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Electronically Filed June 25, 2020

**UNITED STATES BANKRUPTCY COURT**  
**DISTRICT OF NEVADA**

In re

RED ROSE, INC.,

- ☐ Affects Beachhead Roofing and Supply, Inc.
- ☐ Affects California Equipment Leasing Association, Inc.
- ☐ Affects Fences 4 America, Inc.
- ☐ Affects James Petersen Industries, Inc.
- ☐ Affects PD Solar, Inc.
- ☐ Affects Petersen Roofing and Solar LLC
- ☐ Affects Petersen-Dean, Inc.
- ☐ Affects PetersenDean Hawaii LLC
- ☐ Affects PetersenDean Roofing and Solar Systems, Inc.
- ☐ Affects PetersenDean Texas, Inc.
- ☐ Affects Red Rose, Inc.
- ☐ Affects Roofs 4 America, Inc.
- ☐ Affects Solar 4 America, Inc.
- ☐ Affects Sonoma Roofing Services, Inc.
- ☐ Affects TD Venture Fund, LLC
- ☐ Affects Tri-Valley Supply, Inc.
- ☒ Affects All Debtors

Case No. BK-S-20-12814-mkn

Jointly Administered with  
Case No. BK-S-20-12815-mkn  
Case No. BK-S-20-12816-mkn  
Case No. BK-S-20-12818-mkn  
Case No. BK-S-20-12819-mkn  
Case No. BK-S-20-12820-mkn  
Case No. BK-S-20-12821-mkn  
Case No. BK-S-20-12822-mkn  
Case No. BK-S-20-12823-mkn  
Case No. BK-S-20-12824-mkn  
Case No. BK-S-20-12825-mkn  
Case No. BK-S-20-12826-mkn  
Case No. BK-S-20-12827-mkn  
Case No. BK-S-20-12829-mkn  
Case No. BK-S-20-12831-mkn  
Case No. BK-S-20-12833-mkn

Chapter 11

**EMERGENCY MOTION FOR ORDER  
AUTHORIZING USE OF CASH  
COLLATERAL OF FIRST REPUBLIC  
BANK**

Hearing Date: OST PENDING  
Hearing Time: OST PENDING

Petersen-Dean, Inc., Beachhead Roofing & Supply, Inc., California Equipment Leasing Association, Inc., Fences 4 America, Inc., James Petersen Industries, Inc., PD Solar, Inc., Petersen Roofing and Solar LLC, PetersenDean Hawaii LLC, PetersenDean Roofing and Solar Systems, Inc., PetersenDean Texas, Inc., Red Rose, Inc., Roofs 4 America, Inc., Solar 4 America, Inc., Sonoma Roofing Services, Inc., TD Venture Fund, LLC, and Tri-Valley Supply, Inc. (collectively, the “Debtors”), as debtors and debtors-in-possession in the above-captioned and affiliated cases (the “Chapter 11 Cases”), by and through their proposed counsel, the law firm of Fox Rothschild LLP, respectfully submit this motion (the “Motion”) for entry of an interim order (the “Interim Order”)¹ and final order (the “Final Order”) pursuant to sections 361, 363 and 552 of title 11 of the United States Code, §§ 101 et. seq. (the “Bankruptcy Code”), Rules 4001(b) and 4001(d) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rules 4001(b) and 4001(c) of the Local Rules for the U.S. Bankruptcy Court, District of Nevada (“Local Rules”): (i) authorizing and approving, among other things, (a) Debtors to use the cash collateral of First Republic Bank (“FRB”), (b) the form and manner of service of this Motion; and (ii) scheduling interim and final hearings with respect to the relief requested herein. The proposed Interim Order is attached to this Motion as **Exhibit 1.**

Debtors seek authorization for the use of cash collateral in order to make payroll on June 26, 2020.

In compliance with Bankruptcy Rules 4001(b)(1)(B) and 4001(d)(1)(B) and Local Rules 4001(b) and 4001(c), Debtors provide the following additional information regarding the proposed use of cash collateral:<sup>2</sup>

<sup>1</sup> Capitalized terms used, but not defined, herein shall have the meaning ascribed to such terms in the Interim Order.

<sup>2</sup> The following is a summary of the proposed Interim Order. Nothing in this summary alters or amends the terms of the proposed Interim Order, and to the extent of any conflict between this summary and the Interim Order, the Interim Order shall control.

| CITATION TO INTERIM ORDER  | MATERIAL PROVISIONS OF INTERIM ORDER <sup>3</sup>   |
|--|---|
| Interim Order, ¶¶ K, L.  | <b><u>Entity with Interest in Cash Collateral:</u></b> First Republic Bank (“FRB”)  |
| Interim Order, ¶ N.  | <b><u>Purposes for Use of Cash Collateral:</u></b> Debtors shall be permitted to use FRB’s Cash Collateral (as defined in Bankruptcy Code section 363(a), including, without limitation, Cash Collateral that consists of proceeds of the Pre-Petition Lender’s collateral existing as of the Petition Date (the “ <u>Pre-Petition Collateral</u> ”). Debtors shall be authorized to use an aggregate of \$1.2 million of the proceeds of PPP Loans (as defined herein) to pay their employees and the related withholding taxes, excluding equity holders. |
| N/A  | <b><u>Cash Budget:</u></b> None.  |
| Interim Order, ¶ 2.  | <b><u>Term:</u></b> The Debtors’ authorization to use FRB’s Cash Collateral shall be effective through thirty (30) days from the Petition Date.   |
| N/A  | <b><u>Adequate Protection for Pre-Petition Lender:</u></b> None.  |
| N/A  | <b><u>Carve-Out:</u></b> None.  |
| N/A  | <b><u>Events of Default:</u></b> None.  |
| <b><i>Types of Provisions Identified in Bankruptcy Rules 4001(c)(1)(B)(i) through (xi)<sup>4</sup></i></b> |   |
| N/A  | <b>(i) <u>Grant of priority/lien under 11 U.S.C. § 364(c) or (d):</u></b> None.   |
| N/A  | <b>(ii) <u>Adequate protection for pre-petition claims:</u></b> None.   |
| N/A  | <b>(iii) <u>Determination re: pre-petition lien/claim:</u></b> None.  |
| N/A  | <b>(iv) <u>Waiver/modification of the automatic stay:</u></b> None.   |
| N/A  | <b>(v) <u>Waiver/modification of rights re: chapter 11 plan, cash collateral or post-petition financing:</u></b> None.  |

<sup>3</sup> All provisions listed below as being contained in the proposed Interim Order are proposed to remain in effect if interim approval is granted, but final relief is denied, as provided under Bankruptcy Rule 4001(b)(2) unless otherwise noted.

<sup>4</sup> Although Bankruptcy Rule 4001(c)(1)(B) applies to obtaining post-petition credit under Bankruptcy Code section 364, Debtors are identifying these types of provisions to the extent applicable to the Interim Order in an abundance of caution to ensure compliance with Bankruptcy Rule 4001(d)(1)(B) and Local Rule 4001(c)(3).

| CITATION TO INTERIM ORDER | MATERIAL PROVISIONS OF INTERIM ORDER <sup>3</sup>                                |
|---------------------------|--|
| N/A                       | (vi) <u>Confirmation/disclosure statement deadlines</u> : None.                  |
| N/A                       | (vii) <u>Wavier/modification of lien rights under non-bankruptcy law</u> : None. |
| N/A                       | (viii) <u>Release of estate causes of action</u> : None.                         |
| N/A                       | (ix) <u>Indemnification</u> : None.  |
| N/A                       | (x) <u>506(c) Waiver</u> : None.   |
| N/A                       | (xi) <u>Lien/claim on avoidance actions</u> : None.                              |

This Motion is made and based upon the following memorandum of points and authorities, the papers and pleadings on file with the Court in the above-referenced case, and any oral arguments of counsel the Court may entertain at the hearing on this Motion.

DATED this 25<sup>th</sup> day of June 2020.

**FOX ROTHSCHILD LLP**

By: /s/Brett A. Axelrod  
 BRETT A. AXELROD, ESQ.  
 Nevada Bar No. 5859  
 1980 Festival Plaza Drive, Suite 700  
 Las Vegas, Nevada 89135  
*[Proposed] Counsel for Debtors*

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**MEMORANDUM OF LAW**

**I.**

**JURISDICTION**

1. This Court has jurisdiction to consider and determine this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b).

2. Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory bases for the relief requested herein are Bankruptcy Code sections 361 and 363, Bankruptcy Rules 4001(b) and 4001(d), and Local Rules 4001(b) and (c).

4. Pursuant to Local Rule 9014.2, Debtors consent to entry of final order(s) or judgment(s) by the bankruptcy judge if it is determined that the bankruptcy judge, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

**II.**

**FACTUAL BACKGROUND**

**A. General Background.**

5. On June 11, 2020 (the “Petition Date”), Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

6. Debtors are continuing in possession of their property and are operating and managing their businesses, as debtors-in-possession, pursuant to Bankruptcy Code sections 1107 and 1108. See generally Chapter 11 Case Docket.

7. No request has been made for the appointment of a trustee or examiner, and no statutory committee has been appointed. See id.

8. The factual background relating to Debtors’ commencement of their Chapter 11 Cases is set forth in detail in the *Omnibus Declaration of Jeffrey Perea in Support of First Day Motions* (the “Omnibus Declaration”) and is incorporated for all purposes herein by this reference.

### B. Debtors' Need to Use Cash Collateral.

9. As described in greater detail below, FRB has placed administrative holds on five (5) bank accounts maintained at FRB by Debtors Red Rose, Inc., PetersenDean Texas, Inc., PetersenDean Hawaii, L.L.C., PetersenDean Roofing and Solar Systems, Inc., and PD Solar, Inc., totaling in the aggregate \$4,339,225.72 in Payroll Protection Program (“PPP”) funds. Now that Debtors have commenced their chapter 11 cases, Debtors require either the consent of FRB or approval of the Court to use FRB’s cash collateral.

10. Debtors have an emergent need for a portion of the PPP Funds, an amount not to exceed **\$1,200,000**, by **Friday, June 26, 2020** in order to pay payroll and certain payroll-related expenses, including, but not limited to, payroll taxes, garnishments, commissions, insurance and related employee payments. The PPP program was designed for this very purpose to maintain jobs during this pandemic. Without these emergency funds, Debtors will be unable to make payroll. Thus, Debtors have an urgent and immediate need to use cash collateral. The Debtors are seeking to use the balance of the PPP funds in accordance with the allowed forgivable expenditures pursuant to the PPP. The exigent immediate need is for this week's payroll. The Debtors have just filed their voluntary petitions and their collection of accounts receivable have been delayed. The Debtors are in the process of stabilizing their operations, but without this emergency relief they will have no choice but to convert these cases to chapter 7. A conversion of these cases will limit the recovery of all parties in interest including FRB.

### C. The Pre-Petition Loans.

11. TD Venture Fund LLC secured a \$1,500,000 revolving line of credit (the “RLOC”) from FRB as evidenced by, *inter alia*: (1) a Promissory Note in the original principal amount of \$1,500,000; (2) a Loan Agreement; (3) a Security Agreement (All Assets); and (4) a Security Agreement (Deposit Account/Certificate of Deposit), all dated as of February 13, 2018. As security for the RLOC, TD Venture Funds LLC pledged, *inter alia*, a Certificate of Deposit (CD) in the original sum of \$1,000,000.

12. TD Venture Fund LLC also secured an \$840,000 term loan (the “Aircraft Loan” and together with the RLOC, the “TDVF Loans”) from FRB as evidenced by, *inter alia*: (1) a Promissory Note in the original principal amount of \$840,000; (2) a Loan Agreement (Term Loan – Aircraft); and (3) an Aircraft Mortgage and Security Agreement, all dated as of June 22, 2018.

13. On or about April 23, 2020, Red Rose, Inc. obtained a \$1,172,000 loan from FRB under the Small Business Administration (“SBA”) PPP as evidenced by a Note.

14. On or about April 22, 2020, PetersenDean Texas, Inc. obtained a \$518,800 PPP loan from FRB as evidenced by a Note.

15. On or about April 19, 2020, PetersenDean Hawaii, LLC obtained a \$2,121,500 PPP loan from FRB as evidenced by a Note.

16. On or about April 22, 2020, PetersenDean Roofing and Solar Systems, Inc. obtained a \$1,503,900 PPP loan from FRB as evidenced by a Note.

17. On or about April 18, 2020, PD Solar, Inc. obtained a \$7,454,700 PPP loan from FRB as evidenced by a Note.

18. Debtors’ PPP loans from FRB are collectively referred to herein as the “PPP Loans.” The proceeds of the PPP Loans are held in bank accounts maintained at FRB.

19. FRB has placed administrative holds on the following five (5) bank accounts held by the Debtors:

| Debtor                              | Account No.   | Loan Amount    | Hold Amount    |
|-------------------------------------|---------------|----------------|----------------|
| Red Rose Inc.                       | xxx-xxxx-9792 | \$1,172,200.00 | \$91,934.84    |
| PetersenDean Texas, Inc.            | xxx-xxxx-9818 | \$518,800.00   | \$188,113.18   |
| PetersenDean Hawaii, LLC            | xxx-xxxx-9735 | \$2,121,500.00 | \$806,393.68   |
| PetersenDean Roofing and Solar Sys. | xxx-xxxx-9834 | \$1,503,900.00 | \$180,462.48   |
| PD Solar, Inc.                      | xxx-xxxx-9768 | \$7,454,700.00 | \$3,072,321.54 |
| Total:                              |               | \$12,771,100   | \$4,339,225.72 |

## RELIEF REQUESTED

22. In order to keep Debtors' businesses operational, Debtors must be able to pay their employees. Debtors will not be able to make payroll on June 26, 2020, if they are not authorized to use FRB's Cash Collateral. Debtors project that they will need to disburse approximately \$1,200,000 in order to fund payroll. Accordingly, timely approval of the proposed use of FRB's Cash Collateral is critical to preserving the going concern value of Debtors' estates from the outset of the Chapter 11 Cases.

23. In addition, Debtors are requesting that the Court set a final hearing on the proposed use of FRB's Cash Collateral. Debtors request that the Court set the final hearing within thirty (30) days of the hearing date, subject to availability on the Court's calendar. Obtaining certainty regarding Debtors' ability to use FRB's Cash Collateral is a key step for Debtors to stabilize their operations as chapter 11 debtors-in-possession, which will then enable Debtors and their professionals to focus complete attention on the Debtors' strategy to emerge from bankruptcy.



## IV.

## LEGAL ARGUMENT

**A. Debtors' Use of Cash Collateral Pursuant to the Interim Order Complies With Bankruptcy Code Sections 361 and 363.**

As debtors-in-possession, Debtors are authorized to operate their businesses under the Bankruptcy Code. See 11 U.S.C. § 1108. The Bankruptcy Code provides that a debtor in possession may use cash collateral only with a secured creditor's consent or if the Court, after notice and a hearing, authorizes such use. See 11 U.S.C. § 363(c)(2). Absent consent, courts look to whether a secured creditor has "adequate protection" of its interest in cash collateral as a condition to authorizing its use. See, e.g., 11 U.S.C. § 363(e); see also United Savings Ass'n v. Timbers of Inwood Forest Ass'n, 484 U.S. 365, 369-73 (1988) (the "interest in property" entitled to protection is "the value of the collateral" that secures the claim).

Bankruptcy Code section 361 provides some examples of adequate protection, including payment of cash or periodic cash payments and the grant of additional or replacement liens. See 11 U.S.C. § 361. However, the concept of adequate protection is not limited to these specific examples—Bankruptcy Code section 361(3) makes it clear that adequate protection can take any form so long as it will result in the realization of "the indubitable equivalent of [the secured creditor's] interest in such property." 11 U.S.C. § 361(3).

The legislative history of section 361 provides further reinforcement for the broad flexibility that bankruptcy courts have in deciding what constitutes adequate protection on a case-by-case basis:

This section specifies the means by which adequate protection may be provided. It does not require the court to provide it. To do so would place the court in an administrative role. Instead, the trustee or debtor-in-possession will provide or propose a protection method. If the party that is affected by the proposed action objects, the court will determine whether the protection provided is adequate. The purpose of this section is to illustrate means by which it may be provided and to define the contours of the concept.

H.R. Rep. No. 95-595, at 338, 95th Cong., 1st Sess. (1977); see also Resolution Trust Corp. v. Swedeland Dev. Group, Inc. (In re Swedeland Dev. Group, 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."); MBank Dallas, N.A. v. O'Connor (In re O'Connor), 808 F.2d 1393, 1396-97 (10th Cir. 1987) (same).

Pursuant to Bankruptcy Code section 507(b), if a party is provided with adequate protection and, notwithstanding such protection, the party has a claim allowable under section 507(a)(2), then such claim shall have priority over every other claim allowable under section 507(a)(2).

The PPP is a loan designed to provide a direct incentive for small businesses to keep their workers on the payroll. Here, the SBA has fully guaranteed the PPP Loans that FRB made to Debtors. In light of the unique circumstances of the PPP and the full guaranty from the government, Debtors respectfully submit that no further adequate protection for FRB is necessary.

Prior to filing this Motion, Debtors tried to consensually resolve the use of the PPP funds with FRB and its secured creditor ACF Finco I LP (the “Pre-Petition Lender”). However, the parties were unable to do so as FRB insisted on a superpriority claim pursuant to section 507(b) of the Bankruptcy Code which the Pre-Petition Lender would not consent to. Debtors could not agree to FRB’s demands over the Pre-Petition Lender’s objection in light of the *Interim Order (I) Authorizing the Use of Cash Collateral Pursuant to Section 363 of the Bankruptcy Code, (II) Granting Adequate Protection Pursuant to Sections 361, 362, and 363 of the Bankruptcy Code, (III) Granting Liens and Superpriority Claims, and (IV) Modifying the Automatic Stay, and (V) Scheduling a Final Hearing* (the “Interim Cash Collateral Order”), entered by the Court, as FRB’s demand is inconsistent with the same.

Therefore, because the proposed Interim Order complies with the requirements of the Bankruptcy Code, the Court should authorize Debtors to use FRB’s Cash Collateral and provide adequate protection to FRB in accordance therewith.

**B. Debtors’ Request to Use Cash Collateral Pursuant to the Terms of the Proposed Interim Order Is Supported by Sound Business Judgment.**

Courts generally give broad deference to the business decisions of a debtor. See, e.g., Stephens Indus., Inc. v. McClung, 789 F.2d 386, 390 (6th Cir. 1986); In re Continental Air Lines, Inc., 780 F.2d 1223, 1226 (5th Cir. 1986); In re Lionel Corp., 722 F.2d 1063, 1070 (2d Cir. 1983); Walter v. Sunwest Bank (In re Walter), 83 B.R. 14, 19-20 (B.A.P. 9th Cir. 1987).

Here, Debtors’ request to use cash collateral pursuant to the proposed Interim Order represents a reasonable exercise of business judgment. Debtors have an immediate need for the use of FRB’s

1 Cash Collateral in order to fund their payroll expenses. Debtors applied for the PPP Loans for this  
2 very purpose to maintain jobs during this pandemic. Without the use of FRB's Cash Collateral,  
3 Debtors will not be able to make payroll on June 26, 2020. Therefore, the Court should  
4 approve Debtors' decision to use FRB's Cash Collateral pursuant to the proposed Interim Order as  
5 an exercise of sound business judgment.

6 **C. The Court Should Schedule Interim and Final Hearings On This Motion**  
7 **Pursuant To Bankruptcy Rule 4001(b)(2).**

8 Bankruptcy Rule 4001(b)(2) provides that a final hearing on a motion for authorization to use  
9 cash collateral may be commenced not earlier than fourteen (14) days after service of the motion.  
10 Upon request, however, the Bankruptcy Court is empowered to conduct an expedited hearing  
11 on the motion and authorize the use of cash collateral to the extent necessary to avoid immediate and  
12 irreparable harm to a debtor's estate.

13 Pursuant to Bankruptcy Rule 4001(b)(2) and Local Rule 9006, Debtors request that the Court  
14 conduct an expedited interim hearing on the Motion (the "Interim Hearing") and, after the entry of  
15 the Interim Order, allow Debtors to use cash collateral in accordance therewith. Debtors have an  
16 urgent and immediate need for the proceeds of their PPP Loans to pay their employees and the related  
17 withholding taxes, excluding equity holders. Since FRB's asserted interest in the proceeds of Debtors'  
18 PPP Loans is derived from the TDVF Loans and wholly unrelated to permitted uses of funds under  
19 the PPP, Debtors submit that the terms of the proposed Interim Order are fair, reasonable and in the  
20 best interests of Debtors' estates. Therefore, entry of the Interim Order is proper under Bankruptcy  
21 Rule 4001(b)(2).

22 Also pursuant to Bankruptcy Rule 4001(b)(2), Debtors request that the Court schedule the  
23 final hearing on the Motion within thirty (30) days of the Petition Date, subject to availability on the  
24 Court's calendar. Obtaining certainty regarding Debtors' ability to use FRB's Cash Collateral is a  
25 key step for Debtors to stabilize their operations as chapter 11 debtors-in-possession, which will then  
26 enable Debtors and their professionals to focus complete attention on Debtors' strategy to emerge  
27 from bankruptcy.

V.

NOTICE

Notice of this Motion is being given by either electronic mail, facsimile or overnight delivery to the following parties or their counsel: (a) the Office of the United States Trustee for the District of Nevada; (b) counsel to FRB; (c) counsel to the Pre-Petition Lender; (d) to all parties listed on each Debtors' List of Creditors Holding the 20 Largest Unsecured Claims; and (e) all other parties requesting notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, Debtors respectfully submit that no further notice is necessary.

VI.

CONCLUSION

WHEREFORE, based upon all the foregoing, as set forth in this Memorandum, the Motion, and all other papers, documents, and other evidence submitted in support of the Motion, Debtors respectfully request that the Court grant the Motion in its entirety and: (1) approve Debtors' use of cash collateral on an interim basis pending a final hearing on the Motion; (2) enter the Interim Order, in substantially the form attached hereto as **Exhibit 1**; (3) schedule a final hearing on this Motion; (4) in conjunction with the final hearing, enter the Final Order approving Debtors' use of cash collateral on a final basis; and (5) grant to Debtors such other relief as the Court deems necessary and appropriate.

DATED this 25<sup>th</sup> day of June, 2020.

**FOX ROTHSCHILD LLP**

By /s/Brett A. Axelrod  
 BRETT A. AXELROD, ESQ.  
 Nevada Bar No. 5859  
 1980 Festival Plaza Drive, Suite 700  
 Las Vegas, Nevada 89135  
*[Proposed] Counsel for Debtors*

**EXHIBIT 1**

**PROPOSED INTERIM ORDER**

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Nevada Bar No. 5859  
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Las Vegas, Nevada 89135  
Telephone: (702) 262-6899  
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Email: baxelrod@foxrothschild.com  
*[Proposed] Counsel for Debtor*

**UNITED STATES BANKRUPTCY COURT**

**DISTRICT OF NEVADA**

In re

RED ROSE, INC.,

- ☐ Affects Beachhead Roofing and Supply, Inc.
- ☐ Affects California Equipment Leasing Association, Inc.
- ☐ Affects Fences 4 America, Inc.
- ☐ Affects James Petersen Industries, Inc.
- ☐ Affects PD Solar, Inc.
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Case No. BK-S-20-12831-mkn  
Case No. BK-S-20-12833-mkn

Chapter 11

**INTERIM ORDER PURSUANT TO 11  
U.S.C. §§ 361, 363 AND 552 AND FED. R.  
BANKR. P. 4001(b) AND 4001(d)  
AUTHORIZING USE OF CASH  
COLLATERAL OF FIRST REPUBLIC  
BANK**

Hearing Date:

Hearing Time:

1 The Court, having reviewed and considered the Motion (the “Motion”)<sup>1</sup> filed by Petersen-  
 2 Dean, Inc., Beachhead Roofing & Supply, Inc., California Equipment Leasing Association, Inc.,  
 3 Fences 4 America, Inc., James Petersen Industries, Inc., PD Solar, Inc., Petersen Roofing and Solar  
 4 LLC, PetersenDean Hawaii LLC, PetersenDean Roofing and Solar Systems, Inc., PetersenDean  
 5 Texas, Inc., Red Rose, Inc., Roofs 4 America, Inc., Solar 4 America, Inc., Sonoma Roofing Services,  
 6 Inc., TD Venture Fund, LLC, and Tri-Valley Supply, Inc. (collectively, the “Debtors”), for entry of  
 7 an interim order (the “Interim Order”) and final order (the “Final Order”) pursuant to sections 361,  
 8 363 and 552 of title 11 of the United States Code, §§ 101 *et. seq.* (the “Bankruptcy Code”), Rules  
 9 4001(b) and 4001(d) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and  
 10 Rules 4001(b) and 4001(c) of the Local Rules for the U.S. Bankruptcy Court, District of Nevada  
 11 (“Local Rules”): (i) authorizing and approving, among other things, (a) Debtors to use the cash  
 12 collateral of First Republic Bank (“FRB”), (b) respect to the relief requested therein; and it appearing  
 13 that the relief requested is in the best interests of Debtors’ estates, their creditors and all other parties  
 14 in interest; and the Court having jurisdiction to consider the Motion and the relief requested therein  
 15 pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested  
 16 therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper in this Court  
 17 pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having reviewed and considered all other  
 18 pleadings and evidence submitted by the parties in connection with the Motion; and due and proper  
 19 notice of the Motion having been provided; and it appearing that no other or further notice need be  
 20 provided; and the Court having determined that the legal and factual grounds set forth in the Motion  
 21 establish just cause for the relief granted herein; and the Court having considered the oral arguments  
 22 of counsel at the hearings held on June 26, 2020; and the Court having made findings of fact and  
 23 conclusions of law on the record, which (to the extent not expressly set forth below) are incorporated  
 24 herein pursuant to Rule 52 of the Federal Rules of Civil Procedure, made applicable to these  
 25 proceedings by Bankruptcy Rule 7052; and good and sufficient cause appearing therefor,

26 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that:

27 <sup>1</sup> Capitalized terms not defined herein shall have the meanings ascribed to them in the Motion.

**I. Background, Jurisdiction and Notice.**

A. On June 11, 2020 (the “Petition Date”), Debtors commenced their bankruptcy cases by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code. Debtors are continuing to operate their businesses as debtors-in-possession pursuant to Bankruptcy Code sections 1107(a) and 1108. No trustee, examiner, or statutory committee (“Committee”) has been appointed in these cases.

B. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157(b) and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

C. Debtors have complied with the requirements of Bankruptcy Rules 4001(b) and 4001(d), and Local Rules 4001(b), 4001(c) and 9006, requiring, among other things, that the Interim Hearing be held on less than fourteen (14) days’ notice by serving the Motion and providing notice of the Interim Hearing by facsimile or overnight mail to: (i) the Office of the United States Trustee for the District of Nevada; (ii) counsel to FRB; (iii) counsel to the Pre-Petition Lender; (iv) counsel for any statutory committee appointed in these cases, and if no such committee was appointed, then to all parties listed on each Debtors’ List of Creditors Holding the 20 Largest Unsecured Claims; and (v) all other parties requesting notice pursuant to Bankruptcy Rule 2002. Given the nature of the relief sought in the Motion, the Court concludes that the foregoing notice was sufficient and adequate under the circumstances and complies with Bankruptcy Rule 4001 in all respects.

**II. Findings Regarding the Use of Cash Collateral Based on the Record at the Interim Hearing.**

D. TD Venture Fund LLC secured a \$1,500,000 revolving line of credit (the “RLOC”) from FRB as evidenced by, *inter alia*: (1) a Promissory Note in the original principal amount of \$1,500,000; (2) a Loan Agreement; (3) a Security Agreement (All Assets); and (4) a Security Agreement (Deposit Account/Certificate of Deposit), all dated as of February 13, 2018. As security for the RLOC, TD Venture Funds LLC pledged, *inter alia*, a Certificate of Deposit (CD) in the original sum of \$1,000,000.



1 E. TD Venture Fund LLC also secured an \$840,000 term loan (the “Aircraft Loan” and  
2 together with the RLOC, the “TDVF Loans”) from FRB as evidenced by, *inter alia*: (1) a Promissory  
3 Note in the original principal amount of \$840,000; (2) a Loan Agreement (Term Loan – Aircraft);  
4 and (3) an Aircraft Mortgage and Security Agreement, all dated as of June 22, 2018.

5 F. On or about April 23, 2020, Red Rose, Inc. obtained a \$1,172,000 loan from FRB  
6 under the Small Business Administration (“SBA”) PPP as evidenced by a Note.

7 G. On or about April 22, 2020, PetersenDean Texas, Inc. obtained a \$518,800 PPP loan  
8 from FRB as evidenced by a Note.

9 H. On or about April 19, 2020, PetersenDean Hawaii, LLC obtained a \$2,121,500 PPP  
10 loan from FRB as evidenced by a Note.

11 I. On or about April 22, 2020, PetersenDean Roofing and Solar Systems, Inc. obtained  
12 a \$1,503,900 PPP loan from FRB as evidenced by a Note.

13 J. On or about April 18, 2020, PD Solar, Inc. obtained a \$7,454,700 PPP loan from FRB  
14 as evidenced by a Note.

15 K. FRB has placed administrative holds on five (5) of Debtors’ bank accounts maintained  
16 at FRB. FRB asserts a pre-petition security interest in these bank accounts with respect to FRB’s  
17 alleged setoff rights in accordance with Section 506(a) of the Bankruptcy Code.

18 L. During the chapter 11 cases, Debtors need to use cash collateral (as defined in  
19 Bankruptcy Code section 363) in which FRB asserts an interest (the “FRB’s Cash Collateral”).

20 M. Debtors have an immediate and critical need to use FRB’s Cash Collateral. Debtors’  
21 ability to use FRB’s Cash Collateral is critical to Debtors’ ability to continue as a going concern  
22 during the course of these chapter 11 cases.

23 N. Debtors project that they will need to disburse approximately \$1,200,000 in order to  
24 pay payroll and certain payroll-related expenses, including, but not limited to, payroll taxes,  
25 garnishments, commissions, insurance and related employee payments. Debtors’ ability to use FRB’s  
26 Cash Collateral under the terms of this Interim Order is vital to the preservation and maintenance of  
27 the going concern value of Debtors’ estates and to Debtors’ successful reorganization. Consequently,  
28



1 without the ability to use FRB's Cash Collateral to the extent authorized pursuant to this Interim  
2 Order, Debtors and their estates would suffer immediate and irreparable harm.

3 O. The terms of this Interim Order are fair and reasonable under the circumstances. The  
4 Debtors' proposed use of FRB's Cash Collateral pursuant to the terms of this Interim Order reflects  
5 Debtors' sound exercise of prudent business judgment consistent with their fiduciary duties.

6 P. Good cause has been shown for immediate entry of this Interim Order pursuant to  
7 Bankruptcy Rules 4001(b)(2) and 4001(d), and, to the extent it applies, Bankruptcy Rule 6003, as the  
8 Court finds that entry of this Interim Order is necessary to avoid immediate and irreparable harm to  
9 Debtors and their estates. Entry of this Interim Order is in the best interest of Debtors, their estates  
10 and creditors.

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

13 **III. Disposition.**

14 1. The Motion is granted on an interim basis on the terms and conditions set forth in this  
15 Interim Order. This Interim Order shall become effective immediately upon its entry.

16 2. Debtors shall be authorized to use FRB's Cash Collateral through thirty (30) days from  
17 the Petition Date.

18 3. Debtors shall be permitted to use FRB's Cash Collateral. Debtors shall be authorized  
19 to use an aggregate of \$1.2 million of the proceeds of PPP Loans to pay their employees and the  
20 related withholding taxes, excluding equity holders.

21 4. FRB is not entitled to any adequate protection for Debtors' use of FRB's Cash  
22 Collateral because the PPP Loans are fully guaranteed by the SBA.

23 5. To the extent applicable, this Interim Order is not subject to the 14-day stay provision  
24 of Bankruptcy Rules 4001(a)(3) or 6003.

25 6. **Service of Notice.** Debtors shall cause a copy of this Interim Order to be served within  
26 three (3) business days of its entry, by electronic mail, U.S. Mail or the Court's ECF noticing of the  
27 Interim Hearing to: (a) counsel for FRB; (b) counsel for the Pre-Petition Lender; (c) the Office of the  
28

1 United States Trustee for the District of Nevada; (d) to all parties listed on each Debtor's List of  
 2 Creditors Holding the 20 Largest Unsecured Claims; and (e) all other secured creditors, and all other  
 3 parties requesting notice pursuant to Bankruptcy Rule 2002 (the "Notice Parties").

4 7. **Final Hearing.** A hearing to consider entry of an order granting the relief set forth in  
 5 this Interim Order on a final basis (the "Final Order") shall be held on \_\_\_\_\_, at \_\_\_\_\_.m.  
 6 (the "Final Hearing") in \_\_\_\_\_; with any objections (the "Objections") to entry of a Final  
 7 Order due to be timely filed electronically with the Court and served on the Notice Parties and  
 8 Debtors' counsel: Fox Rothschild, LLP, 1980 Festival Plaza Drive, Suite 700, Las Vegas, Nevada  
 9 89135, Attn: Brett A. Axelrod, Esq. (collectively, the "Objection Notice Parties") (with a courtesy  
 10 copy delivered directly to the Chambers of the Honorable \_\_\_\_\_) so as to be actually  
 11 received no later than 4:00 pm Pacific time on \_\_\_\_\_, 2020. Replies to timely-filed  
 12 Objections, if any, shall be filed with the Bankruptcy Court electronically and served so that they are  
 13 received no later than 4:00 pm Pacific time on \_\_\_\_\_, 2020 (with a courtesy copy  
 14 delivered directly to the Chambers of the Honorable \_\_\_\_\_) by the Objection Notice  
 15 Parties and the objecting party.

16  
 17 DATED: \_\_\_\_\_, 2020

18  
 19 Prepared and respectfully submitted by:

20 **FOX ROTHSCHILD LLP**

21 By: /s/ Brett A. Axelrod  
 22 BRETT A. AXELROD, ESQ.  
 23 Nevada Bar No. 5859  
 24 1980 Festival Plaza Drive, Suite 700  
 Las Vegas, Nevada 89135  
 [Proposed] Counsel for Debtor

1 APPROVED/DISAPPROVED:

2 **OFFICE OF THE UNITED STATES TRUSTEE**

3 By \_\_\_\_\_

4 ,  
5 Trial Attorney for Tracy Hope Davis,  
6 United States Trustee  
7 Foley Federal Building  
8 300 Las Vegas Boulevard South, Suite 4300  
9 Las Vegas, Nevada 89101

10 **CERTIFICATION OF COUNSEL PURSUANT TO LOCAL RULE 9021**

11 In accordance with Local Rule 9021, counsel submitting this document certifies as follows:

- 12 ☐ The Court has waived the requirement of approval in LR 9021(b)(1).
- 13 ☐ No party appeared at the hearing or filed an objection to the motion
- 14 ☐ I have delivered a copy of this proposed order to all counsel who appeared
- 15 at the hearing, any unrepresented parties who appeared at the hearing, and
- 16 each has approved or disapproved the order, or failed to respond, as
- 17 indicated below:

18 ,  
19 TRIAL ATTORNEY  
20 OFFICE OF THE UNITED STATES  
21 TRUSTEE

22 Approved / Disapproved

- 23 ☐ I certify that this is a case under Chapter 7 or 13, that I have served a
- 24 copy of this order with the motion pursuant to LR 9014(g), and that no
- 25 party has objected to the form or content of the order.

26 ###