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8

9 **UNITED STATES BANKRUPTCY COURT**

10 **CENTRAL DISTRICT OF CALIFORNIA, LOS ANGELES DIVISION**

11 In re

Case No. 2:17-bk-24626-VZ

12 SHIEKH SHOES LLC,  
a California limited liability company,

Chapter 11

13 Debtor.

14 **DEBTOR'S NOTICE OF MOTION AND  
MOTION FOR INTERIM AND FINAL  
ORDERS:**

15 (1) AUTHORIZING DEBTOR TO OBTAIN  
POST-PETITION REPLACEMENT TERM  
LOAN SECURED BY SENIOR LIEN  
PURSUANT TO 11 U.S.C. § 364 TO  
PAYOFF STATE BANK AND TRUST  
COMPANY;  
16 (2) AUTHORIZING DEBTOR'S USE OF  
CASH COLLATERAL PURSUANT TO 11  
U.S.C. § 363;  
17 (3) GRANTING ADEQUATE  
PROTECTION TO PREPETITION JUNIOR  
SECURED CREDITOR PURSUANT TO 11  
U.S.C. §§ 361, 362, 363, AND 364;  
18 (4) SCHEDULING FINAL HEARING ON  
MOTION; AND  
19 (5) GRANTING RELATED RELIEF;

20 **MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT THEREOF**

21 [Declarations of Shiekh S. Ellahi, Gerry Seli,  
22 and Anjum Shiekh filed separately]

23 Date: TO BE DETERMINED  
24 Time: TO BE DETERMINED  
25 Place: Courtroom 1368  
26 255 East Temple Street  
27 Los Angeles, CA 90012  
28

1 **TO THE HONORABLE VINCENT P. ZURZOLO, UNITED STATES**  
2 **BANKRUPTCY JUDGE, SECURED CREDITORS, THE OFFICIAL COMMITTEE OF**  
3 **UNSECURED CREDITORS, THE OFFICE OF THE UNITED STATES TRUSTEE, AND**  
4 **OTHER PARTIES IN INTEREST:**

5 **PLEASE TAKE NOTICE** that, on a date and at a time to be set by the Court pursuant to  
6 a concurrently-filed application for order to shorten time for notice of the hearing (the “OST  
7 Application”),<sup>1</sup> in Courtroom 1368 of the above-entitled Court, at 255 East Temple Street, Los  
8 Angeles, California 90012, before the Honorable Vincent P. Zurzolo, United States Bankruptcy  
9 Judge, Shiekh Shoes, LLC, a California limited liability company, the debtor and debtor in  
10 possession in the above-captioned chapter 11 bankruptcy case (the “Debtor”), will and hereby  
11 does move this Court (the “Motion”), on an expedited basis, for the entry of an interim order (the  
12 “Interim Order”) and a final order (the “Final Order”):

13 (1) authorizing the Debtor to obtain senior secured postpetition term loan in the principal  
14 amount of \$5,000,000 (the “Term Loan”), pursuant to section 364 of the Bankruptcy Code, from  
15 Anjum Shiekh (the brother of the Debtor’s principal, Shiekh S. Ellahi) (the “Term Lender”),  
16 pursuant to the terms of the Interim Order and that certain “Senior Secured Debtor in Possession  
17 Term Loan And Security Agreement” that is the subject of the Motion (the “Term Loan  
18 Agreement”), by and between the Debtor and the Term Lender in substantially the form attached  
19 hereto as Exhibit A (as the same may be amended, restated, supplemented or otherwise modified  
20 from time to time, the “Term Loan Agreement”), as a first stage of funding pending the Debtor’s  
21 procurement of a second stage of funding;

22 (2) authorizing the Debtor to use the Term Loan as and in an amount necessary to payoff  
23 the existing prepetition and postpetition senior secured debt of State Bank And Trust Company  
24

25 <sup>1</sup> Pursuant to the OST Application, the Debtor is seeking a hearing on the present motion for January 9,  
26 2017, at 1:00 p.m., the same date and time set for the final hearing on the Debtor’s motion to authorize the  
27 DIP financing arrangement with State Bank And Trust Company (and other motions in this case). Separate  
Court’s disposition of the OST Application.

1 ("State Bank"), the present pre-petition senior secured lender and postpetition lender under prior  
2 interim order of the Court;

3 (3) authorizing the Debtor to execute, deliver, and enter into the Term Loan Agreement  
4 and other related loan documents (collectively, the "Term Loan Documents") and to perform such  
5 other and further acts as may be required in connection with the Term Loan Documents;

6 (4) granting security interests, liens, and superpriority claims (including a superpriority  
7 administrative claim pursuant to section 364(c)(1) of the Bankruptcy Code, liens pursuant to  
8 sections 364(c)(2) and 364(c)(3) of the Bankruptcy Code, and priming liens pursuant to section  
9 364(d) of the Bankruptcy Code) to the Term Lender to secure all obligations of the Debtor under  
10 and with respect to the Term Loan, subject to the payment of: (i) fees of the United States Trustee  
11 as required under 28 U.S.C. § 1930(a)(6) fees (the "UST Fees"); and (ii) allowed fees and  
12 expenses of each of the Debtor's bankruptcy counsel, the Debtor's financial advisor, counsel for  
13 the Official Committee of Unsecured Creditors (the "Committee"), and the Committee's financial  
14 advisor (collectively, the "Professional Fees");

15 (5) approving the Debtor's proposed budget (which is in the process of being compiled and  
16 will be submitted to the Court in advance of the hearing on the Motion (the "Budget"));

17 (6) authorizing the Debtor's use of cash collateral to pay ordinary and necessary operating  
18 and administrative expenses pursuant to the Budget, with the provision: (a) for flexibility in  
19 connection with the Budget such that the Debtor may exceed the disbursements forecasted in the  
20 Budget by up to 20% on a line-by-line basis, and to exceed aggregate disbursements forecasted in  
21 the Budget by a total of 20%, measured on a cumulative weekly basis; and (b) that, to the extent  
22 any amount in a disbursement category is unused during a particular period, such amount be  
23 preserved and available for use in any subsequent period;

24 (7) granting adequate protection to Comvest Capital II, L.P., as administrative and  
25 collateral agent for itself and various lenders more specifically identified in the related prepetition  
26 credit agreement, and to such lenders (collectively, "Comvest"), whose liens and security interests  
27 are being primed by the Term Loan;

28 (8) modifying the automatic stay under section 362 of the Bankruptcy Code to the extent

1 necessary to implement, effectuate, and perform under the terms and provisions of the Term Loan  
2 Documents and the Interim Order;

3 (9) setting an expedited interim hearing (the “Interim Hearing”) on this Motion pursuant to  
4 Rule 4001 of the Federal Rules of Bankruptcy Procedure (“FRBP”) and applicable Local  
5 Bankruptcy Rules of this Court to consider entry of the Interim Order, which authorizes the  
6 Debtor to borrow under the Term Loan Documents up to an aggregate principal amount not to  
7 exceed \$5,000,000;

8 (10) finding that adequate notice of the Motion (specified below) has been provided;

9 (11) finding that any credit extended and loans made to, cash collateral used by, and  
10 adequate protection provided by the Debtor are in “good faith” pursuant to section 364(e) of the  
11 Bankruptcy Code;

12 (12) pursuant to FRBP 4001(b)(2) and 4001(c)(2), and applicable Local Bankruptcy Rules  
13 of this Court, (a) scheduling a final hearing (the “Final Hearing”) on the Motion to consider entry  
14 of the Final Order authorizing the Term Loan under the Term Loan Documents on a final basis,  
15 and (b) the approval of notice procedures with respect thereto;

16 (13) waiving any applicable stay, including under FRBP 4001(b) and (c), and authorizing  
17 the immediate effectiveness of the Interim Order; and

18 (14) granting related and ancillary relief.<sup>2</sup>

19 **BASIS FOR RELIEF SOUGHT**

20 The Motion is made pursuant to Local Bankruptcy Rules 4001-2 and 9075-1, Federal Rule  
21 of Bankruptcy Procedure, and sections 105(a), 361, 362, 363, 364, and 552(b)(1) of the  
22 Bankruptcy Code, on the following grounds:

23 When this case was filed on November 29, 2017 (the “Petition Date”), the Debtor had an  
24 immediate need for post-petition financing to acquire substantial product (primarily from Nike,

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26 <sup>2</sup> A more detailed description of the relief sought is set forth in the form of Interim Order (Exhibit B  
27 hereto). Any description of the Term Loan set forth in the foregoing recitation of relief sought is for  
informational purposes only. Any inconsistencies between such description and the actual terms laid out in  
the Interim Order and the Term Loan Documents (Exhibit A hereto), the latter documents control.

1 which this Court found to be a “critical vendor”) and otherwise finance ordinary costs of  
2 operations, make payroll, pay rent, pursue inventory clearance/store closing sales, and satisfy other  
3 working capital needs to take optimum advantage of the important holiday shopping season. At  
4 the time, after considering various potential funding sources, a postpetition secured credit facility  
5 from State Bank, the Debtor’s prepetition senior lender, was the only feasible source of financing  
6 that could be obtained and finalized within an acceptable period of time. The Court approved that  
7 DIP secured credit facility (the “State Bank DIP Facility”) on an interim basis. The Debtor has  
8 determined that retiring all debt owed to State Bank now through the Term Loan and funding  
9 operations with cash collateral pending the procurement of second stage financing is necessary  
10 and in the best interests of the Estate.

11 At the outset of this case, State Bank was owed approximately \$7,169,546.65 on account  
12 of its prepetition debt, secured by over \$35,000,000 of inventory at cost and a second trust deed on  
13 real property in Malibu, California, owned jointly by the Debtor’s principal and his brother (the  
14 “Malibu Residence”) with an estimated fair market value of \$30,000,000. Although State Bank  
15 was dramatically oversecured, the State Bank DIP Facility included various “milestones” and  
16 other requirements that the Debtor has not satisfied. In response, on December 21, 2017, State  
17 Bank issued a notice of default asserting that all obligations to State Bank will now bear interest at  
18 the default rate (currently 11.50%) and reserving its rights to exercise all remedies under the State  
19 Bank DIP Facility and related loan agreement (the “State Bank DIP Agreement”). Those  
20 additional rights and remedies include, for example: (i) suspending all lending, (ii) declaring all  
21 obligations immediately due and payable, (iii) requiring the Debtor to liquidate its assets to satisfy  
22 the obligations under the State Bank DIP Facility, (iv) entering the Debtor’s premises without  
23 notice, (v) using or licensing the Debtor’s intellectual property, and (vi) executing any additional  
24 rights of State Bank (as pre-petition senior lender) under the pre-petition senior loan agreement.

25 State Bank and the Debtor have discussed the option of ongoing financing under the  
26 existing State Bank DIP Facility. To proceed, however, State Bank has advised the Debtor of  
27 various fees, limitations, and requirements -- such as the continued accrual of interest at the  
28 default rate, the posting of the Cash Collateral Guaranty, potentially severe limitations on the

1 availability of funding for the Debtor, and the payment of a \$120,000 waiver and amendment fee -  
2 - that the Debtor believes render any such continued financing unworkable or less favorable than  
3 the presently proposed Term Loan.

4 As a result, the Debtor has determined that continued financing from State Bank on the  
5 terms expressed in discussions to date is no longer feasible or in the best interests of the Estate.  
6 Instead, the Debtor determined that it is in the best interests of the Estate to retire the State Bank  
7 Debt (which, as of January 9, 2018, is estimated to be less than \$4.0 million), close the existing  
8 State Bank DIP Facility, and, in the interim, fund operations through use of cash collateral  
9 pursuant to the Budget. There is no prepayment fee or penalty under the State Bank DIP Facility  
10 and State Bank has repeatedly advised the Debtor that it will work with the Debtor to facilitate a  
11 payoff.<sup>3</sup> The Debtor seeks to accomplish this goal through the following two stages of funding:

12 • First Stage: The \$5,000,000 Term Loan from the Term Lender that will be used to  
13 take-out State Bank, with the Debtor using cash collateral (as well as any balance that may remain  
14 from the Term Loan) to fund operations and administrative expenses. This loan will be secured by  
15 a senior lien on substantially all assets, subject to certain carve-outs.

16 • Second Stage: Either: (a) a \$10,000,000 loan from the refinance, sale, or other  
17 transaction involving the Malibu Residence; or (b) a secured DIP credit facility from a third party  
18 financing source in an amount necessary to fund operations and administrative expenses. The  
19 Debtor already has commenced a dual path to procure one of these two second stage funding  
20 mechanisms.

21 The Debtor believes this is the best course for the Debtor, the Estate, creditors, and this  
22 case. First, the Term Loan, payoff of the State Bank Debtor, and financing operations through  
23 cash collateral will avoid the adverse consequences of the Debtor's current default under the  
24 existing facility.

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25  
26 <sup>3</sup> The Debtor believes the payoff of State Bank can be accomplished through a smooth and cooperative  
27 process with State Bank. Indeed, despite defaults under the State Bank DIP Facility, State Bank has been  
working cooperatively with the Debtor (although, of course, this does come at a significant cost in terms of  
fees, interest, expenses, and other charges).

1       Second, this approach will avoid the costly default interest rate and other fees attendant to  
2 any ongoing use of the State Bank DIP Facility (including, but not necessarily limited to, accruing  
3 fees and costs of State Bank's attorneys and financial advisor) and, at best, severe restrictions that  
4 would be placed on the availability of funding. As described below, the Term Loan (as well as  
5 those of the contemplated second stage of financing) are much more favorable to the Estate.

6       Third, the Debtor believes it could fund operations without the State Bank DIP Facility  
7 through use of cash collateral (and any balance under the Term Loan that may remain after payoff  
8 of the State Bank Debt) for a period of time until the Debtor's procures the second stage of  
9 financing. This is especially true given that, among other factors, the Debtor has already reduced  
10 its operating expenses in a number of ways. With the assistance and consultation of DJM Realty,  
11 the Debtor has achieved rent reductions or other lease accommodations or concessions beneficial  
12 to the Estate from various landlords. To date, the Debtor has reached agreements or  
13 accommodations with various landlords, involving lease modifications/rent concessions. In  
14 addition, the Debtor has already or is in the process of rejecting 11 leases and is in the process of  
15 identifying further leases for potential rejection.

16       **NEED FOR INTERIM RELIEF ON EXPEDITED BASIS**

17       The Debtor needs the relief sought on an immediate basis for several reasons. First, by  
18 retiring the existing State Bank DIP Facility, pending the procurement of alternate financing, the  
19 Debtor requires the use of cash collateral to fund operations. The Debtor's uninterrupted use of  
20 cash collateral is critical to the continued operation of its retail stores, online sites, and overall  
21 business, conducting ongoing inventory clearance sales, and to maximize the value of the Estate.  
22 As a result, an interim order authorizing the Term Loan and the use of cash collateral on an  
23 expedited basis, followed by a final order, is necessary to avoid immediate and irreparable harm to  
24 the Debtor.

25       Second, absent an immediate hearing and entry of an order granting this Motion, the  
26 Debtor and the Estate: (i) will continue to accrue the high default rate interest under the State Bank  
27 DIP Facility; (ii) will continue to incur additional fees and costs of State Bank's professionals  
28 (including attorney and financial advisor fees and costs); (iii) will be at risk of State Bank

1 eliminating any availability under the State Bank DIP Facility, while at the same time conducting  
2 daily sweeps of the Debtor's collections; (iv) will remain at risk of State Bank taking further  
3 actions or exercising additional remedies available to it under the State Bank DIP Agreement that  
4 would be harmful to the Estate and this case; and (v) would not have access to sufficient cash to  
5 pay ordinary and necessary expenses essential to continuing its operations, which, in turn, would  
6 jeopardize the Debtor's prospects for a successful reorganization and/or its efforts to maximize the  
7 value of the Estate for the benefit of creditors. Consequently, without the Term Loan and the  
8 authority to use of cash collateral at least as early as January 9, 2017 (the current date of the final  
9 hearing for approval of the State Bank DIP Facility), the Debtor and its Estate would suffer  
10 immediate and irreparable harm.

11 **SUMMARY OF KEY TERMS OF TERM LOAN**

12 The Debtor provides the following information regarding key terms of the Term Loan:<sup>4</sup>

13 • **Borrower:** Shiekh Shoes, LLC (the Debtor, and sometimes referred to as  
14 "Borrower").

15 • **Term Lender:** Anjum Shiekh, the brother of Shiekh S. Ellahi (the Debtor's principal).

16 • **Term Loan Amount:** \$5,000,000.

17 • **Use of Proceeds And Purpose of Loan:** Replacement loan to take-out the existing  
18 prepetition and postpetition claims of State Bank and retire the State Bank DIP Facility. Any  
19 balance of the Term Loan remaining after payment of the State Bank Debt will be used to fund  
20 operations, together with cash collateral. While State Bank may be willing to waive defaults  
21 under and amend the State Bank DIP Facility, the Debtor believes availability of funding under an  
22 amendment would be severely restricted. Moreover, the Term Loan is designed avoid the fees,  
23 accruing default interest, and other costs and charges under the existing (or amended) State Bank  
24 DIP Facility pending the Debtor's procurement of a second plug of more substantial funding to

---

25  
26 <sup>4</sup> The following is only a summary of the key terms. Parties are directed to the Term Loan Agreement and  
27 the Interim Order for actual and complete terms of the Replacement Loan. In the event of any  
inconsistency between this summary (or any other summary or description in this Motion) and the Interim  
Order or Term Loan Agreement, the terms in the Interim Order shall control.

1 provide additional funding for the Debtor's operations and administrative expenses.

2       • **Interest Rate, Monthly Payments, And Fees:** Interest rate of 5.25% per annum.

3 Upon an Event of Default, the interest rate shall increase to 7.25%. Monthly payments of interest  
4 only. Term Lender's associated attorney's fees and costs to be paid with funds of Term Loan. No  
5 loan fees associated with the Term Loan.

6       • **Term:** Payable in full at the earlier of: (1) the first business day that is nine months  
7 after closing of the loan; (2) confirmation of a chapter 11 plan in this case; (3) conversion of the  
8 case to chapter 7; (4) dismissal of the case; or (5) appointment of a chapter 11 trustee in this case.

9       • **Collateral:** Priming lien on all of Borrower's prepetition and postpetition assets,  
10 junior only to: (a) permitted senior security interests that were valid and perfected as of the  
11 Petition Date, and (b) certain indemnification claims and related liens (if any) of State Bank until  
12 the deadline for the Committee to challenge State Bank's claim and liens set in the interim order  
13 on the State Bank DIP Facility expires, subject to the Weekly Advances (defined below), the  
14 Carve-Out (defined below) and payment of UST Fees and allowed Professional Fees.

15       • **Other Material Provisions of Interim Order:**

16           (a) Super-Priority Claim – Term Lender will have a super-priority claim to be paid  
17 ahead of all other administrative expense claims.

18           (b) Adequate Protection – Comvest will receive adequate protection in the form of  
19 replacement liens on the Debtor's inventory, fixtures, furniture, equipment, accounts receivable,  
20 and the proceeds thereof generated or acquired by the Debtor if and to the extent that: (i) the pre-  
21 petition security interest of Comvest is valid, enforceable, properly perfected, and unavoidable;  
22 and (ii) the Debtor's use of cash collateral results in diminution in the value of Comvest's  
23 collateral.

24           (c) Budget - Approval of the Budget, with the provision for flexibility in connection  
25 with the Budget such that the Debtor may exceed the disbursements forecasted in the Budget by  
26 up to 20% on a line-by-line basis, and to exceed aggregate disbursements forecasted in the Budget  
27 by a total of 20%, measured on a cumulative weekly basis. In addition, the Debtor requests that,  
28 to the extent any amount in a disbursement category is unused during a particular period, that

1 amount be preserved and available for use in any subsequent period.

2 (d) Carve-Out - As part of its request for approval of the Budget and authority to use  
3 cash collateral, the Debtor seeks a “carve out” from the Term Lender collateral for UST Fees and  
4 the allowed respective fees and costs of the Debtor’s bankruptcy counsel, the Debtor’s financial  
5 advisor, the Committee’s counsel, and the Committee’s financial advisor (the “Carve-Out”).

6 (e) Weekly Advances – Weekly advances shall be made as follows (collectively, the  
7 “Weekly Advances”): (i) \$35,000 for fees and costs of the Debtor’s bankruptcy counsel; (ii)  
8 \$35,000 for fees and costs of the Debtor’s financial advisor; (iii) \$30,000 for the fees and costs of  
9 the Committee’s bankruptcy counsel; and (iv) \$30,000 for the fees and costs of the Committee’s  
10 financial advisor.

11 • **Conditions Precedent:**

12 (a) Bankruptcy Order – The entry of an interim order granting the Motion.  
13 (b) Loan and Collateral Documents – The execution and delivery of a debtor in  
14 possession loan and security agreement and other loan and collateral documents that are  
15 acceptable to the Term Lender.

16 **EXHIBITS**

17 Attached hereto are the following: (A) Exhibit A: The form of Term Loan Agreement (and  
18 related documents); (B) Exhibit B: The form of Interim Order; (C) Exhibit C: December 21,  
19 2017, notice of default and reservation of rights from State Bank; (D) Exhibit D: December 29,  
20 2017, notice of default and reservation of rights from State Bank; and (E) Exhibit E: The required  
21 LBR Form F 4001-2.STMT.FINANCE required by LBR 4001-2(a).

22 **NOTICE OF THE MOTION**

23 The Debtor has or intends to provide notice of this Motion by overnight mail, e-mail,  
24 facsimile, or hand delivery on the following parties and/or to their counsel: (i) the Office of the  
25 United States Trustee (the “UST”); (ii) the Committee; (iii) State Bank; (iv) Comvest; (v) all other  
26 known parties with liens of record on assets of the Debtor as of the Petition Date; (vi) the Internal  
27 Revenue Service; (vii) all other parties required to receive notice under the Court’s order limiting  
28 notice; and (viii) any other party this Court directs receive notice of the Motion (collectively, the

1     “Notice Parties”).

2             This Motion is based upon these moving papers and exhibits hereto, the Budget, the  
3     accompanying memorandum of points and authorities, the concurrently-filed declaration of Shiekh  
4     S. Ellahi (the “Ellahi Declaration”), declaration of Gerry Seli (the “Seli Declaration”), and  
5     declaration of Anjum Shiekh (the “Shiekh Declaration”), the record in this case, the arguments and  
6     representations of counsel, and any other evidence or argument that may be presented prior to or at  
7     the hearing on this Motion.

8             **PLEASE TAKE FURTHER NOTICE THAT** any party opposing the relief requested in  
9     the Motion must file and serve a written opposition or other response no later than a date that will  
10    be included in a subsequent notice served following and based on the Court’s disposition the OST  
11    Application.

12             **PLEASE TAKE FURTHER NOTICE THAT**, pursuant to Local Bankruptcy Rule 9013-  
13    1(h), the failure to timely file and serve an opposition or other response to the Motion may be  
14    deemed by the Court to be consent to the relief requested in the Motion.

15             **WHEREFORE**, the Debtor respectfully requests that this Court: (1) grant the Motion on  
16    an interim basis and final basis; (2) provide the relief requested in the Motion on an interim basis  
17    and as more particularly described in the Interim Order (Exhibit B hereto); (3) enter the proposed  
18    form of Interim Order; (4) schedule a Final Hearing on the Motion to consider entry of a Final  
19    Order granting the relief requested in the Motion on a final basis; and (5) provide such other and  
20    further relief as is proper.

21     Dated: January 3, 2018

**SulmeyerKupetz**  
A Professional Corporation

23             By: /s/ Asa S. Hami

24                     David S. Kupetz

25                     Asa S. Hami

26                     Steven F. Werth

27                     Attorneys for Debtor and Debtor in Possession  
28                     Shiekh Shoes, LLC

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21	<i>In re C.E.N., Inc.,</i> 86 B.R. 303 (Bankr. D. Maine 1988) .....	20
22		
23	<i>In re Crouse Group, Inc.,</i> 71 B.R. 544 (Bankr. E.D.Pa. 1987) .....	21
24		
25	<i>In re Defender Drug Stores,</i> 126 B.R. 76 (Bankr. D. Ariz. 1991), <i>aff'd</i> 145 B.R. 312, 316 (B.A.P. 9th Cir. 1992) .....	19
26		
27	<i>In re Dynaco Corp.,</i> 162 B.R. 389 (Bankr. D. N.H. 1993) .....	26
28		
	<i>In re Ellingsen MacLean Oil Co.,</i> 834 F.2d 599 (6th Cir. 1987) .....	19
	<i>In re Heatron, Inc.,</i> 6 B.R. 493 (Bankr. W.D. Mo. 1980) .....	26
	<i>In re Hoffman,</i> 51 B.R. 42 (Bankr. W.D. Ark. 1985) .....	26

1	<i>In re Hubbard Power &amp; Light,</i> 202 B.R. 680 (Bankr. E.D.N.Y. 1996) .....	24
2	<i>In re McGowan,</i> 6 B.R. 241 (Bankr. E.D. Pa. 1980) .....	25
4	<u><i>In re Mickler,</i></u> 9 B.R. 121, 123 (Bankr. M.D. Fla. 1981) .....	24
5	<i>In re Photo Promotion Associates, Inc.,</i> 87 B.R. 835 (Bankr. S.D.N.Y. 1988), <i>aff'd</i> , 881 F.2d 6 (2d. Cir. 1989) .....	19
7	<i>In re Pine Lake Village Apartment Co.,</i> 16 B.R. 750 (Bankr. S.D.N.Y. 1981) .....	26
8	<i>In re Planned System, Inc.,</i> 78 B.R. 852 (Bankr. S.D. Ohio 1987) .....	24
10	<i>In re Simasko Production Co.,</i> 47 B.R. 444 (D. Colo. 1985) .....	18
11	<i>In re Snowshoe Co.,</i> 789 F.2d 1085 (4th Cir. 1986) .....	22
13	<i>In re Stein,</i> 19 B.R. 458 (Bankr. E.D. Pa. 1982) .....	26
15	<i>In re T.M. Sweeney &amp; Sons LTL Services, Inc.,</i> 131 B.R. 984 (Bankr. N.D.Ill. 1991) .....	19
16	<i>Pistole v. Mellor (In re Mellor),</i> 734 F.2d 1396 (9th Cir. 1984) .....	25
18	<i>Richmond Leasing Co. v. Capital Bank N.A.,</i> 762 F.2d 1303 (5th Cir. 1985) .....	28
19	<i>United Savings Ass'n of Texas v. Timbers of Inwood Forest Assocs., Ltd.,</i> 484 U.S. 365, 108 S. Ct. 626, 98 L. Ed. 2d 740 (1988) .....	27, 28
21	<b><u>STATUTES</u></b>	
23	11 U.S.C. § 361(1) .....	24
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26	11 U.S.C. § 363(m) .....	20
27	11 U.S.C. § 364(a) .....	22

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2	11 U.S.C. § 364(c) .....	18, 19
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8	11 U.S.C. § 364(d) .....	15, 19
10	11 U.S.C. § 364(d)(1).....	14, 18, 19
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13	11 U.S.C. § 364(e) .....	15, 23
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16	11 U.S.C. § 506(a)(1).....	27
18	11 U.S.C. § 1107(a) .....	18
20	<b><u>RULES</u></b>	
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## **MEMORANDUM OF POINTS AND AUTHORITIES<sup>1</sup>**

I.

## **FACTS**

## A. Brief Background

## 1. The Debtor

The Debtor is a retailer of footwear, apparel, and accessories, with its corporate headquarters in Ontario, California. Founded in 1991, as of the Petition Date, the Debtor was operating 124 specialty retail stores (under 126 leases) across ten states (California, Arizona, Nevada, Texas, Washington, Oregon, New Mexico, Illinois, Michigan, and Tennessee), as well as various websites. All of the Debtor's store locations are leased.

## 2. Assets

The Debtor's primary assets include: (a) inventory, which has an estimated current retail value in the aggregate of approximately \$62,417,186 and approximately \$33,804,413 at cost; (b) fixtures, furniture, and equipment with an aggregate estimated book value of approximately \$11,311,083 (as of October 2017); and (c) trademarks and various intellectual properties with an estimated value of approximately \$250,000.

### 3. Liabilities

As of the Petition Date, the Debtor had secured debt in the aggregate amount of approximately \$17,169,546 held by two parties (although the claim of the junior secured claimant is disputed).

As of the Petition Date, the Debtor's top 20 general unsecured creditors held claims in the aggregate of approximately \$24,745,201 owed to various trade vendors, suppliers, and other parties (certain claims of which are disputed, contingent, and unliquidated). In addition, the Debtor's founder and Chief Executive Officer (Shiekh S. Ellahi) extended a \$15 million unsecured credit facility to the Debtor in January 2015.

<sup>1</sup> Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the motion to which this memorandum of points and authorities is appended.

1 **B. The Debtor's Prepetition Secured Debt Structure**

2 **1. State Bank (Prepetition Senior Facility)**

3 On March 17, 2017, the Debtor and State Bank (at the time, AloStar Bank of Commerce)  
4 entered into that certain “Loan And Security Agreement” (the “State Bank Prepetition Loan  
5 Agreement”). The State Bank Prepetition Loan Agreement provided the Debtor with maximum  
6 borrowings of \$20,000,000 under a secured revolving credit facility (the “Revolver”).

7 Concurrently with the State Bank Prepetition Loan Agreement, the Debtor also executed a  
8 Revolver Note (the “Note”) for the principal sum of \$20,000,000, with such amount or such lesser  
9 sum as may constitute the outstanding principal amount of the Revolver, due and payable no later  
10 than March 17, 2020.

11 The Revolver was secured by: (1) a first priority lien on substantially all of the Debtor’s  
12 assets, including, but not limited to, inventory; and (2) second priority deed of trust on the Malibu  
13 Residence, residential real property at 609 Palisades Beach Road, Santa Monica, CA 90402, that  
14 Ellahi owns jointly with his brother (the current Term Lender). The Debtor believes the Malibu  
15 Residence has a current estimated fair market value of approximately \$30,000,000, with a first  
16 priority mortgage securing obligations of approximately \$3.7 million.

17 As of the Petition Date, (i) the Debtor was indebted to State Bank on account of the  
18 prepetition secured loan in the aggregate principal amount of approximately \$7,169,546, and (ii)  
19 as noted above, the value of the collateral dramatically exceeded the amount of this prepetition  
20 obligation.

21 **2. Comvest (Prepetition Junior Facility)**

22 On March 17, 2017, the Debtor (as borrower), Karmaloop (as lender), and Comvest  
23 Capital II, L.P. (as administrative and collateral agent for itself and Karmaloop) entered that  
24 certain “Credit Agreement” (the “Comvest Prepetition Loan Agreement”), pursuant to which  
25 Comvest agreed to extend a term loan to the Debtor in an aggregate principal amount of  
26 \$10,000,000. The Comvest Prepetition Loan Agreement converted certain preferred equity  
27 interests received in connection with the Debtor’s earlier purchase of the Karmaloop business to a  
28 secured term loan (the “Comvest Loan”). Comvest asserts that the Comvest Loan is secured by a

1 second priority lien on substantially all of the Debtor's assets.

2 As of the Petition Date, the Debtor believes the asserted claim of Comvest under the  
3 Comvest Loan is \$10,000,000. However, for the reasons set forth in the "first day" omnibus  
4 declaration of Shiekh S. Ellahi (the "Omnibus Declaration"), the Debtor disputes the Comvest  
5 claim in its entirety. The Debtor has both sought to engage Comvest in settlement discussions and  
6 is preparing a complaint seeking, among other forms of relief, disallowance of Comvest's claim  
7 avoidance of its asserted lien.

8 **C. Summary of Restructuring Goals And Means of Maximizing The Value of The Estate**

9 On November 29, 2017, the Debtor filed its voluntary petition for relief under chapter 11  
10 of the Bankruptcy Code. The Debtor continues to operate its business and manage its affairs as a  
11 debtor in possession in this case.

12 Various challenges relating to particular investments the Debtor made in connection with  
13 its operations, declining store revenues due to the rise of e-commerce, the generally weakening  
14 retail environment (among other financial and operational issues), have made it increasingly  
15 difficult for the Debtor to turn a profit in recent years. As a result, with a growing liquidity crisis,  
16 and a need for reorganization, the Debtor filed this chapter 11 case.

17 The Debtor commenced this reorganization case in order to pursue implementation of a  
18 restructuring of its operations, leases, and debt. The Debtor believes that a successful overall  
19 reorganization would maximize the value of the Estate, provide for payment to unsecured  
20 creditors, and allow the Debtor to emerge from chapter 11 with a reorganized and viable ongoing  
21 business. However, a successful restructuring that maintains the Debtor's current business model  
22 may likely require cooperation of certain stakeholders in the Debtor, including certain suppliers  
23 and landlords. Among the means of achieving its restructuring goals is the Debtor's pursuit of  
24 inventory clearance/store closing sales at certain retail stores (the "Store Closing Sales"), the  
25 rejection of various leases, and negotiations with landlords for lease modifications, rent  
26 reductions, or other lease concessions.

27 To this end, on November 29, 2017, the Debtor filed an emergency "first day" motion to  
28 authorize the Debtor to conduct the Store Closing Sales (with the assistance of Gordon Brothers

1 Retail Partners, LLC, an outside consultant expert at conducting such sales) at 31 of its stores  
2 through the holiday season. These are the stores the Debtor had determined at that time needed to  
3 be closed, following the inventory clearance sales (although the Debtor continues to negotiate with  
4 certain landlords of these stores that may permit the Debtor to maintain the store).

5 On December 1, 2017, this Court entered an interim order granting the Debtor's Store  
6 Closing Sales motion. The final hearing is set for January 9, 2018. The Debtor believes that  
7 under any scenario such inventory clearance sales will advance the goal of maximizing the value  
8 of the Estate and benefit creditors. It may become necessary for additional stores to be closed.  
9 The Store Closing Sales are in progress and the Debtor anticipates they will be completed in  
10 January 2018.

11 The Debtor also filed two separate motions relating to the rejection of multiple leases.  
12 First, on November 29, 2017, the Debtor filed a motion to reject two store leases in San Diego,  
13 California, and Portland, Oregon, respectively. On December 1, 2017, this Court entered an order  
14 granting that motion.

15 Second, on December 6, 2017, the Debtor filed a motion for an order authorizing the  
16 Debtor to reject a number of leases identified in that motion pursuant to a proposed notice  
17 procedure. Following various objections raised by certain landlords and the Committee, the  
18 Debtor reached an agreement with the Committee regarding the rejection of certain of those leases  
19 and a procedure for the rejection of other leases subject to that motion.

20 On December 27, 2017, the Debtor and the Committee entered into a stipulation  
21 documenting their agreement (the "Lease Rejection Stipulation"). The Court approved the Lease  
22 Rejection Stipulation, pursuant to which the Debtor rejected 11 leases that the Debtor identified  
23 earlier.

24 In addition, the Debtor is in the process of identifying further leases for potential rejection  
25 either under the procedures developed with the Committee in the Lease Rejection Stipulation or  
26 through standard motion practice.

27 Further, since commencement of this case, the Debtor has engaged in discussions and  
28 negotiations with its landlords. In this regard, the Debtor retained DJM Realty Services, LLC,

1 d/b/a Gordon Brothers Real Estate, to assist the Debtor with such negotiations in the hope of  
2 restructuring and mitigating landlord claims, as well as to develop exit strategies in respect of the  
3 leases intended for rejection. To date, the Debtor has reached agreements for lease modifications  
4 or rent reductions with various landlords.

5 **D. Critical Vendor Nike**

6 The Debtor is a longtime customer of Nike. Nike is the Debtor's critical, key supplier and  
7 vendor. Indeed, Nike's products account for more than 60% of the Debtor's gross revenues. For  
8 approximately 25 years, Nike shipped product to the Debtor on credit (like most vendors), which  
9 the Debtor paid down monthly. Nike holds the largest unsecured claim against the Debtor. As of  
10 the Petition Date, Nike asserted a general unsecured trade vendor claim in the sum of  
11 approximately \$16,040,021.01, much of which was past due.

12 Nike product is also essential to the Debtor's current overall business model. In early  
13 2015, the Debtor commenced store remodels according to various Nike designs and specifications.  
14 As of the Petition Date, the Debtor had remodeled 61 of its 124 stores at a cost of approximately  
15 \$30 million.

16 The Debtor does not believe it would be in a position to successfully reorganize its affairs  
17 in a manner that maintains its current product presentation, product mix, and overall business  
18 concept and operations absent Nike's continued supply of products and its cooperation in this  
19 case. With the holiday season at hand at the time the Debtor filed this case, the Debtor needed the  
20 immediate shipment of Nike products to ensure the Debtor had sufficient time to receive,  
21 catalogue, and properly display the products at the Debtor's various stores and to otherwise be in a  
22 position to leverage and take full advantage of the holiday season.

23 In anticipation of the filing of the present bankruptcy case, the Debtor and Nike engaged in  
24 extensive negotiations to reach an agreement under which Nike would continue supplying the  
25 Debtor with product immediately. As a result of those negotiations, the parties entered an  
26 agreement under which the Debtor would commence payments to Nike on account of its pre-  
27 petition debt as a critical vendor, in exchange for Nike's resumption of shipments to the Debtor on  
28 credit terms, with all outstanding indebtedness owed to Nike afforded superpriority administrative

1 status (the “Nike Agreement”).

2 The Nike Agreement requires the Debtor tender to Nike \$4,000,000 for every \$3,000,000  
3 in product it purchases (with \$1,000,000 of the \$4,000,000 going to pay down Nike’s pre-petition  
4 debt). The product was essential to the Debtor’s current business, maintenance of its going  
5 concern value, and overall profitability, especially given the Debtor’s significant investment in  
6 aligning its stores and business model with the Nike brand.

7 On November 29, 2017, the Debtor filed an emergency “first day” motion for interim and  
8 final orders authorizing the Debtor to approve the Nike Agreement, pay Nike’s prepetition claim  
9 as a critical vendor and to otherwise enter and perform under the Nike Agreement (the “Nike  
10 Motion”). On December 1, 2017, following a “first day” hearing, and recognizing that Nike was a  
11 legitimate critical vendor, this Court entered an interim order granting the Nike Motion. A final  
12 hearing on the Nike Motion currently is set for January 9, 2018.

13 **E. The State Bank DIP Facility**

14 **1. Immediate Need For DIP Funding**

15 Due to the Debtor’s financial condition at or about the time this case was filed, the Debtor  
16 required funding to maintain its business and preserve the value of its assets and to otherwise  
17 operate its business.

18 At the initial hearing conducted by the Court in this case on November 30, 2017, at which  
19 time the Court approved the DIP Credit Facility with State Bank on an interim basis, counsel for  
20 the Debtor advised the Court that with the holiday sales season already under way and considering  
21 the Debtor’s urgent need to acquire Nike product under the terms of the critical vendor agreement  
22 with Nike (also approved on an interim basis at the November 30<sup>th</sup> hearing), it was necessary for  
23 the Debtor to obtain access to the DIP Credit Facility since the Debtor had not yet been able to line  
24 up other financing. Counsel for the Debtor also advised at that hearing that if the Court was not  
25 inclined to approve the Nike agreement, the Debtor did not want to enter into the DIP Credit  
26 Facility (and could operate, at least on an interim basis, through the use of cash collateral). The  
27 Court granted interim approval of both the DIP Credit Facility and the Nike agreement at the  
28 November 30, 2017 hearing.

1           In the lead up to the filing of this case, the Debtor and State Bank engaged in intensive  
2 discussions and negotiations regarding the Debtor's cash position, financial condition, cash needs,  
3 and the Debtor's overall need for financing. At various points during this process, the negotiations  
4 and potential financing arrangements fell through, with State Bank freezing the Debtor's line of  
5 credit and precluding it from accessing much-needed cash.

6           After intense negotiations, State Bank agreed to provide the State Bank DIP Facility. On  
7 November 29, 2017, the Debtor filed an emergency "first day" motion to approve the facility (the  
8 "DIP Financing Motion"). On December 1, 2017, the court entered an interim order on the DIP  
9 Financing Motion, and set a final hearing for January 9, 2018.

10           **2.        Summary of Terms of State Bank DIP Facility**

11           Under the State Bank DIP Agreement, State Bank agreed to provide the Debtor with a  
12 \$16.0 million DIP facility to be used to: (a) finance transaction fees, expenses, costs, and  
13 expenditures per an approved budget; and (b) pay fees and expenses associated with the facility.

14           Under the State Bank DIP Facility, non-default interest rate accrues at an amount equal to  
15 the Wall Street Journal U.S. prime rate (currently 4.50%) plus 5.0% per annum, with a default  
16 margin of 2.0% per annum. Other terms and conditions of the State Bank DIP Facility are set  
17 forth in detail in the State Bank DIP Agreement and related interim order, with a summary of the  
18 key terms set forth in the related DIP Financing Motion.

19           The State Bank DIP Facility imposed various requirements and milestones, with non-  
20 compliance serving as an event of default. A few are described below.

21           a.        Cash Management System

22           Prepetition, the Debtor operated its business with approximately 50 accounts at Alostar  
23 Bank of Commerce (now State Bank) and Bank of America ("BOFA"). For reasons discussed in  
24 the Omnibus Declaration, the BOFA accounts were held in Ellahi's individual name. Per the State  
25 Bank DIP Facility, the Debtor was required to modify its cash management system as follows: (i)  
26 Transfer all accounts in Ellahi's name to the Debtor's name; (ii) Maintain a single account with  
27 State Bank into which all of the Debtor's collections would be automatically swept on a daily  
28 basis for State Bank; and (iii) Place a deposit account control agreement ("DACA") for State

1 Bank's benefit on the Debtor's main deposit account at BOFA by December 15, 2017.

2 Since before and immediately after entry of the interim order approving the State Bank  
3 DIP Facility, the Debtor worked on implementing these changes. Unfortunately, the Debtor's  
4 diligent efforts were delayed as a result of BOFA's policies and procedures and the Debtor was  
5 unable to complete these changes by the deadlines set forth in the State Bank DIP Agreement or  
6 interim order.

7 The Debtor no longer utilizes any accounts in Ellahi's individual name and the Debtor has  
8 opened a business deposit account with a standing sweep order for State Bank's benefit; however,  
9 despite prior representations from BOFA to the contrary, on December 18, 2017, BOFA informed  
10 the Debtor that it would not allow a DACA on the BOFA deposit account.

11 b. Real Estate Milestones

12 The State Bank DIP Agreement also required Ellahi to provide State Bank with a  
13 \$10,000,000 cash collateral guaranty (the "Cash Collateral Guaranty"). The Malibu Residence  
14 was identified as the collateral to raise the necessary funds for this guaranty in accordance with  
15 various milestones (collectively, the "Real Estate Milestones").

16 3. Default Notices And Reservation of Rights

17 On December 21, 2017, State Bank sent a notice of default and reservation of rights to the  
18 Debtor asserting that "Events of Default existing under the Loan Agreement and Interim Order"  
19 on the grounds that: (a) not all bank accounts used by the Debtor were maintained in the Debtor's  
20 name as of December 1, 2017; (b) no "standing transfer orders" were in place to automatically  
21 sweep the Debtor's deposit account; and (c) the Debtor did not satisfy one of the Real Estate  
22 Milestones. *See Exhibit C* hereto.

23 As a result, State Bank advised that "the Obligations will bear interest at the Default Rate  
24 [currently 11.50%] effective as of December 21, 2017." Further, State Bank "reserve[d] the right  
25 to exercise all of its rights and remedies under the Interim Order, the Loan Agreement and the  
26 other Loan Documents." Those rights and remedies include: (i) suspending all lending, (ii)  
27 declaring all obligations immediately due and payable, (iii) requiring the Debtor to liquidate its  
28 assets to satisfy the obligations under the State Bank DIP Facility, (iv) entering the Debtor's

1 premises without notice, (v) using or licensing the Debtor's intellectual property, and (vi)  
2 executing any additional rights of State Bank (as prepetition senior lender) under the prepetition  
3 senior loan agreement.

4 On December 29, 2017, State Bank issued a second notice of default and reservation  
5 rights. This notice asserted the Debtor was in further default under the State Bank DIP Facility for  
6 failure to remain in "Substantial Compliance" with the "Approved Budget" (as those terms are  
7 defined in the State Bank DIP Agreement and Interim Order, respectively). *See Exhibit D* hereto.  
8 State Bank again reserved its rights to exercise any of its rights and remedies.

9 **4. Negotiations For Continued Financing**

10 With State Bank having called a default, the Debtor and State Bank engaged in discussions  
11 regarding funding going forward. Whereas State Bank indicated a willingness to proceed with a  
12 final order on the State Bank DIP Facility and potentially a waiver and amendment agreement, the  
13 Debtor did not believe certain terms and conditions were feasible or otherwise as favorable to the  
14 Debtor and the Estate than the proposed replacement financing through the two-stage funding  
15 discussed in this Motion.

16 For example, while continued financing from State Bank might be possible despite the  
17 defaults, the Debtor believes that any continued financing of the Debtor would: (a) be severely  
18 restricted and would provide the Debtor with limited funding availability; (b) require a \$120,000  
19 waiver and amendment fee (the "Forbearance Fee"); (c) still require Ellahi satisfy the Real Estate  
20 Milestones within relatively short extended deadlines; and (d) all obligations under the State Bank  
21 DIP Facility currently would continue to accrue interest at the default rate, in addition to the  
22 substantial fees and costs already being incurred under the State Bank DIP Facility (some of which  
23 are referenced in the Committee's objection to final approval of the State Bank DIP Facility).

24 The restricted availability of funding, if any, going forward with State Bank, combined  
25 with the Forbearance Fee and high default interest, and other related fees and costs (such as State  
26 Bank's attorney and financial advisor fees and costs), make it necessary to conclude the financing  
27 arrangement with State Bank. In other words, the Debtor believes that proceeding with State  
28 Bank, rather than with the proposed take-out Term Loan (followed by a second plug of funding),

1 would only serve to delay (rather than avoid) a further round of defaults and increase the risk of  
2 State Bank taking further, more aggressive action in exercising its rights and remedies to the  
3 detriment of the Estate (even though, to date, State Bank has been cooperative with the Debtor  
4 despite the defaults).

5 **5. Objections to State Bank DIP Facility**

6 To date, multiple parties filed objections to final approval of the State Bank DIP Facility.  
7 In addition to limited objections from various landlords and Comvest, the Committee filed  
8 extensive objections on many grounds. *See* Dkt. Nos. 235, 236, and 237. While the Debtor is not  
9 intending to express agreement or disagreement with such objections in this Motion, the Debtor  
10 desires to work with State Bank to pay off outstanding obligations to State Bank and requires the  
11 Term Loan to accomplish this goal.

12 **II.**

13 **THE REPLACEMENT FINANCING AND USE OF CASH COLLATERAL**

14 **A. The Debtor's Immediate Need For The Replacement Term Loan**

15 As discussed above, the Debtor is in default under the existing State Bank DIP Facility.  
16 As a result, since December 21, 2017, the Debtor's obligations under that facility have been  
17 accruing interest at the default rate. Moreover, State Bank has reserved its rights to exercise any  
18 and all additional rights and remedies, which include, for example: (i) suspending all lending, (ii)  
19 declaring all obligations immediately due and payable, (iii) requiring the Debtor to liquidate its  
20 assets to satisfy the obligations under the State Bank DIP Facility, (iv) entering the Debtor's  
21 premises without notice, (v) using or licensing the Debtor's intellectual property, and (vi)  
22 executing any additional rights of State Bank (as pre-petition senior lender) under the pre-petition  
23 senior loan agreement. Any such actions would paralyze or force a shutdown or liquidation of the  
24 Debtor's operations.

25 State Bank has indicated a potential willingness to proceed with final approval of the DIP  
26 financing, together with a limited waiver of the defaults. Nevertheless, as noted above, even if  
27 State Bank is will to waive defaults and amend the State Bank DIP Facility, the Debtor believes  
28 any such amendment would result is restricted and very limited availability of funding going

1 forward, and would require the Debtor's payment of a sizeable Forbearance Fee, continued accrual  
2 of the high default rate interest, and the satisfaction of the Real Estate Milestones by relatively  
3 tight deadlines. Aside from the added cost and fees of continued financing with State Bank, the  
4 failure to meet the Real Estate Milestones would only increase the risk of State Bank taking  
5 further actions upon any future default.

6 As a result, with a final hearing on the prior DIP Financing Motion set for January 9, 2018,  
7 an interim order authorizing the Term Loan and the use of cash collateral on an expedited basis  
8 (also by January 9, 2018, to avoid the need for final approval on the State Bank DIP Facility),  
9 followed by a final order, is necessary to avoid immediate and irreparable harm to the Debtor.  
10 The Debtor believes that it could fund operations and administrative expenses -- including the  
11 purchase of sufficient product, making payroll, and paying rent, shippers, vendors, utility  
12 providers, and other ordinary course expenses to sustain operations -- with the first stage Term  
13 Loan and cash collateral until the Debtor procures and finalizes the second stage of funding  
14 (discussed below).

15 This is especially true given that, among other factors: (a) the busy holiday season and  
16 need for increased product is coming to a close; (b) the Debtor has already shed some of its  
17 unprofitable stores through the rejection of multiple leases; (c) the Debtor has reached agreements  
18 or understandings with various landlords for lease modifications, rent concessions, and/or other  
19 related accommodations that reduce the Debtor's operating expenses or otherwise increase or  
20 allow for the profitability of various stores; and (d) the Debtor expects to achieve such lease and  
21 rent accommodations with other landlords regarding other leases in the near future as the Debtor,  
22 together with its Court-approved real estate consultant (DJM Realty), continues to negotiate with  
23 landlords.

24 **B. Stages And Terms of Funding**

25 **1. First Stage Funding (the Term Loan)**

26 After several weeks of searching for and consideration of potential replacement financing  
27 in light of the defaults under the State Bank DIP Facility in an effort to avoid the consequences of  
28 the defaults, Ellahi's brother (Anjum Shiekh) agreed to lend the Debtor up to \$5,000,000 as a

1 senior secured debtor in possession loan. The Term Lender has access to sufficient funds to make  
2 the loan, and is presently ready, willing, and able to fund the Term Loan. *See Anjum Shiekh*  
3 Declaration.

4 This Term Loan will be used to retire the existing State Bank Debt and related State Bank  
5 DIP Facility. The State Bank Debt is, as of January 9, 2018, estimated to be less than \$4.0  
6 million. Any excess funds under the Term Loan remaining after payment of the State Bank Debt  
7 will be used, together with cash collateral, to fund the Debtor's operations and administrative  
8 expenses. The Term Loan will be secured by a senior priming lien on the Debtor's assets, subject  
9 to the Carve-Out and payment of the Weekly Advances.

10 The Term Loan will accrue interest at 5.25%, with monthly interest only payments,  
11 payable in full at the earlier of: (1) the first business day that is nine months after closing of the  
12 loan; (2) confirmation of a chapter 11 plan in this case; (3) conversion of the case to chapter 7; (4)  
13 dismissal of the case; or (5) appointment of a chapter 11 trustee in this case. The Term Lender's  
14 reasonable attorney's fees and costs will be with the Term Loan, but no loan fees will be assessed  
15 as part of the Term Loan.

16 **2. Second Stage Funding**

17 The Term Loan represents the first stage of funding, pending the Debtor's procurement of  
18 a second stage of financing. This second stage of financing will come in the form of either: (a) the  
19 refinancing, sale, or other transaction involving the Malibu Residence; or (2) a separate secured  
20 DIP credit facility from a third party lender. Assuming payoff of State Bank with the Term Loan,  
21 the Malibu Residence will have secured obligations of only approximately \$3,700,000 on account  
22 of a first priority deed of trust in favor of Bank of America.

23 With respect to any second stage financing from a third party source, over recent weeks,  
24 the Debtor has engaged in discussions with and solicited proposals from several third party  
25 funding sources for a DIP credit facility. The Debtor has received several proposals. Those  
26 proposals, however: (a) were not as favorable to the Debtor as the Term Loan; and (b) included  
27 various conditions precedent and due diligence periods that likely would drag the process out  
28 beyond an acceptable period in which to take out the State Bank DIP Facility and avoid the

1 accruing default interest, fees, and other looming risks associated with the Debtor's defaults under  
2 that facility. As a result, although the Debtor continues to pursue this potential option for the  
3 second stage of funding, the Debtor determined that the best course of action at the present time  
4 was to obtain the Term Loan now. The Term Loan is sufficient to payoff the State Bank Debt  
5 (estimated as of January 9, 2018) and, together with cash collateral, fund operations until the  
6 Debtor obtains the subsequent stage financing.

7 The Debtor will file the necessary motion or other papers to obtain approval of any second  
8 stage funding when finalized and otherwise necessary and appropriate.

9 **C. Inability to Obtain Financing on More Favorable Terms**

10 The Debtor believes the proposed Term Loan is extremely favorable both in respect of the  
11 current and any proposed final DIP financing through State Bank, as well as any proposed  
12 financing from third party sources that the Debtor has received to date.

13 Both shortly before and after State Bank's issuance of its first notice of default and  
14 reservation of rights letter to the Debtor, the Debtor attempted to locate take-out or other  
15 replacement financing from various sources. Those sources included the current Term Lender  
16 (Ellahi's brother) and, at least, two other third party prospective DIP financiers. The Debtor  
17 continues to pursue discussions and proposals from such third party sources for the second stage  
18 funding. However, the Debtor has been unable to obtain the requisite financing from sources  
19 other than the Term Lender on terms and subject to conditions more favorable than under the  
20 Term Loan Agreement, and that the Debtor believes realistically could close within the necessary  
21 expedited timeframe.

22 Based on the Debtor's attempt to locate alternative financing, the potential funding options  
23 from other parties offered higher interest rates (both in respect of regular and default rates of  
24 interest), included various forms of fees (such as closing fees, unused line fees, prepayment fees,  
25 and other administrative fees), none of which is present under the Term Loan, and included many  
26 conditions precedent and open items that would drag the process out beyond the current January 9,  
27 2018, hearing date for final approval of the State Bank DIP Facility and beyond an otherwise  
28 acceptable period of time to meet the Debtor's cash needs while immediately stopping the accrual

1 of default interest and risk of State Bank taking more aggressive actions.

2 The Debtor recognizes that DIP financing from institutional lenders generally contain such  
3 types of terms and conditions, and anticipates that any second phase of funding from third party  
4 institutional sources may contain such terms and conditions. The fact remains, however, that none  
5 is as favorable to the Debtor as the current Term Loan, which is sufficient to meet the Debtor's  
6 needs at this time. Furthermore, the Term Loan does not contain and avoids the issues and  
7 concerns raised by each of the Committee and various landlord parties in their respective  
8 objections to entry of a final order on the State Bank DIP Facility.

9 Given the Debtor's current financial condition and capital structure, the Debtor is unable to  
10 obtain (i) adequate unsecured credit allowable either (a) under sections 364(b) and 503(b)(1) of the  
11 Bankruptcy Code or (b) under section 364(c)(1) of the Bankruptcy Code, (ii) adequate credit  
12 secured by (x) a senior lien on unencumbered assets of its estate under section 364(c)(2) of the  
13 Bankruptcy Code and (y) a junior lien on encumbered assets under section 364(c)(3) of the  
14 Bankruptcy Code, or (iii) secured credit under section 364(d)(1) of the Bankruptcy Code, from  
15 sources other than the Term Lender on more favorable terms than those of the Term Loan. All  
16 other potential financing sources required the same types of security as those required by the Term  
17 Lender, albeit with the additional terms and conditions that render the Term Loan most favorable.

18 The only source of secured credit available to meet the Debtor's current needs and on an  
19 immediate basis is the Term Loan. The Debtor requires both additional financing under the Term  
20 Loan and the use of cash collateral in order to satisfy its current post-petition liquidity needs.  
21 After considering all of its alternatives, the Debtor has concluded, in an exercise of its sound  
22 business judgment, that the funding to be provided through the Term Loan pursuant to the terms in  
23 the Interim Order and the Term Loan Agreement represents the best financing presently available  
24 to the Debtor.

25 The Term Lender has indicated a willingness to provide the Debtor with a loan, but solely  
26 on the terms and conditions set forth in the Interim Order and the Term Loan Agreement. Among  
27 other terms set forth in such documents, the Debtor was unable to obtain credit from the Term  
28 Lender without providing it with various protections, including the granting of security interests,

1 liens, and superpriority claims (including a superpriority administrative claim pursuant to section  
2 364(c)(1) of the Bankruptcy Code, liens pursuant to sections 364(c)(2) and 364(c)(3) of the  
3 Bankruptcy Code (the “Postpetition Liens”), and priming liens pursuant to section 364(d) of the  
4 Bankruptcy Code) to secure all obligations of the Debtor under and with respect to the Term Loan.

5 In short, none of the other potential financing alternatives is as favorable to the Debtor as  
6 the Term Loan and none is able to close as quickly as the Term Loan to immediately stop the  
7 accrual of default interest and related risks of maintaining the State Bank DIP Facility. Therefore,  
8 after considering all of its current alternatives, the Debtor has properly concluded that the loan  
9 from the Term Lender represents the best source of funding presently available to the Debtor.

10 **D. Good Faith Finding**

11 As noted above, the Term Lender is Ellahi’s brother. The Term Lender has consulted with  
12 separate counsel to provide him with advice and counsel with respect to the Term Loan.  
13 Moreover, as discussed above, the terms of the Term Loan are extremely favorable to the Debtor  
14 in isolation and in comparison to the terms of the current State Bank DIP Facility and other  
15 proposals the Debtor has received to date.

16 Thus, the Debtor believes that any credit extended or loan made by the Term Lender will  
17 be in “good faith” within the meaning of section 364(e) of the Bankruptcy Code.

18 **E. The Budget**

19 **1. Approval of Budget**

20 The Debtor seeks to use any remaining funds from the Term Loan after payment of the  
21 State Bank Debt (if any) and cash collateral to fund operations and payment of administrative  
22 expenses pursuant to a Budget. The Debtor currently is in the process of compiling and finalizing  
23 the Budget and will file it with the Court in advance of the hearing on the Motion. *See*  
24 Declaration of Gerry Seli.

25 The Debtor requests authority to use cash collateral and Term Loan proceeds (to the extent  
26 available after payment of State Bank) in accordance with the Budget. Absent emergency interim  
27 relief, by paying off the State Bank Debt, the Debtor needs to use cash collateral to pay its  
28 employees, satisfy rent or utility obligations, purchase new inventory, and to otherwise operate its

1 business.

2 All payments that will be described in the Budget are those the Debtor believes are  
3 necessary to maintain and continue the Debtor's operations and to maximize the value of the  
4 Estate. The Debtor believes that the failure to make payment in accordance with the Budget could  
5 result in immediate and irreparable harm to the Debtor's operations, the value of the Estate, and  
6 the interests of creditors.

7 The Debtor believes it will be able to continue to operate without impairing the collateral  
8 position of any secured lender and that there will be sufficient funds generated from the ongoing  
9 operations to meet operating and administrative expenses. The Debtor's use of cash collateral is  
10 necessary in order to allow the Debtor to move forward with an approach designed to maximize  
11 the value of the Estate.

12 **2. Limited Flexibility in Budget And Carryover of Excess Cash**

13 The Debtor also requests some flexibility in connection with the Budget such that the  
14 Debtor may exceed the disbursements forecasted in the Budget by up to 20% on a line-by-line  
15 basis, and to exceed aggregate disbursements forecasted in the Budget by a total of 20%, measured  
16 on a cumulative weekly basis.

17 Further, the Debtor requests that, to the extent any amount in a disbursement category is  
18 unused during a particular period, that amount be preserved and available for use in any  
19 subsequent period.

20 **F. Carve-Out And Weekly Advances**

21 As part of its request for approval of the Term Loan, Budget, and use cash collateral, the  
22 Debtor seeks approval of the Carve-Out and Weekly Advances. The Budget will account for such  
23 proposed Carve-Out and Weekly Payments.

24 **G. Adequate Protection**

25 State Bank will be paid off with the Term Loan. As a result, State Bank will not be  
26 impacted by the Term Loan or the Debtor's use of cash collateral in a manner that will require any  
27 form or level of adequate protection.

28 This leaves Comvest as the only party likely asserting the need for adequate protection. As

1 an initial matter, Comvest current position will not be impacted in any negative fashion by the  
2 Term Loan. Indeed, this replacement loan will simply take-out State Bank and the Term Lender  
3 will substitute in State Bank's position in respect of its secured priority level. As a result, with the  
4 Court previously finding that Comvest was adequately protected in relation to the State Bank DIP  
5 Facility, Comvest will remain sufficiently protected following the Term Loan.

6 In any event, Comvest will be adequately protected as follows: First, given the value of  
7 the Debtor's inventory and other collateral, Comvest is secured by a significant equity cushion, of  
8 at least 50% (using the current approximate cost value of the Debtor's inventory alone).

9 Second, the Debtor's ongoing business operations will adequately protect and preserve the  
10 value of Comvest's collateral. The Term Loan and use of cash collateral pursuant to the Budget  
11 will permit the Debtor to continue operating its business, which, in turn, will preserve and protect  
12 the Debtor's going concern value, preserve jobs for the Debtor's over 1,700 employees, and will  
13 otherwise preserve and protect the parties' interests.

14 In addition to the foregoing, the Debtor proposes to grant Comvest replacement liens on  
15 the Debtor's inventory, fixtures, furniture, equipment, accounts receivable and the proceeds  
16 thereof generated or acquired by the Debtor after the Petition Date if and to the extent that: (i) its  
17 pre-petition security interest is valid, enforceable, properly perfected, and unavoidable; and (ii) the  
18 Term Loan, the liens accorded to the Term Lender under section 364, and use of cash collateral  
19 result in any diminution in the value of Comvest's interest in its collateral. Finally, Comvest shall  
20 receive an allowed superpriority administrative expense claim, albeit junior to the adequate  
21 protection senior claims of the Term Lender.

### 22 III.

#### 23 **THE COURT SHOULD AUTHORIZE THE TERM LOAN AND THE DEBTOR'S** 24 **PROPOSED USE OF CASH COLLATERAL**

25 A. **The Debtor Should be Authorized to Obtain The Term Loan And Use Cash**  
26 **Collateral to Maintain The Debtor's Business And Maintain And Preserve The Value**  
27 **of The Debtor's Assets**

28 Section 363 of the Bankruptcy Code governs the Debtor's use of property of its estate.

1 Section 363(c)(1) provides in pertinent part that:

2 If the business of the debtor is authorized to be operated under section . . . 1108 . . .  
3 and unless the court orders otherwise, the trustee may enter into transactions,  
4 including the sale or lease of property of the estate, in the ordinary course of  
business, without notice or a hearing, and may use property of the estate in the  
ordinary course of business without notice or a hearing.

5 11 U.S.C. § 363(c)(1). A debtor in possession has all the rights and powers of a trustee with  
6 respect to property of the estate, including the right to use property of the estate in compliance  
7 with section 363 of the Code. *See* 11 U.S.C. § 1107(a). Section § 363(c)(2) establishes a special  
8 requirement with respect to “cash collateral,” by providing that the trustee or debtor in possession  
9 may not use, sell or lease “cash collateral” under subsection (c)(1) unless (i) such entity that has an  
10 interest in such collateral consents, or (ii) the court, after notice and a hearing, authorizes such use,  
11 sale or lease.

12 Pursuant to Section 364(c), a debtor may, in the exercise of its business judgment, incur  
13 secured debt if the debtor has been unable to obtain unsecured credit and the borrowing is in the  
14 best interest of the estate. *See, e.g., In re Simasko Production Co.*, 47 B.R. 444, 448-9 (D. Colo.  
15 1985) (authorizing interim financing agreement where debtor’s business judgment indicated  
16 financing was necessary and reasonable for benefit of estate); *In re Ames Dept. Stores*, 115 B.R.  
17 34, 38 (Bankr. S.D.N.Y. 1990) (with respect to post-petition credit, courts “permit debtors-in-  
18 possession to exercise their basic business judgment consistent with their fiduciary duties”).

19 Section 364(c) provides, in pertinent part, that:

20 If the trustee [or debtor in possession] is unable to obtain unsecured credit  
21 allowable under section 503(b)(1) of this title as an administrative expense, the  
22 court, after notice and a hearing, may authorize the obtaining of credit or the  
incurring of debt—

23 (1) with priority over any and all administrative expenses of the kind  
specified in section 503(b) or 507(b) of this title;

24 (2) secured by a lien on property of the estate that is not otherwise  
subject to a lien; or

25 (3) secured by a junior lien on property of the estate that is subject to a  
lien.

27 11 U.S.C. § 364(c).

28 Section 364(d)(1) governs the incurrence of senior secured debt or “priming” loans.

1 Pursuant to Section 364(d)(1):

2 the court may, after notice and a hearing, authorize the obtaining of credit or the  
3 incurring of debt secured by a senior or equal lien only if—

4 (1) the trustee is unable to obtain such credit otherwise; and

5 (2) there is adequate protection of the interest of the holder of the lien  
6 on the property of the estate on which such senior or equal lien is proposed  
7 to be granted.

8 11 U.S.C. § 364(d)(1). Section 364 is structured with an escalating series of inducements which a  
9 debtor in possession may offer to attract credit during the post-petition period. *In re Photo*  
10 *Promotion Associates, Inc.*, 87 B.R. 835, 839 (Bankr. S.D.N.Y. 1988), *aff'd*, 881 F.2d 6 (2d. Cir.  
11 1989). Where a trustee or debtor in possession cannot otherwise obtain unsecured post-petition  
12 credit, such credit may be obtained under certain carefully proscribed conditions. *In re T.M.*  
13 *Sweeney & Sons LTL Services, Inc.*, 131 B.R. 984, 989 (Bankr.N.D.Ill.1991). For example, if  
14 creditors are unwilling to extend unsecured credit to a debtor in possession, further inducements  
15 are offered, with court approval after notice and a hearing, including, without limitation, liens  
16 equal to or senior to existing liens on encumbered property in accordance with 11 U.S.C. § 364(d).  
17 *In re Photo Promotion Associates, Inc.*, 87 B.R. at 839.

18 Section 364(c) also enumerates certain incentives that a court may grant to post-petition  
19 lenders. However, the list set forth in section 364(c) is not exhaustive. Courts have frequently  
20 authorized the use of inducements not specified in the statute. *See, e.g., In re Ellingsen MacLean*  
21 *Oil Co.*, 834 F.2d 599 (6th Cir. 1987) (affirming financing order which prohibited any challenges  
22 to the validity of already existing liens); *In re Defender Drug Stores*, 126 B.R. 76 (Bankr. D. Ariz.  
23 1991) (authorizing enhancement fee to post-petition lender), *aff'd* 145 B.R. 312, 316 (B.A.P. 9th  
24 Cir. 1992) ("[b]ankruptcy courts . . . have regularly authorized postpetition financial arrangements  
25 containing lender incentives beyond the explicit priorities and liens specified in section 364").

26 Furthermore, nothing in the Bankruptcy Code prohibits transactions with insiders. Courts  
27 have confirmed that, while transactions involving insiders, generally are subject to higher scrutiny,  
28 there is no per se prohibition against approval of a loan, sale, or other transaction between the  
Debtor and an insider. *See, e.g., Ehrenberg v. Roussos (In re Roussos)*, 541 B.R. 721, 730 (Bankr.

1 C.D. Cal. 2015) (“Nothing in the Bankruptcy Code prohibits a sale to insiders [even though]  
2 insider sales are subject to ‘heightened scrutiny to the fairness of the value provided by the sale and  
3 the good faith of the parties in executing the transaction’); *In re C.E.N., Inc.*, 86 B.R. 303, 306-07  
4 (Bankr. D. Maine 1988) (recognizing that “transactions between debtor and [an insider] . . . are  
5 ‘subject to greater scrutiny than arms-length transactions,’” but confirming there is no *per se* rule  
6 disallowing administrative expense status under 11 U.S.C. § 364 to an insider under all  
7 circumstances); *In re Bakalis*, 220 B.R. 525, 537-38 (Bankr. E.D.N.Y 1998) (approving sale of  
8 debtor assets to insider group under section 363, finding insider group good faith purchase under  
9 section 363(m), and recognizing no *per se* bad faith in insider transactions when “there has been  
10 no showing of any untoward conduct,” “no evidentiary support [of] extortionate conduct,” and no  
11 showing of any action “specifically directed at controlling the sale price or taking unfair advantage  
12 of bidders”).

13 The proposed transactions and use of cash collateral comports with all prerequisites and  
14 should be approved. As discussed above, State Bank has issued two notices of default and  
15 reservation of rights letters. This has triggered the accrual of interest at the default rate on all State  
16 Bank obligations since December 21, 2017.

17 Whereas State Bank has considered (but not committed to) continued funding of the  
18 Debtor under the present State Bank DIP Facility, with a potential waiver and amendment  
19 agreement: (i) the Debtor believes available funding going forward would be severely restricted;  
20 (ii) interest would continue to accrue at the default rate, (iii) the Debtor would need to pay a  
21 considerable Forbearance Fee and other substantial fees and costs would continue to be imposed,  
22 (iv) the Real Estate Milestones would still need to be satisfied in short order, and (v) until and  
23 unless the Debtor satisfies such requirements, the Debtor would continue to operate under a risk of  
24 further default and State Bank’s exercise of additional remedies that could be harmful to the  
25 Estate. To stop the ongoing accrual of default interest and operating under the foregoing  
26 restrictive, expensive, and precarious scenario, the Term Loan, together with the use of cash  
27 collateral, is necessary to pay off State Bank and smoothly proceed with operations, the ongoing  
28 Store Closing Sales, and negotiations with landlords, and to preserve the Debtor as a going

1 concern, protect and maximize the value of the Estate, and to advance the goal of a successful  
2 reorganization and/or maximizing the value of the Estate.

3 Subject to the approval of the Court, and in order to obtain the necessary replacement loan,  
4 the Debtor has agreed to provide the Term Lender with various protections including perfected  
5 priming liens, superpriority administrative claims, and other protections identified in the Term  
6 Loan Agreement and/or Interim Order. Under the present circumstances of this case, the  
7 replacement loan, together with the use of cash collateral, provides the Debtor with critically  
8 necessary funding to take-out State Bank and avoid the risk of forced liquidation, fund operations  
9 on a go-forward basis until procurement of second stage funding, and emerge as a reorganized  
10 debtor. For these and all other reasons discussed above, the Debtor believes that granting the  
11 Postpetition Liens (as well as the other protections being provided under the loan documents) is  
12 warranted, appropriate, and necessary.

13 **B. The Court Should Authorize The Granting of Postpetition Liens And Other**  
14 **Protections to The Term Lender Required Under The Term Loan Agreement**

15 Two factors courts consider in determining whether to authorize post-petition financing  
16 which contemplates the granting of a security interest in favor of the lender are: (1) whether the  
17 debtor is unable to obtain unsecured credit per section 364(b), *i.e.*, by allowing a lender only an  
18 administrative claim per section 364(b); and (2) whether the terms of the transaction are fair,  
19 reasonable, and adequate, given the circumstances of the debtor-borrower and the proposed lender.  
20 *In re Crouse Group, Inc.*, 71 B.R. 544, 549 (Bankr. E.D.Pa. 1987). *See also, In re Aqua Assoc.*,  
21 123 B.R. 192, 195 (Bankr. E.D.Pa. 1991). In addition to the foregoing, a debtor in possession  
22 seeking subordination of liens to new financing must establish adequate protection of the liens to  
23 be subordinated to the new financing. *In re C.B.G. Ltd.*, 150 B.R. 570, 571 (Bankr. M.D.Pa.  
24 1992). The Debtor submits that all of these standards are satisfied in this case.

25 **1. The Debtor is Unable to Obtain Unsecured Credit or Secured Credit on a**  
26 **Junior Lien Basis**

27 In satisfying the standards of Section 364, a debtor need not seek credit from every  
28 available source, but should make a reasonable effort to seek other sources of credit available

1 under § 364(a) and (b). *See, e.g., In re Snowshoe Co.*, 789 F.2d 1085, 1088 (4th Cir. 1986)  
2 (trustee had demonstrated by good faith effort that credit was not available without senior lien by  
3 unsuccessfully contacting other financial institutions in immediate geographic area; “the statute  
4 imposes no duty to seek credit from every possible lender before concluding that such credit is  
5 unavailable”); *Ames, supra*, 115 B.R. at 40 (finding that debtors demonstrated the unavailability of  
6 unsecured financing where debtors approached four lending institutions).

7 To date, the best postpetition term financing commitment to meet the Debtor’s current  
8 need that has been provided to the Debtor is the one offered by the Term Lender. As discussed  
9 above, in the lead up to the filing of the present Motion, the Debtor engaged in negotiations with  
10 State Bank for continued postpetition financing despite the present defaults and, concurrently,  
11 diligently sought proposals for additional financing from alternate sources. None of the sources of  
12 funding -- including from State Bank -- was willing to provide junior financing.

13 Moreover, given the Debtor’s financial condition, the Debtor’s overall assets and  
14 liabilities, and the asserted secured position of Comvest, it was not realistic for any lender to be  
15 willing to provide the Debtor with unsecured financing or even secured financing on a junior lien  
16 basis. As discussed above, the Debtor received proposals from alternate sources other than State  
17 Bank and the Term Lender. However, those proposals: (i) were not on more favorable terms than  
18 the current replacement loan, (ii) would not have been on an unsecured, administrative, or junior  
19 secured basis, but rather secured by a senior priming lien against the Debtor’s assets, and (iii)  
20 simply were not feasible from a timing perspective given various contingencies and related issues,  
21 the exigencies of the Debtor’s cash position, and the defaults under the existing State Bank DIP  
22 Facility.

23 Fortunately, the Term Lender offered to provide the Debtor with postpetition secured  
24 funding to take-out State Bank, with any remaining balance available to fund operations, but  
25 solely on the terms and conditions set forth in the Term Loan Agreement and/or Interim Order.  
26 Moreover, the terms and conditions set forth in the Term Loan Agreement and Interim Order have  
27 been negotiated in good faith, with the Debtor represented by counsel and the Term Lender having  
28 consulted with separate counsel.

1                   After considering all of the alternatives, the Debtor has concluded that the Term Loan  
2 represents the best financing presently available to the Debtor.

3                   **2. The Term Loan is Fair, Reasonable, And Adequate**

4                   The Debtor submits that the terms of the proposed Term Loan are fair, reasonable, and  
5 adequate. This is true both standing alone and in comparison to other proposals the Debtor  
6 received, including, but not limited to, continued funding from State Bank. Indeed, the Term  
7 Loan: (i) only has a 5.25% interest rate, lower than the ordinary interest rate under the State Bank  
8 DIP Facility and other proposals for alternate financing the Debtor received (let alone under the  
9 current 11.50% default rate accruing on the State Bank obligations); (ii) imposes none of the  
10 closing fees, unused line fees, prepayment fees, and other administrative fees often included in  
11 DIP funding arrangements from institutional lenders; (iii) does not include the reporting  
12 requirements usually mandated by traditional DIP lenders; and (iv) avoids the need to pay any  
13 forbearance fee and the risks associated with defaults on loans from institutional lenders.

14                   The Debtor believes that the benefits afforded to the Debtor by the Term Loan justify the  
15 protections being afforded under the terms of the Term Loan Agreement and Interim Order. The  
16 proposed loan offers the Debtor its best opportunity to maintain and preserve the value of its assets  
17 while pursuing the Store Closing Sales, landlord negotiations, and restructuring of its debts to  
18 emerge a healthy reorganized debtor as the Debtor secures alternate, more-long term financing,  
19 which will benefit all creditors and parties in interest in this case.

20                   Based on the foregoing, the Debtor believes that (i) the terms and conditions of the  
21 proposed Term Loan are fair and reasonable, reflect the Debtor's exercise of prudent business  
22 judgment in light of the current circumstances and are supported by reasonably equivalent value  
23 and fair consideration, and (ii) the Term Loan is being extended, issued or made, as the case may  
24 be, in "good faith" within the meaning of Section 364(e).

25                   **3. Comvest is Adequately Protected**

26                   **a. Standard**

27                   The proposed priming liens are authorized by the Bankruptcy Code, even absent consent of  
28 other existing lien holders. Section 364(d)(1)(B) of the Bankruptcy Code requires the furnishing

1 of adequate protection in favor of lien holders which assert an interest in collateral. *See* 11 U.S.C.  
2 § 364(d)(1)(B). Likewise, it is universally acknowledged that the debtor's cash "is the life blood  
3 of the business" and the bankruptcy court must assure that such life's blood "is available for use  
4 even if to a limited extent." *In re Mickler*, 9 B.R. 121, 123 (Bankr. M.D. Fla. 1981). Therefore,  
5 courts typically authorize a debtor to use cash collateral to continue its operations so long as the  
6 interests asserted by affected creditors in such cash are adequately protected.

7       Although neither section 364 nor section 363 specifically define the term "adequate  
8 protection," section 361 of the Bankruptcy Code requires that adequate protection be furnished to  
9 the extent a debtor's "use, sale, lease or grant results in a decrease in the value of such entity's  
10 interest in such property." 11 U.S.C. § 361(1), (2). Stated succinctly, adequate protection protects  
11 a secured creditor against a decrease in the value of its collateral. *See e.g., In re Planned System,  
12 Inc.*, 78 B.R. 852, 861-62 (Bankr. S.D. Ohio 1987).

13       This standard applies equally with respect to "priming" financing under section  
14 364(d)(1)(B). *See, e.g., In re Hubbard Power & Light*, 202 B.R. 680, 685 (Bankr. E.D.N.Y. 1996)  
15 ("The goal of adequate protection for purposes of the provision entitling a debtor to obtain  
16 financing secured by liens senior to all other interests is to safeguard the secured creditor from  
17 diminution in the value of its interests."); *In re Aqua Assoc.*, 123 B.R. 192, 196 (Bankr. E.D. Pa.  
18 1991); *In re Beker Ind. Corp.*, 58 B.R. 725, 741-42 (Bankr. S.D.N.Y. 1986). The Court has broad  
19 discretion to determine whether adequate protection is furnished. *See, e.g., In re 495 Cent. Park  
20 Ave. Corp.*, 136 B.R. 626, 631 (Bankr. S.D.N.Y. 1992).

21       The Debtor satisfies any adequate protection requirements.

22       b.       **State Bank Will be Paid Off With The Term Loan**

23       No adequate protection is required for State Bank (as prepetition senior lender) as the State  
24 Bank Debt will be paid off with the Term Loan.

25       c.       **Comvest's Interests Will be Adequately Protected by a Substantial  
26                   Equity Cushion**

27       The Ninth Circuit Court of Appeals has held that an equity cushion alone can provide  
28 adequate protection, stating:

1        Although the existence of the equity cushion is a method of adequate protection is  
2        not specifically mentioned in § 361, it is the classic form of protection for a secured  
3        debt justifying restraining of lien enforcement by a bankruptcy court.... In fact, it  
4        has been held that the existence of an equity cushion, standing alone, can provide  
5        adequate protection.... A sufficient equity cushion has been found to exist  
6        although not a single mortgage payment had been made.

7        *Pistole v. Mellor (In re Mellor)*, 734 F.2d 1396, 1400 (9th Cir. 1984) (citation omitted). The Ninth  
8        Circuit defined the term “equity cushion” as “the value in the property, above the amount owed to  
9        the creditor with a secured claim, that will shield that interest from loss due to any decrease in the  
10       value in the property during the time the automatic stay is effect.” *Id.* at 1400 n.2. An equity  
11       cushion of 10% or greater has been found sufficient to provide a lienholder with adequate protection.  
12       *See Id.* at 1401 (citing *In re McGowan*, 6 B.R. 241, 243 (Bankr. E.D. Pa. 1980) (holding that a 10%  
13       equity cushion constitutes adequate protection)).

14       In the instant case, Comvest is adequately protected by a substantial equity cushion. As  
15       discussed above, Comvest asserts a junior claim in the amount of approximately \$10,000,000.  
16       With assets against which Comvest asserts a second priority lien valued at approximately almost  
17       \$34,000,000 (using the approximate cost value of the Debtor’s inventory alone), after considering  
18       the \$5,000,000 secured claim of the Term Lender, Comvest is protected by an equity cushion of  
19       over 50%.

20       d.       **Comvest’s Interest in Its Collateral Will be Adequately Protected**  
21                **Because The Term Loan And Use of Cash Collateral Will Preserve The**  
22                **Going Concern Value of Its Collateral**

23       It must be emphasized that the value of the Debtor’s assets is primarily the value of its  
24       inventory, in addition to the good will associated with the Debtor’s business. The Debtor’s ability  
25       to maximize the value of these assets is inextricably tied to maintaining the going concern value of  
26       the Debtor’s business.

27       If the Debtor does not have access to cash, it may be forced to shut down operations and  
28       the Debtor’s assets would be liquidated to the detriment of unsecured creditors and equity holders  
29       of the Debtor and secured creditors. The Debtor is a retail business, and without continuity of its  
30       operations, and an uninterrupted delivery of inventory to stores, the Debtor could face a significant

1 customer defection, which would have immediate and devastating effect upon the Debtor's future  
2 revenues and opportunity to maximize the value of the Estate.

3 For all the reasons discussed above, it is in the best interests of the Estate to take-out State  
4 Bank and replace the funding provided under the State Bank DIP Facility with the Term Loan and  
5 the Debtor's use of cash collateral. Without the State Bank DIP Facility, the Debtor requires cash  
6 collateral to fund operations and administrative expenses; at least until the Debtor procures  
7 replacement financing from another source. In other words, the Debtor could only survive with  
8 access to the cash to be provided through the Term Loan and cash collateral. Accordingly, this  
9 loan and use of cash collateral will preserve and protect the value of Comvest's collateral  
10 generally and enhance and maximize the potential recovery for all creditors.

11 It is well established that a bankruptcy court, where possible, should resolve issues  
12 presented in favor of reorganization rather than to force a liquidation because the business cannot  
13 use cash or other property to operate. *See, e.g., In re Dynaco Corp.*, 162 B.R. 389 (Bankr. D. N.H.  
14 1993); *In re Hoffman*, 51 B.R. 42 (Bankr. W.D. Ark. 1985); *In re A&B Hearing & Air  
Conditioning, Inc.*, 48 B.R. 401 (Bankr. M.D. Fla. 1985); *In re Heatron, Inc.*, 6 B.R. 493 (Bankr.  
15 W.D. Mo. 1980). Applying this principal in the context of adequate protection for the use of cash  
16 collateral, courts have frequently allowed a debtor to use cash collateral in circumstances where  
17 such use would enhance or preserve the debtor's reorganization value. Thus, for example, in *In re  
Stein*, 19 B.R. 458 (Bankr. E.D. Pa. 1982), the court allowed a debtor to use cash collateral where  
18 the bank was undersecured and had no cushion for protection. The court in *Stein* found that the  
19 use of cash collateral was necessary to the continued operations of the debtor and "the creditor's  
20 secured position can only be enhanced by the continued operation of the [debtor's business]." *Id.*  
21 at 460. *See also, In re Pine Lake Village Apartment Co.*, 16 B.R. 750 (Bankr. S.D.N.Y. 1981)  
22 (marginally secured creditor adequately protected by lien in post-petition property acquired by  
23 debtor; debtor can use cash collateral "in the normal course of their business").

24 Here, adequate protection of Comvest's interest is present in this case because the  
25 proposed use of the Term Loan and cash collateral will preserve and protect the value of the  
26 Debtor's business and Comvest's collateral.

e. **Comvest Will be Adequately Protected by Replacement Liens**

Section 361 of the Bankruptcy Code identifies the following as a proper form of adequate protection:

[P]roviding . . . an additional or replacement lien to the extent that such . . . use . . . results in a decrease in the value of such entity's interest in such property[.]

Neither section 361 nor any other provision of the Bankruptcy Code defines the nature and extent of “interest in property” of which a secured creditor is entitled to adequate protection under section 363. However, the statute plainly provides that a qualifying interest demands protection only to the extent that the use of the creditor’s collateral will result in a decrease in “the value of such entity’s interest in such property.” *United Savings Ass’n of Texas v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 108 S. Ct. 626, 98 L. Ed. 2d 740 (1988).

*Timbers* teaches that a secured creditor is entitled to “adequate protection” only against the diminution in value of the collateral securing its allowed secured claim. Where the value of the collateral is *not* diminishing by a debtor’s use, sale, or lease, it follows that their respective interests in cash collateral (if any) is adequately protected. As an initial matter, here, as explained above, the proposed loan and cash collateral usage will enhance the value of the Debtor’s business and Comvest’s collateral.

Moreover, separate and independent of any question of diminution in value, a secured creditor has no right to preservation of the equity cushion in its collateral. The Supreme Court in *Timbers* determined that the property interest the Debtor must adequately protect is the lien that secures the creditor's claim. *See Timbers*, 484 U.S. at 371. Further, the value of the lien may not exceed the allowed amount of the secured claim. *See* 11 U.S.C. § 506(a)(1). Accordingly, the property interest of an oversecured creditor that the Debtor must adequately protect, namely the lien value, is the allowed amount of the secured claim and does not include the equity cushion.

In *In re Alyucan Interstate Corp.*, 12 B.R. 803 (Bankr. D. Utah 1981), the court ruled that an equity cushion is not a requirement of adequate protection because a secured creditor is only entitled to protection against a decline in the value of its lien. The existence of an equity cushion

1 (the value of the property above the lien) is not a necessary component of adequate protection.  
2 The court reasoned that section 361 speaks not in terms of preserving equity, but in terms of  
3 compensating for any “decrease in the value of [an] interest in property.” *Id.* at 803. The  
4 Supreme Court’s decision in *Timbers* confirms this interpretation of section 361.

5 As discussed above, the Debtor proposes to grant Comvest replacement liens on cash,  
6 inventory, fixtures, furniture, equipment, and accounts receivable and the proceeds thereof  
7 acquired post-petition, to the extent that: (i) its pre-petition security interest is valid, enforceable,  
8 properly perfected, and unavoidable, and (ii) as necessary to protect it from any diminution in the  
9 value of its collateral as a result of the grant of the Postpetition Liens under section 364 to the  
10 Term Lender and use of any cash collateral.

11 **4. The Term Loan And Use of Cash Collateral Are Necessary And Proper**

12 While in determining whether to approve such a transaction, a Court is authorized to act in  
13 its informed discretion (*In re Ames Department Stores, Inc.*, 115 B.R. 34, 37 (Bankr. S.D.N.Y.  
14 1990)), the Court should give broad deference to the business decision of a chapter 11 debtor,  
15 particularly with respect to a debtor’s business judgment regarding the need for and proposed use  
16 of funds. *See Richmond Leasing Co. v. Capital Bank N.A.*, 762 F.2d 1303, 1311 (5th Cir. 1985).  
17 As the Court noted in *In re Ames Dept. Stores Inc.*, *supra*, “the court’s discretion under section  
18 364 is to be utilized on the grounds that permit the reasonable business judgment [of the Debtor]  
19 to be exercised . . .” *In re Ames Department Stores, Inc.*, 115 B.R. at 40.

20 There is little dispute that, without the postpetition financing and access to cash collateral,  
21 the Debtor likely would be unable to purchase the necessary product or to otherwise operate its  
22 business for much longer, or reorganize and emerge a healthy going concern. Instead, the Debtor  
23 would risk State Bank taking aggressive action that could result in a forced liquidation or  
24 shutdown of operations. There can also be no question that such a result would cause the Debtor,  
25 its estate and its creditors immediate and irreparable harm.

26 In contrast, the proposed replacement funding and use of cash collateral affords the Debtor  
27 the ability to maintain the going-concern value of its business, realize increased profitability, and  
28 successfully reorganize. The Debtor has therefore concluded that obtaining the Term Loan and

1 use cash collateral is critically important to maximizing the recovery for creditors, and is therefore  
2 in the best interests of the Debtor's estate.

3 **IV.**

4 **THE WAIVER OF ANY APPLICABLE STAY IS APPROPRIATE**

5 For the reasons noted herein, the Debtor will suffer immediate and irreparable harm if the  
6 Debtor is unable to payoff the State Bank Debt as soon as possible, stop the ongoing accrual of  
7 costly default interest, and continue operations without the risk of any harmful actions taken as a  
8 result of current or future defaults, pending a final hearing on the Motion. The Debtor requires the  
9 terms of the Interim Order to become immediately effective to ensure that the Debtor will be able  
10 to obtain the funding and authority to use cash collateral under the Budget to pay critical expenses  
11 as set forth in the Budget. Based on the foregoing, the Debtor requests that any applicable stay,  
12 including the stay provided under FRBP 6004, be waived to allow the Interim Order to become  
13 immediately effective.

14 **V.**

15 **CONCLUSION**

16 Based upon all of the foregoing, the Court grant the Motion.

17 Dated: January 3, 2018

18 **SulmeyerKupetz**  
A Professional Corporation

19

20

By: /s/ Asa S. Hami

21 David S. Kupetz

Asa S. Hami

22 Steven F. Werth

Attorneys for Shiekh Shoes, LLC

23 Debtor and Debtor in Possession

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# **EXHIBIT A**

**SENIOR SECURED DEBTOR IN POSSESSION**  
**TERM LOAN AND SECURITY AGREEMENT**

THIS SENIOR SECURED DEBTOR IN POSSESSION TERM LOAN AND SECURITY AGREEMENT ("Agreement") is entered into this \_\_ day of January, 2018, between **Anjum Shiekh** ("Lender"), and **SHIEKH SHOES, LLC**, a California limited liability company ("Borrower"). All schedules, riders and exhibits annexed hereto are incorporated herein and made a part hereof.

WHEREAS, on November 29, 2017 (the "Petition Date"), Borrower commenced Chapter 11 Case No. 2:17-bk-24626-VZ (the "Chapter 11 Case") by filing a voluntary petition for reorganization under the Bankruptcy Code (as defined below), with the United States Bankruptcy Court for the Central District of California, Los Angeles Division (the "Bankruptcy Court");

WHEREAS, Borrower continues to operate its business and manage its properties as debtor and debtors-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code;

WHEREAS, prior to the Petition Date, State Bank and Trust Company ("State Bank") provided financing to Borrower pursuant to that certain Loan and Security Agreement, dated as of March 17, 2017 between Borrower and Lender (as amended, modified or supplemented through the Petition Date, the "Prepetition Senior Loan Agreement");

WHEREAS, following the Petition Date, State Bank provided provided Borrowed with a senior secured, super priority revolving credit facility (the "DIP Credit Facility");

WHEREAS, Borrower is in default under the DIP Credit Facility and while State Bank may be prepared to waive such defaults subject to amending the DIP Credit Facility;

WHEREAS, Borrower believes that any such amended would involve (among other things) restricting Borrower's access to funding under the amended DIP Credit Facility, charging interest at the default rate, charging a waiver and amendment fee, and subjecting Borrower to other fees and charges of State Bank;

WHEREAS, Lender is willing to make a term loan to Borrower to pay off the DIP Credit Facility and fund operations upon the terms and conditions set forth herein; and

WHEREAS, Borrower has agreed to secure all of the obligations under this Agreement by granting to Lender a security interest in and lien upon all or substantially all of its existing and after-acquired assets.

NOW, THEREFORE, for good and valuable consideration, the parties hereto, intending to be bound hereby, agree as follows:

## SECTION 1. DEFINITIONS

1.1 **Defined Terms.** When used in this Agreement or in any schedule or rider hereto, the following terms shall have the following meanings (terms defined in the singular to have the same meaning when used in the plural and *vice versa*).

"Bankruptcy Code" means title 11 of the United States Code.

"Bankruptcy Court" has the meaning set forth in the recitals to this Agreement.

"Bankruptcy Default" means the occurrence of any of the following in connection with the Chapter 11 Case:

(a) the entry of an order in the Chapter 11 Case confirming a plan of reorganization that does not contain a provision for the full payment of all obligations under this Agreement;

(b) the entry of an order amending, supplementing, staying, vacating or otherwise modifying this Agreement without the written consent of Lender;

(c) the Final Order, in form and substance acceptable to Lender, is not entered promptly following the expiration of the Interim Order;

(d) the Final Order, in form and substance acceptable to Lender, is not entered on or before the date that is thirty (30) days after the entry of the Interim Order;

(e) the appointment of a trustee in the Chapter 11 Case or the appointment of an examiner in the Chapter 11 Case with expanded powers to operate or manage the financial affairs, the business, or reorganization of Borrower (or Borrower applies for, consents to, or acquiesces in, any such relief);

(f) the dismissal of the Chapter 11 Case, or the conversion of the Chapter 11 Case from one under Chapter 11 to one under Chapter 7 of the Bankruptcy Code (or Borrower applies for, consents to, or acquiesces in, any such relief);

(g) the entry of an order by the Bankruptcy Court granting relief from or modifying the automatic stay of Section 362 of the Bankruptcy Code (i) to allow any creditor to execute upon or enforce a Lien on any Collateral, or (ii) with respect to any Lien of or the granting of any Lien on any Collateral to any state or local environmental or regulatory agency or authority, which in either case is with respect to any portion of the Collateral having a value, individually or in the aggregate, in excess of \$25,000 or which would otherwise have a Material Adverse Effect;

(h) the commencement of a suit or action against Lender by or on behalf of Borrower;

(i) the breach of and/or failure of Borrower to perform any of its obligations under this Agreement; and

(j) the Bankruptcy Court or any other court of competent jurisdiction enters an order or judgment, or Borrower applies for, consents to, or acquiesces in, the entry of such order or judgment, in the Chapter 11 Case modifying, limiting, subordinating or avoiding (i) the priority of any obligations owing to Lender under this Agreement, or (ii) the perfection, priority or validity of any Lien securing such obligations.

“Bankruptcy Rules” means the Federal Rules of Bankruptcy Procedure, as the same may from time to time be in effect and applicable to the Chapter 11 Case.

“Borrower’s Books” means all of Borrower’s books and records relating to its existence, governance, assets, liabilities or financial condition or any of the Collateral, including minute books; ledgers and records indicating, summarizing or evidencing Borrower’s assets or liabilities; all information relating to Borrower’s business operations; and all computer records, programs, discs or tape files, printouts, runs, and other information prepared or stored electronically, including the equipment or any website or third party storage provider containing or hosting such information.

“Carve-Out” has the meaning provided in the DIP Order.

“Carve-Out Amount” has the meaning provided in the DIP Order.

“Chapter 11 Case” has the meaning set forth in the recitals to this Agreement.

“Closing Date” means the date on which the initial Loan is funded hereunder.

“Collateral” means all of the property and interests in property described in this Agreement, all property described in any of the Security Documents as security for the payment or performance of any of the Obligations, and all other property and interests in property that now or hereafter secure (or are intended to secure) the payment or performance of any of the Obligations.

“Committees” means, collectively, any official committee of unsecured creditors and any other committee formed, appointed, or approved in the Chapter 11 Case and each of such Committees shall be referred to herein as a “Committee”.

“Comvest” means Comvest Capital IV, L.P.

“Comvest Agent” means Comvest, in its capacity as agent under the Comvest Loan Agreement.

“Comvest Lenders” means the lenders from time to time party to the Comvest Loan Agreement.

“Comvest Liens” means the Liens granted to Comvest Agent in assets of Borrower.

“Comvest Loan Agreement” means that certain Credit Agreement dated as of the Prepetition Closing Date among Borrower, the Comvest Lenders and Comvest Agent, as amended.

“Comvest Loan Documents” means the Loan Documents as defined in the Comvest Loan Agreement.

“Comvest Loans” means all amounts owing under the Comvest Loan Agreement.

“Default” means an event or condition the occurrence of which would, with the lapse of time or the giving of notice, or both, become an Event of Default.

“DIP Order” means the Interim Order or the Final Order, whichever is in effect as of the relevant date in question.

“Dollars” and the sign “\$” means lawful money of the United States of America.

“Event of Default” means the occurrence of any one of the events set forth in Section 8.

“Fees” means all fees payable to Lender pursuant to this Agreement.

“Final Order” means the order of the Bankruptcy Court entered in the Chapter 11 Case after a final hearing under Bankruptcy Rule 4001(c)(2) or such other procedures as approved by the Bankruptcy Court which order shall be satisfactory in form and substance to Lender, and from which no appeal or motion to reconsider has been timely filed, or if timely filed, such appeal or motion to reconsider has been dismissed or denied unless Lender waives such requirement), together with all extensions, modifications and amendments thereto, in form and substance satisfactory to Lender, which, among other matters but not by way of limitation, authorizes Borrower to obtain credit, incur (or guaranty) Indebtedness, and grant Liens under this Agreement and the other Loan Documents, as the case may be, and provides for the super priority of Lender’s claims.

“Full Payment” means the full, final and indefeasible payment in full of all of the Obligations.

“GAAP” means generally accepted accounting principles in the United States of America in effect from time to time.

“Intellectual Property” means all intellectual and similar property of a Person, including inventions, designs, patents, copyrights, trademarks, service marks, trade names, trade secrets, confidential or proprietary information, customer lists, know-how, software and databases; all embodiments or fixations thereof and all related documentation, applications, registrations and franchises; all licenses or other rights to use any of the foregoing; and all books and records relating to the foregoing.

“Interim Order” means the order of the Bankruptcy Court entered in the Chapter 11 Case after an interim hearing (assuming satisfaction of the standards prescribed in Section 364 of the Bankruptcy Code and Bankruptcy Rule 4001 and other applicable law), together with all extension, modifications, and amendments thereto, in form and substance satisfactory to Lender which, among other matters but not by way of limitation, authorizes, on an interim basis, Borrower to execute and perform under the terms of this Agreement and the other Loan Documents, substantially in the form of Exhibit B.

“Lien” means any interest in property securing an obligation owed to, or a claim by, a Person other than the owner of the property, whether such interest is based on common law, statute or contract. The term “Lien” shall also include reservations, exceptions, encroachments, easements,

rights-of-way, covenants, conditions, restrictions, leases and other title exceptions and encumbrances affecting property. For the purpose hereof, Borrower shall be deemed to be the owner of any property which it has acquired or holds subject to a conditional sale agreement or other arrangement pursuant to which title to the property has been retained by or vested in some other Person for security purposes.

"Loan" means an advance of money made by Lender to Borrower pursuant to the terms of this Agreement.

"Loan Documents" means, collectively, this Agreement (including any Rider hereto), the DIP Order, the Note, and any other documents and agreements entered into between Lender and Borrower in connection with this Agreement or to evidence or govern the terms of any of the Obligations

"Local Bankruptcy Rules" means the local bankruptcy rules of the Bankruptcy Court as the same may from time to time be in effect and applicable to the Chapter 11 Case.

"Material Agreement" means any agreement, instrument or arrangement to which Borrower is a party for which default in the performance, observance or fulfillment of any of the material obligations, covenants or conditions contained therein could reasonably be expected to have a Material Adverse Effect.

"Note" means a promissory note executed by Borrower at Lender's request to evidence any of the Obligations, including the Term Note.

"Obligations" means all Debts, liabilities, obligations, covenants, and duties at any time or times owing by Borrower to Lender of any kind and description, whether incurred pursuant to or evidenced by any of the Loan Documents or pursuant to any other agreement between Lender and Borrower or otherwise, and whether direct or indirect, absolute or contingent, due or to become due, or joint or several, including the principal of and interest on the Loan. Without limiting the generality of the foregoing, the term "Obligations" shall include all Debts, liabilities and obligations incurred by Borrower to Lender in the Bankruptcy Case and any interest, fees or other charges accrued in the Bankruptcy Case, whether or not any such interest, fees or other charges are recoverable from Borrower or its estate under 11 U.S.C. §506.

"Obligor" means Borrower.

"Permitted Senior Lien" means any Prior Lien (as defined in the DIP Order), and valid, enforceable, and non-avoidable Lien that was perfected prior to the Petition Date (or perfected on or after the Petition Date to the extent permitted by Section 546(b) of the Bankruptcy Code), which is not subject to avoidance, reduction, disallowance, impairment or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law and which is senior in priority to the Prepetition Senior Liens under applicable law and after giving effect to any subordination or inter-creditor agreements; provided that this definition shall exclude the Liens of Comvest Agent and the Comvest Lenders, all of which Liens shall be subordinate to the Liens securing the Obligations.

"Petition Date" has the meaning set forth in the recitals to this Agreement.

**"Postpetition"** means the time period beginning immediately upon the filing of the Chapter 11 Case.

**"Prepetition"** means the time period ending immediately prior to the filing of the Chapter 11 Case.

**"Security Documents"** means each instrument or agreement now or at any time hereafter securing or assuring payment of the whole or any part of the Obligations, including this Agreement.

**"Term Loan"** means the loan to be made by Lender to Borrower pursuant to this Agreement.

**"Term Note"** means the promissory note to be executed by Borrower at Lender's request to evidence the Obligations under the Term Loan and in connection with this Agreement.

**"UCC"** means the Uniform Commercial Code (or any successor statute) as adopted and in force in the State of Georgia from time to time or, when the laws of any other state govern the method or manner of the perfection or enforcement of any security interest in any of the Collateral, the Uniform Commercial Code (or any successor statute) of such state.

**1.2 UCC Terms.** All other capitalized terms contained in this Agreement and not otherwise defined herein shall have, when the context so indicates, the meanings provided for by the UCC to the extent the same are used or defined therein.

**1.3 Super Priority Nature of Obligations.**

(a) The priority of Lender's claims against, and Liens on and in the Collateral of, Borrower shall be as set forth in the DIP Order.

(b) All Obligations shall constitute administrative expenses of Borrower in the Chapter 11 Case, with administrative priority and senior secured status under Sections 364(c) and 364(d) of the Bankruptcy Code. Subject to the Carve-Out, such administrative claim shall have priority over all other costs and expenses of the kinds specified in, or ordered pursuant to, Sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 546(c), 726, 1114 or any other provision of the Bankruptcy Code or otherwise, and shall at all times be senior to the rights of Borrower, Borrower's estate, and any successor trustee or estate representative in the Chapter 11 Case or any subsequent proceeding or case under the Bankruptcy Code. The Liens granted to Lender on and in the Collateral of Borrower, and the priorities accorded to the Obligations, shall have the priority and senior secured status afforded by Sections 364(c) and 364(d)(l) of the Bankruptcy Code (all as more fully set forth in the DIP Order) senior to all claims and interests other than the Carve-Out and Permitted Senior Liens.

(c) Lender's Liens on and in the Collateral of Borrower and Lender's administrative claims under Sections 364(c)(l) and 364(d) of the Bankruptcy Code afforded the Obligations shall also have priority over any claims arising under Section 506(c) of the Bankruptcy Code subject and subordinate only to the Carve-Out and Permitted Senior Liens. Except as set forth herein or in the DIP Order, no other claim having a priority superior or pari passu to that granted to Lender by the DIP Order shall be granted or approved while any Obligations under this Agreement remain outstanding. Except for the

Carve-Out, no costs or expenses of administration shall be imposed against Lender or any of its Collateral under Sections 105, 506(c) or 552 of the Bankruptcy Code, or otherwise, and Borrower hereby waives for itself and on behalf of its estate in bankruptcy, any and all rights under sections 105, 506(c) or 552, or otherwise, to assert or impose or seek to assert or impose, any such costs or expenses of administration against Lender.

**1.4 Payment of the Obligations.** Upon the maturity (whether by acceleration or otherwise) of any of the Obligations under this Agreement or any of the other Loan Documents, Lender shall be entitled to immediate payment of such Obligations without further application to or order of the Bankruptcy Court.

**1.5 No Discharge; Survival of Claims.** Borrower agrees that (a) the Obligations hereunder shall not be discharged by the entry of an order confirming a plan of reorganization in the Chapter 11 Case (and Borrower pursuant to Section 1141(d)(4) of the Bankruptcy Code, hereby waives any such discharge) and (ii) the superpriority administrative claim granted to Lender pursuant to the DIP Order and described in this Agreement and the Liens granted to Lender pursuant to the Interim Order and Final Order and described in this Agreement shall not be affected in any manner by the entry of an order confirming a plan of reorganization in the Chapter 11 Case.

**1.6 Waiver of Priming Rights.** Upon the Closing Date, and on behalf of itself and its estate, and for so long as any Obligations shall be outstanding, without limiting any terms or conditions of the DIP Order, Borrower hereby irrevocably waives any right, (a) to grant or impose, or request that the Bankruptcy Court grant or impose, under section 364 of the Bankruptcy Code or otherwise, Liens on or security interests in any of the collateral securing the Obligations, which are pari passu with, equal to or superior to the Liens and security interests held by Lender, (b) to grant or impose, or request that the Bankruptcy Court grant or impose, under section 364 of the Bankruptcy Code or otherwise, claims or expenses against Borrower, which are pari passu with, equal to or superior to the Obligations, and (c) to use, or to request that the Bankruptcy Court authorize the use of, Cash Collateral (as defined in the DIP Order) or proceeds of Loans, except for such consensual uses expressly provided under the DIP Order.

## **SECTION 2. LOAN AND TERMS OF REPAYMENT**

**2.1 Term Loan.** Upon Court approval of this Agreement, Lender shall advance a Term Loan to Borrower in the sum of \$5,000,000.

**2.2 Payments.** All payments with respect to any of the Obligations shall be made to Lender on the date when due, in immediately available funds, without any offset or counterclaim.

**2.3 Interest Rate.** Interest shall accrue on the Term Loan at the rate of 5.25% per annum shall be paid on a monthly basis. Upon an Event of Default under this Agreement, the interest rate shall increase to 7.25% per annum.

**2.4 Fees and Reimbursement of Expenses.** Borrower shall be obligated to pay all of Lender's reasonable fees and expenses, including attorneys' fees and costs, incurred in connection with this Agreement and the Term Loan.

**2.5 No Prepayment Penalty.** Borrower shall have the right to prepay the Obligations under this Agreement in full at any time without the imposition of any prepayment fee or penalty.

### **SECTION 3. TERM AND TERMINATION**

**3.1 Term.** The Term Loan shall mature and be Payable in full at the earlier of: (1) the first business day that is nine months after closing of the loan; (2) confirmation of a chapter 11 plan in this case; (3) conversion of the case to chapter 7; (4) dismissal of the case; or (5) appointment of a chapter 11 trustee in this case.

**3.2 Termination.** At any time that an Event of Default exists, Lender may terminate this Agreement upon 5-days notice to Borrower.

### **SECTION 4. CREATION OF SECURITY INTEREST**

**4.1 Grant of Security Interest.** Without limitation of any of the provisions of the DIP Order, to secure the prompt payment and performance of all of the Obligations, Borrower hereby grants to Lender a continuing security interest in and Lien upon all personal property of Borrower, including all of the following property and interests in property of Borrower, whether now owned or existing or hereafter created, acquired or arising and wheresoever located: all Accounts; all Goods, including all Inventory and Equipment (including Fixtures); all Instruments; all Chattel Paper; all Documents (including bills of lading); all General Intangibles, including Intellectual Property, Payment Intangibles and Software; all Deposit Accounts; all Accessions to, substitutions for and replacements, Products and cash and non-cash Proceeds of any of the foregoing, including Proceeds of and unearned premiums with respect to insurance policies insuring any of the Collateral and claims against any Person for loss of, damage to or destruction of any of the Collateral; and all of Borrower's Books.

**4.2 Perfection of Security Interest.** Without limitation of any of the provisions of the DIP Order relating to the automatic perfection of Lender's Liens, promptly after Lender's request therefor, Borrower shall execute or cause to be executed and delivered to Lender such instruments, assignments, title certificates or other documents as are necessary under the UCC or other applicable law (including any motor vehicle certificate of title act) to perfect (or continue the perfection of) Lender's Liens upon the Collateral and shall take such other action as may be requested by Lender to give effect to or carry out the intent and purposes of this Agreement. Unless prohibited by applicable law, Borrower hereby irrevocably authorizes Lender to execute and file in any jurisdiction any financing statement or amendment thereto on Borrower's behalf, including financing statements that indicate the Collateral (i) as all assets or all personal property of Borrower or words to similar effect or (ii) as being of equal or lesser scope, or with greater or lesser detail, than as set forth in this Agreement. Borrower also hereby ratifies its authorization for Lender to have filed in any jurisdiction any like financing statement or amendment thereto if filed prior to the date hereof.

## SECTION 5. CONDITIONS PRECEDENT

5.1 **Initial Conditions Precedent.** Lender shall not be obligated to fund the Loan unless each of the following conditions has been satisfied:

(a) Borrower has executed and delivered each such Loan Document, all in form and substance satisfactory to Lender.

(g) The DIP Order shall be in full force and effect and shall not have been reversed, modified, amended, subject to a pending appeal, stayed or vacated (other than, as to the Interim Order, by the Final Order) absent the prior written consent of Lender.

## SECTION 6. BORROWER'S REPRESENTATIONS AND WARRANTIES

### 6.1 **Administrative Priority; Lien Priority; DIP Order.**

(a) The Obligations constitute an allowed administrative expense in the Chapter 11 Case, having priority in payment over all other administrative expenses and claims against Borrower now existing or hereafter arising, of any kind or nature whatsoever, including without limitation all administrative expenses of the kind specified in, or arising or ordered under, Sections 105, 326, 328, 503(b), 506(c), 507(a), 507(b), 546(c), 726 and 1114 of the Bankruptcy Code.

(b) Pursuant to Section 364(c)(2) of the Bankruptcy Code and the DIP Order, all Obligations are secured by a perfected Lien on the Collateral, subject to no other Lien (except as provided in the DIP Order) in any of the Collateral which is not encumbered by a Prior Lien (as defined in the DIP Order).

(c) Pursuant to Section 364(d)(1) of the Bankruptcy Code and the DIP Order, all of the Obligations are secured by (1) a perfected Lien on the Collateral which came into existence or was acquired by Borrower on or after the Petition Date, subject to no other Lien except as provided in the DIP Order, and (2) a perfected Lien on the Collateral which came into existence or was acquired by Borrower prior to the Petition Date, subject to no other Lien except as provided in the DIP Order.

(d) On the Closing Date, the Interim Order is, and from and after the entry of the Final Order, the Final Order will be, in full force and effect, and neither the Interim Order nor the Final Order has been reversed, vacated, modified, amended or stayed, except for modifications and amendments that are reasonably acceptable to Lender and are not stayed in any respect.

6.2 **Approved Budget.** Borrower has furnished the Approved Budget to Lender. The Approved Budget is reasonable and was prepared on a reasonable basis and in good faith by Borrower and is based on reasonable assumptions based on the best information available to Borrower, and Borrower is not aware of any facts or information that would lead any of them to believe that the Approved Budget is incorrect or misleading in any material respect.

6.3 **Appointment of Trustee or Examiner; Liquidation.** No order has been entered or is pending in the Chapter 11 Case (a) for the appointment of a Chapter 11 trustee, (b) for the appointment of an examiner with enlarged powers (beyond those set forth in Sections 1106(a)(3) and (4) of the

Bankruptcy Code) under Sections 1104(d) and 1106(b) of the Bankruptcy Code or (c) to convert the Chapter 11 Case to a Chapter 7 case or to dismiss the Chapter 11 Case.

**6.4 Chapter 11 Case.** The Chapter 11 Case was commenced by the filing of a voluntary petition on the Petition Date. The Chapter 11 Case has not been dismissed. The motion for approval of this Agreement was proper and sufficient pursuant to the Bankruptcy Code, the Bankruptcy Rules, and the Local Bankruptcy Rules of the Bankruptcy Court.

## **SECTION 7. AFFIRMATIVE COVENANTS**

At all times that this Agreement remains in effect the Term Loan is outstanding, Borrower covenants that it shall:

**7.1 Notices.** Notify Lender, promptly after Borrower obtaining knowledge thereof, of (i) any Default or Event of Default; (ii) the commencement of any action, suit or other proceeding against, or any demand for arbitration with respect to, Borrower; (iii) the occurrence or existence of any default (or claimed default) by Borrower relating to this Agreement or the Term Loan; or (iv) any other event or transaction which has or could reasonably be expected to have a Material Adverse Effect.

**7.2 Rights and Facilities.** Maintain and preserve all rights (including all rights related to Intellectual Property), franchises and other authority adequate for the conduct of its business; maintain its properties, equipment and facilities in good order and repair; conduct its business in an orderly manner without voluntary interruption; and maintain and preserve its existence.

**7.3 Insurance.** In addition to the insurance required by the Loan Documents with respect to the Collateral, maintain with its current insurers or with other financially sound and reputable insurers having a rating of at least A- or better by *Best's Ratings*, a publication of A.M. Best Company, (i) insurance with respect to its properties and business against such casualties and contingencies of such type (including product liability, workers' compensation, larceny, embezzlement or other criminal misappropriation insurance) and in such amounts and with such coverages, limits and deductibles as is customary in the business of Borrower (ii) marine cargo coverage, in such amounts and with such coverages, limits and deductibles as is customary in the business of Borrower, and (iii) business interruption insurance, in an amount approved by Lender.

**7.4 Visits and Inspections.** Permit representatives of Lender from time to time, as often as may be reasonably requested, but only during normal business hours and (except when a Default or Event of Default exists) upon reasonable prior notice to Borrower to: visit and inspect properties of Borrower; inspect, audit and make extracts from Borrower's books and records; and discuss with its officers, employees and independent accountants Borrower's financial conditions, business prospects and results of operations.

**7.5 Taxes; Other Charges.** Pay and discharge all Taxes (and other charges the non-payment of which could result in a Lien on Borrower's assets) in accordance with the requirements of the Bankruptcy Code to the extent permitted under the DIP Order, and, if requested by Lender, shall provide proof of payment or, in the case of withholding or other employee taxes, deposit of payments required

by applicable law. Borrower shall, and shall cause each of its Subsidiaries to, deliver to Lender copies of all Tax returns (and amendments thereto) promptly after the filing thereof.

**7.6 Financial Statements and Other Information.** (a) Keep adequate records and books of account with respect to its business activities in which proper entries are made in accordance with GAAP reflecting all its financial transactions

**7.7 Compliance with Laws.** Comply with all laws relating to Borrower, the conducts of its business and the ownership and use of its Assets, including ERISA, all Environmental Laws, OSHA, the Fair Labor Standards Act and all other laws regarding the collection, payment and deposit of the Taxes, and shall obtain and keep in full force and effect any and all governmental and regulatory approvals necessary to the ownership of its properties or the conduct of its business and shall promptly report any non-compliance to Lender.

**7.8 Reimbursement for Lender Expenses.** Upon the demand of Lender, promptly reimburse Lender for all sums expended by Lender which constitute Lender Expenses, and Borrower hereby authorizes and approves all Loans by Lender in payment of items constituting Lender Expenses.

**7.9 Chapter 11 Pleadings.** Promptly (and in any event within two days) after filing thereof, Borrower will deliver, or cause to be delivered, to Lender copies of any pleadings, motions, applications, financial information and other papers and documents filed by Borrower in the Chapter 11 Case, which papers and documents would not otherwise be served on Lender and Lender's counsel pursuant to the Bankruptcy Court's appropriate procedures.

**7.10 Committee Reports.** Promptly (and in any event within two days) after sending thereof, Borrower will deliver, or cause to be delivered, to Lender copies of all written reports given by or on behalf of Borrower to any Committee.

## **SECTION 8. EVENTS OF DEFAULTS**

**8.1 Events of Default.** The occurrence or existence of any one or more of the following events or conditions shall constitute an Event of Default:

- (a) Borrower shall fail to pay any of the Obligations on the due date thereof (whether due at stated maturity, on demand, upon acceleration or otherwise);
- (b) Borrower fails or neglects to perform, keep or observe any term, provision, condition, covenant or agreement, in this Agreement, in any of the other Loan Documents, or in any other present or future agreement between Borrower and Lender;
- (c) Borrower is enjoined, restrained or in any way prevented by court order from continuing to conduct all or any material part of its business affairs or Borrower voluntarily ceases to continue to conduct all or any material part of its business; or
- (d) A Bankruptcy Default shall occur.

**8.2 Cumulative Rights; No Waiver.** All covenants, conditions, warranties, guaranties, indemnities and other undertakings of Borrower in the DIP Order, this Agreement or any of the other Loan Documents shall be deemed cumulative, and Lender shall have all other rights and remedies not inconsistent herewith as provided under the UCC or other applicable law. No exercise by Lender of one right or remedy shall be deemed an election, and no waiver by Lender of any Default or Event of Default on one occasion shall be deemed to be a continuing waiver or applicable to any other occasion. No waiver or course of dealing shall be established by the failure or delay of Lender to require strict performance by Borrower with any term of the Loan Documents, or to exercise any rights or remedies with respect to the Collateral or otherwise.

## **SECTION 9. GENERAL PROVISIONS**

**9.1 Effectiveness, Successors and Assigns.** This Agreement shall be binding and deemed effective when executed by Borrower and accepted by Lender in the State of California, and when so accepted, shall bind and inure to the benefit of the respective successors and assigns of each of the parties; provided that Borrower may not assign this Agreement or any rights hereunder without Lender's prior written consent and any prohibited assignment shall be absolutely void. No consent to an assignment by Lender shall release Borrower from its Obligations to Lender. Lender may assign this Agreement and its rights and duties hereunder. Lender reserves the right to sell, assign, transfer, negotiate or grant participations in all or any part of, or any interest in, Lender's rights and benefits hereunder.

**9.2 Section Headings; Interpretation.** Section headings and section numbers have been set forth herein for convenience only. Neither this Agreement nor any uncertainty or ambiguity herein shall be construed or resolved against Lender or Borrower, whether under any rule of construction or otherwise. This Agreement has been reviewed by all parties and shall be construed and interpreted according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of the parties hereto.

**9.3 Indulgences Not Waivers.** Lender's failure at any time or times to require strict performance by Borrower of any provision of this Agreement or any of the other Loan Documents shall not waive, affect or otherwise diminish any right of Lender thereafter to demand strict compliance and to performance with such provision.

**9.4 Severability; Survival.** Each provision of this Agreement shall be severable from every other provision of this Agreement for the purpose of determining the legal enforceability of any specific provision.

**9.5 Modification; Entire Agreement.** This Agreement cannot be changed or terminated orally. This Agreement and the other Loan Documents represent the entire understanding of the parties with respect to the subject matter hereof and thereof and supersede all prior agreements, understandings, negotiations and inducements regarding the same subject matter.

9.6 **Counterparts; Facsimile Signatures.** This Agreement and any amendments hereto may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument. Counterparts of each of the Loan Documents may be delivered by facsimile or electronic mail and the effectiveness of each such Loan Document and signatures thereon shall, subject to applicable law, have the same force and effect as manually signed originals and shall be binding on all parties thereto.

9.7 **Governing Law.** This Agreement shall be deemed to have been made in the State of California, and shall be governed by and construed in accordance with the internal laws (without regard to conflict of law provisions) of the State of California.

9.8 **Consent to Forum.** Borrower and Lender consent to the exclusive jurisdiction of the Bankruptcy Court in any action, suit or other proceeding arising out of or relating to this Agreement or any of the other Loan Documents. Subject to the terms of the DIP Order, nothing herein shall limit the right of Lender to bring proceedings against Borrower in the courts of any other jurisdiction where Collateral may be located. Nothing in this Agreement shall be deemed or operate to affect the right of Lender to serve legal process in any other manner permitted by law or to preclude the enforcement by Lender of any judgment or order obtained in such forum or the taking of any action under this Agreement to enforce same in any other appropriate forum or jurisdiction.

9.9 **Waiver of Certain Rights.**

(A) **GENERAL.** TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, BORROWER HEREBY KNOWINGLY, INTENTIONALLY AND INTELLIGENTLY WAIVES (WITH THE BENEFIT OF ADVICE OF LEGAL COUNSEL OF ITS OWN CHOOSING): (I) THE RIGHT TO TRIAL BY JURY (WHICH LENDER HEREBY ALSO WAIVES) IN ANY ACTION, SUIT, PROCEEDING OR COUNTERCLAIM OF ANY KIND ARISING OUT OF, RELATED TO OR BASED IN ANY WAY UPON ANY OF THE LOAN DOCUMENTS, THE OBLIGATIONS OR THE COLLATERAL; (II) SUBJECT TO THE TERMS OF THE DIP ORDER, PRESENTMENT, PROTEST, DEFAULT, NON-PAYMENT, MATURITY, RELEASE, COMPROMISE, SETTLEMENT, EXTENSION OR RENEWAL OF ANY OR ALL COMMERCIAL PAPER, ACCOUNTS, CONTRACT RIGHTS, DOCUMENTS, INSTRUMENTS, CHATTEL PAPER AND GUARANTIES AT ANY TIME HELD BY LENDER ON WHICH BORROWER MAY IN ANY WAY BE LIABLE AND HEREBY RATIFIES AND CONFIRMS WHATEVER LENDER MAY DO IN THIS REGARD; (III) SUBJECT TO THE TERMS OF THE DIP ORDER, NOTICE PRIOR TO TAKING POSSESSION OR CONTROL OF ANY OF THE COLLATERAL AND THE REQUIREMENT TO DEPOSIT OR POST ANY BOND OR OTHER SECURITY WHICH MIGHT OTHERWISE BE REQUIRED BY ANY COURT OR APPLICABLE LAW PRIOR TO ALLOWING LENDER TO EXERCISE ANY OF LENDER'S SELF-HELP OR JUDICIAL REMEDIES TO OBTAIN POSSESSION OF ANY OF THE COLLATERAL; (IV) THE BENEFIT OF ALL VALUATION, APPRAISEMENT AND EXEMPTION LAW; (V) ANY CLAIM AGAINST LENDER ON ANY THEORY OF LIABILITY, FOR SPECIAL, INDIRECT, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES (AS OPPOSED TO DIRECT OR ACTUAL DAMAGES) ARISING OUT OF, IN CONNECTION WITH, OR AS A RESULT OF ANY OF THE LOAN DOCUMENTS, ANY TRANSACTION THEREUNDER, THE ENFORCEMENT OF ANY REMEDIES BY LENDER OR THE USE OF ANY PROCEEDS OF ANY LOANS; (VI) NOTICE OF ACCEPTANCE OF THIS AGREEMENT BY LENDER; AND (VII) THE RIGHT TO ASSERT ANY CONFIDENTIAL RELATIONSHIP THAT IT MAY HAVE UNDER APPLICABLE LAW WITH ANY ACCOUNTING

**FIRM AND/OR SERVICE BUREAU IN CONNECTION WITH ANY INFORMATION REQUESTED BY LENDER PURSUANT TO OR IN ACCORDANCE WITH THIS AGREEMENT (AND BORROWER AGREES THAT LENDER MAY CONTACT DIRECTLY ANY SUCH ACCOUNTING FIRM AND/OR SERVICE BUREAU IN ORDER TO OBTAIN ANY SUCH INFORMATION).**

9.10 **Additional Provisions.** Time is of the essence of this Agreement and the other Loan Documents. No provision of this Agreement or any of the other Loan Documents shall be construed against or interpreted to the disadvantage of any party hereto by any governmental authority by reason of such party having or being deemed to have structured, drafted or dictated such provision.

9.11 **Lender as Party-in-Interest.** Borrower hereby stipulates and agrees that Lender is and shall remain a party in interest in the Chapter 11 Case and shall have the right to participate, object and be heard in any motion or proceeding in connection therewith. Nothing in this Agreement or any other Loan Document shall be deemed to be a waiver of any of Lender's rights or remedies under applicable law or documentation. Without limitation of the foregoing, Lender shall have the right to make any motion or raise any objection it deems to be in its interest.

9.12. **Credit Bids.** Lender has the right to credit bid its claims under this Agreement or the DIP Order, as applicable, pursuant to Section 363(k) of the Bankruptcy Code, and Borrower agrees that it shall not object to Lender's right to credit bid.

9.13. **Conflict of Terms.** If any provision in this Agreement or any other Loan Document conflicts with any provision in the DIP Order, the provision in the DIP Order shall govern and control.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, to be effective on the date first set forth above.

BORROWER:

**SHIEKH SHOES, LLC**

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

Name: Shiekh Ellahi

Title: Chief Executive Officer

LENDER:

Anjum Shiekh

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

Name: \_\_\_\_\_

**EXHIBIT A**

**FORM OF TERM NOTE**

U.S. \$5,000,000

January \_\_, 2018

FOR VALUE RECEIVED, the undersigned, **SHIEKH SHOES, LLC**, a California limited liability company ("Borrower"), hereby promises to pay to the order of **Anjum Shiekh** (herein, together with any subsequent holder hereof, called "Lender"), the principal sum of **FIVE MILLION AND NO/100 DOLLARS** (\$5,000,000) on the date on which such outstanding principal amounts become due and payable pursuant to the Loan Agreement (as defined below), in strict accordance with the terms thereof. Borrower likewise unconditionally promises to pay to Lender interest from and after the date hereof on the outstanding principal amount of Term Loan at such interest rate, payable at such times and computed in such manner as are specified in the Loan Agreement and in strict accordance with the terms thereof.

This Term Note (this "Note") is issued pursuant to, and is the "Term Note" referred to in, Senior Priority Debtor in Possession Term Loan and Security Agreement dated of even date herewith (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "Loan Agreement"), between Borrower and Lender, and Lender is and shall be entitled to all benefits thereof and of all other Loan Documents executed and delivered in connection therewith. All capitalized terms used herein, unless otherwise defined herein, shall have the meanings ascribed to such terms under the Loan Agreement.

The entire unpaid principal balance and all accrued interest on this Note shall be due and payable in accordance with the Loan Agreement. All payments of principal and interest shall be made in Dollars and in immediately available funds as specified in the Loan Agreement.

Upon or after the occurrence of an Event of Default and for so long as such Event of Default exists, the principal balance and all accrued interest of this Note may be declared (or shall become) due and payable in the manner and with the effect provided in the Loan Agreement, and the unpaid principal balance hereof shall bear interest at the Default Rate as and when provided in Section 2.3 of the Loan Agreement. If this Note is collected by or through an attorney at law, then Borrower shall be obligated to pay, in addition to the principal balance of and accrued interest on this Note, all costs of collection, including, without limitation, reasonable attorneys' fees and court costs.

All principal amounts of the Term Loan made by Lender to Borrower pursuant to the Loan Agreement, and all accrued and unpaid interest thereon, shall be deemed evidenced by this Note and shall continue to be owing by Borrower until paid in accordance with the terms of this Note and the Loan Agreement.

In no contingency or event whatsoever shall the amount paid or agreed to be paid to Lender for the use, forbearance or detention of the Term Loan exceed the highest lawful rate permissible under any law which a court of competent jurisdiction may deem applicable hereto; and, in the event of any such payment inadvertently paid by Borrower or inadvertently received by Lender, such excess sum shall be, at Borrower's option, returned to Borrower forthwith or credited as a payment of principal, but shall not be applied to the payment of interest. It is the intent hereof that Borrower not pay or contract

to pay, and that Lender not receive or contract to receive, directly or indirectly in any manner whatsoever, interest in excess of that which may be paid by Borrower under applicable law.

Time is of the essence of this Note. To the fullest extent permitted by applicable law, Borrower, for itself and its legal representatives, successors and assigns, expressly waives presentment, demand, protest, notice of dishonor, notice of non-payment, notice of maturity, notice of protest, presentment for the purpose of accelerating maturity, diligence in collection, and the benefit of any exemption or insolvency laws.

Wherever possible each provision of this Note shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Note shall be prohibited or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or remaining provisions of this Note. No delay or failure on the part of Lender in the exercise of any right or remedy hereunder shall operate as a waiver thereof, nor as an acquiescence in any default, nor shall any single or partial exercise by Lender of any right or remedy preclude any other right or remedy.

Borrower shall have the right to prepay this Note in full at any time without the imposition of any prepayment fee or penalty.

The rights of Lender and obligations of Borrower hereunder shall be construed in accordance with and governed by the laws (without giving effect to the conflict of law principles thereof) of the State of California.

To the fullest extent permitted by applicable law, Borrower and, by its acceptance hereof, Lender, each hereby waives the right to trial by jury in any action, suit, proceeding or counterclaim of any kind arising out of, related to or based in any way upon this Note or any of the matters contemplated hereby.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, Borrower has caused this Note to be executed and delivered by its duly authorized officers on the date first above written.

**SHIEKH SHOES, LLC**  
("Borrower")

By: \_\_\_\_\_  
Name: Shiekh Ellahi  
Title: Chief Executive Officer

**EXHIBIT B**  
**FORM OF INTERIM ORDER**

[ATTACH FORM OF INTERIM ORDER]

2617865.1

# **EXHIBIT B**

1 David S. Kupetz (CA Bar No. 125062)  
2 *dkupetz@sulmeyerlaw.com*  
3 Asa S. Hami (CA Bar No. 201728)  
4 *ahami@sulmeyerlaw.com*  
5 Steven F. Werth (CA Bar No. 205434)  
6 *swerth@sulmeyerlaw.com*  
7 **SulmeyerKupetz**  
8 A Professional Corporation  
9 333 South Hope Street, Thirty-Fifth Floor  
10 Los Angeles, California 90071-1406  
11 Telephone: 213.626.2311

12 Attorneys for Debtor and Debtor in Possession  
13 Shiekh Shoes, LLC

14 **UNITED STATES BANKRUPTCY COURT**

15 **CENTRAL DISTRICT OF CALIFORNIA, LOS ANGELES DIVISION**

16 In re

17 Case No. 2:17-bk-24626-VZ

18 SHIEKH SHOES, LLC,  
19 a California limited liability company,

20 Chapter 11

21 Debtor.

22 **INTERIM ORDER:**

23 **(1) AUTHORIZING DEBTOR TO OBTAIN  
24 POSTPETITION REPLACEMENT TERM  
25 LOAN SECURED BY SENIOR LIEN  
26 PURSUANT TO 11 U.S.C. § 364 TO  
27 PAYOFF STATE BANK AND TRUST  
28 COMPANY;**

29 **(2) AUTHORIZING DEBTOR'S USE OF  
30 CASH COLLATERAL PURSUANT TO 11  
31 U.S.C. § 363;**

32 **(3) GRANTING ADEQUATE  
33 PROTECTION TO PREPETITION JUNIOR  
34 SECURED CREDITOR PURSUANT TO 11  
35 U.S.C. §§ 361, 362, 363, AND 364;**

36 **(4) SCHEDULING FINAL HEARING ON  
37 MOTION; AND**

38 **(5) GRANTING RELATED RELIEF**

39 [Relates to Dkt. No. \_\_\_\_\_]

40 Date: TBD

41 Time: TBD

42 Place: Courtroom 1368  
43 255 East Temple Street  
44 Los Angeles, CA 90012

1        The “Motion For Interim And Final Orders: (1) Authorizing Debtor to Obtain Postpetition  
2 Replacement Term Loan Secured by Senior Lien Pursuant to 11 U.S.C. § 364 to Payoff Staet bank  
3 And Trust Company; (2) Authorizing Debtor’s Use of Cash Collateral Pursuant to 11 U.S.C. §  
4 363; (3) Granting Adequate Protection to Prepetition Junior Secured Creditor Pursuant to 11  
5 U.S.C. §§ 361, 362, 363, And 364; (4) Scheduling Final Hearing on Motion; And (5) Granting  
6 Related Relief” [Dkt. No. \_\_\_\_] (the “**Motion**”), filed by Shiekh Shoes, LLC, the debtor and  
7 debtor in possession in the above-captioned case (the “**Debtor**”), came on for hearing on an  
8 shortened notice on January 9, 2018, at 1:00 p.m., before the Honorable Vincent P. Zurzolo,  
9 United States Bankruptcy Judge, in Courtroom 1368 of the above-entitled Court, at 255 East  
10 Temple Street, Los Angeles, California 90012. Appearances were as noted on the record of the  
11 hearing.

12        The Motion filed in the above-captioned chapter 11 case (the “**Chapter 11 Case**”) seeks  
13 the entry of this interim order (this “**Order**”) and a final order (the “**Final Order**”): (1)  
14 authorizing the Debtor to obtain a senior secured postpetition term loan in the principal amount of  
15 \$5,000,000 (the “**Term Loan**”), pursuant to section 364 of title 11 of the United States Code, 11  
16 U.S.C. §§ 101, et seq. (the “**Bankruptcy Code**”), from Anjum Shiekh (the brother of the Debtor’s  
17 principal, Shiekh S. Ellahi) (the “**Term Lender**”), pursuant to the terms of this Order and that  
18 certain “Senior Secured Debtor in Possession Term Loan And Security Agreement”, dated as of  
19 January \_\_, 2018, by and between the Debtor and the Term Lender in substantially the form  
20 attached to the Motion as Exhibit A (as the same may be amended, restated, supplemented or  
21 otherwise modified from time to time, the “**Term Loan Agreement**”),<sup>1</sup> as a first stage of funding  
22 pending the Debtor’s procurement of a second stage of funding; (2) authorizing the Debtor to use  
23 the Term Loan as an in an amount necessary to payoff the existing prepetition and postpetition  
24 senior secured debt of State Bank And Trust Company (“**State Bank**”), the present prepetition  
25 senior secured lender and postpetition secured lender under prior interim order of the Court; (3)  
26 authorizing the Debtor to execute, deliver and enter into the Term Loan Agreement and other

27        <sup>1</sup> Capitalized terms used but not defined herein shall have the meaning assigned to such terms in the Term Loan  
28 Agreement.

1 Term Loan Documents (as defined in paragraph 2 below) and to perform such other and further  
2 acts as may be required in connection with the Term Loan Documents; (4) granting security  
3 interests, liens, and superpriority claims (including a superpriority administrative claim pursuant to  
4 section 364(c)(1) of the Bankruptcy Code, liens pursuant to sections 364(c)(2) and 364(c)(3) of the  
5 Bankruptcy Code, and priming liens pursuant to section 364(d) of the Bankruptcy Code) to the  
6 Term Lender to secure all obligations of the Debtor under and with respect to the Term Loan,  
7 subject to the payment of: (a) fees of the United States Trustee as required under 28 U.S.C. §  
8 1930(a)(6) (the “**UST Fees**”); and (b) allowed fees and expenses of each of the Debtor’s  
9 bankruptcy counsel, the Debtor’s financial advisor, the Committee’s bankruptcy counsel, and the  
10 Committee’s financial advisor (collectively, the “**Professional Fees**”); (5) approving the Debtor’s  
11 proposed 13-week budget appended hereto as Exhibit A (the “**Budget**”), which includes line-items  
12 for the payment of the UST Fees and Professional Fees; (6) authorizing the Debtor’s use of Cash  
13 Collateral (as defined in paragraph F below) to pay ordinary and necessary operating and  
14 administrative expenses pursuant to the Budget, with the provision: (a) for flexibility in  
15 connection with the Budget such that the Debtor may exceed the disbursements forecasted in the  
16 Budget by up to 20% on a line-by-line basis, and to exceed aggregate disbursements forecasted in  
17 the Budget by a total of 20%, measured on a cumulative weekly basis; and (b) that, to the extent  
18 any amount in a disbursement category is unused during a particular period, such amount be  
19 preserved and available for use in any subsequent period; (7) granting adequate protection to  
20 Comvest Capital II, L.P., as administrative and collateral agent for itself and various lenders more  
21 specifically identified in the related prepetition credit agreement, and to such lenders (collectively,  
22 “Comvest”), whose liens and security interests are being primed by the Term Loan, as more fully  
23 set forth in this Order; (8) modifying the automatic stay imposed under section 362 of the  
24 Bankruptcy Code to the extent necessary to implement, effectuate, and perform under the terms  
25 and provisions of the Term Loan Documents and this Order; (9) setting an expedited interim  
26 hearing (the “**Interim Hearing**”) on the Motion, pursuant to Rule 4001 of the Federal Rules of  
27 Bankruptcy Procedure (“**FRBP**”) and applicable Local Bankruptcy Rules of this Court, to be held  
28 before this Court to consider entry of this Order, which authorizes the Debtor to borrow under the

1 Term Loan Documents up to an aggregate principal amount not to exceed \$5,000,000; (10)  
2 finding that adequate notice of the Motion has been provided; (11) finding that any credit extended  
3 and loans made to, cash collateral used by, and adequate protection provided by the Debtor, are in  
4 “good faith” pursuant to section 364(e) of the Bankruptcy Code; (12) pursuant to Bankruptcy  
5 Rules 4001(b)(2) and 4001(c)(2) and the applicable Local Bankruptcy Rules of this Court: (a)  
6 scheduling a final hearing (the “**Final Hearing**”) on the Motion as set forth in paragraph 27 below  
7 to consider entry of the Final Order authorizing the Term Loan under the Term Loan Documents  
8 on a final basis, and (b) approving notice procedures with respect thereto; (13) waiving any  
9 applicable stay, including under FRBP 4001(b) and (c), and authorizing the immediate  
10 effectiveness of this Order; and (14) granting related and ancillary relief; and the Interim Hearing  
11 having been held before this Court on January 9, 2018; and this Court having considered the  
12 Motion and all pleadings related thereto, any oppositions or other responses to the Motion, the  
13 record in this case, and the evidence, representations, statements, and arguments presented by  
14 counsel at the Interim Hearing; and after due deliberation and consideration, and for the reasons  
15 set forth on the record at the Interim Hearing, and good and sufficient cause appearing therefor:

16 **THIS COURT HEREBY FINDS AND CONCLUDES AS FOLLOWS:<sup>2</sup>**

17 A. Commencement of Case. On November 29, 2017 (the “**Petition Date**”), the  
18 Debtor filed with this Court a voluntary petition for relief under chapter 11 of the Bankruptcy  
19 Code. The Debtor is continuing to operate its business and manage its properties as a Debtor-in-  
20 possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request has been  
21 made for the appointment of a trustee or examiner. On or about December 12, 2017, the United  
22 States Trustee appointed the Committee in this Chapter 11 Case.

23 B. Jurisdiction; Venue. This Court has jurisdiction over the Chapter 11 Case and the  
24 Motion pursuant to 28 U.S.C. §§ 157(b) and 1334. Consideration of the Motion constitutes a core  
25 proceeding pursuant to 28 U.S.C. § 157(b)(2). The statutory predicates for the relief sought herein  
26 are sections 105, 361, 362, 363, and 364 of the Bankruptcy Code and Rules 2002, 4001 and 9014

27  
28 <sup>2</sup> Pursuant to Bankruptcy Rule 7052, any findings of fact contained herein that may be construed as matters of law  
shall be treated as conclusions of law as if set forth below, and vice versa.

1 of the Federal Rules of Bankruptcy Procedure. Venue of the Chapter 11 Case in this District is  
2 proper pursuant to 28 U.S.C. §§ 1408 and 1409.

3       C.     Adequate Notice. On January \_\_\_, 2018, the Debtor filed the Motion with this  
4 Court and pursuant to Bankruptcy Rules 2002, 4001 and 9014, and the Local Bankruptcy Rules of  
5 this Court, the Debtor has provided notice of the Motion and the Interim Hearing by electronic  
6 mail, facsimile, hand delivery or overnight delivery to the following parties and/or to their counsel  
7 as indicated: (i) the Office of the United States Trustee for this District (the “U.S. Trustee”); (ii)  
8 the Committee; (iii) State Bank; (iv) Comvest; (v) all other known parties with liens of record on  
9 assets of the Debtor as of the Petition Date; (vi) all financial institutions at which the Debtor  
10 maintains deposit accounts; (vii) the local office for the Internal Revenue Service; and (viii) all  
11 other parties required to receive notice under the Court’s order limiting notice [Dkt. No. \_\_\_]  
12 (collectively, the “Notice Parties”). Given the nature of the relief sought in the Motion, this Court  
13 concludes that the foregoing notice was sufficient and adequate under the circumstances and  
14 complies with the Bankruptcy Code, the Bankruptcy Rules, and any other applicable law, and no  
15 further notice relating to this proceeding is necessary or required.

16       D.     State Bank Liens and Claims.

17 Without prejudice to the rights of any other party:

18       1.     Pursuant to that certain Loan and Security Agreement, dated as of March  
19 17, 2017 (as amended, restated, supplemented or otherwise modified from time to time, the “State  
20 Bank Prepetition Loan Agreement”), among the Debtor, State Bank and Trust Company (as  
21 successor-by-merger to Alostar Bank of Commerce), State Bank agreed to extend loans to, issue  
22 letters of credit for, and provide services and other credit accommodations to, the Debtor. The  
23 State Bank Prepetition Senior Loan Agreement, along with any other agreements and documents  
24 executed or delivered in connection therewith, including, without limitation, the “Loan  
25 Documents” as defined therein, are collectively referred to herein as the “State Bank Prepetition  
26 Loan Documents” (as the same may be amended, restated, supplemented or otherwise modified  
27 from time to time).

28       2.     All obligations of the Debtor arising under, or in connection with, the State  
Bank Prepetition Loan Agreement (including, without limitation, the “Obligations” and “Bank  
Product Obligations”, each as defined therein), any other State Bank Prepetition Loan Document,  
and/or any agreement evidencing any Bank Products (as defined in the State Bank Prepetition  
Loan Agreement) shall collectively be referred to herein as the “State Bank Prepetition  
Obligations.”

29       3.     Pursuant to the State Bank Prepetition Loan Agreement, the Security  
30 Documents (as defined in the State Bank Prepetition Loan Agreement), and all other State Bank  
31 Prepetition Loan Documents that purport to create a Lien (as defined in the State Bank Prepetition

1      Loan Agreement) in favor of State Bank (as such documents are amended, restated, supplemented  
2      or otherwise modified from time to time, the “**State Bank Prepetition Security Documents**”), the  
3      Debtor granted to State Bank, to secure the State Bank Prepetition Senior Obligations, a first  
4      priority security interest in and continuing lien (the “**State Bank Prepetition Liens**”) on  
5      substantially all of the Debtor’s assets and property, and all proceeds, products, accessions, rents  
6      and profits thereof, in each case whether then owned or existing or thereafter acquired or arising.  
7      All collateral granted or pledged by the Debtor pursuant to any State Bank Prepetition Security  
8      Document or any other State Bank Prepetition Loan Document, including, without limitation, the  
9      “Collateral” as defined in the State Bank Prepetition Loan Agreement, and all pre-petition and  
10     post-petition proceeds thereof shall collectively be referred to herein as the “**State Bank**  
11     **Prepetition Collateral**”.

7      4.      As of the Petition Date, (i) the Debtor was indebted to State Bank pursuant  
8      to the State Bank Prepetition Loan Documents in the aggregate principal amount of not less than  
9      \$7,005,970.00 in respect of loans made and letters of credit issued by State Bank, plus all accrued  
10     and hereafter accruing and unpaid interest thereon and any additional fees and expenses (including  
11     any attorneys’, accountants’, appraisers’ and financial advisors’ fees and expenses that are  
12     chargeable or reimbursable under the State Bank Prepetition Loan Documents) now or hereafter  
13     due under the State Bank Prepetition Loan Agreement and the other State Bank Prepetition Loan  
14     Documents, and (ii) the value of the State Bank Prepetition Collateral exceeded the amount of  
15     State Bank Prepetition Obligations.

12     5.      On November 29, 2017, the Debtor filed an “Emergency Motion For  
13     Interim And Final Orders: (1) Authorizing Debtor to Obtain Postpetition Financing Pursuant to 11  
14     U.S.C. § 364; (2) Authorizing The Debtor’s Limited Use of Cash Collateral Pursuant to 11 U.S.C.  
15     § 363; (3) Granting Adequate Protection to Prepetition Senior Lender Pursuant to 11 U.S.C. §§  
16     361,362, 363, And 364; (4) Scheduling Final Hearing Pursuant to Bankruptcy Rule 4001; And (5)  
17     Granting Related Relief” [Dkt. No. 5] (the “**State Bank DIP Financing Motion**”);

16     6.      On December 1, 2017, this Court entered an interim order granting the State  
17     Bank DIP Financing Motion on an interim basis (the “**State Bank Interim Order**”), pursuant to  
18     which, as more specifically set forth therein, the Debtor was authorized to obtain senior secured  
19     post-petition financing in an aggregate principal amount not to exceed \$16,000,000 (the “**State**  
20     **Bank DIP Facility**”), pursuant to section 364 of the Bankruptcy Code, from State Bank pursuant  
21     to the terms of the State Bank Interim Order and that certain “Senior Secured, Super-Priority  
22     Debtor-In-Possession Loan and Security Agreement,” dated as of December 1, 2017, by and  
23     between the Debtor and State Bank (as the same may be amended, restated, supplemented or  
24     otherwise modified from time to time, the “**State Bank Postpetition Loan Agreement**”);

21     7.      On December 21, 2017, State Bank issued to the Debtor a notice of default  
22     and reservation of rights asserting that Events of Default exist under the State Bank Loan  
23     Agreement and State Bank Interim Order, and advising that the obligations due State Bank will  
24     bear interest at the Default Rate effective as of December 21, 2017, with a reservations of rights to  
25     exercise all of its rights and remedies under the State Bank DIP Loan Agreement, the State Bank  
26     Interim Order, and other loan documents relating to the State Bank DIP Facility (together with the  
27     State Bank Loan Agreement, the “**State Bank DIP Loan Documents**”). On December 29, 2017,  
28     State Bank issued to the Debtor a second notice of default and reservation of rights asserting that  
an additional Event of Default exists under the State Bank Loan Agreement and State Bank  
Interim Order.

26     8.      As of the filing of the Motion, the Debtor is indebted to State Bank on  
27     account of any remaining State Bank Prepetition Obligations and any obligations under the State  
28     Bank DIP Facility (the “**State Bank Postpetition Obligations**,” and together with the State Bank  
Prepetition Obligations, the “**State Bank Obligations**”). in an amount not less than  
\$ \_\_\_\_\_.

1                   E.     Comvest Liens and Claims.

2                   Without prejudice to the rights of any party (including the Debtor), the Debtor states that:

3                   1.     Pursuant to that certain Credit Agreement, dated as of March 17, 2017 (as  
4     amended, restated, supplemented or otherwise modified from time to time, the “Prepetition Second  
5     Lien Credit Agreement”), among the Debtor, Comvest Capital II, L.P., as administrative agent and  
6     collateral agent for itself and the Prepetition Second Lien Lenders (as defined below) (in such  
7     capacity, the “**Prepetition Second Lien Agent**”), and the other lenders party thereto (collectively, the  
8     “**Prepetition Second Lien Lenders**”), the Prepetition Second Lien Lenders agreed to extend a term  
9     loan to the Debtor in an aggregate principal amount of \$10,000,000. The Prepetition Second Lien  
10    Credit Agreement, along with any other agreements and documents executed or delivered in  
11    connection therewith, including, without limitation, the “Loan Documents” as defined therein, are  
12    collectively referred to herein as the “**Prepetition Second Lien Loan Documents**” (as the same may  
13    be amended, restated, supplemented or otherwise modified from time to time). The Prepetition  
14    Second Lien Agent and the Prepetition Second Lien Lenders may be referred to herein collectively, as  
15    “**Comvest**”).

16                   2.     All obligations of the Debtors arising under the Prepetition Second Lien Credit  
17    Agreement (including, without limitation, the “Obligations” as defined therein) or any other  
18    Prepetition Second Lien Loan Document shall collectively be referred to herein as the “**Prepetition  
19    Second Lien Obligations**.”

20                   3.     Pursuant to the Collateral Agreement (as defined in the Prepetition Second Lien  
21    Credit Agreement) (as such documents are amended, restated, supplemented or otherwise modified  
22    from time to time, the “**Prepetition Second Lien Security Documents**”), by and between the Debtor  
23    and the Prepetition Second Lien Agent, the Debtor granted to the Prepetition Second Lien Agent, for  
24    the benefit of itself and the Prepetition Second Lien Lenders, to secure the Prepetition Second Lien  
25    Obligations, a second priority security interest in and continuing lien (the “**Prepetition Junior  
26    Liens**”) in the State Bank Prepetition Collateral (the “**Comvest Collateral**”).

27                   F.     Cash Collateral. For purposes of this Order, the term “**Cash Collateral**” shall  
28    mean and include all “cash collateral” as defined by section 363(a) of the Bankruptcy Code and  
29    shall include and consist of, without limitation, all of the respective cash proceeds of the  
30    Postpetition Collateral (as defined below in paragraph 8 of this Order) and Comvest Collateral in  
31    which Comvest has an interest (including, without limitation, any adequate protection lien or  
32    security interest), whether such interest existed as of the Petition Date or arises thereafter pursuant  
33    to this Order, any other order of this Court, applicable law or otherwise.

34                   G.     Exigent Circumstances. The Debtor has an immediate and critical need to obtain  
35    postpetition funding under the Term Loan and to use Cash Collateral in order to, among other  
36    things, payoff the State Bank Obligations, finance the ordinary costs of its operations, make  
37    payroll, satisfy other working capital and operational needs, and satisfy the administrative  
38    expenses in this Chapter 11 Case. The Debtor’s access to sufficient working capital and liquidity

1 through the incurrence of postpetition funding under the Term Loan and the use of Cash Collateral  
2 under the terms of this Order is vital to the preservation and maintenance of the value of the  
3 Estate. Consequently, without access to the Term Loan and the use of Cash Collateral, to the  
4 extent authorized pursuant to this Order, the Debtor and its Estate would suffer immediate and  
5 irreparable harm.

6       H.     No Alternative Sources of Funding. Given the Debtor's current financial condition  
7 and capital structure, the Debtor is unable to obtain (i) adequate unsecured credit allowable either  
8 (a) under sections 364(b) and 503(b)(1) of the Bankruptcy Code or (b) under section 364(c)(1) of  
9 the Bankruptcy Code, (ii) adequate credit secured by (x) a senior lien on unencumbered assets of  
10 its estate under section 364(c)(2) of the Bankruptcy Code and (y) a junior lien on encumbered  
11 assets under section 364(c)(3) of the Bankruptcy Code, or (iii) secured credit under section  
12 364(d)(1) of the Bankruptcy Code, from sources other than the Term Lender on terms more  
13 favorable than the terms of the Term Loan. The only source of secured credit available to meet  
14 the Debtor's current needs and on an immediate basis is the Term Loan. The Debtor requires both  
15 additional financing under the Term Loan and the use of Cash Collateral under the terms of this  
16 Order in order to satisfy its post-petition liquidity needs. After considering all of its alternatives,  
17 the Debtor has concluded, in an exercise of its sound business judgment, that the financing to be  
18 provided by the Term Lender pursuant to the terms of this Order and the Term Loan Documents  
19 represents the best financing presently available to the Debtor.

20       I.     Willingness of Term Lender. The Term Lender has indicated a willingness to  
21 provide the Debtor with a loan, but solely on the terms and conditions set forth in this Order and in  
22 the Term Loan Documents.

23       J.     Section 364(d) Finding. The security interests and liens granted pursuant to this  
24 Order to the Term Lender are appropriate under section 364(d) of the Bankruptcy Code because,  
25 among other things: (i) such security interests and liens do not impair the interests of any holder of  
26 a valid, perfected, prepetition security interest or lien in any property of the Estate, and/or (ii) the  
27 holders of such security interests and liens have consented (or are deemed to have consented) to  
28 the security interests and priming liens granted pursuant to this Order to the Term Lender.

1           K.     Good Cause Shown. Good cause has been shown for immediate entry of this Order  
2 pursuant to Bankruptcy Rules 4001(b)(2) and (c)(2) and such relief is in the best interest of the  
3 Debtor, its Estate and creditors. In particular, the authorizations granted herein for the Debtor to  
4 execute the Term Loan Documents, to use the Cash Collateral, and to obtain interim financing,  
5 including on a priming lien basis, are necessary to avoid immediate and irreparable harm to the  
6 Debtor and its Estate, are fair and reasonable, reflect the Debtor's exercise of prudent business  
7 judgment consistent with its fiduciary duties, and are supported by reasonably equivalent value  
8 and fair consideration.

9           L.     Section 364(e); Good Faith. The Term Loan, Term Loan Documents, use of Cash  
10 Collateral, and provision of adequate protection contained herein have been negotiated in good  
11 faith and at arm's-length among the Debtor and the Term Lender. Accordingly, any credit  
12 extended and loans made to, Cash Collateral used by, and adequate protection provided by, the  
13 Debtor pursuant to this Order shall be, and hereby are, deemed to have been extended, issued,  
14 made, used or provided, as the case may be, in "good faith" as required by, and within the  
15 meaning of, section 364(e) of the Bankruptcy Code.

16           Based upon the foregoing findings, stipulations, and conclusions, and upon the record  
17 made before this Court at the Interim Hearing, and good and sufficient cause appearing therefor,

18 **IT IS HEREBY ORDERED AS FOLLOWS:**

19           1.     Motion Granted. The Motion is approved on an interim basis on the terms and  
20 conditions set forth in this Order. This Order shall become effective immediately upon its entry.  
21 To the extent any provisions in this Order conflict with any provisions of the Term Loan  
22 Documents, the provisions of this Order shall control and govern to the extent of such conflict.  
23 All objections to the entry of this Order have been withdrawn or overruled.

24           2.     Term Loan Documents. The terms and conditions of the Term Loan Agreement are  
25 hereby approved. The Debtor is hereby authorized to enter into and deliver the Term Loan  
26 Agreement and such additional documents, instruments, notes and agreements as may be  
27 reasonably required by the Term Lender to implement the terms or effectuate the purposes of this  
28 Order (as such additional documents, instruments, notes and agreements may be amended,

1 restated, supplemented or otherwise modified from time to time, together with the Term Loan  
2 Agreement, the “**Term Loan Documents**”). The Debtor is hereby authorized to borrow money  
3 under the Term Loan Agreement, in accordance with the terms of this Order and the Term Loan  
4 Documents. Upon execution and delivery thereof by the Debtor, the Term Loan Documents shall  
5 be incorporated by reference as part of this Order and shall constitute valid and binding  
6 obligations of the Debtor, enforceable against the Debtor (and its Estate, successors and assigns)  
7 in accordance with the terms thereof.

8       3.     Amendments. The Debtor is hereby authorized, without further notice, motion or  
9 application to, order of, or hearing before, this Court, to enter into agreements with the Term  
10 Lender providing for any non-material modifications to the Term Loan Agreement, or of any other  
11 modifications to the Term Loan Agreement necessary to conform the Term Loan Agreement to  
12 this Order, and the Debtor may make any non-material modifications to the Budget; provided,  
13 however, that notice of any material modification or amendment to the Budget or the Term Loan  
14 Agreement shall be provided to counsel to the Committee, counsel to Comvest, and counsel to the  
15 U.S. Trustee, each of whom shall have three (3) days from the date of such notice within which to  
16 object in writing to such material modification or amendment. If the Committee, Comvest, or the  
17 U.S. Trustee timely objects in writing served on counsel for the Term Lender and the Debtor to  
18 any material modification or amendment to the Budget or the Term Loan Agreement, then such  
19 modification or amendment shall only be permitted pursuant to an order of this Court.

20       4.     Permitted Use. Notwithstanding anything in this Order to the contrary, the Debtor  
21 may, and is authorized to, use the proceeds of the Term Loan to payoff the State Bank  
22 Obligations, and may use the Cash Collateral and any remaining proceeds of the Term Loan  
23 following payment of the State Bank Obligations to pay any and all ordinary and necessary  
24 operating and administrative expenses of the Debtor, solely in accordance with the Term Loan  
25 Documents, this Order, and the Budget, with the provision: (i) for flexibility in connection with  
26 the Budget such that the Debtor may exceed the disbursements forecasted in the Budget by up to  
27 20% on a line-by-line basis, and to exceed aggregate disbursements forecasted in the Budget by a  
28 total of 20%. measured on a cumulative weekly basis; and (ii) that, to the extent any amount in a

1 disbursement category is unused during a particular period, such amount be preserved and  
2 available for use in any subsequent period. Any variance provided for in this Order shall be  
3 exclusive of any fees, charges, costs, or expenses that may be required to be paid to State Bank in  
4 connection with the payoff of the State Bank Obligations.

5. **Postpetition Obligations.** For purposes of this Order, the term "**Postpetition**  
**Obligations**" shall mean all amounts owing under the Term Loan Agreement and other Term  
Loan Documents and shall include the principal of, interest on, fees, costs, expenses and other  
charges owing in respect of, such amounts (including, without limitation, any attorneys',  
accountants', financial advisors' and other fees, costs and expenses that are chargeable or  
reimbursable under the Term Loan Documents), and any obligations in respect of letters of credit  
or indemnity claims, in each case whether contingent or otherwise.

6. **Interest, Fees, Costs and Expenses.** The Postpetition Obligations shall bear interest  
at the rates, and be due and payable (and paid), as set forth in, and in accordance with the terms  
and conditions of, this Order and the Term Loan Documents, in each case without further notice,  
motion or application to, order of, or hearing before, this Court. The Debtor shall pay on demand  
all fees, costs, expenses and other charges payable under the terms of the Term Loan Documents,  
including, without limitation, all fees, costs and expenses described in the Term Loan Agreement,  
in each case whether or not the Term Loan Agreement and transactions contemplated therein are  
consummated. All such fees, costs and expenses (if any) incurred through and including the  
Closing Date (as defined in the Term Loan Agreement) shall be paid on the Closing Date, and  
none of such fees, costs and expenses shall be subject to Court approval or U.S. Trustee  
guidelines, and no recipient of any such payment shall be required to file with respect thereto any  
interim or final fee application with this Court. With respect to all such fees, costs, and expenses  
incurred after the Closing Date, the Term Lender shall submit summaries of its professional fee  
invoices to the Debtor, the U.S. Trustee and counsel for the Committee. Such summary invoices  
may be redacted to the extent necessary to delete any information subject to the attorney-client  
privilege, any information constituting attorney work product, or any other confidential  
information, and the provision of such summaries shall not constitute any waiver of the attorney-

1 client privilege or of any benefits of the attorney work product doctrine. The U.S. Trustee and the  
2 Committee may object to the reasonableness of the fees, costs, and expenses included in any  
3 professional fee summary invoice submitted by the Term Lender; provided that, (i) any portion of  
4 any such summary invoice that is not the subject of any objection shall be paid immediately, and  
5 (ii) any objection shall be forever waived and barred unless (A) it is filed with this Court and  
6 served on counsel to the Term Lender no later than ten (10) days after the objecting party's receipt  
7 of the applicable professional fee summary invoice, and (B) it describes with particularity the  
8 items or categories of fees, costs, and expenses that are the subject of the objection and provides  
9 the specific basis for the objection to each such item or category of fees, costs, and expenses. Any  
10 hearing on an objection to payment of any fees, costs, and expenses of the Term Lender set forth  
11 in a professional fee summary invoice shall be limited to the reasonableness or necessity of the  
12 particular items of categories of the fees, costs and expenses which are the subject of such  
13 objection. The Debtor shall indemnify the Term Lender (and other applicable parties) to the  
14 extent set forth in the Term Loan Documents. All such unpaid fees, costs, expenses, and charges  
15 that have not been disallowed by this Court on the basis of an objection filed by the U.S. Trustee  
16 or the Committee in accordance with the terms hereof shall constitute Postpetition Obligations and  
17 shall be secured by the Postpetition Collateral as specified in this Order.

18       7.     Budget. The Budget attached hereto as Exhibit A is a 13-week budget, which  
19 reflects on a line-item basis the Debtor's anticipated cumulative cash receipts, and expenditures on  
20 a weekly basis and all necessary and required cumulative expenses which the Debtor expects to  
21 incur during each week of the Budget, is approved. The Budget may be modified or supplemented  
22 from time to time by additional budgets (covering any time period covered by a prior budget or  
23 covering additional time periods) prepared by the Debtor, in each case without further notice,  
24 motion or application to, order of, or hearing before, this Court (except as required by paragraph 3  
25 above). The Debtor may exceed the disbursements forecasted in the Budget by up to 20% on a  
26 line-by-line basis, and may exceed aggregate disbursements forecasted in the Budget by a total of  
27 20%, measured on a cumulative weekly basis. In addition, to the extent any amount in a  
28 disbursement category is unused during a particular period, such amount be preserved and

1 available for use in any subsequent period.

2       8.     Postpetition Liens. Effective only upon Closing of the Term Loan and the payoff  
3 of the State Bank Obligations, as security for the full and timely payment of the Postpetition  
4 Obligations, the Term Lender is hereby granted, pursuant to sections 364(c)(2), 364(c)(3) and  
5 364(d)(1) of the Bankruptcy Code, valid, binding, enforceable, unavoidable and fully perfected  
6 security interests, liens and mortgages (collectively, the “**Postpetition Liens**”) in and upon all  
7 prepetition and postpetition real and personal, tangible and intangible property and assets of the  
8 Debtor of any kind or nature whatsoever, wherever located, whether now existing or hereafter  
9 acquired or arising, including, without limitation, all State Bank Prepetition Collateral, cash  
10 (including all Cash Collateral wherever held), cash equivalents, bank accounts, accounts, other  
11 receivables, chattel paper, contract rights, inventory, instruments, documents, securities (whether  
12 or not marketable), equipment, goods, fixtures, real property interests, intellectual property,  
13 general intangibles, investment property, supporting obligations, letter of credit rights, commercial  
14 tort claims, one hundred percent (100%) of the capital stock of the Debtor’s direct and indirect  
15 domestic and foreign subsidiaries, all inter-company notes held by the Debtor, copyrights,  
16 trademarks, trade names, licenses, rights to payment including tax refund claims, and causes of  
17 action (exclusive of actions for preferences, fraudulent conveyances, and other avoidance power  
18 claims under sections 544, 545, 547, 548, 549 and 550 of the Bankruptcy Code (the “**Avoidance**  
19 **Actions**”)) and the proceeds, products, offspring, rents and profits of all of the foregoing, including  
20 insurance proceeds (all of the foregoing, the “**Postpetition Collateral**”). Such Postpetition Liens  
21 shall not be released except to the extent that Full Payment (as defined in Term Loan Agreement)  
22 of the Postpetition Obligations has occurred in cash and the Term Lender has received a release  
23 from the Debtor and its Estate in form and substance acceptable to the Term Lender.  
24 Notwithstanding the foregoing, any Postpetition Lien with respect to any of the Debtor’s leasehold  
25 rights shall constitute a lien on the proceeds from the sale of such leasehold rights and not a direct  
26 lien on the actual leasehold rights.

27       9.     Other Priority Matters. Subject to the Carve-Out, the Postpetition Liens: (a) shall,  
28 pursuant to section 364(c)(2) of the Bankruptcy Code, constitute first priority security interests in

1 and liens on all Postpetition Collateral that is not otherwise subject to any Prior Lien (defined  
2 below); (b) shall, pursuant to section 364(d)(1) of the Bankruptcy Code, be senior to and prime (i)  
3 any Prepetition Junior Liens, (ii) the Adequate Protection Junior Liens (the liens described in  
4 clauses (i) and (ii) above, collectively, the “**Primed Liens**”); and (c) shall, pursuant to section  
5 364(c)(3) of the Bankruptcy Code, be immediately junior in priority to any and all Prior Liens  
6 (other than the Primed Liens) on or in the Postpetition Collateral. Other than the Carve-Out and  
7 the Prior Liens, the Postpetition Liens shall at all times be senior to the following (collectively, the  
8 “**Subordinate Liens and Related Rights**”): (i) the rights of the Debtor and any successor trustee  
9 or estate representative in the Chapter 11 Case or any other subsequent proceedings under the  
10 Bankruptcy Code, including, without limitation, any Chapter 7 proceeding if any of the Chapter 11  
11 Case are converted to a case under Chapter 7 of the Bankruptcy Code (collectively, the  
12 “**Successor Case**”); (ii) any inter-company claim of the Debtor or any domestic or foreign  
13 subsidiary or affiliate of the Debtor, and (iii) any security interest or lien which is either (x)  
14 avoided or otherwise preserved for the benefit of the Estate under section 551 or any other  
15 provision of the Bankruptcy Code, or (y) junior or otherwise subordinate to the State Bank  
16 Prepetition Liens. The Postpetition Liens shall be deemed legal, valid, binding, enforceable, and  
17 perfected liens, not subject to subordination, impairment or avoidance, for all purposes in the  
18 Chapter 11 Case and any Successor Case. Other than the Carve-Out and the Prior Liens, no other  
19 liens or security interests, whether for adequate protection or otherwise, shall be senior or equal to  
20 or *pari passu* with the Postpetition Liens in this Chapter 11 Case or any Successor Case without  
21 the express written consent of the Term Lender given in accordance with the Term Loan  
22 Agreement (which consent may be withheld in its sole discretion). As used herein, the terms  
23 “**Prior Liens**” or “**Prior Lien**” have the same meaning as used in paragraph D(d) of the State  
24 Bank Interim Order and, for avoidance of doubt: (a) any Prior Lien that existed as of the Petition  
25 Date that was not primed pursuant to the State Bank Interim Order, such Prior Lien shall not be  
26 primed pursuant to this Order; and (b) the Prior Liens shall not include, or be deemed to include,  
27 any or all of the Prepetition Junior Liens and/or the Adequate Protection Junior Liens, all of which  
28 liens are being primed by the Postpetition Liens as set forth herein.

1       10.    Super-Priority Claim. In addition to the Postpetition Liens, the Term Lender is  
2 hereby granted, for all Postpetition Obligations, an allowed super-priority administrative expense  
3 claim pursuant to Section 364(c)(1) of the Bankruptcy Code (the “**Super-Priority Claim**”) against  
4 the Debtor and its Estate. Except for the Carve-Out, the Super-Priority Claim shall have priority  
5 over all other costs and expenses of administration of any kind (and no cost or expense of  
6 administration shall be senior to, equal to, or *pari passu* with, the Super-Priority Claim), including  
7 those specified in, or ordered pursuant to, sections 105, 326, 328, 330, 331, 363, 364, 503, 506,  
8 507, 546, 726, 1113 or 1114 or any other provision of the Bankruptcy Code or otherwise.

9       11.    No Reduction or Impairment. No obligation or liability owed, or payment, transfer  
10 or grant of security, to Term Lender under this Order or any other Term Loan Document shall be  
11 stayed, restrained, voidable, impaired, or recoverable under the Bankruptcy Code or under any  
12 applicable law (including, without limitation, under section 502(d) or 548 of the Bankruptcy Code  
13 or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance  
14 Act or similar statute or common law), or be subject to any defense, reduction, setoff, recoupment  
15 or counterclaim, whether in the Chapter 11 Case or any Successor Case. The Postpetition  
16 Obligations, once paid by the Debtor, shall be non-refundable.

17       12.    Carve-Out.

18           (a)    Generally. Notwithstanding anything to the contrary contained in this  
19 Order, the liens and claims granted to the Term Lender in this Order and/or any of the Term Loan  
20 Documents shall be subject to the payment of the allowed fees, expenses, and claims (collectively,  
21 the “**Carve-Out**”), but only to the extent that there are not sufficient, unencumbered funds in the  
22 Estate to pay such amounts and/or from any retainers held by any Retained Professionals (as  
23 defined below):

24           (i)    the claims of (x) professionals of the Debtor whose retention is  
25 approved by this Court during the Chapter 11 Case pursuant to Sections 327 and 328 of the  
26 Bankruptcy Code (the “**Debtor’s Professionals**”) for unpaid fees and expenses which were  
27 incurred on and after the Petition Date; and (y) professionals of any statutory committees  
28 appointed in the Chapter 11 Case whose retention is approved by this Court during the Chapter 11  
Case pursuant to Section 1103 of the Bankruptcy Code (the “**Committee’s Professionals**” and  
together with the Debtor’s Professionals, the “**Retained Professionals**”) for unpaid fees and  
expenses which were incurred on and after the Petition Date; provided that, in each case, such fees  
and expenses of the Retained Professionals are ultimately allowed on a final basis by this Court

1 under sections 330 and 331 of the Bankruptcy Code; and

2 (ii) unpaid fees payable to the United States Trustee and Clerk of the  
3 Bankruptcy Court pursuant to Section 1930 of Title 28 of the United States Code.

4 (b) Weekly Advances. Subject to the terms and conditions of this Order and  
5 the Term Loan Documents, the Debtor shall be permitted to (i) make weekly advances of funds to  
6 the Committee's Counsel (which funds will be held in Committee's Counsel's trust account) (each  
7 such advance with respect to Committee's Counsel, a "**Committee's Counsel Advance**"; each  
8 such advance with respect to the Committee's Financial Advisor, a "**Committee's Financial**  
9 **Advisor Advance**") for payment of compensation and reimbursement of reasonable fees and  
10 expenses of the Committee's Professionals allowed and payable under sections 327, 328, 330 and  
11 331 of the Bankruptcy Code, as the same may be due and payable in accordance with the Budget;  
12 and (ii) make weekly advances of funds to Debtor's Counsel (which funds will be held in Debtor's  
13 Counsel's trust account) (each such advance with respect to Debtor's Counsel, a "**Debtor's**  
14 **Counsel Advance**"; each such advance with respect to the Debtor's Financial Advisor, a  
15 "**Debtor's Financial Advisor Advance**") for payment of compensation and reimbursement of  
16 reasonable expenses of Debtor's Professionals allowed and payable under sections 327, 328, 330  
17 and 331 of the Bankruptcy Code in accordance with the Budget, subject to the following: (A) the  
18 aggregate amount of Committee's Counsel Advances in any week will be \$30,000; (B) the  
19 aggregate amount of Committee's Financial Advisor Advance in any week will be \$30,000; (C)  
20 the aggregate amount of Debtor's Counsel Advances in any week will be \$35,000; and (D) the  
21 aggregate amount of Debtor's Financial Advisor Advances in any week will be \$35,000.

22 (c) Reservation of Rights. Payment of any fees and expenses of the Retained  
23 Professionals pursuant to the Carve-Out shall not, and shall not be deemed to, (i) reduce the  
24 Debtor's obligations owed to the Term Lender or (ii) subordinate, modify, alter, or otherwise  
25 affect any of the liens and security interests of the Term Lender in the Postpetition Collateral (or  
26 its claims against the Debtor). The Term Lender shall not be responsible for the direct payment or  
27 reimbursement of any fees or disbursements of any Retained Professionals (or of any other  
28 Person) incurred in connection with the Chapter 11 Case or any Successor Case, and nothing in

1 this Order or otherwise shall be construed to obligate such parties in any way to pay compensation  
2 to or to reimburse expenses of any Retained Professional or any other Person, or to ensure that the  
3 Debtor has sufficient funds to pay such compensation or reimbursement. Nothing herein shall  
4 impair, or be construed to impair, the ability of any party to object to any of the fees, expenses,  
5 reimbursement or compensation of the Retained Professionals.

6       13.     Adequate Protection Junior Obligations. Effective only upon Closing of the Term  
7 Loan and the payoff of the State Bank Obligations, to the extent that the Prepetition Second Lien  
8 Agent has a valid claim for diminution in the value, if any, of the Prepetition Second Lien Agent's  
9 and Prepetition Second Lien Lenders' interests in the Comvest Collateral from and after the  
10 Petition Date (the amount of such diminution, the "**Adequate Protection Junior Obligations**"),  
11 and subject to the rights of any party in interest (including, without limitation, the Debtor) to  
12 challenge the extent, validity, and priority of the Prepetition Second Lien Agent's and Prepetition  
13 Second Lien Lenders' and/or claims against the Debtor and/or the Prepetition Junior Liens, the  
14 Prepetition Second Lien Agent and Prepetition Second Lien Lenders are hereby granted the  
15 following:

16               (a)     Replacement Liens. Subject to the foregoing requirements set forth in this  
17 paragraph 13, pursuant to sections 361(2), 362, 363(c)(2), and 363(e) of the Bankruptcy Code, the  
18 Prepetition Second Lien Agent, for its benefit and the benefit of the Prepetition Second Lien  
19 Lenders, is hereby granted by the Debtor continuing valid, binding, enforceable and perfected,  
20 liens and security interests in and on all of the Postpetition Collateral (the "**Adequate Protection**  
21 **Junior Liens**"). The Adequate Protection Junior Liens shall be subordinate to: (A) the Carve-Out,  
22 (B) the Postpetition Liens, and (C) the Prior Liens. The Adequate Protection Junior Liens shall be  
23 deemed legal, valid, binding, enforceable, and perfected liens, not subject to subordination,  
24 impairment or avoidance, for all purposes in the Chapter 11 Case and any Successor Case. Except  
25 as described herein, no other liens or security interests, whether for adequate protection or  
26 otherwise, shall be senior or equal to or *pari passu* with the Adequate Protection Junior Liens in  
27 the Chapter 11 Case or any Successor Case without the prior written consent of Comvest.

28               (b)     Adequate Protection Junior Claim. Subject to the foregoing requirements

1 set forth in this paragraph 13, pursuant to section 507(b) of the Bankruptcy Code, the Prepetition  
2 Second Lien Agent and the Prepetition Second Lien Lenders shall have an allowed super-priority  
3 administrative expense claim (the “**Adequate Protection Junior Claim**”) against the Debtor and  
4 its Estate. The Adequate Protection Junior Claim shall be subordinate to: (A) the Carve-Out, and  
5 (B) the Super-Priority Claim. Except as described herein, no cost or expense of administration  
6 under any provision of the Bankruptcy Code (whether incurred in these Chapter 11 Case or any  
7 Successor Case, whether for adequate protection, the lack of, or failure to provide, adequate  
8 protection, or otherwise), shall be senior to, equal to, or *pari passu* with, the Adequate Protection  
9 Junior Claim.

10       14.    Waivers. Except for the Carve-Out and Prior Liens, no claim or lien having a  
11 priority superior to or *pari passu* with those granted pursuant to this Order to the Term Lender,  
12 shall be granted or allowed while any portion of the Term Loan (or any refinancing thereof) or the  
13 Postpetition Obligations remain outstanding.

14       15.    Automatic Perfection.

15       (a)    The Postpetition Liens and the Adequate Protection Junior Liens (subject to  
16 the provisions of paragraph 13 of this Order) shall not be subject to challenge and, immediately  
17 upon becoming effective as set forth in this Order, shall attach and become valid, perfected,  
18 enforceable, non-avoidable and effective by operation of law as of the Petition Date without any  
19 further notice, act or action of or by any Person or entity, and without the necessity of execution  
20 by the Debtor, or the filing or recordation, of any financing statements, security agreements,  
21 vehicle lien applications, mortgages, filings with the U.S. Patent and Trademark Office, or other  
22 documents. If the Term Lender hereafter requests that the Debtor execute and deliver to it any  
23 financing statements, security agreements, collateral assignments, mortgages, or other instruments  
24 and documents considered by such party to be reasonably necessary or desirable to further  
25 evidence the perfection of the liens and security interests provided under this Order, then the  
26 Debtor is hereby authorized and directed, at its sole cost and expense, to promptly execute and  
27 deliver such financing statements, security agreements, mortgages, collateral assignments,  
28 instruments, and documents, and the Term Lender is hereby authorized to file or record such

1 documents in their respective discretion, in which event all such documents shall be deemed to  
2 have been filed or recorded at the time and on the date of entry of this Order, but with the  
3 priorities as set forth herein. The Term Lender may (in its sole discretion), but shall not be  
4 required to, file a certified copy of this Order in any filing or recording office in any state, county  
5 or other jurisdiction in which the Debtor has real or personal property and such filing or recording  
6 shall be accepted and shall constitute sufficient evidence of perfection of such party's interests in  
7 the Postpetition Collateral at the time and on the date of entry of this Order, but with the priorities  
8 as set forth herein.

9 (b) To the extent that any applicable non-bankruptcy law would otherwise  
10 restrict the grant, scope, enforceability, attachment or perfection of the security interests and liens  
11 authorized or created under or in connection with this Order or the Term Loan Documents, or  
12 otherwise would impose filing or registration requirements or fees and charges with respect  
13 thereto, such law is hereby pre-empted to the maximum extent permitted by the United States  
14 Constitution, the Bankruptcy Code, applicable federal law, and the judicial power of the United  
15 States Bankruptcy Court; provided that the Term Lender may still take such steps as it wishes to  
16 perfect its respective security interests and liens under otherwise applicable state law without  
17 waiving the benefits of this provision of this Order.

18        16. Default Under Other Documents. The Term Lender shall have all rights and  
19 remedies with respect to the Debtor and any other rights, remedies, benefits and privileges as are  
20 set forth in this Order and the Term Loan Documents (as applicable). Except as otherwise  
21 expressly provided herein, no provision contained in any prepetition or postpetition agreement to  
22 which the Debtor is a party, or under which the Debtor is obligated or bound, that restricts,  
23 conditions, prohibits, limits or impairs in any way the Debtor from (a) granting the Term Lender  
24 the postpetition security interests or liens upon any of its assets (subject to the limitations with  
25 respect to the Debtor's leasehold interest set forth in paragraph 8 above), or (b) otherwise entering  
26 into and complying with all of the terms, conditions and provisions of this Order and the Term  
27 Loan Documents, shall be unenforceable against the Debtor.

28 17. Successors and Assigns. The provisions of this Order and the Term Loan

1 Documents shall, as applicable, be binding upon and inure to the benefit of the Term Lender, the  
2 Prepetition Second Lien Agent, the Prepetition Second Lien Lenders, and the Debtor and its  
3 Estate, and their respective successors and assigns, including, without limitation, any trustee or  
4 other fiduciary hereafter appointed as a legal representative of the Debtor or its Estate, whether in  
5 this Chapter 11 Case or any Successor Case.

6       18.     Survival. The provisions of this Order and any actions taken pursuant thereto: (a)  
7 shall survive the entry of any order: (i) converting the Chapter 11 Case to a case under chapter 7 of  
8 the Bankruptcy Code; or (ii) dismissing or closing the Chapter 11 Case; and (b) shall continue in  
9 full force and effect notwithstanding the entry of any such order.

10       19.     Section 364(e); Effect of Modification or Appeal. Based on the findings set forth  
11 in this Order and on the record of the Interim Hearing, in consideration for the financing provided  
12 under Term Loan, the Term Lender is entitled to, and hereby is granted, the full rights, benefits,  
13 privileges and protections of, and provided by, section 364(e) of the Bankruptcy Code with respect  
14 to the Postpetition Obligations (and related liens, claims, rights, remedies and benefits) created or  
15 authorized by this Order in the event that this Order or any authorization or approval contained  
16 herein is subsequently stayed, vacated, reversed, amended or modified on appeal. Any subsequent  
17 stay, modification, reversal, amendment or vacation of this Order shall not alter, modify or affect  
18 the validity, priority, perfection or enforceability of any claim, lien, or security interest of the  
19 Term Lender authorized, created or granted pursuant to this Order and outstanding immediately  
20 prior to the actual receipt of written notice by the Term Lender of the effective date of such stay,  
21 modification, reversal, amendment or vacation. Notwithstanding any such stay, modification,  
22 reversal, amendment or vacation, all obligations and other financial accommodations made  
23 pursuant to this Order, all Postpetition Obligations incurred and uses of Cash Collateral permitted  
24 by the Debtor pursuant hereto prior to the actual receipt of written notice by the Term Lender of  
25 the effective date of such stay, modification, reversal, amendment or vacation, shall be governed  
26 in all respects by the original provisions of this Order and the Term Lender shall be entitled to all  
27 of the rights, privileges, remedies, protections and benefits contained or granted in section 364(e)  
28 of the Bankruptcy Code, the Term Loan Documents and this Order (as applicable), including,

1 without limitation, the Postpetition Liens and Super-Priority Claims.

2       20.     Modification of Automatic Stay; Other Remedies.

3                 (a)     Subject to sub-paragraph (c) below, the automatic stay pursuant to section  
4 362 of the Bankruptcy Code is hereby lifted and vacated as to the Term Lender to the extent  
5 necessary to permit it to perform in accordance with, provide any notice under, and exercise, enjoy  
6 and enforce its rights, benefits, privileges and remedies pursuant to this Order and the other Term  
7 Loan Documents, in each case without further notice, motion or application to, order of, or hearing  
8 before, this Court. Subject to sub-paragraph (c) below, regardless of any change in circumstances  
9 (whether or not foreseeable), neither section 105 of the Bankruptcy Code nor any other provision  
10 of the Bankruptcy Code or applicable law shall be utilized to prohibit the Term Lender's exercise,  
11 enjoyment and enforcement of any of such rights, benefits, privileges and remedies as and to the  
12 extent provided in this Order.

13                 (b)     Subject to sub-paragraph (c) below, the Term Lender is hereby authorized  
14 and granted leave from the automatic stay under section 362 of the Bankruptcy Code to do the  
15 following on and after the occurrence and continuation of an Event of Default under the Term  
16 Loan Agreement, in each case without further notice, motion or application to, order of, or hearing  
17 before, this Court:

18                         (i)     terminate any obligation of Term Lender to make loans or other  
19 extensions of credit under the Term Loan Documents or this Order; and

20                         (ii)    declare all Postpetition Obligations immediately due and payable in  
full in cash.

21                 (c)     On and after the occurrence and continuation of an Event of Default under  
22 the Term Loan Agreement, and after obtaining Court approval upon notice and hearing, the Term  
23 Lender shall be entitled to foreclose or otherwise enforce its respective liens on any or all of the  
24 Postpetition Collateral and/or to exercise any other default-related rights and remedies under the  
25 Term Loan Documents, this Order, and applicable law to the extent not already permitted pursuant  
26 to sub-paragraph (b) above. The parties shall use their best efforts to schedule and attend an  
27 expedited Court hearing within three (3) business days of notice of the Event of Default being  
28 given to the Debtor. The Debtor acknowledges and agrees, and this Court hereby orders, that the

1 only issue to be determined and decided at any Court hearing regarding such matters is whether an  
2 Event of Default has occurred and is continuing under the Term Loan Agreement and notice of  
3 such hearing need only be given to the Debtor, the Committee, Comvest, and the U.S. Trustee.

4       21.     No Waiver of Rights.

5               (a)     Generally. Without limiting the terms and conditions of paragraphs 8  
6 through 11, and 13 none of the Term Lender, Prepetition Second Lien Agent, or Prepetition  
7 Second Lien Lenders waives, and each expressly reserves, any and all claims, causes of action,  
8 defenses, rights and remedies it has or may have pursuant to any or all of the Term Loan  
9 Documents, the Prepetition Second Lien Loan Documents, any inter-creditor or subordination  
10 agreement, the Bankruptcy Code and/or under applicable law against or with respect to the Debtor  
11 and any other Person or entity.

12               (b)     Relative Priorities. Pursuant to section 510 of the Bankruptcy Code, any  
13 inter-creditor or subordination agreement between and/or among the Prepetition Junior Lender, the  
14 Debtor and any other non-Debtor party thereto, and any other applicable inter-creditor or  
15 subordination provisions contained in any credit agreement, security agreement, indenture or  
16 related document, remain in full force and effect and are not amended, altered or modified by the  
17 terms of this Order or the Term Loan Documents.

18               (c)     Additional Rights Preserved. Without limiting the generality of this  
19 paragraph 21, the Term Lender, Prepetition Second Lien Agent, and Prepetition Second Lien  
20 Lenders may, as applicable, petition this Court for any such additional protection they may  
21 reasonably require with respect to the Prepetition Second Lien Obligations, the Postpetition  
22 Obligations, or otherwise, including, without limitation, their rights to request additional adequate  
23 protection of their interests in the Comvest Collateral. Except as otherwise set forth herein, entry  
24 of this Order shall not in any way constitute agreement, consent, or acquiescence by the Term  
25 Lender, Prepetition Second Lien Agent, or Prepetition Second Lien Lenders to the terms of any  
26 plan of reorganization filed in the Chapter 11 Case.

27       22.     No Liability to Third Parties. In making decisions to advance loans to the Debtor,  
28 in administering any loans, in permitting the Debtor to use Cash Collateral, in approving any

1 budget or in taking any actions permitted by this Order or the Term Loan Documents, as  
2 applicable, the Term Lender shall not (i) be deemed to be in control of the operations of the  
3 Debtor or to be acting as a “controlling person,” “responsible person” or “owner or operator” with  
4 respect to the operation or management of the Debtor, and/or (ii) owe any fiduciary duty to the  
5 Debtor, its creditors or its Estate, and its relationship with the Debtor shall not constitute or be  
6 deemed to constitute a joint venture or partnership with the Debtor.

7       23.     Payments Held in Trust. Except as expressly permitted in this Order or the Term  
8 Loan Documents, in the event that any person or entity receives any payment on account of a  
9 security interest in Collateral, receives any Collateral or any proceeds of Collateral or receives any  
10 other payment with respect thereto from any source prior to the indefeasible payment in full in  
11 cash of all Postpetition Obligations, and termination of the Term Loan in accordance with the  
12 Term Loan Documents, such person or entity shall be deemed to have received, and shall hold,  
13 any such payment or proceeds of Collateral in trust for the benefit of the Term Lender and shall  
14 immediately turn over such proceeds to the Term Lender for application to the Postpetition  
15 Obligations, or as otherwise instructed by the Court, for application in accordance with the Term  
16 Loan Documents and this Order.

17       24.     Additional Defaults. In addition and without limitation of the Events of Default set  
18 forth in and defined in the Term Loan Documents, this Order, or any Final Order, it shall be a  
19 default hereunder (and constitute an “Event of Default” under the Term Loan Agreement and this  
20 Order) if (a) a sale of substantially all assets is proposed by the Debtor without the written consent  
21 of the Term Lender that would not indefeasibly pay the Postpetition Obligations in full in cash, (b)  
22 any other motion is filed by the Debtor for any relief directly or indirectly affecting the  
23 Postpetition Collateral in a material manner unless all Postpetition Obligations have been  
24 indefeasibly paid in final, in full, in cash, and completely satisfied upon consummation of the  
25 transaction contemplated thereby and such motion is otherwise approved of in writing by the Term  
26 Lender, (c) the Debtor fails to comply with any of the terms of this Order, or (d) at the option of  
27 the Term Lender in its sole discretion, the occurrence of any Event of Default under the Term  
28 Loan Agreement. Any order for dismissal or conversion shall be automatically deemed to

1 preserve the rights of the Term Lender under this Order. No order providing for the sale of  
2 substantially all of the assets of the Debtor under section 363 of the Bankruptcy Code shall be  
3 entered by the Court unless, upon the closing of such transaction, all liens securing the  
4 Postpetition Obligations and Prepetition Second Lien Obligations (to the extent that such liens  
5 securing the Prepetition Second Lien Obligations are valid, perfected, enforceable, and  
6 unavoidable) (in their respective priority) are transferred to the proceeds of such sale and such  
7 proceeds or are applied to permanently and indefeasibly repay the Postpetition Obligations and  
8 Prepetition Second Lien Obligations (to the extent that the liens securing the Prepetition Second  
9 Lien Obligations are valid, perfected, enforceable, and unavoidable) as applicable, in full, in cash;  
10 provided, however, that nothing contained in this paragraph 24, shall grant the Prepetition Second  
11 Lien Agent or any Prepetition Second Lien Lender any greater rights than any of them have under  
12 the Prepetition Intercreditor Agreement. If an order dismissing any of these Chapter 11 Case  
13 under section 305 or 1112 of the Bankruptcy Code or otherwise is at any time entered, (i) the  
14 claims, security interests, liens and claims granted to or for the benefit of the Term Lender and  
15 Prepetition Second Lien Agent pursuant to this Order shall continue in full force and effect and  
16 shall maintain their priorities as provided in this Order, as applicable, until all Postpetition  
17 Obligations and Prepetition Second Lien Obligations (to the extent that the liens securing the  
18 Prepetition Second Lien Obligations are valid, perfected, enforceable, and unavoidable) shall have  
19 been paid and satisfied in full (and that such claims and liens, shall, notwithstanding such  
20 dismissal, remain binding on all parties in interest) and (ii) this Court shall retain jurisdiction,  
21 notwithstanding such dismissal, for the purposes of enforcing such claims and liens.

22       25. Proofs of Claim. The Term Lender will not be required to file a proof of claim or  
23 request for approval of administrative expenses in any of the Chapter 11 Case or any Successor  
24 Case, and the provisions of this Order relating to the amount of the Postpetition Obligations shall  
25 constitute a timely filed proof of claim and/or administrative expense request in the Chapter 11  
26 Case.

27       26. Critical Vendors. To the extent that critical vendor status is conferred upon any  
28 entity in this Chapter 11 Case, whether by motion filed by the Debtor or otherwise, such entity's

1 claims shall be deemed to be subordinate to the Postpetition Obligations, the Prepetition Second  
2 Lien Obligations, and the Adequate Protection Junior Obligations regardless of whether such  
3 entity executes a subordination agreement in favor of the Postpetition Lender, Prepetition Second  
4 Lien Agent, or Prepetition Second Lien Lenders.

5       27. Subordination to State Bank Indemnity Claims or Liens. Notwithstanding anything  
6 to the contrary elsewhere in this Order, until expiration of the Complaint Filing Deadline (as that  
7 term is defined in paragraph 30 to the State Bank Interim Order), the Super-Priority Claim and the  
8 Postpetition Liens shall be subordinate to any indemnification claims and related liens (if any) to  
9 which State Bank is entitled under the State Bank Interim Order or any of the State Bank DIP  
10 Loan Documents.

11       28. Final Hearing; Procedure for Objections to and Entry of Final Order. The Motion  
12 is set for a Final Hearing before this Court at \_\_\_\_:\_\_\_\_0 \_\_\_\_M. Pacific time on \_\_\_\_\_  
13 \_\_\_\_\_, 2018, at which time any party in interest may present any timely filed objections to the entry  
14 of the Final Order, which order shall be in form and substance acceptable to the Term Lender in its  
15 sole discretion. The Debtor shall, in accordance with the Bankruptcy Code, Bankruptcy Rules and  
16 Local Bankruptcy Rules of this Court, promptly serve a notice of the Final Hearing and entry of  
17 this Order, together with a copy of this Order, by electronic mail, facsimile, hand delivery, or  
18 overnight delivery to the Notice Parties. Such notice shall state that objections to the entry of the  
19 Final Order shall be in writing and shall be filed with the United States Bankruptcy Court for the  
20 Central District of California (Los Angeles Division) by no later than 4:00 P.M. (Prevailing  
21 Pacific time) on \_\_\_\_\_, 2018 (the “**Objection Deadline**”), which objections shall  
22 be served so that the same are actually received by the Objection Deadline by: (i) David S.  
23 Kupetz, Esq., Asa S. Hami, Esq., and Steven F. Werth, Esq., SulmeyerKupetz, a Professional  
24 Corporation, 333 South Hope Street, Thirty-Fifth Floor, Los Angeles, California 90071-1406, fax  
25 213-629-4520, dkupetz@sulmeyerlaw.com, ahami@sulmeyerlaw.com, and  
26 swerth@sulmeyerlaw.com, (counsel to the Debtor), (ii) \_\_\_\_\_  
27 (counsel to the Term Lender); and (iii) Kelly L. Morrison, Esq., Office of the United States  
28 Trustee, 915 Wilshire Blvd., Suite 1850, Los Angeles, CA 90017, Kelly.l.morrison@usdoj.gov

1 (the office of the United States Trustee). Any objections by creditors or other parties-in-interest to  
2 any of the provisions of the Final Order shall be deemed forever waived and barred unless timely  
3 filed and served in accordance with this paragraph.

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**Sulmeyer**Kuppetz, A Professional Corporation  
333 SOUTH HOPE STREET, THIRTY-FIFTH FLOOR  
LOS ANGELES, CALIFORNIA 90071-1406  
TEL 213.626.2311 • FAX 213.629.4520

# EXHIBIT C

December 21, 2017

**Via Overnight Delivery**

Shiekh Shoes, LLC  
1777 S. Vintage Ave.  
Ontario, CA 91761  
Attention: Shiekh S. Ellahi  
Facsimile: (909) 937-3317

Re: Senior Secured, Super Priority Debtor in Possession Loan and Security Agreement dated December 1, 2017 (as amended from time to time, the "Loan Agreement") between **SHIEKH SHOES, LLC**, a California limited liability company ("Borrower"), and **STATE BANK AND TRUST COMPANY**, a Georgia banking corporation, as successor by merger to AloStar Bank of Commerce ("Lender"); Interim Order (I) Authorizing the Debtor to Obtain Post-Petition Secured Financing Pursuant to 11 U.S.C. § 364, (II) Authorizing the Debtor's Use of Cash Collateral Pursuant to 11 U.S.C. § 363, (III) Granting Adequate Protection to Prepetition Senior Lender Pursuant to 11 U.S.C. §§ 361, 362, 363, and 364, and (IV) Scheduling Final Hearing Pursuant to Bankruptcy Rule 4001 (the "Interim Order")

Ladies and Gentlemen:

Please refer to the Loan Agreement and Interim Order described above. Capitalized terms used herein without definition shall have the meanings ascribed to such terms in the Loan Agreement and Interim Order, as applicable.

Events of Default exist under the Loan Agreement and Interim Order as a result of (a) Borrower's failure to cause each bank account which the Borrower utilizes in connection with its business to be owned by, and maintained in the name of, the Borrower by December 1, 2017, as required pursuant to Section 8.15 of the Loan Agreement and Paragraph 14(a) of the Interim Order, (b) Borrower's failure to cause all funds in each bank account into which proceeds of any Prepetition Senior Collateral and/or Postpetition Collateral are deposited to be transferred to Lender on a daily basis and to have standing transfer orders to this effect to be in place as to each such bank account on or before December 5, 2017, as required under Section 2.7 of the Loan Agreement and Paragraph 14(a) of the Interim Order, and (c) Borrower's failure to deliver to Lender a binding commitment letter from a lender or purchaser with respect to a loan to be made to the Real Estate Owners based on the security of the California Real Estate, or a purchase of the California Real Estate on or before December 20, 2017 as required under the definition of "Real Estate Milestones" set forth in the Loan Agreement. Such Events of Default are referred to herein as the "Specified Defaults."

Please be advised that, as a result of the Specified Defaults, the Obligations will bear interest at the Default Rate effective as of December 21, 2017.

Lender hereby reserves the right to exercise all of its rights and remedies under the Interim Order, the Loan Agreement and the other Loan Documents as a result of the Specified Defaults.

Borrower is hereby advised that (a) Lender hereby reserves the right to exercise all of its rights and remedies without further notice to Borrower, any Guarantor or any other Person, (b) any prior agreement by Lender to forbear from or forego the exercise of rights and remedies with respect to the Specified Default is no longer of any force or effect and shall in no way limit the rights of Lender as set forth herein, and (c) such rights and remedies are in addition to the rights and remedies of Lender with respect to any other Events of Default under the Interim Order, Loan Agreement, or any other Loan Document, whether now existing or hereafter arising. Neither this letter nor any subsequent Loan made by Lender to Borrower shall be construed as a waiver of the Specified Default or any other Event of Default.

Please feel free to contact the undersigned at (404) 365-7110 with any questions regarding the foregoing.

Sincerely,

STATE BANK AND TRUST COMPANY

By:   
Patrick Aarons, Director

cc: David Kupetz, Esq. (via email: dkupetz@sulmeyerlaw.com)

# **EXHIBIT D**

December 29, 2017

**Via Overnight Delivery**

Shiekh Shoes, LLC  
1777 S. Vintage Ave.  
Ontario, CA 91761  
Attention: Shiekh S. Ellahi  
Facsimile: (909) 937-3317

Re: Senior Secured, Super Priority Debtor in Possession Loan and Security Agreement dated December 1, 2017 (as amended from time to time, the “Loan Agreement”) between SHIEKH SHOES, LLC, a California limited liability company (“Borrower”), and STATE BANK AND TRUST COMPANY, a Georgia banking corporation, as successor by merger to AloStar Bank of Commerce (“Lender”); Interim Order (I) Authorizing the Debtor to Obtain Post-Petition Secured Financing Pursuant to 11 U.S.C. § 364, (II) Authorizing the Debtor’s Use of Cash Collateral Pursuant to 11 U.S.C. § 363, (III) Granting Adequate Protection to Prepetition Senior Lender Pursuant to 11 U.S.C. §§ 361, 362, 363, and 364, and (IV) Scheduling Final Hearing Pursuant to Bankruptcy Rule 4001 (the “Interim Order”)

Ladies and Gentlemen:

Please refer to the Loan Agreement and Interim Order described above. Capitalized terms used herein without definition shall have the meanings ascribed to such terms in the Loan Agreement and Interim Order, as applicable.

In addition to the Events of Default described in the Lender’s letter dated as of December 21, 2017, an Event of Default exists under the Loan Agreement and Interim Order as a result of Borrower’s failure be in Substantial Compliance with the Approved Budget for the week ended December 22, 2017, as required pursuant to Section 8.9 and Item 16 of the Terms Schedule of the Loan Agreement and Paragraph 8(b) of the Interim Order. Such Event of Default is referred to herein as the “Specified Default.”

Lender hereby reserves the right to exercise all of its rights and remedies under the Interim Order, the Loan Agreement and the other Loan Documents as a result of the Specified Default. Borrower is hereby advised that (a) Lender hereby reserves the right to exercise all of its rights and remedies without further notice to Borrower, any Guarantor or any other Person, (b) any prior agreement by Lender to forbear from or forego the exercise of rights and remedies with respect to the Specified Default is no longer of any force or effect and shall in no way limit the rights of Lender as set forth herein, and (c) such rights and remedies are in addition to the rights and remedies of Lender with respect to any other Events of Default under the Interim Order, Loan Agreement, or any other Loan Document, whether now existing or hereafter arising. Neither this letter nor any subsequent Loan made by Lender to Borrower shall be construed as a waiver of the Specified Default or any other Event of Default.

Please feel free to contact the undersigned at (404) 365-7110 with any questions regarding the foregoing.

Sincerely,

ALOSTAR BANK OF COMMERCE

By: 

Michael Lapresi, Chief Credit Officer

cc: David B. Kurzweil, Esq. (via email: kurzweild@gtlaw.com)  
Michael Atkinson (via email: michael.atkinson@protiviti.com)  
David Kupetz, Esq. (via email: dkupetz@sulmeyerlaw.com)  
Max Schlan, Esq. (via email: mschlan@cooley.com)

# **EXHIBIT E**

Attorney or Party Name, Address, Telephone & FAX Nos., State Bar No. & Email Address David S. Kupetz (CA Bar No. 125062) dkupetz@sulmeyerlaw.com Asa S. Hami (CA Bar No. 210728) ahami@sulmeyerlaw.com Steven F. Werth (CA Bar No. 205434) swerth@sulmeyerlaw.com SulmeyerKupetz, APC 333 South Hope Street, 35 <sup>th</sup> Floor Los Angeles, California 90071 Telephone 213.626.2311 Facsimile 213.629.4520 <input type="checkbox"/> <i>Individual appearing without attorney</i> <input checked="" type="checkbox"/> <i>Attorney for: Shiekh Shoes, LLC, Debtor and Debtor In Possession</i>	FOR COURT USE ONLY
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**UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION**

In re:  SHIEKH SHOES, LLC, a California limited liability company,  Debtor(s).	CASE NO.: 2:17-bk-24626-VZ CHAPTER: 11  <b>STATEMENT REGARDING CASH COLLATERAL OR DEBTOR IN POSSESSION FINANCING [FRBP 4001; LBR 4001-2]</b>  DATE: TIME: COURTROOM: 1368 ADDRESS: 255 East Temple Street Los Angeles, CA 90012
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Secured party(ies): State Bank and Trust Company; Comvest Capital II, L.P. (as Administrative and Collateral Agent for Itself and other Landlords); Toyota Motor Company

The Debtor has requested the approval of either (1) a motion for use of cash collateral, or postpetition financing, or both, or (2) through a separately-filed motion, a stipulation providing for the use of cash collateral, or postpetition financing, or both. The proposed form of order on the motion or the stipulation contains the following provisions or findings of fact:

Disclosures Tracking FRBP 4001(c)(1)(B)(i) through (xi) and (d)(1)(B)	Page No.:	Line No. (if applicable)
<input checked="" type="checkbox"/> (i): “[A] grant of priority or a lien on property of the estate under § 364(c) or (d)”	12-14 (Order, ¶ 8-10)	6-7 (Agmt, ¶ 1.3)

<i>Continued from page 1</i>			
<input checked="" type="checkbox"/>	(ii): “[T]he providing of adequate protection or priority for a claim that arose before the commencement of this case, including the granting of a lien on property of the estate to secure the claim, or the use of property of the estate or credit obtained under § 364 to make cash payments on account of the claim”	16-17 (Order, ¶ 13)	
<input type="checkbox"/>	Cross-collateralization, <i>i.e.</i> , clauses that secure prepetition debt by postpetition assets in which the secured party would not otherwise have a security interest by virtue of its prepetition security agreement or applicable law		
<input type="checkbox"/>	Roll-up, <i>i.e.</i> , provisions deeming prepetition debt to be postpetition debt or using postpetition loans from a prepetition secured party to pay part or all of that secured party’s prepetition debt, other than as provided in § 552(b)		
<input type="checkbox"/>	Grant a replacement lien in an amount in excess of the dollar amount of the lien on cash collateral as of the petition date		
<input type="checkbox"/>	(iii): “[A] determination of the validity, enforceability, priority, or amount of a claim that arose before the commencement of the case, or of any lien securing the claim”		
<input checked="" type="checkbox"/>	(iv): “[A] waiver or modification of Code provisions or applicable rules relating to the automatic stay”	20-21 (Order, ¶ 20)	
<input type="checkbox"/>	Automatic relief from the automatic stay upon occurrence of certain events.		
<input type="checkbox"/>	(v): “[A] waiver or modification of any entity’s authority or right to file a plan, seek an extension of time in which the debtor has the exclusive right to file a plan, request the use of cash collateral under § 363(c), or request authority to obtain credit under § 364”		
<input type="checkbox"/>	(vi): “[T]he establishment of deadlines for filing a plan of reorganization, for approval of a disclosure statement, for a hearing on confirmation, or for entry of a confirmation order”		
<input checked="" type="checkbox"/>	(vii): “[A] waiver or modification of the applicability of nonbankruptcy law relating to the perfection of a lien on property of the estate, or on the foreclosure or other enforcement of the lien”	17-19 (Order, ¶ 15)	
<input type="checkbox"/>	(viii): “[A] release, waiver, or limitation on any claim or other cause of action belonging to the estate or the trustee, including any modification of the statute of limitations or other deadline to commence an action”	8 (Agmt, ¶ 4.2)	
<input checked="" type="checkbox"/>	(ix): “[T]he indemnification of any entity”	11-12 (Order, ¶ 6)	
<input checked="" type="checkbox"/>	(x): “[A] release, waiver, or limitation of any right under § 506(c)”	14 (Order, ¶ 10)	
<input type="checkbox"/>	The granting of any lien on any claim or cause of action arising under § 506(c)	6-7 (Agmt, ¶ 1.3)	
<input type="checkbox"/>	(xi): “The granting of any lien on any claim or cause of action arising under §§ 544, 545, 547, 548, 549, 553(b), 723(a), or 724(a)”		

Additional Disclosures Required by LBR 4001-2	Page No.:	Line No. (if applicable)
<input checked="" type="checkbox"/> With respect to a professional fee carve out, disparate treatment for professionals retained by a creditors' committee from that provided for the professionals retained by the debtor*	15-16 (Order, ¶ 12)	6-7 (Agmt, ¶ 1.3)
<input type="checkbox"/> Pay down prepetition principal owed to a creditor		
<input type="checkbox"/> Findings of fact on matters extraneous to the approval process		

January 3, 2018 Asa S. Hami /s/ Asa S. Hami  
Date Printed Name Signature

\* The interim order provides for a carve-out and weekly payments for each of the Debtor professionals and Committee professionals, but with higher amounts for the Debtor professionals.

## PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

A true and correct copy of the foregoing document entitled: **STATEMENT REGARDING CASH COLLATERAL OR DEBTOR IN POSSESSION FINANCING [FRBP 4001; LBR 4001-2]** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

**1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (date) \_\_\_\_\_, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

Service information continued on attached page

**2. SERVED BY UNITED STATES MAIL:**

On (date) \_\_\_\_\_, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

**3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served):** Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (date) \_\_\_\_\_, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

---

Date

Printed Name

Signature

## PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is 333 South Hope Street, Thirty-Fifth Floor, Los Angeles, CA 90071-1406.

A true and correct copy of the foregoing document entitled (specify): **DEBTOR'S NOTICE OF MOTION AND MOTION FOR INTERIM AND FINAL ORDERS: (1) AUTHORIZING DEBTOR TO OBTAIN POST-PETITION REPLACEMENT TERM LOAN SECURED BY SENIOR LIEN PURSUANT TO 11 U.S.C. § 364 TO PAYOFF STATE BANK AND TRUST COMPANY; (2) AUTHORIZING DEBTOR'S USE OF CASH COLLATERAL PURSUANT TO 11 U.S.C. § 363; (3) GRANTING ADEQUATE PROTECTION TO PREPETITION JUNIOR SECURED CREDITOR PURSUANT TO 11 U.S.C. §§ 361, 362, 363, AND 364; (4) SCHEDULING FINAL HEARING ON MOTION; AND (5) GRANTING RELATED RELIEF; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

**1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (date) January 3, 2018, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

- Dustin P Branch on behalf of Creditors Centennial Real Estate Company/Passco Companies, LLC/Starwood Retail Partners LLC /The Macerich Company /Vintage Real Estate, LLC/Westfield, LLC - branchd@ballardspahr.com, carolod@ballardspahr.com; hubenb@ballardspahr.com; Pollack@ballardspahr.com
- Gregg M Ficks on behalf of Creditor 1777 S. Vintage Avenue Investors LLC - gficks@coblenzlaw.com
- Scott F Gautier on behalf of Creditors Comvest Capital II, L.P./Comvest Partners II, L.P. - sgautier@robinskaplan.com
- Ronald E Gold on behalf of Creditor Washington Prime Group Inc. - rgold@fbtlaw.com, joguinn@fbtlaw.com
- Asa S Hami on behalf of Debtor Shiekh Shoes, LLC - ahami@sulmeyerlaw.com, agonzalez@sulmeyerlaw.com; agonzalez@ecf.inforuptcy.com; ahami@ecf.inforuptcy.com
- Brian D Huben on behalf of Creditors Centennial Real Estate Company/Starwood Retail Partners LLC/The Macerich Company/Westfield, LLC - hubenb@ballardspahr.com, carolod@ballardspahr.com
- William W Huckins on behalf of Creditors GGP Limited Partnership/Taubman Landlords - whuckins@allenmatkins.com, clynch@allenmatkins.com
- Ivan L Kallick on behalf of Interested Party Manatt, Phelps & Phillips, LLP - ikallick@manatt.com, iherandez@manatt.com
- Dimitri G Karcizes on behalf of Creditor Comvest Capital II, L.P. - dimitri.karcizes@goldbergkohn.com
- David S Kupetz on behalf of Debtor Shiekh Shoes, LLC - dkupetz@sulmeyerlaw.com, dperez@sulmeyerlaw.com; dperez@ecf.inforuptcy.com; dkupetz@ecf.inforuptcy.com
- David B Kurzweil on behalf of Creditor State Bank and Trust Company - kurzweild@gtlaw.com, brattons@gtlaw.com; dyerj@gtlaw.com; perkinsd@gtlaw.com
- Daniel A Lev on behalf of Interested Party Courtesy NEF - dlev@sulmeyerlaw.com, asokolowski@sulmeyerlaw.com; dlev@ecf.inforuptcy.com; dwalker@sulmeyerlaw.com
- Kevin Meek on behalf of Creditor Comvest Capital II, L.P. - kmeek@robinskaplan.com, kevinmeek32@gmail.com; kmeek@ecf.inforuptcy.com
- Angela Z Miller on behalf of Creditor New Era Cap Co., Inc. - amiller@phillipslytle.com, styrone@phillipslytle.com
- Ali M Mojdehi on behalf of Creditor Committee The Official Committee of Unsecured Creditors of Shiekh Shoes, LLC - amojdehi@cooley.com, jgertz@cooley.com;bbyun@cooley.com;arego@cooley.com
- Kelly L Morrison on behalf of United States Trustee (LA) - kelly.l.morrison@usdoj.gov
- Ernie Zachary Park on behalf of Creditor The Irvine Company - ernie.park@bewleylaw.com
- Kristen N Pate on behalf of Creditor GGP Limited Partnership - ggpbk@ggp.com
- Dean G Rallis, Jr on behalf of Interested Parties CAPREF Burbank LLC and CAPRF Lloyd II LLC - drallis@afrct.com, msinclair@afrct.com; AFRCTECF@afrct.com;mpham@afrct.com
- D Sarver on behalf of Creditor 3829 Broadway LLC - ADS@asarverlaw.com
- Howard Steinberg on behalf of Creditor State Bank and Trust Company - steinbergh@gtlaw.com, pearsallt@gtlaw.com;laik@gtlaw.com
- Michael A Sweet on behalf of Interested Party Fictitious Party - msweet@foxrothschild.com, pchlum@foxrothschild.com; epaulsen@foxrothschild.com
- Wayne R Terry on behalf of Creditor Gordon Brothers Retail Partners, LLC - wterry@hemar-rousso.com
- Ronald M Tucker, Esq on behalf of Creditor Simon Property Group Inc - rtucker@simon.com, cmartin@simon.com; psummers@simon.com; Bankruptcy@simon.com
- United States Trustee (LA) - ustpregion16.la.ecf@usdoj.gov
- Steven Werth on behalf of Debtor Shiekh Shoes, LLC - swerth@sulmeyerlaw.com, asokolowski@sulmeyerlaw.com; kmccamey@sulmeyerlaw.com; asokolowski@ecf.inforuptcy.com; swerth@ecf.inforuptcy.com
- Eric R Wilson on behalf of Creditor Rouse Properties, LLC - kdwbankruptcydepartment@kelleydrye.com, MVicinanza@ecf.inforuptcy.com

Service information continued on attached page.

This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.

**2. SERVED BY UNITED STATES MAIL:**

On (date)       , I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page.

**3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served):** Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (date) January 3, 2018, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

The Honorable Vincent P. Zurzolo – VIA PERSONAL DELIVERY  
U.S. Bankruptcy Court  
Roybal Federal Building  
255 E. Temple Street  
Los Angeles, CA 90012-3332 - Bin outside of Suite 1360

Service information continued on attached page.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

January 3, 2018	Andrea Gonzalez	/s/ Andrea Gonzalez
Date	Printed Name	Signature

**3. SERVED BY OVERNIGHT MAIL AND EMAIL:**

**Attorneys for Creditors Committee** – Via Overnight Mail and Email

Cooley LLP  
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Max Schlan, Esq.  
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[mschlan@cooley.com](mailto:mschlan@cooley.com)

**Attorneys for Secured Creditor State Bank**

**and Trust Company (Alostar Bank)** – Via Overnight Mail and Email

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Greenberg Traurig, LLP – Via Email

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**Attorneys for Secured Creditor Comvest Capital II, L.P.** – Via Overnight Mail and Email

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Robins Kaplan LLP – Via Overnight Mail and Email

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**Secured Creditor** – Email

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**Landlords**

**Attorneys for GGP** – Via Overnight Mail and Email

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**Attorneys for The Macerich Company and Westfield, LLC** – Via Email

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M.S. Management Associates, Inc. – Via Overnight Mail  
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Indianapolis, IN 46204

**Attorneys for M.S. Management Associates, Inc.** – Via Overnight Mail and Email  
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**Internal Revenue Service** – Via Overnight Mail  
Internal Revenue Service  
Insolvency I Stop 5022  
300 North Los Angeles St., Rm 4062  
Los Angeles CA 90012-9903

**Office of the United States Trustee** – Via Overnight Mail and Email  
Kelly L Morrison, Esq.  
915 Wilshire Blvd., Suite 1850  
Los Angeles, California 90017  
Email: [kelly.l.morrison@usdoj.gov](mailto:kelly.l.morrison@usdoj.gov)

#### **REQUESTS FOR SPECIAL NOTICE**

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**Attorneys for Rouse Properties, LLC** – Via Overnight Mail and Email  
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