WILK AUSLANDER LLP
1515 Broadway, 43rd Floor
New York, New York 10036
Telephone: (212) 981-2300
Eric J. Snyder, Esq.
David L. Barrack, Esq.
Eloy A. Peral, Esq.

Proposed Counsel for Debtors and
Debtors in Possession

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	
	:	Chapter 11
BICOM NY, LLC, *et al.*,[1]	:	
	:	Case No. 17- 11906 (MEW)
Debtors.	:	
	:	(Joint Administration Requested)

DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS (I) AUTHORIZING THE DEBTORS TO (A) OBTAIN POSTPETITION FINANCING AND (B) UTILIZE CASH COLLATERAL OF JPMORGAN CHASE BANK, N.A., (II) GRANTING ADEQUATE PROTECTION TO JPMORGAN CHASE BANK, N.A., (III) SCHEDULING A FINAL HEARING, AND (IV) GRANTING RELATED RELIEF

[1] The last four numbers of each Debtor's taxpayer identification number are BICOM NY, LLC (9990); ISCOM NY, LLC (1589); and Bay Ridge Automotive Company, LLC (0694). The Debtors' addresses are 787 11th Ave, New York, NY 10019; 1 York Street, New York, NY 10013; and 612 86th Street, Brooklyn, NY 11228, respectively.

d/b/a Maserati of Manhattan ("ISCOM"), and Bay Ridge Automotive Company, LLC d/b/a Bay Ridge Ford ("BRAC") (each individually, a "Debtor" and collectively, the "Debtors") in the above-referenced chapter 11 cases (collectively, the "Chapter 11 Cases") by and through their proposed counsel Wilk Auslander, LLP, submits this motion for entry of an interim order ("Interim Order") and a final order ("Final Order"), under sections 105, 361, 362, 363(c), 363(e), 364(c), 364(d)(1), 364(e) and 507 of title 11, United States Code (the "Bankruptcy Code") , and Rules 2002, 4001, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (as amended, the "Bankruptcy Rules") and Rule 4001-2 of the Local Bankruptcy Rules for the Southern District of New York (the "Local Rules"), seeking, among other things, authorization to obtain debtor in possession financing and the use of cash collateral. In support of its Motion, the Debtors respectfully represent as follows:

PRELIMINARY STATEMENT

1. On July 10, 2017 (the "Petition Date"), the Debtors filed voluntary petitions for reorganization pursuant to Chapter 11 of the Bankruptcy Code. [2]

2. The Debtors are authorized to continue to operate their businesses and manage their property as a debtor in possession, pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

3. No trustee or examiner has been appointed in the Chapter 11 Cases.

4. BICOM owns and operates a "dual" Jaguar/Land Rover vehicle franchise (the "J/LR Dealership"), pursuant to franchise agreements (the "J/LR Franchise Agreements") by and between BICOM and Jaguar Land Rover North America, LLC ("J/LR"), the manufacturer. The J/LR Dealership, as of the Petition Date, is located at 787 Eleventh Avenue, New York, New York ("J/LR Facility") and operates under the names "Land Rover Manhattan", "Jaguar Manhattan",

[2] All capitalized terms not otherwise defined herein shall be defined in accordance with the DIP Credit Agreement, the form and substance of which is attached hereto as Exhibit A. The final form of the DIP Credit Agreement as executed by the Debtors and Chase and any related documents and instruments delivered pursuant to or in connection therewith are collectively referred to herein as the "DIP Loan Documents".

5. On June 28, 2017, BICOM received a notice of termination from J/LR of the J/LR Franchise Agreements, effective July 14, 2017. On June 30, 2017, BICOM received a notice of termination of the lease from the lessor of the J/LR Facility, effective July 11, 2017 (the "J/LR Facility Lease").

6. ISCOM, a New York limited liability company, owns and operates a Maserati vehicle franchise (the "Maserati Dealership"), pursuant to a franchise agreement (the "Maserati Franchise Agreement") by and between ISCOM and Maserati North America, Inc. ("Maserati"), the manufacturer. The Maserati Dealership, as of the Petition Date, is located at 1 York Street, New York, New York ("Maserati Facility") and operates under the name "Maserati of Manhattan".

7. BRAC, a New York limited liability company, owns and operates a Ford vehicle franchise (the "Ford Dealership"), pursuant to a franchise agreement (the "Ford Franchise Agreement" with the J/LR Franchise Agreements and the Maserati Franchise Agreement, the "Franchise Agreements") by and between BRAC and Ford Motor Company ("Ford", with J/LR and Maserati, the "Manufacturers"). As of the Petition Date, the Ford Dealership, which operates under the name "Bay Ridge Ford", is located at 612 86th Street, Brooklyn, New York where it sells new vehicles.

8. The Debtors' bankruptcy filings were commenced to stay the termination of the J/LR lease and J/LR Franchise Agreements.

9. Both before and since the Petition Date, the Debtors have actively marketed and solicited offers from a wide range of potential purchasers for a sale of substantially all of the Debtors' operating assets, or significant parts thereof, and have conducted extensive discussions and negotiations with a number of parties that expressed an actual interest in such acquisitions.

10. Unfortunately, the Debtors were unable to consummate the transaction prior to the filing, and are compelled to sell the assets of the Dealerships, including their rights under the

filed contemporaneously herewith. The Debtors seek to maximize the value of their assets through the Auction that will best position the Debtors to obtain the highest and best price or prices for the assets.

11. By reason of the foregoing, the Debtors are confident that the sale process will achieve a disposition of their assets at fair and reasonable prices, and, therefore, is supported by the exercise of the Debtors' sound business judgment. In order for the Debtors to be able to fund the case and the run the sale process, the Debtor's require the DIP Facility and use of Cash Collateral (as defined below). Additional information regarding the Debtors' business, capital structure, and the circumstances leading to these chapter 11 cases is contained in the *Declaration of Gary B Flom (I) in Support of First Day Motions and (II) Pursuant to Local Bankruptcy Rule 1007-2.*

Relief Requested

12. By this Motion, the Debtors seek entry of the Interim Order, substantially in the form attached hereto as Exhibit A, and the Final Order, which will be submitted in advance of a Final Hearing (as defined below) (collectively, the "Orders") granting the following relief:

(a) authorization for the Debtors, as debtors and debtors in possession, on a joint and several basis (each individually, a "Borrower" and collectively, "Borrowers"), to obtain post-petition financing (the "DIP Facility"). The Borrowers' obligations under the DIP Facility, consisting of an aggregate principal amount of up to $4.5 million (the "DIP Loan"), of which up to $1.5 million (the "Interim Advance") shall be available upon entry of this Interim Order, shall be (i) secured by a priming first lien security interest in all assets of the Debtors except assets subject to a valid first priority lien in favor of a party other than JPMorgan Chase Bank, N.A. ("Chase"), and (ii) shall be accorded superpriority administrative clam status;

(b) authorization for the Debtors to utilize the DIP Facility and Chase's cash collateral, as such term is defined in section 363(a) of the Bankruptcy Code (as so defined, "Cash Collateral"),

capital needs of the Borrowers, including, the allowed administrative costs and expenses of the Chapter 11 Cases during the pendency of the Chapter 11 Cases; (ii) the Debtors' efforts to sell substantially all of their assets; and (iii) from Cash Collateral only and upon the sale of each vehicle encumbered by Prepetition Liens, the allocated portion of the Floorplan Facility (as defined below) for each such vehicle;

(c) authorization, subject to entry of the Final Order, for the Debtors to utilize the DIP Facility to indefeasibly repay in full and in cash all obligations under the Credit Agreement dated September 14, 2016, as amended by that Amendment to Credit Agreement and Line of Credit Note dated October 4, 2016 (the "Working Capital Facility" and, together with any related documents and instruments delivered pursuant to or in connection therewith, the "Working Capital Loan Documents"), entered into between the Debtors, Kings and Chase;

(d) the grant of valid, enforceable, non-avoidable and fully perfected first priority priming liens on and senior security interests in all of the property, assets and other interests in property and assets of the Debtors other than Avoidance Actions (as defined below) for the benefit of Chase as the lender under the DIP Facility (the "DIP Lender"), to secure all obligations of the Debtors under and with respect to the DIP Facility (collectively, the "DIP Obligations"), subject and subordinate only to those valid, perfected and non-avoidable liens in favor of third parties other than Chase prior to the Petition Date (collectively, the "Permitted Encumbrances");

(e) the grant of superpriority administrative expense claims to the DIP Lender having recourse to all prepetition and postpetition property of the Debtors' estates now owned or hereafter acquired, other than, Avoidance Actions;

(f) the grant of adequate protection to Chase in its capacity as the lender under the Prepetition Loans (the "Prepetition Lender") on account of the Debtors' use of its Cash Collateral, the diminution in value of the Prepetition Collateral (as defined below), and the priming of the Prepetition Liens (as defined below) by the DIP Liens;

(g) subject to entry of the Final Order, the waiver by the Debtors of any right to surcharge the Prepetition Collateral pursuant to section 506(c) of the Bankruptcy Code or other applicable law, and (ii) the grant of rights under section 552(b) of the Bankruptcy Code;

(h) the scheduling of a final hearing (the "Final Hearing") on the Motion within twenty-one (21) days after the Petition Date, to consider entry of a Final Order granting the relief requested in the Motion on a final basis; and

(i) waiver of any applicable stay (including under Bankruptcy Rule 6004) and provision for immediate effectiveness of this Interim Order.

Jurisdiction and Venue

13. This Court has subject matter jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). The statutory predicates for the relief sought herein are sections 105, 361, 362, 363 and 364 and 507 of the Bankruptcy Code and Bankruptcy Rules 2002, 4001(b), 6004 and 9014 and Local Rule 4001-2. Venue of the Chapter 11 Cases and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

Concise Statement Pursuant To Local Bankruptcy Rule 4001-2

14. Pursuant to Bankruptcy Rules 4001(b), (c) and (d), and Local Bankruptcy Rule 4001-2, the following is a concise statement and summary of the proposed material terms of the DIP Loan Documents and Orders:

MATERIAL TERMS OF THE PROPOSED POSTPETITION FINANCING	
DIP Credit Agreement Parties	**Debtor Parties**: Borrower: The Debtors, individually and collectively **(DIP Agmt., Preamble)**. Lender JPMorgan Chase Bank, N.A. **(DIP Credit Agmt., Preamble; § 1)**. **Lender**:
Maturity *Fed. R. Bankr. P.*	

4001(c)(1)(B)	**Maturity Date**. means the earliest of (a) September 29, 2017 (the "Scheduled Termination Date"), (b) the date of acceleration of any of the Obligations pursuant to Section 7, (c) the date of termination of the Commitments; (d) the first Business Day on which the Interim Order expires by its terms or is terminated, unless the Final Order has been entered and has become effective prior thereto, (e) July 28, 2017, unless prior thereto: (1) the Final Order has been entered and has become effective prior thereto, (2) the Sales Procedures Order has been entered and has become effective prior thereto, and (3) the Borrowers have received one or more letters of intent from prospective purchasers for substantially all of the Borrower's assets in form, substance and amount acceptable to DIP Lender in its sole discretion; (f) August 31, 2017, unless the Sale Order has been entered, (g) the date that any of the Chapter 11 Cases is converted to a case under chapter 7 of the Bankruptcy Code; (h) the date that any of the Chapter 11 Cases is dismissed; and (i) the effective date of any Borrower's plan of reorganization confirmed in the Chapter 11 Cases. . **(Interim Order ¶ 4; DIP Credit Agmt., § 1)**.

MATERIAL TERMS OF THE PROPOSED POSTPETITION FINANCING	
Termination Date *Local Bankruptcy Rule 4001-2(a)(10) Fed. R. Bankr. P. 4001(c)(1)(B)*	September 29, 2017 **(DIP Credit Agmt., § 1)**.
Use of Proceeds	**DIP Facility**.

Fed. R. Bankr. P. 4001(c)(1)(B)	**6(e) Use of Proceeds.** (i) The Borrowers shall utilize the proceeds of each Advance and Cash Collateral solely to fund, and in each case solely in accordance with the Approved Budget, this Agreement and the Financing Order: (A) the general working capital requirements of the Debtors, including allowed administrative costs and expenses of the Chapter 11 Cases during the pendency of the Chapter 11 Cases as well as to fund the continued operations of their businesses including paying wages, maintaining business relationship with vendors, suppliers and customers, making capital expenditures, making adequate protection payments, and generally conduct their business affairs so as to avoid immediate and irreparable harm to their estates and the value of their assets, and to afford the Debtors time to effectively market their businesses and/or their various assets for sale. (B) the satisfaction of any interest, fees and costs arising in connection with this Agreement; (C) the making of payments with respect to the Adequate Protection Obligations; (D) payment of the fees, costs and expenses incurred by the Borrowers as debtors-in-possession in the Chapter 11 Cases, which fees and expenses include but are not limited to, payment of the fees and expenses of the Professionals retained by the Borrowers and Creditors' Committee pursuant to sections 327 and 328 of the Bankruptcy Code, approved in accordance with sections 330 and 331 of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and the Bankruptcy Court's Local Rules, the rules and requirements of the U.S. Trustee and any order, ruling or judgment entered by the Bankruptcy Court in the Chapter 11 Cases up to the amounts permitted in the Approved Budget. (ii) The Borrowers shall not be permitted to use proceeds of any Advance or Cash Collateral to fund: (A) the payment of interest or principal with respect to any Indebtedness (other than Indebtedness pursuant to this Agreement and the Adequate Protection Obligations); (B) to finance in any way any action, suit, arbitration, proceeding, application, motion or other litigation challenging the amount, validity, perfection, priority, extent or enforceability of, or to assert any defense, counterclaims or offset to, the Prepetition Obligations or the Prepetition Liens and security interests of Lender on or in the Collateral; (C) to finance in any way any action, suit, arbitration, proceeding, application, motion or other litigation against any Lender or its affiliates; or (D) to make any Restricted Payment or Investment. (**Interim Order ¶ 1**; **DIP Credit Agmt., § 2(a))**.

Interest Rate *Fed. R. Bankr. P. 4001(c)(1)(B)*	**Interest Rate and Default Rate.** Interest Rate: LIBOR + 10% Default Rate: Additional 3 The specific terms regarding the calculation of the LIBOR can be found in the DIP Line of Credit Note, attached as Exhibit A to the DIP Credit Agreement. **(DIP Credit Agmt., § 2(b))**.

MATERIAL TERMS OF THE PROPOSED POSTPETITION FINANCING	
DIP Commitments *Local Bankruptcy Rule 4001-2(a)(1);* *Fed. R. Bankr. P. 4001(c)(1)(B)* .	**The DIP Line of Credit** The Lender has agreed to make the Line of Credit available to the Borrowers hereunder on a joint and several basis in an aggregate maximum principal amount of up to $4.5Million. (**Interim Order ¶ (1) and 2**; **DIP Credit Agmt., C, §§ 1, 2)**.
Conditions *Local Bankruptcy Rule 4001-2(a)(2);* *Local Bankruptcy Rule 4001-2(h);* *Fed. R. Bankr. P. 4001(c)(1)(B)*	**Closing Conditions.** DIP Facility/ Line of Credit, including DIP Lenders satisfaction with Borrowers having the DIP Agreement, approvals having been obtained, the CRO approved, an Interim Order satisfactory to the DIP Lender, stipulation to the validity of prepetition liens and security interests, execution and delivery of the DIP Documents, payment of costs and fees, and accuracy of representations and warranties. **(DIP Credit Agmt., §§4(a))**. **Funding Conditions.** Each withdrawal by the Borrower from the Loan proceeds Entry of the Final Order, Maturity Date not having, no Default, and notice of borrowing duly served, representations and warranties remaining true and correct. **(DIP Credit Agmt., § 4(b))**.

MATERIAL TERMS OF THE PROPOSED POSTPETITION FINANCING	
Fees & Payments	
Local Bankruptcy Rule 4001-2(a)(3); Fed. R. Bankr. P. 4001(c)(1)(B)	The DIP Fee of 1% of the maximum principal amount of the DIP Facility earned upon the making of the first advance under the DIP Facility shall accrue as payment in kind as a DIP Obligation. **(DIP Credit Agmt., § __)**.
Liens and Priorities	**DIP Liens**. Subject to the Carve-Out, the obligations of each Borrowers under the DIP

Local Bankruptcy Rule

shall be secured by the following liens (the "*DIP Liens*"). As security for the DIP Obligations, the DIP Lender is hereby granted (effective upon the date of this Interim Order, without the necessity of the execution by the Debtors or the filing or recordation of mortgages, security agreements, lock box or control agreements, financing statements, or any other instruments or otherwise) valid, binding and fully perfected, security interests in and liens upon (the "DIP Liens") all present and after-acquired property of the Debtors of any nature whatsoever, real or personal, tangible, intangible, or mixed, now existing or hereafter acquired, whether existing prior to the Petition Date or arising thereafter, and all other "property of the estate" within the meaning of section 541 of the Bankruptcy Code, including, without limitation, "Collateral", all cash and cash equivalents contained in any account maintained by any of the Debtors (collectively, with all proceeds, rents, products and offspring of any or all of the foregoing, the "DIP Collateral" and together with the Prepetition Collateral, the "Collateral"), subject only to the payment of the Carve-Out, such DIP Liens to consist of:

(a) First Lien on Cash Balances and Unencumbered Property. Pursuant to section 364(c)(2) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully perfected first priority senior lien upon and security interest in all of the Debtors' right, title and interest in, to and under all DIP Collateral that is not otherwise encumbered by a validly perfected security interest or lien on the Petition Date (collectively, the "Unencumbered Property"). The Collateral shall not include the Debtors' claims and causes of action under sections 502(d), 544, 545, 547, 548, 549, 550, and 553 of the Bankruptcy Code and any other avoidance actions under the Bankruptcy Code (collectively, the "Avoidance Actions").

(b) Liens Priming Prepetition First Priority Liens. Pursuant to section 364(d)(1) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully perfected first priority senior priming lien upon and security interest in all of the Debtors' right, title and interest in, the Prepetition Collateral. Such lien and security interest shall be senior to and prime the Prepetition Liens and the Adequate Protection Liens (as defined below) granted to the Prepetition Lender but shall be junior to any Permitted Encumbrances.

(c) Liens Junior to Certain Other Liens. Pursuant to section 364(c)(3) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected junior lien upon and security interest (other than as set forth in Subparagraph ((d)) of this Paragraph 11) upon all of the Debtors' right, title and interest in, to and under all DIP Collateral (other than the property described in Subparagraphs ((a)) or ((b)) of this Paragraph 11, as to which the liens and security interests in favor of the DIP Lender will be as described in such Subparagraphs), whether now existing or hereafter acquired, that is subject to any Permitted Encumbrances. The junior liens granted pursuant to this Paragraph include, among other interests, a second priority lien on the leasehold estate for the property located at 152 58th Street, Brooklyn, New York, commonly referred to as the Brooklyn Army Terminal facility.

(d) Liens Senior to Certain Other Liens. The DIP Liens and the Adequate Protection Liens shall not be subject or subordinate to (i) any lien or security interest that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code, (ii) subject to a Final Order, any liens arising after the Petition Date including, without limitation, any liens or security interests granted in favor of any federal, state, municipal or other governmental unit, commission, board or court for any liability of the Debtors, or (iii) any intercompany or affiliate liens of the Debtors.

The DIP Liens will not be subject to challenge and the DIP Collateral will be free and clear of other liens, claims and encumbrances, except the Prepetition Liens, the Adequate Protection Liens, and any Permitted Encumbrances. The DIP Liens granted to the DIP Lender shall secure all DIP Obligations. Upon entry of this Interim Order, the DIP Liens shall be deemed to be automatically perfected as of the Petition Date, without the need for further action of any kind; provided, however, that if the DIP Lender determines, in its sole discretion, to file any financing statements, notice of liens, mortgages or any other similar instruments, the Debtors will cooperate and assist in such filings and the automatic stay shall be lifted without the need for further order of this Court to allow such filings. The DIP Liens shall not encumber the Debtors' interests in any Avoidance Actions or the proceeds of the Avoidance Actions.

(**Interim Order ¶ (11) and 2**; **DIP Credit Agmt., C, § 1,)**

	As security for the DIP Obligations, the DIP Lender is hereby granted (effective **DIP Facility Priorities**. Pursuant to section 364(c)(1) of the Bankruptcy Code, the DIP Facility will be entitled to superpriority administrative expense claim status in the chapter 11 case . **(Interim Order ¶ 10**; **DIP Credit Agmt., § 1)**. **Adequate Protection**. The Lender is entitled, pursuant to sections 361, 363(e), and 364(d)(1) of the Bankruptcy Code, to adequate protection of their interest in tits Prepetition Collateral (including Cash Collateral) for, and in an aggregate amount equal to, the diminution in value (collectively, "***Diminution in Value***") of such interests from and after the Petition Date for, among other things, the Debtors' sale, lease, or use of the Prepetition Collateral (including Cash Collateral), the priming of the Prepetition Liens as set forth herein and the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code. The Prepetition Lender is granted adequate protection, which include (i) adequate protection liens, (ii) superpriority claims for diminution in value of the Cash Collateral, (iii) payment of fees and expense , and Payment of Adequate Protection from the sale of vehicles . The Prepetition Secured Parties reserve their rights to seek further or different adequate protection. **(Interim Order ¶ 10)**.
Carve-Out *Local Bankruptcy Rule 4001-2(a)(5)* *Local Bankruptcy Rule*	As set forth in the Interim Order, customary for postpetition financings of this size, providing for a carve-out (the "***Carve-Out***") from pre- and postpetition claims, liens and interests for: .;

MATERIAL TERMS OF THE PROPOSED POSTPETITION FINANCING	
	Carve-Out" means the payment of (a) subject to the Approved Budget, (i) the aggregate amount of any budgeted and unpaid fees, costs and expenses allowed by an order of the Bankruptcy Court that were accrued or incurred prior to the Maturity Date by the Professionals retained in the Chapter 11 Cases by the Debtors or on behalf of their estates (collectively, the "Professionals") and (ii) the accrued and unpaid costs and expenses of the CRO, as of the Maturity Date, plus (b) those fees, costs and expenses incurred by the Professionals after the Maturity Date and subsequently allowed by order of the Bankruptcy Court, together with the fees, costs and expenses incurred by CRO after the Maturity Date and subsequently allowed by order of the Bankruptcy Court, in an aggregate amount not to exceed $50,000, plus (c) fees required to be paid to the Clerk of the Bankruptcy Court and to the U.S. Trustee pursuant to 28 U.S.C. § 1930. **(Interim Order ¶ 14; DIP Credit Agmt., § 1).**
Covenants *Local Bankruptcy Rule 4001-2(a)(8);* *Fed. R. Bankr. P. 4001(c)(1)(B)*	**Affirmative Covenants**. Usual and customary for financings of this type (subject to certain additional changes and modifications), including delivery of financial statements, delivery of cash flow forecasts, delivery of a weekly and monthly variance report setting forth cash receipts, expenditures, and net cash flow and variance from the Approved Budget, maintenance of existence, legal compliance, properties, insurance, and books and records, and inspection rights, as well as compliance with milestones. **(DIP Credit Agmt., Art. 6)**. **Negative Covenants**. Usual and customary for financings of this type (subject to certain additional changes and modifications), including limitations on indebtedness, liens, nature of business, consolidation and mergers, asset sales, investments and acquisitions, prepayment of indebtedness (except as provided in "first day" or other Court orders), transactions with affiliates, sale and leaseback transactions, accounting changes, and creating or permitting other superpriority claims to exist. **(DIP Credit Agmt., Art. 6)**. **Financial Covenants.** The DIP Credit Agreement contains Sales Milestones for the marketing and sale fo the Debtors' businesses. **(Interim Order 22; DIP Credit Agmt., Art. 6 (m))**.

	Use of Proceeds
	(e) Use of Proceeds. (i) The Borrowers shall utilize the proceeds of each Advance and Cash Collateral solely to fund, and in each case solely in accordance with the Approved Budget, this Agreement and the Financing Order: (A) the general working capital requirements of the Debtors, including allowed administrative costs and expenses of the Chapter 11 Cases during the pendency of the Chapter 11 Cases as well as to fund the continued operations of their businesses including paying wages, maintaining business relationship with vendors, suppliers and customers, making capital expenditures, making adequate protection payments, and generally conduct their business affairs so as to avoid immediate and irreparable harm to their estates and the value of their assets, and to afford the Debtors time to effectively market their businesses and/or their various assets for sale. (B) the satisfaction of any interest, fees and costs arising in connection with this Agreement; (C) the making of payments with respect to the Adequate Protection Obligations; (D) payment of the fees, costs and expenses incurred by the Borrowers as debtors-in-possession in the Chapter 11 Cases, which fees and expenses include but are not limited to, payment of the fees and expenses of the Professionals retained by the Borrowers and Creditors' Committee pursuant to sections 327 and 328 of the Bankruptcy Code, approved in accordance with sections 330 and 331 of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and the Bankruptcy Court's Local Rules, the rules and requirements of the U.S. Trustee and any order, ruling or judgment entered by the Bankruptcy Court in the Chapter 11 Cases up to the amounts permitted in the Approved Budget. (ii) The Borrowers shall not be permitted to use proceeds of any Advance or Cash Collateral to fund: (A) the payment of interest or principal with respect to any Indebtedness (other than Indebtedness pursuant to this Agreement and the Adequate Protection Obligations); (B) to finance in any way any action, suit, arbitration, proceeding, application, motion or other litigation challenging the amount, validity, perfection, priority, extent or enforceability of, or to assert any defense, counterclaims or offset to, the Prepetition Obligations or the Prepetition Liens and security interests of Lender on or in the Collateral; (C) to finance in any way any action, suit, arbitration, proceeding, application, motion or other litigation against any Lender or its affiliates; or (D) to make any Restricted Payment or Investment. **(Interim Order ¶ 15**; **DIP Credit Agmt., § 6(e))**.

MATERIAL TERMS OF THE PROPOSED POSTPETITION FINANCING

Events of Default	7. Events of Default. Each of the following events, if it occurs before all of the Obligations have been paid in full and all of the Commitments have been terminated, shall be referred to herein as and constitute an "Event of Default": (a) failure of the Borrowers to make any payment of principal of or interest upon the Line of Credit when due and payable; (b) (i) failure of any Borrower to perform or observe any term, covenant or agreement contained in Section 6(b), (e)(ii), (f), (g), (h), (i), (l), or (m) or (ii) failure of any Borrower to perform or observe any other term, covenant or agreement contained in this Agreement, the Note, any other Loan Document or Financing Order and, in the case of the foregoing clause (ii), such default shall continue unremedied for a period of three (3) Business Days; (c) any representation, warranty or certification by any Borrower made herein, in the Note, in any Loan Document or in any report, certificate, financial or similar statement or other document or instrument furnished in connection with this Agreement, the Note, or the other Loan Documents shall prove to have been incorrect or misleading in any material respect on or as of the date made or deemed made; (d) any Borrower shall have failed to receive, as and when required, any consent or approval from any Governmental Authority necessary in order for such Borrower to perform its obligations hereunder in accordance with all applicable laws, rules and regulations; (e) The CRO consented to by Lender shall cease to serve as the CRO of any Borrower empowered as set forth herein and the Financing Order, unless the resignation of the CRO and the selection of his or her successor is consented to in advance by Lender, or with respect to the CRO's removal by the Court for cause, the CRO is immediately replaced by another CRO whose identity and scope of authority is consented to in writing by the Lender; (f) an "Event of Default" occurs under, or as specified in, this Agreement, the Note, the Financing Order, or any other Loan Document; (g) the filing by any of the Debtors of any motion or proceeding, or the entry of an order by the Bankruptcy Court, which could reasonably be expected to result in material impairment of Lender's rights under the Loan Documents or the Financing Order; (h) the occurrence of any of the following additional events: (i) The Final Order shall not have been entered on or before July 28, 2017, or at any time following its entry ceases to be in full force and effect, or shall be vacated, reversed or stayed, or modified or amended without the prior written consent of the Lender; (ii) The entry of an order amending, supplementing, staying, vacating, reversing or otherwise modifying this Agreement, the Note, the other Loan Documents, the Interim Order or the Final Order without the written consent of Lender (other than the replacement of the Interim Order with the Final Order); (iii) Breach by any Debtor of: (1) compliance with their obligations with respect to the Approved Budget, (2) the variance covenants set forth in the Financing Order and Section 6(l) above, or (3) any Sale Process Covenant; (iv) Borrowers fail to sell the number of vehicles designated for Non-Retail Sales in the Approved Budget as measured on a rolling two (2) week basis; (v) Any of the Chapter 11 Cases shall be dismissed or converted to a case under Chapter 7 of the Bankruptcy Code; a Chapter 11 Trustee or an examiner with enlarged powers relating to the operation of the business of any Debtor (powers beyond those expressly set forth in section 1106(a)(3) and (4) of the Bankruptcy Code) shall be appointed in any of the Chapter 11 Cases; or any other superpriority claim (other than the Carve-Out) or grant of any other lien (including

Local Bankruptcy Rule 4001-2(a)(10); Fed. R. Bankr. P. 4001(c)(1)(B)

any Adequate Protection Lien) which is senior to or pari passu with the DIP Obligations or the liens securing the DIP Obligations, or the Adequate Protection Obligations and the liens securing the Adequate Protection Obligations, shall be granted in any of the Chapter 11 Cases;

(vi) Other than payments set forth in the Approved Budget in respect of (i) accrued payroll and related expenses (including workers compensation insurance) as of the commencement of the Chapter 11 Cases, (ii) adequate protection payments to the Prepetition Lender, if any, and (iii) certain critical vendors and other creditors, in each case to the extent authorized by one or more "first day" or other orders in form and substance satisfactory to the Lender, any Debtor shall make any payment (whether by way of adequate protection or otherwise) of principal or interest or otherwise on account of any pre-petition indebtedness or payables;

(vii) The Bankruptcy Court shall enter an order granting relief from the automatic stay to any Person asserting a claim or other right against any of the Borrowers or their assets relating to any alleged pre-petition actions or omissions unless otherwise consented to by Lender;

(viii) The Maturity Date shall have occurred;

(ix) The filing by the Debtors of any plan of reorganization or liquidation that is not consented to by the Lender (unless the plan satisfies all Obligations in full) or the Prepetition Lender (unless the plan satisfies all Adequate Protection Obligations in full);

(x) The termination of the Debtors' "exclusive period" under Section 1121 of the Bankruptcy Code for the filing of a plan of reorganization;

(xi) (1) The Debtors engage in or support any challenge to the validity, perfection, priority, extent or enforceability of any DIP Obligations, Adequate Protection Obligations, or Prepetition Obligations or any liens on or security interest in the assets of the Debtors securing the DIP Obligations, Adequate Protection Obligations or Prepetition Obligations, including without limitation seeking to equitably subordinate or avoid the liens securing such indebtedness or (2) the Debtors engage in or support any investigation or assert any claims or causes of action (or directly or indirectly support assertion of the same) against the Lender or the Prepetition Lender; provided, however, that it shall not constitute an Event of Default if the Debtors provide information with respect to the Prepetition Loan Documents to a party in interest or are compelled to provide information by an order of the Court and provide prior written notice to the Lender and the Prepetition Lender of any intention or requirement to do so;

(xii) Any person shall obtain a section 506(a) judgment or similar determination with respect to the Prepetition Obligations that is not consented to by the Prepetition Lender;

(xiii) The allowance of any claim or claims under section 506(c) or 552(b) of the Bankruptcy Code against or with respect to any of the Collateral securing the DIP Obligations or any Prepetition Obligations, as applicable;

(xiv) The consummation of any sale of Collateral, other than sales in the ordinary course that are contemplated by the Approved Budget, and other than pursuant to an Approved Sale;

(xv) The postpetition designation of any vehicle as sold or "punched" prior to the sale to a bona fide third party purchaser for value;

(xvi) The allowance of any claim or claims under section 546(c) or 503(b)(9) of the Bankruptcy Code that is not contemplated in the Approved Budget or is otherwise unacceptable to the Lender;

(xvii) The Committee, if any, or any other party in interest, shall file a complaint or a pleading or initiate any other action against the Lender or the Prepetition Lender or otherwise file an objection to the claims or seek to avoid the liens held by any such party; and

(xviii) The filing by any of the Debtors of any motion or proceeding which could reasonably be expected to result in material impairment of the Lender's rights under the Loan Documents.

(xix) the entry of an order granting any administrative claim (other than the Carve-Out) or Lien (including adequate protection Liens) which are equal or superior to that provided to Lender; or

(xx) the entry by the Bankruptcy Court of a debtor-in-possession financing order or amendment thereto, the form and substance of which is not consented to by Lender.

(DIP Credit Agmt., § 7).

Milestones *Local Bankruptcy Rule 4001-2(a)(12); Fed. R. Bankr. P. 4001(c)(1)(B)(*	The DIP Credit Agreement contains the Milestones set forth for an auction sale process. **(Interim Order 22; DIP Credit Agmt., Art. 6 (m))**.
Repayment *Local Bankruptcy Rule 4001-2(a)(13)*	**Voluntary Prepayment.** (a) Payments. (i) At Maturity. The Borrowers shall repay in full in cash on the Maturity Date the outstanding principal amount of the Line of Credit, together with any accrued and unpaid interest on such principal amount, and all other Obligations. (ii) Optional Prepayments. The Borrowers may, from time to time, optionally prepay the Advances upon not less than one (1) Business Day's prior written notice from the Borrower Representative to Lender. (iii) Mandatory Prepayments. If, after giving effect to (1) the application of proceeds from any Advance by the Lender and (2) the anticipated disbursements by the Debtors under the Approved Budget, the Unrestricted Cash of the Borrowers exceeds $100,000 in the aggregate for all of the Borrowers for at least three (3) consecutive Business Days, then the Borrowers shall, on the immediately succeeding Business Day, prepay the Line of Credit in an amount equal to the lesser of (1) an amount necessary to reduce the amount of Unrestricted Cash to $100,000 or less, or (2) an amount necessary to repay the outstanding Obligations in full. **(DIP Credit Agmt., § 3)**. **Mandatory Repayment**. The DIP Credit Agreement shall be prepaid in an amount
	(a) **Repayment of Working Capital Facility**. Subject to entry of the Final Order, the rs shall make an immediate draw through a Notice of Borrowing of the amount necessary to Working Capital Facility in full and shall direct Lender to repay such Working Capital Facility Notice of Borrowing. **(DIP Credit Agmt., § 2(c)**.

MATERIAL TERMS OF THE PROPOSED POSTPETITION FINANCING	
	(DIP Credit Agmt., § 2.11).
Joint Liability *Local Bankruptcy Rule 4001-2(a)(14); Local Bankruptcy Rule 4001-2(e)*	All obligations of the Borrowers are joint and several . **(DIP Credit Agmt., § Preamble)**.
Acknowledgements *Local Bankruptcy Rule 4001-2(f)* *Fed. R. Bankr. P. 4001(c)(1)(B)(iii);*	The Debtors make certain customary admissions and stipulations with respect to the aggregate amount of prepetition indebtedness owing to the Prepetition Lender and the validity, enforceability and priority of the liens and security interests granted to the Prepetition Lenders to secure such indebtedness. **(Interim Order ¶ D)**.
Automatic Stay *Fed. R. Bankr. P. 4001(c)(1)(B)(iv)*	The Interim Order provides for lifting of the automatic stay to allow the DIP Lenders to exercise upon the occurrence and during the continuance of an Event of Default, all rights and remedies against the Collateral provided for in the DIP Documents. **(Interim Order ¶ 21)**.
Waivers and Consents *Fed. R. Bankr. P. 4001(c)(1)(B)(v); Fed. R. Bankr. P. 4001(c)(1)(B)(vii-x)*	Upon execution and delivery of the DIP Documents, the Debtors' obligations under the DIP Documents shall constitute valid and binding obligations of the Debtors, enforceable against each Debtor party thereto in accordance with their terms. No obligation, payment, transfer, or grant of security under the DIP Documents or the Interim Order shall be stayed, restrained, voidable, or recoverable under the Bankruptcy Code or under any applicable law, or subject to any defense, reduction, setoff, recoupment, or counterclaim. **(Interim Order ¶ 8)**. **Indemnification**. Usual and customary for financings of this type, and substantially the same as set forth in the Prepetition Loan Documents, including fees, charges and disbursements of counsel to the Prepetition Agent. **(Interim Order ¶ 7**; **DIP Credit Agmt., § 9(a))**. **506(c) Waiver**. Subject to entry of the Final Order, no costs or expenses of administration shall be surcharged against or recovered from or against the Prepetition Lender, the DIP Collateral and the Prepetition Collateral (including Cash Collateral) pursuant to section 506(c) of the Bankruptcy Code or otherwise. **(Interim Order ¶ 18)**. **No Marshaling**. In no event shall the DIP Parties or the Prepetition Secured Parties, subject to entry of the Final Order, be subject to the equitable doctrine of "marshaling" or any other similar doctrine with respect to the DIP Collateral or the Prepetition Collateral. **(Interim Order ¶ 18)**. **552 Waiver**: Subject to entry of the Final Order, each of the DIP Parties and the Prepetition Secured Parties are entitled to all the rights and benefits of section 552(b) of the Bankruptcy Code, and the "equities of the case" exception will not apply. **(Interim Order ¶ N)**.

Key Provisions

15. As a condition to obtaining the proposed financing, the DIP Lenders have required, and the Debtors have agreed to, certain provisions that may be considered key provisions to be highlighted to the Court. These provisions include the following:

- Proceeds of Avoidance Actions. The Superpriority Claims shall be chargeable against the Debtors and, subject to entry of the Final Order, the DIP Liens shall include liens on the proceeds of the Debtors' claims and causes of action (but not on the actual claims and causes of action) arising under sections 502(d), 544, 545, 547, 548, 549, 550 and 553 of the Bankruptcy Code. (Interim Order ¶ 11).

- Automatic Stay Relief. The Interim Order lifts the automatic stay to allow on five days' prior written notice to the Debtors (with copy to the Office of the United States Trustee for the Southern District of New York (the "U.S. Trustee") and counsel to any official committee appointed in these chapter 11 cases (the "Committee") during the continuance of an Event of Default, the exercise of rights and remedies against the DIP Collateral. **(**Interim Order ¶ 21**)**.

- Carve-Out. The DIP Facility provides for a Carve-Out provides for payment of fees and expenses of primary counsel for the Debtors and the Committee accrued before the Carve-Out Date so long as such are in accordance with the Approved Budget and allowed by order of the Bankruptcy Court; the payment of fees and expenses incurred post-Carve-Out Date of $50,000 in the aggregate for such counsel; and, and (y) the payment of fees pursuant to 28 U.S.C. § 1930 **(**Interim Order ¶ 14**)**. The Carve-Out does not provide for disparate treatment of the Debtors' and the Committees' professionals and therefore is in compliance with Local Bankruptcy Rule 4001-2(d).

- 506(c) and 552 Waiver. Subject to the entry of the Final Order, (i) the Debtors waive their rights to surcharge against the DIP Collateral and Prepetition Collateral pursuant to section 506(c) of the Bankruptcy Code, and (ii) the Debtors waive their rights to assert an "equities of the case" claim against the DIP Lender, and Prepetition Lender pursuant to section 552 of the Bankruptcy Code. (Interim Order ¶¶ 18 & 23).

- Fees. The Debtors have agreed, subject to Court approval, to pay certain fees to the DIP Lenders in exchange for their making financing available under the DIP Facility. (Interim Order ¶ 7).

- Committee Investigation. The Debtors have agreed that the limitations on use of Cash Collateral or proceeds of the DIP Facility or Carve-Out to fund challenges to the DIP Liens, the Prepetition Liens, Prepetition Obligations or claims against the DIP Lender and/or the Prepetition Lender shall not apply to Committee

investigations in an aggregate amount not to exceed $30,000. The Interim Order also provides that the Debtors' stipulations as to the Prepetition Liens shall be binding upon all parties, including the Committee, unless the Committee or a party in interest has sought standing to file, and files an adversary proceeding or contested matter within 60 days of its appointment or 75 days from the petition date from the date of entry of the Final Order in accordance with Local Rule 4001-2(f). (Interim Order ¶ 14(B) and 15).

- Adequacy of the Budget (Pursuant to Local Bankruptcy Rule 4001-2(h)). The Borrowers is required to deliver to the DIP Lenders a budget for the 13 weeks commencing with the week that includes the Petition Date. Such budget will be updated and extended in the following months. (Interim Order ¶ 7). The Debtors have reason to believe that the Approved Budget will be adequate, considering all available assets, to pay all administrative expenses due or accruing during the period covered by the financing or the budget.

Prepetition Capital Structure

16. As set forth in the Flom Declaration, as of the Petition Date, the Debtors' outstanding funded debt obligations are in the aggregate amount of approximately $ __million. The particular debts and obligations are as follows:

Continuing Security Agreements.

(a) Pursuant to continuing security agreements dated December 11, 2015 (the "Continuing Security Agreements"), the Debtors granted to and/or for the benefit of Chase valid, perfected and enforceable security interests and liens (the "Prepetition Liens") in substantially all of the Debtors' personal assets, both tangible and intangible, then owned or thereafter acquired, including *inter alia,* accounts, chattel paper, deposit accounts and other payment obligations of a financial institution (including Chase), documents, equipment, general intangibles, instruments, inventory, investment property, letter of credit rights, and the proceeds, products and supporting obligations of the foregoing, all as more particularly described in the Continuing Security Agreements, including all proceeds and products thereof and all Cash Collateral (collectively, the "Prepetition Collateral");

(b) the Continuing Security Agreements secure the payment and performance

of all of Debtors' obligations, indebtedness and liabilities (the "Prepetition Obligations") whether individual, joint and several, absolute or contingent, direct or indirect, liquidated or unliquidated, then or thereafter existing in favor of Chase, including *inter alia*, liabilities, interest, costs and fees arising under or from any note, open account, letter of credit application, and specifically including indebtedness thereafter incurred by Debtors to Chase, all as more particularly described in the Continuing Security Agreements;

(c) Chase's liens and security interests constitute valid, binding, enforceable and perfected liens in and to the Prepetition Collateral, having the priority set forth in the Continuing Security Agreements, and are not subject to avoidance, reduction, disallowance, disgorgement, counterclaim, surcharge or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law; and (2) no claim of or cause of action held by the Debtors or their estates exists against Chase or any of its agents, whether arising under applicable state or federal law (including, without limitation, any recharacterization, subordination, avoidance or other claims arising under or pursuant to sections 105, 510 or 542 through 553 of the Bankruptcy Code), or whether arising under or in connection with any of the Prepetition Liens, including without limitation, any right to assert any disgorgement or recovery; and

(d) all of the Debtors' cash, including any cash in the deposit accounts, wherever located, constitutes Cash Collateral of Chase as Prepetition Lender.

Working Capital Facility.

(a) The Debtors are truly and justly indebted, without defense, counterclaim or offset of any kind, to Chase pursuant to the Working Capital Facility in the aggregate principal amount of $1,998,214.95 as of the Petition Date, *plus*, accrued and unpaid interest with respect thereto and any additional fees, costs and expenses (including any fees and expenses of attorneys, financial advisors and other professionals that are chargeable or reimbursable under

the Working Capital Facility) now or hereafter due under the Working Capital Facility (all obligations of the Debtors arising under the Working Capital Facility, at any time, collectively being referred to herein as the "Working Capital Obligations");

(b) pursuant to the Continuing Security Agreements, the Working Capital Obligations are Prepetition Obligations, such that Chase has valid, perfected and enforceable security interests and liens (the "Working Capital Liens") in the Prepetition Collateral as security for the Working Capital Obligations (as collateral for such obligations, the "Working Capital Collateral"); and

(c) (1) the Working Capital Obligations constitute legal, valid and binding obligations of each of the Debtors; (2) no offsets, defenses or counterclaims to the Working Capital Obligations exist; (3) no portion of the Working Capital Obligations is subject to avoidance, disallowance, reduction or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law; (4) the Working Capital Loan Documents are valid and enforceable by Chase against each of the applicable Debtors; (5) Chase's liens and security interests constitute valid, binding, enforceable and perfected liens in and to the Working Capital Collateral, having the priority set forth in the Working Capital Loan Documents or the Continuing Security Agreements, and are not subject to avoidance, reduction, disallowance, disgorgement, counterclaim, surcharge or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law; (6) the Working Capital Obligations constitute allowed secured claims against each Debtor's estate; and (7) no claim of or cause of action held by the Debtors or their estates exists against Chase or any of its agents, whether arising under applicable state or federal law (including, without limitation, any recharacterization, subordination, avoidance or other claims arising under or pursuant to sections 105, 510 or 542 through 553 of the Bankruptcy

Code), or whether arising under or in connection with any of the Working Capital Loan Documents (or the transactions contemplated thereunder), Working Capital Obligations or the Working Capital Liens, including without limitation, any right to assert any disgorgement or recovery.

Floorplan Facility.

(a) The Debtors are truly and justly indebted, without defense, counterclaim or offset of any kind, to Chase pursuant to the Floorplan Credit Agreement dated December 11, 2015, as amended (the "Floorplan Facility" and, together with any related documents and instruments delivered pursuant to or in connection therewith, the "Floorplan Facility Loan Documents") between Debtors, Kings Automotive Holdings LLC ("Kings") and IFC NY, LLC ("IFC") as borrowers, and Chase in the aggregate principal amount of $47,432,002.64 as of the Petition Date, *plus*, accrued and unpaid interest with respect thereto and any additional fees, costs and expenses (including any fees and expenses of attorneys, financial advisors and other professionals that are chargeable or reimbursable under the Floorplan Facility) now or hereafter due under the Floorplan Facility (all obligations of the Debtors arising under the Floorplan Facility, at any time, collectively being referred to herein as the "Floorplan Obligations");

(b) pursuant to the Continuing Security Agreements, the Floorplan Obligations are Prepetition Obligations, such that Chase has valid, perfected and enforceable security interests and liens (the "Floorplan Liens") in the Prepetition Collateral as security for the Floorplan Obligations (as collateral for such obligations, the "Floorplan Collateral"); and

(c) (1) the Floorplan Obligations constitute legal, valid and binding obligations of each of the Debtors; (2) no offsets, defenses or counterclaims to the Floorplan Obligations exist; (3) no portion of the Floorplan Obligations is subject to avoidance, disallowance, reduction or subordination pursuant to the Bankruptcy Code or applicable non-

bankruptcy law; (4) the Floorplan Loan Facility Documents are valid and enforceable by Chase against each of the applicable Debtors; (5) Chase's liens and security interests constitute valid, binding, enforceable and perfected liens in and to the Floorplan Collateral, having the priority set forth in the Floorplan Facility Loan Documents or the Continuing Security Agreements, and are not subject to avoidance, reduction, disallowance, disgorgement, counterclaim, surcharge or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law; (6) the Floorplan Obligations constitute allowed secured claims against each Debtor's estate; and (7) no claim of or cause of action held by the Debtors or their estates exists against Chase or any of its agents, whether arising under applicable state or federal law (including, without limitation, any recharacterization, subordination, avoidance or other claims arising under or pursuant to sections 105, 510 or 542 through 553 of the Bankruptcy Code), or whether arising under or in connection with any of the Floorplan Facility Loan Documents (or the transactions contemplated thereunder), Floorplan Obligations or the Floorplan Liens, including without limitation, any right to assert any disgorgement or recovery.

Mortgage Guaranty

(a) The Debtors are truly and justly indebted, without defense, counterclaim or offset of any kind, to Chase pursuant to (1) the Amended and Restated Loan Agreement dated as of December 30, 2015 (the "Mortgage Loan Agreement"), among 8904 5th Avenue Realty, L.L.C ("Realty") as borrower, Debtors, IFC, Kings, and the Gary B. Flom ("Flom"), Veniamin Nilva ("Nilva"), and Alexander Boyko ("Boyko," and collectively with Flom and Nilva, "Individual Guarantors") as guarantors, and Chase, (2) the Joint and Several Guaranty of Payment, dated as of May 4, 2015 (the "Original Mortgage Guaranty"), given by Bicom, Bay Ridge, Kings, and the Individual Guarantors as guarantors in favor of Chase, and (3) the Joinder

Agreement (together with the Original Mortgage Guaranty, the "Mortgage Guaranty", and together with the Mortgage Loan Agreement, the Original Mortgage Guaranty, and any related documents and instruments delivered pursuant to or in connection therewith, the "Mortgage Guaranty Documents"), among IFC and ISCOM as guarantors and Chase, in the aggregate principal amount of $3,410,000.00 as of the Petition Date, plus, accrued and unpaid interest with respect thereto and any additional fees, costs and expenses (including any fees and expenses of attorneys, financial advisors and other professionals that are chargeable or reimbursable under the Mortgage Guaranty) now or hereafter due under the Mortgage Guaranty (all obligations of the Debtors arising under the Mortgage Guaranty, at any time, collectively being referred to herein as the "Mortgage Guaranty Obligations");

(b) pursuant to the Continuing Security Agreements, the Mortgage Guaranty Obligations are Prepetition Obligations, and, pursuant to the Mortgage Guaranty, Chase was granted a security interest in any moneys, securities and other property of the Debtors then on deposit or thereafter delivered, remaining with, or in transit in any manner to Chase (the "Mortgage Guaranty Funds"), all as more particularly described in the Original Mortgage Guaranty, such that Chase has valid, perfected and enforceable security interests and liens (the "Mortgage Guaranty Liens") in the Prepetition Collateral and in the Mortgage Guaranty Funds as security for the Mortgage Guaranty Obligations (as collateral for such obligations, the "Mortgage Guaranty Collateral"); and

(c) (1) the Mortgage Guaranty Obligations constitute legal, valid and binding obligations of each of the Debtors; (2) no offsets, defenses or counterclaims to the Mortgage Guaranty Obligations exist; (3) no portion of the Mortgage Guaranty Obligations is subject to avoidance, disallowance, reduction or subordination pursuant to the Bankruptcy Code or

applicable non-bankruptcy law; (4) the Mortgage Guaranty Documents are valid and enforceable by Chase against each of the applicable Debtors; (5) Chase's liens and security interests constitute valid, binding, enforceable and perfected liens in and to the Mortgage Guaranty Collateral, having the priority set forth in the Mortgage Guaranty Documents or the Continuing Security Agreements, and are not subject to avoidance, reduction, disallowance, disgorgement, counterclaim, surcharge or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law; (6) the Mortgage Guaranty Obligations constitute allowed secured claims against each Debtor's estate; and (7) no claim of or cause of action held by the Debtors or their estates exists against Chase or any of its agents, whether arising under applicable state or federal law (including, without limitation, any recharacterization, subordination, avoidance or other claims arising under or pursuant to sections 105, 510 or 542 through 553 of the Bankruptcy Code), or whether arising under or in connection with any of the Mortgage Guaranty Documents (or the transactions contemplated thereunder), Mortgage Guaranty Obligations or the Mortgage Guaranty Liens, including without limitation, any right to assert any disgorgement or recovery.

Letters of Credit

(a) The Debtors are truly and justly indebted, without defense, counterclaim or offset of any kind, to Chase pursuant to three letter of credit applications and the letters of credit issued thereunder: (1) an irrevocable standby letter of credit in the amount of $166,667 in favor of Nationwide Management Corp. as agent for 625 West 55th Street LLC on behalf of Bicom, issued by Chase on or about January 14, 2015 (the "625 West 55th L/C" and, together with any related documents and instruments delivered pursuant to or in connection therewith, the "625 West 55th L/C Loan Documents), (2) an irrevocable standby letter of credit in the amount of $430,000 in favor of Riverside Machinery Co. on behalf of Bay Ridge, issued by Chase on or about April 15, 2015 (the "Riverside L/C" and, together with any related documents and

instruments delivered pursuant to or in connection therewith, the "Riverside L/C Loan Documents) and (3) an irrevocable standby letter of credit in the amount of $6,000,000 in favor of Georgetown Eleventh Avenue Owners, LLC, on behalf of Bicom, issued by Chase on or about September 24, 2015 (the "Georgetown L/C" and, together with any related documents and instruments delivered pursuant to or in connection therewith, the "Georgetown L/C Loan Documents"; further, the 625 West 55th L/C, the Riverside L/C and the Georgetown L/C are defined herein as the "L/Cs"; further, the 625 West 55th L/C Loan Documents, the Riverside L/C Loan Documents and the Georgetown L/C Loan Documents are defined herein as the "L/C Loan Documents"), plus, accrued and unpaid interest with respect thereto and any additional fees, costs and expenses (including any fees and expenses of attorneys, financial advisors and other professionals that are chargeable or reimbursable under the L/Cs) now or hereafter due under the L/Cs (all obligations of the Debtors arising under the LCs, at any time, collectively being referred to herein as the "L/C Obligations");

(b) pursuant to the Continuing Security Agreements, the L/C Obligations are Prepetition Obligations, such that Chase has valid, perfected and enforceable security interests and liens (the "L/C Liens") in the Prepetition Collateral as security for the L/C Obligations (as collateral for such obligations, the "L/C Collateral"); and

(1) the L/C Obligations constitute legal, valid and binding obligations of each of the Debtors; (2) no offsets, defenses or counterclaims to the L/C Obligations exist; (3) no portion of the L/C Obligations is subject to avoidance, disallowance, reduction or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law; (4) the L/C Loan Documents are valid and enforceable by Chase against each of the applicable Debtors; (5) Chase's liens and security interests constitute valid, binding, enforceable and perfected liens in and to the L/C Collateral,

having the priority set forth in the L/C Loan Documents or the Continuing Security Agreements, and are not subject to avoidance, reduction, disallowance, disgorgement, counterclaim, surcharge or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law; (6) the L/C Obligations constitute allowed secured claims against each Debtor's estate; and (7) no claim of or cause of action held by the Debtors or their estates exists against Chase or any of its agents, whether arising under applicable state or federal law (including, without limitation, any recharacterization, subordination, avoidance or other claims arising under or pursuant to sections 105, 510 or 542 through 553 of the Bankruptcy Code), or whether arising under or in connection with any of the L/C Loan Documents (or the transactions contemplated thereunder), L/C Obligations or the L/C Liens, including without limitation, any right to assert any disgorgement or recovery.

Forbearance Agreement

(c) The Debtors, IFC, Kings, Realty, the Individual Guarantors, and Chase entered into (1) that certain Forbearance Agreement dated as of June 23, 2016, (2) that certain Amendment to Forbearance Agreement dated as of July 25, 2016, (3) that certain Modification and Waiver Agreement dated as of September 15, 2016, (4) that certain Amendment to Modification and Waiver Agreement dated as of December 22, 2016, (5) that certain Second Amendment to Modification and Waiver Agreement dated as of February 17, 2017, and (6) that certain Forbearance Agreement dated as of June 1, 2017 (together with all documents executed in connection therewith, collectively, the "Forbearance Agreements"), and incurred certain obligations thereunder (the "Forbearance Obligations") in order to induce Chase to forbear from exercising certain of its rights and remedies in connection with the Floorplan Facility, the Working Capital Facility, and/or the Mortgage Loan Agreement (collectively, the "Prepetition Loans", further the Working Capital Loan Documents, the Floorplan Facility Loan Documents

and the Mortgage Guaranty Documents, are defined herein as the "Prepetition Loan Documents"); and

(d) without limitation to the generality of the stipulations in other Paragraphs of this Order, (1) the Forbearance Obligations constitute legal, valid and binding obligations of each of the Debtors; (2) no offsets, defenses or counterclaims to the Forbearance Obligations exist; (3) no portion of the Forbearance Obligations is subject to avoidance, disallowance, reduction or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law; (4) the Forbearance Agreements are valid and enforceable by Chase against each of the applicable Debtors; and (5) no claim of or cause of action held by the Debtors or their estates exists against Chase or any of its agents, whether arising under applicable state or federal law (including, without limitation, any recharacterization, subordination, avoidance or other claims arising under or pursuant to sections 105, 510 or 542 through 553 of the Bankruptcy Code), or whether arising under or in connection with the Forbearance Agreements (or the transactions contemplated thereunder), including without limitation, any right to assert any disgorgement or recovery.

Debtors' Stipulations With Respect to Prepetition NY Supreme Court Orders.

17. Subject to the limitations thereon described in Paragraph N(b)15 below, the Debtors hereby admit, acknowledge, agree and stipulate that:

(i) NY Supreme Court TRO.

(a) On May 9, 2017, in a lawsuit commenced by Chase regarding Debtors' continued breaches of the Floorplan Facility and the Working Capital Facility (the "Chase State Court Action"), the Supreme Court of the State of New York, County of New York ("NY Supreme Court") entered an order that, *inter alia*, "restrained and enjoined" the Debtors from "moving, removing, selling, secreting, transferring, disposing of, or damaging any of" the Prepetition

Collateral (the "TRO"); and

(b) (1) the NY Supreme Court had jurisdiction to enter the TRO; (2) the Debtors were not entitled to notice prior to entry of the TRO; (3) the Debtors had the opportunity to, but did not, request vacation of the TRO; and (4) instead, the Debtors consented to the extension of the TRO beyond its initial expiration date.

(ii) NY Supreme Court Order of Seizure.

(c) On June 15, 2017, in the Chase State Court Action, the NY Supreme Court entered an order stipulated to by Chase, the Debtors, and IFC, Kings, Flom, Nilva and Boyko that, *inter alia*, (1) approved the seizure of the Prepetition Collateral by the appropriate sheriffs in the State of New York and (2) "restrained and enjoined" the Debtors from "moving, removing, selling, secreting, transferring, disposing of, or damaging any of" the Prepetition Collateral (the "Order of Seizure"); and

(d) (1) the NY Supreme Court had jurisdiction to enter the Order of Seizure; (2) Debtors had agreed to entry of the Order of Seizure in the Forbearance Agreements; (3) Chase agreed in the Forbearance Agreements not to enforce the Order of Seizure except in certain circumstances; and (4) Chase has complied with the Forbearance Agreements in not enforcing the Order of Seizure.

Financing

(iii) The Debtors' Need for the DIP Facility and Development of the Budget.

18. As set forth in greater detail below and in the Flom Declaration, to continue operating in the ordinary course and to be able to effectuate the Auction, the Debtors need immediate access to new liquidity. The Debtors, with the assistance of their advisors, analyzed their cash needs in order to determine the liquidity levels necessary to maintain the Debtors'

operations during the pendency of these Chapter 11 Cases to preserve value for their creditors. As part of the Debtors' financial review and analysis, the Debtors developed a 13-week budget. Attached hereto as Exhibit A is a rolling 13-week cash flow budget setting forth all projected cash receipts and cash disbursements (by line item) on a weekly basis (the "Initial Approved Budget"). The Initial Approved Budget may be modified or supplemented weekly as necessary, but in no event less frequently than once every four weeks, by additional 13-week budgets prepared by the Debtors and consented to by the DIP Lender without subsequent notice to or order of the Court (each such additional budget, a "Supplemental Approved Budget" and together with the Initial Approved Budget, the "Approved Budget"). The Initial Approved Budget is an integral part of this Interim Order and has been relied upon by Chase to provide the DIP Facility and consent to the use of Cash Collateral as provided for herein. The Debtors represent and warrant to Chase and this Court that the Approved Budget includes and contains the Debtors' best estimate of all operational receipts and all operational disbursements, fees, costs and other expenses that will be payable, incurred and/or accrued by any of the Debtors during the period covered by the Approved Budget and that such operational disbursements, fees, costs and other expenses will be timely paid in the ordinary course of business pursuant to and in accordance with the Approved Budget unless such operational disbursements, fees, costs and other expenses are not incurred or otherwise payable.

19. The Debtors further represent that the Initial Approved Budget is achievable and will allow the Debtors to operate their various car dealerships and service operations in the Chapter 11 Cases, seek to sell substantially all of their assets pursuant to section 363 of the Bankruptcy Code, as authorized by the Court, and pay postpetition obligations as they come due. The Debtors shall operate in accordance with the Approved Budget and all disbursements

of the Debtors shall be consistent with the provisions of the Approved Budget. As set forth in more detail in the DIP Credit Agreement, the Debtors shall provide on a weekly basis to the DIP Lender a report detailing the actual disbursements and receipts for the preceding week versus the line items contained in the Approved Budget for such period and an explanation of any variances for each line time. The Debtors shall be permitted a variance between the Approved Budget and actual cash flow without triggering the occurrence of an Event of Default as follows: (i) for any three-week rolling period (measured on a two-week rolling period for the four weeks beginning on July 10, 2017, the Debtors' actual net cash flow (aggregate receipts minus aggregate disbursements) may deviate from the projected net cash flow for such period as set forth in the Approved Budget by no more than fifteen percent (15%); and (ii) on a weekly basis, the Debtors may exceed any line item disbursement in the Approved Budget by no more than fifteen percent (15%) per line item, provided that the Debtors may carry forward positive variances and balances within line items in the Approved Budget and reallocate such variances and balances to other periods for such line items.

20. The Debtors will use Cash Collateral to fund working capital, capital expenditures, and other general corporate purposes. Cash Collateral alone, however, will be insufficient to fund the costs associated with the Debtors' restructuring. Therefore, the Debtors, with the assistance of their advisors, have determined that the additional postpetition financing being provided by the DIP Facility is necessary to provide new money working capital for the Debtors' businesses, fund adequate protection payments, and satisfy the costs associated with consummating the Restructuring. As such, the DIP Facility is fundamental to the preservation and maintenance of the Debtors' going-concern value during these Chapter 11 Cases and critical for the Debtors' successful reorganization.

21. The Debtors do not have sufficient available sources of working capital and financing to carry on the operation of their businesses without the DIP Facility and authorized use of Cash Collateral. As a result of the Debtors' financial condition, the use of Cash Collateral alone will be insufficient to meet the Debtors' immediate postpetition liquidity needs. The Debtors' ability to maintain business relationships with their vendors, suppliers and customers, pay their employees, purchase and supply new parts inventory and otherwise finance their operations is essential to the Debtors' continued viability. In the absence of the DIP Facility and the authorization by this Court to use Cash Collateral, the Debtors' businesses and estates would suffer immediate and irreparable harm, including, without limitation, a cessation of substantially all of their operations. The preservation, maintenance and potential enhancement of the going concern value of the Debtors are of the utmost significance and importance to a successful going concern sale of the assets of the Debtors under chapter 11 of the Bankruptcy Code. Use of Cash Collateral and the DIP Facility will permit the Debtors to preserve the going concern value of their businesses while they market their businesses and assets for sale.

22. Therefore, the Debtors have an immediate need to access the DIP Facility on an interim basis and throughout the pendency of these Chapter 11 Cases, and absent doing so would result in immediate and irreparable harm.

I. THE DEBTORS' EFFORTS TO OBTAIN POSTPETITION FINANCING.

23. The Debtors simply did not have any viable alternative for postpetition financing. The Flom Declarations set forth the actions taken by the Debtors' principals to find a transaction whereby they could sell the Debtors through an out of court sale or bankruptcy auction process. The Debtors engaged transaction counsel to represent them in these efforts. The Debtors believe that their dealerships are highly desirable in the particular location in one

of highest income areas in the country. The Debtors *sine qua non* of a sale transaction with any of the ten (10) parties with which they entered into NDA's where the parties would provide financing for the transaction to allow the Debtors to continue to operate and to maximize value for their creditors. The Debtors were able to reach this stage with one potential buyer, while it would provide financing, it later did not go forward based upon other considerations.

24. As with many debtors, their financial issues are compounded by the purported termination of their dealership agreements and leases. There particular issues that the Debtors have with financing their business are more complicated, specific and niche due to the floor plan financing of multiple high-end dealerships. The Debtors did consult with a specialist banker for DIP financing but that did not bear fruit. In the end, the Debtors' were constrained to negotiate with the Lender who already had its own economic interest in the Debtors successful sale and maximization of assets for all creditors. As Judge Peck has correctly pointed out, "[t]hat which helps to foster consensus may be preferable to a notionally better transaction that carries the risk of promoting unwanted conflict." In re Ion Media, 2009 WL 2902568 (Bankr. S.D.N.Y. 2009).

25. The Debtors are unable to obtain sufficient financing from sources other than from the DIP Lender on terms and subject to conditions more favorable than under the DIP Facility and the DIP Loan Documents (as defined in the DIP Credit Agreement, and are not able to obtain unsecured credit allowable as an administrative expense under section 503(b)(1) of the Bankruptcy Code. The Debtors are also unable to obtain secured credit allowable under sections 364(c)(1), 364(c)(2) and 364(c)(3) of the Bankruptcy Code for the purposes set forth in the DIP Credit Agreement without the Debtors (i) granting to the DIP Lender, subject to the Carve-Out (as defined below), (a) the DIP Superpriority Claims (as defined below) and (b) the DIP Liens in the DIP Collateral, in each case under the terms and conditions set forth in this

Interim Order and the DIP Loan Documents, (ii) agreeing to the provisions of this Interim Order related to the Working Capital Facility and, subject to the entry of the Final Order, the repayment of the Working Capital Facility, and (iii) providing the Prepetition Lender, subject to the Carve-Out, the adequate protection as provided herein.

26. Based on the results of the Debtors' process and the current dire financial situation there are simply no workable alternative sources of financing with terms better than those of the DIP Facility presently available to the Debtors.

A. The DIP Facility.

27. As described above and in the Flom Declaration, the Debtors and the DIP Lender engaged in extensive, good faith, and arms'-length negotiations with respect to the terms and conditions of the proposed DIP Facility as memorialized in the DIP Credit Agreement. Pursuant to the DIP Credit Agreement, the Debtors are permitted to draw (a) upon entry of the Interim Order, up to $1.5 million, and (b) upon entry of the Final Order, $4.5 million. The Total DIP Commitments shall not exceed $4.5 million in the aggregate.

28. The Debtors' ability to continue the operation of its business and car dealerships to provide repair and other services will allow the Debtors' to preserve their assets to maximize their value through the Auction. The proceeds of the DIP Facility provide the much needed liquidity to fund their operations and meet their administrative obligations during these Chapter 11 Cases. The reality is that the Debtors cannot operate their businesses without the DIP Facility. They cannot be proper stewards of the estate and fiduciaries to the creditors and estates, and they cannot employ their employees. This not a case that can function with the financing being provided by the DIP Lender.

29. The DIP Lender has indicated a willingness to provide post-petition secured financing but solely on the terms and conditions set forth in this Interim Order and the DIP Loan

Documents. After considering all of their alternatives, the Debtors have concluded, in an exercise of their sound business judgment, that the DIP Facility provided by DIP Lender and the Prepetition Lender's authorization to use Cash Collateral represents the best financing presently available to the Debtors. Based upon the pleadings and proceedings of record in the Chapter 11 Cases, (i) the terms and conditions of the DIP Facility are fair and reasonable, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duty, 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 among 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 have been extended, issued or made, as the case may be, in "good faith" within the meaning of section 364(e) of the Bankruptcy Code. The Debtors have requested entry of this Interim Order pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2) and the Local Rules. Absent granting the relief sought by this Interim Order, the Debtors' estates will be immediately and irreparably harmed. Consummation of the DIP Facility and authorization of the use of the Prepetition Collateral (including the Cash Collateral) in accordance with this Interim Order and the DIP Loan Documents are, therefore, in the best interests of the Debtors' estates and are consistent with the Debtors' fiduciary duties.

B. Use of Cash Collateral.

30. An immediate and critical need exists for the Debtors to use the Cash Collateral (in addition to the DIP Facility) to continue to operate their businesses, pay wages, maintain business relationship with vendors, suppliers and customers, make capital expenditures, make adequate protection payments, generally conduct their business affairs so as to avoid immediate and irreparable harm to their estates and the value of their assets, and afford the Debtors adequate time to effectively market their businesses and/or their various assets for sale.

C. Forms of Adequate Protection.

31. The adequate protection provided to the Prepetition Lender for any diminution in the value of its interests in the Prepetition Collateral, from and after the Petition Date, including, without limitation, from the DIP Facility and use of Cash Collateral, pursuant to the provisions of this Interim Order, is consistent with and authorized by the Bankruptcy Code and is offered by the Debtors to protect the Prepetition Lender's interest in the Prepetition Collateral in accordance with sections 361, 362 and 363 of the Bankruptcy Code. The consent of the Prepetition Lender to the priming of its liens by the DIP Liens does not constitute, and shall not be construed as constituting, an acknowledgment or stipulation by the Prepetition Lender that its interests in the Prepetition Collateral are adequately protected pursuant to this Interim Order or otherwise. The adequate protection provided herein and other benefits and privileges contained herein are necessary to protect the Prepetition Lender from the diminution in value of its interests in the Prepetition Collateral and to obtain its consent to the DIP Facility and its agreement to the Debtors' use of its Cash Collateral and the priming of the Prepetition Liens, all pursuant to the terms of this Order.

Basis for Relief

I. THE DIP FACILITY SHOULD BE APPROVED PURSUANT TO SECTION 364(C) OF THE BANKRUPTCY CODE.

32. The Debtors propose to obtain financing under the proposed DIP Facility by providing security interests and liens as set forth above pursuant to section 364(c) of the Bankruptcy Code. The statutory requirement for obtaining postpetition credit under section 364(c) is a finding, made after notice and hearing, that a debtor is "unable to obtain unsecured credit allowable under Section 503(b)(1) of the [Bankruptcy Code]." 11 U.S.C. § 364(c). *See In re Crouse Grp. Inc.*, 71 B.R. 544, 549 (Bankr. E.D. Pa. 1987) (holding that secured credit

under section 364(c)(2) of the Bankruptcy Code is authorized, after notice and hearing, upon showing that unsecured credit cannot be obtained).

33. Courts generally have set forth a three-part test to determine whether a debtor may obtain financing under section 364(c) of the Bankruptcy Code. Specifically, courts consider 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 estate assets; and

(c) the terms of the transaction are fair, reasonable, and adequate under the circumstances of the debtor-borrower and the proposed lender.

See, e.g., *In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 37–39 (Bankr. S.D.N.Y. 1990); *Norris Square Civic Ass'n v. St. Mary Hosp. (In re St. Mary Hosp.)*, 86 B.R. 393, 401–02 (Bankr. E.D. Pa. 1988); *Crouse*, 71 B.R. at 549.

34. As described in greater detail below and in the Flom Declaration, the Debtors, together with their advisors, sought alternative sources of postpetition financing to determine whether the Debtors could obtain debtor-in-possession financing as an administrative expense. No parties were willing to provide postpetition financing solely on an unsecured, administrative priority basis. Furthermore, the Debtors do not believe they can adequately protect, preserve, and maximize the value of their estates without access to postpetition financing. Given the Debtors' circumstances, the Debtors believe that the terms of the DIP Facility are fair, reasonable, and adequate.

35. Where, as here, a debtor is unable to obtain unsecured credit, section 364(c)(1) of the Bankruptcy Code provides that the debtor may obtain credit secured by an administrative

expense claim having priority "over any or all administrative expenses of the kind specified in section 503(b) or 507(b) of [the Bankruptcy Code]." 11 U.S.C. § 364(c)(1). The Debtors are unable to obtain unsecured credit. Therefore, approving the DIP Superpriority Claim in favor of the DIP Lenders is appropriate under the circumstances.

II. THE DIP FACILITY SHOULD BE APPROVED PURSUANT TO SECTION 364(D)(1) OF THE BANKRUPTCY CODE.

A. Cause Exists to Authorize Financing Under Section 364 of the Bankruptcy Code.

36. In addition to authorizing financing under section 364(c) of the Bankruptcy Code, a debtor may be authorized to obtain postpetition credit secured by a lien that is senior or equal in priority to existing liens on encumbered property without the consent of the existing lienholders if the debtor cannot otherwise obtain such credit and the interests of existing lienholders are adequately protected. *See* 11 U.S.C. § 364(d)(1). Consent by the secured creditors subject to priming, however, obviates the need to show adequate protection. *See, e.g.*, *Anchor Savs. Bank FSB v. Sky Vallev, Inc.*, 99 B.R. 117, 122 (N.D. Ga. 1989) ("[B]y tacitly consenting to the superpriority lien, those creditors relieved the debtor of having to demonstrate that they were adequately protected"). Accordingly, the Debtors may incur "priming" liens under the DIP Facility if the Debtors are unable to obtain unsecured or junior secured credit and either (a) the "primed" party has consented, or (b) such "primed" party's interests in collateral are adequately protected.

37. Here, the "primed" parties have provided the requisite consent because the Prepetition Lender have consented to the proposed DIP Facility and the priming liens granted thereunder.

B. The Debtors are Unable to Obtain Unsecured or Junior Secured Credit.

38. To show that credit is not obtainable on an unsecured basis, the Debtors need only demonstrate "by a good faith effort that credit was not available" without the protections afforded to potential lenders by subsections 364(c) or (d) of the Bankruptcy Code. *Bray v. Shenandoah Fed. Savs. & Loan Ass'n (In re Snowshoe Co., Inc.)*, 789 F.2d 1085, 1088 (4th Cir. 1986); *see also Anchor Savings*, 99 B.R. at 120 n.4 (noting that the debtor satisfied the requirement of section 364(d) by "approach[ing] all lenders reasonably likely to be willing to make a junior or unsecured loan"); *Ames*, 115 B.R. at 37–40 (holding that the debtor must show that it made a reasonable effort to seek other sources of financing under subsections 364(a) and (b) of the Bankruptcy Code). Moreover, the Bankruptcy Code and courts do not require debtors to "seek credit from every possible lender before concluding that such credit is unavailable." *Snowshoe*, 789 F.2d at 1088; *see also In re Sky Valley, Inc.*, 100 B.R. 107, 113 (Bankr. N.D. Ga. 1988) (finding that "it would be unrealistic and unnecessary to require [the debtor] to conduct such an exhaustive search for financing" where the debtor "suffers some financial stress and has little or no unencumbered property"), *aff'd sub nom. Anchor Savings*, 99 B.R. at 117; *In Reading Tube Indus.*, 72 B.R. 329, 332 (Bankr. E.D. Pa. 1987) ("[g]iven the 'time is of the essence' nature of this type of financing, we would not require this or any debtor to contact a seemingly infinite number of possible lenders."); *but see Crouse Group*, 71 B.R. at 550 (noting the "relative ease" of establishing the unavailability of unsecured credit, but denying the motion where the debtor only approached one potential lender, and did not contact two large prepetition lenders).

39. The Debtors believe that there are no alternative sources of financing reasonably available and no alternative sources of financing available on better terms than those being provided by the DIP Facility. Indeed, no party was willing to provide postpetition financing on

anything other than a "priming" basis with respect to substantially all of the Debtors' assets, which "priming" liens likely would not have been consented to by the Prepetition Lender and would have subjected to the Debtors' to a protracted and expensive priming dispute. Thus, providing the DIP Lenders with a superpriority administrative claim and priming liens is reasonable and appropriate here as it will allow the Debtors to obtain on a consensual basis the critical financing they need to fund their operations and appropriately administer these Chapter 11 Cases. Therefore, the Debtors submit that they satisfy the requirements of section 364 of the Bankruptcy Code that alternative credit on more favorable terms be unavailable to the Debtors.

III. THE PROPOSED FORMS OF ADEQUATE PROTECTION WITH RESPECT TO CASH COLLATERAL ARE FAIR AND APPROPRIATE.

40. Section 363(e) of the Bankruptcy Code provides for adequate protection of interests in property when a debtor uses cash collateral. Further, section 362(d)(1) of the Bankruptcy Code provides for adequate protection of interests in property due to the imposition of the automatic stay. *See In re Cont'l Airlines*, 91 F.3d 553, 556 (3d Cir. 1996) (en banc). While section 361 of the Bankruptcy Code provides examples of forms of adequate protection, such as granting replacement liens and administrative claims, courts decide what constitutes sufficient adequate protection on a case-by-case basis. *See, e.g., In re Mosello*, 195 B.R. 277, 289 (Bankr. S.D.N.Y. 1996) ("[t]he determination of adequate protection is a fact-specific inquiry . . . left to the vagaries of each case"); *In re Realty Sw. Assocs.*, 140 B.R. 360 (Bankr. S.D.N.Y. 1992); *In re Beker Indus. Corp.*, 58 B.R. 725, 736 (Bankr. S.D.N.Y. 1986) (the application of adequate protection "is left to the vagaries of each case, but its focus is protection of the secured creditor from diminution in the value of its collateral during the reorganization process") (citation omitted); *In re Satcon Tech. Corp.*, No. 12-12869 (KG), 2012 WL 6091160,

at *6 (Bankr. D. Del. Dec. 7, 2012); *see also In re Dynaco Corp.*, 162 B.R. 389, 394 (Bankr. D.N.H. 1993) (citing 2 Collier on Bankruptcy ¶ 361.01[1] at 361–66 (15th ed. 1993) (explaining that adequate protection can take many forms and "must be determined based upon equitable considerations arising from the particular facts of each proceeding" (citations omitted)).

41. As described above, the proposed Adequate Protection Obligations set forth in the Interim Order have been consented to and, the Debtors believe, are sufficient to protect the Prepetition Lender from any Diminution in Value to the Prepetition Collateral, including Cash Collateral. In light of the foregoing, the Debtors submit that the proposed Forms of Adequate Protection being provided for the benefit of the Prepetition Lender are appropriate.

IV. THE USE OF CASH COLLATERAL IS WARRANTED AND SHOULD BE APPROVED.

42. The Debtors' use of property of their estates, including the Cash Collateral, is governed by section 363 of the Bankruptcy Code, which provides in relevant part that:

> If the business of the debtor is authorized to be operated under section . . . 1108 . . . of this title and unless the court orders otherwise, the [debtor] may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing.

11 U.S.C. § 363(c)(1). Pursuant to section 363(c)(2) of the Bankruptcy Code, a debtor may not use cash collateral unless "(A) each entity that has an interest in such cash collateral consents; or (B) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of this section." 11 U.S.C. § 363(c)(2).

43. It is essential to the Debtors' successful reorganization and the going concern value of their businesses that they have sufficient funds to operate in the ordinary course. Absent the use of Cash Collateral, the Debtors will not have sufficient working capital to (a)

make payments to employees, vendors, or suppliers, (b) satisfy ordinary operating costs, and (c) fund the administrative costs of these Chapter 11 Cases. Furthermore, as discussed above, and in accordance with section 363(c)(2) of the Bankruptcy Code, the Prepetition Lender has consented to the Debtors' use of Cash Collateral, subject the Adequate Protection Obligations on the terms and conditions set forth in the Interim Order. Accordingly, the Debtors submit that the use of Cash Collateral is in the best interests of the Debtors' estates and should be approved.

V. THE ROLL UP IS APPROPRIATE AND SHOULD BE APPROVED.

44. One of the DIP Lender's predicate conditions to the DIP Facility was that the amounts outstanding under the Working Capital Facility would be paid under the new DIP Facility, thereby converting a pre-petition claim secured against the estate's assets to a post-petition secured claim. This roll up of $2 million of the Prepetition Lender's total claims of well over $50 million – in exchange for new money of over $2.5 million – serves as an incentive to the DIP Lender to finance the Debtors' ability to pursue a quick Auction and maximize value for all creditors.

45. Courts in this district, as well as elsewhere, have approved roll-ups in recent chapter 11 cases, and in certain cases have permitted roll-ups of prepetition debt on the first day of the case. See, e.g., *In re Velo Holdings, Inc.*, Case No. 12-11384 (MG) (Bankr.S.D.N.Y. Apr. 23, 2012) (authorizing debtor-in-possession financing that included roll-up under the interim order); *In re United Retail Group, Inc.*, Case No. 12-10405 (SMB) (Bankr. S.D.N.Y.Feb. 23, 2012) (same); *In re Blockbuster Inc.*, Case No. 10-14997 (BRL); (Bankr. S.D.N.Y. Oct. 27, 2010*); In re Uno Rest. Holdings Corp.*, Case No. 10-10209 (MG) (Bankr. S.D.N.Y. Feb. 18, 2010) (authorizing debtor-in-possession financing that included roll-up under the interim order); *In re Tronox Inc.*, Case No. 09-10156 (ALG) (Bankr. S.D.N.Y. Jan. 12, 2009); In re Lyondell

Chem. Co., Case No. 09-10023 (REG) (Bankr. S.D.N.Y. Jan. 6, 2009*); In re Verso Corp.,* Case No. 16-10163 (KG) (Bankr. D. Del. March 2, 2016) (authorizing debtor-in-possession financing that included roll-up under the interim order); In re Laboratory Partners, Inc., Case No. 13-12769 (Bankr. D. Del. Oct. 29, 2013) (same); *In re Southern Air Holdings, Inc*., Case No. 12-12690 (Bankr. D. Del. Oct. 1, 2012) (same); In re Appleseed's Intermediate Holdings LLC, Case No.11-10160 (Bankr. D. Del. Jan. 20, 2011) (same); In re Foamex Int'l Inc., Case No. 09-10560 (KJC) (Bankr. D. Del. Feb. 18, 2009); Aleris Int'l, Inc., Case No. 09-10478 (BLS) (Bankr. D. Del. Feb. 12, 2009).

Recently Judge Bernstein of this court, over the vociferous objection of the Creditors' Committee approved a financing where the debtors received very little new cash in exchange for the rollup of one billion dollars of debt. In re SunEdison, Inc., Case No. 16-10992 (SMB) (Bankr. S.D.N.Y. June 9, 2016). Consistent with this authority, the Debtors respectfully submit that the Court should approve the Debtors' decision to accept and enter into the DIP Facility, including the roll-up facilities subject to the terms of the Interim Order and the Final Order.

V. THE SCOPE OF THE CARVE-OUT IS APPROPRIATE.

46. The Adequate Protection Obligations are subject to the Carve-Out. Without the Carve-Out, the Debtors and other parties in interest may be deprived of certain rights and powers because the services for which professionals may be paid in this chapter 11 cases would be restricted. *See In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) (observing that courts insist on carve-outs for professionals representing parties in interest because "[a]bsent such protection, the collective rights and expectations of all parties-in-interest are sorely prejudiced"). The Carve-Out does not directly or indirectly deprive the Debtors' estates or other parties in interest of possible rights and powers. Additionally, the Carve-Out protects against administrative insolvency during the course of these Chapter 11 C cases by

ensuring that assets remain for the payment of the Clerk of the Court, U.S. Trustee fees, and the professional fees.

VI. THE DEBTORS SHOULD BE AUTHORIZED TO MAKE THE DIP PAYMENTS.

47. In connection with negotiating the DIP Facility, the Debtors agreed, subject to Court approval, to pay certain fees, expenses and other payments arising under the DIP Documents or the DIP Orders (the "DIP Payments"). Specifically, the Debtors will pay 1% of the principal amount of the DIP Loan and such amount will accrue as payment in kind and will not be paid in cash by the Debtors' when incurred.

48. The amounts the Debtors have agreed to pay and other obligations under the DIP Documents and proposed Orders are reasonable and represent the most favorable terms to the Debtors on which the DIP Lenders would agree to make available the DIP Loans. The Debtors considered the amounts described above when determining in their sound business judgment that the DIP Facility constituted the best terms on which the Debtors could obtain the postpetition financing necessary to continue their operations and prosecute the Chapter 11 Cases, and paying these fees and payments in order to obtain the DIP Facility is in the best interests of the Debtors' estates, creditors, and other parties in interest.

49. Courts routinely authorize debtors to pay amounts similar to those the Debtors propose to pay, where the associated financing is, in the debtor's business judgment, beneficial to the debtors' estates. *See, e.g.*, *In re Answers Holdings, Inc.*, No. 17-10496 (SMB) (Bankr. S.D. N.Y. Apr. 5, 2017) (approving 2.5% commitment fee and 1% unused commitment fee); *In re InSight Health Servs. Holdings Corp.*, Case No. 10-16564 (AJG) (Bankr. S.D.N.Y. Jan. 4, 2011) (approving 2.0% DIP closing fee); *In re NR Liquidation III Co. (f/k/a Neff Corp.)*, Case No. 10-12610 (SCC) (Bankr. S.D.N.Y. June 30, 2010) (approving 3.1% DIP and exit facility fee); *In re Lear Corp.*, Case No. 09-14326 (ALG) (Bankr. S.D.N.Y. Aug. 4, 2009) (approving

5.0% upfront fee and a 1.0% exit/conversion fee); *In re Gen. Growth Props., Inc.*, Case No. 09-11977 (ALG) (Bankr. S.D.N.Y. May 14, 2009) (approving 3.75% exit fee); *In re Aleris Int'l Inc.*, Case No. 09-10478 (BLS) (Bankr. D. Del. Mar. 18, 2009) (approving 3.5% exit fee and 3.5% front-end net adjustment against each lender's initial commitment); *In re Tronox Inc.*, Case No.09-10156 (ALG) (Bankr. S.D.N.Y. Jan. 13, 2009) (approving an up-front 3% facility fee); *In re Lyondell Chem. Co.*, Case No. 09-10023 (REG) (Bankr. S.D.N.Y. Jan. 8, 2009) (approving exit fee of 3%); *In re Dura Auto. Sys., Inc.*, Case No. 06-11202 (KJC) (Bankr. D. Del. Jan. 28, 2008) (approving a 2.5% fees related to refinancing and extending a postpetition financing facility); *In re DJK Residential, Inc.*, Case No. 08-10375 (JMP) (Bankr. S.D.N.Y. Feb. 29, 2008) (approving 3% fee in connection with postpetition financing). Accordingly, the Court should authorize the Debtors to make the DIP Payments provided under the DIP Documents, and proposed Orders in connection with entering into those agreements.

VII. GOOD FAITH UNDER SECTION 364(E) OF THE BANKRUPTCY CODE.

50. Section 364(e) of the Bankruptcy Code protects a good faith lender's right to collect on loans extended to a debtor, and its right in any lien securing those loans, even if the authority of the debtor to obtain such loans or grant such liens is later reversed or modified on appeal. Section 364(e) provides that:

> The reversal or modification on appeal of an authorization under this section [364 of the Bankruptcy Code] to obtain credit or incur debt, or of a grant under this section of a priority or a lien, does not affect the validity of any debt so incurred, or any priority or lien so granted, to an entity that extended such credit in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and the incurring of such debt, or the granting of such priority or lien, were stayed pending appeal.

11 U.S.C. § 364(e).

51. As explained above, in the Flom Declaration, the DIP Facility is the result of the

Debtors' reasonable and informed determination that the DIP Lenders offered the most favorable terms on which postpetition financing was available for these Chapter 11 Cases. Further, the DIP Facility is the result of extended arms'-length, good faith negotiations between the Debtors, on one hand, and the DIP Lenders, on the other. The terms and conditions of the DIP Facility are fair and reasonable, and the proceeds of the DIP Facility will be used only for purposes that are permissible under the Bankruptcy Code. Further, no consideration is being provided to any party to the DIP Documents other than as described herein. Accordingly, the Court should find that the DIP Lenders are "good faith" lenders within the meaning of section 364(e) of the Bankruptcy Code, and are entitled to all of the protections afforded by section 364(e) of the Bankruptcy Code.

VIII. FAILURE TO OBTAIN IMMEDIATE INTERIM ACCESS TO THE DIP FACILITY, INCLUDING THE USE OF CASH COLLATERAL, WOULD CAUSE IMMEDIATE AND IRREPARABLE HARM.

52. Bankruptcy Rules 4001(b) and 4001(c) provide that a final hearing on a motion to obtain credit pursuant to section 364 of the Bankruptcy Code or to use cash collateral pursuant to section 363 may not be commenced earlier than 14 days after the service of such motion. Upon request, however, the Court is empowered to conduct a preliminary expedited hearing on the motion and authorize the obtaining of credit and use of cash collateral to the extent necessary to avoid immediate and irreparable harm to a debtor's estate. *See* Bankruptcy Rules 4001(b)(2) and 4001(c)(2) & Local Bankruptcy Rule 4001-2(g). Furthermore, section 363(c)(3) of the Bankruptcy Code authorizes the court to conduct a preliminary hearing and to authorize the use of cash collateral "if there is a reasonable likelihood that the [debtor] will prevail at the final hearing under [section 363(e) of the Bankruptcy Code]." 11 U.S.C. § 363(c)(3).

53. Failure to obtain access to the DIP Facility and access to Cash Collateral would result in immediate and irreparable harm to the Debtors and their stakeholders, and cause a diminution in value to the Debtors' estates. Without the approval of the DIP Facility and the use of Cash Collateral, the Debtors likely would be unable to continue in business, they would not be able to maintain the status quo pending the Auction. Furthermore, the Debtors require access to additional liquidity provided under the DIP Facility to fund their operations, preserve and maximize the value of their estates, and administer these chapter 11 cases.

54. Accordingly, pursuant to section 363(c)(3) of the Bankruptcy Code, Bankruptcy Rule 4001(b), and Local Bankruptcy Rule 4001-2(g), the Debtors request that the Court conduct an expedited hearing on this motion, and enter the Interim Order authorizing the Debtors to obtain credit under the DIP Facility, including the use Cash Collateral, all on an interim basis, pending approval on a final basis after the Final Hearing (if necessary).

IX. THE AUTOMATIC STAY SHOULD BE MODIFIED ON A LIMITED BASIS.

55. The relief requested herein contemplates a modification of the automatic stay to permit the Debtors to grant the security interests and liens described above to the DIP Lender to perform such acts as may be requested to assure the perfection and priority of such security interests and liens. Paragraph __ of the Interim Order further provides that the automatic stay shall be vacated and modified to the extent necessary to permit the DIP Agent and DIP Lenders (as applicable) to exercise all rights and remedies provided for in the DIP Documents and the Interim Order. Stay modifications of this kind are ordinary and standard features for the use of cash collateral, and in the Debtors' business judgment, are reasonable and fair under the present circumstances. Accordingly, the Debtors request that the Court grant the requested relief from that automatic stay as provided in the Orders.

56. Stay modification provisions of this sort are ordinary features of debtor in

possession financing facilities and, in the Debtors' business judgment, are reasonable under the circumstances. *See, e.g.*, *See, e.g.*, *In re Answers Holdings, Inc.*, Case No. 17-10496 (SMB) (Bankr. S.D.N.Y. Apr. 5, 2017); *In re Avaya Inc.*, Case No. 17-10089 (SMB) (Bankr. S.D.N.Y. Mar. 10, 2017); *In re International Shipholding Corporation*, Case No. 16-12220 (SMB) (Bankr. S.D.N.Y. Sept. 21, 2016); *In re Aéropostale, Inc.*, Case No. 16-11275 (SHL) (Bankr. S.D.N.Y. June 13, 2016); *In re Fairway Group Holdings Corp.*, Case No. 16-11241 (MEW) (Bankr. S.D.N.Y. May 31, 2016); *In re Republic Airways Holdings Inc.*, No. 16-10429 (SHL) (Bankr. S.D.N.Y. May 3, 2016).

The Requirements of Bankruptcy Rule 6003 Are Satisfied

57. Bankruptcy Rule 6003 empowers a court to grant relief within the first 21 days after the Petition Date "to the extent that relief is necessary to avoid immediate and irreparable harm." Immediate and irreparable harm exists where the absence of relief would impair a debtor's ability to reorganize or threaten the debtor's future as a going concern. *See In re Ames* Dep't Stores, Inc., 115 B.R. 34, 36 n.2 (Bankr. S.D.N.Y. 1990) (discussing the elements of "immediate and irreparable harm" in relation to Bankruptcy Rule 4001). For the reasons discussed above, the relief requested is necessary in order for the Debtors to operate their business in the ordinary course and preserve the ongoing value of the Debtors' operations and maximize the value of their estates for the benefit of all stakeholders during the pendency of these chapter 11 cases. Accordingly, the Debtors submit that they have satisfied the "immediate and irreparable harm" standard of Bankruptcy Rule 6003 to support granting the relief requested herein.

Request for a Final Hearing

58. Pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2), the Debtors request that the Court set a date, which is no sooner than 15 days after the date of this Motion and no

later than 30 days after the entry of the Interim Order, to hold a hearing to consider entry of the Final Order and the permanent approval of the relief requested in this Motion.[3] The Debtors also request authority to serve a copy of the signed Interim Order, which fixes the time and date for the filing of objections, if any, to entry of the Final Order, by first class mail upon the notice parties listed below, and further request that the Court deem service thereof sufficient notice of the hearing on the Final Order under Bankruptcy Rule 4001(c)(2).

Motion Practice

59. This motion includes citations to the applicable rules and statutory authorities upon which the relief requested herein is predicated, and a discussion of their application to this motion. Accordingly, the Debtors submit that this motion satisfies Local Bankruptcy Rule 9013-1(a).

Waiver of Bankruptcy Rules 6004(a) and 6004(h)

60. To implement the foregoing successfully, the Debtors request that the Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and that the Debtors have established cause to exclude such relief from the 14-day stay period under Bankruptcy Rule 6004(h).

Reservation of Rights

61. Nothing contained herein is intended or should be construed as an admission as to the validity of any claim against the Debtors, a waiver of the Debtors' rights to dispute any claim, or an approval or assumption of any agreement, contract, or lease under section 365 of the Bankruptcy Code. The Debtors expressly reserve their right to contest any claim related to the relief sought herein. Likewise, if the Court grants the relief sought herein, any payment made pursuant to an order of the Court is not intended to be nor should it be construed as an

[3] The DIP Credit Agreement requires that the Final Order be entered no later than 21 days after the Petition Date.

admission as to the validity of any claim or a waiver of the Debtors' rights to subsequently dispute such claim.

Notice

62. The Interim Hearing is being held pursuant to the authorization of Bankruptcy Rule 4001(b)(2) and (c)(2). Notice of the Interim Hearing and the emergency relief requested in the Motion has been provided by the Debtors, by electronic mail, overnight courier, hand delivery or electronic deliver through the Court's CM/ECF system, on July 12, 2017, to certain parties in interest, including: (i) the Office of the United States Trustee for the Southern District of New York, (ii) the 20 largest non-insider unsecured creditors of each Debtor, (iii) Chase as DIP Lender and Prepetition Lender, (iv) Sidley Austin LLP, as counsel to Chase, (v) the Internal Revenue Service, (vii) the Securities and Exchange Commission, and (viii) the United States Attorney for the Southern District of New York. Under the circumstances, such notice of the Motion, the relief requested therein and the Interim Hearing complies with Bankruptcy Rule 4001(b), (c) and (d) and the Local Rules.

No Prior Request

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

[*Remainder of page intentionally left blank.*]

WHEREFORE, for the reasons set forth herein and in the Flom Declarations, the Debtors respectfully request that this Court (a) enter the Interim Order and the Final Order granting the relief requested herein on an interim and permanent basis, respectively, and (b) grant such other and further relief as the Court deems appropriate.

New York, New York
Dated: July 12, 2017

WILK AUSLANDER LLP

/s/ Eric Snyder

Eric J. Snyder, Esq.
1515 Broadway
New York, New York 10036
Ph: (212) 981-2300
Proposed Counsel for Debtors
and Debtors in Possession