

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

In re:

Lee Steel Corporation, *et al.*<sup>1</sup>

Debtors.

Chapter 11

Case No. 15-45784-mbm

Hon. Marci B. McIvor

**STIPULATION BETWEEN DEBTORS, THE HUNTINGTON NATIONAL BANK  
AND OFFICIAL COMMITTEE OF UNSECURED CREDITORS FOR ENTRY OF  
FIRST AMENDED FINAL ORDER (A) AUTHORIZING DEBTORS TO OBTAIN  
POST-PETITION FINANCING AND GRANT SECURITY INTERESTS AND  
SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS PURSUANT TO 11  
U.S.C. §§ 105 AND 364(c); (B) MODIFYING THE AUTOMATIC STAY PURSUANT  
TO 11 U.S.C. § 362; AND (C) AUTHORIZING DEBTORS TO ENTER INTO  
AGREEMENTS WITH THE HUNTINGTON NATIONAL BANK**

NOW COME the above-captioned debtors and debtors in possession (“Debtors”), The Huntington National Bank (“Lender”) and the Official Committee of Unsecured Creditors (“Committee” and collectively with Debtors and Lender, the “Parties”) by and through their undersigned counsel, and do hereby stipulate to the entry of the *First Amended Final Order (A) Authorizing Debtors to Obtain Interim Post-Petition Financing and Grant Security Interests and Superpriority Administrative Expense Status Pursuant to 11 U.S.C. §§ 105 and 364(c); (B) Modifying the Automatic Stay Pursuant to 11 U.S.C. § 362; and (C) Authorizing Debtors to Enter Into Agreements With The Huntington National Bank* attached hereto as Exhibit A (the “Stipulated Order”).

**[SIGNATURES ON THE NEXT PAGE]**

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<sup>1</sup> Debtors include Lee Steel Corporation, Case No. 15-45784-mbm; Taylor Industrial Properties, L.L.C., Case No. 15-45785-mbm, and 4L Ventures, LLC, Case No. 15-45788-mbm.

**Stipulated and Agreed:**

/s/ Jayson B. Ruff

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COUNSEL FOR  
THE HUNTINGTON NATIONAL BANK

Dated: August 27, 2015

## **Exhibit A**

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

<b>In re:</b>	) <b>Chapter 11</b>
	)
<b>LEE STEEL CORPORATION. <i>et al.</i><sup>1</sup></b>	) <b>Case No. 15-45784-mbm</b>
	)
	)
<b>Debtors.</b>	) <b>Judge Marci B. McIvor</b>
	)

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**FIRST AMENDED FINAL ORDER (A) AUTHORIZING DEBTORS TO OBTAIN POST-PETITION FINANCING AND GRANT SECURITY INTERESTS AND SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS PURSUANT TO 11 U.S.C. §§ 105 AND 364(c); (B) MODIFYING THE AUTOMATIC STAY PURSUANT TO 11 U.S.C. § 362; AND (C) AUTHORIZING DEBTORS TO ENTER INTO AGREEMENTS WITH THE HUNTINGTON NATIONAL BANK**

This matter having come before the Court on the *First Day Motion of Debtors For An Order (A) Authorizing Debtors to Obtain Interim Post-Petition Financing and Grant Security Interests and Superpriority Administrative Expense Status Pursuant to 11 U.S.C. §§ 105 and 364(c); (B) Modifying the Automatic Stay Pursuant to 11 U.S.C. § 362; (C) Authorizing Debtors to Enter Into Agreements With The Huntington National Bank; and (D) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001* (the “Motion”), dated April 13, 2015, filed by the above-captioned debtors and debtors in possession (collectively, the “Debtors”), each as a Debtor and Debtor-in-Possession in the above-captioned Chapter 11 cases (collectively, the “Cases”), pursuant to Sections 105, 361, 362, 363, 364(c)(1), 364(c)(2) and 364(c)(3) of Title 11 of the United States Code, 11 U.S.C. §§ 101, et seq. (the “Bankruptcy Code”) and Rules 2002, 4001(c), and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”); the initial hearing on the Motion having been held by this Court on April 15, 2015 (the “Interim Hearing”);

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<sup>1</sup> Debtors include Lee Steel Corporation, Case No. 15-45784-mbm; Taylor Industrial Properties, L.L.C., Case No. 15-45785-mbm, and 4L Ventures, LLC, Case No. 15-45788-mbm.

due and appropriate notice of the Motion, the relief requested therein, and the Interim Hearing (the “Notice”) having been served by the Debtors in accordance with Rule 4001(c) on (i) The Huntington National Bank (the “Lender”), (ii) the United States Trustee for the Eastern District of Michigan (the “U.S. Trustee”), (iii) the holders of the twenty (20) largest unsecured claims against the Debtors’ estates (the “20 Largest Unsecured Creditors”), (iv) Dickinson Wright PLLC, counsel for the Lender, (v) the Internal Revenue Service, (vi) all appropriate state taxing authorities, (vii) all landlords, owners, and/or operators of premises at which any of the Debtors’ inventory and/or equipment is located, and (viii) certain other parties identified in the certificate of service filed with the Court, including, without limitation, all creditors who have filed or recorded pre-petition liens or security interests against any of the Debtors’ assets (collectively, the “Noticed Parties”); the Motion having been granted on an interim basis and the Court having entered its *Order (A) Authorizing Debtors to Obtain Interim Post-Petition Financing and Grant Security Interests and Superpriority Administrative Expense Status Pursuant to 11 U.S.C. §§ 105 and 364(c); (B) Modifying the Automatic Stay Pursuant to 11 U.S.C. § 362; (C) Authorizing Debtors to Enter Into Agreements With The Huntington National Bank; and (D) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001* (the “Interim Order”); the Official Unsecured Creditors’ Committee (“Committee”) having been formed since entry of the Interim Order and having worked with Debtors and the Lender to resolve the Committee’s objections to the Interim Order as evidenced by this final order; all other objections having been resolved; and upon the record made by the Debtors at the Interim Hearing and at the final hearing on May 12, 2015, including the Motion, and the filings and pleadings in the Cases, and good and sufficient cause appearing therefor,

THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:

1. **Petition**. On April 13, 2015 (the “Petition Date”), each Debtor filed a voluntary petition (the “Petition”) under Chapter 11 of the Bankruptcy Code. 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.

2. **Jurisdiction and Venue.** The Court has jurisdiction of this proceeding and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157(b) and 1334. The Motion is a “core” proceeding as defined in 28 U.S.C. §§ 157(b)(2). Venue of the Cases and the Motion in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

3. **Notice.** Under the circumstances, the Notice given by the Debtors of the Motion, the Interim Hearing and the relief granted under this Order constitutes due and sufficient notice thereof and complies with Bankruptcy Rule 4001(c).

4. **Debtors’ Acknowledgments and Agreements.** The Debtors admit, stipulate, acknowledge and agree, that:

a. **Pre-Petition Loan Documents.**

i. Lender, Debtor Lee Steel Corporation (the “Operating Debtor”), and Debtor Taylor Industrial Properties, L.L.C. (“Taylor Industrial”) are parties to a Credit Agreement dated February 18, 2011, as amended by numerous amendments to the Credit Agreement including, but not limited to, the Nineteenth Amendment to Credit Agreement dated December 18, 2014 (as amended, the “Pre-Petition Credit Agreement”).

ii. Lender made the following loans and financial accommodations available to Operating Debtor and Taylor Industrial under the Pre-Petition Credit Agreement:

1. a \$32,000,000 revolving line of credit to Operating Debtor (the “Revolver”) evidenced by a Revolving Credit Note dated September 18, 2012, as amended by the Sixteenth Amendment to Credit Agreement and Note Amendment dated January 17, 2014 (as amended, the “Revolver Note”);

2. a \$1,530,000 term loan to Taylor Industrial (“Term Loan A”) evidenced by a Term Loan A Note dated April 18, 2011 (the “Term Loan A Note”);

3. a \$942,222 term loan to Taylor Industrial (“Term Loan B”) evidenced by a Term Loan B Note dated April 18, 2011 (the “Term Loan B Note”);

4. a \$4,000,000 equipment line of credit to Operating Debtor (the “Equipment Line of Credit”) evidenced by an Equipment Line of Credit Note dated August 5, 2011 (the “Equipment Line of Credit Note”);

5. a \$12,900,000 equipment line of credit to Operating Debtor (the “Second Equipment Line of Credit”) evidenced by a Second Equipment Line of Credit Note executed in April 2012, as amended by the Eighth Amendment to Credit Agreement and Note Amendment dated October 12, 2012 and the Eighteenth Amendment to Credit Agreement and Note Amendment dated April 21, 2014 (as amended, the “Second Equipment Line of Credit Note”); and

6. a \$25,000 letter of credit for the benefit of Operating Debtor, payable to the Michigan Department of Environmental Quality (as amended, the “MDEQ Letter of Credit”).

iii. Operating Debtor’s and Taylor Industrial’s obligations under and in connection with the Pre-Petition Credit Agreement are guaranteed by Operating Debtor, Taylor Industrial, Debtor 4L Ventures, LLC (“4L Ventures”), and W. Zachary Taylor (“Mr. Taylor”) in a Guaranty Agreement dated February 18, 2011, as amended by a Joinder Agreement dated October 30, 2012, and a Joinder Agreement dated October 30, 2013 (as amended, the “Lee Steel / Taylor Industrial Guaranty”).

iv. Additionally, Lender, 4L Ventures (as borrower), Operating Debtor, and Taylor Industrial (as guarantors) are parties to a Loan Agreement dated October 30, 2012, as amended by a First Amendment to Loan Agreement dated October 30, 2013 (as amended, the “4L Ventures Loan Agreement”).

v. Lender made the following loans and financial accommodations available to 4L Ventures under the 4L Ventures Loan Agreement:

1. a \$6,800,0000 construction loan (the “4L Ventures Construction Loan”) evidenced by a Promissory Note (End Loan) dated June 1, 2014 (the “4L Ventures Construction Note”);

2. a \$4,322,000 term loan (the “Draw-to Term Loan”) evidenced by a Promissory Note (Draw-to Term Loan) dated June 1, 2014 (the “Draw-to Term Loan Note”); and

3. a \$376,786.58 letter of credit for the benefit of 4L Ventures, payable to the Michigan Department of Transportation (as amended, the “MDOT Letter of Credit”).

vi. 4L Ventures’ obligations under and in connection with the 4L Ventures Loan Agreement are guaranteed by (1) Operating Debtor and Taylor Industrial in a Guaranty Agreement dated October 30, 2012; and (2) Mr. Taylor in an Amended and Restated Guaranty Agreement dated October 30, 2012. These guaranties are, collectively, the “4L Ventures Guaranties”.

vii. The Revolver Note, the Term Loan A Note, the Term Loan B Note, the Equipment Line of Credit Note, the Second Equipment Line of Credit Note, the 4L Ventures Construction Note and the Draw-to Term Loan Note are collectively referred to as the “Pre-Petition Promissory Notes”.

viii. The MDEQ Letter of Credit and MDOT Letter of Credit and all documents executed in connection with the MDEQ Letter of Credit or the MDOT Letter of Credit are collectively referred to as the “Letter of Credit Documents”.



ix. The Pre-Petition Obligations (as defined below) are secured by the following collateral (together with all other collateral described in the Pre-Petition Security Documents, the “Pre-Petition Collateral”) more particularly described in the following documents (collectively, the “Pre-Petition Security Documents”):

1. A Security Agreement dated February 18, 2011 made by Operating Debtor and Taylor Industrial granting Lender a first-priority lien in, among other things, each grantor’s present and future accounts, general intangibles, documents, instruments, chattel paper, inventory, equipment, fixtures, deposit accounts, investment property, and all products and proceeds thereof;

2. A Security Agreement dated October 30, 2012 made by 4L Ventures granting Lender a first-priority lien in, among other things, 4L Ventures’ present and future accounts, general intangibles, documents, instruments, chattel paper, inventory, equipment, fixtures, deposit accounts, investment property, and all products and proceeds thereof;

3. A first-priority lien on Taylor Industrial’s real property commonly known as 5875 Weller Ct., Wyoming, Michigan, which was granted under a Mortgage dated February 18, 2011, and recorded on March 1, 2011 at document no. 20110301-0017746 Kent County, Michigan Register of Deeds, as amended by a First Amendment to Mortgage dated October 30, 2012, and recorded on December 11, 2012 at document no. 20121211-0116689 Kent County, Michigan Register of Deeds;

4. A Security Agreement dated October 30, 2012 made by each Debtor granting Lender a first-priority lien in, among other things, each Debtor’s present and future accounts, general intangibles, documents,

instruments, chattel paper, inventory, equipment, fixtures, deposit accounts, investment property, and all products and proceeds thereof;

5. A first-priority lien on 4L Ventures' real property commonly known as 36320 Eureka Rd., Romulus, Michigan ("Romulus Property"), which was granted under a Mortgage dated October 30, 2012, and recorded on November 8, 2012 at Liber 50260 Page 1132 Wayne County, Michigan Register of Deeds, executed and delivered by 4L Ventures in Lender's favor; and

6. An assignment of leases and rentals on the Romulus Property, which was granted under an Assignment of Leases and Rentals dated October 30, 2012, and recorded on November 8, 2012 at Liber 50260 Page 1160 Wayne County, Michigan Register of Deeds, executed and delivered by 4L Ventures in Lender's favor

x. The Pre-Petition Credit Agreement, the Pre-Petition Promissory Notes, the Letter of Credit Documents, the Lee Steel / Taylor Industrial Guaranty, the 4L Ventures Loan Agreement, the 4L Ventures Guaranties, the Pre-Petition Security Documents, and all other agreements, documents and instruments executed and/or delivered with, to, or in favor of Lender, including, without limitation, all Uniform Commercial Code financing statements, all other security agreements, notes, guaranties, or mortgages, and all other related agreements, documents and instruments executed and/or delivered with these documents, as all of the same have been amended, supplemented, modified, extended, renewed, restated, and /or replaced at any time before the Petition Date, are collectively called the "Pre-Petition Loan Documents".

b. Pre-Petition Obligations Amount. As of the Petition Date, Debtors owed an aggregate principal amount of \$50,091,702.35 to Lender under the Pre-Petition Loan Documents (as defined below), consisting of the following:

- i. \$24,581,533.99 under the Revolver;
- ii. \$1,230,375.00 under Term Loan A;
- iii. \$573,185.05 under Term Loan B;
- iv. \$1,938,391.03 under the Equipment Line of Credit;
- v. \$11,364,285.70 under the Second Equipment Line of Credit;
- vi. \$6,545,003.00 under the 4L Ventures Construction Loan;
- vii. \$3,858,928.58 under the Draw-to Term Loan;

plus interest accrued and accruing thereon, together with \$401,786.58 in contingent liabilities under the Letter of Credit Documents, all costs, fee, expenses (including attorneys' fees and legal expenses) and other charges accrued, accruing or chargeable with respect thereto (collectively, and as such term is more fully defined in the Ratification Agreement, the "Pre-Petition Obligations"). The Debtors acknowledge, stipulate and agree that the Pre-Petition Obligations constitute allowed, legal, valid, binding, enforceable and non-avoidable obligations of Debtors, and are not subject to any offset, defense, counterclaim, avoidance, recharacterization or subordination pursuant to the Bankruptcy Code or any other applicable law, and Debtors do not possess and shall not assert any claim, counterclaim, setoff or defense of any kind, nature or description which would in any way affect the validity, enforceability and non-avoidability of any of the Pre-Petition Obligations.

c. Pre-Petition Collateral. As of the Petition Date, the Pre-Petition Obligations were secured by valid, perfected, enforceable and non-avoidable first priority security interests and liens granted by Debtors to the Lender under the Pre-Petition Security Documents on substantially all assets and real property of the Debtors, subject only to the liens specifically permitted under the Pre-Petition Loan Documents to the extent that such security interests, liens or encumbrances are (x) valid, perfected and non-avoidable security interests, liens or encumbrances existing as of the Petition Date, and (y) senior to and have not been or are subject to being subordinated to the liens and security interest of the Lender in the Pre-Petition Collateral or otherwise avoided, and, in each instance, only for so long as and to the extent that

such encumbrances are and remain senior and outstanding (hereinafter referred to as the “Permitted Encumbrances”). The Debtors do not possess, and will not assert, any claim, counterclaim, setoff or defense of any kind, nature or description which would in any way affect the validity, enforceability and non-avoidability of any of the liens, claims or security interests of the Lender in the Pre-Petition Collateral.

d. Proof of Claim. The acknowledgment by Debtors of the Pre-Petition Obligations and the liens, rights, priorities and protections granted to or in favor of the Lender as set forth herein and in the Pre-Petition Loan Documents shall be deemed a timely filed proof of claim on behalf of the Lender in these Cases.

5. **Findings Regarding the Post-Petition Financing.**

a. Post-Petition Financing. The Debtors have requested from the Lender, and Lender is willing to extend, certain loans, advances and other financial accommodations on the terms and conditions set forth in this Order and the Amendment and Ratification Agreement dated April 15, 2015, as amended by the Second Amendment to Amendment and Ratification Agreement dated on or about even date herewith by and between Debtors, Mr. Taylor and Lender (as amended, the “Post-Petition Amendment Agreement” a copy of which is filed at Docket No. 313 and is incorporated herein, and together with the Pre-Petition Loan Documents, collectively, the “Loan Documents”).

b. Need for Post-Petition Financing. The Debtors do not have sufficient available sources of working capital, including cash collateral, to operate their businesses in the ordinary course of their business without the financing requested under the Motion. The Debtors’ ability to maintain business relationships with their vendors, suppliers and customers, to pay their employees, and to otherwise fund their operations is essential to the Debtors’ continued viability as the Debtors seek to maximize the value of the assets of the Estates (as defined below) for the benefit of all creditors of the Debtors. The ability of the Debtors to obtain sufficient working capital and liquidity through the proposed post-petition financing arrangements with Lender as set forth in this Order and the Loan Documents is vital to the preservation and

maintenance of the going concern values of the Debtors and/or the Debtors' ability to conduct an orderly liquidation of its assets to maximize the value thereof. Accordingly, the Debtors have an immediate need to obtain the post-petition financing in order to, among other things, permit the orderly continuation of the operation of their businesses, minimize the disruption of their business operations, and preserve and maximize the value of the assets of the Debtors' bankruptcy estates (as defined under Section 541 of the Bankruptcy Code, the "Estates") in order to maximize the recovery to all creditors of the Estates.

c. No Credit Available on More Favorable Terms. The Debtors are unable to procure financing in the form of unsecured credit allowable under Section 503(b)(1) of the Bankruptcy Code, as an administrative expense under Section 364(a) or (b) of the Bankruptcy Code, or in exchange for the grant of an administrative expense priority pursuant to Section 364(c)(1) of the Bankruptcy Code, without the grant of liens on assets. The Debtors have been unable to procure the necessary financing on terms more favorable than the financing offered by Lender pursuant to the Loan Documents.

d. Budget. The Debtors have prepared and delivered to Lender a Budget<sup>2</sup> through September 28, 2015. Such Budget has been thoroughly reviewed by the Debtors and their management. Lender is relying upon the Debtors' compliance with the Budget, the Post-Petition Amendment Agreement and this Order in determining to enter into the post-petition financing arrangements provided for herein.

e. Business Judgment and Good Faith. The terms of the Post-Petition Amendment Agreement and this Order are fair, just and reasonable under the circumstances, are ordinary and appropriate for secured financing to debtors-in-possession, reflect the Debtors' exercise of their prudent business judgment consistent with their fiduciary duties, and are supported by reasonably equivalent value and fair consideration. The terms and conditions of

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<sup>2</sup> Capitalized terms used but not otherwise defined in this Order shall have the respective meanings ascribed thereto in the Post-Petition Amendment Agreement.

the Post-Petition Amendment Agreement and this Order have been negotiated in good faith and at arms' length by and among the Debtors, on one hand, and Lender, on the other hand, with all parties being represented by counsel. Any credit extended under the terms of this Order shall be deemed to have been extended in good faith by Lender as that term is used in Section 364(e) of the Bankruptcy Code.

f. Good Cause. The relief requested in the Motion is necessary, essential and appropriate, and is in the best interest of and will benefit the Debtors, their creditors and their Estates, as its implementation will, among other things, provide the Debtors with the necessary liquidity to (a) minimize disruption to the Debtors' businesses and on-going operations, (b) preserve and maximize the value of the Debtors' Estates for the benefit of all the Debtors' creditors, and (c) avoid immediate and irreparable harm to the Debtors, their creditors, their businesses, their employees, and their assets.

g. Immediate Entry. Sufficient cause exists for immediate entry of this Order pursuant to Bankruptcy Rules 4001(c)(2). No party appearing in the Cases has filed or made an objection to the relief sought in the Motion or the entry of this Order, or any objections that were made (to the extent such objections have not been withdrawn) are hereby overruled.

Based upon the foregoing, and after due consideration and good cause appearing therefore; IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that:

1. Motion Granted. The Motion is granted. This Order shall hereinafter be referred to as the "Final Order."

2. Authorization to Borrow and Use Loan Proceeds. Operating Debtor is hereby authorized and empowered to immediately borrow and obtain loans, advances, and other credit and financial accommodations from, and otherwise incur indebtedness and obligations owing to, Lender pursuant to the terms and conditions of this Final Order and the Post-Petition Amendment Agreement. Subject to the terms and conditions contained in this Final Order, Operating Debtor shall use the proceeds of the loans, advances and any other credit and financial accommodations provided to Operating Debtor pursuant to this Final Order, and the Post-

Petition Amendment Agreement for the payment of disbursements specifically identified in the Budget (subject to a ten percent (10%) cumulative variance) and the costs, fees, interest, charges and expenses relating to the Post-Petition Obligations (as defined in the Post-Petition Amendment and as limited by Section 7) incurred by Debtors owing to Lender in accordance with the terms of this Final Order and the Post-Petition Amendment Agreement.

3. **Authorization.** Debtors are hereby authorized and directed to enter into, execute, deliver, perform, and comply with all of the terms, conditions and covenants of the Post-Petition Amendment Agreement pursuant to which each Debtor ratifies, reaffirms, restates, extends, assumes, adopts, and amends, the Pre-Petition Credit Agreement and the other Pre-Petition Loan Documents to which it is a party. Debtors are further directed to contemporaneously provide to the Committee's professionals all reporting provided by them or on their behalf to the Lender under the Post-Petition Amendment Agreement and this Final Order.

4. **Approval.** The Loan Documents and each term set forth therein are approved to the extent necessary to implement the terms and provisions of this Final Order. The terms, conditions and covenants of the Loan Documents shall be sufficient and conclusive evidence of the borrowing arrangements by and among Debtors and Lender, and of each Debtor's assumption and adoption of all of the terms, conditions, and covenants of the Loan Documents, with the exclusion of the Specified Defaults (defined below), for all purposes, including, without limitation, to the extent applicable, the payment of all obligations arising thereunder, including, without limitation, all principal, interest, commissions, fees, and expenses, including, without limitation, all of Lender's consultant fees, professional fees, reasonable attorney fees and legal expenses, as more fully set forth in the Post-Petition Amendment Agreement; provided however that Lender shall provide the Office of the United States Trustee with copies of its invoices for an *in camera* review ten (10) days before payment of same by Debtors, and further provided that such invoices will not be paid unless Lender is determined to be over-secured and entitled to payment of these invoices under 11 U.S.C. § 506(b).

5. **Amendment.** Debtors and Lender may amend, modify, supplement or waive any

provision of the Loan Documents (an “Amendment”) without further approval or order of the Court so long as (a) such Amendment is not material (for purposes hereof, a “material” Amendment shall mean any Amendment that operates to increase the interest rate other than as currently provided in the Loan Documents, add specific new events of default or enlarge the nature and extent of default remedies available to the Lender following an event of default, or otherwise modify any terms and conditions in any Loan Document in a manner materially less favorable to Debtors or the Committee); (b) the Debtors provide prior written notice of the Amendment (the “Amendment Notice”) to (i) the U.S. Trustee and (ii) the Committee; (c) the Debtors file the Amendment Notice with the Court; and (d) no objection to the Amendment is filed with the Court within 5 business days from the later of the date the Amendment Notice is served or the date the Amendment Notice is filed with the Court in accordance with this Section, or if a timely objection is filed, the Court overrules the objection and allows the Amendment. Any material Amendment to the Loan Documents, however, must be approved by the Court to be effective.

6. **Payment of Prepetition Debt.** The Debtors are authorized to pay Lender in respect of the Pre-Petition Obligations in accordance with the Post-Petition Amendment Agreement and this Final Order.

7. **Payments and Application of Payments.** The Debtors are authorized and directed to make all payments and transfers of Estate property to Lender as and when such payments and transfers are received, and which payments and transfers, subject to Section 25 of this Final Order, shall not be avoidable or recoverable from Lender under Section 547, 548, 550, 553 or any other Section of the Bankruptcy Code, or any other claim, charge, assessment, or other liability, whether by application of the Bankruptcy Code, other law or otherwise. Subject to the terms of the Post-Petition Amendment Agreement and this Final Order, all proceeds of the Collateral received by Lender, and any other amounts or payments received by Lender in respect of the Pre-Petition Collateral, shall be applied or deemed to be applied in accordance with the Post-Petition Amendment Agreement and this Final Order first to the Post-Petition Obligations,



until such Post-Petition Obligations are indefeasibly paid in full and completely satisfied, and then to the Pre-Petition Obligations; provided, however, that to the extent there is a deficiency on the amount owed under Revolver, the deficiency will be deemed a Pre-Petition Obligation for all purposes under this Final Order.

8. **Continuation of Prepetition Procedures.** All pre-petition practices and procedures for the payment and collection of proceeds of the Collateral, the turnover of cash, the delivery of property to Lender and the funding pursuant to the Pre-Petition Loan Documents, including any lockbox or blocked depository bank account arrangements, are hereby approved and may continue without interruption after the commencement of the Cases.

9. **Post-Petition Lien Grant.** To secure the prompt payment and performance of any and all Post-Petition Obligations of Debtors to Lender of whatever kind, nature or description, absolute or contingent, now existing or hereafter arising, Lender shall have and is hereby granted, effective as of the Petition Date, valid and perfected first priority security interests and liens, superior to all other liens, claims or security interests that any creditor of the Debtors' Estates may have in all of Debtors' post-petition assets, excluding any avoidance actions brought under Sections 510, 544, 545, 547, 548, or 550 of chapter 5 of the Bankruptcy Code (the "**Chapter 5 Avoidance Actions**") (collectively with the Pre-Petition Collateral, the "**Collateral**"); Lender's security interests and liens are also subject to certain claims entitled to priority, including the Permitted Liens and Claims (as defined below). In accordance with Sections 552(b) and 361 of the Bankruptcy Code and subject to Objections (if any) under Section 25, the value, if any, in any of the Collateral, in excess of the amount of Obligations secured by such Collateral after satisfaction of the Post-Petition Obligations of Debtors to Lender, shall constitute additional security for the repayment of the Pre-Petition Obligations and adequate protection for the use by Debtors, and the diminution in the value, of the Collateral, including through the use of cash collateral, existing on the Petition Date.

10. **Lien Priority.** The pre-petition and post-petition liens and security interests of Lender granted under the Loan Documents and this Final Order shall be and shall continue to be

first and senior in priority to all other interests and liens of every kind, nature and description, whether created consensually, by an order of the Court or otherwise, including, without limitation, liens or interests granted in favor of third parties in conjunction with Section 363, 364 or any other Section of the Bankruptcy Code or other applicable law; provided, however, that Lender's liens on and security interests in the Collateral shall be subject only to (a) the Permitted Encumbrances, and (b) the Carve Out Expenses (as defined below) solely to the extent provided for in Sections 14, 15, 16, and 17 of this Interim Order (the foregoing clauses (a) and (b) are collectively referred to herein as the "Permitted Liens and Claims"). The liens granted in favor of Lender pursuant to this Final Order shall not be deemed or construed to prime any valid, perfected, existing, non-avoidable liens on the Pre-Petition Collateral that are at all times senior in priority to the liens of Lender in the Pre-Petition Collateral securing the Pre-Petition Obligations.

11. **Post-Petition Lien Perfection.** This Final Order shall be sufficient and conclusive evidence of the priority, perfection and validity of the post-petition liens and security interests granted herein, effective as of the Petition Date, without any further act and without regard to any other federal, state or local requirements or law requiring notice, filing, registration, recording or possession of the Collateral, or other act to validate or perfect such security interest or lien, including without limitation, control agreements with any financial institution(s) holding a depository account consisting of Collateral (a "Perfection Act"). Notwithstanding the foregoing, if Lender shall, in its sole discretion, elect for any reason to file, record or otherwise effectuate any Perfection Act, Lender is authorized to perform such act, and the Debtors are authorized and directed to perform such act to the extent necessary or required by Lender, which act or acts shall be deemed to have been accomplished as of the date and time of entry of this Final Order notwithstanding the date and time actually accomplished, and in such event, the subject filing or recording office is authorized to accept, file or record any document in regard to such act in accordance with applicable law. Lender may choose to file, record or present a certified copy of this Final Order in the same manner as a Perfection Act, which shall

be tantamount to a Perfection Act, and, in such event, the subject filing or recording office is authorized to accept, file or record such certified copy of this Final Order in accordance with applicable law. Should Lender so choose and attempt to file, record or perform a Perfection Act, no defect or failure in connection with such attempt shall in any way limit, waive or alter the validity, enforceability, attachment, or perfection of the post-petition liens and security interests granted herein by virtue of the entry of this Final Order.

12. **Nullifying Pre-Petition Restrictions to Post-Petition Financing.**

Notwithstanding anything to the contrary contained in any pre-petition agreement, contract, lease, document, note or instrument to which any Debtor is a party or under which any Debtor is obligated, any provision that restricts, limits or impairs in any way any Debtor from granting Lender security interests in or liens upon any of the Collateral (including, among other things, any anti-lien granting or anti-assignment clauses in any leases or other contractual arrangements to which any Debtor is a party) under the Loan Documents or this Final Order, or otherwise entering into and complying with all of the terms, conditions and provisions hereof and in the Loan Documents, shall not (a) be effective and/or enforceable against any such Debtor(s) and/or Lender, or (b) adversely affect the validity, priority or enforceability of the liens, security interests, claims, rights, priorities and/or protections granted to Lender pursuant to this Final Order or the Loan Documents to the maximum extent permitted under the Bankruptcy Code and other applicable law.

13. **Superpriority Administrative Expense.** For all Post-Petition Obligations now existing or hereafter arising pursuant to this Final Order, the Post-Petition Amendment Agreement or otherwise, Lender is granted an allowed superpriority administrative claim pursuant to Section 364(c)(1) of the Bankruptcy Code, having priority in right of payment over any and all other obligations, liabilities and indebtedness of Debtors, whether now in existence or hereafter incurred by Debtors, and over any and all administrative expenses or priority claims of the kind specified in, or ordered pursuant to, inter alia Sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 364(c)(1), 546(c), 726 or 1114 of the Bankruptcy Code (the

“Superpriority Claim”), provided, however, the Superpriority Claim shall be subject only to the Permitted Liens and Claims as and to the extent expressly set forth in this Final Order, and shall not be enforceable against Chapter 5 Avoidance Actions.

14. **Carve Out Expenses**. Upon the declaration by Lender of the occurrence of an Event of Default (as defined below), Lender’s liens, claims and security interests in the Collateral, and Lender’s Superpriority Claim, shall be subject only to the right of payment of the following expenses (the “Carve Out Expenses”):

- a. statutory fees payable to the U.S. Trustee pursuant to 28 U.S.C. § 1930(a)(6);
- b. fees payable to the Clerk of this Court; and
- c. subject to the terms and conditions of this Final Order, the unpaid reasonable fees and expenses actually incurred on or after the Petition Date, once approved by a final order of the Court pursuant to Sections 326, 328, 330, or 331 of the Bankruptcy Code (collectively, the “Allowed Professional Fees”), by attorneys, accountants and other professionals retained by the Debtors and the Committee under Section 327 or 1103(a) of the Bankruptcy Code (collectively, the “Professionals”), less the amount of any retainers, if any, then held by such Professionals, in a cumulative, aggregate sum not to exceed \$483,000, subject to a 10% cumulative variance (the “Professional Fee Carve Out”).

15. **Excluded Professional Fees**. Notwithstanding anything to the contrary in this Final Order, neither the Professional Fee Carve Out nor the proceeds of any loans, letters of credit or Collateral shall be used to pay any Allowed Professional Fees or any other fees or expenses incurred by any Professional in connection with any of the following: (a) an assertion or joinder in (but excluding any investigation into) any claim, counter-claim, action, proceeding, application, motion, objection, defense or contested matter seeking any order, judgment, determination or similar relief: (i) challenging the legality, validity, priority, perfection, or enforceability of the Obligations or Lender’s liens on and security interests in the Collateral, (ii)

invalidating, setting aside, avoiding or subordinating, in whole or in part, the Obligations or Lender's liens on and security interests in the Collateral, (iii) preventing, hindering or delaying Lender's assertion or enforcement of any lien, claim, right or security interest or realization upon any Collateral in accordance with the terms and conditions of this Final Order, or (iv) commencing or prosecuting any action or proceeding of any claims, causes of action or defenses against Lender or any of its officers, directors, employees, agents, attorneys, affiliates, successors or assigns, including, without limitation, any attempt to recover or avoid any claim or interest from Lender under chapter 5 of the Bankruptcy Code; (b) a request to use the Cash Collateral (as such term is defined in Section 363 of the Bankruptcy Code) without the prior written consent of Lender in accordance with the terms and conditions of this Final Order; (c) a request for authorization to obtain Debtor-in-Possession financing or other financial accommodations pursuant to Section 364(c) or Section 364(d) of the Bankruptcy Code, other than from Lender, without the prior written consent of Lender, or (d) any act which has or could have the effect of materially and adversely modifying or compromising the rights and remedies of Lender, or which is contrary, in a manner that is material and adverse to Lender, to any term or condition set forth in or acknowledged by the Post-Petition Amendment Agreement or this Final Order and which results in the occurrence of an Event of Default under the Post-Petition Amendment Agreement or this Final Order.

16. **Payment of Carve Out Expenses.** Until an Event of Default occurs Debtors shall be permitted to pay Allowed Professional Fees of the Professionals in accordance with the Budget. After an Event of Default occurs, payment of Carve Out Expenses, including the Professional Fee Carve Out shall be governed by Section 14, and the amount of any payment by Lender of the Professional Fee Carve Out or the other Carve Out Expenses (if any) shall be added to and made a part of the Obligations, secured by the Collateral, and entitle Lender to all of the rights, claims, liens, priorities and protections under this Final Order, the Loan Documents, the Bankruptcy Code or applicable law. Payment of any Carve Out Expenses, whether by or on behalf of Lender, shall not and shall not be deemed to reduce the Obligations,

and shall not and shall not be deemed to subordinate any of Lender's liens and security interests in the Collateral or Lender's Superpriority Claim to any junior pre-petition or post-petition lien, interest or claim in favor of any other party. Except as otherwise provided herein with respect to the Professional Fee Carve Out and the other Carve Out Expenses, Lender shall not, under any circumstance, be responsible for the direct payment or reimbursement of any fees or disbursements of any Professionals incurred in connection with the Case under any chapter of the Bankruptcy Code, and nothing in this Final Order shall be construed to obligate Lender in any way, to pay compensation to or to reimburse expenses of any Professional, or to ensure that the Debtors have sufficient funds to pay such compensation or reimbursement.

17. **Authorization to Use Cash Collateral.** Subject to the terms and conditions of this Final Order, and the Post-Petition Amendment Agreement, and in accordance with the Budget, Debtors shall be and are hereby authorized to use the Cash Collateral (as defined in Section 363 of the Bankruptcy Code) subject to the pre-petition liens and security interests granted to the Lender until the end of the Financing Period (as defined in the Post-Petition Amendment Agreement). Nothing in this Final Order shall authorize the disposition of any assets of the Debtors or their Estates outside the ordinary course of business, or any Debtor's use of Cash Collateral or other proceeds resulting therefrom, except as permitted in this Final Order, the Post-Petition Amendment Agreement and in accordance with the Budget.

18. **Replacement Liens.** As adequate protection for the diminution in value of its interests in the Pre-Petition Collateral (including Cash Collateral) on account of the Debtors' use of such Pre-Petition Collateral (including Cash Collateral), the imposition of the automatic stay and the subordination to the Carve Out-Expenses, and to the extent of such diminution, Lender is hereby granted pursuant to Sections 361 and 363 of the Bankruptcy Code, valid, binding, enforceable and perfected replacement liens upon and security interests in all Collateral (the "Replacement Lien"). The Replacement Lien shall be junior and subordinate only to the Carve Out Expenses and the liens and security interests granted to Lender in the Collateral securing the Post-Petition Obligations and shall otherwise be senior to all other security interests in, liens on,

or claims against any of the Collateral.

19. **Section 507(b) Priority Claim.** As adequate protection for the diminution in value, if any, of its interests in the Pre-Petition Collateral (including Cash Collateral) on account of the Debtors' use of such Pre-Petition Collateral (including Cash Collateral), the imposition of the automatic stay and the subordination to the Carve Out Expenses, the Lender is hereby granted as and to the extent provided by Section 507(b) of the Bankruptcy Code an allowed superpriority administrative expense claim in each of the Cases and any successor cases (the "**Adequate Protection Superpriority Claim**") to the extent of any diminution of the Pre-Petition Collateral, provided, however that the Adequate Protection Superpriority Claim shall not apply for any deficiency in the amount owed on the Revolver. The Adequate Protection Superpriority Claim shall be junior only to the Carve Out Expenses and shall otherwise have priority over all administrative expense claims and unsecured claims against Debtors and their Estates now existing or hereafter arising, of any kind or nature whatsoever.

20. **Other Adequate Protection.** As further adequate protection, Debtors are hereby authorized to provide adequate protection to Lender in the form of: (a) payment of interest due on the Pre-Petition Obligations as set forth in the Post-Petition Amendment Agreement, and (b) subject to Section 4 of this Final Order, payment of the fees, costs and expenses, including, without limitation, reasonable legal and other professionals' fees and expenses, of the Lender as required under the Post-Petition Amendment Agreement. Interest payments shall be fully earned as of the date hereof and shall be payable on the first business day of each month.

21. **Events of Default.** The occurrence of any Event of the Default under the Post-Petition Amendment Agreement, excluding any Specified Default, shall constitute an "**Event of Default**" under this Final Order. The "**Specified Defaults**" (individually, a "**Specified Default**") are the following pre-petition defaults by the Debtors: (a) Operating Debtor's borrowings under the Revolver exceeded the maximum availability under the Revolver, (b) Operating Debtor failed to repay the excess borrowings on the Revolver as required under the Pre-Petition Loan Documents; (b) Operating Debtor and Taylor Industrial failed to meet the minimum Combined

Fixed Charge Coverage Ratio of 1.20 to 1.00; (c) Operating Debtor and Taylor Industrial failed to deliver combined audited financial statements; and (d) Operating Debtor and Taylor Industrial made Restricted Payments in excess of those permitted under the Pre-Petition Loan Documents.

22. **Rights and Remedies Upon Event of Default.** Upon the occurrence of and during the continuance of an Event of Default, (a) the Debtors' authority to engage in post-petition financing pursuant to this Final Order shall terminate, (b) the Debtors shall be bound by all restrictions, prohibitions and other terms as provided in this Final Order and the Post-Petition Amendment Agreement, (c) Lender shall be entitled to take any act or exercise any right or remedy as provided in this Final Order or Post-Petition Amendment Agreement, including, without limitation, declaring all Obligations immediately due and payable, accelerating the Obligations and ceasing to extend loans or provide or arrange for letter of credit accommodations on behalf of Debtors, and (d) the Debtors' authority to use cash collateral shall terminate 5 business days after Lender provides Debtors an Enforcement Notice (as defined in Paragraph 24 of this Final Order), provided that during the 5 business day period following the Enforcement Notice, Debtors shall only use cash collateral in accordance with the terms of this Final Order and the Budget. During such 5 business day period, Debtors may cure the default (if curable). Whether Debtors have cured the default, however, shall be determined by Lender in the exercise of its reasonable judgment. Debtors and the Committee shall each have the right to seek an expedited hearing challenging Lender's assertion of an Event of Default or Lender's determination of whether a cure has occurred. Lender shall have no obligation to lend or advance any additional funds to or on behalf of Debtors, or provide any other financial accommodations to Debtors, immediately upon or during the occurrence of an Event of Default or upon the occurrence of any act, event, or condition that, with the giving of notice or the passage of time, or both, would constitute an Event of Default.

23. **Expiration of Commitment.** Upon the expiration of Operating Debtor's authority to borrow and obtain other credit accommodations from Lender pursuant to the terms of this Final Order and Post-Petition Amendment Agreement (except if such authority shall be



extended with the prior written consent of Lender, which consent shall not be implied or construed from any action, inaction or acquiescence by Lender) all of the Obligations shall immediately become due and payable.

24. **Relief from Automatic Stay.** The automatic stay provisions of Section 362 of the Bankruptcy Code and any other restriction imposed by an order of the Court or applicable law are hereby modified and vacated without further notice, application or order of the Court to the extent necessary to permit Lender to perform any act authorized or permitted under or by virtue of this Final Order or the Loan Documents. In addition, and without limiting the foregoing, upon the occurrence of an Event of Default and after providing five (5) business days prior written notice (the “Enforcement Notice”) to counsel for the Debtors, counsel for the Committee, and the U.S. Trustee, and if the default is not cured within such 5 business day period as determined by Lender in the exercise of its reasonable judgment, and subject to Debtors’ and the Committee’s rights to contest the occurrence of an Event of Default and Lender’s determination of cure, Lender shall be entitled to take any action and exercise all rights and remedies provided to it by this Final Order, the Loan Documents or applicable law as Lender may deem appropriate in its sole discretion to, among other things, proceed against and realize upon the Collateral or any other assets or properties of Debtors’ Estates upon which Lender has been or may hereafter be granted liens or security interests to obtain the full and indefeasible repayment of all Obligations.

25. **Objections to Pre-Petition Obligations.** The Committee is granted derivative standing to initiate, in the name of any one or more of the Debtors, any action, adversary proceeding, objection, contested matter, claim, application, motion, defense, or other proceeding that seeks to object to, challenge, contest or otherwise invalidate or reduce, whether by setoff, recoupment, counterclaim, deduction, disgorgement or claim of any kind: (a) the existence, validity or amount of the Pre-Petition Obligations or (b) the extent, legality, validity, perfection or enforceability of Lender’s pre-petition liens and security interests in the Pre-Petition Collateral (hereinafter, an “Objection”). Any Objection must be filed with the Court by September 11,

2015 unless such date is extended by stipulation of the Committee and Lender. If any such Objection is timely filed and successfully pursued, nothing in this Final Order shall prevent the Court from granting appropriate relief with respect to the Pre-Petition Obligations or Lender's liens on the Pre-Petition Collateral. If no Objection is timely filed, or if an Objection is timely filed but denied, (a) the Pre-Petition Obligations shall be deemed allowed in full, shall not be subject to any setoff, recoupment, counterclaim, deduction or claim of any kind, and shall not be subject to any further objection or challenge by any party at any time, and Lender's pre-petition liens on and security interest in the Pre-Petition Collateral shall be deemed legal, valid, perfected, enforceable, and non-avoidable for all purposes and of first and senior priority, subject to only the Permitted Liens and Claims, and (b) Lender's and its participants, agents, officers, directors, employees, attorneys, professionals, successors, and assigns shall be deemed released and discharged from any and all claims and causes of action related to or arising out of the Pre-Petition Loan Documents and shall not be subject to any further objection or challenge by any party at any time. Nothing contained in this Section 25 or otherwise shall or shall be deemed or construed to impair, prejudice or waive any rights, claims or protections afforded to Lender in connection with all post-petition loans and letter of credit accommodations and other financial and credit accommodations provided by Lender to Debtors in reliance on Section 364(e) of the Bankruptcy Code and in accordance with the terms and provisions of this Final Order and the Post-Petition Amendment Agreement.

26. **Debtors' Waivers.** At all times during the Cases, and whether or not an Event of Default has occurred, the Debtors irrevocably waive any right that they may have to seek authority (a) to use Cash Collateral of Lender under Section 363 of the Bankruptcy Code provided that, Debtors may seek to use cash collateral pursuant to Section 363 of the Bankruptcy Code that either (i) indefeasibly repays in full all Obligations owing by Debtors to Lender on terms and conditions acceptable to the Lender or (ii) is on terms and conditions acceptable to Lender, (b) to obtain post-petition loans or other financial accommodations pursuant to Section 364(c) or 364(d) of the Bankruptcy Code, other than from Lender in accordance with the terms

hereof; provided, that, Debtors may seek to obtain financing pursuant to Section 364(c) of the Bankruptcy Code that either (i) indefeasibly repays in full all Obligations owing by Debtors to Lender on terms and conditions acceptable to the Lender or (ii) is junior and subordinate in all respects to the liens, claims and right of payment of Lender in respect of all Obligations and is otherwise on terms and conditions acceptable to Lender, or (c) to challenge the application of any payments authorized by this Final Order as pursuant to Section 506(b) of the Bankruptcy Code, or (d) to seek relief under the Bankruptcy Code, including without limitation, under Section 105 of the Bankruptcy Code, to the extent any such relief would in any way restrict or impair the rights and remedies of Lender as provided in this Final Order and the Loan Documents or Lender's exercise of such rights or remedies; provided, however, that Lender may otherwise consent in writing, but no such consent shall be implied from any other action, inaction, or acquiescence by Lender.

27. **Section 506(c) Claims.** No costs or expenses of administration which have or may be incurred in the Cases at any time shall be charged against Lender, its claims or the Collateral pursuant to Section 506(c) of the Bankruptcy Code without the prior written consent of Lender, and no such consent shall be implied from any other action, inaction or acquiescence by Lender.

28. **Collateral Rights.** Until all of the Obligations shall have been indefeasibly paid and satisfied in full: (a) no other party shall foreclose or otherwise seek to enforce any junior lien or claim in any Collateral; and (b) upon and after the occurrence of an Event of Default, and subject to Lender obtaining relief from the automatic stay as provided for herein, in connection with a liquidation of any of the Collateral, Lender (or any of its employees, agents, consultants, contractors or other professionals) shall have the right, at the sole cost and expense of Debtors, to: (x) enter upon, occupy and use any real or personal property, fixtures, equipment, leasehold interests or warehouse arrangements owned or leased by Debtors and (y) use any and all trademarks, trade names, copyrights, licenses, patents or any other similar assets of Debtors, which are owned by or subject to a lien of any third party and which are used by Debtors in their

businesses. Lender will be responsible for the payment of any applicable fees, rentals, royalties or other amounts due such lessor, licensor or owner of such property for the period of time that Lender actually uses the equipment or the intellectual property (but in no event for any accrued and unpaid fees, rentals or other amounts due for any period prior to the date that Lender actually occupies or uses such assets or properties).

29. **Release.** Upon the earlier of (a) the entry of a final financing order approving the Motion or (b) the entry of an Order extending the Interim Financing Period beyond thirty (30) calendar days after the date of this Final Order, and in each instance, subject to Section 25 above, in consideration of Lender making post-petition loans, advances and providing other credit and financial accommodations to the Debtors pursuant to the provisions of the Post-Petition Amendment Agreement and this Final Order, each Debtor, on behalf of itself and its successors and assigns, (collectively, the “Releasors”), shall, forever release, discharge and acquit Lender and its participants, officers, directors, agents, attorneys and predecessors-in-interest (collectively, the “Releasees”) of and from any and all claims, demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness and obligations, of every kind, nature and description, including, without limitation, any so-called “lender liability” claims or defenses, that Releasors had, have or hereafter can or may have against Releasees as of the date hereof, in respect of events that occurred on or prior to the date hereof with respect to the Debtors, the Pre-Petition Obligations, the Loan Documents and any loans, letter of credit accommodations or other financial accommodations made by Lender to Debtors pursuant to the Loan Documents. In addition, upon the earlier of (x) the repayment of all Obligations owed to Lender by Debtors and termination of the rights and obligations arising under the Loan Documents (which payment and termination shall be on terms and conditions acceptable to Lender) and (y) the confirmation of a plan of reorganization or plan of liquidation of any Debtors’ Chapter 11 Cases, Lender shall be released from any and all obligations, liabilities, actions, duties, responsibilities and causes of action arising or occurring in connection with or related to the Loan Documents or the applicable financing 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 Expenses), on terms and conditions acceptable to Lender. In the event an Objection is timely filed under Section 25, this release will not be effective with respect to the specific claims raised in the Objection unless (i) the Court rules, or enters an order or judgment, stipulated or otherwise, in favor of the Lender, (ii) the Committee dismisses the Objection, or (iii) the Committee and the Lender agree in writing.

30. **No Modification or Stay of This Final Order.** Notwithstanding (a) any stay, modification, amendment, supplement, vacating, revocation or reversal of the Interim Order or this Final Order or any term hereunder or thereunder, or (b) the dismissal or conversion of one or more of the Cases (each, a “Subject Event”), (x) the acts taken by Lender in accordance with the Interim Order and this Final Order, and (y) the Post-Petition Obligations incurred or arising prior to Lender’s actual receipt of written notice from Debtors expressly describing the occurrence of such Subject Event shall, in each instance, be governed in all respects by the original provisions of the Interim Order and this Final Order, and the acts taken by Lender in accordance with the Interim Order and this Final Order, and the liens granted to Lender in the Collateral, and all other rights, remedies, privileges, and benefits in favor of Lender pursuant to the Interim Order and this Final Order shall remain valid and in full force and effect pursuant to Section 364(e) of the Bankruptcy Code. For purposes of this Final Order, the term “appeal”, as used in Section 364(e) of the Bankruptcy Code, shall be construed to mean any proceeding for reconsideration, amending, rehearing, or re-evaluating this Final Order by this Court or any other tribunal.

31. **Power to Waive Rights; Duties to Third Parties.** Lender shall have the right to waive any of the terms, rights and remedies provided or acknowledged in this Final Order in respect of Lender (the “Lender Rights”), and shall have no obligation or duty to any other party with respect to the exercise or enforcement, or failure to exercise or enforce, any Lender Right(s). Any waiver by Lender of any Lender Rights shall not be or constitute a continuing waiver. Any delay in or failure to exercise or enforce any Lender Right shall neither constitute a

waiver of such Lender Right, subject Lender to any liability to any other party, nor cause or enable any other party to rely upon or in any way seek to assert as a defense to any obligation owed by the Debtors to Lender.

32. **Disposition of Collateral.** Debtors shall not sell, transfer, lease, encumber or otherwise dispose of any portion of the Collateral without the prior written consent of Lender (and no such consent shall be implied, from any other action, inaction or acquiescence by Lender) and an order of this Court, except for sales of Debtors' inventory in the ordinary course of their business. Debtors shall remit to Lender, or cause to be remitted to Lender, all proceeds of the Collateral for application by Lender to the Obligations, in such order and manner as Lender may determine in its discretion, in accordance with the terms of this Final Order, the Loan Documents and the Budget.

33. **Inventory.** Debtors shall not, without the consent of Lender, (a) enter into any agreement to return any inventory to any of their creditors for application against any pre-petition indebtedness under any applicable provision of Section 546 of the Bankruptcy Code, or (b) consent to any creditor taking any setoff against any of its pre-petition indebtedness based upon any such return pursuant to Section 553(b)(1) of the Bankruptcy Code or otherwise.

34. **Reservation of Rights.** The terms, conditions and provisions of this Final Order are in addition to and without prejudice to the rights of Lender to pursue any and all rights and remedies not otherwise inconsistent with the terms of this Final Order under the Bankruptcy Code, the Loan Documents or any other applicable agreement or law, including, without limitation, rights to seek adequate protection and/or additional or different adequate protection, to seek relief from the automatic stay, to seek an injunction, to oppose any request for use of cash collateral or granting of any interest in the Collateral or priority in favor of any other party, to object to any sale of assets, and to object to applications for allowance and/or payment of compensation of Professionals or other parties seeking compensation or reimbursement from the Estate.

35. **Binding Effect.**

a. Subject to Section 25, the provisions of this Final Order and the Loan Documents, the Post-Petition Obligations, Superpriority Claim and any and all rights, remedies, privileges and benefits in favor of Lender provided or acknowledged in this Final Order, and any actions taken pursuant thereto, shall be effective immediately upon entry of this Final Order pursuant to Bankruptcy Rules 6004(g) and 7062, shall continue in full force and effect, and shall survive entry of any such other order, including without limitation any order which may be entered confirming any plan of reorganization, converting one or more of the Cases to any other chapter under the Bankruptcy Code, or dismissing one or more of the Cases.

b. Any order dismissing one or more of the Cases under Section 1112 or otherwise shall be deemed to provide (in accordance with Sections 105 and 349 of the Bankruptcy Code) that (i) the Superpriority Claim and Lender's liens on and security interests in the Collateral shall continue in full force and effect notwithstanding such dismissal until the Obligations are indefeasibly paid and satisfied in full, and (ii) this Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing the Superpriority Claim and liens in the Collateral.

c. This Final Order shall be binding upon Debtors, all parties in interest in the Cases and their respective successors and assigns, including any trustee or other fiduciary appointed in the Cases or any subsequently converted bankruptcy case(s) of any Debtor. This Final Order shall also inure to the benefit of Lender, Debtors and their respective successors and assigns.

36. **Restrictions on Cash Collateral Use, Additional Financing, Plan Treatment.**

All post-petition advances and other financial accommodations under the Post-Petition Amendment Agreement are made in reliance on this Final Order and there shall not at any time be entered in the Cases, or in any subsequently converted case under Chapter 7 of the Bankruptcy Code, any order (other than a final financing order by this Court) which (a) authorizes the use of cash collateral of Debtors in which Lender has an interest, or the sale, lease,

or other disposition of property of any Debtor's Estate in which Lender has a lien or security interest, except as expressly permitted hereunder, or (b) authorizes under Section 364 of the Bankruptcy Code the obtaining of credit or the incurring of indebtedness secured by a lien or security interest which is equal or senior to a lien or security interest in property in which Lender holds a lien or security interest, or which is entitled to priority administrative claim status which is equal or superior to that granted to Lender herein; unless, in each instance (x) Lender shall have given its express prior written consent with respect thereto, no such consent being implied from any other action, inaction or acquiescence by Lender, or (y) such other order requires that all Obligations shall first be indefeasibly paid and satisfied in full in accordance with the terms of Loan Documents, including, without limitation, all debts and obligations of Debtors to Lender which arise or result from the obligations, loans, security interests and liens authorized herein, on terms and conditions acceptable to Lender. The security interests and liens granted to or for the benefit of Lender hereunder and the rights of Lender pursuant to this Final Order and the Loan Documents with respect to the Obligations and the Collateral are cumulative and shall not be altered, modified, extended, impaired, or affected by any plan of reorganization or liquidation of Debtors and, if the Obligations shall not be repaid in full upon confirmation thereof, shall continue after confirmation and consummation of any such plan.

37. **No Owner/Operator Liability**. Subject to the entry of a final financing order granting the following relief, in determining to make any loan under the Post-Petition Amendment Agreement or any financing order, or in exercising any rights or remedies as and when permitted pursuant to the Loan Documents or any financing order, Lender shall not be deemed to be in control of the operations of the Debtors or 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 any similar terms, are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 29 U.S.C. §§ 9601 et seq., as amended, or any similar federal or state statute).

38. **Marshalling**. In no event shall Lender be subject to the equitable doctrine of



“marshalling” or any similar doctrine with respect to the Collateral.

39. **Term; Termination.** Notwithstanding any provision of this Final Order to the contrary, the term of the financing arrangements among Debtors and Lender authorized by this Final Order may be terminated pursuant to the terms of the Post-Petition Amendment Agreement.

40. **Limited Effect.** Unless the Final Order specifically provides otherwise, in the event of a conflict between the terms and provisions of the Loan Documents, including the Post-Petition Amendment Agreement, and this Final Order, the terms and provisions of this Final Order shall govern, interpreted as most consistent with the terms and provisions of the Loan Documents.

41. **Objections Overruled.** All objections to the entry of this Final Order are, to the extent not withdrawn, hereby overruled.

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