

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

John Varvatos Enterprises, Inc., *et al.*,
Debtors.¹

Chapter 11

Case No. 20-11043 (MFW)

Joint Administration Requested

INTERIM ORDER, PURSUANT TO 11 U.S.C. §§ 105, 361, 362, 363, 364, 503, 506, AND 507, (I) AUTHORIZING THE DEBTORS TO OBTAIN SECURED PRIMING POST-PETITION FINANCING, (II) GRANTING LIENS AND SUPERPRIORITY ADMINISTRATIVE EXPENSE CLAIMS, (III) AUTHORIZING THE USE OF CASH COLLATERAL, (IV) GRANTING ADEQUATE PROTECTION, (V) MODIFYING THE AUTOMATIC STAY, (VI) SCHEDULING FINAL HEARING, AND (VII) GRANTING RELATED RELIEF

Upon the motion (the “**Motion**”)² of John Varvatos Enterprises, Inc., and its affiliates that are debtors and debtors in possession (the “**Debtors**”) in the above-captioned cases (the “**Chapter 11 Cases**”), pursuant to sections 105, 361, 362, 363(b), 363(c)(2), 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), 364(e), 503, 506(c), and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the “**Bankruptcy Code**”), Rules 2002, 4001, 6003, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”), for entry of interim and final orders, among other things:

- (i) Authorizing John Varvatos Enterprises, Inc., and John Varvatos Apparel Corp. (collectively, the “**DIP Borrowers**”) and Lion/Hendrix Corp. (the

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, where applicable, are: Lion/Hendrix Corp. (8784), John Varvatos Enterprises, Inc. (3554) and John Varvatos Apparel Corp. (3394). The Debtors’ corporate headquarters and mailing address is 26 West 17th Street, New York, NY, 10011.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the DIP Documents or the Motion, as applicable.

“**DIP Guarantor**” and, together with the DIP Borrowers, the “**DIP Loan Parties**”) to obtain debtor-in-possession credit financing in an aggregate principal amount of up to \$20,500,000 (the “**DIP Financing**”) to be funded by the Prepetition Noteholder (in its capacity as lender under the DIP Facility, the “**DIP Lender**”) under a credit facility (the “**DIP Facility**”) subject to the terms, conditions, and limitations set forth herein and in the documentation regarding the DIP Facility (the commitments thereunder, the “**DIP Commitments**”, and the term loans thereunder the “**DIP Loans**”), which shall include (a) the refinancing of \$13,666,666.66 of the outstanding Prepetition Notes Secured Obligations into obligations under the DIP Facility (the “**Prepetition Refinancing**”) and (b) funding of those certain expenditures set forth in the Approved Budget;

- (ii) authorizing the DIP Loan Parties, in connection with the DIP Facility, to (A) execute and enter into the Secured Priming Delayed Draw Term Loan Debtor-in-Possession Credit Agreement, among the DIP Loan Parties, the DIP Lender in its capacity as such, and Lion/Hendrix Cayman Limited, solely in its capacity as agent under the DIP Facility (the “**DIP Agent**”, and together with the DIP Lender, the “**DIP Secured Parties**”), substantially in the form attached hereto as Exhibit A (as amended, supplemented or otherwise modified from time to time in accordance with the terms hereof and thereof, the “**DIP Credit Agreement**” and, together with the schedules and exhibits attached thereto and all agreements, documents, instruments and amendments executed and delivered in connection therewith, including the Approved Budget, the “**DIP Documents**”) and (B) to perform all such other and further acts as may be required in connection with the DIP Documents;
- (iii) authorizing for the Debtors to execute and deliver the DIP Credit Agreement and the other DIP Documents and to perform such other and further acts as may be necessary or appropriate in connection therewith;
- (iv) granting to the DIP Agent, for the benefit of the DIP Lender, valid, enforceable, non-avoidable and automatically and fully perfected liens and security interests, subject only to the (a) the Carve-Out, (b) Prepetition Credit Agreement Adequate Protection Liens, (c) Prepetition Credit Agreement Liens and (d) other valid, enforceable and non-avoidable liens that are (i) in existence on the Petition Date, (ii) either perfected as of the Petition Date or perfected subsequent to the Petition Date solely to the extent permitted by section 546(b) of the Bankruptcy Code, and (iii) senior in priority to the Prepetition Liens granted the Prepetition Notes Secured Parties under and in connection with the Prepetition Notes in accordance with applicable law (such liens, the “**Permitted Prior Liens**”), to secure the DIP Obligations, which liens and security interests shall have the rankings and priorities set forth herein;

- (v) granting superpriority administrative claims to the DIP Secured Parties payable from, and having recourse to, all prepetition and post-petition property of the DIP Loan Parties' estates and all proceeds thereof (other than Avoidance Actions, but, subject to entry of the Final Order, including Avoidance Proceeds), subject to (a) the Carve-Out, (b) Prepetition Credit Agreement Adequate Protection Obligations, (c) Prepetition Credit Agreement Obligations and (d) Permitted Prior Liens;
- (vi) authorizing the DIP Loan Parties (A) upon entry of this Interim Order, to incur in a single draw on the date of execution of the DIP Credit Agreement (the "**Closing Date**"), DIP Loans in an aggregate principal amount of up to \$6,833,333.34 (the "**Initial DIP Loans**") (the incurrence of such loans upon entry of this Interim Order, the "**Interim Financing**") and (B) upon entry of the final order (the "**Final Order**"), to incur in single draw additional DIP Loans in an aggregate principal amount of \$13,666,666.66, in each case subject to the terms and conditions set forth in the DIP Documents, this Interim Order and the Final Order;
- (vii) authorizing the Debtors' use of the proceeds of the DIP Facility pursuant to the DIP Credit Agreement and the other DIP Documents, including the Approved Budget (as defined in the DIP Credit Agreement);
- (viii) authorizing the Debtors to continue to use the Cash Collateral (subject to the Approved Budget) and all other Prepetition Collateral, and the granting of Adequate Protection to (a) the Prepetition Credit Agreement Secured Parties and (b) the Prepetition Noteholder, in each case, with respect to, *inter alia*, such use of their Cash Collateral to the extent of diminution in the value of the Prepetition Collateral (including Cash Collateral);
- (ix) approving certain stipulations by the Debtors with respect to the Prepetition Debt Documents and the Prepetition Collateral as set forth herein;
- (x) modifying the automatic stay as set forth herein and the DIP Documents, to the extent necessary, to implement and effectuate the foregoing and the other terms and provisions of the DIP Documents, the Interim Order and Final Order;
- (xi) subject to entry of the Final Order, (a) waiving any right to surcharge against the DIP Collateral or Prepetition Collateral, including pursuant to section 506(c) of the Bankruptcy Code or otherwise, (b) providing that the Prepetition Secured Parties are not subject to the "equities of the case" exception contained in section 552(b) of the Bankruptcy Code and (c) providing that the Prepetition Secured Parties are not subject to the equitable doctrine of "marshaling," or any other similar doctrine with respect to the DIP Collateral or Prepetition Collateral;

(xii) scheduling a final hearing (the “**Final Hearing**”), to be held within 30 days after the Petition Date, to consider entry of the Final Order approving the DIP Facility and use of Cash Collateral, as set forth in the Motion and the DIP Documents;

(xiii) granting related relief; and

the Court having jurisdiction to consider the matters raised in the Motion pursuant to 28 U.S.C. § 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012 (the “**Standing Order**”); and the Court having authority to hear the matters raised in the Motion pursuant to 28 U.S.C. § 157; and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and consideration of the Motion and the requested relief being a core proceeding that the Court can determine pursuant to 28 U.S.C. § 157(b)(2); and due and proper notice of the Motion and opportunity for a hearing on the Motion having been given to the parties listed therein, and it appearing that no other or further notice need be provided; and the Court having reviewed and considered the Motion and the Zorda Declaration; and the Court having held an interim hearing on the Motion (the “**Interim Hearing**”); and the Court having determined that the legal and factual bases set forth in the Motion and at the Interim Hearing establish just cause for the relief granted herein; and the Court having found that good and sufficient cause exists for the relief requested in the Motion; and the Court having determined that the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates as contemplated by Bankruptcy Rules 4001 and 6003; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor;

THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:³

A. *Petition Date.* On May 6, 2020 (the “**Petition Date**”), each of the Debtors filed a separate voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (this “**Court**”) commencing the Chapter 11 Cases.

B. *Debtors in Possession.* The Debtors have continued in the management and operation of their businesses and properties as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

C. *Committee Formation.* As of the date hereof, the Office of the United States Trustee for the District of Delaware (the “**U.S. Trustee**”) has not appointed a statutory committee in the Chapter 11 Cases pursuant to section 1102 of the Bankruptcy Code (if appointed, a “**Committee**”).

D. *Jurisdiction and Venue.* The Court has jurisdiction over the Motion pursuant to 28 U.S.C. § 1334 and the Standing Order. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2) and, pursuant to Local Rule 9013-1(f), the Debtors consent to the entry of a final order by the Court in connection with the Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution. Venue of the Chapter 11 Cases and related proceedings is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

³ The findings and conclusions set forth herein constitute the Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

E. *Notice.* The Interim Hearing was held pursuant to Bankruptcy Rule 4001(b)(2) and (c)(2). Adequate and sufficient notice of the Motion has been provided in accordance with the Bankruptcy Code, the Bankruptcy Rules and the Local Rules, and under the circumstances, no other or further notice of the Motion or the entry of this Interim Order shall be required. The interim relief granted herein is necessary to avoid immediate and irreparable harm to the Debtors and their estates.

F. *Debtors' Stipulations Regarding the DIP Facility.* The Debtors, on their behalf and on behalf of their estates, admit, stipulate, acknowledge, and agree (the “**Debtors’ DIP Stipulations**”) as follows:

(i) Release of Claims. Upon entry of this Interim Order, each Debtor and its estate, on its own behalf and on behalf of its past, present and future predecessors, successors, heirs, subsidiaries, and assigns, shall be deemed to have unconditionally, irrevocably and fully forever waived, discharged, and released each of the DIP Secured Parties and their respective affiliates, assigns, or successors and the respective members, managers, equity holders, partners, limited partners, affiliates, agents, attorneys, financial advisors, consultants, officers, directors, employees, and other representatives of the foregoing (each solely in its capacity as such and all of the foregoing, collectively, the “**DIP Secured Party Releasees**”) from any and all “claims” (as defined in the Bankruptcy Code), counterclaims, causes of action (including actions under section 105 or chapter 5 of the Bankruptcy Code or similar provisions of state or federal law, and causes of action in the nature of “lender liability”), defenses, setoff rights, rights of recoupment, other offset rights, and other rights of disgorgement or recovery, and actions or claims for recharacterization or subordination, in each case, whether known, unknown,

asserted, unasserted, suspect, unsuspected, accrued, unaccrued, fixed, contingent, pending or threatened, whether arising in law or in equity (collectively, “**Claims**”) against any and all of the DIP Secured Party Releasees, relating to and/or otherwise in connection with the DIP Obligations, the DIP Liens or the debtor-creditor relationship between any of the DIP Secured Parties, on the one hand, and any of the Debtors, on the other hand; *provided* that, nothing herein shall relieve the DIP Secured Party Releasees from fulfilling their obligations or commitments under the DIP Facility or the rights of parties in interest with respect to the Prepetition Secured Parties set forth in paragraphs 20 and 21.

G. *Debtors’ Stipulations Regarding the Prepetition Credit Agreement.* After consultation with their attorneys and financial advisors, and without prejudice to the rights of a Committee or any other party in interest to bring Challenges in accordance with paragraphs 20 and 21 below), the Debtors acknowledge, admit, stipulate and agree that:

(i) Prepetition Credit Agreement. Pursuant to that certain Credit Agreement, dated as of April 22, 2019 (as amended by that certain First Amendment and Waiver to Credit Agreement, dated as of August 20, 2019, and that certain Waiver, Consent and Second Amendment to Credit Agreement, dated as of February 5, 2020, and as further amended, supplemented or otherwise modified from time to time in accordance with the terms thereof, the “**Prepetition Credit Agreement**” and, together with the schedules and exhibits attached thereto and all agreements, documents, instruments and amendments executed and delivered in connection therewith, the “**Prepetition Credit Agreement Documents**”), among John Varvatos Enterprises, Inc. and John Varvatos Apparel Corp., as borrowers (collectively, the “**Prepetition Credit Agreement Borrowers**”), and

Lion/Hendrix Corp, as guarantor (the “**Prepetition Credit Agreement Guarantor**” and, together with the Prepetition Credit Agreement Borrowers, the “**Prepetition Credit Agreement Loan Parties**”), Wells Fargo Bank, National Association, as agent (in such capacity, the “**Prepetition Credit Agreement Agent**”), and the lenders party thereto from time to time (the “**Prepetition Credit Agreement Lenders**” and, together with the Prepetition Credit Agreement Agent, the “**Prepetition Credit Agreement Secured Parties**”), the Prepetition Credit Agreement Lenders provided revolving credit and other financial accommodations to the Prepetition Credit Agreement Loan Parties.

(ii) Prepetition Credit Agreement Obligations. As of the Petition Date, the Prepetition Credit Agreement Loan Parties were justly and lawfully indebted and liable to the Prepetition Credit Agreement Secured Parties, without defense, counterclaim or offset of any kind, in respect of outstanding loans in the aggregate principal amount of not less than \$19,396,246.02, pursuant to and in accordance with the terms of the Prepetition Credit Agreement Documents (such indebtedness, together with (a) accrued and unpaid interest thereon and (b) all other fees, expenses, charges, indemnities and other obligations incurred in connection therewith as provided in the Prepetition Credit Agreement Documents, the “**Prepetition Credit Agreement Obligations**”).

(iii) Validity of Prepetition Credit Agreement Obligations. (a) The Prepetition Credit Agreement Obligations constitute legal, valid, binding and non-avoidable obligations of the Prepetition Credit Agreement Loan Parties, enforceable in accordance with the terms of the Prepetition Credit Agreement Documents (other than in respect of the stay of enforcement arising from section 362 of the Bankruptcy Code) and (b) no portion of the Prepetition Credit Agreement Obligations or any payments made to the

Prepetition Credit Agreement Secured Parties or applied to or paid on account of the Prepetition Credit Agreement Obligations prior to the Petition Date is subject to any contest, attack, rejection, recovery, recoupment, reduction, defense, counterclaim, offset, subordination, recharacterization, avoidance or other claim, cause of action or other challenge of any nature under the Bankruptcy Code or applicable non-bankruptcy law.

(iv) Prepetition Credit Agreement Liens. The liens and security interests granted to the Prepetition Credit Agreement Secured Parties (the “**Prepetition Credit Agreement Liens**”), pursuant to and in connection with the Prepetition Credit Agreement Documents, are (a) valid, binding, perfected, enforceable, non-avoidable and properly-perfected first priority liens and security interests in the Collateral (as defined in the Prepetition Credit Agreement, the “**Prepetition Credit Agreement Collateral**”), (b) not subject to avoidance, recharacterization, subordination, recovery, attack, effect, counterclaim, defense, or claim under the Bankruptcy Code or applicable non-bankruptcy law, and (c) as of the Petition Date, subject only to the Permitted Prior Liens.

(v) No Control. None of the Prepetition Credit Agreement Secured Parties controls the Debtors or their properties or operations, has authority to determine the manner in which any Debtor’s operations are conducted or are control persons or insiders of the Debtors by virtue of any of the actions taken with respect to, in connection with, related to, or arising from the Prepetition Credit Agreement Documents.

(vi) No Claims or Causes of Action. No Claims, counterclaims or causes of action of any kind or nature exist against, or with respect to, the Prepetition Credit Agreement Secured Parties under any agreements by and among the Debtors and any

such party that is in existence as of the Petition Date, whether related to the Prepetition Credit Agreement Documents, any other agreement, the Debtors or otherwise.

(vii) Releases. Upon entry of this Interim Order, each Debtor and its estate, on its own behalf and on behalf of its past, present and future predecessors, successors, heirs, subsidiaries, and assigns shall be deemed to have unconditionally, irrevocably and fully forever waived, discharged, and released each of the Prepetition Credit Agreement Agent and the other Prepetition Credit Agreement Secured Parties, and each of their respective affiliates, assigns, or successors and the respective members, managers, equity holders, affiliates, agents, attorneys, financial advisors, consultants, officers, directors, employees, and other representatives of the foregoing (each solely in its capacity as such and all of the foregoing, collectively, the “**Prepetition Credit Agreement Secured Party Releasees**”) from any and all Claims against any and all of the Prepetition Credit Agreement Secured Party Releasees relating to and/or otherwise in connection with the Prepetition Credit Agreement Secured Obligations, the Prepetition Credit Agreement Liens or the debtor-creditor relationship between any of the Prepetition Credit Agreement Secured Parties, on the one hand, and any of the Debtors, on the other hand.

(viii) Subject solely to Challenges brought in accordance with paragraphs 20 and 21 below, the Debtors’ acknowledgements, stipulations and releases (as set forth in this paragraph) shall be binding on the Debtors and their respective representatives, successors and assigns, and on each of the Debtors’ estates, all creditors thereof and each of their respective representatives, successors and assigns, including any trustee or other representative appointed in the Chapter 11 Cases, whether such trustee or representative is appointed in chapter 7 or chapter 11.

H. *Debtors' Stipulations Regarding the Prepetition Notes.* After consultation with their attorneys and financial advisors, and without prejudice to the rights of a Committee or any other party in interest to bring Challenges in accordance with paragraphs 20 and 21 below), the Debtors acknowledge, admit, stipulate and agree that:

(i) Prepetition Notes. Pursuant to that certain (a) Second Amended and Restated Tranche A Joint and Several Secured Non-Negotiable Promissory Note, dated as of February 5, 2020 (originally entered into on December 18, 2015, as amended and restated on April 22, 2019 and February 5, 2020, and as further amended, supplemented or otherwise modified from time to time in accordance with the terms thereof, the **“Tranche A Prepetition Note”**), (b) Second Amended and Restated Tranche B Joint and Several Secured Non-Negotiable Promissory Note, dated as of February 5, 2020 (originally entered into on December 18, 2015, as amended and restated on April 22, 2019 and February 5, 2020 and as further amended, supplemented or otherwise modified from time to time in accordance with the terms thereof, the **“Tranche B Prepetition Note”**), (c) Second Amended and Restated Tranche C Joint and Several Secured Non-Negotiable Promissory Note, dated as of February 5, 2020 (originally entered into on March 30, 2016, as amended and restated on April 22, 2019 and February 5, 2020, and as further amended, supplemented, or otherwise modified from time to time in accordance with the terms thereof, the **“Tranche C Prepetition Note”**), (d) Third Amended and Restated Tranche C-1 Joint and Several Secured Non-Negotiable Promissory Note, dated as of February 5, 2020 (originally entered into on March 3, 2017, as amended and restated on April 22, 2019, August 20, 2019 and February 5, 2020, and as further amended, supplemented, or otherwise modified from time to time in accordance with the

terms thereof, the “**Tranche C-1 Prepetition Note**”) and (e) Tranche D Joint and Several Secured Non-Negotiable Promissory Note, dated as of February 5, 2020 (the “**Tranche D Prepetition Note**” and, together with the notes described in clauses (a) through (d) above, collectively, the “**Prepetition Notes**” and, together with the schedules and exhibits attached thereto and all agreements, documents, instruments and amendments executed and delivered in connection therewith, the “**Prepetition Notes Documents**” and, the Prepetition Notes Documents together with the Prepetition Credit Agreement Documents, the “**Prepetition Debt Documents**”), each made by John Varvatos Enterprises, Inc. and John Varvatos Apparel Corp. (collectively, the “**Prepetition Notes Makers**”) and guaranteed by Lion/Hendrix Corp. (the “**Prepetition Notes Guarantor**” and, together with the Prepetition Notes Makers, the “**Prepetition Notes Obligor**”) in favor of Lion/Hendrix Cayman Limited, as payee (in such capacity, the “**Prepetition Noteholder**” and in its capacity as agent under the Amended and Restated Security Agreement, dated as of February 5, 2020 (the “**Prepetition Notes Security Agreement**”), by the Prepetition Notes Obligor and Prepetition Noteholder, the “**Prepetition Notes Agent**”; the Prepetition Noteholder and the Prepetition Notes Agent together, the “**Prepetition Notes Secured Parties**” and, together with the Prepetition Credit Agreement Secured Parties, the “**Prepetition Secured Parties**”), the Prepetition Noteholder provided loans and other financial accommodations to the Prepetition Note Obligor.

(ii) Prepetition Notes Obligations. As of the Petition Date, the Prepetition Notes Obligor were justly and lawfully indebted and liable to the Prepetition Noteholder, without defense, counterclaim, or offset of any kind, in respect of

(a) outstanding indebtedness under the Tranche A Prepetition Note in the aggregate principal amount of not less than \$14,249,161.38, (b) outstanding indebtedness under the Tranche B Prepetition Note in the aggregate principal amount of not less than \$32,526,639.94, (c) outstanding indebtedness under the Tranche C Prepetition Note in the aggregate principal amount of not less than \$15,840,297.53, (d) outstanding indebtedness under the Tranche C-1 Prepetition Note in the aggregate principal amount of not less than \$11,164,941.84, (e) outstanding indebtedness under the Tranche D Prepetition Note in the aggregate principal amount of not less than \$20,998,442.62, in each case, pursuant to and in accordance with the terms of the applicable Prepetition Notes Documents (such indebtedness, together with (i) accrued and unpaid interest thereon and (ii) all other fees, expenses, charges, indemnities, and other obligations incurred in connection therewith as provided in the Prepetition Notes Documents, the “**Prepetition Notes Obligations**” and, the Prepetition Notes Secured Obligations together with the Prepetition Credit Agreement Obligations, the “**Prepetition Obligations**”).

(iii) Validity of Prepetition Notes Obligations. (a) The Prepetition Notes Obligations constitute legal, valid, binding and non-avoidable obligations of the Prepetition Note Obligors, enforceable in accordance with the terms of the Prepetition Notes Documents (other than in respect of the stay of enforcement arising from section 362 of the Bankruptcy Code) and (b) no portion of the Prepetition Notes Obligations or any payments made to the Prepetition Notes Secured Parties or applied to or paid on account of the Prepetition Notes Obligations prior to the Petition Date is subject to any contest, attack, rejection, recovery, recoupment, reduction, defense, counterclaim, offset, subordination, recharacterization, avoidance or other claim, cause of

action, or other challenge of any nature under the Bankruptcy Code or applicable non-bankruptcy law.

(iv) Prepetition Notes Liens. The liens and security interests granted to the Prepetition Notes Secured Parties (the “**Prepetition Notes Liens**” and, together with the Prepetition Credit Agreement Liens, the “**Prepetition Liens**”), pursuant to and in connection with the Prepetition Notes Documents, are (a) valid, binding, perfected, enforceable, non-avoidable and properly-perfected liens and security interests in the Collateral (as defined in the Prepetition Notes Security Agreement, the “**Prepetition Notes Collateral**” and, together with the Prepetition Credit Agreement Collateral, the “**Prepetition Collateral**”), (b) not subject to avoidance, recharacterization, subordination, recovery, attack, effect, counterclaim, defense, or claim under the Bankruptcy Code or applicable non-bankruptcy law, and (c) as of the Petition Date, subject only to the Permitted Prior Liens and the Prepetition Credit Agreement Liens.

(v) No Control. None of the Prepetition Notes Secured Parties, in their capacity as such, controls the Debtors or their properties or operations, has authority to determine the manner in which any Debtor’s operations are conducted or are control persons or insiders of the Debtors by virtue of any of the actions taken with respect to, in connection with, related to, or arising from the Prepetition Notes Documents.

(vi) No Claims or Causes of Action. No Claims, counterclaims or causes of action of any kind or nature exist against, or with respect to, the Prepetition Notes Secured Parties under any agreements by and among the Debtors and any such party that is in existence as of the Petition Date, whether related to the Prepetition Notes Documents, any other agreement, the Debtors or otherwise.

(vii) Releases. Upon entry of this Interim Order, each Debtor and the its estate, on its own behalf and on behalf of its past, present and future predecessors, successors, heirs, subsidiaries, and assigns shall be deemed to have unconditionally, irrevocably and fully, forever waived, discharged, and released each of the Prepetition Notes Secured Parties, and each of their respective affiliates, assigns, or successors and the respective members, managers, equity holders, partners, limited partners, affiliates, agents, attorneys, financial advisors, consultants, officers, directors, employees, and other representatives of the foregoing (each solely in its capacity as such and all of the foregoing, collectively, the “**Prepetition Notes Secured Party Releasees**” and, together with the Prepetition Credit Agreement Secured Party Releasees, the “**Prepetition Secured Party Releasees**”) from any and all Claims against any and all of the Prepetition Notes Secured Party Releasees relating to and/or otherwise in connection with the Prepetition Notes Secured Obligations, the Prepetition Notes Liens or the debtor-creditor relationship between any of the Prepetition Notes Secured Parties, on the one hand, and any of the Debtors, on the other hand.

(viii) Subject solely to Challenges brought in accordance with paragraphs 20 and 21 below, the Debtors’ acknowledgements, stipulations and releases (as set forth in this paragraph) shall be binding on the Debtors and their respective representatives, successors and assigns, and on each of the Debtors’ estates, all creditors thereof and each of their respective representatives, successors and assigns, including any trustee or other representative appointed in the Chapter 11 Cases, whether such trustee or representative is appointed in chapter 7 or chapter 11.

I. *Findings Regarding the DIP Financing and Use of Cash Collateral.*

(i) Good and sufficient cause has been shown for the entry of this Interim Order.

(ii) The DIP Loan Parties have an immediate and critical need to obtain the DIP Financing and to continue to use the “cash collateral” within the meaning of section 363(a) of the Bankruptcy Code (“**Cash Collateral**”), in each case on an interim basis, in order to permit, among other things, the orderly continuation of the operation of their businesses, to maintain business relationships with vendors, suppliers and customers, to make payroll, to make capital expenditures, to administer these Chapter 11 Cases, and to satisfy other working capital and operational needs. The access of the DIP Loan Parties to sufficient working capital and liquidity through the use of Cash Collateral, incurrence of new indebtedness under the DIP Documents and other financial accommodations provided under the DIP Documents are necessary and vital to the preservation and maintenance of the going concern values of the DIP Loan Parties and to a successful sale process.

(iii) The DIP Loan Parties are unable to obtain financing on more favorable terms from sources other than the DIP Lender and are unable to obtain adequate unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense. The DIP Loan Parties are also unable to obtain secured credit allowable under section 364(c)(1), 364(c)(2), or 364(c)(3) of the Bankruptcy Code without granting to the DIP Secured Parties the DIP Liens and the DIP Superpriority Claims and granting Adequate Protection, in each case subject to (a) the Carve-Out, (b) Prepetition Credit Agreement Adequate Protection Obligations and Prepetition Credit

Agreement Adequate Protection Liens, (c) Prepetition Credit Agreement Obligations and Prepetition Credit Agreement Liens, and subject to the terms and conditions set forth in this Interim Order and in the DIP Documents.

(iv) Based on the Motion and the Zorda Declaration, and the record presented to the Court at the Interim Hearing, the terms of the DIP Financing and the terms on which the DIP Loan Parties may continue to use the Cash Collateral pursuant to this Interim Order and the DIP Documents are fair and reasonable, reflect the DIP Loan Parties' exercise of prudent business judgment consistent with their fiduciary duties and constitute reasonably equivalent value and fair consideration.

(v) Absent order of the Court and the provision of adequate protection, consent of the Prepetition Secured Parties is required for the DIP Loan Parties' use of Cash Collateral. The Prepetition Secured Parties have consented to the DIP Loan Parties' use of Cash Collateral, and the DIP Loan Parties' entry into the DIP Documents in accordance with and subject to the terms and conditions in this Interim Order and the DIP Documents.

(vi) The DIP Financing and the use of the Cash Collateral have been negotiated in good faith and at arms' length among the DIP Loan Parties and the DIP Secured Parties, and all of the DIP Loan Parties' obligations and indebtedness arising under, in respect of, or in connection with, the DIP Financing and the DIP Documents, including all Obligations (as defined in the DIP Credit Agreement), in each case owing to the DIP Secured Parties (collectively, the "**DIP Obligations**"), shall be deemed to have been extended by the DIP Secured Parties and their respective affiliates 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, and the DIP Secured Parties (and the successors and assigns thereof) 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.

(vii) The Prepetition Secured Parties have acted in good faith regarding the DIP Financing and the DIP Loan Parties' continued use of the Cash Collateral to fund the administration of the DIP Loan Parties' estates and continued operation of their businesses (including the granting of Adequate Protection), in accordance with the terms hereof, and the DIP Secured Parties (and the successors and assigns thereof) shall be entitled to the full protection of sections 363(m) and 364(e), as may be applicable, of the Bankruptcy Code in the event that this Interim Order or any provision hereof is vacated, reversed or modified, on appeal or otherwise.

(viii) The Prepetition Secured Parties are entitled to the adequate protection provided in this Interim Order as and to the extent set forth herein pursuant to sections 361, 362, 363, and 364 of the Bankruptcy Code. Based on the Motion and on the record presented to the Court, the terms of the proposed adequate protection arrangements and of the use of the Cash Collateral are fair and reasonable, reflect the DIP Loan Parties' prudent exercise of business judgment, and constitute reasonably equivalent value and fair consideration for the use of the Cash Collateral; *provided* that nothing in this Interim Order or the other DIP Documents shall (a) be construed as the affirmative consent by any of the Prepetition Secured Parties for the use of Cash Collateral other than on the terms set forth in this Interim Order, (b) be construed as a consent by any party to the terms of any other financing or any other lien encumbering

the Cash Collateral (whether senior or junior) other than on the terms set forth in this Interim Order, or (c) prejudice, limit, or otherwise impair the rights of any of the Prepetition Secured Parties to seek new, different, or additional adequate protection for any diminution in value of their interests in the Cash Collateral (or other Prepetition Collateral) from and after the Petition Date and the rights of the Prepetition Secured Parties or any other party in interest to object to such relief are hereby preserved.

(ix) The Debtors have requested immediate entry of this Interim Order pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2) and the Local Rules. Absent granting the relief set forth in this Interim Order, the Debtors' estates will be immediately and irreparably harmed. Consummation of the DIP Financing and the use of the Cash Collateral in accordance with this Interim Order and the DIP Documents are, therefore, in the best interests of the Debtors' estates and consistent with the Debtors' exercise of their fiduciary duties.

J. *Permitted Prior Liens; Continuation of Prepetition Liens.* Nothing herein shall constitute a finding or ruling by this Court that any alleged Permitted Prior Lien is valid, senior, enforceable, prior, perfected, or non-avoidable. Moreover, nothing herein shall prejudice the rights of any party-in-interest, including the Debtors, the DIP Agent, the DIP Lender, the Prepetition Secured Parties, or a Committee (if appointed), to challenge the validity, priority, enforceability, seniority, avoidability, perfection, or extent of any alleged Permitted Prior Lien. The right of a seller of goods to reclaim such goods under section 546(c) of the Bankruptcy Code is not a Permitted Prior Lien and is expressly subject to the DIP Liens. The Prepetition Liens, and the DIP Liens that prime the Prepetition Notes Liens, are continuing liens and the DIP

Collateral is and will continue to be encumbered by such liens in light of the integrated nature of the DIP Facility, the DIP Documents, and the Prepetition Debt Documents.

K. *Immediate Entry.* Sufficient cause exists for immediate entry of this Interim Order pursuant to Bankruptcy Rules 4001(b)(2) and (c)(2).

IT IS HEREBY ORDERED THAT:

1. *Interim Financing Approved.* The interim relief requested in the Motion is granted, and the use of Cash Collateral on an interim basis and the Interim Financing is authorized and approved, in each case in accordance with the terms and conditions set forth in the DIP Documents, the Approved Budget and this Interim Order. Any objections to the Motion with respect to the entry of this Interim Order that have not been withdrawn, waived or settled, and all reservations of rights included therein, are hereby denied and overruled on the merits.

2. *Authorization of the DIP Financing and the DIP Documents.*

(a) The DIP Loan Parties are hereby authorized to execute, deliver, enter into and, as applicable, perform all of their obligations under this Interim Order and the DIP Documents and such other and further acts as may be necessary, appropriate, or desirable in connection therewith, in each case in accordance with and subject to the terms of this Interim Order and the DIP Documents. The DIP Borrowers are hereby authorized to borrow money pursuant to the DIP Credit Agreement, subject to any limitations on borrowing under the DIP Documents, which shall be used for all purposes permitted under the DIP Documents, including to pay certain costs, fees, and expenses related to the Chapter 11 Cases, to fund the Prepetition Refinancing, to pay the Adequate Protection Expenses, and to fund working capital and for general corporate purposes of the DIP Loan Parties during the Chapter 11 Cases, in each case, subject to the Approved Budget

and in accordance with this Interim Order and the DIP Documents, and the DIP Guarantor is hereby authorized to guaranty the DIP Obligations. For the avoidance of doubt, without limiting the DIP Lender's right to credit bid the DIP Obligations in accordance with paragraph 32 of this Interim Order, no repayment or prepayment of amounts borrowed under the DIP Facility may be made unless and until (x) the Prepetition Credit Agreement Obligations have been previously paid in full in cash, and (y) the Challenge Period has expired with respect to the Prepetition Credit Agreement Agent, the Prepetition Credit Agreement Lenders, and the Prepetition Credit Agreement Secured Parties.

(b) In furtherance of the foregoing and without further approval of the Court, each Debtor is authorized to perform all acts, to make, execute, and deliver all instruments, certificates, agreements, and documents (including the execution or recordation of security agreements, mortgages, and financing statements), and to pay all fees in connection with or that may be reasonably required, necessary, or desirable for the DIP Loan Parties' performance of their obligations under or related to the DIP Financing, including:

(i) the execution and delivery of, and performance under, each of the DIP Documents;

(ii) the execution and delivery of, and performance under, one or more amendments, waivers, consents, or other modifications to and under the DIP Documents, in each case, in such form as the DIP Loan Parties, the DIP Agent and the requisite DIP Lender may agree, it being understood that no further approval of the Court shall be required for any authorizations, amendments,

waivers, consents, or other modifications to and under the DIP Documents (and any fees and other expenses, amounts, charges, costs, indemnities, and other obligations paid in connection therewith) that do not (A) shorten the maturity of the extensions of credit thereunder or increase the aggregate commitments or the rate of interest payable thereunder, (B) increase existing fees or add new fees thereunder (excluding, for the avoidance of doubt, any amendment, consent or waiver fee), or (C) shorten the case Milestones set forth in the DIP Credit Agreement. The foregoing shall be without prejudice to the DIP Loan Parties' right to seek approval from the Court of any modification or amendment on an expedited basis;

(iii) the non-refundable payment to the DIP Agent and the DIP Lender, of all reasonable and documented fees (if any, and which fees shall be, and shall be deemed to have been, approved upon entry of this Interim Order and upon payment thereof, shall not be subject to any contest, attack, rejection, recoupment, reduction, defense, counterclaim, offset, subordination, recharacterization, avoidance or other claim, cause of action, or other challenge of any nature under the Bankruptcy Code, under applicable non-bankruptcy law or otherwise) and any amounts due (or that may become due) in respect of the indemnification obligations, in each case referred to in the DIP Documents and the costs and expenses as may be due from time to time, including reasonable and documented fees and expenses of the professionals retained by any of the DIP Agent and/or DIP Lender, as provided for in the DIP Documents, whether or not such fees or

expenses arose prior to or after the Petition Date without the need to file retention motions or fee applications or to provide notice to any party; and

(iv) the performance of all other acts necessary, appropriate, or desirable under or in connection with the DIP Documents.

3. *Refinancing of Prepetition Notes Obligations.* On the Closing Date, \$5,125,000.00 of the Prepetition Notes Obligations arising from the Tranche B Prepetition Note shall immediately, automatically and irrevocably be deemed to have been converted into DIP Loans (the “**Initial Refinancing**”), and upon the entry of the Final Order, an additional \$8,541,666.66 of the Tranche B Prepetition Note shall immediately, automatically and irrevocably be deemed to have been converted into DIP Loans (the “**Subsequent Refinancing**”) and the DIP Loans created by each of the Initial Refinancing and the Subsequent Refinancing shall be entitled to all the priorities, privileges, rights, and other benefits afforded to the other DIP Obligations under this Interim Order, the Final Order and the DIP Documents, in each case subject to the terms and conditions set forth in this Interim Order, the Final Order, the DIP Documents and the reservation of rights of parties in interest in paragraph 20 below.

4. *Release of DIP Secured Party Releasees and Prepetition Secured Party Releasees.* Subject to paragraphs 20 and 21 hereof, the releases set forth in paragraphs F, G and H hereof in favor of the DIP Secured Party Releasees, Prepetition Credit Agreement Secured Party Releasees and Prepetition Notes Secured Party Releasees are hereby approved upon entry of this Interim Order.

5. *DIP Obligations.* Upon execution and delivery of the DIP Documents, the DIP Documents shall constitute valid, binding and non-avoidable obligations of the DIP Loan Parties, enforceable against each DIP Loan Party party thereto in accordance with the terms of the DIP

Documents and this Interim Order as of the date of the entry of this Interim Order. No obligation, payment, transfer or grant of security to the DIP Secured Parties under the DIP Documents or this Interim Order shall be stayed, restrained, voidable, avoidable, or recoverable under the Bankruptcy Code or under any applicable law (including under section 502(d), 544, 548, 549 or 550 of the Bankruptcy Code or under any applicable state Uniform Voidable Transactions Act, Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, or similar statute or common law), or subject to any defense, reduction, setoff, recoupment, claim, or counterclaim.

6. *Carve-Out.*

(a) As used in this Interim Order, the “**Carve-Out**” shall mean a carve-out from the DIP Superpriority Claims, the DIP Liens, the Prepetition Notes Adequate Protection Claims, the Prepetition Notes Adequate Protection Liens and the Prepetition Notes Liens, in an amount equal to the sum of (i) all fees required to be paid to the Clerk of the Court and to the U.S. Trustee under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate (without regard to the Carve-Out Trigger Notice); (ii) all reasonable fees and expenses incurred by a trustee and payable under section 726(b) of the Bankruptcy Code, in an aggregate amount not to exceed \$50,000 (without regard to the Carve-Out Trigger Notice); (iii) to the extent allowed by final order of the Court at any time and provided for in the Approved Budget, for the Debtors’ professionals and the Committee’s professionals, respectively, all unpaid fees and expenses (the “**Professional Fees**”) incurred by persons or firms retained by the Debtors pursuant to section 327, 328, or 363 of the Bankruptcy Code or by a Committee, if any, pursuant to section 328 and 1103 of the Bankruptcy Code (collectively, the “**Professional Persons**”) at any time on or before the earlier of (a) the date of delivery by the DIP Agent

of a Carve-Out Trigger Notice and (b) the Termination Date (as defined in the DIP Credit Agreement) (such earlier date, the “**Carve-Out Trigger Date**”), whether allowed by the Court prior to or after the Carve-Out Trigger Date; (iv) to the extent allowed by final order of the Court, Professional Fees incurred after the Carve-Out Trigger Date in an amount not to exceed \$100,000 (the “**Post Trigger Date Carve-Out Amount**”); and (v) amounts held as of the Petition Date as a retainer by the Professional Persons retained by the Debtors to be used to pay Professional Fees allowed by final order of the Court (clauses (i) through (v), collectively, the “**Carve-Out Amount**”), in each case subject to the limits imposed by the Interim Order and/or the Final Order. For purposes of the foregoing, “**Carve-Out Trigger Notice**” shall mean a written notice delivered by email by the DIP Agent to the Debtors’ lead restructuring counsel, the U.S. Trustee, and counsel to any Committee, which notice may be delivered following the occurrence and during the continuation of an “Event of Default” under the DIP Documents and the acceleration of the DIP Obligations (an “**Event of Default**”), stating that the Carve-Out has been invoked.

(b) Prior to the occurrence of the Carve-Out Trigger Date, the Debtors are authorized (subject to the Approved Budget), for the Debtors’ Professional Persons and the Committee’s Professional Persons, respectively, to pay Professional Fees that are authorized to be paid in accordance with the provisions of the Bankruptcy Code and any order entered by the Court establishing procedures for the payment of compensation to Professional Persons in these Chapter 11 Cases, as the same may be due and payable, and such payments shall not reduce the Carve-Out Amount.

(c) Notwithstanding anything to the contrary herein or in the DIP Documents, the Carve-Out shall be senior to the DIP Superpriority Claims, the DIP Liens, the Prepetition Notes Adequate Protection Claims, the Prepetition Notes Adequate Protection Liens, the Prepetition Notes Liens and all other liens and claims granted under this Interim Order, the DIP Documents, or otherwise securing or in respect of the DIP Obligations or any Prepetition Notes Adequate Protection Obligations, and shall be subordinate to the Prepetition Credit Agreement Liens, the Prepetition Credit Agreement Claims, the Prepetition Credit Agreement Adequate Protection Liens and the Prepetition Credit Agreement Adequate Protection Claims.

7. *No Direct Obligation to Pay Allowed Professional Fees.* Nothing in this Interim Order or otherwise shall be construed to obligate any Prepetition Secured Parties or the DIP 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; provided that on a weekly basis, the budgeted fees for Professional Persons shall be placed in escrow (the “Professional Escrow”) and released to each Professional Person upon the approval of the Court. Notwithstanding any provision in this paragraph 7 to the contrary, no portion of the Carve-Out, any Cash Collateral, any DIP Collateral, any proceeds of the DIP Facility or any unencumbered assets (or the proceeds thereof) that are subject to the DIP Superpriority Claims (including any disbursements set forth in the Approved Budget or obligations benefitting from the Carve-Out and amounts in the Professional Escrow) shall be utilized for the payment of professional fees and disbursements to the extent restricted under paragraph 21 hereof. Nothing herein shall be construed as consent to the allowance of any professional fees or expenses of any of the Debtors, any Committee, any

other official or unofficial committee in these Chapter 11 Cases or any successor case or of any other person or entity, or shall affect the right of any Person, including the DIP Agent and the DIP Lender, to object to the allowance and payment of any such fees and expenses.

8. *DIP Superpriority Claims.* Pursuant to section 364(c)(1) of the Bankruptcy Code, all of the DIP Obligations shall constitute allowed superpriority administrative expense claims against the DIP Loan Parties (without the need to file any proof of claim) with priority over all other administrative claims against the DIP Loan Parties, now existing or hereafter arising, of any kind whatsoever, including all administrative expenses or other claims arising under section 105, 326, 328, 330, 331, 365, 503(b), 507(a), 507(b), 726, 1113, or 1114 of the Bankruptcy Code (including the Prepetition Notes Adequate Protection Claims, but not the Prepetition Credit Agreement Adequate Protection Obligations), whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy, or attachment, which allowed claims (the “**DIP Superpriority Claims**”) shall for 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 DIP Superpriority Claims shall be payable from and have recourse to all prepetition and post-petition property of the DIP Loan Parties and all proceeds thereof (excluding the DIP Loan Parties’ claims and causes of action under sections 502(d), 506(c), 544, 545, 547, 548, 550, and 553 of the Bankruptcy Code and under any applicable state Uniform Voidable Transactions Act, Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act and similar statutes or common law, and any commercial tort claims (collectively, the “**Avoidance Actions**”, which, for the avoidance of doubt, excludes Debtors’ claims and causes of action under section 549 of the Bankruptcy Code or similar state or other applicable law and the proceeds of each of the foregoing), but, subject to

entry of the Final Order, including any proceeds or property recovered, unencumbered or otherwise from Avoidance Actions, whether by judgment, settlement, or otherwise (the “**Avoidance Proceeds**”), subject to the Carve-Out; *provided* that notwithstanding anything to the contrary in this paragraph 8, the DIP Obligations shall be (i) junior and subordinated in all respects to Prepetition Credit Agreement Adequate Protection Obligations and (ii) junior and subordinated to the Prepetition Credit Agreement Obligations with respect to payments from Prepetition Collateral. 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. The DIP Superpriority Claims shall be *pari passu* in right of payment with one another and senior to the Prepetition Notes Adequate Protection Claims.

9. *DIP Liens.*

(a) As security for the DIP Obligations, effective and perfected upon the date of the Petition Date and without the necessity of the execution, recordation or filing of mortgages, security agreements, control agreements, pledge agreements, financing statements, notations on certificates of title for titled goods or other similar documents, or the possession or control by the DIP Agent of, or over, any and all tangible and intangible prepetition and post-petition assets of the DIP Loan Parties, whether existing on the Petition Date or thereafter acquired including any and all cash of the DIP Loan Parties (whether maintained with the DIP Agent or otherwise) and any investment of such cash, inventory, accounts receivable, other rights to payment whether arising before or after the Petition Date, contracts, properties, plants, fixtures, machinery, equipment, general intangibles, documents, instruments, securities, chattel paper, interests in leaseholds, real

properties, deposit accounts, patents, copyrights, trademarks, trade names, the proceeds of any and all commercial tort claims of the Debtors of any kind or nature, including commercial tort claims, any claim or rights under section 549 of the Bankruptcy Code, rights under license agreements and other intellectual property, letter-of-credit rights, investment property and support obligations, all books and records pertaining to the property described in this paragraph 9, all property of the DIP Loan Parties held by any DIP Secured Party, all other goods (including fixtures) and personal property of the DIP Loan Parties, whether tangible or intangible and wherever located, Avoidance Proceeds (following entry of the Final Order), capital stock of subsidiaries, wherever located, and, to the extent not covered by the foregoing, all other assets or property of the Debtors, whether tangible, intangible, real, personal or mixed, and the proceeds, products, rents, and profits of the foregoing, whether arising under section 552(b) of the Bankruptcy Code or otherwise, of all the foregoing, in each case other than the Avoidance Actions, but, subject to entry of the Final Order, including any Avoidance Proceeds (collectively, the “**DIP Collateral**”), the following security interests and liens are hereby granted to the DIP Agent for its own benefit and the benefit of the DIP Lender (all such liens and security interests granted to the DIP Agent, for its benefit and for the benefit of the DIP Lender, pursuant to below this Interim Order and the DIP Documents, the “**DIP Liens**”):

- (i) Lien on Unencumbered Property. Pursuant to section 364(c)(2) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully perfected security interest in and lien upon DIP Collateral, that, on or as of the Petition Date, is not subject to a valid, perfected, and non-avoidable lien as of the Petition Date or perfected subsequent to the Petition Date as permitted by Section 546(b)

of the Bankruptcy Code (collectively, “**Unencumbered Property**”), including Avoidance Proceeds, subject and subordinate to the Carve-Out and the Prepetition Credit Agreement Adequate Protection Liens but senior in all respects to all other liens.

(ii) Liens Priming Prepetition Notes Liens. Pursuant to section 364(d)(1) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully perfected priming security interest in and lien upon all DIP Collateral (wherever located and the proceeds, products, rents and profits thereof) securing Prepetition Notes Obligations subject and subordinate only to the Carve-Out and the Prepetition Credit Agreement Liens, Prepetition Credit Agreement Adequate Protection Liens and Permitted Prior Liens, but senior in all respects to the Prepetition Notes Liens, Prepetition Notes Adequate Protection Liens and all other liens that are not Permitted Prior Liens, Prepetition Credit Agreement Liens, and Prepetition Credit Agreement Adequate Protection Liens.

(iii) Liens Junior to Certain Other Liens. Pursuant to section 364(c)(3) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully perfected security interest in and lien upon all other DIP Collateral subject to Permitted Prior Liens, junior to all such Permitted Prior Liens and subject and subordinate to each of the following (each of which shall be or shall remain junior to such Permitted Prior Liens); (x) the Carve-Out, (y) any Prepetition Credit Agreement Adequate Protection Liens, and (z) to the extent that any DIP Collateral subject to Permitted Prior Liens is also subject to Prepetition Credit Agreement Liens, to such Prepetition Credit Agreement Liens.

(b) The DIP Liens shall not be (i) subject or subordinate to (A) any lien or security interest that is avoided and preserved for the benefit of the DIP Loan Parties and their estates under section 551 of the Bankruptcy Code, (B) unless otherwise provided for in the DIP Documents or in this Interim Order, any liens or security interests arising after the Petition Date, including any liens or security interests granted in favor of any federal, state, municipal, or other governmental unit (including any regulatory body), commission, board, or court for any liability of the DIP Loan Parties, or (C) any intercompany or affiliate liens or security interests of the DIP Loan Parties or (ii) subordinated to or made *pari passu* with any other lien or security interest under section 363 or 364 of the Bankruptcy Code granted after the date hereof.

(c) For the avoidance of doubt, any DIP Liens on DIP Collateral relating to real property of the Debtors granted pursuant to this paragraph 9 shall include, for the ratable benefit of the related DIP Secured Parties, in each case to the extent constituting DIP Collateral, all of each Debtor's right, title and interest now or hereafter acquired in and to all land, together with the buildings, structure, and other improvements thereon, now or hereafter owned by any Debtor, including all easements, rights-of-way, and similar rights relating thereto and all leases, tenancies, and occupancies thereof, and (a) all goods, accounts, inventory, general intangibles, instruments, documents, contract rights and chattel paper, (b) all reserves, escrows or impounds and all deposit accounts maintained by each Debtor with respect to such real estate, (c) all leases (to the extent expressly permitted by the terms of such leases; and with respect to leases where such liens are not expressly permitted, all proceeds of, or property or value recovered from, such leases, but not the leases themselves), licenses, concessions, occupancy agreements

or other agreements (written or oral, now or at any time in effect) which grant to any person a possessory interest in, or the right to use, all or any part of such real estate, together with all related security and other deposits, (d) all of the rents, revenues, royalties, income proceeds, profits, accounts receivable, security and other types of deposits, and other benefits paid or payable by parties to the leases for using, leasing, licensing possessing, operating from, residing in, selling or otherwise enjoying such real estate, (e) all other agreements, such as construction contracts, architects' agreements, engineers' contracts, utility contracts, maintenance agreements, management agreements, service contracts, listing agreements, guaranties, warranties, permits, licenses, certificates and entitlements in any way relating to the construction, use, occupancy, operation, maintenance, enjoyment or ownership of such real estate, (f) all rights, privileges, tenements, hereditaments, rights-of-way, easements, appendages, and appurtenances appertaining to the foregoing, (g) all property tax refunds payable with respect to such real estate, (h) all accessions, replacements and substitutions for any of the foregoing and all proceeds thereof, (i) all insurance policies, unearned premiums therefor and proceeds from such policies covering any of the above property now or hereafter acquired by each Debtor as an insured party, and (j) all awards, damages, remunerations, reimbursements, settlements or compensation heretofore made or hereafter to be made to any Debtor by any governmental authority pertaining to any condemnation or other taking (or any purchase in lieu thereof) of all or any such real estate.

10. *Automatic Stay.*

(a) The automatic stay provisions of section 362 of the Bankruptcy Code are hereby modified to the extent necessary to permit the DIP Secured Parties to enforce all

of their rights under the DIP Documents and (i) immediately upon the occurrence of an Event of Default, to declare (A) the termination, reduction, or restriction of any further DIP Commitment to the extent any such DIP Commitment remains and (B) all applicable DIP Obligations to be immediately due and payable, without presentment, demand, protest, or other notice of any kind, all of which are expressly waived by the DIP Loan Parties, and (ii) unless the Court orders otherwise during the Remedies Notice Period, upon the occurrence of an Event of Default and the giving by the DIP Agent or the Prepetition Credit Agreement Agent of four (4) business days' prior written notice (which shall run concurrently with any notice required to be provided under the DIP Documents or Prepetition Credit Agreement Documents, as applicable) (the "**Remedies Notice Period**") delivered by email to the Debtors' lead restructuring counsel (with a copy to the Prepetition Credit Agreement Agent's lead counsel, the Committee, if any, and the U.S. Trustee) (the "**Remedies Notice**"), (A) to withdraw consent to the Debtors continued use of any Cash Collateral and/or (B) in the case of a notice given by the DIP Agent, to exercise, subject to the rights of the Prepetition Credit Agreement Secured Parties, all other rights and remedies provided for in the DIP Documents and under applicable law (except that with respect to any of the Debtors' leasehold locations, the DIP Secured Parties may only enter upon any of the Debtors' leasehold locations in accordance with (i) a separate written agreement by and between the DIP Agent and any applicable landlord, (ii) entry of an order of this Court obtained by motion of the DIP Secured Parties on such notice to the landlord, the Debtors, the Committee, and the U.S. Trustee as shall be required by this Court, or (iii) consent of the applicable landlord); *provided* that, during the Remedies Notice Period, the Debtors shall be permitted to continue to use

Cash Collateral solely to pay regular payroll and other critical expenses necessary to avoid immediate and irreparable harm to the business of the Debtors (which in no event shall exceed the expenses provided for in the Approved Budget during the applicable period) and may request an expedited hearing before the Court in connection with such Event of Default. After delivery of the Remedies Notice and during and after the Remedies Notice Period, the Debtors shall only propose to make payments in accordance with the Approved Budget, any such payments shall be subject to prior review by the DIP Agent and the Prepetition Credit Agreement Agent and their respective professionals, and the Debtors shall be prohibited from making any payment that is not (a) in the ordinary course of business or (b) included in the Approved Budget.

(b) No rights, protections, or remedies of the DIP Secured Parties granted by the provisions of this Interim Order or the DIP Documents shall be limited, modified, or impaired in any way by (i) any actual or purported withdrawal of the consent of the Prepetition Credit Agreement Secured Parties or any party to the DIP Loan Parties' authority to continue to use Cash Collateral, (ii) any actual or purported termination of the DIP Loan Parties' authority to continue to use Cash Collateral, or (iii) the terms of any other order or stipulation related to the DIP Loan Parties' continued use of Cash Collateral or the provision of adequate protection to any party.

11. *Payment of DIP Agent Fees and Expenses.* The DIP Loan Parties shall make current cash payments of the reasonable and documented prepetition and postpetition fees and expenses incurred by the DIP Agent in connection with the Chapter 11 Cases in any manner (including, in the case of the advisors to the DIP Agent, Sullivan & Cromwell LLP and Young Conaway Stargatt & Taylor LLP promptly upon receipt of invoices therefor, which payments (to

the extent for fees, expenses, and disbursements incurred after the Petition Date) shall be made within 10 days (which time period may be extended by the applicable professional) after the receipt by the Debtors, the Committee, if any, and the U.S. Trustee (the “**Review Period**”) of invoices therefor (the “**Invoiced Fees**”) and without the necessity of filing formal fee applications, including such amounts arising before or after the Petition Date. The Committee, if any, and the U.S. Trustee may object to any portion of the Invoiced Fees (the “**Disputed Invoiced Fees**”) within the Review Period by filing with the Court a motion or other pleading setting forth the specific objections to the Disputed Invoiced Fees in reasonable narrative detail and the bases for such objections; *provided* that payment of any undisputed portion of Invoiced Fees shall not be delayed based on any objections thereto. For the avoidance of doubt, any payments on account of Invoiced Fees shall be included in the calculation of any permitted variance from the Approved Budget.

12. *Limitation on Charging Expenses Against Collateral.* Subject to entry of the Final Order, except to the extent of the Carve-Out, no costs or expenses of administration of the Chapter 11 Cases or any future proceeding that may result therefrom, including liquidation in bankruptcy or other proceedings under the Bankruptcy Code, shall be charged against or recovered from the DIP Collateral (including Cash Collateral) or the Prepetition Collateral pursuant to section 506(c) of the Bankruptcy Code or any similar principle of law, without the prior written consent of the DIP Agent, the Prepetition Credit Agreement Agent or the Prepetition Noteholder, as applicable, and no such consent shall be implied from any other action, inaction, or acquiescence by the DIP Lender or the Prepetition Secured Parties, and nothing contained in this Interim Order shall be deemed to be a consent by the DIP Lender or the

Prepetition Secured Parties to any charge, lien, assessment, or claim against the DIP Collateral under section 506(c) of the Bankruptcy Code or otherwise.

13. *Payments Free and Clear.* Any and all payments or proceeds remitted to the DIP Agent on behalf of the DIP Lender pursuant to the provisions of this Interim Order or the DIP Documents shall be received free and clear of any claim, charge, assessment, or other liability, including any such claim or charge arising out of or based on, directly or indirectly, section 506(c) of the Bankruptcy Code (whether asserted or assessed by, through, or on behalf of the Debtors) or 552(b) of the Bankruptcy Code.

14. *Use of Cash Collateral.* The Debtors are hereby authorized, solely in accordance with the Approved Budget and the terms and conditions of this Interim Order, to use all Cash Collateral.

15. *Adequate Protection of Prepetition Credit Agreement Secured Parties.* The Prepetition Credit Agreement Secured Parties are entitled, pursuant to sections 361, 362, 363(e), 364(d)(1), and 507 of the Bankruptcy Code, to adequate protection of their respective interests in the Prepetition Credit Agreement Collateral, for the reasons provided for under the Bankruptcy Code, the Debtors' use, sale or lease of Cash Collateral and/or the imposition of the automatic stay. In consideration of the foregoing, the Prepetition Credit Agreement Secured Parties are hereby granted the following (collectively, "**Prepetition Credit Agreement Adequate Protection**"):

(a) Adequate Protection Liens. The Prepetition Credit Agreement Agent (for itself and for the benefit of the Prepetition Credit Agreement Lenders) is hereby granted (effective and perfected upon the Petition Date and without the necessity of the execution of any mortgages, security agreements, pledge agreements, financing statements, or other

agreements), a valid, perfected replacement security interest in and lien upon (the “**Prepetition Credit Agreement Adequate Protection Liens**”) the DIP Collateral (including, subject to the entry of the Final Order, the Avoidance Proceeds), which Prepetition Credit Agreement Adequate Protection Liens shall secure the Prepetition Credit Agreement Adequate Protection Obligations, and shall be subject and subordinate only to the Permitted Prior Liens.

(b) Adequate Protection Claims. The Prepetition Credit Agreement Agent, for the benefit of the Prepetition Credit Agreement Lenders, is hereby granted an allowed superpriority administrative expense claim as provided for in section 507(b) of the Bankruptcy Code, for and equal in amount to the aggregate diminution in the value of the Prepetition Credit Agreement Secured Parties’ prepetition security interests in the Prepetition Credit Agreement Collateral from and after the Petition Date with, except as set forth in this Interim Order, priority in payment over any and all administrative expenses of the kind specified or ordered pursuant to any provision of the Bankruptcy Code (the “**Prepetition Credit Agreement Adequate Protection Claims**”), including the DIP Superpriority Claims and Prepetition Notes Adequate Protection Claims, which Prepetition Credit Agreement Adequate Protection Claims shall have recourse to and be payable from all of the DIP Collateral (including the Avoidance Proceeds).

(c) Adequate Protection Cash Payments. Subject to reallocation or recharacterization as payment of principal under section 506(a) and (b) of the Bankruptcy Code as may be ordered by the Court in connection with a timely and successful Challenge pursuant to paragraph 20 or 21 below, until the indefeasible discharge of the Prepetition Credit Agreement Obligations, the Prepetition Credit Agreement Agent, for

the benefit of the Prepetition Credit Agreement Secured Parties, shall receive (x) current payment in cash when due and payable under the Prepetition Credit Agreement of all post-petition unpaid interest accruing on all outstanding principal, interest, fees, and other amounts owing under the Prepetition Credit Agreement (as of the Petition Date), in each case at the applicable default rate, and (y) \$25,000 in principal payments each week in accordance with the Approved Budget (the payments in this subparagraph (c), the **“Prepetition Credit Agreement Adequate Protection Payments”**).

(d) Prepetition Credit Agreement Secured Parties Fees and Expenses. The Debtors shall make current cash payments of the reasonable and documented prepetition and post-petition fees and expenses incurred by the Prepetition Credit Agreement Agent in connection with the Chapter 11 Cases in any manner (including, in the case of the advisors to the Prepetition Credit Agreement Agent, Riemer & Braunstein LLP and Burr & Forman LLP) (the **“Prepetition Credit Agreement Adequate Protection Expenses”** and together with the Prepetition Credit Agreement Adequate Protection Claims and Prepetition Credit Agreement Adequate Protection Payments, the **“Prepetition Credit Agreement Adequate Protection Obligations”**) promptly upon receipt of invoices therefor, which payments (to the extent for fees, expenses, and disbursements incurred after the Petition Date) shall be made in accordance with the procedures set forth in paragraph 11 hereof with respect to payment of the fees and expenses of the DIP Agent.

(e) Budget. The Approved Budget (and any other Proposed Budget (as defined in the DIP Credit Agreement) shall be subject to the prior express approval by the Prepetition Credit Agreement Agent, such approval not to be unreasonably withheld, conditioned or delayed.

16. *Adequate Protection of Prepetition Notes Secured Parties.* The Prepetition Notes Secured Parties are entitled, pursuant to sections 361, 362, 363(e), 364(d)(1), and 507 of the Bankruptcy Code, to adequate protection of their respective interests in the Prepetition Notes Collateral, for the reasons provided for under the Bankruptcy Code, including the provisions of this Interim Order granting priming liens on the Prepetition Collateral, the Debtors' use, sale or lease of Cash Collateral, the imposition of the automatic stay and/or the Carve-Out. In consideration of the foregoing, the Prepetition Notes Secured Parties are hereby granted the following (collectively, "**Prepetition Notes Adequate Protection**" and together with the Prepetition Credit Agreement Adequate Protection, the "**Adequate Protection**"):

(a) Adequate Protection Liens.

(i) The Prepetition Notes Agent is hereby granted (effective and perfected upon the Petition Date and without the necessity of the execution of any mortgages, security agreements, pledge agreements, financing statements, or other agreements), a valid, perfected replacement security interest in and lien upon (the "**Prepetition Notes Adequate Protection Liens**" and together with the Prepetition Credit Agreement Adequate Protection Liens, the "**Adequate Protection Liens**") the DIP Collateral (including, subject to the entry of the Final Order, the Avoidance Proceeds), which Prepetition Notes Adequate Protection Liens shall secure the Prepetition Notes Adequate Protection Obligations, and shall be subject and subordinate only to the Carve-Out, the Prepetition Credit Agreement Adequate Protection Liens, the Prepetition Credit Agreement Liens, and the Permitted Prior Liens.

(b) Adequate Protection Claims.

(i) The Prepetition Notes Agent hereby granted an allowed superpriority administrative expense claim as provided for in section 507(b) of the Bankruptcy Code, for and equal in amount to the aggregate diminution in the value of the Prepetition Notes Secured Parties' prepetition security interests in the Prepetition Notes Collateral from and after the Petition Date with, except as set forth in this Interim Order, priority in payment over any and all administrative expenses of the kind specified or ordered pursuant to any provision of the Bankruptcy Code (the "**Prepetition Notes Adequate Protection Claims**") and together with the Prepetition Credit Agreement Adequate Protection Claims, the "**Adequate Protection Claims**") but junior and subordinated to the Prepetition Credit Agreement Adequate Protection Obligations and, with respect to the Prepetition Credit Agreement Collateral, the Prepetition Credit Agreement Obligations, which Prepetition Notes Adequate Protection Claims shall have recourse to and be payable from all of the DIP Collateral (including the Avoidance Proceeds). The Prepetition Notes Adequate Protection Claims shall be subject and subordinate only to the Carve-Out, the Prepetition Credit Agreement Adequate Protection Obligations and, with respect to the Prepetition Credit Agreement Collateral, the Prepetition Credit Agreement Obligations.

(c) Prepetition Notes Secured Parties Fees and Expenses. The Debtors shall make current cash payments of the reasonable and documented prepetition and post-petition fees and expenses incurred by the Prepetition Secured Parties in connection with the Chapter 11 Cases in any manner (including, in the case of the advisors to the Prepetition Notes Secured Parties, Sullivan & Cromwell LLP and Young Conaway

Stargatt & Taylor LLP) (the “**Prepetition Notes Adequate Protection Expenses**” and, together with the Prepetition Credit Agreement Adequate Protection Expenses, the “**Adequate Protection Expenses**”; and the Prepetition Notes Adequate Protection Expenses together with the Prepetition Notes Adequate Protection Claims, the “**Prepetition Notes Adequate Protection Obligations**”; and the Prepetition Notes Adequate Protection Obligations together with the Prepetition Credit Agreement Adequate Protection Obligations, the “**Adequate Protection Obligations**”) promptly upon receipt of invoices therefor, which payments (to the extent for fees, expenses, and disbursements incurred after the Petition Date) shall be made in accordance with the procedures set forth in paragraph 11 hereof with respect to payment of the fees and expenses of the DIP Agent.

17. *Reservation of Rights of Prepetition Secured Parties.* Under the circumstances and given that the above-described adequate protection is consistent with the Bankruptcy Code, including section 506(b) thereof, the Court finds that the adequate protection provided herein is reasonable and sufficient to protect the interests of the Prepetition Secured Parties; *provided* that any of the Prepetition Secured Parties may request further or different adequate protection at any time.

18. *Perfection of DIP Liens and Adequate Protection Liens.*

(a) The DIP Agent, the DIP Lender and the Prepetition Secured Parties are hereby authorized, but not required, to file or record (and to execute in the name of the DIP Loan Parties, as their true and lawful attorneys, with full power of substitution, to the maximum extent permitted by law) financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments in any jurisdiction, or 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. Whether or not the DIP Agent, on behalf of the DIP Lender, or the Prepetition Secured Parties shall, in their sole discretion, choose to file such financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments, or take possession of or control over any cash or securities, or otherwise confirm perfection of the liens and security interests granted to them hereunder, such liens and security interests shall be deemed valid, perfected, allowed, enforceable, non-avoidable, and not subject to challenge, dispute, or subordination, at the time and on the date of entry of this Interim Order. Upon the request of the DIP Agent, each of the Prepetition Secured Parties and the DIP Loan Parties, without any further consent of any party, is authorized (in the case of the DIP Loan Parties) and directed (in the case of the Prepetition Secured Parties) to take, execute, deliver and file such instruments (in each case, without representation or warranty of any kind) to enable the DIP Agent to further validate, perfect, preserve, and enforce the DIP Liens. All such documents shall be deemed to have been recorded and filed as of the Petition Date.

(b) This Interim Order shall be sufficient and conclusive evidence of the validity, perfection, and priority of all liens granted herein, including the DIP Liens and the Adequate Protection Liens, without the necessity of filing or recording financing statements, intellectual property filings, mortgages, notices of lien or similar instruments in any jurisdiction, taking possession of or control over cash, deposit accounts, securities, or other assets, or the taking of any other action (including, for the avoidance of doubt, entering into any deposit account control agreement, customs broker agreement or freight

forwarding agreement) to validate or perfect (in accordance with applicable non-bankruptcy law) the DIP Liens and any Adequate Protection Liens, or to entitle the DIP Secured Parties and the Prepetition Secured Parties to the priorities granted herein. Notwithstanding the foregoing, a certified copy of this Interim Order may, in the discretion of the DIP Agent, be filed with or recorded in filing or recording offices in addition to or in lieu of such financing statements, mortgages, notices of lien or similar instruments, and all filing offices are hereby authorized and directed to accept such certified copy of this Interim Order for filing and/or recording, as applicable. The automatic stay of section 362(a) of the Bankruptcy Code shall be modified to the extent necessary to permit the DIP Agent and any Prepetition Secured Parties to take all actions, as applicable, referenced in this paragraph 18.

19. *Preservation of Rights Granted Under This Interim Order.*

(a) Except as otherwise expressly provided in this Interim Order, the DIP Liens and the Adequate Protection Liens shall not be (i) 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, (ii) subordinated to or made *pari passu* with any other lien or security interest, whether under section 364(d) of the Bankruptcy Code or otherwise, (iii) subordinated to or made *pari passu* with any liens arising after the Petition Date, including any liens or security interests granted in favor of any federal, state, municipal, or other domestic or foreign governmental unit (including any regulatory body), commission, board, or court for any liability of the DIP Loan Parties, or (iv) subject or junior to any intercompany or affiliate liens or security interests of the Debtors.

(b) Notwithstanding any order that may be entered converting any of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code or dismissing any of the Chapter 11 Cases under section 1112 of the Bankruptcy Code or that otherwise is at any time entered, (i) the DIP Superpriority Claims, the Adequate Protection Obligations, the DIP Liens, and the Adequate Protection Liens 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 Obligations shall have been indefeasibly paid in full in cash (and such DIP Superpriority Claims, Adequate Protection Claims, DIP Liens, and Adequate Protection Liens shall, notwithstanding such dismissal or conversion, remain binding on all parties in interest), (ii) the other rights granted by this Interim Order shall not be affected, and (iii) the Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing the claims, liens and security interests referred to in this paragraph 19 and otherwise in this Interim Order.

(c) If any or all of the provisions of this Interim Order are hereafter reversed, modified, vacated, or stayed, such reversal, modification, vacatur, or stay shall not affect (i) the validity, priority or enforceability of any DIP Obligations or any Adequate Protection Obligations incurred prior to the actual receipt of written notice by the DIP Agent, the Prepetition Credit Agreement Agent or the Prepetition Notes Agent, as applicable, of the effective date of such reversal, modification, vacatur, or stay or (ii) the validity, priority, or enforceability of the DIP Liens or the Adequate Protection Liens. Notwithstanding any such reversal, modification, vacatur, or stay of any use of Cash Collateral, any DIP Obligations or any Adequate Protection Obligations incurred by the Debtors to the DIP Secured Parties or the Prepetition Secured Parties, as the case may be,

prior to the actual receipt of written notice by the DIP Agent, the Prepetition Credit Agreement Agent or the Prepetition Notes Agent, as applicable, of the effective date of such reversal, modification, vacatur, or stay shall be governed in all respects by the original provisions of this Interim Order, and the DIP Secured Parties and the Prepetition Secured Parties shall be entitled to all the rights, remedies, privileges and benefits granted in section 364(e) of the Bankruptcy Code, this Interim Order and the DIP Documents.

(d) Except as expressly provided in this Interim Order or in the DIP Documents, the DIP Obligations, the DIP Liens, the DIP Superpriority Claims, the Adequate Protection Obligations, the Adequate Protection Liens, and all other rights and remedies of the DIP Agent, the DIP Lender 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 the entry of an order (i) converting any of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code, dismissing any of the Chapter 11 Cases, terminating the joint administration of the Chapter 11 Cases, (ii) approving the sale of any DIP Collateral pursuant to section 363(b) of the Bankruptcy Code (except to the extent permitted by the DIP Documents), or (iii) confirming a chapter 11 plan in any of the Chapter 11 Cases and, pursuant to section 1141(d)(4) of the Bankruptcy Code, the Debtors have waived any discharge as to any outstanding DIP Obligations or Adequate Protection Obligations. The terms and provisions of this Interim Order and the DIP Documents shall continue in the Chapter 11 Cases, in any successor cases if the Chapter 11 Cases cease to be jointly administered and in any superseding chapter 7 cases under the Bankruptcy Code, and the DIP Obligations, the DIP Liens, the DIP Superpriority Claims, the Adequate Protection Obligations, the Adequate Protection

Liens, and all other rights and remedies of the DIP Secured Parties and the Prepetition Secured Parties granted by the provisions of this Interim Order and the DIP Documents shall continue in full force and effect until the DIP Obligations are indefeasibly paid in full in cash, as set forth herein and in the DIP Documents, and the DIP Commitments have been terminated.

20. *Effect of Stipulations on Third Parties.*

(a) The Debtors' stipulations, admissions, agreements and releases contained in this Interim Order (other than releases with respect to the DIP Secured Party Releasees, which releases are binding upon all parties upon entry of this Interim Order) shall be binding upon (i) the Debtors and their estates, upon entry of this Interim Order, in all circumstances and for all purposes and (ii) all other parties in interest, including any statutory or non-statutory committees appointed or formed in the Chapter 11 Cases (including a Committee, if any) and any other person or entity acting or seeking to act on behalf of the Debtors' estates, including any chapter 7 or chapter 11 trustee or examiner appointed or elected for any of the Debtors, upon entry of this Interim Order, in all circumstances and for all purposes unless (A) such committee or any other party in interest (subject in all respects to any agreement or applicable law that may limit or affect such entity's right or ability to do so), in each case, with standing granted by the Court, has timely filed an adversary proceeding (subject to the limitations contained herein, including, *inter alia*, in this paragraph 20) (1) objecting to or challenging the amount, validity, perfection, enforceability, priority, or extent of such Prepetition Obligations or Prepetition Liens or (2) otherwise asserting or prosecuting any action for preferences, fraudulent transfers or conveyances, other avoidance power claims or any other claims,

counterclaims or causes of action, objections, contests, or defenses (collectively, a “**Challenge**”) against the applicable Prepetition Secured Parties or their respective subsidiaries, affiliates, officers, directors, managers, principals, employees, agents, financial advisors, attorneys, accountants, investment bankers, consultants, representatives, and other professionals and their respective successors and assigns thereof, in each case in their respective capacity as such (each, a “**Representative**” and, collectively, the “**Representatives**”) in connection with matters related to any claims of the Debtors against any Prepetition Secured Parties, the Prepetition Debt Documents, the Prepetition Obligations, the Prepetition Liens, the Prepetition Collateral, or otherwise, *provided* that all pleadings filed in connection with a Challenge shall set forth the basis for such challenge or claim, (B) such Challenge has been filed prior to the latest of (1) (Y) with respect to parties in interest (other than a Committee), the earlier of (i) 75 calendar days after entry of this Interim Order and (ii) subject to entry of the Final Order, two (2) business days prior to the deadline ordered by the Court for submitting qualified bids in an auction for substantially all of the Debtors’ assets and (Z) with respect to a Committee, if any, the earlier of (i) 60 calendar days after the appointment of the Committee and (ii) subject to entry of the Final Order, two (2) business days prior to the deadline ordered by the Court for submitting qualified bids in an auction for substantially all of the Debtors’ assets, (2) any such later date as has been agreed to, in writing, by the Prepetition Credit Agreement Agent and/or Prepetition Notes Agent, as applicable, and (3) any such later date as has been ordered by the Court for cause upon a motion filed and served within any applicable time period set forth in this paragraph 20 (the time period established by the foregoing clauses (1) through (3), the “**Challenge Period**”), and

(C) there is a final non-appealable order sustaining such Challenge in favor of the plaintiff in such timely filed adversary proceeding or contested matter. Any Challenge not so specified and filed prior to the expiration of the Challenge Period shall be deemed forever, waived, released, and barred, it being acknowledged that the Challenge Period may expire against one or more of the Prepetition Secured Parties notwithstanding the filing of a Challenge against any of the other Prepetition Secured Parties.

(b) [Reserved].

(c) If no such Challenge is filed during the Challenge Period or the Court does not rule in favor of the plaintiff in any such proceeding, then (i) the Debtors' stipulations, admissions, agreements, and releases contained in this Interim Order shall be binding on all parties in interest, including the Committee, if any, (ii) the Prepetition Credit Agreement Obligations and Prepetition Notes Obligations, shall constitute allowed claims not subject to defense, claim, counterclaim, recharacterization, subordination, offset, or avoidance, for all purposes in the Chapter 11 Cases, and any subsequent chapter 7 case(s), (iii) the Prepetition Credit Agreement Liens and Prepetition Notes Liens shall be deemed to have been, as of the Petition Date, legal, valid, binding, perfected, security interests and liens, not subject to recharacterization, subordination, avoidance, or other defense, (iv) no Prepetition Obligations or Prepetition Liens shall be subject to any other or further claim or challenge by a Committee, if any, any non-statutory committees appointed or formed in the Chapter 11 Cases, any trustee or examiner with enlarged powers appointed or elected in any of the Chapter 11 Cases or any subsequent chapter 7 case of the Debtors or any other party in interest acting or seeking to act on behalf of the Debtors' estates, and (v) any defenses, claims, causes of action, counterclaims, and

offsets by a Committee, if any, any non-statutory committees appointed or formed in the Chapter 11 Cases, or any other party acting or seeking to act on behalf of the Debtors' estates, whether arising under the Bankruptcy Code or otherwise, against any of the Prepetition Credit Agreement Secured Parties or Prepetition Notes Secured Parties and, in each case their Representatives arising out of or relating to the any claims of the Debtors against any Prepetition Secured Parties, any Prepetition Debt Documents or otherwise shall be deemed forever waived, released, and barred. If any such Challenge is filed during the Challenge Period, the stipulations, admissions, agreements, and releases contained in this Interim Order shall nonetheless remain binding and preclusive (as provided in this subparagraph (c)) on a Committee, if any, and on any other person or entity, except to the extent that, and after, such stipulations, admissions, agreements, and releases were expressly and successfully challenged in such Challenge as set forth in a final, non-appealable order of the Court or any other court of competent jurisdiction. Nothing in this Interim Order vests or confers on any Person (as defined in the Bankruptcy Code), including a Committee, if any, or any non-statutory committees appointed or formed in the Chapter 11 Cases, standing or authority to pursue any claim or cause of action belonging to the Debtors or their estates, including Challenges with respect to any Prepetition Debt Documents, Prepetition Obligations or Prepetition Liens, or claims, counterclaims or causes of action of the Debtors against any Prepetition Secured Party.

21. *Limitation on Use of DIP Financing Proceeds and Collateral.* Notwithstanding anything herein or in any other order entered by the Court to the contrary, no proceeds of the DIP Facility, DIP Collateral, Cash Collateral, or the Carve-Out may be used (a) for Professional Fees

incurred for (i) any litigation or threatened litigation (whether by contested matter, adversary proceeding, or otherwise, including any investigation in connection with litigation or threatened litigation) against any of the DIP Agent, the DIP Lender, or any Prepetition Secured Parties or for the purpose of objecting to or challenging the validity, perfection, enforceability, extent, amount or priority of any claim, lien, or security interest held or asserted by any of the DIP Agent, the DIP Lender, or any Prepetition Secured Parties or (ii) asserting any defense, claim, cause of action, counterclaim, or offset with respect to the DIP Obligations, any Adequate Protection Obligations any Prepetition Obligations (including for lender liability or pursuant to section 105, 510, 544, 547, 548, 549, 550, or 552 of the Bankruptcy Code, applicable non-bankruptcy law or otherwise), the DIP Liens, or any Prepetition Liens or against any of the Prepetition Secured Parties or their respective Representatives, (b) to prevent, hinder, or otherwise delay any of the DIP Secured Party's or any Prepetition Secured Party's assertion, enforcement, or realization on the Prepetition Collateral or the DIP Collateral in accordance with the DIP Documents, the Prepetition Debt Documents or this Interim Order other than to seek a determination that an Event of Default has not occurred or is not continuing, or in connection with a remedies hearing, (c) to seek to modify any of the rights granted to the DIP Agent, the DIP Lender, or any Prepetition Secured Party under this Interim Order or under the DIP Documents or the Prepetition Debt Documents, in each of the foregoing cases without such parties' prior written consent, which may be given or withheld by such party in the exercise of its respective sole discretion, or (d) to pay any amount on account of any claims arising prior to the Petition Date unless such payments are approved by an order of the Court (including hereunder); *provided* that notwithstanding anything to the contrary herein, the Committee, if any, may use the proceeds of the DIP Collateral (including Cash Collateral), and/or the Carve-Out to

investigate (but not prosecute or initiate the prosecution of, including the preparation of any complaint or motion on account of) prior to (but not after) the delivery of a Carve-Out Trigger Notice, (y) the claims and liens of the Prepetition Secured Parties, and (z) potential claims, counterclaims, causes of action, or defenses against the Prepetition Secured Parties; *provided further* that no more than an aggregate of \$50,000 of the proceeds of the DIP Collateral (including Cash Collateral) and/or the Carve-Out may be used by the Committee, if any, in respect of the investigations set forth in the preceding proviso (the “**Investigation Budget**”).

22. *Access to the Debtors.* In accordance with the terms of the DIP Documents and the Prepetition Debt Documents, the DIP Secured Parties and their professionals shall be afforded continued reporting as to DIP Collateral amounts and reasonable access to the DIP Collateral and the Debtors’ business premises, during normal business hours and upon reasonable advance notice, for purposes of verifying the Debtors’ compliance with the terms of this Interim Order.

23. *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 the Chapter 11 Cases, including the DIP Agent, the DIP Lender, all Prepetition Secured Parties, the Committee, if any, any non-statutory committees appointed or formed in the Chapter 11 Cases, the Debtors, and their respective successors and assigns (including any chapter 7 or chapter 11 trustee hereinafter appointed or elected for the estate of any of the Debtors, an examiner appointed pursuant to 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 Agent, the DIP Lender, all Prepetition Secured Parties, the Debtors, and their respective successors and assigns; *provided*

that the DIP Agent, the DIP Lender, and the Prepetition Secured Parties shall have no obligation to permit the use of the DIP Collateral or Prepetition Collateral (including Cash Collateral) or to extend any financing to any chapter 7 trustee, chapter 11 trustee, or similar responsible person appointed for the estates of the Debtors.

24. *Effect of Reversal, Etc.* Upon any reversal or modification on appeal of this Interim Order, section 364(e) of the Bankruptcy Code applies to any DIP Obligations, Adequate Protection Claims, Adequate Protection Expenses, DIP Liens, Adequate Protection Liens, and the DIP Agent, the DIP Lender, and each Prepetition Secured Party is entitled to all of the benefits and protections afforded by section 364(e).

25. *Limitation of Liability.* The DIP Agent, the DIP Lender, and each Prepetition Secured Party, each in their capacity as such, shall not (a) be deemed to be in “control” of the operations of the Debtors, (b) owe any fiduciary duty to the Debtors, their respective creditors, shareholders, or estates, and (c) be deemed to be acting as a “Responsible Person,” “Owner,” or “Operator” with respect to the operation or management of the Debtors, so long as their actions do not constitute, within the meaning of 42 U.S.C. § 9601(20)(F), actual participation in the management or operational affairs of a vessel or facility owned or operated by a Debtor, or otherwise cause liability to arise to the federal or state government or the status of “responsible person” or “managing agent” to exist under applicable law (as such terms or similar terms are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601, *et seq.*, as amended, or any similar federal or state statute).

26. *Inapplicability of Bar Date; Master Proof of Claim.* Any order entered by the Court establishing a bar date for any claims (including administrative claims) in any of the Chapter 11 Cases or any subsequent chapter 7 case of any of the Debtors shall not apply to any

DIP Secured Party or any Prepetition Secured Party. The DIP Secured Parties and each Prepetition Secured Party shall not be required to file proofs of claim or requests for allowance and payment of administrative expenses authorized by this Interim Order in any of the Chapter 11 Cases or any subsequent chapter 7 case of any of the Debtors. The provisions of this Interim Order, and, upon the entry thereof, the Final Order, shall constitute a sufficient and timely filed proof of claim and/or administrative expense request in respect of such obligations and such secured status. However, in order to facilitate the processing of claims, to ease the burden upon the Court, and to reduce an unnecessary expense to the Debtors' estates, (i) the Prepetition Credit Agreement Agent is authorized to, but not required to, file in the Debtors' lead Chapter 11 Case *In re John Varvatos Enterprises, Inc., et al.*, Case No. 20-11043 (MFW), a single, master proof of claim on behalf of the Prepetition Credit Agreement Secured Parties, on account of any and all of their respective claims arising under the applicable Prepetition Credit Agreement Documents and hereunder (each, a "**Master Credit Agreement Proof of Claim**") applicable against each of the Debtors and (ii) the Prepetition Notes Agent is authorized to, but not required to, file in the Debtors' lead Chapter 11 Case, a single, master proof of claim on behalf of the Prepetition Notes Secured Parties, on account of any and all of their respective claims arising under the applicable Prepetition Notes Documents and hereunder (each, a "**Master Notes Proof of Claim**" and, together with the Master Credit Agreement Proof of Claim, each as "**Master Proof of Claim**") applicable against each of the Debtors. Upon the filing of a Master Proof of Claim, the Prepetition Credit Agreement Agent and the Prepetition Credit Agreement Secured Parties or the Prepetition Notes Agent and the Prepetition Notes Secured Parties, as applicable, and each of their respective successors and assigns, shall be deemed to have filed a proof of claim in the amount set forth opposite its name therein in respect

of its claims against each of the Debtors of any type or nature whatsoever with respect to the applicable Prepetition Debt Documents, and the claim of each Prepetition Secured Party (and each of its respective successors and assigns), named in a Master Proof of Claim shall be treated as if such entity had filed a separate proof of claim in each of the Chapter 11 Cases. The Master Proof of Claim shall not be required to identify whether any Prepetition Secured Party acquired its claim from another party and the identity of any such party or to be amended to reflect a change in the holders of the claims set forth therein or a reallocation among such holders of the claims asserted therein resulting from the transfer of all or any portion of such claims. Nothing in this Interim Order shall waive the right of any DIP Lender or any Prepetition Secured Party to file its own proof of claim against any of the Debtors. The provisions of this paragraph 26 and each Master Proof of Claim are intended solely for the purpose of administrative convenience and shall not affect the right of each Prepetition Secured Party (or its successors in interest) to vote separately on any plan proposed in the Chapter 11 Cases. The Master Proof of Claim shall not be required to attach any instruments, agreements, or other documents evidencing the obligations owing by each of the Debtors to the applicable Prepetition Secured Parties, which instruments, agreements, or other documents will be provided upon reasonable written request to counsel to the Prepetition Credit Agreement Agent or the Prepetition Notes Agent, as applicable.

27. *Insurance.* To the extent that any Prepetition Secured Party is listed as loss payee or additional insured under any of the DIP Loan Parties' insurance policies, the DIP Agent is also deemed to be the loss payee or additional insured, as applicable, under such insurance policies and shall act in that capacity and distribute any proceeds recovered or received in respect of any such insurance policies, *first*, to the payment in full of the Prepetition Credit Agreement Obligations, *second*, to the DIP Obligations (other than contingent indemnification obligations as

to which no claim has been asserted), and *third*, to the payment of the applicable Prepetition Obligations.

28. *Effectiveness.* This Interim Order shall constitute findings of fact and conclusions of law and shall take effect and be fully enforceable *nunc pro tunc* to the Petition Date immediately upon entry hereof. Notwithstanding Bankruptcy Rule 4001(a)(3), 6004(h), 6006(d), 7062, or 9014, any Local Rule or Rule 62(a) of the Federal Rules of Civil Procedure, this Interim Order shall be immediately effective and enforceable upon its entry and there shall be no stay of execution or effectiveness of this Interim Order.

29. *Headings.* Section headings used herein are for convenience only and are not to affect the construction of or to be taken into consideration in interpreting this Interim Order.

30. *Payments Held in Trust for the DIP Agent and DIP Lender.* Except as expressly permitted in this Interim Order or the DIP Documents, in the event that any person or entity (other than a Prepetition Credit Agreement Secured Party, in respect of Prepetition Credit Agreement Obligations or Prepetition Credit Agreement Adequate Protection Obligations) receives any payment on account of a security interest in DIP Collateral, receives any DIP Collateral or any proceeds of DIP Collateral, or receives any other payment with respect thereto from any other source prior to indefeasible payment in full in cash of all DIP Obligations under the DIP Documents, and termination of the DIP Commitments in accordance with the DIP Documents, such person or entity shall be deemed to have received, and shall hold, such payment or proceeds of DIP Collateral in trust for the benefit of the DIP Agent, the DIP Lender and, with respect to DIP Collateral that is Prepetition Collateral, the Prepetition Secured Parties, and such proceeds shall not be property of such person or entity regardless of whether they are segregated or commingled with other funds thereof, and such person or entity shall immediately

turn over such proceeds to the DIP Agent, or as otherwise instructed by the Court, for application in accordance with the DIP Documents and this Interim Order.

31. *Disposition of Prepetition Collateral and/or DIP Collateral.*

(a) Unless the Prepetition Credit Agreement Obligations and the DIP Obligations are indefeasibly paid in full, in cash, upon the closing of a sale or other disposition of the Prepetition Collateral and/or the DIP Collateral, the Debtors shall not sell, transfer, lease, encumber, or otherwise dispose of any portion of the Prepetition Collateral or the DIP Collateral (or enter into any binding agreement to do so) (other than transactions permitted under the DIP Documents) without the prior written consent of the Prepetition Credit Agreement Agent and/or the DIP Agent, as applicable, (and no such consent shall be implied from any other action, inaction, or acquiescence by any DIP Lender or Prepetition Secured Party or any order of this Court). Except to the extent otherwise expressly provided in the DIP Documents and subject to the Carve-Out, all proceeds from the sale, transfer, lease, encumbrance, or other disposition of any DIP Collateral (other than the sales in the ordinary course of business) shall be remitted to the Prepetition Credit Agreement Agent and DIP Agent for application to the Prepetition Credit Agreement Obligations and DIP Obligations, (a) in the case of DIP Collateral that is also Prepetition Collateral, in accordance with the terms of this Interim Order and the Cayman Subordination Agreement (as defined in the DIP Credit Agreement) and (b) in the case of DIP Collateral that is not Prepetition Collateral, in accordance with the terms of this Interim Order.

(b) The Prepetition Credit Agreement Agent and Prepetition Noteholder are parties to the Cayman Subordination Agreement. The Cayman Subordination Agreement

is a “subordination agreement” within the meaning of section 510(a) of the Bankruptcy Code in the Chapter 11 Cases. The Prepetition Credit Agreement Agent and Prepetition Noteholder in its capacity as DIP Lender have stipulated that their respective interests in the Prepetition Collateral (including DIP Collateral that is also Prepetition Collateral) shall continue to be governed by the Cayman Subordination Agreement (including, without limitation, the Prepetition Credit Agreement Agent’s rights as “Senior Agent” and “Senior Lender” (as those terms are defined in the Cayman Subordination Agreement) with respect to the Prepetition Collateral.

(c) The DIP Lender, the Prepetition Noteholder, and the Prepetition Credit Agreement Agent shall remain bound by the terms and conditions set forth in the Cayman Subordination Agreement, including, without limitation, with respect to the Prepetition Collateral and the DIP Collateral that is also Prepetition Collateral, and (x) nothing contained in this Interim Order shall be deemed to abrogate or limit the respective, rights, claims and obligations of each of the DIP Lender, the Prepetition Noteholder, or the Prepetition Credit Agreement Agent under the Cayman Subordination Agreement, and (y) the Cayman Subordination Agreement shall apply and govern the respective rights, obligations, and priorities of each of the DIP Lender, the Prepetition Noteholder, and the Prepetition Credit Agreement Agent in the Chapter 11 Cases. All DIP Loans made by the DIP Lender pursuant to and under the DIP Facility which constitute rolled up prepetition Notes Obligations shall be deemed to be “Notes Obligations” under the Cayman Subordination Agreement with respect to DIP Collateral that is Prepetition Collateral.

32. *Credit Bidding*. The DIP Lender shall have the right to credit bid, in accordance with the DIP Documents and subject to the Carve-Out, up to the then outstanding amount of the

DIP Obligations in any sale of the DIP Collateral, in each case pursuant to section 363(k) of the Bankruptcy Code, without the need for further Court order authorizing the same and whether any such sale is effectuated through section 363(k) or 1129(b) of the Bankruptcy Code, by a chapter 7 trustee under section 725 of the Bankruptcy Code or otherwise. Each Prepetition Secured Party shall have the right to credit bid up to the full amount of its applicable Prepetition Obligations in any sale of the Prepetition Collateral, *provided* that, following the disallowance of any Prepetition Obligations or the avoidance of liens securing such obligations, in each case solely in Challenge pursuant to paragraph 20 and as approved by a final, non-appealable order by this Court or any other court of competent jurisdiction, any party-in-interest shall be entitled to move this Court for an appropriate remedy to compensate the Debtors for the decrease in the value of such credit bid. The Debtors shall pay the fees and expenses of the DIP Secured Parties and any Prepetition Secured Party in connection with any such credit bid, subject to the procedures set forth in paragraph 11 hereof.

33. *No Marshalling.* Subject to entry of the Final Order, in no event shall the DIP Secured Parties or any Prepetition Secured Parties be subject to the equitable doctrine of “marshaling” or any similar doctrine with respect to the DIP Collateral or Prepetition Collateral. Subject to entry of the Final Order, the DIP Secured Parties and the Prepetition Secured Parties are entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and the “equities of the case” exception shall not apply.

34. *Bankruptcy Rules.* The requirements of Bankruptcy Rules 4001, 6003, and 6004, in each case to the extent applicable, are satisfied by the contents of the Motion.

35. *Necessary Action.* The Debtors are authorized to take all such actions as are necessary or appropriate to implement the terms of this Interim Order.

36. *Modifications of DIP Documents.* The Debtors, the DIP Agent, and the DIP Lender are hereby authorized to implement, in accordance with the terms of the respective DIP Documents, any non-material modifications of the respective DIP Documents without further order of this Court; *provided, however*, that notice of any material modification or amendment to the respective DIP Documents that is adverse to the Debtors shall be made pursuant to an order of this Court; *provided* that the Debtors' right to seek to shorten the notice period for the hearing on such order is preserved.

37. *Retention of Jurisdiction.* The Court shall retain jurisdiction to implement, interpret and enforce the provisions of this Interim Order, and this retention of jurisdiction shall survive the confirmation and consummation of any chapter 11 plan for any one or more of the Debtors notwithstanding the terms or provisions of any such chapter 11 plan or any order confirming any such chapter 11 plan.

38. *Termination of Cash Collateral Use.* In the absence of a further order of this Court, and notwithstanding anything herein or in the DIP Documents to the contrary, after delivery (including delivery by electronic mail or facsimile) of notice of the occurrence of a Cash Collateral Termination Event by either the Prepetition Credit Agreement Agent or the Prepetition Notes Agent to the Debtors, the Committee (if appointed), the other Prepetition Secured Parties and the U.S. Trustee, the Debtors shall no longer be authorized pursuant to this Interim Order to use Cash Collateral other than with respect to the Carve-Out and such Cash Collateral use shall automatically terminate the date upon which any of the following events occurs (such date being referred to herein as the "**Cash Collateral Termination Date**," and each of the following events, a "**Cash Collateral Termination Event**"):

(a) the appointment of a trustee or the appointment of an examiner with enlarged powers in any of the Chapter 11 Cases unless such appointment is approved by the Prepetition Credit Agreement Agent and the Prepetition Notes Agent;

(b) the delivery of a Carve-Out Trigger Notice;

(c) the occurrence of an Event of Default as defined in the DIP Credit Agreement;

(d) the failure by the Debtors to achieve any of the following milestones (or to the extent any milestone requires a court hearing, as soon as practicable thereafter based on scheduling availability of the Court):

(i) on or before the date that is thirty (30) calendar days following the entry of this Interim Order, the Final Order shall have been entered by this Court;

(ii) on or before the date that is sixty (60) calendar days after the Petition Date, the Debtors shall conduct the auction for the sale (the “**Sale**”) of all or substantially all of the Debtors’ assets (if qualified bids are received) (the “**Auction**”); *provided*, that the Debtors shall be entitled to extend such milestone by twenty eight (28) calendar days solely to permit the resolution of a Challenge;

(iii) on or before the date that is three (3) Business Days after the Auction, the Court shall have entered an order approving the Approved Sale (the “**Sale Order**”); and

(iv) on or before the date that is fifteen (15) calendar days after the entry of the Sale Order, the Debtors shall have consummated the Sale to the party determined to have made the highest or otherwise best bid for the Debtors’ assets

in accordance with the Sale Order, including the payment in full in cash of all Prepetition Credit Agreement Obligations.

Further, none of the foregoing milestones may be modified without the prior express approval by the Prepetition Credit Agreement Agent, such approval not to be unreasonably withheld, conditioned or delayed.

(e) the failure of the Debtors to make any payment under this Interim Order to any of the Prepetition Secured Parties when due without the prior written consent of such Prepetition Secured Party;

(f) a failure of the Debtors to (x) observe or perform any of the terms or provisions contained in this Interim Order or (y) comply with any covenant or agreement in this Interim Order;

(g) the filing of a motion by any Debtor (or any other person, to the extent such motion is not dismissed or denied within thirty (30) days after the date of filing such motion) seeking, or the entry of any order permitting, recovery from any portion of the Prepetition Collateral (or from any Prepetition Secured Party directly) any costs or expenses of preserving or disposing of the Prepetition Collateral under section 506(c) or section 552(b) of the Bankruptcy Code (or otherwise); or

(h) any of the liens securing the Prepetition Obligations or the Adequate Protection Liens granted to the Prepetition Secured Parties shall cease to be valid, binding, and perfected liens with the priority and to the extent provided in this Interim Order.

39. *Final Hearing.* The Final Hearing is scheduled for May 26, 2020 at 10:30 a.m. (prevailing Eastern Time) before the Court.

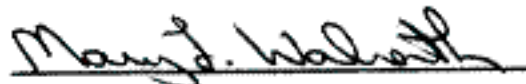
40. *Inconsistency.* In the event of any inconsistency between the terms and conditions of the DIP Documents and of this Interim Order, the provisions of this Interim Order shall govern and control.

41. *Objections.* Any party in interest objecting to the relief sought at the Final Hearing shall file and serve written objections, which objections shall be served upon (a) counsel to the Debtors, Morris, Nichols, Arsht & Tunnell LLP, 1201 N. Market Street, 16th Floor, P.O. Box 1347, Wilmington, Delaware, 19899-1347, (Attention: Derek C. Abbott and Matthew O. Talmo), E-mail: dabbott@mnat.com and mtalmo@mnat.com, (b) counsel to the DIP Secured Parties, (i) Sullivan & Cromwell LLP, 125 Broad Street, New York, New York 10011 (Attention: Ari B. Blaut and David R. Zylberberg), E-mail: blauta@sullcrom.com and zylberbergd@sullcrom.com and (ii) Young Conaway Stargatt & Taylor LLP, Rodney Square, 1000 North King Street, Wilmington, DE 19801 (Attention: Pauline K. Morgan and Sean T. Greecher), E-mail: pmorgan@ycst.com and sgreecher@ycst.com, (c) counsel to the Prepetition Credit Agreement Secured Parties, (i) Riemer & Braunstein LLP, 100 Cambridge Street, 22nd Floor, Boston, Massachusetts (Attention: Donald E. Rothman), E-mail: drothman@riemerlaw.com, and (ii) Burr & Forman LLP, 1201 N. Market Street, Suite 1407, Wilmington, Delaware 19801 (Attention: J. Cory Falgowski), E-mail: jfalgowski@burr.com, (d) the U.S. Trustee, 4 King Street, Room 2207, Wilmington, Delaware 19801, (Attn: Timothy J. Fox, Jr.), E-mail: Timothy.Fox@usdoj.gov, and (d) any other party that has filed a request for notices with the Court, in each case to allow actual receipt by the foregoing no later than May 21, 2020 at 4:00 p.m. (prevailing Eastern Time).

42. The Debtors shall promptly serve copies of this Interim Order (which shall constitute adequate notice of the Final Hearing, including notice that the Debtors will seek

approval at the Final Hearing of a waiver of rights under sections 506(c) and 552(b) of the Bankruptcy Code) to the parties having been given notice of the Interim Hearing, to any party that has filed a request for notices with the Court and to the Committee after the same has been appointed, or such Committee's counsel, if the same shall have been appointed.

Dated: May 7th, 2020
Wilmington, Delaware



MARY F. WALRATH
UNITED STATES BANKRUPTCY JUDGE