

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re

TPC GROUP INC., *et al.*,

Debtors.¹

Chapter 11

Case No. 22-10493 (CTG)

Joint Administration Requested

**DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS (I)
AUTHORIZING THE DEBTORS TO (A) OBTAIN SENIOR SECURED PRIMING
SUPERPRIORITY POSTPETITION FINANCING AND (B) USE CASH COLLATERAL,
(II) GRANTING LIENS AND PROVIDING CLAIMS WITH SUPERPRIORITY
ADMINISTRATIVE EXPENSE STATUS, (III) GRANTING ADEQUATE PROTECTION
TO THE PREPETITION SECURED PARTIES, (IV) MODIFYING THE AUTOMATIC
STAY, AND (V) GRANTING RELATED RELIEF**

TPC Group Inc. and its debtor affiliates, as debtors and debtors in possession (collectively, the “**Debtors**”) in the above-captioned chapter 11 cases (the “**Chapter 11 Cases**”), file this *Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (a) Obtain Senior Secured Priming Superpriority Postpetition Financing and (b) Use Cash Collateral, (II) Granting Liens and Providing Claims with Superpriority Administrative Expense Status, (III) Granting Adequate Protection to the Prepetition Secured Parties, (IV) Modifying the Automatic Stay, and (V) Granting Related Relief* (the “**Motion**”)² for entry of an interim order, substantially in the form attached hereto as **Exhibit 1** (the “**Interim Order**”), and a final order (the “**Final Order**,” and together with the Interim Order, the “**DIP Orders**”), pursuant to sections 105(a), 361, 362, 363(b), 363(c)(2),

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: TPC Group Inc. (3618); TPC Holdings, Inc. (7380); TPC Group LLC (8313); Texas Butylene Chemical Corporation (7440); Texas Olefins Domestic International Sales Corporation (4241); TPC Phoenix Fuels LLC (9133); Port Neches Fuels, LLC (1641); and TP Capital Corp. (6248). Each Debtor’s corporate headquarters and mailing address is 500 Dallas St., Suite 2000, Houston, Texas 77002.

² Each capitalized term used but not otherwise defined herein shall have the meaning ascribed to it in the Interim Order or the applicable DIP Loan Document (as defined below), as applicable. In the event there is any inconsistency between the meaning of a capitalized term in this Motion, on the one hand, and in the Interim Order or a DIP Loan Document, on the other, the meaning in the Interim Order or DIP Loan Document shall govern.

364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), 364(e), 503, 506, 507, and 552 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**”), Rule 4001-2 of the Bankruptcy Local Rules of Bankruptcy Practice and Procedure for the District of Delaware (the “**Bankruptcy Local Rules**”). In support of this Motion, the Debtors rely on the *Declaration of Robert Del Genio in Support of the Debtors’ Chapter 11 Petitions and First Day Motions* (the “**First Day Declaration**”); the *Declaration of Robert Del Genio in Support of the Debtors’ Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (a) Obtain Senior Secured Priming Superpriority Postpetition Financing and (b) Use Cash Collateral, (II) Granting Liens and Providing Claims with Superpriority Administrative Expense Status, (III) Granting Adequate Protection to the Prepetition Secured Parties, (IV) Modifying the Automatic Stay, and (V) Granting Related Relief* (the “**Del Genio Declaration**”); and the *Declaration of Zul Jamal in Support of the Debtors’ Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (a) Obtain Senior Secured Priming Superpriority Postpetition Financing and (b) Use Cash Collateral, (II) Granting Liens and Providing Claims with Superpriority Administrative Expense Status, (III) Granting Adequate Protection to the Prepetition Secured Parties, (IV) Modifying the Automatic Stay, and (V) Granting Related Relief* (the “**Jamal Declaration**”), all of which are being filed contemporaneously herewith. In further support of this Motion, the Debtors respectfully represent as follows:

Preliminary Statement

1. To fund the reorganization process and, importantly, bridge the liquidity gap between commencing these Chapter 11 Cases and confirmation of the Debtors’ plan of reorganization, the Debtors conducted a solicitation process to obtain postpetition DIP financing.

In connection therewith, as described in greater detail in the Jamal Declaration, the Debtors, through their investment banker, Moelis & Company (“**Moelis**”), solicited offers from thirty parties for a term loan DIP facility and fourteen parties for a revolving loan DIP facility. Five offers for a DIP term loan facility and six offers for a revolving credit facility were received. After careful consideration and multiple rounds of negotiations with the potential DIP lenders, the Debtors determined that the Term DIP Facility (as defined below) offered by the Ad Hoc Noteholder Group (as defined below), and the ABL DIP Facility (as defined below) offered by Eclipse Business Capital LLC represent the best financing alternatives available to the Debtors. Specifically, the Debtors propose to enter into the following:

- (a) postpetition financing on a superpriority priming senior secured basis (such facility, the “**Term DIP Loan Facility**”, and the loans made thereunder, including the New Money Term DIP Loans, the New Money Cash Out DIP Loans and the DIP Roll Up Loans (each as defined below), the “**Term DIP Loans**”), on the terms and conditions set forth in the DIP Orders and that certain *Senior Secured Super-Priority Priming Term Loan Debtor-In-Possession Credit Agreement*, substantially in the form attached to the Interim Order as **Exhibit 2** and otherwise in form and substance acceptable to the Required Term DIP Lenders (as defined below) and the Debtors (as may be amended, amended and restated, supplemented, or otherwise modified from time to time in accordance with the terms thereof and of the DIP Orders, the “**Term DIP Loan Agreement**”, and, together with all other agreements, guarantees, pledge, collateral and security documents, control agreements, instruments, certificates, notes and other documents executed, filed and/or delivered in connection therewith, including the Loan Documents (as defined in the Term DIP Loan Agreement) and the DIP Intercreditor Agreement (as defined below) (each as amended, amended and restated, supplemented, or otherwise modified from time to time in accordance with the terms thereof and of the DIP Orders, and together with the Term DIP Loan Agreement, collectively, the “**Term DIP Loan Documents**”), by and among TPC, as Borrower, TPC Holdings, Inc. (“**Holdings**”) and each of the direct and indirect subsidiaries of the Borrower (other than TPC Pipeline Holding Company LLC and TPC Pipeline Company LLC), as guarantors (together with Holdings, the “**Guarantors**”, and together with the Borrower, the “**Term DIP Loan Parties**”), GLAS USA LLC, as administrative agent (in such capacity, the “**Term DIP Administrative Agent**”) and GLAS Americas LLC, as collateral agent (in such capacity, the “**Term DIP Collateral Agent**”) and together with the Term DIP Administrative Agent, the “**Term DIP Agents**”), the lenders party thereto from time to time (the “**Term DIP Lenders**”),

and together with the Term DIP Agents, the “**Term DIP Secured Parties**”), comprised of the following:

- (i) (A) a new money multiple draw term loan facility (the new money term loans thereunder, the “**New Money Term DIP Loans**”) in an aggregate principal amount of up to \$85 million, pursuant to which (1) an aggregate principal amount of \$32 million shall be borrowed in a single borrowing on the Closing Date (as defined in the Term DIP Loan Agreement), (2) an aggregate principal amount of \$25 million shall be borrowed in a single borrowing upon the entry of the Final Order, and (3) thereafter, the remaining aggregate principal amount available under the Term DIP Loan Facility may be borrowed in a third single borrowing on or after June 30, 2022 (collectively, the “**Term DIP Borrowings**”, and each, a “**Term DIP Borrowing**”), in the case of each of the foregoing, subject to the terms and conditions set forth in the DIP Orders and in the Term DIP Loan Agreement (including, without limitation, any conditions precedent to each of the Term DIP Borrowings set forth therein), and (B) New Money Cash Out DIP Loans (as defined below); and
- (ii) the conversion of all amounts outstanding under the Prepetition Senior Priority Notes (as defined below) to Term DIP Loans (such conversion, the “**Roll Up**”, and such converted amounts, the “**DIP Roll Up Loans**”), pursuant to which (1) upon entry of the Interim Order, approximately \$59 million in obligations arising under the Prepetition Senior Priority Additional Notes issued pursuant to the Supplemental Indentures (as defined below) (consisting of \$[53] million in respect of principal amount outstanding under the Prepetition Senior Priority Additional Notes, \$1 million of accrued but unpaid interest thereon, and approximately \$5 million of the Redemption Premium³), will be deemed “rolled up” and converted into the Term DIP Loan Facility, on a cashless dollar for dollar basis (the “**Initial Roll Up**”), and (2) upon entry of the Final Order, the balance of the obligations arising under the Prepetition Senior Priority Notes (including all remaining principal, the balance of the Redemption Premium, and accrued but unpaid interest thereon through the date thereof) shall be deemed “rolled up” and converted into the Term DIP Loan Facility, on a cashless dollar for dollar basis (the “**Final Roll Up**”), and, upon such conversion, each of the Roll Up DIP Loans shall automatically be deemed to be substituted and exchanged for, and shall be deemed to be, Term DIP Loans for all purposes hereunder; *provided, however*, that beneficial holders of Prepetition Senior Priority Additional Notes (in the case of the Initial Roll Up) and beneficial holders of other Prepetition Senior Priority Notes

³ “Redemption Premium” means the amount of principal of, accrued and unpaid interest and premium on the Prepetition Senior Priority Notes that becomes due and payable shall equal the redemption price applicable with respect to an optional redemption of the Prepetition Senior Priority Notes, in effect on the date of such acceleration, applicable premium event or the date on which the Prepetition Senior Priority Notes otherwise become due as if such acceleration or other circumstance causing the Prepetition Senior Priority Notes to become due were an optional redemption of the Prepetition Senior Priority Notes accelerated or becoming due.

(in the case of the Final Roll Up) that certify in writing to the Term DIP Agents and the Term DIP Lenders that they are unable to effectuate a Roll Up of their Prepetition Senior Priority Additional Notes or other Prepetition Senior Priority Notes (as the case may be) due to limitations with respect to holding term loans in the governing documents or internal policies of such shall be repaid in cash from the proceeds of additional new money term loans to be provided by the Term DIP Lenders, in a principal amount not to exceed \$[●] million in the aggregate (the “**New Money Cash Out DIP Loans**”).

- (b) postpetition financing on a superpriority priming senior secured basis in a form of a revolving credit facility in an aggregate principal amount of up to \$200 million (such facility, the “**ABL DIP Loan Facility**”, and together with the Term DIP Loan Facility (the “**DIP Facilities**”; the loans advanced under the ABL DIP Loan Facility, the “**ABL DIP Loans**”, and together with the Term DIP Loans, the “**DIP Loans**”), providing, among other things, for the refinancing of all amounts outstanding under the Prepetition ABL Loan Agreement (as defined below) pursuant to a payoff letter substantially in the form attached to the Interim Order as Exhibit [●] and otherwise in form and substance satisfactory to the Debtors, the Prepetition ABL Agent (as defined below), the DIP Agents (as defined below) and the Term DIP Required Lenders⁴ (the “**Prepetition ABL Payoff Letter**”), on the terms and conditions set forth in this Interim Order and that certain *Debtor-In-Possession Credit Agreement*, substantially in the form attached to this Interim Order as Exhibit 3 and otherwise in form and substance acceptable to the Required ABL DIP Lenders (as defined below) and the Debtors (as may be amended, amended and restated, supplemented, or otherwise modified from time to time in accordance with the terms of the Interim Order and thereof, the “**ABL DIP Loan Agreement**”, and, together with all other agreements, guarantees, pledge, collateral and security documents, control agreements, instruments, certificates, notes, and other documents executed, filed and/or delivered in connection therewith, including the Loan Documents (as defined in the ABL DIP Loan Agreement) and the DIP Intercreditor Agreement (each as amended, amended and restated, supplemented, or otherwise modified from time to time in accordance with the terms of the Interim Order and thereof, and together with the ABL DIP Loan Agreement, collectively, the “**ABL DIP Loan Documents**”, and together with the Term DIP Loan Documents, the “**DIP Loan Documents**”), by and among TPC, as [Borrower], the [Guarantors] (together with the [Borrower], the “**ABL DIP Loan Parties**”, and together with the Term DIP Loan Parties, the “**DIP Loan Parties**”), Eclipse Business Capital LLC, as administrative agent and collateral agent (in such capacities, together with its successors and permitted assigns, the “**ABL DIP Agent**”, and together with the Term DIP Agents, the “**DIP Agents**”), the lenders party thereto from time to time (the “**ABL DIP Lenders**”, and together with the

⁴ As used herein, (a) the term “**ABL DIP Required Lenders**” means the “Required Lenders” under the ABL DIP Loan Agreement, (b) the term “**Term DIP Required Lenders**” means the “Required Lenders” under the Term DIP Loan Agreement, and (c) the term “**Required DIP Lenders**” means both the ABL DIP Required Lenders and the Term DIP Required Lenders.

Term DIP Lenders, the “**DIP Lenders**”; the ABL DIP Lenders together with the ABL Agent, the “**ABL DIP Secured Parties**”, and together with the Term DIP Secured Parties, the “**DIP Secured Parties**”), which shall be available immediately upon entry of this Interim Order, in each case, subject to the terms and conditions set forth in this Interim Order and the ABL DIP Loan Agreement (collectively, the “**ABL DIP Borrowings**”, and each, an “**ABL DIP Borrowing**”, and together with the Term DIP Borrowings, the “**DIP Borrowings**”, and each, a “**DIP Borrowing**”);

2. The Debtors further seek authorization through this Motion to grant the DIP Secured Parties valid, enforceable, non-avoidable, automatically and fully perfected DIP Liens in and upon all DIP Collateral to secure DIP Obligations, as proposed herein:

- (a) *First Priority Liens on Unencumbered Property.* Pursuant to section 364(c)(2) of the Bankruptcy Code, the ABL DIP Liens and the Term DIP Liens shall be valid, binding, continuing, enforceable, non-avoidable, fully and automatically perfected (x) subject to entry of the Final Order, first priority liens and security interests in all Avoidance Actions and Avoidance Action Proceeds, subject to the relative priority set forth in the DIP Intercreditor Agreement, and (y) *pari passu* first priority liens and security interests in all other DIP Collateral that is not subject to valid, non-avoidable and properly perfected liens and security interests in existence as of the commencement of the Chapter 11 Cases (or valid and non-avoidable liens in existence as of the commencement of the Chapter 11 Cases but that are perfected subsequent to such commencement as permitted by section 546(b) of the Bankruptcy Code).
- (b) *Priming Term DIP Liens and Junior Term DIP Liens.* Pursuant to sections 364(c)(3) and 364(d)(1) of the Bankruptcy Code, the Term DIP Liens shall be valid, binding, continuing, enforceable, non-avoidable, fully and automatically perfected liens and security interests in all DIP Collateral (other than as described in clause (c) of this paragraph 2), which Term DIP Liens (A) shall be subject and subordinate to (1) Permitted Prior Liens, (2) solely with respect to ABL Facility Priority Collateral⁵ and DIP Collateral of a type that would otherwise constitute ABL

⁵ “ABL Facility Priority Collateral” is defined in the DIP Intercreditor Agreement to mean, (a) all accounts and payment intangibles including those for inventory that has been or is to be sold, leased, licensed, assigned or otherwise disposed of, or for services rendered or to be rendered (including unbilled accounts but, in each case excluding accounts and payment intangibles arising solely from the sale, lease, license, assignment or other disposition of Notes Priority Collateral; (b) all inventory; (c) all customer contracts (including exchange agreements and rights thereunder) and all business interruption insurance; (d) all intercompany and affiliate indebtedness of the Grantors and their Subsidiaries, in each case, that is unrelated to the sale, lease, assignment or other disposition of Notes Priority Collateral; (e) all Investment Property (other than Equity Interests owned by the Grantors and any present or future subsidiary of TPC Holdings, Inc.); (f) all general intangibles (other than equity interests owned by the grantors and any present or future subsidiary of TPC Holdings, Inc. and any intellectual property), Instruments, Letter of Credit Rights, Documents, Chattel Paper and Commercial Tort Claims, in each case to the extent arising from or relating to the other items of property included within the preceding clauses; (g) all deposit accounts (other than deposit accounts that contain only the identifiable proceeds of the Notes Priority Collateral) with any bank or other financial institution (including all cash, cash equivalents, financial assets, negotiable instruments and other evidence of payment, and other

Facility Priority Collateral, the ABL DIP Liens, the ABL Adequate Protection Liens (until the ABL Refinancing) and the Prepetition ABL Liens (until the ABL Refinancing), and (3) solely with respect to the assets of Holdings (the “**TPC Holdings Assets**”), the ABL DIP Liens, the ABL Adequate Protection Liens (until the ABL Refinancing) and the Prepetition ABL Liens (until the ABL Refinancing), (B) shall be subject to the DIP Intercreditor Agreement and the priorities set forth in **Exhibit 4** attached to the Interim Order, and (C) shall be senior to any and all other liens and security interests in the DIP Collateral, including, without limitation, all liens and security interests in the Notes Priority Collateral⁶ or any DIP Collateral that would otherwise constitute Notes Priority Collateral (including, without limitation, any ABL DIP Liens, ABL Adequate Protection Liens, Prepetition ABL Liens, Senior Priority Notes Adequate Protection Liens, Junior Priority Notes Adequate Protection Liens, Prepetition Senior Priority Notes Liens or Prepetition Junior Priority Notes Liens in Notes Priority Collateral).

- (c) *Priming ABL DIP Liens and Junior ABL DIP Liens.* Pursuant to sections 364(c)(3) and 364(d)(1) of the Bankruptcy Code, the ABL DIP Liens shall be valid, binding, continuing, enforceable, non-avoidable, fully and automatically perfected liens and security interests in all DIP Collateral (other than as described in this clause (c) of this paragraph 2), which ABL DIP Liens (A) shall be subject and subordinate to (1) Permitted Prior Liens, (2) solely with respect to ABL Facility Priority Collateral and DIP Collateral of a type that would otherwise constitute ABL Facility Priority Collateral, the ABL Adequate Protection Liens (until the ABL Refinancing) and the Prepetition ABL Liens (until the ABL Refinancing), (3) solely with respect to the TPC Holdings Assets, the ABL Adequate Protection Liens (until the ABL Refinancing) and the Prepetition ABL Liens (until the ABL Refinancing), and (4)

funds on deposit therein or credited thereto, other than, in each case, to the extent constituting the identifiable Proceeds of Notes Priority Collateral); (h) all securities accounts (other than securities accounts that contain only the identifiable proceeds of the Notes Priority Collateral) with any securities intermediary (including any and all investment property and all funds or other property held therein or credited thereto, other than, in each case, to the extent constituting the identifiable proceeds of Notes Priority Collateral); (i) all commodity accounts (other than commodity accounts that contain only the identifiable proceeds of the Notes Priority Collateral) with any commodities intermediary (including any and all commodity contracts and all funds and other property held therein or credited thereto, other than, in each case, to the extent constituting the identifiable proceeds of Notes Priority Collateral); (j) all accessions to, substitutions for and replacements of the foregoing, together with all books and records, customer lists, credit files, computer files, programs, printouts and other computer materials and records related thereto; and (k) to the extent not otherwise included, all proceeds (including without limitation, all insurance proceeds related to the above), supporting obligations and products of any and all of the foregoing and all collateral security and guarantees given by any person with respect to any of the foregoing.

⁶ “Notes Priority Collateral” is defined in the DIP Intercreditor Agreement to mean, (a) deposit accounts, securities accounts and commodity accounts that contain only proceeds of items (b) through (i) below; (b) all present and future equity interests owned by the grantors and of each present and future subsidiary of TPC Holding Inc.; all equipment; all fixtures; all real property; all intellectual property; all other notes collateral other than the ABL Facility Priority Collateral; all accessions to, substitutions for and replacements of the foregoing, together with all books and records, customer lists, credit files, computer files, programs, printouts and other computer materials and records related thereto; and to the extent not otherwise included, all proceeds (including without limitation, all insurance proceeds relating to the above and any identifiable proceeds of items (a) through (h) of this definition contained in any deposit accounts, securities accounts and commodity accounts that otherwise constitute ABL Facility Priority Collateral), supporting obligations and products of any and all of the foregoing and all collateral security and guarantees given by any person with respect to any of the foregoing.

solely with respect to Notes Priority Collateral and DIP Collateral of a type that would otherwise constitute Notes Priority Collateral, the Term DIP Liens, the Senior Priority Notes Adequate Protection Liens (until the Prepetition Senior Priority Notes Secured Obligations are refinanced in full under the Term DIP Loan Facility) and the Prepetition Senior Priority Notes Liens (until the Prepetition Senior Priority Notes Secured Obligations are refinanced in full under the Term DIP Loan Facility), the Junior Priority Notes Adequate Protection Liens, the Prepetition Junior Priority Notes Liens, (B) shall be subject to the DIP Intercreditor Agreement and the priorities set forth in Exhibit 4 of the Interim Order, and (C) shall be senior to any and all other liens and security interests in the DIP Collateral, including, without limitation, all liens and security interests in the ABL Facility Priority Collateral or any DIP Collateral that would otherwise constitute ABL Facility Priority Collateral (including, without limitation, any Term DIP Liens, Senior Priority Notes Adequate Protection Liens, Junior Priority Notes Adequate Protection Liens, Prepetition Senior Priority Notes Liens or Prepetition Junior Priority Notes Liens in ABL Facility Priority Collateral).

- (d) *DIP Liens Senior to Other Liens.* Except to the extent expressly permitted hereunder, the DIP Liens, the DIP Superpriority Claims, the Adequate Protection Liens and the Adequate Protection Claims shall not be made subject or subordinate to or *pari passu* with (A) any lien, security interest or claim heretofore or hereinafter granted in any of the Chapter 11 Cases or any Successor Cases, including any lien, security interest or claim 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 Debtors, (B) any lien or security interest that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code or otherwise, (C) any intercompany or affiliate claim, lien or security interest of the Debtors or their affiliates, or (D) any other lien, security interest or claim arising under section 363 or 364 of the Bankruptcy Code granted on or after the date the Interim Order is entered.

3. The proposed DIP Facilities will provide the Debtors with a critical infusion of working capital and ensure the continuation of the Debtors' businesses without interruption during these Chapter 11 Cases. The Debtors have an immediate need for access to the DIP Facilities and the use of Cash Collateral, in light of the immediate and irreparable harm that will be suffered by the Debtors' estates if the Debtors do not have access to the DIP Facilities, which are necessary to, among other things, satisfy their working capital and operational needs — both of which are vital to preserving and maintaining the Debtors' going-concern value for the benefit of all creditors and parties in interest. The Debtors' customers, employees, critical vendors, and stakeholders are

all depending on the Debtors' ability to continue to operate as a going concern and fund a reorganization process aimed at maximizing value for all stakeholders and ensuring the Debtors are well positioned post-emergence.

4. It is without question that the Debtors' access to sufficient working capital and liquidity made through the use of Cash Collateral (defined below) as well as the incurrence of new indebtedness and other financial accommodations offered under the DIP Facilities, are vital to the preservation and maintenance of their going concern value. Further, given the realities of the Debtors' circumstances, including a capital structure that includes little to no available unencumbered assets, the terms of the DIP Facilities reflect the most reasonable and only viable option for the Debtors.

5. For the reasons set forth herein, the Debtors believe that authority to obtain debtor-in-possession financing as provided under the DIP Facilities and use of the Cash Collateral is in the best interests of the Debtors, their estates and their creditors and should be granted.

JURISDICTION AND VENUE

6. The Court has jurisdiction over the Motion pursuant to 28 U.S.C. § 1334 and the *Amended Standing Order of Reference of the United States District Court for the District of Delaware* dated February 29, 2012. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b), and the Debtors confirm their consent pursuant to Local Rule 9013-1(f) to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution. Venue of the Chapter 11 Cases and this Motion in this Court is proper under 28 U.S.C. §§ 1408 and 1409.

7. The statutory bases for the relief requested herein are sections 105, 361, 362, 363, 364, 503, and 507 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001, 6004 and 9014, Bankruptcy Local Rules 4001-2 and 9013-1.

BACKGROUND

A. Debtors' Businesses

8. The Debtors are the leading North American producer and processor of intermediate and specialty chemicals and fuel derivatives. Their products are critical to a wide range of end-markets and applications, including synthetic rubber, fuels, lubricants, plastics, and surfactants. Additional information regarding the Debtors' businesses, capital structure, and the circumstances leading to the commencement of these Chapter 11 Cases is set forth in the First Day Declaration filed contemporaneously herewith and incorporated herein by reference.

B. Chapter 11 Cases

8. On June 1, 2022 (the "***Petition Date***"), the Debtors commenced these Chapter 11 Cases by filing voluntary petitions with this Court under chapter 11 of title 11 of the United States Code (the "***Bankruptcy Code***").

9. The Debtors are authorized to continue operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner, or statutory committee has been appointed in these Cases. The events leading up to the Petition Date and the facts and circumstances supporting the relief requested herein are set forth in the First Day Declaration.

RELIEF REQUESTED

10. By this Motion, the Debtors respectfully request entry of the DIP Orders, granting, among other things, the following relief, as applicable:

- (a) authorization and approval for the Borrower (as defined in the Term DIP Loan Agreement and ABL DIP Loan Agreement, respectively) to incur, and the Guarantors (as defined in the Term DIP Loan Agreement and ABL DIP Loan Agreement, respectively) to jointly and severally, irrevocably and unconditionally, guarantee, on a superpriority basis, the payment in full in cash of all DIP Obligations (as defined below) in accordance with the DIP Orders and the DIP Loan Documents;
- (b) authorization and approval for the Debtors to: (i) execute, deliver, and perform under the Term DIP Loan Agreement and the ABL DIP Loan Agreement (together, the “**DIP Loan Agreements**”), and each of the DIP Loan Documents, (ii) incur all loans, advances, extensions of credit and financial accommodations, and pay all principal, interest, premiums or similar amounts, fees, costs, expenses, charges, indemnification and reimbursement obligations (whether contingent or absolute), and all other obligations or amounts, including without limitation, all “Obligations” as defined in the Term DIP Loan Agreement, whether or not such obligations arose before or after the Petition Date, whenever the same shall become due, whether at stated maturity, by mandatory prepayment, declaration, acceleration or otherwise, in each case, in accordance with the Term DIP Loan Documents and the DIP Orders (collectively, the “**Term DIP Obligations**”), (iii) incur all loans, advances, extensions of credit and financial accommodations, and pay all principal, interest, premiums or similar amounts, fees, costs, expenses, charges, indemnification and reimbursement obligations (whether contingent or absolute), and all other obligations or amounts, including without limitation, all “Obligations” as defined in the ABL DIP Loan Agreement, whether or not such obligations arose before or after the Petition Date, whenever the same shall become due, whether at stated maturity, by mandatory prepayment, declaration, acceleration or otherwise, in each case, in accordance with the ABL DIP Loan Documents and the DIP Orders (collectively, the “**ABL DIP Obligations**”, and together with the Term DIP Obligations, the “**DIP Obligations**”), and (iv) perform such other and further acts as may be necessary, required or desirable to implement and effectuate the terms of the DIP Orders, the DIP Loan Documents and the transactions contemplated hereunder and thereunder;
- (c) authorization and approval for the Debtors to grant to the DIP Agents, for the benefit of themselves and the other DIP Secured Parties, the DIP Liens in all DIP Collateral, as set forth in the DIP Orders, subject to the Carve Out, and subject to the relative priorities set forth in the DIP Orders and the DIP Intercreditor Agreement (as defined below);
- (d) authorization and approval for the Debtors to grant to the DIP Agents, for the benefit of themselves and the other DIP Secured Parties, allowed super-priority administrative expense claims against each of the Debtors, on a joint and several basis, in respect of all DIP Obligations, subject in each case to the Carve Out, as set forth in the Interim Order;

- (e) authorization and approval for the Debtors to use the proceeds of the DIP Facilities, the DIP Collateral and the Prepetition Collateral, including Cash Collateral, in accordance with the terms and conditions set forth in the DIP Orders and the DIP Loan Documents, including the Approved Budget (as defined below), subject to any variances expressly permitted under the DIP Loan Agreements (the “***Permitted Variances***”);
- (f) authorization and approval of the form of adequate protection to be provided by the Debtors to the Prepetition Secured Parties to protect against any Diminution in Value of their respective Prepetition Liens in the Prepetition Collateral (including Cash Collateral);
- (g) modification or vacatur of the automatic stay imposed by section 362 of the Bankruptcy Code or otherwise, to the extent necessary, required or desirable to implement and effectuate the terms and provisions of the DIP Orders and the DIP Loan Documents, as set forth herein, waiving any applicable stay (including under Bankruptcy Rule 6004) with respect to the effectiveness and enforceability of the DIP Orders, and providing for the immediate effectiveness of the DIP Orders;
- (h) approval of certain stipulations, waivers, and releases by the Debtors with respect to, *inter alia*, (i) the DIP Secured Parties, the DIP Loan Documents, the DIP Liens, and the DIP Obligations, and (ii) subject to the terms of the DIP Orders, the Prepetition Secured Parties, the Prepetition Loan Documents, the Prepetition Liens and the Prepetition Secured Obligations;
- (i) approval of the Debtors’ waiver of the right to surcharge the DIP Collateral as to the DIP Secured Parties, and the Prepetition Collateral as to the Prepetition Secured Parties, pursuant to section 506(c) of the Bankruptcy Code or otherwise, in each case, upon the terms set forth in the DIP Orders;
- (j) approval of (i) the Debtors’ waiver of the equitable doctrine of “marshaling” and other similar doctrines with respect to the DIP Collateral as to the DIP Secured Parties, and (ii) the Debtors’ waiver of the equitable doctrine of “marshaling” and the Debtors’ waiver of any “equities of the case” exception under section 552(b) of the Bankruptcy Code, with respect to the Prepetition Collateral as to the Prepetition Secured Parties, in each case, upon the terms set forth in the DIP Orders;
- (k) setting a final hearing (the “***Final Hearing***”) on the Motion to consider entry of the Final Order and approving the form of notice with respect to such Final Hearing, which order shall be in form and substance and on terms and conditions acceptable in all respects to the Required DIP Lenders; and
- (l) granting related relief.

SUMMARY OF DIP CREDIT AGREEMENTS AND USE OF CASH COLLATERAL

11. In accordance with Bankruptcy Rules 4001(b)(1) and 4001(c)(1), and Bankruptcy Local Rule 4001-2(a)(i) and (ii), a summary of certain key terms of the proposed DIP Facilities and the proposed DIP Orders is set forth below (the “**Rule 4001 Summary**”). The Rule 4001 Summary is qualified in its entirety by reference to the applicable provisions of the proposed DIP Orders and the DIP Loan Agreements, and the proposed DIP Orders and the DIP Loan Agreements will control in the event of any inconsistency between this Motion, the Rule 4001 Summary and the proposed DIP Orders and the DIP Loan Agreements, as applicable.

Summary of Material Terms	
Borrower(s) Bankruptcy Rule 4001(c)(1)(B)	ABL DIP Loan Facility TPC Group Inc. TPC Group LLC TP Capital Corp. Texas Butylene Chemical Corporation Texas Olefins Domestic-International Sales Corporation Port Neches Fuels, LLC TPC Phoenix Fuels LLC <i>See Preamble of the ABL DIP Loan Agreement.</i> Term DIP Loan Facility TPC Group Inc. <i>See Preamble of the Term DIP Loan Agreement.</i>
Guarantors Bankruptcy Rule 4001(c)(1)(B)	ABL DIP Loan Facility TPC Holdings, Inc. TPC Group Inc. TPC Group LLC TP Capital Corp. Texas Butylene Chemical Corporation Texas Olefins Domestic-International Sales Corporation Port Neches Fuels, LLC TPC Phoenix Fuels LLC <i>See Preamble of the ABL DIP Loan Agreement.</i> Term DIP Loan Facility TPC Holdings, Inc. TPC Group LLC Texas Butylene Chemical Corporation Texas Olefins Domestic International Sales Corporation

Summary of Material Terms	
	<p>TPC Phoenix Fuels LLC Port Neches Fuels, LLC TP Capital Corp.</p> <p><i>See Preamble of the Term DIP Loan Agreement.</i></p>
<p>Lenders</p> <p>Bankruptcy Rule 4001(c)(1)(B)</p>	<p>ABL DIP Loan Facility Eclipse Business Capital, LLC and its affiliates</p> <p><i>See Preamble of the ABL DIP Loan Agreement.</i></p> <p>Term DIP Loan Facility Members of the Ad Hoc Noteholder Group (as defined below)</p> <p><i>See Preamble and Schedule 2.01 of the Term DIP Loan Agreement.</i></p>
<p>DIP Agents</p> <p>Bankruptcy Rule 4001(c)(1)(B)</p>	<p>ABL DIP Loan Facility Eclipse Business Capital LLC, as administrative agent and collateral agent</p> <p><i>See Preamble of the ABL DIP Loan Agreement.</i></p> <p>Term DIP Loan Facility GLAS USA LLC, as administrative agent, and GLAS Americas LLC, as collateral agent</p> <p><i>See Preamble of the Term DIP Loan Agreement.</i></p>
<p>DIP Facilities and Borrowing Limits</p> <p>Bankruptcy Rule 4001(c)(1)(B)</p>	<p>ABL DIP Loan Facility \$200 million senior secured super-priority priming revolving credit facility.</p> <p><i>See Preamble of the ABL DIP Loan Agreement.</i></p> <p>Term DIP Loan Facility \$85 million of new money term loans senior secured, super-priority multi-draw term loan facility, of which \$32 million shall be available upon entry of the Interim Order, \$25 million shall be available upon entry of the Final Order and \$28 million shall be available on or after June 30, 2022 (subject to certain financial conditions being met as set forth in the Term DIP Loan Agreement). Additionally, a roll-up of approximately \$59 million in obligations under the Prepetition Senior Priority 2022 Bridge Notes upon entry of the Interim Order and the balance of the obligations under the Senior Priority Notes upon entry of the Final Order; <i>provided, however</i>, holders of the Prepetition Senior Priority Notes that certify in writing that they are unable to effectuate a “roll-up” of their Prepetition Senior Priority Notes due to limitations with respect to holding term loans in the governing documents or internal policies of such entities shall be repaid in cash from the proceeds of additional new money term loans funded by the Ad Hoc Noteholder Group on a <i>pro rata</i> basis in a principal amount not to exceed \$[•].</p> <p><i>See Preamble of Term DIP Loan Agreement.</i></p>
<p>Conditions of Borrowing</p> <p>Bankruptcy Rule 4001(c)(1)(B)</p>	<p>ABL DIP Loan Facility The closing under the DIP Term Loan Facility shall be subject to customary conditions to closing for facilities of this type, including:</p> <p>a) ABL DIP Agent shall have received the ABL DIP Loan Agreement;</p>

Summary of Material Terms	
	<ul style="list-style-type: none"> b) the preparation, authorization and execution of the Term DIP Loan Documents with respect to the Term Loan DIP Facility, in form and substance acceptable to the Loan Parties, the ABL DIP Required Lenders and the ABL DIP Agent; c) the delivery of customary legal opinions in form and substance reasonably acceptable to the ABL DIP Required Lenders; d) delivery of (i) a secretary's (or other officer's) certificate of the Loan Parties in such form as is customary for the jurisdiction in which the relevant Loan Party is organized, with appropriate insertions and attachments; and (ii) a customary closing officer's certificate of the Borrower; e) the Collateral and Guarantee Requirement with respect to items to be completed as of the Closing Date shall have been satisfied and, if applicable, be in proper form for filing or be evidenced in the shareholder register, including delivery of the Security Documents and the Loan Document Guarantee f) the audited consolidated balance sheets and unaudited interim consolidated balance sheets of the Lead Borrower; g) substantially contemporaneously with closing, repayment, redemption, defeasance and/or satisfaction and discharge of all obligations under the Prepetition ABL Credit Agreement in full and termination of all commitments to extend credit under the Prepetition ABL Credit Agreement and termination and release of any security interests and guarantees in connection with the Prepetition ABL Credit Agreement shall be terminated and/or released, subject to the DIP Orders; h) all premiums, payments, fees, invoiced costs and invoiced expenses payable thereto or to any Lender (including, without limitation, the invoiced fees and expenses of all counsel, financial advisors and other professionals for the ABL DIP Secured Parties); i) delivery of a certificate signed by a Responsible Officer of the Lead Borrower as to the matters set forth in <u>clauses (b) and (c) of Section 4.01</u> of the ABL DIP Loan Agreement; j) delivery of a completed perfection certificate dated the Closing Date and signed by a Responsible Officer of each Loan Party; k) delivery of a duly authorized, executed and delivered the Borrowing Base Certificate; and l) delivery of (i) an appraisal of the inventory of each Borrower and their respective Subsidiaries and (ii) the results of a field examination of the Inventory and Accounts and related assets and liabilities of each Borrower and their respective Subsidiaries and, in each case, the results of such appraisal and field examination shall be in form, scope and substance reasonably satisfactory to the ABL DIP Agent. <p>See Section 4.02 of the ABL DIP Loan Agreement.</p> <p>Term DIP Loan Facility</p> <p>The closing under the Term DIP Loan Facility shall be subject to customary conditions to closing for facilities of this type, including:</p> <ul style="list-style-type: none"> a) no later than three (3) calendar days after the Petition Date, the Bankruptcy Court shall have entered the Interim Order, and the Interim Order shall be in full force and effect and shall not have been vacated, reversed, modified, amended or stayed without the prior written consent of the Term DIP Required Lenders; b) the preparation, authorization and execution of the Term DIP Loan Documents with respect to the Term Loan DIP Facility, in form and substance consistent

Summary of Material Terms	
	<p>with this DIP Term Sheet and otherwise acceptable to the Loan Parties, the Term DIP Lenders and the Term DIP Agents;</p> <p>c) the delivery of a 13-week cash flow projection (the “Initial Budget”) in form and substance acceptable to the DIP Lenders, reflecting (i) the Debtors’ and their subsidiaries’ anticipated cash receipts and disbursements for each calendar week during the period from the week in which the Petition Date occurs through and including the end of the thirteenth calendar week thereafter, (ii) the anticipated sum of weekly unused availability under the Term DIP Loan Facility and any ABL DIP Facility, plus unrestricted cash on hand, (iii) anticipated weekly outstanding principal balance of amounts outstanding under the Term Loan DIP Facility and any ABL DIP Facility, and (iv) a professional fee accrual budget with respect to the anticipated fees and expenses to be incurred by professionals retained by the Debtors, any Official Committee (as defined below) appointed in the Chapter 11 Cases, and other professionals during the thirteen week period;</p> <p>d) the Term DIP Collateral Agent shall have been named as an additional insured with respect to, liability policies (other than worker’s compensation policies and public liability policies) and the Term DIP Collateral Agent shall be named as loss payee with respect to the property and business interruption insurance (other than public property policies) maintained by the Term DIP Loan Parties;</p> <p>e) the delivery of customary legal opinions in form and substance reasonably acceptable to the Term DIP Required Lenders;</p> <p>f) the delivery of (x) a secretary’s (or other officer’s) certificate of the Borrower and each of the other Term DIP Loan Parties, dated as of the Closing Date and in such form as is customary for the jurisdiction in which the relevant Debtor is organized, with appropriate insertions and attachments; and (y) a customary closing officer’s certificate of the Borrower;</p> <p>g) either (x) the preparation, authorization and execution of the ABL DIP Loan Documents with respect to the ABL DIP Loan Facility, in form and substance acceptable to the Term Loan Parties, the Term DIP Required Lenders and the Term DIP Agents, the ABL DIP Loan Facility shall be in full force and effect and there shall not be a default or event of default thereunder; or (y) the Prepetition ABL Secured Parties shall have agreed to permit the use of cash collateral, and adequate protection, pursuant to the Interim Order on terms and conditions set forth herein and otherwise acceptable to the Term DIP Required Lenders;</p> <p>h) all premiums, payments, fees, costs and expenses (including, without limitation, the fees and expenses of the Term DIP Lender Advisors (defined below) and all other counsel, financial advisors and other professionals of the Term DIP Lenders and Term DIP Agents (whether incurred before or after the Petition Date) to the extent earned, due and owing, and including estimated fees and expenses through the Closing Date) shall have been paid;</p> <p>i) the Term DIP Lenders shall have received from the Borrower and each of the Term DIP Loan Parties, at least three Business Days prior to the Closing Date, (i) documentation and other information requested by any Term DIP Lender a reasonable period prior to the required delivery date that is required by regulatory authorities under applicable “know your customer” and anti-money laundering rules and regulations, including the USA Patriot Act and (ii) if the Borrower qualifies as a “legal entity customer” under the beneficial ownership regulations, the Term DIP Lenders shall have received from the Borrower, at least one Business Day prior to the Closing Date, a beneficial ownership certification in relation to the Borrower;</p>

Summary of Material Terms	
	<p>j) the Term DIP Collateral Agent shall have a fully perfected lien on the DIP Collateral to the extent required by the Term DIP Loan Documents and the Interim Order, having the priorities set forth in the Interim Order;</p> <p>k) each Uniform Commercial Code financing statement and each intellectual property security agreement required by the Term DIP Loan Documents to be filed in order to create in favor of the Term DIP Collateral Agent a perfected lien on the DIP Collateral having the priorities set forth in the DIP Orders shall have been filed;</p> <p>l) the Term DIP Collateral Agent shall have received the certificates, if any, representing the certificated shares of pledged securities held by a Debtor pledged pursuant to the Term DIP Loan Documents; and</p> <p>m) the Closing Date shall have occurred.</p> <p><i>See Section 4.02 of the Term DIP Loan Agreement.</i></p>
Interest Rate Bankruptcy Rule 4001(c)(1)(B)	<p>ABL DIP Loan Facility Adjusted SOFR Rate (subject to a floor of 1.0%) + 4.5%</p> <p><i>See Section 1.01 of the ABL DIP Loan Agreement, definition of “Applicable Margin.”</i></p> <p>Term DIP Loan Facility Adjusted SOFR Rate (subject to a floor of 1.0%) + 10.0%</p> <p><i>See Section 1.01 of the Term DIP Loan Agreement, definition of “Applicable Margin.”</i></p>
Maturity Date; Duration for Use of DIP Collateral Bankruptcy Rule 4001(b)(1)(B)	<p>ABL DIP Loan Facility All obligations under the ABL DIP Loan Facility (including the exit facility), accrued or otherwise, shall be due and payable in full on the earliest of (i) eighteen (18) months from the Petition Date, (ii) the date of consummation of a sale and/or other disposition of all or substantially all of the working capital assets of the Borrower under section 363 of the Bankruptcy Code, (iii) 45 days after the Petition Date if the Final Order has not been entered or (iv) the effective date of any chapter 11 plan for the reorganization of the Borrower unless the chapter 11 plan implements that certain Restructuring Support Agreement dated May 9, 2022 by and between Debtors, certain sponsors of the Debtors and certain noteholders of the Debtors (the “<i>RSA</i>”) and the ABL DIP Loan Facility is established as the asset based lending exit financing facility under such plan.</p> <p><i>See Section 1.01 of the ABL DIP Loan Agreement, definition of “Maturity Date.”</i></p> <p>Term DIP Loan Facility The Term DIP Loan Facility will mature on the earliest to occur of (a) nine (9) months <i>provided</i>, that such date may be extended by up to three (3) calendar months upon mutual agreement of the Borrower and the Term DIP Required Lenders and payment by the Borrower of an extension payment in an amount equal to 1.00% of the aggregate principal amount of the Term Loans and unused New Money Commitments and Roll-Up Backstop Commitments outstanding as of such date of extension, (b) 11:59 p.m. New York City Time on the date that is three (3) calendar days after the Petition Date (or if such third day is not a Business Day, the first succeeding Business Day thereafter), if the Interim Order, in form and substance acceptable to the Term DIP Required Lenders, has not been entered by the Bankruptcy Court prior to such date and time, (c) 11:59 p.m. New York City Time on the date that is thirty-five (35) calendar days after the Petition Date (or if such thirty-fifth day is not a Business Day, the first succeeding Business Day thereafter), if the Final</p>

Summary of Material Terms	
	<p>Order, in form and substance acceptable to the Term DIP Required Lenders, has not been entered by the Bankruptcy Court prior to such date and time, (d) the effective date of a chapter 11 plan of any Loan Party, which has been confirmed by an order entered by the Bankruptcy Court in any of the Chapter 11 Cases, (e) dismissal of any of the Chapter 11 Cases or conversion of any of the Chapter 11 Cases into a case under Chapter 7 of the Bankruptcy Code, (f) the acceleration of the Term Loans and the termination of the New Money Commitments and Roll-Up Backstop Commitments under the Term Loan DIP Facility pursuant to Article VII and (g) the closing of a sale of all or substantially all assets or equity of the Loan Parties (other than to another Loan Party).</p> <p><i>See</i> Section 1.01 of the Term DIP Loan Agreement, definition of “Maturity Date.”</p>
<p>Parties with an Interest in Cash Collateral</p> <p>Bankruptcy Rule 4001(b)(1)(B)(i)</p>	<p>Prepetition Secured Parties.</p>
<p>Purposes for Use of DIP Proceeds and Cash Collateral</p> <p>Bankruptcy Rule 4001(b)(1)(B)(ii)</p>	<p>ABL DIP Loan Facility</p> <p>Subject to the DIP Orders, each Borrower will use the proceeds of the Loans, and may request the issuance of Revolving Letters of Credit, solely for the purposes expressly permitted in the Approved Budget, including, without limitation, (i) to pay the costs of administration of the Chapter 11 Cases, (ii) for general corporate and working capital purposes, (iii) to pay adequate protection payments to the extent set forth in this Interim Order, (iv) to consummate the ABL Refinancing in accordance with the Prepetition ABL Payoff Letter, and (v) to pay professional fees and expenses in accordance with this Interim Order.</p> <p><i>See</i> Interim Order ¶ H(d).</p> <p>Term DIP Loan Facility</p> <p>Solely in accordance with and subject to the Term DIP Loan Agreement the proceeds of the Term DIP Loan Facility may be used only for the following purposes: (i) the Roll Up, (ii) make adequate protection payments as required in the Term DIP Loan Documents, the Interim DIP and the Final DIP, (iii) pay the administrative costs of the Chapter 11 Cases and (iv) for general corporate purposes, in each case, in accordance with and subject to the Term DIP Loan Documents, Interim Order and the Final Order (including the Approved Budget, subject to permitted variances).</p> <p><i>See</i> Interim Order ¶ H(d).</p>
<p>Budget</p> <p>Bankruptcy Rule 4001(b)(1)(B)(ii)</p>	<p>ABL DIP Loan Facility and Term DIP Loan Facility</p> <p>Use of Cash Collateral and proceeds of the DIP Facilities are subject to consolidated 13-week cash flow forecast statements of the Debtors set forth on Exhibit 1 attached to the Interim Order (the “<i>Initial Budget</i>”, that shall be updated by the Debtors and approved by Required DIP Lenders from time to time in accordance with the terms of the Interim Order and the DIP Loan Documents, the “<i>Approved Budget</i>”).</p> <p><i>See</i> Interim Order ¶ H(k).</p>

Summary of Material Terms	
Fees Bankruptcy Rule 4001(c)(1)(B)	[Sealed]
Adequate Protection Bankruptcy Rule 4001(b)(1)(B)(ii)	<p>ABL DIP Loan Facility and Term DIP Loan Facility</p> <p>The Prepetition Secured Parties are entitled to adequate protection for the Debtors' use of the Prepetition Collateral. During the Chapter 11 Cases, the granting of priming liens and claims as set forth herein, and the imposition of the Carve Out, the Prepetition Notes Secured Parties and the Prepetition ABL Secured Parties, as applicable, shall be granted the following adequate protection, subject in all cases to the Carve Out:</p> <p>The Prepetition Senior Priority Notes Secured Parties shall be entitled to receive, subject in all cases to the Carve Out and Permitted Prior Liens and only until the Prepetition Senior Priority Notes Secured Obligations are indefeasibly repaid and/or deemed repaid in full under the Term Loan DIP Facility, including any deemed roll-up and conversion of all amounts outstanding under the Senior Priority Notes into the Term Loan DIP Facility, the following as adequate protection: (A) to the extent of any diminution in value of the Prepetition Senior Priority Notes Liens in Prepetition Senior Priority Notes Collateral, validly perfected replacement liens on any security interests in all DIP Collateral (the “<i>Senior Priority Notes Adequate Protection Liens</i>”), which replacement liens shall have the priority set forth in <u>Exhibit 4</u> attached to the Interim Order, as applicable; (B) to the extent of any diminution in value of the Prepetition Senior Priority Notes Liens in Prepetition Senior Priority Notes Collateral, a superpriority administrative expense claim as contemplated by section 507(b) of the Bankruptcy Code against each of the Debtors, on a joint and several basis, which claim shall have priority over all other claims against the Debtors and their estates, now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, administrative expenses of the kinds specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 365, 503(a), 506(c), 507(a), 507(b), 546(c), 546(d), 726(b), 1113 and 1114 of the Bankruptcy Code or otherwise (other than the Carve Out), which claims shall be subject to the priorities set forth in <u>Exhibit 4</u> attached to the Interim Order, as applicable; (C) payment of accrued but unpaid pre- and postpetition interest at the non-default rate in the form of additional Prepetition Senior Priority Notes, on a quarterly basis, (D) the payment of the reasonable and documented fees and out-of-pocket expenses of the Prepetition Senior Priority Notes Trustee (including without limitation, the pre-petition and post-petition fees and expenses of Foley & Lardner LLP, as counsel to the Senior Priority Notes Trustee, and a single firm as local counsel), and the payment of the reasonable and documented fees of the Ad Hoc Noteholder Group (including without limitation, the prepetition and post-petition fees and expenses of (i) Paul Hastings, LLP and Stroock & Stroock & Lavan LLP, as counsel to the Ad Hoc Noteholder Group, and (ii) Evercore Group, L.L.C., as financial advisor to the Ad Hoc Noteholder Group, in accordance with the terms of that certain fee letter effective as to Evercore Group, L.L.C. as of November 3, 2021), (iii) Young Conaway Stargatt & Taylor, LLP, as local counsel to the Ad Hoc Noteholder Group, (iv) Sinclair Group and (v) with the Borrower's consent (not to be unreasonably withheld), such other attorneys, financial advisors or professionals retained by the Ad Hoc Noteholder Group (collectively clauses (i) through (v), the “<i>Term DIP Lender Advisors</i>”); (E) financial reporting, including the weekly delivery of a rolling 13 week cash flow budget, variance reporting, supporting information requested by the Term DIP Lenders and/or their advisors, and such other financial reporting acceptable to the Term DIP Lenders; and (F) consent rights over the “first day” orders, which shall be reasonably acceptable to the Ad Hoc Noteholder Group;</p>

Summary of Material Terms	
	<p>The Prepetition Junior Note Secured Parties shall be entitled to receive, subject in all cases to the Carve Out and Permitted Prior Liens, the following as adequate protection: (A) to the extent of any diminution in value of the Prepetition Junior Priority Notes Liens in Prepetition Notes Collateral, validly perfected replacement liens on any security interests in all DIP Collateral (the “<i>Junior Priority Notes Adequate Protection Liens</i>”), which replacement liens shall have the priority set forth in Exhibit 4 attached to the Interim Order, as applicable; (B) to the extent of any diminution in value of the Prepetition Junior Priority Notes Liens in Prepetition Notes Collateral, a superpriority administrative expense claim as contemplated by section 507(b) of the Bankruptcy Code against each of the Debtors, on a joint and several basis, which claim shall have priority over all other claims against the Debtors and their estates, now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, administrative expenses of the kinds specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 365, 503(a), 506(c), 507(a), 507(b), 546(c), 546(d), 726(b), 1113 and 1114 of the Bankruptcy Code or otherwise (other than the Carve Out), which claims shall be subject to the priorities set forth in Exhibit 4 of the Interim Order, as applicable; (C) payment of accrued but unpaid pre- and postpetition interest at the non-default rate in the form of additional Prepetition Junior Priority Notes, on a quarterly basis; (D) the payment of the reasonable and documented fees and out-of-pocket expenses of the Prepetition Junior Priority Notes Trustee (including without limitation, the pre-petition and post-petition fees and expenses of Foley & Lardner LLP, as counsel to the Prepetition Junior Priority Notes Trustee, and a single firm as local counsel) and the Term DIP Lender Advisors; and (E) financial reporting, including the weekly delivery of a rolling thirteen week cash flow budget, variance reporting, and such other information provided to the Prepetition Senior Notes Secured Parties as adequate protection; and (F) consent rights over the “first day” orders, which shall be reasonably acceptable to the Ad Hoc Noteholder Group; and</p> <p>The Prepetition ABL Secured Parties shall be entitled to receive, subject in all cases to the Carve Out and Permitted Prior Liens and only until all obligations under the Prepetition ABL Facility are indefeasibly repaid and/or deemed repaid in full under the ABL DIP Loan Facility (as applicable), the following as adequate protection: (A) to the extent of any diminution in value of the Prepetition ABL Liens in Prepetition ABL Collateral, validly perfected replacement liens on and security interests in all DIP Collateral (the “<i>ABL Adequate Protection Liens</i>”), which replacement liens shall have the priority set forth set forth in Exhibit 4 of the Interim Order, as applicable; (B) to the extent of any diminution in value of the Prepetition ABL Liens in Prepetition ABL Collateral, a superpriority administrative expense claim as contemplated by section 507(b) of the Bankruptcy Code against each of the Debtors, on a joint and several basis, which claim shall have priority over all other claims against the Debtors and their estates, now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, administrative expenses of the kinds specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 365, 503(a), 506(c), 507(a), 507(b), 546(c), 546(d), 726(b), 1113 and 1114 of the Bankruptcy Code or otherwise (other than the Carve Out), which claims shall be subject to the priorities set forth set forth in Exhibit 4 of the Interim Order, as applicable; (C) payment of accrued but unpaid interest at the non-default rate, as the same becomes due and payable under the ABL Credit Agreement, (D) the payment of all reasonable and documented fees and out-of-pocket expenses of the Prepetition ABL Agent (including without limitation, the prepetition and postpetition fees and expenses of (i) Haynes and Boone, LLP, as counsel to the Prepetition ABL Agent, (ii) Carl Marks Advisors, as financial advisor to the Prepetition ABL Agent, and (iii) one local counsel; and (E) financial reporting, including the weekly delivery of a rolling 13 week cash flow budget, variance reporting, supporting information reasonably requested by the</p>

Summary of Material Terms	
	<p>Prepetition ABL Agent and/or their advisors, and such other financial reporting reasonably acceptable to the Prepetition ABL Agent.</p> <p>See Interim Order ¶ 11.</p>
<p>Chapter 11 Milestones</p> <p>Bankruptcy Rule 4001(c)(1)(B)</p>	<p>Term DIP Loan Facility</p> <p>The Debtors shall achieve the following transaction milestones (the “Milestones”), each of which shall be extended automatically to the extent the corresponding milestones set forth in the RSA are extended in accordance with the terms thereof and otherwise at any time with the written approval of the Term DIP Required Lenders:</p> <ul style="list-style-type: none"> a) no later than three (3) calendar days after the Petition Date, the Court shall have entered the Interim Order; b) no later than the date that is three (3) calendar days after the Petition Date, the Bankruptcy Court shall have entered an interim order which establishes notice procedures and restrictions (A) on and preventing (without complying with any applicable notice or Bankruptcy Court approval requirements under such order) direct or indirect trading with respect to stock of TPC Holdings, Inc. (within the meaning of IRC Section 382 and applicable Treasury regulations and IRS guidance with respect thereto), (B) on and preventing (without complying with any applicable notice or Bankruptcy Court approval requirements under such order) the claiming of a worthlessness deduction directly or indirectly with respect to the stock of TPC Holdings, Inc. under IRC Section 165 with respect to any taxable year ending prior to the Effective Date; c) no later than the date that is seven (7) calendar days after the Petition Date, the TPC Parties shall have filed initial versions of a chapter 11 plan, the Disclosure Statement, a motion to approve the disclosures statement and other solicitation materials (the “Disclosure Statement Motion”) a motion to approve the rights offering backstop agreement (such agreement, the “Backstop Purchase Agreement”, and such motion, the “Backstop Motion”) and a motion to approve the rights offering procedures (which may be the Disclosure Statement Motion or the Backstop Motion); d) no later than the date that is thirty-five (35) calendar days after the Petition Date, the Bankruptcy Court shall have entered the Final Order; e) no later than sixty (60) days after the Disclosure Statement Order Date, subject to automatic one-day extensions for each day following the 10 days prior to the plan supplement filing deadline for which the supporting noteholders have not yet delivered draft new corporate governance documents to the Debtors’ advisors, the Bankruptcy Court shall commence hearings on confirmation of the chapter 11 plan; f) no later than the date that is three (3) Business Days after entry of an order approving a general claims bar date (the “Bar Date Order”), which shall be no later than the date that is sixty-five (65) calendar days after the Petition Date, the Debtors shall have published notice of the Chapter 11 Cases as authorized under the Bar Date Order; g) no later than the date that is sixty (60) calendar days after the Petition Date, the Bankruptcy Court shall have entered the final order which establishes notice procedures and restrictions (A) on and preventing (without complying with any applicable notice or Bankruptcy Court approval requirements under such order) direct or indirect trading with respect to stock of TPC Holdings, Inc. (within the meaning of IRC Section 382 and applicable Treasury regulations and IRS guidance with respect thereto), (B) on and preventing (without complying with any applicable notice or Bankruptcy Court approval

Summary of Material Terms	
	<p>requirements under such order) the claiming of a worthlessness deduction directly or indirectly with respect to the stock of TPC Holdings, Inc. under IRC Section 165 with respect to any taxable year ending prior to the Effective Date;</p> <p>h) no later than the date that is seventy-five (75) calendar days after the Petition Date, the Bankruptcy Court shall have entered an order approving the Disclosure Statement Motion (the “Disclosure Statement Order”), an order approving the Backstop Motion (the “Backstop Order”) and an order approving the rights offering procedures (which may be the Disclosure Statement Order or the Backstop Order);</p> <p>i) no later than the date that is five (5) calendar days after entry of the Disclosure Statement Order, the Debtors shall have commenced solicitation of votes on the chapter 11 plan;</p> <p>j) no later than the date that is five (5) calendar days after entry of the Backstop Order and an order approving the rights offering procedures, the Debtors shall have commenced the rights offering;</p> <p>k) No later than the date that is seven (7) calendar days prior to the deadline to file the plan supplement (the “Draft Deadline”), the noteholders parties to the RSA shall provide then-current drafts of the new corporate governance documents for reorganized TPC Holdings Inc. to the Debtors through counsel; <i>provided</i>, that the Debtors shall receive an automatic one (1) calendar day extension of each of the Milestones set forth in (xii) and (xiii) for each calendar day following the Draft Deadline for which the Supporting Noteholders have not delivered then-current drafts of the new corporate governance documents to the Debtors;</p> <p>l) no later than one hundred and twenty (120) calendar days after the Petition Date (or, if such 120th day is not a Business Day, the first succeeding Business Day thereafter), the Bankruptcy Court shall have entered the confirming a chapter 11 plan; and</p> <p>m) no later than the date that is one hundred and thirty-five (135) calendar days after the Petition Date, the Effective Date shall have occurred.</p> <p><i>See Term DIP Loan Agreement Section 6.11.</i></p>
<p>Liens and Priorities</p> <p>Bankruptcy Rule 4001(c)(1)(B)(i)</p>	<p>ABL DIP Loan Facility and Term DIP Loan Facility</p> <p><u>First Priority Liens on Unencumbered Property.</u> Pursuant to section 364(c)(2) of the Bankruptcy Code, the ABL DIP Liens and the Term DIP Liens shall be valid, binding, continuing, enforceable, non-avoidable, fully and automatically perfected (x) subject to entry of the Final Order, first priority liens and security interests in all Avoidance Actions and Avoidance Action Proceeds, subject to the relative priority set forth in the DIP Intercreditor Agreement, and (y) <i>pari passu</i> first priority liens and security interests in all other DIP Collateral that is not subject to valid, non-avoidable and properly perfected liens and security interests in existence as of the commencement of the Chapter 11 Cases (or valid and non-avoidable liens in existence as of the commencement of the Chapter 11 Cases but that are perfected subsequent to such commencement as permitted by section 546(b) of the Bankruptcy Code).</p> <p><u>Priming Term DIP Liens and Junior Term DIP Liens.</u> Pursuant to sections 364(c)(3) and 364(d)(1) of the Bankruptcy Code, the Term DIP Liens shall be valid, binding, continuing, enforceable, non-avoidable, fully and automatically perfected liens and security interests in all DIP Collateral (other than as described in the following clause (c)), which Term DIP Liens (A) shall be subject and subordinate to (1) Permitted Prior Liens, (2) solely with respect to ABL Facility Priority Collateral and DIP Collateral of a type that would</p>

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	<p>otherwise constitute ABL Facility Priority Collateral, the ABL DIP Liens, the ABL Adequate Protection Liens (until the ABL Refinancing) and the Prepetition ABL Liens (until the ABL Refinancing), and (3) solely with respect to the assets of Holdings (the “TPC Holdings Assets”), the ABL DIP Liens, the ABL Adequate Protection Liens (until the ABL Refinancing) and the Prepetition ABL Liens (until the ABL Refinancing), (B) shall be subject to the DIP Intercreditor Agreement and the priorities set forth in Exhibit 4 of the Interim Order, and (C) shall be senior to any and all other liens and security interests in the DIP Collateral, including, without limitation, all liens and security interests in the Notes Priority Collateral or any DIP Collateral that would otherwise constitute Notes Priority Collateral (including, without limitation, any ABL DIP Liens, ABL Adequate Protection Liens, Prepetition ABL Liens, Senior Priority Notes Adequate Protection Liens, Junior Priority Notes Adequate Protection Liens, Prepetition Senior Priority Notes Liens or Prepetition Junior Priority Notes Liens in Notes Priority Collateral).</p> <p><u>Priming ABL DIP Liens and Junior ABL DIP Liens.</u> Pursuant to sections 364(c)(3) and 364(d)(1) of the Bankruptcy Code, the ABL DIP Liens shall be valid, binding, continuing, enforceable, non-avoidable, fully and automatically perfected liens and security interests in all DIP Collateral (other than as described in this clause (c)), which ABL DIP Liens (A) shall be subject and subordinate to (1) Permitted Prior Liens, (2) solely with respect to ABL Facility Priority Collateral and DIP Collateral of a type that would otherwise constitute ABL Facility Priority Collateral, the ABL Adequate Protection Liens (until the ABL Refinancing) and the Prepetition ABL Liens (until the ABL Refinancing), (3) solely with respect to the TPC Holdings Assets, the ABL Adequate Protection Liens (until the ABL Refinancing) and the Prepetition ABL Liens (until the ABL Refinancing), and (4) solely with respect to Notes Priority Collateral and DIP Collateral of a type that would otherwise constitute Notes Priority Collateral, the Term DIP Liens, the Senior Priority Notes Adequate Protection Liens (until the Prepetition Senior Priority Notes Secured Obligations are refinanced in full under the Term DIP Loan Facility) and the Prepetition Senior Priority Notes Liens (until the Prepetition Senior Priority Notes Secured Obligations are refinanced in full under the Term DIP Loan Facility), the Junior Priority Notes Adequate Protection Liens, the Prepetition Junior Priority Notes Liens, (B) shall be subject to the DIP Intercreditor Agreement and the priorities set forth in Exhibit 4 of the Interim Order, and (C) shall be senior to any and all other liens and security interests in the DIP Collateral, including, without limitation, all liens and security interests in the ABL Facility Priority Collateral or any DIP Collateral that would otherwise constitute ABL Facility Priority Collateral (including, without limitation, any Term DIP Liens, Senior Priority Notes Adequate Protection Liens, Junior Priority Notes Adequate Protection Liens, Prepetition Senior Priority Notes Liens or Prepetition Junior Priority Notes Liens in ABL Facility Priority Collateral).</p> <p><u>DIP Liens Senior to Other Liens.</u> Except to the extent expressly permitted hereunder, the DIP Liens, the DIP Superpriority Claims (as defined below), the Adequate Protection Liens and the Adequate Protection Claims shall not be made subject or subordinate to or <i>pari passu</i> with (A) any lien, security interest or claim heretofore or hereinafter granted in any of the Chapter 11 Cases or any Successor Cases, including any lien, security interest or claim 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 Debtors, (B) any lien or security interest that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code or otherwise, (C) any intercompany or affiliate claim, lien or security interest of the Debtors or their affiliates, or (D) any other lien, security interest or claim arising under section 363 or 364 of the Bankruptcy Code granted on or after the date the Interim Order is entered.</p>

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	See Interim Order ¶ 6(c).
Carve Out Bankruptcy Rule 4001(c)(1)(B) ⁷	[To be updated.]
Events of Default Bankruptcy Rule 4001(c)(1)(B)	<p>ABL DIP Loan Facility</p> <p>The ABL DIP Credit Agreement include usual and customary events of default for transactions of this type, including the following:</p> <ul style="list-style-type: none"> a) any representation or warranty made or deemed made by a Borrower or any other Loan Party in any Loan Document, or any representation, warranty, statement or information contained in any report, certificate, financial statement or other instrument furnished in connection with or pursuant to any Loan Document, shall prove to have been incorrect, false or misleading in any material respect when so made, deemed made or furnished by a Borrower or any other Loan Party; b) default shall be made in the payment of any principal of any Loan or the reimbursement with respect to any Revolving L/C Disbursement when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof or by acceleration thereof or otherwise; c) default shall be made in the payment of any interest on any Loan or on any Revolving L/C Disbursement or in the payment of any Payment or any other amount (other than an amount referred to in (b) above) due under any Loan Document, when and as the same shall become due and payable, and (in the event that the Administrative Agent does not charge the loan balance therefor) such default shall continue unremedied for a period of five (5) Business Days; d) failure by any Loan Party to comply with its obligations under <u>Section 5.01(a)</u>, <u>Section 5.05(a)</u>, <u>Section 5.14</u>, <u>Section 5.17</u> or <u>Article VI</u> of the ABL DIP Loan Agreement; e) failure by any Loan Party or any of their Restricted Subsidiaries to comply with any of its other obligations (other than those specified in paragraphs (b), (c) or (d) above) under the Loan Documents and the continuance of such failure for 15 days after notice thereof to the Lead Borrower by the Administrative Agent or any Lender (given through the Administrative Agent); f) so long as not subject to the automatic stay as a result of the commencement of the Chapter 11 Cases (i) any event or condition occurs that (x) results in the Term Loan Obligations or any other Material Indebtedness becoming due prior to its scheduled maturity or (y) enables or permits the holder or holders of the Term Loan Obligations or any other Material Indebtedness or any trustee or agent on its or their behalf to cause the Term Loan Obligations or any other Material Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity or (ii) a Borrower or any of its Significant Subsidiaries (or a group of Subsidiaries that taken as a whole, would constitute, a Significant Subsidiary) shall fail to pay the principal of the Term Loan Obligations or any other Material Indebtedness at the stated final maturity thereof; <i>provided</i> that this clause (f) shall not apply to secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness if such sale or transfer is permitted hereunder and under the documents providing for such

⁷ NTD: Need to update when final.

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	<p>Indebtedness;</p> <p>g) so long as not subject to the automatic stay as a result of the commencement of the Chapter 11 Cases, the failure by Holdings, any Borrower or any Significant Subsidiary (or a group of Subsidiaries that taken as a whole, would constitute, a Significant Subsidiary), to pay final and non- appealable judgments entered by a court or courts of competent jurisdiction aggregating in excess of \$5.0 million (net of any amounts which are covered by insurance or bonded), which judgments are not paid, waived, satisfied, discharged or stayed for a period of thirty (30) days, in each case, without the prior written consent of the ABL DIP Required Lenders;</p> <p>h) there shall have occurred a Change in Control;</p> <p>i) one or more ERISA Events shall have occurred that, when taken together with all other ERISA Events that have occurred, could reasonably be expected to result in a Material Adverse Effect;</p> <p>j) (i) any Loan Document at any time ceases for any reason to be in full force and effect (other than by reason of the release thereof in accordance with the express terms thereof), or any Loan Party or any Person acting on behalf of a Loan Party repudiates, denies or disaffirms its obligations under any Loan Document or otherwise asserts that any Loan Document is not a legal, valid and binding obligation of any Loan Party; (ii) any Guarantee of any Guarantor at any time ceases for any reason to be in full force and effect (other than by reason of the release thereof in accordance with the express terms thereof), or any Guarantor or any Person acting on behalf of a Guarantor repudiates, denies or disaffirms its obligations under any Guarantee or otherwise asserts that any Guarantee is not a legal, valid and binding obligation of any Guarantor; (iii) any Lien purported to be created by any Security Document in Collateral ceases to be in full force and effect (other than by reason of the release thereof in accordance with the express terms thereof), or ceases to be a valid perfected lien having the priority set forth in the Orders, in this Agreement and the Loan Documents, or (iv) any Loan Party repudiates, denies or disaffirms that such Lien is a valid, enforceable, perfected Lien having the priority set forth in the Orders, in this Agreement and the Loan Documents;</p> <p>k) any of the following shall have occurred in the Chapter 11 Cases:</p> <p>(i) the Closing Date shall not have occurred within three (3) calendar days of the Petition Date (or if such third calendar day is not a Business Day, the immediately succeeding Business Day);</p> <p>(ii) the Interim DIP Order (a) at any time ceases to be in full force and effect or (b) shall be vacated, reversed, stayed, amended, supplemented or modified without the prior written consent of the ABL DIP Required Lenders;</p> <p>(iii) the Final DIP Order (a) at any time ceases to be in full force and effect, (b) shall be vacated, reversed, stayed, amended, supplemented or modified without the prior written consent of the ABL DIP Required Lenders, or (c) shall not have been entered by the Bankruptcy Court within thirty-five (35) calendar days after the Petition Date (or if such thirty-fifth calendar day is not a Business Day, the immediately succeeding Business Day);</p> <p>(iv) except with the prior written consent of the ABL DIP Required Lenders, the entry of an order in any of Chapter 11 Cases (a) staying, reversing, amending, supplementing, vacating or otherwise modifying any of the Loan Documents, the Interim DIP Order or the Final DIP Order, or (b) impairing or modifying any of the liens, security interests, claims, rights, remedies, privileges, benefits or protections granted under the Loan Documents or under the Orders to the Secured Parties or the Prepetition Secured Parties (as defined in the Orders);</p>

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	<ul style="list-style-type: none"> (v) the failure of any of the Chapter 11 Debtors to comply with any of the terms or conditions of the Interim DIP Order or the Final DIP Order; (vi) [reserved]; (vii) the dismissal of any of the Chapter 11 Cases or conversion of any of the Chapter 11 Cases to a Chapter 7 case; (viii) the appointment or election of a Chapter 11 trustee, a responsible officer or an examiner (other than a fee examiner) under section 1104 of the Bankruptcy Code with enlarged powers (beyond those set forth in Section 1106(a)(3) and (4) of the Bankruptcy Code) relating to the operation of the business of any Debtor in the Chapter 11 Cases; (ix) the entry of an order in any of the Chapter 11 Cases authorizing the Chapter 11 Debtors (i) to obtain additional financing under section 364(c) or (d) of the Bankruptcy Code that does not provide for the repayment in full in cash of all Obligations under this Agreement (without the prior written consent of the ABL DIP Required Lenders with respect to the obligations under this Agreement owed to each of them); or (ii) to grant any Lien, other than Liens expressly permitted under this Agreement and the Orders, upon or affecting any Collateral; (x) (a) the consensual use of prepetition cash collateral is terminated or modified, or (b) the entry of an order in any of the Chapter 11 Cases terminating or modifying the use of cash collateral other than as provided in this Agreement and the Orders, in each case, without the prior written consent of the ABL DIP Required Lenders; (xi) except for the Carve Out, and except as expressly permitted hereunder, the entry of an Order in any of the Chapter 11 Cases granting any claim against any Chapter 11 Debtor entitled to superpriority administrative expense status in any of the Chapter 11 Cases pursuant to section 364(c)(2) of the Bankruptcy Code that is <i>pari passu</i> with or senior to the claims of the Administrative Agent and the Lenders or the Adequate Protection Claims (as defined in the Orders) granted to the secured parties in respect of the Existing Notes Obligations (without the prior written consent of the ABL DIP Required Lenders or the requisite secured parties in respect of the Existing Notes Obligations with respect to the obligations owed to each of them); (xii) except for the Carve Out or as expressly permitted hereunder, the entry of an order in any of the Chapter 11 Cases granting any Lien in Collateral that is <i>pari passu</i> with or senior to any Lien granted to the Administrative Agent or the Lenders, or any Adequate Protection Lien (as defined in the Orders) granted to the secured parties in respect of the Pre-Petition ABL Credit Agreement (without the prior written consent of the ABL DIP Required Lenders); (xiii) except as provided in the Orders, the making of any adequate protection payment or the granting of any adequate protection (including, without limitation, the granting of any Liens on the Collateral, superpriority claims, the right to receive cash payments or otherwise), without the prior written consent of the ABL DIP Required Lenders and the requisite secured parties in respect of the Existing Notes Obligations and the Pre-Petition ABL Credit Agreement; (xiv) the Chapter 11 Debtors' "exclusive period" under Section 1121 of the Bankruptcy Code for the filing and/or solicitation of a chapter 11 plan is terminated or modified for any reason; (xv) the payment of, or any Chapter 11 Debtors file a motion or application seeking authority to pay, any Prepetition Debt or other prepetition claim

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	<p>other than (A) as provided in any of the First Day Orders, (B) to the extent such payment is expressly permitted pursuant to this Agreement and the Approved Budget, or (C) with the prior written consent of the ABL DIP Required Lenders;</p> <p>(xvi) the entry of an order in any of the Chapter 11 Cases granting relief from or otherwise modifying any stay of proceeding (including the automatic stay) to allow a third party to execute upon or enforce a Lien against any assets of the Chapter 11 Debtors that have an aggregate value in excess of \$5 million, or with respect to any Lien of or the granting of any Lien on any assets of the Chapter 11 Debtors to any state or local environmental or regulatory agency or authority having priority over the Liens in favor of the Secured Parties without the prior written consent of the ABL DIP Required Lenders;</p> <p>(xvii) (A) any Chapter 11 Debtor shall (i) challenge or contest the validity or enforceability of the Orders or any Loan Document or deny that it has further liability thereunder, (ii) challenge or contest the nature, extent, amount, enforceability, validity, priority or perfection of the Obligations, Liens securing the Obligations, the DIP Superpriority Claims (as defined in the Orders), Loan Documents, Prepetition Secured Obligations (as defined in the Orders), Adequate Protection Liens (as defined in the Orders), Adequate Protection Claims (as defined in the Orders), the Term Loan Obligations, the Existing Notes, the Liens securing the Prepetition Secured Obligations (as defined in the Orders), the Liens securing the Existing Notes and the Term Loan Documents, (iii) assert any claim, defense or cause of action that seeks to avoid, recharacterize, subordinate, disgorge, disallow, impair or offset all or any portion of the Obligations, Liens securing the Obligations, the DIP Superpriority Claims, Loan Documents, Adequate Protection Liens, Adequate Protection Claims, the Prepetition Secured Obligations (as defined in the Orders), the Liens securing the Prepetition Secured Obligations (as defined in the Orders), and the Term Loan Documents, (iv) investigate, join or file any motion, application or other pleading in support of, or publicly support any other Person that has asserted any of the claims, challenges or other requested relief contemplated in <u>clauses (i) or (ii)</u> above, or fails to timely contest such claims, challenges or other requested relief in good faith (provided, that responding to any investigation conducted by an Official Committee or other party with respect to the nature, extent, amount, enforceability, validity, priority or perfection of the Prepetition Secured Obligations (as defined in the Orders), the Liens securing the Prepetition Secured Obligations (as defined in the Orders), the Liens securing the Term Loan Documents, subject in each case to the Orders, shall not, in and of itself, constitute an Event of Default hereunder); or (B) the entry of a judgment or order in any of the Chapter 11 Cases sustaining any of the claims, challenges or other relief contemplated in <u>clauses (i) or (ii)</u> above);</p> <p>(xviii) the entry of an order in any of the Chapter 11 Cases, avoiding, disallowing, offsetting, recharacterizing, subordinating, disgorging or requiring repayment of any payments made to the Secured Parties on account of the Obligations owing under the Orders, the ABL DIP Loan Agreement, the other ABL DIP Loan Documents;</p> <p>(xix) the entry of any order in any of the Chapter 11 Cases (a) charging any of the Collateral with respect to the ABL DIP Secured Parties, whether under Section 506(c) of the Bankruptcy Code or otherwise or (b) charging any of the prepetition collateral securing the Existing Notes with respect to</p>

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	<p>the secured parties in respect of the Existing Notes, whether under Section 506(c) of the Bankruptcy Code or otherwise;</p> <p>(xx) any Chapter 11 Debtor shall consummate or seek to obtain Bankruptcy Court approval of any sale or other disposition of all or any portion of the Collateral pursuant to Section 363 of the Bankruptcy Code or otherwise (other than in ordinary course of business that is expressly permitted by the Approved Budget and this Agreement), without the prior written consent of the ABL DIP Required Lenders;</p> <p>(xxi) the RSA or one of the Backstop Agreements is terminated by any party thereto or otherwise terminates in accordance with the terms thereof;</p> <p>(xxii) the (i) filing by any Chapter 11 Debtor of (1) any chapter 11 plan other than the Plan of Reorganization, or any disclosure statement attendant to a chapter 11 plan other than the Plan of Reorganization, or (2) any direct or indirect amendment, or other document or instrument related to, the Plan of Reorganization (or any disclosure statement attendant thereto) that is materially inconsistent with the Plan of Reorganization or the Restructuring Support Agreement to the extent such amendment, document or instrument relates to or impacts the Obligations, the Loan Documents or the Secured Parties and to which the ABL DIP Required Lenders do not consent in writing, (ii) the entry of an order approving a disclosure statement attendant to a chapter 11 plan other than the Plan of Reorganization, or (iii) the entry of an order confirming a plan other than the Plan of Reorganization;</p> <p>(xxiii) if any Chapter 11 Debtor or any of its Subsidiaries is enjoined, restrained, or in any way prevented by court order or a Governmental Authority from continuing to conduct all or any material part of the business affairs of the Chapter 11 Debtors and their Subsidiaries;</p> <p>(xxiv) since the Closing Date, the occurrence of a Material Adverse Effect; or</p> <p>(xxv) any Chapter 11 Debtor initiates, commences, joins, publicly supports, pursues, files any motion, application or other pleading in support of, the entry of an order or any of the relief described in clauses (iv) through (xxiv) in this Section 7.01(k) or any Chapter 11 Debtor fails to contest the entry of such order or any such actions or relief in good faith;</p> <p><i>See Section 7.01 of the ABL DIP Loan Agreement.</i></p> <p>Term DIP Loan Facility</p> <p>The Term DIP Loan Agreement include usual and customary events of default for transactions of this type, including the following:</p> <p>a) any representation or warranty made or deemed made by the Borrower or any other Loan Party in any Term DIP Loan Document, or any representation, warranty, statement or information contained in any report, certificate, financial statement or other instrument furnished in connection with or pursuant to any Term DIP Loan Document, shall prove to have been incorrect, false or misleading in any material respect when so made, deemed made or furnished by the Debtors;</p> <p>b) (x) default shall be made in the payment of any principal, or interest or any other amount (other than reimbursement of professional fees pursuant to Section 9.05) when and as the same shall become due and payable hereunder, whether at the due date thereof or at a date fixed for prepayment thereof or by acceleration thereof or otherwise; or (y) default shall be made in the payment of the reimbursement of professional fees when and as the same shall become due and payable hereunder, and such default shall continue unremedied for a period of five (5) calendar days;</p>

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	<p>c) [reserved];</p> <p>d) failure by any Debtor to comply with its obligations under Section 5.01(a), Section 5.05(a), Section 5.14, Section 5.16 or Article VI of the Term DIP Loan Agreement;</p> <p>e) failure by any Debtor or any of their Restricted Subsidiaries to comply with any of its other obligations (other than those specified in paragraphs (ii) or (iv) above) under the Term DIP Loan Documents and the continuance of such failure for 15 calendar days after notice thereof to the Borrower by the Term DIP Administrative Agent or the Required Term DIP Lenders (given through the Term DIP Administrative Agent);</p> <p>f) so long as not subject to the automatic stay as a result of the commencement of the Chapter 11 Cases (i) any event or condition occurs that (x) results in any Material Indebtedness becoming due prior to its scheduled maturity or (y) enables or permits (with all applicable grace periods having expired) the holder or holders of any Material Indebtedness or any trustee or agent on its or their behalf to cause any Material Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity or (ii) the Borrower or any of its Significant Subsidiaries (or, in either such case, a group of Subsidiaries that taken as a whole, would constitute, a Significant Subsidiary) shall fail to pay the principal of any Material Indebtedness at the stated final maturity thereof; <i>provided</i>, that this clause (f) shall not apply to secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness if such sale or transfer is permitted hereunder and under the documents providing for such Indebtedness;</p> <p>g) so long as not subject to the automatic stay as a result of the commencement of the Chapter 11 Cases, the entry of one or more monetary judgments or decrees of a court of competent jurisdiction against any Borrower or Subsidiary involving a liability of \$5 million or more in the aggregate for all such judgments and decrees for Borrower and its Subsidiaries, and which judgments have not been paid, waived, satisfied, discharged or stayed or bonded pending appeal within a period of thirty (30) days after the entry thereof, in each case, without the prior written consent of the Term DIP Required Lenders;</p> <p>h) there shall have occurred a Change of Control;</p> <p>i) one or more ERISA Events shall have occurred that, when taken together with all other ERISA Events that have occurred, could reasonably be expected to result in a Material Adverse Effect;</p> <p>j) (i) any Term DIP Loan Document at any time ceases for any reason to be in full force and effect (other than by reason of the release thereof in accordance with the express terms thereof), or any Debtor or any Person acting on behalf of a Debtor repudiates, denies or disaffirms its obligations under any Term DIP Loan Document or otherwise asserts that any Term DIP Loan Document is not a legal, valid and binding obligation of any Debtor; (ii) any Guarantee of any Guarantor at any time ceases for any reason to be in full force and effect (other than by reason of the release thereof in accordance with the express terms thereof), or any Guarantor or any Person acting on behalf of a Guarantor repudiates, denies or disaffirms its obligations under any Guarantee or otherwise asserts that any Guarantee is not a legal, valid and binding obligation of any Guarantor; (iii) any Lien purported to be created by any security document in Collateral ceases to be in full force and effect (other than by reason of the release thereof in accordance with the express terms thereof), or ceases to be a valid perfected lien having the priority set forth in the DIP Orders, in the Term DIP Loan Agreement and the Term DIP Loan Documents, or (iv) any Debtor repudiates, denies or disaffirms</p>

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	<p>that such Lien is a valid, enforceable, perfected Lien having the priority set forth in the DIP Orders, in the Term DIP Loan Agreement and the Term DIP Loan Documents;</p> <p>k) any of the following shall have occurred in the Chapter 11 Cases:</p> <ul style="list-style-type: none"> (i) the Closing Date shall not have occurred within three (3) calendar days of the Petition Date (or if such third calendar day is not a Business Day, the immediately succeeding Business Day); (ii) the Interim Order (a) at any time ceases to be in full force and effect or (b) shall be vacated, reversed, stayed, amended, supplemented or modified without the prior written consent of the Term DIP Required Lenders; (iii) the Final Order (a) at any time ceases to be in full force and effect, (b) shall be vacated, reversed, stayed, amended, supplemented or modified without the prior written consent of the Term DIP Required Lenders, or (c) shall not have been entered by the Bankruptcy Court within thirty-five (35) calendar days after the Petition Date (or if such thirty-fifth calendar day is not a Business Day, the immediately succeeding Business Day); (iv) except with the prior written consent of the Term DIP Required Lenders, the entry of an order in any of Chapter 11 Cases (a) staying, reversing, amending, supplementing, vacating or otherwise modifying any of the Term DIP Loan Documents, the Interim Order or the Final Order, or (b) impairing or modifying any of the liens, security interests, claims, rights, remedies, privileges, benefits or protections granted under the Term DIP Loan Documents or under the DIP Orders to the Secured Parties or the Prepetition Notes Secured Parties; (v) the failure of any of the Debtors to comply with any of the terms or conditions of the Interim Order or the Final Order; (vi) the Loan Parties' failure to satisfy any of the Milestones other than with the prior written consent of the Term DIP Required Lenders; (vii) the dismissal of any of the Chapter 11 Cases or conversion of any of the Chapter 11 Cases to a Chapter 7 case; (viii) the appointment or election of a Chapter 11 trustee, a responsible officer or an examiner (other than a fee examiner) under section 1104 of the Bankruptcy Code with enlarged powers (beyond those set forth in Section 1106(a)(3) and (4) of the Bankruptcy Code) relating to the operation of the business of any Debtor in the Chapter 11 Cases; (ix) the entry of an order in any of the Chapter 11 Cases authorizing the Debtors (i) to obtain additional financing under section 364(c) or (d) of the Bankruptcy Code that does not provide for the repayment in full in cash of all DIP Obligations under the Term DIP Loan Agreement (without the prior written consent of the Term DIP Required Lenders); or (ii) to grant any Lien, other than Liens expressly permitted under the Term DIP Loan Agreement and the DIP Orders, upon or affecting any Collateral; (x) (a) the consensual use of prepetition cash collateral is terminated or modified, or (b) the entry of an order in any of the Chapter 11 Cases terminating or modifying the use of cash collateral other than as provided in the Term DIP Loan Agreement and the DIP Orders, in each case, without the prior written consent of the Term DIP Required Lenders; (xi) except for the Carve Out, and except as expressly permitted hereunder, the entry of an Order in any of the Chapter 11 Cases granting any claim against any Debtor entitled to superpriority administrative expense status in any of the Chapter 11 Cases pursuant to section 364(c)(2) of the Bankruptcy Code that is <i>pari passu</i> with or senior to the claims of the Administrative Agent and the Lenders or the Adequate Protection Claims granted to the

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	<p>Prepetition Notes Secured Parties (without the prior written consent of the Term DIP Required Lenders or the requisite Prepetition Notes Secured Parties with respect to the obligations owed to each of them);</p> <p>(xii) except for the Carve Out or as expressly permitted hereunder, the entry of an order in any of the Chapter 11 Cases granting any Lien in Collateral that is <i>pari passu</i> with or senior to any Lien granted to the Administrative Agent or the Lenders, or any Adequate Protection Lien granted to the Prepetition Notes Secured Parties (without the prior written consent of the Term DIP Required Lenders or the requisite the Prepetition Notes Secured Parties with respect to the obligations owed to each of them);</p> <p>(xiii) except as provided in the DIP Orders, the making of any adequate protection payment or the granting of any adequate protection (including, without limitation, the granting of any Liens on the Collateral, superpriority claims, the right to receive cash payments or otherwise), without the prior written consent of the Term DIP Required Lenders and the requisite Prepetition Notes Secured Parties;</p> <p>(xiv) the Debtors' "exclusive period" under Section 1121 of the Bankruptcy Code for the filing and/or solicitation of a chapter 11 plan is terminated or modified for any reason;</p> <p>(xv) the payment of, or any Debtors file a motion or application seeking authority to pay, any Prepetition Debt or other prepetition claim other than (A) as provided in any of the First Day Orders, (B) to the extent such payment is expressly permitted pursuant to the Term DIP Loan Agreement and the Approved Budget, or (C) with the prior written consent of the Term DIP Required Lenders;</p> <p>(xvi) the entry of an order in any of the Chapter 11 Cases granting relief from or otherwise modifying any stay of proceeding (including the automatic stay) to allow a third party to execute upon or enforce a Lien against any assets of the Debtors that have an aggregate value in excess of \$5 million, or with respect to any Lien of or the granting of any Lien on any assets of the Debtors to any state or local environmental or regulatory agency or authority having priority over the Liens in favor of the Secured Parties, without the prior written consent of the Term DIP Required Lenders;</p> <p>(xvii) (A) any Chapter 11 Debtor shall (i) challenge or contest the validity or enforceability of the DIP Orders or any Loan Document or deny that it has further liability thereunder, (ii) challenge or contest the nature, extent, amount, enforceability, validity, priority or perfection of the Obligations, Liens securing the Obligations, the DIP Superpriority Claims, Loan Documents, Adequate Protection Liens, Adequate Protection Claims, the Prepetition Noteholder Secured Obligations, the Liens securing the Prepetition Noteholder Secured Obligations or the Prepetition Notes Documents, (iii) assert any claim, defense or cause of action that seeks to avoid, recharacterize, subordinate (whether equitable subordination or otherwise), disgorge, disallow, impair or offset all or any portion of the Obligations, Liens securing the Obligations, the DIP Superpriority Claims, Loan Documents, Adequate Protection Liens] Adequate Protection Claims, the Prepetition ABL Obligations, the Prepetition Noteholder Secured Obligations, the Liens securing the Prepetition ABL Obligations, the Liens securing the Prepetition Noteholder Secured Obligations, the Prepetition Notes Documents and the ABL Facility Loan Documents, (iv) investigate, join or file any motion, application or other pleading in support of, or publicly support any other Person that has asserted any of the claims, challenges or other requested relief contemplated in <u>clauses (i) - (iii)</u> above,</p>

Summary of Material Terms	
	<p>or fails to timely contest such claims, challenges or other requested relief in good faith (provided, that responding to any investigation conducted by an Official Committee or other party with respect to the nature, extent, amount, enforceability, validity, priority or perfection of the Prepetition ABL Obligations, the Prepetition Noteholder Secured Obligations, the Liens securing the Prepetition Noteholder Secured Obligations and the Prepetition Notes Documents, subject in each case to the Orders, shall not, in and of itself, constitute an Event of Default hereunder); or (B) the entry of a judgment or order in any of the Chapter 11 Cases sustaining any of the claims, challenges, causes of action or other relief contemplated in <u>clauses (i) - (iii)</u> above of the Term DIP Loan Agreement);</p> <p>(xviii) the entry of an order in any of the Chapter 11 Cases, avoiding, disallowing, offsetting, recharacterizing, subordinating, disgorging or requiring repayment of any payments made to the Secured Parties on account of the Obligations owing under the Orders, this Agreement, the other Loan Documents or (ii) reversing, recharacterizing or otherwise modifying all or any portion of the Roll-Up Term Loans previously deemed advanced and approved by the Bankruptcy Court without the prior written consent of the Required Lenders;</p> <p>(xix) the entry of any order in any of the Chapter 11 Cases (a) charging any of the Collateral with respect to the Secured Parties, whether under Section 506(c) of the Bankruptcy Code or otherwise or (b) charging any of the Prepetition Noteholder Collateral with respect to the Prepetition Notes Secured Parties, whether under Section 506(c) of the Bankruptcy Code or otherwise;</p> <p>(xx) any Debtor shall consummate or seek to obtain Bankruptcy Court approval of any sale or other disposition of all or any portion of the Collateral pursuant to Section 363 of the Bankruptcy Code or otherwise (other than in ordinary course of business and that is expressly permitted by the Approved Budget and the Term DIP Loan Agreement), without the prior written consent of the Term DIP Required Lenders;</p> <p>(xxi) the RSA or the Backstop Purchase Agreement is terminated by any party thereto or otherwise terminates in accordance with the terms thereof;</p> <p>(xxii) the (i) filing by any Debtor of (1) any chapter 11 plan other than the Plan of Reorganization, or any disclosure statement attendant to a chapter 11 plan other than the Plan of Reorganization, or (2) any direct or indirect amendment, or other document or instrument related to, the Plan of Reorganization (or any disclosure statement attendant thereto) that is materially inconsistent with the Plan of Reorganization or the Restructuring Support Agreement to which Term DIP Required Lenders do not consent in writing, (ii) the entry of an order approving a disclosure statement attendant to a chapter 11 plan other than the Plan of Reorganization, or (iii) the entry of an order confirming a plan other than the Plan of Reorganization;</p> <p>(xxiii) if any Chapter 11 Debtor or any of its Subsidiaries is enjoined, restrained, or in any way prevented by court order or a Governmental Authority from continuing to conduct all or any material part of the business affairs of the Chapter 11 Debtors and their Subsidiaries;</p> <p>(xxiv) since the Closing Date, the occurrence of a Material Adverse Effect;</p> <p>(xxv) (i) the Prepetition Notes Intercreditor Agreement shall for any reason (except to the extent permitted by the terms thereof) cease to be in full force and effect and valid, binding and enforceable in accordance with its terms against the Borrower, any party thereto or any holder of the liens subordinated thereby, or shall be repudiated by any of the Debtors, or be</p>

Summary of Material Terms	
	<p>amended, modified, or supplemented to cause the liens securing the obligations of the Prepetition Junior Priority Notes to be senior or <i>pari passu</i> in priority to the liens securing the obligations under the Prepetition Senior Priority Notes, (ii) the Borrower takes any action inconsistent with the terms of the Prepetition Notes Intercreditor Agreement (other than in connection with the Plan of Reorganization), or (iii) any order any court of competent jurisdiction is granted which is materially inconsistent with the terms of the Prepetition Notes Intercreditor Agreement and would reasonably be expected to be adverse to the interests of the Prepetition Senior Priority Notes Secured Parties; or</p> <p>(xxvi) any Debtor initiates, commences, joins, publicly supports, pursues, files any motion, application or other pleading in support of, or fails to contest in good faith, the actions or relief described in the foregoing clauses (iv), (vii) through (xiv), (xviii) and (xix).</p> <p><i>See</i> Term DIP Loan Agreement Section 7.01.</p>
<p>Waiver/Modification of the Automatic Stay</p> <p>Bankruptcy Rule 4001(c)(1)(B)(iv)</p>	<p>ABL DIP Loan Facility and Term DIP Loan Facility</p> <p>The automatic stay is modified solely to (a) permit the Debtors to grant the security interests, liens, and superpriority claims described above and to perform such acts as may be requested to assure the perfection and priority of such security interests and liens, and (b) permit the DIP Agents, DIP Lenders, and the Prepetition Secured Parties to exercise rights and remedies under certain circumstances.</p> <p><i>See</i> Interim Order ¶ 16.</p>
<p>Waiver/Modification of Applicability of Nonbankruptcy Law Relating to Perfection or Enforceability of Liens</p> <p>Bankruptcy Rule 4001(c)(1)(B)(vii)</p>	<p>ABL DIP Loan Facility and Term DIP Loan Facility</p> <p>All security interests in and liens on collateral securing the obligations under the DIP Facilities shall be valid and perfected upon entry of the Interim Order.</p> <p><i>See</i> Interim Order ¶ 7(c).</p>
<p>Indemnification</p> <p>Bankruptcy Rule 4001(c)(1)(B)(ix)</p>	<p>ABL DIP Loan Facility</p> <p>The ABL DIP Loan Agreement shall also provide for customary indemnification by each of the Loan Parties, on a joint and several basis, of each of the ABL DIP Secured Parties (together with their related parties and representatives).</p> <p><i>See</i> Section 9.05 of the ABL DIP Loan Agreement</p> <p>Term DIP Loan Facility</p> <p>The Term DIP Loan Agreement shall also provide for customary indemnification by each of the Loan Parties, on a joint and several basis, of each of the Term DIP Secured Parties (together with their related parties and representatives).</p> <p><i>See</i> Term DIP Loan Agreement Section 8.08</p>

Summary of Material Terms	
Cross-Collateralization Local Rule 4001–2(a)(i)(A)	ABL DIP Loan Facility and Term DIP Loan Facility <i>See</i> Liens and Priorities above.
Debtors’ Stipulations Local Rule 4001–2(a)(i)(B)	ABL DIP Loan Facility and Term DIP Loan Facility Pursuant to the Interim Order, the Debtors for themselves, their estates and all representatives of such estates, make the stipulations set forth in Paragraphs E and F of the Interim Order. <i>See</i> Interim Order ¶¶ E, F.
506(c) Waiver Local Rule 4001–2(a)(i)(C)	ABL DIP Loan Facility and Term DIP Loan Facility As a material inducement to the DIP Secured Parties’ agreement to provide the DIP Facilities, and in exchange for (i) the DIP Secured Parties’ agreement to subordinate their DIP Liens to the Carve Out and Permitted Prior Liens, (ii) the Prepetition Secured Parties’ consent (or deemed consent) to the subordination of their Prepetition Liens and Adequate Protection Liens to the DIP Liens and the Carve Out, and (iii) the Prepetition Secured Parties’ consent (or deemed consent) to the use of Prepetition Collateral (including Cash Collateral), (a) subject to paragraph 26 of the Interim Order, the Debtors have waived their right to surcharge any costs or expenses incurred in connection with the preservation, protection or enhancement of, or realization by the DIP Secured Parties or the Prepetition Secured Parties upon, the DIP Collateral or the Prepetition Collateral (as applicable), whether pursuant to section 506(c) of the Bankruptcy Code or otherwise, (b) subject to paragraph 27 of the Interim Order, the DIP Secured Parties and the Prepetition Secured Parties shall not be subject to the equitable doctrine of “marshaling” or any similar doctrine with respect to the DIP Collateral or the Prepetition Collateral (as applicable), and (c) subject to entry of the Final Order, each of the Prepetition Secured Parties shall be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and in no event shall the “equities of the case” exception in section 552(b) of the Bankruptcy Code apply to the Prepetition Secured Parties or the Prepetition Collateral, in the case of each of the foregoing, to the extent set forth in the Interim Order. <i>See</i> Interim Order ¶ H(g).
Liens on Chapter 5 Causes of Action Local Rule 4001–2(a)(i)(D)	Pursuant to Bankruptcy Code § 364(c)(2), the DIP Agents (in the case of the Term DIP Agents, the Term DIP Collateral Agent), for the benefit of themselves and the DIP Lenders, are granted valid, perfected, enforceable and non-avoidable liens on, and security interests in, all now owned or hereafter acquired assets and property of the Debtors, including, without limitation, Avoidance Actions and Avoidance Action Proceeds upon entry of the Final Order. <i>See</i> Interim Order ¶ 7(b).
Provisions Deeming Prepetition Debt to be Postpetition Debt Local Rule 4001–2(a)(i)(E)	The Interim Order provides for provisions deeming prepetition debt to be converted to postpetition debt. ABL DIP Loan Facility Specifically, the proceeds from the ABL DIP Loan Facility shall fully refinance the Prepetition ABL Secured Obligations under the Prepetition ABL Credit Agreement.

Summary of Material Terms	
	<p>Term DIP Loan Facility Specifically, all amounts outstanding under the Prepetition Senior Priority Notes shall be converted to Term DIP Loans.</p> <p><i>See Interim Order ¶¶ (a), (b).</i></p>
<p>Disparate Treatment of Professionals Under Carve Out</p> <p>Local Rule 4001–2(a)(i)(F)</p>	<p>[To be updated]</p>
<p>Non-Consensual Priming Liens</p> <p>Local Rule 4001–2(a)(i)(G)</p>	<p>The Interim Order does not provide for non-consensual priming of any existing secured lien.</p>
<p>Section 552(b)(1) Waiver</p> <p>Local Rule 4001–2(a)(i)(H)</p>	<p>ABL DIP Loan Facility and Term DIP Loan Facility Except to the extent of the Carve Out, no costs or expenses of administration of the Chapter 11 Cases or any Successor Cases at any time, including, without limitation, any costs and expenses incurred in connection with the preservation, protection, or enhancement of realization by the DIP Secured Parties or the Prepetition Secured Parties, respectively, upon the DIP Collateral or the Prepetition Collateral, respectively, shall be charged against or recovered from the DIP Collateral as to DIP Secured Parties or the Prepetition Collateral as to the Prepetition Secured Parties, whether pursuant to section 506(c) of the Bankruptcy Code, any other legal or equitable doctrine (including unjust enrichment) or otherwise, without the prior written consent of the Required DIP Lenders under both the Term DIP Loan Agreement and the ABL DIP Loan Agreement with respect to the DIP Collateral or the requisite Prepetition Secured Parties under the applicable Prepetition Loan Documents with respect to the Prepetition Collateral, each in their sole discretion, and no such consent shall be implied, directly or indirectly, from anything contained in the Interim Order (including, without limitation, consent to the Carve Out or the approval of any budget hereunder) or from any other action, inaction, or acquiescence by any of the DIP Secured Parties or any of the Prepetition Secured Parties; <i>provided, however</i>, that with respect to the Prepetition Secured Parties and the Prepetition Collateral, the foregoing shall be subject to entry of the Final Order.</p> <p><i>See Interim Order ¶ 27.</i></p>
<p>Prepayment Penalties</p> <p>Local Rule 4001–2(a)(i)(I)</p>	<p>ABL DIP Loan Facility The Term DIP Loan Agreement requires the payment of prepayment penalties. If the Commitments are terminated, however, there is an Exit Payment.</p> <p><i>See ABL DIP Loan Agreement Section 2.12(e).</i></p> <p>Term DIP Loan Facility The Term DIP Loan Agreement requires the payment of prepayment penalties.</p> <p><i>See Term DIP Loan Agreement Section 2.11(b).</i></p>

Summary of Material Terms	
Payment of Lender Expenses Local Rule 4001–2(a)(i)(K)	The Interim Order requires the reasonable and documented fees and expenses of the law firms, financial advisors and other professionals of the DIP Agents and Ad Hoc Noteholder Group. <i>See</i> Interim Order ¶ 3.
Limitations on Investigations of Liens Local Rule 4001–2(a)(i)(L)	The Interim Order prohibits the use of the financing to investigate the liens of the DIP Secured Parties or the Prepetition Secured Parties or their respective Representatives, except for the \$50,000 of the DIP Collateral set aside for an Official Committee to investigate liens prior to the Challenge Deadline. <i>See</i> Interim Order ¶ 26.
Authorization of DIP Facilities and DIP Loan Documents Local Rule 4001–2(a)(i)(R)	The Interim Order immediately approves the terms and conditions of the DIP Loan Facilities. <i>See</i> Interim Order ¶ 2(a.)
Notice of an Event of Default Local Rule 4001–2(a)(i)(S)	The Interim Order only provides for three (3) Business Days written notice of an Event of Default. <i>See</i> Interim Order ¶ 22(b).
Limitations on Arguments in the Event of a Default Local Rule 4001–2(a)(i)(T)	The Interim Order does not provide for limitations on arguments in the Event of a Default.
Marshalling Waiver Local Rule 4001–2(a)(i)(X)	The Interim Order provides that neither the DIP Secured Parties nor the Prepetition Secured Parties shall be subject to the equitable doctrine of “marshaling” or any similar doctrine with respect to the DIP Collateral, the DIP Obligations, the Prepetition Collateral or the Prepetition Secured Obligations. <i>See</i> Interim Order ¶¶ 4, 25, 26, 28.
DIP Liens on Unencumbered Assets Local Rule 4001-1(a)(1)(G)	ABL DIP Liens and Term DIP Liens shall be valid, binding, continuing, enforceable, non-avoidable, fully and automatically perfected <i>pari passu</i> first priority liens and security interests in all Unencumbered Property. <i>See</i> Section 3.17 of the ABL DIP Loan Agreement or Term DIP Loan Agreement, as applicable

DEBTORS' PREPETITION CAPITAL STRUCTURE

12. As of the Petition Date, the Debtors have funded debt of approximately \$1.241 billion in aggregate principal amount consisting of (i) approximately \$105.5 million outstanding on a first-lien secured asset-based revolving loan facility with a maximum commitment of \$200 million; (ii) approximately \$205.5 million in aggregate outstanding principal amount of 10.875% first-lien secured notes due 2024; and (iii) approximately \$930 million in aggregate outstanding principal amount of 10.5% secured notes due 2024. The Debtors have no unsecured funded debt. Each outstanding debt issuance is described below.

13. ***Prepetition ABL Facility.*** Certain of the Debtors are parties to that certain *Amended and Restated Credit Agreement*, dated as of August 2, 2019 (as amended, amended and restated, supplemented, or otherwise modified from time to time prior to the Petition Date, the “***Prepetition ABL Credit Agreement***”, and together with all other agreements, guarantees, pledge, collateral and security documents, control agreements, instruments, certificates, notes, and other documents executed, recorded and/or delivered in connection therewith, including, without limitation, the Loan Documents⁸ and the Prepetition Intercreditor Agreement (as defined below), collectively, the “***Prepetition ABL Loan Documents***”), by and among TPC, as the Borrower, the guarantors party thereto (the “***Prepetition ABL Guarantors***”, and together with the Borrower, the “***Prepetition ABL Loan Parties***”), Bank of America, N.A., as administrative agent (in such capacity, the “***Prepetition ABL Agent***”), and the lenders party thereto from time to time (collectively, the “***Prepetition ABL Lenders***”, and together with the Prepetition ABL Agent, the “***Prepetition ABL Secured Parties***”), the Prepetition ABL Lenders provided a revolving credit facility (the “***Prepetition ABL Facility***”) to the Prepetition ABL Loan Parties. Pursuant to the

⁸ “Loan Documents” means the Prepetition ABL Agreement, the revolving letters of credit, the Prepetition Intercreditor Agreement, the security documents, the loan Document guarantee and any promissory note issued.

Prepetition ABL Loan Documents, each of the Prepetition ABL Guarantors, among other things, unconditionally and irrevocably guaranteed, on a joint and several basis, the payment in full in cash of all of the Prepetition ABL Secured Obligations (as defined below).

14. As of the Petition Date, the Prepetition ABL Loan Parties were justly and lawfully indebted to the Prepetition ABL Secured Parties, on a joint and several basis, without defense, claim, counterclaim, challenge or offset of any kind, in the aggregate amount of not less than \$105.5 million on account of principal amounts outstanding under the Prepetition ABL Facility, *plus* accrued but unpaid interest (including default interest) thereon, *plus* all fees, costs, expenses (including attorneys', financial advisors' and other professionals' fees and expenses), charges, disbursements, indemnification and reimbursement obligations (contingent or otherwise), including all "Obligations"⁹, and all other amounts that may be due or owing under the Prepetition ABL Loan Documents (collectively, the "***Prepetition ABL Secured Obligations***").

15. Pursuant to the Prepetition ABL Loan Documents, each of the Prepetition ABL Loan Parties granted to the Prepetition ABL Agent, for the benefit of itself and the Prepetition ABL Lenders, valid and properly perfected continuing liens and security interests in (the "***Prepetition ABL Liens***") substantially all of the assets of the Prepetition ABL Loan Parties, including, without limitation, all "Collateral"¹⁰ (collectively, the "***Prepetition ABL Collateral***").

⁹ "Obligations" is defined in the Prepetition ABL Credit Agreement to mean, for purposes of the Loan Documents, all obligations of every nature of each loan party from time to time owed to the Prepetition ABL Agents (including former Agents) or the lenders, under any Loan Document, whether for principal, interest (including interest which, but for the filing of a petition in bankruptcy with respect to such loan party, would have accrued on any such Obligation, whether or not a claim is allowed against such loan party for such interest in the related bankruptcy proceeding), loans, revolving L/C exposure, fees, expenses, indemnification or otherwise. For the avoidance of doubt, revolving facility loans made pursuant to any incremental facility incurred under Section 2.20 of the Prepetition ABL Credit Agreement shall constitute Obligations.

¹⁰ "Collateral" is defined in the Prepetition ABL Credit Agreement to mean all accounts; all equipment, goods, inventory and fixtures; all documents, instruments and chattel paper; all letters of credit and letter-of-credit rights; all securities collateral; all investment property (including all securities accounts and commodity accounts and the assets therein); all intellectual property collateral; all commercial tort claims described in applicable schedule; all deposit accounts of any guarantor and all other bank accounts and all deposits therein; all general intangibles; all money, cash or cash equivalents or any guarantor; all books and records related to the Collateral; and all other personal property of

16. ***Prepetition Senior Priority Notes.*** Each of the Debtors, excluding TPC Pipeline Holding Company LLC and TPC Pipeline Company LLC, is party to that certain Indenture, dated as of February 2, 2021, as amended by that certain First Supplemental Indenture, dated as of February 22, 2022, as further amended by that certain Second Supplemental Indenture dated as of March 2, 2022, as further amended by that certain Third Supplemental Indenture dated as of March 11, 2022 (as further amended, amended and restated, supplemented or otherwise modified from time to time prior to the Petition Date, the “***Prepetition Senior Priority Notes Indenture***”, and together with all other agreements, guarantees, pledge, collateral and security documents, control agreements, instruments, certificates, notes, and other documents executed, recorded and/or delivered in connection therewith, including, without limitation, the “Notes Documents”¹¹ and the Prepetition Intercreditor Agreements (as defined below), collectively, the “***Prepetition Senior Priority Notes Documents***”), among TPC, as the Borrower, the guarantors party thereto (the “***Prepetition Senior Priority Notes Guarantors***”, and together with the Borrower, the “***Prepetition Senior Priority Notes Loan Parties***”), and U.S. Bank National Trust Company National Association (successor in interest to U.S. Bank National Association), as indenture trustee and collateral agent (in such capacities, the “***Prepetition Senior Priority Notes Trustee***”), the Borrower issued 10.875% senior secured notes due 2024 (the “***Prepetition Senior Priority Notes***”, and the holders thereof, the “***Prepetition Senior Priority Noteholders***”, and together with the Prepetition Senior Priority Notes Trustee, the “***Prepetition Senior Priority Notes Secured Parties***”). Pursuant to the Prepetition Senior Priority Notes Documents, each of the Prepetition Senior Priority Notes

such grantor, whether tangible or intangible, and all proceeds and products of each of the foregoing and all accessories to, substitutions and replacements for, and rents, profits and products of, each of the foregoing, any and all proceeds of any insurance, indemnity, warranty or guaranty payable to such grantor from time to time with respect to any of the foregoing.

¹¹ “Notes Documents” means the Prepetition Senior Priority Notes Indenture, the Prepetition Senior Priority Notes, the note guarantees and the security documents.

Guarantors, among other things, unconditionally and irrevocably guaranteed, on a joint and several basis, the payment in full in cash of all of the Prepetition Senior Priority Notes Secured Obligations (as defined below).

17. As of the Petition Date, the Prepetition Senior Priority Notes Loan Parties were justly and lawfully indebted to the Prepetition Senior Priority Notes Secured Parties, on a joint and several basis, without defense, claim, counterclaim, challenge or offset of any kind, in the aggregate amount of not less than \$205.5 million on account of principal amounts outstanding under the Prepetition Senior Priority Notes, *plus* accrued but unpaid interest (including default interest) thereon, *plus* not less than \$[●] million in Applicable Premium,¹² *plus* all fees, costs, expenses (including attorneys', financial advisors' and other professionals' fees and expenses), charges, disbursements, indemnification and reimbursement obligations (contingent or otherwise), including all "Obligations"¹³ and all other amounts that may be due or owing under the Prepetition Senior Priority Notes Documents (collectively, the "***Prepetition Senior Priority Notes Secured Obligations***").

18. Pursuant to the Prepetition Senior Priority Notes Documents, the Prepetition Senior Priority Notes Loan Parties granted to the Prepetition Senior Priority Notes Trustee, for the benefit of itself and the Prepetition Senior Priority Noteholders, properly perfected continuing liens and

¹² "Applicable Premium" means, with respect to any Prepetition Senior Priority Notes on any redemption date: (A) occurring prior to August 2, 2022, the greater of: 1.0% of the principal amount of the Prepetition Senior Priority Note; and the excess of: (a) the present value at such redemption date of (i) the redemption price of the Prepetition Senior Priority Note at August 2, 2022, (such redemption price being set forth in clause (B) below) plus (ii) all required interest payments due on the Prepetition Senior Priority Note through August 2, 2022 (excluding accrued but unpaid interest to the applicable redemption date), computed using a discount rate equal to the Treasury Rate as of such redemption date plus 50 basis points; over (b) the principal amount of the Prepetition Senior Priority Note; (B) occurring on or after August 2, 2022 but prior to February 2, 2023, 8.1563% of the principal amount of the Prepetition Senior Priority Note; and (c) occurring on or after February 2, 2023 but prior to August 2, 2023, 4.0781% of the principal amount of the Prepetition Senior Priority Note.

¹³ "Obligations" is defined in the Prepetition Senior Priority Notes Indenture to mean any principal, interest (including post-petition Interest), penalties, fees, indemnifications, reimbursements, damages and other liabilities payable under the documentation governing any indebtedness according to the Prepetition Senior Priority Notes Indenture.

security interests in (collectively, the “***Prepetition Senior Priority Notes Liens***”) substantially all of the assets of the Prepetition Senior Priority Notes Loan Parties, including, without limitation, all “Collateral”¹⁴ (the “***Prepetition Senior Priority Notes Collateral***”).

19. ***Prepetition Junior Priority Notes.*** Each of the Debtors, excluding TPC Pipeline Holding Company LLC and TPC Pipeline Company LLC, is party to that certain Indenture, dated as of August 2, 2019, as amended by that certain First Supplemental Indenture dated as of February 2, 2021, as further amended by that certain Second Supplemental Indenture dated as of February 22, 2022 (as further amended, amended and restated, supplemented or otherwise modified from time to time prior to the Petition Date, the “***Prepetition Junior Priority Notes Indenture***”, and together with all other agreements, guarantees, pledge, collateral and security documents, control agreements, instruments, certificates, notes, and other documents executed, recorded and/or delivered in connection therewith, including, without limitation, the “Notes Documents”¹⁵ and the Prepetition Intercreditor Agreements, collectively, the “***Prepetition Junior Priority Notes Documents***”), among TPC, as the Borrower, the guarantors party thereto (the “***Prepetition Junior Priority Notes Guarantors***”, and together with the Borrower, the “***Prepetition Junior Priority Notes Loan Parties***”), and U.S. Bank National Trust Company National Association (successor in interest to U.S. Bank National Association), as indenture trustee and collateral agent (in such

¹⁴ “Collateral” is defined in the Prepetition Senior Priority Notes Indenture to mean all accounts; all equipment, goods, inventory and fixtures; all documents, instruments and chattel paper; all letters of credit and letter-of-credit rights; all securities collateral; all investment property (including all securities accounts and commodity accounts and the assets therein); all intellectual property collateral; all commercial tort claims described in applicable schedule; all deposit accounts of any guarantor and all other bank accounts and all deposits therein; all general intangibles; all money, cash or cash equivalents or any guarantor; all books and records related to the Collateral; and all other personal property of such grantor, whether tangible or intangible, and all proceeds and products of each of the foregoing and all accessories to, substitutions and replacements for, and rents, profits and products of, each of the foregoing, any and all proceeds of any insurance, indemnity, warranty or guaranty payable to such grantor from time to time with respect to any of the foregoing.

¹⁵ Notes Documents means the Prepetition Junior Priority Notes Indenture, the Prepetition Junior Priority Notes, the note guarantees and the security documents.

capacities, the “*Prepetition Junior Priority Notes Trustee*”), the Borrower issued 10.50% senior secured notes due 2024 (the “*Prepetition Junior Priority Notes*”, and the holders thereof, the “*Prepetition Junior Priority Noteholders*”, and together with the Prepetition Junior Priority Notes Trustee, the “*Prepetition Junior Priority Notes Secured Parties*”). Pursuant to the Prepetition Junior Priority Notes Documents, each of the Prepetition Junior Priority Notes Guarantors, among other things, unconditionally and irrevocably guaranteed, on a joint and several basis, the payment in full in cash of all of the Prepetition Junior Priority Notes Secured Obligations (as defined below).

20. As of the Petition Date, the Prepetition Junior Priority Notes Loan Parties were justly and lawfully indebted to the Prepetition Junior Priority Notes Secured Parties, on a joint and several basis, without defense, claim, counterclaim, challenge or offset of any kind, in the aggregate amount of not less than \$930 million on account of principal amounts outstanding under the Prepetition Junior Priority Notes, *plus* accrued but unpaid interest (including default interest) thereon, *plus* not less than \$[●] million in Applicable Premium¹⁶, *plus* all fees, costs, expenses (including attorneys’, financial advisors’ and other professionals’ fees and expenses), charges, disbursements, indemnification and reimbursement obligations (contingent or otherwise), including all “Obligations”¹⁷, and all other amounts that may be due or owing under the Prepetition Junior Priority Notes Documents (collectively, the “*Prepetition Junior Priority Notes Secured Obligations*”).

¹⁶ “Applicable Premium” means, with respect to any Note on any redemption date, the greater of: (1) 1.0% of the principal amount of the Prepetition Junior Priority Note; or (2) the excess of: (a) the present value at such redemption date of (i) the redemption price of the Prepetition Junior Priority Note at August 1, 2021, (such redemption price being set forth in the table appearing in Section 3.07(b) hereof) plus (ii) all required interest payments due on the Prepetition Junior Priority Note through August 1, 2021 (excluding accrued but unpaid interest to the applicable redemption date), computed using a discount rate equal to the Treasury Rate as of such redemption date plus 50 basis points; over (b) the principal amount of the Prepetition Junior Priority Note.

¹⁷ “Obligations” is defined in the Prepetition Junior Priority Notes Indenture to mean any principal, interest (including post petition Interest), penalties, fees, indemnifications, reimbursements, damages and other liabilities payable under the documentation governing any indebtedness according to the Prepetition Junior Priority Notes Indenture.

21. Pursuant to the Prepetition Junior Priority Notes Documents, the Prepetition Junior Priority Notes Loan Parties granted to the Prepetition Junior Priority Notes Trustee, for the benefit of itself and the Prepetition Junior Priority Noteholders, properly perfected continuing liens and security interests in (collectively, the “***Prepetition Junior Priority Notes Liens***”) substantially all of the Prepetition Junior Priority Loan Parties’ assets, including, without limitation, all “Collateral”¹⁸ (the “***Prepetition Junior Priority Notes Collateral***”).

22. ***Forbearance Agreement.*** On February 3, 2022, the Prepetition Senior Priority Notes Loan Parties, the Prepetition Junior Priority Notes Loan Parties, certain Prepetition Senior Priority Noteholders and certain Prepetition Junior Priority Noteholders (collectively, the “***Forbearing Noteholders***”) entered into a forbearance agreement (as subsequently amended on March 16, 2022, pursuant to that certain *Amendment No. 1 to Forbearance Agreement*, on April 10, 2022, pursuant to that certain *Amendment No. 2 to Forbearance Agreement*, on April 28, 2022, pursuant to that certain *Amendment No. 3 to Forbearance Agreement*, and on May 11, 2022 pursuant to that certain *Amendment No. 4 to Forbearance Agreement*, and as further amended via email on May 23, 2022, the “***Forbearance Agreement***”), pursuant to which the Forbearing Noteholders agreed to, among other things, (A) temporarily forbear from exercising rights and remedies with respect to the Specified Defaults,¹⁹ (B) consent to certain supplemental indentures

¹⁸ “Collateral” is defined in the Prepetition Junior Priority Notes Indenture to mean all accounts; all equipment, goods, inventory and fixtures; all documents, instruments and chattel paper; all letters of credit and letter-of-credit rights; all securities collateral; all investment property (including all securities accounts and commodity accounts and the assets therein); all intellectual property collateral; all commercial tort claims described in applicable schedule; all deposit accounts of any guarantor and all other bank accounts and all deposits therein; all general intangibles; all money, cash or cash equivalents or any guarantor; all books and records related to the Collateral; and all other personal property of such grantor, whether tangible or intangible, and all proceeds and products of each of the foregoing and all accessories to, substitutions and replacements for, and rents, profits and products of, each of the foregoing, any and all proceeds of any insurance, indemnity, warranty or guaranty payable to such grantor from time to time with respect to any of the foregoing.

¹⁹ “Specified Defaults” means the Debtors’ failure to pay interest on February 1, 2022 as required under Section 4.01 of the Senior Priority Notes Indenture and Section 1 of the Senior Priority Notes, failure to pay interest on February 1, 2022 as required under Section 4.01 of the Junior Priority Notes Indenture and Section 1 of the Junior Priority Notes, and failure to pay any defaulted interest required to be paid under Section 1 of the Senior Priority Notes.

with respect to the Prepetition Senior Priority Notes and the Prepetition Junior Priority Notes to allow for the Borrower to issue additional Prepetition Senior Priority Notes and (C) provide a commitment for the purchase of such additional Prepetition Senior Priority Notes (the “**Note Purchase Commitment Letter**”). Pursuant to the Notes Purchase Commitment Letter, the Debtors were permitted to put to the parties listed thereunder up to \$51.5 million in aggregate principal amount of Additional Notes. The Forbearance Agreement and this additional liquidity provided by the Prepetition Senior Priority Noteholders were critical in establishing a runway to ensure a smooth and orderly transition into these Chapter 11 Cases.

23. In connection with the Forbearance Agreement, on March 16, 2022, April 10, 2022, April 28, 2022, May 11, 2022 and May 23, 2022, the Prepetition ABL Loan Parties and the Prepetition ABL Agent entered into those certain Consent Agreements.

24. **Intercreditor Agreements.** The Prepetition ABL Secured Parties, the Prepetition Senior Priority Notes Secured Parties and the Prepetition Junior Priority Notes Secured Parties, in their respective capacities as such (collectively, the “**Prepetition Secured Parties**”) with respect to collateral and proceeds thereof are governed by two intercreditor agreements:

- (a) The Prepetition ABL Agent, the Prepetition Senior Priority Notes Trustee and the Prepetition Junior Priority Notes Trustee are party to that certain Intercreditor Agreement dated as of August 2, 2019 (as amended, amended and restated, supplemented or otherwise modified from time to time prior to the Petition Date, the “**Prepetition ABL/Notes Intercreditor Agreement**”), which sets forth the relative payment and lien priorities and other rights and remedies of the Prepetition ABL Secured Parties, on the one hand, and the Prepetition Senior Priority Notes Secured Parties and the Prepetition Junior Priority Notes Secured Parties, on the other hand, with respect to “Common Collateral”²⁰.
- (b) The Prepetition Senior Priority Notes Trustee and the Prepetition Junior Priority Notes Trustee are party to that certain Intercreditor Agreement dated as of February 2, 2021 (as amended, amended and restated, supplemented or otherwise modified from time to time prior to the Petition Date, the “**Prepetition Notes Intercreditor**”).

²⁰ “Common Collateral” is defined in the Prepetition ABL/Notes Intercreditor Agreement to mean collateral that is both Prepetition ABL Collateral and Prepetition Junior Priority Notes Collateral.

Agreement”, and together with the Prepetition ABL/Notes Intercreditor Agreement, the “***Prepetition Intercreditor Agreements***”), which sets forth the relative payment and lien priorities and other rights and remedies of the Prepetition Senior Priority Notes Secured Parties and the Prepetition Junior Priority Notes Secured Parties with respect to “Common Collateral”²¹.

25. The Intercreditor Agreements govern, among other things, the priority of distribution of collateral and proceeds thereof among the Prepetition Secured Parties.

26. In addition, the Prepetition Intercreditor Agreements contain certain bankruptcy-specific provisions regarding limitations on the Prepetition Senior Priority Noteholders and Prepetition Junior Priority Noteholders ability to challenge the use of cash collateral (the “***Cash Collateral***”) and DIP financing. If the Prepetition ABL Agent or the other Prepetition ABL Secured Parties desire to consent to or not object to the use of ABL Facility Priority Collateral constituting cash collateral or provide or permit a third-party to provide DIP financing secured by all or a portion of the ABL Facility Priority Collateral, the Prepetition Senior Priority Noteholders and Prepetition Junior Priority Noteholders agree to consent and not object to the use of such cash collateral or to the DIP financing. *See* Prepetition ABL/Notes Intercreditor Agreement, §5.2(a). Further, the Prepetition Notes Intercreditor Agreement provides that each Prepetition Junior Priority Notes Secured Party agrees that it will not compete with, will raise no objection to, and will not support any objection to, and will not otherwise challenge or contest the use of Cash Collateral or DIP financing and will subordinate its liens in common collateral and any other collateral to such DIP financing that is agreed to or provided by Prepetition Senior Priority Noteholders. *See* Prepetition Notes Intercreditor Agreement, § 6.1(a).

²¹ “Common Collateral” is defined in the Prepetition Notes Intercreditor Agreement to mean collateral that is both Prepetition Senior Priority Notes Collateral and Prepetition Junior Priority Notes Collateral.

DEBTORS' NEED FOR CASH COLLATERAL AND DIP FINANCING

27. As detailed in the Del Genio Declaration, the Debtors require the continued use of Cash Collateral in order to maintain operations. *See* Del Genio Declaration at ¶ 6. Not only is continued use of Cash Collateral important for the Debtors' business, but so, too, is immediate access to the funds available from the DIP Facilities. *Id.* at ¶ 7. The Debtors' businesses are cash intensive, with significant daily costs required to satisfy obligations to vendors and employees. *Id.* As of the Petition Date, the Debtors have no unrestricted cash balance, and therefore are unable to operate their enterprise and continue paying their debts as they come due, notwithstanding the additional costs of these Chapter 11 Cases. *Id.* ¶ 6. Given the business's substantial cash needs, the Debtors' management team operates the Debtors with a minimum liquidity threshold of \$50 million. *Id.* ¶ 11. That figure, established months prior to the commencement of these cases, already reflects a reduction from the Debtors' historical minimum liquidity threshold of between \$75 and \$100 million, as part of an effort to extend the Debtors' prepetition runway to negotiate a transaction with their economic stakeholders. *Id.* As the Initial Budget shows, the Debtors now expect to fall below their \$50 million minimum liquidity threshold in the first week of these chapter 11 cases absent the Term DIP Loan Facility, even if they obtain access to Cash Collateral. *Id.* Accordingly, the proceeds of the DIP Facilities and the use of Cash Collateral are essential to the Debtors' reorganization efforts, and are in the best interest of the Debtors, their estates, their creditors and all parties in interest.

28. In addition, the Debtors require immediate access to the funding provided by the DIP Facilities on an interim basis. *Id.* at 5. The events leading up to the commencement of these Chapter 11 Cases have underscored the Debtors' need to access the proceeds of the DIP Facilities and Cash Collateral on an interim basis. *Id.* at 6. Absent immediate access to the funds available

from the DIP Facilities and the Debtors' continued use of Cash Collateral, as well as the cooperation of key business partners at this critical early stage, the Debtors could face a value-destructive interruption to their businesses and, simultaneously, eliminate their best chance for negotiating and consummating a comprehensive and orderly restructuring, to the detriment of all stakeholders. *Id.* at 7. Access to greater liquidity pursuant to the DIP Facilities will send a positive and credible message to the Debtors' workforce and commercial counterparties that the Debtors will have sufficient liquidity to maintain ordinary course operations and meet their financial commitments throughout the course of the Chapter 11 Cases. The current high commodity prices and the uncertainty in the commodity markets also make the need for greater liquidity paramount. *Id.* at 11. As such, and due to their current limited liquidity, the Debtors require immediate access to the DIP Facilities and use of Cash Collateral to operate their businesses, preserve value, and avoid irreparable harm pending the Final Hearing. *Id.*

PREPETITION EFFORTS TO SECURE DIP FINANCING

29. Prior to the Petition Date, the Debtors, through Moelis, launched a solicitation process to obtain postpetition financing and commenced negotiations with potential lenders. Moelis contacted (i) six traditional banks and twenty-three alternative lenders as prospective financing sources for both priming and non-priming term loan postpetition financing and (ii) ten traditional banks and five alternative lenders as prospective financing sources for a postpetition ABL facility, in addition to the Debtors' existing ABL lenders and known noteholders, all of which Moelis believed would be interested in providing the Debtors postpetition financing. *See* Jamal Declaration, at ¶ 14. The Debtors received proposals for (i) a priming term loan from one traditional bank and three alternative lenders and (ii) a priming asset-based revolving credit facility from three traditional banks and three alternative lenders. *Id.* at ¶ 16. Unfortunately, during the

Debtors' marketing process for postpetition financing, the traditional bank withdrew its proposal for the priming term loan and two alternative lenders and two traditional banks withdrew their proposals for the priming secured ABL facility during the diligence process. The marketing process ultimately yielded two actionable priming ABL facility proposals from Eclipse Business Capital, LLC ("**Eclipse**") and the Prepetition ABL Agent and two superior priming secured term loan facility proposals from the Ad Hoc Group and Bayside Capital, Inc. and Cerberus Capital Management, L.P. (the "**Bayside/Cerberus Proposal**").

30. DIP Facilities offered through the Ad Hoc Noteholder Group with respect to the Term DIP Loan Facility and Eclipse with respect to the ABL DIP Loan Facility are the best financing alternative available.

31. The terms of the DIP Facility are the product of extensive and good faith arms'-length negotiations and each party was represented by experienced counsel and financial advisors. *Id.* at ¶ 19. Over the course of multiple months, Moelis, along with the Debtors' other advisors, actively negotiated the terms and provisions of the DIP Facilities on behalf of the Debtors. *Id.* at ¶ 20.

32. Through these vigorous negotiations, the Debtors were able to secure DIP Facilities that represent a superior solution to the Debtors' financing needs because they represent a consensual path forward in these Chapter 11 Cases that maximizes value and provides much needed improvements to their balance sheet upon emergence. *Id.* at ¶ 35.

33. Based on extensive negotiations between the parties and the marketing efforts undertaken by the Debtors and Moelis, the DIP Facilities represent the Debtors' best available financing option. *Id.* at ¶ 36. The terms of the DIP Facilities are reasonable under the

circumstances and are generally consistent with market terms for debtor-in-possession financing. *Id.* at ¶ 33.

34. In the negotiations for the ABL DIP Loan Facility, the Debtors and its advisors were successful in lowering interest rates and reducing fees. Eclipse’s proposal was selected because it provided lower fees and interest, no covenants, and additional availability under the borrowing base in comparison to the Prepetition ABL Agent’s proposal. *Id.* at ¶ 21.

35. Although the Bayside/Cerberus Proposal was more economically attractive, such proposal posed significant execution risk as it requires the Debtors to seek approval of a DIP facility that would prime the Prepetition Junior Priority Notes Liens on a nonconsensual basis. *Id.* at ¶ 27.

BASIS FOR RELIEF

I. The Debtors Should Be Authorized to Obtain Postpetition Financing.

a. Entering into the DIP Loan Documents and Payment of Fees Thereunder is an Exercise of the Debtors’ Sound Business Judgment.

36. The Court should authorize the Debtors, in exercising their sound business judgment, to enter into the DIP Loan Documents, obtain postpetition DIP financing under the DIP Facilities, and continue using Cash Collateral. Courts grant considerable deference to a debtor’s business judgment in obtaining postpetition secured credit so long as the agreement to obtain such credit does not run afoul of the provisions and underlying policy considerations of the Bankruptcy Code. *See, e.g., In re L.A. Dodgers LLC*, 457 B.R. 308, 313 (Bankr. D. Del. 2011) (“[C]ourts will almost always defer to the business judgment of a debtor in the selection of the lender.”); *In re Trans World Airlines, Inc.*, 163 B.R. 964, 974 (Bankr. D. Del. 1994) (approving postpetition loan and receivables facility because such facility “reflect[ed] sound and prudent business judgment”); *In re Ames Dep’t Stores, Inc.*, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) (“[C]ases consistently

reflect that the court's discretion under section 364 is to be utilized on grounds that permit reasonable business judgment to be exercised so long as the financing agreement does not contain terms that leverage the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to benefit a party-in-interest.”).

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

38. Courts generally will not second-guess a debtor's business decisions when those decisions involve a minimum level of care in arriving at the decision on an informed basis, in good faith, and in the honest belief that the action was taken in the best interest of the debtor. *See In re Los Angeles Dodgers LLC*, 457 B.R. at 313. To determine whether the business judgment test is met, “the court ‘is required to examine whether a reasonable business person would make a similar decision under similar circumstances.’” *In re Dura Auto. Sys., Inc.*, No. 06-11202 (KJC), 2007 WL 7728109, at *97 (Bankr. D. Del. Aug. 15, 2007) (citation omitted). Further, in considering whether the terms of postpetition financings are fair and reasonable, courts consider the terms in light of the relative circumstances of both the debtor and the potential lender. *In re Farmland Indus., Inc.*, 294 B.R. 855, 886 (Bankr. W.D. Mo. 2003); *see also Unsecured Creditors' Comm. Mobil Oil Corp. v. First Nat'l Bank & Trust Co. (In re Ellingsen MacLean Oil Co.)*, 65 B.R. 358,

365 n.7 (W.D. Mich. 1986) (recognizing a debtor may have to enter into “hard bargains” to acquire funds for its reorganization).

39. The Debtors’ entry into the DIP Facilities represents a sound exercise of their business judgment. *See* Jamal Declaration, at ¶ 35. The Debtors require access to the Term DIP Loan Facility because (i) they fall below minimum liquidity this week and (ii) it is important to the Debtors’ ability to reassure their suppliers, customers, vendors, employees, and other stakeholders that the Debtors have adequate liquidity to fund these chapter 11 cases and have the support, backed by new money, of their largest financial constituency, the Ad Hoc Group. *See* Del Genio Declaration, at ¶ 9. The DIP Facilities are also critical for the Debtors to execute and complete their restructuring efforts successfully. *See* Jamal Declaration, at ¶ 29. The terms of the DIP Facilities were thoroughly negotiated in good faith and at arm’s length, resulting in proposed postpetition financing on terms that are more favorable overall to the Debtors than the terms contained in the proposals received from the other prospective financing sources. *Id.* at 20. Accordingly, the Court should authorize the Debtors’ entry into the DIP Facilities as a reasonable exercise of the Debtors’ business judgment.

B. The Roll Up of the Prepetition Senior Priority Notes Is Appropriate.

40. The proposed roll-up of the Prepetition Senior Priority Notes with the proceeds of the Term DIP Loan Facility is also an exercise of the Debtors’ sound business judgment. *Id.* at 30. Upon entry of the Interim Order, those certain Senior Priority Notes issued on March 2, 2022 and March 11, 2022, collectively, in an aggregate principal amount equal to approximately \$53 million (the “*Prepetition Senior Priority 2022 Bridge Notes*”) will be rolled up into the Term DIP Loans and the balance of the Prepetition Senior Priority Notes will be rolled up into the Term DIP Loans upon entry of the Final Order. *Id.* at 29. Section 363(b) of the Bankruptcy Code permits a debtor to use, sell, or lease property, other than in the ordinary course of business, with court approval.

Courts in this jurisdiction have approved similar DIP features, including on the first day of the case. *See, e.g., In re Remington Outdoor Co., Inc.*, No. 18-10684 (BLS) (Bankr. D. Del. Mar. 28, 2018) (authorizing approximately \$338 million DIP and a roll-up of approximately \$150 million pursuant to interim order); *In re Bon-Ton Stores, Inc.*, No. 18-10248 (MFW) (Bankr. D. Del. Feb. 6, 2018) (authorizing full roll-up of all \$489 million outstanding prepetition revolving obligations pursuant to interim order); *In re Real Indus. Inc.*, No. 17-12464 (KJC) (Bankr. D. Del. Nov. 20, 2017) (authorizing approximately \$365 million DIP that included a creeping roll-up pursuant to interim order and a full roll-up pursuant to final order of approximately \$266 million prepetition debt); *In re Radioshack Corp.*, No. 15-10197 (BLS) (Bankr. D. Del. Feb. 5, 2015) (authorizing approximately \$285 million DIP and a roll-up of approximately \$250 million prepetition debt, including a full roll-up of \$215 million, pursuant to interim order); *In re MACH Gen, LLC*, No. 14-10461 (MFW) (Bankr. D. Del. Mar. 5, 2014) (authorizing approximately \$200 million DIP that included a full roll-up of approximately \$144 million prepetition debt pursuant to interim order). The business judgment rule shields a debtor's management from judicial second-guessing. *In re Johns-Manville Corp.*, 60 B.R. 612, 615–16 (Bankr. S.D.N.Y. 1986) (“[T]he [Bankruptcy] Code favors the continued operation of a business by a debtor and a presumption of reasonableness attaches to a debtor's management decisions.”).

41. Where, as here, the Prepetition Senior Priority Notes are fully perfected and over secured, repaying creditors that stand to receive payment in full with postpetition loans will not harm the Debtors' estates and other creditors. *See* Jamal Declaration, ¶ 30. Further, the roll up

of the Prepetition Senior Priority Notes is a material component of the consideration required by the DIP Lenders as part of their commitment to provide postpetition financing. *Id.*

42. Finally, the Term DIP Loan Facility would not be available absent the roll up. *See Id.* The Term DIP Loan Facility will enable the Debtors to strengthen their cash position in the aggregate principal amount of \$43 million to fund working capital, general corporate purposes, the expenses of administering the chapter 11 cases. *See* Del Genio Declaration at ¶ 13. Given these circumstances, the roll up is reasonable, appropriate, and a sound exercise of the Debtors' business judgment. Jamal Declaration, at ¶ 30.

C. The Debtors Should Be Authorized to Grant Liens and Superpriority Claims to the DIP Lenders.

43. The Debtors propose to obtain financing under the DIP Facilities, in part, by providing superpriority claims and liens pursuant to section 364(c) and (d) of the Bankruptcy Code, significantly as set forth in paragraph 2 hereof.

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

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

11 U.S.C. § 364(c); *see also In re Crouse Group, Inc.*, 71 B.R. 544, 549 (Bankr. E.D. Pa. 1987) (secured credit under section 364(c) of the Bankruptcy Code is authorized, after notice and hearing, upon showing that unsecured credit cannot be obtained).

45. Courts have articulated a three-part test to determine whether a debtor is entitled to financing pursuant to section 364(c) of the Bankruptcy Code. Specifically, courts look to whether:

- a. the debtor is unable to obtain unsecured credit under section 364(b) of the Bankruptcy Code, *i.e.*, by allowing a lender only an administrative claim;
- b. the credit transaction is necessary to preserve the assets of the estate; and
- c. the terms of the transaction are fair, reasonable, and adequate, given the circumstances of the debtor-borrower and proposed lenders.

See In re Ames Dep't Stores, 115 B.R. 34, 37–40 (Bankr. S.D.N.Y. 1990); *see also In re St. Mary Hosp.*, 86 B.R. 393, 401–02 (Bankr. E.D. Pa. 1988); *Crouse Group*, 71 B.R. at 549.

46. To satisfy the requirements of section 364(c) of the Bankruptcy Code, courts will consider whether (a) the debtor made reasonable efforts, but failed, to obtain unsecured credit under sections 364(a) and 364(b) of the Bankruptcy Code, (b) the credit transaction benefits the debtor as necessary to preserve estate assets, and (c) the terms of the credit transaction are fair, reasonable, and adequate, given the circumstances of the debtor and proposed lender. *See In re Republic Airways Holdings Inc.*, 2016 WL 2616717, at *11; *In re Los Angeles Dodgers LLC*, 457 B.R. at 312–13; *In re Ames Dep't Stores, Inc.*, 115 B.R. at 40. However, section 364 “imposes no duty to seek credit from every possible lender before concluding that such credit is unavailable.” *Bray v. Shenandoah Fed. Savs. & Loan Ass'n (In re Snowshoe Co.)*, 789 F.2d 1085, 1088 (4th Cir. 1986).

47. Further, section 364(d) of the Bankruptcy Code provides that a debtor may obtain credit secured by a senior or equal lien on property of the estate already subject to a lien where the debtor is “unable to obtain such credit otherwise” and “there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted.” 11 U.S.C. § 364(d)(1).

48. As such, the Debtors may incur “priming” liens under the DIP Facilities if they are unable to obtain unsecured or junior secured credit and either (a) the Prepetition Secured Parties have consented or (b) the Prepetition Secured Parties’ interests in collateral are adequately protected. Here, no party that the Debtors’ advisors contacted as part of the above-described process was interested in providing, or willing to provide, postpetition financing to the Debtors on an unsecured basis. *See* Jamal Declaration, at ¶ 33. Indeed, no constituency was willing to provide postpetition financing on anything other than priming basis with respect to all of the Debtors’ assets. *Id.* at ¶ 16. Accordingly, the DIP Facilities’ structures are appropriate in light of the Debtors’ financing needs and the lack of viable non-priming debtor-in-possession financing alternatives. *See Anchor Savs. Bank FSB v. Sky Valley, Inc.*, 99 B.R. 117, 122 (N.D. Ga. 1989) (“[B]y tacitly consenting to the superpriority lien, those [undersecured] creditors relieved the debtor of having to demonstrate that they were adequately protected.”); *see also In re El Paso Refinery, L P*, 171 F.3d 249, 252 (5th Cir. 1999) (stating that priming lien given to a postpetition lender by “agreement was given a priority over the preexisting first lien of a group of Term Lenders”); *In re Outboard Marine Corp.*, 2002 WL 571661, at *1 (Bankr. N.D. Ill. 2002) (“[T]he DIP Lenders committed to provide certain financing to the Debtors . . . pursuant to which the Prepetition Lenders consented to the imposition of priming liens upon the Prepetition Collateral and in favor of the DIP Lenders[.]”), *aff’d*, *Bank of Am., N.A. v. Moglia*, 330 F.3d 942 (7th Cir. 2003).

49. The Prepetition Secured Parties have consented or deemed to have consented to the priming liens securing the DIP Facilities. Given the Ad Hoc Group’s amount of the Prepetition Junior Priority Notes, it controls the directions given to the Prepetition Junior Priority Notes Trustee related to the priming of Prepetition Junior Priority Notes Liens. Ad Hoc Group has

directed both the Prepetition Senior Priority Notes Trustee and the Prepetition Junior Priority Notes Trustee to consent to the priming liens securing the Term DIP Loan Facility and that the trustees under such Indentures have so consented.²² *See* Jamal Declaration, at ¶ 25. Moreover, pursuant to the DIP Orders, the Prepetition Secured Parties will receive adequate protection (in the case of the Prepetition ABL Secured Parties, until the Prepetition ABL Secured Obligations are refinanced in full under an ABL DIP Facility and in the case of the Prepetition Senior Priority Notes Secured Parties, until the Prepetition Senior Priority Notes Secured Obligations are rolled up in full under the Term DIP Loan Facility) in the form of (i) replacement liens on any security interests in all DIP Collateral, (ii) superpriority administrative expense claims as contemplated by section 507(b) of the Bankruptcy Code against each of the Debtors (iii) accrued but unpaid interest at the non-default rate as of the Petition Date and thereafter all interest due under the Prepetition Loan Documents²³, (iv) the payment of all reasonable and documented fees and out-of-pocket expenses of the Prepetition ABL Agent, Prepetition Senior Priority Notes Trustee and Prepetition Junior Priority Notes Trustee, and (v) financial reporting. *See* Interim Order at ¶ 11. Accordingly, the relief requested pursuant to section 364(d)(1) of the Bankruptcy Code is both warranted and appropriate under the circumstances.

²² According to the Prepetition Senior Priority Notes Indenture and the Prepetition Junior Priority Notes Indenture, holders of a majority in aggregate principal amount of the then outstanding notes may direct the Prepetition Senior Priority Notes Trustee and the Prepetition Junior Priority Notes Trustee. *See* Prepetition Senior Priority Notes Indenture § 6.05; Prepetition Junior Priority Notes Indenture § 6.05.

²³ The Prepetition ABL Agent, on behalf of itself and the Prepetition ABL Lenders, shall receive all interest due (at the non-default rate) under the Prepetition ABL Loan Agreement that accrued but was unpaid as of the Petition Date, payable in cash, and thereafter, all interest due (at the non-default rate) under the Prepetition ABL Loan Agreement, as and when due thereunder. The Prepetition Senior Priority Notes Trustee, on behalf of the Prepetition Senior Priority Noteholders, and the Prepetition Junior Priority Notes Trustee, on behalf of the Prepetition Junior Priority Noteholders, shall receive all interest due (at the non-default rate) under the applicable Indentures that accrued but was unpaid as of the Petition Date and from and after the Petition Date on a quarterly basis, payable in kind.

D. No Comparable Alternative to the DIP Facilities Is Reasonably Available.

50. A debtor need only demonstrate “by a good faith effort that credit was not available without” the protections afforded to potential lenders by sections 364(c) of the Bankruptcy Code. *In re Snowshoe Co., Inc.*, 789 F.2d 1085, 1088 (4th Cir. 1986); *see also In re Plabell Rubber Prods., Inc.*, 137 B.R. 897, 900 (Bankr. N.D. Ohio 1992). Moreover, in circumstances where only a few lenders likely can or will extend the necessary credit to a debtor, “it would be unrealistic and unnecessary to require [the debtor] to conduct such an exhaustive search for financing.” *Sky Valley, Inc.*, 100 B.R. at 113; *see also In re Snowshoe Co.*, 789 F.2d 1085, 1088 (4th Cir. 1986) (demonstrating that credit was unavailable absent the senior lien by establishment of unsuccessful contact with other financial institutions in the geographic area); *In re Stanley Hotel, Inc.*, 15 B.R. 660, 663 (D. Colo. 1981) (bankruptcy court’s finding that two national banks refused to grant unsecured loans was sufficient to support conclusion that section 364 requirement was met); *In re Ames Dep’t Stores*, 115 B.R. at 37–39 (debtor must show that it made reasonable efforts to seek other sources of financing under section 364(a) and (b)).

51. Here, the Debtors have made a good faith effort to seek out optimal postpetition financing arrangements to meet their short-term liquidity needs as well as their longer-term restructuring objectives. *See* Jamal Declaration, at ¶ 34. The DIP Facilities constitute the best available solution to the Debtors’ financing needs because they provide an actionable path forward in (and out of) these Chapter 11 Cases that maximizes value and provides much-needed improvements to their balance sheet upon emergence. *Id.* Accordingly, the DIP Facilities represent the best option available to address the Debtors’ immediate liquidity needs, and the Debtors respectfully submit that the terms and conditions of the DIP Facilities are reasonable and appropriate under the circumstances.

II. The Use of Cash Collateral is Warranted and Should Be Approved.

52. For the reasons set forth herein, the Debtors require use of Cash Collateral as well as the DIP Facilities for the continued operation of the Debtors' businesses and smooth entry into these Chapter 11 Cases. Section 363(c) of the Bankruptcy Code governs a debtor's use of a secured creditor's cash collateral. Section 363(c) provides, in pertinent part, that:

The trustee may not use, sell, or lease cash collateral . . . unless—

- (A) each entity that has an interest in such cash collateral consents; or
- (B) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of this section [363].

11 U.S.C. § 363(c)(2). Furthermore, section 363(e) provides that “on request of an entity that has an interest in property . . . proposed to be used, sold or leased, by the trustee, the court, with or without a hearing, shall prohibit or condition such use, sale, or lease as is necessary to provide adequate protection of such interest.” 11 U.S.C. § 363(e).

53. The Debtors have satisfied the requirements of sections 363(c)(2) and (e) and should be authorized to use Cash Collateral. As noted above, the Debtors intend to provide the appropriate parties with adequate protection for the use of Cash Collateral. Additionally, the Prepetition Secured Parties consent to the Debtors' use of Cash Collateral, subject to the terms and limitations set forth in the DIP Orders. Further, the Prepetition Secured Parties will inherently benefit from the Debtors' continued use of the Cash Collateral, which will prevent avoidable diminution in value of the Cash Collateral and enhance the likelihood of preserving the Debtors' overall value. *See, e.g., 495 Cent. Park Ave. Corp.*, 136 B.R. 626, 631 (Bankr. S.D.N.Y. 1992) (noting that, in determining whether protection is “adequate,” courts consider “whether the value of the debtor's property will increase as a result of the” use of collateral or provision of financing); *In re Sky Valley, Inc.*, 100 B.R. 107, 114 (Bankr. N.D. Ga. 1988) (“an increase in the value of the

collateral . . . resulting from superpriority financing could result in adequate protection.” (citation omitted)), *aff’d sub nom. Anchor Sav. Bank FSB v. Sky Valley, Inc.*, 99 B.R. 117 (N.D. Ga. 1989). Accordingly, the Court should grant the Debtors the authority to use Cash Collateral under section 363(c) of the Bankruptcy Code.

III. The Debtors Should Be Authorized to Pay the Fees Required by the DIP Loan Documents.

54. Under the DIP Loan Documents, the Debtors have agreed, subject to Court approval, to pay certain fees, expenses, and other payments to the DIP Agents and the DIP Lenders. The Debtors have also agreed to pay the fees and expenses of counsel and other professionals retained by the DIP Agents and the DIP Lenders as provided for in the DIP Loan Documents. The fees payable to the ABL DIP Agents are being filed under seal.

55. The Debtors believe that the interest and fees to be paid under the DIP Facilities are consistent with the market and are reasonable and appropriate, particularly in light of the circumstances of these Chapter 11 Cases and the robust marketing process undertaken, and represent the most favorable terms available to the Debtors. *See* Jamal Declaration, at ¶ 20. Market comparable interest rates and fees are attached to the Jamal Declaration as **Appendix I**. The Debtors considered the fees when determining in their sound business judgment that the DIP Facilities constituted the best, and in the case of the Term DIP Loan Facility the only, actionable terms on which the Debtors could obtain the postpetition financing necessary to continue their operations, prosecute their cases, and benefit the Debtors’ estates. *Id.* at ¶ 32. Accordingly, the Court should authorize the Debtors to pay the interest, payments, fees, costs and expenses provided under the DIP Loan Documents in connection with the DIP Facilities.

IV. The DIP Agents and the DIP Lenders Should Be Afforded Good-Faith Protections under Section 364(e).

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

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

57. The DIP Facilities (a) are the product of arm's-length, good-faith negotiation processes; (b) are the best available postpetition financing options for the Debtors in light of the facts and circumstances of the Debtors and these chapter 11 cases; and (c) contain reasonable and appropriate financial terms and conditions under the circumstances.. *See* Jamal Declaration, at ¶ 2. The terms and conditions of the DIP Facilities are reasonable and appropriate under the circumstances, *id.* at ¶ 32, and the proceeds of the DIP Facilities and Cash Collateral will be used only for purposes that are permissible under the Bankruptcy Code. Further, the Debtors ran a competitive process before selecting the DIP Lenders' proposals as the winning bidders. *Id.* at ¶ 14. Accordingly, the Court should find that the obligations arising under the DIP Facilities and other financial accommodations made to the Debtors have been extended by the DIP Agents and the DIP Lenders and the Prepetition Secured Parties in "good faith" within the meaning of section 364(e) of the Bankruptcy Code and therefore the DIP Agents and the DIP Lenders and the Prepetition Secured Parties are entitled to all of the protections afforded thereby.

V. The Automatic Stay Should be Modified on a Limited Basis.

58. The relief requested herein contemplates a modification of the automatic stay (if applicable) to (a) permit the Debtors to grant the security interests, liens, and superpriority claims described above and to perform such acts as may be requested to assure the perfection and priority of such security interests and liens, and (b) permit the DIP Agents, DIP Lenders, and the Prepetition Secured Parties to exercise rights and remedies under certain circumstances. Stay modifications of this kind are ordinary and standard features of debtor-in-possession financing arrangements, and, in the Debtors' business judgment, are reasonable and fair under the circumstances of these Cases. *See, e.g., In re Blackhawk Mining LLC*, No. 19-11595 (LSS) (Bankr. D. Del. July 22, 2019) (modifying automatic stay as necessary to effectuate the terms of the order); *In re Z Gallerie, LLC*, No. 19-10488 (LSS) (Bankr. D. Del. Apr. 9, 2019) (same); *ATD Corporation*, No. 18-12221 (KJC) (Bankr. D. Del. Oct. 26, 2018) (same); *In re Charming Charlie, LLC*, No. 17-12906 (CSS) (Bankr. D. Del. Dec. 12, 2017) (same); *In re Magnum Hunter Res. Corp.*, No. 15-12533 (KG) (Bankr. D. Del. Dec. 15, 2015) (terminating automatic stay after event of default). The Debtors therefore submit that the modification of the automatic stay as set forth in the DIP Orders should be approved.

VI. Failure to Obtain Interim Access to the DIP Facilities and Cash Collateral Would Cause Immediate and Irreparable Harm.

59. Bankruptcy Rule 4001(b) provides that a final hearing on a motion to use cash collateral pursuant to section 363 of the Bankruptcy Code may not be commenced earlier than fourteen (14) days after the service of such motion. Upon request, however, the court is empowered to conduct an interim expedited hearing on the motion at which it may authorize a debtor to use cash collateral to the extent necessary to avoid immediate and irreparable harm to a debtor's estate. *See* Bankruptcy Rule 4001(b)(2). Section 363(c)(3) of the Bankruptcy Code authorizes the court to

conduct a preliminary hearing and to authorize the use of cash collateral “if there is a reasonable likelihood that the [debtor] will prevail at the final hearing under [section 363(e) of the Bankruptcy Code].” 11 U.S.C. § 363(c)(3).

60. The Debtors cannot continue to operate their businesses without the use of Cash Collateral. *See* Del Genio Declaration, at ¶ 6. Additionally, immediate access to the funds available from the DIP Facilities is important to the Debtors’ businesses. *Id.* at ¶ 7. The Debtors operate cash-intensive businesses with accounts payable and accounts receivables that can vary widely depending, at least in part, on commodity pricing. *Id.* As such, the Debtors require immediate access to postpetition financing and the use of Cash Collateral to operate their businesses, preserve value, and avoid irreparable harm pending the Final Hearing.

61. The Debtors, with the assistance of their advisors, developed the Initial Budget. *Id.* at ¶ 8. The Initial Budget contains line items for each category of cash flows anticipated to be received or disbursed during the time period for which the Budget is prepared. *Id.* The Budget includes all reasonable, necessary, and foreseeable expenses to be incurred in connection with the operation of their businesses for the period set forth in the Budget. The Initial Budget establishes that the Debtors will have adequate liquidity during this interim period if allowed to utilize the Cash Collateral and access the DIP Facilities. *Id.* at ¶ 9.

62. The Debtors are seeking limited relief to, among other things, satisfy payroll and contractual obligations, pay suppliers, meet overhead, and make any other payments that are essential for the continued management, operation, and preservation of the Debtors’ businesses. *Id.* at ¶ 8, 11. The ability to satisfy these expenses when due is essential to the Debtors’ continued operation of their businesses during the pendency of these Chapter 11 Cases. *Id.* at ¶ 11-13.

63. Failure to obtain access to the DIP Facilities and Cash Collateral will result in immediate and irreparable harm to the Debtors and their stakeholders and will diminish the value of the Debtors' estates to the detriment of their creditors. *Id.* at ¶ 13. Without the approval of the DIP Facilities and use of Cash Collateral, the Debtors will be unable to continue to operate in the ordinary course and preserve and maximize the value of their assets for the benefit of all parties in interest. *Id.* at ¶ 12.

64. Accordingly, pursuant to section 363(c)(3) of the Bankruptcy Code and Bankruptcy Rule 4001(b), the Debtors respectfully request that the Court conduct an expedited hearing on this Motion and enter the proposed Interim Order authorizing the Debtors to enter into the DIP Facilities and use Cash Collateral.

REQUEST FOR FINAL HEARING

65. Pursuant to Rules 4001(b)(2) and 4001(c)(2) of the Bankruptcy Rules, the Debtors request that the Court set a date for the Final Hearing that is as soon as practicable and fix the time and date prior to the Final Hearing for parties to file objections to this Motion.

WAIVER OF BANKRUPTCY RULES 4001 AND 6004

66. The Debtors request a waiver of the notice requirements under Bankruptcy Rule 6004(a) and any stay of the order granting the relief requested herein pursuant to Bankruptcy Rules 4001(a)(3) and 6004(h). As explained above and in the Del Genio Declaration, the relief requested herein is necessary to avoid immediate and irreparable harm to the Debtors. Accordingly, ample cause exists to justify the waiver of the notice requirements under Bankruptcy Rule 6004(a) and the 14-day stay imposed by Bankruptcy Rules 4001(a)(3) and 6004(h), to the extent such stay applies.

RESERVATION OF RIGHTS

67. Nothing contained herein is intended or shall be construed as (a) an admission as to the validity of any claim against the Debtors; (b) a waiver of the Debtors' or any appropriate party in interest's rights to dispute the amount of, basis for, or validity of any claim against the Debtors; (c) a waiver of any claims or causes of action which may exist against any creditor or interest holder; or (d) an approval, assumption, adoption, or rejection of any agreement, contract, lease, program, or policy between the Debtors and any third party under section 365 of the Bankruptcy Code. Likewise, if the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended to be and should not be construed as an admission to the validity of any claim or a waiver of the Debtors' rights to dispute such claim subsequently.

NOTICE

68. Notice of this Motion will be provided to (i) the Office of the United States Trustee for the District of Delaware; (ii) the holders of the 30 largest unsecured claims against the Debtors on a consolidated basis; (iii) counsel to the ABL DIP Agent, Goldberg Kohn Ltd., 55 East Monroe, Suite 3300, Chicago, Illinois 60603, Attn: Dimitri Karcazes (dimitri.karcazes@goldbergkohn.com) and Prisca Kim (prisca.kim@goldbergkohn.com) (iv) counsel to the Prepetition ABL Agent, Haynes & Boone, LLP, 1221 McKinney Street, Suite 4000, Houston, TX 77010 (Attn: Charles A. Beckham, Jr. and Tim Johnston); (v) counsel to the Term DIP Agents, Pryor Cashman LLP, 7 Times Square, New York, New York 10036 (Attn: Seth H. Lieberman, Esq., Patrick Sibley, Esq., and Conrad K. Chiu, Esq.); (vi) counsel to the Term DIP Lenders, Paul Hastings, LLP, 200 Park Avenue, New York, New York 10166 (Attn: Kristopher M. Hansen, Esq., Erez E. Gilad, Esq., and Jonathan D. Canfield, Esq.); (vii) counsel to Prepetition Senior Priority Notes Trustee and Prepetition Senior Priority Notes Trustee, Foley & Lardner LLP,

2021 McKinney Ave Suite 1600, Dallas, TX 75201, (Attn: Mark Radtke); (viii) the Internal Revenue Service; (ix) the United States Attorney's Officer for the District of Delaware; (x) the Securities and Exchange Commission; (xi) any other party entitled to notice pursuant to Bankruptcy Rule 2002; and (xii) any other party entitled to notice pursuant to Bankruptcy Local Rule 9013-1(m) (collectively, the "**Notice Parties**").

NO PRIOR REQUEST

69. No previous request for the relief sought herein has been made by the Debtors to this or any other court.

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WHEREFORE the Debtors respectfully request entry of the proposed DIP Orders granting the relief requested herein and such other and further relief as the Court may deem just and equitable.

Dated: June 1, 2022
Wilmington, Delaware

BAKER BOTTS L.L.P.

James R. Prince (*pro hac vice* admission pending)
Kevin Chiu (*pro hac vice* admission pending)
2001 Ross Avenue, Suite 900
Dallas, Texas 75201-2980
Telephone: (214) 953-6500
Facsimile: (214) 953-6503
Email: jim.prince@bakerbotts.com
kevin.chiu@bakerbotts.com

-and-

BAKER BOTTS L.L.P.

Scott R. Bowling (*pro hac vice* admission pending)
30 Rockefeller Plaza
New York, New York 10112
Telephone: (212) 408-2500
Facsimile: (212) 259-2501
Email: scott.bowling@bakerbotts.com

-and-

BAKER BOTTS L.L.P.

David R. Eastlake (*pro hac vice* admission pending)
Lauren N. Randle (*pro hac vice* admission pending)
910 Louisiana Street
Houston, Texas 77002
Telephone: (713) 229-1234
Facsimile: (713) 229-1522
Email: david.eastlake@bakerbotts.com
lauren.randle@bakerbotts.com

/s/ Robert J. Dehney

**MORRIS, NICHOLS, ARSHT & TUNNELL
LLP**

Robert J. Dehney (No. 3578)
Curtis S. Miller (No. 4583)
Daniel B. Butz (No. 4227)
Matthew O. Talmo (No. 6333)
Brian Loughnane (No. 6853)
1201 N. Market Street, 16th Floor
P.O. Box 1347
Wilmington, Delaware 19899-1347
Telephone: (302) 658-9200
Facsimile: (302) 658-3989
Email: rdehney@morrisnichols.com
cmiller@morrisnichols.com
dbutz@morrisnichols.com
mtalmo@morrisnichols.com
bloughnane@morrisnichols.com

*Proposed Attorneys for Debtors
and Debtors in Possession*