

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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In re:

VISION QUEST LIGHTING, INC. d/b/a,
E-QUEST LIGHTING

Chapter 11

Case No.: 17-73967 (LAS)

Debtor.

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**FINAL ORDER AUTHORIZING THE USE OF CASH
COLLATERAL PURSUANT TO 11 U.S.C. §§ 105, 361(2) AND 507(b)**

Vision Quest Lighting, Inc. d/b/a E-Quest Lighting (the “**Debtor**”) having filed a petition for relief pursuant to chapter 11 of the Bankruptcy Code on June 28, 2017 (the “**Petition Date**”), and upon the *Declaration of Lawrence Lieberman Under Local Rules 1007-4 in Connection with Chapter 11 Filing, and Local Rule 9077-1 in Support of Certain “First Day” Motions*, dated June 30, 2017 (ECF Doc. No. 12), and the Debtor having filed an application (ECF Doc. No. 17) (the “**Application**”)¹, for entry of an order pursuant to §§ 105, 361, 362, 363 and 364 of title 11, United States Code (the “**Bankruptcy Code**”), Rules 2002, 4001, and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), Rule 4001-5 of the Local Bankruptcy Rules for the Eastern District of New York (the “**Local Bankruptcy Rules**”), and Administrative Order No. 558 (the “**Administrative Order**”), (i) authorizing the use of “cash collateral,” as such term is defined Bankruptcy Code § 363, in which Citibank, N.A. (“**Citibank**”, or the “**Prepetition Lender**”) has an interest (the “**Cash Collateral**”), (ii) providing adequate protection (as hereinafter defined) to the Prepetition Lender; (iii) vacating and modifying the automatic stay imposed by Bankruptcy Code § 362 to the extent necessary to implement and effectuate the terms and provisions of this Interim Order; and (iv) scheduling, pursuant to Bankruptcy Rule 4001, a final hearing (the “**Final Hearing**”) to be held before this Court to consider entry of this Final Order approving (a) the

¹ All capitalized terms used but not otherwise defined herein shall have the meanings given to them in the Application.

Debtor's use of Cash Collateral and (b) the granting of adequate protection to Citibank, all on a final basis (the "**Final Order**").

The Court hereby finds that:

A. The Court has jurisdiction over the Application pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of the Debtor's chapter 11 case and the Application in this district is proper under 28 U.S.C. §§ 1408 and 1409;

B. The statutory predicates for the relief sought in the Application are 11 U.S.C. §§ 105, 361, 362, 363 and 364, Bankruptcy Rules 4001 and 9014, Local Rule 4001-5, and the Administrative Order;

C. On the Petition Date, the Debtor filed a petition for relief pursuant to chapter 11 of the Bankruptcy Code. Without prejudice to the rights of any party in interest the Debtor further asserts that prior to the Petition Date, the Debtor entered into certain loan documents and security agreements with Citibank (collectively hereinafter referred to as the "**Citibank Documents**"). Pursuant to the Citibank Documents, Citibank made loans, advances, and other financial accommodations to and for the benefit of the Debtor secured by a duly perfected first lien on, and security interest in substantially all Debtor's assets including but not limited to, all of Debtor's existing and after acquired accounts, inventory, machinery and equipment, and intangibles, together with the proceeds and products thereof (the "**Collateral**").

D. Without prejudice to the rights of any party in interest, the Debtor acknowledges and agrees that, as of the Petition Date, the Debtor was indebted to Citibank in the approximate amount of \$440,373.73 plus interest, fees, costs and attorney's fees as may be accrued ("**Pre-Petition Obligations**").

E. The successful operation of the business of the Debtor and its ability to the rehabilitation of its business and reorganization of its financial affairs is dependent on its ability to use Cash Collateral.

F. The use of cash collateral proposed hereunder is in the best interests of the Debtor, its estate, creditors, and parties in interest;

G. Citibank is willing to permit the use of its cash collateral upon the terms and conditions of the Citibank Documents and this Interim Order.

H. The Debtor would suffer irreparable harm absent use of cash collateral contemplated herein;

I. It is in the best interest of the Debtor's estate that it be allowed to use cash collateral under the terms and conditions set forth in the Citibank Documents, as modified and supplemented herein, as such is necessary to permit the orderly administration of the Debtor's estate;

J. Due notice of the Application has been given to (i) the Debtor's twenty (20) largest unsecured creditors, or counsel to the Official Committee of Unsecured Creditors (the "**Committee**"), if one is appointed; (ii) the Office of the United States Trustee for Region 2; (iii) counsel to Citibank, N.A., the Debtor's secured lender; (iv) the Internal Revenue Service; (v) the United States Attorney's Office for the Eastern District of New York; (vi) the New York State Department of Taxation and Finance, and (vii) all parties that have filed notices of appearances and requests for notices in the Debtor's chapter 11 case, pursuant to Bankruptcy Code §102, Bankruptcy Rule 4001(c) and all applicable Local Bankruptcy Rules; and

K. The Interim hearing was held by this Court on July 11, 2017, and the Court entered an Interim Order authorizing the Interim use of Cash Collateral on July 14, 2017.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. The Application is granted to the extent set forth herein and any objection that has not been withdrawn or resolved is hereby denied.

2. The Debtor is hereby authorized to: (i) use Cash Collateral; (ii) provide adequate protection (as hereinafter defined) for any diminution in the value of Citibank's Collateral as a result of the automatic stay or the use of the Collateral (including but not limited to the Debtor's

use of Cash Collateral) to Citibank in the form of a superpriority claim under Bankruptcy Code § 507(b), and adequate protection liens on all of the pre- and post-petition assets of the Debtor presently owned or hereinafter acquired, wherever located, of any kind and nature, including but not limited to the collateral described in the Citibank Documents together with the proceeds and products thereof, including but not limited to accounts receivable and inventory, wherever located whether in possession of the Debtor or third parties, under Bankruptcy Code §§ 361(2) and payments to be made to Citibank as set forth in the Budget (as defined below); and (iii) vacate and modify the automatic stay imposed by Bankruptcy Code § 362 solely to the extent necessary to implement and effectuate the terms and provisions of this Final Order. All obligations owed by the Debtor to Citibank shall be due and payable, and shall be paid, by the Debtor in accordance with the requirements of this Final Order and the Citibank Documents.

3. Provided there is no Event of Default (as defined herein), the Debtor is authorized to use Cash Collateral in accordance with the Citibank Documents and this Final Order, to be used by the Debtor strictly in accordance with the budget through the period ending September 30, 2017, a copy of which is annexed hereto as **Exhibit 1** or any further Budget as agreed to in writing by Citibank (the “**Budget**”).

4. The Debtor is authorized, deemed to ratify, and adopts the Citibank Documents as modified and supplemented herein. Except as specifically and expressly modified herein, Citibank’s rights, and remedies, and the Debtor’s obligations, consents, and requirements shall be governed in all respects by the terms and conditions of the Citibank Documents, which are deemed incorporated herein, and which shall continue and be in full force and effect. The Debtor asserts that Citibank Documents as modified and supplemented herein shall constitute valid, binding, and enforceable obligations of the Debtor in accordance with its terms. The Debtor is authorized to do and perform all acts, to make, execute, and deliver any and all agreements, assignments, instruments and documents and to pay all filing fees and recording fees to give effect to any of the terms and conditions of the Citibank Documents as modified and

supplemented herein. To the extent necessary, each officer of the Debtor and such other individuals as may be so authorized by the Debtor are hereby authorized to execute and deliver each document necessary to effect the terms of this Final Order and also comply with the Citibank Documents such execution and delivery to be conclusive of their respective authority to act in the name, and on behalf of the Debtor.

5. Subject to the Carve Out (as defined below), to the extent the Debtor uses Cash Collateral, Citibank consents to the limited use of its cash collateral provided that it is used in accordance with and solely for the purposes set forth in the Budget (as defined below), and subject to the terms of the Citibank Documents and this Final Order. Effective *nunc pro tunc* as of the Petition Date, as adequate protection for any diminution in the value of Citibank interest or the value of the Collateral as a result of the automatic stay or the Debtor's use of the Collateral (including Cash Collateral), Citibank shall receive (i) a superpriority administrative expense claim (the "**Superpriority Claim**") under Bankruptcy Code § 507(b), (ii) valid perfected and enforceable security interests (the "**Adequate Protection Liens**") upon all of the pre and post petition assets of the Debtor presently owned or hereinafter acquired, wherever located, of any kind and nature, including but not limited to the Collateral described in the Citibank Documents together with the proceeds and products thereof, including but not limited to accounts receivable and inventory, wherever located whether in possession of the Debtor or third parties, under Bankruptcy Code § 361(2) (excluding claims which have been or may be commenced under Bankruptcy Code §§ 544, 545, 547, 548, 550, and 551, or the products and proceeds thereof), and (iii) the payments to be made to Citibank as set forth in the Interim Approved Budget (as defined below).

6. This Final Order shall be sufficient evidence of Citibank's perfected first position post-petition liens and security interests in all of the Debtor's assets as provided in the Citibank Documents and this Final Order and shall be binding, enforceable and perfected upon the entry of this Final Order. The Debtor is authorized and directed to execute such documents including, without limitation, Uniform Commercial Code financing statements and to pay such costs and

expenses as may be reasonably required to perfect Citibank's security interests in the Collateral as provided herein; Citibank is authorized (but not required) to file and record financing statements with respect to such security interests and liens, all such financing statements being deemed to have been filed or recorded on the Petition Date.

7. The provisions of this Final Order shall inure to the benefit of Citibank and its assigns and shall also be binding upon the Debtor and its successors and assigns (including any trustee or other fiduciary herein appointed as a legal representative of the Debtor in this Chapter 11 case or in any succeeding case under Chapter 7 or otherwise with respect to the property of the estate of the Debtor).

8. The Debtor shall provide Citibank with such written reports as required under the Citibank Documents.

9. Each of the following shall constitute an "Event of Default" for purposes of this Final Order:

- a. The Court enters an order authorizing the sale of all or substantially all assets of the Debtor that does not provide for the payment in full to Citibank of its claims in cash upon the closing of the sale, unless otherwise agreed by Citibank in its sole and absolute discretion;
- b. The Court enters an order granting relief from the automatic stay to a third party with respect to material assets of the Debtor's estate;
- c. The Debtor ceases operations of its present business as such existed on the Petition Date or takes any material action for the purpose of effecting the foregoing without the prior written consent of Citibank;
- d. The Debtor's bankruptcy case is either dismissed or converted to a Chapter 7 case, pursuant to an order of the Court, the effect of which has not been stayed, or if the Debtor shall file a motion or not oppose a motion seeking such relief;
- e. A chapter 11 trustee, an examiner, or any other responsible person or officer of the Court with similar powers is appointed by order of the Court, the effect of which has not been stayed;
- f. A change in the Debtor's ownership or management occurs, in a manner that is not acceptable to Citibank, in its sole discretion;

- g. This Order is reversed, vacated, stayed, amended, supplemented or otherwise modified in a manner which shall, in the sole opinion of Citibank; (i) materially and adversely affect the rights of Citibank hereunder, or (ii) materially and adversely affect the priority of any or all of Citibank's claims and/or the liens granted herein;
- h. The occurrence, subsequent to the Petition Date, of an Event of Default under the Citibank Documents, as modified and supplemented herein. Any Event of Default occurring and/or existing as of the Petition Date or solely because of the commencement of the Debtor's bankruptcy case on the Petition Date shall not constitute an Event of Default under this Order;
- i. The Debtor expends any funds or monies for any purpose other than those set forth on the Initial Approved Budget within a variance of ten (10%) percent in the aggregate, or the Debtor's net cash flow, accounts receivable, inventory, and collections, as set forth in the Interim Approved Budget is more than ten (10%) percent less than such projections set forth in the Interim Approved Budget, all on a rolling 4-week basis;
- j. The occurrence of a material adverse change, including without limitation any such occurrence resulting from the entry of any order of the Court, in each case as determined by Citibank in its sole and absolute discretion in (1) the condition (financial or otherwise), operations, assets, business or business prospects of the Debtor, (2) the Debtor's ability to repay Citibank, and/or (3) the value of the Citibank Collateral;
- k. Any material and/or intentional misrepresentation by the Debtor in any financial reporting or certifications to be provided by the Debtor to Citibank;
- l. Non-compliance or default by the Debtor with any of the terms and provisions of this Order or the Citibank Documents; provided, however, that said non-compliance or default shall not be deemed an Event of Default if curable and cured by the Debtor within five (5) days after notice of such non-compliance or default is given to the Debtor by Citibank.

10. Upon the occurrence of the earlier of (a) 11:59 p.m. Eastern Time on the fifth day after the date of receipt by the Debtor of a written notice from Citibank of an Event of Default, which notice shall also be provided to the Committee, if any, or the top twenty unsecured creditors, if no committee has been appointed, and the Office of the U.S. Trustee (which notice may be given by facsimile or e-mail transmission) (the "**Default Notice**"), but only in the event such default is still continuing on such date, or (b) September 30, 2017 at 11:59 p.m. Eastern Time, unless

such date is extended in writing by Citibank (the “**Termination Date**”), Citibank’s consent to the Debtor’s use of cash collateral shall terminate, and Citibank shall have the right to move the Court for appropriate relief, including, but not limited to, relief of the restrictions of 11 U.S.C. § 362 or under any other section of the Bankruptcy Code or applicable law or rule, and seek authorization to take immediate action to protect the Collateral from harm, theft and/or dissipation and to exercise all of its contractual, legal and equitable rights and remedies as to all or such part of the Collateral as Citibank shall elect. The September 30, 2017 Termination Date can be extended without further Court Order upon approval by Citibank in writing of a future Budget and to a day as may be specifically agreed in writing to by Citibank and the Debtor.

11. Citibank may seek such relief on an expedited basis by providing the Debtor, Debtor’s counsel, the Committee, if any, or the top twenty unsecured creditors, if no committee has been appointed, and the Office of the U.S. Trustee (which notice may be given by facsimile or e-mail transmission) seven (7) days notice of the hearing on such motion.

12. With respect to an Event of Default as to which a Default Notice has been given, the Debtor shall have five (5) days from the receipt of the Default Notice to cure such default.

13. As consideration for the Carve Out (as defined below), no expenses of administration of the Debtor’s Chapter 11 case or any future proceeding which may result from such case, including liquidation in this Chapter 11 case or other proceedings under the Code, shall be charged against the Collateral pursuant to Bankruptcy Code § 506(c), or similar principles of law without the prior written consent of Citibank and no such consent shall ever be implied from any other action, inaction or acquiescence by Citibank.

14. The automatic stay provided by Bankruptcy Code § 362 shall be and is hereby vacated and terminated to the extent necessary as to Citibank with respect to the creation, perfection and implementation of Citibank’s post-petition liens and security interests in the Collateral.

15. There shall not at any time be entered in the Debtor's Chapter 11 case or any succeeding Chapter 7 case any further order which authorizes (a) the use of cash collateral of the Debtor or the sale, lease or other disposition, out of the ordinary course of business, of property of the estate of the Debtor in which Citibank has an interest or (b) under Bankruptcy Code § 364, the obtaining of credit or the incurring of indebtedness secured by a lien or security interest which is equal or senior to the liens or security interests held by Citibank, or which is entitled to priority administrative status which is equal to or superior to that granted to Citibank herein, unless in either case (i) Citibank shall have given its prior written consent thereto or (ii) such order requires that there shall first be indefeasibly paid in full to Citibank all debts and obligations of the Debtor which arise or result from the Citibank Documents and the obligations, security interests and liens authorized herein.

16. The provisions of this Final Order and any action pursuant thereto shall be and remain in effect unimpaired and shall survive entry of any order which may be entered confirming a chapter 11 plan of the Debtor or converting this case from Chapter 11 to Chapter 7 and the terms and provisions of this Final Order, as well as the priorities, liens and security interests created hereunder, shall continue in this or any other superseding case under the Code, and such liens and security interests shall maintain that priority as provided for in this Final Order until satisfied and discharged in full.

17. The term "Carve Out" shall mean: (i) Quarterly fees of the United States Trustee and other fees due the United States Bankruptcy Court pursuant to 28 U.S.C. 1930, including any fees and applicable interest thereon pursuant to chapter 123 of title 28, United States Code; (ii) any cost and fees of a chapter 7 Trustee, should one be appointed, however, not to exceed the amount of \$10,000; and (iii) allowed professional fees and expenses of the Professionals retained by the Debtor, (a) to the extent incurred or paid prior to the delivery of a Default Notice or the occurrence of a Termination Date, whichever is earlier, and (b) to the extent such fees and

expenses are consistent with the Budget as it relates to Professional fees and expenses subject to the limitation of the use of funds set forth in this Final Order.

18. No plan confirmed in this case shall impair, effect, amend or otherwise modify the rights of Citibank under this Final Order or the Citibank Documents, unless Citibank expressly consents in writing.

19. This Final Order has been negotiated in good faith and at arm's length between the Debtor and Citibank.

20. The Debtor shall provide Citibank with weekly reports comparing the previous week's actual cash flow with such week's projections contained in the Budget or subsequent approved Budgets. Such reports shall also include an aging of accounts receivable and a list of Deposits received for orders not yet delivered and shall be received by Citibank no later than Thursday of each week.

21. Without prejudice to the rights of third parties to the extent set forth in this paragraph: (a) the validity, extent, priority, perfection, enforceability and non-avoidability of Citibank's pre-petition claims against the Debtor and/or pre-petition liens shall not be subject to challenge by the Debtor; (b) the Debtor shall not seek to avoid or challenge (whether pursuant to Chapter 5 of Bankruptcy Code or otherwise) any transfer made by or on behalf of the Debtor to or for the benefit of Citibank, whether prior or subsequent to the Petition Date; and (c) the Debtor hereby acknowledges the extent, validity and priority of Citibank's liens and security interests in the Collateral and releases and waives all defenses, affirmative defenses, counterclaims, claims, causes of action, recoupment, setoffs or other rights that it may have to contest (1) any Events of Default (as defined in this Final Order) which were or could have been declared by Citibank as of the Petition Date, (2) any provisions of the Citibank Documents, (3) the amount of the Pre-Petition Obligations and/or the value of the Collateral on the Petition Date, or (4) the conduct of Citibank and its directors, officers, employees, agents, attorneys and other professionals (collectively, the "**Citibank Parties**") in administering the business relationship among the Debtor and Citibank,

including, without limitation, “equitable subordination”, “lender liability” and/or “deepening insolvency” claims and causes of action. The Debtor hereby waives and agrees not to assert any defenses, offsets, claims, or counterclaims, if any, with respect to the Pre-Petition Obligations, or to challenge the extent, validity, priority, enforceability, propriety or perfection of any of the liens and security interests encumbering Citibank's pre-petition Collateral securing same, and shall not seek to avoid or challenge any transfer made by or on behalf of the Debtor to or for the benefit of Citibank prior to the Petition Date. Notwithstanding anything to the contrary contained in the immediately preceding sentence, (i) counsel for Committee may commence a proceeding in this Court pursuant to 11 U.S.C. § 506 (a) challenging the extent, validity and/or priority of Citibank's pre-Chapter 11 liens, (b) seeking to avoid or challenge any transfer made by or on behalf of the Debtor to or for the benefit of Citibank prior to the Petition Date or (c) seeking damages or equitable relief against Citibank arising from or related to the Pre-Petition business relationship between the Debtor and Citibank including without limitation “equitable subordination”, or “lender liability” claims and causes of action (collectively a “**Challenge**”) provided such action is commenced within sixty (60) days from the date of appointment of such counsel; provided, however, that no portion of the Carve Out in this or any subsequent order shall be available to fund the Committee's prosecution of such Challenge, or (ii) if no Committee is formed or the Committee fails to appoint counsel, any party-in-interest, except the Debtor, may commence a Challenge proceeding in this Court provided such action is commenced within seventy-five (75) days from the date of entry of this Final Order, or (iii) upon conversion of the Debtor's chapter 11 case to a case under chapter 7, a trustee, to the extent any period prior to conversion has not yet expired. All parties in interest, including without limitation the Committee, that fail to act in accordance with the time periods set forth in the preceding sentences of this paragraph shall be, and hereby are, barred forever from commencing a Challenge. The foregoing is without prejudice to any and all of the Citibank Parties' legal and equitable claims, counterclaims, defenses and/or rights of offset and setoff in response to any such Challenge, all of which are reserved, and the

foregoing shall in no event revive, renew or reinstate any applicable statute of limitations which may have expired prior to the date of initiation of such Challenge. Despite the commencement of a Challenge, Citibank's pre-petition claims and liens shall be deemed valid, binding, properly perfected, enforceable, non-avoidable, not subject to disallowance under Bankruptcy Code § 502(d) and not subject to subordination under Bankruptcy Code § 510 until such time as a final and non-appealable order is entered sustaining such Challenge in favor of the plaintiffs therein.

22. Except with respect to Citibank and with respect to a Challenge, no rights are created under this Final Order for the benefit of any creditor of the Debtor, any other party in interest in the Debtor's bankruptcy case, or any other persons or entities, or any direct, indirect or incidental beneficiaries thereof.

23. The stay under Bankruptcy Rule 6004(h) is hereby waived and shall not apply to this Final Order.

24. To the extent that any of the provisions of this Final Order shall conflict with any of the provisions of the Citibank Documents, this Final Order is deemed to control and shall supersede the conflicting provision(s). To the extent that any of the provisions of this Final Order shall conflict with any order of the Court authorizing the Debtor to continue the use of pre-petition bank accounts, cash management systems and/or business forms, or any similar orders, then this Final Order is deemed to control and supersede the conflicting provision(s) in said orders.

25. Citibank and the Debtor may amend, modify or supplement any of the provisions of the Citibank Documents (collectively, a "**Modification**") without further order of the Court, provided that (a) such Modification is not material, and (b) notice of such Modification is filed with the Court and given to the Committee and if no Committee to the top twenty unsecured creditors, and the U.S. Trustee's counsel reasonably prior to the proposed effective date thereof, except that filing with the Court shall not be required with respect to any Modification that in addition to being non-material is also technical and/or ministerial. The foregoing provisions shall not apply to any forbearance or waiver by Citibank with respect to any Events of Default which may have

occurred (and the foregoing provisions shall not limit or impair Citibank's absolute discretion to agree to such forbearance or waiver), provided that such forbearance or waiver is not itself conditioned upon the Debtor's agreeing to any Modification that is material.

26. The Debtor's authorized use of Cash Collateral pursuant to this Final Order shall be in effect for the period commencing with the Petition Date through and including September 30, 2017 at 11:59 p.m. Eastern or such extension date as may be agreed upon by Citibank.

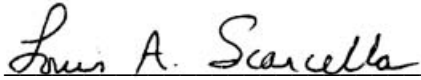
27. This Final Order is without prejudice to the right of Citibank to request at any time further adequate protection for the Debtor's use of Cash Collateral and this Final Order shall not be deemed to preclude Citibank from seeking such relief as it may deem necessary or appropriate including, but not limited to, relief from the automatic stay.

28. This Final Order is not intended nor shall it be construed as a waiver or limitation in any way of any rights or remedies of Citibank under the Bankruptcy Code or other applicable law, which it may have.

29. Citibank shall not be subject to the equitable doctrines of "marshalling" or any similar claim or doctrine with respect to any Collateral.

Dated: July 31, 2017
Central Islip, New York




Louis A. Scarcella
United States Bankruptcy Judge