IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
VYAIRE MEDICAL, INC., *et al.*,[1]	)	Case No. 24-11217 (___)
Debtors.	)	(Joint Administration Requested)

MOTION OF DEBTORS FOR ENTRY OF INTERIM AND FINAL ORDERS (I) AUTHORIZING THE DEBTORS TO (A) OBTAIN POSTPETITION FINANCING AND (B) UTILIZE CASH COLLATERAL, (II) GRANTING LIENS AND SUPERPRIORITY ADMINISTRATIVE EXPENSE CLAIMS, (III) GRANTING ADEQUATE PROTECTION TO PREPETITION SECURED PARTIES, (IV) MODIFYING THE AUTOMATIC STAY, (V) SCHEDULING A FINAL HEARING, AND (VI) GRANTING RELATED RELIEF

The above-captioned debtors and debtors in possession (collectively, the "Debtors" and, each, a "Debtor") state as follows in support of this motion:[2]

Preliminary Statement

1. As discussed in the First Day Declaration, the Debtors commenced these chapter 11 cases to effectuate a sale of substantially all of their assets in a manner that maximizes value for all stakeholders. The Debtors commenced their chapter 11 cases with committed debtor-in-possession financing from certain Prepetition First Lien Term Loan Lenders holding

[1] The last four digits of Debtor Vyaire Medical Inc.'s federal tax identification number are 6495. A complete list of each of the Debtors in these chapter 11 cases and each such Debtor's federal tax identification number may be obtained on the website of the Debtors' proposed claims and noticing agent at https://omniagentsolutions.com/Vyaire. The location of Debtor Vyaire Medical, Inc.'s principal place of business and the Debtors' service address in these chapter 11 cases is 26125 North Riverwoods Boulevard, Mettawa, Illinois, USA 60045.

[2] A detailed description of the Debtors and their business, including the facts and circumstances giving rise to the Debtors' chapter 11 cases, is set forth in the *Declaration of John Bibb, Group Chief Executive Officer of Vyaire Medical, Inc., in Support of Chapter 11 Filing and First Day Motions* (the "First Day Declaration"), filed contemporaneously herewith and incorporated by reference herein. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the First Day Declaration.

over 90% of the First Lien Term Loans (the "1L Ad Hoc Group") to provide them with sufficient liquidity to operate during these chapter 11 cases and facilitate the Debtors' marketing and sale of the business pursuant to section 363 of the Bankruptcy Code.[3]

2. The DIP Facility provides a $45 million new-money commitment (the "New Money Commitment"), including $25 million available to the Debtors on an interim basis and $20 million available on entry of a final order, and the consensual use of Cash Collateral (as defined herein). As described in the First Day Declaration, the Debtors have an immediate need for liquidity as they enter these chapter 11 cases with approximately $1.7 million in cash on hand, which is insufficient to continue operating the Debtors' businesses and fund these chapter 11 cases.

3. As contemplated by the Restructuring Support Agreement, the Debtors are seeking the Court's approval to sell certain, all, or substantially all of their assets pursuant to customary bidding procedures. The Restructuring Support Agreement commits the lenders party thereto to support a liquidating plan (subject to the terms and conditions of the Restructuring Support Agreement), and the DIP Facility includes a wind-down budget to support implementation of that plan. Without access to the DIP Facility and use of Cash Collateral (as defined herein), the Debtors would be unable to meet their obligations in the ordinary course of business and would be unable to continue the Marketing and Sale Process. *See* Braley Decl. ¶ 13.

4. The terms of the DIP Facility are the result of extensive arm's-length, good faith negotiations between the Debtors and the Ad Hoc Groups. The DIP Facility features a $135 million roll-up (the "Roll-Up") of the DIP Lenders' prepetition first lien term loans into DIP Obligations (*i.e.*, a 3:1 roll up of prepetition secured first lien term loans relative to $45 million of

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[3] An ad hoc group of certain of the Debtors' second lien lenders (the "2L Ad Hoc Group" and together with the Ad Hoc Group, the "Ad Hoc Groups") hold 13% of the First Lien Term Loans, and is participating in the DIP Facility solely on account of its First Lien Term Loans.

New Money Commitment). The Roll-Up is only granted to the DIP Lenders on account of their portion of the New Money Commitment actually funded to the Debtors. The Roll-Up constitutes a key aspect of the DIP Facility, and was required by the 1L Ad Hoc Group as consideration for the extension of postpetition financing. *See* Schlappig Decl. ¶ 21. As security for the DIP Obligations, the Debtors propose granting the DIP Agent a first priority lien on all unencumbered property of the Debtors and a priming lien on Prepetition Collateral (as defined in the Interim Order). Importantly, in connection with the Debtors' restructuring, the DIP Documents (as defined below) and Restructuring Support Agreement set forth a mechanism to limit recovery of the DIP Claims to net sale proceeds from the Marketing and Sale Process.

5. As described in the Schlappig Declaration, prior to these chapter 11 cases, the Debtors engaged in significant efforts to raise capital on either an in-court or out-of-court basis. In parallel with their negotiations with the Ad Hoc Groups, the Debtors' investment banker, PJT Partners, LP ("PJT") solicited interest from a number of third-parties including the Sponsor and Second Lien Lenders (each as defined herein) to identify other parties that may be interested in providing postpetition financing to the Debtors. PJT contacted approximately six third-party financial institutions; however, no alternative third-party proposal for financing on an out-of-court or debtor-in-possession financing facility materialized. Third parties were unwilling to extend financing because, among other things, substantially all of the Debtors' assets are encumbered, the First Lien Term Loan Lenders and the holders of First Lien Notes (the "First Lien Noteholders" and together with the First Lien Term Loan Lenders, the "First Lien Lenders") would not consent to being primed by a third party, and no third party was willing to lend on a junior basis.

6. Accordingly, and in an exercise of their sound business judgment, the Debtors determined that obtaining the DIP Facility from the DIP Lenders was necessary. As discussed

herein and in the Schlappig Declaration, the Debtors and their advisors engaged in hard-fought and arm's-length negotiations with the Ad Hoc Groups on the terms of the DIP Facility in order to obtain postpetition financing on the best possible terms. As part of these discussions, the Debtors and their advisors sought, and ultimately received, a greater amount of postpetition financing and a commitment to provide a wind-down budget, among other material terms. The DIP Facility represents the best possible debtor-in-possession financing facility that the Debtors could obtain. Accordingly, the Debtors seek approval of the DIP Facility to fund the administration of these chapter 11 cases.

7. The DIP Facility allows the Debtors to continue operations, provides the liquidity necessary to advance the Marketing and Sale Process in a thorough and organized fashion, and is necessary for the Debtors to pursue confirmation of a chapter 11 plan. Therefore, the proposed DIP Facility is in the best interests of the Debtors, is necessary to avoid irreparable harm to the Debtors and their estates, and should be approved.

Relief Requested

8. The Debtors seek entry of interim and final orders, substantially in the forms attached hereto as **Exhibit A** (respectively, the "Interim Order" and the "Final Order," and together, the "DIP Orders"):[4]

- ***DIP Facility***: authorizing the Debtors to enter into a senior secured, superpriority term loan credit facility (the "DIP Facility") in the aggregate principal amount of $180 million (the "DIP Loans"), consisting of: (i) a new money term loan facility in an aggregate principal amount of $45 million (*i.e.*, the New Money Commitments), $25 million of which shall be made available subject to and upon entry of the Interim Order, and $20 million of which shall be made available upon entry of the Final Order, and (ii) roll-up term loans in an aggregate principal amount of approximately $135 million, $75 million of which shall be rolled up upon entry of the Interim Order and $60 million of which shall be rolled up upon entry of the Final Order, all

[4] The Debtors will file the form of Final Order prior to the Final Hearing (as defined herein).

pursuant to the terms and conditions of that certain Senior Secured Superpriority Debtor-in-Possession Credit Agreement (as amended, restated or otherwise modified from time to time in accordance with the terms thereof, the "DIP Credit Agreement"), substantially in the form attached to the Interim Order as Exhibit A, by and among the DIP Borrowers, the DIP Guarantors, the DIP Lenders, and Wilmington Savings Fund Society, FSB, as administrative agent and collateral agent (in such capacities, the "DIP Agent") (collectively, the "DIP Secured Parties");

- ***DIP Documents***: approving the terms of, and authorizing the Debtors to enter into the DIP Credit Agreement, that certain Escrow Agreement among the DIP Borrowers, the DIP Agent, and Wilmington Savings Fund Society, FSB as escrow agent, and all agreements, documents, and instruments delivered or executed in connection with the foregoing (collectively, the "DIP Documents"), and to perform all of the Debtors' obligations arising thereunder (the "DIP Obligations");

- ***Cash Collateral***: authorizing the Debtors to use cash collateral (as defined in section 363(a) of the Bankruptcy Code, "Cash Collateral") and all other Prepetition Collateral and providing for adequate protection in favor of the Prepetition Secured Parties (as defined in the Interim Order) as and to the extent provided in the DIP Orders and the DIP Documents;

- ***Security and Priority***: authorizing the Debtors to grant, subject and subordinate solely to any Prior Senior Liens and the Carve Out (as defined herein), senior liens and superpriority administrative expense status to the DIP Lenders to secure the DIP Obligations, including continuing, valid, binding, enforceable, non-avoidable, and automatically and properly perfected postpetition security interests in and liens on the DIP Collateral;

- ***Automatic Stay***: modifying the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and conditions of the DIP Orders; and

- ***Final Hearing***: scheduling a final hearing to consider entry of the Final Order (the "Final Hearing").

9. In support of this motion, the Debtors submit the Braley Declaration and the Schlappig Declaration, each filed contemporaneously herewith.

Jurisdiction and Venue

10. The United States District Court for the District of Delaware has jurisdiction over this matter pursuant to 28 U.S.C. §1334, which was referred to the United States Bankruptcy Court

for the District of Delaware (the "Court") under 28 U.S.C. § 157 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. The Debtors confirm their consent, pursuant to rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), to the entry of a final order by the Court in connection with this motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

11. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

12. The statutory bases for the relief requested herein are sections 105, 361, 362, 363, 364, 503, and 507 of title 11 of the United States Code (the "Bankruptcy Code"), rules 2002, 4001, 6003, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Local Rules 2002-1(b), 4001-2, and 9013-1(m).

Background

13. Vyaire Medical, Inc., together with its direct and indirect subsidiaries (collectively, "Vyaire" or the "Company"), is a global company focused on developing products and providing related services for the diagnosis, treatment, and monitoring of various cardiology, pulmonology, and respiratory health conditions. With a 70-year history of pioneering breathing technology, the integrated solutions offered by the Company help enable, enhance, and extend lives. Headquartered in Mettawa, Illinois, Vyaire operates approximately 27 offices and manufacturing facilities, and employs approximately 950 individuals around the world. The Company has a global reach, and Vyaire products are available in more than 100 countries. Its

customers are the hospitals, health centers, and private practice facilities delivering life-enhancing products and services to patients every day.

14. On June 9, 2024 (the "Petition Date"), each of the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. The Debtors are operating their business and managing their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. Concurrently with the filing of this motion, the Debtors filed a motion requesting procedural consolidation and joint administration of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b). No request for the appointment of a trustee or examiner has been made in these chapter 11 cases, and no official committees have been appointed or designated.

Concise Statements Pursuant to Bankruptcy Rule 4001(b) and Local Rule 4001-2[5]

15. The below chart contains a summary of the material terms of the proposed DIP Facility, together with references to the applicable sections of the relevant source documents, as required by Bankruptcy Rules 4001(b)(1)(B) and 4001(c)(1)(B) and Local Rule 4001-2.

Bankruptcy Code	Summary of Material Terms
Borrower 4001(c)(1)(B)	Vyaire Company, a Delaware corporation ("Holdings"), Vyaire Medical, Inc. (the "U.S. Borrower"), and Vyaire Finance B.V., a private limited liability company incorporated under the laws of the Netherlands (the "Dutch Borrower", together with the U.S. Borrower, the "Borrowers"). *See* DIP Credit Agreement, Preamble.
Guarantors Bankruptcy Rule 4001(c)(1)(B)	Vyaire Company, a Delaware corporation, and its direct and indirect debtor subsidiaries, as listed on Schedule 1.01D of the DIP Credit Agreement. *See* DIP Credit Agreement, Schedule 1.01D

[5] The summaries contained in this motion are qualified in their entirety by the provisions of the documents referenced, including the DIP Credit Agreement and the Interim Order. To the extent anything in this motion is inconsistent with such documents, the terms of the applicable documents shall control. Capitalized terms used in this summary chart but not otherwise defined have the meanings ascribed to them in the DIP Documents or the DIP Orders, as applicable.

Bankruptcy Code	Summary of Material Terms
Agent	Wilmington Savings Fund Society, FSB, as administrative agent and collateral agent. *See* DIP Credit Agreement, Preamble
DIP Lenders Bankruptcy Rule 4001(c)(1)(B)	First Lien Term Loan Lenders, to be backstopped by (i) certain First Lien Term Loan Lenders that have executed and delivered counterparty signature pages to the Restructuring Support Agreement prior to the Petition Date (the "<u>Backstop Parties</u>"). The Backstop Parties are listed on Schedule 2.09 of the Credit Agreement. *See* DIP Credit Agreement, Schedule 2.09.
Term Bankruptcy Rule 4001(b)(l)(B)(iii), 4001(c)(1)(B) Local Rule 4001-2(a)(ii)	Earliest to occur of (i) the consummation of a sale or the Disposition of all or substantially all of Holdings', the Borrower's, and each of their Subsidiaries' assets; (ii) a Change of Control; (iii) 120 days after entry into the DIP Credit Agreement; (iv) the date on which all Loans are accelerated and all unfunded Commitments (if any) have been terminated in accordance with the DIP Credit Agreement, by operation of law or otherwise; (v) the date the Court orders a conversion of the chapter 11 cases to a chapter 7 liquidation or the dismissal of the chapter 11 case of any Debtor; (vi) the closing of any sale of assets pursuant to Section 363 of the U.S. Bankruptcy Code, which when taken together with all other sales of assets since the Closing Date, constitutes a sale of all or substantially all of the assets of the Loan Parties; (vii) the Plan Consummation Date; (viii) the first Business Day after the date on which the Interim Order expires by its terms or is terminated, unless the Final Order has been entered and becomes effective prior thereto; and (ix) the date that the Final Order is vacated, terminated, rescinded revoked, declared null and void or otherwise ceases to be in full force and effect (unless consented to by the Required Lenders). *See* DIP Credit Agreement, Section 1.01 ("<u>Maturity Date</u>")
Commitments Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(ii)	The DIP Facility shall consist of: (a) <u>New Money Commitments</u>. A superpriority senior secured multiple draw term loan credit facility in the principal amount of $45 million, of which $25 million will be disbursed to the DIP Borrowers upon entry of the Interim Order and $20 million will be funded into an escrow account on the date of the Interim Order and available to be drawn by the DIP Borrowers upon entry of the Final Order. (b) <u>Roll-Up Loans</u>. A superpriority term loan facility in the principal amount of up to $135 million, of which (i) $75 million will be deemed funded and converted from and exchanged for First Lien Term Loans upon entry of the Interim Order and (ii) $60 million will be deemed funded and converted from and exchanged for First Lien Term Loans upon entry of the Final Order. *See* Interim Order ¶ 3(b).
Provisions that Provide for the Funding of Non-Debtor Affiliates Del. Bankr. L.R. 4001-2(a)(i)(D)	The Debtors are permitted to enter into: (a) transactions between or among Holdings, the Borrowers, or any Restricted Subsidiary in the ordinary course of business and consistent with past practice; (b) transactions on terms substantially as favorable to the Borrowers or such Restricted Subsidiary as would be obtainable by such Borrower or such Restricted Subsidiary at the time in a comparable arm's-length transaction with a Person other than an Affiliate; (c) Restricted Payments permitted under <u>Section 7.06</u> of the DIP Credit Agreement; (d) employment, compensation, severance or termination arrangements between any Parent Entity, a Borrower or any of their Subsidiaries and their respective officers, employees and consultants (including management and employee benefit plans or agreements, subscription agreements or similar agreements pertaining to the repurchase of Equity

Bankruptcy Code	Summary of Material Terms
	Interests pursuant to put/call rights or similar rights with current or former employees, officers, directors consultants and stock option or incentive plans and other compensation arrangements) in the ordinary course of business and consistent with past practice and transactions pursuant to management equity plans, stock option plans and other employee benefit plans, agreements and arrangements; (e) the payment of customary fees and reasonable out of pocket costs to, and indemnities provided on behalf of, directors, officers, managers, employees, consultants and other service providers of the U.S. Borrower and its Restricted Subsidiaries or any Parent Entity in the ordinary course of business and consistent with past practice to the extent attributable to the ownership or operation of the U.S. Borrower and its Restricted Subsidiaries; (f) transactions pursuant to permitted agreements in existence on the Closing Date and set forth on <u>Schedule 7.07</u> of the DIP Credit Agreement or any amendment thereto to the extent such an amendment, taken as a whole, is not adverse to the Lenders in any material respect; (g) transactions with Wholly-Owned Subsidiaries for the purchase or sale of goods, products, parts and services entered into in the ordinary course of business in a manner consistent with past practice and prudent business practice followed by companies in the industry of the U.S. Borrower and its Subsidiaries; (h) transactions with joint ventures for the purchase or sale of goods, equipment and services entered into in the ordinary course of business and in a manner consistent with past practice and with prudent business practice followed by companies in the industry of the U.S. Borrower and its Subsidiaries; and (i) to the extent not prohibited by <u>Sections 7.06(g)(i)</u> and <u>(iii)</u>, payments by any Parent Entity of the Borrowers, U.S. Borrower and the Restricted Subsidiaries pursuant to Tax sharing agreements among any such Parent Entity, the U.S. Borrower and the Restricted Subsidiaries on customary terms; provided that payments by the U.S. Borrower and the Restricted Subsidiaries under any such Tax sharing agreements shall not exceed the excess (if any) of the amount they would pay on a standalone basis over the amount they actually pay to Governmental Authorities; provided, further that such payments are (w) made in the ordinary course of business, (x) consistent with past practice, (y) for a bona fide business purpose and (z) do not exceed the amount for such payment in the Approved Budget (subject to Permitted Variances). Notwithstanding the foregoing provisions in <u>Section 7.07</u> of the DIP Credit Agreement, the Borrowers and any Restricted Subsidiaries shall not make any payment to the Sponsor (including, without limitation, any payments for any financial advisory, financing, underwriting or placement services or in respect of other investment banking activities, and any fees in connection with acquisitions or divestitures). *See* DIP Credit Agreement, Section 7.07.
Conditions of Borrowing Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(ii)	<u>Conditions to Initial New Money Commitment</u> The obligation of each Lender to make its initial Credit Extension hereunder is subject to satisfaction of the following conditions precedent except as otherwise agreed between the Borrowers and the Administrative Agent: (a) The Administrative Agent's receipt of the following, each of which shall be originals or facsimiles (followed promptly by originals) unless otherwise specified, each properly executed by a Responsible Officer of the signing Loan Party: (i) executed counterparts

Bankruptcy Code	Summary of Material Terms
	of the DIP Credit Agreement and the Guarantee; (ii) executed counterparts of the Escrow Agreement; (iii) a certificate signed by a Responsible Officer of the U.S. Borrower certifying that he conditions set forth in clause (f) below are satisfied; (iv) certificates substantially in the form of <u>Exhibit J</u> to the DIP Credit Agreement for each Loan Party which attach (A) resolutions or other action documentation, (B) incumbency certificates for each Loan Party other than the Dutch Borrower or an extract of the trade register of the Dutch Chamber of Commerce in relation the Dutch Borrower, (C) Organizational Documents, (D) good standing certificates (for each Loan Party other than the Dutch Borrower) and (E) for the Dutch Borrower, if applicable, a copy of a request for advice from the works council of the Dutch Borrower and an unconditional positive advice from the works council; (v) an opinion from Kirkland & Ellis LLP, New York counsel to the U.S. Loan Parties; and (vi) a Committed Loan Notice relating to the initial Credit Extensions; (b) All fees and expenses required to be paid hereunder and pursuant to the Administrative Agent Fee Letter and the Fronting Fee Letter, and in the case of expenses, to the extent invoiced prior to the Closing Date (except as otherwise agreed by the Borrowers) shall, substantially concurrently with the initial Borrowing of the DIP Term Loans, have been paid (which amounts may, at the Borrowers' option, be offset against the proceeds of the Facilities); (c) The Administrative Agent shall have received all fees and other amounts previously agreed in writing by Holdings to be due and payable on or prior to the Closing Date, including the fees of the Lender Advisors, to the extent invoiced prior to the Closing Date (except as otherwise reasonably agreed by Borrowers), and the reimbursement or payment of all out-of-pocket expenses (including reasonable fees, charges and disbursements of counsel including the fees of Gibson, Dunn & Crutcher LLP, Rothschild & Co US Inc. and Loyens & Loeff N.V.) required to be reimbursed or paid by any Loan Party under any Loan Document; (d) After giving effect to the borrowings to be made on the Closing Date, Liquidity shall be no less than $2,500,000; (e) The Restructuring Support Agreement remains in full force and effect and the Loan Parties are not in Default under or have not breached such agreement; (f) The representations and warranties of the Borrowers and each other Loan Party contained in <u>Article V</u> of the DIP Credit Agreement or any other Loan Document shall be true and correct in all material respects on and as of the Closing Date; *provided* that to the extent that such representations and warranties specifically refer to an earlier date, they shall be true and correct in all material respects as of such earlier date; (g) The Administrative Agent shall have received, at least three Business Days prior to the Closing Date, all documentation and other information about the Borrowers and the Guarantors as has been reasonably requested in writing at least ten Business Days prior to the Closing Date by the Administrative Agent that they reasonably determine is required by U.S. regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including without limitation the USA PATRIOT Act; (h) The Administrative Agent and Lender Advisors on behalf of the Lenders shall have received the Approved Budget in form and substance satisfactory to the Required Lenders; (i) The Court shall have entered the Interim Order, no later than five (5) Business Days after the Petition Date, and such order shall be in form and substance satisfactory to the Required Lenders (which satisfaction may be communicated via an email from the

Bankruptcy Code	Summary of Material Terms
	Lender Advisors) (and with respect to any provisions that affect the rights or duties of the Administrative Agent, the Administrative Agent), be in full force and effect, and shall not have been reversed, modified, amended, stayed or vacated absent prior written consent of the Required Lenders (which consent may be communicated via an email from each of the Lender Advisors, as applicable) (and with respect to any provisions that affect the rights or duties of the Administrative Agent, the Administrative Agent); (ii) the Lenders shall have received drafts of the "first day" pleadings for the chapter 11 cases, in each case, in form and substance reasonably satisfactory to the Required Lenders (which satisfaction may be communicated via an email from the Lender Advisors), not later than a reasonable time in advance of the Petition Date for the Lenders' counsel to review and analyze the same; (iii) all motions, orders (including the "first day" orders), and other documents to be filed with or submitted to the Bankruptcy Court on the Petition Date shall be in form and substance reasonably acceptable to the Required Lenders (which satisfaction may be communicated via an email from the Lender Advisors); and (iv) all "first day" orders shall have been approved and entered by the Court except as otherwise reasonably agreed by the Required Lenders (which agreement may be communicated via an email from each of the Lender Advisors); (j) The Prepetition Agent and the First Lien Term Loan Lenders shall have each consented or are deemed to consent to the use of collateral or received adequate protection (if applicable) in respect of the liens securing their respective obligations pursuant to the Interim Order; <u>and</u> (k) As of the Closing Date, no Event of Default or Default shall have occurred and be continuing. <u>Conditions to Other Commitments</u> Any Withdrawal after the Closing Date is subject to the satisfaction or waiver by the Required Lenders of the following conditions precedent: (a) The Court shall have entered the Final Order, it shall be in full force and effect and it shall not have been vacated, stayed, reversed, modified or amended, in whole or in any part, without the Required Lenders' written consent (which consent may be communicated via an email from the Lender Advisors). All other "second day" orders shall be entered in form and substance acceptable to the Required Lenders. (b) The representations and warranties of the Borrowers and each other Loan Party contained in <u>Article V</u> of the DIP Credit Agreement or any other Loan Document shall be true and correct in all material respects on and as of the date of such Withdrawal; *provided* that to the extent that such representations and warranties specifically refer to an earlier date, they shall be true and correct in all material respects as of such earlier date; *provided*, *further*, that any representation and warranty that is qualified as to "materiality," "Material Adverse Effect" or similar language shall be true and correct (after giving effect to any qualification therein) in all respects on such respective dates. (c) No Default shall exist, or would result from such proposed Withdrawal or from the application of the proceeds therefrom. (d) The Administrative Agent shall have received a Withdrawal Notice executed by the Borrower requesting the proposed Withdrawal thereunder. (e) The Withdrawal shall not exceed $2,000,000. (f) No motion, pleading or application seeking relief affecting the provision of the financing contemplated hereunder in a manner that is adverse to the Lenders, in their capacities as

Bankruptcy Code	Summary of Material Terms
	such, shall have been filed in the Court by any Loan Party without the prior written consent of the Administrative Agent (at the Direction of the Required Lenders). (g) The Agents and the Lender Advisors, as applicable, shall have received all fees and other amounts previously agreed in writing by Holdings to be due and payable on such date, including, for the avoidance of doubt, the fees of the Lender Advisors, to the extent invoiced prior to such Withdrawal, as applicable (except as otherwise reasonably agreed by the Borrowers), reimbursement or payment of all out-of-pocket expenses (including reasonable fees, charges and disbursements of counsel) required to be reimbursed or paid by any Loan Party under any Loan Document. (h) The aggregate amount of unrestricted cash and Cash Equivalents included in the consolidated balance sheet of the Borrower as of the date of such Withdrawal shall not exceed, (i) to the extent such cash is located in accounts in the United States, \$7,000,000 or (ii) to the extent such cash is located in accounts outside of the United States, \$14,000,000. (i) The Restructuring Support Agreement remains in full force and effect and the Loan Parties are not in default under or have not breached such agreement. (j) After due inquiry, each Loan Party is unaware of any fraudulent activities in connection with its business. (k) The Court shall have entered an order (which may be the Final Order) approving the roll-up of the Prepetition Loans contemplated in Section 2.01(b)(ii), which order shall be in full force and effect and shall not have been vacated, stayed, reversed, modified or amended with respect to such matter without the Required Lenders' written consent (which consent may be communicated via an email from the Lender Advisors). (l) The Loan Parties shall be in compliance with the Approved Budget in all respects and the proceeds of the Loans shall be used as set forth in the Approved Budget (in each case, subject to the Permitted Variance). (m) The Borrower shall be in compliance in all respects with the Milestones. *See* DIP Credit Agreement, Article IV.
Interest Rates Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(ii)	A percentage per annum equal to: with respect to (a) DIP Term Loans, (x) for DIP Term Loans that are Term SOFR Loans, (1) 6.00% of PIK Interest (as defined below) and (2) 1.00% paid in cash (such interest, "<u>Cash Interest</u>") and (y) for DIP Term Loans that are Base Rate Loans, (1) 5.00% of PIK Interest and (2) 1.00% of Cash Interest and (b) Roll-Up Loans, (x) for Roll-Up Loans that are Term SOFR Loans, (1) 6.00% of PIK Interest and (2) 1.00% of Cash Interest and (y) for Roll-Up Loans that are Base Rate Loans, (1) 5.00% of PIK Interest and (2) 1.00% of Cash Interest. "<u>PIK Interest</u>" means interest paid in kind and not in cash, by adding the amount of such interest to the principal amount of the outstanding DIP Term Loans or Roll-Up Loans on each applicable Interest Payment Date, which shall thereafter constitute DIP Term Loans or Roll-Up Loans, as applicable, and Obligations for all purposes of the DIP Credit Agreement and the other Loan Documents and accrue interest in accordance with <u>Section 2.08</u> of the DIP Credit Agreement. *See* DIP Credit Agreement, Section 1.01 "Applicable Rate."

Bankruptcy Code	Summary of Material Terms
Use of DIP Facility and Cash Collateral Bankruptcy Rule 4001(b)(l)(B)(ii) Local Rule 4001-2(a)(ii)	The proceeds of the Term Loans shall be subject to and used in accordance with the Approved Budget (subject to Permitted Variances) and subject to the terms and conditions of the DIP Credit Agreement, the "first day" orders (solely to the extent permitted under the Approved Budget (subject to Permitted Variances)) and the DIP Orders to (i) provide working capital and for other general corporate purposes of the Debtors, (ii) fund the costs of the administration of the chapter 11 cases (including professional fees and expenses) and sales under Section 363 of the Bankruptcy Code, (iii) make any other payments consistent with the Approved Budget, in each case, subject to Permitted Variances, and (iv) in accordance with the Wind-Down Budget (as defined in the RSA) in accordance with the RSA, as applicable. *See* DIP Credit Agreement, Section 5.17.
"Roll-Up" Provisions Local Rule 4001-2(a)(i)(E)	<u>Incurrence of Roll-Up Loans</u> (a) On the Closing Date, \$75,000,000.00 in aggregate principal amount of Prepetition Term Loans shall be deemed converted into and exchanged for Roll-Up Loans and shall be deemed funded on the Closing Date without constituting a novation, and shall satisfy and discharge \$75,000,000.00 in aggregate principal amount of Prepetition Term Loans (the "<u>Closing Date Roll-Up Loans</u>" and, the Prepetition Term Loans that are not Closing Date Roll-Up Loans, the "<u>Remaining Prepetition Loans</u>"). The Closing Date Roll-Up Loans deemed funded on the Closing Date shall be deemed to be made by each Backstop Party (or an investment advisor, manager, or beneficial owner for the account of a Backstop Party, or an affiliated fund or trade counterparty designated by such Backstop Party) (such initial lender holding such Roll-Up Loans, the "<u>Closing Date Roll-Up Lenders</u>") in an amount equal to the lesser of (x) the aggregate principal amount of the Prepetition Term Loans owing to the applicable Closing Date Roll-Up Lenders on the Closing Date and (y) an amount equal to (I) \$45,000,000 multiplied by (II) the quotient of the amount set forth next to each Backstop Party's name on Schedule 2.09 hereof divided by the sum of all amounts set forth on Schedule 2.09 hereof. (b) Subject to the entry, and the terms, of the Final Order, on each Withdrawal Date, concurrently with and automatically upon the withdrawal from the Loan Proceeds Account and disbursement of such proceeds to the Borrowers on such Withdrawal Date (the aggregate amount of DIP Term Loans funded by any Lender hereunder and so withdrawn and disbursed on any such Withdrawal Date, such Lender's "<u>Withdrawn Amount</u>"), each Lender hereunder (or an investment advisor, manager, or beneficial owner for the account of such Lender, or an affiliated fund or trade counterparty designated by such Lender) (collectively, the "<u>Additional Roll-Up Lenders</u>") shall be deemed to have (x) converted and exchanged an aggregate principal amount of Remaining Prepetition Loans equal to the lesser of (I) such Additional Roll-Up Lenders' Remaining Prepetition Loans on such date and (II) three times the applicable Lender's Withdrawn Amount on such Withdrawal Date (such lesser amount, such Lender's "<u>Roll-Up Amount</u>") for Roll-Up Loans and (y) funded an amount of Roll-Up Loans equal to its Roll-Up Amount on such Withdrawal Date, without constituting a novation, and satisfied and discharged an aggregate principal amount of Rolled-Up Prepetition Loans equal to its Roll-Up Amount. <u>Other Provisions</u> <u>Application of Commitment Reductions; Payment of Fees</u>. Each repayment of Term Loans shall be applied, first, ratably to the DIP Term Loans included in the repaid Borrowing, until all DIP Term Loans are repaid in full, and, second, ratably to the Roll-Up Loans included in the repaid Borrowing, until all Roll-Up Loans are repaid in full. <u>Interest Accrual</u>. Interest shall begin to accrue on the Roll-Up Loans from (and including)

Bankruptcy Code	Summary of Material Terms
	the date such Roll-Up Loans are deemed made in accordance with Section 2.01(e) (which, in the case of the Closing Date Roll-Up Loans deemed made pursuant to Section 2.01(e)(i), shall be the Closing Date). Notwithstanding anything to the contrary in the DIP Credit Agreement, the DIP Term Loans held in the Loan Proceeds Account shall be deemed to be made and funded hereunder on the Closing Date and shall accrue interest in accordance with Section 2.08(d) of the DIP Credit Agreement even if such DIP Term. Loans are not yet withdrawn and disbursed to the Borrowers. *See* DIP Credit Agreement, Section 2.01(e); 2.05(d); and 2.08(d).
Adequate Protection Bankruptcy Rules 4001(c)(1)(B)(ii), 4001(b)(l)(B)(iv) Local Rule 4001-2(a)(i)(B), 4001-2(a)(i)(G), 4001-2(a)(i)(K)	Adequate Protection for First Lien Term Loan Secured Parties and the Prepetition First Lien Notes Secured Parties. Subject only to the Carve Out and the terms of the Interim Order, pursuant to sections 361, 363(e), and 364 of the Bankruptcy Code, and in consideration of the stipulations and consents set forth in the Interim Order, as adequate protection of their interests in the Prepetition First Lien Term Loan Collateral and the Prepetition First Lien Notes Collateral (in each case, including Cash Collateral), as applicable, for any diminution in value of such interests (each such diminution, a "Diminution in Value"), resulting from, among other things, the imposition of the priming DIP Liens on the Prepetition First Lien Term Loan Collateral and the Prepetition First Lien Notes Collateral, the Carve Out, the Debtors' use of the Prepetition First Lien Term Loan Collateral and the Prepetition First Lien Notes Collateral (in each case, including Cash Collateral), and the imposition of the automatic stay, the Prepetition First Lien Term Loan Agent, for the benefit of itself and the Prepetition First Lien Term Loan Secured Parties and the Prepetition First Lien Notes Agent, for the benefit of itself and the Prepetition First Lien Notes Secured Parties, are hereby granted the following (collectively, the "First Lien Adequate Protection Obligations"): (a) First Lien Adequate Protection Liens. As security for any Diminution in Value, additional and replacement, valid, binding, enforceable, non-avoidable, and effective and automatically perfected postpetition security interests in and liens as of the date of the Interim Order (together, the "First Lien Adequate Protection Liens"), without the necessity of the execution by the Debtors (or recordation or other filing), of security agreements, control agreements, pledge agreements, financing statements, mortgages, or other similar documents, on all DIP Collateral and, upon entry of the Final Order, all proceeds or property recovered from Avoidance Actions. Subject to the terms of the Interim Order, the First Lien Adequate Protection Liens shall be subordinate only to the (A) Carve Out, (B) the DIP Liens, and (C) Prior Senior Liens. The First Lien Adequate Protection Liens shall otherwise be senior to all other security interests in, liens on, or claims against any of the DIP Collateral (including, for the avoidance of doubt, any lien or security interest that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code). (b) First Lien Adequate Protection Superpriority Claims. As further adequate protection, and to the extent provided by sections 503(b), 507(a), and 507(b) of the Bankruptcy Code, allowed administrative expense claims in each of the Cases ahead of and senior to any and all other administrative expense claims in such Cases to the extent of any postpetition Diminution in Value (the "First Lien Adequate Protection Superpriority Claims"), but junior to the Carve Out and the DIP Superpriority Claims. Subject to the Carve Out and the DIP Superpriority Claims in all respects, and to the extent set forth in the Bankruptcy Code, the First Lien Adequate Protection Superpriority Claims will not be junior to any claims and shall have priority over all administrative expense claims against each of the Debtors, now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, administrative expense claims of the kinds specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 365, 503(a), 503(b), 506(c) (subject to entry

Bankruptcy Code	Summary of Material Terms
	of the Final Order), 507(a), 507(b), 546(d), 726, 1113, and 1114 of the Bankruptcy Code. (c) First Lien Adequate Protection Payments. As further adequate protection, the Debtors are authorized and directed to pay, in accordance with the terms of paragraph 18 of the Interim Order, all reasonable and documented fees and expenses (the "First Lien Adequate Protection Fees"), in the case of (i) the DIP/First Lien Advisors and DIP Agent Advisors whether incurred before or after the Petition Date and (ii) any other party, solely incurred after the Petition Date, to the extent not duplicative of any fees and/or expenses paid pursuant to paragraph 3(e)(3) hereof, including all reasonable and documented fees and expenses of counsel and other professionals retained as provided for in the DIP Documents and the Interim Order, including, for the avoidance of doubt, of (i) the DIP/First Lien Advisors, including, without limitation, Gibson, Dunn & Crutcher LLP (as counsel), Rothschild & Co (as financial advisor), Pachulski Stang Ziehl & Jones LLP (as local bankruptcy counsel), and any other foreign counsel and other professionals necessary to represent the interests of the DIP Lenders and the ad hoc group of Prepetition First Lien Term Loan Lenders and Prepetition First Lien Noteholders, (ii) the DIP Agent Advisors, including, without limitation, ArentFox Schiff LLP and Morris James LLP as counsel to the DIP Agent, (iii) Haynes and Boone, LLP and Ashby & Geddes, P.A. as counsel to the Prepetition First Lien Term Loan Agent, and (iv) Seward & Kissel LLP and local counsel as counsel to the Prepetition First Lien Notes Agent (all payments referenced in this sentence, collectively, the "First Lien Adequate Protection Payments"). None of the First Lien Adequate Protection Fees shall be subject to separate approval by this Court or the U.S. Trustee Guidelines, and no recipient of any such payment shall be required to file any interim or final fee application with respect thereto or otherwise seek the Court's approval of any such payments. (d) Right to Seek Additional Adequate Protection. The Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, the rights of the Prepetition First Lien Term Loan Secured Parties or the Prepetition First Lien Notes Secured Parties to request further or alternative forms of adequate protection at any time or the rights of the Debtors or any other party to contest such request. Nothing in the Interim Order shall impair or modify the application of section 507(b) of the Bankruptcy Code in the event that the adequate protection provided to the Prepetition First Lien Term Loan Secured Parties or the Prepetition First Lien Notes Secured Parties is insufficient to compensate for any Diminution in Value of their interests in the Prepetition First Lien Term Loan Collateral and the Prepetition First Lien Notes Collateral during the Cases. Nothing contained in the Interim Order shall be deemed a finding by the Court, or an acknowledgment by any of the Prepetition First Lien Term Loan Secured Parties or the Prepetition First Lien Notes Secured Parties that the adequate protection granted Interim Order does in fact adequately protect any of the Prepetition First Lien Term Loan Secured Parties or the Prepetition First Lien Notes Secured Parties against any Diminution in Value of their respective interests in the Prepetition First Lien Term Loan Collateral and the Prepetition First Lien Notes Collateral (in each case, including the Cash Collateral). (e) Other Covenants. The Debtors shall maintain their cash management arrangements in a manner consistent with the Cash Management Order approving the Debtors' cash management motion. The Debtors shall comply with the covenants contained in the DIP Credit Agreement regarding conduct of business, including, without limitation, preservation of rights, qualifications, licenses, permits, privileges, franchises, governmental authorizations and intellectual property rights material to the conduct of their business and the maintenance of properties and insurance. (f) Reporting Requirements. As additional adequate protection to the Prepetition First Lien Term Loan Secured Parties and the Prepetition First Lien Notes Secured Parties, the Debtors shall comply with all reporting requirements set forth in the DIP Credit

Bankruptcy Code	Summary of Material Terms
	Agreement. (g) Miscellaneous. Except for (i) the Carve Out and (ii) as otherwise provided in paragraphs 6 and 7, the First Lien Adequate Protection Liens and First Lien Adequate Protection Superpriority Claims granted to the Prepetition First Lien Term Loan Secured Parties and the Prepetition First Lien Notes Secured Parties pursuant to paragraph 8 of the Interim Order shall not be subject, junior, or *pari passu*, to any lien or security interest that is avoided and preserved for the benefit of the Debtors' estates under the Bankruptcy Code, including, without limitation, pursuant to section 551 of the Bankruptcy Code or otherwise, and shall not be subordinated to or made *pari passu* with any lien, security interest or administrative claim under the Bankruptcy Code, including, without limitation, pursuant to section 364 of the Bankruptcy Code or otherwise. Adequate Protection for the Prepetition Second Lien Term Loan Secured Parties. Subject only to the Carve Out, the First Lien Adequate Protection Obligations, and the terms of the Interim Order, pursuant to sections 361, 363(e), and 364 of the Bankruptcy Code, and in consideration of the stipulations and consents set forth in the Interim Order, as adequate protection of their interests in the Prepetition Second Lien Term Loan Collateral (including Cash Collateral), as applicable, for any Diminution in Value, resulting from, among other things, the imposition of the priming DIP Liens on the Prepetition Second Lien Term Loan Collateral, the Carve Out, the Debtors' use of the Prepetition Second Lien Term Loan Collateral (in each case, including Cash Collateral), and the imposition of the automatic stay, the Prepetition Second Lien Term Loan Agent, for the benefit of itself and the Prepetition Second Lien Term Loan Secured Parties, is hereby granted the following (collectively, the "Second Lien Adequate Protection Obligations", and together with the First Lien Adequate Protection Obligations, the "Adequate Protection Obligations"): (a) Second Lien Adequate Protection Liens. As security for any Diminution in Value, additional and replacement, valid, binding, enforceable, non-avoidable, and effective and automatically perfected postpetition security interests in and liens as of the date of the Interim Order (together, the "Second Lien Adequate Protection Liens", and together with the First Lien Adequate Protection Liens, the "Adequate Protection Liens"), without the necessity of the execution by the Debtors (or recordation or other filing), of security agreements, control agreements, pledge agreements, financing statements, mortgages, or other similar documents, on all DIP Collateral and, upon entry of the Final Order, all proceeds or property recovered from Avoidance Actions. Subject to the terms of the Interim Order, the Second Lien Adequate Protection Liens shall be subordinate only to the (A) Carve Out, (B) the DIP Liens, (C) Prior Senior Liens, (D) the First Lien Term Loan Liens, (E) the First Lien Notes Liens, and (F) the First Lien Adequate Protection Liens. The Second Lien Adequate Protection Liens shall otherwise be senior to all other security interests in, liens on, or claims against any of the DIP Collateral (including, for the avoidance of doubt, any lien or security interest that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code). (b) Second Lien Adequate Protection Superpriority Claims. As further adequate protection, and to the extent provided by sections 503(b), 507(a), and 507(b) of the Bankruptcy Code, allowed administrative expense claims in each of the Cases ahead of and senior to any and all other administrative expense claims in such Cases to the extent of any postpetition Diminution in Value (the "Second Lien Adequate Protection Superpriority Claims", and together with the First Lien Adequate Protection Superpriority Claims, the "Adequate Protection Superpriority Claims"), but junior to the Carve Out, the DIP Superpriority Claims, and the First Lien Adequate Protection Superpriority Claims. Subject to the Carve Out, the DIP Superpriority Claims, and the First Lien Adequate Protection

Bankruptcy Code	Summary of Material Terms
	Superpriority Claims in all respects, and to the extent set forth in the Bankruptcy Code, the Second Lien Adequate Protection Superpriority Claims will not be junior to any claims and shall have priority over all administrative expense claims against each of the Debtors, now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, administrative expense claims of the kinds specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 365, 503(a), 503(b), 506(c) (subject to entry of the Final Order), 507(a), 507(b), 546(d), 726, 1113, and 1114 of the Bankruptcy Code. (c) Second Lien Adequate Protection Payments. As further adequate protection, the Debtors are authorized and directed to pay, in accordance with the terms of paragraph 18 of the Interim Order, all reasonable and documented fees and expenses up to $100,000 (the "Second Lien Adequate Protection Fees"), to the extent not duplicative of any fees and/or expenses paid pursuant to paragraph 3(e)(3) hereof, of counsel to the Prepetition Second Lien Term Lenders. None of the Second Lien Adequate Protection Fees shall be subject to separate approval by this Court or the U.S. Trustee Guidelines, and no recipient of any such payment shall be required to file any interim or final fee application with respect thereto or otherwise seek the Court's approval of any such payments. *See* Interim Order ¶¶ 8, 9.
Repayment Features Local Rule 4001-2(a)(i)(E)	Optional Prepayments. The Borrowers may, upon notice to the Administrative Agent, at any time or from time to time voluntarily prepay Term Loans in whole or in part without premium or penalty other than the Exit Fee; *provided* that (1) such notice must be received by the Administrative Agent not later than 1:00 p.m. (A) three (3) Business Days prior to any date of prepayment of SOFR Loans, (B) [reserved], and (C) on the date of prepayment of Base Rate Loans; (2) any prepayment of SOFR Loans shall be in a minimum principal amount of $1,000,000 or a whole multiple of $500,000 in excess thereof; (3) any prepayment of Base Rate Loans shall be in a minimum principal amount of $500,000 or a whole multiple of $100,000 in excess thereof or, in the case of each of clauses (2) and (3), the entire principal amount thereof then outstanding. Each such notice shall specify the date and amount of such prepayment and the Class(es) and Type(s) of Loans to be prepaid. The Administrative Agent will promptly notify each Appropriate Lender of its receipt of each such notice, and of the amount of such Lender's Pro Rata Share of such prepayment. Any prepayment of a Contract Rate Loan shall be accompanied by all accrued interest thereon and any additional amounts required pursuant to Section 3.05. For the avoidance of doubt, the Borrowers may prepay any Class of Term Loans as the Borrowers may select. At the Borrower's election in connection with any prepayment pursuant to Section 2.05(a) of the DIP Credit Agreement, such prepayment shall not be applied to any Loan of a Defaulting Lender. Mandatory Prepayments. (a) [reserved]. (b) If (x) the U.S. Borrower or any Restricted Subsidiary Disposes of any property or assets (other than any Disposition of any property or assets permitted by Section 7.05 of the DIP Credit Agreement (except pursuant to Section 7.05(l) or 7.05(a) of the DIP Credit Agreement), or (y) any Casualty Event occurs, which results in the realization or receipt by the U.S. Borrower or such Restricted Subsidiary of Net Cash Proceeds, the Borrowers shall make a prepayment (or cause to make a prepayment), in accordance with Section 2.05(b)(ii)(C) of the DIP Credit Agreement, of an aggregate principal amount of Term Loans equal to 100% of such Net Cash Proceeds. i. [reserved] ii. On each occasion that the Borrowers must make a prepayment of the Term Loans pursuant to Section 2.05(b)(ii) of the DIP Credit Agreement, the Borrowers shall, within five (5) Business Days after the date of realization or receipt of such Net

Bankruptcy Code	Summary of Material Terms
	Cash Proceeds, make a prepayment (or cause to make a prepayment), in accordance with Section 2.05(b)(v) of the DIP Credit Agreement, of the principal amount of Term Loans in an amount equal to the Net Cash Proceeds realized or received. (c) On each occasion that a Debt Incurrence Prepayment Event occurs, the Borrowers shall, within one Business Day after the receipt of Net Cash Proceeds from a Debt Incurrence Prepayment Event, prepay in accordance with clause (d) below, a principal amount of Term Loans and unpaid accrued interest and premium thereon in an amount equal to 100% of the Net Cash Proceeds from such Debt Incurrence Prepayment Event. (d) Except as set forth in clause (e) below, (x) each prepayment of Loans pursuant to Section 2.05(b) of the DIP Credit Agreement shall be applied, with respect to the Term Loans; and each such prepayment shall be paid to the Lenders in accordance with their respective Pro Rata Shares and (y) each prepayment of Term Loans required by Sections 2.05(b)(i) of the DIP Credit Agreement through (iii) shall be allocated to the Classes of Term Loans outstanding, pro rata, based upon the applicable remaining principal amounts due in respect of each such Class of Term Loans, shall be applied pro rata to Lenders within each Class, based upon the outstanding principal amounts owing to each such Lender under each such Class of Term Loans. (e) The Borrowers shall notify the Administrative Agent in writing of any mandatory prepayment of Term Loans required to be made pursuant to clauses (i), (ii) and (iii) of Section 2.05(b) of the DIP Credit Agreement at least three (3) Business Days prior to 1:00 p.m. on the date of such prepayment. The Administrative Agent will promptly notify each Appropriate Lender of the contents of the Borrowers' prepayment notice and of such Appropriate Lender's Pro Rata Share of the prepayment. Each Appropriate Lender may reject all or a portion of its Pro Rata Share of any mandatory prepayment (such declined amounts, the "Declined Proceeds") of Term Loans required to be made pursuant to clauses (i) and (ii), of Section 2.05(b) of the DIP Credit Agreement by providing written notice (each, a "Rejection Notice") to the Administrative Agent and the Borrowers no later than 9:00 a.m. one (1) Business Day after the date of such Lender's receipt of notice from the Administrative Agent regarding such prepayment. Each Rejection Notice from a given Lender shall specify the principal amount of the mandatory prepayment of Term Loans to be rejected by such Lender. If a Lender fails to deliver a Rejection Notice to the Administrative Agent within the time frame specified above or such Rejection Notice fails to specify the principal amount of the Term Loans to be rejected, any such failure will be deemed an acceptance of the total amount of such mandatory repayment of Term Loans. Any Declined Proceeds shall be returned to and be permitted to be retained by the Borrowers("Retained Declined Proceeds"). *See* DIP Credit Agreement, Section 2.05.
Fees Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(ii)	Commitment Fee: The Borrowers agree to pay to the Administrative Agent for the ratable account of the DIP Term Loan Lenders, upfront fees in the amount of $900,000 (representing 2.00% of the DIP Term Loan Commitments in effect immediately prior to the funding of any DIP Term Loans on the Closing Date) (the "Commitment Fee"), which shall be fully earned on the Closing Date and due and payable on Closing Date and shall be paid in cash on the Closing Date and shall be treated (and reported) by the Borrower and the Administrative Agent as put option premium or original issue discount for U.S. federal, state, and local income tax purposes. Fee Letters: The Borrowers agree to pay all fees and expenses as set forth in the Administrative Agent Fee Letter and the Fronting Fee Letter. Backstop Fee: The Borrowers agree to pay to each of the Backstop Parties ratably based on the amount set forth next to each Backstop Party's name on Schedule 2.09, a backstop fee in

Bankruptcy Code	Summary of Material Terms
	the amount of $2,250,000 (representing 5.00% of the DIP Term Loan Commitments in effect immediately prior to the funding of any DIP Term Loans on the Closing Date) (the "Backstop Fee"), which shall be fully earned on the Closing Date and due and payable on Closing Date and shall be paid in cash on the Closing Date and shall be treated (and reported) by the Borrowers and Backstop Parties as put option premium for U.S. federal, state and local income tax purposes. Exit Fee: The Borrowers agree to pay to the Administrative Agent for the ratable account of the DIP Term Loan Lenders ratably based on their DIP Term Loans, exit fees in the amount of $562,500 (representing 1.25% of the DIP Term Loan Commitments) (the "Exit Fee"), which shall be due and shall be paid in cash upon the earlier to occur of (i) any voluntary prepayment of any DIP Term Loans, which has been made pursuant to Section 2.05(a) of the DIP Credit Agreement or any mandatory prepayment of the DIP Term Loans, or any voluntary termination of Commitments and (ii) the Maturity Date and which shall be treated (and reported) by the Borrowers and the Administrative Agent as original issue discount for U.S. federal, state, and local income tax purposes. *See* DIP Credit Agreement, Section 2.09.
Budget Bankruptcy Rule 4001 (c)(1)(B) Local Rule 4001-2(a)(ii) **Variance Covenant** Bankruptcy Rule 4001(c)(l)(B) Local Rule 4001-2(a)(ii)	The use of Loans by the Loan Parties under the DIP Credit Agreement and the other Loan Documents shall be limited in accordance with the Approved Budget (subject to Permitted Variances). The Approved Budget shall set forth, on a weekly basis, for the period ending the week of September 6, 2024 covered thereby, the Budgeted Cash Receipts, Budgeted Disbursement Amounts, Budgeted Liquidity and Budgeted Borrower Professional Fees for the period commencing with the week that includes the Closing Date and shall be approved by, and be in form and substance satisfactory to, the Required Lenders (it being acknowledged and agreed that the form of Approved Budget set forth as Exhibit V to the DIP Credit Agreement is approved by and satisfactory to the Required Lenders and is and shall be the Approved Budget unless and until replaced in accordance with the terms of Section 6.20 of the DIP Credit Agreement). The Approved Budget shall (i) include line-item reporting, the nature and scope of which shall be satisfactory to the Required Lenders, and (ii) otherwise be in form and substance satisfactory to, and subject to the approval of, the Required Lenders. The Approved Budget shall be updated, modified or supplemented by the Borrowers on July 12, 2024 if requested by the Borrowers or the Required Lenders; *provided* that the Borrowers shall be limited to two (2) requests for an updated Approved Budget during the ninety (90) days following the Petition Date; *provided*, *further*, that no such updated, modified or supplemented budget shall be effective as an Approved Budget if Required Lenders object in writing (which objection may be communicated by means of a Direction of the Required Lenders) within ten (10) Business Days of receipt, and, if no written objection is received within ten (10) Business Days of receipt, the updated, modified or supplemented budget shall be deemed an Approved Budget; *provided further*, however, that in the event the Required Lenders, on the one hand, and the Borrower, on the other hand, cannot agree as to an updated, modified or supplemented budget, the then current Approved Budget shall remain in effect unless and until a new Approved Budget is not objected to by the Required Lenders (which objection may be communicated by means of a Direction of the Required Lenders). Each Approved Budget delivered to the Administrative Agent and the Lender Advisors shall be accompanied by such supporting documentation as reasonably requested by the Required Lenders. Each Approved Budget shall be prepared in good faith based upon assumptions believed by the Borrowers to be reasonable at the time of preparation thereof. Commencing with the First Testing Period and for each Variance Testing Period thereafter, the Borrowers shall not permit: (x) the Actual Cash Receipts to be less than Budgeted Cash

Bankruptcy Code	Summary of Material Terms
	Receipts (each calculated on a cumulative basis as opposed to on a line by line basis), in each case, for such Variance Testing Period, by more than 15.0% for such Variance Testing Period; and (y) "Total Operating Disbursements" to exceed the Budgeted Disbursement Amounts (for the avoidance of doubt, excluding Budgeted Borrower Professional Fees) (each calculated on a cumulative basis as opposed to on a line by line basis), in each case, for such Variance Testing Period, by more than 10.0% for such Variance Testing Period (the "Permitted Variances"). It is understood and agreed that the Borrowers shall receive credit in subsequent Variance Testing Periods (x) for purposes of the receipts test set forth in clause (x) of the prior sentence, for any overperformance on receipts for the applicable Variance Testing Periods prior thereto and (y) for purposes of the disbursements test set forth in clause (y) of the prior sentence, for any overperformance on disbursements for the applicable Variance Testing Periods prior thereto. The use of cash and proceeds from loans under the DIP Facility is subject to other customary budget terms. *See* DIP Credit Agreement, Section 6.20; Interim Order ¶ 4.
Events of Default Bankruptcy Rule 4001(c)(l)(B) Local Rule 4001-2(a)(ii)	The DIP Credit Agreement and Interim Order contain events of default that are usual and customary for debtor-in-possession financings including: violations of the Interim Order or Final Order; dismissal of the Debtors' chapter 11 cases; amendment of the Interim or Final Order in a manner adverse to the DIP Lenders; filing a chapter 11 plan that does not propose to repay the DIP Facility in full (except in the event the Distributable Value and other costs do not exceed the DIP Obligations in accordance with Section 2.07 of the DIP Credit Agreement); entry of a bankruptcy court order granting a lien that is equal or senior in priority to the liens securing the DIP Facility (except for Permitted Liens); the bankruptcy court enters an order lifting the stay as to a material asset (other than with the consent of the DIP Lenders); and failure to satisfy the Milestones (as defined in the RSA). *See* DIP Credit Agreement, Art. VIII.
Default Notice Local Rule 4001-2(a)(i)(S)	Subject to the terms and conditions of the DIP Order and the Carve-Out, if any Event of Default occurs and is continuing (other than an Event of Default under Section 8.01(b)(ii) of the DIP Credit Agreement unless the conditions of the second proviso contained therein have been satisfied), the Administrative Agent may and, at the request of the Required Lenders, shall take any or all of the following actions: (a) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrower; (b) declare a restriction or termination of the Loan Parties' ability to use cash collateral; and (c) exercise on behalf of itself and the Lenders all rights and remedies available to it and the Lenders under the Loan Documents or applicable law. *See* DIP Credit Agreement, Section 8.02.
Indemnification Bankruptcy Rule 4001(c)(1)(B)(ix)	The Debtors will indemnify each of the DIP Lenders, each Backstop Party (whether or not such Backstop Party is a Lender at such time), the DIP Agent, the Prepetition Agents, the Prepetition First Lien Secured Parties, and each of their respective affiliates, successors, and assigns and the officers, directors, employees, agents, attorneys, advisors, controlling persons, and members of each of the foregoing (each an "Indemnified Person") and hold

Bankruptcy Code	Summary of Material Terms
	them harmless from and against all costs, expenses (including but not limited to reasonable and documented legal fees and expenses), and liabilities arising out of or relating to the transactions contemplated hereby and any actual or proposed use of the proceeds of any loans made under the DIP Facility as and to the extent provided in the DIP Credit Agreement. *See* DIP Credit Agreement, Section 10.05; Interim Order ¶ 18(c).
Milestones Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(ii)	The Debtors are required to comply with the milestones contained in the Restructuring Support Agreement and the DIP Credit Agreement. *See* DIP Credit Agreement, <u>Annex I</u>.
Entities with Interests in Cash Collateral Bankruptcy Rule 4001(b)(l)(B)(i)	The Prepetition Secured Parties have an interest in the Cash Collateral. *See* Interim Order, Recital F(vii).
Carve Out Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(i)(f)	The DIP Orders provide a "Carve Out" of certain statutory fees and allowed professional fees, all as detailed in the Interim Order. *See* Interim Order ¶ 10.
Liens and Priorities Bankruptcy Rule 4001(c)(l)(B)(i) 4001(c)(l)(B)(xi) Local Rule 4001-2(a)(i)(D), 4001-2(a)(i)(G), 4001-2(a)(i)(U), 4001-2(a)(ii)	As security for the DIP Obligations, effective and perfected upon the date of the Interim Order, and without the necessity of the execution, recordation of filings by the Debtors of mortgages, security agreements, control agreements, pledge agreements, financing statements, or other similar documents, or the possession or control by the DIP Agent or any DIP Lender of, or over, any DIP Collateral (as defined below), the following security interests and liens are hereby granted by the Debtors to the DIP Agent, for the benefit of the DIP Secured Parties (all property identified in clause (a) and (b) below being collectively referred to as the "<u>DIP Collateral</u>"), subject only to (x) Prior Senior Liens, (y) the Excluded Property (as defined in the DIP Credit Agreement), and (z) the Carve Out (all such liens and security interests granted to the DIP Agent, for the benefit of the DIP Lenders, pursuant to the Interim Order and the DIP Documents, the "<u>DIP Liens</u>"): *First Priority Lien on Any Unencumbered Property*. Subject only to the Carve Out, pursuant to section 364(c)(2) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected, non-avoidable, automatically, and properly perfected first priority senior security interest in and lien upon all property of the Debtors, whether existing on the Petition Date or thereafter acquired, that, on or as of the Petition Date is not subject to valid, perfected, and non-avoidable liens (or perfected after the Petition Date to the extent permitted by section 546(b) of the Bankruptcy Code) including, without limitation (in each case, to the extent not subject to valid, perfected, and non-avoidable liens), a 100% equity pledge of all first-tier foreign subsidiaries and all unencumbered assets of the Debtors; all prepetition property and post-petition property of the Debtors' estates, and the proceeds, products, rents and profits thereof, whether arising from section 552(b) of the Bankruptcy Code or otherwise, including, without limitation, unencumbered cash, if any, (and any investment of such cash) of the Debtors (whether maintained with the DIP Agent or otherwise); all equipment, all goods, all accounts, cash, payment intangibles, bank accounts and other deposit or securities accounts of the Debtors (including any accounts opened prior to, on, or after the Petition Date to the fullest extent permitted under applicable law); all insurance policies and

Bankruptcy Code	Summary of Material Terms
	proceeds thereof, equity interests, instruments, intercompany claims, accounts receivable, other rights to payment, all general intangibles, all contracts and contract rights, securities, investment property, letters of credit and letter of credit rights, chattel paper, all interest rate hedging agreements of the Debtors; all owned real estate, real property leaseholds and fixtures of the Debtors; patents, copyrights, trademarks, trade names, rights under license agreements and other intellectual property of the Debtors; all commercial tort claims of the Debtors; and all claims and causes of action (including causes of action under section 549 of the Bankruptcy Code, claims arising on account of transfers of value from a Debtor to (x) another Debtor and (y) a non-Debtor affiliate incurred on or following the Petition Date), and any and all proceeds, products, rents, and profits of the foregoing, all products and proceeds of the foregoing and, subject to entry of the Final Order, all proceeds and property recovered in respect of Avoidance Actions (collectively, the "Previously Unencumbered Property"); provided, for the avoidance of doubt, and notwithstanding anything to the contrary contained in the Interim Order, to the extent a lien cannot attach to any of the foregoing pursuant to applicable law, the liens granted pursuant to the Interim Order shall attach to the Debtors' economic rights, including, without limitation, any and all proceeds of the foregoing. *Liens Priming the Prepetition Liens*. Subject only to the Carve Out and Prior Senior Liens, pursuant to section 364(d)(1) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected first priority senior priming security interest in and lien upon all property of the Debtors that was subject to the Prepetition Liens, including, without limitation, the Prepetition Collateral and Cash Collateral; provided, for the avoidance of doubt, and notwithstanding anything to the contrary contained in the Interim Order, to the extent a lien cannot attach to any of the foregoing pursuant to applicable law, the liens granted pursuant to the Interim Order shall attach to the Debtors' economic rights, including, without limitation, any and all proceeds of the foregoing. *Liens Junior to Certain Other Liens*. Subject only to the Carve Out, pursuant to section 364(c)(3) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully perfected security interest in and lien upon all prepetition and post-petition property of the Debtors immediately junior to the Prior Senior Liens. *See* Interim Order ¶ 7
506(c) Waiver; Section 552(b) Bankruptcy Rule 4001(c)(l)(B)(x); 4001(c)(1)(B) Local Rule 4001-2(a)(i)(C), 4001-2(a)(i)(H) 4001-2(a)(i)(W)	Subject to entry of the Final Order, no expenses of administration of the Cases or any future proceeding that may result therefrom, including liquidation in bankruptcy or other proceedings under the Bankruptcy Code, shall be charged against or recovered from (a) the DIP Collateral (except to the extent of the Carve Out), the DIP Agent, or the DIP Lenders or (b) the Prepetition Collateral (except to the extent of the Carve Out) or the Prepetition Secured Parties, in each case, pursuant to sections 105(a) or 506(c) of the Bankruptcy Code or any similar principle of law or equity, without the prior written consent of the DIP Agent, the DIP Lenders, and the Prepetition First Lien Secured Parties, as applicable, and no such consent shall be implied from any other action, inaction, or acquiescence by the DIP Agent, the DIP Lenders, or the Prepetition Secured Parties. The Prepetition Secured Parties shall each be entitled to all the rights and benefits of section 552(b) of the Bankruptcy Code, and, subject to and upon entry of the Final Order, the "equities of the case" exception under section 552(b) of the Bankruptcy Code shall not apply to the Prepetition Secured Parties with respect to proceeds, product, offspring, or profits of any of the Collateral (including the Prepetition Collateral). *See* Interim Order ¶¶ 16, 36

Bankruptcy Code	Summary of Material Terms
Provisions Limiting the Court's Power and/or Discretion Local Rules 4001-2(a)(i)(C)	None.
Stipulations to Prepetition Liens and Claims Bankruptcy Rule 4001(c)(1)(B)(iii) Local Rule 4001-2(a)(i)(B)	After consultation with their attorneys and financial advisors, and without prejudice to the rights of parties-in-interest, the Debtors, on their behalf and on behalf of their estates, admit, stipulate, acknowledge, and agree immediately upon entry of the Interim Order, to certain stipulations regarding the validity and extent of the Prepetition First Lien Secured Parties' claims and liens. *See* Interim Order ¶ F.
Waiver/Modification of Applicability of Non-bankruptcy Law Relating to Perfection or Enforceability of Liens Bankruptcy Rule 4001(c)(1)(B)(vii)	The Prepetition Obligations shall constitute allowed claims, not subject to counterclaim, setoff, recoupment, reduction, subordination, recharacterization, defense, or avoidance for all purposes in the Debtors' Cases and any Successor Cases; (c) the Prepetition Liens shall be deemed to have been, as of the Petition Date, legal, valid, binding, and perfected secured claims, not subject to recharacterization, subordination, or avoidance; and (d) all of the Debtors' stipulations and admissions contained in the Interim Order, including the Debtors' Stipulations, and all other waivers, releases, affirmations, and other stipulations as to the priority, extent, and validity as to the Prepetition Secured Parties' claims, liens, and interests contained in the Interim Order shall be of full force and effect and forever binding upon the Debtors, the Debtors' estates, and all creditors, interest holders, and other parties in interest in these Cases and any Successor Cases. *See* Interim Order ¶ 12.
Joint Liability Local Rule 4001-2(a)(i)(J)	The DIP Guarantors are hereby authorized and directed to jointly, severally, and unconditionally guarantee, and upon entry of the Interim Order shall be deemed to have guaranteed, in full, all of the DIP Obligations of the DIP Borrowers. *See* Interim Order ¶ 3(g).
Milestones Bankruptcy Rule 4001(c)(1)(B)(vi) Local Rule 4001-2(a)(i)(H)	(a) No later than June 9, 2024, the Company Parties shall file (i) petitions in the Bankruptcy Court to commence the chapter 11 cases and (ii) within 24 hours thereafter file the First Day Pleadings, the DIP Motion, and the Bidding Procedures Motion; (b) No later than June 12, 2024, the Bankruptcy Court shall have entered the Interim DIP Order; (c) No later than July 1, 2024, the Debtors shall have (i) designated a stalking horse and (ii) received indications of interest that, individually or in the aggregate, in the good faith estimate of the Debtors and their advisors, with the consent of the Required Lenders, are likely to lead to bids that, individually or in the aggregate, meet the Minimum Bid Requirement as set forth in the Bidding Procedures and the Bidding Procedures Order; provided that if the Debtors do not receive any indications of interest consistent with the foregoing clause, then the Debtors shall terminate the sale process, cancel the auction, and, with the consent of the Required Lenders, wind down their estates pursuant to a Plan in a manner consistent with the RSA; (d) No later than July 8, 2024, the Bankruptcy Court shall have entered the Bidding Procedures Order; (e) No later than July 14, 2024, the Bankruptcy Court shall have entered the Final DIP Order;

Bankruptcy Code	Summary of Material Terms
	(f) No later than July 22, 2024, the Debtors shall have received bids that, individually or in the aggregate, meet the Minimum Bid Requirement as set forth in the Bidding Procedures and the Bidding Procedures Order; provided that if the Debtors do not receive any bids consistent with the foregoing clause, then the Debtors shall terminate the sale process, cancel the auction, and, with the consent of the Required Lenders, wind down their estates pursuant to a Plan in a manner consistent with the RSA; (g) No later than July 25, 2024, the auction shall have occurred, if applicable; (h) No later than July 29, 2024, the Bankruptcy Court shall have entered the Sale Orders, if applicable; and (i) No later than August 19, 2024, the Debtors shall have consummated the Sale Transactions. *See* DIP Credit Agreement 6.19 and Annex I; Interim Order ¶ 14.
Challenge Period Bankruptcy Rule 4001(c)(l)(B) Local Rule 4001-2(a)(i)(B) 4001-2(a)(i)(L)	Seventy-five (75) calendar days after entry of the Interim Order (the "Challenge Period" and the date of expiration of the Challenge Period, the "Challenge Period Termination Date"); provided, however, that if, prior to the end of the Challenge Period, (x) the cases convert to chapter 7, or (y) if a chapter 11 trustee is appointed, then, in each such case, the Challenge Period shall be extended by the later of (A) the time remaining under the Challenge Period plus ten (10) days or (B) such other time as ordered by the Court solely with respect to any such trustee, commencing on the occurrence of either of the events discussed in the foregoing clauses (x) and (y); *provided*, that the Challenge Period shall not be extended past the date of a hearing on the approval of the Debtors' proposed sale transaction(s), if any, before this Court. The limitation on estate funds related to the Challenge Period is $50,000. *See* Interim Order ¶ 12, 27
Approval of the DIP Facility Local Rule 4001-2(a)(i)(R)	The Interim Order provides for approval of the DIP Facility to the extent and for the amounts set forth in the Interim Order. *See* Interim Order ¶ 1.
Waiver/Modification of the Automatic Stay Bankruptcy Rule 4001(c)(1)(B)(iv)	Pursuant to the Interim Order, the automatic stay provisions of section 362 of the Bankruptcy Code are modified to the extent necessary to implement and effectuate the terms of the Interim Order. *See* Interim Order ¶ 3(e).
Cross-Collateralization and Administrative Expense Status Local Rule 4001-2(a)(i)(N)	Subject to, and subordinate in all respects to, the Carve Out, pursuant to section 364(c)(1) of the Bankruptcy Code, all of the DIP Obligations shall constitute allowed superpriority administrative expense claims against each of the Debtors' estates (the "DIP Superpriority Claims") (without the need to file any proof of claim) to the extent set forth in the Bankruptcy Code, with priority over any and all administrative expenses, adequate protection claims, diminution claims, and all other claims against the Debtors, now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, and over any and all administrative expenses or other claims arising under sections 105, 326, 327, 328, 330, 331, 361, 362, 364, 365, 503(b), 506(c), 507(a), 507(b), 726, 1113, or 1114 of the Bankruptcy Code or otherwise, which allowed claims shall for the purposes of section 1129(a)(9)(A) of the Bankruptcy Code be considered administrative expenses allowed under section 503(b) of the Bankruptcy Code and which shall be payable from and have recourse to all prepetition and postpetition property of the Debtors and all proceeds

Bankruptcy Code	Summary of Material Terms
	thereof, including, without limitation, the DIP Collateral and including, without limitation, subject to entry of the Final Order, any proceeds or property recovered in connection with the pursuit of claims or causes of action arising under chapter 5 of the Bankruptcy Code, if any (the "Avoidance Actions"), subject only to the payment of the Carve Out. Except as set forth in the Interim Order or the Final Order, no other superpriority claims shall be granted or allowed in these Cases. *See* Interim Order ¶ 6.
Non-Consensual Priming Liens Local Rule 4001-2(a)(i)(P)	None.
Provisions Approving All Terms of the Loan Agreement Local Rule 4001-2(a)(i)(R)	None.
Limitation on Remedies Hearing Local Rule 4001-2(a)(i)(T)	During the Remedies Notice Period, the Debtors shall be entitled to seek an emergency hearing within the Remedies Notice Period with the Court for the sole purpose of contesting whether an Event of Default has occurred or is continuing. Except as set forth in paragraph 15 of the DIP Credit Agreement or otherwise ordered by the Court prior to the expiration of the Remedies Notice Period, after the Remedies Notice Period, the Debtors shall waive their right to and shall not be entitled to seek relief, including, without limitation, under section 105 of the Bankruptcy Code, to the extent such relief would in any way impair or restrict the rights and remedies of the DIP Agent, the DIP Lenders, or the Prepetition Secured Parties under the Interim Order. Unless the Court orders otherwise prior to the expiration of the Remedies Notice Period, the automatic stay, as to all of the DIP Agent, DIP Lenders, and Prepetition First Lien Secured Parties shall automatically be terminated at the end of the Remedies Notice Period without further notice or order. Upon expiration of the Remedies Notice Period, the DIP Agent (at the direction of the Required DIP Lenders) and the Prepetition First Lien Secured Parties shall be permitted to exercise all remedies set forth in the Interim Order, and in the DIP Documents, and as otherwise available at law without further order of or application or motion to this Court consistent with the Interim Order. Interim Order ¶ 15.
Marshaling Waiver Local Rule 4001-2(a)(i)(X)	Subject to entry of the Final Order, the DIP Agent and the DIP Secured Parties shall not be subject to the equitable doctrine of "marshaling" or any other similar doctrine with respect to any of the DIP Collateral, and proceeds of the DIP Collateral shall be received and applied pursuant to the Interim Order, the DIP Documents and the Prepetition Documents, notwithstanding any other agreement or provision to the contrary, and the Prepetition Secured Parties shall not be subject to the equitable doctrine of "marshaling" or any other similar doctrine with respect to any of the Prepetition Collateral. Interim Order ¶ 34.

<u>The Debtors' Prepetition Capital Structure and Need for the DIP Facility</u>

I. Prepetition Capital Structure.

16. As of the Petition Date, Vyaire had approximately $533.6 million in total funded debt obligations:

Funded Debt	Approximate Principal Amount Outstanding
First Lien Term Loan	$339.3 million
First Lien Notes	$78.6 million
First Lien Debt	**$417.9 million**
Second Lien Term Loan	$115.7 million
Total Funded Debt Obligations	**$533.6 million**

A. First Lien Facility.

17. On April 16, 2018, Vyaire Medical, Inc., Vyaire Company, and Vyaire Finance B.V., a private limited liability company incorporated under the laws of the Netherlands and an indirect, wholly owned subsidiary of Vyaire Holding Company, and certain other subsidiaries of the Company (all such subsidiaries of Vyaire Holding Company, whether in the capacity of a borrower, guarantor, obligor, or pledgor thereunder, the "<u>Obligated Subsidiaries</u>"), and the lenders party thereto from time to time (the "<u>First Lien Term Loan Lenders</u>"), entered into that certain First Lien Credit Agreement[6] (the "<u>First Lien Credit Agreement</u>," as may be amended, restated,

[6] For the avoidance of doubt, such agreement was amended by Amendment No. 1 to the First Lien Credit Agreement, dated as of October 15, 2018, as further amended by Amendment No. 2 to the First Lien Credit Agreement, dated as of September 13, 2019, as further amended by Amendment No. 3 to the First Lien Credit Agreement, dated as of April 7, 2020, as further amended by the Incremental Agreement to the First Lien Credit Agreement, dated as of August 18, 2020, as further amended by Amendment No. 5 to the First Lien Credit Agreement, dated as of September 17, 2021, as further amended by Amendment No. 6 to the First Lien Credit Agreement, dated as of August 19, 2022, as further amended by Amendment No. 7 to the First Lien Credit Agreement, dated as of January 24, 2023, as further amended by Amendment No. 8 to the First Lien Credit Agreement, dated as of May 18, 2023, as further amended by Amendment No. 9 to the First Lien Credit Agreement, dated as of April 10, 2024, and as may otherwise be amended, restated, supplemented, or otherwise modified from time to time.

amended and restated, supplemented or otherwise modified from time to time), which provides for a "First Lien Term Loan" in an initial principal amount of $360,000,000, priced at SOFR + 4.75% for Eurocurrency rate loans and 3.75% for base rate loans, payable every one, three, or six months (at the option of the Obligated Subsidiary) in arrears on each interest payment date.

18. The secured parties under the First Lien Credit Agreement have first-priority liens on all or substantially all assets and property of Vyaire Medical, Inc. and all guarantors. The First Lien Term Loan, unless amended, modified, or extended, will mature on April 16, 2025. At present, interest on the First Lien Term Loan is SOFR + 4.75%, which, as of May 17, 2024, equated to 10.1%. Bank of America, N.A. acts as administrative agent and collateral agent.

B. First Lien Notes.

19. On May 3, 2019, the Obligated Subsidiaries, as issuers, and the purchasers party thereto from time to time (the "Notes Purchasers" and, together with the First Lien Term Laon Lenders, the "First Lien Lenders") entered into that certain Note Purchase Agreement[7] (as may be amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "Note Purchase Agreement") with Wilmington Trust, National Association acting as notes agent and collateral agent. The Note Purchase Agreement provides for the purchase of a bank note (the "First Lien Notes") for approximately $60,000,000, at the fixed rate adjusted EURIBOR rate of 5.75%, payable every one, three, or six months (at the option of the Obligated Subsidiary) in arrears on each interest payment date. As a result of certain amendments to the Note Purchase Agreement, the borrowing capacity increased by $20,000,000, and as of September 30, 2023, the

[7] For the avoidance of doubt, such agreement was amended by Amendment No. 1 to the Note Purchase Agreement, dated as of October 1, 2019, as further amended by Amendment No. 2 to the Note Purchase Agreement, dated as of October 15, 2019, as further amended by Amendment No. 3 to the Note Purchase Agreement, dated as of April 7, 2020, as further amended by Amendment No. 4 to the Note Purchase Agreement, dated as of January 24, 2023, and as may otherwise be amended, restated, supplemented, or otherwise modified from time to time.

outstanding principal balance was approximately $76,262,000. At present, interest on the First Lien Notes is EURIBOR + 4.75%, which, as of May 17, 2024, equated to 8.5%. The First Lien Notes will mature on April 16, 2025, unless earlier converted, redeemed, or repurchased. The secured parties under the Note Purchase Agreement have first-priority liens on substantially the same assets and property as in the First Lien Credit Agreement.

C. Second Lien Facility.

20. On April 16, 2018, the Obligated Subsidiaries, and the lenders party thereto from time to time (the "Second Lien Lenders"), entered into that certain Second Lien Credit Agreement[8] (as may be amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "Second Lien Credit Agreement" and, together with the First Lien Credit Agreement, the "Credit Agreements"), which provides for a "Second Lien Term Loan" in an initial principal amount of €75,000,000, initially priced at EURIBOR + 7.25%, payable every one, three, or six months (at the option of the Obligated Subsidiary) in arrears on each interest payment date. Wilmington Trust, National Association acts as administrative agent and collateral agent.

21. Between November 6, 2018, and May 31, 2023, certain amendments to the Second Lien Credit Agreement were executed that allowed the Obligated Subsidiaries to make PIK interest

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[8] For the avoidance of doubt, such agreement was amended by Amendment No. 1 to the Second Lien Credit Agreement, dated as of November 6, 2018, as further amended by Amendment No. 2 to the Second Lien Credit Agreement, dated as of April 7, 2020, as further amended by Amendment No. 3 to the Second Lien Credit Agreement, dated as of May 31, 2022, as further amended by Amendment No. 4 to the Second Lien Credit Agreement, dated as of September 28, 2022, as further amended by Amendment No. 5 to the Second Lien Credit Agreement, dated as of January 24, 2023, and as may otherwise be amended, restated, supplemented, or otherwise modified from time to time.

payments on the relevant interest payment date. At present, interest on the Second Lien Term Loan is EURIBOR + 8.25%, which, as of May 17, 2024, equated to 12.08%.

22. The Second Lien Term Loan, unless amended, modified, or extended, will mature on April 16, 2026.

23. The collateral priority and enforcement rights as between the First Lien Credit Agreement and the Note Purchase Agreement are governed by a *pari passu* intercreditor agreement; and the collateral priority and enforcement rights as between the First Lien Credit Agreement, Note Purchase Agreement, and Second Lien Credit Agreement are governed by a first lien-second lien intercreditor agreement.

D. Equity Interests.[9]

24. The equity of Vyaire Holding Company, the topco Debtor, is 100% owned by Vyaire Intermediate HoldCo LP which, in turn, is 99.8% beneficially owned by Apax. Vyaire Holding Company is authorized to issue 4,000,000 shares of preferred stock at $.01 par value, but no shares are currently issued and outstanding.

II. Alternative Sources of Financing Are Not Readily Available.

25. As further described in the Schlappig Declaration, the Debtors do not have any alternative sources of financing readily available with terms better than those included in the DIP Facility. The Debtors and their advisors engaged with numerous parties, including Apax and the Second Lien Lenders, in connection with both the Debtors' prepetition efforts to secure bridge financing and to potentially fund these chapter 11 cases. Specifically, after the Debtors were

[9] In 2018, Apax bought out BD's remaining ownership stake in Vyaire, giving Apax 99.98% control. Katarina Sallerfors, Funds advised by Apax Partners to acquire remaining minority stake in Vyaire Medical from BD (Mar. 19, 2018), https://www.apax.com/news-views/funds-advised-by-apax-partners-to-acquire-remaining-minority-stake-in-vyaire-medical-from-bd/.

unable to secure an actionable bridge financing alternative, PJT contacted 10 third-party financial institutions to determine whether any of these parties would be willing to provide postpetition financing to the Debtors. Only the DIP Lenders were willing to provide the Debtors with a postpetition financing facility sufficient to meet the business needs of the Debtors during these chapter 11 cases. *See* Braley Decl. ¶ 15.

26. The terms of the DIP Facility are reasonable under the circumstances. The DIP Facility is the product of good-faith, robust arm's-length negotiations and is necessary for the Debtors to maximize value on behalf of their constituents in these chapter 11 cases. *See* Schlappig ¶ 12. Accordingly, the DIP Facility is in the best interests of the Debtors' estates and represents a sound exercise of the Debtors' reasonable business judgment.

Basis for Relief

I. The Debtors Should Be Authorized to Obtain Postpetition Financing Through the DIP Documents.

A. Entry into the DIP Documents Is a Sound Exercise of the Debtors' Business Judgment.

27. The Court should authorize the Debtors, as a sound exercise of their business judgment, to execute and deliver the DIP Documents and to obtain access to the DIP Facility. Section 364 of the Bankruptcy Code authorizes a debtor to obtain secured or superpriority financing under certain circumstances discussed in detail below. Courts grant a debtor in possession considerable deference in acting in accordance with its business judgment in obtaining postpetition secured credit, so long as the agreement to obtain such credit does not run afoul of the provisions of, and policies underlying, the Bankruptcy Code. *See, e.g.*, *In re Trans World Airlines, Inc.*, 163 B.R. 964, 974 (Bankr. D. Del. 1994) (approving a postpetition loan and receivables facility because such facility "reflect[ed] sound and prudent business judgment"); *In re L.A. Dodgers LLC*, 457 B.R. 308, 313 (Bankr. D. Del. 2011) ("[C]ourts will almost always defer to the

business judgment of a debtor in the selection of the lender."); *In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) ("[C]ases consistently reflect that the court's discretion under section 364 is to be utilized on grounds that permit reasonable business judgment to be exercised so long as the financing agreement does not contain terms that leverage the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to benefit a party-in-interest.").

28. Specifically, to determine whether the business judgment standard is met, a court need only "examine whether a reasonable businessperson would make a similar decision under similar circumstances." *In re Exide Techs.*, 340 B.R. 222, 239 (Bankr. D. Del. 2006); *see also In re Curlew Valley Assocs.*, 14 B.R. 506, 513–14 (Bankr. D. Utah 1981) (noting that courts should not second guess a debtor's business decision when that decision involves "a business judgment made in good faith, upon a reasonable basis, and within the scope of [the debtor's] authority under the [Bankruptcy] Code").

29. Furthermore, in considering whether the terms of postpetition financing are fair and reasonable, courts consider the terms in light of the relative circumstances of both the debtor and the potential lender. *In re Farmland Indus., Inc.*, 294 B.R. 855, 886 (Bankr. W.D. Mo. 2003) ("Viewed in isolation, several of the terms of the [postpetition financing] might appear to be extreme or even unreasonable. Certainly, many of them favor the DIP Lenders. But, taken in context, and considering the relative circumstances of the parties, the Court does not believe that the terms are unreasonable."); *see also Unsecured Creditors' Comm. Mobil Oil Corp. v. First Nat'l Bank & Trust Co. (In re Elingsen McLean Oil Co., Inc.*), 65 B.R. 358, 365 n.7 (W.D. Mich. 1986) (recognizing that a debtor may have to enter into "hard bargains" to acquire funds for its reorganization). Courts may also appropriately take into consideration noneconomic benefits to a

debtor offered by a proposed postpetition facility. For example, in *In re ION Media Networks, Inc.*, the bankruptcy court for the Southern District of New York held that:

> Although all parties, including the Debtors and the Committee, are naturally motivated to obtain financing on the best possible terms, a business decision to obtain credit from a particular lender is almost never based purely on economic terms. *Relevant features of the financing must be evaluated, including non-economic elements such as the timing and certainty of closing, the impact on creditor constituencies and the likelihood of a successful reorganization.* This is particularly true in a bankruptcy setting where cooperation and establishing alliances with creditor groups can be a vital part of building support for a restructuring that ultimately may lead to a confirmable reorganization plan. That which helps foster consensus may be preferable to a notionally better transaction that carries the risk of promoting unwanted conflict.

2009 WL 2902568, at *4 (Bankr. S.D.N.Y. July 6, 2009) (emphasis added).

30. The Debtors' decision to move forward with the DIP Facility is a sound exercise of their business judgment following an arm's-length process and careful evaluation of alternatives. Put simply, the DIP Financing represents the only financing available to the Debtors, and given the Debtors' current cash position and the lack of alternatives, the DIP Facility is necessary to preserve value for the benefit of all stakeholders. The Debtors and their advisors determined that the DIP Facility will create adequate liquidity necessary to administer these chapter 11 cases and to continue the Marketing and Sale Process for substantially all of the Debtors' assets. Moreover, the Debtors negotiated the DIP Credit Agreement and related DIP Documents with the DIP Lenders in good faith, at arm's-length, and with the assistance of their respective advisors, and the Debtors believe that they have obtained the best financing available under the circumstances. *See* Schlappig Decl. ¶ 27. Accordingly, the Court should authorize the Debtors' entry into the DIP Documents, as it is a sound exercise of the Debtors' business judgment.

B. The Debtors Should Be Authorized to Grant Liens and Superpriority Claims.

31. The Debtors propose to obtain financing under the DIP Facility by providing security interests and liens as set forth in the DIP Documents pursuant to section 364(c) and

section 364(d) of the Bankruptcy Code. More specifically, the Debtors propose to provide to the DIP Lenders, subject to the Carve Out, continuing, valid, binding, enforceable, non-avoidable, and automatically and properly perfected postpetition security interests in and liens on the DIP Collateral (as defined in the Interim Order), which include substantially all of the Debtors' assets, and, specifically, (a) a priming security interest and lien on the Prepetition Collateral to the extent such Prepetition Collateral is subject to prepetition liens that secure the prepetition secured obligations of the Prepetition Secured Parties, (b) a junior security interest and lien to all property of the Debtors that is subject to Prior Senior Liens, (c) a first lien priority senior security interest in all property of the Debtors that is not subject to a valid, perfected and non-avoidable lien, subject to and as further provided for in the DIP Documents and the Interim Order.

32. The statutory requirement for obtaining postpetition credit under section 364(c) of the Bankruptcy Code is a finding, made after notice and hearing, that a debtor is "unable to obtain unsecured credit allowable under section 503(b)(1) of [the Bankruptcy Code]." 11 U.S.C. § 364(c); *see also In re Crouse Grp., Inc.*, 71 B.R. 544, 549 (Bankr. E.D. Pa. 1987) (secured credit under section 364(c) of the Bankruptcy Code is authorized, after notice and hearing, upon showing that unsecured credit cannot be obtained). Courts have articulated a three-part test to determine whether a debtor is entitled to financing under section 364(c) of the Bankruptcy Code. Specifically, courts look to whether:

A. the debtor is unable to obtain unsecured credit under section 364(b) of the Bankruptcy Code—*i.e.*, by allowing a lender only an administrative claim;

B. the credit transaction is necessary to preserve the assets of the estate; and

C. the terms of the transaction are fair, reasonable, and adequate, given the circumstances of the debtor-borrower and proposed lenders.

In re Crouse Grp., Inc., 71 B.R. 544, 549 (Bankr. E.D. Pa. 1987); *see also L.A. Dodgers LLC*, 457 B.R. at 312–13 (Bankr. D. Del. 2011); *Ames Dep't Stores*, 115 B.R. at 37–40 (Bankr. S.D.N.Y. 1990); *In re St. Mary Hosp.*, 86 B.R. 393, 401 (Bankr. E.D. Pa. 1988).

33. As described above and set forth in the Schlappig Declaration, the Debtors recognized that it would be particularly difficult to secure postpetition financing because time was limited, all of the Debtors' cash and material assets are encumbered by existing liens under their prepetition debt, and the First Lien Lenders indicated that they would not consent to a "priming" DIP financing provided by a third party. *See* Schlappig Decl. at ¶ 13. In light of this, the Debtors and PJT understood that any third-party DIP financing would require engaging in a protracted and costly priming fight or valuation dispute with the First Lien Term Loan Lenders at the very outset of these chapter 11 cases. *Id.* Regardless of the prospects of success, the expense and disruption associated with complex litigation at the beginning of the case would seriously jeopardize the Debtors' restructuring efforts, as already strained liquidity would be required to fund such a fight. *Id.* Such litigation would also have had a disastrous effect on the Debtors' effort to garner consensus to swiftly drive these cases to a successful conclusion.

34. Absent the DIP Facility, which will provide sufficient liquidity to administer these chapter 11 cases, the value of the Debtors' estates would be significantly impaired to the detriment of all stakeholders. Given the Debtors' circumstances, the Debtors believe that the terms of the DIP Facility as set forth in the DIP Credit Agreement, are fair, reasonable, and adequate, all as

more fully set forth below. For all these reasons, the Debtors have met the standard for obtaining postpetition financing under section 364(c) of the Bankruptcy Code.

35. In the event that a debtor is unable to obtain unsecured credit allowable as an administrative expense under section 503(b)(1) of the Bankruptcy Code, section 364(c) of the Bankruptcy Code provides that a court may:

> authorize the obtaining of credit or the incurring of debt (1) with priority over any or all administrative expenses of the kind specified in section 503(b) or 507(b) of [the Bankruptcy Code]; (2) secured by a lien on property of the estate that is not otherwise subject to a lien; or (3) secured by a junior lien on property of the estate that is subject to a lien.

11 U.S.C. § 364(c). As described above, the Debtors are unable to obtain unsecured credit. Therefore, approving superpriority claims in favor of the DIP Lenders is reasonable and appropriate.

36. Further, section 364(d) of the Bankruptcy Code provides that a debtor may obtain credit secured by a senior or equal lien on property of the estate already subject to a lien, after notice and a hearing, where the debtor is "unable to obtain such credit otherwise" and "there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted." 11 U.S.C. § 364(d)(1). The Debtors may incur "priming" liens under the DIP Facility to the extent such DIP Collateral is subject to prepetition liens that secure the prepetition secured obligations of the Prepetition Secured Parties. *See Anchor Savs. Bank FSB v. Sky Valley, Inc.*, 99 B.R. 117, 122 (N.D. Ga. 1989) ("[B]y tacitly consenting to the superpriority lien, those [undersecured] creditors relieved the debtor of having to demonstrate that they were adequately protected."). Accordingly, the Debtors may incur "priming" liens under the DIP Facility if either (a) their Prepetition Secured Parties have consented

(at the threshold required under the Prepetition Documents) or (b) the Prepetition Secured Parties' interests in collateral are adequately protected.

37. Here, the Ad Hoc Groups affirmatively consented to the DIP Facility and actively participated in facilitating the proposed DIP Facility. Moreover, as set forth more fully in the Interim Order, the Debtors propose to provide an adequate protection package to protect the interests of the Prepetition Secured Parties. Therefore, the relief requested pursuant to section 364(d)(1) of the Bankruptcy Code is appropriate.

C. No Comparable Alternative to the DIP Facility Is Reasonably Available.

38. A debtor need only demonstrate "by a good faith effort that credit was not available without" the protections afforded to potential lenders by sections 364(c) of the Bankruptcy Code. *In re Snowshoe Co., Inc.*, 789 F.2d 1085, 1088 (4th Cir. 1986); *see also In re Reading Tube Indus.*, 72 B.R. 329, 332 (Bankr. E.D. Pa 1987). Moreover, in circumstances where only a few lenders likely can or will extend the necessary credit to a debtor, "it would be unrealistic and unnecessary to require [the debtor] to conduct such an exhaustive search for financing." *In re Sky Valley, Inc.*, 100 B.R. 107, 113 (Bankr. N.D. Ga. 1988), *aff'd sub nom. Anchor Sav. Bank FSB v. Sky Valley, Inc.*, 99 B.R. 117, 120 n.4 (N.D. Ga. 1989); *see also In re Snowshoe Co.*, 789 F.2d 1085, 1088 (4th Cir. 1986) (demonstrating that credit was unavailable absent the senior lien by establishment of unsuccessful contact with other financial institutions in the geographic area); *In re Stanley Hotel, Inc.*, 15 B.R. 660, 663 (D. Colo. 1981) (holding that the bankruptcy court's finding that two national banks refused to grant unsecured loans was sufficient to support conclusion that the section 364 requirement was met); *Ames Dep't Stores*, 115 B.R. at 37–39 (finding that the debtor

must show that it made reasonable efforts to seek other sources of financing under section 364(a) and (b) of the Bankruptcy Code).

39. The Debtors do not believe that alternative sources of financing are reasonably available given the Debtors' unsuccessful solicitation of alternative financing proposals. *See* Schlappig Decl. ¶ 15. The Debtors and their advisors have searched for actionable alternative proposals but there are no alternative options available to the Debtors. *Id*. ¶ 13–16. The Debtors have determined that the DIP Facility provides the most favorable terms while reducing execution risks and providing the incremental liquidity necessary to conduct a robust marketing process during these chapter 11 cases. *Id*. Simply put, the DIP Facility provides the Debtors with the liquidity they need at the lowest cost available while simultaneously placing the Debtors on an optimal path to pursue a value-maximizing marketing and sale process pursuant to the Restructuring Support Agreement. Therefore, the requirement of section 364 of the Bankruptcy Code that alternative credit on more favorable terms be unavailable to the Debtors is satisfied.

D. The Debtors Should Be Authorized to Use Cash Collateral.

40. Section 363 of the Bankruptcy Code governs the Debtors' use of property of their estates, including Cash Collateral. Pursuant to section 363(c)(2) of the Bankruptcy Code, a debtor may use cash collateral as long as "(A) each entity that has an interest in such cash collateral consents; or (B) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of this section." 11 U.S.C. § 363(c)(2). Here, the DIP Lenders and the Prepetition Secured Parties consent or are deemed to consent to the Debtors' use of the Cash Collateral, subject to the terms and limitations set forth in the Interim Order.

41. Section 363(e) of the Bankruptcy Code provides for adequate protection of interests in property when a debtor uses cash collateral. Further, section 362(d)(1) of the Bankruptcy Code

provides for adequate protection of interests in property due to the imposition of the automatic stay. *See In re Cont'l Airlines*, 91 F.3d 553, 556 (3d Cir. 1996) (en banc). While section 361 of the Bankruptcy Code provides examples of forms of adequate protection, such as granting replacement liens and administrative claims, courts decide what constitutes sufficient adequate protection on a case by case basis. *See, e.g.*, *In re Swedeland Dev. Grp., Inc.*, 16 F.3d 552, 564 (3d Cir. 1994) (explaining that the "determination of whether there is adequate protection is made on a case by case basis"); *In re Satcon Tech. Corp.*, No. 12-12869 (KG), 2012 WL 6091160, at *6 (Bankr. D. Del. Dec. 7, 2012) (same); *In re N.J. Affordable Homes Corp.*, 2006 WL 2128624, at *14 (Bankr. D.N.J. June 29, 2006) (holding that "the circumstances of the case will dictate the necessary relief to be given"); *In re Columbia Gas Sys., Inc.*, 1992 WL 79323, at *2 (Bankr. D. Del. Feb. 18, 1992) (holding that "what interest is entitled to adequate protection and what constitutes adequate protection must be decided on a case-by-case basis"); *see also In re Dynaco Corp.*, 162 B.R. 389, 394 (Bankr. D.N.H. 1993) (citing 2 Collier on Bankruptcy ¶ 361.01[1] at 361–66 (15th ed. 1993) (explaining that adequate protection can take many forms and "must be determined based upon equitable considerations arising from the particular facts of each proceeding")).

42. As set forth in the Interim Order, the Debtors propose to provide the Prepetition Secured Parties with certain forms of adequate protection to protect against the postpetition diminution in value of the Cash Collateral resulting from the use, sale, or lease of the Cash Collateral by the Debtors, priming of their security interests and liens by the DIP Liens, and the imposition of the automatic stay (collectively, the "<u>Adequate Protection Obligations</u>") and Adequate Protection Payments:

a. replacement liens in favor of the Prepetition Secured Parties on all property of the Debtors, and, subject to entry of the Final Order, all proceeds of any avoidance actions under chapter 5 of the Bankruptcy Code;

b. super-priority administrative expense claims to the extent provided by section 503(b), 507(a), and 507(b) of the Bankruptcy Code and junior to the DIP Superpriority Claim, subject to the Carve Out;

c. payment of all reasonable and documented professional fees and expenses for the DIP/First Lien Advisors, DIP Agent Advisors, Prepetition First Lien Term Loan Agent, and Prepetition First Lien Notes Agent; and

d. additional lender protections in the form of (a) 506(c) and 552(b) waivers (in each case subject to entry of the Final Order) (for the benefit of the Prepetition Secured Parties) and (b) financial reporting, milestones and financial covenant compliance under the DIP Orders and DIP Documents.

43. The Debtors submit that the proposed Adequate Protection Obligations are sufficient to protect the Prepetition Secured Parties from any potential diminution in value to the Cash Collateral. In light of the foregoing, the Debtors further submit that the proposed Adequate Protection Obligations to be provided for the benefit of the Prepetition Secured Parties are appropriate. Thus, the Debtors' provision of the Adequate Protection Obligations is not only necessary to protect against any diminution in value but is fair and appropriate under the circumstances of these chapter 11 cases to ensure the Debtors are able to continue using the Cash Collateral, subject to the terms and limitations set forth in the Interim Order, for the benefit of all parties in interest and their estates.

E. The Roll-Up is Appropriate.

44. Section 363(b) of the Bankruptcy Code permits a debtor to use, sell, or lease property, other than in the ordinary course of business, with court approval. It is well settled in the Third Circuit that such transactions should be approved when they are supported by a sound business purpose. *See In re Abbots Dairies, Inc*., 788 F.2d 143 (3d Cir. 1986) (holding that in the Third Circuit, a debtor's use of assets outside the ordinary course of business under section 363(b) of the Bankruptcy Code should be approved if the debtor can demonstrate a sound business

justification for the proposed transaction). The business judgment rule shields a debtor's management from judicial second-guessing. *See In re Johns-Manville Corp.*, 60 B.R. 612, 615-16 (Bankr. S.D.N.Y. 1986) ("[T]he [Bankruptcy] Code favors the continued operation of a business by a debtor and a presumption of reasonableness attaches to a debtor's management decisions.").

45. Repaying prepetition debt (often referred to as a "roll-up") is a common feature in debtor-in-possession financing arrangements. The importance of "roll-up" features in DIP facilities has been repeatedly recognized by courts in this district and others, and such courts have granted relief similar to the relief requested herein. *See, e.g.*, *In re Express, Inc.*, No. 24-10831 (KBO) (Bankr. D. Del. June 6, 2024) (authorizing DIP facilities of approximately $225 million, including a roll up of approximately $200 million, of which the term loan was rolled up on a 2.5:1 basis); *In re Sientra, Inc.*, No. 24-10245 (JTD) (Bankr. D. Del. Mar. 11, 2024) (authorizing a $90 million DIP facility, including a $67 million roll-up of the prepetition debt obligations (*i.e.*, a 2.9:1 roll-up)); *In re PGX Holdings, Inc.*, No. 23-10718 (CTG) (Bankr. D. Del. Aug. 4, 2023) (authorizing an approximately $62.7 million DIP facility, including a $42.75 million creeping roll-up of the prepetition term loan (*i.e.*, 3.1:1 roll-up)); *In re SiO2 Medical Prods., Inc.*, No. 23-10366 (JTD) (Bankr. D. Del. Apr. 26, 2023) (authorizing an approximately $120 million DIP facility, including a $60 million creeping roll-up of the prepetition term loan (*i.e.*, 2:1 roll-up)); *In re Phoenix Services Topco, LLC*, N. 22-10906 (MFW) (Bankr. D. Del. Sept. 29, 2022) (authorizing an approximately $200 million DIP facility including $150 million roll-up (*i.e.*, 3:1 roll-up), of which $75 million was rolled up on entry of the interim order); *In re Extraction Oil & Gas, Inc.*, No. 20-11548 (CSS) (Bankr. D. Del. Jul. 20, 2020) (authorizing an approximately $50 million DIP facility including a $22 million roll-up); *In re Blackhawk Mining LLC*, No. 19-11595 (LSS) (Bankr. D. Del. July 23, 2019) (authorizing an approximately $240 million DIP facility,

including a $100 million roll-up of the prepetition term loan and an additional $140 million in incremental liquidity, pursuant to interim order).[10]

46. As set forth above, the DIP Credit Agreement provides that, upon entry of the Interim Order, approximately $75 million of the Debtors' First Lien Debt will "roll up" with the DIP Facility, with an additional $60 million of the Debtors' First Lien Debt rolled up upon entry of the Final Order. The Debtors submit that the Roll-Up is reasonable under the circumstances of these chapter 11 cases. This repayment is a sound exercise of the Debtors' business judgment and is a material component of the structure of the DIP Facility. Without continued access to the additional liquidity provided under the DIP Facility, the Debtors will be unable to fund the administration of these chapter 11 cases and the sale process.

47. As discussed herein and in the Schlappig Declaration, the Roll-Up was the subject of arm's-length and good-faith negotiations between the Debtors and the DIP Lenders, is an integral component of the overall terms of the DIP Facility, and was required by the DIP Lenders as consideration for the extension of postpetition financing. *See* Schlappig Declaration ¶ 21. For these reasons, and because no other party has put forward an actionable financing proposal, the granting of the Roll-Up is reasonable, appropriate, a sound exercise of the Debtors' business judgment, and ultimately in the best interests of all stakeholders given the alternatives.

II. The Debtors Should Be Authorized to Pay the Fees Required by the DIP Agent and the DIP Lenders Under the DIP Documents.

48. Under the DIP Credit Agreement, the Debtors will, subject to Court approval, pay certain fees to each of the DIP Agent and DIP Lenders. In particular, the Debtors have agreed to pay (a) a commitment fee of two (2) percent of the aggregate amount of the new-money DIP Loans,

[10] Because of the voluminous nature of the orders cited herein, such orders have not been attached to this motion. Copies of these orders are available upon request of the Debtors' proposed counsel.

payable in cash at closing; (b) a backstop fee of five (5) percent of the aggregate amount of the new-money DIP Loans, payable in cash at closing; and (c) an exit fee of 1.25 percent of the aggregate amount of new money DIP Loans, payable in cash at maturity or prepayment.

49. Courts in this district and others have approved similar aggregates in fees in large chapter 11 cases. See *In re Carestream Health, Inc.,* No. 22-10778 (JKS) (Bankr. D. Del. Aug. 24, 2022) (approving a commitment fee of approximately 2.0 percent of the DIP loans, an exit fee of approximately 4.0 percent of the DIP Loans, and undrawn DIP fee of 1.0 percent of the unused DIP loan commitments, and an agency fee); *In re Akorn, Inc.*, No. 20-11177 (KBO) (Bankr. D. Del. May 22, 2022) (approving a commitment fee of approximately 3.0 percent of the DIP loans, a backstop fee of approximately 2.0 percent of the DIP loans, and a fronting premium of approximately 0.50% of the DIP loans); *In re ATD Corp.*, No. 18-12221 (KJC) (Bankr. D. Del. Oct. 26, 2018) (approving a cash fee approximately 2.0 percent of the overall DIP facility); *In re PES Holdings LLC*, No. 18-10122 (KG) (Bankr. D. Del. Jan. 22, 2018) (same); *In re Toys "R" US, Inc.*, No. 17-34665 (KLP) (Bankr. E.D.Va. Sept. 19, 2017) (approving aggregate fees that were just less than 3.0 percent of the overall DIP facility).

50. These fees are customary and reasonable under the circumstances. It is understood and agreed by all parties that these fees are an integral component of the overall terms of the DIP Facility and were required by the DIP Lenders as consideration for the extension of postpetition financing. *See* Schlappig Decl. ¶ 18. Accordingly, the Court should authorize the Debtors to pay

the fees provided under the DIP Loan Documents in connection with entering into those agreements.

III. The DIP Lenders Should Be Deemed Good-Faith Lenders Under Section 364(e) of the Bankruptcy Code.

51. Section 364(e) of the Bankruptcy Code protects a good-faith lender's right to collect on loans extended to a debtor, and its right in any lien securing those loans, even if the authority of the debtor to obtain such loans or grant such liens is later reversed or modified on appeal. Section 364(e) of the Bankruptcy Code provides that:

> The reversal or modification on appeal of an authorization under this section [364 of the Bankruptcy Code] to obtain credit or incur debt, or of a grant under this section of a priority or a lien, does not affect the validity of any debt so incurred, or any priority or lien so granted, to an entity that extended such credit in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and the incurring of such debt, or the granting of such priority or lien, were stayed pending appeal.

52. As explained herein and the Schlappig Declaration, the DIP Documents are the result of the Debtors' reasonable and informed determination that the DIP Lenders offered the most favorable terms on which to obtain vital postpetition financing, and arm's-length, good-faith negotiations between the Debtors and the DIP Secured Parties (as defined in the DIP Documents). The DIP Documents are reasonable and appropriate under the circumstances, and the proceeds of the DIP Facility will be used only for purposes that are permissible under the Bankruptcy Code,

the DIP Orders, and the DIP Documents. Furthermore, no consideration is being provided to any party to the DIP Documents other than as described herein.

53. Accordingly, the Court should find that the DIP Lenders are "good faith" lenders within the meaning of section 364(e) of the Bankruptcy Code and are entitled to all of the protections afforded therein.

IV. The Automatic Stay Should Be Modified on a Limited Basis.

54. The proposed Interim Order provides that the automatic stay provisions of section 362 of the Bankruptcy Code will be modified to the extent necessary to permit the DIP Agent to file or record financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments in any jurisdiction, deposit account control agreements or to take possession of or control over cash or securities, or take any other action in order to validate and perfect the liens and security interests granted to them hereunder, including, without limitation, with respect to the DIP Liens and the Adequate Protection Liens.

55. Stay modifications of this kind are ordinary and standard features of debtor in possession financing arrangements, and, in the Debtors' business judgment, are reasonable and fair under the circumstances of these chapter 11 cases. *See, e.g.*, *In re Express, Inc.*, No. 24-10831 (KBO) (Bankr. D. Del. April 24, 2024); *In re Sientra, Inc.*, No. 24-10245 (JTD) (Bankr. D. Del. Feb. 14, 2024) (modifying automatic stay as necessary to effectuate the terms of the order and following occurrence of an event of default); *In re PGX Holdings, Inc.*, No. 23-10718 (CTG) (Bankr. D. Del. Jun. 6, 2023) (same); *In re SiO2 Medical Prods., Inc.*, No. 23-10366 (JTD) (Bankr. D. Del. Apr. 26, 2023) (same); *In re Carestream Health, Inc.,* No. 22-10778 (JKS) (Bankr. D. Del.

Aug. 24, 2022) (same); *In re Town Sports Int'l, LLC*, No. 12-12168 (CTG) (Bankr. D. Del. Oct. 2, 2020) (same).[11]

V. Failure to Obtain Immediate Interim Access to the DIP Facility Would Cause Immediate and Irreparable Harm.

56. Bankruptcy Rules 4001(b) and 4001(c) provide that a final hearing on a motion to obtain credit pursuant to section 364 of the Bankruptcy Code may not be commenced earlier than 14 days after the service of such motion. Upon request, however, the Court may conduct a preliminary, expedited hearing on the motion and authorize the obtaining of credit to the extent necessary to avoid immediate and irreparable harm to a debtor's estate.

57. For the reasons noted above and in the Braley Declaration, the Debtors have an immediate need for the liquidity provided by the DIP Facility. *See* Braley Decl. ¶ 15. The proposed DIP Facility is critical to the Debtors' ability to fund its operations and the Marketing and Sale Process while providing sufficient liquidity at the outset of these chapter 11 cases. *See id.* ¶ 17. The DIP Facility is an essential component to reassure vendors and business partners, protect normal-course operations while the Debtors pursue a successful sale process during the pendency of these chapter 11 cases. Without such funding, the Debtors would be unable to maintain their business while conducting the Marketing and Sale Process. *Id.* ¶ 18.

58. The Debtors request that the Court hold and conduct a hearing to consider entry of the Interim Order authorizing the Debtors, from and after entry of the Interim Order until the Final Hearing, to receive initial funding under the DIP Facility. This relief will enable the Debtors to

[11] Because of the voluminous nature of the orders cited herein, such orders have not been attached to this motion. Copies of these orders are available upon request of the Debtors' proposed counsel.

preserve and maximize value and, therefore, avoid immediate and irreparable harm and prejudice to their estates and all parties in interest, pending the Final Hearing.

Request for Final Hearing

59. Pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2), the Debtors request that the Court set a date for the Final Hearing that is as soon as practicable, and in no event after twenty-one days after the Petition Date, and fix the time and date prior to the Final Hearing for parties to file objections to this motion.

Notice

60. The Debtors will provide notice of this motion to: (a) the United States Trustee for the District of Delaware; (b) the holders of the 30 largest unsecured claims against the Debtors (on a consolidated basis); (c) the office of the attorney general for each of the states in which the Debtors operate; (d) the United States Attorney's Office for the District of Delaware; (e) the Internal Revenue Service; (f) the United States Securities and Exchange Commission; (g) counsel to the 1L Ad Hoc Group; (h) the agent of the DIP Facility and counsel thereto; (i) the agent of the First Lien Credit Agreement and counsel thereto; (j) the Second Lien Credit Agreement Agent and counsel thereto; (k) the agent of the First Lien Notes and counsel thereto; and (l) any party that has requested notice pursuant to Bankruptcy Rule 2002. As this motion is seeking "first day" relief, the Debtors will serve copies of this motion and any order entered in respect to this motion as required by Local Rule 9013-1(m). The Debtors submit that in light of the nature of the relief requested, no other or further notice need be given.

WHEREFORE, the Debtors request that the Court enter the DIP Orders, (a) granting the relief requested herein and (b) granting such other relief as the Court deems appropriate under the circumstances.

Dated: June 10, 2024
Wilmington, Delaware

/s/ Patrick j. Reilley

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EXHIBIT A

Proposed Interim Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
VYAIRE MEDICAL, INC., *et al.*,[1]	)	Case No. 24-11217 (___)
Debtors.	)	(Joint Administration Requested) **Re: Docket No. __**

INTERIM ORDER (I) AUTHORIZING THE DEBTORS TO OBTAIN POSTPETITION FINANCING, (II) AUTHORIZING THE DEBTORS TO USE CASH COLLATERAL, (III) GRANTING LIENS AND PROVIDING SUPERPRIORITY ADMINISTRATIVE EXPENSE CLAIMS, (IV) GRANTING ADEQUATE PROTECTION, (V) MODIFYING AUTOMATIC STAY, (VI) SCHEDULING A FINAL HEARING, AND (VII) GRANTING RELATED RELIEF

Upon the motion (the "Motion")[2] of the above-captioned debtors and debtors in possession (collectively, the "Debtors") in the above captioned chapter 11 cases (collectively, the "Cases"), pursuant to sections 105, 361, 362, 363, 364, 506(c), 507, and 552 of title 11 of the United States Code (as amended, the "Bankruptcy Code"), rules 2002, 4001, 6003, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rules 2002-1(b), 4001-2, 9006-1, and 9013 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), seeking entry of this interim order (this "Interim Order"):

(i) authorizing Vyaire Medical, Inc. and Vyaire Finance B.V., in their capacities as borrowers (the "DIP Borrowers"), to obtain postpetition financing, and for each of the other Debtors to guarantee unconditionally (the Debtors, other than the DIP

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1 The last four digits of Debtor Vyaire Medical, Inc.'s federal tax identification number are 6495. A complete list of each of the Debtors in these chapter 11 cases and each such Debtor's federal tax identification number may be obtained on the website of the Debtors' proposed claims and noticing agent at https://omniagentsolutions.com/Vyaire. The location of Debtor Vyaire Medical, Inc.'s principal place of business and the Debtors' service address in these chapter 11 cases is 26125 North Riverwoods Boulevard, Mettawa, Illinois, USA 60045.

2 Capitalized terms used but not defined herein have the meanings given to such terms in the Motion or the DIP Credit Agreement (as defined herein).

Borrowers, the "DIP Guarantors") on a joint and several basis, the DIP Borrowers' obligations in connection with a superpriority senior secured multiple draw term loan credit facility (the "DIP Facility") in the aggregate principal amount of $180,000,000 (the "DIP Loans"), consisting of:

(a) New Money Loans. A superpriority senior secured multiple draw term loan credit facility in the principal amount of $45,000,000 (the "New Money Commitments" and the term loans made thereunder, the "New Money Loans"), which New Money Loans shall be fully funded upon entry of this Interim Order in accordance with the terms and conditions set forth in the DIP Credit Agreement (as defined below), substantially in the form attached hereto as **Exhibit A** and all other terms and conditions of the DIP Documents (as defined below);

(b) Roll-Up Loans. A superpriority term loan facility in the principal amount of up to $135,000,000 (the "Roll-Up Loans"), of which (x) $75,000,000 will be deemed funded in accordance with clause (i) below on the date of this Interim Order, and (y) up to an additional $60,000,000 will be deemed funded in accordance with clause (ii) below, subject to the entry of and the terms of the Final Order, which Roll-Up Loans shall be deemed funded and an equal amount of First Lien Term Loans (as defined below) shall be deemed converted into and exchanged for, such Roll-Up Loans, in each case, at the times, and in accordance with the terms and conditions, set forth in the DIP Credit Agreement and the other DIP Documents and as set forth below.

(i) On the date of this Interim Order, concurrently with the making of the New Money Loans as described in clause (a) above, $75,000,000 in aggregate principal amount of First Lien Term Loans shall be deemed converted into and exchanged for Roll-Up Loans (the First Lien Term Loans rolled-up pursuant to this clause (b), the "Rolled-Up First Lien Term Loans" and, the First Lien Term Loans that are not Rolled-Up First Lien Term Loans, the "Remaining First Lien Term Loans"), and $75,000,000 of Roll-Up Loans shall be deemed funded on the date of this Interim Order, without constituting a novation, and shall satisfy and discharge $25,000,000 in aggregate principal amount of Rolled-Up First Lien Term Loans. The Roll-Up Loans deemed funded on the date of this Interim Order shall be deemed to be made by each Backstop Party (as defined in the DIP Credit Agreement) (or an investment advisor, manager, or beneficial owner for the account of a Backstop Party, or an affiliated fund or trade counterparty designated by such Backstop Party) (such initial lender holding such Roll-Up Loans, the "Closing Date Roll-Up Lenders") in an amount equal to the lesser of (x) the aggregate principal amount of the First Lien Term Loans owing to the applicable Closing Date Roll-Up Lenders on the date of this Interim Order and (y) an amount equal to (I) $75,000,000 multiplied by (II) the quotient of the amount set forth next to each Backstop Party's name on Schedule 2.09 of the DIP Credit Agreement divided by the sum of all amounts set forth on Schedule 2.09 of the DIP Credit Agreement.

(ii) Subject to the entry of and the terms of the Final Order, on each Withdrawal Date (as defined in the DIP Credit Agreement), concurrently with and automatically upon the withdrawal from the Loan Proceeds Account (as defined in the DIP Credit Agreement) and disbursement of New Money Loans to the DIP Borrower on such Withdrawal Date (the aggregate amount of New Money Loans funded by any DIP Lender and so withdrawn and disbursed on any such Withdrawal Date, such DIP Lender's "Withdrawn Amount"), each DIP Lender (or an investment advisor, manager, or beneficial owner for the account of such DIP Lender, or an affiliated fund or trade counterparty designated by such DIP Lender) (collectively, the "Additional Roll-Up Lenders") shall be deemed to have (x) converted and exchanged an aggregate principal amount of Remaining First Lien Term Loans equal to the lesser of (I) such Additional Roll-Up Lender's Remaining First Lien Term Loans on such date and (II) three times its Withdrawn Amount on such Withdrawal Date (such lesser amount, such DIP Lender's "Roll-Up Amount") for Roll-Up Loans and (y) funded an amount of Roll-Up Loans equal to its Roll-Up on such Withdrawal Date, without constituting a novation, and satisfied and discharged an aggregate principal amount of Rolled-Up First Lien Term Loans equal to its Roll-Up Amount.

(iii) On the terms set forth in the Syndication Procedures, upon completion of the Syndication (as defined in the DIP Credit Agreement) (1) each DIP Lender holding Roll-Up Loans on such date ("Existing Roll-Up Lender") shall be deemed to have assigned a portion of its Roll-Up Loans ratably to each other DIP Lender on such date (each such DIP Lender, a "Syndicate Lender"), and each Syndicate Lender shall be deemed to have ratably assumed an amount of Roll-Up Loans from each Existing Roll-Up Lender and (2) each Syndicate Lender on such date shall be deemed to have assigned a portion of its Remaining First Lien Term Loans to each Existing Roll-Up Lender and each Existing Roll-Up Lender shall be deemed to have assumed a portion of such Remaining First Lien Term Loans from each Syndicate Lender such that each DIP Lender (including both Existing Roll-Up Lenders and Syndicate Lenders) will hold the amount of Roll-Up Loans as set forth set forth on Schedule 2.17 of the DIP Credit Agreement and the Remaining First Lien Term Loans will be reallocated and assigned accordingly.

(c) Interim Facility. Upon entry of this Interim Order, the maximum amount of the New Money Commitments that will be disbursed to the Borrowers shall be $25,000,000;

(ii) authorizing the DIP Borrowers and the DIP Guarantors to (a) enter into and perform under that certain Senior Secured Super-Priority Term Loan Debtor-In-Possession Credit Agreement dated as of June [9], 2024, among the DIP Borrowers, the lenders party thereto (collectively in such capacities, the "DIP Lenders"), and Wilmington Savings Fund Society, FSB, as administrative agent, and collateral agent (in such capacities, the "DIP Agent," and, together with the DIP Lenders, the "DIP Secured Parties") (as the same may be amended, restated, amended and restated, supplemented, waived, or otherwise modified from time to time, the "DIP Credit Agreement") and the other DIP Documents (as defined below) and (b) enter into and perform under that certain Escrow Agreement (the "Escrow Agreement"), dated as of June [9], 2024, among the DIP Borrowers, the DIP Agent, and Wilmington Savings Fund Society, FSB, as escrow agent (the "Escrow Agent"); and each of the foregoing, together with this Interim Order, the Final Order, and all agreements, documents, and instruments delivered or executed in connection therewith, in each case as may be amended, restated, amended and restated, supplemented, waived, or otherwise modified from time to time in accordance with the terms thereof (including the fee letters executed by the DIP Borrowers in connection with the DIP Facility and the Escrow Agreement), and other guarantee and security documentation, collectively, the "DIP Documents"), and to perform such other and further acts as may be required in connection with the DIP Documents;

(iii) authorizing the Debtors to use the proceeds of the DIP Loans and the Prepetition Collateral (as defined below), including Cash Collateral (as defined below), (x) solely in accordance with the Approved DIP Budget (subject to any Permitted Variance set forth herein and in the DIP Credit Agreement), (y) to effectuate the exchange of First Lien Term Loans for Roll-Up Loans in accordance with the DIP Credit Agreement, this Interim Order, and the Final Order, and (z) to provide working capital for, and for other general corporate purposes of, the Debtors and certain of the Debtors' subsidiaries, including for funding the Carve Out (as defined below) and for payment of any Adequate Protection Payments (as defined below);

(iv) subject to the Carve Out, granting adequate protection to the Prepetition Secured Parties (as defined below) to the extent of any Diminution in Value (as defined below) of their interests in the Prepetition Collateral (as defined below);

(v) subject to the Carve Out, granting valid, enforceable, binding, non-avoidable, and fully perfected first priority priming liens on and senior security interests in substantially all of the property, assets, and other interests in property and assets of the Debtors, whether such property is presently owned or after-acquired, and each Debtors' estate as created by section 541 of the Bankruptcy Code, of any kind or nature whatsoever, real or personal, tangible, intangible, or mixed, now existing or hereafter acquired or created, whether existing prior to or arising after the Petition Date (as defined below), subject only to the (x) Carve Out (as defined below) and (y) other valid, perfected and unavoidable liens, if any, existing as of the Petition Date that are senior to the liens or security interests of the Prepetition Secured Parties as of the Petition Date by operation of law or permitted by the Prepetition Documents and liens that are perfected after the Petition Date to the extent permitted by section 546(b) of the Bankruptcy Code (the "Prior Senior Liens");

(vi) granting superpriority administrative expense claims against each of the Debtors' estates to the DIP Agent and the DIP Lenders with respect to the DIP Obligations (as defined below) over any and all administrative expenses of any kind or nature subject and subordinate only to the payment of the Carve Out on the terms and conditions set forth herein and in the DIP Documents;

(vii) subject to entry of a Final Order (as defined below), waiving the Debtors' and the estates' right to surcharge against the Prepetition Collateral or DIP Collateral (each as defined below) pursuant to section 506(c) of the Bankruptcy Code;

(viii) subject to entry of a Final Order and to the extent set forth herein, for the "equities of the case" exception under section 552(b) of the Bankruptcy Code to not apply to such parties with respect to the proceeds, products, offspring, or profits of any of the Prepetition Collateral or the DIP Collateral, as applicable;

(ix) pursuant to Bankruptcy Rule 4001, holding an interim hearing (the "Interim Hearing") on the Motion before this Court to consider entry of this Interim Order, among other things, (1) authorizing the Debtors to, on an interim basis, borrow from the DIP Lenders a principal amount of $120,000,000 in DIP Loans of which (I) $25,000,000 of New Money Loans will be made available to the DIP Borrower on the date of this Interim Order, (II) $20,000,000 of New Money Loans will be funded into an escrow account on the date of this Interim Order and available to be drawn by the DIP Borrowers and (III) $75,000,000 of Roll-Up Loans shall be deemed funded and converted from and exchanged for First Lien Term Loans upon entry of this Interim Order, subject to and in accordance with this Interim Order, without any further action by the Debtors or any other party, (2) authorizing the DIP Guarantors to guaranty the DIP Obligations, (3) authorizing the Debtors' use of Prepetition Collateral (including Cash Collateral), (4) granting the adequate protection described in this Interim Order, and (5) authorizing the Debtors to execute and deliver the DIP Documents to which they are a party and to perform their respective obligations thereunder and such other and further acts as may be necessary or appropriate in connection therewith;

(x) scheduling a final hearing (the "Final Hearing") to consider the relief requested in the Motion and the entry of a final order (the "Final Order"), and approving the form of notice with respect to the Final Hearing; and

(xi) granting related relief.

This Court having considered the Motion, the exhibits thereto, the *Declaration of John Bibb, Group Chief Executive Officer of Vyaire Medical, Inc., in Support of Chapter 11 Filing and First Day Motions* [Docket No. [●]] (the "First Day Declaration"), the *Declaration of Michael Schlappig in Support of the Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Utilize Cash Collateral, (II) Granting Liens and Superpriority Administrative Expense Claims, (III) Granting Adequate Protection to Prepetition Secured Parties, (IV) Modifying the Automatic Stay, (V) Scheduling a Final Hearing, and (VI) Granting Related* [Docket No. [●]] (the "Schlappig Declaration"), the *Declaration of Charles Braley in Support of the Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Utilize Cash Collateral, (II) Granting Liens and Superpriority Administrative Expense Claims, (III) Granting Adequate Protection to Prepetition Secured Parties, (IV) Modifying the Automatic Stay, (V) Scheduling a Final Hearing, and (VI) Granting Related* [Docket No. [●]] (the "Braley Declaration"), and the other evidence submitted or adduced and the arguments of counsel made at the Interim Hearing held on June 11, 2024; and proper and sufficient notice of the Motion and the Interim Hearing having been given in accordance with Bankruptcy Rules 2002, 4001(b), (c) and (d), and 9014; and this Court having heard and resolved or overruled any objections, reservations of rights, or other statements with respect to the relief requested in the Motion; and the Court having noted the appearances of all parties in interest; and it appearing that approval of the interim relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates pending the Final Hearing, and otherwise is fair and reasonable and in the best interests of the Debtors, their estates, and all parties in interest, and is essential for the continued operation of the Debtors' businesses and the preservation of the value of the Debtors' assets; and it appearing that the

Debtors' entry into the DIP Credit Agreement and the other DIP Documents is a sound and prudent exercise of the Debtors' business judgment; and the Debtors having provided notice of the Motion as set forth in the Motion; and after due deliberation and consideration, and for good and sufficient cause appearing therefor;

BASED UPON THE RECORD ESTABLISHED AT THE INTERIM HEARING, THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:[3]

A. *Petition Date*. On June 9, 2024 (the "Petition Date"), each of the Debtors filed a voluntary petition under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware commencing these Cases.

B. *Debtors in Possession*. The Debtors continue to manage and operate their businesses and properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in these Cases.

C. *Jurisdiction and Venue*. The Court has jurisdiction over the Motion, these Cases, and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157 and 1334. The Court's consideration of the Motion constitutes a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue for these Cases and proceedings on the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This Court may enter a final order consistent with Article III of the United States Constitution.

D. *Committee*. As of the date hereof, the Office of the United States Trustee for the District of Delaware (the "U.S. Trustee") has not yet appointed an official committee of unsecured

[3] Findings of fact shall be construed as conclusions of law, and conclusions of law shall be construed as findings of fact, pursuant to Bankruptcy Rule 7052.

creditors pursuant to section 1102 of the Bankruptcy Code (any such committee, the "Committee").

E. *Notice*. Proper, timely, adequate and sufficient notice of the Motion and the Interim Hearing has been provided in accordance with the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules, and no other or further notice of the Motion with respect to the relief requested at the Interim Hearing is or shall be required. The interim relief granted herein is necessary to avoid immediate and irreparable harm to the Debtors and their estates pending the Final Hearing, for purposes of Bankruptcy Rule 6003.

F. *Debtors' Stipulations*. Subject only to the rights of parties in interest specifically set forth in paragraph 12 of this Interim Order (and subject to the limitations thereon contained in such paragraph or otherwise in this Interim Order), the Debtors stipulate and agree that (collectively, paragraphs F(i) through (x) below are referred to herein as the "Debtors' Stipulations"):

(i) First Lien Term Loans.

(a) The Prepetition First Lien Term Lenders (as defined below) provided loans (the "First Lien Term Loans") in a total aggregate principal amount outstanding as of the Petition Date of $339,300,000 under that certain First Lien Credit Agreement dated as of April 16, 2018, by and among Vyaire Company ("Holdings"), the DIP Borrowers, each of the other revolving lenders from time to time party thereto, each of the other term lenders from time to time party thereto (collectively, the "Prepetition First Lien Term Lenders"), and Bank of America, N.A. as administrative agent and collateral agent (in such capacities, the "Prepetition First Lien Term Loan Agent", and together with the Prepetition First Lien Term Lenders and the other Secured Parties (as defined in the Prepetition First Lien Credit Agreement), the "Prepetition First Lien Term Loan

Secured Parties") (such credit agreement, as amended, restated, amended and restated, supplemented, or otherwise modified from time to time, the "Prepetition First Lien Credit Agreement", and together with the other Loan Documents (as defined in the Prepetition First Lien Credit Agreement), the "Prepetition First Lien Term Loan Documents"). The First Lien Credit Agreement and Prepetition First Lien Loan Documents include a Revolving Credit Facility (as defined in the Prepetition First Lien Credit Agreement) that matured on April 16, 2024.

(b) As of the Petition Date, the Prepetition Loan Party Debtors (as defined below) were jointly and severally indebted to the Prepetition First Lien Term Loan Secured Parties pursuant to the Prepetition First Lien Term Loan Documents without objection, defense, counterclaim, or offset of any kind, in the aggregate principal amount of not less than $339,300,000 on account of First Lien Term Loans *plus* accrued and unpaid interest with respect thereto and any additional fees, costs, premiums, expenses (including any attorneys', accountants', consultants', appraisers', financial advisors', and other professionals' fees and expenses), reimbursement obligations, indemnification obligations, guarantee obligations, other contingent obligations, and other charges of whatever nature, whether or not contingent, whenever arising, due, or owing, and all other Obligations (as defined in the Prepetition First Lien Credit Agreement), in each case, owing under or in connection with the Prepetition First Lien Term Loan Documents (collectively, the "Prepetition First Lien Term Loan Obligations").

(ii) First Lien Term Loan Collateral. In connection with the Prepetition First Lien Credit Agreement, (x) certain Prepetition Loan Party Debtors entered into that certain First Lien Security Agreement, dated as of April 16, 2018 (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time the "Prepetition First Lien Term Loan Security Agreement"), by and between Holdings, Vyaire Medical, Inc., certain subsidiaries identified therein as guarantors (including, as applicable, those subsidiaries that became guarantors via a supplemental joinder thereto), and the Prepetition First Lien Term Loan Agent and (y) Holdings entered into that certain First Lien Guaranty, dated as of April 16, 2018 (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time, the "Prepetition First Lien Term Loan Guaranty Agreement" and, together with the Prepetition First Lien Term Loan Security Agreement, the "Prepetition First Lien Term Loan Collateral Agreements"), by and between Holdings, certain subsidiaries of Holdings identified therein as guarantors (including, as applicable, those subsidiaries that became guarantors via supplemental joinder thereto), and the Prepetition First Lien Term Loan Agent. Pursuant to the Prepetition First Lien Term Loan Collateral Agreements and the other Prepetition First Lien Term Loan Documents, the Prepetition First Lien Term Loan Obligations are secured by valid, binding, perfected, and enforceable first-priority security interests in and liens (the "First Lien Term Loan Liens") on the "Collateral" (the "Prepetition First Lien Term Loan Collateral"), as such term is defined in the Prepetition First Lien Credit Agreement, pursuant to the Prepetition First Lien Term Loan Documents. The Prepetition First Lien Term Loan Collateral consists of substantially all of the assets of the Debtors that were Loan Parties (as defined in the Prepetition First Lien Credit Agreement) under the Prepetition First Lien Term Loan Documents (the "Prepetition Loan Party Debtors"), except as set forth in the Prepetition First Lien Credit Agreement.

(iii) First Lien Notes.

(a) The Prepetition First Lien Noteholders provided notes (the "First Lien Notes") in a total aggregate principal amount outstanding as of the Petition Date of €72,102,348.98 under that certain Note Purchase Agreement dated as of May 3, 2019, by and among Holdings, the DIP Borrowers, each of the purchasers party thereto (collectively, the "Prepetition First Lien

Noteholders"), and Wilmington Trust, National Association as notes agent and collateral agent (in such capacities, the "Prepetition First Lien Notes Agent", and together with the Prepetition First Lien Noteholders and the other Secured Parties (as defined in the Prepetition First Lien Note Purchase Agreement), the "Prepetition First Lien Notes Secured Parties" and, together with the Prepetition First Lien Term Loan Secured Parties, the "Prepetition First Lien Secured Parties") (such note purchase agreement, as amended, restated, amended and restated, supplemented, or otherwise modified from time to time, the "Prepetition First Lien Note Purchase Agreement", and together with the other "Note Documents" (as defined in the Prepetition First Lien Note Purchase Agreement), the "Prepetition First Lien Note Documents").

(b) As of the Petition Date, the Prepetition Loan Party Debtors were jointly and severally indebted to the Prepetition First Lien Notes Secured Parties pursuant to the Prepetition First Lien Notes Documents without objection, defense, counterclaim, or offset of any kind, in the aggregate principal amount of not less than €72,102,348.98 on account of First Lien Notes *plus* accrued and unpaid interest with respect thereto and any additional fees, costs, premiums, expenses (including any attorneys', accountants', consultants', appraisers', financial advisors', and other professionals' fees and expenses), reimbursement obligations, indemnification obligations, guarantee obligations, other contingent obligations, and other charges of whatever nature, whether or not contingent, whenever arising, due, or owing, and all other Obligations (as defined in the Prepetition First Lien Note Purchase Agreement), in each case, owing under or in connection with the Prepetition First Lien Notes Documents (collectively, the "Prepetition First Lien Notes Obligations" and, together with the Prepetition First Lien Term Loan Obligations, the "Prepetition First Lien Obligations").

(iv) First Lien Notes Collateral. In connection with the Prepetition First Lien Note Purchase Agreement, (x) certain Prepetition Loan Party Debtors entered into that certain Security Agreement, dated as of May 3, 2019 (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time the "Prepetition First Lien Notes Security Agreement"), by and between Holdings, Vyaire Medical, Inc., certain subsidiaries identified therein as guarantors (including, as applicable, those subsidiaries that became guarantors via a supplemental joinder thereto), and the Prepetition First Lien Notes Agent and (y) Holdings entered into that certain Guaranty, dated as of May 3, 2019 (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time, the "Prepetition First Lien Notes Guaranty Agreement" and, together with the Prepetition First Lien Notes Security Agreement, the "Prepetition First Lien Notes Collateral Agreements"), by and between Holdings, certain subsidiaries of Holdings identified therein as guarantors (including, as applicable, those subsidiaries that became guarantors via a supplemental joinder thereto), and the Prepetition First Lien Notes Agent. Pursuant to the Prepetition First Lien Notes Collateral Agreements and the other Prepetition First Lien Notes Documents, the Prepetition First Lien Notes Obligations are secured by valid, binding, perfected, and enforceable first-priority security interests in and liens (the "First Lien Notes Liens") on the "Collateral" (the "Prepetition First Lien Notes Collateral"), as such term is defined in the Prepetition First Lien Note Purchase Agreement, pursuant to the Prepetition First Lien Notes Documents. The Prepetition First Lien Notes Collateral consists of substantially all of the assets of the Prepetition Loan Party Debtors, except as set forth in the Prepetition First Lien Note Purchase Agreement.

(v) Second Lien Term Loans.

(a) The Prepetition Second Lien Term Lenders (as defined below) provided loans (the "Second Lien Term Loans") in a total aggregate principal amount outstanding as of the Petition Date of €106,178,070.76 under that certain Second Lien Credit Agreement dated as of April 16, 2018, by and among Holdings, the DIP Borrowers, each of the other lenders from time to time party thereto (collectively, the "Prepetition Second Lien Term Lenders"), Wilmington Trust, National Association as administrative agent and collateral agent (in such capacities, the "Prepetition Second Lien Term Loan Agent", and together with the Prepetition First Lien Term Loan Agent and the Prepetition First Lien Notes Agent, the "Prepetition Agents", and the Prepetition Second Lien Term Loan Agent, together with the Prepetition Second Lien Term Lenders, and the other Secured Parties (as defined in the Prepetition Second Lien Credit Agreement), the "Prepetition Second Lien Term Loan Secured Parties", and together with the Prepetition First Lien Term Loan Secured Parties and the Prepetition First Lien Notes Secured Parties, the "Prepetition Secured Parties") (such credit agreement, as amended, restated, amended and restated, supplemented, or otherwise modified from time to time, the "Prepetition Second Lien Credit Agreement", and together with the other "Loan Documents" (as defined in the Prepetition Second Lien Credit Agreement), the "Prepetition Second Lien Term Loan Documents", and together with the Prepetition First Lien Term Loan Documents and the Prepetition First Lien Notes Documents, the "Prepetition Documents").

(b) As of the Petition Date, the Prepetition Loan Party Debtors were jointly and severally indebted to the Prepetition Second Lien Term Loan Secured Parties pursuant to the Prepetition Second Lien Term Loan Documents without objection, defense, counterclaim, or offset of any kind, in the aggregate principal amount of not less than €106,178,070.76 on account of

Second Lien Term Loans *plus* accrued and unpaid interest with respect thereto and any additional fees, costs, premiums, expenses (including any attorneys', accountants', financial advisors', and other professionals' fees and expenses), reimbursement obligations, indemnification obligations, guarantee obligations, other contingent obligations, and other charges of whatever nature, whether or not contingent, whenever arising, due, or owing, and all other Obligations (as defined in the Prepetition Second Lien Credit Agreement), in each case, owing under or in connection with the Prepetition Second Lien Term Loan Documents (collectively, the "Prepetition Second Lien Term Loan Obligations", together with the Prepetition First Lien Term Loan Obligations and the Prepetition First Lien Notes Obligations, the "Prepetition Obligations").

(vi) Second Lien Term Loan Collateral. In connection with the Prepetition Second Lien Credit Agreement, (x) certain Prepetition Loan Party Debtors entered into that certain Second Lien Security Agreement, dated as of April 16, 2018 (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time the "Prepetition Second Lien Term Loan Security Agreement"), by and between Holdings, Vyaire Medical, Inc., certain subsidiaries identified therein as guarantors (including, as applicable, those subsidiaries that became guarantors via a supplemental joinder thereto), and the Prepetition Second Lien Term Loan Agent and (y) Holdings entered into that certain Second Lien Guaranty, dated as of April 16, 2018 (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time, the "Prepetition Second Lien Term Loan Guaranty Agreement" and, together with the Prepetition Second Lien Term Loan Security Agreement, the "Prepetition Second Lien Term Loan Collateral Agreements"), by and between Holdings, certain subsidiaries of Holdings identified therein as guarantors (including, as applicable, those subsidiaries that became guarantors via a supplemental joinder thereto), and the Prepetition Second Lien Term Loan Agent. Pursuant to the

Prepetition Second Lien Term Loan Collateral Agreements and the other Prepetition Second Lien Term Loan Documents, the Prepetition Second Lien Term Loan Obligations are secured by valid, binding, perfected, and enforceable second-priority security interests in and liens (the "Second Lien Term Loan Liens", together with the First Lien Term Loan Liens and the First Lien Notes Liens, the "Prepetition Liens") on the "Collateral" (the "Prepetition Second Lien Term Loan Collateral", and together with the Prepetition First Lien Term Loan Collateral and the Prepetition First Lien Notes Collateral, the "Prepetition Collateral"), as such term is defined in the Prepetition Second Lien Credit Agreement, pursuant to the Prepetition Second Lien Term Loan Documents. The Prepetition Second Lien Term Loan Collateral consists of substantially all of the assets of the Prepetition Loan Party Debtors, except as set forth in the Prepetition Second Lien Credit Agreement.

(vii) *Cash Collateral*. Any and all of the Debtors' cash, including any amounts on deposit or maintained in any banking, checking, or other deposit accounts by the Debtors, any amounts generated by the collection of accounts receivable or other disposition of the Prepetition Collateral existing as of the Petition Date or deposited into the Debtors' banking, checking, or other deposit accounts after the Petition Date, and the proceeds of any of the foregoing is the Prepetition Secured Parties' cash collateral within the meaning of section 363(a) of the Bankruptcy Code (the "Cash Collateral").

(viii) *Bank Accounts*. The Debtors acknowledge and agree that as of the Petition Date, none of the Debtors has either opened or maintains any bank accounts other than the accounts listed in the exhibit attached to any order authorizing the Debtors to continue to use the Debtors' existing cash management system (the "Cash Management Order").

(ix) *Validity, Perfection, and Priority of Prepetition Liens and Prepetition Obligations*. Each of the Debtors acknowledges and agrees that, in each case as of the Petition Date: (A) the Prepetition Liens are valid, binding, enforceable, non-avoidable, and properly perfected liens on and security interests in the Prepetition Collateral; (B) the First Lien Term Loan Liens and the First Lien Notes Liens are subject and subordinate only to Prior Senior Liens; (C) the Second Lien Term Loan Liens are subject and subordinate only to Prior Senior Liens, the First Lien Term Loan Liens and the First Lien Notes Liens; (D) the Prepetition Obligations constitute legal, valid, binding, and non-avoidable obligations of the Prepetition Loan Party Debtors; (E) the Prepetition Liens encumber all of the Prepetition Collateral subject to the priorities set forth in the Prepetition Documents and the Prepetition Intercreditor Agreements (as defined below), as the same existed on the Petition Date; (F) the Prepetition Liens were granted to or for the benefit of the Prepetition Secured Parties for fair consideration and reasonably equivalent value and were granted contemporaneously with, or covenanted to be provided as an inducement for, the making of the loans and/or commitments and other financial accommodations secured thereby; (G) no offsets, challenges, objections, defenses, claims, or counterclaims of any kind or nature to any of the Prepetition Liens or Prepetition Obligations exist, and no portion of the Prepetition Liens or Prepetition Obligations is subject to any challenge or defense including impairment, set-off, right of recoupment, avoidance, attachment, disallowance, disgorgement, reduction, recharacterization, recovery, subordination (whether equitable or otherwise), attack, offset, defense, counterclaims, cross-claims, or "claim" (as defined in the Bankruptcy Code), pursuant to the Bankruptcy Code or applicable nonbankruptcy law; and (H) the Debtors and their estates have no claims, objections, challenges, causes of actions, recoupments, counterclaims, cross-claims, setoff rights, and/or choses in action, including "lender liability" causes of action or avoidance claims under chapter 5 of the Bankruptcy Code, whether arising under applicable state law or federal law (including any recharacterization, subordination, avoidance, disgorgement, recovery, or other claims arising under or pursuant to sections 105, 510, or 542 through 553 of the Bankruptcy Code), against the Prepetition Agents, the Prepetition Secured Parties, or any of their respective affiliates, agents, representatives, attorneys, advisors, professionals, officers, directors, and employees arising out of, based upon, or related to their loans under the Prepetition Documents, the Prepetition Obligations, or the Prepetition Liens.

(x) *Prepetition Intercreditor Agreements*. Pursuant to section 510 of the Bankruptcy Code, any applicable intercreditor or subordination provisions contained in any of, or entered into as permitted by and in accordance with, the Prepetition Documents, including that certain (x) Equal Priority Intercreditor Agreement dated as of May 3, 2019, by and among Holdings, the DIP Borrowers, the Prepetition First Lien Term Loan Agent, the Prepetition First Lien Notes Agent, Wilmington Trust, National Association as the initial additional authorized representative, and each additional authorized representative from time to time party thereto (such intercreditor agreement, as amended, restated, amended and restated, supplemented, or otherwise modified from time to time, the "Equal Priority Intercreditor Agreement") and (y) Junior Lien Intercreditor Agreement dated as of April 16, 2018 by and among the Prepetition First Lien Term Loan Agent, the Prepetition First Lien Notes Agent, the Prepetition Second Lien Term Loan Agent, and each additional representative from time to time party thereto (such intercreditor agreement, as amended, restated, amended and restated, supplemented, or otherwise modified from time to time, the "Junior Lien Intercreditor Agreement", and together with the Equal Priority Intercreditor Agreement, the "Prepetition Intercreditor Agreements") shall (i) remain in full force and effect, and (iii) not be deemed to be amended, altered or modified by the terms of this Interim Order or the DIP Documents, in each case, unless expressly set forth herein or therein.

G. *Findings Regarding the DIP Facility and Use of Cash Collateral*.

(i) The Debtors have an immediate need to obtain the DIP Facility and to use Cash Collateral (solely to the extent consistent with the Approved DIP Budget, subject to any Permitted Variance set forth herein and in the DIP Credit Agreement) to, among other things, (A) permit the orderly continuation of their businesses; (B) pay certain Adequate Protection Payments; (C) pay the costs of administration of their estates and satisfy other working capital and general corporate purposes of the Debtors and certain subsidiaries thereof; and (D) fund the wind-down budget, subject to the terms of the Restructuring Support Agreement, to wind down either certain, all, or substantially all of the Debtors' operations in the event a sale of the Debtors' assets is not achievable within the terms, conditions, and/or milestones contemplated in the Restructuring Support Agreement, the DIP Credit Agreement, the Bidding Procedures Order and/or the Bidding Procedures. The DIP Facility will also reassure the Debtors' and their non-Debtor affiliates' customers and employees that the Debtors will have access to additional liquidity to meet their commitments during the Cases. The ability of the Debtors to obtain sufficient working capital and liquidity through the incurrence of the new indebtedness for borrowed money and other financial accommodations is vital to the preservation and maintenance of the Debtors' going concern value and successful reorganization. The Debtors will not have sufficient sources of working capital and financing to operate their businesses in the ordinary course of business throughout the Cases or to fund the wind-down budget as set forth in this paragraph, subject to the Restructuring Support Agreement, without access to the DIP Facility and authorized use of Cash Collateral, and subject to the Carve Out (defined below) as provided herein.

(ii) The Debtors and their estates will suffer immediate and irreparable harm if immediate financing is not obtained and permission to use Cash Collateral is not granted. The terms of the DIP Facility are fair and reasonable, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties.

(iii) The Debtors are unable to obtain financing on more favorable terms from sources other than the DIP Lenders under the DIP Documents and are unable to obtain unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense. The Debtors also are unable to obtain secured credit allowable under sections 364(c)(1), 364(c)(2), and 364(c)(3) of the Bankruptcy Code for the purposes set forth in the DIP Documents without the Debtors granting to the DIP Secured Parties the DIP Liens (as defined below) and the DIP Superpriority Claims (as defined below) under the terms and conditions set forth in this Interim Order and the DIP Documents.

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

(v) *Adequate Protection*. Each of the Prepetition Secured Parties are entitled, pursuant to sections 105, 361, 362, and 363(e) of the Bankruptcy Code, to adequate protection of their respective interests in the Prepetition Collateral, including Cash Collateral, for any diminution in the value thereof.

(vi) *Sections 506(c) and 552(b)*. In light of the Prepetition Secured Parties' agreement to subordinate their liens and superpriority claims to the DIP Obligations and the Carve Out and to permit the use of their Cash Collateral as set forth herein, the Prepetition Secured Parties are entitled to the rights and benefits of section 552(b) of the Bankruptcy Code and, subject to and upon entry of the Final Order, (i) a waiver of any "equities of the case" claims under section 552(b) of the Bankruptcy Code and (ii) a waiver of the provisions of section 506(c) of the Bankruptcy Code.

(vii) *Consent by Required Lenders*. Holders constituting Required Lenders (as defined in the Prepetition First Lien Credit Agreement), Required Purchasers (as defined in the Prepetition First Lien Note Purchase Agreement), and Required Lenders (as defined in the Prepetition Second Lien Credit Agreement) have consented to, or are deemed to consent to, conditioned upon the entry of this Interim Order, the Debtors' incurrence of the DIP Facility, and proposed use of Cash Collateral on the terms and conditions set forth in this Interim Order, including, without limitation, the terms of the adequate protection provided for in this Interim Order.

H. *Good Cause Shown; Best Interest*. Good cause has been shown for entry of this Interim Order, and entry of this Interim Order is in the best interests of the Debtors' respective estates and creditors as its implementation will, among other things, allow for the continued operation of the Debtors' existing business and enhance the Debtors' prospects for a successful reorganization. Absent granting the relief sought by this Interim Order, the Debtors' estates will be immediately and irreparably harmed.

I. *Notice*. In accordance with Bankruptcy Rules 2002, 4001(b) and (c), and 9014, and the Local Rules, notice of the Interim Hearing and the emergency relief requested in the Motion has been provided by the Debtors. Under the circumstances, the notice given by the Debtors of the Motion, the relief requested herein, and of the Interim Hearing complies with Bankruptcy Rules 2002, 4001(b) and (c), and 9014 and applicable Local Rules.

J. *Arm's Length, Good Faith Negotiations*. The terms of this Interim Order were negotiated in good faith and at arm's length between the Debtors and the Prepetition Secured Parties. The Prepetition Secured Parties have acted in good faith in respect of all actions taken by them in connection with or related in any way to negotiating, implementing, documenting, or obtaining requisite approvals of the Debtors' incurrence of the DIP Facility and the Debtors' use of Cash Collateral, including in respect of all of the terms of this Interim Order, all documents related thereto, and all transactions contemplated by the foregoing.

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

IT IS HEREBY ORDERED THAT:

1. DIP Financing Approved. The Motion is granted on an interim basis as set forth herein, the DIP Facility approved on an interim basis, and the use of Cash Collateral on an interim basis is authorized, subject to the terms of this Interim Order.

2. Objections Overruled. Any objections, reservations of rights, or other statements with respect to entry of the Interim Order, to the extent not withdrawn or resolved, are overruled on the merits. This Interim Order shall become effective immediately upon its entry.

3. Authorization of the DIP Facility and the DIP Documents.

(a) The DIP Borrower and the DIP Guarantors are hereby immediately authorized and empowered to enter into, and execute and deliver, the DIP Documents, including the DIP Credit Agreement, and such additional documents, instruments, certificates and agreements as may be reasonably required or requested by the DIP Secured Parties to implement the terms or effectuate the purposes of this Interim Order and the DIP Documents and to effectuate the exchange of First Lien Term Loans for Roll-Up Loans. To the extent not entered into as of the date hereof, the Debtors and the DIP Secured Parties shall negotiate the DIP Documents in good faith, and in all respects such DIP Documents shall be, subject to the terms of this Interim Order and the Final Order, consistent with the terms of the DIP Credit Agreement and otherwise reasonably acceptable to the DIP Borrowers and the DIP Agent (acting at the direction of the required lenders under and pursuant to the DIP Credit Agreement (the "Required DIP Lenders")) and the Required DIP Lenders. Upon entry of this Interim Order and until execution and delivery of the DIP Credit Agreement and other DIP Documents required to be delivered thereunder, the Debtors and the DIP Secured Parties shall be bound by (x) the terms and conditions and other provisions set forth in the other executed DIP Documents (including the fee letters executed in connection with the DIP Facility), with the same force and effect as if duly executed and delivered to the DIP Agent by the Debtors, and (y) this Interim Order and the other executed DIP Documents (including the fee letters executed in connection with the DIP Facility) shall govern and control the DIP Facility. Upon entry of this Interim Order, the Interim Order, the DIP Credit Agreement, and other DIP Documents shall govern and control the DIP Facility. The DIP Agent is hereby authorized to execute and enter into its respective obligations under the DIP Facility Documents, subject to the terms and conditions set forth therein and this Interim Order. Upon execution and delivery thereof, the DIP Documents shall constitute valid and binding obligations of the Debtors enforceable in accordance with their terms. To the extent there exists any conflict among the terms and conditions of the DIP Documents and this Interim Order, the terms and conditions of this Interim Order shall govern and control.

(b) Upon entry of this Interim Order, the DIP Borrowers are hereby authorized to borrow, and the DIP Guarantors are hereby authorized to guaranty, borrowings up to an aggregate principal amount of $120,000,000 of DIP Loans (inclusive of the Roll-Up Loans), of which (i) $25,000,000 of New Money Loans will be made available to the DIP Borrower on the date of this Interim Order, (ii) $20,000,000 of New Money Loans will be funded into an escrow account on the date of this Interim Order and available to be drawn by the DIP Borrower, and (iii) $75,000,000 of Roll-Up Loans shall be deemed funded and converted from and exchanged for First Lien Term Loans upon entry of this Interim Order, subject to and in accordance with this Interim Order, without any further action by the Debtors or any other party.

(c) Upon the entry of this Interim Order, without any further action by the Debtors or any other party, the Debtors shall be authorized and deemed to have effectuated the exchange of First Lien Term Loans for Roll-Up Loans, subject to the occurrence of the Closing Date (as defined in the DIP Credit Agreement).

(d) In accordance with the terms of this Interim Order and the DIP Documents, proceeds of the DIP Loans shall be used solely for the purposes permitted under the DIP Documents and this Interim Order, and in accordance with the Approved DIP Budget, subject to the Carve Out and any Permitted Variance, as set forth in this Interim Order and the DIP Documents. Attached as **Exhibit B** hereto and incorporated herein by reference is a budget prepared by the Debtors and approved by the Required DIP Lenders in accordance with section 6.20 of the DIP Credit Agreement (the "Initial DIP Budget").

(e) In furtherance of the foregoing and without further approval of this Court, each Debtor is authorized, and the automatic stay imposed by section 362 of the Bankruptcy Code is hereby lifted solely to the extent necessary to perform all acts and to make, execute, and deliver all instruments and documents (including, without limitation, the DIP Credit Agreement, any security and pledge agreement, and any mortgage to the extent contemplated thereby, or the DIP Credit Agreement), and to pay all fees (including all amounts owed to the DIP Lenders and the DIP Agent under the DIP Documents, the Escrow Agent under the Escrow Agreement, and the Prepetition Agents under the Prepetition Documents) that may be reasonably required or necessary for the Debtors' performance of their obligations under the DIP Facility, including, without limitation:

(1) the execution, delivery, and performance of the DIP Documents, including, without limitation, the DIP Credit Agreement, any security and pledge agreement, and any mortgage to the extent required thereby;

(2) the execution, delivery, and performance of one or more amendments, waivers, consents, or other modifications to and under the DIP Documents (in each case in accordance with the terms of the applicable DIP Documents

and in such form as the Debtors, the DIP Agent, and the Required DIP Lenders may reasonably agree), it being understood that no further approval of the Court shall be required for amendments, waivers, consents, or other modifications to and under the DIP Documents or the DIP Obligations that are not material; provided, that, any such non-material amendment shall be provided to the U.S. Trustee and counsel for the Committee to the extent one has been appointed at such time;

(3) the non-refundable payment to each of and/or on behalf of the DIP Secured Parties, as applicable, of the fees referred to in the DIP Documents, including (x) all fees and other amounts owed to the DIP Agent and the DIP Lenders and (y) all reasonable and documented costs and expenses as may be due from time to time, including, without limitation, the reasonable and documented fees and expenses of counsel and other professionals retained as provided for in the DIP Documents and this Interim Order (in the case of (i) the DIP/First Lien Advisors and the DIP Agent Advisors whether incurred before or after the Petition Date and (ii) any other party, solely incurred after the Petition Date) including, for the avoidance of doubt, (a) Gibson, Dunn & Crutcher LLP (as counsel), Rothschild & Co (as financial advisor), Pachulski Stang Ziehl & Jones LLP (as local bankruptcy counsel), and any other foreign counsel and other professionals necessary to represent the interests of the DIP Lenders and the ad hoc group of Prepetition First Lien Term Lenders and Prepetition First Lien Noteholders (the "DIP/First Lien Group") in connection with the Cases (collectively, the

"DIP/First Lien Advisors"); (b) ArentFox Schiff LLP (as counsel), and Morris James LLP (as local bankruptcy counsel) to the DIP Agent ("DIP Agent Advisors"); (c) Haynes and Boone, LLP (as counsel) and Ashby & Geddes, P.A. (as local counsel) to the Prepetition First Lien Term Loan Agent; and (d) Seward & Kissel LLP (as counsel) and local counsel to the Prepetition First Lien Notes Agent; and one counsel to the DIP Agent and the DIP Lenders (which shall be chosen by the Required DIP Lenders) in each local foreign jurisdiction, which such fees and expenses shall not be subject to the approval of the Court, nor shall any recipient of any such payment be required to file with respect thereto any interim or final fee application with the Court, provided that any fees and expenses of a professional shall be subject to the provisions of paragraph 18 of this Interim Order; and

(4) the performance of all other acts required under or in connection with the DIP Documents, including, without limitation, pursuant to the Escrow Agreement.

(f) Upon entry of this Interim Order and subject to the Carve Out, such DIP Documents, the DIP Obligations, and the DIP Liens shall constitute valid, binding, and non-avoidable obligations of the Debtors enforceable against each Debtor in accordance with their respective terms and the terms of this Interim Order for all purposes during the Cases, any subsequently converted Case of any Debtor to a case under chapter 7 of the Bankruptcy Code or after the dismissal of any Case. No obligation, payment, transfer, or grant of security under the DIP Credit Agreement, the other DIP Documents, or this Interim Order shall be stayed, restrained, voidable, avoidable, or recoverable under the Bankruptcy Code or under any applicable law (including, without limitation, under sections 502(d), 548, or 549 of the Bankruptcy Code or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, Uniform Voidable Transactions Act or similar statute or common law), or subject to any defense, reduction, setoff, recoupment, or counterclaim. All payments or proceeds remitted (a) to or on behalf of the DIP Agent on behalf of any DIP Secured Parties or (b) to or on behalf of the Prepetition Secured Parties, in each case, pursuant to the DIP Documents, the provisions of this Interim Order, or any subsequent order of this Court shall be received free and clear of any claim, charge, assessment, or other liability, including, without limitation, any such claim or charge arising out of or based on, directly or indirectly, section 506(c) of the Bankruptcy Code or the "equities of the case" exception of section 552(b) of the Bankruptcy Code (and, solely in the case of waivers of rights under sections 506(c) of the Bankruptcy Code and the "equities of the case" exception of section 552(b) of the Bankruptcy Code, subject to the entry of the Final Order). For the avoidance of doubt, and notwithstanding anything to the contrary in any Prepetition Document, DIP Document, any additional document, instrument, certificate and/or agreement related to any of the foregoing, in no event shall any property, proceeds, cash, cash equivalents, or otherwise placed or held in the escrow account established pursuant to the Escrow Agreement at any time be, or be deemed to be, property of any of the Debtors or their affiliates or subsidiaries or any of the Debtors' estates and the parties to the Escrow Agreement have acknowledged and agreed to the foregoing.

(g) The DIP Guarantors are hereby authorized and directed to jointly, severally, and unconditionally guarantee, and upon entry of this Interim Order shall be deemed to have guaranteed, in full, all of the DIP Obligations of the DIP Borrowers.

4. Budget and Variance Reporting.

(a) The Initial DIP Budget shall set forth, on a weekly basis, the Budgeted Cash Receipts, Budgeted Disbursement Amounts, Budgeted Liquidity and Budgeted Borrower Professional Fees (each as set forth and referenced in the Approved DIP Budget) for the period commencing with the week that includes the Closing Date and shall be approved by, and be in form and substance reasonably satisfactory to, the Required DIP Lenders (it being acknowledged and agreed that the form of Initial DIP Budget set forth as **Exhibit B** hereto is approved by and reasonably satisfactory to the Required DIP Lenders).

(b) On or before the fifth (5th) business day before the end of each Budget Period (as defined below) beginning with the fourth full week following the Petition Date (or more frequently if determined by the Debtors), the Debtors and/or the DIP Agent (at the direction of the Required DIP Lenders) may request an updated budget, and in such case, the Debtors will deliver to the DIP Agent, the DIP/First Lien Advisors, and counsel to the Prepetition First Lien Agent an updated Budget for the subsequent 13-week period (a "Subsequent DIP Budget"), which shall be in form and substance satisfactory to the Required DIP Lenders in their sole discretion (not to be unreasonably withheld); provided the Debtors shall be limited to two (2) requests for an updated budget during the ninety (90) days following the Petition Date. The Initial DIP Budget or any Subsequent DIP Budget shall be deemed to constitute the "Approved DIP Budget" for purposes of this Interim Order with the most recently delivered Budget constituting the "Approved DIP Budget" solely upon approval by the Required DIP Lenders (which must be in writing (including from the DIP/First Lien Advisors), email being sufficient), or which shall be deemed an Approved DIP Budget absent objection by the Required DIP Lenders within ten (10) business days after delivery of the Budget) in their sole discretion. In the event the conditions for the most recently delivered Subsequent DIP Budget to constitute an "Approved DIP Budget" are not met as set forth herein, the prior Approved DIP Budget shall remain in full force and effect and the Debtors shall be required to work in good faith with the Required DIP Lenders to modify such Subsequent DIP Budget until the Required DIP Lenders approve (which approval shall not be unreasonably withheld) such Subsequent DIP Budget as an "Approved DIP Budget." Each Approved Budget delivered shall be accompanied by such supporting documentation as reasonably requested by the Required DIP Lenders. Each Approved Budget shall be prepared in good faith based upon assumptions believed to be reasonable at the time of preparation thereof. "<u>Budget Period</u>" means the initial four-week period set forth in the Approved DIP Budget in effect at such time.

(c) Commencing on the Friday of the second full calendar week after the Petition Date, Budget Variances (as defined below) shall be tested on each Friday on a two-week basis (each such date, a "<u>Testing Date</u>"). Commencing after the second full week after the Petition Date, on or before 5:00 p.m. (prevailing Eastern time) on each Friday after each full calendar week ending on Friday, the Debtors shall deliver to the DIP Agent, the DIP/First Lien Advisors, and counsel to the Prepetition First Lien Agent a budget variance report/reconciliation in form and substance reasonably satisfactory to the DIP/First Lien Group (the "<u>Approved DIP Budget Variance Report</u>"), setting forth in detail (i) the Debtors' actual disbursements (the "<u>Actual Disbursements</u>"), including, without limitation, the sum of all such net line items under the headings "Total Operating Disbursements", "Total Non-Operating Receipts/(Disbursements)" and "Total Restructuring Receipts/(Disbursements)" (as set forth in the Approved DIP Budget) for the week period and the two-week period if ending on the applicable Testing Date; (ii) the Debtors' actual ordinary course receipts that are accounted for as "revenue" under GAAP (as applied by the Debtors in the ordinary course of business consistent with past practice) (the "<u>Actual Receipts</u>"), including the line item under the heading "Total Operating Receipts" in the Approved Budget and excluding, for the avoidance of doubt, any intercompany transactions or asset sales outside the ordinary course of business, on an aggregate basis during the two-week period ending on the applicable Testing Date; (iii) a comparison (whether positive or negative, in dollars and expressed as a percentage) of the Actual Receipts and the Actual Disbursements for the week and two-week period ending on the Testing Date to the amount of Debtors' projected cash receipts and disbursements, in each case, on an aggregate basis, set forth in the Approved DIP Budget with respect to such week or two-week period ending on the applicable Testing Date; (iv) as to each variance contained in the Approved DIP Budget Variance Report and required to be tested pursuant to clause (c) above, an indication as to whether such variance is temporary or permanent and an analysis and explanation in reasonable detail for any variance; (v) only in the event that a Subsequent DIP Budget has been requested during the two-week period ending on the applicable Testing Period, a weekly roll forward of the Debtors' cash forecast (both domestic and international); and (vi) a cash balance for the Debtors by country.

(d) The Debtors shall not permit: (i) for the rolling two-week period ending on any Testing Date, the Debtors' Total Operating Disbursements (in the aggregate) to be more than 110% (on a cumulative basis taking into account the variance for any prior Budget Period) of the projected disbursements (in the aggregate) as set forth in the Approved DIP Budgets with respect to such period; and (ii) for the rolling two-week period ending on any Testing Date, the Debtors' Actual Receipts (in the aggregate) to be less than 85% (on a cumulative basis taking into account the variance for any prior Budget Period) of the projected receipts (in the aggregate) as set forth in the Approved DIP Budgets with respect to such period (the "<u>Budget Variances</u>"; all references in this Interim Order and the DIP Documents to "<u>Approved DIP Budget</u>" shall mean the Approved

DIP Budget as it is subject to the Budget Variances). Commencing with the first full calendar week after the Petition Date, the Debtors shall maintain Liquidity (as defined in the DIP Credit Agreement) of not less than $2,500,000 as of the last business day of each calendar week. For purposes of Budget Variances testing, (i) the Debtors shall receive credit in subsequent Budget Periods for any overperformance on either receipts or disbursements for the Budget Period prior thereto and (ii) the fees and expenses of Professional Persons and disbursements made in connection with the administration of the Debtors' chapter 11 cases and other non-operating expenses shall be excluded.

5. Access to Records. The Debtors shall provide the DIP/First Lien Advisors with all reporting and other information required to be provided to the DIP Agent under the DIP Documents. In addition to, and without limiting, whatever rights to access the DIP Secured Parties have under the DIP Documents, upon reasonable notice to counsel to the Debtors (email being sufficient), at reasonable times during normal business hours, the Debtors shall permit representatives, agents, and employees of the DIP Secured Parties to have reasonable access to (i) inspect the Debtors' assets, and (ii) reasonably requested information (including historical information and the Debtors' books and records) and personnel, including regularly scheduled meetings as mutually agreed with senior management of the Debtors and other company advisors (during normal business hours), and the DIP Secured Parties shall be provided with access to all information they shall reasonably request, excluding any information for which confidentiality is owed to third parties, information subject to attorney client or similar privilege, or where such disclosure would not be permitted by any applicable requirements of law.

6. DIP Superpriority Claims. Subject to, and subordinate in all respects to, the Carve Out, pursuant to section 364(c)(1) of the Bankruptcy Code, all of the DIP Obligations shall

constitute allowed superpriority administrative expense claims against each of the Debtors' estates (the "DIP Superpriority Claims") (without the need to file any proof of claim) to the extent set forth in the Bankruptcy Code, with priority over any and all administrative expenses, adequate protection claims, diminution claims, and all other claims against the Debtors, now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, and over any and all administrative expenses or other claims arising under sections 105, 326, 327, 328, 330, 331, 361, 362, 364, 365, 503(b), 506(c), 507(a), 507(b), 726, 1113, or 1114 of the Bankruptcy Code or otherwise, which allowed claims shall for the purposes of section 1129(a)(9)(A) of the Bankruptcy Code be considered administrative expenses allowed under section 503(b) of the Bankruptcy Code and which shall be payable from and have recourse to all prepetition and postpetition property of the Debtors and all proceeds thereof, including, without limitation, the DIP Collateral and including, without limitation, subject to entry of the Final Order, any proceeds or property recovered in connection with the pursuit of claims or causes of action arising under chapter 5 of the Bankruptcy Code, if any (the "Avoidance Actions"), subject only to the payment of the Carve Out. Except as set forth in this Interim Order or the Final Order, no other superpriority claims shall be granted or allowed in these Cases.

7. DIP Liens. As security for the DIP Obligations, effective and perfected upon the date of this Interim Order, and without the necessity of the execution, recordation of filings by the Debtors of mortgages, security agreements, control agreements, pledge agreements, financing statements, or other similar documents, or the possession or control by the DIP Agent or any DIP Lender of, or over, any DIP Collateral (as defined below), the following security interests and liens are hereby granted by the Debtors to the DIP Agent, for the benefit of the DIP Secured Parties

(all property identified in clause (a) and (b) below being collectively referred to as the "DIP Collateral"), subject only to (x) Prior Senior Liens, (y) the Excluded Property (as defined in the DIP Credit Agreement), and (z) the Carve Out (all such liens and security interests granted to the DIP Agent, for the benefit of the DIP Lenders, pursuant to this Interim Order and the DIP Documents, the "DIP Liens"):

(a) First Priority Lien On Any Unencumbered Property. Subject only to the Carve Out, pursuant to section 364(c)(2) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected, non-avoidable, automatically, and properly perfected first priority senior security interest in and lien upon all property of the Debtors, whether existing on the Petition Date or thereafter acquired, that, on or as of the Petition Date is not subject to valid, perfected, and non-avoidable liens (or perfected after the Petition Date to the extent permitted by section 546(b) of the Bankruptcy Code) including, without limitation (in each case, to the extent not subject to valid, perfected, and non-avoidable liens), a 100% equity pledge of all first-tier foreign subsidiaries and all unencumbered assets of the Debtors; all prepetition property and post-petition property of the Debtors' estates, and the proceeds, products, rents and profits thereof, whether arising from section 552(b) of the Bankruptcy Code or otherwise, including, without limitation, unencumbered cash, if any, (and any investment of such cash) of the Debtors (whether maintained with the DIP Agent or otherwise); all equipment, all goods, all accounts, cash, payment intangibles, bank accounts and other deposit or securities accounts of the Debtors (including any accounts opened prior to, on, or after the Petition Date to the fullest extent permitted under applicable law); all insurance policies and proceeds thereof, equity interests, instruments, intercompany claims, accounts receivable, other rights to payment, all general intangibles, all contracts and contract rights, securities, investment property, letters of credit and letter of credit rights, chattel paper, all interest rate hedging agreements of the Debtors; all owned real estate, real property leaseholds and fixtures of the Debtors; patents, copyrights, trademarks, trade names, rights under license agreements and other intellectual property of the Debtors; all commercial tort claims of the Debtors; and all claims and causes of action (including causes of action under section 549 of the Bankruptcy Code, claims arising on account of transfers of value from a Debtor to (x) another Debtor and (y) a non-Debtor affiliate incurred on or following the Petition Date), and any and all proceeds, products, rents, and profits of the foregoing, all products and proceeds of the foregoing and, subject to entry of the Final Order, all proceeds and property recovered in respect of Avoidance Actions (collectively, the "Previously Unencumbered Property"); provided, for the avoidance of doubt, and notwithstanding anything to the contrary contained herein, to the extent a lien cannot attach to any of the foregoing pursuant to applicable law, the liens granted pursuant to this Interim Order shall attach to the Debtors' economic rights, including, without limitation, any and all proceeds of the foregoing.

(b) Liens Priming the Prepetition Liens. Subject only to the Carve Out and Prior Senior Liens, pursuant to section 364(d)(1) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected first priority senior priming security interest in and lien upon all property of the Debtors that was subject to the Prepetition Liens, including, without limitation, the Prepetition Collateral and Cash Collateral; provided, for the avoidance of doubt, and notwithstanding anything to the contrary contained herein, to the extent a lien cannot attach to any of the foregoing pursuant to applicable law, the liens granted pursuant to this Interim Order shall attach to the Debtors' economic rights, including, without limitation, any and all proceeds of the foregoing.

(c) Liens Junior to Certain Other Liens. Subject only to the Carve Out, pursuant to section 364(c)(3) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully perfected security interest in and lien upon all prepetition and post-petition property of the Debtors immediately junior to the Prior Senior Liens.

8. Adequate Protection for the Prepetition First Lien Term Loan Secured Parties and the Prepetition First Lien Notes Secured Parties. Subject only to the Carve Out and the terms of this Interim Order, pursuant to sections 361, 363(e), and 364 of the Bankruptcy Code, and in consideration of the stipulations and consents set forth herein, as adequate protection of their interests in the Prepetition First Lien Term Loan Collateral and the Prepetition First Lien Notes Collateral (in each case, including Cash Collateral), as applicable, for any diminution in value of such interests (each such diminution, a "Diminution in Value"), resulting from, among other things, the imposition of the priming DIP Liens on the Prepetition First Lien Term Loan Collateral and the Prepetition First Lien Notes Collateral, the Carve Out, the Debtors' use of the Prepetition First Lien Term Loan Collateral and the Prepetition First Lien Notes Collateral (in each case, including Cash Collateral), and the imposition of the automatic stay, the Prepetition First Lien Term Loan Agent, for the benefit of itself and the Prepetition First Lien Term Loan Secured Parties and the Prepetition First Lien Notes Agent, for the benefit of itself and the Prepetition First Lien Notes Secured Parties, are hereby granted the following (collectively, the "First Lien Adequate Protection Obligations"):

(a) First Lien Adequate Protection Liens. As security for any Diminution in Value, additional and replacement, valid, binding, enforceable, non-avoidable, and effective and automatically perfected postpetition security interests in and liens as of the date of this Interim Order (together, the "First Lien Adequate Protection Liens"), without the necessity of the execution by the Debtors (or recordation or other filing), of security agreements, control agreements, pledge agreements, financing statements, mortgages, or other similar documents, on all DIP Collateral and, upon entry of the Final Order, all proceeds or property recovered from Avoidance Actions. Subject to the terms of this Interim Order, the First Lien Adequate Protection Liens shall be subordinate only to the (A) Carve Out, (B) the DIP Liens, and (C) Prior Senior Liens. The First Lien Adequate Protection Liens shall otherwise be senior to all other security interests in, liens on, or claims against any of the DIP Collateral (including, for the avoidance of doubt, any lien or security interest that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code).

(b) First Lien Adequate Protection Superpriority Claims. As further adequate protection, and to the extent provided by sections 503(b), 507(a), and 507(b) of the Bankruptcy Code, allowed administrative expense claims in each of the Cases ahead of and senior to any and all other administrative expense claims in such Cases to the extent of any postpetition Diminution in Value (the "First Lien Adequate Protection Superpriority Claims"), but junior to the Carve Out and the DIP Superpriority Claims. Subject to the Carve Out and the DIP Superpriority Claims in all respects, and to the extent set forth in the Bankruptcy Code, the First Lien Adequate Protection Superpriority Claims will not be junior to any claims and shall have priority over all administrative expense claims against each of the Debtors, now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, administrative expense claims of the kinds specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 365, 503(a), 503(b), 506(c) (subject to entry of the Final Order), 507(a), 507(b), 546(d), 726, 1113, and 1114 of the Bankruptcy Code.

(c) First Lien Adequate Protection Payments. As further adequate protection, the Debtors are authorized and directed to pay, in accordance with the terms of paragraph 18 of this Interim Order, all reasonable and documented fees and expenses (the "First Lien Adequate Protection Fees"), in the case of (i) the DIP/First Lien Advisors and DIP Agent Advisors whether incurred before or after the Petition Date and (ii) any other party, solely incurred after the Petition Date, to the extent not duplicative of any fees and/or expenses paid pursuant to paragraph 3(e)(3) hereof, including all reasonable and documented fees and expenses of counsel and other professionals retained as provided for in the DIP Documents and this Interim Order, including, for the avoidance of doubt, of (i) the DIP/First Lien Advisors, including, without limitation, Gibson, Dunn & Crutcher LLP (as counsel), Rothschild & Co (as financial advisor), Pachulski Stang Ziehl & Jones LLP (as local bankruptcy counsel), and any other foreign counsel and other professionals necessary to represent the interests of the DIP Lenders and the ad hoc group of Prepetition First Lien Term Lenders and Prepetition First Lien Noteholders, (ii) the DIP Agent Advisors, including, without limitation, ArentFox Schiff LLP and Morris James LLP as counsel to the DIP Agent, (iii) Haynes and Boone, LLP and Ashby & Geddes, P.A. as counsel to the Prepetition First Lien Term Loan Agent, and (iv) Seward & Kissel LLP and local counsel as counsel to the Prepetition First Lien Notes Agent (all payments referenced in this sentence, collectively, the "First Lien Adequate Protection Payments"). None of the First Lien Adequate Protection Fees shall be subject to separate approval by this Court or the U.S. Trustee Guidelines, and no recipient of any such payment shall be required to file any interim or final fee application with respect thereto or otherwise seek the Court's approval of any such payments.

(d) Right to Seek Additional Adequate Protection. This Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, the rights of the Prepetition First Lien Term Loan Secured Parties or the Prepetition First Lien Notes Secured Parties to request further or alternative forms of adequate protection at any time or the rights of the Debtors or any other party to contest such request. Nothing herein shall impair or modify the application of section 507(b) of the Bankruptcy Code in the event that the adequate protection provided to the Prepetition First Lien Term Loan Secured Parties or the Prepetition First Lien Notes Secured Parties is insufficient to compensate for any Diminution in Value of their interests in the Prepetition First Lien Term Loan Collateral and the Prepetition First Lien Notes Collateral during the Cases. Nothing contained herein shall be deemed a finding by the Court, or an acknowledgment by any of the Prepetition First Lien Term Loan Secured Parties or the Prepetition First Lien Notes Secured Parties that the adequate protection granted herein does in fact adequately protect any of the Prepetition First Lien Term Loan Secured Parties or the Prepetition First Lien Notes Secured Parties against any Diminution in Value of their respective interests in the Prepetition First Lien Term Loan Collateral and the Prepetition First Lien Notes Collateral (in each case, including the Cash Collateral).

(e) Other Covenants. The Debtors shall maintain their cash management arrangements in a manner consistent with the Cash Management Order approving the Debtors' cash management motion. The Debtors shall comply with the covenants contained in the DIP Credit Agreement regarding conduct of business, including, without limitation, preservation of rights, qualifications, licenses, permits, privileges, franchises, governmental authorizations and intellectual property rights material to the conduct of their business and the maintenance of properties and insurance.

(f) Reporting Requirements. As additional adequate protection to the Prepetition First Lien Term Loan Secured Parties and the Prepetition First Lien Notes Secured Parties, the Debtors shall comply with all reporting requirements set forth in the DIP Credit Agreement.

(g) Miscellaneous. Except for (i) the Carve Out and (ii) as otherwise provided in paragraphs 6 and 7, the First Lien Adequate Protection Liens and First Lien Adequate Protection Superpriority Claims granted to the Prepetition First Lien Term Loan Secured Parties and the Prepetition First Lien Notes Secured Parties pursuant to paragraph 8 of this Interim Order shall not be subject, junior, or *pari passu*, to any lien or security interest that is avoided and preserved for the benefit of the Debtors' estates under the Bankruptcy Code, including, without limitation, pursuant to section 551 of the Bankruptcy Code or otherwise, and shall not be subordinated to or made *pari passu* with any lien, security interest or administrative claim under the Bankruptcy Code, including, without limitation, pursuant to section 364 of the Bankruptcy Code or otherwise.

9. Adequate Protection for the Prepetition Second Lien Term Loan Secured Parties. Subject only to the Carve Out, the First Lien Adequate Protection Obligations, and the terms of this Interim Order, pursuant to sections 361, 363(e), and 364 of the Bankruptcy Code, and in consideration of the stipulations and consents set forth herein, as adequate protection of their interests in the Prepetition Second Lien Term Loan Collateral (including Cash Collateral), as applicable, for any Diminution in Value, resulting from, among other things, the imposition of the priming DIP Liens on the Prepetition Second Lien Term Loan Collateral, the Carve Out, the Debtors' use of the Prepetition Second Lien Term Loan Collateral (in each case, including Cash Collateral), and the imposition of the automatic stay, the Prepetition Second Lien Term Loan Agent, for the benefit of itself and the Prepetition Second Lien Term Loan Secured Parties, is hereby granted the following (collectively, the "Second Lien Adequate Protection Obligations",

and together with the First Lien Adequate Protection Obligations, the "Adequate Protection Obligations"):

(a) Second Lien Adequate Protection Liens. As security for any Diminution in Value, additional and replacement, valid, binding, enforceable, non-avoidable, and effective and automatically perfected postpetition security interests in and liens as of the date of this Interim Order (together, the "Second Lien Adequate Protection Liens", and together with the First Lien Adequate Protection Liens, the "Adequate Protection Liens"), without the necessity of the execution by the Debtors (or recordation or other filing), of security agreements, control agreements, pledge agreements, financing statements, mortgages, or other similar documents, on all DIP Collateral and, upon entry of the Final Order, all proceeds or property recovered from Avoidance Actions. Subject to the terms of this Interim Order, the Second Lien Adequate Protection Liens shall be subordinate only to the (A) Carve Out, (B) the DIP Liens, (C) Prior Senior Liens, (D) the First Lien Term Loan Liens, (E) the First Lien Notes Liens, and (F) the First Lien Adequate Protection Liens. The Second Lien Adequate Protection Liens shall otherwise be senior to all other security interests in, liens on, or claims against any of the DIP Collateral (including, for the avoidance of doubt, any lien or security interest that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code).

(b) Second Lien Adequate Protection Superpriority Claims. As further adequate protection, and to the extent provided by sections 503(b), 507(a), and 507(b) of the Bankruptcy Code, allowed administrative expense claims in each of the Cases ahead of and senior to any and all other administrative expense claims in such Cases to the extent of any postpetition Diminution in Value (the "Second Lien Adequate Protection Superpriority Claims", and together with the First Lien Adequate Protection Superpriority Claims, the "Adequate Protection

Superpriority Claims"), but junior to the Carve Out, the DIP Superpriority Claims, and the First Lien Adequate Protection Superpriority Claims. Subject to the Carve Out, the DIP Superpriority Claims, and the First Lien Adequate Protection Superpriority Claims in all respects, and to the extent set forth in the Bankruptcy Code, the Second Lien Adequate Protection Superpriority Claims will not be junior to any claims and shall have priority over all administrative expense claims against each of the Debtors, now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, administrative expense claims of the kinds specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 365, 503(a), 503(b), 506(c) (subject to entry of the Final Order), 507(a), 507(b), 546(d), 726, 1113, and 1114 of the Bankruptcy Code.

(c) Second Lien Adequate Protection Payments. As further adequate protection, the Debtors are authorized and directed to pay, in accordance with the terms of paragraph 18 of this Interim Order, all reasonable and documented fees and expenses up to $100,000 (the "Second Lien Adequate Protection Fees"), to the extent not duplicative of any fees and/or expenses paid pursuant to paragraph 3(e)(3) hereof, of counsel to the Prepetition Second Lien Term Lenders. None of the Second Lien Adequate Protection Fees shall be subject to separate approval by this Court or the U.S. Trustee Guidelines, and no recipient of any such payment shall be required to file any interim or final fee application with respect thereto or otherwise seek the Court's approval of any such payments.

10. Carve Out.

(a) Carve Out. As used in this Interim Order, the "Carve Out" means the sum of (i) all fees required to be paid to the Clerk of the Court and to the Office of the United States Trustee under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate (without regard to the notice set forth in (iii) below); (ii) all reasonable fees and expenses up to $50,000 incurred by a trustee under section 726(b) of the Bankruptcy Code (without regard to the notice set forth in (iii) below); (iii) to the extent allowed at any time, whether by interim order, procedural order, or otherwise, all unpaid fees and expenses (the "Allowed Professional Fees") incurred by persons or firms retained by the Debtors pursuant to section 327, 328, or 363 of the Bankruptcy Code (the "Debtor Professionals") and the Committee (if appointed) pursuant to section 328 or 1103 of the Bankruptcy Code (the "Committee Professionals" and, together with the Debtor Professionals, the "Professional Persons") at any time before or on the first business day following delivery by the DIP Agent (at the direction of the Required DIP Lenders) (or by the Prepetition First Lien Term Loan Agent (at the direction of the Required Lenders) after repayment of the DIP Obligations in full) of a Carve Out Trigger Notice (as defined below), whether allowed by the Court prior to or after delivery of a Carve Out Trigger Notice; and (iv) Allowed Professional Fees of Professional Persons in an aggregate amount not to exceed $1,500,000 incurred after the first business day following delivery by the DIP Agent of the Carve Out Trigger Notice (or by the Prepetition First Lien Term Loan Secured Parties after repayment of the DIP Obligations in full), to the extent allowed at any time, whether by interim order, procedural order, or otherwise (the amounts set forth in this clause (iv) being the "Post-Carve Out Trigger Notice Cap"). For purposes of the foregoing, "Carve Out Trigger Notice" shall mean a written notice delivered by email (or other electronic means) by the DIP Agent (at the direction of the Required DIP Lenders) (or by the Prepetition First Lien Term Loan Agent (at the direction of the Required Lenders) after repayment of the DIP Obligations in full) to the Debtors, their lead restructuring counsel, the U.S. Trustee, and counsel to the Committee (if appointed), which notice may be delivered following the occurrence and during the continuation of an Event of Default and acceleration of the DIP Obligations under the DIP Facility (or the occurrence of the Termination Date for the Debtors' use of cash collateral and the expiration of the applicable Remedies Notice Period and during the continuation of an Event of Default (as defined herein)), stating that the Post-Carve Out Trigger Notice Cap has been invoked.

(b) Delivery of Weekly Fee Statements. Not later than 7:00 p.m. New York time on the third business day of each week starting with the first full calendar week following the Petition Date, each Professional Person shall deliver to the Debtors, the DIP Agent, and the DIP/First Lien Advisors a statement setting forth a good-faith estimate of the amount of unpaid fees and expenses incurred during the preceding week by such Professional Person (through Saturday of such week, the "Calculation Date"), along with a good-faith estimate of the cumulative total amount of unreimbursed fees and expenses incurred through the applicable Calculation Date and a statement of the amount of such fees and expenses that have been paid to date by the Debtors (each such statement, a "Weekly Statement"); provided that, within one business day of the occurrence of the Termination Declaration Date (as defined below), each Professional Person shall deliver one additional statement (the "Final Statement") setting forth a good-faith estimate of the amount of unpaid fees and expenses incurred during the period commencing on the calendar day after the most recent Calculation Date for which a Weekly Statement has been delivered and concluding on the Termination Declaration Date (and the Debtors shall cause such Weekly Statement and Final Statement to be delivered on the same day received to the DIP Agent and the DIP/First Lien Advisors). If any Professional Person fails to deliver a Weekly Statement within three (3) calendar days after such Weekly Statement is due, such Professional Person's entitlement (if any) to any funds in the Pre-Carve Out Trigger Notice Reserve (as defined below) with respect to the aggregate unpaid amount of Allowed Professional Fees for the applicable period(s) for which such Professional Person failed to deliver a Weekly Statement covering such period shall be limited to the aggregate unpaid amount of Allowed Professional Fees included in the Approved Budget for such period for such Professional Person.

(c) Carve Out Reserves. Commencing with the week ended June 14, 2024, and on or before the Thursday of each week thereafter, the Debtors shall utilize all cash on hand as of such date to fund a reserve in an amount equal to the sum of (a) the greater of (i) the aggregate unpaid amount of all Estimated Fees and Expenses reflected in the Weekly Statement delivered on the immediately prior Wednesday to the Debtors and the DIP Agent, and (ii) the aggregate amount of unpaid Allowed Professional Fees contemplated to be incurred in the Approved Budget during such week, plus (b) the Post Carve-Out Trigger Notice Cap, plus (c) an amount equal to the amount of Allowed Professional Fees set forth in the Budget for the week occurring after the most recent Calculation Date. The Debtors shall deposit and hold such amounts in a segregated account maintained at the Debtors in trust (the "Funded Reserve Account") to pay such Allowed Professional Fees (the "Funded Reserves") prior to any and all other claims, and all payments of Allowed Professional Fees incurred prior to the Termination Declaration Date shall be paid first from such Funded Reserve Account; *provided* that when all Allowed Professional Fees have been paid in full, any funds remaining in the Funded Reserve Account shall revert to the Debtors for use in a manner consistent with the DIP Credit Agreement and this Interim Order. For the avoidance of doubt, the DIP Lenders shall have no obligation to fund aggregate fees and expenses in excess of the New Money Commitments. Other than with respect to Debtor Professionals, Professional Person's entitlement (if any) to any funds in the Funded Reserve Account shall be limited to the aggregate unpaid amount of Allowed Professional Fees included in the Approved Budget for such Professional Person. On the day on which a Carve Out Trigger Notice is given by the DIP Agent (at the direction of the Required DIP Lenders) (or by the Prepetition First Lien

Term Loan Agent (at the direction of the Required Lenders) after repayment of the DIP Obligations in full) to the Debtors with a copy to counsel to the Committee (the "Termination Declaration Date"), the Carve Out Trigger Notice shall constitute a demand to, and the Debtors shall utilize all cash on hand as of such date, including cash in the Funded Reserve Account, and any available cash thereafter held by any Debtor, to fund a reserve in an amount equal to the then unpaid amounts of the Allowed Professional Fees accrued prior to the Termination Declaration Date. The Debtors shall deposit and hold such amounts in a segregated account maintained at the Debtors in trust to pay such then unpaid Allowed Professional Fees incurred through the Termination Declaration Date (the "Pre-Carve Out Trigger Notice Reserve") prior to any and all other claims. For the avoidance of doubt, the DIP Lenders shall have no obligation to fund the Pre-Carve Out Trigger Notice Reserve in excess of the DIP Loans already funded to the Debtors from the escrow account prior to the Termination Declaration Date and any such remaining DIP Loans held in the escrow account that has not yet been funded to the Debtors prior to the Termination Declaration Date shall not be used to fund the Pre-Carve Out Trigger Notice Reserve. On the Termination Declaration Date, after funding the Pre-Carve Out Trigger Notice Reserve, the Debtors shall utilize all remaining cash on hand as of such date and any available cash thereafter held by any Debtor, after funding the Pre-Carve Out Trigger Notice Reserve, to fund a reserve in an amount equal to the Post-Carve Out Trigger Notice Cap. The Debtors shall deposit and hold such amounts in a segregated account maintained at the Debtors in trust to pay such unpaid Allowed Professional Fees benefiting from the Post-Carve Out Trigger Notice Cap (the "Post-Carve Out Trigger Notice Reserve" and, together with the Pre-Carve Out Trigger Notice Reserve, the "Carve Out Reserves") prior to any and all other claims. Any remaining DIP Loans held in the escrow account that has not yet been funded to the Debtors prior to the

Termination Declaration Date shall not be used to fund the Post-Carve Out Trigger Notice Reserve. All funds in the Pre-Carve Out Trigger Notice Reserve shall be used first to pay the obligations set forth in clauses (i) through (iii) of the definition of Carve Out set forth above (the "Pre-Carve Out Amounts"), but not, for the avoidance of doubt, the Post-Carve Out Trigger Notice Cap, until indefeasibly paid in full, and then to the extent the Pre-Carve Out Trigger Notice Reserve has not been reduced to zero to pay the DIP Agent for the benefit of the DIP Lenders, unless the DIP Obligations have been indefeasibly paid in full, in cash, and all Commitments have been terminated, in which case any such excess shall be paid to the Prepetition Secured Parties in accordance with their rights and priorities as of the Petition Date. All funds in the Post-Carve Out Trigger Notice Reserve shall be used first to pay the obligations set forth in clause (iv) of the definition of Carve Out set forth above (the "Post-Carve Out Amounts"), and then, to the extent the Post-Carve Out Trigger Notice Reserve has not been reduced to zero, to pay the DIP Agent for the benefit of the DIP Lenders, unless the DIP Obligations have been indefeasibly paid in full, in cash, and all Commitments have been terminated, in which case any such excess shall be paid to the Prepetition Secured Parties in accordance with their rights and priorities under the Prepetition Intercreditor Agreements as of the Petition Date. Notwithstanding anything to the contrary in the DIP Documents, or this Interim Order, if either of the Carve Out Reserves is not funded in full in the amounts set forth in this paragraph 10, then, any excess funds in one of the Carve Out Reserves following the payment of the Pre-Carve Out Amounts and Post-Carve Out Amounts, respectively, shall be used to fund the other Carve Out Reserve, up to the applicable amount set forth in this paragraph 10, prior to making any payments to the DIP Agent, the Prepetition Secured Parties, or the Prepetition Agents, as applicable. Notwithstanding anything to the contrary in the DIP Documents or this Interim Order, following delivery of a Carve Out

Trigger Notice, the DIP Agent and the Prepetition Agents shall not sweep or foreclose on cash (including cash received as a result of the sale or other disposition of any assets) of the Debtors until the Carve Out Reserves have been fully funded, but shall have an automatically perfected lien and a security interest in any residual interest in the Carve Out Reserves, with any excess paid to the DIP Agent for application in accordance with the DIP Documents or if the DIP Obligations have been indefeasibly paid in full, to the applicable Prepetition Agents, for application in accordance with the Prepetition Documents and the Prepetition Intercreditor Agreements. Further, notwithstanding anything to the contrary in this Interim Order, (i) disbursements by the Debtors from the Carve Out Reserves shall not constitute Loans (as defined in the DIP Credit Agreement) or increase or reduce the DIP Obligations, (ii) the failure of the Carve Out Reserves to satisfy in full the Allowed Professional Fees shall not affect the priority of the Carve Out, and (iii) in no way shall the Initial Budget, Budget, Carve Out, Post-Carve Out Trigger Notice Cap, Carve Out Reserves, or any of the foregoing be construed as a cap or limitation on the amount of the Allowed Professional Fees due and payable by the Debtors. For the avoidance of doubt and notwithstanding anything to the contrary in this Interim Order, the DIP Facility, or in any Prepetition Document, the Carve Out shall be senior to all liens and claims securing the DIP Facility, the DIP Superpriority Claims, the DIP Liens, the Adequate Protection Liens, and claims pursuant to section 507(b) of the Bankruptcy Code, and any and all other forms of adequate protection, liens, or claims securing the DIP Obligations or the Prepetition Obligations.

(d) <u>Carve Out Payment of Allowed Professional Fees Prior to the Termination Declaration Date</u>. Any payment or reimbursement made prior to the occurrence of the Termination Declaration Date in respect of any Allowed Professional Fees shall not reduce the Carve Out.

(e) No Direct Obligation To Pay Allowed Professional Fees. None of the DIP Agent, DIP Lenders, or the Prepetition First Lien Term Loan Secured Parties shall be responsible for the payment or reimbursement of any fees or disbursements of any Professional Person or any fees or expenses of the U.S. Trustee or Clerk of the Court incurred in connection with the Cases or any successor cases under any chapter of the Bankruptcy Code. Nothing in this Interim Order or otherwise shall be construed to obligate the DIP Agent, the DIP Lenders, or the Prepetition Secured Parties, in any way, to pay compensation to, or to reimburse expenses of, any Professional Person or to guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement.

(f) Payment of Carve Out On or After the Termination Declaration Date. Any payment or reimbursement made on or after the occurrence of the Termination Declaration Date in respect of any Allowed Professional Fees shall permanently reduce the Carve Out on a dollar-for-dollar basis. Any funding of the Carve Out shall be added to, and made a part of, the DIP Obligations secured by the DIP Collateral and shall be otherwise entitled to the protections granted under this Interim Order, the DIP Documents, the Bankruptcy Code, and applicable law.

11. Reservation of Rights of the DIP Agent, DIP Lenders, and Prepetition First Lien Secured Parties. Subject only to the Carve Out, notwithstanding any other provision in this Interim Order or the DIP Documents to the contrary, the entry of this Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, or otherwise impair: (a) any of the rights of any of the Prepetition First Lien Secured Parties to seek any other or supplemental relief in respect of the Debtors including the right to seek additional adequate protection at and following the Final Hearing; provided that any such further or different adequate protection shall at all times be subordinate and junior to the Carve Out and the claims and liens of the DIP Secured Parties

granted under this Interim Order and the DIP Documents; (b) any of the rights of the DIP Secured Parties or the Prepetition First Lien Secured Parties under the DIP Documents, the Prepetition Documents, the Prepetition Intercreditor Agreements, or the Bankruptcy Code or under non-bankruptcy law (as applicable), including, without limitation, the right of any of the DIP Secured Parties or the Prepetition First Lien Secured Parties to (i) request modification of the automatic stay of section 362 of the Bankruptcy Code, (ii) request dismissal of any of the Cases, conversion of any of the Cases to cases under chapter 7, or appointment of a chapter 11 trustee or examiner with expanded powers in any of the Cases, (iii) seek to propose, subject to the provisions of section 1121 of the Bankruptcy Code, a chapter 11 plan or plans; or (c) any other rights, claims, or privileges (whether legal, equitable, or otherwise) of any of the DIP Secured Parties or the Prepetition Secured Parties. The delay in or failure of the DIP Secured Parties and/or the Prepetition First Lien Secured Parties to seek relief or otherwise exercise their rights and remedies shall not constitute a waiver of any of the DIP Secured Parties' or the Prepetition First Lien Secured Parties' rights and remedies. For all adequate protection purposes throughout the Cases, each of the Prepetition First Lien Secured Parties shall be deemed to have requested relief from the automatic stay and adequate protection for any Diminution in Value from and after the Petition Date. For the avoidance of doubt, such request will survive termination of this Interim Order.

12. Reservation of Certain Committee and Third Party Rights and Bar of Challenges and Claims. Subject to the Challenge Period (as defined herein), the stipulations, admissions, waivers, and releases contained in this Interim Order, including the Debtors' Stipulations, shall be binding upon the Debtors, their estates, and any of their respective successors in all circumstances and for all purposes and the Debtors are deemed to have irrevocably waived and relinquished all Challenges (as defined below) as of the Petition Date. The stipulations, admissions, and waivers

contained in this Interim Order, including, the Debtors' Stipulations, shall be binding upon all other parties in interest, including any Committee and any other person acting on behalf of the Debtors' estates, unless and to the extent that a party in interest with proper standing granted by order of the Court (or other court of competent jurisdiction) has timely and properly filed an adversary proceeding or contested matter under the Bankruptcy Rules seventy-five (75) calendar days after entry of the Interim Order (the "Challenge Period" and the date of expiration of the Challenge Period, the "Challenge Period Termination Date"); provided, however, that if, prior to the end of the Challenge Period, (x) the cases convert to chapter 7, or (y) if a chapter 11 trustee is appointed, then, in each such case, the Challenge Period shall be extended by the later of (A) the time remaining under the Challenge Period plus ten (10) days or (B) such other time as ordered by the Court solely with respect to any such trustee, commencing on the occurrence of either of the events discussed in the foregoing clauses (x) and (y); *provided*, that the Challenge Period shall not be extended past the date of a hearing on the approval of the Debtors' proposed sale transaction(s), if any, before this Court; (i) seeking to avoid, object to, or otherwise challenge the findings or Debtors' Stipulations regarding: (a) the validity, enforceability, extent, priority, or perfection of the mortgages, security interests, and liens of the Prepetition Agents and the Prepetition Secured Parties; or (b) the validity, enforceability, allowability, priority, secured status, or amount of the Prepetition Obligations (any such claim, a "Challenge"), and (ii) in which the Court enters a final order in favor of the plaintiff sustaining any such Challenge in any such timely filed adversary proceeding or contested matter. Upon the expiration of the Challenge Period Termination Date without the filing of a Challenge (or if any such Challenge is filed and overruled): (a) any and all such Challenges by any party (including the Committee, any chapter 11 trustee, and/or any examiner or other estate representative appointed or elected in these Cases, and any chapter 7 trustee and/or examiner or other estate representative appointed or elected in any Successor Case) shall be deemed to be forever barred; (b) the Prepetition Obligations shall constitute allowed claims, not subject to counterclaim, setoff, recoupment, reduction, subordination, recharacterization, defense, or avoidance for all purposes in the Debtors' Cases and any Successor Cases; (c) the Prepetition Liens shall be deemed to have been, as of the Petition Date, legal, valid, binding, and perfected secured claims, not subject to recharacterization, subordination, or avoidance; and (d) all of the Debtors' stipulations and admissions contained in this Interim Order, including the Debtors' Stipulations, and all other waivers, releases, affirmations, and other stipulations as to the priority, extent, and validity as to the Prepetition Secured Parties' claims, liens, and interests contained in this Interim Order shall be of full force and effect and forever binding upon the Debtors, the Debtors' estates, and all creditors, interest holders, and other parties in interest in these Cases and any Successor Cases. If any such adversary proceeding or contested matter is timely and properly filed under the Bankruptcy Rules and remains pending and the Cases are converted to chapter 7, the chapter 7 trustee may continue to prosecute such adversary proceeding or contested matter on behalf of the Debtors' estates. Furthermore, if any such adversary proceeding or contested matter is timely and properly filed under the Bankruptcy Rules, the stipulations and admissions contained in this Interim Order, including the Debtors' Stipulations, shall nonetheless remain binding and preclusive on any Committee and any other person or entity except to the extent that such stipulations and admissions were expressly challenged in such adversary proceeding or contested matter prior to the Challenge Period Termination Date. Nothing in this Interim Order vests or confers on any person (as defined in the Bankruptcy Code), including, without limitation, any Committee appointed in the Cases, standing or authority to pursue any cause of action belonging to the Debtors or their estates, including, without limitation any challenges (including a Challenge) with respect to the Prepetition Documents, the Prepetition Liens, and the Prepetition Obligations, and a separate order of the Court conferring such standing on any Committee or other party-in-interest shall be a prerequisite for the prosecution of a Challenge by such Committee or such other party-in-interest.

13. Termination Date. Following the Termination Date (as defined below) and the expiration of the Remedies Notice Period as defined below), consistent with Article VIII of the DIP Credit Agreement, (a) all DIP Obligations shall be immediately due and payable, all New Money Commitments will terminate, and the Carve Out Reserves shall be funded as set forth in this Interim Order; (b) all authority to use Cash Collateral shall cease; provided, however, that during the Remedies Notice Period (as defined below), the Debtors may use Cash Collateral solely to fund the Carve Out and pay payroll and other expenses critical to the administration of the Debtors' estates in accordance with the Approved DIP Budget, subject to any Permitted Variance provided for in the DIP Credit Agreement; and (c) the DIP Secured Parties shall be otherwise entitled to exercise rights and remedies under the DIP Documents in accordance with this Interim Order.

14. Events of Default. The occurrence of any of the following events, unless waived by the Required DIP Lenders in accordance with the terms of the DIP Documents, shall constitute an event of default (collectively, the "Events of Default"): (a) the failure of the Debtors to perform, in any material respect, any of the terms, provisions, conditions, covenants, or obligations under this Interim Order; (b) the failure of the Debtors to comply with any of the case milestones set forth in section 6.19 of the DIP Credit Agreement (collectively, the "Required Milestones"), in accordance with the DIP Credit Agreement, unless such Required Milestone has been waived or extended by the Required DIP Lenders; or (c) the occurrence of an "Event of Default" under the

DIP Credit Agreement. The Required DIP Lenders shall provide written notice of any Event of Default to the Debtors, any Committee, and the U.S. Trustee; *provided* that such notice should be for informational purposes only and shall not be a pre-requisite to the occurrence of an Event of Default.

15. Rights and Remedies Upon Event of Default. Immediately upon the occurrence and during the continuation of an Event of Default, notwithstanding the provisions of section 362 of the Bankruptcy Code, without any application, motion, or notice to, hearing before, or order from the Court, but subject to the terms of this Interim Order, and following the expiration of the Remedies Notice Period (defined below), (a) the DIP Agent (at the direction of the Required DIP Lenders) may declare (any such declaration shall be referred to herein as a "Termination Declaration") (i) all DIP Obligations owing under the DIP Documents to be immediately due and payable, (ii) the termination, reduction or restriction of any further commitment to extend credit to the Debtors to the extent any such commitment remains under the DIP Facility, (iii) termination of the DIP Facility and the DIP Documents as to any future liability or obligation of the DIP Agent and the DIP Lenders, but without affecting any of the DIP Liens or the DIP Obligations, and (iv) that the Carve Out shall be triggered, through the delivery of the Carve Out Trigger Notice to the DIP Borrower and (b) subject to paragraph 13(b), the DIP Agent (at the direction of the Required DIP Lenders) may declare a termination, reduction or restriction on the ability of the Debtors to use Cash Collateral (the date on which a Termination Declaration is delivered, the "Termination Date"). The automatic stay in the Cases otherwise applicable to the DIP Agent, the DIP Lenders, and the Prepetition Secured Parties is hereby modified so that five (5) business days after the date a Termination Declaration is delivered (such five (5) business day period, the "Remedies Notice Period"): (a) the DIP Agent (at the direction of the Required DIP Lenders)

shall be entitled to exercise its rights and remedies in accordance with the DIP Documents and this Interim Order to satisfy the DIP Obligations, DIP Superpriority Claims, and DIP Liens, subject to the Carve Out; (b) subject to the foregoing clause (a), the applicable Prepetition First Lien Secured Parties shall be entitled to exercise their respective rights and remedies to the extent available in accordance with the applicable Prepetition Documents, the Prepetition Intercreditor Agreements, and this Interim Order with respect to the Debtors' use of Cash Collateral. During the Remedies Notice Period, the Debtors shall be entitled to seek an emergency hearing within the Remedies Notice Period with the Court for the sole purpose of contesting whether an Event of Default has occurred or is continuing. Except as set forth in this paragraph 15 or otherwise ordered by the Court prior to the expiration of the Remedies Notice Period, after the Remedies Notice Period, the Debtors shall waive their right to and shall not be entitled to seek relief, including, without limitation, under section 105 of the Bankruptcy Code, to the extent such relief would in any way impair or restrict the rights and remedies of the DIP Agent, the DIP Lenders, or the Prepetition Secured Parties under this Interim Order. Unless the Court orders otherwise prior to the expiration of the Remedies Notice Period, the automatic stay, as to all of the DIP Agent, DIP Lenders, and Prepetition First Lien Secured Parties shall automatically be terminated at the end of the Remedies Notice Period without further notice or order. Upon expiration of the Remedies Notice Period, the DIP Agent (at the direction of the Required DIP Lenders) and the Prepetition First Lien Secured Parties shall be permitted to exercise all remedies set forth herein, and in the DIP Documents, and as otherwise available at law without further order of or application or motion to this Court consistent with this Interim Order. Notwithstanding anything to the contrary in this Interim Order, following an Event of Default, the Prepetition Secured Parties shall be stayed from enforcing any rights and remedies under this Interim Order unless and until the DIP Agent has delivered a Carve

Out Trigger Notice and has complied with its obligations in connection with the issuance thereof or consents to such enforcement.

16. Limitation on Charging Expenses Against Collateral. Subject to entry of the Final Order, no expenses of administration of the Cases or any future proceeding that may result therefrom, including liquidation in bankruptcy or other proceedings under the Bankruptcy Code, shall be charged against or recovered from (a) the DIP Collateral (except to the extent of the Carve Out), the DIP Agent, or the DIP Lenders or (b) the Prepetition Collateral (except to the extent of the Carve Out) or the Prepetition Secured Parties, in each case, pursuant to sections 105(a) or 506(c) of the Bankruptcy Code or any similar principle of law or equity, without the prior written consent of the DIP Agent, the DIP Lenders, and the Prepetition First Lien Secured Parties, as applicable, and no such consent shall be implied from any other action, inaction, or acquiescence by the DIP Agent, the DIP Lenders, or the Prepetition Secured Parties.

17. Use of Cash Collateral. The Debtors are hereby authorized to use all Cash Collateral of the Prepetition Secured Parties, but solely for the purposes set forth in this Interim Order and solely in accordance with the Approved DIP Budget (subject to permitted variances as set forth in this Interim Order and the DIP Documents), including, without limitation, to make payments on account of the Adequate Protection Obligations provided for in this Interim Order, from the date of this Interim Order through and including the date of termination of the DIP Credit Agreement.

18. Expenses and Indemnification.

(a) The Debtors are hereby authorized and directed to pay, in accordance with this Interim Order, the principal, interest, fees, payments, expenses, and other amounts described in the DIP Documents as such amounts become due and without need to obtain further Court approval, including, without limitation, backstop, fronting, closing, arrangement or commitment payments (including all payments and other amounts owed to the DIP Lenders), administrative agent's fees, collateral agent's fees, and escrow agent's fees (including all fees and other amounts owed to the DIP Agent), the reasonable and documented fees and disbursements of counsel and other professionals to the extent set forth in paragraphs 3(e)(3), 8(c), and 9(c) of this Interim Order, all to the extent provided in this Interim Order or the DIP Documents. Notwithstanding the foregoing, the Debtors are authorized and directed to pay on the Closing Date (as defined in the DIP Documents), subject to paragraphs 3(e)(3), 8(c), and 9(c), all reasonable and documented fees, costs, and expenses, including the fees and expenses of counsel to the DIP Lenders, the DIP Agent, the Prepetition Agents, and the Prepetition First Lien Secured Parties incurred on or prior to such date without the need to be subject to the procedures set forth in paragraph 18(b).

(b) The Debtors shall be jointly and severally obligated to pay all fees and expenses described above, which obligations shall constitute the DIP Obligations. The Debtors shall pay the reasonable and documented professional fees, expenses, and disbursements of professionals to the extent provided for in paragraphs 3(e)(3), 8(c), and 9(c) of this Interim Order (collectively, the "Lender Professionals" and, each, a "Lender Professional") no later than five (5) business days (the "Review Period") after the receipt by counsel for the Debtors, any Committee, or the U.S. Trustee of each of the invoices therefor (the "Invoiced Fees") and without the necessity of filing formal fee applications or complying with the U.S. Trustee Guidelines, including such amounts arising before the Petition Date. Invoiced Fees shall be in the form of an invoice summary for professional fees and categorized expenses incurred during the pendency of the Cases, and such invoice summary shall not be required to contain time entries, but shall include a general, brief description of the nature of the matters for which services were performed (which shall provide sufficient information to determine if such fees and expenses are reasonable), and which may be redacted or modified to the extent necessary to delete any information subject to the attorney-client privilege, any work product doctrine, privilege or protection, common interest doctrine privilege or protection, any other evidentiary privilege or protection recognized under applicable law, or any other confidential information, and the provision of such invoices shall not constitute any waiver of the attorney-client privilege, work product doctrine, privilege or protection, common interest doctrine privilege or protection, or any other evidentiary privilege or protection recognized under applicable law. The Debtors, any Committee, or the U.S. Trustee may dispute the payment of any portion of the Invoiced Fees (the "Disputed Invoiced Fees") if, within the Review Period, a Debtor, any Committee that may be appointed in these Cases, or the U.S. Trustee notifies the submitting party in writing setting forth the specific objections to the Disputed Invoiced Fees (to be followed by the filing with the Court, if necessary, of a motion or other pleading, with at least ten (10) days prior written notice to the submitting party of any hearing on such motion or other pleading). For avoidance of doubt, the Debtors shall promptly pay in full all Invoiced Fees other than the Disputed Invoiced Fees.

(c) In addition, as provided in section 10.05 of the DIP Credit Agreement, the Debtors will indemnify each of the DIP Lenders, the DIP Agent, the Prepetition Agents, the Prepetition First Lien Secured Parties, and each of their respective affiliates, successors, and assigns and the officers, directors, employees, agents, attorneys, advisors, controlling persons, and members of each of the foregoing (each an "Indemnified Person") and hold them harmless from and against all costs, expenses (including but not limited to reasonable and documented legal fees and expenses), and liabilities arising out of or relating to the transactions contemplated hereby and any actual or proposed use of the proceeds of any loans made under the DIP Facility as and to the extent provided in the DIP Credit Agreement. No Indemnified Person shall have any liability (whether direct or indirect, in contract, tort, or otherwise) to the Debtors or any shareholders or creditors of the Debtors for or in connection with the transactions contemplated hereby, except to the extent such liability is found in a final non-appealable judgment by a court of competent jurisdiction to have resulted solely from such Indemnified Person's gross negligence, fraud, or willful misconduct or breach of their obligations under the DIP Facility, which indemnity shall have equal priority and lien status to the DIP Superpriority Claims. In no event shall any Indemnified Person or any Debtor be liable on any theory of liability for any special, indirect, consequential, or punitive damages; provided, that this shall not affect the Debtor's indemnification obligations pursuant to the immediately preceding sentence.

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

20. Section 507(b) Reservation. Subject only to the Carve Out, nothing herein shall impair or modify the application of section 507(b) of the Bankruptcy Code in the event that the adequate protection provided to the Prepetition Secured Parties is insufficient to compensate for any Diminution in Value of their interests in the Prepetition Collateral during the Cases. Nothing contained herein shall be deemed a finding by the Court, or an acknowledgment by any of the Prepetition Secured Parties that the adequate protection granted herein does in fact adequately protect any of the Prepetition Secured Parties against any Diminution in Value of their respective interests in the Prepetition Collateral (including the Cash Collateral).

21. Insurance. Until the DIP Obligations have been indefeasibly paid in full, at all times the Debtors shall maintain casualty and loss insurance coverage for the Prepetition Collateral

and the DIP Collateral on substantially the same basis as maintained prior to the Petition Date and shall name the DIP Agent as loss payee or additional insured, as applicable, thereunder.

22. No Waiver for Failure to Seek Relief. The failure or delay of the DIP Agent or the Required DIP Lenders to exercise rights and remedies under this Interim Order, the DIP Documents, or applicable law, as the case may be, shall not constitute a waiver of their respective rights hereunder, thereunder, or otherwise.

23. Perfection of the DIP Liens and Adequate Protection Liens.

(a) Without in any way limiting the automatically effective perfection of the DIP Liens granted pursuant to paragraph 7 hereof and the Adequate Protection Liens granted pursuant to paragraphs 8(a) and 9(a) hereof, the DIP Agent and the Prepetition Agents are hereby authorized, but not required, to file or record financing statements, intellectual property filings, mortgages, depository account control agreements, notices of lien, or similar instruments in any jurisdiction in order to validate and perfect the liens and security interests granted hereunder. Whether or not the DIP Agent or the Prepetition Agents shall (at the direction of the applicable required lenders) choose to file such financing statements, intellectual property filings, mortgages, notices of lien, or similar instruments, such liens and security interests shall be deemed valid, perfected, allowed, enforceable, non-avoidable, and not, subject to the Challenge Period, subject to challenge, dispute, or subordination as of the date of entry of this Interim Order. If the DIP Agent or the Prepetition Agents (at the direction of the applicable required lenders) determines to file or execute any financing statements, agreements, notice of liens, or similar instruments (which, in each case, shall be at the sole cost and expense of the Debtors), the Debtors shall use commercially reasonable efforts to cooperate and assist in any such execution and/or filings as reasonably requested by the DIP Agent or the Prepetition Agents (at the direction of the applicable required lenders), and the automatic stay shall be modified solely to allow such filings as provided for in this Interim Order.

(b) A certified copy of this Interim Order may, at the direction of the applicable Required DIP Lenders, be filed with or recorded in filing or recording offices by the DIP Agent or the Prepetition Agents in addition to or in lieu of such financing statements, mortgages, notices of lien, or similar instruments, and all filing offices are hereby authorized to accept such certified copy of this Interim Order for filing and recording; provided, however, that notwithstanding the date of any such filing, the date of such perfection shall be the date of this Interim Order.

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

24. Release. Subject to the rights and limitations set forth in paragraph 12 of this Interim Order, each of the Debtors and the Debtors' estates, on its own behalf and on behalf of each of their predecessors, their successors, and assigns, shall, to the maximum extent permitted by applicable law, unconditionally, irrevocably, and fully forever release, remise, acquit, relinquish, irrevocably waive, and discharge, effective upon entry of this Interim Order, each of

the DIP Secured Parties and each of their respective affiliates, former, current, or future officers, employees, directors, agents, representatives, owners, members, partners, financial advisors, legal advisors, shareholders, managers, consultants, accountants, attorneys, affiliates, assigns, and predecessors in interest, each in their capacity as such (collectively, the "Related Parties"), and, effective upon entry of the Final Order, each of the Prepetition First Lien Secured Parties and each of their respective Related Parties, of and from any and all claims, demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness and obligations, rights, assertions, allegations, actions, suits, controversies, proceedings, losses, damages, injuries, attorneys' fees, costs, expenses, or judgments of every type, whether known, unknown, asserted, unasserted, suspected, unsuspected, accrued, unaccrued, fixed, contingent, pending, or threatened, including, without limitation, all legal and equitable theories of recovery, arising under common law, statute, or regulation or by contract, of every nature and description that exist on the date hereof with respect to or relating to the DIP Obligations, the DIP Liens, the DIP Documents, the Prepetition Obligations, the Prepetition Liens or the Prepetition Documents, as applicable, including, without limitation: (i) any so-called "lender liability" or equitable subordination claims or defenses, (ii) any and all claims and causes of action arising under the Bankruptcy Code, and (iii) any and all claims and causes of action regarding the validity, priority, extent, enforceability, perfection, or avoidability of the liens or claims of the DIP Secured Parties and the Prepetition Secured Parties; provided that nothing in this paragraph 24 shall in any way limit or release the obligations of any DIP Secured Party under the DIP Documents, this Interim Order, and the Final Order.

25. Credit Bidding. Subject to section 363(k) of the Bankruptcy Code, the DIP Agent (at the direction of the Required DIP Lenders) and the Prepetition First Lien Term Loan Agent (at

the direction of the Required Lenders) shall have the right to credit bid (either directly or through one or more acquisition vehicles), up to the full amount of the underlying lenders' respective claims, including, for the avoidance of doubt, Adequate Protection Superpriority Claims, if any, in any sale of all or any portion of the Prepetition Collateral or the DIP Collateral including, without limitation, sales occurring pursuant to section 363 of the Bankruptcy Code or included as part of any chapter 11 plan subject to confirmation under section 1129(b)(2)(A)(ii)-(iii) of the Bankruptcy Code.

26. Preservation of Rights Granted Under this Interim Order.

(a) Unless and until all DIP Obligations are indefeasibly paid in full, in cash, and all New Money Commitments are terminated, the Prepetition Secured Parties shall: (i) have no right to and shall take no action to foreclose upon, or recover in connection with, the liens granted thereto pursuant to the Prepetition Documents or this Interim Order, or otherwise seek to exercise or enforce any rights or remedies against such DIP Collateral; and (ii) not file any further financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments, or otherwise take any action to perfect their security interests in the DIP Collateral, except as set forth in paragraph 23 herein.

(b) In the event this Interim Order or any provision hereof is vacated, reversed, or modified on appeal or otherwise, any liens or claims granted to the DIP Secured Parties or the Prepetition Secured Parties hereunder arising prior to the effective date of any such vacatur, reversal, or modification of this Interim Order shall be governed in all respects by the original provisions of this Interim Order, including entitlement to all rights, remedies, privileges, and benefits granted herein, and the Prepetition Secured Parties shall be entitled to all the rights, remedies, privileges, and benefits afforded in section 364(e) of the Bankruptcy Code.

(c) Unless and until all DIP Obligations, Prepetition Obligations, and Adequate Protection Obligations are indefeasibly paid in full, in cash, and all New Money Commitments are terminated, the Debtors irrevocably waive the right to seek and shall not seek or consent to, directly or indirectly (i) except as permitted under the DIP Documents or, if not provided for therein, with the prior written consent of the DIP Agent, the Required DIP Lenders, and the Prepetition Agents (acting at the direction of the applicable Required Lenders), (x) any modification, stay, vacatur, or amendment of this Interim Order or (y) a priority claim for any administrative expense or unsecured claim against any of the Debtors (now existing or hereafter arising of any kind or nature whatsoever, including, without limitation, any administrative expense of the kind specified in sections 503(b), 507(a), or 507(b) of the Bankruptcy Code) in any of the Cases, *pari passu* with or senior to the DIP Superpriority Claims, the Adequate Protection Superpriority Claims, or the Prepetition First Lien Obligations, or (z) any other order allowing use of the DIP Collateral; (ii) except as permitted under the DIP Documents (including the Carve Out), any lien on any of the DIP Collateral or the Prepetition Collateral with priority equal or superior to the DIP Liens, the Adequate Protection Liens or the Prepetition Liens, as applicable; (iii) the use of Cash Collateral for any purpose other than as permitted in the DIP Documents and this Interim Order; (iv) except as set forth in the DIP Documents, the return of goods pursuant to section 546(h) of the Bankruptcy Code (or other return of goods on account of any prepetition indebtedness) to any creditor of any Debtor; (v) an order converting or dismissing any of the Cases; (vi) an order appointing a chapter 11 trustee in any of the Cases; or (vii) an order appointing an examiner with enlarged powers in any of the Cases; provided, however, that none of the foregoing shall require the Debtors to violate their fiduciary duties.

(d) Notwithstanding any order dismissing any of the Cases entered at any time, (x) the DIP Liens, the DIP Superpriority Claims, the Adequate Protection Liens, the Adequate Protection Superpriority Claims, and the other administrative claims granted pursuant to this Interim Order shall continue in full force and effect and shall maintain their priorities as provided in this Interim Order until all DIP Obligations and Adequate Protection Payments are indefeasibly paid in full in cash (and such DIP Liens, DIP Superpriority Claims, Adequate Protection Liens, Adequate Protection Superpriority Claims, and the other administrative claims granted pursuant to this Interim Order, shall, notwithstanding such dismissal, remain binding on all parties in interest); and (y) to the fullest extent permitted by law the Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing the claims, liens, and security interests referred to in clause (x) above.

(e) Except as expressly provided in this Interim Order or in the DIP Documents, the DIP Liens, the DIP Superpriority Claims, the Adequate Protection Liens, the Adequate Protection Superpriority Claims, and all other rights and remedies of the DIP Agent, the DIP Lenders, and the Prepetition Secured Parties granted by the provisions of this Interim Order and the DIP Documents shall survive, and shall not be modified, impaired, or discharged by (i) the entry of an order converting any of the Cases to a case under chapter 7, dismissing any of the Cases, terminating the joint administration of these Cases or by any other act or omission, (ii) the entry of an order approving the sale of any Prepetition Collateral or DIP Collateral pursuant to section 363(b) of the Bankruptcy Code, or (iii) the entry of an order confirming a chapter 11 plan in any of the Cases and, pursuant to section 1141(d)(4) of the Bankruptcy Code, the Debtors have waived any discharge as to any remaining DIP Obligations or Adequate Protection Obligations. The terms and provisions of this Interim Order and the DIP Documents shall continue in these

Cases, in any successor cases if these Cases cease to be jointly administered, or in any superseding chapter 7 cases under the Bankruptcy Code. The DIP Liens, the DIP Superpriority Claims, the Adequate Protection Liens, the Adequate Protection Superpriority Claims, and all other rights and remedies of the DIP Secured Parties and the Prepetition Secured Parties granted by the provisions of this Interim Order shall continue in full force and effect until the DIP Obligations and the Adequate Protection Payments are indefeasibly paid in full, in cash or, with respect to the DIP Obligations, otherwise satisfied in a manner agreed to by the Required DIP Lenders and the DIP Agent (acting at the direction of the Required DIP Lenders).

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

27. <u>Limitation on Use of DIP Facility Proceeds, DIP Collateral, and Cash Collateral</u>. Notwithstanding anything to the contrary set forth in this Interim Order, none of the DIP Facility, the DIP Collateral, the Prepetition Collateral, including Cash Collateral, or the Carve Out or proceeds thereof may be used: (a) to investigate (including by way of examinations or discovery proceedings), initiate, assert, prosecute, join, commence, support, or finance the initiation or prosecution of any claim, counterclaim, action, suit, arbitration, proceeding, application, motion, objection, defense, adversary proceeding, or other litigation of any type (i) against any of the DIP Secured Parties or the Prepetition Secured Parties (each in their capacities as such), and each of their respective affiliates, 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), including, without limitation, any so-called "lender liability" claims and causes of action, or seeking relief that would impair the rights and remedies of the DIP Secured Parties or the Prepetition Secured Parties (each in their capacities as such) under the DIP Documents, the Prepetition Documents, or this Interim Order, including, without limitation, for the payment of any services rendered by the professionals retained by the Debtors or any Committee appointed in these Cases in connection with the assertion of or joinder in any claim, counterclaim, action, suit, arbitration, proceeding, application, motion, objection, defense, adversary proceeding, or other contested matter, the purpose of which is to seek, or the result of which would be to obtain, any order, judgment, determination, declaration, or similar relief that would impair the ability of any of the DIP Secured Parties or the Prepetition Secured Parties to recover on the DIP Collateral or the Prepetition Collateral or seeking affirmative relief against any of the DIP Secured Parties or the Prepetition Secured Parties related to the DIP Obligations or the Prepetition Obligations; (ii) invalidating, setting aside, avoiding, or subordinating, in whole or in part, the DIP Obligations or the Prepetition Obligations, or the DIP Agent's, the DIP Lenders', and the Prepetition Secured Parties' liens or security interests in the DIP Collateral or Prepetition Collateral, as applicable; or (iii) for monetary, injunctive, or other affirmative relief against the DIP Secured Parties or the Prepetition Secured Parties, or the DIP Agent's, the DIP Lenders', the Prepetition Secured Parties' respective liens on or security interests in the DIP Collateral or the Prepetition Collateral that would impair the ability of any of the DIP Secured Parties or the Prepetition Secured Parties, as applicable, to assert or enforce any lien, claim, right, or security interest or to realize or recover on the DIP Obligations or the Prepetition Obligations, to the extent applicable; (b) for objecting to or challenging in any way the legality, validity, priority, perfection, or enforceability of the claims, liens, or interests (including the Prepetition Liens) held by or on behalf of each of the Prepetition Secured Parties related to the Prepetition Obligations, or by or on behalf of the DIP Agent and the DIP Lenders related to the DIP Obligations; (c) for asserting, commencing, or prosecuting any claims or causes of action whatsoever, including, without limitation, any Avoidance Actions related to the DIP Obligations, the DIP Liens, the Prepetition Obligations, or the Prepetition Liens; or (d) for prosecuting an objection to, contesting in any manner, or raising any defenses to, the validity, extent, amount, perfection, priority, or enforceability of: (x) any of the DIP Liens or any other rights or interests of the DIP Agent or the DIP Lenders related to the DIP Obligations or the DIP Liens, or (y) any of the Prepetition Liens or any other rights or interests of any of the Prepetition Secured Parties related to the Prepetition Obligations or the Prepetition Liens, provided that no more than $50,000 of the proceeds of the DIP Facility, the DIP Collateral, or the Prepetition Collateral, including the Cash Collateral, in the aggregate, may be used by any Committee appointed in these Cases, if any, solely to investigate, within the Challenge Period (as defined below), the claims, causes of action, adversary proceedings, or other litigation against the Prepetition Secured Parties solely concerning the legality, validity, priority, perfection, enforceability or extent of the claims, liens, or interests (including the Prepetition Liens) held by or on behalf of each of the Prepetition Secured Parties related to the Prepetition Obligations.

28. Conditions Precedent. Except as provided for in the Carve Out, no DIP Lender shall have any obligation to make any DIP Loan under the respective DIP Documents unless all of the conditions precedent to the making of such extensions of credit under the applicable DIP Documents have been satisfied in full or waived in accordance with such DIP Documents.

29. Prepetition Intercreditor Agreements. Pursuant to section 510 of the Bankruptcy Code, any applicable intercreditor or subordination provisions contained in any of the Prepetition Documents, including the Prepetition Intercreditor Agreements, shall remain in full force and effect; provided that nothing in this Interim Order shall be deemed to provide liens to any Prepetition Secured Party on any assets of the Debtors except as set forth herein.

30. Binding Effect; Successors and Assigns. The DIP Documents and the provisions of this Interim Order, including all findings herein, shall be binding upon all parties in interest in these Cases, including, without limitation, the DIP Secured Parties, the Prepetition Secured Parties, any Committee appointed in these Cases, and the Debtors and their respective successors and permitted assigns (including any chapter 7 or chapter 11 trustee hereinafter appointed or elected for the estate of any of the Debtors, an examiner appointed pursuant to section 1104 of the Bankruptcy Code, or any other fiduciary appointed as a legal representative of any of the Debtors or with respect to the property of the estate of any of the Debtors) and shall inure to the benefit of the DIP Secured Parties and the applicable Prepetition Secured Parties; provided that, except to the extent expressly set forth in this Interim Order, the Prepetition Secured Parties shall have no obligation to permit the use of Cash Collateral or to extend any financing to any chapter 7 trustee or similar responsible person appointed for the estates of the Debtors. In determining to make any loan (whether under the DIP Credit Agreement, a promissory note or otherwise) to permit the use of Cash Collateral or in exercising any rights or remedies as and when permitted pursuant to this Interim Order or the DIP Documents, the DIP Secured Parties and the Prepetition Secured Parties shall not (i) be deemed to be in control of the operations of the Debtors, or (ii) owe any fiduciary duty to the Debtors, their respective creditors, shareholders, or estates.

31. Limitation of Liability. In determining to make any loan under the DIP Documents, permitting the use of Cash Collateral, or in exercising any rights or remedies as and when permitted pursuant to this Interim Order or the DIP Documents, the DIP Secured Parties and the Prepetition Secured Parties shall not, solely by reason thereof, be deemed in control of the operations of the Debtors or to be acting as a "responsible person" or "owner or operator" with respect to the operation or management of the Debtors (as such terms, or any similar terms, are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 29 U.S.C. §§ 9601 et seq. as amended, or any similar federal or state statute). Furthermore, nothing in this Interim Order or in the DIP Documents shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Agent, the DIP Lenders, or any Prepetition Secured Parties of any liability for any claims arising from the prepetition or post-petition activities of any of the Debtors.

32. No Requirement to File Claim for DIP Obligations. Notwithstanding anything to the contrary contained in any prior or subsequent order of the Court, including, without limitation, any order establishing a deadline for the filing of proofs of claim or requests for payment of administrative expenses under section 503(b) of the Bankruptcy Code, neither the DIP Agent nor any DIP Lender shall be required to file any proof of claim or request for payment of administrative expenses with respect to any of the DIP Obligations, all of which shall be due and payable in accordance with the DIP Documents without the necessity of filing any such proof of claim or request for payment of administrative expenses, and the failure to file any such proof of claim or request for payment of administrative expenses shall not affect the validity, priority, or enforceability of any of the DIP Documents or of any indebtedness, liabilities, or obligations arising at any time thereunder or prejudice or otherwise adversely affect the DIP Agent's or any

DIP Lender's rights, remedies, powers, or privileges under any of the DIP Documents, this Interim Order, or applicable law. The provisions set forth in this paragraph are intended solely for the purpose of administrative convenience and shall not affect the substantive rights of any party-in-interest or their respective successors-in-interest.

33. No Requirement to File Claim for Prepetition Obligations. Notwithstanding anything to the contrary contained in any prior or subsequent order of the Court, including, without limitation, any order establishing a deadline for the filing of proofs of claim or requests for payment of administrative expenses under section 503(b) of the Bankruptcy Code, neither the Prepetition Agents nor any Prepetition Secured Parties shall be required to file any proof of claim or request for payment of administrative expenses with respect to any of the Prepetition Obligations; and the failure to file any such proof of claim or request for payment of administrative expenses shall not affect the validity, priority, or enforceability of any of the Prepetition Documents or of any indebtedness, liabilities, or obligations arising at any time thereunder or prejudice or otherwise adversely affect the Prepetition Agents' or any Prepetition Secured Party's rights, remedies, powers, or privileges under any of the Prepetition Documents, this Interim Order, or applicable law. The provisions set forth in this paragraph are intended solely for the purpose of administrative convenience and shall not affect the substantive rights of any party-in-interest or their respective successors-in-interest.

34. No Marshaling. Subject to entry of the Final Order, the DIP Agent and the DIP Secured Parties shall not be subject to the equitable doctrine of "marshaling" or any other similar doctrine with respect to any of the DIP Collateral, and proceeds of the DIP Collateral shall be received and applied pursuant to this Interim Order, the DIP Documents and the Prepetition Documents, notwithstanding any other agreement or provision to the contrary, and the Prepetition

Secured Parties shall not be subject to the equitable doctrine of "marshaling" or any other similar doctrine with respect to any of the Prepetition Collateral.

35. Application of Proceeds of DIP Collateral. Subject to entry of a Final Order, the DIP Obligations, at the option of the Required DIP Lenders, to be exercised in their sole and absolute discretion, shall be repaid (a) first, from the DIP Collateral comprising Previously Unencumbered Property and (b) second, from all other DIP Collateral.

36. Equities of the Case. The Prepetition Secured Parties shall each be entitled to all the rights and benefits of section 552(b) of the Bankruptcy Code, and, subject to and upon entry of the Final Order, the "equities of the case" exception under section 552(b) of the Bankruptcy Code shall not apply to the Prepetition Secured Parties with respect to proceeds, product, offspring, or profits of any of the Collateral (including the Prepetition Collateral).

37. Transferred Assets. Notwithstanding anything contained in the Interim Order, Final Order, or any DIP Documents, no liens or other security interests granted hereunder or under any DIP Loan Document, including any DIP Liens or any Adequate Protection Liens, shall attach to, encumber, or otherwise impact the "Transferred Assets" as defined in that certain Stock and Asset Purchase Agreement by and between Vyaire Holding Company and SunMed Group Holdings, LLC, dated as of March 27, 2023, and such Transferred Assets are not property of the Debtors' estates.

38. Final Hearing. The Final Hearing on the Motion shall be held on _________, 2024, at__:__ _.m., prevailing Eastern time. Any objections or responses to entry of a final order on the Motion shall be filed on or before 4:00 p.m., prevailing Eastern time, on _________, 2024, and shall be served on: (a) the Debtors, 26125 North Riverwoods Boulevard, Mettawa, Illinois, USA 60045, Attn.: Charles Braley (cbraley@alixpartners.com); (b) proposed co-counsel to the Debtors

(i) Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn.: Joshua A. Sussberg, P.C. (joshua.sussberg@kirkland.com), Chris Ceresa (chris.ceresa@kirkland.com), and Tiffani Chanroo (tiffani.chanroo@kirkland.com) (ii) Kirkland & Ellis LLP, 333 West Wolf Point Plaza, Chicago, Illinois, 60654, Attn.: Spencer A. Winters (spencer.winters@kirkland.com) and Yusuf U. Salloum (yusuf.salloum@kirkland.com), and, (iii) Cole Schotz P.C., 500 Delaware Avenue, Suite 1410, Wilmington, Delaware 19801, Attn.: Patrick J. Reilley, Esq. (preilley@coleschotz.com), Stacy L. Newman (snewman@coleschotz.com), Michael E. Fitzpatrick, Esq. (mfitzpatrick@coleschotz.com), and Jack M. Dougherty, Esq. (jdougherty@coleschotz), and (iv) Cole Schotz P.C., Court Plaza North, 25 Main Street, Hackensack, New Jersey 07601, Attn.: Michael D. Sirota, Esq (msirota@coleschotz.com) and Warren A. Usatine, Esq. (wusatine@coleschotz.com); (c) co-counsel to the DIP Lenders and the DIP/First Lien Group, (i) Gibson, Dunn & Crutcher LLP, 200 Park Ave., New York, NY 10166, Attn: Scott J. Greenberg (sgreenberg@gibsondunn.com), Jason Zachary Goldstein (jgoldstein@gibsondunn.com), Joshua Brody (jbrody@gibsondunn.com), and Kevin Liang (kliang@gibsondunn.com) and (ii) Pachulski Stang Ziehl & Jones LLP, 919 North Market Street, 17th Floor, Wilmington, DE 19801, Attn: Laura Davis Jones (ljones@pszjlaw.com); (d) co-counsel to the DIP Agent, (i) ArentFox Schiff LLP, 1301 Avenue of the Americas, 42nd Floor, New York, NY 10019, Attn: Jeffrey R. Gleit (jeffrey.gleit@afslaw.com) and (ii) Morris James LLP, 500 Delaware Avenue, Suite 1500, Wilmington, DE 19801, Attn: Eric J. Monzo (emonzo@morrisjames.com) and Brya Keilson (bkeilson@morrisjames.com); (e) co-counsel to the Prepetition First Lien Term Loan Agent, (i) Haynes & Boone LLP, 2801 N. Hardwood Street, Suite 2300, Dallas, TX 75201, Attn: Eli Columbus (eli.columbus@haynesboone.com), James Markus (james.markus@haynesboone.com), and Dani Leon-Osorio (Dani.Leon-

Osorio@haynesboone.com) and (ii) local counsel; (f) co-counsel to the Prepetition First Lien Notes Agent and the Prepetition Second Lien Term Loan Agent, (i) Seward & Kissel LLP, One Battery Park Plaza, New York, NY 10004, Attn: Ronald A. Hewitt (hewitt@sewkis.com) and (ii) local counsel; (g) the United States Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn: Benjamin A. Hackman; and (h) counsel to any statutory committee appointed in these chapter 11 cases. In the event no objections to entry of the Final Order on the Motion are timely received, this Court may enter such Final Order without need for the Final Hearing.

39. Effect of this Interim Order. This Interim Order shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 and shall take effect and be enforceable immediately upon execution hereof.

40. Retention of Jurisdiction. The Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation of this Interim Order.

EXHIBIT A

DIP Credit Agreement

[To be Filed]

EXHIBIT B

Budget

	Week 1	Week 2	Week 3	Week 4	Week 5	Week 6	Week 7	Week 8	Week 9	Week 10	Week 11	Week 12	Week 13	
($ 000s)	**Forecast**	**Forecast**	**Forecast**	**Forecast**	**Forecast**	**Forecast**	**Forecast**	**Forecast**	**Forecast**	**Forecast**	**Forecast**	**Forecast**	**Forecast**	**13 Weeks**
Calendar Year	**2024**	**2024**	**2024**	**2024**	**2024**	**2024**	**2024**	**2024**	**2024**	**2024**	**2024**	**2024**	**2024**	**Period - Ended**
Week End Date	**Jun-14**	**Jun-21**	**Jun-28**	**Jul-05**	**Jul-12**	**Jul-19**	**Jul-26**	**Aug-02**	**Aug-09**	**Aug-16**	**Aug-23**	**Aug-30**	**Sep-06**	
Total Operating Receipts	**2,308**	**2,308**	**2,509**	**1,995**	**3,330**	**2,745**	**3,613**	**2,560**	**2,908**	**2,768**	**2,628**	**2,612**	**2,146**	**34,431**
Total Operating Disbursements	**(3,549)**	**(5,713)**	**(2,229)**	**(5,519)**	**(1,941)**	**(5,213)**	**(1,632)**	**(4,966)**	**(1,824)**	**(4,981)**	**(1,786)**	**(5,155)**	**(2,267)**	**(46,776)**
Net Cash Flow from Operations	**(1,241)**	**(3,406)**	**279**	**(3,524)**	**1,389**	**(2,468)**	**1,980**	**(2,406)**	**1,085**	**(2,212)**	**842**	**(2,543)**	**(121)**	**(12,346)**
Total Non-Operating Receipts / (Disbursements)	**(22)**	**(22)**	**(22)**	**(22)**	**(22)**	**(22)**	**(22)**	**(17)**	**(346)**	**(346)**	**(346)**	**(346)**	**2,083**	**529**
Total Net Cash Flow	**(1,263)**	**(3,428)**	**257**	**(3,546)**	**1,367**	**(2,490)**	**1,958**	**(2,423)**	**739**	**(2,558)**	**496**	**(2,889)**	**1,962**	**(11,817)**
Restructuring Receipts/(Disbursements)														
DIP Draw, Fees, & Interest	21,655	-	-	-	-	-	4,000	4,000	-	4,000	-	3,000	4,438	41,093
Restructuring Costs (Pro Fees & Other RX)	(725)	(881)	(1,595)	(2,320)	(3,770)	(550)	(1,296)	(3,745)	(1,697)	(425)	(1,104)	(2,025)	(3,915)	(24,047)
Total Restructuring Receipts/(Disbursements)	**20,930**	**(881)**	**(1,595)**	**(2,320)**	**(3,770)**	**(550)**	**2,704**	**255**	**(1,697)**	**3,575**	**(1,104)**	**975**	**522**	**17,045**
Liquidity														
Book Cash Balance - Start	**1,758**	**21,425**	**17,116**	**15,778**	**9,912**	**7,510**	**4,470**	**9,132**	**6,964**	**6,006**	**7,023**	**6,416**	**4,502**	**1,758**
Net Cash Flow (+/-)	19,667	(4,309)	(1,338)	(5,866)	(2,402)	(3,040)	4,662	(2,168)	(958)	1,017	(608)	(1,914)	2,484	5,228
Change in Outstanding ACH/Wire/Check Balance	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total US Liquidity	**21,425**	**17,116**	**15,778**	**9,912**	**7,510**	**4,470**	**9,132**	**6,964**	**6,006**	**7,023**	**6,416**	**4,502**	**6,987**	**6,987**
Ending International Liquidity	**7,104**	**6,366**	**7,491**	**5,870**	**6,264**	**4,803**	**5,148**	**3,747**	**4,546**	**3,545**	**4,345**	**2,894**	**1,172**	**1,172**
Ending Global Liquidity	**$ 28,529**	**$ 23,482**	**$ 23,270**	**$ 15,782**	**$ 13,774**	**$ 9,273**	**$ 14,280**	**$ 10,711**	**$ 10,553**	**$ 10,569**	**$ 10,761**	**$ 7,396**	**$ 8,159**	**$ 8,159**