

extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

2. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory bases for the relief requested herein are sections 105(a), 363(b)(1), 503(b), 506(b), 507(a)(8), 541(d), and 1129(a)(9) of title 11 of the United States Code (the "*Bankruptcy Code*"), Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the "*Bankruptcy Rules*"), and Local Rules 2002-1, 9006-1, and 9013-1.

BACKGROUND

4. Danimer Scientific, Inc. (collectively with its subsidiaries "*Danimer*") is a performance-polymer company specializing in bioplastic replacements for traditional petroleum-based plastics. The Debtors are a leading producer of polyhydroxyalkanoate ("*PHA*"), a key biodegradable ingredient in a wide range of engineered materials that are plastics alternatives. Danimer sells and utilizes PHA under the proprietary "Nodax" brand name for use in a wide variety of plastic applications including straws, food containers, and cutlery, among other things. Danimer also produces proprietary biopolymers using a natural plastic called polylactic acid ("*PLA*") as a base resin. Danimer primarily operates out of its Winchester, Kentucky facility, which has a total plant capacity of up to 55 million pounds of Nodax-based (PHA) finished products per year and has a PLA reactive extrusion facility in Bainbridge, Georgia with a total PLA-based resin capacity of up to 25 million pounds per year.

5. On the date hereof (the "*Petition Date*"), the Debtors each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code (the "*Chapter 11 Cases*"). The Debtors commenced these Chapter 11 Cases to implement a timely and efficient process to maximize the

value of the Debtors' estates for the benefit of all stakeholders. Through these Chapter 11 Cases, the Debtors will immediately commence an orderly and value-maximizing wind-down of their businesses. The Debtors will use their time in chapter 11 to market a sale or sales of all or substantially all of their assets. The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. As of the Petition Date, no request for the appointment of a trustee or examiner has been made and no official committee of unsecured creditors has been appointed in these Chapter 11 Cases.

6. Additional information regarding the Debtors and these Chapter 11 Cases, including the Debtors' business operations, capital structure, financial condition, and the reasons for and objectives of these Chapter 11 Cases, is set forth in the *Declaration of Frank A. Pometti in Support of the Chapter 11 Cases and First-Day Motions* (the "**First Day Declaration**"), filed contemporaneously herewith and incorporated herein by reference.²

RELIEF REQUESTED

7. By this Motion, the Debtors seek entry of an interim order (the "**Interim Order**"), substantially in the form attached hereto as **Exhibit A**, and subsequently a final order (the "**Final Order**"), substantially in the form attached hereto as **Exhibit B**, (a) authorizing the Debtors to negotiate, remit, and pay (or use tax credits to offset) certain accrued and outstanding prepetition Taxes and Fees (as defined below) that will become payable during the pendency of these Chapter 11 Cases in the ordinary course of business, including, for the avoidance of doubt, Taxes and Fees for so-called "straddle" periods and obligations arising on account of Audits (as defined below) or Assessments (as defined below), without regard to whether such obligations

² Capitalized terms used but not otherwise defined in this Motion shall have the meaning set forth in the First Day Declaration.

accrued or arose before, on, or after the Petition Date;³ and (b) granting related relief. In addition, the Debtors request that the Court schedule a final hearing within approximately 30 days of the commencement of these Chapter 11 Cases to consider approval of this Motion on a final basis.

THE DEBTORS' TAXES AND FEES

8. In the ordinary course of the Debtors' businesses, the Debtors collect, withhold, and incur taxes and fees, including property taxes, franchise and income taxes, certain administrative, governmental, and regulatory fees, and assessments (collectively, the "*Taxes and Fees*").⁴ The Debtors pay and remit the Taxes and Fees quarterly, semi-annually, or annually, as applicable, to various international, federal, state, and local governments, including taxing and licensing authorities (collectively, the "*Governmental Authorities*"). A schedule identifying substantially all Governmental Authorities is attached hereto as **Exhibit C**.⁵ The Debtors pay the Taxes and Fees through checks and electronic funds transfers that are processed through their banks and other financial institutions. From time to time, the Debtors may also receive tax credits for overpayments or refunds with respect to Taxes and Fees.

9. Additionally, the Debtors may become subject to further routine audit investigations on account of Audits (as defined below) during these Chapter 11 Cases. Audits may result in additional Assessments (as defined below) against the Debtors. Accordingly, the Debtors

³ The Debtors reserve all rights to seek reimbursement of any "straddle" Taxes and Fees that are ultimately determined to not be entitled to administrative or priority treatment.

⁴ The Debtors do not seek authority to collect and pay any employee withholding taxes under this Motion, but rather request such authority as part of the *Motion of Debtors for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Pay Prepetition Wages, Salaries, Other Compensation, and Reimbursable Expenses and (B) Continue Employee Benefits Programs, and (II) Granting Related Relief*, filed contemporaneously herewith.

⁵ While the Debtors have endeavored to include each Governmental Authority on **Exhibit C**, the Debtors may have inadvertently omitted Governmental Authorities from **Exhibit C**. By this Motion, the Debtors respectfully request relief with respect to Taxes and Fees payable to all Governmental Authorities, regardless of whether such Governmental Authority is specifically identified on **Exhibit C**.

seek authority, but not direction, to pay, remit, contest, and/or appeal tax obligations on account of such Assessments as they arise in the ordinary course of business.

10. As of the Petition Date, the Debtors estimate that the amount of accrued but unpaid Taxes and Fees is approximately \$168,000, of which approximately \$20,500 will become due and owing within the first 21 days of these Chapter 11 Cases. Such estimated Taxes and Fees are summarized below:

Category	Estimated Interim Amount	Estimated Final Amount
Property Taxes	\$0	\$138,000
Franchise Taxes and Income Taxes	\$20,000	\$20,000
Regulatory and Other Taxes & Fees	\$500	\$10,000
	\$20,500	\$168,000

A. Property Taxes

11. The Debtors incur various state and local property taxes against the Debtors' real and personal property (collectively, "**Property Taxes**"). The Debtors are required to pay Property Taxes on an annual basis to avoid the imposition and/or enforcement of statutory liens on their real and personal property. In 2024, the Debtors paid approximately \$635,000 on account of Property Taxes.

12. As of the Petition Date, the Debtors estimate that the amount of accrued but unpaid Property Taxes is approximately \$138,000, none of which will become due and owing within the first 21 days of these Chapter 11 Cases.

B. Franchise Taxes and Income Taxes

13. The Debtors incur various state and local franchise taxes and fees on account of doing business in certain states and certain communities (collectively, "*Franchise Taxes*"). The Debtors are required to pay Franchise Taxes in order to remain in good standing and continue conducting their businesses pursuant to applicable state and local laws during the orderly wind-down and liquidation process. Depending on the taxing jurisdiction, Franchise Taxes may be assessed based on the applicable Debtor's capital structure, as a percentage of gross receipts or income, or as a fixed amount. The Debtors also incur various corporate income taxes on their taxable net income (collectively, "*Income Taxes*"). Income Taxes are generally calculated as a percentage of net or gross income, as applicable. The Debtors are required to remit and pay Income Taxes on an annual basis in order to remain in good standing and continue conducting their businesses pursuant to applicable federal, state, and local laws, while pursuing an orderly wind-down. State Income Taxes are generally calculated as a percentage of net income, but certain states assess a minimum amount of Income Taxes for doing business in that state regardless of net income. In 2024, the Debtors paid approximately \$286,000 on account of Franchise Taxes and Income Taxes.

14. As of the Petition Date, the Debtors estimate that the amount of accrued but unpaid Franchise Taxes and Income Taxes is approximately \$20,000, all of which will become due and owing within the first 21 days of these Chapter 11 Cases.

C. Regulatory and Other Taxes and Fees

15. The Debtors collect or incur various federal and state taxes and fees related to business licensing, import and export activities, regulatory, and other matters (collectively, "*Regulatory and Other Taxes and Fees*"). The Debtors are required to pay Regulatory and Other

Taxes and Fees on a quarterly, semi-annual, or annual basis, as applicable. In 2024, the Debtors paid approximately \$10,000 on account of Regulatory and Other Taxes and Fees.

16. As of the Petition Date, the Debtors estimate that the amount of accrued but unpaid Regulatory and Other Taxes and Fees is approximately \$10,000, of which \$500 of will become due and owing within the first 21 days of these Chapter 11 Cases.

D. Audits and Assessments

17. Although the Debtors are not currently subject to any ongoing audit investigations, they may be subject to future audit investigations by certain Governmental Authorities on account of tax returns and/or obligations from prior years and/or on account of the wind-down activities (the "*Audits*"). In such case, the Governmental Authorities performing the Audits may seek to impose additional prepetition Taxes and Fees, including interest on late payment of taxes (if applicable) (such additional Taxes and Fees, the "*Assessments*").

18. To the extent there are any future Audits or Assessments, the Debtors may contest such Audits and Assessments in appropriate judicial or administrative proceedings, as well as the amount that may need to be posted as collateral to contest any asserted Assessment amounts. The Debtors expressly state that nothing in this Motion or any related order constitutes or should be construed as an admission of liability by the Debtors with respect to any Audit or Assessment. Furthermore, the Debtors expressly reserve all rights with respect to any Audit or Assessment and reserve the right to contest and/or appeal any Assessment as a result of any Audit.

E. Authority to Contest and Settle Taxes and Fees and Other Relief

19. Although paying the Taxes and Fees is critical to the continued operations of the Debtors' businesses, the Debtors may have appropriate grounds and wish to contest certain Taxes and Fees. As such, the Debtors respectfully request that such relief granted in this Motion be without prejudice to the Debtors' rights to contest the amounts of any Taxes and Fees on any

grounds they deem appropriate or the Debtors' ability to request further relief related to the Taxes and Fees in the future. The Debtors propose that prior to making a payment to any of the Governmental Authorities under this Motion, the Debtors be authorized, in their discretion, to settle all or some of the prepetition claims of such Governmental Authorities for less than their face amount without further notice or hearing.

BASIS FOR RELIEF REQUESTED

A. Certain of the Taxes and Fees May Not Be Property of the Debtors' Estates.

20. To the extent the Debtors have collected any Taxes and Fees from third parties, such amounts may be held in trust for the benefit of the Governmental Authorities and are not property of the Debtors' estates. *See*, 26 U.S.C. § 7501(a) (stating that certain taxes and fees are held in trust); *Begier v. I.R.S.*, 496 U.S. 53, 59 (1990) (holding that certain taxes are property held by the debtor in trust for another and, as such, do not constitute property of the estate). As such, these Taxes and Fees are not property of the Debtors' estates under section 541 of the Bankruptcy Code. *See City of Farrell v. Sharon Steel Corp.*, 41 F.3d 92, 97 (3d Cir. 1994) (holding that income required to be withheld by city ordinance and state law is held "in trust" for the taxing authority). To the extent certain of the Taxes and Fees constitute "trust fund" taxes, they are not property of the Debtors' estates under section 541(d) of the Bankruptcy Code, because the Debtors may not have an equitable interest in funds held on account of such "trust fund" taxes. *See* 11 U.S.C. § 507(d); *In re Am. Int'l Airways, Inc.*, 70 B.R. 102, 104-05 (Bankr. E.D. Pa. 1987). As such, the Debtors should be permitted to pay those funds, if any, to the Governmental Authorities as they become due.

21. Further, in many states, officers and directors of the collecting entity may be held personally liable for the payment of certain trust fund taxes to the Governmental Authorities. *See, e.g.*, IRC § 6672(a); *Slodov v. United States*, 436 U.S. 238 (1978). If certain of the Taxes and Fees

are not paid, the Debtors' officers and directors may be subject to lawsuits during the pendency of these Chapter 11 Cases. Such lawsuits would prove distracting for the Debtors and the named officers and directors, whose immediate and full-time attention to the Debtors' operations is required during these Chapter 11 Cases to ensure a value-maximizing liquidation. It is in the best interest of the Debtors' estates to eliminate the possibility of such time-consuming, costly, and potentially damaging distractions. For the avoidance of doubt, the Debtors hereby request authority to remit and pay the Taxes and Fees as provided herein regardless of whether such Taxes and Fees constitute trust fund obligations.

B. Certain of the Taxes and Fees May Be Secured or Priority Claims Entitled to Special Treatment Under the Bankruptcy Code.

22. Claims for certain of the Taxes and Fees may be either secured by statutory liens or entitled to priority status under section 507(a)(8) of the Bankruptcy Code. *See* 11 U.S.C. § 507(a)(8)(G). If the Taxes and Fees are deemed to be entitled to priority status, section 1129(a)(9)(C) of the Bankruptcy Code requires that they be paid through regular installment payments (a) of a total value, as of the effective date of a plan, equal to the allowed amount of each such claim; (b) over a period not exceeding five years after the Petition Date; and (c) in a manner no less favorable than the most favored non-priority claim provided for by a plan (other than a convenience class under section 1122(b) of the Bankruptcy Code). *See* 11 U.S.C. § 1129(a)(9)(C). Moreover, to the extent that such amounts are entitled to priority treatment under the Bankruptcy Code, Governmental Authorities may attempt to assess fees, interest, and penalties if such amounts are not paid. *See* 11 U.S.C. § 507(a)(8) (granting priority status to "a penalty related to a claim of a kind specified in this paragraph and in compensation for actual pecuniary loss."). Accordingly, the Debtors' payment of the Taxes and Fees now, in all likelihood, would affect only the timing of the payments and would reduce the amount of Taxes and Fees owed if

later paid under a plan (due to the potential of higher interest rates and late fees attributable to delinquent tax payments). Therefore, other creditors and parties in interest would not be prejudiced if the relief sought herein were granted by this Court.

C. Payment of the Taxes and Fees as Provided Herein is a Sound Exercise of the Debtors' Business Judgment.

23. Payment of the Taxes and Fees may also be authorized under section 363(b)(1) of the Bankruptcy Code, which permits "[t]he trustee, after notice and a hearing, [to] use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). "In determining whether to authorize the use, sale or lease of property of the estate under this section, courts require the debtor to show that a sound business purpose justifies such actions." *Dai-Ichi Kangyo Bank, Ltd. v. Montgomery Ward Holding Corp. (In re Montgomery Ward Holding Corp.)*, 242 B.R. 147, 153 (D. Del. 1999) (collecting cases); *In re Meridian Auto. Sys. Composite Operations, Inc.*, 372 B.R. 710, 714 (Bankr. D. Del. 2007) (granting the debtor authority to pay prepetition obligations owed to certain critical vendors); *In re Primary Health Sys., Inc.*, 275 B.R. 709-10 (Bankr. D. Del. 2002) (allowing payment of prepetition wages upon a finding that such relief was "essential to the continued operation of the Debtors' businesses"); *In re Ionosphere Clubs, Inc.*, 98 B.R. 174-75 (Bankr. S.D.N.Y. 1989) (finding that a sound business justification existed to justify payment of prepetition wages). Here, it is a sound exercise of the Debtors' business judgment to pay the Taxes and Fees as the Debtors' failure to remit and pay the Taxes and Fees could have a material adverse impact on their ability to operate and preserve the value of equipment, as the Governmental Authorities could attempt to prevent or delay the Debtors' operations if the Taxes and Fees are not paid.

24. Furthermore, section 105(a) of the Bankruptcy Code provides that a court "may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions

of" the Bankruptcy Code, pursuant to the "doctrine of necessity." 11 U.S.C. § 105(a). Under section 105(a) of the Bankruptcy Code and the doctrine of necessity, the bankruptcy court may exercise its broad grant of equitable powers to permit the payment of prepetition obligations when such payment is essential to the continued operation of the debtor's business. *See, e.g., In re Just for Feet, Inc.*, 242 B.R. 821, 824-25 (D. Del. 1999) (holding that section 105(a) of the Bankruptcy Code provides a statutory basis for the payment of prepetition claims under the doctrine of necessity and noting that "[t]he Supreme Court . . . recognize[s] the court's power to authorize payment of pre-petition claims when such payment is necessary for the debtor's survival during chapter 11"); *see also In re Lehigh & New Eng. Ry.*, 657 F.2d 570, 581 (3d Cir. 1981) (holding that a court may authorize payment of prepetition claims if such payment is essential to a debtor's continued operation); *In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191-92 (Bankr. D. Del. 1994) (explaining that the doctrine of necessity is the standard in the Third Circuit for enabling a court to authorize the payment of prepetition claims prior to confirmation of a plan).

25. That the payment of the Taxes and Fees is necessary to avoid potential administrative and operational difficulties is unquestionable. If the Taxes and Fees were not paid, the Governmental Authorities may attempt to take precipitous action, including additional state audits, lien filings, and lift stay motions. *See* 11 U.S.C. § 506(b). Only the prompt and regular payment of the Taxes and Fees will avoid these and other unnecessary governmental actions.

26. Similar relief to that requested herein has been granted by bankruptcy courts within this District. *See, e.g., In re LL Flooring Holdings, Inc.*, No. 24-11680 (BLS) (Bankr. D. Del. Sept. 4, 2024) (authorizing debtors to pay prepetition taxes and fees in the ordinary course of business); *In re SunPower Corp.*, No. 24-11649 (CTG) (Bankr. D. Del. Aug. 28, 2024) (same); *In re Vyair Medical, Inc.*, No. 24-11217 (BLS) (Bankr. D. Del. July 10, 2024) (same); *In re*

Express, Inc., No. 24-10831 (KBO) (Bankr. D. Del. May 15, 2024) (same). The Debtors submit that the present circumstances warrant similar relief in these Chapter 11 Cases.

27. For the foregoing reasons, the Debtors seek authority to pay, perform, or otherwise honor, any or all obligations with respect to Taxes and Fees.

D. The Debtors' Banks Should Be Authorized to Honor Checks, Wire Transfers, and Electronic Fund Transfers.

28. The Debtors have sufficient liquidity to pay the amounts described in this Motion in the ordinary course of business. In addition, under the Debtors' existing cash management system, the Debtors can readily identify checks, wire transfers, or electronic fund transfer requests as relating to an authorized payment in respect of the Taxes and Fees. Accordingly, the Debtors believe that there is minimal risk that checks, wire transfers, and electronic fund transfer requests that the Court has not authorized will be honored inadvertently. The Debtors respectfully request that the Court authorize all applicable financial institutions, when requested by the Debtors, to receive, process, honor, and pay any and all checks, wire transfers, or electronic fund transfer requests in respect of the relief requested in this Motion. Further, the Debtors also seek authority to issue new postpetition checks, wire transfers, or electronic fund transfer requests to replace any prepetition checks, wire transfers, or funds transfers that may be dishonored or rejected as a result of the commencement of these Chapter 11 Cases.

REQUEST FOR IMMEDIATE RELIEF

29. Bankruptcy Rule 6003 empowers a court to grant relief within the first 21 days after the Petition Date "to the extent that relief is necessary to avoid immediate and irreparable harm." For the reasons discussed herein and in the First Day Declaration, authorizing the Debtors to pay certain prepetition Taxes and Fees that will become payable during the pendency of these Chapter 11 Cases, as well as granting the other relief requested herein, is critical to enabling the Debtors to

effectively transition to operating as chapter 11 debtors. Failure to receive such authorization and other relief during the first 21 days of these Chapter 11 Cases might force the Debtors to shut down their facilities abruptly, potentially causing damage to their equipment and inhibiting the Debtors' ability to focus on preserving and maximizing the value of the Debtors' estates in an orderly liquidation. Accordingly, the Debtors submit that they have satisfied the "immediate and irreparable harm" standard of Bankruptcy Rule 6003 to support granting the relief requested herein. As such, the relief requested is necessary in order for the Debtors to operate their businesses in the ordinary course and preserve the value of the Debtors' equipment and maximize the value of their estates for the benefit of all stakeholders.

WAIVER OF BANKRUPTCY RULE 6004(a) AND 6004(h)

30. To implement the foregoing successfully, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the 14-day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h).

RESERVATION OF RIGHTS

31. Unless specifically provided herein, and notwithstanding any actions taken hereunder, nothing in this Motion is intended to be, nor should it be, construed as (a) an implication or admission as to the validity or priority of any claim, lien, or interest against the Debtors; (b) an impairment or waiver of the Debtors' or any other party in interest's rights to contest or dispute any such claim, lien, or interest; (c) a promise or requirement to pay any prepetition claim or interest; (d) an implication or admission that any particular claim or interest is of a type specified or defined in this Motion or any proposed order; or (e) a waiver of the Debtors' or any other party in interest's rights under the Bankruptcy Code or any other applicable law. In addition, nothing in this Motion or the relief requested herein should be interpreted as the assumption or rejection of any executory contract or unexpired lease under section 365 of the Bankruptcy Code.

NOTICE

32. Notice of this Motion has been provided to: (a) the Governmental Authorities; (b) the Office of the United States Trustee for the District of Delaware; (c) counsel to the Super Senior Bridge Loan Lenders; (d) counsel to the IP Term Loan Lenders; (e) the Debtors' 30 largest unsecured creditors (on a consolidated basis); (f) those parties entitled to notice pursuant to Local Rule 9013-1(m); (g) those persons who have formally appeared in these Chapter 11 Cases and requested service pursuant to Bankruptcy Rule 2002; (h) the Securities and Exchange Commission; (i) the Internal Revenue Service; and (j) all other applicable government agencies to the extent required by the Bankruptcy Rules or the Local Rules. In light of the nature of the relief requested in this Motion, the Debtors submit that no further notice is necessary.

NO PRIOR REQUEST

33. No prior motion for the relief requested herein has been made to this Court or any other court.

The Debtors respectfully request that the Court enter the Interim Order and the Final Order, substantially in the forms attached hereto as **Exhibits A** and **B**, respectively, and grant them such other and further relief to which the Debtors may be justly entitled.

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Dated: March 18, 2025
Wilmington, Delaware

/s/ Matthew P. Milana

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Proposed Attorneys for the Debtors and Debtors in Possession

EXHIBIT A

Proposed Interim Order

having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that the Court may enter a final order consistent with Article III of the United States Constitution; and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having reviewed the Motion and the First Day Declaration; and the Court having found that the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates, as contemplated by Bankruptcy Rule 6003; and the Court having found that the relief requested in the Motion is in the best interests of the Debtors and their respective estates, creditors, and other parties in interest; and the Court having found that proper and adequate notice of the Motion and hearing thereon has been given and that no other or further notice is necessary under the circumstances; and the Court having found that good and sufficient cause exists for granting the relief requested in the Motion after considering the Motion and all of the proceedings before the Court in connection with the Motion, it is HEREBY ORDERED THAT:

1. The Motion is granted on an interim basis as set forth herein.
2. The final hearing on the Motion shall be held on _____, 2025, at __: __ .m., prevailing Eastern Time. Any objections or responses to entry of a final order on the Motion shall be filed on or before 4:00 p.m., prevailing Eastern Time, on _____, 2025, and shall be served on: (a) the Debtors, 140 Industrial Boulevard, Bainbridge, Georgia 39817, Attn: Stephen Martin; (b) proposed co-counsel to the Debtors, Vinson & Elkins LLP, The Grace Building, 1114 Avenue of the Americas, 32nd Floor, New York, New York 10036, Attn: George R. Howard and David S. Meyer, and 2001 Ross Avenue, Suite 3900, Dallas, Texas 75201, Attn: Trevor G. Spears and Sara Zoglman; (c) proposed co-counsel to the Debtors, Richards, Layton, & Finger, P.A., One Rodney Square 920 North King Street, Wilmington, Delaware 19801, Attn: Daniel J. DeFranceschi,

Zachary I. Shapiro, Matthew P. Milana, and Alexander R. Steiger; (d) counsel to the DIP Lenders, Proskauer Rose LLP, Eleven Times Square, New York, New York 10036, Attn. David M. Hillman and Dylan J. Marker, and Landis Rath & Cobb LLP, 919 Market Street, Suite 1800, Wilmington, Delaware 19801, Attn: Adam G. Landis and Matthew R. Pierce; (e) the Office of the United States Trustee for the District of Delaware; and (f) the official committee of unsecured creditors (if any) appointed in these Chapter 11 Cases and their counsel.

3. The Debtors are authorized on an interim basis to negotiate, remit, and pay (or use tax credits to offset) all accrued and outstanding prepetition Taxes and Fees due and owing to the Governmental Authorities (including the Governmental Authorities listed on Exhibit C to the Motion), including obligations arising on account of Audits and Assessments due and owing within the first 21 days of these Chapter 11 Cases, in the ordinary course of business, at such time when the Taxes and Fees are payable, in an aggregate interim amount not to exceed \$20,500; *provided* that notwithstanding anything to the contrary herein or in the Motion, in the event the Debtors make a payment with respect to any Taxes and Fees for the prepetition portion of any "straddle" amount, and this Court subsequently determines such amount was not entitled to administrative or priority treatment under section 507(a)(8) or 503(b)(1)(B) of the Bankruptcy Code, the Debtors may (but shall not be required to) seek an order from this Court requiring reimbursement of any such payment.

4. Nothing in this Interim Order or the Motion shall constitute an admission of liability by the Debtors with respect to any Audit or Assessment or impair any rights of the Debtors to contest any such Audit or Assessment. Notwithstanding the relief granted herein or any actions taken hereunder, nothing contained in this Interim Order shall prejudice the Debtors' rights to

contest the amounts of any Taxes and Fees on any grounds they deem appropriate or the Debtors' ability to request further relief related to the Taxes and Fees in the future.

5. The Debtors are authorized, in their discretion, to settle some or all of the Taxes and Fees for less than their face amount without further notice or hearing prior to making a payment under this Interim Order to any of the Governmental Authorities.

6. The Debtors are further authorized to file amended tax returns, including for prepetition periods, and pay any Taxes and Fees in connection therewith.

7. To the extent that the Debtors have overpaid any Taxes and Fees, the Debtors are authorized to seek a refund or credit.

8. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Interim Order in accordance with the Motion.

9. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Interim Order.

10. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these Chapter 11 Cases with respect to prepetition amounts owed in connection with any Taxes and Fees.

11. Notwithstanding anything to the contrary contained herein, (i) any payment made or to be made, or authorization obtained, hereunder shall be subject to the requirements imposed

on the Debtors under any approved debtor-in-possession financing facility or any order regarding the use of cash collateral approved by the Court in these Chapter 11 Cases, including, without limitation, the *Interim Order (I) Authorizing the Debtors to Obtain Postpetition Senior Secured Financing, (II) Authorizing the Debtors to Use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection, (V) Modifying the Automatic Stay, (VI) Scheduling A Final Hearing, and (VII) Granting Related Relief* (the "**DIP Order**"), and (ii) to the extent there is any inconsistency between the terms of the DIP Order and any action taken or proposed to be taken hereunder, the DIP Order and the Approved Budget (as defined in the DIP Order) shall control. For the avoidance of doubt, any payments made pursuant to this Order are subject to the Approved Budget, subject to any Permitted Variance (as defined in the DIP Order).

12. Unless specifically provided herein, and notwithstanding any actions taken hereunder, nothing contained in the Motion or this Interim Order or any payment made pursuant to this Interim Order shall constitute, nor is it intended to constitute, an implication or admission as to the validity or priority of any claim or lien against the Debtors, a waiver of the Debtors', or any party in interest's, rights to subsequently dispute such claim or lien, a promise or requirement to pay any prepetition claim, an implication or admission that any particular claim is of a type specified or defined in the Motion or any proposed order, a waiver of the Debtors', or any other party in interest's, rights under the Bankruptcy Code or any other applicable law, or the assumption or adoption of any agreement, contract, or lease under section 365 of the Bankruptcy Code.

13. Bankruptcy Rule 6003(b) has been satisfied.

14. The requirements of Bankruptcy Rule 6004(a) are waived.

15. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Interim Order shall be immediately effective and enforceable upon entry of this Interim Order.

16. The Court retains jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Interim Order.

EXHIBIT B

Proposed Final Order

having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that the Court may enter a final order consistent with Article III of the United States Constitution; and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having entered the Interim Order; and the Court having found that the relief requested in the Motion is in the best interests of the Debtors and their respective estates, creditors, and other parties in interest; and the Court having found that proper and adequate notice of the Motion and hearing thereon has been given and that no other or further notice is necessary; and the Court having found that good and sufficient cause exists for granting the relief requested in the Motion after considering the Motion and all of the proceedings before the Court in connection with the Motion, it is HEREBY ORDERED THAT:

1. The Motion is granted on a final basis as set forth herein.
2. The Debtors are authorized to negotiate, remit, pay (or use tax credits to offset), and negotiate all accrued and outstanding prepetition Taxes and Fees due and owing to the Governmental Authorities (including those Governmental Authorities listed on **Exhibit C** to the Motion), including obligations arising on account of Audits and Assessments in the ordinary course of business, at such time when the Taxes and Fees are payable, in an aggregate amount not to exceed \$168,000; *provided* that notwithstanding anything to the contrary herein or in the Motion, in the event the Debtors make a payment with respect to any Taxes and Fees for the prepetition portion of any "straddle" amount, and this Court subsequently determines such amount was not entitled to administrative or priority treatment under section 507(a)(8) or 503(b)(1)(B) of the Bankruptcy Code, the Debtors may (but shall not be required to) seek an order from this Court requiring reimbursement of any such payment.

3. Nothing in this Final Order or the Motion shall constitute an admission of liability by the Debtors with respect to any Audit or Assessment or impair any rights of the Debtors to contest any such Audit or Assessment. Notwithstanding the relief granted herein or any actions taken hereunder, nothing contained in this Final Order shall prejudice the Debtors' rights to contest the amounts of any Taxes and Fees on any grounds they deem appropriate or the Debtors' ability to request further relief related to the Taxes and Fees in the future.

4. The Debtors are authorized, in their discretion, to settle some or all of the Taxes and Fees for less than their face amount without further notice or hearing prior to making a payment under this Final Order to any of the Governmental Authorities.

5. The Debtors are further authorized to file amended tax returns, including for prepetition periods, and pay any Taxes and Fees in connection therewith.

6. To the extent that the Debtors have overpaid any Taxes and Fees, the Debtors are authorized, but not directed, to seek a refund or credit.

7. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Final Order in accordance with the Motion.

8. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Final Order.

9. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored

as a consequence of these Chapter 11 Cases with respect to prepetition amounts owed in connection with any Taxes and Fees.

10. Notwithstanding anything to the contrary contained herein, (i) any payment made or to be made, or authorization obtained, hereunder shall be subject to the requirements imposed on the Debtors under any approved debtor-in-possession financing facility or any order regarding the use of cash collateral approved by the Court in these Chapter 11 Cases, including, without limitation, the *Interim Order (I) Authorizing the Debtors to Obtain Postpetition Senior Secured Financing, (II) Authorizing the Debtors to Use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection, (V) Modifying the Automatic Stay, (VI) Scheduling A Final Hearing, and (VII) Granting Related Relief* (the "**DIP Order**"), and (ii) to the extent there is any inconsistency between the terms of the DIP Order and any action taken or proposed to be taken hereunder, the DIP Order and the Approved Budget (as defined in the DIP Order) shall control. For the avoidance of doubt, any payments made pursuant to this Order are subject to the Approved Budget, subject to any Permitted Variance (as defined in the DIP Order).

11. Unless specifically provided herein, and notwithstanding any actions taken hereunder, nothing contained in the Motion or this Final Order or any payment made pursuant to this Final Order shall constitute, nor is it intended to constitute, an implication or admission as to the validity or priority of any claim or lien against the Debtors, a waiver of the Debtors', or any party in interest's, rights to subsequently dispute such claim or lien, a promise or requirement to pay any prepetition claim, an implication or admission that any particular claim is of a type specified or defined in the Motion or any proposed order, a waiver of the Debtors', or any other

party in interest's, rights under the Bankruptcy Code or any other applicable law, or the assumption or adoption of any agreement, contract, or lease under section 365 of the Bankruptcy Code.

12. The requirements of Bankruptcy Rule 6004(a) are waived.

13. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Final Order shall be immediately effective and enforceable upon entry of this Final Order.

14. The Court retains jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Final Order.

EXHIBIT C**Governmental Authorities**

Governmental Authority	Tax Type	Address
Alabama Department of Revenue	Franchise Taxes and Income Taxes	50 N. Ripley, Montgomery, AL 36104
Athens-Clarke County Dept. of Finance	Franchise Taxes and Income Taxes	P O Box 1748, Athens, GA 30603
City of Bainbridge	Franchise Taxes and Income Taxes	P O Box 946, Bainbridge, GA 39818
City of Winchester Finance Department	Regulatory and Other Taxes & Fees	P O Box 4135, Winchester, KY 40392
City of Winchester Finance Department	Property Taxes	P O Box 4135, Winchester, KY 40392
Clark County Clerk	Property Taxes	P O Box 4060, Winchester, KY 40392
Clark County School District	Property Taxes	1600 W Lexington Ave, Winchester, KY 40391
Clark County Sheriff's Dept	Property Taxes	17 Cleveland Ave, Winchester, KY 40391
Clarke County Tax Commissioner	Property Taxes	P O Box 1768, Athens, GA 30603
Commonwealth of Massachusetts	Franchise Taxes and Income Taxes	P O Box 847840, Boston, MA 02284
Connecticut Department of Revenue	Franchise Taxes and Income Taxes	450 Columbus Blvd, Hartford, CT 06103
Decatur County Tax Commissioner	Property Taxes	P O Box 246, Bainbridge, GA 39818
Delaware Division of Revenue	Franchise Taxes and Income Taxes	820 N. French Street, Wilmington, DE 19801
Dept. of the Treasury, Alcohol and Tobacco Tax and Trade Bureau (TTB)	Regulatory and Other Taxes & Fees	1310 G Street, NW, Box 12, Washington, DC 20005
Environmental Protection Agency (EPA)	Regulatory and Other Taxes & Fees	1200 Pennsylvania Avenue, N.W. Washington, DC 20460
Florida Department of Revenue	Franchise Taxes and Income Taxes	2450 Shumard Oak Blvd, Tallahassee, FL 32311
Food and Drug Administration (FDA)	Regulatory and Other Taxes & Fees	10903 New Hampshire Ave., Silver Spring, MD 20993
Franchise Tax Board	Franchise Taxes and Income Taxes	P O Box 924857, Sacramento, CA 94257
Georgia Department of Revenue	Franchise Taxes and Income Taxes	P O Box 105136, Atlanta, GA 30348

Governmental Authority	Tax Type	Address
Illinois Department of Revenue	Franchise Taxes and Income Taxes	Willard Ice Building, 101 West Jefferson St, Springfield, IL 62702
Indiana Department of Revenue	Franchise Taxes and Income Taxes	100 N. Senate Ave, Indianapolis, IN 46204
Kentucky Cabinet for Economic Development	Regulatory and Other Taxes & Fees	300 West Broadway, Frankfort, KY 40601
Kentucky Department for Environmental Protection	Regulatory and Other Taxes & Fees	300 Sower Boulevard, 2nd Floor, Frankfort, KY 40601
Kentucky Department of Revenue	Property Taxes	501 High St, Frankfort, KY 40601
Kentucky State Treasurer	Regulatory and Other Taxes & Fees	300 Sower Blvd, Frankfort, KY 40601
Louisiana Department of Revenue	Franchise Taxes and Income Taxes	P O Box 201, Baton Rouge, LA 70821
Massachusetts Department of Revenue	Franchise Taxes and Income Taxes	100 Cambridge Street, Boston, MA 02114
New York State Corporation Tax	Franchise Taxes and Income Taxes	P O Box 15163, Albany, NY 12212-5163
North Carolina Department of Revenue	Regulatory and Other Taxes & Fees	P.O. BOX 25000, Raleigh, NC 27640-0640
Oklahoma Tax Commission	Franchise Taxes and Income Taxes	2501 North Lincoln Boulevard, Oklahoma City, OK 73194
Pennsylvania Department of Revenue	Franchise Taxes and Income Taxes	1846 Brookwood St, Harrisburg, PA 17104
Rhode Island Division of Taxation	Franchise Taxes and Income Taxes	One Capital Hill, Providence, RI 02908
South Carolina Department of Revenue	Franchise Taxes and Fees	33 Villa Rd Suite 5, Greenville, SC 29615
State of California Franchise Tax Board	Franchise Taxes and Income Taxes	P O Box 942857, Sacramento, CA 94285
State of Delaware	Franchise Taxes and Income Taxes	P O Box 5509, Binghamton, NY 13902-5509
State of Rhode Island Div. of Taxation	Franchise Taxes and Income Taxes	One Capital Hill, Providence, RI 02908-5811
State of Wisconsin - Dept. of Workforce Dev.	Regulatory and Other Taxes & Fees	P O Box 3025, Milwaukee, WI 53201-3028
Tennessee Department of Revenue	Franchise Taxes and Income Taxes	500 Deaderick Street, Nashville, TN 37242
Texas Comptroller of Public Accounts	Franchise Taxes and Income Taxes	P O Box 149348, Austin, TX 78714-9348
Town of Gates	Regulatory and Other Taxes & Fees	1605 Buffalo Road, Rochester, NY 14624

Governmental Authority	Tax Type	Address
Vermont Department of Taxes	Franchise Taxes and Income Taxes	133 State St, Montpeller, VT 05633-1401
Virginia Department of Taxation	Franchise Taxes and Income Taxes	1957 Westmoreland Street, Richmond, VA 23230
Wisconsin Department of Revenue	Franchise Taxes and Income Taxes	P O Box 3025, Milwaukee, WI 53201-3028