Hearing Date: November 16, 2016
Time: 10:00 a.m.

ROSEN & ASSOCIATES, P.C.
Attorneys for the Debtor
and Debtor in Possession
747 Third Avenue
New York, NY 10017-2803
(212) 223-1100
Nancy L. Kourland

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re	Chapter 11
WANK ADAMS SLAVIN ASSOCIATES LLP a/k/a WASA STUDIO,	Case No. 15-11952 (MEW)
Debtor.	

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NOTICE OF DEBTOR'S MOTION FOR THE ENTRY OF A FINAL ORDER AUTHORIZING THE DEBTOR TO OBTAIN POST-PETITION FINANCING ON A SUPERPRIORITY BASIS PURSUANT TO 11 U.S.C. § 364

PLEASE TAKE NOTICE that upon the annexed motion dated October 14, 2016 (the "**Motion**") of Wank Adams Slavin Associates LLP a/k/a WASA Studio, the above-captioned debtor and debtor in possession (the "**Debtor**"), by its attorneys, Rosen & Associates, P.C., the undersigned will move at a hearing before the Honorable Michael E. Wiles, United States Bankruptcy Judge, United States Bankruptcy Court for the Southern District of New York, Alexander Hamilton Custom House, Courtroom 617, One Bowling Green, New York, NY 10004, on November 16, 2016 at 10:00 a.m. or as soon thereafter as counsel can be heard, for entry of an order authorizing the Debtor to obtain post-petition financing on a superpriority basis pursuant to 11 U.S.C. § 364 and for such other and further relief as to the Court shall seem just and proper.

PLEASE TAKE FURTHER NOTICE that objections, if any, to the Motion shall conform to the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules for the Southern District of New York, shall set forth the grounds with specificity, and shall be filed with this Court electronically in accordance with General Order M-399 (General Order M-399 and the User's Manual for the Electronic Case Filing System can be found at www.nysb.uscourts.gov, the official website for this Court) by registered users of this Court's case filing system, and by all other parties in interest on a 3.5" disk or other electronic media, preferably in PDF or any Windows-based word processing format (with a hard copy delivered to Judge Wiles's chambers) and served in accordance with General Order M-399 upon (i) Rosen & Associates, P.C., attorneys for the Debtor, 747 Third Avenue, New York, NY 10017-2803, Attn.: Nancy L. Kourland, Esq., and (ii) the Office of the United States Trustee for Region 2, U.S. Federal Building, 201 Varick Street, New York, NY 10014, Attn.: Greg Zipes, Esq., so as to be received not later than November 9, 2016 at 4:00 p.m.

Dated: New York, New York
October 14, 2016

ROSEN & ASSOCIATES, P.C.
Attorneys for the Debtor
and Debtor in Possession

By: /s/ Nancy L. Kourland
Nancy L. Kourland

747 Third Avenue
New York, NY 10017-2803
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In re	Chapter 11
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MOTION OF THE DEBTOR FOR THE ENTRY OF A FINAL ORDER AUTHORIZING THE DEBTOR TO OBTAIN POST-PETITION FINANCING ON A SUPERPRIORITY BASIS PURSUANT TO 11 U.S.C. § 364

Wank Adams Slavin Associates LLP a/k/a WASA Studio, the above-captioned debtor and debtor in possession (the "**Debtor**"), by its attorneys, Rosen & Associates, P.C., respectfully represents:

PRELIMINARY STATEMENT

1. By this Motion, the Debtor seeks the entry of a final order authorizing it to obtain post-petition financing from Harry Spring (the "**Lender**")[1] of an amount not to exceed $50,000.00 on a superpriority basis to fund the payment of legal fees (including a $15,000 retainer fee) to be incurred by the Debtor in connection with the prosecution of the

[1] The Debtor formerly consisted of three partners, two of whom had voluntarily withdrawn as partners of the Debtor prior to the Petition Date (as defined below). The Lender is the Debtor's sole remaining partner.

Counterclaims (as defined below) asserted by the Debtor in an arbitration proceeding brought against the Debtor (the "**Arbitration**") by XIN Development Management East, LLC ("**XIN**"). The funds to be borrowed under the Loan Agreement (as defined below) are required to allow the Debtor to obtain the services of experienced counsel to assist it in prosecuting the Counterclaims. If the Debtor is successful in prosecuting the Counterclaims, any recovery therefrom remaining after the Debtor pays its secured debt would constitute additional funds available for distribution to the Debtor's unsecured creditors.

2. This Motion is made pursuant to section 364(c), (d) and (e) of title 11 of the United States Code (the "**Bankruptcy Code**"), Rule 4001 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), and Rule 4001-2 of the Local Bankruptcy Rules for the Southern District of New York (the "**Local Rules**") for the entry of a proposed order substantially in the form annexed hereto as Exhibit "A" (the "**Order**" or "**Financing Order**"):

(a) authorizing the Debtor to incur post-petition senior priority secured indebtedness (the "**Post-Petition Financing**") in favor of the Lender pursuant to the terms of a certain Debtor In Possession Loan and Security Agreement (the "**Loan Agreement**")[2] by and between the Debtor, as borrower, and the Lender, a copy of which is attached hereto as Exhibit "B"*;*

(b) granting, as security for the repayment of any amounts advanced under the Loan Agreement, Lender a senior priming security interest in and to and lien on substantially all of the Debtors' assets together with a super-priority administrative expense claim in the Debtor's case;

(c) approving the terms of the Loan Agreement and the documents to be executed in connection therewith, and authorizing the Debtor to execute and deliver all documents and

[2] Capitalized terms used herein but not otherwise defined herein shall have the meanings ascribed to them in the Loan Agreement.

perform such other acts as may be required, necessary and/or desirable in connection with the Loan Agreement; and

(d) modifying the automatic stay under section 362 of the Bankruptcy Code to the extent necessary to permit the Lender to implement the terms and other provisions of the Loan Agreement and any Orders of this Court entered with regard thereto.

CONCISE STATEMENT PURSUANT TO BANKRUPTCY RULE 4001(c) AND LOCAL RULE 4001-2

3. The Debtor submits this concise statement listing certain material terms set forth in the Loan Agreement and the proposed Order that the Debtor believes are required to be identified pursuant to Bankruptcy Rule 4001(c) and Local Rule 4001-2.

Summary of Material Terms		**Location in Loan Agreement and/or Order**
Parties to the Loan Agreement *Fed. R. Bankr. P. 4001(c)(1)(B)*	Borrower: Wank Adams Slavin Associates, LLP a/k/a WASA Studio Lender: Harry Spring	Loan Agreement Preamble
Loan Amount *Fed. R. Bankr. P. 4001(c)(1)(B)* *Local Rule 4001-2(a)(1)*	Up to an aggregate principal amount of $50,000 (the "**Commitment**"). The Loan shall be made upon the Debtor's request, in one or more advances, at any time during the term of the Loan Agreement, which shall be a period from the Effective Date to but not including the Maturity Date unless sooner terminated in accordance with the terms of the Loan Agreement.	Loan Agreement § 1.1 (defining "Commitment," "Effective Date," and "Maturity Date"), § 2.1; Order ¶ 3
Interest Rate *Fed. R. Bankr. P. 4001(c)(1)(B)* *Local Rule 4001-2(a)(3)*	The outstanding principal balance of the Loan shall bear no interest.	Loan Agreement § 2.3
Maturity Date *Fed. R. Bankr. P. 4001(c)(1)(B)*	The "**Maturity Date**" is the earlier of (i) the date of a final disposition of the Arbitration, by award,	Loan Agreement § 1.1 (defining "Maturity Date"

	settlement, or dismissal or otherwise, and (ii) the occurrence of an Event of Default.	and "Event of Default"), § 8.1 (listing Events of Default)
Events of Default *Fed. R. Bankr. P. 4001(c)(1)(B)* *Local Rule 4001-2(a)(10)*	The Events of Default under the Loan Agreement are as follow: (a) the entry of an order by the Court appointing a trustee or examiner, converting the Debtor's chapter 11 case to one under chapter 7 of the Bankruptcy Code, or dismissing the Debtor's chapter 11 case; (b) the entry of an order by the Court to revoke, reverse, stay, modify, supplement or amend the approval of the Loan Agreement without the express written consent of the Lender; (c) the entry of an order by the Court granting a claim or Lien that ranks *pari passu* with or senior to any claim or Lien granted to or for the benefit of the Lender under the Loan Agreement; and (d) if any provision of the Loan Agreement ceases to be valid and binding on or enforceable against the Debtor or its estate, or a proceeding shall be commenced seeking to establish the invalidity or unenforceability of the Loan Agreement. Upon the occurrence of an Event of Default, the Lender may, by notice to the Debtor (i) terminate the Commitment, whereupon the Commitment shall terminate immediately; (ii) declare the Loan then outstanding to be accelerated and immediately due and payable, whereupon the Loan and all other amounts payable under the Loan Agreement, including the amounts payable under the Note, shall become due and payable immediately, without further order of, or application to, the Court, presentment, demand, protest or further notice of any kind, all of which are expressly waived by the Debtor, and/or (iii) may proceed against the Debtor in such manner as the Lender so chooses, having all rights and remedies provided by law or in equity, including, without limitation, the enforcement of the Lender's rights and remedies in connection with the Collateral. The Debtor shall pay any and all reasonable costs and expenses incurred by the Lender in connection with the enforcement of its rights under the Loan Agreement, including, without limitation, legal fees.	Loan Agreement § 8.1

Limitations on the Use of Loan Proceeds *Fed R. Bankr. P. 4001(c)(1)(B)* *Local Rule 4001-2(a)(9)*	The proceeds of the Loans shall be used by the Debtor solely to pay legal fees and expenses for the legal services of Lewis Brisbois Bisgaard & Smith LLP ("**LBBS**") in connection with the prosecution of the Counterclaims to the extent such fees and expense reimbursements are not paid by Chubb, the carrier of the Debtor's professional liability insurance policy.	Loan Agreement § 1.1 (defining "LBBS's Fees and Expenses"), § 2.2; Order ¶ 3
Conditions to Borrowing *Fed. R. Bankr. P. 4001(c)(1)(B)* *Local Rule 4001-2(a)(2)*	Among the conditions to borrowing under the Loan Agreement are: (i) the entry of the Financing Order approving on a final basis the financing transactions under the Loan Documents and the grant of liens and superpriority administrative claims to the Lender as set forth below no later than 10 days after the Court's hearing to consider this Motion (the "**Hearing**"); and (ii) entry of an order of the Court authorizing the retention of LBBS as special counsel no later than 10 days after the Hearing.	Loan Agreement § 5.1
Liens and Superpriority Administrative Claims *Fed. R. Bankr. P. 4001(c)(1)(B)(i)* *Local Rule 4001-2(a)(5)*	(a) The Lender shall be granted, effective as of the date of entry of the Financing Order, (x) a first priority security interest in and to all encumbered assets, rights, interests and property of the Debtor, including any award (and the proceeds thereof) obtained in favor of the Debtor in the Arbitration (the "**Encumbered Collateral**"), which security interest and lien shall be senior to any existing security interest in and to and lien on such property, except as otherwise provided herein, pursuant to 11 U.S.C. § 364(d)(1),[3] and (y) a first priority security interest in and to all unencumbered assets, rights, interests and property of the Debtor, excluding avoidance actions arising under chapter 5 of the Bankruptcy Code (the "**Unencumbered Collateral**," and together with the Encumbered Collateral, the "**Collateral**"), pursuant to 11 U.S.C. § 364(c)(2). The first priority priming liens shall be subject to Statutory Liens. (b) Except as otherwise provided herein, the Loan shall constitute a super priority administrative expense claim with priority over any or all other administrative expenses entitled to priority or super	Loan Agreement § 1.1 (defining "Superpriority Administrative Claim" and "Arbitration Funding Lien"), § 3.1(a)-(b), § 3.2; Order ¶¶ 5-6

[3] HS Consulting, which currently holds a senior first priority lien on the Encumbered Collateral, has agreed to the priming of such lien.

	priority treatment under section 503(b) or 507(b) of the Bankruptcy Code, as provided for in 11 U.S.C. § 364(c)(1), including having priority over the super priority administrative claim granted to HS Consulting, as successor in interest to Citibank, N.A., as adequate protection for the use of its cash collateral. The super priority administrative claim granted to the Lender shall, however, be subject to fees payable to the office of the United States Trustee and the administrative expenses, not to exceed $10,000, of a trustee in a superseding case under chapter 7 of the Bankruptcy Code.	
Waiver of Perfection Requirements *Fed. R. Bankr. P. 4001(c)(1)(B)(vii)*	Upon entry of the Financing Order, the liens and security interests granted under the Loan Agreement shall be valid and perfected senior liens and security interests in the Collateral. Such senior liens and security interests and their priority shall remain in effect until the Loan shall have been irrevocably and unconditionally repaid in cash in full.	Loan Agreement § 3.1(c); Order ¶ 6

JURISDICTION AND VENUE

4. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Consideration of this Motion is a core proceeding pursuant to 38 U.S.C. § 157(b). Venue of this proceeding is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

BACKGROUND

5. On July 27, 2015 (the "**Petition Date**"), the Debtor commenced in this Court a voluntary case under chapter 11 of title 11 of the United States Code (the "**Bankruptcy Code**").

6. The Debtor is continuing to operate its business and manage its property as debtor in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

7. To date, no trustee, examiner, or committee of unsecured creditors has been appointed in the Debtor's chapter 11 case.

8. The Debtor, which maintained its offices at 740 Broadway, New York, NY 10003, is a New York limited liability partnership that provided integrated architectural, engineering, and design services to clients in the governmental, institutional, health care, and private development sectors. The Debtor's principal assets consist of its accounts receivable generated from its performance of services.

9. As of the Petition Date, the Debtor's sole secured creditor was Citibank, N.A. ("**Citibank**"). Pursuant to a business loan agreement, dated December 12, 2014, Citibank made available to the Debtor (a) a line of credit with a limit of $1.1 million with a variable interest rate of 2% over LIBOR and (b) a term loan in the amount of $400,000 with a fixed interest rate of 4.4%. As of the Petition Date, the Debtor owed Citibank approximately $1.4 million, of which approximately $1.05 million was on account of amounts due under the line of credit and $357,000 was on account of the term loan. The Debtor's obligations under the line of credit and the term loan are secured by a first priority security interest in all of its personal property (the "**Prepetition Collateral**") in accordance with, and to the extent set forth in, a Commercial Security Agreement dated December 12, 2014.

10. Since the Petition Date, the Debtor has collected over $1.0 million of accounts receivable. The majority of such proceeds were remitted to Citibank and applied in reduction of its secured claim. On or about March 11, 2016, Citibank transferred all of its right, title, and interest in and to its secured claim, including its first priority security interest in the Prepetition Collateral, to Harry Spring Consulting LLC ("**HS Consulting**").[4] At the time of the

[4] The Lender is the sole member of HS Consulting.

transfer, Citibank had a secured claim in the amount of $783,729. Consequently, HS Consulting has a secured claim in such amount, and is the Debtor's sole secured creditor at this time.

11. By order entered on September 28, 2015, the Court authorized on a final basis the Debtor's use of cash collateral in which Citibank had an interest, and granted Citibank adequate protection for the use of such cash collateral in the form of an adequate protection lien, an adequate protection superpriority administrative claim, and adequate protection payments. The Court extended its authorization for the Debtor to use cash collateral and grant of adequate protection for the use thereof by orders entered on January 22, 2016; January 29, 2016; April 4, 2016; June 29, 2016; and August 17, 2016. The cash collateral order entered on April 4, 2016 reflected that Citibank had transferred all of its right, title, and interest in and to its secured claim to HS Consulting. Accordingly, HS Consulting now has an interest in the cash collateral being used by the Debtor, and holds an adequate protection lien on the Debtor's property and an adequate protection superpriority administrative claim, as well as being entitled to adequate protection payments.

THE XIN ARBITRATION PROCEEDING

12. On May 7, 2015, prior to the Petition Date, XIN commenced the Arbitration against the Debtor by filing a demand for arbitration with the American Arbitration Association (Case No. 01-15-0003-4678). In the Arbitration, XIN asserted a $10 million claim for professional malpractice (the "**Malpractice Claim**") against the Debtor in connection with architectural and engineering services rendered by the Debtor pursuant to the Standard Form of Agreement between XIN, as owner, and the Debtor, as architect, dated February 2013, for the development of a residential condominium building located at 421 Kent Avenue, Brooklyn, NY. Shortly thereafter, the Debtor filed a response in the Arbitration in which it asserted

counterclaims against XIN for breach of contract, tortious interference with contract, and misappropriation and conversion of proprietary information (the "**Counterclaims**"). The Debtor is seeking damages of approximately $8.56 million, which damages claim includes approximately $1.58 million due to the Debtor from XIN for services rendered by the Debtor prepetition.

13. At the time the Debtor rendered services to XIN, it maintained, and continues to maintain, an ACE Advantage Professional Liability Policy for Design Professionals (the "**Policy**") issued by ACE American Insurance Company, which is now known as Chubb. The Policy has a coverage limit of $5 million per claim, an aggregate limit of $5 million, and a $50,000 per claim Self Insured Retention.

14. After the Petition Date, the Debtor tendered the Arbitration to Chubb, which has agreed, subject to a reservation of rights letter dated September 17, 2015, and based on information received to date, to provide the Debtor with a defense to the Malpractice Claim and assigned such defense to David M. Pollack, Esq., of LBBS.

15. After Chubb agreed to provide the Debtor with such defense, the Debtor, pursuant to a stipulation by and among the Debtor, XIN, and ACE dated January 29, 2016, consented to a modification of the automatic stay to allow XIN to prosecute the Malpractice Claim and defend against Counterclaims in the Arbitration.[5] This Court "so-ordered" the stipulation on February 16, 2016.

16. Chubb will not agree to pay the Debtor's legal fees incurred solely in connection with the prosecution of the Counterclaims. However, because many of the tasks

[5] Under the stipulation, XIN has agreed that any distribution it may be entitled to on account of any award it receives will be limited to and paid solely from available proceeds under the Policy. It has waived the right to otherwise participate as a creditor of the estate and will withdraw its filed proof of claim in the amount of approximately $12.0 million.

necessary to such prosecution are the same as, or interrelated to, those to be performed in the defense of the Malpractice Claim, Chubb has agreed to pay LBBS's fees and expenses for such overlapping and interrelated tasks and the Lender has agreed to fund, by means of the Post-Petition Loan, the Debtor's payment of LBBS's fees and expenses that are not paid by Chubb. Absent financing, the Debtor would not be able to pay LBBS's fees and expenses that are not paid by Chubb.

17. The Debtor and the Lender have entered into a retention agreement with LBBS, pursuant to which the Debtor, subject to this Court's approval, has agreed to retain LBBS as special counsel to prosecute the Counterclaims and while the Lender has agreed to pay all of LBBS's fees and expenses in connection therewith to the extent they are not paid by Chubb, the Debtor and the Lender have agreed that such payment to LBBS shall be effectuated through the Post-Petition Loan.[6]

18. On July 25, 2016, the Debtor filed with this Court an application to retain LLBS as special counsel in connection with the Arbitration. The proposed order granting such relief was presented to this Court for signature on August 15, 2016. As of the date of this Motion, the retention application remains pending before the Court.

RELIEF REQUESTED

19. By this Motion, the Debtor seeks the entry of a final order, pursuant to section 364(c), (d), and (e) of the Bankruptcy Code, authorizing it to obtain post-petition financing from the Lender on a superpriority basis, as summarized in more detail above in the Concise Statement Pursuant to Bankruptcy Rule 4001(c) and Local Rule 4001-2, to fund the

[6] As reflected in the retention agreement by and among the Debtor, the Lender, and LBBS, the parties originally agreed that the Lender would pay LBBS's Fees and Expenses on behalf of the Debtor without any reference to financing. However, as reflected in this Motion, the Debtor and the Lender subsequently determined to effectuate such payment through the Post-Petition Loan.

payment of legal fees (including a $15,000 retainer fee) incurred and expense reimbursements to be made by the Debtor in connection with the prosecution of the Counterclaims.

BASES FOR RELIEF

The Debtor Has Satisfied the Statutory Requirements Set Forth in 11 U.S.C. § 364(c) and (d) for Obtaining Post-Petition Financing on a Superpriority Basis

20. Pursuant to 11 U.S.C. § 364,

> [i]f the [debtor in possession] is unable to obtain unsecured credit allowable under section 503(b)(1) of [the Bankruptcy Code] as an administrative expense, the court, after notice and a hearing, 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 this title;
> (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 the property of the estate that is subject to a lien.

11 U.S.C. § 364(c). In order to demonstrate that borrowing on a superpriority basis pursuant to section 364(c) is warranted, courts have required debtors to show that "(1) the debtor cannot obtain credit unencumbered by super-priority status; (2) the credit transaction is necessary to preserve assets of the estate; and (3) the terms of the agreement are fair, reasonable, and adequate." *In re Barbara K. Enters., Inc.*, No. 08-11474 (MG), 2008 WL 2439649, at *10 (Bankr. S.D.N.Y. June 16, 2008) (citing *In Crouse Grp., Inc.*, 71 B.R. 544, 546 (Bankr. E.D. Pa. 1987)).

21. Section 364 of the Bankruptcy Code further provides that a debtor in possession may obtain post-petition financing secured by a senior or equal lien on property of the estate already encumbered by a lien if "(A) the [debtor in possession] is unable to obtain such credit otherwise; and (B) 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)(A)-(B).

22. The Debtor has established that superpriority funding is appropriate under both subsections (c) and (d)(1) of section 364 of the Bankruptcy Code. First, given the Debtor's current financial condition, the fact that most, if not all, of its assets are encumbered, and that it is no longer operating its business aside from collecting outstanding accounts receivable, the Debtor is unable to obtain unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense. Accordingly, the Debtor has agreed to grant the Lender: (a) a superpriority claim, pursuant to 11 U.S.C. § 364(c)(1), which is senior to the existing adequate protection superpriority claim held by HS Consulting but subject to fees payable to the office of the United States Trustee and the administrative expenses, not to exceed $10,000, of a trustee in a superseding case under chapter 7 of the Bankruptcy Code; (b) a senior priming lien on the Encumbered Collateral, pursuant to 11 U.S.C. § 364(d)(1), which shall prime HS Consulting's current lien on such collateral, but shall be subject to Statutory Liens; and (c) a senior lien on all unencumbered assets, if any, of the Debtor, but excluding avoidance claims arising under chapter 5 of the Bankruptcy Code, pursuant to 11 U.S.C. § 364(c)(2)). The Debtor is confident that the Lender is offering financing terms that are the best it can obtain under the circumstances.

23. Next, the Debtor has determined, in its business judgment, that the credit transaction proposed herein is necessary to preserve the value of the Debtor's estate, as representation by experienced counsel, and funding therefor, to prosecute the Counterclaims is necessary to realize and maximize any value the asset may have, which value will, in turn, benefit the Debtor's estate and its creditors.

24. Third, the terms of the Loan Agreement are fair, reasonable, and adequate. Here, the Lender's priming lien is for only $50,000.00 and is being made with the consent of the existing secured lender. The amount of indebtedness being incurred by the Debtor under the credit agreement is small in comparison to the potential recovery that the Debtor may obtain upon the successful prosecution of its Counterclaims. As discussed above, the Debtor's decision to incur such indebtedness is the product of its prudent exercise of its business judgment, as such indebtedness is being incurred in the interest of obtaining legal services by experienced counsel in order to provide value and benefit to the Debtor's estate and its creditors. Accordingly, the transaction is supported by reasonably equivalent value and fair consideration.

25. HS Consulting has consented to the priming of its lien on the Encumbered Collateral to the extent of $50,000.00.

26. Based on the foregoing, the Debtor respectfully submits that obtaining financing on a superpriority basis in this case, pursuant to section 364(c) and (d)(1), is warranted.

The Lender is a Good Faith Lender and Entitled to the Protection of 11 U.S.C. § 364(e)

27. Pursuant to section 364(e) of the Bankruptcy Code,

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

11 U.S.C. § 364(e).

28. Although the term "good faith" as used in section 364(e) of the Bankruptcy Code is not defined, *see In re Gen. Growth Props.*, 412 B.R. 122, 126 (Bankr.

S.D.N.Y. 2009), courts have referenced case law addressing good faith in the context of bankruptcy asset sales in determining good faith, *see Evergreen Int'l Airlines Inc. v. Pan Am Corp. (In re Pan Am. Corp.)*, No. 91 CIV. 8319 (LLM), 1992 WL 154200, at *4 (S.D.N.Y. June 18, 1992) ("Typically, the misconduct that would destroy a purchaser's good faith status at a judicial sale involves fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders." (internal citations, quotation marks, and alteration omitted)).

29. Here, there is nothing to suggest that the proposed financing transaction is the product of fraud or collusion, or that it was entered into for the purpose of taking advantage of creditors or other parties in interest. As discussed above, the Debtor's decision to enter into the transaction was a reasonable exercise of its business judgment, and, although the Lender's insider status precludes a finding of arm's-length negotiation, the terms of the Loan Agreement are fair and reasonable and the transaction is being proposed in good faith.

30. Accordingly, the Debtor respectfully submits that the Lender is entitled to the full protections of section 364(e) of the Bankruptcy Code.

NOTICE

31. Notice of this Motion shall be given to: (a) the Office of the United States Trustee for Region 2; (b) HS Consulting; (c) the 20 largest unsecured creditors of the Debtor; and (d) all parties who have filed a request for notice and service of papers in this case. The Debtor respectfully submits that no other or further notice need be provided.

NO PRIOR REQUEST

32. No prior request for the relief sought in this Motion has been made to this or any other Court.

WHEREFORE, the Debtor respectfully requests that this Court: (a) enter an order, substantially in the form annexed hereto as Exhibit "A"; and (b) grant it such other and further relief as it deems just and proper.

Dated: New York, New York
October 14, 2016

ROSEN & ASSOCIATES, P.C.
Attorneys for the Debtor
and Debtor in Possession

By: /s/ Nancy L. Kourland
Nancy L. Kourland

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