



CLERK, U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS

**ENTERED**

THE DATE OF ENTRY IS ON  
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed October 6, 2016

  
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

In re:

TPP ACQUISITION, INC.,  
d/b/a The Picture People,

Debtor.

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Case No. 16-33437 (HDH)  
(Chapter 11)

**FINAL ORDER PURSUANT TO 11 U.S.C. §§ 105, 361, 362, 363, 364,  
AND 507 AND FED. R. BANKR. P. 2002, 4001 AND 9014 (I)  
AUTHORIZING DEBTOR AND DEBTOR IN POSSESSION TO OBTAIN  
POST-PETITION FINANCING, (II) AUTHORIZING USE OF CASH  
COLLATERAL, (III) GRANTING LIENS AND SUPER-PRIORITY CLAIMS,  
(IV) GRANTING ADEQUATE PROTECTION TO PREPETITION LENDERS,  
(V) MODIFYING THE AUTOMATIC STAY, AND (VI) GRANTING RELATED RELIEF**

Upon the motion (the "*Motion*")<sup>1</sup> of TPP ACQUISITION, INC., debtor and  
debtor-in-possession in the above-captioned case (the "*Debtor*"), pursuant to sections 105, 361, 362, 363,

<sup>1</sup> Capitalized terms used in this Final Order but not defined herein shall have the meanings ascribed to such terms in the DIP Financing Agreements (as defined below).



364, and 507 of Title 11, United States Code, 11 U.S.C. §§ 101 *et seq.* (the “**Bankruptcy Code**”), and in accordance with Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) and Rule 4001-2 of the Local Rules of Bankruptcy Practice and Procedure (the “**Local Rules**”) of the United States Bankruptcy Court for the Northern District of Texas (Dallas Division) (this “**Court**”), in this Chapter 11 Case (the “**Chapter 11 Case**”), for entry of interim and final orders granting the following relief:

**(I) DIP Financing:**

- (A) Authorizing the Debtor to obtain post-petition financing (the “**DIP Facility**”) pursuant to (and in accordance with the terms of) that certain *Senior Secured, Superpriority Debtor-in-Possession Loan and Security Agreement* (as may be amended, modified, or supplemented and in effect from time-to-time, the “**DIP Credit Agreement**”), dated as of September 2, 2016, by and among (x) the Debtor, as borrower, (y) the financial institutions that are or may from time to time become parties thereto (together with their respective successors and assigns, the “**DIP Lenders**”), and (z) Monroe Capital Management Advisors LLC, as administrative agent for the DIP Lenders (in its individual capacity, “**DIP Agent**”), which may be used for the following in accordance with and as limited by the Approved Budget (as defined below) (subject to any variances thereto permitted under the terms and conditions of the DIP Credit Agreement) and subject to Paragraph 48 hereof (where applicable):
- (i) to pay fees, costs, and expenses as provided in the DIP Financing Agreements (as defined below), including amounts incurred in connection with the preparation, negotiation, execution, and delivery of the DIP Credit Agreement and the other DIP Financing Agreements;
  - (ii) for general operating and working capital purposes, for the payment of transaction expenses, for the payment of fees, expenses, and costs incurred in connection with the Chapter 11 Case, and other proper corporate purposes of the Debtor not otherwise prohibited by the terms hereof for working capital, and other lawful corporate purposes of the Debtor;
  - (iii) for making adequate protection payments and other payments as provided in this Final Order;
  - (iv) to fund the Prepetition Indemnity Account (as defined below) for the benefit of the Prepetition Agent and the Prepetition Lenders (each as defined below), in the manner and at such times as is provided hereinbelow;
  - (v) for the payment in full of all outstanding prepetition amounts under the Prepetition Credit Agreement (as defined below) in the manner set forth in Paragraph 5 hereof (the “**Final Roll-Up**”); and

- (vi) upon either (x) a DIP Maturity Event, or (y) after the occurrence of a DIP Order Event of Default (as defined below) as provided in Paragraph 32 below, to fund the Carve Out Account (as defined below).
  - (B) Authorizing the Debtor to enter into the DIP Credit Agreement and all other agreements, documents, notes, certificates, and instruments executed and/or delivered with, to, or in favor of the DIP Agent and/or the DIP Lenders, including, without limitation, security agreements, pledge agreements, notes, guaranties, mortgages, and Uniform Commercial Code (“*UCC*”) financing statements, and all other related agreements, documents, notes, certificates, and instruments to be executed, delivered, and/or ratified by the Debtor in connection therewith or related thereto (collectively, as may be amended, modified, or supplemented and in effect from time to time, the “*DIP Financing Agreements*”);
  - (C) Granting the DIP Agent for the benefit of the DIP Lenders the following Liens (as defined in section 101(37) of the Bankruptcy Code) (the “*DIP Liens*”) and claims:
    - (i) first priority priming, valid, perfected, and enforceable Liens, subject only to the Carve Out (as defined below) and the Permitted Prior Liens (as defined below), as provided in and as contemplated by this Final Order and the DIP Financing Agreements;
    - (ii) a first-priority senior lien on the Debtor’s unencumbered assets, but excluding leasehold interests of the Debtor (“*Leases*”) and actions arising under chapter 5 of the Bankruptcy Code; provided, however, (A) the DIP Liens shall include first-priority senior liens on the proceeds of Leases (the “*Lease Proceeds*”), and (B) the DIP Liens shall include first-priority senior liens on Specified Bankruptcy Recoveries (defined below); and
    - (iii) allowed superpriority administrative claim status in respect of all obligations under the DIP Financing Agreements (collectively, the “*DIP Obligations*”), subject to the Carve Out as provided herein.
- (II) Use of Cash Collateral** – Authorizing the Debtor’s use of “cash collateral” (as such term is defined in section 363 of the Bankruptcy Code (“*Cash Collateral*”)) in which the Prepetition Agent and Prepetition Lenders have an interest;
- (III) Adequate Protection** – Granting certain adequate protection, including, among other things, Adequate Protection Liens and Adequate Protection Superpriority Claims (each as defined below) and certain other adequate protection as described in this Final Order, to Monroe Capital Management Advisors LLC, as administrative agent and as collateral agent (the “*Prepetition Agent*”) under that certain Credit Agreement, dated as of December 17, 2012 (as amended and in effect, the “*Prepetition Credit Agreement*”), by and among the Debtor and the other “Loan Parties” thereunder, the Prepetition Agent, and Monroe Capital Partners Fund LP and Monroe Capital Corporation (collectively, the “*Prepetition Lenders*”), to the extent of any Diminution in the Value (as defined below) of the Prepetition Agent’s and/or Prepetition Lenders’ interest in the Prepetition Collateral (as defined below), having the priority set forth in this Final Order, as adequate protection for the granting of the DIP Liens to the DIP Agent, the use of Cash Collateral, subordination to the Carve Out, and for the imposition of the automatic stay;

- (IV) **Modifying the Automatic Stay** – Modifying the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of the DIP Financing Agreements and this Final Order; and
- (V) **Waiving Any Applicable Stay** – Waiving any applicable stay (including under Bankruptcy Rule 6004) and provision for immediate effectiveness of this Final Order;

and upon the *Declaration Of Stuart Noyes In Support Of First Day Pleadings* (the “**First Day Declaration**”) which was filed contemporaneously with the Motion; and this Court having reviewed the Motion and held a hearing with respect to the Motion on September 7, 2016 (the “**Interim Hearing**”); and the Court having entered its “*Interim Order Pursuant To 11 U.S.C. §§ 105, 361, 362, 363, 364, And 507 And Fed. R. Bankr. P. 2002, 4001 And 9014 (I) Authorizing Debtor And Debtor In Possession To Obtain Post-Petition Financing, (Ii) Authorizing Use Of Cash Collateral, (Iii) Granting Liens And Super-Priority Claims, (Iv) Granting Adequate Protection To Prepetition Lenders, (V) Modifying The Automatic Stay, (Vi) Scheduling A Final Hearing, And (Vii) Granting Related Relief*”, dated September 8, 2016 [D.R. No. 68] (the “**Interim Order**”); and together with this Final Order the “**Financing Orders**”), providing for approval of the Motion on an interim basis; and notice of the final hearing (defined below) on the motion having been given in accordance with Bankruptcy Rules 4001(b), (c), and (d), and 9014 and as provided in the Interim Order; and the final hearing having been held and concluded on September 29, 2016 (the “**Final Hearing**”); and upon the Motion, the First Day Declaration, and the record of the Interim Hearing, the Final Hearing, and all objections, if any, to the entry of this Final Order having been withdrawn, resolved, or overruled by this Court; and after due deliberation and consideration, and for good and sufficient cause appearing therefor:

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

**I. Procedural Findings of Fact**

**A. Petition Date.** On September 2, 2016 (the “**Petition Date**”), the Debtor filed a voluntary petition with this Court for relief under chapter 11 of the Bankruptcy Code. The Debtor continues to operate its business and manage its properties as debtor in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Chapter 11 Case.

**B. Jurisdiction and Venue.** This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157(b) and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a “core” proceeding pursuant to 28 U.S.C. § 157(b).

**C. Statutory Predicates.** The statutory bases for the relief sought herein are sections 105, 361, 362, 363, 364, 503, 506, 507 and 552 of the Bankruptcy Code and Bankruptcy Rules 2002, 4001, and 9014 and the applicable Local Rules.

**D. Committee Formation.** An official committee of unsecured creditors (the “*Committee*”), has been appointed in the Chapter 11 Case.

**E. Notice.** The Final Hearing is being held pursuant to the authorization of Bankruptcy Rule 2002, 4001(b), (c), and (d) and Rule 9014, and the Local Rules. Notice of the Final Hearing and the emergency relief requested in the Motion has been provided by the Debtor to certain parties-in-interest, including, without limitation: (i) the Office of the United States Trustee (“*U.S. Trustee*”); (ii) those creditors holding the twenty (20) largest unsecured claims against the Debtor’s estate; (iii) counsel to the Prepetition Agent and the DIP Agent; and (iv) all other secured creditors of record. Notice has been given in accordance with L.B.R. 9007-1(b), and no other or further notice need be given.

## **II. Debtor’s Acknowledgements and Agreements**

**F.** Without prejudice to the rights of parties-in-interest as set forth in Paragraphs 23-27 below, the Debtor admits, stipulates, acknowledges, and agrees that (collectively, Paragraphs F(1) through F(5) hereof shall be referred to herein as the “*Debtor’s Stipulations*”):

(1) Prepetition Financing Documents. Prior to the commencement of the Chapter 11 Case, the Debtor was a party to (A) the Prepetition Credit Agreement, (B) that certain Guaranty and Collateral Agreement dated as of December 17, 2012 (as amended, restated, modified and supplemented from time to time and in effect), and (C) all other agreements, documents, notes, certificates, and instruments executed and/or delivered with, to, or in favor of Prepetition Agent and/or Prepetition Lenders, including, without limitation, control agreements, mortgages, security agreements, guaranties, and UCC financing statements and all other related agreements, documents, notes, certificates, and instruments executed and/or delivered in connection therewith or related thereto (as amended, modified or supplemented and in effect, collectively, the “*Prepetition Financing Documents*”).

(2) Prepetition Debt Amount. As of the Petition Date, the Debtor is liable to the Prepetition Lenders under the Prepetition Financing Documents, on account of “Revolving Loans” and “Term Loans” in the aggregate amount of not less than \$41,271,837.90, plus interest accrued and accruing at the default rate, costs, expenses, fees (including attorneys’ fees and legal expenses) other charges and other obligations, including, without limitation, on account of cash management, credit card, depository, investment, leasing, hedging and other banking or financial services secured by the Prepetition Financing Documents (collectively the “*Prepetition Debt*”).

(3) Prepetition Collateral. To secure the Prepetition Debt, the Debtor granted continuing security interests and Liens (collectively, the “*Prepetition Liens*”) to the Prepetition Agent and the Prepetition Lenders upon substantially all of its property, including the following, all as defined in the Prepetition Financing Documents (collectively, the “*Prepetition Collateral*”), including, without limitation:

All: (a) all of the personal property now owned or at any time hereafter acquired by any Grantor or in which any Grantor now has or at any time in the future may acquire any right, title or interest, including all of each Grantor’s Accounts, Chattel Paper, Commercial Tort Claims, Deposit Accounts, Documents, Equipment, Fixtures, General Intangibles, Health Care Insurance Receivables, Farm Products, Goods, Instruments, Intellectual Property, Inventory, Investment Property, Leases, Letter-of-Credit Rights, Money, Supporting Obligations and Identified Claims, (b) all books and records pertaining to any of the foregoing, (c) all Proceeds, products, substitutions and Accessions of or to any of the foregoing, and (d) all collateral security and guaranties given by any Person with respect to any of the foregoing.

(4) Prepetition Liens. The Prepetition Liens of the Prepetition Agent and the Prepetition Lenders have priority over all other Liens against the Prepetition Collateral except (x) valid, enforceable, non-avoidable and perfected Liens in existence on the Petition Date that, after giving effect to any intercreditor or subordination agreement, are senior in priority to the Prepetition Liens, and (y) valid, enforceable and non-avoidable Liens in existence on the Petition Date that are perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code and after giving effect to any intercreditor or subordination agreement, are senior in priority to the Prepetition Liens (collectively, the “*Permitted Prior Liens*”).

(a) As of the Petition Date, (i) the Prepetition Liens are valid, binding, enforceable, and perfected first priority Liens against the Prepetition Collateral, subject only to any Permitted Prior Liens, and are not subject to avoidance, recharacterization, or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law, (ii) (a) the Prepetition Debt constitutes legal, valid, and binding obligations of the Debtor, enforceable against the Debtor in accordance with the terms of the Prepetition Financing Documents (other than in respect of the stay of enforcement arising from Section 362 of the Bankruptcy Code), (b) no offsets, defenses, or counterclaims to any of the Prepetition Debt exists, and (c) no portion of the Prepetition Debt is subject to avoidance, recharacterization, or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law, (iii) the Debtor has no valid claims (as such term is defined in section 101(5) of the Bankruptcy Code) or causes of action against the Prepetition Agent or any Prepetition Lender with respect to the Prepetition Financing Documents or otherwise, whether arising at law or at equity, including, without limitation, any recharacterization, subordination, disallowance, avoidance or other claims arising under or pursuant to sections 105, 510, 541 or 542 through 553, inclusive, of the Bankruptcy Code, and (iv) the Prepetition Debt constitutes an allowed secured claim against the Debtor.

(b) On the date that this Final Order is entered, but subject to Paragraphs 23-27 hereof, the Debtor shall be deemed to have waived, discharged, and released the Prepetition Agent and the Prepetition Lenders, together with their respective successors, assigns, subsidiaries, parents, affiliates, agents, attorneys, officers, directors, and employees (collectively, the “*Released Parties*”), of any right the Debtor may have (i) to challenge or object to any of the Prepetition Debt, (ii) to challenge or object to the Prepetition Liens or any other security for the Prepetition Debt, and (iii) to bring or pursue any and all claims, objections, challenges, causes of action, and/or choses in action arising out of, based upon, or related to the Prepetition Financing Documents, or otherwise. Notwithstanding anything herein to the contrary, the Released Parties shall not include any Person that is or was an agent, attorney, officer, director, contractor, or employee of the Debtor or its current or prior owners or stockholders.

(c) Subject to Paragraphs 23-27 hereof, the Debtor does not possess and will not assert any claim, counterclaim, setoff, or defense of any kind, nature, or description against any of the Released Parties, including anything which would in any way affect the validity, enforceability, priority, and non-avoidability of any of the Prepetition Financing Documents or the Prepetition Liens, or any claim of the Prepetition Agent and/or the Prepetition Lenders pursuant to the Prepetition Financing Documents, or otherwise.

(5) Cash Collateral. The Prepetition Agent, for itself and the benefit of the Prepetition Lenders, has a continuing security interest in and Lien on all or substantially all of the Debtor’s Cash Collateral, including all amounts on deposit in the Debtor’s banking, checking, or other deposit accounts and all proceeds of the Prepetition Collateral, to secure the Prepetition Debt.

### **III. Findings Regarding the Post-Petition Financing.**

**G. Need for Post-Petition Financing.** An immediate need exists for the Debtor to obtain funds from the DIP Facility in order to continue operations and to administer and preserve the value of its estate for the benefit of its stakeholders. The ability of the Debtor to finance its operations, to preserve and maintain the value of the Debtor’s assets, and to maximize a return for all creditors requires the availability of working capital from the DIP Facility, the absence of which would immediately and irreparably harm the Debtor, its estate and its stakeholders.

**H. No Credit Available on More Favorable Terms.** As discussed in the First Day Declaration, the Debtor has been unable to obtain any of the following:

- (1) credit for money borrowed on a *pari passu* basis with the Debtor’s existing secured lenders,
- (2) credit for money borrowed that would prime the Debtor’s existing secured obligations to the Prepetition Lenders, or
- (3) a refinancing of the existing secured debt,

in each case, on more favorable terms and conditions than those provided in the DIP Credit Agreement and this Final Order. The Debtor was unable to obtain credit from the DIP Lenders without granting to the DIP Lenders the DIP Protections (as defined below).

**I. Prior Liens.** Nothing herein shall constitute a finding or ruling by this Court that any Permitted Prior Liens or Prepetition Liens are valid, senior, perfected, or unavoidable. Moreover, except as provided in Paragraphs 23-27 below, nothing shall prejudice the following:

(1) the rights of any party-in-interest, including, but not limited to, the Debtor, the DIP Lenders, the Prepetition Agent, the Prepetition Lenders, and the Committee to challenge the validity, priority, perfection, and extent of any such Permitted Prior Liens, or

(2) the rights of the Committee or any other party-in-interest (other than the Debtor) with requisite standing to challenge the validity, priority, perfection, and extent of the Prepetition Liens as set forth in this Final Order.

**J. Adequate Protection for Prepetition Agent and Prepetition Lenders.** As a result of the granting of the DIP Liens and the incurrence of the DIP Obligations, subordination to the Carve Out, the use of Cash Collateral authorized herein, and the imposition of the automatic stay, the Prepetition Agent and Prepetition Lenders are entitled to receive adequate protection pursuant to sections 361, 362, 363, and 364 of the Bankruptcy Code to the extent of any Diminution In Value (as defined in Paragraph 15 below) of their respective interests in the Prepetition Collateral (including Cash Collateral) during this Chapter 11 Case. As adequate protection, the Prepetition Agent and Prepetition Lenders will receive the Adequate Protection (as defined below) described in Paragraph 15 of this Final Order.

**K. Prepetition Agent's and Prepetition Lenders' Consent.** In exchange for the grant of Adequate Protection as provided herein, the Prepetition Agent and Prepetition Lenders have agreed to the Debtor's use of Cash Collateral on the terms set forth in the DIP Credit Agreement and this Final Order, and to the subordination of their Prepetition Liens to the Carve Out, in each case as set forth herein. The Prepetition Agent and the Prepetition Lenders have consented to the priming of the Prepetition Liens by the DIP Liens to the extent set forth herein.

**L. Adequacy of the Approved Budget.** The Prepetition Agent, the DIP Agent, and the Debtor have agreed that the budget, the short form of which is attached hereto as *Exhibit 1* (as the same may



be modified, supplemented, or updated from time to time consistent with the terms of the DIP Credit Agreement, this Final Order, the “*Approved Budget*”<sup>2</sup> is adequate, considering all the available assets, to pay the administrative expenses due and accruing during the Chapter 11 Case.

**M. Conditions Precedent to DIP Lenders’ Extension of Financing.** The DIP Lenders have indicated a willingness to provide financing to the Debtor in accordance with the DIP Credit Agreement and the other DIP Financing Agreements, subject to the following:

(1) the entry of this Final Order, and

(2) findings by this Court that such financing is essential to the Debtor’s estate, that the DIP Lenders are good faith financiers, and that the DIP Agent’s and DIP Lenders’ respective claims, superpriority claims, security interests, and DIP Liens and other protections granted pursuant to this Final Order and the DIP Facility will not be affected by any subsequent reversal, modification, vacation, or amendment of this Final Order or any other order, as provided in section 364(e) of the Bankruptcy Code.

**N. Business Judgment and Good Faith Pursuant to Section 364(e) of the Bankruptcy Code.** The extension of credit under the DIP Facility, the DIP Credit Agreement, and the other DIP Financing Agreements, and the fees paid and to be paid thereunder (i) are fair, reasonable, and the best available under the circumstances, (ii) reflect the Debtor’s exercise of prudent business judgment consistent with its fiduciary duties and (iii) are supported by reasonably equivalent value and consideration. The DIP Facility was negotiated in good faith and at arms’ length between the Debtor and the DIP Agent, and the use of the proceeds to be extended under the DIP Facility will be so extended in good faith, and for valid business purposes and uses, as a consequence of which the DIP Lenders are entitled to the protections and benefits of section 364(e) of the Bankruptcy Code.

**O. Relief Essential; Best Interest.** The relief requested in the Motion (and as provided in this Final Order) is necessary, essential and appropriate for the continued operation of the Debtor’s business, the management and preservation of the Debtor’s assets during the Chapter 11 Case, and to avoid irreparable harm. It is in the best interest of the Debtor’s estate that the Debtor be allowed to establish the DIP Facility

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<sup>2</sup> All backup, schedules, and other detail contained in the Approved Budget is incorporated by reference, including accruals for professional fee estimates.

contemplated by the DIP Credit Agreement and the other DIP Financing Agreements. The Debtor has demonstrated good and sufficient cause for the relief granted herein.

**NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:**

**I.**

**DIP FINANCING**

**A. Approval of Entry into the DIP Financing Agreements**

1. The Motion is granted on a final basis as set forth herein. The Interim Order is hereby ratified and affirmed in all respects. In the event of a conflict between the terms of this Final Order and the Interim Order, this Final Order shall control.

2. The Debtor is expressly and immediately authorized and empowered to execute and deliver the DIP Financing Agreements and to incur and to perform the DIP Obligations in accordance with, and subject to, the terms of this Final Order and the DIP Financing Agreements, and to execute and deliver all instruments, certificates, agreements, and documents which may be required or necessary for the performance by the Debtor under the DIP Facility and the creation and perfection of the DIP Liens described in and provided for by this Final Order and the DIP Financing Agreements. The Debtor is hereby authorized to do and perform all acts, pay the principal, interest, fees, expenses, and other amounts described in the DIP Credit Agreement and all other DIP Financing Agreements as such become due, including, without limitation, the "Closing Fee" (as defined in the DIP Financing Agreements), and, subject to the provisions of Paragraph 48 below, reasonable attorneys', financial advisors', consultants, and accountants' fees and disbursements as provided for in the DIP Credit Agreement, which amounts shall not otherwise be subject to approval of this Court.

**B. Authorization to Borrow**

3. In order to enable it to continue to operate its businesses during the Chapter 11 Case and subject to the terms and conditions of this Final Order, the DIP Credit Agreement, the other DIP Financing Agreements, and the Approved Budget (subject to any variances thereto permitted under the terms and

conditions of the DIP Credit Agreement), the Debtor is hereby authorized under the DIP Facility to incur DIP Obligations in accordance with the terms and conditions of the DIP Financing Agreements.

**C. Application of DIP Facility Proceeds**

4. The advances under the DIP Facility shall be used in each case in a manner consistent with the terms and conditions of the DIP Financing Agreements, and in accordance with and as may be limited by the Approved Budget (subject to any variances thereto permitted under the terms and conditions of the DIP Credit Agreement), solely as follows:

(a) to pay fees, costs, and expenses as provided in the DIP Financing Agreements, including amounts incurred in connection with the preparation, negotiation, execution, and delivery of the DIP Credit Agreement and the other DIP Financing Agreements;

(b) for general operating and working capital purposes, for the payment of transaction expenses, for the payment of fees, expenses, and costs incurred in connection with the Chapter 11 Case, and other proper corporate purposes of the Debtor not otherwise prohibited by the terms hereof for working capital, and other lawful corporate purposes of the Debtor;

(c) for making payments in respect of Adequate Protection and other payments as provided in this Final Order;

(d) to fund the Prepetition Indemnity Account (at such times and in such amount as provided in Paragraph 15 hereof, and subject further to any qualifications and reservations contained therein);

(e) for the payment of the Final Roll-Up; and

(f) to fund the Carve Out Account (as defined below).

**D. Final Roll-Up Authorization**

5. Subject to the rights of parties set forth in Paragraphs 23-27 below, the Debtor shall use the proceeds of the next advance under the DIP Credit Agreement to satisfy all Prepetition Debt in full in accordance with the terms of the Prepetition Credit Agreement (“*Final Roll-Up*”)

6. Notwithstanding any term or provision of the DIP Financing Agreements, the Interim Order, or this Final Order, if the Committee or any other party-in-interest is successful in asserting a Challenge Proceeding (as defined below), nothing in the Interim Order or this Final Order shall prohibit or prejudice the right of the Committee or any party-in-interest to seek to unwind or modify the Interim Roll-Up, the Final Roll-Up, the funding of the Prepetition Indemnity Account, or other relief provided

herein solely as such relief relates to any funds or amounts advanced under the DIP Credit Agreement that was used for the purpose of completing the Interim Roll-Up or the Final Roll-Up.

**E. Conditions Precedent**

7. Neither the DIP Agent nor any DIP Lender(s) shall have any obligation to make any loan or advance under the DIP Credit Agreement during the Chapter 11 Case unless the conditions precedent to make such loan under the DIP Credit Agreement have been satisfied in full or waived in accordance with the DIP Credit Agreement.

**F. The DIP Liens**

8. Pursuant to sections 361, 362, 364(c)(2), 364(c)(3) and 364(d) of the Bankruptcy Code, and subject to the limitations set forth in Paragraph 9 below, effective immediately upon the entry of this Final Order the DIP Agent is hereby granted the DIP Liens (which Liens are subject to the Permitted Prior Liens and the Carve Out) for the ratable benefit of the DIP Lenders, which DIP Liens constitute priming, first priority, continuing, valid, binding, enforceable, non-avoidable, and automatically perfected post-petition security interests and Liens senior and superior in priority to all other secured and unsecured creditors of the Debtor's estate, and except as otherwise expressly provided in this Final Order, upon and to all of the following (collectively, the "*DIP Collateral*"):

- (a) The Collateral, as defined in the DIP Financing Agreements, including:

All: (a) Accounts, (b) Chattel Paper, (c) Commercial Tort Claims (d) Deposit Accounts, (e) Documents, (f) Equipment, (g) Fixtures, (h) General Intangibles (including Payment Intangibles), (i) Goods, (j) Instruments, (k) Inventory, (l) Investment Property, (m) Letter-of-Credit Rights, (n) Software, (o) Supporting Obligations, (p) money, policies and certificates of insurance, deposits, cash, or other property, (q) all books, records, and information relating to any of the foregoing ((a) through (p)) and/or to the operation of any Debtor's business, and all rights of access to such books, records, and information, and all property in which such books, records, and information are stored, recorded and maintained, (r) all A/C Collateral, (s) all insurance proceeds, refunds, and premium rebates, including, without limitation, proceeds of fire and credit insurance (whether any of such proceeds, refunds, and premium rebates arise out of any of the foregoing (a) through (r) or otherwise), (t) all liens, guaranties, rights, remedies, and privileges pertaining to any of the foregoing ((a) through (s)), including the right of stoppage in transit, and (u) any of the foregoing, whether now owned or now due, or in which any Debtor has an interest, or hereafter acquired, arising, or to become due,

or in which any Debtor obtains an interest, and all products, Proceeds, substitutions, and Accessions of or to any of the foregoing.

- (b) The Bankruptcy Recoveries (as defined below), but only (A) with respect to Bankruptcy Recoveries arising under section 549 of the Bankruptcy Code with respect to transfers of DIP Collateral or Prepetition Collateral, the full amount of any such recovery, and (B) with respect to Bankruptcy Recoveries arising under all other sections of chapter 5 of the Bankruptcy Code, the amounts necessary to reimburse the DIP Lenders for the amount of the Carve Out, if any, used to finance the pursuit of such recovery (the foregoing Bankruptcy Recoveries in (A) and (B) being referred to collectively as the “*Specified Bankruptcy Recoveries*”).

As used in this Final Order and notwithstanding anything in this Final Order to the contrary (including but not limited to Paragraph 8(a) of this Final Order), “*Bankruptcy Recoveries*” shall mean any recoveries of the Debtor, by settlement or otherwise, in respect of claims and causes of action to which the Debtor may be entitled to assert by reason of any avoidance or other power vested in or on behalf of the Debtor or the estate of the Debtor under chapter 5 of the Bankruptcy Code, including, but not limited to, any adversary proceeding, cause of action, objection, claim, defense, or other challenge against (i) subject to Paragraphs 23-27 below, the Prepetition Agent, the Prepetition Lenders, the Prepetition Agent’s or Prepetition Lenders’ respective successors, assigns, subsidiaries, parents, affiliates, agents, attorneys, officers, directors, and employees, the Prepetition Liens or the Prepetition Debt, (ii) the Debtor’s officers, directors and other fiduciaries, (iii) and any other third parties.

- (c) Proceeds realized upon the sale, disposition and/or termination of any lease(s), but not the leases themselves, whether or not so perfected prior to the Petition Date.
- (d) Any cash held in any escrow or other account of the Debtor in respect of accrued and/or accruing employee benefit obligations as provided for in the Approved Budget.

For the avoidance of doubt and notwithstanding anything in this Final Order to the contrary (including but not limited to Paragraph 8(a) of this Final Order), the DIP Collateral shall not include, and the DIP Liens shall not extend to and/or encumber the Bankruptcy Recoveries or the proceeds thereof (other than as is expressly provided herein with respect to the Specified Bankruptcy Recoveries), and the DIP Superpriority Claim and the Adequate Protection Superpriority Claim (each as defined and provided for in Paragraph 15 below) shall not be payable out of Bankruptcy Recoveries (other than as is expressly provided herein with respect to the Specified Bankruptcy Recoveries).

#### **G. DIP Lien Priority**

9. The DIP Liens to be created and granted to the DIP Agent and the DIP Lenders, as provided herein, are:

- (a) created pursuant to sections 364(c)(2), 364(c)(3) and 364(d) of the Bankruptcy Code,
- (b) other than as set forth in (c) below, first, valid, prior, perfected, unavoidable, and superior to any security, mortgage, or collateral interest or Lien or claim to the DIP Collateral, and
- (c) subject only to (i) the Carve Out, and (ii) the Permitted Prior Liens.

The DIP Liens shall secure all DIP Obligations and the proceeds of the DIP Collateral shall be applied in the same order and priority set forth in the DIP Credit Agreement, subject to the terms of this Final Order. The DIP Liens shall not be made subject to or *pari passu* with any Lien or security interest by any court order heretofore or hereafter entered in the Chapter 11 Case and shall be valid and enforceable against any trustee appointed in the Chapter 11 Case, upon the conversion of the Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code, or in any other proceedings related to any of the foregoing (each a “*Successor Case*”), and/or upon the dismissal of the Chapter 11 Case. Subject to Paragraph 6 hereof, the DIP Liens shall not be subject to sections 510(c), 549, 550, or 551 of the Bankruptcy Code.

#### **H. Enforceable Obligations**

10. The DIP Financing Agreements shall constitute and evidence the valid and binding obligations of the Debtor, and shall be enforceable against the Debtor, its estate, and any successors thereto, and its creditors in accordance with its terms.

#### **I. Protection of the DIP Lenders and Other Rights**

11. From and after the Petition Date, the Debtor shall use the proceeds of the extensions of credit under the DIP Facility only for the purposes specifically set forth in the DIP Financing Agreements and this Final Order, in compliance with and as limited by the Approved Budget (subject to any variances thereto permitted under the terms and conditions of the DIP Credit Agreement).

#### **J. Superpriority Administrative Claim Status**

12. Subject to the Carve Out, all DIP Obligations shall be an allowed superpriority administrative expense claim (the “*DIP Superpriority Claim*” and, together with the DIP Liens, collectively, the “*DIP Protections*”) with priority in the Chapter 11 Case under sections 364(c)(1), 503(b) and 507(b) of the Bankruptcy Code and otherwise over all administrative expense claims and unsecured

claims against the Debtor and its estate, now existing or hereafter arising, of any kind or nature whatsoever including, without limitation, administrative expenses of the kinds specified in, arising, 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, 1113 and 1114 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; provided, however, that the DIP Protections shall not attach to any Bankruptcy Recoveries or proceeds thereof other than the Specified Bankruptcy Recoveries.

13. Other than the Carve Out, 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 the Chapter 11 Case, or in any Successor Case, and no priority claims are, or will be, senior to, prior to, or on a parity with the DIP Protections or the DIP Obligations or with any other claims of the DIP Lenders arising hereunder.

## II.

### AUTHORIZATION FOR USE OF CASH COLLATERAL; ADEQUATE PROTECTION

14. Pursuant to the terms and conditions of this Final Order, the DIP Credit Agreement, and the other DIP Financing Agreements, and in accordance with and as may be limited by the Approved Budget (subject to any variances thereto permitted under the terms and conditions of the DIP Credit Agreement), the Debtor is authorized to use Cash Collateral and to use the advances under the DIP Facility during the Chapter 11 Case and terminating upon notice being provided by the DIP Agent to the Debtor that a DIP Order Event of Default (as defined below) has occurred and is continuing, in the manner set forth in Paragraphs 37-39 below.

15. As adequate protection for any diminution in the value of the interests of the Prepetition Lenders in the Prepetition Collateral (including Cash Collateral) on account of the granting of the DIP Liens and the incurrence of the DIP Obligations, the subordination to the Carve Out, and the Debtor's use of Cash Collateral, and any other diminution in value arising out of the imposition of the automatic stay or the Debtor's use, sale, depreciation, or disposition of the Prepetition Collateral and Cash Collateral during the

pendency of this Chapter 11 Case, including the disposition of assets as contemplated by the Sale Motion (as defined below), but excluding any payment in respect of the Prepetition Debt, including as a result of the effect of the Interim Roll-Up (as provided for in the Interim Order) and/or the Final Roll-Up provided for herein (collectively, “*Diminution in Value*”), the Prepetition Agent and the Prepetition Lenders shall receive adequate protection as follows (collectively, “*Adequate Protection*”):

(a) **Adequate Protection Liens.** Pursuant to sections 361 and 363(e) of the Bankruptcy Code, and solely to the extent of the Diminution in Value of the interests of the Prepetition Agent and the Prepetition Lenders in the Prepetition Collateral (including Cash Collateral), the Prepetition Agent (for the benefit of the Prepetition Lenders) shall have, subject to the terms and conditions set forth below, valid, perfected, and enforceable additional and replacement security interests and Liens in the DIP Collateral (the “*Adequate Protection Liens*”) which shall be junior only to the Carve Out, the DIP Liens securing the DIP Obligations, and Permitted Prior Liens.

(b) **Adequate Protection Superpriority Claim.** Solely to the extent of the Diminution in Value of the interests of the Prepetition Agent and the Prepetition Lenders in the Prepetition Collateral, the Prepetition Agent and the Prepetition Lenders shall have an allowed superpriority administrative expense claim (the “*Adequate Protection Superpriority Claim*”) which shall have priority (except with respect to (i) the Carve Out and (ii) the DIP Superpriority Claim), in the Chapter 11 Case under sections 503(b) and 507(b) of the Bankruptcy Code and otherwise over all administrative expense claims and unsecured claims against the Debtor and its estate, now existing or hereafter arising, of any kind or nature whatsoever including, without limitation, administrative expenses 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(c), 546(d), 552, 726, 1113 and 1114 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.

Other than the DIP Liens, the DIP Superpriority Claim, and the Carve Out, 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 the Chapter 11 Case, or in any Successor Case, will be senior to, prior to, or on parity with the Adequate Protection Superpriority Claim.

(c) **Adequate Protection Payments.**

(i) On the last business day of each month, the Prepetition Agent shall receive, for the benefit of the Prepetition Lenders, payment of any accrued and unpaid interest at the default rate set forth in the Prepetition Credit Agreement; and

(ii) Subject to the provisions of Paragraph 48 hereof, the Prepetition Agent and the Prepetition Lenders shall be reimbursed, on a current basis, for all reasonable and documented out-of-pocket costs and expenses of the financial advisors and outside attorneys engaged by such parties, solely to the extent permitted under the Prepetition Credit Agreement.

(iii) Anything herein to the contrary notwithstanding, if the claims of the



Prepetition Agent and Prepetition Lenders are determined by this Court to have been undersecured as of the Petition Date, then the Court reserves the ability to reallocate and re-apply any payments authorized pursuant to this subclause to reduce the outstanding principal balance owed under the Prepetition Credit Agreement to the Prepetition Agent and Prepetition Lenders, as their interests may appear, or as otherwise determined by this Court.

(d) **Adequate Protection With Respect to Sales.**

(i) The comprehensive sale process to be implemented under section 363 of the Bankruptcy Code as contemplated by the *Debtor's Expedited Motion, Pursuant To Bankruptcy Code Sections 105(A), 363, And 365, And Bankruptcy Rules 2002, 6004, And 6006, For Entry Of An Order (A) Approving Sale And Bidding Procedures And Bid Protections In Connection With Sale Of Assets Of The Debtor, (B) Authorizing The Sale Of Assets Free And Clear Of All Liens, Claims, Encumbrances, And Other Interests, And (C) Granting Related Relief* (the "***Sale Motion***"), including the timeline and milestones contained therein, shall not be materially modified without the prior written consent of the Prepetition Agent and the DIP Agent, respectively, failing which there shall occur an Event of Default under the DIP Credit Agreement and this Final Order.

(ii) Upon the disposition of DIP Collateral and Prepetition Collateral as contemplated in the Sale Motion (collectively, the "***Sale***"), any such DIP Collateral and Prepetition Collateral shall be sold free and clear of the Prepetition Liens, the Adequate Protection Liens, and the DIP Liens; provided, however, that such Prepetition Liens, Adequate Protection Liens, and DIP Liens shall attach to the proceeds of any such Sale ("***Sale Proceeds***") in the same extent, validity and priority as such Liens attached to the Prepetition Collateral and the DIP Collateral, respectively, which Sale Proceeds shall be promptly paid at closing of any such Sale: first, to reserve the amounts set forth in Paragraph 63 of this Final Order; second, to fund the Carve Out Account (subject to the Carve Out Cap) in accordance with Paragraph 32 hereof; third, to the DIP Agent for application to the DIP Obligations in accordance with the terms of the DIP Credit Agreement; fourth, to fund the Prepetition Indemnity Account; and fifth, to the Debtor; provided, further, that the Committee's right to seek a determination from the Court that the payment of such Sale Proceeds to the DIP Agent (for the benefit of the DIP Lenders) in partial satisfaction of the DIP Obligations should be deferred pending the earlier to occur of (x) the Challenge Period Termination Date, (y) final resolution of any Challenge Proceeding, or (z) entry of a further order of the Court authorizing payment of such Sale Proceeds as provided in this Paragraph 15(d)(ii)(third), shall be and hereby is preserved and reserved.

(iii) The Debtor shall keep the DIP Agent and Prepetition Agent fully informed of the Debtor's efforts to consummate a Sale and any other sales of equity interests and/or assets of the Debtor after the Petition Date, and without limiting the generality of the foregoing, the Debtor shall (A) promptly provide to the DIP Agent and Prepetition Agent copies of all offers for the purchase of any asset(s) and/or equity interests of any of the Debtor and copies of all bids from liquidators, (B) provide, no less frequently than weekly, status updates on the Debtor's efforts to consummate the Sale and/or any other sales, and (C) promptly advise the DIP Agent and Prepetition Agent of any expressions of interest in any or all of the Debtor's assets and/or equity interests; provided, however, that any such information provided by the Debtor shall contemporaneously be delivered to the Committee.

(iv) In connection with any sale process authorized under the Sale Motion, the DIP Agent, DIP Lenders, Prepetition Agent and Prepetition Lenders, respectively, may in their discretion seek to credit bid some or all of its claims for its respective collateral (each a “**Credit Bid**”) pursuant to section 363(k) of the Bankruptcy Code; provided, that notwithstanding anything in Section 2.7(e) of the DIP Credit Agreement to the contrary, any such Credit Bid(s) shall not exceed \$25,000,000 in the aggregate. A Credit Bid may be applied only to reduce the cash consideration with respect to those assets in which the party submitting such Credit Bid holds a security interest. Each of the DIP Agent, DIP Lenders, Prepetition Agent and Prepetition Lenders, respectively, shall be considered a “Qualified Bidder” with respect to its right to acquire all or any of the assets by Credit Bid, subject to the limitations provided for in this Paragraph 15(d)(iv).

(e) **Access to Records; Reporting.** In addition to, and without limiting, whatever rights to access the Prepetition Agent and Prepetition Lenders have under the Prepetition Financing Documents, upon reasonable notice, at reasonable times during normal business hours, the Debtor shall permit representatives, agents, and employees of the Prepetition Agent and Prepetition Lenders (i) to have access to and inspect the Debtor’s properties, (ii) to examine the Debtor’s books and records, (iii) to discuss the Debtor’s affairs, finances, and condition with the Debtor’s officers and financial advisors, and (iv) otherwise to have the full cooperation of the Debtor. In addition, the Debtor shall provide to the Prepetition Agent and Prepetition Lenders all of the financial, collateral, and related reporting required under the DIP Financing Agreements as and when provided to the DIP Agent under the DIP Credit Agreement. All information or requests for information contemplated under this Paragraph 15(e) shall be contemporaneously disclosed and made available to the Committee.

(f) **Prepetition Indemnity Account.** Upon the consummation of a Sale as contemplated in the Sale Motion, provided sufficient proceeds are available pursuant to Paragraph 15(d)(ii) of this Final Order, the Debtor shall establish a segregated account in the control of the Prepetition Agent (the “**Prepetition Indemnity Account**”), into which the sum of \$250,000.00 of Cash Collateral shall be deposited as security for any reimbursement, indemnification, or similar continuing obligations of the Debtor in favor of the Prepetition Agent and Prepetition Lenders under the Prepetition Financing Documents, including without limitation, the provisions of Section 15.17 of the Prepetition Credit Agreement (the “**Prepetition Indemnity Obligations**”).

1) The funds in the Prepetition Indemnity Account shall secure all costs, expenses, and other amounts (including reasonable and documented attorneys’ fees) incurred by the Prepetition Agent and the Prepetition Lenders in connection with or responding to (a) formal or informal inquiries and/or discovery requests, any adversary proceeding, cause of action, objection, claim, defense, or other challenge as contemplated in Paragraphs 23-27 hereof, or (b) any Challenge Proceeding against the Prepetition Agent and/or Prepetition Lenders related to the Prepetition Financing Documents, the Prepetition Liens, or the Prepetition Debt, whether in the Chapter 11 Case or independently in another forum, court, or venue.

2) The Prepetition Indemnity Obligations shall be secured by a first priority lien on the respective Prepetition Indemnity Account and the funds therein and by a Lien on the Prepetition Collateral.

3) Upon compliance with the provisions of Paragraph 48 below, the Prepetition Agent and Prepetition Lenders may apply amounts in the Prepetition Indemnity Account against the Prepetition Indemnity Obligations as and when they arise, without

further notice to or consent from the Debtor, the Committee, or any other parties in interest and without further order of this Court.

4) In addition to the establishment and maintenance of the Prepetition Indemnity Account, until the Challenge Period Termination Date (as defined below) the Prepetition Agent (for itself and on behalf of the Prepetition Lenders), shall retain and maintain the Prepetition Liens as security for any the amount of any Prepetition Indemnity Obligations not capable of being satisfied from application of the funds on deposit in the Prepetition Indemnity Account; provided, that (i) any such indemnification claim(s) shall (i) be subject to the terms of the Prepetition Financing Documents, (ii) the rights of parties in interest with requisite standing to object to any such indemnification claim(s) are hereby reserved in accordance with Paragraphs 23-27 hereof, and (iii) the Court shall reserve jurisdiction to hear and determine any such disputed indemnification claim(s).

16. Nothing herein shall impair or modify the Prepetition Agent's or the Prepetition Lenders' rights under section 507(b) of the Bankruptcy Code in the event that the Adequate Protection provided to the Prepetition Agent and the Prepetition Lenders hereunder is insufficient to compensate for the Diminution in Value of the interest of the Prepetition Agent and Prepetition Lenders in the Prepetition Collateral during the Chapter 11 Case or any Successor Case; provided, however, that (a) nothing herein shall impair the Debtor's or any other party in interest's right to seek to contest any request for additional or different adequate protection, and (b) any section 507(b) claim granted in the Chapter 11 Case to the Prepetition Agent and/or Prepetition Lenders shall be junior in right of payment to all DIP Obligations and subject to the Carve Out.

### III.

#### POST-PETITION LIEN PERFECTION

17. This Final Order shall be sufficient and conclusive evidence of the validity, perfection, and priority of the DIP Liens and the Adequate Protection Liens without the necessity of filing or recording any financing statement, deed of trust, mortgage, security agreement, notice of Lien or other instrument or document which may otherwise be required under the law of any jurisdiction or the taking of any other action (including, for the avoidance of doubt, entering into any deposit account control agreement or securities account control agreement) to validate or perfect the DIP Liens and the Adequate Protection Liens or to entitle the DIP Liens and the Adequate Protection Liens to the priorities granted herein.

18. Notwithstanding the foregoing, the DIP Agent and/or the Prepetition Agent may, in their discretion, file such financing statements, deeds of trust, mortgages, security agreements, notices of Liens, and other similar instruments and documents to evidence, confirm, validate, or perfect, or to ensure the contemplated priority of, the DIP Liens and/or the Adequate Protection Liens granted pursuant hereto, and are hereby granted relief from the automatic stay of section 362 of the Bankruptcy Code in order to do so, and all such financing statements, deeds of trust, mortgages, security agreements, notices of Liens and other similar instruments and documents shall be deemed to have been filed or recorded at the time and on the date of the commencement of the Chapter 11 Case.

19. The Debtor shall execute and deliver to the DIP Agent and the Prepetition Agent, as applicable, all such financing statements, deeds of trust, mortgages, security agreements, notices of Liens and other similar instruments and documents as the DIP Agent and/or the Prepetition Agent may reasonably request to evidence, confirm, validate, or perfect, or to ensure the contemplated priority of, the DIP Liens and/or the Adequate Protection Liens granted pursuant hereto.

20. The DIP Agent and the Prepetition Agent, in their discretion, may file a photocopy of the entered, docketed version of this Final Order as a financing statement with any recording office designated to file financing statements or with any registry of deeds or similar office in any jurisdiction in which any of the Debtor has real or personal property, and in such event, the subject filing or recording office shall be authorized to file or record such copy of this Final Order.

21. The DIP Agent shall, in addition to the rights granted to it under the DIP Financing Agreements, be deemed to have co-equal rights with the Prepetition Agent and succeed to the rights of the Prepetition Agent with respect to all third party notifications in connection with the Prepetition Financing Documents, all prepetition collateral access agreements, and all other agreements with third parties (including any agreement with a customs broker, freight forwarder, or credit card processor) relating to, or waiving claims against, any Prepetition Collateral, including without limitation, each control agreement and collateral access agreement duly executed and delivered by any financial institution and

landlord of the Debtor and including, for the avoidance of doubt, all deposit account control agreements, securities account control agreements, and credit card processing agreements.

22. The automatic stay imposed under section 362(a) of the Bankruptcy Code is hereby modified as necessary to:

(a) permit the Debtor to grant the DIP Liens and the Adequate Protection Liens, and to incur all liabilities and obligations to the DIP Agent and DIP Lenders under the DIP Financing Agreements, the DIP Facility, and this Final Order, and

(b) authorize the DIP Agent, the DIP Lenders, the Prepetition Agent, and the Prepetition Lenders to retain and apply payments hereunder as provided by the DIP Financing Agreements and this Final Order.

#### IV.

#### **RESERVATION OF CERTAIN THIRD-PARTY RIGHTS AND BAR OF CHALLENGES AND CLAIMS**

23. Nothing in this Final Order or the DIP Credit Agreement or the other DIP Financing Agreements shall prejudice whatever rights the Committee or any other party-in-interest (other than the Debtor) with requisite standing may have to bring an adversary proceeding, cause of action, objection, claim, defense, or other challenge against the Prepetition Agent, the Prepetition Lenders, the Prepetition Agent's or Prepetition Lenders' respective successors, assigns, subsidiaries, parents, affiliates, agents, attorneys, officers, directors, and employees, the Prepetition Liens or the Prepetition Debt (collectively, a "*Challenge Proceeding*"), including, but not limited to, any of the following:

(a) an objection to or challenge of the Debtor's Stipulations set forth in Paragraphs F(1) through F(5), including (i) the validity, extent, perfection, or priority of the security interests and Liens of the Prepetition Agent and/or Prepetition Lenders in and to the Prepetition Collateral, or (ii) the validity, allowability, priority, status, or amount of the Prepetition Debt, or

(b) a suit against the Prepetition Agent and/or Prepetition Lenders in connection with or related to the Prepetition Debt or the Prepetition Liens, or the actions or inactions of the Prepetition Agent and/or Prepetition Lenders arising out of or related to the Prepetition Debt or Prepetition Liens;

provided, however, that the Committee or any other party-in-interest with requisite standing must commence a Challenge Proceeding asserting such objection or challenge, including, without limitation, any claim against the Prepetition Agent or Prepetition Lenders in the nature of a setoff, counterclaim, or defense

to the Prepetition Debt or Prepetition Liens (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 the Prepetition Agent or Prepetition Lenders), by no later December 9, 2016 (such period shall be referred to as the “*Challenge Period*”, and the date that is the next calendar day after the termination of the Challenge Period, in the event that no Challenge Proceeding has been commenced during the Challenge Period, shall be referred to as the “*Challenge Period Termination Date*”).

24. The Committee, but no other third party, is hereby determined and deemed to have standing to file, commence, prosecute, and/or pursue a Challenge Proceeding on behalf of the Debtor and its estate. Not less than five (5) business days prior to filing a Challenge Proceeding (or in the case of a third party other than the Committee, a motion seeking standing to file a Challenge Proceeding), a Committee or other third party, as the context makes applicable, shall inform the Prepetition Agent and DIP Lender, in writing, of its intent to file such Challenge Proceeding (such writing shall contain a reasonably detailed statement of the claims proposed to be asserted in such Challenge Proceeding and the legal/other bases supporting such claim(s) (“*Challenge Statement*”). The parties shall thereafter meet and confer for purposes of attempting to resolve any issues/claims asserted in the Challenge Statement. In the event a third party thereafter files a motion seeking standing to commence a Challenge Proceeding in accordance with the terms of this Final Order, any such motion shall, at a minimum, include a copy of any proposed objection or adversary complaint containing a detailed description of the claims and causes of action such party proposes to pursue. The Challenge Period shall be tolled for a period not to exceed thirty (30) days upon the filing of a motion by an interested party seeking standing to commence a Challenge Proceeding in accordance with the terms of this Final Order; provided, that any such tolling shall be applicable solely to the party that files the subject standing motion, and no such tolling shall apply to any other party. The Challenge Period Termination Date may occur as to some, but not all, of the Prepetition Agent or Prepetition Lenders, if a Challenge Proceeding is brought against one or more but not all of the Prepetition Agent and Prepetition Lenders.

25. For the avoidance of doubt, in the event the Chapter 11 Case is converted to a case under Chapter 7, or if a Chapter 11 trustee is appointed prior to expiration of the Challenge Period, then in either such event the Challenge Period shall not expire until sixty (60) days after such trustee's appointment. In the event that the Committee or any other party in interest with requisite standing has commenced a Challenge Proceeding prior to the conversion to Chapter 7 or appointment of a Chapter 11 trustee, the trustee shall be entitled to assume the prosecution of any pending Challenge Proceeding. In either event, until the later of the expiration of the Challenge Period without commencement of a Challenge Proceeding or the entry of a final, non-appealable order or judgment on account of any Challenge Proceeding commenced within the Challenge Period, the trustee shall not be bound by the Debtor's Stipulations in this Order.

26. Upon the Challenge Period Termination Date with respect to one or more or all of the Prepetition Agent and Prepetition Lenders, as the case may be, any and all such challenges, claims and/or objections by any party (including, without limitation, the Committee, any Chapter 11 or Chapter 7 trustee appointed herein or in any Successor Case, and any other party-in-interest) ***shall be deemed to be forever waived and barred*** with respect to the applicable Prepetition Agent and Prepetition Lenders, and the Prepetition Debt as to one or more or all of the Prepetition Agent and Prepetition Lenders, as the case may be, shall be deemed to be an allowed fully secured claim within the meaning of section 506 of the Bankruptcy Code for all purposes in connection with the Chapter 11 Case and the Debtor's Stipulations as to one or more or all of the Prepetition Agent and Prepetition Lenders, as the case may be, shall be binding on all creditors, interest holders, and parties-in-interest, including the Committee.

27. To the extent any such Challenge Proceeding is commenced, the Prepetition Agent and Prepetition Lenders, or any of them, or the DIP Agent and DIP Lenders (following effectuation of the Final Roll-Up), as the case may be, shall be entitled to include reasonable costs and expenses, including, but not limited to, reasonable and documented attorneys' fees and disbursements, incurred in responding to any inquiry, producing documents and/or witnesses in response to formal or informal discovery requests, or otherwise defending the objection or complaint, as part of the Prepetition Debt (or following effectuation of

the Final Roll-Up, the DIP Obligations), to the extent permitted pursuant to the relevant Prepetition Financing Documents. Subject to the reservations contained in Paragraph 15(c)(iii), to the extent any such inquiry or discovery is undertaken or any such objection or complaint is filed (or as part of any agreed upon resolution thereof), the Prepetition Agent and the Prepetition Lenders, or the DIP Agent and DIP Lenders following effectuation of the Final Roll-Up, or any of them, as the case may be, shall be entitled to include such costs and expenses, including, but not limited to, reasonable and documented attorneys' fees and disbursements, incurred in responding to the inquiry or discovery or in defending the objection or complaint, as part of the Prepetition Debt (or following effectuation of the Final Roll-Up, the DIP Obligations) and as part of the Prepetition Indemnity Obligations which shall be reimbursed by the Debtor, including (x) each month as provided for in Paragraph 48 below, (y) out of the Prepetition Indemnity Account, and (z) as part of the Adequate Protection Superpriority Claim, and the Prepetition Indemnity Account shall be maintained until the final resolution of all such objections or claims against the Prepetition Agent and/or the Prepetition Lenders, or the DIP Agent and DIP Lenders (following effectuation of the Final Roll-Up). The Debtor shall remain liable to the Prepetition Agent and Prepetition Lenders, or the DIP Agent and DIP Lenders (following effectuation of the Final Roll-Up), or any of them, as the case may be, for all unpaid Prepetition Indemnity Obligations to the extent that the funds in the Prepetition Indemnity Account are insufficient to satisfy such indemnity obligations in full.

## V.

### **CARVE OUT AND PAYMENT OF PROFESSIONALS.**

28. Subject to the terms and conditions contained in this Paragraph 28, the DIP Liens, DIP Superpriority Claim, the Prepetition Liens, the Adequate Protection Liens and the Adequate Protection Superpriority Claim are all subordinate to the following (collectively, the "*Carve Out*"):

(a) (i) statutory fees and interest payable to the Office of the U.S. Trustee (pursuant to 28 U.S.C. § 1930(a)(6) and 31 U.S.C. § 3717, respectively), as determined by agreement of the U.S. Trustee or by final order of this Court, and (ii) 28 U.S.C. § 156(c) for fees required to be paid to the Clerk of this Court;

(b) all accrued and unpaid fees, disbursements, costs and expenses incurred by professionals retained by the Debtor or a Committee, if any (collectively, the "*Case*");



*Professionals*”), through the date of service by the DIP Agent of a Carve Out Trigger Notice (as defined below), up to and as limited by the aggregate Approved Budget amounts for each Case Professional or category of Case Professional, less the amount of prepetition retainers received by such Case Professionals and not previously applied to fees and expenses. Notwithstanding the designated line item amounts for counsel for the Debtor and the Committee’s Case Professionals contained in the Approved Budget, both the Debtor and the Committee reserve their respective rights to request that the Court reallocate the line item amounts attributable to counsel for the Debtor and the Committee’s Case Professionals. Any such request shall be subject to a written motion filed with the Court and an opportunity to be heard at a hearing held on appropriate notice to interested parties, including, but not limited to, the Debtor, the Committee, the DIP Agent, and any Case Professional adversely affected by any such request. Subject to any applicable limitations set forth in the Approved Budget, the DIP Lenders shall advance funds sufficient to satisfy the allowed professional fees of Case Professionals, subject to any subsequent determination/reallocation as may be directed by the Court, if any; and

(c) all accrued and unpaid fees, disbursements, costs and expenses incurred by the Case Professionals from and after the date of service of a Carve Out Trigger Notice in an aggregate amount not to exceed \$100,000.00 (the “*Carve Out Cap*”), less the amount of prepetition retainers received by such Case Professionals and not applied to the fees, disbursements, costs and expenses set forth in clause (b) above. The Carve Out Cap shall be reduced on a dollar-for-dollar basis by any payments of fees or expenses of the Case Professionals made after delivery of the Carve Out Trigger Notice in respect of fees and expenses incurred after delivery of the Carve Out Trigger Notice.

For the avoidance of doubt, fees, disbursements, costs and expenses incurred by Case Professionals cannot be paid to Case Professionals unless and until allowed by the Court.

For purposes of the foregoing, “*Carve Out Trigger Notice*” shall mean a written notice delivered by the DIP Agent to the Debtor and its counsel, the U.S. Trustee, and counsel to the Committee, which notice may be delivered at any time by the DIP Agent following the occurrence and continuance of any DIP Order Event of Default and shall specify that it is a “Carve Out Trigger Notice.

29. The Carve Out shall exclude, and neither advances under the DIP Facility nor proceeds of the Prepetition Collateral and/or the DIP Collateral shall be used to pay, any fees and expenses incurred in connection with the assertion or joinder in any Challenge Proceeding or any other claim, counterclaim, action, proceeding, application, motion, objection, defenses or other contested matter, the purpose of which is to seek any order, judgment, determination or similar relief:

(A) invalidating, setting aside, avoiding, or subordinating, in whole or in part, (i) the DIP Obligations, (ii) the DIP Agent’s Liens in the DIP Collateral, (iii) the Prepetition Debt, (iv) the Prepetition Agent’ and the Prepetition Lenders’ Liens in the Prepetition Collateral, and/or (v) the Adequate Protection Liens; or

(B) preventing, hindering, or delaying, whether directly or indirectly, the DIP Agent’s, the DIP Lenders’, the Prepetition Agent’s, or the Prepetition Lenders’ assertion or enforcement of

its respective Liens and security interests, or its efforts to realize upon any DIP Collateral, Prepetition Collateral, the Adequate Protection Liens, or the Prepetition Indemnity Account;

provided, however, that such exclusion does not encompass any investigative work conducted by the Case Professionals retained by the Committee, but only up to \$100,000.00 of the Carve Out may be used for such investigative work.

30. Nothing herein, including the inclusion of line items in the Approved Budget for Case Professionals, shall be construed as consent to the allowance of any particular professional fees or expenses of the Debtor, of the Committee, or of any other person or shall affect the right of the DIP Agent, the DIP Lenders, the Prepetition Agent, or the Prepetition Lenders to object to the allowance and payment of such fees and expenses.

## VI.

### **MATURITY; DIP ORDER EVENTS OF DEFAULT; REMEDIES**

#### **A. Maturity**

31. All DIP Obligations shall be due and payable on the date that is the earliest to occur of any of the following (each, a “*DIP Maturity Event*”):

- (a) December 31, 2016;
- (b) the closing of a sale of all or substantially all of the assets of the Debtor pursuant to the provisions of section 363 of the Bankruptcy Code; or
- (c) the effective date of any chapter 11 plan of reorganization/liquidation for the Debtor (a “*Plan*”).

32. Following a DIP Maturity Event, and unless the DIP Facility has been extended, the Debtor shall be required to transfer to a segregated account subject to the control of an escrow agent reasonably acceptable to the Debtor, the DIP Agent and the Prepetition Agent, respectively (the “*Carve Out Account*”), an amount of Cash Collateral equal (i) to the Carve Out Cap, plus (ii) the then accrued and unpaid fees and expenses of the Case Professionals through the date on which a DIP Maturity Event first occurs, to the extent in compliance with the Approved Budget (after giving effect to all carryforwards and carrybacks from prior favorable budget variances for each Case Professional), which Carve Out Account

shall be available only to satisfy obligations benefitting from the Carve Out. All funds on deposit in the Carve Out Account, however funded and from whatever source derived, shall at all times continue to constitute Cash Collateral, subject to the prior payment of all amounts covered by the Carve Out. Once the Carve Out Account has been funded, either by the Debtor as provided in this Paragraph 32 or by the DIP Agent as provided in Paragraph 40 below, none of the Prepetition Agent, the Prepetition Lenders, the DIP Agent, nor the DIP Lenders shall have any further liability for nor responsibility with respect to the Carve Out, including any application or disbursement of funds in the Carve Out Account. In addition to the foregoing, and provided that no DIP Order Event of Default has theretofore occurred that has not otherwise been waived and/or cured, the DIP Lenders shall make available post-petition funding in an amount equal to (i) the “Wind-down Fees” set forth in the Approved Budget and (ii) to the extent not already funded by any other post-petition funding under the DIP Credit Agreement, any unpaid balance of post-petition administrative claims arising out of the conduct of the Debtor’s business that accrued and remain unpaid as of such date (the “*Accrued Administrative Claims*”); provided, that the forgoing in subparagraph (ii) shall: (a) specifically exclude all liabilities for professional fees, costs and expenses that have been incurred or that are incurred or owed by the Debtor in connection with the administration of the Chapter 11 Case (including all fees and expenses of professionals engaged by the Debtor and/or the Committee (except to the extent otherwise provided for in the Carve Out)), and (b) be subject to any limitations applicable under, to or in the Approved Budget, whether by line item or category (including for these purposes budgeted amounts in respect of the so-called wind-down budget; and provided, further, that in the event any amount is funded by the DIP Lenders in respect of any claim that would constitute an “assumed liability” or similar concept, or otherwise is paid in connection with a sale of the Debtor’s assets as provided under the Sale Motion, such assumed and/or otherwise paid amount shall not be included in the universe of Accrued Administrative Claims, and shall not be double-counted or double-funded for purposes hereof.

33. In the event that (A) all Prepetition Debt and DIP Obligations have been paid in full in cash, (B) the DIP Commitments have irrevocably terminated, and/or (C) the Challenge Period has not concluded and/or a Challenge Proceeding has been commenced and has not theretofore been fully and

finally resolved, the Debtor, the Committee, the DIP Agent and the Prepetition Agent shall consult with each other as to the terms and conditions of continued consensual use of Cash Collateral in light of the then present circumstances of this Chapter 11 Case. If the Debtor, the Committee, DIP Agent and the Prepetition Agent are not able to agree on such terms and conditions, each of the DIP Agent and the Prepetition Agent shall be entitled to declare that the Debtor's rights to use Cash Collateral on the terms provided in this Final Order are terminated (a "*Cash Collateral Termination Event*"), with such termination to take effect immediately upon delivery of notice (a "*Cash Collateral Termination Notice*") by the DIP Agent and/or Prepetition Agent, as applicable, to the Debtor and its counsel, the U.S. Trustee, and counsel to the Committee.

34. Following the delivery of the Cash Collateral Termination Notice, the Debtor shall be entitled to an emergency hearing before this Court, with any such hearing to be held on not less than three (3) business days' notice to the Committee, the Prepetition Agent, and the DIP Agent, including for the purposes of determining whether the use of Cash Collateral by the Debtor should be granted and on what terms and conditions, even if on a non-consensual basis. In the event that the Debtor either accepts the termination of use of Cash Collateral (by written correspondence to the DIP Agent and/or Prepetition Agent, as applicable), or the Court determines that the Debtor is not permitted to use Cash Collateral, the delivery of the Cash Collateral Termination Notice shall automatically constitute delivery of a Carve Out Trigger Notice as set forth in Paragraph 28 hereof. Unless and until the Court enters an order authorizing the use of Cash Collateral, the Debtor may not use Cash Collateral without the prior written consent of the DIP Agent and Prepetition Agent; provided, however, that the Debtor may use Cash Collateral solely to (a) meet payroll (other than severance) during the one-week period following the delivery of a Cash Collateral Termination Notice and (b) pay actually incurred and/or accrued and unpaid expenditures through the date of delivery of a Cash Collateral Termination Notice, in each case subject to the limitations set forth in the Approved Budget (including any permitted variances therefrom, and subject further in the case of Case Professionals, to any limitations provided for in Paragraph 28 above).

35. Unless and until the Prepetition Debt and the DIP Obligations have been irrevocably repaid in full in cash (or other arrangements for payment of (i) the Prepetition Debt satisfactory to the Prepetition Agent and (ii) the DIP Obligations satisfactory to the DIP Agent, in each case in their sole and exclusive discretion have been made) and all DIP Commitments have been irrevocably terminated, the protections afforded to the Prepetition Agent, the Prepetition Lenders, the DIP Agent, and the DIP Lenders pursuant to this Final Order and under the DIP Financing Agreements, and any actions taken pursuant thereto, shall survive the entry of any order confirming any Plan or converting the Chapter 11 Case into a Successor Case, and the DIP Liens, the DIP Superpriority Claim, the Adequate Protection Liens, and the Adequate Protection Superpriority Claims shall continue in the Chapter 11 Case and in any Successor Case, and such DIP Liens, DIP Superpriority Claim, Adequate Protection Liens, and Adequate Protection Superpriority Claims shall maintain their respective priorities as provided by this Final Order.

**B. DIP Order Events of Default**

36. All DIP Obligations shall be immediately due and payable and all authority to use the proceeds of the DIP Facility and to use Cash Collateral shall cease on the date that is the earliest to occur of any of the following (each, a “*DIP Order Event of Default*”):

(a) the occurrence of an Event of Default (as defined in the DIP Credit Agreement) in accordance with the DIP Credit Agreement; or

(b) the failure of the Debtor to obtain entry of the Final Order on or before October 7, 2016;

**C. Rights and Remedies Upon DIP Order Event of Default**

37. Any automatic stay otherwise applicable to the DIP Agent and the DIP Lenders is hereby modified so that after the occurrence of any DIP Order Event of Default, upon five (5) days prior written notice (a “*Remedies Notice*”) of such occurrence (the “*Remedies Notice Period*”), in each case given to each of (v) the Debtor, (w) counsel to the Debtor, (x) counsel to the Prepetition Agent, (y) counsel for the Committee, and (z) the U.S. Trustee, the DIP Agent and the DIP Lenders shall be entitled to exercise their rights and remedies in accordance with the DIP Financing Agreements.

38. Upon the service of a Remedies Notice after the occurrence of a DIP Order Event of Default, and subject to the proviso (a) and (b) in Paragraph 34 above:

(a) the Debtor shall continue to deliver and cause the delivery of the proceeds of the Prepetition Collateral to the Prepetition Agent and the DIP Collateral to the DIP Agent as provided in this Final Order and in the DIP Financing Agreements;

(b) the Prepetition Agent and the DIP Agent shall continue to apply such proceeds in accordance with the provisions of this Final Order and the DIP Financing Agreements and the Prepetition Financing Documents, as applicable;

(c) the Debtor shall have no right to use any of such proceeds, nor any other Cash Collateral, other than towards the satisfaction of the Prepetition Debt, the DIP Obligations, and the Carve Out, as provided in the DIP Credit Agreement and this Final Order; provided that, the Debtor shall be permitted to use Cash Collateral to pay its employees ordinary wages accrued up to the date of service of the Remedies Notice; and

(d) any obligation otherwise imposed on the DIP Lenders to provide any loan or advance to the Debtor pursuant to the DIP Facility shall be suspended, and any loan or advance made thereafter shall be made by the DIP Lenders in their sole and exclusive discretion.

39. Following the giving of a Remedies Notice by the DIP Agent, the Debtor and the Committee shall be entitled to an emergency hearing before this Court, with any such hearing to be held on not less than three (3) business days' notice to the Debtor, the Committee, the Prepetition Agent and the DIP Agent. If (x) the Debtor or any such Committee do not contest the occurrence of a DIP Order Event of Default and/or the right of the DIP Agent and the DIP Lenders to exercise their remedies, or (y) the Debtor or any such Committee do timely contest the occurrence of a DIP Order Event of Default and/or the right of the DIP Agent and the DIP Lenders to exercise their remedies, and unless this Court, after notice and hearing prior to the expiry of the Remedies Notice Period stays the enforcement thereof, the automatic stay, solely as to the DIP Agent and the DIP Lenders, shall automatically terminate at the end of the Remedies Notice Period.

40. Subject to the provisions of Paragraphs 37-39 above, upon the occurrence of a DIP Order Event of Default, the DIP Agent and the DIP Lenders are authorized to exercise their remedies and proceed under or pursuant to the DIP Financing Agreements; except that, (A) with respect to any of the Debtor's leasehold locations, the DIP Agent's and the DIP Lenders' rights shall be limited to such rights (i) as may be ordered by this Court upon motion and notice to the applicable landlord with an opportunity to respond

that is reasonable under the circumstances; (ii) to which the applicable landlord agrees in writing with the DIP Agent; or (iii) which the DIP Agent and the DIP Lenders have under applicable non-bankruptcy law, and (B) prior to exercising any such remedies, the DIP Agent shall fund the Carve Out Account as set forth in Paragraph 32 hereof (provided that such Carve Out Account shall be subject to the control of the DIP Agent). Furthermore, notwithstanding the provisions of Paragraphs 37-39 above, in the event there occurs an Event of Default (as defined in the DIP Credit Agreement) by virtue of a failure by the Debtor to comply with the Sale Process (as defined in the DIP Credit Agreement) milestones contained in Section 10.18 of the DIP Credit Agreement, the DIP Agent and DIP Lenders shall not be permitted to exercise their respective default remedies under or pursuant to the DIP Financing Agreements and this Final Order, and the automatic stay shall not herein be modified with respect to the exercise of any such remedies, absent further order of this Court entered following notice and an opportunity to be heard as the Court may determine appropriate in the circumstances.

41. Nothing included herein shall prejudice, impair or otherwise affect the Prepetition Agent's or the DIP Agent's respective rights to seek any other or supplemental relief from the Court in respect of the Debtor, nor the DIP Lenders' rights, as provided herein and in the DIP Credit Agreement, to suspend or terminate the making of loans and granting financial accommodations under the DIP Credit Agreement.

**D. No Waiver of Remedies**

42. The delay in or the failure of the Prepetition Agent and/or the DIP Agent to seek relief or otherwise exercise their rights and remedies shall not constitute a waiver of any of the Prepetition Agent's, the Prepetition Lenders', or the DIP Agent's or DIP Lenders' rights and remedies. Notwithstanding anything herein, the entry of this Final Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly or otherwise impair the rights and remedies of the Prepetition Agent, the Prepetition Lenders, the DIP Agent or the DIP Lenders under the Bankruptcy Code or under non-bankruptcy law, including, without limitation, the rights of the Prepetition Agent and the DIP Agent to: (i) request conversion of the Chapter 11 Case to a case under Chapter 7 of the Bankruptcy Code, dismissal of the Chapter 11 Case, or the appointment of a trustee in the Chapter 11 Case; (ii) propose, subject to the

provisions of section 1121 of the Bankruptcy Code, a Plan; or (iii) subject to section 362 of the Bankruptcy Code exercise any of the rights, claims, or privileges (whether legal, equitable, or otherwise) the Prepetition Agent and/or the DIP Agent may have.

## VII.

### CERTAIN LIMITING PROVISIONS

#### **A. Section 506(c) Claims and Waiver**

43. As a further condition of the DIP Facility and any obligation of the DIP Lenders to make credit extensions pursuant to the DIP Financing Agreements, and in consideration of the Prepetition Agent's and Prepetition Lenders' consent to the use of their Cash Collateral, the Debtor (and any successors thereto or any representatives thereof, including any trustee appointed in the Chapter 11 Case or any Successor Case) shall be deemed to have waived any rights or benefits of section 506(c) of the Bankruptcy Code with respect to the Prepetition Agent, the Prepetition Lenders, the DIP Agent and the DIP Lenders, the Prepetition Collateral, and the DIP Collateral, respectively.

#### **B. Proceeds of Subsequent Financing**

44. If at any time prior to the irrevocable repayment in full in cash of all Prepetition Debt and DIP Obligations and the termination of the DIP Lenders' obligations to make loans and advances under the DIP Facility, the Debtor, any trustee, any examiner with enlarged powers, or any responsible officer subsequently appointed, shall obtain credit or incur debt pursuant to sections 364(c)(1) or 364(d) of the Bankruptcy Code in violation of the DIP Financing Agreements, then all of the cash proceeds derived from such credit or debt and all Cash Collateral shall immediately be turned over first, to the Prepetition Agent to be applied in reduction of the Prepetition Debt, second, to the DIP Agent to be applied in reduction of the DIP Obligations, and third, to the Debtor to be used in accordance with and subject to the Approved Budget (subject to any variances thereto permitted under the terms and conditions of the DIP Credit Agreement).

#### **C. No Priming of DIP Facility**

45. In entering into the DIP Financing Agreements, and consenting to the use of Cash Collateral, and as consideration therefor, the Debtor hereby agrees that until such time as (i) all Prepetition



Debt and all DIP Obligations have been irrevocably paid in full in cash (or other arrangements for payment of the Prepetition Debt and the DIP Obligations satisfactory to the Prepetition Lenders and the DIP Lenders, as applicable, in their sole and exclusive discretion, have been made) and (ii) the DIP Financing Agreements have been terminated in accordance with the terms thereof, the Debtor shall not (unless otherwise agreed to by the DIP Agent, DIP Lenders, Prepetition Agent and Prepetition Lenders, in their sole respective discretion) in any way prime or seek to prime the security interests and DIP Liens provided to the DIP Lenders or the Prepetition Liens or Adequate Protection Liens granted to the Prepetition Agent or Prepetition Lenders under the Financing Orders by offering a subsequent lender or a party-in-interest a superior or *pari passu* Lien or claim pursuant to section 364(d) of the Bankruptcy Code or otherwise.

## VIII.

### OTHER RIGHTS AND OBLIGATIONS

#### **A. Good Faith Under Section 364(e) of the Bankruptcy Code; No Modification or Stay of this Final Order**

46. 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 modified, amended, or vacated by a subsequent order of this or any other court, the DIP Agent and the DIP Lenders are entitled to the protections provided in section 364(e) of the Bankruptcy Code and, no such appeal, modification, amendment, or vacation shall affect the validity and enforceability of any advances made hereunder or the Liens or priority authorized or created hereby.

47. Notwithstanding any modification, amendment, or vacation of any or all of the provisions of this Final Order, any claim or protection granted to the Prepetition Agent, the Prepetition Lenders, the DIP Agent and/or the DIP Lenders hereunder arising prior to the effective date of such modification, amendment, or vacation of any such claim or protection granted to the Prepetition Agent, the Prepetition Lenders, or the DIP Lenders shall be governed in all respects by the original provisions of this Final Order, and the Prepetition Agent, the Prepetition Lenders, the DIP Agent and the DIP Lenders shall be entitled to

all of the rights, remedies, privileges, and benefits, including the Adequate Protection and the DIP Protections granted herein, with respect to any such claim, including those found under section 364(e) of the Bankruptcy Code.

**B. Prepetition Agent's, Prepetition Lenders',  
DIP Agent's, and DIP Lenders' Expenses**

48. All reasonable out-of-pocket costs and expenses of the Prepetition Agent, the Prepetition Lenders, the DIP Agent, and the DIP Lenders, including, without limitation, reasonable legal, accounting, collateral examination, monitoring and appraisal fees and disbursements, financial advisory fees, fees and expenses of other consultants, indemnification and reimbursement obligations with respect to fees and expenses, and other out of pocket expenses, whether or not contained in the Approved Budget and without limitation with respect to the dollar estimates contained in the Approved Budget (provided, however, that such overages shall not weigh against the Debtor in any testing related to compliance with the Approved Budget or against the total amount of availability under the DIP Facility), shall promptly be paid by the Debtor. Payment of such fees shall not be subject to allowance by this Court; provided, however, the Debtor, the U.S. Trustee or counsel for the Committee may seek a determination by this Court whether such fees and expenses (even if to be paid from the Prepetition Indemnity Account or included as part of the Adequate Protection Superpriority Claim) are reasonable in the manner set forth below. Under no circumstances shall professionals for the DIP Agent, the DIP Lenders, the Prepetition Agent, or the Prepetition Lenders be required to comply with the U.S. Trustee fee guidelines; provided, however, (a) the Debtor shall provide to the U.S. Trustee and the Committee a copy of any invoices received from the DIP Agent, the DIP Lenders, the Prepetition Agent, or the Prepetition Lenders for professional fees and expenses during the pendency of the Chapter 11 Case, and (b) the DIP Agent, the DIP Lenders, the Prepetition Agent, or the Prepetition Lenders, as the case may be, shall file with the Court a redacted copy of any invoices contemporaneous with delivery thereof to the Debtor. Each such invoice shall be sufficiently detailed to enable a determination as to the reasonableness of such fees and expenses (without limiting the right of the various professionals to redact privileged, confidential, or sensitive information). If

the Debtor, U.S. Trustee or the Committee object to the reasonableness of the invoices submitted by the DIP Agent, the DIP Lenders, the Prepetition Agent, or the Prepetition Lenders, and the parties cannot resolve such objection within ten (10) days of receipt of such invoices, the Debtor, U.S. Trustee or such Committee, as the case may be, shall file with the Court and serve on the applicable DIP Agent, DIP Lender, Prepetition Agent, or Prepetition Lenders an objection (a “*Fee Objection*”) limited to the issue of reasonableness of such fees and expenses. The Debtor shall promptly pay, and/or the DIP Agent is hereby authorized to make an advance under the DIP Facility to timely pay, the submitted invoices after the expiration of the ten (10) day notice period if no Fee Objection is received in such ten (10) day period. If a Fee Objection is timely received, the Debtor shall promptly pay, and/or the DIP Agent is hereby authorized to make an advance under the DIP Facility to timely pay, the undisputed amount only of the invoice(s) that is the subject of such Fee Objection, and the Court shall have jurisdiction to determine the disputed portion of such invoice(s) if the parties are unable to resolve the Fee Objection.

**C. Binding Effect**

49. The provisions of this Final Order shall be binding upon and inure to the benefit of the DIP Agent, the DIP Lenders, the Prepetition Agent, the Prepetition Lenders, the Debtor, and their respective successors and assigns (including any trustee or other fiduciary hereinafter appointed as a legal representative of the Debtor or with respect to the property of the estate of the Debtor), and the Committee (subject to the provisions of Paragraphs 23-27 above), whether in the Chapter 11 Case, in any Successor Case, or upon dismissal of any such Chapter 11 or Chapter 7 case.

**D. No Third Party Rights**

50. 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, other than the Debtor, the DIP Agent, the DIP Lenders, the Prepetition Agent, and the Prepetition Lenders.

**E. No Marshaling**

51. The DIP Agent, the DIP Lenders, the Prepetition Agent, and the Prepetition Lenders shall not be subject to the equitable doctrine of “marshaling” or any other similar doctrine with respect to any of the DIP Collateral or Prepetition Collateral, as applicable.

**F. Section 552(b) of the Bankruptcy Code**

52. The DIP Agent, the DIP Lenders, the Prepetition Agent, and the Prepetition Lenders shall each be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and the Debtor shall not assert that the “equities of the case” exception under section 552(b) of the Bankruptcy Code shall apply to the DIP Agent, the DIP Lenders, the Prepetition Agent, or the Prepetition Lenders with respect to proceeds, product, offspring, or profits of any of the Prepetition Collateral or the DIP Collateral.

**G. Amendments**

53. The Debtor and the DIP Agent may amend, modify, supplement, or waive any provision of the DIP Financing Agreements without further approval of this Court, but only after notice to the Committee; provided, however, that notice of any “material” amendment, modification, supplement, or waiver shall be filed with this Court, and the Committee shall have five (5) business days from the date of such filing within which to object in writing to such proposed amendment, modification, supplement, or waiver; provided, further, that if a Committee timely objects to any material amendment, modification, supplement, or waiver, then such amendment, modification, supplement, or waiver shall only be permitted pursuant to an order of this Court after notice and a hearing. For purposes of this Paragraph 53, a “material” amendment means: any amendment, modification, supplement, or waiver that (i) increases the interest rate (other than as a result of the imposition of the Default Rate), (ii) increases the DIP Commitments, (iii) changes the maturity date of the DIP Facility or any DIP Maturity Date to a date that is earlier than the date that is in effect as of the date of entry of this Final Order, (iv) amends or waives any Event of Default under the DIP Credit Agreement, (v) revises any case or sale milestone set forth in the DIP Credit Agreement in a manner that reduces or shortens the time periods provided for in the DIP Credit Agreement, or (vi) otherwise modifies the DIP Financing Agreements in a manner that is materially less favorable to the

Debtor. All amendments, modifications, supplements, or waivers of any of the provisions hereof shall not be effective unless set forth in writing, signed by on behalf of the Debtor and the DIP Agent and, if required, approved by this Court.

**H. Survival of Final Order**

54. The provisions of this Final Order and any actions taken pursuant hereto shall survive entry of any order which may be entered:

- (a) confirming any Plan in the Chapter 11 Case,
- (b) converting the Chapter 11 Case to a case under Chapter 7 of the Bankruptcy Code,
- (c) dismissing the Chapter 11 Case,
- (d) withdrawing of the reference of the Chapter 11 Case from this Court, or
- (e) providing for abstention from handling or retaining of jurisdiction of the Chapter 11 Case in this Court.

55. The terms and provisions of this Final Order, including the DIP Protections granted pursuant to this Final Order, the DIP Financing Agreements, and any protections granted the Prepetition Agent and/or the Prepetition Lenders shall continue in full force and effect notwithstanding the entry of any order described in Paragraph 47, and such DIP Protections and protections for the Prepetition Lenders shall maintain their priority as provided by this Final Order until all of the DIP Obligations of the Debtor to the DIP Lenders pursuant to the DIP Financing Agreements and the Prepetition Debt have been irrevocably paid in full in cash and discharged (such payment being without prejudice to any terms or provisions contained in the DIP Facility which survive such discharge by their terms).

**I. Inconsistency**

56. In the event of any inconsistency between the terms and conditions of the DIP Credit Agreement, the DIP Financing Agreements, and this Final Order, the provisions of this Final Order shall govern and control.

**J. Enforceability**

57. This Final Order shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 and shall take effect and be fully enforceable *nunc pro tunc* to the Petition Date immediately upon execution hereof.

**K. Objections Overruled**

58. All objections to the Motion, including, without limitation, the objection filed by MFA Contemporary Atelier, Inc. (Docket No. 50), to the extent not withdrawn or resolved, are hereby overruled.

**L. Waiver of Any Applicable Stay**

59. Any applicable stay (including, without limitation, under Bankruptcy Rule 6004(h)) is hereby waived and shall not apply to this Final Order.

**M. Proofs of Claim**

60. The Prepetition Agent, the Prepetition Lenders, the DIP Agent and the DIP Lenders will not be required to file proofs of claim in the Chapter 11 Case or in any Successor Case.

**N. Headings**

61. The headings in this Order are for purposes of reference only and shall not limit or otherwise affect the meaning of this Order.

**O. Retention of Jurisdiction.**

62. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, and enforcement of this Final Order.

**P. Texas Taxing Authorities**

62. Notwithstanding any provisions of the Interim Order or this Final Order pertaining to, among other things, post-petition financing, use of cash collateral, or the sale of the Debtor's assets, or any agreements validated by any such orders, the liens currently held by any Texas ad valorem tax authority (including Bexar County, Dallas County, Fort Bend County, Frisco, Harris County, Montgomery County and Tarrant County, collectively the "**Texas Tax Authorities**") shall neither be primed by nor subordinated to any liens granted thereby.

63. Furthermore, from the proceeds of the sale of any of the Debtor's assets located in the state of Texas, the amount of \$9,000.00 shall be set aside by the Debtor in a segregated account as adequate protection for the secured claims of the Texas Tax Authorities prior to the distribution of any proceeds to any other creditor. The liens of the Texas Tax Authorities shall attach to these proceeds to the same extent and with the same priority as the liens they now hold against the property of the Debtor. These funds shall be on the order of adequate protection and shall constitute neither the allowance of the claims of the Texas Tax Authorities, nor a cap on the amounts they may be entitled to receive. Furthermore, the claims and liens of the Texas Tax Authorities shall remain subject to any objections any party would otherwise be entitled to raise as to the priority, validity or extent of such liens. These funds may not be distributed apart from agreement between the Texas Tax Authorities and the Debtor and any competing secured creditor claiming a competing interest in such funds, or by subsequent order of the Court, duly noticed to the Texas Tax Authorities.

### End of Order ###

**EXHIBIT 1 TO FINAL ORDER**

**Approved Budget**

2038495.5



THE PICTURE PEOPLE / TPP ACQUISITION LLC  
DIP BUDGET

Account / Description / Pay/Post Date	DIP Balance 7/2/16	2016			2017			2018			2019	2020	2021	2022
		10/1	10/6	10/11	10/12	10/29	11/1	11/13	11/14					
<b>Revenue</b>														
<b>Beginning cash balance</b>	743,707	743,707	243,707	243,707	243,707	243,707	243,707	243,707	243,707	243,707	243,707	243,707	243,707	
<b>Customer Collections</b>		870,000	870,000	762,465	862,052	997,478	955,061	835,653	932,603	932,603	932,603	932,603	932,603	
<b>TOTAL COLLECTIONS</b>		<b>870,000</b>	<b>870,000</b>	<b>762,465</b>	<b>862,052</b>	<b>997,478</b>	<b>955,061</b>	<b>835,653</b>	<b>932,603</b>	<b>932,603</b>	<b>932,603</b>	<b>932,603</b>	<b>932,603</b>	
<b>Operating disbursements</b>														
Payroll and Related		740,230	62,750	1,086,750	55,750	998,750	53,750	533,000	-	-	-	-	533,000	
Inventory vendors		201,863	60,000	60,000	60,000	60,000	60,000	60,000	60,000	60,000	60,000	60,000	60,000	
Freight, freight out and duty		-	-	-	-	-	-	-	-	-	-	-	-	
USPS		2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	
FEDEX		35,000	35,000	35,000	35,000	35,000	35,000	35,000	35,000	35,000	35,000	35,000	35,000	
Maintenance and repairs		30,242	11,645	11,645	11,645	11,645	11,645	11,645	11,645	11,645	11,645	11,645	11,645	
Supplies and services		48,427	48,427	48,427	48,427	48,427	48,427	48,427	48,427	48,427	48,427	48,427	48,427	
Marketing advertising and promotion		17,000	5,655	550,000	85,000	185,500	200,000	151,165	-	-	-	-	87,413	
BBB Occupancy		453,846	22,413	21,035	23,407	23,981	1,276,037	1,890,362	-	-	-	-	2,764,915	
Wal-Mart Occupancy		26,000	-	-	-	-	27,422	139,607	-	-	-	-	139,607	
Bank- Corporate		2,799	2,068	2,797	3,026	3,100	3,371	17,362	-	-	-	-	17,362	
Utilities		13,452	-	-	-	-	13,452	30,704	-	-	-	-	30,704	
Insurance		90,000	90,000	42,000	-	-	75,000	297,000	-	-	-	-	297,000	
FAC Insurance Installments		30,036	-	-	-	-	35,036	70,072	-	-	-	-	70,072	
Sales taxes		195,445	-	20,085	192,363	81,650	-	331,445	-	-	-	-	331,445	
Professional fees, consulting		30,000	15,000	15,000	15,000	25,000	25,000	125,000	65,000	-	-	-	300,000	
Royalties - R. Fields		1,000	1,000	1,000	1,000	1,000	1,000	1,000	15,000	-	-	-	21,000	
Other services payable		1,000	-	-	-	-	-	1,000	-	-	-	-	1,000	
<b>TOTAL OPERATING DISBURSEMENTS</b>		<b>2,968,366</b>	<b>358,568</b>	<b>1,618,624</b>	<b>438,338</b>	<b>1,476,999</b>	<b>1,439,439</b>	<b>7,968,085</b>	<b>954,413</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>8,454,418</b>	
<b>OPERATING CASH-FLOW (DEFICIT)</b>		<b>\$(1,224,659)</b>	<b>\$(514,861)</b>	<b>\$(856,159)</b>	<b>\$(194,631)</b>	<b>\$(479,521)</b>	<b>\$(486,378)</b>	<b>\$(7,132,432)</b>	<b>\$(1,021,760)</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>\$(1,021,760)</b>	
<b>Bankruptcy-related disbursements</b>														
Debit Interest and Fees		10,715	-	-	-	-	40,071	51,406	-	-	-	-	51,406	
Unpaid Line Fee		1,369	-	-	-	-	-	1,369	-	-	-	-	1,369	
Clearing and Other Fees		12,084	100,000	-	-	-	40,071	152,775	-	-	-	-	302,775	
<b>TOTAL BANKRUPTCY RELATED DISBURSEMENTS</b>		<b>24,168</b>	<b>100,000</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>80,142</b>	<b>205,550</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>355,550</b>	
<b>NET CASH-FLOW (DEFICIT)</b>		<b>\$(1,248,827)</b>	<b>\$(614,861)</b>	<b>\$(856,159)</b>	<b>\$(194,631)</b>	<b>\$(479,521)</b>	<b>\$(566,520)</b>	<b>\$(7,337,982)</b>	<b>\$(1,021,760)</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>\$(1,377,310)</b>	
<b>Line of credit - Pre-Bid</b>														
Beginning balance		36,763,838	0	0	0	0	0	36,763,838	-	-	-	-	36,763,838	
Advances		-	-	-	-	-	-	-	-	-	-	-	-	
Repayments		(376,348)	(922,660)	(762,465)	(862,052)	(997,478)	(955,061)	(3,751,378)	(5,351,378)	-	-	-	(12,285,653)	
<b>Ending balance</b>		<b>36,387,490</b>	<b>(922,660)</b>	<b>(519,465)</b>	<b>(862,052)</b>	<b>(997,478)</b>	<b>(955,061)</b>	<b>(3,751,378)</b>	<b>(5,351,378)</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>(12,285,653)</b>	
<b>DIP Borrowed</b>														
Beginning balance		2,613,000	2,613,000	42,953,536	42,764,762	43,434,027	43,434,027	44,027,318	2,613,000	-	-	-	2,613,000	
Net Cash Flow Receipts/Transfers from Pre position LOC		30,806,796	(922,660)	(762,465)	(862,052)	(997,478)	(955,061)	(3,751,378)	(5,351,378)	-	-	-	(12,285,653)	
PRCA Interest		438,437	-	-	-	-	-	382,835	-	-	-	-	382,835	
DIP Advances (Repayments)		1,863,767	563,886	1,741,330	553,309	1,989,822	2,272,374	8,981,141	2,243,805	-	-	-	11,230,660	
<b>Ending DIP Balance</b>		<b>2,651,000</b>	<b>42,893,536</b>	<b>42,764,762</b>	<b>43,434,027</b>	<b>43,434,027</b>	<b>44,027,318</b>	<b>46,096,386</b>	<b>46,096,386</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>46,096,386</b>	
<b>ENDING CASH BALANCE</b>		<b>243,707</b>	<b>243,707</b>	<b>243,707</b>	<b>243,707</b>	<b>243,707</b>	<b>243,707</b>	<b>243,707</b>	<b>243,707</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>243,707</b>	
<b>ENDING DIP</b>		<b>42,913,536</b>	<b>42,764,762</b>	<b>43,434,027</b>	<b>43,434,027</b>	<b>43,434,027</b>	<b>44,027,318</b>	<b>46,096,386</b>	<b>46,096,386</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>46,096,386</b>	