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Debtors-in-Possession*

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY**

In re:

B. Lane, Inc., d/b/a Fashion to Figure, *et al.*,¹

Debtors.

Chapter 11

Case No. 17-32958 (JKS)

(Joint Administration Requested)

**DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS
(A) AUTHORIZING USE OF CASH COLLATERAL, (B) GRANTING
ADEQUATE PROTECTION, (C) SCHEDULING A FINAL HEARING
AND (D) GRANTING RELATED RELIEF**

The above-captioned debtors and debtors-in-possession (collectively, the “Debtors”), by and through their undersigned proposed counsel, submit this motion (the “Motion”) for entry of an interim order² substantially in the form attached hereto as Exhibit A (the (“Interim Order”), pursuant to 11 U.S.C. §§ 105, 361, 362 and 363 and Fed. R. Bankr. P. 4001, (i) approving the use of cash collateral, (ii) providing adequate protection, and (iii) setting a final hearing (the

¹ The Debtors in these chapter 11 cases and the last four digits of each Debtor’s taxpayer identification number are as follows: B. Lane, Inc., d/b/a Fashion to Figure (6982); FTF NJ LLC (4424); FTF CT LLC (1081); FTF DE LLC (7050); FTF GA LLC (5523); FTF MA LLC (1360); and FTF MD LLC (8883). The Debtors’ corporate headquarters and mailing address is 20 W. 36th Street, 5th Floor, New York, NY 10018.

² A proposed final order granting this Motion will be submitted in advance of the final hearing on the Motion.

“Final Hearing”) pursuant to Fed. R. Bankr. P. 4001. In support of this Motion, the Debtors submit the Declaration of Michael Kaplan in Support of Debtors’ Chapter 11 Petitions and First Day Pleadings (the “First Day Declaration”), filed contemporaneously herewith, and respectfully state as follows:

JURISDICTION, VENUE AND STATUTORY PREDICATES

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. sections 157 and 1334 and the Standing Order of Reference to the Bankruptcy Court Under Title 11 dated as of September 18, 2012 (Simandle, C.J.). Venue is proper in this district pursuant to 28 U.S.C. sections 1408 and 1409. This matter is a core proceeding pursuant to 28 U.S.C. section 157(b)(2).

2. The statutory predicates for the relief sought herein are sections 105, 361, 362, 363 of title 11 of the United States Code (the “Bankruptcy Code”), Rule 4001 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and the applicable Local Bankruptcy Rules for the United States Bankruptcy Court for the District of New Jersey (the “Local Rules”).

BACKGROUND

A. General Background

1. On the date hereof (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code, commencing the above-captioned chapter 11 cases (collectively, the “Chapter 11 Cases”) in the United States Bankruptcy Court for the District of New Jersey (the “Court”).

2. The Debtors are operating their business and managing their property as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. As of the filing of

this Motion, no request has been made for the appointment of a trustee or examiner and no statutory committee has been appointed in the Chapter 11 Cases.

3. The Debtors operate a retail chain of 26 stores under the name Fashion to Figure and a separate e-commerce website. The Debtors also sell their merchandise to wholesale partners. The Debtors are a specialty retailer focused on the growing women's plus-size retail apparel industry.

4. A detailed description of the Debtors' business and the facts surrounding the commencement of the Chapter 11 Cases is set forth in the First Day Declaration, which is incorporated herein by reference.

B. The Debtors' Prepetition Capital Structure

5. As of the Petition Date, the Debtors have outstanding secured debt in the current principal amount of \$1,250,000, plus accrued interest (at the contract rate), fees and other costs (collectively, the "Pre-Petition Debt") owed to ACM Capital Fund I, LP ("ACM" or the "Prepetition Lender") pursuant to a note (the "ACM Note") and related (i) credit agreement and (ii) security agreement, each dated as of July 21, 2017 (collectively, as amended, the "Prepetition Facility").

6. The Prepetition Facility (including the ACM Note) was initially entered into in the principal amount of \$1 million. Subsequently, on August 28, 2017, Cowen Overseas Investment LP ("Cowen Overseas")³ entered into a Participation Agreement with ACM whereby Cowen Overseas agreed to fund to ACM an additional \$250,000 "Participation Amount" for Cowen Overseas to participate in the Prepetition Facility. The \$250,000 was deemed funded from Cowen Overseas to ACM and disbursed to Debtor B. Lane, Inc. In connection therewith,

³ As of the Petition Date, Cowen Overseas was also one of the Company's equity holders, holding an approximately 4.60% equity interest in Debtor B. Lane, Inc.

ACM modified and increased the principal loan amount under the ACM Note and Prepetition Facility from \$1 million to \$1.25 million pursuant to that certain First Amendment to Note and Modification of Credit Agreement, dated as of August 28, 2017.

7. To secure the prepetition secured obligations owed under the Prepetition Facility, the Debtors granted the Prepetition Lender a first priority security interest in, and liens on, substantially all the Debtors' assets (collectively, the "Prepetition Collateral"), but expressly excluding leasehold interests in non-residential real property leases.

C. Proposed Asset Sale(s)

8. The Debtors intend in the near future to file one or more motions pursuant to section 363 of the Bankruptcy Code to pursue one or more sales of the Debtors' assets – to be consummated as soon as possible given the upcoming critical holiday shopping season commencing on "Black Friday" (*i.e.*, November 24, 2017) – to potential purchasers, subject in all respects to higher and better offers. At the same time, the Debtors are also considering vacating certain of their retail store locations and expeditiously conducting going out of business ("GOB") sales at such locations.

NEED FOR USE OF CASH COLLATERAL

9. The Debtors urgently need the ability to utilize cash collateral and intends to provide adequate protection to their Prepetition Lender. Without the immediate use of cash collateral, the Debtors will be unable to pay ordinary and necessary business expenses including, but not limited to, payroll and related obligations, taxes, utilities, amounts owed to vendors and other suppliers of goods and services, insurance, and other expenses that are crucial to maintaining operations while the Debtors proceed toward one or more sale transactions.

10. The Debtors, therefore, request authority to use cash collateral in accordance with the budget (the “Budget”) attached as Exhibit 1 to the Interim Order. The use of cash collateral as requested herein will allow the Debtors to continue operations until one or more sale transactions can be consummated. The use of cash collateral will also preserve the value of the Debtors’ estates for all parties-in-interest, including the Prepetition Lender, preserve employment for their hundreds of employees, and preserve the Debtors’ going-concern value while they run an expedited sale process under section 363 of the Bankruptcy Code.

SUMMARY OF CASH COLLATERAL INTERIM ORDER

11. In accordance with the disclosure requirements of Local Rule 4001-3, a summary of the material terms of the proposed usage of cash collateral, including a description of each of the provisions required to be highlighted by such rules, are set forth in the chart below.⁴

<i>Amount of Cash Collateral Sought to be Utilized</i>	The Debtors shall use Cash Collateral in the ordinary course of the Debtors’ business for the purposes of supporting the Debtors’ ongoing working capital needs, to the extent and up to the amounts set forth in the budget attached to this Order (as may be amended, the “Budget”); <u>provided, however</u> , that the Debtors may (i) exceed any line item expenditure in the Budget by up to ten percent (10%) thereof and (ii) exceed any line item expenditure in the Budget by more than ten percent (10%) thereof for so long as, on any date of determination and after giving effect to such expenditures, the total aggregate expenditures of the Debtors since the Petition Date do not exceed one hundred ten percent (110%) of the total aggregate expenditures of the Debtors projected in the Budget as of such date. Interim Order ¶¶ H and I.
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⁴ The descriptions of the material terms of the proposed Interim Order provided in this Motion are intended only as a summary thereof. In the event of any inconsistency between the descriptions set forth herein and the terms of the Interim Order, the terms of the Interim Order shall govern. All capitalized terms used but not otherwise defined in this summary chart shall have the meanings ascribed to them in the Motion or, to the extent not defined herein, the Interim Order. Sections that must be highlighted for the Court under either Bankruptcy Rule 4001(c) or Local Rule 4001-3 are in bold and references to the Interim Order are provided.

Adequate Protection

The following adequate protection will be provided:

a. Adequate Protection Liens. As adequate protection for any diminution in the value of ACM's interests in the Pre-Petition Collateral from the Petition Date and thereafter, including any diminution resulting from the use of Cash Collateral on or after the Petition Date, ACM is hereby granted, pursuant to sections 361, 362 and 363 of the Bankruptcy Code, valid, binding, enforceable and automatically perfected liens on and security interests in (collectively, the "Adequate Protection Liens") all personal property of the Debtors, wherever located and whether created, acquired or arising prior to, on or after the Petition Date, including, without limitation, all of the Debtors' accounts, general intangibles, trademarks, tradenames, patents, copyrights and all other forms of intellectual property, tax refunds or insurance proceeds, returned or repossessed goods and all the Debtors' rights as a seller of goods, all collateral securing the foregoing, now owned or after acquired inventory, all not owned and hereafter acquired equipment, all other deposit accounts, investment property, instruments, letter of creditor rights, goods of debtor and any and all other personal property now or hereafter owned by the Debtors, all cash and non-cash proceeds of any of the foregoing, in whatever form including proceeds of proceeds, and all books and records relating to any of the foregoing collateral, and all computers and other equipment used in connection with the record-keeping for the collateral (all such personal property, together with all cash and non-cash proceeds thereof, being hereinafter referred to as the "Replacement Collateral"; and together with the Pre-Petition Collateral, the "Collateral"). Notwithstanding the foregoing, the Replacement Collateral shall not include any claims or causes of action of the Debtors under 11 U.S.C. §§ 544, 547, 548, 549, 550 or 551 ("Avoidance Actions") or any proceeds of any of such claims or causes of action ("Avoidance Proceeds") or the Debtors' interests in non-residential real property leases, unless Debtors shall grant a lien upon Avoidance Actions or Avoidance Proceeds to any other person or entity, in which event ACM shall be deemed to have been granted such a lien under this Order. The Adequate Protection Liens shall be junior in priority only to (i) the Pre-Petition Liens; (ii) valid, enforceable, perfected and nonavoidable liens upon and security interests in the assets of the Debtors that (x) existed on the Petition Date and (y) were superior in priority as of the Petition Date, after giving effect to any existing subordination or intercreditor arrangements, to the Pre-Petition Liens, if any; (iii) any fees payable to the Clerk of this Court or, pursuant to 28 U.S.C. § 1930, the United States Trustee; and (iv) the amounts set forth on the Budget for professionals retained under the Bankruptcy Code through the date of an event of default under this Order. The Adequate Protection Liens shall at all times be senior in priority to (i) any replacement lien at any time granted by the Debtors in favor of any other person or entity, and (ii) all liens, security interests and priority claims granted to any post-

	<p>petition lender unless otherwise agreed to by ACM. The Adequate Protection Liens and all claims, rights, interests, administrative claims and other protections granted to or for the benefit of ACM pursuant to this Order and the Bankruptcy Code shall constitute valid, enforceable, non-avoidable and duly perfected security interests and liens. ACM shall not be required to file or serve financing statements, mortgages or similar instruments which otherwise may be required under federal or state law in any jurisdiction, or take any action, including taking possession, to validate and perfect such security interests and liens, but upon request by ACM, the Debtors are hereby authorized and directed to execute and deliver any such financing statements, mortgages or similar instruments. The failure by ACM to request, or the failure or refusal of the Debtors to execute or deliver, any documentation relating to the Adequate Protection Liens shall in no way affect the validity, perfection or priority of such Adequate Protection Lien.</p> <p>b. <u>Insurance</u>: The Debtors shall keep all Collateral fully insured in accordance with the Pre-Petition Loan Agreement and, to the extent not already the case, shall cause ACM to be named as loss payee on all insurance policies relating to such Collateral.</p> <p>c. <u>Rights Under Section 507(b) of the Bankruptcy Code</u>. ACM shall be entitled to assert an administrative priority claim under section 507(b) of the Bankruptcy Code in the amount, if any, by which the protections afforded herein for the Debtors' use, sale, consumption or disposition of any Pre-Petition Collateral (including, without limitation, Cash Collateral) prove to be inadequate. ACM has not consented to any surcharge of any of the Collateral under section 506(c) of the Bankruptcy Code, and no such consent shall be implied from any action, failure to act, or acquiescence by ACM. Likewise, the Debtors and their estates have not waived any rights under section 506(c) of the Bankruptcy Code.</p> <p>Interim Order ¶ 4.</p>
<p><i>Effect of Relief on Existing Liens</i></p>	<p>The Adequate Protection Liens shall be junior in priority only to (i) the Pre-Petition Liens; (ii) valid, enforceable, perfected and nonavoidable liens upon and security interests in the assets of the Debtors that (x) existed on the Petition Date and (y) were superior in priority as of the Petition Date, after giving effect to any existing subordination or intercreditor arrangements, to the Pre-Petition Liens, if any</p> <p>Interim Order ¶ 4.a.</p>
<p><i>Events of Default; Termination; Change of Control; Filing of Motion for Appointment of Trustee or Examiner</i></p>	<p><u>Suspension</u>. The Debtors' authority to use Cash Collateral shall be suspended (and Debtors shall therefore not be authorized to use such Cash Collateral for any purpose, except as further ordered by the Court) for so long as any one or more of the following conditions</p>

	<p>(collectively, an “<u>Event of Default</u>”) exists: (i) the Debtors have failed to discharge any duty or other obligation imposed upon it in this Order, or has otherwise violated any requirement or condition to use of Cash Collateral provided in this Order, and has not cured such failure or violation within five (5) business days after receiving written notice thereof from ACM (provided that the Debtors shall have the ability to seek an emergency hearing within 72 hours to challenge any such written notice, and authority to continue usage of Cash Collateral until the Court rules on such dispute), or (ii) there is pending any motion by the Debtors to dismiss or convert this chapter 11 case to a case under chapter 7.</p> <p>(b) <u>Termination</u>. The Debtors’ authority to use Cash Collateral shall terminate for all purposes (except to pay the Pre-Petition Debt) upon the soonest to occur of the following events or conditions: (i) the Interim Period expires and no final order or extension has been approved by the Court, (ii) a chapter 11 trustee is appointed for any of the Debtors, (iii) this chapter 11 case is converted to a chapter 7 case or dismissed, (iv) the Court enters an order confirming a chapter 11 plan of reorganization or liquidation for any of the Debtors, (v) the Court enters an order granting ACM, or any post-petition lender to the Debtors, relief from the automatic stay to exercise rights and remedies in respect of any property of the Debtors, (vi) there is a change in the current senior management of any of the Debtors as evidenced by a notice thereof filed with the Court by the Debtors (and the Debtors shall file such notice no later than three (3) business days after any such change in management), or (vii) this Order is amended, vacated, stayed, reversed or otherwise modified, as a result of a motion or other court filing by any of the Debtors, without the prior written consent of ACM.</p> <p>Interim Order ¶ 3.</p>
<p><i>506(c) Rights</i></p>	<p>ACM has not consented to any surcharge of any of the Collateral under section 506(c) of the Bankruptcy Code, and no such consent shall be implied from any action, failure to act, or acquiescence by ACM. Likewise, the Debtors and their estates have not waived any rights under section 506(c) of the Bankruptcy Code.</p> <p>Interim Order ¶ 4.a.</p>
<p><i>Agreement Binding the Debtors or Other Parties in Interest With Respect to the Validity, Perfection, or Amount of the Prepetition Lender’s Claim; Waiver of Claims and</i></p>	<p>Subject to the Challenge Deadline, the Debtors acknowledge and consent to the validity, extent, perfection, priority and non-avoidability of the Pre-Petition Debt and Pre-Petition Liens in the Pre-Petition Collateral, and the Debtors will not seek disgorgement or disallowance of the Pre-Petition Debt. Interim Order ¶ B.</p> <p>Any interested party having standing to do so to may commence an</p>

<p><i>Challenge Rights</i></p>	<p>appropriate adversary proceeding or contested matter objecting to the validity or amount of the Pre-Petition Debt, or the validity, extent, perfection, priority or non-avoidability of the Pre-Petition Liens in the Pre-Petition Collateral, or seeking disgorgement or disallowance of all or any part of the Pre-Petition Debt, no later than 30 days after the entry of the final order granting the Motion (the “<u>Challenge Deadline</u>”), and the final order granting the Motion will provide for such Challenge Deadline. If such adversary proceeding or contested matter is not filed prior to expiration of the Challenge Deadline, then the liens and security interests of ACM in the Pre-Petition Collateral shall be deemed legal, valid, binding, enforceable, perfected and unavoidable and all of the Pre-Petition Debt shall be conclusive and binding upon all parties in interest in this case and in any superseding chapter 7 case, including any subsequently appointed trustee, as a legal, valid, binding, enforceable, fully secured claim that is not subject to offset, counterclaim, equitable subordination, surcharge, recharacterization or other defense or claim. The Debtors acknowledge and consent to the validity, extent, perfection, priority and non-avoidability of the Pre-Petition Debt and Pre-Petition Liens in the Pre-Petition Collateral, will not seek disgorgement or disallowance of all or any part of the Pre-Petition Debt, and will not commence an appropriate adversary proceeding or contested matter relating to such issues. Interim Order ¶ 7.</p>
<p><i>Avoidance Actions</i></p>	<p>The Replacement Collateral shall not include any claims or causes of action of the Debtors under 11 U.S.C. §§ 544, 547, 548, 549, 550 or 551 (“<u>Avoidance Actions</u>”) or any proceeds of any of such claims or causes of action (“<u>Avoidance Proceeds</u>”) or the Debtors’ interests in non-residential real property leases, unless Debtors shall grant a lien upon Avoidance Actions or Avoidance Proceeds to any other person or entity, in which event ACM shall be deemed to have been granted such a lien under this Order. DIP Credit Agreement § 3(a); Interim DIP Order ¶15.</p>

BASIS FOR RELIEF

12. Without the use of cash collateral, the Debtors will be unable to pay for goods and services that are crucial to their operational needs. Moreover, the value of the Debtors’ assets and operations will dissipate, hindering their ability to consummate one or more asset sales to the detriment of all interested parties. Thus, the Debtors’ use of cash collateral is in the best interests of the Debtors’ estates, creditors and all other stakeholders. In light of the foregoing, the Debtors seek Court approval to use cash collateral in accordance with the Budget.

13. Under section 363(c)(2) of the Bankruptcy Code, the Debtors may not use cash collateral without the consent of any entity with an interest in such cash collateral or authority granted by the Court. With respect the Prepetition Lender that asserts an interest in cash collateral, the Debtors respectfully submit that the Court should order the relief requested herein under section 363(c)(2)(B) of the Bankruptcy Code given the adequate protection being provided under sections 361 and 363(e) of the Bankruptcy Code as set forth herein.

14. Section 363(c)(2) of the Bankruptcy Code provides that a debtor may not use cash collateral unless “(A) each entity that has an interest in such cash collateral consents; or (B) the court, after notice and hearing, authorizes such use, sale, or lease in accordance with the provisions of this section.” 11 U.S.C. § 363(c)(2). Pursuant to section 363(c) of the Bankruptcy Code, a debtor-in-possession may not use cash collateral without the consent of the secured party or Court approval. The Debtors are in negotiations with the Prepetition Lender for its consent to the use of cash collateral.

15. Bankruptcy Code section 363(e) provides, in pertinent part, that “on request of an entity that has an interest in property . . . proposed to be used, sold, or leased, by the trustee, the court, with or without a hearing, shall prohibit or condition such use, sale, or lease as is necessary to provide adequate protection of such interest.” 11 U.S.C. § 363(e). Examples of adequate protection are provided in section 361 of the Bankruptcy Code and include, but are not limited to: (a) lump sum or periodic cash payments to the extent that such use will result in a decrease in value of such entity’s interest in the property; (b) provisions for an additional or replacement lien to the extent that the use of the property will cause a decrease in the value of such entity’s interest in the property; and (c) such other relief as will result in the realization by the entity of the indubitable equivalent of such entity’s interest in the property. 11 U.S.C. § 361.

16. By adequate protection, the Bankruptcy Code seeks to shield a secured creditor from diminution in the value of its interest in the particular collateral during the period of use. *See In re 495 Cent. Park Ave. Corp.*, 136 B.R. 626, 631 (Bankr. S.D.N.Y. 1992); *In re Beker Indus. Corp.*, 58 B.R. 725, 736 (Bankr. S.D.N.Y. 1986); *In re Hubbard Power & Light*, 202 B.R. 680 (Bankr. E.D.N.Y. 1996).

17. While section 361 of the Bankruptcy Code provides examples of forms of adequate protection, such as granting replacement liens and administrative claims, courts decide what constitutes sufficient adequate protection on a case-by case basis. *See In re Columbia Gas Sys., Inc.*, Nos. 91-803, 91-804, 1992 WL 79323, at *2 (Bankr. D. Del. Feb. 18, 1992); *In re Swedeland Dcv. Grp., Inc.*, 16 F.3d 552, 564 (3d Cir. 1994); *In re N.J. Affordable Homes Corp.*, No. 05-60442, 2006 WL 2128624, at *14 (Bankr. D.N.J. June 29, 2006); *see also In re Mosello*, 195 B.R. 277, 289 (Bankr. S.D.N.Y. 1996); *In re Dynaco Corp.*, 162 B.R. 389, 394 (Bankr. D.N.H. 1993) (citing 2 Collier on Bankruptcy § 361.01[1] at 361-66 (15th ed. 1993)) (explaining that what constitutes adequate protection is not defined, and “must be determined based upon equitable considerations arising from the particular facts of each proceeding”).

18. For example, courts have held that replacement liens are sufficient adequate protection. *See In re Mt. Olive Hospitality, LLC*, Civil No. 13-3395 (RBK), 2014 WL 1309953, at *3, n. 6 (D.N.J. March 31, 2014); *see also In re Airport Inn Assocs., Ltd.*, 132 B.R. 951, 960 (Bankr. D. Col. 1990) (“The court could order a lien in postpetition accounts receivable as adequate protection if that relief was requested”); *In re Int’l Design & Display Grp., Inc.*, 154 B.R. 362, 364 (Bankr. S.D. Fla. 1993) (court authorized debtor to use cash collateral and, as adequate protection, granted secured creditor replacement lien on all postpetition accounts receivable, inventory and contracts to the extent the creditor’s collateral was depleted).

19. The Interim Order provides adequate protection of the interests of their Prepetition Lender in the form of valid, binding, enforceable, non-avoidable and automatically perfected replacement security liens on the Debtors' post-petition assets to the same extent, validity and priority that existed as of the Petition Date.

20. Moreover, as set forth in the Interim Order, to the extent that the adequate protection provided for fails to protect the Prepetition Lender against any diminution in value of their collateral, the Prepetition Lender is also being granted a superpriority administrative expense claim as provided for in Section 507(b) of the Bankruptcy Code. The Debtors believe that such adequate protection is fair and reasonable.

21. The Debtors' ability to pay for goods and services is crucial to its continued operational needs and the employment of the Debtors' employees until one or more sale transactions can be consummated. Accordingly, the Debtors respectfully submit that the use of cash collateral on the terms set forth in the attached proposed Interim Order provides the Prepetition Lender with adequate protection and is in the best interest of the Debtors' estates, their creditors and all parties in interest, and, therefore should be authorized by this Court.

INTERIM APPROVAL SHOULD BE GRANTED

22. Bankruptcy Rule 4001(b) provides that a final hearing on a motion to use cash collateral may not be commenced earlier than 14 days after service of such motion. The court, however, may conduct an expedited hearing prior to the expiration of such 14-day period and authorize the use of cash collateral where, as here, such relief is necessary to avoid immediate and irreparable harm to a debtor's estate.

23. For the reasons set forth above, the failure to obtain approval of the use of cash collateral on an expedited basis would very likely lead to immediate and irreparable harm to the

Debtors' estates and the value of the Debtors' assets. Accordingly, the Debtors seek immediate entry of the Interim Order to prevent immediate and irreparable harm pending the Final Hearing, pursuant to Bankruptcy Rule 4001(b).

REQUEST FOR FINAL HEARING

24. Pursuant to Bankruptcy Rules 4001(b)(2), the Debtors request 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.

WAIVER OF BANKRUPTCY RULES 6004(A) AND 6004(H)

25. To implement the foregoing successfully, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the fourteen-day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h).

WAIVER OF MEMORANDUM OF LAW

26. Because the legal basis upon which the Debtors rely is incorporated herein and the Motion does not raise any novel issues of law, the Debtors respectfully request that the Court waive the requirement to file a separate memorandum of law pursuant to Local Rule 9013-1(a)(3).

NO PRIOR REQUEST

27. No prior motion for the relief sought herein has been made to this or to any other court.

NOTICE

32. Notice of this Motion has been given to (i) the Office of the United States Trustee for the District of New Jersey, One Newark Center, Suite 2100, Newark, NJ 07102; (ii) the Internal Revenue Service, 2970 Market Street, Mail Stop 5-Q30.133, Philadelphia, PA 19104-

5016; (iii) the New Jersey Division of Taxation Compliance and Enforcement - Bankruptcy Unit, 50 Barrack Street, 9th Floor, Trenton, NJ 08695; (iv) the Office of the Attorney General of the State of New Jersey, Division of Law, Richard J. Hughes Justice Complex, 25 Market Street, Trenton, NJ 08625; (v) the Office of the United States Attorney, Peter Rodino Federal Building, 970 Broad Street, Suite 700, Newark, NJ 07102; (vi) Counsel for ACM Capital Partners, LLC, Shraiberg, Landau & Page, Attn: Bradley S. Shraiberg, Esq., 2385 N.W. Executive Center Dr., Suite 300, Boca Raton, FL 33431; and (vii) the Debtors' thirty (30) largest unsecured creditors on a consolidated basis. In light of the nature of the relief requested herein, the Debtors respectfully submit that no other or further notice is required.

[Remainder of page intentionally left blank]

WHEREFORE, the Debtors respectfully request that this Court: (i) enter an order, substantially in the form submitted herewith, granting the relief requested herein; and (ii) grant the Debtors such other and further relief as the Court deems just and proper.

Dated: November 13, 2017

Respectfully submitted,

LOWENSTEIN SANDLER LLP

/s/ Kenneth A. Rosen

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