



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

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

Signed January 8, 2018

United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

In re:	§	Chapter 11 Case
	§	
	§	
AMERICAN FUEL CELL AND	§	Case No. 17-44766-mxm11
COATED FABRICS COMPANY,	§	
	§	
Debtor.	§	
	§	

**FINAL ORDER (I) AUTHORIZING DEBTOR
TO USE CASH COLLATERAL AND (II) GRANTING
ADEQUATE PROTECTION TO PREPETITION LENDER**

Pending before the Court is the *Amended Emergency Motion for Entry of Interim and Final Orders Authorizing the Use of Cash Collateral and Granting Adequate Protection* [Docket Nos. 12 and 13], (the “**Motion**”)¹ filed by American Fuel Cell and Coated Fabrics Company (the “**Debtor**”), debtor-in-possession, for interim and final orders under Sections 105, 361, 362, 363,

¹ Capitalized terms not otherwise defined herein have the definition ascribed in the Motion.

507 and 552 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (as amended, the “**Bankruptcy Code**”), and Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (as amended, the “**Bankruptcy Rules**”), seeking:

- a. authorization for the Debtor to use Cash Collateral and the granting of adequate protection to Fidelity Bank (the “**Fidelity**”) for, among other things, such use of Cash Collateral and any diminution in value of its interests in Cash Collateral, whether existing on the Petition Date or arising pursuant to this Order;
- b. pursuant to Bankruptcy Rule 4001, that an interim hearing on the Motion be held before this Court to consider entry of an interim order;
- c. authorization to vacate the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of this Order;
- d. that this Court schedule a final hearing (the “**Final Hearing**”) to consider entry of a final order authorizing the use of Cash Collateral and the granting of adequate protection on a final basis; and
- e. waiver of any applicable stay with respect to the effectiveness and enforceability of any interim order (including a waiver pursuant to Bankruptcy Rule 6004(h)).

The Interim Hearing having been held by this Court on November 29, 2017 (the “**Interim Hearing**”); and the Court having entered an *Interim Order (i) Authorizing the Debtor to Use Cash Collateral, (ii) Granting Adequate Protection to Prepetition Lender, and (iii) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001(b)* [Docket No. 26] (the “**First Interim Order**”); and a second interim hearing having been held by this Court on December 12, 2017 (the “**Second Interim Hearing**”), at which the Court heard evidence that subsequent to the Interim Hearing Anemoi Capital, LLC (“**Anemoi**”) purchased all of Fidelity’s rights under the Loan Documents (defined below), including all liens, security interests, and superiority claims arising therefrom or arising under the First Interim Order; and the Court having entered a *Second Interim Order (i) Authorizing Debtor to Use Cash Collateral, (ii) Granting Adequate Protection to Prepetition Lender, and (iii) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001(b)* [Docket No.

60] (the “**Second Interim Order**”); and a final hearing having been held by this Court on January 3, 2018 (the “**Final Hearing**”); and upon the record made by the Debtor at the Interim Hearing, the Second Interim Hearing, and the Final Hearing; and this Court having heard and resolved or overruled all objections, if any, to the final relief requested in the Motion; and it appearing that the final relief requested in the Motion is in the best interests of the Debtor, its estate and creditors; and after due deliberation and consideration and sufficient cause appearing therefor,

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

1. On November 26, 2017 (the “**Petition Date**”), the Debtor filed its voluntary petition under chapter 11 of the Bankruptcy Code, commencing the above-captioned chapter 11 case (the “**Chapter 11 Case**”).

2. The Debtor is in possession of its property and continues to operate and manage its business as a debtor-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

3. *The Motion.* The Motion is granted on a final basis as set forth herein (this “**Final Cash Collateral Order**”). Any objection to the Motion to the extent not withdrawn or resolved is hereby overruled.

4. *Jurisdiction and Venue.* This Court has core jurisdiction over this case, this Motion, and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157(b) and 1334. The predicates for relief granted pursuant to this Final Cash Collateral Order are Sections 105(a), 362, 363, 364, 503, and 507 of the Bankruptcy Code, Rules 6003 and 6004 of the Bankruptcy Rules, and Rules 4001-1, 4002-1, and 9013-1 of the Bankruptcy Local Rules. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

5. *Committee Formation.* A statutory committee of unsecured creditors (if appointed, the “**Committee**”) has not been appointed in the Chapter 11 Case.

6. *Notice.* Notice of the Motion, the relief requested therein and the Final Hearing was served by the Debtor, whether by telecopy, email, U.S. First Class Mail, overnight courier or hand delivery, on (i) the Office of the United States Trustee; (ii) Fidelity; (iii) counsel to Fidelity; (iv) Anemoi and its counsel; (v) the twenty (20) largest unsecured creditors of the Debtor's bankruptcy estate; (vi) the Internal Revenue Service; and (vii) all parties in interest who have formally appeared and requested notice. Under the circumstances, the notice given by the Debtor of the Motion, the relief requested therein and of the Final Hearing constitutes due and sufficient notice thereof and complies with Bankruptcy Rules 2002, 4001(b), (c) and (d).

7. *Debtor's Assertions.* The Debtor asserts that, as of the Petition Date, it is a party to the following agreements, and that Fidelity claimed a security interest in certain assets of the Debtor as provided and granted in such agreements (collectively, the "**Loan Documents**"):

- (a) Loan Agreement, By and Between Fidelity Bank, as Lender, and American Fuel Cell and Coated Fabrics Company, as Borrower, dated December 7, 2016 (the "Loan Agreement"), as amended by that Commercial Debt Modification Agreement First Amendment to Loan Agreement dated January 24, 2017, a Second Amendment to Loan Agreement dated March 1, 2017, a Third Amendment to Loan Agreement dated August 18, 2017, and a Fourth Amendment to Loan Agreement dated October 13, 2017, under which Lender made a term loan and a revolving loan to the Debtor;
- (b) Security Agreement by American Fuel Cell and Coated Fabrics Company and Fidelity Bank, dated December 7, 2016;
- (c) Promissory Note (Term Note) dated December 7, 2016, in the original principal amount of \$2,200,000 executed by American Fuel Cell and Coated Fabrics Company, as maker, made payable to Fidelity Bank;
- (d) Promissory Note (Revolving Note) dated October 13, 2017, in the original principal amount of \$4,000,000.00 executed by American Fuel Cell and Coated Fabrics Company, as maker, made payable to Fidelity Bank, which Revolving Note replaced (i) that certain Promissory Note (Revolving Note dated December 7, 2016, in the original principal amount of \$2,500,000 executed by American Fuel Cell and Coated Fabrics Company, as maker, made payable to Fidelity Bank, and (ii) that certain Universal Note (Revolving Line of Credit) dated May 22, 2017, in the original principal amount of \$400,000.00 executed by American Fuel Cell and Coated Fabrics Company, as maker, made payable to Fidelity Bank.

8. *Debtor's Stipulations.* Without prejudice to the rights of any other non-Debtor party-in-interest with standing (but subject to the limitations thereon described in Paragraph 22 below) (hereafter, the “**Objection Provisions**”), and subject in all respects to the DIP Liens and DIP Superpriority Claim described below, the Debtor hereby admits, acknowledges, agrees and stipulates that:

- (a) As of the Petition Date, the Debtor was indebted to Fidelity pursuant to and under the Loan Documents, in the aggregate outstanding principal amount of \$6,100,000.00, plus accrued and unpaid interest, fees, costs, expenses and other charges with respect thereto (collectively, the “**Indebtedness**”);
- (b) To secure the Indebtedness, the Debtor granted to Fidelity a first priority security interest and lien upon all the collateral under and as defined in the Loan Documents (collectively, the “Pre-Petition Collateral”); the Pre-Petition Collateral consists of, among other things, all of the Debtor’s present and future accounts, deposit accounts, inventory, equipment, and products and proceeds of the foregoing;
- (c) Fidelity properly perfected its security interests in and liens on the Pre-Petition Collateral by filing a UCC financing statement showing the Debtor, as debtor, and Fidelity, as secured party, covering the Pre-Petition Collateral, which security interests and liens are not subject to avoidance, reduction, disallowance, counterclaim, recharacterization or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law;
- (d) (i) The Indebtedness constitutes legal, valid, enforceable non-avoidable and binding obligations of the Debtor; (ii) no offsets, defenses or counterclaims to the Indebtedness exist; (iii) no portion of the Indebtedness is subject to avoidance, disallowance, reduction, recharacterization or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law; and (iv) the Loan Documents and the security interest and liens granted thereby are valid, binding, enforceable and avoidable against the Debtor;
- (e) All of the Debtor’s cash, including any cash in deposit accounts of the Debtor, wherever located, constitutes Cash Collateral of Fidelity; and
- (f) On or about December 5, 2017, Anemoi purchased all of Fidelity’s rights and interests in and arising under the Loan Documents, including all liens, security interests, and superpriority claims arising therefrom or arising under the First Interim Order and/or the Second Interim Order, and is the proper party-in-interest and has full and complete power and authority to enforce any and all rights and interests afforded therein as successor in interest to Fidelity.

9. First Fidelity, and now Anemoi, has demanded adequate protection of its interests and is entitled to receive adequate protection as set forth in this Final Cash Collateral Order pursuant to Sections 361, 363 and 364 of the Bankruptcy Code, as set forth in Paragraph 17 below, for any diminution in the value of its interests in the Pre-Petition Collateral (including Cash Collateral) from and after the Petition Date resulting from, among other things, (i) the Debtor's use, sale or lease of such collateral, (ii) market value decline of such collateral, and (iii) the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code (collectively, and solely to the extent of any such diminution in value, the "**Diminution in Value**").

10. The terms of the use of Cash Collateral, including the grant of the proposed adequate protection set forth below, are fair and reasonable, proposed in good faith, and reflect the Debtor's exercise of prudent business judgment.

11. The use of Cash Collateral by the Debtor is reasonable and necessary to prevent irreparable injury, loss, or damage to its estate. This Court concludes, and the parties agree, that entry of this Final Cash Collateral Order is in the best interest of the estate at this time because its implementation will, among other things, allow for the Debtor's continued operation of its existing business and preserve the enterprise value for all constituents.

12. At the present time the Debtor has a need to use Cash Collateral as set forth below.

13. Anemoi has agreed to the Debtor's use of Cash Collateral under the terms set forth in this Final Cash Collateral Order.

14. The relief granted herein is made expressly subject to the terms of the Court's *Final Order Granting Motion for Entry of Order (i) Authorizing the Debtor to Obtain Post-Petition Financing and (ii) Granting Security Interests, Superpriority Claims, and Related Relief* [Docket

No. ____] (the “Final DIP Order”). To the extent any provision conflicts with a provision of the Final DIP Order, the Final DIP Order shall control.

ACCORDINGLY, IT IS HEREBY ORDERED:

15. **Use of Cash Collateral.** The Debtor is hereby authorized to use the Cash Collateral of Anemoi only in a manner consistent with the terms and conditions of this Final Cash Collateral Order, and in accordance with the budget attached to the Final DIP Order as Exhibit B (the “**DIP Budget**”), subject to a 10% variance for each item listed on the DIP Budget; *provided, however*, that the Debtor’s authorization to use Cash Collateral shall immediately terminate upon the expiration of the Default Notice Period (as defined below) following the occurrence of an Event of Default (as defined below).

16. Nothing contained in this Final Cash Collateral Order authorizing the Debtor’s use of Cash Collateral during the period after the Petition Date shall constitute a consent or waiver of any rights, claims, causes of action, or remedies of Anemoi under the Loan Documents, or with respect to the Debtor’s use of Cash Collateral during the period prior to the Petition Date.

17. **Adequate Protection.** As adequate protection against any, and solely to the extent of, Diminution in Value until the date upon which the Indebtedness is paid in full, Anemoi is hereby granted:

- (a) continuing valid, binding, enforceable, unavoidable and fully perfected post-petition replacement liens on and security interests in all of the Debtor’s assets acquired by the Debtor from and after the Petition Date except for chapter 5 causes of action (the “**Replacement Liens**”), in the same nature, extent, priority, and validity that any such liens asserted by the Lender existed on the Petition Date, which liens shall be junior only to: (i) the DIP Liens (as defined in the Final DIP Order); (ii) valid and perfected liens and security interests, if any, of other creditors (including creditors holding ad valorem tax claims) in any specific piece of property or proceeds thereof that existed as of the Petition Date and that are senior and prior to any prepetition liens and security interests of Anemoi in such property; and (iii) such other liens and security interests authorized by the Court, if any. The Replacement Liens shall be enforceable and effective against the Debtor, its successors and assigns, including any trustee or

- receiver in this or any superseding chapter 7 case, without any further action by Debtor or Anemoi and without the execution, delivery, filing or recordation of any promissory notes, financing statements, security agreements or other documents. Notwithstanding the foregoing: (i) this Final Cash Collateral Order shall be deemed a security agreement and may be filed as a financing statement and the Debtor shall execute and deliver such notes, security agreements, assignments, financing statements and other documents that Anemoi shall reasonably request to further evidence the liens and security interests granted hereby; (ii) Anemoi shall not be afforded a lien on any chapter 5 causes of action by this Final Cash Collateral Order; and (iii) the Debtor shall be authorized to use Cash Collateral to pay all quarterly fees payable to the United States Trustee under 28 U.S.C. § 1930(a)(6);
- (b) superpriority administrative expense claims (the “**Superpriority Claims**”) under and to the extent set forth in sections 503 and 507(b) of the Bankruptcy Code against the Debtor’s estate, which Superpriority Claims, if any, shall be payable from and have recourse to all assets and property of the Debtors (excluding avoidance actions under chapter 5 of the Bankruptcy Code and any proceeds thereof) with priority in payment over any and all administrative expenses of the kinds specified or ordered pursuant to any provision of the Bankruptcy Code, including, but not limited to, Bankruptcy Code sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 726, 1113 and 1114, or otherwise and including those resulting from the conversion of any of the Chapter 11 Cases pursuant to section 1112 of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment; provided that the Superpriority Claims shall be junior only to any senior liens, security interests and administrative expenses as ordered by the Court, including the DIP Superpriority Claim (as defined in the Final DIP Order);
- (c) a single payment of interest calculated at the non-default rate under the Loan Documents for the post-petition period thru December 5, 2017, in the amount of \$10,438.00, (without prejudice to the rights of Anemoi to later seek additional interest payments as adequate protection and to assert claims for interest at the default rate; provided that Anemoi shall not request additional interest payments as adequate protection during the 60-day period beginning December 6, 2017; provided further, however, that interest shall continue to accrue during such 60-day period at the non-default rate under the Loan Documents);
- (d) **[RESERVED]**;
- (e) access to the Debtor’s books and records and such financial reports as required under the Loan Documents;
- (f) reasonable access to personnel employed at the Debtor and non-privileged information as Lender may reasonably request with respect to the Debtor’s business;
- (g) that the Debtor shall continue to maintain appropriate insurance on the Debtor’s assets in amounts consistent with prepetition practices; and

- (h) that the Debtor shall continue to maintain appropriate and necessary licensing with respect to operating its business consistent with prepetition practices.

18. **Events of Default.** The following shall constitute events of default under this Final Cash Collateral Order (“**Events of Default**”):

- (a) The Debtor uses Cash Collateral contrary to the DIP Budget;
- (b) The Debtor makes any representation made by the Debtor subsequent to the Petition Date in any report or financial statement delivered to Anemoi that proves to have been false or misleading in any material respect as of the time when made or given (including by omission of material information necessary to make such representation, warranty or statement not misleading);
- (c) The Debtor fails to provide any reports or accounting information when due or access to its books and records within a reasonable time after such access is requested;
- (d) The Debtor fails to maintain appropriate insurance on the its assets in amounts consistent with prepetition practices;
- (e) The Debtor fails to maintain appropriate and necessary licensing with respect to operating its business consistent with prepetition practices.
- (f) Appointment of a trustee or examiner in the Chapter 11 Case without Anemoi’s consent;
- (g) Conversion of the Chapter 11 Case to a case under chapter 7;
- (h) Dismissal of the Chapter 11 Case; or
- (i) Debtor’s default under this Final Cash Collateral Order.

19. **Remedies Upon Default.** The authorization to use Cash Collateral granted herein shall automatically and immediately terminate five (5) business days after the provision of written notice to the Debtor (with a copy of such notice provided to counsel for the Debtor, counsel to the Committee, if any, and the U.S. Trustee) (the “**Default Notice Period**”) of an Event of Default. Upon the occurrence of an Event of Default, the Debtor shall be entitled to an emergency hearing with the Bankruptcy Court to occur within the Default Notice Period. Upon the occurrence of an

Event of Default (and following the expiration of the Default Notice Period), the automatic stay provisions of section 362 of the Bankruptcy Code shall be automatically vacated and modified to the extent necessary to permit Anemoi, as applicable, to exercise all rights and remedies provided in this Final Cash Collateral Order and to take any or all of the following actions, as applicable, without further order of or application to this Court:

- a. the immediate termination of Debtor's use of Anemoi's Cash Collateral;
- b. the entry of an order prohibiting or limiting the Debtor's further use of Anemoi's Cash Collateral; and
- c. such further or other relief as provided in the Bankruptcy Code, this Final Cash Collateral Order or applicable non-bankruptcy law.

20. The automatic stay under section 362(a) of the Bankruptcy Code shall be automatically vacated and modified as provided in paragraph 28 below, effective following the expiration of the Default Notice Period, unless the Court has determined that an Event of Default has not occurred and/or is not continuing. The rights and remedies of Anemoi specified herein are cumulative and not exclusive of any rights or remedies that Anemoi may have under the prepetition agreements, as applicable, or otherwise. The Debtor shall cooperate fully with Anemoi in any permitted exercise of Anemoi's rights and remedies.

21. **Restrictions on Granting Postpetition Liens.** Except for the DIP Liens or as otherwise provided in this Final Cash Collateral Order or by Anemoi written consent, until the Indebtedness has been paid in full, no claim or lien having a priority superior or *pari passu* with the Replacement Liens granted by this Final Cash Collateral Order to Anemoi shall be granted or permitted by any order of this Court heretofore or hereafter entered in the Chapter 11 Case, and the Debtor will not grant any such mortgages, security interests or liens in the Pre-Petition

Collateral or such collateral subject to the Replacement Liens (or any portion thereof) to any other parties pursuant to sections 364(c) and 364(d) of the Bankruptcy Code or otherwise.

22. **Limitation on Use of Cash Collateral.** Notwithstanding anything herein to the contrary, unless otherwise agreed to by Anemoi, no portion of the Cash Collateral or proceeds thereof shall include, apply to, or be available for any fees, costs or expenses incurred by any party, including the Debtor or any Committee, in connection with any of the following: (i) the investigation (including by way of examinations or discovery proceedings), initiation, assertion, joining, commencement, support or prosecution of any claims, causes of action, adversary proceedings, or other litigation against Fidelity or Anemoi, and any of their respective officers, directors, employees, agents, representatives, attorneys, consultants, financial advisors, affiliates, assigns, or successors, with respect to any transaction, occurrence, omission, action or other matter (including formal discovery proceedings in anticipation thereof) (each, a “**Loan Party Claim**”), including, without limitation, (a) investigating or challenging the amount, validity, extent, perfection, priority, or enforceability of, or asserting any defense, counterclaim, or offset to the Indebtedness or security interests and liens of Anemoi; (b) investigating or asserting any claims or causes of action arising under chapter 5 of the Bankruptcy Code against Fidelity or Anemoi; (c) investigating or asserting any so-called “lender liability” claims and causes of action against Fidelity or Anemoi; and (d) any action seeking to invalidate, set aside, avoid or subordinate, in whole or in part, the Loan Documents; (ii) asserting any claims or causes of action against Fidelity or Anemoi, including, without limitation, claims or actions to hinder or delay the assertions, enforcement or realization on the Pre-Petition Collateral on the liens securing the Indebtedness in accordance with this Final Cash Collateral Order (including attempting to stay the exercise of any right or remedy provided in this Final Cash Collateral Order); (iii) seeking to modify any of the

rights, remedies, priorities, privileges, protections and benefits granted to Anemoi hereunder, the First Interim Order, the Second Interim Order, or under the Loan Documents, without Anemoi's prior written consent; (iv) to pay any amount on account of any claims arising prior to the Petition Date unless such payments are (x) approved by an order of the Bankruptcy Court and (y) in accordance with the DIP Budget.

23. **Reservation of Certain Third-Party Rights.** The Committee (if any) shall have until the later of (i) seventy-five (75) days from the Petition Date and (ii) sixty (60) days from the date of its appointment (the "**Investigation Termination Date**"), to obtain standing to commence, and so commence, an appropriate contested matter or adversary proceeding (a "**Challenge**") asserting any Loan Party Claim. If a Challenge is not filed on or before the Investigation Termination Date (or such other later date as extended by the written consent of Anemoi or, prior to the final hearing), then: (a) the agreements, acknowledgements and stipulations contained in Paragraph 8 of this Final Cash Collateral Order shall be irrevocably binding on the Debtor, any Committee and all parties-in-interest and any and all successors-in-interest as to any of the foregoing, without further action by any party or this Court, and any Committee and any other party-in-interest and any and all successors-in-interest as to any of the foregoing, shall thereafter be forever barred from bringing any Challenge with respect thereto; (b) Anemoi's prepetition liens and security interests shall be deemed to constitute valid, binding, enforceable and perfected liens and security interests not subject to avoidance or disallowance pursuant to the Bankruptcy Code or applicable non-bankruptcy law; (c) the Indebtedness shall be deemed to be finally allowed claims for all purposes against the Debtor, including in any subsequent chapter 7 cases, and shall not be subject to challenge by any party-in-interest as to validity, priority or otherwise; and (d) the Debtor shall be deemed to have released, waived and discharged Fidelity and Anemoi, together

with their respective affiliates, parents, subsidiaries, partners, controlling persons, agents, representatives, attorneys, advisors, professionals, officers, directors and employees from any and all claims and causes of action arising out of, based upon or related to, in whole or in part, the Indebtedness or the Loan Documents, as applicable. Notwithstanding anything to the contrary herein: (x) if any such Challenge is timely commenced, the stipulations contained in Paragraph 8 of this Final Cash Collateral Order shall nonetheless remain binding and preclusive on all parties-in-interest (other than the party that has brought such Challenge in connection therewith) except to the extent that such stipulations are successfully challenged in such Challenge; (y) Anemoi reserves all of its rights to contest on any grounds any Challenge; and (z) Anemoi shall comply with any and all orders of the Court in connection with a successful Challenge; provided, however, that Anemoi preserves any and all of its rights to appeal and stay any orders of the Court issued in connection with such successful Challenge. For the avoidance of doubt, nothing in this Final Cash Collateral Order vests or confers on any person (as defined in the Bankruptcy Code) standing or authority to pursue any cause of action belonging to the Debtor or its estate. If, prior to expiration of the Investigation Termination Date established above, the Chapter 11 Case is converted to a case under chapter 7 of the Bankruptcy Code or a chapter 11 trustee is appointed in the Chapter 11 Case, the Investigation Termination Date shall be extended for a period of 60 days for the chapter 7 trustee after the entry of a conversion order or chapter 11 trustee after the date of its appointment.

24. **Bankruptcy Code Section 506(c) Waiver.** The Debtor shall irrevocably waive and shall be prohibited from asserting any surcharge claim, under section 506(c) of the Bankruptcy Code or otherwise, for any costs and expenses incurred in connection with the preservation, protection or enhancement of, or realization by Anemoi upon the Pre-Petition Collateral and no costs or expenses of administration that have been or may be incurred in the Chapter 11 Case at

any time shall be charged against Anemoi or its claims or liens. The Debtor acknowledges and agrees that Anemoi does not consent to any costs or expenses of administration which have been or may be incurred in the Chapter 11 Case, whether in connection with or on account of the preservation and/or disposition of any Pre-Petition Collateral, or which otherwise could be chargeable to Anemoi or the Pre-Petition Collateral, pursuant to Bankruptcy Code §§ 105, 506(c), 552 or otherwise, may be chargeable, without the prior written consent of Anemoi, and no such consent shall be implied from any action, inaction, or acquiescence by Anemoi.

25. **Section 552(b)**. Upon entry of the Final Cash Collateral Order, Anemoi shall be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and the “equities of the case” exception under section 552(b) shall not apply to Anemoi with respect to proceeds, products, offspring, or profits of any of the Prepetition Collateral.

26. **Right to Credit Bid**. The Debtor agrees that Anemoi shall have the right to credit bid as part of any asset sale process or plan sponsorship process and shall have the right to credit bid the full amount of its claims during any sale of Debtor’s assets (in whole or in part) with respect to any asset subject to its duly perfected liens as of the Petition Date, including without limitation, sales occurring pursuant to section 363 of the Bankruptcy Code or included as part of any restructuring plan subject to confirmation under section 1129(b)(2)(A)(ii)-(iii) of the Bankruptcy Code or a sale or disposition by a chapter 7 trustee for the Debtor under Section 725 of the Bankruptcy Code. The foregoing shall be binding on the Debtor’s chapter 11 estate and all parties in interest.

27. **[RESERVED]**

28. **Continuing Effect of Order**. If an order dismissing the Chapter 11 Case under Section 1112 of the Bankruptcy Code or otherwise is at any time entered, such order shall provide

(in accordance with Sections 105 and 349 of the Bankruptcy Code) that (x) the Superpriority Claims and the Replacement Liens granted herein shall continue in full force and effect and shall maintain their priorities as provided in this Final Cash Collateral Order (subject to the Final DIP Order) until all adequate protection obligations shall have been paid and satisfied in full (and that such claims and liens shall, notwithstanding such dismissal, remain binding on all persons), and (y) this Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing the claims, liens and security interests referred to in clause (x) above.

29. **Modification of Automatic Stay.** The automatic stay under Bankruptcy Code Section 362(a) is hereby modified as necessary to effectuate all of the terms and provisions of this Final Cash Collateral Order, including, without limitation, to: (a) allow the Debtor to grant Anemoi the Replacement Liens and incur the Superpriority Claims as provided herein; (b) permit the Debtor and Anemoi to perform such acts as may be needed to assure the perfection and priority of the Replacement Liens granted herein; (c) permit the Debtor to incur all liabilities and obligations under the terms of this Final Cash Collateral Order; (d) authorize the Debtor to pay, and Anemoi to retain and apply, any payments made in accordance with the terms of this Final Cash Collateral Order; (e) allow the Debtor to otherwise effect the transactions and actions permitted by this Final Cash Collateral Order, including, without limitation, Anemoi's rights to enforce its remedies in accordance with the terms of this Final Cash Collateral Order; and (f) implement the terms of this Final Cash Collateral Order.

30. **Not a Responsible Person.** In administering or determining to make any loan under the Loan Documents or this Final Cash Collateral Order, or in exercising any rights or remedies as and when permitted thereunder, Anemoi shall not be deemed to be in control of the operations of the Debtor or to be acting as a "responsible person" or "owner or operation" with respect to its

role if any, as mortgagee in possession, or on account of the operation or management of the Debtor (as such terms, or any similar terms, are used in the United States Comprehensive and Liability Act, 29 U.S.C. § 9601 et seq., as amended, or any similar federal or state statute).

31. **Rights of Access and Information.** The representatives, advisors, consultants, agents and/or employees of Anemoi shall be afforded reasonable access to the Debtor's premises, during normal business hours and without unreasonable interference with the proper operation of the Debtor's business, and its books and records in accordance with this Final Cash Collateral Order or the Loan Documents and the Debtor shall reasonably cooperate, consult with, and provide to such persons all such information as may be reasonably requested with respect to the businesses, results of operations, and financial condition of the Debtor.

32. **No Third-Party Rights.** Except as explicitly provided for herein and subject to the terms of the Final DIP Order, this Final Cash Collateral 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 Anemoi.

33. **Headings.** The headings in this Final Cash Collateral Order are for purposes of reference only and shall not limit or otherwise affect the meaning of this Final Cash Collateral Order.

34. **Binding Effect.** The provisions of this Final Cash Collateral Order shall be binding upon and inure to the benefit of the Debtor, Anemoi and their respective successors and assigns. To the extent permitted by applicable law, this Final Cash Collateral Order shall bind any successor to the Debtor, including, without limitation, any trustee hereafter appointed for the estate of the Debtor, whether in this Chapter 11 Case or in the event of the conversion of the Chapter 11 Case to a liquidation under chapter 7 of the Bankruptcy Code. Such binding effect is an integral part of

this Final Cash Collateral Order. Anemoi may assign all of its rights and obligations under the Loan Documents and this Final Cash Collateral Order subject to the terms and conditions of the Loan Documents without further order of the Court, and any permitted assignee of Anemoi shall succeed to all of the protections afforded to its predecessor under this Final Cash Collateral Order. All persons and entities shall be required to accept this Final Cash Collateral Order as sole and sufficient evidence of the validity and enforceability of the Superpriority Claims, the Replacement Liens and all of Anemoi's related rights and remedies, and may rely on this Final Cash Collateral Order in recognizing, facilitating, and or complying with the enforcement of the Replacement Liens and all of Anemoi's related rights and remedies in accordance with the terms of this Final Cash Collateral Order and the Loan Documents.

35. **[RESERVED]**

36. **[RESERVED]**

37. **Notices.** Except as otherwise stated herein, all notices and demands hereunder shall be in writing and shall be deemed given when addressed as follows: on the earlier of (a) when they are actually delivered to the addressees by hand delivery, facsimile transmission, email or otherwise, or (b) at 11:00 a.m. Dallas time on the Banking Day next following the deposit thereof with any recognized national overnight delivery service properly addressed to the addressees.

38. **Other.** The findings of fact and conclusions of law of this Court pursuant to this Final Cash Collateral Order shall be deemed effective upon the entry of this Final Cash Collateral Order. To the extent that such findings may constitute conclusions, and vice versa, they hereby are deemed such.

39. **Satisfaction of Bankruptcy Rule 6003 and Waiver of Stay of Bankruptcy Rule 6004.** The Court finds and determines that the requirements of Bankruptcy Rule 6003, to the extent

applicable, are satisfied and that the relief requested is necessary to avoid immediate and irreparable harm. To the extent applicable, the requirements of Bankruptcy Rule 6004(a) are waived. Notwithstanding Bankruptcy Rule 6004(h), this Final Cash Collateral Order shall be effective and enforceable immediately upon entry hereof.

40. **Survival**. The provisions of this Final Cash Collateral Order and any actions taken pursuant hereto shall survive the entry of any order: (i) confirming any plan of reorganization in the Chapter 11 Case; (ii) converting the Chapter 11 Case to a chapter 7 case; or (iii) dismissing of the Chapter 11 Case.

41. **Effectiveness**. This Final Cash Collateral Order is immediately valid and fully effective upon its entry by the Court.

###END OF ORDER###