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9 UNITED STATES BANKRUPTCY COURT
10 FOR THE DISTRICT OF NEVADA

11 * * * * *

12 IN RE:

13 BRISTLECONE, INC., dba BRISTLECONE
14 HOLDINGS

- 15 Affects this Debtor.
- 16 Affects all Debtors.
- 17 Affects Boonfi LLC
- 18 Affects Bristlecone Lending, LLC
- 19 Affects Bristlecone SPV I, LLC
- 20 Affects I Do Lending, LLC
- 21 Affects Medly, LLC
- 22 Affects One Road Lending, LLC
- 23 Affects Wags Lending, LLC

Case No.: BK-17-50472-btb (Chapter 11)
Jointly Administered with:

- 17-50473-btb BOONFI LLC
- 17-50474-btb BRISTLECONE LENDING, LLC
- 17-50475-btb BRISTLECONE SPV I, LLC
- 17-50476-btb I DO LENDING, LLC
- 17-50478-btb MEDLY, LLC
- 17-50479-btb ONE ROAD LENDING, LLC
- 17-50480-btb WAGS LENDING, LLC

**AMENDED MOTION FOR INTERIM
AND FINAL ORDER AUTHORIZING
DEBTORS TO OBTAIN DEBTOR-IN-
POSSESSION FINANCING UNDER 11
U.S.C. §§105, 362, 363, 364(c)(2) AND
F.R.B.P. 4001(c)**

24 Debtors.

25 _____/

Hearing Date: July 28, 2017
Hearing Time: 10:00 a.m.
Est. Time: 15 minutes
Set by: Judge Beesley

26 BRISTLECONE, INC., dba BRISTLECONE HOLDINGS, a Delaware corporation,
27 and its wholly owned subsidiaries, BOONFI LLC, a Nevada limited liability company,
28 BRISTLECONE LENDING, LLC, a Nevada limited liability company, BRISTLECONE SPV
I, LLC, a Nevada limited liability company, I DO LENDING, LLC, a Nevada limited liability
company, MEDLY, LLC, a Nevada limited liability company, ONE ROAD LENDING, LLC,

1 a Nevada limited liability company, and WAGS LENDING, LLC, a Nevada limited liability
2 company (collectively the "Debtors"), by and through their counsel, STEPHEN R. HARRIS,
3 ESQ., of HARRIS LAW PRACTICE LLC, hereby move the Court for an entry of an order
4 authorizing the Debtor, BRISTLECONE, INC., to obtain post-petition financing pursuant to
5 11 U.S.C. §§ 105, 362, 363, 364(c)(2) and Rule 4001(c) of the Federal Rules of Bankruptcy
6 Procedure (the "Bankruptcy Rules"). This motion is supported by the entire record before the
7 Court, and by the following memorandum of points and authorities.

8 **Jurisdiction and Venue**

9 1. Each of the above-captioned Debtors filed a voluntary petition for relief under
10 Chapter 11 of the United States Bankruptcy Code, 11 U.S.C. § 101-1330 (the "Bankruptcy
11 Code"), on April 18, 2017. On April 25, 2017, this Court entered its order jointly administering
12 these estates on an interim basis, with a final hearing held on May 30, 2017 at 2:00 p.m.

13 2. This Court has jurisdiction over these Chapter 11 proceedings under 28 U.S.C. §§
14 157 and 1334. This matter constitutes a core proceeding under 28 U.S.C. § 157(b)(2).

15 3. Debtors are in the business of providing financial leases to consumers for tangible
16 goods in various industries, including medical products, pets, household goods, jewelry,
17 wedding products and automobile parts. The Debtors continue to operate their businesses as
18 Debtors and Debtors-In-Possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy
19 Code. The headquarters for the Debtors' business is located in Reno, Nevada, although the
20 Debtors all transact business online in order to provide financial leases in all 50 states. As of
21 the Petition Date, the Debtors collectively employed approximately 24 employees, but now
22 employ 14 employees as of the date of this motion. Accordingly, venue of the Debtors' Chapter
23 11 proceeding is proper in this District under 28 U.S.C. §§ 1408 and 1409.

24 4. The statutory predicates for the relief requested in this motion are Bankruptcy Code
25 §§ 105, 362, 363 and 364(c)(2) of the Bankruptcy Code and Rule 4001(c) of the Bankruptcy
26 Rules.

27 5. On July 12, 2017, the Debtors' filed their MOTION FOR INTERIM AND
28 FINAL ORDER AUTHORIZING DEBTORS TO OBTAIN DEBTOR-IN-POSSESSION

1 FINANCING UNDER 11 U.S.C. §§105, 362, 363, 364(c)(2) and F.R.B.P. 4001(c) (Doc. No.
2 136) (“Motion”). The Motion requested authorization from this Court for the Debtors to obtain
3 debtor-in-possession financing on a secured basis from Gas Hole, LLC in order to provide funds
4 to bridge the Debtors’ ongoing business operations until the hearing on a pending §363 asset
5 sale. At the time the Motion was filed, the Debtors also filed a motion with this Court seeking
6 shortened time for a hearing on the Motion so that such hearing could be held on or before July
7 14, 2017. The Court entered its EX-PARTE ORDER SHORTENING TIME (Doc. No. 140),
8 scheduling the hearing on the DIP Motion for July 24, 2017 at 9:30 a.m.

9 6. Due to the fact that the hearing on the pending DIP Motion will not be heard
10 until July 24, 2017, the proposed lender, Gas Hole, LLC, withdrew its offer to provide financing
11 to the Debtors because it is not willing to bear the risk of advancing any funds to the Debtors
12 before obtaining Court approval of secured financing. As a result, the Debtors have negotiated
13 with their secured creditor, FRS BC, LLC, to provide DIP financing under substantially the
14 same terms previously offered by Gas Hole, LLC, with the exception that FRS BC, LLC has
15 agreed to advance funds without prior approval of the modified security interests requested by
16 FRS BC, LLC on condition that the Debtors request approval of such security interests, *nunc*
17 *pro tunc* to July 13, 2017. Thus, the Debtors’ hereby submit this AMENDED MOTION FOR
18 INTERIM AND FINAL ORDER AUTHORIZING DEBTORS TO OBTAIN DEBTOR-IN-
19 POSSESSION FINANCING UNDER 11 U.S.C. §§105, 362, 363, 364(c)(2) and F.R.B.P.
20 4001(c) (“Amended Motion”), requesting authorization to obtain debtor-in-possession financing
21 from FRS BC, LLC, or its assignee, in the place of Gas Hole, LLC.

22 **Relief Requested**

23 7. By this Amended Motion, the Debtors seek authorization under sections 105, 362,
24 363, and 364(c)(2) of the Bankruptcy Code, to allow their parent corporation to:

- 25 a. Obtain secured post-petition financing of a maximum amount of \$150,000.00
26 under a Loan Agreement and Security Agreement and Revolving Line of Credit
27 Promissory Note (collectively the “DIP Facility” or “DIP Loan Agreement”), by
28 and between BRISTLECONE, INC., as Borrower, and FRS BC, LLC, or

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assignee (“DIP Lender” or “FRS”), as the Lender; and

b. Grant the DIP Lender a senior security interest, pursuant to section 364(c)(2) of the Bankruptcy Code, with respect to such obligations, against the Collateral described as Group #3 Assets and Group #4 Assets (collectively “Collateral”) in the AMENDED MOTION FOR ORDER APPROVING THE SALE OF CERTAIN ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES AND INTERESTS OR FINANCING TRANSACTION (11 U.S.C. §§363(b) and (f)) (Docket No. 107) (“Sale Motion”), which Group #3 Assets and Group #4 Assets are currently unencumbered, although FRS BC, LLC claims a security interest in same which the Debtors have disputed.

Basis for Relief

8. Debtors have determined that the DIP Facility is necessary to continue to operate their business and for a successful reorganization. To ensure the uninterrupted business operations of the Debtors, Debtors have concluded that obtaining this post-petition financing is necessary and in the best interest of the Debtors to bridge their ongoing business operations until such time as they can sell certain assets or obtain confirmation of their plans.

Summary of the Terms of the DIP Facility

9. The terms and conditions of the proposed DIP Facility are set forth in detail in Exhibit “A” attached hereto. The following is a summary of the most significant terms and conditions of the proposed DIP Facility. If any conflict exists between this summary and the DIP Loan Agreement, then the terms and provisions of the DIP Loan Agreement control:

- a. *Borrower.* BRISTLECONE, INC., a Delaware corporation (“Borrower”).
- b. *Commitments.* The DIP Facility provides for the extension of credit in a maximum amount of \$150,000.00, available upon entry of an interim or final DIP Order. The credit accommodations under the DIP Facility consist of a revolving credit facility, described more fully below, in the original principal amount of \$150,000.00.

- 1 c. *Closing Date.* The DIP Facility shall close following execution of the
2 DIP Financing Loan Documents and satisfying the terms thereof, subject
3 only to the Bankruptcy Court having entered an interim or final DIP
4 Order in form and substance reasonably satisfactory to the DIP Lender.
- 5 d. *Term.* Borrowing shall be repaid in full, and the DIP Facility shall
6 terminate the earlier of: (i) four (4) months after the Loan and Security
7 Agreement execution date, (ii) the completion of a Bankruptcy Court
8 approved §363 asset sale or (iii) the confirmation by Debtors of a plan
9 (such earlier date being known herein as the “Maturity Date”).
- 10 e. *Use of Proceeds.* The DIP Facility will be available to finance the
11 ongoing business operations by the Debtors until the time of a §363 asset
12 sale or Plan confirmation. The Budget for the use of proceeds is attached
13 hereto as Exhibit “B”.
- 14 f. *Priority and Collateral.* To secure the Borrower’s obligations under the
15 DIP Facility, all obligations of the Borrower to the DIP Lender shall be
16 entitled to senior security interest in the Collateral. The DIP Lender
17 reserves the right to credit bid its unpaid loan balance at any §363 Court
18 approved sale of the Collateral.
- 19 g. *Advances.* Debtor has not previously received advances from the DIP
20 Lender, although the Lender has agreed to make advances to the Debtor,
21 as needed, under the DIP Facility prior to the scheduled hearing date of
22 July 28, 2017 at 10:00 a.m., provided that the Debtor seeks *nunc pro tunc*
23 approval of the security interests at such hearing.
- 24 h. *Interest Rate.* Advances outstanding of the DIP Facility shall bear
25 interest at the non-default rate of 10% (ten percent) per annum. The
26 default interest rate shall be equal to the lesser of eighteen percent (18%)
27 per annum or the Maximum Lawful Rate.
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- i. *Events of Default.* The DIP Loan Agreement contains customary events of default, as set forth in Section 4.1 therein.
- j. *Conditions to Funding of Any Disbursements.* Conditions to the funding of any disbursements are subject to the following: (i) Debtor’s bankruptcy case is still pending in the Bankruptcy Court under Chapter 11 of the Bankruptcy Code; (ii) Lender shall have received Borrower’s execution and delivery of this Loan Agreement and the Note; (iii) Borrower has provided Lender with such information as Lender may require regarding the proposed use of the requested funds; provided, however that Lender is not required to make any disbursement if the proposed use of the funds is not acceptable to Lender in its sole and absolute discretion; (iv) the Bankruptcy Court shall have entered an Order scheduling a hearing to approve Debtor’s incurring secured debt under this Loan Agreement, in form and substance acceptable to Lender, and such order shall remain in full and effect, except for such modifications thereto acceptable to Lender; (v) there has been no appointment of a trustee in any of the Debtors’ Chapter 11 cases, or there has been no conversion of any of the Debtors’ Chapter 11 cases to Chapter 7 of the Bankruptcy Code; (vi) Debtor submitting to Lender a written disbursement request in a form and content acceptable to Lender specified in the proposed use of the requested funds; (vii) any representations and warranties contained in this Loan Agreement shall be true and correct in all respects on and as of the date of such advance, as though made on and as of such date (except to the extent that such representations and warranties relate solely to an earlier date); (viii) all other documents and legal matters in connection with the transactions contemplated by this Loan Agreement shall have been delivered or executed or recorded and shall be in form and substance satisfactory to

1 Lender and its counsel; (ix) Debtors have demonstrated to the satisfaction
2 of the Lender that the Debtors have filed a motion with the Court
3 requesting that the Court grant a 11 U.S.C. § 363 full or partial asset sale.
4 Additionally, Debtors and FRS BC, LLC shall have executed a term sheet
5 and/or executed definitive settlement documentation and filed a motion
6 for Court approval of same, which motion has not been withdrawn; and
7 (x) no Event of Default or event which with the giving of notice or
8 passage of time would constitute an Event of Default shall have occurred
9 and be continuing on the date of such advance nor shall either result from
10 the making of the advance.

11 Upon a failure of any condition, the Lender may rescind the remaining
12 obligations of the Lender under the DIP Loan, cease making any further
13 advances under the DIP Facility and declare an event of default or
14 accelerate the DIP Facility as otherwise provided under the DIP
15 Financing Loan Documents.

- 16 I. *Interim Approval of DIP Facility.* The DIP Loan Agreement
17 contemplates that the Debtor may seek approval of the DIP Facility on an
18 interim basis if necessary (the "Interim DIP Approval") pending entry of
19 the Final DIP Order by the Court. The Debtors will serve notice of this
20 Motion to all known creditors in addition to those creditors of the Debtors
21 that are entitled to notice of this Motion. A copy of the DIP Loan
22 Agreement is attached hereto as **Exhibit "A"** and incorporated herein by
23 that reference.

24 Negotiations of the DIP Facility

25 10. The Debtors negotiated the terms of the DIP Facility with FRS in good faith and at
26 arms' length. In fact, before agreeing to enter into the DIP Facility, the Debtors solicited
27 proposals from other financial institutions and third party sources for debtor-in-possession
28 financing, all of which either refused to propose a debtor-in-possession loan to the Debtors or

1 proposed terms substantially less favorable than the proposed DIP Facility. See Declaration of
2 B. Kyle Ferguson (Doc. No. 108) (“Ferguson Declaration”) filed in support of the Debtors’
3 pending §363 sale motion. The Debtors determined that after Gas Hole, LLC’s rescission of its
4 desire to provide financing to the Debtors, the proposal for the DIP Facility from FRS was,
5 under the circumstances, the most favorable in light of the Debtors’ working capital needs.
6 Accordingly, the Debtors, in their sound business judgment, ultimately accepted FRS’ proposal
7 for post-petition financing. See, e.g., *Bray v. Shenandoah Federal Savings and Loan Ass’n*, (*In*
8 *re Snowshoe Co.*), 789 F.2d 1085, 1088 (4th Cir. 1986) (that trustee contacted other financial
9 institutions in the immediate geographic areas and was unsuccessful satisfied the requirements
10 of Section 364 of the Bankruptcy Code); *In re 495 Central Park Ave. Corp.*, 136 B.R. 626, 630-
11 31 (Bankr. S.D.N.Y. 1992) (unsuccessful attempts to secure financing from other sources
12 justified senior priority loan under Section 364); *In re Ames Dept. Stores, Inc.*, 115 B.R. 34, 40
13 (Bankr. S.D.N.Y. 1990) (that the debtors had contacted four lenders satisfied the requirement of
14 Section 364 that the debtors were unable to obtain comparable financing on an unsecured basis).

15 11. In these circumstances, “[t]he statute imposes no duty to seek credit from every
16 possible lender before concluding that such credit is unavailable.” *In re Snowshoe Co.*, 789
17 F.2d at 1088. Where there are few lenders likely to be able or willing to extend the necessary
18 credit to the debtor, “it would be unrealistic and unnecessary to require [the debtor] to conduct
19 an exhaustive search for financing.” *In re Sky Valley, Inc.*, 100 B.R. 107, 113 (Bankr. N.D. Ga.
20 1988), *aff’d sub nom, Anchor Savings Bank FSB v. Sky Valley, Inc.*, 99 B.R. 117, 120 n.4 (N.D.
21 Ga. 1989).

22 12. As more fully set forth in Paragraph 13 below, the DIP Facility constitutes a
23 financing package in the best interests of the Debtors and their estates. It enables the Debtors to
24 continue their business operations, and thereby maximize the going concern value of their
25 businesses, until a successful § 363 sale can be approved by the Court, which is estimated to
26 occur on July 28, 2017. The DIP Facility FRS BC, LLC presented the Debtors with the most
27 attractive economic package.

28

Applicable Authority

13. This Court may authorize the Debtor to enter into the DIP Facility pursuant to Section 105(a) of the Bankruptcy Code, which grants broad authority to a court to enforce the provision of the Bankruptcy Code under equitable common law doctrines. Moreover, if a debtor is unable to obtain unsecured credit allowable as an administrative expense under Section 503(b)(1) of the Bankruptcy Code, then the Court, after notice and hearing, may authorize the debtor to obtain credit or incur debt:

- a. With priority over any or all administrative expenses of the kind specified in Section 503(b) or 507(b) of the Bankruptcy Code; or
 - b. Secured by a lien on property for the estate that is not otherwise subject to a lien; or
 - c. Secured by a junior lien on property of the estate that is subject to a lien.
- 11 U.S.C. §364(c).

14. Bankruptcy Rule 4001(c) governs the procedures for obtaining authorization to obtain post-petition financing and provides, in relevant part:

The court may commence a final hearing on a motion for authority to obtain credit no earlier than 15 days after service of the motion. If the motion so requests, the court may conduct a hearing before such 15 day period expires, but the court may authorize the obtaining of credit only to the extent necessary to avoid immediate and irreparable harm to the estate pending a final hearing.

The foregoing provisions of Sections 105 and 364 of the Bankruptcy Code and Bankruptcy Rule 4001(c) authorize the Court to grant the relief requested herein.

Approval of the DIP Facility Is Necessary for the Debtors' Reorganization

15. As described above, it is essential to the success of the Debtors' Chapter 11 cases that they obtain access to sufficient post-petition financing, without which the Debtors will be

1 unable to ensure uninterrupted business operations, and therefore, continue to operate to
2 maximize the estates' assets. Absent access to the financing that will be available to the
3 Debtors under the DIP Facility, the Debtors will not be meet their ordinary course operating
4 expenses and thus will be unable to preserve the Debtors' value as a going concern and
5 maximize the value of their businesses at the pending sale of their assets. The Debtors'
6 continuing viability and their ability to sell estate assets successfully depend heavily on the
7 Court's approval of the DIP Facility.

8 **The Debtors Adequately Explored**

9 **Alternatives to the DIP Facility**

10 16. A post-petition financing facility of the type and magnitude needed in this case
11 could not have been obtained on an unsecured basis. The Debtors will show that potential
12 sources of a similar credit facility for the Debtors, obtainable quickly and on reasonable terms,
13 are limited. In these circumstances, "[t]he statute imposes no duty to seek credit from every
14 possible lender before concluding that such credit is unavailable." *In re Snowshoe Co.*, 789
15 F.2d at 1088. Where there are few lenders likely to be able or willing to extend the necessary
16 credit to the debtor, "it would be unrealistic and unnecessary to require [the debtor] to conduct
17 and exhaustive search for financing." *In re Sky Valley, Inc.*, 100 B.R. 107, 113 (Bankr. N.D.
18 Ga. 1988), *aff'd sub nom Anchor Savings Bank FSB v. Sky Valley, Inc.*, 99 B.R. 117, 120 n.4
19 (N.D. Ga. 1989).

20 17. In the days leading up to the filing of these Chapter 11 cases, the Debtors
21 approached numerous institutions and parties to obtain post-petition financing. *See Ferguson*
22 *Declaration* (Doc. No. 108). Because of the complexity and uniqueness of the Debtors'
23 operations and collateral base, the Debtors directed their inquiries to a limited number of
24 sophisticated institutions and parties most likely to provide adequate post-petition financing.
25 Following negotiations with these potential lenders, the Debtors have concluded in their best
26 judgment that they could not have obtained a post-petition credit facility to meet their working
27 capital needs on terms more favorable than those contained in the DIP Facility. As indicated
28 previously, FRS is the holder of some of the largest secured and unsecured claims against the

1 Debtors and, pursuant to the Settlement Term Sheet executed by and between FRS and the
2 Debtors, FRS may acquire some of the Debtors' assets. Under the settlement, Debtors will
3 transfer Group #1, Group #2 and Group #5 Assets to FRS in consideration for full satisfaction
4 of FRS' claims (believed to exceed \$9.7 million) against the Debtors. With this DIP Facility,
5 FRS will also have a security interest in Group #3 and Group #4 Assets, and FRS reserves the
6 right to credit bid the unpaid balance of the DIP Facility at the contemplated §363 sale of Group
7 #3 and #4 Assets on July 28, 2017.

8 18. After appropriate investigation and analysis, the Debtors' management reasonably
9 concluded that FRS' proposal was the best and only reasonable alternative to immediate
10 cessation of the Debtors' business. Termination of the Debtors' business would harm not only
11 the going concern value of the Debtors' businesses, but also the merchants that depend upon the
12 Debtors to provide financing to their customers and the lessees who require orderly
13 management and serving of their lease agreements. Consequently, the Debtors' efforts in this
14 regard satisfy the statutory requirement of Section 364(c) of the Bankruptcy Code.

15 **The Terms of the DIP Facility are Fair, Reasonable, and Appropriate**

16 19. The proposed terms of the DIP Facility and the Final DIP Order are fair, reasonable
17 and adequate under the circumstances. The purpose of the DIP Facility is to enable the Debtors
18 to maintain the value of their estates while completing a §363 sale and formulating confirmable
19 plans of reorganization. *See In re First South Savv. Ass'n*, 820 F.2d 700, 710-15 (5th Cir. 1987);
20 *In re Tenney Village Co.*, 104 B.R. 562, 568069 (Bankr. D.N.H. 1989).

21 20. The various terms required by FRS under the DIP Facility and the Final DIP Order
22 are reasonable and appropriate under the circumstances, especially since the Lender is not
23 assessing any loan fees or charges. Courts routinely authorize similar lender terms and
24 incentives beyond the explicit liens and other rights specified in section 364 of the Bankruptcy
25 Code. *See, e.g., In re Defender Drug Stores, Inc.*, 145 B.R. 312, 316 (Bankr. 9th Cir. 1992)
26 (authorizing credit arrangement under section 364, including a lender "enhancement fee").

27 21. With access to the DIP Facility, the Debtors are confident that they can achieve the
28 best price for their assets at a §363 sale. The Debtors' ability to achieve successful Section 363

1 Sales depends on unimpeded operations and continued generation of targeted levels of cash
2 flow. Without the DIP Facility from FRS, the Debtors' business operations would cease on July
3 13, 2017.

4 22. The success of these cases and the maximization of the going concern value of the
5 Debtors' businesses thus depends on the confidence of the markets in which the Debtors
6 operate. If that confidence were destroyed by the Debtors' failure to obtain post-petition
7 financing to continue business operations, the Debtors' efforts to sell its assets would be gravely
8 jeopardized.

9 Application of the Business Judgment Standard

10 23. As described above, after appropriate investigation and analysis, the Debtors'
11 management has concluded that the DIP Facility is the best alternative available under the
12 circumstances. Bankruptcy courts routinely defer to the debtor's business judgment on most
13 business decisions, including the decision to borrow money. *See Group of Institutional*
14 *Investors v. Chicago Mil. St. P. & Pac. Ry.*, 318 U.S. 523 550 (1943); *In re Simasko Prod. Co.*,
15 47 B.R. 444, 449 (D. Colo. 1985) ("Business judgments should be left to the board room and not
16 to this Court"); *In re Lifeguard Indus., Inc.*, 37 B.R. 3, 17 (Bankr. S.D. Ohio 1983). "More
17 exacting scrutiny would slow the administration of the Debtor's estate and increase its costs,
18 interfere with the Bankruptcy Code's provision for private control of administration of the
19 estate, and threaten the court's ability to control a case impartially." *Richmond Leasing Co. v.*
20 *Capital Bank, N.A.*, 762 F.2d 1303, 1311 (5th Cir. 1985).

21 24. In general, a bankruptcy court should defer to a debtor's business judgment
22 regarding the need for and the proposed use of funds, unless such decision is arbitrary and
23 capricious. *In re Curlew Valley Assocs.*, 14 B.R. 507, 511-13 (Bankr. D. Utah 1981). Courts
24 generally will not second-guess a debtor's business decisions when those decisions involve "a
25 business judgment made in good faith, upon a reasonable basis, and within the scope of his
26 authority under the Code." *Curlew Valley*, 14 B.R. at 513-14 (footnotes omitted).

27 25. The Debtors have exercised sound business judgment in determining that this post
28 petition credit facility is appropriate and have satisfied the legal prerequisites to borrow under

1 the DIP Facility. The terms of the DIP Facility are fair and reasonable and are in the best
2 interests of the Debtors' estate. Accordingly, under Section 364(c) of the Bankruptcy Code, the
3 Debtors should be granted authority to enter into the DIP Facility and to borrow funds from
4 FRS on the basis described above.

5 **Approval and Minimum Cash Requirements**

6 **Notice with Respect to Final DIP Order**

7 26. Because the Debtors will seek final relief under this Motion, the Debtors
8 respectfully request that they be authorized to serve copies of the DIP Loan Agreement, by
9 overnight mail, email or facsimile upon: (a) counsel to any official committee of unsecured
10 creditors appointed in this case; (b) the Office of the United States Trustee; (c) all parties who
11 have filed requests for Notice pursuant to Bankruptcy Rule 2002; (d) counsel for FRS; (e) the
12 twenty (20) largest unsecured creditors of the Debtors and (f) the secured creditors of the
13 Debtors, and (g) all remaining unsecured creditors and equity holders. The Debtor further
14 request that the Court consider such notice of the interim and later final hearing to be sufficient
15 notice under Bankruptcy Rule 4001.

16 **Conclusion**

17 **WHEREFORE**, Debtors respectfully request that the Court enter its interim or final
18 order authorizing the Debtors to obtain credit and incur indebtedness pursuant to the DIP
19 Facility, and enter into and perform according to the terms of the DIP Facility, substantially in
20 the form attached hereto as **Exhibit "A"**; and grant such additional and further relief as is just
21 and proper.

22 DATED this 13th day of July, 2017.

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24 STEPHEN R. HARRIS, ESQ.
HARRIS LAW PRACTICE LLC

25 */s/ Stephen R. Harris, Esq.*

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Attorneys for Jointly Administered Debtors

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EXHIBIT "A"

LOAN AGREEMENT AND SECURITY AGREEMENT

THIS LOAN AND SECURITY AGREEMENT ("Loan Agreement") is made effective as of July 13, 2017, by and between Bristlecone, Inc., a Delaware corporation, as debtor and debtor in possession ("Borrower"), having an address at 1401 S. Virginia St., Suite 100, Reno, NV 89502, on the one hand, and FRS BC, LLC, a limited liability company, or its nominee or assignee (together with its successors and assigns), having its address at 100 Canal Pointe Blvd. Suite 208, Princeton, NJ 08540 (the "Lender"), on the other hand. Borrower and/or Lender are sometimes herein referred to individually as a "party" and collectively as the "parties."

RECITALS:

WHEREAS, on April 18, 2017, Borrower, and its seven (7) wholly owned subsidiaries, filed voluntary petitions under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Nevada, Reno Division (the "Bankruptcy Court"), as Case Nos. 17-50472-btb, 17-50473-btb, 17-50474-btb, 17-50475-btb, 17-50476-btb, 17-50478-btb, 17-50479-btb and 17-50480-btb (collectively the "Debtors"). The Debtors' Chapter 11 cases are being jointly administered by the Bankruptcy Court pursuant to an order entered on April 25, 2017, and the Debtors will also be seeking to substantively consolidate their cases with Borrower's case; and

WHEREAS, Borrower and Lender are entering into a Revolving Line of Credit Promissory Note ("Note"), a true and correct copy of which is attached hereto as "Exhibit A", contemporaneously herewith whereby Lender intends to loan certain monies to Borrower on a revolving credit basis.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Loan Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Revolving Credit Extension Advances. Lender may, but shall have no obligation to, make credit extension advances under the Note from time to time in lawful money of the United States of America in Lender's sole and absolute discretion upon the request of Borrower pursuant to the terms and conditions set forth in this Loan Agreement and in the amounts and categories specifically set forth in this Loan Agreement and the Note. The foregoing advances shall be subject to an approved Budget and used exclusively to fund monthly operational capital requirements of Borrower, including, but not limited to, the restructuring and reorganization costs of Borrower, including, but not limited to, the maintenance and upkeep of the Borrower's property, the payment of administrative expenses and certain other claims and expenses as specifically set forth in this Loan Agreement and the Note, or otherwise approved by Lender and the Bankruptcy Court.
2. Definitions. The following terms shall have the following respective meanings:

"Debt" shall mean all monies owing by Borrower to Lender at any time during the term of this Loan Agreement.

"DIP Financing Order(s)" shall mean the order or orders of the United States Bankruptcy Court for the District of Nevada Authorizing the Debtor To Obtain Post-Petition Financing Pursuant to 11 U.S.C. §§ 105, 361 and 364(c)(2), entered in the Borrower's bankruptcy proceeding.

"DIP Facility" shall mean this Loan Agreement, the Note, and such other agreements, documents and instruments now or hereafter governing, securing or guaranteeing any portion of the indebtedness evidenced by the Note or executed by Debtor or any guarantor or indemnitor or any other person or entity in connection with the loan transaction contemplated hereby or thereby, together with any and all renewals, modifications, amendments, restatements, consolidations, substitutions, replacements, extensions and supplements hereof or thereof.

"Note" means the Revolving Line of Credit Promissory Note entered into contemporaneously herewith between the parties.

3. **DIP Financing Order(s).** This Loan Agreement is authorized pursuant to and is entitled to all of the benefits of the DIP Financing Order(s), and all of its terms and conditions shall conform to the DIP Financing Order(s). This Loan Agreement and the Note evidences all loans made by Lender to Borrower under the DIP Financing Order(s).

4. **Conditions Precedent to Advances.** The consideration of Lender to make any advances under this Loan Agreement and the Note is subject to the fulfillment, to the satisfaction of Lender, of each of the following conditions on or before the Closing Date and as of the date of any proposed advance under the Note, unless such condition is waived in writing by Lender:

- a. Borrower's bankruptcy case is still pending in the Bankruptcy Court under Chapter 11 of the Bankruptcy Code;
- b. Lender shall have received Borrower's execution and delivery of this Loan Agreement and the Note;
- c. Borrower has provided Lender with such information as Lender may require regarding the proposed use of the requested funds; provided, however, that Lender is not required to make any disbursement if the proposed use of the funds is not acceptable to Lender, in its sole and absolute discretion;
- d. Borrower has demonstrated to the satisfaction of the Lender that the Borrower has filed a motion with the Court requesting that the Court enter an Order approving Borrower's incurring debt under this Loan Agreement on a secured basis, *nunc pro tunc* to July 13, 2017, in form and substance acceptable to Lender, and such motion shall be set for hearing no later than July 28, 2017;
- e. There has been no appointment of a trustee in Borrower's Chapter 11 case, or there has been no conversion of any of the Debtors' Chapter 11 case to Chapter 7 of the Bankruptcy Code;

- f. Borrower submitting to Lender a written disbursement request in a form and content acceptable to Lender specified in the proposed use of the requested funds;
- g. Any representations and warranties contained in this Loan Agreement shall be true and correct in all respects on and as of the date of such advance, as though made on and as of such date (except to the extent that such representations and warranties relate solely to an earlier date);
- h. All other documents and legal matters in connection with the transactions contemplated by this Loan Agreement shall have been delivered or executed or recorded and shall be in form and substance satisfactory to Lender and its counsel;
- i. Debtors have demonstrated to the satisfaction of the Lender that the Debtors have filed a motion with the Court requesting that the Court grant a 11 U.S.C. § 363 full or partial asset sale. Additionally, Borrower must demonstrate to the satisfaction of the Lender that Debtors and FRS BC, LLC have executed a term sheet and/or executed definitive settlement documentation; and
- j. No Event of Default or event which with the giving of notice or passage of time would constitute an Event of Default shall have occurred and be continuing on the date of such advance nor shall either result from the making of the advance.

Upon a failure of any condition, the Lender may obtain any remedy available under applicable law, including, without limitation, rescinding the remaining obligations of the Lender under the DIP Loan, cease making any further advances under the DIP Facility, declaring an event of default, and accelerating the DIP Facility as otherwise provided under the DIP Financing Loan Documents.

5. Creation of Security Interests and Liens.

- a. The grant of security interests and liens set forth in this Section 5 are subject to approval of the Bankruptcy Court. In the event that the Bankruptcy Court does not approve Borrower's motion for authority to obtain financing on a secured basis pursuant to Section 364(c), *nunc pro tunc* to July 13, 2017, Borrower shall remain liable under this Loan Agreement and the Note, provided, however, the security interests granted hereunder shall not be enforceable and any advance by Lender to Borrower pursuant to the DIP Facility shall be deemed an allowed unsecured claim against Borrower's bankruptcy estate. Lender shall have the right to request payment of any advance by Lender to Borrower as an administrative expense pursuant to 11 U.S.C. § 503(b)(1) as an actual, necessary cost to preserving the Borrower's bankruptcy estate, and Borrower shall not object to such request.

- b. Grant of Security Interests and Liens. Borrower hereby grants to Lender continuing security interests in and liens upon the Collateral¹ in order to secure prompt repayment of any and all Borrower obligations contained in this Loan Agreement and in order to secure prompt performance by Borrower of its covenants and duties under the Loan Documents. The Collateral is defined as, and described in, Section 5(c) of this Loan Agreement.
- c. Description of Collateral: Group #3 Assets - Certain office equipment, including all computer equipment and communication systems, equipment and software, including miscellaneous computer tablets, computer monitors, filing cabinets, cubicles, appliances, headsets, dishware, office décor, chairs, telephones, office supplies, kiosks, desks, and other office equipment; Intangibles and intellectual property consisting of origination/pricing logic and algorithms for approval and pricing and customized applications and lease agreements for all eight (8) Debtor Entities; trademarks for Bristlecone, SPV, BoonFi, Medly, Barkify, and I Do; for Bristlecone, SPV, BoonFi, Medly, Barkify, and I Do, the Internet domain names including all domain names owned by Bristlecone except for those specifically listed in Group #2 Assets; for all eight (8) Debtor Entities, the Google accounts, websites including all website historical data and logs, and website infrastructure, custom built Salesforce infrastructure, custom built Tableau dashboards and workbooks, product development records and historical data (including but not limited to those located in or utilizing Youtrack, Wrike, Asana, Slack, and other first or third party software or applications), custom built communication templates (including but not limited to all email templates, all Mailchimp templates, all Mandrill templates, letter and other form documents, all training materials, all marketing materials, all promotional offer templates, and other communication templates designed to communicate to a consumer, retailer, third-party vendor, strategic partner, or employee/independent contractor), marketing source materials and data (including but not limited to website content from the websites of all eight (8) Debtor Entities, marketing materials and contacts and lists from Constant Contact, and all other materials and data used to develop marketing materials), retailer historical data (including but not limited to all retailer communication records and historical data, historical data collected on all present and former retailers for all eight (8) Debtor Entities, business contact lists for all eight (8) Debtor Entities, Google analytics historical data for all eight (8) Debtor Entities, 8x8 fax number and stored data, all recorded phone calls with retailers for all eight (8) Debtor Entities, and all other retailer historical data developed or kept for any or all of the eight (8) Debtor Entities), employee communication history and data (including but not limited to communications via

¹ The Collateral is identified as the Group #3 Assets and Group #4 Assets in the Amended Motion for Order Approving the Sale of Certain Assets Free and Clear of All Liens, Claims, Encumbrances and Interests or Financing Transactions (11 U.S.C. §§363(b) and (f)) (Docket No. 107).

Slack, all data stored on tablets and/or computers, employee/independent contractor files, and all other history and data of communications between Bristlecone employees/independent contractors, and history and data of communications between Bristlecone employees/independent contractors and third party vendors servicing or acting on behalf of as agents for Bristlecone or any of the eight (8) Debtor Entities), legal/compliance records and data (including but not limited to policies and procedures, merchant/retailer agreements, employee handbooks and training materials, employee/independent contractor files, third party vendor handbooks and training materials, legal research, legal memos, legal opinions, and any other legal or compliance records and data developed or maintained by Bristlecone or any of the eight (8) Debtor Entities), custom built software platform (including but not limited to software platforms for underwriting, decision making, customer management, lease management, customer/retailer communication, application program interface, general contract management, retailer training, permissions management, state-specific compliance, payment processing, funding management, customer relationship management integration, accounting integration, credit bureau integrations, fraud detection/management, deployment/continuous integration management, electronic signature management/integration, pet warranty management, FAQ management, authentication management, and all other customer built software platforms), custom built Alteryx workflows, custom built software tools (including but not limited to phone call archiver, investor website, tablet power manager, standalone application program interface architecture, buyout calculator website, and all other custom built software tools), customized webpages, cost and terms software; miscellaneous goodwill; the medical/hearing aid and bridal industry relationships (point of sale/strategic relationships), including but not limited to the relationships with GetFinancing, AllWell, MedCentric, Epic, and an auto industry point of sale and strategic relationship with Repair Pal; Barkify.Dog trademark, intellectual property, Internet domain name, website infrastructure and historical data, POP materials, advertising materials, and marketing materials; and all the Confidentiality, Invention Assignment, Non-Solicitation, and Non-Competition Agreements for all existing and former Bristlecone employees and independent contractors. Lender's security interests in and liens upon the Collateral shall attach to all Collateral without further act on the part of Lender or Borrower. Group #4 Assets - For all eight (8) Debtor entities, all customer personally identifiable information and historical data (including but not limited to all customer application historical data, all customer lease agreement historical data, all customer communication records and historical data, all recorded phone calls with customers, all customer payment histories, all customer credit information, and all other customer personally identifiable information or historical data developed or kept for any or all of the eight (8) Debtor Entities).

- d. Delivery of Additional Documentation Required. Borrower shall at any time upon the request of Lender execute and deliver to Lender all financing statements, continuation financing statements, fixture filings, security agreements, chattel mortgages, lease assignments and/or lease mortgages, real property mortgages, pledges, assignments, endorsements of certificates of title, applications for title,

affidavits, reports, notices, consents, schedules of accounts, letters of authority, and all other documents that Lender may reasonably request, in form satisfactory to Lender, to perfect Lender's security interests in and liens upon the Collateral, and in order to fully consummate all of the transactions contemplated hereby.

- e. **Power of Attorney.** Borrower hereby irrevocably makes, constitutes, and appoints Lender (and any agents designated by Lender) as Borrower's true and lawful attorney, with power to: (a) if Borrower refuses to, or fail timely to execute and deliver any of the documents described in Section 5(c) this Loan Agreement, to sign the name of Borrower on any of said documents in Section 5(c) of this Loan Agreement to be executed, recorded, or filed in order to perfect or continue the perfection of Lender's security interests in and liens upon the Collateral; (b) at any time that an Event of Default has occurred and is continuing, sign Borrower's names on any invoice or bill of lading relating to any account, drafts against account debtors, schedules and assignments of accounts, verifications of accounts, and notices to account debtors; (c) send requests for verification of accounts; (d) endorse Borrower's name on any checks, notices, acceptances, money orders, drafts, or other item of payment or security that may come into Lender's possession; (e) at any time that an Event of Default, notify the post office authorities to change the address for delivery of Borrower's mail to an address designated by Lender, to receive and open all mail addressed to Borrower, and to retain all mail relating to the Collateral or the inventory and forward all other mail to Borrower; (f) at any time that an Event of Default has occurred and is continuing, make, settle, and adjust all claims under Borrower's policies of insurance and make all determinations and decisions with respect to such policies of insurance; and (g) at any time that an Event of Default has occurred and is continuing, settle and adjust disputes and claims respecting the accounts directly with account debtors, for amounts and upon terms which Lender determines to be reasonable, and Lender may cause to be executed and delivered any documents and releases which Lender determines to be necessary. The appointment of Lender as Borrower's attorney, and each and every one of Lender's rights and powers, being coupled with an interest, is irrevocable until all of the Obligations have been fully and finally repaid and performed and Lender's obligation to extend credit hereunder is terminated.
- f. **Right to Inspect.** Lender shall have the right, from time to time hereafter to inspect Borrower's books and to check, test, and appraise the Collateral in order to verify Borrower's financial condition or the amount, quality, value, condition of, or any other matter relating to, the Collateral.
- g. **No Prior Encumbrances.** Borrower has good title to the Collateral, subject only to the disputed security interest of FRS BC, LLC, which dispute shall be resolved if the settlement agreement with FRS BC, LLC is approved by the Bankruptcy Court.

6. Further Acts. During the continuance hereof, the Borrower promises and agrees to execute, and cooperate with executing or maintaining, all notices or filings required to perfect or maintain perfection of the security interest created by this Loan Agreement.

7. Events of Default. For all purposes of this Loan Agreement, the occurrence of any or more of the following shall constitute a "Default" by Borrower under this Loan Agreement (whatever the reason for such Default and whether it may be voluntary or involuntary or be effected by operation of law pursuant to any judgment, decree or order of any court or any order, rule or regulations of any administrative or governmental body):

- a. Borrower's breach or failure to comply with any of its obligations under the Note;
- b. Borrower's default on the payment of any sum of money when due by Borrower, whether or not evidenced by the Note;
- c. Borrower's failure to comply with the DIP Financing Order(s) or any final non-appealable order of the Bankruptcy Court;
- d. Borrower's breach or failure to comply with any of its obligations under this Loan Agreement;
- e. The DIP Financing Order(s) or the Chapter 11 Plan (if applicable), are not filed in a form reasonably agreed upon by Lender, or are disapproved, or are reasonably likely to be disapproved, by the Bankruptcy Court;
- f. A Chapter 11 Trustee is appointed for any of the Debtors in their Chapter 11 cases, or any of the Debtors' Chapter 11 cases is dismissed or converted to Chapter 7 of the Bankruptcy Code, or venue of any of the Debtors' Chapter 11 cases is transferred from the District of Nevada to any other judicial district;
- g. Borrower's use of all or any part of an advance for purposes other than as may be specifically agreed to by Lender and Borrower as a condition of any advance; or
- h. Any representation or warranty by Borrower is false or materially misleading.

8. Remedies in Event of Default. Upon the occurrence of a Default, Lender may, at its election, without notice of its election and without demand, but subject to any applicable terms and conditions set forth in the Bankruptcy Court Order, do any one or more of the following, all of which are authorized by Borrower:

- a. Declare all obligations hereunder, whether evidenced by this Loan Agreement, or otherwise, immediately due and payable;
- b. Cease advancing money or extending credit to or for the benefit of Borrower under this Loan Agreement, or under any other agreement between Borrower and Lender;

- c. Terminate this Loan Agreement as to any future liability or obligation of Lender.
- d. Apply to the Bankruptcy Court upon proper notice to Borrower, Debtors' counsel, counsel for the official creditors' committee in such case (if any), and the United States Trustee for the District of Nevada and any other parties entitled to special notice under the Local Rules for the United States Bankruptcy Court for the District of Nevada, for one or more of the following forms of relief: (i) appointment of an examiner for any of the Debtors; (ii) appointment of a Chapter 11 trustee for any of the Debtors; (iii) conversion of any of the Debtors' Chapter 11 cases to a case under Chapter 7 of the Bankruptcy Code; (iv) dismissal of any of the Debtors' Chapter 11 bankruptcy cases; or (v) relief from the automatic stay. Nothing in this paragraph shall limit the right of Lender to apply to the Bankruptcy Court for such other or further relief as may be justified and appropriate, and nothing in this paragraph shall limit the other rights and remedies of Lender provided for elsewhere in this Loan Agreement or under applicable law.

9. Remedies Cumulative. Lender's rights and remedies under this Loan Agreement, shall be cumulative. Lender shall have all other rights and remedies not inconsistent herewith as provided under the Bankruptcy Court Order, the Bankruptcy Code, by law, or in equity. No exercise by Lender of one right or remedy shall be deemed an election, and no waiver by Lender of any Event of Default shall be deemed a continuing waiver. No delay by Lender shall constitute a waiver, election, or acquiescence by it.

10. Waivers: Indemnification.

- a. Demand; Protest; etc. Borrower waives demand, protest, notice of protest, notice of default or dishonor, notice of payment and nonpayment, notice of any default, nonpayment at maturity, release, compromise, settlement, extension, at any time held by Lender on which Borrower may in any way be liable.
- b. Indemnification. Borrower agrees to defend, indemnify, save, and hold Lender and its agents harmless against: (a) all obligations, demands, claims, and liabilities claimed or asserted by any other person arising out of or relating to the transactions contemplated by this Loan Agreement and (b) all losses (including attorney's fees and disbursements) in any way suffered, incurred, or paid by Lender as a result of or in any way arising out of, following, or consequential to the transactions contemplated by this Loan Agreement except, in any such case, to the extent that the same arises from the gross negligence or willful misconduct of Lender. This provision shall survive the termination of this Loan Agreement.

11. Notices. Unless otherwise provided in this Loan Agreement, all notices or demands by any party relating to this Loan Agreement shall be in writing and shall be personally delivered or sent by registered or certified mail, postage prepaid, return receipt requested, telefacsimile, or

telegram (with messenger delivery specified) to Borrower or to Lender, as the case may be, at its address set forth below:

If to Borrower:

Bristlecone, Inc.
c/o Stephen R. Harris, Esq.
6151 Lakeside Drive, Suite 2100
Reno, NV 89511
Telephone: (775) 786-7600
Facsimile: (775) 786-7764
Email: steve@harrislawreno.com

If to Lender:

FRS BC, LLC
Attn: Valerie Hamilton, Esq.
600 College Road East
Princeton, NJ 08540
Telephone: (609) 227-4608
Email: vhamilton@sillscummis.com

The parties hereto may change the address at which they are to receive notices hereunder, by notice in writing in the foregoing manner given to the other. Borrower and Lender acknowledge and agree that notices sent by Lender shall be deemed sent when deposited in the mail or personally delivered, or, where permitted by law, transmitted by telefacsimile or any other method set forth above.

12. General Provisions.

- a. Effectiveness. This Loan Agreement shall be binding and deemed effective when executed by the Borrower and accepted and executed by Lender.
- b. Successors and Assigns. This Loan Agreement shall bind and inure to the benefit of the respective successors and assigns of each of the parties; provided, however, that Borrower may not assign this Loan Agreement or any rights or duties hereunder without Lender's prior written consent and any prohibited assignment shall be absolutely void. No consent to an assignment by Lender shall release Borrower from its obligations. Lender may assign this Loan Agreement and its rights and duties hereunder and no consent or approval by Borrower is required in connection with any such assignment. To the extent that Lender assigns its rights and obligations hereunder to a third Person, Lender thereafter shall be released from such assigned obligations to Borrower and such assignment shall effect a novation between Borrower and such third person.

- c. Section Headings. Headings and numbers have been set forth herein for convenience only. Unless the contrary is compelled by the context, everything contained in each section applies equally to this entire Loan Agreement.
- d. Interpretation. Neither this Loan Agreement nor any uncertainty or ambiguity herein shall be construed or resolved against Lender or Borrower, whether under any rule of construction or otherwise. On the contrary, this Loan Agreement has been reviewed by all parties and shall be construed and interpreted according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of all parties hereto.
- e. Good Faith. Each of the parties hereto agrees that it will exercise its rights and remedies hereunder, and perform each of its obligations hereunder, in a commercially reasonable manner and in good faith.
- f. Severability. Each provision of this Loan Agreement shall be severable from every other provision of this Loan Agreement for the purpose of determining the legal enforceability of any specific provision.
- g. Amendments in Writing. This Loan Agreement cannot be changed or terminated orally. All prior agreements, understandings, representations, warranties, and negotiations, if any, are superseded and replaced in their entirety by this Loan Agreement.
- h. Counterparts. This Loan Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, when taken together, shall constitute but one and the same Loan Agreement. Delivery of an executed counterpart of this Loan Agreement by telefacsimile or e-mail shall be equally as effective as delivery of a manually executed counterpart of this Loan Agreement. Any party delivering an executed counterpart of this Loan Agreement by telefacsimile or e-mail also shall deliver a manually executed counterpart of this Loan Agreement but the failure to deliver a manually executed counterpart shall not affect the validity, enforceability, and binding effect of this Loan Agreement.
- i. Revival and Reinstatement of Obligations. If the incurrence or payment of the obligations under this Loan Agreement by Borrower or the transfer by either or both of such parties to Lender of any property of either or both of such parties should for any reason subsequently be declared to be void or voidable under any state or federal law relating to creditors' rights, including provisions of the Bankruptcy Code relating to fraudulent conveyances, preferences, and other voidable or recoverable payments of money or transfers of property (collectively, a "Voidable Transfer"), and if Lender is required to repay or restore, in whole or in part, any such Voidable Transfer, or elects to do so upon the reasonable advice of its counsel, then, as to any such Voidable Transfer, or the amount thereof that Lender is required or elects to repay or restore, and as to all reasonable costs, expenses, and attorneys' fees of Lender related thereto, the liability of Borrower

automatically shall be revived, reinstated, and restored and shall exist as though such Voidable Transfer had never been made.

- j. Integration. This Loan Agreement, as supplemented or complemented by the Note, reflects the entire understanding of the parties with respect to the transactions contemplated hereby and shall not be contradicted or qualified by any other agreement, oral or written, whether before or after the date hereof. No waiver of any of the provisions of this Loan Agreement will constitute a waiver of any other provision, whether or not similar, nor will any waiver constitute a continuing waiver. No waiver will be binding unless executed in writing by the party making the waiver.

IN WITNESS WHEREOF, each of parties hereto have caused this Loan Agreement to be executed at the addresses for such parties listed in introductory paragraph of this Loan Agreement.

BORROWER:

LENDER:

BRISTLECONE, INC.

FRS BC, LLC

By: 
B. Kyle Ferguson, CEO

By: _____
AUTHORIZED REPRESENTATIVE

EXHIBIT A
(Revolving Line of Credit Promissory Note)

REVOLVING LINE OF CREDIT PROMISSORY NOTE

Pursuant to the Loan and Security Agreement

\$150,000.00

July 13, 2017
Reno, Nevada

FOR VALUE RECEIVED, Bristlecone, Inc., a Delaware corporation (the "Debtor" or "Maker"), having an address at 1401 S. Virginia St., Suite 100, Reno, NV 89502, hereby promises to pay to the order of FRS BC, LLC, a limited liability company, or its nominee or assignee (together with its successors and assigns and any subsequent holders of this Revolving Line of Credit Promissory Note ("Note")), (the "Lender," "Holder" or "Payee"), having an address at 100 Canal Pointe Blvd. Suite 208, Princeton, NJ 08540, the principal sum of ONE HUNDRED AND FIFTY THOUSAND DOLLARS (\$150,000) or so much thereof as may be advanced by Lender from time to time hereunder to or for the benefit or account of Debtor, together with interest thereon at the Note Rate (as hereinafter defined), and otherwise in strict accordance with the terms and provisions hereof.

ARTICLE I. DEFINITIONS

Section 1.1 DEFINITIONS. As used in this Note, the following terms shall have the following meanings:

Applicable Rate: Ten Percent (10%) per annum.

Debtor: As identified in the introductory paragraph of this Note.

Business Day: A weekday, Monday through Friday, except a legal holiday or a day on which banking institutions in Reno, Nevada are authorized or required by law to be closed. Unless otherwise provided, the term "days" when used herein shall mean calendar days.

Charges: All fees, charges and/or any other things of value, if any, contracted for, charged, taken, received or reserved by Lender in connection with the transactions relating to this Note and the other Loan Documents, which are treated as interest under applicable law.

Debtor Relief Laws: Title 11 of the United States Code, as now or hereafter in effect, or any other applicable law, domestic or foreign, as now or hereafter in effect, relating to bankruptcy, insolvency, liquidation, receivership, reorganization, arrangement or composition, extension or adjustment of debts, or similar laws affecting the rights of creditors.

Exhibit A - 1

Default Interest Rate: A rate per annum equal to the lesser of eighteen percent (18%) or the Maximum Lawful Rate.

DIP Financing Order(s): The order of the United States Bankruptcy Court for the District of Nevada Authorizing the Debtor to Obtain Post-Petition Financing Pursuant to 11 U.S.C. §§ 105, 361 and 364(c)(2), entered in the Debtor's bankruptcy proceeding.

Event of Default: Any event or occurrence described under Section 4.1 hereof.

Lender: As identified in the introductory paragraph of this Note.

Loan Documents: This Note, the Loan and Security Agreement ("Loan Agreement") and such other agreements, documents and instruments now or hereafter governing, securing or guaranteeing any portion of the indebtedness evidenced by this Note or executed by Debtor or any guarantor or indemnitor or any other person or entity in connection with the loan evidenced by this Note or in connection with the payment of the indebtedness evidenced by this Note or the performance and discharge of the obligations related hereto or thereto, together with any and all renewals, modifications, amendments, restatements, consolidations, substitutions, replacements, extensions and supplements hereof or thereof.

Maximum Lawful Rate: The maximum lawful rate of interest which may be contracted for, charged, taken, received or reserved by Lender in accordance with the applicable laws of the State of Nevada (or applicable United States federal law to the extent that such law permits Lender to contract for, charge, take, receive or reserve a greater amount of interest than under Nevada law), taking into account all Charges made in connection with the transaction evidenced by this Note and the other Loan Documents.

Note Rate: The rate equal to the lesser of (a) the Maximum Lawful Rate or (b) the Applicable Rate.

Any capitalized term used in this Note and not otherwise defined herein shall have the meaning ascribed to each such term in the Loan Agreement. All terms used herein, whether or not defined in Section 1.1 hereof, and whether used in singular or plural form, shall be deemed to refer to the object of such term whether such is singular or plural in nature, as the context may suggest or require.

ARTICLE II. CREDIT EXTENSIONS

Section 2.1. Holder, in its sole and absolute discretion, may make credit extension advances under this Note from time to time in lawful money of the United States of America upon the request of Maker pursuant to the terms and conditions set forth in this Note and the Loan Agreement.

The foregoing advances shall be used to fund weekly/monthly operational business requirements of Debtor, including, but not limited to, the restructuring and reorganization costs

of Debtor, the maintenance and upkeep of the Debtor's property, the payment of administrative expenses, such as wages, and certain other claims and expenses as specifically set forth in the Loan Documents, or otherwise approved by Lender and the Bankruptcy Court.

Section 2.2. This Note shall represent a revolving credit facility against which Maker may, subject to the terms, conditions and provisions herein set forth and set forth in that certain Loan Agreement of even date herewith by and among Maker, as Debtor, and Holder, as Lender (the "Loan Agreement"), from time to time, make credit extension advances not to exceed the cumulative total principal sum of ONE HUNDRED AND FIFTY THOUSAND DOLLARS (\$150,000) in lawful money of the United States of America at any given time, to repay all or part of the same and make additional credit extension advances and draw additional credits not to exceed the face amount hereof at any given time, and thereafter repay the principal and interest outstanding hereunder upon the written demand of Holder as set forth below or upon material default by Maker hereunder, whichever shall first occur. Provided Maker is not in default in the performance of the terms of this Note or the Loan Agreement, Maker may from time to time, upon at least three (3) Domestic Business Days' (as that term is defined in the Loan Agreement) prior written notice to Holder, transmitted via facsimile, make a credit extension advance draw request hereunder. In the event Holder elects to make the credit extension advance, or is otherwise obligated to make a credit extension advance hereunder, Holder shall cause a wire transfer in said amount to be initiated to the bank account or accounts designated for such purposes by Maker no later than two (2) Domestic Business Days after the date of the transmission of the request. Credit extension advance draw requests must be fully transmitted via electronic mail or facsimile before 5:00 P.M. Pacific Standard Time; any requests transmitted after that time on any calendar day shall be deemed to be transmitted on the following Domestic Business Day.

ARTICLE III. PAYMENT TERMS

Section 3.1 PAYMENT OF PRINCIPAL AND INTEREST. The outstanding principal balance of this Note and any and all accrued but unpaid interest hereon shall be due and payable in full upon the earlier of: (i) four (4) months after the execution by Maker of this Note, which shall be the date of entry of a Bankruptcy Court order approving the Agreement; (ii) the completion of a Bankruptcy Court approved §363 asset sale or (iii) the confirmation by Debtors of a plan (such earlier date being known herein as the "Maturity Date"). Holder reserves the right to credit bid any balance owing under the terms of this note pursuant to 11 U.S.C. §363(k), with respect to the sale of the Collateral assets, as defined in the parties' Loan Agreement, at any sale conducted and authorized by the Bankruptcy Court.

This Note is authorized pursuant to and is entitled to all of the benefits of the DIP Financing Order, and all outstanding amounts evidenced by this Note shall be paid in strict accordance with the terms of this Note and the DIP Financing Order. This Note evidences all loans made by Lender to Debtor under the DIP Financing Order.

Section 3.2 APPLICATION. Except as expressly provided herein to the contrary, all payments on this Note shall be applied in the following order of priority: (i) the payment or

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reimbursement of any expenses, costs or obligations (other than the outstanding principal balance hereof and interest hereon), including, without limitation, any and all fees owed to Lender or Lender's servicing agent, should one be retained, for which either Debtor shall be obligated or Lender shall be entitled pursuant to the provisions of this Note or the other Loan Documents, (ii) the payment of accrued but unpaid interest hereon, and (iii) the payment of all or any portion of the principal balance hereof then outstanding hereunder, in the direct order of maturity. If an Event of Default exists under this Note or under any of the other Loan Documents, then Lender may, at the sole option of Lender, apply any such payments, at any time and from time to time, to any of the items specified in clauses (i), (ii) or (iii) above without regard to the order of priority otherwise specified in this Section 3.2 and any application to the outstanding principal balance hereof may be made in either direct or inverse order of maturity.

Section 3.3 PAYMENTS. All payments under this Note made to Lender shall be made by wire transfer pursuant to instructions provided separately by Lender by delivery of written notice thereof to Debtor, without offset, in lawful money of the United States of America, which shall at the time of payment be legal tender in payment of all debts and dues, public and private. Payments by check or draft shall not constitute payment in immediately available funds until the required amount is actually received by Lender in full. Payments in immediately available funds received by Lender in the place designated for payment on a Business Day prior to 12:00 noon Pacific time at said place of payment shall be credited prior to the close of business on the Business Day received, while payments received by Lender on a day other than a Business Day or after 12:00 noon Pacific time on a Business Day shall not be credited until the next succeeding Business Day. If any payment of principal or interest on this Note shall become due and payable on a day other than a Business Day, such payment shall be made on the next succeeding Business Day. Any such extension of time for payment shall be included in computing interest which has accrued and shall be payable in connection with such payment.

Section 3.4 COMPUTATION PERIOD. Interest on the indebtedness evidenced by this Note shall be computed on the basis of a three hundred sixty-five (365) day year and shall accrue on the actual number of days elapsed for any whole or partial month in which interest is being calculated. In computing the number of days during which interest accrues, the day on which funds are initially advanced shall be included regardless of the time of day such advance is made, and the day on which funds are repaid shall be included.

Section 3.5 PREPAYMENT. Debtor shall have the right to prepay, at any time and from time to time upon delivery to Lender of a prepayment notice two (2) days prior to the date of prepayment, without fee, premium or penalty (except as noted below), all or any portion of the outstanding principal balance hereof, provided, however, that such prepayment shall also include any and all accrued but unpaid interest on the amount of principal being so prepaid through and including the date of prepayment, plus any other sums which have become due to Lender under the Note or any other Loan Documents on or before the date of prepayment, but which have not been fully paid. Prepayments of principal will be applied in inverse order of maturity. If this Note is prepaid in full, any commitment of Lender to make further advances shall automatically terminate and shall be of no further force or effect. Any such prepayment shall not result in a

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reamortization, deferral, postponement, suspension, or waiver of any and all installment payments due under this Note.

Section 3.6 PARTIAL OR INCOMPLETE PAYMENTS. Remittances in payment of any part of this Note other than in the required amount in immediately available funds at the place where this Note is payable shall not, regardless of any receipt or credit issued therefore, constitute payment until the required amount is actually received by Lender in full in accordance herewith and shall be made and accepted subject to the condition that any check or draft may be handled for collection in accordance with the practice of the collecting bank or banks. Acceptance by Lender of any payment in an amount less than the full amount then due shall be deemed an acceptance on account only, and the failure to pay the entire amount then due shall be and continue to be an Event of Default in the payment of this Note.

Section 3.7 INTEREST ON UNPAID INTEREST, LATE PAYMENT CHARGES; DEFAULT INTEREST RATE, ETC. In the event any payment of interest is not paid on the date when due, interest shall accrue thereon as set forth herein on a compounded basis until paid in full. Further, in the event any payment of interest is not paid within five (5) days of the date when due, Debtor shall pay a late payment charge in an amount equal to five percent (5%) of the late payment in order to offset Lender's increased administrative costs resulting from such late payment. For so long as any Event of Default exists under this Note or under any of the other Loan Documents, and in addition to all other rights and remedies of Lender hereunder, interest shall accrue on the outstanding principal balance hereof at the Default Interest Rate, and such accrued interest shall be immediately due and payable. Debtor acknowledges that it would be extremely difficult or impracticable to determine Lender's actual damages resulting from any late payment or Event of Default, and such late charges and accrued interest are reasonable estimates of those damages and do not constitute a penalty. Debtor shall also pay an additional \$35.00 fee for any check which is not honored.

ARTICLE IV. EVENT OF DEFAULT AND REMEDIES

SECTION 4.1 EVENT OF DEFAULT. The occurrence or happening, at any time and from time to time, of any one or more of the following shall immediately constitute an "Event of Default" under this Note:

(a) Prior to the Maturity Date, by acceleration or otherwise, Debtor shall fail, refuse or neglect to pay and satisfy, in full and in the applicable method and manner required, any required payment of principal or interest or any other portion of the indebtedness evidenced by this Note as and when the same shall become due and payable, whether at the stipulated due date thereof, at a date fixed for payment, or immediately on the Maturity Date, by acceleration or otherwise Debtor shall fail, refuse or neglect to pay and satisfy in full and in the applicable method and manner required, the indebtedness evidenced by this Note;

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(b) The occurrence of any other default, breach or event of default as defined in or under this Note or any other Loan Document that remains uncured under and pursuant to the provisions of this Note or any other Loan Document;

(c) Debtor fails to comply with the DIP Financing Order(s) or any final nonappealable order of the Bankruptcy Court;

(d) The DIP Financing Order(s) are not filed in a form reasonably agreed upon by Lender, or are disapproved, or are reasonably likely to be disapproved, by the Bankruptcy Court;

(e) A Chapter 11 Trustee is appointed in the Chapter 11 case of the Debtor or any of its subsidiaries, or the Chapter 11 case filed by the Debtor or any of its subsidiaries is dismissed or converted to Chapter 7 of the United States Bankruptcy Code or if venue in the Chapter 11 case of the Debtor or any of its subsidiaries is transferred from the District of Nevada to any other judicial district;

(f) Debtor's use of all or any part of an advance for purposes other than as may be specifically agreed to by Lender and Debtor as a condition of any advance; or

(g) Any representation by Maker is false or materially misleading.

SECTION 4.2 REMEDIES. Upon the occurrence of an Event of Default, Lender shall have the immediate right, subject to the DIP Financing Order, at the sole discretion of Lender and without notice, demand, presentment, notice of nonpayment or nonperformance, protest, notice of protest, notice of intent to accelerate, notice of acceleration, or any other notice or any other action (i) to declare the entire unpaid balance of the indebtedness evidenced by this Note (including, without limitation, the outstanding principal balance hereof, including all sums advanced or accrued hereunder or under any other Loan Documents, and all accrued but unpaid interest thereon) at once immediately due and payable (and upon such declaration, the same shall be at once immediately due and payable) and may be collected forthwith, whether or not there has been a prior demand for payment and regardless of the stipulated date of maturity, and (ii) to exercise any of Lender's other rights, powers, recourses and remedies under this Note, or at law or in equity, and the same (w) shall be cumulative and concurrent, (x) may be pursued separately, singly, successively or concurrently against Debtor or others obligated for the repayment of this Note or any part hereof, or against any one or more of them, or against the Debtor's assets, at the sole discretion of Lender, (y) may be exercised as often as occasion therefor shall arise, it being agreed by Debtor that the exercise, discontinuance of the exercise of or failure to exercise any of the same shall in no event be construed as a waiver or release thereof or of any other right, remedy, or recourse and (z) are intended to be, and shall be, nonexclusive. All rights and remedies of Lender hereunder and under the other Loan Documents shall extend to any period after the initiation of foreclosure proceedings, judicial or otherwise, with respect to the Debtor's assets or any portion thereof.

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ARTICLE V. GENERAL PROVISIONS

SECTION 5.1 NO WAIVER; AMENDMENT. No failure to accelerate the indebtedness evidenced by this Note by reason of an Event of Default hereunder, acceptance of a partial or past due payment, or indulgences granted from time to time shall be construed (i) as a novation of this Note or as a reinstatement of the indebtedness evidenced by this Note or as a waiver of such right of acceleration or of the right of Lender thereafter to insist upon strict compliance with the terms of this Note or (ii) to prevent the exercise of such right of acceleration or any other right granted under this Note, under any of the other Loan Documents or by any applicable laws. Debtor hereby expressly waives and relinquishes the benefit of any statute or rule of law or equity now provided, or which may hereafter be provided, which would produce a result contrary to or in conflict with the foregoing. The failure to exercise any remedy available to Lender shall not be deemed to be a waiver of any rights or remedies of Lender under this Note or under any of the other Loan Documents, or at law or in equity. No extension of the time for the payment of this Note or any installment due hereunder, made by agreement with any person now or hereafter liable for the payment of this Note, shall operate to release, discharge, modify, change or affect the original liability of Debtor under this Note, either in whole or in part, unless Lender specifically, unequivocally and expressly agrees otherwise in writing. No single or partial exercise of any power hereunder shall preclude any other or further exercise thereof or the exercise of any other power. The release of any party liable under this Note shall not operate to release any other party liable hereon. Time is of the essence of this Note. This Note may not be changed orally, but only by an agreement in writing signed by the party against whom enforcement of any waiver, change or modification is sought.

SECTION 5.2 USE OF FUNDS. Debtor hereby warrants, represents and covenants that (i) the loan evidenced by this Note is made to Debtor solely for the purpose of commercial purposes or carrying on a business or commercial enterprise, (ii) all proceeds of this Note shall be used only for business and commercial purposes, and (iii) no funds disbursed hereunder shall be used for personal, family, or household purposes.

SECTION 5.3 FURTHER ASSURANCES AND CORRECTIONS. From time to time, at the request of Lender, Debtor will (i) promptly correct any defect, error or omission which may be discovered in the contents of this Note or in any other loan document executed by and between Debtor and Lender (collectively, the "Loan Documents"), or in the execution or acknowledgment thereof; (ii) execute, acknowledge, deliver, record and/or file (or cause to be executed, acknowledged, delivered, recorded and/or filed) such further documents and instruments (including, without limitation, further deeds of trust, security agreements, financing statements, continuation statements and assignments of rents) and perform such further acts and provide such further assurances as may be necessary, desirable or proper, in Lender's opinion, (A) to carry out more effectively the purposes of this Note and the other Loan Documents and the transactions contemplated hereunder and thereunder, (B) to confirm the rights created under this Note and the other Loan Documents, (C) to protect and further the validity, priority and enforceability of this Note and the other Loan Documents and the liens and security interests created thereby, and (D) subject to the Loan documents, any property of Debtor intended by the

terms of any one or more of the Loan Documents to be encumbered by the Loan Documents; and (iii) pay all costs in connection with any of the foregoing.

SECTION 5.4 GOVERNING LAW; SUBMISSION TO JURISDICTION. This Note is executed and delivered as an incident to a lending transaction negotiated and consummated in Reno, Nevada, and shall be governed by and construed in accordance with the laws of the State of Nevada.

SECTION 5.5 COUNTING OF DAYS. If any time period referenced hereunder ends on a day other than a Business Day, such time period shall be deemed to end on the next succeeding Business Day.

SECTION 5.6 RELATIONSHIP OF THE PARTIES. Notwithstanding any prior business or personal relationship between Debtor and Lender, or any officer, director or employee of Lender, that may exist or have existed, the relationship between Debtor and Lender under this Note is solely that of debtor and creditor.

SECTION 5.7 SUCCESSORS AND ASSIGNS. The terms and provisions hereof shall be binding upon and inure to the benefit of Debtor and Lender and their respective heirs, executors, legal representatives, successors, successors-in-title and assigns, whether by voluntary action of the parties, by operation of law or otherwise, and all other persons claiming by, through or under them. The terms "Debtor" and "Lender" as used hereunder shall be deemed to include their respective heirs, executors, legal representatives, successors, successors-in-title and assigns, whether by voluntary action of the parties, by operation of law or otherwise, and all other persons claiming by, through or under them.

SECTION 5.8 HEADINGS. The Article, Section, and Subsection entitlements hereof are inserted for convenience of reference only and shall in no way alter, modify, define, limit, amplify or be used in construing the text, scope or intent of such Articles, Sections, or Subsections or any provisions hereof.

SECTION 5.9 NOTICES. All notices or other communications required or permitted to be given pursuant to this Note shall be in writing and shall be considered as properly given if (i) mailed by first class United States mail, postage prepaid, registered or certified with return receipt requested, (ii) by delivering same in person to the intended addressee, (iii) by delivery to a reputable independent third party commercial delivery service for same day or next day delivery and providing for evidence of receipt at the office of the intended addressee or (iv) by prepaid telegram, telex, telecopier or telefacsimile transmission to the addressee. Notice so mailed shall be effective upon its deposit with the United States Postal Service or any successor thereto; notice sent by such a commercial delivery service shall be effective upon delivery to such commercial delivery service; notice given by personal delivery shall be effective only if and when received by the addressee; and notice given by other means shall be effective only if and when received at the office or designated place or machine of the intended addressee. For purposes of notice, the address for both Debtor and Lender is the address provided for each on the first page of this Note; provided, however, that either party shall have the right to change its

address for notice hereunder to any other location within the continental United States by the giving of ten (10) days' prior notice to the other party in the manner set forth herein.

SECTION 5.10 SEVERABILITY. If any provision of this Note or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, then neither the remainder of this Note nor the application of such provision to other persons or circumstances nor the other instruments referred to herein shall be affected thereby, but rather shall be enforced to the greatest extent permitted by applicable law.

SECTION 5.11 COSTS OF COLLECTION. If any holder of this Note retains an attorney-at-law not employed by said holder in connection with any Event of Default or at maturity or to collect, enforce, or defend this Note or any part hereof, or any other Loan Document, in any lawsuit or in any probate, reorganization, bankruptcy or other proceeding, or if Debtor sues any holder in connection with this Note or any other Loan Document and does not prevail, then Debtor agrees to pay to each such holder, in addition to the principal balance hereof and all interest hereon, all costs and expenses of collection or incurred by such holder or in any such suit or proceeding, including, but not limited to, reasonable attorneys' fees.

SECTION 5.12 ENTIRE AGREEMENT. THIS NOTE AND THE OTHER LOAN DOCUMENTS CONTAIN THE FINAL, ENTIRE AGREEMENT BETWEEN THE PARTIES HERETO RELATING TO THE SUBJECT MATTER HEREOF AND THEREOF AND ALL PRIOR AGREEMENTS, WHETHER WRITTEN OR ORAL, RELATIVE HERETO AND THERETO WHICH ARE NOT CONTAINED HEREIN OR THEREIN ARE SUPERSEDED AND TERMINATED HEREBY, AND THIS NOTE AND THE OTHER LOAN DOCUMENTS MAY NOT BE CONTRADICTED OR VARIED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OR DISCUSSIONS OF THE PARTIES HERETO. THERE ARE NO UNWRITTEN ORAL AGREEMENTS AMONG THE PARTIES HERETO.

Section 5.13 EFFECTIVE DATE: This Agreement shall be deemed effective upon its due execution by all parties of this Note, the Note and the other Loan Documents, and upon entry of the DIP Financing Order.

IN WITNESS WHEREOF, Debtor, intending to be legally bound hereby, has duly executed this Note as of the day and year first written above.

DEBTOR:

MAKER:

BRISTLECONE, INC.

By: 

B. Kyle Ferguson, CEO

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EXHIBIT "B"

Bristlecone Inc.
 14 Day Cash Forecast
 July 12, 2017 - July 25, 2017

Cash Balance at July 11, 2017	35,065	See BCH Cash Status 170615.xlsx
Payroll	(80,750)	Single 2 week payroll
Weekly AP exclusive of Rent	(104,715)	2 weeks at \$50k per week. Primarily underwriting costs
Projected Cash Requirement	<u>(150,400)</u>	

Estimated AP	
Glact	150
Worldwide Express	5,000
Wyoming Secretary of State	5,250
Nevada Dept of Taxation	13,500
Missouri Department of Revenue - Taxation D)	3,850
Tennessee Department of Revenue	15
Ernest Packaging Solutions	250
LexisNexis Risk Solutions Bureau	28,000
Influence and Co	2,500
BXB, Inc.	6,200
Intact Corporation	2,500
Delaware Secretary of State	7,000
Microbilt	14,500
Contrinex, LLC	16,000
	<u>104,715</u>