

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF CONNECTICUT  
NEW HAVEN DIVISION**

	X		
In re:	:		CHAPTER 11
	:		
NEOPS HOLDINGS, LLC,	:		CASE NO. 17-31017
NEW ENGLAND ORTHOTIC & PROSTHETIC SYSTEMS, LLC,	:		CASE NO. 17-31018
NEW ENGLAND O&P NEW YORK, INC.,	:		CASE NO. 17-31019
BERGMAN ORTHOTICS & PROSTHETIC, LLC,	:		CASE NO. 17-31020
SPINAL ORTHOTIC SYSTEMS, LLC,	:		CASE NO. 17-31021
AND CARLOW ORTHOPEDIC & PROSTHETIC, INC.	:		CASE NO. 17-31022
	:		Jointly Administered under
Debtors	:		CASE NO. 17-31017
	X		

**FINAL ORDER PURSUANT TO 11 U.S.C. §§ 105, 361, 362, 363, 364 AND 507  
(1) APPROVING POST-PETITION FINANCING, (2) AUTHORIZING USE OF CASH  
COLLATERAL, (3) GRANTING LIENS AND PROVIDING SUPERPRIORITY  
ADMINISTRATIVE EXPENSE STATUS, AND (4) GRANTING ADEQUATE  
PROTECTION, (5) MODIFYING AUTOMATIC STAY**

Upon the motion (the “*Motion*”) of NEOPS Holdings, LLC (“*Holdings*”) New England Orthotic and Prosthetic Systems, LLC (“*NEOPS*”), New England O&P New York, Inc., Bergman Orthotics & Prosthetics, LLC, Spinal Orthotic Systems, LLC, and Carlow Orthopedic & Prosthetic, Inc. LLC, debtors-in-possession (collectively, the “*Debtors*” or “*Borrowers*”) in the above-referenced chapter 11 cases (collectively, with any successor cases, the “*Cases*”), pursuant to §§ 105, 361, 362, 363(c), 364(c), 364(d)(1), 364(e), and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the “*Bankruptcy Code*”) and Rules 2002, 4001, and 9014 of the Federal Rules of Bankruptcy Procedure (the “*Bankruptcy Rules*”), seeking, *inter alia*, entry of an interim order (the “*Interim Order*”) and a final order (this “*Final Order*”):

(i) authorizing the Borrowers to obtain secured, superpriority post-petition financing (the “*DIP Facility*”) consisting of a \$1.2 million term loan credit facility, subject to the terms and conditions set forth herein and in the Line Letter, Grid Note, Security Agreement, and Guaranty (as may be amended, supplemented, restated, or otherwise modified from time to time, the “*Post-Petition Financing Documents*”) by and among the Borrowers and AHM NEOPS Acquisition, LLC (“*Acquisition*,” and together with its successors and assigns, hereinafter “*DIP Lender*” or “*Prepetition Senior Lenders*”), substantially in the form of **EXHIBITS B-E** attached to the Motion;

(ii) authorizing the Debtors to execute and deliver the Post-Petition Financing Documents and other related loan documents and to perform such other acts as may be necessary or desirable in connection with the Post-Petition Financing Documents;

(iii) authorizing the Debtors to grant the DIP Lender allowed superpriority administrative expense claims in each of the Cases and any Successor Cases (as defined herein) for the DIP Facility and all obligations owing thereunder and under the Post-Petition Financing Documents (collectively, and including all “*Obligations*” as described in the Post-Petition Financing Documents, the “*DIP Obligations*”), as more fully set forth in this Final Order;

(iv) authorizing the Debtors to grant the DIP Lender automatically perfected security interests in and liens on all of the DIP Collateral (as defined herein), including, without limitation, all property constituting “cash collateral” (as defined in § 363(a) of the Bankruptcy Code, “*Cash Collateral*”), which liens shall be subject to the priorities set forth in paragraph 7 below;

(v) authorizing and directing the Debtors to pay the principal, interest, fees, expenses, and other amounts payable under each of the Post-Petition Financing Documents as they

become due, excluding, however, any fees and disbursements of the DIP Lender's attorneys, advisors, accountants, and other consultants;

(vi) authorizing the Debtors' use of the Cash Collateral on the terms and conditions set forth in this Final Order;

(vii) authorizing the Debtors to provide adequate protection of the liens and security of the Prepetition Senior Lender and Prepetition Junior Lenders (each, as defined herein);

(viii) providing adequate protection to the Prepetition Senior Lender and the Prepetition Junior Lenders for any Diminution in Value (as defined herein) of their respective interests in the Prepetition Collateral (as defined herein), including the Cash Collateral; and

(ix) vacating and modifying the automatic stay imposed by § 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of the Post-Petition Financing Documents and this Final Order.

The Court having considered the Motion and the exhibits attached thereto, after duly noticed emergency hearing held on July 12, 2017, continued hearing held on July 17, 2017, and Final Hearing held on August 21, 2017, and having entered a first Interim Order on July 13, 2017 (Docket No. 28) a second Interim Order on July 25, 2017 (Docket No. 59), and a third Interim Order on August 4, 2017 (Docket No. 91) and upon the Debtors' proffer and after hearing the arguments of counsel at the Final Hearing; and notice of the Final Hearing having been given in accordance with Bankruptcy Rules 2002, 4001(b), (c) and (d), and 9014; and the Final Hearing to consider the relief requested in the Motion having been held and concluded; and all objections, if any, to the relief requested in the Motion having been withdrawn, resolved or overruled by the Court; and it appearing to the Court that granting the relief requested is necessary to avoid immediate and irreparable harm to the Debtors and their respective bankruptcy estates (the

“*Estates*”) and otherwise is fair and reasonable and in the best interests of the Debtors, their Estates, and their creditors and equity holders, and is essential for the continued operation of the Debtors’ businesses; and after due deliberation and consideration, and for good and sufficient cause appearing therefor:

**BASED UPON THE RECORD ESTABLISHED AT THE FINAL HEARING BY THE DEBTORS, THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:**

**A. Petition Date:** On July 11, 2017 (the “*Petition Date*”), each of the Debtors filed a separate voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Connecticut, New Haven Division (the “*Court*”), commencing these Cases.

**B. Debtors-in-Possession.** The Debtors are continuing in the management and operation of their businesses and properties as debtors in possession pursuant to §§ 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in these Cases.

**C. Jurisdiction and Venue.** This Court has jurisdiction, pursuant to 28 U.S.C. §§ 157(b) and 1334, over these proceedings, and over the persons and property affected hereby. Consideration of the Motion constitutes a core proceeding under 28 U.S.C. § 157(b)(2). Venue for the Cases and proceedings on the Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

**D. Committee.** On July 21, 2017, the United States Trustee (the “*U.S. Trustee*”) appointed an official committee of unsecured creditors (the “*Committee*”) in these Cases pursuant to § 1102 of the Bankruptcy Code. (Docket No. 53).

**E. Debtors' Stipulations.** After consultation with their attorneys and financial advisors, and without prejudice to the rights of parties in interest as set forth in paragraph 31 herein, the Debtors (on behalf of and for themselves and their Estates) admit, stipulate, acknowledge and agree that (collectively, paragraphs F(i) through F(ix) below are referred to herein as the "**Debtors' Stipulations**"):

(i) Pursuant to that certain Revolving Credit and Term Loan Agreement Loan Agreement dated as of May 4, 2012, First Niagara Bank, N.A. ("**First Niagara**") provided Holdings and NEOPS a Revolving Credit Loan in the maximum principal amount up to \$4,000,000 and a Term Loan in the original principal amount of \$8,000,000. As of the Petition Date, the principal amount outstanding on the revolving loan is \$3,900,000, and the principal amount on the term loan is \$920,000 (plus any interest, fees, expenses, and disbursements (including, without limitation, attorneys' fees, related expenses, and disbursements), indemnification obligations and other charges of whatever nature, whether or not contingent, whenever arising, due or owing in respect thereof, the "**First Lien Obligations**"). In the fall of 2016, KeyBank, National Association ("**KeyBank**") succeeded to First Niagara's interest in the First Lien Obligations as a result of KeyBank's acquisition of First Niagara.

(ii) On November 6, 2013, F.N.B. Capital Partners, L.P., now known as Tecum Capital Partners ("**Tecum**") loaned \$4,000,000 to Holdings and NEOPS, as evidenced by that certain Senior Subordinated Promissory Note dated November 6, 2013. As of the Petition Date, the principal amount outstanding to Tecum is \$5,112,380 (plus any interest, fees, expenses, and disbursements (including, without limitation, attorneys' fees, related expenses and disbursements), indemnification obligations, and other charges of whatever nature, whether or not contingent, whenever arising, due or owing in respect thereof). On November 6, 2013, Edward Epstein

(“Epstein”) loaned \$1,000,000 to Holdings and NEOPS. As of the Petition Date the principal amount outstanding is \$1,278,095 (plus any interest, fees, expenses, and disbursements (including, without limitation, attorneys’ fees, related expenses, and disbursements), indemnification obligations, and other charges of whatever nature, whether or not contingent, whenever arising, due or owing in respect thereof, the “*Second Lien Obligations*”). The notes held by Tecum and Epstein are collectively referred to as the “*Second Lien Notes*.”

**(iii) Prepetition Guaranties to Prepetition Senior Lender:** The debtors New England O&P New York, Inc., Carlow Orthopedic & Prosthetic, Inc., and Bergman Orthotics & Prosthetics, LLC guaranteed the First Lien Obligations.

**(iv) Prepetition Liens and Prepetition Collateral.** Prior to the Petition Date, Holdings and NEOPS granted (a) first priority security interests in and liens on substantially all of their prepetition assets (the “*Prepetition Collateral*”) to First Niagara (the “*Prepetition Senior Liens*); and (b) second priority security interests in and liens on the Prepetition Collateral to the holders of the Second Lien Notes (to the extent such liens are valid and properly perfected, the “*Prepetition Junior Liens*”). Tecum and Epstein share the Prepetition Junior Liens *pari passu*.

**(v) Priority of the Prepetition Liens; Intercreditor Agreement.** The Borrowers and Prepetition Senior Lender stipulate, acknowledge, and agree that pursuant to that certain Intercreditor Agreement and Subordination Agreement dated November 6, 2013 (as amended, supplemented, or modified prior to the Petition Date, the “*Intercreditor Agreement*”), the Prepetition Junior Liens on any of the Prepetition Collateral are subordinate to the Prepetition Senior Liens in accordance with the Intercreditor Agreement.

**(vi) Validity, Perfection, and Priority of Prepetition Liens and Prepetition Obligations.** Subject to the provisions of paragraph 31 of this Order, the Debtors and the

Prepetition Senior Lender stipulate, acknowledge, and agree that: (a) as of the Petition Date, the Prepetition Senior Liens on the Prepetition Collateral are valid, binding, enforceable, non-avoidable, and properly perfected; (b) as of the Petition Date, the Prepetition Senior Liens were senior in priority over any and all other liens on the Prepetition Collateral, subject only to, to the extent valid, properly perfected, non-avoidable, and senior in priority to the Prepetition Senior Liens as of the Petition Date, (i) certain liens otherwise permitted by the Prepetition Senior Loan Documents and prior in right, title and interest (the “*Permitted Prior Liens*”), (c) as of the Petition Date, the Prepetition Junior Liens were junior and subordinate to the Prepetition Senior Liens; (d) the Prepetition Senior Loan Obligations constitute legal, valid, binding, and non-avoidable obligations of the Debtors; (e) no offsets, challenges, objections, defenses, claims, or counterclaims of any kind or nature to any of the Prepetition Senior Liens or Prepetition Senior Loan Obligations exist, and no portion of the Prepetition Senior Liens or Prepetition Senior Loan Obligations is subject to any challenge or defense, including, without limitation, avoidance, disallowance, disgorgement, recharacterization, or subordination (whether equitable or otherwise) pursuant to the Bankruptcy Code or applicable non-bankruptcy law; and (f) the Debtors have no claims, objections, challenges, causes of actions, and/or choses in action, including without limitation, avoidance claims under chapter 5 of the Bankruptcy Code, against the Prepetition Senior Lender or any of its affiliates, agents, attorneys, advisors, professionals, officers, directors, and employees.

**(vii) Transfer of Prepetition Senior Loan Obligations, Prepetition Senior Documents and Prepetition Senior Liens.** Prior to the Petition Date, pursuant to that certain Loan Purchase Agreement dated July 10, 2017, by and among KeyBank and Acquisition, KeyBank, sold, assigned, transferred, and conveyed to Acquisition, and Acquisition purchased and

accepted from KeyBank, all of KeyBank's right, title, and interest in, under and to the Prepetition Senior Loan Obligations, Prepetition Senior Loan Documents, and Prepetition Senior Liens.

**(viii) Cash Collateral.** The Debtors represent that substantially all of the Debtors' cash, including the cash in their deposit accounts, wherever located, whether as original collateral or proceeds of other Prepetition Collateral, constitute the Cash Collateral of the DIP Lender, Prepetition Senior Lender, and Prepetition Junior Lender.

**(ix) Default by the Debtors.** The Debtors acknowledge and stipulate that the Debtors are in default of their debts and obligations under the Prepetition Senior Loan Documents.

**F. Findings Regarding the Post-petition Financing.**

**(i) Need for Post-petition Financing and Use of Cash Collateral.** The Debtors' need to obtain credit pursuant to the DIP Facility and to use Cash Collateral is immediate and critical in order to enable the Debtors to continue operations, to minimize the disruption of Debtors as "going concerns," and to administer and preserve the value of their Estates. The ability of the Debtors to finance their operations, maintain business relationships with their vendors, suppliers and customers, to pay their employees, and to otherwise finance their operations requires the availability of working capital from the DIP Facility and the use of Cash Collateral, the absence of either of which would immediately and irreparably harm the Debtors, their Estates, their creditors and equity holders, and the possibility for a successful reorganization. The Debtors do not have sufficient available sources of working capital and financing to operate their businesses or maintain their properties in the ordinary course of business without the DIP Facility and authorized use of Cash Collateral.

**(ii) No Credit Available on More Favorable Terms.** Given their current financial condition, financing arrangements, and capital structure, the Debtors are unable to obtain



financing from sources other than the DIP Lender on terms more favorable than the DIP Facility. The Debtors have been unable to obtain unsecured credit allowable under Bankruptcy Code § 503(b)(1) as an administrative expense or solely in exchange for the grant of a special administrative expense priority pursuant to § 364(c)(1) of the Bankruptcy Code. The Debtors have also been unable to obtain credit: (a) having priority over that of administrative expenses of the kind specified in §§ 503(b), 507(a), and 507(b) of the Bankruptcy Code; (b) secured by a lien on property of the Debtors that is not otherwise subject to a lien; or (c) secured solely by a junior lien on property of the Debtors that is subject to a lien pursuant to §§ 364(c)(2) and (c) of the Bankruptcy Code. Within the timeframe required by their need to avoid immediate and irreparable harm, financing on a post-petition basis is not otherwise available without granting the DIP Lender, (1) perfected security interests in and liens on (each as provided herein) all of the Debtors' existing and after-acquired assets with the priorities set forth in paragraph 7 hereof, (2) superpriority claims with the priorities set forth in paragraph 8, and (3) the other protections set forth in this Final Order.

**(iii) Priming of the Prepetition Senior Liens and Prepetition Junior Liens.**

The priming of the Prepetition Senior Liens and the Prepetition Junior Liens on the Prepetition Collateral pursuant to § 364(d) of the Bankruptcy Code, as further described below, will enable the Debtors to obtain the DIP Facility and to continue to operate their businesses for the benefit of their Estates and creditors. The Prepetition Senior Lender and the Prepetition Junior Lenders consent to such priming liens and are entitled to receive adequate protection as set forth in this Final Order, pursuant to §§ 361, 363, and 364 of the Bankruptcy Code, for any diminution in the value of their interests in the Prepetition Collateral (including Cash Collateral), resulting from, among other things, the subordination to the Carve Out (as defined herein) and to the DIP Liens (as defined herein), the Debtors' use, sale, or lease of such Prepetition Collateral, and the

imposition of the automatic stay (collectively, and solely to the extent of any such diminution in value, the “*Diminution in Value*”). The Debtors assert that their interest in the Prepetition Collateral does not exceed the value of the Prepetition Senior Lender’s interest in such Prepetition Collateral, and accordingly, the Prepetition Junior Lenders’ interest in the Prepetition Collateral lacks any value whatsoever. Notwithstanding, this Final Order provides the Prepetition Junior Lenders with adequate protection to the extent of any Diminution in Value of its interest in the Prepetition Collateral pending the determination of value of the Prepetition Junior Lender’s interest in the Prepetition Collateral.

(iv) **Use of Proceeds of the DIP Facility.** As a condition to the entry into the Post-Petition Financing Documents, the extension of credit under the DIP Facility and the agreement for the use of Cash Collateral, the DIP Lender requires, and the Debtors have agreed, that proceeds of the DIP Facility shall be used, in each case in a manner consistent with the terms and conditions of the Post-Petition Financing Documents, solely for (1) working capital and other general corporate purposes, (2) permitted payment of costs of administration of the Cases and (3) payment of fees and expenses due under the DIP Facility, as approved by the Court.

(v) **Application of Proceeds of Collateral.** As a condition to the entry into the Post-Petition Financing Documents, the extension of credit under the DIP Facility and the authorization to use Cash Collateral and other Prepetition Collateral, the Debtors have agreed that as of and commencing on the date of entry of the Interim Order, the Debtors applied the proceeds of DIP Collateral as set forth in the Post-Petition Financing Documents and shall continue to do so pursuant to this Final Order.

(vi) **Adequate Protection.** The Prepetition Senior Lender and the Prepetition Junior Lenders are each entitled to receive adequate protection on account of their respective

interests in the Prepetition Collateral, pursuant to §§ 361, 362, 363, and 364 of the Bankruptcy Code to the extent of any Diminution in Value of their respective interests in the Prepetition Collateral (including the Cash Collateral). Pursuant to §§ 361, 363, 364, and 507(b), as adequate protection: (i) the Prepetition Senior Lender will receive adequate protection liens and super priority claims, as more fully set forth in paragraphs 12 and 13 herein, and (ii) the Prepetition Junior Lenders will receive adequate protection liens as more fully set forth in paragraph 12 herein.

**(vii) Sections 506(c) and 552(b).** In light of (i) the DIP Facility and the DIP Lender's agreement to subordinate its liens and super priority claims to the Carve Out; and (ii) the Prepetition Senior Lender's agreement to subordinate its liens and super priority claims to the Carve Out, DIP Liens and DIP Super priority Claims, each of the DIP Lender and Prepetition Senior Lender are entitled to (a) a waiver of any "equities of the case" claims under § 552(b) of the Bankruptcy Code, and (b) a waiver of the provisions of § 506(c) of the Bankruptcy Code.

**G. Good Faith of the DIP Lender.**

**(i) Willingness to Provide Financing.** The DIP Lender has indicated a willingness to provide financing to the Debtors subject to: (a) the entry of this Final Order and the Final Order; (b) approval of the terms and conditions of the DIP Facility and the Post-Petition Financing Documents; and (c) entry of findings by this Court that such financing is essential to the Debtors' Estates, that the DIP Lender is extending credit to the Debtors pursuant to the Post-Petition Financing Documents in good faith, and that the DIP Lender's claims, superpriority claims, security interests, liens, rights, and other protections granted pursuant to this Final Order and the Post-Petition Financing Documents will have the protections provided in § 364(e) of the Bankruptcy Code and will not be affected by any subsequent reversal, modification, vacatur,

amendment, re-argument or reconsideration of this Final Order or any other order, subject to the entry of the Final Order.

(ii) **Business Judgment and Good Faith Pursuant to Section 364(e).** The terms and conditions of the DIP Facility and the Post-Petition Financing Documents, and the fees paid and to be paid thereunder, are fair, reasonable, and the best available to the Debtors under the circumstances, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties, and are supported by reasonably equivalent value and consideration. The DIP Facility and the use of Cash Collateral were negotiated in good faith and at arms' length among the Debtors, DIP Lender, and the Prepetition Senior Lender. Use of Cash Collateral and credit to be extended under the DIP Facility shall be deemed to have been so allowed, advanced, made, used or extended in good faith, and for valid business purposes and uses within the meaning of § 364(e) of the Bankruptcy Code. Accordingly, the DIP Lender is entitled to the protection and benefits of § 364(e) of the Bankruptcy Code and this Final Order and will not be affected by any subsequent reversal, modification, vacatur, amendment, reargument, or reconsideration of this Final Order or any other order, subject to the entry of the Final Order.

**H. Notice.** Notice of the Final Hearing and the relief requested in the Motion has been provided by the Debtors, whether by facsimile, email, overnight courier or hand delivery, to certain parties in interest, including: (i) the Office of the U.S. Trustee; (ii) counsel to the DIP Lender (iii) counsel to the Prepetition Senior Lender; (iv) counsel to the Prepetition Junior Lenders; (v) each creditor included in each of the Debtors' list of twenty (20) largest unsecured creditors; and (vi) all parties who have filed a notice of appearance and requested service of pleadings in the Cases. The parties have made reasonable efforts to afford the best notice possible under the circumstances

and such notice is good and sufficient to permit the relief set forth in this Final Order, and no other or further notice is or shall be required.

Based upon the foregoing findings and conclusions, the Motion and the record before the Court with respect to the Motion, and good and sufficient cause appearing therefor,

**IT IS HEREBY ORDERED that:**

**1. DIP Facility Approved.** The Motion is granted as set forth herein, the DIP Facility is authorized and approved, and the use of Cash Collateral on a final basis is authorized, subject to the terms and conditions set forth in this Final Order.

**2. Objections Overruled.** All objections to the Motion to the extent not withdrawn or resolved are hereby overruled.

**DIP FACILITIES AUTHORIZATION**

**3. Authorization of the DIP Financing and Post-Petition Financing Documents.** The Post-Petition Financing Documents, as modified by this Final Order, are hereby approved. The Debtors are expressly and immediately authorized, empowered, and directed to execute and deliver the Post-Petition Financing Documents and to incur and to perform the DIP Obligations in accordance with, and subject to, the terms of this Final Order and the Post-Petition Financing Documents, and to deliver all instruments and documents which may be required or necessary for the performance by the Debtors under the DIP Facility and the creation and perfection of the DIP Liens described in and provided for by this Final Order and the Post-Petition Financing Documents. The Debtors are hereby authorized and directed to pay the principal, interest, fees, expenses, and other amounts described in the Post-Petition Financing Documents as such become due and without need to obtain further Court approval, all to the extent provided in the Post-Petition Financing Documents, excluding any fees and disbursements of the DIP Lender's

attorneys, advisers, accountants, and other consultants, whether or not the transactions contemplated hereby are consummated subject to parties-in interests' rights to object, and disgorgement. Upon payment, such amounts shall be deemed fully earned, indefeasibly paid, and non-refundable. All collections and proceeds, whether from ordinary course collections, asset sales, debt or equity issuances, insurance recoveries, condemnations or otherwise, will be deposited and applied as required by this Final Order and the Post-Petition Financing Documents. The DIP Lender shall be authorized to apply all such proceeds (subject to final payment or collection in the case of checks or other payment items) to the DIP Obligations in accordance with the Post-Petition Financing Documents. Prior to the remittance to the DIP Lender of any proceeds of the DIP Collateral, Debtors shall be deemed to hold such proceeds for the benefit of the DIP Lender. Upon execution and delivery, the Post-Petition Financing Documents shall represent valid and binding obligations of the Debtors, enforceable against each of the Debtors and their Estates in accordance with their terms.

**4. Authorization to Borrow.** Until the earlier of (i) the Maturity Date; (ii) the date the Debtors repay the DIP Obligations in full and terminate the DIP Facility; (iii) the earlier date on which the DIP Obligations shall become due and payable in accordance with the terms of the Post-Petition Financing Documents, including by acceleration by the DIP Lender upon the occurrence of an Event of Default thereunder, or the commitment to make advances is terminated in accordance with the terms of the Post-Petition Financing Documents; or (iv) the consummation of a Plan of Reorganization (such earlier date, the "*Termination Date*"), and subject to the terms, conditions, limitations on availability set forth in the Post-Petition Financing Documents, DIP Facility, and this Final Order, and in order to prevent immediate and irreparable harm to the Debtors' Estates, the Debtors are hereby authorized to request extensions of credit under the DIP

Facility (in the form of loans) with aggregate principal amount not to exceed \$1.2 million at any one time outstanding.

**5. DIP Obligations.** The Post-Petition Financing Documents and this Final Order shall constitute and evidence the validity and binding effect of the Debtors' DIP Obligations, which DIP Obligations shall be enforceable against the Debtors, their Estates, and any successors thereto, including without limitation, any trustee or other estate representative appointed in the Cases, or any case under chapter 7 of the Bankruptcy Code upon the conversion of any of the Cases, or in any other proceedings superseding or related to any of the foregoing (collectively, "**Successor Cases**"). Upon entry of this Final Order, the DIP Obligations will include all loans and any other indebtedness or obligations, contingent or absolute, which may now or from time to time be owing by any of the Debtors to the DIP Lender under the Post-Petition Financing Documents or this Final Order, including, without limitation, all principal, accrued interest, costs, fees, expenses, and other amounts owed pursuant to the Post-Petition Financing Documents. The DIP Obligations shall be due and payable, without notice or demand, and the use of Cash Collateral shall automatically cease on the Termination Declaration Date (as defined herein), except as provided in paragraph 11 herein.

**6. DIP Liens and DIP Collateral.** Effective immediately upon the execution of this Final Order, pursuant to §§ 361, 362, 364(c)(2), 364(c)(3), and 364(d) of the Bankruptcy Code, the DIP Lender is hereby granted continuing, valid, binding, enforceable, non-avoidable and automatically and properly perfected security interests in and liens (the "**DIP Liens**") on any and all presently owned and hereafter acquired personal property, real property and other assets of the Debtors, both tangible and intangible, whether owned or consigned by or to, or leased from or to

the Debtors, (collectively, the “*DIP Collateral*”),<sup>1</sup> including, but not limited to, the following:<sup>2</sup> all (i) Prepetition Collateral; (ii) Accounts; (iii) Books; (iv) Chattel Paper; (v) Deposit Accounts; (vi) Equipment and Fixtures; (vii) General Intangibles (including, without limitation, Payment Intangibles and Software); (viii) Inventory; (ix) Investment-Related Property; (x) Negotiable Collateral; (xi) Supporting DIP Obligations; (xii) Commercial Tort Claims; (xiii) money, cash and Cash Equivalents; and (xiv) proceeds of all leases and leasehold interests.

**7. DIP Lien Priority.** The DIP Liens securing the DIP Obligations shall be junior only to the (a) Carve Out, and (b) Permitted Prior Liens, and shall otherwise be senior in priority and superior to any security, mortgage, collateral interest, lien or claim on or to any of the DIP Collateral including, but not limited to, the Prepetition Senior Liens and the Prepetition Junior Liens. Other than as set forth herein, the DIP Liens shall not be made subject to or *pari passu* with any lien or security interest heretofore or hereinafter granted in the Cases or any Successor Cases. Subject to the entry of the Final Order, the DIP Liens shall be valid and enforceable against any trustee or other estate representative appointed in the Cases or any Successor Cases, upon the conversion of any of the Cases to a case under chapter 7 of the Bankruptcy Code (or in any other Successor Case), and/or upon the dismissal of any of the Cases or Successor Cases. The DIP Liens shall not be subject to §§ 506(c), 510, 549, or 550 of the Bankruptcy Code. No lien or interest avoided and preserved for the benefit of any estate pursuant to § 551 of the Bankruptcy Code shall be made *pari passu* with or senior to the DIP Liens.

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<sup>1</sup> For the avoidance of doubt, the term DIP Collateral herein shall have the identical meaning as provided for the term “DIP Collateral” in the Post-Petition Financing Documents.

<sup>2</sup> All defined terms in the description of DIP Collateral shall have the meanings ascribed thereto in the Post-Petition Financing Documents. All terms not specifically defined in the Post-Petition Financing Documents shall have the meanings ascribed to such terms in Article 8 or 9 of the Uniform Commercial Code.



**8. DIP Superpriority Claims.** Upon entry of this Final Order, the DIP Lender is hereby granted, pursuant to § 364(c)(1) of the Bankruptcy Code, an allowed superpriority administrative expense claim in each of the Cases and any Successor Cases (collectively, the “*DIP Superpriority Claims*”) for all DIP Obligations. The DIP Superpriority Claims shall be subordinate only to the Carve Out, and shall (a) otherwise have priority over any and all administrative expenses and unsecured claims against the Debtors or their Estates in any of the Cases and any Successor Cases, at any time existing or arising, of any kind or nature whatsoever, including, without limitation, administrative expenses of the kinds specified in or ordered pursuant to Bankruptcy Code §§ 105, 326, 328, 330, 331, 365, 503(a), 503(b), 506(c), 507(a), 507(b) (except as set forth herein), 546(c), 546(d), 726 (to the extent permitted by law), 1113, and 1114, and any other provision of the Bankruptcy Code, except as set forth herein, and (b) at all times be senior to the rights of the Debtors and their Estates, and any successor trustee or other estate representative to the extent permitted by law. The DIP Superpriority Claims shall not extend to any avoidance actions or claims arising under chapter 5 of the Bankruptcy Code, except that the DIP Superpriority Claims shall extend to any avoidance actions or claims in each case arising under § 549 of the Bankruptcy Code and the proceeds thereof.

**9. No Obligation to Extend Credit.** The DIP Lender shall not have any obligation to make any loan or advance under the Post-Petition Financing Documents, unless all of the conditions precedent to the making of such extension of credit under the applicable Post-Petition Financing Documents and this Final Order have been satisfied in full or waived by the DIP Lender in its sole discretion.

**10. Use of DIP Facility Proceeds.** From and after the Petition Date, the Debtors shall use advances of credit under the DIP Facility only for the purposes specifically set forth in this

Final Order, the Post-Petition Financing Documents and in compliance with the Budget. Notwithstanding any first-day orders entered authorizing the Debtors to pay any prepetition or other expenses, all such payments shall be made in accordance with the Budget and the Debtors shall not borrow from the DIP Lender unless the borrowing is needed to pay the budgeted expenses. A copy of the Budget is attached to the Motion as **EXHIBIT A**.

**Authorization to Use Cash Collateral and Adequate Protection**

**11. Authorization to Use Cash Collateral.** Subject to the terms and conditions of this Final Order and the Post-Petition Financing Documents, and in accordance with the Budget, the Debtors are authorized to use Cash Collateral until the Termination Declaration Date; *provided, however,* that during the five (5) days after the Termination Declaration Date, the Debtors may use Cash Collateral in accordance with the terms and provisions of the Budget solely to meet payroll and, with the prior written consents required under the Post-Petition Financing Documents, to pay expenses critical to the preservation of the Debtors and their Estates. Nothing in this Final Order shall authorize the disposition of any assets of the Debtors or their Estates outside the ordinary course of business, or any Debtor's use of any Cash Collateral or other proceeds resulting therefrom, except as permitted in this Final Order, the DIP Facility, the Post-Petition Financing Documents, and in accordance with the Budget.

**12. Adequate Protection Liens.**

**(a) Prepetition Senior Lender Adequate Protection Liens.** Pursuant to §§ 361, 363(e) and 364(d) of the Bankruptcy Code, as adequate protection of the interests of the Prepetition Senior Lender in the Prepetition Collateral against any Diminution in Value of such interests in the Prepetition Collateral, the Debtors hereby grant to the Prepetition Senior Lender continuing valid, binding, enforceable, non-avoidable, and automatically perfected post-petition

security interests in and liens on the DIP Collateral (the “*Prepetition Senior Lender Adequate Protection Liens*”).

(b) **Prepetition Junior Lenders Adequate Protection Liens.** Pursuant to §§ 361, 363(e) and 364(d) of the Bankruptcy Code, as adequate protection of the interests of the Prepetition Junior Lenders in the Prepetition Collateral against any Diminution in Value of such interests in the Prepetition Collateral, the Debtors hereby grant to the Prepetition Junior Lenders continuing, valid, binding, enforceable, non-avoidable, and automatically perfected post-petition security interests in and liens on the DIP Collateral (the “*Prepetition Junior Lenders Adequate Protection Liens*”).

(c) **Priority of Adequate Protection Liens**

(i) The Prepetition Senior Lender Adequate Protection Liens shall be junior only to the: (A) Carve Out; (B) DIP Liens; (C) Prepetition Senior Liens; and (D) Permitted Prior Liens to the extent they were valid and properly perfected. The Prepetition Senior Lender Adequate Protection Liens shall otherwise be senior to all other security interests in, liens on, or claims against any of the DIP Collateral.

(ii) The Prepetition Junior Adequate Protection Liens shall be junior only to the: (A) Carve Out; (B) DIP Liens; (C) Prepetition Senior Liens; (D) Prepetition Senior Lender Adequate Protection Liens; (E) Prepetition Junior Liens to the extent they were valid and properly perfected; and (F) Permitted Prior Liens to the extent they were valid and properly perfected. The Prepetition Junior Adequate Protection Liens shall be senior to all other security interests in, liens on, or claims against any of the DIP Collateral.

(iii) Except as provided herein, the Adequate Protection 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 Cases or any Successor Cases, and shall be valid and enforceable against any trustee appointed in any of the Cases or any Successor Cases, or upon the dismissal of any of the Cases or Successor Cases. The Adequate Protection Liens shall not be subject to §§ 506(c), 510, 549, or 550 of the Bankruptcy Code. No lien or interest avoided and preserved for the benefit of any estate pursuant to § 551 of the Bankruptcy Code shall be made *pari passu* with or senior to the Adequate Protection Liens.

**13. Adequate Protection Superpriority Claims.**

**(a) Prepetition Senior Lender Adequate Protection Superpriority Claims.**

As further adequate protection of the interests of the Prepetition Senior Lender in the Prepetition Collateral against any Diminution in Value of such interests in the Prepetition Collateral, the Prepetition Senior Lender is hereby granted as and to the extent provided by §§ 503(b) and 507(b) of the Bankruptcy Code an allowed superpriority administrative expense claim in each of the Cases and any Successor Cases (the “*Adequate Protection Superpriority Claims*”) to the extent of any Diminution in Value.

**(b) Priority of Adequate Protection Superpriority Claims.** The Adequate Protection Superpriority Claims shall be junior only to the Carve Out and DIP Superpriority Claims. Except as set forth herein, the Adequate Protection Superpriority Claims shall have priority over all administrative expense claims and unsecured claims against the Debtors or their Estates, now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, administrative expenses of the kinds specified in or ordered pursuant to §§ 105, 326, 328, 330, 331, 365, 503(a), 503(b), 506(c), 507(a), 507(b), 546(c), 546(d), 726 (to the extent permitted by law), 1113, and 1114 of the Bankruptcy Code.

**14. Section 507(b) Reservation.** Nothing herein shall impair or modify the application of § 507(b) of the Bankruptcy Code in the event that the adequate protection provided hereunder is insufficient to compensate for any Diminution in Value during the Cases or any Successor Cases.

**PROVISIONS COMMON TO DIP FINANCING AND USE OF CASH COLLATERAL AUTHORIZATIONS**

**15. Amendment of the Post-Petition Financing Documents.** No waiver, modification, or amendment of any of the provisions of any Post-Petition Financing Documents shall be effective unless set forth in writing, signed on behalf of the Debtors, and with the necessary consents required under and executed in accordance with the Post-Petition Financing Documents, and approved by the Court on notice.

**16. Budget Maintenance.** The Budget and any modification to, or amendment or update of, the Budget shall be in form and substance acceptable to and approved by the DIP Lender, each in its sole discretion. The Budget may be amended or modified in writing from time to time only with the written consents required under the Post-Petition Financing Documents. The Debtors shall update the Budget as provided in the Post-Petition Financing Documents, including any Budget for the time period commencing after November 18, 2017 (provided that any update shall be in form and substance acceptable to the DIP Lender in its sole discretion), with delivery to the DIP Lender in accordance with the Post-Petition Financing Documents, with copies to be provided to the Prepetition Junior Lenders, United States Trustee, and the Committee and filed with the Court within one business day.

**17. Modification of Automatic Stay.** The automatic stay imposed under Bankruptcy Code § 362(a) is hereby modified as necessary to effectuate all of the terms and provisions of this Final Order, including, without limitation, to: (a) permit the Debtors to grant the DIP Liens, Adequate Protection Liens, DIP Superpriority Claims, and Adequate Protection Superpriority

Claims; (b) permit the Debtors to incur all liabilities and obligations under the Post-Petition Financing Documents, the DIP Facility, and this Final Order; and (c) permit the Debtors to perform such other acts as are necessary to effectuate the terms of this Final Order.

**18. Perfection of DIP Liens and Adequate Protection Liens.** This Final Order shall be sufficient and conclusive evidence of the validity, perfection, and priority of the DIP Liens and Adequate Protection Liens without the necessity of filing or recording any financing statement or other instrument or document, which may otherwise be required under the law or regulation of any jurisdiction or the taking of any other action (including, for the avoidance of doubt, entering into any deposit account control agreement) to validate or perfect (in accordance with applicable non-bankruptcy law) the DIP Liens and Adequate Protection Liens, or to entitle the DIP Lender, Prepetition Senior Lender, and Prepetition Junior Lender, to the priorities granted herein. Notwithstanding the foregoing, each of the DIP Lender, Prepetition Senior Lender, and the Prepetition Junior Lender is authorized to file, as it deems necessary in its sole discretion, such financing statements, mortgages, notices of liens, and other similar documents to perfect in accordance with applicable non-bankruptcy law or to otherwise evidence the applicable DIP Liens and/or Adequate Protection Liens, and all such financing statements, mortgages, notices, and other documents shall be deemed to have been filed or recorded as of the Petition Date; *provided, however,* that no such filing or recordation shall be necessary or required in order to create or perfect the DIP Liens and/or the Adequate Protection Liens. The Debtors are authorized and directed to execute and deliver promptly upon demand to the DIP Lender, Prepetition Senior Lender, and Prepetition Junior Lender all such financing statements, mortgages, notices, and other documents as any of them may reasonably request. The DIP Lender, Prepetition Senior Lender, and Prepetition Junior Lender, each in its discretion, may file a photocopy of this Final Order as a

financing statement with any filing or recording office or with any registry of deeds or similar office, in addition to or in lieu of such financing statements, notices of lien, or similar instrument.

**19. Proceeds of Subsequent Financing.** If the Debtors, any trustee, any examiner with enlarged powers, any responsible officer, or any other estate representative subsequently appointed in these Cases or any Successor Cases, shall obtain credit or incur debt pursuant to Bankruptcy Code §§ 364(b), 364(c) or 364(d) in violation of the Post-Petition Financing Documents at any time prior to the repayment in full of all DIP Obligations and the termination of the DIP Lender's obligation to extend credit under the DIP Facility, including subsequent to the confirmation of any plan with respect to any or all of the Debtors and the Debtors' Estates, then all the cash proceeds derived from such credit or debt shall immediately be turned over to the DIP Lender to be applied to the DIP Obligations and as set forth in the Post-Petition Financing Documents to the extent of the outstanding DIP Obligations.

**20. Maintenance of Insurance for DIP Collateral.** Until the payment in full in cash of all DIP Obligations, and the termination of the DIP Lender's obligations to extend credit under the DIP Facility, the Debtors shall insure the DIP Collateral as required under the DIP Facility.

**21. Disposition of DIP Collateral; Rights of DIP Lender.** The Debtors shall not sell, transfer, lease, encumber, or otherwise dispose of any portion of the DIP Collateral other than as permitted in the Post-Petition Financing Documents without the prior written consents as required under the Post-Petition Financing Documents (and no such consent shall be implied, from any other action, inaction or acquiescence by the DIP Lender) and, if said disposition is outside the ordinary course of the Debtors' business, without approval of the Court.

**22. DIP Termination.** On the Termination Date, (a) all DIP Obligations shall be immediately due and payable, and all commitments to extend credit under the DIP Facility will

terminate, and (b) all authority to use Cash Collateral shall cease, *provided, however*, that for the five (5) days after the Termination Declaration Date, the Debtors may use Cash Collateral solely as set forth in paragraph 11 herein.

**23. Events of Default.** The occurrence of an “*Event of Default*” under the Post-Petition Financing Documents (subject to any extensions or waivers as permitted thereunder), shall constitute an event of default under this Final Order, unless expressly waived in writing by the DIP Lender (collectively, the “*Events of Default*”).

**24. Rights and Remedies Upon Event of Default.** Immediately upon the occurrence and during the continuation of an Event of Default, (a) the DIP Lender may declare (i) all DIP Obligations owing under the Post-Petition Financing Documents to be immediately due and payable, (ii) the termination, reduction, or restriction of any further commitment to extend credit to the Debtors to the extent any such commitment remains, (iii) the termination of the Post-Petition Financing Documents as to any future liability or obligation of the DIP Lender, but without affecting any of the DIP Liens or the DIP Obligations, and/or (iv) a termination, reduction, or restriction on the ability of the Debtors to use Cash Collateral, except as provided in paragraph 11 hereof; and (b) the Prepetition Senior Lender may declare a termination, reduction, or restriction of the ability of the Debtors to use any Cash Collateral, except as provided in paragraph 11 (any such declaration by the DIP Lender or the Prepetition Senior Lender, shall be referred to herein as a “*Termination Declaration*”). The Termination Declaration shall be given by email (or other electronic means) to the Office of the U.S. Trustee, counsel to the Debtors, counsel to the DIP Lender, counsel to the Prepetition Senior Lender, counsel to the Prepetition Junior Lenders, and counsel to the Committee (the earliest date any such Termination Declaration is made shall be referred to herein as the “*Termination Declaration Date*”). The DIP Obligations shall be due and



payable, without notice or demand, and the use of Cash Collateral shall automatically cease on the Termination Declaration Date, except as provided in paragraph 11. Any automatic stay otherwise applicable to the DIP Lender and Prepetition Senior Lender is hereby modified so that beginning on the fifth day after the Termination Declaration Date (such five day period the “**Remedies Notice Period**”), (x) the DIP Lender shall be entitled to exercise all rights and remedies against the DIP Collateral in accordance with the Post-Petition Financing Documents and this Final Order and shall be permitted to satisfy the DIP Obligations and DIP Superpriority Claims, subject to the Carve Out, and (y) the Prepetition Senior Lender shall be entitled to exercise its rights and remedies to satisfy the Prepetition Senior Loan Obligations, and Adequate Protection Superpriority Claims, subject to the Carve Out. Notwithstanding anything to the contrary, during the Remedies Notice Period, the Debtors, the Committee, and the Prepetition Junior Lenders shall be entitled to seek an emergency hearing with the Court for the sole purpose of contesting whether an Event of Default has occurred and/or is continuing. Unless the Court determines during the Remedies Notice Period that an Event of Default has not occurred and/or is not continuing, the automatic stay shall automatically be terminated at the end of the Remedies Notice Period without further notice or order, and the Debtors shall no longer have the right to use or seek to use Cash Collateral, and the DIP Lender and the Prepetition Senior Lender shall be permitted to exercise all remedies set forth herein, in the Post-Petition Financing Documents and Prepetition Senior Loan Documents, as applicable, and as otherwise available at law against the DIP Collateral and Prepetition Collateral, as applicable, without any further order of or application or motion to the Court, and without restriction or restraint by any stay under §§ 362 or 105 of the Bankruptcy Code, or otherwise, against the enforcement of the liens and security interest in the DIP Collateral or any other rights and remedies granted to the DIP Lender with respect thereto pursuant to the Post-Petition

Financing Documents or this Final Order. Notwithstanding anything to the contrary in this Final Order, the right of the DIP Lender and the Prepetition Senior Lender to occupy and/or use any leased premises shall be limited to any rights: (A) existing under applicable non-bankruptcy law; (B) consented to, in writing, by the applicable landlord(s); and/or (C) granted by the Court on motion and notice, and with an opportunity for the landlords to respond.

**25. Good Faith Under Section 364(e) of the Bankruptcy Code; No Modification or Stay of this Final Order.** The DIP Lender and the Prepetition Senior Lender each have acted in good faith in connection with negotiating the Post-Petition Financing Documents, extending credit under the DIP Facility, allowing use of Cash Collateral and their reliance on this Final Order is in good faith. Based on the findings set forth in this Final Order and the record made during the Final Hearing, and in accordance with § 364(e) of the Bankruptcy Code, in the event any or all of the provisions of this Final Order are hereafter reversed, modified, amended, or vacated by a subsequent order of this Court or any other court, the DIP Lender and Prepetition Senior Lender are each entitled to the protections provided in § 364(e) of the Bankruptcy Code. Any such reversal, modification, amendment, or vacatur shall not affect the validity, perfection, priority, allowability, enforceability, or non-avoidability of any advances previously made or made hereunder, or lien, claim, or priority authorized or created hereby. Any liens or claims granted to the DIP Lender and Prepetition Senior Lender hereunder arising prior to the effective date of any such reversal, modification, amendment, or vacatur of this Final Order shall be governed in all respects by the original provisions of this Final Order, including entitlement to all rights, remedies, privileges, and benefits granted herein.

**26. Indemnification of DIP Lender.** The Debtors shall indemnify and hold harmless the DIP Lender and its respective shareholders, directors, officers, subsidiaries, and affiliates,

successors and assigns, in their respective capacities as such, from and against any and all damages, losses, settlement payments, obligations, liabilities, claims, actions, or causes of action, whether groundless or otherwise, and reasonable costs and expenses incurred, suffered, sustained, or required to be paid by an indemnified party of every nature and character arising out of or related to the Post-Petition Financing Documents, or the DIP Facility or the transactions contemplated thereby and by this Final Order, whether such indemnified party is party thereto, as provided in and pursuant to the terms of the Post-Petition Financing Documents and as further described therein and herein, except to the extent resulting from such indemnified party's gross negligence or willful misconduct as determined by a final non-appealable order of a court of competent jurisdiction. The indemnity includes indemnification for the DIP Lender's exercise of discretionary rights granted under the DIP Facility. In all such litigation, or the preparation therefor, the DIP Lender shall be entitled to select its own counsel and, in addition to the foregoing indemnity, the Debtors agree to promptly pay the reasonable fees and expenses of such counsel.

**27. Reporting Requirements.** Debtors shall observe and comply with all of the financial reporting and performance covenants and conditions set forth in the Post-Petition Financing Documents.

**28. Rights of Access and Information.** Without limiting the rights of access and information afforded the DIP Lender, the Debtors shall be, and hereby are, required to afford representatives, agents, and/or employees of the DIP Lender reasonable access to the Debtors' premises and their books and records in accordance with the Post-Petition Financing Documents and shall reasonably cooperate, consult with, and provide to such persons all such information as may be reasonably requested. In addition, the Debtors authorize their independent certified public accountants, financial advisors, investment bankers, and consultants to cooperate, consult with,

and provide to the DIP Lender all such information as may be reasonably requested with respect to the business, results of operations and financial condition of any Borrower.

**29. Carve Out.**

(a) **Carve Out.** As used in this Final Order, the “*Carve Out*” shall encompass the following expenses: (i)(a) allowed fees and reimbursement for disbursements of professionals retained by the Debtors and the Committee (“*Professional Fees*”) in an aggregate amount for all such Professional Fees not to exceed \$100,000, plus (b) allowed fees and expenses incurred and unpaid prior to a Termination Event consistent with the Budget; (ii) quarterly fees pursuant to 28 U.S.C. § 1930(a)(6) and any fees payable to the clerk of the Bankruptcy Court; and (iii) amounts due and owing to the Debtors’ employees for post-petition wages. The Prepetition Senior Liens, Prepetition Junior Liens, as well as the DIP Liens, DIP Super priority Claims, Adequate Protection Liens, and Adequate Protection Superpriority Claims granted pursuant to this Final Order shall all be subject and subordinate in lien, payment and priority to the amounts payable by the Debtors on account of the Carve Out (collectively, the “*Carve Out Amount*”); *provided, however*, that the Carve Out Amount shall be reduced dollar for dollar by the aggregate amount of Debtors’ Professional Fees and Committee’s Professional Fees actually paid by the Debtors and their Estates during the pendency of the Cases (exclusive of retainers paid to such professionals prior to the Petition Date).

(b) **No Direct Obligation to Pay Professional Fees; No Waiver of Right to Object to Fees.** The DIP Lender shall not be responsible for the direct payment or reimbursement of any fees or disbursements of any professionals retained by the Debtors and/or the Committee incurred in connection with the Cases or any Successor Cases. Nothing in this Final Order or otherwise shall be construed (i) to obligate the DIP Lender, in any way to pay compensation to or

to reimburse expenses of any professionals retained by the Debtors and/or the Committee, or to guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement; (ii) to increase the Carve Out Amount if actual Professional Fees exceed the Carve Out Amount; (iii) as consent to the allowance of any professional fees or expenses of any professionals retained by the Debtors and/or the Committee; or (iv) to affect the right of the DIP Lender, Prepetition Senior Lender, and Prepetition Junior Lenders to object to the allowance and payment of such fees and expenses.

**30. Limitations on the DIP Facility, DIP Collateral, Cash Collateral, and Carve Out.** The DIP Facility, DIP Collateral, Cash Collateral, and Carve Out may not be used: (a) in connection with or to finance in any way any action, suit, arbitration, proceeding, application, motion or other litigation of any type (i) adverse to the interests of the DIP Lender or Prepetition Senior Lender, or their rights and remedies under the Post-Petition Financing Documents and Prepetition Senior Loan Documents or this Final Order, as applicable, including, without limitation, for the payment of any services rendered by the professionals retained by the Debtors or the Committee in connection with the assertion of or joinder in any claim, counterclaim, action, proceeding, application, motion, objection, defense, or other contested matter, the purpose of which is to seek, or the result of which would be to obtain, any order, judgment determination, declaration, or similar relief (ii) invalidating, setting aside, avoiding, or subordinating, in whole or in part, the DIP Obligations or Prepetition Senior Loan Obligations (iii) for monetary, injunctive, or other affirmative relief against any DIP Lender or Prepetition Senior Lender or their respective collateral, or (iv) preventing, hindering, or otherwise delaying the exercise by the DIP Lender of any rights and/or remedies under this Final Order, the Post-Petition Financing Documents, or applicable law, or the enforcement or realization (whether by foreclosure, credit bid, further order

of the Court, or otherwise) by the DIP Lender upon any of the DIP Collateral; (b) to make any payment in settlement of any claim, action, or proceeding, before any court, arbitrator or other governmental body without the prior written consents required under the Post-Petition Financing Documents unless approved by the Court; (c) to pay any fees or similar amounts to any person who has proposed or may propose to purchase interests in any of the Debtors without the prior written consents required under the Post-Petition Financing Documents, (d) using or seeking to use Cash Collateral or selling or otherwise disposing of DIP Collateral without the consents required under the Post-Petition Financing Documents; (e) using or seeking to use any insurance proceeds constituting DIP Collateral without the consents required under the Post-Petition Financing Documents; (f) incurring debt outside the ordinary course of business without the prior consent of the DIP Lender; (g) objecting to or challenging in any way the claims, liens, or interests (including interests in the Prepetition Collateral or DIP Collateral) held by or on behalf of any DIP Lender or Prepetition Senior Lender (h) asserting, commencing, or prosecuting any claims or causes of action whatsoever, including, without limitation, any actions under chapter 5 of the Bankruptcy Code, against any DIP Lender, Prepetition Senior Lender, or Prepetition Junior Lenders; (j) prosecuting an objection to, contesting in any manner, or raising any defenses to, the validity, extent, amount, perfection, priority, or enforceability of any of the Prepetition Senior Loan Obligations Prepetition Senior Liens DIP Obligations, or DIP Liens or any other rights or interests of any of the Prepetition Senior Lender or DIP Lender; or (l) preventing, hindering, or otherwise delaying the exercise by any DIP Lender or Prepetition Senior Lender, of any rights and remedies granted under this Final Order.

**31. Reservation of Certain Third-Party Rights and Bar of Challenges and Claims.**

Nothing in this Final Order or the Post-Petition Financing Documents shall prejudice the rights of

the Committee, if granted standing by the Court, and the Prepetition Junior Lenders (subject to the Intercreditor Agreement) to seek, solely in accordance with the provisions of this paragraph 31, to assert claims against the Prepetition Senior Lender or Prepetition Junior Lenders on behalf of the Debtors or Debtors' creditors or interest holders or to otherwise challenge the Debtors' Stipulations, including, but not limited to those in relation to: (a) the validity, extent, priority, or perfection of the mortgages, security interests, and liens of any Prepetition Senior Lender or Prepetition Junior Lenders; (b) the validity, allowability, priority, secured status or amount of the Prepetition Senior Obligations or Prepetition Junior Obligations; (c) any liability of the Prepetition Senior Lender with respect to anything arising from or related to the Prepetition Senior Loan Documents, Prepetition Senior Loan Obligations, and/or Prepetition Senior Liens; or (d) any liability of the Prepetition Junior Lenders with respect to anything arising from or related to the Prepetition Junior Loan Documents, Prepetition Junior Loan Obligations, and/or Prepetition Junior Liens (separately or collectively, a "**Challenge**"). A party in interest, including the Committee, must, after obtaining Court-approved standing, commence, as appropriate, a contested matter or adversary proceeding raising such a Challenge, including, without limitation, any claim or cause of action against any Prepetition Senior Lender or Prepetition Junior Lenders, within sixty (60) calendar days following the date of entry of the Final Order (the "**Challenge Period**"). The applicable Challenge Period may only be extended with the written consent of the applicable Prepetition Senior Lender and Prepetition Junior Lenders, or by order of the Court. Only those parties in interest who commence a Challenge within the Challenge Period may prosecute such a Challenge. As to (i) any parties in interest, including the Committee, who fail to file a Challenge within the Challenge Period, or, if any such Challenge is filed and overruled or (ii) any and all matters that are not expressly the subject of a timely Challenge: (A) any and all such Challenges

by any party (including, without limitation, the Committee, any chapter 11 trustee, and/or any examiner or other estate representative appointed in these Cases, and any chapter 7 trustee and/or examiner or other estate representative appointed in any Successor Case), shall be deemed to be forever waived and barred, (B) all of the findings, Debtors' Stipulations, waivers, releases, affirmations and other stipulations as to the priority, extent, and validity as to the Prepetition Senior Lender's and each Prepetition Junior Lender's claims, liens, and interests shall be of full force and effect and forever binding upon the Debtors, the Debtors' Estates, and all creditors, interest holders, and other parties in interest in these Cases and any Successor Cases, and (C) any and all claims or causes of action against any of the Prepetition Senior Lenders and/or Prepetition Junior Lenders relating in any way to the Debtors shall be released by the Debtors' Estates, all creditors, interest holders and other parties in interest in these Cases and any Successor Cases.

**32. No Third-Party Rights.** Except as explicitly provided for herein, this Final Order does not create any rights for the benefit of any third party, creditor, equity holder or any direct, indirect, or incidental beneficiary.

**33. No Deemed Control.** In making decisions to advance any extensions of credit under the DIP Facility, or in taking any other actions related to this Final Order or the Post-Petition Financing Documents (including, without limitation, the exercise of its approval rights with respect to any budget), DIP Lender shall have no liability to any third party and shall not be deemed to be in control of the operations of Debtors or to be acting as "controlling person," "responsible person," or "owner or operator" with respect to the operation or management of Debtors (as such term, or any similar terms, are used in the Internal Revenue Code, the United States Comprehensive Environmental Response, Compensation and Liability Act as amended, or any



similar federal or state statute), and DIP Lender's relationship with Debtors shall not constitute or be deemed to constitute a joint venture or partnership of any kind.

**34. Continued Effectiveness of Intercreditor Agreement.** The Intercreditor Agreement shall continue in full force and effect and be binding on the Prepetition Junior Lenders to the same extent as it was prior to the Petition Date and the entry of this Final Order, and shall inure to the benefit of the DIP Lender with the same force and effect to the DIP Lender as it currently does to the Prepetition Senior Lender as if the DIP Lender were originally named therein as the "*Senior Creditor*" named therein. Except as expressly set forth in the prior sentence, nothing in this Final Order or the Post-Petition Financing Documents shall (a) modify or amend any terms of the Intercreditor Agreement or (b) affect the validity or effectiveness of the Intercreditor Agreement. In the event of any direct conflict between the terms and conditions of the Intercreditor Agreement and this Final Order or the Post-Petition Financing Documents, the provisions of this Final Order and the Post-Petition Financing Documents shall govern and control, except with respect to provisions of this Final Order that are expressly subject to the terms of the Intercreditor Agreement (in which case, the terms of the Intercreditor Agreement shall govern and control).

**35. No Marshaling/Applications of Proceeds.** The DIP Lender, Prepetition Senior Lender, and Prepetition Junior 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 the Prepetition Collateral, as the case may be, and proceeds shall be received and applied pursuant to the Post-Petition Financing Documents.

**36. Section 506(c) Claims.** No costs or expenses of administration which have been or may be incurred in the Cases at any time shall be charged against or recovered from the DIP Lender or the Prepetition Senior Lender or any of their respective claims or collateral pursuant to

sections 105 or 506(c) of the Bankruptcy Code, or otherwise, without the prior written consent, as applicable, of the DIP Lender or Prepetition Senior Lender, and no such consent shall be implied from any other action, inaction, or acquiescence by any of the DIP Lender or Prepetition Senior Lender or their respective representatives.

**37. Section 552(b).** The DIP Lender, Prepetition Senior Lender, and Prepetition Junior Lenders shall each be entitled to all of the rights and benefits of § 552(b) of the Bankruptcy Code subject to the entry of this Final Order.

**38. Joint and Several Liability.** Nothing in this Final Order shall be construed to constitute a substantive consolidation of any of the Debtors' Estates, it being understood, however, that the Debtors shall be jointly and severally liable for the obligations hereunder and in accordance with the terms of the DIP Facility and the Post-Petition Financing Documents.

**39. Discharge Waiver.** The Debtors expressly stipulate, and the Court finds and adjudicates, that the DIP Obligations shall not be discharged by the entry of an order confirming any plan of reorganization, notwithstanding the provisions of § 1141(d) of the Bankruptcy Code, unless the DIP Obligations have been paid in full in cash on or before the effective date of a confirmed plan of reorganization subject to the entry of the Final Order. None of the Debtors shall propose or support any plan of reorganization or sale of all or substantially all of the Debtors' assets or entry of any confirmation order or sale order that is not conditioned upon the payment in full in cash, on the effective date of such plan of reorganization or sale, of all DIP Obligations.

**40. Rights Preserved.** Other than as expressly set forth in this Final Order, any other rights, claims or privileges (whether legal, equitable or otherwise) of the DIP Lender, Prepetition Senior Lender, and Prepetition Junior Lenders are preserved.

**41. No Waiver by Failure to Seek Relief.** The failure of any DIP Lender, Prepetition Senior Lender, or Prepetition Junior Lender to seek relief or otherwise exercise its rights and remedies under this Final Order, the Post-Petition Financing Documents, the Prepetition Senior Loan Documents, or applicable law, as the case may be, shall not constitute a waiver of any of the rights hereunder, thereunder, or otherwise of the applicable DIP Lender, Prepetition Senior Lender, or Prepetition Junior Lender.

**42. Binding Effect of Final Order.** Immediately upon entry by this Court (notwithstanding any applicable law or rule to the contrary), the terms and provisions of this Final Order shall become valid and binding upon and inure to the benefit of the Debtors, the DIP Lender, Prepetition Senior Lender, Prepetition Junior Lenders, all other creditors of any of the Debtors, the Committee or any other court appointed committee appointed in the Cases, and all other parties in interest and their respective successors and assigns, including any trustee or other fiduciary hereafter appointed in any of the Cases, any Successor Cases, or upon dismissal of any Case or Successor Case.

**43. No Modification of Final Order.** Until and unless the DIP Obligations and Prepetition Senior Loan Obligations have been indefeasibly paid in full in cash, and all commitments to extend credit under the DIP Facility have been terminated, the Debtors irrevocably waive the right to seek and shall not seek or consent to, directly or indirectly, without prior written consents of the DIP Lender and the Prepetition Senior Lender, as applicable: (a) any modification, stay, vacatur, or amendment to this Final Order; (b) a priority claim for any administrative expense or unsecured claim against the Debtors (now existing or hereafter arising of any kind or nature whatsoever, including, without limitation any administrative expense of the kind specified in §§ 503(b), 507(a) or 507(b) of the Bankruptcy Code) in any of the Cases or

Successor Cases, equal or superior to the DIP Superpriority Claims, other than the Carve Out, (c) any other order allowing use of Cash Collateral; or (d) any lien on any of the DIP Collateral with priority equal or superior to the DIP Liens. The Debtors irrevocably waive any right to seek any amendment, modification or extension of this Final Order without the prior written consent, as provided in the Post-Petition Financing Documents, of the DIP Lender and the Prepetition Senior Lender, as applicable, and no such consent shall be implied by any other action, inaction or acquiescence of the applicable DIP Lender and Prepetition Senior Lender.

**44. Final Order Controls. In the event of any inconsistency between the terms and conditions of the Post-Petition Financing Documents or this Final Order, the provisions of this Final Order shall govern and control.**

**45. Survival.** 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 of reorganization in any of the Cases; (b) converting any of the Cases to a case under chapter 7 of the Bankruptcy Code; (c) dismissing any of the Cases or any Successor Cases; or (d) pursuant to which this Court abstains from hearing any of the Cases or Successor Cases. The terms and provisions of this Final Order, including the claims, liens, security interests, and other protections granted to the DIP Lender, Prepetition Senior Lender, and the Prepetition Junior Lenders pursuant to this Final Order and/or the Post-Petition Financing Documents, notwithstanding the entry of any such order, shall continue in the Cases, in any Successor Cases, or following dismissal of the Cases or any Successor Cases, and shall maintain their priority as provided by this Final Order until all DIP Obligations have been indefeasibly paid in full and all letters of credit under the DIP Facility shall have been cancelled, backed, or cash collateralized in accordance with the terms thereof and all commitments to extend credit under the DIP Facility are terminated. The terms and provisions concerning the

indemnification of the DIP Lender shall continue in the Cases, in any Successor Cases, following dismissal of the Cases or any Successor Cases, following termination of the Post-Petition Financing Documents and/or the repayment of the DIP Obligations.

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

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

**48. Nunc Pro Tunc.** The Debtors' use of cash collateral pursuant to this order shall be effective *nunc pro tunc* to the Petition Date.

Dated this 16th day of October, 2017, at New Haven, Connecticut.

*Ann M. Nevins*  
United States Bankruptcy Judge  
District of Connecticut

