

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

In re)	Chapter 11
)	
PERSONAL COMMUNICATIONS)	Case Nos.: 13-74303-ast
DEVICES, LLC, <i>et al.</i> , ¹)	13-74304-ast
)	
Debtors.)	(Jointly Administered)

**FINAL ORDER (I) AUTHORIZING DEBTORS
(A) TO OBTAIN POST-PETITION SECURED FINANCING
PURSUANT TO 11 U.S.C. § § 105, 361, 362 AND 364, AND
(B) TO UTILIZE CASH COLLATERAL PURSUANT TO 11 U.S.C. § 363; (II)
GRANTING LIENS AND SUPERPRIORITY CLAIMS; AND (III) GRANTING
ADEQUATE PROTECTION TO PREPETITION SECURED
PARTIES PURSUANT TO 11 U.S.C. § § 361, 362, 363 AND 364**

Personal Communications Devices, LLC (“*PCD*”) along with Personal Communications Devices Holdings, LLC (“*Holdings*”), each as a debtor and debtor-in-possession (together, the “*Debtors*”) in the above captioned chapter 11 cases (collectively, the “*Chapter 11 Cases*” and either of the Chapter 11 Cases upon either appointment of any trustee or any other estate representative or conversion to a case under chapter 7 of the Bankruptcy Code (as defined below) and any other proceedings related to the Chapter 11 Cases, a “*Successor Case*”) having filed a motion, dated August 19, 2013 (the “*Motion*”), requesting, *inter alia*, entry of an interim and a final order (this “*Final Order*”) pursuant to sections 105, 361, 362, 363, 364, 503 and 507 of chapter 11 of title 11 of the United States Code (as amended, the “*Bankruptcy Code*”), Rules 2002, 4001, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (the “*Bankruptcy*

¹ The Debtors in these chapter 11 cases, along with the last four (4) digits of each Debtor’s federal tax identification number, are: Personal Communications Devices, LLC, a Delaware limited liability company (4171) and Personal Communications Devices Holdings, LLC, a Delaware limited liability company (4096). The Debtors’ mailing address is 80 Arkay Drive, Hauppauge, Suffolk County, NY 11788.

Rules”), and the Local Bankruptcy Rules for the United States Bankruptcy Court for the Eastern District of New York (the “**Local Rules**”), including without limitation, *Administrative Order No. 558, In re: Adoption of Guidelines for Financing Motions* (the “**Financing Guidelines**”) seeking, among other things:

(a) authorization for the Debtors to obtain debtor-in-possession financing (the “**DIP Facility**”) in the aggregate amount of up to \$46 million, by entering into that certain Senior Secured, Super-Priority Debtor-In-Possession Credit Agreement, dated August 21, 2013 (the “**DIP Credit Agreement**”,² and, together with all other loan and security documents executed in connection with the DIP Credit Agreement, the “**DIP Loan Documents**”) with JPMorgan Chase Bank, N.A. as administrative agent (in such capacity, the “**DIP Agent**”) and the lenders named therein (the “**DIP Lenders**” and together with the DIP Agent, the “**DIP Secured Parties**”);

(b) approval of the terms of, and authorization for the Debtors to execute and perform under, the DIP Credit Agreement and the other DIP Loan Documents and to perform such other and further acts as may be required in connection with the DIP Loan Documents;

(c) authorization for the Debtors to grant (i) to the DIP Agent, for the benefit of itself and the other DIP Secured Parties, the DIP Liens (as defined below) on all of the DIP Collateral (as defined below) pursuant to sections 364(c)(2) and (3) and 364(d) of the Bankruptcy Code, which DIP Liens are senior to the Primed Liens (as defined below) as more fully provided for herein and (ii) to the DIP Secured Parties, pursuant to section 364(c)(1) of the Bankruptcy Code, super-priority administrative claims having recourse to all prepetition and post-petition property of the Debtors’ estates, now owned or hereafter acquired, and any Debtors’ rights under section 506(c) of the Bankruptcy Code and the proceeds thereof;

² Capitalized terms used but not otherwise defined herein shall have the meanings assigned to them in the DIP Credit Agreement or the Motion.

(d) authorization for the Debtors to use Prepetition Collateral (as defined below), including, without limitation, “cash collateral,” as such term is defined in section 363 of the Bankruptcy Code (the “*Cash Collateral*”), in which the DIP Secured Parties and the Prepetition Secured Parties have a Lien or other interest, whether existing on the Petition Date (as defined below), arising pursuant to the Interim Order (as defined below), this Final Order or otherwise;

(e) authorization for the Debtors to grant, as of the Petition Date and in accordance with the relative priorities set forth herein, certain adequate protection to the DIP Secured Parties and to the Prepetition Secured Parties (as defined below);

(f) the vacatur of the automatic stay imposed by section 362 of the Bankruptcy Code solely to the extent necessary to implement and effectuate the terms and provisions of the DIP Loan Documents, the Interim Order and this Final Order and subject in all respects to the Debtors’ rights herein;

(g) authorization for the Debtors to borrow under the DIP Facility for the purposes of funding the operations of the Debtors’ businesses, paying certain transaction fees and expenses and other costs and expenses of administration of the Chapter 11 Cases, and, to the extent necessary, the Carve-Out (defined below), all subject to, and in accordance with, the DIP Loan Documents, the Interim Order, this Final Order and the Approved Budget (as defined below);

(h) waiver of any applicable stay (including under Bankruptcy Rule 6004) and provision for immediate effectiveness of the Interim Order and this Final Order; and

(i) such further relief as this Court shall deem appropriate.

Having considered the Motion, the DIP Credit Agreement, the *Declaration of Raymond F. Kunzmann*, Pursuant to Rule 1007-4 of the Local Rules for the Eastern District of New York in Support Of Chapter 11 Petitions and Requests for Relief [ECF No. 2] (the “*Kunzmann*”

Declaration”) and the evidence submitted or proffered at the hearings held and concluded before this Court on August 21, 2013 (the “*Interim Hearing*”) and on September 4, 2013 (the “*Final Hearing*”); and the Court having considered the objection filed by the official committee of unsecured creditors [Dkt. No. 76]; and in accordance with Bankruptcy Rules 2002, 4001(b), (c), and (d), 6004 and 9014 and all applicable Local Rules, including the Financing Guidelines, notice of the Motion, the Interim Hearing, the Interim Order and the Final Hearing having been provided in a sufficient manner and in accordance with the Interim Order; and it appearing that approval of the relief requested in the Motion is fair and reasonable and in the best interests of the Debtors, their creditors, their estates and all parties in interest, and is essential for maximizing the value of the Debtors’ businesses and assets for the benefit of the Debtors’ creditors and all parties in interests; and after due deliberation and consideration, and for good and sufficient cause appearing therefor:

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

A. **Petition Date**. The above-captioned debtors and debtors-in-possession filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code on August 19, 2013 (the “*Petition Date*”) and have continued to operate their businesses as debtors-in-possession under Sections 1107 and 1108 of the Bankruptcy Code. On the Petition Date, the Debtors filed the Motion. On August 21, 2013, this Court entered the *Interim Order (I) Authorizing Debtors (A) To Obtain Post-Petition Secured Financing Pursuant to 11 U.S.C. §§ 105, 361, 362 and 364, and (B) To Utilize Cash Collateral Pursuant to 11 U.S.C. § 363; (II) Granting Liens and Superpriority Claims; (III) Granting Adequate Protection to Prepetition Secured Parties Pursuant to 11 U.S.C. §§ 361, 362, 363 and 364; and (IV) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001* [ECF No. 39] (the “*Interim Order*”). No trustee or examiner has been

appointed in these cases. On August 21, 2013, this Court entered an order [ECF No. 32] directing the joint administration of these cases. On August 26, 2013, an official committee of unsecured creditors (the “*Committee*”) was appointed in these cases.

B. Jurisdiction and Venue. This Court has jurisdiction over these matters pursuant to 28 U.S.C. § 1334 and 28 U.S.C. § 157(a) and (b) as this is a core matter pursuant to 28 U.S.C. § 157(b)(2)(D). Venue is appropriate in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

C. Notice. The Final Hearing is being held pursuant to Bankruptcy Rule 4001. Sufficient notice of the Final Hearing and the relief requested in the Motion has been provided by the Debtors, whether by facsimile, electronic mail, overnight courier or hand delivery, on August 22, 2013 to certain parties in interest in accordance with the Interim Order, including: (i) Edwards Wildman Palmer LLP, as counsel to JPMorgan Chase Bank, N.A., in its capacities as DIP Agent and as First Lien Agent (as defined below), Attn: Charles L. Glerum, 111 Huntington Avenue, Boston, Massachusetts 02119; (ii) Latham & Watkins LLP, Attn: Keith Simon, Esq., Joshua Tinkelman, Esq. and Adam J. Goldberg, Esq., as counsel to DLJ Investment Partners, L.P., DLJ Investment Partners III and L.P. IP III Plan Investors, L.P., as Second Lien Lenders (defined below) (collectively, in such capacities, the “*CS Term Lenders*”); (iii) Patton Boggs LLP, Attn: Mark Salzberg, Esq., as counsel to PineBridge Investments, Inc. and its Affiliates (collectively, the “*PineBridge Lenders*”); (iv) Shipman & Goodwin LLP, Attn: William G. Rock, Esq. and Kathleen M. LaManna, Esq., as counsel to U.S. Bank National Association, as Second Lien Agent; (v) Tracy Hope Davis, Esq., the United States Trustee, Region 2; (vi) the List of Twenty Largest General Unsecured Creditors of the Debtors; (vii) Pantech Wireless, Inc. and Pantech Co., Ltd.; (viii) the Internal Revenue Service; (ix) the United

States Attorney for the Eastern District of New York; (x) the Tax Division of the United States Department of Justice; (xi) the New York State Department of Taxation and Finance, and (xii) Perkins Coie LLP, Attn: Schuyler G. Carroll, Esq., as proposed counsel to the Committee, in each case to the attention of the persons identified, and at the addresses set forth, in the service list to the Motion. Under the circumstances, such notice of the Motion, the relief requested therein, the entry of the Final Order and the Final Hearing complies with Bankruptcy Rule 4001(b), (c) and (d) and the Local Rules.

D. Debtors' Stipulations Regarding the Prepetition Credit Facilities.

Without prejudice to the rights of parties in interest to the extent set forth in Paragraph 17 below, the Debtors admit, stipulate, acknowledge and agree (Paragraphs D(i) through (vi) hereof shall be referred to herein collectively as the "*Debtors' Stipulations*") as follows:

(i) First Lien Credit Facility. Pursuant to that certain Amended and Restated Credit Agreement dated as of May 14, 2012 by and among PCD, JPMorgan Chase Bank, N.A. as administrative agent (in such capacity, the "*First Lien Agent*"), the lenders named therein (the "*First Lien Lenders*" and together with the First Lien Agent, the "*First Lien Secured Parties*"), and the guarantors (including Holdings) named therein (the "*First Lien Credit Agreement*" and, together with all other loan and security documents executed in connection therewith, the "*First Lien Loan Documents*"), the First Lien Secured Parties made certain loans and extended certain credit to the Debtors. All obligations of the Debtors arising under the First Lien Loan Documents including, without limitation, the "Obligations" as defined in the First Lien Credit Agreement, shall collectively be referred to herein as the "*First Lien Credit Obligations*".

(ii) Second Lien Credit Facility. Pursuant to that certain Amended and Restated Second Lien Credit Agreement dated as of May 14, 2012 (the “*Second Lien Credit Agreement*” and, together with all other loan and security documents executed in connection therewith, the “*Second Lien Loan Documents*” and, together with the First Lien Loan Documents, the “*Prepetition Secured Loan Documents*”) by and among PCD, U.S. Bank National Association as administrative agent (the “*Second Lien Agent*”), the lenders named therein (the “*Second Lien Lenders*”, together with the Second Lien Agent, the “*Second Lien Secured Parties*”, and collectively with Second Lien Agent and the First Lien Secured Parties, the “*Prepetition Secured Parties*”), and the guarantors (including Holdings) named therein, the Second Lien Lenders extended certain loans to the Debtors. All obligations of the Debtors arising under the Second Lien Credit Agreement shall be referred to herein as the “*Second Lien Credit Obligations*”, and together with the First Lien Credit Obligations shall collectively be referred to herein as the “*Prepetition Credit Obligations*”.

(iii) Prepetition Credit Obligations. As of the Petition Date, the Debtors were truly and justly indebted (a) to the First Lien Secured Parties pursuant to the First Lien Loan Documents, without defense, counterclaim or offset of any kind, in respect of First Lien Credit Obligations in the aggregate principal amount of \$33,980,946.67, plus accrued and unpaid interest thereon and fees and expenses (including attorneys’, accountants’, appraisers’ and financial advisors’ fees and expenses that are chargeable or reimbursable under the First Lien Loan Documents) now or hereafter due under the First Lien Credit Agreement and the other First Lien Loan Documents, and (b) to the Second Lien Secured Parties pursuant to the Second Lien Loan Documents, without defense, counterclaim or offset of any kind, in respect of Second

Lien Credit Obligations in the aggregate principal amount of \$68,912,134.78,³ plus accrued and unpaid interest thereon and fees and expenses (including attorneys', accountants', appraisers' and financial advisors' fees and expenses that are chargeable or reimbursable under the Second Lien Loan Documents) now or hereafter due under the Second Lien Credit Agreement and the other Second Lien Loan Documents.

(iv) First Priority Liens and Collateral. Pursuant to the First Lien Loan Documents, the Debtors granted to the First Lien Agent, for the benefit of the First Lien Secured Parties, to secure the First Lien Loan Obligations, valid, perfected, enforceable first-priority security interests in and continuing liens (the "***First Priority Liens***") on all or substantially all of the Debtors' assets and property and all proceeds, products, accessions, rents and profits thereof, in each case whether then owned or existing or thereafter acquired or arising (the "***First Lien Collateral***"). As of the Petition Date, the First Priority Liens (a) are legal, valid and binding obligations of the applicable Debtors, enforceable in accordance with the terms of the applicable First Lien Loan Documents (other than in respect of the stay of enforcement arising from section 362 of the Bankruptcy Code), (b) were granted to, or for the benefit of, the First Lien Secured Parties for fair consideration and reasonably equivalent value and (c) are not subject to avoidance, recharacterization, recovery, subordination, attack, offset, counterclaim, defense, or "claim" (as defined in the Bankruptcy Code) of any kind pursuant to the Bankruptcy Code or applicable non-bankruptcy law. Any guaranties provided pursuant to the First Lien Loan

³ Of this amount, \$35,274,008.10 constitutes the aggregate principal amount due and owing on account of the CS Term Loans (as defined in the Second Lien Credit Agreement) to the CS Term Lenders. As of August 19, 2013, the CS Term Lenders are owed \$1,066,058.91 in accrued but unpaid interest in respect of the CS Term Loans. \$33,638,126.68 constitutes the principal amount due and owing to the PineBridge Lenders for amounts advanced under the Second Lien Credit Agreement. As of August 19, 2013, the PineBridge Lenders are owed \$1,016,618.94 in accrued but unpaid interest on such principal amount.

Documents continue in full force and effect notwithstanding any use of Cash Collateral permitted hereunder.

(v) Second Liens and Collateral. Pursuant to the Second Lien Loan Documents, the Debtors granted to the Second Lien Agent, for the benefit of the Second Lien Secured Parties, to secure the Second Lien Credit Obligations, second-priority security interests in and continuing liens on (the “*Second Priority Liens*” and together with the First Priority Liens, the “*Prepetition Liens*”), all or substantially all of the Debtors’ assets and property and all proceeds, products, accessions, rents and profits thereof, in each case whether then owned or existing or thereafter acquired or arising (the “*Second Lien Collateral*” and together with the First Lien Collateral, the “*Prepetition Collateral*”). As of the Petition Date, the Second Priority Liens (a) are legal, valid and binding obligations of the applicable Debtors, enforceable in accordance with the terms of the applicable Second Lien Loan Documents (other than in respect of the stay of enforcement arising from section 362 of the Bankruptcy Code), (b) were granted to, or for the benefit of, the Second Lien Secured Parties for fair consideration and reasonably equivalent value and (c) are not subject to avoidance, recharacterization, recovery, subordination, attack, offset, counterclaim, defense, or “claim” (as defined in the Bankruptcy Code) of any kind pursuant to the Bankruptcy Code or applicable non-bankruptcy law, except that the Second Priority Liens are subject and subordinate to the First Priority Liens. Any guaranties provided pursuant to the Second Lien Loan Documents continue in full force and effect notwithstanding any use of Cash Collateral permitted hereunder.

(vi) Cash Collateral. The Debtors represent that all of the Debtors’ cash, including the cash in its deposit accounts, wherever located, whether Prepetition Collateral or proceeds thereof, constitutes the Cash Collateral of the Prepetition Secured Parties.

(vii) Release of Claims Against First Lien Secured Parties. Each Debtor shall be deemed to have forever waived, discharged, and released any and all rights against the First Lien Secured Parties, together with their respective affiliates, agents, attorneys, financial advisors, consultants, officers, directors, and employees (all of the foregoing, collectively, the “*First Lien Releasees*”), to pursue, bring or prosecute any and all “claims” (as defined in the Bankruptcy Code), counterclaims, causes of action, defenses, setoff, recoupment, or other offset rights against any and all of the First Lien Releasees, whether arising at law or in equity, with respect to the First Lien Credit Obligations, the First Lien Loan Documents, and the First Priority Liens, including (a) any recharacterization, subordination, avoidance, or other claim arising under or pursuant to section 105 or chapter 5 of the Bankruptcy Code, or under any other provisions of applicable state or federal law, and (b) any right or basis to challenge or object to the amount, validity, characterization or enforceability of the First Lien Credit Obligations, or the validity, characterization, enforceability, priority, or non-avoidability of the First Priority Liens.

(viii) Release of Claims Against Second Lien Secured Parties. Each Debtor shall be deemed to have forever waived, discharged, and released any and all rights against the Second Lien Secured Parties, together with their respective affiliates, agents, attorneys, financial advisors, consultants, officers, directors, and employees (all of the foregoing, collectively, the “*Second Lien Releasees*”), to pursue, bring or prosecute any and all “claims” (as defined in the Bankruptcy Code), counterclaims, causes of action, defenses, setoff, recoupment, or other offset rights against any and all of the Second Lien Releasees, whether arising at law or in equity, with respect to the Second Lien Credit Obligations, the Second Lien Loan Documents, and the Second Priority Liens, including (a) any recharacterization,

subordination, avoidance, or other claim arising under or pursuant to section 105 or chapter 5 of the Bankruptcy Code, or under any other provisions of applicable state or federal law, and (b) any right or basis to challenge or object to the amount, validity, characterization or enforceability of the Second Lien Credit Obligations, or the validity, characterization, enforceability, priority, or non-avoidability of the Second Priority Liens.

(ix) Prepetition Subordination Agreements. Pursuant to section 510 of the Bankruptcy Code, the subordination and inter-creditor terms of the Prepetition Loan Documents, including, without limitation, Section 2.18 of the Second Lien Credit Agreement, and other inter-creditor or subordination agreements remain in full force and effect and are not, and shall not be deemed to be, amended, altered or otherwise modified by this Final Order or by the consummation of the transactions contemplated thereby or hereby. Each of the Prepetition Secured Parties expressly reserves any and all claims, causes of action, defenses, rights and remedies it has or may have pursuant to the Prepetition Loan Documents or pursuant to any other lien release, inter-creditor or subordination agreement.

The foregoing Debtors' Stipulations shall be subject to the provisions of Paragraph 17 of this Final Order.

E. Sale of the Debtors' Assets. On August 19, 2013, the Debtors entered into that certain Asset Purchase Agreement (the "*Stalking Horse APA*") with Q1W Newco, LLC and Quality One Wireless, LLC (together, the "*Stalking Horse Bidder*" or "*Quality One*"). Pursuant to the Stalking Horse APA, Quality One has agreed to purchase substantially all of the Debtors' assets, subject to higher or better offers obtained by the Debtors during an auction conducted pursuant to section 363 of the Bankruptcy Code (the "*Sale*"). The Sale shall yield

cash proceeds sufficient to satisfy in full all of the First Lien Credit Obligations and the DIP Obligations.

F. Findings Regarding the DIP Facility.

(i) Need for Post-Petition Financing. The Debtors need to obtain loans under the DIP Facility and use Cash Collateral to, among other things, permit the orderly continuation of the operation of their businesses, to fund certain expenses associated with the closing of the sale of the Debtors' assets to the Stalking Horse Bidder, maintain business relationships with vendors, suppliers and customers, to make payroll, to make capital expenditures, and to satisfy other working capital and operational needs. The Debtors' access to sufficient working capital and liquidity through the use of Cash Collateral and borrowing under the DIP Facility is vital to maximizing the value of the Debtors' assets and businesses for the benefit of the Debtors' creditors and parties in interest.

(ii) Relief Essential; Best Interest. For the reasons stated herein and in the Interim Order, the continued availability of the DIP Facility (in the full amount provided for therein) and Cash Collateral in accordance with this Final Order and the DIP Loan Documents is in the best interests of the Debtors' estates and consistent with their fiduciary duties.

(iii) No Credit Available on More Favorable Terms. As set forth in the Motion and in the Kunzmann Declaration, the Debtors have been and continue to be unable to obtain financing on more favorable terms from sources other than the DIP Secured Parties under the DIP Loan Documents. The Debtors are unable to obtain adequate unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense. The Debtors are also unable to obtain secured credit allowable under sections 364(c)(1), 364(c)(2) and 364(c)(3) of the Bankruptcy Code without (a) granting to the DIP Secured Parties the rights, remedies,

privileges, benefits and protections provided herein and in the DIP Loan Documents, including the DIP Liens and the DIP Super-Priority Claims (as defined below) and (b) allowing the DIP Secured Parties to provide the DIP Facility on the terms set forth herein and in the DIP Loan Documents (all of the foregoing described in clauses (a) and (b) above, including the DIP Liens and the DIP Superpriority Claims (as defined below), collectively, the “*DIP Protections*”), and (c) providing the Prepetition Secured Parties the adequate protection more fully described in Paragraphs 14 and 15 below.

(iv) Roll-Up of Prepetition Debt. The “roll-up” of prepetition debt consisting of the First Lien Credit Obligations on a revolving basis, as set forth in Paragraph 13 of this Final Order, and all other terms of the DIP Facility required to be disclosed in the Motion were adequately disclosed in the Motion in accordance with the Financing Guidelines and all other applicable Bankruptcy Rules, Local Rules, and guidelines. Nothing in this Final Order shall constitute a waiver of the Bankruptcy Court’s authority, to unwind or partially unwind, after notice and a hearing, the post-petition protection provided to the Prepetition Secured Parties or the pay down of the First Lien Credit Obligations in the event that there is (a) a successful Challenge (as defined below) to the validity, enforceability, extent, perfection or priority of the Prepetition Secured Parties’ liens or claims or (b) upon a Challenge, a determination that the claims held by any of the Prepetition Secured Parties were undersecured and the cross-collateralization or roll-up of the First Lien Credit Obligations improperly advantaged the First Lien Secured Parties. For the avoidance of doubt, to the extent the Court unwinds any payments to the First Lien Secured Parties as set forth in the preceding sentence, then the First Lien Credit Obligations in respect of which such payments were made shall be reinstated in full force and effect and all guaranties and security in respect thereof shall be restored.

G. Adequate Protection for, and Good Faith of, the Prepetition Secured

Parties. The Prepetition Secured Parties have negotiated in good faith regarding the Debtors' use of the Prepetition Collateral (including the Cash Collateral) to fund the administration of the Debtors' estates and continued operation of their businesses. The Prepetition Secured Parties have agreed to permit the Debtors to use the Prepetition Collateral, including the Cash Collateral, subject to the terms and conditions set forth herein, including the protections afforded a party acting in "good faith" under section 364(e) of the Bankruptcy Code. In addition, the DIP Facility contemplated hereby provides for the priming of the Prepetition Liens as new loans are made and the prepetition loans are repaid pursuant to section 364(d) of the Bankruptcy Code. The Prepetition Secured Parties are entitled to the adequate protection as set forth herein pursuant to sections 361, 362, 363, 364 and 507(b) of the Bankruptcy Code for the diminution in value of the Prepetition Collateral. Based on the Motion and on the record presented to the Court at the Interim Hearing and the Final Hearing, the terms of the proposed adequate protection arrangements and the use of the Cash Collateral contemplated hereby are fair and reasonable, reflect the Debtors' prudent exercise of business judgment, and constitute reasonably equivalent value and fair consideration for the Prepetition Secured Parties, none of whom has objected to the relief sought in this Final Order.

H. Limited Consent. The Prepetition Secured Parties have consented to the priming of their liens by the DIP Liens pursuant (and solely pursuant to) the terms of the DIP Facility presently before this Court, and such consent does not, and shall not be deemed to, extend to any other post-petition financing or to any materially modified version of this DIP Facility unless expressly agreed to in writing by the DIP Agent and the First Lien Secured Parties and, subject to the Prepetition Secured Loan Documents, including any intercreditor or

subordination agreement by and among the First Lien Secured Parties and the Second Lien Secured Parties, the Second Lien Secured Parties. Nothing in this Final Order, including any of the provisions herein with respect to adequate protection, shall constitute, or be deemed to constitute, a finding that the interests of any of the Prepetition Secured Parties are or will be adequately protected with respect to any non-consensual use of Cash Collateral or non-consensual priming of the Prepetition Liens.

I. Section 552. In light of the subordination of their liens and superpriority administrative claims to the DIP Liens, each of the Prepetition Secured Parties is entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and the “equities of the case” exception shall not apply.

J. Business Judgment and Good Faith Pursuant to Section 364(e).

(i) The DIP Secured Parties have indicated a willingness to provide postpetition secured financing via the DIP Facility to the Debtors in accordance with the DIP Loan Documents and this Final Order.

(ii) The terms and conditions of the DIP Facility as set forth in the DIP Loan Documents and this Final Order, and the fees paid and to be paid thereunder, are fair, reasonable, and the most favorable under the circumstances, and the Debtors’ agreement to the terms and conditions of the DIP Loan Documents and to the payment of such fees reflect the Debtors’ exercise of prudent business judgment consistent with their fiduciary duties. Such terms and conditions are supported by reasonably equivalent value and fair consideration.

(iii) The DIP Facility and the DIP Loan Documents were negotiated in good faith and at arm’s length among the Debtors and the DIP Secured Parties with the assistance and counsel of their respective advisors, and all of the DIP Obligations shall be

deemed to have been extended by the DIP Lenders and their affiliates for valid business purposes and uses and in good faith, as that term is used in section 364(e) of the Bankruptcy Code, and in express reliance upon the protections offered by section 364(e) of the Bankruptcy Code and this Final Order, and the DIP Liens, the DIP Superpriority Claims (as defined below) and the other DIP Protections shall be entitled to the full protection of section 364(e) of the Bankruptcy Code and this Final Order in the event this Final Order or any other order or any provision hereof or thereof is vacated, reversed, amended, or modified, on appeal or otherwise.

NOW, THEREFORE, on the Motion and the record before this Court with respect to the Motion, and with the consent of the Debtors, the First Lien Agent (on behalf of the First Lien Secured Parties), the Second Lien Agent (on behalf of the Second Lien Secured Parties) and the DIP Agent (on behalf of the DIP Secured Parties) to the form and entry of this Final Order, and good and sufficient cause appearing therefor,

IT IS ORDERED that:

1. **Motion Granted**. The Motion is hereby granted in accordance with the terms and conditions set forth in this Final Order and the DIP Loan Documents. Any objections to the Motion with respect to the entry of this Final Order that have not been withdrawn, waived, or settled, and all reservations of rights included therein, are hereby denied and overruled.

2. **Ratification of the Interim Order; Approval of DIP Loan Documents**; The terms of the Interim Order are hereby ratified and confirmed, except to the extent amended or modified by this Final Order, and all DIP Obligations (defined below) incurred and borrowing and payments made and protections afforded any parties under the Interim Order are ratified and confirmed on a final basis and shall be deemed made in accordance with and pursuant to this Final Order. The DIP Loan Documents are hereby approved on a final basis. The Debtors are

expressly and immediately authorized on a final basis to obtain post-petition financing pursuant to the DIP Loan Documents and this Final Order, and to perform under the DIP Loan Documents and this Final Order, to incur the DIP Obligations (as defined below) in accordance with, and subject to, the terms of this Final Order and the DIP Loan Documents, and to perform under all other instruments, certificates, agreements, and documents which may be required or necessary for the performance by the applicable Debtors under the DIP Loan Documents and the creation and perfection of the DIP Liens described in, and provided for, by this Final Order and the DIP Loan Documents. The Debtors are hereby authorized and directed to do and perform all acts and pay the principal, interest, fees, expenses, and other amounts described in the DIP Loan Documents as such become due pursuant to the DIP Loan Documents and this Final Order, including, without limitation, all closing fees, administrative fees, commitment fees, expenses incurred in connection with field examinations, appraisals, insurance reviews, lien searches and collateral monitoring, and reasonable attorneys' fees, financial consultants' and advisors' fees, and accountants' fees, and disbursements arising under the DIP Loan Documents and this Final Order, which amounts shall not be subject to further approval of this Court and shall be non-refundable. The DIP Loan Documents represent valid and binding obligations of the applicable Debtors enforceable against such Debtors in accordance with their terms. Each of the following officers of the Debtor acting singly was and is hereby authorized to execute and deliver each of the DIP Loan Documents on behalf of the Debtors: George Appling, the chief executive officer, and Raymond F. Kunzmann, the chief financial officer.

3. DIP Obligations. For purposes of this Final Order, the term "*DIP Obligations*" shall mean all amounts and other obligations and liabilities owing by the Debtors under the DIP Credit Agreement and other DIP Loan Documents (including, without limitation, all

“Obligations” as defined in the DIP Credit Agreement) and shall include, without limitation, the principal of, interest on, fees, costs, expenses, and other charges owing in respect of, such amounts (including, without limitation, any reasonable attorneys’, accountants’, financial advisors’, and other fees, costs, and expenses that are chargeable or reimbursable under the DIP Loan Documents and/or this Final Order), and any obligations in respect of indemnity claims, whether contingent or otherwise.

4. Authorization to Incur DIP Obligations. Subject to the terms and conditions of this Final Order, the DIP Loan Documents and the Approved Budget, the Debtors are hereby authorized on a final basis to use Cash Collateral and borrow under the DIP Facility in an aggregate outstanding principal amount for all such borrowings not to exceed \$46 million under the DIP Facility. Subject to the terms of the DIP Loan Documents and this Final Order, the Debtors are entitled to borrow all amounts under the DIP Loan Documents to fund the Debtors’ working capital and other general corporate needs and pay such other amounts required or allowed to be paid pursuant to the DIP Loan Documents.

5. Approved Budget. Attached hereto as Exhibit A is a budget which sets forth projected disbursements and receipts of the Debtors, loan balances and Availability (as such term is defined in the DIP Credit Agreement) on a weekly basis for the 10-week period following the Petition Date (the “*Approved Budget*”).

6. Termination Events. The occurrence of any of the following events, unless waived in writing by the DIP Agent (with the requisite consent of the DIP Lenders), in its (and their) discretion, shall constitute a termination event under this Final Order and the DIP Loan Documents (each, a “*Termination Event*”):

- (a) the Maturity Date (as such term is defined under the DIP Credit

Agreement);

(b) the reversal, vacatur, or modification of this Final Order in any respect without the express prior written consent of the DIP Agent, in its reasonable discretion;

(c) the substantial consummation of a plan of reorganization or liquidation that is confirmed pursuant to an order entered by this Court or any other court having jurisdiction over the Chapter 11 Cases;

(d) the effective date of any sale of all or substantially all, or any material portion of, the Debtors' assets pursuant to a transaction under Bankruptcy Code Section 363;

(e) the failure of any of the following sale process milestones to transpire in the following time and manner:

(i) entry of the Bid Procedures Order in the form filed with this Court and is in substance reasonably satisfactory to the DIP Agent within twenty-four (24) days of the Petition Date;

(ii) the Debtors' receipt of one or more bids that satisfies the criteria set forth in the Bid Procedures Order (each a "*Qualified Bid*") within fifty (50) days of the Petition Date; provided for the avoidance of doubt that the Stalking Horse APA shall constitute a Qualified Bid;

(iii) in the event that more than one Qualified Bid is received, the failure of the Debtor to complete an auction for the proposed Sale within fifty-one (51) days of the Petition Date;

(iv) entry of the Sale Order in form and substance satisfactory to the DIP Agent within fifty-two (52) days of the Petition Date; and

(v) consummation of the Sale within sixty-five (65) days of the Petition Date and Payment in Full at closing of any remaining DIP Obligations and First Lien Credit Obligations by wire transfer from the buyer directly to the DIP Agent.

(f) the dismissal of either of the Chapter 11 Cases or conversion of either of the Chapter 11 Cases to chapter 7 cases, or appointment of a chapter 11 trustee or examiner or other responsible person in either of the Chapter 11 Cases;

(g) the failure by the Debtors to timely perform, in any respect, any of the terms, provisions, conditions, covenants, or other obligations under this Final Order;

(h) the acceleration of the DIP Obligations and/or termination of the Revolving Commitments (as such term is defined in the DIP Credit Agreement) in accordance with Article VII of the DIP Credit Agreement and Paragraph 25 of this Final Order;

(i) the filing of a financing motion by the Debtors seeking any relief;

(j) any action taken as set forth in Paragraph 21 of this Final Order, including, without limitation, (i) the obtaining of credit or the incurring of indebtedness that is secured by a security, mortgage, or collateral interest or other Lien on all or any portion of the DIP Collateral and/or that is entitled to administrative priority status, in each case which is superior to or *pari passu* with the DIP Liens, the DIP Superpriority Claims (as defined below), and the other DIP Protections granted pursuant to this Final Order to the DIP Secured Parties; or (ii) the use of Cash Collateral for any purpose other than as provided for in Paragraph 4 in this Final Order or as otherwise permitted in the DIP Loan Documents;

(k) entry of an order granting relief from the automatic stay for any purpose in respect of any of the DIP Collateral, other than an order granting relief in favor of the DIP Secured Parties or the First Lien Secured Parties;

(l) the grant of a change in venue with respect to the Chapter 11 Cases or any adversary proceeding;

(m) the failure of George Appling to continue to serve as the chief executive officer of the Debtors, or any material reduction in the duties or responsibilities of George Appling in such capacity;

(n) the failure of Richter Consulting, Inc. to continue to serve as financial

consultant to the Debtors or any material reduction in the scope of its engagement as financial consultant to the Debtors, unless an alternative financial consultant acceptable to the DIP Agent shall be retained by the Debtors to replace Richter Consulting, Inc. within five (5) Business Days of the date that either (i) Richter Consulting, Inc. ceases to serve as the Debtor's financial consultant or (ii) the scope of Richter Consulting, Inc.'s engagement is materially reduced; or

(o) the filing of any Challenge to the First Lien Credit Obligations or the First Lien Secured Parties' First Priority Liens.

(p) Any termination as contemplated by Section 4.7 of the Stalking Horse APA (other than as a result of an Approved Alternative Sale Transaction as defined in the DIP Credit Agreement);

(q) Failure of any of the following to be met by no later than the date the hearing for approval of the Bid Procedures is held;

- (i) Purchaser, Credit Suisse and PineBridge shall have reached agreement on all definitive documentation, including without limitation, on the notes and security agreement(s) as contemplated by the Stalking Horse APA;
- (ii) Purchaser's Lender, Credit Suisse and PineBridge shall have reached agreement on any applicable intercreditor agreement, as contemplated in the Stalking Horse APA; or
- (iii) the Second Lien Lenders and the Stalking Horse Bidder to reach final agreement on the definitive terms of an intercreditor agreement establishing the relative priorities of the Second Lien Lenders.

7. **Interest, Fees, Costs and Expenses.** The DIP Obligations shall bear interest at the rates, and be due and payable (and paid), as set forth in, and in accordance with the terms and conditions of, this Final Order and the DIP Loan Documents, in each case without further notice, motion, or application to, order of, or hearing before, this Court. The Debtors shall pay on demand all fees, costs, expenses (including reasonable out-of-pocket legal and other professional

fees and expenses of the DIP Secured Parties) and other charges payable under the terms of the DIP Loan Documents, including, without limitation, the fees described in that certain confidential Amended and Restated Fee Letter Agreement dated as of August 15, 2013, by and between the DIP Agent and PCD (the "*Fee Letter*"). All fees described in the Fee Letter are fully earned, all paid portions of such fees are finally allowed and nonrefundable, all unpaid portions of such fees shall be immediately payable by the Debtors when and as due in accordance with the Fee Letter, and the payment of such fees, costs, and expenses shall not be subject to Challenge pursuant to Paragraph 17 hereof or otherwise.

8. Conditions Precedent. Neither the DIP Secured Parties nor the First Lien Secured Parties have any obligation to extend credit under the DIP Facility or to permit use of any DIP Collateral proceeds, including Cash Collateral, as applicable, unless and until all conditions precedent to the extension of credit and/or use of DIP Collateral or proceeds thereof under the DIP Loan Documents and this Final Order have been satisfied in full or waived by the DIP Agent with the requisite consent of the DIP Lenders and the First Lien Agent with the requisite consent of the First Lien Lenders in accordance with the DIP Loan Documents and this Final Order.

9. DIP Liens. As security for the DIP Obligations, the Debtors hereby grant to the DIP Agent, for its own benefit and the benefit of the other DIP Secured Parties, the DIP Liens (as defined below). Notwithstanding anything to the contrary herein or in the DIP Documents, the DIP Collateral (as defined below) shall include the First Lien Collateral, the First Lien Collateral's proceeds, products, offspring, and profits, and all property of the Debtors acquired from and after the Petition Date to the same extent such property would have been First Lien Collateral or the proceeds, products, offspring or profits of First Lien Collateral if the Chapter 11

Cases had not been commenced, all only to the extent the First Priority Liens were valid, perfected and enforceable as of the Petition Date. The DIP Liens shall include the following security interests and liens, which shall immediately upon any extension of credit under the DIP Credit Agreement and DIP Loan Documents, without any further action by any Person, be valid, binding, permanent, first priority, perfected, continuing, enforceable, and non-avoidable liens and security interests upon the entry of this Final Order, and shall extend to all property of the Debtors, now existing or hereinafter acquired, including, without limitation, all cash and cash equivalents (whether maintained with the DIP Agent or otherwise, and for the avoidance of doubt such property shall include, without limitation, any deposit(s) provided to the Debtors in connection with any proposed sale of property but shall specifically exclude the Professionals Fees Account (as described in paragraph 18)), any and all other amounts the Debtors may claim they are entitled to receive, including without limitation, liquidated damages as provided in Section 13.2 of the Stalking Horse APA, and any investment in such cash or cash equivalents, money, inventory, goods (including goods that are in transit and/or not under the Debtors' control or in its possession), accounts receivable, other rights to payment, intercompany loans and other investments, investment property, contracts, contract rights, properties, plants, equipment, machinery, general intangibles, payment intangibles, accounts, deposit accounts, documents, instruments, chattel paper, documents of title, letters of credit, letter of credit rights, supporting obligations, leases and other interests in leaseholds, real property, fixtures, patents, copyrights, trademarks, trade names, other intellectual property, intellectual property licenses, equity interests in subsidiaries (including, without limitation, all equity interests of the Debtors in PCD, Personal Communications Canada Ltd., PCD Equipamentos de Comunicacao Ltd. (Brazil), Personal Communications Devices S de RI de CV (Mexico) and Personal Communications

Devices Services S de RI de CB (Mexico)), tax and other refunds, insurance proceeds, commercial tort claims, all other Collateral (as defined in the DIP Loan Documents), and all other “property of the estate” (as defined in section 541 of the Bankruptcy Code) of any kind or nature, real or personal, tangible, intangible, or mixed, now existing or hereafter acquired or created, and all rents, products, substitutions, accessions, profits, replacements, and cash and non-cash proceeds of all of the foregoing (in all cases to the extent that the First Lien Secured Parties held First Priority Liens in such assets that were valid, perfected and enforceable as of the Petition Date), subject only to the Carve-Out (as defined below) and those certain valid, perfected and non-avoidable liens in effect as of the date of commencement of the Chapter 11 Cases as provided below (all of the foregoing collateral collectively referred to as the “**DIP Collateral**” and all such liens granted to the DIP Agent for the benefit of the DIP Secured Parties pursuant to this Final Order and the DIP Loan Documents, the “**DIP Liens**”):

(a) pursuant to section 364(c)(2) of the Bankruptcy Code, a perfected, binding, continuing, enforceable, and non-avoidable first priority lien on all DIP Collateral that is not otherwise subject to a lien, *provided, however*, that the DIP Collateral shall not include the Debtors’ claims and causes of action under sections 502(d), 544, 545, 547, 548, 549, 550 and 553 of the Bankruptcy Code and any other avoidance or similar action under the Bankruptcy Code or similar state law and the proceeds thereof (“**Avoidance Actions**”), whether received by judgment, settlement, or otherwise and all DIP Collateral in which the First Lien Secured Parties did not hold First Priority Liens that were valid, perfected and enforceable as of the Petition Date;

(b) pursuant to section 364(d)(1) of the Bankruptcy Code, a perfected first priority, senior priming lien on all DIP Collateral (including, without limitation, Cash Collateral)

that is senior to the Adequate Protection Replacement Liens (as defined below) and senior and priming to (i) the Prepetition Liens, and (ii) any liens that are junior to the Prepetition Liens and the Adequate Protection Replacement Liens, after giving effect to any intercreditor or subordination agreements, (the liens referenced in clauses (i) and (ii), collectively, the “*Primed Liens*”), and to all other liens except those certain valid, perfected and non-avoidable liens in effect as of the date of commencement of the Chapter 11 Cases (the “*Non-Avoidable Liens*”; for the avoidance of doubt, the Non-Avoidable Liens shall not include the First Priority Liens, the Second Priority Liens, and any purported liens asserted by Pantech Wireless, Inc. or Pantech Co., Ltd.); and

(c) pursuant to Bankruptcy Code section 364(c)(3), a perfected junior lien on all property of the Debtors that is subject to Non-Avoidable Liens.

10. DIP Lien Priority. Notwithstanding anything to the contrary contained in this Final Order or the DIP Loan Documents, for the avoidance of doubt, the DIP Liens granted to the DIP Agent for the benefit of the DIP Secured Parties shall in each and every case be senior to any and all other prepetition and postpetition liens of any other person or entity (including, without limitation, the Primed Liens and the Adequate Protection Replacement Liens) other than the Non-Avoidable Liens. The DIP Liens and the DIP Superpriority Claims (as defined below) (a) shall not be subject to any claims, including claims under sections 506, 510, 549, 550, 551, or 553 of the Bankruptcy Code or the “equities of the case” exception of section 552 of the Bankruptcy Code, (b) shall not be subordinate to, or *pari passu* with, (i) any lien that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code or (ii) any intercompany or affiliate liens of the Debtors, and (c) shall be valid and enforceable against any trustee or any other estate representative appointed in the Chapter 11

Cases, any Successor Cases and/or upon the dismissal of either of the Chapter 11 Cases. Without limiting the foregoing, the DIP Obligations shall also be secured by the First Priority Liens, which shall remain in full force and effect and continue from and after the Petition Date to secure both the DIP Obligations and the First Lien Credit Obligations (with the DIP Obligations having priority in accordance with the terms of this Final Order). The definition of “DIP Liens” shall include the First Priority Liens solely to the extent that they secure the DIP Obligations as provided herein.

11. Enforceable Obligations. The DIP Loan Documents shall constitute and evidence the valid and binding DIP Obligations of the Debtors, which DIP Obligations shall be enforceable against the Debtors, their estates and any successors thereto (including, without limitation, any trustee or other estate representative in any Successor Case), and their creditors, in accordance with their terms. No obligation, payment, transfer, or grant of security under the DIP Credit Agreement, the other DIP Loan Documents, or this Final Order 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, or 549 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), counterclaim, cross-claim, defense, or any other challenge under the Bankruptcy Code or any applicable law or regulation by any person or entity.

12. Superpriority Administrative Claim Status. In addition to the DIP Liens granted herein, all of the DIP Obligations shall constitute allowed superpriority administrative claims pursuant to section 364(c)(1) of the Bankruptcy Code, which shall have priority over all

administrative expense claims, adequate protection and other diminution claims (including the Adequate Protection Superpriority Claims (as defined below)), unsecured claims, and all other claims against the Debtors, now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, administrative expenses or other claims of the kinds specified in, or ordered pursuant to, sections 105, 326, 328, 330, 331, 503(a), 503(b), 506(c), 507(a), 507(b), 546, 552(b), 726, 1113, and 1114 or any other provision of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy, or attachment (the “*DIP Superpriority Claims*”). The DIP Superpriority Claims shall, for purposes of section 1129(a)(9)(A) of the Bankruptcy Code, be considered administrative expenses allowed under section 503(b) of the Bankruptcy Code, shall be against each Debtor on a joint and several basis, and shall be payable from and have recourse to all prepetition and postpetition property of the Debtors and all proceeds thereof (but excluding any property of the estate that does not constitute DIP Collateral). Other than as provided in the DIP Credit Agreement and this Final Order, no costs or expenses of administration, including, without limitation, professional fees allowed and payable under sections 328, 330, and 331 of the Bankruptcy Code, or otherwise, that have been or may be incurred in these proceedings, or in any Successor Cases, and no priority claims (other than the Carve-Out) are, or will be, senior to, prior to, or on a parity with the DIP Superpriority Claims or the DIP Obligations, or with any other claims of the DIP Secured Parties arising hereunder.

13. Authorization to Use Cash Collateral and Proceeds of the DIP Facility and Roll-Up Prepetition Debt. Subject to the terms and conditions of this Final Order and the DIP Loan Documents, the DIP Agent may, in its discretion, apply the proceeds of the Cash Collateral or any other amounts received by the DIP Agent in respect of the DIP Obligations or otherwise,

in such order or manner as the DIP Agent may deem appropriate, including, first to the First Lien Credit Obligations until such First Lien Credit Obligations are paid and satisfied in full, and then to the DIP Obligations. The Debtors are authorized to request advances under the DIP Facility from and after the Closing Date, subject to the Approved Budget, to fund the Debtors' working capital and other general corporate needs. Upon disbursement, such advances shall be immediately deemed DIP Obligations and incurred under the DIP Facility in accordance with the terms of this Final Order and the DIP Loan Documents, and the proceeds of such advances shall be available for use by the Debtors in accordance with Section 5.08 of the DIP Credit Agreement including without limitation, pursuant to the Approved Budget, provided that each Debtor shall be prohibited from at any time using proceeds of DIP Collateral (including Cash Collateral) or advances under the DIP Facility, in each case, except in accordance with the terms and conditions of this Final Order and the DIP Loan Documents including, without limitation, Section 5.08 of the DIP Credit Agreement. The order and manner of the application of the Cash Collateral or any other amounts received by the DIP Agent in respect of the DIP Obligations set forth in this Paragraph 13 contemplates and authorizes a gradual "roll-up" of the First Lien Credit Obligations, which the DIP Agent may effect in its discretion. Upon entry of this Final Order, and thereafter, the Debtors shall continue to use the DIP Facility to fund the Debtors' working capital and other general corporate needs in accordance with the Approved Budget and the terms of this Final Order and the DIP Loan Documents. The Cash Collateral includes, among other things, cash held in a deposit account of Debtors maintained with JPMorgan Chase Bank, N.A., (the "*Appling LC Cash Collateral Account*") as collateral for a Letter of Credit in the face amount of \$500,000 issued prior to the Petition Date by JPMorgan Chase Bank, N.A. for the benefit of George Appling (the "*Appling LC*"). In addition to and without limitation of any

other rights of the DIP Agent, the DIP Secured Parties or the First Lien Secured Parties under this Final Order, the automatic stay pursuant to section 362 of the Bankruptcy Code is hereby modified so as to permit the DIP Agent to withdraw from time to time from the Appling LC Cash Collateral Account to remit to JPMorgan Chase Bank, N.A., in its capacity as letter of credit issuer under the First Lien Credit Agreement (the “*First Lien LC Issuer*”) such amounts as necessary to reimburse the First Lien LC Issuer for any draws made by George Appling under the Appling LC, and the First Lien LC Issuer is hereby permitted to receive, retain and apply such amounts as reimbursement for any such draws made under the Appling LC. The DIP Agent and the other DIP Secured Parties may terminate the applicable Debtors’ right to use proceeds of extensions of credit under the DIP Facility, DIP Collateral, Prepetition Collateral, and Cash Collateral without further notice, motion, or application to, order of, or hearing before, the Court, in accordance with Paragraph 25 below, immediately upon notice to such effect by the DIP Agent to the Debtors after the occurrence and during the continuance of any Termination Event. Upon the occurrence and during the continuance of a Termination Event (subject to Paragraph 25 below), the First Lien Agent (on behalf of the First Lien Secured Parties) may terminate the consensual Cash Collateral use arrangement contained herein without further notice, motion, or application to, order of, or hearing before, the Court; provided, however, that the rights of the DIP Secured Parties and the First Lien Secured Parties under this Final Order or otherwise shall not be affected by the occurrence or waiver of any Termination Event. The earliest date upon which the consensual Cash Collateral use arrangement described in this Final Order is terminated pursuant to this Paragraph 13 shall be referred to herein as the “*Cash Collateral Termination Date*”.

14. Adequate Protection for First Lien Secured Parties. In consideration for the

use of the Prepetition Collateral (including Cash Collateral) and the priming of the First Priority Liens, the First Lien Secured Parties shall receive the following adequate protection (collectively referred to as the “***First Lien Secured Parties’ Adequate Protection***”):

(a) First Lien Adequate Protection Replacement Liens. To the extent there is a diminution in value of the interests of the First Lien Secured Parties in the Prepetition Collateral (including Cash Collateral) from and after the Petition Date resulting from the use, sale, or lease by the Debtors of the applicable Prepetition Collateral (including Cash Collateral), the granting of the DIP Superpriority Claims, the granting of the DIP Liens, the subordination of the First Priority Liens thereto, and the imposition or enforcement of the automatic stay of section 362(a) of the Bankruptcy Code, the First Lien Agent, for the benefit of the First Lien Secured Parties, is hereby granted, subject to the terms and conditions set forth below, pursuant to sections 361, 363(e), and 364 of the Bankruptcy Code, replacement liens upon all of the DIP Collateral (such adequate protection replacement liens, the “***First Lien Adequate Protection Replacement Liens***”), which First Lien Adequate Protection Replacement Liens on such DIP Collateral shall be subject and subordinate only to the DIP Liens and Carve-Out (as defined below) and shall be senior in priority to the First Priority Liens, the Second Lien Adequate Protection Replacement Liens (as defined below), and the Second Priority Liens. The First Lien Adequate Protection Replacement Liens and the First Lien Adequate Protection Superpriority Claims (as defined below) (i) shall not be subject to sections 510, 549, 550, or 551 of the Bankruptcy Code or section 506(c) of the Bankruptcy Code or the “equities of the case” exception of section 552 of the Bankruptcy Code, (ii) shall not be subordinate to, or *pari passu* with, (A) any lien that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code or (B) any intercompany or affiliate liens of the

Debtors, and (iii) shall be valid and enforceable against any trustee or any other estate representative appointed in the Chapter 11 Cases or any Successor Cases, and/or upon the dismissal of either of the Chapter 11 Cases.

(b) First Lien Adequate Protection Superpriority Claims. To the extent of diminution in value of the First Lien Collateral, the First Lien Secured Parties are hereby further granted and allowed superpriority administrative claims (such adequate protection superpriority claims, the “*First Lien Adequate Protection Superpriority Claims*”), pursuant to section 507(b) of the Bankruptcy Code, with priority over all administrative expense claims and unsecured claims against the Debtors or their estates, now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, administrative expenses of the kind specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 503(a), 503(b), 506(c), 507(a), 507(b), 546(c), 546(d), 552(b), 726 (to the extent permitted by law), 1113, and 1114 and any other provision of the Bankruptcy Code, junior only to the DIP Superpriority Claims and the Carve-Out (as defined below) to the extent provided herein and in the DIP Loan Documents, and payable from and having recourse to all of the DIP Collateral (but not to any property of the estate that does not constitute DIP Collateral); provided, however, that the First Lien Secured Parties shall not receive or retain any payments, property, or other amounts in respect of the First Lien Adequate Protection Superpriority Claims unless and until all DIP Obligations have been Paid in Full (as defined below). Subject to the relative priorities set forth above, the First Lien Adequate Protection Superpriority Claims against each Debtor shall be against each Debtor on a joint and several basis. For purposes of this Final Order, the terms “*Paid in Full,*” and “*Payment in Full*” shall mean, with respect to any referenced DIP Obligations, First Lien Credit Obligations and/or Second Lien Credit Obligations, (i) the indefeasible payment in full in cash of

such obligations and (ii) the termination of all credit commitments under the DIP Loan Documents, First Lien Loan Documents and/or Second Lien Loan Documents, as applicable.

(c) Interest and Professional Fees. As further adequate protection, and without limiting any rights of the First Lien Agent and the other First Lien Secured Parties under section 506(b) of the Bankruptcy Code which are hereby preserved, and in consideration, and as a requirement, for obtaining the consent of the First Lien Secured Parties to the entry of this Final Order and the Debtors' consensual use of Cash Collateral as provided herein, the Debtors shall (i) pay or reimburse currently the First Lien Agent for any and all of its accrued and past-due fees, costs, expenses, and charges to the extent, and at the times, payable under the First Lien Loan Documents, (ii) on the last day of each calendar month commencing after the Closing Date, pay to the First Lien Agent for prompt distribution to the applicable First Lien Secured Parties any and all of the interest accruing on the First Lien Credit Obligations under the First Lien Credit Agreement at such rate as was in effect immediately preceding the Petition Date and (iii) pay currently all reasonable out-of-pocket fees, costs, and expenses of the First Lien Agent (including, without limitation, the fees, costs, and expenses of counsel, consultants and financial advisors for the First Lien Agent without duplication of any such amounts payable to the DIP Agent), in the case of each of sub-clauses (i), (ii), and (iii) above, all whether accrued prepetition or postpetition and without further notice (except as provided in Paragraph 30 below with respect to postpetition professional fees, costs, and expenses), motion, or application to, order of, or hearing before, this Court.

(d) Consent to Priming and Adequate Protection. The First Lien Agent, on behalf of the First Lien Secured Parties, consents to the First Lien Secured Parties' Adequate Protection and the priming provided for herein; provided, however, that such consent of the First

Lien Agent, on behalf of the First Lien Secured Parties, to the priming of the First Priority Liens, the use of Cash Collateral, and the sufficiency of the First Lien Secured Parties' Adequate Protection provided for herein is expressly conditioned upon the entry of this Final Order, and such consent shall not be deemed to extend to any other Cash Collateral usage or other replacement financing or debtor-in-possession financing other than the DIP Facility provided under the DIP Loan Documents; and provided further that such consent shall be of no force and effect in the event this Final Order is not entered or is entered and subsequently reversed, modified, stayed, or amended (unless such reversal, modification, stay, or amendment is acceptable to the First Lien Agent (with the requisite consent of the First Lien Secured Parties)) or the DIP Loan Documents and DIP Facility as set forth herein are not approved.

(e) Right to Credit Bid. Each of the DIP Agent (on behalf of the DIP Secured Parties) and the First Lien Agent (on behalf of the First Lien Secured Parties) or their respective assignees, designees, or successors, shall have the right to "credit bid" up to the amount of the DIP Obligations and the First Lien Credit Obligations respectively during any sale of all or any portion of the DIP Collateral, including, without limitation, sales occurring pursuant to section 363 of the Bankruptcy Code or included as part of any reorganization plan subject to confirmation under section 1129(b)(2)(A) of the Bankruptcy Code. The DIP Agent (on behalf of the DIP Secured Parties) and the First Lien Agent (on behalf of the First Lien Secured Parties) have the absolute right to assign, transfer, sell, or otherwise dispose of their rights to credit bid.

15. Adequate Protection for Second Lien Secured Parties. In consideration for the use of the Prepetition Collateral (including Cash Collateral) and the priming of the Second Liens, the Second Lien Secured Parties shall receive the following adequate protection (collectively referred to as the "*Second Lien Secured Parties' Adequate Protection*") and, together with the

First Lien Secured Parties' Adequate Protection, the "***Prepetition Secured Parties' Adequate Protection***"):

(a) Second Lien Adequate Protection Replacement Liens. To the extent there is a diminution in value of the interests of the Second Lien Credit Parties in the Second Lien Collateral (including Cash Collateral) from and after the Petition Date resulting from the use, sale, or lease by the Debtors of the Second Lien Collateral (including Cash Collateral), the granting of the DIP Superpriority Claims and the First Lien Adequate Protection Superpriority Claims, the granting of the priming DIP Liens and the granting of the First Lien Adequate Protection Replacement Liens, and the imposition or enforcement of the automatic stay of section 362(a) of the Bankruptcy Code, the Second Lien Agent, for the benefit of the Second Lien Secured Parties, is hereby granted, subject to the terms and conditions set forth below, pursuant to sections 361, 363(e), and 364 of the Bankruptcy Code, replacement liens upon all Second Lien Collateral, the Second Lien Collateral's proceeds, products, offspring and profits, and all property of the Debtors acquired from and after the Petition Date to the same extent such property would have been Second Lien Collateral or the proceeds, products, offspring or profits of Second Lien Collateral if the Chapter 11 Cases had not been commenced, all only to the extent the Second Priority Liens were valid, perfected and enforceable as of the Petition Date (such adequate protection replacement liens, the "***Second Lien Adequate Protection Replacement Liens***" and, together with the First Lien Adequate Protection Replacement Liens, the "***Adequate Protection Replacement Liens***"), which Second Lien Adequate Protection Replacement Liens on such Second Lien Collateral shall be subject and subordinate only to the DIP Liens, the Carve-Out, the First Priority Liens, the First Lien Adequate Protection Replacement Liens and shall be senior in priority to the Second Priority Liens. The Second Lien

Adequate Protection Replacement Liens and the Second Lien Adequate Protection Superpriority Claim (as defined below) (i) shall not be subject to sections 510, 549, 550, or 551 of the Bankruptcy Code or section 506(c) of the Bankruptcy Code or the “equities of the case” exception of section 552 of the Bankruptcy Code, (ii) shall not be subordinate to, or *pari passu* with, (x) any lien that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code or (y) any intercompany or affiliate liens of the Debtors, and (iii) shall be valid and enforceable against any trustee or any other estate representative appointed in the Chapter 11 Cases or any Successor Cases, and/or upon the dismissal of either of the Chapter 11 Cases. For the avoidance of doubt, no Second Lien Adequate Protection Replacement Lien shall encumber any Avoidance Actions, any portion of the Break-Up Fee payable to the Debtors for the benefit of the Debtor’s unsecured creditors pursuant to Amendment No. 3 to the Stalking Horse APA or any subsequent amendment thereto approved by the Court after notice and a hearing and any note or other consideration issued to the Debtors for the benefit of the unsecured creditors pursuant to Amendment No. 3 to the Stalking Horse APA or any subsequent amendment thereto approved by the Court after notice and a hearing (the “***Second Lien Excluded Collateral***”).

(b) Second Lien Adequate Protection Superpriority Claims. To the extent of diminution in value of the Second Lien Collateral, the Second Lien Secured Parties are hereby further granted allowed superpriority administrative claims (such adequate protection superpriority claims, the “***Second Lien Adequate Protection Superpriority Claims***” and, together with the First Lien Adequate Protection Superpriority Claims, the “***Adequate Protection Superpriority Claims***”), pursuant to section 507(b) of the Bankruptcy Code, with priority over all administrative expense claims and unsecured claims against the Debtors or their estates, now

existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, administrative expenses of the kind specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 503(a), 503(b), 506(c), 507(a), 507(b), 546(c), 546(d), 552(b), 726 (to the extent permitted by law), 1113, and 1114 and any other provision of the Bankruptcy Code, junior only to the DIP Superpriority Claim, the Carve-Out (as defined below), the First Lien Adequate Protection Superpriority Claims, and the First Lien Credit Obligations to the extent provided herein, and payable from and having recourse to all of the Second Lien Collateral (but not to any property of the estate that is not subject to a Second Lien Adequate Protection Replacement Lien, including without limitation any Second Lien Excluded Collateral); provided, however, that the Second Lien Secured Parties shall not receive or retain any payments, property, or other amounts in respect of the Second Lien Adequate Protection Superpriority Claims unless and until (i) all DIP Obligations have been Paid in Full, (ii) all credit commitments under the DIP Loan Documents have been Paid in Full, and (iii) the First Lien Credit Obligations have been Paid in Full. Subject to the relative priorities set forth above, the Second Lien Adequate Protection Superpriority Claims against each Debtor shall be against each Debtor on a joint and several basis.

(c) Professional Fees. As further adequate protection, and without limiting any rights of the Second Lien Agent and the other Second Lien Secured Parties under section 506(b) of the Bankruptcy Code which are hereby preserved, and in consideration, and as a requirement, for obtaining the consent of the Second Lien Secured Parties to the entry of this Final Order and the Debtors' consensual use of Cash Collateral as provided herein, the Debtors shall (i) pay or reimburse currently the Second Lien Secured Parties for any and all of their accrued and past-due fees, costs, expenses, and charges to the extent, and at the times, payable

under the Second Lien Loan Documents, and (ii) pay currently all reasonable out-of-pocket fees, costs, and expenses of the Second Lien Second Lien Secured Parties (including, without limitation, the fees, costs, and expenses of counsel, consultants and financial advisors for the Second Lien Secured Parties), in the case of each of sub-clauses (i) and (ii) above, all whether accrued prepetition or postpetition and without further notice (except as provided in Paragraph 30 below with respect to postpetition professional fees, costs, and expenses), motion, or application to, order of, or hearing before, this Court; *provided, however*, that the amounts payable hereunder shall not exceed \$250,000 in the aggregate for all Second Lien Secured Parties and shall be paid in accordance with the terms and provisions of the Second Lien Credit Agreement and any applicable intercreditor agreement between the Second Lien Secured Parties.

(d) Consent to Priming and Adequate Protection. The Second Lien Secured Parties consent to the First Lien Secured Parties' Adequate Protection, the Second Lien Secured Parties Adequate Protection and the priming provided for herein; provided, however, that such consent of the Second Lien Secured Parties to the priming of their Second Liens, the use of Cash Collateral, and the sufficiency of the Second Lien Secured Parties' Adequate Protection provided for herein is expressly conditioned upon the entry of this Final Order, and such consent shall not be deemed to extend to any other Cash Collateral usage or other replacement financing or debtor-in-possession financing other than the DIP Facility provided under the DIP Loan Documents; and provided, further, that such consent shall be of no force and effect in the event this Final Order is not entered or is entered and subsequently reversed, modified, stayed, or amended (unless such reversal, modification, stay, or amendment is acceptable to the Second Lien Agent and Second Lien Lenders) or the DIP Loan Documents and DIP Facility as set forth herein are not approved.

(e) Right to Credit Bid. The Second Lien Agent (on behalf of the Second Lien Secured Parties) or its assignee, designee, or successor, shall have the right to “credit bid” up to the amount of the Second Lien Credit Obligations during any sale of all or any portion of the Prepetition Collateral and DIP Collateral or any deposit in connection with such sale, including, without limitation, sales occurring pursuant to section 363 of the Bankruptcy Code or included as part of any reorganization plan subject to confirmation under section 1129(b)(2)(A) of the Bankruptcy Code; provided, that any such “credit bid” shall provide for Payment in Full of all DIP Obligations and First Lien Credit Obligations at the closing of such transaction.

(f) Section 507(b) Reservation. Under the circumstances and given that the above-described adequate protection is consistent with the Bankruptcy Code, including section 506(b) thereof, the Court finds that the adequate protection provided herein is reasonable and sufficient to protect the interests of the respective Prepetition Secured Parties. Nothing herein shall impair or modify the application of section 507(b) of the Bankruptcy Code in the event that the adequate protection provided herein to the Prepetition Secured Parties is insufficient to compensate for any diminution in value of each of their respective interests in the Prepetition Collateral during the Chapter 11 Cases or any Successor Cases; provided, however, any such additional section 507(b) claims shall be subject to the same relative priority as such respective party’s Adequate Protection Superpriority Claims, as provided in this Final Order.

16. Automatic Postpetition Lien Perfection. This Final Order shall be sufficient and conclusive evidence of the validity, enforceability, perfection, and priority of the DIP Liens and the Adequate Protection Replacement Liens without the necessity of (a) filing or recording any financing statement, deed of trust, mortgage, or other instrument or document which may otherwise be required under the law of any jurisdiction or (b) taking any other action to validate

or perfect the DIP Liens and the Adequate Protection Replacement Liens or to entitle the DIP Liens and the Adequate Protection Replacement Liens to the priorities granted herein. Notwithstanding the foregoing, each of the DIP Agent, the First Lien Agent and the Second Lien Agent (in the case of the First Lien Agent and the Second Lien Agent, solely with respect to the Adequate Protection Replacement Liens) may, each in their sole discretion, enter into and file, as applicable, financing statements, mortgages, security agreements, notices of liens, and other similar documents, and is hereby granted relief from the automatic stay of section 362 of the Bankruptcy Code in order to do so, and all such financing statements, mortgages, security agreements, notices, and other agreements or documents shall be deemed to have been filed or recorded as of the Petition Date. The applicable Debtors shall execute and deliver to the DIP Agent, the First Lien Agent, and/or the Second Lien Agent, as applicable, all such financing statements, mortgages, notices, and other documents as such parties may reasonably request to evidence and confirm the contemplated priority of, the DIP Liens and the Adequate Protection Replacement Liens, as applicable, granted pursuant hereto. Without limiting the foregoing, each of the DIP Agent, the First Lien Agent, and the Second Lien Agent, each in its discretion, may file a photocopy of this Final Order as a financing statement with any recording officer designated to file financing statements or with any registry of deeds or similar office in any jurisdiction in which any Debtor has real or personal property, and in such event, the subject filing or recording officer shall be authorized to file or record such copy of this Final Order. Upon entry of this Final Order, any provision of any lease, loan document, easement, use agreement, proffer, covenant, license, contract, organizational document, or other instrument or agreement that requires the payment of any fees or obligations to any governmental entity or non-governmental entity in order for the Debtors to pledge, grant, mortgage, sell, assign, or

otherwise transfer any fee or leasehold interest or the proceeds thereof or other DIP Collateral, is and shall be deemed to be inconsistent with the provisions of the Bankruptcy Code, and shall have no force or effect with respect to the Liens on such leasehold interests or other applicable DIP Collateral or the proceeds of any assignment and/or sale thereof by any Debtor, in favor of the DIP Secured Parties in accordance with the terms of the DIP Loan Documents and this Final Order or in favor of the Prepetition Secured Parties in accordance with this Final Order. To the extent that the First Lien Agent is the secured party under any security agreement, mortgage, leasehold mortgage, landlord waiver, financing statement, or account control agreements, listed as loss payee under any of the Debtors' insurance policies, or is the secured party under any of the Prepetition Secured Loan Documents, the DIP Agent shall also be deemed to be the secured party under such account control agreements, loss payee under the Debtors' insurance policies, and the secured party under each such Prepetition Secured Loan Document, shall have all rights and powers attendant to that position (including, without limitation, rights of enforcement), and shall act in that capacity and distribute any proceeds recovered or received first, for the benefit of the DIP Secured Parties in accordance with the DIP Loan Documents, second, subsequent to Payment in Full of all DIP Obligations, for the benefit of the First Lien Secured Parties, and third, subsequent to Payment in Full of all First Lien Credit Obligations, for the benefit of the Second Lien Secured Parties. Nothing contained herein authorizes any of the DIP Agent, DIP Secured Parties, First Lien Secured Parties or Second Lien Secured Parties to take any action to perfect any security interest in any property of the estate of the Debtors that does not constitute DIP Collateral or that does constitute Second Lien Excluded Collateral.

17. Reservation of Certain Third Party Rights and Bar of Challenges and Claims.

In accordance with Paragraph 5 of the Financing Guidelines, the Debtors' Stipulations shall be

binding upon the Debtors in all circumstances upon entry of this Final Order. The Debtors' Stipulations shall be binding on all parties in interest, including any committees appointed by the Bankruptcy Court, including without limitation, the official committee of unsecured creditors appointed in the Chapter 11 Cases (the "**Committee**"), unless such Committee or any other party in interest (including any Chapter 11 trustee appointed) other than the Debtors (or if the Chapter 11 Cases are converted to cases under chapter 7 prior to the expiration of the Challenge Period (as defined below), the chapter 7 trustee in such Successor Case) obtains the authority to commence and commences (i) a contested matter, adversary proceeding, or other action or "claim" (as defined in the Bankruptcy Code) challenging or otherwise objecting to the admissions, stipulations, findings, or releases included in the Debtors' Stipulations, or (ii) a contested matter, adversary proceeding, or other action against any or all of the Prepetition Secured Parties in connection with or related to the Prepetition Credit Obligations, or the actions or inactions of any of the Prepetition Secured Parties arising out of or related to the Prepetition Credit Obligations or otherwise, including, without limitation, any claim against any or all of the Prepetition Secured Parties in the nature of a "lender liability" cause of action, setoff, avoidance, counterclaim, or defense to the Prepetition Credit Obligations (including, but not limited to, those under sections 506, 544, 547, 548, 549, 550, and/or 552 of the Bankruptcy Code or by way of suit against any of the Prepetition Secured Parties) ((i) and (ii) collectively, the "**Challenges**" and, each individually, a "**Challenge**"),

- (a) With respect to the First Priority Liens on the First Lien Collateral, within the earlier of (i) the later of (a) sixty (60) days from the date of selection of counsel for the Committee, or (b) with respect to a chapter 7 trustee only and excluding all other parties in interest, upon the conversion of the Chapter 11 Cases to chapter 7, to the extent that any period to investigate the facts and file a complaint or a motion seeking authority to commence litigation as a representative of the estate has not expired, seventy-five (75) days from the date a chapter 7 trustee is appointed or (ii) 5:00 p.m. prevailing Eastern time on the date

that is one business day prior to hearing before the Bankruptcy Court to approve the Sale (the “*First Lien Challenge Period*”); and

(b) With respect to the Second Priority Liens on the Second Priority Collateral, October 24, 2013 (the “*Second Lien Challenge Period*,” and together with the First Lien Challenge Period, the “*Challenge Period*”).

The Challenge Period shall terminate (i) with respect to any party in interest that has failed to properly and timely commence a Challenge during the Challenge Period, and (ii) with respect only to those parties in interest that have properly commenced a Challenge in the Challenge Period upon the date that such Challenge is fully and finally adjudicated (collectively, the “*Challenge Period Termination Date*”). Consistent with paragraph 5(c) of the Financing Guidelines, any Chapter 7 trustee or Chapter 11 trustee appointed on or after the Challenge Period Termination Date shall be forever barred from bringing any Challenges. Upon the Challenge Period Termination Date and for all purposes in these Chapter 11 Cases and any Successor Cases, (A) all payments made to or for the benefit of the Prepetition Secured Parties pursuant to, or otherwise authorized by, this Final Order or otherwise (whether made prior to, on, or after the Petition Date) shall be indefeasible and not be subject to counterclaim, set-off, subordination, recharacterization, defense, or avoidance, (B) any and all Challenges that have not been properly asserted by any party in interest shall be deemed to be forever released, waived, and barred, (C) the First Lien Credit Obligations shall be deemed to be a fully allowed secured claim within the meaning of section 506 of the Bankruptcy Code (which claim and liens shall have been deemed satisfied by the Payment in Full of the First Lien Credit Obligations as provided herein), (D) the Second Lien Credit Obligations shall be deemed to be an allowed secured claim within the meaning of section 506 of the Bankruptcy Code to the extent of the value of the Second Lien Secured Parties’ interests in the Debtors’ estates’ interests in the Second Lien Collateral and Second Lien Adequate Protection Replacement Liens (subject to the

provisions set forth in this Final Order), and (E) the Debtors' Stipulations, including the release provisions therein, shall be binding on all parties in interest, including the Committee. Notwithstanding the foregoing, to the extent any Challenge is timely asserted in any such adversary proceeding or contested matter, the Debtors' Stipulations and the other provisions in clauses (i) through (v) in the immediately preceding sentence shall nonetheless remain binding and preclusive on any party not asserting the Challenge, including, without limitation, the Committee and any other party in interest from and after the Challenge Period Termination Date and said stipulation(s) Challenged shall be limited only to the extent any party in interest shall have properly asserted a Challenge expressly and successfully disputing such stipulations and provisions, and, in that event, any such limitations shall apply only to the individual party in interest to have asserted the respective Challenge. The Challenge Period may only be extended with the written consent of the DIP Agent in its discretion. Notwithstanding any provision to the contrary herein, nothing in this Final Order shall be construed to grant standing on or otherwise authorize any party in interest, including the Committee, to bring any Challenge or other claim on behalf of the Debtors' estates against any of the DIP Secured Parties, the First Lien Secured Parties or the Second Lien Secured Parties, and such parties hereby reserve all rights to challenge and object to such standing or authority. The failure of any party in interest, including the Committee, to obtain an order of this Court granting standing to bring any Challenge on behalf of the Debtors' estates shall not be a defense to failing to commence a Challenge prior to the Challenge Period Termination Date as required under this Paragraph 17.

18. Carve-Out. Subject to the terms and conditions contained in this Paragraph 18, in the event of the occurrence and during the continuance of an Event of Default under the DIP Credit Agreement, each of the DIP Liens, the DIP Superpriority Claims, the Prepetition Liens,

the Adequate Protection Replacement Liens, and the Adequate Protection Superpriority Claims shall be subject and subordinate to the payment of (x) allowed and unpaid professional fees and disbursements of professionals incurred by the Debtors and any statutory committees appointed in the Chapter 11 Cases after the date of such Event of Default (and regardless of when such fees and expenses become allowed by order of the Bankruptcy Court) in an amount of up to \$250,000 and (y) fees pursuant to 28 U.S.C. § 1930 (the payment of the fees described in (x), and yz) shall be referred to herein as the “**Carve-Out**”). In addition to the Carve-Out, it is expressly agreed that allowed and unpaid professional fees and disbursements of professionals incurred by the Debtors and any statutory committees appointed in the Chapter 11 Cases through the date of an Event of Default in accordance with the Approved Budget (and regardless of when such fees and expenses become allowed by order of the Bankruptcy Court), shall be transferred to a segregated account maintained by the DIP Agent for the benefit of such professionals (the “Professionals Fees Account”). For the avoidance of doubt, the funds in the Professional Fees Account shall not constitute DIP Collateral, First Lien Collateral or Second Lien Collateral to the extent such funds pertain to professionals’ fees actually incurred. All amounts transferred to the Professionals Fees Account shall, upon transfer, constitute a borrowing under the DIP Facility. The payment priority granted to the Carve-Out in this Paragraph 18 shall terminate upon the closing of a sale of all or substantially all of the Debtors’ assets or Payment in Full of the DIP Obligations and First Lien Credit Obligations and thereafter payment of the Carve-Out shall be subordinate in all respects to the payment of the DIP Obligations and Prepetition Obligations. Notwithstanding the foregoing, so long as no Event of Default shall have occurred and be continuing, the Debtors shall be permitted to pay compensation and reimbursement of fees and expenses allowed and payable under Bankruptcy Code sections 328, 330 and 331, as the same

may be due and payable, and the same shall not reduce the Carve-Out. No portion of the Carve-Out or proceeds of the DIP Facility may be used for the payment of the fees and expenses of any person incurred in relation to the challenge of any of the liens in favor of the First Lien Secured Parties and/or the DIP Secured Parties, or the initiation or prosecution of any claim or action against any First Lien Secured Party and/or any DIP Secured Party, including any claim under Chapter 5 of the Bankruptcy Code. No more than \$25,000 of the Carve-Out or proceeds of the DIP Facility may be used to investigate the First Priority Liens.

19. Waiver of 506(c) Claims. As a further condition of the DIP Facility and any obligation of the DIP Lenders to make credit extensions pursuant to the DIP Loan Documents, no costs or expenses of administration of the Chapter 11 Cases or any Successor Cases shall be charged against or recovered from or against any or all of the DIP Secured Parties, the DIP Collateral, the Prepetition Secured Parties, the Prepetition Collateral, and/or the Cash Collateral pursuant to section 506(c) of the Bankruptcy Code or otherwise, without the prior written consent of the DIP Agent and the First Lien Agent, or, in the event that the First Lien Credit Obligations shall have been Paid in Full, the DIP Agent and the Second Lien Agent, as the case may be, and no such consent shall be implied from any other action, inaction, or acquiescence of any or all of the DIP Secured Parties or the Prepetition Secured Parties.

20. After-Acquired Property. Except as otherwise provided in this Final Order, pursuant to section 552(a) of the Bankruptcy Code, all property acquired by the Debtors on or after the Petition Date is not, and shall not be, subject to any Lien of any person or entity resulting from any security agreement entered into by the Debtors prior to the Petition Date, except to the extent that such property constitutes proceeds of property of the Debtors that is subject to a valid, enforceable, perfected, and unavoidable Lien as of the Petition Date which is

not subject to subordination under the Bankruptcy Code or other provisions or principles of applicable law.

21. Protection of DIP Secured Parties' Rights.

(a) Unless the requisite DIP Secured Parties under the DIP Loan Documents shall have provided their prior written consent or all DIP Obligations and First Lien Credit Obligations have been Paid in Full, there shall not be entered in these proceedings, or in any Successor Cases, any order which authorizes any of the following: (i) the obtaining of credit or the incurring of indebtedness that is secured by a security, mortgage, or collateral interest or other Lien on all or any portion of the DIP Collateral and/or that is entitled to administrative priority status, in each case which is superior to or *pari passu* with the DIP Liens, the DIP Superpriority Claims, and the other DIP Protections granted pursuant to this Final Order to the DIP Secured Parties; or (ii) the use of Cash Collateral for any purpose other than as provided for in Paragraphs 4 and 13 in this Final Order or as otherwise permitted in the DIP Loan Documents.

(b) The Debtors (and/or their legal and financial advisors in the case of clauses (ii) through (iv) below) will (i) maintain books, records, and accounts to the extent and as required by the DIP Loan Documents, (ii) reasonably cooperate, consult with, and provide to the DIP Agent, the First Lien Agent, the Second Lien Agent and the Second Lien Lenders all such information as reasonably required or allowed under the DIP Loan Documents or the provisions of this Final Order, (iii) permit representatives of the DIP Agent, the First Lien Agent and the Second Lien Lenders such reasonable rights to visit and inspect any of the Debtors' respective properties, to examine and make abstracts or copies from any of their respective books and records, to conduct a collateral audit and analysis of their respective inventory and accounts, to tour the Debtors' business premises and other properties, and to discuss, and provide advice with

respect to, their respective affairs, finances, properties, business operations, and accounts with their respective officers, employees, and independent public accountants as and to the extent required by the DIP Loan Documents, and (iv) permit the DIP Agent, the First Lien Agent and the Second Lien Lenders and their respective representatives to consult with the Debtors' management and advisors on matters concerning the general status of the Debtors' businesses, financial condition, and operations.

22. Proceeds of Subsequent Financing. Without limiting the provisions and protections of Paragraph 21 above, if at any time prior to the Payment in Full of all the DIP Obligations and First Lien Credit Obligations (including subsequent to the confirmation of any Chapter 11 plan or plans with respect to any of the Debtors), the Debtors' estates, any trustee, any examiner with enlarged powers, or any responsible officer subsequently appointed shall obtain credit or incur debt pursuant to sections 364(b), 364(c), 364(d), or any other provision of the Bankruptcy Code in violation of the DIP Loan Documents, then all of the cash proceeds derived from such credit or debt and all Cash Collateral shall immediately be turned over to the DIP Agent to be applied to the DIP Obligations and First Lien Credit Obligations as provided in the first sentence of Paragraph 13 hereof.

23. Cash Collection. From and after the date of the entry of this Final Order, all collections and proceeds of any DIP Collateral or Prepetition Collateral or services provided by any Debtor and all Cash Collateral which shall at any time come into the possession, custody, or control of any Debtor, or to which any Debtor is now or shall become entitled at any time, shall be promptly remitted to the DIP Agent to be applied to the DIP Obligations and First Lien Credit Obligations as provided in the first sentence of Paragraph 13 hereof.

24. Disposition of DIP Collateral. Unless the DIP Obligations and the First Lien

Credit Obligations are Paid in Full, including, without limitation, upon the closing of any such sale or disposition of Debtors assets to the Stalking Horse Bidder, the Debtors shall not sell, transfer, lease, encumber, or otherwise dispose of any portion of the DIP Collateral without the prior written consent of the DIP Agent (and, if applicable, the requisite DIP Lenders under the DIP Loan Documents) and the First Lien Agent (and, if applicable, the requisite First Lien Lenders under the First Lien Loan Documents) (and no such consent shall be implied from any other action, inaction, or acquiescence by any of the DIP Secured Parties or First Lien Secured Parties or any order of this Court), except as permitted in the DIP Loan Documents and/or the First Lien Loan Documents, as applicable, and this Final Order. In addition to and in no way limiting any of the other protections afforded to the DIP Agent and DIP Lenders contained herein, the proceeds of the transaction contemplated by the Stalking Horse APA sufficient to Pay in Full the DIP Obligations and First Lien Credit Obligations shall be paid directly to the DIP Agent by the Stalking Horse Bidder (or alternative purchaser) by wire transfer of immediately available funds at the Closing.

25. Rights and Remedies Upon Termination Event.

(a) Any automatic stay otherwise applicable to the DIP Secured Parties is hereby modified, without requiring prior notice to or authorization of this Court, to the extent necessary to permit the DIP Secured Parties (and the DIP Secured Parties are hereby permitted) to exercise the following remedies immediately upon the occurrence and during the continuance of any Termination Event (as set forth in Paragraph 6 of this Final Order): (i) declare the DIP Obligations and any and all other amounts owed by the Debtors under the DIP Loan Documents to be forthwith due and payable, whereupon such amounts shall be immediately due and payable without presentment, demand, protest, or other formalities of any kind, all of which are hereby

expressly waived by the Debtors; (ii) declare the termination, reduction, or restriction of any further commitment to extend credit to the Debtors, to the extent any such commitment remains; (iii) terminate the DIP Facility and any DIP Loan Document as to any future liability or obligation of the DIP Secured Parties, but without affecting any of the DIP Obligations or the DIP Liens securing the DIP Obligations; and (iv) declare a termination, reduction, or restriction on the ability of the Debtors to use any Cash Collateral (except as permitted in Paragraph 25(b) below), including Cash Collateral derived solely from the proceeds of DIP Collateral (any such declaration to be made to the Debtors, the First Lien Agent, the Second Lien Agent, the CS Term Lenders, the PineBridge Lenders, the respective lead counsel to the Committee, and the United States Trustee shall be referred to herein as a “*Termination Declaration*” and the date upon which any Termination Declaration is made shall be referred to herein as the “*Termination Declaration Date*”).

(b) Ten days following a Termination Declaration Date, the DIP Agent shall have relief from the automatic stay and may (i) foreclose on all or any portion of the DIP Collateral, (ii) occupy the Debtors’ premises to sell or otherwise dispose of the DIP Collateral, or otherwise exercise remedies against the DIP Collateral permitted by applicable nonbankruptcy law, (iii) reduce any claim to judgment, (iv) take any other action permitted by law, and/or (v) take any action permitted to be taken by the DIP Loan Documents during the continuance of any Termination Event. During the ten day period after a Termination Declaration Date, the Debtors, the DIP Agent, the First Lien Agent and the Committee shall be entitled to an emergency hearing before the Court for the sole purpose of contesting whether a Termination Event has occurred. Unless during such period the Court determines that a Termination Event has not occurred and/or is not continuing, the automatic stay, as to the DIP Secured Parties, shall for all purposes

automatically terminate at the end of such ten day period, without further notice or order. During such ten day period, the Debtors may not use Cash Collateral or any amounts under the DIP Credit Facility except to pay payroll and other expenses critical to keep the business of the Debtors operating in accordance with the Approved Budget, but this Section 25 shall not in any way restrict the DIP Agent from continuing to apply the proceeds of the Cash Collateral in accordance with Paragraph 13 of this Final Order.

(c) All proceeds realized in connection with the exercise of the rights and remedies of the DIP Secured Parties or the Prepetition Secured Parties shall be turned over to the DIP Agent to be applied to the DIP Obligations and First Lien Credit Obligations as provided in the first sentence of Paragraph 13 hereof and, following the Payment in Full of the DIP Obligations and the First Lien Credit Obligations, all such proceeds shall be turned over to the Second Lien Agent until the Payment in Full of the Second Lien Credit Obligations, in accordance with the priorities set forth in the Second Lien Loan Documents;

(d) Upon entry of this Final Order, and notwithstanding anything contained herein to the contrary, and without limiting any other rights or remedies of the DIP Secured Parties contained in this Final Order or the DIP Loan Documents, or otherwise available at law or in equity, and subject to the terms of the DIP Loan Documents, upon three (3) Business Days' written notice to the Debtors and any landlord, lienholder, licensor, or other third party owner of any leased or licensed premises or intellectual property, that a Termination Event has occurred and is continuing, the DIP Agent (i) may, unless otherwise provided in any separate agreement by and between the applicable landlord or licensor and the DIP Agent (the terms of which shall be reasonably acceptable to the parties thereto), enter upon any leased or licensed premises of the Debtors for the purpose of exercising any remedy with respect to Collateral located thereon and

(ii) shall be entitled to all of the Debtors' rights and privileges as lessee or licensee under the applicable license and to use any and all trademarks, trade names, copyrights, licenses, patents, or any other similar assets of the Debtors, which are owned by or subject to a Lien of any third party and which are used by Debtors in their businesses, in either the case of subparagraph (i) or (iii) of this Paragraph 25(d) without interference from lienholders or licensors thereunder, subject to such lienholders' or licensors' rights under applicable law; provided, however, that the DIP Agent, on behalf of the DIP Secured Parties, shall pay only rent and additional rent, fees, royalties, or other obligations of the Debtors that first arise after the written notice referenced above from the DIP Agent and that accrue during the period of such occupancy or use by such DIP Agent calculated on a *per diem* basis. Nothing herein shall require the Debtors, the DIP Agent, or the DIP Secured Parties to assume any lease or license under Bankruptcy Code section 365(a) as a precondition to the rights afforded to the DIP Agent and the other DIP Secured Parties in this Paragraph 25(d).

(e) The automatic stay imposed under Bankruptcy Code section 362(a) is hereby modified pursuant to the terms of this Final Order and the DIP Loan Documents as necessary to (i) permit the Debtors to grant the Adequate Protection Replacement Liens and the DIP Liens and to incur all liabilities and obligations to the Prepetition Secured Parties and the DIP Secured Parties under the DIP Loan Documents, the DIP Facility, and this Final Order, (ii) authorize the DIP Secured Parties and the Prepetition Secured Parties to retain and apply payments hereunder, and (iii) to the extent necessary to implement and effectuate the provisions of this Final Order.

26. Restriction on Use of Proceeds. Notwithstanding anything herein to the contrary, no loans and/or proceeds from the DIP Facility, DIP Collateral, Cash Collateral (including any

prepetition retainer held by any professionals for the below-referenced parties) or Prepetition Collateral may be used by (a) the Committee or trustee or other estate representative appointed in the Chapter 11 Cases or any Successor Cases, or any other person, party, or entity to (or to pay any professional fees and disbursements incurred in connection therewith) to investigate or prosecute any litigation in connection with the value of the Prepetition Collateral or the DIP Collateral; and (b) any of the Debtors, the Committee, and any trustee or other estate representative appointed in the Chapter 11 Cases or any Successor Cases, or any other person, party, or entity to (or to pay any professional fees and disbursements incurred in connection therewith): (i) request authorization to obtain postpetition loans or other financial accommodations pursuant to Bankruptcy Code section 364(c) or (d), or otherwise, other than from the DIP Secured Parties; (ii) investigate (except as set forth below), assert, join, commence, support, or prosecute any action for any claim, counter-claim, action, proceeding, application, motion, objection, defense, or other contested matter seeking any order, judgment, determination, or similar relief against, or adverse to the interests of, in any capacity, any or all of the DIP Secured Parties, the Prepetition Secured Parties, and their respective officers, directors, employees, agents, attorneys, affiliates, assigns, or successors, with respect to any transaction, occurrence, omission, action, or other matter (including formal discovery proceedings in anticipation thereof), including, without limitation, (A) any Challenges and any Avoidance Actions or other actions arising under chapter 5 of the Bankruptcy Code; (B) any action with respect to the validity, enforceability, priority, and extent of the DIP Obligations and/or the Prepetition Credit Obligations, or the validity, extent, and priority of the DIP Liens, the Prepetition Liens, or the Adequate Protection Replacement Liens (including, with respect to the First Lien Parties only, the value of the DIP Collateral); (C) any action seeking to invalidate,

set aside, avoid, or subordinate, in whole or in part, the DIP Liens, the other DIP Protections, the Prepetition Liens, the Adequate Protection Replacement Liens, or the other First Lien Parties' Adequate Protection or Second Lien Parties' Adequate Protection; (D) except to contest the occurrence or continuance of any Termination Event as permitted in Paragraph 25, any action seeking, or having the effect of, preventing, hindering, or otherwise delaying any or all of the DIP Secured Parties' (and, after the Payment in Full of the DIP Obligations, the First Lien Secured Parties', and after the Payment in Full of the First Lien Credit Obligations, the Second Lien Secured Parties') assertion, enforcement, or realization on the Cash Collateral or the DIP Collateral in accordance with the DIP Loan Documents or the Prepetition Secured Loan Documents, as applicable, or this Final Order; and/or (E) any action seeking to modify any of the rights, remedies, priorities, privileges, protections, and benefits granted to any or all of the DIP Secured Parties and the First Lien Secured Parties hereunder or under the DIP Loan Documents or the Prepetition Secured Loan Documents, as applicable; (iii) pay any fees or similar amounts to any person (other than the Prepetition Secured Parties) who has proposed or may propose to purchase interests in any of the Debtors without the prior written consent of the DIP Agent; or (iv) use or seek to use Cash Collateral or sell or otherwise dispose of DIP Collateral, unless otherwise permitted hereby, without the consent of the DIP Secured Parties or the First Lien Secured Parties, as applicable. Notwithstanding the foregoing, an amount not to exceed \$25,000 in the aggregate of any DIP Collateral, any Prepetition Collateral, any Cash Collateral or proceeds of the DIP Facility, may be used by the Committee (to the extent such committee is appointed) to investigate (but not prosecute) the extent, validity, and priority of the Prepetition Credit Obligations, the Prepetition Liens, or any other claims against the First Lien Secured Parties, provided that such investigation occurs within the Challenge Period and provided further

that under no circumstances shall such proceeds be used to investigate the extent, validity, and priority of the DIP Obligations or DIP Liens.

27. Proofs of Claim. Upon entry of this Final Order, the Prepetition Secured Parties will not be required to file proofs of claim in either of the Chapter 11 Cases or Successor Cases for any claim allowed herein. The Debtors' Stipulations shall be deemed to constitute a timely filed proof of claim for the Prepetition Secured Parties. Notwithstanding any order entered by the Court in relation to the establishment of a bar date in either of the Chapter 11 Cases or Successor Cases to the contrary, the First Lien Agent for the benefit of itself and the First Lien Secured Lenders, and the Second Lien Agent, for the benefit of itself and the Second Lien Lenders, are hereby authorized and entitled, in their sole discretion, but not required, to file (and amend and/or supplement, as they see fit) a proof of claim and/or aggregate proofs of claim in each of the Chapter 11 Cases or Successor Cases for any claim allowed herein.

28. Preservation of Rights Granted Under the Final Order.

(a) No Non-Consensual Modification or Extension of Final Order. The Debtors irrevocably waive any right to seek any amendment, modification, or extension of this Final Order without the prior written consent of the DIP Agent and the First Lien Agent, and no such consent shall be implied by any other action, inaction, or acquiescence of the DIP Secured Parties or any of the First Lien Secured Lenders. In the event any or all of the provisions of this Final Order are hereafter modified, amended, or vacated by a subsequent order of this Court or any other court, such modification, amendment, or vacatur shall not affect the validity, perfection, priority, allowability, enforceability, or non-avoidability of any advances, payments, or use of cash (regardless of whether such advance, payment or use of cash occurred prior or subsequent to the entry of this Final Order), or lien, claim, or priority authorized or created

hereby. Based on the findings set forth in this Final Order and in accordance with section 364(e) of the Bankruptcy Code, which is applicable to the DIP Facility contemplated by this Final Order, in the event any or all of the provisions of this Final Order are hereafter reversed, modified, vacated, or stayed by a subsequent order of this Court or any other court, the DIP Secured Parties and the Prepetition Secured Parties shall be entitled to the protections provided in section 364(e) of the Bankruptcy Code, and no such reversal, modification, vacatur, or stay shall affect (i) the validity, priority, or enforceability of any DIP Protections and the Prepetition Secured Parties' Adequate Protection granted or incurred prior to the actual receipt of written notice by the DIP Agent, the First Lien Agent, or the Second Lien Agent, as the case may be, of the effective date of such reversal, modification, vacatur, or stay or (ii) the validity or enforceability of any lien or priority authorized or created hereby or pursuant to the DIP Loan Documents with respect to any DIP Obligations and the Prepetition Secured Parties' Adequate Protection. Notwithstanding any such reversal, modification, vacatur, or stay, any use of Cash Collateral or any DIP Obligations or Prepetition Secured Parties' Adequate Protection incurred or granted by the Debtors prior to the actual receipt of written notice by the DIP Agent, the First Lien Agent, or the Second Lien Agent, as applicable, of the effective date of such reversal, modification, vacatur, or stay shall be governed in all respects by the original provisions of this Final Order, and the DIP Secured Parties and the Prepetition Secured Parties shall be entitled to all of the DIP Protections and Prepetition Secured Parties' Adequate Protection, as the case may be, and all other rights, remedies, liens, priorities, privileges, protections, and benefits granted in section 364(e) of the Bankruptcy Code, this Final Order, and pursuant to the DIP Loan Documents with respect to all uses of Cash Collateral and all DIP Obligations and Prepetition Secured Parties' Adequate Protection.

(b) Dismissal. If any order dismissing either of the Chapter 11 Cases under section 1112 of the Bankruptcy Code or otherwise is at any time entered, such order shall provide (in accordance with sections 105 and 349 of the Bankruptcy Code), to the fullest extent permitted by law, that (i) the DIP Protections and the Prepetition Secured Parties' Adequate Protection shall continue in full force and effect and shall maintain their priorities as provided in this Final Order until all DIP Obligations have been Paid in Full, the First Lien Credit Obligations have been Paid in Full and the Second Lien Credit Obligations have been Paid in Full (and that all DIP Protections and the Prepetition Secured Parties' Adequate Protection shall, notwithstanding such dismissal, remain binding on all parties in interest), and (ii) this Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing such DIP Protections and the Prepetition Secured Parties' Adequate Protection.

(c) Survival of Final Order. The provisions of this Final Order and the DIP Loan Documents, any actions taken pursuant hereto or thereto, and all of the DIP Protections, the Prepetition Secured Parties' Adequate Protection, and all other rights, remedies, liens, priorities, privileges, protections, and benefits granted to any or all of the DIP Secured Parties and the Prepetition Secured Parties shall survive, and shall not be modified, impaired, or discharged by, the entry of any order confirming any plan of reorganization in any Case, converting any Case to a case under chapter 7, dismissing either of the Chapter 11 Cases, withdrawing of the reference of either of the Chapter 11 Cases or any Successor Cases or providing for abstention from handling or retaining of jurisdiction of either of the Chapter 11 Cases in this Court, or terminating the joint administration of these Chapter 11 Cases or by any other act or omission. The terms and provisions of this Final Order, including all of the DIP Protections, the Prepetition Secured Parties' Adequate Protection, and all other rights, remedies, liens, priorities, privileges,

protections, and benefits granted to any or all of the DIP Secured Parties and the Prepetition Secured Parties, shall continue in full force and effect notwithstanding the entry of any such order, and such DIP Protections and Prepetition Secured Parties' Adequate Protection shall continue in these proceedings and in any Successor Cases, and shall maintain their respective priorities as provided by this Final Order. Subject to the provisions of this Final Order and the DIP Loan Documents that permit the treatment of the DIP Obligations under the DIP Facility pursuant to the Plan or any other Chapter 11 plan with respect to any of the Debtors, the DIP Obligations shall not be discharged by the entry of an order confirming the Plan or any other such Chapter 11 plan, the Debtors having waived such discharge pursuant to section 1141(d)(4) of the Bankruptcy Code.

29. Insurance Policies. The DIP Secured Parties shall be, and shall be deemed to be, without any further action or notice, additional insureds and loss payees on each insurance policy maintained by the Debtors which in any way relates to the Collateral as if named as such.

30. Other Rights and Remedies.

(a) Expenses. As provided in the DIP Loan Documents, the applicable Debtors will pay all reasonable expenses incurred by the DIP Agent (including, without limitation, the reasonable fees and disbursements of counsel for the DIP Agent and any internal or third-party appraisers, consultants, financial advisors and auditors advising the DIP Agent) in connection with the preparation, execution, delivery, and administration of the DIP Loan Documents, the Interim Order (to the extent not already paid), the Final Order, and any other agreements, instruments, pleadings, or other documents prepared or reviewed in connection with any of the foregoing, whether or not any or all of the transactions contemplated hereby or by the DIP Loan Documents are consummated.

(b) Notice of Professional Fees. Professionals for the DIP Agent, the First Lien Agent, and the Second Lien Secured Parties (collectively, the “*Lender Professionals*”) shall not be required to comply with the United States Trustee fee guidelines or submit invoices to the Court, United States Trustee, the Committee or any other party-in-interest absent further court order. Copies of summary invoices submitted to the Debtors by such Lender Professionals shall also be forwarded by such Lender Professionals to the United States Trustee, counsel for the Committee, and such other parties as the Court may direct. The summary invoices shall be sufficiently detailed to enable a determination as to the reasonableness of such fees and expenses; provided, however, that such summary 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 summary invoices shall not constitute any waiver of the attorney-client privilege or of any benefits of the attorney work product doctrine. If an objection is filed with respect to the reasonableness of the fees and expenses of any of the Lender Professionals by either the Debtors, United States Trustee, and/or the Committee and such objection is not resolved within ten (10) days of the relevant objecting party’s (or parties’) receipt of such invoices, the Debtors, United States Trustee, and/or the Committee, as the case may be, shall file with the Court and serve on such Lender Professionals an objection (the “*Fee Objection*”) limited to the issue of the reasonableness of such fees and expenses. Any hearing on an objection to payment of any fees, costs, and expenses set forth in a professional fee invoice shall be limited to the reasonableness or necessity of the particular items or categories of the fees, costs, and expenses which are the subject of such objection. The Debtors shall timely pay in accordance with the terms and conditions of this Final Order the undisputed fees, costs, and expenses reflected on any invoice

to which a Fee Objection has been timely filed. The Debtors shall indemnify the DIP Secured Parties (and other applicable parties) to the extent set forth in the DIP Loan Documents. All such unpaid fees, costs, expenses, charges, and indemnities of the DIP Agent that have not been disallowed by this Court on the basis of an objection filed by the United States Trustee or the Committee (or any subsequent trustee of the Debtors' estates) in accordance with the terms hereof shall constitute DIP Obligations and shall be secured by the DIP Collateral as specified in this Final Order. Any and all fees, commissions, costs, and expenses paid prior to the Petition Date by any Debtor to the DIP Secured Parties in connection with or with respect to the DIP Facility, the DIP Credit Agreement, or the other DIP Loan Documents are hereby approved in full and non-refundable.

(c) Binding Effect. Subject to Paragraph 17 above, the provisions of this Final Order, including all findings herein, and the DIP Loan Documents shall be binding upon all parties in interest in these Chapter 11 Cases, including, without limitation, the DIP Secured Parties, the Prepetition Secured Parties, the Committee, and the Debtors and their respective successors and assigns (including any chapter 7 or chapter 11 trustee hereinafter appointed or elected for the estate of any of the Debtors, an examiner appointed pursuant to section 1104 of the Bankruptcy Code, or any other fiduciary or responsible person appointed as a legal representative of any of the Debtors or with respect to the property of the estate of any of the Debtors), whether in either of the Chapter 11 Cases, in any Successor Cases, or upon dismissal of any such Chapter 11 Case or Successor Case; provided, however, that the DIP Secured Parties and the Prepetition Secured Parties shall have no obligation to permit the use of Cash Collateral or to extend any financing to any chapter 7 or chapter 11 trustee or other responsible person appointed for the estates of the Debtors in any Chapter 11 Case or Successor Case.

(d) No Waiver. Neither the failure of the Prepetition Secured Parties to seek relief or otherwise to exercise their rights and remedies under this Final Order, the Prepetition Secured Loan Documents, or otherwise (or any delay in seeking or exercising same), nor the failure of the DIP Secured Parties to seek relief or otherwise exercise their respective rights and remedies under this Final Order, the DIP Loan Documents, or otherwise (or any delay in seeking or exercising same), shall constitute a waiver of any of such parties' rights hereunder, thereunder, or otherwise. Nothing contained in this Final Order (including, without limitation, the authorization of the use of any Cash Collateral) shall impair or modify any rights, claims, or defenses available in law or equity to the Prepetition Secured Parties or any of the DIP Secured Parties, including, without limitation, rights of a party to a swap agreement, securities contract, commodity contract, forward contract, or repurchase agreement with a Debtor to assert rights of setoff or other rights with respect thereto as permitted by law (or the right of a Debtor to contest such assertion). Except as prohibited by this Final Order, the entry of this Final Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, or otherwise impair, the ability of the First Lien Secured Parties, the DIP Secured Parties or, to the extent permitted under the Intercreditor Agreement, the Second Lien Secured Parties, under the Bankruptcy Code or under non-bankruptcy law to (i) request conversion of the Chapter 11 Cases to cases under chapter 7, dismissal of the Chapter 11 Cases, or the appointment of a trustee in the Chapter 11 Cases, (ii) propose, subject to the provisions of section 1121 of the Bankruptcy Code and the rights of the Debtors thereunder, any Chapter 11 plan or plans with respect to any of the Debtors, or (iii) except as expressly provided herein, exercise any of the rights, claims, or privileges (whether legal, equitable, or otherwise) of the DIP Secured Parties or the First Lien Secured Parties, respectively. Except to the extent otherwise expressly provided in this Final Order,

neither the commencement of the Chapter 11 Cases nor the entry of this Final Order shall limit or otherwise modify the rights and remedies of the Prepetition Secured Parties with respect to non-Debtor entities or their respective assets, whether such rights and remedies arise under the Prepetition Loan Documents, applicable law, or equity.

(e) No Third Party Rights. Except as explicitly provided for herein, this Final Order does not create any rights for the benefit of any third party, creditor, equity holder, or any direct, indirect, or incidental beneficiary. In determining to make any loan (whether under the DIP Credit Agreement or otherwise) or to permit the use of Cash Collateral or in exercising any rights or remedies as and when permitted pursuant to this Final Order or the DIP Loan Documents, the DIP Secured Parties, the Prepetition Secured Parties shall not (i) be deemed to be in control of the operations of the Debtors or (ii) owe any fiduciary duty to the Debtors, their respective creditors, shareholders, or estates.

(f) No Marshaling. Neither the DIP Secured Parties nor the Prepetition Secured Parties (to the extent permitted under the Prepetition Secured Loan Documents) shall be subject to the equitable doctrine of “marshaling” or any other similar doctrine with respect to any of the DIP Collateral or the First Lien Collateral, as applicable.

(g) Amendments to DIP Loan Documents and Approved Budget. The Debtors are authorized and empowered, without further notice and hearing or approval of this Court, to amend, modify, supplement, or waive, in each case, with the written consent of the DIP Agent (and, if applicable, the consent of the DIP Lenders to the extent provided for in the DIP Loan Documents) (i) any provision of the DIP Loan Documents or (ii) the Approved Budget. No waiver, modification, or amendment of any of the provisions of this Final Order shall be effective unless set forth in writing, signed by or on behalf of all the Debtors and the DIP Agent

(after having obtained the approval of the DIP Lenders) and, except as provided herein, approved by this Court. Notwithstanding the foregoing, no waiver, modification or amendment of any of the provisions of this Final Order, the DIP Loan Documents or the Approved Budget, (x) that would directly and adversely affect the rights or interests of the First Lien Secured Parties, as applicable, shall be effective unless also consented to in writing by the First Lien Agent (on behalf of the First Lien Secured Parties), as applicable and (y) that would directly and adversely affect the rights or interests of the Second Lien Secured Parties, as applicable, shall be effective unless also consented to in writing by the Second Lien Agent (on behalf of the Second Lien Secured Parties) but only to the extent permitted by, and subject to the terms of, any intercreditor or subordination agreement by and among the First Lien Secured Parties and the Second Lien Secured Parties.

(h) Inconsistency. In the event of any inconsistency between the terms and conditions of the DIP Loan Documents and of this Final Order, the provisions of this Final Order shall govern and control. In the event of any inconsistency between the terms and conditions of the Interim Order and of this Final Order, the provisions of this Final Order shall govern and control.

(i) Enforceability. This Final Order shall constitute findings of fact and conclusions of law pursuant to the Bankruptcy Rule 7052 and shall take effect and be fully enforceable *nunc pro tunc* to the Petition Date immediately upon entry hereof. Notwithstanding Bankruptcy Rules 4001(a)(3), 6004(h), 6006(d), 7062 or 9024 or any other Bankruptcy Rule, or Rule 62(a) of the Federal Rules of Civil Procedure, this Final Order shall be immediately effective and enforceable upon its entry, and there shall be no stay of entry or effectiveness of this Final Order.

(j) Reservation of Rights. Nothing in this Final Order shall be deemed to constitute the consent of the DIP Secured Parties and the First Lien Secured Parties, and each of the foregoing expressly reserve the right to object, to entry of any Order of the Bankruptcy Court that provides for the sale of all or substantially all of the assets of the Debtors to any party unless, in connection and concurrently with any such event, the proceeds of such sale are or will be sufficient to Pay in Full the DIP Obligations, the First Lien Credit Obligations and the First Lien Secured Parties' Adequate Protection, and all of the foregoing are Paid in Full on the closing date of such sale. Moreover, nothing contained herein shall limit any rights of the Second Lien Secured Parties as provided for in 11 U.S.C. § 363(f) except as otherwise modified by an applicable intercreditor or other subordination agreement by and among the First Lien Secured Parties and the Second Lien Secured Parties and the rights of the DIP Lenders provided for in the DIP Credit Agreement and this Final Order.

(k) Headings. Paragraph headings used herein are for convenience only and are not to affect the construction of, or to be taken into consideration in, interpreting this Final Order.

(l) General Cooperation From Debtors; Access to Information. Without limiting any of the Debtors' other obligations in this Final Order or the DIP Loan Documents, each Debtor shall, and shall cause its senior officers, directors and financial advisors to, reasonably cooperate with the DIP Agent, the First Lien Agent, the CS Term Lenders, the PineBridge Lenders and the Second Lien Agent in furnishing documents and information as and when reasonably requested by such parties regarding the DIP Collateral or the Debtors' financial affairs, finances, financial condition, business, and operations. Notwithstanding anything to the contrary contained herein, the Debtors do not waive any right to attorney-client, work product, or

similar privilege, and the Debtors shall not be required to provide the DIP Agent, the First Lien Agent, the CS Term Lenders, the PineBridge Lenders or the Second Lien Agent, or their respective financial advisors with any information subject to attorney-client privilege or consisting of attorney work product.


31. DIP Lenders Not Responsible for Payment of Bid Protections.

Notwithstanding anything contained in the Stalking Horse APA or other operative documents, in no event shall the DIP Lenders be responsible for payment of the Breakup Fee or Reimbursement Amount (as such terms are defined in the Stalking Horse APA). Payment of the Breakup Fee and Reimbursement Amount shall be made only after the DIP Obligations and the First Lien Credit Obligations are paid in full.

32. Retention of Jurisdiction. The Bankruptcy Court has and will retain jurisdiction to enforce this Final Order according to its terms.

**Dated: September 13, 2013
Central Islip, New York**





**Alan S. Trust
United States Bankruptcy Judge**