



Dated: May 15, 2017

The following is ORDERED:

Sarah A Hall
United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

_____)	
)	Chapter 11
In re:)	
)	
EATERIES, INC., <i>et al.</i> ¹)	Case No. 17-11444-SAH
)	
Debtors.)	(Jointly Administered)
_____)	

**FINAL ORDER (A) AUTHORIZING THE DEBTORS TO USE CASH
COLLATERAL, (B) AUTHORIZING THE DEBTORS TO OBTAIN
POST-PETITION FINANCING, (C) GRANTING SECURITY INTERESTS
AND SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS
TO LENDER, AND (D) GRANTING RELATED RELIEF
[Pertains to the Motion at Dkt. #35]**

Now on this 12th day of May, 2017, the *Amended Motion for Interim and Final Orders (A) Authorizing the Debtors to Use Cash Collateral, (B) Authorizing the Debtors to Obtain Post-Petition Financing, (C) Granting Superpriority Security Interests and Superpriority Administrative Expense Status to Lender, (D) Scheduling a Final Hearing; and (E) Granting*

¹ The affiliated Debtors are Eateries, Inc. and GRP of Zanesville, LLC, Case Nos. 17-11444 and 17-11445.

Related Relief (the “Amended Motion”) [Dkt. No. 35] filed by Eateries, Inc. (“Eateries”) and GRP of Zanesville, LLC (“Zanesville”), debtors and debtors-in-possession (collectively the “Debtors”), seeking, *inter alia*, pursuant to Sections 362(d), 364(c) 503(b), and 507 of Title 11 of the United States Code (the “Bankruptcy Code”), and Rules 2002, 4001, and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), authorization for the Debtors to obtain post-petition financing not to exceed an aggregate principal amount of \$500,000.00 on a revolving basis (the “DIP Financing”). After consideration of the presentations on the record in open Court, the Court finds that the Amended Motion seeks authority for the following:

1. authorizing the Debtors to obtain post-petition loans and other extensions of credit from SpiritBank, an Oklahoma Banking Corporation (“DIP Lender”) in an amount not to exceed \$500,000.00 and annual review provisions on a final basis (the “Loan Commitment”), and including, without limitation, principal, other extensions of credit and financial accommodations, interest, fees, expenses, and other costs of DIP Lender in the Case, in accordance with the terms and conditions set forth herein and in the attached Secured Super-Priority Credit Agreement (the “Loan Agreement”),² the other Loan Documents (as defined in the Loan Agreement), and all other related agreements and documents (collectively, the “Loan Facility”);
2. authorizing the Debtors to execute, deliver, and perform under the Loan Facility and Loan Documents, and all other related agreements and documents creating, evidencing, or securing indebtedness or obligations of the Debtors to DIP Lender on account of the Loan Facility or granting or perfecting liens or security interests by the Debtors in favor of and for the benefit of DIP Lender on account of the Loan Facility (the “DIP Liens”), as same now exists or may hereafter be amended, modified, supplemented, ratified, assumed, extended, renewed, restated, or replaced, and any and all of the agreements and documents currently executed or to be executed in connection therewith or related thereto, by and among the Debtors and DIP Lender, the terms of which are referenced and incorporated herein (collectively, the “Loan Facility Documents”);
3. approving the terms and conditions of the Loan Facility and the Loan Facility Documents;

² A copy of the Loan Agreement is attached hereto as **Exhibit B**, and incorporated herein by reference.

4. authorizing Debtors' use of Cash Collateral pursuant to the consent of all interested parties; and
5. modifying the automatic stay of Bankruptcy Code § 362 (the "Automatic Stay") to the extent provided in this Final Order;

The Debtors and DIP Lender have represented to this Court that they have agreed in good faith to the terms and conditions of this *Final Order (A) Authorizing the Debtors to Use Cash Collateral, (B) Authorizing the Debtors to Obtain Post-Petition Financing, (C) Granting Superpriority Security Interests and Superpriority Administrative Expense Status to Lender, and (E) Granting Related Relief* (the "Final Order"). The terms and conditions of this Final Order reflect the Debtor's exercise of prudent business judgment under exigent circumstances and are consistent with their fiduciary duties and are supported by reasonably equivalent value and fair consideration.

The Debtors and the DIP Lender have stipulated and agreed as follows, and based upon the pleadings and evidence at the interim and final hearings before this Court, this Court hereby acknowledges such stipulations, and grants the relief herein, on a final basis, pursuant to Bankruptcy Rule 4001. Therefore, consistent with Bankruptcy Code §§ 361, 362, 363, 503(b), and 507,

THIS COURT HEREBY FINDS AND ORDERS:

Jurisdiction, Venue, and Statutory Authority

1. This Court has jurisdiction over this proceeding and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(B),(D),(G), (K), (M) and (O).
2. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.
3. Sufficient and adequate notice of the Amended Motion, the Interim Hearing, the Interim Order, and the Final Hearing has been given pursuant to Bankruptcy Rules 2002, 4001,

9006, and 9014 and the Local Rules, and as required by Bankruptcy Code §§ 102, 105, 361, 362, 363, and 364.

Necessity of the DIP Financing

4. Good cause has been shown for the entry of this Final Order. The Debtors require the DIP Financing in order to operate and reorganize the Debtors' businesses.

5. Without the use of the Loan Facility, the Debtors may not have the funds necessary to conduct their businesses in the ordinary course of business, maintain their assets, provide financial information, or pay employee compensation, payroll taxes, overhead, and other expenses necessary to maximize the value of the Debtors' assets by obtaining confirmation of a plan, and thereby continue providing quality restaurant services to the communities they serve. The Debtors are seeking authority to obtain the Loan Facility due to the risk of cash flow interruptions and fluctuations frequently attendant to any debt adjustment case under the Bankruptcy Code. DIP Lender is willing to provide on a final basis the Loan Facility to or for the benefit of the Debtors only in accordance with the terms of the Loan Agreement and this Final Order. Accordingly, entry into the Loan Facility is necessary to adjusting the Debtors' debts, and the relief hereunder is necessary to allow the Debtors to continue to operate in the ordinary course of business and preserve the remaining going concern value and maximize the recovery for their respective creditors.

6. The Debtors have sought to obtain financing from other sources and are unable to obtain credit allowable under Bankruptcy Code § 503(b)(1), or pursuant to Bankruptcy Code §§ 364(a) and (b), on terms more favorable to the Debtors than the terms of the Loan Facility.

7. Based upon the record before the Court and the Debtors' representations, the Court concludes that the terms of the DIP Financing is fair and reasonable, reflect the Debtor's

exercise of prudent business judgment consistent with its fiduciary duty and are supported by reasonably equivalent value and fair consideration.

8. The DIP Financing has been negotiated in good faith and at arm's-length between the Debtor and the DIP Lender, and any advances and loans made to the Debtor by the DIP Lender pursuant to the Loan Facility shall be deemed to have been extended by the DIP Lender in good faith, as that term is used in section 364(e) of the Bankruptcy Code.

9. Consummation of the DIP Financing in accordance with this Final Order and the Loan Facility is therefore in the best interest of the Debtor's estate.

Loan Facility: Authorization to Obtain Credit

10. The Debtors are hereby authorized to obtain post-petition loans and other extensions of credit in an amount not to exceed \$500,000 at any time on a revolving basis and subject to the Budget (defined below) pursuant to the terms of this Final Order and the terms of the Loan Facility.

11. The budget attached hereto as **Exhibit A** (the "13 Week Budget") may be replaced, modified, or supplemented upon the Debtors' request with a subsequent budget approved by the DIP Lender in the DIP Lender's sole discretion and without further order from this Court (the 13 Week Budget or the subsequent budget most recently approved by the DIP Lender shall be referred to as the "Budget"). During the term of this Final Order, the Debtors shall be in Substantial Compliance³ with the Budget.

³ As used herein, "Substantial Compliance" shall mean (i) with respect to the amount of expenditures shown in any Budget with respect to each line item for each one week period, an amount equal to 110% of the amount shown in the such Budget with respect to such line item for such period, (ii) with respect to the Debtor's collections for any one week period shown in any Budget, an amount equal to 85% of the amount shown in such Budget for such period, and (iii) with respect to the Debtor's sales for any one week period shown in any Budget, an amount equal to 85% of the amount shown in such Budget for such period.

12. The Loan Facility Documents and the terms therein, including, without limitation, the fees and indemnification provisions, are approved in their entirety. The Debtors are authorized to execute, deliver and perform under the Loan Facility Documents.

Superpriority Liens and Administrative Claims

13. Effective as of the entry of this Order, DIP Lender is entitled to and is hereby granted first priority claims, liens and security interests, and the protections of good faith credit providers under Bankruptcy Code §§ 364(c)(1), (c)(2), and (c)(3), and 364(e) to secure the Loan Facility, senior to all other liens and security interests, to secure repayment of principal and any other extensions of credit, interest, fees, expenses, and any fees and expenses of DIP Lender in this Case, however incurred, but subject only to prior liens, if any, and the Carve-Out (as defined below).

14. The first priority liens and security interests securing the Loan Facility granted hereby are effective on a final basis as of the entry of this Order and are valid and automatically perfected first priority liens and security interests, subject only to prior liens, if any, and the Carve-Out, in and upon, and hereby are granted in and attach to, any and all assets and properties of the Debtors, now owned or after acquired, real and personal, and the proceeds and products thereof (collectively, the “Collateral,” including, without limitation, (A) the following presently-owned and after-acquired personal property: (1) accounts, (2) accessions, (3) chattel paper (both tangible and electronic), (4) commercial tort claims, (5) commodity accounts, (6) commodity contracts, (7) deposit accounts, (8) documents, (9) equipment, (10) financial assets, (11) fixtures, (12) general intangibles, (13) goods, (14) intellectual property, (15) instruments, (16) inventory, (17) investment property, (18) letters of credit, (19) letters of credit rights, (20) payment intangibles, (21) permits, (22) farm products, (23) crops, (24) timber, (25) as-extracted collateral, (26) mobile homes, (27) health care insurance receivables, (28) securities (certificated and

uncertificated), (29) securities accounts, (30) securities entitlements, (31) software, (32) supporting obligations, (33) collateral records, (34) insurance, (35) causes of action, and (36) money (as each such term may be defined in the Oklahoma Uniform Commercial Code as of the date hereof), and (B) all presently owned or after acquired real property and improvements thereon and the proceeds of any leases of real property; provided, however, the Collateral shall not include any causes of action under Bankruptcy Code § 544, 547, and 548 or the proceeds therefrom (the “Avoidance Claims”). Notwithstanding the foregoing, the Collateral shall not include the Debtors’ real property leases but shall include all proceeds of such leases.

15. Additionally, on account of the Loan Facility, DIP Lender is hereby granted a superpriority administrative claim and all other benefits and protections allowable under Bankruptcy Code §§ 507(b) and 503(b)(1), senior in right to all other administrative claims against the Debtors, except for the Carve-Out.

16. The Debtors may instruct DIP Lender, in writing, or in another manner acceptable to DIP Lender, to stop payment on certain prepetition items that may be presented to DIP Lender for payment. In the event an item is presented, and regardless of whether the Debtors have given a stop payment order, and such item is cleared, DIP Lender will have no liability regarding same and the Debtors’ sole remedy shall be recovery from the transferee.

17. DIP Lender may rely on the representations of the Debtors with respect to whether any check, item, or other payment order drawn or issued by the Debtors prior to the Petition Date should be honored pursuant to this or any other order of this Court, and DIP Lender shall not have any liability to any party for relying on such representations by the Debtors as provided for herein.

Automatic Perfection

18. This Final Order shall be sufficient and conclusive evidence of the priority, perfection, attachment, and validity of all of DIP Lender's security interests in and liens on the Collateral granted and created hereunder, and such security interests and liens shall constitute valid, automatically perfected and unavoidable security interests and liens, with the priorities granted hereunder, effective as of the Petition Date, without the necessity of creating, filing, recording, or serving any financing statements, mortgages, or other documents that might otherwise be required under federal or state law in any jurisdiction or the taking of any other action to validate or perfect the security interests and liens granted to DIP Lender by this Final Order.

19. To the extent that any applicable non-bankruptcy law otherwise would restrict the granting, scope, enforceability, attachment, or perfection of DIP Lender's liens and security interests granted and created by this Final Order or otherwise would impose filing or registration requirements with respect to such liens and security interests, such law is hereby pre-empted to the maximum extent permitted by the Bankruptcy Code, applicable federal law, and the judicial power of the United States Bankruptcy Court.

20. By virtue of the terms of this Final Order, to the extent that DIP Lender has filed Uniform Commercial Code financing statements, mortgages, deeds of trust, or other security or perfection documents under the name of the Debtors, such filings shall be deemed to properly perfect its liens and security interests granted under this Final Order without further action by DIP Lender.

21. If DIP Lender shall, in its sole and absolute discretion, elect for any reason to file any Uniform Commercial Code financing statements, mortgages, deeds of trust, or other recordable documents to further evidence perfection of its interests in property of the Debtors,

DIP Lender, or, upon the request of DIP Lender, the Debtors, are authorized and directed to execute or file, or cause to be executed or filed, all such financing statements or other documents, and the filing, recording, or service (as the case may be) of such financing statements or similar documents shall be deemed to have been made at the time of and on the Petition Date, and the signature(s) of any person(s) designated by the Debtors, whether by letter to DIP Lender or by appearing on any one or more of the agreements or other documents respecting the security interests and liens of DIP Lender granted hereunder, shall bind the Debtors. DIP Lender may, in its sole and absolute discretion, file a certified copy of this Final Order in any filing or recording office in any county or other jurisdiction in which the Debtors have real or personal property, and, in such event, the subject filing or recording officer is authorized and directed to file or record such documents or a certified copy of this Final Order.

Prior Liens

22. The Debtors are indebted to Fresh Capital, LLC, Fiesta Holdings, Inc. and Practical Investors, LLC (collectively, the “Secured Creditor”) pursuant to certain documents executed and delivered to Secured Creditor by the Debtors, including, without limitation, all notes, security agreements, assignments, pledges, mortgages, deeds of trust, guaranties, forbearance agreements, letters of credit, and other instruments or documents executed in connection therewith or related thereto are referred to herein collectively as the “Pre-Petition Claim Documents.”

23. Pursuant to the Pre-Petition Claim Documents and applicable law, Secured Creditor holds a valid, enforceable, and allowable claim against the Debtors, as of the Petition Date, in an aggregate amount of at least \$1,300,000 of unpaid principal, plus any and all accrued and unpaid interest, fees, costs, expenses, charges, and other claims, debts or obligations of the Debtors to Secured Creditor that have accrued as of the Petition Date under the Pre-Petition

Claim Documents and applicable law. The Secured Creditor's claim as described in the preceding sentence together with all post-Petition Date interest, fees, costs, and charges allowed to the Secured Creditor on such claim pursuant to Bankruptcy Code § 506(b) shall collectively be referred to hereunder as the "Pre-Petition Claim".

24. The Secured Creditor Pre-Petition Claim constitutes an allowed, legal, valid, binding, enforceable, and non-avoidable obligation of and claim against the Debtors and Guarantors, and is not subject to any offset, defense, counterclaim, avoidance, recharacterization, or subordination pursuant to the Bankruptcy Code or any other applicable law, and the Debtors do not possess and cannot assert any claim, counterclaim, setoff, or defense of any kind, nature, or description which would in any way affect the validity, enforceability, allowance, and non-avoidability of Secured Creditor Pre-Petition Claim.

25. Subject only to prior liens, if any, the Secured Creditor Pre-Petition Claim is secured by properly perfected first priority liens and security interests in, *inter alia*, any and all assets and property of the Debtors, now owned or hereafter acquired, real and personal, and the proceeds and products thereof (collectively and as defined in this Final Order, the "Pre-Petition Collateral"). Secured Creditor reserves all rights to challenge the validity, perfection, enforceability, and priority of prior liens, if any.

26. Additionally, all cash of the Debtors' bankruptcy estates, wherever located, and all cash equivalents, whether in the form of negotiable instruments, documents of title, securities, deposit accounts, investment accounts, or in any other form, that were on the Petition Date in any of the Debtors' possession, custody or control (or persons in privity with any of the Debtors), or in which the Debtors will obtain an interest during the pendency of the Case whether via advances under the Loan Facility or otherwise, or which represent income, proceeds, products,

rents, or profits of any of the Collateral is the cash collateral of Secured Creditor (collectively, the "Cash Collateral"). Secured Creditor has a first priority perfected lien and security interest in the Cash Collateral pursuant to the applicable provisions of the Pre-Petition Claim Documents and Bankruptcy Code §§ 363(a) and 552(b).

27. As of the filing of the Amended Motion, Debtors and Secured Creditor are not aware of any prior liens.

28. Performance Food Group, Inc. ("PFG") is Debtors' primary and critical trade creditor. PFG provides food and other supplies to Debtors' restaurants which are critical to maintaining operations. Debtors' trade payables to PFG have a revolving balance of approximately \$375,000.00. Eateries is giving PFG a consensual, nonpriority lien and security interest on all of Eateries' assets, with the consent of the DIP Lender and the Secured Creditor, and will seek Court approval for said lien via a separate motion and notice to interested parties. PFG has agreed to subordinate all of PFG's pre-petition claim and all of its rights in the Pre-Petition Collateral to the claims and liens granted to DIP Lender in the Loan Agreement, the Interim Financing Order, and this Final Order. To the extent necessary, PFG also consents to the use of any cash collateral. PFG's liens and security interests in Debtors' assets are junior and inferior in priority to the liens and security interests of the Secured Creditor. However, the Secured Creditor and PFG are parties to an intercreditor agreement whereby, under certain circumstances, the proceeds from the sale of the Debtors' assets which otherwise would be payable to the Secured Creditor shall be paid to PFG despite the priority of the Secured Creditor's liens and security interests in such assets.

29. The Secured Creditor has agreed to subordinate all of the Secured Creditor Pre-Petition Claim and all of its rights in the Pre-Petition Collateral to the claims and liens granted to DIP Lender in the Loan Agreement, the Interim Financing Order, and this Final Order.

30. Therefore, the entry of this Final Order shall result in the priming and subordination of all claims and liens of the Secured Creditor and PFG to the DIP Lender.

31. The security interests and liens of DIP Lender granted pursuant to the terms of this Final Order are subject to any other valid, perfected and unavoidable liens and security interests of any other secured creditor in any assets of any of the Debtors existing on the Petition Date that are senior in priority under applicable law to DIP Lender's liens and security interests granted under the Pre-Petition Claim Documents in the Pre-Petition Collateral. There may be certain equipment lessors (collectively the "Equipment Lessors") which purport to have security interest by virtue of the filing of a UCC-1 financing statements (the "Notice Liens") in all equipment, all accounts receivable and all general intangibles (the "General Assets") that Debtors, Secured Creditors, and DIP Lenders allege are beyond the specific equipment, goods and related property that is the subject of such equipment lease(s). However, Debtors, Secured Creditors, and DIP Lender allege that the contracts between the Debtors and the Equipment Lessors do not grant any liens upon the General Assets and therefore, except possibly for the purchase money security interests in the equipment created by said equipment leases, the Equipment Lessors do not hold any prior liens on any of the General Assets. The Debtors or any other party in interest, including DIP Lender, shall have the right to object to the validity, priority, or extent of any such prior liens, or the allowance of such debts secured thereby, or to institute any actions or adversary proceedings with respect thereto. The post-petition liens granted to DIP Lender pursuant to this Final Order shall not at any time be (a) made subject or

subordinated to, or made *pari passu* with, any other lien or security interest existing on the Petition Date, or any claim, lien, or security interest created under Bankruptcy Code §§ 363 or 364(d) or otherwise (except with respect to the Notice Liens), or (b) subject to any lien or security interest that is avoided and preserved for the benefit of the Debtors under Bankruptcy Code § 551.

Use of Cash Collateral

32. Pursuant to the consent of all interested parties, including the DIP Lender, Secured Creditor, and PFG, the Debtors are hereby authorized to continue to use Cash Collateral as set forth in the Budget.

Authorization to Act

33. The Debtors are hereby authorized and directed to perform all acts, take any action, and execute and comply with the terms of such other documents, instruments and agreements, as DIP Lender may reasonably require as evidence of and for the protection of the Collateral, or that may be otherwise deemed necessary by DIP Lender to effectuate the terms and conditions of this Final Order and the Loan Facility.

34. Until all of the Loan Obligations shall have been indefeasibly paid and satisfied in full in accordance with Loan Facility Documents, and without further order of the Court: (a) the Debtors shall use the Loan Facility proceeds strictly in accordance with the terms of the Loan Facility Documents and the other terms of this Final Order; (b) the Debtors shall not, without prior order from the Court (after notice to DIP Lender), engage in any transaction that is not in the ordinary course of the Debtors' businesses, and (c) the Debtors shall timely comply with all of the covenants set forth in the Loan Facility Documents.

No Additional Liens

35. Until such time as the Loan Obligations shall have been indefeasibly paid and satisfied in full in accordance with the Loan Facility Documents, except as provided herein the Debtors shall not be authorized to obtain credit secured by a lien or security interest in the Pre-Petition Collateral or the Collateral, other than the Loan Facility, without the prior written consent of DIP Lender or order of the Court upon reasonable notice.

No Liability

36. From and after the entry of this Order, no act committed or action taken by DIP Lender under this Final Order, including, without limitation, the collection of the Pre-Petition Claims, or the Loan Facility, shall be used, construed, or deemed to hold DIP Lender to be in “control” of or participating in the governance, management, or operations of the Debtors for any purpose, without limitation, or to be acting as a “responsible person(s)” or “owner(s) or operator(s)” or a person(s) in “control” with respect to the governance, management, or operation of the Debtors or their businesses (as such terms, or any similar terms, are used in the Internal Revenue Code, WARN Act, Comprehensive Environmental Response, Compensation and Liability Act, or the Bankruptcy Code, each as may be amended from time to time, or any other federal or state statute, at law, in equity, or otherwise) by virtue of the interests, rights, and remedies granted to or conferred upon DIP Lender under the Pre-Petition Claim Documents, the Loan Facility Documents, or this Final Order including, without limitation, such rights and remedies as may be exercisable by DIP Lender in connection with this Final Order.

Automatic Stay

37. The Automatic Stay is hereby vacated and modified to the extent necessary to permit (a) the Debtors and the DIP Lender to commit all acts and take all actions necessary to

implement the Loan Facility and this Final Order, (b) all acts, actions and transfers contemplated herein, including, without limitation, transfers of funds to DIP Lender by the Debtors as provided herein, and (c) consistent with the terms of this Final Order, DIP Lender at its option to pursue its rights and remedies as to the Collateral in accordance with the Loan Facility Documents and applicable law.

Collateral Insurance

38. The Debtors shall maintain, with financially sound and reputable insurance companies, insurance of the kind covering the Collateral, and in accordance with the Loan Facility Documents (covering such risks in amounts as shall be satisfactory to DIP Lender and shall name DIP Lender as loss payee thereunder).

39. To the extent the Debtors have made or make any deposits for the benefit of utility companies or any other entity such deposits shall be, and hereby are, upon any return of same to the Debtors, subject to the first priority perfected liens and security interests of DIP Lender in respect of the Loan Facility granted by this Final Order.

Reporting Requirements

40. The Debtors are authorized and directed to provide to DIP Lender all of the documentation and reports required under the Loan Agreement and the other Loan Facility Documents, unless DIP Lender waives or modifies such requirements in writing.

41. DIP Lender and its representatives, agents, consultants, and other professionals shall be permitted, in coordination with Debtors' counsel, to contact and communicate with the Debtors and their financial advisors regarding the operation of the Debtors' businesses or the plan of adjustment in this Case. The Debtors shall be responsive and employ their best efforts to cooperate in the coordination of all such contacts and communications, including, without

limitation, by conducting update telephone conferences involving the Debtors, their financial advisors (if any), and DIP Lender, upon request.

42. Subject to federal, state and local laws and regulations governing the operation of food service facilities and the maintaining of business records, DIP Lender and its agents and advisors shall have full access, upon reasonable notice during normal business hours, to the Debtors' business records, business premises, and to the Collateral to enable DIP Lender or its agents and advisors to (a) review, appraise, and evaluate the physical condition of the Collateral, (b) inspect and review the financial records and all other records of the Debtors concerning the operation of the Debtors' businesses, and (c) evaluate the Debtors' overall financial condition and all other records relating to the operations of the Debtors. The Debtors shall fully cooperate with DIP Lender regarding such reviews, evaluations, and inspections, and shall make their employees and professionals available to DIP Lender and its agents and advisors to conduct such reviews, evaluations, and inspections.

Professional Fees in this Case

43. DIP Lender consents, subject to the terms and conditions set forth in this Final Order, to a carve out from its Collateral (a) all fees required to be paid to the clerk of the Bankruptcy Court and to the Office of the United States Trustee under 28 U.S.C. § 1930(a) plus interest at the statutory rate; (b) for the payment of the reasonable professional fees and expenses of Case Professionals⁴ in an amount not to exceed such amounts that are found to be reasonable by this Court pursuant to §503(b)(3), plus (c) an aggregate amount not to exceed \$30,000.00 to be used to pay fees earned and expenses incurred subsequent to the occurrence of an Event of

⁴ "Case Professionals" means any professional hired by the Debtors, the Committee or otherwise who seek to be paid by the Debtors for services rendered in relation to this case.

Default (collectively, the “Carve-Out”). Payments from the Carve-Out shall be subject to any terms and conditions of any engagement agreements executed by the Debtors.

44. Case Professionals may give notice to the Debtors of the amount of fees and expenses incurred on a monthly basis, whereupon the all such amounts shall be set aside within 7 days of receipt of such Notice and held by the Debtors in a segregated account (the “Professional Fee Escrow”). The amount paid by the Debtors in any month for the fees and expenses of the Debtors’ and the Committee’s professionals shall only be paid upon allowance or authorization by the Court from funds on deposit in the Professional Fee Escrow.

45. So long as no Event of Default shall have occurred and be continuing, the Debtors shall be permitted to pay reasonable compensation and reimbursement of expenses subject to a final determination by the Court pursuant to §503(b)(3) that all such amounts are reasonable. Other than the Carve-Out set forth above, DIP Lender does not consent to any carve out from its Collateral for payment of any fees and expenses of the Case Professionals.

46. Any and all payments of fees and expenses to any Case Professionals or use of Cash Collateral shall constitute diminution in the value of the Collateral for all purposes including all adequate protection and superpriority claims granted under the Bankruptcy Code and this Final Order.

47. Notwithstanding the foregoing, and irrespective of the Carve-Out, in no event shall the proceeds of any loans, advances, or other funds made available by the DIP Lender to or for the benefit of the Debtors be used for the payment or reimbursement of any fees, expenses, costs, or disbursements of any Case Professional or other persons incurred with the purpose of: (a) objecting to or contesting in any manner, or in raising any defenses to, the validity, extent, perfection, priority, or enforceability of the, the Loan Facility, the Loan Facility Documents, this

Final Order, or any liens or security interests granted thereby or with respect thereto, or any other rights or interests of the DIP Lender under the Loan Facility Document, (b) investigating, asserting, prosecuting or the joinder in any claims or causes of action against the DIP Lender or any of its officers, directors, employees, affiliates, agents, attorneys, or equity holders (whether arising under state law, the Bankruptcy Code or any other federal or foreign law); (c) preventing, enjoining, hindering or otherwise delaying the DIP lender's enforcement of the Loan Facility Documents or this Final Order or any realization upon any Collateral (unless such enforcement or realization is in direct violation of an explicit provision in any Loan Facility Document or this Final Order); (d) incurring indebtedness except as permitted by the Loan Facility Documents or this Final Order; (e) modifying the DIP Lender's rights under any Loan Facility Documents or this Final Order without DIP Lender's consent; (f) asserting or declaring any liens or security interests granted under the Loan Facility Documents, or this Final Order to have a priority other than the priority set forth herein or therein; (g) asserting, prosecuting or the joinder in, any action or other proceeding seeking to grant a lien or security interest senior to, or on parity with, the liens and security interests of DIP Lender in the Collateral or any portion thereof without the DIP Lender's consent; (h) asserting or declaring any the Loan Facility Documents, or this Final Order to be invalid, not binding or unenforceable in any respect; or (i) selling any Collateral except as specifically permitted in the Loan Facility Documents or this Final Order. Notwithstanding the foregoing, Loan Facility advances may be used to pay the fees earned and expenses incurred by counsel to the Committee in an amount not to exceed \$30,000.00 for reasonable fees earned and expenses incurred by counsel for the Committee and approved by this Court pursuant to 11 U.S.C. § 503(b); provided however, that the Committee or appropriate party-in-interest may request by motion with notice and opportunity for hearing to modify the foregoing provision of

this Final Order. Nothing herein shall be construed to limit the ability of any other interested parties from investigating any claims against the Debtors.

No Surcharge

48. No costs or expenses of administration which have or may at any time be incurred in this Case shall be charged against DIP Lender, its claims or the Collateral pursuant to Bankruptcy Code § 506(c) without the prior written consent of DIP Lender, and no such consent shall be implied from any other action, inaction, or acquiescence by DIP Lender. DIP Lender shall not be subject in any way whatsoever to the equitable doctrine of “marshaling” or any similar doctrine with respect to the Collateral.

Events of Default/Remedies

49. The occurrence of any of the following shall constitute an Event of Default under this Final Order upon notice to the Debtors by DIP Lender: (a) any default, violation, or breach by the Debtors of any of the terms of this Final Order; (b) the occurrence of the Expiration Date (as defined below), maturity, termination, expiration, or non-renewal of this Final Order or the Loan Facility as provided for herein or in any of the Loan Facility Documents; (c) any challenge to the extent, validity, priority, or unavailability of DIP Lender’s liens securing the Loan Facility is commenced by the Debtors or an order is entered sustaining any such challenge commenced by any party other than the Debtors; (d) the occurrence of any default or event of default under the Loan Agreement or any other Loan Facility Document; or (e) the failure of the Debtors to make any payments to DIP Lender that are required to be paid under this Final Order (any of the foregoing events of default being referred to in this Final Order, individually, as an “Event of Default”, or severally, as “Events of Default”).

50. Immediately upon the occurrence of any Event of Default, and at all times thereafter, and without further act or action by DIP Lender, or any further notice, hearing, or order of this Court: (a) DIP Lender may terminate any and all obligations of DIP Lender in connection with the Loan Facility or under this Final Order and the Loan Facility Documents, and (b) DIP Lender may declare all or any part of the Loan Facility to be immediately accelerated and due and payable for all purposes, rights, and remedies.

51. Furthermore, upon the occurrence of any Event of Default, and after the giving of five (5) business days' notice by DIP Lender to the Debtors and the Committee, then without further act or action by DIP Lender, or any further notice, hearing or order of this Court, the Automatic Stay shall be immediately modified and DIP Lender shall be and is hereby authorized, in its sole and absolute discretion, to take any and all actions and remedies that DIP Lender may deem appropriate to proceed against, take possession of, protect, and realize upon the Collateral and any other property of the Debtor, including, without limitation, (i) any right or remedy set forth in the Loan Facility Documents, without limitation, or this Final Order, (ii) any right or remedy that the DIP Lender may deem appropriate to proceed against, take possession of, foreclose upon, sell (in whole or in part), protect, and realize upon the Collateral and any other property of the Debtors upon which the DIP Lender has been or may hereafter be granted liens and security interests to obtain repayment of the Loan Facility, (iii) the commencement of actions for specific performance and for the foreclosure upon any Collateral, (iv) the sale of the Collateral, or any portion thereof, either as a whole or in part, at private or public auction, and the DIP Lender shall have the right to purchase the Collateral at same by credit bidding all or a part of its debt or otherwise, (v) taking possession of the Collateral, and the exercise, without interference, and, if necessary, as the attorney-in-fact for the Debtors, of any rights of the

Debtors in the management, possession, operation, protection or preservation of the Collateral, (vi) the receipt of proceeds from the sale of any Collateral, (vii) the direction of the payment for any purchase of the Collateral directly to the DIP Lender, as applicable, (viii) the right of setoff and recoupment as to any funds of the Debtors held by DIP Lender, (ix) if appropriate, the right to seek and obtain the appointment of a receiver over the Debtors and/or the Collateral, and (x) the right to reproduce, copy, download, or otherwise take possession of any records or data, tangible or electronic, constituting Collateral; provided that the DIP Lender shall not be obligated to take title to any of the Collateral in the pursuit of any of the DIP Lender's rights and remedies and the Debtors shall cooperate with the DIP Lender in conjunction with the exercise of any right and the pursuit of any remedy by DIP Lender, without limitation.

52. Upon or after the occurrence of any Event of Default, DIP Lender may, in its sole and absolute discretion, advance funds to the Debtors, and all such advances (i) shall not constitute a waiver, limitation, or modification of DIP Lender's rights and remedies pursuant to the Loan Facility Documents, this Final Order, and applicable law and (ii) shall be and hereby are granted all of the protections granted to DIP Lender under this Final Order in connection with the Loan Facility.

Other Terms

53. The Debtors and the DIP Lender are authorized to implement, in accordance with the terms of the Loan Facility Documents, any modifications or amendments to any Loan Facility Document which are not material and adverse to the Debtors. Any modifications or amendments of any Loan Facility Document which are material and adverse to the Debtors shall be subject to prior approval by this Court upon motion by the Debtors.

54. Other than prior liens, if any, and the Carve-Out, no priority claims shall be allowed that are or will be prior to or on parity with the superpriority claims or secured claims of DIP Lender arising from the Loan Facility Documents, and this Final Order.

55. No obligations incurred or payments or other transfers made by or on behalf of the Debtors on account of the Loan Facility shall be avoidable or recoverable from DIP Lender under any section of the Bankruptcy Code, or any other federal, state, or other applicable law.

56. The Debtors shall not sell, transfer, lease, encumber, or otherwise dispose of any of the Collateral, without the prior written consent of DIP Lender.

57. The terms hereunder and under the Loan Facility Documents, the security interests and liens granted to DIP Lender under this Final Order, and the rights of DIP Lender pursuant to this Final Order with respect to the Collateral, shall not be altered, modified, extended, impaired, or affected by any plan of debt adjustment of the Debtors without the prior written approval of DIP Lender.

58. The terms and provisions of this Final Order and any actions taken pursuant hereto shall survive entry of any order that may be entered dismissing this Case. The terms and provisions of this Final Order, as well as the priorities in payment, liens, and security interests granted pursuant to this Final Order, and the Loan Facility Documents, shall continue in this or any superseding case under the Bankruptcy Code of the Debtor, and such priorities in payment, liens and security interests shall maintain their priority as provided by this Final Order until such time as the Loan Obligations shall have been indefeasibly paid and satisfied in full in accordance with the Loan Facility Documents and DIP Lender shall have no further obligation or financial accommodation to the Debtors.

59. The provisions of this Final Order shall inure to the benefit of the Debtors and the DIP Lender and they shall be binding upon (a) the Debtors and their successors and assigns, including any trustee or other fiduciary hereafter appointed as legal representative of the Debtors or with respect to property of the Debtors, whether under chapter 11 of the Bankruptcy Code or any confirmed plan and (b) all creditors of the Debtors and other parties in interest.

60. If any or all of the provisions of this Final Order are hereafter modified, vacated or stayed without the prior written agreement of DIP Lender, such modification, vacation or stay shall not affect (a) the validity of any obligation, indebtedness or liability incurred by the Debtors to DIP Lender before the effective date of such modification, vacation or stay or (b) the validity or enforceability of any security interest, lien, priority, or other protection authorized, granted or created hereby or pursuant to this Final Order or any of the Loan Facility Documents. Notwithstanding any such modification, vacation or stay, any indebtedness, obligations or liabilities incurred by the Debtors to DIP Lender before the effective date of such modification, vacation or stay shall be governed in all respects by the original provisions of this Final Order, and DIP Lender shall be entitled to all the liens, rights, remedies, privileges, and benefits granted herein and pursuant to the Loan Facility Documents with respect to all such indebtedness, obligations or liabilities.

61. To the extent the terms and conditions of the Loan Facility Documents are in express conflict (as opposed to being additive, limiting or more specific than Final Order) with the terms and conditions of this Final Order, the terms and conditions of this Final Order shall control.

62. No approval, agreement or consent requested of DIP Lender by the Debtors pursuant to the terms of this Final Order or otherwise shall be inferred from any action, inaction

or acquiescence of DIP Lender other than in writing acceptable to DIP Lender that is signed by DIP Lender and expressly shows such approval, agreement or consent, without limitation.

63. Unless expressly and specifically provided otherwise herein, nothing herein shall be deemed or construed to waive, limit, modify, or prejudice the claims, rights, protections, privileges, and defenses of DIP Lender afforded pursuant to the Bankruptcy Code.

64. This Final Order, and the findings of fact and conclusions of law contained herein, shall be effective upon signature by the Court, and may be relied upon by DIP Lender and the Debtors without the necessity of entry into the docket sheet of this Case. To the extent any findings may constitute conclusions, and vice versa, they are hereby deemed as such.

65. This Court hereby expressly retains jurisdiction over all persons and entities, co-extensive with the powers granted to the United States Bankruptcy Court under the Bankruptcy Code, to enforce the terms of this Final Order and to adjudicate any and all disputes in connection therewith by motion and without necessity of an adversary proceeding.

66. All headings in this Final Order are descriptive and for reference only, and do not have separate meaning or change any terms therein.

67. All of the relief granted in the Interim Order Granting Motion To Use Cash Collateral Authorizing the debtors to obtain post-petition financing, Granting security interests and superiority administrative expense status to lender and Granting related relief entered on April 25, 2017 [Doc. 68] is hereby approved on a final basis.

68. The Debtors' counsel shall serve this Final Order on all of parties listed in the Master Service List [Dkt. No. 90] and all parties in interest who have filed a notice of appearance or upon whom service must be effected under the Federal Rules of Bankruptcy Procedure or the Local Rules.

69. THIS ORDER IS EFFECTIVE IMMEDIATELY.

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APPROVED FOR ENTRY BY:

/s/ William H. Hoch.

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