

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF KENTUCKY**

<b>In re:</b>	)	<b>Chapter 11</b>
	)	
	)	<b>Case No. 15-60831</b>
<b>JW RESOURCES, INC., et al.,<sup>1</sup></b>	)	<b>(Jointly Administered)</b>
	)	
	)	
<b>Debtors.</b>	)	
	)	

**FINAL ORDER (I) AUTHORIZING POST-PETITION SECURED FINANCING  
PURSUANT TO SECTIONS 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3),  
364(d)(1), 364(e) AND 503(b) OF THE BANKRUPTCY CODE;  
(II) AUTHORIZING THE DEBTORS TO USE CASH COLLATERAL  
PURSUANT TO SECTION 363 OF THE BANKRUPTCY CODE;  
(III) PROVIDING ADEQUATE PROTECTION TO THE PREPETITION  
SECURED PARTIES PURSUANT TO SECTIONS 361, 362, AND  
363 OF THE BANKRUPTCY CODE; (IV) MODIFYING  
THE AUTOMATIC STAY PURSUANT TO SECTION 362(d)  
OF THE BANKRUPTCY CODE; AND (V) PROVIDING RELATED RELIEF**

Upon consideration of the motion (the “**Motion**”) of the Debtors for entry of an interim order (the “**Interim Order**” and any order of this Court approving the DIP Facility (defined below) on a final basis, the “**Final Order**,” and together with the Interim Order, the “**DIP Orders**”) authorizing the Debtors to: (i) obtain postpetition financing (the “**DIP Facility**”) <sup>2</sup> and enter into the Senior Secured Superpriority Debtor-in-Possession Credit Agreement substantially in the form annexed to the Motion as **Exhibit A** (as amended by the Wavier and First Amendment To Senior Secured Super-Priority Debtor-in-Possession Credit Agreement, attached hereto as **Exhibit 1**, the “**DIP Credit Agreement**”), together with all Loan Documents as

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<sup>1</sup> The Debtors in these Chapter 11 Cases are (with the last four digits of their federal tax identification numbers in parentheses): JW Resources, Inc. (6400), Straight Creek Coal Mining, Inc. (9073), SCRB Properties, Inc. (1609), and SCRB Processing, Inc. (6470).

<sup>2</sup> Unless otherwise defined herein, all capitalized terms used herein have the meanings ascribed to such terms in the Motion, the DIP Credit Agreement and the DIP Credit Documents.

defined therein, the “**DIP Credit Documents**,” by and among the Borrowers, the Lenders party thereto (the “**DIP Lenders**”), Gordon Brothers Finance Company as administrative agent (in such capacity, the “**DIP Agent**”), all in respect of the Obligations set forth in the DIP Credit Documents and herein (the “**DIP Obligations**”); (ii) grant mortgages, security interests, liens and superpriority claims for the benefit of the DIP Agent and DIP Lenders in respect of the DIP Obligations as provided herein and in the DIP Credit Documents; (iii) subject to the terms hereof and the terms of the DIP Credit Documents, use Cash Collateral (defined below); (iv) provide Adequate Protection (defined below) to the Prepetition Secured Parties (defined below) and the Prepetition Sponsor Agreement Secured Parties; (v) modify the automatic stay pursuant to section 362 of the Bankruptcy Code; (vi) to the extent provided herein, fund postpetition allowed fees and expenses of Retained Professionals (defined below) as provided herein; (vii) obtain an emergency postpetition loan of up to \$2,000,000 under the DIP Credit Agreement (the “**DIP Facility**”), and (viii) grant related relief; and the Court, having considered the Motion and the exhibits attached thereto, including, without limitation, the DIP Credit Documents; and it appearing that the relief requested is in the best interests of the Debtors, their estates (the “**Estates**”), their creditors, and other parties in interest; and adequate notice of the Motion and opportunity for objection having been given in accordance with Bankruptcy Rule 4001(c)(2) and (c)(3), with no objections or requests for hearing having been filed, or all objections having been overruled, as the case may be; and a hearing to consider approval of the Interim DIP Facility having been held and concluded on July 8, 2015 (the “**Interim Hearing**”) and a hearing to consider approval of the DIP Facility on a final basis having been held and concluded on August 4, 2015 (the “**Final Hearing**”); and upon all of the pleadings filed with the Court; and evidence presented in support of the Motion at the Interim Hearing and Final Hearing; and the Court

having noted the appearances of parties in interest at the Interim Hearing and Final Hearing on the record; and it appearing that no other notice need be given; and after due deliberation and sufficient cause appearing therefore:

**THIS ORDER CONTAINS TERMS AND CONDITIONS ON THE USE OF CASH COLLATERAL AND OBTAINING POST-PETITION CREDIT THAT MAY VARY FROM THE REQUIREMENTS OF LOCAL RULE 4001-2(d). THESE TERMS AND CONDITIONS ARE CONTAINED IN PARAGRAPHS 2, 14, 15 AND 19.**

THIS COURT HEREBY FINDS:<sup>3</sup>

A. Chapter 11 Filed. On the Petition Date, each of the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. Each Debtor is continuing in the management and possession of its business and properties as a debtor-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. On July 8, 2015, the Office of the United States Trustee for the Eastern District of Kentucky (the “**U.S. Trustee**”) filed the *Appointment of Official Committee of Unsecured Creditors* [Docket Nos. 38 and 96] appointing the Committee of Unsecured Creditors (the “**Committee**”). No request has been made for the appointment of a trustee or examiner.

B. Jurisdiction and Venue. Consideration of this Motion constitutes a “core proceeding” as defined in 28 U.S.C. §§ 157(b)(2). This Court has jurisdiction over this proceeding and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

C. Notice and Hearing. Notice of the relief sought by the Motion, the Interim Hearing and the Final Hearing with respect thereto, was delivered to the following parties in

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

interest: the U.S. Trustee; the DIP Agent; the Prepetition Agent (defined below); the Prepetition Sponsor Agreement Agent (defined below); the Internal Revenue Service; the taxing authorities having jurisdiction over the Debtors; the United States Environmental Protection Agency and any state environmental protection agencies having jurisdiction over the Debtors; the parties who have issued surety bonds for the account of the Debtors; any parties that have a lien on any of the Debtors' property to the knowledge of the Debtors; the Committee; the entities listed on the Debtors' consolidated list of the twenty (20) largest unsecured creditors that was annexed to the Debtors' chapter 11 petitions; and those parties who have filed a notice of appearance and request for service of pleadings in this Chapter 11 Case pursuant to Bankruptcy Rule 2002 (collectively, the "**Notice Parties**"). Under the circumstances, such notice constitutes due, sufficient and adequate notice of the Motion, the Interim Hearing, the Final Hearing, the Interim Order and this Final Order pursuant to the Bankruptcy Rules, including Bankruptcy Rules 2002, 4001(b), 4001(c) and (d), 5003(e) and 9014 and section 102(1) of the Bankruptcy Code, as required by sections 363(b) and 364(c) of the Bankruptcy Code, and no further notice of the Motion or the DIP Orders is necessary or required.

D. Prepetition Secured Obligations.

(1) The Debtors have represented that, pursuant to that certain Credit Agreement dated as of January 30, 2014 (as amended, restated, supplemented or otherwise modified from time to time, the "**Prepetition Credit Agreement**," and together with all agreements, documents, notes and instruments in respect thereof, the "**Prepetition Credit Documents**") between and among the Debtors, GB Credit Partners, LLC, as agent (in such capacity, the "**Prepetition Agent**") and the lenders that are parties thereto from time to time (the "**Prepetition Lenders**") and together with the Prepetition Agent, the "**Prepetition Secured**

**Parties**”), the Prepetition Lenders provided a revolving credit facility (the **“Prepetition Revolver”**) and term loans (the **“Prepetition Term Loans”**) and extended other financial accommodations to the Debtors prior to the Petition Date. The Debtors’ obligations in respect of the Prepetition Credit Documents are collectively referred to as the **“Prepetition Obligations,”** the collateral securing the Prepetition Obligations shall be referred to as the **“Prepetition Collateral,”** and the Liens related thereto shall be referred to as the **“Prepetition Liens.”**

(2) The Debtors have represented that, pursuant to that certain Amended and Restated Credit Agreement dated as of January 30, 2014 (as amended, restated, supplemented or otherwise modified from time to time, the **“Prepetition Sponsor Credit Agreement,”** and together with all agreements, documents, notes and instruments in respect thereof, the **“Prepetition Sponsor Credit Documents”**) between and among the Debtors, Bayside JW Resources, LLC, as administrative agent (in such capacity, the **“Prepetition Sponsor Agreement Agent”**) and the lenders that are parties thereto from time to time (the **“Prepetition Sponsor Agreement Lenders”** and together with the Prepetition Sponsor Agreement Agent, the **“Prepetition Sponsor Agreement Secured Parties”**), the Prepetition Sponsor Agreement Lenders made loans and extended other financial accommodations to the Debtors prior to the Petition Date. The Debtors’ obligations in respect of the Prepetition Sponsor Credit Documents are collectively referred to as the **“Prepetition Sponsor Agreement Obligations,”** and the collateral securing the Prepetition Sponsor Agreement Obligations shall be referred to as the **“Prepetition Sponsor Agreement Collateral,”** and the Liens related thereto shall be referred to as the **“Prepetition Sponsor Liens.”** The Prepetition Sponsor Agreement Obligations are subordinated to the Prepetition Obligations to the extent provided in that certain First Lien/Second Lien Subordination and Intercreditor Agreement by and among GB Credit Partners,

LLC as First Lien Agent, Bayside JW Resources, LLC, as Second Lien Agent, JW Resources, Inc., SCRB Properties, Inc. and the Guarantor Subsidiaries party thereto dated as of January 30, 2014 (the “**Intercreditor Agreement**”).

E. Necessity and Best Interest.

(1) Based on the Debtors’ representations and other evidence submitted, the Court finds that an immediate and critical need exists for the Debtors to obtain authority for the use of Cash Collateral and to obtain additional funds necessary to maintain the stability of their businesses; and the use of Cash Collateral alone would be insufficient to meet the Debtors’ postpetition liquidity needs and provide the necessary assurances to customers, suppliers and regulatory authorities; and the Debtors have sought and are unable to obtain the required funds (i) in the form of (w) unsecured credit or debt allowable under section 503(b)(1) of the Bankruptcy Code, (x) an administrative expense pursuant to section 364(a) or (b) of the Bankruptcy Code, (y) unsecured debt having the priority afforded by section 364(c)(1) of the Bankruptcy Code or (z) debt secured only as described in section 364(c)(2) or (3) of the Bankruptcy Code or (ii) on terms more favorable than those offered by the DIP Lenders under the DIP Budget (defined below), the other DIP Credit Documents, the Interim Order and this Final Order.

(2) The Debtors have requested that, pursuant to the terms of the DIP Credit Documents, the DIP Agent and DIP Lenders make loans and advances and provide other financial accommodations to the Debtors. The ability of the Debtors to manage their Chapter 11 Cases, as well as to consummate a sale of substantially all of their assets to maximize value for the benefit of all of the Debtors’ creditors as contemplated upon the filing of these Chapter 11 Cases, depends upon the Debtors obtaining such financing. The DIP Lenders are only willing to

make such loans and advances, consent to the use of Cash Collateral and provide such other financial accommodations on a secured, super-priority basis, as more particularly described herein, pursuant to the terms and conditions of the DIP Credit Documents, the Interim Order and this Final Order. Accordingly, the relief requested in the Motion is necessary, essential and appropriate for the continued operation of the Debtors' businesses, the management and preservation of their assets and properties, and is in the best interests of the Debtors, their estates and creditors.

(3) The terms of the DIP Credit Documents have been negotiated in "good faith," as that term is used in section 364(e) of the Bankruptcy Code, and are in the best interests of the Debtors, their estates and creditors. The DIP Agent and DIP Lenders are extending financing to the Debtors and consenting to the use of Cash Collateral in good faith and are entitled to the benefits of the provisions of section 364(e) of the Bankruptcy Code.

(4) The Debtors (in consultation with their advisors) have determined that (i) the DIP Budget is reasonable and will allow the Debtors to proceed with their Chapter 11 Cases and consummate the proposed sale of the Debtors' assets, and (ii) the DIP Budget includes all reasonable, necessary, and foreseeable expenses to be incurred for the period set forth in the DIP Budget.

(5) It is in the best interests of the Debtors' estates that they be allowed to finance their operations under the terms and conditions set forth herein. The relief requested by the Motion is necessary to avoid harm to the Debtors' estates, and good, adequate and sufficient cause has been shown to justify the granting of the relief requested herein, and the immediate entry of this Final Order. The terms of the DIP Facility and the use of Cash Collateral appear to be fair and reasonable.

The Court, having determined that good cause exists for the relief requested in the Motion,

NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

1. Motion. The Motion is granted to the extent provided herein. Any objections to the relief sought in the Motion that have not been previously resolved or withdrawn are hereby overruled on their merits.

2. Authorization to Use Cash Collateral. The Debtors are authorized to use Cash Collateral, subject to, and as set forth in, the DIP Budget (subject to Permitted Variances), the Interim Order, this Final Order and the DIP Credit Documents including, without limitation, to make payments on the Prepetition Obligations as set forth in the Interim Order, this Final Order, the DIP Credit Documents and the DIP Budget. For purposes of this Final Order, the term “**Cash Collateral**” shall mean and include all “cash collateral” as defined by section 363(a) of the Bankruptcy Code. Pursuant to this Final Order, the Debtors’ repayment of the Prepetition Revolver upon entry of the Interim Order is hereby approved.

3. DIP Borrowing Authorization.

a. The Debtors are hereby authorized to (i) enter into the DIP Credit Agreement and the other DIP Credit Documents and (ii) borrow funds, incur debt and perform their obligations in accordance with the terms and conditions of the applicable DIP Credit Documents, the Interim Order, this Final Order and the DIP Budget (subject to Permitted Variances). The Debtors are authorized to enter into and perform the transactions contemplated in the Interim Order, this Final Order and the DIP Credit Documents and to borrow under the DIP Credit Agreement in an amount not to exceed the DIP Facility, subject to the terms and conditions of the Interim Order, this Final Order and the DIP Credit Documents. The DIP



Agent and DIP Lenders shall have the rights set forth in the DIP Credit Documents to make loans, advances and/or financial accommodations pursuant to the terms and conditions thereof.

b. [INTENTIONALLY OMITTED]

c. In entering into the DIP Credit Documents and obtaining the use of Cash Collateral, and as consideration therefor and for the other accommodations and agreements of the DIP Agent and DIP Lenders reflected herein and in the DIP Credit Documents, the Debtors hereby agree that until such time as all of the DIP Obligations are indefeasibly paid in full in cash and the DIP Credit Agreement and DIP Credit Documents are terminated in accordance with the terms thereof, the Debtors shall not in any way prime or seek to prime the DIP Obligations, the DIP Liens or the DIP Superpriority Claims (defined below) provided to the DIP Agent and DIP Lenders under the Interim Order or Final Order by offering a subsequent lender or a party in interest a superior or *pari passu* lien or superpriority administrative expense pursuant to sections 326, 330, 331, 364(d), 503(b), 506, 507(a), 507(b) or 726 of the Bankruptcy Code or otherwise or acquiescing thereto; each Debtor is jointly and severally liable for, and hereby absolutely and unconditionally guarantees to the DIP Agent, DIP Lenders and their respective successors and assigns, the full and prompt payment when due (whether at maturity or earlier, by reason of acceleration or otherwise, and at all times thereafter) and performance of, all DIP Obligations owed or hereafter owing to DIP Agent or any DIP Lender by each Debtor.

d. Each Debtor agrees that (i) its guarantee obligation hereunder shall be, and is, absolute and unconditional for all purposes in these Chapter 11 Cases and is a present and continuing guaranty of payment and not of collection, and (ii) its obligations under the Interim Order, this Final Order and any DIP Credit Document shall not be discharged until the

indefeasible payment, in full, in cash of the DIP Obligations, and the termination of the lending commitments under the DIP Credit Documents.

e. The DIP Agent and DIP Lenders shall not 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 by virtue of providing the DIP Facility to the Debtors.

4. DIP Interest, Fees, Expenses and Reserves.

a. The DIP Obligations shall bear interest at the applicable rate (including any applicable default rate after the occurrence of an Event of Default) set forth in the DIP Credit Documents, and be due and payable in accordance with the Interim Order, this Final Order and the DIP Credit Documents, in each case without further notice, motion or application to, order of, or hearing before, this Court.

b. The Debtors shall pay to the DIP Agent, for itself and, if applicable, the ratable benefit of the DIP Lenders, the fees payable under the terms of the DIP Credit Documents whether or not such amounts are included in the DIP Budget or arose before or after the Petition Date. None of such fees payable pursuant to this Paragraph shall be subject to any other approval by this Court, except as otherwise provided herein.

c. The Debtors shall pay the reasonable and documented fees and expenses of the attorneys and advisors for the DIP Agent and DIP Lenders, whether or not incurred prepetition or postpetition, as provided under the DIP Credit Documents. Invoices supporting such fees and expenses shall be submitted to counsel for the Debtors, with copies to the U.S. Trustee, counsel for the Prepetition Agent, counsel for the Prepetition Sponsor Agreement Agent, and counsel for the Committee (invoices may be redacted to the extent necessary to delete

any information subject to the attorney-client privilege, any information constituting attorney work product, or any other confidential information, except that unredacted copies shall be provided to the U.S. Trustee, and the provision of such invoices, whether in their redacted or unredacted form, shall not constitute any waiver of the attorney-client privilege or of any benefits of the attorney work product doctrine). No attorney or advisor to the DIP Agent or DIP Lenders shall be required to file an application seeking compensation for services or reimbursement of expenses with this Court. The U.S. Trustee, counsel for the Prepetition Agent, the Debtors, the Prepetition Sponsor Agreement Agent, and counsel for the Committee shall have ten (10) business days in which to raise an objection to the payment of any fees and expenses of such attorneys and advisors.

5. DIP Obligations. Upon their execution, the DIP Credit Documents shall constitute valid and binding obligations of the Debtors, enforceable against the Debtors in accordance with their terms; **provided, however,** that notwithstanding any other provision of the Interim Order, this Final Order or of the other DIP Credit Documents, the Debtors shall not incur DIP Obligations in a principal amount greater than the Maximum Loan Amount. No obligation, payment, transfer or grant of security under the Interim Order, this Final Order or the other DIP Credit Documents shall be stayed, restrained, voidable or recoverable under the Bankruptcy Code or any applicable nonbankruptcy law, or subject to any defense, reduction, setoff, recoupment or counterclaim. The Debtors shall use the proceeds of the DIP Facility solely as provided in the DIP Orders and the DIP Credit Documents. From and after the Petition Date, the proceeds of the DIP Facility and Cash Collateral shall not, directly or indirectly, be used to pay expenses of the Debtors or otherwise disbursed except for expenses and/or disbursements in

accordance with the DIP Budget subject to Permitted Variances and the other DIP Credit Documents.

6. DIP Budget. Funds available to the Debtors under the DIP Facility and use of Cash Collateral shall be used solely in accordance with a budget, attached hereto as **Exhibit 2** (as amended, supplemented, extended or otherwise modified from time to time, the “**DIP Budget**”). The Debtors’ compliance with the DIP Budget shall be tested as provided in the DIP Credit Agreement and subject to the variances set forth therein (the “**Permitted Variances**”). Professional Fees for Retained Professionals (defined below) contained in the DIP Budget shall not exceed the amounts set forth in the DIP Budget (less any retainers) and will be measured on a cumulative basis prior to any Termination Date as set forth in the DIP Credit Agreement. Notwithstanding the foregoing, (a) Retained Professionals shall apply any retainers held on the Petition Date by such Retained Professional to the weekly DIP Budget line items for such Retained Professional before any amounts provided in the DIP Budget for such Retained Professionals are deposited into the Professional Fee Account (defined below) and (b) after giving effect to any borrowing of Loans, the aggregate outstanding principal balance of the Loans shall not exceed the Maximum Loan Amount. The DIP Budget shall be prepared by the Debtors. In addition, the Borrowers shall not permit any payment in the line item “Bonding Payment” to be made unless (a) the Stalking Horse Purchase Agreement has been executed and delivered and is in full force and effect, (b) the Sponsor has delivered written consent to the transaction set forth in the Stalking Horse Purchase Agreement in form and substance acceptable to the Administrative Agent and (c) the Administrative Agent has consented to such payment. The initial DIP Budget and each subsequent DIP Budget shall be in form and substance satisfactory to the DIP Agent in its sole discretion for the time period set forth therein. The DIP

Budget may be amended, supplemented, extended or otherwise modified from time to time in any manner as to which Debtors and the DIP Agent mutually agree without further order of this Court or advance notice.

7. DIP Reporting Requirements. The Debtors shall deliver to the DIP Agent such reports, data and other information required to be delivered pursuant to the DIP Credit Documents. The Debtors shall deliver to counsel to each of Prepetition Agent, Prepetition Sponsor Agreement Agent, and counsel to the Committee such reports, data and other information required to be delivered by the Debtors to the DIP Agent pursuant to the DIP Credit Documents and in the same form delivered to the DIP Agent; **provided, however,** the Debtors may take appropriate actions with respect to confidentiality of such reports, data and other information.

8. Amendment of DIP Credit Documents. The DIP Credit Documents may be amended, supplemented or otherwise modified (including, without limitation, waivers of any provisions of the DIP Credit Documents) in a manner that is not materially adverse to the Debtors without further order of this Court; **provided, however,** that the Debtors shall file with the Court and provide written advance notice of any such amendment, supplement or other modification to counsel to each of the U.S. Trustee, the Prepetition Agent, Prepetition Sponsor Agreement Agent, and the Committee (which, to the extent such contact information for such parties is known to the Debtors, shall be transmitted by fax or e-mail, and, if not known, by overnight mail), each of which shall have two (2) business days from the date of such notice within which to object in writing to such amendment, supplement or other modification, and upon any such timely written objection, such amendment, supplement or other modification shall

only be permitted pursuant to an order of this Court (the entry of which may be sought on an expedited basis).

9. Superpriority Claims and DIP Liens. Pursuant to the Bankruptcy Code, including sections 364(c)(1), 364(c)(2), 364(c)(3) and 364(d) thereof, in respect of the DIP Obligations under the DIP Credit Agreement, the other DIP Credit Documents, the Interim Order and this Final Order, the DIP Agent is granted, for itself and the ratable benefit of the DIP Lenders, the following:

a. Superpriority administrative expense claims pursuant to Bankruptcy Code section 364(c)(1) with priority over all other administrative expenses pursuant to the Bankruptcy Code (including the kinds specified in or arising or ordered pursuant to Bankruptcy Code sections 326, 330, 331, 503(b), 506(c), 507(a), 507(b), and 726 thereof or otherwise, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment), which superpriority expense claims of the DIP Agent and DIP Lenders shall be subject and subordinate only to the Carve-Out and Prior Permitted Senior Liens (the “DIP Superpriority Claims”); provided, however, (a) for the avoidance of doubt, pursuant to applicable bankruptcy law, the granting of such DIP Superpriority Claims does not affect the status and superior priority of any liens, including the DIP Liens (defined below), Prepetition Liens and Prior Permitted Senior Liens (defined below) and (b) the DIP Superpriority Claims shall not be asserted against or paid from Avoidance Actions<sup>4</sup> or proceeds thereof;

b. A first priority, priming security interest in and lien pursuant to Bankruptcy Code section 364(d)(1) (the “Section 364(d)(1) Liens”) on all assets of the Debtors

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<sup>4</sup> “Avoidance Actions” means all claims and causes of action under Chapter 5 of the Bankruptcy Code including, without limitation, those under sections 502(d), 544, 545, 547, 548, 550, 552(b) and 553, and state laws of similar import.

and their Estates (the “**DIP Collateral**”) of any nature whatsoever and wherever located, whether first arising prior to or following the Petition Date, now owned or hereafter acquired, including all accounts, all chattel paper, all commercial tort claims, all deposit accounts, all documents, all equipment, all general intangibles, all intellectual property, all owned real property and the proceeds of all leased real property, all goods, all instruments, all inventory, all investment property, all letter-of-credit rights, all books and records, and all proceeds, rents, profits, and offspring of the foregoing (including Cash Collateral) excluding Avoidance Actions and proceeds thereof, which Section 364(d)(1) Liens shall be senior to any existing liens or claims, subject and subordinate only to (i) the Carve-Out and (ii) liens on property of a Debtor (including the proceeds of such property) that are in existence on the Petition Date but only to the extent a lien on such property (x) is valid, binding, perfected, enforceable and not avoidable, and (y) the lien on such property (or the proceeds of such property, as applicable) on the Petition Date was senior in priority to the Prepetition Liens (the items referenced in the foregoing clause being referred to collectively as the “**Prior Permitted Senior Liens**”), **provided, however,** for the avoidance of doubt, neither the Prepetition Liens nor the Prepetition Sponsor Liens are Prior Permitted Senior Liens;

c. A first priority security interest and lien pursuant to Bankruptcy Code section 364(c)(2) on all unencumbered property (the “**Unencumbered Assets**”) of the Debtors and the Estates (the “**Section 364(c)(2) Liens**”), which Section 364(c)(2) Liens shall be subject and subordinate only to the Carve-Out; provided that proceeds resulting from any Unencumbered Assets shall only be applied to the DIP Obligations after proceeds of all other DIP Collateral; and

d. A junior security interest and lien pursuant to Bankruptcy Code section 364(c)(3) on all property of the Debtors and the Estates that is subject and subordinate to a Prior

Permitted Senior Lien (the “**Section 364(c)(3) Liens**”), which Section 364(c)(3) Liens are also subject and subordinate to the Carve-Out.<sup>5</sup>

10. **DIP Collateral.** The DIP Liens include liens upon and security interests in (i) all of those items and types of collateral in which security interests may be created under Article 9 of the Uniform Commercial Code, (ii) all of those items and types of collateral not governed by Article 9 of the Uniform Commercial Code, including, without limitation, to the extent not permitted by applicable nonbankruptcy law, licenses issued by any federal or state regulatory authority, any Leased Premises or other real property interests, and commercial tort claims of the Debtors, (iii) any and all other DIP Collateral of any nature or form, and (iv) the products, rents, offspring, profits, and proceeds of any of the foregoing. None of the DIP Obligations, DIP Liens or DIP Superpriority Claims shall (a) be subject to or *pari passu* with any lien or security interest that is avoided and preserved for the benefit of the Estates under section 551 of the Bankruptcy Code, (b) be subject to or *pari passu* with any inter-company claim, whether secured or unsecured, of any Debtor or any domestic or foreign subsidiary or affiliate of any Debtor, (c) be subject to sections 510, 549, or 550 of the Bankruptcy Code, or (d) hereafter be subordinated to or made *pari passu* with any other lien or security interest under sections 361, 363 or 364 of the Bankruptcy Code or otherwise, except as expressly provided in the DIP Orders.

11. **Carve-Out.**

a. **Generally.** Prior to a Carve-Out Trigger Date, fees and expenses of Retained Professionals may be paid as set forth in the Budget as set forth in Paragraph 11(b). Upon the occurrence of the Carve-Out Trigger Date (defined below), the DIP Liens, the DIP Superpriority Claims, the Adequate Protection Liens (defined below), and the 507(b) Claims

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<sup>5</sup> The Section 364(d)(1) Liens, Section 364(c)(2) Liens, and Section 364(c)(3) Liens shall be collectively referred to as the “**DIP Liens**.”



(defined below) of the Prepetition Secured Parties and the Prepetition Sponsor Agreement Secured Parties, and all other claims and liens granted by this Order, shall each be subject and subordinate to the payment (from either Cash Collateral or proceeds resulting from liquidation of DIP Collateral or Prepetition Collateral) of the following: (i) the unpaid fees payable to the Clerk of the Bankruptcy Court and statutory fees payable to the U.S. Trustee pursuant to section 1930 of Title 28 of the United States Code, together with the statutory rate of interest (for the avoidance of doubt, there is no limitation on the obligations of the Debtors and their Estates with respect to unpaid fees payable to the U.S. Trustee and Clerk of the Bankruptcy Court pursuant to section 1930 of Title 28 of the United States Code); plus (ii) the fee and expense claims of the respective retained professionals of the Debtors and the Committee that have been approved by this Court during the Chapter 11 Cases pursuant to sections 327, 328, and 1103 of the Bankruptcy Code or otherwise (the retained professionals of the Debtors and the Committee are collectively referred to as the “**Retained Professionals**”), which were incurred (A) on and after the Petition Date and prior to the Carve-Out Trigger Date in amounts not in excess of the amounts for such Retained Professional set forth in the DIP Budget (less any retainer held by such Retained Professional on the Petition Date to the extent such retainer has not already been applied pursuant to Paragraph 6 of this Order), and (B) on and after the Carve-Out Trigger Date in an aggregate amount not exceeding \$100,000 (the “**Carve-Out Cap**”) in the aggregate for all Retained Professionals and any Chapter 7 trustee that may be appointed for the Debtors, **provided that**, in each case, such fees and expenses of the Retained Professionals are in accordance with the DIP Budget on a cumulative basis for the applicable period and are ultimately allowed on a final basis by this Court (whether or not such fees and expenses are allowed by this Court as of or after the Carve-Out Trigger Date) pursuant to sections 330 and

331 of the Bankruptcy Code or otherwise and are not excluded from the Carve-Out under Paragraph 16 of the Interim Order or this Final Order, **provided, however**, nothing herein shall waive the right of any party to object to the allowance of any such fees and expenses, and **provided further**, that the Carve-Out shall not include any bonus, transaction, success or completion fees or any other fees of similar import for Retained Professionals (all such amounts in this Paragraph 11(a)(i) and (ii), together with the limitations set forth therein, are collectively referred to as the “**Carve-Out**”).

b. **Professional Fee Account.** On a weekly basis the Debtors shall be authorized to transfer funds to the professional fee reserve account established by counsel to the Debtors (the “**Professional Fee Account**”) in the amounts for the preceding week, if any, set forth in the Budget for fees and expenses of the Retained Professionals; provided, that such funding obligation shall be reduced by the amount of any retainers held by the Retained Professionals as of the Petition Date (which reduction shall be applied to the earliest fundings provided in the DIP Budget pursuant to paragraph 6 of this Final Order). Such funds shall be held in escrow in the Professional Fee Account for the benefit of the Retained Professionals, respectively, to be applied pro rata to the fees and expenses of such Retained Professionals (the “**Escrowed Funds**”), provided, however, that payment from the Professional Fee Account shall only be made pursuant to any interim compensation order or interim or final fee order entered in these Chapter 11 Cases; provided further, however, that for the avoidance of doubt, fees and expenses payable to the Retained Professionals shall be paid solely out of the Professional Fee Account, and all amounts deposited in the Professional Fee Account shall reduce, on a dollar for dollar basis, the obligation to fund the Carve-Out, and provided further success fees that may be earned by any Retained Professional and approved by the Court shall be paid from the proceeds

of any transaction and shall not be deposited into or paid from the Professional Fee Account. Without in any way limiting the Debtors' ability to use the Escrowed Funds to pay the fees and expenses of the Retained Professionals, the Escrowed Funds held in the Professional Fee Account shall remain property of the Debtors' estates and encumbered by and subject to the DIP Liens, and the Superpriority Claims, in their respective order of priority; provided, however, that such liens and claims shall be subordinate to the Carve-Out. The DIP Lenders shall have no obligation to pay any fees and expenses of the Retained Professional except to the extent of the funding in the Professional Fee Account.

c. Carve-Out Trigger Date. The term "**Carve-Out Trigger Date**" means the date on which the DIP Agent provides written notice to counsel for the Debtors, the U.S. Trustee, the Prepetition Agent, the Prepetition Sponsor Agreement Agent and the Committee that the Carve-Out is invoked, which notice may be delivered only on or after the occurrence of the Termination Date.

d. Reduction of Amounts. The fixed dollar amount of \$100,000 available to be paid under the Carve-Out following the Carve-Out Trigger Date shall be funded into the Professional Fee Account as provided in the DIP Budget or promptly upon the occurrence of the Carve-Out Trigger Date if not previously funded. Any allowed fees and expenses of Retained Professionals or any Chapter 7 trustee appointed for the Debtors incurred on and after the Carve-Out Trigger Date shall be paid solely from such amount funded into the Professional Fee Account. For the avoidance of doubt and notwithstanding anything contained in this Order to the contrary, amounts funded into the Professional Fee Account prior to the Carve-Out Trigger Date may be used to pay the allowed fees and expenses of Retained Professionals or any Chapter 7 trustee appointed for the Debtors to the extent such fees and expenses were incurred prior to the

Carve-Out Trigger Date.

e. Reservation of Rights. The payment of any fees or expenses of the Retained Professionals pursuant to the Carve-Out shall not, and shall not be deemed to (i) reduce any Debtor's obligations owed to any of the DIP Agent, the DIP Lenders, the Prepetition Secured Parties (collectively, the "**Secured Parties**") or the Prepetition Sponsor Agreement Secured Parties, or (ii) modify, alter or otherwise affect any of the liens and security interests of such parties in the DIP Collateral, the Prepetition Collateral, or the Prepetition Sponsor Agreement Collateral. Except as otherwise set forth in Paragraphs 12(a) and 12(b), none of the Secured Parties or the Prepetition Sponsor Agreement Secured Parties shall be responsible for the direct payment or reimbursement of any fees or disbursements of any Retained Professionals, the U. S. Trustee or Clerk of the Bankruptcy Court (or of any other entity) incurred in connection with the Chapter 11 Cases or any successor case, and nothing in the DIP Orders or otherwise shall be construed to obligate such parties in any way to pay such compensation to or to reimburse such expenses (for the avoidance of doubt, nothing in this Paragraph 11(e) shall be construed as limiting the Carve-Out or limiting payment of the Carve-Out from Cash Collateral, proceeds of the DIP Facility and/or DIP Collateral), which payments shall be made, upon Court approval of such fees and expenses, directly to the Retained Professionals from the Professional Fee Account; **provided, however,** none of the Secured Parties or the Prepetition Sponsor Agreement Secured Parties shall be responsible for payment of the Carve-Out from sources other than the Professional Fee Account.

12. Waiver of Right to Surcharge. Because (i) of the consent the DIP Agent and the DIP Lenders to the current payment of administrative expenses of the Debtors' Estates in accordance with the DIP Budget, (ii) the subordination of the DIP Liens, Adequate Protection

Liens and 507(b) Claims of the Prepetition Secured Parties to the Carve-Out the Secured Parties are each entitled to a waiver of (a) the provisions of section 506(c) of the Bankruptcy Code and (b) any “equities of the case” claims under section 552(b) of the Bankruptcy Code, subject to the last sentence of this paragraph. Accordingly no costs or expenses of administration or other charge, lien, assessment or claim incurred at any time (including, without limitation, any expenses set forth in the DIP Budget) by any Debtor or any other person or entity shall be imposed or charged against any or all of the DIP Collateral, the Prepetition Collateral, the Secured Parties or their respective claims under sections 506(c) or 552(b) of the Bankruptcy Code, and the Debtors, on behalf of their Estates, waive any such rights. It is expressly understood by all parties that in making all such undertakings and proceeding in compliance with the DIP Budget, the Interim Order, this Final Order and the DIP Credit Documents, the Secured Parties have each relied on the foregoing provisions of this Paragraph 12. Notwithstanding any approval of or consent to the DIP Budget, nothing in the Interim Order or this Final Order shall constitute or be deemed to constitute the consent by any of the Secured Parties to the imposition of any costs or expense of administration or other charge, lien, assessment or claim (including, without limitation, any amounts set forth in the DIP Budget) against such party, its claims or its collateral under sections 105(a), 506(c) or 552(b) of the Bankruptcy Code or otherwise and no such consent shall be implied from any other action or inaction by such parties. Notwithstanding the foregoing, in the event the aggregate unpaid costs and expenses of administration materially exceed those that are paid through the DIP Budget, the Committee reserves the right to seek a reversal of the waiver granted herein for cause, provided that costs of administration that do not in the aggregate exceed budgeted expenses by thirty percent (30%) shall not be deemed to be material.

13. Automatic Perfection.

a. The (i) DIP Liens granted to the DIP Agent, for the benefit of the DIP Lenders pursuant to the Interim Order, this Final Order and the DIP Credit Documents, and (ii) Adequate Protection Liens granted pursuant to the Interim Order or this Final Order to the Prepetition Secured Parties and the Prepetition Sponsor Agreement Secured Parties shall be valid, binding, perfected and enforceable by operation of law upon entry of the Interim Order and/or the Final Order by the Court without any further action by any party. The (i) DIP Agent and DIP Lenders in respect of the DIP Liens, and (ii) Prepetition Secured Parties and Prepetition Sponsor Agreement Secured Parties, respectively, in respect of the Adequate Protection Liens, shall each not be required to enter into or to obtain any control agreements, landlord waivers, mortgagee waivers, bailee waivers or warehouseman waivers or to give, file or record any financing statements, mortgages, deeds of trust, leasehold mortgages, notices to account debtors or other third parties, notices of lien or similar instruments in any jurisdiction (including filings with the United States Patent and Trademark Office, the United States Copyright Office or any similar agency in respect of trademarks, copyrights, trade names or patents with respect to intellectual property) (collectively, the “**Perfection Documents**”), or obtain consents from any licensor or similarly situated party in interest, or take any other action in order to validate and to perfect the DIP Liens granted under the DIP Credit Documents, the Interim Order and this Final Order and the Adequate Protection Liens granted under the Interim Order and this Final Order and approved hereby, all of which are automatically perfected by the entry of the Interim Order and this Final Order. If the Secured Parties or the Prepetition Sponsor Agreement Secured Parties, independently or collectively, in each of their sole discretion respectively, choose to obtain, enter into, give, record or file any Perfection Documents, (x) all such Perfection

Documents shall be deemed to have been obtained, entered into, given, recorded or filed, as the case may be, as of the Petition Date, (y) no defect in any such act shall affect or impair the validity, perfection, priority or enforceability of the DIP Liens and Adequate Protection Liens, and (z) such liens shall have the relative priority set forth herein notwithstanding the timing of filing of any such Perfection Documents. In lieu of recording or filing any Perfection Documents, the Secured Parties or the Prepetition Sponsor Agreement Secured Parties may, in each of their sole discretion, choose to record or file a true and complete copy of the Interim Order and this Final Order in any place that any Perfection Document would or could be recorded or filed (which may include a description of the collateral appropriate to be indicated in a recording or filing at such place of recording or filing), and such recording or filing by the Secured Parties shall have the same effect as if such Perfection Document had been filed or recorded as of the Petition Date. In addition, the DIP Agent may, in its sole discretion, at the Debtors' expense, require the Debtors to file or record any Perfection Document. The Debtors are authorized and directed to execute and deliver promptly upon demand to the DIP Agent, the Prepetition Secured Parties or the Prepetition Sponsor Agreement Secured Parties all Perfection Documents reasonably requested by such party.

b. The Prepetition Agent shall be deemed to be an agent or bailee, as the case may be, on behalf of and for the benefit of the DIP Agent and the DIP Lenders for the purposes of perfecting the security interests granted in the DIP Collateral, and, until the indefeasible payment in full in cash of DIP Obligations, the DIP Collateral and Perfection Documents in the possession, custody or control of the Prepetition Agent (or in the possession, custody or control of agents or bailees of the Prepetition Agent) shall be deemed to be for the benefit of the DIP Agent. Upon an Event of Default and the request of the DIP Agent and subject to paragraph 19

hereof, the Prepetition Agent (or its agents or bailees, as applicable) shall transfer, assign and otherwise convey, as applicable, any DIP Collateral and Perfection Documents in its possession, custody or control to the DIP Agent for the enforcement of rights and remedies under the DIP Credit Documents, and, upon the indefeasible payment in full in cash of all DIP Obligations, the DIP Agent (or its agents or bailees, as applicable) shall transfer, assign and otherwise convey any Prepetition Collateral and Perfection Documents to the Prepetition Agent if any Prepetition Obligations remain unsatisfied or, to the extent the Prepetition Obligations are satisfied, to the Prepetition Sponsor Agreement Agent. For the avoidance of doubt, the grant, perfection, scope and vesting of the DIP Liens, DIP Superpriority Claims and DIP Obligations are fully effectuated by the DIP Orders and any security agreements, collateral agreements or other Perfection Documents executed as part of the DIP Credit Documents shall supplement the grant, perfection, scope and vesting set forth herein as well as the powers and protections accorded to the DIP Agent, on behalf of itself and the DIP Lender, but in no event shall any such security agreement, collateral agreement or other Perfection Document be interpreted as a limitation of such provisions of the Interim Order or this Final Order.

14. Stipulations and Waivers: After consultation with their attorneys and financial advisors, **subject to and without prejudice to the rights of the Committee and any other party in interest as set forth in Paragraph 15 below**, the Debtors admit, stipulate, and agree to the following, and make the releases and waivers set forth below and as described in the Interim Order and this Final Order and the DIP Credit Documents, on and as of the Petition Date<sup>6</sup>:

a. Prepetition Credit Documents. Prior to the Petition Date, the Debtors entered into the Prepetition Credit Documents with the Prepetition Secured Parties.

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<sup>6</sup> For the avoidance of doubt, the stipulations, releases and waivers set forth herein do no purport to bind any of the Debtors' corporate affiliates who are not parties to the Prepetition Credit Documents.



b. Prepetition Obligations.

(1) Pursuant to the Prepetition Credit Documents, as of the Petition Date, the Debtors were indebted and liable to the Prepetition Agent, on behalf of the Prepetition Lenders, without defense, counterclaim or offset of any kind, in the aggregate principal amount of approximately \$7.5 million in respect of the Prepetition Obligations, plus accrued but unpaid interest, costs, fees and expenses.

(2) The Prepetition Obligations constitute the legal, valid and binding obligations of the Debtors that are party thereto, enforceable in accordance with their terms (other than in respect of the stay of enforcement arising under section 362 of the Bankruptcy Code) and no portion of the Prepetition Obligations is subject to avoidance, recharacterization, disgorgement, recovery or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law.

c. Prepetition Liens. The Prepetition Liens are (i) valid, binding, perfected, enforceable, liens on and security interests in the Prepetition Collateral, (ii) not subject to avoidance, recharacterization or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law and (iii) subject only to (A) after giving effect to the DIP Orders, the DIP Obligations, the DIP Liens, the DIP Superpriority Claims, and the Carve-Out, and (B) Prior Permitted Senior Liens.

d. Releases and Waivers. Each Borrower hereby acknowledges effective upon entry of the Interim Order and Final Order, that no Debtor has any defense, counterclaim, offset, recoupment, cross-complaint, claim or demand of any kind or nature whatsoever that can be asserted to reduce or eliminate all of any part of the Debtors' liability to repay the DIP Agent or DIP Lenders as provided in the DIP Credit Agreement or to seek affirmative relief or damages

of any kind or nature from the DIP Agent or any DIP Lender. Each Debtor, on behalf of itself and its bankruptcy estate, and on behalf of all its successors, assigns and any Person acting for and on behalf of, or claiming through them, (collectively, and in each case in their capacities as such, the “**Releasing Parties**”), hereby fully, finally and forever releases and discharges the DIP Agent and each DIP Lender and its respective past and present officers, directors, servants, agents, attorneys, assigns, heirs, parents, subsidiaries, participants, and each Person acting for or on behalf of any of them (collectively, and in each case in their capacities as such, the “**Released Parties**”) of and from any and all actions, causes of action, demands, suits, claims, liabilities, Liens, lawsuits, adverse consequences, amounts paid in settlement, costs, damages, debts, deficiencies, diminution in value, disbursements, expenses, losses and other obligations of any kind or nature whatsoever, whether in law, equity or otherwise (including, without limitation, those arising under Sections 541 through 550 of the Bankruptcy Code and interest or other carrying costs, penalties, legal, accounting and other professional fees and expenses, and incidental, consequential and punitive damages payable to third parties), whether known or unknown, fixed or contingent, direct, indirect, or derivative, asserted or unasserted, foreseen or unforeseen, suspected or unsuspected, now existing, whether held in a personal or representative capacity, and which are based on any act, fact, event or omission or other matter, cause or thing occurring at or from any time prior to and including the date hereof in any way, arising out of, connected with or relating to the DIP Credit Agreement, the Interim Order, this Final Order, any other agreement, document or instrument related to any of the foregoing and the transactions contemplated hereby or thereby. For the avoidance of doubt, the Released Parties shall not include any affiliates or insider (as each such term is defined in Section 101 of the Bankruptcy Code) of the Debtors.

e. Default. The Debtors are in default with respect to their Prepetition Obligations and an Event of Default has occurred under the Prepetition Credit Documents.

15. Effect of Debtors' Stipulations and Waivers on Third Parties.

a. Generally. The admissions, stipulations, agreements, releases, and waivers set forth in the immediately preceding Paragraph 14(a)-(e) of this Final Order and in Paragraph 14(a)-(e) of the Interim Order (collectively, the "**Prepetition Lien and Claim Matters**") are and shall be binding on the Debtors, any subsequent trustee, responsible person, examiner with expanded powers, any other Estate representative and all parties-in-interest and all of their successors-in-interest and assigns, including, without limitation, the Committee, unless, and solely to the extent that, (i) the Committee, any chapter 7 trustee, or any party-in-interest with standing and requisite authority, has timely filed the appropriate pleadings, and timely commenced the appropriate proceeding required under the Bankruptcy Code and Bankruptcy Rules, including, without limitation, as required pursuant to Part VII of the Bankruptcy Rules (in each case subject to the limitations set forth in Paragraph 16 of the DIP Orders) challenging the Prepetition Lien and Claim Matters (each such proceeding or appropriate pleading commencing a proceeding or other contested matter, a "**Challenge**") by no later than September 30, 2015 for the Committee (subject to the availability of the Court), and 75 days from the date of entry of the Interim Order for all other parties in interest, (such applicable dates referred to herein as a "**Challenge Deadline**"); provided, however, that if, prior to the Challenge Deadline, the cases convert to cases under Chapter 7, the Challenge Deadline shall be extended for the Chapter 7 trustee to 45 days after such trustee's appointment. The Challenge Deadline may be extended from time to time in the sole discretion of (y) the Prepetition Agent with respect to the Prepetition Obligations or (z) by this Court for good cause shown pursuant to an application filed

by the Committee or any other party in interest prior to later of the expiration of the Challenge Deadline or the date of the payment-in-full, in cash of the DIP Obligations and the Prepetition Obligations and the termination of any related commitments; and (ii) this Court rules in favor of the plaintiff or movant in any such timely and properly commenced Challenge proceeding and any such ruling is not subject to any further review or appeal. For the avoidance of doubt, nothing in this Final Order shall limit any claims or causes of action or impose any Challenge Deadline for any claims or causes of action against the Prepetition Sponsor Agreement Secured Parties or their affiliates.

b. Binding Effect. To the extent no Challenge is timely and properly commenced by the Challenge Deadline, or to the extent such proceeding does not result in a final and non-appealable order of this Court that is inconsistent with the Prepetition Lien and Claim Matters, then, without further notice, motion or application to, order of, or hearing before, this Court and without the need or requirement to file any proof of claim, the Prepetition Lien and Claim Matters shall pursuant to the DIP Orders become binding, conclusive and final on the Committee and any other person, entity or party-in-interest in the Chapter 11 Cases, and their successors and assigns, and in any successor case for all purposes and shall not be subject to challenge or objection by any party-in-interest, including, without limitation, a trustee, responsible individual, examiner with expanded powers or other representative of the Estates. Notwithstanding anything to the contrary herein, if any such proceeding is timely commenced, the Prepetition Lien and Claim Matters shall nonetheless remain binding on all parties-in-interest and preclusive as provided in sub-paragraph (a) above except to the extent that each of such Prepetition Lien and Claim Matters is expressly the subject of a timely and properly filed Challenge.

16. Limitation on Use of Proceeds. Notwithstanding anything in the Interim Order or this Final Order to the contrary, no portion or proceeds of the DIP Facility, the DIP Collateral, the Prepetition Collateral, the Cash Collateral, or the Carve-Out, and no disbursements set forth in the DIP Budget shall be used for the payment of professional fees, disbursements, costs or expenses incurred in connection with: (a) asserting a claim against the DIP Agent, DIP Lender, Prepetition Agent or Prepetition Lenders challenging the validity, perfection, priority, or enforceability of, or any amount due under, the DIP Credit Documents or the Prepetition Credit Documents or any security interests, liens or claims granted under the Interim Order, this Final Order or the DIP Credit Documents or the Prepetition Credit Documents; (b) asserting any Challenges, claims, actions or causes of action against any of DIP Agent, DIP Lender, Prepetition Agent or Prepetition Lenders or any of their respective agents, affiliates, subsidiaries, directors, officers, representatives, attorneys or advisors; (c) preventing, hindering or otherwise delaying enforcement or realization on the DIP Collateral or the Prepetition Collateral; or (d) seeking use of Cash Collateral and/or the DIP Collateral on a contested basis. No more than \$50,000 in the aggregate of the proceeds of the DIP Facility, the DIP Collateral, the Prepetition Collateral, the Cash Collateral, and the Carve-Out may be used by the Committee to investigate (but not prosecute or Challenge) Prepetition Lien and Claim Matters related to the Prepetition Credit Documents.

17. Adequate Protection.

a. Generally. This Court finds that the Adequate Protection provided in the Interim Order as to the Prepetition Secured Parties and this Final Order, including, without limitation, in this Paragraph 17, is reasonable and sufficient to protect the interests of the Prepetition Secured Parties and the Prepetition Sponsor Agreement Secured Parties.

b. Adequate Protection Liens. As adequate protection of the Prepetition Liens of the Prepetition Secured Parties under the applicable Prepetition Credit Documents and the Prepetition Sponsor Liens of the Prepetition Sponsor Agreement Secured Parties under the applicable Prepetition Sponsor Credit Documents (“**Adequate Protection**”) in accordance with sections 361 and 363(e) of the Bankruptcy Code, the Prepetition Agent and Prepetition Sponsor Agent shall be granted (for the ratable benefit of the respective Prepetition Lenders and Prepetition Sponsor Agreement Lenders (collectively the “**Prepetition Lender Parties**”) and subject to the same priority as between such Prepetition Lender Parties) valid, binding, perfected and enforceable security interests and replacement liens (collectively the “**Adequate Protection Liens**,”) upon all property of the Debtors (other than Avoidance Actions, Unencumbered Assets, or proceeds thereof), whether arising prepetition or postpetition of any nature whatsoever, wherever located, in each case to secure the Prepetition Obligations and Prepetition Sponsor Agreement Obligations from the aggregate diminution, if any, subsequent to the Petition Date, in the value of the Prepetition Collateral and/or the Prepetition Sponsor Agreement Collateral, which is as a result of, or arises from, or is attributable to, the imposition of the automatic stay, or the use, sale, lease or grant of such Prepetition Collateral and/or Prepetition Sponsor Agreement Collateral; provided, that (a) the Adequate Protection Liens of the Prepetition Secured Parties shall not attach to or be payable from the proceeds of any claims and causes of action of the Debtors or debtors-in-possession against the Prepetition Agent and Prepetition Lenders and (b) the Adequate Protection Liens of the Prepetition Sponsor Agreement Secured Parties shall not attach to or be payable from the proceeds of claims and causes of action of the Debtors or debtors-in-possession against Prepetition Sponsor Agreement Secured Parties, or any affiliates thereof; or any insiders or affiliates of the Debtors including, but not limited to, any

insiders of the Debtors that are employed by or affiliated with the Prepetition Sponsor Agreement Secured Parties. The Adequate Protection Liens are subject and subordinate to (A) the Carve-Out, (B) the DIP Obligations, DIP Liens and DIP Superpriority Claims, and (C) the Prior Permitted Senior Liens (and for the avoidance of doubt the Adequate Protection Liens of the Prepetition Sponsor Agreement Lenders are subordinate to the Adequate Protection Liens of the Prepetition Lenders). None of the Adequate Protection Liens shall (x) be subject to any lien or security interest that is avoided and preserved for the benefit of the Estates under section 551 of the Bankruptcy Code, (y) subject to any inter-company claim, whether secured or unsecured, of any Debtor or any domestic or foreign subsidiary or affiliate of any Debtor, or (z) hereafter be subordinated to or made *pari passu* with any other lien or security interest under sections 361, 363 or 364 of the Bankruptcy Code or otherwise except as expressly provided in the Interim Order, the Final Order and the DIP Credit Documents, including, without limitation, with respect to the Carve-Out, Prior Permitted Senior Liens, DIP Obligations, DIP Liens and DIP Superpriority Claims.

c. 507(b) Claims. The Prepetition Secured Parties and the Prepetition Sponsor Agreement Secured Parties are hereby each granted an administrative expense claim pursuant to section 507(b) of the Bankruptcy Code (each, a “**507(b) Claim**”) with priority over all other administrative expenses, but in all cases subject and subordinate to the Carve-Out, Prior Permitted Senior Liens, DIP Obligations, DIP Liens and DIP Superpriority Claims (and for the avoidance of doubt the 507(b) Claim of the Prepetition Sponsor Agreement Lenders is subordinate to the 507(b) Claim of the Prepetition Lenders). For the avoidance of doubt, the Prepetition Secured Parties’ 507(b) Claim is solely for any diminution in the value of the Prepetition Collateral and the Prepetition Sponsor Agreement Lenders’ 507(b) Claim is solely for

any diminution in the value of the Prepetition Sponsor Agreement Collateral.

d. Adequate Protection Payments. Subject to section 506(b) of the Bankruptcy Code, the Debtors shall, in accordance with the DIP Budget, (x) with respect to the Prepetition Agent: (i) pay all reasonable fees and expenses under the Prepetition Credit Documents incurred by the Prepetition Agent and Prepetition Lenders, whether incurred prior to or following the Petition Date, (ii) pay all interest on the Prepetition Obligations at the non-Default Rate (as defined in the Prepetition Credit Agreement) and (iii) pay all amortization payments on account of the term loan obligations under the Prepetition Credit Agreement. The payments under this Paragraph 17(d) shall be collectively referred to as the “**Adequate Protection Payments**.” Invoices supporting fees and expenses being charged to the Debtors by the Prepetition Agent shall be submitted to counsel for the Debtors, with copies to the U.S. Trustee, counsel for the DIP Agent, counsel for the counsel for the Prepetition Sponsor Agreement Agent and counsel for the Committee (invoices may be redacted to the extent necessary to protect any information subject to the attorney-client privilege and any information constituting attorney work product, except that unredacted copies shall be provided to the U.S. Trustee, and the provision of such invoices, whether in their redacted or unredacted form, shall not constitute any waiver of the attorney-client privilege or of any benefits of the attorney work product doctrine). The Prepetition Agent (and its counsel and advisors) shall not be required to file an application seeking compensation for services or reimbursement of expenses with the Court. The U.S. Trustee, the DIP Agent, the Prepetition Sponsor Agreement Agent, the Debtors, and the Committee shall have ten (10) business days in which to raise an objection to the payment of any fees and expenses of any attorneys and advisors for the Prepetition Agent. To the extent any such objection is not resolved or withdrawn within such ten (10) business day



period, the Court shall adjudicate the matter and fashion an appropriate remedy; provided, that any portion of such fees that are not objected to may be paid. In the event any Adequate Protection Payment would be required to be repaid to the Debtors as a result of application of Bankruptcy Code section 506(b) or otherwise, any such amounts shall not be repaid and instead shall be applied as follows: first, to the DIP Obligations until such obligations are indefeasibly paid in full, in cash; and second, to the Prepetition Obligations until such obligations are indefeasibly paid in full, in cash.

e. Reservation. The Adequate Protection Liens, the 507(b) Claim, and the Adequate Protection Payments are without prejudice to the Committee's right to Challenge as provided in paragraph 15(a) herein, including, without limitation, that any Adequate Protection Payments should be recharacterized as principal payments and/or that any Adequate Protection should be disgorged.

18. Indemnification. The Debtors shall indemnify the DIP Agent and each DIP Lender and their respective affiliates, successors and assigns and the officers, directors, employees, agents, advisors, controlling persons and members of each of the foregoing (each, an "**Indemnified Person**") and hold each of them harmless from and against all costs, expenses (including reasonable fees, disbursements and other charges of counsel) and liabilities of such Indemnified Person arising out of or relating to any claim or any litigation or other proceeding (regardless of whether such Indemnified Person is a party thereto and regardless of whether such matter is initiated by a third party or by the Debtors or any of their affiliates or shareholders) that relates to the DIP Facility, the Interim Order, or this Final Order, including the financial accommodations to the Debtors contemplated hereby, the Chapter 11 Cases, or any transactions in connection therewith, provided that no Indemnified Person will be indemnified for any cost,

expense or liability to the extent determined in a final, non-appealable judgment of a court of competent jurisdiction to have resulted primarily from such Indemnified Person's gross negligence or willful misconduct. Nothing herein is meant to limit the scope of any indemnity provided for the benefit of the DIP Agent or DIP Lenders in the DIP Credit Documents. For the avoidance of doubt, this Paragraph 18 does not apply or otherwise affect any indemnification rights or obligations in respect of the Prepetition Secured Parties under the Prepetition Credit Documents or the Prepetition Sponsor Agreement Secured Parties under the Prepetition Sponsor Credit Documents.

19. Remedies. Upon the occurrence of an Event of Default under the DIP Credit Documents and following the giving of three (3) business days' notice to the Court, U.S. Trustee, counsel for the Debtors, counsel for the Committee, counsel for the Prepetition Agent and counsel for the Prepetition Sponsor Agreement Agent (the "Remedies Notice Period"), (i) the DIP Agent is granted leave to cease making financial accommodations to the Debtors, accelerate any or all of the DIP Obligations and declare such DIP Obligations to be immediately due and payable in full, in cash, and (ii) the DIP Agent, for the benefit of the DIP Lender, shall be entitled to exercise all of its rights and remedies under this Order and the DIP Credit Documents, including, without limitation, foreclose upon the DIP Collateral or otherwise enforce the DIP Obligations, DIP Liens and DIP Superpriority Claims on any or all of the DIP Collateral and/or to exercise any other default-related remedies under the DIP Credit Documents, the Prepetition Credit Documents, the Interim Order, this Final Order or applicable law in seeking to recover payment of the DIP Obligations. For the avoidance of doubt, with respect to Prior Permitted Senior Liens, any exercise of such rights and remedies shall be in accordance with applicable non-bankruptcy law in respect of Prior Permitted Senior Liens. During the Remedies Notice

Period, the Debtors, the Prepetition Agent, the Prepetition Sponsor Agreement Agent, the Committee or any other party in interest may seek an order of the Court staying the DIP Agent's exercise of such remedies against the DIP Collateral solely on the grounds that no Event of Default has occurred and, if no such stay is obtained, then the DIP Agent may exercise any and all such rights and remedies without further order of the Court or notice to any party and the Debtors' authority to use Cash Collateral under this Final Order shall terminate. During the Remedies Notice Period, the Debtors may continue to use the DIP Collateral, including Cash Collateral, subject to the DIP Budget and the other limitations contained in the DIP Orders.

20. Access to DIP Collateral. Notwithstanding anything contained herein to the contrary and without limiting any other rights or remedies of the DIP Agent, exercisable on behalf of the DIP Lender, contained in the DIP Orders or the DIP Credit Documents, or otherwise available at law or in equity, and subject to the terms of the DIP Credit Documents, upon written notice to the landlord of any leased premises that an Event of Default or the Termination Date has occurred under the DIP Credit Documents, the DIP Agent may, subject to the applicable notice provisions, if any, in this Final Order and any separate agreement by and between such landlord and the DIP Agent, and to the extent permitted by applicable non-bankruptcy law, enter upon any leased premises of the Debtors or any other party for the purpose of exercising any remedy with respect to DIP Collateral located thereon and shall be entitled to all of the Debtors' rights and privileges as lessee under such lease without interference from the landlords thereunder.

21. Insurance Policies. Effective as of entry of the DIP Orders, the DIP Agent shall be deemed to be, without any further action or notice, named as additional insureds and loss payees on each insurance policy maintained by the Debtors that in any way relates to DIP

Collateral or Prepetition Collateral, as applicable; provided, however, for the avoidance of doubt, this provision shall not delete any other additional insured or loss payee from any insurance policy.

22. Successors and Assigns. The Interim Order, this Final Order, the DIP Credit Agreement and the other DIP Credit Documents shall be binding upon all parties in interest in these Chapter 11 Cases, including any subsequently appointed trustee, responsible individual, examiner with expanded powers, or other Estate representative.

23. Survival. The provisions of DIP Orders and any actions taken pursuant thereto shall survive the entry of any subsequent order, and the rights, remedies, powers, privileges, liens and priorities of the Secured Parties provided for in the Interim Order, this Final Order and in any DIP Credit Document shall not be modified, altered or impaired in any manner by any order, including any order (i) confirming any plan of reorganization or liquidation in any of the Chapter 11 Cases (and, to the extent not indefeasibly paid in full in cash, the DIP Obligations shall not be discharged by the entry of any such order, or pursuant to section 1141(d)(4) of the Bankruptcy Code, each of the Debtors having hereby waived such discharge); (ii) converting any of the Chapter 11 Cases to a Chapter 7 case; (iii) dismissing any of the Chapter 11 Cases; or (iv) any superseding cases under the Bankruptcy Code. The terms and provisions of the Interim Order, this Final Order as well as the DIP Obligations, DIP Liens, DIP Superpriority Claims, DIP Credit Documents, and Adequate Protection Liens shall continue in full force and effect notwithstanding the entry of any such order, and such rights, claims and liens shall maintain their priority as provided by the DIP Orders and the DIP Credit Documents to the maximum extent permitted by law until all of the DIP Obligations are indefeasibly paid in full, in cash.

24. Good Faith. The DIP Facility, the use of Cash Collateral, and the other provisions of the Interim Order, this Final Order, the DIP Credit Agreement and the other DIP Credit Documents have been negotiated in good faith among the Debtors and the DIP Agent and DIP Lenders, and the extension of the financial accommodations to the Debtors by the DIP Agent and DIP Lenders pursuant to the Interim Order, this Final Order and the DIP Credit Documents have been and are deemed to be extended in good faith, as that term is used in section 364(e) of the Bankruptcy Code. The DIP Agent and DIP Lenders are entitled to, and are hereby granted, the full protections of section 364(e) of the Bankruptcy Code.

25. Subsequent Reversal or Modification. Subject to Paragraph 16, if any or all of the provisions of this Final Order are hereafter reversed, modified, vacated or stayed, that action will not affect (i) the validity of any obligation, indebtedness or liability under this Final Order and the DIP Credit Documents by the Debtors prior to the date of receipt of written notice to the DIP Agent and Prepetition Agent of the effective date of such action; or (ii) the validity and enforceability of any lien, administrative expense, right, or priority authorized or created hereby or pursuant to the Interim Order, this Final Order and the DIP Credit Documents, including, without limitation, the DIP Obligations, DIP Liens and DIP Superpriority Claims, Prepetition Secured Obligations, Adequate Protection Liens, Adequate Protection Payments, 507(b) Claims and Carve-Out. Notwithstanding any such reversal, stay, modification or vacatur, any postpetition indebtedness, obligation or liability incurred by the Debtors to the Secured Parties and/or the Prepetition Sponsor Agreement Secured Parties prior to written notice to the DIP Agent and Prepetition Agent and/or the Prepetition Sponsor Agreement Agent of the effective date of such action, shall be governed in all respects by the original provisions of this Final Order and the DIP Credit Documents, and the DIP Agent and DIP Lenders shall be entitled to all the

rights, remedies, privileges and benefits granted pursuant to this Final Order and the DIP Credit Documents.

26. No Waiver. The Interim Order and this Final Order shall not be construed in any way as a waiver or relinquishment of any rights that the Secured Parties or the Prepetition Sponsor Agreement Secured Parties may have to bring or be heard on any matter brought before the Court. Any consent, modification, declaration of default, or exercise of remedies or non-exercise of remedies under or in connection with the DIP Orders or the DIP Credit Documents shall require the approval of DIP Agent, and, as and to the extent required by the voting provisions of the DIP Credit Agreement and shall not be deemed a waiver or relinquishment of any of the rights of the DIP Agent and DIP Lender. Nothing contained in the Interim Order or this Final Order (including without limitation, the authorization to use any Cash Collateral) shall impair, prejudice or modify any rights, claims or defenses available in law or equity to the Secured Parties or the Prepetition Sponsor Agreement Secured Parties, including, without limitation, the right to (a) request conversion of the Debtors' Chapter 11 Cases to cases under chapter 7, (b) seek to terminate the exclusive rights of the Debtors to file, and solicit acceptances of, a plan of reorganization under section 1121 of the Bankruptcy Code or propose, subject to the provisions of section 1121 of the Bankruptcy Code, a chapter 11 plan or plans, (c) object to the fees and expenses of any Retained Professionals, and (d) seek relief from the automatic stay. All such rights, claims and defenses, and the rights, objections and defenses of all parties in connection therewith, are hereby reserved.

27. Termination Date. In addition and without limitation of the Events of Default set forth in and defined in the DIP Credit Documents, the Interim Order or this Final Order, all of

the obligations under the DIP Facility, accrued or otherwise (including, without limitation any fees), shall be due and payable in full on Termination Date.

28. If an order dismissing any of these Chapter 11 Cases under section 305 or 1112 of the Bankruptcy Code or otherwise is at any time entered, (i) the claims, security interests, liens and claims granted to or for the benefit of the Secured Parties or the Prepetition Sponsor Agreement Secured Parties pursuant to the DIP Orders shall continue in full force and effect and shall maintain their priorities as provided in the DIP Orders, as applicable, until all DIP Obligations, Prepetition Obligations and Prepetition Sponsor Agreement Obligations shall have been paid and satisfied in full (and that such claims and liens, shall, notwithstanding such dismissal, remain binding on all parties in interest) and (ii) this Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing such claims and liens.

29. Final Order Governs. In the event of any conflict between the provisions of this Final Order and the Interim Order or the DIP Credit Documents, the provisions of this Final Order shall control and govern to the extent of such conflict.

30. Sale. Upon the closing of any non-ordinary course asset sales (including, without limitation, any payment received on account of the liquidation of any of the Debtor's assets) under section 363 of the Bankruptcy Code all liens securing the DIP Obligations, the Prepetition Obligations and the Prepetition Sponsor Agreement Obligations shall be transferred to the proceeds of such sale, and, subject to Final Order, such proceeds shall be applied at the closing of such sale to permanently and indefeasibly repay the DIP Obligations and shall result in a permanent reduction of the DIP Facility.

31. Right to Credit Bid. Subject to any and all applicable law, pursuant to section 363(k) of the Bankruptcy Code and included as part of any restructuring plan subject to

confirmation under section 1129(b)(2)(A)(iii) of the Bankruptcy Code, the DIP Agent, upon seven (7) days' written notice to the Committee, shall have the right to use the DIP Obligations, DIP Liens and DIP Superpriority Claims and the Prepetition Agent shall have the right to use the Prepetition Obligations and the Prepetition Sponsor Agreement Agent shall, upon the payment in full, in cash, of the DIP Obligations and Prepetition Obligations have the right to use the Prepetition Sponsor Agreement Obligations, in each case subject to section 363(k) of the Bankruptcy Code, to credit bid with respect to any bulk or piecemeal sale of all or any portion of the DIP Collateral, Prepetition Collateral or the Prepetition Sponsor Agreement Collateral, as applicable.

32. No Marshaling. None of the DIP Collateral, Prepetition Collateral, Prepetition Sponsor Agreement Collateral, the Secured Parties or the Prepetition Sponsor Agreement Secured Parties shall be subject to the doctrine of marshaling.

33. Headings. The headings in this Final Order are for reference purposes only and will not in any way affect the meaning and interpretation of the terms of this Final Order.

34. Immediate Effect. This Final Order is hereby deemed effective immediately pursuant to Bankruptcy Rule 6004(h).

Dated: Lexington, Kentucky

**TENDERED BY:**

**FROST BROWN TODD LLC**

/s/ Paige L. Ellerman

Ronald E. Gold, Esq.  
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**ATTORNEYS FOR  
DEBTORS AND DEBTORS- IN-POSSESSION**

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The affixing of this Court's electronic seal below is proof this document has been signed by the Judge and electronically entered by the Clerk in the official record of this case.



Signed By:  
Gregory R. Schaaf  
Bankruptcy Judge  
Dated: Wednesday, August 05, 2015  
(grs)

**WAIVER AND FIRST AMENDMENT TO  
SENIOR SECURED SUPER-PRIORITY  
DEBTOR-IN-POSSESSION CREDIT AGREEMENT**

This WAIVER AND FIRST AMENDMENT TO SENIOR SECURED SUPER-PRIORITY DEBTOR-IN-POSSESSION CREDIT AGREEMENT (this “Amendment”) is entered into as of August 3, 2015, among JW RESOURCES, INC., a Kentucky corporation (the “Lead Borrower”), SCRB PROPERTIES, INC., a Kentucky corporation (“SCRB Properties”), STRAIGHT CREEK COAL MINING, INC., a Kentucky corporation (“Straight Creek Coal Mining”) and SCRB PROCESSING, INC., a Kentucky Corporation (“SCRB Processing”, and together with the Lead Borrower, SCRB Properties and Straight Creek Coal Mining, each a “Borrower” and collectively and jointly and severally, the “Borrowers”), the parties signatory hereto as Lenders (collectively, the “Lenders”), and GORDON BROTHERS FINANCE COMPANY, as administrative agent (in such capacity, the “Administrative Agent”).

**RECITALS**

WHEREAS, the Borrowers, Lenders and Administrative Agent are parties to that certain Senior Secured Superpriority Debtor-in-Possession Credit Agreement dated as of July 14, 2015 (as amended and in effect from time to time, the “DIP Credit Agreement”; all capitalized terms used but not specifically defined herein shall have the respective meanings provided for such terms in the DIP Credit Agreement); and

WHEREAS, certain Events of Default have occurred and continue to exist under the DIP Credit Agreement as described on Schedule 1 attached hereto (collectively, the “Specified Defaults” and each a “Specified Default”); and

WHEREAS, the Borrowers have requested that the Agent and Lenders (i) permanently waive the Specified Defaults, and (ii) make certain amendments to the DIP Credit Agreement, and the Agent and Lenders have agreed to do so on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Acknowledgement; Waiver.

(a) The Borrowers acknowledge and agree that the Specified Defaults have occurred and are continuing.

(b) Subject to the terms and conditions of this Amendment, the Administrative Agent and the Lenders hereby waive the Specified Defaults and their rights to pursue the remedies available to them solely on account of such Specified Defaults. The waiver contained in this Section 1 shall (a) not constitute or be deemed to constitute a waiver (except as otherwise expressly set forth herein), of (i) any Default or Event of Default other than the Specified Defaults, or (ii) any term or condition of the DIP Credit Agreement, (b) not constitute or be deemed to constitute consent by the Administrative Agent or the Lenders to anything other than the matters explicitly set

forth herein, and (c) not constitute a custom or course of dealing among the parties hereto.

2. Amendments to the DIP Credit Agreement. As of the date hereof, the DIP Credit Agreement is hereby amended as follows:

A. Section 1.01 of the DIP Credit Agreement is hereby amended by adding the following defined terms, each such term to be incorporated into Section 1.01 of the DIP Credit Agreement in the correct alphabetical order:

“Asset Sale Auction” has the meaning set forth in Section 5.16(b)(vii).

“Equipment Sale Process” has the meaning set forth in Section 5.16(b)(ii).

“Equipment Sale Agreement” has the meaning set forth in Section 5.16(b)(iii)(D).

“First Amendment”: means that certain Waiver and First Amendment to Senior Secured Super-Priority Debtor-In Possession Credit Agreement, dated as of August 3, 2015, by and among the Borrowers, Lenders and Administrative Agent.”

“First Amendment Effective Date”: means August 3, 2015.”

B. Section 1.01 of the DIP Credit Agreement is hereby amended by deleting the following term and replacing it in its entirety with the following:

“Funding Date”: means (a) the Closing Date, (b) each Monday beginning with July 20, 2015 (or if Monday is not a Business Day, the next succeeding Business Day) through August 2, 2015, and (c) each Wednesday beginning with August 5, 2015 (or if Wednesday is not a Business Day, the next succeeding Business Day), in each case on which any borrowing of Loans is made pursuant to Section 2.2 hereof.

C. Section 2.2 of the DIP Credit Agreement is hereby amended by deleting such subsection in its entirety and replacing it with the following:

“2.2 Procedures for Borrowing; Loan Disbursements. The initial Loan to be made on the Closing Date will be an amount to be agreed upon by the Borrower and the Administrative Agent to fund the amounts set forth in the Approved Budget until the Funding Date on July 20, 2015; provided, that such initial Loan shall be made after application of any funds in the Disbursement Accounts or the Operating Accounts to the outstanding Pre-Petition Revolving Indebtedness. With respect to each requested borrowing of a Loan hereunder other than the initial Loan, the Lead Borrower shall deliver to the Administrative Agent a Borrowing Notice (which Borrowing Notice must be received by the Administrative Agent prior to 2:00 P.M., Boston time, on the Monday of such week, requesting that the Lenders make Loans on such Funding Date; provided, however, that (i) the

Borrowers shall be permitted to borrow a maximum of one (1) Loan per week, (ii) such Loan shall be in the amount, if a negative number, equal to (A) the sum of (I) actual cash (net of any outstanding checks or wires) in the Disbursement Accounts as of the close of business on the Business Day immediately preceding the Monday on which the Borrowing Notice is delivered to the extent such cash exceeds \$200,000 plus (II) an amount equal to the projected cash receipts (including receipts projected for previous periods that were not received during such period and are projected to be received during the current period) set forth in the then applicable Approved Budget for the week in which the Funding Date occurs less (B) the positive amount of disbursements that are projected in the Approved Budget for the week (including any disbursements in the Cumulative Two Week Period or in the case of funding for the Professional Fee Escrow Account for the Cumulative Period that were not made in the previous week or weeks) in which the Funding Date occurs (the “DIP Formula Borrowing Amount”); provided, that (i) if the DIP Formula Borrowing Amount is a positive number then no Loan will be made that week, (ii) the Administrative Agent shall have the right to require that all cash (net of outstanding checks or wires) in the Disbursement Account in excess of \$200,000 be deposited into the Operating Accounts, (iii) the DIP Formula Borrowing Amount will be adjusted to take into account any amounts in (or projected to be deposited in) the Operating Accounts, which the Administrative Agent shall have the right to require at any time be swept and applied first to the Pre-Petition Revolving Indebtedness and then to the Obligations; provided, that to the extent such amounts are swept and applied to the Obligations, such amounts shall be available to re-borrow subject to the terms of this Agreement, (iv) the outstanding balance of the Loans shall at no time exceed the Maximum Loan Amount, and (v) the amounts budgeted for fees and expenses of counsel to the Administrative Agent or Pre-Petition Agent which shall be accounted for by a reserve against the Maximum Loan Amount which shall be instituted from time to time by the Administrative Agent and which shall be paid by the Administrative Agent by the making of a Loan in such amount; provided, that (a) such fees and expenses shall be paid in a manner consistent with the Financing Orders, (b) the Administrative Agent shall provide a reconciliation of such amounts to the Borrowers and Sponsor upon request, and (c) upon the making of the Loan and the payment of such fees and expenses, the reserve shall be released. Upon receipt of any such Borrowing Notice, the Administrative Agent shall promptly notify each Lender thereof. On the applicable Funding Date each Lender shall make available to the Borrowers at an account designated by the Lead Borrower in such Borrowing Notice, an amount in immediately available funds equal to the Loan to be made by such Lender. Notwithstanding the foregoing, if necessary the Administrative Agent and the Borrowers, upon mutual agreement, can adjust the Funding Dates to accommodate the hearing schedule or other timing.”

D. Section 4.2(e) of the DIP Credit Agreement is hereby amended by deleting such subsection in its entirety and replacing it with the following:

“(e) Financing Orders. The Bankruptcy Court shall have entered the Interim Financing Order and, if such proposed funding date is on or after August 4, 2015, the Final Financing Order, which Interim Financing Order or Final Financing Order, as the case may be, shall be in full force and effect, shall not have been reversed, vacated or stayed and shall not have been amended, supplemented or otherwise modified without the prior written consent of the Administrative Agent.”

E. Section 5.16 of the DIP Credit Agreement is hereby amended by deleting such section in its entirety and replacing it with the following:

“5.16 Bankruptcy Milestones.

(a) Asset Sale and Equipment Sale Processes. The Borrowers shall conduct a process for an Asset Sale and an Equipment Sale. In connection with the Asset Sale and the Equipment Sale, the Borrowers shall promptly, upon any such information becoming available to the Borrowers, provide the Administrative Agent copies of any informational packages provided to potential bidders, all draft sale agreements, the deadlines established as to receipt of bids, copies of any bids received from any proposed bidder for all or any portion of the applicable assets any draft motion or order approving the Asset Sale and/or Equipment Sale and, upon request of the Administrative Agent, a status report and updated information relating to such motions, and any updates, modifications or supplements to such information and materials.

(b) Asset Sale and Equipment Sale Milestones. Borrowers shall satisfy each of the following milestones on or before the applicable date(s) indicated:

(i) on or before July 14, 2015, the Borrowers shall have filed the Asset Sale Bidding Procedures Motion;

(ii) on or before August 4, 2015, Borrowers and Administrative Agent shall have agreed upon a process for the conduct of the Equipment Sale (such agreed upon sale process, the “Equipment Sale Process”), which Equipment Sale Process shall be satisfactory to the Administrative Agent;

(iii) on or before August 6, 2015, the Borrowers shall have:

(A) entered into an agreement (an “Equipment Sales Agreement”) with an Approved Liquidator or other proposed selling agent for the Equipment, such Approved Liquidator or selling agent, and the terms and conditions of such Equipment Sales Agreement, to be satisfactory to the Agent in form and substance; and

(B) filed the Equipment Sale Motion and appropriate papers to approve the Equipment Sales Agreement and retain the Approved Liquidator;

(C) entered into a Stalking Horse Purchase Agreement relative to the Asset Sale in form and substance satisfactory to the Administrative Agent;

(D) entered into an amendment to the supply contract with SCANA, which amendment shall be in form and substance acceptable to the Administrative Agent;

(iv) on or before August 6, 2015, the Borrowers shall have filed with the Bankruptcy Court the Asset Sale Motion, seeking approval of consummating the Asset Sale pursuant to the Stalking Horse Purchase Agreement, subject to such higher and better bids relative to the Asset Sale as may be received at the Asset Sale Auction (as hereinafter defined).

(v) on or before August 8, 2015, Borrowers shall have delivered, or caused Borrowers' investment banker to have delivered, the final confidential information memorandum relative to the Asset Sale to the list of potential purchasers agreed upon by Borrowers, Borrowers' investment banker, and Administrative Agent;

(vi) on or before August 20, 2015, the Bankruptcy Court shall have (A) held the Asset Sale Bidding Procedures Hearing and entered the Asset Sale Bidding Procedures Order, which order shall be in form and substance acceptable to the Administrative Agent, and (B) entered the Equipment Sale Procedures Order;

(vii) on or before September 11, 2015, Borrower shall have received qualified bids with respect to the Asset Sale, including customary bid package requirements and marked up forms of asset purchase agreement;

(viii) on or before September 14, 2015, Borrowers (in consultation with the Administrative Agent) shall select the baseline bid for an auction for the Asset Sale (the "Asset Sale Auction");

(ix) on or before September 16, 2015, Borrowers shall have conducted the Asset Sale Auction and selected the highest and best bid(s) for the sale of all or substantially all of the Borrowers' assets other than the Equipment; and

(x) on or before September 29, 2015 the Bankruptcy Court shall enter the Asset Sale Order with the closing of the Asset Sale to occur no later than October 15, 2015.

(c) Consummation of Equipment Sale. The Borrowers shall complete the Equipment Sale by October 8, 2015.

F. Section 6.8 of the DIP Credit Agreement is hereby amended to replace clause (a) thereof with the following:

“(a) Purchases of up to 17,000 of tons coal inventory by the Middlesboro Mining, Inc. or its affiliates for a price no less than \$57.50 per ton; provided, that the terms of such purchase, including any credit enhancement, shall (i) be acceptable to the Debtors and the Administrative Agent and (ii) be disclosed to the Committee in writing at least two (2) business days prior to the purchase of any coal inventory by Middlesboro;”

G. Section 6.21 of the DIP Credit Agreement is hereby amended by deleting such subsection in its entirety and replacing it with the following:

“Section 6.21 Approved Budget Variance Test. Permit the following line items in the Approved Budget: (i) Total Receipts, (ii) Total Operating Disbursements, and (iii) Net Cash Flow to vary by more than the applicable Permitted Variance from the results projected for each such item in the applicable Approved Budget with respect to any Testing Period (except to the extent such actual results are more favorable). In addition, the Borrowers shall not permit any payment in the line item “Bonding Payment” to be made unless the Administrative Agent has consented to such payment.”

H. Section 8.1(c) of the DIP Credit Agreement is hereby amended by deleting such subsection in its entirety and replacing it with the following:

“(c) Any Loan Party shall default in the observance or performance of any agreement contained in Section 5.1, Section 5.2, Section 5.4(a), Section 5.8(a), Section 5.16, Section 6, Section 7, or in Section 4 of the Security Agreement or an “Event of Default” under and as defined in any Mortgage shall have occurred and be continuing; or”

I. Sections 8.01(f)(xv) through (f)(xxvi) of the DIP Credit Agreement are hereby deleted in their entirety.

3. Additional Agreements. In consideration of the waiver by Administrative Agent and Lenders of the Specified Defaults as set forth in this Amendment, the Borrower covenants and agrees as follows:

(a) Call Sheets. The Borrowers shall deliver, or cause its investment banker to deliver, to the Administrative Agent on Wednesday of each week during the Asset Sale process, call sheets regarding the status of such sale process, including, without limitation, the identity of all prospective bidders included in the process, the level of activity of each such bidder in the sale process, and Borrowers’ and its investment banker’s assessment of each such bidder’s level of interest.

(b) Weekly Teleconference. The Borrowers and their advisors (including the Approved Liquidator) shall periodically update the Administrative Agent and the Lenders as to the status of the Asset Sale process and the Equipment Sale Process, including by conducting periodic teleconferences with the Administrative Agent, the Lenders and their advisors, such teleconferences to be held no less frequently than weekly, at a

mutually agreeable date and time.

(c) Events of Default. The Borrower acknowledges and agrees that the failure of the Borrower to comply with the terms and conditions set forth in this Section 3 shall constitute an immediate Event of Default (without need for notice of any kind or any passage of time).

4. Conditions Precedent. The effectiveness of this Amendment is subject to the following conditions precedent (all documents to be in form and substance satisfactory to Administrative Agent):

(a) Administrative Agent shall have received this Amendment duly executed by the Borrowers; and

(b) After giving effect to this Amendment (i) all representations and warranties of the Borrowers set forth herein and in the DIP Credit Agreement and other Loan Documents shall be true and correct in all material respects, (ii) no Event of Default or any other event which, upon the lapse of time, service of notice, or both, which would constitute an Event of Default under any of the Loan Documents, shall have occurred and be continuing, and (iii) the Borrowers shall be in compliance with the DIP Credit Agreement and the other Loan Documents.

5. Representations, Warranties. Borrowers represent that, after giving effect to this Amendment:

(a) No consent or approval of, or exemption by any Person is required to authorize, or is otherwise required in connection with the execution and delivery of this Amendment which has not been obtained and which remains in full force and effect; and

(b) As of the date hereof, each of the representations and warranties of the Borrowers set forth in the DIP Credit Agreement and the other Loan Documents are true, correct and complete in all material respects, except to the extent such representations and warranties speak as to an earlier date, in which case the same are true, correct and complete as to such earlier date; and no Default or Event of Default exists under the DIP Credit Agreement.

6. Limited Waiver. Except as expressly provided in Section 1 hereof, this Amendment shall not constitute a waiver of any Event of Default or any other event which, upon the lapse of time, giving of notice, or both, which would constitute an Event of Default, which may exist under the DIP Credit Agreement, or a waiver or modification of any of the Administrative Agent's or any Lender's rights and remedies or of any of the terms, conditions, warranties, representations, or covenants contained in the DIP Credit Agreement. Except as expressly provided in Section 1 hereof, the Administrative Agent and each Lender hereby reserves all of its rights and remedies pursuant to the DIP Credit Agreement and the other Loan Documents and applicable law.

7. No Other Modifications, Conflicts with Loan Documents, etc. This Amendment is intended to supplement and modify the DIP Credit Agreement and the rights and obligations



of the parties under the DIP Credit Agreement shall not in any way be vacated, modified or terminated except as herein provided. All terms and conditions contained in each and every agreement or promissory note or other evidence of indebtedness of Borrowers to the Lenders are incorporated herein by reference. If there is a conflict between any of the provisions of the DIP Credit Agreement and the provisions of this Amendment, then the provisions of this Amendment shall govern.

8. Governing Law. This Amendment shall be construed in accordance with the substantive laws (other than conflict laws) of the State of New York.

9. Full Force and Effect. Except as expressly amended hereby, all terms and conditions of the DIP Credit Agreement, and any and all exhibits annexed thereto and all other writings submitted by the Borrowers to the Administrative Agent pursuant thereto, shall remain unchanged and in full force and effect.

10. Counterparts. This Amendment may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which shall be considered one and the same document. Delivery of an executed counterpart of a signature page of this document by facsimile or by electronic mail or e-mail file attachment shall be effective as delivery of a manually executed counterpart of this document.

[Signature Page Follows]


**IN WITNESS WHEREOF**, the parties hereto have caused this Waiver and First Amendment to Senior Secured Super-Priority Senior Secured Super-Priority Debtor-In Possession Credit Agreement to be executed and delivered as of the day and year first above written.

**BORROWERS:**

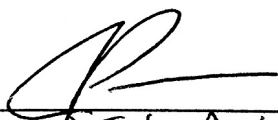
JW RESOURCES, INC.,  
as the Lead Borrower

By:   
Name: Joshua Porter  
Title: Director

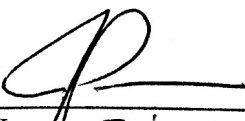
SCRB PROPERTIES, INC.,  
as a Borrower

By:   
Name: Joshua Porter  
Title: Director

STRAIGHT CREEK COAL MINING, INC.,  
as a Borrower

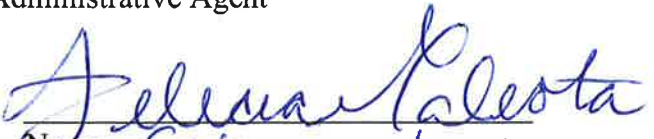
By:   
Name: Joshua Porter  
Title: Director

SCRB PROCESSING, INC.,  
as a Borrower

By:   
Name: Joshua Porter  
Title: Director

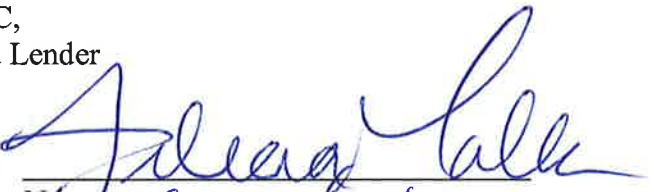
**ADMINISTRATIVE AGENT:**

GORDON BROTHERS FINANCE COMPANY,  
as Administrative Agent

By:   
Name: Felicia Balestra  
Title: Vice President

**LENDERS:**

GORDON BROTHERS FINANCE COMPANY,  
LLC,  
as a Lender

By:   
Name: Felicia Balestra  
Title: Vice President

## **Schedule I**

### **Specified Defaults**

1. The Borrowers failed to enter into a Stalking Horse Purchase Agreement by July 21, 2015, as required by Section 8.1(f)(xvii) of the DIP Credit Agreement, which is an Event of Default.
2. The Borrowers failed to file the Equipment Sale Procedures Motion by July 23, 2015, as required by Section 8.1(f)(xvi) of the DIP Credit Agreement, which is an Event of Default.
3. The Borrowers failed to file the Asset Sale Motion by July 23, 2015, as required by Section 8.1(f)(xviii) of the DIP Credit Agreement, which is an Event of Default.
4. The Borrowers failed to obtain an Asset Sale Bidding Procedures order by July 28, 2015, as required by Section 8.1(f)(xix) of the DIP Credit Agreement, which is an Event of Default.
5. The Borrowers failed to comply with Section 5.16(b) of the Credit Agreement as a result of items 1-4 above.
6. The threat by SCANA to challenge the SCANA purchase contract has resulted in an Event of Default under Section 8.1(m), which is an Event of Default.
7. The Borrowers failed to provide notice of Events of Default as required by Section 5.8(a) of the Credit Agreement resulting in an Event of Default under Section 8.1(c).

	Postpet. Wk 1	Postpet. Wk 2	Postpet. Wk 3	Postpet. Wk 4	Postpet. Wk 5	Postpet. Wk 6	Postpet. Wk 7	Postpet. Wk 8	Postpet. Wk 9	Postpet. Wk 10	Total
Beginning	6/29/15	7/6/15	7/13/15	7/20/15	7/27/15	8/3/15	8/10/15	8/17/15	8/24/15	8/31/15	6/29/15
Ending	7/5/15	7/12/15	7/19/15	7/26/15	8/2/15	8/9/15	8/16/15	8/23/15	8/30/15	9/6/15	9/6/15
Beginning Cash Balance	\$ (37,906)	\$ 1,025,737	\$ 1,285,076	\$ 285,158	\$ 326,833	\$ 200,000	\$ 200,000	\$ 200,000	\$ 200,000	\$ 200,000	\$ (37,906)
Receipts:											
Accounts Receivable	1,796,477	143,281	-	1,020,357	-	-	1,045,126	431,250	431,250	78,723	4,946,463
Other Receipts	28,874	110,000	-	-	-	-	55,000	-	-	-	193,874
Total Receipts	\$ 1,825,351	\$ 253,281	\$ -	\$ 1,020,357	\$ -	\$ -	\$ 1,100,126	\$ 431,250	\$ 431,250	\$ 78,723	\$ 5,140,337
Operating Disbursements:											
Underground Direct Costs & Utilities	194,064	-	-	-	-	-	-	-	-	-	194,064
Royalties:	-	-	-	-	-	-	247,354	-	-	-	247,354
Coal Taxes:	-	-	358,484	-	55,160	-	134,566	-	-	-	548,210
Payroll/Employee Benefits:	135,183	(6,058)	178,001	82,725	40,255	74,832	66,259	156,270	4,093	103,989	835,548
Security:	-	-	11,894	13,450	13,450	13,450	13,450	13,450	13,450	13,450	106,044
Trade Payables and Other Vendors:	(150,227)	-	25,670	11,903	19,785	40,019	22,942	40,019	13,464	35,374	58,950
Commissions:	-	-	-	-	-	-	12,593	-	-	-	12,593
Utilities (Plant, Loadout, Etc.):	1,356	-	-	-	7,106	-	-	-	-	19,250	27,713
Equipment Rental:	-	-	-	-	-	-	-	-	-	-	-
Total Operating Disbursements	\$ (180,377)	\$ 6,058	\$ (574,049)	\$ (108,077)	\$ (135,756)	\$ (128,301)	\$ (497,165)	\$ (209,739)	\$ (31,007)	\$ (172,063)	\$ (2,030,476)
Net Operating Cash Flow	\$ 1,644,974	\$ 259,339	\$ (574,049)	\$ 912,280	\$ (135,756)	\$ (128,301)	\$ 602,960	\$ 221,511	\$ 400,243	\$ (93,339)	\$ 3,109,862
Cumulative Net Operating Cash Flow	\$ 1,644,974	\$ 1,904,313	\$ 1,330,264	\$ 2,242,544	\$ 2,106,788	\$ 1,978,486	\$ 2,581,447	\$ 2,802,958	\$ 3,203,201	\$ 3,109,862	
Non-Operating Disbursements											
Bonding	-	-	-	-	-	-	-	-	-	160,350	160,350
Debt Service (Interest & TL Amort)	-	-	107,542	-	200,693	-	-	-	-	196,215	504,450
DIP Loan Fees & Interest	-	-	90,000	-	-	-	-	-	-	-	90,000
Total Non-Operating Disbursements	\$ -	\$ -	\$ (197,542)	\$ -	\$ (200,693)	\$ -	\$ -	\$ -	\$ -	\$ (356,565)	\$ (754,800)
Bankruptcy Disbursements											
Professional Fees - Cash Impact	29,531	-	152,000	96,453	109,500	49,547	574,500	49,500	74,500	70,750	1,206,281
US Trustee Fees	-	-	-	-	1,300	-	-	-	-	-	1,300
Adequate Assurance Deposits	-	-	-	-	37,923	-	-	-	-	-	37,923
Total Bankruptcy Disbursements	\$ (29,531)	\$ -	\$ (152,000)	\$ (96,453)	\$ (148,723)	\$ (49,547)	\$ (574,500)	\$ (49,500)	\$ (74,500)	\$ (70,750)	\$ (1,245,504)
Total Disbursements	\$ (209,908)	\$ 6,058	\$ (923,591)	\$ (204,530)	\$ (485,173)	\$ (177,849)	\$ (1,071,665)	\$ (259,239)	\$ (105,507)	\$ (599,377)	\$ (4,030,780)
Net Cash Flow	\$ 1,615,443	\$ 259,339	\$ (923,591)	\$ 815,827	\$ (485,173)	\$ (177,849)	\$ 28,460	\$ 172,011	\$ 325,743	\$ (520,654)	\$ 1,109,558
Cumulative Net Cash Flow	\$ 1,615,443	\$ 1,874,782	\$ 951,192	\$ 1,767,019	\$ 1,281,846	\$ 1,103,997	\$ 1,132,458	\$ 1,304,469	\$ 1,630,212	\$ 1,109,558	
Ending Cash Balance (pre Revolver Activity)	\$ 1,577,537	\$ 1,285,076	\$ 361,486	\$ 1,100,985	\$ (158,339)	\$ 22,151	\$ 228,460	\$ 372,011	\$ 525,743	\$ (320,654)	\$ 1,071,652
Net Revolver Activity	(551,800)	-	(76,328)	(774,152)	358,339	177,849	(28,460)	(172,011)	(325,743)	520,654	(871,652)
Ending Cash Balance (post Revolver Activity)	\$ 1,025,737	\$ 1,285,076	\$ 285,158	\$ 326,833	\$ 200,000	\$ 200,000	\$ 200,000	\$ 200,000	\$ 200,000	\$ 200,000	\$ 200,000

	Postpet. Wk 1	Postpet. Wk 2	Postpet. Wk 3	Postpet. Wk 4	Postpet. Wk 5	Postpet. Wk 6	Postpet. Wk 7	Postpet. Wk 8	Postpet. Wk 9	Postpet. Wk 10	Total
Beginning	6/29/15	7/6/15	7/13/15	7/20/15	7/27/15	8/3/15	8/10/15	8/17/15	8/24/15	8/31/15	6/29/15
Ending	7/5/15	7/12/15	7/19/15	7/26/15	8/2/15	8/9/15	8/16/15	8/23/15	8/30/15	9/6/15	9/6/15
Revolver / DIP Balances											
Beginning Prepetition Revolver Balance	1,392,463	840,663	840,663	-	-	-	-	-	-	-	1,392,463
Borrowings/(Paydowns)	(551,800)	-	(840,663)	-	-	-	-	-	-	-	(1,392,463)
Ending Prepetition Revolver Balance	840,663	840,663	-	-	-	-	-	-	-	-	-
Beginning DIP Balance / (Excess Sweep)			-	764,335	(9,816)	348,523	526,372	497,911	325,900	157	-
Net DIP Borrowing / (Paydown)			764,335	(774,152)	358,339	177,849	(28,460)	(172,011)	(325,743)	520,654	520,811
Ending DIP Balance / (Excess Sweep)			764,335	(9,816)	348,523	526,372	497,911	325,900	157	520,811	520,811
Total Prepetition Revolver & DIP Facility	\$ 840,663	\$ 840,663	\$ 764,335	\$ (9,816)	\$ 348,523	\$ 526,372	\$ 497,911	\$ 325,900	\$ 157	\$ 520,811	\$ 520,811
Professional Fee Detail											
Frost Brown Todd (Debtor Counsel)	-	-	50,000	80,000	37,500	37,500	37,500	37,500	37,500	12,500	330,000
Greenberg (GBF Counsel)	-	350,000	25,000	25,000	15,000	15,000	15,000	15,000	15,000	6,250	481,250
Dinsmore (GBF Local Counsel)	-	30,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	-	65,000
EVA (Debtor Investment Banker)	-	-	32,500	-	32,500	-	-	-	-	-	65,000
David Stetson (Debtor Senior Consultant)	-	-	52,500	1,953	25,000	(1,953)	25,000	-	25,000	-	127,500
Former Consultants	29,531	-	5,000	2,500	2,500	(10,000)	-	-	-	-	29,531
UCC Counsel	-	-	12,000	12,000	12,000	24,000	12,000	12,000	12,000	12,000	108,000
Total Professional Fees	\$ 29,531	\$ 380,000	\$ 182,000	\$ 126,453	\$ 129,500	\$ 69,547	\$ 94,500	\$ 69,500	\$ 94,500	\$ 30,750	\$ 1,206,281
less: Net GBF Counsel Fee Reserve Increase	-	(380,000)	(30,000)	(30,000)	(20,000)	(20,000)	480,000	(20,000)	(20,000)	40,000	-
Total Cash Professional Fees	\$ 29,531	\$ -	\$ 152,000	\$ 96,453	\$ 109,500	\$ 49,547	\$ 574,500	\$ 49,500	\$ 74,500	\$ 70,750	\$ 1,206,281