

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

In re:)	
)	Chapter 11
LIMITED STORES COMPANY, LLC, <i>et al.</i> , ¹)	Case No. 17-10124 (___)
)	
Debtors.)	(Joint Administration Requested)
)	

**DEBTORS’ MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS
(I) AUTHORIZING THE DEBTORS TO OBTAIN POST-PETITION SECURED
FINANCING PURSUANT TO SECTION 364 OF THE BANKRUPTCY CODE,
(II) AUTHORIZING THE DEBTORS TO USE CASH COLLATERAL,
(III) GRANTING LIENS AND SUPERPRIORITY ADMINISTRATIVE EXPENSE
CLAIMS, (IV) GRANTING ADEQUATE PROTECTION TO THE PRE-PETITION
LENDERS, (V) MODIFYING THE AUTOMATIC STAY, (VI) SCHEDULING
A FINAL HEARING, AND (VII) GRANTING RELATED RELIEF**

Limited Stores Company, LLC, and its debtor affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “Debtors”),² respectfully state the following in support of this motion (the “Motion”):

Relief Requested

1. The Debtors seek entry of an interim order, substantially in the form attached hereto as **Exhibit A** (the “Interim DIP Order”), and a final order (the “Final DIP Order,”³ and together with the Interim Order, the “DIP Orders”):

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, include: Limited Stores Company, LLC (6463); Limited Stores, LLC (0165); and The Limited Stores GC, LLC (6094). The location of the Debtors’ service address is: 7775 Walton Parkway, Suite 400, New Albany, Ohio 43054.

² A detailed description of the Debtors and their businesses, and the facts and circumstances supporting this motion and the Debtors’ chapter 11 cases, are set forth in greater detail in the *Declaration of Timothy D. Boates of Limited Stores Company, LLC, in Support of Chapter 11 Petitions and First Day Motions* (the “First Day Declaration”), filed contemporaneously with the Debtors’ voluntary petitions for relief filed under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”), on January 17, 2017 (the Petition Date”).

³ The Debtors will file the form of Final DIP Order prior to the Final Hearing (as defined herein).

- a. authorizing the Debtors to obtain senior-secured postpetition financing (the “DIP Facility”) as set forth in that certain Senior Secured and Superpriority Debtor-in-Possession Credit Agreement, attached hereto as **Exhibit B** (the “DIP Credit Agreement,” and together with the Loan Documents (as defined in the DIP Credit Agreement), the “DIP Loan Documents”) under which revolving loans (the “DIP Loans”) may be advanced and made available to the Debtors by the lenders party to the DIP Credit Agreement (collectively, the “DIP Lenders”) in the aggregate maximum principal amount of \$4.6 million (on an interim basis) and \$6 million (on a final basis), in each case subject to and pursuant to the terms and conditions set forth in the DIP Orders and the DIP Loan Documents;
- b. authorizing the Debtors to enter into, be bound by, and perform under the DIP Loan Documents and to perform such other and further acts as may be necessary or appropriate in connection therewith;
- c. authorizing the Debtors to use Collateral (as defined in the DIP Orders), including Cash Collateral (as defined in the DIP Orders), that is subject to the existing liens and security interests in favor of the Pre-Petition Agent on behalf of the Pre-Petition Lenders (each as defined herein), and granting to those parties certain adequate protection (including Pre-Petition Replacement Liens and the Pre-Petition Adequate Protection Claim (each as defined herein)), solely to the extent of any diminution in value of such parties’ interest in the Pre-Petition Collateral (as defined herein);
- d. granting to the DIP Agent (as defined herein), for the benefit of the DIP Lenders: (i) valid and perfected first priority security interests and liens, superior to all other liens, claims, or security interests that any creditor of the Debtors’ estates may have (but subject to the Carve-Out Expenses (as defined in the DIP Orders) and the Permitted Priority Liens (as defined in the DIP Credit Agreement)), in and upon all of the Collateral (the “DIP Liens”) and (ii) an allowed superpriority administrative claim (the “Superpriority Claim”) having priority in right of payment over all other obligations, liabilities, and indebtedness of the Debtors, except for the Carve-Out Expenses;
- e. modifying the automatic stay to permit the DIP Agent, acting on behalf of itself and the DIP Lenders, to perform any act authorized or permitted under or by virtue of the DIP Orders of the DIP Loan Documents, including, without limitation, (i) to implement the postpetition financing arrangements, (ii) to take any act to create, validate, evidence, attach, or perfect any lien, security interest, right, or claim in the Collateral, and (iii) upon the occurrence of an Event of Default (as defined in the DIP Credit Agreement) and after providing five business days prior written

notice (to the extent applicable), to exercise remedies under the DIP Loan Documents;

- f. scheduling a final hearing (the “Final Hearing”) to consider entry of the Final DIP Order for a date that is before the 25th day after the Petition Date to consider entry of the Final DIP Order, and fixing the time and date prior to the Final Hearing for parties in interest to file objections to this Motion; and
- g. granting related relief.

Jurisdiction and Venue

2. The United States Bankruptcy Court for the District of Delaware (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012. The Debtors confirm their consent, pursuant to Rule 7008 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), to the entry of a final order by the Court in connection with this motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

3. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The bases for the relief requested herein are sections 105, 361, 362, 363, 364, 503, and 507 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001, and 9014, and Local Rules 2002-1(b) and 4001-2.

Preliminary Statement⁴

5. The Debtors require immediate access to *both* Cash Collateral and postpetition financing to provide sufficient liquidity to efficiently administer the Debtors' estates during these chapter 11 cases, and therefore, interim approval is essential to the Debtors' ability to preserve and maximize value. The Debtors commenced these chapter 11 cases in the face of considerable uncertainty and turbulence around their business, including as a result of recently ceasing operations at their brick and mortar stores and weakness in the retail industry as a whole. And although the Debtors are confident in the assumptions and projections underlying the Budget, this uncertainty poses material risk that the Debtors fail to achieve their anticipated cash flows, which would cut into their already-low cash balance of less than \$250,000. In addition, the certainty of the DIP Facility provides comfort to the proposed purchaser for the Debtors' IP Sale Assets (as defined herein)—as well as any potential bidders—that the Debtors will have sufficient liquidity through consummation of a sale. Failure to obtain interim approval of the DIP Facility could therefore negatively affect the Debtors' proposed sale process and hinder their ability to obtain the highest or otherwise best offer for the IP Sale Assets.

6. Moreover, and as discussed below and in the First Day Declaration, the provisions of the DIP Credit Agreement and the Interim DIP Order were extensively negotiated at arm's-length and in good faith, and the DIP Facility provides the best terms presently available to the Debtors. Given the lack of strong evidence or certainty of a sufficient equity cushion, the Pre-Petition Lenders made clear to the Debtors that they would not consent to a third-party "priming" facility. And for this same reason, it is unlikely any lender would provide financing junior to the Pre-Petition Lenders. Despite these long odds, the Debtors, with the assistance of

⁴ Capitalized terms used but not defined in this section have the meanings ascribed to such terms further below in this Motion or in the Interim DIP Order, as applicable.

their advisors, solicited proposals for alternative debtor-in-possession financing from seven potential sources. As expected, none provided an alternative proposal. Thus, with no viable postpetition financing options other than the DIP Facility, and because the Debtors believe that the DIP Facility is reasonable, appropriate, and provides the best terms presently available to the Debtors, the Debtors respectfully submit that the Court should grant the relief requested herein.

**Concise Statement Pursuant to
Bankruptcy Rule 4001(b) and Local Rule 4001-2**

7. The below chart contains a summary of the material terms of the proposed DIP Facility, together with references to the applicable sections of the relevant source documents, as required by Bankruptcy Rules 4001(b)(1)(B) and 4001(c)(1)(B) and Local Rule 4001-2.⁵

Bankruptcy Code/Local Rule	Summary of Material Terms
Borrowers Bankruptcy Rule 4001(c)(1)(B)	Limited Stores, LLC and The Limited Stores GC, LLC. <i>See</i> DIP Credit Agreement Preamble; DIP Credit Agreement Schedule 1.1.
Guarantor Bankruptcy Rule 4001(c)(1)(B)	Limited Stores Company, LLC. <i>See</i> DIP Credit Agreement Preamble; DIP Credit Agreement §1.01.
DIP Financing Lenders Bankruptcy Rule 4001(c)(1)(B)	Cerberus Business Finance, LLC (the “ <u>DIP Agent</u> ”), and a syndicate of financial institutions comprised of the Pre-Petition Lenders, including Cerberus ASRS Holding LLC, Cerberus ICQ Levered Loan Opportunities Fund, L.P., Cerberus KRS Levered Loan Opportunities Fund, L.P., Cerberus NJ Credit Opportunities Fund, L.P., and Cerberus Onshore Levered Loan Opportunities Fund II, L.P. <i>See</i> DIP Credit Agreement Preamble; DIP Credit Agreement Schedule 1.2; Interim DIP Order Preambles.
Term Bankruptcy Rule 4001(b)(1)(B)(iii), 4001(c)(1)(B) Local Rule 4001-2(a)(ii)	The term of the DIP Facility shall mature on the date which is the earliest of (a) the date which is 30 days following the date of entry of the Interim DIP Order if the Final DIP Order has not been entered by the Bankruptcy Court on or prior to such date, (b) the date that is four (4) months from the date of the DIP Credit Agreement, (c) the effective date or the substantial consummation (as defined in Section 1101(2) of the Bankruptcy Code) of any plan of reorganization or liquidation in the Chapter 11 Cases; (d) the date on which the Sale is consummated or any other sale of all or substantially all of the Loan Parties’ assets and/or Equity Interests is consummated under Section 363 of the Bankruptcy Code;

⁵ The summaries contained in this Motion are qualified in their entirety by the provisions of the documents referenced, including the DIP Credit Agreement and the Interim DIP Order. To the extent anything in this Motion is inconsistent with such documents, the terms of the applicable documents shall control. Capitalized terms used in this summary chart but not otherwise defined have the meanings ascribed to them in the DIP Loan Documents or the Interim DIP Order, as applicable.

Bankruptcy Code/Local Rule	Summary of Material Terms
	<p>and (e) such earlier date on which all Loans and other Obligations for the payment of money shall become due and payable in accordance with the terms of the DIP Credit Agreement and the other Loan Documents.</p> <p><i>See</i> DIP Credit Agreement § 1.01; Interim DIP Order ¶ 7.3.</p>
Commitment Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(ii)	<p>The total DIP Facility shall include loans to be advanced and made available to the Borrower in the aggregate maximum principal amount of \$4.6 on an interim basis and \$6 million in the aggregate on a final basis.</p> <p><i>See</i> DIP Credit Agreement § 2.01 and Schedule 1.2; Interim DIP Order ¶ 1.2.</p>
Conditions of Borrowing Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(ii)	<p>The DIP Credit Agreement shall become effective as of the Business Day (the “<u>Interim Effective Date</u>”) when each of the following conditions precedent shall have been satisfied or waived in a manner satisfactory to the Agents: (a) the Interim DIP Order shall have been entered by the Bankruptcy Court on or before January 20, 2017, and the Agents shall have received a true and complete copy of such order, and such order shall be in full force and effect and shall not have been reversed, modified, amended, stayed, or vacated, absent prior written consent of the Agents, the Required Lenders and the Borrowers, and the Interim DIP Order shall (i) find and conclude that the Loan Documents were negotiated in good faith and that the Agents and the Lenders are entitled to the protections of Section 364(e) of the Bankruptcy Code and (ii) order that, as of the Petition Date, the Liens and security interests in favor of the Collateral Agent referred to in Section 2.20 of the DIP Credit Agreement shall be valid and perfected Liens and security interests in the Collateral, prior to all other Liens and security interests in the Collateral and subject only to Permitted Priority Liens and payment of the Carve-Out Expenses; (b) the Borrowers shall have paid on or before the Interim Effective Date the Closing Fee and all Credit Party Expenses then due and payable, including the reasonable documented accrued fees, costs and expenses of the Agents’ and the Lenders’ professionals (including legal counsel) in connection with the negotiation and preparation of this Agreement and the other Loan Documents; provided that such payments will be made out of the initial Borrowings under the DIP Credit Agreement; (c) the following statements shall be true and correct: (i) the representations and warranties contained in Article III and in each other Loan Document, certificate or other writing delivered to any Agent or any Lender pursuant hereto or thereto on or prior to the Interim Effective Date are true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations or warranties that already are qualified or modified as to “materiality” or “Material Adverse Effect” in the text thereof, which representations and warranties shall be true and correct in all respects subject to such qualification) on and as of the Interim Effective Date as though made on and as of such date, except to the extent that any such representation or warranty expressly relates solely to an earlier date (in which case such representation or warranty shall be true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations or warranties that already are qualified or modified as to “materiality” or “Material Adverse Effect” in the text thereof, which representations and warranties shall be true and correct in all respects subject to such qualification) on and as of such earlier date) and (ii) no Default or Event of Default shall have occurred and be continuing on the Interim Effective Date or would result from the DIP Credit Agreement or the other Loan Documents becoming effective in accordance with its or their respective terms; (d) the making of the initial Loans shall not contravene any law, rule or regulation applicable to any Agent or any Lender; (e) the Collateral Agent shall have received on or before the Interim Effective Date the following, each in form and substance satisfactory to the Collateral Agent and, unless indicated otherwise, dated the Interim Effective Date: (i) the DIP Credit Agreement, duly executed in counterpart by the Loan Parties, the Agents and the Lenders; (ii) copies of the Charter Documents of each</p>

Bankruptcy Code/Local Rule	Summary of Material Terms
	<p>Loan Party, together with all amendments thereto, certified as of the Interim Effective Date by a Responsible Officer of such Loan Party; (iii) a copy of the resolutions of each Loan Party, certified as of the Interim Effective Date by a Responsible Officer thereof, authorizing (A) the borrowings under the DIP Credit Agreement and the transactions contemplated by the Loan Documents to which such Loan Party is or will be a party, and (B) the execution, delivery and performance by such Loan Party of each Loan Document to which such Loan Party is or will be a party and the execution and delivery of the other documents to be delivered by such Person in connection herewith and therewith; (iv) a certificate of a Responsible Officer of each Loan Party, certifying the names and true signatures of the representatives of such Loan Party authorized to sign each Loan Document to which such Loan Party is or will be a party and the other documents to be executed and delivered by such Loan Party in connection herewith and therewith, together with evidence of the incumbency of such authorized officers; (v) a certificate of the appropriate official(s) of the jurisdiction of organization of each Loan Party certifying as of a recent date not more than 30 days prior to the Interim Effective Date as to the subsistence in good standing of such Loan Party in such jurisdictions; and (vi) a certificate of a Responsible Officer of each Loan Party, certifying as to the matters set forth in Section 4.01(c) of the DIP Credit Agreement; (f) the Agents and the Lenders shall have received the initial Budget, attached as Exhibit D to the DIP Credit Agreement, together with a certificate of a Responsible Officer of the Parent stating that such Budget has been prepared on a reasonable basis and in good faith and is based on assumptions believed by the Loan Parties to be reasonable at the time made and from the best information then available to the Loan Parties; (g) evidence of the insurance coverage required by Section 5.07 of the DIP Credit Agreement and such other insurance coverage with respect to the business and operations of the Loan Parties as the Collateral Agent may request together with evidence of the payment of all premiums due in respect thereof for such period as the Collateral Agent may request; (h) the Agents shall have determined in their sole judgment that no event or development shall have occurred, other than the Chapter 11 Cases, which could reasonably be expected to have a Material Adverse Effect; (i) the Collateral Agent shall be satisfied that it has been granted, and holds for the benefit of the Agents and the Lenders, a perfected, first priority Lien on, and security interest in, all of the Collateral, subject only to Permitted Priority Liens and the Carve-Out Expenses; (j) all consents, authorizations and approvals of, and filings and registrations with, and all other actions in respect of, any Governmental Authority or other Person required in connection with the making of the Loans or the conduct of the Loan Parties' business shall have been obtained and shall be in full force and effect; (k) the Agents shall have received on or before the Petition Date, copies of the "first day" motions, including the orders attached thereto, to be filed by the Loan Parties with the Bankruptcy Court in the Chapter 11 Cases, each of which shall be in form and substance satisfactory to the Agents, and the orders of the Bankruptcy Court approving such motions, in form and substance satisfactory to the Agents, shall have been entered by the Bankruptcy Court on or before the third (3rd) Business Day after the Petition Date; (l) there shall exist no claim, action, suit, investigation, litigation or proceeding pending or threatened in any court or before any arbitrator or governmental authority which relates to the Loans; (m) the Loan Parties shall have commenced the Chapter 11 Cases and no trustee, examiner or receiver shall have been appointed or designated with respect to the Loan Parties' business, properties or assets and no motion shall be pending seeking any relief or seeking any other relief in the Bankruptcy Court to exercise control over any Collateral with an aggregate value in excess of \$200,000; (n) the Loan Parties shall be in compliance with all applicable requirements of law, including Regulations T, U and X of the Board of the Federal Reserve System; and (o) all proceedings in connection with the making of the initial Loans and the other transactions contemplated by the DIP Credit Agreement and the other Loan Documents, and all documents incidental hereto and thereto, shall be satisfactory to</p>

Bankruptcy Code/Local Rule	Summary of Material Terms
	<p>the Agents and their counsel, and the Agents and such counsel shall have received all such information and such counterpart originals or certified or other copies of such documents as the Agents or such counsel may reasonably request. See DIP Credit Agreement § 4.01.</p> <p>The obligation of any Agent or any Lender to make any Loan during the Final Period shall commence as of the Business Day (the “<u>Final Effective Date</u>”) when each of the following conditions precedent shall have been satisfied or waived in a manner satisfactory to the Agents: (a) the Final DIP Order shall have been signed and entered by the Bankruptcy Court on a date that is within thirty (30) days following the Petition Date, and the Agents shall have received a true and complete copy of such order, and such order shall be in full force and effect and shall not have been reversed, modified, amended, stayed or vacated, absent the prior written consent of the Agents, the Required Lenders and the Borrowers, and the Final DIP Order shall (i) find and conclude that the Loan Documents were negotiated in good faith and that the Agents and the Lenders are entitled to the protections of Section 364(e) of the Bankruptcy Code and (ii) order that, as of the Petition Date, the Liens and security interests in favor of the Collateral Agent referred to in Section 2.20 of the DIP Credit Agreement shall be valid and perfected Liens and security interests in the Collateral, prior to all other Liens and security interests in the Collateral and subject only to Permitted Priority Liens; (b) the Borrowers shall have paid on or before such date all reasonable documented fees, costs, expenses and taxes then due and payable including any Credit Party Expenses; <u>provided</u> that such payments may be made out of the Borrowings on such Final Effective Date; (c) the following statements shall be true and correct: (i) the representations and warranties contained in Article III and in each other Loan Document, certificate or other writing delivered to the Agents or the Lenders pursuant hereto or thereto on or prior to the Final Effective Date are true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations or warranties that already are qualified or modified as to “materiality” or “Material Adverse Effect” in the text thereof, which representations and warranties shall be true and correct in all respects subject to such qualification) on and as of the Final Effective Date as though made on and as of such date, except to the extent that any such representation or warranty expressly relates solely to an earlier date (in which case such representation or warranty shall be true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations or warranties that already are qualified or modified as to “materiality” or “Material Adverse Effect” in the text thereof, which representations and warranties shall be true and correct in all respects subject to such qualification) on and as of such earlier date) and (ii) no Default or Event of Default shall have occurred and be continuing on the Final Effective Date or would result from the making of Loans on such date; (d) the Collateral Agent shall be satisfied that it has been granted, and still continues to hold, as the case may be, for the benefit of the Agents and the Lenders, a perfected, first priority Lien on and security interest in all of the Collateral, subject only to Permitted Priority Liens and the Carve-Out Expenses; (e) the Agents shall have determined that no event or development shall have occurred since the Interim Effective Date, which could reasonably be expected to have a Material Adverse Effect; (f) there shall exist no claim, action, suit, investigation, litigation or proceeding pending or threatened in any court or before any arbitrator or Governmental Authority, which relates to the Loans; and (g) all proceedings in connection with the making of the Loans and the other transactions contemplated by this Agreement and the other Loan Documents, and all documents incidental hereto and thereto, shall be satisfactory to the Agents and their counsel, and the Agents and such counsel shall have received all such information and such counterpart originals or certified or other copies of such documents as the Agents or such counsel may reasonably request.</p>

Bankruptcy Code/Local Rule	Summary of Material Terms
	<p><i>See</i> DIP Credit Agreement § 4.02.</p> <p>The obligation of any Agent or any Lender to make any Loan after the Interim Effective Date is subject to the fulfillment, in a manner satisfactory to the Administrative Agent, of each of the following conditions precedent: (a) the Borrowers shall have paid all fees, costs, expenses and taxes then due and payable by the Borrowers pursuant to this Agreement and the other Loan Documents, including the Credit Party Expenses; provided that such payments may be made out of the Borrowings hereunder; (b) the following statements shall be true and correct, and the submission by the Administrative Borrower to the Administrative Agent of a Notice of Borrowing with respect to each such Loan, and the Borrowers' acceptance of the proceeds of such Loan, shall each be deemed to be a representation and warranty by each Loan Party on the date of such Loan that: (i) the representations and warranties contained in Article III and in each other Loan Document, certificate or other writing delivered to any Agent or any Lender pursuant hereto or thereto on or prior to the date of such Loan are true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations or warranties that already are qualified or modified as to "materiality" or "Material Adverse Effect" in the text thereof, which representations and warranties shall be true and correct in all respects subject to such qualification) on and as of the date of such Loan as though made on and as of such date, except to the extent that any such representation or warranty expressly relates solely to an earlier date (in which case such representation or warranty shall be true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations or warranties that already are qualified or modified as to "materiality" or "Material Adverse Effect" in the text thereof, which representations and warranties shall be true and correct in all respects subject to such qualification) on and as of such earlier date), (ii) at the time of and after giving effect to the making of such Loan and the application of the proceeds thereof, no Default or Event of Default has occurred and is continuing or would result from the making of the Loan to be made on such date and (iii) the conditions set forth in this Section 4.03 have been satisfied as of the date of such request; (c) after giving effect to the making of such Loan, the Loan Parties will not hold unrestricted cash, in the aggregate, in excess of \$800,000; (d) after giving effect to the making of such Loan, the outstanding principal amount of the Loans shall not exceed the Total Commitment then in effect; (e) the making of such Loan shall not contravene any law, rule or regulation applicable to any Agent or any Lender; (f) the Administrative Agent shall have received a Notice of Borrowing pursuant to Section 2.02 of the DIP Credit Agreement; (f) the Agents shall have determined that no event or development shall have occurred since the Interim Effective Date which could reasonably be expected to result in a Material Adverse Effect; and (g) the Agents and their counsel shall have received all information or certified or other copies of any other documents as the Agents or such counsel may reasonably request.</p> <p><i>See</i> DIP Credit Agreement § 4.03.</p>

Bankruptcy Code/Local Rule	Summary of Material Terms
Interest Rates Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(ii)	<p>Debtors shall pay interest on the unpaid principal amount of each Loan from the date made until the principal amount thereof shall have been paid in full at a rate per annum equal at all times to (i) in the case of a Prime Rate Loan, the then Prime Rate, <u>plus</u> 8.75% and (ii) in the case of a LIBOR Loan, the Adjusted LIBOR Rate for such Interest Period, <u>plus</u> 10.0%, in each case, payable in arrears in cash on the first day of each calendar month, upon any repayment or prepayment thereof (on the amount prepaid) and on the Termination Date (whether by maturity, acceleration, or otherwise), and after such termination, on demand, and computed on the basis of a year of 360 days for the actual number of days, including the first day but excluding the last day, elapsed.</p> <p>In addition, principal outstanding on account of the Loans after the occurrence of an Event of Default shall bear interest, from the date of such Event of Default and all times thereafter until such Event of Default is waived in writing in accordance with the terms of the DIP Credit Agreement, interest shall accrue at a rate per annum equal to the rate otherwise in effect from time to time pursuant to the DIP Credit Agreement plus 2.00% per annum.</p> <p><i>See</i> DIP Credit Agreement §§ 2.04, 2.08.</p>
Use of DIP Financing Facility and Cash Collateral Bankruptcy Rule 4001(b)(1)(B)(ii) Local Rule 4001-2(a)(ii)	<p>The DIP Facility (and cash collateral) shall be used, subject to the other terms and conditions of the DIP Credit Agreement, to (a) pay fees and expenses related to the DIP Credit Agreement and the Chapter 11 Cases, and consistent with the Budget, (b) repay the Loans or any other Obligations, and (c) fund working capital of the Loan Parties consistent with the Budget, subject to the variances set forth in the DIP Credit Agreement.</p> <p><i>See</i> DIP Credit Agreement § 5.10.</p>
Repayment Features Local Rule 4001-2(a)(ii)	<p>The outstanding unpaid principal amount of the Loans and other Obligations shall be due and payable on the Termination Date. Upon the request of any Lender, the Loans made by such Lender shall be evidenced by a Note, duly executed on behalf of the Borrowers, dated the Interim Effective Date, payable to the order of such Lender in an aggregate principal amount equal to such Lender's Commitment. Each Lender is authorized by the applicable Borrowers to endorse on a schedule attached to each Note delivered to such Lender (or on a continuation of such schedule attached to such Note and made a part thereof), or otherwise to record in such Lender's internal records, an appropriate notation evidencing the date and amount of each payment and prepayment of principal of the Loan, each payment of interest on any such Loan and the other information provided for on such schedule; <u>provided, however</u>, that the failure of any Lender to make such a notation or any error therein shall not affect the obligation of any Borrowers to repay the portion of the Loan made by such Lender in accordance with the terms of the DIP Credit Agreement and the applicable Notes. Upon receipt of an affidavit and indemnity of a Lender as to the loss, theft, destruction or mutilation of such Lender's Note and upon cancellation of such Note, the Borrowers will issue, in lieu thereof, a replacement Note in favor of such Lender, in the same principal amount thereof and otherwise of like tenor.</p> <p><i>See</i> DIP Credit Agreement § 2.03.</p>
Entities with Interests in Cash Collateral Bankruptcy Rule 4001(b)(1)(B)(i)	<p>The lenders party to (i) that certain Term Loan Agreement dated as of December 20, 2011 (as amended, amended and restated, supplemented, or otherwise modified), and (ii) the DIP Credit Agreement, and the Revolving Agent, but only with respect to the BofA Cash (each as defined herein).</p> <p><i>See</i> DIP Credit Agreement § 2.20; Interim DIP Order ¶¶ D(i), 2.1.1, 2.1.2.</p>
Fees Bankruptcy Rule 4001(c)(1)(B)	<p>Closing Fee: The Borrowers shall pay to the DIP Agent for the account of the DIP Lenders, in accordance with their Commitment Percentage, a closing fee in an amount equal to 1.00% on the Total Commitment (as applicable on the Final Effective Date),</p>

Bankruptcy Code/Local Rule	Summary of Material Terms
Local Rule 4001-2(a)(ii)	<p>which shall be fully earned, non-refundable and payable on the Interim Effective Date.</p> <p><i>See</i> DIP Credit Agreement § 2.14.</p> <p><u>Professional Fees</u>: Any and all fees paid or required to be paid in connection with the DIP Loan Documents (including, but not limited to, the fees and expenses of the DIP Agent and the DIP Lenders) shall be paid as set forth in the DIP Credit Agreement and Section 2.4.2.d of the Interim Order.</p> <p><i>See</i> Interim Order ¶ 3.1</p>
Budget Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(ii)	<p>The use of cash and proceeds from the DIP Facility is subject to a customary budget, attached to the Interim DIP Order as Exhibit 1 and to the DIP Credit Agreement as Exhibit D.</p> <p><i>See</i> DIP Credit Agreement Preamble, § 6.15; Interim DIP Order ¶¶ 1.2, 2.4.1.</p>
Reporting Information Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(ii)	<p>The DIP Credit Agreement requires compliance with certain reporting covenants that are usual and customary for DIP financings, including, without limitation, delivery of schedules, assignments, financial statements, insurance policies, and endorsements, weekly reports of receipts and budgeted cash usage, copies of all reports filed with the Office of the United States Trustee within two business days after such filing; and such additional financial or other information concerning the acts, conduct, property, assets, liabilities, operations, financial condition, and transactions of any of the Debtors' estates.</p> <p><i>See</i> DIP Credit Agreement § 5.01.</p>
Variance Covenant Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(ii)	<p>The Debtors are authorized to use the Cash Collateral (including, without limitation, the advances under the DIP Facility) strictly in accordance with the Budget, subject to permitted variances as set forth in the DIP Credit Agreement.</p> <p><i>See</i> DIP Credit Agreement §§ 5.10, 6.15; Interim DIP Order ¶ 2.4.1.</p>
Sale Milestones Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(ii)	<p>21 days after the Petition Date The Debtors shall obtain entry of an order, satisfactory to the DIP Agent and the DIP Lenders, the Pre-Petition Agent and the Pre-Petition Lenders, approving certain bid protections and sale procedures.</p> <p>42 days after the Petition Date The Debtors shall obtain entry of an order, satisfactory to the DIP Agent and the DIP Lenders, the Pre-Petition Agent and the Pre-Petition Lenders, approving the Sale, or such later date agreed to by the DIP Agent and Pre-Petition Agent (the "<u>Sale Order</u>").</p> <p>47/57 days after the Petition Date The Debtors shall close the Sale no later than the earlier of: (i) 5 days after entry of the Sale Order if the purchaser of all or substantially all of the IP Sale Assets waives the requirement that the Sale Order become a final order and (ii) 15 days after entry of the Sale Order if the purchaser of all or substantially all of the IP Sale Assets does not waive the requirement that the Sale Order become a final order; <u>provided</u> that the time periods in (i) and (ii) may be extended to such later date as agreed to by the DIP Agent and the Pre-Petition Agent in their sole and absolute discretion.</p> <p><i>See</i> DIP Credit Agreement § 1.01; Interim DIP Order § 4.2.</p>
Liens and Priorities Bankruptcy Rule 4001(c)(1)(B)(i) Local Rule 4001-2 (a)(ii)	<p>The DIP Loan shall be secured by the following liens, effective as of the Petition Date, valid and perfected first priority security interests and liens, superior to all other liens, claims or security interests that any creditor of the Debtors' Estates may have (but subject to the Carve-Out Expenses (as defined below) and the Permitted Priority Liens (as defined</p>

Bankruptcy Code/Local Rule	Summary of Material Terms
	<p>in the DIP Credit Agreement), as and to the extent expressly provided in Section 2.1 of the Interim DIP Order), in and upon all of the Collateral.</p> <p>The DIP Liens shall be first and senior in priority to all other interests and liens of every kind, nature and description, whether created consensually, by an order of the Court or otherwise, including, without limitation, liens or interests granted in favor of third parties in conjunction with Section 363, 364 or any other Section of the Bankruptcy Code or other applicable law; <u>provided, however</u>, that the DIP Liens shall be subject to the Permitted Priority Liens and to the Carve-Out Expenses to the extent provided for in Section 2.3 of the Interim DIP Order.</p> <p>See DIP Credit Agreement § 2.20; Interim DIP Order ¶ 2.1.</p> <p>Upon entry of the Interim DIP Order, pursuant to section 364(c)(1) of the Bankruptcy Code, superpriority claims with priority over all other administrative claims against the Debtors' estates and all other benefits and protections allowable under, among others, sections 507(b) and 503(b)(1) of the Bankruptcy Code, senior in right to all other administrative claims against the Debtors' estates, subject only to payment of the Carve-Out Expenses.</p> <p>See DIP Credit Agreement § 2.21; Interim DIP Order ¶ 2.2.</p>
<p>Carve Out Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(ii)</p>	<p>The sum of: (a) statutory fees payable to the U.S. Trustee pursuant to 28 U.S.C. § 1930(a)(6); (b) fees payable to the Clerk of this Court; (c) all reasonable fees and expenses up to \$50,000 incurred by a trustee under Section 726(b) of the Bankruptcy Code; and (d) subject to the terms and conditions of the Interim DIP Order, (i) the unpaid and outstanding reasonable fees and expenses actually incurred on or after the Petition Date and prior to the Carve-Out Trigger Date, and approved and allowed by a final order of the Court pursuant to Sections 326, 328, 330, or 331 of the Bankruptcy Code by attorneys, accountants and other professionals retained by the Debtors and any Committee under Section 327 or 1103(a) of the Bankruptcy Code (collectively, the "<u>Professionals</u>"), (on a professional by professional basis) in an amount not to exceed the amounts set forth for each such Professional for the periods prior to the Carve-Out Trigger Date in the Budget, (ii) the "Transaction Fee" (as defined in that certain engagement letter, dated October 1, 2016, between Guggenheim Securities, LLC, and the Debtors in an amount not to exceed \$1,500,000 (subject to credits for monthly fees) that (a) becomes due and owing upon the consummation of a sale of the IP Sale Assets (as hereinafter defined) and (b) is permitted to be paid by order of the Court, and (iii) the reasonable fees and expenses actually incurred, and approved and allowed by a final order of the Court pursuant to Sections 326, 328, 330, or 331 of the Bankruptcy Code, by the Professionals during the Carve-Out Expense Reduction Period in an aggregate sum not to exceed \$200,000 (the "<u>Professional Expense Carve-Out Cap</u>"). Any payments made during the Carve-Out Expense Reduction Period (in respect of fees and expenses incurred after the Carve-Out Trigger Date) shall reduce the Professional Expense Carve-Out Cap (on a Professional-by-Professional basis) on a dollar-for-dollar basis.</p> <p>See DIP Credit Agreement § 1.01; Interim DIP Order ¶ 2.3.</p>
<p>506(c) Waiver Bankruptcy Rule 4001(c)(1)(B)(x) Local Rule 4001-2(a)(ii)</p>	<p>Subject to entry of the Final DIP Order, except to the extent of the Carve-Out Expenses, no costs or expenses of administration which have or may be incurred in the Cases at any time during the Interim Period (as defined in the DIP Credit Agreement) (and subject to the entry of the Final DIP Order, any time after the expiration of the Interim Period) shall be charged against the DIP Agent, the DIP Lenders, the Pre-Petition Agent, the Pre-Petition Lenders, their respective claims or interests, the Collateral, and/or Pre-Petition Collateral pursuant to Section 506(c) of the Bankruptcy Code or otherwise without the prior written consent of the DIP Agent and Pre-Petition Agent in their sole and absolute</p>

Bankruptcy Code/Local Rule	Summary of Material Terms
	<p>discretion, and no such consent shall be implied from any other action, inaction or acquiescence by the DIP Agent, any DIP Lender, the Pre-Petition Agent, or any Pre-Petition Lender.</p> <p><i>See</i> DIP Credit Agreement § 2.20(a); Interim DIP Order ¶ 9.3.</p>
<p>Section 552(b) Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(ii)</p>	<p>The Debtors stipulate that the “equities of the case” exception of section 552 of the Bankruptcy Code section 552(b) shall not apply.</p> <p><i>See</i> Interim DIP Order ¶¶ 2.1.3; 2.4.2.a; 10.8</p>
<p>Stipulations to Prepetition Liens and Claims Bankruptcy Rule 4001(c)(1)(B)(iii) Local Rule 4001-2(a)(ii)</p>	<p>Pursuant to the Findings of Fact and Conclusions of Law in the Interim DIP Order, the Debtors make certain customary admissions and stipulations with respect to the aggregate amount of the prepetition debt and the extent, validity, enforceability, and priority of the liens and security interests securing the Pre-Petition Collateral.</p> <p><i>See</i> Interim DIP Order ¶ D(i).</p>
<p>Challenge Period Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(ii)</p>	<p>Any action, claim or defense that seeks to object to, challenge, contest or otherwise invalidate or reduce, whether by setoff, recoupment, counterclaim, deduction, subordination, disgorgement, cure, reinstatement or claim of any kind: (a) the existence, validity, nonavoidability, priority or amount of the Pre-Petition Obligations, or (b) the extent, legality, validity, priority, perfection, nonavoidability or enforceability of the Pre-Petition Liens, shall be filed with the Court (x) if a Committee is appointed by the U.S. Trustee within twenty (20) days following the Petition Date, by such Committee, and no other party, within sixty (60) days from the date of appointment of the Committee by the U.S. Trustee, or (y) in the event no Committee is appointed within twenty (20) days following the Petition Date, by any party in interest with requisite standing within seventy five (75) days from the date of entry of the Interim DIP Order, in each of clauses (x) and (y) as may be extended, in writing, by the Pre-Petition Agent in its sole discretion.</p> <p><i>See</i> Interim DIP Order ¶ 9.1.</p>
<p>Adequate Protection Bankruptcy Rules 4001(b)(1)(B)(iv), 4001(c)(1)(B)(ii)</p>	<p>Taking into account all factors in the chapter 11 cases, as adequate protection of the Pre-Petition Agent’s and Pre-Petition Lenders’ interest in the Pre-Petition Collateral and for the Debtors’ use of Cash Collateral, and subject only to Permitted Priority Liens, if any, the Carve-Out Expenses, and DIP Liens:</p> <ol style="list-style-type: none"> i. The Pre-Petition Agent and Pre-Petition Lenders are granted pursuant to the Interim DIP Order, effective as of the Petition Date, valid and automatically perfected replacement liens and security interests in and upon all Collateral, solely to the extent of any diminution in value of their interests in the Pre-Petition Collateral (the “<u>Pre-Petition Replacement Liens</u>”). ii. To the extent the Pre-Petition Replacement Liens are insufficient to adequately protect the Pre-Petition Agent and the Pre-Petition Lenders’ interest in the Collateral, the Pre-Petition Agent, for the benefit of the Pre-Petition Lenders, is granted pursuant to the Interim DIP Order, superpriority administrative claims and all of the other benefits and protections allowable under Bankruptcy Code § 507(b), junior only in right to payment of the DIP Obligations owing to the DIP Lenders, any superpriority administrative claims granted to the DIP Agent of the DIP Facility, and the Carve-Out Expenses. <p><i>See</i> Interim DIP Order ¶ 2.4.2.</p>

Bankruptcy Code/Local Rule	Summary of Material Terms
Events of Default Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(ii)	<p>The occurrence and continuation of any of the following events shall constitute an “<u>Event of Default</u>”: (a) any Loan Party shall fail to pay any principal of or any interest on the Loan or any fee or any other amount payable under the DIP Credit Agreement or any other Loan Document when and as the same shall become due and payable; (b) any representation, warranty, or certification made or deemed made by or on behalf of any Loan Party or by any officer of the foregoing under or in connection with any Loan Document or under or in connection with any report, certificate, or other document delivered to any Agent or any Lender pursuant to any Loan Document, which representation or warranty is subject to a materiality or a Material Adverse Effect qualification, shall have been incorrect in any respect when made or deemed made; or any representation or warranty made or deemed made by or on behalf of any Loan Party or by any officer of the foregoing under or in connection with any Loan Document or under or in connection with any report, certificate or other document delivered to any Agent or any Lender pursuant to any Loan Document, which representation or warranty is not subject to a materiality or a Material Adverse Effect qualification, shall have been incorrect in any material respect when made or deemed made; (c) any Loan Party shall fail to observe or perform when due any covenant, condition or agreement contained in ARTICLE VI (other than Section 6.12, which shall be subject to the provisions of Section 7.01(d)) or in any of Section 2.12, Section 2.20, Section 2.21, Sections 5.01, Section 5.02, Section 5.04, Section 5.07, Section 5.08, Section 5.11 or Section 5.12 of the DIP Credit Agreement; (d) any Loan Party shall fail to observe or perform when due any covenant, condition or agreement contained in any Loan Document (other than those specified in Section 7.01(a), Section 7.01(b) or Section 7.01(c)), and such failure shall continue unremedied for a period of fifteen (15) days after the earlier of (i) the date on which a Responsible Officer of any Loan becomes aware of such failure and (ii) the date notice thereof shall have been given by any Agent to the Lead Borrower; (e) any Loan Party or any of its Subsidiaries (i) fails to pay when due or within any applicable grace period any principal or interest on any Indebtedness incurred after the Petition Date having an aggregate principal amount in excess of \$100,000 (other than the Loans) or (ii) breaches or defaults with respect to any Indebtedness incurred after the Petition Date (other than the Loans) (A) having an aggregate principal amount in excess of \$100,000 and (B) if the effect of such breach or default is to cause, or to permit the holder or holders then to cause, such Indebtedness to become or be declared due prior to their stated maturity; (f) a Change in Control shall occur; (g) one or more judgments, awards or orders for the payment of money exceeding \$100,000 in the aggregate shall be rendered against any Loan Party or any of its Subsidiaries and remain unsatisfied and either: (i) enforcement proceedings shall have been commenced by any creditor upon any such judgment or order, or (ii) there shall be a period of ten (10) consecutive days after entry thereof during which a stay of enforcement of any such judgment or order, by reason of a pending appeal or otherwise, shall not be in effect; <u>provided, however</u>, that any such judgment or order shall not give rise to an Event of Default if and for so long as (A) the amount of such judgment or order is covered by a valid and binding policy of insurance between the defendant and the insurer covering full payment thereof subject to standard and customary deductibles and (B) such insurer has been notified, and has not disputed the claim made for payment, of the amount of such judgment or order; (h) an ERISA Event shall have occurred that when taken together with all other ERISA Events that have occurred, could reasonably be expected to result in a Material Adverse Effect and the same shall remain undischarged for a period of thirty (30) consecutive days during which period any action shall not be legally taken to attach or levy upon any material assets of any Loan Party to enforce any such liability; (i) any challenge by or on behalf of any Loan Party to the validity of any Loan Document or the enforceability of any Loan Document strictly in accordance with the subject Loan Document’s terms or which seeks to void, avoid, limit, or otherwise adversely affect any security interest created by or in any Loan Document or any payment made pursuant</p>

Bankruptcy Code/Local Rule	Summary of Material Terms
	<p>thereto; (j) any challenge by or on behalf of any other Person to the validity of any Loan Document or the enforceability of any Loan Document strictly in accordance with the subject Loan Document's terms or which seeks to void, avoid, limit, or otherwise adversely affect any security interest created by or in any Loan Document or any payment made pursuant thereto, in each case, as to which an order or judgment has been entered adverse to the Agents and the Lenders; (k) any Lien purported to be created under any Loan Document in Collateral shall cease to be, or shall be asserted by any Loan Party not to be, a valid and perfected Lien on any such Collateral, with the priority required by the applicable Loan Document except as a result of the sale, release or other disposition of the applicable Collateral in a transaction permitted under the Loan Documents or the failure of the Agents, through their acts or omissions and through no fault of the Loan Parties, to maintain the perfection of their Liens in accordance with Applicable Law; (l)(i) any Loan Party is (A) criminally indicted or convicted of a felony for fraud or dishonesty in connection with the Loan Parties' business, or (B) charged by a Governmental Authority under any law that could reasonably be expected to lead to forfeiture of any material portion of Collateral, or (ii) any director or senior officer of any Loan Party is (A) convicted of a felony for fraud or dishonesty in connection with the Loan Parties' business, or (B) charged by a Governmental Authority under any law that could reasonably be expected to lead to forfeiture of any material portion of Collateral; (m) any material damage to, or loss, theft or destruction of, any Collateral, whether or not insured, if any such event or circumstance could reasonably be expected to have a Material Adverse Effect; (n) the imposition of any stay or other order, the effect of which restrains in the conduct by the Loan Parties, taken as a whole, of their business in the ordinary course in a manner which results in, or could reasonably be expected to have a Material Adverse Effect; (o) the failure of any Loan Party or any of its Subsidiaries to comply with the terms of any subordination, lien priority or intercreditor agreement or any subordination or lien priority provisions of any note or other document running to the benefit of any Agent or the Lenders or the Pre-Petition Agents or Pre-Petition Lenders under the Pre-Petition Term Loan Documents, or if any such document becomes null and void or any Loan Party denies in writing further liability under any such document or provides notice to that effect; (p) any Loan Party asserts or prosecutes any claim or cause of action against any of the Agents, the Lenders, the Pre-Petition Agents or the Pre-Petition Lenders; or (q) the occurrence of any of the following in the Chapter 11 Cases: (i) the Interim DIP Order shall not have been entered by the Bankruptcy Court within three (3) Business Days after the Petition Date; (ii) the Final DIP Order shall not have been entered by the Bankruptcy Court within thirty (30) days after the Petition Date; (iii) the Interim DIP Order or the Final DIP Order, as the case may be, shall have been revoked, reversed, vacated, stayed, modified, extended, supplemented or amended without the express prior written consent of the Agents and the Required Lenders; (iv) an order with respect to any of the Chapter 11 Cases shall be entered by the Bankruptcy Court appointing, (A) a trustee under Section 1104 of the Bankruptcy Code, or (B) a responsible officer or an examiner with enlarged powers relating to the operating of the Loan Parties' business (beyond those set forth in Sections 1106(a)(3) and (4) of the Bankruptcy Code) under Section 1106 of the Bankruptcy Code; (v) an order with respect to any of the Chapter 11 Cases shall be entered by the Bankruptcy Court without the express prior written consent of the Agents and the Required Lenders, (A) to permit any administrative expense or any claim (now existing or hereafter arising, of any kind or nature whatsoever) to have administrative priority as to the Loan Parties pari passu or superior to the priority of (1) the Agents and the Lenders in respect of the Obligations, or (2) the Pre-Petition Agents and the Pre-Petition Lenders in respect of the Pre-Petition Replacement Liens or Pre-Petition Adequate Protection Claim, or (B) to grant or permit the grant of a Lien on the Collateral other than a Permitted Encumbrance; (vi) an order with respect to any of the Chapter 11 Cases shall be entered by the Bankruptcy Court converting such Chapter 11</p>

Bankruptcy Code/Local Rule	Summary of Material Terms
	<p>Case to a case under Chapter 7 of the Bankruptcy Code; (vii) an order shall be entered by the Bankruptcy Court confirming a plan of reorganization in any of the Chapter 11 Cases which does not (A) contain a provision for termination of the Total Commitment and payment in full in cash of (1) all Obligations of the Loan Parties hereunder and under the other Loan Documents and (2) all outstanding Pre-Petition Term Loan Obligations on or before the effective date of such plan or plans upon entry thereof and (B) provide for the continuation of the Liens and security interests granted to the Collateral Agent for the benefit of the Agents and the Lenders, and the priority thereof until such plan effective date; (viii) an order shall be entered by the Bankruptcy Court dismissing any of the Chapter 11 Cases which does not contain a provision for termination of the Total Commitment and payment in full in cash of (A) all Obligations of the Loan Parties hereunder and under the other Loan Documents and (B) all Pre-Petition Term Loan Obligations, in each case on dismissal; (ix) an order shall be entered by the Bankruptcy Court terminating, or the termination, of the exclusivity period of the Loan Parties under Section 1121 of the Bankruptcy Code to file a plan in the Chapter 11 Cases; (x) any Loan Party shall take any action, including the filing of an application, motion or other pleading, in support of any of the events or actions set forth under clauses (i) through (ix) above, or any other Person (other than any of the Loan Parties) shall do so and such application, motion or pleading is not contested in good faith by the Loan Parties; (xi) an order shall be entered by the Bankruptcy Court granting relief from the automatic stay to any creditor of any Loan Party with respect to any claim (other than a claim for personal injury that is covered by liability insurance) against one or more of the Loan Parties in an amount equal to or exceeding \$100,000 in the aggregate; (xii) if any material property of any Loan Party is sold without the express written consent of the Agents and the Required Lenders (other than pursuant to the Asset Purchase Agreement); (xiii) without the prior written consent of the Agents and the Required Lenders, any Loan Party shall take any action, including the filing of an application, motion or other pleading, requesting or seeking authority for any Loan Party (A) to obtain additional financing under Sections 364(c) or (d) of the Bankruptcy Code not otherwise permitted pursuant to this Agreement; (B) to grant any Lien other than Permitted Encumbrances upon or affecting any Collateral; (C) except as provided in the DIP Orders (as applicable), to use, or grant any lien on (other than Permitted Encumbrances), cash collateral of the Agents and the Lenders under Section 363(c) of the Bankruptcy Code; (D) to take any other action or actions materially adverse to any Agent and/or any Lender or their rights and remedies hereunder; or (E) the entry of any order by the Bankruptcy Court in any Chapter 11 Case granting relief as described in subclauses (A) through (D) of this clause (xiii); (xiv) (A) any Loan Party, or representative of the Loan Parties' estates, files an action to (1) invalidate, reduce or otherwise impair the Liens or security interests of the Collateral Agent and/or any Lender's claims or rights against any Loan Party or (2) subject any Collateral to assessment pursuant to Section 506(c) of the Bankruptcy Code, (B) any Collateral becoming subject to surcharge, to marshaling or to assessment pursuant to Section 506(c) of the Bankruptcy Code, (C) any Lien or security interest created by this Agreement, the DIP Orders or any other Loan Document shall, for any reason, cease to be a valid first priority Lien, subject only to Permitted Priority Liens or (C) any action is commenced by any Loan Party which contests the validity, perfection, enforceability or priority of any of the Liens and security interests of the Agents and/or the Lenders created by this Agreement, any of the DIP Orders or any other Loan Document; (xv) if any Loan Party, or representative of the Loan Parties' estates, files any action against any of the Pre-Petition Agents, Pre-Petition Lenders or their respective agents, advisors or employees, challenging the validity, perfection, priority, extent or enforceability of any Pre-Petition Term Loan Document or claims that arose in connection with the Pre-Petition Term Loan Documents, or seeking to avoid, modify, dispute, challenge or subordinate any Lien or claim thereunder; (xvi) the determination of any Loan Party, whether by vote of such Loan Party's Board of Directors</p>

Bankruptcy Code/Local Rule	Summary of Material Terms
	<p>or otherwise, to employ an agent or other third party (other than Guggenheim) to conduct any sales of all or substantially all of such Loan Party's assets, or the filing of a motion or other application in the Chapter 11 Cases, seeking authority to do the foregoing, in each case without the prior written consent of the Agents and the Required Lenders; (xvii) any Loan Party shall fail to comply with or achieve any Sale Milestone; (xviii) immediately upon consummation of the Sale, the Obligations are not paid in full; (xix) any Loan Party makes any disbursement not in accordance with or set forth in the Budget subject to all permitted variances in the DIP Credit Agreement; (xx) an order shall be entered by the Bankruptcy Court amending, supplementing or otherwise modifying, or the filing by any Loan Party of an application, motion, pleading or notice seeking the amendment, supplement or other modification of or appeal against, in each case, the DIP Orders or any of the "first day" orders in respect of cash management or critical vendors or suppliers, in each instance, without the consent of the Administrative Agent and the Required Lenders; <u>provided, however</u>, that any amendment, supplement or other modification materially and adversely affecting any Lender in a manner disproportionate from any other member shall require the written consent of such materially and adversely affected Lender; (xxi) except with respect to payments as permitted by any order of the Bankruptcy Court approving a "first day" motion (and included in the Budget), an order shall be entered by the Bankruptcy Court permitting the payment of, or granting adequate protection with respect to, the Pre-Petition Obligations (other than the Pre-Petition Adequate Protection Claim) or the filing of any motion seeking the same by any of the Loan Parties, in each case, without the consent of the Agents and the Required Lenders; or (xxii) the DIP Credit Agreement, the DIP Orders, or any other Loan Document, shall for any reason fail or cease to create a valid and perfected and, except to the extent permitted by the terms hereof or thereof, first priority Lien in favor of the Collateral Agent for the benefit of the Agents and Lenders on any Collateral purported to be covered thereby.</p> <p><i>See DIP Credit Agreement § 7.01; Interim DIP Order ¶ 7.1.</i></p>
<p>Waiver/Modification of the Automatic Stay Bankruptcy Rule 4001(c)(1)(B)(iv)</p>	<p>The automatic stay provisions imposed by section 362 of the Bankruptcy Code are modified and vacated to the extent necessary to permit the DIP Agent, acting on behalf of itself and the DIP Lenders, to perform any act authorized or permitted under or by virtue of the Interim DIP Order or the DIP Loan Documents, including, without limitation, (a) to implement the post-petition financing arrangements authorized by the Interim DIP Order and pursuant to the terms of the DIP Loan Documents, and (b) to take any act to create, validate, evidence, attach or perfect any lien, security interest, right or claim in the Collateral. In addition, and without limiting the foregoing, upon the occurrence of an Event of Default and after providing five (5) business days prior written notice to counsel for the Debtors, counsel for the Committee (if appointed) and the U.S. Trustee, the DIP Agent, acting on behalf of itself and the DIP Lenders, shall be entitled to take any action and exercise all rights and remedies provided to it by the Interim DIP Order, the DIP Loan Documents, or applicable law as the DIP Agent may deem appropriate in its sole discretion to, among other things, proceed against and realize upon the Collateral or any other assets or properties of Debtors' Estates upon which the DIP Agent, for the benefit of itself and the DIP Lenders, has been or may hereafter be granted liens or security interests to obtain the full and indefeasible repayment of all DIP Obligations.</p> <p><i>See Interim DIP Order ¶ 7.4.</i></p>
<p>Waiver/Modification of Applicability of Nonbankruptcy Law Relating to Perfection or Enforceability of Liens</p>	<p>The Interim DIP Order shall be sufficient and conclusive evidence of the priority, perfection, attachment, and validity of the DIP Liens, effective as of the Petition Date, without any further act and without regard to any other federal, state, or local requirements or law requiring notice, filing, registration, recording or possession of the Collateral, or other act to validate or perfect such security interest or lien</p>

Bankruptcy Code/Local Rule	Summary of Material Terms
Bankruptcy Rule 4001(c)(1)(B)(vii)	<i>See</i> Interim DIP Order ¶ 2.1.5.
Indemnification Bankruptcy Rule 4001(c)(1)(B)(ix)	The Loan Parties jointly and severally indemnify and agree to hold each DIP Agent and each DIP Lender harmless from and against Indemnified Taxes and Other Tax paid by such Person, whether or not such Indemnified Taxes or Other Taxes were correctly or legally asserted. Such indemnification shall be paid within 10 days from the date on which any such Person makes written demand therefore specifying in reasonable detail the nature and amount of such Indemnified Taxes or Other Taxes <i>See</i> DIP Credit Agreement § 2.17(c)
Liens on Avoidance Actions Local Rule 4001-2(a)(ii)	To the extent approved by and subject to the Final DIP Order (except for the proceeds of any causes of actions under section 549 of the Bankruptcy Code, to which the DIP Liens shall attach immediately), the DIP Collateral includes the proceeds (“ <u>Avoidance Proceeds</u> ”) relating to any causes of action, claims, objections and defenses arising under sections 544, 545, 547, 548, and 549 of the Bankruptcy Code (collectively, and among others, as more fully set forth in the Interim Order, the “ <u>Avoidance Actions</u> ”) (but not, for avoidance of doubt, Avoidance Actions themselves). <i>See</i> Interim DIP Order ¶ 2.1.2.a.

Local Rule 4001-2(a)(i)

8. The Debtors do not believe that this Motion or the Interim Order contain any provisions requiring special disclosure under Local Rule 4001-2(a) except as set forth below:

a. The Interim Order provides that the DIP Liens and Pre-Petition Replacement Liens shall attach immediately to Avoidance Proceeds under section 549 of the Bankruptcy Code (with the DIP Liens and Pre-Petition Replacement Liens to attach to all other Avoidance Proceeds only upon entry of a Final Order). The DIP Agent and DIP Lenders required the immediate attachment to such Avoidance Proceeds because it is highly likely that any unauthorized postpetition transfers under Section 549 will have occurred using the proceeds of the loans under the DIP Credit Agreement or the Pre-Petition Lenders' cash collateral. Local Rule 4001-2(a)(i)(D).

b. The Budget provides different line item amounts for the Debtors' and the Committee's professionals. Local Rule 4001-2(a)(i)(F).

c. The Interim Order provides that the “equities of the case” exception of section 552 of the Bankruptcy Code section 552(b) shall not apply to the DIP Agent, DIP Lenders, Pre-Petition Agent and Pre-Petition Lenders. The DIP Agent and Pre-Petition Agent have insisted on this provision and the Debtors believe it is a standard provision. In any event, the Interim Order provides that this provision is subject to the Final Order. Local Rule 4001-2(a)(i)(H).

Background

I. The Debtors' Prepetition Capital Structure.

9. As of the Petition Date, the Debtors' had consolidated outstanding debt obligations in the aggregate principal amount of approximately \$13.4 million, primarily consisting of the components described below.

A. The Revolving Credit Facility.

10. Limited Stores, LLC, as lead borrower, The Limited Stores GC, LLC, as borrower, The Limited as facility guarantor, Bank of America, N.A. (the "Revolving Agent") as administrative agent and collateral agent, certain lenders from time to time (the "Revolving Lenders"), and Bank of America Securities LLC, as lead arranger and bookrunner, are parties to that certain Credit Agreement, dated as of August 24, 2007 (as amended, amended and restated, supplemented, or otherwise modified, refinanced, or replaced from time to time prior to the Petition Date, the "Revolving Credit Agreement"). The Revolving Credit Agreement provided for a senior secured revolving credit facility (the "Revolving Facility") in an amount of up to \$50 million, subject to certain terms and conditions. Obligations under the Revolving Facility were secured by a first priority lien on substantially all of the Debtors' assets. Pursuant to the terms of that certain Payoff Letter, dated as of January 4, 2017 (the "Payoff Letter"), all prepetition obligations owed by the Debtors under the Revolving Credit Agreement were repaid in full as set forth therein. Thus, as of the Petition Date, no amounts remained outstanding under the Revolving Facility.

11. Incidental to the satisfaction of all other prepetition obligations owed by the Debtors under the Revolving Credit Agreement, and in connection with the execution of the Payoff Letter, the Debtors cash collateralized outstanding letters of credit issued pursuant to the Revolving Credit Agreement and funded an indemnity reserve required thereunder by depositing

approximately \$1,127,560.00 (the “BofA Cash”) in that certain bank account ending in –0010 maintained with Bank of America, N.A., and subject to a security interest granted to Bank of America, N.A. As a result, Bank of America retains a first priority lien on the BofA Cash in connection with any obligations that may arise on account of such outstanding letters of credit, including any draws thereon. For the avoidance of doubt, the Debtors are not seeking to use the BofA Cash.

B. The Pre-Petition Credit Agreement.

12. Limited Stores, LLC, as lead borrower, The Limited Stores GC, LLC, as borrower, The Limited as facility guarantor, Cerberus Business Finance, LLC, as administrative agent and collateral agent (in such capacity, the “Pre-Petition Agent”), and certain lenders from time to time are parties to that certain Term Loan Agreement (the “Pre-Petition Lenders”), dated as of December 20, 2011, (as amended, amended and restated, supplemented, or otherwise modified, refinanced, or replaced from time to time prior to the Petition Date, the “Pre-Petition Credit Agreement” and together with the other Loan Documents (as defined in the Pre-Petition Credit Agreement), as amended, supplemented, or otherwise modified from time to time, collectively, the “Pre-Petition Loan Documents”). The aggregate Pre-Petition Credit Agreement commitment was \$35 million, subject to certain terms and conditions. Under the Security Documents (as defined in the Pre-Petition Credit Agreement), the Debtors’ obligations under the Pre-Petition Agreement (the “Pre-Petition Obligations”) are secured by a first priority lien (formerly a second priority lien prior to execution of the Payoff Letter) on substantially all of the Debtors’ assets (other than the BofA Cash, which lien is junior to the Revolving Agent’s lien), including Cash Collateral and the assets that are the subject of the Sale (the “Pre-Petition Collateral”). As of the Petition Date, approximately \$13.4 million of principal remains

outstanding under the Pre-Petition Credit Agreement (excluding unpaid interest and accrued and unpaid fees), with an average interest rate of 11.5 percent.

II. The Need to Use Cash Collateral and For Access to Financing.

13. The Debtors, in consultation with their proposed restructuring advisor, RAS Management Advisors, LLC, reviewed and analyzed the Debtors' projected cash needs and prepared a 13-week projection (as updated from time to time in accordance with the terms of the DIP Credit Agreement, the "Budget")⁶ outlining the Debtors' postpetition cash needs in the initial 13 weeks of these cases. The Debtors believe that the Budget is an accurate reflection of their funding requirements over the identified period, will allow them to meet their obligations—including the administrative expenses of the chapter 11 cases—and is reasonable and appropriate under the circumstances.

14. Based on this forecast, the Debtors' determined that they would require access to *both* Cash Collateral and postpetition financing to provide sufficient liquidity to efficiently administer the Debtors' estates during these chapter 11 cases. Among other things, the Debtors need such liquidity to satisfy payroll, pay their taxes, and make other payments that are essential or appropriate efficient administration of the Debtors' chapter 11 estates. The Debtors' ability to continue making such payments during these chapter 11 cases is essential to the preservation of their assets during the pendency of these cases. *See* First Day Declaration ¶¶ 42, 43.

15. The Debtors require interim approval of the DIP Facility. As an initial matter, while the Debtors are confident in the assumptions and projections underlying the Budget, the Debtors face considerable uncertainty due to their financial condition, the commencement of these chapter 11 cases, and weakness in the retail industry as a whole. Given this uncertainty,

⁶ A copy of the initial Budget is attached to the Interim DIP Order as Exhibit 1.

there is a material risk that the Debtors do not achieve their anticipated cash flows. Indeed, as of the Petition Date, the Debtors' total cash balance is less than \$250,000, leaving little cushion for the Debtors' projections. In the face of this uncertainty, the DIP Facility provides an immediate and essential liquidity cushion that the Debtors will use when the need arises. *See* First Day Declaration ¶¶ 43 and 44.

16. In addition, approval of the DIP Facility provides certainty around the Debtors' sale of their intellectual property and certain related assets (the "IP Sale Assets"). The backdrop of the DIP Facility provides comfort to all parties—including not only the proposed purchaser for the IP Sale Assets, but also any potential bidder for the IP Sale Assets—that the Debtors will have sufficient liquidity to bridge from the Petition Date through the consummation of the sale. Thus, the Debtors' believe that failure to obtain interim approval of the DIP Facility could negatively affect the Debtors' proposed sale process and hinder their ability to obtain the highest or otherwise best offer for the IP Sale Assets. *See* First Day Declaration ¶¶ 44.

17. In sum, without the immediate relief requested by this motion, the Debtors face a material risk of substantial, irreparable, and ongoing harm. Access to Cash Collateral and the DIP Facility will ensure the Debtors have sufficient funds to preserve and maximize the value of their estates, and responsibly administer these chapter 11 cases throughout the period that the Debtors expect will be necessary to consummate their sale of the IP Sale Assets.

III. Alternative Sources of Financing Are Not Readily Available.

18. The Debtors do not have alternative sources of financing readily available. The Debtors' Pre-Petition Lenders assert that all of the Debtors' assets are encumbered under their existing capital structure, which, along with the Debtors' uncertain financial condition and overall weakness in the retail industry, restricts the availability of, and options for, postpetition

financing. *See* First Day Declaration ¶¶ 46–51. The Pre-Petition Lenders also made it clear that they would not consent to “priming” debtor-in-possession financing provided by a third party. *See* First Day Declaration ¶ 46. As a result, the Debtors do not believe third-party debtor-in-possession financing would be reasonably obtainable.

19. Additionally, the Debtors could not provide strong enough evidence or certainty of a sufficient equity cushion to allow for debtor-in-possession financing that would prime existing lenders’ liens over their objections. And for the same reason, no lenders would be willing to provide debtor-in-possession financing junior to the Debtors’ existing lenders. *See* First Day Declaration ¶ 47. These indicators did not portend the development of a feasible third-party financing option.

20. Nevertheless, the Debtors, with the assistance of their advisors, solicited proposals for alternative debtor-in-possession financing. Guggenheim Securities, LLC reached out to seven potential sources of financing outside of the Pre-Petition Lender to gauge their interest in providing such financing to the Debtors. No party provided a proposal for independent postpetition financing. Accordingly, the Debtors were unable to develop an alternative source of financing with terms better than those of the DIP Facility, and for all of the foregoing reasons, the Debtors believe that the DIP Facility is reasonable, appropriate, and provides the best terms presently available to the Debtors.

21. Additionally, with any third-party proposal, the Debtors would incur the execution risk associated with a new lender transaction, including material timing and due diligence constraints, necessarily involving the payment of additional professional fees. In contrast, the proposed DIP Facility offered by the DIP Lenders allows the Debtors to avoid the

need to engage in a costly and time-consuming priming fight at the outset of these chapter 11 cases.

Basis for Relief

IV. The Debtors Should Be Authorized to Obtain Postpetition Financing Through the DIP Loan Documents.

A. Entry into the DIP Loan Documents Is an Exercise of the Debtors' Sound Business Judgment.

22. The Court should authorize the Debtors, as an exercise of their sound business judgment, to enter into the DIP Loan Documents, obtain access to the DIP Facility, and continue using the Cash Collateral. Section 364 of the Bankruptcy Code authorizes a debtor to obtain secured or superpriority financing under certain circumstances discussed in detail below. Courts grant a debtor-in-possession considerable deference in acting in accordance with its business judgment in obtaining postpetition secured credit, so long as the agreement to obtain such credit does not run afoul of the provisions of, and policies underlying, the Bankruptcy Code. *See, e.g., In re Trans World Airlines, Inc.*, 163 B.R. 964, 974 (Bankr. D. Del. 1994) (approving a postpetition loan and receivables facility because such facility “reflect[ed] sound and prudent business judgment”); *In re L.A. Dodgers LLC*, 457 B.R. 308, 313 (Bankr. D. Del. 2011) (“[C]ourts will almost always defer to the business judgment of a debtor in the selection of the lender.”); *In re Ames Dep’t Stores, Inc.*, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) (“[C]ases consistently reflect that the court’s discretion under section 364 is to be utilized on grounds that permit reasonable business judgment to be exercised so long as the financing agreement does not contain terms that leverage the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to benefit a party-in-interest.”).

23. Specifically, to determine whether the business judgment standard is met, a court need only “examine whether a reasonable business person would make a similar decision under

similar circumstances.” *In re Exide Techs.*, 340 B.R. 222, 239 (Bankr. D. Del. 2006); *see also In re Curlew Valley Assocs.*, 14 B.R. 506, 513–14 (Bankr. D. Utah 1981) (noting that courts should not second guess a debtor’s business decision when that decision involves “a business judgment made in good faith, upon a reasonable basis, and within the scope of [the debtor’s] authority under the [Bankruptcy] Code”).

24. Furthermore, in considering whether the terms of postpetition financing are fair and reasonable, courts consider the terms in light of the relative circumstances of both the debtor and the potential lender. *In re Farmland Indus., Inc.*, 294 B.R. 855, 886 (Bankr. W.D. Mo. 2003); *see also Unsecured Creditors’ Comm. Mobil Oil Corp. v. First Nat’l Bank & Trust Co. (In re Elingsen McLean Oil Co., Inc.)*, 65 B.R. 358, 365 n.7 (W.D. Mich. 1986) (recognizing a debtor may have to enter into “hard bargains” to acquire funds for its reorganization). The Court may also appropriately take into consideration non-economic benefits to the Debtors offered by a proposed postpetition facility. For example, in *In re ION Media Networks. Inc.*, the bankruptcy court for the Southern District of New York held that:

Although all parties, including the Debtors and the Committee, are naturally motivated to obtain financing on the best possible terms, a business decision to obtain credit from a particular lender is almost never based purely on economic terms. *Relevant features of the financing must be evaluated, including non economic elements such as the timing and certainty of closing, the impact on creditor constituencies and the likelihood of a successful reorganization.* This is particularly true in a bankruptcy setting where cooperation and establishing alliances with creditor groups can be a vital part of building support for a restructuring that ultimately may lead to a confirmable reorganization plan. That which helps foster consensus may be preferable to a notionally better transaction that carries the risk of promoting unwanted conflict.

No. 09-13125, 2009 WL 2902568, at *4 (Bankr. S.D.N.Y. July 6, 2009) (emphasis added).

25. The Debtors' determination to move forward with the DIP Facility is an exercise of their sound business judgment following an arms'-length process and careful evaluation of alternatives. Specifically, the Debtors and their advisors determined that postpetition financing will create certainty with respect to cash flows necessary for the administration of these chapter 11 cases pending consummation of the Sale. The Debtors negotiated the DIP Credit Agreement and other DIP Loan Documents with the DIP Lenders in good faith, at arms' length, and with the assistance of their respective advisors, and the Debtors believe that they have obtained the best financing available. Accordingly, the Court should authorize the Debtors' entry into the DIP Loan Documents, as it is a reasonable exercise of the Debtors' business judgment.

B. The Debtors Should Be Authorized to Grant Liens and Superpriority Claims.

26. The Debtors propose to obtain financing under the DIP Facility by providing security interests and liens as set forth in the DIP Loan Documents pursuant to section 364(c) of the Bankruptcy Code; specifically, the Debtors propose to provide to the DIP Lenders perfected first priority claims, priming liens, and security interests in the DIP Collateral and Pre-Petition Collateral.

27. The statutory requirement for obtaining postpetition credit under section 364(c) is a finding, made after notice and hearing, that a debtor is "unable to obtain unsecured credit allowable under Section 503(b)(1) of [the Bankruptcy Code]." 11 U.S.C. § 364(c). *See In re Crouse Grp., Inc.*, 71 B.R. 544, 549 (Bankr. E.D. Pa. 1987) (secured credit under section 364(c) of the Bankruptcy Code is authorized, after notice and hearing, upon showing that unsecured credit cannot be obtained). Courts have articulated a three-part test to determine whether a

debtor is entitled to financing under section 364(c) of the Bankruptcy Code. Specifically, courts look to whether:

- a. the debtor is unable to obtain unsecured credit under section 364(b) of the Bankruptcy Code, *i.e.*, by allowing a lender only an administrative claim;
- b. the credit transaction is necessary to preserve the assets of the estate; and
- c. the terms of the transaction are fair, reasonable, and adequate, given the circumstances of the debtor-borrower and proposed lenders.

See In re Ames Dep't Stores, 115 B.R. 34, 37–40 (Bankr. S.D.N.Y. 1990); *see also In re St. Mary Hosp.*, 86 B.R. 393, 401-02 (Bankr. E.D. Pa. 1988); *Crouse Grp.*, 71 B.R. at 549.

28. As described above and as set forth in the First Day Declaration, without strong evidence or certainty of a sufficient equity cushion, third-party lenders were unwilling to provide postpetition financing on an unsecured basis or otherwise junior to the Pre-Petition Lenders. *See* First Day Declaration ¶¶ 46-48. Therefore, the Debtors, in consultation with their advisors, concluded that any workable financing likely would require the support of, or be provided by, the Debtors' existing lenders. *See* First Day Declaration ¶ 48. Absent the DIP Facility, which will provide certainty that the Debtors will have sufficient liquidity to bridge these chapter 11 cases to the sale of the IP Sale Assets, the value of the Debtors' estates would be significantly impaired to the detriment of all stakeholders. Given the Debtors' circumstances, the Debtors believe that the terms of the DIP Facility, as set forth in the DIP Credit Agreement, are fair, reasonable, and adequate, all as more fully set forth below. For all these reasons, the Debtors submit that they have met the standard for obtaining postpetition financing.

29. In the event that a debtor is unable to obtain unsecured credit allowable as an administrative expense under section 503(b)(1) of the Bankruptcy Code, section 364(c) provides that a court “may authorize the obtaining of credit or the incurring of debt (1) with priority over any or all administrative expenses of the kind specified in section 503(b) or 507(b) of [the

Bankruptcy Code]; (2) secured by a lien on property of the estate that is not otherwise subject to a lien; or (3) secured by a junior lien on property of the estate that is subject to a lien.” As described above, the Debtors are unable to obtain unsecured credit. Therefore, approving a superpriority claim in favor of the DIP Lenders is reasonable and appropriate.

30. Further, section 364(d) provides that a debtor may obtain credit secured by a senior or equal lien on property of the estate already subject to a lien, after notice and a hearing, where the debtor is “unable to obtain such credit otherwise” and “there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted.” 11 U.S.C. § 364(d)(1). Consent by the secured creditors to priming obviates the need to show adequate protection. *See Anchor Savs. Bank FSB v. Sky Valley, Inc.*, 99 B.R. 117, 122 (N.D. Ga. 1989) (“[B]y tacitly consenting to the superpriority lien, those [undersecured] creditors relieved the debtor of having to demonstrate that they were adequately protected.”). Accordingly, the Debtors may incur “priming” liens under the DIP Facility if either (a) the Pre-Petition Lenders have consented or (b) Pre-Petition Lenders’ interests in collateral are adequately protected.

31. Here, the Pre-Petition Lenders have consented to the DIP Facility. Therefore, the relief requested pursuant to section 364(d)(1) of the Bankruptcy Code is appropriate.

C. No Comparable Alternative to the DIP Facility Is Reasonably Available.

32. A debtor need only demonstrate “by a good faith effort that credit was not available without” the protections afforded to potential lenders by sections 364(c) of the Bankruptcy Code. *In re Snowshoe Co., Inc.*, 789 F.2d 1085, 1088 (4th Cir. 1986); *see also In re Plabell Rubber Prods., Inc.*, 137 B.R. 897, 900 (Bankr. N.D. Ohio 1992). Moreover, in circumstances where only a few lenders likely can or will extend the necessary credit to a debtor,

“it would be unrealistic and unnecessary to require [the debtor] to conduct such an exhaustive search for financing.” *In re Sky Valley, Inc.*, 100 B.R. 107, 113 (Bankr. N.D. Ga. 1988), *aff’d sub nom. Anchor Sav. Bank FSB v. Sky Valley, Inc.*, 99 B.R. 117, 120 n.4 (N.D. Ga. 1989); *see also In re Snowshoe Co.*, 789 F.2d 1085, 1088 (4th Cir. 1986) (demonstrating that credit was unavailable absent the senior lien by establishment of unsuccessful contact with other financial institutions in the geographic area); *In re Stanley Hotel, Inc.*, 15 B.R. 660, 663 (D. Colo. 1981) (bankruptcy court’s finding that two national banks refused to grant unsecured loans was sufficient to support conclusion that section 364 requirement was met); *In re Ames Dep’t Stores*, 115 B.R. at 37–39 (debtor must show that it made reasonable efforts to seek other sources of financing under section 364(a) and (b)).

33. As noted above, the Debtors do not believe that alternative sources of financing are reasonably available given the realities imposed by the Debtors’ existing capital structure and the Debtors’ unsuccessful solicitation of alternative financing proposals. All of the Debtors’ existing assets, including Cash Collateral, are encumbered, and the Debtors have ceased their retail operations. *See* First Day Declaration ¶¶ [20, 23, 25, 46]. Thus, the Debtors have determined that the DIP Facility provides the best opportunity available to the Debtors under the circumstances to fund these chapter 11 cases. *See* First Day Declaration ¶ [48]. Therefore, in addition to evidence to be introduced at the hearing on the Interim DIP Order if necessary, the Debtors submit that the requirement of section 364 of the Bankruptcy Code that alternative credit on more favorable terms be unavailable to the Debtors is satisfied.

D. Repayment of the DIP Facility and Pre-Petition Obligations Out of the Sale Proceeds is Appropriate.

34. 363(b) of the Bankruptcy Code permits a debtor to use, sell or lease property, other than in the ordinary course of business, with court approval. It is well settled in the Third

Circuit that such transactions should be approved when they are supported by a sound business purpose. *See In re Abbots Dairies, Inc.*, 788 F.2d 143 (3d Cir. 1986) (holding that in the Third Circuit, a debtor's use of assets outside the ordinary course of business under section 363(b) should be approved if the debtor can demonstrate a sound business justification for the proposed transaction). The business judgment rule shields a debtor's management from judicial second-guessing. *In re Johns-Manville Corp.*, 60 B.R. 612, 615-16 (Bankr. S.D.N.Y. 1986) (“[T]he [Bankruptcy] Code favors the continued operation of a business by a debtor and a presumption of reasonableness attaches to a debtor's management decisions.”).

35. The repayment of the DIP Facility and approximately \$13.4 million of the Pre-Petition Obligations in cash from the proceeds of the Sale is a sound exercise of the Debtors' business judgment. Where, as here, a secured creditor is likely oversecured, repaying such creditor that stands to receive payment in full with postpetition cash proceeds will not harm the Debtors' estates and other creditors. In contrast, absent the DIP Facility, the Debtors' ability to continue administer these chapter 11 cases pending consummation of the Sale will be jeopardized to the detriment of all parties in interest. The proposed repayment merely affects the timing, not the amount, of the Pre-Petition Lenders' and DIP Lenders' recovery, and will also reduce the interest accruing under the Pre-Petition Credit Agreement. Given these circumstances, repayment of the Pre-Petition Obligations and DIP Facility out of the cash proceeds from the Sale is reasonable, appropriate, and a sound exercise of the Debtors' business judgment.

V. The Debtors Should Be Authorized to Use the Cash Collateral.

36. Section 363 of the Bankruptcy Code generally governs the use of estate property. Section 363(c)(2)(A) permits a debtor in possession to use cash collateral with the consent of the

secured party. Here, the Pre-Petition Lenders consent to the Debtors' use of the Cash Collateral, subject to the terms and limitations set forth in the Interim DIP Order.

37. Section 363(e) provides for adequate protection of interests in property when a debtor uses cash collateral. Further, section 362(d)(1) of the Bankruptcy Code provides for adequate protection of interests in property due to the imposition of the automatic stay. *See In re Cont'l Airlines*, 91 F.3d 553, 556 (3d Cir. 1996) (en banc). While section 361 of the Bankruptcy Code provides examples of forms of adequate protection, such as granting replacement liens and administrative claims, courts decide what constitutes sufficient adequate protection on a case-by-case basis. *In re Swedeland Dev. Grp., Inc.*, 16 F.3d 552, 564 (3d Cir. 1994); *In re Satcon Tech. Corp.*, No. 12-12869 (KG), 2012 WL 6091160, at *6 (Bankr. D. Del. Dec. 7, 2012); *In re N.J. Affordable Homes Corp.*, No. 05-60442 (DHS), 2006 WL 2128624, at *14 (Bankr. D.N.J. June 29, 2006); *In re Columbia Gas Sys., Inc.*, Nos. 91-803, 91-804, 1992 WL 79323, at *2 (Bankr. D. Del. Feb. 18, 1992); *see also In re Dynaco Corp.*, 162 B.R. 389, 394 (Bankr. D.N.H. 1993) (citing 2 Collier on Bankruptcy ¶ 361.01[1] at 361–66 (15th ed. 1993) (explaining that adequate protection can take many forms and “must be determined based upon equitable considerations arising from the particular facts of each proceeding”)).

38. As described more fully above, and as set forth in the Interim DIP Order, the Debtors propose to provide the Pre-Petition Lenders with a variety of adequate protection to protect against the postpetition diminution in value of the Cash Collateral resulting from the use, sale, or lease of the Cash Collateral by the Debtors and the imposition of the automatic stay (collectively, the “Adequate Protection Obligations”):

- a. Valid and automatically perfected first priority replacement liens and security interests in and upon the Pre-Petition Collateral and the Collateral;

- b. superpriority administrative claims and all of the other benefits and protections allowed under section 507(b) of the Bankruptcy Code, junior only in right to any superpriority administrative claims granted to the DIP Agent and the DIP Lenders on account of the DIP Facility and the Carve-Out Expenses; and
- c. attorneys' fees and expenses and financial advisors' fees and expenses.

39. Therefore, the Debtors submit that the proposed Adequate Protection Obligations are sufficient to protect the Pre-Petition Lenders from any diminution in value to the Cash Collateral. In light of the foregoing, the Debtors further submit, and the Pre-Petition Lenders agree, that the proposed Adequate Protection Obligations to be provided for the benefit of the Pre-Petition Lenders are appropriate.⁷ Thus, the Debtors' provision of the Adequate Protection Obligations is not only necessary to protect against any diminution in value but is fair and appropriate under the circumstances of these chapter 11 cases to ensure the Debtors are able to continue using the Cash Collateral, subject to the terms and limitations set forth in the Interim DIP Order, for the benefit of all parties in interest and their estates.

VI. The Debtors Should Be Authorized to Pay the Fees Required by the DIP Agent and the DIP Lenders Under the DIP Loan Documents.

40. Under the DIP Loan Documents, the Debtors have agreed, subject to Court approval, to pay certain fees to the DIP Agent and the DIP Lenders. In particular, as noted above, the Debtors have agreed to pay:

- a. to the DIP Agent, for the account of each of the DIP Lenders, a closing fee equal to 1.00% percent on the Total Commitment (as defined in the DIP Credit Agreement), due and payable on the Interim Effective Date; and
- b. all reasonable out-of-pocket expenses incurred by the DIP Agent and DIP Lenders, including the reasonable fees, charges, and

⁷ Pursuant to the DIP Orders, the Pre-Petition Lenders are permitted to seek additional adequate protection in accordance with the terms thereof.

disbursements of counsel for the DIP Agent and DIP Lenders, in connection with the DIP Loan Documents, due and payable on the Final Effective Date.

41. It is understood and agreed by all parties, including the Debtors, that these fees are an integral component of the overall terms of the DIP Facility, and were required by the DIP Agent and the DIP Lenders as consideration for the extension of postpetition financing. *See* First Day Declaration ¶ 50. Accordingly, the Court should authorize the Debtors to pay the fees provided under the DIP Loan Documents in connection with entering into those agreements.

VII. The DIP Lenders Should Be Deemed Good-Faith Lenders Under Section 364(e).

42. Section 364(e) of the Bankruptcy Code protects a good-faith lender's right to collect on loans extended to a debtor, and its right in any lien securing those loans, even if the authority of the debtor to obtain such loans or grant such liens is later reversed or modified on appeal. Section 364(e) of the Bankruptcy Code provides that:

The reversal or modification on appeal of an authorization under this section [364 of the Bankruptcy Code] to obtain credit or incur debt, or of a grant under this section of a priority or a lien, does not affect the validity of any debt so incurred, or any priority or lien so granted, to an entity that extended such credit in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and the incurring of such debt, or the granting of such priority or lien, were stayed pending appeal.

43. As explained herein, and in the First Day Declaration, the DIP Loan Documents are the result of: (a) the Debtors' reasonable and informed determination that the DIP Lenders offered the most favorable terms on which to obtain vital postpetition financing, and (b) arms'-length, good-faith negotiations between the Debtors and the DIP Agent and DIP Lenders. The Debtors submit that the terms and conditions of the DIP Loan Documents are reasonable and appropriate under the circumstances, and the proceeds of the DIP Facility will be used only for purposes that are permissible under the Bankruptcy Code. Further, no

consideration is being provided to any party to the DIP Loan Documents other than as described herein. Accordingly, the Court should find that the DIP Lenders are “good faith” lenders within the meaning of section 364(e) of the Bankruptcy Code and are entitled to all of the protections afforded by that section.

VIII. The Automatic Stay Should Be Modified on a Limited Basis.

44. The proposed Interim DIP Order provides that the automatic stay provisions of section 362 of the Bankruptcy Code will be modified to allow the DIP Lenders to file any financing statements, security agreements, notices of liens, and other similar instruments and documents in order to validate and perfect the liens and security interests granted to them under the Interim DIP Order. The proposed Interim DIP Order further provides that the automatic stay is modified as necessary to permit the Debtors to grant the DIP Financing Liens to the DIP Lenders and to incur all liabilities and obligations set forth in the Interim DIP Order. Finally, the proposed Interim DIP Order provides that, following the occurrence of an Event of Default (as defined in the DIP Credit Agreement), the automatic stay shall be vacated and modified to the extent necessary to permit the DIP Agent to exercise all rights and remedies in accordance with the DIP Loan Documents, or applicable law.

45. Stay modifications of this kind are ordinary and standard features of debtor-in-possession financing arrangements, and, in the Debtors’ business judgment, are reasonable and fair under the circumstances of these chapter 11 cases. *See, e.g., In re Magnum Hunter Res. Corp.*, No. 15-12533 (KG) (Bankr. D. Del. Dec. 15, 2015) (terminating automatic stay after event of default); *In re Peak Broad., LLC*, No. 12-10183 (PJW) (Bankr. D. Del. Feb. 2, 2012) (terminating automatic stay after occurrence of termination event); *In re TMP Directional Mktg., LLC*, No. 11-13835 (MFW) (Bankr. D. Del. Jan. 17, 2012) (modifying automatic stay as

necessary to effectuate the terms of the order); *In re Broadway 401 LLC*, No. 10-10070 (KJC) (Bankr. D. Del. Feb. 16, 2010) (same); *In re Hights Cross Commc'ns, Inc.*, No. 10-10062 (BLS) (Bankr. D. Del. Feb. 8, 2010) (same).

IX. Failure to Obtain Immediate Interim Access to the DIP Facility and Cash Collateral Would Cause Immediate and Irreparable Harm.

46. Bankruptcy Rules 4001(b) and 4001(c) provide that a final hearing on a motion to obtain credit pursuant to section 364 of the Bankruptcy Code or to use cash collateral pursuant to section 363 of the Bankruptcy Code may not be commenced earlier than 14 days after the service of such motion. Upon request, however, the Court may conduct a preliminary, expedited hearing on the motion and authorize the obtaining of credit and use of cash collateral to the extent necessary to avoid immediate and irreparable harm to a debtor's estate.

47. For the reasons noted above, the Debtors have an immediate postpetition need to use Cash Collateral, including advances under the DIP Facility. The Debtors cannot maintain the value of their estates during the pendency of these chapter 11 cases without access to cash. The Debtors will use cash to, among other things, fund these chapter 11 cases and effectuate the sale of the IP Sale Assets. The Debtors believe that substantially all of their available cash constitutes the Pre-Petition Lenders' Cash Collateral. The Debtors will therefore be unable to proceed with their proposed Sale or otherwise fund these chapter 11 cases without access to Cash Collateral, and will suffer immediate and irreparable harm to the detriment of all creditors and other parties in interest. In short, the Debtors' ability to administer these chapter 11 cases through the use of Cash Collateral is vital to preserve and maximize the value of the Debtors' estates.

48. The Debtors request that the Court hold and conduct a hearing to consider entry of the Interim DIP Order authorizing the Debtors, from and after entry of the Interim DIP Order

until the Final Hearing, to receive initial funding under the DIP Facility. The DIP Facility will provide the Debtors with a liquidity cushion to the extent they underperform their projections and will provide the potential purchaser of the IP Sale Assets—as well as any potential bidder—with certainty that the Debtors will have sufficient liquidity through consummation of a sale. Accordingly, the Debtors’ believe that this relief will enable the Debtors to preserve and maximize value and, therefore, avoid immediate and irreparable harm and prejudice to their estates and all parties in interest, pending the Final Hearing. *See* First Day Declaration ¶¶ 43-45.

Request for Final Hearing

49. Pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2), the Debtors request that the Court set a date for the Final Hearing that is as soon as practicable, and in no event after 25 days after the Petition Date, and fix the time and date prior to the Final Hearing for parties to file objections to this motion.

Waiver of Bankruptcy Rule 6004(a) and 6004(h)

50. To implement the foregoing successfully, the Debtors request that the Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and that the Debtors have established cause to exclude such relief from the 14-day stay period under Bankruptcy Rule 6004(h).

Notice

51. The Debtors will provide notice of this motion to: (a) the Office of the United States Trustee for the District of Delaware; (b) the holders of the 30 largest unsecured claims against the Debtors (on a consolidated basis); (c) the administrative agent under the Debtors’ prepetition term loan; (d) counsel to the administrative agent under the Debtors’ prepetition term loan; (e) the agent under the Debtors’ proposed debtor-in-possession credit facility; (f) counsel to

the agent under the Debtors' proposed debtor-in-possession credit facility; (g) the United States Attorney's Office for the District of Delaware; (h) the Internal Revenue Service; (i) the Environmental Protection Agency; (j) the office of the attorneys general for the states in which the Debtors operate; (k) the Securities and Exchange Commission; and (m) any party that has requested notice pursuant to Bankruptcy Rule 2002. As this motion is seeking "first day" relief, within two business days of the hearing on this motion, the Debtors will serve copies of this motion and any order entered in respect to this motion as required by Local Rule 9013-1(m). The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

No Prior Request

52. No prior request for the relief sought in this motion has been made to this or any other court.

[Remainder of Page Intentionally Left Blank]

WHEREFORE, the Debtors respectfully request that the Court enter the DIP Orders, granting the relief requested herein and such other relief as the Court deems appropriate under the circumstances.

Dated: January 17, 2017
Wilmington, Delaware

/s/ Domenic E. Pacitti

Domenic E. Pacitti (DE Bar No. 3989)

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