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PROPOSED ATTORNEYS FOR
DEBTORS AND DEBTORS-IN-
POSSESSION

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

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| IN RE: | § | CHAPTER 11 |
| | § | |
| DEPENDABLE AUTO SHIPPERS, INC. | § | CASE NO. 16-34855-11 |
| DAS GLOBAL SERVICES, INC. | § | CASE NO. 16-34857-11 |
| DAS GOVERNMENT SERVICES, LLC | § | CASE NO. 16-34858-11 |
| | § | |
| | § | Joint Administration Requested |
| | § | |

DEBTORS’ EMERGENCY MOTION FOR AN INTERIM AND FINAL ORDER (I) AUTHORIZING THE DEBTORS TO USE CASH COLLATERAL OF EXISTING SECURED LENDER; (II) GRANTING ADEQUATE PROTECTION FOR USE THEREOF; (III) AUTHORIZING THE DEBTORS TO OBTAIN POSTPETITION FINANCING PURSUANT TO SECTIONS 364(b), 364(c), AND 364(d) OF THE BANKRUPTCY CODE; (IV) MODIFYING THE AUTOMATIC STAY TO ALLOW FOR THE RELIEF REQUESTED HEREIN; AND (V) SCHEDULING FINAL HEARING

NO HEARING WILL BE CONDUCTED HEREON UNLESS A WRITTEN RESPONSE IS FILED WITH THE CLERK OF THE UNITED STATES BANKRUPTCY COURT AT 1100 COMMERCE ST., RM. 1254, DALLAS,

Emergency Motion for an Order (I) Authorizing the Debtors to Use Cash Collateral of Existing Secured Lender; (II) Granting Adequate Protection for Use Thereof; (III) Authorizing the Debtors to Obtain Post Petition Financing Pursuant to Sections 364(b), 364(c), and 364(d) of the Bankruptcy Code; (IV) Modifying the Automatic Stay to Allow for the Relief Requested Herein; and (V) Scheduling a Final Hearing

TEXAS 75242 BEFORE CLOSE OF BUSINESS ON JANUARY 15, 2017, WHICH IS AT LEAST 24 DAYS FROM THE DATE OF SERVICE HEREOF.

ANY RESPONSE SHALL BE IN WRITING AND FILED WITH THE CLERK, AND A COPY SHALL BE SERVED UPON COUNSEL FOR THE MOVING PARTY PRIOR TO THE DATE AND TIME SET FORTH HEREIN. IF A RESPONSE IS FILED A HEARING MAY BE HELD WITH NOTICE ONLY TO THE OBJECTING PARTY.

IF NO HEARING ON SUCH NOTICE OR MOTION IS TIMELY REQUESTED, THE RELIEF REQUESTED SHALL BE DEEMED TO BE UNOPPOSED, AND THE COURT MAY ENTER AN ORDER GRANTING THE RELIEF SOUGHT OR THE NOTICED ACTION MAY BE TAKEN.

EMERGENCY CONSIDERATION OF THIS MOTION IS BEING REQUESTED.

The above-captioned debtors and debtors-in-possession (each a “Debtor” and collectively, the “Debtors”) ¹ respectfully submit by and through their undersigned counsel, this *Emergency Motion* (the “Motion”) *For an Order (I) Authorizing the Debtors to Use Cash Collateral of Existing Secured Lender; (II) Granting Adequate Protection for Use Thereof; (III) Authorizing the Debtors to Obtain Post Petition Financing Pursuant to Sections 364(b), 364(c), and 364(d) of the Bankruptcy Code; (IV) Modifying the Automatic Stay to Allow for the Relief Requested Herein; and (V) Scheduling a Final Hearing* and in support thereof, respectfully represent as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over these cases and this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding within the meaning of 28 U.S.C. §

¹ The Debtors in these chapter 11 cases are: Dependable Auto Shippers, Inc. (Case No. 16-34855-11); DAS Global Services, Inc. (Case No. 16-34857-11); DAS Government Services, LLC (Case No. 16-34858-11). The Debtors’ address is 3020 East Highway 80, Mesquite, Texas 75149.

157(b)(2)(A), (D), (G), (K), (M) and (O). Venue of these chapter 11 cases in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief requested in this Motion are Bankruptcy Code §§ 105, 361, 362, 363, 364, and 507 and Bankruptcy Rules 4001 and 9014.

II. RULE 4001 STATEMENT

2. By this Motion the Debtors seek authority to use the Cash Collateral² of ADESA, Inc. (“ADESA”) and to enter into a debtor-in-possession financing arrangement with ADESA as the lender (the “DIP Facility” as more fully described below). The Debtors seek to use Cash Collateral and seek approval of the DIP Facility as working capital to fund the operation of their business as set forth in the attached proposed interim order (the “DIP Order”). As adequate protection for any diminution in value incurred by ADESA through the Debtors’ use of Cash Collateral, the Debtors will (i) maintain the value of their business as a going-concern; (ii) provide to ADESA replacement liens on now owned and after-acquired cash derived from ADESA’s Collateral;³ and (iii) provide super-priority administrative claims to ADESA equal to any diminution in value of ADESA’s Collateral. As protection for providing the DIP Facility, ADESA will be provided a super-priority lien on all assets of the Debtors and a super-priority administrative claim on all assets of the Debtors.

² Cash Collateral shall be defined herein as cash derived directly from or generated directly from assets owned by the Debtors which a party has a perfected security interest in as of the Petition Date and such party’s security interest is at least partially secured as opposed to unsecured.

³ Collateral shall be defined herein as it is defined in the Senior Secured Super Priority Debtor-In-Possession Priming Loan Agreement.

III. BACKGROUND⁴

A. History of Dependable Auto Shippers, Inc.

3. Dependable Auto Shippers, Inc.'s ("DAS") history dates back to 1954 when Sam London formed Dependable Car Travel Services in the heart of New York City. Originally, DAS offered "drive-away" service catering to snowbirds who headed down to Florida for the winter. The snowbirds would have their cars driven from New York to Florida.

4. Demand soon outgrew the ability to offer "drive-away" services and DAS began connecting customers wanting to relocate their cars and auto transporters looking to fill their trailers. DAS's reputation for providing high quality service grew and in 1990, DAS became a full-service vehicle transport carrier.

5. Over the subsequent years, DAS grew into a fleet of auto carriers, created a network of more than 97 storage facilities and created a proprietary web presence. This expansive network improved operational facilities and enabled DAS to have more control during the relocation of vehicles and to maintain its high standards from pick-up to delivery. In fact, DAS is unique in the market in that it controls the auto shipping process from origin to destination and was the first consumer auto-shipper to create such a network.

6. In 1993, DAS began assisting corporations with the relocation of their vehicles and the vehicles of their relocating employees.

⁴ A detailed description of the Debtors and their businesses, and the facts and circumstances supporting this Motion and the Debtors' restructuring, are set forth in greater detail in the Declaration of Tim Higgins in Support of First Day Pleadings (the "First Day Declaration"), filed contemporaneously with the Debtors' voluntary petitions for relief filed under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code").

7. In 1996, DAS Global Services, Inc (“DAS GS”) was formed and incorporated in Delaware to handle the shipping of cars across borders. DAS GS is a wholly owned subsidiary of DAS.

8. By 1999 DAS’ transportation fleet had grown to 48 trucks.

9. In 2000, DAS was incorporated by the combining of DAS-NJ, DAS-CA and DAS-TX into a single entity.

10. DAS continued to expand by opening offices in Chicago and Atlanta.

11. In 2004, DAS’ transport fleet peaked at 122 trucks.

12. By 2008, annual revenue had grown to exceed \$125 million.

13. In 2009, the legacy owners of the company retired. That same year, DAS Government Services, LLC (“DAS GOV”) was formed in New Jersey to service the relocation of vehicles owned by government employees. DAS GOV is a wholly owned subsidiary of DAS.

B. Events leading to bankruptcy.

14. Unfortunately, the upward trajectory of DAS was not sustainable. As the economy took a hit, so did DAS’ revenue.

15. In 2010 DAS consolidated the company into the Dallas, Texas office.

16. In 2011, while projecting revenues of \$70 million, it entered into a strategic partnership with Independent Bankers Capital Fund II LP (“IBCF”) and Paragon LLC (“Paragon”). The funding included \$4.1 million in senior secured notes and preferred shares being issued to IBCF and \$1.2 million in senior secured notes and preferred shares being issued to Paragon (collectively, the “IBCF Debt”).

17. In 2015, seeing improvement on the horizon, DAS shifted into high gear once again and acquired 25 trucks with debt. It entered into a factoring and security agreement with TBK Bank, SSB (f/k/a Triumph Savings Bank, SSB, d/b/a/ Triumph Commercial Finance; “Triumph” and the Triumph Debt). Triumph took a lien on DAS’s assets and entered into a subordination agreement with IBCF and Paragon.

18. As it turned out, an error in the accounting structure of the company had been made with respect to the allocation of expenses and DAS’s cash flow was in fact not as robust as first thought. Coupling the accounting error with continued decreased revenue and the increased debt load, it became impossible for DAS to service the Triumph Debt and the IBCF Debt.

19. In early 2016, IBCF and Paragon infused an additional \$3 million into the company by purchasing Series B preferred equity. The capital was infused on the premise that improved operations by paying off past due creditors would bring Corporate Accounts back to DAS. Unfortunately, the capital was too late and Corporate Accounts did not respond to operational improvements. Revenue for 2016 was on pace with 2015 up through March, however, the majority of a year’s revenue for DAS comes in the Peak summer months when relocation is at its strongest. The Ten Largest Corporate Accounts for DAS suspended service in early April and May, therefore killing the peak season for DAS. Revenue in the Corporate Channel, which is 75% of all DAS revenue, went from 70% of prior year in April to 30% of prior year starting in July and 20% of prior year starting in September. The suspension of Corporate Accounts resulting in over 80% of the overall loss of revenue from prior year.

20. Despite the best efforts of IBCF and Paragon, it became apparent that DAS would not be able to sustain its debt load. DAS's estimated revenue for 2016 has fallen to less than \$20,000,000.

21. DAS began selling its trucks in order to improve its debt position and as of filing, only owns one truck which it plans to sell. Despite its challenges, DAS has maintained its network and ability to offer a one-stop, from pick up to delivery, consumer car transport service and its web based intellectual property assets.

22. IBCF and Paragon began the process of marketing DAS, both as a going concern and for asset value.

23. Given the service nature of DAS's business and the value of its network, there was, and is, little question that DAS's value is highest as a going concern.

24. The insurance policy for the directors and officers expired on September 30, 2016 and DAS elected not to renew the policy, therefore all members of the board resigned as well as the two officers, Tim Higgins as Secretary and Ben Long as Treasurer.

25. DAS reached out to one of its largest vendors, ADESA, Inc. ("ADESA"), and asked if it would be interested in purchasing the company as a going concern.

26. Following lengthy negotiations, ADESA a/k/a as KARS Arrive, purchased IBCF and Paragon's notes without the equity interests.

27. Months prior to IBCF, Paragon and ADESA reaching an agreement with respect to the IBCF Debt, all members of the board of directors of DAS resigned and Tim Higgins resumed his role of managing the Debtors as Executive Vice President.

C. Financing of the Debtors

28. DAS and Triumph entered into (i) a Factoring and Security Agreement, dated as of June 11, 2015, (as amended, restated or otherwise modified from time to time, the “Triumph Factoring Agreement”) and (ii) a Loan and Security Agreement dated August 16, 2013 (the “Triumph Loan” and with the Triumph Factoring Agreement the “Triumph Debt”). Just days prior to seeking relief under chapter 11, the outstanding balance on the Triumph Factoring Agreement was not more than \$770,906.00. The Triumph Loan has a small balance remaining that remains secured by a single truck, VIN 1NPWD49X1FD259113 (the “Truck”). Triumph will retain its first priority lien position on the Truck until the Truck is sold and/or the Triumph Loan is paid in full.

29. Pursuant to the terms of the Triumph Factoring Agreement, Triumph purchased DAS’s receivables. DAS’s customers were not aware that the invoice payments were being paid to a lockbox controlled by Triumph as there were no notations to that effect on the invoices.

30. On December 19, 2016, DAS and ADESA entered into that certain Promissory Note, Credit Agreement and Security Agreement (collectively, the “ADESA Loan”) pursuant to which ADESA loaned funds to DAS for the satisfaction of the Triumph Loan and to fund other expenses of DAS. As of filing and pursuant to the ADESA Loan, DAS owes ADESA \$1,070,960.00 plus interest, fees and expenses. Pursuant to the Security Agreement and the payoff of the Triumph Factoring Agreement, ADESA holds a first-priority lien position on all of the Debtors assets with the exception of the Truck.

31. On December 20, 2016, DAS paid the Triumph Factoring Agreement in full.

32. Pursuant to the payoff of the Triumph Factoring Agreement and the execution of the ADESA Loan, ADESA holds a first-priority security interest on all assets of DAS.

D. Current ownership and management of the Debtors.

33. Tim Higgins has been managing the Debtors as the Executive Vice President since 2012 and continues to do so.

34. Rick London (“London”) owns 68.1% of the shares of DAS and John Roehll (“Roehll”) owns 25.2% of the shares of DAS.

35. The managing member of DAS GOV is Rick London. DAS is the sole member of DAS GOV following its acquisition in November, 2012.

36. All of the shares of DAS GS are owned by DAS.

37. DAS currently has approximately eighteen employees and is located at 3020 East Highway 80 Mesquite, Texas 75149.

38. On December 21, 2016 (the “Petition Date”), DAS, DAS GS and DAS GOV (collectively, the “Debtors”) sought voluntary relief under chapter 11 of the United States Bankruptcy Code.

39. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to Bankruptcy Code sections 1107(a) and 1108. No request for the appointment of a trustee or examiner has been made in these chapter 11 cases. No committees have been appointed or designated.

40. The Debtors are requesting that their cases be jointly administered for procedural purposes.

IV. RELIEF REQUESTED

41. By this Motion, pursuant to Bankruptcy Code §§ 105, 361, 362, 363, 364, and 507 and Bankruptcy Rules 2002, 4001, and 9014, the Debtors request that the Court

enter the proposed interim order attached as Exhibit A (the “Interim Order”) and a final order (the “Final Order”) (i) authorizing the Debtors to enter into the DIP Facility (as defined below); (ii) approving the Debtors’ use of Cash Collateral; (iii) providing adequate protection for, and to the extent of, any diminution in the value of the Cash Collateral and as provided for in the DIP Facility; (iv) modifying the automatic stay to the extent necessary to implement and effectuate the terms and provisions of the Interim Order and a subsequent Final Order; and (iv) scheduling a final hearing on the Motion in accordance with the timeframes established by Bankruptcy Rule 4001 (the “Final Hearing”).

A. Need for cash collateral and financing.

42. The Debtors require access to cash to avoid the immediate and irreparable harm that will come to their estates if they are unable to fund their operations and maintain the business relationships in place with their customers, vendors, transporters and terminals. Through the chapter 11 process, the Debtors intend to sell their business as a going concern. An orderly sales process will maximize the value of their assets and provide the greatest return to creditors.

43. ADESA asserts that pursuant to the satisfaction of the Triumph Loan prepetition and the ADESA Loan, it has a first-priority lien on all the Debtors’ assets including the Debtors’ cash. The Debtors acknowledge that to the extent ADESA has a lien on the Debtors’ cash, the Debtors are required to seek relief to utilize the cash to fund its operations and protect its assets. The mere use of Cash Collateral, however, is not sufficient to fund the Debtors through the sales process. The Debtors require the infusion of additional cash. Following an exhaustive search by the Debtors, IBCF and Paragon,

ADESA is the only party that has offered to provide debtor-in-possession financing and has agreed to do so pursuant to the terms of the DIP Facility.

44. The Debtors' business model is relatively straight forward, they ship cars owned by individuals across the United States and abroad. To facilitate the shipping, they contract with various vendors and storage facilities (terminals) to physically ship and store the vehicles in different locations as they travel towards their destinations. The Debtors maintain websites and the corresponding proprietary intellectual property rights associated with their web based interfaces to facilitate the shipping process with their customers.

45. Though simple when broken down to the basics, the Debtors cannot maintain their existing business as a going concern if they do not pay their vendors, transporters and warehousemen, a complicated and robust network of large and small businesses. The use of cash is required to pay truck operators and storage facilities so that customers' vehicles are not arrested pursuant to artisan and warehousemen liens. If these expenses are not paid customers will immediately seek relief from the Debtors, the Debtors' vendors will cease doing business with the Debtors, and the Debtors will be unable to ship cars and ultimately will be unable to operate.

46. During these bankruptcy cases, the Debtors will require the use of their revenue and the DIP Facility to pay the expenses described above as well as payroll expenses, office expenses, and professional fees, all of which are necessary to manage and maintain the Debtors' assets.

47. Without the use of their revenue and the advances under the DIP Facility, the Debtors' assets will be wasted through foreclosure, the Debtors will be unable to fulfill

their in-place contracts and will be unable to enter into new contracts to ship cars. If the Debtors' are unable to operate in the ordinary course of business and maintain their business relationships, they will ultimately not be able to reorganize and the return to all creditors will be significantly diminished. A shut down of the Debtors' operations would result in a near zero recovery for all creditors. To the contrary, through an organized sale and plan process, the recovery to many creditors will be significantly greater as the purchaser will continue to operate the business and assume many of the in-place executory contracts and pay critical vendors.

B. The DIP Facility.

48. The proposed financing to be provided by ADESA (the "DIP Facility"), combined with the use of Cash Collateral, will be used to fund operations of the Debtors and professional fees through the sale process for the companies and to fund a liquidating trust following confirmation of a plan of reorganization. Under the DIP Facility, ADESA, as lender (the "DIP Lender") will be granted administrative expense claims against the Debtors pursuant to Section 364(b) of the Bankruptcy Code and, to the extent such claims are insufficient to satisfy the loans, advances, extensions of credit, financial accommodations, and other liabilities and obligations in respect of DIP Loans, the DIP Facility and the DIP Loan Documents⁵ (collectively, the "DIP Obligations") in full on the Termination Date⁶, super-priority expense claims against the Debtors

⁵ The term "DIP Loan Documents" shall mean: the Interim Order, the Final Order, the Senior Secured Super Priority Debtor-In-Possession Priming Loan Agreement and all other agreements, documents and instruments delivered or executed in connection therewith, as hereafter amended, supplemented or otherwise modified from time to time.

⁶ The term "Termination Date" shall mean: (a) prior to entry of the Final Order, the earliest to occur of (i) twenty (20) days after the entry of the Interim Order, (ii) the DIP Maturity Date (as defined below) and (iii) the Interim Order ceasing to be in full force and effect for any reason, and (b) subsequent to entry of the Final Order, the earlier to occur of (i) the DIP Maturity Date and (ii) the Final Order ceasing to be in full force and effect for any reason.

pursuant to Section 364(c)(1) of the Bankruptcy Code, and super-priority lien claims pursuant to Section 364(d) of the Bankruptcy Code, each subject to the Carve Out (as defined in the Interim Order).

49. The Debtors and the DIP Lender engaged in arms' length negotiations with respect to the terms of the proposed DIP Facility. Based upon the facts and circumstances of these bankruptcy cases, as well as the Debtors' sound business judgment, the Debtors have determined that financing on the terms and conditions set forth herein and in the Interim Order are the most favorable available to the Debtors under the circumstances.

50. The Debtors have an immediate need to obtain the DIP Facility in order to continue operations and fund a sales process as a going concern which will maximize the return to all creditors.

51. The salient provisions of the DIP Facility are as follows:

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| <u>Debtor:</u> | Dependable Auto Shippers, Inc., DAS Global Services, Inc., DAS Government Services, LLC |
| <u>Lender:</u> | ADESA, Inc. |
| <u>Loan Commitment and Availability:</u> | A loan facility (the "DIP Facility") in the amount of not more than \$2,600,000 (the loans thereunder, the "DIP Loans"). Debtors, jointly and severally, hereby promise to pay to the order of DIP Lender at its Main Office the principal amount of all outstanding Loans as of and when due, either consistent with this Agreement or on the Maturity Date or as agreed to by the DIP Lender and the Debtors, plus all accrued interest, fees and other Obligations then outstanding. |
| <u>Permitted Use:</u> | The Debtors are authorized and have agreed to incur the Obligations under the DIP Loan Agreement solely: (1) in accordance with the terms and provisions of the DIP Loan Agreement and this Order; (2) to pay the expenses enumerated in the Budget, to the extent required, including the Carve-Out, as and when such expenses become due and payable; and (3) to pay the interest and fees as contemplated by the DIP Loan Agreement. If |

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| | the DIP Lender advances monies to the Debtors and the Debtors use such monies other than in accordance with the terms or provisions of this Order, such advances shall be considered Obligations for purposes of this Order. |
| <u>Interest Rate:</u> | Per annum rate equal to 12% |
| <u>Fees:</u> | Debtors agree to pay to DIP Lender a commitment fee (the " <u>Commitment Fee</u> ") in an amount equal to 2% of the Commitment, which shall be fully-earned upon the Closing Date and shall be payable on the Maturity Date; <u>provided, however</u> , that the Commitment Fee shall be calculated based upon a Commitment equal to the amount of Loan authorized by the Interim Order until entry of the Final Order, at which time the Commitment Fee shall be calculated based upon a Commitment equal to \$2,600,000. |

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| <u>Priority:</u> | The Obligations are hereby granted super-priority administrative expense status under section 364(c)(1) of the Bankruptcy Code, with priority over all costs and expenses of administration of the Chapter 11 Case that are incurred under any provision of the Bankruptcy Code, subject to the Carve-Out (as defined in DIP Loan Agreement). In addition, the DIP Lender is hereby granted Liens on the Collateral on a post-petition basis (the “ <u>DIP Liens</u> ”) to secure the Obligations. Until the Obligations are paid in full, the DIP Liens: (1) pursuant to sections 364(c)(2), (c)(3) and 364(d) of the Bankruptcy Code, are first priority senior secured Liens (subject only to Prior Permitted Liens specified in the DIP Loan Agreement) secured by the Collateral (without any further action by the Debtor or the DIP Lender and without the execution, filing or recordation of any financing statements, security agreements, mortgages or other documents or instruments); (2) may be created upon any designated accounts and any other deposit accounts or securities accounts shall be, and hereby are, deemed to confer “control” for purposes of §§7.106, 9.104, 9.105, 9.106 and 9.107 of the Texas Business and Commerce Code as in effect as of the date hereof in favor of the DIP Lender; (3) shall not be subject to any security interest or lien which is avoided and preserved under section 551 of the Bankruptcy Code; (4) shall remain in full force and effect notwithstanding any subsequent conversion or dismissal of the Chapter 11 Case; (5) shall not be subject to section 510(c) of the Bankruptcy Code; and (6) shall not be subject to any landlord’s lien, bailee’s rights, right of distraint or levy, security interest or other interest that any landlord, bailee, warehousemen or landlord’s mortgagee may have in the Collateral located on such leased premises. Notwithstanding the foregoing, the Debtor shall execute and deliver to the DIP Lender such financing statements, mortgages, instruments and other documents as the DIP Lender may request from time to time, and any such documents filed by the DIP Lender shall be deemed filed as of the Petition Date. |
| <u>Payments:</u> | Debtors shall have the right to repay Advances at any time or from time to time, <u>provided that</u> : (i) Debtors shall give DIP Lender irrevocable notice of each prepayment by 11:00 a.m. prevailing Central time, not less than two (2) business days prior to the date of prepayment of a Loan; and (ii) all prepayments of Loans shall be in a minimum amount equal to the lesser of \$25,000 or the unpaid principal amount of the Loans outstanding under this Agreement. |
| <u>Conditions to Effectiveness of DIP Facility:</u> | <ul style="list-style-type: none"> • DIP Lender (or its counsel) shall have received the following: |

Emergency Motion for an Order (I) Authorizing the Debtors to Use Cash Collateral of Existing Secured Lender; (II) Granting Adequate Protection for Use Thereof; (III) Authorizing the Debtors to Obtain Post Petition Financing Pursuant to Sections 364(b), 364(c), and 364(d) of the Bankruptcy Code; (IV) Modifying the Automatic Stay to Allow for the Relief Requested Herein; and (V) Scheduling a Final Hearing

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| | <ul style="list-style-type: none"> (i) a counterpart of this Agreement signed by each Debtor; (ii) an executed copy of the Note(s) signed by each Debtor; (iii) copies of duly executed resolutions, in form and substance satisfactory to DIP Lender in its reasonable discretion, of the board of directors (or similar governing body) of each Debtor authorizing the execution, delivery and performance of the DIP Loan Documents to which it is a party; (iv) a duly executed Borrowing Request with respect to any Loan made on the Closing Date. <ul style="list-style-type: none"> • All legal matters incident to this Agreement and the borrowings hereunder shall be reasonably satisfactory to DIP Lender. • All motions and other documents to be filed with and submitted to the Bankruptcy Court related to the DIP Facility and the approval thereof shall be in form and substance satisfactory to DIP Lender in its reasonable discretion. • The Bankruptcy Court shall have entered the Interim Order, in form and substance satisfactory to DIP Lender in its reasonable discretion. • DIP Lender shall have a valid and perfected Lien on and security interest in the Collateral on the basis and with the priority set forth in the Interim Order, and such Lien of DIP Lender shall be senior to all other Liens except as otherwise provided in any DIP Financing Order and <u>Section 11</u> of this Agreement. |
| <p><u>Conditions to Each Borrowing:</u></p> | <ul style="list-style-type: none"> • The Petition Date shall have occurred. • Debtors shall have delivered to DIP Lender an appropriate Borrowing Request, duly executed and completed, by the time specified in, and otherwise as permitted by, this Agreement. |

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| | <ul style="list-style-type: none"> • The representations and warranties made by Debtors herein shall be true and correct in all material respects at and as if made as of such date (in each case immediately prior to, and after giving effect to, the funding of any Loans) except to the extent they expressly relate to an earlier date, in which case such representations and warranties shall be true and correct in all respects on and as of such earlier date. • No Default or Event of Default shall exist or be continuing either prior to or after giving effect to the making of such Loan. • The making of such Loan (and the use of the proceeds therefrom) shall not violate any Law and shall not be enjoined, temporarily, preliminarily or permanently. • No Material Adverse Effect shall have occurred. • The making of such Loan complies with the Budget, in all respects, or has otherwise been approved in writing by DIP Lender. • With respect to any Loans made after the Closing Date, the DIP Financing Order shall have been entered approving the DIP Facility, in form and substance satisfactory to DIP Lender in its reasonable discretion, which DIP Financing Order shall be in full force and effect and shall not have been reversed, vacated or stayed, and shall not have been amended, supplemented or otherwise modified without the prior written consent of DIP Lender. • Any Law, ruling, judgment, order, injunction or other restraint exists that, in the reasonable judgment of DIP Lender, prohibits, restricts or imposes a materially adverse condition on Debtors, the DIP Facility or the exercise by DIP Lender of its rights as a secured party with respect to the Collateral. • Any borrowing hereunder shall be limited to the amount that is required to fund disbursements permitted under the Budget or otherwise available for use by Debtors. |
| <p><u>Events of Default:</u></p> | <ul style="list-style-type: none"> • Failure to make a payment of principal on any of the DIP Obligations when due and payable; |

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| | <ul style="list-style-type: none"> • Default in the performance, or breach, of any covenant or agreement of a DIP Obligor contained in any DIP Loan Document; • Entry of an order of the Court modifying, amending, reversing, vacating, or staying either the Interim Order or the Final Order, the Interim Order or the Final Order otherwise ceasing to be in full force and effect, or any DIP Obligor’s violation of any of the terms of the Interim Order or the Final Order; • In connection with chapter 11 cases: (1) the Court shall enter an order dismissing the chapter 11 cases; (2) the chapter 11 cases shall be converted to cases under chapter 7 of the Bankruptcy Code; (3) a trustee or an examiner with expanded powers shall be appointed in the chapter 11 cases; (4) a motion shall be filed for, or there shall arise, any claim (other than those of the DIP Lender hereunder) in the chapter 11 cases under Sections 364(b), (c) or (d) of the Bankruptcy Code unless such motion provides for the payment in full in cash of the DIP Obligations upon the closing of such financing; or (5) the Court shall enter an order approving a disclosure statement in connection with a plan proposed by any DIP Obligor or any other person which plan is inconsistent with such DIP Obligor’s agreements and obligations under the DIP Loan Documents; • The Final Order is not entered within 30 days after the entry of the Interim Order or such later date as the DIP Lender may agree in its sole discretion; and • The DIP Debtor shall use the proceeds of any DIP Loan for any purpose not expressly permitted by the Interim Order. |
| <p><u>Prohibition Against Additional Debt</u></p> | <p>The Debtor will not incur or seek to incur debt secured by a lien which is equal to or superior to the DIP Liens, or which is given super-priority administrative expense status under section 364(c)(1) of the Bankruptcy Code, unless, in addition to the satisfaction of all requirements of section 364 of the Bankruptcy Code, the DIP Lender has consented to such order.</p> |
| <p><u>Carve-Out</u></p> | <p>There shall be a carve-out for U.S. Trustee fees and professionals fees and expenses (the “Carve-Out”) that is not subject to the DIP Liens, the DIP Lender’s super-priority administrative expense status under section 364(c)(1) of the Bankruptcy Code, or any other protections granted to the DIP Lender under this Order. Specifically, the Carve-Out shall mean an amount equal to the sum of the following: (a) all fees required to be paid to the Clerk of the</p> |

Court and to the U.S. Trustee under 28 U.S.C. § 1930(a) plus interest pursuant to 31 U.S.C. § 3717; and (b) to the extent allowed by the Bankruptcy Court at any time, and subject to the Budget, all accrued and unpaid fees, disbursements, costs and expenses of professionals or professional firms retained by Debtor and any official committee of creditors accrued or incurred at any time before or on the date and time of the delivery by the DIP Lender of a Carve-Out Trigger Notice, whether allowed by the Court prior to or after delivery of a Carve-Out Trigger Notice, plus fees, costs, and expenses incurred by the aforementioned professionals after the date of the Carve-Out Trigger Notice in an amount not to exceed \$50,000 in the aggregate; provided, however, that nothing in the DIP Loan Agreement or this Order shall be construed to impair the right of any party to object to any fees, expenses, reimbursement or compensation sought by any such professionals or any other person or entity.

Carve-Out Usage. The Debtors have unconditionally stipulated to the validity, first-priority and amount of the Pre-Petition Lender's lines in the assets of the Debtors. No portion of the Carve-Out and no loans arising under the DIP Loan Agreement or any Collateral may be used to pay any fees or expenses incurred by any entity, including the Debtors, any creditors' or the professionals retained by those entities, in connection with claims or causes of action adverse to the DIP Lender's interests in the Collateral, including (1) preventing, hindering or delaying the DIP Lender's enforcement or realization upon any of the Collateral once an Termination Event has occurred; (2) using or seeking to use cash collateral or incurring indebtedness in violation of the terms hereof, or selling any Collateral without the DIP Lender's consent other than in the ordinary course of business; or (3) objecting to or contesting in any manner, or in raising any defenses to, the validity, extent, amount, perfection, priority or enforceability of the DIP Liens or any mortgages, liens or security interests with respect thereto or any other rights or interests of the DIP Lender, or in asserting any claims or causes of action, including, without limitation, any actions under chapter 5 of the Bankruptcy Code, against the DIP Lender; provided, however, that \$25,000 of the Carve-Out may be used to pay fees and expenses incurred by the professionals retained by the Debtor and any creditors committee in connection with the negotiation, preparation and entry of this Order, the Final Order the DIP Loan Documents or any amendment hereto consented to by the DIP Lender.

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| | The Carve-Out does not prevent the Court's review of, and any parties in interest's objection to, any professional fees and expenses. |
| <u>Governing Law:</u> | State of Texas, except as governed by the Bankruptcy Code. |

V. BASIS FOR RELIEF AND ARGUMENT

52. Under 11 U.S.C. § 363(c)(2), a debtor may use cash collateral if each entity that has an interest in the cash collateral consents or if the Court, after notice and a hearing, authorizes the use of the cash collateral. Pursuant to 11 U.S.C. § 363(c)(3), the Court must condition a debtor's use of cash collateral as is necessary to provide adequate protection of the interest in the cash collateral claimed by a party.

53. Section 363(e) further provides that "on request of an entity that has an interest in property...to be used, sold or leased, by the trustee, the court...shall prohibit or condition such use, sale or lease as is necessary to provide adequate protection of such interest." 11 U.S.C. § 363(e).

54. Bankruptcy Rule 4001(b) and (d) govern the procedure for consideration of motions to use cash collateral, and both of these subsections provide for expedited consideration of such motions for cases in which immediate interim relief may be crucial to the success of a reorganization. More simply stated, if the ice cream is melting, cash needs to be made available to turn the freezer back on.

55. Although the Bankruptcy Code does not expressly define "adequate protection," Bankruptcy Code section 361 provides a non-exhaustive list of examples of adequate protection including: (i) a lump sum or periodic cash payments; (ii) replacement liens; and (iii) administrative priority claims. *See* 11 U.S.C. § 361. Generally, courts decide what constitutes

adequate protection on a case-by-case basis. *See Resolution Trust Corp. v. Swedeland Dev. Group, Inc. (In re Swedeland Dev. Group, Inc.)*, 16 F.3d 552, 564 (3d Cir. 1994) (“[A] determination of whether there is adequate protection is made on a case by case basis.”); see also *In re Dynaco Corp.*, 162 B.R. 389, 394 (Bankr. D.N.H. 1993) (citing 2 Collier on Bankruptcy 361.01 [1] at 361-66 (15th ed. 1993) (explaining that adequate protection can take many forms and “must be determined based upon equitable considerations arising from the particular facts of each proceeding”).

56. Courts have consistently recognized that the preservation of the going concern value of secured lenders’ collateral constitutes adequate protection of such creditors’ interest in the collateral. *In re Mendoza*, 111 F.3d 1264, 1272 (5th Cir. 1997) (looking to the equity cushion in the property when determining whether secured creditor was adequately protected); *see, e.g., In re Pursuit Athletic Footwear, Inc.*, 193 B.R. 713, 716 (Bankr. D. Del. 1996) (holding that if there is no actual diminution of value of collateral and the debtor can operate post-petition, then the secured creditor is adequately protected); *In re 499 W. Warren St. Assocs., Ltd. P’ship*, 142 B.R. 53, 56 (Bankr. N.D.N.Y. 1992) (finding a secured creditor’s interest in collateral adequately protected when cash collateral was applied to normal operating and maintenance expenditures on the collateral property); *In re Willowood E. Apartments of Indianapolis II, Ltd.*, 114 B.R. 138, 143 (Bankr. S.D. Ohio 1990) (same); *In re Stein*, 19 B.R. 458, 460 (Bankr. E.D. Pa. 1982) (creditors’ secured position would be enhanced by the continued operation of the debtors’ business); *In re Aqua Assocs.*, 123 B.R. 192, 196 (Bankr. E.D. Pa. 1991) (“The important question, in determining whether the protection to a creditor’s secured interest is adequate,

is whether that interest, whatever it is, is being unjustifiably jeopardized.”) (citation omitted); *In re Las Torres Dev., L.L.C.*, 413 B.R. 687, 700 (Bankr. S.D. Tex. 2009).

57. The debtor bears the burden of proof on the issue of adequate protection, and the party claiming an interest in the cash collateral bears the burden of proof on the issue of the validity, priority, or extent of the lien.

58. Section 364(d) of the Bankruptcy Code provides that the Court may authorize a debtor to incur debt secured by “priming” a senior lien on encumbered property of the debtor if the debtor is unable to obtain such credit otherwise and there is adequate protection of the primed lienholder’s interest.

59. Section 364 “imposes no duty to seek credit from every possible lender before concluding that such credit is unavailable.” *Bray v. Shenandoah Fed. Sav. & Loan Ass’n (In re Snowshoe Co.)*, 789 F.2d 1085, 1088 (4th Cir. 1986); *see also In re Sky Valley, Inc.*, 100 B.R. 107, 113 (Bankr. N.D. Ga. 1988) (“It would be unrealistic and unnecessary to require a Debtor to conduct such an exhaustive search for financing [I]t is clear that the Debtor suffers some financial stress and has little or no unencumbered property.”); *In re Reading Tube Indus.*, 72 B.R. 329, 332 (Bankr. E.D. Pa. 1987) (“Given the ‘time is of the essence’ nature of this type of financing, we would not require this or any debtor to contact a seemingly infinite number of possible lenders.”). Provided that a debtor’s business judgment does not run afoul of the provisions of the Bankruptcy Code, courts grant a debtor considerable deference in acting in accordance therewith. *See, e.g., Snowshoe*, 789 F.2d at 1088; *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 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 parties in interest”); *see also In re Curlew Valley Assocs.*, 14 B.R. 506 513-14 (Bankr. D. Utah 1981); *In re Simasko Prod. Co.*, 47 B.R. 444, 449 (D. Colo. 1985).

A. The use of Cash Collateral and the requested DIP financing is necessary to maintain the Debtors’ going concern value.

60. Prior to the payoff of the Triumph Loan, the Debtors relied on Triumph for the advancement of funds for its operations. All invoices sent to customers and paid by customers were paid to a lockbox controlled solely by Triumph. The Debtors paid the Triumph Loan in full just days prior to seeking relief under chapter 11. Going forward, the Debtors will require that all invoices paid by customers be paid to the Debtors’ operational account directly. To the extent that there are any receivables that should actually be paid to DAS as opposed to Triumph due to the payoff of the Triumph Loan, the Debtors request that the Court direct Triumph to remit such payments to DAS within three days of their receipt.

61. ADESA, pursuant to the ADESA Loan, obtained a security interest in the Debtors’ assets, arguably all the Debtors’ assets. Despite ADESA’s willingness to provide post-petition financing, the Debtors’ still require the use of their Cash Collateral to pay vendors, transporters, terminal operators, taxes, professional fees, employee’s, and employee benefits. If the Debtors fail to pay their vendors, transporters, and terminal operators, vehicles run the risk of being arrested and/or stranded. This will result in the Debtors’ corporate clients ceasing to use their services and will harm the individual owners

of the vehicles by forcing the individual owners to pay twice to obtain their vehicles. If this scenario occurs, the Debtors' operations will come to an abrupt halt and the Debtors' value will greatly decline.

62. Due to the issues surrounding the lockbox required by the Triumph Loan, the potential delay in obtaining payment on invoices which are no longer subject to the Factoring Agreement, and the fact that the Debtors are not generating sufficient cash to sustain operations and pay the expenses of the bankruptcy during the chapter 11 process, debtor-in-possession financing and the use of Cash Collateral are necessary to fund the operations of the Debtors.

B. The Debtors' propose the granting of a replacement lien as additional adequate protection.

63. Additionally, through this Motion, the Debtors intend to provide adequate protection, to the extent of any diminution in value, to ADESA's collateral (to the extent that the diminution in value is not caused by ADESA's actions or refusal to allow Debtors to pay debts necessary to preserve its collateral) for the use of Cash Collateral by providing ADESA post-petition liens pursuant to 11 U.S.C. § 361(2) in cash and other assets generated by or received by Debtors from the ADESA's collateral subsequent to the Petition Date, but only to the extent that ADESA had a valid, perfected prepetition lien and security interest in such collateral as of the Petition Date and only to the extent that the diminution in value was not caused, in whole or in part by ADESA. The priority of any post-petition replacement liens granted to a secured party shall be the same and in the same priority as existed as of the Petition Date.

C. The Debtors' propose the granting of a super-priority administrative expense

Emergency Motion for an Order (I) Authorizing the Debtors to Use Cash Collateral of Existing Secured Lender; (II) Granting Adequate Protection for Use Thereof; (III) Authorizing the Debtors to Obtain Post Petition Financing Pursuant to Sections 364(b), 364(c), and 364(d) of the Bankruptcy Code; (IV) Modifying the Automatic Stay to Allow for the Relief Requested Herein; and (V) Scheduling a Final Hearing 24

claim as additional adequate protection.

64. Further, the Debtors intend to provide adequate protection, to the extent of any diminution in value, to ADESA's collateral (to the extent that the diminution in value is not caused by ADESA's actions or refusal to allow Debtors to pay debts necessary to preserve its collateral) for the use of Cash Collateral by providing ADESA a super-priority administrative expense claim pursuant to 11 U.S.C. § 507(b) (the "Super-Priority Administrative Expense Claim"). The Super-Priority Administrative Expense claim will be superior to all other allowed administrative expense claims and unsecured claims with the exception of the Carve-Out.

D. The Debtors' propose the granting of a superpriority lien on all assets of the Debtors as additional protection.

65. As part of debtor-in-possession financing to be provided by ADESA to the Debtors, the Debtors propose providing to ADESA a super-priority lien on all of the Debtors' Assets in an amount equal to the value of all funds advanced under the debtor-in-possession financing arrangement.

66. Having determined that financing is available only under Sections 364(b), 364(c), and 364(d) of the Bankruptcy Code, the Debtors negotiated the DIP Loan Documents with ADESA at arms' length. Provided that a debtor's business judgment does not run afoul of the provisions of, and policies underlying, the Bankruptcy Code, a debtor should be granted considerable deference in acting in accordance therewith. *See In re Futures Equity L.L.C.*, Case No. 00-33682 (BJH) – 11, 2001 Bankr. LEXIS 2229, at *14 (Bankr. N.D. Tex. Apr. 11, 2001) (holding that a debtor seeking to obtain post-petition financing under Section 364 "has the burden of demonstrating: (i) the credit transaction is necessary to preserve the estate, and (ii) the terms of

the transaction are fair and reasonable given the circumstances”) (citations omitted); *see also In re Breechgrove Redevelopment, L.L.C.*, Case Nos. 07-12057, 07-12058, 2007 WL 4414777, at *1-2 (Bankr. E.D. La. Dec. 13, 2007) (holding that post-petition loan documents were fair and reasonable, reflecting debtors’ exercise of prudent business judgment); *In re Premier Entm’t Biloxi LLC*, Case No. 06-50975, 2007 Bankr. LEXIS 3939, at *17 (Bankr. S.D. Miss. Feb. 2, 2007) (holding that, under Section 364, the debtor has the burden of proving “first, that the proposed financing is an exercise of sound and reasonable business judgment; second, that no alternative financing is available on any other basis; third, that the financing is in the best interests of the estate and its creditors; and, as a corollary to the first three points, that no better offers, bids, or timely proposals are before the Court.”) (citation omitted).

67. As has been discussed at length, the Debtors will not be able to operate on a go forward basis or fund the sales process through chapter 11 without the proposed debtor-in-possession financing pursuant to the terms presented.

68. The terms and conditions of the DIP Loan Documents are fair and reasonable and were negotiated by well-represented, independent parties in good faith and at arms’ length.

69. As a result, the Debtors respectfully submit that the proposed DIP Facility is a proper exercise of their sound business judgment, is in the best interests of the Debtors and their respective estates, creditors, and equity interest holders, and that the financing on the terms provided in the DIP Loan Documents should be approved in all respects.

VI. LEGAL COSTS AND FEES

70. Debtors' ability to continue to operate, reorganize and confirm a plan is dependent upon the ability to retain and pay professionals, including the Debtors' counsel.⁷ Therefore, subject to the Court's approval of the retention of Bonds Ellis Eppich Schafer Jones LLP, the Debtors request authority to pay Bonds Ellis Eppich Schafer Jones LLP in accordance with the Budget. Payments will be held in Bonds Ellis Eppich Schafer Jones LLP's trust account pending further order from this Court.

VII. THE AUTOMATIC STAY SHOULD BE MODIFIED ON A LIMITED BASIS

71. The relief requested herein contemplates a modification of the automatic stay pursuant to Bankruptcy Code section 362 to (a) permit the Debtors to grant adequate protection liens described above with respect to prepetition, perfected and secured parties, and to perform such acts as may be reasonably requested to assure the perfection and priority of such liens; (b) provide the DIP Lender with relief from the automatic stay in the event of a default under the Interim Order; and (c) to implement the terms of the Interim Order.

VIII. REQUEST FOR INTERIM AND FINAL RELIEF

72. Bankruptcy Rules 4001(b) and 4001(c) provide that a final hearing on a motion to use cash collateral or obtain credit may not be commenced earlier than fourteen (14) days after the service of such motion. Upon request, however, the Court is empowered to conduct a preliminary expedited hearing on the motion and authorize the obtaining of post-petition credit and use of cash collateral to the extent necessary to avoid immediate and irreparable harm to a debtor's estate

⁷ The Debtors have or will shortly file an Application for Authority to Employ Bonds Ellis Eppich Schafer Jones LLP as counsel for Debtors-in-Possession.

pending a final hearing. Bankruptcy Rule 6003 further provides that, to the extent relief is necessary to avoid immediate and irreparable harm, a bankruptcy court may grant certain forms of relief during the twenty-one days immediately following the filing date. Fed. R. Bankr. P. 6003.

73. Debtors request that the Court conduct an emergency interim hearing on this Motion to consider the Debtors' request that the Interim Financing Order be entered. Debtors are in desperate need of the funds to be provided under the DIP Facility and the ability to use cash collateral to pay employees, vendors, transporters and terminal operators by the end of the year.

74. The Debtors, therefore, seek immediate authority to use the alleged Cash Collateral and enter into the proposed DIP Facility on an interim basis as set forth in this Motion and in the Interim Order to prevent immediate and irreparable harm to their estates pending a Final Hearing to consider entry of the Final Order.

IX. WAIVER OF BANKRUPTCY RULE 6004(A) AND 6004(H)

75. Given the nature of the relief requested herein, the Debtors respectfully request a waiver of (a) the notice requirements under Bankruptcy Rule 6004(a) and (b) the fourteen-day stay under Bankruptcy Rule 6004(h), to the extent that either rule is applicable. This Motion has been provided to: (i) the Office of the United States Trustee for the Northern District of Texas; (ii) a consolidated list of the twenty largest unsecured creditors of the Debtors; (iii) counsel to ADESSA and Triumph; (iv) the Internal Revenue Service; and (v) all parties in interest who have requested notice. The Debtors respectfully submit that no further notice of this Motion is required.

X. RESERVATION OF RIGHTS

76. Nothing contained herein is intended or should be construed as an admission as to the validity of any claim, lien or interest in or against the Debtors, the Debtors' property or any other third party; a waiver of the Debtors' or any other third party's rights to dispute any claim, lien or interest; or an approval or assumption of any agreement, contract, or lease under Bankruptcy Code section 365. Likewise, if this Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended and should not be construed as an admission as to the validity of any claim or a waiver of the Debtors' or any third party's right to dispute such claim subsequently.

XI. REQUEST FOR A FINAL HEARING

77. As noted above, pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2), the Debtors respectfully request that the Court set a date for the Final Hearing that is fourteen (14) days following the entry of the Interim Order. The Debtors respectfully request that notice of the Final Hearing be limited and they be authorized and directed to serve a copy of the signed Interim Order, which fixes the time and date for the filing of objections, if any, by first-class mail on (i) the Office of the United States Trustee for the Northern District of Texas; (ii) a consolidated list of the twenty largest unsecured creditors of the Debtors; (iii) counsel to ADESSA and Triumph; (iv) the Internal Revenue Service; and (v) to any other party that has filed a request for notices with this Court. The Debtors request that the Court consider such notice of the Final Hearing to be sufficient notice under Bankruptcy Rule 4001.

X. NOTICE

78. No trustee, examiner, or creditors' committee has been appointed in the Debtors' chapter 11 cases. The Debtors have provided notice of this Motion to (a) the Office of the United States Trustee for the Northern District of Texas; (b) the entities listed on the Consolidated List of Creditors Holding the 20 Largest Unsecured Claims filed pursuant to Bankruptcy Rule 1007(d); (c) the Debtors' secured creditors; (d) the United States Internal Revenue Service; and (e) any parties entitled to notice pursuant to the local bankruptcy rules. In light of the nature of the relief requested in this Motion, the Debtors respectfully submit that no further notice is necessary.

WHEREFORE, PREMISES CONSIDERED, Pursuant to Bankruptcy Rule 4001, the Debtors request that the Court set a preliminary hearing on the Debtors' proposed use of Cash Collateral and the proposed DIP Facility, and that at such preliminary hearing, the Court authorize the temporary use of Cash Collateral and the entry into the proposed DIP Facility consistent with the Budget, in order to avoid immediate and irreparable harm to these bankruptcy estates pending a final hearing; the Debtors request that this Court enter an Interim Order, in substantially the form attached hereto authorizing the

Debtors to use Cash Collateral as described herein, setting the Motion for a final hearing, and granting such other and further relief as the Court may deem just and proper.

Date: December 21, 2016

Respectfully Submitted,

/s/ Joshua N. Eppich

D. Michael Lynn

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John Y. Bonds, III

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