

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

IN RE:	Case No.: 19-20524 (TPA)
TRAILSIDE LODGING, LP,	Chapter 11
Debtor.	Doc. No.:
TRAILSIDE LODGING, LP,	Related to Doc. No.: 14
Movant,	Hearing Date: February 20, 2019
-vs-	Hearing Time: 10:00 a.m.
THE REINVESTMENT FUND, INC., FAY- PENN ECONOMIC DEVELOPMENT COUNCIL; THE REDEVELOPMENT AUTHORITY OF THE CITY OF CONNELLSVILLE; SSB BANK A/K/A SLOVAK SAVINGS BANK; JPMFM ENTERPRISES, LP; ALLIANCE LAUNDRY SYSTEMS, LLC; AND US FOODS, INC.,	
Respondents.	

**EXPEDITED MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS  
(I) AUTHORIZING THE DEBTOR TO OBTAIN POST-PETITION FINANCING;  
(II) AUTHORIZING THE DEBTOR TO USE CASH COLLATERAL;  
(III) GRANTING ADEQUATE PROTECTION; (IV) GRANTING RELATED  
RELIEF; AND (V) REQUEST FOR EXPEDITED HEARING**

Trailside Lodging, LP (the “Debtor” or “Borrower”), as debtor and debtor-in-possession in the above-captioned chapter 11 case,<sup>1</sup> by and through its undersigned counsel, respectfully states the following in support of this motion (this “Motion”):

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<sup>1</sup> A detailed description of the Debtor and its business, and the facts and circumstances supporting this Motion and the Debtor’s chapter 11 case (the “Chapter 11 Case”), is set forth in greater detail in the *Declaration of Nathaniel R. Morgan in Support of Chapter 11 Petition and First Day Motions* [Doc. No.: 16] (the “Initial Declaration” and with the *Supplemental Declaration of Nathaniel R. Morgan in Support of Chapter 11 Petition and First Day Motions* [Doc. No. 37], the “First Day Declaration”), filed in support of the Debtor’s voluntary petitions for relief filed under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (as amended, “Bankruptcy Code”) and certain First Day Motions (as defined in the First Day Declaration)..

**Relief Requested<sup>2</sup>**

1. By this Motion, the Debtor respectfully requests that the Court grant the following relief as provided in the proposed interim order, substantially in the form attached hereto as **Exhibit A** (the “Interim Order”), and final order (the “Final Order”<sup>3</sup> and together with the Interim Order, the “DIP Orders”):

- a. authorizing the Debtor to obtain secured post-petition financing on a superpriority basis (the “DIP Loan Facility”) pursuant to which Trailside Hospitality Investments, LLC (the “DIP Lender”), may advance and make available to the Debtor the aggregate principal amount of \$100,000.00, as follows: (a) up to a \$35,000.00 draw available upon the entry of the Interim Order, and (b) up to a \$65,000.00 draw available upon the entry of the Final Order;
- b. granting to the DIP Lender: (i) valid, binding, enforceable, non-avoidable, and automatically and properly perfected upon entry of the Interim Order, post-petition second priority security interests in and liens on (collectively, the “DIP Liens”) on all assets of the Debtor; and (ii) allowed superpriority administrative expense claims (the “DIP Superpriority Claims”) for all obligations owing to the DIP Lenders under the DIP Loan Facility (the “DIP Obligations”), in each case, which DIP Liens and DIP Superpriority Claims shall be junior and subordinate only to the Carve Out (as defined in the Interim Order) and the TRF Indebtedness, the TRF Pre-Petition Liens, the TRF Administrative Priority Claim and the TRF Replacement Liens of The Reinvestment Fund, Inc. (“TRF”);
- c. authorizing the Debtor to use Cash Collateral that is subject to the existing liens and security interests in favor of TRF and granting TRF certain adequate protection solely to the extent of any diminution in value of such parties’ interests in the collateral;
- d. vacating and modifying the automatic stay imposed by Section 362 of the Bankruptcy Code to permit the DIP Lender to perform any act authorized or permitted under or by virtue of the Interim Order;
- e. scheduling a final hearing (the “Final Hearing”) to consider entry of the Final Order for a date that is before the 35<sup>th</sup> day after the Petition Date, and fixing the time and date prior to the Final Hearing for parties in

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<sup>2</sup> Capitalized terms used but not defined in this Motion have the meanings ascribed to such terms further below in this Motion or in the Interim Order, as applicable.

<sup>3</sup> The Debtor will file the form of Final Order prior to the Final Hearing (as defined herein).

interest to file objections to this Motion; and

- f. scheduling an expedited hearing on the relief requested in this Motion.

**Basis for Expedited Relief and Preliminary Statement**

2. The Debtor brings this Motion on an expedited basis in light of the immediate and irreparable harm that would be suffered by the Debtor's bankruptcy estate if the Debtor was denied the financing needed to sustain on-going business operations during the critical first weeks of this case. Several extraordinary circumstances justify the relief requested here:

- a. The Debtor cannot continue to operate without the DIP Loan Facility. The Debtor barely had sufficient funds to make payroll as of the Petition Date. If the DIP Loan Facility is not approved, the Debtor will likely cease operations.
- b. The Debtor suffers from a liquidity crisis, which has been exacerbated by the suspension of its online reservation services by its franchisor, Cobblestone Hotel & Suites ("Cobblestone" or the "Franchisor"). By letter dated January 31, 2019, Cobblestone blocked the Debtor's online reservation services, which resulted in internet users being advised that rooms were unavailable and/or that the Debtor's hotel was "fully booked." As a result, fewer visitors have booked rooms at the Debtor's Hotel (defined below), making the proposed DIP Loan Facility all the more necessary.<sup>4</sup>
- c. The seasonality of the Debtor's operations has likewise created a need for immediate cash. The Debtor's Hotel is located in the Laurel Highlands Region of Southwestern Pennsylvania, immediately adjacent to the Great

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<sup>4</sup> On February 15, 2019, the Debtor and Cobblestone submitted a *Stipulation and Consent Order Granting Adequate Protection* [Doc. No. 32] (the "Cobblestone Stipulation"), through which Cobblestone has agreed to reactive the Debtor's reservation services in exchange for the Debtor performing in accordance with the terms and conditions of the Cobblestone Stipulation.

Allegheny Passage bike trail that runs from Washington D.C. to Pittsburgh, Pa. As visitors frequent the Connellsville area more often in the warmer months, the occupancy rate at the Debtor's Hotel increases and conversely, decreases during the colder months. The Debtor is formulating a business solution for this issue but in the interim needs the proposed DIP Loan Facility to "bridge" through the lower volume months.

- d. The Debtor desperately needs post-petition funding to pay projected operating costs that are critical to preserve its enterprise value. The Debtor submits that its value to creditors and the community is greatest as a going concern.
- e. The Connellsville community benefits from the Debtor's continued operations. Tourists visiting the Laurel Highlands, using the Great Allegheny Passage, or availing themselves of the natural resources that make Connellsville a destination location need hotel accommodations. The Debtor's Hotel is the only property of its kind in the Connellsville area. Absent the immediate infusion of cash, it will fail and the Connellsville community will suffer.
- f. The DIP Loan Facility represents the most favorable and executable transaction available to the Debtor and is the only financing option available that would enable it to avoid liquidation. Absent the funds provided by the DIP Loan Facility, the Debtor would likely be forced to liquidate its business, with stakeholders receiving lesser recoveries than they would in a chapter 11 reorganization or going concern sale, and all parties in interest, including the Debtor's employees, suffering harm in the process.

g. The Debtor therefore submits that the requested relief is necessary to avoid the immediate and irreparable harm that would otherwise result if the Debtor is denied the liquidity that would be provided through the DIP Loan Facility on the terms and conditions set forth in the Interim Order.

3. As the Debtor continues to face significant liquidity issues, the use of Cash Collateral alone would simply be insufficient to meet the Debtor's post-petition cash needs.

4. The Debtor therefore respectfully requests approval of the DIP Loan Facility and the terms and conditions described herein and in the Interim Order.<sup>5</sup>

### **Jurisdiction and Venue**

5. The United States Bankruptcy Court for the Western District of Pennsylvania (the "Bankruptcy Court") has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334.

6. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

7. Sections 105, 361, 362, 363, 364, 503, and 507 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001, 6004, and 9014, and Rule 4001-2 of the Local Bankruptcy Rules for the Western District of Pennsylvania (the "W.P.A.LBR") serve as the statutory bases for the relief requested in this Motion.

### **Concise Statements Pursuant to Bankruptcy Rule 4001(b) and W.P.A.LBR 4001-2**

#### **I. Concise Statement Regarding the DIP Loan Facility**

8. The chart below contains a summary of the material terms of the proposed DIP Loan Facility, together with references to the applicable sections of the Interim Order, as required by Bankruptcy Rules 4001(b)(1)(B) and 4001(c)(1)(B) and W.P.A.LBR 4001-2.

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5 To the extent a conflict exists between this Motion and the Interim Order, the Interim Order shall control.

<b>Bankruptcy Code/W.P.A.LBR</b>	<b>Summary Information</b>	<b>Location in Interim Order</b>
<b>Borrower</b> Bankruptcy Rule 4001(c)(1)(B)	Trailside Lodging, LP	Interim Order, ¶ G.
<b>Guarantors</b> Bankruptcy Rule 4001(c)(1)(B)	None	N/A
<b>Lender</b> Bankruptcy Rule 4001(c)(1)(B)	Trailside Hospitality Investments, LLC	Interim Order, Preamble
<b>Reporting Information</b> Bankruptcy Rule 4001(c)(1)(B); W.P.A.LBR 4001-2(b)(2)	None	N/A
<b>Entities with Interests in Cash Collateral</b> Bankruptcy Rule 4001(b)(1)(B)(i)	TRF asserts that it has first priority perfected liens upon and security interests in the Cash Collateral pursuant to the applicable provisions of the Loan Documents, and Sections 363(a) and 552(b) of the Bankruptcy Code. Cash Collateral is defined collectively as all rents, royalties, proceeds, profits, and revenues of the Pre-Petition Collateral that are in the Debtor's (or persons in privity with the Debtor) possession, custody or control, or in which the Debtor will obtain an interest during the pendency of the bankruptcy case and all other "cash collateral" within the meaning of Section 363(a) of the Bankruptcy Code. SSB may also assert an interest in cash collateral based on its control of a Deposit Account that the Debtor utilized prior to the Petition Date. Any other creditor asserting a security interest in Cash Collateral is, upon information and belief, wholly unsecured based on any junior interest in Cash Collateral.	Interim Order, ¶ E
<b>Term</b> Bankruptcy Rule 4001(b)(1)(B)(iii), 4001(c)(1)(B); W.P.A.LBR 4001-2(b)(2)	The DIP Loan Facility will mature (the " <u>Maturity Date</u> ") on the earlier of: (i) the entry of an order confirming the sale of all or substantially all of the Debtor's assets pursuant to, inter alia, Section 363 and 365 of the Bankruptcy Code (the " <u>Sale Order</u> "); (ii) the entry of an order confirming a chapter 11 plan of reorganization pursuant to Section 1129 of the Bankruptcy Code (the " <u>Confirmation Order</u> "); or (iii) the occurrence of a Termination Event (as defined in the Interim Order).	Interim Order, ¶ 6(a)
<b>Adequate Protection</b> Bankruptcy Rules 4001(b)(1)(B)(iv), 4001(c)(1)(B)(ii)	TRF shall be granted valid and perfected replacement security interests in, and liens upon (the " <u>TRF Replacement Liens</u> ") the Post-Petition Collateral (as defined in the Interim Order) to the same validity, priority and extent of the pre-petition liens against the Pre-Petition Collateral (as defined in the Interim Order), solely to the extent of any diminution in value of TRF's interests in such Pre-Petition Collateral.	Interim Order, ¶ 15(a).

<b>Waiver/Modification of the Automatic Stay</b> Bankruptcy Rule 4001(c)(1)(B)(iv)	The Interim Order provides for automatic perfection of the DIP Liens granted in connection with the Interim Order. To the extent the DIP Lender decides to file any such financing statements, notices of lien or similar instruments, the stay imposed by Section 362(a) of the Bankruptcy Code is lifted to allow the filing and recording of a certified copy of this Interim Order or any such financing statements, notices of lien or similar instruments.	Interim Order, ¶10
<b>Carve Out</b> Bankruptcy Rule 4001(c)(1)(B); W.PA.LBR 4001-2(a)(i)(f)	“Carve Out” shall mean and include: (a) any and all amounts due to the Clerk of the Court and to the United States Trustee pursuant to 28 U.S.C. § 1930(a); and (b) the aggregate accrued and unpaid fees and expenses payable under Sections 330 and 331 of the Bankruptcy Code to professionals of the Debtor, in the amount set forth in the Budget and only to the extent such fees and expenses have not been paid by the Debtors. For the avoidance of doubt, the DIP Lender shall be required to fund the Court approved professional fees set forth in the Budget from the DIP Loan Facility, and only the unpaid portion of any such Court approved professional fees, if any, shall be paid from TRF’s Pre-Petition Collateral or Post-Petition Collateral. The Carve Out shall survive the termination or expiration of the Interim Order and any Final Order entered in connection with the Motion, and the United States Trustee and the professionals whose fees and expenses are subject to the Carve Out shall have standing to enforce the Carve Out.	Interim Order, ¶20
<b>506(c) Waiver</b> Bankruptcy Rule 4001(c)(1)(B)(x); W.PA.LBR 4001-2(b)(1)(C)	The DIP Lender shall be required to fund the Court approved professional fees set forth in the Budget from the DIP Loan Facility, and only the unpaid portion of any such Court approved professional fees, if any, shall be paid from TRF’s Pre-Petition Collateral or Post Petition Collateral.	Interim Order, ¶ 20
<b>Section 552(b)</b> Bankruptcy Rule 4001(c)(1)(B); W.PA.LBR 4001-2(b)(2)	None	N/A
<b>Conditions of Borrowing</b> Bankruptcy Rule 4001(c)(1)(B); W.PA.LBR 4001-2(b)(2)	Terms and conditions set forth in the Interim Order consisting of: (i) requirements requested by TRF; (ii) conditions for DIP Financing; and (iii) certain Benchmarks required in connection with the DIP Financing.	Interim Order, ¶¶ I, 6, 7, 11, and 12.
<b>Interest Rates</b> Bankruptcy Rule 4001(c)(1)(B); W.PA.LBR 4001-2(b)(2)	The rate of interest applicable to the DIP Loan Facility will be five and one-half percent (5.50%) per annum with a default interest rate of ten and one-half percent (10.50%) per annum	Interim Order, ¶ 6(b)

<b>Use of DIP Loan Facility and Cash Collateral</b> Bankruptcy Rule 4001(b)(1)(B)(ii); W.P.A.LBR 4001-2(b)(2)	The Debtor is expressly authorized to borrow from the DIP Lender, on the terms and conditions set forth in the Interim Order, a total of \$100,000 in addition to use of Cash Collateral in accordance with the Budget.	Interim Order, ¶ 7
<b>Stipulations to Prepetition Liens and Claims</b> Bankruptcy Rule 4001(c)(1)(B)(iii); W.P.A.LBR 4001-2(b)(1)(B)	The Debtor stipulates to the validity and priority of the claims of TRF and Fay-Penn. The Debtor reserves all rights with respect to determining the actual amount owed to all creditors and with respect to the amount, validity, priority, and/or extent of any other creditor asserting a secured claim against the Debtor's estate.	Interim Order, ¶ D(i), (ii)
<b>Liens on Avoidance Actions</b> W.P.A.LBR 4001-2(b)(1)(D)	None	N/A
<b>Benchmarks</b> Bankruptcy Rule 4001(c)(1)(B); W.P.A.LBR 4001-2(b)(2)	(i) The Debtor must file an application to employ a real estate broker, reasonably acceptable to TRF, within five (5) days of the entry of the Interim Order; (ii) the Debtor must file a Sale Motion seeking the authority to sell all or substantially all of its assets and assume and/or assume and assign certain executory contracts and unexpired leases within thirty (30) days of the Petition Date or a chapter 11 plan that contemplates a sale scenario; (iii) the Debtor must obtain the entry of an Order approving the Sale Motion within seventy-five (75) days after the Petition Date (unless otherwise agreed upon in writing between the Debtor and TRF; and (iv) the Debtor must close on the Sale within ninety (90) days of the Petition Date. Each of the aforementioned Benchmarks may be extended with written consent by and between the Debtor and TRF (which shall be filed with the Bankruptcy Court) or as otherwise ordered by the Bankruptcy Court. Nothing herein shall be deemed as a waiver or delegation of the Debtor's fiduciary obligations to the bankruptcy estate and its creditors, including, without limitation, the Debtor's right to file a chapter 11 plan.	Interim Order, ¶ 12
<b>Repayment Features</b> W.P.A.LBR 4001-2(b)(1)(E)	The DIP Loan Facility will be payable in full on the Maturity Date	Interim Order, ¶ 6(c)
<b>Fees</b> Bankruptcy Rule 4001(c)(1)(B); W.P.A.LBR 4001-2(b)(2)	No fees are charged in connection with the DIP Facility other than repayment of principal and interest.	Interim Order, ¶ 6



<b>Budget</b> Bankruptcy Rule 4001(c)(1)(B); W.P.A.LBR 4001-2(b)(2)	The Debtor must comply with the 13-week budget included with the Interim Order, subject to the agreed-upon variances.	Interim Order, ¶ 7
<b>Variance Covenant</b> Bankruptcy Rule 4001(c)(1)(B); W.P.A.LBR 4001-2(b)(2)	The expenses, payments and/or disbursements expressly set forth in the Budget must not exceed a fifteen percent (15%) variance measured on a cumulative basis.	Interim Order, ¶ 14
<b>Liens and Priorities</b> Bankruptcy Rule 4001(c)(1)(B)(i); W.P.A.LBR 4001-2(b)(1)(D) and (G); 4001-2(b)(2)	In exchange for (i) the DIP Lender funding the DIP Facility and (ii) TRF consent to use of Cash Collateral, the Debtor seeks to grant (y) the DIP Liens (as defined in the Interim Order) and the DIP Superpriority Claim (as defined in the Interim Order) to the DIP Lender to secure the DIP Obligations (as defined in the Interim Order; and (z) the TRF Replacement Liens to TRF.	Interim Order, ¶¶ 8, 9, 15
<b>Events of Default</b> Bankruptcy Rule 4001(c)(1)(B); W.P.A.LBR 4001-2(b)(2)	The Termination Events are set forth in Paragraphs 12 and 13 of the Interim Order, including the failure to comply with the Benchmarks set forth in Paragraph 12; and as set forth in Paragraph 13: (i) non-compliance by the Debtor with any of the terms, provisions or covenants of this Interim Order; (ii) the Debtor's use of Cash Collateral other than as set forth herein and the Budget (and subject to the variances described below); (iii) the Debtor makes cash disbursements on an aggregate basis in excess of fifteen percent (15%) of the amounts set forth in the Budget measured on a cumulative basis; (iv) the discontinuation of the Debtor's business or the issuance of an Order for the Debtor to discontinue its business; (v) May 12, 2019; (vi) if the Debtor files a plan of reorganization or plan of liquidation with this Court that does not adequately provide, for the full payment in cash on the later of the effective date of such a plan and the Maturity Date, DIP Obligations due to the DIP Lender and the TRF Indebtedness, including fees and interest; (vii) the Debtor's failure to comply with the terms of the DIP Loan Facility as set forth herein or any terms and/or conditions of the DIP Loan Documents should they exist; (viii) any stay, reversal, vacatur or rescission of the Interim Order; (ix) the dismissal of, conversion of or appointment of an examiner with expanded powers in the Chapter 11 Case; (x) failure by this Court to enter a Final Order including terms substantially similar to the terms of this Interim Order; and (xi) the Debtor attempts to prime the liens of TRF or the DIP Lender during the pendency of the Chapter 11 Case.	Interim Order, ¶¶ 12, 13

<b>Challenge Period</b> Bankruptcy Rule 4001(c)(1)(B); W.PA.LBR 4001- 2(b)(1)(B)	As more fully set forth in Paragraph 19, of the Interim Order, the Stipulations contained in Paragraph D above, shall be adopted as findings by this Court, and, subject to this Paragraph 19 and entry of the Final Order, those findings shall be binding upon all parties in interest, unless: (a) any party-in-interest has filed an adversary proceeding or contested matter challenging the amount, validity, enforceability, perfection or priority of the TRF Indebtedness, or otherwise asserting any claims or causes of action against the TRF or the DIP Lender on behalf of the Debtor's estate, no later than the earlier of 60 days from the entry of this Interim Order (the " <u>Challenge Period</u> "), with respect to any challenge relating to the DIP Obligations and/or the DIP Liens with respect to the Post-Petition Collateral, the TRF Indebtedness with respect to the Pre-Petition Collateral, or otherwise relating to any claims or causes of action against TRF or the DIP Lender.	Interim Order, ¶ 19
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## **II. Requirements Under W.PA.LBR 4001-2**

9. W.PA.LBR 4001-2(b)(1) requires that certain provisions in connection with debtor-in-possession financing be highlighted and that the Debtor provides justification for the inclusion of each such highlighted provision(s). The Debtor submits as follows:

### **I. W.PA.LBR 4001-2(b)(1)(A)**

10. Cross-Collateralization. W.PA.LBR 4001-2(b)(1)(A) requires disclosure of provisions that grant cross-collateralization protection (other than replacement liens or other adequate protection) to the prepetition secured creditors (i.e., clauses that secure prepetition debt by post-petition assets in which the secured creditor would not otherwise have a security interest by virtue of its prepetition security agreement or applicable law). The DIP Financing not grant cross-collateralization protection to prepetition secured creditors other than with respect to adequate protection replacement liens.

### **II. W.PA.LBR 4001-2(b)(1)(B)**

11. Stipulation and Challenge Provisions. W.PA.LBR 4001-2(b)(1)(B) requires disclosure of provisions or findings of fact that bind the estate or other parties in interest with respect to the validity, perfection, or amount of the secured creditor's prepetition lien or the

waiver of claims against the secured creditor without first giving parties in interest at least (a) one hundred twenty (120) days from the date of the order, or (b) ninety (90) days from the date a committee is formed and retains counsel, to investigate such matters. Paragraph 19 of the Interim Order provides that the Stipulations contained in Paragraph D above, shall be adopted as findings by this Court, and, subject to this Paragraph 19 and entry of the Final Order, those findings shall be binding upon all parties in interest, unless: (a) any party-in-interest has filed an adversary proceeding or contested matter challenging the amount, validity, enforceability, perfection or priority of the TRF Indebtedness, or otherwise asserting any claims or causes of action against the TRF or the DIP Lender on behalf of the Debtor's estate, no later than the earlier of 60 days from the entry of this Interim Order (the "Challenge Period"), with respect to any challenge relating to the DIP Obligations and/or the DIP Liens with respect to the Post-Petition Collateral, the TRF Indebtedness with respect to the Pre-Petition Collateral, or otherwise relating to any claims or causes of action against TRF or the DIP Lender. The Debtor submits that the abbreviated Investigation Period is necessary in this case, as (i) the Debtor operates a single asset real estate business and must propose a plan of reorganization that is confirmable within a reasonable period of time within ninety (90) days of the Petition Date; and (ii) the Benchmarks require the Debtor to file a sale motion or plan that contemplates a sale within thirty (30) days of the Petition Date. Permitting an extended Investigation Period would likely stall the Debtor's efforts to consummate a sale of its operations and jeopardize the success of its case.

### **III. W.PA.LBR 4001-2(b)(1)(C)**

12. Chapter 5 of the Bankruptcy Code Waiver. W.PA.LBR 4001-2(b)(1)(C) requires disclosure of provisions that seek to waive or release, without notice and/or hearing, whatever rights the estate may have under applicable law, including without limitation, chapter 5 of the

Bankruptcy Code. Other than claims and causes of action that may be asserted against the parties described in the immediately preceding paragraph, subject to the expiration of the challenge period, the Debtor does not waive or release any rights of the estate under applicable law, including without limitation, chapter 5 of the Bankruptcy Code.

**IV. W.PA.LBR 4001-2(b)(1)(D)**

13. Liens on Avoidance Actions. W.PA.LBR 4001-2(b)(1)(D) requires disclosure of provisions that immediately grant to the prepetition secured creditor liens on the debtor's claims and causes of action arising under 11 U.S.C. §§ 544, 545, 547, 548, and 549. The Debtor does not seek to grant liens the Debtor's claims and causes of action arising under 11 U.S.C. §§ 544, 545, 547, 548, and 549.

**V. W.PA.LBR 4001-2(b)(1)(E)**

14. Roll-Up. W.PA.LBR 4001-2(b)(1)(E) requires disclosure of provisions that deem prepetition secured debt to be post-petition debt or that use post-petition loans from a prepetition secured creditor to pay part or all of that secured creditor's prepetition debt, other than as provided in section 552(b) of the Bankruptcy Code. The DIP Financing does not deem prepetition secured debt to be post-petition secured debt or use post-petition loans from a prepetition secured creditor to pay all or part of that secured creditor's prepetition debt.

**VI. W.PA.LBR 4001-2(b)(1)(F)**

15. Carve Out. W.PA.LBR 4001-2(b)(1)(F) requires disclosure of provisions that provide disparate treatment for the professionals retained by a creditors' committee from those professionals retained by the debtor with respect to a professional fee carve-out. Paragraph 20 of the Interim Order provides for a professional fee carve-out (the "Carve Out") for the Debtor's professionals. The Debtor does not anticipate the formation of a Committee of Unsecured

Creditors (the “Committee”) due to the minimal number of general unsecured creditors. Further, the Debtor suffers from significant liquidity issues and is only seeking DIP Financing in the minimum amount necessary to fund its case through a successful sale process. The Debtor therefore submits that, while the Carve Out only provides for payment of the United States Trustee fees and the fees of its professionals, such limitation is reasonable and necessary in this case.

## **VII. W.PA.LBR 4001-2(b)(1)(G)**

16. Priming Liens. W.PA.LBR 4001-2(b)(1)(G) requires disclosure of provisions that prime any secured lien without the consent of that lienor. The DIP Loan Facility is a “priming” facility inasmuch as the DIP Loan Facility will be secured by first priority, senior, priming, perfected liens on and security interests in certain of the Debtor’s rights, title and interest in, to and under the Pre-Petition Collateral (as defined in the Interim Order) that is subject to or encumbered by a validly perfected, unavoidable security interest or lien on the Petition Date or subsequently perfected thereafter, subject only to the Carve Out and the claims and liens of TRF. The DIP Lender required a “priming” lien as a condition of issuing the DIP Loan Facility and, in a sound exercise of the Debtor’s business judgment and with regard to the fiduciary duties owed to its estate, the Debtor believes the “priming” nature of the DIP Loan Facility is in the best interest of its estate.

## **Factual Background**

### **I. The Debtor’s Business and Historical Background**

17. The Debtor is a Pennsylvania limited partnership and the owner of the real property and improvements located at 237 N. First Street, Connellsville, PA 15425, which is in the Laurel Highlands Region of Southwestern Pennsylvania.

18. The Debtor's primary business is the operation of a Cobblestone Hotel & Suites hotel (the "Hotel").

19. The Hotel is a three-story, 27,500 square foot 54-room hotel and has leasehold interests in certain other real property located on N. First Street in Connellsville, Pennsylvania.

20. The Hotel is located steps away from the Great Allegheny Passage bike trail that runs from Washington D.C., to Pittsburgh, PA. Other landmark attractions in close proximity to the Hotel are Frank Lloyd Wright's Fallingwater, Kentuck Knob, Ohiopyle and Laurel Ridge State Parks, and a variety of national parks and historic sites, such as Fort Necessity, Friendship Hill, and the Flight 93 Memorial.

21. The Hotel is also located nearby Connellsville's many facilities, such as Highlands Hospital Regional Autism Center, Penn State University Fayette Campus, the Fayette County Fairgrounds, and the Connellsville Area Career & Technical Center. Connellsville businesses, such as Youghiogeny Opalescent Glass Co, Detar Manufacturing, Stone & Company, Bailey Machine Company, Ebtech Industrial Building Solutions, and Brook's Funeral Home are also very accessible from the Hotel.

22. The Connellsville community benefits from the Debtor's operations. Tourists visiting the Laurel Highlands, using the Great Allegheny Passage, or availing themselves of the natural resources that make Connellsville a destination location, need hotel accommodations. The Hotel is the only property of its kind in the Connellsville area.

23. As of the Petition Date, the Debtor employs nine (9) individuals on either a full or part-time basis. The employees do not receive any benefits in connection with their employment.

24. On February 15, 2014, the Debtor entered into the *Cobblestone Hotels, LLC, Franchise Agreement* (the “Franchise Agreement”) with Cobblestone, thereby securing the rights to operate the Hotel under the Cobblestone flag.

25. Pursuant to the Franchise Agreement, and in exchange for the fees set forth therein, Cobblestone was to provide the Debtor with a variety of lodging services, including but not limited to: (i) the utilization of distinctive trademarks, trade names, service marks, copyrights, décor, graphics, slogans, signs, logos, interior and exterior building designs, commercial symbols and color combinations (collectively, the “Business System”); and (ii) marketing, advertising, operational and other business and information and know-how concerning the Business System.

## **II. The Debtor’s Prepetition Capital Structure<sup>6</sup>**

26. As of the Petition Date, the Debtor’s capital structure consisted of outstanding funded-debt obligations in the aggregate principal amount of approximately \$4.245 Million, exclusive of loans due and owing to the Debtor’s limited partners and/or insiders. The following is a summary of the Debtor’s current funded debt obligations.

### **A. The Reinvestment Fund, Inc.**

27. In order to fund the construction of the Hotel, the Debtor initially sought financing from TRF.

28. The Debtor first executed an *Open-End Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing* dated October 23, 2015, in favor of TRF (the “TRF Open-End Mortgage”), pursuant to which the Debtor granted TRF a first priority lien on and

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6. The following summary is qualified in its entirety by reference to the operative documents, agreements, schedules, and exhibits. In the event of inconsistency between this summary (including the defined terms therein) and such documents, the source documents shall control and govern.

security interest in the real property known as 237 N. First Street, Connellsville, PA (the “Property”) together with the rents and profits from the Property.

29. The Debtor then entered into a *Construction Loan Agreement* dated as of November 12, 2015 (the “TRF Construction Loan Agreement”) with TRF, whereby TRF loaned \$3,570,000.00 (the “TRF Loan”) to the Debtor to finance the development and construction of the Hotel.

30. In connection therewith, the Debtor executed a *Promissory Note* dated November 12, 2015 (the “TRF Note”) in the principal amount of \$3,570,000.00 payable to TRF.

31. As further inducement for TRF to fund the construction of the Hotel, among other things: (i) Thomas J. Rosselot, Elaine Rosselot, Paul Dascani and Nathaniel R. Morgan (collectively, “TRF Guarantors”) executed a Guaranty Agreement in favor of TRF (collectively, the “TRF Guaranties”); (ii) the Debtor and TRF entered into a *Security Agreement* dated November 12, 2015 (the “TRF Security Agreement”), through which the Debtor granted TRF a first priority lien on and security interest in all personal property of the Debtor; and (iii) the Debtor executed a *Collateral Assignment of Franchise Agreement* dated November 12, 2015 (the “TRF Collateral Assignment”), pursuant to which the Debtor granted TRF a first priority lien on and security interest the franchise agreement and other collateral.

32. The TRF Open-End Mortgage, the TRF Construction Loan Agreement, the TRF Note, the TRF Guaranties, the TRF Security Agreement, the TRF Collateral Assignment and any document, agreement and/or instrument executed in connection with the TRF Loan, all as amended, restated, supplemented and modified from time to time, shall collectively be referred to as the “TRF Loan Documents”.



33. TRF asserts that it holds valid, enforceable, and allowable claims against Debtor as of the Petition Date, pursuant to the Loan Documents (the “TRF Pre-Petition Claim”), in an aggregate amount equal to \$3,555,491.95. The TRF Loan matures on November 1, 2022.

**B. The Fay-Penn Economic Development Council**

34. To further fund the development and construction of the Hotel, the Debtor also secured a loan from Fay-Penn Economic Development Counsel (“Fay-Penn”) in the principal amount of up to \$122,500.00 (the “Fay-Penn Loan”).

35. In connection therewith: (i) the Debtor and Fay-Penn executed an undated *Loan Agreement* (the “Fay-Penn Loan Agreement”); (ii) the Debtor executed an undated note in the principal amount of the Fay-Penn Loan (the “Fay-Penn Note”); (iii) the Debtor granted Fay-Penn a *Mortgage* dated November 12, 2015 and recorded with the Fayette County Recorder of Deeds on November 17, 2015, instrument number 201500012816 (the “Fay-Penn Mortgage”); (iv) the Debtor granted Fay-Penn an *Assignment of Rents and Leases* dated November 12, 2015, and recorded with the Fayette County Recorder of Deeds on November 17, 2015, at instrument number 201500012817 (the “Fay-Penn Assignment of Rents”); (v) the Debtor executed in favor of Fay-Penn an undated *Security Agreement* (the “Fay-Penn Security Agreement” and with the Fay-Penn Loan Agreement, the Fay-Penn Note, the Fay-Penn Mortgage, the Fay-Penn Assignment of Rents, and any other document or instrument executed in connection with the Fay-Penn Loan, the “Fay Penn Loan Documents”) through which the Debtor granted Fay-Penn a security interest in its accounts, accounts receivable, and general intangibles, and all of its furniture, appliances, fixtures, equipment, and other tangible personal property, now owned and hereafter acquired, all additions and accessions thereto, all repairs and replacements thereof, and

all proceeds of any of the foregoing, including, but not limited to, insurance proceeds (the "Fay-Penn Collateral").

36. As of the Petition Date, the outstanding balance owed on the Fay-Penn Loan is \$107,785.79, which matured on April 1, 2018.

**C. The Redevelopment Authority of the City of Connellsville**

37. The Debtor also received a loan from the Redevelopment Authority of the City of Connellsville ("RAC"), as evidenced by an undated Amended and Restated Note (the "RAC Note") in the principal amount of \$50,000.00 (the "RAC Loan") and secured by: (i) a Mortgage (the "RAC Mortgage") granted by the Debtor in favor of the RAC; and (ii) a guaranty executed by and between the RAC and Neville Galvanizing, Inc. ("NGI").

38. As of the Petition Date, the outstanding balance owed to the RAC is approximately \$50,000.00, which matures on March 1, 2020.

**D. The Subordination Agreement**

39. On or about October 23, 2015, effective as of November 12, 2015: (i) the Debtor, as borrower; (ii) TRF, as Senior Lender; and (iii) the RAC and Fay-Penn, both as Subordinated Creditors, entered into that certain Subordination Agreement (the "Subordination Agreement"). Pursuant to the Subordination Agreement, both RAC and Fay-Pen (i) subordinated and postponed payment and the time of payment of all of their respective indebtedness to and in favor of the payment in full of the TRF Indebtedness, and (ii) subordinated the lien and priority of each subordinated creditors lien and interest in any and all real or personal property of the Debtor to TRF's existing and future liens in any and all real or personal property of the Debtor.

**E. Slovak Savings Bank**

40. On December 13, 2016, the Debtor secured a revolving line of credit from Slovak Savings Bank (“SSB”) in the maximum amount of \$200,000.00 (the “SSB Loan”), as evidenced by a Revolving Demand Note (the “SSB Note”) of even date therewith. To secure the obligations due and owing under the SSB Loan, *inter alia*: (i) the Debtor and SSB executed a Loan Agreement dated December 13, 2016 (the “SSB Loan Agreement”); (ii) the Debtor granted SSB a first priority security interest in the Debtor’s Deposit Account with SBB; and (iii) Alfred F. Ambrosini, Thomas J. Rosselot, and NED Commercial Ventures, LLC, each executed an Unlimited Guarantee in favor of SSB (collectively, the “SSB Guaranties” and with the SSB Note and SSB Loan Agreement, the “SSB Loan Documents”).

41. As of the Petition Date, the outstanding balance owed on account of the loan from Slovak was approximately \$195,059.13.

**F. JMPMFME Enterprises, LP**

42. On or about April 21, 2016, the Debtor secured a loan from JMPMFME Enterprises, LP (“JMPMFME”) in the principal amount of \$95,000.00 (the “JMPMFME Loan”), pursuant to which the Debtor delivered a Commercial Term Promissory Note (the “JMPMFME Note”) to JMPMFME.

43. To secure the obligations due and owing to JMPMFME, the Debtor granted JMPMFME a Mortgage dated April 21, 2016, recorded June 16, 016 with the Recorder of Deeds for Fayette County, Pennsylvania, at Instrument No. 201600006311 (the “JMPMFME Mortgage”).

44. As of the Petition Date, the estimated outstanding balance owed on account of the loan from JMPMFME was approximately \$88,774.16.

**G. Construction Claimants and Additional Secured Claimants**

45. In addition to the lenders identified above, and reserving all rights of the Debtor to dispute the validity, priority, and/or amount of any and all claims (except as set forth in the Stipulations), the Debtor also is aware of certain construction lien claimants and other creditors that may assert security interests in all or part of the Debtor's assets.

46. The Debtor is aware of two (2) creditors that have asserted construction claims, and may have the ability to perfect mechanics' liens, against the Debtor and the Hotel: (i) BriMark Builders, LLC ("BriMark") and (ii) Fairchance Construction Company ("Fairchance"). As of the Petition Date, the amount owed to BriMark and Fairchance is approximately \$51,875.00 and \$230,000.00, respectively. As of the Petition Date, upon information and belief, neither of the aforementioned construction creditors have perfected a mechanics' lien.

47. On or about December 1, 2016, Alliance Laundry Systems, LLC ("Alliance") filed a UCC-1 financing statement with the Secretary of State for the Commonwealth of Pennsylvania, wherein Alliance asserted a purchase money security interest in all equipment of the Debtor, whether now owned or hereafter acquired, which equipment is financed by Alliance, including without limitation all washers and dryers, whether coin or card-operated, and all items of equipment ancillary to usage in a laundromat with respect to which Alliance has finance including, without limitation, bulkheads, boilers, soap dispensers, coin changers, card systems, together with the software incorporated into or used in connection with any of the foregoing items. As of the Petition Date, the Debtor remits monthly payments to Alliance in the amount of \$453.51.

48. On or about May 24, 2018, US Foods, Inc. ("US Foods") filed a UCC-1 financing statement with the Secretary of State for the Commonwealth of Pennsylvania, wherein US Foods

asserted a security interest in all of the Debtor's personal property, both now owned or at any time in the future acquired and wherever located including, but not limited to, accounts, goods, inventory, equipment, fixtures and vehicles, together with the proceeds and products thereof. As of the Petition Date, the outstanding balance allegedly owed to US Foods is approximately \$10,176.73.

### **III. Circumstances Leading to Chapter 11**

49. At the outset, it is imperative to note that the seasonality of the Debtor's operations has inhibited the Debtor's ability to generate steady operational revenue throughout the year. As discussed above, the Hotel is located in the Laurel Highlands Region of Southwestern Pennsylvania, immediately adjacent to the Great Allegheny Passage bike trail that runs from Washington D.C. to Pittsburgh, Pa.

50. As visitors frequent the Connellsville area more often in the warmer months, the occupancy rate at the Hotel increases and conversely, decreases during the colder months

51. While operating in the Hotel's historical downtime, on January 31, 2019, Cobblestone issued a *Default and Termination Notice* (the "Termination Notice") to the Debtor, alleging that the Debtor was in default under the Franchise Agreement for allegedly failing to pay monthly fees, reservation fees, and other charges accrued under the Franchise Agreement in the amount of \$20,595.13.

52. Also in conjunction with the Termination Notice, effective January 31, 2019, Cobblestone caused the Debtor's reservation system to be blocked. As the Debtor was operating during a reduced occupancy period, the suspension of its online reservation services by Cobblestone exacerbated the situation. Cobblestone halted the Debtor's online reservation

services, which resulted in internet users being advised that rooms were unavailable or that the Debtor's hotel was "fully booked."

53. As a result, fewer visitors have booked rooms at the Hotel during its slower months, which has significantly impaired the ability of the Hotel to generate the revenue it otherwise could have generated.<sup>7</sup>

### **The Debtor's Liquidity Needs**

#### **I. The Debtor Cannot Prudently Operate its Business With Cash Collateral Alone**

54. In order to successfully emerge from this case, the Debtor will need to secure post-petition debtor-in-possession financing, as the Debtor barely had sufficient funds to make the final payroll prior to the Petition Date due to current market conditions.

55. The Debtor is formulating a business solution to enhance revenue and address seasonal fluctuations in occupancy; but in the interim, it needs to secure post-petition financing to "bridge the gap" during the lower volume months.

56. The Debtor desperately needs post-petition funding to pay projected operating costs that are critical to preserve its enterprise value.

57. Absent the funds provided through a post-petition financing arrangement, the Debtor would likely be forced to liquidate its business, with stakeholders receiving lesser recoveries than they would in a chapter 11 reorganization or going concern sale, and all parties in interest, including the Debtor's employees, suffering harm in the process.

58. The Debtor, in consultation with its professionals, has reviewed and analyzed its projected cash needs and prepared a projection (as updated from time to time in accordance with

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7. As noted above, on February 15, 2019, the Debtor and Cobblestone submitted the Cobblestone Stipulation and, *inter alia*, resulted in Cobblestone reactivating the Debtor's reservation systems.

the terms of the DIP Loan Agreement, the “Budget”)<sup>8</sup> outlining the Debtor’s post-petition cash needs in the initial 13 weeks of this case.

59. The Debtor believes that the Budget and its projections provide an accurate reflection of its funding requirements over the identified period, will allow the Debtor to meet its obligations—including the administrative expenses of the Chapter 11 Case—and are reasonable and appropriate under the circumstances.

60. The Debtor believes that the DIP Loan Facility provides the Debtor sufficient liquidity to stabilize its operations as the Debtor seeks to reorganize its business, and is therefore essential to the preservation of its assets during the pendency of this Chapter 11 Case.

61. Immediate access to the DIP Loan Facility and Cash Collateral is essential to provide for continued purchases of goods and services and the meeting of other ordinary working capital and business operating needs.

62. With minimal cash on hand, the Debtor requires interim approval of the DIP Loan Facility to preserve and maximize the value of its estate and to position its estate for a going-concern reorganization.

63. Absent the immediate relief requested by this Motion, the Debtor faces a material risk of substantial, irreparable, and ongoing harm because without the infusion of new capital to fund a reorganization, the Debtor will likely be forced to liquidate its business, resulting in all stakeholders receiving lower recoveries than they would in a reorganization and significant harm inuring to all of the Debtor’s stakeholders and employees.

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8. A copy of the Budget is attached to the Interim Order as **Schedule 1**

**II. Marketing Efforts and Good Faith of the Proposed DIP Financing**

64. The Debtor has been unable to obtain such financing as unsecured credit pursuant to sections 364(a) or (b) of the Bankruptcy Code, allowable as an administrative expense under section 503(b)(1) of the Bankruptcy Code, or as secured credit pursuant to section 364(c) of the Bankruptcy Code on more favorable terms from other sources.

65. The Debtor sought to secure debtor-in-possession financing from TRF; however, TRF refused to fund a debtor-in-possession loan facility.

66. The Debtor and its professionals also contacted several potential DIP lenders, none of whom were willing to entertain a debtor-in-possession loan facility that did not include a senior secured lien position.

67. Due to the emergency circumstances surrounding the commencement of this case and the imminent need for the Debtor to secure financing in addition to use of Cash Collateral, the Debtor submits that the proposed DIP Financing is the best and only possibility for enabling the Debtor to prosecute the above-captioned case.

**III. The Proposed DIP Loan Facility Represents the Best Available Financing Option**

68. The Debtor does not have alternative sources of financing to the DIP Loan Facility readily available.

69. The Debtor's material assets are encumbered under its existing capital structure.

70. Due to the Debtor's high level of existing secured debt obligations, the Debtor could not provide evidence or certainty of a sufficient equity cushion to allow for debtor-in-possession financing that would prime existing lenders' liens over their objections.



71. For the same reason, and along with the Debtor's uncertain financial condition and liquidity issues, the options for post-petition financing on an unsecured and/or junior secured basis is almost non-existent.

72. Therefore, the Debtor respectfully submits that the DIP Loan Facility offers the best and only available financing option to allow the Debtor to potentially reorganize its business through the Chapter 11 Case.

### **Basis for Relief**

#### **I. The Debtor Should Be Authorized to Obtain Post-petition Financing**

##### **A. Securing the DIP Financing is an Exercise of the Debtor's Sound Business Judgment and in Accordance with its Fiduciary Duties to its Estate**

73. The Bankruptcy Court should authorize the Debtor, as an exercise of its sound business judgment and in accordance with the fiduciary duties owed to its estate, to obtain access to the DIP Loan Facility and continue using Cash Collateral.

74. Section 364 of the Bankruptcy Code authorizes a debtor to obtain secured or superpriority financing under certain circumstances that are present in this case. Courts grant a debtor-in-possession considerable deference when acting in accordance with its business judgment in obtaining post-petition secured credit, so long as the agreement to obtain such credit does not run afoul of the provisions of, and policies underlying, the Bankruptcy Code. *See, e.g., In re Trans World Airlines, Inc.*, 163 B.R. 964, 974 (Bankr. D. Del. 1994) (approving a post-petition loan and receivables facility because such facility "reflect[ed] sound and prudent business judgment")

75. The Debtor's determination to move forward with the DIP Loan Facility is an exercise of its sound business judgment following an arms' length marketing and negotiation process and careful evaluation of alternatives.

76. Specifically, the Debtor and its professionals determined that the proposed post-petition financing (a) will create the certainty with respect to cash flows necessary for the administration of this Chapter 11 Case and the continued operation of the Debtor's business, and (b) represents the only realistic path to exiting its Chapter 11 Case.

77. The Debtor negotiated the DIP Loan Facility with the DIP Lender in good faith, at arms'-length, and with the assistance of their respective advisors, and the Debtor believes that it has obtained the best and only financing available under the circumstances.

**B. This Honorable Court Should Authorize the Debtor to Grant Priming Liens and Superpriority Claims**

78. The Debtor proposes to secured post-petition financing on a secured basis as set forth in the Interim Order pursuant to Section 364(d) of the Bankruptcy Code.

79. . Specifically, the Debtor proposes to provide to the DIP Lender with a first priority, validly perfected lien upon all of the Debtor's right, title and interest in and to the Post-Petition Collateral, subordinate and junior only to: (i) the Carve Out (as defined below); and (ii) the claims of TRF. The DIP Liens shall at all times be junior and subordinate to the TRF Indebtedness, the TRF Pre-Petition Liens, the TRF Replacement Liens (as defined herein) and the TRF Administrative Priority Claim (as defined herein).

80. The Debtor, in consultation with its professionals, concluded that any workable financing likely would require an order authorizing the DIP liens to prime all secured creditors except for TRF and the TRF Indebtedness. This will provide certainty that the Debtor will have sufficient liquidity to preserve the value of the Debtor's estate for the benefit of all stakeholders and the Debtor's employees.

81. Given the Debtor's circumstances, the Debtor believes that the terms of the DIP Loan Facility, as set forth in the Interim Order, are fair, reasonable, and adequate, all as more

fully set forth below. For all these reasons, the Debtor submits that it has met the standard for obtaining post-petition financing.

82. Further, section 364 (c) provides that a court “may authorize the obtaining of credit or the incurring of debt (a) with priority over any or all administrative expenses of the kind specified in section 503(b) or 507(b) of the Bankruptcy Code; (b) secured by a lien on property of the estate that is not otherwise subject to a lien; or (c) secured by a junior lien on property of the estate that is subject to a lien.” *See* 11 U.S.C. § 364(c).

83. As described above, the Debtor is unable to obtain unsecured credit. Therefore, approving superpriority claims in favor of the DIP Lender is also reasonable and appropriate.

**C. No Comparable Alternative to the DIP Facilities Is Reasonably Available**

84. A debtor need only demonstrate “by a good faith effort that credit was not available without” the protections afforded to potential lenders by Section 364(d) of the Bankruptcy Code. *In re Snowshoe Co., Inc.*, 789 F.2d 1085, 1088 (4th Cir. 1986); *see also In re Plabell Rubber Prods., Inc.*, 137 B.R. 897, 900 (Bankr. N.D. Ohio 1992).

85. As noted above, the Debtor does not believe that alternative sources of financing are reasonably available given the realities imposed by the Debtor’s existing capital structure and the Debtor’s unsuccessful solicitation of alternative financing proposals.

86. The Debtor has sought to obtain post-petition financing from TRF, which TRF refused to grant. TRF further refused to consent to the “priming” nature of the DIP Loan Facility despite being adequately protected in this case.

87. Substantially all of the Debtor’s existing assets, including Cash Collateral, are encumbered. Thus, the Debtor has determined that the DIP Loan Facility provides the best opportunity available to the Debtor under the circumstances.

88. Therefore, the Debtor submits that the requirement of Section 364 of the Bankruptcy Code – that alternative credit on more favorable terms be unavailable to the Debtor – is satisfied.

## **II. The Debtors Should Be Authorized to Use Cash Collateral**

89. Section 363 of the Bankruptcy Code generally governs the use of estate property. Section 363(c)(2)(A) permits a debtor in possession to use cash collateral with the consent of the secured party.

90. As set forth in the Interim Order, the Debtor proposes to provide TRF with adequate protection to protect against the post-petition diminution in value of the Cash Collateral (as well as the Pre-Petition Collateral) resulting from the use of the Cash Collateral (and other Pre-Petition Collateral) by the Debtor and the imposition of the automatic stay (collectively, the “Adequate Protection Obligations”), including the TRF Replacement Liens and the TRF Administrative Priority Claim.

91. The Debtor submits that the proposed Adequate Protection Obligations are sufficient to protect TRF from any diminution in value of the Cash Collateral and the other Pre-Petition Collateral.

92. In light of the foregoing, the Debtor further submits that the proposed Adequate Protection Obligations to be provided for the benefit of TRF are adequate and appropriate. The Debtor’s provision of the Adequate Protection Obligations is not only necessary to protect against any diminution in value but is fair and appropriate under the circumstances of this Chapter 11 Case to ensure the Debtor is able to continue using the Cash Collateral, subject to the Interim Order, for the benefit of all parties in interest and its estate.

**III. The DIP Lender Should Be Deemed a Good-Faith Lender Under Section 364(e)**

93. 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) of the Bankruptcy Code 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.

*See* 11 U.S.C. § 364(e).

94. The terms of the DIP Loan Facility set forth in the Interim Order are the result of (a) the Debtor's reasonable and informed determination that the DIP Lender offered the most favorable terms on which to obtain vital post-petition financing, and (b) arms'-length, good-faith negotiations between the Debtor and DIP Lender.

95. The Debtor submits that the terms and conditions of the Interim Order are reasonable and appropriate under the circumstances, and the proceeds of the DIP Loan Facility will be used only for purposes that are permissible under the Bankruptcy Code.

96. Accordingly, the Bankruptcy Court should find that the DIP Lender is a "good-faith" lender within the meaning of section 364(e) of the Bankruptcy Code and is entitled to all of the protections afforded by that section.

**IV. The Automatic Stay Should Be Modified on a Limited Basis**

97. The proposed Interim Order provides that the automatic stay provisions of section 362 of the Bankruptcy Code will be modified to the extent the DIP Lender and/or TRF decides to file any financing statements, security agreements, notices of liens, and other similar instruments and documents in order to validate and perfect the liens and security interests granted under the Interim Order.

98. Stay modifications of this kind are ordinary and standard features of debtor-in-possession financing arrangements and, in the Debtor's business judgment, are reasonable and fair under the circumstances of the Chapter 11 Case. *See, e.g., In re PTC Seamless Tube Corp.*, No. 15-21445 (TPA) (Bankr. W.D. Pa. May 4, 2015); *In re ACR Management, L.L.C.*, No. 04-27848 (MBM) (Bankr. W.D. Pa. June 16, 2004).

**V. Failure to Obtain Immediate Interim Access to the DIP Loan Facility and Cash Collateral Would Cause Immediate and Irreparable Harm**

99. 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 of the Bankruptcy Code may not be commenced earlier than 14 days after the service of such motion. Upon request, however, the Bankruptcy Court may 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.

100. For the reasons noted above, the Debtor has an immediate post-petition need to use Cash Collateral, and access the liquidity provided by the DIP Loan Facility. The Debtor cannot maintain the value of its estate during the pendency of this Chapter 11 Case without access to cash. The Debtor will use cash to, among other things, fund the operation of its business.

101. The Debtor believes that substantially all of its available cash constitutes Cash Collateral. The Debtor will therefore be unable to operate its business without access to Cash Collateral, and will suffer immediate and irreparable harm to the detriment of all creditors and other parties in interest.

102. In short, the Debtor's ability to administer its Chapter 11 Case through the use of Cash Collateral is vital to preserve and maximize the value of the Debtor's estate.

103. The Debtor respectfully requests that the Bankruptcy Court hold and conduct a hearing to consider entry of the Interim Order authorizing the Debtor, from and after entry of the Interim Order until the Final Hearing, to receive initial funding under the DIP Loan Facility on the terms and conditions set forth in the Interim Order.

104. The Debtor believes that this relief will enable it to preserve and maximize value and, therefore, avoid immediate and irreparable harm and prejudice to its estate and all parties in interest, pending the Final Hearing.

**Request for Expedited Hearing Pursuant to W.PA.LBR 9013-2**

105. The Debtor believes that just cause exists to support its request for an expedited hearing on this Motion.

106. The Debtor filed its petition for relief under chapter 11 of the Bankruptcy Code just days before the filing of this Motion.

107. Absent an expedited hearing on this matter, the Debtor, its estate, and creditors would be harmed because the Debtor's ability to access cash or to receive financing to continue daily operations would cease.

108. The need for an expedited hearing has not been caused by the lack of due diligence by the Debtor or its counsel.

**Request for Final Hearing**

109. Pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2), the Debtor respectfully requests that the Bankruptcy Court set a date for the Final Hearing that is as soon as practicable, and in no event after 35 days after the Petition Date, and fix the time and date prior to the Final Hearing for parties to file objections to this Motion.

**Waiver of Bankruptcy Rule 6004(a) and 6004(h)**

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

**Notice**

111. The Debtor will provide notice of this Motion to: (a) counsel for the DIP Lender; (b) counsel for TRF; (c) counsel for all potentially secured creditors or all potentially secured creditors if unrepresented; (d) the 20 largest unsecured creditors of the Debtor, (e) the United States Attorney for the Western District of Pennsylvania, (f) the United States Trustee for the Western District of Pennsylvania, and (g) all parties that have formally requested notices in the Chapter 11 Case. The Debtor submits that, in light of the nature of the relief requested, no other or further notice need be given.



WHEREFORE, the Debtor respectfully requests that the Bankruptcy Court enter the Interim Order, granting the relief requested herein and such other relief as the Bankruptcy Court deems appropriate under the circumstances.

Date: February 20, 2019

WHITEFORD, TAYLOR & PRESTON, LLP

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