

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re

Eastern Outfitters, LLC, *et al.*,¹

Debtors.

Chapter 11

Case No.: 17-10243 (LSS)

(Joint Administration Requested)

**DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS
PURSUANT TO 11 U.S.C. §§ 105, 361, 362, 363, 364, 503 AND 507
(I) AUTHORIZING THE DEBTORS TO OBTAIN SECURED
POSTPETITION FINANCING, (II) AUTHORIZING USE OF CASH
COLLATERAL, (III) GRANTING LIENS AND PROVIDING SUPERPRIORITY
ADMINISTRATIVE EXPENSE STATUS, (IV) GRANTING ADEQUATE
PROTECTION, (V) MODIFYING THE AUTOMATIC STAY, (VI) SCHEDULING A
FINAL HEARING, AND (VII) GRANTING RELATED RELIEF**

Eastern Outfitters, LLC and its chapter 11 affiliates, the debtors and debtors in possession (the "Debtors") in the above-captioned chapter 11 cases (the "Cases"), hereby move the Court (the "Motion") for entry of an interim order, substantially in the form attached hereto as **Exhibit A** (the "Interim Order"), and following a final hearing to be set by the Court, entry of a final order² (the "Final Order" and, together with the Interim Order, the "DIP Orders") pursuant to sections 105, 361, 362, 363(c), 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), 364(e), 503 and 507 of title 11 of the United States Code (the "Bankruptcy Code"), Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of

¹ The Debtors and the last four digits of their respective federal taxpayer identification numbers, where applicable, are as follows: Eastern Outfitters, LLC (9164); Subortis Retail Financing, LLC (9065); Eastern Mountain Sports, LLC (9553); Subortis IP Holdings, LLC; Bob's Stores, LLC (4389); and Bob's/EMS Gift Card, LLC (9618). The Debtors' executive headquarters are located at 160 Corporate Court, Meriden, CT 06450.

² A proposed Final Order, which order shall be in form and substance and on terms satisfactory in all respects to the Borrowers, the DIP Agent and the DIP Lenders, will be submitted to the Court in advance of the Final Hearing (as defined below).

Delaware (the “Local Rules”): (i) authorizing the Debtors, among other things, to obtain senior secured postpetition financing (the “DIP Facility”) and, pursuant to the provisions of the DIP Orders, use cash collateral on an interim and final basis pursuant to the terms and conditions set forth in the Debtor In Possession Credit and Security Agreement, substantially in the form attached hereto as **Exhibit B** (as amended, supplemented, restated or otherwise modified from time to time in accordance with the terms thereof, the “DIP Credit Agreement”).

In support of this Motion, the Debtors rely the *Declaration of Mark T. Walsh in Support of First Day Motions* (the “First Day Declaration”) and the *Declaration of Alexander Stevenson in Support of the DIP Motion* (the “Stevenson Declaration”), each of which is filed separately. In further support of this Motion, the Debtors respectfully represent as follows:

Preliminary Statement

1. The Debtors have an urgent and immediate need to obtain postpetition financing. The Debtors do not have sufficient funds on hand or generated from their business to fund operations. Without the postpetition financing under the DIP Credit Agreement and the proposed DIP Orders, the Debtors would not be able to maintain operations pending the outcome of an orderly sale process and through the Store Closing Sales that together will maximize value for all constituents.

2. As described in more detail in this Motion, the Debtors have filed these Cases to implement a sale of substantially all of their assets. To that end, the Debtors have executed a letter of intent with Sportsdirect.com Retail Ltd (“Sportsdirect”), the United Kingdom’s largest sporting goods retailer, to purchase substantially all of the Debtors’ assets. Subject to higher and better bids, pending approval of a sale of substantially all of their assets by this Court, the Debtors require immediate access to postpetition financing and cash collateral to continue their orderly sale efforts. As set forth in the DIP Order, the Debtors’ use of cash collateral will only be

used exclusively to repay the Prepetition Senior Secured Obligations until such time as such obligations are paid in full in cash. Following the payment in full of the Prepetition Senior Secured Obligations, the Debtors may use cash collateral in the accordance with the DIP Order and the Approved Budget.

3. Without the proposed credit facility and, after the payment in full in cash of the Prepetition Senior Secured Obligations, access to cash collateral, the Debtors will not have any liquidity, among other things, to operate their business, fund their ordinary course expenditures, including paying their employees, or to pay the expenses necessary to administer these chapter 11 cases. Absent adequate funding, the Debtors would be required to close their stores prematurely, otherwise cease operations, and liquidate on a piecemeal basis, causing irreparable harm to the Debtors and their estates. Through proceeds from the DIP Facility, the Debtors will have access to the necessary funding to: (a) continue the day-to-day operation of their businesses and pay necessary lease obligations in the ordinary course; (b) fund the expenses necessary to preserve the going concern value of their retail assets; (c) pay adequate protection payments; and (d) provide additional standby liquidity to signal to the Debtors' vendors, suppliers, customers and employees that the Debtors will continue to meet their commitments during these Cases.

4. Hence, the Debtors have determined, in the exercise of their sound business judgment, that they require financing under the terms of the DIP Credit Agreement and, subject to the provisions of the proposed DIP Orders, including the payment in full of the Prepetition Senior Secured Obligations, the use of cash collateral, and hereby request authority to obtain such financing and use of cash collateral. The relief requested by this Motion is a necessary step to both preserving the Debtors' operations as well as a bridge to a restructuring that maximizes value for the Debtors' estates and all of their stakeholders. On this record, and as the Debtors are

prepared to demonstrate at the hearing on this Motion, the relief requested herein represents a sound exercise of business judgment and should be approved.

Jurisdiction and Venue

5. The United States Bankruptcy Court for the District of Delaware (the “Court”) has jurisdiction over these Cases and the Motion pursuant to 28 U.S.C. §§ 157 and 1334, and the Amended Standing Order of Reference from the United States District Court for the District of Delaware dated as of February 29, 2012. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue of these Cases and the Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

6. Pursuant to Local Rule 9013-1(f), the Debtors consent to the entry of a final judgment or order with respect to the Motion if it is determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

7. The statutory bases for the relief requested herein are Bankruptcy Code sections 105, 361, 362, 363(c), 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), 364(e), 503 and 507, Bankruptcy Rules 2002, 4001 and 9014 and the Local Rules.

Background

8. The Debtors’ operating business consists of Bob’s Stores and Eastern Mountain Sports (“EMS”), each of which is a regional multi-channel retailer engaged in the apparel, footwear, and sporting goods lines of business. Prior to the Petition Date, each of the two retailers was comprised of two primary units: (a) a retail store business; and (b) an e-commerce business. Collectively, the Debtors currently manage 86 retail stores in the Northeast. The Debtors employ approximately 2600 full, part-time and temporary employees across their operations.

9. The Debtors, like other retail companies, have faced various obstacles in the challenging retail environment. Since the Debtors acquired their primary assets out of bankruptcy in July 2016, the Debtors' vendors have imposed very restrictive credit terms thereby depressing inventories. Significantly, unit inventories in some categories are down as much as 30% since the prior sale closed. Largely as a result of inventory pressure, the Debtors have been unable to meet their sales plan. Facing these operational challenges along with tightening liquidity, since September 2016, the Debtors, along with their advisors, have been engaged in a robust prepetition process to explore and solicit interest in a number of potential alternatives including, without limitation, the sale of all or a material business unit of the Debtors, equity investments in all or a portion of the business, the sale of a brand, a licensing transaction, potential liquidity enhancing acquisitions, and liquidation sales.

10. After extensive negotiations with two parties and on the eve of proceeding with a liquidation alternative, the Debtors were able to secure an offer from Sportsdirect.com Retail Ltd. ("Sportsdirect"), the United Kingdom's largest sporting goods retailer, to purchase substantially all of the Debtors' assets. The Debtors commenced these Cases to consummate the sale transaction which will save nearly 1900 employee jobs, close the Debtors' stores not being sold to Sportsdirect and facilitate an orderly liquidation and wind-down.

11. On February 5, 2017 (the "Petition Date"), each of the Debtors commenced a voluntary case under chapter 11 of the Bankruptcy Code. The Debtors are authorized to continue to operate their businesses and manage their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner or statutory committee has been appointed in these Cases by the Office of the United States Trustee for the District of Delaware.

12. A full description of the Debtors' acquisition of their primary assets and their business, corporate structure, prepetition indebtedness, and events leading to these Cases is set forth in the First Day Declaration.

Prepetition Capital Structure and Secured Indebtedness

13. As of the Petition Date, the Debtors' primary liabilities consist of the Prepetition Senior Credit Agreement and the Prepetition Subordinate Credit Agreement (as each is defined below). In addition, the Debtors were generally paying trade creditors on a current basis prior to the filing.³

A. The Prepetition Senior Credit Agreement

14. The Debtors are a party to that certain (i) Revolving Credit and Security Agreement dated as of July 18, 2016 (as amended, restated, supplemented or otherwise modified prior to the date hereof, the "Prepetition Senior Credit Agreement") by and among Eastern Mountain Sports, LLC and Bob's Stores, LLC as borrowers, Subortis Retail Financing, LLC, Eastern Outfitters, LLC, Subortis IP Holdings, LLC and Bob's/EMS Gift Card LLC as guarantors, PNC Bank, National Association, as Agent (the "Prepetition Senior Agent") and the financial institutions party thereto from time to time (collectively, the "Prepetition Senior Lenders"), and together with all other agreements, documents and instruments executed or delivered with, to, or in favor of the Prepetition Senior Agent and the Prepetition Senior Lenders, including, without limitation, all security agreements, notes, guarantees, Uniform Commercial Code financing statements and all other related agreements, documents and instruments executed and/or delivered in connection with the Prepetition Senior Credit Agreement or related thereto,

³ For reference, capitalized terms in this section, unless otherwise defined herein, have the meaning ascribed to them in the DIP Credit Agreement. All summaries and discussions of the various terms of the DIP Facility and the Proposed Orders are qualified in their entirety by the actual provisions set forth in the DIP Facility and the Proposed Orders.

as all of the same have heretofore been amended, supplemented, modified, extended, renewed, restated or replaced at any time prior to the Petition Date, are collectively referred to herein as the “Prepetition Senior Credit Documents”), by and between the Debtors, Prepetition Senior Agent and the Prepetition Senior Lenders. The Prepetition Senior Agent and the Prepetition Senior Lenders shall be collectively referred to herein as the “Prepetition Senior Secured Parties”.

15. The outstanding principal amount of the obligations owing by the Debtors to the Prepetition Senior Lenders under and in connection with the Prepetition Senior Credit Documents as of the Petition Date was not less than \$37,514,341.01, plus \$150,000 on account of a letter of credit that was presented to Prepetition Senior Agent on Friday, February 3, 2017, and which shall be honored and paid on or after the Petition Date, plus \$3,292,396.58 of contingent obligations for undrawn letters of credit, together with all accrued and accruing pre- and post-petition interest, charges, fees, costs and expenses (including, without limitation, attorneys’ fees and legal expenses) and other “Obligations” (as defined in the Prepetition Senior Credit Agreement) with respect to the Prepetition Senior Credit Documents (collectively, the “Prepetition Senior Secured Obligations”). The Prepetition Senior Secured Obligations constitute allowed, legal, valid, binding, enforceable and non-avoidable obligations of the Debtors and are not subject to any offset, defense, counterclaim, avoidance, recharacterization, reduction, disallowance, impairment or subordination pursuant to the Bankruptcy Code or any other applicable law, and the Debtors do not possess and shall not assert any claim, counterclaim, setoff or defense of any kind, nature or description which would in any way affect the priority, validity, enforceability and nonavoidability of any of the Prepetition Senior Secured Obligations. The Prepetition Senior Secured Obligations shall be deemed to have been automatically

accelerated on the Petition Date as a result of the commencement of the Cases in accordance with the terms of the Prepetition Senior Credit Documents.

16. As of the Petition Date, the Prepetition Senior Secured Obligations were secured pursuant to the Prepetition Senior Credit Documents by a valid, perfected, and enforceable and non-avoidable first priority security interest and lien (the “Prepetition Senior Liens”) granted by the Debtors to the Prepetition Senior Agent on behalf of the Prepetition Senior Lenders upon the Debtors’ inventory and other Collateral (as defined in the Prepetition Senior Credit Documents, hereafter the “Prepetition Senior Collateral”). The Prepetition Senior Liens in and against the Prepetition Senior Collateral (i) are a valid, binding, perfected, and enforceable first priority lien and security interest on the Prepetition Senior Collateral, (ii) are not subject, pursuant to the Bankruptcy Code or other applicable law, to avoidance, recharacterization, recovery, subordination, attack, offset, counterclaim, defense, or “claim” (as defined in the Bankruptcy Code) of any kind, (iii) are subject and/or subordinate only to any validly perfected and unavoidable liens that exist on the Petition Date and are senior to the Prepetition Senior Liens, pursuant to the Prepetition Senior Credit Documents, and under applicable non-bankruptcy law, and (iv) constitute the legal, valid, unavoidable and binding obligation of the Debtors, enforceable in accordance with the terms of the Prepetition Senior Credit Documents.

17. The Debtors conducted a pre-petition analysis concerning liquidation of the Prepetition Senior Collateral and believe, and therefore assert, that the Prepetition Senior Secured Parties are oversecured. Pursuant to agreements between the Debtors, Prepetition Senior Agent, Prepetition Subordinate Agent, and the DIP Agent, the Prepetition Senior Obligations are to be repaid in full in cash through the current and ongoing collections and application of the Debtors’ Cash Collateral (defined herein) and other paydowns, but shall, in any event, be repaid

in full in cash no later than the earlier of (A) the entry of a Final Order or (B) March 15, 2017, in each case through the repayment, purchase, or refinancing in cash of the then outstanding Prepetition Senior Secured Obligations.

B. The Prepetition Subordinate Credit Agreement

18. The Debtors are party to that certain Second-Lien Term Loan, Security and Guaranty Agreement dated as of July 18, 2016 ("Prepetition Subordinate Agreement"), by and among Eastern Mountain Sports, LLC and Bob's Stores, LLC as borrowers, Subortis Retail Financing, LLC, Eastern Outfitters, LLC, Subortis IP Holdings, LLC and Bob's/EMS Gift Card LLC as guarantors, the lenders party thereto ("Prepetition Subordinate Lenders"), and Sportsdirect.com Retail Ltd, as Agent (the "Prepetition Subordinate Agent", and collectively, with the Prepetition Subordinate Lenders, the "Prepetition Subordinate Secured Parties"), and together with all other agreements, documents and instruments executed or delivered with, to, or in favor of the Prepetition Subordinate Parties, including, without limitation, all security agreements, notes, guarantees, mortgages, Uniform Commercial Code financing statements and all other related agreements, documents and instruments executed and/or delivered in connection with the Prepetition Subordinate Agreement or related thereto, as all of the same have heretofore been amended, supplemented, modified, extended, renewed, restated or replaced at any time prior to the Petition Date, are collectively referred to herein as the "Prepetition Subordinate Credit Documents"; and together with the Prepetition Senior Credit Documents, collectively the "Prepetition Credit Documents"). The Prepetition Senior Agent and the Prepetition Subordinate Agent shall be collectively referred to herein as the "Prepetition Agents". The Prepetition Senior Lenders and the Prepetition Subordinate Lenders shall be collectively referred to herein as the "Prepetition Lenders". The Prepetition Senior Secured Parties and the Prepetition Subordinate Secured Parties shall be collectively referred to herein as the "Prepetition Secured Parties".

19. The outstanding principal amount of the obligations owing by the Debtors to the Prepetition Subordinate Lenders under and in connection with the Prepetition Subordinate Credit Documents as of the Petition Date was not less than \$41,000,000 together with all accrued and accruing pre- and post-petition interest, charges, fees, costs and expenses (including, without limitation, attorneys' fees and legal expenses) and other "Obligations" (as defined in the Prepetition Subordinate Credit Agreement) with respect to the Prepetition Subordinate Credit Documents (collectively, the "Prepetition Subordinate Secured Obligations") and, collectively with the Prepetition Senior Secured Obligations, the "Prepetition Secured Obligations"). The Prepetition Subordinate Secured Obligations constitute allowed, legal, valid, binding, enforceable and non-avoidable obligations of the Debtors and are not subject to any offset, defense, counterclaim, avoidance, recharacterization, reduction, disallowance, impairment or subordination pursuant to the Bankruptcy Code or any other applicable law, and the Debtors do not possess and shall not assert any claim, counterclaim, setoff or defense of any kind, nature or description which would in any way affect the priority, validity, enforceability and nonavoidability of any of the Prepetition Senior Subordinate Secured Obligations. The Prepetition Subordinate Secured Obligations shall be deemed to have been automatically accelerated on the Petition Date as a result of the commencement of the Cases in accordance with the terms of the Prepetition Subordinate Credit Documents.

20. As of the Petition Date, the Prepetition Subordinate Secured Obligations were secured pursuant to the Prepetition Subordinate Credit Documents by a valid, perfected, and enforceable and non-avoidable second priority security interest and lien (the "Prepetition Subordinate Liens") and collectively with the Prepetition Senior Liens, the "Prepetition Liens") granted by the Debtors to the Prepetition Subordinate Agent on behalf of the Prepetition

Subordinate Lenders upon the Debtors' Collateral (as defined in the Prepetition Subordinate Credit Documents, hereafter the "Prepetition Subordinate Collateral") and collectively with the Prepetition Senior Collateral, the "Prepetition Collateral"). The Prepetition Subordinate Liens in and against the Prepetition Subordinate Collateral (i) are a valid, binding, perfected, and enforceable second priority lien and security interest on the Prepetition Subordinate Collateral, (ii) are not subject, pursuant to the Bankruptcy Code or other applicable law, to avoidance, recharacterization, recovery, subordination, attack, offset, counterclaim, defense, or "claim" (as defined in the Bankruptcy Code) of any kind, (iii) are subject and/or subordinate only to the Prepetition Senior Liens and any validly perfected and unavoidable liens that exist on the Petition Date and are senior to the Prepetition Senior Liens or Prepetition Subordinate Liens, pursuant to the Prepetition Senior Credit Documents or Prepetition Subordinate Credit Documents, and under applicable non-bankruptcy law, and (iv) constitute the legal, valid, unavoidable and binding obligation of the Debtors, enforceable in accordance with the terms of the Prepetition Subordinate Credit Documents.

C. The Intercreditor Agreement

21. The Debtors, the Prepetition Senior Agent and the Prepetition Subordinate Agent are parties to that certain Intercreditor and Subordination Agreement dated as of July 18, 2016 (as amended, restated, supplemented, reaffirmed or otherwise modified from time to time, the "Intercreditor Agreement"), which governs the respective rights, obligations and priorities among the Prepetition Secured Parties with respect to the matters referred to therein. The liens and security interests granted to Prepetition Subordinate Secured Parties in the Prepetition Subordinate Collateral are subject to the Intercreditor Agreement. The Intercreditor Agreement was modified by that certain Consent Letter by and among the Prepetition Secured Parties and the DIP Secured Parties (the "Consent Letter").

Events Leading Up to the DIP Facility

A. The Debtors' Liquidity Needs

22. As further described in the First Day Declaration, the Debtors have faced a number of financial challenges that are straining their liquidity.

23. Among other things, without access to the DIP Facility, it is unlikely the Debtors will have sufficient funds to pay their vendors, tax payments, professional fees, employee wages, benefits, and related obligations, resulting in attrition to the Debtors' workforce, including key employees, and negatively impacting morale among remaining employees. In addition, the Debtors would quickly be unable to continue meeting obligations under retail rental agreements which, if terminated, would result in a decrease in value as a going concern and harm the potential recovery of all stakeholders. Additionally, because the Debtors are retail entities, the public perception of closings could harm the Debtors' good will, which would further reduce ultimate creditor recoveries. The Debtors will run out of liquidity almost immediately and be forced into liquidation, resulting in material and perhaps irreparable harm to the Debtors' business. The Debtors have no significant unencumbered cash or other assets. The liquidity provided by the DIP Financing is vital to the Debtors' efforts to reorganize.

24. Without Court approval of the relief sought in this Motion, the Debtors will quickly significant liquidity constraints and will be completely unable to continue as a going concern and be forced to convert these cases to a chapter 7 and begin an immediate liquidation. This would result in major value destruction to the detriment of all the Debtors' stakeholders.

B. The Debtors' Efforts to Obtain Postpetition Financing

25. As set forth in the Stevenson Declaration, in September 2016 the Debtors engaged Lincoln Partners Advisors LLC ("Lincoln") to provide investment banking services in

connection with the Debtors' exploration of a range of strategic alternatives. Such alternatives included, among others, the sale of all or a material business unit of the Company, equity investments in all or a portion of the business, the sale of a brand, a licensing transaction and potential liquidity enhancing mergers.

26. As described in more detail in the First Day Declaration, by the fall 2016, it became clear that, due to reduced levels of vendor support and the Debtors' constricted balance sheet, the Debtors required a solution to either inject new capital into the company or an outright sale of the company. In connection with their exploration of alternatives, the Debtors retained AP Services, LLC ("APS") as turnaround advisors, and appointed Spencer Ware, an employee of APS, as Chief Restructuring Officer. The Debtors' also re-engaged Lincoln to serve as the their investment banker.

27. As also described in more detail in the First Day Declaration, after a robust marketing process Sportsdirect and the Debtors entered into a LOI that contemplated that Sportsdirect would purchase all of the rights and obligations of the lenders under the Prepetition Subordinate Credit Agreement and related documents for cash and other contingent consideration, provide bridge financing to the Debtors to avoid immediate liquidation of the Business, act as a "stalking horse" bidder for the assets of the Debtors, and provide debtor-in-possession financing to provide the Debtors with sufficient liquidity to finance certain aspects of the chapter 11 process. As part of the LOI, Sportsdirect also agreed to refinance the obligations under the Prepetition Senior Credit Agreement in full by no later than March 15, 2017.

28. In exploring their options, the Debtors recognized that the obligations owed to their prepetition secured creditors, and secured by substantially all of the Debtors' assets, meant that either (a) the liens of the prepetition secured creditors would have to be primed to obtain

postpetition financing, (b) the Debtors would have to find a postpetition lender willing to extend credit that would be junior to the liens of the prepetition secured creditors, or (c) a lender would have had to been willing to provide sufficient financing to satisfy at least the Debtors' prepetition indebtedness.

29. As such, beginning on February 2, 2017, Lincoln worked closely with the Debtors' management and other advisors, reached out to a number of other potential lenders known to potentially have an interest in the apparel, footwear, and sporting goods retail sectors to solicit interest in providing DIP financing to the Debtors on a *pari passu* basis with the Debtors' prepetition secured creditors, on a junior secured basis, or on an unsecured, administrative expense basis, or, alternatively, by taking out the existing prepetition secured creditors. Specifically, Lincoln solicited interest from approximately 10 bank and non-bank lenders, including the Debtors' existing prepetition first lien lender, PNC Bank, who, in Lincoln's experience, would consider proposing an alternative DIP to the proposed DIP financing given the circumstances of this case. Lincoln received several verbal indications from potential parties describing the general economic terms under which they would provide such a facility. However, the verbal indications received from third parties were on terms less favorable to the Debtors than the proposed DIP Facility and remained subject to material due diligence requirements that would certainly have resulted in delay and incremental cost thereby subjecting the Debtors to additional business risk and putting in jeopardy the contemplated transactions.

30. Ultimately, the Debtors determined they could not have obtained any viable DIP financing under the circumstances of the type and magnitude required on a more favorable economic basis than the economic terms of the DIP Facility taking into account the Debtors' circumstances, financial condition and projections.

Relief Requested

31. For the reasons set forth herein, the Debtors seek the following relief:
 - a. authorizing the Debtors to obtain the DIP Facility pursuant to the terms and conditions of the DIP Orders and the DIP Credit Agreement;
 - b. authorizing the Debtors to execute, deliver to the Sportsdirect.com Retail Ltd, as agent (in such capacity, the "DIP Agent"), and Sportsdirect.com Retail Ltd (the "DIP Lender" and together with the DIP Agent, the "DIP Secured Parties"), and perform under the DIP Credit Agreement and the other DIP Loan Documents;
 - c. authorizing and directing the Debtors to incur and pay all DIP Obligations, including the fees specified in DIP Credit Agreement;
 - d. providing for the payment in full of the Prepetition Senior Secured Obligations, subject to the terms of the DIP Orders;
 - e. granting to the DIP Secured Parties valid, enforceable, non-avoidable, automatically and fully perfected liens on and security interests in all DIP Collateral, including, without limitation, all Cash Collateral to secure the DIP Obligations, which liens and security interests shall be subject to the Liens in favor of the Prepetition Senior Agent, the Senior Lender Adequate Protection Liens, and the Carve-Out;
 - f. granting to the Prepetition Senior Agent and Prepetition Senior Lenders allowed superpriority administrative expense claims solely as to any Diminution in Value of its interests in the Prepetition Senior Collateral, subject to the Carve-Out, as set forth herein;
 - g. granting to the DIP Secured Parties allowed superpriority administrative expense claims in respect of all DIP Obligations, subject to the allowed superpriority administrative expense claims of the Prepetition Senior Agent and the Carve-Out, as set forth herein;
 - h. granting to the Prepetition Subordinate Agent and the Prepetition Subordinate Lenders allowed superpriority administrative expense claims solely as to any Diminution in Value of their interests in the Prepetition Second Lien Collateral, subject to the allowed superpriority administrative expense claims of the Prepetition Senior Agent, the allowed superpriority administrative expense claims of the DIP Agent, and the Carve-Out, as set forth herein;
 - i. authorizing the Debtors' use of the proceeds of the DIP Facility and, subject to paragraph 9(c) of the Interim Order (and a corollary provision to be included in the Final Order), Cash Collateral pursuant to the Approved Budget, the DIP Orders and the DIP Loan Documents;

- j. providing (a) adequate protection to the Prepetition Senior Agent and the Prepetition Senior Lenders for any Diminution in Value of their interests in the Prepetition Senior Collateral, including Cash Collateral, (b) replacement liens for the Specified Post-Petition Accounts (defined herein), and (c) liens on the DIP Collateral with respect to the indemnity obligations under the Prepetition Senior Credit Documents;
- k. providing adequate protection to the Prepetition Subordinate Agent and the Prepetition Subordinate Lenders for any Diminution in Value of their interests in the Prepetition Second Lien Collateral, including Cash Collateral;
- l. vacating and modifying the automatic stay imposed by section 362 to the extent necessary to implement and effectuate the terms and provisions of the DIP Orders and the DIP Loan Documents, and providing for the immediate effectiveness of the DIP Orders; and
- m. scheduling a Final Hearing to consider entry of a Final Order authorizing the relief requested in the DIP Motion on a final basis, and approving the form of notice with respect to the Final Hearing.

Summary of Principal Terms of DIP Financing

32. In accordance with Bankruptcy Rule 4001 and Local Rule 4001-2, the following is a concise statement and summary of the proposed material terms of the DIP Financing, as specified in the DIP Credit Agreement and the Interim Order:⁴

Material Provision	Summary Description of Material Provision
<p>DIP Credit Agreement Parties</p> <p>Fed. R. Bankr. P. 4001(c)(1)(B)</p> <p>DIP Credit Agreement Preamble</p>	<ul style="list-style-type: none"> • <u>Borrowers</u>: <p>Eastern Mountain Sports, LLC, a limited liability company formed under the laws of the State of Delaware ("<u>EMS</u>"), Bob's Stores, LLC, a limited liability company formed under the laws of the State of Delaware ("<u>Bob's</u>"), Subortis Retail Financing, LLC, a limited liability company formed under the laws of the State of Delaware ("<u>Parent</u>"), Eastern Outfitters, LLC, a limited liability company formed under the laws of the State of Delaware ("<u>Intermediate Holdco</u>"), Subortis IP Holdings, LLC, a limited liability company formed under the laws of the State of Delaware ("<u>SIPH</u>") and Bob's/EMS Gift Card, LLC, a limited liability company organized under the laws of the Commonwealth of Virginia ("<u>BEGC</u>" and together with EMS, Bob's, Parent, Intermediate Holdco and SIPH and each Person joined hereto as a borrower from time to time,</p>

⁴ This summary is qualified, in its entirety by the provisions of the DIP Credit Agreement and the Proposed Orders. Unless otherwise set forth in this summary, capitalized terms used within this summary shall have the meanings ascribed to them in the DIP Credit Agreement.

Material Provision	Summary Description of Material Provision
	<p>collectively, the “<u>Borrowers</u>” and each a “<u>Borrower</u>”). Intermediate Holdco shall serve as the borrowing agent (the “<u>Borrowing Agent</u>”).</p> <ul style="list-style-type: none"> • <u>Lenders</u>: <p>The lenders which are now or which hereafter become a party to the DIP Credit Agreement, including SportsDirect.com Retail Ltd. (collectively, the “<u>Lenders</u>” and each individually a “<u>Lender</u>”).</p> <ul style="list-style-type: none"> • <u>Agent</u>: <p>SportsDirect.com Retail Ltd., as agent for Lenders (in such capacity, the “<u>Agent</u>”).</p>
<p>Amount</p> <p>Fed. R. Bankr. P. 4001(c)(1)(B)</p> <p>DIP Credit Agreement §</p>	<p>Aggregate maximum principal amount not to exceed \$85 million</p>
<p>Availability</p> <p>Fed. R. Bankr. P. 4001(c)(1)(B)</p> <p>DIP Credit Agreement §2.1, §2.2</p>	<ul style="list-style-type: none"> • The Lenders will agree to provide to the Borrowers a delayed draw term loan facility of up to \$85 million, with \$65 million to be available from and after the effective date of the DIP Credit Agreement until the entry of the Final Financing Order, and \$85 million to be available from and after the entry of the Final Financing Order. • The Borrowers can request a commitment increase of \$10 million. • Subject to the terms and conditions herein, the Borrower may borrow under the DIP Credit Agreement, provided that no more than 2 borrowings shall be permitted during any week. • The Borrowers must give the Agent three (3) business days’ notice (or such later date or time consented by the Agent) of any request for a drawing under the DIP Credit Agreement. • Once repaid, the advances under the DIP Credit Agreement may not be re-borrowed.
<p>Use of Proceeds</p> <p>Fed. R. Bankr. P.</p>	<p>Borrowers shall apply the proceeds of advances solely as set forth in the Budget and the Financing Order.</p>

Material Provision	Summary Description of Material Provision
<p>4001(c)(1)(B)</p> <p>DIP Credit Agreement § 2.21</p> <p>Interim Order, pp. 11-12</p>	<p>For (i) payment in full of the Prepetition Senior Secured Obligations as contemplated in the DIP Orders (including the funding of the Payoff Indemnity Account; (ii) payment of prepetition amounts acceptable to the DIP Lenders as authorized by the Court pursuant to orders approving the first day motions filed by the Debtors; (iii) in accordance with the terms of the DIP Loan Documents and the Final Orders (A) for general corporate and working capital purposes in the ordinary course of business, (B) for costs and expenses of administration of the Cases, (C) for the payment of restructuring costs in connection with the Cases; (iv) to make adequate protection payments required; and (v) for the payment of the fees, costs and expenses of the DIP Agent, DIP Lenders, Prepetition Senior Agent, Prepetition Senior Lenders, Prepetition Subordinate Agent and Prepetition Subordinate Lender.</p>
<p>DIP Financing Termination Date</p> <p>Fed. R. Bankr. P. 4001(b)(1)(ii) and (c)(1)(B)</p> <p>DIP Credit Agreement, §1.2, §6.16</p>	<p>The earliest to occur of (a) the Maturity Date, (b) the sale of all or substantially all of the assets of the Borrowers, (c) the date of the acceleration of the obligations under the DIP Credit Agreement and termination of the commitments under the DIP Credit Agreement, (d) the effective date of a plan of reorganization for the Borrowers, and (e) the delivery by the Agent to the Borrowing Agent of a notice that the Agent is terminating the DIP Credit Agreement because information disclosed in the post-closing schedules to the DIP Credit Agreement could reasonably be expected to have an adverse effect on the Borrowers or their business.</p> <p>As used herein, the “<u>Maturity Date</u>” means August [], 2017 or such later date as the Agent and the Lenders, in their sole discretion, may consent to in writing; provided, that, if such day is not a business day, the Maturity Date shall be the business day immediately preceding such day.</p>
<p>Interest Rate</p> <p>Fed. R. Bankr. P. 4001(c)(1)(B)</p> <p>DIP Credit Agreement §1.2, §3.1</p>	<p>6% per annum, and all payments of interest on the advances shall be deemed funded by being added to the principal balance of the advances on each applicable interest payment date.</p> <p>Upon and after the occurrence of an Event of Default, and during the continuation thereof, at the option of Agent or at the direction of Required Lenders, the obligations under the DIP Credit Agreement shall bear interest at 8% per annum.</p>
<p>Fees</p> <p>Fed. R. Bankr. P. 4001(c)(1)(B)</p> <p>DIP Credit Agreement §3.3</p>	<p>A commitment fee to each Lender, payable on the effective date of the DIP Credit Agreement, equal to the product of (a) 2%, times (b) the total commitment amount of such Lender as of the effective date, and the payment of the commitment fee shall be deemed funded by being added to the principal balance of the advances as of the effective date of the DIP Credit Agreement.</p>

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<p>Prepayments</p> <p>DIP Credit Agreement §1.2, §2.20, §7.19, §11.5</p>	<p>Mandatory prepayments of the DIP Credit Agreement shall be required with (a) 100% of the net cash proceeds within one business day of receipt from (i) sales of inventory in the ordinary course of business, (ii) sales of unused and obsolete equipment, and (iii) sales in connection with the store closing programs, (b) 100% of the net cash proceeds from the issuance of any indebtedness, and (c) 100% of the proceeds of any casualty insurance.</p>
<p>Events of Default</p> <p>Fed. R. Bankr. P. 4001(b)(1)(B) and (c)(1)(B)(iii)</p> <p>DIP Credit Agreement Article X</p>	<p>The DIP Credit Agreement contains customary events of default (the “<u>Events of Defaults</u>”) (subject to certain cure periods, exceptions, qualifications and thresholds), including the following:</p> <ul style="list-style-type: none"> • Nonpayment of principal, interest, or fees • Breach of representations and warranties • Levy, injunction or attachment against a material portion of a Borrower’s property • Noncompliance with covenants. • Judgment, writ, order or decree in excess of \$500,000 • Material Adverse Effect • Any lien created under the DIP Credit Agreement is not a valid and perfected lien having a first priority interest • Customary bankruptcy defaults • Cross-default to other indebtedness in excess of \$500,000 • Breach of any provision under any pledge agreement • Change of Control • Invalidity of any material provision of the DIP Credit Agreement or any other loan document • Any material portion of the collateral is seized or subject to a garnishment • The occurrence of any cessation of substantial part of the business of a Borrower • Any event occurs under any ERISA plan that could have a material adverse effect • Any anti-corruption representation or warranty is false • Any credit card issuer or processor ceases to make or suspends payments
<p>Liens, Priorities and Adequate Protection</p> <p>Fed. R. Bankr. P. 4001(c)(1)(B)(i), (ii)</p> <p>DIP Credit Agreement §4.2</p>	<p><u>DIP Liens</u></p> <p>As security for the DIP Obligations, effective immediately upon entry of this Order, the DIP Agent, for the benefit of itself and the DIP Lenders, is hereby granted, subject to the priorities set forth in paragraphs 6 and 9(c) of the Interim DIP Order and the Carve-Out, continuing, valid, binding, enforceable, non-avoidable, and automatically and properly perfected security interests in and liens (collectively, the “<u>DIP Liens</u>”) on the DIP Collateral as collateral security for the prompt and complete performance and payment when due (whether at the</p>

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Interim Order, ¶¶ 5-7, 9(c), 11-13	<p>stated maturity, by acceleration or otherwise of the DIP Obligations).</p> <p>“<u>DIP Collateral</u>” means all assets and properties (whether tangible, intangible, real, personal or mixed) of the Debtors and any domestic and foreign subsidiary whether now owned by or owing to, or hereafter acquired by, or arising in favor of, the Debtors (including under any trade names, styles, or derivations thereof), and whether owned or consigned by or to, or leased from or to, the Debtors, and regardless of where located, before or after the Petition Date, including, without limitation: (i) all Prepetition Collateral; (ii) all cash and cash equivalents; (iii) all funds in any deposit account, securities account or other account of the Debtors and all cash and other property deposited therein or credited thereto from time to time; (iv) all accounts and other receivables (including for the avoidance of doubt all intercompany receivables owed to the Debtors but not the Professional Fee Account); (v) all contract rights; (vi) all instruments, documents and chattel paper; (vii) all securities (whether or not marketable); (viii) all goods, equipment, inventory and fixtures; (ix) all real property interests; (x) all leaseholds and proceeds thereof, provided, however, that to the extent that any lease prohibits the granting of a lien thereon, or otherwise prohibits hypothecation of the leasehold interest, or any federal law, regulation or order thereunder or any DIP Lender’s internal requirements would require the completion of flood due diligence and/or obtaining evidence of applicable flood insurance with respect to any real property or leasehold interest, then in such event the DIP Agent shall be granted a lien only on the economic value of, proceeds of sale or other disposition of, and any other proceeds and products of such leasehold interests, (xi) all franchise rights; (xii) all patents, trade names, trademarks (other than intent-to-use trademarks), copyrights and all other intellectual property; (xiii) all general intangibles; (xiv) all equity interests or capital stock, limited liability company interests, partnership interests and financial assets in domestic and foreign subsidiaries; (xv) all investment property; (xvi) all supporting obligations; (xvii) all letters of credit and letter of credit rights; (xviii) all commercial tort claims; (xix) all other claims and causes of action, including proceeds thereof (including, but not limited to, subject to entry of the Final Order, all claims and causes of action arising under Chapter 5 of the Bankruptcy Code and the proceeds thereof); (xx) all books and records (including, without limitation, customers lists, credit files, computer programs, printouts and other computer materials and records); (xxi) to the extent not covered by the foregoing, all other assets or properties of the Debtors, whether tangible, intangible, real, personal or mixed; and (xxii) all products, offspring, profits and proceeds of each of the foregoing and all accessions to, substitutions and replacements for, and rents, profits and products of, each of the foregoing, any and all proceeds of any insurance, indemnity, warranty or guaranty payable to such Debtor from time to time with respect to any of the foregoing.</p>

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	<p data-bbox="444 254 737 285"><u>Priority of DIP Liens</u></p> <p data-bbox="444 306 1479 447">To secure the DIP Obligations, the DIP Agent, for the benefit of itself and the DIP Lenders, is hereby granted continuing, valid, binding, enforceable, non-avoidable, and automatically and properly perfected DIP Liens in the DIP Collateral as follows:</p> <ul data-bbox="493 474 1479 1535" style="list-style-type: none"> <li data-bbox="493 474 1479 793">• Pursuant to section 364(c)(2) of the Bankruptcy Code, valid, enforceable, non-avoidable automatically and fully perfected first priority liens on and security interests in all DIP Collateral that is not otherwise subject to a valid, perfected and non-avoidable security interest or lien as of the Petition Date, including all funds in the DIP Collateral Deposit Priority Account or any other account of the Debtors, subject only to the Carve-Out, the Senior Lender Adequate Protection Liens, the replacement liens on the Specified Post-Petition Accounts, and the PNC Indemnity Adequate Protection Liens; <li data-bbox="493 842 1479 1129">• Pursuant to section 364(c)(3) of the Bankruptcy Code, valid, enforceable, non-avoidable automatically and fully perfected liens on and security interests in all DIP Collateral subject only to (x) Permitted Prior Liens (as defined in the Prepetition Senior Credit Documents), (y) the Carve-Out, and (z) subject to paragraph 9(c) of the Interim Order, the Prepetition Senior Liens, Senior Lender Adequate Protection Liens, the PNC Indemnity Adequate Protection Liens, and the replacement liens on the Specified Post-Petition Accounts; and <li data-bbox="493 1178 1479 1535">• Pursuant to section 364(d)(1) of the Bankruptcy Code, valid, enforceable, non-avoidable automatically and fully perfected priming liens on and security interests in all Prepetition Collateral securing the Prepetition Secured Obligations, wherever located, which priming liens and security interests in favor of the DIP Agent for the benefit of the DIP Lenders shall be subject only to (x) the Prepetition Senior Liens, Senior Lender Adequate Protection Liens, the PNC Indemnity Adequate Protection Liens, and the replacement liens on the Specified Post-Petition Accounts, subject to paragraph 9(c) of the Interim Order, (y) Permitted Prior Liens, and (z) the Carve-Out. <p data-bbox="444 1556 1479 1871">Except as expressly set forth herein, the DIP Liens and the DIP Superpriority Claim (as defined below): (i) shall not be made subject to or <i>pari passu</i> with (A) any lien, security interest or claim heretofore or hereinafter granted in any of the Cases or any Successor Cases and shall be valid and enforceable against the Debtors, their estates, any trustee or any other estate representative appointed or elected in the Cases or any Successor Cases and/or upon the dismissal of any of the Cases or any Successor Cases, (B) any lien that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code or otherwise, and (C) any intercompany or affiliate lien or claim; (ii) shall</p>

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	<p>not be subject to sections 506(c) (upon entry of the Final Order), 510, 549, 550 or 551 of the Bankruptcy Code; and (iii) shall not attach to or be enforceable against the Professional Fee Account (as defined below).</p> <p><u>Superpriority DIP Claim</u></p> <p>Effective immediately upon entry of this Order, the DIP Agent and the DIP Lenders are hereby granted, pursuant to section 364(c)(1) of the Bankruptcy Code, an allowed superpriority administrative expense claim in each of the Cases or any Successor Cases (the “<u>Superpriority DIP Claim</u>”), for all of the DIP Obligations, (a) subject to the Carve-Out, the Senior Lender Superpriority Claim and the PNC Indemnity Adequate Protection Claim, with priority over any and all administrative expense claims, unsecured claims and all other claims against the Debtors or their estates in any of the Cases or any Successor Cases, at any time existing or arising, of any kind or nature whatsoever, including, without limitation, (i) administrative expenses or other claims of the kinds specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 365, 503(a), 503(b), 506(c), 507(a), 507(b), 546(c), 546(d), 726, 1113 and 1114 of the Bankruptcy Code, and any other provision of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy, or attachment, (ii) any claims allowed pursuant to the obligations under the Prepetition Credit Documents (other than the claims of the Prepetition Secured Parties), and (iii) the Subordinate Lender Superpriority Claim and (b) which shall at all times be senior to the rights of the Debtors or their estates, and any trustee appointed in the Cases or any Successor Cases to the extent permitted by law. The DIP Superpriority Claim shall, for purposes of section 1129(a)(9)(A) of the Bankruptcy Code, be considered administrative expenses allowed under section 503(b) of the Bankruptcy Code, shall be against each Debtor on a joint and several basis, and shall be payable from and have recourse to all DIP Collateral (including, without limitation, subject to entry of the Final Order, all claims and causes of action arising under Chapter 5 of the Bankruptcy Code (and the proceeds thereof)). Notwithstanding the foregoing, the DIP Superpriority Claim shall be subject to the Carve-Out, the PNC Indemnity Adequate Protection Claim (until the expiration of the Challenge Period with no Challenge having been asserted against the Prepetition Senior Secured Parties), and, subject to paragraph 9(c) of the Interim Order, the allowed superpriority claims of the Prepetition Senior Secured Parties.</p> <p><u>Adequate Protection</u></p> <p><i>First Lien Adequate Protection.</i> In consideration for the Debtors’ use of the Prepetition Senior Collateral (including, subject to paragraph 9(c), Cash Collateral), and to protect the Prepetition Senior Agent and the Prepetition Senior Lenders against the risk of Diminution in Value of their interests in the</p>

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	<p>Prepetition Senior Collateral, the Prepetition Senior Agent and the Prepetition Senior Lenders shall receive, solely to the extent of such Diminution in Value, and subject to paragraph 9(c) of the Interim Order, the following adequate protection (collectively, the “<u>Senior Lender Adequate Protection</u>”):</p> <ul style="list-style-type: none"> • <i>Senior Lender Adequate Protection Liens.</i> As consideration to the Prepetition Senior Secured Parties for their agreement to the terms of the Interim Order and the stipulations and consents set forth herein, and as adequate protection and replacement collateral for the Prepetition Senior Secured Parties’ interests in the Prepetition Senior Collateral resulting from: (i) the use, sale or lease of the Prepetition Senior Collateral, and (ii) the imposition of the automatic stay (the “<u>Senior Lender Adequate Protection Obligations</u>”), the Debtors hereby grant to the Prepetition Senior Agent, for the benefit of the Prepetition Senior Lenders, an additional and replacement first priority, valid, binding, enforceable, non-avoidable, and automatically perfected, <i>nunc pro tunc</i> to the Petition Date, post-petition security interest in and lien on (the “<u>Senior Lender Adequate Protection Liens</u>”), without the necessity of the execution by the Debtors (or recordation or other filing) of security agreements, control agreements, pledge agreements, financing statements, mortgages, or other similar documents, all of the right, title and interest of each Debtor and its “estate” (as created pursuant to section 541(a) of the Bankruptcy Code) in, to and under all present and after-acquired DIP Collateral (other than funds in the Professional Fee Account). The Senior Lender Adequate Protection Liens shall be subject to any Permitted Prior Liens and shall secure the Senior Lender Adequate Protection Obligations solely to the extent of any Diminution in Value of the Prepetition Senior Collateral from and after the Petition Date. • <i>Senior Lender Superpriority Claims.</i> As further adequate protection for and to the extent permitted by sections 503(b) and 507(b) of the Bankruptcy Code, the Prepetition Senior Secured Parties are hereby granted an allowed administrative expense claim in the Cases ahead of and senior to any and all other administrative expense claims in such Chapter 11 Cases to the extent of any postpetition Diminution in Value of the Prepetition Senior Collateral, including Cash Collateral (the “<u>Senior Lender Superpriority Claim</u>”); <u>provided, however</u>, that in no event shall the Senior Lender Superpriority Claim be payable from the DIP Collateral Deposit Priority Account or the Professional Fee Account. • <i>Interest, Fees, and Payments.</i> The Prepetition Senior Agent, for the benefit of the Prepetition Senior Secured Parties, shall be entitled to interest at the default rate on account of the outstanding Prepetition Senior Obligations, which shall be accrued and payable, whether arising before or after the Petition Date, and paid in the time and manner set

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	<p>forth in the Prepetition Senior Credit Documents. Without limiting any rights of the Prepetition Senior Agent, for the benefit of the Prepetition Secured Parties, under section 506(b) of the Bankruptcy Code which are hereby preserved, the Debtors shall pay or reimburse, without further Court order, the fees, costs, expenses and charges payable under the Prepetition Senior Credit Documents, including, without limitation, the fees and expenses of the Prepetition Senior Agent as provided in, <i>inter alia</i>, Section 16.9 of the Prepetition Senior Credit Agreement, whether accrued pre-petition or post-petition, and, including, but not limited to, reasonable attorneys' fees and expenses actually incurred (including, without limitation, the fees and expenses of counsel to the Prepetition Senior Agent, Blank Rome LLP) (the "<u>Prepetition Senior Secured Parties' Legal Fees</u>"). After delivery of a monthly summary statement of any requested Prepetition Senior Secured Parties' Legal Fees (which shall include the total number of hours billed by attorney or other professional and a summary description of services redacted for privilege) to counsel for the Debtors, counsel for the DIP Lender, the U.S. Trustee, and any Official Committee, the Debtors shall pay such fees, costs, and expenses upon the expiration of a ten (10) days' notice period from delivery thereof or the Prepetition Senior Agent shall charge the prepetition loan balance for such fees, costs, and expenses; provided that none of such fees and expenses hereunder shall be subject to approval by the Court or the United States Trustee Guidelines, provided further, that all accrued and outstanding Prepetition Senior Secured Parties' Legal Fees through the payoff date shall be included in the payoff amount. No recipient of any such payment shall be required to file with respect thereto any interim or final fee application with the Court. In the event the Debtors, the DIP Lender, the U.S. Trustee and/or any Official Committee dispute(s) any monthly summary statement or portion thereof, it/they must transmit a written notice to the Prepetition Senior Agent and its counsel within five (5) business days of the delivery of the relevant monthly summary statement. The parties shall engage in good faith discussions in an effort to resolve any such dispute and, to the extent that the parties are unable to expeditiously resolve the same, the dispute shall be presented to the Bankruptcy Court for its adjudication. Notwithstanding any timely dispute of any portion of a summary monthly statement, the Debtors shall pay any portion thereof that is not the subject of a timely written dispute notice.</p> <p><i>Second Lien Adequate Protection.</i> In consideration for the Debtors' use of the Prepetition Subordinate Collateral (including, subject to paragraph 9(c) of the Interim Order, Cash Collateral), and to protect the Prepetition Subordinate Agent and the Prepetition Subordinate Lenders against the risk of Diminution in Value of their interests in the Prepetition Subordinate Collateral, the Prepetition</p>

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	<p>Subordinate Agent and the Prepetition Subordinate Lenders shall receive, solely to the extent of such Diminution in Value, the following adequate protection (collectively, the “<u>Subordinate Lender Adequate Protection</u>” and together with the Senior Lender Adequate Protection, the “<u>Adequate Protection</u>”):</p> <ul style="list-style-type: none"> • <i>Subordinate Lender Adequate Protection Liens.</i> As consideration to the Prepetition Subordinate Secured Parties for their agreement to the terms of the Interim Order and the stipulations and consents set forth herein, and as adequate protection and replacement collateral for the Prepetition Subordinate Secured Parties’ interests in the Prepetition Subordinate Collateral resulting from: (i) the use, sale or lease of the Prepetition Subordinate Collateral, and (ii) the imposition of the automatic stay (the “<u>Subordinate Lender Adequate Protection Obligations</u>”), the Debtors hereby grant to the Prepetition Subordinate Agent, for the benefit of the Prepetition Subordinate Lenders, an additional and replacement second priority, valid, binding, enforceable, non-avoidable, and automatically perfected, <i>nunc pro tunc</i> to the Petition Date, post-petition security interest in and lien on (the “<u>Subordinate Lender Adequate Protection Liens</u>” together with the Senior Lender Adequate Protection Liens, the “<u>Adequate Protection Liens</u>”), without the necessity of the execution by the Debtors (or recordation or other filing) of security agreements, control agreements, pledge agreements, financing statements, mortgages, or other similar documents, all of the right, title and interest of each Debtor and its “estate” (as created pursuant to section 541(a) of the Bankruptcy Code) in, to and under all present and after-acquired DIP Collateral, other than funds in the Professional Fee Account. The Subordinate Lender Adequate Protection Liens shall be subject to any Permitted Prior Liens and shall secure the Subordinate Lender Adequate Protection Obligations solely to the extent of any Diminution in Value of the Prepetition Subordinate Collateral from and after the Petition Date and shall be subject to the Carve-Out. • <i>Subordinate Lender Superpriority Claims.</i> As further adequate protection for and to the extent permitted by sections 503(b) and 507(b) of the Bankruptcy Code, the Prepetition Subordinate Secured Parties are hereby granted an allowed administrative expense claim in the Cases ahead of and senior to any and all other administrative expense claims in such Chapter 11 Cases (other than the Senior Lender Superpriority Claim and the PNC Indemnity Adequate Protection Claim) to the extent of any postpetition Diminution in Value of the Prepetition Subordinate Collateral, including Cash Collateral (the “<u>Subordinate Lender Superpriority Claim</u>”); <u>provided, however</u>, that in no event shall the Subordinate Lender Superpriority Claim be payable from the DIP Collateral Deposit Priority Account or the Professional Fee Account.

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	<ul style="list-style-type: none"> <p><i>Interest, Fees, and Payments.</i> The Prepetition Subordinate Agent, for the benefit of the Prepetition Subordinate Secured Parties, shall be entitled to interest on account of the outstanding Prepetition Subordinate Obligations, which shall be accrued and payable-in-kind, whether arising before or after the Petition Date, in the time and manner set forth in the Prepetition Subordinate Credit Documents. Without limiting any rights of the Prepetition Subordinate Agent, for the benefit of the Prepetition Subordinate Parties, under section 506(b) of the Bankruptcy Code which are hereby preserved, the Debtors shall pay or reimburse, without further Court order, the fees, costs, expenses and charges payable under the Prepetition Subordinate Credit Documents, including, without limitation, the fees and expenses of the Prepetition Subordinate Agent as provided in the Prepetition Subordinate Credit Agreement, whether accrued pre-petition or post-petition, and, including, but not limited to, reasonable and documented attorneys' fees and expenses actually incurred (including, without limitation, the fees and expenses of counsel to the Prepetition Subordinate Agent, Greenberg Traurig, LLP) (the "<u>Prepetition Subordinate Secured Parties' Legal Fees</u>"). After delivery of a monthly summary statement of any requested Prepetition Subordinate Secured Parties' Legal Fees (which shall include the total number of hours billed by attorney or other professional and a summary description of services redacted for privilege) to counsel for the Debtors, the U.S. Trustee, and any Official Committee, the Debtors shall pay such fees, costs, and expenses within ten (10) days from delivery thereof; provided that none of such fees and expenses hereunder shall be subject to approval by the Court or the United States Trustee Guidelines. No recipient of any such payment shall be required to file with respect thereto any interim or final fee application with the Court. In the event the Debtors, the U.S. Trustee and/or any Official Committee dispute(s) any monthly summary statement or portion thereof, it/they must transmit a written notice to the Prepetition Subordinate Agent and its counsel within five (5) business days of the delivery of the relevant monthly summary statement. The parties shall engage in good faith discussions in an effort to resolve any such dispute and, to the extent that the parties are unable to expeditiously resolve the same, the dispute shall be presented to the Bankruptcy Court for its adjudication. Notwithstanding any timely dispute of any portion of a summary monthly statement, the Debtors shall pay any portion thereof that is not the subject of a timely written dispute notice. If and only if the Court determines that the Prepetition Subordinate Secured Parties were undersecured as of the Petition Date under section 506(b) of the Bankruptcy Code, then the Debtors or any other party in interest may assert that the payments made in respect of this paragraph 11(b)(iii) constitute and may be recharacterized as principal payments on account of the Prepetition Subordinate Obligations</p>

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	<p>or as part of the Prepetition Subordinate Secured Parties' secured claim. All defenses to any effort to recharacterize such payments are expressly reserved.</p> <p><i>Priority of Adequate Protection Liens</i></p> <ul style="list-style-type: none"> • Subject to paragraph 9(c) of the Interim Order, for the avoidance of doubt, the Senior Lender Adequate Protection Liens shall be, subject to the Carve-Out, first priority perfected liens on the Prepetition Senior Collateral senior to the DIP Liens. The Subordinate Adequate Protection Liens shall be subordinate and subject to (i) Senior Prepetition Liens, (ii) the Senior Lender Adequate Protection Liens, (iii) the PNC Indemnity Adequate Protection Liens, (iv) the DIP Liens, and (v) the Carve-Out, but shall not be payable from funds in the DIP Collateral Deposit Priority Account or the Professional Fee Account. <p><i>Priority of Adequate Protection Superpriority Claims</i></p> <ul style="list-style-type: none"> • Subject to paragraph 9(c) of the Interim Order, the Senior Lender Adequate Protection Superpriority Claim shall have priority over all administrative expense claims and unsecured claims against the Debtors or their estates of any kind or nature whatsoever, including, without limitation, administrative expenses of the kinds specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 364, 365, 503(a), 503(b), 506(c) (subject to entry of the Final Order), 507(a), 507(b), 546(c), 546(d), 726, 1113 and 1114 of the Bankruptcy Code, and subject to the Carve-Out, shall be senior to (i) the PNC Indemnity Adequate Protection Claim, (ii) Subordinate Adequate Protection Superpriority Claim, (iii) the DIP Superpriority Claim. <p><u>Additional Adequate Protection.</u> As further adequate protection, the Debtors are authorized and directed as follows:</p> <ul style="list-style-type: none"> • <i>Budget Compliance.</i> The Debtors shall comply with the Approved Budget (subject to Permitted Variances), and all Budget Variance Reporting requirements set forth herein and in the DIP Loan Documents. • <i>Information; Access to Books and Records.</i> The Debtors will provide to the DIP Agent and the DIP Lenders (subject to the execution of appropriate confidentiality agreements), such reports and information required to be delivered pursuant to the DIP Credit Agreement, and such other reports and information as may be reasonably requested by the DIP Agent or the DIP Lenders. In addition, without limiting the rights (if any) of access and information afforded to the Prepetition Secured Parties, the DIP Agent and the DIP Lenders under this Order and/or the

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	<p>DIP Loan Documents, the Debtors shall provide representatives, agents and/or employees of the DIP Agent reasonable access to the Debtors' premises during regular business hours and their books and records in accordance with this Order and/or the DIP Loan Documents and shall reasonably cooperate, consult with, and provide to such persons all such information as may be reasonably requested. In addition, the Debtors authorize their independent certified public accountants, financial advisors, investment bankers, and consultants to cooperate, consult with, and provide to the DIP Agent and each of the DIP Lenders (subject to execution of an appropriate confidentiality agreement) information as may be reasonably requested with respect to the business, results of operations and financial condition of any of the Debtors.</p> <ul style="list-style-type: none"> • <u>Adequate Protection Reservation.</u> The receipt by the Prepetition Secured Parties of the adequate protection provided pursuant to paragraphs 11 and 12 of this Order shall not be deemed an admission that the interests of the Prepetition Parties are indeed adequately protected. Further, this Order shall not prejudice or limit the rights of the Prepetition Secured Parties to seek additional relief with respect to the use of Cash Collateral or for additional adequate protection; provided that any such additional or alternative adequate protection approved by the Court shall at all times be (a) subordinate and junior to the DIP Obligations and the DIP Liens granted under this Order and the DIP Loan Documents and the Carve-Out or (b) as to the Prepetition Senior Secured Parties, consistent with terms of the Consent Letter and the Intercreditor Agreement as modified by the Consent Letter. Without limiting the foregoing, nothing herein shall impair or modify the application of section 507(b) of the Bankruptcy Code in the event that the adequate protection provided hereunder is insufficient to compensate for any Diminution in Value during any of the Cases subject to the Carve-Out.
<p>Payment of Prepetition Senior Obligations</p> <p>Fed. R. Bankr. P. 4001(c)(1)(B)(i), (ii)</p> <p>DIP Credit Agreement §4.2</p> <p>Interim Order, ¶¶ 5-7, 9</p>	<p>As a matter of administrative convenience and to avoid issues related to commingling of inventory and proceeds thereof, the Prepetition Senior Secured Obligations shall be repaid from time to time from all Cash Collateral, whether received pre or postpetition, and from the proceeds from the sale or other disposition of any Prepetition Senior Collateral and DIP Collateral (other than the Professional Fee Account and the DIP Collateral Deposit Priority Account) until such time as the Prepetition Senior Secured Obligations are paid in full (other than contingent claims for which no claim has been asserted subject to the provisions of paragraph 33 of the Interim DIP Order). The Debtors shall remit to the Prepetition Senior Agent one hundred percent (100%) of the collections related to and proceeds of the Prepetition Senior Collateral (including the Cash Collateral) for application to the Prepetition Senior Secured Obligations (including any issued and outstanding letters of credit as and when drawn)</p>

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	<p>consistent with the terms of the Prepetition Senior Credit Agreement or, if any such collections or proceeds are received directly by the Debtors, they are to be promptly remitted to the Prepetition Senior Agent for application in each case to the Prepetition Senior Secured Obligations. In addition, the Prepetition Senior Secured Parties, the Prepetition Subordinate Secured Parties, the DIP Secured Parties, and the Debtors agree that to the extent the Debtors receive collections related to DIP Collateral that is not Prepetition Senior Collateral, an amount equal to such collections shall be remitted to the Prepetition Senior Agent to repay the Prepetition Senior Secured Obligations until such time as the Prepetition Senior Secured Obligations are paid in full (other than contingent claims for which no claim has been asserted subject to the provisions of paragraph 33 of the Interim DIP Order). Notwithstanding anything to the contrary and except for application of amounts from the Professional Fee Account and the DIP Collateral Deposit Priority Account on which the Prepetition Senior Secured Parties do not have a lien, neither the DIP Secured Parties nor the Prepetition Subordinate Secured Parties shall be repaid on account of the DIP Obligations or Prepetition Subordinate Secured Obligations, respectively, until the Prepetition Senior Obligations are paid in full in cash (other than contingent claims for which no claim has been asserted subject to the provisions of paragraph 33 of the Interim DIP Order). Moreover, the Debtors hereby grant to the Prepetition Senior Agent, on behalf of the Prepetition Senior Secured Parties, a first priority security interest in and lien on all post-petition accounts receivable generated from the post-petition use, consumption or sale of the Prepetition Senior Collateral ("<u>Specified Post-Petition Accounts</u>"), which shall secure the Prepetition Senior Obligations and shall be senior to the DIP Liens. The Prepetition Senior Secured Parties are also being granted adequate protection as set forth herein.</p> <p>In addition, no later than the earlier of (A) the entry of a Final Order or (B) March 15, 2017, or such earlier date as required under the Consent Letter, all then-outstanding Prepetition Senior Secured Obligations (other than contingent claims which have not been asserted) shall in any event be paid in full in cash, including, without limitation, cash collateralization of all outstanding letters of credit in accordance with the Prepetition Senior Credit Agreement, all accrued and unpaid legal fees through such payoff date, and all miscellaneous fees including, without limitation, accrued and unpaid Treasury Management fees, unused line fees, and collateral monitoring fees, through the repayment, purchase, or refinancing in cash of the then outstanding Prepetition Senior Secured Obligations. Upon the repayment of the Prepetition Senior Obligations in full (other than contingent indemnity obligations for which no claims have been asserted), the Debtors or DIP Secured Parties, as applicable, shall provide to the Prepetition Senior Agent certain Cash Collateral in an amount not less than \$500,000 as security for indemnity and expense obligations of the Borrowers under the Prepetition Senior Credit Agreement (the "<u>Payoff</u></p>

Material Provision	Summary Description of Material Provision
	<p><u>Indemnity Account</u>”), including all reasonable and documented legal fees and expenses actually incurred of the Prepetition Senior Agent and any right to indemnification of the Prepetition Senior Secured Parties under the Prepetition Senior Credit Documents (and the Prepetition Senior Secured Parties are permitted to be paid for such legal fees and expenses by charging the Payoff Indemnity Account without further order of this Court from time to time upon submission of a summary invoice on notice to the Debtors, the DIP Agent, the Official Committee, and the Office of the United States Trustee) in accordance with paragraph 11(a)(iii) of this Order. The Prepetition Senior Secured Parties are hereby granted, as adequate protection for such indemnity and expense obligations under the Prepetition Senior Credit Documents, replacement Liens (without the necessity of filing any lien perfection documents or charges) on the DIP Collateral senior to the DIP Liens, but subject to Permitted Prior Liens and the Carve-Out, (collectively, the “<u>PNC Indemnity Adequate Protection Liens</u>”) and an administrative claim in each of the Cases (the “<u>PNC Indemnity Adequate Protection Claim</u>” collectively with the PNC Indemnity Adequate Protection Liens, the “<u>PNC Indemnity Adequate Protection Obligations</u>”); <u>provided that</u>, the (x) the PNC Indemnity Adequate Protection Liens shall be automatically released and of no force and effect and any unused balance held in the Payoff Indemnity Account (after reserving for any cash management and treasury obligations and monitoring of the Cases) shall be released to the Debtors for the benefit of the DIP Secured Parties after (1) expiration of the Challenge Period so long as no Challenge has been timely filed with respect to the Prepetition Senior Obligations and/or the Prepetition Senior Secured Parties, (2) all of the findings, Debtors’ Stipulations, waivers, releases, affirmations, and other stipulations hereunder as to the priority, extent, and validity as to the Prepetition Secured Parties’ claims, lien, and interests are in full force and effect and forever binding upon the Debtors’ bankruptcy estates and all creditors, interest holders, and other parties in interest in the Cases and any Successor Case, and (3) any and all claims or causes of action against the Prepetition Secured Parties are deemed released by the Debtors’ estates, all creditors, interest holders, and other parties in interest in the Cases and any Successor Case; and (y) the PNC Indemnity Adequate Protection Liens shall be senior in priority to the DIP Liens but subject to the Carve-Out and any Permitted Prior Liens. Notwithstanding the foregoing, the Prepetition Senior Secured Parties will not object to any sale of all or substantially all of the Prepetition Senior Collateral and DIP Collateral so long as (i) such sale does not purport to sell the Prepetition Senior Collateral or the DIP Collateral free and clear of the Prepetition Senior Liens, the Senior Lender Adequate Protection Liens, the replacement liens on the Specified Post-Petition Accounts, or the PNC Indemnity Adequate Protection Liens, or (ii) such sale of the Prepetition Senior Collateral is free and clear of the Prepetition Senior Liens or the Senior Lender Adequate Protection Liens and the buyer agrees to indemnify the Prepetition Senior Secured Parties through an agreement in form and substance acceptable to the Prepetition Senior Agent with respect to any Challenge or any potential Challenge (to the extent the Challenge Period has not</p>

Material Provision	Summary Description of Material Provision
	expired) for any amounts in excess of the Payoff Indemnity Account.
<p>Representations and Warranties:</p> <p>Fed. R. Bankr. P. 4001(c)(1)(B)</p> <p>DIP Credit Agreement Article V</p>	<p>The DIP Credit Agreement contains customary representations and warranties (subject to certain exceptions, qualifications and carveouts), including the following:</p> <ul style="list-style-type: none"> • Due authorization • Formation and qualification • Tax returns • Budget, Financing Order and Bankruptcy Matters • Entity Names • OSHA Environmental Compliance • No Litigation, Violation, Indebtedness, or Default; ERISA Compliance • Intellectual Property Matters • Licenses and Permits • No Burdensome Restrictions • No Labor Disputes • Margin Regulations • Investment Company Act • Disclosure • Swaps • Business and Property of the Borrower • Ineligible Securities • Federal Securities Laws • Equity Interests • Commercial Tort Claims • Letter of Credit Rights • Material Contracts • Credit Card Agreements
<p>Affirmative Covenants and Negative Covenants</p> <p>Fed. R. Bankr. P. 4001(c)(1)(B)</p> <p>DIP Credit Agreement Article VI and Article VII</p>	<p>Affirmative Covenants: The DIP Credit Agreement contains customary affirmative covenants (subject to certain exceptions, qualifications and carveouts), including the following:</p> <ul style="list-style-type: none"> • Compliance with laws • Preservation and maintenance of existence, business and properties • Proper books and records • Payment of taxes • Procurement and maintenance of certain insurance, insurance certificates and endorsements • Payment of debt and leasehold obligations • Environmental matters

Material Provision	Summary Description of Material Provision
	<ul style="list-style-type: none"> • Financial statements • Federal Securities Laws • Execution of supplemental instruments or documents relating to the collateral • Enforce all rights under the acquisition agreement • Observe and perform under the credit card agreements • Post-closing deliveries, including delivery of certain schedules and collateral documents • Compliance with milestones • Compliance with sale covenants in the Financing Order <p>Negative Covenants: The DIP Credit Agreement contains customary negatives covenants (subject to certain exceptions, qualifications and carveouts), including the following:</p> <ul style="list-style-type: none"> • No mergers, consolidations, acquisitions or sale of assets • No liens • No investments • No capital expenditures • No restricted payments • No debt • No changes in the nature of the business • No transactions with affiliates • Proceeds limited to uses set forth in the Budget • No creation of new subsidiaries • No changes in the fiscal year or accounting treatment • No pledge of credit on purchases, commitments or contracts • No change in legal entity, jurisdiction, or organization • Compliance with ERISA • No prepayments of debt • No deviations from the Budget beyond the permitted variances and other agreed upon variances in the Financing Order • No closures of any stores other than in accordance with the store closing program
<p>Financial Covenant</p> <p>Fed. R. Bankr. P. 4001(c)(1)(B)</p> <p>DIP Credit</p>	<p>The DIP Credit Agreement contains only the following financial covenant:</p> <p>Compliance with the variance test, as further described under the Section “Budget” below.</p>

Material Provision	Summary Description of Material Provision
Agreement §7.18	
Financial Reporting Requirements Fed. R. Bankr. P. 4001(c)(1)(B) DIP Credit Agreement §9.1	The Borrower shall provide the Administrative Agent and the Lenders with financial reporting customary for facilities of this size and nature. Monthly unaudited financials are due 30 days after the end of each calendar month. Delivery of audited annual financials is required only if requested by the Agent.
Other Reporting Requirements Fed. R. Bankr. P. 4001(c)(1)(B) DIP Credit Agreement §9.2, §9.3	The DIP Credit Agreement contains customary reporting requirements, including, without limitation, the following: <ul style="list-style-type: none"> • Notices regarding management letters, SEC filings and reports, ERISA, and environmental • The Borrowers shall provide updates related to the collateral. • The Borrowers shall provide notices to the Agent as to any name changes, any amendments to any organization documents, and any changes to its address or organization numbers.
Budget Fed. R. Bankr. P. 4001(c)(1)(B) DIP Credit Agreement §2.21, §7.18	<ul style="list-style-type: none"> • Proceeds of the DIP Credit Agreement may be used to operate the business of the Borrowers to the extent permitted by the Budget (subject to permitted variances and other agreed upon variances). • Delivery of the Budget, updates to the Budget, and variance reports are all as set forth in the Financing Order.
Case Milestones Fed. R. Bankr. P. 4001(c)(1)(B)(vi) DIP Credit Agreement §6.17 APA §8.1(f)	<p>The milestones shall be as set forth in the Asset Purchase Agreement among the Company, Eastern Mountain Sports, LLC, Bob’s Stores, LLC, Eastern Outfitters, LLC, Subortis IP Holdings, LLC, and Bob’s/EMS Gift Card, LLC, each as a seller, and SportsDirect, as buyer (the “<u>APA</u>”), which are:</p> <p>The Debtors shall not have filed these Cases within one (1) Business Day of the date of entry into the APA, (ii) the Bidding Procedures and APA Approval Order shall not have been entered on or prior to thirty (30) days of the Petition Date; or (iii) the Sale Order is not entered by the Bankruptcy Court within sixty (60) days after the Petition Date and does not become a Final Order within seventy five (75) days after the Petition Date (all such terms as defined in the APA).</p>

Material Provision	Summary Description of Material Provision
<p>Conditions Precedent to Closing</p> <p>Fed. R. Bankr. P. 4001(c)(1)(B)</p> <p>DIP Credit Agreement § 8.1</p>	<p>The availability of the financing under the DIP Credit Agreement is subject to the satisfaction of customary conditions for DIP financings, including, but not limited to the following conditions precedent:</p> <ul style="list-style-type: none"> • <u>Credit Agreement</u>. Execution and delivery of the DIP Credit Agreement. • <u>Other Documents</u>. Execution and delivery of each of the other loan documents under the DIP Credit Agreement. • <u>Bankruptcy Case Conditions</u>. <ul style="list-style-type: none"> ○ The Bankruptcy Cases shall be pending as cases under Chapter 11 of the Bankruptcy Code, all of the “first day orders” and all related pleadings shall have been provided in advance to the Agent, and no trustee or examiner shall have been appointed with respect to any Borrower or any property or estate of any Borrower. ○ The Interim Financing Order shall have been entered by the Bankruptcy Court not later than February 10, 2017, and the Agent shall have received a certified copy of such Interim Financing Order. ○ The Borrowers, the Agent and the Prepetition Senior Agent shall have agreed upon the Budget. ○ The Borrowers shall have entered into an asset purchase agreement with the Agent and filed a bid procedures motion with the Bankruptcy Court. • <u>Secretary’s Certificates, Authorizing Resolutions and Good Standings of Borrowers</u>. Agent shall have received a customary secretary certificate with (a) copies of resolutions, (b) the incumbency and signature of the officers of such Borrower, (c) copies of the organizational documents of such Borrower as in effect on such date, complete with all amendments thereto, and (d) the good standing (or equivalent status) of such Borrower. • <u>No Litigation</u>. No action, suit, investigation, litigation or proceeding (other than the Bankruptcy Cases) shall be pending or threatened against any Borrower. • <u>Fees</u>. The Borrowers shall have paid all fees and expenses required to be paid or reimbursed on the effective date.
<p>Conditions Precedent to</p>	<p>The agreement of Lenders to make any advance requested to be made on any date (including the initial Advance), is subject to the satisfaction of customary</p>

Material Provision	Summary Description of Material Provision
<p>Borrowings</p> <p>Fed. R. Bankr. P. 4001(c)(1)(B)</p> <p>DIP Credit Agreement §8.2</p>	<p>conditions for DIP financings, including, but not limited to the following conditions precedent:</p> <ul style="list-style-type: none"> • <u>Representations and Warranties</u>. Each of the representations and warranties made by any Borrower and in the Other Documents that are qualified as to materiality or Material Adverse Effect shall be true and correct (after giving effect to such qualifications therein) and the representations and warranties that are not so qualified shall be true and correct in all material respects, in each case with the same effect as though such representations and warranties had been made on and as of the date of the making of each such Advance and after giving effect thereto, except to the extent that such representations and warranties expressly relate solely to an earlier date (in which case such representations and warranties shall have been true and correct to the extent required on and as of such earlier date). Certain specified representations will not be brought down until after the post-closing schedules are delivered, as further described under “Affirmative Covenants.” • <u>No Default</u>. No Event of Default or Default shall have occurred and be continuing. • <u>Notice of Borrowing</u>. The Agent shall have received the notice of requested advance. • <u>No Material Adverse Effect</u>. No Material Adverse Effect has occurred. • <u>Budget</u>. The Borrowers shall be in compliance with the Budget, after giving effect to permitted variances and other agreed upon variances.
<p>Expenses and Indemnification:</p> <p>Fed. R. Bankr. P. 4001(c)(1)(B)(vi)</p> <p>DIP Credit Agreement §16.5, §16.9</p>	<p>The Borrowers agree to pay or reimburse the Agent and the Lenders for all reasonable and documented out-of-pocket costs and expenses (including, without limitation, the fees and expenses of any consultants, accounting firms, attorneys, auditors, financial advisors or other advisors and professionals retained by the Agent and the Lenders) incurred in connection with the diligence, negotiation, documentation consummation, administration or any other aspect of the DIP Credit Agreement and the other loan documents and any amendments.</p> <p>The Borrowers further agree to pay or reimburse the Agent and the Lenders for all reasonable and documented out-of-pocket costs and expenses (including all such costs and expenses incurred during any legal proceeding, including any proceeding under any bankruptcy or other insolvency law, and including the fees and expenses of any consultants, accounting firms, auditors, attorneys, financial advisors or other advisors and professionals retained by the Agent and the Lenders) incurred in connection with enforcement.</p>

Material Provision	Summary Description of Material Provision
	The DIP Credit Agreement contains customary indemnification provisions (including coverage of environmental liabilities) by the Borrowers in favor of the Agent, each Lender and each of their respective officers, directors, affiliates, advisors, attorneys, employees and agents of each of them.
Assignments and Participations: Fed. R. Bankr. P. 4001(c)(1)(B)(vi) DIP Credit Agreement §16.3	Assignments must be in a minimum amount of \$1.0 million and do not require the consent of the Administrative Agent or the Borrower.
Required Lenders: Fed. R. Bankr. P. 4001(c)(1)(B)(vi) DIP Credit Agreement §1.2	Lenders (not including any defaulting lender) holding at least 50% of either (a) the aggregate of the commitment amounts of all Lenders (excluding any defaulting lender), or (b) after the termination of all commitments of Lenders under the DIP Credit Agreement, the sum of the outstanding advances under the DIP Credit Agreement; provided, however, if there are fewer than three (3) Lenders, Required Lenders shall mean all Lenders (excluding any defaulting lender).

Basis for Relief Requested

33. Section 364 of the Bankruptcy Code distinguishes among (a) obtaining unsecured credit in the ordinary course of business, (b) obtaining unsecured credit out of the ordinary course of business, and (c) obtaining credit with specialized priority or with security. If a debtor in possession cannot obtain postpetition credit on an unsecured basis, pursuant to section 364(c) of the Bankruptcy Code, a court may authorize the obtaining of credit or the incurring of debt, repayment of which is entitled to superpriority administrative expense status or is secured by a senior lien on unencumbered property or a junior lien on encumbered property, or a combination of the foregoing. Because the Debtors propose to obtain financing under the DIP Financing that primes the Prepetition Subordinate Lenders and the Prepetition Subordinate Agent, the approval

of the DIP Financing is governed by sections 364(c) and 364(d) of the Bankruptcy Code as to those parties.

A. Financing Under Section 364(c)

34. Section 364 of the Bankruptcy Code authorizes a debtor to obtain, in certain circumstances, postpetition financing on a secured or superpriority basis, or both. Specifically, section 364(c) of the Bankruptcy Code provides, in pertinent part, that the Court, after notice and a hearing, may authorize a debtor that is unable to obtain credit allowable as an administrative expense under section 503(b)(1) of the Bankruptcy Code to obtain credit or incur debt:

- with priority over any or all administrative expenses of the kind specified in section 503(b) or 507(b) of the Bankruptcy Code;
- secured by a lien on property of the estate that is not otherwise subject to a lien; or
- secured by a junior lien on property of the estate that is subject to a lien.

11 U.S.C. § 364(c). Thus, pursuant to section 364(c) of the Bankruptcy Code, a debtor may, in the exercise of its business judgment, incur secured debt if the debtor has been unable to obtain adequate unsecured credit, and the proposed borrowing is in the best interests of its estate. *See, e.g., Richmond Leasing Co. v. Capital Bank, NA.*, 762 F.2d 1303, 1311 (5th Cir. 1985) (Indeed, “more exacting scrutiny [of the debtor’s business decisions] would slow the administration of the debtor’s estate and increase its cost, interfere with the Bankruptcy Code’s provision for private control of administration of the estate, and threaten the court’s ability to control a case impartially”); *In re Ames Dept. Stores*, 115 B.R. 34, 38 (Bankr. S.D.N.Y. 1990) (with respect to postpetition credit, courts “permit debtors in possession to exercise their basic business judgment consistent with their fiduciary duties”); *see also* 3 Collier on Bankruptcy ¶ 364.03 (Alan N. Resnick & Henry J. Sommer eds. 16th ed.).

35. The statutory requirement for obtaining postpetition credit under section 364(c) of the Bankruptcy Code is a finding, made after notice and hearing, that the debtor in possession is “unable to obtain unsecured credit allowable under § 503(b)(1) of [the Bankruptcy Code] as an administrative expense.” *See Ames Dep’t Stores*, 115 B.R. at 37–39 (a debtor must show it has made a reasonable effort to seek other sources of financing under Bankruptcy Code §§ 364(a) and (b)); *In re Crouse Group, Inc.*, 71 B.R. 544, 549 (Bankr. E.D. Pa. 1987), *modified on other grounds*, 75 B.R. 553 (Bankr. E.D. Pa. 1987) (debtor seeking secured credit under Bankruptcy Code § 364(c) must prove it was unable to obtain unsecured credit pursuant to Bankruptcy Code § 364(b)).

36. Courts have articulated a three-part test to determine whether a debtor may obtain financing under section 364(c):

- the debtor is unable to obtain unsecured credit solely under section 364(b) (*i.e.*, by granting a lender administrative expense priority);
- the credit transaction is necessary to preserve the assets of the estate; and
- the terms of the transaction are fair, reasonable, and adequate, given the circumstances of the debtor-borrower and the proposed lender.

See, e.g., In re Los Angeles Dodgers LLC, 457 B.R. 308, 312 (Bankr. D. Del. 2011); *In re Aqua Assocs.*, 123 B.R. 192, 195-96 (Bankr. E.D. Pa. 1991) (applying the above test and holding that “[o]btaining credit should be permitted not only because it is not available elsewhere, which could suggest the unsoundness of the basis for the use of the funds generated by credit, but also because the credit acquired is of significant benefit to the debtor’s estate and the terms of the proposed loan are within the bounds of reason, irrespective of the inability of the debtor to obtain comparable credit elsewhere”); *Ames Dep’t Stores*, 115 B.R. at 37-39.

37. To show financing required is not obtainable on an unsecured basis, a debtor need only demonstrate “by a good faith effort that credit was not available without” the protections of section 364(c). *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.* 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); *see also Ames Dep’t Stores*, 115 B.R. at 40 (approving financing facility and holding the debtor made reasonable efforts to satisfy the standards of section 364(c) where it approached four lending institutions, was rejected by two, and selected the most favorable of the two offers it received).

38. The Debtors attempted to secure financing on more favorable terms, but given the Debtors’ asset base and balance sheet, they were unable to do so. The Debtors have been unable to obtain (a) adequate unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense; (b) credit for money borrowed secured solely by a lien on property of the estate that is not otherwise subject to a lien; or (c) credit for money borrowed secured by a junior lien on property of the estate which is subject to a lien, in each case, on more favorable terms and conditions than those provided in the DIP Financing. Indeed, as set forth in the Stevenson Declaration, no other sophisticated third-party lender was willing to extend financing (other than perhaps a very limited amount) on anything less than a priming basis. Therefore, the Debtors believe entering a DIP Financing with superpriority administrative claims, priming liens (as set forth in paragraph 6(a) of the DIP Order) on encumbered property,

and first priority liens on the Debtors' unencumbered property is appropriate under the circumstances of these Cases.

39. For these reasons, the Debtors submit entry into the DIP Financing is in the best interest of the Debtors' estates, is necessary to preserve the value of estate assets and is an exercise of the Debtors' sound and reasonable business judgment. The Debtors respectfully request the Court to authorize the Debtors to provide the Lenders a superpriority administrative expense status for any obligations arising under the DIP Credit Agreement as provided for in section 364(c)(1) of the Bankruptcy Code.

B. Financing and Adequate Protection Under Section 364(d)(1)

40. In addition to authorizing financing under section 364(c) of the Bankruptcy Code, courts also may authorize a debtor to obtain postpetition credit secured by a lien that is senior or equal in priority to existing liens on the encumbered property, without the consent of the existing lien holders, if the debtor cannot otherwise obtain such credit and the interests of existing lien holders are adequately protected. *See* 11 U.S.C. § 364(d)(1). The Debtors seek approval of the DIP Financing under section 364(d)(1) of the Bankruptcy Code.

41. When determining whether to authorize a debtor to obtain credit secured by a "priming" lien as authorized by section 364(d) of the Bankruptcy Code, courts focus on whether the transaction will enhance the value of the debtor's assets. Courts consider a number of factors, including, without limitation:

- whether the party subject to a priming lien has consented to such treatment;
- whether alternative financing is available on any other basis (i.e., whether any better offers, bids or timely proposals are before the court);
- whether the proposed financing is necessary to preserve estate assets and is necessary, essential, and appropriate for continued operation of the debtor's business;

- whether the terms of the proposed financing are reasonable and adequate given the circumstances of both the debtor and proposed lender(s); and
- whether the proposed financing agreement was negotiated in good faith and at arm's length and entry therein is an exercise of sound and reasonable business judgment and in the best interest of the debtor's estate and its creditors.

See, e.g., In re Ames Dep't Stores, Inc., 115 B.R. 34, 37-39 (Bankr. S.D.N.Y. 1990); *see also* 3 Collier on Bankruptcy ¶ 364.05 (Alan N. Resnick & Henry J. Sommer eds. 16th ed.). The Debtors respectfully submit the DIP Financing, including the priming liens to the extent set forth in the DIP Order, is appropriate under this analysis and the facts of these Cases.

42. First, the Debtors and their advisors explored a variety of possible financing sources, and ultimately determined the DIP Lender offered the best option for obtaining the postpetition financing the Debtors require. The Debtors and the DIP Lender negotiated the DIP Financing in good faith and at arms-length, and the DIP Financing reflects the most favorable terms on which the DIP Lender were willing to offer financing.

43. Second, the Debtors require access to the DIP Financing to provide adequate liquidity for the operation and maintenance of the Debtors' assets and to preserve and enhance the value of their estates for the benefit of all creditors and other parties in interest. Absent the DIP Financing, the Debtors could suffer material and irreparable harm and a liquidity crisis. Accordingly, value will be lost and the Debtors' ability to effectuate a going concern transaction will be significantly threatened. Conversely, the Debtors' access to liquidity will benefit all stakeholders by facilitating the Debtors' efforts to preserve and enhance the value of the Debtors' assets.

44. Third, the DIP Financing will provide access to incremental liquidity, which the Debtors have determined is sufficient and necessary to allow the Debtors to maintain their operations notwithstanding the commencement of these Cases and to continue the approved

capital projects that are critical to the Debtors' short term ability to generate increased cash flow, maintain and ultimately increase the value of their assets, and to their long term ability to reorganize. Accordingly, the terms of the DIP Financing are reasonable and adequate to support the Debtors' operations and restructuring activities through the pendency of these Cases.

45. Fourth, and as discussed more fully below, the Debtors will provide adequate protection to their prepetition secured lenders.

(i) Requirement under Section 364(d) of Providing Adequate Protection

46. A debtor may obtain postpetition credit "secured by a senior or equal lien on property of the estate that is subject to a lien only if "the debtor, among other things, provides "adequate protection" to those parties whose liens are primed. *See* 11 U.S.C. § 364(d)(1)(B). What constitutes adequate protection is decided on a case-by-case basis, and adequate protection may be provided in various forms, including payment of adequate protection fees, payment of interest, or granting of replacement liens or administrative claims. *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 Realty Sw. Assocs.*, 140 B.R. 360 (Bankr. S.D.N.Y. 1992); *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" (citations omitted)). The DIP Financing will provide adequate protection to the Prepetition Senior Secured Lenders and the Prepetition Senior Secured Agent as well as the Prepetition Subordinate Lenders and the Prepetition Subordinate Agent in several critical ways.

47. First, the Debtors will provide adequate protection to the Prepetition Senior Agent and the Prepetition Senior Lenders for any Diminution in Value of their interests in the

Prepetition Senior Collateral, including Cash Collateral, (b) replacement liens for the Specified Post-Petition Accounts (defined herein), and (c) liens on the DIP Collateral with respect to the indemnity obligations under the Prepetition Senior Credit Documents.

48. Second, with respect to the Prepetition Subordinate Agent and the Prepetition Subordinate Lenders, the Debtors will provide adequate protection to the Prepetition Subordinate Agent and the Prepetition Subordinate Lenders for any Diminution in Value of their interests in the Prepetition Second Lien Collateral, including Cash Collateral.

49. Finally, the DIP Financing requires certain financial reporting and other reporting for the benefit of the Lender. The Debtors submit the foregoing adequate protection satisfies the requirements of section 362 of the Bankruptcy Code, and the Court should approve the DIP Financing as a sound and reasonable exercise of the Debtors' business judgment.

(ii) The DIP Financing is Necessary to Preserve the Assets of the Estates

50. It is essential for the Debtors to obtain financing necessary to continue, among other things, the orderly operation of the Debtors' businesses and the Cases, and to otherwise satisfy their working capital requirements. The DIP Financing will allow continued operation the Debtors' retail stores, which protects from leases from forfeiture and penalties. Without immediate approval of a new source of future liquidity, the Debtors' business operations and the Cases in general could be seriously jeopardized. The new liquidity offered by the proposed DIP Financing will ensure the Debtors can maintain and ultimately increase the value of their assets, resulting in a greater recovery for all stakeholders, and administer the Cases through the bankruptcy process. Thus, approval of the DIP Financing is crucial to maximizing the value of the Debtors' estates.

(iii) *The Terms of the DIP Financing Are Fair, Reasonable, and Appropriate*

51. The proposed DIP Financing provides generally that the security interests and superpriority administrative expense claims granted to the Lender are subject to the Carve-Out described above. In *Ames Department Stores*, the bankruptcy court found that such “carve-outs” are not only reasonable but are necessary to insure the debtors’ estates are adequately assisted by counsel and other professionals. *Ames*, 115 B.R. at 40.

52. Likewise, as further detailed in the Stevenson Declaration the Debtors believe the fees and other charges required by the Lender under the DIP Financing are reasonable and appropriate under the circumstances. The proposed fees under the DIP Financing are within the parameters of market fee structures for similar postpetition financing. Indeed, courts routinely authorize similar lender incentives beyond the explicit liens and other rights specified in section 364 of the Bankruptcy Code. *See In re Korea Chosun Daily Times, Inc.*, 337 B.R. 773, 783 (Bankr. E.D.N.Y. 2005) (postpetition financing arrangements under 364 “may include the payment of a loan commitment fee and reimbursement of reasonable fees and expenses in the event that the financing arrangement is not consummated.”).

53. The Debtors are unable to obtain alternate credit sources, the terms of the DIP Financing have been negotiated at arms-length and are not principally for the benefit of a creditor to the detriment of other parties in interest, and the Debtors’ believe, in their business judgment, the DIP Financing is in the best interest of all parties involved. The terms of the DIP Financing are in the realm of the incentives contemplated by section 364 to induce potential Lender to undertake the risks involved in providing postpetition financing to a bankruptcy estate, and should be approved.

(iv) *Application of the Business Judgment Standard*

54. Section 364 of the Bankruptcy Code authorizes a debtor to obtain secured or superpriority financing under the circumstances specified therein. Provided that an agreement to obtain secured credit does not undermine the policies underlying the Bankruptcy Code, courts grant a debtor considerable deference in the exercise of its sound business judgment in obtaining such credit. *See, e.g., In re Ames Dept. Stores, Inc.*, 115 B.R. at 40 (“[C]ases consistently reflect that the court’s discretion under section 364 [of the Bankruptcy Code] 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.”); *Trans World Airlines, Inc. v. Travelers Int’l AG (In re Trans World Airlines, Inc.)*, 163 B.R. 964, 974 (Bankr. D. Del. 1994) (approving postpetition loan and receivables facility because such facility “reflect[ed] sound and prudent business judgment”). Thus, the “normal function in reviewing requests for post-petition financing is to defer to a debtor’s own 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 Barbara K Enters., Inc.*, No. 08-11474, 2008 WL 2439649, at *14 (Bankr. S.D.N.Y. June 16, 2008).

55. To determine whether this standard is met, the Court is “required to 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 courts should not second guess a debtor’s business decision when the 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”) (internal citation omitted).

56. And, in exercising its business judgment, courts recognize a debtor is entitled (if not required) to consider non-economic benefits offered by a proposed postpetition facility:

Although all parties, including the Debtors and the Committee, are naturally motivated to obtain financing on the best possible terms, a business decision to obtain credit from a particular lender is almost never based purely on economic terms. Relevant features of the financing must be evaluated, including noneconomic elements such as the timing and certainty of closing, the impact on creditor constituencies and the likelihood of a successful reorganization.

In re ION Media Networks, Inc., No. 09-13125, 2009 WL 2902568, at *4 (Bankr. S.D.N.Y. Jul. 6, 2009).

57. As described above, after appropriate investigation and analysis, the Debtors have concluded the DIP Financing provides the best alternative available under the circumstances of these Cases. Bankruptcy courts routinely defer to a debtor's business judgment on most business decisions, including the decision to borrow money, unless such decision is arbitrary and capricious. *See In re Trans World Airlines, Inc.*, 163 B.R. 964, 974 (Bankr. D. Del. 1994) (noting the interim loan, receivables facility, and asset-based facility were approved because they "reflect[ed] sound and prudent business judgment on the part of TWA . . . [were] reasonable under the circumstances and in the best interest of TWA and its creditors"). In fact, "[m]ore exacting scrutiny would slow the administration of the Debtor's estate and increase its costs, interfere with the Bankruptcy Code's provision for private control of administration of the estate, and threaten the court's ability to control a case impartially." *Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303, 1311 (5th Cir. 1985).

58. The Debtors' determination to move forward with the DIP Financing is an exercise of their sound business judgment and should be approved. Specifically, the Debtors and their advisors undertook an analysis of the Debtors' projected financing needs and determined

the Debtors would require significant postpetition financing to support their operational and restructuring activities. Accordingly, the Debtors negotiated the DIP Credit Agreement with the Lender in good faith, at arm's-length, and with the assistance of their advisors. The DIP Financing provides the Debtors with the capital necessary to meet their working capital needed to fund the budgeted costs of these Cases. This determination reflects the quintessential exercise of business judgment and is entitled to deference from the Court. *See In re Trans World Airlines, Inc.*, 163 B.R. at 974 (finding the debtor's entry into the financing that served as the "framework" and "cornerstone" for the debtor's plan of reorganization reflected exercise of the debtor's "sound and prudent business judgment").

59. Indeed, the Debtors negotiated the DIP Financing in conjunction with their overall efforts to determine a path forward for these Cases. There can be no reasonable dispute that the DIP Financing is an important step toward achieving this goal: the DIP Financing will support not only the Debtors' near term liquidity needs, but will also provide the funding necessary for the Debtors to effectuate a plan of reorganization, supported by their prepetition secured creditors, that offers value to creditors up and down the capital structure. Accordingly, the DIP Financing reflects an exercise of sound business judgment that should be approved. *See ION Media*, 2009 WL 2902568, at *4 ("[C]ooperation and establishing alliances with creditor groups can be a vital part of building support for a restructuring that ultimately may lead to a confirmable reorganization plan.").

C. The Scope of the Carve-Out is Appropriate

60. The proposed DIP Financing subjects the security interests and administrative expense claims of the DIP Lender 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 statutory committee can obtain appropriate assistance from counsel and other professionals. *See, e.g.*,

Ames, 115 B.R. at 40; *In re United Retail*, Case No. 12-10405 (Bankr. S.D.N.Y. Feb. 1, 2012); *In re Eastman Kodak Co.*, Case No. 12-10202 (Bankr. S.D.N.Y. Jan. 19, 2012); *In re Gen. Maritime Corp.*, Case No. 11-15285 (Bankr. S.D.N.Y. Nov. 17, 2011). The Carve-Out protects against administrative insolvency during the course of these Cases by ensuring assets remain for the payment of U.S. Trustee fees and professional fees notwithstanding the grant of superpriority and administrative liens and claims under the DIP Financing.

D. The Lender Should Be Deemed a Good Faith Lender Under Section 364(e)

61. Section 364(e) of the Bankruptcy Code protects a good faith lender's right to collect on loans extended to a debtor, and its rights in any lien or security interest 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) provides as follows:

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.

11 U.S.C. § 364(e).

62. As explained in detail herein, the DIP Financing is the result of the Debtors' reasonable and informed determination that the Lender offered the most favorable terms on which to obtain needed postpetition financing, and of extended arm's length, good faith negotiations between and among the Debtors and the Lender. The terms and conditions of the DIP Financing are fair and reasonable, and the proceeds of the DIP Financing will be used only for purposes that are permissible under the Bankruptcy Code and pursuant to the Budget. Further, no consideration is being provided to any party to the DIP Financing other than as

described herein. Accordingly, the Court should find the Lender is a “good faith” lender within the meaning of section 364(e) of the Bankruptcy Code, and are entitled to all of the protections afforded thereby.

E. Request for Modification of the Automatic Stay

63. Bankruptcy Code section 362 provides for an automatic stay upon the filing of a bankruptcy petition. The proposed Interim Order contemplates the modification of the automatic stay (to the extent applicable) to the extent necessary to implement the terms of the Interim Order. Stay modification provisions of this sort are ordinary and usual features of DIP Financing facilities and, in the Debtors’ business judgment, are reasonable under the present circumstances. Accordingly, the Debtors respectfully request the Court to authorize the modification of the automatic stay in accordance with the terms set forth in the Interim Order and DIP Credit Agreement.

F. The Debtors Should Be Authorized to Use Cash Collateral

64. In connection with their need for DIP Financing, the Debtors also require the use of 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). 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. *See In re Cont’l Airlines*, 91 F.3d 553, 556 (3d Cir. 1996).

65. The Debtors have satisfied the requirements of sections 363(c)(2) and (e), and should be authorized to use the Cash Collateral. First, subject to paragraph 9(c) of the Interim

Order, the Prepetition Secured Parties support the Debtors' use of the Cash Collateral. Second, if the Debtors use the Prepetition Subordinate Parties' Cash Collateral are adequately protected. As described above, the Debtors are providing such creditors with the Adequate Protection payments and other protection which is fair and reasonable and adequately protects such creditors' interests in the Debtors' prepetition collateral from diminution. Accordingly, the Court should authorize the Debtors to use the Cash Collateral under section 363(c)(2) and (e) of the Bankruptcy Code.

Request For Final Hearing

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

Waiver of Bankruptcy Rules Regarding Notice of Stay of an Order

67. To implement the foregoing successfully, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and any stay of an order granting the relief requested herein pursuant to Bankruptcy Rule 6004(h), 7062, 9014 or otherwise for all of the reasons described above.

Notice

68. The Debtors will provide notice of this Motion to: (a) the DIP Agent and the DIP Lenders, (b) the Prepetition Senior Secured Parties; (c) the Prepetition Subordinate Secured Parties; (d) the U.S. Trustee; (e) the holders of the forty (40) largest unsecured claims against the Debtors' Estate; (f) all parties known to the Debtors who hold any liens or security interests in the Debtors' assets who have filed UCC-1 financing statements against the Debtors, or who, to the Debtors' knowledge, have asserted any liens on any of the Debtors' assets; (g) all landlords and warehouseman of the Debtors; (h) all guarantors of the Prepetition Secured Obligations; (i)

the Internal Revenue Service and all taxing authorities of states in which the Debtors are doing business; (j) all creditors known to the Debtors to be holding a judgment and (k) certain other parties identified in the certificates of service filed with the Court. As this Motion is seeking “first day” relief, within two business days of the hearing on this Motion, the Debtors will serve copies of this Motion and any order entered in respect to this Motion as required by Local Rule 9013-1(m). In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary.

No Prior Request

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

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WHEREFORE, the Debtors respectfully request entry of the DIP Orders granting the relief requested herein and granting such other relief as is just and proper.

Dated: February 7, 2017
Wilmington, Delaware

COLE SCHOTZ P.C.



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