

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

In re:	)	
	)	Chapter 11
	)	
VERTEX ENERGY, INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 24-90507 (CML)
	)	
Debtors.	)	(Jointly Administered)
	)	

**NOTICE OF  
FILING OF PROPOSED  
FINAL ORDER (I) AUTHORIZING  
THE DEBTORS TO OBTAIN POSTPETITION  
FINANCING, (II) AUTHORIZING THE DEBTORS TO USE  
CASH COLLATERAL, (III) GRANTING LIENS AND PROVIDING  
CLAIMS WITH SUPERPRIORITY ADMINISTRATIVE EXPENSE  
STATUS, (IV) GRANTING ADEQUATE PROTECTION TO THE  
PRE-PETITION TERM LOAN SECURED PARTIES, (V) MODIFYING  
THE AUTOMATIC STAY, AND (VI) GRANTING RELATED RELIEF**

PLEASE TAKE NOTICE that, on September 25, 2024, the above-captioned debtors and debtors in possession (collectively, the “Debtors”), filed the *Debtors’ Emergency Motion Seeking Entry of Interim and Final Orders (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Authorizing the Debtors to Use Cash Collateral, (III) Granting Liens and Providing Claims with Superpriority Administrative Expense Status, (IV) Granting Adequate Protection to the Pre-Petition Term Loan Secured Parties, (V) Modifying the Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief* [Docket No. 20] (the “DIP Motion”),<sup>2</sup> with the United

<sup>1</sup> A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors’ claims and noticing agent at <https://www.veritaglobal.net/vertex>. The location of Debtor Vertex Energy, Inc.’s corporate headquarters and the Debtors’ service address in these chapter 11 cases is 1331 Gemini Street, Suite 250, Houston, Texas 77058.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings given to them in the DIP Motion.



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States Bankruptcy Court for the Southern District of Texas (the “Court”), which was approved on an interim basis [Docket No. 53] (the “Interim Order”).

**PLEASE TAKE FURTHER NOTICE** that the Debtors hereby file a proposed final order attached hereto as **Exhibit A** (the “Proposed Final Order”).

**PLEASE TAKE FURTHER NOTICE** that a redline of the Proposed Final Order marked against the Interim Order is attached hereto as **Exhibit B**.

**PLEASE TAKE FURTHER NOTICE** that copies of the DIP Motion, the Interim Order, the Proposed Final Order, and all other documents filed in these chapter 11 cases may be obtained by visiting the Court’s website at <https://ecf.txsb.uscourts.gov> in accordance with the procedures and fees set forth therein or on the website of the Debtors’ claims and noticing agent, Kurtzman Carson Consultants, LLC dba Verita Global, at <https://www.veritaglobal.net/vertex>.

*[Remainder of page intentionally left blank]*

Houston, Texas  
October 28, 2024

/s/ Jason G. Cohen

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**Certificate of Service**

I certify that on October 28, 2024, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Jason G. Cohen

Jason G. Cohen

**EXHIBIT A**

**Proposed Final Order**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

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In re:

VERTEX ENERGY, INC., *et al.*,<sup>1</sup>

Debtors.

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)  
) Chapter 11  
)  
) Case No. 24-90507 (CML)  
)  
) (Jointly Administered)  
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**FINAL ORDER (I) AUTHORIZING  
THE DEBTORS TO OBTAIN POSTPETITION  
FINANCING, (II) AUTHORIZING THE DEBTORS TO USE  
CASH COLLATERAL, (III) GRANTING LIENS AND PROVIDING  
CLAIMS WITH SUPERPRIORITY ADMINISTRATIVE EXPENSE  
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THE AUTOMATIC STAY, AND (VI) GRANTING RELATED RELIEF**

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Upon the emergency motion (the “Motion”)<sup>2</sup> of Vertex Refining Alabama LLC (“Vertex” or “Borrower”) and each of its affiliates that are debtors and debtors-in-possession (collectively, the “Debtors”) in the above-captioned chapter 11 cases (collectively, the “Chapter 11 Cases”) for entry of an interim order (the “Interim Order”) and a final order (this “Final Order”), pursuant to sections 105, 361, 362, 363(c), 363(e), 364(c), 364(d)(1), 364(e), 503, and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the “Bankruptcy Code”), Rules 2002, 4001, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rules 2002-1, 4001-1(b), 4002-1(i), and 9013-1 of the Local Rules of the United States

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<sup>1</sup> A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors’ claims and noticing agent at <https://www.veritaglobal.net/vertex>. The location of Debtor Vertex Energy, Inc.’s corporate headquarters and the Debtors’ service address in these chapter 11 cases is 1331 Gemini Street, Suite 250, Houston, Texas 77058.

<sup>2</sup> All defined terms shall have the meaning ascribed to them in the Motion, the DIP Loan Agreement (as defined below), the Intermediation Order, the Interim Order, or the Specified Defined Terms attached hereto as **Exhibit E**, unless otherwise defined herein.

Bankruptcy Court for the Southern District of Texas (the “Bankruptcy Local Rules”) and the Southern District of Texas Complex Chapter 11 Case Procedures (the “Complex Procedures”), seeking, among other things:

(1) authorization for the Borrower, to obtain priming, senior secured, superpriority, debtor-in-possession postpetition financing and for the remaining Debtors (each, a “Guarantor,” and collectively, the “Guarantors”) to unconditionally guarantee the Borrower’s obligations under such financing facility, which facility shall consist of (a) a new money term loan facility (the “New Money Facility,” the loans made thereunder, the “New Money Loans,” and such lenders that elect to participate in such New Money Facility, the “New Money Lenders”) in the aggregate maximum principal amount of up to \$80 million (the “Term Loan Commitment”), and (b) (i) subject to and effective upon entry of the Interim Order, each New Money Lender (or its designated Affiliate) holding 2024-1 Term Loans (as defined in the Pre-Petition Loan Agreement) (“Interim Roll-Up Lender”) shall be deemed to have advanced additional loans in an aggregate principal amount of \$37,949,226.03 of term loans and such Interim Roll-Up Lender’s 2024-1 Term Loans (as defined in the Pre-Petition Loan Agreement) will be deemed to have been converted on a cashless, dollar-for-dollar basis into DIP Facility Loans (the “Interim Roll-Up”, and such DIP Facility Loans, the “Interim Roll-Up Loans”), (ii) subject to and effective upon entry of this Final Order, each New Money Lender (or its designated Affiliate) holding Initial Term Loans or Additional Term Loans (each as defined in the Pre-Petition Loan Agreement) (“Restricted Roll-Up Lender”) that were funded by such Restricted Roll-Up Lender on the Closing Date or the First Amendment Effective Date (each as defined in the Pre-Petition Loan Agreement), as applicable, shall be deemed to have advanced additional loans in an aggregate principal amount of \$135,202,821.00 of term loans and a portion of such Restricted Roll-Up Lender’s Initial Term

Loans or Additional Term Loans (each as defined in the Pre-Petition Loan Agreement) that were funded by such Restricted Roll-Up Lender on the Closing Date or the First Amendment Effective Date (each as defined in the Pre-Petition Loan Agreement), as applicable, will be deemed to have been converted on a cashless, dollar-for-dollar basis into DIP Facility Loans (the “Restricted Roll-Up”, and such DIP Facility Loans, the “Restricted Roll-Up Loans”) and (iii) each New Money Lender (or its designated Affiliate) holding 2023 Term Loans or JS Loans (each as defined in the Pre-Petition Loan Agreement) (the “Final Roll-Up Lender”) shall be deemed to have advanced additional loans in an aggregate principal amount of \$26,847,952.97 of term loans and such Final Roll-Up Lender’s 2023 Term Loans or JS Loans (each as defined in the Pre-Petition Loan Agreement) will be deemed to have been converted on a cashless, dollar-for-dollar basis into DIP Facility Loans (the “Final Roll-Up”, and together with the Interim Roll-Up and the Restricted Roll-Up, collectively, the “Roll-Up”, and such DIP Facility Loans, the “Final Roll-Up Loans”, and together with the Interim Roll-Up Loans and the Restricted Roll-Up Loans, the “Roll-Up Loans”, and each holder of such Roll-Up Loans, a “Roll-Up Lender”, and the Roll-Up, together with the New Money Facility, the “DIP Facility”, and the loans made thereunder (including the New Money Loans and all of the Roll-Up Loans), the “DIP Facility Loans”), with Cantor Fitzgerald Securities (“Cantor”), as administrative agent and collateral agent (in such capacity, the “DIP Agent”) for the DIP Lenders (as defined below), subject and pursuant to the terms of this Final Order, that certain Senior Secured Super-Priority Debtor-In-Possession Loan and Security Agreement, by and among the Borrower, the Guarantors, the DIP Agent, and the lenders party thereto (the “DIP Lenders”), which shall be in form and substance reasonably acceptable to the Borrower, and the New Money Lenders and substantially similar to the form attached as Exhibit A to the Interim Order (as the same may be amended, restated, amended and restated, supplemented or otherwise modified from



time to time pursuant to the terms thereof, the “DIP Loan Agreement”), and any related documents and instruments delivered pursuant to or in connection therewith (collectively, and together with the DIP Loan Agreement, the “DIP Loan Documents”);

(2) authorization for the Debtors to (i) execute and enter into the DIP Loan Documents, (ii) pay reasonable and documented fees and reimbursable expenses under the DIP Loan Documents, as and in the amounts described in the DIP Loan Documents, and (iii) perform such other and further acts as may be required in connection with the DIP Loan Documents;

(3) authorization for the Debtors to grant (i) valid, enforceable, nonavoidable and fully perfected security interests and liens (including liens pursuant to sections 364(c)(2) and 364(c)(3) of the Bankruptcy Code and consensual priming liens pursuant to section 364(d) of the Bankruptcy Code on all collateral securing the Pre-Petition Loan Obligations (as defined below)) to the DIP Agent, for the benefit of the DIP Agent and the DIP Lenders (collectively, the “DIP Secured Parties”) on all DIP Collateral (as defined below) to secure all obligations of the Debtors under and with respect to the DIP Facility, including the New Money Loans made under the New Money Facility and all interest accrued and accruing thereon and all other amounts owing by the respective Debtors in respect thereof (the “DIP New Money Obligations”) and the Interim Roll-Up Loans and, subject to this Final Order, the Restricted Roll-Up Loans and the Final Roll-Up Loans, by the respective Debtors in respect thereof (the “Roll-Up Obligations” and, together with the DIP New Money Obligations, the “DIP Obligations”), which liens shall be subject in all respects to Carve Out (as defined below) and to the priorities set forth in **Exhibit C** of this Final Order and (ii) subject only to the Carve Out and to the priorities set forth in **Exhibit D** of this Final Order, super-priority claims (including a super-priority administrative expense claim pursuant to section 364(c)(1) of the Bankruptcy Code) to the DIP Agent, for the benefit of the DIP Secured

Parties, having recourse to all prepetition and postpetition property of the Debtors' estates, now owned or hereafter acquired, excluding Intermediation Facility Priority Collateral and claims and causes of action under sections 502(d), 544, 545, 547, 548, and 550 of the Bankruptcy Code, or any other avoidance actions under the Bankruptcy Code (collectively, "Avoidance Actions"), but including, subject to and effective upon entry of this Final Order, all proceeds of, recoveries related to, and property received or recovered on account of the Avoidance Actions (the "Avoidance Actions Proceeds") as set forth in this Final Order;

(4) authorization for the Debtors' use of cash collateral, as such term is defined in section 363(a) of the Bankruptcy Code ("Cash Collateral"), solely in accordance with the Approved Budget (as defined below) then in effect (the initial version of which is attached as Exhibit B to the Interim Order), subject to the Permitted Variance (as defined in the DIP Loan Agreement) in each case pursuant to the terms and conditions set forth in this Final Order and the DIP Loan Agreement;

(5) authorization to provide adequate protection of the liens and security interests (i) granted by Vertex and the Guarantors (in such capacities, the "Pre-Petition Loan Obligors") for the benefit of the prepetition secured lenders holding loans (such lenders in such capacities, the "Pre-Petition Lenders") under that certain Loan and Security Agreement, dated April 1, 2022 (as amended, restated, supplemented or otherwise modified from time to time and in effect on the date hereof, the "Pre-Petition Loan Agreement," and the credit facility evidenced thereby, the "Pre-Petition Loan Facility"), among Vertex, as borrower, the Pre-Petition Lenders, as lenders, and Cantor as administrative agent and collateral agent (in such capacities, the "Pre-Petition Agent," and together with the Pre-Petition Lenders, the "Pre-Petition Term Loan Secured Parties"), and (ii) securing the obligations of the Pre-Petition Loan Obligors under the

Pre-Petition Loan Agreement and the Pre-Petition Loan Documents, including without limitation the Collateral Documents and the Guaranty (each as defined in the Pre-Petition Loan Agreement) (the “Pre-Petition Loan Documents”), each as more fully set forth in this Final Order;

(6) authorization for the Debtors to waive (a) the “equities of the case” exception under section 552(b) of the Bankruptcy Code and (b) except to the extent of the Carve Out, any right to surcharge any collateral pursuant to section 506(c) of the Bankruptcy Code;

(7) authorization for (i) Vertex to immediately obtain from the New Money Lenders under the DIP Facility approximately \$80 million of New Money Loans under the New Money Facility in accordance with the terms and funding conditions of the DIP Loan Agreement and this Final Order, (ii) the Debtors to use Cash Collateral solely in accordance with the Approved Budget, subject to the Permitted Variance (as defined in the DIP Loan Agreement), and pursuant to the terms herein; (iii) the Debtors to grant adequate protection in the relative priorities set forth herein; and (iv) the Debtors to grant the super-priority administrative claims as described herein;

(8) modification of the automatic stay imposed under section 362 of the Bankruptcy Code to the extent necessary to permit the Debtors, the DIP Agent, the DIP Lenders, and the Pre-Petition Term Loan Secured Parties to implement and effectuate the terms of this Final Order and the DIP Loan Documents; and

(9) waiver of any applicable stay (including under Bankruptcy Rule 6004) and provision for immediate effectiveness of this Final Order;

(10) and upon the First Day Declaration and the McGovern Declaration; and the initial hearing (the “Interim Hearing”) on the Motion having been held by the United States Bankruptcy Court for the Southern District of Texas, Houston Division (this “Court”) on September 25, 2024, and the final hearing on the Motion having been held by the Court on

October 29, 2024 (the “Final Hearing”); and this Court having found that, under the circumstances, due and sufficient notice of the Motion, the Interim Hearing, and the Final Hearing was provided by the Debtors in accordance with Bankruptcy Rules 2002, 4001(b), (c), and (d), and all applicable Bankruptcy Local Rules, and as set forth in Paragraph C of this Final Order; and this Court having considered all the pleadings, declarations, and other evidence filed with this Court; and this Court having heard and resolved or overruled all unresolved objections to the relief granted in this Final Order; and upon the record made by the Debtors at the Interim Hearing and the Final Hearing; and it appearing that the relief requested in the Motion is in the best interests of the Debtors and their estates; and after due deliberation and consideration, and good and sufficient cause appearing therefor:

**BASED ON THE FOREGOING AND THE RECORD ESTABLISHED AT THE INTERIM HEARING AND THE FINAL HEARING AND PURSUANT TO PAPERS FILED IN THESE CHAPTER 11 CASES, THE COURT MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:<sup>3</sup>**

A. **Petition Date.** On September 24, 2024 (the “Petition Date”), each of the Debtors filed a voluntary petition (collectively, the “Petitions”) for relief under chapter 11 of the Bankruptcy Code with this Court commencing the Chapter 11 Cases. The Debtors are continuing to operate their respective businesses and manage their respective properties as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. On October 8, 2024, an official committee of unsecured creditors (the “Committee”) was appointed in these Chapter 11 Cases. No trustee or examiner has been appointed in these Chapter 11 Cases.

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<sup>3</sup> Findings of fact shall be construed as conclusions of law, and conclusions of law be construed as findings of fact, pursuant to Bankruptcy Rule 7052.

B. **Jurisdiction; Venue.** This Court has subject matter jurisdiction to consider this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of the Chapter 11 Cases and the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

C. **Notice.** Notice of the Final Hearing and the relief requested in the Motion has been provided by the Debtors to: (i) the Office of the United States Trustee for the Southern District of Texas (the “U.S. Trustee”), (ii) the holders of the 30 largest unsecured claims against the Debtors (on a consolidated basis), (iii) Sidley Austin LLP (“Sidley”), as counsel to the DIP Lenders and the Pre-Petition Lenders, (iv) Cantor, as DIP Agent and Pre-Petition Agent, (v) Shipman & Goodwin LLP, as counsel to the DIP Agent and Pre-Petition Agent, (vi) the Hedge Provider, (vii) the Intermediator, (viii) Reed Smith LLP, as counsel to the Intermediator and the Hedge Provider, (ix) Latham & Watkins LLP, as counsel to JS Lender (as defined in the DIP Loan Agreement and Pre-Petition Loan Agreement), (x) the United States Attorney for the Southern District of Texas, (xi) the Internal Revenue Service, (xii) the United States Securities and Exchange Commission, (xiii) the state attorneys general for states in which the Debtors conduct business, (xiv) UCC lienholders, and (xv) any party that has requested notice pursuant to Bankruptcy Rule 2002. Under the circumstances, such notice of the Motion, the relief requested therein and the Final Hearing complies with Bankruptcy Rule 4001(b), (c), and (d) and the Bankruptcy Local Rules, and no other or further notice of the relief sought at the Final Hearing shall be required.

D. **Debtors’ Stipulations With Respect to the Interim DIP Obligations.** Pursuant to the Interim Order, the Court authorized, among other things, (i) the Debtors to borrow approximately \$40 million of New Money Loans under the New Money Facility, (ii) the Debtors to convert to DIP Obligations under the DIP Loan Documents an aggregate principal amount of

\$37,949,226.03 of term loans and such Interim Roll-Up Lender's 2024-1 Term Loans, (iii) the DIP Guarantors to unconditionally guaranty such obligations jointly and severally, and (iv) the granting of the DIP Super-Priority Claims and the DIP Liens on DIP Collateral on account of such obligations authorized pursuant to the Interim Order. Pursuant to the Interim Order, the Court authorized and empowered the Debtors to execute and deliver the DIP Loan Documents and incur and perform all of the DIP Obligations in accordance with, and subject to, the terms of the Interim Order and the DIP Loan Documents. On September 25, 2024, the DIP Loan Agreement was executed, and the Debtors were authorized to borrow on the terms and conditions set forth in the DIP Loan Documents and the Interim Order.

E. **Debtors' Stipulations With Respect to Pre-Petition Loan Obligations.**

Subject to the limitations described in Paragraph 18 of this Final Order, the Debtors hereby admit, acknowledge, agree and stipulate that:

(i) *Pre-Petition Loan Facility.* As of the Petition Date, the Pre-Petition Loan Obligors were truly and justly indebted to the Pre-Petition Term Loan Secured Parties, without defense, challenge, objection, claim, counterclaim or offset of any kind, pursuant to the Pre-Petition Loan Documents, in the aggregate principal amount of \$271,933,746.66 in respect of the loans made under the Pre-Petition Loan Facility (the "Pre-Petition Loans"), *plus* accrued and unpaid interest with respect thereto, accrued, due and payable fees and premiums, and any additional fees, costs and expenses (including any fees and expenses of attorneys, financial advisors, and other professionals that are chargeable or reimbursable under the Pre-Petition Loan Documents) now or hereafter due under the Pre-Petition Loan Agreement and the other Pre-Petition Loan Documents (collectively, together with all other obligations of the Pre-Petition Loan Obligors arising

under the Pre-Petition Loan Documents (including, without limitation, the Secured Obligations (as defined in the Pre-Petition Loan Agreement)), the “Pre-Petition Loan Obligations”);

(ii) pursuant to the Pre-Petition Loan Agreement, mortgages, financing statements, collateral pledge agreements, deposit account control agreements, blocked account control agreements, securities account control agreements, and other collateral documents and agreements (as amended, restated, supplemented or otherwise modified from time to time and in effect on the date hereof, collectively, the “Pre-Petition Collateral Documents”) and the other Pre-Petition Loan Documents, the Pre-Petition Loan Obligors granted to and/or for the benefit of the Pre-Petition Term Loan Secured Parties first priority (subject to the Permitted Priority Liens and, solely, with respect to the Intermediation Facility Priority Collateral (other than Business Interruption Insurance Proceeds), the Intermediation Facility Liens, valid, perfected and enforceable security interests and liens (the “Pre-Petition Liens”) in and on substantially all of the property listed on Exhibit A to the Pre-Petition Loan Agreement (the “Pre-Petition Collateral”);

(iii) (a) the Pre-Petition Loan Obligations constitute legal, valid, binding and non-avoidable Secured Obligations (as defined in the Pre-Petition Loan Agreement) of the Pre-Petition Loan Obligors; (b) no offsets, defenses, objections or counterclaims to the Pre-Petition Loan Obligations exist; (c) no portion of the Pre-Petition Loan Obligations is subject to avoidance, disallowance, reduction, recharacterization, subordination, or other challenge of any nature pursuant to the Bankruptcy Code or applicable non-bankruptcy law; (d) the Pre-Petition Loan Documents are valid and enforceable by the Pre-Petition Agent for the benefit of the Pre-Petition Term Loan Secured Parties against each of the

Debtors; (e) the liens and security interests of the Pre-Petition Term Loan Secured Parties constitute valid, binding, enforceable and perfected security interests in and continuing liens on and to the Pre-Petition Collateral, having the priority set forth in the Pre-Petition Loan Documents and subject and subordinate only to (after giving effect to any applicable intercreditor or subordination agreement) (x) Permitted Priority Liens<sup>4</sup> and (y) solely with respect to the Intermediation Facility Priority Collateral, the Intermediation Facility Liens, which liens are not subject to avoidance, recharacterization, subordination (whether equitable, contractual, or otherwise), recovery, attack, disgorgement, effect, rejection, reduction, disallowance, impairment, counterclaim, offset, crossclaim, defense or other claim under the Bankruptcy Code or non-bankruptcy law, except as agreed to in writing by the Pre-Petition Agent; (f) the Pre-Petition Loan Obligations constitute allowed secured claims against the applicable Debtors' estates; and (g) no other claims, challenges, offsets, defenses, objections, or causes of action of any nature held by the Debtors exists against any of the Pre-Petition Term Loan Secured Parties, or any of their respective current or former affiliates, agents, subsidiaries, partners, controlling persons, attorneys, advisors, professionals, officers, directors and employees (collectively and in such capacities, "Representatives"), whether arising under applicable state or federal law (including, without limitation, any recharacterization, subordination, avoidance or other claims or equitable relief arising under or pursuant to sections 105, 502(d), 510 or 542 through 553 or 724(a) of the Bankruptcy Code), or whether arising under or in connection with any of the Pre-Petition Loan Documents (or the transactions contemplated thereunder), the Pre-

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<sup>4</sup> Nothing shall prejudice the rights of any party-in-interest including, but not limited to, the Debtors and the Pre-Petition Term Loan Secured Parties to challenge the validity, priority, enforceability, seniority, avoidability, perfection or extent of any such Permitted Priority Liens and/or similar security interests.



Petition Loan Obligations, or the Pre-Petition Loan Facility, including without limitation, any right to assert any disgorgement or recovery; and

(iv) all of the Debtors' cash, including any cash in all deposit accounts and collection accounts, wherever located, comprising proceeds of or otherwise arising from or relating to the Pre-Petition Collateral constitutes Cash Collateral of the Pre-Petition Term Loan Secured Parties.

F. **Intercreditor Agreement.** That certain Second Amended and Restated Intercreditor Agreement, originally dated as of April 1, 2022, as amended and restated as of May 26, 2023, and as further amended and restated June 3, 2024, among the Pre-Petition Agent and Macquarie Energy North America Trading Inc. (the "Intermediator"), as the intermediation facility secured party (in such capacity, the "Intermediation Facility Secured Party"), and acknowledged and agreed to by Vertex and certain of its affiliates (as amended, restated, supplemented, or otherwise modified in accordance with its terms, the "Intercreditor Agreement"), sets forth subordination and other provisions governing the relative priorities and rights of the Pre-Petition Term Loan Secured Parties and the Intermediator. Pursuant to section 510 of the Bankruptcy Code, such Intercreditor Agreement and any other such intercreditor agreement between and/or among any of (1) the Pre-Petition Agent, (2) any Pre-Petition Lender, (3) the Intermediation Facility Secured Party, (4) any Debtor, or (5) any affiliate thereof, and any other applicable collateral trust or intercreditor or subordination provisions contained in any credit agreement, security agreement, indenture, or related document, (a) shall remain in full force and effect, (b) shall continue to govern the relative priorities, rights, and remedies of the Pre-Petition Term Loan Secured Parties and the Intermediation Facility Secured Party (including the relative priorities, rights, and remedies of such parties with respect to the replacement liens, administrative

expense claims, and superpriority administrative expense claims granted, or amounts payable, by the Debtors under this Final Order or otherwise and the modification of the automatic stay), and (c) shall not be amended, altered or modified by the terms of this Final Order or the DIP Loan Documents, and for avoidance of doubt, any acts or omissions by any Pre-Petition Term Loan Secured Parties or the Intermediation Facility Secured Party in connection with any chapter 11 plan of reorganization or liquidation in these Chapter 11 Cases (whether confirmed under section 1129(a) or (b) of the Bankruptcy Code). Except as provided in the RSA (for so long as the RSA has not been terminated as to the Consenting Term Loan Lenders (as defined in the RSA)) or as set forth in the priorities in **Exhibit D**, any distributions on account of, or other treatment of, any Intermediation Facility Secured Party or obligations owed by the Debtors to Intermediator under the Intermediation Contracts pursuant to any chapter 11 plan shall remain subject to the Intercreditor Agreement (including its turnover provisions) or any other applicable intercreditor or subordination provisions, in each case to the extent provided therein; provided, however, that the foregoing shall not prejudice the rights of any party to the Intercreditor Agreement to assert that taking any action or not taking any action is permitted by or prohibited by, as the case may be, the Intercreditor Agreement, and all parties' rights with respect to such assertions are reserved.

G. **Budget for DIP Facility**. The initial Approved Budget was attached to the Interim Order as **Exhibit B** (the "**Initial Approved Budget**"). The Debtors shall, in a manner consistent with the DIP Loan Agreement, deliver Cash Flow Forecasts (as defined in the DIP Loan Agreement) to the DIP Agent, which shall become Approved Budgets as specified in and in accordance with the DIP Loan Agreement (each, an "**Approved Budget**"). Any such Approved Budget shall subsequently be delivered to counsel to the Committee. The Initial Approved Budget shall be the Approved Budget until a Cash Flow Forecast (as defined in the DIP Loan Agreement)

becomes an Approved Budget in accordance with the terms of the DIP Loan Agreement. The Initial Approved Budget is an integral part of this Final Order and has been relied upon by the DIP Secured Parties to provide the DIP Facility and consent to this Final Order and by the Pre-Petition Term Loan Secured Parties to permit the use of the Cash Collateral and consent to this Final Order. The Debtors represent that the Initial Approved Budget is reasonable under the facts and circumstances. The Debtors believe that the Initial Approved Budget is achievable and will allow the Debtors to operate in the Chapter 11 Cases and pay postpetition obligations as they come due. Pursuant to the terms of the DIP Loan Agreement, the Debtors shall provide a Variance Report (as defined in the DIP Loan Agreement) to each of the DIP Agent, counsel to the DIP Lenders, and counsel to the Committee every calendar week, and shall be in compliance with the Permitted Variance (as defined in the DIP Loan Agreement) on the terms and in accordance with the DIP Loan Agreement. Additional variances, if any, shall be subject to the approval of the DIP Agent as specified in the DIP Loan Agreement. The Debtors shall operate solely in accordance with the Approved Budget and all disbursements of the Debtors shall be consistent with the provisions of the Approved Budget, subject to the Permitted Variance (as defined in the DIP Loan Agreement).

H. **Immediate Need for Funding.** The Debtors have an immediate and critical need to obtain the DIP Facility and to use Cash Collateral in order to, among other things, (i) permit the orderly continuation of the operation of the Debtors' business, (ii) maintain business relationships with customers, vendors, and suppliers, (iii) make payroll, (iv) make allowed capital expenditures, (v) satisfy other working capital and operational needs, (vi) settle obligations under the Intermediation Contracts and Hedge Facility, and (vii) fund expenses of these Chapter 11 Cases, all in accordance with the Approved Budget and, as set forth in Paragraph 4, the Wind Down Reserve (as defined herein). In the absence of the DIP Facility and the use of Cash

Collateral, the Debtors' business and estates would suffer immediate and irreparable harm, including, without limitation, a cessation of substantially all of their operations. The access by the Debtors to sufficient working capital and liquidity through the use of Cash Collateral, the incurrence of new indebtedness under the DIP Loan Documents, and the other financial accommodations provided under the DIP Loan Documents is necessary and vital to the preservation and maintenance of the going concern values of the Debtors and to a successful reorganization of the Debtors.

I. **No Credit on More Favorable Terms.** Based upon the First Day Declaration, the McGovern Declaration, and the other pleadings and proceedings of record in the Chapter 11 Cases, the Debtors are unable to obtain sufficient interim and long-term financing from sources other than the New Money Lenders on terms more favorable than under the DIP Facility and the DIP Loan Documents (including the Roll-Up), and are not able to obtain unsecured credit allowable as an administrative expense under section 503(b)(1) of the Bankruptcy Code. The Debtors are also unable to obtain secured credit allowable under sections 364(c)(1), 364(c)(2) and 364(c)(3) of the Bankruptcy Code for the purposes set forth in the DIP Loan Agreement without the Debtors (i) providing the Roll-Up, (ii) granting to the DIP Agent and the DIP Lenders, subject to the Carve Out, (a) the DIP Super-Priority Claims (as defined below) and (b) the DIP Liens (as defined below) in the DIP Collateral (as defined below), in each case under the terms and conditions set forth in this Final Order and the DIP Loan Documents, and (iii) providing the Pre-Petition Term Loan Secured Parties the adequate protection as provided herein.

J. **Reasonable; Good Faith.** The New Money Lenders have indicated a willingness to provide post-petition secured financing to the Debtors, but solely on the terms and conditions set forth in this Final Order and the DIP Loan Documents. After considering all of their

alternatives, the Debtors have concluded, in an exercise of their sound business judgment, that the DIP Facility to be provided by the DIP Lenders, including the Roll-Up and the authorization to use the Cash Collateral to be provided by the Pre-Petition Agent, on behalf of the Pre-Petition Lenders, represents the best financing presently available to the Debtors. Based upon the pleadings and proceedings of record in the Chapter 11 Cases, (i) the terms and conditions of the DIP Facility are fair and reasonable, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duty and are supported by reasonably equivalent value and fair consideration, (ii) the DIP Facility and the use of Cash Collateral have been negotiated in good faith and at arm's length among the Debtors, the DIP Secured Parties and the Pre-Petition Term Loan Secured Parties, and (iii) any credit extended, loans made and other financial accommodations extended to the Debtors by the DIP Lenders have been extended, issued or made, as the case may be, in "good faith" within the meaning of section 364(e) of the Bankruptcy Code, and in express and good faith reliance upon the protections offered by section 364(c) and 363(m) of the Bankruptcy Code and this Final Order.

K. **Consent by Pre-Petition Term Loan Secured Parties.** The Pre-Petition Term Loan Secured Parties have consented, or are deemed to have consented, pursuant to the Intercreditor Agreements, as applicable, to (i) the financing arrangements contemplated by this Final Order and the DIP Loan Documents and (ii) Debtors' proposed use of Cash Collateral, on the terms and conditions set forth in this Final Order, and such consent is binding on all Pre-Petition Term Loan Secured Parties.

L. **Adequate Protection.** The adequate protection provided to the Pre-Petition Term Loan Secured Parties on account of the use of the Pre-Petition Term Loan Secured Parties' Cash Collateral and any diminution in the value of such parties' respective interests in the

Pre-Petition Collateral from and after the Petition Date, including, without limitation, resulting from the DIP Facility, is consistent with and authorized by the Bankruptcy Code and is offered by the Debtors to protect such parties' interests in the Pre-Petition Collateral in accordance with sections 361, 362 and 363 of the Bankruptcy Code. The consent of the Pre-Petition Term Loan Secured Parties to the use of Cash Collateral and the consent of the Pre-Petition Term Loan Secured Parties to priming of their liens by the DIP Liens (1) does not constitute, and shall not be construed as constituting, an acknowledgment or stipulation by the Pre-Petition Term Loan Secured Parties that their respective interests in the Pre-Petition Collateral are adequately protected pursuant to this Final Order or otherwise, and (2) is conditioned upon entry of this Final Order and does not and shall not be deemed to constitute consent other than pursuant to this Final Order and the terms set forth herein. The adequate protection provided herein and other benefits and privileges contained herein are necessary (i) in order to protect the Pre-Petition Term Loan Secured Parties from the diminution in value of their Pre-Petition Collateral, and (ii) to obtain the foregoing consents and agreements. Nothing herein shall prevent the Pre-Petition Term Loan Secured Parties from seeking additional adequate protection to the extent permitted by law or to the extent permitted in the Intercreditor Agreements, as applicable.

M. **Good Cause Shown; Best Interest.** Absent entry of this Final Order, the Debtors' business, properties, and estates will be immediately and irreparably harmed. This Court concludes that good cause has been shown and that entry of this Final Order is in the best interest of the Debtors' respective estates and creditors as its implementation will, among other things, allow for the continued operation of the Debtors' existing businesses and enhance the Debtors' prospects for a successful reorganization.

N. **No Liability to Third Parties.** The Court finds that in making decisions to advance loans to the Debtors, in administering any loans, in permitting the Debtors to use Cash Collateral, in accepting the Initial Approved Budget or any future Approved Budget or in taking any other actions permitted by this Final Order or the DIP Loan Documents, none of the DIP Secured Parties or Pre-Petition Term Loan Secured Parties shall be deemed to be in control of the operations of the Debtors or to be acting as a “responsible person” or “owner or operator” with respect to the operation or management of the Debtors.

O. **Section 552.** In light of the subordination of their liens and super-priority administrative claims as set forth on **Exhibits C** and **D**, each of the DIP Secured Parties and the Pre-Petition Term Loan Secured Parties is entitled to, subject to the Carve Out, all of the rights and benefits of section 552(b) of the Bankruptcy Code, and the “equities of the case” exception shall not apply to any of the DIP Secured Parties or the Pre-Petition Term Loan Secured Parties with respect to the proceeds, products, rents, issues or profits of any of the DIP Collateral or the Pre-Petition Collateral, and no expenses of administration of the Chapter 11 Cases or any future proceeding that may result therefrom, including liquidation in bankruptcy or other proceedings under the Bankruptcy Code, may be charged against proceeds, product, offspring or profits from any of the DIP Collateral or the Pre-Petition Collateral under section 552(b) of the Bankruptcy Code. Subject to the Carve Out, the Debtors shall be deemed to have irrevocably waived, and to have agreed not to assert, any claim or right under section 552(b) of the Bankruptcy Code seeking to avoid the imposition of the DIP Liens, Pre-Petition Liens or the Pre-Petition Term Loan Adequate Protection Liens (as defined below) on any property acquired by any of the Debtors or any of their estates or, subject to the Carve Out, seeking 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 Pre-Petition Term Loan Secured Parties upon the DIP Collateral or the Pre-Petition Collateral, as applicable.

P. **Findings Regarding Corporate Authority.** Each Debtor has all requisite corporate power and authority to execute and deliver the DIP Loan Documents to which it is a party and to perform its obligations thereunder.

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

Based on the foregoing, and upon the record made before this Court at the Interim Hearing and the Final Hearing, and good and sufficient cause appearing therefor,

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:**

1. **Motion Granted.** The Motion is granted on the terms and conditions set forth in this Final Order and the DIP Loan Documents. Any objections to the relief granted in this Final Order that have not previously been withdrawn, waived, settled, or resolved are hereby denied and overruled on the merits. This Final Order shall become effective immediately upon its entry.

2. **Approval of DIP Loan Documents; Authority Thereunder.** The Debtors are hereby authorized to enter into the DIP Loan Documents, including the DIP Loan Agreement, and such additional documents, instruments, and agreements as may be required or reasonably requested by the DIP Secured Parties to implement the terms or effectuate the purposes of this Final Order. The Debtors are authorized to comply with and perform all of the terms and conditions contained in the DIP Loan Documents, and to repay amounts borrowed, together with interest and fees thereon (including, without limitation, the fees in section 2.5 of the DIP Loan Agreement), as well as any other outstanding DIP Obligations to the DIP Lenders in accordance



with and subject to the terms and conditions set forth in the DIP Loan Documents and this Final Order.

3. **Authorization to Borrow DIP Facility Loans and Use Cash Collateral.** The Borrower is immediately authorized to borrow from the New Money Lenders, and the Guarantors are immediately authorized to guaranty, borrowings under the DIP Facility in an aggregate principal amount of approximately \$80 million of the New Money Loans under the New Money Facility, subject to and in accordance with the terms of this Final Order and the DIP Loan Agreement. The Debtors are authorized to use the proceeds of the DIP Facility Loans and the Cash Collateral only for the purposes described in Paragraph 10 of this Final Order. Subject to the terms of Paragraph 28 of this Final Order, the DIP Facility and authorization to use the proceeds of the DIP Facility Loans and the Cash Collateral will terminate upon the date (the “Termination Date”) of the earliest to occur of (a) the Maturity Date (as defined in the DIP Loan Agreement); (b) the expiration of the Enforcement Notice Period (as defined herein) with respect to an Event of Default (as defined in the DIP Loan Agreement); (c) the first business day on which the Interim Order expires by its terms or is terminated, unless this Final Order has been entered and become effective prior thereto; (d) conversion of any of the Chapter 11 Cases to a case under Chapter 7 of the Bankruptcy Code unless otherwise consented to in writing by the DIP Agent (at the direction of the Required Lenders) and the Required Lenders; (e) dismissal of any of the Chapter 11 Cases, unless otherwise consented to in writing by the DIP Agent (at the direction of the Required Lenders) and the Required Lenders; and (f) subject to the funding of the Wind Down Reserve solely in accordance with Paragraph 4 of this Final Order, closing of a sale of all or substantially all of the equity or assets of the Debtors; in each case, unless extended, as to the DIP Facility, with the prior written consent of the DIP Agent (at the direction of the Required Lenders) and the

Required Lenders, and, as to the use of Cash Collateral, with the prior written consent of the Pre-Petition Agent (at the direction of the Required Lenders (as defined in the Pre-Petition Loan Agreement)) and the Required Lenders (as defined in the Pre-Petition Loan Agreement). The full amount of the DIP Obligations will be required to be repaid in cash on the Termination Date, except that the DIP Agent and the New Money Lenders may elect to allow the DIP Obligations to be treated in any other manner acceptable to them in accordance with the DIP Loan Agreement.

4. Subject to the terms and conditions set forth in the DIP Loan Documents, including Section 3.2 of the DIP Loan Agreement and solely if there is no Event of Default (as defined in the DIP Loan Agreement) that has occurred or is continuing, upon the approval of a Credit Bid Sale Order or Third-Party Sale Order (each as defined herein) and three (3) days prior to the closing of a Credit Bid Sale or Third-Party Sale (each as defined herein), New Money Loans shall be made available to the Debtors in an amount to be determined at a later date by the Debtors in their reasonable discretion and consented to by the Supermajority Lenders sufficient to (a) fund the estimated fees, costs, and expenses necessary to fully administer and wind down the Debtors' estates, including the fees, costs, and expenses of the plan administrator selected by the Supermajority Lenders to wind down the Debtors' estates, and (b) pay in full in cash all claims required to be paid under the Bankruptcy Code and the Debtors' chapter 11 plan (the "Plan") in order for the effective date of the Plan (the "Plan Effective Date") to occur or otherwise assumed or required to be paid under the terms of the Plan, in each case to the extent not liquidated and paid in full in cash on the Plan Effective Date (collectively, the "Wind Down Reserve"); provided that the Debtors shall consult with the Committee with respect to (i) the selection of the plan administrator, if any, and (ii) the amount to be funded as part of the Wind Down Reserve.

5. The DIP Secured Parties and Pre-Petition Term Loan Secured Parties each have no obligation to extend credit under the New Money Facility or permit the use of any DIP Collateral or Pre-Petition Collateral or any proceeds thereof, including Cash Collateral, as applicable, during the interim period unless and until all conditions precedent to the extension of credit and/or use of DIP Collateral, Pre-Petition Collateral, or proceeds thereof under the DIP Loan Documents and this Final Order have been satisfied in full or waived in writing by the DIP Secured Parties and the Pre-Petition Agent.

6. **Roll-Up.** The Roll-Up Loans shall be calculated as set forth in the DIP Loan Agreement, but in no event shall exceed a ratio of \$2.50 of Pre-Petition Loans held by each DIP Lender or its affiliate(s) to \$1.00 of Term Loan Commitments made available by the New Money Lender under the DIP Loan Documents and authorized by court order. Pursuant to the Interim Order, Pre-Petition Loans beneficially owned by each DIP Lender or affiliate(s) thereof were, upon entry of the Interim Order, immediately, automatically, and irrecoverably deemed to have been converted into Interim Roll-Up Loans under the DIP Facility in the amount of \$37,949,226.03. Pursuant to this Final Order, Pre-Petition Loans beneficially owned by each DIP Lender or affiliate(s) thereof shall immediately, automatically, and irrevocably be deemed to have converted into Restricted Roll-Up Loans under the DIP Facility in the amount of \$135,202,821.00. Pursuant to this Final Order, a portion of Pre-Petition Loans beneficially owned by each DIP Lender or affiliate(s) thereof shall immediately, automatically, and irrevocably be deemed to have converted into Final Roll-Up Loans under the DIP Facility in the amount of \$26,847,952.97. The Roll-Up Loans shall be entitled to all of the priorities, privileges, rights, and other benefits afforded to the other DIP Obligations under any DIP Order and the DIP Loan Documents. The conversion of the Roll-Up Loans is authorized as compensation for, in consideration for, as a necessary

inducement for, and on account of the agreement of the New Money Lenders to consent to and fund amounts under the New Money Facility and not as payments under, adequate protection for, or otherwise on account of any Pre-Petition Loan Obligations. The Pre-Petition Lenders would not otherwise consent to the use of their Cash Collateral or the subordination of their liens to the DIP Liens and the DIP Agent and the New Money Lenders would not be willing to provide the New Money Facility or extend credit to the Debtors thereunder without the inclusion of the Roll-Up within the DIP Facility.

7. **Collections and Disbursements.** Subject to the Carve Out, from the Petition Date until the DIP Obligations have been paid in full in cash or otherwise discharged, all cash receipts, Cash Collateral, and all proceeds from the sale or other disposition of, or other revenue of any kind attributable to, any DIP Collateral that is now in, or shall hereafter come into, the possession or control of any of the Debtors, or to which any of the Debtors is now or shall hereafter become entitled (i) shall be subject to the DIP Liens and the Pre-Petition Term Loan Adequate Protection Liens (and shall be treated in accordance with this Final Order and the DIP Loan Agreement) and (ii) shall be, to the extent related to or arising from or in connection with Pre-Petition Collateral, promptly deposited only into accounts of the Debtors upon which the Pre-Petition Agent has perfected Pre-Petition Liens. All such amounts arising from or in connection with the Pre-Petition Collateral shall be used for the purposes described in section 2.2(a) of the DIP Loan Agreement or applied to the payment of outstanding DIP Obligations in accordance with the DIP Loan Agreement.

8. **Perfection in Cash.** Subject to the Carve Out and other provisions of this Final Order and the DIP Loan Agreement, all financial institutions with which the Debtors maintain accounts containing Cash Collateral are authorized to comply with any request of the

DIP Agent (acting at the direction of the Required Lenders) made in accordance with this Final Order and the DIP Loan Agreement to turn over to the DIP Agent all Cash Collateral therein without offset or deduction of any kind. The DIP Agent shall enjoy the benefit of (i) all deposit account control agreements, blocked account control agreements, securities account control agreements, and similar agreements to which the Pre-Petition Agent is a party and (ii) subject and subordinate to the rights of the holders of (a) Permitted Priority Liens, (b) solely with respect to the Shared Collateral (other than Business Interruption Insurance Proceeds) and DIP Exclusive Collateral (solely with respect to such collateral held by Participating Hedging Debtors), Hedging Liens, and, (c) solely with respect to the Intermediation Facility Priority Collateral (other than the Business Interruption Insurance Proceeds), the Intermediation Facility Liens, all other deposit account control agreements, blocked account control agreements, securities account control agreements, and similar agreements to which any Debtor is a party. Notwithstanding and without minimizing the force of the foregoing, the Debtors are authorized to enter into, and cause the financial institutions servicing the Debtors' deposit accounts to enter into, such deposit account control agreements and other collateral agreements with the DIP Agent and such financial institutions as the DIP Agent (acting at the direction of the Required Lenders) may reasonably require, or alternatively, the DIP Agent shall be entitled to enjoy the benefit of all control agreements to which the Debtor is a party, as set forth above, without the need to enter into any such new agreements.

9. **Payment of DIP Fees and Expenses.** Subject to the Carve Out, the Debtors are authorized to pay (i) all fees when due under the DIP Loan Agreement (including, without limitation, any fees provided for under sections 2.5 and 10.3 of the DIP Loan Agreement) in the amounts set forth in the DIP Loan Agreement or this Final Order and (ii) reasonable,

documented out-of-pocket fees, costs, and expenses incurred by the DIP Agent and each of the DIP Lenders (the foregoing to include all unpaid prepetition and postpetition fees, costs and expenses incurred by the DIP Agent and each DIP Lender in connection with the DIP Facility) in connection with the DIP Facility and all aspects of the Chapter 11 Cases (the “DIP Lender Advisor Fees and Expenses”), including, without limitation, the reasonable and documented out-of-pocket fees and expenses of legal counsel (including Sidley Austin LLP and Shipman & Goodwin LLP) and banker (Houlihan Lokey Capital, Inc.), and other professionals, hired by or on behalf of the DIP Agent or DIP Lenders with the Debtors’ consent to such hiring (which consent shall not be unreasonably withheld or delayed) (collectively, the “DIP Lender Professionals”), subject to the review procedures set forth in Paragraph 21 of this Final Order. In addition, the Debtors are hereby authorized and directed to indemnify the DIP Agent and the other DIP Secured Parties (and each of their respective directors, officers, employees, agents, representatives, attorneys, consultants, advisors and controlling persons) against any liability arising in connection with the DIP Loan Documents, to the extent set forth in the DIP Loan Documents. All such unpaid fees, costs, expenses and indemnities of the DIP Agent and the DIP Lenders shall (i) constitute DIP Obligations, (ii) be secured by the DIP Collateral, and (iii) be afforded all of the priorities and protections afforded to other DIP Obligations under this Final Order and the DIP Loan Documents.

10. **Validity of DIP Loan Documents.** The DIP Loan Documents constitute, and are hereby deemed to be, legal, valid and binding obligations of the Debtors, enforceable against each Debtor in accordance with the terms thereof for all purposes during the Chapter 11 Cases, in any subsequently converted case of any Debtor under chapter 7 of the Bankruptcy Code, or after dismissal of any of the Chapter 11 Cases. Any DIP Facility Loans advanced under the DIP Loan Agreement pursuant to the Interim Order or this Final Order shall

be used solely for (i) post-petition working capital, capital investments as permitted under the DIP Loan Agreement, and general corporate purposes of the Debtors, (ii) payment of allowed administrative costs and expenses of these Chapter 11 Cases, (iii) the payment of adequate protection payments to the Pre-Petition Term Loan Secured parties, including fees payable under the Pre-Petition Loan Agreement, (iv) payment of professional fees, (v) funding of the Challenge Budget in accordance with paragraph 19 of this Final Order; (vi) funding the Wind Down Reserve, and (vii) for payment of any amount authorized to be paid pursuant to any order entered from time to time by this Court, in each case, solely in accordance with the Approved Budget (subject to the Permitted Variance (as defined in the DIP Loan Agreement)) and this Final Order. For the avoidance of doubt, payment of professional fees are not subject to the Permitted Variance (as defined in the DIP Loan Agreement). No obligation, payment, transfer or grant of security under the DIP Loan Documents or this Final Order shall be stayed, restrained, voided, voidable, or recoverable under the Bankruptcy Code or under any applicable non-bankruptcy law, or subject to any defense, reduction, setoff, recoupment, or counterclaim.

11. **DIP Super-Priority Claims.** In accordance with Bankruptcy Code section 364(c)(1), the DIP Obligations shall constitute superpriority administrative expense claims (the “DIP Super-Priority Claims”) against each of the Debtors with priority in payment over any and all administrative expenses, adequate protection claims, diminution claims, prepetition unsecured claims, and all other claims against the Debtors, now existing or hereafter arising, of any kind whatsoever, including, without limitation, any prepetition claims and adequate protection claims of the Pre-Petition Term Loan Secured Parties, any adequate protection claims granted in favor of any other parties, and any and all administrative expenses or other claims of the kinds specified or ordered pursuant to any provision of the Bankruptcy Code, including, but not limited

to, Bankruptcy Code sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 546, 552, 726, 1113, and 1114 or otherwise, including those resulting from the conversion of any of the Chapter 11 Cases pursuant to section 1112 of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy, or attachment; provided, however, that the DIP Super-Priority Claims shall be subject to the Carve Out and the priorities set forth in **Exhibit D**. The DIP Super-Priority Claims shall for purposes of section 1129(a)(9)(A) of the Bankruptcy Code be considered administrative expenses allowed under section 503(b) of the Bankruptcy Code, shall be against each Debtor on a joint and several basis, and shall be payable from and have recourse to all prepetition and post-petition property of the Debtors and all proceeds thereof, including the Avoidance Action Proceeds; provided that, subject to the Carve Out and claim priorities set forth in **Exhibit D**, the DIP Lenders may only seek to recover from the Avoidance Actions Proceeds in satisfaction of any outstanding DIP Super-Priority Claims, solely to the extent that the DIP Super-Priority Claims have not been indefeasibly paid in full and all other sources of recovery with respect to such DIP Super-Priority Claims have been fully exhausted; provided, further, the DIP Super-Priority Claims granted to the DIP Lenders on account of the Roll-Up Loans shall be immediately junior in payment priority and subject to the DIP Super-Priority Claims granted to the New Money Lenders on account of the DIP New Money Obligations.

12. **DIP Liens**. As security for the DIP Obligations, the DIP Agent, on behalf of and for the benefit of the DIP Secured Parties, was granted (effective upon the date of the Interim Order, without any further action by the DIP Secured Parties, including the execution by the Debtors or the filing or recordation of security agreements, lockbox or control agreements, financing statements, or any other instruments or otherwise) valid, enforceable, binding, and fully



perfected security interests in and liens upon (the “DIP Liens”) all present and after-acquired property of the Debtors of any nature whatsoever (including without limitation “Collateral”), and all cash and cash equivalents contained in any account maintained by any of the Debtors, and is hereby granted in all Avoidance Actions Proceeds of the Debtors or their estates (collectively with all rents, issues, products, offspring, proceeds and profits of any or all of the foregoing, but excluding “Excluded Property” as defined in the DIP Loan Agreement, the “DIP Collateral”), subject to the payment of the Carve Out and other Liens, with the priorities set forth in **Exhibit C** and shall consist of:

(a) Liens on Unencumbered Property. Pursuant to section 364(c)(2) of the Bankruptcy Code, a continuing, enforceable, fully-perfected lien and security interest upon all of the Debtors’ right, title and interest in, to, and under all DIP Collateral that was not encumbered by a validly perfected, enforceable, and nonavoidable security interest or lien subject to the priorities set forth in **Exhibit C** as of the Petition Date or a valid security interest perfected subsequent to the Petition Date to the extent permitted by section 546(b) of the Bankruptcy Code (collectively, the “Unencumbered Property”). For the avoidance of doubt, Unencumbered Property includes the Avoidance Actions Proceeds.

(b) Liens Junior to Certain Other Liens. Pursuant to section 364(c)(3) of the Bankruptcy Code, a junior priority, perfected lien and security interest upon all of the Debtors’ right, title and interest in, to and under all DIP Collateral (other than the DIP Collateral described in Subparagraphs (a) or (c) of this Paragraph 12, as to which the liens and security interests in favor of the DIP Agent will be as described in such Subparagraphs), whether now existing or hereafter acquired, that is subject to any (i) Permitted Priority Lien, (ii) solely with respect to the Shared Collateral (other than the

Business Interruption Insurance Proceeds and Intermediation Facility Priority Collateral) and DIP Exclusive Collateral held by Participating Hedging Debtors, the Hedging Liens, and, (iii) solely with respect to the Intermediation Facility Priority Collateral (other than the Business Interruption Insurance Proceeds), the Hedging Liens, Intermediation Facility Liens, and the Intermediation Facility Adequate Protection Liens, in each case, that was validly perfected prior to the Petition Date, or is validly perfected subsequent to the Petition Date to the extent permitted by section 546(b) of the Bankruptcy Code, and is not subject to section 552(a) of the Bankruptcy Code.

(c) Liens Priming Pre-Petition Term Loan Secured Parties' Liens. Pursuant to section 364(d)(1) of the Bankruptcy Code, valid, enforceable, binding, continuing, enforceable, fully perfected, senior priming liens upon and security interest in all of the Debtors' right, title and interest in, to, and under all DIP Collateral that is subject to the Pre-Petition Liens; provided, however, that the liens granted by this subparagraph shall in each case be subject and subordinate to liens on the Pre-Petition Collateral (other than the Pre-Petition Liens) that (a) are valid, perfected, enforceable and nonavoidable as of the Petition Date or validly perfected subsequent to the Petition Date to the extent permitted by section 546(b) of the Bankruptcy Code, (b) under applicable law, are senior to, and have not been subordinated to, the Pre-Petition Liens, and (c) are not subject to avoidance, reduction, disgorgement, counterclaim, surcharge, or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law (which, for the avoidance of doubt, includes, solely with respect to the Intermediation Facility Priority Collateral (other than the Business Interruption Insurance Proceeds), the Intermediation Facility Liens) (such liens, except for Intermediation Facility Liens, each a "Permitted Priority Lien").

(d) Liens Senior to Certain Other Liens. The DIP Liens shall not be subject or subordinate to (i) 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, (ii) any liens arising after the Petition Date, including without limitation any liens or security interests granted in favor of any federal, state, municipal or other governmental unit, commission, board, or court for any liability of the Debtors, or (iii) any intercompany or affiliate liens of the Debtors.

(e) DIP Liens *Pari Passu*. The DIP Liens granted to the DIP Lenders will be *pari passu* (on a pro rata basis) to (i) with respect to the DIP Liens granted on the Roll-Up Obligations, the DIP Liens granted to the DIP Lenders with respect to the DIP New Money Obligations and (ii) solely with respect to the Business Interruption Insurance Proceeds and in accordance with the DIP Loan Agreement, the Hedging Liens and the Intermediation Facility Liens.

13. **Pre-Petition Term Loan Secured Parties' Adequate Protection.**

Until the indefeasible repayment in full in cash of the Pre-Petition Loan Obligations, the Pre-Petition Term Loan Secured Parties are entitled to adequate protection of their interests in the Pre-Petition Collateral on account of the diminution in the value thereof as a result of (a) the provisions of this Final Order granting priming liens on such Pre-Petition Collateral to the DIP Agent for the benefit of the DIP Secured Parties; (b) the authorization of the use of Cash Collateral and other Pre-Petition Collateral; (c) the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code; and/or (d) otherwise (the "Diminution in Pre-Petition Collateral Value"), pursuant to sections 361(a), 363(c) and 364(d)(1) of the Bankruptcy Code. The Pre-Petition Agent,

on behalf of and for the benefit of the Pre-Petition Lenders, is hereby granted the following (collectively, the “Pre-Petition Term Loan Adequate Protection Obligations”):

(a) Pre-Petition Term Loan Adequate Protection Super-Priority Claims. The Pre-Petition Agent, on behalf of and for the benefit of the Pre-Petition Term Loan Secured Parties, is hereby granted super-priority administrative expense claims (the “Pre-Petition Term Loan Adequate Protection Super-Priority Claims”) under section 507(b) of the Bankruptcy Code against the Debtors’ estates, including Avoidance Actions Proceeds, to the extent of any Diminution in Pre-Petition Collateral Value, which Pre-Petition Term Loan Adequate Protection Super-Priority Claims, if any, shall have priority in payment over any and all administrative expenses of the kinds specified or ordered pursuant to any provision of the Bankruptcy Code, including, but not limited to, Bankruptcy Code sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 726, 1113 and 1114, or otherwise and including those resulting from the conversion of any of the Chapter 11 Cases pursuant to section 1112 of the Bankruptcy Code; provided, however, that the Pre-Petition Secured Parties may only seek to recover from the Avoidance Actions Proceeds in satisfaction of any outstanding Pre-Petition Term Loan Adequate Protection Super-Priority Claims solely to the extent that the Pre-Petition Term Loan Adequate Protection Super-Priority Claims have not been indefeasibly paid in full and all other sources of recovery with respect to such Pre-Petition Term Loan Adequate Protection Super-Priority Claims have been fully exhausted; provided, further, that at all times while such claims are in full force and effect pursuant to this Final Order, the Pre-Petition Term Loan Adequate Protection Super-Priority Claims shall be subject and junior to the Carve Out and in accordance with the priorities set forth in **Exhibit D**.

(b) Pre-Petition Term Loan Adequate Protection Liens. Valid, enforceable, unavoidable and fully perfected replacement liens and security interests in all DIP Collateral (the “Pre-Petition Term Loan Adequate Protection Liens” and, together with the Intermediation Facility Adequate Protection Liens (as defined in the Intermediation Order), the “Adequate Protection Liens”) to the extent of any Diminution in Pre-Petition Collateral Value, which shall be subject to the Carve Out and in accordance with the priorities set forth in **Exhibit C**. The Pre-Petition Term Loan Adequate Protection Liens shall be deemed to be legal, valid, binding, enforceable, perfected liens, not subject to subordination or avoidance, for all purposes in the Chapter 11 Cases. Except as otherwise set forth in this Paragraph 13 or otherwise in this Final Order, the Pre-Petition Term Loan Adequate Protection Liens shall not be subordinated to or be made *pari passu* with any other lien under section 364(d) of the Bankruptcy Code or otherwise. The Pre-Petition Term Loan Adequate Protection Liens were deemed to be perfected automatically upon the entry of the Interim Order, without the need for (x) filing any UCC-1 financing statement, state or federal notice, or other similar instrument or document in any state or public record or office, (y) taking possession or control of any collateral, or (z) further action of any kind (including entry into any security agreements, deposit account control agreements, blocked account control agreements, securities account control agreements, or similar agreements). Without limiting the foregoing, but subject and subordinate to the rights of the DIP Secured Parties and the holders of any senior liens as set forth in **Exhibit C**, in respect of the Pre-Petition Term Loan Adequate Protection Liens, the Pre-Petition Agent shall enjoy the benefit of all deposit account control agreements, blocked account control agreements,

securities account control agreements, and similar agreements to which any Debtor is a party.

(c) Adequate Protection Payments. As further adequate protection, and in consideration, and as a requirement, for obtaining the consent of the Pre-Petition Term Loan Secured Parties to the entry of this Final Order and the Debtors' consensual use of Cash Collateral as provided herein:

(i) The Debtors shall, subject to the Carve Out, pay the reasonable, documented out-of-pocket fees, costs and expenses incurred or accrued by the Pre-Petition Agent and each Pre-Petition Lender (the foregoing to include all unpaid prepetition fees, costs and expenses) in connection with any and all aspects of the Chapter 11 Cases (the "Pre-Petition Lender Fees and Expenses"), including the reasonable and documented out-of-pocket fees and expenses of the legal and financial advisors and investment bankers to the Pre-Petition Agent and each Pre-Petition Lender and other professionals, hired by or on behalf of the Pre-Petition Agent or any Pre-Petition Lender (the "Pre-Petition Lender Professionals"). The payment of the Pre-Petition Lender Fees and Expenses and the fees shall be subject to the review procedures set forth in Paragraph 21 of this Final Order. To the extent the DIP Agent and DIP Lenders and the Pre-Petition Agent and Pre-Petition Lenders are the same and have a single set of advisors, such advisors may submit a single combined invoice for their aggregated services.

(ii) On the Closing Date, the Debtors shall pay in kind to the Pre-Petition Agent all accrued and unpaid interest at the non-default rate, premiums, and fees then owing under the Pre-Petition Loan Agreement. Notwithstanding anything

herein to the contrary, the Committee's rights to object to the allowance of any amount of postpetition interest as part of the Pre-Petition Term Loan Secured Parties' allowed claim in connection with confirmation of a chapter 11 plan is reserved.

(iii) To the extent the Pre-Petition Loans shall not have become Roll-Up Loans, the Debtors shall, as and when due pursuant to the Pre-Petition Loan Documents, pay in kind to the Pre-Petition Term Loan Secured Parties all post-petition interest at the non-default rate specified in such Pre-Petition Loan Documents and (subject to paragraph (iv) below) fees accruing under the Pre-Petition Loan Documents (the payments described in (i) – (iii), the “Pre-Petition Term Loan Adequate Protection Payments”).

(iv) The Pre-Petition Term Loan Adequate Protection Payments shall in all cases be subject to disgorgement to the extent of a successful final and non-appealable Challenge (as defined below).

(d) Financial Reporting. The Debtors shall provide the Pre-Petition Agent, on behalf of itself and on behalf of the Pre-Petition Lenders, with the financial and other reporting as described in the DIP Loan Agreement. Without limiting the rights of access and information afforded the Pre-Petition Term Loan Secured Parties under the DIP Loan Agreement, the Debtors are hereby authorized to afford the representatives, agents, employees, attorneys, financial advisors, and investment bankers of the Pre-Petition Term Loan Secured Parties reasonable access to the Debtors' premises and their books and records in accordance with the DIP Loan Agreement and shall reasonably cooperate, consult with, and provide to such persons all such information as may reasonably be

requested; provided, however, other than any such visits and inspections during the continuation of an Event of Default (as defined in the DIP Loan Agreement), only the Pre-Petition Agent (or a representative or designee of the Required Lenders (as defined in the Pre-Petition Loan Agreement)) on behalf of the Pre-Petition Term Loan Secured Parties (including in acting pursuant to the direction of the Required Lenders (as defined in the Pre-Petition Loan Agreement)) may exercise the rights of the Pre-Petition Term Loan Secured Parties under this Paragraph 13(d).

(e) Noninterference with DIP Obligations. For the avoidance of doubt, nothing in this Paragraph 13 shall affect or limit the obligation of the Debtors to pay the fees, costs and expenses incurred by the DIP Secured Parties as provided in the DIP Loan Documents.

14. **No Waiver of Secured Parties.** The failure of the DIP Secured Parties to seek relief or otherwise exercise their rights and remedies under this Final Order, the DIP Loan Documents, or otherwise (or any delay in seeking or exercising same) shall not constitute a waiver of any such parties' rights hereunder, thereunder, or otherwise. Nothing contained in this Final Order (including the authorization of the use of any Cash Collateral) shall impair or modify any rights, claims or defenses available in law or equity to any DIP Secured Party, including rights of a party to a swap agreement, securities contract, commodity contract, forward contract, or repurchase agreement with a Debtor to assert rights of setoff or other rights with respect thereto as permitted by law. Except as prohibited by this Final Order, the entry of this Final Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, or otherwise impair, any right or ability of the DIP Secured Parties under the Bankruptcy Code or under non-bankruptcy law to (i) oppose the use of Cash Collateral on terms other than those set forth in this Final Order or (ii) except as expressly set forth herein, exercise any of the rights, claims or privileges (whether



legal, equitable, or otherwise) of the DIP Secured Parties, respectively, under the DIP Loan Documents, the Bankruptcy Code, or otherwise.

15. **No Waiver of Pre-Petition Loan Agreement Provisions; Reservation of Rights.** Except as otherwise specifically provided in this Final Order, nothing contained in this Final Order shall be deemed a waiver or constitute a consent to the modification of any provision contained in the Pre-Petition Loan Agreement by the Pre-Petition Term Loan Secured Parties, including, but not limited to, the incurrence or issuance of any indebtedness by the Debtors, the incurrence of any lien in connection therewith or the making of any payment by the Debtors.

16. **Rights of Access and Information.** Without limiting the rights of access and information afforded the DIP Secured Parties under the DIP Loan Documents, the Debtors are hereby authorized to afford the representatives, agents, employees, attorneys, financial advisors, and investment bankers of (i) the DIP Secured Parties and (ii) the Committee, as applicable, reasonable access to the Debtors' premises (including, without limitation, any leased premises without the need for any collateral access agreement, landlord waiver or consent, or similar agreements) and their books and records in accordance with the DIP Loan Documents and the bylaws of the Committee, as applicable, and shall reasonably cooperate, consult with, and provide to such persons all such information as the DIP Secured Parties or the Committee, as applicable, may reasonably request. The DIP Secured Parties may participate in any such visit or inspection at the expense of the Debtors as set forth in the DIP Loan Documents. In addition, the Debtors authorize their independent certified public accountants, financial advisors, investment bankers and consultants to cooperate, consult with, and provide to the DIP Secured Parties and the

Committee all such information as may be reasonably requested with respect to the business, results of operations and financial condition of any of the Debtors.

17. **Carve Out.**

(a) Carve Out. As used in this Final Order, the “Carve Out” means the sum of (i) all fees required to be paid to the Clerk of the Court and to the Office of the U.S. Trustee under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate (without regard to the notice set forth in (iii) below); (ii) all reasonable fees and expenses up to \$100,000 incurred by a trustee under section 726(b) of the Bankruptcy Code (without regard to the notice set forth in (iii) below); (iii) to the extent allowed at any time, whether by interim order, procedural order, or otherwise, all unpaid fees and expenses (the “Allowed Professional Fees”) incurred by persons or firms retained by the Debtors pursuant to section 327, 328, or 363 of the Bankruptcy Code (the “Debtor Professionals”) and the Committee pursuant to section 328 or 1103 of the Bankruptcy Code (the “Committee Professionals” and, together with the Debtor Professionals, the “Professional Persons”) at any time before or on the first business day following delivery by the DIP Agent of a Carve Out Trigger Notice (as defined below), whether allowed by the Court prior to or after delivery of a Carve Out Trigger Notice; and (iv) Allowed Professional Fees of Professional Persons in an aggregate amount not to exceed \$1,000,000 incurred after the first business day following delivery by the DIP Agent of the Carve Out Trigger Notice, to the extent allowed at any time, whether by interim order, procedural order, or otherwise (the amounts set forth in this clause (iv) being the “Post-Carve Out Trigger Notice Cap”). For purposes of the foregoing, “Carve Out Trigger Notice” shall mean a written notice delivered by email (or other electronic means)

by the DIP Agent, acting at the direction of the Required Lenders under and as defined in the DIP Loan Documents, or the Pre-Petition Agent, acting at the direction of the Required Lenders under and as defined in the Pre-Petition Loan Agreement, as applicable, to the Debtors, their lead restructuring counsel, the U.S. Trustee, and counsel to the Committee, which notice may be delivered following the occurrence and during the continuation of an Event of Default (as defined in the DIP Loan Agreement), and acceleration of the DIP Obligations under the DIP Facility or termination of the Debtors' right to use Cash Collateral, as applicable, stating that the Post-Carve Out Trigger Notice Cap has been invoked.

(b) Delivery of Weekly Fee Statements. Not later than 7:00 p.m. New York time on the third business day of each week starting with the first full calendar week following the Petition Date, each Professional Person shall deliver to the Debtors a statement setting forth a good-faith estimate of the amount of fees and expenses (collectively, "Estimated Fees and Expenses") incurred during the preceding week by such Professional Person (through Saturday of such week, the "Calculation Date"), along with a good-faith estimate of the cumulative total amount of unreimbursed fees and expenses incurred through the applicable Calculation Date and a statement of the amount of such fees and expenses that have been paid to date by the Debtors (each such statement, a "Weekly Statement"); provided that, within one business day of the occurrence of the Termination Declaration Date (as defined below), each Professional Person shall deliver one additional statement (the "Final Statement") setting forth a good-faith estimate of the amount of fees and expenses incurred during the period commencing on the calendar day after the most recent Calculation Date for which a Weekly Statement has been delivered

and concluding on the Termination Declaration Date (and the Debtors shall cause such Weekly Statement and Final Statement to be delivered on the same day received to the DIP Agent). If any Professional Person fails to deliver a Weekly Statement within three (3) calendar days after such Weekly Statement is due, such Professional Person's entitlement (if any) to any funds in the Pre-Carve Out Trigger Notice Reserve (as defined below) with respect to the aggregate unpaid amount of Allowed Professional Fees for the applicable period(s) for which such Professional Person failed to deliver a Weekly Statement covering such period shall be limited to the aggregate unpaid amount of Allowed Professional Fees included in the Approved Budget for such period for such Professional Person.

(c) Carve Out Reserves.

(i) Commencing with the week ended September 27, 2024, and on or before the Thursday of each week thereafter, the Debtors shall utilize all cash on hand as of such date and any available cash thereafter held by any Debtor to fund a reserve in an amount equal to the sum of (a) the greater of (i) the aggregate unpaid amount of all Estimated Fees and Expenses reflected in the Weekly Statement delivered on the immediately prior Wednesday to the Debtors and the DIP Agent, and (ii) the aggregate amount of unpaid Allowed Professional Fees contemplated to be incurred in the Approved Budget during such week, *plus* (b) the Post Carve Out Trigger Notice Cap, *plus* (c) an amount equal to the amount of Allowed Professional Fees set forth in the Approved Budget for the week occurring after the most recent Calculation Date. The Debtors shall deposit and hold such amounts in a segregated account maintained by the Debtors in trust (the "Funded Reserve Account") to pay such Allowed Professional Fees (the "Funded Reserves") prior to any and all other claims, and all payments of Allowed Professional

Fees incurred prior to the Termination Declaration Date shall be paid first from such Funded Reserve Account.

(ii) On the day on which a Carve Out Trigger Notice is given by the DIP Agent or the Pre-Petition Agent, as applicable, to the Debtors with a copy to counsel to the Committee (the “Termination Declaration Date”), the Carve Out Trigger Notice shall constitute a demand to the Debtors to, and the Debtors shall utilize all cash on hand as of such date, including cash in the Funded Reserve Account, and any available cash thereafter held by any Debtor to fund a reserve in an amount equal to the then unpaid amounts of the Allowed Professional Fees. The Debtors shall deposit and hold such amounts in a segregated account maintained by the Debtors in trust to pay such then unpaid Allowed Professional Fees (the “Pre-Carve Out Trigger Notice Reserve”) prior to any other claims. On the Termination Declaration Date, the Carve Out Trigger Notice shall also constitute a demand to the Debtors to utilize all cash on hand as of such date, including cash in the Funded Reserve Account, and any available cash thereafter held by any Debtor, after funding the Pre-Carve Out Trigger Notice Reserve, to fund a reserve in an amount equal to the Post-Carve -Out Trigger Notice Cap. The Debtors shall deposit and hold such amounts in a segregated account maintained by the Debtors in trust to pay such Allowed Professional Fees benefiting from the Post-Carve Out Trigger Notice Cap (the “Post-Carve Out Trigger Notice Reserve” and, together with the Pre-Carve Out Trigger Notice Reserve, the “Carve Out Reserves”) prior to any and all other claims.

(d) Application of Carve Out Reserves.

(i) All funds in the Pre-Carve Out Trigger Notice Reserve shall be used first to pay the obligations set forth in clauses (i) through (iii) of the definition of

Carve Out set forth above (the “Pre-Carve Out Amounts”), but not, for the avoidance of doubt, the Post-Carve Out Trigger Notice Cap, until indefeasibly paid in full. If the Pre-Carve Out Trigger Notice Reserve has not been reduced to zero, all remaining funds shall be distributed first to the DIP Agent on account of the applicable DIP Obligations until indefeasibly paid in full, and thereafter to the Pre-Petition Lenders in accordance with their rights and priorities as of the Petition Date and as otherwise set forth in this Final Order.

(ii) All funds in the Post-Carve Out Trigger Notice Reserve shall be used first to pay the obligations set forth in clause (iv) of the definition of Carve Out set forth above (the “Post-Carve Out Amounts”), and then, to the extent the Post-Carve Out Trigger Notice Reserve has not been reduced to zero, to pay the DIP Agent for the benefit of the DIP Lenders, unless the DIP Obligations have been indefeasibly paid in full, in which case any such excess shall be paid to the Pre-Petition Lenders in accordance with their rights and priorities as of the Petition Date.

(iii) Notwithstanding anything to the contrary in the DIP Loan Documents or this Final Order, if either of the Carve Out Reserves is not funded in full in the amounts set forth in Paragraph 17(c), then, any excess funds in one of the Carve Out Reserves following the payment of the Pre-Carve Out Amounts and Post-Carve Out Amounts, respectively (subject to the limits contained in the Post-Carve Out Trigger Notice Cap), shall be used to fund the other Carve Out Reserve, up to the applicable amount set forth in Paragraph 17(c), prior to making any payments to the DIP Agent or the Pre-Petition Lenders, as applicable.

(iv) Notwithstanding anything to the contrary in the DIP Loan Documents or this Final Order, following delivery of a Carve Out Trigger Notice, the DIP Agent, the Pre-Petition Agent, and the Pre-Petition Lenders shall not sweep or foreclose on cash (including cash received as a result of the sale or other disposition of any assets) of the Debtors until the Carve Out Reserves have been fully funded, but shall have a security interest in any residual interest in the Carve Out Reserves, with any excess paid to the DIP Agent for application in accordance with the DIP Loan Documents.

(v) Further, notwithstanding anything to the contrary in this Final Order, (i) disbursements by the Debtors from the Carve Out Reserves shall not constitute Loans (as defined in the DIP Loan Agreement) or increase or reduce the DIP Obligations, (ii) the failure of the Carve Out Reserves to satisfy in full the Allowed Professional Fees shall not affect the priority of the Carve Out with respect to any shortfall (as described below), and (iii) subject to the limitations with respect to the DIP Agent, DIP Lenders, the Pre-Petition Agent, and Pre-Petition Lenders set forth in this Paragraph 17, in no way shall the Initial Approved Budget, any subsequent Approved Budget, Carve Out, Post-Carve Out Trigger Notice Cap or Carve Out Reserves, or any of the foregoing be construed as a cap or limitation on the amount of the Allowed Professional Fees due and payable by the Debtors. For the avoidance of doubt and notwithstanding anything to the contrary in this Final Order or the DIP Loan Documents, the Carve Out shall be senior to all liens and claims securing the DIP Obligations, the Hedge Obligations, the Intermediation Obligations, the Adequate Protection Liens, the Pre-Petition Loan Obligations, the DIP Super-Priority Claims, the Hedging Superpriority Claims (as defined in the Intermediation Order), the Shell Superpriority Claims (as defined in the

Intermediation Order), Intermediation Superpriority Claims (as defined in the Intermediation Order), and any and all other forms of adequate protection, liens, or claims securing the DIP Obligations, the Hedge Obligations, the Intermediation Obligations and the Pre-Petition Loan Obligations.

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

(f) No Direct Obligation To Pay Allowed Professional Fees. None of the DIP Agent, the DIP Lenders, the Pre-Petition Agent, the Pre-Petition Lenders, or the Intermediation Facility Secured Party shall be responsible for the payment or reimbursement of any fees or disbursements of any Professional Person incurred in connection with the Chapter 11 Cases or any successor cases under any chapter of the Bankruptcy Code. Nothing in this Final Order or otherwise shall be construed to obligate the DIP Agent, the DIP Lenders, the Pre-Petition Agent, the Pre-Petition Lenders, or the Intermediation Facility Secured Party in any way, to pay compensation to, or to reimburse expenses of, any Professional Person or to guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement.

(g) Payment of Allowed Professional Fees on or After the Termination Declaration Date. Any payment or reimbursement made on or after the occurrence of the Termination Declaration Date in respect of any Allowed Professional Fees shall permanently reduce the Carve Out on a dollar-for-dollar basis. Any funding of the Carve Out shall be added to, and made a part of, the DIP Obligations secured by the DIP Collateral



and shall be otherwise entitled to the protections granted under this Final Order, the DIP Loan Documents, the Bankruptcy Code, and applicable law.

18. **Investigation Rights.** The Committee shall have until December 7, 2024, and all other non-Debtor parties-in-interest (including a trustee, if appointed or elected prior to the Investigation Termination Date, as defined below) shall have until November 25, 2024 (each, as applicable, the “Investigation Termination Date”) to investigate the validity, extent, priority, perfection and enforceability of: the Pre-Petition Liens and the Pre-Petition Loan Obligations, and (in addition to obtaining the requisite standing) to assert any other claims or causes of action against each of the Pre-Petition Term Loan Secured Parties. If any Committee or any non-Debtor party-in-interest determines that there may be a challenge to the Pre-Petition Liens or the Pre-Petition Loan Obligations and is granted authority and standing by this Court by the Investigation Termination Date, then such Committee or other non-Debtor party-in-interest, as applicable, shall be permitted to file and prosecute an objection or claim related thereto (each, a “Challenge”), and shall have only until the applicable Investigation Termination Date to file such objection or claim (or otherwise initiate an appropriate action on behalf of the Debtors’ estates) setting forth the basis of any such challenge, claim or cause of action; provided, however, that nothing contained in the DIP Loan Documents or this Final Order shall be deemed to confer standing on any Committee or any other non-Debtor party-in-interest to commence a Challenge, and such Committee or other non-Debtor party-in-interest shall be required to move for standing and satisfy the applicable standard for obtaining standing to pursue estate causes of action; provided, further, that, notwithstanding anything herein to the contrary, the filing of a motion by the Committee seeking standing with respect to a Challenge (the “Standing Motion”), that attaches a complaint setting forth such Challenge (the “Challenge Complaint”) and that is filed before the Committee’s

Investigation Termination Date, shall toll the Committee's Investigation Termination Date in respect of such Challenge, solely as to any stipulations or admissions that are specifically and expressly challenged in the Challenge Complaint, until the date that a final order of the Court ruling on such Standing Motion with respect to such Challenge. If a Challenge is not filed on or before the Investigation Termination Date, then, without further action by any party or any further order of this Court: (a) the agreements, acknowledgements, stipulations and releases contained in Paragraph D of this Final Order and its subparagraphs, shall be deemed to be immediately and irrevocably binding on the Debtors, and the Debtors' estates, the Committee, and all parties-in-interest and any and all successors-in-interest thereto shall thereafter be forever barred from bringing any Challenge; (b) the liens and security interests of each of the Pre-Petition Term Loan Secured Parties shall be deemed to constitute valid, binding, enforceable and perfected liens and security interests not subject to avoidance or disallowance pursuant to the Bankruptcy Code or applicable non-bankruptcy law; and (c) each of the Pre-Petition Loan Obligations shall be deemed to be finally allowed claims for all purposes in the Chapter 11 Cases and any subsequent chapter 7 cases, in the amounts set forth in Paragraph E of this Final Order and its subparagraphs and shall not be subject to challenge by any party-in-interest as to validity, priority or otherwise (which claims, with respect to the Pre-Petition Loan Obligations, shall have been deemed satisfied to the extent the Pre-Petition Loan Obligations are converted into Roll-Up Obligations as provided herein). The Pre-Petition Term Loan Secured Parties shall reasonably cooperate in all reasonable requests for information in order to assist the Committee in its investigation under this Paragraph 18. Upon a successful Challenge, the Court may fashion any appropriate remedy, including, without limitation, unwinding or disallowing all or a portion of the Roll-Up Loans, and recharacterization of adequate protection payments or fees paid or otherwise earned including on

account of the Roll-Up Loans, if appropriate. Notwithstanding anything to the contrary herein: (a) if any such Challenge is timely commenced, the stipulations contained in Paragraph E of this Final Order and its subparagraphs shall nonetheless remain binding on all parties-in-interest and preclusive except with respect to the party asserting the Challenge and to the extent that such stipulations are expressly and successfully challenged in such Challenge; and (b) the Pre-Petition Term Loan Secured Parties reserve all of their rights to contest on any grounds any Challenge. For the avoidance of doubt, any trustee appointed or elected in these cases shall, until the Investigation Termination Date (and thereafter, if a Challenge is commenced on or prior to the Investigation Termination Date) and for the duration of any adversary proceeding or contested matter commenced pursuant to this paragraph with respect to a Challenge (whether commenced by such trustee or commenced by any other non-Debtor party-in-interest on behalf of the Debtors' estates), be deemed to be a party other than the Debtors and shall not, for purposes of such adversary proceeding or contested matter, be bound by the acknowledgments, admissions, confirmations and stipulations of the Debtors in this Final Order.

19. **Restriction on Use of DIP Lenders' Funds and Cash Collateral.** The proceeds of the DIP Facility and the Cash Collateral shall be used exclusively for the purposes described in Paragraph 10 of this Final Order, subject to and solely in accordance with the Approved Budget (subject to the Permitted Variance (as defined in the DIP Loan Agreement)). Except as expressly set forth herein or in the Approved Budget, (i) none of Carve Out, DIP Facility Loans, DIP Collateral, or any Cash Collateral may be used for the payment of interest and principal with respect to any indebtedness that is subordinate to the DIP Facility (including the Pre-Petition Term Loan Adequate Protection Obligations) except as expressly set forth herein and in the DIP Loan Agreement and pursuant to the Approved Budget, and (ii) none of the Carve Out, DIP

Facility Loans, DIP Collateral, Pre-Petition Collateral, Cash Collateral, or any Cash Collateral of the Pre-Petition Lenders may be used directly or indirectly by any of the Debtors, any Committee or any other person or entity (x) to finance in any way any adversary action, suit, arbitration, proceeding, application, motion, other litigation, claim, objection, challenge, examination or investigation of any type relating to or in connection with the DIP Loan Documents and Pre-Petition Loan Documents, including, without limitation, any challenges to the DIP Obligations or Pre-Petition Loan Obligations, or the validity, perfection, priority, or enforceability of any DIP Lien or Pre-Petition Lien securing such claims or any payment made thereunder, or (y) to finance in any way any action, suit, arbitration, proceeding, application, motion, other litigation, claim, objection, challenge, examination, or investigation of any type adverse to the interests of the DIP Secured Parties or Pre-Petition Term Loan Secured Parties or their respective rights and remedies under the DIP Loan Documents or Pre-Petition Loan Documents, the Interim Order or this Final Order without the prior written consent of the DIP Agent or Pre-Petition Agent, acting at the direction of Required Lenders (as defined, as applicable, in the DIP Loan Agreement or the Pre-Petition Loan Agreement), as applicable. Notwithstanding the foregoing, the Committee may use no more than \$100,000 (the “Challenge Budget”) of the proceeds of the DIP Facility, the DIP Collateral, or the Pre-Petition Collateral, including the Cash Collateral, in the aggregate, to investigate, prior to the Investigation Termination Date set forth in paragraph 18 of this Final Order, any claims or causes of action against the Pre-Petition Term Loan Secured Parties concerning the legality, validity, priority, perfection, enforceability or extent of the claims, liens, or interests (including the Pre-Petition Liens held by or on behalf of the Pre-Petition Term Loan Secured Parties related to the Pre-Petition Loan Obligations); provided that no portion of such Challenge Budget may be used to prosecute any such claims or causes of action.

20. **Estate Professional Fees.** Nothing in this Final Order shall be construed as consent to the allowance of any fees, expenses, reimbursement or compensation sought by any Professional Person, or shall affect the right of any party in interest, including any DIP Secured Party or any Pre-Petition Term Loan Secured Party, to object to the allowance and payment of any such fees, expenses, reimbursement or compensation.

21. **Payment of Certain Fees and Expenses.** Subject to the review procedures set forth in this Paragraph 21, payment of all DIP Lender Advisor Fees and Expenses and Pre-Petition Lender Fees and Expenses shall not be subject to Court approval of the U.S. Trustee fee guidelines, and none of the DIP Lender Professionals and Pre-Petition Lender Professionals shall be required to file with respect thereto any interim or final fee application with this Court. The DIP Lender Professionals and the Pre-Petition Lender Professionals shall provide copies of summary invoices (which shall be sufficiently detailed to enable a determination as to the reasonableness of such fees and expenses, but shall not be required to contain time entries (subject to the Review Parties' rights to request additional detail of such services provided), and which may be modified to delete any information subject to the attorney-client privilege, any information constituting attorney work product, or any other confidential information, and the provision of the summary invoices shall not constitute any waiver of the attorney client privilege or of any benefits of the attorney work product doctrine) to the Debtors, the U.S. Trustee, the DIP Agent, the Pre-Petition Agent, and counsel to the Committee (together, the "Review Parties"). If any Review Party objects to the reasonableness of the fees and expenses of the DIP Lender Professionals or Pre-Petition Lender Professionals and cannot resolve such objection within ten (10) business days of receipt of such invoices (the "Review Period"), then such party shall file with this Court and serve on such professional an objection (the "Fee Objection") limited to the

issue of the reasonableness of such fees and expenses, and any failure by any such party to file a Fee Objection within the Review Period shall constitute a waiver of any right of such party to object to the applicable invoice. The Debtors shall, upon expiration of the Review Period, pay in accordance with the terms and conditions of this Final Order (a) the undisputed fees, costs, and expenses reflected on any invoice to which a Fee Objection has been timely filed and (b) all fees, costs, and expenses on any invoice in which no Fee Objection has been timely filed.

22. **Protection of DIP Secured Parties' Rights.** So long as there are any DIP Facility Loans or DIP Obligations outstanding or the New Money Lenders have any outstanding commitments under the DIP Loan Agreement, the Pre-Petition Term Loan Secured Parties (i) shall not take any action to foreclose upon or recover in connection with their respective liens and security interests, other agreements, or operation of law of this Final Order, or otherwise exercise remedies against any DIP Collateral, except to the extent authorized herein or by any other order of this Court, (ii) shall be deemed to have consented to any release of DIP Collateral authorized under the DIP Loan Documents, (iii) shall not file any further financing statements, trademark filings, copyright filings, patent filings, mortgages, notices of lien or similar instruments, enter into any control agreement, or otherwise take any action to perfect their security interests in the DIP Collateral unless, solely as to this clause (iii), the DIP Agent (acting at the direction of the Required Lenders) files financing statements or other documents to perfect the liens granted pursuant to this Final Order, or as may be required by applicable state law to continue the perfection of valid and unavoidable liens or security interests as of the Petition Date and (iv) not seek to terminate or modify the use of Cash Collateral, except as provided in Paragraph 28 of this Final Order.

23. **Further Assurances.** The Debtors shall use reasonable best efforts to execute all such agreements, financing statements, instruments and other documents, and take all such further reasonable actions (including the filing and recording of financing statements and other documents) that may be required under any applicable requirements of law, or that the DIP Secured Parties or the Pre-Petition Term Loan Secured Parties may reasonably request in order to grant, preserve, protect, or perfect the DIP Liens or the Pre-Petition Term Loan Adequate Protection Liens granted pursuant hereto. Further, the Debtors are authorized to do and perform all acts, to make, execute and deliver all instruments and documents (including, without limitation, the execution of additional security agreements, mortgages, financing statements, collateral pledge agreements, deposit account control agreements, blocked account control agreements, securities account control agreements, and other collateral documents and agreements), and to pay all fees and expenses that may be reasonably required or necessary for the Debtors' performance under the DIP Loan Documents, including, without limitation, (i) the execution of the DIP Loan Documents and (ii) the payment of the fees, costs and other expenses described in the DIP Loan Documents as and when such become due. The DIP Agent shall enjoy the benefit of all Collateral Documents (as defined in the Pre-Petition Loan Documents) to which the Pre-Petition Agent is a party and shall be entitled to the benefit of those agreements in the furtherance of the Liens granted herein.

24. **506(c) Waiver.** Except to the extent of the Carve Out, no expenses of administration of the Chapter 11 Cases or any future proceeding that may result therefrom, including liquidation in bankruptcy or other proceedings under the Bankruptcy Code, shall be charged against or recovered from any collateral pursuant to section 506(c) of the Bankruptcy Code or any similar principle of law, without the prior written consent of the DIP Agent and the

Pre-Petition Agent no such consent shall be implied from any other action, inaction, or acquiescence by the DIP Secured Parties and the Pre-Petition Term Loan Secured Parties.

25. **Waiver of Marshaling.** Except to the extent of the Carve Out, in connection with any disposition of or exercise of rights and remedies with respect to the DIP Collateral, the DIP Agent may use commercially reasonable efforts to first apply proceeds of the DIP Collateral that is not Pre-Petition Collateral to satisfy the DIP Obligations before applying proceeds of DIP Collateral that is Pre-Petition Collateral to satisfy the DIP Obligations and in no event shall any of the DIP Secured Parties or, any of the Pre-Petition Term Loan Secured Parties, be subject to the equitable doctrine of “marshaling” or any other similar doctrine with respect to the collateral securing the DIP Obligations, the Pre-Petition Term Loan Adequate Protection Obligations, or the Pre-Petition Loan Obligations.

26. **Restrictions on Granting Post-Petition Liens.** Other than the Carve Out, or as otherwise provided in this Final Order or the DIP Loan Agreement, no claim having a priority superior or *pari passu* with those granted by this Final Order to the DIP Secured Parties and the Pre-Petition Term Loan Secured Parties shall be granted or permitted by any order of this Court heretofore or hereafter entered in the Chapter 11 Cases, while (i) any portion of the DIP Facility (or refinancing thereof), any DIP Facility Loan, or any other DIP Obligations are outstanding or (ii) the New Money Lenders have any outstanding Term Loan Commitments under the DIP Loan Agreement. Except as expressly permitted by the DIP Loan Documents, the Debtors will not, at any time during the Chapter 11 Cases, grant mortgages, security interests or liens in the DIP Collateral (or any portion thereof) to any other parties pursuant to section 364(d) of the Bankruptcy Code or otherwise.



27. **Automatic Effectiveness of Liens.** Automatically, the DIP Liens and the Pre-Petition Term Loan Adequate Protection Liens shall be deemed to be valid, perfected, enforceable, non-avoidable and effective by operation of law, and not subject to challenge as of the Petition Date, without the need for (x) filing any UCC-1 financing statements, security agreements, vehicle lien applications, filings with the U.S. Patent and Trademark Office, the United States Copyright Office, or the Library of Congress, state or federal notice, or any other similar instrument or document in any state or public record or office, (y) taking possession or control of any collateral, or (z) further action of any kind (including execution of any security agreements, mortgages, financing statements, collateral agreements, collateral trust agreements, deposit account control agreements, blocked account control agreements, securities account control agreements, or other collateral documents and agreements). All DIP Collateral shall be free and clear of other liens, claims and encumbrances, except the (a) Permitted Priority Liens, (b) solely with respect to the Shared Collateral (other than the Business Interruption Insurance Proceeds) and DIP Exclusive Collateral (solely with respect to such collateral held by Participating Hedging Debtors), Hedging Liens, (c) solely with respect to the Intermediation Facility Priority Collateral (other than the Business Interruption Insurance Proceeds), the Intermediation Facility Liens, (d) with respect to the Business Interruption Insurance Proceeds, the Intermediation Facility Liens, (e) Pre-Petition Term Loan Adequate Protection Liens, and (f) Pre-Petition Liens, in each case, subject to the Carve Out and the priorities set forth on **Exhibit C**. If the DIP Agent (acting at the direction of the Required Lenders) or the Pre-Petition Agent (acting at the direction of the Required Lenders (as defined in the Pre-Petition Loan Agreement)) hereafter reasonably requests that the Debtors execute and deliver to the DIP Agent or the Pre-Petition Agent financing statements, security agreements, collateral assignments, or other instruments and

documents considered by such agent (acting at the direction of the Required Lenders) to be reasonably necessary or desirable to further evidence the perfection of the DIP Liens or the Pre-Petition Term Loan Adequate Protection Liens, as applicable, the Debtors are hereby authorized to execute and deliver such financing statements, security agreements, collateral assignments, instruments, and documents, and the DIP Agent or the Pre-Petition Agent is hereby authorized to file or record such documents in its discretion without seeking modification of the automatic stay under section 362 of the Bankruptcy Code, in which event all such documents shall be deemed to have been filed or recorded at the time and on the date of entry of the Interim Order.

28. **Events of Default and Enforcement of Remedies.** Upon the occurrence and during the continuation of any Event of Default (as defined in the DIP Loan Agreement), the DIP Secured Parties shall have the rights and remedies set forth in the DIP Loan Agreement and in this Final Order, subject to the Enforcement Notice Period and procedures described in Paragraphs 29–30 of this Final Order.

29. **Modification of Automatic Stay.** As provided herein, subject only to the provisions of the DIP Loan Agreement and without further order from this Court, the automatic stay provisions of section 362 of the Bankruptcy Code are vacated and modified to the extent necessary to permit the DIP Agent (acting upon the direction of the Required Lenders in accordance with the terms of the DIP Loan Agreement) to, upon written notice by the DIP Agent to the Debtors, the Intermediator, the Hedge Provider, counsel to any Committee, and the U.S. Trustee (with a copy filed with this Court) of an Event of Default (as defined in the DIP Loan Agreement), (i) declare all DIP Obligations owing under the DIP Facility to be immediately due and payable, (ii) declare the termination, reduction, or restriction of the unfunded Term Loan Commitments to the extent any such Term Loan Commitments remain outstanding (other than as

required to fund the Carve Out), (iii) declare the termination of the DIP Facility and any other documentation as to any future liability or obligation of the DIP Agent and the DIP Lenders, but without affecting any of the DIP Liens or the DIP Obligations; (iv) declare a termination, reduction or restriction on the ability of the Debtors to use any Cash Collateral (other than the Intermediation Facility Priority Collateral) (subject to the Carve Out and other than Cash Collateral for payroll and other expenses critically necessary to preserve the value of the business of the Debtors as specifically provided for in paragraph 30 hereof), and (v) charge the Default Rate (as defined in the DIP Loan Agreement) under the DIP Facility.

30. Any of the foregoing declarations in Paragraph 29 shall be made to the Debtors, and shall be referred to as a “DIP Termination Declaration” and the date which is the earliest to occur of any such DIP Termination Declaration and the Maturity Date (as defined in the DIP Loan Agreement) shall be referred to as the “DIP Termination Declaration Date”; provided, however, that in the case of the termination of the Debtors’ use of Cash Collateral or in the case of enforcement of DIP Liens, the liens securing the Pre-Petition Loan Obligations, or other remedies with respect to the DIP Collateral or Pre-Petition Collateral under the DIP Loan Agreement or the Pre-Petition Loan Agreement, respectively, the DIP Agent (acting at the direction of the Required Lenders) or the Pre-Petition Agent (acting at the direction of the Required Lenders (as defined under the Pre-Petition Loan Agreement)), as applicable, shall file a motion (a “Stay Relief Motion”) with this Court seeking emergency relief to exercise such remedies on at least five (5) business days’ written notice (the “Enforcement Notice Period”) seeking an emergency hearing before this Court (the “Enforcement Hearing”). At the Enforcement Hearing, this Court may consider whether an Event of Default (as defined in the DIP Loan Agreement) has occurred and may fashion an appropriate remedy, including permitting the DIP Agent (acting at

the direction of the Required Lenders), the DIP Lenders, the Pre-Petition Agent (acting at the direction of the Required Lenders (as defined in the Pre-Petition Loan Agreement)), or the Pre-Petition Lenders, as applicable, to exercise the rights and remedies provided for in the DIP Loan Agreement and/or this Final Order; provided that during the Enforcement Notice Period the Debtors are permitted to use Cash Collateral to fund the Carve Out and for payroll and other expenses critically necessary to preserve the value of the business of the Debtors; provided, further, prior to the expiration of the Enforcement Notice Period, the Debtors and any Committee may seek an emergency hearing before this Court, with prompt notice of such hearing to the Intermediator, the Hedge Provider, and primary counsel to each of the DIP Agent, DIP Lenders, Pre-Petition Agent, and Pre-Petition Lenders, to contest whether an Event of Default (as defined in the DIP Loan Agreement) occurred and to seek non-consensual use of Cash Collateral. For the avoidance of doubt, the Enforcement Notice Period shall not expire until the conclusion of the Enforcement Hearing. Except as otherwise ordered by the Bankruptcy Court prior to the expiration of the Enforcement Notice Period, after expiration of the Enforcement Notice Period, the Debtors shall waive their right to and shall not be entitled to seek relief, including, without limitation, under section 105 of the Bankruptcy Code, to the extent such relief would in any way impair or restrict the rights and remedies of the DIP Lenders. The rights and remedies of the DIP Secured Parties specified herein are cumulative and not exclusive of any rights or remedies that the DIP Secured Parties may have under the DIP Loan Documents or otherwise. The Debtors shall cooperate fully with the DIP Secured Parties in their exercise of rights and remedies, whether against the DIP Collateral or otherwise. This Court shall retain exclusive jurisdiction to hear and resolve any disputes and enter any orders required by the provisions of this Paragraph 30 and relating to the application, re-imposition or continuance of the automatic stay as provided hereunder.

31. **Milestones.** It is a condition to the DIP Facility that the Debtors shall comply with the following deadlines (each of which may be waived, amended, modified or extended upon the prior written consent (which may be by email) of the DIP Agent (at the direction of the Supermajority Lenders (as defined in the DIP Loan Documents))), in their sole discretion, without further notice or order of this Court) (the “Milestones”). The failure to satisfy the following Milestones shall constitute an Event of Default (as defined in the DIP Loan Agreement) in accordance with the terms of the DIP Loan Agreement and this Final Order:

(a) No later than three (3) days after the Petition Date, subject to Bankruptcy Court availability, the Bankruptcy Court shall have entered the Interim Order, a disclosure statement scheduling order (the “Scheduling Order”) and an order to approve the bidding procedures (the “Bidding Procedures Order”);

(b) No later than thirty-five (35) days after the Petition Date, the deadline for submitting indications of interest (the “IOI Deadline”);

(c) No later than thirty-six (36) days after the Petition Date, the Bankruptcy Court shall have entered this Final Order;

(d) No later than fifty (50) days after the Petition Date, the Bankruptcy Court shall have entered an order approving the disclosure statement;

(e) If the Debtors elect to pursue a sale of some or substantially all of the Debtors’ assets pursuant to section 363 of the Bankruptcy Code (a “Sale”) to the DIP Lenders and/or Pre-Petition Lenders (the “Credit Bid Sale”), no later than seventy (70) days after the Petition Date, the Bankruptcy Court shall have entered an order approving the Credit Bid Sale (the “Credit Bid Sale Order”);

(f) If the Debtors elect to pursue a Sale to a third party (such a Sale, a “Third-Party Sale”), (i) the deadline for submitting qualified bids for the Third Party Sale shall be no later than no later than sixty-five (65) days after the Petition Date; and (ii) no later than ninety (90) days after the Petition Date, the Bankruptcy Court shall have entered an order approving such Third Party Sale (the “Third-Party Sale Order”);

(g) No later than ninety-five (95) days after the Petition Date, the order confirming an Acceptable Plan of Reorganization shall have been entered; and

(h) No later than one hundred and fifteen (115) days after the Petition Date, the Plan Effective Date shall have occurred.

32. **Credit Bid.**

(a) Subject to section 363(k) of the Bankruptcy Code, the DIP Agent, at the direction of the Required Lenders, shall have the unqualified right to credit bid up to the full amount of the outstanding DIP Obligations, on behalf of the DIP Lenders, in any sale of the DIP Collateral under or pursuant to (i) section 363 of the Bankruptcy Code, (ii) a plan of reorganization or a plan of liquidation under section 1129 of the Bankruptcy Code, or (iii) a sale or disposition by a chapter 7 trustee for any Debtor under section 725 of the Bankruptcy Code.

(b) Subject to section 363(k) of the Bankruptcy Code, the Pre-Petition Agent, at the direction of the Required Lenders (as defined in the Pre-Petition Loan Agreement), shall have the unqualified right to credit bid up to the full amount of any remaining Pre-Petition Loan Obligations, on behalf of the Pre-Petition Lenders, in any sale of DIP Collateral or Pre-Petition Collateral, as applicable, subject to the satisfaction of all DIP Obligations and all obligations secured by Hedging Liens (solely with respect to the Shared

Collateral (other than the Business Interruption Insurance Proceeds) and DIP Exclusive Collateral held by Participating Hedging Debtors), Permitted Priority Liens or Intermediation Facility Liens (solely with respect to the Intermediation Facility Priority Collateral (other than the Business Interruption Insurance Proceeds)), or as otherwise consented to by the New Money Lenders, the Hedge Provider, the Intermediator, or such other holder of a Permitted Priority Lien, as applicable, under or pursuant to (i) section 363 of the Bankruptcy Code, (ii) a plan of reorganization or a plan of liquidation under section 1129 of the Bankruptcy Code, or (iii) a sale or disposition by a chapter 7 trustee for any Debtor under section 725 of the Bankruptcy Code.

33. **Binding Effect.** Subject to Paragraph 18 of this Final Order, the provisions of this Final Order shall be binding upon and inure to the benefit of the DIP Secured Parties, the Pre-Petition Term Loan Secured Parties, the Debtors, any Committee appointed in these Chapter 11 Cases, and each of their respective successors and assigns (including any chapter 7 or chapter 11 trustee hereinafter appointed or elected for the estate of the Debtors, an examiner appointed pursuant to section 1104 of the Bankruptcy Code or any other fiduciary appointed as a legal representative of any of the Debtors or with respect to the property of the estate of any of the Debtors). To the extent permitted by applicable law, this Final Order shall bind any trustee hereafter appointed for the estate of any of the Debtors, whether in these Chapter 11 Cases or in the event of the conversion of any of the Chapter 11 Cases to a liquidation under chapter 7 of the Bankruptcy Code. Such binding effect is an integral part of this Final Order.

34. **Survival.** The provisions of this Final Order and the DIP Loan Documents, any actions taken pursuant hereto or thereto, and all of the protections, rights, remedies, liens, priorities, privileges, and benefits granted to any or all of the DIP Secured Parties and the Pre-

Petition Term Loan Secured Parties hereunder or thereunder, as applicable, shall survive and continue in full force and effect, and shall not be modified, impaired, or discharged by, the entry of any order confirming any Plan (except as agreed in the RSA, if the RSA has not been terminated), converting any of the Chapter 11 Cases to a chapter 7 case, dismissing any of the Chapter 11 Cases, withdrawing of the reference of any of these Chapter 11 Cases or providing for abstention from handling or retaining of jurisdiction of any of these Chapter 11 Cases in this Court, or terminating the joint administration of these Chapter 11 Cases or by any other act or omission. The terms and provisions of this Final Order, including the DIP Super-Priority Claims, and the DIP Liens in the DIP Collateral, and all other protections, rights, remedies, liens, priorities, privileges, and benefits granted to any or all of the DIP Secured Parties and the Pre-Petition Term Loan Secured Parties, respectively, shall continue in full force and effect in these proceedings and after dismissal of any thereof, and shall maintain their respective priorities as provided by this Final Order, the DIP Loan Documents, and the Pre-Petition Loan Documents, and to the maximum extent permitted by law, until all of the DIP Obligations and the Pre-Petition Loan Obligations, as applicable, are discharged. The DIP Obligations shall not be discharged by the entry of any order confirming any such chapter 11 plan (except as agreed in the RSA, if the RSA has not been terminated), each of the Debtors having hereby waived such discharge pursuant to section 1141(d)(4) of the Bankruptcy Code. In no event shall any plan of reorganization or liquidation be allowed to alter the terms of repayment of any of the DIP Obligations from those set forth in the DIP Loan Documents (except as agreed in the RSA, if the RSA has not been terminated) without the express written consent of the DIP Agent and the New Money Lenders.

35. **Modifications of DIP Loan Documents.** The Debtors and the DIP Secured Parties are hereby authorized to implement, in accordance with the terms of the DIP Loan



Documents, any non-material modifications (including without limitation, any change in the number or composition of the DIP Lenders) of the DIP Loan Documents without further order of this Court; provided, however, that the Debtors shall provide notice of any non-material modification or amendment to the DIP Loan Documents shall be provided to counsel to any Committee, to the U.S. Trustee, and the Pre-Petition Agent, each of whom shall have three (3) business days from the date of such notice within which to object in writing to such modification or amendment. If any such party timely objects to any non-material modification or amendment to the DIP Loan Documents, such modification or amendment shall only be permitted pursuant to an order of this Court.

36. **Limits on Lender Liability; No Third Party Rights.** Nothing in this Final Order, any of the DIP Loan Documents, or any other documents related thereto shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Secured Parties or the Pre-Petition Term Loan Secured Parties of any liability for any claims arising from any activities by the Debtors in the operation of their businesses or in connection with the administration of these Chapter 11 Cases. The DIP Secured Parties shall not, solely by reason of having made loans under the DIP Facility, be deemed in control of the operations of the Debtors or to be acting as a “responsible person” or “owner or operator” with respect to the operation or management of the Debtors (as such terms, or any similar terms, are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 et seq., as amended, or any similar federal or state statute). Nothing in this Final Order or the DIP Loan Documents shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Secured Parties or any of the Pre-Petition Term Loan Secured Parties of any liability for any claims arising from the prepetition or post-petition activities of any of the Debtors. Except as explicitly

provided for herein or in any credit document, this Final Order does not create any rights for the benefit of any third party, creditor, equity holder, or direct, indirect, or incidental beneficiary. In determining to make any loan (whether under the DIP Loan Documents or otherwise) or to permit the use of Cash Collateral or in exercising any rights or remedies as and when permitted pursuant to this Final Order or the DIP Loan Documents, the DIP Secured Parties and the Pre-Petition Term Loan Secured Parties shall not owe any fiduciary duty to the Debtors, their respective creditors, shareholders, or estates.

37. **Insurance Policies.** The DIP Secured Parties shall be, and shall be deemed to be, without any further action or notice, named as additional insureds and loss payees, as applicable, on each insurance policy maintained now or in the future by any of the Debtors which in any way relates to the DIP Collateral. Notwithstanding the foregoing, the Debtors are authorized to take any actions that the DIP Agent (acting at the direction of Required Lenders) shall reasonably request, in its sole and absolute discretion, to have the DIP Agent, on behalf of the DIP Secured Parties, added as an additional insured and loss payee on each insurance policy.

38. **Release of Claims and Defenses.** Subject to Paragraph 18 of this Final Order, each Debtor, on its own behalf and on behalf of its estate, hereby absolutely, irrevocably, and unconditionally releases and forever discharges and acquits each of the DIP Secured Parties and the Pre-Petition Term Loan Secured Parties (solely in their capacity as such) together with their Representatives (collectively, the “Released Parties”), of and from any and all obligations and liabilities to the Debtors (and their successors and assigns) and from any and all claims, controversies, disputes, obligations, counterclaims, offsets, defenses, demands, debts, damages, expenses, losses, liens, accounts, contracts, liabilities, actions, causes of action and any other rights of disgorgement or recovery arising prior the Petition Date of any kind, nature or description,

whether known or unknown, foreseen or unforeseen, matured or unmatured, accrued or unaccrued, suspected or unsuspected, or liquidated or unliquidated, pending or threatened, arising in law or equity or upon contract or tort or under any state or federal law or otherwise, arising out of, based upon or related to, in whole or in part, any of the DIP Loan Documents, the Pre-Petition Loan Agreement, or any loans under the DIP Facility, any aspect of the relationship between the Debtors, on the one hand, and any or all of the Released Parties, on the other hand, relating to any of DIP Loan Documents, the Pre-Petition Loan Agreement, or any transaction contemplated thereby or any other acts or omissions by any or all of the Released Parties in connection with the DIP Facility, the Pre-Petition Loan Facility, or any of the DIP Loan Documents, the Pre-Petition Loan Agreement, or their prepetition relationship with such Debtor or any affiliate thereof relating to any of the DIP Loan Documents the Pre-Petition Loan Agreement, or any transaction contemplated thereby, including, without limitation, any so-called “lender liability” claims or defenses or claims or defenses under chapter 5 of the Bankruptcy Code or any other causes of action, in each case that any Debtor at any time had, now has or may have, or that its successors or assigns hereafter can or may have against any of the Released Parties for or by any reason of any act, omission, matter, cause or thing whatsoever arising at any time on or prior to the date of this Final Order; provided that the releases set forth in this section shall not release any claims against a Released Party or liabilities that a court of competent jurisdiction determines results from the bad faith, fraud, gross negligence or willful misconduct of such Released Party; provided, further, that nothing herein shall relieve the DIP Secured Parties from fulfilling their commitments under the DIP Facility.

39. **Protection Under Section 364(e)**. If any or all of the provisions of this Final Order are hereafter reversed, modified, vacated or stayed, such reversal, modification,

vacation or stay shall not affect the validity or enforceability of any DIP Obligation, DIP Lien, Pre-Petition Term Loan Adequate Protection Super-Priority Claim, or Pre-Petition Term Loan Adequate Protection Lien, or any other claim, lien, security interest or priority authorized or created hereby or pursuant to the DIP Loan Documents or Pre-Petition Term Loan Adequate Protection Obligations incurred prior to the actual receipt by the DIP Agent or the Pre-Petition Agent, as applicable, of written notice of the effective date of such reversal, modification, vacation or stay. Notwithstanding any such reversal, modification, vacation or stay, any use of Cash Collateral or the incurrence of DIP Obligations or Pre-Petition Term Loan Adequate Protection Obligations by the Debtors prior to the actual receipt by the DIP Agent or the Pre-Petition Agent, as applicable, of written notice of the effective date of such reversal, modification, vacation or stay, shall be governed in all respects by the provisions of this Final Order, and the DIP Secured Parties and Pre-Petition Term Loan Secured Parties shall be entitled to all of the rights, remedies, protections and benefits granted under the Bankruptcy Code, including section 364(e) of the Bankruptcy Code, this Final Order, and the DIP Loan Documents with respect to all uses of Cash Collateral and the incurrence of DIP Obligations and Pre-Petition Term Loan Adequate Protection Obligations.

40. **Effect of Dismissal of Chapter 11 Cases.** If the Chapter 11 Cases are dismissed, converted or substantively consolidated, then neither the entry of this Final Order nor the dismissal, conversion or substantive consolidation of these Chapter 11 Cases shall affect the rights of the DIP Secured Parties or Pre-Petition Term Loan Secured Parties under their respective DIP Loan Documents, Pre-Petition Loan Documents, or this Final Order, and all of the respective rights and remedies thereunder of the DIP Secured Parties and the Pre-Petition Term Loan Secured Parties shall remain in full force and effect as if the Chapter 11 Cases had not been dismissed,

converted, or substantively consolidated. If an order dismissing any of the Chapter 11 Cases is at any time entered, such order shall provide (in accordance with sections 105 and 349 of the Bankruptcy Code) that (a) the DIP Liens and DIP Super-Priority Claims granted to and conferred upon the DIP Agent and the DIP Secured Parties and the protections afforded to the DIP Agent and the DIP Secured Parties pursuant to this Final Order and the DIP Loan Documents shall continue in full force and effect and shall maintain their priorities as provided in this Final Order until all DIP Obligations shall have been paid and satisfied in full (and that such DIP Liens, DIP Super-Priority Claims, and other protections shall, notwithstanding such dismissal, remain binding on all interested parties); (b) those Pre-Petition Loan, Pre-Petition Term Loan Adequate Protection Liens and Pre-Petition Term Loan Adequate Protection Super-Priority Claims granted to and conferred upon the Pre-Petition Term Loan Secured Parties shall continue in full force and effect and shall maintain their priorities as provided in this Final Order until all Pre-Petition Loan Obligations shall have been paid and satisfied in full (and that such Pre-Petition Term Loan Adequate Protection Liens, Pre-Petition Term Loan Adequate Protection Super-Priority Claims, and other adequate protection granted to or conferred on the Pre-Petition Term Loan Secured Parties shall, notwithstanding such dismissal, remain binding on all interested parties); and (c) to the greatest extent permitted by applicable law, this Court shall retain jurisdiction, notwithstanding such dismissal, for the purpose of enforcing the DIP Liens, the Pre-Petition Loan, the Pre-Petition Term Loan Adequate Protection Liens, the DIP Super-Priority Claims and the Pre-Petition Term Loan Adequate Protection Super-Priority Claims referred to herein.

41. **Discharge.** Solely if the RSA has not been terminated, notwithstanding the provisions of section 1141(d) of the Bankruptcy Code, the DIP Obligations provided herein shall not be discharged by the entry of an order confirming any Plan, a Credit Bid Sale Order, or a Third

Party Sale Order, unless (a) such obligations have been indefeasibly paid in full in cash (other than contingent indemnification obligations for which no claim has been asserted), (b) in the event of a Recapitalization Transactions, (i) equitization of all DIP Obligations (on a pro rata basis along with allowed Term Loan Claims) not refinanced by an exit facility acceptable to holders of DIP Super-Priority Claims and the Debtors, and/or (ii) to the extent exit financing is raised by the Debtors, refinancing of all or part of the DIP Super-Priority Claims, on terms acceptable to the DIP Lenders, by an exit facility acceptable to the holders of the DIP Super-Priority Claims and the Debtors, or (c) in the event of a Credit Bid Sale, holders of any DIP Super-Priority Claims not otherwise bid as part of such Credit Bid Sale shall receive their pro rata share of all Excess Distributable Cash (as defined in the RSA) until paid in full.

42. **Proofs of Claim.** The Pre-Petition Term Loan Secured Parties shall not be required to file proofs of claim in any of the Chapter 11 Cases for any claim allowed herein. The stipulations in Paragraph E of this Final Order shall be deemed to constitute a timely-filed proof of claim for the Pre-Petition Term Loan Secured Parties in respect of the Pre-Petition Loan Obligations. However, in order to facilitate the processing of claims, to ease the burden upon the Court and to reduce an unnecessary expense to the Debtors' estates, the Pre-Petition Agent, is authorized to file in the Debtors' lead Chapter 11 Case Vertex Energy, Inc., Case No. 24-90507 (CML), a master proof of claim on behalf of the Pre-Petition Term Loan Secured Parties on account of any and all of their respective claims arising under the Pre-Petition Loan Documents, applicable security documents and hereunder (each, a "Master Proof of Claim") against each of the Debtors. Upon the filing of a Master Proof of Claim by the Pre-Petition Agent, it shall be deemed to have filed a proof of claim in the amount set forth opposite its name therein in respect of its claims against each of the Debtors of any type or nature whatsoever with respect to the

applicable security documents, and the claim of each Pre-Petition Term Loan Secured Party, (and each of its respective successors and assigns), named in a Master Proof of Claim shall be treated as if it had filed a separate proof of claim in each of these Chapter 11 Cases. In addition, the Pre-Petition Term Loan Secured Parties and the DIP Secured Parties will not be required to file any request for allowance and/or payment of any administrative expenses, and this Final Order shall be deemed to constitute a timely filed request for allowance and/or payment of any Pre-Petition Loan Obligations constituting administrative expenses or any DIP Obligations, as applicable.

43. **Findings of Fact and Conclusions of Law.** This Final Order constitutes, where applicable, findings of fact and conclusions of law and shall take effect and be fully enforceable immediately upon the execution thereof.

44. **Jurisdiction.** This Court shall have exclusive jurisdiction with respect to any and all disputes or matters under, or arising out of or in connection with, either the DIP Facility or the DIP Loan Documents.

45. **Authorized Signatories.** The signature of any Authorized Person (as defined in the Debtors' corporate resolutions filed with the Petitions) or Debtors' attorneys, appearing on any one or more of the DIP Loan Documents shall be sufficient to bind the Debtors. No board of directors or other approval shall be necessary.

46. **Order Effective.** This Final Order shall be effective as of the date of the signature by the Court.

47. **No Requirement to Accept Title to Collateral.** The DIP Secured Parties and the Pre-Petition Term Loan Secured Parties shall not be obligated to accept title to any portion of the respective DIP Collateral and Pre-Petition Collateral in payment of the indebtedness owed to such parties by the Debtors, in lieu of payment in cash or cash equivalents, nor shall any of the

DIP Secured Parties and the Pre-Petition Term Loan Secured Parties be obligated to accept payment in cash or cash equivalents that is encumbered by any interest of any person or entity other than the DIP Secured Parties or the Pre-Petition Term Loan Secured Parties.

48. **Controlling Effect of Final Order.** To the extent any provision of this Final Order conflicts or is inconsistent with any provision of the Motion, any prepetition agreement or any DIP Loan Document, the provisions of this Final Order shall control.

49. **Headings.** Paragraph headings used herein are for convenience only and are not to affect the construction of, or to be taken into consideration in, interpreting this Final Order.

50. **Financial Reporting to the Committee.** The Debtors shall provide counsel to the Committee with the financial and other reporting provided to the DIP Lenders under the DIP Loan Agreement.

51. **Reservation of Rights of Matheson.** Notwithstanding anything to the contrary in the DIP Loan Documents or this Final Order, the liens and claims stipulated to and granted under the Interim Order and this Final Order shall not attach to, or otherwise encumber property owned by Matheson Tri-Gas, Inc., including without limitation:

(a) the leasehold interests of Matheson Tri-Gas, Inc. granted by the Debtors granted pursuant to that certain Ground Lease, dated as of January 12, 2006, by and between Linde Gas USA LLC, successor in interest to Linde Gas LLC, and n/k/a Matheson Tri-Gas, Inc., as lessee, and Shell Chemical LP, as lessor;

(b) the Facility (as defined in the Hydrogen and Steam Supply Agreement by and between Vertex Refining Alabama LLC and Matheson Tri-Gas, Inc., dated as of June 11, 2022), and



(c) the Facility (as defined in the Hydrogen and Steam Supply Agreement by and between Vertex Refining Alabama LLC (Amended and Restated Version), as successor in interest to Shell Chemical LP, and Matheson Tri-Gas, Inc., as successor in interest to Linde Gas LLC, dated as of January 12, 2006, as amended).

52. **Plains Marketing.** For the avoidance of doubt, and notwithstanding anything to the contrary set forth in this Final Order, any DIP Liens granted herein in respect of any property of the Debtors or their estates that is now or hereafter becomes subject to a lien in favor of Plains Marketing, L.P. (“Plains Marketing”) pursuant to that certain *Terminal Services Agreement*, dated as of March 1, 2015, entered by and between Debtor Vertex Refining Alabama LLC and Plains Marketing (such collateral that is Intermediation Facility Priority Collateral, the “Plains Collateral”) and applicable statutory and common law, shall not in any way be senior to or prime any lien held by Plains Marketing in respect of the Plains Collateral.

Signed: \_\_\_\_\_, 2024

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Christoper Lopez  
United States Bankruptcy Judge

**Exhibit A**

**DIP Loan Agreement**

**[Filed at Docket No. 20]**

**Exhibit B**

**Initial Approved Budget**

**[Filed at Docket No. 20]**

**Exhibit C****Relative Lien Priorities on Collateral<sup>1</sup>**

<b>Shared Collateral constituting Intermediation Facility Priority Collateral (other than Business Interruption Insurance Proceeds)</b>	<b>Shared Collateral constituting DIP Priority Collateral (other than Business Interruption Insurance Proceeds)</b>	<b>Shared Collateral constituting Business Interruption Insurance Proceeds<sup>2</sup></b>	<b>DIP Exclusive Collateral</b>
Carve Out	Carve Out	Carve Out	Carve Out
Permitted Priority Liens	Permitted Priority Liens	Permitted Priority Liens	Permitted Priority Liens
Intermediation Facility Liens	Hedging Liens	Hedging Liens/ Intermediation Facility Liens/DIP Liens	Hedging Liens <sup>3</sup>
Intermediation Facility Adequate Protection Liens	DIP Liens	Pre-Petition Term Loan Adequate Protection Liens/ Intermediation Facility Adequate Protection Liens	DIP Liens
Hedging Liens	Pre-Petition Term Loan Adequate Protection Liens	Pre-Petition Liens	Pre-Petition Term Loan Adequate Protection Liens
DIP Liens	Pre-Petition Liens	-	Pre-Petition Liens
Pre-Petition Term Loan Adequate Protection Liens	Intermediation Facility Liens	-	-
Pre-Petition Liens	Intermediation Facility Adequate Protection Liens	-	-

<sup>1</sup> Terms used in this **Exhibit C** shall have the meaning given to such terms in **Exhibit E**.

<sup>2</sup> The Intermediator must have marshalled, taken, liquidated and exhausted all remedies and recoveries available to the Intermediator under the Intermediation Contracts from any other Intermediation Facility Priority Collateral, including Intermediation Title Property.

<sup>3</sup> Only with respect to DIP Exclusive Collateral held by Participating Hedging Debtors.

**Exhibit D****Relative Claim Priorities<sup>12</sup>**

<b>Vertex Refining (with respect to proceeds of Intermediation Facility Priority Collateral (other than Business Interruption Insurance Proceeds))</b>	<b>Vertex Refining (with respect to proceeds of DIP Priority Collateral (other than Business Interruption Insurance Proceeds))</b>	<b>Vertex Refining (with respect to Business Interruption Insurance Proceeds)</b>	<b>Parent</b>	<b>Vertex Renewables</b>	<b>Participating Hedging Debtors (other than Vertex Refining, Parent and Vertex Renewables)</b>	<b>All Other Debtors</b>
Carve Out	Carve Out	Carve Out	Carve Out	Carve Out	Carve Out	Carve Out
Intermediation Superpriority Claims	Superpriority Hedging Claims	Superpriority Hedging Claims/ DIP Super-Priority Claims/ Intermediation Superpriority Claims	Superpriority Hedging Claims	Superpriority Hedging Claims	Superpriority Hedging Claims	DIP Super-Priority Claims

<sup>1</sup> Terms used in this **Exhibit D** shall have the meaning given to such terms in **Exhibit E**.

<sup>2</sup> The priorities shown on this **Exhibit D** are not binding on Shell and are only for depiction. With respect to Shell Superpriority Claims, if there is any conflict between this **Exhibit D** and the Shell Support Agreement (as defined in the Intermediation Order), the Shell Support Agreement controls, it being understood that Paragraph 8 of the Intermediation Order is consistent with the Shell Support Agreement.

<b>Vertex Refining (with respect to proceeds of Intermediation Facility Priority Collateral (other than Business Interruption Insurance Proceeds))</b>	<b>Vertex Refining (with respect to proceeds of DIP Priority Collateral (other than Business Interruption Insurance Proceeds))</b>	<b>Vertex Refining (with respect to Business Interruption Insurance Proceeds)</b>	<b>Parent</b>	<b>Vertex Renewables</b>	<b>Participating Hedging Debtors (other than Vertex Refining, Parent and Vertex Renewables)</b>	<b>All Other Debtors</b>
Pre-Petition Intermediation Facility Adequate Protection Claims	DIP Super-Priority Claims	Shell Superpriority Claims	All DIP Super-Priority Claims / Certain Intermediation Superpriority Claims (solely with respect to Business Interruption Insurance Proceeds)	DIP Super-Priority Claims	DIP Super-Priority Claims	Pre-Petition Term Loan Adequate Protection Super-Priority Claims
Superpriority Hedging Claims	Intermediation Superpriority Claims	Pre-Petition Term Loan Adequate Protection Super-Priority Claims / Pre- Petition Intermediation Facility Adequate Protection Claims	Intermediation Superpriority Claims (claims other than Business Interruption Insurance Proceeds)	Intermediation Superpriority Claims	Pre-Petition Term Loan Adequate Protection Super-Priority Claims	-

<b>Vertex Refining (with respect to proceeds of Intermediation Facility Priority Collateral (other than Business Interruption Insurance Proceeds))</b>	<b>Vertex Refining (with respect to proceeds of DIP Priority Collateral (other than Business Interruption Insurance Proceeds))</b>	<b>Vertex Refining (with respect to Business Interruption Insurance Proceeds)</b>	<b>Parent</b>	<b>Vertex Renewables</b>	<b>Participating Hedging Debtors (other than Vertex Refining, Parent and Vertex Renewables)</b>	<b>All Other Debtors</b>
DIP Super-Priority Claims	Shell Superpriority Claims	-	Shell Superpriority Claims	Pre-Petition Term Loan Adequate Protection Super-Priority Claims	-	-
Shell Superpriority Claims	Pre-Petition Term Loan Adequate Protection Super-Priority Claims	-	Pre-Petition Term Loan Adequate Protection Super-Priority Claims / Certain Pre-Petition Intermediation Facility Adequate Protection Claims (solely with respect to Business Interruption Insurance Proceeds)			

<b>Vertex Refining (with respect to proceeds of Intermediation Facility Priority Collateral (other than Business Interruption Insurance Proceeds))</b>	<b>Vertex Refining (with respect to proceeds of DIP Priority Collateral (other than Business Interruption Insurance Proceeds))</b>	<b>Vertex Refining (with respect to Business Interruption Insurance Proceeds)</b>	<b>Parent</b>	<b>Vertex Renewables</b>	<b>Participating Hedging Debtors (other than Vertex Refining, Parent and Vertex Renewables)</b>	<b>All Other Debtors</b>
Pre-Petition Term Loan Adequate Protection Super-Priority Claims	Pre-Petition Intermediation Facility Adequate Protection Claims	-	Pre-Petition Intermediation Facility Adequate Protection Claims (claims other than Business Interruption Insurance Proceeds)	-	-	-



## **Exhibit E**

### **Certain Defined Terms**

“*Books*” means, as to any Debtor, the books and records, including ledgers; records concerning such Debtor’s assets or liabilities, including the Collateral, business operations or financial condition; and all computer programs, or data storage, and the related devices and equipment, containing such information.

“*Business Interruption Insurance Percentage*” means, as of any date of determination, (i) with respect to the Intermediator, the percentage determined by dividing the outstanding Intermediation Obligations after the Intermediator has marshalled, taken, liquidated and exhausted all remedies and recoveries available to the Intermediator under the Intermediation Contracts (as defined in the Intermediation Order) from any other Intermediation Facility Priority Collateral and any insurance rights owned or held by the Intermediator in its own name covering such Intermediation Facility Priority Collateral to the Intermediation Obligations under the Intermediation Contracts, by the sum of such Intermediation Obligations, plus the outstanding Hedge Obligations plus the outstanding DIP Obligations, hereunder in each case, as of the time of the occurrence of the event giving rise to Business Interruption Insurance Proceeds; (ii) with respect to the Hedge Provider, the percentage determined by dividing the outstanding Hedge Obligations, by the sum of such Intermediation Obligations, plus the outstanding Hedge Obligations plus the outstanding DIP Obligations, hereunder in each case, as of the time of the occurrence of the event giving rise to Business Interruption Insurance Proceeds and (iii) with respect to the DIP Secured Parties hereunder, the difference between 100% and the percentages determined in items (i) and (ii) of this definition. For purposes of determining “Business Interruption Insurance Percentage” with respect to the Intermediator, the Intermediator shall be required to marshal, take, liquidate and exhaust all remedies and recoveries available to the Intermediator with respect to (x) all other categories of Intermediation Facility Priority Collateral, including Intermediation Title Property and (y) all insurance owned and held in the name of the Intermediator with respect to the Intermediation Facility Priority Collateral prior to receiving any recovery of Business Interruption Insurance Proceeds under policies required by the Intermediation Contracts and such policies shall be the secondary policy with respect to Intermediation Facility Priority Collateral.

“*Business Interruption Insurance Proceeds*” means proceeds of business interruption insurance policies maintained by Parent or Vertex Refining. Any Business Interruption Insurance Proceeds go, first, to satisfy the Carve Out, second, to any Permitted Priority Liens, and third, to any obligations secured by Hedging Liens, DIP Liens and Intermediation Facility Liens on a pari passu basis in accordance with the Business Interruption Insurance Percentage to claims secured by the DIP Liens, Hedging Liens and Intermediation Facility Liens.

“*Catalyst Assets*” means any catalyst assets and inventory constituting catalyst, precious metals assets and precious metals inventory and all additions, accessions and all rights related thereto.

“*Carve Out*” means the Carve Out (as defined in the DIP Order).

“*Collateral*” means all assets and interests in assets and proceeds thereof now owned or hereafter acquired by any Debtor or arising and wheresoever located, including all accessions thereto and products and proceeds thereof (other than Excluded Property (as defined in the DIP Order or as defined in the Intermediation Order)) in or upon which a Lien is granted by a Debtor to the Secured Parties with the priorities as set forth in **Exhibit C**.

“*Debtors*” means the Debtors (as defined in the DIP Order).

“*DIP Exclusive Collateral*” means all assets and interests in assets and proceeds thereof now owned or hereafter acquired by any Debtor (excluding, Vertex Refining and limited with respect to the Hedge Provider, only Participating Hedging Debtors) or arising and wheresoever located, including all accessions thereto and products and proceeds thereof (other than Excluded Property or any other Shared Collateral, including business interruption insurance policies maintained by Parent) in or upon which a Lien is granted by a Debtor to the Hedge Provider and DIP Secured Parties with the priorities as set forth in **Exhibit C**; provided that no Debtor shall grant a Lien to the Hedge Provider to the extent such Debtor does not constitute an “eligible contract participant” as defined in the Commodity Exchange Act and the regulations thereunder at the time the guaranty by such Debtor.

“*DIP Liens*” means the DIP Liens (as defined in the DIP Order).

“*DIP Obligations*” means the DIP Obligations (as defined in the DIP Order).

“*DIP Order*” means that certain *Final Order (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Authorizing the Debtors to Use Cash Collateral, (III) Granting Liens and Providing Claims with Superpriority Administrative Expense Status, (IV) Granting Adequate Protection to the Pre-Petition Term Loan Secured Parties, (V) Modifying the Automatic Stay, and (VI) Granting Related Relief*.

“*DIP Priority Collateral*” means Shared Collateral other than the Intermediation Facility Priority Collateral including the DIP Secured Parties’ Business Interruption Insurance Percentage.

“*DIP Secured Parties*” means the DIP Secured Parties (as defined in the DIP Order).

“*DIP Super-Priority Claims*” means the DIP Super-Priority Claims (as defined in the DIP Order).

“*Excluded Property*” means Excluded Property (as defined in the DIP Order or as defined in the Intermediation Order).

“*Hedge Facility*” means the Hedge Facility (as defined in the Intermediation Order).

“*Hedge Obligations*” means the Hedge Obligations (as defined in the Intermediation Order) but shall not include any other Intermediation Obligations or Transaction

Obligations (as defined in the Intermediation Contracts), including, without limitation, by virtue of setoff, netting, or indemnification rights under the Intermediation Contracts.

“*Hedge Provider*” means the Hedge Provider (as defined in the Intermediation Order).

“*Hedging Liens*” means the Hedging Liens (as defined in the Intermediation Order).

“*Hydrocarbon Credit Support*” means, as of any time, all Inventory constituting or consisting of Hydrocarbons (as defined in the Intermediation Contracts) then owned or at any time hereafter acquired by Vertex Refining, that is located at a Company Storage Location (as defined in the Intermediation Contracts); provided that “Hydrocarbon Credit Support” shall not include any Excluded Property or any Catalyst Assets.

“*Independent Amount*” means the Independent Amount (as defined in the Independent Amount Letter as in effect on the date hereof).

“*Independent Amount Letter*” means the independent amount letter entered into between Vertex Refining and the Intermediator in connection with the Intermediation Contracts, as may be amended from time to time.

“*Intermediation Contracts*” means the Intermediation Contracts (as defined in the Intermediation Order).

“*Intermediation Title Property*” means Intermediation Title Property (as defined in the Intermediation Order) or the Proceeds thereof and Supporting Obligations with respect thereto, and the Independent Amount.

“*Intermediation Facility Adequate Protection Liens*” means the Intermediation Facility Adequate Protection Liens (as defined in the Intermediation Order).

“*Intermediation Facility Liens*” means the Intermediation Facility Liens (as defined in the Intermediation Order).

“*Intermediation Facility Priority Collateral*” means all of the following assets of Vertex Refining (or Parent, solely with respect to business interruption insurance policies held by the Parent subject, clause (c)) with respect to which a Lien is granted as security for the Intermediation Obligations in each case whether tangible or intangible: (a) all Inventory subject to or intended to be sold as Intermediation Title Property under the Intermediation Contracts; (b) all Inventory constituting Hydrocarbon Credit Support; (c) the Intermediator’s Business Interruption Insurance Percentage of the proceeds of business interruption insurance policies; and (d) all Proceeds of (including other proceeds of insurance with respect to the foregoing), and Supporting Obligations (including Letter of Credit Rights) with respect to, any of the foregoing.

“*Intermediation Obligations*” means the Intermediation Obligations (as defined in the Intermediation Order), whether arising prepetition or post-petition, but shall not

include any Hedge Obligations, including, without limitation, by virtue of setoff, netting, or indemnification rights under the Intermediation Contracts or Hedge Facility.

*“Intermediation Order”* means that certain *Final Order (I) Authorizing Continuation of the Intermediation Contracts, as Amended, (II) Authorizing the Debtors to Enter Into and Perform Postpetition Intermediation Transactions and Postpetition Hedging Transactions, (III) Providing Superpriority Administrative Expense Status and Liens in Respect of Postpetition Intermediation Transactions and Postpetition Hedging Transactions, (IV) Granting Adequate Protection to the Intermediation Provider, (V) Providing Superpriority Administrative Expense Status in Respect of Purchaser Support Agreements, (VI) Modifying the Automatic Stay, and (VII) Granting Related Relief.*

*“Intermediation Superpriority Claims”* means the Intermediation Superpriority Claims (as defined in Intermediation Order).

*“Intermediator”* means Macquarie (as defined in the Intermediation Order).

*“Inventory”* means “inventory” as defined in the UCC, including work in process and finished products intended for sale or lease or to be furnished under a contract of service, of every kind and description now or at any time hereafter owned by or in the custody or possession, actual or constructive, of any Debtor, including such inventory as is temporarily out of its custody or possession or in transit and including any returns upon any accounts or other proceeds, including insurance proceeds, resulting from the sale or disposition of any of the foregoing and any documents of title representing any of the above, and each Debtor’s Books relating to any of the foregoing.

*“Letter of Credit Rights”* means “letter of credit rights” as defined in the UCC.

*“Lien”* means any pledge, bailment, lease, mortgage, deed of trust (or similar instrument), hypothecation, conditional sales and title retention agreement, charge, claim, encumbrance, preference, priority or other lien (statutory or otherwise) in favor of the Secured Parties under the DIP Order or Intermediation Order.

*“Parent”* means Vertex Energy, Inc., a Nevada corporation, as debtor and debtor-in-possession.

*“Participating Hedging Debtors”* means the Participating Hedging Debtors (as defined in Intermediation Order).

*“Permitted Priority Liens”* means the Permitted Priority Liens (as defined in the DIP Order or as defined in the Intermediation Order).

*“Pre-Petition Intermediation Facility Adequate Protection Claims”* means Pre-Petition Intermediation Facility Adequate Protection Claims (as defined in the Intermediation Order).

“*Pre-Petition Liens*” means the Pre-Petition Liens (as defined in the DIP Order).

“*Pre-Petition Loan Obligations*” means the Pre-Petition Loan Obligations (as defined in the DIP Order).

“*Pre-Petition Term Loan Adequate Protection Liens*” means the “Pre-Petition Term Loan Adequate Protection Liens (as defined in the DIP Order).

“*Pre-Petition Term Loan Adequate Protection Super-Priority Claims*” means the Pre-Petition Term Loan Adequate Protection Super-Priority Claims (as defined in the DIP Order).

“*Proceeds*” means “proceeds” as defined in the UCC.

“*Secured Parties*” means DIP Secured Parties, the Hedge Provider and the Intermediator.

“*Shared Collateral*” means all assets and interests in assets and proceeds thereof now owned or hereafter acquired by Vertex Refining and Parent (solely with respect to business interruption insurance policies maintained by Parent) thereby or arising and wheresoever located, including all accessions thereto and products and proceeds thereof (other than Excluded Property) in or upon which a Lien is granted by a Debtor with the priorities as set forth in **Exhibit C**. For the avoidance of doubt and notwithstanding anything to the contrary herein, Shared Collateral constituting Intermediation Facility Priority Collateral shall not include Intermediation Title Property.

“*Shell Superpriority Claims*” means the Shell Superpriority Claims (as defined in Intermediation Order).

“*Superpriority Hedging Claims*” means the Superpriority Hedging Claims (as defined in Intermediation Order).

“*Supporting Obligations*” means “supporting obligations” as defined in the UCC.

“*UCC*” means the Uniform Commercial Code as adopted and in effect in the State of New York, as amended from time to time; provided, that in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection, or priority of, or remedies with respect to, any Lien on any Collateral is governed by the Uniform Commercial Code in effect in a jurisdiction other than the State of New York, the term “*UCC*” shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions thereof relating to such attachment, perfection, priority, or remedies and for purposes of definitions relating to such provisions.

“*Vertex Refining*” means Vertex Refining Alabama, LLC, a Delaware limited liability company, as debtor and debtor-in-possession.

**EXHIBIT B**

**Redline**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

In re:

VERTEX ENERGY, INC., *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 24-90507 (CML)

(Jointly Administrated Requested)

**~~INTERIM~~FINAL ORDER (I) AUTHORIZING  
THE DEBTORS  
TO OBTAIN POSTPETITION  
FINANCING, (II) AUTHORIZING THE DEBTORS TO USE  
CASH COLLATERAL, (III) GRANTING LIENS AND PROVIDING  
CLAIMS WITH SUPERPRIORITY ADMINISTRATIVE EXPENSE  
STATUS, (IV) GRANTING ADEQUATE PROTECTION TO THE  
PRE-PETITION TERM LOAN SECURED PARTIES, (V) MODIFYING  
THE AUTOMATIC STAY, AND  
(VI) ~~SCHEDULING A FINAL HEARING, AND (VII)~~ GRANTING RELATED RELIEF**

Upon the emergency motion (the “Motion”)<sup>2</sup> of Vertex Refining Alabama LLC (“Vertex” or “Borrower”) and each of its affiliates that are debtors and debtors-in-possession (collectively, the “Debtors”) in the above-captioned chapter 11 cases (collectively, the “Chapter 11 Cases”) for entry of an interim order (~~this~~the “Interim Order”) and a final order

<sup>1</sup> A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors’ ~~proposed~~ claims and noticing agent at <https://www.veritaglobal.net/vertex>. The location of Debtor Vertex Energy, Inc.’s corporate headquarters and the Debtors’ service address in these chapter 11 cases is 1331 Gemini Street, Suite 250, Houston, Texas 77058.

<sup>2</sup> All defined terms shall have the meaning ascribed to them in the Motion, the DIP Loan Agreement (as defined below), the Intermediation Order, the Interim Order, or the Specified Defined Terms attached hereto as Exhibit E, unless otherwise defined herein.

(~~the~~this “Final Order”), pursuant to sections 105, 361, 362, 363(c), 363(e), 364(c), 364(d)(1), 364(e), 503, and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the “Bankruptcy Code”), Rules 2002, 4001, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rules 2002-1, 4001-1(b), 4002-1(i), and 9013-1 of the Local Rules of the United States Bankruptcy Court for the Southern District of Texas (the “Bankruptcy Local Rules”) and the Southern District of Texas Complex Chapter 11 Case Procedures (the “Complex Procedures”), seeking, among other things:

(1) authorization for the Borrower, to obtain priming, senior secured, superpriority, debtor-in-possession postpetition financing and for the remaining Debtors (each, a “Guarantor,” and collectively, the “Guarantors”) to unconditionally guarantee the Borrower’s obligations under such financing facility, which facility shall consist of (a) a new money term loan facility (the “New Money Facility,” the loans made thereunder, the “New Money Loans,” and such lenders that elect to participate in such New Money Facility, the “New Money Lenders”) in the aggregate maximum principal amount of up to \$80 million (the “Term Loan Commitment”), and (b) (i) subject to and effective upon entry of ~~this~~the Interim Order, each New Money Lender (or its designated Affiliate) holding 2024-1 Term Loans (as defined in the Pre-Petition Loan Agreement) (“Interim Roll-Up Lender”) shall be deemed to have advanced additional loans in an aggregate principal amount of \$37,949,226.03 of term loans and such Interim Roll-Up Lender’s 2024-1 Term Loans (as defined in the Pre-Petition Loan Agreement) will be deemed to have been converted on a cashless, dollar-for-dollar basis into DIP Facility Loans (the “Interim Roll-Up”, and such DIP Facility Loans, the “Interim Roll-Up Loans”), (ii) subject to and effective upon entry of ~~the~~this Final Order, each New Money Lender (or its designated Affiliate) holding Initial Term Loans or Additional Term Loans (each as defined in



the Pre-Petition Loan Agreement) (“Restricted Roll-Up Lender”) that were funded by such Restricted Roll-Up Lender on the Closing Date or the First Amendment Effective Date (each as defined in the Pre-Petition Loan Agreement), as applicable, shall be deemed to have advanced additional loans in an aggregate principal amount of \$135,202,821.00 of term loans and a portion of such Restricted Roll-Up Lender’s Initial Term Loans or Additional Term Loans (each as defined in the Pre-Petition Loan Agreement) that were funded by such Restricted Roll-Up Lender on the Closing Date or the First Amendment Effective Date (each as defined in the Pre-Petition Loan Agreement), as applicable, will be deemed to have been converted on a cashless, dollar-for-dollar basis into DIP Facility Loans (the “Restricted Roll-Up”, and such DIP Facility Loans, the “Restricted Roll-Up Loans”) and (iii) each New Money Lender (or its designated Affiliate) holding 2023 Term Loans or JS Loans (each as defined in the Pre-Petition Loan Agreement) (the “Final Roll-Up Lender”) shall be deemed to have advanced additional loans in an aggregate principal amount of \$26,847,952.97 of term loans and such Final Roll-Up Lender’s 2023 Term Loans or JS Loans (each as defined in the Pre-Petition Loan Agreement) will be deemed to have been converted on a cashless, dollar-for-dollar basis into DIP Facility Loans (the “Final Roll-Up”, and together with the Interim Roll-Up and the Restricted Roll-Up, collectively, the “Roll-Up”, and such DIP Facility Loans, the “Final Roll-Up Loans”, and together with the Interim Roll-Up Loans and the Restricted Roll-Up Loans, the “Roll-Up Loans”, and each holder of such Roll-Up Loans, a “Roll-Up Lender”, and the Roll-Up, together with the New Money Facility, the “DIP Facility”, and the loans made thereunder (including the New Money Loans and all of the Roll-Up Loans), the “DIP Facility Loans”), with Cantor Fitzgerald Securities (“Cantor”), as administrative agent and collateral agent (in such capacity, the “DIP Agent”) for the DIP Lenders (as defined below), subject and pursuant to the terms of this

~~Interim~~Final Order, that certain Senior Secured Super-Priority Debtor-In-Possession Loan and Security Agreement, by and among the Borrower, the Guarantors, the DIP Agent, and the lenders party thereto (the “DIP Lenders”), which shall be in form and substance reasonably acceptable to the Borrower, and the New Money Lenders and substantially similar to the form attached ~~hereto~~ as Exhibit A to the Interim Order (as the same may be amended, restated, amended and restated, supplemented or otherwise modified from time to time pursuant to the terms thereof, the “DIP Loan Agreement”), and any related documents and instruments delivered pursuant to or in connection therewith (collectively, and together with the DIP Loan Agreement, the “DIP Loan Documents”);

(2) authorization for the Debtors to (i) execute and enter into the DIP Loan Documents, (ii) pay reasonable and documented fees and reimbursable expenses under the DIP Loan Documents, as and in the amounts described in the DIP Loan Documents, and (iii) perform such other and further acts as may be required in connection with the DIP Loan Documents;

(3) authorization for the Debtors to grant (i) valid, enforceable, nonavoidable and fully perfected security interests and liens (including liens pursuant to sections 364(c)(2) and 364(c)(3) of the Bankruptcy Code and consensual priming liens pursuant to section 364(d) of the Bankruptcy Code on all collateral securing the Pre-Petition Loan Obligations (as defined below)) to the DIP Agent, for the benefit of the DIP Agent and the DIP Lenders (collectively, the “DIP Secured Parties”) on all DIP Collateral (as defined below) to secure all obligations of the Debtors under and with respect to the DIP Facility, including the New Money Loans made under the New Money Facility and all interest accrued and accruing thereon and all other amounts owing by the respective Debtors in respect thereof (the “DIP New Money Obligations”) and the Interim Roll-Up Loans and, subject to ~~the~~this Final Order, the Restricted Roll-Up Loans and the Final

Roll-Up Loans, by the respective Debtors in respect thereof (the “Roll-Up Obligations” and, together with the DIP New Money Obligations, the “DIP Obligations”), which liens shall be subject in all respects to Carve Out (as defined below) and to the priorities set forth in **Exhibit C** of this ~~Interim~~Final Order and (ii) subject only to the Carve Out and to the priorities set forth in **Exhibit D** of this ~~Interim~~Final Order, super-priority claims (including a super-priority administrative expense claim pursuant to section 364(c)(1) of the Bankruptcy Code) to the DIP Agent, for the benefit of the DIP Secured Parties, having recourse to all prepetition and postpetition property of the Debtors’ estates, now owned or hereafter acquired, excluding Intermediation Facility Priority Collateral and claims and causes of action under sections 502(d), 544, 545, 547, 548, and 550 of the Bankruptcy Code, or any other avoidance actions under the Bankruptcy Code (collectively, “Avoidance Actions”), but including, subject to and effective upon entry of ~~the~~this Final Order, all proceeds of, recoveries related to, and property received or recovered on account of the Avoidance Actions (the “Avoidance Actions Proceeds”) as set forth in this Final Order;

(4) authorization for the Debtors’ use of cash collateral, as such term is defined in section 363(a) of the Bankruptcy Code (“Cash Collateral”), solely in accordance with the Approved Budget (as defined below) then in effect (the initial version of which is attached ~~hereto~~-as Exhibit B to the Interim Order), subject to the Permitted Variance (as defined in the DIP Loan Agreement) in each case pursuant to the terms and conditions set forth in this ~~Interim~~Final Order and the DIP Loan Agreement;

(5) authorization to provide adequate protection of the liens and security interests (i) granted by Vertex and the Guarantors (in such capacities, the “Pre-Petition Loan Obligors”) for the benefit of the prepetition secured lenders holding loans (such lenders in such

capacities, the “Pre-Petition Lenders”) under that certain Loan and Security Agreement, dated April 1, 2022 (as amended, restated, supplemented or otherwise modified from time to time and in effect on the date hereof, the “Pre-Petition Loan Agreement,” and the credit facility evidenced thereby, the “Pre-Petition Loan Facility”), among Vertex, as borrower, the Pre-Petition Lenders, as lenders, and Cantor as administrative agent and collateral agent (in such capacities, the “Pre-Petition Agent,” and together with the Pre-Petition Lenders, the “Pre-Petition Term Loan Secured Parties”), and (ii) securing the obligations of the Pre-Petition Loan Obligors under the Pre-Petition Loan Agreement and the Pre-Petition Loan Documents, including without limitation the Collateral Documents and the Guaranty (each as defined in the Pre-Petition Loan Agreement) (the “Pre-Petition Loan Documents”), each as more fully set forth in this ~~Interim~~Final Order;

(6) ~~subject to entry of the Final Order~~, authorization for the Debtors to waive (a) the “equities of the case” exception under section 552(b) of the Bankruptcy Code and (b) except to the extent of the Carve Out, any right to surcharge any collateral pursuant to section 506(c) of the Bankruptcy Code;

(7) ~~subject to and effective upon entry of this Interim Order~~, authorization for (i) Vertex to immediately obtain from the New Money Lenders under the DIP Facility approximately \$480 million of New Money Loans under the New Money Facility, ~~on an interim basis (the “Interim Commitment”)~~ in accordance with the terms and funding conditions of the DIP Loan Agreement and this Final Order, (ii) the Debtors to use Cash Collateral ~~on an interim basis~~ solely in accordance with the Approved Budget, subject to the Permitted Variance (as defined in the DIP Loan Agreement), and pursuant to the terms herein; (iii) the Debtors to grant

adequate protection in the relative priorities set forth herein; and (~~v~~iv) the Debtors to grant the super-priority administrative claims as described herein;

~~(8) the scheduling of a final hearing (the “Final Hearing”) on the Motion no later than 30 calendar days after the Petition Date (as defined below), to consider entry of a Final Order granting the relief requested in the Motion on a final basis in form and substance acceptable to the DIP Agent acting at the direction of the Required Lenders (as to the DIP Facility) and the Pre-Petition Agent acting at the direction of the Required Lenders (as defined in the Pre-Petition Loan Agreement) (as to the use of Cash Collateral);~~

(8) ~~(9)~~ modification of the automatic stay imposed under section 362 of the Bankruptcy Code to the extent necessary to permit the Debtors, the DIP Agent, the DIP Lenders, and the Pre-Petition Term Loan Secured Parties to implement and effectuate the terms of this ~~Interim~~Final Order and the DIP Loan Documents; and

(9) ~~(10)~~ waiver of any applicable stay (including under Bankruptcy Rule 6004) and provision for immediate effectiveness of this ~~Interim~~Final Order;

(10) and upon the First Day Declaration and the McGovern Declaration; and the initial hearing (the “Interim Hearing”) on the Motion having been held by the United States Bankruptcy Court for the Southern District of Texas, Houston Division (this “Court”) on September ~~—25~~, 2024, and the final hearing on the Motion having been held by the Court on October 29, 2024 (the “Final Hearing”); and this Court having found that, under the circumstances, due and sufficient notice of the Motion ~~and, the~~ Interim Hearing, and the Final Hearing was provided by the Debtors in accordance with Bankruptcy Rules 2002, 4001(b), (c), and (d), and all applicable Bankruptcy Local Rules, and as set forth in Paragraph C of this ~~Interim~~Final Order; and this Court having considered all the pleadings, declarations, and other

evidence filed with this Court; and this Court having heard and resolved or overruled all unresolved objections to the relief granted in this ~~Interim~~Final Order; and upon the record made by the Debtors at the Interim Hearing and the Final Hearing; and it appearing that the ~~interim~~ relief requested in the Motion is in the best interests of the Debtors and their estates; and after due deliberation and consideration, and good and sufficient cause appearing therefor:

**BASED ON THE FOREGOING AND THE RECORD ESTABLISHED AT THE INTERIM HEARING AND THE FINAL HEARING AND PURSUANT TO PAPERS FILED IN THESE CHAPTER 11 CASES, THE COURT MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:<sup>3</sup>**

A. **Petition Date.** On September 24, 2024 (the “Petition Date”), each of the Debtors filed a voluntary petition (collectively, the “Petitions”) for relief under chapter 11 of the Bankruptcy Code with this Court commencing the Chapter 11 Cases. The Debtors are continuing to operate their respective businesses and manage their respective properties as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. On October 8, 2024, an official committee of unsecured creditors (the “Committee”) was appointed in these Chapter 11 Cases. No trustee or examiner has been appointed in these Chapter 11 Cases.

B. **Jurisdiction; Venue.** This Court has subject matter jurisdiction to consider this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of the Chapter 11 Cases and the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

<sup>3</sup> Findings of fact shall be construed as conclusions of law, and conclusions of law be construed as findings of fact, pursuant to Bankruptcy Rule 7052.

C. **Notice.** Notice of the ~~Interim~~Final Hearing and the relief requested in the Motion has been provided by the Debtors to: (i) the Office of the United States Trustee for the Southern District of Texas (the “U.S. Trustee”), (ii) the holders of the 30 largest unsecured claims against the Debtors (on a consolidated basis), (iii) Sidley Austin LLP (“Sidley”), as counsel to the DIP Lenders and the Pre-Petition Lenders, (iv) Cantor, as DIP Agent and Pre-Petition Agent, (v) Shipman & Goodwin LLP, as counsel to the DIP Agent and Pre-Petition Agent, (vi) the Hedge Provider, (vii) the Intermediator, (viii) Reed Smith LLP, as counsel to the Intermediator and the Hedge Provider, (ix) Latham & Watkins LLP, as counsel to JS Lender (as defined in the DIP Loan Agreement and Pre-Petition Loan Agreement), (x) the United States Attorney for the Southern District of Texas, (xi) the Internal Revenue Service, (xii) the United States Securities and Exchange Commission, (xiii) the state attorneys general for states in which the Debtors conduct business, (xiv) UCC lienholders, and (xv) any party that has requested notice pursuant to Bankruptcy Rule 2002. Under the circumstances, such notice of the Motion, the relief requested therein and the ~~Interim~~Final Hearing complies with Bankruptcy Rule 4001(b), (c), and (d) and the Bankruptcy Local Rules, and no other or further notice of the relief sought at the ~~Interim~~Final Hearing shall be required.

D. **Debtors’ Stipulations With Respect to the Interim DIP Obligations.**  
Pursuant to the Interim Order, the Court authorized, among other things, (i) the Debtors to borrow approximately \$40 million of New Money Loans under the New Money Facility, (ii) the Debtors to convert to DIP Obligations under the DIP Loan Documents an aggregate principal amount of \$37,949,226.03 of term loans and such Interim Roll-Up Lender’s 2024-1 Term Loans, (iii) the DIP Guarantors to unconditionally guaranty such obligations jointly and severally, and (iv) the granting of the DIP Super-Priority Claims and the DIP Liens on DIP Collateral on

account of such obligations authorized pursuant to the Interim Order. Pursuant to the Interim Order, the Court authorized and empowered the Debtors to execute and deliver the DIP Loan Documents and incur and perform all of the DIP Obligations in accordance with, and subject to, the terms of the Interim Order and the DIP Loan Documents. On September 25, 2024, the DIP Loan Agreement was executed, and the Debtors were authorized to borrow on the terms and conditions set forth in the DIP Loan Documents and the Interim Order.

E. ~~D.~~ **Debtors' Stipulations With Respect to Pre-Petition Loan Obligations.** Subject to the limitations described in Paragraph 18 of this ~~Interim~~Final Order, the Debtors hereby admit, acknowledge, agree and stipulate that:

(i) *Pre-Petition Loan Facility.* As of the Petition Date, the Pre-Petition Loan Obligors were truly and justly indebted to the Pre-Petition Term Loan Secured Parties, without defense, challenge, objection, claim, counterclaim or offset of any kind, pursuant to the Pre-Petition Loan Documents, in the aggregate principal amount of \$271,933,746.66 in respect of the loans made under the Pre-Petition Loan Facility (the "Pre-Petition Loans"), *plus* accrued and unpaid interest with respect thereto, accrued, due and payable fees and premiums, and any additional fees, costs and expenses (including any fees and expenses of attorneys, financial advisors, and other professionals that are chargeable or reimbursable under the Pre-Petition Loan Documents) now or hereafter due under the Pre-Petition Loan Agreement and the other Pre-Petition Loan Documents (collectively, together with all other obligations of the Pre-Petition Loan Obligors arising under the Pre-Petition Loan Documents (including, without limitation, the Secured Obligations (as defined in the Pre-Petition Loan Agreement)), the "Pre-Petition Loan Obligations");



(ii) pursuant to the Pre-Petition Loan Agreement, mortgages, financing statements, collateral pledge agreements, deposit account control agreements, blocked account control agreements, securities account control agreements, and other collateral documents and agreements (as amended, restated, supplemented or otherwise modified from time to time and in effect on the date hereof, collectively, the “Pre-Petition Collateral Documents”) and the other Pre-Petition Loan Documents, the Pre-Petition Loan Obligors granted to and/or for the benefit of the Pre-Petition Term Loan Secured Parties first priority (subject to the Permitted Priority Liens and, solely, with respect to the Intermediation Facility Priority Collateral (other than Business Interruption Insurance Proceeds), the Intermediation Facility Liens, valid, perfected and enforceable security interests and liens (the “Pre-Petition Liens”) in and on substantially all of the property listed on Exhibit A to the Pre-Petition Loan Agreement (the “Pre-Petition Collateral”);

(iii) (a) the Pre-Petition Loan Obligations constitute legal, valid, binding and non-avoidable Secured Obligations (as defined in the Pre-Petition Loan Agreement) of the Pre-Petition Loan Obligors; (b) no offsets, defenses, objections or counterclaims to the Pre-Petition Loan Obligations exist; (c) no portion of the Pre-Petition Loan Obligations is subject to avoidance, disallowance, reduction, recharacterization, subordination, or other challenge of any nature pursuant to the Bankruptcy Code or applicable non-bankruptcy law; (d) the Pre-Petition Loan Documents are valid and enforceable by the Pre-Petition Agent for the benefit of the Pre-Petition Term Loan Secured Parties against each of the Debtors; (e) the liens and security interests of the Pre-Petition Term Loan Secured Parties constitute valid, binding, enforceable and perfected security interests in and continuing liens on and to the Pre-Petition Collateral,

having the priority set forth in the Pre-Petition Loan Documents and subject and subordinate only to (after giving effect to any applicable intercreditor or subordination agreement) (x) Permitted Priority Liens<sup>4</sup> and (y) solely with respect to the Intermediation Facility Priority Collateral, the Intermediation Facility Liens, which liens are not subject to avoidance, recharacterization, subordination (whether equitable, contractual, or otherwise), recovery, attack, disgorgement, effect, rejection, reduction, disallowance, impairment, counterclaim, offset, crossclaim, defense or other claim under the Bankruptcy Code or non-bankruptcy law, except as agreed to in writing by the Pre-Petition Agent; (f) the Pre-Petition Loan Obligations constitute allowed secured claims against the applicable Debtors' estates; and (g) no other claims, challenges, offsets, defenses, objections, or causes of action of any nature held by the Debtors exists against any of the Pre-Petition Term Loan Secured Parties, or any of their respective current or former affiliates, agents, subsidiaries, partners, controlling persons, attorneys, advisors, professionals, officers, directors and employees (collectively and in such capacities, "Representatives"), whether arising under applicable state or federal law (including, without limitation, any recharacterization, subordination, avoidance or other claims or equitable relief arising under or pursuant to sections 105, 502(d), 510 or 542 through 553 or 724(a) of the Bankruptcy Code), or whether arising under or in connection with any of the Pre-Petition Loan Documents (or the transactions contemplated thereunder), the Pre-Petition Loan Obligations, or the Pre-Petition Loan Facility, including without limitation, any right to assert any disgorgement or recovery; and

<sup>4</sup> Nothing shall prejudice the rights of any party-in-interest including, but not limited to, the Debtors and the Pre-Petition Term Loan Secured Parties to challenge the validity, priority, enforceability, seniority, avoidability, perfection or extent of any such Permitted Priority Liens and/or similar security interests.

(iv) all of the Debtors' cash, including any cash in all deposit accounts and collection accounts, wherever located, comprising proceeds of or otherwise arising from or relating to the Pre-Petition Collateral constitutes Cash Collateral of the Pre-Petition Term Loan Secured Parties.

F. ~~E.~~ **Intercreditor Agreement.** That certain Second Amended and Restated Intercreditor Agreement, originally dated as of April 1, 2022, as amended and restated as of May 26, 2023, and as further amended and restated June 3, 2024, among the Pre-Petition Agent and Macquarie Energy North America Trading Inc. (the "Intermediator"), as the intermediation facility secured party (in such capacity, the "Intermediation Facility Secured Party"), and acknowledged and agreed to by Vertex and certain of its affiliates (as amended, restated, supplemented, or otherwise modified in accordance with its terms, the "Intercreditor Agreement"), sets forth subordination and other provisions governing the relative priorities and rights of the Pre-Petition Term Loan Secured Parties and the Intermediator. Pursuant to section 510 of the Bankruptcy Code, such Intercreditor Agreement and any other such intercreditor agreement between and/or among any of (1) the Pre-Petition Agent, (2) any Pre-Petition Lender, (3) the Intermediation Facility Secured Party, (4) any Debtor, or (5) any affiliate thereof, and any other applicable collateral trust or intercreditor or subordination provisions contained in any credit agreement, security agreement, indenture, or related document, (a) shall remain in full force and effect, (b) shall continue to govern the relative priorities, rights, and remedies of the Pre-Petition Term Loan Secured Parties and the Intermediation Facility Secured Party (including the relative priorities, rights, and remedies of such parties with respect to the replacement liens, administrative expense claims, and superpriority administrative expense claims granted, or amounts payable, by the Debtors under this ~~Interim~~Final Order or otherwise and the modification

of the automatic stay), and (c) shall not be amended, altered or modified by the terms of this ~~Interim~~Final Order or the DIP Loan Documents, and for avoidance of doubt, any acts or omissions by any Pre-Petition Term Loan Secured Parties or the Intermediation Facility Secured Party in connection with any chapter 11 plan of reorganization or liquidation in these Chapter 11 Cases (whether confirmed under section 1129(a) or (b) of the Bankruptcy Code). Except as provided in the RSA (for so long as the RSA has not been terminated as to the Consenting Term Loan Lenders (as defined in the RSA)) or as set forth in the priorities in **Exhibit D**, any distributions on account of, or other treatment of, any Intermediation Facility Secured Party or obligations owed by the Debtors to Intermediator under the Intermediation Contracts pursuant to any chapter 11 plan shall remain subject to the Intercreditor Agreement (including its turnover provisions) or any other applicable intercreditor or subordination provisions, in each case to the extent provided therein; provided, however, that the foregoing shall not prejudice the rights of any party to the Intercreditor Agreement to assert that taking any action or not taking any action is permitted by or prohibited by, as the case may be, the Intercreditor Agreement, and all parties' rights with respect to such assertions are reserved.

G. ~~F.~~ **Budget for DIP Facility.** The initial Approved Budget ~~is~~was attached ~~hereto~~to the Interim Order as Exhibit B (the "Initial Approved Budget"). ~~Following the entry of this Interim Order, the~~The Debtors shall, in a manner consistent with the DIP Loan Agreement, deliver Cash Flow Forecasts (as defined in the DIP Loan Agreement) to the DIP Agent, which shall become Approved Budgets as specified in and in accordance with the DIP Loan Agreement (each, an "Approved Budget"). Any such Approved Budget shall subsequently be delivered to counsel to the Committee. The Initial Approved Budget shall be the Approved Budget until a Cash Flow Forecast (as defined in the DIP Loan Agreement) becomes an Approved Budget in

accordance with the terms of the DIP Loan Agreement. The Initial Approved Budget is an integral part of this ~~Interim~~Final Order and has been relied upon by the DIP Secured Parties to provide the DIP Facility and consent to this ~~Interim~~Final Order and by the Pre-Petition Term Loan Secured Parties to permit the use of the Cash Collateral and consent to this ~~Interim~~Final Order. The Debtors represent that the Initial Approved Budget is reasonable under the facts and circumstances. The Debtors believe that the Initial Approved Budget is achievable and will allow the Debtors to operate in the Chapter 11 Cases and pay postpetition obligations as they come due. Pursuant to the terms of the DIP Loan Agreement, the Debtors shall provide a Variance Report (as defined in the DIP Loan Agreement) ~~every other~~to each of the DIP Agent, counsel to the DIP Lenders, and counsel to the Committee every calendar week, and shall be in compliance with the Permitted Variance (as defined in the DIP Loan Agreement) on the terms and in accordance with the DIP Loan Agreement. Additional variances, if any, shall be subject to the approval of the DIP Agent as specified in the DIP Loan Agreement. The Debtors shall operate solely in accordance with the Approved Budget and all disbursements of the Debtors shall be consistent with the provisions of the Approved Budget, subject to the Permitted Variance (as defined in the DIP Loan Agreement).

H. ~~G.~~ **Immediate Need for Funding**. The Debtors have an immediate and critical need to obtain the DIP Facility and to use Cash Collateral in order to, among other things, (i) permit the orderly continuation of the operation of the Debtors' business, (ii) maintain business relationships with customers, vendors, and suppliers, (iii) make payroll, (iv) make allowed capital expenditures, (v) satisfy other working capital and operational needs, (vi) settle obligations under the Intermediation Contracts and Hedge Facility, and (vii) fund expenses of these Chapter 11 Cases, all in accordance with the Approved Budget and, as set forth in

Paragraph 4, the Wind Down Reserve (as defined herein). In the absence of the DIP Facility and the use of Cash Collateral, the Debtors' business and estates would suffer immediate and irreparable harm, including, without limitation, a cessation of substantially all of their operations. The access by the Debtors to sufficient working capital and liquidity through the use of Cash Collateral, the incurrence of new indebtedness under the DIP Loan Documents, and the other financial accommodations provided under the DIP Loan Documents is necessary and vital to the preservation and maintenance of the going concern values of the Debtors and to a successful reorganization of the Debtors.

I. ~~H.~~ **No Credit on More Favorable Terms.** Based upon the First Day Declaration, the McGovern Declaration, and the other pleadings and proceedings of record in the Chapter 11 Cases, the Debtors are unable to obtain sufficient interim and long-term financing from sources other than the New Money Lenders on terms more favorable than under the DIP Facility and the DIP Loan Documents (including the ~~Interim Roll-Up and, subject to and effective upon entry of the Final Order, the Restricted Roll-Up, and the Final~~ Roll-Up), and are not able to obtain unsecured credit allowable as an administrative expense under section 503(b)(1) of the Bankruptcy Code. The Debtors are also unable to obtain secured credit allowable under sections 364(c)(1), 364(c)(2) and 364(c)(3) of the Bankruptcy Code for the purposes set forth in the DIP Loan Agreement without the Debtors (i) providing the ~~Interim Roll-Up and, subject to and effective upon entry of the Final Order, the Restricted Roll-Up and the Final~~ Roll-Up, (ii) granting to the DIP Agent and the DIP Lenders, subject to the Carve Out, (a) the DIP Super-Priority Claims (as defined below) and (b) the DIP Liens (as defined below) in the DIP Collateral (as defined below), in each case under the terms and conditions set forth in

this ~~Interim~~Final Order and the DIP Loan Documents, and (iii) providing the Pre-Petition Term Loan Secured Parties the adequate protection as provided herein.

J.     ~~I.~~ **Reasonable; Good Faith.** The New Money Lenders have indicated a willingness to provide post-petition secured financing to the Debtors, but solely on the terms and conditions set forth in this ~~Interim~~Final Order and the DIP Loan Documents. After considering all of their alternatives, the Debtors have concluded, in an exercise of their sound business judgment, that the DIP Facility to be provided by the DIP Lenders, including the ~~Interim~~ Roll-Up and, ~~subject to and effective upon entry of the Final Order, the Restricted Roll Up, the Final Roll Up, and~~ the authorization to use the Cash Collateral to be provided by the Pre-Petition Agent, on behalf of the Pre-Petition Lenders, represents the best financing presently available to the Debtors. Based upon the pleadings and proceedings of record in the Chapter 11 Cases, (i) the terms and conditions of the DIP Facility are fair and reasonable, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duty and are supported by reasonably equivalent value and fair consideration, (ii) the DIP Facility and the use of Cash Collateral have been negotiated in good faith and at arm's length among the Debtors, the DIP Secured Parties and the Pre-Petition Term Loan Secured Parties, and (iii) any credit extended, loans made and other financial accommodations extended to the Debtors by the DIP Lenders have been extended, issued or made, as the case may be, in "good faith" within the meaning of section 364(e) of the Bankruptcy Code, and in express and good faith reliance upon the protections offered by section 364(c) and 363(m) of the Bankruptcy Code and this ~~Interim~~Final Order.

K.     ~~J.~~ **Consent by Pre-Petition Term Loan Secured Parties.** The Pre-Petition Term Loan Secured Parties have consented, or are deemed to have consented, pursuant to the Intercreditor Agreements, as applicable, to (i) the financing arrangements

contemplated by this ~~Interim~~Final Order and the DIP Loan Documents and (ii) Debtors' proposed use of Cash Collateral, on the terms and conditions set forth in this ~~Interim~~Final Order, and such consent is binding on all Pre-Petition Term Loan Secured Parties.

L. ~~K.~~ **Adequate Protection.** The adequate protection provided to the Pre-Petition Term Loan Secured Parties on account of the use of the Pre-Petition Term Loan Secured Parties' Cash Collateral and any diminution in the value of such parties' respective interests in the Pre-Petition Collateral from and after the Petition Date, including, without limitation, resulting from the DIP Facility, is consistent with and authorized by the Bankruptcy Code and is offered by the Debtors to protect such parties' interests in the Pre-Petition Collateral in accordance with sections 361, 362 and 363 of the Bankruptcy Code. The consent of the Pre-Petition Term Loan Secured Parties to the use of Cash Collateral and the consent of the Pre-Petition Term Loan Secured Parties to priming of their liens by the DIP Liens (1) does not constitute, and shall not be construed as constituting, an acknowledgment or stipulation by the Pre-Petition Term Loan Secured Parties that their respective interests in the Pre-Petition Collateral are adequately protected pursuant to this ~~Interim~~Final Order or otherwise, and (2) is conditioned upon entry of this ~~Interim~~Final Order and does not and shall not be deemed to constitute consent other than pursuant to this ~~Interim~~Final Order and the terms set forth herein. The adequate protection provided herein and other benefits and privileges contained herein are necessary (i) in order to protect the Pre-Petition Term Loan Secured Parties from the diminution in value of their Pre-Petition Collateral, and (ii) to obtain the foregoing consents and agreements. Nothing herein shall prevent the Pre-Petition Term Loan Secured Parties from seeking additional adequate protection to the extent permitted by law or to the extent permitted in the Intercreditor Agreements, as applicable.



M. ~~L.~~ **Good Cause Shown; Best Interest.** Absent entry of this ~~Interim~~Final Order, the Debtors' business, properties, and estates will be immediately and irreparably harmed. This Court concludes that good cause has been shown and that entry of this ~~Interim~~Final Order is in the best interest of the Debtors' respective estates and creditors as its implementation will, among other things, allow for the continued operation of the Debtors' existing businesses and enhance the Debtors' prospects for a successful reorganization.

N. ~~M.~~ **No Liability to Third Parties.** The Court finds that in making decisions to advance loans to the Debtors, in administering any loans, in permitting the Debtors to use Cash Collateral, in accepting the Initial Approved Budget or any future Approved Budget or in taking any other actions permitted by this ~~Interim~~Final Order or the DIP Loan Documents, none of the DIP Secured Parties or Pre-Petition Term Loan Secured Parties shall be deemed to be in control of the operations of the Debtors or to be acting as a "responsible person" or "owner or operator" with respect to the operation or management of the Debtors.

O. ~~N.~~ **Section 552.** ~~Subject to entry of the Final Order, in~~In light of the subordination of their liens and super-priority administrative claims as set forth on **Exhibits C** and **D**, each of the DIP Secured Parties and the Pre-Petition Term Loan Secured Parties is entitled to, subject to the Carve Out, all of the rights and benefits of section 552(b) of the Bankruptcy Code, and the "equities of the case" exception shall not apply to any of the DIP Secured Parties or the Pre-Petition Term Loan Secured Parties with respect to the proceeds, products, rents, issues or profits of any of the DIP Collateral or the Pre-Petition Collateral, and no expenses of administration of the Chapter 11 Cases or any future proceeding that may result therefrom, including liquidation in bankruptcy or other proceedings under the Bankruptcy Code, may be charged against proceeds, product, offspring or profits from any of the DIP Collateral or

the Pre-Petition Collateral under section 552(b) of the Bankruptcy Code ~~(subject to any provisions of the Final Order solely with respect to costs or expenses incurred following the entry of such Final Order)~~. Subject to ~~entry of the Final Order, and subject to~~ the Carve Out, the Debtors shall be deemed to have irrevocably waived, and to have agreed not to assert, any claim or right under section 552(b) of the Bankruptcy Code seeking to avoid the imposition of the DIP Liens, Pre-Petition Liens or the Pre-Petition Term Loan Adequate Protection Liens (as defined below) on any property acquired by any of the Debtors or any of their estates or, subject to the Carve Out, seeking 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 Pre-Petition Term Loan Secured Parties upon the DIP Collateral or the Pre-Petition Collateral, as applicable.

P. ~~Q.~~ **Findings Regarding Corporate Authority.** Each Debtor has all requisite corporate power and authority to execute and deliver the DIP Loan Documents to which it is a party and to perform its obligations thereunder.

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

Based on the foregoing, and upon the record made before this Court at the Interim Hearing and the Final Hearing, and good and sufficient cause appearing therefor,

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:**

1. **Motion Granted.** The Motion is granted on the terms and conditions set forth in this ~~Interim~~Final Order and the DIP Loan Documents. Any objections to the relief granted in this ~~Interim~~Final Order that have not previously been withdrawn, waived, settled, or

resolved are hereby denied and overruled on the merits. This ~~Interim~~Final Order shall become effective immediately upon its entry.

2. **Approval of DIP Loan Documents; Authority Thereunder.** The Debtors are hereby authorized to enter into the DIP Loan Documents, including the DIP Loan Agreement, and such additional documents, instruments, and agreements as may be required or reasonably requested by the DIP Secured Parties to implement the terms or effectuate the purposes of this ~~Interim~~Final Order. The Debtors are authorized to comply with and perform all of the terms and conditions contained in the DIP Loan Documents, and to repay amounts borrowed, together with interest and fees thereon (including, without limitation, the fees in section 2.5 of the DIP Loan Agreement), as well as any other outstanding DIP Obligations to the DIP Lenders in accordance with and subject to the terms and conditions set forth in the DIP Loan Documents and this ~~Interim~~Final Order.

3. **Authorization to Borrow DIP Facility Loans and Use Cash Collateral.** ~~Upon finalizing and executing the DIP Loan Agreement and the other DIP Loan Documents, the~~The Borrower is immediately authorized to borrow from the New Money Lenders, and the Guarantors are immediately authorized to guaranty, ~~initial~~ borrowings under the DIP Facility in an aggregate principal amount of approximately \$~~4~~80 million of the New Money Loans under the New Money Facility, subject to and in accordance with the terms of this ~~Interim~~Final Order and the DIP Loan Agreement. The Debtors are authorized to use the proceeds of the DIP Facility Loans and the Cash Collateral only for the purposes described in Paragraph 10 of this ~~Interim~~Final Order. Subject to the terms of Paragraph 28 of this ~~Interim~~Final Order, the DIP Facility and authorization to use the proceeds of the DIP Facility Loans and the Cash Collateral will terminate upon the date (the “Termination Date”) of the

earliest to occur of (a) the Maturity Date (as defined in the DIP Loan Agreement); (b) the expiration of the Enforcement Notice Period (as defined herein) with respect to an Event of Default (as defined in the DIP Loan Agreement); (c) the first business day on which ~~this~~the Interim Order expires by its terms or is terminated, unless ~~the~~this Final Order has been entered and become effective prior thereto; (d) conversion of any of the Chapter 11 Cases to a case under Chapter 7 of the Bankruptcy Code unless otherwise consented to in writing by the DIP Agent (at the direction of the Required Lenders) and the Required Lenders; (e) dismissal of any of the Chapter 11 Cases, unless otherwise consented to in writing by the DIP Agent (at the direction of the Required Lenders) and the Required Lenders; and (f) subject to the funding of the Wind Down Reserve solely in accordance with Paragraph 4 of this ~~Interim~~Final Order, closing of a sale of all or substantially all of the equity or assets of the Debtors; in each case, unless extended, as to the DIP Facility, with the prior written consent of the DIP Agent (at the direction of the Required Lenders) and the Required Lenders, and, as to the use of Cash Collateral, with the prior written consent of the Pre-Petition Agent (at the direction of the Required Lenders (as defined in the Pre-Petition Loan Agreement)) and the Required Lenders (as defined in the Pre-Petition Loan Agreement). The full amount of the DIP Obligations will be required to be repaid in cash on the Termination Date, except that the DIP Agent and the New Money Lenders may elect to allow the DIP Obligations to be treated in any other manner acceptable to them in accordance with the DIP Loan Agreement.

4. Subject to the terms and conditions set forth in the DIP Loan Documents, including Section 3.2 of the DIP Loan Agreement and solely if there is no Event of Default (as defined in the DIP Loan Agreement) that has occurred or is continuing, upon the approval of a Credit Bid Sale Order or Third-Party Sale Order (each as defined herein) and three

(3) days prior to the closing of a Credit Bid Sale or Third-Party Sale (each as defined herein), New Money Loans shall be made available to the Debtors in an amount to be determined at a later date by the Debtors in their reasonable discretion and consented to by the Supermajority Lenders sufficient to (a) fund the estimated fees, costs, and expenses necessary to fully administer and wind down the Debtors' estates, including the fees, costs, and expenses of the plan administrator selected by the Supermajority Lenders to wind down the Debtors' estates, and (b) pay in full in cash all claims required to be paid under the Bankruptcy Code and the Debtors' chapter 11 plan (the "Plan") in order for the effective date of the Plan (the "Plan Effective Date") to occur or otherwise assumed or required to be paid under the terms of the Plan, in each case to the extent not liquidated and paid in full in cash on the Plan Effective Date (collectively, the "Wind Down Reserve"); provided that the Debtors shall consult with the Committee with respect to (i) the selection of the plan administrator, if any, and (ii) the amount to be funded as part of the Wind Down Reserve.

5. The DIP Secured Parties and Pre-Petition Term Loan Secured Parties each have no obligation to extend credit under the New Money Facility or permit the use of any DIP Collateral or Pre-Petition Collateral or any proceeds thereof, including Cash Collateral, as applicable, during the interim period unless and until all conditions precedent to the extension of credit and/or use of DIP Collateral, Pre-Petition Collateral, or proceeds thereof under the DIP Loan Documents and this ~~Interim~~Final Order have been satisfied in full or waived in writing by the DIP Secured Parties and the Pre-Petition Agent.

6. **Roll-Up.** The Roll-Up Loans shall be calculated as set forth in the DIP Loan Agreement, but in no event shall exceed a ratio of \$2.50 of Pre-Petition Loans held by each DIP Lender or its affiliate(s) to \$1.00 of Term Loan Commitments made available by the New

Money Lender under the DIP Loan Documents and authorized by court order. ~~Subject to and effective upon entry of this~~ Pursuant to the Interim Order, Pre-Petition Loans beneficially owned by each DIP Lender or affiliate(s) thereof ~~shall~~ were, upon entry of the Interim Order, immediately, automatically, and irrecoverably ~~be~~ deemed to have been converted into Interim Roll-Up Loans under the DIP Facility in the amount of \$37,949,226.03. ~~Subject to and effective upon entry of the~~ Pursuant to this Final Order, Pre-Petition Loans beneficially owned by each DIP Lender or affiliate(s) thereof shall immediately, automatically, and irrevocably be deemed to have converted into Restricted Roll-Up Loans under the DIP Facility in the amount of \$135,202,821.00. ~~Subject to and effective upon entry of the~~ Pursuant to this Final Order, a portion of Pre-Petition Loans beneficially owned by each DIP Lender or affiliate(s) thereof shall immediately, automatically, and irrevocably be deemed to have converted into Final Roll-Up Loans under the DIP Facility in the amount of \$26,847,952.97. The Roll-Up Loans, ~~subject to and effective upon entry of this Interim Order or the Final Order, as applicable,~~ shall be entitled to all of the priorities, privileges, rights, and other benefits afforded to the other DIP Obligations under any DIP Order and the DIP Loan Documents. ~~To the extent provided for in this Interim Order or the Final Order, as applicable, the~~ The conversion of the Roll-Up Loans ~~shall be~~ is authorized as compensation for, in consideration for, as a necessary inducement for, and on account of the agreement of the New Money Lenders to consent to and fund amounts under the New Money Facility and not as payments under, adequate protection for, or otherwise on account of any Pre-Petition Loan Obligations. The Pre-Petition Lenders would not otherwise consent to the use of their Cash Collateral or the subordination of their liens to the DIP Liens and the DIP Agent and the New Money Lenders would not be willing to provide the New Money Facility or

extend credit to the Debtors thereunder without the inclusion of the Roll-Up within the DIP Facility.

7. **Collections and Disbursements.** Subject to the Carve Out, from the Petition Date until the DIP Obligations have been paid in full in cash or otherwise discharged, all cash receipts, Cash Collateral, and all proceeds from the sale or other disposition of, or other revenue of any kind attributable to, any DIP Collateral that is now in, or shall hereafter come into, the possession or control of any of the Debtors, or to which any of the Debtors is now or shall hereafter become entitled (i) shall be subject to the DIP Liens and the Pre-Petition Term Loan Adequate Protection Liens (and shall be treated in accordance with this ~~Interim~~Final Order and the DIP Loan Agreement) and (ii) shall be, to the extent related to or arising from or in connection with Pre-Petition Collateral, promptly deposited only into accounts of the Debtors upon which the Pre-Petition Agent has perfected Pre-Petition Liens. All such amounts arising from or in connection with the Pre-Petition Collateral shall be used for the purposes described in section 2.2(a) of the DIP Loan Agreement or applied to the payment of outstanding DIP Obligations in accordance with the DIP Loan Agreement.

8. **Perfection in Cash.** Subject to the Carve Out and other provisions of this ~~Interim~~Final Order and the DIP Loan Agreement, all financial institutions with which the Debtors maintain accounts containing Cash Collateral are authorized to comply with any request of the DIP Agent (acting at the direction of the Required Lenders) made in accordance with this ~~Interim~~Final Order and the DIP Loan Agreement to turn over to the DIP Agent all Cash Collateral therein without offset or deduction of any kind. The DIP Agent shall enjoy the benefit of (i) all deposit account control agreements, blocked account control agreements, securities account control agreements, and similar agreements to which the Pre-Petition Agent is a party

and (ii) subject and subordinate to the rights of the holders of (a) Permitted Priority Liens, (b) solely with respect to the Shared Collateral (other than Business Interruption Insurance Proceeds) and DIP Exclusive Collateral (solely with respect to such collateral held by Participating Hedging Debtors), Hedging Liens, and, (c) solely with respect to the Intermediation Facility Priority Collateral (other than the Business Interruption Insurance Proceeds), the Intermediation Facility Liens, all other deposit account control agreements, blocked account control agreements, securities account control agreements, and similar agreements to which any Debtor is a party. Notwithstanding and without minimizing the force of the foregoing, the Debtors are authorized to enter into, and cause the financial institutions servicing the Debtors' deposit accounts to enter into, such deposit account control agreements and other collateral agreements with the DIP Agent and such financial institutions as the DIP Agent (acting at the direction of the Required Lenders) may reasonably require, or alternatively, the DIP Agent shall be entitled to enjoy the benefit of all control agreements to which the Debtor is a party, as set forth above, without the need to enter into any such new agreements.

9. **Payment of DIP Fees and Expenses.** Subject to the Carve Out, the Debtors are authorized to pay (i) all fees when due under the DIP Loan Agreement (including, without limitation, any fees provided for under sections 2.5 and 10.3 of the DIP Loan Agreement) in the amounts set forth in the DIP Loan Agreement or this ~~Interim~~Final Order and (ii) reasonable, documented out-of-pocket fees, costs, and expenses incurred by the DIP Agent and each of the DIP Lenders (the foregoing to include all unpaid prepetition and postpetition fees, costs and expenses incurred by the DIP Agent and each DIP Lender in connection with the DIP Facility) in connection with the DIP Facility and all aspects of the Chapter 11 Cases (the "DIP Lender Advisor Fees and Expenses"), including, without limitation, the reasonable and



documented out-of-pocket fees and expenses of legal counsel (including Sidley Austin LLP and Shipman & Goodwin LLP) and banker (Houlihan Lokey Capital, Inc.), and other professionals, hired by or on behalf of the DIP Agent or DIP Lenders with the Debtors' consent to such hiring (which consent shall not be unreasonably withheld or delayed) (collectively, the "DIP Lender Professionals"), subject to the review procedures set forth in Paragraph 21 of this ~~Interim~~Final Order. In addition, the Debtors are hereby authorized and directed to indemnify the DIP Agent and the other DIP Secured Parties (and each of their respective directors, officers, employees, agents, representatives, attorneys, consultants, advisors and controlling persons) against any liability arising in connection with the DIP Loan Documents, to the extent set forth in the DIP Loan Documents. All such unpaid fees, costs, expenses and indemnities of the DIP Agent and the DIP Lenders shall (i) constitute DIP Obligations, (ii) be secured by the DIP Collateral, and (iii) be afforded all of the priorities and protections afforded to other DIP Obligations under this ~~Interim~~Final Order and the DIP Loan Documents.

10. **Validity of DIP Loan Documents.** ~~Upon execution and delivery of the~~The DIP Loan Documents, ~~the DIP Loan Documents shall~~ constitute, and are hereby deemed to be, legal, valid and binding obligations of the Debtors, enforceable against each Debtor in accordance with the terms thereof for all purposes during the Chapter 11 Cases, in any subsequently converted case of any Debtor under chapter 7 of the Bankruptcy Code, or after dismissal of any of the Chapter 11 Cases. Any DIP Facility Loans advanced under the DIP Loan Agreement pursuant to ~~this~~the Interim Order or this Final Order shall be used solely for (i) post-petition working capital, capital investments as permitted under the DIP Loan Agreement, and general corporate purposes of the Debtors, (ii) payment of allowed administrative costs and expenses of these Chapter 11 Cases, (iii) the payment of adequate protection payments to the

Pre-Petition Term Loan Secured parties, including fees payable under the Pre-Petition Loan Agreement, (iv) payment of professional fees, (v) funding of the Challenge Budget in accordance with paragraph 19 of this Final Order; (vi) funding the Wind Down Reserve, and (vii) for payment of any amount authorized to be paid pursuant to any order entered from time to time by this Court, in each case, solely in accordance with the Approved Budget (subject to the Permitted Variance (as defined in the DIP Loan Agreement)) and this ~~Interim~~Final Order. For the avoidance of doubt, payment of professional fees are not subject to the Permitted Variance (as defined in the DIP Loan Agreement). No obligation, payment, transfer or grant of security under the DIP Loan Documents or this ~~Interim~~Final Order shall be stayed, restrained, voided, voidable, or recoverable under the Bankruptcy Code or under any applicable non-bankruptcy law, or subject to any defense, reduction, setoff, recoupment, or counterclaim.

11. **DIP Super-Priority Claims.** In accordance with Bankruptcy Code section 364(c)(1), the DIP Obligations shall constitute superpriority administrative expense claims (the “DIP Super-Priority Claims”) against each of the Debtors with priority in payment over any and all administrative expenses, adequate protection claims, diminution claims, prepetition unsecured claims, and all other claims against the Debtors, now existing or hereafter arising, of any kind whatsoever, including, without limitation, any prepetition claims and adequate protection claims of the Pre-Petition Term Loan Secured Parties, any adequate protection claims granted in favor of any other parties, and any and all administrative expenses or other claims of the kinds specified or ordered pursuant to any provision of the Bankruptcy Code, including, but not limited to, Bankruptcy Code sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 546, 552, 726, 1113, and 1114 or otherwise, including those resulting from the conversion of any of the Chapter 11 Cases pursuant to section 1112 of the Bankruptcy

Code, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy, or attachment; provided, however, that the DIP Super-Priority Claims shall be subject to the Carve Out and the priorities set forth in **Exhibit D**. The DIP Super-Priority Claims shall for purposes of section 1129(a)(9)(A) of the Bankruptcy Code be considered administrative expenses allowed under section 503(b) of the Bankruptcy Code, shall be against each Debtor on a joint and several basis, and shall be payable from and have recourse to all prepetition and post-petition property of the Debtors and all proceeds thereof, including, ~~subject to and effective upon entry of the Final Order,~~ the Avoidance Actions Proceeds; provided that, subject to the Carve Out and claim priorities set forth in **Exhibit D**, the DIP Lenders may only seek to recover from the Avoidance Actions Proceeds in satisfaction of any outstanding DIP ~~Super-Priority~~Super-Priority Claims, solely to the extent that the DIP Super-Priority Claims have not been indefeasibly paid in full and all other sources of recovery with respect to such DIP Super-Priority Claims have been fully exhausted; provided, further, the DIP Super-Priority Claims granted to the DIP Lenders on account of the Roll-Up Loans shall be immediately junior in payment priority and subject to the DIP Super-Priority Claims granted to the New Money Lenders on account of the DIP New Money Obligations.

12. **DIP Liens**. As security for the DIP Obligations, the DIP Agent, on behalf of and for the benefit of the DIP Secured Parties, ~~is hereby~~was granted (effective upon the date of ~~this~~the Interim Order, without any further action by the DIP Secured Parties, including the execution by the Debtors or the filing or recordation of security agreements, lockbox or control agreements, financing statements, or any other instruments or otherwise) valid, enforceable, binding, and fully perfected security interests in and liens upon (the “**DIP Liens**”) all present and after-acquired property of the Debtors of any nature whatsoever (including without

limitation “Collateral”), and all cash and cash equivalents contained in any account maintained by any of the Debtors, and, ~~subject to entry of a Final Order,~~ is hereby granted in all Avoidance Actions Proceeds of the Debtors or their estates (collectively with all rents, issues, products, offspring, proceeds and profits of any or all of the foregoing, but excluding “Excluded Property” as defined in the DIP Loan Agreement, the “DIP Collateral”), subject to the payment of the Carve Out and other Liens, with the priorities set forth in **Exhibit C** and shall consist of:

(a) Liens on Unencumbered Property. Pursuant to section 364(c)(2) of the Bankruptcy Code, a continuing, enforceable, fully-perfected lien and security interest upon all of the Debtors’ right, title and interest in, to, and under all DIP Collateral that was not encumbered by a validly perfected, enforceable, and nonavoidable security interest or lien subject to the priorities set forth in **Exhibit C** as of the Petition Date or a valid security interest perfected subsequent to the Petition Date to the extent permitted by section 546(b) of the Bankruptcy Code (collectively, the “Unencumbered Property”). ~~Subject only to and effective upon entry of the Final Order~~ For the avoidance of doubt, Unencumbered Property ~~shall also~~ includes the Avoidance Actions Proceeds.

(b) Liens Junior to Certain Other Liens. Pursuant to section 364(c)(3) of the Bankruptcy Code, a junior priority, perfected lien and security interest upon all of the Debtors’ right, title and interest in, to and under all DIP Collateral (other than the DIP Collateral described in Subparagraphs (a) or (c) of this Paragraph 12, as to which the liens and security interests in favor of the DIP Agent will be as described in such Subparagraphs), whether now existing or hereafter acquired, that is subject to any (i) Permitted Priority Lien, (ii) solely with respect to the Shared Collateral (other than the Business Interruption Insurance Proceeds and Intermediation Facility Priority Collateral)

and DIP Exclusive Collateral held by Participating Hedging Debtors, the Hedging Liens, and, (iii) solely with respect to the Intermediation Facility Priority Collateral (other than the Business Interruption Insurance Proceeds), the Hedging Liens, Intermediation Facility Liens, and the Intermediation Facility Adequate Protection Liens, in each case, that was validly perfected prior to the Petition Date, or is validly perfected subsequent to the Petition Date to the extent permitted by section 546(b) of the Bankruptcy Code, and is not subject to section 552(a) of the Bankruptcy Code.

(c) Liens Priming Pre-Petition Term Loan Secured Parties' Liens. Pursuant to section 364(d)(1) of the Bankruptcy Code, valid, enforceable, binding, continuing, enforceable, fully perfected, senior priming liens upon and security interest in all of the Debtors' right, title and interest in, to, and under all DIP Collateral that is subject to the Pre-Petition Liens; provided, however, that the liens granted by this subparagraph shall in each case be subject and subordinate to liens on the Pre-Petition Collateral (other than the Pre-Petition Liens) that (a) are valid, perfected, enforceable and nonavoidable as of the Petition Date or validly perfected subsequent to the Petition Date to the extent permitted by section 546(b) of the Bankruptcy Code, (b) under applicable law, are senior to, and have not been subordinated to, the Pre-Petition Liens, and (c) are not subject to avoidance, reduction, disgorgement, counterclaim, surcharge, or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law (which, for the avoidance of doubt, includes, solely with respect to the Intermediation Facility Priority Collateral (other than the Business Interruption Insurance Proceeds), the Intermediation Facility Liens) (such liens, except for Intermediation Facility Liens, each a "Permitted Priority Lien").

(d) Liens Senior to Certain Other Liens. The DIP Liens shall not be subject or subordinate to (i) ~~subject to and effective upon entry of the Final Order,~~ 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, (ii) any liens arising after the Petition Date, including without limitation any liens or security interests granted in favor of any federal, state, municipal or other governmental unit, commission, board, or court for any liability of the Debtors, or (iii) any intercompany or affiliate liens of the Debtors.

(e) DIP Liens *Pari Passu*. The DIP Liens granted to the DIP Lenders will be *pari passu* (on a pro rata basis) to (i) with respect to the DIP Liens granted on the Roll-Up Obligations, the DIP Liens granted to the DIP Lenders with respect to the DIP New Money Obligations and (ii) solely with respect to the Business Interruption Insurance Proceeds and in accordance with the DIP Loan Agreement, the Hedging Liens and the Intermediation Facility Liens.

13. **Pre-Petition Term Loan Secured Parties' Adequate Protection.**

Until the indefeasible repayment in full in cash of the Pre-Petition Loan Obligations, the Pre-Petition Term Loan Secured Parties are entitled to adequate protection of their interests in the Pre-Petition Collateral on account of the diminution in the value thereof as a result of (a) the provisions of this ~~Interim~~Final Order granting priming liens on such Pre-Petition Collateral to the DIP Agent for the benefit of the DIP Secured Parties; (b) the authorization of the use of Cash Collateral and other Pre-Petition Collateral; (c) the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code; and/or (d) otherwise (the "Diminution in Pre-Petition Collateral Value"), pursuant to sections 361(a), 363(c) and 364(d)(1) of the Bankruptcy Code. The Pre-Petition Agent, on behalf of and for the benefit of the Pre-Petition Lenders, is hereby

granted the following (collectively, the “Pre-Petition Term Loan Adequate Protection Obligations”):

(a) Pre-Petition Term Loan Adequate Protection Super-Priority Claims. The Pre-Petition Agent, on behalf of and for the benefit of the Pre-Petition Term Loan Secured Parties, is hereby granted super-priority administrative expense claims (the “Pre-Petition Term Loan Adequate Protection Super-Priority Claims”) under section 507(b) of the Bankruptcy Code against the Debtors’ estates, including, ~~subject to and effective upon entry of the Final Order,~~ Avoidance Actions Proceeds, to the extent of any Diminution in Pre-Petition Collateral Value, which Pre-Petition Term Loan Adequate Protection Super-Priority Claims, if any, shall have priority in payment over any and all administrative expenses of the kinds specified or ordered pursuant to any provision of the Bankruptcy Code, including, but not limited to, Bankruptcy Code sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 726, 1113 and 1114, or otherwise and including those resulting from the conversion of any of the Chapter 11 Cases pursuant to section 1112 of the Bankruptcy Code; provided, however, that the Pre-Petition Secured Parties may only seek to recover from the Avoidance Actions Proceeds in satisfaction of any outstanding Pre-Petition Term Loan Adequate Protection Super-Priority Claims solely to the extent that the Pre-Petition Term Loan Adequate Protection Super-Priority Claims have not been indefeasibly paid in full and all other sources of recovery with respect to such Pre-Petition Term Loan Adequate Protection Super-Priority Claims have been fully exhausted; provided, further, that at all times while such claims are in full force and effect pursuant to this ~~Interim~~Final Order, the Pre-Petition Term Loan Adequate

Protection Super-Priority Claims shall be subject and junior to the Carve Out and in accordance with the priorities set forth in **Exhibit D**.

(b) Pre-Petition Term Loan Adequate Protection Liens. Valid, enforceable, unavoidable and fully perfected replacement liens and security interests in all DIP Collateral (the “Pre-Petition Term Loan Adequate Protection Liens” and, together with the Intermediation Facility Adequate Protection Liens (as defined in the Intermediation Order), the “Adequate Protection Liens”) to the extent of any Diminution in Pre-Petition Collateral Value, which shall be subject to the Carve Out and in accordance with the priorities set forth in **Exhibit C**. The Pre-Petition Term Loan Adequate Protection Liens shall be deemed to be legal, valid, binding, enforceable, perfected liens, not subject to subordination or avoidance, for all purposes in the Chapter 11 Cases. Except as otherwise set forth in this Paragraph 13 or otherwise in this ~~Interim~~Final Order, the Pre-Petition Term Loan Adequate Protection Liens shall not be subordinated to or be made *pari passu* with any other lien under section 364(d) of the Bankruptcy Code or otherwise. The Pre-Petition Term Loan Adequate Protection Liens ~~shall be~~were deemed to be perfected automatically upon the entry of ~~this~~the Interim Order, without the need for (x) filing any UCC-1 financing statement, state or federal notice, or other similar instrument or document in any state or public record or office, (y) taking possession or control of any collateral, or (z) further action of any kind (including entry into any security agreements, deposit account control agreements, blocked account control agreements, securities account control agreements, or similar agreements). Without limiting the foregoing, but subject and subordinate to the rights of the DIP Secured Parties and the holders of any senior liens as set forth in **Exhibit C**, in respect of the



Pre-Petition Term Loan Adequate Protection Liens, the Pre-Petition Agent shall enjoy the benefit of all deposit account control agreements, blocked account control agreements, securities account control agreements, and similar agreements to which any Debtor is a party.

(c) Adequate Protection Payments. As further adequate protection, and in consideration, and as a requirement, for obtaining the consent of the Pre-Petition Term Loan Secured Parties to the entry of this ~~Interim~~Final Order and the Debtors' consensual use of Cash Collateral as provided herein:

(i) The Debtors shall, subject to the Carve Out, pay the reasonable, documented out-of-pocket fees, costs and expenses incurred or accrued by the Pre-Petition Agent and each Pre-Petition Lender (the foregoing to include all unpaid prepetition fees, costs and expenses) in connection with any and all aspects of the Chapter 11 Cases (the "Pre-Petition Lender Fees and Expenses"), including the reasonable and documented out-of-pocket fees and expenses of the legal and financial advisors and investment bankers to the Pre-Petition Agent and each Pre-Petition Lender and other professionals, hired by or on behalf of the Pre-Petition Agent or any Pre-Petition Lender (the "Pre-Petition Lender Professionals"). The payment of the Pre-Petition Lender Fees and Expenses and the fees shall be subject to the review procedures set forth in Paragraph 21 of this ~~Interim~~Final Order. To the extent the DIP Agent and DIP Lenders and the Pre-Petition Agent and Pre-Petition Lenders are the same and have a single set of advisors, such advisors may submit a single combined invoice for their aggregated services.

(ii) On the Closing Date, the Debtors shall pay in kind to the Pre-Petition Agent all accrued and unpaid interest at the non-default rate, premiums, and fees then owing under the Pre-Petition Loan Agreement. Notwithstanding anything herein to the contrary, the Committee's rights to object to the allowance of any amount of postpetition interest as part of the Pre-Petition Term Loan Secured Parties' allowed claim in connection with confirmation of a chapter 11 plan is reserved.

(iii) To the extent the Pre-Petition Loans shall not have become Roll-Up Loans, the Debtors shall, as and when due pursuant to the Pre-Petition Loan Documents, pay in kind to the Pre-Petition Term Loan Secured Parties all post-petition interest at the non-default rate specified in such Pre-Petition Loan Documents and (subject to paragraph (iv) below) fees accruing under the Pre-Petition Loan Documents (the payments described in (i) – (iii), the “Pre-Petition Term Loan Adequate Protection Payments”).

(iv) The Pre-Petition Term Loan Adequate Protection Payments shall in all cases be subject to disgorgement to the extent of a successful final and non-appealable Challenge (as defined below).

(d) Financial Reporting. The Debtors shall provide the Pre-Petition Agent, on behalf of itself and on behalf of the Pre-Petition Lenders, with the financial and other reporting as described in the DIP Loan Agreement. Without limiting the rights of access and information afforded the Pre-Petition Term Loan Secured Parties under the DIP Loan Agreement, the Debtors are hereby authorized to afford the representatives, agents, employees, attorneys, financial advisors, and investment bankers of the Pre-Petition Term

Loan Secured Parties reasonable access to the Debtors' premises and their books and records in accordance with the DIP Loan Agreement and shall reasonably cooperate, consult with, and provide to such persons all such information as may reasonably be requested; provided, however, other than any such visits and inspections during the continuation of an Event of Default (as defined in the DIP Loan Agreement), only the Pre-Petition Agent (or a representative or designee of the Required Lenders (as defined in the Pre-Petition Loan Agreement)) on behalf of the Pre-Petition Term Loan Secured Parties (including in acting pursuant to the direction of the Required Lenders (as defined in the Pre-Petition Loan Agreement)) may exercise the rights of the Pre-Petition Term Loan Secured Parties under this Paragraph 13(d).

(e) Noninterference with DIP Obligations. For the avoidance of doubt, nothing in this Paragraph 13 shall affect or limit the obligation of the Debtors to pay the fees, costs and expenses incurred by the DIP Secured Parties as provided in the DIP Loan Documents.

14. **No Waiver of Secured Parties.** The failure of the DIP Secured Parties to seek relief or otherwise exercise their rights and remedies under this ~~Interim~~Final Order, the DIP Loan Documents, or otherwise (or any delay in seeking or exercising same) shall not constitute a waiver of any such parties' rights hereunder, thereunder, or otherwise. Nothing contained in this ~~Interim~~Final Order (including the authorization of the use of any Cash Collateral) shall impair or modify any rights, claims or defenses available in law or equity to any DIP Secured Party, including rights of a party to a swap agreement, securities contract, commodity contract, forward contract, or repurchase agreement with a Debtor to assert rights of setoff or other rights with respect thereto as permitted by law. Except as prohibited by this

~~Interim~~Final Order, the entry of this ~~Interim~~Final Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, or otherwise impair, any right or ability of the DIP Secured Parties under the Bankruptcy Code or under non-bankruptcy law to (i) oppose the use of Cash Collateral on terms other than those set forth in this ~~Interim~~Final Order or (ii) except as expressly set forth herein, exercise any of the rights, claims or privileges (whether legal, equitable, or otherwise) of the DIP Secured Parties, respectively, under the DIP Loan Documents, the Bankruptcy Code, or otherwise.

15. **No Waiver of Pre-Petition Loan Agreement Provisions;**

**Reservation of Rights.** Except as otherwise specifically provided in this ~~Interim~~Final Order, nothing contained in this ~~Interim~~Final Order shall be deemed a waiver or constitute a consent to the modification of any provision contained in the Pre-Petition Loan Agreement by the Pre-Petition Term Loan Secured Parties, including, but not limited to, the incurrence or issuance of any indebtedness by the Debtors, the incurrence of any lien in connection therewith or the making of any payment by the Debtors.

16. **Rights of Access and Information.** Without limiting the rights of access and information afforded the DIP Secured Parties under the DIP Loan Documents, the Debtors are hereby authorized to afford the representatives, agents, employees, attorneys, financial advisors, and investment bankers of (i) the DIP Secured Parties and (ii) the Committee, as applicable, reasonable access to the Debtors' premises (including, without limitation, any leased premises without the need for any collateral access agreement, landlord waiver or consent, or similar agreements) and their books and records in accordance with the DIP Loan Documents and the bylaws of the Committee, as applicable, and shall reasonably cooperate, consult with, and provide to such persons all such information as the DIP Secured Parties or the Committee, as

applicable, may reasonably request. The DIP Secured Parties may participate in any such visit or inspection at the expense of the Debtors as set forth in the DIP Loan Documents. In addition, the Debtors authorize their independent certified public accountants, financial advisors, investment bankers and consultants to cooperate, consult with, and provide to the DIP Secured Parties and the Committee all such information as may be reasonably requested with respect to the business, results of operations and financial condition of any of the Debtors.

17. **Carve Out.**

(a) Carve Out. As used in this ~~Interim~~Final Order, the “Carve Out” means the sum of (i) all fees required to be paid to the Clerk of the Court and to the Office of the U.S. Trustee under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate (without regard to the notice set forth in (iii) below); (ii) all reasonable fees and expenses up to \$100,000 incurred by a trustee under section 726(b) of the Bankruptcy Code (without regard to the notice set forth in (iii) below); (iii) to the extent allowed at any time, whether by interim order, procedural order, or otherwise, all unpaid fees and expenses (the “Allowed Professional Fees”) incurred by persons or firms retained by the Debtors pursuant to section 327, 328, or 363 of the Bankruptcy Code (the “Debtor Professionals”) and the Committee pursuant to section 328 or 1103 of the Bankruptcy Code (the “Committee Professionals” and, together with the Debtor Professionals, the “Professional Persons”) at any time before or on the first business day following delivery by the DIP Agent of a Carve Out Trigger Notice (as defined below), whether allowed by the Court prior to or after delivery of a Carve Out Trigger Notice; and (iv) Allowed Professional Fees of Professional Persons in an aggregate amount not to exceed \$~~5~~1,000,000 incurred after the first business day

following delivery by the DIP Agent of the Carve Out Trigger Notice, to the extent allowed at any time, whether by interim order, procedural order, or otherwise (the amounts set forth in this clause (iv) being the “Post-Carve Out Trigger Notice Cap”). For purposes of the foregoing, “Carve Out Trigger Notice” shall mean a written notice delivered by email (or other electronic means) by the DIP Agent, acting at the direction of the Required Lenders under and as defined in the DIP Loan Documents, or the Pre-Petition Agent, acting at the direction of the Required Lenders under and as defined in the Pre-Petition Loan Agreement, as applicable, to the Debtors, their lead restructuring counsel, the U.S. Trustee, and counsel to the Committee, which notice may be delivered following the occurrence and during the continuation of an Event of Default (as defined in the DIP Loan Agreement), and acceleration of the DIP Obligations under the DIP Facility or termination of the Debtors’ right to use Cash Collateral, as applicable, stating that the Post-Carve Out Trigger Notice Cap has been invoked.

(b) Delivery of Weekly Fee Statements. Not later than 7:00 p.m. New York time on the third business day of each week starting with the first full calendar week following the Petition Date, each Professional Person shall deliver to the Debtors a statement setting forth a good-faith estimate of the amount of fees and expenses (collectively, “Estimated Fees and Expenses”) incurred during the preceding week by such Professional Person (through Saturday of such week, the “Calculation Date”), along with a good-faith estimate of the cumulative total amount of unreimbursed fees and expenses incurred through the applicable Calculation Date and a statement of the amount of such fees and expenses that have been paid to date by the Debtors (each such statement, a “Weekly Statement”); provided that, within one business day of the occurrence of the Termination Declaration Date (as defined below), each Professional Person

shall deliver one additional statement (the “Final Statement”) setting forth a good-faith estimate of the amount of fees and expenses incurred during the period commencing on the calendar day after the most recent Calculation Date for which a Weekly Statement has been delivered and concluding on the Termination Declaration Date (and the Debtors shall cause such Weekly Statement and Final Statement to be delivered on the same day received to the DIP Agent).

If any Professional Person fails to deliver a Weekly Statement within three (3) calendar days after such Weekly Statement is due, such Professional Person’s entitlement (if any) to any funds in the Pre-Carve Out Trigger Notice Reserve (as defined below) with respect to the aggregate unpaid amount of Allowed Professional Fees for the applicable period(s) for which such Professional Person failed to deliver a Weekly Statement covering such period shall be limited to the aggregate unpaid amount of Allowed Professional Fees included in the Approved Budget for such period for such Professional Person.

(c) Carve Out Reserves.

(i) Commencing with the week ended September 27, 2024, and on or before the Thursday of each week thereafter, the Debtors shall utilize all cash on hand as of such date and any available cash thereafter held by any Debtor to fund a reserve in an amount equal to the sum of (a) the greater of (i) the aggregate unpaid amount of all Estimated Fees and Expenses reflected in the Weekly Statement delivered on the immediately prior Wednesday to the Debtors and the DIP Agent, and (ii) the aggregate amount of unpaid Allowed Professional Fees contemplated to be incurred in the Approved Budget during such week, *plus* (b) the Post Carve Out Trigger Notice Cap, *plus* (c) an amount equal to the amount of Allowed Professional Fees set forth in the Approved Budget for the week occurring after the most recent Calculation Date. The Debtors shall deposit and hold such amounts in a segregated account maintained by the

Debtors in trust (the “Funded Reserve Account”) to pay such Allowed Professional Fees (the “Funded Reserves”) prior to any and all other claims, and all payments of Allowed Professional Fees incurred prior to the Termination Declaration Date shall be paid first from such Funded Reserve Account.

(ii) On the day on which a Carve Out Trigger Notice is given by the DIP Agent or the Pre-Petition Agent, as applicable, to the Debtors with a copy to counsel to the Committee (the “Termination Declaration Date”), the Carve Out Trigger Notice shall constitute a demand to the Debtors to, and the Debtors shall utilize all cash on hand as of such date, including cash in the Funded Reserve Account, and any available cash thereafter held by any Debtor to fund a reserve in an amount equal to the then unpaid amounts of the Allowed Professional Fees. The Debtors shall deposit and hold such amounts in a segregated account maintained by the Debtors in trust to pay such then unpaid Allowed Professional Fees (the “Pre-Carve Out Trigger Notice Reserve”) prior to any other claims. On the Termination Declaration Date, the Carve Out Trigger Notice shall also constitute a demand to the Debtors to utilize all cash on hand as of such date, including cash in the Funded Reserve Account, and any available cash thereafter held by any Debtor, after funding the Pre-Carve Out Trigger Notice Reserve, to fund a reserve in an amount equal to the Post-Carve -Out Trigger Notice Cap. The Debtors shall deposit and hold such amounts in a segregated account maintained by the Debtors in trust to pay such Allowed Professional Fees benefiting from the Post-Carve Out Trigger Notice Cap (the “Post-Carve Out Trigger Notice Reserve” and, together with the Pre-Carve Out Trigger Notice Reserve, the “Carve Out Reserves”) prior to any and all other claims.



(d) Application of Carve Out Reserves.

(i) All funds in the Pre-Carve Out Trigger Notice Reserve shall be used first to pay the obligations set forth in clauses (i) through (iii) of the definition of Carve Out set forth above (the “Pre-Carve Out Amounts”), but not, for the avoidance of doubt, the Post-Carve Out Trigger Notice Cap, until indefeasibly paid in full. If the Pre-Carve Out Trigger Notice Reserve has not been reduced to zero, all remaining funds shall be distributed first to the DIP Agent on account of the applicable DIP Obligations until indefeasibly paid in full, and thereafter to the Pre-Petition Lenders in accordance with their rights and priorities as of the Petition Date and as otherwise set forth in this ~~Interim~~Final Order.

(ii) All funds in the Post-Carve Out Trigger Notice Reserve shall be used first to pay the obligations set forth in clause (iv) of the definition of Carve Out set forth above (the “Post-Carve Out Amounts”), and then, to the extent the Post-Carve Out Trigger Notice Reserve has not been reduced to zero, to pay the DIP Agent for the benefit of the DIP Lenders, unless the DIP Obligations have been indefeasibly paid in full, in which case any such excess shall be paid to the Pre-Petition Lenders in accordance with their rights and priorities as of the Petition Date.

(iii) Notwithstanding anything to the contrary in the DIP Loan Documents or this ~~Interim~~Final Order, if either of the Carve Out Reserves is not funded in full in the amounts set forth in Paragraph 17(c), then, any excess funds in one of the Carve Out Reserves following the payment of the Pre-Carve Out Amounts and Post-Carve Out Amounts, respectively (subject to the limits contained in the Post-Carve Out Trigger Notice Cap), shall be used to fund the other Carve Out Reserve, up to the applicable amount set forth in Paragraph 17(c), prior to making any payments to the DIP Agent or the Pre-Petition Lenders, as applicable.

(iv) Notwithstanding anything to the contrary in the DIP Loan Documents or this ~~Interim~~Final Order, following delivery of a Carve Out Trigger Notice, the DIP Agent, the Pre-Petition Agent, and the Pre-Petition Lenders shall not sweep or foreclose on cash (including cash received as a result of the sale or other disposition of any assets) of the Debtors until the Carve Out Reserves have been fully funded, but shall have a security interest in any residual interest in the Carve Out Reserves, with any excess paid to the DIP Agent for application in accordance with the DIP Loan Documents.

(v) Further, notwithstanding anything to the contrary in this ~~Interim~~Final Order, (i) disbursements by the Debtors from the Carve Out Reserves shall not constitute Loans (as defined in the DIP Loan Agreement) or increase or reduce the DIP Obligations, (ii) the failure of the Carve Out Reserves to satisfy in full the Allowed Professional Fees shall not affect the priority of the Carve Out with respect to any shortfall (as described below), and (iii) subject to the limitations with respect to the DIP Agent, DIP Lenders, the Pre-Petition Agent, and Pre-Petition Lenders set forth in this Paragraph 17, in no way shall the Initial Approved Budget, any subsequent Approved Budget, Carve Out, Post-Carve Out Trigger Notice Cap or Carve Out Reserves, or any of the foregoing be construed as a cap or limitation on the amount of the Allowed Professional Fees due and payable by the Debtors. For the avoidance of doubt and notwithstanding anything to the contrary in this ~~Interim~~Final Order or the DIP Loan Documents, the Carve Out shall be senior to all liens and claims securing the DIP Obligations, the Hedge Obligations, the Intermediation Obligations, the Adequate Protection Liens, the Pre-Petition Loan Obligations, the DIP Super-Priority Claims, the Hedging Superpriority Claims (as defined in the Intermediation Order), the Shell Superpriority Claims (as defined in the Intermediation Order), Intermediation Superpriority Claims (as defined in the Intermediation

Order), and any and all other forms of adequate protection, liens, or claims securing the DIP Obligations, the Hedge Obligations, the Intermediation Obligations and the Pre-Petition Loan Obligations.

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

(f) No Direct Obligation To Pay Allowed Professional Fees. None of the DIP Agent, the DIP Lenders, the Pre-Petition Agent, the Pre-Petition Lenders, or the Intermediation Facility Secured Party shall be responsible for the payment or reimbursement of any fees or disbursements of any Professional Person incurred in connection with the Chapter 11 Cases or any successor cases under any chapter of the Bankruptcy Code. Nothing in this ~~Interim~~Final Order or otherwise shall be construed to obligate the DIP Agent, the DIP Lenders, the Pre-Petition Agent, the Pre-Petition Lenders, or the Intermediation Facility Secured Party in any way, to pay compensation to, or to reimburse expenses of, any Professional Person or to guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement.

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

18. **Investigation Rights.** The ~~official committee of creditors holding unsecured claims appointed in these Chapter 11 Cases, if any, pursuant to section 1102 of the Bankruptcy Code (the “Committee”)~~ shall have until ~~sixty (60) calendar days from the date of formation of the Committee~~December 7, 2024, and all other non-Debtor parties-in-interest (including a trustee, if appointed or elected prior to the Investigation Termination Date, as defined below) shall have ~~sixty (60) calendar days from entry of this Interim Order~~until November 25, 2024 (each, as applicable, the “Investigation Termination Date”) to investigate the validity, extent, priority, perfection and enforceability of: the Pre-Petition Liens and the Pre-Petition Loan Obligations, and (in addition to obtaining the requisite standing) to assert any other claims or causes of action against each of the Pre-Petition Term Loan Secured Parties.

If ~~(H)~~ any Committee or any non-Debtor party-in-interest determines that there may be a challenge to the Pre-Petition Liens or the Pre-Petition Loan Obligations and is granted authority and standing by this Court by the Investigation Termination Date, then such Committee or other non-Debtor party-in-interest, as applicable, shall be permitted to file and prosecute an objection or claim related thereto (each, a “Challenge”), and shall have only until the applicable Investigation Termination Date to file such objection or claim (or otherwise initiate an appropriate action on behalf of the Debtors’ estates) setting forth the basis of any such challenge, claim or cause of action; provided, however, that nothing contained in the DIP Loan Documents or this ~~Interim~~Final Order shall be deemed to confer standing on any Committee or any other non-Debtor party-in-interest to commence a Challenge, and such Committee or other non-Debtor party-in-interest shall be required to move for standing and satisfy the applicable standard for obtaining standing to pursue estate causes of action; provided, further, that, notwithstanding anything herein to the contrary, the filing of a motion by the Committee seeking standing with

respect to a Challenge (the “Standing Motion”), that attaches a complaint setting forth such  
Challenge (the “Challenge Complaint”) and that is filed before the Committee’s Investigation  
Termination Date, shall toll the Committee’s Investigation Termination Date in respect of such  
Challenge, solely as to any stipulations or admissions that are specifically and expressly  
challenged in the Challenge Complaint, until the date that a final order of the Court ruling on  
such Standing Motion with respect to such Challenge. If a Challenge is not filed on or before the  
Investigation Termination Date, then, without further action by any party or any further order of  
this Court: (a) the agreements, acknowledgements, stipulations and releases contained in  
Paragraph D of this ~~Interim~~Final Order and its subparagraphs, shall be deemed to be immediately  
and irrevocably binding on the Debtors, and the Debtors’ estates, the Committee, and all  
parties-in-interest and any and all successors-in-interest thereto shall thereafter be forever barred  
from bringing any Challenge; (b) the liens and security interests of each of the Pre-Petition Term  
Loan Secured Parties shall be deemed to constitute valid, binding, enforceable and perfected  
liens and security interests not subject to avoidance or disallowance pursuant to the Bankruptcy  
Code or applicable non-bankruptcy law; and (c) each of the Pre-Petition Loan Obligations shall  
be deemed to be finally allowed claims for all purposes in the Chapter 11 Cases and any  
subsequent chapter 7 cases, in the amounts set forth in Paragraph ~~D~~E of this ~~Interim~~Final Order  
and its subparagraphs and shall not be subject to challenge by any party-in-interest as to validity,  
priority or otherwise (which claims, with respect to the Pre-Petition Loan Obligations, shall have  
been deemed satisfied to the extent the Pre-Petition Loan Obligations are converted into Roll-Up  
Obligations as provided herein). The Pre-Petition Term Loan Secured Parties shall reasonably  
cooperate in all reasonable requests for information in order to assist the Committee in its  
investigation under this Paragraph 18. Upon a successful Challenge, the Court may fashion any

appropriate remedy, including, without limitation, unwinding or disallowing all or a portion of the Roll-Up Loans, and recharacterization of adequate protection payments or fees paid or otherwise earned including on account of the Roll-Up Loans, if appropriate. Notwithstanding anything to the contrary herein: (a) if any such Challenge is timely commenced, the stipulations contained in Paragraph ~~DE~~ of this ~~Interim~~Final Order and its subparagraphs shall nonetheless remain binding on all parties-in-interest and preclusive except with respect to the party asserting the Challenge and to the extent that such stipulations are expressly and successfully challenged in such Challenge; and (b) the Pre-Petition Term Loan Secured Parties reserve all of their rights to contest on any grounds any Challenge. For the avoidance of doubt, any trustee appointed or elected in these cases shall, until the Investigation Termination Date (and thereafter, if a Challenge is commenced on or prior to the Investigation Termination Date) and for the duration of any adversary proceeding or contested matter commenced pursuant to this paragraph with respect to a Challenge (whether commenced by such trustee or commenced by any other non-Debtor party-in-interest on behalf of the Debtors' estates), be deemed to be a party other than the Debtors and shall not, for purposes of such adversary proceeding or contested matter, be bound by the acknowledgments, admissions, confirmations and stipulations of the Debtors in this ~~Interim~~Final Order.

19. **Restriction on Use of DIP Lenders' Funds and Cash Collateral.**

The proceeds of the DIP Facility and the Cash Collateral shall be used exclusively for the purposes described in Paragraph 10 of this ~~Interim~~Final Order, subject to and solely in accordance with the Approved Budget (subject to the Permitted Variance (as defined in the DIP Loan Agreement)). Except as expressly set forth herein or in the Approved Budget, (i) none of Carve Out, DIP Facility Loans, DIP Collateral, or any Cash Collateral may be used for the

payment of interest and principal with respect to any indebtedness that is subordinate to the DIP Facility (including the Pre-Petition Term Loan Adequate Protection Obligations) except as expressly set forth herein and in the DIP Loan Agreement and pursuant to the Approved Budget, and (ii) none of the Carve Out, DIP Facility Loans, DIP Collateral, Pre-Petition Collateral, Cash Collateral, or any Cash Collateral of the Pre-Petition Lenders may be used directly or indirectly by any of the Debtors, any Committee or any other person or entity (x) to finance in any way any adversary action, suit, arbitration, proceeding, application, motion, other litigation, claim, objection, challenge, examination or investigation of any type relating to or in connection with the DIP Loan Documents and Pre-Petition Loan Documents, including, without limitation, any challenges to the DIP Obligations or Pre-Petition Loan Obligations, or the validity, perfection, priority, or enforceability of any DIP Lien or Pre-Petition Lien securing such claims or any payment made thereunder, or (y) to finance in any way any action, suit, arbitration, proceeding, application, motion, other litigation, claim, objection, challenge, examination, or investigation of any type adverse to the interests of the DIP Secured Parties or Pre-Petition Term Loan Secured Parties or their respective rights and remedies under the DIP Loan Documents or Pre-Petition Loan Documents, ~~this~~the Interim Order or ~~the~~this Final Order without the prior written consent of the DIP Agent or Pre-Petition Agent, acting at the direction of Required Lenders (as defined, as applicable, in the DIP Loan Agreement or the Pre-Petition Loan Agreement), as applicable. Notwithstanding the foregoing, the Committee may use no more than \$100,000 (the “Challenge Budget”) of the proceeds of the DIP Facility, the DIP Collateral, or the Pre-Petition Collateral, including the Cash Collateral, in the aggregate, to investigate, prior to the Investigation Termination Date set forth in paragraph 18 of this Final Order, any claims or causes of action against the Pre-Petition Term Loan Secured Parties concerning the legality, validity, priority,

perfection, enforceability or extent of the claims, liens, or interests (including the Pre-Petition Liens held by or on behalf of the Pre-Petition Term Loan Secured Parties related to the Pre-Petition Loan Obligations); provided that no portion of such Challenge Budget may be used to prosecute any such claims or causes of action.

20. **Estate Professional Fees.** Nothing in this ~~Interim~~Final Order shall be construed as consent to the allowance of any fees, expenses, reimbursement or compensation sought by any Professional Person, or shall affect the right of any party in interest, including any DIP Secured Party or any Pre-Petition Term Loan Secured Party, to object to the allowance and payment of any such fees, expenses, reimbursement or compensation.

21. **Payment of Certain Fees and Expenses.** Subject to the review procedures set forth in this Paragraph 21, payment of all DIP Lender Advisor Fees and Expenses and Pre-Petition Lender Fees and Expenses shall not be subject to Court approval of the U.S. Trustee fee guidelines, and none of the DIP Lender Professionals and Pre-Petition Lender Professionals shall be required to file with respect thereto any interim or final fee application with this Court. The DIP Lender Professionals and the Pre-Petition Lender Professionals shall provide copies of summary invoices (which shall be sufficiently detailed to enable a determination as to the reasonableness of such fees and expenses, but shall not be required to contain time entries (subject to the Review Parties' rights to request additional detail of such services provided), and which may be modified to delete any information subject to the attorney-client privilege, any information constituting attorney work product, or any other confidential information, and the provision of the summary invoices shall not constitute any waiver of the attorney client privilege or of any benefits of the attorney work product doctrine) to the Debtors, the U.S. Trustee, the DIP Agent, the Pre-Petition Agent, and counsel to the



Committee (together, the “Review Parties”). If any Review Party objects to the reasonableness of the fees and expenses of the DIP Lender Professionals or Pre-Petition Lender Professionals and cannot resolve such objection within ten (10) business days of receipt of such invoices (the “Review Period”), then such party shall file with this Court and serve on such professional an objection (the “Fee Objection”) limited to the issue of the reasonableness of such fees and expenses, and any failure by any such party to file a Fee Objection within the Review Period shall constitute a waiver of any right of such party to object to the applicable invoice. The Debtors shall, upon expiration of the Review Period, pay in accordance with the terms and conditions of this ~~Interim~~Final Order (a) the undisputed fees, costs, and expenses reflected on any invoice to which a Fee Objection has been timely filed and (b) all fees, costs, and expenses on any invoice in which no Fee Objection has been timely filed.

22. **Protection of DIP Secured Parties’ Rights.** So long as there are any DIP Facility Loans or DIP Obligations outstanding or the New Money Lenders have any outstanding commitments under the DIP Loan Agreement, the Pre-Petition Term Loan Secured Parties (i) shall not take any action to foreclose upon or recover in connection with their respective liens and security interests, other agreements, or operation of law of this ~~Interim~~Final Order, or otherwise exercise remedies against any DIP Collateral, except to the extent authorized herein or by any other order of this Court, (ii) shall be deemed to have consented to any release of DIP Collateral authorized under the DIP Loan Documents, (iii) shall not file any further financing statements, trademark filings, copyright filings, patent filings, mortgages, notices of lien or similar instruments, enter into any control agreement, or otherwise take any action to perfect their security interests in the DIP Collateral unless, solely as to this clause (iii), the DIP Agent (acting at the direction of the Required Lenders) files financing statements or other

documents to perfect the liens granted pursuant to this ~~Interim~~Final Order, or as may be required by applicable state law to continue the perfection of valid and unavoidable liens or security interests as of the Petition Date and (iv) not seek to terminate or modify the use of Cash Collateral, except as provided in Paragraph 28 of this ~~Interim~~Final Order.

23. **Further Assurances.** The Debtors shall use reasonable best efforts to execute all such agreements, financing statements, instruments and other documents, and take all such further reasonable actions (including the filing and recording of financing statements and other documents) that may be required under any applicable requirements of law, or that the DIP Secured Parties or the Pre-Petition Term Loan Secured Parties may reasonably request in order to grant, preserve, protect, or perfect the DIP Liens or the Pre-Petition Term Loan Adequate Protection Liens granted pursuant hereto. Further, the Debtors are authorized to do and perform all acts, to make, execute and deliver all instruments and documents (including, without limitation, the execution of additional security agreements, mortgages, financing statements, collateral pledge agreements, deposit account control agreements, blocked account control agreements, securities account control agreements, and other collateral documents and agreements), and to pay all fees and expenses that may be reasonably required or necessary for the Debtors' performance under the DIP Loan Documents, including, without limitation, (i) the execution of the DIP Loan Documents and (ii) the payment of the fees, costs and other expenses described in the DIP Loan Documents as and when such become due. The DIP Agent shall enjoy the benefit of all Collateral Documents (as defined in the Pre-Petition Loan Documents) to which the Pre-Petition Agent is a party and shall be entitled to the benefit of those agreements in the furtherance of the Liens granted herein.

24. **506(c) Waiver.** ~~Subject to entry of the Final Order and~~ eExcept to the extent of the Carve Out, no expenses of administration of the Chapter 11 Cases or any future proceeding that may result therefrom, including liquidation in bankruptcy or other proceedings under the Bankruptcy Code, shall be charged against or recovered from any collateral pursuant to section 506(c) of the Bankruptcy Code or any similar principle of law, without the prior written consent of the DIP Agent and the Pre-Petition Agent no such consent shall be implied from any other action, inaction, or acquiescence by the DIP Secured Parties and the Pre-Petition Term Loan Secured Parties.

25. **Waiver of Marshaling.** ~~Subject to entry of the Final Order and~~ eExcept to the extent of the Carve Out, in connection with any disposition of or exercise of rights and remedies with respect to the DIP Collateral, the DIP Agent may use commercially reasonable efforts to first apply proceeds of the DIP Collateral that is not Pre-Petition Collateral to satisfy the DIP Obligations before applying proceeds of DIP Collateral that is Pre-Petition Collateral to satisfy the DIP Obligations and in no event shall any of the DIP Secured Parties or, any of the Pre-Petition Term Loan Secured Parties, be subject to the equitable doctrine of “marshaling” or any other similar doctrine with respect to the collateral securing the DIP Obligations, the Pre-Petition Term Loan Adequate Protection Obligations, or the Pre-Petition Loan Obligations.

26. **Restrictions on Granting Post-Petition Liens.** Other than the Carve Out, or as otherwise provided in this ~~Interim~~Final Order or the DIP Loan Agreement, no claim having a priority superior or *pari passu* with those granted by this ~~Interim~~Final Order to the DIP Secured Parties and the Pre-Petition Term Loan Secured Parties shall be granted or permitted by any order of this Court heretofore or hereafter entered in the Chapter 11 Cases, while (i) any

portion of the DIP Facility (or refinancing thereof), any DIP Facility Loan, or any other DIP Obligations are outstanding or (ii) the New Money Lenders have any outstanding Term Loan Commitments under the DIP Loan Agreement. Except as expressly permitted by the DIP Loan Documents, the Debtors will not, at any time during the Chapter 11 Cases, grant mortgages, security interests or liens in the DIP Collateral (or any portion thereof) to any other parties pursuant to section 364(d) of the Bankruptcy Code or otherwise.

27. **Automatic Effectiveness of Liens.** Automatically ~~upon entry of this~~ ~~Interim Order~~, the DIP Liens and the Pre-Petition Term Loan Adequate Protection Liens shall be deemed to be valid, perfected, enforceable, non-avoidable and effective by operation of law, and not subject to challenge as of the Petition Date, without the need for (x) filing any UCC-1 financing statements, security agreements, vehicle lien applications, filings with the U.S. Patent and Trademark Office, the United States Copyright Office, or the Library of Congress, state or federal notice, or any other similar instrument or document in any state or public record or office, (y) taking possession or control of any collateral, or (z) further action of any kind (including execution of any security agreements, mortgages, financing statements, collateral agreements, collateral trust agreements, deposit account control agreements, blocked account control agreements, securities account control agreements, or other collateral documents and agreements). All DIP Collateral shall be free and clear of other liens, claims and encumbrances, except the (a) Permitted Priority Liens, (b) solely with respect to the Shared Collateral (other than the Business Interruption Insurance Proceeds) and DIP Exclusive Collateral (solely with respect to such collateral held by Participating Hedging Debtors), Hedging Liens, (c) solely with respect to the Intermediation Facility Priority Collateral (other than the Business Interruption Insurance Proceeds), the Intermediation Facility Liens, (d) with respect to the Business

Interruption Insurance Proceeds, the Intermediation Facility Liens, (e) Pre-Petition Term Loan Adequate Protection Liens, and (f) Pre-Petition Liens, in each case, subject to the Carve Out and the priorities set forth on Exhibit C. If the DIP Agent (acting at the direction of the Required Lenders) or the Pre-Petition Agent (acting at the direction of the Required Lenders (as defined in the Pre-Petition Loan Agreement)) hereafter reasonably requests that the Debtors execute and deliver to the DIP Agent or the Pre-Petition Agent financing statements, security agreements, collateral assignments, or other instruments and documents considered by such agent (acting at the direction of the Required Lenders) to be reasonably necessary or desirable to further evidence the perfection of the DIP Liens or the Pre-Petition Term Loan Adequate Protection Liens, as applicable, the Debtors are hereby authorized to execute and deliver such financing statements, security agreements, collateral assignments, instruments, and documents, and the DIP Agent or the Pre-Petition Agent is hereby authorized to file or record such documents in its discretion without seeking modification of the automatic stay under section 362 of the Bankruptcy Code, in which event all such documents shall be deemed to have been filed or recorded at the time and on the date of entry of ~~this~~the Interim Order.

28. **Events of Default and Enforcement of Remedies.** Upon the occurrence and during the continuation of any Event of Default (as defined in the DIP Loan Agreement), the DIP Secured Parties shall have the rights and remedies set forth in the DIP Loan Agreement and in this ~~Interim~~Final Order, subject to the Enforcement Notice Period and procedures described in Paragraphs 29–30 of this ~~Interim~~Final Order.

29. **Modification of Automatic Stay.** As provided herein, subject only to the provisions of the DIP Loan Agreement and without further order from this Court, the automatic stay provisions of section 362 of the Bankruptcy Code are vacated and modified to the

extent necessary to permit the DIP Agent (acting upon the direction of the Required Lenders in accordance with the terms of the DIP Loan Agreement) to, upon written notice by the DIP Agent to the Debtors, the Intermediator, the Hedge Provider, counsel to any Committee, and the U.S. Trustee (with a copy filed with this Court) of an Event of Default (as defined in the DIP Loan Agreement), (i) declare all DIP Obligations owing under the DIP Facility to be immediately due and payable, (ii) declare the termination, reduction, or restriction of the unfunded Term Loan Commitments to the extent any such Term Loan Commitments remain outstanding (other than as required to fund the Carve Out), (iii) declare the termination of the DIP Facility and any other documentation as to any future liability or obligation of the DIP Agent and the DIP Lenders, but without affecting any of the DIP Liens or the DIP Obligations; (iv) declare a termination, reduction or restriction on the ability of the Debtors to use any Cash Collateral (other than the Intermediation Facility Priority Collateral) (subject to the Carve Out and other than Cash Collateral for payroll and other expenses critically necessary to preserve the value of the business of the Debtors as specifically provided for in paragraph 30 hereof), and (v) charge the Default Rate (as defined in the DIP Loan Agreement) under the DIP Facility.

30. Any of the foregoing declarations in Paragraph 29 shall be made to the Debtors, and shall be referred to as a “DIP Termination Declaration” and the date which is the earliest to occur of any such DIP Termination Declaration and the Maturity Date (as defined in the DIP Loan Agreement) shall be referred to as the “DIP Termination Declaration Date”; provided, however, that in the case of the termination of the Debtors’ use of Cash Collateral or in the case of enforcement of DIP Liens, the liens securing the Pre-Petition Loan Obligations, or other remedies with respect to the DIP Collateral or Pre-Petition Collateral under the DIP Loan Agreement or the Pre-Petition Loan Agreement, respectively, the DIP Agent (acting at the

direction of the Required Lenders) or the Pre-Petition Agent (acting at the direction of the Required Lenders (as defined under the Pre-Petition Loan Agreement)), as applicable, shall file a motion (a “Stay Relief Motion”) with this Court seeking emergency relief to exercise such remedies on at least five (5) business days’ written notice (the “Enforcement Notice Period”) seeking an emergency hearing before this Court (the “Enforcement Hearing”). At the Enforcement Hearing, this Court may consider whether an Event of Default (as defined in the DIP Loan Agreement) has occurred and may fashion an appropriate remedy, including permitting the DIP Agent (acting at the direction of the Required Lenders), the DIP Lenders, the Pre-Petition Agent (acting at the direction of the Required Lenders (as defined in the Pre-Petition Loan Agreement)), or the Pre-Petition Lenders, as applicable, to exercise the rights and remedies provided for in the DIP Loan Agreement and/or this ~~Interim~~Final Order; provided that during the Enforcement Notice Period the Debtors are permitted to use Cash Collateral to fund the Carve Out and for payroll and other expenses critically necessary to preserve the value of the business of the Debtors; provided, further, prior to the expiration of the Enforcement Notice Period, the Debtors and any Committee may seek an emergency hearing before this Court, with prompt notice of such hearing to the Intermediator, the Hedge Provider, and primary counsel to each of the DIP Agent, DIP Lenders, Pre-Petition Agent, and Pre-Petition Lenders, to contest whether an Event of Default (as defined in the DIP Loan Agreement) occurred and to seek non-consensual use of Cash Collateral. For the avoidance of doubt, the Enforcement Notice Period shall not expire until the conclusion of the Enforcement Hearing. Except as otherwise ordered by the Bankruptcy Court prior to the expiration of the Enforcement Notice Period, after expiration of the Enforcement Notice Period, the Debtors shall waive their right to and shall not be entitled to seek relief, including, without limitation, under section 105 of the Bankruptcy Code, to the

extent such relief would in any way impair or restrict the rights and remedies of the DIP Lenders. The rights and remedies of the DIP Secured Parties specified herein are cumulative and not exclusive of any rights or remedies that the DIP Secured Parties may have under the DIP Loan Documents or otherwise. The Debtors shall cooperate fully with the DIP Secured Parties in their exercise of rights and remedies, whether against the DIP Collateral or otherwise. This Court shall retain exclusive jurisdiction to hear and resolve any disputes and enter any orders required by the provisions of this Paragraph 30 and relating to the application, re-imposition or continuance of the automatic stay as provided hereunder.

31. **Milestones**. It is a condition to the DIP Facility that the Debtors shall comply with the following deadlines (each of which may be waived, amended, modified or extended upon the prior written consent (which may be by email) of the DIP Agent (at the direction of the Supermajority Lenders (as defined in the DIP Loan Documents))), in their sole discretion, without further notice or order of this Court) (the “Milestones”). The failure to satisfy the following Milestones shall constitute an Event of Default (as defined in the DIP Loan Agreement) in accordance with the terms of the DIP Loan Agreement and this ~~Interim~~Final Order:

(a) No later than three (3) days after the Petition Date, subject to Bankruptcy Court availability, the Bankruptcy Court shall have entered ~~this~~the Interim Order, a disclosure statement scheduling order (the “Scheduling Order”) and an order to approve the bidding procedures (the “Bidding Procedures Order”);

~~(b) No later than thirty (30) days after the Petition Date, the Bankruptcy Court shall have entered the Final Order;~~



(b) ~~(e)~~ No later than thirty-five (35) days after the Petition Date, the deadline for submitting indications of interest (the “IOI Deadline”);

(c) No later than thirty-six (36) days after the Petition Date, the Bankruptcy Court shall have entered this Final Order;

(d) No later than fifty (50) days after the Petition Date, the Bankruptcy Court shall have entered an order approving the disclosure statement;

(e) If the Debtors elect to pursue a sale of some or substantially all of the Debtors’ assets pursuant to section 363 of the Bankruptcy Code (a “Sale”) to the DIP Lenders and/or Pre-Petition Lenders (the “Credit Bid Sale”), no later than seventy (70) days after the Petition Date, the Bankruptcy Court shall have entered an order approving the Credit Bid Sale (the “Credit Bid Sale Order”);

(f) If the Debtors elect to pursue a Sale to a third party (such a Sale, a “Third-Party Sale”), (i) the deadline for submitting qualified bids for the Third Party Sale shall be no later than sixty-five (65) days after the Petition Date; and (ii) no later than ninety (90) days after the Petition Date, the Bankruptcy Court shall have entered an order approving such Third Party Sale (the “Third-Party Sale Order”);

(g) No later than ninety-five (95) days after the Petition Date, the order confirming an Acceptable Plan of Reorganization shall have been entered; and

(h) No later than one hundred and fifteen (115) days after the Petition Date, the Plan Effective Date shall have occurred.

32. **Credit Bid.**

(a) ~~The~~ Subject to section 363(k) of the Bankruptcy Code, the DIP Agent, at the direction of the Required Lenders, shall have the unqualified right to credit bid up to

the full amount of the outstanding DIP Obligations, on behalf of the DIP Lenders, in any sale of the DIP Collateral under or pursuant to (i) section 363 of the Bankruptcy Code, (ii) a plan of reorganization or a plan of liquidation under section 1129 of the Bankruptcy Code, or (iii) a sale or disposition by a chapter 7 trustee for any Debtor under section 725 of the Bankruptcy Code.

(b) ~~The~~ Subject to section 363(k) of the Bankruptcy Code, the Pre-Petition Agent, at the direction of the Required Lenders (as defined in the Pre-Petition Loan Agreement), shall have the unqualified right to credit bid up to the full amount of any remaining Pre-Petition Loan Obligations, on behalf of the Pre-Petition Lenders, in any sale of DIP Collateral or Pre-Petition Collateral, as applicable, subject to the satisfaction of all DIP Obligations and all obligations secured by Hedging Liens (solely with respect to the Shared Collateral (other than the Business Interruption Insurance Proceeds) and DIP Exclusive Collateral held by Participating Hedging Debtors), Permitted Priority Liens or Intermediation Facility Liens (solely with respect to the Intermediation Facility Priority Collateral (other than the Business Interruption Insurance Proceeds)), or as otherwise consented to by the New Money Lenders, the Hedge Provider, the Intermediator, or such other holder of a Permitted Priority Lien, as applicable, under or pursuant to (i) section 363 of the Bankruptcy Code, (ii) a plan of reorganization or a plan of liquidation under section 1129 of the Bankruptcy Code, or (iii) a sale or disposition by a chapter 7 trustee for any Debtor under section 725 of the Bankruptcy Code.

33. **Binding Effect.** Subject to Paragraph 18 of this ~~Interim~~ Final Order, the provisions of this ~~Interim~~ Final Order shall be binding upon and inure to the benefit of the DIP Secured Parties, the Pre-Petition Term Loan Secured Parties, the Debtors, any Committee

appointed in these Chapter 11 Cases, and each of their respective successors and assigns (including any chapter 7 or chapter 11 trustee hereinafter appointed or elected for the estate of the Debtors, an examiner appointed pursuant to section 1104 of the Bankruptcy Code or any other fiduciary appointed as a legal representative of any of the Debtors or with respect to the property of the estate of any of the Debtors). To the extent permitted by applicable law, this ~~Interim~~Final Order shall bind any trustee hereafter appointed for the estate of any of the Debtors, whether in these Chapter 11 Cases or in the event of the conversion of any of the Chapter 11 Cases to a liquidation under chapter 7 of the Bankruptcy Code. Such binding effect is an integral part of this ~~Interim~~Final Order.

34. **Survival.** The provisions of this ~~Interim~~Final Order and the DIP Loan Documents, any actions taken pursuant hereto or thereto, and all of the protections, rights, remedies, liens, priorities, privileges, and benefits granted to any or all of the DIP Secured Parties and the Pre-Petition Term Loan Secured Parties hereunder or thereunder, as applicable, shall survive and continue in full force and effect, and shall not be modified, impaired, or discharged by, the entry of any order confirming any Plan (except as agreed in the RSA, if the RSA has not been terminated), converting any of the Chapter 11 Cases to a chapter 7 case, dismissing any of the Chapter 11 Cases, withdrawing of the reference of any of these Chapter 11 Cases or providing for abstention from handling or retaining of jurisdiction of any of these Chapter 11 Cases in this Court, or terminating the joint administration of these Chapter 11 Cases or by any other act or omission. The terms and provisions of this ~~Interim~~Final Order, including the DIP Super-Priority Claims, and the DIP Liens in the DIP Collateral, and all other protections, rights, remedies, liens, priorities, privileges, and benefits granted to any or all of the DIP Secured Parties and the Pre-Petition Term Loan Secured Parties, respectively, shall continue in full force

and effect in these proceedings and after dismissal of any thereof, and shall maintain their respective priorities as provided by this ~~Interim~~Final Order, the DIP Loan Documents, and the Pre-Petition Loan Documents, and to the maximum extent permitted by law, until all of the DIP Obligations and the Pre-Petition Loan Obligations, as applicable, are discharged. The DIP Obligations shall not be discharged by the entry of any order confirming any such chapter 11 plan (except as agreed in the RSA, if the RSA has not been terminated), each of the Debtors having hereby waived such discharge pursuant to section 1141(d)(4) of the Bankruptcy Code. In no event shall any plan of reorganization or liquidation be allowed to alter the terms of repayment of any of the DIP Obligations from those set forth in the DIP Loan Documents (except as agreed in the RSA, if the RSA has not been terminated) without the express written consent of the DIP Agent and the New Money Lenders.

35. **Modifications of DIP Loan Documents.** The Debtors and the DIP Secured Parties are hereby authorized to implement, in accordance with the terms of the DIP Loan Documents, any non-material modifications (including without limitation, any change in the number or composition of the DIP Lenders) of the DIP Loan Documents without further order of this Court; provided, however, that the Debtors shall provide notice of any non-material modification or amendment to the DIP Loan Documents shall be provided to counsel to any Committee, to the U.S. Trustee, and the Pre-Petition Agent, each of whom shall have three (3) business days from the date of such notice within which to object in writing to such modification or amendment. If any such party timely objects to any non-material modification or amendment to the DIP Loan Documents, such modification or amendment shall only be permitted pursuant to an order of this Court.

36. **Limits on Lender Liability; No Third Party Rights.** Nothing in this ~~Interim~~Final Order, any of the DIP Loan Documents, or any other documents related thereto shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Secured Parties or the Pre-Petition Term Loan Secured Parties of any liability for any claims arising from any activities by the Debtors in the operation of their businesses or in connection with the administration of these Chapter 11 Cases. The DIP Secured Parties shall not, solely by reason of having made loans under the DIP Facility, be deemed in control of the operations of the Debtors or to be acting as a “responsible person” or “owner or operator” with respect to the operation or management of the Debtors (as such terms, or any similar terms, are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 et seq., as amended, or any similar federal or state statute). Nothing in this ~~Interim~~Final Order or the DIP Loan Documents shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Secured Parties or any of the Pre-Petition Term Loan Secured Parties of any liability for any claims arising from the prepetition or post-petition activities of any of the Debtors. Except as explicitly provided for herein or in any credit document, this ~~Interim~~Final Order does not create any rights for the benefit of any third party, creditor, equity holder, or direct, indirect, or incidental beneficiary. In determining to make any loan (whether under the DIP Loan Documents or otherwise) or to permit the use of Cash Collateral or in exercising any rights or remedies as and when permitted pursuant to this ~~Interim~~Final Order or the DIP Loan Documents, the DIP Secured Parties and the Pre-Petition Term Loan Secured Parties shall not owe any fiduciary duty to the Debtors, their respective creditors, shareholders, or estates.

37. **Insurance Policies.** ~~Upon entry of this Interim Order, the~~The DIP Secured Parties shall be, and shall be deemed to be, without any further action or notice, named

as additional insureds and loss payees, as applicable, on each insurance policy maintained now or in the future by any of the Debtors which in any way relates to the DIP Collateral. Notwithstanding the foregoing, the Debtors are authorized to take any actions that the DIP Agent (acting at the direction of Required Lenders) shall reasonably request, in its sole and absolute discretion, to have the DIP Agent, on behalf of the DIP Secured Parties, added as an additional insured and loss payee on each insurance policy.

38. **Release of Claims and Defenses.** Subject to ~~and effective upon entry of the Final Order and subject to~~ Paragraph 18 of this ~~Interim~~Final Order, each Debtor, on its own behalf and on behalf of its estate, hereby absolutely, irrevocably, and unconditionally releases and forever discharges and acquits each of the DIP Secured Parties and the Pre-Petition Term Loan Secured Parties (solely in their capacity as such) together with their Representatives (collectively, the “Released Parties”), of and from any and all obligations and liabilities to the Debtors (and their successors and assigns) and from any and all claims, controversies, disputes, obligations, counterclaims, offsets, defenses, demands, debts, damages, expenses, losses, liens, accounts, contracts, liabilities, actions, causes of action and any other rights of disgorgement or recovery arising prior the Petition Date of any kind, nature or description, whether known or unknown, foreseen or unforeseen, matured or unmatured, accrued or unaccrued, suspected or unsuspected, or liquidated or unliquidated, pending or threatened, arising in law or equity or upon contract or tort or under any state or federal law or otherwise, arising out of, based upon or related to, in whole or in part, any of the DIP Loan Documents, the Pre-Petition Loan Agreement, or any loans under the DIP Facility, any aspect of the relationship between the Debtors, on the one hand, and any or all of the Released Parties, on the other hand, relating to any of DIP Loan Documents, the Pre-Petition Loan Agreement, or any transaction contemplated

thereby or any other acts or omissions by any or all of the Released Parties in connection with the DIP Facility, the Pre-Petition Loan Facility, or any of the DIP Loan Documents, the Pre-Petition Loan Agreement, or their prepetition relationship with such Debtor or any affiliate thereof relating to any of the DIP Loan Documents the Pre-Petition Loan Agreement, or any transaction contemplated thereby, including, without limitation, any so-called “lender liability” claims or defenses or claims or defenses under chapter 5 of the Bankruptcy Code or any other causes of action, in each case that any Debtor at any time had, now has or may have, or that its successors or assigns hereafter can or may have against any of the Released Parties for or by any reason of any act, omission, matter, cause or thing whatsoever arising at any time on or prior to the date of this ~~Interim~~Final Order; provided that the releases set forth in this section shall not release any claims against a Released Party or liabilities that a court of competent jurisdiction determines results from the bad faith, fraud, gross negligence or willful misconduct of such Released Party; provided, further, that nothing herein shall relieve the DIP Secured Parties from fulfilling their commitments under the DIP Facility.

39. **Protection Under Section 364(e).** If any or all of the provisions of this ~~Interim~~Final Order are hereafter reversed, modified, vacated or stayed, such reversal, modification, vacation or stay shall not affect the validity or enforceability of any DIP Obligation, DIP Lien, Pre-Petition Term Loan Adequate Protection Super-Priority Claim, or Pre-Petition Term Loan Adequate Protection Lien, or any other claim, lien, security interest or priority authorized or created hereby or pursuant to the DIP Loan Documents or Pre-Petition Term Loan Adequate Protection Obligations incurred prior to the actual receipt by the DIP Agent or the Pre-Petition Agent, as applicable, of written notice of the effective date of such reversal, modification, vacation or stay. Notwithstanding any such reversal, modification, vacation or

stay, any use of Cash Collateral or the incurrence of DIP Obligations or Pre-Petition Term Loan Adequate Protection Obligations by the Debtors prior to the actual receipt by the DIP Agent or the Pre-Petition Agent, as applicable, of written notice of the effective date of such reversal, modification, vacation or stay, shall be governed in all respects by the provisions of this ~~Interim~~Final Order, and the DIP Secured Parties and Pre-Petition Term Loan Secured Parties shall be entitled to all of the rights, remedies, protections and benefits granted under the Bankruptcy Code, including section 364(e) of the Bankruptcy Code, this ~~Interim~~Final Order, and the DIP Loan Documents with respect to all uses of Cash Collateral and the incurrence of DIP Obligations and Pre-Petition Term Loan Adequate Protection Obligations.

40. **Effect of Dismissal of Chapter 11 Cases.** If the Chapter 11 Cases are dismissed, converted or substantively consolidated, then neither the entry of this ~~Interim~~Final Order nor the dismissal, conversion or substantive consolidation of these Chapter 11 Cases shall affect the rights of the DIP Secured Parties or Pre-Petition Term Loan Secured Parties under their respective DIP Loan Documents, Pre-Petition Loan Documents, ~~for~~ this ~~Interim~~Final Order, and all of the respective rights and remedies thereunder of the DIP Secured Parties and the Pre-Petition Term Loan Secured Parties shall remain in full force and effect as if the Chapter 11 Cases had not been dismissed, converted, or substantively consolidated. If an order dismissing any of the Chapter 11 Cases is at any time entered, such order shall provide (in accordance with sections 105 and 349 of the Bankruptcy Code) that (a) the DIP Liens and DIP Super-Priority Claims granted to and conferred upon the DIP Agent and the DIP Secured Parties and the protections afforded to the DIP Agent and the DIP Secured Parties pursuant to this ~~Interim~~Final Order and the DIP Loan Documents shall continue in full force and effect and shall maintain their priorities as provided in this ~~Interim~~Final Order until all DIP Obligations shall have been



paid and satisfied in full (and that such DIP Liens, DIP Super-Priority Claims, and other protections shall, notwithstanding such dismissal, remain binding on all interested parties); (b) those Pre-Petition Loan, Pre-Petition Term Loan Adequate Protection Liens and Pre-Petition Term Loan Adequate Protection Super-Priority Claims granted to and conferred upon the Pre-Petition Term Loan Secured Parties shall continue in full force and effect and shall maintain their priorities as provided in this ~~Interim~~Final Order until all Pre-Petition Loan Obligations shall have been paid and satisfied in full (and that such Pre-Petition Term Loan Adequate Protection Liens, Pre-Petition Term Loan Adequate Protection Super-Priority Claims, and other adequate protection granted to or conferred on the Pre-Petition Term Loan Secured Parties shall, notwithstanding such dismissal, remain binding on all interested parties); and (c) to the greatest extent permitted by applicable law, this Court shall retain jurisdiction, notwithstanding such dismissal, for the purpose of enforcing the DIP Liens, the Pre-Petition Loan, the Pre-Petition Term Loan Adequate Protection Liens, the DIP Super-Priority Claims and the Pre-Petition Term Loan Adequate Protection Super-Priority Claims referred to herein.

41. **Discharge.** Solely if the RSA has not been terminated, notwithstanding the provisions of section 1141(d) of the Bankruptcy Code, the DIP Obligations provided herein shall not be discharged by the entry of an order confirming any Plan, a Credit Bid Sale Order, or a Third Party Sale Order, unless (a) such obligations have been indefeasibly paid in full in cash (other than contingent indemnification obligations for which no claim has been asserted), (b) in the event of a Recapitalization Transactions, (i) equitization of all DIP Obligations (on a pro rata basis along with allowed Term Loan Claims) not refinanced by an exit facility acceptable to holders of DIP Super-Priority Claims and the Debtors, and/or (ii) to the extent exit financing is raised by the Debtors, refinancing of all or part of the DIP Super-Priority

Claims, on terms acceptable to the DIP Lenders, by an exit facility acceptable to the holders of the DIP Super-Priority Claims and the Debtors, or (c) in the event of a Credit Bid Sale, holders of any DIP Super-Priority Claims not otherwise bid as part of such Credit Bid Sale shall receive their pro rata share of all Excess Distributable Cash (as defined in the RSA) until paid in full.

42. **Proofs of Claim.** The Pre-Petition Term Loan Secured Parties shall not be required to file proofs of claim in any of the Chapter 11 Cases for any claim allowed herein. The stipulations in Paragraph ~~DE~~ of this ~~Interim~~Final Order shall be deemed to constitute a timely-filed proof of claim for the Pre-Petition Term Loan Secured Parties in respect of the Pre-Petition Loan Obligations. However, in order to facilitate the processing of claims, to ease the burden upon the Court and to reduce an unnecessary expense to the Debtors' estates, the Pre-Petition Agent, is authorized to file in the Debtors' lead Chapter 11 Case Vertex Energy, Inc., Case No. 24-90507 (CML), a master proof of claim on behalf of the Pre-Petition Term Loan Secured Parties on account of any and all of their respective claims arising under the Pre-Petition Loan Documents, applicable security documents and hereunder (each, a "Master Proof of Claim") against each of the Debtors. Upon the filing of a Master Proof of Claim by the Pre-Petition Agent, it shall be deemed to have filed a proof of claim in the amount set forth opposite its name therein in respect of its claims against each of the Debtors of any type or nature whatsoever with respect to the applicable security documents, and the claim of each Pre-Petition Term Loan Secured Party, (and each of its respective successors and assigns), named in a Master Proof of Claim shall be treated as if it had filed a separate proof of claim in each of these Chapter 11 Cases. In addition, the Pre-Petition Term Loan Secured Parties and the DIP Secured Parties will not be required to file any request for allowance and/or payment of any administrative expenses, and this ~~Interim~~Final Order shall be deemed to constitute a timely filed request for

allowance and/or payment of any Pre-Petition Loan Obligations constituting administrative expenses or any DIP Obligations, as applicable.

43. **Findings of Fact and Conclusions of Law.** This ~~Interim~~Final Order constitutes, where applicable, findings of fact and conclusions of law and shall take effect and be fully enforceable immediately upon the execution thereof.

44. **Jurisdiction.** This Court shall have exclusive jurisdiction with respect to any and all disputes or matters under, or arising out of or in connection with, either the DIP Facility or the DIP Loan Documents.

45. **Authorized Signatories.** The signature of any Authorized Person (as defined in the Debtors' corporate resolutions filed with the Petitions) or Debtors' attorneys, appearing on any one or more of the DIP Loan Documents shall be sufficient to bind the Debtors. No board of directors or other approval shall be necessary.

46. **Order Effective.** This ~~Interim~~Final Order shall be effective as of the date of the signature by the Court.

47. **No Requirement to Accept Title to Collateral.** The DIP Secured Parties and the Pre-Petition Term Loan Secured Parties shall not be obligated to accept title to any portion of the respective DIP Collateral and Pre-Petition Collateral in payment of the indebtedness owed to such parties by the Debtors, in lieu of payment in cash or cash equivalents, nor shall any of the DIP Secured Parties and the Pre-Petition Term Loan Secured Parties be obligated to accept payment in cash or cash equivalents that is encumbered by any interest of any person or entity other than the DIP Secured Parties or the Pre-Petition Term Loan Secured Parties.

48. **Controlling Effect of InterimFinal Order.** To the extent any provision of this ~~Interim~~Final Order conflicts or is inconsistent with any provision of the Motion, any prepetition agreement or any DIP Loan Document, the provisions of this ~~Interim~~Final Order shall control.

49. **Headings.** Paragraph headings used herein are for convenience only and are not to affect the construction of, or to be taken into consideration in, interpreting this ~~Interim~~Final Order.

~~50. **Final Hearing.** The Final Hearing on the Motion shall be heard before this Court on [●], 2024 at [\_\_:\_\_] [m.] in Courtroom 401 at the United States Bankruptcy Court, 515 Rusk Avenue, Houston, TX 77002. Any objections shall be filed with the Court on or before [●], 2024 at 4:00 p.m. and served upon counsel for the Debtors, the DIP Agent, and the Pre-Petition Agent.~~

50. **Financial Reporting to the Committee.** The Debtors shall provide counsel to the Committee with the financial and other reporting provided to the DIP Lenders under the DIP Loan Agreement.

51. **Reservation of Rights of Matheson.** Notwithstanding anything to the contrary in the DIP Loan Documents or this Final Order, the liens and claims stipulated to and granted under the Interim Order and this Final Order shall not attach to, or otherwise encumber property owned by Matheson Tri-Gas, Inc., including without limitation:

(a) the leasehold interests of Matheson Tri-Gas, Inc. granted by the Debtors granted pursuant to that certain Ground Lease, dated as of January 12, 2006, by and between Linde Gas USA LLC, successor in interest to Linde Gas LLC, and n/k/a Matheson Tri-Gas, Inc., as lessee, and Shell Chemical LP, as lessor;

(b) the Facility (as defined in the Hydrogen and Steam Supply Agreement by and between Vertex Refining Alabama LLC and Matheson Tri-Gas, Inc., dated as of June 11, 2022), and

(c) the Facility (as defined in the Hydrogen and Steam Supply Agreement by and between Vertex Refining Alabama LLC (Amended and Restated Version), as successor in interest to Shell Chemical LP, and Matheson Tri-Gas, Inc., as successor in interest to Linde Gas LLC, dated as of January 12, 2006, as amended).

52. **Plains Marketing.** For the avoidance of doubt, and notwithstanding anything to the contrary set forth in this Final Order, any DIP Liens granted herein in respect of any property of the Debtors or their estates that is now or hereafter becomes subject to a lien in favor of Plains Marketing, L.P. (“Plains Marketing”) pursuant to that certain *Terminal Services Agreement*, dated as of March 1, 2015, entered by and between Debtor Vertex Refining Alabama LLC and Plains Marketing (such collateral that is Intermediation Facility Priority Collateral, the “Plains Collateral”) and applicable statutory and common law, shall not in any way be senior to or prime any lien held by Plains Marketing in respect of the Plains Collateral.

~~Dated: [●], 2024.~~

Signed: \_\_\_\_\_, 2024

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Christopher Lopez  
United States Bankruptcy Judge

**Exhibit A**

**DIP Loan Agreement**

**[\[Filed at Docket No. 20\]](#)**

**Exhibit B**

**Initial Approved Budget**

**[\[Filed at Docket No. 20\]](#)**

**Exhibit C****Relative Lien Priorities on Collateral<sup>55</sup>**

<b>Shared Collateral constituting Intermediation Facility Priority Collateral (other than Business Interruption Insurance Proceeds)</b>	<b>Shared Collateral constituting DIP Priority Collateral (other than Business Interruption Insurance Proceeds)</b>	<b>Shared Collateral constituting Business Interruption Insurance Proceeds<sup>66</sup></b>	<b>DIP Exclusive Collateral</b>
Carve Out	Carve Out	Carve Out	Carve Out
Permitted Priority Liens	Permitted Priority Liens	Permitted Priority Liens	Permitted Priority Liens
Intermediation Facility Liens	Hedging Liens	Hedging Liens/ Intermediation Facility Liens/DIP Liens	Hedging Liens <sup>77</sup>
Intermediation Facility Adequate Protection Liens	DIP Liens	Pre-Petition Term Loan Adequate Protection Liens/ Intermediation Facility Adequate Protection Liens	DIP Liens
Hedging Liens	Pre-Petition Term Loan Adequate Protection Liens	Pre-Petition Liens	Pre-Petition Term Loan Adequate Protection Liens
DIP Liens	Pre-Petition Liens	-	Pre-Petition Liens
Pre-Petition Term Loan Adequate Protection Liens	Intermediation Facility Liens	-	-
Pre-Petition Liens	Intermediation Facility Adequate Protection Liens	-	-

<sup>55</sup> Terms used in this **Exhibit C** shall have the meaning given to such terms in **Exhibit E**.

<sup>66</sup> The Intermediator must have marshalled, taken, liquidated and exhausted all remedies and recoveries available to the Intermediator under the Intermediation Contracts from any other Intermediation Facility Priority Collateral, including Intermediation Title Property.

<sup>77</sup> Only with respect to DIP Exclusive Collateral held by Participating Hedging Debtors.



**Exhibit D****Relative Claim Priorities<sup>889</sup>**

<b>Vertex Refining (with respect to proceeds of Intermediation Facility Priority Collateral (other than Business Interruption Insurance Proceeds))</b>	<b>Vertex Refining (with respect to proceeds of DIP Priority Collateral (other than Business Interruption Insurance Proceeds))</b>	<b>Vertex Refining (with respect to Business Interruption Insurance Proceeds)</b>	<b>Parent</b>	<b>Vertex Renewables</b>	<b>Participating Hedging Debtors (other than Vertex Refining, Parent and Vertex Renewables)</b>	<b>All Other Debtors</b>
Carve Out	Carve Out	Carve Out	Carve Out	Carve Out	Carve Out	Carve Out
Intermediation Superpriority Claims	Superpriority Hedging Claims	Superpriority Hedging Claims/ DIP Super-Priority Claims/ Intermediation Superpriority Claims	Superpriority Hedging Claims	Superpriority Hedging Claims	Superpriority Hedging Claims	DIP Super-Priority Claims

<sup>88</sup>  
= Terms used in this **Exhibit D** shall have the meaning given to such terms in **Exhibit E**.

<sup>9</sup>  
= The priorities shown on this **Exhibit D** are not binding on Shell and are only for depiction. With respect to Shell Superpriority Claims, if there is any conflict between this **Exhibit D** and the Shell Support Agreement (as defined in the Intermediation Order), the Shell Support Agreement controls, it being understood that Paragraph 8 of the Intermediation Order is consistent with the Shell Support Agreement.

Vertex Refining (with respect to proceeds of Intermediation Facility Priority Collateral (other than Business Interruption Insurance Proceeds))	Vertex Refining (with respect to proceeds of DIP Priority Collateral (other than Business Interruption Insurance Proceeds))	Vertex Refining (with respect to Business Interruption Insurance Proceeds)	Parent	Vertex Renewables	Participating Hedging Debtors (other than Vertex Refining, Parent and Vertex Renewables)	All Other Debtors
Pre-Petition Intermediation Facility Adequate Protection Claims	DIP Super-Priority Claims	<del>Pre-Petition Term Loan Adequate Protection Super-Priority Claims / Pre-Petition Intermediation Facility Adequate Protection</del> <u>Shell Superpriority Claims</u>	All DIP Super-Priority Claims / Certain Intermediation Superpriority Claims (solely with respect to Business Interruption Insurance Proceeds)	<del>All</del> DIP Super-Priority Claims	DIP Super-Priority Claims	Pre-Petition Term Loan Adequate Protection Super-Priority Claims
Superpriority Hedging Claims	Intermediation Superpriority Claims	<del>Pre-Petition Term Loan Adequate Protection Super-Priority Claims / Pre-Petition Intermediation Facility Adequate Protection</del> <u>Claims</u>	Intermediation Superpriority Claims (claims other than Business Interruption Insurance Proceeds)	Intermediation Superpriority Claims	Pre-Petition Term Loan Adequate Protection Super-Priority Claims	-

Vertex Refining (with respect to proceeds of Intermediation Facility Priority Collateral (other than Business Interruption Insurance Proceeds))	Vertex Refining (with respect to proceeds of DIP Priority Collateral (other than Business Interruption Insurance Proceeds))	Vertex Refining (with respect to Business Interruption Insurance Proceeds)	Parent	Vertex Renewables	Participating Hedging Debtors (other than Vertex Refining, Parent and Vertex Renewables)	All Other Debtors
<u>DIP Super-Priority Claims</u>	<u>Shell Superpriority Claims</u>	=	<u>Shell Superpriority Claims</u>	<u>Pre-Petition Term Loan Adequate Protection Super-Priority Claims</u>	=	=
<del>DIP Super-Priority</del> <u>Shell Superpriority Claims</u>	Pre-Petition Term Loan Adequate Protection Super-Priority Claims	-	Pre-Petition Term Loan Adequate Protection Super-Priority Claims / Certain Pre-Petition Intermediation Facility Adequate Protection Claims (solely with respect to Business Interruption Insurance Proceeds)	<del>Pre-Petition Term Loan Adequate Protection Super-Priority Claims</del>	-	-

<b>Vertex Refining (with respect to proceeds of Intermediation Facility Priority Collateral (other than Business Interruption Insurance Proceeds))</b>	<b>Vertex Refining (with respect to proceeds of DIP Priority Collateral (other than Business Interruption Insurance Proceeds))</b>	<b>Vertex Refining (with respect to Business Interruption Insurance Proceeds)</b>	<b>Parent</b>	<b>Vertex Renewables</b>	<b>Participating Hedging Debtors (other than Vertex Refining, Parent and Vertex Renewables)</b>	<b>All Other Debtors</b>
Pre-Petition Term Loan Adequate Protection Super-Priority Claims	Pre-Petition Intermediation Facility Adequate Protection Claims	-	Pre-Petition Intermediation Facility Adequate Protection Claims (claims other than Business Interruption Insurance Proceeds)	-	-	-

## **Exhibit E**

### **Certain Defined Terms**

“*Books*” means, as to any Debtor, the books and records, including ledgers; records concerning such Debtor’s assets or liabilities, including the Collateral, business operations or financial condition; and all computer programs, or data storage, and the related devices and equipment, containing such information.

“*Business Interruption Insurance Percentage*” means, as of any date of determination, (i) with respect to the Intermediator, the percentage determined by dividing the outstanding Intermediation Obligations after the Intermediator has marshalled, taken, liquidated and exhausted all remedies and recoveries available to the Intermediator under the Intermediation Contracts (as defined in the Intermediation Order) from any other Intermediation Facility Priority Collateral and any insurance rights owned or held by the Intermediator in its own name covering such Intermediation Facility Priority Collateral to the Intermediation Obligations under the Intermediation Contracts, by the sum of such Intermediation Obligations, plus the outstanding Hedge Obligations plus the outstanding DIP Obligations, hereunder in each case, as of the time of the occurrence of the event giving rise to Business Interruption Insurance Proceeds; (ii) with respect to the Hedge Provider, the percentage determined by dividing the outstanding Hedge Obligations, by the sum of such Intermediation Obligations, plus the outstanding Hedge Obligations plus the outstanding DIP Obligations, hereunder in each case, as of the time of the occurrence of the event giving rise to Business Interruption Insurance Proceeds and (iii) with respect to the DIP Secured Parties hereunder, the difference between 100% and the percentages determined in items (i) and (ii) of this definition. For purposes of determining “Business Interruption Insurance Percentage” with respect to the Intermediator, the Intermediator shall be required to marshal, take, liquidate and exhaust all remedies and recoveries available to the Intermediator with respect to (x) all other categories of Intermediation Facility Priority Collateral, including Intermediation Title Property and (y) all insurance owned and held in the name of the Intermediator with respect to the Intermediation Facility Priority Collateral prior to receiving any recovery of Business Interruption Insurance Proceeds under policies required by the Intermediation Contracts and such policies shall be the secondary policy with respect to Intermediation Facility Priority Collateral.

“*Business Interruption Insurance Proceeds*” means proceeds of business interruption insurance policies maintained by Parent or Vertex Refining. Any Business Interruption Insurance Proceeds go, first, to satisfy the Carve Out, second, to any Permitted Priority Liens, and third, to any obligations secured by Hedging Liens, DIP Liens and Intermediation Facility Liens on a pari passu basis in accordance with the Business Interruption Insurance Percentage to claims secured by the DIP Liens, Hedging Liens and Intermediation Facility Liens.

“*Catalyst Assets*” means any catalyst assets and inventory constituting catalyst, precious metals assets and precious metals inventory and all additions, accessions and all rights related thereto.

“*Carve Out*” means the Carve Out (as defined in the DIP Order).

“*Collateral*” means all assets and interests in assets and proceeds thereof now owned or hereafter acquired by any Debtor or arising and wheresoever located, including all accessions thereto and products and proceeds thereof (other than Excluded Property (as defined in the DIP Order or as defined in the Intermediation Order)) in or upon which a Lien is granted by a Debtor to the Secured Parties with the priorities as set forth in Exhibit C.

“*Debtors*” means the Debtors (as defined in the DIP Order).

“*DIP Exclusive Collateral*” means all assets and interests in assets and proceeds thereof now owned or hereafter acquired by any Debtor (excluding, Vertex Refining and limited with respect to the Hedge Provider, only Participating Hedging Debtors) or arising and wheresoever located, including all accessions thereto and products and proceeds thereof (other than Excluded Property or any other Shared Collateral, including business interruption insurance policies maintained by Parent) in or upon which a Lien is granted by a Debtor to the Hedge Provider and DIP Secured Parties with the priorities as set forth in Exhibit C; provided that no Debtor shall grant a Lien to the Hedge Provider to the extent such Debtor does not constitute an “eligible contract participant” as defined in the Commodity Exchange Act and the regulations thereunder at the time the guaranty by such Debtor.

“*DIP Liens*” means the DIP Liens (as defined in the DIP Order).

“*DIP Obligations*” means the DIP Obligations (as defined in the DIP Order).

“*DIP Order*” means that certain ~~interim or final~~ Order (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Authorizing the Debtors to Use Cash Collateral, (III) Granting Liens and Providing Claims with Superpriority Administrative Expense Status, (IV) Granting Adequate Protection to the Pre-Petition Term Loan Secured Parties, (V) Modifying the Automatic Stay, and (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief.

“*DIP Priority Collateral*” means Shared Collateral other than the Intermediation Facility Priority Collateral including the DIP Secured Parties’ Business Interruption Insurance Percentage.

“*DIP Secured Parties*” means the DIP Secured Parties (as defined in the DIP Order).

“*DIP Super-Priority Claims*” means the DIP Super-Priority Claims (as defined in the DIP Order).

“*Excluded Property*” means Excluded Property (as defined in the DIP Order or as defined in the Intermediation Order).

“*Hedge Facility*” means the Hedge Facility (as defined in the Intermediation Order).

“*Hedge Obligations*” means the Hedge Obligations (as defined in the Intermediation Order) but shall not include any other Intermediation Obligations or Transaction Obligations (as defined in the Intermediation Contracts), including, without limitation, by virtue of setoff, netting, or indemnification rights under the Intermediation Contracts.

“*Hedge Provider*” means the Hedge Provider (as defined in the Intermediation Order).

“*Hedging Liens*” means the Hedging Liens (as defined in the Intermediation Order).

“*Hydrocarbon Credit Support*” means, as of any time, all Inventory constituting or consisting of Hydrocarbons (as defined in the Intermediation Contracts) then owned or at any time hereafter acquired by Vertex Refining, that is located at a Company Storage Location (as defined in the Intermediation Contracts); provided that “Hydrocarbon Credit Support” shall not include any Excluded Property or any Catalyst Assets.

“*Independent Amount*” means the Independent Amount (as defined in the Independent Amount Letter as in effect on the date hereof).

“*Independent Amount Letter*” means the independent amount letter entered into between Vertex Refining and the Intermediator in connection with the Intermediation Contracts, as may be amended from time to time.

“*Intermediation Contracts*” means the Intermediation Contracts (as defined in the Intermediation Order).

“*Intermediation Title Property*” means Intermediation Title Property (as defined in the Intermediation Order) or the Proceeds thereof and Supporting Obligations with respect thereto, and the Independent Amount.

“*Intermediation Facility Adequate Protection Liens*” means the Intermediation Facility Adequate Protection Liens (as defined in the Intermediation Order).

“*Intermediation Facility Liens*” means the Intermediation Facility Liens (as defined in the Intermediation Order).

“*Intermediation Facility Priority Collateral*” means all of the following assets of Vertex Refining (or Parent, solely with respect to business interruption insurance policies held by the Parent subject, clause (c)) with respect to which a Lien is granted as security for the Intermediation Obligations in each case whether tangible or intangible: (a) all Inventory subject to or intended to be sold as Intermediation Title Property under the Intermediation Contracts; (b) all Inventory constituting Hydrocarbon Credit Support; (c) the Intermediator’s Business Interruption Insurance Percentage of the proceeds of business interruption insurance policies; and (d) all Proceeds of (including other proceeds of insurance with respect to the

foregoing), and Supporting Obligations (including Letter of Credit Rights) with respect to, any of the foregoing.

“*Intermediation Obligations*” means the Intermediation Obligations (as defined in the Intermediation Order), whether arising prepetition or post-petition, but shall not include any Hedge Obligations, including, without limitation, by virtue of setoff, netting, or indemnification rights under the Intermediation Contracts or Hedge Facility.

“*Intermediation Order*” means that certain ~~interim or final~~ Order (I) *Authorizing Continuation of the Intermediation Contracts, as Amended, (II) Authorizing the Debtors to Enter Into and Perform Postpetition Intermediation Transactions and Postpetition Hedging Transactions, (III) Providing Superpriority Administrative Expense Status and Liens in* ~~Respect of Postpetition Intermediation Transactions and Postpetition Hedging Transactions,~~ Respect of Postpetition Intermediation Transactions and Postpetition Hedging Transactions, (IV) *Granting Adequate Protection to the Intermediation Provider, (V) Providing Superpriority Administrative Expense Status in* ~~Respect of Purchaser Support Agreements,~~ Respect of Purchaser Support Agreements, (VI) *Modifying the Automatic Stay, and* (VII) ~~Scheduling a Final Hearing and (VIII) Granting Related Relief.~~

“*Intermediation Superpriority Claims*” means the Intermediation Superpriority Claims (as defined in Intermediation Order).

“*Intermediator*” means Macquarie (as defined in the Intermediation Order).

“*Inventory*” means “inventory” as defined in the UCC, including work in process and finished products intended for sale or lease or to be furnished under a contract of service, of every kind and description now or at any time hereafter owned by or in the custody or possession, actual or constructive, of any Debtor, including such inventory as is temporarily out of its custody or possession or in transit and including any returns upon any accounts or other proceeds, including insurance proceeds, resulting from the sale or disposition of any of the foregoing and any documents of title representing any of the above, and each Debtor’s Books relating to any of the foregoing.

“*Letter of Credit Rights*” means “letter of credit rights” as defined in the UCC.

“*Lien*” means any pledge, bailment, lease, mortgage, deed of trust (or similar instrument), hypothecation, conditional sales and title retention agreement, charge, claim, encumbrance, preference, priority or other lien (statutory or otherwise) in favor of the Secured Parties under the DIP Order or Intermediation Order.

“*Parent*” means Vertex Energy, Inc., a Nevada corporation, as debtor and debtor-in-possession.

“*Participating Hedging Debtors*” means the Participating Hedging Debtors (as defined in Intermediation Order).



*“Permitted Priority Liens”* means the Permitted Priority Liens (as defined in the DIP Order or as defined in the Intermediation Order).

*“Pre-Petition Intermediation Facility Adequate Protection Claims”* means Pre-Petition Intermediation Facility Adequate Protection Claims (as defined in the Intermediation Order).

*“Pre-Petition Liens”* means the Pre-Petition Liens (as defined in the DIP Order).

*“Pre-Petition Loan Obligations”* means the Pre-Petition Loan Obligations (as defined in the DIP Order).

*“Pre-Petition Term Loan Adequate Protection Liens”* means the “Pre-Petition Term Loan Adequate Protection Liens (as defined in the DIP Order).

*“Pre-Petition Term Loan Adequate Protection Super-Priority Claims”* means the Pre-Petition Term Loan Adequate Protection Super-Priority Claims (as defined in the DIP Order).

*“Proceeds”* means “proceeds” as defined in the UCC.

*“Secured Parties”* means DIP Secured Parties, the Hedge Provider and the Intermediator.

*“Shared Collateral”* means all assets and interests in assets and proceeds thereof now owned or hereafter acquired by Vertex Refining and Parent (solely with respect to business interruption insurance policies maintained by Parent) thereby or arising and wheresoever located, including all accessions thereto and products and proceeds thereof (other than Excluded Property) in or upon which a Lien is granted by a Debtor with the priorities as set forth in **Exhibit C**. For the avoidance of doubt and notwithstanding anything to the contrary herein, Shared Collateral constituting Intermediation Facility Priority Collateral shall not include Intermediation Title Property.

*“Shell Superpriority Claims”* means the Shell Superpriority Claims (as defined in Intermediation Order).

*“Superpriority Hedging Claims”* means the Superpriority Hedging Claims (as defined in Intermediation Order).

*“Supporting Obligations”* means “supporting obligations” as defined in the UCC.

*“UCC”* means the Uniform Commercial Code as adopted and in effect in the State of New York, as amended from time to time; provided, that in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection, or priority of, or remedies with respect to, any Lien on any Collateral is governed by the Uniform Commercial Code in effect in a jurisdiction other than the State of New York, the term “UCC” shall mean the

Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions thereof relating to such attachment, perfection, priority, or remedies and for purposes of definitions relating to such provisions.

“*Vertex Refining*” means Vertex Refining Alabama, LLC, a Delaware limited liability company, as debtor and debtor-in-possession.