

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

In re:

KIKO USA, Inc.,

Debtor.<sup>1</sup>

)  
) Chapter 11  
)  
) Case No. 18-10069 (MFW)  
) **Hearing Date: January 25, 2018 at 11:30 a.m. (EST)**  
) **(requested)**  
) **Objection Deadline: at the hearing (requested)**  
)

**DEBTOR’S MOTION FOR ENTRY OF INTERIM AND FINAL  
ORDERS PURSUANT TO 11 U.S.C. §§ 105, 362, 364, 503 AND 507 AND  
FED. R. BANKR. P. 2002 AND 4001 (I) AUTHORIZING DEBTOR TO OBTAIN  
POSTPETITION FINANCING; (II) GRANTING LIENS AND SUPER-PRIORITY  
CLAIMS TO POSTPETITION LENDER AND (III) SCHEDULING A FINAL HEARING**

KIKO USA, Inc., as debtor and debtor in possession (the “Debtor”) in the above-captioned chapter 11 case (the “Case”), hereby moves the Court (the “Motion”) for entry of an interim order on an expedited basis (the “Interim Order”)<sup>2</sup> substantially in the form attached hereto as **Exhibit A**, and following a final hearing to be set by the Court, entry of a final order (the “Final Order” and, with the Interim Order, the “DIP Orders”), pursuant to Sections 105, 362, 364, 503 and 507 of Title 11 of the United States Code (the “Bankruptcy Code”), Rules 2002 and 4001 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 4001-2 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), authorizing the Debtor, among other things, to obtain senior secured postpetition financing (the “DIP Facility”) on an interim and final basis pursuant to the terms and conditions of that certain Debtor in Possession Credit Agreement, between KIKO USA, Inc. as Borrower and KIKO S.p.A., or its designee, as lender (the “DIP

<sup>1</sup> The last four digits of the Debtor’s federal tax identification number are 0805. The principal place of business for the Debtor is 470 Park Avenue South, 15th Floor New York, NY, 10016.

<sup>2</sup> Capitalized terms not defined herein shall have the meanings ascribed to them in the Interim Order.

Lender”), substantially in the form attached to the Interim Order as ***Exhibit 1*** (the “DIP Credit Agreement”).

In support of the Motion, the Debtor relies on the *Amended Declaration of Frank Furlan in Support of Debtor’s Chapter 11 Petition and First Day Motions* [D.I. 14] (the “First Day Declaration”) and the *Declaration of Mark Samson* (the “Samson Declaration”), the Debtor’s financial advisor, annexed hereto as **Exhibit B**. In further support of the Motion, the Debtor respectfully represents as follows:

### **OVERVIEW**

1. By this Motion, the Debtor seeks entry of the DIP Orders:
  - a. authorizing the Debtor to obtain post-petition financing in the form of a multi-draw term loan credit facility in accordance with the terms and conditions set forth in the DIP Credit Agreement, and in accordance with the DIP Orders, secured by perfected senior priority security interests in and liens on the DIP Collateral, as defined in the DIP Facility (hereinafter the “Collateral”) pursuant to §§ 364(c)(2) and 364(c)(3) of the Bankruptcy Code **at an interest rate of 5%**;
  - b. authorizing the Debtor to grant superpriority administrative claim status, pursuant to § 364(c)(1) of the Bankruptcy Code, to the DIP Lender, in respect of all DIP obligations (subject to the Carve-Out);
  - c. setting a final hearing on the Motion (the “Final Hearing”) to consider entry of the Final Order; and
  - d. granting related relief.

### **JURISDICTION**

2. The United States Bankruptcy Court for the District of Delaware (the “Court”) has jurisdiction over this Case and the Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated February 29, 2012. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2), and the Debtor confirms its consent pursuant to Local Rule 9013-l(f) to the

entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

3. Venue is proper in this District under 28 U.S.C. §§ 1408 and 1409.

4. The statutory and legal predicates for the relief requested herein are sections 105, 362, 364, 503 and 507 of the Bankruptcy Code, Rules 2002 and 4001 of the Bankruptcy Rules, and Rule 4001-2 of the Local Rules.

### **BACKGROUND**

5. On January 11, 2018 (the “Petition Date”), the Debtor commenced a voluntary case under chapter 11 of the Bankruptcy Code.

6. The Debtor is authorized to continue to operate its business and manage its property as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner or statutory committee has been appointed in this Case by the Office of the United States Trustee for the District of Delaware (the “U.S. Trustee”).

7. A more detailed description of the Debtor and its business, and the facts and circumstances supporting this Motion and the above-captioned Case, are set forth in the First Day Declaration.

#### **I. Prepetition Secured Indebtedness**

8. The Debtor has reviewed its books and records. The Debtor is not aware of any secured indebtedness.<sup>3</sup>

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<sup>3</sup> One UCC Financing Statement existed on the date of filing regarding various fixtures at the Yale location. A UCC-3 termination statement was filed prior to the filing of this Motion.

**II. Events Leading Up to the DIP Facility and Negotiation of the DIP Facility**

9. The Debtor and the DIP Lender have entered into the DIP Facility (subject to Court approval), pursuant to which, among other things, the DIP Lender has agreed to provide the Debtor with much-needed liquidity in the form of the DIP Facility.

10. As set forth in the Samson Declaration filed concurrently with this Motion, the Debtor has fielded numerous calls from lenders seeking to provide funding to the Debtor. The Debtor's management engaged in discussions with many potential lenders seeking to provide such debtor in possession financing.

11. Once the potential suitors learned that the interest rate was 5%, interest evaporated. Moreover, the Debtor was unable to obtain financing on an unsecured basis, an administrative expense basis, or on terms more favorable than the DIP Facility. Simply put, the DIP Lender provides the best value to the Debtor.

12. As a result of the superior terms offered by the DIP Lender, no party was willing to extend debtor in possession financing on terms more favorable than those in the DIP Credit Agreement. The DIP Lender has agreed to provide a loan on favorable terms, and the DIP Facility will fund the Debtor's operations and enable the Debtor to maximize value for the estate at a minimal cost.

13. In connection with entry into the DIP Facility, the Debtor and the DIP Lender have agreed upon an initial budget, which is attached hereto as **Exhibit C**, projecting cash flow for the first 13 weeks of this case (as it may be updated in accordance with the DIP Credit Agreement and DIP Orders, the "DIP Budget"). The DIP Credit Agreement permits the Debtor to draw on the DIP Facility to make any disbursement specifically provided for in the DIP Budget (subject to certain permitted variances).

**III. Need for the DIP Facility and Continued Use of Cash Collateral**

14. The Debtor has an urgent and immediate need to obtain postpetition financing. The Debtor does not have sufficient funds either on hand or generated from its business to fund operations. Without the postpetition financing that will be provided under the DIP Credit Agreement and the proposed DIP Orders, the Debtor would not be able to maintain operations and close the non-performing stores that will result in maximizing value for creditors.

15. Without the proposed credit facility, the Debtor would not have any liquidity, among other things, to operate its business, fund its ordinary course expenditures, including paying its employees, or to pay the expenses necessary to administer this Case. Absent adequate funding, the Debtor would be required to cease operations and liquidate on a piecemeal basis, causing irreparable harm to the Debtor and its estate.

16. Hence, the Debtor determined, in the exercise of its sound business judgment, that it requires financing under the terms of the DIP Credit Agreement and the use of cash collateral on the terms set forth in the proposed DIP Orders.

**CONCISE STATEMENT OF RELIEF REQUESTED**

17. In accordance with Bankruptcy Rule 4001 and Local Rule 4001-2, below is a summary of the terms of the DIP Credit Agreement and Interim Order:<sup>4</sup>

(a)	Borrower:	KIKO USA, Inc.  DIP Credit Agreement, preamble
(b)	DIP Lender:	KIKO S.p.A. or its designee  DIP Credit Agreement, preamble

<sup>4</sup> This summary is intended solely for informational purposes and is qualified in its entirety by the DIP Credit Agreement and the Interim Order. In the event there is any conflict between this Motion and the DIP Orders, the DIP Orders will control in all respects. Capitalized terms used in the following chart but not defined therein have the meanings set forth in the DIP Credit Agreement and the Interim Order, as applicable.

(c)	Use of Proceeds and Permitted Variance:	<p>All proceeds of the DIP Loans shall be used only for working capital and other general corporate purposes of the Borrower and its respective subsidiaries in accordance with, and subject to the limitations set forth in, the Budget and the DIP Order; <u>provided</u> that no proceeds of the DIP Loans shall be used for such purposes until the Borrower has first used all cash on hand, to satisfy the obligations proposed to be payable by Borrower pursuant to the Budget (and such cash and Cash Collateral is insufficient to satisfy all such obligations).</p> <p>DIP Credit Agreement, § 3(i)</p> <p>Subject to the Permitted Variances, the expenditures authorized in the Budget shall be adhered to on a 4-week basis and on a cumulative basis as described below; <u>provided, however</u>, that unused expenditures shall carry forward to successive 4-week Budget periods on a cumulative basis. The Budget shall be tested on cumulative basis for a 4-week period then ended, it being understood and agreed that actual amounts of the Borrower's expenditures in the aggregate may not vary from the applicable Budget period by more than the Permitted Variances; <u>provided</u> that the fees, costs and expenses owed by the Borrower to the DIP Lender and its professionals shall not be taken into account in connection with testing compliance with the Budget (including the variance testing).</p> <p>DIP Credit Agreement, § 5(b),</p>
(d)	Type and Amount of DIP Facility:	<p>Multi-Draw Term Loan Credit Facility Aggregate Principal Amount Not to Exceed \$5.5 Million</p> <p>DIP Credit Agreement, Recitals.</p>
(e)	Maturity Date:	<p>The earlier of (i) the Plan Consummation Date, (ii) the date of the acceleration of the DIP Loans and the termination of all Commitment in accordance with the terms of the Agreement, or (iii) July 31, 2018 or such other date as determined by the DIP Lender in consultation with the Borrower.</p> <p>DIP Credit Agreement, Maturity Date Definition.</p>
(f)	DIP Liens & Collateral:	<p>Blanket Liens on all assets.</p> <p>Subject to the entry and the terms of the DIP Order, the Obligations shall be and hereby are secured by enforceable and non-avoidable DIP Liens in and to the DIP Collateral (any</p>

		<p>and all such charges, liens and security interests contemplated by the foregoing, collectively, the “DIP Liens”), which DIP Liens shall be automatically perfected upon the entry of the Interim DIP Order without the need for any further action by the DIP Lender or the Borrower, including the filing of any financing statements or the recording of any mortgages. Such DIP Liens shall be granted pursuant to Sections 364(c)(2), (c)(3) and (d)(1) of the Bankruptcy Code, and shall have the priority as set forth in the DIP Order.</p> <p>DIP Credit Agreement, § 2 (j).</p>
(g)	Interest Rate and Default Rate:	<p>5% per annum.</p> <p>DIP Credit Agreement, Definition of Applicable Rate</p> <p>Default Rate: Applicable Rate + 2% per annum.</p> <p>DIP Credit Agreement, Definition of Default Rate</p>
(h)	Fees:	<p>The Borrower shall reimburse the DIP Lender for (i) all reasonable and documented out-of-pocket costs and expenses in connection with the preparation of the DIP Loan Documents, the Interim DIP Order, the Final DIP Order and any consents, amendments, waivers or other modifications thereto and in connection with the consummation and administration of the transactions contemplated hereby and thereby and in connection with the Chapter 11 Case; (ii) the reasonable and documented out-of-pocket fees, expenses and disbursements of counsel to the DIP Lender in connection with the negotiation, preparation, execution and administration of the DIP Loan Documents and any consents, amendments, waivers or other modifications thereto and any other documents or matters requested by Borrower and in connection with the consummation and administration of the transactions contemplated hereby and thereby and in connection with the Chapter 11 Case; (iii) all the reasonable and documented out-of-pocket costs and expenses in connection with the custody or preservation of any of the DIP Collateral; and (v) all reasonable and documented out-of-pocket costs and expenses, including reasonable attorneys’ fees and costs of settlement, incurred by the DIP Lender in enforcing any Obligations of or in collecting any payments due from the Borrower hereunder or under the other DIP Loan Documents (including in connection with the sale of, collection from, or other realization upon any of the DIP Collateral) or in</p>

		<p>connection with any refinancing or restructuring of the credit arrangements provided under the Agreement in the nature of a “work-out” or pursuant to the Chapter 11 Case, or any other insolvency proceedings or any attempt to enforce any rights or remedies of the DIP Lender against the Borrower or any other person that may be obligated thereto by virtue of being a party to any of the DIP Loan Documents.</p> <p>DIP Credit Agreement, § 9 (a).</p>
(i)	Superpriority Claim:	<p>The DIP Obligations shall, pursuant to Section 364(c)(1) of the Bankruptcy Code, at all times constitute an allowed superpriority administrative expense claim (the “<u>DIP</u> Superpriority Claim”) of the DIP Lender, and be payable from and have recourse to all DIP Collateral. The DIP Superpriority Claim shall be subject and subordinate only to the Carve-Out. Other than as expressly provided herein, including in paragraph 5 hereof with respect to the Carve-Out, no costs or expenses of administration, including, without limitation, professional fees allowed and payable under Sections 328, 330 and 331 of the Bankruptcy Code, or otherwise, that have been or may be incurred in these proceedings or in any Successor Case, and no priority claims are, or will be, senior to, prior to or <i>pari passu</i> with the DIP Liens, the DIP Superpriority Claim or any of the DIP Obligations, or with any other claims of the DIP Lender arising hereunder or under the other DIP Loan Documents, or otherwise in connection with the DIP Facility.</p> <p>Interim Order, ¶ 2 (g).</p>
(j)	Limitations on Use of Proceeds:	<p>No portion of the Carve-Out and no proceeds of the DIP Facility, the DIP Collateral or DIP Loans, may be used for the payment of the fees and expenses of any person incurred (i) in investigating, challenging, or in relation to the challenge of (including as to the validity, priority, extent or enforceability of), any of DIP Liens or DIP Obligations (or the value of the DIP Collateral), or the initiation or prosecution of any claim or action against the DIP Lender, including, without limitation, any claim under Chapter 5 of the Bankruptcy Code, or any state, local or foreign law, in respect of the DIP Facility, or any formal or informal discovery proceedings in anticipation thereof, or in preventing, hindering or delaying the realization by the DIP Lender upon the DIP Collateral, or the enforcement of the DIP Lender’s rights under the Interim Order, the Final Order, or any other DIP Loan Document, (ii) in seeking to modify (whether directly or indirectly) by any</p>



		<p>motion, pleading or otherwise, any of the rights granted to the DIP Lender under the Interim Order or under the other DIP Loan Documents, in each case, without the DIP Lender's prior consent, or (iii) to pay any amount on account of any claims arising prior to the Petition Date unless such payments are (x) approved by an</p> <p>order of this Court and (y) set forth in the DIP Budget and permitted under the DIP Credit Agreement.</p> <p>Interim Order, ¶ 4.</p>
(k)	Carve-Out:	<p>As used in the Interim Order, the "Carve-Out" means the sum of: (i) all fees required to be paid to the Clerk of the Court and all statutory fees payable to the U.S. Trustee under section 1930(a) of title 28 of the United States Code, together with the statutory rate of interest (without regard to the notice set forth in (ii) below); (ii) to the extent allowed by the Court at any time, pursuant to a fee application on notice, or other procedure permitted by any Court order allowing interim compensation or the payment of fees of ordinary course professionals, whether by interim order, final order, procedural order or otherwise, all reasonable and documented unpaid fees and expenses (the "Allowed Professional Fees") incurred by estate professionals retained by the Debtor pursuant to section 327 or 328 of the Bankruptcy Code (collectively, the "Debtor Professionals") and any Committee (together with the Debtor Professionals, the "Professionals") at any time before the delivery by the DIP Lender of a Carve-Out Trigger Notice (defined below), whether allowed by the Court prior to or after delivery of a Carve-Out Trigger Notice; and (iii) the Allowed Professional Fees of the Professionals incurred beginning on and after the date of delivery by the DIP Lender of the Carve-Out Trigger Notice in an aggregate amount not to exceed \$500,000 (the amounts set forth in this clause (iii) being the "Post Carve-Out Trigger Notice Cap"); <u>provided</u> that the Post Carve-Out Trigger Notice Cap shall be reduced, dollar-for-dollar, by the amount of any fees and expenses incurred and accruing by the Debtor, and paid to the applicable Professionals, following delivery of the Carve-Out Trigger Notice. For the avoidance of doubt and notwithstanding anything to the contrary contained in the Interim Order, the Carve-Out shall be senior to all liens and claims securing the DIP Facility and the DIP Obligations. For purposes of the foregoing, "Carve-Out Trigger Notice" shall mean a written notice delivered by electronic mail (or other electronic means) by the DIP Lender to the Debtor, its counsel, the U.S. Trustee and counsel to the Committee, if any, of the occurrence</p>

		<p>and continuation of an Event of Default, stating that the Post-Carve-Out Trigger Notice Cap has been invoked. Nothing herein shall be construed as a consent to the allowance of any professional fees or expenses of any of the Debtor or any Committee or shall limit or otherwise affect the right of the DIP</p> <p>Lender or any party in interest to object to the allowance and payment of any such fees and expenses.</p> <p>Interim Order, ¶ 5.</p>
(l)	Perfection Other Than Under State Law:	<p>Effective immediately upon the entry of the Interim Order, subject and subordinate to the Carve-Out, as set forth more fully in the Interim Order, the DIP Lender is granted the following security interests and liens, which shall immediately be valid, binding, perfected, continuing, enforceable and non-avoidable (all liens and security interests granted to the DIP Lender pursuant to the Interim Order, any Final Order and the other DIP Loan Documents, the “DIP Liens”):</p> <p>(I) pursuant to Section 364(c)(2) of the Bankruptcy Code, valid, enforceable, perfected and non-avoidable first priority liens on and security interests in all DIP Collateral that was not encumbered by valid, enforceable, perfected and non-avoidable liens as of the Petition Date; and</p> <p>(II) pursuant to Section 364(c)(3) of the Bankruptcy Code, valid, enforceable, perfected and non-avoidable junior liens on and security interests in all DIP Collateral on which a third party (a “Prepetition Lienholder”), had a valid, enforceable, perfected and non-avoidable pre-existing lien as of the Petition Date. Nothing in the Interim Order or Final Order shall impair the rights of Prepetition Lienholders, if any, to seek adequate protection.</p> <p>Interim Order, ¶ 2(e).</p>
(m)	Waivers:	<p>The failure of the DIP Lender to seek relief or otherwise exercise its rights and remedies under the Interim Order, the other DIP Loan Documents or otherwise, as applicable, shall not constitute a waiver of any of the DIP Lender’s rights, thereunder or otherwise. Notwithstanding anything therein to the contrary, the entry of the Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, or otherwise impair any of the rights, claims, privileges, objections, defenses or remedies of the DIP Lender under the Bankruptcy Code or under non-bankruptcy</p>

		<p>law against any other person or entity in any court, including without limitation, (i) to request conversion of the Case to a case under Chapter 7, dismissal of the Case, or the appointment of a trustee in the Case, or (ii) to propose, subject to the provisions of Section 1121 of the Bankruptcy Code, a Plan, or (iii) to exercise any of its rights, claims or privileges (whether legal, equitable or otherwise).</p> <p>Interim Order, ¶ 13(d).</p>
(n)	Remedies / Relief from Automatic Stay:	<p>Any automatic stay otherwise applicable to the DIP Lender is hereby modified so that, upon and after the occurrence of the Termination Date, the DIP Lender shall, subject to subparagraph (b) of paragraph 10 of the order, be immediately entitled to exercise all of its rights and remedies in respect of the DIP Collateral, in accordance with the Interim Order, the other DIP Loan Documents. The term “Termination Date” shall mean: (a) prior to entry of the Final Order, the earliest to occur of (i) the Maturity Date and (ii) the Interim Order ceasing to be in full force and effect for any reason, and (b) subsequent to entry of the Final Order, the earlier to occur of (i) the Maturity Date and (ii) the Final Order ceasing to be in full force and effect for any reason.</p> <p>The automatic stay imposed under Section 362(a) of the Bankruptcy Code is hereby modified pursuant to the terms of the DIP Loan Documents as necessary to (i) permit the Debtor to grant the DIP Liens and to incur all DIP Obligations and all liabilities and obligations to the DIP Lender hereunder and under the other DIP Loan Documents, as the case may be, and (ii) authorize the DIP Lender to retain and apply payments, and otherwise enforce its rights and remedies hereunder subject to the provisions of paragraph 10(b) hereof.</p> <p>Interim Order, ¶ 10(a) and (d).</p>

### **REQUIRED DISCLOSURES**

18. The required disclosures under Local Rule 4001-2(a)(i) are limited to seeking approval of (i) the waiver of whatever rights the estate may have under 11 U.S.C. 506(c) (disclosure required under Bankr. L.R. 4001-2(a)(i)(C)); and (ii) the waivers of the “equities of

the case” exception under section 552(b) of the Bankruptcy Code (disclosure required under Bankr. L.R. 4001-2(a)(i)(H)).

19. These terms are justified because the Debtor is in immediate and critical need of the DIP Facility. The Debtor was unable to obtain financing on an unsecured basis, an administrative expense basis, or on terms more favorable than the DIP Facility. The DIP financing represents the only proposal that would provide the critical liquidity to the Debtor that is required. The DIP Facility was the product of extensive negotiations with the DIP Lender on the terms set forth in the DIP Credit Agreement and the proposed DIP Orders. Without this financing, the Debtor would not be able to conduct the store closing process and continue to operate as a going concern, which would doom the Debtor’s efforts to maximize value in this Case.

### **BASIS FOR RELIEF**

#### **I. The Debtor Should Be Permitted to Obtain Postpetition Financing Pursuant to Section 364(c) of the Bankruptcy Code.**

20. Section 364(c) of the Bankruptcy Code requires a finding, made after notice and a hearing, that the debtors seeking postpetition financing on a secured basis cannot “obtain unsecured credit allowable under section 503(b)(1) of [the Bankruptcy Code] as an administrative expense . . . .” 11 U.S.C. § 364(c).

21. In evaluating proposed postpetition financing under section 364(c) of the Bankruptcy Code, courts perform a qualitative analysis and generally consider similar factors, including whether:

- a. unencumbered credit or alternative financing without superpriority status is available to the debtor;
- b. the credit transactions are necessary to preserve assets of the estate;
- c. the terms of the credit agreement are fair, reasonable, and adequate;

- d. the proposed financing agreement was negotiated in good faith and at arm's-length and entry thereto is an exercise of sound and reasonable business judgment and in the best interest of the debtor's estate and its creditors; and
- e. the proposed financing agreement adequately protects prepetition secured creditors.

*See, e.g., In re Los Angeles Dodgers LLC*, 457 B.R. 308, 312 (Bankr. D. Del. 2011) (applying the first three factors); *In re Aqua Assoc.*, 123 B.R. 192, 195-96 (Bankr. E.D. Pa. 1991) (applying the first three factors in making a determination under section 364(c)); *In re Crouse Group, Inc.*, 71 B.R. 544, 546 (Bankr. E.D. Pa. 1987) (same); *Bland v. Farmworker Creditors*, 308 B.R. 109, 113-14 (S.D. Ga. 2003) (applying all factors in making a determination under section 364(d)).

22. For the reasons discussed below, the Debtor satisfies the standards required to obtain postpetition financing under section 364(c) of the Bankruptcy Code.

## **II. The Debtor Was Unable to Obtain Financing on More Favorable Terms.**

23. Whether a debtor was unable to obtain unsecured credit is determined by application of a good faith effort standard, and a debtor must make a good faith effort to demonstrate that credit was not available without granting a security interest. *See In re YL West 87th Holdings I LLC*, 423 B.R. 421, 441 (Bankr. S.D.N.Y. 2010) ("Courts have generally deferred to a debtor's business judgment in granting section 364 financing."); *In re Gen. Growth Props., Inc.*, 412 B.R. 122, 125 (Bankr. S.D.N.Y. 2009). The required showing under section 364 of the Bankruptcy Code that unsecured credit was not available is not rigorous. *See, e.g., Bray v. Shenandoah Fed. Sav. & Loan Ass'n (In re Snowshoe Co.)*, 789 F.2d 1085, 1088 (4th Cir. 1986) (stating that section 364(d) of the Bankruptcy Code imposes no duty to seek credit from every possible lender, particularly when "time is of the essence in an effort to preserve a vulnerable seasonal enterprise").

24. Here, as set forth above and in the Samson Declaration, the Debtor has been unable to procure sufficient financing on an unsecured or administrative expense basis, or obtain postpetition financing or other financial accommodations from any alternative prospective lender or group of lenders, much less on more favorable terms and conditions than those for which approval is sought herein.

25. The Debtor respectfully submits that its efforts to obtain postpetition financing therefore satisfy the standards required under section 364(c) of the Bankruptcy Code. *See, e.g., In re Simasko Production Co.*, 47 B.R. 444, 448-49 (Bankr. D. Colo. 1985) (authorizing interim financing stipulation where debtor's best business judgment indicated financing was necessary and reasonable for benefit of estates); *In re Ames Dept. Stores*, 115 B.R. 34, 38 (Bankr. S.D.N.Y. 1990) (with respect to postpetition credit, courts "permit debtors in possession to exercise their basic business judgment consistent with their fiduciary duties"); *In re Sky Valley, Inc.*, 100 B.R. 107, 113 (Bankr. N.D. Ga. 1988) (where few lenders can or will extend the necessary credit to a debtor, "it would be unrealistic and unnecessary to require [the debtor] to conduct such an exhaustive search for financing").

### **III. The Proposed Financing Is Necessary to Preserve the Assets of the Debtor's Estate.**

26. As described above, the Debtor intends to operate its business in the ordinary course while it runs a value-maximizing store closing process. The Debtor requires the proposed financing and the use of cash collateral to provide the necessary capital with which to operate its business, including funding the Debtor's obligations to employees, and to preserve its business for the benefit of its estate and creditors pending the outcome of the Debtor's store closing process and to seek confirmation of a plan of reorganization.

27. Cash is necessary for working capital, operating costs and expenses incurred during this Case, including funding payroll. The Debtor does not have sufficient sources of

working capital, financing or cash collateral to carry on the operation of its business through the store closing process without additional financing. The Debtor's ability to maintain its business pending the outcome of the store closing process is dependent on its ability to continue to operate, and the Debtor cannot operate unless it can fund payments for postpetition rent, payroll, goods, services and other operating expenses. The DIP Facility is thus essential to the Debtor's continued operational viability and will provide the Debtor with the opportunity to preserve its business for purposes of the ongoing store closing process.

28. As a debtor in possession, the Debtor has a fiduciary duty to protect and maximize its estate's assets. *See Burtch v. Ganz (In re Mushroom Transp. Co.)*, 382 F.3d 325, 339 (3d Cir. 2004). As noted above, the Debtor requires postpetition financing and the use of cash collateral under the terms of the DIP Credit Agreement and proposed DIP Orders to continue its operations pending the outcome of an orderly store closing process.

#### **IV. The Terms of the Proposed Financing Are Fair, Reasonable, and Appropriate.**

29. In considering whether the terms of postpetition financing are fair and reasonable, courts consider the terms in light of the relative circumstances and disparate bargaining power of both the debtor and the potential lender. *In re Farmland Indus., Inc.*, 294 B.R. 855, 886 (Bankr. W.D. Mo. 2003); *see also Unsecured Creditors' Comm. Mobil Oil Corp. v. First Nat'l Bank & Trust Co. (In re Ellingsen MacLean Oil Co.)*, 65 B.R. 358, 365 n.7 (W.D. Mich. 1986) (a debtor may have to enter into hard bargains to acquire funds).

30. The terms of the DIP Credit Agreement and the proposed DIP Orders are extremely favorable to the Debtor. The terms are fair, reasonable and appropriate under the circumstances, and should be approved.

**V. Entry Into the Proposed Financing Reflects the Debtor's Sound Business Judgment.**

31. A debtor's decision to enter into a postpetition lending facility under section 364 of the Bankruptcy Code is governed by the business judgment standard. *See, e.g., Trans World Airlines, Inc. v. Travelers Int'l AG (In re Trans World Airlines, Inc.)*, 163 B.R. 964, 974 (Bankr. D. Del. 1994) (approving postpetition credit facility because such facility "reflect[ed] sound and prudent business judgment"); *In re Ames Dep't Stores, Inc.*, 115 B.R. at 38 ("cases consistently reflect that the court's discretion under section 364 is to be utilized on grounds that permit reasonable business judgment to be exercised so long as the financing agreement does not contain terms that leverage the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to benefit a party-in-interest"). One court has noted that "[m]ore exacting scrutiny [of the debtors' business decisions] would slow the administration of the debtor's estate and increase its cost, interfere with the Bankruptcy Code's provision for private control of administration of the estate, and threaten the court's ability to control a case impartially." *Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303, 1311 (5th Cir. 1985).

32. Here, the Debtor's sound business judgment clearly supports entry into the DIP Credit Agreement to gain access to needed funding and maximize value for all constituents.

**VI. The DIP Lender Is Extending Credit in Good Faith.**

33. Section 364(e) of the Bankruptcy Code provides that:

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

11 U.S.C. § 364(e).



34. As set forth in the Samson Declaration, the Debtor and the DIP Lender negotiated the DIP Credit Agreement and the Interim Order at arm's length and good faith. Accordingly, the DIP Orders should provide that the DIP Lender is entitled to all of the protections set forth in section 364(e) of the Bankruptcy Code.

### **INTERIM ORDER AND FINAL HEARING**

35. Pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2), the Debtor requests that the Court set a date for the Final Hearing that is as soon as practicable, and fix the time and date prior to the final hearing for parties to file objections to the Motion, if any.

36. The urgent need to preserve the Debtor's business, and thereby avoid immediate and irreparable harm to the Debtor's estate, makes it imperative that the Debtor be authorized to obtain postpetition financing as soon as possible, pending the Final Hearing. Without the ability to obtain access to such funding, the Debtor would be unable to meet its postpetition obligations while conducting the store closing process, thus causing irreparable harm to the value of the Debtor's estate and ending the Debtor's efforts to maintain operations through an orderly store closing process.

37. Accordingly, the Debtor respectfully requests that, pending the hearing on the Final Order, the Interim Order be approved in all respects and that the terms and provisions of the Interim Order be implemented and be deemed binding and that, after the Final Hearing, the Final Order be approved in all respects and the terms and provisions of the Final Order be implemented and be deemed binding.

### **IMMEDIATE RELIEF IS NECESSARY**

38. Bankruptcy Rule 6003 provides that the relief requested in this Motion may be granted if the "relief is necessary to avoid immediate and irreparable harm." Fed. R. Bankr. P.

6003. The Debtor submits that for the reasons already set forth herein, the relief requested in this Motion is necessary to avoid immediate and irreparable harm to the Debtor.

**WAIVER OF ANY APPLICABLE STAY**

39. The Debtor also requests that the Court waive any applicable stay of the DIP Orders, including any stay that may be imposed by Bankruptcy Rule 4001(a)(3) and Bankruptcy Rule 6004(h). As described above, the relief that the Debtor seeks in this Motion is necessary for the Debtor to operate its business without interruption and to preserve value for its estate. The exigent nature of the relief sought herein justifies immediate relief.<sup>5</sup>

**NOTICE**

40. Notice of this Motion has been or will be given to (a) the U.S. Trustee, (b) counsel to the DIP Lender; (c) any parties asserting a lien on or a security interest in the assets of the Debtor to the extent reasonably known to the Debtor; (d) the Office of the United States Attorney General for the District of Delaware; (e) the Internal Revenue Service; (f) the Office of the United States Attorney General for the District of Delaware; (g) the Debtor's 20 largest unsecured creditors, and (h) all parties who, as of the filing of this Motion, have filed a notice of appearance and request for service of papers pursuant to Bankruptcy Rule 2002.

**NO PRIOR REQUEST**

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

**CONCLUSION**

WHEREFORE, based upon the foregoing, the Debtor requests entry of the DIP Orders granting the relief requested herein and such other relief the Court deems just and proper.

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<sup>5</sup> The Debtor also seeks a waiver of the notice requirements of Bankruptcy Rule 6004(a), to the extent applicable.

Dated: January 23, 2018  
Wilmington, Delaware

/s/ Lucian B. Murley  
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Lucian B. Murley (DE Bar No. 4892)  
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*Proposed Counsel for Debtor and  
Debtor in Possession*

**EXHIBIT A**

**PROPOSED INTERIM ORDER**

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

In re:	)	
KIKO USA, Inc.	)	Case No. 18-10069 (MFW)
Debtor. <sup>1</sup>	)	Chapter 11
	)	Re: Docket No. ____
	)	

**INTERIM ORDER PURSUANT TO  
SECTIONS 361, 362, 363 AND 364 OF THE BANKRUPTCY CODE AND  
RULE 4001 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE  
(A) AUTHORIZING THE DEBTOR TO OBTAIN SECURED SUPERPRIORITY  
POSTPETITION FINANCING, AND (B) SCHEDULING A FINAL HEARING**

Upon the motion, dated January 23, 2018 (the “Motion”), of KIKO USA, Inc., as the debtor-in-possession (the “Debtor” or “DIP Borrower”) in the above-captioned chapter 11 case (the “Case”), for the entry of an interim order (this “Interim Order”) and the Final Order (as defined below) (A) authorizing the Debtor to obtain senior secured postpetition financing pursuant to Sections 361, 362 and 364 of the United States Code (as amended, the “Bankruptcy Code”) and (B) scheduling interim and final hearings pursuant to Rule 4001(b) and (c) of the Federal Rules of Bankruptcy Procedure (as amended, the “Bankruptcy Rules”), the Debtor sought, among other things, the following relief:

(i) the Court’s authorization, pursuant to Sections 363 and 364(c)(1), (2), (3) and (d)(1) of the Bankruptcy Code, for the DIP Borrower to:

(A) to obtain post-petition financing consisting of a secured debtor-in-possession multi-draw term loan credit facility (the “DIP Facility”) provided by the DIP Borrower’s parent company, KIKO S.p.A (the “DIP Lender”), pursuant to the

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<sup>1</sup> The last four digits of the Debtor’s federal tax identification number are 0805. The principal place of business for the Debtor is 470 Park Avenue South, 15th Floor New York, NY, 10016.

Debtor-in-Possession Credit Agreement attached hereto as Exhibit 1 (as amended, supplemented or otherwise modified from time to time, the “DIP Credit Agreement”<sup>2</sup> and, together with this Interim Order, the Final Order, and all other agreements, documents and instruments delivered or executed in connection therewith, including the DIP Budget (defined below), in each case as hereafter amended, supplemented or otherwise modified from time to time, collectively, the “DIP Loan Documents”), and

(B) obtain DIP Loans (defined below) under the DIP Facility (1) during the period (the “Interim Period”) from the date hereof through and including the earlier to occur of (x) the date of entry of the Final Order by this Court and (y) the Termination Date (defined below), in an aggregate principal amount not to exceed \$2,500,000, and (2) upon entry of the Final Order and thereafter until the Termination Date, in an aggregate principal amount not to exceed \$5,500,000, in each case at any time outstanding, which delayed draw DIP Facility shall be available pursuant to multiple draws to be made on any business day following entry of the Interim Order or Final Order, as applicable, in accordance with the terms of the DIP Credit Agreement (each term loan made under the DIP Credit Agreement and the DIP Facility, the “DIP Loan” and, collectively, the “DIP Loans”);

(ii) the Court’s authorization for the DIP Borrower to execute the DIP Credit Agreement and the other DIP Loan Documents and to perform such other and further acts as may be necessary or appropriate in connection therewith;

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<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings given to them in the DIP Credit Agreement.

(iii) the Court's authorization for the DIP Borrower to use proceeds of the DIP Facility in accordance with this Interim Order and the other DIP Loan Documents;

(iv) the Court's authorization to grant to the DIP Lender under the DIP Loan Documents, in respect of the DIP Obligations (defined below), (x) a superpriority administrative expense claim pursuant to Section 364(c)(1) of the Bankruptcy Code and (y) liens on and security interests in all DIP Collateral (defined below) pursuant to Sections 364(c)(2), (c)(3) and (d)(1) of the Bankruptcy Code, in each case as and to the extent set forth more fully below and subject and subordinate to the Carve-Out (defined below);

(v) the Court's authorization to pay the principal, interest, and other amounts payable under the DIP Loan Documents as, and to the extent, provided under this Interim Order and the other DIP Loan Documents;

(vi) the Court's authorization to use "cash collateral" as such term is defined in Section 363 of the Bankruptcy Code (the "Cash Collateral") in which the DIP Lender has an interest;

(vii) the modification or waiver by the Court of the automatic stay imposed by Section 362 of the Bankruptcy Code and any other applicable stay (including Rule 6004 of the Federal Rules of Bankruptcy Procedure) to the extent necessary to implement and effectuate the terms and provisions of the DIP Facility, this Interim Order and the other DIP Loan Documents and to provide for the immediate effectiveness of this Interim Order;

(viii) the scheduling by the Court of an interim hearing (the "Interim Hearing") to consider entry of this Interim Order;

(ix) the scheduling by the Court of a final hearing (the "Final Hearing") to consider entry of an order (the "Final Order") granting the relief requested in the Motion on a

final basis and approving the form of notice with respect to the Final Hearing and the transactions contemplated by the Motion.

The Court having considered the Motion, the terms of the DIP Facility and the DIP Loan Documents, the *Declaration of Frank Furlan in Support of Chapter 11 Petitions and First Day Pleadings*, the *Declaration of Mark Samson*, sworn to on January 22, 2018 in Support of the Motion, and the evidence submitted at the Interim Hearing held before this Court on January 25, 2018, to consider entry of this Interim Order; and in accordance with Bankruptcy Rules 2002, 4001(b), (c), and (d), and 9014 and the Local Rules of Bankruptcy Practice and Procedure for the District of Delaware (the “Local Rules”), due and proper notice of the Motion and the Interim Hearing having been given; and it appearing that approval of the interim relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtor pending the Final Hearing and is otherwise fair and reasonable and in the best interests of the Debtor, its creditors and its estate, and essential for the continued operation of the Debtor’s business; and all objections, if any, to the entry of this Interim Order having been withdrawn, resolved or overruled by the Court; and after due deliberation and consideration, and for good and sufficient cause appearing therefor:

**THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:**

A. **Petition Date.** On January 11, 2018 (the “Petition Date”), the Debtor filed a voluntary petition under Chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the District of Delaware (the “Court”). The Debtor has continued in the management and operation of its business and properties as a debtor-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Case.



B. **Jurisdiction and Venue.** The Court has jurisdiction over these proceedings, pursuant to 28 U.S.C. § 1334. Consideration of the Motion constitutes a core proceeding under 28 U.S.C. § 157(b)(2). Venue for the Case and the proceedings on the Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

C. **Committee Formation.** As of the date hereof, no official committee of unsecured creditors has been appointed in the Case (the “Creditors’ Committee” and, together with any other statutory committee appointed in the Case pursuant to sections 328 or 1103 of the Bankruptcy Code, a “Committee”).

D. **Notice.** The Debtor has represented that notice of the Interim Hearing and the relief requested in the Motion has been provided by the Debtor, by telecopy, email, overnight courier and/or hand delivery, to (a) the Office of the United States Trustee for the District of Delaware (the “U.S. Trustee”), (b) counsel to the DIP Lender; (c) any parties asserting a lien on or a security interest in the assets of the Debtor to the extent reasonably known to the Debtor; (d) the Office of the United States Attorney General for the District of Delaware; (e) the Internal Revenue Service, (f) the Office of the United States Attorney General for the District of Delaware and (g) those creditors holding the 20 largest unsecured claims against the Debtor’s estate (the “Notice Parties”). Under the circumstances, such notice of the Interim Hearing and the relief requested in the Motion constitutes due, sufficient and appropriate notice and complies with Section 102(1) of the Bankruptcy Code, Bankruptcy Rules 2002 and 4001(b) and (c) and the Local Rules.

E. **No Secured Prepetition Indebtedness.** Without limiting the rights of any party in interest, the Debtor represents, stipulates and agrees that, to the best of its knowledge, it had no outstanding secured indebtedness as of the Petition Date.

F. **Immediate Need for Postpetition Financing and Use of Cash Collateral.** The Debtor has requested expedited entry of this Interim Order pursuant to Bankruptcy Rule 4001(b)(2) and (c)(2). Good cause has been shown for entry of this Interim Order. An immediate need exists for the Debtor to obtain funds and liquidity in order to continue operations, to satisfy in full the costs and expenses of administering the Case and to preserve the value of its estate until emergence under chapter 11 plan of reorganization. The Debtor currently has only enough cash-on-hand to meet its operational needs through January 26, 2018. The ability of the Debtor to finance its operations, preserve and maintain the value of its assets, and maximize returns for creditors requires the availability of the DIP Facility. In the absence of the availability of such funds and liquidity in accordance with the terms hereof, the continued operation of the Debtor's business would not be possible, and serious and irreparable harm to the Debtor and its estate and creditors would occur.

G. **No Credit Available on More Favorable Terms.** The Debtor has been unable to obtain financing on more favorable terms and conditions from sources other than the DIP Lender pursuant to, and for the purposes set forth in, the Motion and this Interim Order, and are unable to obtain adequate unsecured credit allowable under Section 503(b)(1) of the Bankruptcy Code as an administrative expense. The Debtor is also not able to obtain credit without providing the DIP Superpriority Claims and granting the DIP Liens to the DIP Lender on the terms and conditions set forth in this Interim Order and the other DIP Loan Documents.

H. **Use of Cash Collateral and Proceeds of the DIP Facility, DIP Collateral and Prepetition Collateral.** All Cash Collateral, all proceeds of the DIP Collateral (defined below), including proceeds realized from a sale or disposition thereof, or from payment thereon, and all

proceeds of the DIP Facility shall be used and/or applied in accordance with the terms and conditions of this Interim Order and the other DIP Loan Documents.

I. **Extension of Financing; Good Faith Pursuant to Section 364(e).** The terms and conditions of the DIP Facility are fair, reasonable, and the best available under the circumstances, reflect the Debtor's exercise of prudent business judgment, and are supported by reasonably equivalent value and consideration. All of the DIP Borrower's obligations and indebtedness under or in connection with the DIP Facility, including, without limitation, all DIP Loans made by the DIP Lender to the DIP Borrower pursuant to the DIP Loan Documents and all other Obligations (as defined in the DIP Credit Agreement) of the DIP Borrower, shall be deemed to have been extended by the DIP Lender in "good faith" as such term is used in Section 364(e) of the Bankruptcy Code, and in express reliance upon the protections set forth therein, and shall be entitled to the full protection of Section 364(e) of the Bankruptcy Code, in the event that this Interim Order or any provision hereof is vacated, reversed or modified on appeal or otherwise.

J. **Relief Essential; Best Interest.** The relief requested in the Motion (and provided in this Interim Order) is necessary, essential and appropriate for the continued operation of the Debtor's businesses and the management and preservation of the Debtor's assets and property. It is in the best interest of the Debtor's estate that the Debtor be allowed to enter into the DIP Facility and incur the DIP Obligations as contemplated herein.

**NOW, THEREFORE,** on the Motion of the Debtor and the record before this Court with respect to the Motion, including the record made during the Interim Hearing, and with the consent of the Debtor and DIP Lender, and good and sufficient cause appearing therefor,

**IT IS ORDERED** that:

1. **Motion Granted.** The Motion is granted on an interim basis in accordance with the terms and conditions set forth in this Interim Order. Any objections to the Motion with respect to the entry of this Interim Order, to the extent not withdrawn, waived or otherwise resolved, and all reservation of rights included therein, are hereby denied and overruled.

2. **DIP Facility.**

(a) **DIP Obligations, etc.** The Debtor is expressly and immediately authorized and empowered to enter into the DIP Facility and to incur and to perform the DIP Obligations in accordance with and subject to this Interim Order and the other DIP Loan Documents, to execute and/or deliver all DIP Loan Documents and all other instruments, certificates, agreements and documents, and to take all actions, which may be reasonably required or otherwise necessary for the performance by the Debtor under the DIP Facility, including the creation and perfection of the DIP Liens described and provided for herein. The Debtor is hereby authorized and directed to pay all principal, interest, fees and expenses and other amounts described herein and in the other DIP Loan Documents as such shall accrue and become due hereunder or thereunder, including, without limitation, the reasonable fees and expenses of the attorneys and other advisors and consultants of the DIP Lender as, and to the extent, provided for herein and in the other DIP Loan Documents (collectively, all DIP Loans, fees, expenses and other liabilities and obligations, including all other “Obligations” (as defined in the DIP Credit Agreement), collectively, the “DIP Obligations”). The DIP Loan Documents and all DIP Obligations shall represent, constitute and evidence, as the case may be, valid and binding obligations of the Debtor, enforceable against the Debtor, its estate and any successors thereto in accordance with their terms. No obligation, payment, transfer or grant of security

under the DIP Loan Documents as approved under this Interim Order shall be stayed, restrained, voided, voidable or recoverable under the Bankruptcy Code or under any applicable non-bankruptcy law, or subject to any defense, reduction, setoff, recoupment or counterclaim.

(b) **Authorization to Borrow, etc.** In order to continue to operate its business, subject to the terms and conditions of this Interim Order and the other DIP Loan Documents, the DIP Borrower is hereby authorized to borrow under the DIP Facility during the Interim Period up to an aggregate principal amount of \$2,500,000.

(c) **Conditions Precedent.** The DIP Lender shall have no obligation to make any DIP Loan or any other financial accommodation hereunder or under the other DIP Loan Documents unless all conditions precedent to making DIP Loans under the DIP Loan Documents have been satisfied or waived in accordance with the terms of the DIP Loan Documents.

(d) **DIP Collateral.** As used herein, “DIP Collateral” shall mean all now owned or hereafter acquired assets and property, whether real or personal, of the Debtor including, without limitation, all assets and property pledged under the DIP Loan Documents, and all cash, any investment of such cash, inventory, accounts receivable, including intercompany accounts (and all rights associated therewith), other rights to payment whether arising before or after the Petition Date, contracts, contract rights, chattel paper, goods, investment property, inventory, deposit accounts, “core concentration accounts,” “cash collateral accounts”, and in each case all amounts on deposit therein from time to time, equity interests, securities accounts, securities entitlements, securities, commercial tort claims, books, records, plants, equipment, general intangibles, documents, instruments, interests in leases and leaseholds, interests in real property, fixtures, payment intangibles, tax or other refunds, insurance proceeds, letters of credit, letter of credit rights, supporting obligations, machinery and

equipment, patents, copyrights, trademarks, tradenames, other intellectual property, all licenses therefor, and all proceeds, rents, profits, products and substitutions, if any, of any of the foregoing. The DIP Collateral shall not include causes of action for preferences, fraudulent conveyances, and other avoidance power claims under Sections 544, 545, 547, 548, 550 and 553 of the Bankruptcy Code or any proceeds thereof (the “Avoidance Actions”).

(e) **DIP Liens.** Effective immediately upon the entry of this Interim Order, subject and subordinate to the Carve-Out, as set forth more fully in this Interim Order, the DIP Lender is hereby granted the following security interests and liens, which shall immediately be valid, binding, perfected, continuing, enforceable and non-avoidable (all liens and security interests granted to the DIP Lender pursuant to this Interim Order, any Final Order and the other DIP Loan Documents, the “DIP Liens”):

(I) pursuant to Section 364(c)(2) of the Bankruptcy Code, valid, enforceable, perfected and non-avoidable first priority liens on and security interests in all DIP Collateral that was not encumbered by valid, enforceable, perfected and non-avoidable liens as of the Petition Date; and

(II) pursuant to Section 364(c)(3) of the Bankruptcy Code, valid, enforceable, perfected and non-avoidable junior liens on and security interests in all DIP Collateral on which a third party (a “Prepetition Lienholder”), had a valid, enforceable, perfected and non-avoidable pre-existing lien as of the Petition Date. Nothing in the Interim Order or Final Order shall impair the rights of Prepetition Lienholders, if any, to seek adequate protection.

(f) **Other Provisions Relating to the DIP Liens.** The DIP Liens shall secure all of the DIP Obligations. The DIP Liens shall not, without the consent of the DIP Lender, be

made subject to, or *pari passu* with, any other lien or security interest, other than to the extent expressly provided herein and to the Carve-Out, by any Court order heretofore or hereafter entered in the Case, and shall be valid and enforceable against any trustee appointed in the Case, upon the conversion of the Case to a case under Chapter 7 of the Bankruptcy Code or in any other proceedings related to any of the foregoing (such Case or proceedings, “Successor Case”), and/or upon the dismissal of the Case. The DIP Liens shall not be subject to Sections 510, 549, 550 or 551 of the Bankruptcy Code.

(g) **Superpriority Administrative Claim Status.** The DIP Obligations shall, pursuant to Section 364(c)(1) of the Bankruptcy Code, at all times constitute an allowed superpriority administrative expense claim (the “DIP Superpriority Claim”) of the DIP Lender, and be payable from and have recourse to all DIP Collateral. The DIP Superpriority Claim shall be subject and subordinate only to the Carve-Out. Other than as expressly provided herein, including in paragraph 5 hereof with respect to the Carve-Out, no costs or expenses of administration, including, without limitation, professional fees allowed and payable under Sections 328, 330 and 331 of the Bankruptcy Code, or otherwise, that have been or may be incurred in these proceedings or in any Successor Case, and no priority claims are, or will be, senior to, prior to or *pari passu* with the DIP Liens, the DIP Superpriority Claim or any of the DIP Obligations, or with any other claims of the DIP Lender arising hereunder or under the other DIP Loan Documents, or otherwise in connection with the DIP Facility.

3. **Authorization and Approval to Use Cash Collateral and Proceeds of DIP Facility.** Subject to the terms and conditions of this Interim Order and the other DIP Loan Documents as hereinafter set forth, the Debtor are authorized during the Interim Period to request and use proceeds of DIP Loans in accordance with the initial 13-week operating budget

prepared by the Debtor (subject to variances permitted under the DIP Credit Agreement) and annexed hereto as Exhibit 2 (the “Initial DIP Budget,” and as updated or otherwise amended from time to time pursuant to and in accordance with the terms of the DIP Loan Document, and subject to the approval of the DIP Lender, the “DIP Budget”), this Interim Order and the other DIP Loan Documents for \$5,500,000 and for the payment of certain administration costs associated with the Case. DIP Budgets (other than the Initial DIP Budget) shall not be required to be filed with the Court, but in each shall be provided to the U.S. Trustee and counsel to the Committee, if any, upon approval by the DIP Lender. Notwithstanding anything herein to the contrary, subject only to the Debtor’s rights under paragraph 10(b) hereof and the Carve-Out, the Debtor’s right to request or use proceeds of the DIP Loan or to use Cash Collateral shall terminate on the Termination Date.

4. **Limitation on Use of DIP Facility Proceeds.** No portion of the Carve-Out and no proceeds of the DIP Facility, the DIP Collateral or DIP Loans, may be used for the payment of the fees and expenses of any person incurred (i) in investigating, challenging, or in relation to the challenge of (including as to the validity, priority, extent or enforceability of), any of DIP Liens or DIP Obligations (or the value of the DIP Collateral), or the initiation or prosecution of any claim or action against the DIP Lender, including, without limitation, any claim under Chapter 5 of the Bankruptcy Code, or any state, local or foreign law, in respect of the DIP Facility, or any formal or informal discovery proceedings in anticipation thereof, or in preventing, hindering or delaying the realization by the DIP Lender upon the DIP Collateral, or the enforcement of the DIP Lender’s rights under this Interim Order, the Final Order, or any other DIP Loan Document, (ii) in seeking to modify (whether directly or indirectly) by any motion, pleading or otherwise, any of the rights granted to the DIP Lender under this Interim



Order or under the other DIP Loan Documents, in each case, without the DIP Lender's prior consent, or (iii) to pay any amount on account of any claims arising prior to the Petition Date unless such payments are (x) approved by an order of this Court and (y) set forth in the DIP Budget and permitted under the DIP Credit Agreement.

5. **Carve-Out.** As used in this Interim Order, the "Carve-Out" means the sum of: (i) all fees required to be paid to the Clerk of the Court and all statutory fees payable to the U.S. Trustee under section 1930(a) of title 28 of the United States Code, together with the statutory rate of interest (without regard to the notice set forth in (ii) below); (ii) to the extent allowed by the Court at any time, pursuant to a fee application on notice, or other procedure permitted by any Court order allowing interim compensation or the payment of fees of ordinary course professionals, whether by interim order, final order, procedural order or otherwise, all reasonable and documented unpaid fees and expenses (the "Allowed Professional Fees") incurred by estate professionals retained by the Debtor pursuant to section 327 or 328 of the Bankruptcy Code (collectively, the "Debtor Professionals") and any Committee (together with the Debtor Professionals, the "Professionals") at any time before the delivery by the DIP Lender of a Carve-Out Trigger Notice (defined below), whether allowed by the Court prior to or after delivery of a Carve-Out Trigger Notice; and (iii) the Allowed Professional Fees of the Professionals incurred beginning on and after the date of delivery by the DIP Lender of the Carve-Out Trigger Notice in an aggregate amount not to exceed \$500,000 (the amounts set forth in this clause (iii) being the "Post Carve-Out Trigger Notice Cap"); provided that the Post Carve-Out Trigger Notice Cap shall be reduced, dollar-for-dollar, by the amount of any fees and expenses incurred and accruing by the Debtor, and paid to the applicable Professionals, following delivery of the Carve-Out Trigger Notice. For the avoidance of doubt and notwithstanding anything to the contrary

contained in this Interim Order, the Carve-Out shall be senior to all liens and claims securing the DIP Facility and the DIP Obligations. For purposes of the foregoing, “Carve-Out Trigger Notice” shall mean a written notice delivered by electronic mail (or other electronic means) by the DIP Lender to the Debtor, its counsel, the U.S. Trustee and counsel to the Committee, if any, of the occurrence and continuation of an Event of Default, stating that the Post-Carve-Out Trigger Notice Cap has been invoked. Nothing herein shall be construed as a consent to the allowance of any professional fees or expenses of any of the Debtor or any Committee or shall limit or otherwise affect the right of the DIP Lender or any party in interest to object to the allowance and payment of any such fees and expenses.

6. **Collateral Rights; Limitations in Respect of Subsequent Court Orders.**

Without limiting any other provisions of this Interim Order, it shall constitute an Event of Default under the DIP Facility if (i) the Debtor seeks (x) any modification of this Interim Order without the prior written consent of the DIP Lender (and no such consent shall be implied by any other action, inaction or acquiescence by the Lender) or (y) an order converting or dismissing the Case, (ii) there is entered (x) any modification of this Interim Order without the prior written consent of the DIP Lender (and no such consent shall be implied by any other action, inaction or acquiescence by the Lender) or (y) an order converting or dismissing the Case. If an order dismissing the Case under Section 1112 of the Bankruptcy Code or otherwise is at any time entered, such order will provide (in accordance with Sections 105 and 349 of the Bankruptcy Code) that (x) the DIP Superpriority Claim and DIP Liens shall continue in full force and effect and its priority will be maintained as provided in this Interim Order until all DIP Obligations have been paid and satisfied in full (and that such DIP Superpriority Claim and DIP Liens will, notwithstanding such dismissal) remain binding on all parties in interest) and (y) this Bankruptcy

Court will retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing the such DIP Superpriority Claim and DIP Liens.

7. **Proceeds of Subsequent Financing.** Without limiting the provisions and protections of paragraph 10 hereof, if at any time prior to the indefeasible repayment and satisfaction in full and in cash of all DIP Obligations and the termination of the DIP Lender's obligations to make DIP Loans, including subsequent to the confirmation of any Chapter 11 plan or plans (the "Plan") with respect to the Debtor, the Debtor's estate, any trustee, any examiner with enlarged powers or any responsible officer subsequently appointed, shall obtain credit or incur debt in violation of this Interim Order or the other DIP Loan Documents, then all of the cash proceeds derived from such credit or debt and all Cash Collateral shall immediately be turned over to the DIP Lender for application in accordance with paragraph 11 hereof and the DIP Loan Documents, as applicable.

8. **Cash Management.** The Debtor's cash management system shall at all times be maintained (i) in accordance with the terms of the DIP Loan Documents and any order of this Court approving the maintenance of the Debtor's cash management system, and (ii) in a manner which in any event shall be reasonably satisfactory to the DIP Lender. The DIP Lender shall be deemed to have "control" over all cash management accounts for all purposes of perfection under the Uniform Commercial Code. Until the occurrence of an Event of Default, all amounts collected in the cash collection accounts may be used in accordance with this Interim Order and the other DIP Loan Documents; after the occurrence and during the continuance of an Event of Default, subject only to the funding of the Carve-Out and the Debtor's rights under paragraph 10(b) hereof, all such amounts shall be applied in accordance with paragraph 11(b) hereof.

9. **Disposition of DIP Collateral.** The Debtor shall not sell, transfer, lease, encumber or otherwise dispose of any portion of the DIP Collateral, except as permitted by the DIP Loan Documents or as approved by the Court.

10. **Events of Default; Rights and Remedies Upon Event of Default.**

(a) Any automatic stay otherwise applicable to the DIP Lender is hereby modified so that, upon and after the occurrence of the Termination Date, the DIP Lender shall, subject to subparagraph (b) of this paragraph 10, be immediately entitled to exercise all of its rights and remedies in respect of the DIP Collateral, in accordance with this Interim Order, the other DIP Loan Documents. The term “Termination Date” shall mean: (a) prior to entry of the Final Order, the earliest to occur of (i) the Maturity Date and (ii) this Interim Order ceasing to be in full force and effect for any reason, and (b) subsequent to entry of the Final Order, the earlier to occur of (i) the Maturity Date and (ii) the Final Order ceasing to be in full force and effect for any reason.

(b) Notwithstanding the foregoing subparagraph (a) of this paragraph 10, immediately following the giving of notice by the DIP Lender to the Debtor, counsel to the Debtor, counsel for any Committee appointed in the Case and the U.S. Trustee of the occurrence of an Event of Default: (i) all Commitments of the DIP Lenders to provide any DIP Loans shall immediately be suspended; (ii) the Debtor shall have no right to request or use any proceeds of any DIP Loans or DIP Collateral, or to use any Cash Collateral, other than towards the satisfaction of the DIP Obligations and the Carve-Out, as provided in the applicable DIP Loan Documents and this Interim Order; (iii) the Debtor shall deliver and cause the delivery of the proceeds of the DIP Loans and the DIP Collateral to the DIP Lender as provided herein and in the DIP Loan Documents subject to the funding of the Carve-Out; and (iv) the DIP Lender shall

be permitted to apply such proceeds in accordance with the terms of this Interim Order and the DIP Loan Documents. The Debtor and any Committee shall be entitled to an emergency hearing before this Court within five (5) days after the giving of written notice by the DIP Lender of the occurrence of an Event of Default. If the Debtor or any Committee or any other party in interest, does not contest the occurrence of the Event of Default within such five (5) day period, or if there is a timely contest of the occurrence of an Event of Default and the Court after notice and a hearing declines to stay the enforcement thereof, the Termination Date shall be deemed to have occurred for all purposes and the automatic stay, as to the DIP Lender, shall automatically terminate in all respects. Nothing herein shall preclude the DIP Lender from seeking an order from the Court upon written notice (electronically (including via facsimile) in a manner that generates a receipt for delivery, or via overnight mail) to the U.S. Trustee, counsel to the Debtor and counsel to the Committee, if any, authorizing the DIP Lender to exercise any enforcement rights or remedies with respect to the DIP Collateral on less than five (5) days' notice, or the Debtor's right to contest such relief.

(c) Upon the occurrence of the Termination Date (but subject, only in the case of the occurrence of the Termination Date resulting from an Event of Default, to the provisions of paragraph 10(b) hereof), the DIP Lender is authorized to exercise all remedies and proceed under or pursuant to the applicable DIP Loan Documents. All proceeds realized in connection with the exercise of the rights and remedies of the DIP Lender shall be turned over and applied in accordance with paragraph 11(b) hereof.

(d) The automatic stay imposed under Section 362(a) of the Bankruptcy Code is hereby modified pursuant to the terms of the DIP Loan Documents as necessary to (i) permit the Debtor to grant the DIP Liens and to incur all DIP Obligations and all liabilities and

obligations to the DIP Lender hereunder and under the other DIP Loan Documents, as the case may be, and (ii) authorize the DIP Lender to retain and apply payments, and otherwise enforce its rights and remedies hereunder subject to the provisions of paragraph 10(b) hereof.

(e) Nothing included herein shall prejudice, impair or otherwise affect the DIP Lender's rights to seek any other or supplemental relief in respect of the Debtor (including, as the case may be, other or additional adequate protection).

11. **Applications of Proceeds of Collateral, Payments and Collections.**

(a) As a condition to the DIP Loans and the authorization to use Cash Collateral, the Debtor has agreed that proceeds of any DIP Collateral, any amounts held on account of the DIP Collateral, and all payments and collections received by the Debtor with respect to all proceeds of DIP Collateral, shall be used and applied in accordance with the DIP Loan Documents (including repayment and reduction of the DIP Obligations), the DIP Budget (subject to variances permitted under the DIP Credit Agreement) and this Interim Order.

(b) Subject to the Debtor's rights under paragraph 10(b) hereof and the funding of the Carve-Out, if applicable, upon and after the occurrence of the Termination Date, all proceeds of DIP Collateral, whenever received, shall be paid and applied as follows: (i) *first*, to permanently and indefeasibly repay and reduce the DIP Obligations then due and owing in accordance with the DIP Loan Documents, until paid and satisfied in full in cash; (ii) *second*, to the Debtor's estate. For avoidance of doubt, nothing in this Interim Order shall be construed to limit the voluntary and mandatory repayment provisions set forth in the DIP Loan Documents.

12. **Proofs of Claim, etc.** Notwithstanding any order entered by the Court in relation to the establishment of a bar date in the Case or any Successor Case to the contrary, the DIP Lender is hereby authorized and entitled, in its sole and absolute discretion, but not required, to

file (and amend and/or supplement, as its sees fit) a proof of claim and/or aggregate proofs of claim in the Case or the Successor Case for any claim allowed herein. Any order entered by the Court in relation to the establishment of a bar date for any claim (including without limitation administrative claims) in the Case or the Successor Case shall not apply to the DIP Lender.

13. **Other Rights and Obligations.**

(a) **Good Faith Under Section 364(e) of the Bankruptcy Code; No Modification or Stay of this Interim Order.** Based on the findings set forth in this Interim Order and in accordance with Section 364(e) of the Bankruptcy Code, which is applicable to the DIP Facility as approved by this Interim Order, in the event any or all of the provisions of this Interim Order are hereafter modified, amended or vacated by a subsequent order of this Court or any other court, the DIP Lender is entitled to the protections provided in Section 364(e) of the Bankruptcy Code, and no such appeal, modification, amendment or vacation shall affect the validity and enforceability of any advances made hereunder or the liens or priority authorized or created hereby. Notwithstanding any such modification, amendment or vacation, any claim granted to the DIP Lender hereunder arising prior to the effective date of such modification, amendment or vacation of any DIP Liens or of the DIP Superpriority Claim granted to the DIP Lender shall be governed in all respects by the original provisions of this Interim Order, and the DIP Lender shall be entitled to all of the rights, remedies, privileges and benefits, including the DIP Liens and the DIP Superpriority Claim granted herein, with respect to any such claim. Because the DIP Loans are made in reliance on this Interim Order, the DIP Obligations incurred by the Debtor or owed to the DIP Lender prior to the effective date of any stay, modification or vacation of this Interim Order shall not, as a result of any subsequent order in the Case or in any Successor Case, be disallowed or subordinated, lose its lien priority or administrative expense

claim status, or be deprived of the benefit of the status of the liens and claims granted to the DIP Lender under this Interim Order.

(b) **Expenses.** To the fullest extent provided in the DIP Loan Documents and this Interim Order, the Debtor will pay all expenses incurred by the DIP Lender (including, without limitation, the reasonable fees and disbursements of their counsel any other local counsel that they shall retain and any other advisors in connection with (i) the preparation, execution, delivery, funding and administration of the DIP Loan Documents, including, without limitation, all due diligence fees and expenses incurred or sustained in connection with the DIP Loan Documents, (ii) the Case or any Successor Case, or (iii) enforcement of any rights or remedies under the DIP Loan Documents, in each case whether or not the transactions contemplated hereby are fully consummated. Notwithstanding any other provisions of this Interim Order, the DIP Lender, and its advisors and professionals, shall not be required to comply with the U.S. Trustee fee guidelines, and the fees and expenses of the DIP Lender or its advisors and professionals shall not be subject to any budget compliance requirements. The DIP Lender shall provide reasonably detailed statements (redacted if necessary for privileged, confidential or otherwise sensitive information, as to those statements provided to any party other than the U.S. Trustee) to the Office of the U.S. Trustee and counsel for any Committee and the Debtor. Thereafter, within ten (10) days of presentment of such statements, if no written objections to the reasonableness of the fees and expenses charged in any such invoice (or portion thereof) is made, the Debtor shall pay in cash all such fees and expenses of the DIP Lender, and their advisors and professionals. Any objection to the payment of such fees or expenses shall be made only on the basis of “reasonableness,” and shall specify in writing the amount of the contested fees and expenses and the detailed basis for such objection. To the extent an objection only contests a



portion of an invoice, the undisputed portion thereof shall be promptly paid. If any such objection to payment of an invoice (or any portion thereof) is not otherwise resolved between the Debtor, any Committee or the U.S. Trustee and the issuer of the invoice, either party may submit such dispute to the Court for a determination as to the reasonableness of the relevant disputed fees and expenses set forth in the invoice. This Court shall resolve any dispute as to the reasonableness of any fees and expenses.

(c) **Binding Effect.** The provisions of this Interim Order shall be binding upon and inure to the benefit of the DIP Lender, the Debtor, and their respective successors and assigns (including any trustee or other fiduciary hereinafter appointed as a legal representative of the Debtor or with respect to the property of the estate of the Debtor) whether in the Case, in the Successor Case, or upon dismissal of any such Chapter 11 or Chapter 7 case.

(d) **No Waiver.** The failure of the DIP Lender to seek relief or otherwise exercise its rights and remedies under this Interim Order, the other DIP Loan Documents or otherwise, as applicable, shall not constitute a waiver of any of the DIP Lender's rights hereunder, thereunder or otherwise. Notwithstanding anything herein, the entry of this Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, or otherwise impair any of the rights, claims, privileges, objections, defenses or remedies of the DIP Lender under the Bankruptcy Code or under non-bankruptcy law against any other person or entity in any court, including without limitation, (i) to request conversion of the Case to a case under Chapter 7, dismissal of the Case, or the appointment of a trustee in the Case, or (ii) to propose, subject to the provisions of Section 1121 of the Bankruptcy Code, a Plan, or (iii) to exercise any of its rights, claims or privileges (whether legal, equitable or otherwise).

(e) **No Third Party Rights.** Except as explicitly provided for herein, this Interim Order does not create any rights for the benefit of any third party, creditor, equity holder or any direct, indirect, third party or incidental beneficiary.

(f) **No Marshaling.** Subject to the entry of the Final Order, the DIP Lender shall not be subject to the equitable doctrine of “marshaling” or any other similar doctrine with respect to any of the DIP Collateral.

(g) **Amendment.** The Debtor and the DIP Lender may amend, modify, supplement or waive any provision of the DIP Loan Documents without further notice to or approval of the Court, unless such amendment, modification, supplement or waiver (w) increases the interest rate (other than as a result of the imposition of the default rate) charged in connection with the DIP Facility, (x) increases the commitment of the DIP Lender to make DIP Loans under the DIP Loan Documents, (y) changes the Termination Date or (z) otherwise is materially adverse to the interests of the Debtor or its estate. Except as otherwise provided herein, no waiver, modification or amendment of any of the provisions hereof shall be effective unless set forth in writing, signed by, or on behalf of, the Debtor and the DIP Lender and approved by the Court after notice to parties in interest.

(h) **Priority of Terms.** To the extent of any conflict between or among (a) the express terms or provisions of any of the DIP Loan Documents, the Motion, any other order of this Court, or any other agreements, on the one hand, and (b) the terms and provisions of this Interim Order, on the other hand, unless such term or provision herein is phrased in terms of “defined in” or “as set forth in” the DIP Credit Agreement, the terms and provisions of this Interim Order shall govern.

(i) **Survival of Interim Order.** The provisions of this Interim Order and any actions taken pursuant hereto shall survive entry of any order which may be entered (i) confirming any Plan in the Case, (ii) converting the Case to a case under Chapter 7 of the Bankruptcy Code, (iii) to the extent authorized by applicable law, dismissing the Case, (iv) withdrawing of the reference of the Case from this Court or (v) providing for abstention from handling or retaining of jurisdiction of the Case in this Court. The terms and provisions of this Interim Order, the DIP Loan Documents, including the DIP Liens granted pursuant to this Interim Order, and the DIP Loan Documents and any priorities and protections granted to or for the benefit of the DIP Lender hereunder and thereunder, shall continue in full force and effect to the fullest extent provided by Section 364(e) of the Bankruptcy Code.

(j) **Enforceability.** This Interim Order shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 and shall take effect and be fully enforceable *nunc pro tunc* to the Petition Date immediately upon execution hereof.

(k) **No Waivers or Modification of Interim Order.** The Debtor irrevocably waives any right to seek any modification or extension of this Interim Order without the prior written consent of the DIP Lender, and no such consent shall be implied by any other action, inaction or acquiescence of the DIP Lender. The Debtor may not seek to modify or to alter relative lien priority of the DIP Liens set forth in this Interim Order.

(l) **Waiver of any Applicable Stay.** Any applicable stay (including, without limitation, under Bankruptcy Rule 6004(h)) is hereby waived and shall not apply to this Interim Order.

14. **Final Hearing.**

(a) The Final Hearing to consider entry of the Final Order and final approval of the DIP Facility is scheduled for \_\_\_\_\_, 2018, at \_\_\_\_\_ (EST) at the United States Bankruptcy Court for the District of Delaware.

(a) On or before two business days after entry of this Interim Order, the Debtor shall serve, by United States mail, first-class postage prepaid, notice of the entry of this Interim Order and of the Final Hearing (the "**Final Hearing Notice**"), together with copies of this Interim Order and the Motion, on the Notice Parties and to any other party that has filed a request for notices with this Court prior thereto and to any Committee after the same has been appointed, or Committee counsel, if the same shall have been appointed; the Internal Revenue Service, the state taxing authorities in any state in which the Debtor do business, any federal or state regulatory authorities governing the Debtor's industry, the U.S. Attorney's Office, the Delaware Attorney General, and the U.S. Trustee. The Final Hearing Notice shall state that any party in interest objecting to the entry of the proposed Final Order shall file written objections with the Clerk of the Court no later than \_\_\_\_\_, 2018 at \_\_\_\_\_ (EST), except that any objections by any Committee may be filed no later than the Final Hearing, which objections shall be served so that the same are received on or before such date by: counsel to the Debtor, counsel to the DIP Lender, the Office of the United States Trustee, and each party that has filed a request for notice in the Case.

(b) **Retention of Jurisdiction.** The Court has and will retain jurisdiction to enforce this Interim Order according to its terms.

SO ORDERED by the Court January \_\_\_\_, 2018.

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UNITED STATES BANKRUPTCY JUDGE

**EXHIBIT 1**

DIP CREDIT AGREEMENT

**DEBTOR-IN-POSSESSION CREDIT AGREEMENT**

**dated as of January 23, 2018**

**between**

**KIKO USA, INC., as Borrower,**

**and**

**KIKO S.P.A.,  
as DIP Lender**

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EXHIBITS

Exhibit A	–	Form of Promissory Note
Exhibit B	–	Form of Interim DIP Order

## DEBTOR-IN-POSSESSION CREDIT AGREEMENT

This DEBTOR-IN-POSSESSION CREDIT AGREEMENT (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, this “Agreement”), dated as of January 23, 2018, between KIKO USA, INC., a Delaware corporation, as borrower (the “Borrower”) and KIKO S.p.A., as lender (in such capacity, together with its successors and assigns permitted hereunder, the “DIP Lender”).

### RECITALS

WHEREAS, on January 11, 2018 (the “Petition Date”), the Borrower filed a voluntary proceeding (in such capacity, the “Debtor”) under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 et. seq. (as amended, the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) (the “Chapter 11 Case”), and such Debtor continues to operate its businesses and manage its properties as debtor-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code;

WHEREAS, as of the Petition Date, the Debtor had no secured indebtedness whether in the form of secured financing or otherwise;

WHEREAS, the Borrower has requested the DIP Lender extend credit in the form of a multi-draw term loan credit facility (the “DIP Facility”) at any time and from time to time prior to the Maturity Date in an aggregate principal amount at any time outstanding not to exceed \$5,500,000;

WHEREAS, the DIP Lender has agreed to provide the Borrower with the DIP Facility to finance the Debtor’s administrative expenses and other working capital needs of the Borrower during the pendency of the Chapter 11 Case and preserve the going concern value of the Borrower pending the confirmation and consummation of the Borrower’s plan of reorganization, in form and substance acceptable to the DIP Lender (the “Plan”);

WHEREAS, the Borrower acknowledges that it will receive substantial direct and indirect benefits by reason of the DIP Lender making of the loans to the Borrower as provided in this Agreement; and

### AGREEMENT

NOW, THEREFORE, in consideration of the foregoing, and the conditions set forth below, the parties hereto, intending to be legally bound, hereby agree as follows:

#### Section 1. Definitions.

“Affiliate” means, when used with respect to a certain person, another person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the person specified.

“Agreement” has the meaning as provided in the first paragraph of this Agreement.



“Applicable Rate” means 5% per annum.

“Borrower” has the meaning as provided in the first paragraph of this Agreement.

“Borrowings” has the meaning provided in Section 2(a).

“Budget” has the meaning provided in Section 5(a).

“Business Day” means any day except Saturday, Sunday and any day which shall be in New York, New York, a legal holiday or a day on which banking institutions are authorized or required by law or other government action to close.

“Capital Lease” means, with respect to any person, any lease of any property (whether real, personal or mixed) by that person as lessee that, in conformity with GAAP, is accounted for as a capital lease on the balance sheet of that person.

“Closing Date” means the date on which the conditions precedent in Section 4(a) below shall have been met.

“Commitment” means \$5,500,000, as the same may be reduced from time to time or terminated pursuant to Section 2(f), 2(g) or 2(h).

“Commitment Period” means the period commencing on the Closing Date and ending on the Commitment Termination Date.

“Commitment Termination Date” means the earliest to occur of (i) the Borrowing on which the Commitment is permanently reduced to zero in accordance with Section 2(g), (ii) the date on which the Borrower voluntarily terminates in full the Commitment pursuant to Section 2(f), (iii) the date on which the Commitment is terminated pursuant to Section 6, (iv) the Maturity Date and (v) the Plan Consummation Date.

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a person, whether through the ownership of voting securities, by contract or otherwise, and the terms “Controlling” and “Controlled” shall have meaning correlative thereto.

“Default” shall mean any event, act or condition which with notice or lapse of time, or both, would constitute an Event of Default.

“Default Rate” means, with respect to overdue principal on outstanding DIP Loans, the applicable interest rate plus 2.00% per annum, and with respect to any other overdue amount (including overdue interest), the interest rate applicable to the DIP Loans plus 2.00% per annum and in each case, shall be payable on demand.

“DIP Collateral” means all assets and property of the Borrower, now owned or hereafter acquired, which is subject to the Liens granted by the Borrower (or intended to be subject to Liens granted by the Borrower) pursuant to the DIP Order and shall include, for the avoidance of doubt, all “DIP Collateral” as such term is defined in the DIP Order.

“DIP Lender” has the meaning as provided in the first paragraph of this Agreement.

“DIP Liens” has the meaning as provided in Section 2(j) below.

“DIP Loan” has the meaning as provided in Section 2(a).

“DIP Loan Documents” means this Agreement, the Note (if any), and each other document delivered to the DIP Lender in connection herewith, in each case, as amended, restated, supplemented or otherwise modified from time to time.

“DIP Order” means the Interim DIP Order or the Final DIP Order, as applicable.

“Disposition” means (a) the sale, conveyance, transfer or other disposition, whether in a single transaction or a series of related transactions, of property or assets (including by way of a sale and leaseback transaction) of the Borrower or (b) the issuance or sale of capital stock of the Borrower, whether in a single transaction or a series of related transactions.

“Events of Default” has the meaning provided in Section 7.

“Final DIP Order” means a final order of the Bankruptcy Court entered in the Chapter 11 Case after a final hearing under Rule 4001(c)(2) of the Federal Rules of Bankruptcy Procedure, authorizing and approving the DIP Facility and the terms of this Agreement and the other DIP Loan Documents, in form and substance acceptable to the DIP Lender in its sole discretion, as the same may be amended, restated, supplemented or otherwise modified from time to time with the express consent of the DIP Lender, as to which no stay has been entered and which has not been reversed, vacated or overturned, 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 the DIP Lender waives such requirement in writing.

“First Day Orders” means those orders entered by the Bankruptcy Court as a result of motions and applications filed by the Borrower with the Bankruptcy Court on the Petition Date.

“GAAP” means United States generally acceptable accounting principles applied on a consistent basis.

“Governmental Authority” means the government of the United States or any other nation, or of any political subdivision thereof, whether state, regional, county, municipal or local, and any agency, authority, instrumentality, regulatory body, ministry, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

“Indebtedness” means, with respect to any person, without duplication, (a) all indebtedness of such person for borrowed money or for the deferred purchase price of property payment for which is deferred 6 months or more, but excluding obligations to trade creditors incurred in the ordinary course of business that are unsecured and not overdue by more than 6 months unless being contested in good faith, (b) all reimbursement and other obligations with respect to letters of credit, bankers’ acceptances and surety bonds, whether or not matured, (c) all obligations evidenced by notes, bonds, debentures or similar instruments, (d) all indebtedness

created or arising under any conditional sale or other title retention agreement with respect to property acquired by such person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property), (e) that portion of obligations with respect to Capital Leases which is properly classified as a liability on a balance sheet in conformity with GAAP, (f) all obligations of such person under commodity purchase or option agreements or other commodity price hedging arrangements, in each case whether contingent or matured, (g) all obligations of such person under any foreign exchange contract, currency swap agreement, interest rate swap, cap or collar agreement or other similar agreement or arrangement designed to alter the risks of that person arising from fluctuations in currency values or interest rates, in each case whether contingent or matured and (h) all indebtedness referred to above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien upon or in property or other assets (including accounts and contract rights) owned by such person, even though such person has not assumed or become liable for the payment of such indebtedness.

“Interim DIP Order” means an interim order of the Bankruptcy Court entered in the Chapter 11 Case after an interim hearing under Rule 4001(c)(2) of the Federal Rules of Bankruptcy Procedure, authorizing and approving the DIP Facility and the terms of this Agreement and the other DIP Loan Documents, in the form attached hereto as Exhibit B with any modifications thereto approved by the DIP Lender in its sole discretion, as the same may be amended, restated, supplemented or otherwise modified from time to time with the express consent of the DIP Lender, as to which no stay has been entered and which has not been reversed, vacated or overturned, 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 the DIP Lender waives such requirement in writing.

“Investment” means, with respect to any person, all investments by such person in other persons (including Affiliates) in the form of any direct or indirect advance, loan or other extensions of credit (other than advances or extensions of credit to customers, suppliers, directors, officers or employees of any person in the ordinary course of business, and excluding any debt or extension of credit represented by a bank deposit other than a time deposit) or capital contribution to (by means of any transfer of cash or other property to others or any payment for property or services for the account or use of others), or the incurrence of a guarantee of any obligation of, or any purchase or acquisition of equity interests, indebtedness or other similar instruments issued by, such other persons and all other items that are or would be classified as investments on a balance sheet prepared on the basis of GAAP, as applicable; provided, however, that endorsements of negotiable instruments and documents in the ordinary course of business will not be deemed to be an Investment.

“Lien” means, with respect to any assets or property, (a) any mortgage, deed of trust, trust, deemed trust (statutory or otherwise), lien (statutory or otherwise), pledge, encumbrance, claim, charge, assignment, hypothecation, security interest or encumbrance of any kind or any filing of any financing statement under the UCC or any other similar notice of Lien under any similar notice or recording statute of any Governmental Authority, including any easement, right-of-way or other encumbrance on title to real property, in each of the foregoing cases whether voluntary or imposed by law, and any agreement to give any of the foregoing, (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title

retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such Property and (c) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

“Material Adverse Effect” means a material adverse change in, or a material adverse effect on, the operations, business, assets, properties, liabilities (actual or contingent), or financial condition of the Borrower taken as a whole (other than as customarily occurs as a result of events leading up to the commencement of a proceeding under chapter 11 of the Bankruptcy Code and the commencement of the Chapter 11 Case); (b) a material impairment of the rights and remedies of any Lender under any DIP Loan Document, or of the ability of the Borrower to perform its obligations under any DIP Loan Document to which it is a party; or (c) a material adverse effect upon the legality, validity, binding effect or enforceability against the Borrower of any DIP Loan Document to which any of them is a party, other than in accordance with its terms.

“Maturity Date” means the earlier of (i) the Plan Consummation Date, (ii) the date of the acceleration of the DIP Loans and the termination of all Commitment in accordance with the terms of this Agreement, or (iii) July 31, 2018 or such other date as determined by the DIP Lender in consultation with the Borrower.

“Note” means the promissory note of the Borrower evidencing the DIP Loans of the DIP Lender, substantially in the form of Exhibit A to this Agreement.

“Notice of Borrowing” has the meaning provided in Section 2(a).

“Obligations” means all obligations of every nature of the Borrower under the DIP Loan Documents, including, without limitation, any liability on any claim, whether or not the right to payment in respect of such claim is reduced to judgment, liquidated, unliquidated, fixed or contingent, matured, disputed, undisputed, legal, equitable, secured or unsecured, and whether or not such claim is discharged, stayed or otherwise affected by any bankruptcy, insolvency, reorganization or other similar proceeding. Without limiting the generality of the foregoing, the Obligations of the Borrower under this Agreement include (a) the obligation to pay principal, interest, charges, expenses, fees, attorneys’ fees and disbursements, indemnities and other amounts payable by the Borrower under any DIP Loan Document and (b) the obligation to reimburse any amount in respect of any of the foregoing that the DIP Lender, in its sole discretion, may elect to pay or advance on behalf the Borrower.

“Permitted Indebtedness” means (x) indebtedness under this Agreement and (y) indebtedness outstanding on the date hereof.

“Permitted Investments” means any Investment existing on the date hereof.

“Permitted Lien” means (x) the DIP Liens, (y) any adequate protection liens that may be granted pursuant to the DIP Order and (z) any other valid, perfected, enforceable and non-avoidable Liens outstanding on the date hereof.

“Permitted Variances” means actual amounts of expenditures made by the Debtor that vary from the applicable Budget period by less than 15% for each 4 week period. Such

determination shall be made on a category, not line item, basis and shall be determined in the sole discretion of the DIP Lender in consultation with the Borrower.

“Plan Consummation Date” means the day upon which the Plan becomes effective and all related transactions have been consummated.

“Requirements of Law” means, with respect to any person, any and all requirements of any Governmental Authority applicable to such person having the force of law, including any and all laws, judgments, orders, decrees, ordinances, rules, regulations, statutes or case law.

“Restricted Payment” means any dividend or other distribution (whether in cash, securities or other property) with respect to any equity interest the Borrower or any subsidiary thereof, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, defeasance, acquisition, cancellation or termination of any such equity interest, or on account of any return of capital to the Borrower’s or any respective subsidiary’s stockholders, partners or members (or the equivalent Persons thereof).

“UCC” the Uniform Commercial Code as in effect from time to time in the State of New York; provided, however, that, at any time, if by reason of mandatory provisions of law, any or all of the perfection or priority of the Lender’s security interest in any item or portion of the Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, the term “UCC” shall mean the Uniform Commercial Code as in effect, at such time, in such other jurisdiction for purposes of the provisions hereof relating to such perfection or priority and for purposes of definitions relating to such provisions.

## Section 2. **The Commitment and Credit Extension.**

(a) Commitment and Borrowing. Subject to the terms and conditions set forth herein and in the DIP Order, the DIP Lender agrees to make during the Commitment Period a term loan or term loans (each a “DIP Loan” and, collectively, the “DIP Loans”) to the Borrower in an aggregate principal amount not to exceed the Commitment on the applicable date of Borrowing; provided that, notwithstanding anything to the contrary herein, the DIP Lender shall not be required to make DIP Loans in excess of the amounts necessary to be funded pursuant to the Budget. The DIP Loans shall be incurred pursuant to one or more borrowings (each a “Borrowing,” and, collectively, the “Borrowings”); provided that, each such Borrowing (x) shall be denominated in U.S. Dollars and (y) shall be in an aggregate principal amount that is (i) an integral multiple of \$100,000 and not less than \$100,000 or (y) if less, equal to the remaining available balance of the Commitment. Amounts repaid under the DIP Facility may not be reborrowed. For the avoidance of doubt, PIK Interest (defined below) shall not be deemed a Borrowing under this Agreement.

(b) Notice of Borrowing. Whenever the Borrower desires to incur DIP Loans hereunder, the Borrower shall give the DIP Lender written notice of such Borrowing of DIP Loans, not later than 8:00 p.m., New York City time (or such later time as may be acceptable to the DIP Lender in its sole discretion), three (3) Business Days (or such shorter period as agreed by the DIP Lender in its sole discretion) before the date of the proposed Borrowing. Each such notice (each, a “Notice of Borrowing”) shall be irrevocable and shall specify the following

information: (i) the date of such Borrowing, which shall be a Business Day, (ii) the aggregate principal amount of such Borrowing and (iii) a statement certified by an authorized officer of the Borrower that the conditions set forth in Section 4(b) have been satisfied.

(c) Disbursement of Funds. No later than 4:00 p.m., New York City time on the date specified in each Notice of Borrowing, the DIP Lender shall credit the account of the Borrower as directed by the Borrower prior to such time with the aggregate amount of DIP Loans requested pursuant to the applicable Notice of Borrowing to be made on such date.

(d) Maturity Date. The aggregate principal amount of the DIP Loans outstanding on the Maturity Date, together with all accrued and unpaid interest thereon, shall become due and payable in full on the Maturity Date.

(e) Interest.

(ii) Interest Rate. The DIP Loans shall bear interest on the outstanding principal amount thereof from the applicable date of Borrowing at a rate per annum equal to the Applicable Rate. Interest accruing on each DIP Loan shall be due and payable on (x) the last Business Day of each month and in the case of this clause (x) shall be “paid in kind”, with the amount of such interest being automatically added to the outstanding principal amount of the DIP Loans on such date, (y) on each date on which any DIP Loan is repaid or prepaid to the extent such interest has accrued on the amount of such repayment or prepayment unless paid as PIK Interest as set forth in Section 2(f), and (z) on the Maturity Date. Such paid-in-kind interest (“PIK Interest”) shall be deemed paid, and the principal amount of the DIP Loans as so increased shall be deemed “DIP Loans” hereunder and under the other DIP Loan Documents for all purposes and shall thereafter accrue interest in accordance with the terms of this Agreement.

(iii) Default Rate. The Borrower shall pay interest on past due amounts owing by it hereunder at a rate per annum equal to the Default Rate to the fullest extent permitted by law. Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable on demand.

(iv) All interest hereunder shall be computed on the basis of a year of 360 days, and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

(f) Optional Prepayments and Commitment Reductions. The Borrower may voluntarily reduce the unutilized portion of the Commitment and/or repay the DIP Loans at any time without premium or penalty upon at least three (3) Business Days’ prior written notice (or such shorter period as agreed by the DIP Lender in its sole discretion), which notice shall specify the amount of such prepayment; provided that each such reduction or prepayment shall be in an

aggregate principal amount of at least \$500,000 (or such lesser amount as agreed to by the DIP Lender in its sole discretion). Any prepayment of DIP Loans shall be accompanied by all accrued and unpaid interest on the amount of such repaid DIP Loans; provided that the Borrower shall have the option to pay any accrued interest in cash or elect for such accrued interest to capitalize as PIK Interest on the date of any prepayment of DIP Loans.

(g) Mandatory Reduction of Commitments. The Commitment shall automatically be permanently reduced on each date of Borrowing of DIP Loans (after giving effect to the DIP Loans incurred on such date) by an amount equal to the aggregate principal amount of the DIP Loans incurred on such Borrowing date.

(h) Termination of Commitment. The Commitment shall terminate in its entirety on the Maturity Date.

(i) Mandatory Prepayments. Anything contained in this Agreement to the contrary notwithstanding, (A) in no event shall the aggregate principal amount of the DIP Loans at any time outstanding exceed the amount permitted to be outstanding hereunder pursuant to the DIP Order, in each case as the foregoing limits may be in effect from time to time and (B) the Borrower agrees to immediately prepay the DIP Loans in the amounts and at the times as may be necessary to comply with the foregoing clause (A).

(j) Security. Subject to the entry and the terms of the DIP Order, the Obligations shall be and hereby are secured by enforceable and non-avoidable DIP Liens in and to the DIP Collateral (any and all such charges, liens and security interests contemplated by the foregoing, collectively, the “DIP Liens”), which DIP Liens shall be automatically perfected upon the entry of the Interim DIP Order without the need for any further action by the DIP Lender or the Borrower, including the filing of any financing statements or the recording of any mortgages. Such DIP Liens shall be granted pursuant to Sections 364(c)(2), (c)(3) and (d)(1) of the Bankruptcy Code, and shall have the priority as set forth in the DIP Order.

(k) The Borrower agrees that, upon the request by the DIP Lender, the Borrower will execute and deliver to the DIP Lender a Note with appropriate insertions as to date and principal amount.

Section 3. **Representations and Warranties.** The Borrower represents and warrants that:

(a) The Borrower is duly organized and validly existing and in good standing (to the extent such concept is applicable in the relevant jurisdiction) under the laws of the jurisdiction of its organization.

(b) Subject to the granting of the Interim DIP Order, the transactions contemplated by this Agreement (i) are within the power of the Borrower, (ii) have been duly authorized by all necessary corporate and, if required, shareholder approval by the Borrower, (iii) constitute legal, valid and binding obligations of the Borrower, and (iv) do not require the consent or approval of, or any other action by, any governmental authority.

(c) This Agreement has been duly executed and delivered by or on behalf of the Borrower.

(d) The business operations of the Borrower have been and will continue to be conducted in material compliance with all laws of each jurisdiction in which business has been or is being carried on.

(e) The Borrower have obtained all material licenses and permits required for the operation of their businesses, which licenses and permits remain in full force and effect. No proceedings have been commenced or threatened to revoke or amend any of such licenses or permits.

(f) Since the Petition Date, no event or change has occurred that has caused or evidences, either in any case or in the aggregate, a Material Adverse Effect.

(g) All written factual information (taken as a whole) provided by or on behalf of the Borrower to the DIP Lender for the purposes of or in connection with this Agreement or any transaction contemplated herein is true and accurate in all material respects on the date as of which such information is dated or certified and not incomplete by omitting to state any fact necessary to make such information not misleading in any material respect at such time in light of the circumstances under which such information was provided.

(h) The Borrower has disclosed all material assumptions with respect to the Budget.

(i) All proceeds of the DIP Loans shall be used only for working capital and other general corporate purposes of the Borrower and its respective subsidiaries in accordance with, and subject to the limitations set forth in, the Budget and the DIP Order; provided that no proceeds of the DIP Loans shall be used for such purposes until the Borrower has first used all cash on hand, to satisfy the obligations proposed to be payable by Borrower pursuant to the Budget (and such cash and Cash Collateral is insufficient to satisfy all such obligations).

(j) Neither the execution, delivery or performance by the Borrower of this Agreement, nor compliance by it with the terms and provisions thereof, (i) will contravene any provision of any Requirement of Law or any order, writ, injunction or decree of any court or Governmental Authority, (ii) will conflict with or result in any breach of any of the terms, covenants, conditions or provisions of, or constitute a default under, or result in the creation or imposition of (or the obligation to create or impose) any Lien (except pursuant to the DIP Order) upon any of the property or assets of the Borrower pursuant to the terms of any indenture, mortgage, deed of trust, credit agreement or loan agreement, or any other agreement, contract or instrument, in each case to which the Borrower is a party or by which it or any its property or assets is bound or to which it may be subject (other than as permitted by the DIP Order), except in the case of this clause (ii), as could not, either individually or in the aggregate, reasonably be expected to have a material adverse effect, or (iii) will violate any provision of the certificate or articles of incorporation, certificate of formation, limited liability company agreement or by-laws (or equivalent organizational documents), as applicable, of the Borrower.



(k) Upon entry of each of the Interim DIP Order and the Final DIP Order, the Interim DIP Order and the Final DIP Order, as applicable, shall create (or continue) in favor of the DIP Lender, a legal, valid and enforceable fully perfected security interest in and Lien on all right, title and interest of the Borrower in the DIP Collateral with the priority described in the DIP Order. No filings or recordings are required in order to perfect the security interests created under the DIP Order.

(l) The Borrower is not, and is not required to be registered as, an “investment company” within the meaning of the Investment Company Act of 1940, as amended.

Section 4. **Conditions Precedent:**

(a) Closing Date Conditions Precedent. The funding of the initial DIP Loans on the Closing Date shall be subject to the satisfaction (or waiver by the DIP Lender) of the following conditions precedent:

- (i) There shall have been delivered to the DIP Lender an executed counterpart of this Agreement.
- (ii) The Bankruptcy Court shall have entered the Interim DIP Order in form and substance satisfactory to the DIP Lender authorizing the Borrower to enter into the Agreement and the other DIP Loan Documents and approving, among other things, the DIP Facility and the DIP Loans hereunder and the granting of the DIP Liens with the priority contemplated herein.
- (iii) The Interim DIP Order shall be in full force and effect, shall not have been reversed, vacated or stayed and shall not have been amended, supplemented or otherwise modified without the prior written consent of the DIP Lender.
- (iv) The DIP Lender shall have received an initial Budget, in form and substance satisfactory to the DIP Lender, including as to all assumptions.
- (v) No Default or Event of Default shall exist at the time of, or after giving effect to, the making of the DIP Loans on the Closing Date.
- (vi) The representations and warranties of the Borrower set forth herein shall be true and correct in all material respects (or, to the extent qualified by materiality, in all respects) immediately prior to, and after giving effect to, the makings of the DIP Loans on the Closing Date.
- (vii) The making of the DIP Loans on the Closing Date shall not violate any requirement of law and shall not be enjoined, temporarily, preliminarily or permanently.

- (viii) Delivery of a customary Notice of Borrowing pursuant to Section 2.
- (ix) The Borrower shall be in compliance with the terms of the Interim DIP Order, the First Day Orders and any other orders issued in the Chapter 11 Case.
- (x) No pleading or application shall have been filed in the Bankruptcy Court by any party in interest which is not withdrawn, dismissed or denied seeking (i) to dismiss or convert the Chapter 11 Case to a case under Chapter 7 of the Bankruptcy Code, (ii) the appointment of a Chapter 11 trustee in the Chapter 11 Case, (iii) the appointment of an examiner having enlarged powers relating to the operation of the business of the Borrower (beyond those set forth under Section 1106(a)(3) and (4) of the Bankruptcy Code) under Section 1106(b) of the Bankruptcy Code, or (iv) to stay, reverse, vacate, or otherwise modify the Interim DIP Order without the prior written consent of the DIP Lender

(b) Conditions Precedent to Each Borrowing After the Closing Date. The funding of DIP Loans on each date of Borrowing after the Closing Date shall be subject to the satisfaction (or waiver by the DIP Lender) of the following conditions precedent:

- (i) The representations and warranties of the Borrower set forth herein shall be true and correct in all material respects (or, to the extent qualified by materiality, in all respects) immediately prior to, and after giving effect to, the making of such DIP Loans.
- (ii) No Default or Event of Default shall exist at the time of, or after giving effect to, the making of such DIP Loans.
- (iii) Delivery of a customary Notice of Borrowing pursuant to Section 2.
- (iv) The Interim DIP Order and, after its entry, the Final DIP Order, shall be in full force and effect, shall not have been reversed, vacated or stayed and shall not have been amended, supplemented or otherwise modified without the prior written consent of the DIP Lender.
- (v) The Borrower shall be in compliance with the terms of the DIP Order and any other orders issued in the Chapter 11 Case.
- (vi) The making of such DIP Loans shall not violate any requirement of law and shall not be enjoined, temporarily, preliminarily or permanently.

- (vii) The condition set forth in Section 4(a)(xi) shall have been satisfied on the date of such Borrowing of DIP Loans.

Section 5. **Affirmative Covenants.** On and after the effective date of this Agreement and until the date that the Commitment hereunder has terminated and the principal of, and interest on, each DIP Loans and all fees, expenses and other amounts payable under any DIP Loan Document (other than contingent indemnification obligations for which no claim or demand has been made) have been paid in full in cash:

(a) **Financial Reporting Requirements.** The Borrower shall provide to the DIP Lender (i) rolling 13-week cash flow projections and forecasts, in form and substance acceptable to the DIP Lender (the “Budget”), (A) prior to the Closing Date and (B) on an updated basis by the third Business Day of every week (commencing with the first week after the Closing Date), which shall, upon the receipt by the Borrower of written acceptance by the DIP Lender, replace the prior Budget for all purposes hereunder and in the other DIP Loan Documents, (ii) by 5:00 p.m. (New York time) on the third Business Day of each week (commencing with the first week after the Closing Date), a reconciliation of actual receipts and disbursements, cash receipts, cash balance and loan balance against such figures set forth in the Budget for (A) the one-week period which ended on the immediately preceding Friday and (B) the four-week period which ended on the immediately preceding Friday, in each case, with written explanations of material variances and (iii) such other information or documents (financial or otherwise) with respect to the Borrower and its Affiliates as the DIP Lender may reasonably request.

(b) **Budget and Variances.** Subject to the Permitted Variances, the expenditures authorized in the Budget shall be adhered to on a 4-week basis and on a cumulative basis as described below; provided, however, that unused expenditures shall carry forward to successive 4-week Budget periods on a cumulative basis. The Budget shall be tested on cumulative basis for a 4-week period then ended, it being understood and agreed that actual amounts of the Borrower’s expenditures in the aggregate may not vary from the applicable Budget period by more than the Permitted Variances; provided that the fees, costs and expenses owed by the Borrower to the DIP Lender and its professionals shall not be taken into account in connection with testing compliance with the Budget (including the variance testing).

(c) **Other Affirmative Covenants.** The Borrower hereby covenants and agrees:

- (i) to permit the DIP Lender or its agents and advisors on reasonable notice during regular business hours to enter and inspect of the Borrower’s assets and properties, and provide the DIP Lender and the agents or advisors on reasonable notice and during normal business hours full access to the books and records of the Borrower and cause management thereof to fully co-operate with the DIP Lender, its agents and advisors accordingly;
- (ii) to keep the DIP Lender apprised on a timely basis of all material developments with respect to the business and affairs of the Borrower;

- (iii) to provide the DIP Lender with (1) no less than five (5) days' notice of any motion, application or other filing to be brought or made by the Borrower in the Chapter 11 Case or, where it is not practically possible to do so, as much notice as is possible prior to any such filing; (2) notice immediately after learning of any motion, application or other filing to be brought or made by any other person in the Chapter 11 Case or otherwise; and (3) drafts of any materials (including draft orders) to be served by the Borrower at least five (5) days prior to any such service to give the DIP Lender a reasonable opportunity to review and comment on such draft materials before service of such materials or, where it is not practically possible to do so, as much opportunity as is reasonable in the circumstances;
- (iv) to seek the DIP Lender's approval of any order in the Chapter 11 Case that affects this Agreement, the DIP Facility or any other related DIP Loan Documents and only seek to obtain such orders as are in form and substance satisfactory to the DIP Lender, acting reasonably;
- (v) to comply with all court orders and all activities and use all the proceeds of the DIP Facility in a manner consistent with the restrictions set forth in this Agreement and the DIP Order;
- (vi) to promptly notify the DIP Lender of (and, in any event, no later than 2 days after) the occurrence of any Default or Event of Default;
- (vii) to maintain the insurance in existence on the date hereof, with respect to the DIP Collateral;
- (viii) to comply in all material respects with all applicable laws, rules and regulations applicable to their businesses, including, without limitation, environmental laws;
- (ix) to comply with all applicable statutes, regulations and orders of, and all applicable restrictions imposed by, all Governmental Authorities in respect of the conduct of its business and the ownership of its property (including applicable statutes, regulations, orders and restrictions relating to environmental standards and controls), except such non-compliances as could not, either individually or in the aggregate, reasonably be expected to have a material adverse effect;
- (x) to do all things necessary to preserve and keep in full force and effect its existence and its material rights, franchises, licenses, permits, copyrights, trademarks and patents;

- (xi) to use the proceeds of the DIP Loans only as provided in Section 3(i);
- (xii) to promptly execute and deliver all further instruments and documents (including, without limitation, certificates, declarations, affidavits, reports and opinions) and take all further action that may be reasonably necessary, or that the DIP Lender may reasonable require, to give effect to this Agreement, perfect and protect any DIP Lien or to enable the DIP Lender to exercise and enforce its rights and remedies with respect to the DIP Collateral, subject to the terms and conditions set forth in the DIP Order; and
- (xiii) to maintain detailed and accurate accounting and records of proceeds of the DIP Loans.

Section 6. **Negative Covenants.** The Borrower hereby covenants and agrees, on and after the effective date of this Agreement and until the date that the Commitment hereunder has terminated and the principal of and interest on each DIP Loans and other amounts payable under any DIP Loan Document (other than contingent indemnification obligations for which no claim or demand has been made) have been paid in full in cash, the Borrower will not:

- (i) make any Disposition without the prior written consent of the DIP Lender;
- (ii) make any payment, prepayment, purchase or defeasance (i) in respect of existing (i.e., prior to the Petition Date) indebtedness or obligation, or (ii) otherwise prohibited by the DIP Order or any other DIP Loan Document, in each case other than as set forth in the Budget or as may otherwise be permitted by an order of the Bankruptcy Court and consented to in writing by the DIP Lender;
- (iii) create, assume, incur or suffer to exist any Indebtedness other than Permitted Indebtedness without the prior written consent of the DIP Lender;
- (iv) create, incur, assume or suffer to exist any Liens on any of its properties or assets other than Permitted Liens without the prior written consent of the DIP Lender;
- (v) take any action that is inconsistent with obtaining confirmation of the Plan including, without limitation, withdrawing the Plan or filing any other plan in the Chapter 11 Case without the DIP Lender's prior written approval;
- (vi) make a public announcement in respect of, enter into any agreement or letter of intent with respect to, attempt to consummate or support any third party's attempt to consummate

any transaction or agreement that would adversely impact the DIP Facility or consummation of the Plan;

- (vii) make or hold any Investment other than Permitted Investments without the prior written consent of the DIP Lender;
- (viii) declare or make, directly or indirectly, any Restricted Payment without the prior written consent of the DIP Lender;
- (ix) engage in any business other than the businesses engaged in by the Borrower on the date hereof and similar or related businesses without the written consent of the DIP Lender;
- (x) at any time, seek or consent to any reversal, modification, amendments, stay or vacation of (i) any First Day Order, (ii) the Interim DIP Order or (iii) the Final DIP Order;
- (xi) at any time, seek or consent to a priority for any administrative expense against the Debtor (now existing or hereafter arising) of any kind or nature whatsoever, including, without limitation, any administrative expenses of the kind specified in, or ordered under, Sections 105(a), 326, 328, 330, 331, 503(b), 506(c), 507, 546(c), 726, 1113 and 1114 of the Bankruptcy Code equal to or superior to the priority of the DIP Lender in respect of the DIP Obligations except as expressly permitted in the DIP Order; or
- (xii) seek or consent to a sale of substantially all of the DIP Collateral.

Section 7. **Events of Default.** Notwithstanding the provisions of Section 362 of the Bankruptcy Code and without application or motion to, or order from, the Bankruptcy Court, the occurrence of any one or more of the following events, regardless of the reason therefore, shall, unless waived by the DIP Lender, constitute an “Event of Default” hereunder:

(a) the failure of the Borrower to pay any principal when due, whether at stated maturity, by acceleration, by required prepayment or otherwise, or shall fail to pay any installment of interest or other amount payable hereunder within three (3) Business Days of the date when due;

(b) any representation, warranty or statement made or deemed made by the Borrower herein or in any other document related hereto or in any certificate delivered to the DIP Lender pursuant hereto shall prove to be untrue in any material respect (or, in the case of any representation, warranty or statement qualified by materiality, in any respect) on the date as of which made or deemed made;

(c) the Borrower fails to perform or observe any term, covenant or agreement contained in any of Section 5(a), 5(b), 5(c)(v), 5(c)(vi), 5(c)(xi) or Section 6.

(d) the Borrower fails to perform or observe any other provision of this Agreement (other than those set forth in clauses (a), (b) and (c) above) and such default shall continue unremedied for a period of fifteen (15) days after the earlier of (i) the date on which such default shall first become known to any officer of the Borrower or (ii) the date on which written notice thereof is given to the defaulting party by the DIP Lender;

(e) the Bankruptcy Court shall have entered an order (i) directing the appointment of an examiner with expanded powers or a trustee, (ii) converting the Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code, or (iii) dismissing the Chapter 11 Case, which order has not been appealed, stayed, reversed or vacated within fourteen (14) days after such issuance;

(f) termination by the Bankruptcy Court of, or the expiration of, the exclusive period for the Debtor to file a plan of reorganization in the Chapter 11 Case as set forth in section 1121 of the Bankruptcy Code or the filing of any plan in the Chapter 11 Case other than the Plan without the prior written consent of the DIP Lender;

(g) any debtor-in-possession financing is entered into by the Debtor other than the DIP Facility or the Debtor seeks authorization from the Bankruptcy Court to enter into such facility;

(h) entry of any order by the Bankruptcy Court reversing, amending, supplementing, staying for a period of ten (10) days or more, vacating or otherwise amending, supplementing or modifying the DIP Order without the prior written consent of the DIP Lender;

(i) payment by the Borrower of prepetition debt (other than as approved by the Bankruptcy Court or as otherwise contemplated by the Budget, this Agreement or the DIP Order);

(j) the Interim DIP Order or the Final DIP Order, as applicable, shall cease to create valid and perfected Liens on the DIP Collateral with the priority set forth therein or otherwise cease to be valid and binding and in full force and effect;

(k) failure of the Borrower to comply with the Budget (subject to the Permitted Variances);

(l) the appointment by the Bankruptcy Court of a receiver and manager, receiver, interim receiver, trustee in bankruptcy or similar official in respect of the Borrower;

(m) actual or asserted (by the Borrower) invalidity or impairment of this Agreement or any related DIP Loan Document (including the failure of any Lien to remain perfected);

(n) non-compliance by the Borrower with the terms of the DIP Order or any other order entered in the Chapter 11 Case;

(o) the Debtor files, amends or modifies a pleading in the Chapter 11 Case that is inconsistent with the DIP Lender's consent and approval rights under this Agreement and the other DIP Loan Documents.

(p) the Final DIP Order shall not have been entered by the Bankruptcy Court on or prior to the expiration of sixty (60) days from the entry of the Interim DIP Order; or

(q) the Bankruptcy Court enters an order or orders (i) to sell, transfer, lease, exchange, alienate or otherwise dispose of all or substantially all of the DIP Collateral pursuant to Section 363 of the Bankruptcy Code or otherwise without the consent of the DIP Lender, (ii) avoiding or requiring disgorgement by the DIP Lender of any amounts received in respect of the DIP Obligations, as applicable or (iii) permitting the grant of a Lien on the DIP Collateral other than the Permitted Liens.

Upon the occurrence of any Event of Default, the DIP Lender may (notwithstanding the provisions of Section 362 of the Bankruptcy Code and without application or motion to, or order from, the Bankruptcy Court), subject to the terms, conditions and provisions of the DIP Order, by notice to the Borrower and the U.S. Trustee, declare the Commitment to be terminated forthwith, whereupon the Commitment shall immediately terminate, and/or, by notice to the Borrower, declare its DIP Loans hereunder, with accrued interest thereon, and all other Obligations owed to it under this Agreement and the other DIP Loan Documents to be due and payable forthwith, whereupon the same shall immediately become due and payable. Except as expressly provided above in this Section 7, presentment, demand, protest and all other notices of any kind are hereby expressly waived.

Further upon the occurrence and during the continuance of any Event of Default and subject to the terms of the DIP Order, the DIP Lender, may (i) exercise all of its rights and remedies set forth in any of the DIP Loan Documents and the DIP Orders, in addition to all rights and remedies allowed under any applicable law, including the UCC, and (ii) revoke the rights of the Borrower to use cash collateral in which the DIP Lender has an interest. The DIP Lender shall have no obligation of any kind to make a motion or application to the Bankruptcy Court to exercise their rights and remedies set forth or referred to in this Agreement or in the other DIP Loan Documents. The enumeration of the foregoing rights and remedies is not intended to be exhaustive and the exercise of any right or remedy shall not preclude the exercise of any other rights or remedies, all of which shall be cumulative and not alternative.

The Borrower waives (i) presentment, demand and protest and notice of presentment, dishonor, notice of intent to accelerate, notice of acceleration, protest, default, nonpayment, maturity, release, compromise, settlement, extension or renewal of any or all commercial paper, accounts, contract rights, documents, instruments, chattel paper and guaranties or other property at any time held by the DIP Lender on which the Borrower may in any way be liable and hereby ratifies and confirms whatever the DIP Lender may lawfully do in this regard, (ii) subject to the terms of the DIP Order, all rights to notice and hearing prior to the DIP Lender taking possession or control of the DIP Collateral, or any bond or security which might be required by any court prior to allowing the DIP Lender to exercise any of their remedies subject to the terms of the DIP Order, and (iii) the benefit of all valuation, appraisal and exemption laws. The Borrower acknowledges it has been advised by counsel of its choosing with respect to the effect of the



foregoing waivers and this Agreement, the other DIP Loan Documents and the transactions evidenced by this Agreement and the other DIP Loan Documents.

Section 8. **Application of Proceeds.**

Subject to the DIP Order, all or any part of proceeds constituting DIP Collateral in payment of the Obligations shall be applied in the following order:

First, to pay the incurred and unpaid fees and expenses of the DIP Lender and its advisors required to be paid or reimbursed under the DIP Loan Documents.

Second, to the DIP Lender to satisfy the Obligations in full; and

Third, any balance remaining after the Obligations shall have been paid in full to the Borrower or to whomever may be lawfully entitled.

Section 9. **Miscellaneous.**

(a) **Costs and Expenses.** The Borrower shall reimburse the DIP Lender for (i) all reasonable and documented out-of-pocket costs and expenses in connection with the preparation of the DIP Loan Documents, the Interim DIP Order, the Final DIP Order and any consents, amendments, waivers or other modifications thereto and in connection with the consummation and administration of the transactions contemplated hereby and thereby and in connection with the Chapter 11 Case; (ii) the reasonable and documented out-of-pocket fees, expenses and disbursements of counsel to the DIP Lender in connection with the negotiation, preparation, execution and administration of the DIP Loan Documents and any consents, amendments, waivers or other modifications thereto and any other documents or matters requested by Borrower and in connection with the consummation and administration of the transactions contemplated hereby and thereby and in connection with the Chapter 11 Case; (iii) all the reasonable and documented out-of-pocket costs and expenses in connection with the custody or preservation of any of the DIP Collateral; and (v) all reasonable and documented out-of-pocket costs and expenses, including reasonable attorneys' fees and costs of settlement, incurred by the DIP Lender in enforcing any Obligations of or in collecting any payments due from the Borrower hereunder or under the other DIP Loan Documents (including in connection with the sale of, collection from, or other realization upon any of the DIP Collateral) or in connection with any refinancing or restructuring of the credit arrangements provided under this Agreement in the nature of a "work-out" or pursuant to the Chapter 11 Case, or any other insolvency proceedings or any attempt to enforce any rights or remedies of the DIP Lender against the Borrower or any other person that may be obligated thereto by virtue of being a party to any of the DIP Loan Documents.

(b) **Assignments and Participations.** The Borrower may not assign or transfer any of its rights, obligations or interest hereunder without the prior written consent of the DIP Lender (and any attempted assignment or transfer without such consent shall be null and void). The DIP Lender may sell, assign, transfer, negotiate or grant participations to other financial institutions in all or part of the obligations of the Borrower outstanding under the DIP Loan Documents; provided that any such sale, assignment, transfer, negotiation or participation shall be in compliance with the applicable federal and state securities laws; provided, further, that any

assignee or transferee agrees to be bound by the terms and conditions of this Agreement. The DIP Lender may, in connection with any actual or proposed assignment or participation, disclose to the actual or proposed assignee or participant, any information relating to the Borrower. The parties hereto agree that the DIP Lender shall be permitted to make technical fixes to this Agreement to accommodate any such assignment or transfer.

(c) Amendments. Neither this Agreement nor any terms hereof may be changed, waived, discharged or terminated unless such change, waiver, discharge or termination is in writing signed by the Borrower and the DIP Lender.

(d) Entire Agreement; Conflict. This Agreement and the other DIP Loan Documents represent the entire agreement of the parties with respect to the subject matter hereof and thereof, and there are no promises, undertakings, representations or warranties by the parties hereto relative to the subject matter hereof and thereof not expressly set forth or referred to herein or in the other DIP Loan Documents. To the extent that there is any inconsistency between this Agreement and any of the other related DIP Loan Documents once executed, this Agreement shall govern unless such other document specifically states otherwise; provided that, for the avoidance of doubt, to the extent that there is any inconsistency between this Agreement and the DIP Order, the DIP Order shall govern.

(e) Effectiveness; Binding Effect; Governing Law. This Agreement shall become effective when it shall have been executed by the Borrower and the DIP Lender and thereafter shall be binding upon and inure to the benefit of the Borrower, the DIP Lender and their respective successors and assigns. THIS AGREEMENT, THE OTHER DIP LOAN DOCUMENTS AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER AND THEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

(f) Waiver of Jury Trial. EACH OF THE PARTIES TO THIS AGREEMENT HEREBY AGREES TO WAIVE ITS RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT OR ANY OF THE OTHER DIP LOAN DOCUMENTS OR ANY DEALINGS BETWEEN THEM RELATING TO THE SUBJECT MATTER OF THIS LOAN TRANSACTION OR THE LENDER/BORROWER RELATIONSHIP THAT IS BEING ESTABLISHED.

(g) Consent to Jurisdiction; Venue. All judicial proceedings brought against any party hereto with respect to this Agreement and the DIP Loan Documents shall be brought in the Bankruptcy Court or, upon the dismissal or other resolution of the Chapter 11 Case, in any state or federal court of competent jurisdiction in the State of New York, and by execution and delivery of this Agreement, the Borrower accepts for itself and in connection with its properties, generally and unconditionally, the exclusive jurisdiction of the Court, and irrevocably agrees to be bound by any judgment rendered thereby in connection with this Agreement. The Borrower irrevocably waives any right it may have to assert the doctrine of forum non conveniens or to object to venue to the extent any proceeding is brought in accordance with this clause (g).

(h) Execution in Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of this Agreement by facsimile or other electronic transmission shall be as effective as delivery of an original counterpart of this Agreement.

(i) Headings. Article and Section headings used herein are for convenience of reference only, are not part of this Agreement and are not to affect the construction of, or to be taken into consideration in interpreting, this Agreement.

(j) Interpretive Provisions. The words “hereof”, “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, and section, subsection, schedule and exhibit references are to this Agreement unless otherwise specified.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed and delivered as of the date and year first written above.

KIKO USA, INC., as the Borrower

By: \_\_\_\_\_  
Name:  
Title:

KIKO S.p.A., as DIP Lender

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

Name:

Title:

EXHIBIT A  
FORM OF PROMISSORY NOTE

\$5,500,000

New York, New York  
January\_\_\_\_, 2018

FOR VALUE RECEIVED, KIKO USA, INC., a Delaware corporation (the “Borrower”), hereby promises to pay to KIKO S.p.A. (the “Lender”), in lawful money of the United States of America in immediately available funds, the principal sum of five million five hundred thousand dollars (\$5,500,000) or, if less, the unpaid principal amount of the DIP Loan (as defined in the Agreement) made by the Lender pursuant to the Agreement (as defined below), payable at such times and in such amounts as are specified in the Agreement.

The Borrower also promises to pay interest on the unpaid principal amount of the DIP Loan made by the Lender in PIK Interest from the date hereof until paid at the rates and at the times provided in the Agreement.

This Note is the promissory note referred to in the Debtor-in-Possession Credit Agreement, dated as of 22, 2018, among the Borrower and the DIP Lender (as amended, restated, modified and/or supplemented from time to time, the “Agreement”) and is entitled to the benefits thereof and of the other DIP Loan Documents (as defined in the Agreement).

In case an Event of Default (as defined in the Agreement) shall occur and be continuing, the principal of and accrued interest on this Note may be declared to be due and payable in the manner and with the effect provided in the Agreement.

The Borrower hereby waives presentment, demand, protest or notice of any kind in connection with this Note.

**THIS NOTE SHALL BE CONSTRUED IN ACCORDANCE WITH AND BE GOVERNED BY THE LAW OF THE STATE OF NEW YORK.**

KIKO USA, INC.,  
as Borrower

By: \_\_\_\_\_  
Name:  
Title:

EXHIBIT B  
INTERIM DIP ORDER



**EXHIBIT 2**

DIP BUDGET

## KIKO USA, Inc. - 13 Week DIP Budget starting on January 12, 2018

	2	3	4	5	6	7	8	9	10	11	12	13	14	
Week of fiscal year	2	3	4	5	6	7	8	9	10	11	12	13	14	
Week of BK period	1	2	3	4	5	6	7	8	9	10	11	12	13	Admin. Period
Beginning period	1/12/2018	1/19/2018	1/26/2018	2/2/2018	2/9/2018	2/16/2018	2/23/2018	3/2/2018	3/9/2018	3/16/2018	3/23/2018	3/30/2018	4/6/2018	Total 13 Weeks
Ending period	1/18/2018	1/25/2018	2/1/2018	2/8/2018	2/15/2018	2/22/2018	3/1/2018	3/8/2018	3/15/2018	3/22/2018	3/29/2018	4/5/2018	4/12/2018	
	Projected	Projected	Projected	Projected	Projected	Projected	Projected	Projected	Projected	Projected	Projected	Projected	Projected	Projected
<b>Row 1</b>	<b>Cash Receipts Including Sales Tax</b>													
<b>Row 2</b>	Stores (24 closing)	120,000	110,000	100,000										330,000
<b>Row 3</b>	Stores (5 remaining)	145,000	145,000	145,000	145,000	155,000	155,000	155,000	155,000	155,000	155,000	155,000	150,000	1,970,000
<b>Row 4</b>	E-commerce	30,000	30,000	30,000	30,000	40,000	40,000	40,000	28,000	28,000	28,000	28,000	28,000	408,000
<b>Row 5</b>	Amazon	7,000	7,000	7,000	7,000	8,000	8,000	8,000	8,000	7,000	7,000	7,000	7,000	95,000
<b>Row 6</b>	Gift card redemption								(15,000)	(17,500)	(17,500)			(50,000)
<b>Row 7</b>	Office sub-lease	26,930				26,930								53,860
<b>Row 8</b>	Other Income													-
<b>Row 9</b>	<b>Total Cash Receipts</b>	<b>328,930</b>	<b>292,000</b>	<b>282,000</b>	<b>182,000</b>	<b>229,930</b>	<b>203,000</b>	<b>203,000</b>	<b>176,000</b>	<b>172,500</b>	<b>172,500</b>	<b>190,000</b>	<b>190,000</b>	<b>2,806,860</b>
<b>Row 10</b>	<b>Cash Disbursements</b>													
<b>Row 11</b>	<u>COGS (Intercompany)</u>													
<b>Row 12</b>	Purchase of products	(143,410)	(138,661)	(133,912)	(86,426)	(96,398)	(96,398)	(96,398)	(90,699)	(90,225)	(90,225)	(90,225)	(90,225)	(1,331,050)
<b>Row 13</b>	Payroll Disbursements													
<b>Row 14</b>	Payroll		(182,000)		(175,000)		(126,200)		(92,000)		(92,000)		(92,000)	(851,200)
<b>Row 15</b>	Payroll taxes		(80,000)		(78,000)		(56,500)		(42,000)		(42,000)		(42,000)	(382,500)
<b>Row 16</b>	Workers' comp. insurance		(6,500)		(6,500)		(6,500)		(3,500)		(3,500)		(3,500)	(33,500)
<b>Row 17</b>	401k		(2,700)		(2,700)		(2,700)		(2,350)		(2,350)		(2,350)	(17,500)
<b>Row 18</b>	Health and dental insurance				(22,000)				(22,000)				(22,000)	(84,000)
<b>Row 19</b>	ADP service fees		(12,500)						(11,000)				(9,000)	(32,500)
<b>Row 20</b>	Monthly incentive				(25,000)									(25,000)
<b>Row 21</b>	Severance pay						(354,000)							(354,000)
<b>Row 22</b>	Contractual bonuses (TBD)		(89,000)							(148,000)				(237,000)
<b>Row 23</b>	<b>Total Payroll Disbursements</b>		(372,700)		(309,200)		(545,900)		(172,850)		(287,850)		(170,850)	(2,017,200)
<b>Row 24</b>	<u>Rent</u>													
<b>Row 25</b>	Stores (24 closing)				(405,000)									(405,000)
<b>Row 26</b>	Stores (5 remaining)				(323,000)			(323,000)				(323,000)		(969,000)
<b>Row 27</b>	Office				(48,700)			(48,700)				(48,700)		(146,100)
<b>Row 28</b>	Potential new office security deposits (3 months)							(75,000)						(75,000)
<b>Row 29</b>	<u>Sales &amp; Use Tax</u>													
<b>Row 30</b>	Sales & use tax	(139,200)					(71,832)			(64,862)			(38,000)	(313,894)
<b>Row 31</b>	<u>Operations Expenses</u>													
<b>Row 32</b>	Maintenance				(25,000)			(12,500)				(10,500)		(48,000)
<b>Row 33</b>	Utilities				(21,000)			(18,000)				(8,000)		(47,000)
<b>Row 34</b>	Phone & internet				(44,000)			(28,000)				(15,000)		(87,000)
<b>Row 35</b>	Cleaning				(11,470)			(7,800)				(7,800)		(27,070)
<b>Row 36</b>	Logistics & transportation				(70,080)			(63,280)				(60,880)		(194,240)
<b>Row 37</b>	Accountants (OCP)				(2,500)			(10,000)				(10,000)		(22,500)
<b>Row 38</b>	Legal consultants													-
<b>Row 39</b>	Travel expenses (American Express)					(12,500)			(12,500)				(7,500)	(32,500)
<b>Row 40</b>	Marketing & social media				(35,000)			(35,000)				(35,000)		(105,000)
<b>Row 41</b>	Surveillance				(11,800)			(11,800)				(11,800)		(35,400)
<b>Row 42</b>	Bank and c/c fees				(22,750)			(17,500)				(15,000)		(55,250)
<b>Row 43</b>	Insurance			(84,889)										(84,889)
<b>Row 44</b>	IT equipment rental				(8,800)			(2,750)				(2,750)		(14,300)
<b>Row 45</b>	NYC commercial rent taxes									(19,500)				(19,500)
<b>Row 46</b>	Property taxes											(5,696)		(5,696)
<b>Row 47</b>	Store displays and promotional materials (Intercompany)							(22,950)				(18,300)		(41,250)
<b>Row 48</b>	Office and store supplies				(5,500)			(5,500)				(5,500)		(16,500)
<b>Row 49</b>	Construction consultants													-
<b>Row 50</b>	Parking for store employees				(1,400)			(1,400)				(1,400)		(4,200)
<b>Row 51</b>	Posters and store printed materials				(7,650)			(6,100)				(6,200)		(19,950)
<b>Row 52</b>	Armored transportation				(4,970)			(1,250)				(1,250)		(7,470)
<b>Row 53</b>	Food & beverage													-

KIKO USA, Inc. - 13 Week DIP Budget starting on January 12, 2018															
	Week of fiscal year	2	3	4	5	6	7	8	9	10	11	12	13	14	Admin. Period Total 13 Weeks
	Week of BK period	1	2	3	4	5	6	7	8	9	10	11	12	13	
	Beginning period	1/12/2018	1/19/2018	1/26/2018	2/2/2018	2/9/2018	2/16/2018	2/23/2018	3/2/2018	3/9/2018	3/16/2018	3/23/2018	3/30/2018	4/6/2018	
	Ending period	1/18/2018	1/25/2018	2/1/2018	2/8/2018	2/15/2018	2/22/2018	3/1/2018	3/8/2018	3/15/2018	3/22/2018	3/29/2018	4/5/2018	4/12/2018	
		Projected	Projected	Projected	Projected	Projected	Projected	Projected	Projected	Projected	Projected	Projected	Projected	Projected	Projected
Row 59	E-commerce website quarterly maintenance												(3,873)		(3,873)
Row 60	Employment matter settlement														-
Row 61	Contingency	(15,000)	(15,000)	(15,000)	(15,000)	(15,000)	(15,000)	(15,000)	(15,000)	(15,000)	(15,000)	(15,000)	(15,000)	(15,000)	(195,000)
Row 62	<b>Total Operating Disbursements (Excluding COGS and P/R)</b>	<b>(154,200)</b>	<b>(15,000)</b>	<b>(99,889)</b>	<b>(1,063,620)</b>	<b>(27,500)</b>	<b>(86,832)</b>	<b>(15,000)</b>	<b>(705,530)</b>	<b>(27,500)</b>	<b>(99,362)</b>	<b>(15,000)</b>	<b>(605,649)</b>	<b>(60,500)</b>	<b>(2,975,582)</b>
Row 63															
Row 64	<b>Total Operating Disbursements</b>	<b>(297,610)</b>	<b>(526,361)</b>	<b>(233,801)</b>	<b>(1,459,246)</b>	<b>(123,898)</b>	<b>(729,130)</b>	<b>(111,398)</b>	<b>(969,079)</b>	<b>(117,725)</b>	<b>(477,437)</b>	<b>(105,225)</b>	<b>(866,724)</b>	<b>(306,200)</b>	<b>(6,323,832)</b>
Row 65															
Row 66	<u>Capital expenditures</u>														
Row 72	Times Square general contractor (subject to court approval)							(420,000)							(420,000)
Row 73	Times Square architect - Italian (subject to court approval)							(12,000)							(12,000)
Row 74	Times Square architect -local (subject to court approval)							(28,000)							(28,000)
Row 79	Times Square landlord TA							500,000						500,000	1,000,000
Row 80	<b>Total Capex</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>40,000</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>500,000</b>	<b>540,000</b>
Row 81	<u>Restructuring</u>														
Row 82	Legal (Perkins & Saul)									(128,000)				(342,000)	(470,000)
Row 83	CRO (Getzler Henrich)	(30,000)	(30,000)	(25,000)	(25,000)	(25,000)	(25,000)	(15,000)	(15,000)	(15,000)	(15,000)	(15,000)	(20,000)	(20,000)	(275,000)
Row 84	Claims administrator (BMC)	(12,500)	(12,500)	(12,500)	(12,500)	(6,500)	(6,500)	(6,500)	(6,500)	(11,000)	(11,000)	(11,000)	(11,000)	(18,500)	(138,500)
Row 85	UCC					(25,000)									(25,000)
Row 86	UST (US Trustee)				(10,000)				(10,000)				(10,000)		(30,000)
Row 87	DIP loan interest													(33,500)	(33,500)
Row 88	DIP lender counsel (WC - Fox)													(275,000)	(275,000)
Row 89	Store strip-out & demolition costs (general contractor)		(148,800)		(148,800)					(300,000)			(122,400)		(720,000)
Row 90	Products/furniture/IT equipment transfer or demolition												(240,000)		(240,000)
Row 91	Security deposits & collateral (utilities, Amex)		(75,000)												(75,000)
Row 92	<b>Total Restructuring and Professional Fees</b>	<b>(42,500)</b>	<b>(266,300)</b>	<b>(37,500)</b>	<b>(196,300)</b>	<b>(56,500)</b>	<b>(31,500)</b>	<b>(21,500)</b>	<b>(31,500)</b>	<b>(454,000)</b>	<b>(26,000)</b>	<b>(26,000)</b>	<b>(403,400)</b>	<b>(689,000)</b>	<b>(2,282,000)</b>
Row 93															
Row 94	<b>Total Cash Disbursements</b>	<b>(340,110)</b>	<b>(792,661)</b>	<b>(271,301)</b>	<b>(1,655,546)</b>	<b>(180,398)</b>	<b>(760,630)</b>	<b>(92,898)</b>	<b>(1,000,579)</b>	<b>(571,725)</b>	<b>(503,437)</b>	<b>(131,225)</b>	<b>(1,270,124)</b>	<b>(495,200)</b>	<b>(8,065,832)</b>
Row 95															
Row 96	Weekly Change in Cash	(11,180)	(500,661)	10,699	(1,473,546)	49,532	(557,630)	110,102	(824,579)	(399,225)	(330,937)	58,775	(1,080,124)	(310,200)	(5,258,972)
Row 97	Accumulative	(11,180)	(511,841)	(501,142)	(1,974,688)	(1,925,155)	(2,482,785)	(2,372,683)	(3,197,263)	(3,596,487)	(3,927,424)	(3,868,648)	(4,948,772)	(5,258,972)	
Row 98															
Row 99	<b>Bank beginning balance</b>	<b>156,623</b>	<b>145,443</b>	<b>644,782</b>	<b>655,481</b>	<b>381,935</b>	<b>431,468</b>	<b>473,838</b>	<b>583,940</b>	<b>1,009,360</b>	<b>610,136</b>	<b>279,199</b>	<b>337,975</b>	<b>707,851</b>	<b>156,623</b>
Row 100	<b>Weekly Cash(Shortfall) / Surplus</b>	<b>(11,180)</b>	<b>(500,661)</b>	<b>10,699</b>	<b>(1,473,546)</b>	<b>49,532</b>	<b>(557,630)</b>	<b>110,102</b>	<b>(824,579)</b>	<b>(399,225)</b>	<b>(330,937)</b>	<b>58,775</b>	<b>(1,080,124)</b>	<b>(310,200)</b>	<b>(5,258,972)</b>
Row 101	Infusion		1,000,000		1,200,000		600,000		1,250,000				1,450,000		5,500,000
Row 102	<b>Bank ending balance</b>	<b>145,443</b>	<b>644,782</b>	<b>655,481</b>	<b>381,935</b>	<b>431,468</b>	<b>473,838</b>	<b>583,940</b>	<b>1,009,360</b>	<b>610,136</b>	<b>279,199</b>	<b>337,975</b>	<b>707,851</b>	<b>397,651</b>	<b>397,651</b>
	<u>Notes and assumptions</u>														
1	The intention is that all unsecured creditors are paid 100% of their respective allowed claims subject to the bankruptcy code and bankruptcy rules and subject to the Debtor reserving all rights to object to claims														
2	The intention is that the landlords are paid 100% of their respective allowed claims subject to the bankruptcy code and bankruptcy rules and subject to the Debtor reserving all rights to object to claims														
3	24 stores to be closed by 1/31/18														
4	Revenue includes sales tax and based on management projections														
5	Sales tax paid in the following month of sales except for NJ which is quarterly														
6	The 5 remaining locations will remain intact and be part of a the reorganized ongoing operations														
7	Time Square/GC payment and receipt need court approval as the GC who is able to file a lien is a pre-petition creditor. The estate has a net benefit of approx. \$500k														

**EXHIBIT B**

**SAMSON DECLARATION**

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

In re:

KIKO USA, Inc.,

Debtor.<sup>1</sup>

)  
 ) Chapter 11  
 )  
 ) Case No. 18-10069 (MFW)  
 )  
 )  
 )

## DECLARATION OF MARK SAMSON

I, Mark Samson, hereby declare:

1. I am a managing director at Getzler Henrich, a firm specializing in restructuring advisory services. I have more than 25 years of experience in crisis management and operations and have worked with both United States and foreign retail, distribution and manufacturing companies.

2. I have expertise in operations, restructuring, business plan analysis, performance improvement, cash and vendor management and interim management services. I have negotiated and been involved in numerous DIP financing deals.

3. I make this declaration in support of the Debtor's Motion for Entry of Interim and Final Orders Pursuant to 11 U.S.C. §§ 105, 362, 364, 503 and 507 and Fed. R. Bankr. P. 2002 and 4001 (I) Authorizing Debtor To Obtain Postpetition Financing; (II) Granting Liens and Super-Priority Claims to Postpetition Lender and (III) Scheduling a Final Hearing (the "Motion")<sup>2</sup>.

4. I am over the age of 18 and authorized to submit this declaration on behalf of the Debtor. If called upon to testify, I could and would testify competently to the facts set forth in this declaration.

<sup>1</sup> The last four digits of the Debtor's federal tax identification number are 0805. The principal place of business for the Debtor is 470 Park Avenue South, 15th Floor New York, NY, 10016.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

5. Upon the Petition Date, I began to receive numerous calls from various potential suitors to provide postpetition financing. I explained to each that the Debtor would entertain offers and select the offer that provided the best value to the Debtor and its estate. I invited each to make an offer and offered to provide any due diligence they wanted.

6. In each of these conversations, the suitors started with rates in double digits. I respectfully asked if they could come in below 6%. Not a single suitor was able to provide financing below 6%.

7. The DIP Facility contains an interest rate of 5%. In my experience, no lender will even come close to the terms offered by the DIP Lender.

8. In my more than twenty-five years of restructuring practice, this is among, or perhaps even, the best terms I have seen a Debtor obtain.

9. The Debtor was unable to obtain financing on an unsecured basis, an administrative expense basis, or on terms more favorable than the DIP Facility.

10. The Debtor will be out of cash and unable to conduct its business operations without interruption if it does not receive cash under the DIP Facility by January 26, 2017.

11. I respectfully recommend that the Court approve the DIP Financing.

12. I hereby declare that the above statements are true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury.

Dated this 22nd day of January, 2018, in New York, New York.

/s/ Mark Samson

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Mark Samson

**EXHIBIT C**

**BUDGET**

KIKO USA, Inc. - 13 Week DIP Budget starting on January 12, 2018															
		2	3	4	5	6	7	8	9	10	11	12	13	14	Admin. Period Total 13 Weeks
	Week of fiscal year	1	2	3	4	5	6	7	8	9	10	11	12	13	
	Week of BK period	1	2	3	4	5	6	7	8	9	10	11	12	13	
	Beginning period	1/12/2018	1/19/2018	1/26/2018	2/2/2018	2/9/2018	2/16/2018	2/23/2018	3/2/2018	3/9/2018	3/16/2018	3/23/2018	3/30/2018	4/6/2018	
	Ending period	1/18/2018	1/25/2018	2/1/2018	2/8/2018	2/15/2018	2/22/2018	3/1/2018	3/8/2018	3/15/2018	3/22/2018	3/29/2018	4/5/2018	4/12/2018	
		Projected	Projected	Projected	Projected	Projected	Projected	Projected	Projected	Projected	Projected	Projected	Projected	Projected	Projected
Row 1	Cash Receipts Including Sales Tax														
Row 2	Stores (24 closing)	120,000	110,000	100,000											330,000
Row 3	Stores (5 remaining)	145,000	145,000	145,000	145,000	155,000	155,000	155,000	155,000	155,000	155,000	155,000	155,000	150,000	1,970,000
Row 4	E-commerce	30,000	30,000	30,000	30,000	40,000	40,000	40,000	28,000	28,000	28,000	28,000	28,000	28,000	408,000
Row 5	Amazon	7,000	7,000	7,000	7,000	8,000	8,000	8,000	8,000	7,000	7,000	7,000	7,000	7,000	95,000
Row 6	Gift card redemption								(15,000)	(17,500)	(17,500)				(50,000)
Row 7	Office sub-lease	26,930				26,930									53,860
Row 8	Other Income														-
Row 9	Total Cash Receipts	328,930	292,000	282,000	182,000	229,930	203,000	203,000	176,000	172,500	172,500	190,000	190,000	185,000	2,806,860
Row 10															
Row 11	Cash Disbursements														
Row 12	COGS (Intercompany)														
Row 13	Purchase of products	(143,410)	(138,661)	(133,912)	(86,426)	(96,398)	(96,398)	(96,398)	(90,699)	(90,225)	(90,225)	(90,225)	(90,225)	(87,850)	(1,331,050)
Row 14															
Row 15	Payroll Disbursements														
Row 16	Payroll		(182,000)		(175,000)		(126,200)		(92,000)		(92,000)		(92,000)	(92,000)	(851,200)
Row 17	Payroll taxes		(80,000)		(78,000)		(56,500)		(42,000)		(42,000)		(42,000)	(42,000)	(382,500)
Row 18	Workers' comp. insurance		(6,500)		(6,500)		(6,500)		(3,500)		(3,500)		(3,500)	(3,500)	(33,500)
Row 19	401k		(2,700)		(2,700)		(2,700)		(2,350)		(2,350)		(2,350)	(2,350)	(17,500)
Row 20	Health and dental insurance				(22,000)				(22,000)				(22,000)	(18,000)	(84,000)
Row 21	ADP service fees		(12,500)						(11,000)				(9,000)		(32,500)
Row 22	Monthly incentive				(25,000)										(25,000)
Row 23	Severance pay						(354,000)								(354,000)
Row 24	Contractual bonuses (TBD)		(89,000)								(148,000)				(237,000)
Row 25	Total Payroll Disbursements		(372,700)		(309,200)		(545,900)		(172,850)		(287,850)		(170,850)	(157,850)	(2,017,200)
Row 26															
Row 27	Rent														
Row 28	Stores (24 closing)				(405,000)										(405,000)
Row 29	Stores (5 remaining)				(323,000)				(323,000)				(323,000)		(969,000)
Row 30	Office				(48,700)				(48,700)				(48,700)		(146,100)
Row 31	Potential new office security deposits (3 months)								(75,000)						(75,000)
Row 32															
Row 33	Sales & Use Tax														
Row 34	Sales & use tax	(139,200)					(71,832)				(64,862)			(38,000)	(313,894)
Row 35															
Row 36	Operations Expenses														
Row 37	Maintenance				(25,000)				(12,500)				(10,500)		(48,000)
Row 38	Utilities				(21,000)				(18,000)				(8,000)		(47,000)
Row 39	Phone & internet				(44,000)				(28,000)				(15,000)		(87,000)
Row 40	Cleaning				(11,470)				(7,800)				(7,800)		(27,070)
Row 41	Logistics & transportation				(70,080)				(63,280)				(60,880)		(194,240)
Row 42	Accountants (OCP)				(2,500)				(10,000)				(10,000)		(22,500)
Row 43	Legal consultants														-
Row 44	Travel expenses (American Express)					(12,500)				(12,500)				(7,500)	(32,500)
Row 45	Marketing & social media				(35,000)				(35,000)				(35,000)		(105,000)
Row 46	Surveillance				(11,800)				(11,800)				(11,800)		(35,400)
Row 47	Bank and c/c fees				(22,750)				(17,500)				(15,000)		(55,250)
Row 48	Insurance			(84,889)											(84,889)
Row 49	IT equipment rental				(8,800)				(2,750)				(2,750)		(14,300)
Row 50	NYC commercial rent taxes										(19,500)				(19,500)
Row 51	Property taxes												(5,696)		(5,696)
Row 52	Store displays and promotional materials (Intercompany)								(22,950)				(18,300)		(41,250)
Row 53	Office and store supplies				(5,500)				(5,500)				(5,500)		(16,500)
Row 54	Construction consultants														-
Row 55	Parking for store employees				(1,400)				(1,400)				(1,400)		(4,200)
Row 56	Posters and store printed materials				(7,650)				(6,100)				(6,200)		(19,950)
Row 57	Armored transportation				(4,970)				(1,250)				(1,250)		(7,470)
Row 58	Food & beverage														-



KIKO USA, Inc. - 13 Week DIP Budget starting on January 12, 2018															
	Week of fiscal year	2	3	4	5	6	7	8	9	10	11	12	13	14	Admin. Period Total 13 Weeks
	Week of BK period	1	2	3	4	5	6	7	8	9	10	11	12	13	
	Beginning period	1/12/2018	1/19/2018	1/26/2018	2/2/2018	2/9/2018	2/16/2018	2/23/2018	3/2/2018	3/9/2018	3/16/2018	3/23/2018	3/30/2018	4/6/2018	
	Ending period	1/18/2018	1/25/2018	2/1/2018	2/8/2018	2/15/2018	2/22/2018	3/1/2018	3/8/2018	3/15/2018	3/22/2018	3/29/2018	4/5/2018	4/12/2018	
		Projected	Projected	Projected	Projected	Projected	Projected	Projected	Projected	Projected	Projected	Projected	Projected	Projected	Projected
Row 59	E-commerce website quarterly maintenance												(3,873)		(3,873)
Row 60	Employment matter settlement														-
Row 61	Contingency	(15,000)	(15,000)	(15,000)	(15,000)	(15,000)	(15,000)	(15,000)	(15,000)	(15,000)	(15,000)	(15,000)	(15,000)	(15,000)	(195,000)
Row 62	<b>Total Operating Disbursements (Excluding COGS and P/R)</b>	<b>(154,200)</b>	<b>(15,000)</b>	<b>(99,889)</b>	<b>(1,063,620)</b>	<b>(27,500)</b>	<b>(86,832)</b>	<b>(15,000)</b>	<b>(705,530)</b>	<b>(27,500)</b>	<b>(99,362)</b>	<b>(15,000)</b>	<b>(605,649)</b>	<b>(60,500)</b>	<b>(2,975,582)</b>
Row 63															
Row 64	<b>Total Operating Disbursements</b>	<b>(297,610)</b>	<b>(526,361)</b>	<b>(233,801)</b>	<b>(1,459,246)</b>	<b>(123,898)</b>	<b>(729,130)</b>	<b>(111,398)</b>	<b>(969,079)</b>	<b>(117,725)</b>	<b>(477,437)</b>	<b>(105,225)</b>	<b>(866,724)</b>	<b>(306,200)</b>	<b>(6,323,832)</b>
Row 65															
Row 66	<u>Capital expenditures</u>														
Row 72	Times Square general contractor (subject to court approval)							(420,000)							(420,000)
Row 73	Times Square architect - Italian (subject to court approval)							(12,000)							(12,000)
Row 74	Times Square architect -local (subject to court approval)							(28,000)							(28,000)
Row 79	Times Square landlord TA							500,000						500,000	1,000,000
Row 80	<b>Total Capex</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>40,000</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>500,000</b>	<b>540,000</b>
Row 81	<u>Restructuring</u>														
Row 82	Legal (Perkins & Saul)									(128,000)				(342,000)	(470,000)
Row 83	CRO (Getzler Henrich)	(30,000)	(30,000)	(25,000)	(25,000)	(25,000)	(25,000)	(15,000)	(15,000)	(15,000)	(15,000)	(15,000)	(20,000)	(20,000)	(275,000)
Row 84	Claims administrator (BMC)	(12,500)	(12,500)	(12,500)	(12,500)	(6,500)	(6,500)	(6,500)	(6,500)	(11,000)	(11,000)	(11,000)	(11,000)	(18,500)	(138,500)
Row 85	UCC					(25,000)									(25,000)
Row 86	UST (US Trustee)				(10,000)				(10,000)				(10,000)		(30,000)
Row 87	DIP loan interest													(33,500)	(33,500)
Row 88	DIP lender counsel (WC - Fox)													(275,000)	(275,000)
Row 89	Store strip-out & demolition costs (general contractor)		(148,800)		(148,800)					(300,000)			(122,400)		(720,000)
Row 90	Products/furniture/IT equipment transfer or demolition												(240,000)		(240,000)
Row 91	Security deposits & collateral (utilities, Amex)		(75,000)												(75,000)
Row 92	<b>Total Restructuring and Professional Fees</b>	<b>(42,500)</b>	<b>(266,300)</b>	<b>(37,500)</b>	<b>(196,300)</b>	<b>(56,500)</b>	<b>(31,500)</b>	<b>(21,500)</b>	<b>(31,500)</b>	<b>(454,000)</b>	<b>(26,000)</b>	<b>(26,000)</b>	<b>(403,400)</b>	<b>(689,000)</b>	<b>(2,282,000)</b>
Row 93															
Row 94	<b>Total Cash Disbursements</b>	<b>(340,110)</b>	<b>(792,661)</b>	<b>(271,301)</b>	<b>(1,655,546)</b>	<b>(180,398)</b>	<b>(760,630)</b>	<b>(92,898)</b>	<b>(1,000,579)</b>	<b>(571,725)</b>	<b>(503,437)</b>	<b>(131,225)</b>	<b>(1,270,124)</b>	<b>(495,200)</b>	<b>(8,065,832)</b>
Row 95															
Row 96	Weekly Change in Cash	(11,180)	(500,661)	10,699	(1,473,546)	49,532	(557,630)	110,102	(824,579)	(399,225)	(330,937)	58,775	(1,080,124)	(310,200)	(5,258,972)
Row 97	Accumulative	(11,180)	(511,841)	(501,142)	(1,974,688)	(1,925,155)	(2,482,785)	(2,372,683)	(3,197,263)	(3,596,487)	(3,927,424)	(3,868,648)	(4,948,772)	(5,258,972)	
Row 98															
Row 99	<b>Bank beginning balance</b>	<b>156,623</b>	<b>145,443</b>	<b>644,782</b>	<b>655,481</b>	<b>381,935</b>	<b>431,468</b>	<b>473,838</b>	<b>583,940</b>	<b>1,009,360</b>	<b>610,136</b>	<b>279,199</b>	<b>337,975</b>	<b>707,851</b>	<b>156,623</b>
Row 100	<b>Weekly Cash(Shortfall) / Surplus</b>	<b>(11,180)</b>	<b>(500,661)</b>	<b>10,699</b>	<b>(1,473,546)</b>	<b>49,532</b>	<b>(557,630)</b>	<b>110,102</b>	<b>(824,579)</b>	<b>(399,225)</b>	<b>(330,937)</b>	<b>58,775</b>	<b>(1,080,124)</b>	<b>(310,200)</b>	<b>(5,258,972)</b>
Row 101	Infusion		1,000,000		1,200,000		600,000		1,250,000				1,450,000		5,500,000
Row 102	<b>Bank ending balance</b>	<b>145,443</b>	<b>644,782</b>	<b>655,481</b>	<b>381,935</b>	<b>431,468</b>	<b>473,838</b>	<b>583,940</b>	<b>1,009,360</b>	<b>610,136</b>	<b>279,199</b>	<b>337,975</b>	<b>707,851</b>	<b>397,651</b>	<b>397,651</b>
	<u>Notes and assumptions</u>														
1	The intention is that all unsecured creditors are paid 100% of their respective allowed claims subject to the bankruptcy code and bankruptcy rules and subject to the Debtor reserving all rights to object to claims														
2	The intention is that the landlords are paid 100% of their respective allowed claims subject to the bankruptcy code and bankruptcy rules and subject to the Debtor reserving all rights to object to claims														
3	24 stores to be closed by 1/31/18														
4	Revenue includes sales tax and based on management projections														
5	Sales tax paid in the following month of sales except for NJ which is quarterly														
6	The 5 remaining locations will remain intact and be part of a the reorganized ongoing operations														
7	Time Square/GC payment and receipt need court approval as the GC who is able to file a lien is a pre-petition creditor. The estate has a net benefit of approx. \$500k														