**ILLUSTRATIVE OUTLINE
INTERIM DIP FINANCING & CASH COLLATERAL ORDER**

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| **The Court recognizes that the form and structure of proposed DIP financings and the terms of cash collateral use vary depending on the facts and circumstances of each case and the commercial negotiations among the relevant parties. However, parties are encouraged to use this outline as a starting point, to edit, supplement, add or delete provisions as may be appropriate in light of the particular facts of each case, and to submit a mark-up showing any changes to assist the Court and other parties in review and consideration of the proposed order. This outline is intended a non-binding guide to facilitate the use of standardized language in complex chapter 11 cases and thereby assist the Court and other parties in interest in their review and facilitate a common understanding and universal application of DIP financing and cash collateral provisions.** |

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF New YORK

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| *In re:* | ) | Chapter 11 |
|  | ) |  |
| [Debtor], *et al.*,[[1]](#footnote-1) | ) | Case No. [●] (●) |
|  | ) |  |
|  Debtors. | ) | (Joint Administration Requested) |
|  | ) |  |
|  | ) | Re: Docket No. [●] |
| **INTERIM ORDER (I) AUTHORIZING THE DEBTORS TO (A) OBTAIN POSTPETITION FINANCING AND (B) USE CASH COLLATERAL, (II) GRANTING LIENS AND PROVIDING CLAIMS WITH [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** |

Upon the motion (the “***Motion***”)[[2]](#footnote-2) of [●] (“***[NAME]***” or “***DIP Borrower***”) and each of its affiliated debtors and debtors in possession (collectively, the “***Debtors***”) in the above‑captioned chapter 11 cases (the “***Chapter 11 Cases***”), pursuant to sections 105, 361, 362, 363, 364, 503, 506, 507 and 552 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the “***Bankruptcy Code***”), Rules 2002, 4001, 6003, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the “***Bankruptcy Rules***”), and Rules 2002-1, 4001-2 and 9013-1 of the Bankruptcy Local Rules of the United States Bankruptcy Court for the Southern District of New York (the “***Local Bankruptcy Rules***”) promulgated by the United States Bankruptcy Court for the Southern District of New York (the “***Court***”), seeking entry of an interim order (this “***Interim Order***”) and a final order (“***Final Order***”), authorizing the Debtors to obtain postpetition financing in the form of a credit facility in an aggregate principal amount of up to $[●] (the “***DIP Facility***”), pursuant to which [(a) an aggregate principal amount of up to $[●] may be borrowed on and after the Closing Date, and (b) following entry of Final Order, the remaining aggregate principal amount under the DIP Facility shall be available in one or more borrowings,] **[NTD: to be revised or supplemented as necessary based on the specific structure of the proposed financing]** in each case, in accordance with and subject to the terms and conditions set forth in the DIP Loan Documents and this Interim Order; and the Court, having considered the Motion, the *Declaration of [●]* [Docket No. ●] (the “***DIP Declaration***”), the evidence submitted and arguments proffered or adduced at the interim hearing held before this Court on [●] (the “***Interim Hearing***”), and upon the record of the Chapter 11 Cases; and due and proper notice of the Interim Hearing having been given in accordance with Bankruptcy Rules 4001 and 9014 and all applicable Local Bankruptcy Rules; and it appearing that no other or further notice need be provided; and all objections, if any, to the relief requested in the Motion having been withdrawn, resolved, or overruled by the Court; and after due deliberation and consideration, and for good and sufficient cause appearing therefor:

THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:[[3]](#footnote-3)

### *Petition Date.* On [●] (the “***Petition Date***”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in this Court commencing these Chapter 11 Cases.

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

### *Committee Formation*. As of the date hereof, the Office of the United States Trustee (the “***U.S. Trustee***”) has not appointed an official statutory committee of unsecured creditors in the Chapter 11 Cases pursuant to section 1102 of the Bankruptcy Code (the “***Official Committee***”).

### *Jurisdiction and Venue*. This Court has jurisdiction over the Chapter 11 Cases, the Motion, and the parties and property affected hereby pursuant to 28 U.S.C. § 1334. This Court’s consideration of the Motion constitutes a core proceeding pursuant to 28 U.S.C. § 157(b). Venue for these Chapter 11 Cases and the proceedings on the Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

### *Statutory Predicates for Relief*. The statutory predicates for the relief set forth herein are sections [105, 361, 362, 363, 364, 503, 506, 507 and 552] of the Bankruptcy Code, Bankruptcy Rules [2002, 4001, 6003, 6004, and 9014, and Local Bankruptcy Rule 4001-2].

### *Debtors’ Stipulations and Releases.* Subject only to the rights of parties-in -interest specifically set forth in Paragraph [●] of this Interim Order (and subject to the limitations contained therein), the Debtors stipulate and agree as to the following (collectively, the “***Debtors’ Stipulations***”):

**[NTD: To the extent applicable, this paragraph should include a description of any stipulations made by the Debtors as to the enforceability of any prepetition debt, the validity and perfection of any prepetition liens in collateral, and/or any releases to be provided to prepetition lenders****.]**

### *Findings Regarding DIP Facility and Use of Cash Collateral.*

### *Need for Immediate Access.* The Debtors have an immediate need to obtain the DIP Facility and to use Cash Collateral, solely to the extent and for the purposes permitted in the Approved DIP Budget (as defined below), subject to any Permitted Variances (as defined in the DIP Loan Agreement) to, among other things, (A) permit the orderly continuation of their businesses; (B) pay certain adequate protection payments required hereunder; and (C) pay the costs of administration of their estates and satisfy other working capital and general corporate purposes of the Debtors. The ability of the Debtors to obtain sufficient working capital and liquidity through the incurrence of the new indebtedness for borrowed money and other financial accommodations under the DIP Facility is vital to the preservation and maintenance of the Debtors’ going concern value and successful restructuring. The Debtors will not have sufficient sources of working capital and financing to operate their businesses in the ordinary course of business throughout the Chapter 11 Cases without access to the DIP Facility and the authorized use of Cash Collateral.

### *Inability to Obtain More Favorable Financing.* The Debtors are unable to obtain financing on more favorable terms from sources other than the DIP Lenders under the DIP Loan Documents, and are unable to obtain unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as administrative expense claims. The Debtors also are unable to obtain secured credit allowable under sections 364(c)(1), 364(c)(2), and 364(c)(3) of the Bankruptcy Code for the purposes set forth in the DIP Loan Documents without the Debtors granting the DIP Liens (as defined below) and the DIP Superpriority Claims (as defined below) to the DIP Secured Parties under the terms and conditions set forth in this Interim Order and the other DIP Loan Documents.

### *Good Faith.* The DIP Facility has been negotiated in good faith and at arm’s length among the Debtors and the DIP Secured Parties, and all of the DIP Obligations, shall be deemed to have been extended by the DIP Secured Parties 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. The DIP Obligations, the DIP Liens, and the DIP Superpriority Claims shall be entitled to the full protection of section 364(e) of the Bankruptcy Code to the extent provided therein in the event that this Interim Order or any provision hereof is vacated, reversed, or modified on appeal or otherwise, and any liens or claims granted, or payments made, in each case, to the DIP Secured Parties and arising prior to the effective date of any such vacatur, reversal, or modification of this Interim Order shall be governed in all respects by the original provisions of this Interim Order, including entitlement to all of the rights, remedies, privileges, and benefits granted herein.

### *Arm’s Length, Good Faith Negotiations*. The terms of this Interim Order were negotiated in good faith and at arm’s length between the Debtors and the Prepetition Secured Parties. The Prepetition Secured Parties have acted in good faith in respect of all actions taken by them in negotiating, implementing, documenting, or obtaining requisite approvals of the Debtors’ incurrence of the DIP Facility and use of Cash Collateral, including in respect of all of the terms of this Interim Order, all documents related thereto, and all transactions contemplated by the foregoing.

### *Approved DIP Budget*. The Debtors have prepared and delivered to the DIP Secured Parties the initial cash flow forecast set forth on Exhibit [●] attached hereto, which has been approved by the DIP Lenders (the “***Initial DIP Budget***”, as amended, supplemented or updated from time to time in accordance with the terms of this Interim Order and the DIP Loan Agreement, the “***Approved DIP Budget***”), reflecting the Debtors’ projected cash receipts expected to be collected, and necessary disbursements and expenditures (including debt service costs) expected to be incurred or made, by the Debtors for each calendar week during the period from the calendar week ending on the Friday of the week [in which the Petition Date occurs] through and including the end of the [thirteenth (13th)] calendar week thereafter, (ii) the sum of weekly unused availability under the DIP Facility, plus restricted and unrestricted balances of cash on hand, and (iii) the weekly outstanding principal balance of amounts outstanding under the DIP Facility.

### *Adequate Protection*. Each of the Prepetition Secured Parties are entitled, pursuant to sections 105, 361, 362, and 363(e) of the Bankruptcy Code, to adequate protection against the post-petition diminution in value of their respective liens and security interests in the Prepetition Collateral, including Cash Collateral (any such post-petition diminution, to the maximum extent permitted under the Bankruptcy Code, “***Diminution in Value***”), subject to the reservation of rights set in paragraph [●] hereof (solely as it pertains to the Prepetition Collateral).

### *Good Cause Shown; Best Interest*. Good cause has been shown for entry of this Interim Order. The entry of this Interim Order is in the best interests of the Debtors’ respective estates and creditors as its implementation will, among other things, allow for the continued operation of the Debtors’ existing business and enhance the Debtors’ prospects for a successful restructuring. Absent the relief sought by this Interim Order, the Debtors’ estates will be immediately and irreparably harmed.

### *Notice.* In accordance with Bankruptcy Rules 2002, 4001(b) and (c), and 9014, and the Local Rules, notice of the Interim Hearing and the emergency relief requested in the Motion has been provided by the Debtors. Under the circumstances, the Debtors’ notice of the Motion, the relief requested therein and the Interim Hearing complies with Bankruptcy Rules 2002, 4001(b) and (c), and 9014 and the applicable Local Rules.

**NOW THEREFORE**, based upon the Motion, the DIP Declaration, the evidence adduced at the Interim Hearing and the record before the Court, and after due consideration, and good and sufficient cause appearing therefor,

**IT IS HEREBY ORDERED THAT:**

###### *Motion Granted.* The Motion is hereby granted, and the DIP Facility and the use of Cash Collateral is hereby authorized, in each case, upon the terms and conditions set forth in this Interim Order and the DIP Loan Documents. Any objections to the relief set forth in this Interim Order that have not been withdrawn, waived, or settled, are hereby denied and overruled.

###### *Authorization of DIP Facility and DIP Loan Documents.*

*Authorization of DIP Loan Documents.* The DIP Loan Parties are hereby authorized and empowered to execute, enter into and deliver, and perform under the DIP Loan Documents and such additional documents, instruments, certificates and agreements as may be reasonably necessary or required to perform their obligations under the DIP Facility and this Interim Order and to implement the transactions contemplated thereunder and hereunder.

*Authorization to Borrow.* The DIP Borrower is hereby authorized to borrow and incur, and the DIP Guarantors are hereby authorized to guarantee such borrowing and incurrence on a joint and several basis, an aggregate principal amount of up to $[●] million (plus applicable interest, payments, fees (including professional fees and expenses), costs, expenses, charges and other amounts payable under this Interim Order and the DIP Loan Documents in connection with such borrowing), under the DIP Facility, subject to the terms and conditions set forth in the DIP Loan Documents and this Interim Order.

*Use of DIP Collateral and Cash Collateral*. The Debtors are hereby authorized to use the proceeds of the DIP Loans and all Cash Collateral solely to the extent and for the purposes permitted in the Approved DIP Budget (subject to Permitted Variances), subject to the terms and conditions set forth in the DIP Loan Documents and this Interim Order.

*DIP Fees and Expenses; Indemnification.* Subject to paragraph 2(b) of this Interim Order, the DIP Loan Parties are hereby authorized and empowered to pay all DIP Obligations as such amounts become due and payable in accordance with this Interim Order and the DIP Loan Documents, without the need for further order of the Court. Without limiting the foregoing, the DIP Loan Parties are hereby authorized and empowered to (i) pay any and all fees, including the [●], payable under the DIP Loan Documents, (ii) indemnify each of the [Indemnified Persons] (as defined in the DIP Loan Agreement) as and to the extent provided under the DIP Loan Agreement, and (iii) pay all out of pocket costs and expenses of the DIP Secured Parties, including, without limitation, the reasonable and documented fees and expenses of [**NTD: INSERT PROFESSIONALS AND PARTY REPRESENTED**] (collectively, the “***DIP Professional Fees and Expenses***”).

*Amendment of DIP Loan Documents.* The DIP Loan Parties are hereby authorized and empowered to execute, enter into and deliver, and perform under one or more amendments, waivers, consents or other modifications to and under the DIP Loan Documents (in each case, in accordance with the terms of the applicable DIP Loan Document); *provided however,* that a copy of all amendments, waivers, consents or other modifications to and under the DIP Loan Documents shall be provided (which may be by electronic mail) to the U.S. Trustee and counsel to the Official Committee (once appointed) no later than [●] Business Days prior to the anticipated date of effectiveness thereof; *provided further, however,* that all material amendments or modifications to and under the DIP Loan Documents (“***Material DIP Amendment***”) shall be filed with the Court, and if no objection to the Material DIP Amendment is made within [●] business days of the filing of the Material DIP Amendment, then, without further application to or order of the Court, such Material DIP Amendment shall automatically be deemed approved and effective; *provided further, however*, if an objection is made within such time period, then such Material DIP Amendment shall be subject to a hearing and approval of the Court.

*Performance of Other Acts*. The DIP Loan Parties are hereby authorized and empowered to execute such other documents, and perform all such other acts, as may be reasonably necessary or required for the DIP Loan Parties to perform under the DIP Facility and implement the transactions contemplated in this Interim Order and the DIP Loan Documents.

*Refinancing / Roll-Up.*

**[NTD: As and to the extent applicable, describe any refinancing or roll-up transactions contemplated under the DIP Facility and include operative language with respect thereto including the ability of the Court to unwind or partially unwind as per Local Rule 4001-2 (f)(5).]**

###### *DIP Obligations.*

Upon execution and delivery thereof, the DIP Loan Documents shall constitute valid, binding, enforceable, and non-avoidable obligations of each of the DIP Loan Parties, and shall be fully enforceable against each of the DIP Loan Parties, their estates, and any successors thereto, including, without limitation, any estate representative or trustee appointed in any of the Chapter 11 Cases, in any case under Chapter 7 of the Bankruptcy Code upon the conversion of any of the Chapter 11 Cases, and/or upon the dismissal of any of the Chapter 11 Cases or any such successor cases (collectively, the “***Successor Cases***”), in each case, in accordance with the terms of the DIP Loan Documents and this Interim Order.

Upon execution and delivery thereof, the DIP Loan Parties shall be jointly and severally liable for any and all DIP Obligations. The DIP Obligations shall be due and payable, without notice or demand, and the use of Cash Collateral shall automatically cease, on the DIP Termination Declaration Date (as defined below) (subject to Paragraph [●] hereof).

All obligations incurred, payments made, and transfers or grants of liens and security interests set forth in this Interim Order and the DIP Loan Documents by the DIP Loan Parties are granted to or for the benefit of the DIP Secured Parties and the Prepetition Secured Parties (as applicable) for fair consideration and reasonably equivalent value and are granted contemporaneously with the making of the loans and commitments and other financial accommodations secured thereby. No obligation, payment, transfer, or grant of liens or security interests under this Interim Order or the DIP Loan Documents to the DIP Secured Parties or the Prepetition Secured Parties (as applicable) shall be limited, stayed, restrained, voidable, avoidable, or recoverable under the Bankruptcy Code or under any applicable law, or subject to any Challenge (subject, solely in the case of the DIP Professional Fees and Expenses and the Adequate Protection Fees and Expenses (as defined below), to the professional fee review procedures set forth in Paragraph [●] of this Interim Order).

###### *DIP Liens.*

As security for the DIP Obligations, effective as of the entry of this Interim Order (and without the necessity of the execution, recordation or filing by the DIP Loan Parties or the DIP Secured Parties of any pledge, collateral or security documents, mortgages, deeds of trust, financing statements, notations of certificates of title, control agreements or other similar documents, or the taking of any other action to take possession of or control over any DIP Collateral), the DIP Agent, for the benefit of the DIP Secured Parties, is hereby granted valid, binding, enforceable, non-avoidable, and automatically and properly perfected liens and security interests (collectively, the “***DIP Liens***”) in all DIP Collateral, in each case, subject and subordinate to the Carve Out, and subject to the relative priorities set forth in this Interim Order.

The DIP Liens shall be subject to the following priorities (subject in each case to the Carve Out):

**[NTD: Describe the nature, extent and** **priority of such liens and any other liens granted under the Interim Order.]**

###### *DIP Superpriority Claims.* Subject only to the Carve Out, pursuant to section 364(c)(1) of the Bankruptcy Code, all of the DIP Obligations shall constitute allowed superpriority administrative expense claims against each of the Debtors’ estates to the extent set forth in the Bankruptcy Code (the “***DIP Superpriority Claims***”), with priority over any and all other administrative expense claims, adequate protection claims, and all other claims against the Debtors, now existing or hereafter arising, of any kind whatsoever. 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 shall be payable by each of the Debtors on a joint and several basis.

###### *Adequate Protection*. 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 Prepetition Liens in Prepetition Collateral (including Cash Collateral), as follows:

*Adequate Protection Claims*. The Prepetition Agent/Trustee, for the benefit of the Prepetition Secured Parties, is hereby granted, in the amount of any net Diminution in Value of the Prepetition Liens in the Prepetition Collateral (including Cash Collateral) from and after the Petition Date, superpriority administrative expense claims to the extent contemplated by section 507(b) of the Bankruptcy Code (the “***Adequate Protection Claims***”) against each of the Debtors. The Adequate Protection Claims shall be (a) subject and subordinate only to the Carve Out and the DIP Superpriority Claims, and (b) senior to any and all other administrative expense claims and all other claims against the Debtors and their estates, now existing or hereafter arising, of any kind or nature whatsoever.

*Adequate Protection Liens*. The Prepetition Agent, for the benefit of the Prepetition Secured Parties, is hereby granted, effective and perfected as of the entry of this Interim Order (and without the necessity of the execution, recordation or filing by the DIP Loan Parties or the DIP Secured Parties of any pledge, collateral or security documents, mortgages, deeds of trust, financing statements, notations of certificates of title, control agreements or other similar documents, or the taking of any other action to take possession of or control over any DIP Collateral), in the amount of any net Diminution in Value of the Prepetition Liens in the Prepetition Collateral (including Cash Collateral) from and after the Petition Date, valid, binding, enforceable and automatically perfected liens and security interests in [●] (the “***Adequate Protection Liens***”). The Adequate Protection Liens shall have the following relative rank and priority:

**[NTD: Describe the nature, extent and priority of such liens and any other liens granted under the Interim Order.]**

*Adequate Protection Professional Fees and Expenses*. The DIP Loan Parties are authorized and empowered to pay all of the out of pocket fees, costs and expenses of (i) the DIP Secured Parties, including, without limitation, the reasonable and documented fees and expenses of [**FIRM**] (collectively, the “***Adequate Protection Professional Fees and Expenses***”).

*Reporting*. The Debtors shall provide the Prepetition Secured Parties and counsel to the Official Committee, once appointed (and their respective advisors) with all written reports required to be delivered to the DIP Secured Parties under the DIP Loan Documents and this Interim Order.

###### *Review of Professional Fees and Expenses.* The payment of all DIP Professional Fees and Expenses and Adequate Protection Professional Fees and Expenses hereunder shall be made without the necessity of filing fee applications with the Court or compliance with the U.S. Trustee’s guidelines and shall not be subject to further application to or approval of the Court; *provided, however,* each such professional shall provide summary copies of its invoices (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 their invoices shall not constitute any waiver of the attorney-client privilege or of any benefits of the attorney work product doctrine) to counsel to the Debtors, the U.S. Trustee, and counsel to the Official Committee (collectively, the “***Review Parties***”). Any objections raised by any Review Party with respect to such invoices must be in writing and state with particularity the grounds therefor and must be submitted to the affected professional within ten (10) calendar days after delivery of such invoices to the Review Parties (such ten (10) day calendar period, the “***Review Period***”). If no written objection is received prior to the expiration of the Review Period from the Review Parties, the Debtors shall promptly pay such invoices following the expiration of the Review Period. If an objection is received within the Review Period from the Review Parties, the Debtors shall promptly pay the undisputed amount of the invoice, and the disputed portion of such invoice shall not be paid until such dispute is resolved by agreement between the affected professional and the objecting party or by order of this Court.

###### *Modification of Automatic Stay.* The automatic stay imposed by section 362(a) of the Bankruptcy Code is hereby vacated and modified, without application to or further order of this Court, to permit: (a) the DIP Loan Parties to grant the DIP Liens and the DIP Superpriority Claims, and to perform such acts as the DIP Secured Parties may request to assure the perfection and priority of the DIP Liens, (b) the DIP Loan Parties to incur all DIP Obligations as contemplated under this Interim Order and the DIP Loan Documents, (c) the Debtors to grant the Adequate Protection Liens and the Adequate Protection Claims, and to perform such acts as the Prepetition Agent/Trustee may request to assure the perfection and priority of the Adequate Protection Liens, (d) the DIP Loan Parties to incur all liabilities and obligations to the Prepetition Secured Parties, including all Adequate Protection Obligations, as contemplated under this Interim Order and the DIP Loan Documents, (e) subject to paragraph [●] of this Interim Order, the DIP Secured Parties and the Prepetition Secured Parties to exercise, upon the occurrence of any DIP Termination Event (as defined below), all rights and remedies provided for in this Interim Order, the DIP Loan Documents, the Prepetition Loan Documents or applicable law, and (f) the DIP Loan Parties to perform under this Interim Order and the DIP Loan Documents, and to take any and all other actions that may be reasonably necessary or required for the performance by the DIP Loan Parties under this Interim Order and the DIP Loan Documents and the implementation of the transactions contemplated hereunder and thereunder.

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

This Interim Order shall be sufficient and conclusive evidence of the attachment, validity, perfection, and priority of all liens and security interests granted hereunder and under the DIP Loan Documents, without the necessity of the execution, recordation or filing of any pledge, collateral or security agreements, mortgages, deeds of trust, control agreements, financing statements, notations of certificates of title for titled goods, or any other document or instrument, or the taking of any other action to take possession or control of any DIP Collateral), to attach, validate, perfect or prioritize such liens and security interests, or to entitle the DIP Secured Parties and the Prepetition Secured Parties to the priorities granted herein (other than, to the extent applicable, any such filings required under applicable non-U.S. law to attach, validate, perfect or prioritize such liens).

The DIP Agent and the Prepetition Agent/Trustee are each authorized, but not required, to (and if requested by the DIP Agent and/or the Prepetition Agent/Trustee, the DIP Loan Parties shall) execute, file and record financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments in any jurisdiction in order to validate, perfect, preserve and enforce the liens and security interests granted to them hereunder or under the DIP Loan Documents (each, a “***Perfection Action***”). Whether or not the DIP Agent or the Prepetition Agent/Trustee determines, in their sole discretion, choose to take any Perfection Action with respect to any liens or security interests granted hereunder, such liens and security interests shall nonetheless be deemed valid, perfected, allowed, enforceable, non-avoidable as of the entry of this Interim Order.

###### *DIP Termination Events; Exercise of Remedies.*

*DIP Termination Events*. The occurrence of an “Event of Default” under and as defined in the DIP Loan Agreement shall constitute a “DIP Termination Event” under this Interim Order (each a “***DIP Termination Event***”).

*Exercise of Remedies.* Upon the occurrence and during the continuation of a DIP Termination Event, without further application, notice, hearing or order of the Court, the automatic stay under section 362 of the Bankruptcy Code shall automatically be deemed vacated and modified to the extent necessary to permit the DIP Agent (acting at the instruction of the requisite DIP Lenders under the DIP Loan Agreement) and the Prepetition Agent/Trustee (acting at the instruction of the requisite Prepetition Secured Parties under the applicable Prepetition Loan Documents), to deliver a written notice (which may be via electronic mail) to counsel for the Debtors, the U.S. Trustee and counsel for the Official Committee (the “***Remedies Notice***”") to declare the occurrence of a DIP Termination Event (such date, the “***DIP Termination Declaration Date***”) and (i) terminate, reduce or restrict the commitments under the DIP Facility (to the extent any such commitment remains), (ii) accelerate and declare all DIP Obligations to be immediately due and payable, (iii) terminate the DIP Facility and the DIP Loan Documents as to any further liability or obligation thereunder, but without affecting the DIP Liens, the DIP Superpriority Claims or the DIP Obligations, (iv) terminate, restrict or revoke the ability of the Debtors to use Cash Collateral, (v) charge interest at the default rate set forth in the DIP Loan Agreement, and/or (vi) upon at least [●] business days’ notice from and after the DIP Termination Declaration Date (the “***Remedies Notice Period***”), exercise or enforce any rights against DIP Collateral or Prepetition Collateral (as the case may be); *provided, however*, that the DIP Loan Parties and the Official Committee (if appointed) may, during such period, be entitled to seek emergency relief before the Court, subject to the Court’s availability (“***Emergency Motion***”) (in which case, the Remedies Notice Period shall automatically extend until the Court’s adjudication of such Emergency Motion). Unless the Court orders otherwise, upon the expiration of the Remedies Notice Period the automatic stay shall automatically be deemed terminated, without further notice, hearing or order of the Court, and the DIP Agent and/or the Prepetition Secured Parties (each acting at the direction of the requisite parties under the applicable documents) shall be permitted to exercise all remedies set forth herein, in the DIP Loan Documents and/or the Prepetition Loan Documents (as applicable) or applicable law.

*Use of Cash Collateral During Remedies Notice Period.* During the Remedies Notice Period, the Debtors shall be permitted to use Cash Collateral solely to fund (i) payroll and other operating expenses that are critically necessary to keep the Debtors' businesses operating or that have been consented to by the Required DIP Lenders (which consent shall not be unreasonably withheld or delayed), and (ii) the Carve-Out;.

###### *Carve Out.*

*Priority of Carve Out*. Each of the DIP Liens, the DIP Superpriority Claims, the Prepetition Liens, the Adequate Protection Liens, and the Adequate Protection Claims shall be subject and subordinate to payment of the Carve Out.

*Carve Out.* The term “**Carve Out**”means the sum of (i) all unpaid fees required to be paid to the Clerk of the Court and the U.S. Trustee under 28 U.S.C. § 1930(a) plus interest at the statutory rate pursuant to 31 U.S.C. § 3717, (ii) all unpaid reasonable fees and expenses up to $[●] incurred by a trustee appointed under section 726(b) of the Bankruptcy Code, (iii) to the extent allowed by the Court at any time, all accrued but unpaid fees and expenses (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 Official Committee pursuant to section 328 or 1103 of the Bankruptcy Code (the “***Committee Professionals***”, and together with the Debtor Professionals, the “***Professional Persons***”) at any time on and before the date of delivery by the DIP Agent (at the instruction of the Required DIP Lenders) of a Carve Out Trigger Notice (as defined below) (the amounts set forth in the foregoing clauses (i), (ii) and (iii), the “***Pre-Carve Out Notice Amount***”), and (iv) Allowed Professional Fees of Professional Persons incurred after the date of delivery the Carve Out Trigger Notice, in an aggregate amount not to exceed $[●] (the amount set forth in this clause (iv), the “***Post-Carve Out Notice Amount***”, and together with the Pre-Carve Out Notice Amount, the “***Carve Out Amount***”); *provided, however*, that nothing herein shall be construed to impair the ability of any party-in-interest to object to the allowance of Allowed Professional Fees of Professional Persons.

*Carve-Out Trigger Notice*. For purposes of this Interim Order, the “***Carve Out Trigger Notice***” shall mean a written notice (which may be via electronic mail) delivered by the DIP Agent (acting at the instruction of the Required DIP Lenders) to counsel to the Debtors, the U.S. Trustee and counsel to the Official Committee (if appointed), which notice may be delivered following the occurrence of a DIP Termination Event, stating that the Carve Out has been triggered and the Post-Carve Out Notice Amount has been invoked. The Carve Out Trigger Notice may be included in the Remedies Notice.

On the date on which a Carve Out Trigger Notice is delivered (the “***Carve Out Trigger Date***”), the Carve Out Trigger Notice shall constitute a demand to the Debtors to utilize all cash on hand as of such date (net of any professional retainers) and any available cash thereafter held by any Debtor to fund into a segregated account (the “***Carve Out Account***”) an amount equal to (i) the Pre-Carve Out Notice Amount, and (ii) the Post-Carve Out Notice Amount. No later than [●] Business Day(s) after the delivery of a Carve Out Trigger Notice, each Professional Person shall deliver one additional statement to the Debtors, the DIP Agent and the Prepetition Agent/Trustee setting forth a good-faith estimate of the amount of any accrued but unpaid fees and expenses incurred by such Professional Person through and including the Carve Out Trigger Date, and the Debtors shall transfer such amounts to the Carve Out Account.

Notwithstanding anything to the contrary in this Interim Order, the DIP Loan Documents or the Prepetition Loan Documents, following delivery of a Carve Out Trigger Notice, the DIP Agent and the Prepetition Agent/Trustee 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 Account has been fully funded in an amount equal to the Carve Out Amount as set forth herein. The Carve Out Account shall not be subject to the control of any of the DIP Secured Parties or the Prepetition Secured Parties, and shall not be subject to the DIP Liens or the Adequate Protection Liens, nor shall the Carve Out constitute DIP Collateral or Prepetition Collateral; *provided, however,* that the DIP Secured Parties and the Prepetition Secured Parties shall have a residual interest in the Carve Out Account, with any excess paid to the DIP Agent for application to the DIP Obligations in accordance with the DIP Loan Documents until the DIP Obligations are paid in full, and any excess remaining thereafter shall be applied in accordance with this Interim Order.

Notwithstanding anything to the contrary in this Interim Order, (i) disbursements by the Debtors from the Carve Out Account shall not constitute loans or indebtedness under the DIP Loan Documents or the Prepetition Loan Documents or otherwise increase or reduce the DIP Obligations or the Prepetition Secured Obligations, (ii) the failure of the Carve Out Account to satisfy in full the Allowed Professional Fees shall not affect the priority of the Carve Out, and (iii) nothing contained herein shall constitute a cap or limitation on the amount that the Professional Persons may assert as administrative expense claims against the Debtors on account of Allowed Professional Fees incurred by such Professional Persons.

*Payment of Carve Out on or After the Carve Out Trigger Date.* Any payment or reimbursement made after the occurrence of the Carve Out Trigger Date in respect of any Allowed Professional Fees incurred after the occurrence of the Carve Out Trigger Date shall permanently reduce the Post-Carve Out Notice Amount on a dollar-for-dollar basis.

*No Direct Obligation to Pay Allowed Professional Fees.* None of the DIP Secured Parties 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, regardless of whether such fees or expenses have been allowed by the Court. Nothing in this Interim Order or otherwise shall be construed to obligate the DIP Secured Parties 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.

###### *Effect of the Debtors’ Stipulations on Third Parties.*

The Debtors’ Stipulations shall be binding upon the Debtors and any successor thereto immediately upon entry of this Interim Order. The Debtors’ Stipulations shall be binding upon all parties-in-interest, including, without limitation, the Official Committee, any statutory or non-statutory committees appointed or formed in the Chapter 11 Cases, and any other person or entity seeking to act on behalf of the Debtors’ estates (including any chapter 7 or chapter 11 trustee or examiner appointed or elected for any of the Debtors in the Chapter 11 Cases or any Successor Cases)(collectively, “***Successor Entities***”), unless the Official Committee or such other party-in-interest (i) files a motion seeking the requisite standing and authority to bring the Challenge (if and to the extent standing is required under applicable law) prior to the Challenge Deadline, which motion shall describe the specific nature and basis of the Challenge and attach a draft complaint (the “***Standing Motion***”), and such standing is obtained pursuant to an order of the Court, (ii) timely and properly commences and serves an adversary proceeding or contested matter (subject to the limitations contained herein) (each, a “***Challenge Proceeding***”) by no later than the Challenge Deadline, asserting a Challenge with respect to the amount, validity, perfection, enforceability, priority, scope or extent of the Prepetition Secured Obligations, the Prepetition Liens, the Prepetition Collateral or the Prepetition Loan Documents, or otherwise Challenging any of the Debtors’ Stipulations, and (iii) obtains a final non appealable order by a court of competent jurisdiction in favor of the plaintiff sustaining any such Challenge.

If no such Standing Motion (to the extent required) or Challenge Proceeding is timely and properly filed by the Challenge Deadline, or if the Court rules does not rule in favor of plaintiff in any such timely and properly filed Challenge Proceeding, then, without application to or further order of the Court, (i) each of the Debtors’ Stipulations shall be binding on all parties-in-interest, including, without limitation, any Official Committee, any statutory or non-statutory committees appointed or formed in the Chapter 11 Cases, or any other party-in-interest (including, without limitation, any Successor Entities), (ii) the Prepetition Secured Obligations shall constitute allowed claims against each of the Debtors in the Chapter 11 Cases and any Successor Cases, and the Prepetition Liens shall forever be deemed to be legal, valid, binding, continuing, perfected and enforceable, as of the Petition Date, against each of the Debtors in the Chapter 11 Cases and any Successor Cases, (iii) the Prepetition Secured Obligations and the Prepetition Liens shall not be subject to any other or further Challenge by any person or entity, and (iv) any and all Challenges, of any kind or nature whatsoever, whether under the Bankruptcy Code, applicable non-bankruptcy law or otherwise, against any of the Prepetition Secured Parties shall be deemed forever waived, released and barred.

If any such Standing Motion (to the extent required) or Challenge Proceeding is timely filed by the Challenge Deadline, the Debtors’ Stipulations shall nonetheless remain binding and preclusive on any Official Committee, any non-statutory committees appointed or formed in the Chapter 11 Cases, or any other party-in-interest (including, without limitation, any Successor Entities), except to the extent that any of the admissions, stipulations, findings or releases contained in the Debtors' Stipulations were expressly challenged in such Challenge Proceeding (and solely as to the plaintiff party that timely filed such Challenge Proceeding and not, for the avoidance of doubt, any other party-in-interest).

Nothing in this Interim Order vests or confers on any person or entity, including any Official Committee or any statutory or non-statutory committee appointed or formed in the Chapter 11 Cases, or any other party-in-interest standing or authority to pursue any Challenge belonging to the Debtors or their estates, and all rights to object to any request for such standing are expressly reserved.

###### ***Limitations on Use of DIP Collateral, Cash Collateral, Carve Out.***

**[NTD: As and to the extent applicable, describe any limitations on the use of proceeds of the DIP Facility, DIP Collateral, Cash Collateral by the Debtors or any parties in interest.]**

###### *Limitation on Charging Expenses; Waivers.*

**[NTD: As and to the extent applicable, describe the basis and extent of any Section 506(c), Section 552(b) and/or marshalling waivers.]**

###### *Credit Bid.*

**[NTD: As and to the extent applicable, describe the nature and scope of any right of the DIP Secured Parties and/or the Prepetition Secured Parties to credit bid obligations outstanding under the DIP Facility or prepetition debt in accordance with pursuant to section 363(k) of the Bankruptcy Code.]**

###### *Binding Effect; Successors and Assigns*. Immediately upon entry of this Interim Order, subject to paragraph [●] of this Interim Order, the DIP Loan Documents and this Interim Order, including all findings of fact and conclusions of law herein, shall be binding upon all parties-in-interest in the Chapter 11 Cases and any Successor Cases, including without limitation, the DIP Secured Parties, the Prepetition Secured Parties, the Official Committee or any other statutory or non-statutory committee appointed or formed in the Chapter 11 Cases and any Successor Cases, and their respective successors and assigns (including any chapter 11 trustee or chapter 7 trustee or examiner appointed or elected in the Chapter 11 Cases or any Successor Cases, 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 each of the Debtors, the DIP Secured Parties, the Prepetition Secured Parties and their respective successors and assigns; *provided, however,* that, for the avoidance of doubt, the DIP Secured Parties and the Prepetition Secured Parties shall have no obligation to make any loan, permit the use of DIP Collateral or Prepetition Collateral (including Cash Collateral) or extend any financing to any chapter 11 trustee or chapter 7 trustee or similar responsible person appointed for the estate of any Debtor in the Chapter 11 Cases or any Successor Cases.

###### *Modification of Interim Order.*

**[NTD: Describe the ability of the Debtors to modify the Interim Order, grant any liens or claims with priority equal to or superior to those granted under the Interim Order, and/or refinance the DIP Facility.]**

###### *DIP Lender Protections.*

**[As and to the extent applicable, describe any additional protections afforded to the DIP Secured Parties.]**

###### *Preservation of Rights Granted Under Interim Order.*

**[As and to the extent applicable, describe any provisions relating to the effectiveness of the Interim Order, the effect of reversal or modification of the Interim Order, and/or the extent of the survival of the Interim Order upon confirmation, dismissal or conversion.]**

###### *Proofs of Claim.*

**[NTD: Describe whether and the extent to which DIP Secured Parties and/or Prepetition Secured Parties are required to file a proof of claim.]**

###### *Interim Order Controls.* In the event of any conflict or inconsistency between or among the provisions of this Interim Order and any of the DIP Loan Documents, unless such provision in this Interim Order is phrased in terms of “defined in” or “as set forth in” the DIP Loan Agreement or the DIP Loan Documents, the provisions of this Interim Order shall govern and control.

###### *Retention of Jurisdiction.* The Court retains jurisdiction to hear, determine and enforce the terms of any and all matters arising from or related to the DIP Facility, the DIP Loan Documents and this Interim Order.

###### *Final Hearing.* The Final Hearing shall be held on [●], at [●] (prevailing New York City Time), and any objections to the final relief sought in the Motion shall be filed with the Court no later than [●] at 4:00 p.m. (prevailing New York City Time), and served upon the following: [●].

|  |  |
| --- | --- |
| Dated: \_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2023New York, New York |  |
|  | United States Bankruptcy Judge |

Annex A

**Defined Terms**

##### “***Avoidance Action***” means any Claim or Cause of Action arising under Chapter 5 of the Bankruptcy Code or any applicable state law Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or similar statute or common law.

##### “***Avoidance Action Proceeds***” means any and all proceeds of or property recovered from Avoidance Actions, whether by adjudication, judgment, settlement or otherwise

##### “***Cause of Action***” means any cause of action under law or equity, of any kind or nature whatsoever, whether arising under United States federal or state law, common law or otherwise.

##### “***Challenge***” means any challenge, objection, defense or Claim or Cause of Action, including, without limitation, any Avoidance Action or any Claim or Cause of Action asserting reduction, setoff, offset, recoupment, recharacterization, subordination (whether equitable, contractual or otherwise), reclassification, disgorgement, disallowance, impairment, marshalling, surcharge, recovery or other cause of action of any kind or nature whatsoever, whether arising under the Bankruptcy Code, applicable non-bankruptcy law or otherwise.

##### “***Challenge Deadline***” means (A) sixty (60) days from the appointment of the Official Committee (or such longer period as the Court orders for cause shown before the expiration of such period); or (B) if no Official Committee has been appointed, seventy-five (75) days (or such longer period as the Court orders for cause shown before the expiration of such period) from the entry of this Interim Order; *provided, however,* that if a party in interest files a Standing Motion before the end of the initial time periods specified herein, then the Challenge Deadline shall be tolled during the pendency of such Standing Motion (but solely for the party seeking standing); *provided further, however,* that if, prior to the end of the initial time periods set specified herein, (x) the Chapter 11 Cases convert to chapter 7, or (y) if a chapter 11 trustee is appointed, then, in each such case, the Challenge Deadline shall be extended, solely for the chapter 7 trustee or chapter 11 trustee, to the later of (A) the time remaining under the Challenge Deadline plus ten (10) calendar days or (B) such other time as ordered by the Court for cause shown;

##### “***Claim***” has the meaning set forth in the Bankruptcy Code.

##### “***Closing Date***” has the meaning set forth in the DIP Loan Agreement.

##### “***DIP Agent***” means [●].

##### “***DIP Collateral***” means [●]; *provided, however*, that, subject to entry of the Final Order, the DIP Collateral shall not include Avoidance Actions or Avoidance Action Proceeds; *provided, further, however,* that DIP Collateral shall exclude any Excluded Assets for so long as any DIP Collateral constitutes Excluded Assets, but shall include any and all proceeds and products of Excluded Assets (except to the extent such proceeds and products themselves constitute Excluded Assets).

##### “***DIP Lenders”*** has the meaning set forth in the DIP Loan Agreement.

##### “***DIP Loans***” means the loans and advances under the DIP Facility.

##### “***DIP Loan Agreement***” means the [●], substantially in the form attached hereto as Exhibit [●].

##### “***DIP Loan Documents***” means the DIP Loan Agreement and all guarantee, collateral, pledge and security agreements, and all other agreements, documents, certificates and instruments executed, recorded and/or delivered in connection therewith, in each case, as amended, supplemented or modified in accordance with the terms thereof and this Interim Order.

##### “***DIP Obligations***” means any and all obligations arising under the DIP Facility and the DIP Loan Documents, including, without limitation, all DIP Loans, advances, indebtedness, obligations, extensions of credit, financial accommodations, principal, interest, payments, fees, costs, expenses, charges, indemnification and reimbursement obligations (whether contingent or absolute), and all other amounts, whether or not such obligations arose before or after the Petition Date, whenever the same shall become due and payable, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise, to the DIP Agent or any of the DIP Lenders under the DIP Loan Documents or this Interim Order

##### “***DIP Secured Parties***” means the DIP Agent and the DIP Lenders.

##### “***Excluded Assets***” means [●].

##### “***Permitted Prior Senior Liens***” means [●].

##### ***“Prepetition Agent / Trustee***” means [●].

##### “***Prepetition Debt***” means [●].

##### “***Prepetition Liens***” means [●].

##### “***Prepetition Loan Documents***” means [●].

##### “***Prepetition Obligors***” means [●].

##### “***Prepetition Lenders / Noteholders***” means [●].

##### “***Prepetition Secured Obligations***” means [●].

##### “***Prepetition Secured Parties***” means the Prepetition Agent / Trustee and the Prepetition Lenders / Noteholders.

##### “***Required DIP Lenders***” has meaning set forth in the DIP Loan Agreement.

1. The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are as follows: [●]. The Debtors’ corporate headquarters and service address is [●]. [↑](#footnote-ref-1)
2. Each capitalized term that is not defined in the recitals to this Interim Order and that is not otherwise defined in this Interim Order shall have the meaning ascribed to such term in **Annex A** to this Interim Order, which is incorporated by reference herein. [↑](#footnote-ref-2)
3. The findings and conclusions set forth herein constitute the Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such. [↑](#footnote-ref-3)