

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

-----x
In re

Chapter 11

NATIONAL EVENTS OF AMERICA, INC., et al.,

Case No. 17-11798 (JLG)

Jointly Administered

Debtors.
-----x

**ORDER GRANTING CORPORATE DEBTORS' MOTION FOR ENTRY OF A
FINAL ORDER (a) AUTHORIZING DEBTORS TO OBTAIN POSTPETITION
FINANCING PURSUANT TO 11 U.S.C. §§ 105, 361, 362, 363 AND 364 AND (b)
GRANTING LIENS, SECURITY INTERESTS AND SUPERPRIORITY CLAIMS**

This matter is before the Court (the "**Bankruptcy Court**")¹ on the motion dated July 11, 2017 (the "**Motion**") [Dkt. No. 18] of the above-captioned debtors and debtors in possession (together, the "**Corporate Debtors**", and these chapter 11 cases being the "**Chapter 11 Cases**"), by and through Edward J. LoBello, as Receiver and Estate Fiduciary, for entry of a final order ("**Final Order**"), pursuant to §§ 105, 361, 362, 363(c), 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), and 364(e) of title 11, United States Code, 11 U.S.C. §§ 101 *et seq.* (the "**Bankruptcy Code**"), Rules 2002, 4001, 9013 and 9014 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**") and Rules 2002-1, 4001-2, 9006-1, 9013-1, 9014-1 and 9014-2 of the Local Bankruptcy Rules for the Southern District of New York (the "**Local Rules**"), seeking, among other things:

(1) authorization to (A) obtain postpetition secured debtor in possession financing in an aggregate principal amount of up to \$280,000 (the "**Maximum Amount**") pursuant to the terms of an agreement (the "**DIP Facility**"), with Taly USA Holdings Inc. ("**Taly**"), SLL USA Holdings LLC ("**SLL**") and Hutton Ventures LLC ("**Hutton**") (together, Taly, SLL, and Hutton are the "**DIP Lenders**"), acting as lenders, and (B) incur the obligations hereunder (the "**DIP Obligations**") (the Interim Order, this Final Order, and any related agreements or documents delivered or executed in connection therewith, collectively, the "**DIP Documents**");

(2) authorization to execute and enter into the DIP Documents, perform thereunder, and

¹ Capitalized terms not defined herein have the meanings ascribed to them in the DIP Facility (defined below).

undertake such other and further acts as are necessary in connection therewith, including the payment of all amounts payable under the DIP Documents when due and payable; and

(3) authorization to grant valid, enforceable, non-avoidable, automatically and fully perfected security interests, liens, and superpriority claims, including superpriority administrative expense claims pursuant to Bankruptcy Code § 364(c)(1), and liens pursuant to Bankruptcy Code §§ 364(c)(2) and 364(c)(3), to the DIP Lenders, in the Collateral (as defined below) to secure all DIP Obligations.

This Court having found that due and proper notice of the Motion was provided in accordance with Bankruptcy Rules 2002, 4001 and 9014 and Local Rule 2002-1, and having held hearings on the request for interim relief on July 17, 2017, July 27, 2017, and September 6, 2017, after considering pleadings, motions and other papers filed with this Court and evidence proffered or adduced on the record at those hearings; and the Court having granted the interim relief requested in the Motion by Order entered on September 20, 2017 [Dkt No. 53]; and it appearing to the Court that granting final relief is fair and reasonable and in the best interests of the Corporate Debtors, their creditors, their estates, and represents a sound exercise of the Corporate Debtors' business judgment; and upon the record of these Chapter 11 Cases including the hearing at which relief on a "final order" basis was considered, and after due deliberation and good and sufficient cause appearing therefor:

THE COURT HEREBY FINDS AND CONCLUDES AS FOLLOWS:

A. Petition Date. On June 28, 2017 (the "**Petition Date**"), the Corporate Debtors filed voluntary petitions in this Court commencing cases under chapter 11 of the Bankruptcy Code. The Corporate Debtors remain in control of their assets as debtors in possession pursuant to Bankruptcy Code §§ 1107 and 1108. No trustee has been appointed in either Chapter 11 Case.

B. Jurisdiction and Venue. The Court has jurisdiction over these proceedings pursuant to 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order of Reference [M-431] of the United States District Court for the Southern District of New York, dated January 31, 2012 (Hon. Preska,

C.J.). This is a “core” proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (D), and (O). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief sought herein are Bankruptcy Code §§ 105, 361, 362, 363, and 364, Bankruptcy Rules 2002, 4001, 9013 and 9014 and Local Rules 2002-1, 4001-2, 9006-1, 9013-1, 9014-1 and 9014-2.

C. Estate Fiduciary. By Stipulation and Order that was approved by the Court and entered on the docket in these Chapter 11 Cases on September 21, 2017 [Dkt No. 54] (the “**Estate Fiduciary Order**”), Edward J. LoBello, Esq., as Receiver, was appointed as Estate Fiduciary for the Corporate Debtors.

D. Committee Formation. As of the date hereof, no official committee of unsecured creditors or other committee (“**Committee**”) has been appointed in these Chapter 11 Cases.

E. Corporate Debtors' Stipulations. Without prejudice to the rights of any party-in-interest with standing (but subject to the limitations described in paragraph 10 below), the Corporate Debtors hereby admit, acknowledge, agree, and stipulate that:

Subject to and as limited by paragraph 10 hereof, the Corporate Debtors hereby forever, unconditionally, and irrevocably release, discharge, and acquit the DIP Lenders, and each of their successors, assigns, affiliates, parents, subsidiaries, partners, controlling persons, representatives, agents, attorneys, advisors, financial advisors, consultants, professionals, officers, directors, members, managers, shareholders, and employees, past, present and future, and their respective heirs, predecessors, successors, and assigns (collectively, the “**Releasees**”) of and from any and all claims, controversies, disputes, liabilities, obligations, demands, damages, expenses (including, without limitation, reasonable attorneys' fees), debts, liens, actions, and causes of action of any and every nature whatsoever, whether arising in law or otherwise, and whether or not known or matured, arising out of or relating to any prepetition loans, transactions, and/or agreements between either of the DIP Lenders and the Corporate Debtors, or the DIP Documents, including, without limitation, any so-called “lender liability” or equitable subordination claims or defenses, and any claims or causes of action arising under Chapter 5 of the Bankruptcy Code. The Corporate Debtors further waive and release any defense, right of counterclaim, right of set-off, or deduction to the payment of the DIP Obligations that the Corporate Debtors now have or may claim to have against the Releasees arising out of, connected with, or relating to any and all acts, omissions, or events occurring, prior to the Bankruptcy Court entering this Final Order.

F. Need for Postpetition Financing and Use of Cash Collateral. Based upon the record in the Chapter 11 Cases, it is evident that the Corporate Debtors do not have sufficient available sources of capital and financing to conduct an investigation of the Corporate Debtors' prepetition activities without the DIP Facility. Conducting that investigation is essential to maximizing the value of the Corporate Debtors' estates.

G. No Credit on More Favorable Terms. Given their financial condition, the Corporate Debtors are unable to obtain sufficient financing from sources other than the DIP Lenders on any terms, let alone on terms more favorable than under the DIP Facility and DIP Documents, and are unable to obtain unsecured credit allowable only as an administrative expense under Bankruptcy Code § 503(b)(1). The Corporate Debtors have determined that Postpetition financing is unavailable to them without providing the DIP Lenders: (i) the DIP Liens in the DIP Collateral, with the priorities set forth herein; (ii) the DIP Superpriority Claims (as defined below); and (iii) the other protections set forth in this Final Order. After considering all alternatives, the Corporate Debtors have concluded, in an exercise of sound business judgment, that the DIP Facility represents the best financing available to them at this time and is in the best interests of all of their stakeholders.

H. Findings Regarding the DIP Facility. Based upon the record in the Chapter 11 Cases, (i) the terms and conditions of the DIP Facility are fair and reasonable, are the best available to the Corporate Debtors under the circumstances, reflect the Corporate Debtors' exercise of prudent business judgment consistent with their fiduciary duties, and are supported by reasonably equivalent value and fair consideration, (ii) the DIP Facility has been negotiated in good faith and at arm's length between the Corporate Debtors and the DIP Lenders and (iii) any postpetition credit extended, loans made, or other postpetition financial accommodations extended to the

Corporate Debtors by the DIP Lenders pursuant to this Final Order, have been extended or made in "good faith" within the meaning of Bankruptcy Code § 364(e) and in reliance upon the protections offered § 364(e), and the DIP Facility, the DIP Liens, and the DIP Superpriority Claims shall be entitled to the protection of Bankruptcy Code § 364(e) in the event that this Final Order or any provision hereof is vacated, reversed, or modified, on appeal or otherwise.

I. Use of Proceeds of the DIP Facility: As a condition to entering into the DIP Documents and extending credit under the DIP Facility, the DIP Lenders require, and the Corporate Debtors have agreed, that proceeds of the DIP Facility shall be used only for: (i) payment of the costs and expenses incurred by the Estate Fiduciary and his professionals, (ii) payment of valid fees owed to the Office of the United States Trustee, (iii) repayment of the Bridge Loan, (iv) payment of interest, fees, costs, and expenses related to the DIP Facility, and (v) payment of up to \$45,000 in fees and expenses incurred by an examiner appointed in the Corporate Debtors' cases (on consent of the Lenders).

J. Notice. The Corporate Debtors have represented that notice of the Final Hearing was provided to: (i) the Office of the United States Trustee for the Southern District of New York (the "**U.S. Trustee**"); (ii) counsel to each of the DIP Lenders; and (iii) any other party that has filed a request for notice pursuant to Bankruptcy Rule 2002 or is required to receive notice under the Bankruptcy Rules and the Local Rules. Requisite notice of the Motion and the relief requested thereby has been provided in accordance with Bankruptcy Rule 4001, and no other notice need be provided.

K. Immediate Entry. The Corporate Debtors have requested immediate entry of this Final Order pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2). This Court concludes that entry of this Final Order is in the best interests of the Corporate Debtors' respective estates and creditors

as its implementation will, among other things, enhance the Debtors' prospects for maximizing the value of their estates for the benefit of stakeholders.

Now, based on the foregoing, and upon the record made before this Court at the hearings held relating to the Motion, and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. Approval of Relief Sought. The Motion is approved, on a final order basis, to the extent indicated herein. Any objections to the relief requested in the Motion that have not been withdrawn, waived, or settled, and all reservations of rights asserted, are hereby denied and overruled. This Final Order shall become effective immediately upon its entry.

2. Approval of DIP Documents; Authority Thereunder. The DIP Facility is hereby approved, including authorization for the Corporate Debtors to repay the Bridge Loan. The Corporate Debtors are hereby authorized to enter into, and execute and deliver, the DIP Documents and such additional documents as may be reasonably requested by the DIP Lenders to implement the terms or effectuate the purposes of this Final Order and the DIP Documents.

3. Validity of DIP Documents. Upon execution, the DIP Documents shall constitute legal, valid, and binding obligations of the Corporate Debtors, enforceable in accordance with their terms.

4. Authorization to Borrow. Upon entry of this Final Order, the Corporate Debtors are authorized to borrow from the DIP Lenders under the DIP Facility an amount not to exceed \$280,000. Loans made under the DIP Facility ("**DIP Loans**") may be used only in accordance with the terms of the DIP Documents.

5. Conditions of Lending. The DIP Lenders shall not be required to make any advances under this Final Order unless and until each of the following conditions is satisfied or

waived by the DIP Lenders in their sole discretion: (i) this Final Order shall have been entered in form and substance acceptable to the DIP Lenders in their sole discretion; and (ii) no Event of Default shall have occurred. The DIP Lenders have no obligation to make any loan or advance under the DIP Documents unless all conditions precedent to making such extension of credit under the DIP Documents have been satisfied or waived by the DIP Lenders.

6. DIP Superpriority Claims. Pursuant to Bankruptcy Code § 364(c)(1), the DIP Obligations shall constitute senior administrative expense claims ("**DIP Superpriority Claims**") against each of the Corporate Debtors, on a joint and several basis with priority in payment over any and all administrative expenses of any kind or nature whatsoever, including, without limitation, the kinds specified or ordered pursuant to Bankruptcy Code §§ 105, 326, 328, 330, 331, 364(c)(1), 365, 503(a), 503(b), 506(c), 507(a), 507(b), 546(c), 726, 1113, and 1114, including those resulting from the conversion of any of the Chapter 11 Cases pursuant to Bankruptcy Code § 1112, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien; provided, however, that the DIP Superpriority Claims shall be subject to the payment in full in cash of any amounts due under the Carve-Out (defined below); provided, further, that the DIP Superpriority Claims shall have recourse to and be payable from all prepetition and postpetition property of the Debtors and their estates and all proceeds thereof, including, subject to entry of the Final Order, the proceeds of avoidance actions under chapter 5 of the Bankruptcy Code. With respect to the use of proceeds of Chapter 5 avoidance actions (the "**Chapter 5 Proceeds**"), the Corporate Debtors shall repay any outstanding DIP Obligations (i) first from Chapter 5 Proceeds generated in actions other than those against the DIP Lenders ("**Non-Lender Avoidance Proceeds**"), and (ii) to the extent that Non-Lender Avoidance Proceeds are insufficient to repay some or all of the DIP Obligations, from Chapter 5 Proceeds

generated in actions against the DIP Lenders, if any. The foregoing is not to be construed as an obligation to bring any action against the DIP Lenders.

7. DIP Liens. As security for the DIP Obligations, immediately upon entry of this Final Order, the DIP Lenders shall be granted continuing, valid, binding, enforceable, non-avoidable, and automatically and properly perfected security interests in and liens (collectively, the "**DIP Liens**") on all DIP Collateral as collateral security for the prompt and complete performance and payment when due (whether at the stated maturity, by acceleration or otherwise) of the DIP Obligations. The term "**DIP Collateral**" means all assets and properties (whether tangible, intangible, real, personal, or mixed) of the Corporate Debtors, whether now owned by or owing to, or hereafter acquired by the Corporate Debtors (including under any trade names, styles, or derivations thereof), and whether owned or consigned by or to, or leased from or to, the Corporate Debtors, and regardless of where located, before or after the Petition Date, including the proceeds of the following: (i) all commercial tort claims; and (ii) all other claims and causes of action and the proceeds thereof (including, without limitation, all claims and causes of action arising under chapter 5 of the Bankruptcy Code). The DIP Liens shall not attach to such claims and causes of action; rather, the DIP Liens attach only to the proceeds of any such claims and causes of action, and only to the extent of lending that is made pursuant to the DIP Documents.

8. Priority of DIP Liens. To secure the DIP Obligations, immediately upon and effective as of entry of this Final Order, the DIP Lenders shall be granted continuing, valid, binding, enforceable, non-avoidable, and automatically and properly perfected DIP Liens in the DIP Collateral as follows, subject only to the Carve-Out:

- a. Pursuant to Bankruptcy Code § 364(c)(2), valid, enforceable, non-avoidable, automatically and fully perfected first priority liens on and security interests in all DIP Collateral that is not otherwise subject to a valid, perfected, and non-avoidable security interest or lien as of the Petition Date; and

b. Pursuant to Bankruptcy Code § 364(c)(3), valid, enforceable, non-avoidable automatically, and fully perfected junior liens on and security interests in all DIP Collateral.

Except as set forth herein, the DIP Liens and the DIP Superpriority Claims: (i) shall not be made junior to or pari passu with (A) any lien, security interest, or claim granted in any of the Chapter 11 Cases or successor cases, and shall be valid and enforceable against the Corporate Debtors, their estates, trustees, or any other estate representative appointed or elected in the Chapter 11 Cases or any successor cases, and/or upon the dismissal of any of the Chapter 11 Cases or any successor cases, and/or (B) any lien that is avoided and preserved for the benefit of the Corporate Debtors and their estates under Bankruptcy Code § 551 or otherwise; and (ii) shall not be subject to Bankruptcy Code §§ 506(c), 510, 549, 550, or 551. For the avoidance of doubt, upon entry of the Final Order, the DIP Liens granted to the DIP Lenders hereunder shall constitute a first priority lien on, and security interest in, all claims and causes of action arising under chapter 5 of the Bankruptcy Code and the proceeds thereof. With respect to the use of Chapter 5 Proceeds, the Corporate Debtors shall repay any outstanding DIP Obligations (i) first from Non-Lender Avoidance Proceeds, and (ii) to the extent that Non-Lender Avoidance Proceeds are insufficient to repay some or all of the DIP Obligations, from Chapter 5 Proceeds generated in actions against the DIP Lenders, if any. The foregoing is not to be construed as an obligation to bring any action against the DIP Lenders.

9. Carve-Out. As used in this Final Order, the term "**Carve-Out**" shall mean all fees required to be paid to the Clerk of the Court and to the Office of the United States Trustee under § 1930(a) of title 28 of the United States Code plus interest at the statutory rate.

10. Reservation of Certain Third Party Rights. The Estate Fiduciary and any other party in interest (solely if granted standing) shall have until December 19, 2017 (ninety (90) calendar days from September 20, 2017) (the "**Investigation Termination Date**") to commence a

contested matter or adversary proceeding (a "**Challenge**") asserting any claims or causes of action against either of the Lenders; provided, however, that if the Chapter 11 Cases are converted to cases under chapter 7 of the Bankruptcy Code prior to the earlier of (x) a determination by the Estate Fiduciary not to bring a Challenge, or (y) the Investigation Termination Date, then a chapter 7 trustee appointed in the chapter 7 cases (and only a chapter 7 trustee) shall have an additional thirty (30) calendar days after the chapter 7 trustee's appointment in which to bring a Challenge. If a Challenge is not filed on or before the Investigation Termination Date (or such later date ordered by this Court or extended by written consent of the DIP Lenders), then the stipulations contained in paragraph E of this Final Order shall be irrevocably binding on the Corporate Debtors, their estates, all creditors of the Debtors, and all parties-in-interest, and any and all successors-in-interest as to any of the foregoing, including any chapter 11 trustee or chapter 7 trustee subsequently appointed in the Chapter 11 Cases, without further action by any party or this Court, and the Corporate Debtors, any Committee, all creditors of the Debtors, and all such parties shall thereafter be forever barred from bringing any Challenge with respect thereto. Notwithstanding anything to the contrary herein: (x) if any such Challenge is timely commenced, the stipulations contained in paragraph E of this Final Order shall nonetheless remain binding and preclusive on all parties-in-interest (other than the party that has brought such Challenge in connection therewith and then only with respect to the stipulations that are subject to the Challenge and not to any stipulations not subject to the Challenge) except to the extent that such stipulations are successfully attacked in such Challenge; and (y) the DIP Lenders reserve all of their rights to contest on any grounds any Challenge and preserve any and all of their rights to appeal and stay any orders issued in connection with a successful Challenge.

11. No Marshaling/Application of Proceeds. In no event shall the DIP Lenders, subject

to entry of the Final Order, be subject to the doctrine of "marshaling" or any similar doctrine with respect to the DIP Collateral, and all proceeds thereof shall be received and used in accordance with this Final Order. In the event that the DIP Obligations are paid in full pursuant to the terms of a confirmed chapter 11 plan or from the proceeds of a sale that includes assets of the Corporate Debtors, if any, that were not the subject of a valid, perfected lien or security interest on the Petition Date (the "**Unencumbered Assets**"), the proceeds of such Unencumbered Assets shall be deemed applied first to the DIP Obligations until the DIP Obligations are paid in full.

12. Proceeds of Subsequent Financing. If at any time prior to (x) the payment in full or satisfaction of all DIP Obligations; and (y) termination of the DIP Lenders' obligation to extend credit in accordance herewith, either of the Corporate Debtors, or any trustee, examiner, or responsible officer appointed in either of the Chapter 11 Cases or any successor cases obtains credit or incurs debt pursuant to Bankruptcy Code §§ 364(b), 364(c), or 364(d), then unless otherwise agreed by the DIP Lenders, all of the cash proceeds derived from such credit or debt shall first be used to satisfy the DIP Obligations and pay the DIP Lenders in full.

13. Automatic Effectiveness of Liens. The DIP Liens shall not be subject to a Challenge and shall attach and become valid, perfected, binding, enforceable, non-avoidable, and effective liens by operation of law as of the Petition Date without any further action by the Corporate Debtors and/or the DIP Lenders and without the necessity of executing, filing, or recording any financing statements, security agreements, mortgages, or other documents or the taking of any other actions to validate or perfect such liens, or to entitle the DIP Lenders the priorities granted herein. Any property or assets constituting DIP Collateral that are in the possession of or under the control (as defined in the Uniform Commercial Code) of any third party shall at all times be held by such party as gratuitous bailee for the benefit of the DIP Lenders.

14. Automatic Stay; Rights and Remedies upon Event of Default. The automatic stay imposed by Bankruptcy Code § 362(a) is hereby modified as necessary to effectuate the terms and provisions of this Final Order, including, without limitation, to permit: (a) the Corporate Debtors to grant the DIP Liens and DIP Superpriority Claims; (b) the Corporate Debtors to incur all liabilities and obligations to the DIP Lenders as contemplated under this Final Order; (c) the Corporate Debtors to pay all amounts required under, in accordance with, and subject to this Final Order; (d) the DIP Lenders to retain and apply payments made in accordance with this Final Order; (e) subject to the proviso below in this paragraph, the DIP Lenders to exercise, upon and during any Event of Default hereunder or under the DIP Documents, all rights and remedies provided for in the DIP Documents; and (f) the implementation of all of the terms and provisions of this Final Order, without further notice, motion, or application to, or order of or hearing before, this Court, subject to the terms of this Final Order including as to the Remedies Notice Period (as defined below). Prior to the exercise of any right or remedy described in this paragraph, the DIP Lenders shall first provide written notice of the default, and an opportunity to cure, pursuant to the terms of section 8(b) of the DIP Facility. To the extent a default is not cured, the DIP Lenders shall provide written notice to the Corporate Debtors and the U.S. Trustee, pursuant to section 4(c) of the DIP Facility, of their intent to exercise rights and remedies, and at the same time shall file with the Court a Notice of Proposed Order (the "**Remedies Notice**") (served upon the Estate Fiduciary, the U.S. Trustee, and all other parties who have appeared in and/or requested notice in these cases) detailing the relief sought by the Lenders and which requires that any objections to the relief sought through the Remedies Notice must be filed with the Court within ten (10) days of when the Remedies Notice is filed on the docket in these cases (the "**Remedies Notice Period**"). During the Remedies Notice Period, the Corporate Debtors shall be entitled to request a hearing

on an expedited basis. To the extent that no objections are filed, the Court may enter an order providing for the relief sought through the Remedies Notice (an “**Order Granting Default Relief**”). If objections are filed, the Court shall schedule a hearing. No action may be taken by the DIP Lenders with respect to the remedies sought through the Remedies Notice absent entry of an Order Granting Default Relief permitting such action. The rights and remedies of the DIP Lenders specified herein are cumulative and not exclusive of any rights or remedies that the DIP Lenders may have under the DIP Documents or otherwise. This Court retains exclusive jurisdiction to hear and resolve any disputes and enter any orders required by the provisions of this paragraph. The delay or failure to exercise rights or remedies under this Final Order or any of the other DIP Documents by the DIP Lenders shall not constitute a waiver of the DIP Lenders' rights hereunder, thereunder, or otherwise, unless such waiver is pursuant to a written instrument.

15. **Binding Effect.** The provisions of this Final Order shall inure to the benefit of and be binding upon the Corporate Debtors, the DIP Lenders, and their respective successors and assigns as well as all creditors of the Corporate Debtors or other parties in interest and their successors and assigns, including without limitation, any trustee hereafter appointed for the estate of any of the Corporate Debtors, whether in these Chapter 11 Cases or in the event of a conversion of any of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code. Such binding effect is an integral part of this Final Order.

16. **Survival.** The terms and provisions of this Final Order and any actions taken pursuant hereto shall survive the entry of any order: (i) confirming any chapter 11 plan in any of the Chapter 11 Cases; (ii) converting any of the Chapter 11 Cases to a chapter 7 case; or (iii) dismissing any of the Chapter 11 Cases. In no event shall any plan of reorganization be allowed to alter the terms of repayment of any of the DIP Obligations from those set forth in the DIP

Documents unless agreed to by and among the Debtors and the DIP Lenders.

17. Protection under Section 364(e) of the Bankruptcy Code. The DIP Lenders have acted in good faith in connection with this Final Order, and their reliance on this Final Order is in good faith. Based on the record of these Chapter 11 Cases, and in accordance with Bankruptcy Code § 364(e), if any or all of the provisions of this Final Order are hereafter reversed, modified, vacated, or stayed, such reversal, modification, vacation, or stay shall not affect the (i) validity of any DIP Obligations owing to the DIP Lenders, incurred prior to the actual receipt by the DIP Lenders or the Prepetition Agents, as applicable, of written notice of the effective date of such reversal, modification, vacation, or stay, or (ii) validity or enforceability of any DIP Loans or other advances previously made or any claim, lien, security interest, or priority authorized or created hereby or pursuant to this Final Order with respect to any DIP Obligations owing to the DIP Lenders. Notwithstanding any such reversal, modification, vacation or stay, any incurrence of DIP Obligations by the Corporate Debtors prior to the actual receipt by the DIP Lenders of written notice of the effective date of such reversal, modification, vacation, or stay, shall be governed in all respects by the provisions of this Final Order, and the DIP Lenders shall be entitled to all of the rights, remedies, protections, and benefits granted under Bankruptcy Code § 364(e), this Final Order, and the other DIP Documents.

18. Effect of Dismissal or Conversion of Chapter 11 Cases. If the Chapter 11 Cases are dismissed or converted, then such dismissal or conversion shall not affect the rights of the DIP Lenders under the DIP Documents and all of their rights and remedies thereunder shall remain in full force and effect as if the Chapter 11 Cases had not been dismissed or converted.

19. Credit Bidding. Subject to entry of the Final Order: (i) the DIP Lenders shall have the right to credit bid up to the full amount of the DIP Obligations during any sale of the DIP

Collateral (in whole or in part), including without limitation, sales pursuant to Bankruptcy Code § 363 or included as part of any plan subject to confirmation under § 1129(b)(2)(A). The DIP Lenders have the absolute right to assign, transfer, sell, or dispose of their rights to credit bid.

20. Rights of Access and Information. The Debtors will provide to the DIP Lenders such reports and information as may be reasonably requested by the DIP Lenders.

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

22. Joint and Several Liability. Nothing in this Final Order shall be construed to constitute a substantive consolidation of any of the Corporate Debtors' estates, it being understood, however, that the Corporate Debtors shall be jointly and severally liable for all obligations hereunder, including without limitation, the DIP Superpriority Claims.

23. Findings of Fact and Conclusions of Law. This Final Order constitutes, where applicable, 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. The findings and conclusions set forth herein constitute the Bankruptcy Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052. To the extent any findings of fact constitute conclusions of law, they are adopted as such, and vice versa.

24. Entry of this Final Order; Waiver of Stay. Notwithstanding Bankruptcy Rules 4001(a)(3), 6004(h), 6006(d), 7062, or 9024, or Rule 62(a) of the Federal Rules of Civil Procedure, this Final Order shall be immediately effective and enforceable upon entry.

25. Choice of Law; Jurisdiction. The DIP Facility and the DIP Documents, including this Final Order, and the rights and obligations of the parties thereto, shall be governed by, and

construed and interpreted in accordance with, the laws of the State of New York, including §§ 5-1401 and 5-1402 of the New York General Obligations Law, and, where applicable, the Bankruptcy Code. The Bankruptcy Court retains exclusive jurisdiction with respect to any disputes or matters arising out of or in connection with the DIP Facility and this Final Order.

Dated: October 13, 2017

New York, New York

/s/ James L. Garrity, Jr.

HON. JAMES L. GARRITY, JR.
UNITED STATES BANKRUPTCY JUDGE

1664436.3