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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re:

GOOD NOODLES INC.,  
d/b/a Sfoglino,

Chapter 11  
Case No. 19-36441(cgm)

Debtor.

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**DEBTOR'S MOTION FOR (I) ENTRY OF INTERIM ORDER  
(A) APPROVING POST-PETITION SECURED FINANCING  
AND (B) AUTHORIZING THE USE OF CASH COLLATERAL  
AND PROVIDING ADEQUATE PROTECTION THEREFOR  
AND (II) SCHEDULING A FINAL HEARING**

Good Noodles Inc., the above captioned debtor and debtor-in-possession (the "Debtor"), by its proposed attorneys, Kirby Aisner & Curley LLP files this motion (the "Motion") for entry of an (I) interim Order, (A) authorizing the Debtor to obtain post-petition secured financing from Armando De Angelis S.r.l., or its designee ("Lender") on a first-lien basis on certain post-petition assets of the Debtor and as a super priority administrative claim pursuant to sections 105, 361, 363(c), (d) and 364, 503(b) and 507 of the Bankruptcy Code, (B) authorizing the Debtor to use the cash collateral of Santander Bank, N.A. ("Santander") and providing Santander and Rudolf Steiner Foundation, Inc. ("RSF", and together with Santander, the "Secured Creditors") adequate protection pursuant to sections 361, 363 and 364 of the Bankruptcy Code, and (II) scheduling a final hearing to consider the relief sought herein pursuant to Bankruptcy Rule 4001 (the "Final Hearing"), respectfully states and represents as follows:

### **Jurisdiction**

1. This Court has jurisdiction over this Motion under 28 U.S.C. §§ 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue of these proceedings and this Motion is proper in this District pursuant to 28 U.S.C. §§1408 and 1409.

2. The statutory bases for the relief requested herein are §§ 105(a), 361, 362 and 363 of title 11 of the United States Code, 11 U.S.C. §§ 101, et seq. (the “Bankruptcy Code”), and Rule 4001 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rule(s)”) and Rule 4001-2 of the Local Bankruptcy Rules for the Southern District of New York (“Local Rule(s)”).

#### **I. FACTS**

3. On September 4, 2019, (the “Petition Date”), the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. The Debtor has continued in possession of its property and the management of its business affairs as debtors-in-possession pursuant to §§1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner or statutory committee has been appointed.

4. The Debtor manufactures and sells high quality artisanal pasta using locally sourced ingredients and organic grains. In 2012, the Debtor first opened its doors in Williamsburg, Brooklyn.

5. The Debtor was initially formed in 2011 as a New York limited liability company under the name Sfoglini LLC. On June 1, 2018, the Debtor converted to its current corporate form under the name Good Noodles Inc., a Delaware corporation, pursuant to Section 265 of the Delaware General Corporation Law.

6. After steady growth in all areas of the its business, the Debtor outgrew its Brooklyn location. In 2018, the Debtor relocated to the Hudson Valley as part of an aggressive growth plan

funded by a major capital raise of \$1.5 million dollars.

7. The Debtor built-out and expanded into its current location, a high-quality manufacturing facility in West Coxsackie, New York. This new facility was intentionally designed to handle the Debtor's anticipated growth over the next few years. However, the Debtor has not hit its revenue targets. The Debtor's cash flow does not yet support its overhead costs, and its investors are unwilling to further fund the company.

8. The Debtor has funded its own operations for as long as it was able, and the Debtor's principals have utilized their own resources and credit in order to help the Debtor reach the turning point to profitability. Unfortunately, all of these efforts have fallen short and the Debtor has been unable to sustain its significant overhead.

**A. The Santander Bank N.A. Pre-Petition Secured Debt**

9. On or about December 23, 2016, the Debtor entered into a Promissory Note (the "Santander Note") with Santander, in which Santander extended credit to the Debtor in the original principal amount of \$506,000 for a term of sixty (60) months at a fixed interest rate of 5.25%. A copy of the Santander Note is annexed as **Exhibit A**.

10. On or about December 23, 2016, the Debtor entered into a Commercial Security Agreement (the "Santander Security Agreement") and Business Loan Agreement (the "Santander Loan Agreement", together with the Santander Note and Santander Security Agreement, the "Santander Loan Documents"), with Santander which secured the Debtor's obligations under the Santander Note by granting Santander a lien on certain of the Debtor's property (the "Santander Collateral"). A copy of the Santander Security Agreement and Loan Agreement are annexed as **Exhibit B**.

11. The Santander Loan Documents provide that the Debtor's obligations are secured

by a lien on certain of the Debtor's property (the "Santander Collateral") defined as follows:

All assets, including but not limited to, inventory, equipment, accounts (including but not limited to all health care insurance receivables), chattel paper (whether tangible or electronic), instruments (including but not limited to all promissory notes), letter of credit rights, letters of credit, documents, choses in action, (including but not limited to commercial tort claims), and general intangibles (including but not limited to all software and payment intangibles), deposit accounts, investment property money, other rights to payment and performance, and general intangibles (including but not limited to all software and all payment intangibles); all tax refunds, all warranties, all intellectual property, including but not limited to licenses, license agreements, trademarks, trade names, know how, copyrights, and patents, all attachments, accessions, accessories, fittings, increases, tools, parts, repairs, supplies and commingled goods relating to the foregoing property and all additions, replacements or substitutions for all or any part of the foregoing property, all insurance refunds relating to the foregoing property, all good will relating to the foregoing property, all records and data and embedded software relating to the foregoing property, and all equipment inventory and software to utilize, create, maintain and process any such records and data on electronic media, and all supporting obligations relating to the foregoing property, all whether now existing or hereafter arising, whether now owned or hereafter acquired or whether now or hereafter subject to any rights in the foregoing property, and all products and proceeds (including but not limited to all insurance payments) of or relating to the foregoing property.

All Equipment as specified on attached Offer N 777/S-16 dated 9/12/2016 attached as Schedule A, and all attachments, accessions accessories, fittings, tools, parts, repairs, supplies and commingled goods related thereto, all software, records, data, licenses, warranties, insurance and contract rights related or pertaining thereto and all products and proceeds thereof including but not limited to all accounts inventory trade-ins, equipment, chattel paper, (whether tangible or electronic), investment property, supporting obligations, instruments (including but not limited to all promissory notes) documents, deposits accounts, money, other rights to payment and performance, choses in action (including but not limited to commercial tort claims) and general intangibles, and all supporting obligations relating to the foregoing property, all whether now existing or hereafter arising, whether now owned or hereafter acquired or whether now or hereafter subject to any rights in the foregoing property, and all products and proceeds (including but not limited to all insurance payments and tax refunds) of or relating to the foregoing property. Nothing herein shall be deemed to imply that the secured party consents to any disposition of equipment except as expressly authorized in writing by the secured party for any particular piece of equipment. The secured party's security interest includes, but is not limited to, the equipment listed on the attached Schedule A.

12. The grant of security by the Debtor to Santander was allegedly perfected by two

UCC-1 financing statements, each filed on January 6, 2017 in the State of New York (the “Santander UCC-1s”), which at the time was the Debtor’s State of incorporation. Copies of the Santander UCC-1s are annexed as **Exhibit C**.

13. The first Santander UCC-1 (filed at 9:31 a.m.) does not describe the Santander Collateral in the same manner as the Santander Security Agreement. The entire description provided is “All assets”.

14. The second Santander UCC-1 (filed at 2:45 p.m.) describes the Santander Collateral in the same manner as the second descriptive paragraph in paragraph 11 above.

15. As of the Petition Date, the Debtor was indebted to Santander in the approximate outstanding amount of \$278,114.52.

**B. The Rudolf Steiner Foundation, Inc. Secured Debt**

16. On or about June 20, 2017, the Debtor entered into a Promissory Note (the “RSF Note”) with RSF in which RSF extended credit to the Debtor in the original principal amount of \$400,000 for a term of sixty (60) months at a fixed interest rate of 6%. A copy of the RSF Note is annexed as **Exhibit D**.

17. On or about June 20, 2017, the Debtor entered into a Commercial Security Agreement (the “RSF Security Agreement”) and a Business Loan Agreement the “RSF Loan Agreement”, together with the RSF Note and RSF Security Agreement, the “RSF Loan Documents”), with RSF which secured the Debtor’s obligations under the RSF Note by granting RSF a lien on certain of the Debtor’s property (the “RSF Collateral”). A copy of the RSF Security Agreement and Loan Agreement are annexed as **Exhibit E**.

18. The RSF Loan Documents assert that the Debtor’s obligations thereunder are secured by a lien on certain of the Debtor’s property (the “RSF Collateral”) defined as follows:

Purchase Money Security Interest in all equipment and accessories per invoices described and attached as Exhibit A and Exhibit B.

In addition, the word “Collateral” also includes all of the following whether now or hereafter acquired, whether now existing or hereafter arising, and wherever located:

- (A) All accessions, attachments, accessories, replacements of an additions to any of the collateral described herein, whether added now or later.
- (B) All products and produce of any of the property described in this Collateral section.
- (C) All accounts, general intangibles, instruments. Rents, monies, payments, and all other rights, arising out of a sale, lease, consignment or other disposition of any of the property described in this Collateral; section.
- (D) All proceeds (including insurance proceeds) from the sale, destruction, loss, or other disposition of any of the property described in this Collateral section, and sums due from a third party who has damaged or destroyed the Collateral or from that party’s insurer, whether due to judgment, settlement or other process.
- (E) All records and data relating to any of the property described in this Collateral section, whether in the form of a arising, photograph, microfilm, microfiche, or electronic media, together with all of Grantor’s right, title and interest in and to all computer software required to utilize, create, maintain, and process any such records or data on electronic media.

19. The grant of security by the Debtor to RSF was allegedly perfected by a UCC-1 financing statement filed on March 21, 2018, in the State of New York (the “RSF UCC-1”), which at the time was the Debtor’s State of incorporation. A copy of the RSF UCC-1 is annexed as **Exhibit F**.

20. The RSF UCC-1 describes the RSF Collateral in a different manner than the RSF Security Agreement, as follows:

- 21. All inventory, equipment, accounts (including but not limited to all health care insurance receivables), chattel paper, instruments (including but not limited to all promissory notes), letter of credit rights, letters of credit, documents, deposit accounts investment property, money, other rights to payment and performance, and general intangibles (including but not limited to all software and all payment intangibles), all oil, gas and other minerals before extraction, all oil, gas and other

minerals and accounts constitution as-extracted collateral, all fixtures, all timber to be cut, all attachments, accessions, accessories, fittings, increases, tools, parts, repairs, supplies and commingled goods relating to the foregoing property, and all additions, replacements of and substitutions for all or any part of the foregoing property, all insurance refunds relating to the foregoing property, and all equipment, inventory and software to utilize, create, maintain and process any such records and data on electronic media, and all supporting obligations relating to the foregoing property, all whether now existing or hereafter arising, whether now owned or hereafter acquired or whether now or hereafter subject to any rights in the foregoing property and all products and proceeds (including but no limited to all insurance payments) of or relating to the foregoing property.

In addition, the word “Collateral” also includes all of the following whether now or hereafter acquired, whether now existing or hereafter arising, and wherever located:

- (A) All Accessions, attachments, accessories, replacements of an additions to any of the collateral described herein, whether added now or later.
- (B) All products and produce of any of the property described in this Collateral section.
- (C) All accounts, general intangibles, instruments. Rents, monies, payments, and all other rights, arising out of a sale, lease, consignment or other disposition of any of the property described in this Collateral; section.
- (D) All proceeds (including insurance proceeds) from the sale, destruction, loss, or other disposition of any of the property described in this Collateral section, and sums due from a third party who has damaged or destroyed the Collateral or from that party’s insurer, whether due to judgment, settlement or other process.
- (E) All records and data relating to any of the property described in this Collateral section, whether in the form of a arising, photograph, microfilm, microfiche, or electronic media, together with all of Grantor’s right, title and interest in and to all computer software required to utilize, create, maintain, and process any such records or data on electronic media.

22. As of the Petition Date, the Debtor was indebted to RSF in the approximate outstanding amount of \$360,825.77.

**C. The Debtor’s Status, Sale Efforts and Proposed Post-Petition Financing**

23. The Debtor’s brand recognition, loyal customer base and national footprint have continued to grow steadily, notwithstanding its cash flow issues. The Debtor has ongoing

relationships with fifteen distributors who have placed the Debtor's products on the shelves of well-known food national markets such as Whole Foods Market, Fairway, King Kullen, and Stop & Shop, just to name a few. In fact, even during the past few months when the Debtor's operations were nearly shuttered, it continued to pick up new customers which are anticipated to result in \$200,000 in gross revenues in the 4<sup>th</sup> quarter of this year alone.

24. Although the Debtor's gross revenues have steadily climbed from \$955,000 in 2017, to \$1,230,000 in 2018 to a projected \$1,800,000 in 2019, additional capital is necessary to get the Debtor to the goal line of profitability. Both the Debtor's principals and its Board of Directors, all of whom are food industry professionals in their own right, have been hard at work to identify a strategic transaction (sale, merger, new investment).

25. In connection with this effort, logical players have been contacted and varying levels of due diligence have been conducted by no less than fourteen parties. Although the desired outcome was to preserve the Debtor as a going concern, efforts have been made to market the Debtor's assets and equipment in the event the Debtor was forced to shut down its operations. Unfortunately, the Debtor was unable to generate a single offer for any of its equipment, in piecemeal or in bulk. Although several parties went so far as to discuss terms for a merger, sale and/or joint venture, the only real offer was from *Armando De Angelis S.r.l.* (the "Purchaser" or "DIP Lender"), an Italian company.

26. The Purchaser has not only offered to purchase the Debtor (through an asset purchase) but has also agreed to fund the Debtor's operations pending a closing, which is key to preserving the value of the assets. The Purchaser has offered to purchase the assets for \$500,000 plus an additional \$200,000 in the form of a debtor-in-possession loan payable only if the Purchaser is not ultimately the buyer of the Debtor's assets. While this amount does not provide

sufficient funds to pay all creditors in full, the Debtor believes that it is the highest and best offer for the Debtor's assets and will provide the best opportunity for a recovery to its creditors.

27. Prior to the Petition Date the Debtor laid off much of its workforce, ceased manufacturing and was fulfilling orders from existing inventory. However, with the acceptance of the Purchaser's offer, together with the recent surge of new customers and orders, the Debtor recalled some of its workforce and has resumed purchasing necessary supplies and manufacturing and shipping of its products. This resumption of operations has resulted in the Debtor's cash on hand to be diminished significantly. Collections on new orders are on a delay and unavailable to fund operations in the short term. As such, additional cash is desperately needed by the Debtor in order to preserve its customer base and the value of its assets as a going concern. Without such an infusion, orders will be untimely or worse, unfilled, the Debtor will risk losing precious "shelf space" in its customers stores and the sale of its assets will be jeopardized.

28. As set forth above, the Debtor's investors are not interested in further funding the Debtor's operations. The Debtor's principals have exhausted all of their own personal resources and credit and the Debtor simply lacks the funds to continue operations. Prior to the Petition Date, the Secured Creditors were advised of the Debtor's distressed financial situation and the proposed sale of its assets to the Purchaser. Neither of the Secured Creditors indicated a willingness to lend additional funds to the Debtor.

29. As such, it is critical that the Debtor be able to continue to use its cash on hand as well as to "borrow" additional funds from the Purchaser, as set forth more fully herein, in order to preserve the Debtor's assets and successfully close the sale, which will benefit the estate and its creditors. Absent the loan from Purchaser, the Debtor will have to immediately cease all operations, it will be unable to service its customers and the sale of its assets will likely fail, or the purchase price

significantly diminished. Under such a scenario, the secured creditors will certainly receive substantially less than under the proposed sale and priority and unsecured creditors would receive nothing.

**D. The Proposed DIP Loan**

30. In accordance with Bankruptcy Rule 4001 and Local Rule 4001-2, a summary of the key terms of the proposed post-petition debtor-in-possession financing is as follows:

<b>TERM</b>	<b>DESCRIPTION</b>
<i>Borrower:</i>	Good Noodles Inc.
<i>DIP Lender:</i>	An entity to be designated by Purchaser (“ <u>DIP Lender</u> ”)
<i>DIP Loan:</i>	Loan facility in an aggregate principal amount of up to \$200,000.00 (the “ <u>DIP Loan</u> ”) plus interest.
<i>Loan Payments:</i>	All unpaid principal, interest, fees, costs and expenses on the DIP Loan shall be due and payable in full on the Maturity Date, whether at maturity, upon acceleration or otherwise.
<i>Maturity Date:</i>	The “Maturity Date” of the DIP Loan will be the earliest of: <ul style="list-style-type: none"> <li>(i) stated maturity, which shall be December 1, 2019;</li> <li>(ii) the date of the closing on the sale of all or substantially all of the assets of the Borrower pursuant to Bankruptcy Code sections 105, 363, 364 and 365 to a party other than the Lender;</li> <li>(iii) thirty-one (31) days after the Petition Date if the Final Order has not been entered by such date;</li> <li>(iv) the entry of an order by the Bankruptcy Court approving the dismissal or conversion of the Case;</li> <li>(v) the filing or support by Debtor of a plan of reorganization that (A) does not provide for indefeasible payment in full, in cash of all obligations owing under the DIP Loan and (B) is not otherwise acceptable to DIP Lender in its sole discretion;</li> </ul>

	<p>(vi) the acceleration or termination of the DIP Loan under the DIP Loan Documents, including, without limitation, as a result of the occurrence of an Event of Default; and</p> <p>(vii) such other date as is agreed to in the DIP Loan Documents,</p> <p>upon which date, the balance due under the DIP Loan by the Debtor shall be due and payable. In the event that the DIP Lender is the successful Purchaser, the outstanding balance due under the DIP Loan shall be deemed part of the purchase price and satisfied and paid in full upon closing.</p>
<i>Debt Service and Amortization:</i>	None
<i>Interest Rate:</i>	<p>All amounts outstanding under the DIP Loan will bear interest at a rate equal to 6% per annum and shall be payable at the Maturity Date.</p> <p>Notwithstanding the foregoing, after the occurrence and during the continuance of an uncured Event of Default, all overdue amounts under the DIP Loan Documents will bear interest at an additional rate per annum of 2%.</p>
<i>Initial Availability:</i>	<p>On the date after the Bankruptcy Court's entry of the Interim Order (as defined below) upon which all other applicable conditions precedent described below have been satisfied (the "<u>Closing Date</u>"), the Borrower shall make a single draw from the DIP Loan in an amount of \$100,000. The balance available under the DIP Loan shall be available for draw by the Debtor upon entry of a Final Order.</p>
<i>Use of Proceeds:</i>	<p>The proceeds of the DIP Loan will be used only for working capital and other general corporate purposes of the Borrower, in accordance with the Budget (as defined herein).</p>
<i>Super-Priority:</i>	<p>Amounts owed by the Debtor to the DIP Lender pursuant to the DIP Loan, including all accrued interest, shall constitute, in accordance with Section 364(c)(1) of the Bankruptcy Code, a claim having priority over any or all administrative expenses of the kind specified in, among other sections, Sections 105, 326, 330, 331, 503(b), 506(c), 507(a), 507(b) and 726 of the Bankruptcy Code.</p>

<p><i>Collateral:</i></p>	<p>The DIP Loan, including accrued interest, shall be secured, by first priority liens and security interests (the “<u>DIP Liens</u>”) in all of the Borrower’s inventory, including ingredients and supplies as well as manufactured product, purchased and/or produced post-petition and accounts receivable and proceeds thereof generated post-petition <b>as a result of the DIP Loan using advances thereunder or the proceeds thereof</b> (collectively, the “<u>DIP Collateral</u>”).</p> <p><b>In the event of a sale of assets to a party other than the DIP Lender, the DIP Liens shall extend to all of the assets of the Debtor including such assets not provided for above, such that the DIP Loan shall be satisfied prior to the payment of any pre-petition secured claims. <i>This lien priming provision shall be invalid however in the event that the Lender is deemed in default under the APA.</i></b></p> <p><b><i>**This provision could be considered an EXTRADORDINARY PROVISION ****</i></b></p>
<p><i>Lien Validation and Perfection:</i></p>	<p>All liens authorized and granted pursuant to the Interim Order or the Final Order entered by the Bankruptcy Court approving the DIP Loan or with respect to adequate protection shall be deemed effective and perfected as of the date of the first advance of funds by the DIP Lender, and no further filing, notice or act will be required to effect such perfection.</p>
<p><i>Sale Process and Milestones:</i></p>	<p>The Debtor shall conduct a sale process for the sale of substantially all of the assets of the Debtor in accordance with the Milestones defined below.</p> <p>The Debtor is required to comply with the following “Milestones”:</p> <p>(a) On or within ten (10) days of the later of the Petition Date or the Debtor’s receipt of an executed APA, or such later date to which the DIP Lender consents in writing in its sole discretion, the Debtor shall file a motion, in form and substance acceptable to the DIP Lender, requesting entry of a Sale Order approving a 363 Sale to DIP Lender without Auction.</p> <p>(b) If the Bankruptcy Court requires an Auction, on or before the date that is ten (10) days after the hearing to approve the Motion to Approve the Sale, or such later date to which DIP Lender</p>

	<p>consents in writing in its sole discretion, the Bankruptcy Court shall have entered the Sale Procedures Order.</p> <p>(c) On or before the date that sixty (60) days after the hearing to approve the Motion to Approve the Sale, or such later date to which the DIP Lender consents in writing in its sole discretion, the Bankruptcy Court shall have entered the Sale Order approving the 363 Sale.</p> <p>(d) On or before the date that is three (3) days after entry of the Sale Order, provided that the Bankruptcy Court has waived the stay imposed by Bankruptcy Rule 6004(h) or such later date to which DIP Lender consents in writing in its sole discretion, the Sale shall be closed, with the obligations under the DIP Loan to be applied to the purchase price under the Sale.</p>
<p><i>Voluntary Prepayment:</i></p>	<p>Prepayments under the DIP Loan may be made at any time without premium or penalty.</p>
<p><i>Events of Default:</i></p>	<p>The DIP Documents shall contain events of default customarily found in loan documents for similar debtor-in-possession financing and other events of default deemed by the Lender appropriate to the specific transaction, including, without limitation, upon any breach of, or failure to perform by Debtors of any of its, covenants, representations or warranties contained in the Asset Purchase Agreement or in the Sale Order, upon the occurrence of any termination event under the Asset Purchase Agreement and upon the entry of an order reversing, amending, staying, vacating, terminating or otherwise modifying in any manner the Sale Order, in each case, without the prior written consent of the DIP Lender in its sole discretion.</p>

A copy of the DIP Loan term sheet is annexed hereto as **Exhibit G**.

II. **RELIEF SOUGHT AND BASIS THEREFOR**

31. By this Motion, the Debtor requests entry of an Interim Order annexed hereto as **Exhibit H** (the “Order”), (A) authorizing the Debtor to obtain post-petition secured financing from the DIP Lender on a first-lien basis on certain post-petition assets of the Debtor pursuant to sections 105, 361, 363(c), (d) and 364, 503(b) and 507 of the Bankruptcy Code, (B) authorizing the Debtor to use the cash collateral of and providing Santander adequate protection therefor, and (C) scheduling a Final Hearing.

32. The Debtor submits that the granting of the relief sought in this Motion is in the best interests of the Debtor’s estate and all of its creditors. Without the DIP Loan, the value of the Debtor’s assets will erode and the sale thereof will be jeopardized. Furthermore, the use of the Debtor’s cash on hand is critical in order to enable the Debtor to operate and service its customers through the fulfillment of orders with inventory on hand, continued purchasing of supplies and manufacture product and the cash derived therefrom, all of which may be Santander’s Collateral.

A. **The Debtor Should Be Permitted to Enter Into the DIP Loan**

33. Approval of the DIP Loan will equip the Debtor with immediate and ongoing access to funds necessary to pay its current and ongoing operating expenses, including wages and salaries, taxes, vendor obligations, and other operational costs such as rent and utilities. The inability to access additional liquidity would bring the Debtors’ operations to an immediate halt, to the severe detriment of the Debtor’s estate and its creditors, including the Secured Creditors, most likely to be followed by conversion or dismissal of this Chapter 11 case.

34. As a condition of its willingness to extend credit under the DIP Loan, the DIP Lender requires a super-priority administrative claim and a first-priority lien upon certain of the

Debtor's post-petition assets which are generated specifically as a result of the DIP Loan. Specifically, the DIP Lender requires a first priority lien in the cash advanced under the DIP Loan and the supplies purchased, products manufactured, receivables created and proceeds collected directly attributable to the proceeds from the DIP Loan (the "DIP Loan Collateral").

35. Section 364 of the Bankruptcy Code authorizes a debtor to incur indebtedness on behalf of the bankruptcy estate. If such indebtedness cannot be obtained by the offering of a simple administrative priority claim, then under Section 364(c) a debtor may incur indebtedness by, *inter alia*, giving the lender a "super priority claim" which grants the lender priority over any or all administrative expenses of the kind specified in section 503(b) or 507(b) of the Bankruptcy Code. 11 U.S.C. § 364(c)(1); *In re Caldor Corp.*, 266 B.R. 575, 584 (Bankr. S.D.N.Y. 2001); *In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990).

36. When further protections and relief are required by a proposed post-petition lender, Section 364(d) of the Bankruptcy Code permits a debtor to obtain credit secured by a senior or equal lien on property of the estate that is subject to a lien, provided that (i) the debtor is unable to obtain such credit otherwise, and (ii) there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted. 11 U.S.C. § 364(d)(1).

37. A debtor satisfies the first prong of section 364(d)(1) by demonstrating that (1) it was unable to procure financing on an unsecured basis; (2) it was unable to procure financing on a junior basis to existing liens; and (3) there is no other unencumbered property in the estate on which a debtor can grant a lien. *See In re 495 Cent. Park Ave. Corp.*, 136 B.R. 626, 631 (Bankr. S.D.N.Y. 1992).

38. The Debtor is afforded considerable deference in acting in accordance with its

business judgment and so long as the proposed credit does not run afoul of the provisions and policies of the Bankruptcy Code. *In re Ames Dep't Stores, Inc.*, 115 B.R. at 40. In determining whether the Debtor has exercised reasonable business judgment, the Court must consider a multitude of factors including the current economic environment for a similar loan as well as non-economic factors such as timing and certainty of closing. *See In re ION Media Networks, Inc.*, 2009 WL 2902568, \*4 (Bankr. S.D.N.Y. 2009).

39. Here, the Debtor submits that there is no market for an undercollateralized loan which essentially only benefits the purchaser of the Debtor's assets which here, is the DIP Lender. Given that the Debtor does not believe that there is a higher or better offer than that of the Purchaser, this indebtedness is unlikely to be repaid by the Debtor and instead shall inure to the benefit of all by ensuring that the Debtor's assets are protected and the value maximized pending a sale closing.

40. Typically, pre-petition secured creditors would receive replacement liens in the types of assets that are being offered as the DIP Loan Collateral, however, given the immediate cash needs of the Debtor, these assets must be otherwise pledged to the DIP Lender to ensure that the Debtor can continue operating. The Secured Creditors shall retain their liens in the Debtor's cash, inventory and accounts receivable and equipment in existence on the Petition Date, in the same nature, extent and validity as existed of the Petition Date, which liens this Motion does not seek to alter in any way. As such, technically, the Debtor does not believe that the DIP Loan seeks to prime any other secured creditor. However, out of an abundance of caution, this deviation from common practice is highlighted for the Court in connection with its consideration of the relief sought herein.

41. To satisfy the second prong of Section 364(d)(1) of the Bankruptcy Code, a debtor

must demonstrate that it will adequately protect the existing lender's interest in its collateral. The purpose of adequate protection "is to safeguard the secured creditor from diminution in the value of its interest during the Chapter 11 reorganization." *495 Cent. Park Ave.*, 136 B.R. at 631 (citations omitted); *see also Contrarian Funds LLC v. Aretex LLC (In re Westpoint Stevens, Inc.)*, 600 F.3d 231, 257 (2d Cir. 2010) (internal quotations and citations omitted) ("Adequate protection is generally defined as a method by which a secured creditor may apply to the Bankruptcy Court to protect its interests against the diminution in value of [its] security during a bankruptcy proceeding.").

42. Although the Bankruptcy Code does not expressly define adequate protection, "it suggests a broad and flexible definition" and "confers upon 'the parties and the courts flexibility by allowing such other relief as will result in the realization by the protected entity of the value of its interest in the property involved.'" *495 Cent. Park Ave.*, 136 B.R. at 631 (citation omitted). Thus, adequate protection is not a "one size fits all" formulation. *See In re Hubbard Power & Light*, 202 B.R. 680, 686 (Bankr. E.D.N.Y. 1996).

43. Here, the Secured Creditors shall retain their liens in the Debtor's cash, inventory and accounts receivable and equipment in such amounts as they existed on the Petition Date, to the same nature, extent and validity as existed of the Petition Date, which liens this Motion does not seek to alter in any way. However, given the Debtor's current state of affairs, absent the continued use of these assets in the manner set forth in this Motion, the Debtor is unlikely to realize any value for its assets, the Secured Creditors *may* recover a de minimus amount from the sale of the equipment (for which no real market exists) and the remaining creditors will receive zero on account of their claims. As such, even in the event that some minimal collateral diminution should occur, the relief sought herein (the use of cash collateral and approval of the DIP Loan) will enable

the Debtor to preserve, enhance and realize the value of the Debtor's assets and coupled with the Debtor's swift sale of its assets as a going concern, is the Secured Creditors best hope for a meaningful recovery and is in fact its best adequate protection in and of itself. *See 495 Central Park Ave.*, 136 B.R. at 631 (holding that value derived from new postpetition borrowings used to preserve and improve a debtor's property constituted adequate protection).

44. Based upon the foregoing, the Debtor suggests,
  - a. that the terms and conditions of the DIP Loan are fair and reasonable, and were negotiated in good faith, and at arms' length between counsel for the Debtor and the DIP Lender;
  - b. that consummation of the DIP Loan is in the best interest of the Debtor's estate, its employees, claimants, and creditors, and all other parties-in-interest in this Chapter 11 case and is consistent with the Debtor's exercise of its business judgment and fiduciary duty; and
  - c. that it cannot obtain credit on more favorable terms without the protections required by the DIP Lender, and have provided for adequate protection of the Secured Creditors' interests.

45. As such, the Debtor respectfully requests that the Court authorize the Debtor to enter into the DIP Loan and obtain credit in accordance with the terms set forth herein.

**B. The Debtor Should be Authorized to Continue to Use Cash Collateral**

46. The Debtor believes that the Secured Creditors are the only parties that may hold a perfected security interest in the Debtor's property which may constitute, *inter alia*, Cash Collateral, subject to dispute and further investigation by the Debtor and other parties in interest.

47. Section 363(a) of the Bankruptcy Code states as follows:

“In this section, “cash collateral” means cash, negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents whenever acquired in which the estate and an entity other than the estate have an interest and includes the proceeds, products, offspring, rents, or profits of properties subject to a security interest as provided in Section 552(b) of this title, whether existing before or after the commencement of a case under this title.”

48. Section 363(c)(1) of the Bankruptcy Code provides as follows:

"(c)(1) If the business of the debtor is authorized to be operated under section 721, 1108, 1304, 1203, or 1204 of this title and unless the court orders otherwise, the trustee may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing".

49. Section 363(d) of the Bankruptcy Code provides as follows:

"(d) The trustee may use, sell, or lease property under subsection (b) or (c) of this section only to the extent not inconsistent with any relief granted under section 362(c), 362(e), or 362(f) of this title".

50. Accordingly, pursuant to § 363(c)(2) of the Bankruptcy Code, the consent of the Secured Creditors or authority from this Court is required to use Collateral in which they hold perfected security interests.

51. The Debtor is not in a cash position to make debt service payments to the Secured Creditors. However, the Debtor anticipates filing a motion to approve the sale of its assets within the first ten (10) days of this Chapter 11 case and closing within fourteen (14) days of entry of an Order authorizing such sale. As such, the Debtor anticipates operating for only a short time before the asset sale can be accomplished. As such, any diminution in value in the Secured Creditors' Collateral will be minimal and is necessary in order to effectuate the sale which is the Secured Creditors' best possibility for a recovery on its claims, even if not in full.

52. The proposed Interim Order provides that, as adequate protection for the Debtor's

use of the Secured Creditors' Collateral and in consideration for the use of the Collateral, the Debtor shall grant replacement liens in all of the Debtor's assets as they existed on the Petition Date and the proceeds directly derived therefrom, to the extent that the Secured Creditors had valid security interest in such and in the continuing order of priority that existed as of the Petition Date (the "Replacement Liens").

53. The Replacement Liens shall be subject and subordinate only to: (a) United States Trustee fees payable under 28 U.S.C. Section 1930 and 31 U.S.C Section 3717; (b) professional fees of duly retained professionals in this Chapter 11 case as may be awarded pursuant to Sections 330 or 331 of the Code or pursuant to any monthly fee order entered in the Debtor's Chapter 11 case; (c) the fees and expenses of a hypothetical Chapter 7 trustee to the extent of \$10,000; and (d) the recovery of funds or proceeds from the successful prosecution of avoidance actions pursuant to sections 502(d), 544, 545, 547, 548, 549, 550 or 553 ("Avoidance Actions") of the Bankruptcy Code (collectively, the "Carve-Outs").

**C. The Debtor's Weekly Operating Budget Should Be Approved**

54. The Debtor proposes to operate in accordance with the Budget which is annexed hereto as **Exhibit I** (the "Budget"). The Debtor believes that the Budget includes all reasonable, necessary and foreseeable expenses to be incurred in the ordinary course of operating the Debtor's business for the period set forth in the Budget.

55. The Debtor believes that the use of its Cash Collateral in accordance with the Budget will provide the Debtor with adequate liquidity to pay ordinary course payable administrative expenses as they become due and payable during the period covered by the Budget without any significant diminution in value of the Collateral.

56. As such, the Debtor requests that the Court approve the Budget in connection with

the relief sought herein.

**D. Request for Granting of the Motion on an Interim Basis on Shortened Notice**

57. Typically, a motion for authority to use cash collateral and to obtain credit may commence no earlier than fourteen (14) days after service of the motion pursuant to Bankruptcy Rule 4001(b)(2). However, that same rule provides that the court may conduct a preliminary hearing before such 14-day period expires under certain circumstances.

58. Federal Rule of Bankruptcy Procedure 9006(c) provides as follows:

*(c) Reduction.*

*(1) In General.* Except as provided in paragraph (2) of this subdivision, when an act is required or allowed to be done at or within a specified time by these rules or by a notice given thereunder or by order of court, the court for cause shown may in its discretion with or without motion or notice order the period reduced.

*(2) Reduction Not Permitted.* The court may not reduce the time for taking action under Rules 2002 (a)(4) and (a)(8), 2003(a), 3002(c), 3014, 3015, 4001(b)(2), (c)(2), 4003(a), 4004(a), 4007(c), 8002, and 9033(b).

59. Thus, the Federal Rules of Bankruptcy Procedure specifically authorize the Court to hear an application such as the Application herein on shortened notice, for cause shown.

60. The Debtor respectfully submits that sufficient cause exists for scheduling a hearing on shortened notice to consider the Motion and refers the Court to the Affirmation of Erica R. Aisner, Esq. pursuant to Local Bankruptcy Rule 9077-1(a) in support of an order scheduling hearing on shortened notice, submitted herewith.

**E. Request For Waiver Of Stay**

61. The Debtor further seeks a waiver of the stay of the effectiveness of the Order that may be imposed by any applicable Bankruptcy Rule. As set forth above, the approval of the DIP Loan and the use of the Cash Collateral is essential to prevent potentially irreparable damage to

the value of the Debtor's estate.

62. Accordingly, the Debtor submits that sufficient cause exists to justify a waiver of any stay imposed by the Bankruptcy Rules, to the extent applicable.

**F. Notice**

63. This Motion has been served via email and overnight mail to the Secured Creditors, all other parties (via email, if an address is known, and overnight mail) asserting secured claims against the Debtor, the United States Trustee and all other parties entitled to notice pursuant to Bankruptcy Rule 4001(d), including but not limited to the Debtor's twenty (20) largest unsecured creditors.

**WHEREFORE**, the Debtor respectfully requests that the Court grant the relief sought in this Motion in accordance with the terms of the annexed proposed Order, together with such other and further relief as is just and proper under the circumstances.

Dated: Scarsdale, New York  
September 4, 2019

Respectfully submitted,

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GOOD NOODLES INC. d/b/a Sfoglioni

By: /s/ Scott Ketchum  
Scott Ketchum, President