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Proposed Counsel for Chapter 11 Debtor and Debtor in Possession

8 UNITED STATES BANKRUPTCY COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
10 SANTA ANA DIVISION  
11

12 In re: )  
13 KRYSTAL KOACH, INC., ) Case No. 8:10-bk-26547-RK  
14 Debtor and Debtor in Possession. ) Chapter 11  
15 )  
16 ) DEBTOR'S EMERGENCY MOTION FOR  
17 ) APPROVAL OF POST-PETITION  
18 ) FINANCING  
19 )  
20 ) DECLARATION IN SUPPORT  
21 )  
22 ) Date:  
23 ) Time: .m.  
24 ) Place: Courtroom  
25 )  
26 )  
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24 TO ALL SECURED CREDITORS; CREDITORS ON THE LIST OF 20 LARGEST  
25 UNSECURED CREDITORS; THE OFFICE OF THE UNITED STATES TRUSTEE; AND  
26 OTHER PARTIES IN INTEREST:  
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1 Pursuant to Local Bankruptcy Rule 4001-2, and Section 364(c) of title 11 of the United  
2 States Code, 11 U.S.C. §§ 101, et seq. (as amended, the "Bankruptcy Code") and Rules 4001(d)  
3 and 9014 of the Federal Rules of Bankruptcy Procedure, Krystal Koach, Inc. (the "Debtor"), the  
4 debtor and debtor in possession in the above-captioned chapter 11 bankruptcy case, hereby moves  
5 (the "Motion"), for entry of an order, on an interim basis and, following final hearing, on a final  
6 basis, authorizing the Debtor to enter into the Post-Petition Loan and Security Agreement (the  
7 "Agreement") dated November 19, 2010, between the Debtor and Seven One Limited, a BVI  
8 Company, or assignee (the "DIP Lender"), in substantially the form attached as Exhibit "1" to the  
9 annexed Declaration of Walter Bowser.  
10

11 It is important to the Debtor's survival that a hearing on approval of the Agreement be  
12 scheduled immediately. The Debtor's need for approval of the DIP Financing is critical. The  
13 Cash Collateral Stipulation negotiated with Comerica Bank requires that the DIP Financing be  
14 funded within five (5) business days of the Petition Date. It will take at least one day to fund the  
15 DIP Financing after the order is entered approving the DIP Financing. The Debtor urgently needs  
16 to have the additional cash availability to keep its operations going and to pay employees. Due to  
17 the urgency of this request, the Debtor has served this Motion for delivery on Monday morning,  
18 November 22, 2010, and requests that the Court hold an interim hearing on this Motion in  
19 conjunction with the Debtor's emergency cash collateral and wage motions.  
20

21 The Debtor is one of the largest independent manufacturers of stretch limousines and customer  
22 shuttle buses in the United States. The Debtor has been an industry pioneer and leader,  
23 manufacturing and selling its vehicles to limousine operators, dealerships, corporations, and  
24 individuals throughout the world. With sales at both the retail and dealer level, the Debtor has  
25 achieved a premium brand within the industry, commands premium prices, and enjoys a  
26 reputation for quality, safety, and excellence in design.  
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1 The overall downturn in the economy has had a significant impact on the Debtor's  
2 industry. As consumers have reduced their use of luxury products such as limousines, the  
3 Debtor's business has suffered. As a result in the decrease in the use of limousines, replacing  
4 existing limousines has become less necessary for the Debtor's customers. Accordingly, less  
5 orders have been placed, less limousines have been manufactured, less revenue has been  
6 generated, and profit margins have decreased.

7  
8 As a result of these and other factors, the Debtor's business has experienced significant  
9 financial pressure. In 2008, annual revenues (which had previously been as high as \$150,000,000)  
10 fell to approximately \$100 million. This trend continued through 2009, as the Debtor saw annual  
11 revenues fall to approximately \$35 million.

12  
13 Despite implementation of major cost reduction measures, the Debtor was unable to retain  
14 its profitability in the face of these industry pressures. The Debtor filed a voluntary petition under  
15 Chapter 11 of the Bankruptcy Code on November 15, 2010, in order to preserve the value of its  
16 business and pursue reorganization of its affairs.

17 In order to address its immediate cash-flow needs, the Debtor has addressed by negotiated  
18 debtor-in-possession financing and use of cash collateral. Additionally, the Debtor has actively  
19 marketed its business for sale and has negotiated an asset purchase agreement with an entity  
20 related to the proposed post-petition lender, which the Debtor will present for Court approval.

21  
22 Under the Agreement, the DIP Lender will provide up to \$2,500,000 in financing  
23 to the Debtor (the "Post-Petition Financing"). The Post-Petition Financing will not initially  
24 accrue interest. If the DIP Lender or an affiliate of the DIP Lender is the successful bidder for the  
25 Debtor's assets, the Post-Petition Financing amounts shall be applied toward and deducted from  
26 the purchase price. If the DIP Lender or an affiliate of the DIP Lender is not the successful  
27 bidder for the Debtor's assets, the Post-Petition Financing amounts shall accrue interest at five  
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1 percent (5%) per annum, retroactive to the date of advance, and the Post-Petition Financing  
2 amounts and accrued interest shall be repaid from the purchase price.

3  
4 The Post-Petition Financing shall also become due in the event other terminating events  
5 such as the Debtor's default under the Agreement of an order for use of cash collateral,  
6 conversion, appointment of a trustee or similar events. The Agreement provides for the grant of a  
7 security interest in all of the Debtor's assets, excluding avoidance actions, and for the grant of a  
8 super-priority claim status. The financing will also be secured by a deed of trust on real property  
9 of an affiliate of the Debtor, which real property includes the Debtor's headquarters and offices.  
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11 The Debtor has no other source for obtaining the necessary post-petition financing at this  
12 time. The proposed DIP Financing will be in coordination with use of cash collateral pursuant to  
13 an agreement with Comerica Bank and a cash flow budget to be approved with that agreement  
14 (the "Budget"). A copy of the proposed Budget is attached hereto as Exhibit "2."

15 Pursuant to Local Bankruptcy Rule 4001-2 (b) and (d), the Debtor submits that the  
16 requested relief pertaining to the Debtor's obtaining DIP Financing does not (or does) contain any  
17 of the following provisions:  
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<u>Provision</u>	<u>Paragraph</u>
Cross-collateralization clauses	No
Provisions or findings of fact that bind the estate or all parties in interest with respect to the validity, perfection or amount of the secured party's pre-petition lien or debt or the waiver of claims against the secured creditor.	No
Provisions or findings of fact that bind the estate or all parties in interest with respect to the relative priorities of the secured party's pre-petition lien.	No
Provisions that operate, as a practical matter, to divest the Debtor of	No

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<u>Provision</u>	<u>Paragraph</u>
any discretion in the formulation of a plan or administration of the estate or to limit access to the court to seek any relief under other applicable provision of law.	
Waivers of 11 U.S.C. § 506(c), unless the waiver is effective only during the period in which the Debtor is authorized to use cash collateral or borrow funds.	No
Releases of liability for the creditor's alleged pre-petition torts or breaches of Contract.	No
Waivers of avoidance actions arising under the Bankruptcy Code.	No
Provisions that deem pre-petition secured debt to be post-petition debt or that use post-petition loans from a pre-petition secured creditor to pay part or all of that secured creditor's pre-petition debt	No
Provisions that provide disparate treatment for the professionals retained by a creditors' committee from that provided for the professionals retained by the Debtor with respect to a professional fee carve out	No
Provisions that prime any secured lien	No
Automatic relief from the automatic stay upon default, conversion to chapter 7, or appointment of a trustee.	No
Waivers of procedural requirements, including those for foreclosure mandated under applicable non-bankruptcy law, and for perfection of replacement liens.	No, except standard automatic perfection of post-petition liens
Adequate protection provisions which create liens on claims for relief arising under 11 U.S.C. §§ 506(c), 544, 545, 547, 548 and 549.	No
Waivers, effective on default or expiration, of the Debtor's right to move for a court order pursuant to 11 U.S.C. § 363(c)(2)(B) authorizing the use of cash collateral in the absence of the secured party's consent	No
Provisions that grant a lien in an amount in excess of the dollar amount of cash collateral authorized under the applicable cash collateral order.	No
Provisions providing for the paying down of pre-petition principal owed to a creditor.	No

Provision	Paragraph
Findings of fact on matters extraneous to the approval process.	No

Pursuant to Rule 4001 of the Federal Rules of Bankruptcy Procedure, the Debtor hereby provides the following disclosures with respect to the DIP Financing:

Provision	Paragraph in Agreement	Explanation (if any)
A grant of priority or a lien on property of the estate under § 364(c) or (d)	Sections 3, 4	The DIP Financing will be secured by liens which will be (1) junior to perfected, valid and enforceable liens existing on the petition date on the Debtor's Properties, and (2) have super-priority status.
The providing of adequate protection or priority for a claim that arose before the commencement of the case, including the granting of a lien on property of the estate to secure the claim, or the use of property of the estate or credit obtained under § 364 to make cash payments on account of the claim	Does not apply	
A determination of the validity, enforceability, priority, or amount of a claim that arose before the commencement of the case, or of any lien securing the claim	Does not apply	
A waiver or modification of Code provisions or applicable rulings relating to the automatic stay	Does not apply	
A waiver or modification of any entity's authority or right to file a plan, seek an extension of time in which	Does not apply	

<p>1 the debtor has the 2 exclusive right to file a 3 plan, request the use of 4 cash collateral under § 5 363(c), or request to obtain 6 authority to obtain credit 7 under § 364</p>		
<p>8 The establishment of 9 deadlines for filing a plan 10 of reorganization, for 11 approval of a disclosure 12 statement, for a hearing on 13 confirmation, or for entry 14 of a confirmation order</p>	<p>Does not apply</p>	
<p>15 A waiver or modification 16 of the applicability of 17 nonbankruptcy law relating 18 to the perfection of a lien 19 on property of the estate, or 20 on the foreclosure or other 21 enforcement of the lien</p>	<p>Proposed Order, Exhibit 3.</p>	<p>No, except standard automatic perfection of post-petition liens.</p>
<p>22 A release, waiver, or 23 limitation on any claim or 24 other cause of action 25 belonging to the estate or 26 the trustee, including any 27 modification of the statute 28 of limitations or other deadline to commence an action</p>	<p>Does not apply</p>	
<p>The indemnity of an entity</p>	<p>Does not apply</p>	
<p>A release, waiver, or limitation of any right under Section 506(c)</p>	<p>Does not apply</p>	
<p>The granting of a lien on any claim or cause of action arising under Sections 544, 545, 547, 548, 549, 553(b), 723(a), or 724(a)</p>	<p>Does not apply</p>	

1 The relief sought in this Motion is based upon this Motion, the annexed Memorandum of  
2 Points and Authorities and Declaration submitted in support of this Motion, the statements,  
3 arguments and representations of counsel to be made at the hearing on this Motion, and any other  
4 evidence properly presented to the Court at or prior to the hearing on this Motion.

5 A copy of the proposed Order granting the relief requested herein is attached hereto as  
6 Exhibit "3."

7 The Debtor will serve a copy of this Motion and all supportive papers (including notice of  
8 the hearing) upon the Office of the United States Trustee, all secured creditors and their counsel  
9 (if known), the creditors listed on the list of the Debtor's 20 largest creditors (Official Committee  
10 of Unsecured Creditors, if named) and those parties who have requested special notice through  
11 ecf.

12 WHEREFORE, the Debtor respectfully requests that the Court enter an order substantially  
13 in the form of the Order attached hereto as Exhibit "3":

- 14 1. granting this Motion;
- 15 2. authorizing and approving the Agreement on an interim basis pending a final  
16 hearing on the Motion and on a final basis following final hearing;
- 17 3. authorizing the Debtor to execute and deliver such other and further documents as  
18 required or desirable to confirm the Post-Petition Financing;
- 19 4. scheduling a final hearing on this Motion; and
- 20 5. granting such other and further relief as the Court deems just and proper.

21 Dated: November 22, 2010

KRYSTAL KOACH, INC.

22  
23 By: /s/ Philip A. Gasteier

24 RON BENDER

PHILIP A. GASTEIER

KRIKOR J. MESHEFEJIAN

25 LEVENE, NEALE, BENDER, YOO

26 & BRILL L.L.P.

27 Proposed Counsel for Chapter 11 Debtor and Debtor  
28 in Possession



1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I.

3 STATEMENT OF FACTS

4 A. Case Background.

5  
6 1. The Debtor commenced its bankruptcy case by filing a voluntary petition under  
7 Chapter 11 of the Bankruptcy Code on November 19, 2010 (the "Petition Date"). The Debtor  
8 continues to operate its business, manage its financial affairs and operate its bankruptcy estate as  
9 a debtor in possession.

10 2. The Debtor is one of the largest independent manufacturers of stretch limousines  
11 and customer shuttle buses in the United States. Founded twenty-seven years ago by Edward P.  
12 Grech ("Grech") as a small-scale operation conceived in an unassuming automotive repair shop,  
13 the Debtor grew into nearly a \$150 million annual revenue company that is a premier  
14 manufacturer in its industry. The Debtor is currently one of only a few manufacturers in the  
15 world certified by both Ford's Lincoln-Mercury division and General Motors' Cadillac division to  
16 modify their respective vehicles into limousines. Wholly owned by Grech (the Debtor's President  
17 and Chief Executive Officer), who is widely regarded by industry and regional publications as a  
18 progressive, creative leader, and who is known as a senior patriarch in the custom coach industry,  
19 the Debtor has obtained the reputation of designing and manufacturing top-notch, high-end,  
20 limousines, shuttle buses and other specialty vehicles that are unparalleled in the industry.

21 3. The Debtor has been an industry pioneer and leader, manufacturing and selling its  
22 vehicles to limousine operators, dealerships, corporations, and individuals throughout the world.  
23 With sales at both the retail and dealer level, the Debtor has achieved a premium brand within the  
24 industry, commands premium prices, and enjoys a reputation for quality, safety, and excellence in  
25 design. For example, the Debtor is one of the few manufacturers to voluntarily conduct crash  
26 tests of its vehicles to ensure quality and safety. The Debtor has further differentiated itself from  
27 its rivals by being a premium designer and manufacturer that caters to all phases of the luxury  
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1 transportation industry. The Debtor sells products in six main categories: Ford-Lincoln based  
2 limousines, shuttle buses, hearses, hybrid buses, limousine buses, and SUV limousines. Within  
3 the stretch limousine market, the Debtor currently has an estimated 30% market share, and within  
4 the shuttle bus market, the Debtor currently has an estimated 5% market share which is growing.

5 4. The Debtor acquires most of the car chassis that form the core of its product from  
6 Ford Motor Company ("Ford"). These purchases have historically been provided to the Debtor  
7 pursuant to a purchasing line of credit made available from Ford Credit (the "Ford Line") and  
8 additional lines of credit (the "Comerica Lines") made available from Comerica Bank  
9 ("Comerica"). As of the Petition Date, the balances owing on the Ford Line and Comerica Lines  
10 were approximately \$1,390,832 and \$7,329,219.53, respectively.

11 5. Ford Credit and Comerica assert a security interest in, among other things, the car  
12 chassis that Ford sells to the Debtor. Ford Credit retains title documentation for each car chassis  
13 as security until the car is delivered into Mexico where the process of converting the vehicle into  
14 a limousine begins. At the time that the car is transported into Mexico, Ford Credit is paid for the  
15 car and title documentation for the vehicle is transferred to Comerica. As each finished limousine  
16 is then sold, Comerica releases the title documentation to the Debtor, and the Debtor provides the  
17 same to the customer.

18 6. Similarly, Ford sells to the Debtor truck chassis. The truck chassis are not,  
19 however, financed by Ford Credit. Instead, the Debtor and Ford are parties to a consignment  
20 agreement whereby Ford retains title to the truck chassis until the truck chassis is transported to  
21 Mexico. At the time the truck chassis is transported into Mexico, Ford is paid for the truck  
22 chassis, and title documentation for the truck is transferred to Comerica. As each finished  
23 specialty truck is then sold, Comerica releases the title documentation to the Debtor, and the  
24 Debtor provides the same to the customer.

25 7. Other than the Debtor's vehicle inventory, the Debtor's asset base also includes the  
26 following: (a) parts inventory; (b) equipment and tools; (c) accounts receivable; and (d)  
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1 ownership interest in Edson Financial, Inc., which provides equipment and vehicle financing to,  
2 among others, customers of the Debtor.

3 **B. Circumstances That Led To The Chapter 11 Filing.**

4 8. The Debtor showed consistent and formidable growth from its inception until  
5 2007. After expanding to three facilities in the Southern California region, with more than 800  
6 employees and almost \$150 million in annual revenue, starting in 2007, the Debtor began to see a  
7 drop in revenue caused as a result of various external factors which the Debtor has attempted to  
8 counteract through the implementation of various cost-cutting measures.

9 9. The overall downturn in the economy has had a significant impact on the Debtor's  
10 industry. As consumers have reduced their use of luxury products such as limousines, the  
11 Debtor's business has suffered. As a result of the decrease in the use of limousines, replacing  
12 existing limousines has become less necessary for the Debtor's customers. Accordingly, less  
13 orders have been placed, less limousines have been manufactured, and less revenue has been  
14 generated. Due to the decrease in demand, revenue has decreased in the industry as a whole, as  
15 manufacturers and sellers are willing to sell their product at discounted rates.

16 10. Indeed, in an effort to mitigate its losses caused by the decrease in demand due to  
17 the economic recession, the Debtor has been forced to reduce sales prices on its existing  
18 inventory. Additionally, due to a highly anticipated Ford-Lincoln Town Car body style expected  
19 to be released, major customers of the Debtor have refrained from additional purchases of existing  
20 models. Given the image-driven nature of the limousine industry, particularly with up-scale  
21 clientele such as major Las Vegas hotel and casino chains which purchase vehicles from the  
22 Debtor, there has been a degree of hesitancy to purchase new units, as such clients have opted to  
23 wait for the release of newer models expected to be introduced in 2012.

24 11. As a result of the foregoing, the Debtor's business has experienced significant  
25 financial pressure. In 2008, revenues fell to approximately \$100 million. This trend continued  
26 through 2009, as the Debtor saw revenues fall to approximately \$35 million.

1           12. To help alleviate the financial strain being experienced by the Debtor, the Debtor  
2 implemented various cost-cutting measures. First, the Debtor was compelled as a result of the  
3 recession to reduce the number of its employees, from a high of approximately 800 in 2007, to  
4 currently approximately 100. Additionally, starting in 2009, the Debtor closed two of its  
5 manufacturing locations in Southern California. Instead, the Debtor began to outsource a  
6 majority of its vehicle manufacturing work to a sister company – Krystal International (a Mexican  
7 company) (“KI”). KI currently completes approximately 85% of each vehicle in Mexico. The  
8 vehicle is then shipped to the United States where it is completed in the Debtor’s existing  
9 Southern California facility, and then sold. The Debtor pays KI for labor costs and related  
10 expenses. Such outsourcing has allowed the Debtor to streamline its costs and position itself to be  
11 a more profitable company, while ensuring exacting quality and safety. The shift in  
12 manufacturing to KI has marked a strategic shift in the Debtor’s overall business model, as the  
13 Debtor has started to focus upon marketing and distribution while outsourcing production to a less  
14 costly alternative source.

15           13. Nevertheless, while these cost-cutting measures have helped the Debtor reorganize  
16 its business, financial challenges are still prevalent in the industry and with the Debtor’s business.

17           14. The Debtor currently suffers from a cash-flow crunch which the Debtor intends to address  
18 with debtor-in-possession financing. Additionally, the Debtor has actively marketed its business  
19 for sale for an extended period of time and has reached an agreement with a buyer, which is  
20 affiliated with the entity that will be providing the Debtor with the necessary debtor-in-possession  
21 financing. The Debtor intends to embark on an expedited sale process to sell its business to the  
22 highest bidder.

23           C. The Debtor’s Reorganization Strategy.

24           1. The Debtor currently suffers from a cash-flow crunch which the Debtor has  
25 addressed by negotiating debtor-in-possession financing and use of cash collateral. Additionally,  
26 the Debtor has actively marketed its business for sale since January 2010, and has obtained  
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1 varying levels of interest regarding a sale of its business for the benefit of creditors. The Debtor  
2 has signed an asset purchase agreement with an entity related to the proposed post-petition lender,  
3 which the Debtor will present for Court approval. The Debtor has continued its efforts to market  
4 the company. The Debtor believes that a sale of assets is likely necessary to preserve the  
5 business.

6  
7 D. The Proposed Post-Petition Financing.

8 The Debtor has entered into the Agreement with the DIP Lender in order to provide  
9 necessary operating capital to continue business pending a sale of its assets. The DIP Lender is  
10 an affiliate of an interested purchaser. The terms of the financing are very favorable to the  
11 Debtor, but do not bind the Debtor to a sale to anyone.

12 Under the Agreement, the DIP Lender will provide up to \$2,500,000 in financing to the  
13 Debtor (the "DIP Financing"). The DIP Financing will not initially accrue interest. If the DIP  
14 Lender or an affiliate of the DIP Lender is the successful bidder for the Debtor's assets, the DIP  
15 Loan amounts shall be applied toward and deducted from the purchase price. If the DIP Lender  
16 or an affiliate of the DIP Lender is not the successful bidder for the Debtor's assets, the DIP Loan  
17 amounts shall accrue interest at five percent (5%) per annum, retroactive to the date of advance,  
18 and the DIP Loan amounts and accrued interest shall be repaid from the purchase price.

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21 The DIP Financing shall also become due in the event other terminating events such as the  
22 Debtor's default under the Agreement of an order for use of cash collateral, conversion,  
23 appointment of a trustee or similar events.

24 The Agreement provides for the grant of a security interest in all of the Debtor's assets,  
25 excluding avoidance actions, and for the grant of a super-priority claim having priority over all  
26 administrative expenses of the kind specified in Sections 503(b) or 507(b) of the Bankruptcy  
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1 Code; provided, however, such security interest and priority of claim shall be subordinate only to  
2 (a) all Superpriority Claims of Comerica Bank, and (b) a carve-out (the "Carve-Out") for the  
3 payment of (i) unpaid fees and disbursements incurred by professionals (other than ordinary  
4 course professionals) retained, pursuant to Sections 327 or 1103(a) of the Bankruptcy Code plus  
5 not to exceed \$420,000, (b) quarterly fees required to be paid pursuant to 28 U.S.C. §1930(a)(6)  
6 and any fees payable to the Clerk of the Bankruptcy Court, as further provided in the Agreement.  
7  
8 The security interest shall be junior to all existing liens.

9         The DIP Financing will be coordinated with the agreement with the existing secured  
10 lender, Comerica Bank, concerning use of cash collateral and a cash flow budget to be approved  
11 with that agreement (the "Budget"). A copy of the proposed Budget is attached hereto as Exhibit  
12 "2." The Budget reflects the requirements of Comerica that the Debtor (i) utilize the DIP  
13 Financing before utilizing cash collateral; and (ii) utilize the DIP Financing to pay down the  
14 amount anticipated to be drawn on the letter of credit issued by Comerica on behalf of the Debtor  
15 to Lumberman's Underwriting Alliance, the Debtor's workers' compensation insurance carrier, in  
16 the current, amended principal amount of \$907,314.  
17

18         The effectiveness of the Agreement is subject to approval of the Court, and other  
19 contingencies including the delivery of a deed of trust by a related entity, Imperial Highway, LLC  
20 ("Imperial") on property leased by Imperial to the Debtor and used by the Debtor as its  
21 headquarters offices. The deed of trust shall also secure the DIP Financing.  
22

23         The Agreement contains other terms and provisions believed to be for the most part  
24 customary to such agreements. The foregoing is a summary only and should not be relied upon to  
25 the exclusion of the Agreement, which is incorporated herein by reference. In the event of a  
26 conflict between this summary and the Agreement, the terms of the Agreement shall control.  
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1 D. Need for the Post-Petition Financing.

2 The Debtor has canvassed other potential financing options. At the present time, all or  
3 substantially all of the Debtor's assets are encumbered by the security interest of Comerica Bank.  
4 Based on the Debtor's search and review of the current market, it is clear that as is typical in a  
5 Chapter 11 bankruptcy case, no lender is willing to provide the Debtor with the needed DIP  
6 financing on an unsecured basis, with allowing the lender only an administrative claim. Most  
7 lenders who would even consider providing a chapter 11 debtor with DIP financing require a  
8 senior lien against all assets to securitize that loan. The Post-Petition Financing with the DIP  
9 Lender will provide the Debtor with the needed DIP Financing without priming any existing lien  
10 holders.  
11

12 The Debtor has experienced significant cash flow problems as a result of the history  
13 recounted above. The cash flow problems have recently threatened the Debtor's ability to  
14 maintain full production. This has required that the Debtor seek protection in Chapter 11 in order  
15 to retain the value of its business. Although the Debtor has maintained continued availability  
16 under its revolving loan with Comerica, after the filing of the Petition the Debtor will require  
17 post-petition financing from another source in order to be able to utilize Comerica's cash  
18 collateral. Comerica has been unwilling to advance further moneys. If the Debtor is unable to  
19 obtain the DIP Financing, it would be unable to continue operations and the value of its assets and  
20 business would necessarily be irreparably harmed.  
21

22 The Debtor's need for approval of the DIP Financing is critical. The Cash Collateral  
23 Stipulation negotiated with Comerica Bank requires that the DIP Financing be funded within five  
24 (5) business days of the Petition Date. It will take at least one day to fund the DIP Financing after  
25 the order is entered approving the DIP Financing. The Debtor urgently needs to have the  
26 additional cash availability to keep its operations going and to pay employees.  
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1 II.

2 DISCUSSION

3 A. The Standard for Obtaining Secured Credit Pursuant to 11 U.S.C. § 364(c).

4  
5 Pursuant to Section 364 of the Bankruptcy Code, the Court may, after notice and a  
6 hearing, grant authority to a trustee or debtor in possession to obtain credit or incur a debt secured  
7 by a lien on property of the estate. Section 364(c) of the Bankruptcy Code provides, in pertinent  
8 part, as follows:  
9

10 If the trustee is unable to obtain unsecured debt allowable under  
11 section 503(b)(1) of this title as an administrative expense, the court,  
12 after notice and a hearing, may authorize the obtaining of credit or the  
13 incurring of debt – (1) with priority over any or all administrative  
14 expenses of the kind specified in section 503(b) or 507(b) of this title;  
15 (2) secured by a lien on property of the estate that is not otherwise  
16 subject to a lien; or (3) secured by a junior lien on property of the  
17 estate that is subject to a lien.  
18

19 11 U.S.C. § 364(c).

20 Section 364(d) of the Bankruptcy Code authorizes the granting of senior (or commonly  
21 referred to as “priming”) liens against property of the estate, senior even to existing liens, under  
22 certain circumstances.  
23

24 Section 364 of the Bankruptcy Code is structured with an escalating series of inducements  
25 which a debtor in possession may offer to obtain credit during the post-petition period. In re  
26 Photo Promotion Associates, Inc., 87 B.R. 835, 839 (Bankr. S.D.N.Y. 1988), aff'd, 881 F.2d 6  
27 (2d. Cir. 1989); In re Southern Soya, Corp., 251 B.R. 302, 307 (Bankr. D.S.C. 2000); In re Ames  
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1 Department Stores, Inc., 115 B.R. 34, 37 (Bankr. S.D.N.Y. 1990). Therefore, where a trustee or  
2 debtor in possession cannot otherwise obtain unsecured post-petition credit, such credit may be  
3 obtained on a secured basis under stated conditions. In re T.M. Sweeney & Sons LTL Services,  
4 Inc., 131 B.R. 984, 989 (Bankr.N.D.Ill.1991); In re Ames Department Stores, Inc., 115 B.R. at 37.  
5 For example, if creditors are unwilling to extend unsecured credit to a debtor in possession,  
6 further inducements are offered, with court approval, after notice and a hearing, including,  
7 without limitation, liens equal to or senior to existing liens on encumbered property in accordance  
8 with 11 U.S.C. § 364 (d). In re Photo Promotion Associates, Inc., 87 B.R. at 839; see Resolution  
9 Trust Corp. v. Official Unsecured Creditors Committee (In re Defender Drug Stores, Inc.), 145  
10 B.R 312, 317 (9<sup>th</sup> Cir. BAP 1992).

11  
12 Two factors courts consider in determining whether to authorize post-petition financing  
13 which contemplates the granting of a security interest in favor of the lender are (1) whether the  
14 debtor is unable to obtain unsecured credit per 11 U.S.C. § 364(b) i.e., by allowing a lender only  
15 an administrative claim per 11 U.S.C. § 503(b)(1)(A); and (2) whether the terms of the transaction  
16 are fair, reasonable and adequate, given the circumstances of the debtor-borrower and the  
17 proposed lender. In re Crouse Group, Inc., 71 B.R. 544, 549 (Bankr. E.D.Pa. 1987); see also In re  
18 Aqua Assoc., 123 B.R. 192, 195 (Bankr. E.D.Pa. 1991).

19  
20 In addition to the foregoing, a debtor in possession seeking subordination of liens to new  
21 financing must establish adequate protection of the liens to be subordinated to the new financing.  
22 11 U.S.C. § 364(d)(1)(B); In re C.B.G. Ltd., 150 B.R. 570, 571 (Bankr. M.D.Pa. 1992).

23  
24 In the instant case, the Debtor has satisfied the standards for approval of the Post-Petition  
25 Financing on the terms provided by the Agreement, because it is necessary for the continued  
26 funding of the Debtor's operations ; it is coordinated with the agreement with the existing secured  
27 lender, Comerica Bank, for use of cash collateral ; it is to be provided on the basis of a junior lien  
28

1 and superpriority status, which are less onerous than any other option which could be available to  
2 the Debtor ; and, the remaining terms are favorable to the Debtor and the Estate.

3 1. The Debtor Has Satisfied the First Standard Because the Debtor Is Not Able to  
4 Obtain Unsecured Credit.

5 After extensive dialogue with Comerica Bank and conversations other prospective lenders,  
6 it is clear that as is typical in a Chapter 11 bankruptcy case, no lender is willing to provide the  
7 Debtor with their needed DIP financing on an unsecured basis, with allowing the lender only an  
8 administrative claim.  
9

10 At the present time, all or substantially all of the Debtor's assets are encumbered by the  
11 security interest of Comerica Bank. Comerica Bank is unwilling to advance further monies.

12 The Debtor has experienced significant cash flow problems as a result of the history  
13 recounted above. The cash flow problems have recently threatened the Debtor's ability to  
14 maintain full production. This has required that the Debtor seek protection in Chapter 11 in order  
15 to retain the value of its business. Although the Debtor has maintained continued availability  
16 under its revolving loan with Comerica, after the filing of the Petition the Debtor will require  
17 post-petition financing from another source in order to be able to utilize Comerica's cash  
18 collateral. Comerica has been unwilling to advance further moneys. If the Debtor is unable to  
19 obtain the DIP Financing, it would be unable to continue operations and the value of its assets and  
20 business would necessarily be irreparably harmed.  
21  
22

23  
24 2. The Terms of the Post-Petition Financing are Fair, Reasonable and Adequate.

25 As is commonly known, it is extremely difficult for anybody to obtain financing in the  
26 current economy, let alone debtors in chapter 11. Most lenders who would even consider  
27 providing a chapter 11 debtor with DIP financing require a senior lien against all assets to  
28

1 securitize that loan, plus interest, fees and other charges. Under the Agreement, the DIP Lender  
2 will provide up to \$2,500,000 in financing to the Debtor (the "DIP Financing"). The DIP  
3 Financing will not initially accrue interest. If the DIP Lender or an affiliate of the DIP Lender is  
4 the successful bidder for the Debtor's assets, the DIP Loan amounts shall be applied toward and  
5 deducted from the purchase price. If the DIP Lender or an affiliate of the DIP Lender is not the  
6 successful bidder for the Debtor's assets, the DIP Loan amounts shall accrue interest at five  
7 percent (5%) per annum, retroactive to the date of advance, and the DIP Loan amounts and  
8 accrued interest shall be repaid from the purchase price.  
9

10 The Debtor has experienced significant cash flow problems as a result of the history  
11 recounted above. The cash flow problems have recently threatened the Debtor's ability to  
12 maintain full production. This has required that the Debtor seek protection in Chapter 11 in order  
13 to retain the value of its business. Although the Debtor has maintained continued availability  
14 under its revolving loan with Comerica, after the filing of the Petition the Debtor will require  
15 post-petition financing from another source in order to be able to utilize Comerica's cash  
16 collateral. Comerica has been unwilling to advance further moneys. If the Debtor is unable to  
17 obtain the DIP Financing, it would be unable to continue operations and the value of its assets and  
18 business would necessarily be irreparably harmed.  
19

20 The fact that the Debtor has been able to negotiate DIP Financing at zero initial interest  
21 with a potential purchaser is a huge benefit to the Debtor and the Estate. The senior lender is  
22 cooperating but is requiring progress toward a sale. The Agreement allows for the financing  
23 which will preserve the business at the least imaginable cost.  
24

25 In summary, the Debtor believes that there is no question that the proposed DIP financing  
26 is in the overwhelming best interests of these estates.  
27  
28

1 B. THE PROCEDURAL REQUIREMENTS REGARDING APPROVAL OF THIS  
2 EMERGENCY MOTION HAVE BEEN SATISFIED.

3 Pursuant to Bankruptcy Rule 4001(c)(1)(C), the Debtor is required to serve a copy of this  
4 Motion on the creditors listed on the list of 20 largest unsecured creditors, or creditors' committee  
5 if appointed, and any other entity that the Court directs. The Debtor has complied with the  
6 foregoing by serving a copy of this Motion by overnight delivery or email on the creditors listed  
7 on the list of 20 largest unsecured creditors and the United States Trustee, all parties who have  
8 requested special notice, and all lien holders.  
9

10 III.

11 CONCLUSION

12 Based upon all of the foregoing, the Debtor respectfully submits that the Debtor has  
13 satisfied the requirements for approval of an extension of the Term of the Post-Petition Financing,  
14 and request that the Court enter an order granting the relief requested in the Motion.  
15

16 Dated: November 22, 2010

KRYSTAL KOACH, INC.

17  
18  
19  
20  
21 By: /s/ Philip A. Gasteier

22 RON BENDER

PHILIP A. GASTEIER

KRIKOR J. MESHEFEJIAN

23 LEVENE, NEALE, BENDER, YOO

& BRILL L.L.P.

24 Proposed Counsel for Chapter 11 Debtor and Debtor  
25 in Possession  
26  
27  
28

DECLARATION OF WALTER BOWSER

I, Walter Bowser, hereby declare as follows:

1. I am over 18 years of age. I am the Chief Financial Officer of Krystal Koach, Inc. (“the Debtor”), the debtor and debtor in possession herein, having assumed that position in December 2009. Except where otherwise indicated, the statements made herein that address any time period prior to the date I assumed my role as the Debtor’s Chief Financial Officer are based on my review of the Debtor’s books and records and other documents in the Debtor’s possession. Except where otherwise indicated, all other statements are of my own personal knowledge, and if called upon, I could and would testify to their truth.

2. I make this Declaration in support of the Debtor’s Emergency Motion for Approval of Post-Petition Financing (the “Motion”), in connection with the Post-Petition Loan and Security Agreement (the “Agreement”) dated November 19, 2010, between the Debtor and Seven One Limited, A BVI Company, or assignee (the “DIP Lender”), a copy of which is attached hereto as Exhibit “1” (the “Agreement”).

A. Case Background.

3. The Debtor commenced its bankruptcy case by filing a voluntary petition under Chapter 11 of the Bankruptcy Code on November 19, 2010 (the “Petition Date”). The Debtor continues to operate its business, manage its financial affairs and operate its bankruptcy estate as a debtor in possession.

4. The Debtor is one of the largest independent manufacturers of stretch limousines and customer shuttle buses in the United States. Founded twenty-seven years ago by Edward P. Grech (“Grech”) as a small-scale operation conceived in an unassuming automotive repair shop, the Debtor grew into nearly a \$150 million annual revenue company that is a premier manufacturer in its industry. The Debtor is currently one of only a few manufacturers in the

1 world certified by both Ford's Lincoln-Mercury division and General Motors' Cadillac division to  
2 modify their respective vehicles into limousines. Wholly owned by Grech (the Debtor's President  
3 and Chief Executive Officer), who is widely regarded by industry and regional publications as a  
4 progressive, creative leader, and who is known as a senior patriarch in the custom coach industry,  
5 the Debtor has obtained the reputation of designing and manufacturing top-notch, high-end,  
6 limousines, shuttle buses and other specialty vehicles that are unparalleled in the industry.

7 5. The Debtor has been an industry pioneer and leader, manufacturing and selling its  
8 vehicles to limousine operators, dealerships, corporations, and individuals throughout the world.  
9 With sales at both the retail and dealer level, the Debtor has achieved a premium brand within the  
10 industry, commands premium prices, and enjoys a reputation for quality, safety, and excellence in  
11 design. For example, the Debtor is one of the few manufacturers to voluntarily conduct crash  
12 tests of its vehicles to ensure quality and safety. The Debtor has further differentiated itself from  
13 its rivals by being a premium designer and manufacturer that caters to all phases of the luxury  
14 transportation industry. The Debtor sells products in six main categories: Ford-Lincoln based  
15 limousines, shuttle buses, hearses, hybrid buses, limousine buses, and SUV limousines. Within  
16 the stretch limousine market, the Debtor currently has an estimated 30% market share, and within  
17 the shuttle bus market, the Debtor currently has an estimated 5% market share which is growing.

18 6.. The Debtor acquires most of the car chassis that form the core of its product from  
19 Ford Motor Company ("Ford"). These purchases have historically been provided to the Debtor  
20 pursuant to a purchasing line of credit made available from Ford Credit (the "Ford Line") and  
21 additional lines of credit (the "Comerica Lines") made available from Comerica Bank  
22 ("Comerica"). As of the Petition Date, the balances owing on the Ford Line and Comerica Lines  
23 were approximately \$1,390,832 and \$7,329,219.53, respectively.

24 7.. Ford Credit and Comerica assert a security interest in, among other things, the car  
25 chassis that Ford sells to the Debtor. Ford Credit retains title documentation for each car chassis  
26 as security until the car is delivered into Mexico where the process of converting the vehicle into  
27 a limousine begins. At the time that the car is transported into Mexico, Ford Credit is paid for the  
28

1 car and title documentation for the vehicle is transferred to Comerica. As each finished limousine  
2 is then sold, Comerica releases the title documentation to the Debtor, and the Debtor provides the  
3 same to the customer.

4 8.. Similarly, Ford sells to the Debtor truck chassis. The truck chassis are not,  
5 however, financed by Ford Credit. Instead, the Debtor and Ford are parties to a consignment  
6 agreement whereby Ford retains title to the truck chassis until the truck chassis is transported to  
7 Mexico. At the time the truck chassis is transported into Mexico, Ford is paid for the truck  
8 chassis, and title documentation for the truck is transferred to Comerica. As each finished  
9 specialty truck is then sold, Comerica releases the title documentation to the Debtor, and the  
10 Debtor provides the same to the customer.

11 9. Other than the Debtor's vehicle inventory, the Debtor's asset base also includes the  
12 following: (a) parts inventory; (b) equipment and tools; (c) accounts receivable; and (d)  
13 ownership interest in Edson Financial, Inc., which provides equipment and vehicle financing to,  
14 among others, customers of the Debtor.

15 **B. Circumstances That Led To The Chapter 11 Filing.**

16 10 The Debtor showed consistent and formidable growth from its inception until  
17 2007. After expanding to three facilities in the Southern California region, with more than 800  
18 employees and almost \$150 million in annual revenue, starting in 2007, the Debtor began to see a  
19 drop in revenue caused as a result of various external factors which the Debtor has attempted to  
20 counteract through the implementation of various cost-cutting measures.

21 11. The overall downturn in the economy has had a significant impact on the Debtor's  
22 industry. As consumers have reduced their use of luxury products such as limousines, the  
23 Debtor's business has suffered. As a result of the decrease in the use of limousines, replacing  
24 existing limousines has become less necessary for the Debtor's customers. Accordingly, less  
25 orders have been placed, less limousines have been manufactured, and less revenue has been  
26 generated. Due to the decrease in demand, revenue has decreased in the industry as a whole, as  
27 manufacturers and sellers are willing to sell their product at discounted rates.  
28

1 12. Indeed, in an effort to mitigate its losses caused by the decrease in demand due to  
2 the economic recession, the Debtor has been forced to reduce sales prices on its existing  
3 inventory. Additionally, due to a highly anticipated Ford-Lincoln Town Car body style expected  
4 to be released, major customers of the Debtor have refrained from additional purchases of existing  
5 models. Given the image-driven nature of the limousine industry, particularly with up-scale  
6 clientele such as major Las Vegas hotel and casino chains which purchase vehicles from the  
7 Debtor, there has been a degree of hesitancy to purchase new units, as such clients have opted to  
8 wait for the release of newer models expected to be introduced in 2012.

9 13. As a result of the foregoing, the Debtor's business has experienced significant  
10 financial pressure. In 2008, revenues fell to approximately \$100 million. This trend continued  
11 through 2009, as the Debtor saw revenues fall to approximately \$35 million.

12 14. To help alleviate the financial strain being experienced by the Debtor, the Debtor  
13 implemented various cost-cutting measures. First, the Debtor was compelled as a result of the  
14 recession to reduce the number of its employees, from a high of approximately 800 in 2007, to  
15 currently approximately 100. Additionally, starting in 2009, the Debtor closed two of its  
16 manufacturing locations in Southern California. Instead, the Debtor began to outsource a  
17 majority of its vehicle manufacturing work to a sister company – Krystal International (a Mexican  
18 company) (“KI”). KI currently completes approximately 85% of each vehicle in Mexico. The  
19 vehicle is then shipped to the United States where it is completed in the Debtor's existing  
20 Southern California facility, and then sold. The Debtor pays KI for labor costs and related  
21 expenses. Such outsourcing has allowed the Debtor to streamline its costs and position itself to be  
22 a more profitable company, while ensuring exacting quality and safety. The shift in  
23 manufacturing to KI has marked a strategic shift in the Debtor's overall business model, as the  
24 Debtor has started to focus upon marketing and distribution while outsourcing production to a less  
25 costly alternative source.

26 15. Nevertheless, while these cost-cutting measures have helped the Debtor reorganize  
27 its business, financial challenges are still prevalent in the industry and with the Debtor's business.  
28



1 16. The Debtor currently suffers from a cash-flow crunch which the Debtor intends to  
2 address with debtor-in-possession financing. Additionally, the Debtor has actively marketed its  
3 business for sale for an extended period of time and has reached an agreement with a buyer,  
4 which is affiliated with the entity that will be providing the Debtor with the necessary debtor-in-  
5 possession financing. The Debtor intends to embark on an expedited sale process to sell its  
6 business to the highest bidder.

7  
8 C. The Debtor's Reorganization Strategy.

9 17. The Debtor currently suffers from a cash-flow crunch which the Debtor has  
10 addressed by negotiating debtor-in-possession financing and use of cash collateral. Additionally,  
11 the Debtor has actively marketed its business for sale since January 2009, and has obtained  
12 varying levels of interest regarding a sale of its business for the benefit of creditors. The Debtor  
13 is signed an asset purchase agreement with an entity related to the proposed post-petition lender,  
14 which the Debtor will present for Court approval. The Debtor has continued its efforts to market  
15 the company. The Debtor believes that a sale of assets is likely necessary to preserve the  
16 business.  
17

18 D. The Proposed Post-Petition Financing.

19 18. The Debtor has entered into the Agreement with the DIP Lender in order to provide  
20 necessary operating capital to continue business pending a sale of its assets. The DIP Lender is  
21 an affiliate of an interested purchaser. The terms of the financing are very favorable to the  
22 Debtor, but do not bind the Debtor to a sale to anyone.  
23

24 19. Under the Agreement, the DIP Lender will provide up to \$2,500,000 in financing to  
25 the Debtor (the "DIP Financing"). The DIP Financing will not initially accrue interest. If the DIP  
26 Lender or an affiliate of the DIP Lender is the successful bidder for the Debtor's assets, the DIP  
27 Loan amounts shall be applied toward and deducted from the purchase price. If the DIP Lender  
28

1 or an affiliate of the DIP Lender is not the successful bidder for the Debtor's assets, the DIP Loan  
2 amounts shall accrue interest at five percent (5%) per annum, retroactive to the date of advance,  
3 and the DIP Loan amounts and accrued interest shall be repaid from the purchase price.  
4

5 20. The DIP Financing shall also become due in the event other terminating events such  
6 as the Debtor's default under the Agreement of an order for use of cash collateral, conversion,  
7 appointment of a trustee or similar events.

8 21. The Agreement provides for the grant of a security interest in all of the Debtor's  
9 assets, excluding avoidance actions, and for the grant of a super-priority claim having priority  
10 over all administrative expenses of the kind specified in Sections 503(b) or 507(b) of the  
11 Bankruptcy Code; provided, however, such security interest and priority of claim shall be  
12 subordinate only to (a) all Superpriority Claims of Comerica Bank, and (b) a carve-out (the  
13 "Carve-Out") for the payment of (i) unpaid fees and disbursements incurred by professionals  
14 (other than ordinary course professionals) retained, pursuant to Sections 327 or 1103(a) of the  
15 Bankruptcy Code not to exceed \$420,000 plus, (b) quarterly fees required to be paid pursuant to  
16 28 U.S.C. §1930(a)(6) and any fees payable to the Clerk of the Bankruptcy Court, as further  
17 provided in the Agreement. The security interest shall be junior to all existing liens.  
18  
19

20 22. The DIP Financing will be coordinated with the agreement with the existing  
21 secured lender, Comerica Bank, concerning use of cash collateral and a cash flow budget to be  
22 approved with that agreement (the "Budget"). A copy of the proposed Budget is attached hereto  
23 as Exhibit "2." The Budget reflects the requirements of Comerica that the Debtor (i) utilize the  
24 DIP Financing before utilizing cash collateral; and (ii) utilize the DIP Financing to pay down the  
25 amount anticipated to be drawn on the letter of credit issued by Comerica on behalf of the Debtor  
26 to Lumberman's Underwriting Alliance, the Debtor's workers' compensation insurance carrier, in  
27  
28

1 the current, amended principal amount of \$907,314.

2 23. The effectiveness of the Agreement is subject to approval of the Court, and other  
3 contingencies including the delivery of a deed of trust by a related entity, Imperial Highway, LLC  
4 (“Imperial”) on property leased by Imperial to the Debtor and used by the Debtor as its  
5 headquarters offices. The deed of trust shall also secure the DIP Financing.  
6

7 24. The Agreement contains other terms and provisions believed to be for the most part  
8 customary to such agreements. The foregoing is a summary only and should not be relied upon to  
9 the exclusion of the Agreement, which is incorporated herein by reference. In the event of a  
10 conflict between this summary and the Agreement, the terms of the Agreement shall control.

11 25. The DIP Lender is an entity unaffiliated with the Debtor. The principal of the DIP  
12 Lender is Dr. Winston Chung Hing Ha (“Dr. Chung”), who is also the principal of Thunder Sky  
13 Energy Group Limited (“Thunder Sky”). Thunder Sky is a creditor of the Debtor, having made a  
14 loan of approximately \$1.0 Million to the Debtor in May 2010 on an unsecured basis, and Dr.  
15 Chung is an unsecured creditor for approximately \$40,000 on an unsecured basis]. The Debtor  
16 has reached agreement with another entity controlled by Dr. Chung on an agreement to purchase  
17 substantially all assets of the Debtor. The Debtor will be filing a motion for approval of that  
18 agreement, subject to higher bids. Ed Grech, the principal of the Debtor, has an agreement to  
19 obtain an equity interest in the purchasing entity in exchange for a contribution of property.  
20

21 **D. Need for the Post-Petition Financing.**

22 26. The Debtor has canvassed other potential financing options. At the present time, all  
23 or substantially all of the Debtor’s assets are encumbered by the security interest of Comerica  
24 Bank.  
25

26 27. Based on the Debtor’s search and review of the current market, it is clear that as is  
27 typical in a Chapter 11 bankruptcy case, no lender is willing to provide the Debtor with the  
28

1 needed DIP financing on an unsecured basis, with allowing the lender only an administrative  
2 claim. I am advised that most lenders who would even consider providing a chapter 11 debtor  
3 with DIP financing require a senior lien against all assets to securitize that loan. The Post-Petition  
4 Financing with the DIP Lender will provide the Debtor with the needed DIP Financing without  
5 priming any existing lien holders.  
6

7 28. The Debtor has experienced significant cash flow problems as a result of the history  
8 recounted above. The cash flow problems have recently threatened the Debtor's ability to  
9 maintain full production. This has required that the Debtor seek protection in Chapter 11 in order  
10 to retain the value of its business. Although the Debtor has maintained continued availability  
11 under its revolving loan with Comerica, after the filing of the Petition the Debtor will require  
12 post-petition financing from another source in order to be able to utilize Comerica's cash  
13 collateral. Comerica has been unwilling to advance further moneys. If the Debtor is unable to  
14 obtain the DIP Financing, it would be unable to continue operations and the value of its assets and  
15 business would necessarily be irreparably harmed.  
16

17 29. The Debtor's need for approval of the DIP Financing is critical. The Cash Collateral  
18 Stipulation negotiated with Comerica Bank requires that the DIP Financing be funded within five  
19 (5) business days of the Petition Date. It will take at least one day to fund the DIP Financing after  
20 the order is entered approving the DIP Financing. The Debtor urgently needs to have the  
21 additional cash availability to keep its operations going and to pay employees.  
22

23 ///

24 ///

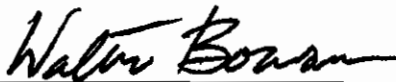
25 ///

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1            30. I believe that under the circumstances, the terms of the Post-Petition Financing  
2 extension are fair and reasonable and are the best terms that have been offered to the Debtor.

3            I declare under penalty of perjury that the foregoing is true and correct.

4            Executed this 19th day of November, 2010 at Brea, California.

5  
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8 \_\_\_\_\_  
9    WALTER BOWSER

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**EXHIBIT 1**

POST-PETITION LOAN AND SECURITY AGREEMENT

Dated as of November 19, 2010

among

Krystal Koach, Inc., as Borrower,

and

Seven One Limited, A BVI Company, or assignee, as Lender

**\$2,500,000 REVOLVING CREDIT FACILITY**

## POST-PETITION LOAN AND SECURITY AGREEMENT

THIS POST-PETITION LOAN AND SECURITY AGREEMENT ("Agreement") is made as of this 19th day of November 2010, by and among Krystal Koach, Inc., a California corporation ("Borrower") and Seven One Limited, A BVI Company, or assignee (the "Lender").

### WITNESSETH:

WHEREAS, on November 19, 2010, the Borrower filed a voluntary petition for relief under Chapter 11 the Bankruptcy Code with the United States Bankruptcy Court for the Central District of California (the "Voluntary Petition"), and the Borrower continues to operate its business and manage its assets as debtor-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code; and

WHEREAS, Lender has agreed to make loans and advances to the Borrower, and the parties wish to provide for the terms and conditions upon which such loans, advances and credit accommodations shall be made.

NOW, THEREFORE, in consideration of any loans, advances and credit accommodations (including any loans by renewal or extension) hereafter made to any Borrower (as defined herein) by Lender, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each Borrower, the parties agree as follows:

### **SECTION 1. DEFINITIONS.**

#### **Section 1.1 General Definitions.**

"Affiliate" means any Person who owns at least 5% of the outstanding capital stock of Borrower, and any Person directly or indirectly controlling, controlled by or under common control with any Borrower.

"Applicable Rate" means a rate of interest per annum of five percent (5%).

"Bankruptcy Case" means the Borrower's Chapter 11 Bankruptcy Case No. \_\_\_\_\_.

"Bankruptcy Code" means Title 11 of the United States Code entitled "Bankruptcy," as now and hereafter in effect, or any successor statute.

"Bankruptcy Court" means the United States Bankruptcy Court before which the Bankruptcy Case is pending, or any other court of competent jurisdiction before which the Bankruptcy Case is pending.

"Borrower" means Krystal Koach, Inc.

"Budget" means that certain Budget as approved by the Bankruptcy Court related to the cash collateral stipulation and order entered in the Bankruptcy Case authorizing the use of cash collateral of Comerica Bank.



"Budget" means that certain Budget as approved by the Bankruptcy Court related to the cash collateral stipulation and order entered in the Bankruptcy Case authorizing the use of cash collateral of Comerica Bank.

"Business Day" means any day other than a Saturday, Sunday, or such other day as banks in Boston, Massachusetts are authorized or required to be closed for business, and a day on which banks and other financial institutions are open for the transaction of business.

"Carve-Out" has the meaning set forth in Section 3 hereof.

"Cash Collateral Order" means the order of the Bankruptcy Court approving Borrower's use of cash collateral of Comerica Bank, as it may be amended from time to time.

"Casualty Event" means, with respect to any Property of any Borrower, any loss of or damage to, or any condemnation or other taking of, such Property for which such Borrower receives insurance proceeds, or proceeds of a condemnation award or other compensation.

"CERCLA" means the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended from time to time, 42 U.S.C. § 9601 et seq.

"Closing Date" means the date upon which the initial Loan is made.

"Collateral" has the meaning specified in Section 4.1 hereof.

"Comerica Loan" means the existing obligations of Borrower to Comerica Bank.

"Default" means any event, condition or default which, with the giving of notice, the lapse of time or both, would be an Event of Default.

"Disposition" means any sale, assignment, transfer or other disposition of any Property (whether now owned or hereafter acquired) by any Borrower to any Person other than another Borrower.

"Environmental Laws" means all federal, state and local laws, rules, regulations, ordinances, programs, permits, guidances, orders and consent decrees relating to health, safety, hazardous substances, and environmental matters applicable to each Borrower's business and facilities (whether or not owned by it) as any of the same may be from time to time hereafter amended.

"Event of Default" has the meaning specified in Section 11.1 hereof.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, and all rules and regulations from time to time promulgated thereunder.

"Existing Purchase Money Liens" means Liens existing as of the Filing Date securing purchase money Indebtedness (including Capital Leases) existing as of the Filing Date, which Liens and purchase money Indebtedness are more fully described on Schedule 5.1(b) hereto.

"Filing Date" means the date of filing of the Voluntary Petition.

"Final Order" means the Final Order of the Bankruptcy Court referred to in Subsection 6.2.(d) hereof.

"Fiscal Year" means the twelve month period ending on December 31<sup>st</sup> of each calendar year.

"GAAP" means generally accepted accounting principles and practices as in effect from time to time, consistently applied during each interval and from period to period.

"Hazardous Substances" means all materials, substances, compounds and solutions the use, transportation, storage, generation or disposal of which are regulated by any Environmental Law. Without limiting the generality of the foregoing, Hazardous Substances shall include (a) "hazardous substances", as defined in CERCLA 42 U.S.C. § 9601 (14), (b) "petroleum" as defined in RCRA 42 U.S.C. § 6991(2)(B), and (c) "pollutant" and "contaminant", each as defined in CERCLA 42 U.S.C. § 9601 (33).

"Indebtedness" means all liabilities, obligations and indebtedness of any and every kind and nature, including, without limitation, the Obligations and all obligations to trade creditors whether heretofore, now or hereafter owing, arising, due, or payable from any Borrower to any Person and howsoever evidenced, created, incurred, acquired, or owing, whether primary, secondary, direct, contingent, fixed, or otherwise. Without in any way limiting the generality of the foregoing, Indebtedness specifically includes (i) all obligations or liabilities of any Person that are secured by any lien, claim, encumbrance, or security interest upon Property owned by any Borrower, even though such Borrower has not assumed or become liable for the payment thereof; (ii) obligations or liabilities created or arising under any lease of real or personal property or conditional sale or other title retention agreement with respect to property used or acquired by a Borrower, even though the rights and remedies of the lessor, seller or lender thereunder are limited to repossession of such property; (iii) all unfunded pension fund obligations and liabilities; and (iv) all deferred or accrued taxes.

"Insolvency Proceeding" means, with respect to the Person in question, the commencement or filing by or against it of a request or petition for liquidation, reorganization, arrangement, adjustment of debts, adjudication as a bankrupt, winding-up, or other similar relief under the bankruptcy, insolvency, or similar laws of the United States, any state or territory thereof, or any foreign jurisdiction, now or hereafter in effect; the making of any general assignment for the benefit of creditors; the appointment of a receiver, trustee or custodian for it or for any of its assets; the institution by or against it of any of the foregoing or of any formal or informal proceeding for the dissolution or liquidation of, settlement of claims against, or winding up of its affairs; the sale, assignment, or transfer of all or any material part of its assets; the nonpayment generally of its debts as they become due; or the cessation of its business as a going concern.

"Interim Order" means the Interim and Proposed Final Order of the Bankruptcy Court described in Subsection 6.1(a) hereof.

"Lender's Security Interest" means the Liens created for the benefit of Lender pursuant to this Agreement, the Orders and the other Loan Documents and more fully described in Section 4.1 hereof.

"Lien" means any mortgage, deed of trust, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), security interest or preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever, including any conditional sale or other title retention agreement. "Lien" includes reservations, exceptions, easements, leases and other restrictions and encumbrances affecting real property. For purposes hereof a Person shall be deemed to own property acquired or held pursuant to a conditional sale or similar security arrangement.

"Loan Documents" means this Agreement and the Other Agreements.

"Loans" means all loans and advances made by Lender to the Borrower hereunder.

"Material Adverse Effect" means with respect to any event, act, condition or occurrence of whatever nature (including any adverse determination in any litigation, arbitration or governmental investigation or proceeding), whether singly or in conjunction with any other event or events, act or acts, condition or conditions, occurrence or occurrences, whether or not related, a material adverse change in, or a material adverse effect upon, any of the business, property, assets, operations, condition (financial or otherwise) or prospects of the Borrower.

"New Purchase Money Liens" means Liens arising after the Filing Date on property acquired by the Borrower after the Filing Date securing purchase money Indebtedness (including Capital Leases).

"Obligations" means and includes (without duplication) the aggregate of the unpaid principal balance of all Loans made hereunder and all accrued and unpaid interest thereon, and all other amounts due and owing from the Borrower to Lender hereunder, including, without limitation, all interest, fees, charges or other costs and payments that any Borrower is required to pay to Lender under or as a result of the Loan Documents or by law; all fees, costs and expenses required to be paid by any Borrower to Lender pursuant to any Loan Document; and all amounts, if any, paid by Lender to fund the Carve-Out pursuant to this Agreement and the Orders.

"Orders" means the Interim Order and the Final Order.

"Other Agreements" means, collectively, the Orders, all agreements, instruments and documents including, without limitation, notes, guarantees, mortgages, trust deeds, pledges, powers of attorney, consents, assignments, contracts, notices, security agreements, leases, financing statements and all other writings heretofore, now or from time to time hereafter executed by or on behalf of any Borrower or any other Person and delivered to Lender or to any parent, affiliate or subsidiary of Lender in connection with the Obligations or the transactions contemplated hereby.

"Permitted Expenses" means (i) fees and expenses of professionals incurred by the Borrower after the Filing Date and approved by the Bankruptcy Court in an aggregate amount not to exceed the aggregate amount of the Carve-Out.

"Permitted Liens" means liens having priority over a security interest perfected against the Debtor as of the date of entry of the Interim Order, including but not limited to: (i) Liens in favor of Lender hereunder and under the Orders; (ii) the Liens securing the Comerica Loan, including all replacement and adequate protection liens granted pursuant to the Cash Collateral Order; (iii) Existing Purchase Money Liens; (iv) New Purchase Money Liens; and (v) mechanics', materialmen's, repairmen's or other like Liens imposed by statute or common law for goods and/or services obtained by the Borrower in the ordinary course of business prior to or after the Filing Date that by such statute or common law have priority over the Lender's Security Interest.

"Person" means any individual, trust, firm, partnership, corporation or any other form of public, private or governmental entity or authority.

"Property" means the real property commonly known as *2701 East Imperial Highway, Brea, California, 92821-6713*, the legal description of which is attached hereto, as Exhibit A, and incorporated herein by this reference as if stated in full.

"Reorganization Plan" means any proposed plan of reorganization in the Bankruptcy Cases.

"Revolving Loan Commitment" shall mean the amount of \$2,500,000.

"Sale" means the sale of Borrower's assets pursuant to Section 363 of the Bankruptcy Code or a Plan.

"Subsidiary" means any corporation (or other legal entity) of which more than 50% of the outstanding stock (or other equity interests) having by its terms the ordinary voting power to elect a majority of the board of directors, managers or trustees of such corporation (or other legal entity) is at the time, directly or indirectly through one or more intermediaries, owned or controlled by a Borrower and/or one or more of its Subsidiaries, irrespective of whether or not, at the time, stock (or other equity interests) of any other class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency.

"Superpriority Claim" means a claim against Borrower in the Bankruptcy Case which is an administrative expense claim having priority over any or all administrative expenses of the kind specified in Sections 503(b) or 507(b) of the Bankruptcy Code.

"Term" has the meaning specified in Section 11 hereof.

"Termination Date" has the meaning specified in Section 11 hereof.

"UCC" means the Uniform Commercial Code (or any successor statute) as adopted and in effect in California or as adopted and in effect in any other state the laws of which are required by Section 9109(c)(3) of the California Commercial Code to be applied in connection with the issue of perfection of security interests as it shall be in effect from time to time.

## **SECTION 2. LOANS AND TERMS OF PAYMENT.**

### **Section 2.1 Revolving Loans.**

(a) Upon Borrower's requests made during the Term, Lender will make Loans to Borrower for Borrower's benefit in an aggregate principal amount at any time outstanding not to exceed the Revolving Loan Commitment.

(b) Borrower shall request each Loan not later than 4:00 p.m. (Pacific Standard Time) at least one (1) Business Days before the Business Day on which Borrower requests Lender to make such Loan. Each Loan shall be in an amount not less than \$100,000 and in integral multiples of \$50,000 each thereafter.

(c) If Lender or an affiliate of Lender (hereinafter jointly referred to as Lender as may be applicable) is the successful Buyer for Borrower's assets at the Sale, Loan amounts Borrower receives pursuant this Agreement shall be applied toward and deducted from Lender's purchase price, whereby Borrower will have no other obligation to repay any Loan sums it received from Lender.

(d) If Lender is an unsuccessful bidder for Borrower's assets at the Sale, Loans shall be repaid in full upon the earlier to occur of (i) expiration of the Term as provided in Section 11 of this Agreement, and (ii) the acceleration of the Obligations pursuant to Subsection 10.2 of this Agreement.

### **Section 2.2 Interest.**

(a) The Borrower will not pay interest to Lender on the unpaid principal amount of any Loans made hereunder unless and until the Sale concludes with Lender being an unsuccessful bidder for Borrower's assets.

(b) If Lender is an unsuccessful bidder at the Sale, or the Sale to Lender does not close within the time set forth in Section 10.1 (l) hereof (unless such time is extended by Buyer), or a Default occurs, interest will accrue on the unpaid principal amount of Loans received at the Applicable Rate retroactively from the date of the advances of the funding /loan until paid in full. If interest is to be paid, it will be calculated at the close of each day, computed on the basis of the actual number of days elapsed after the close of the Sale, over a 360-day year. All interest payable by a Borrower shall be due and payable in conformity with the payment obligation as noted in Section 2.3(b) hereof.

### **Section 2.3 Payment of Obligations.**

(a) The Borrower will not repay any amount owed on any Loan provided under this Agreement if Lender is the successful bidder for Borrower's assets at the Sale.

(b) If, and only if, Lender is not the Buyer of the Debtor's assets pursuant to the Sale thereof, will Borrower's Obligations under this Agreement mature and only then will Borrower become obligated to pay Lender any sums accrued under this Agreement. Upon the maturity (whether following Lender's unsuccessful bid, sale to third party, acceleration, Termination per Section 11 or otherwise) of the Obligations under this Agreement, the Borrower shall immediately pay to Lender cash in an amount equal to the aggregate outstanding principal amount of the Loans and all accrued and unpaid interest thereon, together with any and all fees, expenses and other Obligations owing to Lender hereunder.

**Section 2.4** Use of Proceeds. The Borrower shall use the proceeds of the Loans provided by Lender to Borrower hereunder: (a) for costs, expenses and fees in connection with the preparation, negotiation, execution and delivery of this Agreement and the other Loan Documents, (b) for general operating and working capital purposes pursuant to the Budget (including without limitation the funding of the payment in respect of the letter of credit in accord with the Budget), (c) for Permitted Expenses pursuant to the Budget, and (d) in the event Lender is the successful bidder at the Sale of Borrower's assets, at closing upon the Sale to lender, such Loan Proceeds will be considered as a partial payment made toward Lender's purchase of said assets.

### **SECTION 3. ALLOWANCE AND PRIORITY OF CLAIMS.**

Upon entry of the Interim Order pursuant to Section 364(c)(1) of the Bankruptcy Code, the Obligations of the Borrower hereunder shall at all times constitute allowed administrative expense claims in the Bankruptcy Case having priority over all administrative expenses of the kind specified in Sections 503(b) or 507(b) of the Bankruptcy Code; *provided, however*, such priority of claims shall be subordinate only to (a) any Superpriority Claim of Comerica Bank; and (b) a carve-out not to exceed \$420,000 (the "Carve-Out") for the payment of unpaid fees and disbursements incurred by professionals (other than ordinary course professionals) retained, pursuant to Sections 327 or 1103(a) of the Bankruptcy Code, plus quarterly fees required to be paid pursuant to 28 U.S.C. §1930(a)(6) and any fees payable to the Clerk of the Bankruptcy Court; *provided, however*, that the Carve-Out shall not include professional fees, disbursements, costs, or expenses incurred in connection with any claim or cause of action asserted against the Lender. The foregoing provisions are without prejudice to Lender's right to object to any such fees or expenses. Further, the above is subject to the provisions of Sections 364(c)(2) as provided for in section 4.2 hereof.

### **SECTION 4. SECURITY INTEREST IN FAVOR OF LENDER.**

#### **Section 4.1. Security Interest in Collateral.**

As security for the Loans and all other Obligations, Borrower hereby pledges, assigns and grants to Lender a continuing security interest in all presently owned and hereafter acquired assets and real and personal property of the Debtor, including, without limitation, the following property of the Company, whether now owned or existing or hereafter acquired or arising and

regardless of where located (hereinafter referred to collectively as the "Collateral"):

- (i) all Accounts, Deposit Accounts, Instruments, Documents, Chattel Paper (whether Tangible Chattel Paper or Electronic Chattel Paper), Goods (including Inventory, Equipment, Fixtures, work in progress and Motor Vehicles), Payment Intangibles, Software, accounts receivable, customer lists and other General Intangibles and all Letter-of-Credit Rights;
- (ii) the shares of common stock and preferred stock of, or partnership, membership and other ownership interests in any subsidiary, whether or not wholly owned, organized under the laws of the United States or any political subdivision thereof, now or hereafter owned by the Debtor, (collectively, the "Pledged Equity"), together with, in each case, all shares, securities, monies or property representing a dividend on any of the Pledged Equity, or representing a distribution or return of capital upon or in respect of the Pledged Equity, or resulting from a split up, revision, reclassification or other like change of the Pledged Equity or otherwise received in exchange therefore, and any subscription warrants, rights or options issued to the holders of, or otherwise in respect of, the Pledged Equity;
- (iii) all Investment Property, Financial Assets and Securities Accounts not covered by the foregoing clauses (i) and (ii);
- (iv) all Copyrights, Patents, Trademarks, Licenses, Permits, Certification Governmental Approvals and other Intellectual Property necessary for the operation of the Debtor's Business and operations;
- (v) all causes of action and commercial tort claims of the Debtor under the Bankruptcy Code or applicable non-bankruptcy law, but excluding causes of action and recoveries pursuant to Chapter 5 of the Bankruptcy Code;
- (vi) all other tangible and intangible property of the Debtor, including all books, correspondence, credit files, records, invoices, tapes, cards, computer runs and other papers and documents in the possession or under the control of the Debtor or any computer bureau or service company from time to time acting for the Debtor; and
- (vii) all proceeds and products in whatever form (including cash and non-cash proceeds) of all or any part of the other Collateral, including all rents, profits, income and benefits and all proceeds of insurance and all condemnation awards and all other compensation for any event of loss with respect to all or any part of the other Collateral (together with all rights to recover and proceed with respect to the same), and all accessions to, substitutions for and replacements of all or any part of the other Collateral.

Any of the foregoing terms that are defined in the Uniform Commercial Code shall have the meaning provided in the Uniform Commercial Code, as amended and in effect from time to time, as supplemented and expanded by the foregoing. The Uniform Commercial Code shall incorporate reference to Article 9 as in effect on the date hereof and as amended by Revised Article 9 with an effective date of July 1, 2001.

The pledge, assignment and grant of Liens in favor of Lender on the Collateral are sometimes referred to herein as the "Lender's Security Interest".

**Section 4.2. Priority of Lender's Security Interest.**

Upon entry of the Interim Order, the Obligations shall be secured pursuant to Sections 364(c)(2) of the Bankruptcy Code in accordance with the terms of the Interim Order and the Lender's Security Interest shall be senior to all other Liens on the Collateral except that the Permitted Liens shall be senior to Lender's Security Interest, but only to the extent that such Permitted Liens are valid and perfected under applicable non-bankruptcy law and are not avoided or subordinated under the Bankruptcy Code.

**Section 4.3. Preservation of Collateral; Perfection of Lender's Security Interest.**

Borrower shall, at Lender's request, execute and deliver to Lender such security agreements, mortgages, financing statements, documents and other agreements and instruments (and pay the cost of filing or recording the same in all public offices deemed reasonably necessary or desirable by Lender) and do such other acts and things as Lender may deem necessary or desirable in order to establish and maintain the validity, attachment and perfection of the Lender's Security Interest (free and clear of all other Liens, claims and rights of third parties whatsoever, whether voluntarily or involuntarily created, except Permitted Liens and the Carve Out). Borrower irrevocably hereby makes, constitutes and appoints Lender (and all Persons designated by Lender for that purpose) as Borrower's true and lawful attorney and agent-in-fact to execute such security agreements, mortgages, financing statements, documents and other agreements and instruments and do such other acts and things as may be necessary or appropriate to preserve and perfect Lender's Security Interest.

**Section 4.4. Possession of and Rights to Access Collateral.**

Until an Event of Default has occurred, Borrower shall have the right, except as otherwise provided in this Agreement, in the ordinary course of such Borrower's business: (a) to enter the Property; (b) to use the Collateral in the normal course of Borrower's business and to conduct Borrower's business from the Property; (c) to move Borrower's inventory; (d) to move Borrower's personal property to and from the Property; (e) to use and operate the machinery, equipment, real property, improvements and fixtures thereon the Property consistent with Borrower's past practices; (f) to move to and from the Property the personal property and vehicles of third parties with whom



Borrower conducts business; and (g) subject to the terms of this Agreement, the Orders and any other orders issued by the Bankruptcy Court, to use proceeds of the Loans in accord with Section 2.4 hereof.

**Section 4.5 Lender's Security Interest Subject to Carveout.**

Lender's Security Interest shall be subject and subordinate to the Carveout.

**SECTION 5. REPRESENTATIONS AND WARRANTIES.**

**Section 5.1 General Representations and Warranties.**

Borrower represents and warrants to Lender as of the Closing Date:

(a) Borrower is duly organized and existing and in good standing under the laws of the state of its incorporation and is qualified or licensed to do business in all other countries, states and provinces the laws of which require Borrower to be so qualified or licensed and in which Borrower conducts any material business, except where such circumstance cannot reasonably be expected to have a Material Adverse Effect;

(b) Borrower is not in violation of any applicable statute, regulation or ordinance of any governmental entity; or of any agency thereof, which could reasonably be expected to have a Material Adverse Effect;

(c) The Borrower has not received any notice to the effect that it is not in full compliance with any of the requirements of ERISA, and the regulations promulgated thereunder and, to the best knowledge of each Borrower's executive officers, there exists no event described in Section 4043(b)(3) thereof ("Reportable Event") except where such circumstance cannot reasonably be expected to have a Material Adverse Effect;

(d) Except for filings and payments which could not reasonably be expected to have a Material Adverse Effect, the Borrower has filed all federal, state and local tax returns and other reports it is required by law to file and has paid, to the extent due and payable, all taxes, levies, assessments, charges, liens, claims or encumbrances upon or relating to the Collateral, the Obligations, its employees, payroll, income, and gross receipts, its ownership or use of any of its assets, and any other aspect of its business (collectively, the "Charges");

(e) Upon execution of this Agreement and the other Loan Documents by Lender and so long as the Orders have been entered, the Borrower has the right and power and is duly authorized and empowered to enter into, execute, deliver and perform this Agreement and the other Agreements, and its officers executing and delivering the Loan Documents are duly authorized and empowered to do so;

(f) The execution, delivery and performance by the Borrower of the Loan Documents shall not, by the lapse of time, the giving of notice or otherwise, constitute a violation of any applicable law or a breach of any provision contained in its Articles or Certificate of Incorporation or By-Laws;

(g) Each Borrower has, and is current and in good standing with respect to, all governmental approvals, permits, certificates, inspections, consents and franchises necessary to continue to conduct its business as heretofore conducted, and to own or lease and operate the properties now owned or leased by it, except where such failure cannot reasonably be anticipated to have a Material Adverse Effect;

(h) Except as disclosed in Schedule 5.1(h), all premises and facilities owned, leased, used or operated by the Borrower or any Subsidiary of the Borrower or, to the knowledge of any of the Borrower's executive officers, after a reasonable investigation, any predecessor in interest, have been, and continue to be, owned, leased, used or operated in compliance in all material respects with all applicable Environmental Laws except where the failure to be in compliance would not reasonably be expected to have a Material Adverse Effect;

(i) No broker or finder acting on the Borrower's behalf brought about the obtaining, making or closing of the loans pursuant to this Agreement and the Borrower has no obligation to any other Person in respect of any finder's or brokerage fees in connection with the loans contemplated by this Agreement;

(j) No information contained in the Loan Documents, or any written statement furnished by or on behalf of Borrower pursuant to the terms of this Agreement, which has previously been delivered to Lender, contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained herein or therein not misleading at the time and in light of the circumstances under which made.

**Section 5.2 Warranty and Reaffirmation of Warranties and Representations; Survival of Warranties and Representations.**

Each request made by Borrower for a Loan pursuant to the Loan Documents shall constitute: (i) a warranty and representation by Borrower to Lender that there does not then exist an Event of Default or a Default, except as otherwise notified to Lender by Borrower; and (ii) a reaffirmation as of the date of said request of the representations and warranties of the Borrower contained in Subsections 5.1(a) through 5.1(j) hereof.

All representations and warranties of the Borrower contained in the Loan Documents shall survive the execution, delivery and acceptance thereof by the parties thereto and the closing of the transactions described therein or related thereto.

## **SECTION 6. CONDITIONS PRECEDENT.**

### **Section 6.1 Conditions to Effectiveness of Agreement and Initial Loans.**

This Agreement, and the obligation of Lender to make the initial Loan shall not become effective until the date on which each of the following conditions is satisfied (or waived by Lender in its sole discretion):

(a) Interim Order. The Bankruptcy Court shall have entered, and Lender shall have received a true copy of, an order in substantially the form of Exhibit B attached hereto with such changes as Lender shall have approved in its sole discretion (the "Interim Order") approving the Loan Documents and Lender's Security Interest, and the granting of the Superpriority Claim status, which Interim Order (i) shall have been entered upon motion of Borrower satisfactory in form and substance to Lender, (ii) shall be in full force and effect, and (iii) shall not have been stayed, reversed, modified or amended in any respect and, if the Interim Order is the subject of a pending appeal in any respect, neither the making of such Loans nor the performance by any Borrower of any of its obligations hereunder or under the Loan Documents or under any other instrument or agreement referred to herein shall be the subject of an effective stay pending appeal.

(b) Deed of Trust. As security for the Loans and all other Obligations, Imperial Highway, LLC "Imperial" shall have executed and delivered to Lender a deed of trust substantially in the form attached hereto as Exhibit "C" (the "Deed of Trust") covering all of Imperial's interests in the Property (the legal description of which is provided in Exhibit A hereto) whether real or personal, tangible or intangible, now owned or existing or hereafter acquired or arising, together with any and all additions thereto and replacements therefore, and all proceeds and products thereof, including without limitation all fixtures to or rents from said Property, with said Deed of Trust delivered in escrow prior to the enforceability and funding of this transaction..

(c) Counterparts of Agreement. This Agreement or counterparts thereof shall have been duly executed and delivered by the Borrower to Lender.

(d) Corporate and Judicial Proceedings. All corporate and judicial proceedings required to be taken in connection with the execution of this Agreement, the making of the Loans, the granting of the Deed of

Trust, the use of cash collateral, and the incurrence of any obligations with respect to the execution and delivery of the Loan Documents and all documents and papers relating thereto, shall have been taken, executed and delivered, and shall be satisfactory to Lender in all material respects. Lender shall have received copies of such documents and papers as Lender may reasonably request in connection therewith, all in form and substance satisfactory to Lender.

(e) Bankruptcy Documents. All motions and other documents to be filed with the Bankruptcy Court in connection with this Agreement and the approval thereof shall be in form and substance satisfactory to Lender.

(f) Other Documents. Lender shall have received such other documents, certificates and opinions as Lender may reasonably request.

#### **Section 6.2** Conditions to Each Loan.

The obligation of Lender to make the initial Loan and each other Loan shall also be subject to the satisfaction (or waiver by Lender in its sole discretion) of the following conditions:

(a) Representations and Warranties. All of Borrower's representations and warranties contained in the Loan Documents shall be correct in all material respects on and as of the date of each Loan, except (i) to the extent that any such representation or warranty expressly relates to an earlier date, and (ii) for changes therein permitted or contemplated by this Agreement.

(b) No Events of Default. No event shall have occurred and be continuing, or would result from the funding of such Loan, which constitutes or would constitute a Default or an Event of Default.

(c) Legality. The making of such Loan shall not violate any requirement of law and shall not be enjoined temporarily, preliminarily or permanently.

(d) Bankruptcy Court Order. The Interim Order shall be in full force and effect and shall not have been stayed, reversed, modified or amended in any respect, and, not later than 30 days after the entry of the Interim Order, the Bankruptcy Court shall have entered a final order approving the Loan Documents and Lender's Security Interest, and granting the Superpriority Claim status (the "Final Order"); *provided*, that at the time of the making of any Loan the aggregate amount of which, when added to the sum of the principal amount of all Loans then outstanding would exceed the amount thereof that was authorized by the Bankruptcy Court in the Interim Order (collectively, the "Additional Credit"), Lender shall have received entered copies of the Interim Order and, if applicable, Final

Order, and at the time of the extension of any Additional Credit, the Final Order shall be in full force and effect, and shall not have been stayed, reversed, modified or amended in any respect; and if either the Interim Order or the Final Order is the subject of a pending appeal in any respect, neither the making of the Loans nor the performance by Borrower of any of its obligations under any of the Loan Documents shall be the subject of an effective stay pending appeal.

The request by Borrower for the funding of any Loan and the receipt by Borrower of the proceeds of any Loan shall be deemed to constitute, as of the date of such request or acceptance, a representation and warranty by the Borrower that all of the conditions in this Section 6.2 have been satisfied.

## **SECTION 7. REPORTS AND INFORMATION.**

On and after the date hereof, until all of the Obligations shall have been paid in full and Lender shall have no commitment hereunder, the Borrower shall observe the following reporting covenants:

### **Section 7.1 Interim Financial Statements and Reports.**

(a) Monthly Reports. Borrower shall furnish to Lender either (i) copies of such financial reports as Borrower provides to Comerica under any stipulation or order governing use of cash collateral in connection with the Comerica Loan, or (ii) within fifteen (15) days after the end of each fiscal month, an unaudited consolidated balance sheet of Borrower as of the end of such month and an unaudited consolidated statement of income for the Borrower for such monthly period and for the period from the Filing Date through the end of such month

(b) Other Reports. Borrower shall furnish to Lender all financial reports provided by the Borrower to any other creditor at the same time such reports are provided to such creditors.

**Section 7.2 Notice of Defaults.** As soon as possible, and in any event within two (2) days after the occurrence of any Default or Event of Default, Borrower shall furnish to Lender the statement of its chief executive officer or chief financial officer setting forth details of such Default or Event of Default and the action which the Borrower has taken or propose to take with respect thereto.

**Section 7.3 Miscellaneous.** The Borrower shall provide Lender with such other information as Lender may from time to time request respecting the Collateral or the business, properties, prospects, condition or operations, financial or otherwise, of the Borrower. Additionally, Borrower shall not modify the Budget without providing Lender notification of same at the time consent is sought from Comerica Bank, or in advance of submission to the Bankruptcy Court for approval, if

required, and said Budget modification shall not impact or impair Lender's Superpriority Claim status and security interest as granted hereunder

## **SECTION 8. AFFIRMATIVE COVENANTS.**

On and after the date hereof, until all of the Obligations shall have been paid in full and Lender shall have no commitment hereunder, the Borrower shall observe the following affirmative covenants:

**Section 8.1 Existence and Business.** Borrower shall (a) preserve and maintain its corporate existence and qualify and remain qualified as to conduct business in the jurisdiction in it is organized; (b) comply in all material respects with all valid and applicable statutes, rules and regulations necessary for the conduct of business, except to the extent that the provisions of the Bankruptcy Code specifically conflict therewith and would govern, and (c) engage only in the businesses which it is conducting on the date of this Agreement.

**Section 8.2 Maintenance of Collateral.** Borrower shall maintain, keep and preserve the Collateral in good repair and working order, ordinary wear and tear excepted.

**Section 8.3 Compliance With Law.** Borrower shall comply in all material respects with all applicable laws and regulations.

## **SECTION 9. NEGATIVE COVENANTS.**

On and after the date hereof, until all of the Obligations shall have been performed in accordance with this Agreement, the Borrower covenants that it will not:

### **Section 9.1 Superpriority Claims/Senior Liens.**

Incur, create, assume, suffer to exist or permit any other Superpriority Claim or Lien that is pari passu with or senior to the Liens or claims of Lender against Borrower hereunder, except for the Permitted Liens, any Superpriority Claim of Comerica Bank and the Carve-Out, or apply to the Bankruptcy Court for the authority to incur, create, assume, suffer to exist or permit any such Superpriority Claim or Lien.

### **Section 9.2 Changes To Orders.**

Make or permit to be made, or support or consent to the making of, any changes to the Orders.

**SECTION 10. EVENTS OF DEFAULT; RIGHTS AND REMEDIES ON  
DEFAULT.**

**Section 10.1 Events of Default.** The occurrence of any one or more of the following events shall constitute an "Event of Default," as set forth herein:

(a) Borrower fails to pay the Obligations when due and payable or declared due and payable, and such condition is not corrected within three (3) Business Days;

(b) Lender notifies the Borrower that the outstanding balance of the Loans exceeds the Revolving Loan Commitment and such condition is not corrected within three (3) Business Days after such notice;

(c) Borrower fails to perform, keep or observe any other term, provision, condition, covenant, warranty or representation contained in the Loan Documents, which is required to be performed, kept or observed by such Borrower or Affiliate, and such failure is not cured to Lender's reasonable satisfaction within six (6) Business Days after the sooner to occur of Borrower's receipt from Lender of notice of such failure or the date on which such failure becomes known to any officer of a Borrower;

(d) Any judgment or order with respect to a post-petition event that may be rendered against the Collateral or the Property which does or would reasonably be expected to (i) cause a Material Adverse Effect, (ii) have a material adverse effect on the Borrower's ability to perform its obligations under any Loan Document, or (iii) have a material adverse effect on the rights and remedies of Lender under any Loan Document, and there shall be any period of 10 consecutive days during which a stay of enforcement of such judgment or order, by reason of a pending appeal or otherwise, shall not be in effect, and such condition is not corrected within six (6) Business Days of the date on which Borrower receives notice thereof;

(e) The Bankruptcy Case shall be dismissed or the Borrower submits an application for the approval of any other Superpriority Claim (other than the Carve-Out) in the Bankruptcy Case which is pari passu with or senior to the claims of Lender against Borrower, or there shall arise or be granted any such pari passu or senior Superpriority Claim;

(f) An order of the Bankruptcy Court shall be entered reversing, amending, supplementing, staying for a period in excess of 10 days, vacating or otherwise modifying either of the Orders or the relief granted thereby;

**(g)** The Final Order is not entered within 30 days after the entry of the Interim Order; or

**(h)** Any event shall have occurred and be continuing which could reasonably be expected to have a Material Adverse Effect.

**(i)** A default shall occur under any order entered into the Bankruptcy Case regarding either Borrower's (i) ability to use cash collateral; or (ii) obligation to provide "adequate protection" to the holders of the Comerica Loan. For purposes of this Subsection, "cash collateral" and "adequate protection" shall have the same meanings as they do under the Bankruptcy Code.

**(j)** The Motion to Approve 363 Sale to Lender is not filed within 20 days of the filing of the Bankruptcy proceeding by the Borrower.

**(k)** The Order Approving the 363 Sale to Lender is not entered by January 12, 2011.

**(l)** Closing does not occur on the 363 Sale to Lender by January 26, 2011.

**(m)** Debtor fails to maintain full insurance coverages usual and customary for the business operations of the Debtor, and fails to cure same within four (4) business days of notification thereof by any party

#### **Section 10.2 Acceleration of the Obligations.**

Upon the occurrence and continuance of an Event of Default or on the Termination Date, Lender shall have the right to terminate the Revolving Loan Commitment, and all of the Obligations may, at the option of Lender be declared, and immediately shall become, due and payable. Subject to the automatic stay provisions of 11 U.S.C. § 362, Lender may exercise any or all of the following rights and remedies:

**(a)** The right to terminate the Revolving Loan Commitment;

**(b)** In addition to any other rights and remedies contained in the Loan Documents, all of the rights and remedies under all applicable law and all of the rights and remedies of a secured party under the Bankruptcy Code, the UCC or other applicable law, all of which rights and remedies shall be cumulative and non-exclusive, to the extent permitted by law, and may be exercised, in Lender's discretion, alternatively, successively, or concurrently on any one or more occasions.

**(c)** The right to (i) enter upon the premises of the Property, without any obligation to pay the Borrower rent, without first obtaining a final judgment or giving such Borrower notice and opportunity for a



hearing on the validity of Lender's claim, or any other place or places where the Collateral is located and kept, and remove the Collateral therefrom to the premises of Lender or any agent of Lender, for such time as Lender may desire, in order to effectively collect or liquidate the Collateral, or (ii) require the Borrower, at their expense, to assemble the Collateral and make it available to Lender at a place to be designated by Lender, in its sole discretion;

(d) The right to (i) sell or to otherwise dispose of all or any Collateral at public or private sale or sales, with such notice as may be required by law, in lots or in bulk, for cash or on credit, all as Lender, in its discretion, may deem advisable; (ii) adjourn such sales from time to time with or without notice; (iii) conduct such sales on any Borrower's premises or elsewhere and use any Borrower's premises without charge for such sales for such time or times as Lender may see fit. Lender shall have the right to sell, lease or otherwise dispose of the Collateral, or any part thereof, for cash, credit or any combination thereof, subject to the Permitted Liens. All proceeds realized from the sale of any Collateral shall be applied in accordance with the provisions of Section 10.3 hereof. If, after giving effect to the application of proceeds of Collateral pursuant to the terms of this Agreement, any Obligations shall remain outstanding, the Borrower and any guarantor/co-obligor shall remain liable to Lender therefor with interest at the highest rate provided for herein and all costs and expenses of collection or enforcement, including attorneys' fees and legal expenses.

(e) With reference to any action by the DIP Lender upon Default, the DIP Lender shall provide three business days' notice to the Debtor, the United States Trustee (the "UST"), Comerica Bank and any committee appointed in this Chapter 11 Case (and if no committee has been appointed, each of the Debtors' twenty largest creditors) of said Default. Upon expiration of this notice period, if the Default has not been cured, the DIP Lender shall have the right to seek an order of Bankruptcy Court on five business days' notice to the Debtor, Comerica Bank, the DIP Lender, the UST, and any committee appointed in this Chapter 11 Case (or if no committee has been appointed, each of the Debtors' twenty largest creditors), to exercise the rights and remedies granted it (whether under the Order approving this Loan or the DIP Loan Documents) as to all or such part of the DIP Collateral, including without limitation to take possession of and sell the DIP Collateral in accordance with the terms of the UCC to satisfy the DIP Indebtedness, or to otherwise exercise its remedies as a secured creditor under the UCC, and to seek for any such purpose, relief from the automatic stay of section 362 of the Bankruptcy Code as to the DIP Lender interest and to have same be modified and vacated as to the DIP Lender, if deemed appropriate by the DIP Lender.

(f) Nothing included herein shall prejudice, impair, or otherwise affect the DIP Lender's rights to seek any other or supplemental relief in respect of the Debtor nor the DIP Lender's rights, as provided in the DIP Loan Documents or under applicable law.

(g) Notwithstanding anything else to the contrary in this Section 10.2, Lender shall not have the right to sell any Collateral in which Comerica Bank has a superior lien without the prior written consent of Comerica Bank; provided that, for the avoidance of doubt, nothing herein shall limit Lender in the exercise of its rights under the Deed of Trust in respect of the Property.

### **Section 10.3 Application of Proceeds of Collateral.**

If Lender receives or realize any proceeds from the sale, collection or realization of any of the Collateral following the occurrence and during the continuance of such Event of Default, such proceeds shall be applied as follows: first to the payment of any valid Permitted Liens; second to the reasonable costs, expenses and attorneys' fees and expenses incurred by Lender for collection and for acquisition, completion, protection, removal, storage, sale and delivery of the Collateral; third to the Carve Out; fourth to the principal of the Loans and any other Obligations; and fifth, the remainder, if any, shall be remitted to the Borrower or to such other Person as shall be entitled to the same.

### **Section 10.4 Notice.**

Any notice required to be given by Lender of a sale, lease, other disposition of the Collateral or any other intended action by Lender, if given three (3) days prior to such proposed action, shall constitute commercially reasonable and fair notice thereof to the Borrower.

### **Section 10.5 Survival.**

If this Chapter 11 Case is dismissed, converted, otherwise superseded or substantively consolidated, DIP Lender's rights and remedies under the DIP Loan Documents and any Order entered approving same shall be and remain in full force and effect as if such Chapter 11 Case had not been dismissed, converted, superseded or substantively consolidated. Furthermore, notwithstanding any such dismissal, conversion, supercession or substantive consolidation, all of the terms and conditions of any Order approving this Agreement, including, without limitation, the liens and the priorities granted hereunder, shall remain in full force and effect.

**SECTION 11. TERMINATION OF COMMITMENT; MATURITY OF OBLIGATIONS.**

The Revolving Loan Commitment shall be in effect during the period (the "Term") commencing on the Closing Date and continuing until the earliest to occur of: (a) the sale or liquidation of the Borrower or substantially all of its assets, (b) the effective date of a Reorganization Plan, (c) any termination of the Revolving Loan Commitment and/or acceleration of the Loans by Lender pursuant to Section 10.2 hereof; (d) the rejection or non-approval by the Court of an asset purchase agreement under which Lender or its affiliate are the buyer; (e) the approval by the Court of a buyer for the Debtor's assets and business other than Lender or its affiliate; (f) a default or breach of the Cash Collateral Order; (g) conversion of any of the Chapter 11 Case to a case under Chapter 7 of the Bankruptcy Code; (h) dismissal of any of the Chapter 11 Case; (i) appointment of a Trustee or Examiner; (j) removal of the Debtor in Possessions principals for the control of the Debtor in possession. If one or more of the events specified in clauses (a) through (j) above occurs, then the Revolving Loan Commitment shall terminate ("Termination Date") and all obligations shall be paid in conformity with section 2.3 above.

At such time as the Borrower has repaid all of the Obligations and this Agreement shall have been terminated, (i) the Borrower shall deliver to Lender a release, in form and substance reasonably satisfactory to Lender, of all obligations and liabilities of Lender and their officers, directors, partners, employees, advisors, representatives, agents, parents, subsidiaries and affiliates to the Borrower (*provided* that Lender shall not be entitled to a release of liabilities resulting from actions taken by Lender which, pursuant to a final adjudication, are determined to constitute willful misconduct or bad faith); and (ii) Lender shall deliver to such Borrower a release in form and substance reasonably satisfactory to such Borrower.

**SECTION 12. MISCELLANEOUS**

**Section 12.1 Modification of Agreement; Sale of Interest.**

The Loan Documents may not be modified, altered or amended, except by an agreement in writing signed by Borrower and Lender. The Borrower may not sell, assign or transfer the Loan Documents or any portion thereof, including, without limitation, their rights, title, interests, remedies, powers, and/or duties hereunder or thereunder.

**Section 12.2 Expenses (Including Attorneys' Fees).**

Borrower and Lender shall each bear their own costs and expenses including, but not limited to, the following:

- (a) reasonable attorneys' fees relating to the negotiation of the DIP Loan Documents, the related documentation regarding the

submission of same to the Court and obtaining the approval of same. All other attorneys' fees related to a default, breach or enforcement or determination of the applicability of the Loan Documents shall be the obligation of the Borrower to reimburse to the Lender;

(b) The preparation of, amendment of, restructuring of, modification of, or enforcement of the Loan Documents unless due to a default or enforcement of the Loan Documents;

**Section 12.3 Payment of Charges and Claims.**

(a) If, at any time or times hereafter, Borrower shall fail to pay the Charges arising after the Filing Date when due or promptly obtain the discharge of such Charges or of any Lien therefor or of any other claims against the Collateral, subject to the provisions of Subsection 12.3(b) hereof, Lender may, without waiving or releasing any obligation or liability of the Borrower hereunder or any Event of Default, in its sole discretion, at any time or times thereafter, make such payment, or any part thereof, or obtain such discharge and take any other action with respect thereto which Lender deem advisable. All sums so paid by Lender and any expenses, including reasonable attorneys' fees, court costs, expenses and other charges relating thereto, shall be payable, upon demand, by the Borrower to Lender and shall be additional Obligations hereunder secured by the Collateral.

(b) Borrower may in good faith contest, by proper legal actions or proceedings, the validity or amount of any Charges or claims, and *provided* that such Borrower gives Lender advance notice of its intention to contest the validity or amount of any such Charge or claim, Lender will forbear from making any payment or otherwise obtaining the discharge of such Charge or claim if at the time of the commencement of any such action or proceeding, and during the pendency thereof (i) no Event of Default shall have occurred and be continuing, (ii) reserves with respect thereto are maintained on the books of such Borrower in an amount reasonably acceptable to Lender, (iii) such contest operates to suspend collection of the contested Charges or claims and is maintained and prosecuted continuously with diligence, (iv) none of the Collateral will be subject to forfeiture or loss of any Lien in favor of Lender by reason of the institution or prosecution of such contest, (v) no Lien shall exist for such Charges or claims during such action or proceeding, (vi) such Borrower shall promptly pay or discharge such contested Charges and all additional charges, interests, penalties and expenses, if any, and shall deliver to Lender evidence reasonably acceptable to Lender of such compliance, payment or discharge, if such contest is terminated or discontinued adversely to such Borrower, and (vii) Lender have not advised such Borrower in writing that Lender reasonably believe that non-payment or non-discharge thereof would have a Material Adverse Effect.

**Section 12.4 No Waiver by Lender.** Lender's failure, at any time or times hereafter, to require strict performance by any of the Borrower of any provision of this Agreement shall not waive, affect or diminish any right of Lender thereafter to demand strict compliance and performance.

**Section 12.5 Severability.** Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law. If, however, any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement, unless the ineffectiveness of such provision materially and adversely alters the benefits accruing to either party hereunder.

**Section 12.6 Parties.** The Loan Documents shall be binding upon and inure to the benefit of the successors and assigns of Borrower (including, without limitation, any Chapter 11 trustee, Chapter 7 trustee, or other fiduciary hereafter appointed for or on behalf of the Debtors or with respect to any of the Debtor's property in the Debtor's bankruptcy proceedings or otherwise). This provision, however, shall not be deemed to modify Section 12.1 hereof. Except with respect to the Carve Out, no Persons other than the Borrower, the Lender, and their respective successors ad assigns, shall be entitled to rely upon or enforce, whether as an alleged third party beneficiary or otherwise, any term or provision of this Agreement.

**Section 12.7 Conflict of Terms.** The Other Agreements and all Schedules and Exhibits hereto are incorporated in this Agreement by this reference thereto. Except as otherwise provided in this Agreement and except as otherwise provided in the Other Agreements by specific reference to the applicable provision of this Agreement, if any provision contained in this Agreement is in conflict with, or inconsistent with, any provision in the Other Agreements, the provision contained in this Agreement shall govern and control.

**Section 12.8 Waivers by Borrower.** Except as otherwise provided for in this Agreement, Borrower waives (i) presentment, demand and protest and notice of presentment, protest, default, non-payment, maturity, release, compromise, settlement, extension or renewal of any or all commercial paper, accounts, contract rights, documents, instruments, chattel paper and guaranties at any time held by Lender on which a Borrower may in any way be liable; and (ii) all rights to notice of a hearing prior to Lender's taking possession or control of, or to Lender's replevy, attachment or levy upon, any collateral or any bond or security which might be required by any court prior to allowing Lender to exercise any of Lender's remedies. The Borrower acknowledges that it has been advised by counsel with respect to this Agreement and the transactions evidenced by this Agreement.

**Section 12.9 Remedies.** Lender's rights and remedies under this Agreement shall be cumulative and nonexclusive of any other rights and remedies which Lender may have under any other agreement, including without limitation, the Other Agreements, by operation of law or otherwise.

**Section 12.10 Power of Attorney.** Borrower acknowledges and agrees that its appointment of Lender as its attorney and agent-in-fact for the purposes specified in this Agreement is an appointment coupled with an interest and shall be irrevocable until all of the Obligations shall have been indefeasibly paid in full and this Agreement shall have been terminated.

**Section 12.11 Mutual Waiver of Jury Trial.** THE LENDER AND THE BORROWERS EACH AGREE THAT NONE OF THEM NOR ANY ASSIGNEE OR SUCCESSOR SHALL (A) SEEK A JURY TRIAL IN ANY LAWSUIT, PROCEEDING, COUNTERCLAIM OR ANY OTHER ACTION BASED UPON OR ARISING OUT OF, THIS AGREEMENT, ANY OTHER LOAN DOCUMENT, THE COLLATERAL OR THE DEALINGS OR THE RELATIONSHIP BETWEEN OR AMONG ANY OF THEM, OR (B) SEEK TO CONSOLIDATE ANY SUCH ACTION WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED. THE PROVISIONS OF THIS SECTION 12.11 HAVE BEEN FULLY DISCUSSED BY EACH OF THE LENDERS AND THE BORROWERS WITH THEIR RESPECTIVE COUNSEL, AND THESE PROVISIONS SHALL BE SUBJECT TO NO EXCEPTIONS. NONE OF THE LENDERS OR THE BORROWERS HAS AGREED WITH OR REPRESENTED TO ANY OTHER PARTY THAT THE PROVISIONS OF THIS SECTION 12.11 WILL NOT BE FULLY ENFORCED IN ALL INSTANCES.

**Section 12.12 Governing Law.** EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN ANY LOAN DOCUMENTS, IN ALL RESPECTS, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS AGREEMENT AND THE OBLIGATIONS ARISING HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE BANKRUPTCY CODE AND, TO THE EXTENT NOT PREEMPTED BY THE BANKRUPTCY CODE, THE LAWS OF CALIFORNIA.

**Section 12.13 Notices.** Except as otherwise provided herein, any notice or demand which, by the provisions hereof, is required or which may be given to or served upon the Borrower or Lender shall be in writing and, if by telecopy, shall be deemed to have been validly served, given or delivered when transmitted and confirmed by telecopy answerback, if by personal delivery, shall be deemed to have been validly served, given or delivered upon actual delivery, if by overnight air courier, shall be deemed to have been validly served, given or delivered one (1) Business Day after delivery to the overnight air courier, and, if mailed, shall be deemed to have been validly served, given or delivered three (3) Business Days after deposit in the United States mails, as

registered or certified mail, with proper postage prepaid and addressed to-the party to be notified, at the following addresses (or such other addressees) as a party may designate for itself by like notice):

**Section 12.14** DIP Lender Relationship with Debtors. In making decisions to advance any Loans or other extensions of credit to the Borrower, in administering any Loans or other extensions of credit, or in taking any other actions reasonably related to this Order or the DIP Indebtedness or the DIP Loan Documents (including, without limitation, the exercise of its approval rights with respect to any budget), DIP Lender shall have no liability to any third party and shall not be deemed to be in control of the operations of the Borrower or to be acting as a “controlling person, “responsible person” or “owner or operator” with respect to the operation or management of the Borrower (as such term, or any similar terms, are used in the Internal Revenue Code, the United States Comprehensive Environmental Response, Compensation and Liability Act as amended, or any similar Federal or state statute), and DIP Lender and its related parties relationship with the Borrower shall not constitute or be deemed to constitute a joint venture or partnership of any kind between DIP Lender and the Borrower.

**If to Lender, to:** Seven One Limited, Limited, A BVI Company

---

**with a copies to:**

Robert J. Cousins, Esq  
Quintairos, Prieto, Wood & Boyer  
One East Broward Blvd.  
Suite 1400  
Fort Lauderdale, Fl 33301  
954-523-7008

**If to Borrower, to:** Krystal Koach, Inc. d/b/a Krystal Enterprises

Office of General Counsel  
C/O Michel F. Mills, Esq.  
2701 East Imperial Highway  
Brea, CA 82821-6713

**with copies to:**

**Ron Bender**  
**LEVENE, NEALE, BENDER, YOO & BRILL L.L.P.**  
10250 Constellation Blvd., Suite 1700  
Los Angeles, CA 90067  
Phone 310 229 1234  
Fax 310 229 1244  
[rb@lnbyb.com](mailto:rb@lnbyb.com)

**Section 12.14 Section Titles.** The section titles contained in this Agreement are and shall be without substantive meaning or content of any kind whatsoever and are not a part of the agreement between the parties hereto.

**Section 12.15 Entire Agreement.** The Loan Documents set forth the entire agreement of the parties hereto with respect to the matters addressed herein and therein, and the Loan Documents supersede all prior written or oral agreements, documents or instruments respecting such matters.

**Section 12.16 Counterparts.** This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument.

**[END OF TEXT]**



**IN WITNESS WHEREOF**, this Agreement has been duly executed as of the day and year specified at the beginning hereof.

**BORROWER:**

**KRYSTAL KOACH, INC.**

By: 

Edward Grech

Title: Chief Executive Officer

**LENDER:**

**SEVEN ONE LIMITED, A BVI COMPANY**

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

Dr. Winston Chung Hing Ha

**IN WITNESS WHEREOF**, this Agreement has been duly executed as of the day and year specified at the beginning hereof.

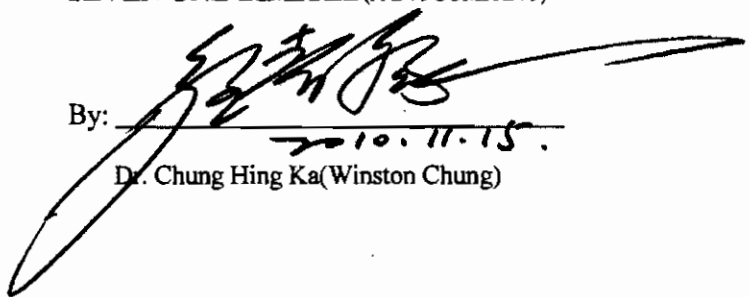
**BORROWER:**

**KRYSTAL KOACH, INC.**

By: \_\_\_\_\_  
Edward Grech  
Title: Chief Executive Officer

**LENDER:**

**SEVEN ONE LIMITED**(A BVI COMPANY)

By:  \_\_\_\_\_  
2010.11.15.  
Dr. Chung Hing Ka (Winston Chung)

## LIST OF SCHEDULES

Schedule 5.1(b)	Permitted Liens
Schedule 5.1 (h)	Environmental Disclosures

### Schedule 5.1(b)

#### Existing Purchase Money Liens

Comerica Equipment  
Ford Motor Credit MSA  
Westrux Equipment  
Ford Motor Credit-Part Truck (2008  
Ford 550)  
Ford Motor Credit-Part Truck (2008  
Ford 550)  
Ally Bank - 2009 Cadillac loan  
Ford Motor Credit - 2009 Lincoln  
Navigator

Schedule 5.1(h)

Environmental Disclosures

NONE

**LIST OF EXHIBITS**

Exhibit A	Legal Description of 2701 East Imperial Highway, Brea, CA 92821-6713 (“the Property”)
Exhibit B	Form of Interim and Proposed Final Order
Exhibit C	Form of Deed of Trust

**EXHIBIT A**

**Exhibit "A"**

**Real Property Description**

All that certain real property situated in the State of California, County of Orange, City of Brea and described as follows:

Parcels 1 and 2, as shown on Exhibit "B" Attached to the Lot Line Adjustment LLA-96-02 recorded October 16, 1996 as Instrument No. 19960525391 of Official Records of Orange County, California.

EXCEPT THEREFROM that Portion of said land lying below a depth of 100 feet, measured vertically from the surface thereof, with no right of surface entry thereon, as reserved in the Deed from Union Oil Company of California, recorded July 20, 1979 in Book 13236, Page 573 of Official Records.

APN: 320-091-11 and 320-091-65

Street Address: 2701 East Imperial Highway, Brea, CA 92821

**EXHIBIT B**



1 RON BENDER (SBN 143364)  
2 PHILIP A. GASTEIER (130043)  
3 KRIKOR J. MESHEFEJIAN (SBN 255030)  
4 LEVENE, NEALE, BENDER, YOO & BRILL L.L.P.  
5 10250 Constellation Boulevard, Suite 1700  
6 Los Angeles, California 90067  
7 Telephone: (310) 229-1234  
8 Facsimile: (310) 229-1244  
9 Email: rb@lnbyb.com; pag@lnbyb.com; kjm@lnbyb.com

6 Proposed Counsel for Chapter 11 Debtor and Debtor in Possession

8 UNITED STATES BANKRUPTCY COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
10 SANTA ANA DIVISION

11  
12 In re: ) Case No. 8:10-bk-26547-RK  
13 KRYSTAL KOACH, INC., ) Chapter 11  
14 Debtor and Debtor in Possession. )  
15 ) ORDER AUTHORIZING DEBTORS TO  
16 ) INCUR POST-PETITION FINANCING  
17 ) ON A SECURED BASIS  
18 )  
19 ) Date:  
20 ) Time:  
21 ) Place:  
22 )  
23 )  
24 )  
25 )  
26 )  
27 )  
28 )

1 A hearing was held on November \_\_, 2010, at \_\_\_\_ a.m./p.m., before the Honorable  
2 \_\_\_\_\_, United States Bankruptcy Judge, in Courtroom "30\_", located at 21041  
3 Burbank Blvd., Woodland Hills, California, for the Court to consider the emergency motion (the  
4 "Emergency Motion") filed by Krystal Koach, Inc. (the "Debtor"), the debtor and debtor in  
5 possession in the above-captioned chapter 11 bankruptcy case, for authority to incur post-petition  
6 financing on a secured basis. Appearances were made at the hearing as set forth on the record of  
7 the Court.

8 The Court, having considered the Emergency Motion, all pleadings filed by the Debtor in  
9 support of the Emergency Motion, any pleadings filed in opposition to the Emergency Motion,  
10 and good cause appearing,

11 IT IS HEREBY ORDERED AS FOLLOWS:

- 12 1. The Motion is granted in its entirety.
- 13 2. The Debtor is authorized to enter into the Post-Petition Loan and Security  
14 Agreement (the "DIP Loan Agreement") dated November 19, 2010, between the Debtor and  
15 National Energy Holdings Limited, A BVI Company, or assignee (the "DIP Lender"), a copy of  
16 which is attached as Exhibit "1" to the Motion.
- 17 3. The DIP Loan Agreement is approved is approved on an interim basis subject to  
18 final hearing, and the Debtor is authorized to enter into and to sign all documents and agreements  
19 necessary to implement the DIP Loan Agreement with the DIP Lender.
- 20 4. In connection with consummating the DIP Loan Agreement, the Debtor is  
21 authorized to grant to the DIP Lender, and the DIP Lender is hereby granted a security interest in  
22 the Collateral, as defined in the DIP Loan Agreement, which security interest shall constitute a  
23 first priority lien against all of the Debtor's unencumbered assets (with the exception of  
24 avoidance causes of action against which the DIP Lender will not have any lien), and a junior  
25 lien against all of the Debtor's encumbered assets, as security for all amounts due or to become  
26 due under the DIP Loan Agreement (the "DIP Indebtedness"). The Debtor is not authorized to  
27 grant to the DIP Lender any lien against any of its assets which is senior in priority to any lien  
28 which already existed on the date of the Debtor's Chapter 11 bankruptcy filings.

1           5. All liens and security interests on or in the Collateral granted to DIP Lender by  
2 this Order and the DIP Loan Agreement shall be, and they hereby are, deemed duly perfected and  
3 recorded under all applicable federal or state or other laws as of the date hereof, and no notice,  
4 filing, mortgage recordation, possession, further order, landlord or warehousemen lien waivers or  
5 other third party consents or other act, shall be required to effect such perfection; provided,  
6 however, that notwithstanding the provisions of § 362 of the Bankruptcy Code, (i) DIP Lender  
7 may, at its sole option, file or record or cause the Debtor to obtain any such landlord or  
8 warehousemen lien waivers or other third party consents or execute, file or record, at the  
9 Debtor's expense, any such UCC financing statements, notices of liens and security interests,  
10 mortgages and other similar documents as DIP Lender may require, and (ii) DIP Lender may  
11 require the Debtor to deliver to DIP Lender any chattel paper, instruments or securities  
12 evidencing or constituting any DIP Collateral, and the Debtor is directed to cooperate and comply  
13 therewith. DIP Lender may (in its discretion), but shall not be required to, file a certified copy of  
14 this Order in any filing or recording office in any county or other jurisdiction in which Debtor  
15 shall have real or personal property and such filing or recording shall be accepted and shall  
16 constitute further evidence of perfection of DIP Lender's interests in the Collateral.

17           6. With reference to any action by the DIP Lender upon Default, as defined in the  
18 DIP Loan Agreement, the DIP Lender shall provide three business days' notice to the Debtor, the  
19 United States Trustee (the "UST"), Comerica Bank and any committee appointed in this Chapter  
20 11 Case (and if no committee has been appointed, each of the Debtors' twenty largest creditors)  
21 of said Default. Upon expiration of this notice period, if the Default has not been cured, the DIP  
22 Lender shall have the right to seek an order of Bankruptcy Court on five business days' notice to  
23 the Debtor, Comerica Bank, the DIP Lender, the UST, and any committee appointed in this  
24 Chapter 11 Case (or if no committee has been appointed, each of the Debtors' twenty largest  
25 creditors), to exercise the rights and remedies granted it (whether under the Order approving  
26 this Loan or the DIP Loan Documents) as to all or such part of the Collateral, including without  
27 limitation to take possession of and sell the Collateral in accordance with the terms of the UCC to  
28 satisfy the DIP Indebtedness, or to otherwise exercise its remedies as a secured creditor under the

1 UCC, and to seek for any such purpose, relief from the automatic stay of section 362 of the  
2 Bankruptcy Code as to the DIP Lender interest and to have same be modified and vacated as to  
3 the DIP Lender, if deemed appropriate by the DIP Lender. In no event shall the DIP Lender be  
4 subject to the equitable doctrine of "marshalling" or any other similar doctrine with respect to  
5 any of the DIP Collateral or otherwise.

6 7. Nothing included herein shall prejudice, impair, or otherwise affect the DIP  
7 Lender's rights to seek any other or supplemental relief in respect of the Debtor nor the DIP  
8 Lender's rights, as provided in the DIP Loan Documents or under applicable law, to suspend or  
9 terminate the making of loans under the DIP Loan Documents.

10 8. Subject to the Carve-Out described in decretal paragraph 9 below, and the DIP  
11 Loan Documents the DIP Indebtedness shall have the highest administrative priority under  
12 § 364(c)(1) of the Bankruptcy Code, and shall have priority over all other costs and expenses of  
13 administration of any kind, including those specified in, or ordered pursuant to, §§ 105, 326, 330,  
14 331, 503(b), 506(c), 507(a), 507(b) or 726 or any other provision of the Bankruptcy Code or  
15 otherwise (whether incurred in this Chapter 11 Case or any Successor Case), and shall at all times  
16 be senior to the rights of Debtor, any successor trustee or estate representative in this Chapter 11  
17 case or any successor case.

18 9. Subject to the remaining provisions of this Order, DIP Lender's liens on and  
19 security interests in the DIP Collateral and its administrative claims under § 364(c)(1) of the  
20 Bankruptcy Code shall be subordinate only to (a) any Superpriority Claim of Comerica Bank; and  
21 (b) a carve-out (the "Carve-Out") for the payment of (i) unpaid fees and disbursements incurred  
22 by professionals (other than ordinary course professionals) retained, pursuant to Sections 327 or  
23 1103(a) of the Bankruptcy Code not to exceed \$420,000, plus (ii) quarterly fees required to be  
24 paid pursuant to 28 U.S.C. §1930(a)(6) and any fees payable to the Clerk of the Bankruptcy  
25 Court; provided, however, that the Carve-Out shall not include professional fees, disbursements,  
26 costs, or expenses incurred in connection with any claim or cause of action asserted against the  
27 Lender. The foregoing provisions are without prejudice to Lender's right to object to any such  
28 fees or expenses.

1           10. The DIP Lender does not waive, and expressly reserves, any and all claims,  
2 defenses, rights and remedies it has pursuant to any or all of the DIP Loan Documents, the  
3 Bankruptcy Code and/or other applicable law against the Debtor any Guarantor and any officer,  
4 director, employee, agent or other representative of the Debtor. In addition, the rights, claims,  
5 liens, security interests and priorities of the DIP Lender arising under this Order are in addition to,  
6 and are not intended as a waiver or substitution for, the rights, obligations, claims, liens, security  
7 interests and priorities granted by the Debtor and any Guarantor. Without limiting the generally  
8 of the foregoing, the DIP Lender may petition this Court for any such additional protection that  
9 may reasonably require with respect to the DIP Indebtedness or otherwise, and nothing in this  
10 Order constitutes a finding with respect to the adequacy of the protection of the interests of the  
11 DIP Lender in the DIP Collateral.

12           11. The provisions of this Order shall be binding upon and inure to the benefit of DIP  
13 Lender, the Debtor, any Guarantor and their respective successors and assigns (including any  
14 trustee or other estate representative appointed as a representative of the Debtor's estate or of any  
15 estate in any successor case). Except as otherwise explicitly set forth in this Order, no third  
16 parties are intended to be or shall be deemed to be third party beneficiaries of this Order or the  
17 DIP Loan Documents.

18           12. If this Chapter 11 Case is dismissed, converted, otherwise superseded or  
19 substantively consolidated, DIP Lender's rights and remedies under this Order and the DIP Loan  
20 Documents shall be and remain in full force and effect as if such Chapter 11 Case had not been  
21 dismissed, converted, superseded or substantively consolidated. Furthermore, notwithstanding  
22 any such dismissal, conversion, supervision or substantive consolidation, all of the terms and  
23 conditions of this Order, including, without limitation, the liens and the priorities granted  
24 hereunder, shall remain in full force and effect.

25           13. Based on the representations made by the Debtors in the Emergency Motion and  
26 at the hearing on the Emergency Motion, any post-petition loan consummated between the  
27 Debtors and the DIP Lender would constitute post-petition credit extended to the Debtors in good  
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1 faith, which would entitled the DIP Lender to the protections afforded by Section 364(e) of the  
2 Bankruptcy Code.

3 14. A final hearing on the Motion shall be held on \_\_\_\_\_, 2010, at \_\_\_\_0 a.m.  
4 Any opposition must be filed and served so that it is actually received by counsel for the Debtor  
5 by 5:00 p.m. on \_\_\_\_\_. \_\_, 2010.

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**EXHIBIT C**

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

Robert J. Cousins  
Quintairos, Prieto, Wood & Boyer  
One East Broward Blvd.  
Suite 1400  
Fort Lauderdale, Fl 33301  
954-523-7008

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THIS SPACE ABOVE FOR RECORDER'S USE

**DEED OF TRUST, SECURITY AGREEMENT AND FIXTURE FILING WITH  
ASSIGNMENT OF RENTS AND LEASES TO SECURE DIP AGREEMENT**

This Deed of Trust and Assignment of Rents and Leases to Secure DIP Agreement is made as of November 19, 2010, by **IMPERIAL HIGHWAY, LLC**, a California limited liability company (hereinafter called "**Trustor**") whose address is 2701 Imperial Highway, Brea, California, 92821, to **FIDELITY NATIONAL TITLE COMPANY**, a corporation (hereinafter called "**Trustee**"), whose address is 17592 East 17<sup>th</sup> Street, Suite 200, Tustin, California 92780, for the benefit of Seven One Limited, A BVI Company or its successor or Assignee (hereinafter called "**Beneficiary**"), whose address is in care of his counsel of record: Robert J. Cousins, Esq., Quintairos, Prieto, Wood & Boyer, One East Broward Blvd., Suite 1400, Fort Lauderdale, FL 33301.

Reference is made to the Post-Petition Loan and Security Agreement between Beneficiary and Krystal Koach, Inc. d/b/a Krystal Enterprises (KKI), a California Corporation, dated November 19, 2010 whereby Beneficiary agreed to provide KKI Debtor-In-Possession Financing (hereinafter called "**DIP Agreement**"). Pursuant the DIP Agreement, Beneficiary agreed to provide KKI \$2.5 Million to fund KKI's operations during the pendency of its reorganization under Chapter 11 of the Bankruptcy Code. Such filing is anticipated to take place on or about November 19, 2010. It is anticipated that Beneficiary will provide the full amount of funding provided for by the DIP Agreement on the date KKI actually files its Bankruptcy petition.

Trustor hereby grants Beneficiary this Deed of Trust to secure repayment of the DIP financing Beneficiary actually provides KKI up to \$2.5Million. If Beneficiary is successful in purchasing KKI assets through the anticipated sale of KKI assets pursuant to § 363 of the Bankruptcy Code, it is intended that the sum of DIP financing Beneficiary will have actually provided KKI, up to \$2.5M, shall be repaid by reduction from the purchase price to be paid by Beneficiary's p. If Beneficiary should be unsuccessful in purchasing KKI assets, Trustor and/or KKI shall repay Beneficiary the amount of DIP financing Beneficiary actually provided KKI on terms consistent with the DIP Agreement and secured by this Trust Deed.

**WITNESSETH:** That Trustor IRREVOCABLY GRANTS, TRANSFERS AND ASSIGNS to Trustee, its successors and assigns, in Trust, with POWER OF SALE TOGETHER WITH RIGHT OF ENTRY AND POSSESSION, the following property (the "**Trust Estate**"):

(a) all that certain real property now or hereafter acquired, in the City of Brea, County of Orange, State of California (the "**Land**"), more particularly described in Exhibit "A" attached hereto;



(b) all buildings, structures and other improvements now or in the future located or to be constructed on the Land (the "**Improvements**");

(c) all tenements, hereditaments, appurtenances, privileges, franchises and other rights and interests now or in the future benefitting or otherwise relating to the Land or the Improvements, including easements, rights-of-way, development rights, mineral rights, water and water rights, pumps and pumping plants and all shares of stock evidencing the same (the "**Appurtenances**," and together with the Land and the Improvements, the "**Real Property**");

(d) subject to the assignment to Beneficiary set forth in Paragraph 11 below, all rents, issues, income, revenues, royalties and profits now or in the future payable with respect to or otherwise derived from the Trust Estate or the ownership, use, management, operation, leasing or occupancy of the Trust Estate, including those past due and unpaid (the "**Rents**");

(e) all present and future right, title and interest of Trustor in and to all fixtures now or in the future located at, upon or about, or affixed or attached to or installed in, the Real Property, or used or to be used in connection with or otherwise relating to the Real Property (the "**Goods**," and together with the Real Property, the "**Property**"); and

This Deed of Trust constitutes a security agreement under the California Uniform Commercial Code (UCC), conveying a security interest in the fixtures to Trustee and Beneficiary. Trustee and Beneficiary shall have, in addition to all rights and remedies provided herein, all the rights and remedies of a "secured party" under the UCC and other applicable California law. Trustor covenants and agrees that this Deed of Trust constitutes a fixture filing under Section 9502 of the UCC.

**FOR THE PURPOSE OF SECURING**, in such order of priority as Beneficiary may elect, (1) payment to Beneficiary and performance by KKI of all obligations arising under the DIP Agreement and any and all modifications, extensions or renewals thereof, and of every guarantee, covenant, promise and/or agreement of KKI contained therein; (2) payment of all other sums, becoming due or payable under the provisions hereof to Trustee or Beneficiary; and (3) due, prompt and complete observance, performance and discharge of each and every condition, obligation, covenant and agreement contained herein, or in the DIP Agreement.

**TO PROTECT AND MAINTAIN THE SECURITY OF THIS DEED OF TRUST, TRUSTOR AGREES:**

(1) To pay, perform, observe and discharge each and every condition, obligation, covenant and agreement for which this Deed of Trust has been given as security as provided above.

(2) To keep the Property in good condition and repair; not to remove or demolish any improvement thereon; to complete or restore promptly and in good and workmanlike manner any improvement which may be constructed, damaged or destroyed thereon and to pay when due all claims for labor performed and materials furnished therefore; to comply with all laws affecting the Trust Estate or requiring any alterations or improvements to be made thereon; not to commit or permit waste thereof; to perform, in the event all or any portion of the Trust Estate constitutes a leasehold estate belonging to Trustor, each and every obligation of Trustor under the terms of the lease agreement relating to the demise of such property; not to commit, suffer or permit any act upon the Trust Estate in violation of law; to do all acts which from the character or use of the Property may be reasonably necessary, the specific enumerations herein not excluding the general.

(3) To fully insure, or cause to be insured, the Property against loss or damage by fire, earthquake, flood, and such other risks as Beneficiary shall, from time to time, require. Trustor shall carry public liability and other insurance as Beneficiary may require. Trustor shall maintain all required insurance in companies, amounts, coverages, deductibles, and forms satisfactory to the Beneficiary and at least equal to that required on the date of this Deed of Trust. Such insurance shall be carried in amounts not less than amounts determined by the insurance company or Beneficiary to prevent the application of co-insurance or similar clauses, or in such greater amounts as Beneficiary may require. Neither Beneficiary nor Trustee, by reason of accepting, rejecting, approving or obtaining insurance, shall incur any liability for (i) the existence, nonexistence, form or legal sufficiency thereof, (ii) the solvency or insolvency of any insurer, or (iii) the payment of losses. All property insurance policies shall name Beneficiary as the primary loss payee, all liability insurance policies shall name Beneficiary as an additional insured, and all policies shall provide that they cannot be terminated as to Beneficiary except upon thirty (30) days' prior written notice to Beneficiary. Trustor shall deliver to Beneficiary the original of all such policies, or with Beneficiary's consent certificates, together with receipts satisfactory to the Beneficiary, evidencing payment of the premiums therefore. Should Trustor fail to insure or fail to pay the premiums on any required insurance or fail to deliver the policies or renewals of them as provided above, Beneficiary may (but is not obligated to) have the insurance issued or renewed (and pay the premiums on it for the account of Trustor) in amounts and with companies and at premiums as Beneficiary deems appropriate. If Beneficiary elects to have insurance issued or renewed to insure Beneficiary's interest, Beneficiary shall have no obligation to also insure Trustor's interest or to notify Trustor of Beneficiary's actions. All sums advanced by Beneficiary to pay premiums on insurance policies which Trustor is required to maintain hereunder shall be due and payable by Trustor to Beneficiary upon demand, and failing prompt reimbursement, shall be added to the indebtedness secured by this Deed of Trust until paid in full.

As of the date this Deed of Trust is recorded and continuously until this Deed of Trust is fully reconveyed, the insurance policies shall conform to the following requirements:

(a) All insurance policies must be underwritten by insurers with a Best's rating of B+, VI or better;

(b) In the event all or any portion of the Real Property secured by this Deed of Trust constitutes rental or non-residential property, Trustor shall maintain a Commercial General Liability insurance policy, including broad form coverages or their equivalents, with One Million Dollars (\$1,000,000) combined single limit coverage for bodily injury and property damage; provided, however, if improvements similar to the Improvements secured hereby are generally insured at higher limits of coverage, such higher limits shall be obtained. In all other cases, Trustor shall maintain such liability insurance coverages as Beneficiary may require from time to time;

(c) Trustor shall provide, as required by Beneficiary, additional property and rental income insurance coverages as follows:

1. All risk coverage (including earthquake insurance) in the amount of the full replacement cost of the Improvements;
2. A waiver of co-insurance endorsement or agreed value endorsement (relative to casualty);
3. A replacement cost coverage endorsement (relative to casualty);

4. A standard mortgage clause (438BFU or CP12-18) with Beneficiary named as loss payee in the Declarations;
5. A waiver of subrogation clause;
6. To the extent that any portion of the Real Property constitutes rental property, loss of rents coverage in an amount equal to at least twelve (12) months of rentals from the Real Property secured hereby and any expenses that are payable or reimbursable by tenants;
7. Flood insurance in an amount sufficient to provide full replacement cost coverage of the Real Property in the event the Real Property is located within any flood hazard area; and
8. Such other coverages as Beneficiary may request from time to time.

The amount collected under any fire or other insurance policy maintained by Trustor with respect to the Property (whether or not required hereunder and whether or not Beneficiary is named as loss payee) may be applied by Beneficiary upon any indebtedness secured hereby and in such order as Beneficiary may determine, or at option of Beneficiary the entire amount so collected or any part thereof may be released to Trustor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

(4) To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses, including cost of evidence of title and attorney's fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear, and in any suit brought by Beneficiary to foreclose this Deed of Trust.

(5) To pay and discharge, at least ten days prior to delinquency, all taxes of every kind and nature, including real and fixtures taxes and income, franchise, withholding, profits and gross receipts taxes, all general and special assessments, including assessments on appurtenant water stock, levies, permits, inspection and license fees, all water and sewer rents and charges, and all other public charges whether of a like or different nature, imposed upon or assessed against Trustor or the Trust Estate or any part thereof or upon the revenues, rents, issues, income and profits thereof or upon this Deed of Trust or the indebtedness now or hereafter secured hereby; when due, all encumbrances, charges and liens on the Trust Estate or any part thereof, which appear to be prior or superior hereto or subject or subordinate hereto; all costs, fees and expenses of this Trust; or, if and as required by Beneficiary, to pay to Beneficiary in equal installments on the first day of each month, sufficient funds (as estimated by Beneficiary from time to time) to pay when due the next maturing taxes, assessments and hazard insurance (including flood insurance, if required) premiums. When so provided with sufficient funds, Beneficiary shall pay such taxes, assessments and hazard insurance premiums before delinquency. Any excess over the amount required for such purposes shall be held for future use, applied to any indebtedness hereby secured or refunded to Trustor at Beneficiary's option.

To promptly and completely observe, perform, and discharge each and every condition, obligation, covenant and agreement affecting the Trust Estate, whether the same is prior and superior or subject and subordinate hereto including, if the security hereunder is or will be a condominium, community apartment or part of a planned development, each and every provision to be performed by Trustor under any Declaration of Covenants, Conditions and Restrictions pertaining to the condominium, community apartment or planned development project and, upon written request of Beneficiary, to pay maintenance charges, if the same have not been paid or legal steps have not been initiated to enforce such payment within ninety (90) days after such written request is made.

Should Trustor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may: make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon the Real Property for such purposes; appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto; and, in exercising any such powers, pay necessary expenses, employ counsel and pay reasonable attorneys' fees and costs in connection therewith.

(6) To pay immediately and without demand all sums so expended by Beneficiary or Trustee which sums shall be secured by this Deed of Trust to the same extent and with the same priority as the principal under the DIP Agreement, and such sums shall be deemed mandatory advances required for the preservation and protection of the lien of this Deed of Trust and Trustee's and Beneficiary's rights hereunder.

(7) That any award of damages in connection with any condemnation for public use of or injury to the Property or any part thereof is hereby assigned and shall be paid to Beneficiary who may apply or release such moneys received by it in the same manner and with the same effect as above provided for disposition of proceeds of fire or other insurance. Notwithstanding the fact that the security given hereby may not be impaired by a partial condemnation, Beneficiary, in its sole and absolute discretion, shall have the right to apply all compensation, award or other payments or relief therefore made on account thereof to amounts payable under the DIP Agreement or reimbursement of Trustor for expenses incurred by it in the restoration of the Property, and in respect thereto, Trustor hereby waives the benefit of any statute or rule of law which may be contrary thereto.

(8) That by accepting the payment, performance or observance of any condition, obligation, covenant or agreement contained herein after the date to be paid, performed or observed as provided hereunder, Beneficiary does not waive its right either to require prompt payment, performance or observance when due of all other conditions, obligations, covenants or agreements contained herein or to declare a default for failure so to do.

(9) That at any time or from time to time, without liability therefore and without notice, upon written request of Beneficiary and presentation of this Deed of Trust and the DIP Agreement for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, Trustee may: reconvey any part of the Trust Estate; consent to the making of any map or plat thereof; join in granting any easement thereon; join in the execution of or subordination of the lien or charge hereof to any covenants, conditions or restrictions affecting said property; or join in any extension agreement or any agreement subordinating the lien or charge hereof.

(10) That upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed of Trust to Trustee for cancellation and retention and upon payment by Trustor of its fees, Trustee shall reconvey, without warranty, the Trust Estate then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto."

(11) That Trustor absolutely and unconditionally hereby assigns, transfers, conveys and sets over to Beneficiary all the Rents; provided, however, prior to any default by Trustor in the payment, observance, performance and discharge of any condition, obligation, covenant or agreement of Trustor contained herein, Trustor shall have the right as the agent and fiduciary representative of Beneficiary for collection and distribution purposes only, to collect and receive the Rents as they become due and payable

to be applied by Trustor to the payment of all sums due or payable on the DIP Agreement and to the payment of all other sums payable under this Deed of Trust and, thereafter, so long as no default as aforesaid has occurred, the balance shall be distributed to the account of Trustor. Upon any such default, Beneficiary may at any time without notice, either in person, by agent or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of the Property or any part thereof, in its own name or in the name of Trustor, sue for or otherwise collect the Rents, including those past due and unpaid and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees and expenses, to the payment of the principal and all other sums due or payable under the DIP Agreement and to the payment of all other sums payable under this Deed of Trust and in such order as Beneficiary may determine. The entering upon and taking possession of the Property, the collection of the Rents and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

All leases and rental agreements now or hereafter affecting the Real Property, including all oil and gas leases and other subsurface leases and the royalties derived therefrom, are hereby assigned and transferred to Beneficiary by the Trustor, and Trustor hereby agrees and covenants that none of said leases or rental agreements will be modified or terminated without the consent in writing of Beneficiary. Trustor shall provide to Beneficiary a non-disturbance and attornment agreement, in form acceptable to Beneficiary, executed by each tenant under a lease or rental agreement for a portion of said Real Property executed after the date hereof.

Trustor agrees that it will not (a) execute any further assignment of any of its right, title and interest in the Rents without the prior written consent of Beneficiary; (b) accept prepayments of any installments of Rents to become due under any leases or rental agreements in excess of one (1) month except prepayments in the nature of security which security will not exceed an amount equal to one (1) month's rent under the lease or rental agreement; (c) with respect to any lease or rental agreement having a term of two (2) years or more, Trustor will not terminate, amend or modify any such lease or rental agreement without the prior written consent of the Beneficiary or (d) accept a surrender of any such lease or rental agreement.

(12) Trustor hereby represents, warrants and covenants that:

(a) Neither the Real Property which is the subject of this Deed of Trust nor any other real property occupied and/or owned by Trustor has ever been used by Trustor or any other previous owner and/or operator in connection with the disposal of or to refine, generate, manufacture, produce, store, handle, treat, transfer, release, process or transport flammable explosives, radioactive materials, asbestos, PCB, hazardous wastes, toxic substances or related materials, including, without limitation, any substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," or "toxic substances" under any Hazardous Materials Laws (defined below) (collectively, "Hazardous Materials"), and Trustor will not at any time use the Real Property or such other real property for the disposal, refining, generating, manufacturing, producing, storing, handling, treating, transferring, releasing, processing or transporting of any Hazardous Materials.

(b) To the best of its knowledge, Trustor warrants and represents that the Real Property is free of Hazardous Materials and contaminants which are or could be detrimental to the Real Property, human health or the environment or in violation of any governmental laws or regulations.

(c) Neither the Real Property or any other real property owned and/or occupied by Trustor has been designated, listed or identified in any manner by the United States Environmental Protection Agency ("EPA") or under and pursuant to the Comprehensive Environmental Response,

Compensation and Liability Act of 1980, as amended, set forth at 42 U.S.C. 9601 et seq. ("**CERCLA**"), the Resource Conservation and Recovery Act of 1986, as amended, set forth at 42 U.S.C. 6901 et seq. ("**RCRA**"), or any other environmental protection statute as a hazardous waste or hazardous substance disposal or removal site, superfund or cleanup site or candidate for removal of closure pursuant to RCRA, CERCLA or any other environmental protection statute.

(d) Trustor has not received a notice, summons, citation, directive, letter or other communication, written or oral (collectively, "**Notice**") from the EPA or any other federal or state governmental agency or instrumentality, authorized pursuant to an environmental protection statute, concerning any intentional or unintentional action or omission by Trustor resulting in the releasing, spilling, leaking, pumping, pouring, emitting, emptying, dumping or otherwise disposing of Hazardous Materials into the environment resulting in damage thereto or to the fish, shellfish, wildlife, biota or other natural resources.

Trustor shall, and shall cause all tenants, employees, agents, contractors and subcontractors of Trustor and any other persons present on or occupying the Real Property to, keep and maintain the Real Property, including the soil and groundwater thereof, in compliance with, and not cause or permit the Real Property, including the soil and groundwater thereof, to be in violation of, any federal, state or local laws, ordinances or regulations relating to industrial hygiene or to the environmental conditions thereon, including but not limited to any Hazardous Materials Laws. Neither Trustor nor tenants, employees, agents, contractors and subcontractors of Trustor nor any other persons occupying or present on the Real Property shall use, generate, manufacture, store or dispose of on, under or about the Real Property or transport to or from the Real Property any Hazardous Materials.

The intended use of the Real Property is for commercial purposes ("**Permitted Use**") and Trustor shall not change or alter the Permitted Use unless Trustor shall have first notified Beneficiary thereof in writing and Beneficiary shall have determined, in its sole and absolute discretion, that such change or modification will not result in the presence of Hazardous Materials on the Real Property in such a level that would increase the potential liability for Hazardous Materials Claims.

Trustor shall immediately advise Beneficiary in writing of: (a) any Notices (whether such Notices are received from the EPA, the Occupational Safety and Health Agency, the Department of Health Services, the State Water Quality Control Board, the Department of Sanitation, the Department of Public Works or any other federal, state or local governmental agency or regional office thereof) of violation or potential violation which are received by Trustor of any applicable federal, state or local laws, ordinances or regulations relating to any Hazardous Materials, including but not limited to CERCLA, RCRA, the Hazardous Materials Transportation Act, the Hazardous Substances Account Act, the Hazardous Substances Act, the Occupational Health and Safety Act, the Porter-Cologne Water Quality Control Act, the Solid Waste Management Act of 1980, the Toxic Pit Cleanup Act, the Underground Tank Act of 1984, and the California Water Quality Improvement Act (collectively, "Hazardous Materials Laws"); (b) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened pursuant to any Hazardous Materials Laws; (c) all claims made or threatened by any third party against Trustor or the Trust Estate relating to damage, contribution, cost recovery compensation, loss or injury resulting from any Hazardous Materials (the matters set forth in clauses (a), (b) and (c) above are collectively referred to herein as "Hazardous Materials Claims"); and (d) Trustor's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Real Property that could cause the Real Property or any part thereof to be classified as "border-zone property" under the provisions of California Health and Safety Code, Sections 25220 et seq., or any regulation adopted in accordance therewith, or to be otherwise subject to any restrictions on the ownership, occupancy, transferability or use of the Real Property under any Hazardous Materials Laws.



To the extent Beneficiary has a reasonable basis to believe its security for the DIP Agreement is or might be impaired by any Hazardous Materials Claims or in the event of any default hereunder or under the DIP Agreement, Beneficiary shall have the right but not the obligation to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Hazardous Materials Claims and to have its reasonable attorneys' and consultants' fees in connection therewith paid by Trustor upon demand.

Trustor shall be solely responsible for, and shall indemnify and hold harmless Beneficiary, its directors, officers, employees, agents, successors and assigns, from and against any loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal or presence (whether prior to or during the term of the DIP Agreement) of Hazardous Materials on, under or about the Real Property (whether by Trustor or a predecessor in title or any employees, agents, contractor or subcontractors of Trustor, or any predecessor in title, any third persons at any time occupying or present on the Real Property, or from any other cause whatsoever), including, without limitation: (a) all foreseeable and unforeseeable consequential damages including third party claims; (b) the costs of any required or necessary repair, cleanup or detoxification of the Real Property, including the soil and groundwater thereof, and the preparation and implementation of any closure, remedial or other required plans; (c) damage to any natural resources; and (d) all reasonable costs and expenses incurred by Beneficiary in connection with clauses (a), (b) and (c), including but not limited to reasonable attorneys' and consultants' fees.

Any costs or expenses incurred by Beneficiary for which Trustor is responsible or for which Trustor has indemnified Beneficiary shall be paid to Beneficiary on demand, and failing prompt reimbursement, shall be added to the indebtedness secured by this Deed of Trust until paid in full.

Trustor shall not undertake any cleanup, containment, restoration, removal or other remedial work (collectively, "**Remedial Work**") in response to the presence of any Hazardous Materials on, under or about the Real Property without prior written notice to Beneficiary of the scope and nature of such Remedial Work; provided, however, that prior written notice shall not be necessary in the event that the presence of Hazardous Materials on, under or about the Real Property either poses an immediate threat to the health, safety or welfare of any individual or is of such a nature that an immediate remedial response is necessary and it is not possible to notify Beneficiary before taking such action. In such event, Trustor shall notify Beneficiary as soon as practicable of any action so undertaken. Trustor shall not, without Beneficiary's prior written consent, which shall not be unreasonably withheld, enter into any settlement agreement, consent decree or other compromise in respect to any Hazardous Material Claims, which remedial action, settlement, consent or compromise might, in Beneficiary's reasonable judgment, impair the value of Beneficiary's security hereunder.

In the event any investigation or monitoring of conditions on the Real Property or any Remedial Work is required under any applicable Hazardous Materials Laws, by any judicial order, by any governmental entity, or in order to comply with any agreements affecting the Real Property because of or in connection with any Hazardous Material Claims, Trustor shall perform or cause to be performed the Remedial Work in compliance with such Hazardous Material Laws or agreement. All Remedial Work shall be performed by one or more contractors, selected by Trustor and approved in advance in writing by Beneficiary, and under the supervision of a consulting engineer, selected by Trustor and approved in writing by Beneficiary. All costs and expenses of such Remedial Work shall be paid by Trustor, including, without limitation, the charges of such contractors and/or the consulting engineer, and Beneficiary's reasonable attorneys' fees and costs incurred in connection with monitoring or reviewing such Remedial Work. In the event Trustor shall fail to timely commence or cause to be commenced, or fail to diligently prosecute to completion, such Remedial Work, Beneficiary may, but shall not be

required to, cause such Remedial Work to be performed, and all costs and expenses thereof shall be due and payable upon demand therefore by Trustor.

If during the term of the DIP Agreement secured by this Deed of Trust Beneficiary has reasonable cause to believe that Hazardous Materials have migrated onto the Real Property or have otherwise come onto the Real Property in violation of the terms of this Deed of Trust or there has been a default by Trustor hereunder with respect to Hazardous Materials, at Beneficiary's request, Trustor shall retain, at Trustor's sole cost and expense, a licensed geologist, industrial hygienist or an environmental consultant (a "Consultant") acceptable to Beneficiary to conduct an environmental site assessment of the Real Property for the presence of Hazardous Materials ("**Environmental Audit**"). The Environmental Audit shall be performed in a manner reasonably calculated to discover the presence of Hazardous Materials contamination. The Consultant shall concurrently deliver the results of its investigation in writing directly to Trustor and Beneficiary without prior consultation with either party unless conducted in the presence of the other party.

If Trustor fails to pay for or obtain an Environmental Audit as provided for herein, Beneficiary may, but shall not be obligated to, obtain the Environmental Audit, and either demand reimbursement from Trustor or add the cost thereof to the indebtedness secured by this Deed of Trust. Furthermore, Trustor hereby grants Beneficiary, its employees and agents the right, exercisable at any time and at Beneficiary's sole cost and expense, to enter upon the Real Property for the purpose of conducting an inspection, sampling and testing to determine whether there have been any violations of the covenants contained in this Paragraph 12.

Trustor's liability under this Paragraph 12 shall not terminate until the earlier of (i) the sale of the KKI assets to Beneficiary; (ii) the payment in full of the indebtedness; or (iii) the sale of Real Property pursuant to the enforcement of the lien of this Deed of Trust, the proceeds of which are applied to the indebtedness secured hereby.

(13) Trustor agrees to indemnify, defend and hold harmless Trustee and Beneficiary from and against any and all losses, liabilities, suits, obligations, fines, damages, judgments, penalties, claims, charges, costs and expenses (including attorneys' fees and disbursements) which may be imposed on, incurred or paid by or asserted against Trustee and/or Beneficiary by reason or on account of, or in connection with (a) any willful misconduct of Trustor or any default or event of default by Trustor hereunder or under the DIP Agreement; (b) Trustee's and/or Beneficiary's good faith and commercially reasonable exercise of any of their rights and remedies, or the performance of any of their duties hereunder or under the DIP Agreement; (c) Trustor's failure to perform or comply with any of the covenants set forth in Paragraph 12 above; (d) the construction, reconstruction or alteration of the Real Property; (e) any negligence of Trustor, or any negligence or willful misconduct of any lessee of the Real Property or any portion thereof, or any of their respective agents, contractors, employees, licensees or invitees; or (f) any accidents, injury, death or damage to any person or property occurring in, on or about the Real Property or any street, drive, sidewalk, curb or passageway adjacent thereto, except for the willful misconduct or gross negligence of Beneficiary or Trustee. Upon demand by Trustee and/or Beneficiary, Trustor shall defend any action or proceeding brought against Trustee and/or Beneficiary arising out of or alleging any claim or cause of action covered by this indemnity, all at Trustor's own cost and by counsel to be approved by Beneficiary in the exercise of its reasonable judgment. In the alternative, Trustee and/or Beneficiary may elect to conduct its own defense at the expense of Trustor. The provisions of this Paragraph 13 shall survive the foreclosure or the delivery of a deed in lieu of foreclosure of this Deed of Trust or the payment in full of the indebtedness secured hereby and the termination and reconveyance of this Deed of Trust, as the case may be.



Any amount payable to Trustee or Beneficiary under Paragraph 12 or this Paragraph 13 shall be due and payable immediately after demand therefore and receipt by Trustor of a statement setting forth in reasonable detail the amount claimed and the basis therefore, from and after the date such amounts are paid by Beneficiary or Trustee, as the case may be, until paid in full by Trustor.

(14) That upon default by KKI or by Trustor in payment of any indebtedness or obligation secured hereby or in performance of any agreement hereunder, Beneficiary may take any action or pursue any right or remedy permitted under applicable law specifically including, without limiting, impairing or otherwise affecting its other rights and remedies, declare all sums secured hereby immediately due and payable by delivery to Trustee written declaration of default and demand for sale and of written notice of default and of election to cause to be sold the Real Property, which notice Trustee shall cause to be filed for record. Beneficiary also shall deposit with Trustee this Deed of Trust, the DIP Agreement and all documents evidencing expenditures secured hereby.

After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of the sale having been given as then required by law, Trustee, without demand on Trustor, shall sell the Real Property at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of said Real Property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to such purchaser its deed conveying the Real Property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee, or Beneficiary as herein defined, may purchase at such sale.

After deducting all costs, fees and expenses of Trustee and of this Trust, including cost of evidence of title in connection with sale, Trustee shall apply the proceeds of sale to payment of: all sums expended under the terms hereof, not then repaid; all other sums then secured hereby; and the remainder, if any, to the person or persons legally entitled thereto.

(15) Following recordation of a notice of default, Beneficiary and prospective bidders at any foreclosure sale shall have the right to enter and inspect said Real Property at reasonable times and upon reasonable notice to Trustor. Trustor shall, promptly following the recordation of a notice of default, but in any event prior to the date of sale set in the notice of sale, disclose to Beneficiary in writing all material facts regarding said Real Property.

Trustor hereby waives any claims against Beneficiary or Trustee arising out of or in connection with any disclosures regarding said Real Property which may be made by Beneficiary or Trustee to prospective bidders at or prior to the foreclosure sale. In addition, Trustor shall indemnify, defend and hold harmless Trustee and Beneficiary from and against all losses, liabilities, suits, damages claims or judgments which may arise out of or in connection with any disclosures regarding said Real Property which may be made by Beneficiary or Trustee to prospective bidders at or prior to the foreclosure sale. All costs, fees and expenses incurred by Beneficiary or Trustee in connection with such inspections and disclosures shall be payable by Trustor upon demand therefore, until paid in full by Trustor, and if not so paid shall be added to the amount secured hereby.

(16) That if the Trustor, or any subsequent owner of the Real Property covered hereby, shall occupy said property, or any part thereof, after any default in payment of any amount secured by this Deed of Trust, the Trustor, or such owner, shall pay to the Beneficiary in advance on the first day of each month a reasonable rental for the premises so occupied, and upon failure to pay such reasonable rental,

the Trustor, or such owner, may be removed from said premises by summary dispossess proceedings or by any other appropriate action or proceeding.

(17) Trustor hereby represents and warrants: (a) that it is or will be the lawful owner of all of the Trust Estate free of all claims, liens or encumbrances except those previously identified and of record Comerica Trust Deeds superior to this Trust Deed, other than the security interests granted pursuant hereto and such other matters as may be approved in writing by Beneficiary in Beneficiary's sole and absolute discretion; (b) all information, including but not limited to financial statements furnished by Trustor to Beneficiary heretofore or hereafter, whether oral or written, is and will be correct and true as of the date given; and (c) if Trustor is a business entity, the execution, delivery and performance hereof are within its powers and have been duly authorized.

(18) With respect to the Fixtures and the security interest granted to Beneficiary under the Deed of Trust, the following shall apply:

(a) Trustor shall: (i) execute such financing statements and other documents and do such other acts and things, all as Beneficiary may from time to time require, to establish and maintain a valid security interest in the Fixtures, including payment of all costs and fees in connection with any of the foregoing when deemed necessary by Beneficiary; (ii) keep the Fixtures separate and identifiable and at the location described herein and permit Beneficiary and its representatives to inspect the Fixtures and/or records pertaining thereto from time to time during normal business hours; (iii) at Trustor's expense upon Beneficiary's request remove any unauthorized lien or security interest and defend any claim affecting the Fixtures; (iv) reimburse Beneficiary for any expenses including but not limited to reasonable attorneys' fees and legal expenses, incurred by Beneficiary in seeking to protect, collect or enforce any rights in the Fixtures; (v) maintain the Fixtures in good condition and not use the Fixtures for any unlawful purpose; and (vi) at its own expense, upon request of Beneficiary, notify any parties obligated to Trustor on any of the Fixtures to make payment to Beneficiary. Trustor does hereby authorize Beneficiary to perform any and all acts which Beneficiary in good faith deems necessary for the protection and preservation of the Fixtures or its value or Beneficiary's security interest therein, including transferring any of the Fixtures into its own name and receiving the income thereon as additional security hereunder.

(b) Trustor hereby assumes, and releases Beneficiary from, all risk of loss, destruction or damage to all or any part of the Fixtures by reason of any casualty or cause whatsoever except as caused by the intentional misconduct of Beneficiary, and Trustor shall indemnify and hold Beneficiary harmless from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including, reasonable attorneys' fees and costs) imposed upon or incurred by or asserted against Beneficiary by reason of (i) any failure by Trustor to perform or comply with the terms of this Deed of Trust or (ii) the exercise by Beneficiary of any rights or remedies provided hereunder or at law or in equity, except as caused by Beneficiary's intentional misconduct.

(c) Upon transfer by Beneficiary of any part of the obligations secured hereby, Beneficiary shall be fully discharged from all liability with respect to the Fixtures transferred therewith.

(d) The grant of a security interest in proceeds, replacements, substitutions or the like does not imply any right of Trustor to sell or dispose of any Fixtures described herein without the express written consent by Beneficiary.

(19) Beneficiary, acting alone, may from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed and acknowledged by each and recorded in the office of the recorder of the county or counties where said

property is situated, shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveying from the Trustee predecessor, succeed to all its title, estate, rights, powers and duties. Said instrument must contain the name of the original Trustor, Trustee and Beneficiary hereunder, the book and page or document number where this Deed of Trust is recorded, and the name and address of the new Trustee. If notice of default shall have been recorded, this power of substitution cannot be exercised until after the costs, fees and expenses of the then acting Trustee shall have been paid to such Trustee, who shall endorse receipt thereof upon such instrument of substitution.

(20) That any Trustor who is a married person hereby expressly agrees that recourse may be had against his or her separate property, but without hereby creating any lien or charge thereon, for any deficiency after sale of the property hereunder.

(21) If requested, that Trustor shall furnish at least annually, within ninety (90) days after the end of its fiscal year, or more frequently if requested by Beneficiary, a full and complete financial statement concerning income, expenses, assets and liabilities of Trustor, and/or applicable or attributable to the Trust Estate encumbered hereby and the operations thereof, and such other information as Beneficiary may request. Such statement shall be prepared in accordance with generally accepted accounting principles and shall be certified as true, complete and correct by Trustor. Trustor shall keep true and correct records upon which annual statements are based for not less than three (3) years after delivery of the required annual statement. Beneficiary shall have the right, at its cost and at any time and from time to time after giving prior written notice to Trustor, to do or cause to be done any of the following: to audit the records; to cause an audit of the records to be made; to make abstracts from the records; to make copies of any or all of the records; to examine any or all leases and rental agreements (if such leases and rental agreements exist); and to make copies of any or all leases and rental agreements (to the extent such leases and rental agreements exist). Trustor shall make all records specified in the notice available at the time specified in the notice and at the place where the records are customarily kept, or at Beneficiary's option at Beneficiary's office. Upon any default under the DIP Agreement described above or this Deed of Trust, Beneficiary may perform any of the acts authorized by this paragraph at the sole cost of Trustor. Trustor shall promptly reimburse Beneficiary for its costs and such costs shall be secured by this Deed of Trust.

(22) That the pleading of any statute of limitations as a defense to any and all obligations secured by this Deed of Trust is hereby waived to the full extent permissible by law.

(23) That this Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term Beneficiary shall mean the owner and holder, including pledgees, of the DIP Agreement secured hereby, whether or not named as Beneficiary herein. In this Deed of Trust, whenever the context so requires, the masculine gender includes the feminine and neuter, and the singular number includes the plural. If more than one (1) person executes this Deed of Trust as Trustor, the obligations of such persons are joint and several.

(24) Trustor agrees that Beneficiary may provide any financial or other information, data or material in Beneficiary's possession relating to Trustor, the Loan, this Deed of Trust, the Property or the Improvements, to Beneficiary's parent, affiliate, subsidiary, participants or service providers, without further notice to Trustor.

(25) That Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other deed of trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party unless brought by Trustee.

(26) To pay Beneficiary for each and every beneficiary statement furnished at Trustor's request the maximum fee allowed by law and if there be no maximum, then in accordance with Beneficiary's schedule therefore. Such fee shall be computed as of the time said statement is furnished.

(27) That should Trustor sell, convey, transfer, dispose of or further encumber the Trust Estate or any part thereof or any interest therein or enter into a lease covering all or any portion thereof or an undivided interest therein, either voluntarily, involuntarily or otherwise, or enter into an agreement so to do, without the prior written consent of Beneficiary being first had and obtained, then Beneficiary may, at its option, declare all sums secured hereby immediately due and payable. Consent to one such transaction shall not be deemed to be a waiver of the right to require such consent to future or successive transactions.

(28) If Trustor is a corporation, trust, limited or general partnership or joint venture, or limited liability company, should there occur (A) a sale, conveyance, transfer, disposition or encumbrance, either voluntary or involuntary, or should an agreement be entered into to accomplish any thereof, with respect to (i) more than ten percent (10%) of the issued and outstanding capital stock of Trustor if a corporation or (ii) the beneficial interest of Trustor if a trust or (iii) any general partnership or joint venture interest if Trustor is a limited or general partnership or a joint venture, or (iv) any membership interest if Trustor is a limited liability company, or (B) a change in any general partner or joint venturer if Trustor is a limited or general partnership or a joint venture, then Beneficiary may, at its option, declare all sums secured hereby immediately due and payable unless Beneficiary shall have given its prior written consent thereto. Consent to one such transaction shall not be deemed to be a waiver of the right to require such consent to future or successive transactions.

(29) That in the event of the passage after the date hereof of any law deducting from the value of real property, for taxation purposes, any lien thereon or changing in any way the laws now in force for the taxation of deeds of trust or debts whether or not secured thereby for federal, state or local purposes or the manner of the collection of any such taxes so as to affect this Deed of Trust or the obligations hereby secured, Trustor agrees to pay the same and if Trustor fails to so do or if it would be illegal for Trustor so to do then, the whole of the principal sum secured by this Deed of Trust shall, at the option of Beneficiary, without demand or notice, immediately become due and payable.

(30) To the fullest extent permitted by law, Trustor hereby waives the provisions of Section 431.70 of the California Code of Civil Procedure and all amendments thereto.

(31) That no remedy herein conferred upon, reserved to Trustee or Beneficiary is intended to be exclusive of any other remedy herein or by law provided, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. No delay or omission of Trustee or Beneficiary in the exercising of any right or power accruing upon any event of default hereunder shall impair such right or power or any other right or power nor shall the same be construed to be a waiver of any default or any acquiescence therein; and every power and remedy given by this Deed of Trust to Trustee or Beneficiary may be exercised from time to time as often as may be deemed expedient by Trustee or Beneficiary. If there exists additional security for the obligations secured hereby, Beneficiary, at its sole option, and without limiting or affecting any of the rights or remedies hereunder, may exercise any of the rights or remedies to which it may be entitled hereunder either concurrently with whatever rights it may have in connection with such other security or in such order and in such manner as Beneficiary may deem fit without waiving any rights with respect to any other security. The granting of consent by Beneficiary to any transaction as required by the terms hereunder shall not be deemed a waiver of the right to secure the consent of Beneficiary to future or successive transactions.

(32) That in the event any one or more of the provisions contained in this Deed of Trust or in the DIP Agreement hereby secured shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Deed of Trust or said DIP Agreement, but this Deed of Trust and the DIP Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein or therein.

(33) This Deed of Trust has been executed and delivered in the State of California and is to be construed and enforced according to and governed by the laws thereof except that with respect to any portion of the Trust Estate covered hereby located outside of the State of California, only to the extent required for Trustee or Beneficiary to enforce or realize upon the rights and remedies hereunder with respect thereto, the laws of the state in which such property is located shall be applicable hereto.

The undersigned Trustor requests that a copy of any notice of default and of any notice of sale hereunder be mailed Trustor at the address set forth in the recitals.

### Guaranty Waivers

(a) Trustor agrees that:

(i) the obligations of the Trustor under this Deed of Trust are also in the nature of a guaranty and are independent of and in addition to the undertakings of [Debtor] pursuant to the Loan Documents, any evidence of indebtedness issued in connection with the Loan, any other deed of trust or other security agreement given to secure the Loan, any other guarantees given in connection with the Loan, and any other obligations of [Debtor] to Beneficiary;

(ii) a separate action may be brought to enforce the provisions of this Deed of Trust whether [Debtor] is a party in any action or not;

(iii) Beneficiary may at any time, or from time to time, in its sole discretion:

(A) extend or change the time of payment or performance or the manner, place, or terms of payment or performance of any of the Obligations of Trustor and Debtor;

(B) exchange, release, or surrender any of the collateral security, or any part of it, by whomever deposited, which is now or may later be held by Beneficiary in connection with any of the Obligations of Trustor or Debtor;

(C) sell or purchase any of the collateral at public or private sale, or at any broker's board, in the manner permitted by law, and after all costs and expenses of every kind for collection, sale, or delivery, the net proceeds of any sale may be applied by Beneficiary on any of the Obligations of the Trustor or Debtor; and

(D) settle or compromise with [Debtor], or any other person liable, any of the Obligations of Trustor or Debtor, or subordinate the payment of it, or any

part of it, to the payment of any other debts or claims, that may at any time be due or owing to Beneficiary or any other person or corporation; and

(iv) Beneficiary will be under no obligation to marshal any assets in favor of Trustor or Debtor or in payment of any of the Obligations.

(b) Trustor waives:

(i) presentment, demand, protest, notice of acceptance, notice of dishonor, notice of nonperformance, and any other notice with respect to any of the Obligations and this Guaranty, and promptness in commencing suit against any party, or in giving any notice to or making any claim or demand on Trustor;

(ii) any right to require Beneficiary to proceed against Debtor, proceed against or exhaust any security held from Debtor, or pursue any remedy in Beneficiary's power;

(iii) any defense based on any legal disability or other defense of Debtor, any other Trustor, or other person or by reason of the cessation or limitation of the liability of Debtor from any cause other than full payment of all sums payable under the Note and the performance of the other Obligations;

(iv) any defense based on any lack of authority of the officers, directors, partners, or agents purporting to act on behalf of Debtor or any principal of Debtor or any defect in the formation of Debtor or any principal of Debtor;

(v) to the fullest extent permitted by law, all rights and benefits under Civ. Code § 2809 purporting to reduce a Trustor's obligations in proportion to the principal obligation;

(vi) any defense based on the application by Debtor of the proceeds of the Loan for purposes other than the purposes represented by Debtor to Beneficiary or intended or understood by Beneficiary or Trustor;

(vii) any defense it may acquire by reason of Beneficiary's election of any remedy against it or Debtor or both, including, without limitation, election by Beneficiary to exercise its rights under the power of sale in the Deed of Trust and the consequent loss by Trustor of the right to recover any deficiency from Debtor;

(viii) any defense based on Beneficiary's failure to disclose to Trustor any information concerning Debtor's financial condition or any other circumstances bearing on Debtor's ability to pay all sums payable under the Note or any of the other Obligations;

(ix) any defense based on any statute or rule of law that provides that the obligation of a surety must be neither larger in amount nor in any other respects more burdensome than that of a principal;

(x) any defense based on Beneficiary's election, in any proceeding instituted under Beneficiaryruptcy Code §1111(b)(2) of the Federal Beneficiaryruptcy Code or any successor statute;

(xi) any defense based on any borrowing or any grant of a security interest under Beneficiaryruptcy Code § 364;

(xii) any right of subrogation, contribution, or reimbursement against Debtor, any right to enforce any remedy that Beneficiary has or may in the future have against Debtor, any other right that Beneficiary may now or later acquire against Debtor that arises from the existence or performance of Trustor's obligations under this Guaranty or would arise with respect to the Obligations, and any benefit of, and any right to participate in, any security for the Obligations now or in the future held by Beneficiary;

(xiii) the benefit of any statute of limitations affecting the liability of Trustor or the enforcement of the Guaranty, including, without limitation, any rights arising under Code Civ. Proc. § 359.5; and

(xiv) to the fullest extent permitted by law, all rights and benefits under Code Civ. Proc. § 580a, purporting to limit the amount of any deficiency judgment that might be recoverable following the occurrence of a trustee's sale under a deed of trust; Code Civ. Proc. § 580b, stating that no deficiency may be recovered on a real property purchase money obligation; and Code Civ. Proc. § 580d, stating that no deficiency may be recovered on a note secured by a deed of trust on real property in case the real property is sold under the power of sale contained in the deed of trust, if those statutory sections have any application.

(c) Trustor agrees that the payment of all sums payable under the Note or any of the other Obligations or any other act that tolls any statute of limitations applicable to the Note or the other Obligations will similarly operate to toll the statute of limitations applicable to Trustor's liability. Without limiting the generality of the foregoing or any other provision of this Guaranty, Trustor expressly waives all benefits that might otherwise be available to Trustor under Civ. Code §§ 2809, 2810, 2819, 2839, 2845, 2849, 2850, 2899, and 3433, Code Civ. Proc. §§ 580a, 580b, 580d, and 726, or similar sections.

(d) Trustor waives all rights and defenses arising out of an election of remedies by the creditor, even though that election of remedies, such as a nonjudicial foreclosure with respect to security for a guaranteed obligation, has destroyed the Trustor's rights of subrogation and reimbursement against the principal by the operation of Code Civ. Proc. § 580d or otherwise. Furthermore, Trustor understands and acknowledges that if Beneficiary forecloses judicially or nonjudicially against any real property security for the



Loan, that foreclosure could impair or destroy any ability that Trustor may have to seek reimbursement, contribution, or indemnification from Debtor or others based on any right Trustor may have of subrogation, reimbursement, contribution, or indemnification for any amounts paid by Trustor under this Guaranty. Trustor further understands and acknowledges that in the absence of this provision, the potential impairment or destruction of Trustor's rights, if any, may entitle Trustor to assert a defense to this Guaranty based on Code Civ. Proc. § 580d, as interpreted in Union Beneficiary v. Gradsky, 265 Cal. App. 2d 40, 71 Cal. Rptr. 64 (2d Dist. 1968). By executing this Guaranty, Trustor freely, irrevocably, and unconditionally:

(i) waives and relinquishes that defense, and agrees that Trustor will be fully liable under this Guaranty even though Beneficiary may foreclose judicially or nonjudicially against any real property security for the Loan;

(ii) agrees that Trustor will not assert that defense in any action or proceeding that Beneficiary may commence to enforce this Guaranty;

(iii) acknowledges and agrees that the rights and defenses waived by Trustor under this Guaranty include any right or defense the Trustor may have or be entitled to assert based upon or arising out of any one or more of Code Civ. Proc. §§ 580a, 580b, 580d, or 726, or Civ. Code § 2848; and

(iv) acknowledges and agrees that Beneficiary is relying on this waiver in making the Loan, and that this waiver is a material part of the consideration that Beneficiary is receiving for making the Loan.



**TRUSTOR:**

**IMPERIAL HIGHWAY, LLC,**  
a California limited liability company

By: \_\_\_\_\_  
Edward P. Grech  
President, IMPERIAL HIGHWAY, LLC

By: KRYSTAL KOACH, INC.,  
a California corporation  
Title: Member

By: \_\_\_\_\_  
Edward P. Grech  
President

ACKNOWLEDGMENTS

STATE OF CALIFORNIA )  
 )  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

**Exhibit "A"**

Real Property Description

All that certain real property situated in the State of California, County of Orange, City of Brea and described as follows:

Parcels 1 and 2, as shown on Exhibit "B" Attached to the Lot Line Adjustment LLA-96-02 recorded October 16, 1996 as Instrument No. 19960525391 of Official Records of Orange County, California.

EXCEPT THEREFROM that Portion of said land lying below a depth of 100 feet, measured vertically from the surface thereof, with no right of surface entry thereon, as reserved in the Deed from Union Oil Company of California, recorded July 20, 1979 in Book 13236, Page 573 of Official Records.

APN: 320-091-11 and 320-091-65

Street Address: 2701 East Imperial Highway, Brea, CA 92821

**EXHIBIT 2**

Krystal Koach, Inc.  
**PROJECTED 8 - WEEK DIP BUDGET**  
 As of 11/19/2010

	Week 1 11/26/2010	Week 2 12/3/2010	Week 3 12/10/2010	Week 4 12/17/2010	Week 5 12/24/2010	Week 6 12/31/2010	Week 7 1/7/2011	Week 8 1/14/2011	Post-filing Total
<b>For week ending</b>									
Receipts	\$ 528,011	\$ 1,179,010	\$ 560,100	\$ 908,600	\$ 974,700	\$ 903,640	\$ 897,580	\$ 901,250	\$ 6,853,891
Disbursements	\$ 100,000	\$ 798,000	\$ 321,000	\$ 362,000	\$ 321,000	\$ 362,000	\$ 362,000	\$ 370,000	\$ 2,996,000
Chassis Purchases	50,000	450,000	150,000	150,000	150,000	150,000	150,000	150,000	1,400,000
Parts Purchases	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	800,000
Used Car Trade In Purchases	-	-	81,798	-	-	-	-	81,798	163,596
Rent	6,448	169,000	6,448	169,000	6,448	169,000	6,448	169,000	701,792
Employee Costs	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	800,000
Mexico Vehicle Fees	63,950	61,186	172,627	76,186	35,950	89,186	37,083	151,730	687,898
Other G&A	55,000	12,990	55,000	22,989	25,000	(7,011)	15,000	(7,011)	171,956
Contingency	475,398	1,691,176	986,873	980,175	738,398	963,175	770,531	1,115,517	7,721,242
<b>Total Operating Disbursements</b>									
Administrative Costs	-	25,000	-	25,000	-	25,000	-	25,000	100,000
Pro Fees - Debtor Financial Advisor	-	-	-	100,000	-	-	-	100,000	200,000
Pro Fees - Debtor Bankruptcy Counsel	-	10,000	-	-	-	-	10,000	-	20,000
Pro Fees - Debtor Litigation Counsel	-	-	-	75,000	-	-	-	75,000	150,000
Pro Fees - Lender Legal Counsel	-	-	-	50,000	-	-	-	50,000	100,000
Pro Fees - UCC Professionals	1,303	3,260	-	4,430	1,303	3,260	-	4,430	17,986
DIP Fees and Interest	-	-	10,000	-	-	-	-	10,000	20,000
US Trustee and Other Court Fees	-	907,000	-	-	-	-	-	-	907,000
Paydown of Lumbermans	1,303	945,260	10,000	254,430	1,303	28,260	10,000	264,430	1,514,986
<b>Total Administrative Costs</b>									
<b>Net Cash Flow</b>	\$ 51,310	\$ (1,457,426)	\$ (436,773)	\$ (325,005)	\$ 234,999	\$ (87,795)	\$ 117,049	\$ (478,697)	\$ (2,382,338)
Cash Collateral Roller									
Opening Cash Collateral	-	51,310	893,885	657,111	332,106	567,105	479,310	596,359	-
Plus Cash in From Sales Of Vehicles	528,011	1,179,010	560,100	909,600	974,700	903,640	897,580	901,250	6,853,891
Less Cash Disbursements	(476,701)	(2,636,436)	(996,873)	(1,234,605)	(739,701)	(991,435)	(780,531)	(1,379,947)	(9,236,228)
Plus DIP Borrowings	-	2,300,000	200,000	-	-	-	-	-	2,500,000
Ending Cash	51,310	893,885	657,111	332,106	567,105	479,310	596,359	117,663	117,663
DIP Loan Roller									
Opening Loan Balance	2,500,000	2,500,000	200,000	-	-	-	-	-	2,500,000
DIP Borrowings	-	(2,300,000)	(200,000)	-	-	-	-	-	(2,500,000)
Ending Balance	2,500,000	200,000	-	-	-	-	-	-	-

Notes and Key Assumptions:  
 1) Assume DIP financing order entered in first week. Access to DIP financing in week 2.  
 2) Assume that Lumberman's calls LC in week 2 and is paid out of DIP financing.

**EXHIBIT 3**

1 RON BENDER (SBN 143364)  
2 PHILIP A. GASTEIER (130043)  
3 KRIKOR J. MESHEFEJIAN (SBN 255030)  
4 LEVENE, NEALE, BENDER, YOO & BRILL L.L.P.  
5 10250 Constellation Boulevard, Suite 1700  
6 Los Angeles, California 90067  
7 Telephone: (310) 229-1234  
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9 Email: rb@lnbyb.com; pag@lnbyb.com; kjm@lnbyb.com

6 Proposed Counsel for Chapter 11 Debtor and Debtor in Possession

8 UNITED STATES BANKRUPTCY COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
10 SANTA ANA DIVISION

11  
12 In re: ) Case No. 8:10-bk-26547-RK  
13 KRYSTAL KOACH, INC., ) Chapter 11  
14 Debtor and Debtor in Possession. )  
15 ) ORDER AUTHORIZING DEBTORS TO  
16 ) INCUR POST-PETITION FINANCING  
17 ) ON A SECURED BASIS  
18 )  
19 ) Date:  
20 ) Time:  
21 ) Place:  
22 )  
23 )

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1 A hearing was held on November \_\_, 2010, at \_\_\_\_ a.m./p.m., before the Honorable  
2 \_\_\_\_\_, United States Bankruptcy Judge, in Courtroom "30\_", located at 21041  
3 Burbank Blvd., Woodland Hills, California, for the Court to consider the emergency motion (the  
4 "Emergency Motion") filed by Krystal Koach, Inc. (the "Debtor"), the debtor and debtor in  
5 possession in the above-captioned chapter 11 bankruptcy case, for authority to incur post-petition  
6 financing on a secured basis. Appearances were made at the hearing as set forth on the record of  
7 the Court.

8 The Court, having considered the Emergency Motion, all pleadings filed by the Debtor in  
9 support of the Emergency Motion, any pleadings filed in opposition to the Emergency Motion,  
10 and good cause appearing,

11 IT IS HEREBY ORDERED AS FOLLOWS:

- 12 1. The Motion is granted in its entirety.
- 13 2. The Debtor is authorized to enter into the Post-Petition Loan and Security  
14 Agreement (the "DIP Loan Agreement") dated November 19, 2010, between the Debtor and  
15 National Energy Holdings Limited, A BVI Company, or assignee (the "DIP Lender"), a copy of  
16 which is attached as Exhibit "1" to the Motion.
- 17 3. The DIP Loan Agreement is approved is approved on an interim basis subject to  
18 final hearing, and the Debtor is authorized to enter into and to sign all documents and agreements  
19 necessary to implement the DIP Loan Agreement with the DIP Lender.
- 20 4. In connection with consummating the DIP Loan Agreement, the Debtor is  
21 authorized to grant to the DIP Lender, and the DIP Lender is hereby granted a security interest in  
22 the Collateral, as defined in the DIP Loan Agreement, which security interest shall constitute a  
23 first priority lien against all of the Debtor's unencumbered assets (with the exception of  
24 avoidance causes of action against which the DIP Lender will not have any lien), and a junior  
25 lien against all of the Debtor's encumbered assets, as security for all amounts due or to become  
26 due under the DIP Loan Agreement (the "DIP Indebtedness"). The Debtor is not authorized to  
27 grant to the DIP Lender any lien against any of its assets which is senior in priority to any lien  
28 which already existed on the date of the Debtor's Chapter 11 bankruptcy filings.



1           5. All liens and security interests on or in the Collateral granted to DIP Lender by  
2 this Order and the DIP Loan Agreement shall be, and they hereby are, deemed duly perfected and  
3 recorded under all applicable federal or state or other laws as of the date hereof, and no notice,  
4 filing, mortgage recordation, possession, further order, landlord or warehousemen lien waivers or  
5 other third party consents or other act, shall be required to effect such perfection; provided,  
6 however, that notwithstanding the provisions of § 362 of the Bankruptcy Code, (i) DIP Lender  
7 may, at its sole option, file or record or cause the Debtor to obtain any such landlord or  
8 warehousemen lien waivers or other third party consents or execute, file or record, at the  
9 Debtor's expense, any such UCC financing statements, notices of liens and security interests,  
10 mortgages and other similar documents as DIP Lender may require, and (ii) DIP Lender may  
11 require the Debtor to deliver to DIP Lender any chattel paper, instruments or securities  
12 evidencing or constituting any DIP Collateral, and the Debtor is directed to cooperate and comply  
13 therewith. DIP Lender may (in its discretion), but shall not be required to, file a certified copy of  
14 this Order in any filing or recording office in any county or other jurisdiction in which Debtor  
15 shall have real or personal property and such filing or recording shall be accepted and shall  
16 constitute further evidence of perfection of DIP Lender's interests in the Collateral.

17           6. With reference to any action by the DIP Lender upon Default, as defined in the  
18 DIP Loan Agreement, the DIP Lender shall provide three business days' notice to the Debtor, the  
19 United States Trustee (the "UST"), Comerica Bank and any committee appointed in this Chapter  
20 11 Case (and if no committee has been appointed, each of the Debtors' twenty largest creditors)  
21 of said Default. Upon expiration of this notice period, if the Default has not been cured, the DIP  
22 Lender shall have the right to seek an order of Bankruptcy Court on five business days' notice to  
23 the Debtor, Comerica Bank, the DIP Lender, the UST, and any committee appointed in this  
24 Chapter 11 Case (or if no committee has been appointed, each of the Debtors' twenty largest  
25 creditors), to exercise the rights and remedies granted it (whether under the Order approving  
26 this Loan or the DIP Loan Documents) as to all or such part of the Collateral, including without  
27 limitation to take possession of and sell the Collateral in accordance with the terms of the UCC to  
28 satisfy the DIP Indebtedness, or to otherwise exercise its remedies as a secured creditor under the

1 UCC, and to seek for any such purpose, relief from the automatic stay of section 362 of the  
2 Bankruptcy Code as to the DIP Lender interest and to have same be modified and vacated as to  
3 the DIP Lender, if deemed appropriate by the DIP Lender. In no event shall the DIP Lender be  
4 subject to the equitable doctrine of "marshalling" or any other similar doctrine with respect to  
5 any of the DIP Collateral or otherwise.

6 7. Nothing included herein shall prejudice, impair, or otherwise affect the DIP  
7 Lender's rights to seek any other or supplemental relief in respect of the Debtor nor the DIP  
8 Lender's rights, as provided in the DIP Loan Documents or under applicable law, to suspend or  
9 terminate the making of loans under the DIP Loan Documents.

10 8. Subject to the Carve-Out described in decretal paragraph 9 below, and the DIP  
11 Loan Documents the DIP Indebtedness shall have the highest administrative priority under  
12 § 364(c)(1) of the Bankruptcy Code, and shall have priority over all other costs and expenses of  
13 administration of any kind, including those specified in, or ordered pursuant to, §§ 105, 326, 330,  
14 331, 503(b), 506(c), 507(a), 507(b) or 726 or any other provision of the Bankruptcy Code or  
15 otherwise (whether incurred in this Chapter 11 Case or any Successor Case), and shall at all times  
16 be senior to the rights of Debtor, any successor trustee or estate representative in this Chapter 11  
17 case or any successor case.

18 9. Subject to the remaining provisions of this Order, DIP Lender's liens on and  
19 security interests in the DIP Collateral and its administrative claims under § 364(c)(1) of the  
20 Bankruptcy Code shall be subordinate only to (a) any Superpriority Claim of Comerica Bank; and  
21 (b) a carve-out (the "Carve-Out") for the payment of (i) unpaid fees and disbursements incurred  
22 by professionals (other than ordinary course professionals) retained, pursuant to Sections 327 or  
23 1103(a) of the Bankruptcy Code not to exceed \$420,000, plus (ii) quarterly fees required to be  
24 paid pursuant to 28 U.S.C. §1930(a)(6) and any fees payable to the Clerk of the Bankruptcy  
25 Court; provided, however, that the Carve-Out shall not include professional fees, disbursements,  
26 costs, or expenses incurred in connection with any claim or cause of action asserted against the  
27 Lender. The foregoing provisions are without prejudice to Lender's right to object to any such  
28 fees or expenses.

1           10.     The DIP Lender does not waive, and expressly reserves, any and all claims,  
2 defenses, rights and remedies it has pursuant to any or all of the DIP Loan Documents, the  
3 Bankruptcy Code and/or other applicable law against the Debtor any Guarantor and any officer,  
4 director, employee, agent or other representative of the Debtor. In addition, the rights, claims,  
5 liens, security interests and priorities of the DIP Lender arising under this Order are in addition to,  
6 and are not intended as a waiver or substitution for, the rights, obligations, claims, liens, security  
7 interests and priorities granted by the Debtor and any Guarantor. Without limiting the generally  
8 of the foregoing, the DIP Lender may petition this Court for any such additional protection that  
9 may reasonably require with respect to the DIP Indebtedness or otherwise, and nothing in this  
10 Order constitutes a finding with respect to the adequacy of the protection of the interests of the  
11 DIP Lender in the DIP Collateral.

12           11.     The provisions of this Order shall be binding upon and inure to the benefit of DIP  
13 Lender, the Debtor, any Guarantor and their respective successors and assigns (including any  
14 trustee or other estate representative appointed as a representative of the Debtor's estate or of any  
15 estate in any successor case). Except as otherwise explicitly set forth in this Order, no third  
16 parties are intended to be or shall be deemed to be third party beneficiaries of this Order or the  
17 DIP Loan Documents.

18           12.     If this Chapter 11 Case is dismissed, converted, otherwise superseded or  
19 substantively consolidated, DIP Lender's rights and remedies under this Order and the DIP Loan  
20 Documents shall be and remain in full force and effect as if such Chapter 11 Case had not been  
21 dismissed, converted, superseded or substantively consolidated. Furthermore, notwithstanding  
22 any such dismissal, conversion, supervision or substantive consolidation, all of the terms and  
23 conditions of this Order, including, without limitation, the liens and the priorities granted  
24 hereunder, shall remain in full force and effect.

25           13.     Based on the representations made by the Debtors in the Emergency Motion and  
26 at the hearing on the Emergency Motion, any post-petition loan consummated between the  
27 Debtors and the DIP Lender would constitute post-petition credit extended to the Debtors in good  
28

1 faith, which would entitled the DIP Lender to the protections afforded by Section 364(e) of the  
2 Bankruptcy Code.

3 14. A final hearing on the Motion shall be held on \_\_\_\_\_, 2010, at \_\_\_\_0 a.m.  
4 Any opposition must be filed and served so that it is actually received by counsel for the Debtor  
5 by 5:00 p.m. on \_\_\_\_\_. \_\_, 2010.

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