

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

BHCOSMETICS HOLDINGS, LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 22-10050 (____)

(Joint Administration Requested)

**DEBTORS' MOTION FOR INTERIM AND FINAL ORDERS (A) AUTHORIZING
POSTPETITION USE OF CASH COLLATERAL, (B) GRANTING ADEQUATE
PROTECTION, (C) SCHEDULING A FINAL HEARING PURSUANT TO
BANKRUPTCY RULE 4001(b), AND (D) GRANTING RELATED RELIEF**

BHCosmetics Holdings, LLC and its affiliated debtors and debtors in possession (collectively, the “Debtors”) in the above-captioned chapter 11 cases (collectively, the “Chapter 11 Cases”) hereby file this motion (this “Motion”) for the entry of an interim order, substantially in the form attached hereto as **Exhibit A** (the “Interim Order”), and final order, pursuant to sections 105, 361, 362, 363, 506, 507(b) and 552 of title 11 of the United States Code 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”), Rules 2002, 4001, 6004(h), 7062 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rules 2002-1(b), 4001-2, and 9013-1(m) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”): (a) authorizing the Debtors to use Cash Collateral² subject to the terms and conditions set forth in the Interim Order; (b) providing adequate protection to the Prepetition Loan Lenders (as defined below) in the form and manner provided for in the Interim Order; (c) scheduling, pursuant to Bankruptcy Rule 4001(d), a final hearing (the “Final

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are as follows: BHCosmetics Holdings, LLC (7827); BHCosmetics Intermediate, LLC (2918); BHCosmetics, LLC (9106); and Visceral Agency LLC (9266). The Debtors’ service address for purposes of these chapter 11 cases is 8161 Lankershim Blvd., North Hollywood, CA 91605.

² Capitalized terms used but not otherwise defined herein shall have the meanings given to them in the Interim Order.

Hearing”) to consider entry of an order granting the relief requested in the Motion on a final basis (the “Final Order,” and together with the Interim Order, the “Cash Collateral Orders”); and (d) granting related relief. In support of this Motion, the Debtors rely upon and incorporate by reference the *Declaration of Spencer M. Ware in Support of Debtors’ Chapter 11 Petitions and First Day Motions* (the “First Day Declaration”), filed contemporaneously herewith. In further support of this Motion, the Debtors respectfully state as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated as of February 29, 2012 (the “Amended Standing Order”). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and pursuant to Local Rule 9013-1(f), the Debtors consent to entry of a final order by the Court in connection with this Motion to the extent it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution. Venue is proper in the Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief requested herein are sections 105, 361, 362, 363, 506, 507(b) and 552 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001, 6004(h), 7062 and 9014 and Local Rules 2002-1(b), 4001-2, and 9013-1(m).

BACKGROUND

A. General Background

2. On January 14, 2022 (the “Petition Date”), each of the Debtors commenced a voluntary case under chapter 11 of the Bankruptcy Code. The Debtors are authorized to continue to operate their business and manage their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. To date, no trustee, examiner or statutory committee

has been appointed in these Chapter 11 Cases. Additional factual background relating to the Debtors' business, capital structure and the commencement of these Chapter 11 Cases is set forth in detail in the First Day Declaration.

3. The Debtors are a leading beauty brand specializing in clean, vegan, and cruelty-free cosmetics and other beauty products. The Debtors sell their products on their e-commerce platform directly to consumers and wholesale to various major retailers. On or about September 29, 2021, the Debtors engaged an investment banker to conduct an exhaustive search to identify a going concern buyer. In parallel, the Debtors commenced various operational cost-savings initiatives to improve liquidity. When it became clear that a going concern sale may not be successful, the Debtors engaged a professional liquidator to commence a liquidation of their physical inventory assets (the "Inventory Sale Process"). In addition, the Debtors engaged a firm to focus on the sale of their intellectual property assets (together with the Inventory Sale Process, the "Sale Process").

4. After a robust and thorough approximately four (4) month marketing and solicitation process, and in consultation with their professional advisors and prepetition lenders, the Debtors ultimately secured a stalking horse agreement with RBI Acquisition Holdings, LLC for the sale of a substantial portion of the Debtors' assets.

5. The Debtors filed these Chapter 11 Cases with the goal of (i) monetizing their assets; (ii) maximizing the value of their assets for the benefit of their creditors and parties in interest; and (iii) minimizing estate obligations, to the extent possible. To that end, the Debtors will proceed with a robust bidding and auction process to maximize the value of the Debtors' assets for the benefit of the Debtors' estates and all stakeholders. Once the Debtors consummate the sale of their assets, the Debtors will close their merchandise distribution center and look to unburden

the estates of the administrative expenses associated therewith and monetize the non-inventory assets located therein. The Debtors anticipate that the Sale Process will be completed in the first quarter of 2022.

B. Capital Structure³

i. Prepetition Loan

6. On December 27, 2017, Debtor BHCosmetics, LLC, as borrower (“Borrower”), Debtor BHCosmetics Intermediate, LLC, as guarantor (“Guarantor”), and Fifth Third Bank, N.A. (“Fifth Third”) as Administrative Agent, Collateral Agent, Swing Line Lender, L/C Issuer, Lead Arranger, and Bookrunner and the other participating lenders, if any (collectively with Fifth Third, the “Prepetition Loan Lenders”) entered into the certain *Credit Agreement*, dated as of December 28, 2017 (as amended, restated, modified, supplemented or replaced from time to time, the “Prepetition Loan Agreement”), pursuant to which the Prepetition Loan Lenders provided a term and revolving line of credit to finance the acquisition of the Debtors with initial term loan commitments of \$15,000,000 in the aggregate and initial revolving credit commitments of \$10,000,000 in the aggregate. On February 2, 2019, September 16, 2019, February 20, 2020, December 8, 2020, and August 2, 2021, the parties to the Prepetition Loan Agreement entered into forbearance agreements (collectively, the “Forbearance Agreements”) with respect to the Prepetition Loan Agreement, which provided for certain amendments to the Financial Covenants (as defined in the Prepetition Loan Agreement) and certain minimum liquidity and consolidated EBITDA requirements.

³ The descriptions of the Debtors’ prepetition debt facilities and the collateral securing those facilities provided herein does not constitute, and should not be construed as, an admission by the Debtors regarding the validity, priority, enforceability, perfection, or amount of any obligation, claim, guarantee, lien, mortgage, pledge, or other security interest, or any other fact with respect thereto, and the Debtors reserve all rights to challenge or dispute any of the foregoing on any basis whatsoever except to the extent as set forth herein and in the Interim Order.

7. As of the Petition Date, the outstanding balances of the revolving and term loans owed to the Prepetition Loan Lenders under the Prepetition Loan Agreement were \$9,627,614.02 and \$13,856,490.34, respectively, and in each case including accrued and unpaid interest through December 21, 2021, but not yet including fees and other charges (all such amounts, along with all other “Obligations” as defined in the Prepetition Loan Agreement, referred to herein as the “Prepetition Loan Obligations,” which Prepetition Loan Obligations will continue to increase on account of interest, fees, and other charges until Paid in Full (as defined herein)), and all agreements entered into in connection with such Prepetition Loan Obligations, including the “Loan Documents” as defined in the Prepetition Loan Agreement, referred to herein as the “Secured Credit Documents”). The obligations under the Secured Credit Documents mature on December 28, 2022.

8. The Prepetition Loan Obligations are secured by a first-priority lien on and security interest in substantially all of Borrower’s assets, including accounts receivable, cash and cash equivalents, chattel paper, commercial tort claims, deposit accounts, documents, equipment, general intangibles, goods, instruments, inventory, investment property, books and records pertaining to the collateral, intellectual property, letters of credit rights, license, and the proceeds and products thereof (the “Prepetition Collateral”). The Prepetition Loan Lenders’ security interests in the Prepetition Collateral (the “Secured Prepetition Liens”) are duly perfected. The Guarantors have no defenses to or offsets against their obligations under the Guaranty (as defined in the Prepetition Loan Agreement), and are obligated to the Prepetition Loan Lenders as set forth in the Guaranty.

iv. *Other Debt*

9. Lastly, as a producer and seller of clean, high-performance, vegan and cruelty-free color cosmetics, the Debtors occupy or have in the past occupied a distribution center, warehouse, and headquarters, and have certain obligations in respect of those leased facilities. In addition, the Debtors' books and records list approximately \$14,878,695.10 in outstanding trade liabilities and other unsecured obligations.

RELIEF REQUESTED

10. By this Motion, the Debtors request the Court to enter the Cash Collateral Orders: (a) authorizing the Debtors to use Cash Collateral, subject to the terms and conditions set forth therein; (b) granting certain adequate protection to the Prepetition Loan Lenders in the form and manner provided for in the Interim Order; (c) scheduling the Final Hearing within approximately thirty (30) days of the commencement of these Chapter 11 Cases to consider approval of this Motion on a final basis; and (d) granting related relief.

THE DEBTORS' IMMEDIATE NEED TO USE CASH COLLATERAL

11. The Debtors require immediate access to Cash Collateral to ensure that they are able to continue the operation of their business and effectively and efficiently conduct the Sale Process, as the Cash Collateral is a critical source of funding for their operations and the costs of administering these Chapter 11 Cases. Absent immediate authority to use Cash Collateral, the Debtors, their creditors and the estates generally would suffer irreparable harm because the Debtors would be forced to abruptly cease operations, which, in turn, would cause an immediate and pronounced deterioration in the value of the Prepetition Collateral and the Debtors' assets. Thus, the Debtors' access to Cash Collateral is absolutely necessary to preserve and maximize value for the benefit of all of the Debtors' stakeholders.

12. As further set forth herein and in the Interim Order, the Interim Order provides adequate protection to the Prepetition Loan Lenders in the form of, among other things, superpriority claims and replacement liens to protect the Prepetition Loan Lenders against any diminution in value arising from the Debtors' use of Cash Collateral or the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code.

13. The Debtors propose to make disbursements pursuant to a budget annexed to the Interim Order as Exhibit 1, subject to certain permitted variances provided for in the Interim Order.

CONCISE STATEMENT OF THE MATERIAL TERMS OF THE INTERIM ORDER

14. The following chart (the "Summary of Material Terms Chart") contains a summary of the material terms of the Interim Order, in accordance with Bankruptcy Rule 4001(b)(1) and Local Rule 4001-2(a)(ii):⁴

Material Terms	Summary of Material Terms	Para(s). of Interim Order
Entities with an Interest in Cash Collateral <i>Bankruptcy Rule 4001(b)(1)(B)(i)</i>	Prepetition Loan Lenders	¶ D
Purpose for Use of Cash Collateral <i>Bankruptcy Rule 4001(b)(1)(B)(ii)</i> <i>Local Rule 4001-2(a)(i)</i>	The Debtors may use Cash Collateral during the Cash Collateral Period only to pay the expenses in the budget categories and at the times set forth in the cash collateral budget attached to the Interim Order as <u>Exhibit 1</u> (as the same may be updated from time to time with the prior written consent of the Prepetition Loan Lenders, the " <u>Budget</u> "), subject to the Permitted Variance (as defined in the Interim Order).	¶¶ 3, 15

⁴ The Summary of Material Terms Chart and any other description of the Interim Order provided for in this Motion is qualified in its entirety by the actual terms of the Interim Order. The actual terms of the Interim Order will control in the event of any inconsistency between this Motion (including the Summary of Material Terms Chart) and the Interim Order. In addition, this chart references only those terms listed in Local Rule 4001-2(i)(A)-(X) that are relevant the Debtors' proposed use of cash collateral. See Del. Bankr. L. R. 4001-2(i)(A)-(X).

Material Terms	Summary of Material Terms	Para(s). of Interim Order
Budget <i>Bankruptcy Rule 4001(b)(1)(B)(ii)</i>	<p>The expenses set forth in the Budget include, among other things, amounts for: (i) general corporate purposes and (ii) the costs and expenses of administering these Chapter 11 Cases (including payment of the Allowed Professional Fees).</p>	<p>¶¶ 3, 15</p> <p>Exhibit 1 to the Interim Order</p>
Duration of Use of Cash Collateral / Events of Default / Milestones / Relief from Stay <i>Bankruptcy Rule 4001(b)(1)(B)(iii)</i> <i>Local Rule 4001-2(a)(ii)</i>	<p><u>Termination Date (¶ 4(d)).</u></p> <p>The Debtors' authorization to use Cash Collateral pursuant to this Interim Order shall terminate immediately upon written notice by the Prepetition Loan Lenders to the Debtors, the U.S. Trustee and, if appointed, any Committee, of the earliest to occur of the following (the earliest such date, herein defined as the "Termination Date"):</p> <p>(i) March 31, 2021, subject to entry of an order of the Court extending the Debtors' rights to use Cash Collateral; (ii) the date of the Final Hearing; (iii) the entry of an order of this Court terminating the right of any Debtor to use Cash Collateral; (iv) the dismissal of any of the Cases or the conversion of any of the Cases to a case under chapter 7 of the Bankruptcy Code; (v) the appointment in any of the Cases of a trustee or an examiner with expanded powers; (vi) the entry of an order of this Court reversing, staying, vacating, or otherwise modifying this Interim Order or any provision contained herein without the prior written consent of the Prepetition Loan Lenders; (vii) any Debtor's failure to correct any material misrepresentation by any Debtor in the financial reporting to be provided by the Debtors to the Prepetition Loan Lenders under either or both of the Prepetition Loan Agreement and this Interim Order, after three (3) business days' written notice of such alleged material misrepresentation; (viii) any Debtor's failure to provide any additional adequate protection ordered by the Court, if such failure continues unremedied for more than three (3) business days after written notice thereof; (ix) any Debtor's failure to perform, in any respect, any of its obligations under this Interim Order (other than a failure that constitutes a Termination Event), if such failure continues unremedied for more than three (3) business days after written notice thereof; and (x) the occurrence of a Termination Event (as defined in the Interim Order).</p> <p><u>Termination Events (¶ 8(a)).</u></p> <p>Each of the following shall constitute a "Termination Event" under this Interim Order and shall constitute an "Event of Default" under the Secured Loan Documents:</p> <ol style="list-style-type: none"> i. The use of Cash Collateral for any purpose not authorized by the Interim Order or in excess of the limitations set forth in the Interim Order; ii. Appointment of a Chapter 11 trustee or the appointment of an examiner with expanded powers; iii. Conversion of one or more of the Cases to cases under Chapter 7 of the Bankruptcy Code; iv. One or more of the Cases are dismissed; 	<p>¶¶ 4, 8, 10</p>

Material Terms	Summary of Material Terms	Para(s). of Interim Order
	<p>v. The entry of an order of this or any other Court (other than the Final Order) reversing, staying, vacating, or otherwise modifying in any material respect the terms of this Interim Order;</p> <p>vi. Any Debtor (or any other party) files any plan of reorganization or plan of liquidation that is not acceptable in form and substance to the Prepetition Loan Lenders;</p> <p>vii. The Debtors cease pursuing sales that are supported by the Prepetition Loan Lenders, or the Debtors conduct any liquidation or sale process that is not supported by the Prepetition Loan Lenders;</p> <p>viii. The Interim Order (unless replaced by the Final Order acceptable to Prepetition Loan Lenders, in which case, the Final Order) ceases to be in full force and effect for any reason;</p> <p>ix. The Debtors seek to obtain financing that does not provide for Payment in Full of the Prepetition Loan Obligations, unless the Prepetition Loan Lenders provide prior written consent to such financing;</p> <p>x. The Debtors fail to meet the following milestones: (1) the Court does not hold a hearing on and enter an order approving bidding procedures for the sale of substantially all of the Debtors' assets that is acceptable in form and substance to the Prepetition Loan Lenders on or before January 28, 2022; (2) the Court does not enter an order approving the Debtors' sale of substantially all of their assets on or before February 18, 2022 and (3) the Debtors do not close a sale of substantially all of their assets pursuant to prior order of this Court on or before March 11, 2022.</p> <p><u>Relief from the Automatic Stay (§ 10).</u></p> <p>(a) The automatic stay provisions of section 362 of the Bankruptcy Code are hereby modified to permit (i) the Debtors to implement and perform the terms of this Interim Order, and (ii) the Debtors to create, and the Prepetition Loan Lenders to perfect, the Liens granted hereunder. The Prepetition Loan Lenders shall not be required to file UCC financing statements or other instruments with any other filing authority to perfect the Secured Replacement Liens granted by this Interim Order or to take any other actions to perfect such Secured Replacement Liens, which shall be deemed automatically perfected by the docketing of the Interim Order by the Clerk of the Court, and deemed to be effective as of the Petition Date. If, however, the Prepetition Loan Lenders elect for any reason to file, record, or serve any such financing statements or other documents with respect to such Secured Replacement Liens, then the Debtors shall execute same upon request and the filing, recording, or service thereof (as the case may be) shall be deemed to have been made at the time of the commencement of the Cases on the Petition Date.</p>	

Material Terms	Summary of Material Terms	Para(s). of Interim Order
	(b) The automatic stay provisions of section 362 of the Bankruptcy Code and any other restriction imposed by an order of the Court or applicable law are hereby modified without further notice, application, or order of the Court to the extent necessary to permit the Prepetition Loan Lenders to perform any act authorized or permitted under or by virtue of this Interim Order or the Prepetition Loan Agreement, as applicable, including, without limitation, (i) to implement the arrangements authorized by this Interim Order, (ii) to take any act to create, validate, evidence, attach, or perfect any lien, security interest, right, or claim in the Collateral, and (iii) to assess, charge, collect, advance, deduct, and receive payments with respect to the Prepetition Loan Obligations authorized by the Interim Order.	
<p>Proposed Adequate Protection</p> <p><i>Bankruptcy Rule 4001(b)(1)(B)(iv)</i></p> <p><i>Local Rule 4001-2(a)(i)(B)</i></p>	<p><u>Secured Replacement Liens (§5(a).</u></p> <p>Pursuant to sections 361 and 363 of the Bankruptcy Code, as adequate protection for the amount of diminution in value of the Prepetition Loan Lenders' interests in the Collateral, including, without limitation, the aggregate amount of Cash Collateral used by any Debtor (on a dollar-for-dollar basis), the imposition of the automatic stay, and any other act or omission that causes diminution in the value of its interests in the Collateral (collectively, the "<u>Diminution in Value</u>"), the Prepetition Loan Lenders are hereby granted valid, binding, enforceable, and perfected replacement liens upon and security interests in all of each Debtor's presently owned or hereafter acquired property and assets to the extent that such categories of property and assets would constitute such Prepetition Loan Lenders' Collateral if they had been acquired before the Petition Date (such collateral together with the Prepetition Collateral and the Cash Collateral, the "<u>Collateral</u>") to the extent of any Diminution in Value (such liens being referred to herein as the "<u>Secured Replacement Liens</u>"); provided, however, that, for the avoidance of doubt, the Secured Replacement Liens shall not attach to property recovered as a result of transfers or obligations avoided or actions maintained or taken pursuant to Sections 542, 544, 545, 547, 548, 549, 550, 551, 552, and 553 of the Bankruptcy Code (the "<u>Avoidance Actions</u>") except as specifically set forth herein; provided, further, that such Secured Replacement Liens shall, upon entry of the Final Order, attach to all proceeds of Avoidance Actions; and provided further, however, with respect to the Debtors' non-residential real property leases, no liens or encumbrances shall be granted or extend to such leases themselves under the Interim Order, except as permitted in the applicable lease, but rather any liens granted shall extend only to the proceeds realized upon the sale, assignment, termination, or other disposition of such lease, books and records related to the foregoing accessions, and proceeds of the foregoing wherever located, including insurance proceeds. The Secured Replacement Liens shall be junior and subordinate only to (A) each Prepetition Loan Lender's Secured Prepetition Liens on the Collateral, and (B) the Carve-Out, solely to the extent set forth in the Interim Order, and shall otherwise be senior to all other security interests in, liens on, or claims against any asset of a Debtor and all rights of payment of all other parties. Other than as set forth herein, the Secured Replacement Liens shall</p>	<p>¶¶ 5, 6, and 17</p>

Material Terms	Summary of Material Terms	Para(s). of Interim Order
	<p>not be made subject to or <i>pari passu</i> with any lien or with any lien or security interest granted in any case under chapter 7 of the Bankruptcy Code (collectively, “<u>Successor Cases</u>”). The Secured Replacement Liens shall be deemed automatically valid and perfected with such priority as provided in the Interim Order without any further notice or act by any party that may otherwise be required under any other law. Notwithstanding the foregoing, the Debtors shall, upon request of any Prepetition Loan Lender, execute and deliver such documents as may be reasonably requested by such Prepetition Loan Lender to further create or perfect the security interest and liens described herein under applicable non-bankruptcy law, and each Prepetition Loan Lender shall be authorized to file and record such documents and take such other actions as may be necessary to perfect such security interests and liens under all such laws and to correctly describe the collateral subject thereto. The Secured Replacement Liens shall be valid, binding, and enforceable (i) against any trustee or other estate representative appointed in any Case, (ii) upon the conversion of any of the Cases to a Successor Case, and (iii) upon the dismissal of any Case or Successor Case. For avoidance of doubt, the Collateral which the Secured Replacement Liens encumber includes, but is not limited to, all of the Debtors’ right, title and interest in each contract (and its proceeds) which they may enter for the sale of assets, the factoring of receivables, or the escrow of funds and all intellectual property rights acquired or reserved by any Debtor.</p> <p><u>Secured Adequate Protection Superpriority Claim (§5(b)(i)).</u></p> <p>As further adequate protection for the Diminution in Value, the Prepetition Loan Lenders are hereby granted, as and to the extent provided by Sections 503 and 507(b) of the Bankruptcy Code, an allowed superpriority administrative expense claim in the Cases and any Successor Case (the “<u>Secured Adequate Protection Superpriority Claim</u>”). The Secured Adequate Protection Superpriority Claim shall be subordinate to the Carve-Out solely to the extent set forth in the Interim Order, but otherwise shall have priority over all administrative expense claims, including administrative expenses of the kinds specified in or ordered pursuant to Sections 503(b) and 507(b) of the Bankruptcy Code, and unsecured claims against each Debtor and each Estate now existing or hereafter arising, of any kind or nature whatsoever.</p> <p><u>Payments and Review of Lender Fees and Expenses (§5(b)(ii)).</u></p> <p>The Debtors shall pay, up to the aggregate amounts set forth in the Budget under the “<u>Professional Fee Escrow & Lender Counsel</u>” line item, the reasonable attorneys’ fees and expenses (including but not limited to those of lead and local counsel) and any other professional fees and expenses of the Prepetition Loan Lenders incurred before and after the Petition Date in connection with the Secured Credit Documents, the Collateral, or the Cases; provided, that the Debtors shall pay all such reasonable fees and expenses within twelve (12) business days of the Prepetition Loan Lenders’ and/or their</p>	

Material Terms	Summary of Material Terms	Para(s). of Interim Order
	<p>professionals' delivery of a monthly statement or invoice for such fees and expenses (it being understood that such statements or invoices shall not be required to be maintained in any particular format, the provision of such statements will not result in a waiver of any privilege, and the statements may be redacted to protect privileged, confidential, or proprietary information, nor shall any such counsel or other professional be required to file any interim or final fee applications with the Court or otherwise seek the Court's approval of any such payments) to the Debtors, the U.S. Trustee, and the Committee (if one is appointed), unless, within ten (10) business days of the date of that delivery, the Debtors, the U.S. Trustee, or the Committee (if one is appointed) serve a written objection upon the Prepetition Loan Lenders and the subject professional, in which case, the Debtors shall pay only such amounts that are not the subject of any timely filed objection as set forth in paragraph 5(b)(ii) of the Interim Order and pay the remaining amount as the objecting parties may subsequently agree or the Court so orders to be paid; provided, however, that any such remaining amount shall be held in escrow by the Debtors for the benefit of the Prepetition Loan Lenders under resolution of any objection to the payment thereof.</p> <p><u>Cash Management (§5(c)).</u></p> <p>Until the Prepetition Loan Lenders receive Payment in Full (as defined below), the Prepetition Loan Lenders shall have, and continue to have, exclusive dominion and control of all deposit accounts and other accounts of Debtors, and all banks, depository entities, securities intermediaries, and commodities intermediaries that are parties to any control agreements shall be authorized and directed to continue affording the Prepetition Loan Lenders exclusive dominion and control over such accounts in accordance with the terms and conditions of the applicable control agreements. Prior to the Termination Date, the Debtors shall maintain all Cash Collateral actually received in their accounts, and shall utilize such Cash Collateral so received solely in accordance with the Budget and this Interim Order. The terms "<u>Payment in Full</u>" or "<u>Paid in Full</u>" mean that (i) all of the Prepetition Loan Obligations have been paid in full in cash; and (ii) the Prepetition Loan Lenders have received a release from each Debtor and the Committee (if any) of and from all demands, actions, causes of action, suits, covenants, contracts, controversies, agreements, promises, sums of money, accounts, bills, reckonings, damages, and any and all other claims, counterclaims, defenses, rights of set-off, demands, and liabilities in form and substance acceptable to the Prepetition Loan Lenders.</p> <p><u>Cash Management (§5(d)).</u></p> <p>Notwithstanding anything to the contrary set forth herein, the adequate protection granted by this Interim Order is without prejudice to the Prepetition Loan Lenders' right to seek additional adequate protections from this Court, or the rights of any party in interest to oppose such request. The use of Cash Collateral pursuant to the terms and conditions of this Interim Order and in accordance</p>	

Material Terms	Summary of Material Terms	Para(s). of Interim Order
	<p>with the Budget shall not be deemed to be a consent by the Prepetition Loan Lenders to any other or further use of Cash Collateral.</p> <p><u>Insurance (§ 6).</u></p> <p>At all times, the Debtors shall maintain casualty and loss insurance coverage for the Collateral on substantially the same basis as maintained prior to the Petition Date. The Debtors shall provide the Prepetition Loan Lenders with proof of the foregoing within five (5) days of written demand and give the Prepetition Loan Lenders reasonable access to the Debtors' records in this regard.</p> <p><u>Reporting (§ 17).</u></p> <p>During the Cash Collateral Period, the Debtors shall provide the Prepetition Loan Lenders with (a) all financial and other information required under the Prepetition Loan Agreement and this Interim Order and such other information as the Prepetition Loan Lenders may from time to time reasonably request; and (b) copies of all notices issued or received by Debtors concerning any escrow agreement or asset purchase agreement to which the Debtors are parties at that time, immediately upon such issuance or receipt.</p>	
<p>Liens on Chapter 5 Actions</p> <p><i>Local Rule 4001-2(a)(i)(D)</i></p>	<p>Subject to entry of the Final Order.</p>	<p>¶ 5(a)</p>
<p>Carve-Out</p> <p><i>Local Rule 4001-2(a)(i)(F)</i></p>	<p><u>Carve-Out (§ 4(a)).</u></p> <p>As used in the Interim Order, the “Carve-Out” means the sum of: (i) all allowed administrative expenses pursuant to 28 U.S.C. § 156(c) for fees required to be paid to the Clerk of the Bankruptcy Court and pursuant to 28 U.S.C. § 1930(a)(6) for fees payable to the Office of the U.S. Trustee under 28 U.S.C. § 1930(a), plus interest at the statutory rate, as determined by agreement of the U.S. Trustee or by final order of the Bankruptcy Court; (ii) all reasonable fees and expenses up to \$5,000 incurred by a Trustee under Section 726(b) of the Bankruptcy Code; (iii) any and all fees, costs and/or expenses allowed by the Bankruptcy Court upon proper application and payable, at any time, to (a) Hilco IP Services, LLC d/b/a Hilco Streambank (as set forth in the <i>Debtors’ Application for an Order (I) Authorizing the Retention and Employment of Hilco IP Services, LLC d/b/a Hilco Streambank, as Intellectual Property Disposition Consultant to the Debtors, Effective as of the Petition Date, (II) Waiving Certain Information Requirements of Local Rule 2016-2, and (III) Granting Related Relief</i>) and/or (b) <i>SB360 Capital Partners, LLC (as discussed in the Debtors’ Emergency Motion for Interim and Final Orders (I)(A) Confirming, on an Interim Basis, that the Inventory Sale Agreement Is Operative and Effective and (B) Authorizing, on a Final Basis, the Debtors to Assume the Inventory Sale Agreement, (II) Authorizing and Approving Inventory Sales Free and Clear of All Liens, Claims, and Encumbrances)</i>; (iv)</p>	<p>¶ 4</p>

Material Terms	Summary of Material Terms	Para(s). of Interim Order
	<p>subject to the terms and conditions of the Interim Order, all Allowed Professional Fees (as defined below) of attorneys, accountants, and other professionals, other than Hilco IP Services, LLC d/b/a Hilco Streambank and SB360 Capital Partners, LLC, retained by the Debtors and any Committee(s), under §§ 327, 363, or 1103(a) of the Bankruptcy Code (collectively, the “Professionals”) incurred prior to the Termination Date in an amount not to exceed at any time the Professional Fee Budget attached for such professional as a schedule to the Budget (the “<u>Professional Fee Budget</u>”), (v) Allowed Professional Fees and disbursements following the Termination Date by the Professionals retained, pursuant to §§ 327 or 1103(a) of the Bankruptcy Code, by the Debtors and the Committee not to exceed the aggregate amount of \$105,000, and (vi) the reasonable fees and expenses of the Prepetition Loan Lenders’ counsel and other professionals (collectively, “<u>Lenders’ Professional Fees</u>”) incurred before or after the Petition Date in connection with the Secured Credit Documents, the Collateral, or the Cases (clauses (iv), (v), and (vi), collectively, the “<u>Professional Fee Carve-Out</u>”). For purposes of the Interim Order, the term “Allowed Professional Fees” shall mean the unpaid and outstanding reasonable fees and expenses of Professionals (i) actually incurred on or after the Petition Date and (ii) only to the extent allowed at any time by an order of the Court pursuant to §§ 326, 328, 330 or 331 of the Bankruptcy Code. The amounts on the Professional Fee Budget are not subject to the Permitted Variances. The amounts allocated to each individual Professional’s fees and to the Lenders’ Professional Fees on the Professional Fee Budget are wholly separate, with each such professional’s allocation reserved for that professional (if approved by the court where that approval is required) (i.e., the total Budgeted amount for all professionals shall not be split pro rata among the professionals if any one professional exceeds the amount Budgeted for that professional). Conversely, to the extent the Budgeted amounts for Allowed Professional Fees for any individual Professional or for the Lenders’ Professional Fees for any Budget period exceed the actual fees and expenses incurred by such professional for that period, the excess may be carried forward to later Budget periods or backward to prior Budget periods to be applied to any fees and expenses for such professional that exceeded the Budget amounts for such prior or later periods. Notwithstanding anything herein to the contrary, no Cash Collateral or any portion of the Carve-Out may be used to investigate or assert any claims or causes of action against the Prepetition Loan Lenders or object to or contest in any manner, or raise any defenses to, the validity, perfection, priority, extent, or enforceability of the Prepetition Loan Obligations, the Secured Prepetition Liens, or the Secured Replacement Liens granted herein; provided, however, that up to \$25,000 may be used by the Committee, if any, to investigate any such claims or causes of action. Nothing herein allows the payment of any fees or expenses of Professionals absent approval of the same by the Court pursuant to a fee application on notice, or such other procedures that may be approved by the Court.</p>	

Material Terms	Summary of Material Terms	Para(s). of Interim Order
	<p><u>Carve-Out (§ 4(b)).</u></p> <p>The Secured Prepetition Liens, the Secured Replacement Liens, and the Secured Adequate Protection Superpriority Claim (as defined below) shall be subordinate to the Carve-Out solely to the extent set forth in the Interim Order. Other than the aggregate amounts set forth in the Professional Fee Budget as of the Termination Date and the amounts set forth in paragraph 4(a)(v) of the Interim Order, none of the Prepetition Loan Lenders' liens and claims in or against the Collateral, the Debtors, and the Estates shall be subordinate to the Professional Fee Carve-Out. For the avoidance of doubt, nothing herein shall be construed to impair the ability of any party to object to the fees, expenses, reimbursement, or compensation described in the Interim Order.</p> <p><u>Carve-Out (§ 4(c)).</u></p> <p>The Debtors are authorized to electronically transfer funds, on a weekly basis and to the extent funds are available, to the Young Conaway Stargatt & Taylor, LLP Client Trust Account in an amount equal to, but not to exceed, the amount set forth in the Professional Fee Budget for each Professional for each such week (the "<u>Professional Fee Escrow</u>"), including upon the consummation of a sale of the Debtors' assets. The Prepetition Loan Lenders shall not have any responsibility, liability, or obligation whatsoever to ensure that the Debtors fund the Professional Fee Escrow or that the Professional Fee Escrow has funds equal to the aggregate amounts set forth in the Professional Fee Budget for any applicable period. The Debtors may fund the Professional Fee Escrow (i) prior to the Termination Date and upon the sale of the Debtors' assets, up to, but not to exceed, the amounts set forth in the Professional Fee Budget for each week prior to the Termination Date (notwithstanding any otherwise Permitted Variances), and (ii) after the Termination Date, up to, but not to exceed, an amount equal to (x) the aggregate Professional Fee Budget amounts for all prior weeks in which the Professional Fee Escrow has not been funded, plus Professional Fee Budget amounts for the week in which the Termination Date occurs (but only to the extent not previously funded), plus \$105,000. No Cash Collateral shall be transferred to or deposited into the Professional Fee Escrow in a manner or amount that is inconsistent with the terms of this Interim Order. Except as specifically provided in this Interim Order, on and after the Termination Date, no funds of the Debtors (including Cash Collateral) shall be transferred or deposited into the Professional Fee Escrow. Notwithstanding anything to the contrary herein, the Debtors shall not transfer the amounts on the Professional Fee Budget allocated to the Lenders' Professional Fees to the Professional Fee Escrow; rather, the Debtors shall pay those sums directly to the Prepetition Loan Lenders' respective professionals to the extent that the Professional Fee Budget and paragraph 5(b)(ii) herein permit.</p>	

Material Terms	Summary of Material Terms	Para(s). of Interim Order
Cross-Collateralization <i>Local Rule 4001-2(a)(i)(A)</i>	None, other than replacement liens as adequate protection.	
Findings re Validity/Perfection/Amount <i>Local Rule 4001-2(a)(i)(B)</i>	The Interim Order, at Paragraphs D and 7, contains certain stipulated findings of fact, including those related to the validity and enforceability of the Debtors' prepetition secured indebtedness, subject only to the limitations contained in Paragraph 7 of the Interim Order.	¶¶ D and 7
Challenge Period <i>Local Rule 4001-2(a)(i)(B)</i>	<p>Paragraph 7 of the Interim Order provides as follows:</p> <p>The stipulations contained in Paragraph D and the release in Paragraph E of this Interim Order (the "<u>Stipulations</u>") shall be binding upon all parties in interest, including without limitation, the Debtors, their successors (including any chapter 7 or chapter 11 trustee), the Estates, and the Committee, if any. All parties in interest, the Debtors, their successors (including any chapter 7 or chapter 11 trustee), the Estates, and the Committee, if any, are deemed to have irrevocably waived and relinquished all claims and right to challenge any of such Stipulations or any portion of such release, with the same not being effective as to the Committee, if any, or any other party in interest except for the Debtors, if such party has filed an adversary proceeding or contested matter (subject to the limitation set forth in paragraph 4(a) of this Interim Order) challenging the validity, enforceability, or priority of the Prepetition Loan Obligations or the Secured Prepetition Liens or otherwise asserting any claims or causes of action against any of the Prepetition Loan Lenders on behalf of the Estates (a "<u>Challenge Action</u>"), (i) with respect to any Committee, within the earlier of (a) sixty (60) calendar days from the date the U.S. Trustee appoints such Committee and (b) seventy-five (75) calendar days following the entry of the Interim Order, or (ii) with respect to all other parties, within seventy-five (75) calendar days following the entry of the Interim Order (the "<u>Challenge Deadline</u>"); provided, however, that if the case converts to a Chapter 7 or a Chapter 11 trustee is appointed, in either instance prior to the Challenge Deadline, that the Challenge Deadline shall be extended for the Chapter 7 or Chapter 11 trustee to the earlier of (a) forty-five (45) days after his or her appointment, and (b) the date upon which the Court rules in favor of the plaintiff in any such adversary proceeding or contested matter. If no such adversary proceeding or contested matter is commenced by the Challenge Deadline, the Prepetition Loan Obligations shall constitute allowed claims, in the amount acknowledged herein, not subject to subordination and otherwise unavoidable, for all purposes in the Cases and any Successor Cases, the Secured Prepetition Liens on the Prepetition Collateral shall be deemed legal, valid, binding, perfected, and first-priority liens not subject to subordination and otherwise unavoidable, and the Prepetition Loan Obligations and the Secured Prepetition</p>	¶ 7

Material Terms	Summary of Material Terms	Para(s). of Interim Order
	<p>Liens on the Prepetition Collateral shall not be subject to any other or further challenge by any party in interest seeking to exercise the rights of the Debtors' Estates, including without limitation, any successor thereto. To the extent the Stipulations (or any of them) are (a) not subject to a Challenge Action timely and properly commenced prior to the Challenge Deadline or (b) subject to a Challenge Action timely and properly commenced prior to the Challenge Deadline, to the extent any such Challenge Action does not result in a final and non-appealable judgment or order of the Court that is inconsistent with such Stipulations, then, in each case, without further notice, motion or application to, or order of, or hearing before, the Court and without the need or requirement to file any proof of claim: (x) any and all such Challenge Actions by any party shall be deemed to be forever waived, released, and barred; and (y) all of the Stipulations and all other stipulations, waivers, releases, admissions, agreements and affirmations set forth in this Interim Order (or any not properly and timely challenged) shall be of full force and effect and shall be binding, conclusive and final on any person, entity, or party-in-interest, including any Committee, and their successors and assigns, in the Cases and in any Successor Case for all purposes and shall not be subject to challenge or objection by the Committee or any other party-in-interest, including, without limitation, any trustee, responsible individual, examiner, or other representative of the Debtors' estates. If any such adversary proceeding or contested matter is commenced on or prior to the Challenge Deadline, the Stipulations contained in paragraph D of this Interim Order shall remain binding and preclusive except to the extent that such Stipulations are expressly and successfully challenged in such adversary proceeding or contested matter and negated by entry of a final and non-appealable order or judgment of this Court. Nothing in this Interim Order vests or confers on any person, including the Committee (if any), standing or authority to pursue any cause of action belonging to the Debtors or the Estates. For the avoidance of doubt, any trustee appointed or elected in these cases shall, until the termination of the Challenge Deadline (and thereafter, if a Challenge is commenced on or prior to the Challenge Deadline) and for the duration of any adversary proceeding or contested matter commenced pursuant to this paragraph with respect to a Challenge Action (whether commenced by such trustee or commenced by any other party-in-interest on behalf of the Estates), be deemed to be a party other than the Debtors and shall not, for purposes of such adversary proceeding or contested matter, be bound by the acknowledgments, admissions, confirmations, and stipulations of the Debtors in this Interim Order.</p>	
<p>506(c) Waiver <i>Local Rule 4001-2(a)(i)(C)</i></p>	<p>Subject to and effective upon the entry of the Final Order, except to the extent of the Carve-Out (solely to the extent expressly set forth herein), as a further condition of the Debtors' authorization to use the Cash Collateral, no costs or expenses of administration of the Cases or any future proceeding that may result therefrom, including liquidation in bankruptcy or other proceedings under the Bankruptcy Code, shall be charged or assessed against or recovered from the Prepetition Loan Lenders or the Collateral pursuant to Section 506(c)</p>	<p>¶ 20</p>

Material Terms	Summary of Material Terms	Para(s). of Interim Order
	of the Bankruptcy Code or any similar principle of law. No action, inaction, or acquiescence by the Prepetition Loan Lenders, including permitting the use of Cash Collateral to fund the Debtors' Cases, shall be construed as consent to a charge, lien, assessment or claim against, or in respect of, the Collateral pursuant to Section 506(c) of the Bankruptcy Code or otherwise.	
552(b) Waiver <i>Local Rule 4001-2(a)(i)(H)</i>	Subject to and effective upon the entry of a Final Order, the "equities of the case" exception under Section 552(b) of the Bankruptcy Code shall not apply to the Prepetition Loan Lenders, including, without limitation, with respect to (i) proceeds, products, offspring, or profits of any of the Prepetition Collateral, including, but not limited to, the Cash Collateral, or (ii) the extension of the Secured Replacement Liens to cover proceeds of the Prepetition Collateral.	¶¶ K and 19
Releases <i>Local Rule 4001-2(a)(ii)</i>	Without prejudice to the rights of any other party (but subject to the limitations in paragraph 7 of the Interim Order), the Debtors forever and irrevocably (i) release, discharge, and acquit the Prepetition Loan Lenders, and each of their respective former, current, or future officers, employees, directors, agents, representatives, owners, members, partners, financial advisors, legal advisors, shareholders, managers, consultants, accountants, attorneys, affiliates, and predecessors in interest (collectively, the "Releasees") of and from any and all claims, demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness, and obligations of every type, including, without limitation, any claims arising from any actions relating to any aspect of any relationship between the Prepetition Loan Lenders and the Debtors and their affiliates, including, without limitation, any equitable subordination claims or defenses, with respect to or relating to the Prepetition Loan Obligations, the Prepetition Loan Lenders, the Debtors' attempts to restructure the Prepetition Loan Obligations, any and all claims and causes of action arising under the Bankruptcy Code, and any and all claims regarding the validity, priority, perfection, or avoidability of the liens or secured claims of the Prepetition Loan Lenders and any funds and payments received by the Prepetition Loan Lenders; and (ii) waive any and all defenses (including, without limitation, offsets and counterclaims of any nature or kind) as to the validity, perfection, priority, enforceability, and non-avoidability of the Prepetition Loan Obligations. Nothing in the Interim Order shall in any way be construed or interpreted to impose or allow the imposition upon the Prepetition Loan Lenders of any liability for any claims arising from any and all activities and omissions by the Debtors or any of their subsidiaries or affiliates in the operation of their businesses or in connection with their restructuring efforts.	¶¶ E
Provisions Deeming Prepetition Debt to be Postpetition Debt <i>Local Rule 4001-2(a)(i)(E)</i>	None.	

Material Terms	Summary of Material Terms	Para(s). of Interim Order
Non-Consensual Priming <i>Local Rule 4001-2(a)(i)(B)</i>	None.	

BASIS FOR RELIEF

A. The Debtors' Use of Cash Collateral Is Critical to the Success of the Inventory Sales and These Chapter 11 Cases

15. A debtor's cash is "the life's blood of the business" and the bankruptcy court must assure that such cash "is available for use even if to a limited extent." *See In re Mickler*, 9 B.R. 121, 123 (Bankr. M.D. Fla. 1981). Courts have repeatedly recognized that a debtor's access to cash collateral is warranted when needed to preserve the debtor's ability to reorganize and thus maximize the value of the estate for all parties-in-interest. *See, e.g., Chrysler Credit Com. v. George Ruggiere Chrysler-Plymouth, Inc. (George Ruggiere Chrysler- Plymouth, Inc.)*, 727 F.2d 1017, 1019 (11th Cir. 1984) (allowing debtor to use cash collateral over a secured creditor's non-consent after noting that "[w]ithout the availability of cash to meet daily operating expenses such as rent, payroll, utilities, etc., the congressional policy favoring rehabilitation over economic failure would be frustrated."); *see also MBank Dallas, N.A. v. O'Connor (In re O'Connor)*, 808 F.2d 1393, 1399 (10th Cir. 1987) (permitting debtor to use cash collateral to expand operations after finding there was only a low risk that the secured creditor's interest would diminish); *In re Dynaco Corp.*, 162 B.R. 389, 394 (Bankr. D.N.H. 1993) (granting a motion for the use of cash collateral and stating that "the purpose of [c]hapter 11 is to rehabilitate debtors and generally access to cash collateral is necessary in order to operate a business"); *Stein v. U.S. Farmers Home Admin. (In re Stein)*, 19 B.R. 458, 459 (Bankr. E.D. Pa. 1982) (granting cash collateral motion and declaring that access to cash is imperative for a debtor to operate its business).

16. The Debtors' ability to continue to fund their business operations through the use of the Cash Collateral is critical to the success of the Sale Process, the ability to monetize the Debtors' assets, including their intellectual property, and these Chapter 11 Cases. The Debtors require immediate access to Cash Collateral to ensure that they are able to continue the operation of their businesses on a day-to-day basis. The Cash Collateral is a critical source of funding for the Debtors' operations and the costs of administering the chapter 11 process, including the Sale Process. Absent immediate authority to use Cash Collateral, the Debtors, their creditors and the estates generally would suffer irreparable harm because the Debtors would be forced to abruptly cease operations, which, in turn, would cause an immediate and pronounced deterioration in the value of the Debtors' business and assets. Thus, the Debtors' access to Cash Collateral is absolutely necessary to preserve and maximize value for the benefit of all of the Debtors' stakeholders.

17. The Debtors filed these Chapter 11 Cases as a means to realize the highest and best value for their assets, including through the Sale Process, and to avoid an abrupt, inefficient and value-impairing liquidation of Cash Collateral that would be the alternative result.

18. In particular, access to the Cash Collateral is essential to ensure timely payment of employee wages, salaries, and other employee-related obligations throughout the Sale Process and these Chapter 11 Cases. These parties need to be assured that the Debtors will not only continue their business operations in the near-term, but also that the Debtors will have access to necessary funds while the Sale Process and other value-maximizing efforts are undertaken. Accordingly, approval of the Motion is warranted.

B. The Debtors Satisfy the Requirements for Using Cash Collateral Under Section 362 and 363 of the Bankruptcy Code

19. The Debtors' use of property of their estates, including "Cash Collateral"⁵ is governed by section 363 of the Bankruptcy Code. Pursuant to section 363(c)(2) of the Bankruptcy Code, a debtor may use cash collateral as long as "(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).

20. 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). 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. *Resolution Trust Corp. v. Swedeland Dev. Grp., Inc. (In re Swedeland Dev. Grp., Inc.)*, 16 F.3d 552, 564 (3d Cir. 1994) ("[A] determination of whether there is adequate protection is made on a case by case basis."); *In re Satcon Tech. Corp.*, No. 12-12869, 2012 WL 6091160, at *6 (Bankr. D. Del. Dec. 7, 2012); *In re N.J. Affordable Homes Corp.*, No. 05-60442, 2006 WL 2128624, at *14 (Bankr. D.N.J. June 29, 2006); *In re Columbia Gas Sys., Inc.*, Nos. 91-803, 91-804, 1992 WL 79323, at *2 (Bankr. D. Del. Feb. 18, 1992); *see also Dynaco*,

⁵ The Bankruptcy Code defines "cash collateral" as follows:

Cash, negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents whenever acquired in which the estate and an entity other than the estate have an interest and includes the proceeds, products, offspring, rents, or profits of property and the fees, charges, accounts or other payments for the use or occupancy of rooms and other public facilities in hotels, motels, or other lodging properties subject to a security interest as provided in section 552(b) of this title, whether existing before or after the commencement of a case under this title.

11 U.S.C. § 363(a).

162 B.R. at 394 (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”); *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 . . .”) (citation and quotation omitted).

21. Generally speaking, the purpose of adequate protection is to maintain the status quo and afford secured creditors some protection from a diminution or loss in the value of their collateral during the debtor’s chapter 11 case. *See, e.g., In re Delta Res., Inc.*, 54 F.3d 722, 730 (11th Cir. 1995); *In re Timbers of Inwood Forest Assocs., Ltd.*, 793 F.2d 1380, 1388-89 (5th Cir. 1986), on reh’g, 808 F.2d 363 (5th Cir. 1987), *aff’d sub nom., United Sav. Ass’n of Tex. v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365 (1988). Section 361 of the Bankruptcy Code, however, plainly states that a secured creditor’s “interest in property” demands protection only to the extent that the debtor’s use of the creditor’s collateral will result in a decrease in the “value of such entity’s interest in such property.” *See* 11 U.S.C. § 361; *see also In re Pursuit Athletic Footwear, Inc.*, 193 B.R. 713, 716 (Bankr. D. Del. 1996). In determining whether a creditor holding liens on cash collateral is adequately protected, courts must consider the debtor’s need for access to cash collateral to further its chapter 11 efforts and balance such need against the secured creditor’s desire for adequate protection. *See Stein v. U.S. Farmers Home Admin. (In re Stein)*, 19 B.R. 458, 459 (Bankr. E.D. Pa. 1982).

22. Here, the Debtors propose to provide the Prepetition Loan Lenders with several forms of additional adequate protection (collectively, as described above and set forth more fully in the Interim Order, the “Adequate Protection”) for any diminution in the value of the Prepetition Collateral that may result from the Debtors’ use of the Cash Collateral.

23. The Adequate Protection to be provided for the benefit of the Prepetition Revolving Loan Lenders is appropriate, as it protects the Prepetition Loan Lenders against any diminution in value, and is also fair and appropriate, on an interim basis, under the circumstances of these Chapter 11 Cases to ensure that the Debtors are able to continue using the Cash Collateral in the near term, for the benefit of all parties in interest and their estates. Moreover, the Prepetition Loan Lenders have consented to the adequate protection provided in the Interim Order.

C. Failure to Obtain Immediate Interim Use of Cash Collateral Would Cause Immediate and Irreparable Harm to the Debtors' and Their Estates

24. Bankruptcy Rule 4001(b) provides that a final hearing on a motion to use cash collateral pursuant to section 363 of the Bankruptcy Code may not be commenced earlier than fourteen (14) days after the service of such motion. However, the Court is authorized to conduct a preliminary expedited hearing on the Motion and authorize the Debtors' proposed use of Cash Collateral to the extent necessary to avoid immediate and irreparable harm to a debtor's estate. *See Fed. R. Bankr. P. 4001(b)(2).*

25. The Debtors have an immediate postpetition need to use Cash Collateral. The Debtors cannot maintain the value of their business and assets during the pendency of these Chapter 11 Cases and the Sale Process without access to cash. The Debtors will use cash to, among other things, maintain business operations during the pendency of the Sale Process, and pay employees, vendors, and suppliers in connection therewith. All or substantially all of the Debtors' available cash allegedly constitutes the cash collateral of the Prepetition Loan Lenders, as that term is used by section 363(c) of the Bankruptcy Code. The Debtors will therefore be unable to proceed with operating their businesses without the ability to use Cash Collateral, and will suffer immediate and irreparable harm to the detriment of all creditors and other parties in interest. In short, the Debtors' ability to finance their business operations, and the availability of sufficient working

capital and liquidity to the Debtors through the use of Cash Collateral, is vital to the preservation and maintenance of the value of the Debtors' estates, the successful Sale Process, and the successful prosecution of these Chapter 11 Cases.

26. The Debtors, therefore, seek immediate authority to use Cash Collateral on an interim basis, as set forth in this Motion and in the Interim Order, to prevent immediate and irreparable harm to their estates pending the Final Hearing pursuant to Bankruptcy Rule 4001(b). Accordingly, the Debtors respectfully submit that they have satisfied the requirements of Bankruptcy Rule 4001 to support an expedited preliminary hearing and immediate Cash Collateral availability on an interim basis.

D. Modification of the Automatic Stay Is Appropriate

27. The Interim Order contemplates a modification of the automatic stay (to the extent applicable) as necessary to, among other things, permit the Debtors to: (a) grant the security interests, liens and superpriority claims described above, and to perform such acts as may be requested to assure the perfection and priority of such security interests and liens; and (b) authorize the Debtors to make certain payments in accordance with the terms of the Interim Order. Stay modification provisions of this kind are ordinary and standard terms of postpetition use by debtors-in-possession of prepetition collateral, and, in the Debtors' business judgment, are reasonable under the present circumstances. Accordingly, the Debtors respectfully request that the Court authorize the modification of the automatic stay solely in accordance with the terms set forth in the Cash Collateral Orders.

REQUEST FOR FINAL HEARING

28. Pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2), the Debtors request that the Court set a date for the Final Hearing within thirty days of the Petition Date, and fix the date and time prior to the Final Hearing for parties to file objections to the relief requested by this Motion.

WAIVER OF BANKRUPTCY RULES 6004(a) AND 6004(h)

29. To implement the foregoing successfully, the Debtors request that, to the extent applicable, the Cash Collateral Orders provide 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).

NOTICE

30. Notice of this Motion has been provided to: (i) the Office of the United States Trustee for the District of Delaware; (ii) the Office of the United States Attorney for the District of Delaware; (iii) the Internal Revenue Service; (iv) the Debtors' twenty (20) largest unsecured creditors (excluding insiders); (v) the Prepetition Loan Lenders; and (vi) all parties known to the Debtors who hold any liens or security interests in the Debtors' assets who have filed UCC-1 financing statements against the Debtors. Notice of this Motion and any order entered hereon will be served in accordance with Local Rule 9013-1(m). In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary.

CONCLUSION

WHEREFORE, the Debtors request that the Court: (a) enter the Cash Collateral Orders (i) authorizing the Debtors to use Cash Collateral on an interim and final basis subject to the terms and conditions set forth therein, (ii) granting adequate protection to the extent set forth in the Cash Collateral Orders, (iii) scheduling the Final Hearing within approximately thirty (30) days of the commencement of these Chapter 11 Cases to consider approval of this Motion on a final basis, and (iv) granting related relief; and (b) grant the Debtors such other and further relief as is just and proper.

Dated: January 15, 2022
Wilmington, Delaware

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ Allison S. Mielke

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Proposed Counsel to the Debtors and Debtors in Possession

EXHIBIT A

Interim Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

BHCOSMETICS HOLDINGS, LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 22-10050 (____)

(Joint Administration Requested)

Ref. Docket No. ____

**INTERIM ORDER (I) AUTHORIZING USE OF CASH COLLATERAL AND
AFFORDING ADEQUATE PROTECTION; (II) MODIFYING
AUTOMATIC STAY; AND (III) SCHEDULING A FINAL HEARING**

This matter coming before this Court on the *Debtors' Motion for Interim and Final Orders (A) Authorizing Postpetition Use of Cash Collateral, (B) Granting Adequate Protection, (C) Scheduling a Final Hearing Pursuant To Bankruptcy Rule 4001(b), and (D) Granting Related Relief* (the "Motion")² at an interim hearing on January ___, 2022 (the "Interim Hearing"), the Court has reviewed the Motion and the *Declaration of Spencer M. Ware in Support of Chapter 11 Petitions and First Day Motions* (the "First Day Declaration"). The Motion requests entry of this order (the "Interim Order"):

(a) authorizing Debtors BHCosmetics Holdings, LLC, BHCosmetics Intermediate, LLC, BH Cosmetics, LLC, and Visceral Agency, LLC (collectively, the "Debtors") to use Cash Collateral (as defined below) and granting adequate protection to the Prepetition Loan Lenders (each as defined below) in respect of their asserted rights under the Secured Credit Documents, as

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are as follows: BHCosmetics Holdings, LLC (7827); BHCosmetics Intermediate, LLC (2918); BHCosmetics, LLC (9106); and Visceral Agency LLC (9266). The Debtors' service address for purposes of these chapter 11 cases is 8161 Lankershim Blvd., North Hollywood, CA 91605.

² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

applicable (each as defined below), and their asserted interests in the Collateral (as defined below) pursuant to Bankruptcy Code sections 105, 361, 362 and 363 and other applicable law with respect to any diminution in value of such rights and interests on and after the Petition Date (as defined below);

(b) modifying the automatic stay arising under section 362 of the Bankruptcy Code in accordance with the provisions hereof to the extent necessary to implement and effectuate the terms and provisions of this Interim Order;

(c) scheduling a final hearing (the “Final Hearing”) pursuant to Bankruptcy Rule 4001(b)(2) to be held before this Court to consider entry of an order authorizing and granting the relief requested in the Motion on a final basis (such order, in form and substance acceptable to the Prepetition Loan Lenders, the “Final Order”);

(d) waiver of any applicable stay with respect to the effectiveness and enforceability of this Interim Order (including a waiver pursuant to Bankruptcy Rule 6004(h));

(e) subject to entry of the Final Order, except to the extent of the Carve-Out (defined below) (solely to the extent expressly set forth herein), the waiver by the Debtors of any right to surcharge against or recover from the Prepetition Loan Lenders or the Collateral pursuant to Section 506(c) of the Bankruptcy Code or any similar principle of law;

(f) subject to entry of the Final Order, the waiver of the “equities of the case” exception under Section 552(b) of the Bankruptcy Code with respect to the Prepetition Loan Lenders and the proceeds of any of the Prepetition Collateral (defined below); and

(g) granting certain related relief.

The Court having considered the Motion, the First Day Declaration, the other filings and pleadings in the above-captioned jointly-administered chapter 11 cases (each individually a “Case”

and collectively, the “Cases”), and the evidence submitted or adduced and the arguments of counsel made at the Interim Hearing; and the Prepetition Loan Lenders having consented to the Debtors’ use of Cash Collateral as long as it is limited by the form and substance of an order that the Prepetition Loan Lenders approve; and notice of the Interim Hearing having been given in accordance with Bankruptcy Rules 2002, 4001(b), (c), and (d), and 9014; and the Interim Hearing to consider the interim relief requested in the Motion having been held and concluded; and all objections, if any, to the interim relief requested in the Motion having been withdrawn, resolved, or overruled by the Court; and it appearing to the Court that granting the relief set forth herein is necessary to avoid immediate and irreparable harm to the Debtors and their estates pending the Final Hearing, and otherwise is fair and reasonable, in the best interests of the Debtors, their estates, and their creditors and equity holders, and essential for the continued operation of the Debtors’ remaining businesses; and after due deliberation and consideration, and for good and sufficient cause appearing therefor;

BASED UPON THE RECORD ESTABLISHED AT THE INTERIM HEARING BY THE DEBTORS, INCLUDING THE SUBMISSIONS AND DECLARATIONS AND REPRESENTATIONS OF COUNSEL, THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:³

A. Petition Date. On January 14, 2022 (the “Petition Date”), the Debtors filed voluntary petitions under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court” or this “Court”). The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to Bankruptcy Code sections 1107 and 1108.

³ The findings and conclusions set forth herein constitute the Bankruptcy Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052. To the extent any findings of fact constitute conclusions of law, they are adopted as such. To the extent any conclusions of law constitute findings of fact, they are adopted as such.

B. Jurisdiction and Venue. This Court has core jurisdiction over these Cases, this Motion and the parties and property affected hereby pursuant to 28 U.S.C. sections 157(b) and 1334. Venue is proper before this Court pursuant to 28 U.S.C. sections 1408 and 1409. The statutory bases for the relief set forth in this Interim Order are sections 105, 361, 362, 363, and 507 of the Bankruptcy Code, Bankruptcy Rules 2002 and 4001 and Local Rule 4001-2.

C. Notice. Upon the record presented to the Court at the Interim Hearing, and under the exigent circumstances set forth therein, requisite notice of the Motion and the relief requested thereby and this Interim Order has been provided in accordance with Bankruptcy Rules 4001(b) and 4001(c)(1) to (a) the United States Trustee for the District of Delaware (the “U.S. Trustee”); (b) the Office of the United States Attorney for the District of Delaware; (c) the Internal Revenue Service; (d) the entities listed on the Consolidated List of Creditors Holding the 20 Largest Unsecured Claims filed pursuant to Bankruptcy Rule 1007(d); (e) the Prepetition Loan Lenders (as defined below); (f) all parties known to the Debtors who hold any liens or security interests in the Debtors’ assets who have filed UCC-1 financing statements against the Debtors; (g) the Debtors’ landlords; and (h) all parties who have filed a notice of appearance and request for service of papers pursuant to Bankruptcy Rule 2002 (collectively, the “Notice Parties”), which notice was appropriate under the circumstances; and no further notice of, or hearing on, the entry of this Interim Order is necessary or required.

D. Debtors’ Stipulations. Without prejudice to the rights of any other party (but subject to the limitations in paragraph 7 below) the Debtors admit, stipulate, and agree that, with respect to the Debtors’ obligations under agreements executed prior to the Petition Date to Fifth Third Bank, N.A. (“Fifth Third”) as Administrative Agent, Collateral Agent, Swing Line Lender, L/C Issuer, Lead Arranger, and Bookrunner and the other participating lenders thereunder, if any

(collectively with Fifth Third, the “Prepetition Loan Lenders” and such agreements, including as amended, extended, or otherwise altered, collectively, the “Prepetition Loan Agreement”):

(1) On or about December 28, 2017, Debtor BHCosmetics, LLC, as borrower (“Borrower”), Debtor BHCosmetics Intermediate, LLC and Debtor Visceral Agency LLC, as guarantors⁴ (together, “Guarantors”), and the Prepetition Loan Lenders entered into the Prepetition Loan Agreement, pursuant to which the Prepetition Loan Lenders provided a term and revolving line of credit to finance the acquisition of the Debtors with initial term loan commitments of \$15,000,000 in the aggregate and initial revolving credit commitments of \$10,000,000 in the aggregate. On February 6, 2019, September 16, 2019, February 20, 2020, December 8, 2020, and August 2, 2021, the parties to the Prepetition Loan Agreement entered into forbearance agreements with respect to the Prepetition Loan Agreement which provided for certain amendments to the Financial Covenants (as defined in the Prepetition Loan Agreement) and certain minimum liquidity and consolidated EBITDA requirements (collectively, the “Forbearance Agreements”).

(2) As of the Petition Date, the outstanding balances of the revolving and term loans owed to the Prepetition Loan Lenders under the Prepetition Loan Agreement were \$9,627,614.02 and \$13,856,490.34, respectively, and in each case including accrued and unpaid interest through December 21, 2021, but not yet including fees and other charges (all such amounts, along with all other “Obligations” as defined in the Prepetition Loan Agreement, referred to herein as the “Prepetition Loan Obligations,” which Prepetition Loan Obligations will continue to increase on account of interest, fees, and other charges

⁴ Pursuant to the terms of the Fourth Forbearance Agreement dated December 8, 2020, Visceral Agency LLC was added as Obligor and Guarantor under the Prepetition Loan Agreement.

until Paid in Full (as defined herein)), and all agreements entered into in connection with such Prepetition Loan Obligations, including the “Loan Documents” as defined in the Prepetition Loan Agreement, referred to herein as the “Secured Credit Documents”). The obligations under the Secured Credit Documents mature on December 28, 2022.

(3) The Prepetition Loan Obligations are secured by a first-priority lien on and security interest in substantially all of the Borrower’s assets, including accounts receivable, cash and cash equivalents, chattel paper, commercial tort claims, deposit accounts, documents, equipment, general intangibles, goods, instruments, inventory, investment property, books and records pertaining to the collateral, intellectual property, letters of credit rights, license, and the proceeds and products thereof (the “Prepetition Collateral”). The Prepetition Loan Lenders’ security interests in the Prepetition Collateral (the “Secured Prepetition Liens”) are duly perfected. The Guarantors have no defenses to or offsets against their obligations under the Guaranty, and are obligated to the Prepetition Loan Lenders as set forth in the Guaranty.

(4) All of the Debtors’ existing cash that constitutes property of the estates and all cash (i) constituting Prepetition Collateral; (ii) constituting proceeds, products, rents, or profits of property, which is Prepetition Collateral; or (iii) subject to the Secured Parties’ rights of setoff constitutes cash collateral (the “Cash Collateral”).

E. Release. Without prejudice to the rights of any other party (but subject to the limitations in paragraph 7 below), the Debtors forever and irrevocably (i) release, discharge, and acquit the Prepetition Loan Lenders, and each of their respective former, current, or future officers, employees, directors, agents, representatives, owners, members, partners, financial advisors, legal advisors, shareholders, managers, consultants, accountants, attorneys, affiliates, and predecessors

in interest (collectively, the “Releasees”) of and from any and all claims, demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness, and obligations of every type, including, without limitation, any claims arising from any actions relating to any aspect of any relationship between the Prepetition Loan Lenders and the Debtors and their affiliates, including, without limitation, any equitable subordination claims or defenses, with respect to or relating to the Prepetition Loan Obligations, the Prepetition Loan Lenders, the Debtors’ attempts to restructure the Prepetition Loan Obligations, any and all claims and causes of action arising under the Bankruptcy Code, and any and all claims regarding the validity, priority, perfection, or avoidability of the liens or secured claims of the Prepetition Loan Lenders and any funds and payments received by the Prepetition Loan Lenders; and (ii) waive any and all defenses (including, without limitation, offsets and counterclaims of any nature or kind) as to the validity, perfection, priority, enforceability, and non-avoidability of the Prepetition Loan Obligations. Nothing in this Interim Order shall in any way be construed or interpreted to impose or allow the imposition upon the Prepetition Loan Lenders of any liability for any claims arising from any and all activities and omissions by the Debtors or any of their subsidiaries or affiliates in the operation of their businesses or in connection with their restructuring efforts.

F. Creditors’ Committee. As of the date hereof, the U.S. Trustee has not appointed an official committee of unsecured creditors (the “Committee”) in accordance with Bankruptcy Code section 1102.

G. Cash Collateral. The Prepetition Loan Lenders assert first-priority security interests in Debtors’ assets including, but not limited to, any and all Cash Collateral existing as of the Petition Date or arising or acquired after the Petition Date, and the Debtors agree that the Prepetition Loan Lenders’ security interests have that priority. The Prepetition Loan Lenders are, and have been,

granted the Secured Replacement Liens (as defined below) pursuant to the terms of this Interim Order on all of Debtor's assets including but not limited to, the Cash Collateral, together with all proceeds thereof, as cash collateral within the meaning of section 363(a) of the Bankruptcy Code. Pursuant to section 363(c)(2) of the Bankruptcy Code, the Debtors are not able to use Cash Collateral without the Prepetition Loan Lenders' consent or this Court's authorization after notice and a hearing.

H. Necessity for Relief Requested; Immediate and Irreparable Harm. The Debtors requested entry of this Interim Order pursuant to Bankruptcy Rule 4001(b)(2) on the terms described herein. The Debtors have an immediate and continuing need to use the Cash Collateral to, among other things, preserve and maximize the value of the assets of each Debtor's bankruptcy estate (each as defined under section 541 of the Bankruptcy Code, an "Estate"), absent which immediate and irreparable harm will result to the Debtors, their Estates, and their stakeholders. Absent the Debtors' ability to use Cash Collateral, the Debtors would not have sufficient available sources of working capital or financing and would be unable to pay their payroll and other operating expenses, or maintain their assets to the detriment of their Estates and creditors. Accordingly, the relief requested in the Motion and the terms provided herein are (i) critical to the Debtors' ability to maximize the value of the Estates, (ii) in the best interests of the Debtors and their Estates, and (iii) necessary, essential, and appropriate to avoid immediate and irreparable harm to the Debtors and the Debtors' Estates, stakeholders, assets, goodwill, reputation, and employees.

I. Adequate Protection. On account of their Secured Prepetition Liens, the Prepetition Loan Lenders are entitled to the adequate protection provided in this Interim Order as and to the extent set forth herein pursuant to sections 361, 362, and 363 of the Bankruptcy Code. Based on

the Motion and on the record presented to the Court, the terms of the proposed adequate protection arrangements and permission being granted to use the Collateral (as defined below), including the Cash Collateral, are fair and reasonable, reflect the Debtors' prudent exercise of business judgment, and constitute reasonably equivalent value and fair consideration for the use of Cash Collateral.

J. Good Cause. Good cause has been shown for immediate entry of this Interim Order, and the entry of this Interim Order is in the best interests of the Debtors, the Estates, and their stakeholders. Among other things, the relief granted herein will minimize disruption of the Debtors' business and permit the Debtors to meet payroll and other expenses necessary to maximize the value of the Estates. The terms of the Debtors' use of Cash Collateral and proposed adequate protection arrangements, as set forth in this Interim Order, are fair and reasonable under the circumstances, and reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties.

K. Section 552(b) Protections. Subject to the entry of the Final Order, the Prepetition Loan Lenders are entitled to all of the rights and benefits of Section 552(b) of the Bankruptcy Code, and the "equities of the case" exception shall not apply to any of the Prepetition Loan Lenders with respect to proceeds, product, offspring or profits of any of the Prepetition Collateral.

BASED UPON ALL OF THE FOREGOING, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

1. Motion Granted. The Motion is GRANTED to the extent provided herein. Any objection to the Motion, to the extent not withdrawn, waived or resolved, is hereby overruled.
2. Authorization to Use Cash Collateral. The Debtors are authorized on an interim basis to use the Cash Collateral solely in accordance with and to the extent set forth in the Budget

(as defined below) and this Interim Order during the period commencing on the date of this Interim Order through to the Termination Date (as defined below) (the “Cash Collateral Period”).

3. Budget.

(a) The Debtors may use Cash Collateral during the Cash Collateral Period only to pay the expenses in the budget categories set forth in the cash collateral budget attached hereto as **Exhibit 1** (as the same may be updated from time to time with the prior written consent of the Prepetition Loan Lenders, the “Budget”), subject to the Permitted Variance (as defined below). The Debtors shall provide updated Budgets to the Prepetition Loan Lenders on February 22, 2022, and, on or before February 24, 2022, the Prepetition Loan Lenders will inform the Debtors whether they, in their sole discretion, approve that updated Budget. If the Prepetition Loan Lenders approve that updated Budget, the new Budget shall become the operative Budget under this Interim Order unless the Final Order has been entered prior to that time. The Debtors shall file a notice of the updated Budget(s) in the record of these chapter 11 Cases and serve same on the Notice Parties.

(b) Not later than 11:59 p.m. (Eastern Time) on the Thursday of each week commencing on January 27, 2022, and continuing weekly for as long as the Debtors have authority to use Cash Collateral under this Interim Order, the Debtors shall furnish the following information to the Prepetition Loan Lenders: (1) a report setting forth the actual results for each line item of the Budget during the one week ending on the immediately preceding Saturday and (2) commencing on February 3, 2022, a report setting forth the actual results for each line item of the Budget during the two weeks ending on the immediately preceding Saturday (each such period in this sentence referred to herein as a “Two-Week Measurement Period,” and the reports in this sentence collectively referred to herein as the “Budget Compliance Reports”).

(c) The Debtors hereby covenant and agree that (i) the actual results constituting “Total Operating Collections” as set forth in the Budget for the Two-Week Measurement Period shall not be less than eighty-five percent (85%) of the amount projected in the “Total Operating Collections” line item of the Budget for such Measurement Period; and (ii) the actual results constituting “Total Operating Disbursements” as set forth in the Budget for the Two-Week Measurement Period, shall not be more than one hundred and fifteen percent (115%) of the amount projected in the “Total Operating Disbursements” section of the Budget, for such Two-Week Measurement Period (the “Permitted Variance”).⁵

(d) For the absence of doubt, the Prepetition Loan Lenders have absolutely no obligation to advance additional funds to the Debtors under this Interim Order or otherwise.

(e) Under no circumstance shall Debtors:

(i) Use any Cash Collateral for any purpose other than those authorized by this Interim Order and as outlined in the Budget without the written consent of the Prepetition Loan Lenders; or

(ii) Use Cash Collateral to the extent that expenses listed in the Budget are not actually incurred.

4. Carve-Out.

(a) As used in this Interim Order, the “Carve-Out” means the sum of: (i) all allowed administrative expenses pursuant to 28 U.S.C. § 156(c) for fees required to be paid to the Clerk of the Bankruptcy Court and pursuant to 28 U.S.C. § 1930(a)(6) for fees payable to the Office of the U.S. Trustee under 28 U.S.C. § 1930(a), plus interest at the statutory rate, as determined by

⁵ For the absence of doubt, the disbursement line item for “Liquidation Costs – Cushion” in the Budget is subsumed into, and is not in addition to, the Permitted Variance.

agreement of the U.S. Trustee or by final order of the Bankruptcy Court; (ii) all reasonable fees and expenses up to \$5,000 incurred by a Trustee under Section 726(b) of the Bankruptcy Code; (iii) any and all fees, costs and/or expenses allowed by the Bankruptcy Court upon proper application and payable, at any time, to (a) Hilco IP Services, LLC d/b/a Hilco Streambank (as set forth in the *Debtors' Application for an Order (I) Authorizing the Retention and Employment of Hilco IP Services, LLC d/b/a Hilco Streambank, as Intellectual Property Disposition Consultant to the Debtors, Effective as of the Petition Date, (II) Waiving Certain Information Requirements of Local Rule 2016-2, and (III) Granting Related Relief*) and/or (b) SB360 Capital Partners, LLC (as discussed in the *Debtors' Emergency Motion for Interim and Final Orders (I)(A) Confirming, on an Interim Basis, that the Inventory Sale Agreement Is Operative and Effective and (B) Authorizing, on a Final Basis, the Debtors to Assume the Inventory Sale Agreement, (II) Authorizing and Approving Inventory Sales Free and Clear of All Liens, Claims, and Encumbrances*); (iv) subject to the terms and conditions of this Interim Order, all Allowed Professional Fees (as defined below) of attorneys, accountants, and other professionals, other than Hilco IP Services, LLC d/b/a Hilco Streambank and SB360 Capital Partners, LLC, retained by the Debtors and any Committee(s), under §§ 327, 363, or 1103(a) of the Bankruptcy Code (collectively, the "Professionals") incurred prior to the Termination Date in an aggregate amount not to exceed at any time the Professional Fee Budget attached for such professional as a schedule to the Budget (the "Professional Fee Budget"), (v) Allowed Professional Fees and disbursements following the Termination Date by the Professionals retained, pursuant to §§ 327 or 1103(a) of the Bankruptcy Code, by the Debtors and the Committee not to exceed the aggregate amount of \$105,000, and (vi) the reasonable fees and expenses of the Prepetition Loan Lenders' counsel and other professionals (collectively, "Lenders' Professional Fees") incurred before or after the

Petition Date in connection with the Secured Credit Documents, the Collateral, or the Cases (clauses (iv), (v), and (vi), collectively, the “Professional Fee Carve-Out”). For purposes of this Interim Order, the term “Allowed Professional Fees” shall mean the unpaid and outstanding reasonable fees and expenses of Professionals (i) actually incurred on or after the Petition Date and (ii) only to the extent allowed at any time by an order of the Court pursuant to §§ 326, 328, 330 or 331 of the Bankruptcy Code. The amounts on the Professional Fee Budget are not subject to the Permitted Variances. The amounts allocated to each individual Professional’s fees and to the Lenders’ Professional Fees on the Professional Fee Budget are wholly separate, with each such professional’s allocation reserved for that professional (if approved by the court where that approval is required) (i.e., the total Budgeted amount for all professionals shall not be split *pro rata* among the professionals if any one professional exceeds the amount Budgeted for that professional). Conversely, to the extent the Budgeted amounts for Allowed Professional Fees for any individual Professional or for the Lenders’ Professional Fees for any Budget period exceed the actual fees and expenses incurred by such professional for that period, the excess may be carried forward to later Budget periods or backward to prior Budget periods to be applied to any fees and expenses for such professional that exceeded the Budget amounts for such prior or later periods. Notwithstanding anything herein to the contrary, no Cash Collateral or any portion of the Carve-Out may be used to investigate or assert any claims or causes of action against the Prepetition Loan Lenders or object to or contest in any manner, or raise any defenses to, the validity, perfection, priority, extent, or enforceability of the Prepetition Loan Obligations, the Secured Prepetition Liens, or the Secured Replacement Liens granted herein; provided, however, that up to \$25,000 may be used by the Committee, if any, to investigate any such claims or causes of action. Nothing herein allows the payment of any fees or expenses of Professionals absent

approval of the same by the Court pursuant to a fee application on notice, or such other procedures that may be approved by the Court.

(b) The Secured Prepetition Liens, the Secured Replacement Liens, and the Secured Adequate Protection Superpriority Claim (as defined below) shall be subordinate to the Carve-Out solely to the extent set forth in this Interim Order. Other than the aggregate amounts set forth in the Professional Fee Budget as of the Termination Date and the amounts set forth in paragraph 4(a)(v) above, none of the Prepetition Loan Lenders' liens and claims in or against the Collateral, the Debtors, and the Estates shall be subordinate to the Professional Fee Carve-Out. For the avoidance of doubt, nothing herein shall be construed to impair the ability of any party to object to the fees, expenses, reimbursement, or compensation described herein.

(c) The Debtors are authorized to electronically transfer funds, on a weekly basis and to the extent funds are available, to the Young Conaway Stargatt & Taylor, LLP Client Trust Account in an amount equal to, but not to exceed, the amount set forth in the Professional Fee Budget for each Professional for each such week (the "Professional Fee Escrow"), including upon the consummation of a sale of the Debtors' assets. The Prepetition Loan Lenders shall not have any responsibility, liability, or obligation whatsoever to ensure that the Debtors fund the Professional Fee Escrow or that the Professional Fee Escrow has funds equal to the aggregate amounts set forth in the Professional Fee Budget for any applicable period. The Debtors may fund the Professional Fee Escrow (i) prior to the Termination Date and upon the sale of the Debtors' assets, up to, but not to exceed, the amounts set forth in the Professional Fee Budget for each week prior to the Termination Date (notwithstanding any otherwise Permitted Variances), and (ii) after the Termination Date, up to, but not to exceed, an amount equal to (x) the aggregate Professional Fee Budget amounts for all prior weeks in which the Professional Fee Escrow has not been funded,

plus Professional Fee Budget amounts for the week in which the Termination Date occurs (but only to the extent not previously funded), plus \$105,000. No Cash Collateral shall be transferred to or deposited into the Professional Fee Escrow in a manner or amount that is inconsistent with the terms of this Interim Order. Except as specifically provided in this Interim Order, on and after the Termination Date, no funds of the Debtors (including Cash Collateral) shall be transferred or deposited into the Professional Fee Escrow. Notwithstanding anything to the contrary herein, the Debtors shall not transfer the amounts on the Professional Fee Budget allocated to the Lenders' Professional Fees to the Professional Fee Escrow; rather, the Debtors shall pay those sums directly to the Prepetition Loan Lenders' respective professionals to the extent that the Professional Fee Budget and paragraph 5(b)(ii) herein permit.

(d) Termination Date. The Debtors' authorization to use Cash Collateral pursuant to this Interim Order shall terminate immediately upon written notice by the Prepetition Loan Lenders to the Debtors, the U.S. Trustee and, if appointed, any Committee, of the earliest to occur of the following (the earliest such date, herein defined as the "Termination Date"): (i) March 31, 2021, subject to entry of an order of the Court extending the Debtors' rights to use Cash Collateral; (ii) the date of the Final Hearing; (iii) the entry of an order of this Court terminating the right of any Debtor to use Cash Collateral; (iv) the dismissal of any of the Cases or the conversion of any of the Cases to a case under chapter 7 of the Bankruptcy Code; (v) the appointment in any of the Cases of a trustee or an examiner with expanded powers; (vi) the entry of an order of this Court reversing, staying, vacating, or otherwise modifying this Interim Order or any provision contained herein without the prior written consent of the Prepetition Loan Lenders; (vii) any Debtor's failure to correct any material misrepresentation by any Debtor in the financial reporting to be provided by the Debtors to the Prepetition Loan Lenders under either or both of the Prepetition Loan

Agreement and this Interim Order, after three (3) business days' written notice of such alleged material misrepresentation; (viii) any Debtor's failure to provide any additional adequate protection ordered by the Court, if such failure continues unremedied for more than three (3) business days after written notice thereof; (ix) any Debtor's failure to perform, in any respect, any of its obligations under this Interim Order (other than a failure that constitutes a Termination Event), if such failure continues unremedied for more than three (3) business days after written notice thereof; and (x) the occurrence of a Termination Event (defined below).

5. Adequate Protection.

(a) Secured Replacement Liens. Pursuant to sections 361 and 363 of the Bankruptcy Code, as adequate protection for the amount of diminution in value of the Prepetition Loan Lenders' interests in the Collateral, including, without limitation, the aggregate amount of Cash Collateral used by any Debtor (on a dollar-for-dollar basis), the imposition of the automatic stay, and any other act or omission that causes diminution in the value of its interests in the Collateral (collectively, the "Diminution in Value"), the Prepetition Loan Lenders are hereby granted valid, binding, enforceable, and perfected replacement liens upon and security interests in all of each Debtor's presently owned or hereafter acquired property and assets to the extent that such categories of property and assets would constitute such Prepetition Loan Lenders' Collateral if they had been acquired before the Petition Date (such collateral together with the Prepetition Collateral and the Cash Collateral, the "Collateral") to the extent of any Diminution in Value (such liens being referred to herein as the "Secured Replacement Liens"); provided, however, that, for the avoidance of doubt, the Secured Replacement Liens shall not attach to property recovered as a result of transfers or obligations avoided or actions maintained or taken pursuant to Sections 542, 544, 545, 547, 548, 549, 550, 551, 552, and 553 of the Bankruptcy Code (the "Avoidance Actions")

except as specifically set forth herein; provided, further, that such Secured Replacement Liens shall, upon entry of the Final Order, attach to all proceeds of Avoidance Actions; and provided further, however, with respect to the Debtors' non-residential real property leases, no liens or encumbrances shall be granted or extend to such leases themselves under this Interim Order, except as permitted in the applicable lease, but rather any liens granted shall extend only to the proceeds realized upon the sale, assignment, termination, or other disposition of such lease, books and records related to the foregoing accessions, and proceeds of the foregoing wherever located, including insurance proceeds. The Secured Replacement Liens shall be junior and subordinate only to (A) each Prepetition Loan Lender's Secured Prepetition Liens on the Collateral, and (B) the Carve-Out, solely to the extent set forth in this Interim Order, and shall otherwise be senior to all other security interests in, liens on, or claims against any asset of a Debtor and all rights of payment of all other parties. Other than as set forth herein, the Secured Replacement Liens shall not be made subject to or *pari passu* with any lien or with any lien or security interest granted in any case under chapter 7 of the Bankruptcy Code (collectively, "Successor Cases"). The Secured Replacement Liens shall be deemed automatically valid and perfected with such priority as provided in this Interim Order without any further notice or act by any party that may otherwise be required under any other law. Notwithstanding the foregoing, the Debtors shall, upon request of any Prepetition Loan Lender, execute and deliver such documents as may be reasonably requested by such Prepetition Loan Lender to further create or perfect the security interest and liens described herein under applicable non-bankruptcy law, and each Prepetition Loan Lender shall be authorized to file and record such documents and take such other actions as may be necessary to perfect such security interests and liens under all such laws and to correctly describe the collateral subject thereto. The Secured Replacement Liens shall be valid, binding, and

enforceable (i) against any trustee or other estate representative appointed in any Case, (ii) upon the conversion of any of the Cases to a Successor Case, and (iii) upon the dismissal of any Case or Successor Case. For avoidance of doubt, the Collateral which the Secured Replacement Liens encumber includes, but is not limited to, all of the Debtors' right, title and interest in each contract (and its proceeds) which they may enter for the sale of assets, the factoring of receivables, or the escrow of funds and all intellectual property rights acquired or reserved by any Debtor.

(b) Section 507(b) Priority Claims.

(i) Secured Adequate Protection Superpriority Claim. As further adequate protection for the Diminution in Value, the Prepetition Loan Lenders are hereby granted, as and to the extent provided by Sections 503 and 507(b) of the Bankruptcy Code, an allowed superpriority administrative expense claim in the Cases and any Successor Case (the "Secured Adequate Protection Superpriority Claim"). The Secured Adequate Protection Superpriority Claim shall be subordinate to the Carve-Out solely to the extent set forth in this Interim Order, but otherwise shall have priority over all administrative expense claims, including administrative expenses of the kinds specified in or ordered pursuant to Sections 503(b) and 507(b) of the Bankruptcy Code, and unsecured claims against each Debtor and each Estate now existing or hereafter arising, of any kind or nature whatsoever.

(ii) Payment and Review of Lender Fees and Expenses. The Debtors shall pay, up to the aggregate amounts set forth in the Budget under the "Professional Fee Escrow & Lender Counsel" line item, the reasonable attorneys' fees and expenses (including but not limited to those of lead and local counsel) and any other professional fees and expenses of the Prepetition Loan Lenders incurred before and after the Petition Date in connection with the Secured Credit Documents, the Collateral, or the Cases; provided, that the Debtors shall pay all such reasonable

fees and expenses within twelve (12) business days of the Prepetition Loan Lenders' and/or their professionals' delivery of a monthly statement or invoice for such fees and expenses (it being understood that such statements or invoices shall not be required to be maintained in any particular format, the provision of such statements will not result in a waiver of any privilege, and the statements may be redacted to protect privileged, confidential, or proprietary information, nor shall any such counsel or other professional be required to file any interim or final fee applications with the Court or otherwise seek the Court's approval of any such payments) to the Debtors, the U.S. Trustee, and the Committee (if one is appointed), unless, within ten (10) business days of the date of that delivery, the Debtors, the U.S. Trustee, or the Committee (if one is appointed) serve a written objection upon the Prepetition Loan Lenders and the subject professional, in which case, the Debtors shall pay only such amounts that are not the subject of any timely filed objection, as set forth in this paragraph, and pay the remaining amount as the objecting parties may subsequently agree or the Court so orders to be paid; provided, however, that any such remaining amount shall be held in escrow by the Debtors for the benefit of the Lenders until resolution of any objection to the payment thereof.

(c) Cash Management. Until the Prepetition Loan Lenders receive Payment in Full (as defined below), the Prepetition Loan Lenders shall have, and continue to have, exclusive dominion and control of all deposit accounts and other accounts of Debtors, and all banks, depository entities, securities intermediaries, and commodities intermediaries that are parties to any control agreements shall be authorized and directed to continue affording the Prepetition Loan Lenders exclusive dominion and control over such accounts in accordance with the terms and conditions of the applicable control agreements. Prior to the Termination Date, the Debtors shall maintain all Cash Collateral actually received in their accounts, and shall utilize such Cash

Collateral so received solely in accordance with the Budget and this Interim Order. The terms “Payment in Full” or “Paid in Full” mean that (i) all of the Prepetition Loan Obligations have been paid in full in cash; and (ii) the Prepetition Loan Lenders have received a release from each Debtor and the Committee (if any) of and from all demands, actions, causes of action, suits, covenants, contracts, controversies, agreements, promises, sums of money, accounts, bills, reckonings, damages, and any and all other claims, counterclaims, defenses, rights of set-off, demands, and liabilities in form and substance acceptable to the Prepetition Loan Lenders.

(d) Notwithstanding anything to the contrary set forth herein, the adequate protection granted by this Interim Order is without prejudice to the Prepetition Loan Lenders’ right to seek additional adequate protections from this Court, or the rights of any party in interest to oppose such request. The use of Cash Collateral pursuant to the terms and conditions of this Interim Order and in accordance with the Budget shall not be deemed to be a consent by the Prepetition Loan Lenders to any other or further use of Cash Collateral.

6. Insurance. At all times, the Debtors shall maintain casualty and loss insurance coverage for the Collateral on substantially the same basis as maintained prior to the Petition Date. The Debtors shall provide the Prepetition Loan Lenders with proof of the foregoing within five (5) days of written demand and give the Prepetition Loan Lenders reasonable access to the Debtors’ records in this regard.

7. Stipulation. The stipulations contained in Paragraph D and the release in Paragraph E of this Interim Order (the “Stipulations”) shall be binding upon all parties in interest, including without limitation, the Debtors, their successors (including any chapter 7 or chapter 11 trustee), the Estates, and the Committee, if any. All parties in interest, the Debtors, their successors (including any chapter 7 or chapter 11 trustee), the Estates, and the Committee, if any, are deemed

to have irrevocably waived and relinquished all claims and right to challenge any of such Stipulations or any portion of such release, with the same not being effective as to the Committee, if any, or any other party in interest except for the Debtors, if such party has filed an adversary proceeding or contested matter (subject to the limitation set forth in paragraph 4(a) of this Interim Order) challenging the validity, enforceability, or priority of the Prepetition Loan Obligations or the Secured Prepetition Liens or otherwise asserting any claims or causes of action against any of the Prepetition Loan Lenders on behalf of the Estates (a “Challenge Action”), (i) with respect to any Committee, within the earlier of (a) sixty (60) calendar days from the date the U.S. Trustee appoints such Committee and (b) seventy-five (75) calendar days following the entry of the Interim Order, or (ii) with respect to all other parties, within seventy-five (75) calendar days following the entry of the Interim Order (the “Challenge Deadline”); provided, however, that if the case converts to a Chapter 7 or a Chapter 11 trustee is appointed, in either instance prior to the Challenge Deadline, that the Challenge Deadline shall be extended for the Chapter 7 or Chapter 11 trustee to the earlier of (a) forty-five (45) days after his or her appointment, and (b) the date upon which the Court rules in favor of the plaintiff in any such adversary proceeding or contested matter. If no such adversary proceeding or contested matter is commenced by the Challenge Deadline, the Prepetition Loan Obligations shall constitute allowed claims, in the amount acknowledged herein, not subject to subordination and otherwise unavoidable, for all purposes in the Cases and any Successor Cases, the Secured Prepetition Liens on the Prepetition Collateral shall be deemed legal, valid, binding, perfected, and first-priority liens not subject to subordination and otherwise unavoidable, and the Prepetition Loan Obligations and the Secured Prepetition Liens on the Prepetition Collateral shall not be subject to any other or further challenge by any party in interest seeking to exercise the rights of the Debtors' Estates, including without limitation, any successor

thereto. To the extent the Stipulations (or any of them) are (a) not subject to a Challenge Action timely and properly commenced prior to the Challenge Deadline or (b) subject to a Challenge Action timely and properly commenced prior to the Challenge Deadline, to the extent any such Challenge Action does not result in a final and non-appealable judgment or order of the Court that is inconsistent with such Stipulations, then, in each case, without further notice, motion or application to, or order of, or hearing before, the Court and without the need or requirement to file any proof of claim: (x) any and all such Challenge Actions by any party shall be deemed to be forever waived, released, and barred; and (y) all of the Stipulations and all other stipulations, waivers, releases, admissions, agreements and affirmations set forth in this Interim Order (or any not properly and timely challenged) shall be of full force and effect and shall be binding, conclusive and final on any person, entity, or party-in-interest, including any Committee, and their successors and assigns, in the Cases and in any Successor Case for all purposes and shall not be subject to challenge or objection by the Committee or any other party-in-interest, including, without limitation, any trustee, responsible individual, examiner, or other representative of the Debtors' estates. If any such adversary proceeding or contested matter is commenced on or prior to the Challenge Deadline, the Stipulations contained in paragraph D of this Interim Order shall remain binding and preclusive except to the extent that such Stipulations are expressly and successfully challenged in such adversary proceeding or contested matter and negated by entry of a final and non-appealable order or judgment of this Court. Nothing in this Interim Order vests or confers on any person, including the Committee (if any), standing or authority to pursue any cause of action belonging to the Debtors or the Estates. For the avoidance of doubt, any trustee appointed or elected in these cases shall, until the termination of the Challenge Deadline (and thereafter, if a Challenge is commenced on or prior to the Challenge Deadline) and for the duration of any

adversary proceeding or contested matter commenced pursuant to this paragraph with respect to a Challenge Action (whether commenced by such trustee or commenced by any other party-in-interest on behalf of the Estates), be deemed to be a party other than the Debtors and shall not, for purposes of such adversary proceeding or contested matter, be bound by the acknowledgments, admissions, confirmations, and stipulations of the Debtors in this Interim Order.

8. Termination Events.

(a) Each of the following shall constitute a “Termination Event” under this Interim Order and shall constitute an “Event of Default” under the Secured Loan Documents, including, but not limited to, that certain Credit Agreement dated on or about December 29, 2017, among BHCosmetics Intermediate, LLC, BHCosmetics, LLC, the Prepetition Loan Lenders, and others (the “Credit Agreement”):

(i) The use of Cash Collateral for any purpose not authorized by this Interim Order or in excess of the limitations set forth in this Interim Order;

(ii) Appointment of a Chapter 11 trustee or the appointment of an examiner with expanded powers;

(iii) Conversion of one or more of the Cases to cases under Chapter 7 of the Bankruptcy Code;

(iv) One or more of the Cases are dismissed;

(v) The entry of an order of this or any other Court (other than the Final Order) reversing, staying, vacating, or otherwise modifying in any material respect the terms of this Interim Order;

(vi) Any Debtor (or any other party) files any plan of reorganization or plan of liquidation that is not acceptable in form and substance to the Prepetition Loan Lenders;

(vii) The Debtors cease pursuing sales that are supported by the Prepetition Loan Lenders, or the Debtors conduct any liquidation or sale process that is not supported by the Prepetition Loan Lenders;

(viii) This Interim Order (unless replaced by the Final Order acceptable to Prepetition Loan Lenders, in which case, the Final Order) ceases to be in full force and effect for any reason;

(ix) The Debtors seek to obtain financing that does not provide for Payment in Full of the Prepetition Loan Obligations, unless the Prepetition Loan Lenders provide prior written consent to such financing;

(x) The Debtors fail to meet the following sale milestones: (1) the Court does not hold a hearing on and enter an order approving bidding procedures for the sale of substantially all of the Debtors' assets that is acceptable in form and substance to the Prepetition Loan Lenders on or before January 28, 2022; (2) the Court does not enter an order approving the Debtors' sale of substantially all of their assets on or before February 18, 2022 and (3) the Debtors do not close a sale of substantially all of their assets pursuant to prior order of this Court on or before March 11, 2022.

(b) Upon the Debtors' receipt of notice of the occurrence of a Termination Event (a "Default Notice") from any of the Prepetition Loan Lenders, the Debtors are prohibited from using the Cash Collateral until further order of this Court; provided, however, that the Debtors shall be entitled to pay (a) expenses, actually accrued and incurred by Debtors as of the Termination Date and as a result of the termination of such employment under applicable law (and not for any future periods), to any employee in the Budget category "Payroll" budgeted for payment in the Measurement Period in which the Default Notice is received plus any liability to

any employee in the Budget category “Payroll” resulting from the cessation of the Debtors’ employment; and (b) any other expenses expressly authorized to be paid after a Termination Event in this Interim Order. For the avoidance of doubt, notwithstanding the foregoing, the Debtors shall be permitted to make payments from the Carve-Out and from the Professional Fee Escrow and to the Prepetition Loan Lenders’ counsel.

9. Remedies Upon a Termination Event.

(a) At 5:00 p.m. (Eastern Time) on the fifth (5th) business day after the delivery of a Default Notice, absent entry of an order of the Court to the contrary, the automatic stay imposed by 11 U.S.C. § 362 shall be immediately modified and the Debtors’ interests in the Collateral shall be immediately deemed abandoned to the Prepetition Loan Lenders pursuant to 11 U.S.C. § 554(b), without further notice, hearing, or order, to permit the Prepetition Loan Lenders to, in their sole discretion, take any and all actions and pursue any and all remedies that the Prepetition Loan Lenders may deem appropriate to enforce their rights under the Secured Loan Documents, related documents, and applicable law and/or proceed against, take, take possession of, protect, and/or realize upon the Collateral and any other property of any of the Debtors’ Estates in which the Prepetition Loan Lenders have a lien or security interest (other than the Carve-Out), including, without limitation: (i) exercise any right or remedy that the Prepetition Loan Lenders may have under applicable non-bankruptcy law to proceed against, take, take possession of, foreclose upon, sell (in whole or in part), protect, and realize upon the Collateral or any other property of any of the Estates on which the Prepetition Loan Lenders have been granted liens or security interests; (ii) commence actions for either or both specific performance and the foreclosure upon any Collateral or Cash Collateral; (iii) sell the Collateral or any portion thereof, either in whole or in part, at private or public auction; (iv) receive proceeds from the sale of any of the

Collateral, (v) assert and/or enforce the rights of Debtors in any contracts which are Collateral and rights of setoff and recoupment as to any funds of the Estates held by any Prepetition Loan Lenders; and (vi) assign all or a portion of their rights and obligations under the Secured Loan Documents, including, but not limited to, the Credit Agreement and any or all other related documents to any third party, without any requirement to obtain the prior consent of any person or entity. If the Prepetition Loan Lenders elect to recover the Collateral as permitted in this paragraph, the Debtors shall cooperate in all respects with the Prepetition Loan Lenders' recovery efforts, including, but not limited to, providing the Prepetition Loan Lenders and their agents reasonable access to the Collateral.

(b) The Debtors and the Prepetition Loan Lenders recognize and agree that the Debtors' commencement of these bankruptcy cases constituted the occurrence of an "Event of Default" under the Credit Agreement, both under Section 8.01(f) of the Credit Agreement and in all other applicable Sections throughout the Credit Agreement, and that such Event of Default is continuing. The Debtors and the Prepetition Loan Lenders further agree that, at 5:00 p.m. (Eastern Time) on the fifth (5th) business day after the delivery of a Default Notice under this Interim Order, absent entry of an order of the Court to the contrary, the Prepetition Loan Lenders will have all rights available to them upon the occurrence of an Event of Default under the Credit Agreement, in addition to any or all other rights and remedies available to them under paragraph 9(a) of this Interim Order.

10. Relief from the Automatic Stay.

(a) The automatic stay provisions of section 362 of the Bankruptcy Code are hereby modified to permit (i) the Debtors to implement and perform the terms of this Interim Order, and (ii) the Debtors to create, and the Prepetition Loan Lenders to perfect, the Liens granted

hereunder. The Prepetition Loan Lenders shall not be required to file UCC financing statements or other instruments with any other filing authority to perfect the Secured Replacement Liens granted by this Interim Order or to take any other actions to perfect such Secured Replacement Liens, which shall be deemed automatically perfected by the docketing of this Interim Order by the Clerk of the Court, and deemed to be effective as of the Petition Date. If, however, the Prepetition Loan Lenders elect for any reason to file, record, or serve any such financing statements or other documents with respect to such Secured Replacement Liens, then the Debtors shall execute same upon request and the filing, recording, or service thereof (as the case may be) shall be deemed to have been made at the time of the commencement of the Cases on the Petition Date.

(b) The automatic stay provisions of section 362 of the Bankruptcy Code and any other restriction imposed by an order of the Court or applicable law are hereby modified without further notice, application, or order of the Court to the extent necessary to permit the Prepetition Loan Lenders to perform any act authorized or permitted under or by virtue of this Interim Order or the Prepetition Loan Agreement, as applicable, including, without limitation, (i) to implement the arrangements authorized by this Interim Order, (ii) to take any act to create, validate, evidence, attach, or perfect any lien, security interest, right, or claim in the Collateral, and (iii) to assess, charge, collect, advance, deduct, and receive payments with respect to the Prepetition Loan Obligations authorized herein.

11. Reversal, Modification, Vacatur, or Stay. Any reversal, modification, vacatur, or stay of any or all of the provisions of this Interim Order (other than in accordance with the Final Order) shall not affect the validity or enforceability of any Secured Replacement Liens, Secured Adequate Protection Superpriority Claim, or any claim, lien, security interest, or priority authorized or created hereby with respect to any Secured Replacement Lien or Secured Adequate

Protection Superpriority Claim incurred prior to the effective date of such reversal, modification, vacatur, or stay. Notwithstanding any reversal, modification, vacatur, or stay (other than in accordance with the Final Order), (a) this Interim Order shall govern, in all respects, any use of Cash Collateral and the Secured Replacement Liens and Secured Adequate Protection Superpriority Claim incurred by the Debtors prior to the effective date of such reversal, modification, vacatur, or stay, and (b) the Prepetition Loan Lenders shall be entitled to all the benefits and protections granted by this Interim Order with respect to any such use of Cash Collateral and such Secured Replacement Liens or Secured Adequate Protection Superpriority Claim incurred by the Debtors.

12. No Waiver for Failure to Seek Relief. The failure or delay of the Prepetition Loan Lenders to seek relief or otherwise exercise any of their rights and remedies under this Interim Order, the Prepetition Loan Agreement, or applicable law, as the case may be, shall not constitute a waiver of any rights hereunder, thereunder, or otherwise, by the Prepetition Loan Lenders.

13. Section 507(b) Reservation. Nothing herein shall impair or modify the application of section 507(b) of the Bankruptcy Code in the event that the adequate protection provided to the Prepetition Loan Lenders is insufficient to compensate for any Diminution in Value during the Cases. Nothing contained herein shall be deemed a finding by the Court, or an acknowledgment by the Prepetition Loan Lenders, that the adequate protection granted herein does in fact adequately protect the Prepetition Loan Lender, against any diminution in value of interests in the Collateral (including the Cash Collateral).

14. Rights of Prepetition Loan Lenders. Without limiting the rights of the Prepetition Loan Lenders contained in this Interim Order, the Prepetition Loan Lenders shall have the right, upon three (3) business days' written notice to the Debtors, at any time during the Debtors' normal

business hours, to inspect, audit, examine, check, make copies of, or extract from the non-privileged books, accounts, checks, orders, correspondence, and other records of the Debtors, and to inspect, audit, and monitor all or any part of the Collateral, and the Debtors shall make all of the same reasonably available to the Prepetition Loan Lenders and each of their representatives for such purposes.

15. Use of Cash Collateral. The Cash Collateral shall not, directly or indirectly, be used to pay administrative expenses of the Debtors or the Estates except for those operating expenses (including the statutorily required fees payable to the Office of the United States Trustee pursuant to 28 U.S.C. §1930 and any interest due thereon) that are set forth in the Budget, paid with the prior written consent of the Prepetition Loan Lenders, or paid pursuant to a separate order of the Court entered after reasonable notice to the Prepetition Loan Lenders and an opportunity for the Prepetition Loan Lenders to object thereto and to be heard on the matter.

16. Binding Effect. This Interim Order shall be binding upon and inure to the benefit of the Prepetition Loan Lenders, the Debtors, and their respective successors and assigns, including, without limitation, any trustee, responsible officer, examiner, estate administrator or representative, or similar person appointed in a case for the Debtors under any chapter of the Bankruptcy Code. No rights are entered under this Interim Order for the benefit of any creditor of the Debtors other than the Prepetition Loan Lenders, of any other party in interest in the Cases, or of any other person or entity, or any direct, indirect, or incidental beneficiaries thereof, unless any person or entity becomes one of the Prepetition Loan Lenders or the Prepetition Loan Lenders otherwise expressly agree in writing.

17. Reporting. During the Cash Collateral Period, the Debtors shall provide the Prepetition Loan Lenders with (a) all financial and other information required under the Prepetition

Loan Agreement and this Interim Order and such other information as the Prepetition Loan Lenders may from time to time reasonably request; and (b) copies of all written notices issued or received by Debtors concerning any escrow agreement or asset purchase agreement to which the Debtors are parties at that time, immediately upon such issuance or receipt.

18. Effectiveness. The terms and conditions of this Interim Order shall be (a) effective and immediately enforceable upon its entry by the Clerk of the Court notwithstanding any potential application of Fed. R. Bankr. P. 6004(g), 7062, 9014 or otherwise; and (b) not be stayed absent (i) an application by a party in interest for such stay in conformance with such Fed. R. Bankr. P. 8005, and (ii) a hearing upon notice to the Notice Parties.

19. Section 552. Subject to and effective upon the entry of a Final Order, the “equities of the case” exception under Section 552(b) of the Bankruptcy Code shall not apply to the Prepetition Loan Lenders, including, without limitation, with respect to (i) proceeds, products, offspring, or profits of any of the Prepetition Collateral, including, but not limited to, the Cash Collateral, or (ii) the extension of the Secured Replacement Liens to cover proceeds of the Prepetition Collateral.

20. Section 506(c) Claims. Subject to and effective upon the entry of the Final Order, except to the extent of the Carve-Out (solely to the extent expressly set forth herein), as a further condition of the Debtors’ authorization to use the Cash Collateral, no costs or expenses of administration of the Cases or any future proceeding that may result therefrom, including liquidation in bankruptcy or other proceedings under the Bankruptcy Code, shall be charged or assessed against or recovered from the Prepetition Loan Lenders or the Collateral pursuant to Section 506(c) of the Bankruptcy Code or any similar principle of law. No action, inaction, or acquiescence by the Prepetition Loan Lenders, including permitting the use of Cash Collateral to

fund the Debtors' Cases, shall be construed as consent to a charge, lien, assessment or claim against, or in respect of, the Collateral pursuant to Section 506(c) of the Bankruptcy Code or otherwise.

21. Proofs of Claim, etc. None of the Prepetition Loan Lenders shall be required to file proofs of claim in any of the Cases or any Successor Cases for any claim allowed herein. Any order entered by the Court in relation to the establishment of a bar date for any claim (including without limitation administrative claims) in any of the Cases or any Successor Cases shall not apply to the Prepetition Loan Lenders. Notwithstanding any order entered by the Court in relation to the establishment of a bar date in any of the Cases or any Successor Cases to the contrary, the Prepetition Loan Lenders are hereby authorized and entitled in their sole and absolute discretion, but not required, to file (and amend and/or supplement) a proof of claim and/or aggregate proofs of claim in each of the Cases or any Successor Cases for any claim allowed hereby. For the avoidance of doubt, any such proof of claim may (but is not required to be) filed as one consolidated proof of claim against all of the Debtors, rather than as separate proofs of claim against each Debtor. Any proof of claim filed by a Prepetition Loan Lender shall be deemed to be in addition to and not in lieu of any other proof of claim that may be filed or other evidence that may be offered by any other Prepetition Loan Lender.

22. Miscellaneous.

(a) Good Faith. Each of the Prepetition Loan Lenders have acted in good faith (including, without limitation, for the purposes of section 363(m) of the Bankruptcy Code) in

connection with this Interim Order and their reliance on this Interim Order has been and is in good faith.

(b) No Release of Guarantors. Nothing contained in this Interim Order shall or shall be deemed to terminate, modify or release any obligations of the Guarantors with respect to their obligations under any of the Secured Credit Documents, if any.

(c) No Waiver. The failure of any Prepetition Loan Lender to seek relief or otherwise exercise its rights and remedies under this Interim Order, the Secured Credit Documents, or otherwise, as applicable, shall not constitute a waiver of any of the Prepetition Loan Lenders' rights hereunder, thereunder, or otherwise. Notwithstanding anything herein, the entry of this Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, or otherwise impair any of the rights, claims, privileges, objections, defenses, or remedies of the Prepetition Loan Lenders under the Bankruptcy Code or under nonbankruptcy law against any other person or entity in any court.

(d) No Third Party Rights. Except as explicitly provided for herein, this Interim Order does not create any rights for the benefit of any third party, creditor, equity holder or any direct, indirect, third party, or incidental beneficiary, excepting prepetition Loan Lenders.

(e) No Marshaling. Subject to entry of the Final Order, none of the Prepetition Loan Lenders shall be subject to the equitable doctrine of "marshaling" or any other similar doctrine with respect to any of the Collateral.

(f) Enforceability. This Interim Order shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 and shall take effect and be fully enforceable *nunc pro tunc* to the Petition Date immediately upon execution hereof.

(g) No Waivers or Modification of Interim Order. The Debtors irrevocably waive any right to seek any modification or extension of this Interim Order without the prior written consent of the Prepetition Loan Lenders, and no such consent shall be implied by any other action, inaction, or acquiescence of the Prepetition Loan Lenders.

23. Survival. The provisions of this Interim Order and any actions taken pursuant hereto shall survive entry of any order which may be entered (a) confirming any plan of reorganization in any of the Cases, (b) converting any of the Cases to a case under chapter 7 of the Bankruptcy Code, (c) dismissing any of the Cases or Successor Cases, or (d) pursuant to which this Court abstains from hearing any of the Cases or Successor Cases. The terms and provisions of this Interim Order, as well as the Secured Adequate Protection Superpriority Claim, the Secured Replacement Liens, and all other claims and liens granted by this Interim Order, shall (a) continue in this or any other superseding case or Successor Case under the Bankruptcy Code, (b) be valid and binding on all parties in interest, including, without limitation, any Committee, chapter 11 trustee, examiner, or chapter 7 trustee, and (c) continue, notwithstanding any dismissal of any Case or Successor Case (and any such order of dismissal shall so provide), and such claims and liens shall maintain their priority as provided by this Interim Order until the Prepetition Loan Obligations are Paid in Full.

24. Rights Preserved. Notwithstanding anything herein to the contrary, the entry of this Interim Order is without prejudice to, and does not constitute a waiver, expressly or implicitly, of: (a) the Prepetition Loan Lenders' rights to seek any other relief in respect of the Debtors (including the right to seek additional adequate protection); or (b) any rights of the Prepetition Loan Lenders under the Bankruptcy Code or under non-bankruptcy law. Other than as expressly

set forth in this Interim Order, any other rights, claims or privileges (whether legal, equitable or otherwise) of the Prepetition Loan Lenders are preserved.

25. Payment of Compensation. Nothing herein or in the Budget shall be construed as consent to the allowance of any professional fees or expenses of any Professionals or shall affect the right of any party to object to the allowance or payment of such fees and expenses. The Prepetition Loan Lenders shall not be responsible for the funding, direct payment, or reimbursement of any fees or expenses of any Professionals incurred in connection with the Cases. Nothing in this Interim Order or otherwise shall be construed to obligate the Prepetition Loan Lenders in any way to pay compensation to or reimburse expenses of any Professional, or to guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement.

26. Final Hearing. A hearing on the Debtors' request for a Final Order approving the Motion is scheduled for _____, 2022, at _____ (Eastern Time) before this Court. Within three (3) business days after entry of this Interim Order, the Debtors shall serve, or cause to be served, by first class mail or other appropriate method of service, a copy of the Motion (to the extent the Motion was not previously served on a party) and this Interim Order on (i) the Notice Parties and (ii) counsel to any Committee. Any responses or objections to the Motion shall be made in writing, conform to the applicable Bankruptcy Rules and Local Rules, be filed with the Bankruptcy Court, set forth the name of the objecting party, the basis for the objection, and the specific grounds therefor, and be served so as to be actually received no later than _____, 2022, at 4:00 p.m. (Eastern Time). Objections must be served on: (i) counsel to the Debtors, Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware 19801, Attn: M. Blake Cleary, Esq. (mbcleary@ycst.com) and Allison Mielke, Esq. (amielke@ycst.com); (ii) the Office of the United States Trustee for the District of

Delaware, 844 King Street, Suite 2207, Wilmington, Delaware, 19801, Attn: Timothy J. Fox, Jr., Esq. (Timothy.j.Fox@usdoj.gov); (iii) counsel to the Prepetition Loan Lenders, Stoll Keenon Ogden PLLC, Attn: Lea Pauley Goff, Esq., 500 West Jefferson Street, Suite 2000, Louisville, KY 40202-2828, (Lea.Goff@skofirm.com) and Attn: Amelia Martin Adams, Esq., 300 West Vine Street, Suite 2100, Lexington, KY 40507-1801 (Amelia.Adams@skofirm.com) and Stevens & Lee, P.C., Attn: Joseph H. Huston, Jr., Esq., 919 North Market Street, Suite 1300, Wilmington, DE 19801 (joseph.huston@stevenslee.com); and (iv) counsel to any statutory committee appointed in these chapter 11 cases.

27. Retention of Jurisdiction. The Court has and will retain jurisdiction to enforce this Interim Order in accordance with its terms and to adjudicate any and all matters arising from or related to the interpretation or implementation of this Interim Order.

EXHIBIT 1

BUDGET

[to be filed]