IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	:	Chapter 11
LENSAR, INC.,[1]	:	Case No. 16-12808 (MFW)
Debtor.	:	**Proposed Hearing Date: January 9, 2017 at 10:30 a.m. (ET)**
	:	**Proposed Objection Deadline: At the Hearing.**

MOTION OF DEBTOR FOR INTERIM AND FINAL ORDERS (I) AUTHORIZING DEBTOR (A) TO OBTAIN POST-PETITION SECURED FINANCING PURSUANT TO 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) AND 364(e), AND (B) TO UTILIZE CASH COLLATERAL PURSUANT TO 11 U.S.C. § 363, (II) GRANTING ADEQUATE PROTECTION TO PREPETITION PDL SECURED PARTIES PURSUANT TO 11 U.S.C. §§ 361, 362, 363 AND 364, AND (III) SCHEDULING FINAL HEARING PURSUANT TO BANKRUPTCY RULES 4001(B) AND (C)

Lensar, Inc., the debtor and debtor in possession in the above-captioned case (the "**Debtor**") hereby moves (the "**Motion**") for entry of an interim order, substantially in the form attached hereto as Exhibit A (the "**Interim Order**") and a final order (the "**Final Order**"), pursuant to sections 105, 361, 362, 363, 364, 507 and 552 of title 11 of the United States Code (the "**Bankruptcy Code**"), Rules 2002, 4001, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), and Rule 4001-2 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "**Local Rules**") that, among other things:

i. authorizes the Debtor to obtain a senior secured, super-priority, multiple draw term credit facility (such facility, the "**DIP Facility**") of up to $4,368,216 in aggregate principal amount pursuant to the terms of (x) the Interim Order, (y) that certain Senior Secured Super Priority Debtor in Possession Credit Agreement in substantially the form attached as Exhibit 1 to the Interim Order (as the same may be amended, restated,

[1] The Debtor in this case and the last four digits of the Debtor's federal tax identification number are: Lensar, Inc. (5724). The Debtor's corporate headquarters are located at 2800 Discovery Drive, Orlando, Florida 32826.

supplemented or otherwise modified from time to time, the "**DIP Credit Agreement**")[2] among Debtor and PDL Biopharma, Inc., a Delaware corporation, as lender and agent (the "**DIP Lender**"), and PDL Biopharma, Inc., a Delaware corporation, not individually, but as the Agent (the "**DIP Agent**" and together with the DIP Lender, the "**DIP Secured Parties**") and (z) any and all other Loan Documents (as defined in the DIP Credit Agreement) (together with the DIP Credit Agreement, collectively, the "**DIP Loan Documents**"), which, if approved on a final basis, would consist of $4,368,216 in funding (the "**DIP Loans**"), consisting of (i) $2.8 million in new money and (ii) $1,568,216 in previously funded Interim Advances (as defined below), subject to the terms and conditions of the Interim Order, the Final Order (as defined below), and the DIP Loan Documents (all DIP Loans made pursuant to the DIP Loan Documents, and all other obligations and liabilities of the Debtor arising under the DIP Loan Documents, including, without limitation, all Loan Document Obligations as defined in the DIP Credit Agreement, collectively, the "**DIP Obligations**");

ii. approves the terms of, and authorizes the Debtor to execute and deliver, and perform under, the DIP Loan Documents and to perform such other and further acts as may be required in connection with the DIP Loan Documents;

iii. authorizes the Debtor to grant, in accordance with the relative priorities set forth herein, to the DIP Lender (x) senior Liens on all of the DIP Collateral (as defined below) pursuant to sections 364(c) and (d) of the Bankruptcy Code and (y) super-priority administrative expense claims having recourse to all prepetition and post-petition property of the estate of the Debtor, now owned or hereafter acquired (which, upon entry of the Final Order, will include Avoidance Actions (as defined below)) and proceeds thereof;

iv. authorizes the Debtor to use "cash collateral," as such term is defined in section 363 of the Bankruptcy Code (the "**Cash Collateral**"), including, without limitation, Cash Collateral in which the Prepetition PDL Secured Parties (as defined below) and the DIP Lender have a Lien or other interest, in each case whether existing on the Petition Date, arising pursuant to the Interim Order or otherwise, and in accordance with the Budget (as defined in the DIP Credit Agreement);

v. grants, as of the Petition Date and in accordance with the relative priorities set forth herein, certain adequate protection to the Prepetition PDL Secured Parties (as defined below), consisting of, among other things,

[2] Unless otherwise specified, all capitalized terms used herein without definition shall have the respective meanings given such terms in the DIP Credit Agreement.

Adequate Protection Liens (as defined below) and the Adequate Protection Super-Priority Claims;

vi. vacates the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of the DIP Loan Documents and the Interim Order;

vii. schedules a final hearing on the DIP Motion to be held on January 30, 2017 (the **"Final Hearing"**) to consider entry of a final order acceptable in form and substance to the Lender and Agent that grants all of the relief requested in the DIP Motion on a final basis (the **"Final Order"**); and

viii. waives any applicable stay (including under Bankruptcy Rule 6004) and provides for immediate effectiveness of the Interim Order.

The Debtor will be filing a *Declaration of Nicholas T. Curtis, Chief Executive Officer of the Debtor, in Support of the Motion* (the "**Curtis DIP Financing Declaration**"). In further support of the Motion, the Debtor respectfully represents:

JURISDICTION

2. This Court has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue of the case and this Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief requested herein are sections 105, 361, 362, 363, 364, 507 and 552 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001, 6004 and 9014, and Local Rule 4001-2.

GENERAL BACKGROUND

3. On December 16, 2016 (the "**Petition Date**"), the Debtor filed a voluntary petition in this Court commencing this case for relief under chapter 11 of the Bankruptcy Code (the "**Chapter 11 Case**"). The factual background regarding the Debtor, including its business operations, capital and debt structures, and the events leading to the filing of this Chapter 11 Case, is set forth in detail in the *Declaration of Nicholas T. Curtis in Support of Chapter 11 Petition and First Day Pleadings* [Dkt. No. 3] and the *Supplemental Declaration of Nicholas T.*

Curtis in Support of Chapter 11 Petition and First Day Pleadings [Dkt. No. 16], which are fully incorporated herein by reference.

4. The Debtor continues to manage and operate its business as a debtor in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been requested in the Chapter 11 Case, and no statutory committee of unsecured creditors (to the extent such committee is appointed, the "**Committee**") has yet been appointed.

SPECIFIC BACKGROUND

A. Debtor's Capital Structure

i. Reaffirmation Agreement.

5. As of the Petition Date, Debtor, as borrower, and PDL Biopharma, Inc., as lender and agent (the "**Prepetition PDL Secured Parties**") were parties to that certain Reaffirmation Agreement (as amended by Amendment No. 1 to Reaffirmation Agreement and to Term Note, dated as of December 16, 2016), dated as of December 14, 2015, by and between the Debtor and PDL, pursuant to which Debtor reaffirmed $7,304,083 in obligations originally advanced pursuant to the Credit Agreement dated as of October 1, 2013 (the "**Reaffirmation Agreement**").

6. As of the Petition Date, the aggregate outstanding obligations arising under the Reaffirmation Agreement was no less than $8,509,019, consisting of (i) a Deficiency Amount (as defined in the Reaffirmation Agreement) in the outstanding principal amount of $7,304,083 and (ii) accrued and unpaid interest, costs, expenses, fees (including reimbursable attorney and other advisor fees and expenses), other charges (in each case, to the extent reimbursable under the Reaffirmation Agreement) and other obligations owing to the Prepetition PDL Secured Parties (all obligations under, and as defined in the Reaffirmation Agreement,

together with any other amounts owing by the Debtor under any document executed in connection with the Reaffirmation Agreement (the "**Reaffirmation Loan Documents**"), collectively, the "**Reaffirmed 2013 Indebtedness**").

ii. 2016 Credit Facility.

7. As of the Petition Date, Debtor, as borrower, and the Prepetition PDL Secured Parties, as lender and agent, were parties to that certain Second Amended and Restated Credit Agreement, dated as of December 16, 2016 (as amended, restated, supplemented or otherwise modified prior to the Petition Date, the "**2016 Credit Agreement**" and together with the other Loan Documents (as defined in the 2016 Credit Agreement), in each case as amended, restated, supplemented or otherwise modified prior to the Petition Date, collectively, the "**2016 Loan Documents**" and the credit facility contemplated therein, the "**2016 Credit Facility**"). The 2016 Loan Documents and the Reaffirmation Loan Documents are collectively referred to herein as the "**Prepetition Loan Documents**." The Obligations under the 2016 Credit Facility were secured by a security interest in substantially all of the Debtor's assets, which was subordinate to the security interest securing the Reaffirmed 2013 Indebtedness.

8. As of the Petition Date, the aggregate outstanding Obligations (as defined in the 2016 Credit Agreement) arising under the 2016 Loan Documents was no less than $48,928,411, consisting of (i) a term loan in the outstanding principal amount of $42,000,000 and (ii) accrued and unpaid interest, costs, expenses, fees (including reimbursable attorney and other advisor fees and expenses), other charges (in each case, to the extent reimbursable under the 2016 Loan Documents) and other obligations owing to the Prepetition PDL Secured Parties (all Obligations under, and as defined in the 2016 Credit Agreement, together with any other amounts owing by the Debtor under the 2016 Loan Documents, collectively, the "**2016**

Indebtedness" and together with the Reaffirmed 2013 Indebtedness, the "**Prepetition PDL Indebtedness**").

iii. Interim Promissory Note.

9. As of the Petition Date, Debtor, as borrower, and Prepetition PDL Secured Parties, as lender, were parties to that certain Interim Promissory Note, dated as of December 14, 2016 (as amended, restated, supplemented or otherwise modified prior to the Petition Date, the "**Interim Promissory Note**" and together with the Security Agreement (as defined in the Interim Promissory Note), in each case as amended, restated, supplemented or otherwise modified prior to the Petition Date, collectively, the **"Interim Advance Documents"** and the advances contemplated therein, the "**Interim Advances**"). As of the Petition Date, the aggregate outstanding balance arising under the Interim Advance Documents was no less than $1,570,696, consisting of (i) advances in the total outstanding principal amount of $1,568,216 and (ii) accrued and unpaid interest, costs, expenses, fees (including reimbursable attorney and other advisor fees and expenses), other charges (in each case, to the extent reimbursable under the Interim Advance Documents) and other obligations owing to the Prepetition PDL Secured Parties (collectively, the "**Interim Indebtedness.**"

iv. Prepetition PDL Liens and Prepetition PDL Collateral.

10. The Prepetition PDL Indebtedness and the Interim Indebtedness is secured by Liens granted to, or for the benefit of, the Prepetition PDL Secured Parties (the "**Prepetition PDL Liens**") on substantially all of the Debtor's property, as further described in the Prepetition Loan Documents (the "**Prepetition PDL Collateral**"). As of the Petition Date, the Prepetition PDL Liens (w) are valid, binding, enforceable, and perfected Liens to the extent required by the Prepetition Loan Documents, (x) were granted to, or for the benefit of, the Prepetition PDL

Secured Parties for fair consideration and reasonably equivalent value, (y) are not subject to avoidance, recharacterization or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law (except for the lien subordination contemplated herein), and (z) are subject and subordinate only to (A) the DIP Liens (as defined below), (B) the Carve-Out (as defined below), and (C) valid, perfected and unavoidable Liens permitted under the applicable Prepetition Loan Documents, if any, but only to the extent that such Liens are permitted by the applicable Prepetition Loan Documents to be senior to or pari passu with the applicable Prepetition Senior Liens. The security interest securing the 2016 Credit Facility is also subordinate to the security interest securing the Reaffirmed 2013 Indebtedness.

B. Process for Securing Financing

11. The Curtis DIP Financing Declaration will describe the efforts made to find an alternative funding source.

C. Cash Collateral and the Need for Financing

12. In the aggregate, the Debtor has nine (9) bank accounts (collectively, the "**Bank Accounts**"). As of the Petition Date, the approximate aggregate amount of cash in the Bank Accounts was approximately $2.9 million.

13. In general, the Debtor's cash is subject to security interests in favor of the Prepetition PDL Secured Parties. All of this cash constitutes Prepetition PDL Collateral, meaning that the Prepetition PDL Secured Parties have the first priority right to payment from such cash. In addition, cash receivables collected by the Debtor during this Chapter 11 Case will constitute proceeds of the Prepetition PDL Collateral, and all or virtually all of that cash will constitute Prepetition PDL Collateral.

14. Subject to the terms and conditions of the Interim Order, the Prepetition PDL Secured Parties have consented to the Debtor's use of Cash Collateral. The Debtor has been informed that the Prepetition PDL Secured Parties would not consent to the Debtor's continued use of Cash Collateral outside of the establishment of the DIP Facility. The Debtor has determined, in consultation with its advisors, that the expense and uncertainty attendant to a contested cash collateral litigation with the Prepetition PDL Secured Parties would adversely impact the Debtor's operations, would generate additional legal expenses and, if unsuccessful, could force an immediate liquidation of the Debtor.

15. The Debtor further believes that the use of Cash Collateral alone would not be sufficient to fund its operations and pay all administrative expenses during this Chapter 11 Case. The Debtor has an immediate need to obtain the DIP Facility and use Cash Collateral, among other things, to permit the orderly continuation of the operation of its business, to maintain business relationships with vendors, suppliers and customers, to make payroll, to make capital expenditures, and to satisfy other working capital and operation needs. The Debtor's access to sufficient working capital and liquidity through the use of borrowing under the DIP Facility and through the use of Cash Collateral is vital to the preservation and maintenance of the Debtor's going concern value and successful reorganization.

D. Overview of Proposed DIP Financing

16. The DIP Credit Agreement contemplates a multiple draw term credit facility providing for up to $2.8 million in new money ($4,368,216 in total, including the previously funded Interim Advances) loans and other financial accommodations, the provisions of which will be subject to compliance with the budget created in accordance with the terms of the DIP Credit Agreement, which budget is attached hereto as **Exhibit B**.

17. The DIP Facility will be secured by liens (the "**DIP Liens**") upon substantially all of the Debtor's prepetition and postpetition assets (the "**DIP Collateral**") pursuant to the terms of (x) the Interim Order, (y) the DIP Credit Agreement, and (z) the other DIP Loan Documents.

18. The DIP Loans will bear interest, payable in kind, at 15.5% per annum.

19. The DIP Agent (as provided in the DIP Loan Documents and for itself and the benefit of the DIP Secured Parties) will be granted Liens (which shall immediately, and without any further action by any Person, be valid, binding, permanent, perfected, continuing, enforceable and non-avoidable) on substantially all property of the Debtor.

E. Description of DIP Facility Pursuant to Bankruptcy Rule 4001

20. Pursuant to Bankruptcy Rule 4001 and Local Rule 4001-2(a)(ii), the Debtor sets forth significant elements of the DIP Facility as follows:

Material Provision	**Brief Summary**
Borrower	Lensar, Inc. *See DIP Credit Agreement*, preamble at p. 1.
Guarantors	None.
Administrative Agent	PDL Biopharma, Inc. *See DIP Credit Agreement*, preamble at p. 1.
DIP Lender	PDL Biopharma, Inc. *See DIP Credit Agreement*, preamble at p. 1.
DIP Facility Bankruptcy Rule 4001(c)(1)(B)	Post-petition senior, secured, super-priority multiple draw term credit financing in the amount of $4,368,216, consisting of (i) $2.8 million in new money and (ii) $1,568,216 in previously funded Interim Advances. *Interim Order* ¶ (i) at p. 1.
Interest Rate	15.5% per annum, payable in kind. If an Event of Default occurs, the interest rate increases by 3%

	See DIP Credit Agreement § 2.4 at p. 15.
Fees and Expenses	Debtor to pay the reasonable out-of-pocket costs and expenses of the DIP Secured Parties, including attorneys' fees and expenses. *See DIP Credit Agreement* § 10.3 at pp. 52-53.
DIP Maturity Event Bankruptcy Rule 4001(c)(1)(B)	The milesstones are still under negotiation; however, section 6.11 of the DIP Credit Agreement will provide that the Debtor shall comply with milestones with respect to the following aspects of the Chapter 11 Case: (i) The Interim Order Entry Date shall have occurred on or prior to [ ]. (ii) The Final Order Entry Date shall have occurred on or prior to [ ]. (iii) The disclosure statement (the "Disclosure Statement") shall have been filed pursuant to section 1125 of the Bankruptcy Code and a chapter 11 plan for the Debtor (the "Plan") on or prior to [ ], the terms of which Plan shall have the consent of the Agent, which consent shall not be unreasonably withheld. (iv) The Bankruptcy Court shall have entered an order approving the Disclosure Statement on or before [ ]. (v) The Bankruptcy Court shall have entered an order confirming the Plan on or prior to [ ] (the "Confirmation Order"). (vi) The Confirmation Order shall have become final and non-appealable on or prior to [ ]. (vii) The effective date of the Plan shall have occurred on or prior to [ ]. *See DIP Credit Agreement* § 6.11.

Liens, Collateral, and Priority Bankruptcy Rule 4001(c)(1)(B)(i), (vii), & (xi)	Claims arising under the DIP Loans shall have priority and be secured by liens and collateral as set forth below: (I) pursuant to section 364(c)(2) of the Bankruptcy Code, a perfected, binding, continuing, enforceable, non-avoidable, first priority Lien on all unencumbered DIP Collateral, including the proceeds of the Debtor's claims and causes of action under sections 502(d), 544, 545, 547, 548, 549, 550, 551 and 553 and 724(a) of the Bankruptcy Code, and any other avoidance or similar action under the Bankruptcy Code or similar state law ("**Avoidance Actions**") (subject to entry of the Final Order), whether received by judgment, settlement or otherwise, but excluding the Avoidance Actions themselves; (II) pursuant to section 364(c)(3) of the Bankruptcy Code, a perfected junior Lien upon all DIP Collateral (including, without limitation, Cash Collateral) that is subject to (x) valid, enforceable, non-avoidable and perfected Liens in existence on the Petition Date that, after giving effect to any intercreditor or subordination agreement, are senior in priority to the Prepetition PDL Liens, and (y) valid, enforceable and non-avoidable Liens in existence on the Petition Date that are perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code and after giving effect to any intercreditor or subordination agreement, are senior in priority to the Prepetition PDL Liens, other than, in the case of clause (II)(x) or (II)(y), Liens which are expressly stated to be primed by the Liens to be granted to the DIP Agent described in clause (III) below (subject to such exception, the "**Prepetition Senior Liens**"); and (III) pursuant to section 364(d)(1) of the Bankruptcy Code, a perfected first priority, senior priming Lien on all DIP Collateral, which lien is senior to (x) the existing Prepetition PDL Liens in favor of the Prepetition PDL Secured Parties and securing the Prepetition PDL Indebtedness (including all Obligations as defined in the Prepetition PDL Loan Documents), or (y) any existing Liens in favor of any other person or entity (other than the Prepetition Senior Liens), including, without limitation, all Liens junior to the Prepetition PDL Liens (the Liens referenced in clauses (x) and (y), collectively, the "**Primed Liens**"), which Primed Liens, together with any Liens granted on or after the Petition Date to provide adequate protection in respect of any Primed Liens, shall be primed by and made subject and subordinate to the perfected first priority senior priming DIP Liens.
Carve Out	**Carve-Out**" means: (i) all unpaid fees required to be paid in the Case to the clerk of the Bankruptcy Court and to the Office of the United States Trustee under 28 U.S.C. §1930(a)(6), in such amount agreed to by the Office of the

	United States Trustee or as determined by the Court, whether arising prior to or after the delivery of the Carve-Out Trigger Notice; (ii) fees, disbursements, costs and expenses which are incurred after the Petition Date and before the delivery of a Carve-Out Trigger Notice in an amount not to exceed the amounts set forth in the Budget for each Professional (as defined below), less any amount actually paid to each such Professional, retained by the Debtor and any Committee pursuant to Bankruptcy Code sections 327, 330, 363 and 1103 (collectively, the "**Professionals**"), to the extent allowed at any time by this Court and owed pursuant to such Professionals' respective engagement letters; (iii) the fees, disbursements, costs and expenses of Professionals in an aggregate amount not to exceed $200,000 that are incurred after the delivery of a Carve-Out Trigger Notice and which are ultimately allowed by this Court (the "**Carve-Out Cap**"). The term **"Carve-Out Trigger Notice"** shall mean a written notice delivered by the DIP Agent to the Debtor's lead counsel, the U.S. Trustee, and lead counsel to any Committee appointed in the Case, which notice may be delivered at any time following the occurrence and during the continuation of any Event of Default under the DIP Loan Documents, expressly stating that the Carve-Out (and the Carve-Out Cap) is invoked. Following the delivery of the Carve-Out Trigger Notice after the occurrence and during the continuance of any Event of Default under the DIP Loan Documents, any payments actually made pursuant to Bankruptcy Code sections 327, 328, 330, 331, 363, 503 or 1103 or otherwise, to Professionals shall (i) not be paid from the proceeds of any DIP Loan, DIP Collateral, Prepetition PDL Collateral or Cash Collateral until such time as all retainers, if any, held by such Professionals have been reduced to zero, and (ii) in the case of any payments made on account of any fees and expenses described in clause (iii) of the definition of Carve-Out, reduce the Carve-Out Cap on a dollar-for-dollar basis. *Interim Order* ¶ 7 at pp. 27-29.
Events of Default	Section 8 of the DIP Credit Agreement and paragraph 14 of the Interim Order set forth the Events of Default, which include failure to make payments when due and failure to comply with the Budget (subject to Permitted Variances thereunder). The Interim Order requires five (5) business days written notice to the Debtor, the United States Trustee, and lead counsel to the Committee before the DIP Secured Parties may

	take Enforcement Action. *See DIP Credit Agreement* §§ 8.1-8.18 and *Interim Order* ¶ 14 at pp. 33-35.
Adequate Protection	As adequate protection for the interests of the Prepetition PDL Secured Parties in the Prepetition PDL Collateral (including Cash Collateral) for, and in an aggregate amount equal to, the diminution in value (collectively, "**Diminution in Value**") of such interests from and after the Petition Date, calculated in accordance with section 506(a) of the Bankruptcy Code, resulting from the use, sale or lease by the Debtor of the applicable Prepetition PDL Collateral (including Cash Collateral), the granting of the DIP Liens, the subordination of the Prepetition PDL Liens thereto and to the Carve-Out, or the imposition or enforcement of the automatic stay of section 362(a), the Prepetition PDL Secured Parties shall receive the following adequate protection: a. Adequate Protection Liens. Solely to the extent of any aggregate post-petition Diminution in Value of the prepetition interests of the Prepetition PDL Secured Parties in the Prepetition PDL Collateral, the Prepetition PDL Secured Parties will be granted, pursuant to sections 361, 363(c) and 364(d) of the Bankruptcy Code, valid, perfected and unavoidable senior Liens (including replacement Liens) upon all of the DIP Collateral (the "**Adequate Protection Liens**"), which Adequate Protection Liens on such DIP Collateral shall be subject and subordinate only to the DIP Liens, the Prepetition Senior Liens, if any, and the payment of the Carve-Out to the extent expressly provided in the DIP Loan Documents and the Interim Order. b. Adequate Protection Super-Priority Claims. Solely to the extent of any aggregate post-petition Diminution in Value, the Prepetition PDL Secured Parties are hereby granted, subject to the payment of the DIP Super-Priority Claims and the Carve-Out to the extent provided herein and in the DIP Loan Documents, allowed super-priority administrative expense claims (the "**Adequate Protection Super-Priority Claims**") as provided for in section 507(b) of the Bankruptcy Code, immediately junior to the DIP Super-Priority Claims and payable from and having recourse to all prepetition and post-petition property of the Debtor, including (subject to the entry of the Final Order) Avoidance Actions, and all proceeds thereof; provided, however, that the Prepetition PDL Secured Parties shall not receive or retain any payments, property or other amounts in respect of the Adequate Protection Super-Priority Claims unless and until (x) all DIP Obligations have indefeasibly been paid in full in cash, and (y) all Commitments under the DIP Loan Documents have been irrevocably terminated.

	c. Right to Seek Additional Adequate Protection. Any Prepetition PDL Secured Party may request further or different adequate protection, and the Debtor or any other party in interest may contest any such request (notwithstanding their agreement to otherwise consent to the terms of the Interim Order); provided that any such further or different adequate protection shall at all times be subordinate and junior to the claims and Liens of the DIP Secured Parties granted under the Interim Order and the DIP Loan Documents. d. Consent to Priming and Adequate Protection. The Prepetition PDL Secured Parties consent to the adequate protection and the priming described herein; provided, however, that the consent of the Prepetition PDL Secured Parties to the priming of their Prepetition PDL Liens, the use of Cash Collateral, and the sufficiency of the adequate protection provided is expressly conditioned upon the entry of the Interim Order and such consent shall not be deemed to extend to any other replacement financing or debtor in possession financing other than the DIP Facility provided under the DIP Loan Documents.
Automatic Stay	The automatic stay is terminated with respect to enforcement actions after 5 business days' prior written notice to the Debtor, the United States Trustee, and lead counsel to the Committee before the DIP Secured Parties may take Enforcement Action. The automatic stay is also terminated to permit the Debtor to grant the Adequate Protection Liens and DIP Liens and otherwise implement the DIP Credit Agreement. *Interim Order* ¶ 14(a) & (c) at pp. 33-35.
Limitation on Challenges to the Amount of the Secured Debt Obligations and the Liens Securing Such Secured Debt Obligations Bankruptcy Rule 4001(c)(1)(B)(iii), (viii)	The recitals in paragraphs D(i)-(iv) & D(vi) of the Interim Order provide stipulations by the Debtor to the validity and priority of the liens securing the Prepetition PDL Indebtedness and grant releases to the Prepetition PDL Secured Party Releasees. Further, subject to the terms of the Interim Order and the Final Order, section 2.15 of the Credit Agreement provides releases to the Prepetition PDL Secured Parties by the Debtor. Paragraph 6 of the Interim Order provides that the Debtor's Stipulations shall be binding upon each other party in interest, including any Committee, unless such party in interest, including any Committee, obtains the requisite standing to commence, and commences, by (x) with respect to any Committee, 60 days after the initial appointment of the Committee, and (y) with respect to any other party in interest, 75 days after the date of entry of the Interim Order.
Limitation on Use of Proceeds	Up to $50,000 in the aggregate of the Carve-Out, any DIP Collateral, any Prepetition PDL Collateral (including Cash Collateral), or proceeds

Bankruptcy Rule 4001(c)(1)(B)	of the DIP Facility may be used by any Committee to investigate the Prepetition PDL Indebtedness and Prepetition PDL Liens. *Interim Order* ¶ 6 at p. 26.
Conditions Precedent Bankruptcy Rule 4001(c)(1)(B)	Conditions precedent include, without limitation: (i) execution and delivery of the DIP Credit Agreement; (ii) the DIP Secured Parties' receipt of the Budget and a cash flow forecast; (iii) execution of control agreements for each deposit account and securities account; (iv) no material adverse change; and (v) entry of the Interim Order in a form and substance reasonably satisfactory to the DIP Secured Parties. *See DIP Credit Agreement* § 4 at pp. 22-25.
Section 506(c)/522(b) Waiver Bankruptcy Rule 4001(c)(1)(B)(x)	From and after entry of the Final Order, no costs or expenses of administration of the Chapter 11 Case or any successor case shall be charged against or recovered from or against the DIP Secured Parties, the Prepetition PDL Secured Parties, the DIP Collateral, the Prepetition PDL Collateral, or the Cash Collateral pursuant to section 506(c) of the Bankruptcy Code or otherwise. *See DIP Credit Agreement* §§ 2.16 & 8.13 at pp. 18 & 49 and *Interim Order* ¶ 8 at pp. 29-30. The Prepetition PDL Secured Parties, each of the DIP Secured Parties and the Prepetition PDL Secured Parties are entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and, subject to the entry of the Final Order, the "equities of the case" exception shall not apply. *Interim Order* ¶ G at p. 11.
Indemnification Bankruptcy Rule 4001(c)(1)(B)(ix)	The Debtor shall indemnify and hold harmless the DIP Secured Parties, and their representatives, advisors, and affiliates, except to the extent any indemnified liabilities result from DIP Secured Parties' own gross negligence, willful misconduct, or material breach of any Loan Document. *See DIP Credit Agreement* § 10.4 at p. 53. *See* also *DIP Credit Agreement* § 3.1(c) concerning indemnification for taxes.

F. Local Rule 4001-2(a)(i) Statements

21. In accordance with Local Rule 4001-2(a)(i), the following provisions of the DIP Credit Agreement are highlighted below:

a. *Provisions that grant cross-collateralization protection (other than replacement liens or other adequate protection) to the prepetition secured lenders*

There is no cross-collateralization.

b. *Provisions or findings of fact that bind the estate or other parties in interest with respect to the validity, perfection or amount of the secured creditor's prepetition lien or the waiver of claims against the secured creditor without first giving parties in interest at least seventy-five (75) days from the entry of the order and the creditors' committee, if formed, at least sixty (60) days from the date of its formation to investigate such matters.*

There are no such provisions.

c. *Provisions that seek to waive, without notice, whatever rights the Debtors' estates have under 11 U.S.C. § 506(c).*

All rights of the Debtor's estate under section 506(c) of the Bankruptcy Code are waived with respect to the collateral of the Prepetition PDL Secured Parties and the DIP Secured Parties, subject to entry of a Final Order.

d. *Provisions that immediately grant to the prepetition secured creditors liens on the Debtors' claims and causes of action arising under 11 U.S.C. §§ 544, 545, 547, 548, and 549.*

Subject to entry of a Final Order, the DIP Secured Parties will be granted liens on avoidance actions arising under 11 U.S.C. §§ 544, 545, 547, 548, and 549.

e. *Provisions that deem prepetition secured debt to be postpetition debt or that use postpetition loans from a prepetition creditor to pay part or all of that secured creditor's prepetition debt, other than as provided in 11 U.S.C. § 552(b).*

Pursuant to the provisions of the DIP Loan Documents, the Interim Indebtedness shall be included and become part of the DIP Facility and the balance owing thereunder.

f. *Provisions that provide disparate treatment for the professionals retained by a creditors' committee from those professionals retained by the debtor with respect to a professional fee carve-out.*

Up to $50,000 in the aggregate of the Carve-Out, any DIP Collateral, any Prepetition PDL Collateral (including Cash Collateral), or proceeds of the DIP Facility may be used by any Committee to investigate the Prepetition PDL Indebtedness and Prepetition PDL Liens.

g. *Provisions that prime any secured lien absent consent of the affected lienor.*

The liens securing the DIP Facility will prime certain of the Prepetition PDL Lien Secured Parties' prepetition liens; however, the Prepetition PDL Secured Parties have consented to this priority.

h. *Provisions that seek to affect the Court's power to consider the equities of the case under 11 U.S.C. § 552(b)*

In light of the subordination of their Liens and super-priority administrative expense claims to (i) the Carve-Out in the case of the DIP Secured Parties, and (ii) the Carve-Out and the DIP Liens and DIP Super-Priority Claims in the case of the Prepetition PDL Secured Parties, each of the DIP Secured Parties and the Prepetition PDL Secured Parties are entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and, subject to the entry of the Final Order, the "equities of the case" exception shall not apply.

22. In addition to the foregoing, the Debtor is seeking a finding in the Interim Order that the DIP Lenders are "good faith" lenders within the meaning of section 364(e) of the Bankruptcy Code, and are entitled to all of the protections afforded by that section. The DIP Credit Agreement provides the Debtor with the financing necessary to maintain its operations and maximize estate value, and the provisions thereof were extensively negotiated, at arms' length and in good faith. Accordingly, the requested finding pursuant to section 364(e) of the Bankruptcy Code is warranted.

RELIEF REQUESTED

23. The Debtor seeks entry of interim and final orders (I) authorizing the Debtor (A) to obtain postpetition secured financing pursuant to sections 105, 361, 362, 364(**c**)(1), 364(**c**)(2), 364(**c**)(3), 364(d)(1) and 364(e) of the Bankruptcy Code, and (B) to utilize cash

collateral pursuant to section 363 of the Bankruptcy Code, (II) granting adequate protection to prepetition first lien secured parties pursuant to sections 361, 362, 363 and 364 of the Bankruptcy Code, and (III) scheduling and establishing deadlines related to a Final Hearing and proposed Final Order approving the relief requested in the Motion.

BASIS FOR RELIEF

A. The DIP Credit Agreement Should be Approved

24. The Debtors propose to obtain financing under the DIP Credit Agreement by providing security interests and liens as set forth above pursuant to sections 364(c) and 364(d) of the Bankruptcy Code. Section 364(c) provides:

> If the [debtor in possession] is unable to obtain unsecured credit allowable under section 503(b)(1) of this title as an administrative expense, the court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt —
>
> (1) with priority over any or all administrative expenses of the kind specified in section 503(b) or 507(b) of this title;
>
> (2) secured by a lien on property of the estate that is not otherwise subject to a lien; or
>
> (3) secured by a junior lien on property of the estate that is subject to a lien.

11 U.S.C. § 364(c).

25. Section 364(d)(1) further provides:

> The court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt secured by a senior or equal lien on property of the estate that is subject to a lien only if —
>
> (A) the [debtor in possession] is unable to obtain such credit otherwise; and
>
> (B) there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted.

11 U.S.C. § 364(d).

26. Bankruptcy Rule 4001(c)(2) provides, in relevant part:

> The court may commence a final hearing on a motion for authority to obtain credit no earlier than 14 days after service of the motion. If the motion so requests, the court may conduct a hearing before such 14 day period expires, but the court may authorize the obtaining of credit only to the extent necessary to avoid immediate and irreparable harm to the estate pending a final hearing.

Fed. R. Bankr. P. 4001(c)(2).

1. The DIP Credit Agreement Satisfies sections 364(c) and 364(d) of the Bankruptcy Code.

27. Courts have articulated a three-part test to determine whether a debtor is entitled to financing under section 364(c) of the Bankruptcy Code. Specifically, courts look to whether: (a) the debtor is unable to obtain unsecured credit under section 364(b), i.e., by allowing a lender only an administrative claim; (b) the credit transaction is necessary to preserve the assets of the estate; and (c) the terms of the transaction are fair, reasonable and adequate, given the circumstances of the debtor-borrower and the proposed lender. In re Ames Dep't Stores, Inc., 115 B.R. 34, 37-39 (Bankr. S.D.N.Y. 1990); In re The Crouse Grp., Inc., 71 B.R. 544, 549 (Bankr. E.D. Pa. 1987). Section 364(c) of the Bankruptcy Code does not impose upon a debtor in possession the onerous duty to seek unsecured credit from every possible lender before concluding that such credit is unavailable. See Bray v. Shenandoah Fed. Sav. & Loan Ass'n (In re Snowshoe Co., Inc.), 789 F.2d 1085, 1088 (4th Cir. 1986). This is true especially when time is of the essence. See, e.g., id.; In re Reading Tube Indus., 72 B.R. 329, 333 (Bankr. E.D. Pa. 1987); In re Stacy Farms, 78 B.R. 494, 498 (Bankr. S.D. Ohio 1987). Rather, a debtor need only demonstrate "by a good faith effort that credit was not available without" the protections afforded to potential lenders by section 364(c) of the Bankruptcy Code. See In re

Snowshoe Co., 789 F.2d 1085, 1088 (4th Cir. 1986); see also In re Plabell Rubber Prods., Inc., 137 B.R. 897, 900 (Bankr. N.D. Ohio 1992).

28. Inability to Obtain Credit on an Unsecured Basis.

29. The Curtis DIP Financing Declaration will describe the efforts made to find an alternative funding source.

30. The DIP Facility is Necessary to Preserve Assets. The Debtor believes that use of Cash Collateral alone will not be sufficient to fund their operations and pay all administrative expenses during this Chapter 11 Case. Accordingly, absent the cash availability arising under the DIP Facility, the Debtor would be unable to finance this Chapter 11 Case and maintain the going concern value necessary to maximize returns to stakeholders.

31. The Terms of the Transaction are Fair, Reasonable and Adequate. The Debtor negotiated the DIP Credit Agreement at arm's length and has determined, in the exercise of its sound business judgment, that it is the best proposal under the circumstances and that its terms are fair and reasonable. The Debtor believes that the terms of the DIP Facility, including the pricing, fees, term, and milestones, taken as a whole, are competitive. Indeed, the posture of the negotiations leading up to the commencement of this case ensured that the terms of the DIP Facility are the best available. Moreover, the Debtor believes that the DIP Facility and the Approved Budget will provide the Debtor with adequate liquidity to continue their operations uninterrupted and preserve the value of the Debtor's business.

2. The DIP Credit Agreement Satisfies Section 364(d) of the Bankruptcy Code.

32. The DIP Credit Agreement also includes priming liens on all Prepetition PDL Lien Collateral for the benefit of the DIP Lenders, and therefore is subject to approval under section 364(d) of the Bankruptcy Code. Section 364(d)(1) of the Bankruptcy Code

authorizes a debtor-in-possession to incur superpriority senior secured priming liens if: (a) the debtor is unable to obtain such credit otherwise, and (b) the interests of the secured creditors whose liens are being primed by the post-petition financing are adequately protected. *See* 11 U.S.C. §§ 364(d)(1). As described above, the Debtor is unable to obtain viable financing on terms more favorable than the DIP Credit Agreement. In addition, as described below, the Interim Order contemplates a fair adequate protection package which was consented to by the Prepetition PDL Secured Parties. Accordingly the Debtor submits that the proposed DIP Facility satisfies the requirements of section 364(d) of the Bankruptcy Code.

B. The Debtor's Use of Cash Collateral Should Be Approved.

33. The Debtor's use of property of its estate is governed by section 363 of the Bankruptcy Code, which provides in pertinent part that:

> If the business of the debtor is authorized to be operated under section . . . 1108 . . . of this title and unless the court orders otherwise, the [debtor] may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing.

11 U.S.C. § 363(c)(1).

34. Pursuant to section 363(c)(2) of the Bankruptcy Code, the Court may authorize the Debtor to use cash collateral as long as the applicable secured creditor consents or is adequately protected. See In re McCormick, 354 B.R. 246, 251 (Bankr. C.D. Ill. 2006) (to use the cash collateral of a secured creditor, the debtor must have the consent of the secured creditor or must establish to that the secured creditor's interest in the cash collateral is adequately protected); see also Matter of Pursuit Athletic Footwear, Inc., 193 B.R. 713, 721 (Bankr. D. Del. 1996) (holding that creditors were adequately protected and allowing debtor to use cash

collateral); In re Atrium Corp., 2010 WL 2822131, at *6 (Bankr. D. Del. Mar. 17, 2010) (authorizing debtor's use of cash collateral and granting creditor adequate protection).

35. The Debtor has an urgent need for the immediate use of its Cash Collateral, and seeks to use all Cash Collateral existing on or after the Petition Date. The continued operation of the Debtor's business is the single most important factor in preserving the Debtor's going-concern value. If the Debtor is not allowed to use Cash Collateral, the Debtor will not have sufficient funds to pay suppliers, employees, and the other costs of operations. This scenario is not in the best interests of the Debtor or the other stakeholders in this Chapter 11 Case. See In re Dynaco Corp., 162 B.R. 389, 395–96 (Bankr. D.N.H. 1983) (finding that the alternative to the debtor's use of cash collateral, termination of its business, would doom reorganization and any chance to maximize value for all creditors); see also In re Glob. Safety Textiles Holdings LLC, 2009 WL 7834657, at *4 (Bankr. D. Del. July 30, 2009) aff'd as modified, 2009 WL 7834658 (Bankr. D. Del. Sept. 21, 2009) (finding good cause for the use of cash collateral because "Debtors ha[d] an immediate need to use the Cash Collateral . . . to permit . . . the orderly continuation of the operation of their businesses, to maintain business relationships with vendors, suppliers and customers, to make payroll, to make capital expenditures and to satisfy other working capital and operational needs" and because cash collateral was "vital to the preservation and maintenance of the going concern values of the Debtors and to a successful reorganization of the Debtors or an orderly sale of the Debtors' assets"). The use of Cash Collateral, together with the availability under the DIP Facility, will enable the Debtor to preserve the going concern value of its business.

36. Subject to the terms and conditions of the Interim Order, the Prepetition PDL Secured Parties have consented to the Debtor's use of Cash Collateral. In addition, to the

extent any other prepetition secured creditor has a lien on the Debtor's Cash Collateral and does not consent to the Debtor's use of such Cash Collateral, such creditor will be adequately protected as described below.

37. Based on the foregoing, the Debtor requests that the Court authorize the Debtor to use the Cash Collateral in accordance with the terms set forth in the Interim Order and the DIP Credit Agreement.

C. The Proposed Adequate Protection Should Be Approved.

38. Section 363(e) of the Bankruptcy Code provides that "on request of an entity that has an interest in property used . . . or proposed to be used . . . by [a debtor in possession], the court, with or without a hearing, shall prohibit or condition such use . . . as is necessary to provide adequate protection of such interest." 11 U.S.C. § 363(e).

39. The propriety of adequate protection is determined on a case-by-case basis. See Resolution Trust Corp. v. Swedeland Dev. Group (In re Swedeland Dev. Group), 16 F.3d 552, 564 (3d Cir. 1994) (citing MBank Dallas, N.A. v. O'Connor (In re O'Connor), 808 F.2d 1393, 1396-97 (10th Cir. 1987)); In re Martin, 761 F.2d 472, 474 (8th Cir. 1985); In re Mosello, 195 B.R. 277, 289 (Bankr. S.D.N.Y. 1996); In re Columbia Gas Sys., Inc., 1992 WL 79323, at *2 (Bankr. D. Del. Feb. 18, 1992); In re Beker Indus. Corp., 58 B.R. 725, 736 (Bankr. S.D.N.Y. 1986). Adequate protection shields a secured creditor from diminution in the value of its interest in the particular collateral during the period of use. See In re Continental Airlines, Inc., 154 B.R. 176, 180-81 (Bankr. D. Del. 1993); In re 495 Cent. Park Ave. Corp., 136 B.R. 626, 631 (Bankr. S.D.N.Y. 1992); Beker Indus., 58 B.R. at 736; In re Ledgemere Land Corp., 116 B.R. 338, 343 (Bankr. D. Mass. 1990); In re Kain, 86 B.R. 506, 513 (Bankr. W.D. Mich. 1988).

40. Adequate protection is not expressly defined in the Bankruptcy Code. Rather, section 361 of the Bankruptcy Code provides a non-exclusive list of examples of adequate protection. The flexibility provided by section 361 provides the Court with discretion in fashioning the protection provided to a secured party. See Swedeland, 16 F.3d 552, 564 (3d Cir. 1994). Adequate protection may be provided through a "replacement lien" or "other relief" resulting in the "indubitable equivalent" of the secured creditor's interest in such property. See 11 U.S.C. § 361.

41. The Debtor is providing the Prepetition PDL Secured Parties with adequate protection for their consent to the priming liens[3] and use of Cash Collateral by the provision of the Prepetition PDL Secured Parties' Adequate Protections, including (a) the Adequate Protection Liens, (b) the Adequate Protection Super-Priority Claims, and (c) a right to seek additional adequate protection, all as set forth in the Interim Order. The Debtor believes that this form of adequate protection reasonably balances the Debtor's need to use the Prepetition PDL Collateral and the Prepetition PDL Secured Parties' rights to adequate protection under the Bankruptcy Code.

42. To the extent any prepetition secured creditor has a lien on the Debtor's assets and does not consent to the Debtor's use of those assets, such creditor will be adequately protected.[4] Without the DIP Facility, and the attendant inability to fund ongoing operations and loss of support from its critical vendors, the Debtor could be required to quickly terminate some or all of its operations, which would destroy at least a substantial portion of the going concern value of the Debtor's operations.

[3] Section 364(d) of the Bankruptcy Code requires that adequate protection be provided where the liens of secured creditors are being primed to secure the obligations under a debtor-in-possession financing facility. 11 U.S.C. § 364(d).

[4] The Debtor does not believe that any such creditors exist.

43. Preservation of value generally constitutes the "adequate protection" needed to prime existing liens. See, e.g., Norton, et al., 2 Norton Bankruptcy Law and Practice 2d. § 38:7, p.38-17 (1994) (addressing the section 364(d) determination, "[f]actors influencing a court's decision will be the viability of the debtor's business and the need to protect assets against a sharp decline in value"); Snowshoe, 789 F.2d at 1087 (section 364(d) order affirmed on appeal where "the trustee reported that the resort [the collateral] would lose from 50% to 90% of its fair market value if it ceased operations"); In re 495 Cent. Park Ave. Corp., 136 B.R. 626, 631 (Bankr. S.D.N.Y. 1992) (funds from lender given "priming" lien used to improve collateral is transferred into value. "This value will serve as adequate protection . . . ."); In re Hubbard Power & Light, 202 B.R. 680, 685 (Bankr. E.D.N.Y. 1996); In re Devlin, 185 B.R. 376, 378 (Bankr. M.D. Fla. 1995) (chapter 11 debtor-motel operator authorized to incur debt with superpriority status to replace air-conditioning unit, boiler, and hot water heaters because such expenses were necessary to preserve value and maintain operations).

44. Accordingly, the Debtor submits that the proposed terms of the Debtor's use of the Prepetition PDL Collateral and proposed forms of adequate protection should be approved in their entirety.

D. The Proposed Roll-Up Should Be Approved.

45. As of the Petition Date, the aggregate outstanding balance arising under the Interim Advance Documents was no less than $1,570,696, consisting of (i) advances in the total outstanding principal amount of $1,568,216 and (ii) accrued and unpaid interest, costs, expenses, fees (including reimbursable attorney and other advisor fees and expenses), other charges (in each case, to the extent reimbursable under the Interim Advance Documents) and other obligations owing to the Prepetition PDL Secured Parties.

46. Pursuant to the provisions of the DIP Loan Documents, and as authorized by this Order, the Interim Indebtedness shall be included and become part of the DIP Facility and the balance owing thereunder.

47. Courts have permitted debtors to use post-petition financing to pay prepetition claims of a lender where, as here, the loan cannot be obtained on any other basis and the claims of the prepetition lender are fully secured. As the United States District Court for the District of Delaware recently observed:

> [Prepetition] secured claims can be paid off through a "roll-up." Most simply, a [roll up] is the payment of a pre-petition debt with the proceeds of a post-petition loan. Roll-ups most commonly arise where a pre-petition secured creditor is also providing a post-petition DIP loan under section 364(c) and/or (d) of the Bankruptcy Code. The proceeds of the DIP loan are used to pay off or replace the pre-petition debt, resulting in a post-petition debt equal to the pre-petition debt plus any new money being lent to the debtor. As a result, the entirety of the pre-petition and post-petition debt enjoys the post-petition protection of section 364(c) and/or (d) as well as the terms of the DIP order. In both a refinancing and a roll-up, the pre-petition secured claim is paid through the issuance of new debt rather than unencumbered cash.

Del. Trust Co. v. Energy Future Immediate Holdings, LLC (In re Energy Future Holding Corp.), 2015 U.S. Dist. LEXIS 19684, 20-21 (D. Del. 9, 2015) (quoting *In re Capmark Fin. Group, Inc.*, 438 B.R. 471, 511 (Bankr. D. Del. 2010).

48. The Debtor believes that the limited partial proposed roll-up is appropriate under the circumstances and will not prejudice the Debtor or its estate. First, the proposed roll-up is for only a small portion of the prepetition debt, approximately $1.5 million of the nearly $60 million that was due and owing to the Prepetition PDL Secured Parties as of the Petition Date. Second, the roll-up is a condition to the DIP Credit Agreement and, as noted above, the Debtor is unable to obtain financing on more favorable terms. Third, the validity, enforceability, and priority of the liens being granted are subject to the "challenge" rights of third parties,

including a Committee, if one is formed. Thus, third parties will have an opportunity to examine the propriety of such repayment and to claw-back such repayment to the extent that the underlying liens are avoided. Hence, there should be no prejudice from the proposed roll-up to other creditors because the DIP Secured Parties have already asserted fully secured claims. Moreover, the DIP Secured Parties are providing funds to cover administrative costs, including professional fees, incurred during the Chapter 11 Case.

49. Accordingly, the Debtor submits that the proposed roll-up is appropriate under the circumstances and should be approved.

E. The DIP Secured Parties Are Entitled to the Protections of Section 364(e) of the Bankruptcy Code.

50. Section 364(e) of the Bankruptcy Code provides that the "reversal or modification on appeal of an authorization . . . to obtain credit or incur debt . . . does not affect the validity of any debt so incurred or any priority or lien so granted, to an entity that extended such credit in good faith." 11 U.S.C. § 364(e). As previously discussed herein, the DIP Credit Agreement is the product of extensive arm's length, good faith negotiations between the Debtor and the DIP Secured Parties. Moreover, the terms and conditions of the DIP Facility are fair and reasonable, and the Debtor's entry into the DIP Credit Agreement is in the best interests of its estates and creditors. Accordingly, the Debtor respectfully submits that the Court should find that the DIP Lenders are "good faith" lenders within the meaning of section 364(e) of the Bankruptcy Code, and are entitled to all of the protections afforded thereby.

F. The Section 506(c) Waiver in the Final Order Should Be Approved.

51. Under the DIP Credit Agreement, the Debtor agrees to waive any rights to charge costs and expenses against any or all of the DIP Secured Parties, the Prepetition PDL Secured Parties, the DIP Collateral, the Prepetition PDL Collateral and the Cash Collateral. The

Debtor requests that the Court approve the waiver, upon entry of the Final Order. Such waivers and provisions are standard under financings between sophisticated parties. As one court noted, "the Trustee and Debtors-in-Possession in this case had significant interests in asserting claims under § 506(c) and have made use of their rights against the Lender under § 506(c) by waiving them in exchange for concessions to the estates (including a substantial carve-out for the benefit of administrative creditors)." In re Molten Metal Tech., Inc., 244 B.R. 515, 527 (Bankr. D. Mass. 2000). See also In re Nutri/System of Florida Assocs., 178 B.R. 645, 650 (E.D. Pa. 1995) (noting that debtor had waived section 506(c) rights in obtaining debtor in possession financing); In re Telesphere Commc'ns, Inc., 179 B.R. 544, 549 (Bank. N.D. Ill. 1994) (approving settlement between debtor and certain lenders wherein debtor waived certain rights (including 506(c) rights) against the lenders in exchange for valuable consideration).

52. The waiver of surcharge rights is appropriate where, as here, the Prepetition PDL Secured Parties have consented to the Carve Out and to the continued use of Cash Collateral and the proceeds of the Prepetition PDL Collateral to fund the administration of the Debtor's estate in accordance with the Approved Budget.

G. Modification of the Automatic Stay Should Be Approved.

53. The DIP Credit Agreement and Interim Order contemplate the modification of the automatic stay to the extent necessary to permit the Debtors, the DIP Agent and DIP Lender to take all actions necessary to implement the DIP Credit Agreement and the Interim Order, and, if an Event of Default occurs, to take enforcement action after providing 5 business days notice.

54. Stay modification provisions of this type are customary components of postpetition debtor-in-possession financing facilities and, in the Debtor's business judgment, are

reasonable under the circumstances. Accordingly, the Debtor requests that the Court authorize the modification of the automatic stay in accordance with the terms set forth in the Interim Order.

H. Liens on the Proceeds of Avoidance Actions Should Be Approved.

55. The Final Order, if approved by the Court, will grant the DIP Agent (for the benefit of itself and the DIP Lender) a first priority Lien on all unencumbered DIP Collateral, including the proceeds of the Debtor's claims and causes of action under sections 502(d), 544, 545, 547, 548, 549, 550, 551 and 553 and 724(a) of the Bankruptcy Code, and any other avoidance or similar action under the Bankruptcy Code or similar state law ("**Avoidance Actions**"), whether received by judgment, settlement or otherwise, but excluding the Avoidance Actions themselves.

56. The DIP Lender required the granting of such liens as a necessary condition to extending financing under the DIP Credit Agreement. The Debtor requires the financing under the DIP Credit Agreement to ensure that their business operations are not interrupted.

57. Accordingly, it is appropriate to grant the liens on the proceeds of Avoidance Actions for the limited purposes set forth above.

I. Notice Procedures and Final Hearing

58. Pursuant to Local Rule 4001-2(c), the Final Order may only be entered after notice and a hearing and the Debtors may not schedule a hearing to consider the Final Order until at least seven (7) days after the organizational meeting of the Committee contemplated by section 1102 of the Bankruptcy Code.

59. On or before January 10, 2017, the Debtor shall serve, by United States mail, first-class postage prepaid, (such service constituting adequate notice of the Final Hearing) (i) notice of the entry of the Interim Order and of the Final Hearing (the **"Final Hearing Notice"**) and (ii) a copy of the Interim Order, on the parties having been given notice of the Interim Hearing and to any other party that has filed a request for notices with this Court and to any Committee after the same has been appointed, or Committee counsel, if the same shall have been appointed. The Final Hearing Notice shall state that any party in interest objecting to the entry of the proposed Final Order shall file written objections with the Clerk of the Bankruptcy Court no later than January 23, 2017, which objections shall be served so that the same are received on or before such date by: (a) counsel for the Debtor, Ballard Spahr LLP, 919 Third Avenue, 37th Floor, New York, New York 10022, Attn: Paul Harner; and Ballard Spahr LLP, 919 North Market Street, 11th Floor, Wilmington, Delaware 19801, Attn: Matthew G. Summers; (b) counsel for the DIP Agent and the Prepetition PDL Agent, Gibson, Dunn & Crutcher, LLP, 333 S. Grand Ave, Los Angeles, California 90071, Attn: Jeffrey C. Krause and Samuel A. Newman; and Young Conway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware 19801; Attn: Michael R. Nestor; (c) counsel to any Committee; and (d) the Office of the United States Trustee for the District of Delaware and shall be filed with the Clerk of the United States Bankruptcy Court for the District of Delaware, in each case to allow

actual receipt of the foregoing no later than January 23, 2017, at 4:00 p.m. (prevailing Eastern time).

60. The Debtor respectfully requests that the Court schedule the Final Hearing on this Motion on January 30, 2017, which date is twenty-one (21) days after the date of entry of the Interim Order and more than twenty-one (21) days after this Motion was filed. Such relief is necessary in order to maintain the value of the Debtor's assets and avoid immediate and irreparable harm and prejudice to the Debtor's estate.

REQUEST FOR WAIVER OF STAY

61. To implement the foregoing, the Debtor seeks a waiver of any stay of the effectiveness of the order approving this Motion. Pursuant to Bankruptcy Rule 6004(h), any "order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise." Fed. R. Bankr. P. 6004(h). The relief requested in this Motion is necessary to avoid immediate and irreparable harm to the Debtor for the reasons set forth herein. Accordingly, ample cause exists to justify a waiver of any 14-day stay imposed by Bankruptcy Rule 6004(h).

62. To implement the foregoing immediately, the Debtor respectfully requests a waiver of the notice requirements of Bankruptcy Rule 6004(a) to the extent deemed applicable.

CONSENT TO JURISDICTION

63. Pursuant to Local Rule 9013-1(f), the Debtor consents to the entry of a final judgment or order with respect to this Motion if it is determined that the Court would lack Article III jurisdiction to enter such final order or judgment absent consent of the parties.

NOTICE OF MOTION

64. Notice of this Motion will be given to: (a) the Office of the United States Trustee for the District of Delaware; (b) Gibson, Dunn & Crutcher, LLP, 333 S. Grand Ave, Los

Angeles, California 90071, Attn: Jeffrey C. Krause and Samuel A. Newman; and Young Conway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware 19801; Attn: Michael R. Nestor; (c) the Internal Revenue Service; (d) the parties included on the Debtor's list of twenty (20) largest unsecured creditors; (e) counsel to any Committee, if formed; and (f) all parties entitled to notice pursuant to Local Rule 9013-1(m). The Debtor submits that, under the circumstances, no other or further notice is required.

WHEREFORE, the Debtor respectfully requests that the Court grant the relief requested in the Motion and such other and further relief as may be just and proper.

Dated: January 5, 2017
Wilmington, Delaware

/s/ Matthew G. Summers

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