovery, reduction, defense, counterclaim, offset, subordination, recharacterization, avoidance or other claim (as such term is used in the Bankruptcy Code), cause of action or other challenge of any nature under the Bankruptcy Code or applicable non-bankruptcy law (a **“Claim”**);

(d) as of the Petition Date, pursuant to and in connection with the Prepetition Credit Documents, the Prepetition Borrowers and the Prepetition Guarantors granted to the Prepetition Collateral Agent, for the benefit of itself and the other Prepetition Secured Parties, a security interest in and continuing lien on (the **“Prepetition Liens”**) substantially all of their assets and property, including, without limitation, a valid, binding, properly perfected, enforceable, non-avoidable, first priority security interest in and continuing lien on the Collateral

<sup>9</sup> **“Prepetition Obligations”** means “Obligations” as defined in the Prepetition Credit Agreement.

(as defined in the Prepetition Credit Documents) (which, for the avoidance of doubt, includes Cash Collateral (as defined below)) and all proceeds, products, accessions, rents, and profits thereof, in each case whether then owned or existing or thereafter acquired or arising (collectively, the **‘Prepetition Collateral’**), which are not subject to avoidance, recharacterization, subordination (whether equitable, contractual, or otherwise), recovery, attack, disgorgement, effect, rejection, reduction, disallowance, impairment, counterclaim, offset, crossclaim, defense or Claim under the Bankruptcy Code or applicable non-bankruptcy law, subject and subordinate only to certain liens expressly permitted by the Prepetition Credit Documents, solely to the extent any such permitted liens were valid, binding, enforceable, properly perfected, non-avoidable and senior in priority to the Prepetition Liens (the **‘Prepetition Permitted Prior Liens’**)<sup>10</sup>;

(e) as of the Petition Date, except for the Prepetition Permitted Prior Liens, there were no liens on or security interests in the Prepetition Collateral other than the Prepetition Liens. Nothing herein shall constitute a finding or ruling by this Court that any alleged Prepetition Permitted Prior Lien or Permitted Lien is valid, senior, enforceable, prior, perfected, or non-avoidable. Moreover, nothing herein shall prejudice the rights of any party-in-interest, including, but not limited to the Debtors, the DIP Agents, the DIP Lenders, the Prepetition Secured Parties, or a Creditors’ Committee ~~(if appointed)~~, to challenge the validity, priority,

<sup>10</sup> Nothing herein shall constitute a finding or ruling by this Court that any such Prepetition Permitted Prior Liens are valid, senior, enforceable, prior, perfected or non-avoidable. Moreover, nothing herein shall prejudice the rights of any party-in-interest, including but not limited to, the Debtors, the DIP Agents, the DIP Lenders, any of the Prepetition Secured Parties or any Creditors’ Committee to challenge the validity, priority, enforceability, seniority, avoidability, perfection or extent of any such Prepetition Permitted Prior Liens and/or security interests (subject to the terms of this ~~Interim~~Final Order). Any alleged claim arising or asserted as a right of reclamation or return (whether asserted under Section 546(c) of the Bankruptcy Code or otherwise) shall have the same rights and priority with respect to the DIP Facility, the DIP Liens and the DIP Collateral as such claims had with respect to the Prepetition Liens in the Prepetition Collateral.

enforceability, seniority, avoidability, perfection, or extent of any alleged Prepetition Permitted Prior Lien or Permitted Lien. The right of a seller of goods to reclaim such goods under section 546(c) of the Bankruptcy Code is not a Prepetition Permitted Prior Lien or Permitted Lien and is expressly subject to the Prepetition Liens and the DIP Liens (as defined below);

(f) none of the Prepetition Secured Parties control the Debtors or their properties or operations, have authority to determine the manner in which any Debtor's operations are conducted or are control persons or insiders of the Debtors by virtue of any of the actions taken with respect to, in connection with, related to or arising from the Prepetition Credit Documents;

(g) no claims, counterclaims, offsets, objections, defenses, challenges or causes of action exist against, or with respect to, the Prepetition Secured Parties or any of their respective affiliates, agents, subsidiaries, partners, controlling persons, agents, attorneys, advisors, professionals, officers, directors and employees, whether arising under applicable state or federal law (including, without limitation, any recharacterization, or other equitable relief that might otherwise impair the aforementioned parties or their interest in the Prepetition Collateral, subordination, avoidance or other claims, including any claims or causes of action arising under or pursuant to sections 105, 502(d), 510, 542 through 553(b) or 724(a) of the Bankruptcy Code), in connection with or arising under any Prepetition Credit Documents or the transactions contemplated thereunder or the Prepetition Debt or Prepetition Liens, including without limitation, any right to assert any disgorgement or recovery; and the Debtors and their estates hereby release and discharge any and all such claims, counterclaims, objections, defenses, set-off rights, challenges and causes of actions;

(h) the Debtors hereby absolutely, irrevocably, and unconditionally release and forever discharge and acquit the DIP Secured Parties, the Prepetition Secured Parties, and their respective Representatives (as defined below), in each case, solely in their capacities as such (collectively, the **‘Released Parties’**), from any and all obligations and liabilities to the Debtors (and their successors and assigns) and from any and all claims, controversies, disputes, obligations, counterclaims, offsets, demands, debts, damages, expenses (including, without limitation, reasonable attorneys’ and financial advisors’ fees and expenses), liens, accounts, contracts, liabilities, actions, and causes of action arising prior to the Petition Date (collectively, the **‘Released Claims’**) of any kind, nature or description, whether known or unknown, foreseen or unforeseen, matured or unmatured, accrued or unaccrued, or liquidated or unliquidated, arising in law or equity or upon contract or tort or under any state or federal law or otherwise, arising out of or related to (as applicable) the DIP Facility, the DIP Documents, the Prepetition Credit Documents, the obligations owing and the financial obligations made thereunder, the negotiation thereof and the transactions reflected and contemplated thereby (and the events leading up to entry into such documents), and the obligations and financial obligations made thereunder, in each case, that the Debtors at any time had, now have or may have, or that their successors or assigns hereafter can or may have against any of the Released Parties for or by reason of any act, omission, matter, cause or thing whatsoever arising at any time on or prior to the date of this ~~Interim~~Final Order, whether such Released Claims are matured, contingent, liquidated, unliquidated, unmatured, known, unknown or otherwise; provided, that, for the avoidance of doubt, the foregoing release shall not constitute a release of any rights of the Debtors arising under the DIP Documents after the date hereof;

(i) that certain Pledge and Security Agreement, dated as of December 27, 2017, by and among each of the Loan Parties (as defined therein) party thereto, in favor of Cortland Capital Market Services LLC, in its capacity as collateral agent for the Secured Parties (as defined therein) (the “**Pledge and Security Agreement**”) is binding and enforceable against the Prepetition Borrowers, the Prepetition Guarantors and the Prepetition Secured Parties in accordance with its terms; and

(j) all cash, securities or other property of the Credit Parties (and the proceeds therefrom) as of the Petition Date, including, without limitation, all cash, securities or other property (and the proceeds therefrom) and other amounts on deposit or maintained by the Credit Parties in any account or accounts (collectively, the “**Depository Institutions**”) were subject to any applicable rights of set-off under the Prepetition Credit Documents and applicable law, for the benefit of the Prepetition Secured Parties. All proceeds of the Prepetition Collateral (including cash on deposit at the Depository Institutions as of the Petition Date, securities or other property, whether subject to control agreements or otherwise, in each case that constitutes Prepetition Collateral) are “**cash collateral**” of the Prepetition Secured Parties within the meaning of section 363(a) of the Bankruptcy Code (the “**Cash Collateral**”).

8. *Findings Regarding the DIP Financing and Use of Cash Collateral.*

(a) Good and sufficient cause has been shown for the entry of this ~~Interim~~Final Order and for authorization of the Credit Parties to obtain financing pursuant to the DIP Facility.

(b) The Credit Parties have ~~an immediate~~a need to obtain the DIP Financing and to continue to use the Prepetition Collateral (including Cash Collateral) in order to, among

other things, avoid the liquidation of these estates and solely in accordance with, and subject to, the Approved Cash Flow Forecast: (i) permit the orderly continuation of the operation of their businesses, including maintaining, amending, renewing, or modifying insurance policies and surety bonds in the ordinary course of business, (ii) maintain business relationships with customers, vendors and suppliers, including purchasing necessary materials and services to maintain compliance with all applicable regulatory and safety requirements, (iii) make payroll, (iv) satisfy other working capital, capital improvement and operational needs, (v) pay professionals' fees, expenses, and obligations benefitting from the Carve-Out, and (vi) pay costs, fees, and expenses associated with or payable under the DIP Financing under the terms of ~~this~~the Interim Order, this Final Order and the DIP Documents. The Credit Parties' use of Cash Collateral alone would be insufficient to meet the Debtors' cash disbursement needs during the ~~period~~pendency of ~~effectiveness of this Interim Order~~the Chapter 11 Cases. The access by the Credit Parties to sufficient working capital and liquidity through the use of Cash Collateral and other Prepetition Collateral, incurrence of new indebtedness under the DIP Documents and other financial accommodations provided under the DIP Documents are necessary and vital to avoid an immediate liquidation and for the preservation and maintenance of the going concern values of the Credit Parties and to a successful restructuring of the Credit Parties. The terms of the proposed DIP Financing pursuant to the DIP Documents and this ~~Interim~~Final Order are fair and reasonable, reflect each Credit Party's exercise of prudent business judgment, and are supported by reasonably equivalent value and fair consideration.

(c) The Credit Parties are unable to obtain financing on more favorable terms from sources other than the DIP Lenders under the DIP Documents and are unable to obtain

adequate unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense. The Credit Parties are also unable to obtain secured credit allowable under sections 364(c)(1), 364(c)(2) and 364(c)(3) of the Bankruptcy Code without the Credit Parties granting to the DIP Secured Parties, subject to the Carve-Out, the Permitted Liens, the DIP Liens and the DIP Superpriority Claims (as defined below) and, subject to the Carve-Out, incurring the Adequate Protection Obligations (as defined below), in each case, under the terms and conditions set forth in this ~~Interim~~Final Order and in the DIP Documents.

(d) Based on the Motion, the declarations filed in support of the Motion, and the record presented to the Court at the ~~Interim~~Final Hearing, (i) the terms of the DIP Financing, (ii) the terms of the adequate protection granted to the Prepetition Secured Parties as provided in paragraph 18 of this ~~Interim~~Final Order (the “**Adequate Protection**”) and (iii) the terms on which the Credit Parties may continue to use the Prepetition Collateral (including Cash Collateral), in each case pursuant to this ~~Interim~~Final Order and the DIP Documents, are in each case fair and reasonable, reflect the Credit Parties’ exercise of prudent business judgment consistent with their fiduciary duties, constitute reasonably equivalent value and fair consideration, and represent the best financing available. The ~~adequate protection~~Adequate Protection provided in this ~~Interim~~Final Order and other benefits and privileges contained herein are consistent with and authorized by the Bankruptcy Code.

(e) To the extent such consent is required, the Prepetition Secured Parties have consented to the Credit Parties’ use of Cash Collateral and the other Prepetition Collateral, and the Credit Parties’ entry into the DIP Documents, in accordance with and subject to the terms and conditions in this ~~Interim~~Final Order and the DIP Documents.

(f) The DIP Financing, the Adequate Protection and the use of the Prepetition Collateral (including Cash Collateral) have been negotiated in good faith and at arm's length among the Credit Parties, the DIP Secured Parties, and their respective advisors, and all of the Credit Parties' obligations and indebtedness arising under, in respect of, or in connection with, the DIP Financing and the DIP Documents, including, without limitation, all loans made to and guarantees issued by the Credit Parties pursuant to the DIP Documents and any DIP Obligations shall be deemed to have been extended by the DIP Agents and the DIP Lenders and their respective affiliates in good faith, as that term is used in section 364(e) of the Bankruptcy Code and in express reliance upon the protections offered by section 364(e) of the Bankruptcy Code, and the DIP Secured Parties (and the successors and assigns thereof) shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that ~~this~~the Interim Order or any provision thereof, or this Final Order or any provision hereof ~~is~~, are vacated, reversed or modified, on appeal or otherwise.

(g) The Prepetition Secured Parties have acted in good faith regarding the DIP Financing and the Credit Parties' continued use of the Prepetition Collateral (including Cash Collateral) to fund the administration of the Credit Parties' estates and continued operation of their businesses (including the incurrence and payment of the Adequate Protection Obligations and the granting of the Adequate Protection Liens (as defined herein)), in accordance with the terms hereof, and the Prepetition Secured Parties (and the successors and assigns thereof) shall be entitled to the full protection of section 363(m) of the Bankruptcy Code in the event that ~~this~~the Interim Order or any provision thereof, or this Final Order or any provision hereof is vacated, reversed or modified, on appeal or otherwise.



(h) The Prepetition Secured Parties are entitled to the Adequate Protection provided in this ~~Interim~~Final Order as and to the extent set forth herein pursuant to sections 361, 362, 363 and 364 of the Bankruptcy Code. Based on the Motion, the declarations filed in support of the Motion, and the record presented to the Court at the ~~Interim Hearing~~Hearings, the terms of the proposed Adequate Protection arrangements and of the use of the Prepetition Collateral (including Cash Collateral) are fair and reasonable, reflect the Credit Parties' prudent exercise of business judgment and constitute reasonably equivalent value and fair consideration for the use of the Prepetition Collateral (including Cash Collateral); provided that nothing in this ~~Interim~~Final Order or the DIP Documents shall (x) be construed as the affirmative consent by any of the Prepetition Secured Parties for the use of Cash Collateral other than on the terms set forth in this ~~Interim~~Final Order and the Approved Cash Flow Forecast (subject to Permitted Variances) and in the context of the DIP Financing authorized by this ~~Interim~~Final Order, (y) be construed as a consent by any Prepetition Secured Party to the terms of any other financing or any other lien encumbering the Prepetition Collateral (whether senior, *pari passu*, or junior) or (z) prejudice, limit or otherwise impair the rights of any of the Prepetition Secured Parties to seek modification of the grant of ~~adequate protection~~Adequate Protection provided hereby so as to provide new, different or additional adequate protection or assert the interests of any of the Prepetition Secured Parties, and without prejudice to the right of the Debtors and any other party in interest's rights to contest such modification.

(i) None of the DIP Secured Parties control the Debtors or their properties or operations, have authority to determine the manner in which any Debtor's operations are conducted or are control persons or insiders of the Debtors by virtue of any of the actions taken

with respect to, in connection with, related to or arising from this ~~Interim~~Final Order or the DIP Documents;

(j) The Debtors have prepared and delivered to the DIP Agents and the DIP Secured Parties a 13-week cash flow forecast (the “**Initial Cash Flow Forecast**”<sup>11</sup>), a copy of which is attached hereto as **Exhibit 1**. The Initial Cash Flow Forecast reflects the Debtors’ anticipated cash receipts and anticipated disbursements for the calendar week during which the Petition Date occurs and through and including the end of the twelfth (12th) calendar week following such week. The Initial Cash Flow Forecast may be modified, amended and updated from time to time in accordance with the DIP Credit Agreement, with contemporaneous notice to the Creditors’ Committee, and once approved by the DIP Requisite Lenders,<sup>12</sup> in form and substance reasonably satisfactory to them, shall supplement and replace the Initial Cash Flow Forecast (together with each subsequent approved 13-week cash flow forecast, shall constitute without duplication, an “**Approved Cash Flow Forecast**”<sup>13</sup>). The Debtors believe that the Initial Cash Flow Forecast is reasonable under the facts and circumstances known to them, taken as a whole, as of the Petition Date. The DIP Agents and the DIP Secured Parties are relying, in part, upon the Debtors’ agreement to comply with the Approved Cash Flow Forecast (subject to Permitted Variances), the other DIP Documents, and this ~~Interim~~Final Order in determining to enter into the postpetition financing arrangements provided for in this ~~Interim~~Final Order.

(k) ~~The Debtors have requested immediate entry of this Interim Order pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2) and the Local Bankruptcy Rules and good cause has been shown for the immediate entry of this Interim Order.~~ For the reasons set

<sup>11</sup> “**Initial Cash Flow Forecast**” is the “Initial Budget” referenced in the DIP Credit Agreement.

<sup>12</sup> “**DIP Requisite Lenders**” means “Required Lenders” as defined in the DIP Credit Agreement.

<sup>13</sup> “**Approved Cash Flow Forecast**” is the “Approved Budget” referenced in the DIP Credit Agreement.

forth in the Motion, the declarations filed in support of the Motion, and the record presented to the Court at the ~~Interim~~Final Hearing, ~~absent granting the relief set forth in this Interim Order, the Credit Parties' estates would face significant business disruption resulting in immediate and irreparable harm. Consummation~~consummation of the DIP Financing and the use of Prepetition Collateral (including Cash Collateral), in accordance with this ~~Interim~~Final Order and the DIP Documents are therefore in the best interests of the Credit Parties, their estates and their creditors.

(l) The Motion and this ~~Interim~~Final Order comply with the requirements of Local Bankruptcy Rule 4001-2.

9. *Authorization of the DIP Financing and the DIP Documents.*

(a) Subject to the terms and conditions of this ~~Interim~~Final Order, the Credit Parties are hereby authorized to execute, enter into and perform all obligations under the DIP Documents. The DIP Documents and this ~~Interim~~Final Order shall govern the financial and credit accommodations to be provided to the Debtors by the DIP Lenders in connection with the DIP Financing ~~during the Interim Period~~. The Borrower is hereby authorized to forthwith borrow money pursuant to the DIP Credit Agreement, and the Guarantors are hereby authorized to guarantee the Credit Parties' DIP Obligations with respect to such borrowings, in each case up to an aggregate principal amount equal to ~~\$3.5~~11.75 million DIP Loans ~~on an interim basis, together with applicable interest, protective advances, expenses, fees and other charges payable in connection with the DIP Facility and, subject to entry of,~~ inclusive of amounts authorized by the ~~Final~~Interim Order, ~~\$8.25 million DIP Loans, and~~ in each case, together with applicable interest, protective advances, expenses, fees and other charges payable in connection

~~therewith~~with the DIP Facility, subject to any limitations on borrowing or incurrence under the DIP Documents, which shall be used for all purposes permitted under the DIP Documents and this ~~Interim~~Final Order, including, without limitation, in accordance with, and subject to, the Approved Cash Flow Forecast and Permitted Variances: (i) general corporate and working capital purposes, including the orderly continuation of the operation of their businesses, (ii) payment of other expenses and payments in accordance with ~~this~~the Interim DIP Order, this Final DIP Order, and the DIP Documents, and (iii) the payment of fees, costs and expenses of the DIP Facility.

(b) In furtherance of the foregoing and without further approval of this Court, each Debtor is authorized and directed to perform all acts, to make, execute and deliver all instruments and documents (including, without limitation, the execution or recordation of pledge and security agreements, mortgages, deeds of trust and financing statements), and to pay all fees that may be reasonably required or necessary for the Credit Parties to implement the terms of, performance of their obligations under or effectuate the purposes of and transactions contemplated by this ~~Interim~~Final Order or the DIP Financing ~~during the Interim Period~~, including, without limitation:

- (i) the execution and delivery of, and performance under, each of the  
DIP Documents;
- (ii) the execution and delivery of, and performance under, one or more  
amendments, waivers, consents or other modifications to and under the DIP Documents,  
in each case, in such form as the Credit Parties and the DIP Administrative Agent, acting  
at the direction of the DIP Requisite Lenders pursuant to the terms of the DIP Documents,

may agree, it being understood that no further approval of the Court shall be required for non-material authorizations, amendments, waivers, consents or other modifications to and under the DIP Documents (and any fees and other expenses (including any attorneys', accountants', appraisers', consultants' and financial advisors' fees, to the extent provided in, and in accordance with, the DIP Documents and subject to the Approved Cash Flow Forecast (including Permitted Variances)), amounts, charges, costs, indemnities and other obligations paid in connection therewith) that do not shorten the maturity of the extensions of credit thereunder or increase the aggregate commitments or the rate of interest payable thereunder; provided, for the avoidance of doubt, updates and supplements to the Approved Cash Flow Forecast required to be delivered by the Credit Parties under the DIP Documents shall not be considered amendments or modifications to the Approved Cash Flow Forecast or the DIP Documents; provided further that a copy (which may be provided through electronic mail or facsimile) of the amendment, modification, or supplement is provided to the U.S. Trustee and the Creditors' Committee-  
~~(if any);~~

(iii) the non-refundable and, upon entry of ~~this~~the Interim Order, irrevocable payment to the DIP Agents and/or the DIP Lenders, as the case may be, of all fees, whether paid pursuant to the Interim Order or this Final Order, including, without limitation, any origination fees, exit fees, prepayment fees, agency fees, administrative agents' fees, and collateral agents' fees, (which fees, in each case, ~~shall be~~were, and ~~shall be~~were deemed to have been, approved upon entry of ~~this~~the Interim Order, and which fees shall not be subject to any challenge, contest, attack, rejection, recoupment,

reduction, defense, counterclaim, offset, subordination, recharacterization, avoidance or other claim, cause of action or other challenge of any nature under the Bankruptcy Code, under applicable non-bankruptcy law or otherwise) and any amounts due (or that may become due) in respect of the indemnification obligations, in each case referred to in the DIP Credit Agreement (and in any separate letter agreements between any or all Credit Parties, on the one hand, and any of the DIP Agents and/or DIP Lenders, on the other, in connection with the DIP Financing) and the costs and expenses as may be due from time to time, including, without limitation, fees and expenses of the following professionals retained by the DIP Agents and/or DIP Lenders, whether incurred before or after the Petition Date: (i) Stroock & Stroock & Lavan LLP ("**Stroock**"), counsel to the DIP Agents, (ii) one local bankruptcy counsel to the DIP Agent in the Southern District of Ohio (which may be the same local counsel to the DIP Lenders, as noted below), and, solely to the extent necessary to enforce rights and remedies under the DIP Documents, one counsel to the DIP Agent in each local jurisdiction, in each case which counsel may be the same as counsel representing the DIP Lenders in such capacity, (iii) Stroock, counsel to the DIP Lenders; (iv) Jackson Kelly PLLC, as local counsel for the DIP Lenders; (v), in each case of the foregoing (i)-(iv), solely to the extent provided for in the DIP Documents (the "**DIP Fees and Expenses**"), without the need to file retention motions or fee applications or to provide notice to any party; and

(iv) the performance of all other acts required under or in connection with the DIP Documents, including the granting of the DIP Liens and DIP Superpriority

Claims and perfection of the DIP Liens and DIP Superpriority Claims as permitted herein and therein.

(c) Upon execution and delivery of the DIP Documents, each of the DIP Documents shall constitute valid, binding, enforceable, and non-avoidable obligations of the Credit Parties, fully enforceable against each Credit Party in accordance with the terms of the DIP Documents and this ~~Interim~~Final Order. No obligation, payment, transfer or grant of security under the DIP Documents or this ~~Interim~~Final Order to the DIP Agents (including their Representatives) and/or the DIP Lenders and other DIP Secured Parties (including their Representatives) shall be stayed, restrained, voidable or recoverable under the Bankruptcy Code or under any applicable law (including, without limitation, under sections 502(d), 544, 548 or 549 of the Bankruptcy Code, any applicable Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or other similar state statute or common law), or subject to any defense, reduction, recoupment, recharacterization, subordination, disallowance, impairment, cross-claim, claim, counterclaim, or offset.

(d) No DIP Lender, DIP Administrative Agent or the DIP Collateral Agent shall have any obligation or responsibility to monitor any Credit Party's use of the DIP Financing, and each DIP Lender or each DIP Agent may rely upon each Credit Party's representations that the amount of DIP Financing requested at any time and the use thereof are in accordance with the requirements of this ~~Interim~~Final Order; and the DIP Documents, ~~and Bankruptcy Rule 4001(e)(2).~~

(e) Subject to the terms and conditions of this ~~Interim~~Final Order, the DIP Agents are hereby authorized and directed to execute, enter into and perform all rights and obligations under the DIP Documents.

10. *Carve-Out.*

(a) Notwithstanding anything to the contrary herein, the Debtors' obligations to the DIP Secured Parties and the liens, security interests and superpriority claims granted herein and/or under the DIP Documents, including the DIP Liens, the DIP Superpriority Claims, the Adequate Protection Liens, and the Adequate Protection 507(b) Claims, as well as the Prepetition Liens, shall be subject in all respects to the Carve-Out.

(b) Carve-Out. As used in this ~~Interim~~Final Order, the "**Carve-Out**" means the sum of (i) all fees required to be paid to the Clerk of the Court and to the Office of the United States Trustee under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate (without regard to the notice set forth in (iii) below); (ii) all reasonable fees and expenses up to \$20,000.00 incurred by a trustee under section 726(b) of the Bankruptcy Code (without regard to the notice set forth in (iii) below); (iii) to the extent allowed at any time, whether by interim order, procedural order, or otherwise, all unpaid fees and expenses (including any restructuring, sale, financing, or other success fee of any investment bankers or financial advisors of the Debtors or the Creditors' Committee, in each case solely to the extent such fee is earned pursuant to the terms of the applicable agreement giving rise to such fee, prior to delivery of a Carve-Out Trigger Notice) (the "**Allowed Professional Fees**") incurred by persons or firms retained by the Debtors pursuant to section 327, 328, or 363 of the Bankruptcy Code (the "**Debtor Professionals**") and the Creditors' Committee pursuant to section 328 or 1103 of the



Bankruptcy Code (the “**Committee Professionals**” and, together with the Debtor Professionals, the “**Professional Persons**”), in each case, subject to the Approved Cash Flow Forecast only for purposes of payment but not for earning or accrual, at any time before the first business day following delivery by the DIP Administrative Agent of a Carve-Out Trigger Notice (as defined below), whether allowed by the Court prior to or after delivery of a Carve-Out Trigger Notice; and (iv) Allowed Professional Fees of Professional Persons in an aggregate amount not to exceed \$300,000.00 incurred on or after the first business day following delivery by the DIP Administrative Agent of the Carve-Out Trigger Notice, to the extent allowed at any time, whether by interim order, procedural order, or otherwise (the amounts set forth in this clause (iv) being the “**Post-Carve-Out Trigger Notice Cap**”). For purposes of the foregoing, “**Carve-Out Trigger Notice**” shall mean a written notice delivered by email (or other electronic means) by the DIP Administrative Agent to the Debtors, their lead restructuring counsel, the U.S. Trustee, and counsel to the Creditors’ Committee ~~(if any)~~, which notice may be delivered ~~following~~upon the ~~occurrence and during the continuation of an Event of Default or~~ acceleration of the DIP Obligations under the DIP Facilities, stating that the Post-Carve-Out Trigger Notice Cap has been invoked.

(c) Any provisions of ~~this~~the Interim ~~Orders~~Order, ~~the~~this Final Order, or the DIP Credit Agreement to the contrary notwithstanding, including the grant of the DIP Superpriority Claims set forth in Paragraph 11 below and the grant of the DIP Liens set forth in Paragraph 12 below and the Adequate Protection Liens set forth in Paragraph 18 below, until the occurrence of a Termination Declaration Date as defined below, the Debtors shall and are authorized to pay (a) compensation and reimbursement of expenses of the estate professionals, subject to the Approved

Cash Flow Forecast only for purposes of payment but not for earning or accrual, to the extent allowed under Bankruptcy Code §§ 330 and 331 and payable pursuant to an order of this Court, as the same may be payable; and (b) the amount of money identified in the Approved Cash Flow Forecast for estate professionals' fees (excluding Permitted Variances) on a weekly basis into a segregated account established by the Debtors for purposes of funding the Carve-Out (the **'Funded Reserve Account'**). The funds in the Funded Reserve Account and the Post-Carve-Out Amounts (as defined below) shall be used to pay the allowed estate professionals' fees and expenses in accordance with orders entered by this Court and no cost or expense of administration under the Bankruptcy Code or otherwise, shall be senior to, or pari passu with, the payments that are authorized and consented to in this Paragraph 10.

(d) On the day on which a Carve-Out Trigger Notice is given by the DIP Administrative Agent to the Debtors with a copy to counsel to the Creditors' Committee (the **'Termination Declaration Date'**), the Carve-Out Trigger Notice shall constitute a demand to the Debtors to utilize all cash on hand as of such date and any available cash thereafter held by any Debtor to fund a reserve in an amount equal to the then unpaid amounts of the Allowed Professional Fees in excess of funds in the Funded Reserve Account; provided that in the event that a Termination Declaration Date occurs, Professional Persons shall have 2 business days to deliver additional good-faith estimates of the cumulative total amount of unreimbursed fees and expenses incurred in a preceding month (each such statement, a **'Fee Statement'**) to the Debtors, and the Debtors shall fund into the Funded Reserve Account any additional amounts equal to the difference between, as applicable, the Initial Funded Reserve Amount or the Monthly Funded Reserve Amount and the amount accrued and claimed in the applicable Fee Statement (each, a

“**Top Off Amount**”). The Debtors shall ~~deposit into~~hold the Funded Reserve Account in trust to pay such then unpaid Allowed Professional Fees (the “**Pre-Carve-Out Trigger Notice Reserve**”) prior to any and all other claims. On the Termination Declaration Date, after funding the Pre-Carve-Out Trigger Notice Reserve, the Debtors shall utilize all remaining cash on hand as of such date and any available cash thereafter held by any Debtor to fund a reserve in an amount equal to the Post-Carve-Out Trigger Notice Cap (the “**Post-Carve-Out Trigger Notice Reserve**”) and, together with the Pre-Carve-Out Trigger Notice Reserve, the “**Carve-Out Reserves**”) prior to paying any and all other claims. All funds in the Pre-Carve-Out Trigger Notice Reserve shall be used first to pay the obligations set forth in clauses (i) through (iii) of the definition of Carve-Out set forth above (the “**Pre-Carve-Out Amounts**”), but not, for the avoidance of doubt, the Post-Carve-Out Trigger Notice Cap, until paid in full, and then, to the extent the Pre-Carve-Out Trigger Notice Reserve has not been reduced to zero, to pay the DIP Administrative Agent for the benefit of the DIP Lenders, unless the DIP Obligations have been indefeasibly paid in full, in cash, and all Commitments (as defined and used in the DIP Credit Agreement) (the “**DIP Commitments**”) have been terminated, in which case any such excess shall be paid to the Prepetition Secured Parties in accordance with their rights and priorities as of the Petition Date. All funds in the Post-Carve-Out Trigger Notice Reserve shall be used first to pay the obligations set forth in clause (iv) of the definition of Carve-Out set forth above (the “**Post-Carve-Out Amounts**”), and then, to the extent the Post-Carve-Out Trigger Notice Reserve has not been reduced to zero, to pay the DIP Administrative Agent for the benefit of the DIP Lenders, unless the DIP Obligations have been indefeasibly paid in full, in cash, and all DIP Commitments have been terminated, in which case any such excess shall be paid to the

Prepetition Secured Parties in accordance with their rights and priorities as of the Petition Date. Notwithstanding anything to the contrary in the DIP Documents or this ~~Interim~~Final Order, if either of the Carve-Out Reserves is not funded in full in the amounts set forth in this paragraph 12(d), then, any excess funds in one of the Carve-Out Reserves following the payment of the Pre-Carve-Out Amounts and Post-Carve-Out Amounts, respectively, shall be used to fund the other Carve-Out Reserve, up to the applicable amount set forth in this paragraph 12(d), prior to making any payments to the DIP Administrative Agent or the Prepetition Secured Parties, as applicable. Notwithstanding anything to the contrary in the DIP Documents or this ~~Interim~~Final Order, following delivery of a Carve-Out Trigger Notice, the DIP Administrative Agent and the Prepetition Secured Parties shall not sweep or foreclose on cash (including cash received as a result of the sale or other disposition of any assets) of the Debtors until the Carve-Out Reserves have been fully funded, but shall have a security interest in any residual interest in the Carve-Out Reserves, with any excess paid to the DIP Administrative Agent for application in accordance with the DIP Documents. Further, notwithstanding anything to the contrary in this ~~Interim~~Final Order, (i) disbursements by the Debtors from the Carve-Out Reserves shall not constitute Loans (as defined in the DIP Credit Agreement) or increase or reduce the DIP Obligations, (ii) the failure of the Carve-Out Reserves to satisfy in full the Allowed Professional Fees shall not affect the priority of the Carve-Out, and (iii) in no way shall the Approved Cash Flow Forecast, Carve-Out, Post-Carve-Out Trigger Notice Cap, Carve-Out Reserves, or any of the foregoing be construed as a cap or limitation on the amount of the Allowed Professional Fees due and payable by the Debtors. For the avoidance of doubt and notwithstanding anything to the contrary in this ~~Interim~~Final Order, the DIP Facilities or in any Prepetition Credit Documents, the Carve-Out

shall be senior to all liens and claims securing the DIP Facilities, the Adequate Protection Liens, the Adequate Protection 507(b) Claims, and any and all other forms of ~~adequate-~~  
~~protection~~Adequate Protection, liens, or claims securing the DIP Obligations or the Prepetition Debt.

(e) Payment of Allowed Professional Fees Prior to the Termination Declaration Date. Any payment or reimbursement made prior to the occurrence of the Termination Declaration Date in respect of any Allowed Professional Fees shall not reduce the Carve-Out.

(f) No Direct Obligation To Pay Allowed Professional Fees. None of the DIP ~~Administrative—Agent~~Agents, DIP Lenders, or the Prepetition Secured Parties shall be responsible for the payment or reimbursement of any fees or disbursements of any Professional Person incurred in connection with the Chapter 11 Cases or any successor cases under any chapter of the Bankruptcy Code. Nothing in this ~~Interim~~Final Order or otherwise shall be construed to obligate the DIP Agents, the DIP Lenders, or the Prepetition Secured Parties, in any way, to pay compensation to, or to reimburse expenses of, any Professional Person or to guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement.

(g) Payment of Carve-Out On or After the Termination Declaration Date. Any payment or reimbursement made on or after the occurrence of the Termination Declaration Date in respect of any Allowed Professional Fees shall permanently reduce the Carve-Out on a dollar-for-dollar basis.

(h) For the avoidance of doubt and notwithstanding anything in this ~~Interim~~Final Order, the DIP Facility or in the Prepetition Credit Documents to the contrary, the

Carve-Out shall be senior to all liens and claims securing the DIP Facility, the Adequate Protection Liens, and the Adequate Protection Claims, and any and all other forms of ~~adequate-protection~~Adequate Protection, liens, as well as Prepetition Liens, or claims securing the DIP Obligations or the Prepetition Obligations.

11. *DIP Superpriority Claims.*

(a) *DIP Superpriority Claims.* Pursuant to section 364(c)(1) of the Bankruptcy Code, all of the DIP Obligations shall constitute allowed superpriority administrative expense claims against the Credit Parties on a joint and several basis (without the need to file any proof of claim) with priority over any and all claims against each of the Credit Parties, now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code and any and all administrative expenses or other claims arising under sections 105, 326, 328, 330, 331, 365, 503(b), 506(c) ~~(subject to any provisions of the Final Order with respect to costs or expenses incurred following the entry of such Final Order)~~, 507(a), 507(b), 726, 1113 or 1114 of the Bankruptcy Code (including the Adequate Protection Obligations), whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment, which allowed claims (the ‘**DIP Superpriority Claims**’) shall for purposes of section 1129(a)(9)(A) of the Bankruptcy Code be considered administrative expenses allowed under section 503(b) of the Bankruptcy Code, and which DIP Superpriority Claims shall be payable from and have recourse to all pre- and postpetition property of the Credit Parties and all proceeds thereof ~~(excluding except for~~ Avoidance Actions ~~but including, subject to entry of the Final Order,~~ Avoidance Proceeds and any commercial tort claims of the Debtors that are not

subject to a valid, properly perfected lien of the Prepetition Secured Parties as of the Petition Date (“Unencumbered Commercial Tort Claims”)) in accordance with the DIP Credit Agreement and this ~~Interim~~Final Order, subject only to the Carve-Out. The DIP Superpriority Claims shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that ~~this~~the Interim Order or any provision thereof, or this Final Order or any provision hereof, is vacated, reversed or modified, on appeal or otherwise. Subject to the Carve-Out in all respects, the DIP Superpriority Claims shall be senior to the Adequate Protection 507(b) Claims (as defined below).

12. *DIP Liens.*

(a) *DIP Liens.* As security for the DIP Obligations, effective and perfected upon the date of ~~this~~the Interim Order and without the necessity of the execution, recordation or filing by the Credit Parties or the DIP Collateral Agent of mortgages, security agreements, control agreements, pledge agreements, financing statements or other similar documents, any notation of certificates of title for a titled good or the possession or control by the DIP Collateral Agent of, or over, any DIP Collateral, or any other action, the following security interests and liens (all such liens and security interests granted to the DIP Collateral Agent, for its benefit and for the benefit of the DIP Lenders, pursuant to this ~~Interim~~Final Order and the DIP Documents (as defined in the Motion), the “**DIP Liens**”) are hereby granted to the DIP Collateral Agent for its own benefit and the benefit of the DIP Lenders (all property identified in clauses (i)-(iii) below being collectively referred to as the “**DIP Collateral**”):

(i) Liens on Unencumbered Property. Subject and subordinate in all respects to the Carve-Out, pursuant to section 364(c)(2) of the Bankruptcy Code, a valid,

binding, continuing, enforceable, fully-perfected first priority senior security interest in and lien upon all tangible and intangible pre- and postpetition property of the Credit Parties, whether existing on the Petition Date or thereafter acquired, and the proceeds, products, rents, and profits thereof, that, on or as of the Petition Date, is not subject to a valid, perfected and non-avoidable lien or is subject to a valid and non-avoidable lien in existence as of the Petition Date that is perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code, including, without limitation, any and all unencumbered cash of the Credit Parties (whether maintained with the DIP Collateral Agent or otherwise) and any investment of such cash, inventory, accounts receivable, other rights to payment whether arising before or after the Petition Date, contracts, properties, plants, fixtures, machinery, equipment, general intangibles, documents, instruments, securities, chattel paper, interests in leaseholds, real properties, deposit accounts, patents, copyrights, trademarks, trade names, rights under license agreements and other intellectual property, capital stock of subsidiaries, wherever located, and the proceeds, products, rents and profits of the foregoing, whether arising under section 552(b) of the Bankruptcy Code or otherwise, of all the foregoing (the **‘Unencumbered Property’**), in each case other than the Avoidance Actions ~~–(but including, Avoidance Proceeds, subject to entry of the Final Order) and Unencumbered Commercial Tort Claims,~~ but in each case subject and subordinate in all respects to the Carve-Out;

(ii) Liens Priming Certain Prepetition Secured Parties’ Liens. Pursuant to section 364(d)(1) of the Bankruptcy Code, and subject and subordinate in all respects



to the Carve-Out, a valid, binding, continuing, enforceable, fully-perfected first priority priming security interest in and lien upon all pre- and postpetition property of the Credit Parties of the same nature, scope, and type as the Prepetition Collateral, regardless of where located, regardless of whether or not any liens on such assets are voided, avoided, invalidated, lapsed or unperfected, which security interest and lien shall prime the Prepetition Liens (the “**DIP Priming Liens**”). Notwithstanding anything herein to the contrary, the DIP Priming Liens shall be (A) subject and junior to the Carve-Out in all respects and shall otherwise be junior only to Permitted Liens,<sup>14</sup> (B) senior in all respects to the other Prepetition Liens on DIP Collateral, (C) senior to any Adequate Protection Liens on DIP Collateral and (D) not subordinate to any lien, security interest or mortgage that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code. The Prepetition Liens with respect to the Prepetition Collateral shall be primed by and made subject and subordinate to the Carve-Out and the DIP Priming Liens;

(iii) Liens Junior to Certain Other Liens. Pursuant to section 364(c)(3) of the Bankruptcy Code, and subject and subordinate in all respects to the Carve-Out, a valid, binding, continuing, enforceable, fully-perfected junior security interest in and lien upon pre- and postpetition property of the Credit Parties that, on or as of the Petition Date, is subject to valid, perfected and non-avoidable senior Permitted Liens or valid and non-avoidable senior liens in existence immediately prior to the Petition Date that are perfected subsequent to the Petition Date as permitted by section 546(b) of the

<sup>14</sup> Notwithstanding anything to the contrary in this Order, to the extent that Komatsu Financial Limited Partnership and Caterpillar Financial Services Corporation have valid, binding, enforceable, properly perfected, and unavoidable first priority security interests in their respective collateral, those security interests constitute Permitted Liens that are not primed by the DIP Priming Liens.

Bankruptcy Code; provided, that nothing in the foregoing shall limit the rights of the DIP Secured Parties under the DIP Documents to the extent such liens are not permitted thereunder;

(iv) Liens Senior to Certain Other Liens. The DIP Liens shall not be (i) subject or subordinate to or made *pari passu* with (A) any lien or security interest that is avoided and preserved for the benefit of the Credit Parties and their estates under section 551 of the Bankruptcy Code, (B) unless otherwise provided for in the DIP Documents or in this ~~Interim~~Final Order, any liens or security interests arising after the Petition Date, including, without limitation, any liens or security interests granted in favor of any federal, state, municipal or other governmental unit (including any regulatory body), commission, board or court for any liability of the Credit Parties, or (C) any intercompany or affiliate liens of the Credit Parties or security interests of the Credit Parties; or (ii) subordinated to or made *pari passu* with any other lien or security interest under section 363 or 364 of the Bankruptcy Code.

(b) Specified Leases. Notwithstanding anything to the contrary in the Motion, the DIP Documents, or this ~~Interim~~Final Order, for purposes of this ~~Interim~~Final Order, in no event shall the DIP Collateral include or the DIP Liens or Adequate Protection Liens granted under this ~~Interim~~Final Order attach to any lease or other real property right, to which any Debtor is a party or any of such relevant Debtor's rights or interests thereunder, if and for so long as the grant of such security interest would constitute or result in: (x) the abandonment, invalidation, unenforceability or other impairment of any right, title or interest of any Debtor therein, or (y) a breach or termination pursuant to the terms of, or a default under, any such lease or other real

property right pursuant to any provision thereof, unless, in the case of each of clauses (x) and (y), the applicable provision is rendered ineffective, unenforceable, and/or invalid by applicable non-bankruptcy law or the Bankruptcy Code (such leases the ‘**Specified Lease**’); provided that, the foregoing shall not preclude any counterparty to a Specified Lease from an opportunity to be heard in this Court on notice with respect to whether applicable non-bankruptcy law or the Bankruptcy Code renders such provision ineffective, unenforceable, and/or invalid if requested by this non-Debtor party to the Specified Lease, and the Court shall retain jurisdiction to hear and adjudicate issues related thereto; provided further that DIP Collateral shall include and the DIP Liens and Adequate Protection Liens granted under this ~~Interim~~Final Order shall attach to any proceeds of any Specified Lease.

(c) *Automatic Effectiveness of Liens.* The automatic stay imposed under section 362(a) of the Bankruptcy Code is hereby vacated and modified to effectuate all of the terms and provisions of this ~~Interim~~Final Order, including to (i) permit the Credit Parties to grant the liens and security interests to the DIP Collateral Agent, the other DIP Secured Parties and the Prepetition Secured Parties, and (ii) authorize the Credit Parties to pay, and the DIP Secured Parties and Prepetition Secured Parties to retain and apply, payments made in accordance with this ~~Interim~~Final Order, to the extent, in cases (i) and (ii), contemplated by this ~~Interim~~Final Order and the other DIP Documents.

13. *Protection of DIP Lenders’ Rights.*

(a) So long as there are any DIP Obligations outstanding or the DIP Secured Parties have any outstanding DIP Commitments, the Prepetition Secured Parties shall: (i) have no right to and shall take no action to foreclose upon, or recover in connection with, the liens

granted thereto pursuant to the Prepetition Credit Documents or ~~this~~the Interim Order, or otherwise seek to exercise or enforce any rights or remedies against such DIP Collateral, including in connection with the Prepetition Liens or the Adequate Protection Liens; (ii) be deemed to have consented to any transfer, disposition or sale of, or release of liens on, such DIP Collateral (but not any proceeds of such transfer, disposition or sale to the extent remaining after payment in cash in full of the DIP Obligations and termination of the DIP Commitments), to the extent such transfer, disposition, sale or release is authorized under the DIP Documents; (iii) not file any further financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments, or otherwise take any action to perfect their security interests in such DIP Collateral unless, solely as to this clause (iii), the DIP Collateral Agent or the DIP Lenders file financing statements or other documents to perfect the liens granted pursuant to this ~~Interim~~Final Order, or as may be required by applicable state law to continue the perfection of valid and non-avoidable liens or security interests as of the Petition Date and (iv) at the request of the DIP Collateral Agent, deliver or cause to be delivered, at the Credit Parties' cost and expense, any termination statements, releases and/or assignments in favor of the DIP Collateral Agent or the DIP Lenders or other documents necessary to effectuate and/or evidence the release, termination and/or assignment of liens on any portion of such DIP Collateral subject to any sale or disposition permitted by the DIP Documents and this ~~Interim~~Final Order; provided, however, that the foregoing shall not in any way limit the ability of the Prepetition Secured Parties from credit bidding at any sale of DIP Collateral or Prepetition Collateral.

(b) To the extent any Prepetition Secured Party has possession of any Prepetition Collateral or DIP Collateral or has control with respect to any Prepetition Collateral

or DIP Collateral, or has been noted as a secured party on any certificate of title for a titled good constituting Prepetition Collateral or DIP Collateral, then such Prepetition Secured Party shall be deemed to maintain such possession or notation or exercise such control as a gratuitous bailee and/or gratuitous agent for perfection for the benefit of the DIP Collateral Agent and the DIP Lenders and it shall comply with the instructions of the DIP Collateral Agent with respect to the exercise of such control. The Prepetition Collateral Agent is not and shall not be deemed to be a fiduciary of any kind for the DIP Agents, the DIP Lenders and the DIP Agents, on behalf of themselves and the DIP Lenders, is hereby deemed to waive and release the Prepetition Agent and the Prepetition Collateral Agent from all claims and liabilities arising pursuant to their role under this paragraph 13(b) as gratuitous bailee and agent with respect to the Prepetition Collateral or the DIP Collateral.

(c) Any proceeds of Prepetition Collateral received by any Prepetition Secured Party in connection with the exercise of any right or remedy relating to the Prepetition Collateral or otherwise received by any Prepetition Secured Party shall be segregated and held in trust for the benefit of and forthwith paid over to the DIP Collateral Agent for the benefit of the applicable DIP Secured Parties in the same form as received, with any necessary endorsements, or as a court of competent jurisdiction may otherwise direct. The DIP Collateral Agent is hereby authorized to make any such endorsements as agent for any such Prepetition Secured Party. This authorization is coupled with an interest and is irrevocable.

(d) The automatic stay provisions of section 362 of the Bankruptcy Code are hereby vacated and modified to the extent necessary to permit the DIP Secured Parties to enforce all of their rights under the applicable DIP Documents and take any or all of the following

actions, at the same or different time, in each case without further order or application of the Court: (i) the DIP Secured Parties may, upon the occurrence of an Event of Default (a) immediately terminate the Debtors' limited use of any Cash Collateral, (b) cease making any DIP Loans, and terminate, reduce or restrict any further DIP Commitment to the extent any such DIP Commitment remains, (c) declare all DIP Obligations immediately due, owing and payable, without presentment, demand, protest, or other notice of any kind, all of which are expressly waived by the Credit Parties, notwithstanding anything herein or in any DIP Document to the contrary, (d) freeze any monies or balances in the Debtors' accounts and sweep all funds in the Debtors' deposit accounts, (e) immediately setoff all amounts in accounts maintained by the Debtors with the DIP Agent or any DIP Lenders against the DIP Obligations, or otherwise enforce all rights against the DIP Collateral in the possession of the DIP Agent or DIP Lenders (including the disposition of DIP Collateral solely for application to DIP Obligations), and (f) take any other action or exercise any other remedy permitted under the DIP Orders, the DIP Documents, or applicable law, and (ii) Debtors waive any right to seek relief under the Bankruptcy Code, including section 105, to the extent such relief would impair or restrict the rights and remedies of the DIP Agent and DIP Lenders set forth in the DIP Orders (as defined in the Motion) and the DIP Documents; provided, however, that, prior to the exercise of any rights in clauses (i)(d), (e) and (f) of this paragraph, the DIP Agent or DIP Lenders, as applicable, shall be required to provide five (5) calendar days' notice to counsel to the Debtors, counsel to the Creditors' Committee, and the U.S. Trustee of their intent to exercise their rights and remedies (the "**Remedies Notice Period**").

(e) During the Remedies Notice Period, the Credit Parties shall be permitted to use Cash Collateral only to pay the following amounts and expenses in accordance with the Approved Cash Flow Forecast to (i) the Carve-Out, (ii) the expenses that the Debtors and the DIP Requisite Lenders have determined in good faith are in the ordinary course and critical to the preservation of the Debtors and their estates, and (iii) such other amounts as approved in advance in writing by the DIP Requisite Lenders. Before or during the Remedies Notice Period, (x) the Debtors shall be entitled to seek an emergency hearing with the Court before or within the Remedies Notice Period solely for the purpose of contesting whether, in fact, an Event of Default has occurred and is continuing, and (y) the DIP Lenders shall not contest holding such a hearing on an emergency basis.

(f) In no event shall the DIP Agents, the DIP Lenders, or the Prepetition Secured Parties be subject to the equitable doctrine of “marshaling” or any similar doctrine with respect to the Prepetition Collateral or the DIP Collateral. Further, ~~subject to entry of the Final Order,~~ in no event shall the “equities of the case” exception in section 552(b) of the Bankruptcy Code apply to the secured claims of the Prepetition Secured Parties.

(g) No rights, protections or remedies of the DIP Agents, the DIP Lenders, or the Prepetition Secured Parties granted by the provisions of this ~~Interim~~Final Order or the DIP Documents shall be limited, modified or impaired in any way by: (i) any actual or purported withdrawal of the consent of any party to the Debtors’ authority to continue to use Cash Collateral; (ii) any actual or purported termination of the Debtors’ authority to continue to use Cash Collateral; or (iii) the terms of any other order or stipulation related to the Debtors’ continued use of Cash Collateral or the provision of adequate protection to any party.

14. *Proceeds of Subsequent Financing.* Without limiting the provisions and protections ~~of paragraph 11 above~~provided for herein, but subject in all respects to the Carve-Out, if at any time prior to the repayment in full in accordance with the DIP Documents of all the DIP Obligations (including subsequent to the confirmation of any chapter 11 plan or plans with respect to any of the Debtors), the Debtors' estates, any trustee, any examiner with enlarged powers, or any responsible officer subsequently appointed shall obtain credit or incur debt pursuant to sections 364(b), 364(c), 364(d), or any other provision of the Bankruptcy Code in violation of this ~~Interim~~Final Order or the DIP Documents, then, unless otherwise agreed by the DIP Requisite Lenders, all of the cash proceeds derived from such credit or debt and all Cash Collateral shall immediately be turned over to the DIP Collateral Agent for application to the DIP Obligations until such DIP Obligations are paid in full.

15. *Limitation on Charging Expenses Against Collateral.* Except to the extent of the Carve Out, no costs or expenses of administration of the Chapter 11 Cases or any future proceeding that may result therefrom, including liquidation in bankruptcy or other proceedings under the Bankruptcy Code, shall be charged against or recovered from the Collateral (including Cash Collateral) pursuant to section 506(c) of the Bankruptcy Code or any similar principle of law, without the prior written consent of the DIP Agent or the Prepetition Agent, as applicable, and no such consent shall be implied from any other action, inaction or acquiescence by the DIP Secured Parties or the Prepetition Secured Parties, and nothing contained in this ~~Interim~~Final Order shall be deemed to be a consent by the DIP Secured Parties to any charge, lien, assessment or claims against the Collateral under section 506(c) of the Bankruptcy Code or otherwise; provided, however, that solely in the ~~foregoing waiver shall be without prejudice to any~~



~~provisions of the Final Order with respect to costs or expenses incurred following the entry of such Final Order~~event that the DIP Commitments are not fully funded by the DIP Lenders, any waiver under section 506(c) of the Bankruptcy Code by the Debtors shall not apply to claims arising prior to the Termination Declaration Date (defined below) from the furnishing of goods or services for which payment is provided for in accordance with the Approved Cash Flow Forecast.

16. *Payments Free and Clear.* Any and all payments or proceeds remitted to the DIP Agents by, through or on behalf of the DIP Secured Parties pursuant to the provisions of ~~this~~the Interim Order or this Final Order or the DIP Documents (including, without limitation, the Approved Cash Flow Forecast (subject to Permitted Variances)) shall be irrevocable, received free and clear of any claim, charge, assessment or other liability, including without limitation, any such claim or charge arising out of or based on, directly or indirectly, sections 506(c) (subject to ~~any provisions of the Final Order with respect to costs or expenses incurred following the entry of such Final Order~~paragraph 15 hereof) or 552(b) of the Bankruptcy Code (~~subject to entry of the Final Order approving the waiver of the Debtors' rights under 552(b) of the Bankruptcy Code~~), whether asserted or assessed by through or on behalf of the Debtors.

17. *Use of Cash Collateral.* The Debtors are hereby authorized, subject to the terms and conditions of this ~~Interim~~Final Order, to use Cash Collateral; provided, that (a) the Prepetition Secured Parties are granted the Adequate Protection as hereinafter set forth and (b) except on the terms and conditions of this ~~Interim~~Final Order, the Debtors shall be enjoined and prohibited from at any time using the Cash Collateral absent further order of the Court.

18. *Adequate Protection of Prepetition Secured Parties.* Subject to the Carve-Out in all respects, the Prepetition Secured Parties are entitled, pursuant to sections 361, 362, 363(e), 364(d)(1) and 507 of the Bankruptcy Code, to adequate protection of their interests in all Prepetition Collateral, including Cash Collateral, for and equal in amount to the aggregate diminution in the value of the Prepetition Secured Parties' interests in the Prepetition Collateral (including Cash Collateral) from and after the Petition Date, if any (**'Diminution in Collateral Value'**), for any reason provided for under ~~the Bankruptcy Code, including, without limitation, any such diminution resulting from the sale, lease or use by the Credit Parties (or other decline in value) of the Prepetition Collateral, the priming of the Prepetition Liens by the DIP Priming Liens pursuant to the DIP Documents and this Interim Order, the payment of any amounts under the Carve-Out, and the imposition of the automatic stay pursuant to section 362 of the~~ Bankruptcy Code (the **"Adequate Protection Claims"**). To the extent of any Diminution in Collateral Value, the Prepetition Secured Parties are hereby granted the following, in each case subject to the Carve-Out (collectively, the **"Adequate Protection Obligations"**):

(a) Adequate Protection Liens. The Prepetition Collateral Agent, for itself and for the benefit of other Prepetition Secured Parties, is hereby granted (effective and perfected upon the date of ~~this~~the Interim Order and without the necessity of the execution of any mortgages, security agreements, pledge agreements, financing statements or other agreements), in the amount of the Prepetition Secured Parties' Adequate Protection Claims, a valid, perfected replacement security interest in and lien upon all of the DIP Collateral (the **"Adequate Protection Liens"**), subject and subordinate to (i) the Carve-Out, (ii) the DIP Liens and any liens to which the DIP Liens are junior (including the Permitted Liens), and (iii) Prepetition Liens;

provided, that to the extent that certain Prepetition Collateral is released from the Prepetition Liens in connection with a final order of the Court granting any Challenge, then the Adequate Protection Liens on such Prepetition Collateral shall be released to the same extent.

(b) Section 507(b) Claim. The Prepetition Agent, for itself and for the benefit of the Prepetition Lenders, is hereby granted, subject to the Carve-Out, an allowed superpriority administrative expense claim as provided for in section 507(b) of the Bankruptcy Code in the amount of the Prepetition Secured Parties' Adequate Protection Claims (the "**Adequate Protection 507(b) Claims**"), which Adequate Protection 507(b) Claims shall be payable from and have recourse to all DIP Collateral and all proceeds thereof (~~excluding except for~~ Avoidance Actions ~~but including, without limitation, subject to entry of the Final Order, the~~ Avoidance Proceeds and Unencumbered Commercial Tort Claims). The Adequate Protection 507(b) Claims shall be subject and subordinate only to the Carve-Out, the DIP Superpriority Claims, and the prepetition claims of the Prepetition Secured Parties. The Prepetition Secured Parties shall not receive or retain any payments, property or other amounts in respect of the Adequate Protection 507(b) Claims unless and until the DIP Obligations (other than contingent indemnification obligations as to which no claim has been asserted) and any claims having a priority superior to or *pari passu* with the DIP Superpriority Claims have indefeasibly been paid in cash in full and all DIP Commitments have been terminated.

(c) Adequate Protection Payments. As additional adequate protection, subject to the Carve-Out as set forth in this ~~Interim~~Final Order, the Prepetition Agent shall receive, for the benefit of the Prepetition Lenders, current payment of interest (at the contractual default rate) due under the Prepetition Credit Agreement (the "**Adequate Protection Payments**"), whether

due prior to, on, or subsequent to the Petition Date, subject to the rights reserved in paragraph 27 below.

(d) Adequate Protection Fees and Expenses. As further adequate protection, subject to the Carve-Out as set forth in this ~~Interim~~Final Order, the Credit Parties shall provide current cash payments of the reasonable and documented prepetition and postpetition fees and expenses of the Prepetition Agent under the Prepetition Credit Documents and the Prepetition Lenders, including, but not limited to, the reasonable and documented fees and out-of-pocket expenses of Stroock, (in its capacity as counsel to the Prepetition Agent and Prepetition Lenders) and Jackson Kelly PLLC, (in its capacity as local counsel to the Prepetition Lenders) in accordance with the Prepetition Credit Agreement (the “**Adequate Protection Fees and Expenses**”), subject to the review procedures set forth in paragraph 27 of this ~~Interim~~Final Order.

~~(e) — Adequate Protection Amortization Payments. As further adequate protection, subject to the Carve-Out as set forth in this Interim Order, the Prepetition Agent shall receive, for the benefit of the Prepetition Lenders, current amortization payments, in cash, due under the Prepetition Credit Agreement (the “Adequate Protection Amortization Payments”), whether due prior to, on, or subsequent to the Petition Date, subject to the rights reserved in paragraph 27 below.~~

(e) ~~(f)~~ Prepetition Secured Parties’ Information Rights. The Debtors shall promptly provide the Prepetition Agent, on behalf of itself and the Prepetition Secured Parties, with all required written financial reporting and other periodic reporting to the extent required to be provided to the DIP Agent or the DIP Secured Parties in accordance with the DIP Documents,

including but not limited to the reporting required under section 7.01(a) of the DIP Credit Agreement and shall also provide such reporting to the Creditors' Committee.

(f) ~~(g)~~ Prepetition Secured Parties' Adequate Protection Milestones. The Prepetition Secured Parties are hereby entitled to performance of the milestones set forth in Schedule 7.01(y) of the DIP Credit Agreement, as amended in connection with this Final Order (the "**Adequate Protection Milestones**") ~~during the Interim Period~~, which cannot be waived, amended, modified or extended from time to time, in each case as to the Prepetition Secured Parties, absent prior written consent of the Prepetition Requisite Lenders ~~during the Interim Period~~.<sup>1415</sup>

(g) ~~(h)~~ The Adequate Protection Milestones, reporting obligations above shall survive any termination of the DIP Credit Agreement or the DIP Commitments thereunder. Following any such termination of the DIP Credit Agreement or the DIP Commitments thereunder, the Adequate Protection Milestones may be waived, amended, modified or extended from time to time by the Prepetition Requisite Lenders (in their sole discretion).

19. *Reservation of Rights of Prepetition Secured Parties.* Under the circumstances and given that the above-described adequate protection is consistent with the Bankruptcy Code, the Court finds that the ~~adequate protection~~ Adequate Protection provided herein is reasonable and sufficient to protect the interests of the Prepetition Secured Parties ~~during the Interim Period~~; provided that any of the Prepetition Secured Parties may request further or different adequate protection.

20. *Perfection of DIP Liens and Adequate Protection Liens.*

<sup>1415</sup> "Prepetition Requisite Lenders" means "Required Lenders" as defined in the Prepetition Credit Agreement,

(a) The DIP Collateral Agent, the DIP Secured Parties and the Prepetition Secured Parties are hereby authorized, but not required, to file or record (and to execute in the name of the Credit Parties, as their true and lawful attorneys, with full power of substitution, to the maximum extent permitted by law) financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments in any jurisdiction, or take possession of or control over cash or securities or other property, or take any other action in order to validate and perfect the liens and security interests granted to them hereunder. Whether or not the DIP Collateral Agent (on behalf of the DIP Secured Parties) or the Prepetition Secured Parties shall, in their sole discretion, choose to file such financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments, or take possession of or control over any cash or securities or other property, or otherwise confirm perfection of the liens and security interests granted to them hereunder, such liens and security interests shall be deemed valid, perfected, allowed, enforceable, non-avoidable and not subject to challenge, dispute or subordination (subject to the priorities set forth in this ~~Interim~~Final Order), at the time and on the date of entry of this ~~Interim~~Final Order or thereafter. Upon the request of the DIP Collateral Agent or the Prepetition Collateral Agent, as applicable, each of the Prepetition Secured Parties and the Credit Parties, without any further consent of any party, is authorized to take, execute, deliver and file such instruments (in each case, without representation or warranty of any kind) to enable the DIP Collateral Agent or the Prepetition Collateral Agent to further validate, perfect, preserve and enforce the DIP Liens and the applicable Adequate Protection Liens, respectively. All such documents will be deemed to have been recorded and filed as of the Petition Date.

(b) A certified copy of ~~this~~the Interim Order or this Final Order may, in the discretion of the DIP Collateral Agent or the Prepetition Collateral Agent, as applicable, be filed with or recorded in filing or recording offices in addition to or in lieu of such financing statements, mortgages, notices of lien or similar instruments, and all filing offices are hereby authorized to accept such certified copy of ~~this~~the Interim Order or this Final Order for filing and/or recording, as applicable. The automatic stay of section 362(a) of the Bankruptcy Code shall be modified to the extent necessary to permit the DIP Collateral Agent or the Prepetition Collateral Agent to take all actions, as applicable, referenced in this subparagraph (b) and the immediately preceding subparagraph (a).

(c) To the extent that any Prepetition Secured Party is the secured party under any account control agreements, listed as loss payee or additional insured under any of the Credit Parties' insurance policies or is the secured party under any other agreement, the DIP Collateral Agent, on behalf of the DIP Secured Parties, is also deemed to be the secured party under such account control agreements, loss payee or additional insured under the Credit Parties' insurance policies and the secured party under each such agreement (in any such case with the same priority of liens and claims thereunder relative to the priority of (x) the Prepetition Liens and Adequate Protection Liens and (y) the DIP Liens, as set forth herein), and shall have all rights and powers in each case attendant to that position (including, without limitation, rights of enforcement, but subject in all respects to the terms of this ~~Interim~~Final Order), and shall, subject to the terms of this ~~Interim~~Final Order, act in that capacity and distribute any proceeds recovered or received in respect of any of the foregoing, first, to the payment in full of the DIP Obligations, and second, to the payment of the Prepetition Debt. In accordance with the terms of this ~~Interim~~Final Order and

the other DIP Documents, the Prepetition Collateral Agent shall serve as agent for the DIP Collateral Agent for purposes of perfecting the DIP Collateral Agent's security interests in and liens on all Collateral that is of a type such that perfection of a security interest therein may be accomplished only by possession or control by a secured party.

21. *Preservation of Rights Granted Under This ~~Interim~~Final Order.*

(a) Other than (i) the Carve-Out, (ii) the Prepetition Permitted Prior Liens, (iii) Permitted Liens; and (iv) other claims and liens expressly granted by this ~~Interim~~Final Order, no claim or lien having a priority superior to or *pari passu* with those granted by this ~~Interim~~Final Order to the DIP Secured Parties or the Prepetition Secured Parties shall be permitted while any of the DIP Obligations or the Adequate Protection Obligations remain outstanding, and, except as otherwise expressly provided in paragraphs 10, 18, or 19 of this ~~Interim~~Final Order, the DIP Liens and the Adequate Protection Liens shall not be: (i) subject or junior to any lien or security interest that is avoided and preserved for the benefit of the Credit Parties' estates under section 551 of the Bankruptcy Code; (ii) subordinated to or made *pari passu* with any other lien or security interest, whether under section 364(d) of the Bankruptcy Code or otherwise; (iii) subordinated to or made *pari passu* with any liens arising after the Petition Date including, without limitation, any liens or security interests granted in favor of any federal, state, municipal or other domestic or foreign governmental unit (including any regulatory body), commission, board or court for any liability of the Credit Parties; or (iv) subject or junior to any intercompany or affiliate liens or security interests of the Credit Parties.

(b) The occurrence of (a) any Event of Default (under and as defined in the DIP Credit Agreement) or (b) any violation of any of the terms of this ~~Interim~~Final Order, shall,



after notice by the DIP Administrative Agent in writing to the Borrower (which may be electronic), constitute an event of default under this ~~Interim~~Final Order (each an ‘**Event of Default**’) and, subject to the Remedies Notice Period terminate the right of the Credit Parties to use Cash Collateral pursuant to this ~~Interim~~Final Order and upon any such Event of Default, interest, including, where applicable, default interest, shall accrue and be paid as set forth in the DIP Credit Agreement. Notwithstanding any order that may be entered dismissing any of the Chapter 11 Cases under section 1112 of the Bankruptcy Code: (A) the DIP Superpriority Claims, the Adequate Protection 507(b) Claims, the DIP Liens, and the Adequate Protection Liens, and any claims related to the foregoing, shall continue in full force and effect and shall maintain their priorities as provided in this ~~Interim~~Final Order until all DIP Obligations and Adequate Protection shall have been paid in full (and that such DIP Superpriority Claims, Adequate Protection 507(b) Claims, DIP Liens and Adequate Protection Liens shall, notwithstanding such dismissal, remain binding on all parties in interest); (B) the other rights granted by this ~~Interim~~Final Order shall not be affected; and (C) this Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing the claims, liens and security interests referred to in this paragraph and otherwise in this ~~Interim~~Final Order.

(c) If any or all of the provisions of this ~~Interim~~Final Order are hereafter reversed, modified, vacated or stayed, such reversal, modification, vacation or stay shall not affect: (i) the validity, priority or enforceability of any DIP Obligations or Adequate Protection Obligations incurred prior to the actual receipt of written notice by the DIP Administrative Agent, the DIP Collateral Agent, the Prepetition Agent, or the Prepetition Collateral Agent, as applicable, of the effective date of such reversal, modification, vacation or stay; or (ii) the

validity, priority or enforceability of the DIP Liens, the Adequate Protection Liens, the Prepetition Liens or the Prepetition Debt. Notwithstanding any such reversal, modification, vacation or stay of any use of Cash Collateral or Prepetition Collateral, any DIP Obligations, DIP Liens, Adequate Protection Obligations or Adequate Protection Liens incurred by the Credit Parties to the DIP Secured Parties or the Prepetition Secured Parties, as the case may be, prior to the actual receipt of written notice by the DIP Administrative Agent, the DIP Collateral Agent, the Prepetition Agent, or the Prepetition Collateral Agent, as applicable, of the effective date of such reversal, modification, vacation or stay shall be governed in all respects by the original provisions of this ~~Interim~~Final Order, and the DIP Agents, the DIP Lenders and the Prepetition Secured Parties shall be entitled to all the rights, remedies, privileges and benefits granted in section 364(e) of the Bankruptcy Code, this ~~Interim~~Final Order and the DIP Documents with respect to all uses of Cash Collateral, the DIP Obligations and Adequate Protection.

(d) Except as expressly provided in this ~~Interim~~Final Order or in the DIP Documents, the Carve-Out, the DIP Liens, the DIP Superpriority Claims, the Adequate Protection Liens, the Prepetition Liens, the Adequate Protection 507(b) Claim, the Prepetition Debt and the Adequate Protection and all other rights and remedies of the DIP Secured Parties and the Prepetition Secured Parties granted by the provisions of this ~~Interim~~Final Order and the DIP Documents shall survive, and shall not be modified, impaired or discharged by: (i) the entry of an order converting any of the Chapter 11 Cases to a case under chapter 7, dismissing any of the Chapter 11 Cases, substantively consolidating any of the cases with another case, terminating the joint administration of these Chapter 11 Cases or by any other act or omission; (ii) the entry of an order approving the sale of any DIP Collateral pursuant to section 363(b) of the Bankruptcy

Code (except to the extent permitted by the DIP Documents); or (iii) the entry of an order confirming a chapter 11 plan in any of the Chapter 11 Cases and, pursuant to section 1141(d)(4) of the Bankruptcy Code, the Credit Parties have waived any discharge as to any remaining DIP Obligations or Adequate Protection Obligations and with respect to the Prepetition Debt. The Credit Parties shall not propose or support any plan of reorganization or sale of all or substantially all of the Credit Parties' assets, or order confirming such plan or approving such sale, that is not conditioned upon the indefeasible payment in full in cash, no later than the effective date of such plan or sale, of (i) all Adequate Protection Claims of the Prepetition Secured Parties, and (ii) all other claims arising under the DIP Facility of the DIP Secured Parties, in each case in cash or such other consideration acceptable to the Prepetition Secured Parties, regardless of whether the Prepetition Debt becomes undersecured at any point during the Chapter 11 Cases and regardless of the value of the Prepetition Collateral. The terms and provisions of this ~~Interim~~Final Order and the DIP Documents shall continue in these Chapter 11 Cases, in any successor cases if these Chapter 11 Cases cease to be jointly administered and in any superseding chapter 7 cases under the Bankruptcy Code, and the DIP Liens, the DIP Superpriority Claims, the Adequate Protection Liens, the Prepetition Debt, the Prepetition Liens and the Adequate Protection Claims and all other rights and remedies of the DIP Secured Parties and the Prepetition Secured Parties granted by the provisions of this ~~Interim~~Final Order and the DIP Documents shall continue in full force and effect until the DIP Obligations are paid in full, as set forth herein and in the DIP Documents, and the DIP Commitments have been terminated.

22. *Limitation on Use of DIP Financing Proceeds and Collateral.* Notwithstanding any other provision of this ~~Interim~~Final Order or any other order entered by the Court, no DIP

Loans, DIP Collateral, Prepetition Collateral or any portion of the Carve-Out, may be used directly or indirectly by any Debtor, ~~any~~the Creditors' Committee, or any trustee appointed in the Chapter 11 Cases or any successor case, including any chapter 7 case, or any other person, party or entity (i) in connection with the investigation, initiation or prosecution of any claims, causes of action, adversary proceedings or other litigation (a) against the DIP Secured Parties, or the Prepetition Secured Parties, or their respective predecessors-in-interest, agents, affiliates, representatives, attorneys, or advisors, or any action purporting to do the foregoing in respect of the Prepetition Debt, liens on the Prepetition Collateral, DIP Obligations, DIP Liens, DIP Superpriority Claims and/or the adequate protection, adequate protection liens and superpriority claims granted to the Prepetition Secured Parties under the Interim Order or ~~the~~this Final Order, as applicable, or (b) challenging the amount, validity, perfection, priority or enforceability of or asserting any defense, counterclaim or offset with respect to, the Prepetition Debt, liens on the Prepetition Collateral, DIP Obligations, DIP Liens, DIP Superpriority Claims, and/or the liens, claims, rights, or security interests granted under ~~this~~the Interim Order, ~~the~~this Final Order, the DIP Documents or the Prepetition Credit Documents including, in each case, without limitation, for lender liability or pursuant to section 105, 510, 544, 547, 548, 549, 550, or 552 of the Bankruptcy Code, applicable non-bankruptcy law or otherwise; (ii) to prevent, hinder, or otherwise delay the Prepetition Secured Parties' or the DIP Secured Parties', as applicable, enforcement or realization on the Prepetition Debt, Prepetition Collateral, DIP Obligations, DIP Collateral, and the liens, claims and rights granted to such parties under the Interim Order or ~~the~~this Final Order, as applicable, each in accordance with the DIP Documents, the Prepetition Credit Documents or this ~~Interim~~Final Order; (iii) to seek to modify any of the rights and

remedies granted to the Prepetition Secured Parties or the DIP Secured Parties under this ~~Interim~~Final Order, the Prepetition Credit Documents or the DIP Documents, as applicable; (iv) to apply to the Court for authority to approve superpriority claims or grant liens (other than the liens permitted pursuant to the DIP Documents) or security interests in the DIP Collateral or any portion thereof that are senior to, or on parity with, the DIP Liens, DIP Superpriority Claims, adequate protection liens and superpriority claims and liens granted to the Prepetition Secured Parties, unless all DIP Obligations, Prepetition Debt, Adequate Protection, and claims granted to the DIP Secured Parties or Prepetition Secured Parties under this ~~Interim~~Final Order, have been refinanced or paid in full or otherwise agreed to in writing by the DIP Secured Parties; or (v) to seek to pay any amount on account of any claims arising prior to the Petition Date unless such payments are agreed to in writing by the DIP Lenders, in or are otherwise included in the “Approved Cash Flow Forecast” (subject to Permitted Variances); provided, that, notwithstanding anything to the contrary herein, the Creditors’ Committee ~~(if appointed)~~ may use the proceeds of the DIP Loans, DIP Collateral (including Cash Collateral) and/or the Carve-Out to investigate, but not prosecute, (i) the claims and liens of the Prepetition Secured Parties and (ii) potential claims, counterclaims, causes of action or defenses against the Prepetition Secured Parties; provided, further, that no more than \$~~25,000~~75,000 of the proceeds of the DIP Loans, DIP Collateral (including Cash Collateral) and/or the Carve-Out (the “**Challenge Budget**”) may be used by the Creditors’ Committee ~~(if appointed)~~ to cover the aggregate costs, fees and expenses incurred in connection with its investigation of (but not ~~formal discovery~~, an objection or commencement of litigation with respect to) any Challenge (defined below).

23. *Real Property Leases.* As a requirement and precondition to the DIP Secured Parties' willingness to lend and in furtherance of the DIP Superpriority Claims provided for in this ~~Interim~~Final Order and pursuant to the DIP Documents, which are payable from and have recourse to all of the Debtors' pre- and post-petition property including, among other things, each leasehold interest in the Leases (as defined in the DIP Credit Agreement) to which a Debtor is a counterparty (each, a "**Real Property Lease**"), the DIP Secured Parties shall have the following protections with respect to the Debtors' Real Property Leases, regardless of whether any particular Real Property Lease or group of Real Property Leases constitutes Collateral, which protections shall be enforced by the DIP Agents or DIP Secured Parties as authorized, approved, and granted pursuant to the provisions of this ~~Interim~~Final Order and in accordance with the terms of the DIP Credit Agreement (and, after the indefeasible payment in full in cash of the DIP Obligations, (i) defined terms used in this paragraph 23 relating to the DIP Documents shall be deemed to be references to corresponding defined terms relating to the Prepetition Credit Documents, (ii) any notice herein required to be delivered pursuant to this paragraph 23 to the DIP Agents shall instead be required to be delivered to each of the Prepetition Agent and the Prepetition Collateral Agent, and (iii) the automatic stay provisions pursuant to section 362 of the Bankruptcy Code are vacated and modified to the extent necessary so as to permit the DIP Agents, the DIP Secured Parties, the Prepetition Agent and the Prepetition Collateral Agent, as applicable, and the Prepetition Secured Parties to exercise any of their rights with respect to Real Property Leases under this paragraph 23):

(a) Remedies Upon an Event of Default. If an Event of Default shall have occurred and be continuing, the DIP Agents for the benefit of the DIP Secured Parties shall, with

respect to any Real Property Lease or group of Real Property Leases, be permitted, and are hereby authorized, approved, and granted the following rights and remedies: only to the extent permitted by applicable law, and after advance written notice to the counterparty to the Real Property Lease (and affording the Counterparty an opportunity to be heard in this Court on notice with respect to the foregoing), to access the leasehold interests of the Debtors or debtors in possession in any such Real Property Lease(s) for the purpose of (A) marketing such property or properties for sale and (B) removing any Collateral thereon or arranging for the Asset Sale of any such Collateral except to the extent prohibited by the terms of the Real Property Lease (unless the applicable provision is rendered ineffective by applicable non-bankruptcy law or the Bankruptcy Code); provided that the foregoing shall not preclude any counterparty to a Real Property Lease (each, a “**Counterparty**”) from an opportunity to be heard in this Court on notice with respect to the foregoing.

(b) Right to Credit Bid. Prior to any assumption and assignment of any Real Property Lease or group of Real Property Leases under Bankruptcy Code Sections 363 and 365, the Debtors shall first provide at least five (5) business days’ prior written notice (the “**Initial Notice Period**”) to the DIP Agents, unless such notice provision is waived by the DIP Agents and the DIP Requisite Lenders, which Initial Notice Period may be extended up to a further twenty-five (25) days by the DIP Agents or the DIP Requisite Lenders in each of their sole discretion by delivering written notice of such extension to the Debtors prior to expiration of the Initial Notice Period, and by any further period as is mutually agreeable between the DIP Agents or the DIP Requisite Lenders and the Company (such notice period being the “**Aggregate Notice Period**”). During such notice period, the DIP Agents shall be permitted, subject to the terms of

the DIP Documents and unless otherwise ordered by the Court, to participate in an auction sale for the Real Property Lease(s) and to credit bid forgiveness of some or all of the outstanding DIP Obligations (in an amount equal to at least the consideration offered by any other party in respect of such assignment) outstanding under the DIP Facilities as consideration in exchange for any such Real Property Lease(s) and pay to the Real Property Lease counterparty in cash all amounts necessary to cure any monetary defaults under the Real Property Leases, provided that to the extent the Company is entitled to retain a portion of the total consideration paid in respect of such assignment in accordance with the DIP Credit Agreement, the applicable portion of the consideration to be retained by Company shall be paid in cash (provided that such proceeds shall constitute DIP Collateral and Cash Collateral). In addition, and in connection with any sale of any Real Property Lease(s), the DIP Agents, on behalf of the DIP Lenders, shall be permitted to credit bid (subject to paragraph 27(a)(i) hereof) forgiveness of some or all of the outstanding DIP Obligations (in an amount equal to at least the consideration offered by any other party in respect of such sale or other Asset Sale) as consideration in exchange for such Real Property Lease(s), plus pay cash to the counterparty(ies) to the Real Property Lease(s) an amount necessary to cure any monetary defaults under the Real Property Lease(s). Pursuant to section 364(e) of the Bankruptcy Code, absent a stay pending appeal, the DIP Lenders' right to credit bid shall not be affected by the reversal or modification on appeal of the Debtors' authorization pursuant to this ~~Interim~~Final Order to obtain credit and incur debt as and in accordance with the terms set forth herein.

(c) DIP Lenders' Right to Cure Defaults. If any of the Debtors are required to cure any monetary defaults under any Real Property Lease pursuant to any order of this Court or



otherwise in connection with any assumption or assumption and assignment of any such Real Property Lease pursuant to section 365(f) of the Bankruptcy Code, and such monetary default is not, within five (5) business days of the receipt by such Debtor of notice from the DIP Agents pursuant to the applicable provision(s) of the DIP Credit Agreement or any other notice from the DIP Agents requesting the cure of such monetary default, cured in accordance with the provisions of such applicable court order as arranged by the DIP Agents, the DIP Agents may cure any such monetary defaults on behalf of the applicable Debtor(s).

(d) Priorities. For the avoidance of doubt, nothing set forth in this paragraph 23 shall affect the relative priorities of liens and claims set forth herein.

24. *Approved Cash Flow Forecast*. The Approved Cash Flow Forecast is approved on ~~an interim~~ a final basis. Proceeds of the DIP Facility and Cash Collateral under this ~~Interim~~ Final Order shall be used by the Credit Parties in accordance with the DIP Credit Agreement and this ~~Interim~~ Final Order and consistent with the Approved Cash Flow Forecast or as otherwise agreed by the DIP ~~Administrative~~ Agents (subject to Permitted Variances). None of the DIP Secured Parties' consent ~~(if any)~~ to, or acknowledgment of, the Approved Cash Flow Forecast shall be construed as consent to use of the proceeds of the DIP Facilities or Cash Collateral beyond the maturity date set forth in the DIP Credit Agreement, regardless of whether the aggregate funds shown on the Approved Cash Flow Forecast have been expended.

25. *Payment of Fees and Expenses*. The Credit Parties are authorized to pay the DIP Fees and Expenses, as provided in the DIP Documents and in accordance with the Approved Cash Flow Forecast. Subject to the review procedures set forth in this paragraph 25, payment of all DIP Fees and Expenses and Adequate Protection Fees and Expenses shall not be subject to

allowance or review by the Court. Professionals for the DIP Secured Parties and the Prepetition Secured Parties shall not be required to comply with the U.S. Trustee fee guidelines, however any time that such professionals seek payment of fees and expenses from the Debtors after the closing of the DIP Facility and prior to confirmation of a chapter 11 plan, each professional shall provide summary copies of its invoices (which shall not be required to contain time entries and which may be redacted or modified to the extent necessary to delete any information subject to the attorney-client privilege, any information constituting attorney work product, or any other confidential information, and the provision of such invoices shall not constitute any waiver of the attorney client privilege or of any benefits of the attorney work product doctrine) to the Debtors, the U.S. Trustee and counsel for the Creditors' Committee ~~(if appointed)~~ (together, the **'Review Parties'**). Any objections raised by the ~~Debtors, the U.S. Trustee or the Creditors' Committee (if appointed)~~ Review Parties with respect to such invoices must be in writing and state with particularity the grounds therefor and must be submitted to the applicable professional within ten (10) days of the receipt of such invoice (the **'Review Period'**). If no written objection is received by 12:00 p.m., prevailing Eastern Time, on the end date of the Review Period, the Credit Parties shall pay such invoices within three (3) days. If an objection to a professional's invoice is received within the Review Period, the Credit Parties shall promptly pay the undisputed amount of the invoice and this Court shall have jurisdiction to determine the disputed portion of such invoice if the parties are unable to resolve the dispute consensually. Notwithstanding the foregoing, the Debtors are authorized and directed to pay on or after the Closing Date the DIP Fees and Expenses and Adequate Protection Fees and Expenses incurred on or prior to such date without the need for any professional engaged by the DIP Secured Parties or the Prepetition

Secured Parties to first deliver a copy of its invoice or other supporting documentation to the Review Parties (other than the Debtors). No attorney to the DIP Secured Parties or any Prepetition Secured Party shall be required to file an application seeking compensation for services or reimbursement of expenses with the Court. ~~Any and all fees, costs, and expenses paid prior to the Petition Date by any of the Debtors to the (i) DIP Secured Parties in connection with or with respect to the DIP Facility; and (ii) Prepetition Secured Parties in connection or with respect to these and related matters, are hereby approved in full and shall not be subject to recharacterization, avoidance, subordination, disgorgement or any similar form of recovery by the Debtors or any other person.~~

26. *Limits to Lender Liability.* Nothing in this ~~Interim~~Final Order, the DIP Documents, or any other documents related to these transactions shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Secured Parties (in each case, in their capacities as such) of any liability for any claims arising from the prepetition or postpetition activities of the Debtors in the operation of their business, or in connection with their restructuring efforts. So long as the DIP Secured Parties comply with their obligations under the DIP Documents and their obligations, if any, under applicable law (including the Bankruptcy Code), (a) the DIP Secured Parties shall not, in any way or manner, be liable or responsible for (i) the safekeeping of the DIP Collateral, (ii) any loss or damage thereto occurring or arising in any manner or fashion from any cause, (iii) any diminution in the value thereof or (iv) any act or default of any carrier, servicer, bailee, custodian, forwarding agency or other person and (b) all risk of loss, damage or destruction of the Collateral shall be borne by the Credit Parties.

27. *Effect of Stipulations on Third Parties.* The Debtors' stipulations, admissions, agreements and releases contained in this ~~Interim~~Final Order, including, without limitation, in paragraph 7 of this ~~Interim~~Final Order, shall be binding upon the Debtors and any successor thereto (including, without limitation, any chapter 7 or chapter 11 trustee or examiner appointed or elected for any of the Debtors) in all circumstances and for all purposes. The Debtors' stipulations, admissions, agreements and releases contained in this ~~Interim~~Final Order, including, without limitation, in paragraph 7 of this ~~Interim~~Final Order, shall be binding upon all other parties in interest, including, without limitation, ~~at~~the Creditors' Committee, ~~if any,~~ and any other person or entity acting or seeking to act on behalf of the Debtors' estates, in all circumstances and for all purposes unless: (a) such Creditors' Committee, or any other person or entity acting or seeking to act on behalf of the Debtors' estates, in each case with requisite standing (subject in all respects to any agreement or applicable law that may limit or affect such entity's right or ability to do so), has timely filed an adversary proceeding or contested matter (subject to the limitations contained herein, including, *inter alia*, in this paragraph) by no later than (i) ~~(x) the Creditors' Committee (if appointed) with requisite standing within 60 calendar days after the appointment of any Creditors' Committee,~~ (y) ~~if no Creditors' Committee has been appointed, by any party in interest with requisite standing within 75 calendar days after entry of the Interim Order, and (z) such later date as may be agreed in writing by the Debtors and the DIP Lenders (the deadline established by the foregoing clauses (i) and (ii), the "Challenge Deadline"),~~ (A) with respect to any adversary proceeding or other contested matter objecting to or challenging the amount, validity, perfection, enforceability, priority or extent of the Prepetition Debt or the Prepetition Liens, or (B) ~~otherwise~~ the allowance of any Prepetition Obligation based on the amount of such

obligation (i.e., not including any challenge on a basis such as section 510(c) of the Bankruptcy Code), by August 27, 2020 at 4:00 p.m. (Eastern) (the ‘Initial Challenges’); provided, however, that for an Initial Challenge to be timely, the Creditors’ Committee must provide written notice to the Prepetition Secured Parties’ counsel of its intent to file any Initial Challenge and identify the specific Initial Challenges by August 25, 2020; and (ii) with respect to any other challenge to the Debtors’ Stipulations, asserting or prosecuting any action for preferences, fraudulent transfers or conveyances, equitable subordination, other avoidance power claims or any other claims, counterclaims or causes of action, objections, contests or defenses (‘Second Period Challenges’ collectively with the Initial Challenges, the ‘Challenges’) (x) the Creditors’ Committee with requisite standing by October 9, 2020 (the ‘Creditors’ Committee’s Second Challenge Deadline’), (y) if no Creditors’ Committee has been appointed, by any party in interest with requisite standing, within 75 calendar days after entry of the Interim Order, and (z) such later date as may be agreed in writing by the Debtors and the DIP Lenders (the deadline established by the foregoing clauses (i) and (ii), the ‘Challenge Deadlines’) against any of the Prepetition Secured Parties or their respective affiliates and subsidiaries and each of their respective former, or current ~~or future~~ officers, partners, directors, managers, members, principals, employees, agents, related funds, investors, financing sources, financial advisors, attorneys, accountants, investment bankers, consultants, representatives and other professionals and the respective successors and assigns thereof, in each case in their respective capacity as such (each a ‘Representative’ and, collectively, the ‘Representatives’) in connection with matters related to the Prepetition Credit Documents, the Prepetition Debt, the Prepetition Liens and the Prepetition Collateral; and (b) there is a final non-appealable order in favor of the plaintiff sustaining any such Challenge in any

such timely filed adversary proceeding or contested matter; provided, however, that any pleadings filed in connection with any Challenge shall set forth with specificity the basis for such challenge or claim and any challenges or claims not so specified by an interested party with requisite standing prior to the Challenge Deadline shall be deemed forever, waived, released and barred; and provided further that, solely to the extent an order of the Court is entered converting the Chapter 11 Cases to cases under chapter 7 prior to one of the Challenge ~~Deadline~~Deadlines, the Challenge Deadline applicable to the Creditors' Committee shall be extended solely for the chapter 7 trustee to the later of (i) the Creditors' Committee's Challenge Deadline, or (ii) the date that is 21 days after the appointment of the chapter 7 trustee. Notwithstanding anything contained herein to the contrary, the Challenge Deadline for a Second Period Challenge will be tolled for the Creditors' Committee if it formally moves for an order of this Court conferring such standing or authority (the '**Standing Motion**') prior to ~~the initial~~that Challenge Deadline from the date the Creditors' Committee so moves until such time as standing is granted or denied pursuant to an order of the Court with regard to such Standing Motion; provided that the Challenge Deadline will only be tolled (a) if such motion attaches a proposed complaint identifying the specific Challenge that the Creditors' Committee proposes to assert and the defendants against whom such Challenge is proposed to be asserted and (b) will only be tolled with respect to such Challenge and defendants specifically identified therein; provided further, that the Creditors' Committee shall have automatic standing and shall not be required to file a Standing Motion only with respect to any Initial Challenges; provided further, any adversary proceeding or contested matter commenced with respect to an Initial Challenge may be stayed upon the request of the Prepetition Secured Parties until the expiration of the Creditors' Committee's Second Challenge

Deadline. If no such Challenge is timely and properly filed prior to the Challenge ~~Deadline~~Deadlines or the Court does not rule in favor of the plaintiff in any such proceeding then: (a) the Debtors' stipulations, admissions, agreements and releases contained in this ~~Interim~~Final Order, including, without limitation, those contained in paragraph 7 of this ~~Interim~~Final Order, shall be binding on all parties in interest; (b) the obligations of the Credit Parties under the Prepetition Credit Documents, including the Prepetition Debt, shall constitute allowed claims not subject to defense, claim, counterclaim, recharacterization, subordination, offset or avoidance, for all purposes in the Chapter 11 Cases, and any subsequent chapter 7 case(s); (c) the Prepetition Liens on the Prepetition Collateral shall be deemed to have been, as of the Petition Date, legal, valid, binding, perfected, security interests and liens, not subject to recharacterization, subordination, avoidance or other defense; and (d) the Prepetition Debt and the Prepetition Liens on the Prepetition Collateral shall not be subject to any other or further claim or challenge by ~~any~~the Creditors' Committee, or any other party in interest acting or seeking to act on behalf of the Debtors' estates, including, without limitation, any successor thereto (including, without limitation, any chapter 7 trustee or chapter 11 trustee or examiner appointed or elected for any of the Debtors) and any defenses, claims, causes of action, counterclaims and offsets by any Creditors' Committee, if any, or any other party acting or seeking to act on behalf of the Debtors' estates, including, without limitation, any successor thereto (including, without limitation, any chapter 7 trustee or chapter 11 trustee or examiner appointed or elected for any of the Debtors), whether arising under the Bankruptcy Code or otherwise, against any of the Prepetition Secured Parties and their Representatives arising out of or relating to any of the Prepetition Credit Documents shall be deemed forever waived, released

and barred. If any such Challenge is timely filed prior to ~~the~~ Challenge Deadline, the stipulations, admissions, agreements and releases contained in this ~~Interim~~Final Order, including, without limitation, those contained in paragraph 7 of this ~~Interim~~Final Order, shall nonetheless remain binding and preclusive (as provided in the second sentence of this paragraph) on all parties in interest (other than the party that has brought such Challenge in connection therewith, and then only with respect to the stipulations, admissions, agreements and releases that are subject to the Challenge and not to any stipulations, agreements, admissions and releases not subject to the Challenge) except to the extent that such stipulations, admissions, agreements and releases were expressly and successfully challenged in such Challenge as set forth in a final, non-appealable order of a court of competent jurisdiction. Nothing in this ~~Interim~~Final Order vests or confers on any Person (as defined in the Bankruptcy Code), including any Creditors' Committee, standing or authority to pursue any claim or cause of action belonging to the Debtors or their estates, ~~including, without limitation, Challenges~~ with respect to ~~the Prepetition Credit Documents, the Prepetition Debt or the Prepetition Liens. Any motion seeking standing a Second~~ Period Challenge. Any Standing Motion shall attach a draft complaint or other pleading that sets forth such Challenge, and any Challenge not included therein shall be deemed forever waived, released, and barred. For the avoidance of doubt, none of the foregoing challenge provisions set forth in this paragraph shall apply to any DIP Secured Party, in their capacities as such, and in no event shall the DIP Facility, DIP Obligations or DIP Liens be subject to challenge pursuant to this paragraph on avoidance or any other grounds by any party.

28. *Postpetition Release.* In addition, ~~subject to the entry of the Final Order,~~ notwithstanding anything to the contrary set forth herein, upon the repayment of all DIP



Obligations owed to the DIP Agents and the DIP Secured Parties by the Debtors and termination of the rights and obligations arising under the DIP Documents (which payment and termination shall be on terms and conditions acceptable to the DIP Agents), the DIP Agents and the DIP Lenders shall be released from any and all obligations, liabilities, actions, duties, responsibilities and causes of action arising or occurring, on or prior to the date of such repayment and termination, in connection with or related to the DIP Documents, or the Interim Order (including without limitation any obligation or responsibility (whether direct or indirect, absolute or contingent, due or not due, primary or secondary, liquidated or unliquidated) to pay or otherwise fund the Carve-Out on terms and conditions acceptable to the DIP Agents).

29. *Landlord Agreements; Access.*

(a) All collateral access agreements to which the Prepetition Collateral Agent is a party shall hereby continue to be deemed to be amended to include the DIP Agents as a beneficiary thereunder, and such agreements shall thereafter be additionally enforceable by the DIP Agents against, and binding upon, each landlord party thereto. ~~Subject to the entry of the Final Order, any~~ Any title, landlord's lien, right of distraint or levy, security interest or other interest that any landlord or mortgagee may have in any DIP Collateral or Prepetition Collateral of the Debtors located on such leased premises, to the extent the same is not avoidable under sections 544, 545, 547, 548, 549, 550, or 552 of the Bankruptcy Code, applicable non-bankruptcy law or otherwise, is hereby expressly subordinated to the liens of the DIP Secured Parties and the Prepetition Secured Parties.

(b) Without limiting any other rights or remedies of the DIP Agents or the other DIP Secured Parties set forth in this ~~Interim~~ Final Order, the DIP Documents, or otherwise

available at law or in equity, and subject to the terms of the DIP Documents, upon three (3) business days' written notice to counsel to the Debtors and any landlord, lienholder, licensor, or other third party owner of any leased or licensed premises or intellectual property, after the expiration of the Remedies Notice Period, that an Event of Default has occurred and is continuing, the DIP Agents, (i) may, unless otherwise expressly provided in any separate agreement by and between the applicable landlord or licensor and the DIP Agents, enter upon any leased or licensed premises of the Debtors for the purpose of exercising any remedy with respect to DIP Collateral located thereon, and (ii) shall be entitled to all of the Debtors' rights and privileges as lessee or licensee under the applicable license and to use any and all trademarks, trade names, copyrights, licenses, patents, or any other similar assets of the Debtors, which are owned by or subject to a lien of any third party and which are used by Debtors in their businesses, without unreasonable interference from landlords, lienholders, or licensors thereunder; provided, however, that the DIP Agents (on behalf of the DIP Lenders) shall pay only rent and additional rent, fees, royalties, or other monetary obligations of the Debtors that first arise after the written notice referenced above from the DIP Agents and that accrue during the period of such occupancy or use by DIP Agents calculated on a per diem basis. For the avoidance of doubt, (A) all of the Debtors' obligations under any applicable lease or license shall not be affected, limited, or otherwise modified by the rights granted to the DIP Agents pursuant to this paragraph and (B) any affected landlords, lienholders, and/or licensors shall retain all remedies available under applicable non-bankruptcy law. Nothing herein shall require the Debtors, the DIP Agents or the other DIP Secured Parties, to assume any lease or license under Bankruptcy Code

section 365(a) as a precondition to the rights afforded to the DIP Agents and the other DIP Secured Parties herein.

30. *Master Proof of Claim.* The Prepetition Agent shall not be required to file proofs of claim in the Chapter 11 Cases or any successor case in order to assert claims on behalf of itself and the applicable Prepetition Secured Parties for payment of the applicable Prepetition Debt arising under the applicable Prepetition Credit Documents, nor shall any other Prepetition Secured Party be required to file any proofs of claim in the Chapter 11 Cases or any successor case in order to assert claims on behalf of itself for payment of the Prepetition Debt arising under the Prepetition Credit Documents. The statements of claim in respect of the Prepetition Debt set forth in this Final Order, together with any evidence accompanying the Motion and presented at the Hearings, are deemed sufficient to and do constitute proofs of claim in respect of such debt and such secured status. However, in order to facilitate the processing of claims, to ease the burden upon the Court and to reduce an unnecessary expense to the Debtors' estates, the Prepetition Agent is authorized to file in the Debtors' lead chapter 11 case, *In re Hopedale Mining LLC, et al.*, Case No. 20-12043, a single, master proof of claim on behalf of the relevant Prepetition Secured Parties on account of any and all of their respective claims arising under the applicable Prepetition Credit Documents and hereunder (each, a '**Master Proof of Claim**'), which shall be deemed asserted against each of the Debtors. Upon the filing of a Master Proof of Claim, insofar as deemed asserted against each of the Debtors, the Prepetition Agent and the Prepetition Secured Parties, and each of their respective successors and assigns, as applicable, shall be deemed to have filed a proof of claim in the amount set forth opposite its name therein in respect of its claims (which names may be redacted in the publicly filed version of the Master

Proof of Claim) against each of the Debtors of any type or nature whatsoever with respect to the applicable Prepetition Credit Documents, and the claim of each Prepetition Secured Party (and each of its respective successors and assigns), named in a Master Proof of Claim shall be treated as if such entity had filed a separate proof of claim in each of these Chapter 11 Cases. The Master Proofs of Claim shall not be required to identify whether any Prepetition Secured Party acquired its claim from another party and the identity of any such party or to be amended to reflect a change in the holders of the claims set forth therein or a reallocation among such holders of the claims asserted therein resulting from the transfer of all or any portion of such claims. The provisions of this paragraph 34 and each Master Proof of Claim are intended solely for the purpose of administrative convenience and shall not affect the right of each Prepetition Secured Party (or its successors in interest) to vote separately on any plan proposed in these Chapter 11 Cases. The Master Proofs of Claim shall not be required to attach any instruments, agreements or other documents evidencing the obligations owing by each of the Debtors to the applicable Prepetition Secured Parties, which instruments, agreements or other documents will be provided upon written request to counsel to the Prepetition Agent.

31. ~~30. Interim~~Final *Order Governs.* In the event of any inconsistency between the provisions of ~~this Interim~~the Final Order, the DIP Documents or any other order entered by this Court ~~(other than the Final Order)~~, the provisions of this ~~Interim~~Final Order shall govern. Notwithstanding anything to the contrary in any other order entered by this Court, any payment made pursuant to, or authorization contained in, any other order entered by this Court shall be consistent with and subject to the requirements set forth in this ~~Interim~~Final Order and the DIP

Documents, including, without limitation, the Approved Cash Flow Forecast (subject to permitted variances).

32. ~~31.~~ *Binding Effect; Successors and Assigns.* Subject only to paragraph 27, the DIP Documents and the provisions of this ~~Interim~~Final Order, including all findings herein, shall be binding upon all parties in interest in these Chapter 11 Cases, including, without limitation, the DIP Secured Parties, the Prepetition Secured Parties, ~~any~~the Creditors' Committee, and the Debtors and their respective successors and assigns (including any chapter 7 or chapter 11 trustee hereinafter appointed or elected for the estate of any of the Debtors, an examiner appointed pursuant to section 1104 of the Bankruptcy Code, or any other fiduciary appointed as a legal representative of any of the Debtors or with respect to the property of the estate of any of the Debtors) and shall inure to the benefit of the DIP Secured Parties, the Prepetition Secured Parties and the Debtors and their respective successors and assigns; provided, that the DIP Secured Parties and the Prepetition Secured Parties shall have no obligation to permit the use of the Prepetition Collateral (including Cash Collateral) by, or to extend any financing to, any chapter 7 trustee, chapter 11 trustee or similar responsible person appointed for the estates of the Debtors.

33. ~~32.~~ *Exculpation.* Nothing in this ~~Interim~~Final Order, the DIP Documents, the existing agreements or any other documents related to the transactions contemplated hereby shall in any way be construed or interpreted to impose or allow the imposition upon any DIP Secured Party or any Prepetition Secured Party of any liability for any claims arising from the prepetition or postpetition activities of the Credit Parties in the operation of their businesses, or in connection with their restructuring efforts.

34. ~~33.~~ *Limitation of Liability.* In determining to make any loan or other extension of credit under the DIP Credit Agreement, to permit the use of Cash Collateral or in exercising any rights or remedies as and when permitted pursuant to this ~~Interim~~Final Order or the DIP Documents, none of the DIP Secured Parties, or the Prepetition Secured Parties shall (i) be deemed to be in “control” of the operations or participating in the management of the Debtors; (ii) owe any fiduciary duty to the Debtors, their respective creditors, shareholders or estates; or (iii) be deemed to be acting as a “Responsible Person” or “Owner” or “Operator” with respect to the operation or management of the Debtors (as such terms or similar terms are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601, et seq., as amended, or any similar federal or state statute).

35. ~~34.~~ *Effectiveness.* This ~~Interim~~Final Order shall constitute findings of fact and conclusions of law<sup>4516</sup> and shall take effect and be fully enforceable *nunc pro tunc* to the Petition Date immediately upon entry hereof. Notwithstanding Bankruptcy Rules 4001(a)(3), 6004(h), 6006(d), 7062, or 9014 of the Bankruptcy Rules, or any Local Bankruptcy Rule, or Rule 62(a) of the Federal Rules of Civil Procedure, this ~~Interim~~Final Order shall be immediately effective and enforceable upon its entry and there shall be no stay of execution or effectiveness of this ~~Interim~~Final Order.

36. ~~35.~~ *Modification of DIP Documents and Approved Cash Flow Forecast.* The Credit Parties are hereby authorized, ~~during the Interim Period and~~ without further order of this Court, to enter into agreements with the DIP Secured Parties providing for any consensual non-material modifications to the Approved Cash Flow Forecast or the DIP Documents, or of

<sup>4516</sup> Findings of fact shall be construed as conclusions of law, and conclusions of law shall be construed as findings of fact, pursuant to Bankruptcy Rule 7052.

any other modifications to the DIP Documents necessary to conform the terms of the DIP Documents to this ~~Interim~~Final Order, in each case consistent with the amendment provisions of the DIP Documents, and shall provide contemporaneous notice of such modification to the Creditors' Committee.

37. ~~36.~~ *Headings.* Section headings used herein are for convenience only and are not to affect the construction of or to be taken into consideration in interpreting this ~~Interim~~Final Order.

38. ~~37.~~ *Payments Held in Trust.* Except as expressly permitted in this ~~Interim~~Final Order or the DIP Documents, in the event that any person or entity receives any payment on account of a security interest in Prepetition Collateral or DIP Collateral, receives any DIP Collateral or any proceeds of DIP Collateral or receives any other payment with respect thereto from any other source prior to payment in full of all DIP Obligations under the DIP Documents and termination of the DIP Commitments in accordance with the DIP Documents, such person or entity shall be deemed to have received, and shall hold, any such payment or proceeds of Collateral in trust for the benefit of the DIP Secured Parties (as applicable based on the specific asset at issue) and shall immediately turn over such proceeds to any DIP Agent, or as otherwise instructed by this Court, for application to the DIP Obligations in accordance with the DIP Documents and this Final Order.

39. *Credit Bidding.* Subject to paragraph 27(a)(i) hereof, unless otherwise ordered by the Court and notwithstanding anything contained herein to the contrary, (a) the DIP Collateral Agent, on behalf of itself and the DIP Lenders, shall have the right to credit bid, in accordance with the DIP Documents, up to the full amount of the DIP Obligations in any sale of the DIP

Collateral (or any part thereof); (b) the Prepetition Collateral Agent, on behalf of itself and the applicable Prepetition Secured Parties, shall have the right to credit bid up to the full amount of the Prepetition Debt in any sale of the Prepetition Collateral (or any part thereof), in each case of (a) and (b), as provided for in section 363(k) of the Bankruptcy Code, without the need for further Court order authorizing the same and whether any such sale is effectuated through section 363(k) or 1129(b) of the Bankruptcy Code, by a chapter 7 trustee under section 725 of the Bankruptcy Code, or otherwise. Each of the DIP Collateral Agent, on behalf of itself and the DIP Lenders, and the Prepetition Collateral Agent, on behalf of itself and the applicable Prepetition Secured Parties, shall have the right to assign its credit bidding rights to any party, in each case in its sole discretion.

40. *Certain Governmental Matters.*

(a) Notwithstanding anything to the contrary in this ~~Interim~~Final Order or DIP Documents, nothing in this Final Order or the DIP Documents shall relieve the Debtors of any obligations under federal, state or local police or regulatory laws or under 28 U.S.C. § 959(b), provided that nothing herein shall limit or impair the Debtors' rights to assert defenses under applicable law and nothing herein shall create new defenses to obligations under police or regulatory laws or 28 U.S.C. § 959(b).

(b) Notwithstanding anything to the contrary in this Final Order or the DIP Documents, nothing in this Final Order or the DIP Documents shall impair or adversely affect the United States of America's rights, claims and defenses of set-off and recoupment, or those of any State or any of the foregoing's respective agencies, departments or agents, and all such rights, claims and defenses shall be preserved in their entirety.



(c) Stipulation 7(f) and paragraphs 26, 27, 28, 32, and 33 of this Final Order shall apply with respect to liabilities to governmental units under police or regulatory law only so long as the actions of the DIP Agent, DIP Lenders, or the Prepetition Secured Parties, as applicable, have not constituted and do not constitute, within the meaning of 42 U.S.C. § 9601(20)(F), actual participation in the management or operational affairs of a vessel or facility owned or operated by the Debtors, or otherwise caused lender liability to arise or the status of control, responsible person, owner, or operator to exist under applicable federal, state, or local law. For the avoidance of doubt, in determining to make any loan or other extension of credit under the DIP Credit Agreement, permitting the use of Cash Collateral, performing under this Order and the DIP Documents in the ordinary course, no DIP Agent, DIP Lender or Prepetition Secured Party shall be deemed to have participated in the management or operational affairs of a vessel or facility owned or operated by the Debtors, or to have otherwise caused lender liability to arise or assumed the status of control, responsible person, owner, or operator, *provided, however*, that foreclosing, exercising remedies, or becoming involved in decision-making on the Debtors' compliance with police or regulatory laws or regulations would not be ordinary course performance. Each DIP Agent, DIP Lender, and Prepetition Secured Party preserves and is not waiving any defenses it may have to any claims as set forth in 42 U.S.C. § 9601(20)(F) or comparable, federal, state, and local law.

(d) Notwithstanding anything to the contrary in this Final Order or the DIP Documents, nothing in this Final Order or the DIP Documents shall impair or adversely affect any right under applicable law of any governmental unit with respect to any financial assurance, letter of

credit, trust, or bond or limit any governmental unit in the exercise of its police powers in accordance with 11 U.S.C. § 362(b)(4).

(e) Notwithstanding anything to the contrary in this Final Order or the DIP Documents, nothing in this Final Order or the DIP Documents shall impair or adversely affect the right of the United States or any State to object to any credit bid for cause.

41. *DIP Credit Agreement Modifications.* The following provisions of the DIP Credit Agreement are hereby amended and restated in their entirety as follows:

(a) Section 9.01(w)(x): “the entry of an order by the Bankruptcy Court granting relief from or modifying the automatic stay of section 362 of the Bankruptcy Code (x) to allow any creditor to execute upon or enforce a Lien on any Collateral with a value in excess of \$250,000 with respect to any single such order or \$750,000 in the aggregate with respect to all such orders, or (y) with respect to any Lien of or the granting of any Lien on any Collateral to any state or local environmental or regulatory agency or authority having priority over the Liens in favor of the Agents;”

(b) Section 9.01(w)(xvii): “the entry of an order precluding the Collateral Agent from having the right to or being permitted to “credit bid” with respect to any of the assets of the Loan Parties constituting DIP Collateral or Prepetition Collateral, as applicable (excluding an order determining the extent of the Prepetition Secured Parties’ liens in connection with any Initial Challenge);”

(c) Schedule 7.01(y): Schedule 7.01(y) will be replaced in its entirety with the Schedule 7.01(y) annexed to this Final Order as **Exhibit 2**.

(d) Notwithstanding the terms of the DIP Documents, the DIP Lenders are not being granted a lien on Avoidance Actions, Avoidance Proceeds, or Unencumbered Commercial Tort Claims.

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

43. ~~39.~~ *Bankruptcy Rules.* The requirements of Bankruptcy Rules 4001, 6003 and 6004, in each case to the extent applicable, are satisfied by the contents of the Motion.

44. ~~40.~~ *Necessary Action.* The Debtors are authorized to take any and all such necessary actions as are reasonable and appropriate to implement the terms of this ~~Interim~~Final Order.

45. ~~41.~~ *Retention of Jurisdiction.* The Court shall retain jurisdiction to implement, interpret and enforce the provisions of this ~~Interim~~Final Order, and this retention of jurisdiction shall survive the confirmation and consummation of any chapter 11 plan for any one or more of the Debtors notwithstanding the terms or provisions of any such chapter 11 plan or any order confirming any such chapter 11 plan.

~~42. — *Final Hearing.* The Final Hearing is scheduled for August 12, 2020, at 10:30 a.m. (prevailing Eastern Time) and will be conducted virtually. Any party who wishes to attend telephonically is required to make arrangements through CourtSolutons LLC at [www.court-solutions.com](http://www.court-solutions.com), by calling (917) 746-7476 or emailing [info@court-solutions.com](mailto:info@court-solutions.com). Any objections or responses to entry of a final order granting the relief requested in the Motion shall be filed on or before 4:00 p.m., prevailing Eastern Time, on August 10, 2020.~~

~~43. — *Objections.* Any party in interest objecting to the relief sought at the Final Hearing shall file and serve written objections, which objections shall be served upon:~~

- ~~(a) — proposed counsel to the Debtors, Frost Brown Todd LLC, 3300 Great American Tower, 301 East Fourth Street, Cincinnati, Ohio 45202, Attn: Douglas L. Lutz (dlutz@fbtlaw.com), Mark A. Platt (mplatt@fbtlaw.com) and A.J. Webb (awebb@fbtlaw.com);~~
- ~~(b) — counsel to the DIP Agents and Prepetition Agents, Stroock & Stroock & Lavan LLP, 180 Maiden Lane, New York, New York 10038, Attn: Frank A. Merola (fmerola@stroock.com), Samantha Martin (smartin@stroock.com) and Alex Cota (acota@stroock.com);~~
- ~~(c) — counsel to the DIP Lenders and Prepetition Lenders, Stroock & Stroock & Lavan LLP, 180 Maiden Lane, New York, New York 10038, Attn: Frank A. Merola (fmerola@stroock.com), Samantha Martin (smartin@stroock.com) and Alex Cota (acota@stroock.com); and Jackson Kelly PLLC, 100 West Main Street, Suite 700, Lexington, KY 40507 (Attn: Mary Elisabeth Naumann) and 221 NW Fifth Street, Evansville, IN 47708 (Attn: Charles A. Compton);~~
- ~~(d) — the U.S. Trustee (Attn: Monica Kindt (Monica.Kindt@usdoj.gov)); and~~
- ~~(e) — any other party that has filed a request for notices with this Court,~~

~~to allow actual receipt by the foregoing no later than August 10, 2020, at 4:00 p.m., prevailing Eastern Time.~~

~~44. — The Debtors shall within two (2) business days of its entry serve copies of this Interim Order (which shall constitute adequate notice of the Final Hearing, including, without limitation, notice that the Debtors will seek approval at the Final Hearing of a waiver of rights under sections 506(c) and 552(b) of the Bankruptcy Code) to the parties having been given notice of the Interim Hearing, to any party that has filed a request for notices with this Court.~~

~~45.~~ 46. The Debtors shall serve this order in accordance with all applicable rules and orders and shall file a certificate of service evidencing compliance therewith.

[SO ORDERED.]

Copies to Default List.

4852-0692-7044v3

Document comparison by Workshare 10.0 on Wednesday, August 12, 2020  
7:09:34 AM

Input:	
Document 1 ID	file:///C:/Users/implatt/ND Office Echo\VAULT-GLGUE90T/Rhino - Interim DIP Order (TO BE FILED) 4852-0692-7044 v.3.docx
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Moved to	3

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Format changed	0
Total changes	586