

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

In re:

THE BIG APPLE CIRCUS, LTD.

Debtor.

Chapter 11

Case No. 16-13297 (SHL)

**INTERIM ORDER (I) AUTHORIZING THE DEBTOR TO OBTAIN
POSTPETITION FINANCING AND (II) GRANTING RELATED RELIEF**

Upon the motion (the “**Motion**”)¹ of The Big Apple Circus, Ltd. (the “**Circus**” or the “**Debtor**”), pursuant to sections 362, 363, 364, 1107(a), and 1108 of title 11 of the United States Code (the “**Bankruptcy Code**”), rules 2002, 4001, 9006, and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and rules 4001-2 and 9013-1 of the Local Bankruptcy Rules for the Southern District of New York (the “**Local Bankruptcy Rules**”), for entry of an interim order (a) authorizing, but not directing, the Circus to obtain interest-free postpetition financing from the Directors in the aggregate amount of \$66,058 (the “**DIP Loan**”) that (i) matures upon the closing of the sale of the Walden Property (as defined below), (ii) is secured by a lien on the Walden Property that is junior only to valid, enforceable, perfected and non-avoidable third-party liens, and (iii) has priority over any and all administrative expenses of the kind specified in section 503(b) or 507(b) of the Bankruptcy Code, and (b) granting related relief, all as further set forth in the Motion; and upon consideration of the First Day Declaration; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and venue being proper before this

¹ Unless otherwise defined herein, all capitalized terms shall have the meaning ascribed to them in the Motion.

Court pursuant to 28 U.S.C. §§ 1408 and 1409; and adequate notice of the Motion and opportunity for objection having been given under the circumstances; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein and that such relief is (a) in the best interests of the Debtor, its estate, its creditors and all parties in interest and (b) necessary to avoid immediate and irreparable harm to the Debtor and its estate; and any objections to the Motion having been withdrawn or overruled on the merits; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor, it is hereby FOUND, DETERMINED, ORDERED AND ADJUDGED that:

1. The Motion is granted on an interim basis as set forth herein.
2. The DIP Loan is approved in all respects. The Debtor is hereby authorized to immediately borrow the DIP Loan up to a maximum aggregate amount of \$66,058. The Debtor is authorized to enter into, execute and deliver all instruments, certificates, agreements and documents, and to take all actions, which may be reasonably required or otherwise necessary for the Debtor's performance with respect to the DIP Loan, including the delivery of promissory notes, if requested by the Directors, and the creation and perfection of the lien described herein.
3. Upon entry of this Interim Order, the DIP Loan shall constitute a valid and binding obligation of the Debtor. All obligations incurred, payments made, and transfers or grants of security set forth in this Interim Order are granted to or for the benefit of the Directors for fair consideration and reasonably equivalent value, and are granted contemporaneously with the making of the DIP Loan.

4. Effective immediately upon the entry of this Interim Order, the Directors are hereby granted a lien on and security interest in the Walden Property, which lien and security interest shall be (a) immediately valid, binding, fully perfected, enforceable, and non-avoidable and (b) junior only to pre-existing liens of a third party, but solely to the extent that such liens and security interests are, as of the commencement of this chapter 11 case, valid, enforceable, perfected and non-avoidable liens, or were perfected subsequent to commencement of this chapter 11 case as permitted under section 546(b) of the Bankruptcy Code.

5. This Interim Order shall be sufficient and conclusive evidence of the validity, perfection and priority of the lien granted hereunder, without the necessity of filing or recording any financing statement, deed of trust, mortgage, or other instrument or document which may otherwise be required under the law of any jurisdiction or the taking of any other action to validate or perfect such lien. Notwithstanding the foregoing, the Directors may, in their sole discretion, file such financing statements, deeds of trust, mortgages, security agreements, notices of liens and other similar documents, and are hereby granted relief from the automatic stay of section 362 of the Bankruptcy Code to do so, and all such financing statements, deeds of trust, mortgages, security agreements, notices and other agreements or documents shall be deemed to have been filed or recorded at the time and on the date of the commencement of the chapter 11 case.

6. Effective immediately upon the entry of this Interim Order, the Debtor's obligation to repay the DIP Loan shall constitute an allowed super-priority administrative expense claim against the Debtor's estate pursuant to section 364(c)(1) of the Bankruptcy Code with priority over any and all administrative expenses and all other claims asserted against the Debtor now existing or hereafter arising of any kind whatsoever, including all other

administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code.

7. The DIP Loan has been negotiated in good faith between the Debtor and the Directors, and all of the Debtor's obligations and indebtedness arising under, in respect of or in connection with the DIP Loan, shall be deemed to have been extended by the Directors in good faith, as that term is used in section 364(e) of the Bankruptcy Code and in express reliance upon the protections offered by section 364(e) of the Bankruptcy Code, and shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that this Interim Order or any provision hereof is vacated, reversed or modified, on appeal or otherwise.

8. All fees required to be paid to the Clerk of this Court and the Office of the United States Trustee pursuant to 28 U.S.C. § 1930(a) shall be afforded priority status in accordance with section 507(a)(2) of the Bankruptcy Code.

9. Notice of the Motion and the hearing to consider the Motion and entry of this Interim Order was good and sufficient and satisfies section 102(l) of the Bankruptcy Code, Bankruptcy Rules 2002(a), 4001, and 9006, and all applicable Local Bankruptcy Rules.

10. The terms and provisions of this Interim Order shall be binding in all respects upon the Debtor, its estate and creditors, all holders of any lien, claim, encumbrance, or other interest in the Walden Property, any purchaser and all successors and assigns of any purchaser, and any trustees subsequently appointed in this chapter 11 case or upon conversion to chapter 7 under the Bankruptcy Code of this case. This Interim Order shall inure to the benefit of the Debtor, its estate and creditors, any purchaser, and their respective successors and assigns.

11. The Final Hearing on the Motion shall be held on **December 14, 2016 at 10 AM (Eastern Time)** and any objections or responses to the Motion shall be in writing, filed

with the Court, and served upon (a) the proposed attorneys for the Debtor, Debevoise & Plimpton LLP, 919 Third Avenue, New York, New York 10022 (Attn: M. Natasha Labovitz, Esq. and Christopher Updike, Esq.); and (b) the Notice Parties, in each case so as to be received no later than **4:00 p.m. (Eastern Time) on December 7, 2016**; provided, however, that if no objection is timely made, the Final Order regarding the relief sought in the Motion may be entered without a Final Hearing.

12. The Debtor is authorized and empowered to take such actions as may be necessary and appropriate to implement the terms of this Interim Order.

13. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Interim Order.

Dated: November 22, 2016

/s/ Sean H. Lane

UNITED STATES BANKRUPTCY JUDGE