IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
OPTIMA SPECIALTY STEEL, INC., *et al.*,[1]	Case No. 16-12789 (KJC)
Debtors.	(Jointly Administered)

MOTION FOR THE ENTRY OF INTERIM AND FINAL ORDERS PURSUANT TO 11 U.S.C. §§ 105, 361, 362, 363, 364, 503 AND 507 (I) AUTHORIZING THE DEBTORS TO OBTAIN NON-PRIMING SENIOR SECURED POSTPETITION FINANCING, (II) AUTHORIZING USE OF CASH COLLATERAL, (III) GRANTING LIENS AND PROVIDING SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS, (IV) GRANTING ADEQUATE PROTECTION, (V) MODIFYING THE AUTOMATIC STAY, (VI) SCHEDULING A FINAL HEARING, AND (VII) GRANTING RELATED RELIEF

The above-captioned debtors and debtors-in-possession (collectively, the "**Debtors**") hereby move the Court (this "**Motion**") pursuant to sections 105, 361, 362, 363, 364(c)(1), 364(c)(2), 364(c)(3), 364(e), 503, and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the "**Bankruptcy Code**"), Rules 2002, 4001, 6004, and 9014, of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), and Rule 2002-1(b), 4001-2, 9006-1 and 9013-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "**Local Rules**"), for entry of an interim order (the "**Interim DIP Order**")[2] and a final order (the "**Final DIP Order**" and, together with the Interim DIP Order, the "**DIP Orders**"):

[1] The Debtors in these Chapter 11 Cases, along with the business addresses and the last four (4) digits of each Debtor's federal tax identification number, if applicable, are: Optima Specialty Steel, Inc., 200 S. Biscayne Blvd., Suite 5500, Miami, FL 33131-2310 (0641); Michigan Seamless Tube LLC, 400 McMunn Street, South Lyon, MI 48178 (3850); Niagara LaSalle Corporation, 1412 150th Street, Hammond, IN 46327 (0059); KES Acquisition Company d/b/a Kentucky Electric Steel, 2704 South Big Run Road, Ashland, KY 41102 (2858); and The Corey Steel Company, 2800 South 61st Court, Cicero, IL 60804 (0255).

[2] The form of Interim DIP Order has not yet been finally approved by the proposed lender, and it is subject to revision pending final approval.

(i) authorizing the Debtors to obtain junior secured non-priming post-petition financing in the form of a multi-draw term loan facility containing terms substantially consistent with the term sheet attached as **Exhibit A** hereto (the "**DIP Term Sheet**"), by and between the Debtors and Optima Acquisitions, LLC (the "**DIP Lender**"), of up to $40 million in principal amount (the "**DIP Facility"**), of which $30 million in principal amount shall be available on an interim basis under the terms of the Interim DIP Order;

(ii) authorizing the Debtors to negotiate, execute and deliver to the DIP Lender a Debtor-in-Possession Loan and Security Agreement (as amended, supplemented, restated or otherwise modified from time to time in accordance with the terms thereof, the "**DIP Credit Agreement**") and other documents, including the Final DIP Order and the Budget (as defined below) substantially consistent with the DIP Term Sheet (all such documents, as amended, supplemented, restated or otherwise modified from time to time in accordance with the terms thereof, collectively, the "**DIP Loan Documents**"), and perform under the DIP Credit Agreement and the other DIP Loan Documents, and to perform such other and further acts as may be necessary or desirable in connection with the DIP Loan Documents;

(iii) authorizing the Debtors to grant the DIP Lender valid, enforceable, non-avoidable, automatically and fully perfected liens and security interests in the DIP Collateral,[3] with such liens and security interests to be first-priority as to the Debtors' unencumbered assets and junior to existing valid, enforceable and fully perfected liens and security interests on the Debtors' encumbered assets in including the liens in favor of the Secured Notes Trustee (as defined below), and allowing the DIP Obligations as superpriority administrative expense claims in the Debtors' chapter 11 cases (the "**Chapter 11 Cases**"), with such liens, security interests, and claims subject to the Carve-Out;

(iv) authorizing the Debtors' use of the proceeds of the DIP Facility and Cash Collateral pursuant to the Budget, the DIP Orders and the other DIP Loan Documents;

(v) granting adequate protection to the Secured Notes Trustee for the benefit of itself and the Prepetition Secured Noteholders;

(vi) vacating and modifying 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 Orders and the other DIP Loan Documents, and providing for the immediate effectiveness of the DIP Orders; and

[3] Capitalized Terms used but not defined in this Motion shall have the meanings ascribed to them in the DIP Term Sheet.

(vii) scheduling a final hearing (the "**Final Hearing**") to consider entry of the Final DIP Order, and approving the form of notice with respect to the Final Hearing; and

(viii) granting related relief.

In support of this Motion, the Debtors respectfully state as follows:

Status of the Case

1. On December 15, 2016 (the "**Petition Date**"), each of the Debtors commenced the Bankruptcy Cases by filing voluntary petitions for relief under the Bankruptcy Code.

2. The Debtors are in possession of their properties and are operating and managing their businesses as debtors and debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

3. No request has been made for the appointment of a trustee or examiner.

4. The United States Trustee for the District of Delaware (the "**U.S. Trustee**") appointed an official committee of unsecured creditors (the "**Creditors' Committee**") in these Chapter 11 Cases on January 4, 2017.

Jurisdiction, Venue and Statutory Predicates

5. The Court has jurisdiction over the Bankruptcy Cases and the Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order of Reference from the United States District Court for the District of Delaware, dated February 29, 2012. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

6. The statutory predicates for the relief set forth herein are sections 105, 361, 362, 363, 364, 503, and 507 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001, 6004, and 9014, and Local Rules 2002-1(b), 4001-2, 9006-1 and 9013-1.

Background

A. The Debtors

7. The Debtors are leading independent manufacturers of specialty steel products. These steel products include (i) special bar quality and merchant bar quality hot rolled steel bars, (ii) value-added precision-tolerance, cold drawn seamless tubes, and (iii) high quality engineered cold finished steel bars. The Debtors' products are utilized across a diversified range of end markets, including transportation (e.g. automotive), energy (e.g. oil and gas shale extraction), agriculture, power generation, yellow goods/construction equipment, railroad car, industrial chain manufacturing, and trailer support beam flanges.

8. All of the Debtors' manufacturing facilities are located in the United States, and each of the Debtors' operating units has operated in the steel industry for more than 50 years. In the aggregate, the Debtors have more than one thousand customers in the United States. These customers span many industries including transportation, energy, agriculture and power generation. The Debtors collectively employ more than 900 people.

9. Although the Debtors' business is fundamentally sound, it has been affected by a period of macroeconomic and industry distress. These external and other factors rendered the Debtors incapable of repaying their long-term indebtedness at maturity. Accordingly, the Debtors sought protection under Chapter 11 of the Bankruptcy Code to provide "breathing room" during which the Debtors intend to assess strategic options, address operational issues and consider restructuring proposals. During this period, the Debtors intend to continue their operations in the ordinary course of business.

B. Debtors' Prepetition Debt and Equity Structures

10. Debtor Optima Specialty Steel, Inc. ("**OSS**") is the issuer of $175 million aggregate principal amount of 12.5% senior secured notes that matured on December 15, 2016 (the "**Secured Notes**"). The Secured Notes are held by various holders including Mast Capital Management, LLC ("**Mast**") and DDJ Capital Management, LLC ("**DDJ,**" and collectively with Mast and the other holders, the "**Secured Noteholders**"). It is the Debtors' understanding that certain of the Secured Noteholders holding more than 50% of the principal amount of the Secured Notes have formed an *ad hoc* committee (the "**Ad Hoc Committee of Secured Noteholders**").

11. In connection with the issuance of the Secured Notes, OSS and its existing and future subsidiaries and Wilmington Trust, National Association as trustee and noteholder collateral agent (the "**Secured Notes Trustee**"), entered into an indenture dated December 5, 2011, which governs the Secured Notes. The Secured Notes were priced at 96.0% of par resulting in a yield to maturity of 13.62% with interest payable semi-annually in arrears on June 15 and December 15 of each year. Prior to the maturity date, interest was timely paid under the Secured Notes. The Secured Notes are fully guaranteed, on a senior secured basis, by each of the Debtors. The Secured Notes and related guarantees are secured by substantially all of the Debtors' assets, subject to permitted liens and specified excluded assets.

12. The Debtors' made an excess cash flow payment in 2015 in the amount of $13.3 million. The approximate amount currently outstanding under the Secured Notes is $171.7 million, which includes interest in the approximate amount of $10 million through the Petition Date.

13. OSS is also the issuer of $85 million of senior unsecured notes bearing interest at 12.0% per annum, payable semi-annually in arrears on March 15 and September 15 of each year

(the "**Unsecured Notes**"). The Unsecured Notes matured on the earlier of December 30, 2016. Until the commencement of these Chapter 11 Cases, interest payments due under the Unsecured Notes were paid timely.

14. In connection with the issuance of the Unsecured Notes, OSS and its existing and future subsidiaries and Wilmington Trust, National Association as trustee, entered into an indenture dated January 29, 2015, which governs the Unsecured Notes. The Unsecured Notes are fully guaranteed by each of the Debtors. On or about January 4, 2017, Wilmington Savings Fund Society replaced Wilmington Trust as the indenture trustee for the Unsecured Notes.

15. The Debtors understand that the Unsecured Notes are currently held solely by DDJ (in such capacity, the "**Unsecured Noteholder,**" and together with the Secured Noteholders, the "**Noteholders**"). The approximate amount currently outstanding under the Unsecured Notes is $87.5 million, which includes accrued interest in the approximate amount of $2.5 million as of the Petition Date.

16. Aside from the Notes, the Debtors have general unsecured claims which include, among others, trade claims, litigation claims and environmental claims. As of the Petition Date, the general unsecured claims (excluding the Unsecured Notes) were in excess of $37.0 million.

17. OSS is wholly-owned by Optima Acquisitions, LLC, a privately owned U.S.-based investment firm. The equity of Optima Acquisitions, LLC, is owned directly or indirectly by three individuals: Mordechai Korf (33%), Gennadiy Bogolyubov (33%) and Igor Kolomoyskyy (33%). Optima Acquisitions, LLC is the proposed DIP Lender.

C. Corporate Governance

18. The Board of Directors of OSS is comprised of seven individuals. On December 14, 2016, the Debtors formed a special committee comprised of two independent directors (the

"**Special Committee**") to review, evaluate and make key decisions regarding the restructuring of the Debtors' business, assets, liabilities, and interests during these Chapter 11 Cases (the "**Restructuring Process**"). The independent directors are John H. Goodish and Menachem M. Mayberg. Mr. Mayberg is a practicing attorney in Miami, Florida. Mr. Goodish has deep steel-industry experience having worked in the industry for forty years including serving as Chief Operating Officer and Executive Vice President of United States Steel Corp. from June 1, 2005 to December 31, 2010.

19. The Debtors have proposed to retain Miller Buckfire & Co., LLC ("**Miller Buckfire**") to provide investment banking services to the Debtors in these Chapter 11 Cases. The Debtors have filed an application with the Court to approve the retention of Miller Buckfire as their investment bankers.

20. The Debtors have also selected Michael Correra of Conway MacKenzie Management Services, LLC as the Chief Restructuring Officer of the Debtors (the "**CRO**"). The CRO will report to the Special Committee. The Debtors are finalizing the terms of engagement for the CRO and expect to file an application for his retention within a few days.

D. Prepetition Restructuring Efforts

21. Prior to the Petition Date, the Debtors, with the assistance of their pre-petition financial advisor, devoted several months to extensive negotiations with existing debt holders, shareholders and potential new lenders. The Debtors and their stakeholders considered various proposals for the refinancing comprised of new senior secured debt plus a substantial infusion of new debt and equity capital by Optima Acquisitions, LLC. Those negotiations ultimately failed to result in a binding term sheet or any definitive agreement. With the refinancing negotiations

breaking down in December 2016 and the maturity of the Secured Notes looming on December 15, 2016, the Debtors filed these Chapter 11 Cases.

E. The Debtors' Liquidity

22. As set forth in the Declaration of James Doak filed concurrently with this Motion,[4] although the Debtors obtained authority for the use of Cash Collateral on an interim basis pursuant to the *Interim Order (I) Authorizing the Use of Cash Collateral, (II) Granting Adequate Protection to the Secured Parties, (III) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001(b) and (IV) Granting Related Relief* [Docket No. 54], the use of Cash Collateral alone does not allow the Debtors sufficient liquidity to meet their needs, including seasonal increases in the need for working capital that traditionally begin arising in mid-January 2017 and the costs of administration of these Chapter 11 Cases. Additional liquidity is necessary to continue operations, administer these Chapter 11 Cases and preserve the value of the Debtors' estates.

23. As a result, since the Petition Date, the Debtors have focused their efforts on obtaining a DIP Facility. A DIP Facility will permit the Debtors to finance their operations, maintain business relationships with their vendors, suppliers and customers, pay their employees, and otherwise finance their operations. Without the ability to access post-petition financing, the Debtors, their estates and their creditors would suffer immediate and irreparable harm.

F. The Debtors' DIP Financing Process

24. Through their advisors and at the direction of the Special Committee, the Debtors established an orderly, fair and transparent process for soliciting, negotiating and selecting proposals from parties interested in providing DIP financing. As set forth in the *Notice of*

[4] Mr. Doak is a Managing Director at Miller Buckfire.

Debtor-in Possession Financing Process and Hearing to Approve Debtor-in-Possession Financing [Docket No. 90] (the "**DIP Process Notice**") filed on December 23, 2016, the Debtors published the following schedule for such process:

Date	Event
December 22, 2016	Debtors' financial advisor will make calls to potential lenders to assess interest
December 27-29, 2016	Debtors will conduct meetings and calls with select lenders
January 3, 2017	Financing proposals due
On or about January 6, 2017	DIP documentation will be filed with the Court

The Debtors have conducted their process substantially in accordance with this schedule culminating in the filing of this Motion and the DIP Term Sheet. The Debtors, through their professionals, contacted 28 parties to solicit their interest in providing DIP financing on an unsecured, administrative, superpriority or even a priming basis. The Debtors entered into non-disclosure agreements with 18 of these parties. The Debtors established a virtual dataroom on December 20, 2016 and began granting access to lenders upon execution of non-disclosure agreements. On December 26, 2016, a Confidential Information Memorandum ("**CIM**") was distributed to potential lenders via the dataroom. On December 27, 2016, a process letter and model term sheet were also distributed to potential lenders via the dataroom.

25. Over the course of the process, the Debtors obtained multiple DIP financing proposals from five different potential lenders. Initially, the Debtors received a proposal from Mast. Mast's initial proposal contemplated new money post-petition financing, a partial roll up

of the Secured Notes, a twelve month term with a three month extension, substantial exit and other fees and what the Debtors viewed as aggressive case milestones (the "**Mast Proposal**"). After an exchange of draft term sheets, and negotiations between counsel for the Debtors and Mast, the Debtors received a revised proposal from Mast, which was then joined by DDJ (the joint proposal, the "**Mast/DDJ Proposal**"). The Mast/DDJ Proposal contemplated new money post-petition financing, a partial roll up of the Secured Notes, a six month term with a three month extension, substantial exit and other fees, lender controls in addition to and more controlling than those present in the initial Mast proposal, and provisions advantageous to DDJ's Unsecured Note claim.

26. In addition to the Mast/DDJ Proposal, the Debtors received the following other DIP financing proposals: (i) a proposal submitted by only DDJ (the "**DDJ Individual Proposal**"), which provided new money post-petition financing, a full roll up of the Secured Notes upon final approval of the financing, a priming lien during the interim period, a six month term subject to extension in DDJ's sole discretion, and what the Debtors view as aggressive case milestones and other provisions advantageous to DDJ's Unsecured Note claim; (ii) two different proposals from two separate third-party lenders for a new money priming loan, and (iii) a proposal from the DIP Lender that ultimately lead to the DIP Term Sheet.

27. In evaluating the proposals, the Debtors worked to assure that the proposals provided sufficient liquidity, the best available economic terms, and, as much as possible, a level playing field for all of the Debtors' constituencies during the expected future plan process. While attractive in meeting these three objectives, the two third-party proposals had execution risk in that they each required priming the Secured Noteholders. The DDJ Individual Proposal did not meet most of the Debtors' objectives, and it also required priming the Secured

Noteholders. The Debtors, therefore, focused initially on the Mast Proposal and subsequently on the Mast/DDJ Proposal and the proposal from the DIP Lender.

28. Before making their determination between these two proposals, the Debtors' advisors discussed each of the proposals with the party submitting them and provided mark-ups of the proposals. The Debtors received revised proposals from Mast/DDJ and from the DIP Lender. The revised Mast/DDJ Proposal contemplated junior DIP financing, a roll up of the Secured Notes upon final approval, intercreditor provisions to ensure priority of the Senior Notes, fees to DDJ on account of its Unsecured Note claim, and call and put options for DDJ to buy out the DIP financing. Although the revised Mast/DDJ Proposal contained fewer case controls, it still contemplated aggressive milestones and other control provisions and provisions to advantage DDJ's Unsecured Note claim. The Debtors' advisors repeatedly requested without success that these provisions be removed. By contrast, the DIP Lender's revised proposal – the proposed DIP Facility – further improved in revisions and discussions. In addition to providing for junior DIP financing, the proposed DIP Facility contemplates low fees, no case control provisions, and lower interest rates than those proposed by the third-party lenders on secured basis. The proposed DIP Lender has continued to improve its proposal by refining the intercreditor terms in the DIP Term Sheet.

29. The Debtors advisors evaluated the proposals and concluded that the proposed DIP Facility is superior to the Mast/DDJ Proposal. Among other things, the initial economics of the proposed DIP Facility are superior to the Mast/DDJ Proposal. The Mast/DDJ Proposal contains substantially higher fees, including an exit fee and a backstop commitment fee not included in the proposed DIP Facility, and provides for a higher interest rate on new money. Although the pricing of the two proposals is comparable several months into either financing, the

non-economic terms of the two proposals further weigh in favor of the proposed DIP Facility. Examples of unfavorable non-economic terms in the Mast/DDJ Proposal include aggressive case milestones and provisions that advantage DDJ's Unsecured Note claim. These provisions in the Mast/DDJ Proposal limit the Debtors' flexibility and do not maintain a level playing field during the plan process.

30. After considering the recommendations of their advisors, the Special Committee determined that the proposal by the DIP Lender for a junior non-priming DIP Facility from the DIP Lender was the most favorable proposal for the Debtors' estates because the proposal provided sufficient liquidity, had attractive economics, did not contain case control or other features that limited flexibility later in the case, and could be taken out at any time without premium or penalty, all while still respecting the rights of the Secured Noteholders.

31. The Debtors are continuing as of the date hereof to negotiate with its constituencies over the terms of the DIP financing, including providing Mast and DDJ a further mark up of the Mast/DDJ Proposal.

32. The Debtors and the DIP Lender were represented by separate advisors during the negotiations. The Debtors followed a full and transparent process in obtaining the DIP Facility. Thus, the Debtors' negotiations with the DIP Lender were conducted in good faith and at arm's-length.

G. Use of the DIP Facility

33. The proceeds of the DIP Facility will be used in accordance with the provisions of a budget (as defined in the DIP Term Sheet, the "**Budget**"). The Budget will provide for the payment of operating expenses such as for the purchase of raw materials to be used in the manufacture of the Debtors' specialty steel products, the cost for supplies, repairs and dies

relating to the Debtors' machinery, and payroll for the Debtors' employees. The Budget also provides for adequate protection in the form of postpetition interest payments to the Secured Noteholders. In addition, the Budget provides for the expenses of administration of these Chapter 11 Cases. Payment of these and other expenses is necessary to maintain the Debtors' enterprise as a going concern and to maximize the value of the Secured Noteholders' Collateral and of the Debtors' estates.

Summary of the Terms and Conditions of the Proposed DIP Facility[5]

A. Highlighted Provisions under Local Rule 4001-2(a)(i)

34. Local Rule 4001-2(a)(i) requires this Motion to recite whether the DIP Orders or the DIP Loan Documents contain any of the following seven provisions and, to the extent such provisions are present, to identify their location in the relevant documents justify their inclusion.

(i) **Local R. 4001-2(a)(i)(A)—*Cross-Collateralization Protection***. The DIP Facility does not include cross-collateralization provisions.

(ii) **Local R. 4001-2(a)(i)(B)—*Challenge Period***. The DIP Orders provide the same stipulations and challenge periods set forth in the Interim Order (I) Authorizing the Use of Cash Collateral, (II) Granting Adequate Protection to the Secured Parties, (III) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001(b) and (IV) Granting Related Relief (Docket No. 54) (the "**Cash Collateral Order**").

(iii) **Local R. 4001-2(a)(i)(C)—*506(c) Waiver***. The DIP Orders provide for a waiver of the rights of the Debtors' estates under section 506(c) upon entry of the Final Order.

(iv) **Local R. 4001-2(a)(i)(D)—*Liens on Avoidance Actions***. The DIP Order does not provide for liens on avoidance actions, but, subject to approval by the Final Order, the DIP Collateral does include the proceeds of avoidance actions, which shall be available, to the extent necessary, to pay any administrative claim of the DIP Lender in respect of the DIP Facility (but only if proceeds of other DIP Collateral are insufficient to pay any such claims). *See* DIP Term Sheet "Avoidance Actions."

[5] The summaries contained in this Motion are qualified in their entirety by the provisions of the DIP Loan Documents. To the extent anything in this Motion is inconsistent with such documents, the terms of the applicable documents shall control.

(v) **Local R. 4001-2(a)(i)(E)—*Repayment Features***. The DIP Facility does not provide for any "roll up" or similar feature.

(vi) **Local R. 4001-2(a)(i)(F)—*Disparate Carve Out Treatment***. The DIP Facility does not provide for disparate carve-out treatment for the professionals retained by and creditors' committee from the professionals retained by the Debtors, provided that, in the event of a Carve-Out Trigger Notice, the Post-Termination Amount reserved for the Debtors' Professionals is $300,000, but the Post-Termination Amount reserved for the Committee's Professionals is $150,000. *See* DIP Term Sheet "Carve-Out." This is the same treatment as set forth in the Cash Collateral Order.

(vii) **Local R. 4001-2(a)(i)(G)—*Nonconsensual Priming***. The DIP Facility does not provide for any priming or *pari passu* lien with respect to the Prepetition Secured Notes.

(viii) **Local R. 4001-2(a)(i)(H)—*Section 552(b)(1)***. The DIP Orders do not provide for section 552(b) or "equities of the case" waivers.

35. For the reasons discussed below, the Debtors believe these provisions are reasonable in light of the facts and circumstances of these Chapter 11 Cases and should be approved.

B. Summary of Essential Terms under Bankruptcy Rule 4001(c)(1)(B) and Local Rule 4001-2(a)(ii)

36. Pursuant to Bankruptcy Rule 4001(c)(1)(B) and Local Rule 4001-2(a)(ii), the following chart summarizes the essential terms of the proposed DIP Facility, together with references to applicable sections of the relevant source documents.

Bankruptcy Rule / Local Rule	Summary of Material Terms
DIP Credit Agreement Parties Fed. R. Bankr. P. 4001(c)(1)(B); Local R. 4001-2(a)(ii)	**Borrowers:** The Debtors **Lender:** Optima Acquisitions, LLC *See* DIP Term Sheet "Borrowers" & "DIP Lender"
Commitment Fed. R. Bankr. P. 4001(c)(1)(B); Local	A multi-draw term loan facility to the Debtors in an aggregate principal amount of $40 million, of which $30 million will be available on an interim basis (subject to the terms of the DIP Loan Documents)

Bankruptcy Rule / Local Rule	Summary of Material Terms
R. 4001-2(a)(ii)	*See* DIP Term Sheet "DIP Facility and DIP Documents" & "DIP Facility Availability"
Interest Rates and Fees Fed. R. Bankr. P. 4001(c)(1)(B); Local R. 4001-2(a)(ii)	The DIP Loans shall bear interest on the unpaid principal amount thereof plus all DIP Obligations owing to, and rights of, the DIP Lender pursuant to the DIP Credit Agreement, including without limitation, all interest, fees, and costs accruing thereon from the date of the DIP Credit Agreement (the "**Effective Date**") to and including the Maturity Date, at a fixed rate per annum equal to 3-month LIBOR *plus* 5.50% (with a LIBOR floor of 1.00%), which interest shall be payable in cash monthly in arrears, calculated on the basis of a 365-day year for the actual number of days elapsed. Accrued, unpaid interest on the DIP Loans shall be compounded on the last day of each calendar month. After the Maturity Date and/or after the occurrence and during the continuance of an Event of Default, the DIP Obligations shall bear interest at a rate equal to 3-month LIBOR *plus* 7.50% (with a LIBOR floor of 1.00%) per annum, calculated on the basis of a 365-day year for the actual number of days elapsed (the "**Default Rate**"). Interest shall be payable, in cash, on the last day of each calendar month, upon prepayment of any portion of the DIP Obligations, on the Maturity Date, and upon payment in full of the DIP Loans. Upon the making of the initial DIP Loan under the DIP Credit Agreement, the Debtors shall pay to the DIP Lender a one-time administrative service fee equal to 1.5% of the full Commitment amount (the "**Administrative Fee**"). The Administrative Fee shall be non-refundable. The Borrowers shall pay or reimburse the DIP Lender for all of its reasonable and documented costs and expenses incurred in connection with the collection or enforcement of or preservation of any rights under the DIP Credit Agreement, including, without limitation, the fees and disbursements of counsel for the DIP Lender, including attorneys' fees out of court, in trial, on appeal, in bankruptcy proceedings, or otherwise. *See* DIP Term Sheet "Interest Rate and Fees"
Term Fed. R. Bankr. P. 4001(c)(1)(B); Local	The maturity date of the DIP Facility (the "**Maturity Date**") will be (and all DIP Loans and other DIP Obligations shall be repaid in full in cash on) the earliest of: (i) stated maturity, which shall be June 15, 2018, (ii) the effective date of any Chapter 11 plan of reorganization or

Bankruptcy Rule / Local Rule	Summary of Material Terms
R. 4001-2(a)(ii)	liquidation of the Borrowers, (iii) the date that is the 90th day following the Interim Order Entry Date if the Final Order shall not have been entered by such date, (iv) the acceleration of the DIP Loans or termination of the Commitment, including, without limitation, as a result of the occurrence of an Event of Default (as defined below) and (v) the consummation of a sale(s) of all or substantially all of the assets of the Debtors. *See* DIP Term Sheet "Maturity"
Use of DIP Facility Fed. R. Bankr. P. 4001(c)(1)(B); Local R. 4001-2(a)(ii)	The proceeds of the DIP Loans will be used, in accordance with the terms of the Budget and DIP Orders: (i) to fund the working capital needs and chapter 11 administrative costs of the Borrowers during the pendency of the Chapter 11 Cases, (ii) to provide adequate protection to the Debtors' Prepetition Secured Notes Parties as provided in the DIP Orders and the DIP Credit Agreement, (iii) to pay fees, costs and expenses of the DIP Facility on the terms and conditions described therein, and (iv) to pay other amounts as specified in the Budget. Proceeds of the DIP Loans may be used to fund investigations by the Debtors and Official Committee of Unsecured Creditors (the "Creditors' Committee") and their respective advisors (but not investigations by any other party in interest) of possible estate causes of action against the DIP Lender or any DIP Lender Related Party (as defined below); provided that in no event may any proceeds of the DIP Loans be used to prepare, commence, initiate, prosecute, join or otherwise finance (including by paying for any services rendered by professionals retained by the Debtors, the Creditors' Committee or any other party in interest) the preparation, commencement, initiation, prosecution of or joinder in any claim, counterclaim, action, suit, arbitration, proceeding, application, motion, objection, defense or other litigation of any type (A) against the DIP Lender or any DIP Lender Related Party (in any of their capacities) or (B) seeking to invalidate, challenge, impair or otherwise prejudice in any way any of the DIP Lender's rights, liens and/or claims under the DIP Documents (or to enjoin the DIP Lender from enforcing any such rights, liens and/or claims or any of the DIP Obligations). *See* DIP Term Sheet "Purpose/Use of Proceeds"
Conditions of Borrowing Fed. R. Bankr. P.	The DIP Credit Agreement shall contain customary funding conditions for a financing of this type, including (i) the material accuracy of the representations and warranties of the Borrowers under the DIP Documents, (ii) the absence of any Default or Event of Default, (iii) in

Bankruptcy Rule / Local Rule	Summary of Material Terms
4001(c)(1)(B); Local R. 4001-2(a)(ii)	the case of the funding of the initial DIP Loan, the negotiation, execution and delivery of the DIP Credit Agreement, which shall be in form and substance satisfactory to the DIP Lender, and the entry of the Interim Order, (iv) absence of any Material Adverse Change (to be defined in the DIP Credit Agreement) and (v) compliance with the Budget. *See* DIP Term Sheet "Conditions Precedent to the Funding of any DIP Loans"
Repayment Features Fed. R. Bankr. P. 4001(c)(1)(B); Local R. 4001-2(a)(i)(E)	The DIP Facility does not provide for any "roll up" or similar feature.
Budget Fed. R. Bankr. P. 4001(c)(1)(B); Local R. 4001-2(a)(ii)	"**Budget**" means in the case of the initial Budget (delivered at the time of execution of the DIP Credit Agreement), a 13-week statement of sources and uses of the Borrowers broken down by week, including the anticipated uses of the DIP Facility for such period. The Budget shall provide, among other things, for the payment of fees and expenses relating to the DIP Facility, ordinary course administrative expenses, bankruptcy-related expenses and professional fees, working capital expenditures, and other general corporate needs. No less frequently than every four weeks commencing no later than four (4) weeks following the Effective Date (or, if earlier, the entry of the Final Order), the Debtors shall deliver an updated budget (each, a "**Proposed Budget**") to the DIP Lender, which Proposed Budget, upon written approval of the DIP Lender, shall become the Budget effective as of the first Monday following such written approval; *provided*, *however*, that unless and until the DIP Lender shall have approved in writing any Proposed Budget or any other proposed modification to the Budget then in effect, the Debtors shall still be subject to and be governed by the terms of such Budget then in effect in accordance with the terms of the DIP Orders. Modifications to the Budget shall not require further order or approval of the Bankruptcy Court. Commencing on the first Wednesday following entry of the Interim Order (or the next business day if such day is not a business day), and continuing every week thereafter, the Debtors shall be required to deliver to the DIP Lender a weekly variance report from the previous week comparing the actual receipts and disbursements of the Debtors with the receipts and disbursements in the Budget, as well as cumulative

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	variances (the "**Budget Variance Report**"). Upon request by the DIP Lender, the Borrowers shall provide an explanation for any material variances from the Budget. *See* DIP Term Sheet "Budget"
Reporting Information Fed. R. Bankr. P. 4001(c)(1)(B); Local R. 4001-2(a)(ii)	Financial Statements, Reports, Certificates. Commencing on the first Wednesday following entry of the Interim Order (or the next business day if such day is not a business day) and continuing every week thereafter, the Borrowers shall provide the DIP Lender a reconciliation, in form and substance acceptable to the DIP Lender and substantially consistent with the Budget, of the actual cash receipts and disbursements of the Borrowers under DIP Credit Agreement for the most recently ended week to the budgeted line item amounts set forth in the Budget for such week. The Borrowers shall further provide prompt written notice of the occurrence of any Default or Event of Default and the action(s) the Borrowers propose to take to remedy such Default or Event of Default. Access to Collateral; Books and Records. At all reasonable times the DIP Lender, or its agents, shall have the right to inspect the DIP Collateral and the right to audit and copy Borrowers' books and records. *See* DIP Term Sheet "Affirmative Covenants"
Variance Covenant Fed. R. Bankr. P. 4001(c)(1)(B); Local R. 4001-2(a)(ii)	The Debtors shall be permitted a twenty percent (20%) variance on disbursements tested on a cumulative basis *See* DIP Term Sheet "Budget"
Chapter 11 Milestones Fed. R. Bankr. P. 4001(c)(1)(B)(vi); Local R.4001-2(a)(ii)	The DIP Facility does not contain milestones.
Liens Fed. R. Bankr. P. 4001(c)(1)(B)(i); Local R. 4001-2(a)(i)(D), 4001-	Effective immediately upon entry of the Interim Order (as defined below), and subject and subordinate to the Adequate Protection Liens (except as expressly provided below with respect to the DIP Loan Proceeds Account) and Carve-Out (each as defined below), the DIP Lender will be granted the following security interests and liens, which shall immediately be binding, perfected, continuing, enforceable and

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2(a)(ii)	non-avoidable (all the following liens and security interests granted to the DIP Lender pursuant to the Interim Order or any Final Order (as defined below), the "**DIP Liens**"): a. pursuant to section 364(c)(2) of the Bankruptcy Code, first priority liens on and security interests in (the "**Section 364(c)(2) Liens**") all DIP Collateral that was unencumbered by valid, enforceable, perfected and non-avoidable liens as of the Petition Date (collectively, the "**Prepetition Liens**"), which Section 364(c)(2) Liens shall be subject and subordinate to only to the Adequate Protection Liens and Carve-Out; *provided* that the Section 364(c)(2) Liens on the DIP Loan Proceeds Account and any amounts on deposit therein shall be senior to the Adequate Protection Liens and subject only to the Carve-Out; and b. pursuant to section 364(c)(3) of the Bankruptcy Code, liens on and security interests in (the "**Section 364(c)(3) Liens**") all DIP Collateral encumbered by Prepetition Liens immediately junior to any such Prepetition Liens on such DIP Collateral, which Section 364(d)(3) Liens shall be subject and subordinate only to the Prepetition Liens, the Adequate Protection Liens and the Carve-Out. *See* DIP Term Sheet "DIP Liens and DIP Superpriority Claim"
Cross-Collateralization Protection Fed. R. Bankr. P. 4001(c)(1)(B); Local R. 4001-2(a)(i)(A)	The DIP Facility does not include cross-collateralization provisions.
Priority Claims Fed. R. Bankr. P. 4001(c)(1)(B)(i); Local R. 4001-2(a)(i)(D), 4001-2(a)(ii)	Effective immediately upon entry of the Interim Order, the DIP Lender will be granted, pursuant to section 364(c)(1) of the Bankruptcy Code, allowed superpriority administrative expense claims (the "**DIP Superpriority Claims**") under section 503(b)(1) of the Bankruptcy Code for all DIP Obligations, which DIP Superpriority Claims shall have priority over all other administrative expenses (other than Adequate Protection

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	Superiority Claims (as defined below)) pursuant to the Bankruptcy Code (including the kinds specified in or arising or ordered pursuant to Bankruptcy Code sections 326, 330, 331, 503(b), 506(c) (subject to entry of the final order), 507(a), 507(b), and 726 thereof or otherwise, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment), and shall be subject and subordinate only to the Carve-Out and the Adequate Protection Superpriority Claim. *See* DIP Term Sheet "DIP Liens and DIP Superpriority Claim"
Events of Default Fed. R. Bankr. P. 4001(c)(1)(B); Local R. 4001-2(a)(ii)	Any one of the following shall constitute an Event of Default under the DIP Credit Agreement: a. The Borrowers shall fail to pay any DIP Obligations to the DIP Lender as and when due; b. The Borrowers shall fail to perform, or otherwise breach, any covenant or agreement of the Borrowers contained in the DIP Credit Agreement, which failure or breach shall continue for twenty (20) days after the date upon which Borrowers have received a written notice of such failure or breach from the DIP Lender; *provided* that no such grace period shall apply with respect to the Budget covenant to be set forth in the DIP Credit Agreement; c. Any representation or warranty made by a Borrower in the DIP Credit Agreement or by a Borrower (or any of its officers) in any agreement, certificate, instrument or financial statement or other statement delivered to the DIP Lender pursuant to or in connection with the DIP Credit Agreement shall prove to have been incorrect in any material respect when made or deemed made; d. The rendering against a Borrower of a final non-appealable arbitration award, judgment, decree or order for the payment of money in excess of $200,000 (excluding amounts covered by insurance to the extent the relevant independent third-party insurer has not denied coverage therefor), and the same shall remain unsatisfied (unless satisfied in accordance with the Budget), unvacated and unstayed pending appeal for a period of thirty (30)

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	consecutive days after the entry thereof; e. The Borrowers (except following the DIP Lender's prior written request or with the DIP Lender's express prior written consent) shall file a motion with the Bankruptcy Court or any other court with jurisdiction in the matter seeking an order, or an order is otherwise entered, modifying, reversing, revoking, staying, rescinding, vacating, or amending the DIP Orders or any of the DIP Documents, without the DIP Lender's express prior written consent (and no such consent shall be implied from any other action, inaction, or acquiescence of the DIP Lender); *provided* that it shall not be an Event of Default for the Borrowers to seek an order from the Bankruptcy Court approving financing that provides for the repayment in full in cash of all of the DIP Obligations immediately upon consummation of such financing, so long as (i) any order so entered contemplates such repayment and (ii) such repayment occurs immediately upon consummation of any such financing; f. The Borrowers shall make any filing seeking to obtain, or any other person shall obtain, Bankruptcy Court approval of a Plan of Reorganization or related disclosure statement which does not provide for the full, final, and irrevocable repayment of all of the DIP Obligations of the Borrowers to the DIP Lender upon the effectiveness of such Plan of Reorganization, unless the DIP Lender has expressly joined in or consented to such Plan of Reorganization in writing; g. The Final Order has not been entered by the Bankruptcy Court on or before ninety (90) days after the Interim Order Entry Date; h. Any Borrower shall file any motion or application, or the Bankruptcy Court allows the motion or application of any other person or entity, which seeks approval for or allowance of any claim, lien, security interest ranking equal or senior in priority to the claims, liens and security interests granted to the DIP Lender under the DIP Orders or any of the other

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	DIP Documents or any such equal or prior claim, lien, or security interest shall be established in any manner, except, in any case, as expressly permitted under the DIP Orders; i. The DIP Orders shall cease to be in full force and effect from and after the date of entry thereof by the Bankruptcy Court; j. Any breach of, or failure of any Debtor to perform its obligations under, the DIP Orders shall have occurred; k. The entry of an order which provides relief from the automatic stay otherwise imposed pursuant to Section 362 of the Bankruptcy Code, which order permits any creditor, other than the DIP Lender, (i) to realize upon, or to exercise any right or remedy with respect to, any asset of the Borrowers or (ii) to terminate any license, franchise, or similar agreement, solely in the case of subclause (ii), where such termination could reasonably be expected to result in a Material Adverse Change; l. If any creditor of the Borrowers receives any adequate protection payment or other payment (unless in accordance with the Budget) on account of prepetition claims owed by any of the Borrowers, in any such case, which is not fully acceptable to the DIP Lender, or any claim, lien or security interest is granted as adequate protection other than as set forth in the DIP Orders; m. Conversion of the Chapter 11 Case to a Chapter 7 case under the Bankruptcy Code, or dismissal of the Chapter 11 Case or any subsequent Chapter 7 case either voluntarily or involuntarily, or any of the Debtors filing a motion or not opposing a motion seeking such relief; n. The Interim Order or Final Order are modified, reversed, revoked, remanded, stayed, rescinded, vacated or amended on appeal or by the Bankruptcy Court without the prior written consent of the DIP Lender (and no such consent shall be implied from

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	any other authorization or acquiescence by the DIP Lender); o. An examiner with special powers is appointed pursuant to Section 1104(a) of the Bankruptcy Code; p. The cessation of the DIP Facility to be in full force and effect or the DIP Facility being declared by the Bankruptcy Court to be null and void or the validity or enforceability the DIP Facility or any DIP Documents being contested by the Debtors or the Debtors denying in writing that it has any further liability or obligation under the DIP Facility or the DIP Lender ceasing to have the benefit of the liens granted by the DIP Orders; or Any of the Debtors seek authority to obtain post-petition loans or other financial accommodations pursuant to section 364(c) or 364(d) of the Bankruptcy Code, other than from the DIP Lender, or as may be otherwise expressly permitted under the DIP Documents, unless the Debtors use the proceeds of such post-petition loans or other financial accommodations to pay in full in cash all DIP Obligations. *See* DIP Term Sheet "Events of Default"
Carve Out Fed. R. Bankr. P. 4001(c)(1)(B); Local R. 4001-2(a)(i)(F)	"**Carve-Out**" shall mean the sum of: (i) all fees required to be paid to the Clerk of the Court and to the Office of the United States Trustee under 28 U.S.C. § 1930(a); (ii) fees and expenses up to $50,000 incurred by a trustee under Bankruptcy Code section 726(b); (iii) all accrued but unpaid costs, fees, and expenses (the "**Professional Fees**") incurred by persons or firms retained by the Debtors pursuant to sections 327, 328, or 363 of the Bankruptcy Code (collectively, the "**Debtor Professionals**") and any official committee appointed in the Chapter 11 Cases, including the Creditors' Committee (the "**Committee Professionals**" and the Debtor Professionals, collectively, the "**Professional Persons**") at any time before or on the first business day following delivery by the DIP Lender of a Carve-Out Trigger Notice (as defined below), to the extent allowed at any time whether allowed by interim order, procedural order, or otherwise (the "**Pre-Termination Amount**"); and (iv) after the first business day following delivery by the DIP Lender of the Carve-Out Trigger Notice, to the extent allowed at any time, whether by interim order, procedural order, or otherwise, the payment of Professional Fees of Professional Persons in an aggregate amount not to exceed (x) with respect to the Debtor Professionals, $300,000 and (y) with respect to the Committee

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	Professionals, $150,000 (the amounts set forth in the foregoing clauses (x) and (y) are collectively referred to as the "**Post-Termination Amount**," and together with the Pre-Termination Amount, the "**Professional Fees Amount**"); *provided* that nothing herein shall be construed to impair the ability of any party to object to the fees, expenses, reimbursement, or compensation described in preceding clauses (iii) and (iv). For purposes of the foregoing, "**Carve-Out Trigger Notice**" shall mean a written notice delivered by the DIP Lender to the Debtors and their lead counsel, the U.S. Trustee, the Secured Notes Trustee, and lead counsel to the Creditors' Committee, if any, providing notice that a Termination Event has occurred. On the day on which a Carve-Out Trigger Notice is given to the Debtors, such Carve-Out Trigger Notice shall constitute a demand to the Debtors to utilize all cash on hand as of such date and any available cash thereafter held by any Debtor to fund a reserve in an aggregate amount equal to (A) the Pre-Termination Amount *plus* (B) the Post-Termination Amount, and the Debtors shall deposit and hold any such amounts in a segregated account in trust for the Professional Persons (the "**Professional Fees Reserve**") (it being understood that the Prepetition Secured Notes Parties shall have a lien and security interest in any residual amount of such segregated account). For the avoidance of doubt, so long as the Carve-Out Trigger Notice shall not have been delivered, the Carve-Out shall not be reduced by the payment of Professional Fees allowed at any time by the Bankruptcy Court. For the avoidance of doubt the Carve-Out shall be senior to all liens and claims securing the DIP Obligations and the Prepetition Secured Notes Obligations (including the Prepetition Secured Notes Liens and the Adequate Protection Liens). *See* DIP Term Sheet "Carve-Out"
Section 506(c) Waiver Fed. R. Bankr. P. 4001(c)(1)(B)(x); Local R. 4001-2(a)(i)(C)	Subject to the entry of the Final Order and subject to the Carve-Out, the Debtors (and any successors thereto or any representatives thereof, including any trustees appointed in the Chapter 11 Cases or any successor cases) shall be deemed to have waived any rights, benefits or causes of action under section 506(c) of the Bankruptcy Code as they may relate to or be asserted against the DIP Lender, the DIP Liens, the DIP Collateral, the Prepetition Secured Notes Parties, the Prepetition Secured Notes Liens, the Adequate Protection Liens, the Prepetition Secured Notes Collateral or the Adequate Protection Collateral. *See* DIP Term Sheet "Certain Other Terms of the DIP Orders"

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Section 552(b) Waiver Fed. R. Bankr. P. 4001(c)(1)(B); Local R. 4001-2(a)(i)(H)	The Interim Order does not provide for a waiver of section 552(b) or "equities of the case" claims.
Stipulations to Prepetition Liens and Claims Fed. R. Bankr. P. 4001(c)(1)(B)(iii); Local R. 4001-2(a)(i)(B)	The Interim Order does not contain stipulations regarding the Prepetition Secured Notes.
Adequate Protection Fed. R. Bankr. P. 4001(c)(1)(B)(ii)	The Secured Notes Trustee, for the benefit of itself and the Prepetition Secured Noteholders, shall be granted the following adequate protection (collectively, the "**Adequate Protection**") of its prepetition security interests for, and equal in amount to, the diminution in the value (each such diminution, a "**Diminution in Value**") of the prepetition security interests of the Prepetition Secured Notes Parties calculated in accordance with section 506(a) of the Bankruptcy Code, whether or not such Diminution in Value results from the sale, lease or use by the Borrowers of the Prepetition Secured Notes Collateral or the stay of enforcement of any prepetition security interest arising from section 362 of the Bankruptcy Code, subject and subordinate to the Carve-Out: a. Adequate Protection Liens. As security for and solely to the extent of any Diminution in Value and without the necessity of the execution by any Debtor (or recordation or other filing) of any security agreements, control agreements, pledge agreements, financing statements, mortgages or other similar documents, the Secured Notes Trustee, for the benefit of the Prepetition Secured Notes Parties, will be granted additional and replacement valid, binding, enforceable, non-avoidable, and automatically perfected post-petition security interests in and liens on (the "**Adequate Protection Liens**") all property, whether now owned or hereafter acquired or existing and wherever located, of each Debtor and each Debtor's "estate" (as created pursuant to section 541(a) of the Bankruptcy Code), of any kind or nature whatsoever, real or

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	personal, tangible or intangible, and now existing or hereafter acquired or created that constitutes DIP Collateral (but excluding (i) the DIP Loan Proceeds Account prior to the payment in full of the DIP Obligations and termination of the Commitment and (ii) any causes of action under sections 544, 545, 547, 548 and 550 of the Bankruptcy Code and any other Avoidance Actions under the Bankruptcy Code), all products, proceeds and supporting obligations of the foregoing, whether in existence on the Petition Date or thereafter created, acquired, or arising and wherever located (collectively, the "**Adequate Protection Collateral**"); provided that, subject to approval by the Final Order, Adequate Protection Collateral shall include the proceeds of the Avoidance Actions, which shall be available, to the extent necessary, to pay any administrative claim of the Prepetition Secured Notes Parties (but only if proceeds of other Adequate Protection Collateral are insufficient to pay any such claims). Subject to the terms of the Interim Order, the Adequate Protection Liens shall be subordinate only to the (A) Carve-Out and (B) other unavoidable liens, if any, existing as of the Petition Date that are senior in priority to the Prepetition Secured Notes Liens as permitted by the terms of the Prepetition Secured Notes Documents. The Adequate Protection Liens shall otherwise be senior to all other security interests in, liens on, or claims against any of the Adequate Protection Collateral (including any lien or security interest that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code). b. Adequate Protection Superpriority Claims. As further adequate protection, solely to the extent of any Diminution in Value, the Prepetition Secured Notes Parties shall have, subject in each case to the payment of the Carve-Out, an allowed administrative expense claim against each of the Debtors (the "Adequate Protection Superpriority Claims"), as provided for in sections 503(b) and 507(b) of the Bankruptcy Code, in each case payable from and having recourse to all Adequate Protection

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	Collateral, which Adequate Protection Superpriority Claims shall have priority over all other administrative expenses pursuant to the Bankruptcy Code (including the DIP Superpriority Claims and the kinds specified in or arising or ordered pursuant to Bankruptcy Code sections 326, 330, 331, 503(b), 506(c) (subject to entry of the Final Order), 507(a), 507(b), and 726 thereof or otherwise, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment), and shall be subject and subordinate only to the Carve-Out. c. Fees and Expenses. As further adequate protection, the Debtors will pay the reasonable and documented fees and expenses (the "**Adequate Protection Fees**"), whether incurred before or after the Petition Date, of the Secured Notes Trustee and the ad hoc group of unaffiliated holders of a majority in amount of the Prepetition Secured Notes represented by Akin Gump Strauss Hauer & Feld LLP (the "**Prepetition Secured Noteholder Group**"), limited, in the case of any legal or professional advisor fees and expenses to the reasonable and documented fees and expenses of (a) one local Delaware counsel and one lead counsel (Morrison & Foerster LLP) for the Secured Notes Trustee and (b) one local Delaware counsel, one lead counsel (Akin Gump Strauss Hauer & Feld LLP) and one financial advisor for the Prepetition Secured Noteholder Group. d. Post-petition Payment of Interest. As further adequate protection, the Debtors will pay to the Secured Notes Trustee, for distribution to the holders of the Prepetition Secured Notes, the post-petition interest payable on the Prepetition Secured Notes Obligations at the default contract rate set forth in the Prepetition Secured Notes Documents. e. DIP Facility Reporting. As further adequate protection, the Debtors will provide to the Prepetition Secured Notes Trustee and lead counsel to the Prepetition Secured Noteholder Group (in

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	each case of the foregoing, subject to applicable confidentiality agreements) copies of all of the financial reporting or other written materials, in each case of the foregoing, delivered from time to time to the DIP Lender pursuant to the Budget covenant and the other affirmative covenants set forth in the DIP Credit Agreement (collectively, the "**Adequate Protection Reporting**"). *See* DIP Term Sheet "Adequate Protection"
Waiver/Modification of the Automatic Stay; Remedies Fed. R. Bankr. P. 4001(c)(1)(B)(iv)	Upon the occurrence of a Termination Event, the automatic stay provisions of section 362 of the Bankruptcy Code shall be automatically vacated and modified to the extent necessary to permit the DIP Lender to exercise all rights and remedies provided in the DIP Orders and the other DIP Documents, as applicable, without further order of or application to the Bankruptcy Court; *provided* that, notwithstanding anything herein to the contrary, the DIP Lender shall not enforce any DIP Liens against the DIP Collateral or exercise any other remedies against the DIP Collateral (other than delivery of control notices in accordance with any account control agreement to which the DIP Lender is a party) prior to the expiration of three (3) business days (the "**Termination Event Notice Period**") following the provision of written notice to the Debtors (with a copy of such notice provided to counsel for the Debtors, the U.S. Trustee, the Prepetition Secured Notes Trustee, and lead counsel to the Creditors' Committee, if any) of the occurrence of a Termination Event; *provided* that the Termination Event Notice Period shall not apply to a Termination Event resulting from the occurrence of the Maturity Date pursuant to clause (i) or (ii) of the definition of Maturity Date. If a Termination Event has occurred and the DIP Lender has elected to have remedies exercised against any DIP Collateral (other than the DIP Loan Proceeds Account and amounts on deposit therein), then (i) without limiting the notice requirements set forth in the immediately preceding paragraph, the DIP Lender shall provide written notice thereof to the Secured Notes Trustee (with a copy of such notice provided to lead counsel to the Creditors' Committee, if any, to the extent not previously notified in accordance with the immediately preceding paragraph) and (ii) the Secured Notes Trustee, in consultation with the DIP Lender, may direct the order and manner of the exercise of such remedies, subject to intercreditor arrangements (including standstill provisions) between the DIP Lender and the Prepetition Secured Notes Parties that are acceptable to the DIP Lender; *provided*

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	that (x) the DIP Lender shall be permitted to deliver control notices in accordance with any account control agreement to which the DIP Lender is a party and (y) remedies against the DIP Loan Proceeds Account and amounts on deposit therein may be exercised in the sole discretion of the DIP Lender, subject only to the applicable provisions of the DIP Orders. The DIP Orders shall further provide that (a) the automatic stay under section 362(a) of the Bankruptcy Code shall be automatically vacated and modified as described above, effective following the expiration of the Termination Event Notice Period (or immediately, in the case of a Termination Event resulting from the occurrence of the Maturity Date pursuant to clause (i) or (ii) of the definition of Maturity Date), unless the Bankruptcy Court has determined that a Termination Event has not occurred and/or is not continuing, (b) any party in interest's sole recourse with respect to opposing such modification of the automatic stay under section 362(a) of the Bankruptcy Code shall be to contest the occurrence and/or continuance of a Termination Event, (c) during the Termination Event Notice Period, the Debtors shall (x) have no right to request extensions of credit under the DIP Facility, other than with the consent of the DIP Lender, and (y) be entitled to an emergency hearing before the Bankruptcy Court, with proper notice to the DIP Lender, (d) the rights and remedies of the DIP Lender specified in the DIP Orders are cumulative and not exclusive of any rights or remedies that the DIP Lender may have under any DIP Document or otherwise, and (e) subject to any express limitations set forth in the DIP Term Sheet, the Debtors shall cooperate fully with the DIP Lender in any permitted exercise of rights and remedies, whether against the DIP Collateral or otherwise. *See* DIP Term Sheet "Termination Events; Remedies"
Waiver/Modification of Applicability of Nonbankruptcy Law Relating to Perfection or Enforceability of Liens Fed. R. Bankr. P. 4001(c)(1)(B)(vii)	Effective immediately upon entry of the Interim Order, the DIP Liens and the Adequate Protection Liens shall be immediately binding, perfected, continuing, enforceable and non-avoidable. *See* DIP Term Sheet "DIP Liens and DIP Superpriority Claim" and "Adequate Protection"
Release	The DIP Orders do not provide for a release by the Debtors of any

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Fed. R. Bankr. P. 4001(c)(1)(B)(viii)	prepetition claims. The DIP Orders shall provide that the DIP Loan Documents will constitute valid, binding and non-avoidable obligations of the Debtors enforceable against each of the Debtors in accordance with their respective terms for all purposes during the Chapter 11 Cases, any subsequently converted case of any Debtor under chapter 7 of the Bankruptcy Code, or after the dismissal of any such case. No obligation, payment, or transfer under the DIP Documents shall be stayed, restrained, voidable, avoidable, or recoverable under the Bankruptcy Code or under any applicable law (including, without limitation, under sections 502(d), 544, 547, 548, 549, 550 and 553 of the Bankruptcy Code or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or similar statute or common law), or subject to any avoidance, reduction, setoff, recoupment, offset, recharacterization, subordination (whether equitable, contractual, or otherwise), counterclaims, cross-claims, defenses, disallowance, impairment, or any other challenges under the Bankruptcy Code or any other applicable foreign or domestic law or regulation by any person or entity. *See* DIP Term Sheet "DIP Facility and DIP Documents"
Indemnification Fed. R. Bankr. P. 4001(c)(1)(B)(ix)	The Borrowers agree to indemnify, defend and hold harmless the DIP Lender (in its capacity as such), its affiliates and the DIP Lender's and its affiliates' respective directors, officers, shareholders, principals, investors, members, managers, partners, employees, agents, attorneys, advisors and other representatives (each solely in their capacity as such) (collectively, the "**DIP Lender Related Parties**") against: (a) all obligations, demands, claims, damages and liabilities (collectively, "**Claims**") asserted by any other person or entity or otherwise incurred by the DIP Lender or any DIP Lender Related Party in connection with the transactions contemplated by the DIP Documents or any proposed or actual use of proceeds of the DIP Facility; and (b) all losses or expenses incurred or paid by the DIP Lender from, following, or arising from the transactions contemplated by the DIP Documents (including reasonable attorneys' fees and expenses), except for Claims and/or losses directly caused by the DIP Lender's gross negligence or willful misconduct. *See* DIP Term Sheet "Indemnity; Expenses"
Liens on Avoidance Actions	The DIP Collateral shall not include causes of action for preferences, fraudulent conveyances, and other avoidance power claims under

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Fed. R. Bankr. P. 4001(c)(1)(B)(xi); Local R. 4001-2(a)(i)(D)	sections 544, 545, 547, 548, 549, 550 and 553 of the Bankruptcy Code (the "**Avoidance Actions**") but shall, subject to approval by the Final Order, include the proceeds of the Avoidance Actions, which shall be available, to the extent necessary, to pay any administrative claim of the DIP Lender in respect of the DIP Facility (but only if proceeds of other DIP Collateral are insufficient to pay any such claims). *See* DIP Term Sheet "DIP Collateral"
Challenge Period Fed. R. Bankr. P. 4001(c)(1)(B); Local R. 4001-2(a)(i)(B)	Because the DIP Facility does not contain any stipulations with respect to the Prepetition Secured Notes, the DIP Facility does not include a challenge period. In no event shall any proceeds of the DIP Loans be used to investigate or commence any action against the DIP Lender or any DIP Lender Related Party. *See* DIP Term Sheet "Purpose/Use of Proceeds"
No Priming or Pari Passu Liens Fed. R. Bankr. P. 4001(c)(1)(B); Local R. 4001-2(a)(i)(G)	The DIP Facility does not provide for *pari passu* or priming liens to be granted to the DIP Lender.

Relief Requested

37. The Debtors seek entry of the Interim DIP Order and, pending the Final Hearing, the Final DIP Order, in each case: (a) authorizing the Debtors to obtain the DIP Facility under terms substantially consistent with the DIP Term Sheet; (b) authorizing the Debtors to negotiate, execute, deliver, and perform under the DIP Credit Agreement and the other DIP Loan Documents substantially consistent with the DIP Term Sheet; (c) authorizing and directing the Debtors to incur and pay all DIP Obligations; (d) authorizing the Debtors to grant the DIP Lender valid, enforceable, non-avoidable, automatically and fully perfected liens and security interests in the DIP Collateral, with such liens and security interests to be first-priority as to the

Debtors' unencumbered assets and junior to existing valid, enforceable and fully perfected liens and security interests on the Debtors' encumbered assets, and allowing the DIP Obligations as superpriority administrative expense claims in these Chapter 11 Cases, with such liens, security interests, and claims subject to the Carve-Out; (e) authorizing the Debtors' use of proceeds of the DIP Facility pursuant to the Budget; (f) granting adequate protection to the Secured Noteholders; (g) vacating and modifying the automatic stay; (h) scheduling a Final Hearing to consider entry of the Final DIP Order and approving the form of notice with respect to the Final Hearing; and (i) granting related relief.

Basis for Relief

A. The Debtors' Decision to Obtain the DIP Facility from the DIP Lender Should Be Approved.

38. Section 364 of the Bankruptcy Code authorizes a debtor-in-possession to obtain secured or superpriority financing under certain circumstances discussed in detail below. Ordinarily, courts review the debtor-in-possession's decision to obtain post-petition credit under the deferential business judgment standard. *See In re L.A. Dodgers LLC*, 457 B.R. 308, 313 (Bankr. D. Del. 2011). However, where the debtor-in-possession transacts with an insider, its decision may be subject to heightened scrutiny. *See Schubert v. Lucent Techs. Inc. (In re Winstar Commc'ns., Inc.)*, 554 F.3d 382, 412 (3d Cir. 2009).

39. The Debtors' request for authority to obtain the DIP Facility from the DIP Lender should be evaluated under the business judgment standard because the decision to select the DIP Lender's proposal was made by the independent and fully informed Special Committee. Even if the Debtors' request is subject to heightened scrutiny, however, its decision to obtain the DIP Facility should be approved because it is the product of fair dealing and is comprised of fair price and terms.

(1) Obtaining the DIP Facility Is an Exercise of the Debtors' Sound Business Judgment.

40. Courts grant a debtor in possession considerable deference in acting in accordance with its business judgment in obtaining post-petition secured credit, so long as the agreement to obtain such credit does not run afoul of the provisions of, and policies underlying, the Bankruptcy Code. *See, e.g.*, *In re Trans World Airlines, Inc.*, 163 B.R. 964, 974 (Bankr. D. Del. 1994) (approving post-petition loan and receivables facility because such facility "reflect[ed] sound and prudent business judgment"); *In re L.A. Dodgers LLC*, 457 B.R. at 313 ("[C]ourts will almost always defer to the business judgment of a debtor in the selection of the lender."); *In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) ("[C]ases consistently reflect that the court's discretion under section 364 is to be utilized on grounds that permit reasonable business judgment to be exercised so long as the financing agreement does not contain terms that leverage the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to benefit a party-in-interest.").

41. As a threshold matter, a debtor-in-possession's decision is reviewed under the business judgment standard unless an objecting party can prove the contrary:

> [T]he business judgment rule governs unless the opposing party can show one of four elements: (1) the directors did not in fact make a decision, (2) the directors' decision was uninformed; (3) the directors were not disinterested or independent; or (4) the directors were grossly negligent.

In re Los Angeles Dodgers LLC, 457 B.R. at 313. None of these four facts exist in this case. The Special Committee is disinterested and independent. It selected the DIP Facility proposed by the DIP Lender after a process that was fair, transparent and reasonable in light of the circumstances of the Chapter 11 Cases, it relied on its professional advisors to fully informed itself of the terms and conditions of the DIP Term Sheet, the competing proposals and other relevant facts and circumstances, and in light of the substantive provisions of the DIP Term

Sheet which provide the Debtors necessary liquidity at a market price without any onerous non-economic terms or milestones that would unduly restrict the Debtors' strategic options for maximizing the value of its assets in these Chapter 11 Cases. Accordingly, the decision to obtain the DIP Facility from the DIP Lender should be reviewed under the business judgment standard.

42. To determine whether the business judgment standard is met, a court need only "examine whether a reasonable business person would make a similar decision under similar circumstances." *In re Exide Teats.*, 340 B.R. 222, 239 (Bankr. D. Del. 2006); *see also In re Curlew Valley Assocs.*, 14 B.R. 506, 513-14 (Bankr. D. Utah 1981) (noting that courts should not second guess a Debtors' business decision when that decision involves "a business judgment made in good faith, upon a reasonable basis, and within the scope of [the Debtors'] authority under the [Bankruptcy] Code").

43. Furthermore, in considering whether the terms of post-petition financing are fair and reasonable, courts consider the terms in light of the relative circumstances of both the debtor and the potential lender. *In re Farmland Indus., Inc.*, 294 B.R. 855, 886 (Bankr. W.D. Mo. 2003); *see also Unsecured Creditors' Comm. Mobil Oil Corp. v. First Nat'l Bank & Trust Co.* (*In re Elingsen McLean Oil Co., Inc.*), 65 B.R. 358, 365 (W.D. Mich. 1986) (recognizing a debtor may have to enter into "hard bargains" to acquire funds for its reorganization). The Court may also appropriately take into consideration non-economic benefits to the Debtors offered by a proposed post-petition facility. For example, in *In re ION Media Networks. Inc.*, the Bankruptcy Court for the Southern District of New York held that:

> Although all parties, including the Debtors and the Committee, are naturally motivated to obtain financing on the best possible terms, a business decision to obtain credit from a particular lender is almost never based purely on economic terms. Relevant features of the financing must be evaluated, including non-economic elements such as the timing and certainty of closing, the impact on

> creditor constituencies and the likelihood of a successful reorganization. This is particularly true in a bankruptcy setting where cooperation and establishing alliances with creditor groups can be a vital part of building support for a restructuring that ultimately may lead to a confirmable reorganization plan. That which helps to foster consensus may be preferable to a notionally better transaction that carries the risk of promoting unwanted conflict.

No. 09-13125, 2009 WL 2902568, at *4 (Bankr. S.D.N.Y. July 6, 2009) (emphasis added).

44. Here, the DIP Facility is clearly within the Debtors' reasonable business judgment. As more fully set forth above, the DIP Facility contains the most favorable economic terms of any of the DIP financing proposals received by the Debtors, it does not contain any milestones or other control mechanisms, and it is pre-payable at any time without an exit fee. The Debtors also believe that the Creditors' Committee supports the filing of this Motion.

(2) Obtaining the DIP Facility Passes Muster under Heightened Scrutiny.

45. The Debtors' decision to obtain the DIP Facility from the DIP Lender passes must under even the strictest review—"entire fairness". This review requires a showing of "fair dealing" in light of the when the transaction was timed and how it was initiated, structured, negotiated and disclosed to the directors. *In re Zenith Elecs. Corp.*, 241 B.R. 92, 108 (Bankr. D. Del. 1999) (citing *Weinberger v. UOP, Inc.*, 457 A.2d 701, 711 (Del. 1983)). It also requires a showing of "fair price" in light of the economic and financial considerations of the transaction. *Id.*

46. The DIP Facility is the product of "fair dealing". The Debtors' urgency is a function of their working capital needs, and the Debtors and their professionals have acted promptly since the Petition Date to conduct a reasonable process to ventilate the market as fully as possible in light of the circumstances. In addition to the proposal from the DIP Lender, this process resulted in proposals from certain of the Debtors' Noteholders and certain third party

lenders. During the negotiations between the Debtors and the potential DIP lenders, each side negotiated at arm's length through their own independent professionals. The ultimate decision to select the DIP Lender's proposal was made by the independent Special Committee after fully informing itself of the facts and circumstances and considering the advice of the Debtors' professionals.

47. The DIP Facility also has a "fair price." The economic terms are superior to any other proposal submitted to the Debtors, including the proposals of certain of its Noteholders. The DIP Facility has no terms that unfairly advantage the DIP Lender. There are no case milestones or control features. Nor does the DIP Facility unfairly shift economic risks to the Prepetition Secured Noteholders or seek to alter the priorities of the Debtors' existing creditors. The existing liens and security interests of the Prepetition Secured Noteholders remain first priority. In addition, they are the beneficiaries of adequate protection in that the Debtors will pay default interest and the DIP Lender has agreed to provide reasonable intercreditor provisions.

B. The DIP Facility Meets the Requirements to Authorize Post-petition Financing on a Secured and Superpriority Basis under Section 364(c).

48. The statutory requirement for obtaining post-petition credit under section 364(c) is a finding, made after notice and hearing, that a debtor is "unable to obtain unsecured credit allowable under section 503(b)(1) of [the Bankruptcy Code]." 11 U.S.C. § 364(c). See *In re Crouse Grp.*, *Inc.*, 71 B.R. 544, 549 (Bankr. E.D. Pa. 1987) (secured credit under section 364(c) of the Bankruptcy Code is authorized, after notice and hearing, upon showing that unsecured credit cannot be obtained). To meet this requirement, a debtor need only demonstrate "by a good faith effort that credit was not available without" the protections afforded to potential lenders by sections 364(c) of the Bankruptcy Code. *See In re Snowshoe Co.*, 789 F.2d 1085, 1088 (4th Cir.

1986) ("[t]he statute imposes no duty to seek credit from every possible lender before concluding that such credit is unavailable").

49. Courts have articulated a 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 credit transaction is necessary to preserve the assets of the estate; and

b. the terms of the transaction are fair, reasonable, and adequate, given the circumstances of the debtor-borrower and proposed lenders.

In re Ames Dep't Stores, 115 B.R. at 37-39 (Bankr. S.D.N.Y. 1990); *see also In re St. Mary Hosp.*, 86 B.R. 393, 401-02 (Bankr. E.D. Pa. 1988); *Crouse Grp.*, 71 B.R. at 549.

50. For the reasons stated above, the Debtors have been unable to obtain unsecured credit, and believe that the liquidity provided by the DIP Facility is necessary to meet their imminent working capital requirements and that its terms are fair, reasonable and adequate.

C. The DIP Lenders Should Be Deemed Good-Faith Lenders under Section 364(e).

51. Section 364(e) of the Bankruptcy Code protects a good-faith lender's right to collect on loans extended to a debtor, and its right in any lien securing those loans, even if the authority of the debtor to obtain such loans or grant such liens is later reversed or modified on appeal. Section 364(e) of the Bankruptcy Code provides that:

> The reversal or modification on appeal of an authorization under this section [364 of the Bankruptcy Code] to obtain credit or incur debt, or of a grant under this section of a priority or a lien, 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, whether or not such entity knew of the pendency of the appeal, unless such authorization and the incurring of such debt, or the granting of such priority or lien, were stayed pending appeal.

52. As set forth above, the DIP Facility is the result of the Debtors' reasonable and informed determination that the DIP Lender offered the most favorable terms on which to obtain

needed post-petition financing, and of arm's length, good-faith negotiations between the Debtors and the DIP Lender. In addition, the terms and conditions of the DIP Facility are reasonable and appropriate under the circumstances, and the proceeds of the DIP Facility will be used only for purposes that are permissible under the Bankruptcy Code. Accordingly, the Court should find that the DIP Lender is a "good faith" lender within the meaning of section 364(e) of the Bankruptcy Code and are entitled to all of the protections afforded by that section.

D. The Debtors' Request to Use Cash Collateral and the Proposed Adequate Protection is Appropriate.[6]

53. The Debtors' use of property of their estates, including Cash Collateral, is governed by section 363 of the Bankruptcy Code. Pursuant to section 363(c)(2) of the Bankruptcy Code, a debtor may use cash collateral as long as "(A) each entity that has an interest in such cash collateral consents; or (B) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of this section." 11 U.S.C. § 363(c)(2).

54. Section 363(e) of the Bankruptcy Code provides for adequate protection of interests in property when a debtor uses cash collateral. Further, section 362(d)(1) of the Bankruptcy Code provides for adequate protection of interests in property due to the imposition of the automatic stay. *See In re Cont'l Airlines*, 91 F.3d 553, 556 (3d Cir. 1996). While section 361 of the Bankruptcy Code provides examples of forms of adequate protection, such as granting replacement liens and administrative claims, courts decide what constitutes sufficient adequate protection on a case-by-case basis. *In re Swedeland Dev. Grp., Inc.*, 16 F.3d 552, 564 (3d Cir. 1994); *In re Satcon Tech. Corp.*, No. 12-12869, 2012 WL 6091160, at *6 (Bankr. D. Del. Dec. 7,

[6] Unless otherwise defined herein, capitalized terms used in this Section D and the following Section E shall have the meaning ascribed to them in the *Motion to Approve Use of Cash Collateral Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing Postpetition Use of Cash Collateral, (II) Granting Adequate Protection to the Secured Parties, (III) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001(b) and (IV) Granting Related Relief Filed By Optima Specialty Steel, Inc.* filed on December 15, 2016 [Docket No. 17].

2012); *In re N.J. Affordable Homes Corp.*, No. 05-60442, 2006 WL 2128624, at *14 (Bankr. D.N.J. June 29, 2006); *In re Columbia Gas Sys., Inc.*, Nos. 91-803, 91-804, 1992 WL 79323, at *2 (Bankr. D. Del. Feb. 18, 1992); *see also In re Dynaco Corp.*, 162 B.R. 389, 394 (Bankr. D.N.H. 1993) (citing 2 Collier on Bankruptcy ¶ 361.01 [1] at 361-66 (15th ed. 1993) (explaining that adequate protection can take many forms and "must be determined based upon equitable considerations arising from the particular facts of each proceeding").

55. The concept of adequate protection is designed to shield a secured creditor from diminution in the value of its interest in collateral during the period of a debtor's use. *See In re Carbone Cos.*, 395 B.R. 631, 635 (Bankr. N.D. Ohio 2008) ("The test is whether the secured party's interest is protected from diminution or decrease as a result of the proposed use of cash collateral."); *see also In re Cont'l Airlines, Inc.*, 154 B.R. 176, 180—81 (Bankr. D. Del. 1993) (holding that adequate protection for use of collateral under section 363 of the Bankruptcy Code is limited to use-based decline in value).

56. As set forth in the Summary of Material Terms, and in the Interim Order, the Debtors propose to provide the Secured Parties with Adequate Protection, including the Adequate Protection Liens, the Adequate Protection Superpriority Claims, Fees and Expenses and the Postpetition Payment of Interest.

57. The Debtors respectfully submit that the proposed Adequate Protection is sufficient to protect the Secured Parties from any diminution in value to the Collateral during the interim period. In addition to the replacement liens, superpriority claims, payment of fees and expenses, and payment of postpetition interest, the use of Cash Collateral in accordance with the terms of the Budget preserves and maximizes the value of the Secured Noteholders Collateral. *See In re 495 Cent. Park Ave. Corp.*, 136 B.R. 626, 631 (Bankr. S.D.N.Y. 1992) (evaluating

"whether the value of the debtor's property will increase as a result of the" use of collateral in determining sufficiency of adequate protection); *In re Salem Plaza Assocs.*, 135 B.R. 753, 758 (Bankr. S.D.N.Y. 1992) (holding that debtor's use of cash collateral to pay operating expenses, thereby "preserv[ing] the base that generates the income stream," provided adequate protection to the secured creditor).

58. Under the Budget, Cash Collateral will be used to pay operating expenses such as for the purchase of raw materials to be used in the manufacture of the Debtors' specialty steel products, the cost for supplies, repairs and dies relating to the Debtors' machinery, and payroll for the Debtors' employees. In addition, the Cash Collateral Budget provides for the expenses of administration of these Chapter 11 Cases. Payment of these and other expenses in accordance with the terms of the Budget is necessary to maintain the Debtors' enterprise as a going concern and thereby to maximizing the value of the Debtors' estates. In light of the foregoing, the Debtors submit that the proposed Adequate Protection to be provided for the benefit of the Secured Parties is appropriate. Thus, the Debtors' proposed Adequate Protection is not only necessary to protect the Secured Parties against any diminution in value, but is also fair and appropriate on an interim basis under the circumstances of these Cases to ensure the Debtors are able to continue using the Cash Collateral in the near term, for the benefit of all parties in interest and their estates.

E. Failure to Obtain the Immediate Interim Use of Cash Collateral Would Cause Immediate and Irreparable Harm.

59. Bankruptcy Rule 4001(b) provides that a final hearing on a motion to use cash collateral pursuant to Section 363 may not be commenced earlier than 14 days after the service of such motion. However, the Court is authorized to conduct a preliminary expedited hearing on

the Motion and authorize the Debtors' proposed use of Cash Collateral to the extent necessary to avoid immediate and irreparable harm to a debtor's estate. *See* Fed. R. Bankr. P. 4001(b)(2).

60. The Debtors have an immediate postpetition need to use Cash Collateral. The Debtors cannot maintain the value of their estates during the pendency of these Chapter 11 Cases without access to cash. The Debtors will use cash to, among other things, continue operating their business and satisfy other working capital needs during these Chapter 11 Cases. Substantially all of the Debtors' available cash may constitute the Secured Parties' cash collateral, as that term is used by section 363(c) of the Bankruptcy Code. If accurate, the Debtors will therefore be unable to proceed with operating their business without the ability to use Cash Collateral, and will suffer immediate and irreparable harm to the detriment of all creditors and other parties in interest. In short, the Debtors' ability to finance their operations and the availability of sufficient working capital and liquidity to the Debtors through the use of Cash Collateral is vital to the preservation and maintenance of the value of the Debtors' estates.

F. The Automatic Stay Should Be Modified on a Limited Basis.

61. The Debtors request that automatic stay imposed by section 362 be modified to the extent necessary to implement and effectuate the terms and provisions of the Interim DIP Order or the Final DIP Order, as applicable. Such and similar stay modifications are commonplace and standard features of debtor-in-possession financing arrangements, and are reasonable and fair under the circumstances of these Chapter 11 Cases. *See, e.g.*, *In re Peak Broad., LLC*, No. 12-10183 (PJW) (Bankr. D. Del. Feb. 2, 2012) (terminating automatic stay after occurrence of termination event); *In re TMP Directional Mktg, LLC*, No. 11-13835 (MFW) (Bankr. D. Del. Jan. 17, 2012) (modifying automatic stay as necessary to effectuate the terms of the order); *In re Broadway 401 LLC*, No. 10-10070 (KJC) (Bankr. D. Del. Feb. 16, 2010)

(same); *In re Haights Cross Commc'ns, Inc.*, No. 10-10062 (BLS) (Bankr. D. Del, Feb. 8, 2010) (same).

G. Failure to Obtain the Immediate Interim Access to the DIP Facility and Cash Collateral Would Cause Immediate and Irreparable Harm.

62. Bankruptcy Rule 4001(c) provides that a final hearing on a motion to obtain credit pursuant to section 364 of the Bankruptcy Code may not be commenced earlier than 14 days after the service of such motion. Upon request, however, the Court is empowered to conduct a preliminary expedited hearing on the motion and authorize the obtaining of credit and use of cash collateral to the extent necessary to avoid immediate and irreparable harm to a Debtors' estates.

63. The Debtors request that the Court hold and conduct a hearing to consider entry of the Interim DIP Order authorizing the Debtors from and after entry of the Interim DIP Order until the Final Hearing to receive advances contemplated by the DIP Facility. The Debtors require these advances prior to the Final Hearing and entry of the Final DIP Order to be able to continue to operate and pay administrative expenses. This relief will enable the Debtors to preserve and maximize value and, therefore, avoid immediate and irreparable harm and prejudice to the estates and all parties in interest, pending the Final Hearing.

Request for Final Hearing

64. Pursuant to Bankruptcy Rule 4001(c)(2), the Debtors request that the Court set a date for the Final Hearing that is as soon as practicable and fixes the time and date prior to the Final Hearing for parties to file objections to this Motion.

Waiver of Bankruptcy Rule 6004(a) and 6004(h)

65. To implement the foregoing successfully, the Debtors request that the Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a)

and that the Debtors have established cause to exclude such relief from the 14-day stay period under Bankruptcy Rule 6004(h).

Consent to Jurisdiction

66. Pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "**Local Rules**"), the Debtors consent 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

67. Notice of this Motion has been given to the following parties or, in lieu thereof, to their counsel, if known: (a) the Office of the United States Trustee for the District of Delaware; (b) counsel for Wilmington Trust, National Association, as indenture trustee for the Secured Notes; (c) counsel the Ad Hoc Committee of Secured Noteholders; (d) Wilmington Savings Fund Society, FSB, as indenture trustee for the Unsecured Notes; (e) counsel DDJ Capital Management, LLC, as the sole holder of the Unsecured Notes; (f) counsel to the Creditors' Committee; and (g) all other parties requesting to receive notice pursuant to Bankruptcy Rules 2002 prior to the date of the Motion. As the Motion is seeking expedited relief, the Debtors will serve copies of the Motion and any order entered with respect to the Motion in accordance with the Local Rules. The Debtors submit that, in light of the nature of the relief requested, no other or further notice is required.

No Prior Request

68. No prior Motion for the relief requested herein has been made to this or any other court other than in connection with the Cash Collateral Order.

Conclusion

WHEREFORE, the Debtors respectfully request that this Court enter an order granting the relief requested herein and granting the Debtors such other and further relief as is just and proper.

Dated: January 9, 2017

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Proposed Counsel for the Debtors and Debtors-in-Possession

Proposed Form of Interim Order

The form of Interim DIP Order has not yet been finally approved by the proposed lender, and it is subject to revision pending final approval

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
OPTIMA SPECIALTY STEEL, INC., *et al.*,[1]	Case No. 16-12789 (KJC)
Debtors.	(Jointly Administered)
	Ref. Docket No.

INTERIM ORDER PURSUANT TO 11 U.S.C. §§ 105, 361, 362, 363, 364, 503 AND 507 (I) AUTHORIZING THE DEBTORS TO OBTAIN NON-PRIMING SENIOR SECURED POSTPETITION FINANCING, (II) AUTHORIZING USE OF CASH COLLATERAL, (III) GRANTING LIENS AND PROVIDING SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS, (IV) GRANTING ADEQUATE PROTECTION, (V) MODIFYING THE AUTOMATIC STAY, (VI) SCHEDULING A FINAL HEARING, AND (VII) GRANTING RELATED RELIEF

Upon the motion (the "**Motion**")[2] pursuant to sections 105, 361, 362, 363, 364(c)(1), 364(c)(2), 364(c)(3), 364(d), 364(e), 503, and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the "**Bankruptcy Code**"), Rules 2002, 4001, and 9014, of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), and Rule 2002-1(b), 4001-2, 9006-1 and 9013-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "**Local Rules**"), for entry of an interim order

[1] The Debtors in these Cases, along with the business addresses and the last four (4) digits of each Debtor's federal tax identification number, if applicable, are: Optima Specialty Steel, Inc., 200 S. Biscayne Blvd., Suite 5500, Miami, FL 33131-2310 (0641); Michigan Seamless Tube LLC, 400 McMunn Street, South Lyon, MI 48178 (3850); Niagara LaSalle Corporation, 1412 150th Street, Hammond, IN 46327 (0059); KES Acquisition Company d/b/a Kentucky Electric Steel, 2704 South Big Run Road, Ashland, KY 41102 (2858); and The Corey Steel Company, 2800 South 61st Court, Cicero, IL 60804 (0255).

[2] Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to such term in the Motion.

(the "**Interim DIP Order**") and a final order (the "**Final DIP Order**" and, together with the Interim DIP Order, the "**DIP Orders**"):

(1) authorizing the Debtors to obtain junior secured non-priming postpetition financing in the form of a multi-draw term loan facility containing terms substantially consistent with the term sheet attached as Exhibit A to the Motion (the "**DIP Term Sheet**"), by and between the Debtors and Optima Acquisitions, LLC (the "**DIP Lender**"), of up to $40 million in principal amount (the "**DIP Facility**"), of which $30 million in principal amount shall be available on an interim basis pursuant to the terms hereof;

(2) authorizing the Debtors to negotiate, execute and deliver to the DIP Lender a Debtor-in-Possession Loan and Security Agreement (as amended, supplemented, restated or otherwise modified from time to time in accordance with the terms thereof, the "**DIP Credit Agreement**") and other documents, including the Final DIP Order and the Budget (as defined below) substantially consistent with the DIP Term Sheet (all such documents, as amended, supplemented, restated or otherwise modified from time to time in accordance with the terms thereof, collectively, the "**DIP Loan Documents**"), and perform under the DIP Credit Agreement and the other DIP Loan Documents, and to perform such other and further acts as may be necessary or desirable in connection with the DIP Loan Documents;

(3) authorizing the Debtors to grant the DIP Lender valid, enforceable, non-avoidable, automatically and fully perfected liens and security interests in the DIP Collateral, with such liens and security interests to be first-priority as to the Debtors' unencumbered assets and junior to existing valid, enforceable and fully perfected liens and security interests on the Debtors' encumbered assets in including the liens in favor of the Secured Notes Trustee, and allowing the DIP Obligations as superpriority administrative expense claims in the Debtors' chapter 11 cases (the "**Chapter 11 Cases**"), with such liens, security interests, and claims subject to the Carve-Out;

(4) authorizing the Debtors' use of the proceeds of the DIP Facility and Cash Collateral pursuant to the Budget, the DIP Orders and the other DIP Loan Documents

(5) granting adequate protection to the Secured Notes Trustee for the benefit of itself and the Prepetition Secured Noteholders

(6) vacating and modifying 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 Orders and the other DIP Loan Documents, and providing for the immediate effectiveness of the DIP Orders;

(7) scheduling a final hearing (the "**Final Hearing**") to consider entry of the Final DIP Order, and approving the form of notice with respect to the Final Hearing; and

(8) granting related relief.

and the Court, having considered the Motion and the exhibits attached thereto; and proper notice of the Motion and the hearing (the "**Interim Hearing**") to consider interim approval of the DIP Facility having been held and concluded having been given in accordance with Bankruptcy Rules 2002, 4001(b), (c), and (d), and 9014; and all objections, if any, to the interim relief requested in the Motion having been withdrawn, resolved, or overruled by the Court; and it appearing to the Court that granting the interim relief requested is necessary to avoid immediate and irreparable harm to the Debtors and their estates pending the Final Hearing, and otherwise is fair and reasonable, in the best interests of the Debtors, their estates, and their creditors and equity holders, and essential for the continued operation of the Debtors' business; and after due deliberation and consideration, and for good and sufficient cause appearing therefore:

THE COURT HEREBY FINDS AND CONCLUDES THAT:[3]

A. Petition Date. On the Petition Date each of the Debtors commenced the Bankruptcy Cases by filing voluntary petitions for relief under the Bankruptcy Code.

B. Debtors-in-Possession. The Debtors are in possession of their properties and are operating and managing their businesses as debtors and debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request has been made for the appointment of a trustee or examiner. The United States Trustee for the District of Delaware (the "**U.S. Trustee**") appointed an official committee of unsecured creditors (the "**Creditors' Committee**") in these Chapter 11 Cases on January 4, 2017.

C. Jurisdiction and Venue. This Court has jurisdiction over the Bankruptcy Cases and the Motion pursuant to 28 U.S.C. §§ 157(b) and 1334 and the Amended Standing Order of Reference from the United States District Court for the District of Delaware, dated February 29,

3 Pursuant to Bankruptcy Rule 7052, any findings of fact contained herein may be treated as conclusions of law as if set forth below, and vice versa.

2012. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). The statutory predicates for the relief set forth herein are sections 105, 361, 362, 363, 364, 503 and 507 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001 and 9014, and Local Rules 2002-1(b), 4001-2, 9006-1 and 9013-1.

D. Adequate Notice. On December 23, 2016, the Debtors filed the Motion with the Court and pursuant to Bankruptcy Rules 2002, 4001 and 9014, and the Local Rules of this Court, the Debtors provided notice of the Motion and the Interim Hearing by electronic mail, facsimile, hand delivery or overnight delivery to the following parties and/or to their counsel: (a) the Office of the United States Trustee for the District of Delaware; (b) counsel for Wilmington Trust, National Association, as indenture trustee for the Secured Notes; (c) counsel the Ad Hoc Committee of Secured Noteholders; (d) Wilmington Savings Fund Society, FSB, as indenture trustee for the Unsecured Notes; (e) counsel DDJ Capital Management, LLC, as the sole holder of the Unsecured Notes; (f) counsel to the Creditors' Committee; (g) the Office of the United States Attorney for the District of Delaware; (h) the Internal Revenue Service and (i) all other parties requesting to receive notice pursuant to Bankruptcy Rules 2002 prior to the date of the Motion. The Debtors have made reasonable efforts to afford the best notice possible under the circumstances and such notice is good and sufficient to permit the interim relief set forth herein. Given the nature of the relief granted herein, the Court concludes that the foregoing notice was sufficient and adequate under the circumstances and complies with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and any other applicable law, and no further notice relating to entry of the Interim Order is necessary or required.

E. Debtors' Stipulations. Without prejudice to any other party-in-interest's rights but subject to the limitations with respect to such rights contained in paragraph 10 of this Interim

Order, the Debtors represent, admit, stipulate, and agree (collectively, the "**Debtors' Stipulations**") as follows:

i. Cash Collateral. Any and all of the Debtors' cash, including cash and other amounts on deposit or maintained in any account or accounts by the Debtors, and any amounts generated by the collection of accounts receivable or other disposition of the Prepetition Collateral existing as of the Petition Date, and the proceeds of any of the foregoing is the Secured Parties' cash collateral within the meaning of section 363(a) of the Bankruptcy Code (the "**Cash Collateral**").

ii. Secured Notes Indenture. Debtor Optima Specialty Steel, Inc., ("**OSS**") as issuer, and the other Debtors are guarantors, of $175 million in the aggregate principal amount of secured notes (the "**Secured Notes**") under that certain Indenture (as amended, modified or supplemented from time to time, the "**Secured Notes Indenture**" and together with any and all related collateral and security documents, the "**Secured Notes Documents**" and any and all related obligations thereunder, the "**Secured Obligations**") between the Debtors, Wilmington Trust, National Association as trustee and noteholder collateral agent (the "**Prepetition Secured Notes Trustee**") for the benefit of the secured noteholders thereunder (the "**Secured Noteholders**" and together with the Prepetition Secured Notes Trustee, the "**Prepetition Secured Parties**").

iii. The Secured Notes are secured by substantially all assets of the Debtors (the "**Prepetition Collateral**" and all liens and security interests therein, the "**Prepetition Liens**") and constitute the legal, valid, non-avoidable and binding obligations of the Debtors, enforceable in accordance with the Secured Notes Documents (other than in respect of the stay of enforcement arising from section 362 of the Bankruptcy Code).

iv. As of the Petition Date, the Debtors, without defense, counterclaim, or offset of any kind were jointly and severally indebted and liable to the Prepetition Secured Parties under the Secured Notes Documents in the aggregate principal amount of not less than approximately $161 million, exclusive of accrued and unpaid interest, premium, if any, and certain fees, costs, expenses, indemnification obligations, charges and all other obligations of whatever nature owing, whether or not contingent, whenever arising, accrued accruing, due, owing or chargeable in respect of any of the Secured Obligations.

v. Prepetition Liens. The Prepetition Liens granted to the Prepetition Secured Parties in the Prepetition Collateral pursuant to and in connection with the Secured Notes Documents, (i) are valid, binding, perfected, and enforceable first priority liens and security interests in the Prepetition Collateral, (ii) are not subject, pursuant to the Bankruptcy Code or other applicable law, to avoidance, recharacterization, recovery, subordination, attack, offset, counterclaim, defense, or "claim" (as defined in the Bankruptcy Code) of any kind, (iii) as of the Petition

Date are subject and/or subordinate only to valid, perfected, and unavoidable liens and security interests existing as of the Petition Date that are senior in priority to the Prepetition Liens of the Secured Parties or are as otherwise permitted by the terms of the Secured Note Documents and (iv) constitute the legal, valid, and binding obligation of the Debtors, enforceable in accordance with the terms of the applicable Secured Notes Documents.

vi. The Debtors and their estates have no claims, objections, challenges, causes of action and/or choses in action, including, without limitation, avoidance claims under chapter 5 of the Bankruptcy Code, against any of the Secured Parties, or any of their respective affiliates, agents, attorneys, advisors, professionals, officers, directors, and employees in respect of the Prepetition Liens or the Secured Obligations.

F. Necessity for Relief Requested; Immediate and Irreparable Harm. The Debtors requested entry of this Interim Order pursuant to Bankruptcy Rule 4001(c). The Debtors have an immediate need to obtain credit pursuant to the DIP Facility as provided for herein on an interim basis and to use the Prepetition Collateral, including Cash Collateral to, among other things, preserve and maintain the going concern value of the Debtors, absent which immediate and irreparable harm will result to the Debtors, their estates, and their creditors. The preservation and maintenance of the Debtors' assets and business is necessary to maximize the value of the Debtors' estates. Absent the Debtors' ability to obtain the DIP Facility and use the Prepetition Collateral, including Cash Collateral, the Debtors would not have sufficient available sources of working capital or financing and would be unable to pay their operating expenses or maintain their assets, to the severe detriment of their estates and creditors. Accordingly, the relief requested in the Motion and the terms herein are (i) critical to the Debtors' ability to maximize the value of their chapter 11 estates, (ii) in the best interests of the Debtors and their estates, and (iii) necessary, essential, and appropriate to avoid immediate and irreparable harm to the Debtors, their creditors, and their assets, remaining business, goodwill, and reputation.

G. Good Cause. Good cause has been shown for entry of this Interim Order, and the entry of this Interim Order is in the best interests of the Debtors and their estates and creditors. Given their current financial condition, financing arrangements and capital structure, the Debtors are unable to obtain financing from sources other than the DIP Lender on terms more favorable than those provided under the DIP Facility and the DIP Loan Documents. The Debtors have been unable to obtain unsecured credit allowable as an administrative expense under section 503(b)(1) of the Bankruptcy Code. Postpetition financing is not otherwise available without granting to the DIP Lender: (1) liens and claims (a) having priority over administrative expenses of the kind specified in sections 503(b), 507(a) and 507(b) of the Bankruptcy Code (other than Adequate Protection Superiority Claims), (b) secured by a lien on property of the Debtors and their estates that is not otherwise subject to a lien, and (c) secured by a junior lien on property of the Debtors and their estates that is subject to a lien; and (2) the other protections set forth in this Interim Order. After considering all alternatives, the Debtors have concluded, in the exercise of their sound business judgment consistent with their fiduciary duties, that the DIP Facility represents the best financing available to them at this time, and is in the best interests of all of their stakeholders.

H. Good Faith. The extension of credit under the DIP Facility, governed by the terms and conditions of the DIP Loan Documents, the fees paid and to be paid thereunder, and this Interim Order as it relates to the interim financing: (a) are fair and reasonable; (b) are the best available to the Debtors under the circumstances; (c) reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties; and (d) are supported by reasonably equivalent value and fair consideration. The DIP Facility and the use of Cash Collateral were negotiated in good faith and at arms' length among the Debtors and the DIP Lender. The use of

Cash Collateral and credit to be extended under the DIP Facility shall be deemed to have been so allowed, advanced, made, used and/or extended in good faith, and for valid business purposes and uses, within the meaning of section 364(e) of the Bankruptcy Code, and the DIP Lender is therefore entitled to the protection and benefits of section 364(e) of the Bankruptcy Code and this Interim Order.

I. Immediate Entry. The Debtors have requested immediate entry of this Interim Order pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2). Absent entry of this Interim Order, the Debtors' businesses, properties and estates will be immediately and irreparably harmed. The Court concludes that entry of this Interim Order is in the best interest of the Debtors' respective estates and creditors as its implementation will, among other things, allow for the continued operation of the Debtors' existing businesses and enhance the Debtors' prospects for successful reorganization.

BASED UPON THE STIPULATED TERMS SET FORTH HEREIN AND THE FINDINGS OF FACT AND CONCLUSIONS OF LAW, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

1. Motion Granted. The Motion is GRANTED to the extent provided herein on an interim basis. Any objection to the Motion to the extent not withdrawn or resolved is hereby overruled.

2. Authorization to Use Cash Collateral. The Debtors are authorized to use Cash Collateral pursuant to the terms and conditions provided herein.

3. DIP Borrowing Authorization.

a. The Debtors are hereby authorized to (i) negotiate and enter into the DIP Credit Agreement and the other DIP Loan Documents and (ii) borrow funds, incur debt and perform their obligations in accordance with the terms and conditions of the applicable DIP Loan Documents. The Debtors are authorized to enter into and perform the transactions contemplated in this Interim Order and the DIP Loan Documents and to borrow under the DIP Facility on an interim basis, subject to

the terms and conditions of the DIP Budget, this Interim Order and the other DIP Loan Documents. The DIP Credit Agreement and the other DIP Loan Documents once executed shall constitute and are hereby deemed to be the legal, valid and binding obligations of the Debtors party thereto and each of their respective Estates, enforceable against each such Debtor and its respective Estate in accordance with the terms hereof and the DIP Loan Documents and any successor of each such Debtor or any representative of the Estates (including a trustee, responsible person, or examiner with expanded powers). The DIP Lender and any other parties to whom obligations are or may be owed pursuant to any DIP Loan Documents shall have the rights set forth in the DIP Loan Documents to make loans, advances and/or financial accommodations pursuant to the terms and conditions thereof.

b. The Debtors acknowledge, represent, stipulate and agree, and the Court hereby finds and orders, that: subject to the entry of this Interim Order, the Debtors have obtained all authorizations, consents and approvals necessary from, and have made all filings with and given all notices to, all federal, state and local governmental agencies, authorities and instrumentalities required to be obtained, made or given by the Debtors in connection with the execution, delivery, performance, validity and enforceability of the DIP Loan Documents.

4. DIP Interest, Fees, Expenses and Reserves.

a. The DIP Obligations shall bear interest at the applicable rate (including any applicable non-default rate after the occurrence of an Event of Default) set forth in the DIP Loan Documents, and be due and payable in accordance with this Interim Order and the DIP Loan Documents, in each case without further notice, motion or application to, order of, or hearing before, this Court.

b. Upon the making of the initial DIP Loan under the DIP Credit Agreement, the Debtors shall pay to the DIP Lender a one-time $450,000 Administrative Fee equal to 1.5% of the full Commitment amount. Such fee shall non-refundable and payment of such fee is hereby approved in full.

c. The Debtors shall pay or reimburse the DIP Lender for all of its reasonable and documented costs and expenses incurred in connection with the collection or enforcement of or preservation of any rights under the DIP Credit Agreement, including, without limitation, the fees and disbursements of counsel for the DIP Lender, including attorneys' fees out of court, in trial, on appeal, in bankruptcy proceedings, or otherwise. Invoices supporting such fees and expenses shall be submitted to counsel for the Debtors, with copies to the U.S. Trustee, counsel for each of the Prepetition Secured Parties and counsel for the Creditors' Committee (invoices may be redacted to the extent necessary to delete any information subject to the attorney-client privilege, any information constituting attorney work product, or any other confidential information, and the provision of such invoices shall not constitute any waiver of the attorney-client privilege or of any benefits

of the attorney work product doctrine). No attorney or advisor to the DIP Lender shall be required to file an application seeking compensation for services or reimbursement of expenses with this Court. The U.S. Trustee, Prepetition Secured Parties, the Debtors, and Committee shall have ten (10) business days in which to raise an objection to the payment of any fees and expenses of such attorneys and advisors.

5. DIP Obligations. Upon their execution, the DIP Loan Documents shall constitute valid and binding obligations of the Debtors, enforceable against the Debtors in accordance with their terms; *provided, however*, that notwithstanding any other provision of this Interim Order or of the other DIP Loan Documents, the Debtors shall not, prior to entry of the Final Order approving the DIP Loan Documents, incur DIP Obligations in a principal amount greater than those permitted by this Interim Order. No obligation, payment, transfer or grant of security under this Interim Order or the other DIP Loan Documents shall be stayed, restrained, voidable or recoverable under the Bankruptcy Code or any applicable nonbankruptcy law, or subject to any defense, reduction, setoff, recoupment or counterclaim. The Debtors shall use the DIP Facility solely as provided in the DIP Orders and the DIP Loan Documents. From and after the Petition Date, the DIP Facility and Cash Collateral shall not, directly or indirectly, be used to pay expenses of the Debtors or otherwise disbursed except for those expenses and/or disbursements that are expressly permitted under the DIP Budget and the other DIP Loan Documents.

6. DIP Budget.

a. The amount of the DIP Facility and Cash Collateral authorized to be used shall be pursuant to a budget (as amended, supplemented, extended or otherwise modified from time to time, the "**DIP Budget**"), subject to Permitted Variances (as defined below).

b. No less frequently than every four weeks commencing no later than four (4) weeks following the Effective Date (or, if earlier, the entry of the Final Order), the Debtors shall deliver an updated budget (each, a "**Proposed Budget**") to the DIP Lender (with a copy to the Prepetition Secured Notes Trustee and counsel to the Secured Noteholder Group), which Proposed Budget, upon written approval of the DIP Lender, shall become the DIP Budget effective as of the first Monday

following such written approval; provided, however, that unless and until the DIP Lender shall have approved in writing any Proposed Budget or any other proposed modification to the DIP Budget then in effect, the Debtors shall still be subject to and be governed by the terms of such Budget then in effect in accordance with the terms of this Interim Order.

c. Commencing on the first Wednesday following entry of this Interim Order (or the next business day if such day is not a business day), and continuing every week thereafter, the Debtors shall be required to deliver to the DIP Lender (with a copy to the Prepetition Secured Notes Trustee and counsel to the Secured Noteholder Group) a weekly variance report from the previous week comparing the actual disbursements of the Debtors with the receipts and disbursements in the Budget (the "Budget Variance Report"). The Debtors shall be permitted a (20%) variance on disbursements tested on a cumulative basis ("Permitted Variances").

7. Amendment of DIP Loan Documents. The DIP Loan Documents may be amended, supplemented or otherwise modified (including, without limitation, waivers of any provisions of the DIP Loan Documents) without further order of this Court; provided, however, that the Debtors shall provide written advance notice of any such amendment, supplement or other modification to counsel to each of the U.S. Trustee, the Prepetition Secured Parties, counsel to the Creditors' Committee (which, to the extent such contact information for such parties is known to the Debtors, shall be transmitted by fax or e-mail, and, if not known, by overnight mail), each of which shall have two (2) business days from the date of such notice within which to object in writing to such amendment, supplement or other modification, and upon any such timely written objection, such amendment, supplement or other modification shall only be permitted pursuant to an order of this Court (the entry of which may be sought on an expedited basis); and, provided further, any amendment, modification, supplement or waiver that (w) directly or indirectly decreases the amounts preserved under the Carve-Out (it being understood that in no way shall the Budget operate or be construed as a cap or limitation on the Carve-Out), (x) increases the interest rate (other than as a result of the imposition of the Default Rate or changes to LIBOR or similar component thereof) or fees (other than consent fees in

connection with such amendment, modification, supplement or waiver) charged by the DIP Lender in connection with the DIP Documents, (y) increases the commitments of the DIP Lender to make DIP Loans under the DIP Documents, or (z) changes the scheduled Maturity Date to an earlier date, shall be permitted only after notice, a hearing and an order of this Court (the entry of which may be sought on an expedited basis). Notwithstanding anything to the contrary herein, any amendment to the DIP Documents that would adversely affect the rights and remedies of the Prepetition Secured Notes Parties (in their respective capacities as such) shall be subject to the prior consent of the holders of a majority of the outstanding principal amount of the Prepetition Secured Notes (or the Prepetition Secured Notes Trustee acting at the direction of the holders of a majority of the outstanding principal amount of the Prepetition Secured Notes), unless such amendment is authorized by further order of the Court. Notwithstanding the foregoing but subject to the last sentence of this paragraph, updates and supplements to the Budget required to be delivered by the Debtors under the DIP Documents shall not be considered amendments adversely affecting the Prepetition Secured Notes Parties solely for purposes of this paragraph.

8. Superpriority Claims and DIP Liens. Pursuant to the Bankruptcy Code, including sections 364(c)(1), 364(c)(2), 364(c)(3) and 364(d) thereof, in respect of the DIP Obligations under the DIP Credit Agreement, the other DIP Loan Documents and this Interim Order, the DIP Lender is granted, the following:

a. pursuant to section 364(c)(2) of the Bankruptcy Code, first priority liens on and security interests in (the "**Section 364(c)(2) Liens**") all DIP Collateral that was unencumbered by valid, enforceable, perfected and non-avoidable liens as of the Petition Date (collectively, the "**Prepetition Liens**"), which Section 364(c)(2) Liens shall be subject and subordinate to only to the Adequate Protection Liens and Carve-Out; provided that the Section 364(c)(2) Liens on the DIP Loan Proceeds Account and any amounts on deposit therein shall be senior to the Adequate Protection Liens and subject only to the Carve-Out; and

b. pursuant to section 364(c)(3) of the Bankruptcy Code, liens on and security interests in (the "**Section 364(c)(3) Liens**") all DIP Collateral encumbered by Prepetition Liens immediately junior to any such Prepetition Liens on such DIP Collateral, which Section 364(d)(3) Liens shall be subject and subordinate only to the Prepetition Liens, the Adequate Protection Liens and the Carve-Out; and

pursuant to section 364(c)(1) of the Bankruptcy Code, allowed superpriority administrative expense claims (the "**DIP Superpriority Claims")** under section 503(b)(1) of the Bankruptcy Code for all DIP Obligations, which DIP Superpriority Claims shall have priority over all other administrative expenses (other than the Adequate Protection Superpriority Claims) pursuant to the Bankruptcy Code (including the kinds specified in or arising or ordered pursuant to Bankruptcy Code sections 326, 330, 331, 503(b), 506(c), 507(a), 507(b), and 726 thereof or otherwise, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment), and shall be subject and subordinate only to the Carve-Out and the Adequate Protection Superpriority Claims.

9. DIP Collateral. The DIP Liens include liens upon and security interests on all presently owned and hereafter acquired tangible and intangible property and assets of the Debtors and their estates wherever located, of any nature whatsoever, and any proceeds and product thereof, including, without limitation, accounts, deposit accounts, cash, chattel paper, investment property, securities accounts, letter-of-credit rights, commercial tort claims, causes of action, investments, instruments, documents, inventory, contract rights, general intangibles, intellectual property, licenses issued by any federal or state regulatory authority, any leasehold or other real property interests, fixtures, goods, equipment, and other fixed assets, and the products, rents, offspring, profits and proceeds of any and all of the foregoing (including earnings and insurance proceeds) (all the foregoing, the "**DIP Collateral**"). The DIP Collateral shall not include causes of action for preferences, fraudulent conveyances, and other avoidance power claims under sections 544, 545, 547, 548, 549, 550 and 553 of the Bankruptcy Code (the "**Avoidance Actions**"), but shall, subject to approval by the Final Order, include the proceeds of the Avoidance Actions, which shall be available, to the extent necessary, to pay any

administrative claim of the DIP Lender in respect of the DIP Facility (but only if proceeds of other DIP Collateral are insufficient to pay any such claims).

10. Effect of Stipulations on Third Parties.

a. The Debtors' acknowledgments, stipulations, admissions waivers and releases set forth in this Interim Order shall be binding on the Debtors, their estates and their respective representatives, successors, and assigns. The acknowledgments, stipulations, admissions waivers and releases contained in this Interim Order shall also be binding upon all other parties in interest, including the Creditors' Committee or any chapter 7 or chapter 11 trustee appointed or elected for any of the Debtors (a "**Trustee**"), unless (a) such party, in each case, with requisite standing, has duly filed an adversary proceeding challenging the validity, perfection, priority, extent or enforceability of the Prepetition Liens or the Secured Obligations or otherwise asserting or prosecuting any other claims, counterclaims or causes of action, objections, contests or defenses (collectively, the "**Claims and Defenses**") against the Prepetition Secured Notes Trustee or Prepetition Secured Noteholders in connection with any matter related to the Prepetition Collateral or Prepetition Secured Obligations by no later (i) with respect to any Creditors' Committee, the date that is sixty (60) days after the Creditors' Committee's formation or (ii) with respect to other parties in interest, no later than the date that is seventy-five (75) days after the entry of the Cash Collateral Order (the time period established by the later of the foregoing clauses (i) and (ii), the "**Challenge Period**"); provided, however, that in the event that, prior to the expiration of the Challenge Period, (x) these Cases are converted to chapter 7 or (y) a chapter 11 trustee is appointed in these Cases, then, in each such case, the Challenge Period shall be extended for a period of 60 days solely with respect to any Trustee, commencing on the occurrence of either of the events described in the foregoing (x) and (y); and (b) an order is entered by a court of competent jurisdiction and becomes final and non-appealable in favor of the plaintiff sustaining any such challenge or claim in any such duly filed adversary proceeding. If no such adversary proceeding is timely filed prior to the expiration of the Challenge Period, without further order of this Court (x) the obligations under the Secured Notes Documents shall constitute allowed claims, not subject to any Claims and Defenses (whether characterized as a counterclaim, setoff, subordination, recharacterization, defense, avoidance, contest, attack, objection, recoupment, reclassification, reduction, disallowance, recovery, disgorgement, attachment, "claim" (as defined by Bankruptcy Code section 101(5)), impairment, subordination (whether equitable, contractual or otherwise), or other challenge of any kind pursuant to the Bankruptcy Code or applicable non-bankruptcy law), for all purposes in these Cases and any subsequent chapter 7 case, if any; and (y) the Secured Obligations, the Prepetition Liens on the Prepetition Collateral and the Prepetition Secured Parties (in their capacities as such) shall not be subject to any other or further challenge and any party in interest shall be forever enjoined and barred from seeking to exercise the rights of the Debtors' estates or taking any

such action, including any successor thereto (including any estate representative or a Trustee, whether such Trustee is appointed or elected prior to or following the expiration of the Challenge Period). If any such adversary proceeding is timely filed prior to the expiration of the Challenge Period, (a) the stipulations and admissions contained in this Interim Order shall nonetheless remain binding and preclusive on the Creditors' Committee, and any other party in these cases, including any Trustee, except as to any stipulations or admissions are specifically and expressly challenged in such adversary proceeding and (b) any Claims and Defenses not brought in such adversary proceeding shall be forever barred; provided that if and to the extent any challenges to a particular stipulation or admission are withdrawn, denied or overruled by a final non-appealable order, such stipulation also shall be binding on the Debtors' estates and all parties in interest.

b. Nothing in this Interim Order vests or confers on any person (as defined in the Bankruptcy Code), including any Creditors' Committee, standing or authority to pursue any cause of action belonging to the Debtors or their estates, including, without limitation, any Challenge with respect to the Secured Notes Documents or the Secured Obligations.

11. Use of DIP Proceeds. The proceeds of the DIP Loans will be used, in accordance with the terms of the Budget and the DIP Orders: (i) to fund the working capital needs and chapter 11 administrative costs of the Borrowers during the pendency of the Chapter 11 Cases, (ii) to provide adequate protection to the Debtors' Prepetition Secured Notes Parties (as defined below) as provided in the DIP Orders and the DIP Credit Agreement, (iii) to pay fees, costs and expenses of the DIP Facility on the terms and conditions described therein, and (iv) to pay other amounts as specified in the Budget. Proceeds of the DIP Loans may be used to fund investigations by the Debtors and the Creditors' Committee and their respective advisors (but not investigations by any other party in interest) of possible estate causes of action against the DIP Lender or any DIP Lender Related Party (as defined below); provided that in no event may any proceeds of the DIP Loans be used to prepare, commence, initiate, prosecute, join or otherwise finance (including by paying for any services rendered by professionals retained by the Debtors, the Creditors' Committee or any other party in interest) the preparation, commencement,

initiation, prosecution of or joinder in any claim, counterclaim, action, suit, arbitration, proceeding, application, motion, objection, defense or other litigation of any type (A) against the DIP Lender or any DIP Lender Related Party (in any of their capacities) or (B) seeking to invalidate, challenge, impair or otherwise prejudice in any way any of the DIP Lender's rights, liens and/or claims under the DIP Documents (or to enjoin the DIP Lender from enforcing any such rights, liens and/or claims or any of the DIP Obligations).

12. Termination Date. The Debtors' authorization, and the Prepetition Secured Parties' consent, to use Cash Collateral shall terminate without further notice or action by the Court on the earliest to occur of (the "**Termination Date**") any of the following (each a "**Termination Event**"):

a. the occurrence of the Maturity Date;

b. the date on which neither the Interim Order nor the Final Order is in full force and effect.

c. three (3) business days after the DIP Lender declares an Event of Default under the DIP Loan Documents..

13. Reporting Requirements/Access to Records. The Debtors shall provide the DIP Lender with all reporting and other information required to be provided to the DIP Lender under the DIP Loan Documents. The Debtors shall provide the Prepetition Secured Notes Trustee and counsel to the Secured Noteholder Group with all reporting and other information required to be provided to the Prepetition Secured Notes Trustee under the Secured Notes Documents and to the Adequate Protection Reporting (as defined below). The Debtors will provide lead counsel to the Creditors' Committee (subject to applicable confidentiality provisions in the Committee bylaws) copies of all of the Adequate Protection Reporting.

14. Adequate Protection. Subject only to the Carve-Out and the terms of this Interim Order, pursuant to sections 361, 363(e) and 364 of the Bankruptcy Code, and in consideration of the stipulations and consents set forth herein, as adequate protection of their interests in the Prepetition Collateral, including the Cash Collateral, for and equal in amount to the aggregate postpetition diminution in value of such interests (each such diminution, a "**Diminution in Value**"), the Prepetition Secured Notes Trustee, for the benefit of itself and the Secured Noteholders, is hereby granted the following:

a. Adequate Protection Liens. As security for and solely to the extent of any Diminution in Value and without the necessity of the execution by any Debtor (or recordation or other filing) of any security agreements, control agreements, pledge agreements, financing statements, mortgages or other similar documents, the Prepetition Secured Notes Trustee, for the benefit of the Prepetition Secured Notes Parties, will be granted additional and replacement valid, binding, enforceable, non-avoidable, and automatically perfected postpetition security interests in and liens on (the "**Adequate Protection Liens**") all property, whether now owned or hereafter acquired or existing and wherever located, of each Debtor and each Debtor's "estate" (as created pursuant to section 541(a) of the Bankruptcy Code), of any kind or nature whatsoever, real or personal, tangible or intangible, and now existing or hereafter acquired or created that constitutes DIP Collateral (but excluding (i) the DIP Loan Proceeds Account prior to the payment in full of the DIP Obligations and termination of the Commitment and (ii) any causes of action under sections 544, 545, 547, 548 and 550 of the Bankruptcy Code and any other Avoidance Actions under the Bankruptcy Code), all products,

proceeds and supporting obligations of the foregoing, whether in existence on the Petition Date or thereafter created, acquired, or arising and wherever located (collectively, the "**Adequate Protection Collateral**"); *provided* that, subject to approval by the Final Order, Adequate Protection Collateral shall include the proceeds of the Avoidance Actions, which shall be available, to the extent necessary, to pay any Adequate Protection Superpriority Claims (as defined below) of the Prepetition Secured Notes Parties (but only if proceeds of other Adequate Protection Collateral are insufficient to pay any such claims). Subject to the terms of the Interim Order, the Adequate Protection Liens shall be subordinate only to the (A) Carve-Out and (B) other unavoidable liens, if any, existing as of the Petition Date that are senior in priority to the Prepetition Secured Notes Liens as permitted by the terms of the Prepetition Secured Notes Documents. The Adequate Protection Liens shall otherwise be senior to all other security interests in, liens on, or claims against any of the Adequate Protection Collateral (including any lien or security interest that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code).

b. Adequate Protection Superpriority Claim. As further adequate protection, solely to the extent of any Diminution in Value, the Prepetition Secured Notes Parties shall have, subject in each case to the payment of the Carve-Out, an allowed administrative expense claim against each of the Debtors (the "**Adequate Protection Superpriority Claims**"), as provided for in sections 503(b) and 507(b) of the Bankruptcy Code, in each case payable

from and having recourse to all Adequate Protection Collateral, which Adequate Protection Superpriority Claims shall have priority over all other administrative expenses pursuant to the Bankruptcy Code (including the DIP Superpriority Claims and the kinds specified in or arising or ordered pursuant to Bankruptcy Code sections 326, 330, 331, 503(b), 506(c) (subject to entry of the Final Order), 507(a), 507(b), and 726 thereof or otherwise, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment), and shall be subject and subordinate only to the Carve-Out.

c. Fees and Expenses. As further adequate protection, the Debtors will pay the reasonable and documented fees and expenses (the "**Adequate Protection Fees**"), whether incurred before or after the Petition Date, of the Prepetition Secured Notes Trustee and the ad hoc group of unaffiliated holders of a majority in amount of the Prepetition Secured Notes represented by Akin Gump Strauss Hauer & Feld LLP (the "**Prepetition Secured Noteholder Group**"), limited, in the case of any legal or professional advisor fees and expenses to the reasonable and documented fees and expenses of (a) one local Delaware counsel and one lead counsel (Morrison & Foerster LLP) for the Prepetition Secured Notes Trustee and (b) one local Delaware counsel, one lead counsel (Akin Gump Strauss Hauer & Feld LLP) and one financial advisor for the Prepetition Secured Noteholder Group. The Debtors shall serve copies of the invoices supporting the Adequate Protection Fees on the U.S. Trustee and the Creditors' Committee, and any Adequate Protection Fees shall be subject to prior ten (10) day review by the

U.S. Trustee and by the Creditors' Committee, and in the event either the U.S. Trustee or the Creditors' Committee shall file with this Court an objection to any such legal invoice, the portion of such legal invoice subject to such objection shall not be paid until resolution of such objection by this Court. If no objection is filed within such ten (10) day review period, such invoice shall be paid without further order of the Court within five (5) days following the expiration of the foregoing review period and shall not be subject to any further review or challenge.

d. Postpetition Payment of Interest. As further adequate protection, the Debtors will pay to the Prepetition Secured Notes Trustee, for distribution to the holders of the Prepetition Secured Notes, the post-petition interest payable on the Prepetition Secured Notes Obligations at the default contract rate set forth in the Prepetition Secured Notes Documents.

e. DIP Facility Reporting. As further adequate protection, the Debtors will provide to the Prepetition Secured Notes Trustee and lead counsel to the Prepetition Secured Noteholder Group (in each case of the foregoing, subject to applicable confidentiality agreements) copies of all of the financial reporting or other written materials, in each case of the foregoing, delivered from time to time to the DIP Lender pursuant to the Budget covenant and the other affirmative covenants set forth in the DIP Credit Agreement (collectively, the "**Adequate Protection Reporting**").

15. Carve-Out. For purposes hereof, the "Carve-Out" shall mean the sum of: (i) all fees required to be paid to the Clerk of the Court and to the Office of the United States Trustee under 28 U.S.C. § 1930(a); (ii) fees and expenses up to $50,000 incurred by a trustee under

Bankruptcy Code section 726(b); (iii) all accrued but unpaid costs, fees, and expenses (the "**Professional Fees**") incurred by persons or firms retained by the Debtors pursuant to sections 327, 328, or 363 of the Bankruptcy Code (collectively, the "Debtor Professionals") and any official committee appointed in these Cases, including the Creditors' Committee (the "Committee Professionals" and the Debtor Professionals, collectively, the "Professional Persons") at any time before or on the first business day following delivery by the DIP Lender of a Carve-Out Trigger Notice, to the extent allowed at any time whether allowed by interim order, procedural order, or otherwise (the "**Pre-Termination Amount**"); and (iv) after the first business day following delivery by the DIP Lender of the Carve-Out Trigger Notice, to the extent allowed at any time, whether by interim order, procedural order, or otherwise, the payment of Professional Fees of Professional Persons in an aggregate amount not to exceed (x) with respect to the Debtor Professionals, $300,000 and (y) with respect to the Committee Professionals, $150,000 (the amounts set forth in the foregoing clauses (x) and (y) are collectively referred to as the "**Post-Termination Amount**," and together with the Pre-Termination Amount, the "**Professional Fees Amount**"); provided, that nothing herein shall be construed to impair the ability of any party to object to the fees, expenses, reimbursement, or compensation described in preceding clauses (iii) and (iv). For purposes of the foregoing, "**Carve-Out Trigger Notice**" shall mean a written notice delivered by the DIP Lender to the Debtors and their lead counsel, the U.S. Trustee, the Prepetition Secured Notes Trustee, and lead counsel to the Creditors' Committee, providing notice that the Termination Date has occurred. On the day on which a Carve-Out Trigger Notice is given to the Debtors, such Carve-Out Trigger Notice shall constitute a demand to the Debtors to utilize all cash on hand as of such date and any available cash thereafter held by any Debtor to fund a reserve in an aggregate amount

equal to (A) the Pre-Termination Amount plus (B) the Post-Termination Amount, and the Debtors shall deposit and hold any such amounts in a segregated account in trust for the Professional Persons (the "**Professional Fees Reserve**") (it being understood that the Prepetition Secured Parties shall have a lien and security interest in any residual amount of such segregated account). For the avoidance of doubt, so long as the Carve-Out Trigger Notice shall not have been delivered, the Carve-Out shall not be reduced by the payment of Professional Fees allowed at any time by this Court. For the avoidance of doubt and notwithstanding anything to the contrary herein or in the DIP Loan Documents or the Secured Notes Documents, the Carve-Out shall be senior to all liens and claims securing the DIP Loan Documents, the Secured Notes Documents and the Adequate Protection Claims (as defined herein), and any and all other forms of adequate protection, liens, or claims securing the Secured Obligations. Further, for the avoidance of doubt and notwithstanding anything herein to the contrary, following a Termination Event, the DIP Lender or Prepetition Secured Parties shall not sweep or foreclose on cash (including cash received as a result of the sale of any assets) of the Debtors until the Professional Fees Reserve shall have been fully funded, but shall have a first priority, fully perfected, non-avoidable security interest in any residual interest in the Professional Fees Reserve, with any excess paid to the DIP Lender for application in accordance with the terms of this Interim Order and the DIP Loan Documents, as the case may be.

16. Automatic Perfection. The (i) DIP Liens granted to the DIP Lender pursuant to this Interim Order and the DIP Loan Documents, and (ii) Adequate Protection Liens granted pursuant to this Interim Order to the Prepetition Secured Parties shall be valid, binding, perfected and enforceable by operation of law upon entry of this Interim Order by the Court without any further action by any party. The (i) DIP Lender in respect of the DIP Liens, and (ii) Prepetition

Secured Parties in respect of the Adequate Protection Liens, shall each not be required to enter into or to obtain any control agreements, landlord waivers, mortgagee waivers, bailee waivers or warehouseman waivers or to give, file or record any financing statements, mortgages, deeds of trust, leasehold mortgages, notices to account debtors or other third parties, notices of lien or similar instruments in any jurisdiction (including filings with the United States Patent and Trademark Office, the United States Copyright Office or any similar agency in respect of trademarks, copyrights, trade names or patents with respect to intellectual property) (collectively, the "**Perfection Documents**"), or obtain consents from any licensor or similarly situated party in interest, or take any other action in order to validate and to perfect the DIP Liens granted under the DIP Loan Documents and this Interim Order and the Adequate Protection Liens granted under this Interim Order and approved hereby, all of which are automatically perfected by the entry of this Interim Order. If the Secured Parties, independently or collectively, in each of their sole discretion respectively, choose to obtain, enter into, give, record or file any Perfection Documents, (x) all such Perfection Documents shall be deemed to have been obtained, entered into, given, recorded or filed, as the case may be, as of the Petition Date, (y) no defect in any such act shall affect or impair the validity, perfection, priority or enforceability of the DIP Liens and Adequate Protection Liens, and (z) such liens shall have the relative priority set forth herein notwithstanding the timing of filing of any such Perfection Documents. In lieu of recording or filing any Perfection Documents, the Secured Parties may, in each of their sole discretion, choose to record or file a true and complete copy of this Interim Order in any place that any Perfection Document would or could be recorded or filed (which may include a description of the collateral appropriate to be indicated in a recording or filing at such place of recording or filing), and such recording or filing by the Secured Parties shall have the same effect as if such

Perfection Document had been filed or recorded as of the Petition Date. In addition, the DIP Lender may, in its sole discretion, at the Debtors' expense, require the Debtors to file or record any Perfection Document. The Debtors are authorized and directed to execute and deliver promptly upon demand to the DIP Lender all Perfection Documents as the DIP Lender may reasonably request.

17. Reversal, Modification, Vacatur, or Stay. Any reversal, modification, vacatur, or stay of any or all of the provisions of this Interim Order (other than in accordance with the Final Order) shall not affect the validity or enforceability of any Adequate Protection Lien, or any claim, lien, security interest, or priority authorized or created hereby with respect to any Adequate Protection Lien, incurred prior to the effective date of such reversal, modification, vacatur, or stay. Notwithstanding any reversal, modification, vacatur, or stay (other than in accordance with the Final Order), (a) this Interim Order shall govern, in all respects, any use of the DIP Facility, Cash Collateral, Adequate Protection Lien or Adequate Protection Superpriority Claim incurred by the Debtors prior to the effective date of such reversal, modification, vacatur, or stay, and (b) the DIP Lender shall be entitled to all the benefits and protections granted by this Interim Order with respect to any such use of the DIP Facility, Cash Collateral or such Adequate Protection Lien or Adequate Protection Superpriority Claim incurred by the Debtors.

18. Remedies. Upon the occurrence of a Termination Event, the automatic stay provisions of section 362 of the Bankruptcy Code shall be vacated and modified to the extent necessary to permit the DIP Lender to exercise all rights and remedies provided in the DIP Orders and the other DIP Documents, as applicable, without further order of or application to the Bankruptcy Court; *provided that* notwithstanding anything herein to the contrary, the DIP

Lender shall not enforce any DIP Liens against the DIP Collateral or exercise any other remedies against the DIP Collateral (other than delivery of control notices in accordance with any account control agreement to which the DIP Lender is a party) prior to the expiration of three (3) business days (the "**Termination Event Notice Period**") following the provision of written notice to the Debtors (with a copy of such notice provided to counsel for the Debtors, the U.S. Trustee, the Prepetition Secured Notes Trustee, and lead counsel to the Creditors' Committee) of the occurrence of a Termination Event. If a Termination Event has occurred and the DIP Lender has elected to have remedies exercised against any DIP Collateral (other than the DIP Loan Proceeds Account and amounts on deposit therein), then (i) without limiting the notice requirements set forth above, the DIP Lender shall provide written notice thereof to the Prepetition Secured Notes Trustee (with a copy to lead counsel to the Creditors' Committee to the extent not previously notified) and (ii) the Prepetition Secured Notes Trustee, in consultation with the DIP Lender, may direct the order and manner of the exercise of such remedies, subject to intercreditor arrangements (including standstill provisions) between the DIP Lender and the Prepetition Secured Notes Parties that are acceptable to the DIP Lender; *provided that* (x) the DIP Lender shall be permitted to deliver control notices in accordance with any account control agreement to which the DIP Lender is a party and (y) remedies against the DIP Loan Proceeds Account and amounts on deposit therein may be exercised in the sole discretion of the DIP Lender, subject only to the applicable provisions of the DIP Orders.

19. Effective following the expiration of the Termination Event Notice Period (or immediately, in the case of a Termination Event resulting from the occurrence of the Maturity Date pursuant to clause (i) or (ii) of the definition of Maturity Date), unless the Bankruptcy Court has determined that a Termination Event has not occurred and/or is not continuing, and in

each case without further notice, motion or application to, order of, or hearing before, this Court, the DIP Lender is granted leave to cease making financial accommodations to the Debtors, accelerate any or all of the DIP Obligations and declare such DIP Obligations to be immediately due and payable in full, in cash, and the Debtors shall use Cash Collateral and DIP Facility proceeds only with the written consent of the DIP Lender and only to the extent required to avoid irreparable damage to the Debtors and their Estates. In addition, upon the Maturity Date, and after providing five (5) business days prior notice to the Court, U.S. Trustee, counsel for the Debtors, lead counsel for the Creditors' Committee, counsel for each of the Prepetition Agent and Prepetition Trustees, then the DIP Lender, shall be entitled to exercise all of its rights and remedies under this Order and the DIP Loan Documents, including, without limitation, foreclose upon the DIP Collateral or otherwise enforce the DIP Obligations, DIP Liens and DIP Superpriority Claims on any or all of the DIP Collateral and/or to exercise any other default-related remedies under the DIP Loan Documents, this Interim Order or applicable law in seeking to recover payment of the DIP Obligations. During the five (5) business day notice period, the Debtors, the Prepetition Agent and Prepetition Trustees, the Creditors' Committee, or any other party in interest may seek an order of the Court staying the DIP Lender's exercise of such remedies against the DIP Collateral and, if no such stay is obtained, then the DIP Lender may exercise any and all such rights and remedies without further order of the Court or notice to any party and the Debtors' authority to use Cash Collateral under this Interim Order shall terminate.

20. No Waiver for Failure to Seek Relief. The failure or delay of the DIP Lender or any of the Prepetition Secured Parties to seek relief or otherwise exercise any of their rights and remedies under this Interim Order, the DIP Loan Documents, the Secured Notes Documents, or

applicable law, as the case may be, shall not constitute a waiver of any rights hereunder, thereunder, or otherwise, by the DIP Lender or any or all of the Prepetition Secured Parties.

21. Section 507(b) Reservation. Nothing herein shall impair or modify the application of section 507(b) of the Bankruptcy Code in the event that the adequate protection provided to any of the Prepetition Secured Parties hereunder is insufficient to compensate for any Diminution in Value of their interests in the Prepetition Collateral during the Cases. Nothing contained herein shall be deemed a finding by the Court, or an acknowledgment by any of the Prepetition Secured Parties, that the adequate protection granted herein does in fact adequately protect any of the Prepetition Secured Parties against any diminution in value of their respective interests in the Prepetition Collateral (including the Cash Collateral).

22. Modification of the Automatic Stay. The Debtors are authorized and directed to perform all acts and to make, execute and deliver any and all instruments as may be reasonably necessary to implement the terms and conditions of this Interim Order and the transactions contemplated hereby. The stay of section 362 of the Bankruptcy Code is hereby modified to permit the Debtors and the DIP Lender to accomplish the transactions contemplated by this Interim Order.

23. Preservation of Rights Granted Under This Interim Order.

a. Neither the DIP Liens nor the Adequate Protection Liens shall be subject or junior to any lien or security interest that is avoided and preserved for the benefit of the Debtors' estates under section 551 of the Bankruptcy Code.

b. Notwithstanding any order dismissing any of the Cases under section 1112 of the Bankruptcy Code or otherwise entered at any time, (x) the DIP Superpriority Claims, the other administrative claims granted pursuant to this Interim Order and the DIP Liens shall continue in full force and effect and, except as agreed to in writing by counsel to the DIP Lender shall maintain their priorities as provided in this Interim Order until all the DIP Obligations shall have been paid and satisfied in full in cash (and such DIP Superpriority Claims, the other administrative claims granted pursuant to this Interim Order and the DIP Liens shall, notwithstanding

such dismissal, remain binding on all parties in interest); (y) the Adequate Protection Superpriority Claims, the other administrative claims granted pursuant to this Interim Order and the Adequate Protection Liens shall continue in full force and effect and, except as agreed to in writing by counsel to the Secured Noteholder Group (with the consent of the Secured Noteholder Group), shall maintain their priorities as provided in this Interim Order until all adequate protection obligations shall have been paid and satisfied in full in cash (and such Adequate Protection Superpriority Claims, the other administrative claims granted pursuant to this Interim Order and the Adequate Protection Liens shall, notwithstanding such dismissal, remain binding on all parties in interest); and (z) the Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing the claims, liens and security interests referred to in clause (x) and (y) above.

c. Except as expressly provided in this Interim Order, the DIP Liens, DIP Claims, the Adequate Protection Liens, the Adequate Protection Claims and all other rights and remedies of the DIP Lender, Prepetition Secured Notes Trustee and the Secured Noteholders granted by the provisions of this Interim Order shall survive, and shall not be modified, impaired or discharged by (i) the entry of an order converting any of the Cases to a case under chapter 7, dismissing any of the Cases, terminating the joint administration of these Cases or by any other act or omission, (ii) the entry of an order approving the sale of any Prepetition Collateral or Adequate Protection Collateral pursuant to Bankruptcy Code section 363(b) or (iii) the entry of an order confirming a plan of reorganization in any of the Cases and, pursuant to Bankruptcy Code section 1141(d)(4), the Debtors have waived any discharge as to any remaining adequate protection obligations. The terms and provisions of this Interim Order shall continue in these Cases, in any successor cases if these Cases cease to be jointly administered, or in any superseding chapter 7 cases under the Bankruptcy Code.

24. Good Faith. The DIP Facility, the use of Cash Collateral, and the other provisions of this Interim Order, the DIP Credit Agreement and the other DIP Loan Documents have been negotiated in good faith and at arm's-length among the Debtors and the DIP Lender, and the extension of the financial accommodations to the Debtors by the DIP Lender pursuant to this Interim Order and the DIP Loan Documents have been and are deemed to be extended in good faith, as that term is used in section 364(e) of the Bankruptcy Code. The DIP Lender is entitled to, and is hereby granted, the full protections of section 364(e) of the Bankruptcy Code.

25. Subsequent Reversal or Modification. Subject to Paragraph 16, if any or all of the provisions of this Interim Order are hereafter reversed, modified, vacated or stayed, that action will not affect (i) the validity of any obligation, indebtedness or liability under this Interim Order and the DIP Loan Documents by the Debtors prior to the date of receipt of written notice to the DIP Lender and Prepetition Agent of the effective date of such action; or (ii) the validity and enforceability of any lien, administrative expense, right, or priority authorized or created hereby or pursuant to this Interim Order and the DIP Loan Documents, including, without limitation, the DIP Obligations, DIP Liens and DIP Superpriority Claims, Prepetition Secured Obligations, Adequate Protection Liens, Adequate Protection Payments and 507(b) Claims. Notwithstanding any such reversal, stay, modification or vacatur, any postpetition indebtedness, obligation or liability incurred by the Debtors to the DIP Lender prior to written notice to the DIP Lender and Prepetition Agent and Prepetition Trustees of the effective date of such action, shall be governed in all respects by the original provisions of this Interim Order and the DIP Loan Documents, and the DIP Lender shall be entitled to all the rights, remedies, privileges and benefits granted pursuant to this Interim Order and the DIP Loan Documents.

26. 506(c) Waiver. Subject to the entry of the Final Order and subject to the Carve-Out, the Debtors and their Estates (and any successors thereto or any representatives thereof, including any trustees appointed in the Chapter 11 Cases or any successor cases) shall be deemed to have waived any rights, benefits or causes of action under section 506(c) of the Bankruptcy Code as they may relate to or be asserted against the DIP Lender, the DIP Liens, the DIP Collateral, the Prepetition Secured Notes Parties, the Prepetition Secured Notes Liens, the Adequate Protection Liens, the Prepetition Secured Notes Collateral or the Adequate Protection Collateral.

27. Proofs of Claim. None of the Prepetition Secured Parties nor the DIP Lender shall be required to file proofs of claim in any of the Cases or successor cases in respect of the DIP Obligations or Secured Obligations, and the Debtors' stipulations in paragraph E herein shall be deemed to constitute a timely filed proof of claim against the applicable Debtor(s). Any order entered by the Court in relation to the establishment of a bar date for any claim (including without limitation, administrative claims) in any of the Cases or successor cases shall not apply to the DIP Lender with respect to the DIP Obligations or to the Prepetition Secured Notes Trustee or the Secured Noteholders with respect to the Secured Obligations. Notwithstanding the foregoing, the Prepetition Secured Notes Trustee (on behalf of itself and the Secured Noteholders) is hereby authorized and entitled, in its sole discretion, but not required, to file (and amend and/or supplement, as it sees fit) a master proof of claim for any claims of the Prepetition Secured Parties arising from the applicable Secured Notes Documents; *provided*, that nothing herein shall waive the right of any Prepetition Secured Party to file its own proofs of claim against the Debtors.

28. Order Governs. In the event of any conflict between the provisions of this Interim Order and the DIP Loan Documents, the provisions of this Interim Order shall control and govern to the extent of such conflict.

29. Final Hearing. A hearing on the Debtors' request for a Final Order approving the Motion is scheduled for February ___, 2017, at [●] [a.m./p.m.] (prevailing Eastern time) before this Court. Within three (3) business days after entry of this Interim Order, the Debtors shall serve, or cause to be served, by first class mail or other appropriate method of service, a copy of the Motion (to the extent the Motion was not previously served on a party) and this Interim Order on (i) the Notice Parties, and (ii) counsel to the Creditors' Committee. Any responses or

objections to the Motion shall be made in writing, conform to the applicable Bankruptcy Rules and Local Rules, be filed with the Bankruptcy Court, set forth the name of the objecting party, the basis for the objection, and the specific grounds therefor, and be served so as to be actually received no later than February ___, 2017, at 4:00 p.m. (prevailing Eastern time) by counsel to the Debtors and counsel to the DIP Lender.

30. Order Effective Upon Entry. Notwithstanding any applicability of any Bankruptcy Rules, the terms and conditions of this Interim Order shall be immediately effective and enforceable upon its entry.

31. Retention of Jurisdiction. The Court has and will retain jurisdiction to enforce this Interim Order in accordance with its terms and to adjudicate any and all matters arising from or related to the interpretation or implementation of this Interim Order.

Wilmington, Delaware
Dated: _____, 2017

_____
The Honorable Kevin J. Carey
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
OPTIMA SPECIALTY STEEL, INC., *et al.*,[1]	Case No. 16-12789 (KJC)
Debtors.	(Joint Administration)

DECLARATION OF JAMES DOAK
IN SUPPORT OF MOTION FOR THE ENTRY OF INTERIM AND FINAL ORDERS PURSUANT TO 11 U.S.C. §§ 105, 361, 362, 363, 364, 503 AND 507 (I) AUTHORIZING THE DEBTORS TO OBTAIN NON-PRIMING SENIOR SECURED POSTPETITION FINANCING, (II) AUTHORIZING USE OF CASH COLLATERAL, (III) GRANTING LIENS AND PROVIDING SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS, (IV) GRANTING ADEQUATE PROTECTION, (V) MODIFYING THE AUTOMATIC STAY, (VI) SCHEDULING A FINAL HEARING, AND (VII) GRANTING RELATED RELIEF

I, James Doak, make this declaration pursuant to 28 U.S.C. § 1746:

1. I am a Managing Director at Miller Buckfire & Co., LLC ("**Miller Buckfire**"), a financial advisory and investment banking firm that, together with its Stifel Financial Corp. affiliate, Stifel, Nicolaus & Co., Inc. ("**Stifel Nicolaus**" and, together with Miller Buckfire, "**Stifel**"), is the proposed investment banker to the debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the "**Debtors**"). Stifel was engaged as of December 13, 2016 by the Debtors to serve as their investment banker to lead the Debtors' process for obtaining debtor-in-possession financing and to provide general restructuring advice.

2. Since joining Miller Buckfire's predecessor entities in 2000, I have advised both debtors and creditors in financial restructuring and distressed mergers and acquisitions; raised

[1] The Debtors in these Chapter 11 Cases, along with the business addresses and the last four (4) digits of each Debtor's federal tax identification number, if applicable, are: Optima Specialty Steel, Inc., 200 S. Biscayne Blvd., Suite 5500, Miami, FL 33131-2310 (0641); Michigan Seamless Tube LLC, 400 McMunn Street, South Lyon, MI 48178 (3850); Niagara LaSalle Corporation, 1412 150th Street, Hammond, IN 46327 (0059); KES Acquisition Company d/b/a Kentucky Electric Steel, 2704 South Big Run Road, Ashland, KY 41102 (2858); and The Corey Steel Company, 2800 South 61st Court, Cicero, IL 60804 (0255).

capital for troubled companies; and represented debtors and creditor constituencies in bankruptcy proceedings. I have also raised capital in many in-court and out-of-court financings, and have extensive experience in procuring, structuring, and negotiating debtor-in-position financing.

3. I submit this declaration (the "**Declaration**") in support of the Debtors' motion filed concurrently herewith (the "**Motion**")[2] for authority to obtain a junior secured non-priming debtor-in-possession financing facility in the amount of $40 million (the "**DIP Facility**") provided by Optima Acquisitions, LLC (the "**DIP Lender**"). In particular, I submit this Declaration in support of my belief that the proposed DIP Facility is (a) the product of an arm's length negotiation process, (b) the best available debtor-in-possession financing option for the Debtors, and (c) in the best interests of the Debtors and their estates and creditors.

4. Except as otherwise indicated, all facts set forth in this Declaration are based upon my personal knowledge of the Debtors' operations and finances, my experience, my review of relevant documents, information provided to me by Miller Buckfire employees working under my supervision, or information provided to me by members of the Debtors' management or their other advisors. If called upon to testify, I could and would testify to the facts set forth herein on that basis.

The Debtors' Prepetition Debt and Equity Structures

5. It is my understanding that Debtor Optima Specialty Steel, Inc. ("**OSS**") is the issuer of $175 million aggregate principal amount of 12.5% senior secured notes that matured on December 15, 2016 (the "**Secured Notes**"). It is also my understanding that the Secured Notes are held by various holders including Mast Capital Management, LLC ("**Mast**") and DDJ Capital Management, LLC ("**DDJ,**" and collectively with Mast and the other holders, the "**Secured**

[2] Capitalized terms used but not defined in this Declaration shall have the meanings set forth in the Motion.

Noteholders"). It is my understanding that Mast and DDJ are the two largest holders of the Secured Notes. It is also my understanding that certain of the Secured Noteholders holding more than 50% of the principal amount of the Secured Notes have formed an *ad hoc* committee.

6. It is my understanding that OSS and its existing and future subsidiaries and Wilmington Trust, National Association as trustee and noteholder collateral agent (the "**Secured Notes Trustee**"), are parties to an indenture dated December 5, 2011 which governs the Secured Notes. It is also my understanding that the Secured Notes were priced at 96.0% of par resulting in a yield to maturity of 13.62% with interest payable semi-annually in arrears on June 15 and December 15 of each year. I am informed that, before the maturity date, interest was timely paid under the Secured Notes. I am further informed that the Secured Notes are fully guaranteed, on a senior secured basis, by each of the Debtors, and that the Secured Notes and related guarantees are secured by substantially all of the Debtors' assets, subject to permitted liens and specified excluded assets.

7. It is my understanding that the Debtors' made an excess cash flow payment in 2015 in the amount of $13.3 million. I further understand that the approximate amount currently outstanding under the Secured Notes is $171.7 million, which includes interest in the approximate amount of $10 million through the Petition Date.

8. It is my understanding that OSS is also the issuer of $85 million of senior unsecured notes, bearing interest at 12.0% per annum, payable semi-annually in arrears on March 15 and September 15 of each year (the "**Unsecured Notes**"). It is also my understanding that the Unsecured Notes matured on December 30, 2016. I am informed that, until the commencement of these Chapter 11 Cases, interest payments due under the Unsecured Notes were paid timely.

9. It is my understanding that, in connection with the issuance of the Unsecured Notes, OSS and its existing and future subsidiaries and Wilmington Trust, National Association as trustee, are parties to an indenture dated January 29, 2015, which governs the Unsecured Notes. It is also my understanding that the Unsecured Notes are fully guaranteed by each of the Debtors. I am informed that, on or about January 4, 2017, Wilmington Savings Fund Society replaced Wilmington Trust as the indenture trustee for the Unsecured Notes.

10. The Debtors understand that the Unsecured Notes are currently held solely by DDJ (in such capacity, the "**Unsecured Noteholder**," and together with the Secured Noteholders, the "**Noteholders**"). It is my understanding that the approximate amount currently outstanding under the Unsecured Notes is $87.5 million, which includes accrued interest in the approximate amount of $2.5 million as of the Petition Date.

11. It is also my understanding that, aside from the Notes, the Debtors have general unsecured claims which include, among others, trade claims, litigation claims and environmental claims. I am informed that, as of the Petition Date, the Debtors have estimated that these general unsecured claims (excluding the Unsecured Notes) were in excess of $37.0 million.

12. It is my understanding that OSS is wholly-owned by Optima Acquisitions, LLC, a privately owned U.S.-based investment firm. It my further understanding that the equity of Optima Acquisitions, LLC, is owned directly or indirectly by three individuals: Mordechai Korf (33%), Gennadiy Bogolyubov (33%) and Igor Kolomoyskyy (33%). Optima Acquisitions, LLC is the proposed DIP Lender.

The Debtors' Liquidity

13. Based on my experience in general, and my specific involvement in these Chapter 11 Cases as the Debtors' investment banker, including review and consideration of the

the Debtors' projections of working capital needs prepared by the Debtors and their other advisors, the use of cash collateral alone does not allow the Debtors sufficient liquidity to meet their needs, including seasonal increases in the need for working capital that traditionally begin arising in mid-January 2017 and the costs of administration of these Chapter 11 Cases.

14. Since the Petition Date, the Debtors have focused their efforts on obtaining debtor-in-possession financing and have retained my firm to assist them in obtaining such financing on the best available terms. It is my belief that debtor-in-possession financing will permit the Debtors to finance their operations, maintain business relationships with their vendors, suppliers and customers, pay their employees, and otherwise finance their operations. Without the ability to access post-petition financing, I believe that the Debtors, their estates and their creditors would suffer immediate and irreparable harm.

The Debtors' DIP Financing Process

15. In my role as the Debtors' investment banker, I was actively involved in the solicitation and review of the proposals to procure DIP financing, as well as in the negotiation process, which I led on behalf of the Debtors. Based on my experience and involvement in the marketing and negotiation of the various DIP financing options available to the Debtors, including engaging in good faith and arm's length negotiations with the potential lenders, all as more fully set forth below, I believe that the DIP Facility should be approved. I believe the proposed facility is fair, reasonable, in the best interests of the Debtors' estates, and will provide the Debtors with the financing required for these Chapter 11 Cases on the best terms available in the market under the circumstances.

16. Through Miller Buckfire and their other advisors and at the direction of the Special Committee, the Debtors established what I believe to be an orderly, fair and transparent

process for soliciting, negotiating and selecting proposals from parties interested in providing DIP financing. This process included certain deadlines, which we made known to parties interested in providing a DIP financing proposal and which I understand were published by the filing of a notice with the Bankruptcy Court, as follows:

Date	Event
December 22, 2016	Debtors' financial advisor will make calls to potential lenders to assess interest
December 27-29, 2016	Debtors will conduct meetings and calls with select lenders
January 3, 2017	Financing proposals due
On or about January 6, 2017	DIP documentation will be filed with the Court

The Debtors have conducted their process substantially in accordance with this schedule.

17. Miller Buckfire contacted 28 parties to solicit their interest in providing DIP financing on an unsecured, administrative, superpriority or even a priming basis. The Debtors entered into non-disclosure agreements with 18 of these parties. The Debtors established a virtual dataroom on December 20, 2016 and began granting access to lenders upon execution of non-disclosure agreements. On December 26, 2016, a Confidential Information Memorandum ("**CIM**") was distributed to potential lenders via the dataroom. On December 27, 2016, a process letter and model term sheet were also distributed to potential lenders via the dataroom.

18. Over the course of the process, the Debtors obtained multiple DIP financing proposals from five different potential lenders. Initially, the Debtors received a proposal from Mast. Mast's initial proposal contemplated new money post-petition financing, a partial roll up

of the Secured Notes, a twelve-month term with a three-month extension, substantial exit and other fees, and what the Debtors viewed as aggressive case milestones (the "**Mast Proposal**"). After an exchange of draft term sheets, and negotiations between counsel for the Debtors and Mast, the Debtors received a revised proposal from Mast, which was then joined by DDJ (the joint proposal, the "**Mast/DDJ Proposal**"). The Mast/DDJ Proposal contemplated new money post-petition financing, a partial roll up of the Secured Notes, a six-month term with a three month extension, substantial exit and other fees, lender controls in addition to and more controlling than those present in the initial Mast proposal, and provisions advantageous to DDJ's Unsecured Note claim.

19. In addition to the Mast/DDJ Proposal, the Debtors received the following other DIP financing proposals: (i) a proposal submitted by only DDJ (the "**DDJ Individual Proposal**"), which provided new money post-petition financing, a full roll up of the Secured Notes upon final approval of the financing, a priming lien during the interim period, a six-month term with a three month extension, substantial exit and other fees, and what the Debtors view as aggressive case milestones and other provisions that could be considered as advantaging DDJ's Unsecured Note claim; (ii) two different proposals from two separate third-party lenders on December 28th and January 4th for a new money priming loan, and (iii) a proposal from the DIP Lender that ultimately lead to the DIP Term Sheet.

20. In evaluating the proposals, we worked with the Debtors to assure that the proposals provided sufficient liquidity, the best available economic terms, and, as much as possible, a level playing field for all of the Debtors' constituencies during the expected future plan process. In my view, while attractive in meeting these three objectives, the two third-party proposals had execution risk in that they each required priming the Secured Noteholders. In my

view, the DDJ Individual Proposal did not meet most of the Debtors' objectives, and it also required priming the Secured Noteholders. The Debtors, therefore, focused initially on the Mast Proposal, and subsequently on the Mast/DDJ Proposal and the proposal from the DIP Lender.

21. Before making their determination between these two proposals, the Debtors' advisors discussed each of the proposals with the party submitting them and provided mark-ups of the proposals. The Debtors received revised proposals from Mast/DDJ and from the DIP Lender. The revised Mast/DDJ Proposal contemplated junior DIP financing, a roll up of the Secured Notes upon final approval, intercreditor provisions to ensure priority of the Senior Notes, fees to DDJ on account of its Unsecured Note claim, and call and put option for DDJ to buy out the DIP financing from Mast. Although the revised Mast/DDJ Proposal contained fewer case controls than earlier proposals, it still contemplated aggressive milestones and other control provisions and provisions to advantage DDJ's Unsecured Note claim. It is my understanding that the Debtors' advisors repeatedly requested without success that these provisions be removed. By contrast, the DIP Lender's revised proposal – the proposed DIP Facility – further improved in revisions and discussions. In addition to providing for junior DIP financing, the proposed DIP Facility contemplates low fees, no case control provisions, and lower interest rates than those proposed by the third-party lenders on secured basis. The proposed DIP Lender has continued to improve its proposal by refining the intercreditor terms in the DIP Term Sheet.

22. With the assistance of the Debtors' other advisors, I evaluated the proposals and concluded that the proposed DIP Facility is superior to the Mast/DDJ Proposal, and certainly so on an interim basis. Among other things, the initial economics of the proposed DIP Facility are superior to the Mast/DDJ Proposal. The Mast/DDJ Proposal contains substantially higher fees, including an exit fee and a backstop commitment fee not included in the proposed DIP Facility,

and provides for a higher interest rate on new money. Although the pricing of the two proposals is comparable several months into either financing, the non-economic terms of the two proposals further weigh in favor of the proposed DIP Facility. Examples of unfavorable non-economic terms in the Mast/DDJ Proposal include aggressive case milestones and provisions that advantage DDJ's Unsecured Note claim, such as providing them a right to force a sale of the financing to DDJ. It is my view that these provisions in the Mast/DDJ Proposal limit the Debtors' flexibility and do not maintain a level playing field during the plan process.

23. I understand that after considering the recommendations of their advisors, the Special Committee determined that the proposal by the DIP Lender for a junior non-priming DIP Facility from the DIP Lender was the most favorable proposal for the Debtors' estates because the proposal provided sufficient liquidity, had attractive economics, did not contain case control or other features that limited flexibility later in the case, and could be taken out at any time without premium or penalty, all while still respecting the rights of the Secured Noteholders. The Debtors are continuing as of the date hereof to negotiate with its constituencies over the terms of the DIP financing, including providing Mast and DDJ a further mark up of the Mast/DDJ Proposal.

24. The Debtors and the DIP Lender were represented by separate advisors during the negotiations. I believe that the Debtors followed a full and transparent process in obtaining the DIP Facility and that the Debtors' negotiations with the DIP Lender were conducted in good faith and at arm's-length.

Use of the DIP Facility

25. The proceeds of the DIP Facility, if approved, will be used in accordance with the provisions of a budget (as defined in the DIP Term Sheet, the "**Budget**"). It is my understanding

that the Budget will provide for the payment of operating expenses such as for the purchase of raw materials to be used in the manufacture of the Debtors' specialty steel products, the cost for supplies, repairs and dies relating to the Debtors' machinery, and payroll for the Debtors' employees. It is also my understanding that the Budget provides for adequate protection in the form of postpetition interest payments to the Secured Noteholders. In addition, I am also informed that the Budget provides for the expenses of administration of these Chapter 11 Cases. In my view, payment of these and other expenses is necessary to maintain the Debtors' enterprise as a going concern and to maximize the value of the Secured Noteholders' Collateral and of the Debtors' estates.

The DIP Facility Should Be Approved

26. Based on my experience in general and my specific involvement in the marketing and negotiation of the DIP Facility in this matter, I believe that the process was full and fair, was comprehensive, and produced the best available financing option under the circumstances. The negotiations with the lenders were conducted at arm's length and were productive, as the Debtors were able to improve upon the initial proposal.

27. I also believe that the DIP Facility is fairly priced, superior to the offers made through the other proposals and a better fit for the Debtors at this time. Indeed, as noted, in my view, it was an achievement to obtain a facility that the proposal provided sufficient liquidity, had attractive economics, did not contain case control or other features that limited flexibility later in the case, and could be taken out at any time without premium or penalty, all while still respecting the rights of the Secured Noteholders. Moreover, the terms governing the Debtors' use of the DIP Facility are consistent with the terms generally provided in other similar Chapter 11 Cases.

28. I believe that the Debtors require the proposed $40 million DIP Facility to operate their businesses while they work with key parties to restructure through a plan of reorganization. I also believe that proceeding in these cases in an orderly manner (to maximize value) hinges directly on the Debtors' ability to maintain provide the necessary assurance to their vendors and suppliers that the Debtors will continue to pay their obligations as they come due. In my view, the DIP Facility will, among other things, send a strong signal to employees, customers, and other parties that the Debtors have sufficient liquidity to successfully implement their restructuring. Accordingly, if approved, the DIP Facility will preserve and enhance the value of the Debtors' businesses and, as such, I believe it is in the best interest of the Debtors' estates.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge, information, and belief.

Dated: January 9, 2017
New York, New York

/s/ James Doak
James Doak