



CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed November 23, 2020

United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re: § Chapter 11
Tuesday Morning Corporation, *et al.*,¹ § Case No. 20-31476-HDH-11
Debtors. § Jointly Administered

**ORDER GRANTING DEBTORS' EXPEDITED MOTION FOR ENTRY OF AN ORDER
AUTHORIZING THE DEBTORS TO PAY THE EXTENSION FEE IN CONNECTION
WITH THE EXTENSION OF THE ABL EXPIRATION DATE**

Upon the *Debtors' Expedited Motion for Entry of an Order Authorizing the Debtors to Pay the Extension Fee in Connection with the Extension of the ABL Expiration Date* (the "Motion"); and the Court having jurisdiction to consider the Motion and the relief requested

¹The Debtors in these Chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, include: Tuesday Morning Corporation (8532) ("TM Corp."); TMI Holdings, Inc. (6658) ("TMI Holdings"); Tuesday Morning, Inc. (2994) ("TMI"); Friday Morning, LLC (3440) ("FM LLC"); Days of the Week, Inc. (4231) ("DOTW"); Nights of the Week, Inc. (7141) ("NOTW"); and Tuesday Morning Partners, Ltd. (4232) ("TMP"). The location of the Debtors' service address is 6250 LBJ Freeway, Dallas, TX 75240.

therein pursuant to 28 U.S.C. §§ 157 and 1334, and the *Order of Reference of Bankruptcy Cases and Proceedings Nunc Pro Tunc*, Misc. Rule No. 33 (N.D. Tex. Aug. 3, 1984); and consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and it appearing that venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided, and it appearing that no other or further notice need be provided; and the Court having reviewed the Motion; and the Court having held a hearing on the Motion; and all objections, if any, to the Motion have been withdrawn, resolved, or overruled; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.
2. The First Amendment to the ABL Credit Agreement, including the Extension Fee, is hereby approved in its entirety.
3. Solely with respect to any borrowing requested on or after November 25, 2020 (the “Extension Commencement Date”), after giving effect to the requested borrowing, the aggregate outstanding principal amount of all loans under the ABL DIP Credit Agreement shall not exceed \$5,000,000, and letters of credit shall not exceed the sublimit amount of the ABL DIP Credit Agreement;
4. The Debtors shall pay an extension fee (the “Extension Fee”) in the aggregate amount of \$100,000 immediately upon entry of the Order approving the Extension Fee; and

5. The Debtors' shall have provided, or immediately upon entry of this Order provide, evidence satisfactory to the ABL DIP Agent of written consent from no fewer than 270 landlords to extend the current deadline under Bankruptcy Code § 365(d)(4) to assume or reject unexpired store leases until January 31, 2021. Additionally, the Debtors shall move for and obtain entry of an order approving the extension of the § 365(d)(4) deadline with respect to the consenting landlords.
6. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry.
7. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order.

END OF ORDER

Agreed as to Form and Content:

/s/ Ian T. Peck

Ian T. Peck
State Bar No. 24013306
Jarom J. Yates
State Bar No. 24071134
Jordan E. Chavez
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ATTORNEYS FOR DEBTORS

/s/ William L. Wallander

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**ATTORNEYS FOR JPMORGAN CHASE
BANK, N.A.**

EXHIBIT 1

First Amendment to ABL DIP Credit Agreement

FIRST AMENDMENT

FIRST AMENDMENT, dated as of November 12, 2020 (this "Amendment") to the Senior Secured Super Priority Debtor-In-Possession Credit Agreement, dated as of May 29, 2020 (as amended prior to the date hereof, the "Credit Agreement") among Tuesday Morning, Inc., a Texas corporation (the "Borrower"), each of the Subsidiary Guarantors, Tuesday Morning Corporation, a Delaware corporation ("Parent"), TMI Holdings, Inc., a Delaware corporation ("Intermediate Holdings"), the Lenders party thereto from time to time, JPMorgan Chase Bank, N.A., as administrative agent (in such capacity, the "Administrative Agent") and the other parties thereto.

RECITALS

WHEREAS, the Borrower and the Guarantors filed a voluntary case, including any adversary proceedings or other ancillary proceedings related thereto (the "Chapter 11 Cases") under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"), and the Chapter 11 Cases are jointly administered in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Court", and the date the Chapter 11 Cases were commenced, the "Petition Date");

WHEREAS, from and after the Petition Date, the Borrower and the Guarantors continue to operate their business and manage their property as debtors and debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code;

WHEREAS, the Court entered the *Final Order (I) Authorizing Debtors to (A) Use Cash Collateral on a Limited Basis and (B) Obtain Postpetition Financing on a Secured, Superpriority Basis, (II) Granting Adequate Protection, and (III) Granting Related Relief* [Docket No. 331] (the "Final Order") on June 26, 2020;

WHEREAS, the Borrower has requested that the Lenders consent to certain amendments to the Credit Agreement;

WHEREAS, effective as of the Amendment Effective Date (as defined below) each Lender consenting to this Amendment has, subject to the terms and conditions set forth herein, agreed to the amendment of the Credit Agreement as set forth herein (the Credit Agreement, as amended by this Amendment, the "Amended Credit Agreement");

NOW, THEREFORE, in consideration of the premises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound hereby, agree as follows:

Section 1. **Capitalized Terms.** Capitalized terms used in this Amendment but not defined herein shall have the meanings assigned to them in the Credit Agreement.

Section 2. **Amendments to Credit Agreement.** In reliance upon the representations, warranties and covenants herein, the Credit Agreement shall be amended effective as of the Amendment Effective Date in the manner provided in this Section 2:

2.1 **Additional Definition.** Section 1.1 of the Credit Agreement is hereby amended by adding thereto, in the appropriate alphabetical order, the following new definition:

"Extension Commencement Date" means November 25, 2020.

2.2 **Amended Definition.** The definition of “Revolver Termination Date” is hereby amended and restated in its entirety to read as follows:

“Revolver Termination Date” shall mean December 31, 2020.

2.3 **Amendment to Section 2.07(c).** Section 2.07(c) of the Credit Agreement is hereby amended and restated in its entirety to read as follows:

(c) In the event and on such occasion that (i) the aggregate outstanding Loans and LC Obligations exceed the Line Cap, the Borrower shall on the next Business Day prepay first, the Pre-Petition Obligations then outstanding (other than the Retained Pre-Petition Obligations except to the extent provided in Section 2.07(h)) in the order and manner provided in the Pre-Petition Credit Agreement and second, the Loans and/or LC Obligations or Cash Collateralize the LC Obligations in an account with the Administrative Agent pursuant to Section 2.04(c), as applicable, in an aggregate amount equal to such excess and (ii) from and after the Extension Commencement Date, the aggregate principal amount of Loans outstanding exceeds \$5,000,000, the Borrower shall on the next Business Day prepay first, the Pre-Petition Obligations then outstanding (other than the Retained Pre-Petition Obligations except to the extent provided in Section 2.07(h)) in the order and manner provided in the Pre-Petition Credit Agreement and second, the Loans in an aggregate amount equal to such excess.

2.4 **Amendment to Section 4.02.** Section 4.02 of the Credit Agreement is hereby amended and restated in its entirety to read as follows:

Section 4.02 Conditions Precedent to All Credit Extensions. On the date of each Borrowing and on the date of each issuance, amendment, extension or renewal of a Letter of Credit:

(a) the Borrower shall have delivered to the Administrative Agent a customary Borrowing Request, or LC Request as the case may be certifying as to, among other things, that (i) the Loans will be utilized in accordance with the Approved Budget (as updated from time to time pursuant to any Budget Compliance Report), (ii) the principal amount of the requested Loans (together with the outstanding principal amount of all outstanding Loans) does not exceed the Approved Budget (as updated from time to time pursuant to any Budget Compliance Report), (iii) the Borrower shall apply the proceeds of the Loans only to expenses set forth in the Approved Budget, (iv) after giving effect to the requested Borrowing, the aggregate outstanding principal amount of Loans and LC Obligations shall not exceed the Line Cap, and (v) solely with respect to any Borrowing requested on or after the Extension Commencement Date, after giving effect to the requested Borrowing, the aggregate outstanding principal amount of all Loans shall not exceed \$5,000,000;

(b) Availability on the proposed date of such Borrowing shall be equal to or greater than the amount of such proposed Borrowing or issuance of Letters of Credit;

(c) at the time of and immediately after giving effect to such Borrowing or the issuance, amendment, renewal or extension of such Letter of Credit, as applicable, and the application of the proceeds thereof, (i) no Default or Event of Default shall have occurred and be continuing (except for (x) any defaults or events of default arising solely as a result of the commencement of the Chapter 11 Cases and (y) to the extent the Pre-

Petition Obligations have not been converted to the Obligations in accordance with this Agreement, any defaults or events of default under the Pre-Petition Credit Agreement) and (ii) no Protective Advance shall be outstanding;

(d) the representations and warranties of each Loan Party set forth in **Article III** of this Agreement or in any other Loan Document shall be true and correct in all material respects (without duplication of any materiality qualifier contained therein) on the date of, and upon giving effect to, such funding or issuance (except for representations and warranties that expressly relate to an earlier date, in which case such representations and warranties shall be true and correct in all material respects as such earlier date);

(e) with respect to the issuance of any Letter of Credit, the LC Conditions shall be satisfied;

(f) (i) the Final Order and the Cash Management Order, in each case, shall have been entered in form and substance acceptable to the Administrative Agent following the expiration of the Interim Order; (ii) the Interim Order or the Final Order, as applicable, shall not have been vacated, stayed, reversed, modified, or amended without the Administrative Agent's consent and shall otherwise be in full force and effect; and (iii) no motion for reconsideration of the Interim Order or the Final Order, as applicable, shall have been timely filed by a Loan Party of any of their Subsidiaries;

(g) the Borrower shall have paid the balance of all fees and expenses then due and payable under this Agreement; and

(h) solely with respect to any Borrowing requested on or after the Extension Commencement Date, after giving effect to the requested Borrowing, the aggregate outstanding principal amount of all Loans shall not exceed \$5,000,000.

Each request by the Borrower for funding of a Loan, or issuance of a Letter of Credit (other than the Existing Letters of Credit) shall constitute a representation by the Borrower that the conditions in **clauses (b)** through **(h)** above are satisfied on the date of such request and on the date of such funding or issuance.

2.5 **Amendment to Schedule 3.07.** Schedule 3.07 to the Credit Agreement is hereby amended and restated in its entirety to read as set forth on **Schedule 3.07** to this Amendment.

Section 3. **Representations and Warranties.** Each Loan Party makes the following representations and warranties:

(a) at the time of and immediately after giving effect to the Amendment Effective Date, no Default or Event of Default has occurred and is continuing;

(b) the representations and warranties of each Loan Party set forth in **Article III** of the Credit Agreement and in any Loan Document are true and correct in all material respects (without duplication of any materiality qualifier contained therein) as of the Amendment Effective Date, with the same effect as though made on and as of such date (except to the extent such representations and warranties expressly relate to an earlier date, in which case such representations and warranties were true and correct in all material respects (without duplication of any materiality qualifier contained therein) as of such earlier date); and

(c) since the Petition Date, no event, development, circumstance or change has occurred that has or would reasonably be expected to have a Material Adverse Effect.

Section 4. **Conditions to Effectiveness of this Amendment**. This Amendment shall become effective on the date (such date, the "Amendment Effective Date") that the following conditions have been satisfied:

4.1 The Administrative Agent (or its counsel) shall have received from each party hereto either (i) a counterpart of this Amendment signed on behalf of such party or (ii) written evidence satisfactory to the Administrative Agent (which may include fax or other electronic transmission of a signed signature page of this Amendment) that such party has signed a counterpart of this Amendment.

4.2 The Borrower shall have paid to the Administrative Agent for the ratable benefit of the Lenders a non-refundable extension fee in the amount of \$100,000.

4.3 The Court shall have entered an order, in form and substance acceptable to the Administrative Agent, approving entry by the Loan Parties into this Amendment.

4.4 The Administrative Agent shall have received satisfactory evidence that the Loan Parties have obtained the written consent of the landlords of not fewer than 270 of the Loan Parties' stores to the extension of the deadline under Bankruptcy Code §365(d)(4) for the Loan Parties to assume or reject the unexpired store leases to which each such landlord is a party.

4.5 The Court shall have entered an order, in form and substance acceptable to the Administrative Agent, granting the Loan Parties' motion to extend the Loan Parties' deadline under Bankruptcy Code §365(d)(4) to assume or reject their unexpired store leases until January 31, 2021.

Section 5. **Counterparts**. This Amendment may be executed in two (2) or more counterparts, each of which shall constitute an original but all of which, when taken together, shall constitute but one (1) contract, and shall become effective as provided in Section 4 of this Amendment. Delivery of an executed counterpart to this Amendment by facsimile transmission or other electronic transmission (including by ".pdf" or ".tif") shall be as effective as delivery of a manually signed original.

Section 6. **Headings**. The headings of the several Sections and subsections of this Amendment are inserted for convenience only and are not to affect the construction of, or to be taken into consideration in interpreting, this Amendment.

Section 7. **Effect of this Amendment**. Except as expressly set forth herein, (i) this Amendment shall not by implication or otherwise limit, impair, constitute a waiver of or otherwise affect the rights and remedies of the Lenders, the Administrative Agent or the Issuing Banks, in each case under the Credit Agreement, the Final Order, or any other Loan Document, (ii) shall not alter, modify, amend or in any way affect any of the terms, conditions, obligations, covenants or agreements contained in the Credit Agreement, the Final Order, or any other Loan Document and (iii) each and every term, condition, obligation, covenant and agreement contained in the Credit Agreement, the Final Order, or any other Loan Document is hereby ratified and re-affirmed in all respects and shall continue in full force and effect. Each of the Loan Parties hereby consents to this Amendment and confirms and reaffirms (i) that all obligations of such Loan Party under the Loan Documents to which such Loan Party is a party shall continue to apply to the Credit Agreement as amended hereby, (ii) its Guarantees of the Obligations, (iii) its pledges and grants of security interests and Liens on the Collateral to secure the Obligations pursuant to the Security Documents and (iv) such Guarantees, pledges and grants of security interests, as applicable, shall continue to be in full force and effect and shall continue to inure to the benefit of the

Lenders and the other Secured Parties. This Amendment shall constitute a Loan Document for purposes of the Credit Agreement. On and after the effectiveness of this Amendment, each reference in any Loan Document to “the Credit Agreement” shall mean and be a reference to the Amended Credit Agreement and each reference in the Credit Agreement to “this Agreement,” “hereunder,” “hereof” or words of like import shall mean and be a reference to the Amended Credit Agreement. The parties hereto acknowledge and agree that the amendment of the Credit Agreement pursuant to this Amendment and all other Loan Documents amended and/or executed and delivered in connection herewith shall not constitute a novation of the Credit Agreement or of any other Loan Documents as in effect prior to the Amendment Effective Date.

Section 8. **Reimbursement of Expenses.** Subject to the provisions of the Final Order, the Borrower agrees to pay or reimburse all reasonable and documented (in summary form) expenses, including, without limitation, reasonable and documented (in summary form) attorney’s fees and expenses, incurred by the Administrative Agent in connection with the negotiation and preparation of this Amendment.

Section 9. **NO CLAIMS; RELEASE; COVENANT NOT TO SUE.** EACH LOAN PARTY (IN ITS OWN RIGHT AND ON BEHALF OF ITS PREDECESSORS, LEGAL REPRESENTATIVES, SUCCESSORS AND ASSIGNS) HEREBY EXPRESSLY AND UNCONDITIONALLY ACKNOWLEDGES AND AGREES THAT, AS OF THE DATE HEREOF, IT HAS NO SETOFFS, COUNTERCLAIMS, ADJUSTMENTS, RECOUPMENTS, DEFENSES, CLAIMS, CAUSES OF ACTION, ACTIONS OR DAMAGES OF ANY CHARACTER OR NATURE, WHETHER CONTINGENT, NONCONTINGENT, LIQUIDATED, UNLIQUIDATED, FIXED, MATURED, UNMATURED, DISPUTED, UNDISPUTED, LEGAL, EQUITABLE, SECURED OR UNSECURED, KNOWN OR UNKNOWN, ACTUAL OR PUNITIVE, FORESEEN OR UNFORESEEN, DIRECT, OR INDIRECT, AGAINST THE ADMINISTRATIVE AGENT, ANY LENDER, ANY ISSUING BANK, ANY OF THEIR RESPECTIVE AFFILIATES OR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, ATTORNEYS, CONSULTANTS TO ATTORNEYS (INCLUDING, WITHOUT LIMITATION, AGENT COUNSEL AND AGENT ADVISOR) OR REPRESENTATIVES OR ANY OF THEIR RESPECTIVE PREDECESSORS, SUCCESSORS OR ASSIGNS (COLLECTIVELY, THE “LENDER-RELATED PARTIES”) OR ANY GROUNDS OR CAUSE FOR REDUCTION, MODIFICATION, SET ASIDE OR SUBORDINATION OF THE SECURED OBLIGATIONS OR ANY LIENS OR SECURITY INTERESTS GRANTED OR CREATED UNDER OR IN CONNECTION WITH ANY LOAN DOCUMENT IN FAVOR OF THE ADMINISTRATIVE AGENT. IN PARTIAL CONSIDERATION FOR THE AGREEMENT OF THE ADMINISTRATIVE AGENT, THE LENDERS AND THE ISSUING BANKS TO ENTER INTO THIS AGREEMENT, EACH LOAN PARTY HEREBY KNOWINGLY AND UNCONDITIONALLY WAIVES AND FULLY AND FINALLY RELEASES AND FOREVER DISCHARGES THE LENDER-RELATED PARTIES FROM, AND COVENANTS NOT TO SUE THE LENDER-RELATED PARTIES FOR, ANY AND ALL SETOFFS, COUNTERCLAIMS, ADJUSTMENTS, RECOUPMENTS, CLAIMS, DEMANDS, CAUSES OF ACTION, ACTIONS, GROUNDS, CAUSES, DAMAGES, REMEDIES, COSTS AND EXPENSES OF EVERY NATURE AND CHARACTER, WHETHER CONTINGENT, NONCONTINGENT, LIQUIDATED, UNLIQUIDATED, FIXED, MATURED, UNMATURED, DISPUTED, UNDISPUTED, LEGAL, EQUITABLE, SECURED OR UNSECURED, KNOWN OR UNKNOWN, ACTUAL OR PUNITIVE, FORESEEN OR UNFORESEEN, DIRECT OR INDIRECT, ARISING OUT OF OR FROM OR RELATED TO ANY LAW, STATUTE, RULE, REGULATION, OR ANY OF THE LOAN DOCUMENTS, WHETHER AT LAW, IN EQUITY, OR OTHERWISE, WHICH ANY LOAN PARTY OWNS AND HOLDS AS OF THE DATE HEREOF, OR HAS AT ANY TIME PRIOR TO THE DATE HEREOF OWNED OR HELD, SUCH WAIVER, RELEASE AND

DISCHARGE BEING MADE WITH FULL KNOWLEDGE AND UNDERSTANDING OF THE CIRCUMSTANCES AND EFFECTS OF SUCH WAIVER, RELEASE AND DISCHARGE AND AFTER HAVING CONSULTED LEGAL COUNSEL OF ITS OWN CHOOSING WITH RESPECT THERETO. THIS SECTION IS IN ADDITION TO ANY OTHER RELEASE OF ANY OF THE LENDER-RELATED PARTIES BY ANY LOAN PARTY AND SHALL NOT IN ANY WAY LIMIT ANY OTHER RELEASE, COVENANT NOT TO SUE, OR WAIVER BY ANY LOAN PARTY IN FAVOR OF ANY OF THE LENDER-RELATED PARTIES, IT BEING THE INTENT OF THE LOAN PARTIES THAT THIS RELEASE AND COVENANT NOT TO SUE BE AS BROAD AND INCLUSIVE AS PERMITTED BY APPLICABLE LAW.

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IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed by their respective authorized officers as of the day and year first above written.

BORROWER:

TUESDAY MORNING, INC.


By: 
Name: Steven R. Becker
Title: Chief Executive Officer and President

GUARANTORS:

TUESDAY MORNING CORPORATION


By: 
Name: Steven R. Becker
Title: Chief Executive Officer and President

TMI HOLDINGS, INC.


By: 
Name: Steven R. Becker
Title: Chief Executive Officer and President

FRIDAY MORNING, LLC


By: Tuesday Morning, Inc., as Sole Member

By: 
Name: Steven R. Becker
Title: Chief Executive Officer and President

DAYS OF THE WEEK, INC.


By: 
Name: Steven R. Becker
Title: Chief Executive Officer

NIGHTS OF THE WEEK, INC.

By: 
Name: Steven R. Becker
Title: Chief Executive Officer

TUESDAY MORNING PARTNERS, LTD.


By: Days of the Week, Inc., as General Partner

By: 
Name: Steven R. Becker
Title: Chief Executive Officer

JPMORGAN CHASE BANK, N.A.,
as Administrative Agent, an Issuing Bank, and a
Lender

By: *Jon Eckhouse*
Name: Jon Eckhouse
Title: Authorized Officer

WELLS FARGO BANK, N.A.,
as a Lender and as Syndication Agent

By: 
Name: JAI ALEXANDER
Title: DIRECTOR

BANK OF AMERICA, N.A.,
as a Lender

By: Andrew Cerussi
Name: Andrew Cerussi
Title: Senior Vice President

Schedule 3.07

Properties**Owned Real Property:**

Address	Owner
14601 Inwood Road, Addison, Texas 75001	Friday Morning, LLC
14603 Inwood Road, Addison, Texas 75001	Friday Morning, LLC
14639 Inwood Road, Addison, Texas 75001	Friday Morning, LLC
4404 S Beltwood Pkwy, Farmers Branch, Texas 75244	Tuesday Morning Partners, Ltd.
14621 Inwood Road, Addison, Texas 75001	Tuesday Morning Partners, Ltd.
14303 Inwood Rd, Farmers Branch, TX 75244	Tuesday Morning Partners, Ltd.
6250 LBJ Freeway, Dallas, TX 75240	Tuesday Morning, Inc.

Leased Real Property:

Address	Purpose
563 S. 63rd Ave, Phoenix, AZ 85043	Phoenix Distribution Center
See <i>Exhibit A</i>	Various Store Locations