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**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

|  |   |   |
|--|---|---|
| <b>In re</b>   | ) |   |
|  | ) | <b>Chapter 11</b>                       |
|  | ) |   |
| <b>A.B.C. CARPET CO., INC., <i>et al.</i>,<sup>1</sup></b> | ) | <b>Case No. 21-11591</b>                |
|  | ) |   |
| <b>Debtors.</b>  | ) | <b>(Joint Administration Requested)</b> |
|  | ) |   |

**DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL  
ORDERS (A) AUTHORIZING DEBTORS AND DEBTORS IN POSSESSION  
TO OBTAIN SUPERPRIORITY POSTPETITION FINANCING,  
(B) AUTHORIZING USE OF CASH COLLATERAL, (C) GRANTING LIENS  
AND SUPERPRIORITY CLAIMS, (D) GRANTING ADEQUATE PROTECTION  
TO PREPETITION SECURED PARTY, (E) MODIFYING THE AUTOMATIC STAY,  
(F) SCHEDULING A FINAL HEARING, AND (G) GRANTING RELATED RELIEF**

<sup>1</sup> The Debtors in these chapter 11 cases (the "**Chapter 11 Cases**"), along with the last four digits of each Debtor's federal tax identification number, as applicable, are: A.B.C. Carpet Co., Inc. (6537), A.B.C. Home Furnishings, Inc. (6915), and A.B.C. Oriental Carpets, Inc. (3679). The Debtors' principal place of business is 888 Broadway, New York, New York 10003.

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) respectfully state as follows in support of this Motion.

**Preliminary Statement**

The Debtors’ business operations have been severely impacted by the pandemic, including government-mandated store closures, fulfillment issues due to supply chain shortages, production delays, and delays in return to work for nearby commercial office spaces. The impact of the pandemic on Debtor ABC Carpet & Home was more pronounced than many other retailers given that the Debtors’ flagship store is in New York City, which was the subject of not only more restrictive regulations than many other municipalities, but also experienced a mass exodus of current and prospective customers leaving the city. In addition, the Debtors’ business has been negatively impacted for the past few years by other adverse market trends, including the shifting of sales from traditional brick-and-mortar retailers to online retailers, changing consumer preferences and construction delay related impact to operating performance at the Debtors’ 888 Broadway store location.

The Debtors’ liquidity position has now reached the point that further deterioration, without near-term funding, would likely require that the Debtors cease operating. Accordingly, the Debtors have determined in their business judgment, after exploring various strategic options, that a sale of substantially all of their assets as a going-concern is in the best interests of their creditors and estates.

The Debtors’ ability to obtain the necessary liquidity to operate their business while prosecuting the sale is critical. As discussed in the First Day Declaration and the Mandarin Declaration (as defined below), prior to the initiation of these bankruptcy cases, the Debtors, through their financial advisor and investment banker, reached out to numerous parties to obtain financing, but were not offered terms for viable financing as a result of their financial condition.

As a result of their inability to obtain investment funding or financing, the Debtors pivoted to a going concern sale to their prepetition lender, which is acting as the proposed stalking horse bidder. The Senior Prepetition Lender (as defined below) also agreed to fund the Debtors' operations and the administration of their bankruptcy cases pending this Court's approval of the sale. The parties contemplate such funding would be provided in the form of debtor-in-possession financing of up to \$5,700,000, with the stalking horse bidder credit bidding the resulting obligations as well as the Prepetition Secured Obligations (as defined below).

The Debtors have been unable to obtain commercially reasonable financing on terms that are junior to the Debtors' existing liens or on an unsecured basis. The Debtors do not believe they can adequately protect, preserve and maximize the value of their estates without access to postpetition financing. If approved, the Debtors intend to use the liquidity provided under the DIP Facility (as defined below) and their continued access to cash collateral to, among other things, pay critical obligations such as vendor and supplier obligations, employee wages and benefits, and fund the administration of these Chapter 11 Cases. Given the Debtors' circumstances, the terms of the proposed DIP Facility are fair, reasonable, adequate and necessary to preserve and maximize the value of the Debtors' business pending the sale, and thus is in the best interest of the Debtors, their estates and their creditors.

### **Background**

1. On the date hereof (the "Petition Date"), the Debtors each commenced with this Court a voluntary case under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). The Debtors are authorized to continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner, or statutory committee of creditors has been appointed in these chapter 11 cases.

2. Contemporaneously herewith, the Debtors have filed a motion requesting joint administration of their chapter 11 cases pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

3. Additional information regarding the Debtors’ businesses, capital structure, and the circumstances leading to the commencement of these chapter 11 cases is set forth in the *Declaration of Aaron Rose Pursuant to Rule 1007-2 of the Local Bankruptcy Rules for the Southern District of New York* (the “First Day Declaration”), which has been filed with the Court contemporaneously herewith and is incorporated by reference herein.

#### **Jurisdiction and Venue**

4. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated January 31, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

5. The Debtors confirm their consent pursuant to Bankruptcy Rule 7008 to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

6. Venue of these cases and the Motion is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

7. The statutory predicates for the relief sought herein are sections 105(a), 361, 362, 363, 364, 503, 506, 507, and 552 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001, 6003, 6004 and 9014, and Rules 2002-1, 4001-2, and 9014-2 of the Local Bankruptcy Rules for the Southern District of New York (the “Local Rules”).

**Relief Requested**

8. Through this Motion, the Debtors request entry of an interim order, substantially in the form attached hereto as Exhibit A (the “Interim DIP Order”) and, following the final hearing on the Motion, entry of a final order (the “Final DIP Order” and together with the Interim DIP Order, the “DIP Orders”), granting, among other things, the following relief:

- authorizing the Debtors to (i) obtain and use postpetition senior secured debtor-in-possession financing in an aggregate principal amount of up to \$5,700,000 (the “DIP Facility”), of which up to \$2,250,000 (the “Interim DIP Facility Amount”) may be advanced immediately following the entry of the Interim DIP Order, subject to disbursement in accordance with the Approved Budget (defined below), pursuant to the terms and conditions of the Interim DIP Order and that certain Post-Petition Loan and Security Agreement (substantially in the form attached to the Interim DIP Order as Exhibit A, and as hereafter amended, restated, amended and restated, supplemented, or otherwise modified from time to time in accordance with the terms thereof and hereof, the “DIP Agreement”), by and among the Debtors, as borrowers, and 888 Capital Partners, LLC, as lender (in such capacity, the “DIP Lender”) and (ii) incur the Obligations (as defined in the DIP Agreement, the “DIP Obligations”) under the DIP Loan Documents;<sup>2</sup>
- authorizing the Debtors to execute and enter into the DIP Agreement and the other DIP Loan Documents and to take such other and further acts as may be required in connection with the DIP Loan Documents and consummation of the DIP Facility;
- authorizing the Debtors to grant security interests, liens, and superpriority claims (including a superpriority administrative claim pursuant to sections 364(c)(1), 503(b) and 507(b) of the Bankruptcy Code, liens pursuant to sections 364(c)(2) and 364(c)(3) of the Bankruptcy Code and priming liens pursuant to section 364(d) of the Bankruptcy Code) to the DIP Lender to secure all DIP Obligations, including, subject to entry of the Final DIP Order, on any claim that could be asserted by or on behalf of any Debtor or its estate against a person under sections 544, 546, 547, 548, 549, 550 or 553 of the Bankruptcy Code, as amended (collectively, “Avoidance Claims”), such liens, security interests and claims to be subject to the Carve-Out (defined below) and Valid Prior Liens (defined below) as further provided in the Interim DIP Order;
- authorizing the Debtors to pay the principal, interest, fees, expenses and other amounts payable under the DIP Loan Documents as such become due and payable;

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<sup>2</sup> The term “DIP Loan Documents” means the DIP Agreement, the Note (as defined in the DIP Agreement) and the Security Documents (as defined in the DIP Agreement) and any and all other agreements, instruments and documents now or hereafter executed by Debtors in favor of DIP Lender with respect to any of the transactions contemplated by the DIP Agreement.

- authorizing the Debtors, pursuant to sections 105, 361, 362, 363, and 507 of the Bankruptcy Code to use Cash Collateral,<sup>3</sup> and which shall include proceeds of the DIP Facility, and all other Prepetition Collateral (defined below), in accordance with the Approved Budget, subject to the Permitted Variances (defined below), or as otherwise permitted under the Interim DIP Order, the Final DIP Order or the DIP Agreement;
- authorizing the Debtors to provide adequate protection of the liens and security interests (such liens and security interests, the “Prepetition Liens”) of the Prepetition Lender (defined below), which Prepetition Liens are being consensually primed by the DIP Facility, as more fully set forth in the Interim DIP Order, any such Adequate Protection Liens (defined below) and Superpriority Adequate Protection Claims (defined below) to be subject to the liens and superpriority claims granted with respect to the DIP Facility and to the Carve-Out and Valid Prior Liens, in each case, as set forth in the Interim DIP Order, solely to the extent of any diminution in value of its respective interests in the Prepetition Collateral (defined below) as of the Petition Date, if any, resulting from the imposition of the automatic stay, the Debtors’ postpetition use, sale, or lease of the Prepetition Collateral or the priming of the Prepetition Liens on the Prepetition Collateral;
- authorizing the Debtors to provide adequate protection to the Participant (as defined below) in the form of cash payments to the Participant for the reimbursement of reasonable legal, accounting, appraisal and other fees and expenses incurred by Participant (including reasonable out of pocket fees and expenses of Participant professionals) in connection with the bankruptcy cases and the transactions contemplated by the DIP Agreement, in a maximum amount not to exceed \$50,000 for such time until Participant becomes the direct holder of the Prepetition Secured Obligations (in the event of such occurrence);
- modification of the automatic stay imposed under section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of the DIP Loan Documents and the Interim DIP Order;
- scheduling a final hearing (the “Final Hearing”) on the motion for a date that is on or before the 21<sup>st</sup> day after the Petition Date to consider entry of a Final DIP Order authorizing the borrowings under the DIP Facility on a final basis and approval of notice procedures with respect thereto; and

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<sup>3</sup> Section 363(a) of the Bankruptcy Code defines “cash collateral” to mean:

Cash, negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents whenever acquired in which the estate and an entity other than the estate have an interest and includes the proceeds, products, offspring rents, or profits of property and the fees, charges, accounts or other payments for the use or occupancy of rooms and other public facilities in hotels, motels, or other lodging properties subject to a security interest as provided in section 552(b) of this title, whether existing before or after the commencement of a case under this title.

- waiver of any applicable stay with respect to the effectiveness and enforceability of the Interim DIP Order or the Final DIP Order (including a waiver pursuant to Bankruptcy Rule 6004(h)).

9. In support of this Motion, the Debtors rely on and incorporate by reference the First Day Declaration and the *Declaration of Perry M. Mandarinino in Support of the DIP Financing Motion* (the “Mandarinino Declaration”), attached hereto as Exhibit B.

### **Summary of DIP Agreement**<sup>4</sup>

10. In accordance with Bankruptcy Rule 4001(b)(1)(B) and 4001(c)(1)(B) and Local Rule 4001-2, below is a summary of the terms of the proposed DIP Facility, as specified in the DIP Loan Documents and Interim DIP Order:

| <b>Material Terms<br/>(Applicable Rule)</b>  | <b>DIP Facility Provision; Location<sup>5</sup></b>   |
|--|---|
| <b>Borrowers</b><br>Fed. R. Bankr. P. 4001(c)(1)(B)                                      | A.B.C. Carpet Co., Inc., A.B.C. Home Furnishings, Inc., and A.B.C. Oriental Carpets Inc.<br><br><i>See Order ¶ 2(b); DIP Agmt. at preamble.</i>   |
| <b>DIP Lender</b><br>Fed. R. Bankr. P. 4001(c)(1)(B)                                     | 888 Capital Partners, LLC<br><br><i>See Order ¶ 2; DIP Agmt. at preamble.</i>   |
| <b>Amount and Facility</b><br>Fed. R. Bankr. P. 4001(c)(1)(B)<br>Local Rule 4001-2(a)(1) | Nonamortized revolving facility in the amount of \$5,700,000, of which up to \$2,250,000 may be advanced immediately following the entry of the Interim DIP Order, subject to disbursement in accordance with the Approved Budget.<br><br><i>See Order ¶¶ 2(a), (b); DIP Agmt. at Recital (¶ A), Art. 2, and definition for “Commitment”.</i> |
| <b>Interest Rate</b><br>Fed. R. Bankr. P. 4001(c)(1)(B)<br>Local Rule 4001-2(a)(3)       | 12.0% per annum.<br><br><i>See DIP Agmt. § 3.2(a)</i>   |
| <b>Default Interest</b>  | 15.0% per annum.  |

<sup>4</sup> This summary is qualified in its entirety by the provisions of the Interim DIP Order and DIP Agreement, as applicable. Capitalized terms used but not otherwise defined in this summary have the meanings given to them elsewhere in this Motion. To the extent there is any conflict between this summary and the Interim DIP Order, the terms of the Interim DIP Order control. The Debtors reserve the right to supplement these statements.

<sup>5</sup> As used herein, “Order” shall mean the Interim DIP Order and “DIP Agmt.” shall mean the DIP Agreement.

| Material Terms<br>(Applicable Rule)   | DIP Facility Provision; Location <sup>5</sup>   |
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| Fed. R. Bankr. P. 4001(c)(1)(B)<br>Local Rule 4001-2(a)(3)                                | DIP Agmt. § 3.2(b) (and definition for “Default Rate”)  |
| <b>Fees</b><br>Fed. R. Bankr. P. 4001(c)(1)(B)<br>Local Rule 4001-2(a)(3), (16).          | <p>A “<u>Commitment Fee</u>” equal to \$120,000. The Debtors shall be obligated for the Commitment Fee, which shall be paid to the DIP Lender on the Effective Date (as defined in Section 6.1 of the DIP Agreement) by the DIP Lender adding the amount of the Commitment Fee to the outstanding balance of the Loans (as defined in the DIP Agreement).</p> <p>Customary reimbursement of DIP Lender’s reasonable legal, accounting, appraisal and other fees and expenses incurred by DIP Lender.</p> <p>Only with respect to legal fees, the DIP Lender will submit copies of their respective legal counsel’s invoices (redacted to preserve privilege) to the Debtors, counsel to the Debtors, counsel to the Committee, and the U.S. Trustee for review and objection.</p> <p>See Order ¶¶ 2(h), 23; DIP Agmt. §§ 2.6, 4.4(a).</p>   |
| <b>Borrowing Conditions</b><br>Fed. R. Bankr. P. 4001(c)(1)(B)<br>Local Rule 4001-2(a)(2) | <p>Customary borrowing conditions, including:</p> <p>(a) execution of the DIP Agreement and Note, together with such financing statements which in the opinion of the DIP Lender are desirable to perfect the liens and security interests created under the DIP Loan Documents;</p> <p>(b) entry of the Interim DIP Order that, among other things, provides that the Liens and security interests in favor of the DIP Lender granted pursuant to the DIP Agreement shall be valid and perfected first priority Liens prior (except for Valid Prior Liens to which such Liens and security interests are subordinate and junior) to all other Liens in or on the DIP Collateral intended to be subject thereto, subject to the Carve-Out;</p> <p>(c) good standing certificates from the Secretary of State;</p> <p>(d) Board resolution from Debtors authorizing the Debtors’ entry into the DIP Loan Documents and an officer certificate regarding: (i) the representations and warranties, (ii) the absence of any Default or Event of Default; and (iii) the absence of a material adverse change;</p> <p>(e) evidence that all fees and expenses required by the DIP Agreement to be paid by Debtors on or before the Effective Date shall have been paid in full (or shall have been authorized by the Interim DIP Order, as the case may be); and</p> <p>(f) such other approvals or documents as the DIP Lender may reasonably request.</p> <p>See Order ¶ 2(e); DIP Agmt. §§ 6.1, 6.2.</p> |
| <b>Prepayment</b><br>Fed. R. Bankr. P. 4001(c)(1)(B)<br>Local Rule 4001-2(a)(13)          | <p>The Debtors shall have the right to borrow, repay and, so long as no Event of Default (as defined in the DIP Agreement and discussed below) or the Termination Date (as defined in the DIP Agreement and discussed below) has occurred, reborrow Loans under the DIP Agreement.</p> <p>If at any time the Loans (as defined in the DIP Agreement) outstanding under the DIP Agreement exceed the Commitment (as defined in the DIP</p>   |



| Material Terms<br>(Applicable Rule)  | DIP Facility Provision; Location <sup>5</sup>  |
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|  | <p>Agreement) then available, then the Debtors shall immediately repay the Loans in the amount of such excess.</p> <p><i>See DIP Agmt. §§ 2.9, 2.10.</i></p>   |
| <p><b>Term</b></p> <p>Fed. R. Bankr.<br/>P. 4001(b)(1)(B)(iii)</p> <p>Fed. R. Bankr. P. 4001(c)(1)(B)</p> <p>Local Rule 4001-2(a)(2)</p>                                   | <p>The earliest of (a) the Maturity Date (i.e., November 10, 2021), (b) the voluntary repayment in full of all DIP Obligations and termination by the Debtors of the DIP Lender's Commitment pursuant to Section 2.5(b) of the DIP Agreement, and (c) acceleration of the DIP Obligations by the DIP Lender following the occurrence of an Event of Default.</p> <p><i>See Order ¶¶ 2(g); DIP Agmt. § 3.1.</i></p>   |
| <p><b>Security and Priority</b></p> <p>Fed. R. Bankr.<br/>P. 4001(c)(1)(B)(i), (vii)</p> <p>Local Rule 4001-2(a)(4)</p>  | <p>The liens and security interests in favor of the DIP Lender shall have first priority, with respect to the Debtors' present and future right, title and interest in and to certain of the personal property of Debtors whether such property is now existing or hereafter created, acquired or arising and whenever from time to time, including, subject to entry of a Final DIP Order, Avoidance Claims (as further described in the DIP Agreement and Interim DIP Order, the "<u>DIP Collateral</u>"), which liens shall be subject to the Carve-Out and Valid Prior Liens.<sup>6</sup></p> <p>The DIP Obligations shall constitute allowed administrative expenses in the Chapter 11 Cases having superpriority status under section 364(c)(1) of the Bankruptcy Code over all other administrative expenses and unsecured claims against the Debtors, subject, as to priority, only to the Carve-Out.</p> <p><i>See Order ¶¶ J, 2(f), 3, 5, 6; DIP Agmt. §§ 5.1, 5.2, 5.7.</i></p> |
| <p><b>Use of DIP Facility and Cash Collateral</b></p> <p>Fed. R. Bankr. P.<br/>4001(b)(1)(B)(ii)</p> <p>Fed. R. Bankr. P. 4001(c)(1)(B)</p> <p>Local Rule 4001-2(a)(2)</p> | <p>The Interim DIP Facility Amount advanced by DIP Lender to the Debtors shall be used by the Debtors in the amounts and for the purposes identified in the Approved Budget to (i) pay related DIP-related transaction costs, fees and expenses of the DIP Facility in accordance with the DIP Loan Documents; and (ii) pay expenses to preserve, maintain and operate the businesses.</p> <p>During the Interim Period, the Debtors shall only use Cash Collateral in the amounts and for the purposes identified in the Approved Budget.</p> <p><i>See Order ¶¶ H, I, 2(b)–(d), 7; DIP Agmt. §§ 2.4, 2.7.</i></p>  |
| <p><b>Approved Budget</b></p> <p>Fed. R. Bankr. P. 4001(c)(1)(B)</p> <p>Local Rule 4001-2(a)(2)</p>  | <p>A copy of the Approved Budget is annexed to the Interim DIP Order as <u>Exhibit B</u>.</p> <p>Each request for a Borrowing under the DIP Agreement shall be made strictly in compliance with and solely to pay amounts contemplated by the Budget</p>   |

<sup>6</sup> The term "Valid Prior Liens" means, collectively, liens on property of the Debtors (including the proceeds of such property) that are in existence on the Petition Date (but excluding the Prepetition Liens), but only if the lien on such property (or the proceeds of such property, as applicable) is a valid perfected and non-avoidable encumbrance and such lien is perfected on the Petition Date or that are perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code

| Material Terms<br>(Applicable Rule)  | DIP Facility Provision; Location <sup>5</sup>   |
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|  | <p>(subject to Permitted Variances), <u>provided</u> that payments on account of Professional Fees, including funding of the Carve-Out, shall not be subject to the Budget.</p> <p>“<u>Permitted Variance</u>” means, with respect to (i) the initial Cumulative Period,<sup>7</sup> a negative variance of up to 20% between the “Operating Cash Flow, excl. Non-Recurring” line item as set forth in the Budget for the applicable Cumulative Period and actual “Operating Cash Flow, excl. Non-Recurring” for such Cumulative Period, and (ii) any Cumulative Period thereafter, a negative variance of up to 15% between the “Operating Cash Flow, excl. Non-Recurring” line item as set forth in the Budget for the applicable Cumulative Period and actual “Operating Cash Flow, excl. Non-Recurring” for the applicable Cumulative Period.</p> <p><i>See Order ¶¶ H, I, 2(b)–(d), 7; DIP Agmt. §§ 2.4, 2.7.</i></p>  |
| <p><b>Covenants</b></p> <p>Fed. R. Bankr. P. 4001(c)(1)(B)</p> <p>Local Rule 4001-2(a)(2)</p>  | <p>Customary and appropriate affirmative and negative covenants for financings of this type, including, without limitation, relating to (a) financial reporting and notices of material events; (b) information regarding collateral; (c) continuation of the Debtors’ legal existence and conduct of business; (d) keeping of books and records and granting of inspection rights; (e) maintenance of properties; (f) maintenance of insurance, (g) compliance with applicable laws, (h) limitations on activities, (i) use of proceeds, (j) liens, (k) asset disposition, and (l) certain other bankruptcy matters.</p> <p><i>See DIP Agmt. at Articles 8-9.</i></p>  |
| <p><b>Limitations on use of DIP Facility; Cash Collateral</b></p> <p>Fed. R. Bankr. P. 4001(b)(1)(B)</p> <p>Fed. R. Bankr. P. 4001(c)(1)(B)</p> <p>Local Rule 4001-2(a)(9)</p> | <p>No Prepetition Collateral, Cash Collateral, DIP Collateral, or proceeds thereof, or any portion of the Carve-Out shall include, apply to, or be available for any fees or expenses incurred by any party, including the Debtors or the Committee (if appointed), in connection with (i) the initiation or prosecution of any claims, causes of action, adversary proceedings, or other litigation against the Prepetition Lender, including the Participant as it relates to her Participation Interest under the Participation Documents, including, without limitation, challenging the amount, validity, extent, perfection, priority, characterization, or enforceability of, or asserting any defense, counterclaim, or offset to the Prepetition Secured Obligations, the Prepetition Liens, the Adequate Protection Liens, or Superpriority Adequate Protection Claims, (ii) asserting any claims or causes of action, including, without limitation, claims or actions to hinder or delay the Prepetition Lender’s assertion, enforcement or realization on the Prepetition Collateral in accordance with the Prepetition Loan Documents or the Interim Order or any Avoidance Claims against the Prepetition Lender, or (iii) the initiation or prosecution of any claims, causes of action, adversary proceedings, or other litigation against the Prepetition Lender, including the Participant as it relates</p> |

<sup>7</sup> “Cumulative Period” means (i) the two-week period commencing on the Petition Date and ending on the date that is the second Monday following the Petition Date, (ii) the three-week period commencing on the Petition Date and ending on the date that is the third Monday following the Petition Date, (iii) the four-week period commencing on the Petition Date and ending on the date that is the fourth Monday following the Petition Date, and (iv) thereafter, the rolling period of four consecutive weeks ending on each Monday thereafter up to and through the Monday of the most recent week then ended.

| Material Terms<br>(Applicable Rule)  | DIP Facility Provision; Location <sup>5</sup>  |
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|  | <p>to her Participation Interest under the Participation Documents, including, without limitation, challenging the amount, validity, extent, perfection, priority, or enforceability of, or asserting any defense, counterclaim, or offset to the Prepetition Secured Obligations, or the adequate protection granted herein; <u>provided</u> however, the Committee shall be authorized to use up to \$20,000 of Cash Collateral to investigate the liens, claims and interests of the Prepetition Lender.</p> <p>No proceeds of the DIP Loans can be used to pay Professional Expenses incurred in connection with the assertion of or joinder in any claim, counterclaim, action, contested matter, objection, defense or other proceeding, the purpose of which is to seek or the result of which would be to obtain any order, judgment, declaration, or similar relief (a) seeking damages against the DIP Lender or any DIP Lender indemnitees on account of any alleged cause of action arising on, before or after the Petition Date; (b) invalidating, setting aside, avoiding or subordinating, in whole or in part, any of the DIP Obligations or Liens and security interests in any DIP Collateral granted to DIP Lender under the DIP Agreement, the Interim DIP Order, or the Final DIP Order; (c) declaring any of the DIP Loan Documents or the Prepetition Loan to be invalid, not binding or unenforceable in any respect; (d) preventing, enjoining, hindering or otherwise delaying DIP Lender's enforcement of any of the DIP Loan Documents, the Prepetition Lender's enforcement of the Prepetition Loan Documents or any realization upon any Collateral (unless such enforcement or realization is in direct violation of an explicit provision in any of the Interim DIP Order or Final DIP Order); or (e) declaring any Liens granted or purported to be granted under any of the DIP Loan Documents to have a priority other than the priority set forth therein.</p> <p><i>See Order ¶ 4(d); DIP Agmt. § 2.7.</i></p> |
| <p><b>Entities with Interests in Cash Collateral</b></p> <p>Fed. R. Bankr.<br/>P. 4001(b)(1)(B)(i)</p> | <p>The DIP Lender, Prepetition Lender and the Participant by way of her Participation Interest.</p> <p><i>See Order ¶¶ D(a)–(d), D(g), and 2(d).</i></p>   |
| <p><b>Adequate Protection</b></p> <p>Fed. R. Bankr. P.<br/>4001(b)(1)(B)(iv)</p>                       | <p>As adequate protection for any diminution in the value of the valid, perfected and enforceable liens on the Prepetition Collateral in favor of Prepetition Lender securing the valid, perfected and enforceable Prepetition Secured Obligations caused by the Debtors' use of the Prepetition Collateral, and to the extent of such diminution:</p> <p>Pursuant to section 361(2) of the Bankruptcy Code, the Prepetition Lender (inclusive of the Participant) is granted postpetition, valid, and perfected replacement liens on and security interests in all of the Debtors' now existing and hereafter acquired DIP Collateral (the "<u>Adequate Protection Liens</u>"), which Adequate Protection Liens shall (i) be junior to the DIP Liens, the Carve-Out, and the Valid Prior Liens, and (ii) shall be senior to all other security interests in, liens on, or claims against the Prepetition Collateral and DIP Collateral, whether now existing or hereafter arising or acquired. The Adequate Protection Liens granted to the Prepetition Lender are automatically perfected by operation of law upon the Court's entry of the Interim DIP Order</p>  |

| Material Terms<br>(Applicable Rule)   | DIP Facility Provision; Location <sup>5</sup>   |
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|   | <p><i>nunc pro tunc</i> to the Petition Date without further action by the Prepetition Lender, and will survive the Termination Date (as defined in DIP Agreement).</p> <p>Any diminution in the value of the Prepetition Liens on the Prepetition Collateral in favor of the Prepetition Lender securing the Prepetition Secured Obligations caused by the Debtors' use of the Prepetition Lender's Cash Collateral that is not satisfied by proceeds of the DIP Collateral shall constitute a cost and expense of administration in the Bankruptcy Cases in accordance with section 503(b)(1) of the Bankruptcy Code and shall have a superpriority status under section 507(b) of the Bankruptcy Code (the "<u>Superpriority Adequate Protection Claim</u>") and thus will be paid ahead of all other costs and expenses of administration of the chapter 11 cases, including, without limitation, those specified in sections 503(b) or 507(a) of the Bankruptcy Code; <u>provided, further</u>, that the Superpriority Adequate Protection Claims shall be subject and subordinate to the DIP Superpriority Claim and the Carve-Out</p> <p>Reimbursement of Participant's reasonable legal, accounting, appraisal and other fees and expenses incurred by the Participant (including reasonable out of pocket fees and expenses of the Participant's professionals) in connection with the Chapter 11 Cases and the transactions contemplated by the DIP Agreement, in a maximum amount not to exceed \$50,000 for such time until Participant becomes the direct holder of the Prepetition Secured Obligations (in the event of such occurrence) (the "<u>Participant Reimbursement Obligations</u>"). The Participant Reimbursement Obligations shall (i) be subordinate and subject to the Carve-Out, (ii) <i>pari passu</i> with the DIP Superpriority Claim, and (iii) senior to the Superpriority Adequate Protection Claim. Only with respect to legal fees, the Participant will submit copies of her legal counsel's invoices (redacted to preserve privilege) to the Debtors, counsel to the Debtors, counsel to the Committee, and the U.S. Trustee for review and objection.</p> <p><i>See Order ¶¶ L, 23; DIP Agmt. § 4.4(b).</i></p> |
| <p><b>Stipulations as to Prepetition Claims and Liens</b></p> <p>Fed. R. Bankr. P. 4001(c)(1)(B)(iii)</p> <p>Local Rule 4001-2(a)(18)</p>                       | <p>Paragraph D of the Interim DIP Order contains customary acknowledgments, agreements, stipulations and waivers on behalf of the Debtors and their Estates, subject to a challenge period (discussed below).</p> <p><i>See Order ¶ D.</i></p>  |
| <p><b>Effect of Stipulations / Challenge Period; Release of Claims.</b></p> <p>Fed. R. Bankr. P. 4001(c)(1)(B)(iii), (viii)</p> <p>Local Rule 4001-2(a)(18)</p> | <p>The Debtors' stipulations, admissions and agreements contained in the Interim DIP Order shall be binding upon the Debtors and their Estates, subject only to the Challenge rights of third parties, in all circumstances and for all purposes. The Debtors and their Estates moreover agree not to challenge, object to or otherwise contest the validity of the Prepetition Loan Documents, the Prepetition Secured Obligations, or the Prepetition Liens.</p> <p>The Debtors' stipulations, admissions, and agreements contained in the Interim DIP Order shall be binding upon all other parties in interest, including any statutory or non-statutory committees appointed or formed in the Chapter 11 Cases (including the Committee) and any other person or entity acting or seeking to act on behalf of the Debtors' Estates, including any</p>  |

| Material Terms<br>(Applicable Rule)   | DIP Facility Provision; Location <sup>5</sup>   |
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|   | <p>chapter 7 or chapter 11 trustee or examiner appointed for any of the Debtors, in all circumstances and for all purposes unless a Challenge<sup>8</sup> is brought during the Challenge Period,<sup>9</sup> and such Challenge is successful. A timely Challenge by a party granted standing by the Court under the Interim DIP Order shall be the sole mechanism for a party in interest or Committee (if appointed) to contest the validity of the Prepetition Loan Documents, the Prepetition Secured Obligations, or the Prepetition Liens or raise any other Challenge.</p> <p>See Order ¶ D.</p>  |
| <p><b>Carve-Out</b><br/>Fed. R. Bankr. P. 4001(c)(1)(B)<br/>Local Rule 4001-2(a)(5)</p> | <p>The DIP Liens, the DIP Superpriority Claims, the Prepetition Liens, the Adequate Protection Liens, and the Superpriority Adequate Protection Claim shall be junior and subject to the payment, without duplication, of the following fees and expenses (the amounts set forth below, together with the limitations set forth therein, collectively, the “<u>Carve-Out</u>”):</p> <p>(i) all unpaid fees payable to the U.S. Trustee and Clerk of the Bankruptcy Court pursuant to section 1930(a) of Title 28 of the United States Code;</p> <p>(ii) to the extent allowed by the Bankruptcy Court at any time (regardless of whether the order allowing such fees is entered before or after notice of the Carve-Out Trigger Date)<sup>10</sup> and subject to Paragraph 4(c) of the Interim DIP Order, payment of fees and expenses and reimbursement of expenses payable to Greenberg Traurig, LLP, as counsel to the Debtors, and any other professionals retained by the Debtors or a creditors’ committee, if appointed (a “<u>Committee</u>” and the Debtors’ and Committee’s retained professionals, the “<u>Professionals</u>”) incurred prior to delivery of a Carve-Out Notice inclusive of</p> |

<sup>8</sup> The Interim DIP Order defines “Challenges” to mean:

(A) objecting to or challenging the amount, validity, perfection, enforceability, priority, or extent of the Prepetition Secured Obligations, the Prepetition Loan, the Prepetition Collateral, or the Prepetition Liens, or (B) otherwise asserting or prosecuting any claims, counterclaims or causes of action, objections, contests or defenses (collectively, the “Challenges”) against the Prepetition Lender in connection with matters related to the Prepetition Secured Obligations, the Prepetition Loan, the Prepetition Collateral, or the Prepetition Liens.

<sup>9</sup> The Interim DIP Order defines “Challenge Period” to mean:

(a) a committee or any other party in interest with requisite standing (subject in all respects to any agreement or applicable law that may limit or affect such entity’s right or ability to do so), has timely filed an adversary proceeding or contested matter by no later than (i) (x) with respect to parties in interest with requisite standing other than a statutory committee, 75 calendar days after entry of the Final DIP Order and (y) with respect to the statutory committee, 60 calendar days after the entry of the Final DIP Order, (ii) any such later date as has been agreed to, in writing, by the Prepetition Lender and (iii) any such later date as has been ordered by the Court for cause upon a motion filed and served within any applicable period of time set forth above.

<sup>10</sup> The Interim DIP Order defines “Carve-Out Trigger Date” and “Carve-Out Notice” to mean:

“Carve-Out Trigger Date” means the day after the DIP Lender provides written notice to the Debtors, Debtors’ counsel, the U.S. Trustee, and counsel to the Committee that the Carve-Out is invoked, which notice may be delivered following the occurrence and during the continuance of an Event of Default under the DIP Loan Documents (the “Carve-Out Notice”).

| Material Terms<br>(Applicable Rule) | DIP Facility Provision; Location <sup>5</sup>  |
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|                                     | <p>any holdbacks, but excluding any unused retainers established prior to the date hereof;</p> <p>(iii) all unpaid fees and expenses incurred by the Professionals after the delivery of a Carve-Out Notice, in an aggregate amount not to exceed \$250,000, and an additional \$500,000 further to the engagement letter between the Debtors and B. Riley (the “<u>Engagement Letter</u>”) to be held in trust for the benefit of B. Riley for the duration of the “Tail Period” to satisfy any “Transaction Fee” if payable, as each of those terms are defined in the Engagement Letter (the “<u>Post-Trigger Notice Carve-Out Amount</u>”); <u>provided</u>, for the avoidance of doubt, that all amounts paid to Professionals under the Carve-Out must be allowed by order of the Bankruptcy Court; and</p> <p>(iv) in the event of a conversion of the Bankruptcy Cases to cases under chapter 7 of the Bankruptcy Code, allowed fees and expenses incurred by a trustee and any professional retained by such trustee, in an aggregate amount not to exceed \$50,000.</p> <p><u>Carve-Out Funding.</u> The Carve-Out shall be funded by the DIP Lender on a weekly basis in accordance with the Approved Budget plus any additional amounts in excess of the Approved Budget estimated to be incurred by such Professionals each week as may be provided by such Professionals in a weekly notice to the DIP Lender and Debtors with the written consent of the Debtors (<u>provided</u>, <u>however</u>, that in the event a Professional’s weekly estimate exceeds the amount actually incurred by such Professional in excess of the Approved Budget for such week, such additional amount shall remain in the Professional Fee Reserve (as defined below) to be credited towards future estimates by such Professional); <u>provided</u>, <u>however</u>, that the amounts funded by the DIP Lender in excess of the line item in the Approved Budget for Professional Fee expenses for such week, when added to all other amounts funded to the Debtors from the Petition Date through that week, may not exceed the lesser of (i) the aggregate Approved Budget amount for all of the Debtors’ expenses (inclusive of Professional Fees) from the Petition Date through that week, or (ii) \$5,700,000. Such amounts for Professionals shall be funded into a segregated account maintained by or on behalf of the Debtors in trust for each of the Professionals (separately based on each Professional’s budgeted amount and additional estimate, with each Professional entitled to such amounts as allocated) and not subject to any other lien, claim or encumbrance (the “<u>Professional Fee Reserve</u>”). Amounts funded into the Professional Fee Reserve shall be held in trust for each Professional separately on a per-Professional basis.</p> <p>On the Carve-Out Trigger Date, the DIP Lender shall fund the Post-Trigger Notice Carve-Out Amount to the Debtors who shall deposit such amount into the Professional Fee Reserve. Upon funding such amounts to the Debtors, the DIP Lender shall have no further responsibility or liability to any Professional for funding the Professional Fee Reserve for such period. The Debtors shall be permitted to pay from the Professional Fee Reserve the allowed fees and expenses of the Professionals as and when the same may become due and payable. Any and all amounts in the Professional Fee Reserve shall not be subject to any cash sweep and/or foreclosure provisions in the Prepetition Loan Documents, the DIP Loan Documents, the Interim Order or Final Order. Any funding of the Carve-Out shall constitute DIP Loans under the DIP Facility secured by the DIP Collateral and shall be otherwise entitled to the protections granted under the Interim Order and/or Final Order, the</p> |

| Material Terms<br>(Applicable Rule)  | DIP Facility Provision; Location <sup>5</sup>   |
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|  | <p>Bankruptcy Code and applicable law. The Carve-Out shall not reduce the amounts payable to the DIP Lender under the DIP Facility. Nothing in the Interim Order or in the Prepetition Loan Documents shall prohibit or restrict the payment of the fees and expenses of any Professional from any retainers paid prior to the Petition Date and held by such Professional. Further, notwithstanding anything to the contrary in this Interim Order, the failure of the Professional Fee Reserve to satisfy in full the allowed fees and expenses of Professionals shall not affect the priority of the Carve-Out or the DIP lender's liability to further fund the Professional Fee Reserve subject to the limitations imposed by the Carve-Out Notice and the Approved Budget limit of \$5,700,000.</p> <p>See Order ¶ 4(a), (c).</p>   |
| <p><b>Events of Default</b></p> <p>Fed. R. Bankr. P. 4001(c)(1)(B)</p> <p>Local Rule 4001-2(a)(10)</p> | <p>The DIP Agreement provides for customary events of default, including:</p> <p>(a) the Debtors shall: (i) fail to pay the principal of the Note as and when due and payable; or (ii) fail to pay interest on the Note or any fee or other amount due under the DIP Agreement within five (5) days of the date such amount is due and payable; or</p> <p>(b) any material representation or material warranty made or deemed made by the Debtors in the DIP Agreement or in any other DIP Loan Document to which it is a party or which is contained in any certificate, document, opinion, financial or other statement furnished at any time under or in connection with any DIP Loan Document shall prove to have been incorrect in any material respect on or as of the date made or deemed made; or</p> <p>(c) the Debtors shall conduct any promotional sale event outside of the ordinary course of business at any retail store location of the Debtors in New York, New York;</p> <p>(d) an order with respect to the Chapter 11 Cases shall be entered by the Bankruptcy Court, or the Debtors shall file an application for an order with respect to the Chapter 11 Cases (i) appointing a trustee in any such Chapter 11 Cases or (ii) appointing an examiner in the Chapter 11 Cases with the authority to perform the duties of a trustee (other than the duties solely of an examiner) in respect of the estate of the Debtors or the operation of the business of the Debtors;</p> <p>(e) an order with respect to the Chapter 11 Cases shall be entered by the Bankruptcy Court dismissing the Chapter 11 Cases or converting the Chapter 11 Cases to chapter 7 cases;</p> <p>(f) an order shall be entered by the Bankruptcy Court confirming a plan of reorganization in the Chapter 11 Cases, or a plan of reorganization shall be filed, which either (i) does not contain a provision for payment in full in cash of all DIP Obligations of the Debtors on or before the Termination Date, or (ii) which is not otherwise satisfactory in all material respects to the DIP; or</p> <p>(g) an order with respect to the Chapter 11 Cases shall be entered by the Bankruptcy Court without the express prior written consent of the DIP Lender (i) to revoke, reverse, stay, modify or amend (in a manner materially adverse to the DIP Lender), or supplement the Interim Order or any Final Order or any of the DIP Loan Documents, (ii) approving the incurrence by the Debtors</p> |

| Material Terms<br>(Applicable Rule)   | DIP Facility Provision; Location <sup>5</sup>  |
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|   | <p>of any debt not contemplated under the DIP Agreement, (iii) to permit any administrative expense or any claim (now existing or hereafter arising, of any kind or nature whatsoever) to have administrative priority equal or superior to the priority of the DIP Lender in respect of the DIP Obligations, except for Carve-Out, or (iv) to grant or permit the grant of a Lien on the DIP Collateral other than Permitted Liens; or</p> <p>(h) an application for any of the orders described in clauses (d), (e), (f), or (g) above shall be made (i) by a Person other than the Debtors and such application is not contested by the Debtors or (ii) by the Debtors; or</p> <p>(i) any judgment or order shall be entered against any Debtor or any other event shall occur or condition exist which in each case, does or could reasonably be expected to have a material adverse effect on the condition (financial or otherwise), business, operation or prospects of the Debtors, taken as a whole; or</p> <p>(j) any levy, lien (including mechanics liens), seizure, attachment, execution or similar process shall be issued or levied on any of the property of the Debtors; or</p> <p>(k) the Security Documents shall at any time after their execution and delivery and for any reason cease: (i) to create a valid and perfected security interest and DIP Lien in and to the property purported to be subject thereto having the priority specified in the Security Documents; or (ii) to be in full force and effect or shall be declared null and void, or the validity or enforceability thereof shall be contested by the Debtors, or the Debtors shall deny it has any further liability or obligation under any such agreement, or the Debtors shall fail to perform any of its obligations thereunder; or</p> <p>(l) the later of the date (i) the Debtors shall cease to have the exclusive right to file a plan of reorganization in the Chapter 11 Cases; or (ii) a party in interest shall file a competing plan of reorganization which does not provide for the payment in full of the DIP Obligations in cash;</p> <p>(m) the Debtors shall: (i) fail to perform or observe any other material term, material covenant or material agreement on its part to be performed or observed in any business DIP Loan Document, which failure shall continue uncured for a period in excess of five (5) days; or (ii) fail to comply with any of the terms or provisions of the Financing Orders;</p> <p>(n) the failure to comply with the provisions of the Interim or Final DIP Orders; or</p> <p>(o) the failure to comply with any Milestone which failure is not cured within two (2) days.</p> <p><i>See Order ¶ 13; DIP Agmt. § 10.1.</i></p> |
| <b>Milestones</b><br><br>Fed. R. Bankr. P. 4001(c)(1)(B)<br>Local Rule 4001-2(a)(2), (12) | <p>The DIP Agreement provides for the following case milestones:</p> <p>(a) The Debtors shall have filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code by September 8, 2021;</p> <p>(b) The Interim DIP Order shall be entered by September 10, 2021;</p>   |



| Material Terms<br>(Applicable Rule)  | DIP Facility Provision; Location <sup>5</sup>   |
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|  | <p>(c) The motion seeking approval of the Sale Transaction<sup>11</sup> shall be filed on the Petition Date;</p> <p>(d) The Final DIP Order shall be entered by October 1, 2021;</p> <p>(e) The Bidding Procedures Order<sup>12</sup> shall be entered by October 1, 2021;</p> <p>(f) The deadline for the submission of bids for the Sale Transaction shall be October 19, 2021;</p> <p>(g) The auction in connection with the Sale Transaction shall be on October 22, 2021;</p> <p>(h) The Sale Order<sup>13</sup> shall be entered by October 26, 2021; and</p> <p>(i) The Sale Transaction shall close by no later than October 31, 2021.</p> <p>See Order ¶ 13; DIP Agmt. § 8.11.</p> |
| <p><b>Section 506(c) Waiver</b><br/>Fed. R. Bankr. P. 4001(c)(1)(B)<br/>Local Rule 4001-2(a)</p> | <p>Subject to entry of a Final DIP Order, no costs or expenses of administration which have been or may be incurred in the case at any time shall be charged against the DIP Lender, or the interests of the DIP Lender in the DIP Collateral.</p> <p>See Order ¶ 15; DIP Agmt. § 5.7.</p>  |
| <p><b>Section 552(b)</b><br/>Fed. R. Bankr. P. 4001(c)(1)(B)</p>                                 | <p>Subject to entry of a Final DIP Order, DIP Lender shall be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code and the “equities of the case” exception under section 552(b) of the Bankruptcy Code shall not apply to the DIP Obligations and/or any proceeds, products, offspring or profits of any of the foregoing.</p> <p>See Order ¶ 26.</p>   |
| <p><b>Liens on Avoidance Actions</b><br/>Fed. R. Bankr. P. 4001(c)(1)(B)(xi)</p>                 | <p>Subject to entry of a Final DIP Order, the DIP Lender’s collateral package will include a lien on Avoidance Claims.</p> <p>See Order ¶ J; DIP Agmt.’s definition for “Collateral”.</p>   |

<sup>11</sup> “Sale Transaction” means (a) the sale of all or substantially all of the Debtors’ business assets as a going concern as approved by the Bankruptcy Court pursuant to the applicable provisions of the Bankruptcy Code; provided that any going concern sale shall either be (x) to the Stalking Horse Bidder, or (y) to another successful bidder at the auction for the Sale Transaction; or (b) in the event that no Sale Transaction contemplated by the preceding clause (a) is available to the Debtors, the liquidation of the Debtors’ business and all of the assets relating thereto under Section 363 of the Bankruptcy Code, as approved by the Bankruptcy Court..

<sup>12</sup> “Bidding Procedures Order” means an order of the Bankruptcy Court approving bidding procedures related to the Sale Transaction.

<sup>13</sup> “Sale Order” means a final order of the Bankruptcy Court approving the Sale Motion and the Sale Transaction.

| Material Terms<br>(Applicable Rule)  | DIP Facility Provision; Location <sup>5</sup>   |
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| <p><b>Automatic Stay/Modification</b></p> <p>Fed. R. Bankr. P.<br/>4001(c)(1)(B)(iv)</p> <p>Local Rule 4001-2(a)(10)</p> | <p>The proposed Interim DIP Order provides that the automatic stay provisions of section 362 of the Bankruptcy Code will be modified to permit (a) the Debtors to grant the liens and claims provided for under the DIP Facility, (b) the Debtors to incur the liabilities and obligations contemplated in the DIP Loan Documents, (c) the Debtors to pay all amounts required in accordance with the DIP Loan Documents, (d) the DIP Lender, subject to certain limitations, to exercise remedies upon the occurrence and during the continuation of an Event of Default, (e) the DIP Lender to implement all of the terms, rights, benefits, privileges, remedies, and provisions of the Interim DIP Order; (f) grant the Adequate Protection Liens and the Superpriority Adequate Protection Claims, and (g) perform such acts as the Prepetition Lender may request in its reasonable discretion to assure the perfection and priority of the liens granted in the Interim DIP Order.</p> <p>Upon the occurrence of an Event of Default that, after five (5) days' notice remains uncured, DIP Lender may by notice to Debtors declare the DIP Facility terminated, cease making any advances under the DIP Facility (except with respect to the Carve-Out) and declare the unpaid principal amount, interest accrued thereon and all other amounts owed by Debtors under the DIP Loan Documents, including any fees due to be immediately due and payable without further order of the Court. Additionally, the DIP Lender may settle an order on seven (7) days' notice that identifies the applicable uncured Event of Default and requests, among other things, that the Court enter an order determining that: (a) the automatic stay under section 362(a) of the Bankruptcy Code has been terminated with respect to DIP Lender; and (b) DIP Lender shall be entitled to exercise its rights and remedies in accordance with the DIP Loan Documents including, without limitation, exercising and enforcing any and all rights and remedies under the DIP Facility with respect to the DIP Collateral and terminating any obligations of DIP Lender under the DIP Loan Documents.</p> <p>In the event the Debtors, the Committee, the U.S. Trustee, or any other party in interest seeks a hearing within the settlement period (the "<u>DIP Default Hearing</u>"), DIP Lender shall refrain from enforcing its rights and remedies under the DIP Facility until the Court makes a ruling or an agreement has otherwise been reached, <u>provided however</u>, that except with respect to the Carve-Out, the DIP Lender shall not be obligated to make any further advances pending such determination. Unless the Court orders otherwise, upon the termination of the seven (7) day notice period referenced above, the automatic stay under section 362(a) of the Bankruptcy Code shall be terminated with respect to DIP Lender and the DIP Lender may exercise any and all rights and remedies under the DIP Facility with respect to the DIP Collateral without further Court order. All proceeds realized in connection with the exercise of the rights and remedies of DIP Lender shall be applied to reduce the DIP Obligations at the DIP Lender's sole discretion.</p> <p>At any DIP Default Hearing requested by the Debtors, the Committee, the U.S. Trustee, or any other party in interest, the person or entity requesting the hearing shall have the burden of proof and the only issue to be determined and decided by the Court at any such DIP Default Hearing is whether the Event of Default has occurred and is continuing.</p> <p><i>See Order ¶ 12; DIP Agmt. § 10.3</i></p> |

**Prepetition Secured Funded Indebtedness**

11. On October 1, 2020, Debtors executed a certain Promissory Note and Loan and Security Agreement together with all other agreements, documents, security agreements, notes, Uniform Commercial Code financing statements, and instruments executed and/or delivered in connection therewith or related thereto (the “Prepetition Loan Documents”) in favor of Gerber Finance Inc., predecessor in interest to 888 Capital Partners, LLC, as lender (in such capacity, the “Senior Prepetition Lender” and, together with the Participant, collectively, the “Prepetition Lender”) to provide Debtors with one or more loans (the “Prepetition Loan”) in the principal amount of \$5,000,000.00. Various amendments, including that certain Forbearance Agreement and Amendment to Loan and Security Agreement dated February 26, 2021; Amendment to Loan and Security Agreement and Pledge Agreement dated as of March 19, 2021; Second Amendment to Loan and Security Agreement and Pledge Agreement dated as of April [\_\_\_\_][sic], 2021; Amendment to Loan and Security Agreement and Forbearance Agreement dated July 21, 2021; the Amendment and Modification dated August 16, 2021; and the Amendment and Modification dated September 1, 2021 were subsequently entered into pursuant to which the Prepetition Lender made certain financial accommodations to Debtors.

12. In connection with the Prepetition Loan, one of the Debtors’ equity holders, Ms. Paulette Cole, executed a Guaranty dated as of October 1, 2020 pursuant to which she guaranteed the payment of certain of the Obligations of Debtors to Senior Prepetition Lender. Thereafter, on March 4, 2021, Ms. Cole pledged as collateral her right, title and interest in and to a deposit account in her name.

13. On July 21, 2021, the Prepetition Lender and Ms. Cole (in such capacity, the “Participant”) executed a Participation Agreement, pursuant to which the Participant acquired a

\$2,000,000 undivided junior participation interest under the Prepetition Loan Documents (the “Participation Agreement”). On August 4, 2021, the Senior Prepetition Lender and the Participant executed a Partial Release of Collateral, pursuant to which the Participant acquired an additional \$700,000 undivided junior participation interest under the Prepetition Loan Documents (the “Release Agreement” and together with the Participation Agreement, the “Participation Documents” and the Participant’s interest under the Prepetition Loan Documents, the “Participation Interest”).

14. The Prepetition Loan is secured by all assets of the Debtors. The Prepetition Lender has a first priority security interest in all such assets in which Prepetition Lender properly perfected its security interests (as described in the Prepetition Loan Documents, the “Prepetition Collateral”).

15. The Prepetition Loan matures on September 30, 2022 and bears interest at the rate of three percent (3%) per annum in excess of the prime rate plus five percent (5%) in the case of a default. As of the Petition Date, the outstanding balance due on the Prepetition Loan (including recent prepetition advances) was no less than \$8,747,598.42, of which no less than \$2.7 million constitutes the Participant’s Participation Interest under the Participation Documents, including interest (the “Prepetition Secured Obligations”).<sup>14</sup>

**The Debtors’ Immediate Need for Postpetition  
Financing and Access to Cash Collateral.**

16. The Debtors require immediate access to debtor-in-possession financing and access to Cash Collateral to make all payments authorized under the proposed orders approving all other first day motions and to continue operating as a going concern through the sale process outlined

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<sup>14</sup> As discussed in greater detail in the bidding procedures motion, 888 Capital Partners, LLC is also the proposed “stalking horse” bidder. 888 Capital Partners, LLC, or its assignee/designee, intends to credit bid the Prepetition Secured Obligations and DIP Obligations as part of its stalking horse bid. If the stalking horse bid is the successful bid and the sale is approved, the Participant will hold an indirect minority interest in the purchaser by way of her Participation Interest.

in the bidding procedures motion filed concurrently with this Motion. This includes, without limitation, the Debtors' immediate need to use Cash Collateral and the DIP Facility to fund payroll prior to the Final Hearing. Absent the relief requested herein, the Debtors will be faced with immediate or irreparable harm to their business. *See* Mandarinino Decl. ¶ 10.

17. As discussed in further detail in the First Day Declaration, the Debtors' current liquidity issues are the result of the adverse impacts of the COVID-19 pandemic on the Debtors' revenue, results of operations, and cash flows. While the Debtors have a significant customer base, the impact of the COVID-19 pandemic caused the Debtors' revenue to decline year-over-year. Year through date to July 31, 2021, the Debtors' gross sales were approximately \$25.46 million, an approximate 50% drop from the same period in 2018.

18. Prior to commencing these chapter 11 cases, as part of the Debtors' ongoing discussions with the DIP Lender, the Debtors developed and negotiated the terms and conditions of the DIP Facility. The Debtors' negotiations with the DIP Lender were arm's length and each party was represented by separate counsel. This process resulted in terms and conditions that the Debtors believe are fair and reasonable under the circumstances, particularly taking into account the unprecedented business and financing challenges the Debtors have faced as a result of the COVID-19 pandemic.

19. Additionally, as detailed in the Mandarinino Declaration, B. Riley Securities, Inc. ("B. Riley"), the Debtors' proposed financial advisor and investment banker, approached over twelve (12) potential debtor-in-possession financing providers, consisting of direct lenders and alternative investment firms, prior to the Debtors selecting 888 Capital Partners as the DIP Lender. *See* Mandarinino Decl. ¶ 7. In consultation with B. Riley and the Debtors' other advisors, the Debtors

determined that the above detailed debtor-in-position financing represents the best presently available postpetition financing option.

20. The Debtors, in consultation with their advisors, have also reviewed and analyzed the Debtors' projected cash needs. The DIP Facility will ensure that the Debtors will have sufficient liquidity to fund these cases through the projected conclusion of the sale process. This assurance of liquidity is of critical importance to vendors, who must have confidence that the Debtors will be able to continue to fund orders on an ongoing basis. *See* Mandarino Decl. ¶ 10.

21. Given these issues, it would not be possible for these Debtors to finance these cases on prepetition Cash Collateral alone, and, therefore, the use of Cash Collateral and the DIP Facility is crucial to preserving the Debtors and their bankruptcy estates (the "Estates"). *See* Mandarino Decl. ¶ 10.

22. The Debtors moreover believe that the Approved Budget is adequate, considering all available assets, to pay administrative expenses due or accruing during the period covered by the Approved Budget. *See* Mandarino Decl. ¶ 10.

### **Basis for Relief Requested**

#### **A. The Court Should Approve the DIP Facility Under Section 364(c) and (d)(1) of the Bankruptcy Code**

23. Absent the relief requested herein, the Debtors' ability to continue to operate their business in these chapter 11 cases would be severely jeopardized. Put simply, the Debtors would be forced to cease operations and would not have the ability to consummate the sale. Approval of the DIP Facility (and the use of Cash Collateral) will allow the Debtors to fund their current and ongoing payroll, working capital, and operating expenses and prosecute these chapter 11 cases. Accordingly, for the reasons set forth herein, the Debtors submit that entry into the DIP Facility is a sound exercise of their business judgment and should be approved.

i. The Debtors Exercised Sound and Reasonable Business  
Judgment in Deciding to Enter into the DIP Facility

24. The Court should authorize the Debtors, as an exercise of their sound business judgment, to enter into the DIP Loan Documents and obtain access to the DIP Facility. Section 364 of the Bankruptcy Code authorizes a debtor to obtain secured or superpriority financing under certain circumstances discussed in detail below.

25. Courts grant a debtor considerable deference in acting in accordance with its business judgment in obtaining postpetition secured credit, so long as the agreement to obtain such credit does not run afoul of the provisions of, and policies underlying, the Bankruptcy Code. *See In re Barbara K. Enters., Inc.*, Case No. 08-11474 (MG), 2008 WL 2439649, at \*14 (Bankr. S.D.N.Y. June 16, 2008) (explaining that courts defer to a debtor's business judgment "so long as a request for financing does not 'leverage the bankruptcy process' and unfairly cede control of the reorganization to one party in interest"); *In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) ("Cases consistently reflect that the court's discretion under section 364 is to be utilized on grounds that permit [a debtor's] reasonable business judgment to be exercised so long as the financing agreement does not contain terms that leverage the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to benefit a party-in-interest.").

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

27. In considering whether the terms of postpetition financing are fair and reasonable, courts consider the terms in light of the relative circumstances of both the debtor and the potential lender. *In re Farmland Indus.*, 294 B.R. 855, 886 (Bankr. W.D. Mo. 2003); *Unsecured Creditors' Comm. Mobil Oil Corp. v. First Nat'l Bank & Trust Co. (In re Elingsen McLean Oil Co., Inc.)*, 65 B.R. 358, 365 n.7 (W.D. Mich. 1986) (recognizing a debtor may have to enter into "hard bargains" to acquire funds for its reorganization). Courts may also appropriately take into consideration non-economic benefits to the debtors offered by a proposed postpetition facility. *See In re ION Media Networks, Inc.*, Case No. 09-13125, 2009 WL 2902568, at \*4 (Bankr. S.D.N.Y. July 6, 2009) (noting that "[r]elevant features of the financing must be evaluated, including non-economic elements such as the timing and certainty of closing, the impact on creditor constituencies and the likelihood of a successful reorganization.").

28. Under the circumstances, the Debtors' determination to proceed with the DIP Facility is a sound exercise of their business judgment following a thorough process and careful evaluation of alternatives. The Debtors and their advisors determined that postpetition financing will create certainty with respect to cash flows necessary for administering these chapter 11 cases. The DIP Facility will allow the Debtors to: (a) fund certain costs, fees, and expenses related to the chapter 11 cases, including the sale process; (b) provide Adequate Protection (defined below); (c) fund the fees, interest, payments, and expenses associated with the DIP Facility, including fees, costs, and expenses incurred by the DIP Lender; and (d) fund the Debtors' payroll and related expenditures. The Debtors negotiated the DIP Facility and DIP Loan Documents with the DIP Lender in good faith, at arm's length, and with the assistance of their respective advisors, and the Debtors believe that they have obtained the best financing available under the circumstances.



Accordingly, the Court should authorize the Debtors' entry into the DIP Agreement, as it is a reasonable exercise of the Debtors' business judgment.

ii. The Debtors Should Be Authorized to Grant Liens and Superpriority Claims

29. The Debtors propose to obtain financing under the DIP Facility by providing security interests and liens as set forth in the DIP Loan Documents pursuant to section 364(c) of the Bankruptcy Code. Specifically, the Debtors propose to provide to the DIP Lender continuing, valid, binding, enforceable, non-avoidable, and automatically and properly perfected postpetition security interests in and liens on the DIP Collateral, subject to the Carve-Out and Valid Prior Liens. Additionally, in conjunction with the provision of Adequate Protection and as discussed in greater detail below, the Debtors intend to provide the Prepetition Lender with certain liens on the DIP Collateral and superpriority claims with respect to those liens and payment of the Participant Reimbursement Obligations.

30. The Debtors satisfy the requirements for relief under section 364 of the Bankruptcy Code, which authorizes a debtor to incur secured or superpriority debt under certain circumstances. The statutory requirement for obtaining postpetition credit under section 364(c) of the Bankruptcy Code is a finding, made after notice and hearing, that a debtor is "unable to obtain unsecured credit allowable under Section 503(b)(1) of [the Bankruptcy Code]." 11 U.S.C. § 364(c). *See In re Crouse Grp., Inc.*, 71 B.R. 544, 549 (Bankr. E.D. Pa. 1987) (secured credit under section 364(c) of the Bankruptcy Code is authorized, after notice and hearing, upon showing that unsecured credit cannot be obtained). A debtor need only demonstrate "by a good faith effort that credit was not available" to the debtor on an unsecured or administrative expense basis. *See In re Crouse Grp.*, 71 B.R. at 549; *Bray v. Shenandoah Fed. Savs. & Loan Ass'n (In re Snowshoe Co.)*, 789 F.2d 1085, 1088 (4th Cir. 1986). "The statute imposes no duty to seek credit from every possible lender before concluding that such credit is unavailable." *Id.*; *Pearl-Phil GMT (Far East) Ltd. v. Caldor*

*Corp.*, 266 B.R. 575, 584 (S.D.N.Y. 2001) (superpriority administrative expenses authorized where debtor could not obtain credit as an administrative expense). When few lenders are likely to be able and willing to extend the necessary credit to a debtor, “it would be unrealistic and unnecessary to require [the debtor] to conduct such an exhaustive search for financing.” *In re Sky Valley, Inc.*, 100 B.R. 107, 113 (Bankr. N.D. Ga. 1988), *aff’d sub nom., Anchor Savs. Bank FSB v. Sky Valley, Inc.*, 99 B.R. 117, 120 n.4 (N.D. Ga. 1989).

31. Courts have articulated the following three-part test to determine whether a debtor is entitled to financing under section 364(c) of the Bankruptcy Code:

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

*In re Los Angeles Dodgers LLC*, 457 B.R. 308 (Bankr. D. Del. 2011); *In re Ames*, 115 B.R. at 37–40; *In re Crouse Grp.*, 71 B.R. at 549.

32. As described above and as set forth in the Mandarin Declaration, no third-party lender indicated it would be willing to provide postpetition financing on an unsecured, *pari passu*, or junior-lien basis to the Prepetition Lender. *See* Mandarin Decl. ¶ 8. The DIP Facility is therefore the best DIP financing available to the Debtors under the circumstances to provide liquidity during the chapter 11 cases.

33. Absent the DIP Facility, which will provide assurances that the Debtors will have liquidity to administer the cases, the value of the Debtors’ estates would be significantly impaired to the detriment of all stakeholders. Without postpetition financing, the Debtors lack sufficient funds to operate their enterprise, continue paying their debts as they come due, and cover the projected costs of the chapter 11 cases. *See* Mandarin Decl. ¶ 10.

34. Given the Debtors' current liquidity position, the Debtors would have to imminently cease operations without postpetition financing, preventing them from consummating the sale, which in turn means that creditors will receive drastically decreased recoveries from a subsequent liquidation of the Debtors' assets. Under the circumstances, the Debtors believe that the terms of the DIP Facility as set forth in the DIP Loan Documents are reasonable for the reasons provided more fully above and in the Mandarino Declaration. For all these reasons, the Debtors submit that they have met the standard for obtaining postpetition financing.

35. Further, section 364(d) provides that a debtor may obtain credit secured by a senior or equal lien on property of the estate already subject to a lien, after notice and a hearing, where the debtor is "unable to obtain such credit otherwise" and "there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted." 11 U.S.C. § 364(d)(1). Consent by the secured creditors to priming obviates the need to show adequate protection. *See Anchor Savs. Bank FSB v. Sky Valley, Inc.*, 99 B.R. 117, 122 (N.D. Ga. 1989) ("[B]y tacitly consenting to the superpriority lien, those [undersecured] creditors relieved the debtor of having to demonstrate that they were adequately protected."). Accordingly, the Debtors may incur "priming" liens under the DIP Facility if either (a) the Prepetition Lender has consented or (b) the Prepetition Lender's interests in collateral are adequately protected.

36. As stated in the Mandarino Declaration, the Prepetition Lender is consenting to the priming of its lien pursuant to the terms of the Interim DIP Order. *See Mandarino Decl.* ¶ 9. Moreover, the Debtors were unable to obtain unsecured financing; and the feasibility of a priming fight with the Prepetition Lender eliminated the strategy of unsecured financing from a third party. *See Mandarino Decl.* ¶ 8. Therefore, the Debtors submit that the requirement of section 364 of the

Bankruptcy Code that alternative credit on more favorable terms be unavailable to the Debtors is satisfied.

**B. The Debtors Should Be Authorized to Pay the Fees Required  
Under the DIP Loan Documents**

37. Under the DIP Loan Documents, the Debtors have agreed to pay certain fees to the DIP Lender. In particular, as noted above, the Debtors have agreed to pay: (i) a Commitment Fee of \$120,000, which is approximately two percent (2%) of the Commitment amount; and (ii) customary reimbursement of DIP Lender's reasonable legal, accounting, appraisal and other fees and expenses incurred by DIP Lender.

38. Courts in this district and others have approved similar aggregate fees in chapter 11 cases. *See, e.g., In re Sungard Availability Serv's Capital, Inc.*, Case No. 19-22915 (RDD) (Bankr. S.D.N.Y. May 1, 2019) (approving upfront and commitment fees of 3% of the committed DIP amount and 2.5% of the average daily unused delayed draw, respectively); *In re BCBG Max Azria Global Holdings, LLC*, Case No. 17-10466 (Bankr. S.D.N.Y. Mar. 28, 2017) (approving 3.5% DIP closing fee); *In re NR Liquidation III Co. (f/k/a Neff Corp.)*, Case No. 10- 12610 (SCC) (Bankr. S.D.N.Y. June 30, 2010) (approving 3.1% DIP and exit facility fee).

39. The fees and rates to be paid under the proposed DIP Facility were the subject of arm's-length and good faith negotiation between the Debtors and the DIP Lender, are an integral component of the overall terms of the proposed DIP Facility, and were required by the DIP Lender as consideration for the extension of debtor-in-possession financing. *See* Mandarino Decl. ¶ 10. Accordingly, the Bankruptcy Court should authorize the Debtors to pay the fees provided under the DIP Loan Documents in connection with entering into those agreements.

**C. The DIP Lender Should Be Deemed A Good-Faith Lender Under Section 364(e).**

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

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

41. As explained herein and in the Mandarin Declaration, the DIP Loan Documents are the result of: (a) the Debtors' reasonable and informed determination that the DIP Lender provided the best financing alternative available under the circumstances; and (b) extensive arm's-length, good-faith negotiations between the Debtors and the DIP Lender. The Debtors submit that the terms and conditions of the DIP Loan Documents are reasonable under the circumstances, and the proceeds of the DIP Facility will be used only for purposes that are permissible under the Bankruptcy Code. Further, no consideration is being provided to any party to the DIP Loan Documents other than as described herein or in the DIP Loan Documents. Accordingly, the Court should find that the DIP Lender is a "good faith" lender within the meaning of section 364(e) of the Bankruptcy Code and is entitled to all of the protections afforded by that section.

**D. The Debtors Should Be Authorized to Use Cash Collateral**

42. Section 363 of the Bankruptcy Code governs the Debtors' use of property of their estates, including Cash Collateral. Pursuant to section 363(c)(2) of the Bankruptcy Code, a debtor may use cash collateral as long as "(A) each entity that has an interest in such cash collateral

consents; or (B) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of this section.” 11 U.S.C. § 363(c)(2).

43. Section 363(e) of the Bankruptcy Code provides for adequate protection of interests in property when a debtor uses cash collateral. Further, section 362(d)(1) of the Bankruptcy Code provides for adequate protection of interests in property due to the imposition of the automatic stay.

44. Adequate protection may be provided in various forms, including payment of fees, granting of replacement liens or administrative claims. Thus, what constitutes adequate protection is decided on a case-by-case basis. *See, e.g., In re Mosello*, 195 B.R. 277, 289 (Bankr. S.D.N.Y. 1996) (“The determination of adequate protection is a fact-specific inquiry . . . left to the vagaries of each case”); *In re Beker Indus. Corp.*, 58 B.R. 725, 736 (Bankr. S.D.N.Y. 1986) (the application of adequate protection “is left to the vagaries of each case, but its focus is protection of the secured creditor from diminution in the value of its collateral during the reorganization process” (citation omitted)). The critical purpose of adequate protection is to guard against the diminution of a secured creditor’s collateral during the period when such collateral is being used by the debtor in possession. *See 495 Cent. Park*, 136 B.R. at 631 (“The goal of adequate protection is to safeguard the secured creditor from diminution in the value of its interest during the chapter 11 reorganization.”); *In re Beker Indus.*, 58 B.R. at 736; *In re Hubbard Power & Light*, 202 B.R. 680, 685 (Bankr. E.D.N.Y. 1996).

45. The Adequate Protection Liens, the Superpriority Adequate Protection Claim, and the Participant Reimbursement Obligations (collectively, the “Adequate Protection”) provided to the Prepetition Lender appropriately safeguard against the diminution in the value of its interests

in the Prepetition Collateral (including Cash Collateral), and, as such, are fair and reasonable and satisfy the requirements of section 364 of the Bankruptcy Code.

**E. The Carve-Out Is Appropriate; Adequate Protection Is Subject to Carve-Out**

46. The DIP Facility and the Interim DIP Order subject the security interests and administrative expense claims under the DIP Facility and the Adequate Protection to the Carve-Out. Such carve-outs for professional fees have been found to be reasonable and necessary to ensure that a debtor's estate and any official committee appointed can reimburse their professionals in certain circumstances during an event of default under the terms of the debtor's postpetition financing. *See In re Ames*, 115 B.R. at 38 ("Absent such protection, the collective rights and expectations of all parties-in-interest are sorely prejudiced"). Additionally, the Carve-Out protects against administrative insolvency during the course of these Chapter 11 Cases by ensuring that, notwithstanding the grant of superpriority claims and liens under the DIP Facility and adequate protection claims, assets remain for the payment of the fees of the Office of the United States Trustee for the Southern District of New York (the "U.S. Trustee") and professional fees of the Debtors and any Committee.

**F. The Automatic Stay Should Be Modified on a Limited Basis.**

47. The proposed Interim DIP Order provides that the automatic stay provisions of section 362 of the Bankruptcy Code will be modified to permit (a) the Debtors to grant the liens and claims provided for under the DIP Facility, (b) the Debtors to incur the liabilities and obligations contemplated in the DIP Loan Documents, (c) the Debtors to pay all amounts required in accordance with the DIP Loan Documents, (d) the DIP Lender, subject to certain limitations, to exercise remedies upon the occurrence and during the continuation of an Event of Default, and (e) the DIP Lender to implement all of the terms, rights, benefits, privileges, remedies, and provisions of the Interim DIP Order and the DIP Loan Documents, including allowing the DIP

Lender to file any financing statements, security agreements, notices of liens, and other similar instruments and documents in order to validate and perfect the liens and security interests granted to them under the Interim DIP Order. In addition, with respect to the Prepetition Lender, the Interim DIP Order permits the Debtors to (a) grant the Adequate Protection Liens, the Superpriority Adequate Protection Claims, and the Participant Reimbursement Obligations, and (b) perform such acts as the Prepetition Lender may request in its reasonable discretion to assure the perfection and priority of the liens granted therein.

48. Stay modifications of this kind are ordinary and standard features of debtor-in-possession financing arrangements and, in the Debtors' business judgment, are reasonable and fair under the circumstances of the Chapter 11 Cases.

**G. Failure to Obtain Immediate Interim Access to the DIP Facility  
Would Cause Immediate and Irreparable Harm**

49. Bankruptcy Rules 4001(b) and 4001(c) provide that a final hearing on a motion to obtain credit pursuant to section 364 of the Bankruptcy Code may not be commenced earlier than fourteen (14) days after the service of such motion. Upon request, however, pursuant to Bankruptcy Rules 4001(b) and 4001(c) and Local Rule 4001-2, the Court may conduct a preliminary, expedited hearing on the motion and authorize the obtaining of credit to the extent necessary to avoid immediate and irreparable harm to a debtor's estate.

50. The Debtors request that the Court hold and conduct a hearing to consider entry of the Interim DIP Order authorizing the Debtors, from and after entry of the Interim DIP Order until the Final Hearing, to borrow funds under the DIP Facility. The Debtors will suffer immediate and irreparable harm if the Interim DIP Order approving the DIP Facility is not entered sooner than fourteen (14) days after service of the DIP Motion and if the Debtors are not permitted to access the DIP Facility. The Debtors require access to the DIP Facility prior to the Final Hearing and



entry of the Final DIP Order in order to continue operating, to pay their administrative expenses and to implement the relief requested in the Debtors' other "first day" motions. This relief is necessary for the Debtors to preserve and maximize value and, therefore, to avoid immediate and irreparable harm and prejudice to the Debtors' estates and all parties in interest.

#### **H. Request for Final Hearing**

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

#### **Bankruptcy Rule 6003 Is Satisfied**

52. Bankruptcy Rule 6003(b) provides that, to the extent relief is necessary to avoid immediate and irreparable harm, a bankruptcy court may approve "a motion to use, sell, lease, or otherwise incur an obligation regarding property of the estate, including a motion to pay all or part of a claim that arose before the filing of the petition" prior to twenty-one (21) days after the Commencement Date. *See* Fed. R. Bankr. P. 6003(b). As described above and in the Mandarino Declaration, the Debtors would suffer immediate and irreparable harm if the relief sought herein is not promptly granted. Accordingly, the Debtors submit that the relief requested herein is necessary to avoid immediate and irreparable harm, and, therefore, Bankruptcy Rule 6003 is satisfied.

#### **Waiver of Bankruptcy Rules 6004(a) and 6004(h)**

53. To implement the foregoing successfully, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a). Additionally, the Debtors also request that the Court waive the stay imposed by Bankruptcy Rule 6004(h), which provides that "[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise." Fed. R. Bankr. P. 6004(h).

54. As described above, the relief that the Debtors seek in this Motion is necessary for the Debtors to operate their business without interruption and to preserve value for their estates – specifically to provide the Debtors runway to pursue a sale of their assets. Accordingly, the Debtors respectfully request that the Court waive the fourteen-day stay imposed by Bankruptcy Rule 6004(h), to the extent that it applies.

**Bankruptcy Rule 4001(a)(3) Should Be Waived**

55. Bankruptcy Rule 4001(a)(3) provides, “[an] order granting a motion for relief from an automatic stay made in accordance with Rule 4001(a)(1) is stayed until the expiration of fourteen days after entry of the order, unless the court orders otherwise.” *See* Fed. R. Bankr. P. 4001(a)(3). The Debtors request a waiver of the stay of the effectiveness of the order approving this Motion under Bankruptcy Rule 4001(a)(3). As explained herein, access to the DIP Facility is essential to prevent irreparable damage to the Debtors’ estates. Accordingly, ample cause exists to justify the waiver of the fourteen-day imposed by Bankruptcy Rule 4001(a)(3), to the extent such applies.

**Reservation of Rights**

56. Nothing in this Motion: (a) is intended or shall be deemed to constitute an assumption of any agreement pursuant to section 365 of the Bankruptcy Code or an admission as to the validity of any claim against the Debtors or their estates; (b) shall impair, prejudice, waive, or otherwise affect the rights of the Debtors or their estates to contest the validity, priority, or amount of any claim against the Debtors or their estates; (c) shall impair, prejudice, waive, or otherwise affect the rights of the Debtors or their estates with respect to any and all claims or causes of action against any third party; or (d) shall be construed as a promise to pay a claim or continue any applicable program postpetition, which decision shall be in the discretion of the Debtors. Any payment made pursuant to an order of the Court granting the relief requested herein

is not intended to be nor should it be construed as an admission as to the validity of any claim or a waiver of the Debtors' rights to subsequently dispute such claim.

**Notice**

57. Notice of this Motion has been provided to (i) the Office of the United States Trustee for Region 2; (ii) the Debtors' thirty (30) largest unsecured creditors on a consolidated basis; (iii) counsel to the Senior Prepetition Lender and DIP Lender; (iv) counsel to the Participant; (v) the Internal Revenue Service; (vi) the United States Attorney's Office for the Southern District of New York; and (vii) to the extent not listed herein, those parties requesting notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be provided.

**No Prior Request**

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

WHEREFORE the Debtors respectfully requests entry of an Interim DIP Order and a Final DIP Order granting the relief requested herein and such other and further relief as is just.

Dated: September 9, 2021  
New York, New York

/s/ Oscar N. Pinkas  
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*Proposed Counsel for the Debtors and  
Debtors in Possession*

**Exhibit A**

**Interim DIP Order**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re:

A.B.C. CARPET CO., INC., *et al.*,<sup>1</sup>

Debtors.

)  
) Chapter 11  
)  
) Case No. 21-11591 (\_\_\_\_)  
)  
) (Joint Administration Requested)  
)

**INTERIM ORDER (A) AUTHORIZING DEBTORS AND DEBTORS IN  
POSSESSION TO OBTAIN SUPERPRIORITY POSTPETITION FINANCING,  
(B) AUTHORIZING USE OF CASH COLLATERAL, (C) GRANTING LIENS  
AND SUPERPRIORITY CLAIMS, (D) GRANTING ADEQUATE PROTECTION  
TO PREPETITION SECURED PARTY, (E) MODIFYING THE AUTOMATIC STAY,  
(F) SCHEDULING A FINAL HEARING, AND (G) GRANTING RELATED RELIEF**

Upon consideration of the Motion (the “Financing Motion”)<sup>2</sup> dated September 9, 2021, filed by the above-captioned debtors and debtors-in-possession (collectively, the “Debtors”) for authority to (a) obtain postpetition financing on a superpriority basis from 888 Capital Partners, LLC (in such capacity, the “DIP Lender”) pursuant to 11 U.S.C. §§ 105, 362, 363, 364(c), and 364(d) and (e) and Fed. R. Bankr. P. 2002, 4001(b), (c) and (d); (b) granting adequate protection to the Prepetition Lender (as hereinafter defined); and (c) granting related relief; and there being due and sufficient notice, in accordance with Rules 2002 and 4001 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and the Local Bankruptcy Rules for the Southern District of New York (the “Local Rules”), of the Financing Motion; the First Day Declaration and the Mandarino Declaration, and the interim hearing thereon held by the Court on September [\*\*], 2021 (the “Interim Hearing”); and upon the record of the Interim Hearing; and the Court having

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, as applicable, are ABC Carpet Co., Inc. (6537), ABC Home Furnishings, Inc. (6915), and ABC Oriental Carpets, Inc. (3679). The Debtors’ principal place of business is 888 Broadway, New York, NY 10003.

<sup>2</sup> Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the Financing Motion.

considered the Financing Motion, the exhibits thereto, and the evidence and the arguments of counsel presented at the Interim Hearing; and after due deliberation and consideration, and for good and sufficient cause appearing therefor:

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

A. **Petition Date.** On September 8, 2021 (the “Petition Date”), the Debtors commenced the above-captioned chapter 11 cases (the “Bankruptcy Cases”) by filing petitions for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York (the “Court”). Since the Petition Date, the Debtors have remained in possession of their assets and are debtors in possession pursuant to section 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Bankruptcy Cases.

B. **Jurisdiction and Venue.** This Court has jurisdiction to hear the Financing Motion pursuant to 28 U.S.C. §§ 157 and 1334. Consideration of the Financing Motion constitutes a core proceeding under 28 U.S.C. § 157(b). Venue for the Bankruptcy Cases and proceedings on the Financing Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. The Debtors and the DIP Lender consent to the entry of this Interim Order to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection with the Financing Motion consistent with Article III of the United States Constitution. The statutory predicates for the relief sought herein are sections 105(a), 361, 362, 363, 364, 503, 506, 507, and 552 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001, 6003, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure, and Local Rules 2002-1, 4001-2, and 9014-2.

C. **Notice.** Notice of the Interim Hearing and the relief requested in the Financing

Motion has been provided by the Debtors as set forth in the Financing Motion to the required parties. The Debtors have made reasonable efforts to afford the best notice possible under the circumstances. Such notice of the Interim Hearing and the relief requested in the Financing Motion constitutes due, sufficient and appropriate notice and complies with section 102(1) of the Bankruptcy Code, Bankruptcy Rules 2002 and 4001(b), and applicable Local Rules.

D. **Parties' Acknowledgments, Agreements and Stipulations.** In requesting the DIP Facility (as hereinafter defined) and use of Prepetition Lender's cash collateral, and in exchange for and as a material inducement to the Prepetition Lender to agree to provide, or consent to, the DIP Facility, the use cash collateral, and subordination of the Prepetition Liens (as hereinafter defined) to the Carve-Out (as hereinafter defined), as provided herein, and as a condition to providing financing under the DIP Facility and consenting to the use of cash collateral as set forth in this Interim Order, subject to the Challenge Period (as hereinafter defined) the Debtors permanently and irrevocably admit, stipulate, acknowledge and agree as follows, provided however that consistent with Local Rule 4001-2(g)(4), subsections D(b), (d), (e) and (g) do not constitute factual findings by the Court:

a. **Prepetition Loan.** On October 1, 2020, Debtors executed a certain Promissory Note and Loan and Security Agreement (as amended, the "Prepetition Loan Agreement," and together with all other agreements, documents, security agreements, notes, Uniform Commercial Code financing statements, and instruments executed and/or delivered in connection therewith or related thereto (the "Prepetition Loan Documents") in favor of Gerber Finance Inc., predecessor in interest to 888 Capital Partners, LLC, as lender (in such capacity, the "Senior Prepetition Lender" and, together with the Participant (as hereinafter defined), collectively, the "Prepetition



Lender”)<sup>3</sup> to provide Debtors with one or more loans (the “Prepetition Loan”) in the principal amount of \$5,000,000.00. Various amendments, including that certain Forbearance Agreement and Amendment to Loan and Security Agreement dated February 26, 2021; Amendment to Loan and Security Agreement and Pledge Agreement dated as of March 19, 2021; Second Amendment to Loan and Security Agreement and Pledge Agreement dated as of April [\_\_\_\_][sic], 2021; Amendment to Loan and Security Agreement and Forbearance Agreement dated July 21, 2021; the Amendment and Modification dated August 16, 2021; and the Amendment and Modification dated September 1, 2021 were subsequently entered into pursuant to which the Prepetition Lender made certain financial accommodations to Debtors. On July 21, 2021, the Senior Prepetition Lender and one of the Debtors’ equity holders Ms. Paulette Cole (in such capacity, the “Participant”) executed a Participation Agreement, pursuant to which the Participant acquired a \$2,000,000 undivided junior participation interest under the Prepetition Loan Documents (the “Participation Agreement”). On August 4, 2021, the Senior Prepetition Lender and the Participant executed a Partial Release of Collateral, pursuant to which the Participant acquired an additional \$700,000 undivided junior participation interest under the Prepetition Loan Documents (the “Release Agreement” and together with the Participation Agreement, the “Participation Documents” and the Participant’s interest under the Prepetition Loan Documents, the “Participation Interest”). The Prepetition Loan is secured by a first priority security interest in all assets of the Debtors in which Prepetition Lender properly perfected a security interest (as described in the Prepetition Loan Documents, the “Prepetition Collateral”). The Prepetition Loan

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<sup>3</sup> As set forth in more detail below, one of the Debtors’ equity holders, Ms. Paulette Cole, has a Participation Interest (defined below) in the Prepetition Loan.

matures on September 30, 2022 and bears interest at the rate of 3% per annum in excess of the prime rate plus 5% in the case of a default. As of the Petition Date, the outstanding balance due on the Prepetition Loan (including recent prepetition advances) was no less than \$8,747,598.42, of which no less than \$2.7 million constitutes the Participant's Participation Interest under the Participation Documents, including interest (the "Prepetition Secured Obligations").

b. **Prepetition Secured Obligations.** The Prepetition Secured Obligations owing to the Prepetition Lender (inclusive of the Participant's Participation Interest therein) constitute legal, valid and binding obligations of the Debtors, enforceable against them in accordance with their terms and to the extent properly perfected no portion of the Prepetition Secured Obligations owing to the Prepetition Lender is subject to avoidance, recharacterization, reduction, set-off, offset, counterclaim, cross claim, recoupment, defenses, disallowance, impairment, recovery, subordination, or any other challenges pursuant to the Bankruptcy Code or applicable non-bankruptcy law or regulation by any person or entity.

c. **Prepetition Collateral.** Pursuant to the Prepetition Loan Documents, and on the terms set forth therein, the Debtors granted to the Prepetition Lender liens on the Prepetition Collateral (the "Prepetition Liens").

d. **Prepetition Liens.** The Prepetition Liens granted to the Prepetition Lender constitute legal, valid, binding, enforceable, and perfected (to the extent properly perfected) security interests in and liens on the Prepetition Collateral, were granted to, or for the benefit of, the Prepetition Lender for fair consideration and reasonably equivalent value, and are not subject to defense, counterclaim, recharacterization, subordination, avoidance, or recovery pursuant to the Bankruptcy Code or applicable non-bankruptcy law or regulation by any

person or entity.

e. **No Challenges/Claims.** No offsets, challenges, objections, defenses, claims or counterclaims of any kind or nature to any of the Prepetition Liens (to the extent properly perfected) or Prepetition Secured Obligations exist, and no portion of the Prepetition Liens (to the extent properly perfected) or Prepetition Secured Obligations is subject to any challenge or defense including, without limitation, avoidance, disallowance, disgorgement, recharacterization, or subordination (equitable or otherwise) pursuant to the Bankruptcy Code or applicable non-bankruptcy law. The Debtors and, subject to Paragraph D(h), the Estates have no valid Claims (as such term is defined in section 101(5) of the Bankruptcy Code) objections, challenges, causes of action, and/or choses in action against the Prepetition Lender or any of its affiliates, agents, attorneys, advisors, professionals, officers, directors, and employees with respect to the Prepetition Loan Documents, the Prepetition Secured Obligations, or the Prepetition Liens (to the extent properly perfected), whether arising at law or at equity, including, without limitation, any challenge, recharacterization, subordination, avoidance, recovery, disallowance, reduction, or other claims arising under or pursuant to sections 105, 502, 510, 541, 542 through 553, inclusive, or 558 of the Bankruptcy Code or applicable state law equivalents. The Prepetition Secured Obligations constitute allowed, secured claims to the extent properly perfected and up to the value of the Prepetition Collateral within the meaning of sections 502 and 506 of the Bankruptcy Code.

f. **Sale and Credit Bidding.** In connection with any sale process or sale authorized by the Court, subject to the rights preserved in Paragraph D(h), the DIP Lender and the Prepetition Lender, or any assignee or designee of the foregoing entities, shall have the right to credit bid any

or all of the obligations outstanding under the DIP Facility and the Prepetition Loan Documents, as applicable, in connection with any disposition of property of the Estates subject to the provisions of section 363(k) of the Bankruptcy Code, and the Debtors shall not oppose such right.

g. **Cash Collateral.** As of the Petition Date, the Debtors admit, stipulate, acknowledge, and agree that all of the cash of the Debtors, wherever located, and all cash equivalents, including any cash in deposit accounts, now existing or after acquired proceeds of the Prepetition Collateral, constitutes “cash collateral” of the Prepetition Lender within the meaning of section 363(a) of the Bankruptcy Code (“Cash Collateral”).

h. **Effect of Stipulations on Third Parties.** The Debtors’ stipulations, admissions and agreements contained in this Interim Order shall be binding upon the Debtors and, subject to this Paragraph D(h), their Estates, in all circumstances and for all purposes. Notwithstanding any other provision of this Interim Order and subject only to the Challenge rights of third parties contained in this Paragraph D(h), the Debtors and their Estates further agree not to challenge, object to or otherwise contest the validity of the Prepetition Loan Documents, the Prepetition Secured Obligations, or the Prepetition Liens, or the perfection of the Prepetition Liens. The Debtors’ stipulations, admissions, and agreements contained in this Interim Order shall be binding upon all other parties in interest, including any statutory or non-statutory committees appointed or formed in the Bankruptcy Cases (including the Committee (as hereinafter defined), if appointed) and any other person or entity acting or seeking to act on behalf of the Debtors’ Estates, including any chapter 7 or chapter 11 trustee or examiner appointed for any of the Debtors, in all circumstances and for all purposes unless: (a) such committee or any other party in interest with requisite standing (subject in all respects to any agreement or applicable law that may limit or

affect such entity's right or ability to do so), has timely filed an adversary proceeding or contested matter by no later than (i) (x) with respect to parties in interest with requisite standing other than the Committee, 75 calendar days after entry of the Final Order and (y) with respect to the Committee, 60 calendar days after the entry of the Final Order, (ii) any such later date as has been agreed to, in writing, by the Prepetition Lender and (iii) any such later date as has been ordered by the Court for cause upon a motion filed and served within any applicable period of time set forth in this Paragraph (the time period established by the foregoing clauses (i), (ii), and (iii), the "Challenge Period"), in each case (A) objecting to or challenging the amount, validity, perfection, enforceability, priority, or extent of the Prepetition Secured Obligations, the Prepetition Loan, the Prepetition Collateral, or the Prepetition Liens, or (B) otherwise asserting or prosecuting any claims, counterclaims or causes of action, objections, contests or defenses (collectively, the "Challenges") against the Prepetition Lender in connection with matters related to the Prepetition Secured Obligations, the Prepetition Loan, the Prepetition Collateral, or the Prepetition Liens; and (b) there is a final non-appealable order in favor of the plaintiff sustaining any such Challenge in any such timely filed adversary proceeding or contested matter. Nothing in this Interim Order vests or confers on any Person (as defined in the Bankruptcy Code), including the Committee (if appointed) or any non-statutory committees appointed or formed in these Bankruptcy Cases, standing or authority to pursue any claim or cause of action belonging to the Debtors or their Estates, including Challenges with respect to the Prepetition Secured Obligations, the Prepetition Loan, the Prepetition Collateral, or the Prepetition Liens. A timely Challenge by a party granted standing by the Court under this provision of this Order shall be the sole mechanism for a party in interest or Committee (if appointed) to contest the validity of the Prepetition Loan Documents, the

Prepetition Secured Obligations, or the Prepetition Liens or raise any other Challenge.

E. **Post-Petition Financing.** The Debtors have requested from the DIP Lender, and the DIP Lender is willing, subject to entry of and on the terms set forth in this Interim Order and satisfaction of the conditions set forth in the DIP Agreement (as hereinafter defined), to extend the DIP Loan on the terms and conditions set forth in this Interim Order and the DIP Loan Documents (as hereinafter defined), respectively.

F. **Need for Post-Petition Financing and Use of Cash Collateral.** The Debtors have an immediate need to use Cash Collateral on an interim basis and to obtain credit on an interim basis, in each case, as set forth in this Interim Order in order to, amongst other things, administer and preserve the value of their assets and to avoid harm to their Estates. The ability of the Debtors to administer their Bankruptcy Cases, preserve and maintain the value of their assets, and maximize the return for creditors requires the immediate availability of the debtor-in-possession financing transaction described in the post-petition loan and security agreement between the Debtors and the DIP Lender attached hereto as Exhibit A (the “DIP Agreement”), which shall hereinafter be referred to as the “DIP Facility”. The DIP Agreement, the Note (as defined in the DIP Agreement) and the Security Documents (as defined in the DIP Agreement) and any and all other agreements, instruments and documents now or hereafter executed by Debtors in favor of DIP Lender with respect to any of the transactions contemplated by the DIP Agreement shall hereinafter be referred to as the “DIP Loan Documents”. In the absence of the availability of such funds in accordance with the terms hereof and the DIP Loan Documents, and the use of Cash Collateral as set forth in this Interim Order, the Debtors’ ability to maintain, preserve and operate their business, pay taxes and other administrative expenses would not be possible, and serious and

irreparable harm to the Debtors, the Estates, and their creditors would occur. Accordingly, the Debtors have an immediate need to obtain post-petition financing and to use Cash Collateral as set forth in this Interim Order to, amongst other things, minimize the disruption of their business operations and preserve and maximize the value of the assets of the Debtors' Estates to maximize recovery to all creditors.

G. **No Credit Available on More Favorable Terms.** The Debtors have been unable to obtain credit on more favorable terms and conditions than those set forth in the DIP Agreement and this Interim Order.

H. **Use of Proceeds of the DIP Facility.** Proceeds of the DIP Facility (net of any amounts used to pay fees, costs and expenses under the DIP Loan Documents) shall be used, in each case in a manner consistent with the DIP Loan Documents, the Interim Order, and the Budget (as hereinafter defined). In the event the terms of the DIP Agreement and/or the terms of the DIP Loan Documents are inconsistent with the terms of this Interim Order, the terms of this Interim Order shall control in all respects.

I. **Budget.** The Debtors have prepared and delivered to the DIP Lender and the Prepetition Lender a Budget (as defined in DIP Agreement), which reflects the Debtors' anticipated cash receipts and disbursements for each calendar week from the Petition Date through and including November 6, 2021. The Budget is reasonable under the circumstances and is hereby approved (the "**Approved Budget**").<sup>4</sup> A copy of the Approved Budget is annexed hereto as **Exhibit B.** The DIP Lender is relying upon Debtors' agreement to comply with the terms set forth

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<sup>4</sup> For the avoidance of doubt, the Approved Budget may be amended, modified or supplemented from time to time with the Lender's written consent.

in the DIP Loan Documents, the Approved Budget, and this Interim Order in determining to enter into the post-petition financing arrangements provided for herein and the DIP Loan Documents and to consent to the Debtors' use of DIP Collateral (as hereinafter defined).

J. **Certain Conditions to DIP Facility.** The DIP Lender's willingness to make the DIP Loan is conditioned upon, among other things: (a) the Debtors' obtaining Court approval to enter into the DIP Loan Documents and to incur all of the obligations thereunder, and to confer, as applicable, upon the DIP Lender all rights, powers, and remedies thereunder in each case as may be modified by this Interim Order; (b) the provision of adequate protection of the Prepetition Lender's interests in the Prepetition Collateral pursuant to sections 361 and 363 of the Bankruptcy Code; (c) the DIP Lender being granted, as security for the prompt payment of the DIP Facility and all other obligations of the Debtors under the DIP Loan Documents, subject to the Carve Out and Valid Prior Liens (as hereinafter defined), priming superpriority perfected security interests in and liens upon all property and assets of the Debtors, including, but not limited to, a valid and perfected security interest in and lien upon all of the now existing or hereafter arising or acquired assets, including: (i) assets constituting Prepetition Collateral, (ii) subject to entry of a final order approving the Financing Motion (the "Final Order"), a lien on proceeds of Avoidance Claims (as defined in the DIP Agreement), (iii) liens on leases, (iv) liens on Cash Collateral (as hereinafter defined), and (v) any assets of the Debtors that, as of the Petition Date, were not otherwise subject to a valid, perfected, enforceable, and unavoidable security interest or lien (collectively hereinafter referred to as the "DIP Collateral");

K. **Business Judgment and Good Faith Pursuant to Section 364(e).** Good cause



has been shown for entry of this Interim Order. The relief requested herein is necessary, essential and appropriate to aid the continuation of the Debtors' businesses and the preservation and maintenance of their assets, absent which the Debtors' ability to maximize the value of their Estates for the benefit of creditors will be jeopardized. The terms and conditions of the DIP Facility, as set forth in the DIP Loan Documents, and the fees paid and to be paid thereunder (i) are fair, reasonable, and the best available under the circumstances; (ii) reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties and are enforceable pursuant to their terms; (iii) are supported by reasonably equivalent value and consideration, and (iv) and have been negotiated in good faith and at arm's length, between Debtors and DIP Lender. DIP Lender has indicated its willingness to provide financing to the Debtors pursuant to the DIP Loan Documents. The funds to be extended under the DIP Facility will be extended by DIP Lender in good faith, and for valid business purposes and uses by the Debtors, and, as a consequence, DIP Lender is entitled to the protection and benefits afforded by section 364(e) of the Bankruptcy Code. The DIP Superpriority Claim (as hereinafter defined), and other protections granted pursuant to this Interim Order, the DIP Loan Documents and the DIP Facility will not be affected by any subsequent reversal, modification, vacatur or amendment of this Interim Order, as provided in section 364(e) of the Bankruptcy Code.

L. **Adequate Protection.** The Prepetition Lender is entitled pursuant to sections 361, 362 and 363 of the Bankruptcy Code to receive adequate protection against any diminution in value of its interests in the Prepetition Collateral (including Prepetition Lender's interest in Cash Collateral), to the extent set forth in this Interim Order. As adequate protection for any diminution in the value of the valid, perfected and enforceable liens on the Prepetition Collateral in favor of

Prepetition Lender securing the valid, perfected and enforceable Prepetition Secured Obligations caused by the Debtors' use of the Prepetition Collateral, and to the extent of such diminution:

a. Pursuant to section 361(2) of the Bankruptcy Code, the Prepetition Lender (inclusive of the Participant) is granted, and the Debtors hereby grant to Prepetition Lender, postpetition priority, valid, and perfected replacement liens on and security interests in all of the Debtors' now existing and hereafter acquired DIP Collateral (the "Adequate Protection Liens"), which Adequate Protection Liens shall (i) be junior to the DIP Liens, the Carve-Out, and the Valid Prior Liens, and (ii) shall be senior to all other security interests in, liens on, or claims against the Prepetition Collateral and DIP Collateral, whether now existing or hereafter arising or acquired.

b. Any diminution in the value of the Prepetition Liens on the Prepetition Collateral in favor of the Prepetition Lender securing the Prepetition Secured Obligations caused by the Debtors' use of the Prepetition Lender's Cash Collateral that is not satisfied by proceeds of the DIP Collateral shall constitute a cost and expense of administration in the Bankruptcy Cases in accordance with section 503(b)(1) of the Bankruptcy Code and shall have a superpriority status under section 507(b) of the Bankruptcy Code (the "Superpriority Adequate Protection Claim") and thus will be paid ahead of all other costs and expenses of administration of the Bankruptcy Cases including, without limitation, those specified in sections 503(b) or 507(a) of the Bankruptcy Code; provided, further, that the Superpriority Adequate Protection Claims shall be subject and subordinate to the DIP Superpriority Claim and the Carve-Out.

c. The Adequate Protection Liens granted to the Prepetition Lender pursuant to this Interim Order are automatically perfected by operation of law upon the Court's entry of this Interim Order *nunc pro tunc* from the Petition Date without further action by the Prepetition

Lender, and will survive the Termination Date (as defined in the DIP Agreement). The Prepetition Lender may, but shall not be required to, file any Uniform Commercial Code financing statements and record any additional documents in any jurisdiction or take any other or further action to validate or perfect the Adequate Protection Liens. If the Prepetition Lender deems it necessary or convenient, the Debtors shall execute and deliver to Prepetition Lender, or shall have executed and delivered to Prepetition Lender, all in form and substance reasonably satisfactory to the Prepetition Lender, any other agreements, instruments, documents, or writings to evidence the terms of this Interim Order, the use of Prepetition Lender's Cash Collateral and/or the Prepetition Lender's Adequate Protection Liens, and the Prepetition Lender may request from time to time the execution and delivery of Uniform Commercial Code financing statements, continuation statements, amendments to financing statements, and any other agreements, instruments, and/or documents relating to the use of Prepetition Lender's Cash Collateral and the Adequate Protection Liens. The Debtors hereby authorize the execution and filing of all financing statements, amendments, continuations, and other agreements, instruments and documents desired by the Prepetition Lender for the perfection of the Adequate Protection Liens, and Debtors agree to and the Prepetition Lender shall receive a lifting of the automatic stay for the limited purpose of carrying out the purposes of this Paragraph. Furthermore, the Debtors irrevocably authorize the filing of a carbon, photographic or other reproduction of this Interim Order as a financing statement and agree that such filing is sufficient as a financing statement subject to applicable state law.

d. As provided for in Section 4.4(b) of the DIP Agreement, the reimbursement of reasonable legal, accounting, appraisal and other fees and expenses incurred by the Participant (including reasonable out of pocket fees and expenses of the Participant's professionals) in

connection with the Bankruptcy Cases and the transactions contemplated by the DIP Agreement, in a maximum amount not to exceed \$50,000; provided, that if and to the extent the Participant becomes the direct holder of the Prepetition Secured Obligations, Section 4.4(b) shall terminate (as to any fees, costs and expenses incurred by Participant from and after the date on which the Participant becomes the direct holder of the Prepetition Secured Obligations but not as to any such amounts incurred prior to such date) and the provisions of the Prepetition Loan Documents shall control (the “Participant Reimbursement Obligations”). The Participant Reimbursement Obligations shall (i) be subordinate and subject to the Carve-Out, (ii) *pari passu* with the DIP Superpriority Claim, and (iii) senior to the Superpriority Adequate Protection Claim.

M. **Relief Essential; Best Interests.** The relief requested in the Financing Motion (and as provided in this Interim Order) is necessary, essential, and appropriate for the continued preservation of the Debtors’ assets. It is in the best interest of the Estates that the Debtors be allowed to obtain credit pursuant to the DIP Facility and the DIP Loan Documents.

N. **Entry of Interim Order.** For the reasons stated above, the Debtors have requested and are entitled to immediate entry of this Interim Order pursuant to Bankruptcy Rule 4001(c)(2).

**NOW, THEREFORE**, upon the Financing Motion and the record before this Court with respect to the Financing Motion, including the record made during the Interim Hearing, and good and sufficient cause appearing therefor,

**IT IS HEREBY ORDERED** that:

1. **Motion Granted.** The Financing Motion is granted on an interim basis to the extent and in accordance with the terms and conditions set forth in this Interim Order. Any objections to the Financing Motion with respect to the entry of this Interim Order to the extent not

withdrawn, waived or otherwise resolved, and all reservations of rights included therein (but subject to all reservation of rights included herein), if any, are hereby denied and overruled.

2. **DIP Loan Documents.**

a. **Approval of Entry into the DIP Loan Documents.** The Debtors are expressly and immediately authorized, empowered, and directed to execute and deliver the DIP Loan Documents in the form annexed to the Financing Motion, and to execute and deliver all instruments, certificates, agreements and documents which may be required or necessary for the performance by the Debtors in connection with the DIP Facility described in and provided for by this Interim Order and the DIP Loan Documents. The Debtors are hereby authorized to do and perform all acts, satisfy all obligations, and to pay all principal, interest, fees, expenses and other amounts described in the DIP Loan Documents as such become due (collectively with all other obligations under and as defined in the DIP Loan Documents, the “DIP Obligations”), which amounts shall, subject to Paragraph 23, not otherwise be subject to further approval of this Court. Upon execution and delivery, the DIP Loan Documents shall represent valid and binding obligations of the Debtors in accordance with their terms enforceable against the Debtors and the Estates.

b. **Authorization to Borrow on an Interim Basis.** Subject to, and in accordance with, the terms and conditions of the DIP Loan Documents, the Debtors are immediately authorized to borrow funds from the DIP Lender between the date of entry of this Interim Order and the date of the Final Hearing on the Financing Motion (the “Interim Period”) in accordance with the Approved Budget up to the amount of \$2,250,000 (the “Interim DIP Facility Amount”).

c. **Use of the Interim DIP Facility Amount.** The Interim DIP Facility Amount advanced by DIP Lender to the Debtors shall be used by the Debtors in the amounts and for the

purposes identified in the Approved Budget to (i) pay related DIP-related transaction costs, fees and expenses of the DIP Facility in accordance with the DIP Loan Documents; and (ii) pay expenses to preserve, maintain and operate the businesses. All advances by DIP Lender to the Debtors of the Interim Facility Amount during the Interim Period shall be subject to the Approved Budget.

d. **Limited Use of Cash Collateral.** Proceeds of the Interim DIP Facility Amount advanced by DIP Lender to the Debtors shall constitute Cash Collateral of the Debtors. During the Interim Period, the Debtors shall only use Cash Collateral in the amounts and for the purposes identified in the Approved Budget. Subject to the terms and conditions of this Interim Order and in accordance with the Approved Budget, Debtors are authorized to use Cash Collateral; provided, however, that upon an Event of Default, such use of Cash Collateral shall terminate on five (5) days' notice, subject to the Debtors' right to seek nonconsensual use of such Cash Collateral, unless otherwise agreed by the DIP Lender in writing, or subject to further order of the Court.

e. **Conditions Precedent.** During the Interim Period, the DIP Lender shall have no obligation to make any loan or any other financial accommodations under the DIP Loan Documents unless the conditions precedent to make such loans or financial accommodations under the DIP Loan Documents have been satisfied in full or waived in accordance with the DIP Loan Documents. For avoidance of doubt, no loans or other extensions of credit will be available to the Debtors, (i) unless DIP Lender and the Debtors execute and deliver the DIP Loan Documents, and (ii) in excess of the Interim DIP Facility Amount, until entry of a Final Order authorizing the Debtors to borrow the full amount of the DIP Facility in accordance with the DIP Loan Documents.

f. **DIP Superpriority Claim.** Provided that DIP Lender advances the Interim DIP

Facility Amount, effective immediately upon entry of this Interim Order, and subject to the terms of the DIP Loan Documents, DIP Lender is hereby granted a superpriority administrative expense claim pursuant to section 364(c)(1) of the Bankruptcy Code superior to any and all administrative expenses in the Bankruptcy Cases, including without limitation, any and all administrative expenses of the kind specified or ordered pursuant to any provision of the Bankruptcy Code, including, but not limited to, sections 105, 326, 328, 330, 331, 364(c), 503(a), 503(b), 507(a), 507(b), 546(c), 546(d), 726 and 1114 of the Bankruptcy Code (the “DIP Superpriority Claim”), provided, however, that the DIP Superpriority Claim shall be subject and subordinate to the Carve-Out.

g. **Maturity**. The DIP Facility will mature on November 10, 2021. All obligations and liabilities of the Debtors to DIP Lender that remain outstanding or are in existence on the last day of the term of the DIP Facility shall be due and payable on the Maturity Date. Nothing in this Interim Order shall authorize the dissolution of any assets of the Debtors or the Estates or other proceeds therefrom outside the ordinary course of business, except as permitted under the DIP Facility and the DIP Loan Documents (subject to any required approval).

h. **Payment of DIP Fees**. All reasonable and documented fees and expenses payable pursuant to the DIP Loan Documents are hereby approved and the Debtors are authorized to pay, currently in cash or as otherwise provided in the DIP Loan Documents and Approved Budget, all reasonable and documented out of pocket costs, disbursements and expenses of DIP Lender incurred at any time, as provided by the DIP Loan Documents, Approved Budget and Paragraph 23 of this Interim Order.

3. **Postpetition Liens.** To secure performance and payment when due (whether at the stated maturity, by acceleration or otherwise) of any and all DIP Obligations of the Debtors to the DIP Lender of whatever kind, nature, or description, whether absolute or contingent, now existing or hereafter arising, the DIP Lender shall have and is hereby granted, effective as of the Petition Date and subject to the Carve-Out and Valid Prior Liens, continuing, valid, binding, enforceable, non-avoidable, automatic and properly perfected security interests in and liens (collectively, the “DIP Liens”) upon all DIP Collateral. Subject to the Carve-Out and Valid Prior Liens, the DIP Liens on the DIP Collateral securing the DIP Obligations shall be first and senior in priority to all other interests and liens of every kind, nature, and description, whether created consensually, by an order of the Court or otherwise. The term “Valid Prior Liens” means collectively liens on property of the Debtors (including the proceeds of such property) that are in existence on the Petition Date (but excluding the Prepetition Liens), but only if the lien on such property (or the proceeds of such property, as applicable) is (i) a valid perfected and non-avoidable encumbrance and such lien is perfected on the Petition Date or (ii) perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code.

4. **Carve-Out.**

a. **Generally.** The DIP Liens, the DIP Superpriority Claims, the Prepetition Liens, the Adequate Protection Liens, and the Superpriority Adequate Protection Claim shall be junior and subject to the payment, without duplication, of the following fees and expenses (the amounts set forth below, together with the limitations set forth therein, collectively, the “Carve-Out”): (i) all unpaid fees payable to the U.S. Trustee and Clerk of the Bankruptcy Court pursuant to section



1930(a) of Title 28 of the United States Code; (ii) to the extent allowed by the Bankruptcy Court at any time (regardless of whether the order allowing such fees is entered before or after notice of the Carve-Out Trigger Date (as hereinafter defined)) and subject to Paragraph 4(c), payment of fees and expenses and reimbursement of expenses payable to Greenberg Traurig, LLP, as counsel to the Debtors, and any other professionals retained by the Debtors or a creditors' committee, if appointed (a "Committee" and the Debtors' and Committee's retained professionals, the "Professionals") incurred prior to delivery of a Carve-Out Notice (as hereinafter defined), inclusive of any holdbacks, but excluding any unused retainers established prior to the date hereof; (iii) all unpaid fees and expenses incurred by the Professionals after the delivery of a Carve-Out Notice, in an aggregate amount not to exceed \$250,000, and an additional \$500,000 further to the engagement letter between the Debtors and B. Riley (the "Engagement Letter") to be held in trust for the benefit of B. Riley for the duration of the "Tail Period" to satisfy any "Transaction Fee" if payable, as each of those terms are defined in the Engagement Letter (the "Post-Trigger Notice Carve-Out Amount"); provided, for the avoidance of doubt, that all amounts paid to Professionals under the Carve-Out must be allowed by order of the Bankruptcy Court; and (iv) in the event of a conversion of the Bankruptcy Cases to cases under chapter 7 of the Bankruptcy Code, allowed fees and expenses incurred by a trustee and any professional retained by such trustee, in an aggregate amount not to exceed \$50,000.

b. Carve-Out Trigger Date. As used herein, the term "Carve-Out Trigger Date" means the day after the DIP Lender provides written notice to the Debtors, Debtors' counsel, the U.S. Trustee, and counsel to the Committee that the Carve-Out is invoked, which notice may be delivered following the occurrence and during the continuance of an Event of Default under the

DIP Loan Documents (the “Carve-Out Notice”).

c. Carve-Out Funding. The Carve-Out shall be funded by the DIP Lender on a weekly basis in accordance with the Approved Budget plus any additional amounts in excess of the Approved Budget estimated to be incurred by such Professionals each week as may be provided by such Professionals in a weekly notice to the DIP Lender and Debtors with the written consent of the Debtors (provided, however, that in the event a Professional’s weekly estimate exceeds the amount actually incurred by such Professional in excess of the Approved Budget for such week, such additional amount shall remain in the Professional Fee Reserve (as defined below) to be credited towards future estimates by such Professional); provided, however, that the amounts funded by the DIP Lender in excess of the line item in the Approved Budget for Professional Fee expenses for such week, when added to all other amounts funded to the Debtors from the Petition Date through that week, may not exceed the *lesser* of (i) the aggregate Approved Budget amount for all of the Debtors’ expenses (inclusive of Professional Fees) from the Petition Date through that week, or (ii) \$5,700,000. Such amounts for Professionals shall be funded into a segregated account maintained by or on behalf of the Debtors in trust for each of the Professionals (separately based on each Professional’s budgeted amount and additional estimate, with each Professional entitled to such amounts as allocated) and not subject to any other lien, claim or encumbrance (the “Professional Fee Reserve”). Amounts funded into the Professional Fee Reserve shall be held in trust for each Professional separately on a per-Professional basis. On the Carve-Out Trigger Date, the DIP Lender shall fund the Post-Trigger Notice Carve-Out Amount to the Debtors who shall deposit such amount into the Professional Fee Reserve. Upon funding such amounts to the Debtors, the DIP Lender shall have no further responsibility or liability to any Professional for funding the

Professional Fee Reserve for such period. The Debtors shall be permitted to pay from the Professional Fee Reserve the allowed fees and expenses of the Professionals as and when the same may become due and payable. Any and all amounts in the Professional Fee Reserve shall not be subject to any cash sweep and/or foreclosure provisions in the Prepetition Loan Documents, the DIP Loan Documents, the Interim Order or Final Order. Any funding of the Carve-Out shall constitute DIP Loans under the DIP Facility secured by the DIP Collateral and shall be otherwise entitled to the protections granted under the Interim Order and/or Final Order, the Bankruptcy Code and applicable law. The Carve-Out shall not reduce the amounts payable to the DIP Lender under the DIP Facility. Nothing in this Interim Order or in the Prepetition Loan Documents shall prohibit or restrict the payment of the fees and expenses of any Professional from any retainers paid prior to the Petition Date and held by such Professional. Further, notwithstanding anything to the contrary in this Interim Order, the failure of the Professional Fee Reserve to satisfy in full the allowed fees and expenses of Professionals shall not affect the priority of the Carve-Out or the DIP lender's liability to further fund the Professional Fee Reserve subject to the limitations imposed by the Carve-Out Notice and the Approved Budget limit of \$5,700,000.

d. Investigation Budget. Notwithstanding anything herein to the contrary, no Prepetition Collateral, Cash Collateral (except as provided in this Paragraph), DIP Collateral, or proceeds thereof, or any portion of the Carve-Out shall include, apply to, or be available for any fees or expenses incurred by any party, including the Debtors or the Committee (if appointed), in connection with (i) the initiation or prosecution of any claims, causes of action, adversary proceedings, or other litigation against the Prepetition Lender, including the Participant as it relates to her Participation Interest under the Participation Documents, including, without limitation,

challenging the amount, validity, extent, perfection, priority, characterization, or enforceability of, or asserting any defense, counterclaim, or offset to the Prepetition Secured Obligations, the Prepetition Liens, the Adequate Protection Liens, or Superpriority Adequate Protection Claims, (ii) asserting any claims or causes of action, including, without limitation, claims or actions to hinder or delay the Prepetition Lender's assertion, enforcement or realization on the Prepetition Collateral in accordance with the Prepetition Loan Documents or this Interim Order or any Avoidance Claims against the Prepetition Lender, or (iii) the initiation or prosecution of any claims, causes of action, adversary proceedings, or other litigation against the Prepetition Lender, including the Participant as it relates to her Participation Interest under the Participation Documents, including, without limitation, challenging the amount, validity, extent, perfection, priority, or enforceability of, or asserting any defense, counterclaim, or offset to the Prepetition Secured Obligations, or the adequate protection granted herein; provided however, the Committee shall be authorized to use up to \$20,000 of Cash Collateral to investigate the liens, claims and interests of the Prepetition Lender. The foregoing shall not be construed as consent to the allowance of any fees and expenses referred to above and shall not affect the right of the Debtor, the Prepetition Lender, the Committee, the U.S. Trustee, or other parties in interest to object to the allowance and payment of such amounts.

5. **Enforceable Obligations.** The DIP Loan Documents shall constitute and evidence the valid and binding obligations of the Debtors, which obligations shall be enforceable against the Debtors, the Estates and any successors thereto, including, without limitation, any trustee appointed in these Bankruptcy Cases under chapter 7 of the Bankruptcy Code upon the conversion

of the Bankruptcy Cases, and its creditors and other parties in interest, in each case, in accordance with the terms of this Interim Order and the DIP Loan Documents.

6. **Superpriority Administrative Claim Status.** The DIP Obligations, pursuant to section 364(c)(1) of the Bankruptcy Code, shall at all times constitute the DIP Superpriority Claim to secure post-petition advances and extensions of credit under section 364(c)(1). Other than as provided in the DIP Loan Documents and this Interim Order with respect to the Carve-Out, and as to section 506(c) of the Bankruptcy Code subject to entry of the Final Order, no costs or expenses of administration that have been or may be incurred in these proceedings, or in any successor case, and no priority claims are, or will be, senior to, prior to or on a parity with the DIP Superpriority Claims or the DIP Obligations, or with any other claims of DIP Lender arising hereunder.

7. **Authorization to Use Proceeds of DIP Financing.** Pursuant to the terms and conditions of this Interim Order, the DIP Facility and the DIP Loan Documents, and in a manner consistent with the Budget (as the same may be modified, supplemented or updated from time to time with the agreement of DIP Lender consistent with the terms and conditions of the DIP Loan Documents), the Debtors are authorized to use the advances under the DIP Facility. The Debtors' rights to use the proceeds of the DIP Facility shall terminate upon the earlier of (i) the indefeasible payment in full in cash of the obligations owing to the DIP Lender, or (ii) subject to Paragraph 12, upon an Event of Default that, after five (5) days' notice, remains uncured. Nothing in this Interim Order shall authorize the disposition of any assets of the Debtors or the Estates or other proceeds resulting therefrom outside the ordinary course of business, except as permitted under the DIP Facility and the DIP Loan Documents (subject to any required court approval).

8. **DIP Lender as Loss Payee or Additional Insured.** DIP Lender shall also be deemed to be the loss payee and/or additional insured under the Debtors' insurance policies and shall have all rights and powers attendant to that position (including, without limitation, rights of collection and enforcement) and shall act in that capacity and distribute any proceeds recovered or received in accordance with the terms of this Interim Order and the other DIP Loan Documents.

9. **Reporting to DIP Lender.**

a. On each Tuesday, commencing with the second Tuesday after the Petition Date, Debtors shall deliver to DIP Lender and its counsel, (i) a report setting forth, in reasonable detail, the Debtors' actual financial results for the preceding weekly period (Sunday through Monday) against the Debtors' projected performance for such period as set forth in the Budget, prepared on a line item basis for such weekly period and the cumulative period from the commencement of the Budget through the week then ended, together with a Variance Report; (ii) any updated or amended Budget prepared by the Debtors, which updated or amended Budget shall be subject to the prior approval of the DIP Lender (such approval not to be unreasonably withheld or delayed); and (iii) Debtors' weekly financial statements in the form customarily delivered by Debtors to the Senior Prepetition Lender pursuant to the Prepetition Loan Documents (forms of which are attached to the DIP Agreement as Exhibit B). In addition to providing the foregoing, the Debtors shall deliver such reports and information reasonably requested by the DIP Lender. In connection with any request for Borrowing (as defined in the DIP Agreement), Debtors shall promptly make a representative available to answer questions regarding the Borrowing request prior to the time for the next advance under the DIP Agreement, including with respect to the weekly report detailing the Debtors' performance and the Variance Report.

b. In addition, the DIP Lender shall have the right, upon reasonable notice to Debtors, at any time during agreed business hours, to inspect, audit, examine, check, and make copies of, and extract non-privileged information from, Debtors' records and to obtain company information from Debtors' management, and Debtors shall make its records and management available to the DIP Lender for such purposes, provided however that in-person visits shall be limited to once weekly and during agreed hours, and information relating the sales process in these Bankruptcy Cases shall be governed by the applicable bidding procedures as may be approved by the Court. Further, Debtors authorize their independent certified public accountants, financial advisors, investment bankers, and consultants to cooperate, consult with, and provide to the DIP Lender all such information as may be reasonably requested with respect to the business, results of operations and financial condition of the Debtors; provided, however, that information relating the sales process in these Bankruptcy Cases shall be governed by the applicable bidding procedures as may be approved by the Court. The Debtors shall also provide the DIP Lender with copies of all non-privileged consultants' reports, appraisals, business plans and similar documents as they become available to Debtors including, without limitation, any and all audits and other non-privileged reports prepared by Debtors' accountants; provided, however, that information relating the sales process in these Bankruptcy Cases shall be governed by the applicable bidding procedures as may be approved by the Court. In addition, Debtors shall timely serve upon the DIP Lender and its counsel all pleadings and other documents filed by Debtors in these Bankruptcy Cases, including the financial reports required by the U.S. Trustee's office.

10. **Payment of Compensation.** Nothing herein shall be construed as consent to the allowance of any professional fees or expenses of any of the Professionals or shall affect the right of DIP Lender to object to the allowance and payment of such fees and expenses.

11. **Events of Default.** Subject to the provisions of the DIP Loan Documents and this Interim Order, unless and until all DIP Obligations are indefeasibly paid in full in cash (or other arrangements for payment of such amounts satisfactory (in its sole discretion) to DIP Lender have been made), the protections afforded DIP Lender pursuant to this Interim Order and under the other DIP Loan Documents, and any actions taken pursuant thereto, shall survive the entry of any order confirming a chapter 11 plan or converting these Bankruptcy Cases into a case under chapter 7, and the DIP Superpriority Claim shall continue in these proceedings and in any successor case, and such DIP Superpriority Claim shall maintain its respective priority as provided by this Interim Order.

12. **Rights and Remedies Upon Occurrence of Event(s) of Default.** Upon the occurrence of an Event of Default that, after five (5) days' notice remains uncured, DIP Lender may by notice to Debtors declare the DIP Facility terminated, cease making any advances under the DIP Facility (except with respect to the Carve-Out) and declare the unpaid principal amount, interest accrued thereon and all other amounts owed by Debtors under the DIP Loan Documents, including any fees due to be immediately due and payable without further order of the Court. Additionally, the DIP Lender may settle an order (the "Default Order") on seven (7) days' notice that identifies the applicable uncured Event of Default and requests, among other things, that the Court enter an order determining that: (a) the automatic stay under section 362(a) of the Bankruptcy Code has been terminated with respect to DIP Lender; and (b) DIP Lender shall be



entitled to exercise its rights and remedies in accordance with the DIP Loan Documents including, without limitation, exercising and enforcing any and all rights and remedies under the DIP Facility with respect to the DIP Collateral and terminating any obligations of DIP Lender under the DIP Loan Documents. In the event the Debtors, the Committee, the U.S. Trustee, or any other party in interest seeks a hearing within the settlement period (the “DIP Default Hearing”), DIP Lender shall refrain from enforcing its rights and remedies under the DIP Facility until the Court makes a ruling or an agreement has otherwise been reached, provided however, that except with respect to the Carve-Out, the DIP Lender shall not be obligated to make any further advances pending such determination. Unless the Court orders otherwise, upon the termination of the seven (7) day notice period referenced above, the automatic stay under section 362(a) of the Bankruptcy Code shall be terminated with respect to DIP Lender and the DIP Lender may exercise any and all rights and remedies under the DIP Facility with respect to the DIP Collateral without further Court order. All proceeds realized in connection with the exercise of the rights and remedies of DIP Lender shall be applied to reduce the DIP Obligations at the DIP Lender’s sole discretion. At any DIP Default Hearing requested by the Debtors, the Committee, the U.S. Trustee, or any other party in interest, the person or entity requesting the hearing shall have the burden of proof and the only issue to be determined and decided by the Court at any such DIP Default Hearing is whether the Event of Default has occurred and is continuing.

13. **Milestones.** The failure to comply with any of the Milestones in Section 8.11 of the DIP Loan Agreement, which failure is not cured within two (2) days, is an Event of Default.

14. **Good Faith Under Section 364(e); No Modification or Stay of this Interim Order.** The DIP Lender is extending credit pursuant to this Interim Order in “good-faith” within

the meaning of section 364(e) of the Bankruptcy Code, and the credit extended by DIP Lender pursuant to this Interim Order, and in connection with the DIP Facility and the DIP Loan Documents shall be deemed to be extended in good faith within the meaning of section 364(e) of the Bankruptcy Code. The DIP Lender is entitled to, and is hereby granted, the full protections of section 364(e) of the Bankruptcy Code, and no such appeal, modification, amendment or vacatur shall affect the validity and enforceability of any advances made hereunder or the rights, claims, or priority authorized or created hereby. Notwithstanding any such potential modification, amendment or vacatur, any rights, claims or priorities granted to the DIP Lender hereunder arising prior to the effective date of such modification, amendment or vacatur of the DIP Liens or DIP Superpriority Claims granted to the DIP Lender shall be governed in all respects by the original provisions of this Interim Order, and the DIP Lender shall be entitled to all of the rights, priorities remedies, privileges and benefits, including the DIP Liens and the DIP Superpriority Claims granted herein, with respect to any such claim. Since the loans made pursuant to the DIP Financing Documents are made in reliance on this Interim Order, the obligations owed to the DIP Lender prior to the effective date of any stay, modification or vacatur of this Interim Order shall not, as a result or any subsequent order in the bankruptcy case or in any successor cases, be subordinated, lose their lien and/or superpriority administrative expense claim status, or be deprived of the benefit of the status of the claims granted to DIP Lender under this Interim Order and/or the DIP Loan Documents.

15. **Section 506(c) Claims.** Subject to entry of the Final Order no costs or expenses of administration which have been or may be incurred in the case at any time shall be charged against the DIP Lender, or the interests of the DIP Lender in the DIP Collateral granted hereunder, whether

under sections 105 or 506(c) of the Bankruptcy Code, or otherwise, without the prior written consent of the DIP Lender, and no such consent shall be implied from any other action, inaction, or acquiescence by the DIP Lender.

16. **Amendment.** The DIP Lender and the Debtors may enter into waivers, amendments or consents with respect to the DIP Loan Documents without the need for further Court approval provided that (i) the agreement as so modified is not materially different from that approved, (ii) notice of all amendments is filed with the Court, and (iii) notice of all amendments (other than those that are ministerial or technical and do not adversely affect the Debtors) are provided in advance to counsel for any Committee appointed in these Bankruptcy Cases, all parties requesting specific notice and the United States Trustee.

17. **Binding Effect of Interim Order.** Subject to Paragraph D(h), this Interim Order shall be valid and binding upon and inure to the benefit of Debtors, the DIP Lender, all other creditors of the Debtors or any Committee appointed in these Bankruptcy Cases, and all other parties in interest and their respective successors and assigns, including any trustee or other estate representative appointed in this case or any successor case, provided, that the DIP Lender shall have no obligation to make DIP loans or advances to any trustee or other estate representative appointed in this case or any successor case, other than all amounts required by Paragraph 4 hereof relating to the Carve-Out.

18. **Survival of Interim Order.** The provisions of this Interim Order and any actions taken pursuant hereto shall survive entry of any order which may be entered (i) confirming a chapter 11 plan in these Bankruptcy Cases, (ii) converting the Bankruptcy Cases to cases under chapter 7 of the Bankruptcy Code, (iii) to the extent authorized by applicable law, dismissing the

Bankruptcy Cases; (iv) withdrawing the reference of the Bankruptcy Cases from the Court, or (v) providing for abstention from handling or retaining of jurisdiction of the Bankruptcy Cases in the Court. The terms and provisions of this Interim Order, including the DIP Liens and the DIP Superpriority Claims granted pursuant to this Interim Order and the DIP Loan Documents and any protections granted to the DIP Lender, shall continue in full force and effect notwithstanding the entry of such order, and such DIP Liens and DIP Superpriority Claims and protections for the DIP Lender shall maintain their priority as provided by this Interim Order until all the DIP Obligations have been indefeasibly paid in full and discharged (such payment being without prejudice to any terms or provisions contained in the DIP Facility which survive such discharge by their terms).

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

20. **Enforceability.** The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the conclusions of law constitute findings of fact, they are adopted as such. This Interim Order shall take effect and be fully enforceable immediately upon execution hereof.

21. **Waiver of any Applicable Stay, including Bankruptcy Rule 6004(h).** Any applicable stay (including, without limitation, under Bankruptcy Rule 6004(h)) is hereby waived and shall not apply to this Interim Order.

22. **No Waiver or Modification of Interim Order.** Until and unless the repayment in full of the DIP Facility, Debtors irrevocably waive the right to seek, directly or indirectly without the prior written consent of the DIP Lender: (i) any modification, stay, vacatur or amendment to this Interim Order; (ii) priority claim for any administrative expense or unsecured claim against Debtors or their Estates (now existing or hereafter arising of any kind or nature whatsoever, including, without limitation any administrative expense of the kind specified in sections 503(b), 506(c) (subject to entry of the Final Order), 507(a) or 507(b) of the Bankruptcy Code) in the case, equal or superior to the DIP Superpriority Claims, other than the Carve-Out; or (iii) any lien on any assets with priority equal or superior to the DIP Liens. Debtors irrevocably waive any right to seek any amendment, modification or extension of this Interim Order without the prior written consent, as provided in the foregoing, of the DIP Lender and no such consent shall be implied by any other action, inaction or acquiescence of the DIP Lender.

23. **Expenses of Lender and Participant.** As provided in the DIP Loan Documents, the Debtors shall pay all reasonable expenses incurred by DIP Lender and the Participant as set forth in the Budget annexed hereto (including, without limitation, the reasonable fees and disbursements of counsel for DIP Lender and the Participant), including in connection with the preparation, execution, delivery and administration of the DIP Loan Documents. Subject to the last sentence of this Paragraph, payment of such fees shall not be subject to allowance by the Court, and shall not be required to comply with the U.S. Trustee fee guidelines; provided, however, that DIP Lender and the Participant shall submit copies of their respective legal counsel's invoices, redacted to preserve privilege, to the Debtors, counsel to the Debtors, counsel to the Committee, and the U.S. Trustee and such parties shall have twenty (20) days following their receipt of such

invoices to object to the reasonableness of the fees and expenses included in any invoice submitted by DIP Lender or the Participant. Any such objection must describe with particularity the items or categories of fees and expenses that are the subject of the objection and provide the specific basis for the objection to each such item or category. If any such objection is not resolved within ten (10) days, a hearing with respect thereto shall be promptly scheduled.

24. **No Waiver.** The failure of DIP Lender to seek relief or otherwise exercise its rights and remedies under the DIP Loan Documents, the DIP Facility, this Interim Order or otherwise, as applicable, shall not constitute a waiver of any of DIP Lender's rights hereunder, thereunder, or otherwise. Notwithstanding anything herein, the entry of this Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, or otherwise impair any of the rights or remedies of DIP Lender under the Bankruptcy Code or under non-bankruptcy law.

25. **No Third Party Rights.** Except for the Participant's rights pursuant to the Participation Documents or as explicitly provided for herein, this Interim Order does not create any rights for the benefit of any third party, creditor, equity holder or any direct, indirect, or incidental beneficiary.

26. **Section 552(b).** Subject to entry of the Final Order, DIP Lender shall be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code and the "equities of the case" exception under section 552(b) of the Bankruptcy Code shall not apply to the DIP Obligations and/or any proceeds, products, offspring or profits of any of the foregoing.

27. **Final Hearing.** A final hearing on the Financing Motion will be held on [\_\_\_\_], 2021. Debtors shall provide notice of the Final Hearing by service of a copy of this Interim Order on all required parties within two (2) business days of its entry. Objections to the entry of the Final

Order shall be filed with this Court by no later than 4:00 p.m. (prevailing Eastern Time) on [\_\_\_\_],  
2021, with copies to:

- a. proposed counsel for the Debtors, Greenberg Traurig, LLP, MetLife Building, 200 Park Avenue, New York, New York 10166, Attn: Oscar N. Pinkas ([PinkasO@gtlaw.com](mailto:PinkasO@gtlaw.com)); Jeffrey M. Wolf ([WolfJe@gtlaw.com](mailto:WolfJe@gtlaw.com)); and Nathan A. Haynes ([HaynesN@gtlaw.com](mailto:HaynesN@gtlaw.com));
- b. counsel to the Senior Prepetition Lender and DIP Lender, Robinson Brog Leinwand Greene Genovese & Gluck, P.C., 875 Third Avenue, New York, New York 10002, Attn: Adam Greene ([ajg@robinsonbrog.com](mailto:ajg@robinsonbrog.com)) and Fred B. Ringel ([fbr@robinsonbrog.com](mailto:fbr@robinsonbrog.com));
- c. counsel to the Participant, Cole Schotz P.C., 1325 Avenue of the Americas, 19th Floor, New York, New York 10019, Attn: Michael D. Sirota ([msirota@coleschotz.com](mailto:msirota@coleschotz.com));
- d. Office of the U.S. Trustee for the Southern District of New York, 201 Varick Street, Suite 1006, New York, New York 10014, [\*\*Attn: TBI (\_\_\_\_)];
- e. Counsel to the Committee, if any; and
- f. those parties requesting notice pursuant to Bankruptcy Rule 2002.

28. **Retention of Jurisdiction.** The Court shall have exclusive jurisdiction with respect to any and all disputes or matters under, or arising out of or in connection with, this Interim Order, the DIP Facility or the DIP Loan Documents.

Dated: September \_\_, 2021

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UNITED STATES BANKRUPTCY JUDGE

**Exhibit A**

**DIP Agreement**



## POST-PETITION LOAN AND SECURITY AGREEMENT

**THIS POST-PETITION LOAN AND SECURITY AGREEMENT** is dated as of September \_\_, 2021, by and among A.B.C. Carpet Co. Inc. ("Carpet"), A.B.C. Home Furnishings, Inc. ("Home") and A.B.C. Oriental Carpets Inc. ("Oriental" and, together with Carpet and Home, each a "Borrower" and collectively, "Borrowers"), and 888 Capital Partners LLC, as lender (in such capacity, the "Lender"). Capitalized terms not otherwise defined herein, have the meanings assigned to them in Article I, and /or the Financing Orders, as applicable.

### RECITALS

A. The Borrowers are debtors-in-possession under Chapter 11 of the Bankruptcy Code in cases pending in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"), under Cases No. 21-11591, 21-11592 and 21-11593 (the "Chapter 11 Cases"). The Borrowers have requested the Lender to provide the Borrowers with up to \$5,700,000 debtor in possession financing.

B. Subject to the terms and conditions of this Agreement and the Interim Order and any Final Order, the Lender has agreed to provide such financing.

NOW, THEREFORE, in consideration of the mutual covenants herein contained and intending to be legally bound hereby, the parties hereto agree as follows:

### ARTICLE 1 Definitions

Section 1.1 Definitions. As used in this Agreement the following terms shall have the following meanings (terms defined in the singular to have a correlative meaning when used in the plural and vice versa):

"Account" shall have the meaning ascribed to "account" in the UCC and shall include a right to payment for goods sold or leased or for services rendered that is not evidenced by an Instrument or Chattel Paper, whether or not any such right to payment has been earned by performance.

"Account Debtor" means any Person who is or may become obligated under or on account of an Account.

"Agreement" means this Post-Petition Loan and Security Agreement, as amended or supplemented from time to time. References to Articles, Sections, Exhibits, Schedules and the like refer to the Articles, Sections, Exhibits, Schedules and the like of this Agreement unless otherwise indicated.

“Avoidance Claim” means any claim that could be asserted by or on behalf of any Borrower or its estate against a Person under sections 544, 546, 547, 548, 549, 550 or 553 of the Bankruptcy Code.

“Banking Day” means any day other than a day on which commercial banks are not authorized or required to close in New York City.

“Bankruptcy Code” shall mean title 11 of the United States Code, as amended.

“Bankruptcy Court” shall mean the United States Bankruptcy Court for the Southern District of New York or such other court having original jurisdiction over the Chapter 11 Cases.

“Bidding Procedures Order” shall mean an order of the Bankruptcy Court approving bidding procedures relative to the Sale Transaction.

“Borrowers” shall have the meaning assigned to such term in the preamble hereto.

“Borrowing” means a borrowing hereunder of a Loan.

“Budget” shall mean the debtor-in-possession budget for the Borrowers attached hereto as Exhibit C for the period commencing on or about the Effective Date and ending on or about the Maturity Date, as the same may be amended, modified or supplemented from time to time with the Lender's written consent. For purposes of determining the amount permitted to be borrowed hereunder for any weekly period set forth in the Budget and for calculating the amount of any Permitted Variance, any difference between a projected line item disbursement in the Budget for any weekly period and the actual amount expended by the Borrowers in respect of such line item in such period may be carried forward in the Budget to subsequent weekly periods.

“Capital Expenditures” shall mean expenditures made for the acquisition of any fixed assets or improvements, replacements, substitutions or additions thereto which have a useful life of more than one year, including the total principal portion of Capitalized Lease Obligations.

“Capitalized Lease Obligation” shall mean any debt represented by obligations under a lease that is required to be capitalized for financial reporting purposes in accordance with GAAP.

“Carve-Out” shall have the meaning set forth in the Interim Order and any Final Order.

“Casualty Event” means any event that gives rise to the receipt by a Borrower or any Subsidiary of any insurance proceeds or condemnation awards in respect of any equipment, fixed assets or real property (including any improvements thereon).

“Chapter 11 Cases” shall mean the Borrowers' cases under chapter 11 of the Bankruptcy Code pending in the Bankruptcy Court.

“Clearance Sales” means “clearance” or other similarly entitled sale events to be conducted at the Borrowers’ retail store locations, commencing on a date mutually agreed among the Borrowers, the Consultant and the Lender and continuing through October 31, 2021 or such later date as agreed by the parties to the Consulting Agreement and the Monitor (as such term is defined in the Consulting Agreement).

“Code” means the Internal Revenue Code of 1986, as amended from time to time.

“Collateral” shall mean all Borrowers’ present and future right, title and interest in and to certain of the personal property of Borrower whether such property is now existing or hereafter created, acquired or arising and whenever from time to time, including without limitation, (i) inventory, including raw materials, work in process, or materials used or consumed in Borrowers’ businesses, items held for sale or lease or to be furnished under contracts of service, sale or lease, goods that are returned, reclaimed or repossessed; (ii) equipment, including machinery, vehicles and furniture; (iii) fixtures; (iv) General Intangibles, of every kind and description, payment intangibles, software, all existing and future customer lists, choses in action, claims (including claims for indemnification or breach of warranty), books, records, patents and patent applications, copyrights, trademarks, tradenames, tradestyles, trademark applications, goodwill, drawings, designs and plans, trade secrets, contracts, licenses, license agreements, franchise agreements, tax and any other types of refunds, returned and unearned insurance premiums, rights and claims under insurance policies; (v) all supporting obligations of all of the foregoing property; (vi) subject to entry of the Final Order, proceeds of Avoidance Claims and (vii) all cash and noncash proceeds (including insurance proceeds) of all of the foregoing property, all products thereof and all additions and accessions thereto, substitutions therefor and replacements thereof.

“Commitment” shall mean the obligation of the Lender to make Loans to the Borrower in an aggregate principal amount not to exceed the sum of FIVE MILLION SEVEN HUNDRED THOUSAND DOLLARS (\$5,700,000.00).

“Commitment Fee” shall mean a fee in the amount of \$120,000, which fee shall be accrued and added to the total of the Loan on the Effective Date, and payable with all of the principal of the Loan on the Termination Date.

“Consignor” shall mean an affiliate of the Lender providing merchandise to the Borrowers on consignment for purposes of inclusion in the Clearance Sales.

“Consignment Advance” shall mean advances by the Consignor to the Borrowers in an aggregate amount of \$500,000 payable in the amounts and at the times set forth in the Consulting Agreement, which advances are on account of amounts payable to the Borrower under the Consignment Agreement relative to sales of consignment merchandise provided by the Consignor.

“Consultant” shall mean B. Riley Retail Solutions, LLC, a California limited liability company, or another consultant retained by the Borrowers to conduct the Store Closing Sales reasonably acceptable to the Lender.

“Consulting Agreement” means any consulting agreement between the Borrowers, the Consultant and the Consignor relative to the conduct of the Clearance Sales, in form and substance reasonably satisfactory to the Lender, and which is approved by the Bankruptcy Court pursuant to an order in form and substance acceptable to the Borrowers, the Consultant, the Consignor and the Lender.

“Cumulative Period” means (i) the two-week period commencing on the Petition Date and ending on the date that is the second Monday following the Petition Date, (ii) the three-week period commencing on the Petition Date and ending on the date that is the third Monday following the Petition Date, (iii) the four-week period commencing on the Petition Date and ending on the date that is the fourth Monday following the Petition Date, and (iv) thereafter, the rolling period of four consecutive weeks ending on each Monday thereafter up to and through the Monday of the most recent week then ended.

“Default” means any event, which with the giving of notice or lapse of time, or both, would become an Event of Default.

“Default Rate” shall mean, in respect of any principal of any Obligation or any other amount under this Agreement or any Note that is not paid when due (whether at stated maturity, by acceleration, by mandatory prepayment or otherwise), at a rate per annum during the period from and including the due date to but excluding the date on which such amount is paid in full equal to the rate payable hereunder with respect to the Obligations plus 3%.

“Deposit Account” shall have the meaning ascribed to “deposit account” in the UCC and shall include any demand, time, savings, passbook, money market or other depository account, or a certificate of deposit, maintained by Borrower with any bank, savings and loan association, credit union or other depository institution.

“Disposition” or “Dispose” means the sale, transfer, license, lease or other disposition (including any sale and leaseback transaction and any sale or issuance of equity interests in a Subsidiary) of any property by any Person, including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith, but excluding the sale of Inventory and use of cash in the ordinary course of business.

“Dollars” and the sign “\$” mean lawful money of the United States of America.

“Effective Date” shall have the meaning attributed thereto in Section 6.1 hereof.

“Environmental Laws” means all federal, state and local laws, rules, regulations, ordinances, programs, permits, guidance documents promulgated by regulatory agencies, orders and consent decrees relating to human health and safety or the protection or pollution of the environment, including CERCLA.

“Event of Default” has the meaning given such term in Section 10.1 hereof.

“Final Order” shall mean an order of the Bankruptcy Court, in form and substance satisfactory to the Lender and its counsel and Borrowers and their counsel, after a final hearing under Bankruptcy Rule 4001(c)(2), in substantially the form of the Interim Order with such modifications thereto as are appropriate to reflect the final nature of the order (it being understood that (a) such modifications to reflect the final nature of the order and (b) the terms and conditions otherwise identical to those set forth in the Interim DIP Order shall be deemed satisfactory to the Lender), as the same may be amended, modified or supplemented from time to time with the express written joinder or consent of the Lender.

“Financing Documents” shall mean the Agreement, the Note and the Security Documents and any and all other agreements, instruments and documents now or hereafter executed by Borrowers in favor of Lender with respect to any of the transactions contemplated by the Agreement.

“Financing Order(s)” shall mean each of the Interim Order and the Final Order, as applicable.

“General Intangible” shall have the meaning ascribed to the term “general intangible” in the UCC and shall include all interests in Intellectual Property.

“Hazardous Material” means, without limitation, any and all substances (whether solid, liquid or gas) defined, listed or otherwise classified as pollutants, hazardous wastes, hazardous substances, hazardous materials, extremely hazardous wastes, or words of similar meaning or regulatory effect under any present or future Environmental Law or that may have a negative impact on human health or the environment.

“Interim Order” shall mean an order of the Bankruptcy Court, in form and substance satisfactory to the Lender and its counsel and Borrowers and their counsel, approving this Agreement and the extensions of credit made and to be made to the Borrowers in accordance with this Agreement on an interim basis, in substantially in the form of Exhibit A hereto, as the same may be amended, modified or supplemented from time to time with the express written joinder or consent of the Lender.

“Lender” shall have the meaning assigned to such term in the preamble hereto.

“Lien” means any lien (statutory or otherwise), security interest, mortgage, deed of trust, priority, pledge, charge, conditional sale, title retention agreement, financing lease or other encumbrance or similar right of others, or any agreement to give any of the foregoing.

“Loans” shall mean the Revolving Loans provided for in Section 2.1(a) hereof.

“Material Adverse Deviation” means, from and after the Effective Date, as of any date of determination, an adverse deviation of more than the Permitted Variance from the aggregate amount set forth in the line item of the Budget entitled “Operating Cash Flow, excl. Non-Recurring.”

“Maturity Date” means November 10, 2021.

“Note” shall mean the promissory note provided for by Section 2.8 hereof and all promissory notes delivered in substitution or exchange therefor, in each case, as the same shall be modified and supplemented and in effect from time to time.

“Obligations” shall mean, without limitation, all indebtedness, obligations, loans, advances and liabilities of the Borrowers to the Lender incurred under or related to this Agreement, the Note or any other Financing Document, whether such indebtedness, obligations, loans, advances or liabilities are direct or indirect, secured or unsecured, joint and/or several, contractual or tortious, absolute or contingent, liquidated or unliquidated, due or to become due, whether for payment or performance, now existing or hereafter arising, including the principal amount of Loans outstanding, together with interest thereon, and all expenses, fees and indemnities hereunder or under any other Financing Document, from time to time arising under or in connection with or evidenced or secured by this Agreement, the Note, or any other Financing Document.

“Permitted Liens” shall mean the Liens described in Section 9.1 hereof.

“Permitted Variance” means, with respect to (i) the initial Cumulative Period, a negative variance of up to 20% between the “Operating Cash Flow, excl. Non-Recurring” line item as set forth in the Budget for the applicable Cumulative Period and actual “Operating Cash Flow, excl. Non-Recurring” for such Cumulative Period, and (ii) any Cumulative Period thereafter, a negative variance of up to 15% between the “Operating Cash Flow, excl. Non-Recurring” line item as set forth in the Budget for the applicable Cumulative Period and actual “Operating Cash Flow, excl. Non-Recurring” for the applicable Cumulative Period.

“Person” means an individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, governmental authority or entity of whatever nature.

“Petition Date” shall have the meaning assigned to such term in the preamble hereto.

“Prepetition Events and Circumstances” has the meaning set forth in Section 6.1(f).

“Prepetition Loan Agreement” has the meaning set forth in the Financing Orders.

“Prepetition Loan Documents” has the meaning set forth in the Financing Orders.

“Prepetition Secured Obligations” has the meaning set forth in the Financing Orders.

“Professional Expenses” means the fees and reimbursable expenses of an attorney, accountant, appraiser, auctioneer or other professional person and who is retained, with Bankruptcy Court approval, by the Borrowers pursuant to Section 327 of the Bankruptcy Code.

“Sale Motion” has the meaning set forth in Section 11.13.

“Sale Order” means a final order of the Bankruptcy Court approving the Sale Motion and the Sale Transaction.

“Sale Transaction” means (a) the sale of all or substantially all of the Borrowers’ business assets as a going concern as approved by the Bankruptcy Court pursuant to the applicable provisions of the Bankruptcy Code; provided that any going concern sale shall either be (x) to the Stalking Horse Bidder, or (y) to another successful bidder at the auction for the Sale Transaction; or (b) in the event that no Sale Transaction contemplated by the preceding clause (a) is available to the Borrowers, the liquidation of the Borrowers’ business and all of the assets relating thereto under Section 363 of the Bankruptcy Code, as approved by the Bankruptcy Court.

“Security Documents” shall mean, collectively, this Agreement, all Uniform Commercial Code financing statements required by this Agreement which have been or will be filed with respect to the security interests in Collateral created pursuant to this Agreement and the other Financing Documents, and all other security and pledge Agreements, mortgages or Uniform Commercial Code financing statements heretofore or hereafter delivered or filed, as the case may be, by the Borrowers pursuant to the terms of this Agreement securing the Obligations.

“Stalking Horse Bid” has the meaning set forth in Section 11.13.

“Stalking Horse Bidder” has the meaning set forth in Section 11.13.

“Subsidiary” means, as to any Person, any corporation or other entity of which at least a majority of the securities or other ownership interests having ordinary voting power (absolutely or contingently) for the election of directors or other persons performing similar functions at the time owned directly or indirectly by such Person.

“Termination Date” shall mean, with respect to the Loans, the earliest of (a) the Maturity Date, (b) the voluntary repayment in full of all Obligations and termination by the Borrowers of the Lender’s Commitment hereunder pursuant to Section 2.5(b) hereof, and (c) acceleration of the Obligations by the Lender following the occurrence of an Event of Default hereunder.

“UCC” shall mean the Uniform Commercial Code (or any successor statute) as adopted and in force in the State of New York from time to time or, when the laws of any other state govern the method or manner of the creation or perfection of any security interest in any of the Collateral, the Uniform Commercial Code (or any successor statute) of such state.

“Valid Prior Liens” has the meaning set forth in the Financing Orders.

“Variance Report” has the meaning set forth in Section 8.10(d).

## ARTICLE 2 The Loans

### Section 2.1 The Revolving Loans.

(a) Subject to the terms and conditions set forth herein, the Lender agrees from time to time upon the written request of the Borrowers, to make revolving loans (the “Revolving Loans”) to or for the account of Borrowers, in such amounts as may from time to time be requested by Borrowers, in an aggregate amount outstanding at any time not to exceed the Commitment.

(b) Notwithstanding anything herein to the contrary, the Lender shall have no obligation to make Loans hereunder (i) in excess of the amounts authorized under the Financing Orders, and any reference herein to the amount of the Commitment shall be automatically reduced to the amounts so authorized pursuant to the Financing Orders, and (ii) at any time that a continuing uncured Event of Default exists.

(c) Subject to the terms and conditions herein, Revolving Loans may be borrowed, repaid and reborrowed hereunder by the Borrowers.

Section 2.2 Revolving Loan Account. An account shall be opened on the books of Lender in which account a record will be kept of all Revolving Loans, and all payments thereon and other appropriate debits and credits as provided by this Agreement.

Section 2.3 Revolving Loan Limits. Subject to the terms and conditions of this Agreement, the Lender shall make advances to the Borrowers respecting the Revolving Loans in an aggregate amount outstanding at any time not to exceed the Commitment. The amount of each Borrowing of Revolving Loans by the Borrowers for any weekly period shall not exceed an amount equal to the difference of (a) the product of (i) 100% plus the applicable Permitted Variance percentage, times (ii) the aggregate amount set forth in the Budget for any applicable weekly period, minus (b) the collected balance of funds available to the Borrowers on the Banking Day immediately preceding the date of the requested Borrowing (excluding (x) the amount of any prior Revolving Loan funded to the Borrowers but not yet disbursed to pay expenses for any preceding weekly period, and (y) any amounts received by Borrowers on account of Consignment Advances).



Section 2.4 Borrowings.

(a) Borrowing requests shall be delivered to the Lender on each Tuesday, together with the delivery by the Borrowers of the Variance Report for the week then ended pursuant to Section 8.10(d) along with the Borrowers' weekly financial statements in the form customarily delivered by the Borrowers to the Lender pursuant to the Prepetition Loan Documents (the forms of which are attached hereto as Exhibit B). On the date specified by the Borrowers for each Borrowing hereunder (which shall be no earlier than twelve (12) hours after the delivery to the Lender of the materials specified in the first sentence of this Section 2.4), the Lender shall, subject to the terms and conditions of this Agreement, including without limitation, those set forth in Section 6.2, make available the amount of such Borrowing to the Borrowers by depositing the same, in immediately available funds, in an account of the Borrowers designated for such purpose from time to time by the Borrowers.

(b) Each request for a Borrowing shall be made strictly in compliance with and solely to pay amounts contemplated by the Budget (subject to Permitted Variances; provided that payments on account of Professional Fees, including funding of the Carve-Out, shall not be subject to the Budget). All requests for Borrowings shall be made in order to fund disbursements set forth in the Budget for future or prior periods and (i) for expenses to be paid in the future, such Borrowing request shall be accompanied by cash projections or other estimates that support such request, and (ii) for expenses paid prior to the date of the requested Borrowing, such request shall be accompanied by invoices, bills, statements and any other information that is reasonably required by Lender to support or document the amounts requested in such request for Borrowing. All requests for Borrower shall be accompanied by a calculation prepared by the Borrower evidencing compliance of the requested Borrowing with the limitations of Section 2.3 above.

(c) Notwithstanding the foregoing provisions of Section 2.4(b) to the contrary, requests for Borrowings to pay Professional Fees shall be based upon the estimates for such Professional Fees submitted by each Professional in accordance with the Interim Order and any Final Order.

(d) Lender shall have no obligation to honor any request for a Borrowing after the Termination Date or when any condition precedent in ARTICLE VI hereof is not satisfied but may do so in its discretion and without regard to the existence of, and without being deemed to have waived, any Default or Event of Default and regardless of whether such Borrowing is funded after the Termination Date.

(e) Notwithstanding anything to the contrary herein, if following the occurrence of an Event of Default Lender notifies Borrowers in writing (email is sufficient) of its election to terminate the Commitment hereunder, and if any expenses are incurred by any Borrower that are consistent with the Budget, and if such expenses have not been previously funded by Lender, then Lender agrees to fund all such incurred expenses through the date of said notice of termination; provided that such incurred expenses (i) do not otherwise exceed the amounts for such expenses set forth in the Budget (or in the case of Professional Fees, the estimates therefor

submitted by Professionals in accordance with the Interim Order and any Final Order); and (ii) otherwise comply with the other terms of Section 2.3. In addition, in the event of the termination of the Commitment by the Lender, Lender shall immediately fund the amount of the Carve-Out incurred through such effective date of termination of Lender's Commitment under this Agreement (including any post-Post-Trigger Carve Out Amount, as defined in the Interim Order).

Section 2.5 Changes of Commitment.

(a) Subject to Lender's obligation to fund Borrowings expressly described in Section 2.4(c) above, the Commitment shall be automatically reduced to zero on the Termination Date.

(b) The Borrowers shall have the right at any time or from time to time (i) so long as no Loans are outstanding, to terminate the Commitment and (ii) to reduce the unused amount of the Commitment; provided that the Borrowers shall give notice of each such termination or reduction as provided in Section 4.3 hereof.

(c) The Commitment once terminated or reduced may not be reinstated.

Section 2.6 Fees. Lender has agreed to provide the Loans under the terms of this Agreement for the Borrowers pursuant to the Budget. The Borrowers have agreed to the Commitment Fee in consideration of Lender's agreement to enter into this Agreement. Therefore, in full satisfaction of any and all fees in connection with the Loans, the Borrowers shall be obligated for the Commitment Fee, which shall be paid to the Lender on the Effective Date by the Lender adding the amount of the Commitment Fee to the outstanding balance of the Loans.

Section 2.7 Use of Proceeds. The Borrowers hereby covenant, represent and warrant that the proceeds of the Loans will be used solely to fund the Borrowers' continued ordinary course operations, costs of the Chapter 11 Cases (including, without limitation, fees and costs of Professionals), costs of the Clearance Sales, if applicable, and working capital needs, in each case solely in accordance with the Budget, and the proceeds of such Loans shall not be used to fund personal, family or household purposes. Notwithstanding anything to the contrary contained herein, in no event shall proceeds of the Loans be used to pay Professional Expenses incurred in connection with the assertion of or joinder in any claim, counterclaim, action, contested matter, objection, defense or other proceeding, the purpose of which is to seek or the result of which would be to obtain any order, judgment, declaration, or similar relief (a) seeking damages against Lender or any Lender indemnitees on account of any alleged cause of action arising on, before or after the Petition Date; (b) invalidating, setting aside, avoiding or subordinating, in whole or in part, any of the Obligations or Liens and security interests in any Collateral granted to Lender under this Agreement or the Financing Orders; (c) declaring any of the Financing Documents or Prepetition Loan Agreement to be invalid, not binding or unenforceable in any respect; (d) preventing, enjoining, hindering or otherwise delaying

Lender's enforcement of any of the Financing Documents, the Prepetition Lender's enforcement of the Prepetition Loan Agreement or the realization upon any Collateral (unless such enforcement or realization is in direct violation of an explicit provision in any of the Financing Orders); or (e) declaring any Liens granted or purported to be granted under any of the Financing Documents to have a priority other than the priority set forth therein. Nothing in this Section 2.7 shall be construed to waive (i) Lender's right to object to any requests, motions or applications made in or filed with the Bankruptcy Court, including any applications for interim or final allowances of Professional Expenses, or (ii) Borrowers' right to contest whether the Termination Date has occurred (and pay Professional Fees in connection with a hearing with regard to the same).

Section 2.8 Note. The Loans made by the Lender hereunder shall be evidenced by a single promissory note of the Borrowers in substantially the form of Exhibit D hereto, dated as of the date hereof, payable to the Lender in a principal amount equal to the amount of the Commitment as originally in effect and otherwise duly completed. The date and amount of each Loan made by the Lender to the Borrowers, and all payments and prepayments made on account of the principal thereof, shall be recorded by the Lender on its books and, prior to any transfer of the Note, endorsed by the Lender on the schedule attached to such Note or any continuation thereof; provided, however, that any failure by the Lender to make any such notation shall not affect the obligations of the Borrowers hereunder or under such Note in respect of such obligations.

Section 2.9 Optional Prepayments. The Borrowers shall have the right to borrow, repay and, so long as no Event of Default or the Termination Date has occurred, reborrow Loans hereunder.

Section 2.10 Mandatory Prepayments and Reductions of Commitment. If at any time the Loans outstanding hereunder exceed the Commitment then available, then the Borrowers shall immediately repay the Loans in the amount of such excess.

### ARTICLE 3 Payments of Principal and Interest

Section 3.1 Payment at Maturity. To the extent not due and payable earlier pursuant to the terms of this Agreement, the entire unpaid principal amount of each Borrowing shall be due and payable on its Termination Date.

Section 3.2 Interest.

(a) The Borrowers hereby promise to pay to the Lender interest on the unpaid principal amount of each Loan, for the period from and including the date of such Loan to the date such Loan shall be paid in full at a rate per annum equal to 12.0%. Interest on the outstanding balance of the Loans shall accrue and shall be paid in full on the Maturity Date or, if earlier, the Termination Date.

(b) Notwithstanding the foregoing, the Borrowers hereby promise to pay to the Lender interest on the Loans at the Default Rate (i) upon the occurrence and during the continuance of an Event of Default hereunder and (ii) on any principal of any Loan and on any other amount payable by the Borrowers hereunder or under the Note which shall not be paid in full when due (whether at stated maturity, by acceleration, by mandatory prepayment or otherwise), for the period from and including the due date thereof to but excluding the date the same is paid in full. Interest payable at the Default Rate shall be payable in cash from time to time on demand. Payment or acceptance of the increased rates of interest provided for in this Section 3.2(b) is not a permitted alternative to timely payment and shall not constitute a waiver of any Event of Default or otherwise prejudice or limit any rights or remedies of the Lender.

#### ARTICLE 4 **Payments; Computations; Etc.**

##### Section 4.1 Payments.

(a) Except to the extent otherwise provided herein, all payments of principal, interest and other amounts to be made by the Borrowers to the Lender under this Agreement, the Note and the other Financing Documents shall be made in Dollars, in immediately available funds, without deduction, set-off or counterclaim, into an account (Account No. \*\*\*8756) maintained in the name of the Lender at Signature Bank, New York, New York (or such other account designated by the Lender from time to time) not later than 2:00 p.m. New York time on the date on which such payment shall become due (each such payment made after such time on such due date to be deemed, to have been made on the next succeeding Banking Day).

(b) The Borrowers shall, at the time of making any payment under this Agreement or any Note, specify to the Lender the Obligations or other amounts payable by the Borrowers hereunder to which such payment is to be applied (and in the event that the Borrowers fail to so specify, or if an Event of Default has occurred and is continuing, the Lender may apply the amount of such payment received by it in such manner as it may determine to be appropriate).

(c) If the due date of any payment under this Agreement or the Note would otherwise fall on a day that is not a Banking Day, such date shall be extended to the next succeeding Banking Day, and interest shall be payable for any principal so extended for the period of such extension.

Section 4.2 Computations. Interest hereunder shall be computed on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed (including the first day but excluding the last day) occurring in the period for which payable.

Section 4.3 Certain Notices. Notices by the Borrowers to the Lender of terminations or reductions of the Commitment and of any request for Borrowing shall be irrevocable and shall

be effective only if received by the Lender not later than 12:00 noon New York time on the number of Banking Days prior to the date of the relevant termination, reduction or Borrowing specified below:

| Notice                                       | Number of<br>Banking<br>Days Prior            |
|--|---|
| Termination or<br>reduction of<br>Commitment | 2   |
| Borrowing of Loans                           | Same day<br>(subject to<br>Section<br>2.4(a)) |

Each such notice of termination or reduction shall specify the amount of the Commitment to be terminated or reduced. Each such notice of Borrowing shall specify the amount of the Revolving Loans to be borrowed, the date of Borrowing (which shall be a Banking Day) and include the information required under Section 2.4 above.

#### Section 4.4 Reimbursement Obligations.

(a) Borrowers shall reimburse Lender for all reasonable legal, accounting, appraisal and other fees and expenses incurred by Lender (including reasonable out of pocket fees and expenses of Lender professionals) in connection with (i) the negotiation and preparation of any of the Financing Documents, any amendment or modification thereto, any waiver of any Default or Event of Default thereunder, or any restructuring or forbearance with respect thereto; (ii) the administration of the Financing Documents and the transactions contemplated thereby, to the extent that such fees and expenses are expressly provided for in this Agreement or any of the other Financing Documents; (iii) action taken to perfect or maintain the perfection or priority of any of Lender's Liens with respect to any of the Collateral; (iv) any inspection of or audits conducted with respect to any of Borrowers' books and records or any of the Collateral; (v) any effort to verify, protect, preserve, or restore any of the Collateral or to collect, sell, liquidate or otherwise dispose of or realize upon any of the Collateral; (vi) any litigation, contest, dispute, suit, proceeding or action (whether instituted by or against Lender or Borrowers) in any way arising out of or relating to any of the Collateral (or the validity, perfection or priority of any of Lender's Liens thereon), any of the Financing Documents or the validity, allowance or amount of any of the Obligations; (vii) the protection or enforcement of any rights or remedies of Lender in any Chapter 11 Case or other insolvency proceeding; and (viii) any other action taken by Lender to enforce any of the rights or remedies of Lender against any Borrowers or any Account Debtors to enforce collection of any of the Obligations or payments with respect to any of the Collateral. All amounts chargeable to Borrowers under

this Section 4.4 shall constitute Obligations that are secured by all of the Collateral and shall be payable on demand to Lender. Borrowers shall also reimburse Lender for reasonable expenses incurred by Lender in its administration of any of the Collateral to the extent and in the manner provided in this Agreement or any of the other Financing Documents. The foregoing shall be in addition to, and shall not be construed to limit, any other provision of any of the Financing Documents regarding the reimbursement by Borrowers of costs, expenses or liabilities suffered or incurred by Lender.

(b) In consideration for, among other things, Participant's agreement to be primed by the Loans as provided in the Financing Orders, Borrowers shall reimburse Participant for all reasonable legal, accounting, appraisal and other fees and expenses incurred by Participant (including reasonable out of pocket fees and expenses of Participant professionals) in connection with the Chapter 11 Cases and the transactions contemplated by this Agreement, in a maximum amount not to exceed \$50,000; provided, that if and to the extent Participant becomes the direct holder of the Prepetition Secured Obligations, this Section 4.4(b) shall terminate (as to any fees, costs and expenses incurred by Participant from and after the date on which Participant becomes the direct holder of the Prepetition Secured Obligations but not as to any such amounts incurred prior to such date) and the provisions of the Prepetition Loan Documents shall control.

Section 4.5 All Borrowings to Constitute One Obligation. The Borrowings shall constitute one general Obligation of Borrower and shall be secured by Lender's Lien upon all of the Collateral.

## ARTICLE 5 **Security: Administration; Priority**

### Section 5.1 Grant of Lien and Security Interest.

(a) Pursuant to this Agreement and the Security Documents, each Borrower hereby assigns, pledges, transfers, grants, confirms and sets over unto the Lender, and hereby grants and creates in favor of the Lender a security interest in and to, the Collateral.

(b) The liens and security interests in favor of the Lender referred to in Section 5.1(a) hereof and under the Security Documents shall be valid and perfected liens and security interests, prior to all other liens and interests, other than Valid Prior Liens, and shall have first priority, with respect to Collateral; provided that the Liens of the Lender referred to in Section 5.1(a) hereof and under the Security Documents shall be subject to the Carve-Out, which with respect to Professional Fees is limited in all respects to the amount of the Lender's Commitment. All Liens and security interests in favor of the Lender hereunder and their priority shall remain in effect until the Commitment has been terminated and all Obligations have been repaid in cash in full.

Section 5.2 Lien on Deposit Accounts. As additional security for the payment and performance of the Obligations, Borrowers hereby grant to Lender a Lien upon, and hereby

collaterally assigns to Lender, all of Borrowers' right, title and interest in and to each Deposit Account in which monies or proceed relating to the Collateral are deposited and all deposits or other sums at any time credited to each such Deposit Account, including any sums in any blocked account or any special lockbox account and in the accounts in which sums are deposited from such blocked accounts and special lockbox accounts. In connection with the foregoing, subject to the terms of the Interim Order or any Final Order, Borrowers hereby authorize and direct each such bank or other depository to pay or deliver to Lender upon its written demand therefor made at any time upon the occurrence and during the continuation of an Event of Default and without further notice to Borrowers (such notice being hereby expressly waived), all balances in each Deposit Account maintained by Borrowers with such depository for application to the Obligations then outstanding or as described in the Interim Order or any Final Order, and the rights given Lender in this Section shall be cumulative with and in addition to Lender's other rights and remedies in regard to the foregoing property as proceeds of Collateral. Borrower hereby irrevocably appoints Lender as Borrower's attorney-in-fact to collect any and all such balances to the extent any such payment is not made to Lender by such bank or other depository after demand thereon is made by Lender pursuant hereto.

Section 5.3 Right of Set-off. Lender is hereby authorized at any time and from time to time after the occurrence and during the continuance of an Event of Default, to the fullest extent permitted by law, to set-off and apply any and all monies in the Deposit Accounts at any time held and other indebtedness at any time owing by Lender to or for the credit or the account of any Borrower against any and all of the obligations of such Borrowers then existing under this Agreement and the Note. Lender agrees promptly to notify the applicable Borrowers after any such set-off and application made by Lender; provided, however, that the failure to give such notice shall not affect the validity of such set-off and application. The rights of Lender under this Article 5 are in addition to other rights and remedies (including, without limitation, other rights of set-off) which Lender may have.

Section 5.4 Acquired or Intellectual Property. Upon the acquisition or establishment of any property used in or relating to the business of any Borrower, including intellectual property, each Borrower, as applicable, shall cause the Borrowers acquiring or establishing such property to take all actions reasonably required by Lender to cause such property to become part of the Collateral for the Loans, including, but not limited to, the execution of all documents reasonably required by the Lender.

Section 5.5 Legends. The Borrowers shall promptly make, stamp or record such entries or legends on the Borrowers' books and records as Lender shall request from time to time, to indicate and disclose that Lender has a security interest in the Collateral.

Section 5.6 Intentionally Reserved.

Section 5.7 Administrative Priority. Subject to the terms of the Interim Order and any Final Order, the Borrowers hereby agree that the Obligations of the Borrowers shall constitute

allowed administrative expenses in the Chapter 11 Cases having super-priority status under section 364(c)(1) of the Bankruptcy Code over all other administrative expenses and unsecured claims against the Borrowers now existing or hereafter arising of any kind or nature whatsoever, including without limitation all administrative expenses, charges and claims of the kind specified in sections 503(b), 506(c), and 507(b) of the Bankruptcy Code, subject, as to priority, only to the Carve-Out.

Section 5.8 Grants, Rights and Remedies Cumulative. The liens and security interests granted pursuant to Section 5.1(a) hereof and the Security Documents and the administrative priority granted pursuant to Section 5.7 hereof, may be independently granted by the Financing Documents, the Interim Order and any Final Order and by other agreements hereafter entered into. This Agreement, the other Financing Documents, the Interim Order and any Final Order and such other agreements hereinafter entered into supplement each other, and the grants, priorities, rights and remedies of the Lender hereunder and thereunder are cumulative.

Section 5.9 No Filings Required. Subject to the terms of the Interim Order and any Final Order, the liens and security interests referred to in Section 5.1(a) hereof, and in the other Financing Documents shall be deemed valid and perfected by the Interim Order and any Final Order, as the case may be. The Lender shall not be required to file any financing statements, notices of Lien, mortgages or similar instruments in any jurisdiction or filing office, or to take possession of any Collateral or to take any other action in order to validate or perfect the Liens and security interests granted by or pursuant to this Agreement, the Interim Order and any Final Order, as the case may be, or any other Financing Document. Lender shall, in its sole discretion, from time to time choose to file such financing statements, notices of Lien, mortgages or similar instruments, take possession of any Collateral, or take any other action to validate or perfect any such security interests or liens, all such documents shall be deemed to have been filed or recorded at the time and on the date of entry of the Interim Order and any Final Order, and the Borrowers consent to the modification of the automatic stay under § 362 of the Bankruptcy Code to permit the Lender to file such financing statements, notices of Lien or similar instruments, take possession of any collateral, or take any other action to validate or perfect any such security interests or Liens.

Section 5.10 Survival. The Liens, security interests, lien priorities, administrative priorities and other rights and remedies granted to the Lender pursuant to this Agreement and the other Financing Documents (specifically including but not limited to the existence, perfection and priority of the Liens and security interests provided herein and therein, and the administrative priority provided herein and therein) shall not be modified, altered or impaired in any manner by any other financing or extension of credit or incurrence of debt by the Borrowers (pursuant to § 364 of the Bankruptcy Code or otherwise), or by any dismissal or conversion of the Chapter 11 Cases, or, with respect to any Loans then outstanding, any modification, amendment or reversal or stay of the Interim Order and any Final Order, as the case may be, or by any other act or omission whatsoever. Without limitation, notwithstanding any such order, financing, extension, incurrence, dismissal, conversion, act of omission:



(a) except for the Carve-Out, no costs or expenses of administration which have been or may be incurred in the Chapter 11 Cases or any conversion of the same or in any other proceedings related thereto, and no priority claims, are or will be prior to or on a parity with any claim of the Lender against the Borrowers in respect of any Obligation; and

(b) the Liens and security interests in favor of the Lender set forth in Section 5.1(a) hereof and in the other Financing Documents shall constitute valid and perfected first priority Liens and security interests, subject only to Valid Prior Liens to which such Liens and security interests hereunder shall be subordinate and junior, and shall be prior to all other Liens and security interests, now existing or hereafter arising, in favor of any other creditor to any other Person whatsoever; provided that all such liens and security interests of the Lender set forth in Section 5.1(a) hereof or in any of the Financing Documents shall be subject and subordinate to the Carve-Out.

## ARTICLE 6 Conditions Precedent

Section 6.1 Conditions Precedent. The obligation of the Lender to make Loans available hereunder shall occur on the date (the “Effective Date”) on or before September 10, 2021, that the Lender shall have received each of the following, in form, and substance satisfactory to the Lender and its counsel:

(a) this Agreement duly executed by the Borrowers, together with such financing statements which in the opinion of the Lender are desirable to perfect the liens and security interests created hereby;

(b) the Note duly executed by the Borrowers;

(c) evidence that the Interim Order shall have been entered by the Bankruptcy Court approving this Agreement, the Loans and the other Financing Documents no later than September 10, 2021, and such Interim Order shall be in full force and effect and shall not have been reversed, stayed, modified or amended;

(d) a copy of the charter, as amended and in effect, of the Borrowers certified as of recent date by the Secretary of State of the state of its incorporation, and a certificate from such Secretary of State dated as of recent date as to the good standing of and charter documents filed by such Borrowers;

(e) a certificate from the Secretary of the Borrowers, dated the Effective Date, certifying (i) that the attached are true and complete copies of the by-laws of the Borrowers as amended and in effect, (ii) that attached thereto is a true and complete copy of resolutions duly adopted by the Board of Directors of the Borrowers authorizing execution, delivery and performance of this Agreement and the other Financing Documents to which the Borrowers are

parties and the extensions of credit hereunder, and that such resolutions have not been modified, rescinded or amended and are in full force and effect, (iii) that the charter of the Borrowers have not been amended since the date of the certification thereto furnished pursuant to clause (d) above, and (iv) as to the incumbency and specimen signature of each officer of such Borrowers executing the Financing Documents;

(f) a certificate of a duly authorized officer of the Borrowers, dated the Effective Date, stating that (a) the representations and warranties in Article 7 of this Agreement and in the other Financing Documents are true and correct on such date as though made on and as of such date, (b) no event has occurred and is continuing which constitutes a Default or an Event of Default hereunder and (c) prior to the Effective Date no material adverse change in the assets, business, operations or financial condition of the Borrowers taken as whole have occurred or become known since the Petition Date, except as disclosed in writing by the Borrowers to the Lender prior to the Effective Date; provided, however, that none of (i) the events leading up to the filing of the Chapter 11 Cases, including the events specifically described in any “First Day Affidavit” filed with the Bankruptcy Court, the filing of the Chapter 11 Cases and resulting effects of bankruptcy, including any defaults under prepetition agreements so long as the exercise of remedies as a result of such defaults is stayed under the Bankruptcy Code, or such agreements are voided or invalidated by an order of the Bankruptcy Court, (ii) any action of the Borrowers taken pursuant to, or any failure of the Borrowers to take any action prohibited by this Agreement or the other Financing Documents, (iii) the public disclosure of this Agreement or any of the other Financing Documents or any of the transactions contemplated hereby or thereby, and (iv) the COVID-19 pandemic and matters resulting directly or indirectly therefrom affecting the Borrowers shall be deemed to constitute a material adverse change hereunder or under the other Financing Documents (each of the foregoing clauses (i) through (iv), the “Prepetition Events and Circumstances”);

(g) upon entry of the Interim Order, the Liens and security interests in favor of the Lender granted pursuant hereto shall be valid and perfected first priority Liens prior (except for Valid Prior Liens to which such Liens and security interests are subordinate and junior) to all other Liens in or on the Collateral intended to be subject thereto, subject to the Carve-Out;

(h) evidence that all fees and expenses required by this Agreement to be paid by the Borrowers on or before the Effective Date shall have been paid in full (or shall have been authorized by the Interim or Final Order, as the case may be); and

(i) such other approvals or documents as the Lender may reasonably request.

Section 6.2 Conditions Precedent to making Revolving Loans. The Lender shall not be obligated to make any Revolving Loans hereunder unless:

(a) As of the date of the proposed Revolving Loan, no Default or Event of Default has occurred and is continuing;

(b) No material adverse change has occurred in the financial condition of the Borrowers since the date hereof, other than Prepetition Events and Circumstances;

(c) No Material Adverse Deviation has occurred; and

(d) The Borrowers have delivered to Lender, upon Lender's request, a certificate executed by the chief executive officer of the Borrowers confirming the statements made in paragraphs (a), (b), and (c) above.

Section 6.3 Certification. Each notice of a Borrowing shall be accompanied by a certificate of a duly authorized officer of each Borrower certifying that the statements contained in Article VII are true and correct both on the date of such notice and, unless such Borrower otherwise notifies the Lender prior to such Borrowing, as of the date of such Borrowing.

## ARTICLE 7 Representations and Warranties

The Borrowers hereby represent and warrant that upon the occurrence of the Effective Date:

Section 7.1 Incorporation, Good Standing and Due Qualification. Each Borrower (a) is a corporation duly organized, validly existing and in good standing under the laws or the jurisdiction of New York; (b) has the requisite corporate power and has all material governmental licenses, authorizations, consents and approvals necessary to own its assets, and carry on the business in which they are now engaged; and (c) is duly qualified to do business in each jurisdiction in which the nature of the business conducted by such Borrower makes such qualification necessary and in which the failure to so qualify would have a material adverse effect on the business, financial condition or operations of the Borrowers, taken as a whole.

Section 7.2 Corporate Power and Authority; No Conflicts. Subject to the entry of the Financing Orders, the execution, delivery and performance by each Borrower of the Financing Documents to which it is a party, the grant by the Borrowers and the perfection of the security interests purported to be granted in favor of the Lender hereunder and under the Security Documents have been duly authorized by all necessary corporate action and do not and will not: (a) contravene any provision of its charter or bylaws; (b) violate any provision of, or require any filing, registration, consent or approval under, any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award presently in effect having applicability to the Borrowers or their affiliates (other than entry of the Financing Orders); (c) result in a breach of or constitute a default or require any consent under any indenture or loan or credit agreement or any other agreement, lease, or instrument to which the Borrowers are a party or by which it or its properties may be bound or affected; (d) result in, or require, the creation or imposition of any Lien (other than as provided hereunder and under the Security Documents), upon or with respect to any of the properties now owned or hereafter acquired by the Borrowers; or (e) cause the

Borrowers to be in default under any such law, rule, regulation, order, writ, judgment, injunction, decree, determination or award or any such indenture, agreement, lease or instrument which would not be cured by entry of the Financing Orders.

Section 7.3 Subsidiaries: Except as previously disclosed to the Lender in writing, Borrowers have no subsidiaries, and the Borrowers have never consolidated, merged or acquired substantially all of the assets of any other entity or person.

Section 7.4 Intentionally Reserved.

Section 7.5 Legally Enforceable Agreements. Subject to the entry of the Financing Orders, each Financing Document to which the Borrowers are a party is, or when delivered under this Agreement will be, a legal, valid and binding obligation of the Borrowers enforceable against the Borrowers in accordance with its terms.

Section 7.6 Use of Proceeds: No portion of any Loan is to be used for (i) personal, family or household purposes, (ii) any other purpose other than the operation of the Borrowers' business, or (iii) the purchasing of margin stock or margin securities with the meaning of Regulations U and X of the Board of Governors of the Federal Reserve System, 12 C.F.R. 221 and 224).

Section 7.7 Litigation. Other than the Chapter 11 Cases and as set forth in Schedule 7.7 hereto, as of the Effective Date there are no actions, suits or proceedings pending against the Borrowers or any of their properties before any court, governmental agency or arbitrator which may, in any one case or in the aggregate, materially adversely affect the financial condition, operations, properties or business of the Borrowers or the ability of the Borrowers to perform their obligations under the Financing Documents to which they are a party.

Section 7.8 No Default on Outstanding Judgments or Orders. The Borrowers are not in default with respect to any judgment, writ, injunction, decree, rule or regulation of any court, arbitrator or federal, state, municipal or other governmental authority, commission, board, bureau, agency or instrumentality, domestic or foreign, other than as a result of the Chapter 11 Cases.

Section 7.9 Government Regulation. Except for the effect of the Financing Orders, the Borrowers are not subject to regulation under any statute or regulation limiting its ability to incur indebtedness for money borrowed as contemplated hereby.

Section 7.10 Environmental. As of the date hereof, no Borrower nor any of the Borrowers' respective agents, employees or independent contractors (i) have caused or are aware of a release or threat of release of Hazardous Materials on any of the premises or personal property owned or controlled by Borrowers or any property abutting such property, which could reasonably be expected to give rise to material liability under any Environmental Law or any other Federal, state or local law or regulation; (ii) have arranged for the transport of or

transported any Hazardous Material in a manner as to violate, or result in potential material liabilities under any Environmental Law; (iii) have receive any notice, order or demand from the Environmental Protection Agency or any other Federal, state or local agency under any Environmental Law; (iv) have incurred any liability under any Environmental Law in connection with the mismanagement, improper disposal or release of Hazardous Materials; or (v) are aware of any inspection or investigation of any of Borrowers' controlled or abutting property by any Federal, state or local agency for possible violation of any Environmental Law, in each case, which could reasonably be expected to have a material adverse effect on the business, operations or financial condition of the Borrowers, taken as a whole.

Section 7.11 Administrative Priority.

(a) Subject to entry of the Financing Orders, the Obligations of the Borrowers will constitute allowed administrative expenses in the Chapter 11 Cases having priority over all other administrative expenses and unsecured claims against the Borrowers, now existing or hereafter arising, of any kind or nature whatsoever, including without limitation all other administrative expenses, charges or claims of the kind specified in sections 503(b), 506(c), and 507(b) of the Bankruptcy Code, subject only to Carve-Out.

(b) Subject to entry of the Financing Orders, the Obligations of the Borrowers will be secured by a valid and perfected first priority Lien on and security interest in all of the Collateral, subject only to Valid Prior Liens to which such Liens and security interests shall be junior to and subordinate, and subject further to the Carve-Out.

Section 7.12 Bankruptcy Court Orders. The Interim Order or the Final Order, as the case may be, is in full force and effect, and has not been reversed, stayed, modified or amended, except as consented to by the Lender in writing.

ARTICLE 8  
**Affirmative Covenants**

So long as the Note shall remain unpaid, the Borrowers shall:

Section 8.1 Maintenance of Existence. Preserve and maintain their respective corporate existence and good standing in the jurisdiction of their organization.

Section 8.2 Conduct of Business. (a) Continue to engage in a business of the same general type as conducted by it on the date of this Agreement, (b) operate their businesses in material conformity to the Budget (subject to Permitted Variances), (c) obtain and/or maintain all licenses, permits, authorizations or other forms of permission which under federal, state and local laws are necessary or advisable for operating and maintaining the conduct of the business of the Borrowers (including, without limitation, copyrights, trademarks, patents and licenses to use tangible or intangible property and similar rights), and (d) use their best efforts to preserve and protect the value of the Collateral.

Section 8.3 Intentionally omitted.

Section 8.4 Maintenance of Properties and Executory Contracts and Leases. Maintain, keep and preserve the Collateral and all of its properties (tangible and intangible) including leased property, necessary or useful in the proper conduct of its business in good repair, working order and condition, ordinary wear and tear excepted, and shall use its best efforts to ensure that all leases and executory contracts necessary or useful in the Borrowers' operations remain in full force and effect (without prejudice, however, to the Borrowers' right to assume or reject such leases or executory contracts under section 365 of the Bankruptcy Code), except to the extent otherwise consented to by the Lender. The Borrowers will immediately notify the Lender of any loss or damage to or any occurrence which would adversely affect the value of any such property

Section 8.5 Maintenance of Records. Keep adequate records and books of account, in which complete entries will be made reflecting all financial transactions of the Borrowers.

Section 8.6 Intentionally Omitted.

Section 8.7 Compliance with Laws. Comply in all material respects with all applicable laws, rules, regulations and orders, such compliance to include, without limitation, paying before the same become delinquent all taxes, assessments and governmental charges imposed upon it or upon its property, subject to the limitations and requirements of the Bankruptcy Code.

Section 8.8 Right of Inspection. Shall provide Lender, including, without limitation, Lender's auditor or accountant, access during normal business hours and upon reasonable prior notice to all of Borrowers' inventory and to any and all of the books and records, financial statements and other data and information, wherever held, relating to the business or financial condition of the Borrowers, including, without limitation, (1) a current inventory list, (2) a fixed asset list, (3) copies of sales journals and other records of sales and inventory, and (4) such additional documents as are required to be made available under this Agreement; provided, however, that in exercising their rights under this Section 8.8 the Lender shall, and shall cause each of its applicable agents and representatives to, not unreasonably disrupt the Borrowers' conduct of business at any of their business locations, the conduct of the Clearance Sales, and/or due diligence undertaken by any other parties interested in participating in the Sale Transaction.

Section 8.9 Location of Collateral. Except for sale, processing, use, consumption or other disposition in the ordinary course of business, keep all inventory and equipment only at the Borrowers' locations identified to the Lender prior to the Effective Date. The Borrowers shall, during the term of this Agreement, keep the Lender currently and accurately informed in writing of each location where the Borrowers' records relating to its accounts and contract rights, respectively, are kept.

Section 8.10 Financial Statements. Borrowers shall furnish to Lender,

(a) as soon as practicable, but in any event within 30 days after the close of each month, a full and complete signed copy of financial statement, prepared by Borrowers in form acceptable to Lender, which shall include a balance sheet of the Borrowers, as at the end of such month, and statement of profit and loss of the Borrowers reflecting the results of its operations during such month, and prepared on a compiled basis in accordance with generally accepted accounting principles, consistently applied, subject to year-end adjustments;

(b) as soon as available to Borrowers, but in any event within 120 days of the close of each fiscal year, a full and complete copy of financial statements, prepared by a certified public accountant reasonably acceptable to Lender, which shall include a balance sheet of the Borrowers, as at the end of such year, and statement of profit and loss of the Borrowers reflecting the results of the operations of the Borrowers during such year and prepared on a reviewed basis in accordance with generally acceptable accounting principles, consistently applied together with any so-called "management letter", if any;

(c) concurrently with the filing of the same, a copy of Borrowers' annual federal tax returns;

(d) on each Tuesday, commencing with the second Tuesday after the Petition Date, (i) a report setting forth, in reasonable detail, the Borrowers' actual financial results for the preceding weekly period (Sunday through Monday) against the Borrowers' projected performance for such period as set forth in the Budget, prepared on a line item basis for such weekly period and the cumulative period from the commencement of the Budget through the week then ended, together with a narrative report describing in reasonable detail any negative variance of more than ten percent (10%) between the Borrowers' actual results and the Borrowers' projected results as set forth in the Budget (each, a "Variance Report"), and (ii) any updated or amended Budget prepared by the Borrowers, which updated or amended Budget shall be subject to the prior approval of the Lender (such approval not to be unreasonably withheld or delayed) and, to the extent approved, such updated or amended Budget shall be deemed to be the "Budget" for all purposes of this Agreement; and

(e) from time to time, such additional financial data and information about Borrowers as the Lender may reasonably request.

Section 8.11 Milestones. The Borrowers agree that they shall take all actions necessary to cause each of the following to occur on or before the date indicated (each a "Milestone" and collectively, the "Milestones"):

(a) The Borrowers shall have filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code shall be filed by September 8, 2021;

(b) The Interim Order shall be entered by September 10, 2021;

(c) The Sale Motion shall be filed on the Petition Date;

- (d) The Final Order shall be entered by October 1, 2021;
- (e) The Bidding Procedures Order shall be entered by October 1, 2021;
- (f) The deadline for the submission of bids for the Sale Transaction shall be October 19, 2021;
- (g) The auction in connection with the Sale Transaction shall be on October 22, 2021;
- (h) The Sale Order shall be entered by October 26, 2021; and
- (i) The Sale Transaction shall close by no later than October 31, 2021.

Section 8.12 Insurance. Borrowers will maintain in force property and casualty insurance on any property of the Borrowers, if any, against risks customarily insured against by companies engaged in business similar to that of the Borrowers containing such terms and written by such companies as may be satisfactory to the Lender, such insurance to be payable to the Lender as its interest may appear in the event of loss and to name the Lender as insured pursuant to a standard loss payee clause; no loss shall be adjusted thereunder without the Lender's approval; and all such policies shall provide that they may not be cancelled without first giving at least thirty (30) days written notice of cancellation to the Lender. Borrowers will also maintain liability insurance containing such terms and written by such companies as may be satisfactory to the Lender, with the Lender to be named as an individual insured under such policies. At the option of the Lender, all insurance proceeds received from any loss or damage to any property shall be applied either to the replacement or repair hereof or as a payment on account of the Obligations.

Section 8.13 Further Assurances. Execute, acknowledge, deliver, record, file, register, perform and do any and all such further acts, deeds, conveyances, assignments, estoppel certificates, financing statements, assurances and other instruments as the Lender may reasonably request from time to time in order (a) to carry out more effectively the purposes of this Agreement or any other Financing Document, (b) to subject the Collateral to valid and perfected first priority liens and security interests (subject, as to priority, to the Permitted Liens and the Carve-Out), (c) to perfect and maintain the validity, effectiveness and priority of any of the Financing Documents and the Liens and security interests intended to be created thereby, and (d) to better assure, convey, grant, assign, transfer, preserve, protect and confirm unto the Lender the rights granted or now or hereafter intended to be granted to the Lender under any Financing Document. The assurances contemplated by this Section 8.7 shall be given under applicable non-bankruptcy law as well as the Bankruptcy Code, it being the intention of the parties that the Lender may request assurances under applicable non-bankruptcy law, and such request shall be complied with (if otherwise made in good faith by the Lender) whether or not the Final Order is in force and whether or not dismissal of the Chapter 11 Cases or any other action by the Bankruptcy Court is imminent, likely or threatened.



ARTICLE 9  
**Negative Covenants**

So long as the Note shall remain unpaid, the Borrowers shall not:

Section 9.1 Liens. Create, incur, assume or suffer to exist, or permit any of its Subsidiaries to create, incur, assume or suffer to exist, any Lien upon or with respect to any of its properties, now owned or hereafter acquired, except:

- (a) All liens granted pursuant to the Prepetition Loan Documents;
- (b) Liens provided for under the Financing Documents and the Financing Orders;
- (c) Liens for taxes or assessments or other government charges or levies if not yet due and payable if they are being contested in good faith by appropriate proceedings and for which appropriate reserves are maintained;
- (d) Liens imposed by law, such as mechanic's, materialmen's, landlord's, warehousemen's and carrier's Liens, and other similar Liens, securing the obligations incurred in the ordinary course of business which are not past due for more than 30 days, or which are being contested in good faith by appropriate proceedings and for which appropriate reserves have been established;
- (e) Liens under workmen's compensation, unemployment insurance, social security or similar legislation;
- (f) Liens, deposits or pledges or liens granted to secure the Borrowers' obligations under letters of credit issued to secure the performance of bids, tenders, contracts (other than contracts for the payment of money), leases (permitted under the terms of this Agreement), public or statutory obligations, surety, stay, appeal, indemnity, performance or other similar bonds, or other similar obligations arising in the ordinary course of business;
- (g) judgment and other similar Liens arising in connection with court proceedings; provided that the execution or other enforcement of such Liens is effectively stayed and the claims secured thereby are being actively contested in good faith and by appropriate proceedings and for which appropriate reserves have been established;
- (h) easements, rights-of-way, restrictions and other similar encumbrances which, in the aggregate, do not materially interfere with the occupation, use and enjoyment by the Borrowers of the property or assets encumbered thereby in the normal course of its business or materially impair the value of the property subject thereto;
- (i) Liens in existence as of the Effective Date and set forth on Schedule 9.1 attached hereto; and

(j) Liens securing inventory obtained by the Borrowers on consignment (including in favor of the Consignor).

Section 9.2 Sale of Interest. Permit any sale or transfer of ownership of any interest in the Borrowers without the Lender's prior written consent.

Section 9.3 Loans or Advances. Make any loans or advances to any individual, partnership, corporation, limited liability company, trust, or other organization or person, including without limitation its officers and employees; provided, however, that Borrowers may (i) make advances to its employees, including its officers, with respect to expenses incurred or to be incurred by such employees in the ordinary course of business which expenses are reimbursable by Borrowers, (ii) extend credit in the ordinary course of business in accordance with customary trade practice, and (iii) make an advance to the Consultant pursuant to the Consulting Agreement in an amount not to exceed \$50,000.

Section 9.4 Investments. (i) Make investments in, or advances to, any individual, partnership, corporation, limited liability company, trust or other organization of person or (ii) purchase or otherwise invest in or hold securities, nonoperating real estate or other nonoperating assets or purchase all of all substantially all the assets of any entity.

Section 9.5 Merger. Merge or consolidate or be merged or consolidated with or into any other entity.

Section 9.6 Expenditures. (i) Except to the extent of any Permitted Variance, directly, or directly, utilize funds (including monies borrowed pursuant to this Agreement) or make or commit to make expenditures except in accordance with the Budget and in the ordinary and usual course of business or (ii) directly, or directly, make or commit to make capital expenditures by lease, purchase, or otherwise except in accordance with the Budget and in the ordinary and usual course of business.

Section 9.7 Change of Name, etc. Change their legal name or the State or the type of its organizations, without giving the Lender as least 30 days prior written notice thereof.

Section 9.8 Bankruptcy Court Orders; Administrative Priority; Lien Priority; Payment of Claims.

(a) Seek, consent to or suffer to exist any modification, stay, vacation or amendment of the Financing Orders, except for modifications and amendments agreed to by the Lender in writing.

(b) Seek, consent to or suffer to exist a priority for any administrative expense or unsecured claim against the Borrowers (now existing or hereafter arising of any kind or nature whatsoever, including without limitation any administrative expenses, charges or claims of the kind specified in sections 503(b), 506(c), and 507(b) of the Bankruptcy Code) equal or superior

to the priority of the Lender in respect of the Obligations, except for (i) the Carve-Out, which shall rank senior to the Obligations, and which with respect to Professional Fees shall be limited in all respects specifically to the Lender's Commitment, and (ii) any breakup fee and expense reimbursement obligations in connection with the Stalking Horse Bid.

(c) Suffer to exist any Lien on the Collateral having a priority equal or superior to the Liens and security interests in favor of the Lender in respect of the Obligations, except for Valid Prior Liens and the Carve-Out.

(d) Prior to the date on which the Obligations have been paid in full in cash and the Commitment has been terminated, pay any administrative expense claims except, the Borrowers may pay (i) amounts owing to the Lender under this Agreement, (ii) amounts payable pursuant to the Prepetition Loan Documents, to the extent required to be paid under the Financing Orders and included in the Budget, (iii) administrative expense claims incurred in the ordinary course of the business of the Borrowers, (iv) amounts payable pursuant to 28 U.S.C. § 1930(a)(6) and the allowed fees and expenses of Professionals under sections 330 and 331 of the Bankruptcy Code, limited in all respects specifically to the aggregate amounts set forth in the Approved Budget, and (v) any amounts owing to the Consultant or Consignor pursuant to the Consulting Agreement.

Section 9.9 Variation from Budget; Reallocation. From and after the Effective Date, at any time operate their business in a manner which is not consistent with the Budget (as updated and amended from time to time and approved by Lender as provided herein, except to the extent of any Permitted Variance.

Section 9.10 Dispositions. Make any Disposition or enter into any agreement to make any Disposition, except:

(a) Dispositions of obsolete, worn out, used or surplus property, whether now owned or hereafter acquired, in the ordinary course of business and Dispositions of property no longer used or useful in the conduct of the business of the Borrowers and the Subsidiaries;

(b) Dispositions of inventory and goods held for sale in the ordinary course of business;

(c) Dispositions of property to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property or (ii) the proceeds of such Disposition are promptly applied to the purchase price of such replacement property; provided that to the extent the property being transferred constitutes Collateral, such replacement property shall constitute Collateral;

(d) Dispositions of property to another Borrower or a Subsidiary;

(e) leases, subleases, licenses or sublicenses (including the provision of software under an open source license), in each case in the ordinary course of business and which do not materially interfere with the business of the Borrowers and the Subsidiaries, taken as a whole;

(f) transfers of property subject to Casualty Events upon receipt of the net cash proceeds of such Casualty Event;

(g) Dispositions of property not otherwise permitted under this Section; provided the aggregate fair market value (as determined by the Borrowers in good faith) of the property Disposed of pursuant to this clause (g) shall not exceed \$100,000 in the aggregate;

(h) Dispositions of accounts receivable in connection with the collection or compromise thereof;

(i) Expenditures of cash in the ordinary course of business and consistent with the Budget, subject to Permitted Variances;

(j) Dispositions of inventory and furniture, fixtures and equipment pursuant to the Clearance Sales;

(k) Entry by the Borrowers into the Stalking Horse Bid and consummation of the Sale Transaction; and

(l) to the extent allowable under section 1031 of the Code (or comparable or successor provision), any exchange of like property (excluding any boot thereon permitted by such provision) for use in any business conducted by the Borrowers or any of its Subsidiaries that is not in contravention of this Section;

*provided* that any Disposition of any property pursuant to this Section 9.10 (except pursuant to Section 9.10(d), Section 9.10(e), Section 9.10(f) and Section 9.10(h), and except for Dispositions by a Borrower to another Borrower), shall be for no less than the fair market value of such property at the time of such Disposition as determined by the Borrowers in good faith. To the extent any Collateral is Disposed of as expressly permitted by this Section 9.10 to any Person other than a Borrower or a Subsidiary of a Borrower, such Collateral shall be sold free and clear of the Liens created by the Financing Documents.

## ARTICLE 10 Events of Default

Section 10.1 Events of Default. Any of the following events shall be an “Event of Default”:

(a) the Borrowers shall: (i) fail to pay the principal of the Note as and when due and payable; or (ii) fail to pay interest on the Note or any fee or other amount due hereunder within five (5) days of the date such amount is due and payable; or

(b) any material representation or material warranty made or deemed made by the Borrowers in this Agreement or in any other Financing Document to which it is a party or which is contained in any certificate, document, opinion, financial or other statement furnished at any time under or in connection with any Financing Document shall prove to have been incorrect in any material respect on or as of the date made or deemed made; or

(c) the Borrowers shall conduct any promotional sale event outside of the ordinary course of business at any retail store location of the Borrowers in New York, New York; or

(d) an order with respect to the Chapter 11 Cases shall be entered by the Bankruptcy Court, or the Borrowers shall file an application for an order with respect to the Chapter 11 Cases (i) appointing a trustee in any such Chapter 11 Cases or (ii) appointing an examiner in the Chapter 11 Cases with the authority to perform the duties of a trustee (other than the duties solely of an examiner) in respect of the estate of the Borrowers or the operation of the business of the Borrowers; or

(e) an order with respect to the Chapter 11 Cases shall be entered by the Bankruptcy Court dismissing the Chapter 11 Cases or converting the Chapter 11 Cases to chapter 7 cases; or

(f) an order shall be entered by the Bankruptcy Court confirming a plan of reorganization in the Chapter 11 Cases, or a plan of reorganization shall be filed, which either (i) does not contain a provision for payment in full in cash of all Obligations of the Borrowers hereunder and under the other Financing Documents on or before the Termination Date, or (ii) which is not otherwise satisfactory in all material respects to the Lender; or

(g) an order with respect to the Chapter 11 Cases shall be entered by the Bankruptcy Court without the express prior written consent of the Lender (i) to revoke, reverse, stay, modify or amend (in a manner materially adverse to the Lender), or supplement the Interim Order or any Final Order or any of the Financing Documents, (ii) approving the incurrence by the Borrowers of any debt not contemplated hereunder, (iii) to permit any administrative expense or any claim (now existing or hereafter arising, of any kind or nature whatsoever) to have administrative priority equal or superior to the priority of the Lender in respect of the Obligations, except for Carve-Out, or (iv) to grant or permit the grant of a Lien on the Collateral other than Permitted Liens; or

(h) an application for any of the orders described in clauses (d), (e), (f), or (g) above shall be made (i) by a Person other than the Borrowers and such application is not contested by the Borrowers or (ii) by the Borrowers; or

(i) any judgment or order shall be entered against any Borrower or any other event shall occur or condition exist which in each case, does or could reasonably be expected to have a material adverse effect on the condition (financial or otherwise), business, operation or prospects of the Borrowers, taken as a whole; or

(j) any levy, lien (including mechanics liens), seizure, attachment, execution or similar process shall be issued or levied on any of the property of the Borrowers; or

(k) the Security Documents shall at any time after their execution and delivery and for any reason cease: (i) to create a valid and perfected security interest and Lien in and to the property purported to be subject thereto having the priority specified in the Security Documents; or (ii) to be in full force and effect or shall be declared null and void, or the validity or enforceability thereof shall be contested by the Borrowers, or the Borrowers shall deny it has any further liability or obligation under any such agreement, or the Borrowers shall fail to perform any of its obligations thereunder; or

(l) the later of the date (i) the Borrowers shall cease to have the exclusive right to file a plan of reorganization in the Chapter 11 Cases; or (ii) a party in interest shall file a competing plan of reorganization which does not provide for the payment in full of the Obligations in cash;

(m) the Borrowers shall: (i) fail to perform or observe any other material term, material covenant or material agreement on its part to be performed or observed in any business Financing Document, which failure shall continue uncured for a period in excess of five (5) days; or (ii) fail to comply with any of the terms or provisions of the Financing Orders;

(n) the failure to comply with the provisions of the Interim or Final Financing Orders; or

(o) the failure to comply with any Milestone set forth in Section 8.11 which failure is not cured within two (2) days.

Section 10.2 Consequences of an Event of Default. If an Event of Default shall occur and so long as it shall continue or, the Lender may, by notice to the Borrowers,

(a) declare the Commitment terminated, whereupon, subject to the provisions of Section 2.4(c), the Loan will terminate immediately and any fees hereunder shall be immediately due and payable on DEMAND without further order of or application to the Bankruptcy Court or another Court, presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived, and an action therefor shall immediately accrue; or

(b) declare the unpaid principal amount of the Loans, interest accrued thereon, and all other amounts owing by the Borrowers hereunder or under the Note to be immediately due and payable without further order of or application to the Bankruptcy Court, presentment,

demand, protest or further notice of any kind, all of which are hereby expressly waived, and an action therefor shall immediately accrue.

Section 10.3 Certain Remedies. Subject to the terms of the Financing Orders, if an Event of Default has occurred and is continuing, the Lender may, on five (5) days' prior notice to the Borrowers, declare the Facility terminated, cease making any advances under DIP Facility (except with respect to the Carve-Out) and declare the unpaid principal amount, interest accrued thereon and all other amounts owed by Debtors under the Financing Documents, including any fees due to be immediately due and payable without further order of the. All proceeds in respect of the Collateral shall be applied by the Lender to reduce the Obligations in such manner as determined by the Lender in its sole discretion, and the Borrowers shall remain liable for any deficiency. All such remedies shall be cumulative and not exclusive. No failure on the part of the Lender to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof or preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

## ARTICLE 11 **Miscellaneous**

Section 11.1 Amendments and Waivers. The Borrowers and the Lender may from time to time enter into agreements amending, modifying or supplementing this Agreement, the Notes or any other Financing Documents, and the Lender may from time-to-time grant waivers or consents to a departure from the due performance of the obligations of the Borrowers hereunder or thereunder. Any such agreement, waiver or consent must be in writing and shall be effective only to the extent specifically set forth in such writing. In the case of any such waiver or consent relating to any provision hereof, any Event of Default so waived or consented to shall be deemed to be cured and not continuing, but no such waiver or consent shall extend to any other or subsequent Event of Default or impair any right consequent thereto.

Section 11.2 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Lender, the Borrowers and their respective successors and assigns (including, except for the right to request Loans, any trustee or examiner or other person with expanded powers succeeding to the rights of the Borrowers or pursuant to any conversion to a case under chapter 7 of the Bankruptcy Code).

Section 11.3 The Lender as Party-in-Interest. The Borrowers hereby stipulate and agree that the Lender is and shall remain a party-in-interest in the Chapter 11 Cases and shall have the right to participate, object and be heard in any motion or proceeding in connection therewith (including but not limited to objections to use of proceeds of the Loans, to the payment of professional fees and expenses or the amount thereof, to sales or other transactions outside the ordinary course of business or to assumption or rejection of any executory contract or lease).

Section 11.4 Assignment and Participation. The Borrowers may not assign or transfer their rights or obligations hereunder. The Lender may assign, or sell participations in, all or any

part of the Obligations (including all or a portion of its Commitment) owing to the Lender to another Lender or other entity, in which event (a) in the case of an assignment, upon notice thereof by the Lender to the Borrowers, the assignee shall have, to the extent of such assignment (unless otherwise provided therein), the same rights, benefits and obligations as it would have if it were the Lender hereunder; and (b) in the case of a participation, the participant shall have no rights under the Financing Documents. The agreement executed by the Lender in favor of the participant shall not give the participant the right to require the Lender to take or omit to take any action hereunder except action directly relating to (i) the extension of a payment date with respect to any portion of the principal of or interest on any amount outstanding hereunder allocated to such participant, (ii) the reduction of the principal amount outstanding hereunder or (iii) the reduction of the rate of interest payable on such amount or any amount of fees payable hereunder to a rate or amount, as the case may be, below that which the participant is entitled to receive under its agreement with the Lender. The Lender may furnish any information concerning the Borrowers in the possession of the Lender from time to time to assignees and participants (including prospective assignees and participants); provided that the Lender shall require any such prospective assignee or such participant (prospective or otherwise) to agree in writing to maintain the confidentiality of such information.

Section 11.5 Waiver of Homestead. To the maximum extent permitted under applicable law, the Borrowers hereby waive and terminate any homestead rights and/or exemptions respecting any of its property under the provisions of any applicable homestead law, including without limitation, Section 256 of the Civil Practice Law and Rules of New York.

Section 11.6 Notices. Unless the party to be notified otherwise notifies the other party in writing as provided in this Section, and except as otherwise provided in this Agreement, notices shall be given to the Lender and to the Borrowers by email, facsimile or by overnight courier or by personal delivery addressed to such party at its address on the signature page of this Agreement.

Section 11.7 Table of Contents; Headings. Any table of contents and the headings and captions hereunder are for convenience only and shall not affect the interpretation or construction of this Agreement.

Section 11.8 Severability. The provisions of this Agreement are intended to be severable. If for any reason any provision of this Agreement shall be held invalid or unenforceable in whole or in part in any jurisdiction, such provision shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without in any manner affecting the validity or enforceability thereof in any other jurisdiction or the remaining provisions hereof in any jurisdiction.

Section 11.9 Counterparts. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument, and any party hereto may execute this Agreement by signing any such counterpart.



Section 11.10 Integration. The Financing Documents set forth the entire agreement between the parties hereto relating to the transactions contemplated thereby and supersede any prior oral or written statements or agreements with respect to such transactions.

Section 11.11 Governing Law. This Agreement shall be governed by, and interpreted and construed in accordance with, the internal laws of the State of New York, except to the extent governed by the Bankruptcy Code.

Section 11.12 Waiver of Jury Trial. BY ITS EXECUTION AND DELIVERY OF THIS AGREEMENT THE BORROWERS HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION AGAINST THE LENDER, ANY PARTICIPANT, ASSIGNEE OR INDEMNIFIED PARTY, BASED HEREON OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT, THE NOTES OR ANY OTHER FINANCING DOCUMENT, ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF THE LENDER OR THE BORROWERS IN CONNECTION HERewith OR THEREWITH. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE LENDER TO ENTER INTO THIS AGREEMENT.

Section 11.13 Sale of Assets. On the Petition Date, Borrowers shall file a motion in form reasonably acceptable to Lender and Borrowers seeking to approve the Sale Transaction under sections 363 and 365 of the Bankruptcy Code with the Lender acting as a stalking horse bidder (“Stalking Horse Bidder” and the motion, the “Sale Motion”). The Stalking Horse Bidder’s bid (the “Stalking Horse Bid”) shall be a credit bid under section 363(k) of the Bankruptcy Code, which shall be comprised of any and all of the Obligations owed under this Agreement and the Prepetition Loan Documents, including any and all fees, interest and expenses that have accrued up to and through the date of the deadline to submit a bid and other amounts payable hereunder and thereunder.

Section 11.14 Schedules.

(a) Borrowers shall deliver to Lender, not later than seven (7) days after the Effective Date, all schedules referenced in this Agreement that were not delivered prior to the date hereof.

(b) From and after the Effective Date until and including the date of the Final Order, Borrowers may correct, update or supplement the information contained in any schedule by furnishing such corrected, updated or supplemented schedule to Lender (and such corrected, updated or supplemented information shall be deemed to amend such schedule for all purposes). The Parties agree that corrections, updates and/or supplements to any schedule pursuant to this Section 11.14(b) shall not be considered a failure of the representations and warranties of Borrowers set forth in this Agreement to be true and correct as of the Effective Date, and the schedules as corrected, updated or supplemented in accordance with this Section 11.14(b) shall

supersede the version of the schedules delivered by Borrowers to Lender on the Effective Date or after the Effective pursuant to Section 11.14(a) hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be  
duly executed as of the day and year first above written.

**BORROWERS:**

A.B.C. CARPET CO. INC., as Borrower

By: \_\_\_\_\_  
Title:

Address for Notices

Telephone:  
Facsimile:

A.B.C. HOME FURNISHINGS, INC.

By: \_\_\_\_\_  
Title:

Address for Notices

Telephone:  
Facsimile:  
Email:

A.B.C. ORIENTAL CARPETS INC.

By: \_\_\_\_\_  
Title:

Address for Notices

Telephone:  
Facsimile:  
Email:

**Lender:**

888 CAPITAL PARTNERS LLC

By: \_\_\_\_\_  
Title

Address for Notices

Telephone:  
Facsimile:  
Email:

EXHIBIT A  
INTERIM ORDER

EXHIBIT B

FORM WEEKLY FINANCIAL STATEMENTS

EXHIBIT C

INTERIM ORDER

EXHIBIT D

FORM OF NOTE



SCHEDULE I

LICENSES

SCHEDULE II

LIENS

**Exhibit B**

**Approved Budget**

**ABC Carpet & Home - Consolidated**

**Consolidated DIP Budget**

\$ in 000s

| Week-Beginning:                                   | 8-Sep             | 12-Sep            | 19-Sep            | 26-Sep            | 3-Oct             | 10-Oct            | 17-Oct            | 24-Oct            | 31-Oct            | 8-Sep             | Wind            | Wind              |
|---|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-----------------|-------------------|
| Week-Ending:                                      | 11-Sep            | 18-Sep            | 25-Sep            | 2-Oct             | 9-Oct             | 16-Oct            | 23-Oct            | 30-Oct            | 6-Nov             | 6-Nov             | Down            | Down              |
| Closing Date                                      | -                 | -                 | -                 | -                 | -                 | -                 | -                 | -                 | 31-Oct            | 31-Oct            | -               | +                 |
| Week:   | 1                 | 2                 | 3                 | 4                 | 5                 | 6                 | 7                 | 8                 | 9                 | 9 Week            | -               | 9 Week            |
| Forecast / Actual                                 | Fcst.             | Fcst.             | Fcst.             | Fcst.             | Fcst.             | Fcst.             | Fcst.             | Fcst.             | Fcst.             | Fcst.             | Fcst.           | Fcst.             |
| <b>Cash Receipts</b>                              |                   |                   |                   |                   |                   |                   |                   |                   |                   |                   |                 |                   |
| Carpet Retail                                     | \$ 200            | \$ 446            | \$ 385            | \$ 468            | \$ 403            | \$ 489            | \$ 403            | \$ 440            | \$ 63             | \$ 3,297          | \$ -            | \$ 3,297          |
| Home Retail                                       | 171               | 405               | 435               | 460               | 425               | 350               | 250               | 250               | 32                | 2,779             | -               | 2,779             |
| Consignment Backstop                              | -                 | -                 | -                 | -                 | -                 | -                 | -                 | 500               | -                 | 500               | -               | 500               |
| <b>Total Collections</b>                          | <b>\$ 371</b>     | <b>\$ 851</b>     | <b>\$ 820</b>     | <b>\$ 928</b>     | <b>\$ 828</b>     | <b>\$ 839</b>     | <b>\$ 653</b>     | <b>\$ 1,190</b>   | <b>\$ 95</b>      | <b>\$ 6,576</b>   | <b>\$ -</b>     | <b>\$ 6,576</b>   |
| <b>Operating Disbursements</b>                    |                   |                   |                   |                   |                   |                   |                   |                   |                   |                   |                 |                   |
| Sales Taxes                                       | \$ -              | \$ -              | \$ (300)          | \$ -              | \$ -              | \$ -              | \$ -              | \$ (300)          | \$ (5)            | \$ (605)          | \$ -            | \$ (605)          |
| Payroll & Taxes                                   | (65)              | (480)             | (75)              | (408)             | (75)              | (398)             | (75)              | (398)             | (149)             | (2,123)           | -               | (2,123)           |
| Medical Plan, Union Health & Pension              | (132)             | (26)              | -                 | -                 | (70)              | (21)              | -                 | -                 | (10)              | (259)             | -               | (259)             |
| Insurance   | (130)             | -                 | -                 | -                 | (130)             | -                 | -                 | -                 | -                 | (260)             | -               | (260)             |
| Third Party Rent & Real Estate Taxes              | (133)             | (396)             | -                 | (187)             | (82)              | (68)              | -                 | -                 | -                 | (866)             | -               | (866)             |
| Marketing   | (84)              | (119)             | (10)              | (30)              | (114)             | (97)              | -                 | (30)              | -                 | (484)             | -               | (484)             |
| Inventory Purchases                               | (90)              | (90)              | (90)              | (90)              | (90)              | (90)              | (90)              | (90)              | (13)              | (733)             | -               | (733)             |
| Critical Vendor Payments, incl. Customer Deposits | (79)              | (342)             | (342)             | (342)             | (292)             | (292)             | (242)             | (242)             | (20)              | (2,193)           | -               | (2,193)           |
| Other Operating Disbursements                     | (46)              | (177)             | (177)             | (261)             | (194)             | (162)             | (162)             | (162)             | (51)              | (1,390)           | -               | (1,390)           |
| <b>Total Operating Disbursements</b>              | <b>\$ (759)</b>   | <b>\$ (1,630)</b> | <b>\$ (994)</b>   | <b>\$ (1,318)</b> | <b>\$ (1,047)</b> | <b>\$ (1,128)</b> | <b>\$ (569)</b>   | <b>\$ (1,222)</b> | <b>\$ (248)</b>   | <b>\$ (8,913)</b> | <b>\$ -</b>     | <b>\$ (8,913)</b> |
| <b>Operating Cash Flow, excl. Non-Recurring</b>   | <b>\$ (387)</b>   | <b>\$ (778)</b>   | <b>\$ (174)</b>   | <b>\$ (390)</b>   | <b>\$ (219)</b>   | <b>\$ (289)</b>   | <b>\$ 84</b>      | <b>\$ (32)</b>    | <b>\$ (153)</b>   | <b>\$ (2,337)</b> | <b>\$ -</b>     | <b>\$ (2,337)</b> |
| <b>Non-Recurring Restructuring Costs</b>          |                   |                   |                   |                   |                   |                   |                   |                   |                   |                   |                 |                   |
| Professional Fees & Escrow Funding                | \$ (491)          | \$ (176)          | \$ (176)          | \$ (233)          | \$ (233)          | \$ (176)          | \$ (176)          | \$ (221)          | \$ (291)          | \$ (2,170)        | \$ -            | \$ (2,170)        |
| Other Restructuring Costs                         | (345)             | -                 | -                 | (88)              | -                 | -                 | (15)              | (32)              | (217)             | (696)             | -               | (696)             |
| Wind Down Costs                                   | -                 | -                 | -                 | -                 | -                 | -                 | -                 | -                 | -                 | -                 | (250)           | (250)             |
| <b>Total Non-Recurring Restructuring Costs</b>    | <b>\$ (836)</b>   | <b>\$ (176)</b>   | <b>\$ (176)</b>   | <b>\$ (321)</b>   | <b>\$ (233)</b>   | <b>\$ (176)</b>   | <b>\$ (191)</b>   | <b>\$ (252)</b>   | <b>\$ (508)</b>   | <b>\$ (2,866)</b> | <b>\$ (250)</b> | <b>\$ (3,116)</b> |
| <b>Operating Cash Flow</b>                        | <b>\$ (1,223)</b> | <b>\$ (954)</b>   | <b>\$ (349)</b>   | <b>\$ (710)</b>   | <b>\$ (452)</b>   | <b>\$ (464)</b>   | <b>\$ (106)</b>   | <b>\$ (284)</b>   | <b>\$ (661)</b>   | <b>\$ (5,203)</b> | <b>\$ (250)</b> | <b>\$ (5,453)</b> |
| <b>Cumulative Net Operating Cash Flow</b>         | <b>\$ (1,223)</b> | <b>\$ (2,177)</b> | <b>\$ (2,526)</b> | <b>\$ (3,236)</b> | <b>\$ (3,688)</b> | <b>\$ (4,152)</b> | <b>\$ (4,259)</b> | <b>\$ (4,543)</b> | <b>\$ (5,203)</b> | <b>\$ (5,203)</b> | <b>\$ (250)</b> | <b>\$ (5,453)</b> |
| <b>Financing</b>                                  |                   |                   |                   |                   |                   |                   |                   |                   |                   |                   |                 |                   |
| Other Non-deal Operational Funding                | \$ -              | \$ -              | \$ -              | \$ -              | \$ -              | \$ -              | \$ -              | \$ -              | \$ -              | \$ -              | \$ -            | \$ -              |
| Operational Funding                               | -                 | -                 | -                 | -                 | -                 | -                 | -                 | -                 | -                 | -                 | -               | -                 |
| Pre-Petition Debt Interest/Fees <sup>(1)</sup>    | -                 | -                 | -                 | -                 | -                 | -                 | -                 | -                 | -                 | -                 | -               | -                 |
| Post-Petition Interest/Fees                       | -                 | -                 | -                 | (71)              | -                 | -                 | -                 | (111)             | -                 | (182)             | -               | (182)             |
| <b>Total Non-Operating Disbursements</b>          | <b>\$ -</b>       | <b>\$ -</b>       | <b>\$ -</b>       | <b>\$ (71)</b>    | <b>\$ -</b>       | <b>\$ -</b>       | <b>\$ -</b>       | <b>\$ (111)</b>   | <b>\$ -</b>       | <b>\$ (182)</b>   | <b>\$ -</b>     | <b>\$ (182)</b>   |
| <b>Net Cash Flow</b>                              | <b>\$ (1,223)</b> | <b>\$ (954)</b>   | <b>\$ (349)</b>   | <b>\$ (781)</b>   | <b>\$ (452)</b>   | <b>\$ (464)</b>   | <b>\$ (106)</b>   | <b>\$ (395)</b>   | <b>\$ (661)</b>   | <b>\$ (5,385)</b> | <b>\$ (250)</b> | <b>\$ (5,635)</b> |
| <b>Cumulative Net Cash Flow</b>                   | <b>\$ (1,223)</b> | <b>\$ (2,177)</b> | <b>\$ (2,526)</b> | <b>\$ (3,307)</b> | <b>\$ (3,759)</b> | <b>\$ (4,223)</b> | <b>\$ (4,330)</b> | <b>\$ (4,725)</b> | <b>\$ (5,385)</b> | <b>\$ (5,385)</b> | <b>\$ (250)</b> | <b>\$ (5,635)</b> |
| <b>Beg Book Cash Balance</b>                      |                   |                   |                   |                   |                   |                   |                   |                   |                   |                   |                 |                   |
| Net Cash Generated / (Used)                       | \$ 410            | \$ 100            | \$ 100            | \$ 100            | \$ 100            | \$ 100            | \$ 100            | \$ 100            | \$ 100            | \$ 410            | \$ 100          | \$ 410            |
| Borrow / (Paydown)                                | (1,223)           | (954)             | (349)             | (781)             | (452)             | (464)             | (106)             | (395)             | (661)             | (5,385)           | (250)           | (5,635)           |
| <b>Ending Book Cash Balance</b>                   | <b>\$ 100</b>     | <b>\$ 100</b>     | <b>\$ 100</b>     | <b>\$ 100</b>     | <b>\$ 100</b>     | <b>\$ 100</b>     | <b>\$ 100</b>     | <b>\$ 100</b>     | <b>\$ 100</b>     | <b>\$ 100</b>     | <b>\$ 100</b>   | <b>\$ 100</b>     |
| <b>Beg Loan Ledger Balance</b>                    |                   |                   |                   |                   |                   |                   |                   |                   |                   |                   |                 |                   |
| DIP Borrow / (Paydown)                            | \$ -              | \$ 1,023          | \$ 1,977          | \$ 2,326          | \$ 3,108          | \$ 3,559          | \$ 4,024          | \$ 4,130          | \$ 4,525          | \$ -              | \$ 5,185        | \$ -              |
| Capitalization of Commitment Fee                  | 913               | 954               | 349               | 781               | 452               | 464               | 106               | 395               | 661               | 5,075             | 250             | 5,325             |
| <b>Ending Loan Ledger Balance</b>                 | <b>\$ 1,023</b>   | <b>\$ 1,977</b>   | <b>\$ 2,326</b>   | <b>\$ 3,108</b>   | <b>\$ 3,559</b>   | <b>\$ 4,024</b>   | <b>\$ 4,130</b>   | <b>\$ 4,525</b>   | <b>\$ 5,185</b>   | <b>\$ 5,185</b>   | <b>\$ 5,435</b> | <b>\$ 5,435</b>   |

(1) Interest on prepetition debt accrues, but is not paid, during the budgeted postpetition period.

**Exhibit B**

**Mandarino Declaration**

Oscar N. Pinkas  
Nathan A. Haynes  
Sara A. Hoffman  
**GREENBERG TRAUIG, LLP**  
MetLife Building  
200 Park Avenue  
New York, NY 10166  
Telephone: (212) 801-9200  
Facsimile: (212) 801-6400

Ari Newman (*pro hac vice* pending)  
**GREENBERG TRAUIG, LLP**  
333 SE 2nd Avenue  
Suite 4400  
Miami, FL 33131  
Telephone: (305) 579-0500  
Facsimile: (305) 579-0717

*Proposed Counsel for the Debtors and  
Debtors in Possession*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

|   |   |                                  |
|---|---|----------------------------------|
| In re:  | ) |                                  |
|   | ) | Chapter 11                       |
| A.B.C. CARPET CO., INC., <i>et al.</i> , <sup>1</sup> | ) |                                  |
|   | ) | Case No. 21-11591 (___)          |
| Debtors.  | ) | (Joint Administration Requested) |
|   | ) |                                  |

**DECLARATION OF PERRY M. MANDARINO  
IN SUPPORT OF THE DIP FINANCING MOTION**

I, Perry M. Mandarino, hereby declare that the following is true to the best of my knowledge, information and belief:

1. I am a Senior Managing Director, Co-Head of Investment Banking and Head of Restructuring at B. Riley Securities, Inc. ("B. Riley"), resident in its office located at 299 Park Avenue, New York, NY 10171. B. Riley is the proposed financial advisor and investment banker for the above-captioned debtors and debtors-in-possession (the "Debtors").

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, include: A.B.C. Carpet Co., Inc. (6537); A.B.C. Home Furnishings, Inc. (6915); and A.B.C. Oriental Carpets Inc. (3679). The location of the Debtors' service address is 888 Broadway, New York, NY 10003.

2. I submit this declaration (the “Declaration”) in support of the *Debtors’ Motion for Entry of Interim and Final Orders (A) Authorizing Debtors and Debtors in Possession to Obtain Superpriority Postpetition Financing, (B) Authorizing Use of Cash Collateral, (C) Granting Liens and Superpriority Claims, (D) Granting Adequate Protection to Prepetition Secured Party, (E) Modifying the Automatic Stay, (F) Scheduling a Final Hearing, and (G) Granting Related Relief* (the “Motion”).<sup>2</sup>

3. Unless otherwise indicated, all facts set forth in this Declaration are based on my personal knowledge, my discussions with the Debtors’ senior management, members of the B. Riley team, my review of relevant documents, or my opinion based on my experience, knowledge, and information concerning the Debtors’ operations and financial affairs. To the extent any information I disclose herein requires amendment or modification, a supplemental declaration will be submitted to the Court. If I were called to testify, I would testify competently to the facts set forth here.

### **Qualifications**

4. I have over 30 years of professional experience in the retail, healthcare, media, real estate, energy and communications sectors, most of which has involved corporate restructuring transactions.

5. Prior to B. Riley, I was a Partner and Leader of the Business Recovery Services Practice at PricewaterhouseCoopers LLC, a financial advisory and accounting firm with numerous offices throughout the country. Before then, I was Senior Managing Director at Traxi LLC beginning in April 2002. Prior to April 2002, I was a partner at Arthur Andersen LLP. I received a Bachelor of Science in Accounting from Seton Hall University in 1987. Throughout my career,

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

I have advised borrowers, lenders and other stakeholders on numerous restructuring transactions in complex chapter 11 cases.

**The Proposed DIP Facility**

6. The Debtors seek authority to obtain senior secured postpetition financing in an aggregate principal amount of up to \$5,700,000, pursuant to the terms and conditions of the DIP Agreement and Financing Orders, with 888 Capital Partners, LLC as lender (in such capacity, “DIP Lender”), of which up to \$2,250,000 will be made available upon entry of the Interim DIP Order.

7. In my capacity as financial advisor and banker to the Debtors, I, along with my colleagues at B. Riley, approached over twelve (12) potential DIP financing providers, consisting of direct lenders and alternative investment firms, prior to the Debtors selecting the DIP Lender as the DIP provider, and I was actively involved in the arm’s-length, good-faith negotiations that preceded execution of the DIP Agreement.

8. The Debtors were unable to obtain unsecured financing. The feasibility of a priming fight with the Prepetition Lender eliminated the strategy of unsecured financing from a third party. No third-party lender indicated it would be willing to provide postpetition financing on an unsecured, *pari passu*, or junior-lien basis to the Prepetition Lender.

9. The Prepetition Lender has consented to the Debtors’ use of the Prepetition Lender’s Cash Collateral and entry into the DIP Agreement pursuant to the terms of the DIP Loan Documents and Interim DIP Order and Final DIP Order.

10. It is my opinion that the Debtors’ entry into the DIP Facility is consistent with an exercise of sound business judgment for several important reasons:

- a. The Debtors require immediate access to debtor-in-possession financing and access to Cash Collateral to make all payments authorized under the proposed orders



approving all other first day motions and to continue operating as a going concern through the sale process outlined in the bidding procedures motion. This includes, without limitation, the Debtors' immediate need to use Cash Collateral and the DIP Facility to fund payroll prior to the Final Hearing.

- b. The DIP Facility will ensure that the Debtors will have sufficient liquidity to fund these cases through the projected conclusion of the sale process. This assurance of liquidity is of critical importance to vendors, who must have confidence that the Debtors will be able to continue to fund orders on an ongoing basis.
- c. It would not be possible for these Debtors to finance these cases on prepetition Cash Collateral alone, and, therefore, the use of Cash Collateral and the DIP Facility is crucial to preserving the Debtors and their Estates.
- d. Absent the DIP Facility (and use of Cash Collateral), the value of the Debtors' estates would be significantly impaired to the detriment of all stakeholders. Without postpetition financing, the Debtors lack sufficient funds to operate their enterprise, continue paying their debts as they come due, and cover the projected costs of the chapter 11 cases.
- e. The Approved Budget is adequate, considering all available assets, to pay administrative expenses due or accruing during the period covered by the Approved Budget.
- f. The fees and rates to be paid under the proposed DIP Facility were the subject of arm's-length and good faith negotiation between the Debtors and the DIP Lender, are an integral component of the overall terms of the proposed DIP Facility, and were required by the DIP Lender as consideration for the extension of debtor-in-possession financing. The DIP Facility is the best DIP financing available to the Debtors under the circumstances to provide liquidity during the chapter 11 cases.

[Signature on Following Page]

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated: September 8, 2021  
New York, New York

/s/ Perry M. Mandarino  
Perry M. Mandarino