

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

OPTIMA SPECIALTY STEEL, INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 16-12789 (KJC)

(Jointly Administered)

Ref. D.I. 202

**FINAL ORDER (I) AUTHORIZING POSTPETITION
SECURED FINANCING PURSUANT TO 11 U.S.C. §§ 105(A), 361
362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) AND 364(e), (II) AUTHORIZING
THE DEBTORS' USE OF CASH COLLATERAL PURSUANT TO
11 U.S.C. § 363, (III) GRANTING ADEQUATE PROTECTION PURSUANT
TO 11 U.S.C. §§ 361, 363 AND 364, AND (IV) GRANTING RELATED RELIEF**

Upon the motion dated January 17, 2017 [D.I. 202] (the "DIP Motion") of Optima Specialty Steel, Inc. ("OSS") and its affiliated debtors, each as a debtor and debtor in possession (collectively with OSS, the "Debtors") in the above-captioned cases (the "Cases") before the United States Bankruptcy Court for the District of Delaware (the "Court"), pursuant to sections 105, 361, 362, 363, 364, 503, and 507 of title 11 of the United States Code (the "Bankruptcy Code"), and Rules 2002, 4001, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), seeking, among other things:

(a) authorization for each of the Debtors, in its capacity as a borrower (each "Borrower" and, collectively, the "Borrowers"), to obtain postpetition financing (the "DIP

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

Facility”), on a joint and several basis, consisting of a superpriority term loan credit facility in an aggregate principal amount of up to \$211,700,000 consisting of (i) a multiple-draw term loan of up to \$50,000,000 in respect of new money funding (the “New Money DIP Loans” or the “New Money DIP Commitments”) provided by DDJ Capital Management, LLC (on behalf of certain of its managed accounts and investment funds, “DDJ” and, together with third parties acceptable to DDJ, the “New Money DIP Lenders”), of which \$40,000,000 was approved pursuant to the *Interim Order (I) Authorizing Postpetition Secured Financing Pursuant to 11 U.S.C. §§ 105(A), 361, 362, 364(c)(1), 364(c)(2), 364(d)(1) and 364(e), (II) Authorizing the Debtors’ Use of Cash Collateral Pursuant to 11 U.S.C. § 363, (III) Granting Adequate Protection Pursuant to 11 U.S.C. §§ 361, 363 and 364, and (IV) Scheduling a Final Hearing Pursuant to Bankruptcy Rules 4001(b) and 4001(c)* [D.I. 257] (the “Interim Order”), and (ii) a single draw term loan (the “Replacement DIP Loans” and, together with the New Money DIP Loans, the “DIP Loans”) provided by DDJ and certain other holders of the Prepetition Secured Notes (as defined below) (exclusive of DDJ, the “Minority DIP Lenders” and, together with the New Money DIP Lenders, the “DIP Lenders”) in an amount sufficient to repay in full, in cash, all Prepetition Secured Notes Obligations (as defined below) (the “Prepetition Secured Notes Repayment”), subject to the terms and conditions hereof, and as set forth in the DIP Documents (as defined below);

(b) authorization for the Debtors to enter into that certain Senior Secured Super-Priority Debtor-In-Possession Credit Agreement among the Borrowers, the DIP Lenders party thereto, and Cortland Capital Market Services LLC, as administrative agent (in such capacity, the “DIP Agent”) (as amended, restated or otherwise modified from time to time in accordance with the terms thereof, the “DIP Credit Agreement”; together with all agreements, documents,

and instruments delivered or executed in connection therewith, the “DIP Documents”), which DIP Credit Agreement was filed in substantially final form as Exhibit “A” to the Interim Order, and to perform such other and further acts as may be required in connection with the DIP Documents;

(c) authorization for the Debtors to use the New Money DIP Loans, the proceeds thereof, and the Prepetition Secured Notes Collateral (as defined below), including Cash Collateral (as defined below), to provide working capital for, and for other general corporate purposes of, the Debtors, including for payment of any Adequate Protection Obligations (as defined below) and, subject to entry of this Final Order, authorization for the Debtors to incur the Replacement DIP Loans and use the proceeds thereof to make the Prepetition Secured Notes Repayment;

(d) the granting of adequate protection to the holders (collectively, the “Prepetition Secured Noteholders”) of the 12.500% Senior Secured Notes due 2016 issued by the Borrower (the “Prepetition Secured Notes”) under that certain Indenture dated as of December 5, 2011 (as amended, supplemented or otherwise modified, the “Prepetition Secured Notes Indenture” and, together with all related collateral and security documents, the “Prepetition Secured Notes Documents”), by and among OSS, as issuer, the guarantors party thereto and Wilmington Trust, National Association, as trustee and collateral agent (the “Prepetition Secured Notes Trustee”);

(e) authorization for the Debtors to use the Prepetition Secured Notes Collateral, including Cash Collateral, in which the Prepetition Secured Noteholders and the Prepetition Secured Notes Trustee (collectively, the “Prepetition Secured Notes Parties”) have an interest, and the granting of adequate protection to the Prepetition Secured Notes Parties with respect

to, among other things, such use of their Cash Collateral and any diminution in the value of the Prepetition Secured Notes Collateral;

(f) the granting of valid, enforceable, non-avoidable and fully perfected first priority liens on and senior security interests in all of the property, assets and other interests in property and assets of the Debtors, whether such property is presently owned or after-acquired, and all other “property of the estate” (within the meaning of the Bankruptcy Code) of the Debtors, of any kind or nature whatsoever, real or personal, tangible, intangible or mixed, now existing or hereafter acquired or created, whether existing prior to or arising after the Petition Date, subject to (i) the Carve-Out (as defined below), (ii) prior to entry of this Final Order approving the Replacement DIP Loans and the occurrence of the Prepetition Secured Notes Repayment, the Prepetition Secured Notes Liens and the Adequate Protection Liens (each as defined below), in each case, unless there is an order of the Court finding that (x) the claims arising in connection with the Prepetition Secured Notes Obligations are not allowed as secured claims or (y) such Prepetition Secured Notes Liens do not constitute non-avoidable, valid and perfected liens, and (iii) any Senior Liens (as defined below), on the terms and conditions set forth herein and in the DIP Documents;

(g) the granting of superpriority administrative expense claims against each of the Debtors’ estates to the DIP Agent and the DIP Lenders with respect to the DIP Obligations (as defined below), subordinate to the payment of the Carve-Out and, which claims on account of the New Money DIP Loans, (i) prior to entry of this Final Order approving the Replacement DIP Loans and the occurrence of the Prepetition Secured Notes Repayment, shall be junior to the claims arising on account of the Prepetition Secured Notes Obligations and the Adequate Protection Superpriority Claims (unless there is an order of the Court finding that the claims

arising in connection with the Prepetition Secured Notes Obligations are not allowed as secured claims) and (ii) following entry of this Final Order approving the Replacement DIP Loans and the occurrence of the Prepetition Secured Notes Repayment, shall be junior to the superpriority administrative expense claims on account of the Replacement DIP Loans, but in both instances otherwise senior to any and all other administrative expenses of any kind or nature other than the Carve-Out, on the terms and conditions set forth herein and in the DIP Documents;

(h) the limitation of the Debtors' and the estates' right to surcharge against the DIP Collateral (as defined below) and the Prepetition Secured Notes Collateral pursuant to Bankruptcy Code section 506(c);

(i) pursuant to Bankruptcy Rule 4001, that an interim hearing (the "Interim Hearing") on the DIP Motion be held before this Court to consider entry of the Interim Order, among other things, (1) authorizing the Borrowers, on an interim basis, to borrow from the New Money DIP Lenders under the DIP Documents up to an aggregate principal amount not to exceed \$40,000,000 in New Money DIP Loans (subject to any limitations of borrowing under the DIP Documents); (2) authorizing the Debtors' use of Cash Collateral; and (3) granting the adequate protection described in the Interim Order;

(j) that this Court schedule a final hearing (the "Final Hearing") to consider entry of a final order (this "Final Order") authorizing, among other things, the balance of the borrowing under the DIP Documents on a final basis, the Prepetition Secured Notes Repayment, as set forth in the DIP Motion and the DIP Documents; and

(k) granting related relief.

Due and appropriate notice of the DIP Motion, the relief requested therein and the Final Hearing having been served by the Debtors on, among others, (a) the United States Trustee (the “U.S. Trustee”); (b) Morrison & Foerster LLP, 250 West 55th Street, New York, New York 10019, Attn: Jonathan I. Levine, Esq. and Daniel J. Harris, Esq., counsel to the Prepetition Secured Notes Trustee; (c) Akin Gump Strauss Hauer & Feld LLP (“Akin Gump”), Attn: Philip C. Dublin, Esq. and Jason Rubin, Esq., counsel to the ad hoc group of unaffiliated holders of a majority in amount of the Prepetition Secured Notes (the “Secured Noteholder Group”) and the Minority DIP Lenders; (d) Latham & Watkins LLP, 330 North Wabash Avenue, Suite 2800, Chicago, IL 60611, Attn: Richard A. Levy, Esq. and Ted A. Dillman, Esq., counsel to DDJ; (e) Squire Patton Boggs (US) LLP, 30 Rockefeller Center, New York, New York 10112 Attn: Stephen Lerner (stephen.lerner@squirepb.com) and Norman N. Kinel (norman.kinel@squirepb.com), counsel to the official committee of unsecured creditors appointed in these cases [D.I. 120] (the “Creditors’ Committee”); (f) those parties requesting notice pursuant to Bankruptcy Rule 2002; (g) the Office of the United States Attorney General for the District of Delaware; and (h) the Internal Revenue Service, in compliance with Bankruptcy Rules 4001(b) and (c) and the Local Rules of the United States Bankruptcy Court for the District of Delaware (the “Local Bankruptcy Rules”).

The Interim Hearing approving the Motion on an interim basis having been held by this Court on January 23, 2017, the Interim Order having been approved by this Court on January 23, 2017, and the Final Hearing having been held by this Court on February 28, 2017.

Upon the record at the Interim Hearing and the Final Hearing and after due deliberation and consideration and sufficient cause appearing therefor;

IT IS FOUND, DETERMINED, ORDERED AND ADJUDGED, that:²

1. *Disposition.* The DIP Motion is GRANTED on a final basis in accordance with the terms of this Final Order. Any objections to the DIP Motion with respect to the entry of this Final Order that have not been withdrawn, waived or settled on the record of the Final Hearing, and all reservation of rights included therein, are hereby denied and overruled on the merits.

2. *Jurisdiction.* This Court has core jurisdiction over the Cases commenced on December 15, 2016 (the "Petition Date"), the DIP Motion, and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157(b) and 1334. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

3. *Notice.* Under the circumstances, the notice given by the Debtors of the DIP Motion, the relief requested therein, and the Final Hearing constitutes due and sufficient notice thereof and complies with Bankruptcy Rules 4001(b) and (c) and the Local Bankruptcy Rules, and no further notice of the relief sought at the Final Hearing and the relief granted herein is necessary or required.

4. *Debtors' Stipulations.* Without prejudice to the rights of any other party, but subject to the limitations thereon contained in paragraphs 30 and 31 of this Final Order, the Debtors represent, admit, stipulate, and agree as follows:

- (a) Cash Collateral. Any and all of the Debtors' cash, including cash and other amounts on deposit or maintained in any account or accounts by the Debtors, and any amounts generated by the collection of accounts receivable or other disposition of the Prepetition Secured Notes Collateral existing as of the Petition Date, and the proceeds of any of the foregoing, is the Prepetition Secured Notes

² Findings of fact shall be construed as conclusions of law, and conclusions of law shall be construed as findings of fact, as appropriate, pursuant to Bankruptcy Rule 7052.

Parties' cash collateral within the meaning of Bankruptcy Code section 363(a) (the "Cash Collateral").

- (b) The Prepetition Secured Notes are secured by substantially all assets of the Debtors (the "Prepetition Secured Notes Collateral" and all liens and security interests therein, the "Prepetition Secured Notes Liens") and constitute the legal, valid, non-avoidable and binding obligations of the Debtors, enforceable in accordance with the Prepetition Secured Notes Documents.
- (c) Prepetition Secured Notes Obligations. As of the Petition Date, the Debtors, without defense, counterclaim, or offset of any kind were jointly and severally indebted and liable to the Prepetition Secured Notes Parties under the Prepetition Secured Notes Documents in the aggregate principal amount of not less than approximately \$161 million, plus accrued and unpaid interest, premium, if any, and certain fees, costs, expenses, indemnification obligations, charges and all other obligations of whatever nature owing, whether or not contingent, whenever arising, accrued, accruing, due, owing or chargeable under the Prepetition Secured Notes (collectively, the "Prepetition Secured Notes Obligations").
- (d) Prepetition Secured Notes Liens. The Prepetition Secured Notes Liens granted to the Prepetition Secured Notes Parties in the Prepetition Secured Notes Collateral pursuant to and in connection with the Prepetition Secured Notes Documents, (i) are valid, binding, perfected, and enforceable first priority liens and security interests in the Prepetition Secured Notes Collateral, (ii) are not subject, pursuant to the Bankruptcy Code or other applicable law, to avoidance, recharacterization, recovery, subordination, attack, offset, counterclaim, defense, or "claim" (as defined in the Bankruptcy Code) of any kind, (iii) as of the Petition Date are subject and/or subordinate only to valid, perfected, and unavoidable liens and security interests existing as of the Petition Date (or perfected after the Petition Date to the extent permitted by Bankruptcy Code section 546(b)) that are senior in priority (after giving effect to any intercreditor agreements) to the Prepetition Secured Notes Liens of the Prepetition Secured Notes Parties as permitted by the terms of the Prepetition Secured Note Documents ("Senior Liens"), and (iv) constitute the legal, valid, and binding obligation of the Debtors, enforceable in accordance with the terms of the applicable Prepetition Secured Notes Documents.
- (e) The Debtors and their estates have no claims, objections, challenges, causes of action and/or choses in action, including, without limitation, avoidance claims under chapter 5 of the Bankruptcy Code, against any of the Prepetition Secured Notes Parties, or any of their respective affiliates, agents, attorneys, advisors, professionals, officers, directors, and employees in respect of the Prepetition Secured Notes Liens or the Prepetition Secured Notes Obligations.

5. *Findings Regarding the DIP Facility.*

(a) Good cause has been shown for the entry of this Final Order.

(b) From the Petition Date through the date of the first borrowing of New Money DIP Loans pursuant to the Interim Order, the Debtors had been funding their business exclusively through the use of Cash Collateral in accordance with the *Interim Order (I) Authorizing The Use of Cash Collateral, (II) Granting Adequate Protection to the Secured Parties, (III) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001(B) and (IV) Granting Related Relief* entered by the Court on December 19, 2016. [D.I. 54] (the “Interim Cash Collateral Order”). Notwithstanding the Interim Cash Collateral Order, the Debtors lack sufficient sources of working capital and financing to operate their businesses in the ordinary course throughout the Cases without the DIP Facility.

(c) The Debtors have a continuing and immediate need to obtain the DIP Facility and to use the Cash Collateral to, among other things, (i) permit the orderly continuation of their businesses; (ii) maintain business relationships with vendors, suppliers, and customers of the Debtors; (iii) make payroll; (iv) make capital expenditures; (v) make adequate protection payments; and (vi) pay the costs of administration of their estates and satisfy other working capital and general corporate purposes of the Debtors. The ability of the Debtors to obtain sufficient working capital and liquidity through the incurrence of the new indebtedness for borrowed money and other financial accommodations is vital to the preservation and maintenance of the going concern values of the Debtors and to the Debtors’ successful reorganization.

(d) The Debtors are unable to obtain financing on more favorable terms from sources other than the DIP Lenders under the DIP Documents and are unable to obtain adequate unsecured credit allowable under Bankruptcy Code section 503(b)(1) as an administrative expense. The Debtors are also unable to obtain secured credit allowable under Bankruptcy Code sections 364(c)(1) for the purposes set forth in the DIP Documents without the Debtors granting to the DIP Agent and the DIP Lenders (subject to the Carve-Out and, prior to entry of this Final Order approving the Replacement DIP Loans and the occurrence of the Prepetition Secured Notes Repayment, subject to the Prepetition Secured Notes Liens, the Prepetition Secured Notes Obligations, the Adequate Protection Liens and the Adequate Protection Superpriority Claims) the DIP Liens (as defined below) and the DIP Superpriority Claims (as defined below) under the terms and conditions set forth in this Final Order and the DIP Documents. The Debtors are also unable to obtain debtor-in-possession financing on terms and conditions more favorable than the terms and conditions set forth in this Final Order and the DIP Documents.

(e) The terms of the DIP Facility, the DIP Documents and the use of Cash Collateral are fair and reasonable, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties and constitute reasonably equivalent value and fair consideration.

(f) The terms of the use of Cash Collateral were negotiated in good faith and at arms' length among the Debtors and the Prepetition Secured Notes Parties and the Prepetition Secured Notes Parties' consent to the use of Cash Collateral shall be deemed to have been made in "good faith."

(g) The DIP Facility has been negotiated in good faith and at arm's length among the Debtors, the DIP Agent and the DIP Lenders, and all of the Debtors' obligations and indebtedness arising under, in respect of, or in connection with the DIP Facility and the DIP Documents including, without limitation, all loans (including the Replacement DIP Loans) made to and guarantees issued by the Debtors pursuant to the DIP Documents and all other obligations under the DIP Documents (collectively, the "DIP Obligations") shall be deemed to have been extended by the DIP Agent and the DIP Lenders in good faith as that term is used in Bankruptcy Code section 364(e) and in express reliance upon the protections offered by Bankruptcy Code section 364(e). Subject to the terms of this Final Order, the DIP Obligations, the DIP Liens and the DIP Superpriority Claims shall be entitled to the full protection of Bankruptcy Code section 364(e) in the event that this Final Order or any provision hereof is vacated, reversed, or modified on appeal or otherwise, and any liens or claims granted to the DIP Agent or the DIP Lenders hereunder arising prior to the effective date of any such vacatur, reversal or modification 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.

(h) The Debtors have requested entry of this Final Order pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2) and the Local Bankruptcy Rules. Absent granting the relief sought by this Final Order, the Debtors' estates will be immediately and irreparably harmed. Consummation of the DIP Facility and authorization of the use of the Prepetition Secured Notes Collateral (including the Cash Collateral) in

accordance with this Final Order and the DIP Documents are, therefore, in the best interests of the Debtors' estates and are consistent with the Debtors' fiduciary duties.

6. *Authorization of the DIP Facility and the DIP Documents.*

(a) The Debtors are hereby expressly authorized and empowered to execute and deliver and, on such execution and delivery, directed to perform under the DIP Documents, including the DIP Credit Agreement, which is hereby approved and incorporated herein by reference.

(b) In accordance with the terms of this Final Order and the DIP Credit Agreement, proceeds of the New Money DIP Loans shall be used solely for the purposes permitted under the DIP Credit Agreement, this Final Order and in accordance with the Budget (as defined below), plus Permitted Variances as set forth in this Final Order and the DIP Credit Agreement.

(c) Upon entry of this Final Order, the Borrowers will be authorized to (a) borrow up to an aggregate principal amount of up to \$50,000,000 (inclusive of New Money DIP Loans borrowed pursuant to the Interim Order) in New Money DIP Loans (plus interest, fees and other expenses and amounts provided for in the DIP Credit Agreement), subject to and in accordance with the terms of this Final Order and the DIP Credit Agreement, (b) borrow the Replacement DIP Loans in an amount sufficient to effectuate the Prepetition Secured Notes Repayment, and (c) effectuate the Prepetition Secured Notes Repayment, in each case, subject to and in accordance with the terms of this Final Order and the DIP Credit Agreement.

(d) In furtherance of the foregoing and without further approval of this Court, each Debtor is authorized, and the automatic stay imposed by Bankruptcy Code

section 362 is hereby lifted to the extent necessary, to perform all acts and to make, execute and deliver all instruments and documents (including, without limitation, the DIP Credit Agreement, any security and pledge agreement, and any mortgage contemplated thereby), and to pay all fees, that may be reasonably required or necessary for the Debtors' performance of their obligations under this Final Order and the DIP Facility including, without limitation:

(i) the execution, delivery and performance of the DIP Documents, including, without limitation, the DIP Credit Agreement, any security and pledge agreement, and any mortgage contemplated thereby;

(ii) the execution, delivery and performance of one or more amendments, waivers, consents or other modifications to and under the DIP Documents, it being understood that no further approval of the Court shall be required for amendments, waivers, consents or other modifications to and under the DIP Documents or the DIP Obligations that do not shorten the maturity of the extensions of credit thereunder or increase the commitments or the rate of interest payable thereunder; provided that prior to the occurrence of the Prepetition Secured Notes Repayment, the consent of the Prepetition Secured Notes Trustee and the Secured Noteholder Group shall be required with respect to any such amendments, waivers, consents or other modifications to and under the DIP Documents; provided, further, that (i) the Creditors' Committee shall be provided prompt notice of any amendment or modification of the DIP Documents or DIP Obligations, (ii) the Creditors' Committee shall have three (3) business days from receipt of notice to file an objection to any material amendment or modification, and (iii) if a timely objection is filed, such material amendment or modification shall not become effective unless agreed by the Creditors' Committee or ordered by the Court; provided,

however, that nothing herein shall limit the rights of the Debtors to seek emergency relief from the Court for approval of any material amendment to which the Creditors' Committee objects;

(iii) the non-refundable payment to the DIP Agent or the DIP Lenders, as applicable, of the fees referred to in the DIP Credit Agreement, including (x) a Closing Fee of 2% of the New Money DIP Commitments (i.e., \$1,000,000), which was payable in cash to the New Money DIP Lenders upon entry of the Interim Order; and (y) all reasonable and documented costs and expenses as may be due from time to time, including, without limitation, fees and expenses of counsel and other professionals retained as provided for in the DIP Documents and this Final Order;

(iv) the payment of the Adequate Protection Fees and the Adequate Protection Payments provided for in this Final Order and incurred through the date of the Prepetition Secured Notes Repayment; and

(v) the performance of all other acts required under or in connection with the DIP Documents.

(e) Upon execution and delivery of the DIP Credit Agreement and the other DIP Documents, such DIP Documents shall constitute valid, binding and non-avoidable obligations of the Debtors enforceable against each Debtor party thereto in accordance with their respective terms and the terms of this Final Order for all purposes during the Cases, any subsequently converted Case of any Debtor to a case under chapter 7 of the Bankruptcy Code or after the dismissal of any Case. No obligation, payment, transfer or grant of security under the DIP Credit Agreement, the other DIP Documents or this Final Order shall be stayed, restrained, voidable, avoidable or recoverable under the Bankruptcy Code or under any applicable law (including, without limitation, under

Bankruptcy Code sections 502(d), 548 or 549 or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or similar statute or common law), or subject to any defense, reduction, setoff, recoupment or counterclaim.

7. *Budget; Cash Management and DIP Accounts.*

- (a) Except as otherwise provided herein, the Debtors may only use Cash Collateral and the proceeds of the DIP Facility in a manner set forth in the budget attached as Exhibit "B" to the Interim Order (as the same may be updated in accordance with the terms of this Final Order and the DIP Documents, the "Budget"), including, without limitation, for: (i) working capital requirements; (ii) general corporate purposes; (iii) the Prepetition Secured Notes Repayment, and (iv) the costs and expenses (including making adequate protection payments hereunder and, subject to further order of the Court, as applicable, payment of the allowed fees and expenses of professionals retained by the Debtors' estates) of administering the Cases (including payments under the Carve-Out as provided herein).
- (b) No less frequently than every four weeks, commencing on February 1, 2017, the Debtors shall deliver an updated budget (each, a "Proposed Budget") to the DIP Agent and the DIP Lenders, and, prior to the occurrence of the Prepetition Secured Notes Repayment, to the Prepetition Secured Notes Trustee and Berkley Research Group, LLC ("BRG"), which Proposed Budget, upon written approval by the Required Lenders (as defined in the DIP Credit Agreement) and, prior to the occurrence of the Prepetition Secured Notes Repayment, BRG (at the direction of the Required Prepetition Secured Noteholders)³, as applicable, shall become the Budget effective as of the first Monday following such written approval; provided that unless and until the Required Lenders and, prior to the occurrence of the Prepetition Secured Notes Repayment, BRG (at the direction of the Required Prepetition Secured Noteholders), as applicable, shall have approved in writing any Proposed Budget or any other proposed modification to the Budget then in effect, the Debtors shall still be subject to and be governed by the terms of such Budget then in effect in accordance with the terms of this Final Order. Modifications to the Budget approved in accordance with the terms of this Final Order and the DIP Documents shall not require further order or approval of the Court; provided that the Debtors shall consult with the advisors to Creditors'

³ "Required Prepetition Secured Noteholders" means the holders of at least 50.1% of the Prepetition Secured Notes Obligations.

Committee in connection with any such amendment or modification of the Budget.

- (c) On or before 5:00 p.m. (Prevailing Eastern Time) on Wednesday of each week, the Debtors shall be required to deliver to the DIP Agent and the DIP Lenders and, prior to the occurrence of the Prepetition Secured Notes Repayment, the Prepetition Secured Notes Trustee and BRG, a weekly variance report, certified by the CRO (as defined below), and in a form reasonably satisfactory to the DIP Agent and Required Lenders and, prior to the occurrence of the Prepetition Secured Notes Repayment, the Prepetition Secured Notes Trustee and BRG, comparing the actual receipts and disbursements of the Debtors on a line item basis with the receipts and cash disbursements in the Budget (the "Budget Variance Report"). In no event shall the disbursements or receipts exceed the Permitted Variance. "Permitted Variance" means 15% variance on total disbursements and 25% variance on total receipts, tested weekly on a rolling 8-week cumulative basis, beginning with the week of January 16, 2017; provided that to the extent that fewer than eight (8) weeks have elapsed since January 16, 2017, Permitted Variances shall be tested based on the actual number of weeks elapsed (*i.e.*, the first test shall occur with delivery of the Budget Variance Report on Wednesday, January 25, 2017 for week of January 16, 2017, which test shall be based on the variance of disbursements and receipts for that week only; the following weekly test shall use a 2-week period, etc.); provided, however, the fees and expenses of the DIP Agent, DIP Lenders, Prepetition Secured Notes Trustee, and the Secured Noteholder Group that are required to be paid pursuant to this Final Order and the DIP Documents shall not be considered disbursements for purposes of the foregoing calculation; provided further however, that nothing in the Budget shall constitute a cap on the allowance of any Professional Fees.
- (d) The consent of the Required Lenders or the Required Prepetition Secured Noteholders to the Budget shall not be construed as consent to the use of any Cash Collateral or DIP Term Loans after the occurrence of a Termination Event (as defined below), regardless of whether the aggregate funds shown on the Budget have been expended.
- (e) Upon being drawn down, proceeds of any DIP Loans (except for proceeds of the DIP Loans used to effectuate the Prepetition Secured Notes Repayment, which shall be made to the Prepetition Secured Notes Trustee and/or Escrow Agent (defined below) for distribution to the Prepetition Secured Noteholders) will be deposited into one or more bank accounts of the Debtors acceptable to the DIP Agent (collectively, the "DIP Accounts"). All proceeds of DIP Loans deposited into any DIP Account shall constitute the Cash Collateral of the DIP Agent and the DIP Lenders and, prior to the Prepetition Secured Notes Repayment, collateral for the Prepetition Secured Note Obligations and collateral for the Adequate

Protection Liens. Subject to the foregoing proviso and the priorities set forth herein, in this Final Order and in the DIP Documents, the DIP Agent (for itself and the DIP Lenders) shall at all times have a perfected first priority lien thereon (subject to the Carve-Out, and, prior to the Prepetition Secured Notes Repayment, the Prepetition Secured Notes Liens and the Adequate Protection Liens) as well as sole dominion and control, in either case, subject to the terms of this Final Order and, if so requested by the DIP Agent on not less than three (3) business days' prior notice, a deposit account control agreement reasonably acceptable to the DIP Agent and Required Prepetition Secured Noteholders. Subject to the applicable remedies provisions, amounts in the DIP Accounts may be used by the Debtors pursuant to the Budget, subject to Permitted Variances, and in accordance with the provisions of the DIP Documents. Any amounts remaining in the DIP Accounts at the maturity of the DIP Facility (whether by acceleration or otherwise) shall be applied to reduce (i) prior to the Prepetition Secured Notes Repayment, the Prepetition Secured Notes Obligations and (ii) following the Prepetition Secured Notes Repayment, the Replacement DIP Loans and, once the Replacement DIP Loans have been repaid in full, in cash, the New Money DIP Loans then outstanding.

- (f) Copies of the above Proposed Budgets, variance reports, and other operating and financial reports provided by the Debtors to the DIP Agent and DIP Lenders pursuant to this Final Order and the DIP Documents shall also be provided (substantially contemporaneously as provided to the DIP Agent and DIP Lenders) to counsel for the Creditors' Committee and counsel to Optima Acquisitions, LLC ("OA").

8. *Reporting Requirements/Access to Records.* The Debtors shall provide to the DIP Agent and DIP Lenders such other financial and operating reports and such other information relating to the business as the DIP Agent and Required Lenders may reasonably request from time to time.⁴ Prior to the occurrence of the Prepetition Secured Notes Repayment, the Debtors shall provide the Prepetition Secured Notes Trustee and the Secured Noteholder Group such financial and operating reports provided to the DIP Agent and DIP Lenders. The (a) DIP Lenders, the DIP Agent and their respective financial advisors,

⁴ For the avoidance of doubt, the foregoing shall include due diligence information reasonably requested by DDJ and/or the DIP Professionals related to the Debtors, their assets and liabilities, and the business.

consultants and other professionals and representatives (including, for the avoidance of doubt, such advisors, consultants, professionals and representatives of the Minority DIP Lenders), (b) prior to the occurrence of the Prepetition Secured Notes Repayment, the Prepetition Secured Notes Trustee and the Secured Noteholder Group and their respective financial advisors, consultants and other professionals and representatives, (c) OA and its financial advisors, consultants and other professionals and representatives, and (d) the Creditors' Committee shall (i) have reasonable access to and shall be entitled to visit and inspect, any of the Debtors' facilities, assets, and/or books and records at reasonable times during normal business hours and on reasonable notice, and (ii) subject to appropriate confidentiality agreements and excluding legally privileged information, shall be entitled to discuss any matter relating to any of the Debtors' business affairs, their operations or any sale process with any of the Debtors, and their respective officers, directors, advisors and other professionals at reasonable times and upon reasonable notice. In addition, each of (a) the DIP Lenders, the DIP Agent, and their financial advisors, consultants and other professionals and representatives, (b) prior to the occurrence of the Prepetition Secured Notes Repayment, the Prepetition Secured Notes Trustee and the Secured Noteholder Group and their respective financial advisors, consultants and other professionals and representatives, and (c) OA and its financial advisors, consultants and other professionals and representatives, shall be entitled to communicate directly with any and all vendors, customers, creditors or other parties in interest with respect to any matter involving the Debtors relating to the Debtors' business affairs, operations or the restructuring process; provided that prior to the occurrence of a Termination Event, such communications shall be made only with the consent of the CRO (not to be unreasonably withheld, conditioned or delayed); provided, further, that the foregoing shall not operate as a release of any post-

petition actionable conduct by, or claims against, the foregoing parties in connection with their interaction with vendors, customers, creditors or other parties pursuant to this paragraph. The Debtors and their Boards of Managers/Directors shall cooperate, and shall use commercially reasonable efforts to cause the Debtors' officers, employees, advisors and other professionals to cooperate, with the DIP Lenders, the DIP Agent, the Prepetition Secured Notes Trustee, the Secured Noteholder Group, the Creditors' Committee and OA in connection with the exercise of access and informational rights as set forth in this and the immediately preceding paragraph.

9. *Retention of Chief Restructuring Officer.* For as long as the DIP Facility remains outstanding, unless consented to by the Required Lenders and, prior to the occurrence of the Prepetition Secured Notes Repayment, the Required Prepetition Secured Noteholders, the Debtors shall retain Conway MacKenzie to provide Michael Correra to act as chief restructuring officer or another individual reasonably acceptable to the Secured Noteholder Group and DDJ (the "CRO"), with such responsibilities and authority typically provided to chief restructuring officers in chapter 11 cases. The Secured Noteholder Group, Required Lenders, the DIP Agent, the Creditors' Committee, and OA shall be entitled to communicate directly with the CRO on any matter relating to the Debtors, their businesses or the restructuring process.

10. *DIP Superpriority Claims.* Pursuant to Bankruptcy Code section 364(c)(1), all of the DIP Obligations shall constitute allowed superpriority administrative expense claims against each of the Debtors' estates (the "DIP Superpriority Claims") (without the need to file any proof of claim) with priority over any and all administrative expenses, adequate protection claims, diminution claims and all other claims against the Debtors, now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expenses of the

kind specified in Bankruptcy Code sections 503(b) and 507(b), and over any and all administrative expenses or other claims arising under Bankruptcy Code sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 726, 1113, or 1114 or otherwise, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment, which allowed claims shall for the purposes of Bankruptcy Code section 1129(a)(9)(A) be considered administrative expenses allowed under Bankruptcy Code section 503(b) and which shall be payable from and have recourse to all prepetition and postpetition property of the Debtors and all proceeds thereof, including, without limitation, any proceeds or property recovered in connection with the pursuit of claims or causes of action arising under chapter 5 of the Bankruptcy Code, if any (the “Avoidance Actions”) and commercial tort claims, subject only to the payment of the Carve-Out to the extent specifically provided for herein; provided, however, (x) prior to the occurrence of the Prepetition Secured Notes Repayment, any DIP Superpriority Administrative Claims shall be junior to, and subject to the prior payment in full in cash, of the claims of the Prepetition Secured Notes Trustee and the Prepetition Secured Noteholders with respect to the Prepetition Secured Notes Obligations and the Adequate Protection Superpriority Claims (unless there is an order of the Court finding that the claims arising in connection with the Prepetition Secured Notes Obligations are not allowed as secured claims) and (y) following the occurrence of the Prepetition Secured Notes Repayment, the DIP Superpriority Administrative Claims granted on account of the New Money DIP Loans shall in all circumstances be subject to the prior payment in full in cash of the DIP Superpriority Administrative Claims granted on account of the Replacement DIP Loans.

11. *DIP Liens.* As security for the DIP Obligations, and subject to the Carve-Out in all respects, effective and perfected upon the date of the Interim Order, and without the necessity of the execution, recordation of filings by the Debtors of mortgages, security agreements, control agreements, pledge agreements, financing statements or other similar documents, or the possession or control by the DIP Agent or any DIP Lender of, or over, any DIP Collateral (as defined below), the following security interests and liens have been granted by the Debtors to the DIP Agent, for the benefit of the DIP Agent and the DIP Lenders (all property identified in clauses (a), (b) and (c) below being collectively referred to as the “DIP Collateral”, and all such liens and security interests granted to the DIP Agent, for the benefit of the DIP Lenders, pursuant to the Interim Order, this Final Order, and the DIP Documents, the “DIP Liens”):

(a) Liens on Unencumbered Property. Pursuant to Bankruptcy Code section 364(c)(2), a valid, binding, continuing, enforceable, fully-perfected first priority senior security interest in and lien upon all prepetition and postpetition property of the Debtors, whether existing on the Petition Date or thereafter acquired, that, on or as of the Petition Date is not subject to valid, perfected and non-avoidable liens (or perfected after the Petition Date to the extent permitted by Bankruptcy Code section 546(b)), including, without limitation, any unencumbered cash of the Debtors (whether maintained with the DIP Agent or otherwise) and any investment of such cash, accounts, inventory, goods, contract rights, instruments, documents, chattel paper, patents, trademarks, copyrights, and licenses therefor, accounts receivable, receivables and receivables records, general intangibles, payment intangibles, tax or other refunds, insurance proceeds, letters of credit, contracts, owned real estate, real property

leaseholds, fixtures, deposit accounts, securities accounts, instruments, investment property, letter-of-credit rights, supporting obligations, machinery and equipment, real property, leases (and proceeds from the disposition thereof), all of the issued and outstanding capital stock of each Debtor, other equity or ownership interests, including equity interests in subsidiaries and non-wholly-owned subsidiaries, money, investment property, causes of action, including causes of action arising under Bankruptcy Code section 549 (but excluding all other Avoidance Actions and commercial tort claims), all products, proceeds and supporting obligations of the foregoing, whether in existence on the Petition Date or thereafter created, acquired, or arising and wherever located (provided that, for the avoidance of doubt, the DIP Superpriority Claims shall be payable from any and all proceeds and property recovered in respect of Avoidance Actions and/or commercial tort claims), provided that such liens shall be subject to (x) the Carve-Out and (y) prior to the occurrence of the Prepetition Secured Notes Repayment, the Adequate Protection Liens. For the avoidance of doubt, this Final Order does not grant any lien (senior, junior or otherwise) in Avoidance Actions (other than under Bankruptcy Code section 549) or commercial tort claims.

(b) Liens Junior to Certain Other Liens. Pursuant to Bankruptcy Code section 364(c)(3), a valid, binding, continuing, enforceable, fully-perfected junior security interest in and junior lien upon all prepetition and postpetition property of the Debtors (other than the property described in clause (a) of this paragraph 11, as to which the liens and security interests in favor of the DIP Agent will be as described in such clause), whether now existing or hereafter acquired, that is subject to valid, perfected and unavoidable liens in existence immediately prior to the Petition Date,

including the Prepetition Secured Notes Liens and Senior Liens, subject to (x) the Carve-Out and (y) prior to the occurrence of the Prepetition Secured Notes Repayment, the Adequate Protection Liens.

(c) Liens on Prepetition Secured Notes Collateral. Upon the occurrence of the Prepetition Secured Notes Repayment, pursuant to Bankruptcy Code section 364(d)(1), a valid, binding, continuing, enforceable, fully-perfected first priority security interest and lien upon the Prepetition Secured Notes Collateral, which security interest and lien shall be senior to all other security interests in and liens on such Prepetition Secured Notes Collateral, except for the Carve-Out and any Senior Liens.

(d) For the avoidance of doubt, prior to the occurrence of the Prepetition Secured Notes Repayment, all DIP Liens shall be junior to the valid, perfected and unavoidable Prepetition Secured Notes Liens and the Adequate Protection Liens.

12. *Carve-Out.* For purposes hereof, the “Carve-Out” shall mean the sum of: (i) all fees required to be paid to the Clerk of the Court and to the Office of the U.S. Trustee under 28 U.S.C. § 1930(a); (ii) fees and expenses up to \$50,000 incurred by a trustee under Bankruptcy Code section 726(b); (iii) all accrued but unpaid costs, fees, and expenses (the “Professional Fees”) incurred by persons or firms retained by the Debtors pursuant to Bankruptcy Code sections 327, 328, or 363 (collectively, the “Debtor Professionals”) and any official committee appointed in these Cases, including the Creditors’ Committee (the “Committee Professionals” and the Debtor Professionals, collectively, the “Professional Persons”), at any time before or on the first business day following delivery by the DIP Agent of a Carve-Out Trigger Notice (as defined below), to the extent allowed at any time whether

allowed by interim order, procedural order, or otherwise (the “Pre-Termination Amount”); and (iv) after the first business day following delivery of a Carve-Out Trigger Notice, to the extent allowed at any time, whether by interim order, procedural order, or otherwise, the payment of Professional Fees of Professional Persons in an aggregate amount not to exceed (x) with respect to the Debtor Professionals, \$300,000 and (y) with respect to the Committee Professionals, \$150,000 (the amounts set forth in the foregoing clauses (x) and (y) collectively referred to as the “Post-Termination Amount,” and together with the Pre-Termination Amount, the “Professional Fees Amount”); provided that nothing herein shall be construed to impair the ability of any party to object to the fees, expenses, reimbursement, or compensation described in preceding clauses (iii) and (iv). For purposes of the foregoing, “Carve-Out Trigger Notice” shall mean a written notice delivered by the DIP Agent or the Required Lenders, or, prior to the occurrence of the Prepetition Secured Notes Repayment, the Prepetition Secured Notes Trustee or the Secured Noteholder Group, to the Debtors and their lead counsel, the U.S. Trustee, lead counsel to the Creditors’ Committee, and counsel to the DIP Agent, DIP Lenders, Prepetition Secured Notes Trustee (prior to the occurrence of the Prepetition Secured Notes Repayment), and Secured Noteholder Group (prior to the occurrence of the Prepetition Secured Notes Repayment), as applicable, providing notice that a Termination Event (as defined below) has occurred. On the day on which a Carve-Out Trigger Notice is given to the Debtors and the other parties in the immediately preceding sentence, such Carve-Out Trigger Notice shall constitute a demand to the Debtors to utilize all cash on hand as of such date and any available cash thereafter held by any Debtor to fund a reserve in an aggregate amount equal to (A) the Pre-Termination Amount *plus* (B) the Post-Termination Amount, and the Debtors shall deposit and hold any such amounts in a segregated account in trust for the

Professional Persons (the "Professional Fees Reserve") (it being understood that any residual amount of such segregated account shall be Cash Collateral and DIP Collateral). For the avoidance of doubt and notwithstanding anything to the contrary herein, in the DIP Documents or the Prepetition Secured Notes Documents, the Carve-Out shall be senior to the DIP Liens, the DIP Superpriority Claims, the Adequate Protection Liens, the Adequate Protection Superpriority Claims, any and all other forms of adequate protection, and the liens and claims securing the Prepetition Secured Notes Obligations. Further, for the avoidance of doubt and notwithstanding anything herein to the contrary, following a Termination Event, neither the DIP Agent nor the Prepetition Secured Notes Trustee shall sweep or foreclose on cash (including cash received as a result of the sale of any assets) of the Debtors until the Professional Fees Reserve shall have been fully funded.

13. *Limitation on Charging Expenses Against Collateral.* No expenses of administration of the Cases or any future proceeding that may result therefrom, including liquidation in bankruptcy or other proceedings under the Bankruptcy Code, shall be charged against or recovered from the Prepetition Secured Notes Collateral or the DIP Collateral (except to the extent of the Carve-Out), the DIP Agent, the DIP Lenders, the Prepetition Secured Notes Trustee or the Prepetition Secured Noteholders pursuant to Bankruptcy Code sections 105(a) or 506(c) or any similar principle of law or equity, without the prior written consent of the DIP Agent, the DIP Lenders, the Prepetition Secured Notes Trustee and the Required Prepetition Secured Noteholders, as applicable, and no such consent shall be implied from any other action, inaction, or acquiescence by the DIP Agent, the DIP Lenders, the Prepetition Secured Notes Trustee or the Prepetition Secured Noteholders.

14. *No Marshaling/Application of Proceeds.* The DIP Agent and, prior to the occurrence of the Prepetition Secured Notes Repayment, the Prepetition Secured Notes Trustee shall be entitled to apply the payments or proceeds of the DIP Collateral and the Prepetition Secured Notes Collateral in accordance with the provisions of the DIP Documents and the Prepetition Secured Notes Documents, as applicable, and in no event shall the DIP Agent, the DIP Lenders or any of the Prepetition Secured Notes Parties be subject to the equitable doctrine of “marshaling” or any other similar doctrine with respect to any of the DIP Collateral or Prepetition Secured Notes Collateral.

15. *Equities of the Case.* The DIP Agent, the DIP Lenders and the Prepetition Secured Notes Parties shall be entitled to all of the rights and benefits of Bankruptcy Code section 552(b), and the “equities of the case” exception under Bankruptcy Code section 552(b) shall not apply to such parties with respect to the proceeds, products, offspring or profits of any of the Prepetition Secured Notes Collateral or the DIP Collateral, as applicable.

16. *Use of Cash Collateral.* The Debtors are hereby authorized to use all Cash Collateral of the Prepetition Secured Notes Parties, but solely for the purposes set forth in the Final Order and in accordance with the Budget (plus Permitted Variances as set forth in this Final Order and the DIP Documents) including, without limitation, to make adequate protection payments and to pay the fees and expenses of the DIP Agent and DIP Lenders provided for in the Interim Order, this Final Order, and the DIP Documents. Except on the terms and conditions of the Final Order, the Debtors shall be enjoined and prohibited from at any time using the Cash Collateral.

17. *Adequate Protection.* Subject to the terms of this Final Order, pursuant to Bankruptcy Code sections 361, 363(e) and 364, and in consideration of the stipulations and

consents set forth in the Interim Order and this Final Order, as adequate protection of the Prepetition Secured Notes Parties' interests in the Prepetition Secured Notes Collateral (including Cash Collateral), for and equal in amount to the aggregate postpetition diminution in value of such interests resulting from the Carve-Out, the Debtors' use, sale or lease of the Prepetition Secured Notes Collateral (including Cash Collateral), and the imposition of the automatic stay (each such diminution, a "Diminution in Value"), from the Petition Date through the occurrence of the Prepetition Secured Notes Repayment, the Prepetition Secured Notes Parties are hereby granted:

(a) Adequate Protection Liens. As security for and solely to the extent of any Diminution in Value from the Petition Date through the occurrence of the Prepetition Secured Notes Repayment, additional and replacement valid, binding, enforceable, non-avoidable, and effective and automatically perfected postpetition security interests in and liens as of the date of the Interim Cash Collateral Order (the "Adequate Protection Liens"), without the necessity of the execution by the Debtors (or recordation or other filing) of security agreements, control agreements, pledge agreements, financing statements, mortgages, or other similar documents, on all DIP Collateral, including, for the avoidance of doubt, all proceeds in the DIP Accounts. Subject to the terms of this Final Order, the Adequate Protection Liens shall be subordinate only to the (i) Carve-Out and (ii) other unavoidable liens, if any, existing as of the Petition Date that are senior in priority to the Prepetition Secured Notes Liens as permitted by the terms of the Prepetition Secured Notes Documents. The Adequate Protection Liens shall otherwise be senior to the DIP Liens and all other security interests in, liens on, or claims against any of the DIP Collateral (including any lien or

security interest that is avoided and preserved for the benefit of the Debtors and their estates under Bankruptcy Code section 551). Upon the occurrence of the Prepetition Secured Notes Repayment, the Adequate Protection Liens shall automatically terminate without further action or order of the Court.

(b) Adequate Protection Superpriority Claim. To the extent provided by Bankruptcy Code sections 503(b) and 507(b), allowed administrative expense claims in the Cases as of the Petition Date (including the DIP Superpriority Claims) ahead of and senior to any and all other administrative expense claims in such Cases to the extent of any Diminution in Value from the Petition Date through the occurrence of the Prepetition Secured Notes Repayment (the “Adequate Protection Superpriority Claims”), except the Carve-Out. Effective as of the Petition Date, subject to the Carve-Out in all respects, the Adequate Protection Superpriority Claims will not be junior to any claims and shall have priority over all administrative expense claims against each of the Debtors, now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, administrative expense claims of the kinds specified in or ordered pursuant to Bankruptcy Code sections 105, 326, 328, 330, 331, 365, 503(a), 503(b), 506(c), 507(a), 507(b), 546(d), 726, 1113 and 1114. For the avoidance of doubt, upon the occurrence of the Prepetition Secured Notes Repayment, no Adequate Protection Superpriority Claims shall exist.

(c) Fees and Expenses. The Debtors are authorized and directed to pay, without further Court order, reasonable and documented fees and expenses (the “Adequate Protection Fees”), incurred on or before the date of the Prepetition Secured Notes Repayment (whether incurred before or after the Petition Date), of the

Prepetition Secured Notes Trustee and the Secured Noteholder Group, including, without limitation, the fees and expenses of (a) one local counsel (currently Morris, Nichols, Arsht & Tunnell LLP), and one lead counsel (currently Morrison & Foerster LLP) for the Prepetition Secured Notes Trustee and (b) one local counsel (currently Morris, Nichols, Arsht & Tunnell LLP), one lead counsel (currently Akin Gump), and one financial advisor (currently BRG) for the Secured Noteholder Group. The applicable professional shall serve copies of the invoices supporting the Adequate Protection Fees on the Debtors, the U.S. Trustee, counsel for the Creditors' Committee and counsel for DDJ, and any Adequate Protection Fees shall be subject to prior ten (10) day review by the U.S. Trustee, by the Debtors, by the Creditors' Committee, and by DDJ, and in the event the U.S. Trustee, the Creditors' Committee, or DDJ shall file with this Court an objection to any such invoice, the portion of such invoice subject to such objection shall not be paid until resolution of such objection by this Court. If no objection is filed within such ten (10) day review period, such invoice shall be paid without further order of the Court within five (5) days following the expiration of the foregoing review period and shall not be subject to any further review or challenge. The Debtors shall not be obligated to pay Adequate Protection Fees related to the period beginning on the first day after the Prepetition Secured Notes Repayment; provided, however, that notwithstanding the occurrence of the Prepetition Secured Notes Repayment, (x) the Debtors shall remain obligated to pay any and all Adequate Protection Fees incurred on or before the date of the Prepetition Secured Notes Repayment regardless of whether such Adequate Protection Fees are invoiced before or after the occurrence of the Prepetition Secured Notes Repayment and (y) the Debtors'

obligation to pay the reasonable and documented fees and expenses of the advisors to the Minority DIP Lenders pursuant to paragraph 29(a) of this Final Order shall continue in all respects.

(d) Adequate Protection Payment. The Prepetition Secured Notes Obligations shall continue to accrue interest at the default contract rate set forth in the Prepetition Secured Notes Documents through the occurrence of the Prepetition Secured Notes Repayment, and the Debtors shall make adequate protection payments equal to the amount of such interest monthly in arrears no later than the third business day of each month (collectively, the foregoing payments, the “Adequate Protection Payments” and, collectively, with the Adequate Protection Liens, the Adequate Protection Superpriority Claims and the Adequate Protection Fees, the “Adequate Protection Obligations”); provided that all interest accrued (at the default rate) and unpaid through the date of the Prepetition Secured Notes Repayment shall be paid by the Debtors concurrently with the occurrence of the Prepetition Secured Notes Repayment. Notwithstanding anything to the contrary, to the extent the value of the Prepetition Secured Notes Collateral is determined by final and non-appealable order to be less than the amount of the Prepetition Secured Notes Obligations, in each case, as of the Petition Date, then all Adequate Protection Payments shall be applied to reduce the secured portion of the Prepetition Secured Notes Obligations.

18. *Section 507(b) Reservation.* Nothing herein shall impair or modify the application of Bankruptcy Code section 507(b) in the event that the adequate protection provided to any of the Prepetition Secured Notes Parties hereunder is insufficient to compensate for any Diminution in Value of their interests in the Prepetition Secured Notes

Collateral during the Cases. Nothing contained herein shall be deemed a finding by the Court, or an acknowledgment by any of the Prepetition Secured Notes Parties, that the adequate protection granted herein does in fact adequately protect any of the Prepetition Secured Notes Parties against any Diminution in Value of their respective interests in the Prepetition Secured Notes Collateral (including the Cash Collateral).

19. *Insurance.* At all times the Debtors shall maintain casualty and loss insurance coverage for the Prepetition Secured Notes Collateral and the DIP Collateral on substantially the same basis as maintained prior to the Petition Date.

20. *Reservation of Rights of the DIP Agent, DIP Lenders and Prepetition Secured Notes Parties.* Notwithstanding any other provision in this Final Order to the contrary, the entry of this Final Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, or otherwise impair: (a) any of the rights of any of the Prepetition Secured Notes Parties to seek any other or supplemental relief in respect of the Debtors at any time; (b) any of the rights of the DIP Agent, the DIP Lenders, or the Prepetition Secured Notes Parties under the Bankruptcy Code or under non-bankruptcy law, including, without limitation, the right of any of the DIP Agent, the DIP Lenders, or the Prepetition Secured Notes Parties, to (i) request modification of the automatic stay of Bankruptcy Code section 362, (ii) request dismissal of any of the Cases, conversion of any of the Cases to cases under chapter 7, or appointment of a chapter 11 trustee or examiner with expanded powers in any of the Cases, (iii) seek to propose, subject to the provisions of Bankruptcy Code section 1121, a chapter 11 plan or plans; or (c) any other rights, claims, or privileges (whether legal, equitable, or otherwise) of any of the DIP Agent, the DIP Lenders, or the Prepetition Secured Notes Parties. The delay in or failure of the DIP Agent, the DIP Lenders and/or the Prepetition

Secured Notes Parties to seek relief or otherwise exercise their rights and remedies shall not constitute a waiver of any of the DIP Agent's, the DIP Lenders' or the Prepetition Secured Notes Parties' rights and remedies.

21. *Debtors' Reservation of Rights.* The entry of this Final Order and the grant of adequate protection to the Prepetition Secured Notes Parties pursuant to the terms hereof shall be without prejudice to the rights of the Debtors, following the occurrence of a Termination Event, to seek authority to use the Prepetition Secured Notes Collateral, including Cash Collateral, without the consent of the Prepetition Secured Notes Parties, and the Prepetition Secured Notes Parties reserve all of their respective rights with respect to contesting any such motion or request by the Debtors or any other person; provided that the fees and expenses incurred by the Debtors in connection with seeking such authority shall reduce the Post-Termination Amount of the Carve-Out as to the Debtors' Professionals.

22. *Termination Events.* The occurrence of any of the following events, unless waived in writing (x) following the occurrence of the Prepetition Secured Notes Repayment, by the Required Lenders, in their sole discretion or (y) prior the Prepetition Secured Notes Repayment, by the Required Lenders and the Required Prepetition Secured Noteholders, shall constitute a termination event (each a "Termination Event") under the DIP Documents and this Final Order and with respect to use of the Cash Collateral, the DIP Loans, and the proceeds thereof:

(a) failure of the Debtors to pay the Adequate Protection Fees or the Adequate Protection Payments when due (subject to expiration of applicable grace periods, if any);

(b) failure of the Prepetition Secured Notes Repayment to occur within four (4) business days of entry of this Final Order;

(c) failure of the Debtors to comply with any of the following milestones:

(i) on or before July 14, 2017, the Debtors shall file a chapter 11 plan of reorganization, which plan shall provide for payment in full in cash of the DIP Obligations (the “**Debtors’ Plan**”), and related disclosure statement;

(ii) on or before August 28, 2017, an order shall be entered approving the disclosure statement for the Debtors’ Plan;

(iii) on or before October 6, 2017, an order shall be entered confirming the Debtors’ Plan; and

(iv) on or before October 27, 2017, the Debtors’ Plan shall be substantially consummated and the effective date thereof shall have occurred;

(d) filing of any motion by the Debtors seeking to obtain credit or incur indebtedness, or the obtaining of credit and incurrence of indebtedness (or the entry of an order of the Court or other court of competent jurisdiction authorizing the obtaining of credit and incurrence of indebtedness), by the Debtors that is: (i) secured by a security interest, mortgage or other lien on all or any DIP Collateral which is equal or senior to any DIP Lien, Adequate Protection Lien or the Prepetition Secured Notes Liens, as applicable, or (ii) entitled to administrative priority status which is equal or senior to the Adequate Protection Claims or DIP Superpriority Administrative Claims (other than the Carve-Out); provided that it shall not be a Termination Event for the Debtors to seek an order from the Court approving financing that provides for the repayment in full in cash of all of the DIP Obligations immediately upon consummation

of such financing, so long as (i) any order so entered contemplates such repayment and (ii) such repayment occurs immediately upon consummation, and directly out of the proceeds, of any such financing;

(e) institution of any judicial proceeding, or the filing of any motion, by, or supported by, any Debtor seeking to challenge the validity of any portion of the DIP Documents, the DIP Obligations, or the applicability or enforceability of same, or the Prepetition Secured Note Obligations, the Prepetition Secured Notes Liens or which seeks to void, avoid, limit, subordinate or otherwise adversely affect any security interest created by or in relation to the DIP Documents, the Prepetition Secured Notes Documents, or the Adequate Protection Liens or the entry of any order of the Court having any such effect;

(f) reversal, vacatur, modification or stay of this Final Order;

(g) any material breach by any Debtor of any provision of the Interim Order or this Final Order;

(h) the entry of an order dismissing any of the Cases or converting any of the Cases to a case under chapter 7 of the Bankruptcy Code;

(i) the entry of an order in any of the Cases appointing a chapter 11 trustee, receiver, or an examiner with expanded powers;

(j) failure of the Debtors to comply with the Budget, subject to the Permitted Variances;

(k) payment of, or application for authority to pay, any pre-petition claim against any Debtor, without the Required Lenders' prior written consent (and, prior to

the occurrence of the Prepetition Secured Notes Repayment, the Required Prepetition Secured Noteholders' prior written consent) unless otherwise permitted by the Budget;

(l) allowance of any claim or claims under Bankruptcy Code section 506(c) or otherwise against the DIP Agent, the DIP Lenders, the Prepetition Secured Notes Trustee, the Prepetition Secured Noteholders or any of the foregoing parties' claims or collateral;

(m) entry of an order by the Court granting relief from or modifying the automatic stay of Bankruptcy Code section 362 to allow any creditor to execute upon or enforce a lien or other interest in any DIP Collateral having a fair market value of at least \$200,000;

(n) filing of a motion seeking to sell a material portion of the DIP Collateral of any Debtor that does not permit (i) the DIP Agent to credit bid any or all of the DIP Obligations or (ii) prior to the occurrence of the Prepetition Secured Notes Repayment, the Prepetition Secured Notes Trustee to credit bid any or all of the Prepetition Secured Notes Obligations;

(o) any other Event of Default under the DIP Documents that is not waived by the Required Lenders (and, prior to the occurrence of the Prepetition Secured Notes Repayment, the Required Prepetition Secured Noteholders);

(p) failure to pay (i) when and as required to be paid herein, any amount of principal of any DIP Loan, or (ii) within three (3) business days after the same becomes due, any interest on any Loan or any other amount payable hereunder or with respect to any of the other DIP Documents.

23. *Remedies Upon a Termination Event; Notice of Termination Event.*

(a) Upon prior written notice by the DIP Agent to counsel for the Debtors, the U.S. Trustee, counsel for the Prepetition Secured Notes Trustee (prior to the occurrence of the Prepetition Secured Notes Repayment), counsel for the Secured Noteholder Group (prior to the occurrence of the Prepetition Secured Notes Repayment) or counsel to the Minority DIP Lenders (following the occurrence of the Prepetition Secured Notes Repayment) and counsel for the Creditors' Committee of the occurrence and continuance of a Termination Event (following the expiration of any applicable grace period), but subject to the provisions of paragraph 23(c) with respect to any enforcement action by the DIP Agent against any DIP Collateral, the DIP Agent or Required Lenders may (i) declare the DIP Obligations to be immediately due and payable; (ii) terminate the Debtors' ability to access the DIP Loans; and/or (iii) subject in all respects to paragraph 24 of this Final Order, exercise all default-related rights and remedies against the DIP Collateral, without further order of or application or motion to the Court, and without restriction or restraint by any stay under Bankruptcy Code sections 362 or 105 or otherwise.

(b) Prior to the occurrence of the Prepetition Secured Notes Repayment, upon written notice by the Prepetition Secured Notes Trustee or the Secured Noteholder Group to counsel for the Debtors, the U.S. Trustee, counsel for the Creditors' Committee, counsel for the DIP Agent, and counsel for the DIP Lenders of the occurrence and continuance of a Termination Event (following the expiration of any applicable grace period), but subject to the provisions of paragraph 23(c) with respect to any enforcement action by the Prepetition Secured Notes Trustee or the Required Prepetition Secured Noteholders against any DIP Collateral, the Prepetition Secured

Notes Trustee or the Required Prepetition Secured Noteholders may exercise all remedies available to them under this Final Order, the Prepetition Secured Notes Documents and applicable non-bankruptcy law, and all Adequate Protection Obligations shall be due and payable.

(c) Upon the occurrence of any Termination Event (following the expiration of any applicable grace period), and following the giving of five business (5) days' prior written notice to counsel for the Debtors, the U.S. Trustee, counsel for the Prepetition Secured Notes Trustee (prior to the occurrence of the Prepetition Secured Notes Repayment), counsel for the Secured Noteholder Group (prior to the occurrence of the Prepetition Secured Notes Repayment) or counsel for the Minority DIP Lenders (following the occurrence of the Prepetition Secured Notes Repayment), counsel for DDJ, counsel to the DIP Agent and counsel for the Creditors' Committee, as applicable, the Debtors' ability to use Cash Collateral and proceeds of the DIP Loans shall terminate and, subject to paragraph 24 of this Final Order, the Prepetition Secured Notes Parties (prior to the occurrence of the Prepetition Secured Notes Repayment), the DIP Agent and the DIP Lenders, as applicable, shall have relief from the automatic stay to foreclose on any or all of the DIP Collateral and otherwise enforce the Adequate Protection Liens, the Prepetition Secured Notes Liens, and the DIP Liens, as applicable. During such five (5) business days' notice period, the Debtors and the Creditors' Committee shall be entitled to an emergency hearing with the Court for the sole purpose of contesting whether a Termination Event has occurred and is continuing. Unless during such period the Court determines that a Termination Event has not occurred or is not continuing, then (i) the automatic stay, as to the Prepetition Secured

Notes Parties (prior to the occurrence of the Prepetition Secured Notes Repayment), DIP Agent and DIP Lenders, as applicable, shall be automatically terminated at the end of such notice period, without further notice, hearing or order, (ii) neither Bankruptcy Code section 105 nor any other provision of the Bankruptcy Code shall be utilized to preclude or restrict the Prepetition Secured Notes Parties (prior to the occurrence of the Prepetition Secured Notes Repayment), the DIP Agent or the DIP Lenders, as applicable, from exercising their default-related rights and remedies, and (iii) the Debtors shall cooperate with the Prepetition Secured Notes Parties (prior to the occurrence of the Prepetition Secured Notes Repayment), the DIP Agent and the DIP Lenders, as applicable, to effect an orderly liquidation of the DIP Collateral on terms and conditions acceptable to the Prepetition Secured Notes Trustee (prior to the occurrence of the Prepetition Secured Notes Repayment) and/or the DIP Agent, as applicable. For the avoidance of doubt, any foreclosure on or other exercise of remedies with respect to the DIP Collateral is subject in all respects to the Carve-Out and shall not extend, under any circumstances, to the Professional Fee Reserve, until the obligations included in the Carve-Out are satisfied.

(d) For the avoidance of doubt, notwithstanding anything in the foregoing to the contrary, the rights and remedies of the DIP Agent and the DIP Lenders against Collateral shall be subject in all respects to paragraph 24 of this Final Order.

(e) The Debtors shall immediately provide notice to the DIP Agent, the DIP Lenders, the Prepetition Secured Notes Trustee (prior to the occurrence of the Prepetition Secured Notes Repayment), counsel to the Secured Noteholder Group (prior to the occurrence of the Prepetition Secured Notes Repayment) or the Minority

DIP Lenders (following the occurrence of the Prepetition Secured Notes Repayment), and counsel to the Creditors' Committee, of the occurrence of any Termination Event.

24. *Intercreditor Provisions.*

(a) Prior to the occurrence of the Prepetition Secured Notes Repayment, the DIP Agent and the DIP Lenders will not (i) exercise or seek to exercise any rights or remedies with respect to the DIP Collateral (including taking any Enforcement Action (as defined below) with respect to the DIP Collateral; provided that (A) the DIP Agent may take Enforcement Actions with respect to the DIP Collateral after the passage of a period of 30 days (the "Standstill Period") after the date on which the DIP Agent provides written notice to the Prepetition Secured Notes Trustee stating that a Termination Event has occurred (the "Standstill Commencement Date") and (B) in no event shall the DIP Agent or any DIP Lender exercise any rights or remedies with respect to the DIP Collateral if, notwithstanding the expiration of the Standstill Period, the Prepetition Secured Notes Trustee or any Prepetition Secured Noteholder shall have commenced prior to the expiration of the Standstill Period and shall be diligently pursuing in good faith an Enforcement Action with respect to all or any material portion of the DIP Collateral; (ii) on an after the Standstill Commencement Date, contest, protest, or object to any Enforcement Action by the Prepetition Secured Notes Trustee or any Prepetition Secured Noteholders, in each case, with respect to the DIP Collateral; and (c) on and after the Standstill Commencement Date, but subject to the rights of the DIP Agent and the DIP Lenders under the first proviso to clause (i) above, object to the forbearance by the Prepetition Secured Notes Trustee or any

Prepetition Secured Noteholder from taking any Enforcement Action with respect to the DIP Collateral.

(b) On and after the Standstill Commencement Date, until the occurrence of the Prepetition Secured Notes Repayment, but subject to the rights of the DIP Agent and the DIP Lenders under the first proviso of clause (a)(i) above, the Prepetition Secured Notes Trustee and the Prepetition Secured Noteholders shall have the exclusive right to take Enforcement Actions with respect to the Prepetition Secured Notes Collateral with notice to, but without any consultation with or the consent of the Debtors, the DIP Agent or any DIP Lender. In connection with any such Enforcement Action, the Prepetition Secured Notes Trustee or the Prepetition Secured Noteholders may enforce the provisions of the Prepetition Secured Notes Documents and exercise remedies thereunder, all in such order and in such manner as they may determine in the exercise of their sole discretion.

(c) “Enforcement Action” means, with respect to the DIP Obligations or the Prepetition Secured Notes Obligations, the exercise of any rights and remedies with respect to the DIP Collateral and/or Prepetition Secured Notes Collateral securing such obligations or the commencement or prosecution of enforcement of any of the rights and remedies under, as applicable, the DIP Documents or the Prepetition Secured Notes Documents, or applicable law, including, without limitation the exercise of any rights of set-off or recoupment, and the exercise of any rights or remedies of a secured creditor under the UCC of any applicable jurisdiction or under this Final Order.

25. *Maturity.* Unless earlier declared due and payable pursuant to paragraph 23 hereof, the DIP Obligations shall mature and be due and payable on the earliest to occur of

(i) October 31, 2017 or such later date to which Required Lenders consent in writing in their sole discretion, (ii) the occurrence of the effective date of any chapter 11 plan, or (iii) the sale of substantially all of the Debtors' assets, except, in the case of the foregoing clauses (ii) and (iii), unless otherwise agreed by all DIP Lenders in their respective sole discretion.

Notwithstanding the foregoing, with the consent of each DIP Lender and the Debtors, the DIP Obligations may, subject to entry of an order of the Court, be converted into an exit financing facility on terms and conditions acceptable to the each DIP Lender and the Debtors in their respective sole discretion.

26. *No Waiver for Failure to Seek Relief.* The failure or delay of the DIP Agent, the DIP Lenders or any of the Prepetition Secured Notes Parties to exercise rights and remedies under this Final Order, the DIP Documents, the Prepetition Secured Notes Documents, or applicable law, as the case may be, shall not constitute a waiver of their respective rights hereunder, thereunder or otherwise.

27. *Perfection of the DIP Liens and Adequate Protection Liens.*

(a) The DIP Agent and the Prepetition Secured Notes Trustee are hereby authorized, but not required, to file or record financing statements, intellectual property filings, mortgages, depository account control agreements, notices of lien or similar instruments in any jurisdiction in order to validate and perfect the liens and security interests granted hereunder. Whether or not the DIP Agent or the Prepetition Secured Notes Trustee shall, in their sole discretion, choose to file such financing statements, intellectual property filings, mortgages, notices of lien or similar instruments, such liens and security interests shall be deemed valid, perfected, allowed, enforceable, non-avoidable and not subject to challenge, dispute or subordination as of the date of entry

of (i) the Interim Cash Collateral Order with respect to the Adequate Protection Liens and (ii) the Interim Order with respect to the DIP Liens. If the DIP Agent or the Prepetition Secured Notes Trustee determines to file or execute any financing statements, agreements, notice of liens or similar instruments, the Debtors shall cooperate and assist in any such execution and/or filings as reasonably requested by the DIP Agent or the Prepetition Secured Notes Trustee, and the automatic stay shall be modified to allow such filings.

(b) A certified copy of this Final Order may, in the discretion of the DIP Agent or the Prepetition Secured Notes Trustee, be filed with or recorded in filing or recording offices in addition to or in lieu of such financing statements, mortgages, notices of lien or similar instruments, and all filing offices are hereby authorized to accept such certified copy of this Final Order for filing and recording; provided, however, that notwithstanding the date of any such filing, the date of such perfection shall be the date of (i) the Interim Cash Collateral Order with respect to the Adequate Protection Liens and (ii) the Interim Order with respect to the DIP Liens.

(c) Effective upon entry of this Final Order, any provision of any lease or other license, contract or other agreement that requires (i) the consent or approval of one or more landlords or other parties or (ii) the payment of any fees or obligations to any governmental entity, in order for any Debtor to pledge, grant, sell, assign, or otherwise transfer any such leasehold interest, or the proceeds thereof, or other collateral related thereto, is hereby deemed to be inconsistent with the applicable provisions of the Bankruptcy Code. Any such provision shall have no force and effect with respect to the granting of the DIP Liens and the Adequate Protection Liens on

such leasehold interest or the proceeds of any assignment and/or sale thereof by any Debtor in accordance with the terms of the Prepetition Secured Notes Documents or this Final Order.

28. *Preservation of Rights Granted Under this Final Order.*

(a) Other than as set forth in this Final Order, neither the DIP Liens nor the Adequate Protection Liens shall be made subject to or *pari passu* with any lien or security interest granted in any of the Cases or arising after the Petition Date, and neither the DIP Liens nor the Adequate Protection Liens shall be subject or junior to any lien or security interest that is avoided and preserved for the benefit of the Debtors' estates under Bankruptcy Code section 551.

(b) In the event this Final Order or any provision hereof is vacated, reversed, or modified on appeal or otherwise, any liens or claims granted to the DIP Agent, the DIP Lenders, and/or the Prepetition Secured Notes Parties hereunder arising prior to the effective date of any such vacatur, reversal or modification 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, and the Prepetition Secured Notes Parties shall be entitled to the protections afforded in Bankruptcy Code sections 363(m) and 364(e), as applicable, with respect to all DIP Loans and all uses of the Prepetition Secured Notes Collateral (including the Cash Collateral) and all Adequate Protection Obligations.

(c) Unless and until all DIP Obligations, Prepetition Secured Notes Obligations and Adequate Protection Obligations are indefeasibly paid in full, in cash, and all commitments to extend credit under the DIP Facility are terminated, the Debtors

irrevocably waive the right to seek and shall not seek or consent to, directly or indirectly (i) except as permitted under the DIP Documents and with the prior written consent of the DIP Agent, the Required Lenders, the Prepetition Secured Notes Trustee and the Required Prepetition Secured Noteholders (x) any modification, stay, vacatur, or amendment of this Final Order, (y) a priority claim for any administrative expense or unsecured claim against any of the Debtors (now existing or hereafter arising of any kind or nature whatsoever, including, without limitation, any administrative expense of the kind specified in Bankruptcy Code sections 503(b), 507(a) or 507(b)) in any of the Cases, equal or superior to the DIP Superpriority Claims, the Adequate Protection Superpriority Claims, or the Prepetition Secured Notes Obligations, other than the Carve-Out, or (z) any other order allowing use of the DIP Collateral; (ii) except as permitted under the DIP Documents, any lien on any of the DIP Collateral or the Prepetition Secured Notes Collateral with priority equal or superior to the DIP Liens, the Adequate Protection Liens or the Prepetition Secured Notes Liens, as the case may be; (iii) an order converting or dismissing any of the Cases; (iv) an order appointing a chapter 11 trustee in any of the Cases; or (v) an order appointing an examiner with enlarged powers in any of the Cases.

(d) Notwithstanding any order dismissing any of the Cases under Bankruptcy Code section 1112 or otherwise entered at any time, (x) the DIP Liens, the DIP Superpriority Claims, the Adequate Protection Liens, the Adequate Protection Superpriority Claims and the other administrative claims granted pursuant to this Final Order, shall continue in full force and effect and shall maintain their priorities as provided in this Final Order until all DIP Obligations and Adequate Protection

Obligations are indefeasibly paid in full, in cash (and such DIP Liens, DIP Superpriority Claims, Adequate Protection Liens, Adequate Protection Superpriority Claims and the other administrative claims granted pursuant to this Final Order, shall, notwithstanding such dismissal, remain binding on all parties in interest); and (y) the Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing the claims, liens and security interests referred to in clause (x) above.

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

Superpriority Claims and all other rights and remedies of the DIP Agent, the DIP Lenders, the Prepetition Secured Notes Trustee and the Prepetition Secured Noteholders granted by the provisions of this Final Order shall continue in full force and effect until the DIP Obligations and the Adequate Protection Obligations are indefeasibly paid in full, in cash (or, with respect to the DIP Obligations, otherwise satisfied in a manner agreed to by the Required Lenders).

29. *Expenses and Indemnification.*

(a) All (i) post-petition expenses, including, but not limited to, reasonable legal fees and expenses of counsel to the DIP Agent, counsel and financial advisors to the DIP Lenders (collectively, the "DIP Professionals") incurred (in such capacity) in connection with the Cases, including the preparation, execution and delivery, administration, amendment, waiver or modification (including proposed amendments, waivers or modifications) of the DIP Facility, whether or not the DIP Facility is successfully consummated (unless the DIP Facility is not consummated as a result of the DIP Lenders' material breach of the DIP Documents), and (ii) expenses (including, without limitation, fees, disbursements and other charges of DIP Professionals) of the DIP Agent and the DIP Lenders for enforcement costs and documentary taxes associated with the DIP Facility and the transactions contemplated thereby are to be paid by the Debtors and shall constitute part of the DIP Obligations. All post-closing fees and expenses described above shall be payable by the Debtors (whether accrued or incurred prior to, on, or after the Petition Date), subject to prior ten (10) day review by the U.S. Trustee, by the Debtors, and by the Creditors' Committee, and in the event the U.S. Trustee, the Debtors, or the Creditors' Committee shall file with this Court an

objection to any such legal invoice, the portion of such legal invoice subject to such objection shall not be paid until resolution of such objection by this Court. If no objection is filed within such ten (10) day review period, such invoice shall be paid without further order of the Court within five (5) days following the expiration of the foregoing review period and shall not be subject to any further review or challenge. Notwithstanding the foregoing, the Debtors' obligations to reimburse fees and expenses of the DIP Agent and the DIP Lenders hereunder shall be limited to (x) for DDJ in its capacity as DIP Lender, one primary counsel (presently Latham & Watkins, LLP), one local counsel (presently Richards Layton & Finger, P.A.) and one financial advisor (presently Alvarez & Marsal Securities, LLC), (b) for the DIP Agent, one primary counsel and one local counsel, and (c) for the Minority DIP Lenders, one primary counsel (presently Akin Gump), one local counsel (presently Morris, Nichols, Arsht & Tunnell LLP), and one financial advisor (currently BRG); provided that the foregoing shall not limit the payment of the Adequate Protection Fees pursuant to paragraph 17(c) of this Final Order.

(b) In addition, the Debtors will indemnify the DIP Lenders, the DIP Agent and their respective affiliates, successors and assigns and the officers, directors, employees, agents, advisors (including the DIP Professionals), investment managers, controlling persons and members of each of the foregoing (each an "Indemnified Person") and hold them harmless from and against all costs, expenses (including but not limited to reasonable and documented legal fees and expenses) and liabilities arising out of or relating to the financing transactions contemplated hereby and any actual or proposed use of the proceeds of any loans made

under the DIP Facility; provided that no such person will be indemnified for costs, expenses or liabilities to the extent determined by a final, non-appealable judgment of a court of competent jurisdiction to have been incurred solely by reason of the gross negligence, fraud or willful misconduct of such person (or their related persons). No Indemnified Person shall have any liability (whether direct or indirect, in contract, tort or otherwise) to the Debtors or any shareholders or creditors of the Debtors for or in connection with the financing transactions contemplated hereby, except to the extent such liability is found in a final non-appealable judgment by a court of competent jurisdiction to have resulted solely from such Indemnified Person's gross negligence, fraud or willful misconduct, and in no event shall any Indemnified Person be liable on any theory of liability for any special, indirect, consequential or punitive damages.

30. *Limitation on Use of DIP Facility Proceeds, DIP Collateral and Cash Collateral.*

(a) Notwithstanding anything to the contrary set forth in this Final Order, none of the DIP Facility, the DIP Collateral, the Prepetition Secured Notes Collateral, including Cash Collateral, or the Carve-Out may be used: (a) to investigate (except as expressly provided herein), initiate, prosecute, join, or finance the initiation or prosecution of any claim, counterclaim, action, suit, arbitration, proceeding, application, motion, objection, defense, or other litigation of any type (i) against any of the DIP Agent, the DIP Lenders or the Prepetition Secured Notes Parties (each in their capacities as such) or seeking relief that would impair the rights and remedies of the DIP Agent, the DIP Lenders or the Prepetition Secured Notes Parties (each in their capacities as such) under the DIP Documents, the Prepetition Secured Notes

Documents or this Final Order, including, without limitation, for the payment of any services rendered by the professionals retained by the Debtors or the Creditors' 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 that would impair the ability of any of the DIP Agent, the DIP Lenders or the Prepetition Secured Notes Parties to recover on the DIP Collateral or the Prepetition Secured Notes Collateral or seeking affirmative relief against any of the DIP Agent, the DIP Lenders or the Prepetition Secured Notes Parties (each in their capacities as such) related to the DIP Obligations or the Prepetition Secured Notes Obligations; (ii) seeking to invalidate, set aside, avoid, or subordinate, in whole or in part, the DIP Obligations or the DIP Agent's and the DIP Lenders' liens or security interests in the DIP Collateral or the Prepetition Secured Notes Obligations or the Prepetition Secured Notes Parties' liens or security interests in the Prepetition Secured Notes Collateral; or (iii) for monetary, injunctive, or other affirmative relief against the DIP Agent, the DIP Lenders or the Prepetition Secured Notes Parties (each in their capacities as such), or their respective liens on or security interests in the DIP Collateral or the Prepetition Secured Notes Collateral that would impair the ability of any of the DIP Agent, the DIP Lenders or the Secured Parties to assert or enforce any lien, claim, right, or security interest or to realize or recover on the DIP Obligations or the Prepetition Secured Notes Obligations; (b) for objecting to or challenging in any way the legality, validity, priority, perfection, or enforceability of the claims, liens, or interests (including the Prepetition Secured Notes Liens) held by or

on behalf of each of the Prepetition Secured Notes Parties related to the Prepetition Secured Notes Obligations or by or on behalf of the DIP Agent and the DIP Lenders related to the DIP Obligations; (c) for asserting, commencing, or prosecuting any claims or causes of action whatsoever, including, without limitation, any Avoidance Actions related to the DIP Obligations, the DIP Liens, or the Prepetition Secured Notes Obligations or the Prepetition Secured Notes Liens; or (d) for prosecuting an objection to, contesting in any manner, or raising any defenses to, the validity, extent, amount, perfection, priority, or enforceability of: (x) any of the DIP Liens or any other rights or interests of the DIP Agent or the DIP Lenders related to the DIP Obligations or the DIP Liens, or (y) any of the Prepetition Secured Notes Liens or any other rights or interests of any of the Prepetition Secured Notes Parties related to the Prepetition Secured Notes Obligations or the Prepetition Secured Notes Liens; provided that no more than \$125,000 of the proceeds of the DIP Facility, the DIP Collateral or the Prepetition Secured Notes Collateral, including the Cash Collateral, in the aggregate, may be used by the Creditors' Committee solely to investigate the foregoing matters within the Challenge Period (as defined below).

(b) Notwithstanding anything to the contrary set forth in this Final Order, none of the DIP Facility, the DIP Collateral, or the Carve-Out may be used to object to or contest the validity or enforceability of the Prepetition Unsecured Notes Obligations (as defined below). As used herein, the "Prepetition Unsecured Notes Obligations" means (i) the 12% Senior Unsecured Notes due 2016 (the "Prepetition Unsecured Notes" and the holders thereof, the "Prepetition Unsecured Noteholders") issued pursuant to that certain Indenture, dated as of January 29, 2015 (as amended,

supplemented or otherwise modified from time to time, the “Prepetition Unsecured Notes Indenture” and, together with all Indenture Documents (as defined therein), the “Prepetition Unsecured Notes Documents”), by and among OSS, the guarantors party thereto, and Wilmington Savings Fund Society, FSB, as trustee, (ii) all other “Obligations” (as defined in the Prepetition Unsecured Notes Indenture), and (iii) all other obligations of the Debtors under the Prepetition Unsecured Notes Documents. For the avoidance of doubt, the foregoing shall not (i) restrict the Debtors’ ability to propose a plan of reorganization proposing treatment for the claims arising on account of the Prepetition Unsecured Notes Obligations consistent with the provisions of the Bankruptcy Code, or (ii) prohibit the use of Cash Collateral or proceeds of the DIP Loans to investigate claims and causes of action related to the Prepetition Unsecured Notes Obligations. For the avoidance of doubt, any investigation by the Creditors’ Committee with respect to the Prepetition Unsecured Notes Obligations, Prepetition Unsecured Notes, or Prepetition Unsecured Notes Documents shall not be subject to the limitations of paragraphs 30 or 31, including, without limitation, the Challenge Period or any budget for conducting an investigation.

(c) For the avoidance of doubt, neither OA nor its counsel or financial advisors shall receive or be entitled to any indemnity or payment or reimbursement of fees, costs, or expenses by or from the Debtors or their estates for or in connection with the DIP Facility, the DIP Obligations, the Adequate Protection Obligations, the Interim Order or this Final Order.

31. *Effect of Stipulations on Third Parties.*

(a) The Debtors' acknowledgments, stipulations, admissions waivers and releases set forth in this Final Order shall be binding on the Debtors, their estates and their respective representatives, successors, and assigns. The acknowledgments, stipulations, admissions, waivers and releases contained in this Final Order shall also be binding upon all other parties in interest, including the Creditors' Committee, or any chapter 7 or chapter 11 trustee appointed or elected for any of the Debtors (a "Trustee"), unless (a) such party, in each case, with requisite standing, has duly filed an adversary proceeding challenging the validity, perfection, priority, extent or enforceability of the Prepetition Secured Notes Liens, the Prepetition Secured Notes Obligations or otherwise asserting or prosecuting any Avoidance Actions or any other claims, counterclaims or causes of action, objections, contests or defenses (collectively, the "Claims and Defenses") against the Prepetition Secured Notes Trustee or the Prepetition Secured Noteholders in connection with any matter related to the Prepetition Secured Notes Collateral, the Prepetition Secured Notes Liens, or the Prepetition Secured Notes Obligations,⁵ by no later than (i) with respect to any Creditors' Committee, May 8, 2017 or (ii) with respect to other parties in interest, no later than the date that is seventy-five (75) days after the entry of the Interim Cash Collateral Order (the time period established by the later of the foregoing clauses (i) and (ii), the "Challenge Period"); provided that the Challenge Period may be extended

⁵ For the avoidance of doubt, nothing in the Interim Order or this Final Order (including the Debtors' payment of interest at the default rate as provided in paragraph 17(d) of the Interim Order and this Final Order) shall preclude or impair the Creditors' Committee from challenging, prior to expiration of the Challenge Period, the Prepetition Secured Noteholders' entitlement to postpetition default interest as part of their claim on account of the Prepetition Secured Notes Obligations, and the Prepetition Secured Parties reserve all rights and defenses with respect to any such challenge.

(x) by the Court for cause following notice and a hearing at which all parties in interest may be heard or (y) with the prior written consent of the Prepetition Secured Notes Trustee, the Required Lenders and, prior to the occurrence of the Prepetition Secured Notes Repayment, the Required Prepetition Secured Noteholders; provided, further, that the filing of a motion for standing shall toll the Challenge Period with respect to any proposed Claims or Defenses requiring standing until five (5) days after entry of an order of the Court determining such motion; provided, further, that in the event that, prior to the expiration of the Challenge Period, (x) these Cases are converted to cases under chapter 7 or (y) a chapter 11 trustee is appointed in these Cases, then, in each such case, the Challenge Period shall be extended for a period of sixty (60) days solely with respect to any Trustee, commencing on the occurrence of either of the events described in the foregoing clauses (x) and (y); and (b) an order is entered by a court of competent jurisdiction and becomes final and non-appealable in favor of the plaintiff sustaining any such challenge or claim in any such duly filed adversary proceeding. If no such adversary proceeding is timely filed prior to the expiration of the Challenge Period, without further order of this Court (x) the obligations under the Prepetition Secured Notes Documents shall constitute allowed claims, not subject to any Claims and Defenses (whether characterized as a counterclaim, setoff, subordination, recharacterization, defense, avoidance, contest, attack, objection, recoupment, reclassification, reduction, disallowance, recovery, disgorgement, attachment, "claim" (as defined by Bankruptcy Code section 101(5)), impairment, subordination (whether equitable, contractual or otherwise), or other challenge of any kind pursuant to the Bankruptcy Code or applicable non-bankruptcy law), for all purposes in these Cases

and any subsequent chapter 7 cases, if any; and (y) the Prepetition Secured Notes Obligations, the Prepetition Secured Notes Liens on the Prepetition Secured Notes Collateral, the Prepetition Secured Notes Parties (in their capacities as such) shall not be subject to any other or further challenge and any party in interest shall be forever enjoined and barred from seeking to exercise the rights of the Debtors' estates or taking any such action, including any successor thereto (including any estate representative or a Trustee, whether such Trustee is appointed or elected prior to or following the expiration of the Challenge Period). If any such adversary proceeding is timely filed prior to the expiration of the Challenge Period,

(i) the stipulations and admissions contained in this Final Order shall nonetheless remain binding and preclusive on the Creditors' Committee and any other party in these cases, including any Trustee, except as to any stipulations or admissions that are specifically and expressly challenged in such adversary proceeding and (ii) any Claims and Defenses not brought in such adversary proceeding shall be forever barred; provided that if and to the extent any challenges to a particular stipulation or admission are withdrawn, denied or overruled by a final non-appealable order, such stipulation also shall be binding on the Debtors' estates and all parties in interest.

(b) In the event any of the Prepetition Secured Notes Collateral, the Prepetition Secured Notes Liens or the Prepetition Secured Notes Obligations are subject of a successful challenge pursuant to the previous paragraph, the Prepetition Secured Notes Parties shall be subject to any and all remedies including, to the extent ordered by the Court, disgorgement, modification and/or rescission of any Adequate Protection Payments or the Prepetition Secured Notes Repayment, to the extent made

to the Prepetition Secured Notes Parties, and reinstatement of the applicable claims, liens and security interests (unless such claims, liens and security interests are determined by final and non-appealable order to be invalid or are otherwise disallowed or avoided); provided that any amounts disgorged or other proceeds, if any, of such remedies shall constitute DIP Collateral, shall be subject to the DIP Liens and DIP Superpriority Claims in accordance with the priority of such liens and claims as provided in the DIP Documents and this Final Order, and shall be promptly remitted to the DIP Agent for application to the DIP Obligations in accordance with the DIP Documents and this Final Order. For the avoidance of doubt, except as provided in paragraphs 30 and 31 or otherwise expressly provided under this Final Order, nothing in this paragraph shall impact or otherwise modify or limit the Creditors' Committee's investigation and challenge rights.

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

32. *Release.* Subject to the rights and limitations set forth in paragraphs 30 and 31 of this Final Order, each of the Debtors and the Debtors' estates, on its own behalf and on behalf of each of their predecessors, their successors, and assigns shall to the maximum extent permitted by applicable law, unconditionally, irrevocably and fully forever release, remise, acquit, relinquish, irrevocably waive and discharge each of the DIP Lenders, the DIP Agent, and the Prepetition Secured Notes Parties, and each of their respective former, current or

future officers, employees, directors, agents, representatives, owners, members, partners, financial advisors, legal advisors, shareholders, managers, consultants, accountants, attorneys, affiliates, and predecessors in interest, each in solely their capacity as such, of and from any and all claims, demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness and obligations, rights, assertions, allegations, actions, suits, controversies, proceedings, losses, damages, injuries, attorneys' fees, costs, expenses, or judgments of every type, whether known, unknown, asserted, unasserted, suspected, unsuspected, accrued, unaccrued, fixed, contingent, pending, or threatened including, without limitation, all legal and equitable theories of recovery, arising under common law, statute or regulation or by contract, of every nature and description that exist on the date hereof with respect to or relating to the DIP Obligations, the DIP Liens, the Prepetition Secured Notes Obligations or the Prepetition Secured Notes Liens, as applicable, including, without limitation, (i) any so-called "lender liability" or equitable subordination claims or defenses, (ii) any and all claims and causes of action arising under the Bankruptcy Code, and (iii) any and all claims and causes of action regarding the validity, priority, extent, enforceability, perfection or avoidability of the liens or claims of the DIP Agent, the DIP Lenders, the Prepetition Secured Notes Trustee or the Prepetition Secured Noteholders.

33. *Reimbursement of Prepetition Secured Notes Party Expenses.* All reasonable and documented fees and expenses incurred after the date of the Prepetition Secured Notes Repayment by the Prepetition Secured Noteholders and the Prepetition Secured Notes Trustee, including fees and expenses of counsel to such Prepetition Secured Notes Parties, in connection with any investigation of or assertion by any person of Claims and Defenses against the Prepetition Secured Notes Trustee or the Prepetition Secured Noteholders pursuant to

paragraph 31(a) of this Final Order, including, without limitation, any fees and expenses incurred in connection with responding to any formal or informal discovery requests and opposing any motion filed by the Creditors' Committee or any other person seeking standing to assert any Claims and Defenses, shall be paid by the Debtors in accordance with the procedures set forth in paragraph 17(c) of this Final Order with respect to Adequate Protection Fees (which procedures include, for the avoidance of doubt, the right of the Creditors' Committee to object to the reasonableness of any such fees and expenses); provided that (x) the Creditors' Committee reserves all rights to (i) argue in connection with any challenge pursuant to paragraph 31(a) of this Final Order that the Prepetition Secured Notes Trustee and/or the Prepetition Secured Noteholders had no legal right under the Bankruptcy Code to receive the payment of the fees and expenses pursuant to this paragraph 33 and (ii) seek all available remedies regarding any such payment, including disgorgement and/or the application of such payments to reduce the secured portion of the Prepetition Secured Notes Obligations and (y) the Prepetition Secured Notes Parties reserve all rights and defenses with respect to the same; provided, further, however, that the sole remedy of the Creditors' Committee in the event of a successful challenge under paragraph 31(a) of this Final Order with respect to any fees and expenses paid to the Prepetition Secured Notes Trustee pursuant to this paragraph 33 shall be to seek application of such payments to reduce the secured portion of the Prepetition Secured Notes Obligations. For the avoidance of doubt, the indemnification provisions contained in section 7.07 of the Prepetition Secured Notes Indenture shall survive following the occurrence of the Prepetition Secured Notes Repayment in accordance with the terms of the Prepetition Secured Notes Indenture.

34. *Mandatory Repayments and Prepayments.*

(a) Asset Sales. Immediately following receipt by any Debtor, 100% of proceeds (net of reasonable transaction-related expenses determined acceptable to the Required Prepetition Secured Noteholders or Required Lenders, as applicable) from the sale or disposition of DIP Collateral outside the ordinary course of business shall be used to pay down (i) prior to the occurrence of the Prepetition Secured Notes Repayment, the Prepetition Secured Notes Obligations and (ii) following the occurrence of the Prepetition Secured Notes Repayment, subject to any reinvestment provisions contained in the DIP Documents, the Replacement DIP Loans until paid in full and then the New Money DIP Loans. Notwithstanding anything contained in this Final Order, the right of the Creditors' Committee to object to any asset sales on any basis, including the making of any mandatory repayment or prepayment, is preserved.

(b) Insurance Proceeds. Immediately following the receipt by any Debtor, 100% of the insurance and condemnation proceeds (net of reasonable transaction-related expenses determined acceptable to the Required Prepetition Secured Noteholders or Required Lenders, as applicable) received on account of any loss of or damage to any DIP Collateral shall be used to pay down (i) prior to the occurrence of the Prepetition Secured Notes Repayment, the Prepetition Secured Notes Obligations and (ii) following the occurrence of the Prepetition Secured Notes Repayment, subject to any reinvestment provisions contained in the DIP Documents, the Replacement DIP Loans until paid in full and then the New Money DIP Loans.

35. *Credit Bidding*. Subject to the consent of the Required Lenders, the DIP Agent shall have the right to credit bid, up to the full amount of the DIP Obligations, respectively, in any sale of any of the DIP Collateral, as provided for in and subject to Bankruptcy Code

section 363(k), without the need for further Court order authorizing the same and whether any such sale is effectuated through Bankruptcy Code section 363(b) or 1129(b), by a chapter 7 trustee under Bankruptcy Code section 725, or otherwise. Prior to the occurrence of the Prepetition Secured Notes Repayment, subject to the consent of the Required Prepetition Secured Noteholders, the Prepetition Secured Notes Trustee shall have the right to credit bid, up to the full amount of the Prepetition Secured Notes Obligations, in any sale of any of the Prepetition Secured Notes Collateral, as provided for in Bankruptcy Code section 363(k), without the need for further Court order authorizing the same and whether any such sale is effectuated through Bankruptcy Code section 363(b) or 1129(b), by a chapter 7 trustee under Bankruptcy Code section 725, or otherwise; provided that any such credit bid of the Prepetition Secured Notes Obligations shall be subject to paragraph 31(b).

36. *Final Order Governs.* This Final Order supersedes the Interim Order and Interim Cash Collateral Order, and in the event of any inconsistency between the provisions of this Final Order, the Interim Order, the Interim Cash Collateral Order or the DIP Documents, the provisions of this Final Order shall govern.

37. *Binding Effect; Successors and Assigns.* The DIP Documents and the provisions of this Final Order, including all findings herein, shall be binding upon all parties in interest in these Cases, including, without limitation, the DIP Agent, the DIP Lenders, the Prepetition Secured Notes Parties, the Creditors' Committee appointed in these Cases, and the Debtors and their respective successors and assigns (including any chapter 7 or chapter 11 trustee hereinafter appointed or elected for the estate of any of the Debtors, an examiner appointed pursuant to Bankruptcy Code section 1104, or any other fiduciary appointed as a legal representative of any of the Debtors or with respect to the property of the estate of any

of the Debtors) and shall inure to the benefit of the DIP Agent, the DIP Lenders, and the Secured Parties; provided that except to the extent expressly set forth in this Final Order, the Prepetition Secured Notes Parties shall have no obligation to permit the use of Cash Collateral or to extend any financing to any chapter 7 trustee or similar responsible person appointed for the estates of the Debtors. In determining to make any loan (whether under the DIP Credit Agreement, a promissory note or otherwise) or to permit the use of Cash Collateral or in exercising any rights or remedies as and when permitted pursuant to this Final Order or the DIP Documents, the DIP Agent, the DIP Lenders and the Prepetition Secured Notes Parties shall not (i) be deemed to be in control of the operations of the Debtors, or (ii) owe any fiduciary duty to the Debtors, their respective creditors, shareholders or estates.

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

39. *Reclamation Rights.* To the extent that any party in interest is determined to have an allowed Reclamation Claim (as defined and established pursuant to the procedures set forth in the *Final Order (A) Establishing Procedures for Asserting, Resolving, and Satisfying Reclamation Claims; and (B) Granting Related Relief* [D.I. 201] (the “Reclamation Order”)), nothing in this Final Order, the Interim Order, or the Interim Cash Collateral Order (including, without limitation, any liens or claims granted hereunder or thereunder) shall impair or impact any priorities, rights or remedies of any such allowed Reclamation Claim.

40. *Ratification of Escrow Arrangement to Effectuate Prepetition Secured Notes Repayment.* OSS's appointment of Wilmington Trust, National Association (the "Escrow Agent"), as escrow agent, pursuant to that certain Escrow Agreement (the "Escrow Agreement"), substantially in the form attached hereto as Exhibit "A", is hereby ratified. Each of the Replacement Lenders has consented to OSS's entry into and performance under the Escrow Agreement in order to effectuate the Prepetition Secured Notes Repayment, and OSS is hereby authorized to perform all of its obligations thereunder. OSS is hereby authorized to deliver to the Escrow Agent, in accordance with the terms of the Escrow Agreement, on behalf of the Debtors, the DIP Agent, and each of the Replacement Lenders, all information that may be necessary or appropriate in order to effectuate the terms of the Escrow Agreement and the Prepetition Secured Notes Repayment. The Escrow Agent may conclusively rely upon any and all information provided to it by OSS in accordance with the Escrow Agreement or otherwise in connection with the Prepetition Secured Notes Repayment, and shall have no independent obligation to verify the accuracy or completeness of any such information. The Escrow Agent shall not incur any liability, financial or otherwise, to the Debtors, the DIP Agent, any of the Replacement Lenders, or to any of their respective affiliates or their or their respective affiliates' officers, directors, employees, representatives, agents and advisors or to any third-party, in connection with or as a result any action or inaction undertaken by the Escrow Agent in reliance upon any information provided to it by OSS in accordance with this paragraph 40 and otherwise in compliance with the Escrow Agreement, and shall be entitled, in accordance with the terms of the Escrow Agreement, to be indemnified by the Debtors in connection with any and all claims, expenses, obligations, liabilities, losses, damages, injuries (to person, property, or natural resources), penalties, stamp or other similar taxes, actions, suits,

judgments, reasonable costs and expenses (including reasonable attorney's fees and expenses) of whatever kind or nature regardless of their merit, demanded, asserted or claimed against the Escrow Agent directly or indirectly relating to, or arising from, claims against the Escrow Agent by reason of any such action or inaction. For the avoidance of doubt, any and all indemnification obligations of the Debtors arising under this paragraph 40 or the Escrow Agreement shall be considered administrative expenses allowed under Bankruptcy Code section 503(b).

Dated: February 28, 2017
Wilmington, Delaware

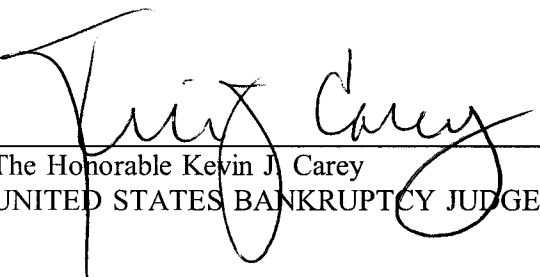

The Honorable Kevin J. Carey
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT A

FORM OF ESCROW AGREEMENT

THIS AGREEMENT, dated as of [●], 2017 (as amended, supplemented or otherwise modified, this "Agreement"), is entered into by and among Optima Specialty Steel, Inc., a Delaware corporation ("Optima" or the "Company") and Wilmington Trust, National Association, as escrow agent hereunder ("Escrow Agent").

WITNESSETH

WHEREAS, the entities listed on Schedule A hereto (the "Replacement Lenders") are beneficial holders of certain of the 12.5% notes due 2016 (the "12.5% Notes") issued pursuant to that certain indenture, dated as of December 5, 2011, among Optima, as issuer, the guarantors party thereto, and Wilmington Trust, National Association, as trustee and noteholder collateral agent (the "Existing Trustee"), as amended, restated, modified or supplemented (the "Prepetition Secured Notes Indenture");

WHEREAS, Optima and certain of its affiliates have entered into that Senior Secured Super-Priority Debtor-in-Possession Credit Agreement (the "DIP Credit Agreement"), dated as of January 27, 2017, by and among the Company and certain of its affiliates, as Borrowers, the Lenders party thereto, including the Replacement Lenders, and Cortland Capital Market Services LLC, as administrative agent (the "DIP Agent");

WHEREAS, the DIP Credit Agreement provides that, on the Replacement Loan Date (defined below) each Replacement Lender severally agrees to make loans to the Borrowers in an amount up to but not exceeding such Replacement Lender's commitment as set forth opposite such Replacement Lender's name on Schedule 2.01 to the DIP Credit Agreement (each, a "Replacement Loan");

WHEREAS, the DIP Credit Agreement further provides that, the Replacement Loans shall be funded or deemed to be funded on the Replacement Loan Date in connection with the Prepetition Secured Notes Repayment (defined below);

WHEREAS, the parties to this Agreement wish to transfer the Escrow Securities and Replacement Lender Cash (each defined below) to a segregated escrow account to be held by Escrow Agent pending the occurrence of the Replacement Loan Date;

WHEREAS, Escrow Agent has agreed to accept, hold in escrow, and transfer the Escrow Securities and Replacement Lender Cash deposited with it in accordance with the terms of this Agreement.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, for themselves, their successors and assigns, hereby agree as follows:

1. Definitions. The following terms shall have the following meanings when used herein:

“Adequate Protection Payments” shall have the meaning ascribed to such term in the Interim Order or Final Order, as applicable.

“Cash” shall mean United States dollars.

“DTC” shall mean The Depository Trust Company.

“DTC Suppress Allocation Notice” shall mean a written direction executed by Escrow Agent in substantially the form attached as Annex 2 hereto, directing DTC to suppress allocation of any future distributions with respect to the Escrow Securities.

“Escrow Account” shall have the meaning ascribed to such term in Section 3(a) of this Agreement.

“Escrow Securities” shall mean all of the 12.5% Notes beneficially held by the Replacement Lenders, which are in the principal amounts set forth next to each Replacement Lender’s name on Schedule A in the column headed “Aggregate principal amount of 12.5% Notes held by Replacement Lender”, which are to be cancelled and repaid or deemed to be repaid pursuant to the Prepetition Secured Notes Repayment.

“Final Order” shall have the meaning ascribed to such term in the DIP Credit Agreement.

“Funds Flow” shall have the meaning ascribed to such term in the definition of Optima Written Direction.

“Incumbency Certificate” shall mean the certificate deliverable by Optima in substantially the form attached as Schedule C hereto.

“Interim Order” shall have the meaning ascribed to such term in the DIP Credit Agreement.

“Non-Replacement Lender Holders” shall mean the beneficial holders of 12.5% Notes other than the Replacement Lenders.

“Optima Written Direction” shall mean a written direction executed by Optima in substantially the form attached as Annex 1 hereto (a) confirming that Optima has wired the funds in accordance with the funds flow attached as Schedule D hereto (the “Funds Flow”), (b) attaching a copy of an email correspondence from the DIP Agent confirming that the DIP Agent entered the Replacement Loans in the Register pursuant to (and as defined in) Section 10.07(d) of the DIP Credit Agreement (which amounts include the amount of such Replacement Lender’s Rollover Replacement Loan Amount), and (c) directing Escrow Agent to transfer the Escrow Securities to the Existing Trustee and the Replacement Lender Cash to the Replacement Lenders in accordance with this Agreement.

“Prepetition Secured Notes Repayment” shall have the meaning ascribed to such term in the DIP Credit Agreement.

“Prepetition Secured Notes Obligations” shall have the meaning ascribed to such term in the DIP Credit Agreement.

“Replacement Lender Cash” shall mean, with respect to each Replacement Lender, Cash in the amount set forth next to such Replacement Lender’s name on Exhibit 2 to the Optima Written Direction under the column headed “Total Replacement Lender Cash”, which shall reflect the sum of (i) such Replacement Lender’s share of the Adequate Protection Payments payable through and including the Replacement Loan Date and (ii) the amount of cash to be paid to such Replacement Lender representing the excess of the principal outstanding amount of the Escrow Securities beneficially held by such Replacement Lender over its Rollover Replacement Loan Amount.

“Replacement Loan Date” shall have the meaning ascribed to such term in the DIP Credit Agreement.

“Rollover Replacement Loan Amount” shall mean, with respect to each Replacement Lender, the amount set forth next to such Replacement Lender’s name on Schedule A under the column headed “Rollover Replacement Loan Amount,” which shall reflect the amount of Rollover Replacement Loans to be provided by such Replacement Lender pursuant to Section 2.01(b) of the DIP Credit Agreement.

“Rollover Replacement Loans” shall have the meaning ascribed to such term in the DIP Credit Agreement.

2. Appointment of and Acceptance by Escrow Agent. The Company hereby appoints Wilmington Trust, National Association as Escrow Agent hereunder. Escrow Agent hereby accepts such appointment and, upon receipt by transfer through DTC of the Escrow Securities and upon receipt of the Replacement Lender Cash in accordance with Section 3 below, agrees to hold and transfer such Escrow Securities and Replacement Lender Cash, respectively, in the Escrow Account in accordance with this Agreement.

3. Deposit of Escrow Securities and Cash.

(a) Upon execution hereof, the Escrow Agent shall have established and shall maintain a segregated escrow account for the Escrow Securities and Replacement Lender Cash it receives under this Agreement as described in Schedule B hereto (the “Escrow Account”).

(b) Upon execution hereof and from time to time thereafter, the Escrow Agent shall accept the Escrow Securities from the Replacement Lenders via transfer through DTC’s free delivery system to DTC Participant #[●] with a reference to the Escrow Account in the delivery. The Escrow Agent will deposit the Escrow Securities it receives into the Escrow Account.

(c) The Escrow Agent will not invest or pay interest on any funds distributed in connection with the Escrow Securities or otherwise held by Escrow Agent pursuant to this Agreement.

(d) Upon execution hereof and from time to time thereafter, the Escrow Agent shall accept the Replacement Lender Cash, which is to be wire transferred in immediately available funds to the Escrow Account as follows:

Bank Name & Address:	[•]
ABA No.	[•]
Account No.	[•]
Re:	[•]
Attention:	[•]

(e) The Escrow Agent will not invest or pay interest on any funds distributed in connection with the Replacement Lender Cash or otherwise held by Escrow Agent pursuant to this Agreement.

4. Delivery of the DTC Suppress Allocation Notice. Upon receipt of all of the Escrow Securities described in Schedule A hereto, Escrow Agent shall deliver the DTC Suppress Allocation Notice to DTC.

5. Notice of Delivery of Payment. Promptly upon delivery by wire transfer to the Existing Trustee of the aggregate amount of payments shown on the Funds Flow payable to the Non-Replacement Lender Holders through and including Replacement Loan Date, the Company shall deliver notice to the DIP Agent by email to [•] and [•] containing confirmation that (i) all such payments (including interest through and including Replacement Loan Date) have been delivered to the Existing Trustee and (ii) the Company has delivered to the Existing Trustee an instruction to cancel all 12.5% Notes beneficially held by the Non-Replacement Lender Holders upon their surrender to the Existing Trustee for cancellation.

6. Notice of Receipt of Replacement Lender Cash and Escrow Securities. Upon receipt by the Escrow Agent of (a) Cash in an amount equal to the aggregate amount of Replacement Lender Cash as reflected in the Funds Flow, and (b) all of the Escrow Securities, the Escrow Agent shall deliver notice to the DIP Agent by email to [•] and [•] of its receipt of the Replacement Lender Cash and Escrow Securities.

7. Transfer of Escrow Securities and Replacement Lender Cash. Subject to Escrow Agent's telephonic verification of wire transfer instructions for all Cash payments in accordance with the Incumbency Certificate, the Escrow Agent shall transfer the Escrow Securities and the Replacement Lender Cash at any time thereafter in accordance with the following:

(a) upon receipt of an Optima Written Direction, in which case Escrow Agent shall (i) within three (3) business days of the receipt of such notice deliver all Escrow Securities in the Escrow Account to the Existing Trustee for cancellation and (ii) within (1) business day of the receipt of such notice (or on the date of receipt of such notice if the Replacement Lender Cash and Optima Written Direction are received by no later

12:00 (noon) New York City Time) deliver to each Replacement Lender, such Replacement Lender's Replacement Lender Cash in accordance with the wire transfer account information reflected next to such Replacement Lender's name on Schedule A hereto; and

(b) if the Escrow Agent does not receive an Optima Written Direction by noon (New York City Time) on March 8, 2017, Escrow Agent shall deliver, within two (2) business days after such time (i) to each Replacement Lender such Replacement Lender's portion of the Escrow Securities previously delivered to the Escrow Agent by such Replacement Lender in accordance with the account information reflected next to such Replacement Lender's name on Schedule A hereto, (ii) to the DIP Agent, Replacement Lender Cash held by the Escrow Agent in the amount of \$[•], which is to be wire transferred in immediately available funds to the DIP Agent's account below and (iii) to the Company, all Replacement Lender Cash in excess of the amount specified in the immediately preceding clause (ii), which is to be wire transferred in immediately available funds to the Company's account below:

(i) If to the Company:

Bank Name & Address:	[•]
ABA No.	[•]
Account Name:	[•]
Account No.	[•]
F/F/C:	[•]
Attention:	[•]

(ii) If to the DIP Agent:

Bank Name & Address:	[•]
ABA No.	[•]
Account Name:	[•]
Account No.	[•]
F/F/C:	[•]
Attention:	[•]

The Optima Written Direction shall contain delivery instructions in accordance with the terms of this Agreement.

8. Duties of the Escrow Agent. Notwithstanding any provision in this Agreement to the contrary, the Escrow Agent is obligated only to perform the duties specifically set forth in this Agreement, which shall be deemed purely ministerial in nature. Under no circumstances

will the Escrow Agent be deemed to be a fiduciary to, or agent for, the Company, the Replacement Lenders, the DIP Agent, or any other person under this Agreement. This Agreement sets forth all matters pertinent to the escrow contemplated hereunder, and no additional obligations of the Escrow Agent shall be inferred or implied from the terms of this Agreement or any other agreement. By executing this Agreement, the Company hereby releases and waives any claims against Escrow Agent for a breach or alleged breach of any agency or fiduciary duties arising out of or in connection with this Agreement.

9. Rights of the Escrow Agent.

(a) The Escrow Agent shall not be liable for any act or omission by it unless such act or omission constitutes gross negligence or willful misconduct as determined by a final, non-appealable judgment of a court of competent jurisdiction.

(b) The Escrow Agent shall have no duties or obligations other than those specifically set forth herein or as may be subsequently agreed to in writing between the Escrow Agent and the Company.

(c) The Escrow Agent may conclusively rely upon and shall be protected in acting or refraining from acting upon any certificate, instrument, opinion, notice, letter, or other document or security delivered to it and believed by it to be genuine and to have been signed or presented by the proper person or persons.

(d) The Escrow Agent may conclusively rely upon and shall not be liable to the Company or to any other person or entity for acting or refraining from acting upon written instructions from the Company, including, but not limited to, the Optima Written Direction.

(e) If, at any time, (i) there shall exist any dispute with respect to the holding or disposition of all or any portion of the Escrow Securities, the Replacement Lender Cash, or any other obligations of the Escrow Agent hereunder or (ii) the Escrow Agent is in doubt as to the action to be taken hereunder, the Escrow Agent is authorized to refrain from taking any action until (x) such dispute or uncertainty shall be resolved to the satisfaction of the Escrow Agent in its sole discretion as Escrow Agent or (y) the Escrow Agent files an interpleader action with respect to the Escrow Securities and the Replacement Lender Cash in any court of competent jurisdiction, and upon the filing thereof, the Escrow Agent shall be relieved of all liability as to the Escrow Securities and the Replacement Lender Cash. The Escrow Agent shall be entitled to act on any agreement, court order or arbitration decision without further question, inquiry or consent.

(f) The Escrow Agent may resign and be discharged from the performance of its duties hereunder at any time by giving at least thirty (30) days prior written notice to the Company specifying the date when such resignation shall take effect. The Company shall appoint a successor Escrow Agent hereunder prior to the effective date of resignation. The Escrow Agent, at the sole expense of the Company, shall transmit all records pertaining to the Escrow Securities and the Replacement Lender Cash and shall deliver all Escrow Securities and Replacement Lender Cash to the successor escrow agent, after making copies of records the Escrow Agent deems necessary and advisable. Upon delivery of the Escrow Securities and

Replacement Lender Cash to the successor escrow agent, the Escrow Agent shall have no further duties, responsibilities or obligations hereunder. If, at the end of thirty (30) days following the Escrow Agent providing notice of its intent to resign no successor escrow agent shall have been appointed by the Company, then the Escrow Agent may appoint a successor escrow agent at the expense of the Company.

(g) The Escrow Agent shall not be subject to, nor be required to comply with, any other agreement, or to comply with any direction or instruction (other than those contained herein or delivered in accordance with this Agreement).

(h) The Escrow Agent shall not be required to expend or risk any of its own funds or otherwise incur any liability, financial or otherwise, in the performance of any of its duties hereunder.

(i) If at any time the Escrow Agent is served with any judicial or administrative order, judgment, decree, writ or other form of judicial or administrative process which in any way affects the Escrow Securities and/or the Replacement Lender Cash (including but not limited to orders of attachment or garnishment or other forms of levies or injunctions or stays relating to the transfer of the Escrow Securities and/or Replacement Lender Cash), the Escrow Agent is authorized to comply therewith in any manner it or legal counsel of its own choosing deems appropriate; and if the Escrow Agent complies with any such judicial or administrative order, judgment, decree, writ or other form of judicial or administrative process, Escrow Agent shall not be liable to the Company or to any other person or entity even though such order, judgment, decree, writ or process may be subsequently modified or vacated or otherwise determined to have been without legal force or effect.

(j) In no event shall the Escrow Agent be liable for (i) any indirect, consequential, punitive or special damages, regardless of the form of action and whether or not any such damages were foreseeable or contemplated or (ii) for the acts or omissions of its nominees, correspondents, designees, agents, subagents or subcustodians.

(k) The Escrow Agent may consult with legal counsel of its own choosing, at the expense of the Company, as to any matter relating to this Agreement, and the Escrow Agent shall not incur any liability in acting in good faith in accordance with any advice from such counsel.

(l) The Escrow Agent shall not incur any liability for not performing any act or fulfilling any duty, obligation or responsibility hereunder by reason of any occurrence beyond the control of the Escrow Agent (including but not limited to any act or provision of any present or future law or regulation or governmental authority, any act of God or war, civil unrest, local or national disturbance or disaster, any act of terrorism, or the unavailability of the Federal Reserve Bank wire or facsimile or other wire or communication facility).

(m) When the Escrow Agent acts on any information, instructions, communications, sent by facsimile, email or other form of electronic or data transmission, the Escrow Agent shall not be responsible or liable in the event such communication is not an authorized or authentic communication of the sender of the communication or is not in the form sent or intended to be sent (whether due to fraud, distortion or otherwise). The Company shall indemnify the Escrow

Agent against any loss, liability, claim or expense (including reasonable and documented legal fees and expenses) it may incur in connection with its acting in accordance with any such communication, absent gross negligence or willful misconduct on the part of the Escrow Agent.

(n) In the event of any ambiguity or uncertainty hereunder or in any notice, instruction or other communication received by the Escrow Agent hereunder, the Escrow Agent may, in its sole discretion, refrain from taking any action other than to retain possession of the Escrow Securities and/or Replacement Lender Cash and notifying the Company of such ambiguity or uncertainty, unless the Escrow Agent receives written instructions, signed by the Company, which eliminates such ambiguity or uncertainty.

(o) The Escrow Agent does not have any interest in the Escrow Securities or Replacement Lender Cash deposited hereunder but is serving as escrow holder only and has only possession thereof. The Company shall pay or reimburse the Escrow Agent upon request for any transfer taxes or other taxes relating to the Escrow Securities and Replacement Lender Cash incurred in connection herewith and shall indemnify and hold harmless the Escrow Agent from any amounts that the Escrow Agent is obligated to pay in the way of such taxes.

(p) The Escrow Agent shall be entitled to payment from the Company for customary fees and expenses for all services rendered by it hereunder as separately agreed to in writing between the Company and the Escrow Agent (as such fees may be adjusted from time to time). The Company shall reimburse the Escrow Agent on demand for all losses, liabilities, damages, disbursements, advances or expenses paid or incurred by it in the administration of its duties hereunder, including, but not limited to, all reasonable and documented legal counsel's, advisors' and agents' fees and disbursements and all taxes or other governmental charges. The Company shall indemnify, defend and hold harmless the Escrow Agent and its affiliates, and their respective officers, directors, employees, representatives, agents and advisors, from and against and reimburse the Escrow Agent for any and all claims, expenses, obligations, liabilities, losses, damages, injuries (to person, property, or natural resources), penalties, stamp or other similar taxes, actions, suits, judgments, reasonable costs and expenses (including reasonable attorney's fees and expenses) of whatever kind or nature regardless of their merit, demanded, asserted or claimed against the Escrow Agent directly or indirectly relating to, or arising from, claims against the Escrow Agent by reason of its participation in the transactions contemplated hereby, including without limitation all reasonable costs associated with claims for damages to persons or property, and reasonable and documented attorneys' and consultants' fees and expenses and court costs, except to the extent caused by the Escrow Agent's gross negligence or willful misconduct. The provisions of this paragraph shall survive the termination of this Agreement or the earlier resignation or removal of the Escrow Agent.

10. Tax Reporting. The Escrow Agent shall not be deemed the payor, and shall have no obligations in respect of tax withholding. The Company shall be solely responsible for determining any tax reporting in connection with this Agreement. To the extent that the Escrow Agent is requested to perform any administrative functions in connection with such tax reporting, the Company shall (a) specify in writing the version(s) of any IRS or other tax form to be distributed, (b) furnish any information required in such tax form and (c) furnish any additional information as may be reasonably requested by the Escrow Agent in connection with the Escrow Agent's performance of administrative functions under this Section. The Escrow Agent may

conclusively rely upon the Company's representations, direction and advice regarding tax reporting.

11. Binding Effect; Successors. This Agreement shall be binding upon the respective parties hereto and their heirs, executors, successors or assigns. If Escrow Agent consolidates, merges or converts into, or transfers all or substantially all of its corporate trust business (including the escrow contemplated by this Agreement) to another corporation, the successor or transferee corporation without any further act shall be the successor Escrow Agent.

12. Representations and Warranties.

(a) Escrow Agent's Representations and Warranties. The Escrow Agent hereby represents and warrants to the Company that it has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder and that this Agreement has been duly approved by all necessary action and constitutes Escrow Agent's valid and binding agreement enforceable in accordance with its terms.

(b) Company's Representations and Warranties. The Company hereby represents to the Escrow Agent that it has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder and that this Agreement has been duly approved by all necessary corporate action (or the Final Order) and constitutes the Company's valid and binding agreement enforceable in accordance with its terms. In addition, the Company hereby represents and warrants that (i) prior to, or contemporaneously with, its execution of this Agreement, it has delivered the Incumbency Certificate to the Escrow Agent and that the information set forth on the Incumbency Certificate is true and correct in all material respects and (ii) the information on Schedule A is true and correct in all material respects to the best of its knowledge.

13. Identifying Information. IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT – To help the United States government fight the funding of terrorism or money laundering activities, federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens a new account. What this means for the parties to this Agreement: the Escrow Agent will ask for information that will allow the Escrow Agent to identify the Company (e.g., your tax identification number). The Escrow Agent may also ask to see your identifying documents (e.g., evidence of incorporation, certificate of good standing, etc.).

14. Notices. All written notices required under this Agreement shall be given in writing and shall be deemed to have been given upon (a) the transmitter's confirmation of a receipt of a facsimile or email transmission or (b) confirmed delivery by a standard overnight carrier or when delivered by hand, to the following addresses (or to such other address for a Party as shall be specified by like notice):

(a) If to the Company:

[•]

with a copy (which shall not constitute notice) to:

[•]

and

[•]

(b) If to Escrow Agent:

[•]

with a copy (which shall not constitute notice) to:

[•]

15. Amendment. This Escrow Agreement may not be amended, modified, supplemented or otherwise altered without the prior written consent of the Company and the Replacement Lenders (each of which shall be the intended third-party beneficiaries of this Section with the right of enforcement).

16. Governing Law. This Agreement and all matters arising out of or in any way relating to this Agreement shall be governed by, and construed in accordance with, the laws of the State of New York.

17. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all other prior negotiations, commitments, agreements and understandings, both written and oral, between the parties with respect to the subject matter hereof.

18. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument. Delivery of an executed counterpart of a signature page of this Agreement in Portable Document Format (PDF) or by facsimile transmission shall be as effective as delivery of a manually executed original counterpart of this Agreement.

19. Termination. This Agreement shall terminate upon the distribution of all the Escrow Securities and Replacement Lender Cash pursuant to any applicable provision of this Agreement.

[Signature pages follow]

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed, all as of the day and year first above written.

WILMINGTON TRUST, NATIONAL ASSOCIATION,
as Escrow Agent

By: _____

Name:

Title:

Signature Page

OPTIMA SPECIALTY STEEL, INC.

By: _____

Name:

Title:

Signature Page