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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
In re

Chapter 11

NATIONAL EVENTS HOLDINGS, LLC,  
*et al*<sup>1</sup>,

Case No. 17-11556 (JLG)

(Jointly Administered)

Debtors.  
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**DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS (I) AUTHORIZING DEBTORS IN POSSESSION TO OBTAIN POSTPETITION FINANCING PURSUANT TO 11 U.S.C. §§ 105, 361, 362, 363 AND 364; (II) GRANTING LIENS, SECURITY INTERESTS AND SUPERPRIORITY CLAIMS; (III) AUTHORIZING USE OF CASH COLLATERAL AND GRANTING ADEQUATE PROTECTION; (IV) MODIFYING THE AUTOMATIC STAY; AND (V) SCHEDULING A FINAL HEARING**

The above-captioned debtors (the "Debtors"), by their counsel, Herrick, Feinstein LLP, as and for their motion (the "Motion") for entry of an interim order substantially in the form annexed hereto as Exhibit A (the "Interim Order"), and a final order (the "Final Order" and, together with the Interim Order, the "DIP Orders"): (i) authorizing the Debtors to enter into a debtor-in-possession financing facility (the "DIP Loan") with Falcon Strategic Partners IV, LP and FMP Agency Services, LLC (collectively, the "DIP Lender") pursuant to the terms of the

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<sup>1</sup> The last four numbers of each Debtor's taxpayer identification number are National Events Holdings, LLC (7314); National Events Intermediate, LLC (0566); National Event Company II, LLC (6663); National Event Company III, LLC (7592); and World Events Group II, LLC (9429). The Debtors' address is 1430 Broadway, 7th Floor, New York, New York 10018.

Interim Order; (ii) granting liens and superpriority administrative expense status in connection with the DIP Loan pursuant to 11 U.S.C. § 364; (iii) authorizing the Debtors to use cash collateral pursuant to 11 U.S.C. § 363; and (iv) scheduling a final hearing with respect to the relief requested herein pursuant to Rule 4001 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), respectfully represent as follows:

### **SUMMARY OF RELIEF REQUESTED**

1. This Motion is a request to approve a commercially reasonable lending facility between debtors-in-possession and their existing prepetition secured lender, who has agreed to make a debtor-in-possession loan on the terms specified in the Interim Order and to permit use of cash collateral.

2. The proposed financing is advantageous to the Debtors because it provides critical debtor-in-possession financing during the next phase of the Debtors’ chapter 11 cases, specifically the Debtors’ efforts to liquidate the remaining inventory of tickets before the tickets become stale, and the Debtors’ continuing Investigation (as such term is defined in the Interim Order) into the Causes of Action (as such term is defined in the Interim Order).

3. As the Court is aware, these chapter 11 cases are related to the chapter 11 cases of the Debtors’ related entities (the so-called “Inc. Debtors”, *i.e.*, National Events of America, Inc. and New World Events Group, Inc.).

4. In this case, the DIP Lender and Debtors have negotiated the terms of the proposed financing here which, if approved, will enable the Debtors to continue their Wind-Down efforts efficiently and continue their Investigation.<sup>2</sup>

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<sup>2</sup> At the same time, the DIP Lender has negotiated with the receiver of the Inc. Debtors and other principal parties in interest to administer those cases efficiently and conduct their own investigations. As a result, all of these parties from the Debtors’ and the Inc. Debtors’ cases have reached an agreement in principle regarding a proposed protocol to govern the administration of both sets of chapter 11 cases.

5. The proposed DIP Loan will provide the Debtors up to \$245,000 to be used to investigate potential causes of actions and claims the Debtors may have. The proceeds of such actions and claims would benefit the Debtors' estates and creditors. As contemplated by the protocol, the investigations by the Debtors and the Inc. Debtors would need to be concluded by September 20, 2017. At the same time, the professionals of the Debtors (including the chief restructuring officer), the DIP Lender, the Receiver of the Inc. Debtors and other lenders would coordinate their investigations, avoid conflicts and minimize any duplication of efforts to the extent practicable.

6. The Debtors submit that the proposed financing, which for the purposes of this Motion includes the authority to use cash collateral, will provide necessary funding to complete the Wind-Down (as such term is defined in the Interim Order) and enable the Debtors to work on maximizing recovery for their estates. The need for the financing is apparent, the terms are reasonable, and the Debtors respectfully submit that the Motion should be granted.

#### **SUMMARY OF TERMS OF PROPOSED DIP LOAN**

7. Following is a summary of the material terms of the Debtors' request for authority, on an interim and final basis, to enter into the DIP Loan and to use cash collateral:

#### **DIP LOAN**

- Commitment:** Up to \$245,000 (the "Commitment").
- Use of Proceeds:** Proceeds of the DIP Loans shall be utilized to complete the Investigation and the Wind-Down in accordance with the Approved Investigation and Wind-Down Budget (including Permitted Variances) both as defined in the Interim Order.
- Interest:** 11 % per annum.
- Fees:** None.
- Default Interest:** 15% per annum.
- Term:** The DIP Loans shall mature on the date (the "Maturity Date") that is earliest of (i) 30 days after the date hereof, if this Court does not enter the Final Order in a form acceptable to the DIP Lender in its sole discretion;

(ii) December 31, 2017; (iii) the date on which a Chapter 11 plan of reorganization becomes effective; (iv) upon entry of an order dismissing or converting any of these Chapter 11 Cases to a case under Chapter 7 of the Bankruptcy Code; (v) upon the request by any party in interest for the appointment of a trustee or examiner or the appointment of a creditors' committee with respect to any of these Chapter 11 Cases; (vi) upon the failure of the Debtors' chief restructuring officer to continue to serve in such position; (vii) upon any change of control of any of the Debtors; or (viii) upon any breach of any provision of this Interim Order or failure to comply with the Approved Investigation and Wind-Down Budget, including any Milestones.

**Conditions  
of Lending:**

The Interim Order shall have been entered on or before 5:00 p.m. on July 19, 2017, in form and substance acceptable to the DIP Lender in its sole discretion; the DIP Lender shall have agreed to an Approved Investigation and Wind-Down Budget in its sole discretion and each such borrowing under the DIP Facility shall be in accordance with the terms of such Approved Investigation and Wind-Down Budget; no default shall have occurred; the Debtors shall be in compliance with all terms, provisions, conditions, and covenants contained herein; each of the representations and warranties contained in the Interim Order of the Final Order, as applicable remain true and correct; each Debtor shall have executed and delivered a promissory note to the DIP Lender in the principal amount of the Maximum Amount; and an Order granting the Prepetition Secured Parties' motion for relief from the automatic stay [ECF No. 24] shall have been entered in form and substance satisfactory to the Prepetition Secured Parties in their sole discretion.

**Collateral:**

The DIP Loan shall be secured by the Causes of Action (as such term is defined in the Interim Order), including, subject to the entry of the Final Order, the proceeds of avoidance actions under Chapter 5 of the Bankruptcy Code.

**Priority and Liens:**

To secure the DIP Obligations, immediately upon, and effective as of entry of this Interim Order, the DIP Lender is hereby a senior, first priority, continuing, valid, binding, enforceable, non-avoidable, and automatically and properly perfected DIP Liens in the DIP Collateral as follows, subject to the Carve-Out.

**Repayments:**

The proceeds of any recoveries from the Causes of Action shall immediately be applied to repay the following obligations: (i) first, amounts owed to the Secured Parties for the Debtors' use of Cash Collateral pursuant to the Cash Collateral Orders in the amount of \$106,690.18 through July 14, 2017, plus additional amounts incurred subsequent thereto, less any portion of such amounts directly incurred to preserve or to liquidate the Prepetition Collateral; (ii) second, accrued interest and fees and other amounts (other than principal) outstanding under the DIP Facility; and (iii) third, repayment of the Emergency Pre-Filing Advance (as hereinafter defined)(including interest at the above rates); and (iv) fourth, principal amounts owed under the DIP Facility. Any excess amounts shall be available to the Debtors' estates.

**Carve-Out:** Means the sum of the following: (a) all fees required to be paid to the Clerk of the Court and to the Office of the United States Trustee under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate; (b) all allowed and unpaid fees and expenses incurred by parties retained by the Debtors pursuant to section 327, 328, or 363 of the Bankruptcy Code, and the Committee, if any, pursuant to section 328 or 1103 of the Bankruptcy Code (each, a “Professional”) at any time before the Maturity Date, whether allowed by the Court prior to or after such termination, provided, however, that in no event shall any such fees and expenses exceed the amount set forth in the Approved Budget for any such Professional and the amount of any retainer held by such Professional; and (c) all reasonable fees and expenses up to \$20,000 incurred by a Chapter 7 trustee following conversion of these Chapter 11 Cases to Chapter 7.

**Default Remedies:** Upon the occurrence and during the continuance of any Default under the DIP Documents, including the Approved Budget and any Milestone thereunder, all rights and remedies provided for herein, and to take any or all of the following actions without further notice, motion, or application to, order of, or hearing before, this Court: (1) immediately terminate the Debtors’ rights, if any, under this Interim Order to use Cash Collateral; (2) cease making any DIP Loans to the Debtors (but without affecting any of the DIP Obligations or the DIP Liens securing the DIP Obligations); (3) declare the individual commitments of the DIP Lender to make further DIP Loans to be terminated; (4) declare the unpaid principal amount of all outstanding DIP Loans, all interest accrued and unpaid thereon, and all other DIP Obligations to be immediately due and payable, without presentment, demand, protest, or other notice of any kind, all of which are hereby expressly waived by the Debtors; (5) freeze monies or balances in the Debtors’ accounts; (6) immediately set off any and all amounts in accounts maintained by the Debtors against the DIP Obligations, enforce all rights and remedies against the DIP Collateral for application toward the DIP Obligations, and otherwise proceed to protect or enforce all rights and remedies of the DIP Lender under this Interim Order, any of the other DIP Documents, or applicable law; and (7) take any other actions or exercise any other rights or remedies permitted under this Interim Order or the Final Order, as applicable, the other DIP Documents, or applicable law to effectuate the repayment of the DIP Obligations.

8. In the event of any discrepancy between the summary description of the DIP Loan contained in the Motion and the terms of the Interim Order or the Final Order, as the case may be, the terms of the Interim Order or the Final Order, as applicable, shall control.

### **INTRODUCTION**

9. On June 5, 2017 (the “Petition Date”), the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in this Court, and orders for relief under section 301 of the Bankruptcy Code were entered in these

cases (the “Chapter 11 Cases”). A motion directing the joint administration of the Chapter 11 Cases is pending.

10. The Debtors have been authorized to remain in possession of their property and to continue in the operation and management of their businesses as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

11. No official committee of unsecured creditors has been appointed by the Office of the United States Trustee for the Southern District of New York (the “U.S. Trustee”) in the Chapter 11 Cases.

### **BACKGROUND**

12. The Debtors operated together as a ticket broker and wholesale distributor of tickets for sporting and theatrical events that was formed in 2006. The Debtors provided ticketing services for concert, theater and sporting event tickets, as well as various V.I.P. hospitality packages that delivered exclusive access to big name events, including hotels, celebrity meet and greets, and exclusive parties.

13. On May 31, 2017, Jason Nissen (“Nissen”), the former chief executive officer of the Debtor, was arrested and charged by the Federal Bureau of Investigation (the “FBI”) with allegedly defrauding victims of at least \$70 million through what the FBI characterized as a Ponzi scheme. According to the complaint filed in the United States District Court for the Southern District of New York (the “Complaint”), Nissen “represented to victims that he would use money lent to him and his companies by victims to purchase bulk quantities of premium tickets to sporting and entertainment events...However...Nissen used the victims’ money in large part to repay other victims and enrich himself.”

14. According to the Complaint, to perpetuate his fraud, Nissen presented to his victims falsified financial documents and inflated accounts receivable ledgers as purported proof that their money was being used to purchase tickets for resale.

15. The Complaint further alleges that on or about May 7, 2017, Nissen admitted to one of his victims that he had been operating a Ponzi scheme, and that on May 10, 2017 he made a similar acknowledgement to another victim.

16. The Debtors learned of Nissen's fraudulent activities on or about May 10, 2017. Nissen was terminated on that date and on May 11, 2017, the Board of Managers of National Events Holdings, LLC retained RAS Advisors, LLC, a nationally-known crisis management and turnaround firm. Timothy Puopolo of RAS has served as Chief Restructuring Officer since that date.

17. Since RAS has been retained, the CRO's principal activities have consisted of (1) liquidating the Debtors' inventory of saleable tickets, (2) reducing operating expenses to a bare minimum, (3) ensuring the integrity of the Debtors' remaining assets, and (4) investigating potential assets and recoveries, such as amounts due from counterparties.

18. Nissen's fraud is still the subject of a continuing criminal investigation by the United States Attorney for the Southern District of New York (the "US Attorney Investigation"). Since May 10, 2017, the Debtors have fully cooperated with the US Attorney Investigation by responding to subpoenas that have been issued, providing bank and financial records and responding to inquiries. Because the US Attorney Investigation has not concluded, the Debtors anticipate that they will have continuing response obligations.

19. As indicated above, the Debtors are well along in the process of completing the Collateral Liquidation. In fact, on July 10, 2017 the Debtors filed a motion seeking authority to

sell their remaining inventory of tickets to Major League Baseball games, concerts and the US Open tennis championship matches through a sealed-bid auction. When the auction contemplated by that motion is completed, the Debtors' primary focus will turn to the Investigation and the Causes of Action.

20. The Debtors also will be conducting the Collateral Liquidation for the benefit of Falcon, which will be entitled to receive the net proceeds of such liquidation, i.e., after the costs of collection thereof, with the proceeds to be retained by Falcon in a segregated account pending further order of this Court. Falcon has advised the Debtors that it intends to file an order (the "Falcon Order") with respect to its motion for relief from the automatic stay [ECF 24], which will address the segregation and retention of such funds.

21. The Debtors also own a 40% interest in Concierge Live, LLC, a ticket management software company, and a 50% interest in Winter Music Festivals LLC, a company that produces concert events. The Debtors are currently evaluating the best methods for maximizing the value of those assets.

#### **PREPETITION FUNDING OF THE DEBTORS' OPERATIONS**

22. Pursuant to (a) that certain Purchase Agreement dated July 6, 2015 (as amended, supplemented, amended and restated or otherwise modified from time to time in accordance with the terms thereof, including on August 20, 2015, November 23, 2015, January 13, 2016, April 11, 2017 (the "Fourth Amendment"), and June 5, 2017 (the "Fifth Amendment"), the "Prepetition Credit Agreement"), among Debtors National Events Intermediate, LLC ("NECO"), National Events Holdings, LLC ("Holdings"), and "Subsidiary Guarantors" National Event Company II, LLC, National Event Company III, LLC, and World Events Group II, LLC, Jason Nissen, Falcon Strategic Partners IV, LP (in such capacity, the "Prepetition Lender"), FMP Agency Services, LLC (in such capacity, the "Prepetition Agent"), the Prepetition Lender agreed



to purchase (x) up to \$25,000,000 in aggregate original principal amount of the 11% Senior Secured Notes due 2020 of NECO, (y) up to \$15,000,000 in aggregate original principal amount of the 8% Senior Unsecured PIK Notes due 2022 of NECO, and (z) 48 Class A Units representing membership interests in Holdings, with the Fourth Amendment, dated April 11, 2017, providing for an additional tranche of Senior Secured Notes in the amount of \$4,000,000, and the Fifth Amendment providing emergency pre-filing funds in the amount of \$108,572 on the Petition Date to enable the filing of these Chapter 11 Cases (the “Emergency Pre-Filing Advance”), and (b) the other Financing Documents (as defined in the Prepetition Credit Agreement and, together with the Prepetition Credit Agreement, the “Prepetition Loan Documents”), the Prepetition Lender provided fully perfected secured loans (the “Prepetition Secured Loans”) to and for the benefit of the Debtors in the amount of \$29,000,000, and senior unsecured loans (the “Prepetition Unsecured Loans”) in the aggregate amount of \$15,000,000.

23. As of the Petition Date, the Debtors were indebted to the Prepetition Lender, without defense, counterclaim, or offset of any kind, in respect of (1) the Prepetition Secured Loans made in the aggregate outstanding principal amount under the Prepetition Loan Documents of not less than \$29,108,572, plus accrued and unpaid interest and fees with respect thereto (which, as of June 5, 2017, was not less than \$681,111.11, and (2) Prepetition Unsecured Loans made in the aggregate outstanding principal amount under the Prepetition Loan Documents of not less than \$15,000,000, plus accrued and unpaid interest and fees with respect thereto (which, as of June 5, 2017, was not less than \$2,231,214.20 (collectively, the “Prepetition Obligations”; if solely in connection with the Prepetition Secured Loans, collectively, the “Prepetition Secured Obligations”, and if solely in connection with the Prepetition Unsecured Loans, collectively, the “Prepetition Unsecured Obligations”). A copy of the Prepetition Loan

Documents was attached as Exhibit B to Debtors' Motion for Entry Of Interim And Final Orders (I) Authorizing Debtors In Possession To Obtain Postpetition Financing Pursuant To 11 U.S.C. §§ 105, 361, 362, 363 And 364; (II) Granting Liens, Security Interests And Superpriority Claims; (III) Authorizing Use Of Cash Collateral And Granting Adequate Protection; (IV) Modifying The Automatic Stay; And (V) Scheduling A Final Hearing [ECF 6].

24. To secure the Prepetition Obligations related to the Prepetition Secured Loans, the Debtors granted to the Prepetition Lender for the benefit of the Prepetition Lender security interests in and liens upon (the "Prepetition Liens") all "Collateral" under, and as defined in, the Prepetition Loan Documents (the "Prepetition Collateral").

25. The Debtors believe that all cash of the Debtors wherever located on the Petition Date represented either proceeds of loans or other financial accommodations from the Prepetition Lenders to the Debtors or proceeds of Prepetition Collateral. Pursuant to the Prepetition Loan Documents, the Debtors believe that the Prepetition Lender has a first, valid, and perfected security interest in and lien on all of the Debtors' cash, and that those funds constitute "cash collateral" within the meaning of section 363(a) of the Bankruptcy Code.

26. The Debtors believe that the Prepetition Lender's Liens constitute valid, binding, enforceable, and perfected first-priority liens subject only to liens described in or otherwise permitted by the Prepetition Loan Agreement, and are not subject to avoidance or subordination that are valid, binding, enforceable, and in existence on the Petition Date and the Carve-Out (as hereinafter defined) in accordance with the provisions of this Interim Order) pursuant to the Bankruptcy Code or applicable non-bankruptcy law. The Debtors believe: (1) that the Prepetition Debt constitutes legal, valid, and binding obligations of the Debtors, enforceable in accordance with the terms of the Prepetition Loan Documents (other than in respect of the stay of

enforcement arising from Bankruptcy Code section 362); (2) that no offsets, defenses, or counterclaims to the Prepetition Indebtedness exist; and (3) that no portion of the Prepetition Debt is subject to avoidance or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law.

27. An immediate need exists for the Debtors to obtain funds in order to continue the Wind-Down and the Investigation. Without such funds, the Debtors will not be able to pay their operating expenses or pay or accrue the professional expenses necessary to pursue the Investigation and the Causes of Action. The Debtors are unable to obtain the required funds in the form of unsecured credit or unsecured debt allowable under section 503(b)(1) of the Bankruptcy Code, as an administrative expense pursuant to section 364(a) or 364(b) of the Bankruptcy Code, unsecured debt having the priority afforded by section 364(c)(1) or secured debt as described in section 364(c)(2) or 364(c)(3) except as set forth herein.

28. The Prepetition Lender asserts, and the Debtors believe, that substantially all of the Debtors' assets are subject to the Prepetition Lender's Liens. The Prepetition Lender has objected to any further use of the Prepetition Collateral by the Debtors, except under the terms of the Interim Order assuring that the liens and the various claims, superpriority claims, and other protections granted pursuant to this Interim Order will not be affected by any subsequent reversal or modification of this Interim Order or any other order, as provided in section 364(e) of the Bankruptcy Code, which is applicable to the postpetition financing arrangement contemplated by this Interim Order.

29. Subject to the provisions of the Interim Order, the DIP Lender has agreed to provide postpetition financing to permit the Debtors to complete the Wind-Down and pursue the Investigations and the Causes of Action. The Debtors thus seek authority to borrow money

pursuant to the DIP Loan Documents (all loans, advances and any other indebtedness or obligations, contingent or absolute, which may now or from time to time hereafter be owing by the Debtors to the DIP Lender, the “DIP Loans”), and to perform their obligations hereunder and thereunder, solely in accordance with, and subject to, the terms of the Interim Order, in compliance with (on a line-by-line basis) and for the purposes of funding those expenses set forth in the Approved Investigation and Wind-Down Budget ((as such term is defined in the Interim Order) attached as Exhibit B hereto (as may be modified or supplemented from time to time without further order of this Court by additional budgets (covering any time period covered by a prior budget or covering additional time periods) to which the DIP Lender, and the Debtors agree, and together with the Approved Collateral Liquidation Budget (as such term is defined in the Interim Order), the “Budget”)).

**THE REASONS WHY EMERGENCY INTERIM RELIEF IS REQUIRED**

30. The Debtors’ respectfully submit that without immediate access to the DIP Loan, the Wind-Down and the Investigation will not be able to proceed. As indicated in the Budget, over the course of the next few weeks, or until such time as this Court can schedule a final hearing on the Motion, the Debtors will either be accruing or paying substantial expenses. During that period, the Debtors predict that they will need to borrow \$185,000 from the DIP Loan to meet their obligations set forth in the Budget. The Debtors propose that all loans and advances authorized on an interim basis be subject to the terms of the DIP Term Sheet generally and the Interim Order specifically.

31. The pre-petition financing arrangement which the Debtors negotiated with the Prepetition Lender was negotiated at arms’ length and contains terms favorable to the Debtors. The DIP Loan was likewise negotiated with the DIP Lender at arms’ length and contains terms

favorable to the Debtors. Based upon the Debtors' familiarity with the market for this type of loan, and the current state of the credit markets regarding debtor in possession loans, they believe that it is unlikely that there is any other lender that would offer more favorable terms.

32. The Debtors cannot continue to operate in bankruptcy without access to the liquidity provided by the DIP Loan. The Debtors believe that if the relief sought herein is granted, it will provide the Debtors with the opportunity to pursue their wind down strategy and to preserve their assets and business for the benefit of their creditors and estates.

### **SPECIFIC RELIEF REQUESTED**

33. This Motion is brought pursuant to sections 361, 363(b) and 364(b) and (c) of the Bankruptcy Code, and *inter alia*, Bankruptcy Rule 4001. The Debtors seek entry of the Interim Order (and ultimately the Final Order) authorizing the Debtors to borrow from the DIP Lender and to use cash collateral, pursuant to the terms of the DIP Loan substantially, and without material change, in the form annexed hereto and entry of a virtually identical Final Order.

34. Pursuant to sections 364(c)(1) of the Bankruptcy Code, this Court is authorized to permit a debtor to obtain post-petition credit entitled to superpriority administrative expense status and secured by a first security interest in and lien on property of the estate, provided a debtor is otherwise unable to obtain unsecured credit allowable under section 363(b)(1) of the Bankruptcy Code as an administrative expense and provides adequate protection to existing lienholders. Under the Interim Order, the DIP Lender's and post-petition liens will prime the pre-petition liens of the Prepetition Lenders with the consent of the Prepetition Lender on the terms set forth in the Interim Order.

35. Pursuant to, *inter alia*, sections 363 and 361 of the Bankruptcy Code, the Court may authorize the use of Cash Collateral, provided that all entities with an interest therein

received adequate protection. In this case, the use of Cash Collateral will be limited to activities relating to the Approved Collateral Liquidation, with the net proceeds to be held subject to the terms of the Falcon Order. Specifically, the Debtors are being authorized to use Cash Collateral to the extent, and in strict compliance with, the Approved Collateral Liquidation Budget.

36. The Debtors propose to obtain post-petition credit from the DIP Lender and to use cash collateral to pay ordinary and necessary operating expenses. The Debtors' proposed operational expenditures relate to payment for outside services and payroll and payroll-related expenses. At the current time, no material capital expenditures are contemplated.

37. As demonstrated herein and in the Budget, and as will be shown at any evidentiary hearing held with respect to the Motion (if required), the financing, borrowing and use of cash collateral is necessary, appropriate and, indeed, essential to the Debtors' Wind-Down efforts. It is, moreover, given the Debtors' circumstances and the time constraints the most favorable financing - if not the only financing - currently available to the Debtors. Absent the ability to borrow, the Debtors will be unable to support the Investigations or complete the Wind-Down process.

#### **AUTHORITY FOR THE REQUESTED RELIEF**

38. It is vital to the success of the Debtors' wind-down efforts that access to cash collateral and DIP Loan borrowings be obtained immediately. Absent the immediate ability to borrow and utilize cash collateral, the Debtors face a risk of severe disruption to their wind-down efforts and irreparable harm to their assets.

#### **A. The Debtors Satisfy the Requirements for Obtaining Credit Under Section 364(c) of the Bankruptcy Code**

39. The Debtors propose to obtain financing under the DIP Loan by providing security interests and liens (and super priority and administrative claims) as set forth above

pursuant to section 364(c) of the Bankruptcy Code. Section 364(c) of the Bankruptcy Code provides as follows:

(c) If the trustee is unable to obtain unsecured credit allowable under section 503(b)(1) of this title as an administrative expense, the court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt --

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

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

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

11 U.S.C. § 364(c). Given the alternative provisions of section 364(c), the Debtors only have to meet one of the conditions here.

40. Thus, the statutory requirement for obtaining postpetition credit under section 364(c) is a finding that the debtor is “unable to obtain unsecured credit allowable under section 503(b)(1) of [the Bankruptcy Code] as an administrative expense.” See In re Ames Dept. Stores, Inc., 115 B.R. 34, 37-39 (Bankr. S.D.N.Y. 1990) (debtor must demonstrate a reasonable effort to obtain other sources of financing); In re Garland Corp., 6 B.R. 456, 461 n. 11 (1<sup>st</sup> Cir. BAP 1980) (secured credit under section 364 is authorized upon showing that unsecured credit cannot be obtained); In re Crouse Group, Inc., 71 B.R. 544, 549 (Bankr. E.D. Pa.), modified on other grounds, 75 B.R. 553 (1987) (debtor must prove that it was unable to obtain unsecured credit pursuant to 11 U.S.C. § 354(b)).

41. Courts have articulated a three-part test to determine whether financing should be authorized under section 364(c) of the Bankruptcy Code. Specifically, courts look to whether:

- (a) the debtor is unable to obtain unsecured credit under section 364(b), i.e., by allowing a lender only an administrative claim;
- (b) the credit transaction is necessary to preserve the assets of the estate; and
- (c) the terms of the transaction are fair, reasonable, and adequate, given the circumstances of the debtor-borrower and the proposed lender.

In re Ames Dept. Stores, 115 B.R. at 37-39; see also In re St. Mary Hospital, 86 B.R. 393, 401-02 (Bankr. E.D. Pa. 1988); In re Crouse Group, Inc., 71 B.R. at 549.

42. The Debtors believe that the DIP Loan will provide adequate time and resources for the Debtors to complete the Wind-Down and pursue the Investigations. If, however, the Debtors were unable to obtain debtor in possession financing, they would be unable to complete that process.

43. Lastly, given the Debtors' current circumstances, the Debtors believe that the terms of the DIP Loan are fair, reasonable and adequate. Based on the foregoing, the incurrence of debt under the DIP Loan and the granting of super-priority administrative claims is appropriate under the circumstances.

**B. The Debtors Satisfy the Requirements for Using Cash Collateral Under Section 363 of the Bankruptcy Code**

44. Unless a creditor consents, the use of cash collateral is conditioned upon the adequate protection of the creditor's interest. See 11 U.S.C. §§ 363(c)(2), (e). The Bankruptcy Code does not explicitly define "adequate protection." However, section 361 suggests that adequate protection may be provided by (i) periodic cash payments to the extent that there is a decrease in the lien holder's interest in the property; (ii) providing additional or replacement liens; or (iii) other relief resulting in the realization of the "indubitable equivalent" of the lien



holder's interest in the property. See 11 U.S.C. § 361. The third possibility is regarded as a "catch-all" provision, affording courts discretion, on a case-by-case basis, to determine what level of protection is appropriate to provide a secured party. See In re Swedeland Dev. Group, Inc., 16 F.3d 552, 564 (3d Cir. 1994).

45. The goal of adequate protection is to protect a secured lender against a diminution in the value of its collateral during the reorganization process. See 495 Cen. Park, 136 B.R. 626, 631 (Bankr. S.D.N.Y. 1992) ("The goal of adequate protection is to safeguard the secured creditor in the value of its interest [during the chapter 11 case]."); In re Beker Indus. Corp., 58 B.R. 725, 736 (Bankr. S.D.N.Y. 1986); In re Hubbard Power & Light, 202 B.R. 680, 685 (Bankr. E.D.N.Y. 1996). Accordingly, courts have discretion, on a case-by-case basis, to determine what level of protection is appropriate to provide a secured party. See Beker Indus., 58 B.R. at 736; In re Swedeland Dev. Group, Inc., 16 F.3d 552, 564 (3d Cir. 1994).

46. The Debtors believe that the DIP Lender would not have agreed to provide the DIP Loan absent the protections afforded to it. The Debtors believe, in their reasonable business judgment, that the benefits of the DIP Loan outweigh the risks associated with having no access to continued funding.

**C. No Comparable Alternative to the DIP Loan Is Currently Available, and the DIP Loan is in the Best Interests of the Debtors' Estates**

47. The proposed terms of the DIP Loan are fair, reasonable and adequate given the Debtors' circumstances. The terms and conditions of the DIP Loan were negotiated by the parties in good faith and at arm's length, and are fair and reasonable under the circumstances. Accordingly, the DIP Lender should be accorded the benefits of section 364(e) of the Bankruptcy Code in respect of such agreement.

48. Bankruptcy courts consistently defer to a debtor's business judgment on most business decisions, including the decision to borrow money, unless such decision is arbitrary and capricious. See e.g., Bray v. Shenandoah Fed. Sav. & Loan Ass'n (In re Snowshoe Co.), 789 F.2d 1085, 1088 (4<sup>th</sup> Cir. 1986) (approving debtor in possession financing necessary to sustain seasonal business); Ames Dep't Stores, Inc., 115 B.R. at 40 (“[C]ases consistently reflect that the court’s discretion under section 364 is to be utilized on grounds that permit reasonable business judgment to be exercised so long as the financing agreement does not contain terms that leverage the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to benefit a party-in-interest.”).

49. The financing under the DIP Loan and the use of the cash collateral is the sole means of providing the Debtors with liquidity and thus will enable the Debtors, inter alia, complete the Wind-Down and the Investigation into Causes of Action for the benefit of the Debtors and their creditors.

### **NOTICE**

50. Notice of this Motion has been provided to (i) Office of the United States Trustee, (ii) the attorneys for the Debtors’ Prepetition Lender and proposed DIP Lender, (iii) the holders of the thirty (30) largest unsecured claims against the Debtors on a consolidated basis, (iv) state and local taxing authorities and the Internal Revenue Service, and (v) all parties who have filed a notice of appearance and request for service pursuant to Bankruptcy Rule 2002, in each case by CM/ECF, facsimile, e-mail, telephone, or overnight courier. In light of the nature of the relief requested herein, the Debtors submit that no other further notice is necessary.

51. No previous application for the relief sought herein has been made to this or any other Court.

WHEREFORE, the Debtors respectfully request the Court (i) to enter an Interim Order substantially in the form annexed hereto as Exhibit A (a) authorizing the Debtors' use of cash collateral (b) authorizing the Debtors to enter into and borrow under the DIP Loan; (c) granting the DIP Lender liens and super-priority claims; (d) scheduling a final hearing to consider the relief sought herein on a final basis; (e) granting any other appropriate form of relief; and (ii) immediately following the final hearing, enter a final order on substantially the same terms as the Interim Order.

Dated: New York, New York  
July 11, 2017

HERRICK, FEINSTEIN LLP  
*Attorneys for the Debtors and Debtors in  
Possession*

By: /s/ Stephen B. Selbst  
Stephen B. Selbst  
2 Park Avenue  
New York, New York 10016  
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**EXHIBIT A**

**INTERIM ORDER**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
In re

Chapter 11

NATIONAL EVENTS HOLDINGS, LLC, *et al.*,<sup>1</sup>

Case No. 17-11556 (JLG)

Debtors.

(Jointly Administered)  
-----X

**INTERIM ORDER (I) PURSUANT TO BANKRUPTCY CODE §§ 105, 361, 362, 363, 364, AND 507 AUTHORIZING DEBTORS TO (A) OBTAIN SENIOR SECURED SUPERPRIORITY POSTPETITION FINANCING, (B) GRANT LIENS AND SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS, (C) USE CASH COLLATERAL OF PREPETITION SECURED PARTIES, AND (D) GRANT ADEQUATE PROTECTION TO PREPETITION SECURED PARTIES; (II) SCHEDULING FINAL HEARING PURSUANT TO BANKRUPTCY RULES 4001(b) AND (c); AND (III) GRANTING RELATED RELIEF**

This matter is before this Court (this “Court” or the “Bankruptcy Court”) on the motion, dated July 11, 2017 (the “Motion”), of the above-captioned debtors and debtors in possession (collectively, the “Debtors”, and each, individually, a “Debtor”) in the above-captioned Chapter 11 cases (collectively, these “Chapter 11 Cases”), for entry of an interim order (this “Interim Order”) and a final order (the “Final Order”), under Bankruptcy Code §§ 105, 361, 362, 363(c), 364(c) and (e), and 507; Bankruptcy Rules 2002, 4001, 9013, and 9014; and Local Bankruptcy Rules 2002-1, 4001-2, 9006-1, 9013-1, 9014-1, and 9014-2, seeking, among other things:

- (1) authorization for the Debtors to (A) obtain postpetition secured debtor in possession financing in an aggregate principal amount of up to \$245,000 (as such amount may be increased by the DIP Lender in its sole discretion, after notice filed with the Court

<sup>1</sup> The last four numbers of each Debtor’s taxpayer identification number are National Events Holdings, LLC (7314); National Events Intermediate, LLC (0566); National Event Company II, LLC (6663); National Event Company III, LLC (7592); and World Events Group II, LLC (9429). The Debtors’ address is 1430 Broadway, 7<sup>th</sup> Floor, New York, New York 10018.

and served on the Notice Parties (as defined below), the “Maximum Amount”) (of which (x) up to \$185,000 (the “Maximum Interim Amount”) shall be available to the Debtors upon entry of this Interim Order and the satisfaction or waiver of the borrowing conditions set forth herein, but prior to entry of the Final Order, and (y) subject to the entry of the Final Order and the borrowing conditions set forth herein, any remaining undrawn amounts may be drawn pursuant to the terms and conditions of this Interim Order (the “DIP Facility”), with Falcon Strategic Partners IV, LP (the “DIP Lender”), acting as lender, and (B) incur the postpetition obligations hereunder (such obligations being referred to herein as the “DIP Obligations”) (this Interim Order, together with any Final Order and any related agreements, documents, certificates, instruments, exhibits, and schedules delivered or executed from time to time in connection therewith, including the Credit Note (as defined below), as all of the same may be amended, restated, amended and restated, supplemented, or otherwise modified from time to time in accordance with the terms thereof and hereof, collectively, the “DIP Documents”);

(2) authorization for the Debtors to execute and enter into the DIP Documents and to perform their respective obligations thereunder and such other and further acts as may be required in connection with the DIP Documents, including, without limitation, the payment of all principal, interest, fees, expenses, premiums, and other amounts payable under the DIP Documents, as such amounts become due and payable;

(3) authorization for the Debtors to grant valid, enforceable, non-avoidable, and automatically and fully perfected security interests, liens, and superpriority claims, including allowed superpriority administrative expense claims pursuant to Bankruptcy Code § 364(c)(1) and liens pursuant to Bankruptcy Code § 364(c)(2) and (3), to the DIP

Lender in the DIP Collateral (as defined below) to secure all DIP Obligations, as more fully set forth in this Interim Order;

(4) authorization for the Debtors' use of all property constituting "Cash Collateral," as defined in Bankruptcy Code § 363(a) ("Cash Collateral"), of the Prepetition Secured Parties (as defined below), solely as provided herein and in accordance with the Approved Collateral Liquidation Budget (as defined below), and the provision of adequate protection to the Prepetition Secured Parties for any Diminution in Value (as defined below) of their interests in the Prepetition Collateral (as defined below), including any Cash Collateral, solely, to fund the Debtors' continued liquidation of the Prepetition Collateral (the "Collateral Liquidation");

(5) authorization for the Debtors to borrow amounts under the DIP Facility in accordance with the terms and conditions of the DIP Documents and the Approved Investigation and Wind-Down Budget (as defined below) to fund the investigation (the "Investigation") of the Causes of Action (as defined below) and the continued wind-down of the Debtors' estates (excluding the Collateral Liquidation, the "Wind-Down");

(6) the scheduling of a final hearing (the "Final Hearing") on the Motion for a date that is before the 30th day after the date of the Motion to consider entry of a Final Order authorizing the borrowings under the DIP Facility on a final basis, and granting other related relief; and

(7) modification of the automatic stay imposed under Bankruptcy Code § 362, to the extent necessary, to implement and effectuate the terms and provisions of the DIP Documents.

This Court having found that due and proper notice of the Motion and the Interim Hearing held to consider the interim relief provided for herein (the “Interim Relief”) was provided by the Debtors in accordance with Bankruptcy Rules 2002, 4001, and 9014 and Local Bankruptcy Rule 2002-1; and this Court having held the Interim Hearing on July 17, 2017; and after considering all the pleadings, motions, and other papers filed with this Court and the evidence proffered or adduced on the record at the Interim Hearing; and this Court having overruled all unresolved objections to the Interim Relief; and it appearing to the Court that the Interim Relief is necessary to avoid immediate and irreparable harm to the Debtors and their estates pending the Final Hearing and is fair and reasonable and in the best interests of the Debtors, their creditors, and their estates and representing a sound exercise of the Debtors’ business judgment and appropriate under the circumstances, including to fund the Collateral Liquidation from Cash Collateral and the Investigation and the Wind-Down from the DIP Facility; and upon the record of these Chapter 11 Cases and after due deliberation and consideration and for good and sufficient cause appearing therefor:

**THE COURT HEREBY FINDS AND CONCLUDES AS FOLLOWS:**

A. Petition Date. On June 5, 2017 (the “Petition Date”), each Debtor filed a voluntary petition with this Court commencing a case under chapter 11 of the Bankruptcy Code. The Debtors are continuing to operate their businesses and manage their respective properties as debtors in possession pursuant to Bankruptcy Code §§ 1107 and 1108. No trustee or examiner has been appointed in any of these Chapter 11 Cases.

B. Jurisdiction and Venue. This Court has jurisdiction over these proceedings pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated January 31, 2012. This is



a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory and legal predicates for the relief sought herein are Bankruptcy Code §§ 105, 361, 362, 363, 364, and 507; Bankruptcy Rules 2002, 4001, 9013, and 9014; and Local Bankruptcy Rules 2002-1, 4001-2, 9006-1, 9013-1, 9014-1, and 9014-2.

C. No Committee Formation. As of the date hereof, no official committee of unsecured creditors or any other statutory committee has been appointed in these Chapter 11 Cases.

D. Debtors' Stipulations. Subject to the Reservation of Certain Third Party Rights described in paragraph 16 of this Interim Order, the Debtors hereby admit, acknowledge, agree, and stipulate that:

(i) Pursuant to (a) that certain Purchase Agreement dated July 6, 2015 (as amended, supplemented, amended and restated, or otherwise modified from time to time in accordance with the terms thereof, including on August 20, 2015, November 23, 2015, January 13, 2016, April 11, 2017 (the "Fourth Amendment"), and June 5, 2017 (the "Fifth Amendment"), the "Prepetition Credit Agreement"), among Debtors National Events Intermediate, LLC ("NECO"), National Events Holdings, LLC ("Holdings"), and "Subsidiary Guarantors" National Event Company II, LLC, National Event Company III, LLC, and World Events Group II, LLC, Jason Nissen, Falcon Strategic Partners IV, LP (in such capacity, the "Prepetition Lender"), FMP Agency Services, LLC (in such capacity, the "Prepetition Agent" and together with the Prepetition Lender, the "Prepetition Secured Parties"), the Prepetition Lender agreed to purchase (x) up to \$25,000,000 in aggregate original principal amount of the 11% Senior Secured Notes due 2020 of NECO, (y) up to \$15,000,000 in aggregate original principal amount of the 8% Senior Unsecured PIK Notes due 2022 of NECO, and (z) 48 Class A Units representing membership interests in Holdings, with the Fourth Amendment providing for an additional tranche of Senior Secured Notes in the amount of \$4,000,000, and the Fifth Amendment providing emergency pre-filing funds in the amount of \$108,572 on the Petition Date to enable the filing of these Chapter 11 Cases (the "Emergency Pre-Filing Advance"), and (b) the other Financing Documents (as defined in the Prepetition Credit Agreement and, together with the Prepetition Credit Agreement, the "Prepetition Loan Documents"), the Prepetition Lender provided fully perfected secured loans (the "Prepetition Secured Loans") to and for the benefit of the Debtors in the amount of \$29,000,000, and senior unsecured loans (the "Prepetition Unsecured Loans") in the aggregate amount of \$15,000,000. As of the Petition Date, the Debtors were indebted to the Prepetition Lender, without defense, counterclaim, or offset of any kind, in respect of (1) the Prepetition Secured Loans made in the aggregate outstanding principal amount under the Prepetition Loan Documents of not

less than \$29,108,572, plus accrued and unpaid interest and fees with respect thereto (which, as of June 5, 2017, was not less than \$681,111.11, and (2) Prepetition Unsecured Loans made in the aggregate outstanding principal amount under the Prepetition Loan Documents of not less than \$15,000,000, plus accrued and unpaid interest and fees with respect thereto (which, as of June 5, 2017, was not less than \$2,231,214.20, which amounts, for the avoidance of doubt, do not include the Prepetition Secured Parties' accrued and unpaid attorneys' fees, costs, and expenses, or any other premium, fee, make-whole, or penalty payments otherwise required by the terms of the Prepetition Loan Documents, including, without limitation, upon a prepayment or acceleration of the obligations thereunder) (such amounts, together with any amounts incurred or accrued but unpaid prior to the Petition Date in accordance with the Prepetition Loan Documents, including but not limited to, accrued and unpaid interest, any fees, expenses and disbursements, indemnification obligations, and other charges, amounts, and costs of whatever nature owing, whether or not contingent, whenever arising, accrued, accruing, due, owing, or chargeable in respect of any of the Debtors' obligations pursuant to the Prepetition Loan Documents, collectively, the "Prepetition Obligations"; if solely in connection with the Prepetition Secured Loans, collectively, the "Prepetition Secured Obligations", and if solely in connection with the Prepetition Unsecured Loans, collectively, the "Prepetition Unsecured Obligations");

(ii) To secure the Prepetition Secured Obligations, the Debtors granted to the Prepetition Agent for the benefit of the Prepetition Lender security interests in and liens upon (the "Prepetition Liens") all "Collateral" under and as defined in the Prepetition Loan Documents (the "Prepetition Collateral"), and for purposes of this Interim Order, the Prepetition Collateral does not include any claims and causes of action of the Debtors not directly related to the Prepetition Collateral and the proceeds thereof (collectively, the "Causes of Action");

(iii) (a) the Prepetition Obligations constitute legal, valid, enforceable, non-avoidable, and binding obligations of each of the Debtors; (b) no offsets, defenses, or counterclaims to the Prepetition Obligations exist; (c) no portion of the Prepetition Obligations is subject to avoidance, disallowance, reduction, disallowance, disgorgement, counterclaim, surcharge, or subordination (other than as contemplated by this Interim Order) pursuant to the Bankruptcy Code or applicable non-bankruptcy law; (e) the Prepetition Loan Documents are valid and enforceable by the Prepetition Agent on behalf of the Prepetition Lender against each of the Debtors party thereto; (f) the Prepetition Secured Obligations constitute allowed secured claims against the Debtors' estates; (g) the Prepetition Unsecured Obligations constitute allowed unsecured claims against the Debtors' estates; and (h) the Debtors and their estates have no claim, objection, challenge, or cause of action against the Prepetition Agent or the Prepetition Lender or any of either of their respective successors, assigns, affiliates, parents, subsidiaries, partners, controlling persons, representatives, agents, attorneys, advisors, financial advisors, consultants, professionals, officers, directors, members, managers, shareholders, and employees, past, present, and future, and their respective heirs, predecessors, successors, and assigns, whether arising under applicable state or federal law (including, without limitation, any recharacterization, subordination (other than as contemplated by this Interim Order),

avoidance, or other claims arising under or pursuant to Bankruptcy Code § 105, 510, or 542 through 553), in connection with any of the Prepetition Loan Documents (or the transactions contemplated thereunder), the Prepetition Secured Obligations, the Prepetition Liens, or the Prepetition Unsecured Obligations, including, without limitation, any right to assert any disgorgement or recovery;

(iv) All of the Debtors' cash, including any cash in deposit accounts of the Debtors, wherever located, constitutes Cash Collateral of the Prepetition Secured Parties; and

(v) As a result of, among other things, the commencement of these Chapter 11 Cases, the Debtors are in default of their debts and obligations under the Prepetition Loan Documents.

E. Debtors' Releases. Subject to the Reservation of Certain Third Party Rights described in paragraph 16 of this Interim Order, *the Debtors hereby forever unconditionally and irrevocably release, discharge, and acquit the Prepetition Agent, the Prepetition Lender, the DIP Lender, and each of their respective successors, assigns, affiliates, parents, subsidiaries, partners, controlling persons, representatives, agents, attorneys, advisors, financial advisors, consultants, professionals, officers, directors, members, managers, shareholders, and employees, past, present and future, and their respective heirs, predecessors, successors, and assigns (collectively, the "Releasees") of and from any and all claims, controversies, disputes, liabilities, obligations, demands, damages, expenses (including, without limitation, reasonable attorneys' fees), debts, liens, actions, and causes of action of any and every nature whatsoever, whether arising in law or otherwise, and whether or not known or matured, arising out of or relating to the Prepetition Obligations, the Prepetition Loan Documents, the DIP Facility, or the DIP Documents, including, without limitation, (A) any so-called "lender liability", breach of fiduciary duty, or equitable subordination claims or defenses, (B) any and all claims and causes of action arising under the Bankruptcy Code, and (C) any and all claims and causes of action with respect to the validity, priority, perfection, or avoidability of the Prepetition Liens, the DIP*

*Liens (as defined below), the Prepetition Obligations, and the DIP Obligations. Subject to the entry of the Final Order, the Debtors further waive and release any defense, right of counterclaim, right of set-off, or deduction to the payment of the Prepetition Obligations and the DIP Obligations that the Debtors now have or may claim to have against the Releasees arising out of, connected with, or relating to any and all acts, omissions, or events occurring prior to the Bankruptcy Court entering this Interim Order.*

F. Need for Postpetition Financing and Use of Cash Collateral. Based upon the pleadings and proceedings of record in these Chapter 11 Cases, the Debtors do not have sufficient cash or other available sources of funding to complete the Wind-Down or investigate and pursue any litigation related to the Causes of Action and require the funds available under the DIP Facility to do so. In addition, the Debtors' critical need for continued use of Cash Collateral is immediate, and the entry of this Interim Order is necessary to avoid immediate and irreparable harm to the Debtors' estates and the value of their assets, and absent the requested use of Cash Collateral, the Collateral Liquidation could not continue, and serious and irreparable harm to the Debtors and their estates would occur.

G. No Credit on More Favorable Terms. The Debtors are unable to obtain sufficient financing to pursue the Investigation and continue the Wind-Down from sources other than the DIP Lender on any terms, much less on terms more favorable than under the DIP Facility and the DIP Documents, and are not able to obtain unsecured credit allowable as an administrative expense under Bankruptcy Code § 503(b)(1). The Debtors also are unable to obtain sufficient credit having priority over administrative expenses of the kind specified in Bankruptcy Code §§ 503(b) and 507(b). Postpetition financing is unavailable to the Debtors without providing the DIP Lender: (i) the DIP Liens in the DIP Collateral, as provided herein with the priorities set forth

herein; (ii) the DIP Superpriority Claims (as defined below); and (iii) the other protections set forth in this Interim Order. After considering all alternatives, the Debtors have concluded, in the exercise of their sound business judgment, that the DIP Facility represents the best financing available to them at this time under the circumstances and is in the best interests of all of their stakeholders.

H. Findings Regarding the DIP Facility. Based upon the pleadings and proceedings of record in these Chapter 11 Cases, (i) the terms and conditions of the DIP Facility are fair and reasonable, are the best available to the Debtors under the circumstances, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties, and are supported by reasonably equivalent value and fair consideration, (ii) the DIP Facility has been negotiated in good faith and at arm's length between the Debtors and the DIP Lender, and (iii) any credit extended, loans made, and other financial accommodations extended to the Debtors by the DIP Lender, including, without limitation, pursuant to this Interim Order, have been extended, issued, or made, as the case may be, in "good faith" within the meaning of Bankruptcy Code § 364(e) and in express reliance upon the protections offered by Section 364(e), and the DIP Facility, the DIP Liens, and the DIP Superpriority Claims shall be entitled to the full protection of Section 364(e) in the event that this Interim Order or any provision hereof is vacated, reversed, or modified, on appeal or otherwise.

I. Sections 506(c) and 552(b). As a material inducement to the DIP Lender to agree to provide the DIP Facility and the continued use of Cash Collateral subject to the terms of this Interim Order, the DIP Lender and the Prepetition Secured Parties are entitled to receive, upon entry of the Final Order, a waiver of any equities of the case exceptions or claims under Bankruptcy Code § 552(b) and the surcharge provisions of Bankruptcy Code § 506(c).

J. Use of Proceeds of the DIP Facility; Use of Cash Collateral; Consent of Prepetition Secured Parties. The Debtors have received the necessary consents from the Prepetition Secured Parties to (i) the financing arrangements contemplated by this Interim Order and the DIP Documents and (ii) the Debtors' continued use of Cash Collateral, on the terms and conditions set forth in this Interim Order. Such consents are expressly limited to the postpetition financing being provided by the DIP Lender and the use of Cash Collateral (in each case as contemplated by this Interim Order and the DIP Documents) and the provision of adequate protection herein and shall not extend to any other postpetition financing or to any modified version of the DIP Facility or to any modified version of the use of Cash Collateral. As a condition to entry into the DIP Documents, the extension of credit under the DIP Facility, and the continued authorization to use Cash Collateral as provided in this Interim Order, the DIP Lender and the Prepetition Secured Parties require, and the Debtors have agreed, that proceeds of the DIP Facility and Cash Collateral shall be used, in each case only in a manner consistent with the terms and conditions of the DIP Documents and this Interim Order, solely for the purposes set forth in this Interim Order, including (a) with respect to Cash Collateral, to continue the Collateral Liquidation, and (b) with respect to the DIP Facility, to complete the Investigation and the Wind-Down.

K. Adequate Protection. The Prepetition Secured Parties are entitled to receive adequate protection, as set forth in paragraph 12 of this Interim Order, pursuant to Bankruptcy Code §§ 361, 362, 363, and 364, for any diminution in value of their interests in the Prepetition Collateral (including Cash Collateral) resulting from, arising from, or attributable to, among other things, (i) the Debtors' use, sale, or lease of such Prepetition Collateral, (ii) market value decline of such Prepetition Collateral, and (iii) the imposition of the automatic stay pursuant to Bankruptcy

Code § 362 (collectively, and to the extent of any such diminution in value, “Diminution in Value”).

L. Notice. The Debtors have represented that e-mail notice, facsimile notice, or overnight mail notice of this Interim Hearing and the proposed entry of this Interim Order has been provided to: (i) the 30 largest unsecured creditors of the Debtors on a consolidated basis; (ii) the Office of the United States Trustee for the Southern District of New York (the “U.S. Trustee”); (iii) Cahill Gordon & Reindel LLP, as counsel to the Prepetition Secured Parties and the DIP Lender; (iv) all known parties, to the best of the Debtors’ knowledge, information, or belief, asserting a lien against the DIP Collateral; (v) the Internal Revenue Service and applicable state taxing authorities; and (vi) any other party that has filed a request for notice pursuant to Bankruptcy Rule 2002 or is required to receive notice under the Bankruptcy Rules and the Local Bankruptcy Rules (collectively, the “Notice Parties”). Requisite notice of the Motion and the relief requested thereby and this Interim Order has been provided in accordance with Bankruptcy Rule 4001, and no other notice need be provided for entry of this Interim Order.

M. Immediate Entry. The Debtors have requested immediate entry of this Interim Order pursuant to Bankruptcy Rule 4001(b)(2) and (c)(2). Absent entry of this Interim Order, the Debtors’ estates will be immediately and irreparably harmed. This Court concludes that entry of this Interim Order is in the best interests of the Debtors’ respective estates and creditors as its implementation will, among other things, enhance the Debtors’ prospects for maximizing the value of their estates for the benefit of their stakeholders.

N. Prior Use of Cash Collateral. This Court has approved the use of Cash Collateral during these Chapter 11 Cases pursuant to the following orders (collectively, the “Cash Collateral Orders”): (i) the *Interim Order Authorizing Debtors to Use Cash Collateral of*

*Prepetition Secured Parties, Granting Adequate Protection* [ECF No. 23], on June 14, 2017, wherein the Prepetition Secured Parties consented to the use of Cash Collateral in the amount of \$46,448.84 to fund payroll obligations of the Debtors; (ii) the *Consent Second Interim Order Authorizing Debtor' Continued Use of Cash Collateral of Prepetition Secured Parties and Granting Adequate Protection* [ECF No. 32] on June 15, 2017, wherein the Prepetition Secured Parties consented to the use of Cash Collateral in the amount of \$46,448.84 to fund payroll obligations of the Debtors through June 20, 2017; (iii) the *Third Interim Order Authorizing Debtors' Continued Use of Cash Collateral of Prepetition Secured Parties and Granting Adequate Protection* [ECF 56] on June 26, 2017, wherein this Court ordered the use of Cash Collateral in the amount of \$37,997.38 to fund payroll and rent obligations of the Debtors through June 29, 2017; and (iv) the *Consent Fourth Interim Order Authorizing Debtor' Continued Use of Cash Collateral of Prepetition Secured Parties and Granting Adequate Protection* [ECF No. 88] on July 7, 2017, wherein the Prepetition Secured Parties consented to the use of Cash Collateral in the amount of \$21,213 to fund payroll obligations of the Debtors through July 14, 2017.

Based on the foregoing, and upon the record made before this Court at the Interim Hearing, and good and sufficient cause appearing therefor,

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:**

1. Approval of Interim Order. The Motion is approved, on an interim basis, on the terms and conditions set forth in this Interim Order. Any objections to the Interim Relief that have not previously been withdrawn, waived, or settled, and all reservations of rights included therein, are hereby denied and overruled. This Interim Order shall become effective immediately upon its entry.



2. Approval of DIP Documents; Authority Thereunder. The DIP Facility is hereby approved. The Debtors are hereby authorized to enter into, and execute and deliver, the DIP Documents and such additional documents, instruments, certificates, and agreements as may be required or reasonably requested by the DIP Lender and the Prepetition Secured Parties to implement the terms or effectuate the purposes of this Interim Order and the DIP Documents.

3. Validity of DIP Documents. Upon execution and delivery of the DIP Documents, each of the DIP Documents shall constitute, and is hereby deemed to be, the legal, valid and binding obligation of the Debtors party thereto, enforceable against each such Debtor in accordance with its terms. Loans advanced under the DIP Facility (the "DIP Loans") until the Final Hearing will be made to fund the Investigation and to complete the Wind-Down, to the extent permitted hereunder. No obligation, payment, transfer, or grant of security under the this Interim Order with respect to the DIP Facility shall be stayed, restrained, voided, voidable, or recoverable under the Bankruptcy Code or under any applicable non-bankruptcy law or be subject to any defense, reduction, setoff, recoupment, or counterclaim.

4. Authorization to Borrow. Upon entry of this Interim Order and during the period prior to entry of the Final Order, the Debtors are immediately authorized to borrow from the DIP Lender under the DIP Facility an aggregate principal amount not to exceed \$185,000.

5. Terms of the DIP Facility. The DIP Facility and the DIP Loans made thereunder shall be subject to the following terms and conditions:

a. General. Except as otherwise provided herein or approved in advance by the DIP Lender in writing, the proceeds of the DIP Facility shall be used only in strict compliance with the Approved Investigation and Wind-Down Budget.

b. Maturity Date. The DIP Loans shall mature on the date (the "Maturity Date") that is earliest of (i) 30 days after the date hereof, if this Court does not enter the Final Order in a form acceptable to the DIP Lender in its sole discretion; (ii) December 31, 2017; (iii) the date on which a Chapter 11 plan of reorganization becomes effective; (iv) upon entry of an order dismissing or converting any of these Chapter 11 Cases to a case under Chapter 7 of the Bankruptcy Code; (v) upon the request by any party in interest for the appointment of a trustee or examiner or the appointment of a creditors' committee with respect to any of these Chapter 11 Cases; (vi) upon the failure of the Debtors' chief restructuring officer to continue to serve in such position; (vii) upon any change of control of any of the Debtors; or (viii) upon any breach of any provision of this Interim Order or failure to comply with the Approved Investigation and Wind-Down Budget, including any Milestones.

c. Interest Rate. 11% per annum, payable in kind monthly in arrears, accruing on the last calendar day of each month and on the Maturity Date. Interest on the DIP Loans shall be based on a year of three hundred sixty (360) days and charged for the actual number of days elapsed.

d. Default Interest Rate. 15% per annum, payable in kind, as set forth above.

e. Fees. None.

f. Advances. The DIP Lender shall not make advances unless it shall have received a written request from the Debtors for the same no later than 12:00 noon, prevailing Eastern Time, one business day prior to the day such advance is requested to be made. The DIP Lender shall not be required to make any advance (i) in an amount less than \$25,000; (ii) more than once per week; (iii) if such advance would cause the amounts outstanding under the DIP

Facility to exceed the Maximum Amount (and prior to the entry of the Final Order, the Maximum Interim Amount); or (iv) after the occurrence of the Maturity Date.

g. Repayments. The proceeds of any recoveries from the Causes of Action shall immediately be applied to repay the following obligations: (i) first, amounts owed to the Secured Parties for the Debtors' use of Cash Collateral pursuant to the Cash Collateral Orders in the amount of \$106,690.18 through July 14, 2017, plus additional amounts incurred subsequent thereto, less any portion of such amounts directly incurred to preserve or to liquidate the Prepetition Collateral; (ii) second, accrued interest and fees and other amounts (other than principal) outstanding under the DIP Facility; (iii) third, repayment of the Emergency Pre-Filing Advance (including interest at the above rates); and (iv) fourth, principal amounts owed under the DIP Facility. Any excess amounts shall be available to the Debtors' estates.

h. Debtors' Representations and Warranties. The Debtors hereby, and as of every requested advance hereunder must, represent and warrant that the Approved Investigation and Wind-Down Budget reflects the reasonably anticipated needs of the Debtors, and they are in compliance with the Approved Investigation and Wind-Down Budget, including any Milestones, and have not made any untrue statement of material fact to the DIP Lender.

i. Conditions of Lending. The DIP Lender shall not be required to make any advances under this Interim Order, unless and until each of the following conditions is satisfied or waived by the DIP Lender in its sole discretion: (i) this Interim Order shall have been entered on or before 5:00 p.m. prevailing Eastern Time on July 19, 2017, in form and substance acceptable to the DIP Lender in its sole discretion; (ii) the DIP Lender shall have agreed to an Approved Investigation and Wind-Down Budget in its sole discretion, and each borrowing under the DIP Facility shall be in accordance with the terms of such Approved Investigation and Wind-

Down Budget; (iii) no default shall have occurred hereunder or under the DIP Facility; (iv) the Debtors shall be in compliance with all of the terms, provisions, conditions, and covenants contained herein; (v) each of the representations and warranties contained herein remain true and correct; (vi) each Debtor shall have executed and delivered a promissory note to the DIP Lender in the principal amount of the Maximum Amount (as may be amended, modified, or replaced from time to time, the "Credit Note"); and (vii) an Order granting the Prepetition Secured Parties' motion for relief from the automatic stay [ECF No. 24] (the "Relief from Stay Order") shall have been entered in form and substance satisfactory to the Prepetition Secured Parties in their sole discretion. The Credit Note shall evidence the Debtors' absolute and unconditional obligation to repay the DIP Lender for all of the DIP Loans made by the DIP Lender under the DIP Facility, with interest as herein and therein provided. Each and every DIP Loan under the DIP Facility, as well as the interest accrued thereunder, shall be deemed evidenced by the Credit Note. The Credit Note shall be substantially in the form set forth in Exhibit 1 attached hereto. The DIP Lender shall have no obligation to make any loan or advance under the DIP Documents unless all of the conditions precedent to the making of such extension of credit under the DIP Documents have been satisfied in full or waived by the DIP Lender in its sole and absolute discretion.

j. Negative Covenant. The Debtors shall not incur any indebtedness other than the DIP Facility or create, incur, assume, or permit to exist, any lien (other than the liens created hereby).

6. Use of Cash Collateral. Subject to the terms and conditions of this Interim Order and the Relief from Stay Order, the Debtors are authorized to use Cash Collateral solely in strict compliance with the Approved Collateral Liquidation Budget until the date upon which the Debtors' right to use Cash Collateral is terminated hereunder or the date the Debtors are required

to turn over possession of the Prepetition Collateral to the Prepetition Secured Parties under the terms of the Relief from Stay Order. The Debtors will not be permitted to use Cash Collateral unless all conditions precedent to such use of Cash Collateral have been satisfied in full or waived in writing by the Prepetition Secured Parties in their sole and absolute discretion. The Cash Collateral Orders shall be superseded by this Interim Order, and the Debtors' prior use of Prepetition Collateral, including Cash Collateral, shall be treated in accordance with the terms of this Interim Order.

7. No Segregation of Cash Collateral. The Prepetition Liens shall continue to attach to Cash Collateral irrespective of the commingling of Cash Collateral with any other cash of the Debtors. Any failure by the Debtors on or after the Petition Date to comply with the segregation requirements of Bankruptcy Code § 363(c)(4) in respect of any Cash Collateral shall not be used as a basis to challenge the Prepetition Secured Obligations or the extent, validity, enforceability, or perfected status of the Prepetition Liens.

8. Approved Budgets.

a. Initial Budgets. Attached as Exhibit 2 hereto and incorporated by reference herein are cash flow forecasts for the period beginning as of July 17, 2017, through and including the 13th week such date, broken down by week and separately for the Collateral Liquidation and for the Investigation and the Wind-Down, of the anticipated weekly sources and uses of proceeds of the DIP Loans and Cash Collateral for such period, including, among other things, line items for projected total receipts, total operating disbursements, total restructuring fees (including professional fees and fees for the Debtors' chief restructuring officer and financial advisory firm and counsel listed on an accrual basis, referenced herein as the "Professional Fee Accrual Schedules"), and net cash flow, which forecasts shall be in form and substance

satisfactory to the DIP Lender and the Prepetition Secured Parties in their sole discretion (the “Initial Budgets”). Upon entry of this Interim Order and approval by the DIP Lender and the Prepetition Secured Parties, the Initial Budgets shall be deemed “Approved Budgets”, with the approved budget for the Investigation and the Wind-Down being referred to herein as the “Approved Investigation and Wind-Down Budget”, and the approved budget for the Collateral Liquidation being referred to herein as the “Approved Collateral Liquidation Budget”. The Approved Budgets shall also include milestones for the Collateral Liquidation, the Wind-Down, and the Investigation, as well as procedures to be followed by the Debtors in connection therewith (“Milestones”).

b. Updated Budgets. By no later than 5:00 p.m. New York City time on the third (3rd) business day of each subsequent week, the Debtors shall deliver to the DIP Lender and the Prepetition Secured Parties a supplement to the Initial Budgets (or the previously supplemented Approved Budgets, as the case may be), covering the 13-week period that commences with the week in which such supplemental budget is delivered, consistent with the form and level of detail set forth in the Initial Budgets and otherwise in form and substance satisfactory to the DIP Lender and the Prepetition Secured Parties in their sole discretion (each such supplement, “Updated Budgets”); provided that the Debtors shall comply with the requirements set forth herein with respect to the timing and content of each set of Updated Budgets. The Updated Budgets shall become the Approved Budgets only under the circumstances described herein. The Debtors’ expenses in relation to the “Total Outflows” as set forth in either the Approved Investigation and Wind-Down Budget or the Approved Collateral Liquidation Budget for any given week, as well as amounts incurred by estate professionals and advisors in relation to any of the Professional Fee Accrual Schedules related to either of the foregoing for any

given 4-week period, shall be permitted to vary no more than the greater of 15% and \$2,500 (the “Permitted Variances”).

c. Variance Reporting. The Debtors shall deliver to the DIP Lender and the Prepetition Secured Parties variance reports in form and substance acceptable to the DIP Lender and the Prepetition Secured Parties in their sole discretion (the “Variance Reports”) in accordance with the terms and on the dates set forth herein.

d. Budget Compliance. The Debtors shall comply with the Approved Budgets, subject only to Permitted Variances, and all budget requirements set forth herein. Absent a waiver in writing by the DIP Lender or the Prepetition Secured Parties, respectively, in their sole and absolute discretion, (i) failure to achieve a Milestone under the Approved Investigation and Wind-Down Budget shall be an immediate default under this Interim Order and the DIP Facility, and upon such a default, the Maturity Date will be deemed to have occurred without any further action of the DIP Lender or this Court, and any remaining commitments under the DIP Facility shall automatically terminate, and (ii) failure to achieve a Milestone under the Collateral Liquidation Budget shall be an immediate default under this Interim Order, and upon such a default, without any further action of the Prepetition Secured Parties or this Court, the Debtors’ authority to use Cash Collateral granted herein shall automatically terminate, and the Prepetition Secured Parties shall be entitled to exercise their rights under the Relief from Stay Order.

9. Indemnification. The Debtors are hereby authorized to and hereby agree to indemnify and hold harmless the DIP Lender and, solely in their capacities as such, each of its respective successors, assigns, affiliates, parents, subsidiaries, partners, controlling persons, representatives, agents, attorneys, advisors, financial advisors, consultants, professionals, officers, directors, members, managers, shareholders, and employees, past, present, and future, and their

respective heirs, predecessors, successors, and assigns (each, an “Indemnified Party”) from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses (including, without limitation, reasonable attorney’s fees), or disbursements of any nature whatsoever that may be imposed on, incurred by, or asserted against an Indemnified Party in any way relating to or arising out of any of the DIP Documents or any other document contemplated hereby or thereby or the transactions contemplated thereby or by this Interim Order (including, without limitation, the exercise by the DIP Lender of discretionary rights granted hereunder) or any action taken or omitted by the DIP Lender under any of the DIP Documents or any document contemplated hereby or thereby; provided that the Debtors shall not have any obligation to indemnify and hold harmless any Indemnified Party under this paragraph with respect to any matter solely resulting from (a) the fraud, gross negligence, or willful misconduct of such Indemnified Party or (b) violations by such Indemnified Party of this Interim Order, as determined by a court of competent jurisdiction in a final non-appealable judgment or order. No Indemnified Party shall have any liability (whether direct or indirect, in contract, tort, or otherwise) to any Debtor or any of its subsidiaries or any shareholders or creditors of the foregoing for or in connection with the transactions contemplated hereby, except to the extent such liability is determined by a court of competent jurisdiction in a final non-appealable judgment or order to have resulted solely from such Indemnified Party’s (a) fraud, gross negligence, or willful misconduct or (b) violations of this Interim Order. All indemnities made or owed by any Debtor to the Indemnified Parties shall be secured by the DIP Collateral and afforded all of the priorities and protections afforded to the DIP Obligations under this Interim Order.

10. DIP Superpriority Claims. In accordance with Bankruptcy Code § 364(c)(1), the DIP Obligations shall constitute senior administrative expense claims, subject only



to the Carve Out (as defined below) (the “DIP Superpriority Claims”), against each Debtor, on a joint and several basis with priority in payment over any and all administrative expenses at any time existing or arising, of any kind or nature whatsoever, including, without limitation, the kinds specified or ordered pursuant to any provision of the Bankruptcy Code, including, but not limited to, Bankruptcy Code §§ 105, 326, 328, 330, 331, 364(c)(1), 365, 503(a), (b), and (c), 507(a) and (b), 546(c), 726, 1113, and 1114 or otherwise, including those resulting from the conversion of any of these Chapter 11 Cases to Chapter 7 pursuant to Bankruptcy Code § 1112, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy, or attachment. The DIP Superpriority Claims shall have recourse to and be payable from all proceeds of the Causes of Action, including, subject to the entry of the Final Order, the proceeds of avoidance actions under Chapter 5 of the Bankruptcy Code.

11. DIP Liens. As security for the DIP Obligations, immediately upon, and effective as of entry of this Interim Order, pursuant to Bankruptcy Code § 364(c)(1), the DIP Lender is granted a senior, first priority (subject only to the Carve Out), continuing, valid, binding, enforceable, non-avoidable, and automatically, fully, and properly perfected security interests in and liens (collectively, the “DIP Liens”) on the Causes of Action (including, subject to the entry of the Final Order, the proceeds of avoidance actions under Chapter 5 of the Bankruptcy Code) (collectively, the “DIP Collateral”) as collateral security for the prompt and complete performance and payment when due (whether at the stated maturity, by acceleration, or otherwise) of the DIP Obligations. The DIP Liens and the DIP Superpriority Claims: (i) shall not be made junior to or *pari passu* with any lien, security interest, or claim heretofore or hereinafter granted in any of these Chapter 11 Cases or any successor cases on the DIP Collateral, and shall be valid and enforceable against the Debtors, their estates, any trustee or any other estate representative appointed or elected

in these Chapter 11 Cases or any successor cases, and/or upon the dismissal of any of these Chapter 11 Cases or any successor cases, and (ii) shall not be subject to Bankruptcy Code §§ 506(c) (subject to the entry of the Final Order), 510, 549, 550, or 551.

12. Adequate Protection.

(a) *Adequate Protection Liens.* As adequate protection of the diminution in value in interests of the Prepetition Secured Parties in the Prepetition Collateral, including Cash Collateral, the Prepetition Secured Parties are hereby granted continuing, valid, binding, enforceable, unavoidable, and automatically-perfected postpetition replacement liens and security interests in all of the assets of the Debtors (the “Adequate Protection Liens”), which Adequate Protection Liens shall be senior in priority to all other liens. The Adequate Protection Liens shall not be made junior to or *pari passu* with any lien or security interest heretofore or hereinafter granted or created in any of these Chapter 11 Cases or any successor cases and shall be valid and enforceable against the Debtors, their estates, and any successors thereto, including, without limitation, any trustee appointed in any of these Chapter 11 Cases or any successor cases until such time as the Prepetition Secured Obligations owed under the Prepetition Loan Documents are paid in full. The Adequate Protection Liens shall not be subject to Bankruptcy Code § 549 or 550. No lien or interest avoided and preserved for the benefit of the estates pursuant to Bankruptcy Code § 551 shall be *pari passu* with or senior to the Adequate Protection Liens.

(b) *Adequate Protection Claims.* As further adequate protection of the diminution in value in interests of the Prepetition Secured Parties in the Prepetition Collateral, including Cash Collateral, the Prepetition Secured Parties are hereby granted

allowed superpriority administrative expense claims, which claims shall be senior to and have priority over any administrative expense claims, unsecured claims, and all other claims against the Debtors or their estates in any of these Chapter 11 Cases or any successor cases, at any time existing or arising, of any kind or nature whatsoever, including, without limitation, (A) administrative expenses or other claims of the kinds specified in or ordered pursuant to Bankruptcy Code §§ 105, 326, 328, 330, 331, 365, 503(a) and (b), 506(c), 507(a) and (b), 546(c), 726, 1113, and 1114, and any other provision of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy, or attachment, or (B) any claims allowed pursuant to the obligations under the Prepetition Loan Documents (the “Adequate Protection Claims”). The Adequate Protection Claims shall, for purposes of Bankruptcy Code § 1129(a)(9)(A), be considered an administrative expense allowed under Bankruptcy Code § 503(b), shall be against each Debtor on a joint and several basis, and shall be payable from and have recourse to all assets of the Debtors (including, without limitation, the Causes of Action), including, subject to the entry of the Final Order, the proceeds of avoidance actions under Chapter 5 of the Bankruptcy Code. The Adequate Protection Claims shall not be made junior to or *pari passu* with any claim heretofore or hereinafter granted or created in any of these Chapter 11 Cases or any successor cases and shall be valid and enforceable against the Debtors, their estates, and any successors thereto, including, without limitation, any trustee appointed in any of the Chapter 11 Cases or any successor cases until such time as the Adequate Protection Claims are paid in full.

(c) *Limitation on Adequate Protection Liens and Claims.* Without limiting any rights of the Prepetition Secured Parties as set forth in this Interim Order, if there is a successful Challenge (as defined below) pursuant to paragraph 16 of this Interim Order with respect to any portion of the interests of the Prepetition Secured Parties in the Prepetition Collateral, the Adequate Protection Liens and the Adequate Protection Claims shall not apply solely with respect to that portion of the interests of the Prepetition Secured Parties in the Prepetition Collateral that was subject to a successful Challenge.

(d) *Cooperation.* The Debtors shall cooperate with, consult with, and provide to the Prepetition Secured Parties all such information as may be reasonably requested with respect to the Debtors' activities. In addition, the Debtors shall authorize each of their respective representatives, advisors, and employees to cooperate and consult with and to provide information to the Prepetition Secured Parties as reasonably requested.

13. Adequate Protection Reservation; Section 507(b) Reservation. The receipt by the Prepetition Secured Parties of the adequate protection provided pursuant to this Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, the rights of the Prepetition Secured Parties to seek additional forms of adequate protection at any time, and nothing contained herein shall impair or modify the application of Bankruptcy Code § 507(b) in connection with any request for additional adequate protection by any party.

14. Carve Out. The DIP Liens and the DIP Superpriority Claims shall be subject to a carve out (the "Carve Out") equal to the sum of: (a) all fees required to be paid to the Clerk of the Court and the U.S. Trustee under Section 1930(a) of Title 28 of the United States

Code plus interest at the statutory rate; (b) all allowed and unpaid fees and expenses incurred by parties retained by the Debtors pursuant to Bankruptcy Code § 327, 328, or 363 at any time before the Maturity Date; provided, however, that in no event shall any such fees and expenses exceed the amounts set forth in the Approved Budget for any such professional, less any amount previously paid to any such professional and the amount of any retainer held by such professional; and (c) all reasonable fees and expenses up to \$20,000 incurred by a Chapter 7 trustee following conversion of these Chapter 11 Cases to Chapter 7.

15. Limitation on Use of Cash Collateral and DIP Facility Proceeds.

Notwithstanding anything herein to the contrary, except as provided for in the Approved Budgets, no portion of the DIP Facility, the DIP Collateral, the Prepetition Collateral, or Cash Collateral shall include, apply to, or be available for any fees, costs, or expenses incurred by any party in connection with any of the following: (i) the investigation (including by way of examinations or discovery proceedings), initiation, assertion, joining, commencement, support, or prosecution of any claims, counter-claims, causes of action, adversary proceedings, applications, motions, objections, defenses, or other contested matters against any of the DIP Lender or the Prepetition Secured Parties, or any of their respective successors, assigns, affiliates, parents, subsidiaries, partners, controlling persons, representatives, agents, attorneys, advisors, financial advisors, consultants, professionals, officers, directors, members, managers, shareholders, and employees, past, present, and future, and their respective heirs, predecessors, successors, and assigns, in each case in their respective capacities as such and with respect to any transaction, occurrence, omission, action, or other matter related to any Debtor (including formal discovery proceedings in anticipation thereof) (each, other than (a) below, which is waived in accordance with this Interim Order, a "Loan Party Claim"), including, without limitation, (a) investigating or challenging the

amount, validity, extent, perfection, priority, or enforceability of, or asserting any defense, counterclaim, or offset to the DIP Obligations, the DIP Superpriority Claims, or security interests and liens of the DIP Lender in respect thereof, (b) investigating or challenging the amount, validity, extent, perfection, priority, or enforceability of, or asserting any defense, counterclaim, or offset to the Prepetition Obligations or the Prepetition Liens, (c) investigating or asserting any claims or causes of action, including those arising under Chapter 5 of the Bankruptcy Code against the Prepetition Secured Parties, (d) investigating or asserting any so-called “lender liability” or breach of fiduciary duty claims and causes of action against the Prepetition Secured Parties; and (e) investigating or asserting any action seeking to invalidate, set aside, avoid, or subordinate, in whole or in part, the Prepetition Obligations or the DIP Loans; (ii) investigating or asserting any claims or causes of action against the Prepetition Secured Parties or the DIP Lender, including, without limitation, claims or actions to hinder or delay the assertions, enforcement, or realization on the DIP Collateral or the Prepetition Collateral; (iii) seeking to modify any of the rights, remedies, priorities, privileges, protections, and benefits granted to the Prepetition Secured Parties or the DIP Lender hereunder or under the DIP Documents, the Prepetition Loan Documents, or the Relief from Stay Order in each of the foregoing cases, without such applicable parties’ prior written consent; (iv) the payment of any amount on account of any claims arising prior to the Petition Date unless such payments are approved by the DIP Lender and the Prepetition Secured Parties or are approved by order of the Bankruptcy Court; or (v) any purpose that is prohibited under the Bankruptcy Code.

16. Reservation of Certain Third Party Rights. All parties in interest shall have until 4:00 PM (Prevailing Eastern Time) on September 20, 2017 (the “Loan Party Investigation Termination Date”), to commence an appropriate adversary proceeding (a “Challenge”) asserting

any Loan Party Claim; provided, however, that if these Chapter 11 Cases are converted to cases under Chapter 7 of the Bankruptcy Code prior to the expiration of the Loan Party Investigation Termination Date, then a Chapter 7 trustee appointed in such Chapter 7 cases (and only a Chapter 7 trustee) shall have an additional 30 calendar days after the Chapter 7 trustee's appointment in which to bring a Challenge. *If a Challenge is not filed on or before the Loan Party Investigation Termination Date (or such other later date as ordered by this Court or extended in accordance with the immediately-preceding sentence), then: (a) the agreements, acknowledgements, and stipulations contained in paragraph D of this Interim Order shall be irrevocably binding on the Debtors, the estates, any creditors' committee, all creditors of the Debtors, and all parties in interest, and any and all successors-in-interest as to any of the foregoing, including any Chapter 11 or Chapter 7 trustee appointed in these Chapter 11 Cases or any subsequent Chapter 7 cases, without further action by any party or this Court, and the Debtors, any creditors' committee, all creditors of the Debtors, and any other party in interest and any and all successors-in-interest as to any of the foregoing, including any chapter 11 trustee or chapter 7 trustee, shall thereafter be forever barred from bringing any Challenge with respect thereto; and (b) the Debtors' estates (and any parties that could assert any claims on behalf thereof) shall be deemed to have released, waived, and discharged the Prepetition Secured Parties (whether in their prepetition or postpetition capacity), together with each of their respective successors, assigns, affiliates, parents, subsidiaries, partners, controlling persons, representatives, agents, attorneys, advisors, financial advisors, consultants, professionals, officers, directors, members, managers, shareholders, and employees, from any and all claims and causes of action arising out of, based upon or related to, in whole or in part, the Prepetition Obligations.* Notwithstanding anything to the contrary herein: (x) if any such Challenge is timely commenced, the stipulations contained in

paragraph D of this Interim Order shall nonetheless remain binding and preclusive on all parties in interest (other than the party that has brought such Challenge in connection therewith and then only with respect to the stipulations that are subject to the Challenge and not to any stipulations not subject to the Challenge) except to the extent that such stipulations are successfully challenged in such Challenge; and (y) the Prepetition Secured Parties and the DIP Lender reserve all of their rights to contest on any grounds any Challenge and preserve any and all of their rights to appeal and stay any orders issued in connection with a successful Challenge. In the event a Challenge is brought with respect to any amounts held by the Prepetition Secured Parties in a segregated manner in accordance with the Relief from Stay Order, then the September 20, 2017, date set forth therein shall be extended until such Challenge is resolved with respect to any such amounts. For the avoidance of doubt, nothing in this Interim Order vests or confers on any entity or person standing or authority to pursue any cause of action belonging to the Debtors or their estates, and to the extent a party that has not been granted standing asserts what would otherwise be a Challenge, it shall not be treated as a Challenge for the purposes hereof.

17. Bankruptcy Code § 506(c) Waiver. Subject to the entry of the Final Order, the Debtors shall irrevocably waive and shall be prohibited from asserting any surcharge claim, under Bankruptcy Code § 506(c) or otherwise, for any costs and expenses incurred in connection with the preservation, protection, or enhancement of, or realization by the DIP Lender or the Prepetition Secured Parties upon the DIP Collateral or the Prepetition Collateral, and no costs or expenses of administration that have been or may be incurred in any of these Chapter 11 Cases or any subsequent Chapter 7 cases at any time shall be charged against the DIP Lender, the Prepetition Secured Parties, or any of their respective claims or liens (including any claims or liens granted pursuant to this Interim Order).



18. No Marshaling/Application of Proceeds. Subject to the entry of the Final Order, in no event shall the DIP Lender or the Prepetition Secured Parties be subject to the equitable doctrine of “marshaling” or any other similar doctrine with respect to the DIP Collateral or the Prepetition Collateral (as applicable), and all proceeds thereof shall be received and used in accordance with this Interim Order.

19. Section 552(b). Subject to the entry of the Final Order, the Prepetition Secured Parties shall be entitled to all of the rights and benefits of Bankruptcy Code § 552(b), and the “equities of the case” exception under Section 552(b)(1) shall not apply to the Prepetition Secured Parties with respect to the proceeds, products, offspring, or profits of any of the Prepetition Collateral.

20. Disposition of Collateral; Settlement of Causes of Action. The Debtors shall not sell, transfer, lease, encumber, or otherwise dispose of any portion of the DIP Collateral or the Prepetition Collateral or settle or release any of the Causes of Action, without an order of the Court and the prior written consent of the DIP Lender and the Prepetition Secured Parties.

21. Proceeds of Subsequent Financing. If at any time prior to (x) the indefeasible payment in full or otherwise acceptable satisfaction of all DIP Obligations and the DIP Superpriority Claims and (y) the termination of the DIP Lender’s obligation to extend credit in accordance herewith, any of the Debtors or any successor thereto, including any trustee or examiner, obtains credit or incurs debt pursuant to Bankruptcy Code § 364, whether or not in violation of the DIP Documents or this Interim Order, then unless otherwise agreed by the DIP Lender, all of the cash proceeds derived from such credit or debt up to the amount of the DIP Obligations and the DIP Superpriority Claims shall immediately be turned over to the DIP Lender.

22. Automatic Effectiveness of Liens. The DIP Liens and the Adequate Protection Liens shall not be subject to a Challenge and shall attach and become valid, perfected, binding, enforceable, non-avoidable, and effective liens by operation of law as of the Petition Date, without any further action by the Debtors, the DIP Lender, or the Prepetition Secured Parties, respectively, and without the necessity of executing, filing, or recording any financing statements, security agreements, mortgages, filings with a governmental unit, or other documents, or the taking of any other actions to validate or perfect (in accordance with applicable law) such liens, or to entitle the DIP Lender, the Prepetition Agent, or the Prepetition Secured Parties the priorities granted herein.

23. Automatic Stay; Rights and Remedies upon Default. Subject to the terms set forth herein, the automatic stay imposed under Bankruptcy Code § 362(a) is hereby modified as necessary to effectuate all of the terms, rights, benefits, privileges, remedies, and provisions of this Interim Order, including, without limitation, to permit: (a) the Debtors to grant the DIP Liens and the DIP Superpriority Claims, and to perform such acts as the DIP Lender may reasonably request, to assure the perfection and priority of the DIP Liens and any other liens granted hereunder; (b) the Debtors to take all appropriate actions necessary to (i) grant the Adequate Protection Liens, the Adequate Protection Claims, and any other liens or claims set forth herein, and (ii) ensure that the Adequate Protection Liens and any other liens granted hereunder are perfected and maintain the priority set forth herein; (c) the Debtors to incur all liabilities and obligations to the DIP Lender and the Prepetition Secured Parties, as contemplated under this Interim Order; (d) the Debtors to pay all amounts required under, in accordance with, and subject to this Interim Order; (e) the DIP Lender and the Prepetition Secured Parties to retain and apply payments made in accordance with this Interim Order; (f) the DIP Lender and Prepetition Secured

Parties to exercise, upon the occurrence and during the continuance of any default hereunder or under the Approved Budget, including with respect to any Milestone, in each case without further notice, motion, application to, order of, or hearing before, this Court; and (g) the implementation of all of the terms, rights, benefits, privileges, remedies, and provisions of this Interim Order, without further notice, motion, or application to, or order of or hearing before, this Court. Moreover, subject to the provisions of the DIP Documents and without further order from this Court, the automatic stay provisions of Bankruptcy Code § 362 are vacated and modified to the extent necessary to permit the DIP Lender or the Prepetition Secured Parties (or any of their respective agents) to exercise, upon the occurrence and during the continuance of any default under this Interim Order or the Approved Budget, including with respect to any Milestone, all rights and remedies provided for herein, and to take any or all of the following actions without further notice, motion, or application to, order of, or hearing before, this Court: (1) immediately terminate the Debtors' rights, if any, under this Interim Order to use Cash Collateral; (2) cease making any DIP Loans to the Debtors (but without affecting any of the DIP Obligations or the DIP Liens securing the DIP Obligations); (3) declare the individual commitments of the DIP Lender to make further DIP Loans to be terminated; (4) declare the unpaid principal amount of all outstanding DIP Loans, all interest accrued and unpaid thereon, and all other DIP Obligations to be immediately due and payable, without presentment, demand, protest, or other notice of any kind, all of which are hereby expressly waived by the Debtors; (5) freeze monies or balances in the Debtors' accounts; (6) immediately set off any and all amounts in accounts maintained by the Debtors against the Prepetition Obligations, enforce all rights and remedies against the DIP Collateral and the Prepetition Collateral, as applicable, for application toward the DIP Obligations and the Prepetition Obligations, respectively, and otherwise proceed to protect or enforce all rights

and remedies of the DIP Lender and the Prepetition Secured Parties under this Interim Order, any of the other DIP Documents, or applicable law; and (7) take any other actions or exercise any other rights or remedies permitted under this Interim Order or the Final Order, as applicable, the other DIP Documents, or applicable law to effectuate the repayment of the DIP Obligations and the Prepetition Obligations. The rights and remedies of the DIP Lender and the Prepetition Secured Parties specified herein are cumulative and not exclusive of any rights or remedies that such parties have under the DIP Documents, the Prepetition Loan Documents, or otherwise. The Debtors shall cooperate with the DIP Lender and the Prepetition Secured Parties in their exercise of their rights and remedies, shall not challenge or raise any objections to the exercise of such rights and shall waive any right to seek relief under the Bankruptcy Code, including under Section 105 thereof, to the extent such relief would restrict or impair the rights and remedies of the DIP Lender and the Prepetition Secured Parties set forth in this Interim Order and in the DIP Documents. Any delay or failure to exercise rights and remedies under this Interim Order or any of the other DIP Documents by the DIP Lender or the Prepetition Secured Parties shall not constitute a waiver of such parties' rights hereunder, thereunder, or otherwise.

24. Binding Effect. The provisions of this Interim Order shall inure to the benefit of the Debtors, the DIP Lender, the Prepetition Secured Parties, and their respective successors and assigns, and shall be binding upon the Debtors, the DIP Lender, the Prepetition Secured Parties, any creditors' committee, and any and all other creditors of the Debtors or other parties in interest and their successors and assigns, including without limitation, any trustee hereafter appointed for the estate of any of the Debtors, whether in these Chapter 11 Cases or in the event of a conversion of any of these Chapter 11 Cases to a case under Chapter 7 of the Bankruptcy Code. Such binding effect is an integral part of this Interim Order. Further, upon

entry of this Interim Order, the Debtors' stipulations contained herein shall be binding on the Debtors, and the DIP Obligations and the Prepetition Obligations shall constitute allowed claims for all purposes in each of these Chapter 11 Cases.

25. Survival. The terms and provisions of this Interim Order and any actions taken pursuant hereto, including but not limited to the DIP Superpriority Claims, the DIP Liens, the Adequate Protection Liens, and the Adequate Protection Claims granted pursuant to this Interim Order, shall survive the entry of any order: (i) confirming any Chapter 11 plan in any of these Chapter 11 Cases; (ii) converting any of these Chapter 11 Cases to a Chapter 7 case; or (iii) dismissing any of these Chapter 11 Cases, and the terms and provisions of this Interim Order shall continue in full force and effect notwithstanding the entry of any such order. Such claims and liens shall maintain their priority as provided by this Interim Order and to the maximum extent permitted by law, until all of the DIP Obligations and the Prepetition Secured Obligations are indefeasibly paid in full in cash and discharged or otherwise treated under a Chapter 11 plan. In no event shall any plan of reorganization be allowed to alter the terms of repayment of any of the DIP Obligations from those set forth in the DIP Documents unless agreed to by and among the Debtors and the DIP Lender.

26. Protection under Bankruptcy Code § 364(e). The DIP Lender and the Prepetition Secured Parties have acted in good faith in connection with this Interim Order, and their reliance on this Interim Order is in good faith. Based on the record of these Chapter 11 Cases, and in accordance with Bankruptcy Code § 364(e), if any or all of the provisions of this Interim Order are hereafter reversed, modified, vacated, or stayed, such reversal, modification, vacation, or stay shall not affect (i) the validity of any DIP Obligations owing to the DIP Lender or adequate protection obligations owing to the Prepetition Secured Parties incurred prior to the

actual receipt by the DIP Lender or the Prepetition Secured Parties, as applicable, of written notice of the effective date of such reversal, modification, vacation, or stay or (ii) the validity or enforceability of any DIP Loans or other advances previously made or any claim, lien, security interest, or priority authorized or created hereby or pursuant to this Interim Order with respect to any DIP Obligations owing to the DIP Lender or any adequate protection obligations owing to the Prepetition Secured Parties. Notwithstanding any such reversal, modification, vacation, or stay, any use of Cash Collateral, incurrence of the DIP Obligations, or incurrence of adequate protection obligations by the Debtors prior to the actual receipt by the DIP Lender or the Prepetition Secured Parties of written notice of the effective date of such reversal, modification, vacation, or stay, shall be governed in all respects by the provisions of this Interim Order, and the DIP Lender and the Prepetition Secured Parties shall be entitled to all of the rights, remedies, protections, and benefits granted under Bankruptcy Code § 364(e), this Interim Order, and the other DIP Documents with respect to all uses of Cash Collateral and the incurrence of the DIP Obligations and adequate protection obligations.

27. Effect of Dismissal or Conversion of Chapter 11 Cases. If any of these Chapter 11 Cases are dismissed or converted, then such dismissal or conversion shall not affect the rights of the DIP Lender or the Prepetition Secured Parties under their respective DIP Documents, Prepetition Loan Documents, or this Interim Order, and all of the respective rights and remedies thereunder of the DIP Lender and the Prepetition Secured Parties shall remain in full force and effect as if these Chapter 11 Cases had not been dismissed or converted. If an order dismissing any of these Chapter 11 Cases is at any time entered, such order shall provide (in accordance with Bankruptcy Code §§ 105 and 349) that: (i) the DIP Liens and the DIP Superpriority Claims granted to and conferred upon the DIP Lender and the protections afforded to the DIP Lender

pursuant to this Interim Order shall continue in full force and effect and shall maintain their priorities as provided in this Interim Order until all the DIP Obligations shall have been paid and satisfied in full in cash and that such DIP Liens, the DIP Superpriority Claims, and other protections shall, notwithstanding such dismissal, remain binding on all interested parties; (ii) all Prepetition Liens, the Adequate Protection Liens, and the Adequate Protection Claims granted to and conferred upon the Prepetition Secured Parties, to the extent not subject to a successful Challenge, shall continue in full force and effect and shall maintain their priorities as provided in this Interim Order until all of the Prepetition Secured Obligations shall have been paid and satisfied in full in cash and that such Adequate Protection Liens and Adequate Protection Claims shall, notwithstanding such dismissal, remain binding on all interested parties; and (iii) to the greatest extent permitted by applicable law, this Court shall retain jurisdiction, notwithstanding such dismissal, for the purpose of enforcing the DIP Liens, the DIP Superpriority Claims, the Adequate Protection Liens, and the Adequate Protection Claims.

28. Proofs of Claim. Notwithstanding any order entered by the Bankruptcy Court in relation to the establishment of a bar date in these Chapter 11 Cases to the contrary, or otherwise, the DIP Lender and the Prepetition Secured Parties shall not be required to file proofs of claim in these Chapter 11 Cases for any claim allowed herein, and the Debtors' stipulations contained in paragraph D of this Interim Order shall be deemed to constitute a timely filed proof of claim against each of the Debtors.

29. No Third Party Rights. Except as explicitly provided for herein, this Interim Order does not create any rights for the benefit of any third party, creditor, equity holder, or any direct, indirect, or incidental beneficiary other than the DIP Lender and the Prepetition Secured Parties.

30. Joint and Several Liability. Nothing in this Interim Order shall be construed to constitute a substantive consolidation of any of the Debtors' estates, it being understood, however, that the Debtors shall be jointly and severally liable for all obligations hereunder, including without limitation, the DIP Superpriority Claims and the Adequate Protection Claims.

31. Limitations on Liability. Subject to the entry of the Final Order, in determining to make extensions of credit under the DIP Facility, permitting the use of Cash Collateral, or in exercising any rights or remedies as and when permitted pursuant to this Interim Order (or any Final Order), none of the DIP Lender or the Prepetition Secured Parties, nor any successor of any of the foregoing, as applicable, shall be deemed to be in control of the operations of the Debtors or any affiliate of the Debtors (as defined in Bankruptcy Code § 101(2), "Affiliate"), or to be acting as a "responsible person" or "owner or operator" with respect to the operation or management of the Debtors or any Affiliate (as such terms, or any similar terms, are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 29 U.S.C. §§ 9601 *et seq.*, as amended, or any similar federal or state statute). Furthermore, nothing in this Interim Order shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Lender or the Prepetition Secured Parties, or any successor of any of the foregoing, of any liability for any claims arising from the prepetition or postpetition activities of the Debtors or any Affiliate.

32. Findings of Fact and Conclusions of Law. This Interim Order constitutes, where applicable, findings of fact and conclusions of law and shall take effect and be fully enforceable *nunc pro tunc* to the Petition Date immediately upon entry hereof. The findings and conclusions set forth herein constitute the Bankruptcy Court's findings of fact and conclusions



of law pursuant to Bankruptcy Rule 7052. To the extent any findings of fact constitute conclusions of law, they are adopted as such. To the extent any conclusions of law constitute findings of fact, they are adopted as such.

33. Entry of this Interim Order; Waiver of Stay. Notwithstanding Bankruptcy Rules 4001(a)(3), 6004(h), 6006(d), 7062, or 9024, any other Bankruptcy Rule or Rule 62(a) of the Federal Rules of Civil Procedure, this Interim Order shall be immediately effective and enforceable upon its entry, and there shall be no stay of execution or effectiveness of this Interim Order.

34. Choice of Law; Jurisdiction. The DIP Facility and the DIP Documents, including this Interim Order, and the rights and obligations of the parties thereto, shall be governed by, and construed and interpreted in accordance with, the laws of the State of New York, including, without limitation, Sections 5-1401 and 5-1402 of the New York General Obligations Law, and, to the extent applicable, the Bankruptcy Code. The Bankruptcy Court shall have exclusive jurisdiction with respect to any and all disputes or matters under, or arising out of or in connection with the DIP Facility and this Interim Order.

35. Controlling Effect of Interim Order. To the extent any provision of this Interim Order conflicts with any provision of the Motion or any DIP Document, the provisions of this Interim Order shall control.

36. Service. Service of this Interim Order and notice of the Final Hearing shall be made upon the Notice Parties.

37. Reservation of Rights of the Prepetition Secured Parties. This Interim Order and the transactions contemplated hereby shall be without prejudice to (i) the rights of the Prepetition Secured Parties to seek additional or different adequate protection, move to vacate the

automatic stay, which they have already done, move for the appointment of a trustee or examiner, move to dismiss or convert any of these Chapter 11 Cases, or take any other action in the Chapter 11 Cases and appear and be heard in any matter raised in these Chapter 11 Cases and (ii) any and all rights, remedies, claims, and causes of action that the Prepetition Secured Parties may have against any non-Debtor party liable for the Prepetition Obligations. For all adequate protection and stay relief purposes throughout these Chapter 11 Cases, the Prepetition Secured Parties shall be deemed to have requested relief from the automatic stay and adequate protection as of the Petition Date. For the avoidance of doubt, such request will survive termination of this Interim Order.

38. Objections. Objections to the entry of the Final Order shall be in writing, conform with the Bankruptcy Code, the Bankruptcy Rules, and the Local Bankruptcy Rules, state with particularity the grounds therefor, and be filed with the Bankruptcy Court, with two courtesy copies, single-sided, delivered to the Chambers of the Honorable James L. Garrity, Jr., United States Bankruptcy Court, One Bowling Green, New York, New York 10004, and be served upon, on or before \_\_\_\_\_, 2017, at 4 PM (Prevailing Eastern Time): (i) counsel to the Debtors, Herrick, Feinstein LLP, 2 Park Avenue, New York, New York 10016 (Attn: Stephen B. Selbst, Esq.); (ii) counsel to the DIP Lender and the Prepetition Secured Parties, Cahill Gordon & Reindel LLP, 80 Pine Street, New York, New York 10005 (Attn: Joel H. Levitin, Esq., and Richard A. Stieglitz Jr., Esq.); (iii) the Office of the United States Trustee, 201 Varrick Street, New York, New York 10014 (Attn: Shannon Anne Scott, Esq.); and (iv) any other party that has filed a request for notice pursuant to Bankruptcy Rule 2002 or is required to receive notice under the Bankruptcy Rules and the Local Bankruptcy Rules.

39. Final Hearing. The Final Hearing on the Motion shall be heard before this Court on \_\_\_\_\_, 2017 at \_\_:\_\_ M (Prevailing Eastern Time) in Courtroom No. 601 at the United States Bankruptcy Court, One Bowling Green, New York, New York 10004.

Dated: \_\_\_\_\_, 2017.

\_\_\_\_\_  
Honorable James L. Garrity, Jr.  
United States Bankruptcy Judge

**EXHIBIT 1**

**Form of Credit Note**

FOR VALUE RECEIVED, the undersigned (each, a "Debtor" and, collectively, the "Debtors"), hereby promise to pay to FALCON STRATEGIC PARTNERS IV, LP or registered assigns (as hereinafter defined) (the "DIP Lender"), in accordance with the provisions of the Interim Order, the principal amount of each DIP Loan from time to time made by the DIP Lender to the Debtors under that certain Interim Order.

Each Debtor jointly and severally promises to pay interest on the unpaid principal amount of each DIP Loan from the date of such DIP Loan until such principal amount is paid in full, at such interest rates and at such times as provided in the Interim Order. All payments of principal and interest shall be made to the DIP Lender in United States Dollars in immediately available funds at the DIP Lender's office. If any amount is not paid in full when due hereunder, such unpaid amount shall bear interest, to be paid upon demand, from the due date thereof until the date of actual payment computed at the per annum rate set forth in the DIP Order.

This Credit Note is one of the Credit Notes referred to in the Interim Order, is entitled to the benefits thereof and may be prepaid in whole or in part subject to the terms and conditions provided therein. This Credit Note is also entitled to the benefits of the DIP Collateral. If one or more of the Events of Default specified in the Interim Order occurs and is continuing, all amounts then remaining unpaid on this Credit Note shall become under certain circumstances, or may be declared to be, immediately due and payable all as provided in the Interim Order. DIP Loans made by the DIP Lender shall be evidenced by one or more loan accounts or records maintained by the DIP Lender in the ordinary course of business. The DIP Lender may also attach schedules to this Credit Note and endorse thereon the date, amount and maturity of its DIP Loans and payments with respect thereto.

Each Debtor, for itself, its successors and assigns, hereby waives diligence, presentment, protest and demand and notice of protest, demand, dishonor and non-payment of this Credit Note.

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

**DEBTORS:**

NATIONAL EVENTS INTERMEDIATE, LLC

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

NATIONAL EVENTS HOLDINGS, LLC

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

NATIONAL EVENT COMPANY II, LLC

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

NATIONAL EVENT COMPANY III, LLC

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

WORLD EVENTS GROUP II, LLC

1. By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



**EXHIBIT 2**

**Initial Budgets**

## **EXHIBIT B**

## **BUDGET**



