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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	Chapter 11
S.M.F. GROUP, INC., *et al.*,[1]	Case No. 26-11893 (SAB)
Debtors.	(Jointly Administered)

MOTION OF THE DEBTORS FOR ENTRY OF INTERIM AND FINAL ORDERS (I) AUTHORIZING THE DEBTORS TO (A) OBTAIN SENIOR SECURED SUPERPRIORITY POSTPETITION FINANCING AND (B) USE CASH COLLATERAL, (II) GRANTING LIENS AND PROVIDING CLAIMS WITH SUPERPRIORITYADMINISTRATIVE EXPENSE STATUS, (III) GRANTING ADEQUATE PROTECTION TO THE PREPETITION SECURED PARTY, (IV) MODIFYING THE AUTOMATIC STAY, (V) SCHEDULING A FINAL HEARING, AND (VI) GRANTING RELATED RELIEF

S.M.F. Group, Inc. and its affiliated debtors (collectively, the "**Debtors**"), each of which is a debtor and debtor in possession in the above-captioned chapter 11 cases (the "**Chapter 11 Cases**"), hereby file this *Motion of the Debtors for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Senior Secured Superpriority Postpetition Financing and*

[1] The Debtors and the last four digits of their federal tax identification numbers are: (1) S.M.F. Group Inc. (1726); (2) 57th Street Hospitality Partners, LLC (2026); (3) Brasserie 57 LLC (6251); (4) Broadway Hospitality Venture, LLC (5541); (5) Brooklyn Diner USA, Inc. (1194); (6) Brooklyn Diner USA, L.P. (9292); (7) Cafe Concepts (Washington DC), LLC (3827); (8) Cieli Partners, L.P. (7771); (9) Ebbets Field Venture, LLC (9637); (10) Ebbets Field Venture II, LLC (2344); (11) Fireman Hospitality Card LLC (4763); (12) Fiorello's Roman Cafe, Inc. (2519); (13) Italian Cafe Concepts, LLC (3784); (14) Red Eye/Brooklyn Associates, L.P. (9293); (15) Red Eye Grill, Inc. (1189); (16) Red Eye Grill, L.P. (9291); (17) SFAP Group, LLC (9152); (18) Shelny, LLC (1859); (19) SMJ Group, Inc. (1191); (20) SMJ Group, L.L.C. (3319); (21) The Finer Diner, LLC (1940); and (22) The Fireman Group Cafe Concepts, Inc. (5919). The Debtors' mailing address is 810 Seventh Avenue, Suite 615, New York, NY 10019.

(B) Use Cash Collateral, (II) Granting Liens and Providing Claims with Superpriority Administrative Expense Status, (III) Granting Adequate Protection to the Prepetition Secured Party, (IV) Modifying the Automatic Stay, (V) Scheduling a Final Hearing, and (VI) Granting Related Relief (this "**Motion**"). This Motion is supported by the *Declaration of Jordan Meyers in Support of the Debtors' Chapter 11 Petitions and Requests for First Day Relief* (the "**First Day Declaration**"), filed contemporaneously herewith and incorporated herein by reference. In further support of this Motion, the Debtors respectfully state as follows:

RELIEF REQUESTED

1. By this Motion, and pursuant to sections 105, 361, 362, 363, 364, 503, 506, 507, and 552 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the "**Bankruptcy Code**"), Rules 2002, 4001, 6003, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), and Rule 4001-2 of the Local Bankruptcy Rules for the United States Bankruptcy Court for the Southern District of New York (the "**Local Rules**"), the Debtors seek entry of an interim order, substantially in the form attached hereto as **Exhibit A** (the "**Interim Order**"), and a final order (the "**Final Order**" and together with the Interim Order, the "**Proposed Orders**"), granting the following relief:

> (i) authorizing The Fireman Group Café Concepts, Inc. (in such capacity, the "**DIP Borrower**") and the other Credit Parties (as defined in the DIP Agreement (defined below)) (together with the DIP Borrower, the "**DIP Loan Parties**") to obtain postpetition, superpriority, senior secured, debtor-in-possession financing (the "**DIP Facility**") subject to the terms and conditions set forth in that certain *Secured Superpriority Debtor-in-Possession Credit and Security Agreement* attached hereto in substantially final form as **Exhibit 1** (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "**DIP Agreement**"),[2] by and among the DIP Borrower, the other DIP Loan Parties,

[2] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the DIP Agreement or the Interim Order (as defined herein), as applicable.

and FHGRF LLC, as sole lender (the "**DIP Lender**" or the "**Lender**"), in an aggregate principal amount of up to $6,500,000.00, consisting of:

(a) an Interim New Money DIP Revolving Facility in an aggregate principal amount of up to $1,500,000.00, and, in the DIP Lender's sole and absolute discretion, an additional $800,000.00,[3] for a total of $2,300,000.00, to be made available upon satisfaction of the conditions set forth in the DIP Loan Documents and upon entry of the Interim Order (the loans made thereunder, the "**Interim New Money DIP Revolving Facility**", and the commitments in respect thereof, the "**Interim New Money DIP Commitment**");

(b) during the Interim Period (defined below), upon each advance under the Interim New Money DIP Revolving Facility, a "roll-up" of the Prepetition Secured Obligations (defined below) of the Debtor under the Prepetition Loan Documents (defined below) in an amount equal to two times of such advance (such rolled-up obligations, the "**Interim Roll-Up DIP Loans**", and together with the Interim New Money DIP Loans, the "**Interim DIP Loans**"), which Interim Roll-Up DIP Loans shall be automatically rolled up, refinanced, and converted into postpetition obligations under the DIP Facility on a cashless basis in an amount equal to two times the amount funded under the Interim New Money DIP Revolving Facility;

(c) an Additional DIP Revolving Facility to be made available following entry of the Final Order and remittaFnce of required Holdback Amounts (as defined in the DIP Agreement) (the loans made thereunder, the "**Additional New Money DIP Revolving Facility**", and together with the Interim New Money DIP Revolving Facility, the "**New Money DIP Revolving Facility**"); and

(d) following entry of the Final Order, upon each advance of Additional New Money DIP Revolving Facility, a "roll-up" of the Prepetition Secured Obligations of the Debtor under the Prepetition Loan Documents in an amount equal to two times of such advance (such rolled-up obligations, the "**Additional Roll-Up DIP Loans**", and together with the Interim Roll-Up DIP Loans, the "**Rolled-Up DIP Loans**" and together with the New Money DIP Revolving Facility, the "**DIP Loans**"), which Additional Roll-Up DIP Loans shall be automatically rolled up, refinanced, and converted into postpetition obligations under the DIP Facility on a cashless basis in an amount equal to two times the amount funded under the Additional New Money DIP Revolving Facility;

[3] For the avoidance of doubt, to the extent any Holdback Amounts are released to the Debtors during the Interim Period, the Debtors are authorized to use the Holdback Amounts to fund their operations to pay disbursements authorized under the Approved DIP Budget, which may mitigate the need for the Debtors to borrow the additional $800,000. Upon entry of the Final Order, however, any Holdback Amounts released to the Debtors are required to pay down the DIP Loans until repaid in full.

in each case, in accordance with the Approved DIP Budget (as defined below) then in effect (subject to any Permitted Variances (as defined below)) and the terms and conditions set forth in the DIP Loan Documents and the Proposed Orders;

(ii) granting to the DIP Lender valid, enforceable, non-avoidable and automatically perfected DIP Liens (as defined below) pursuant to sections 364(c) and 364(d) of the Bankruptcy Code on all DIP Collateral (as defined herein) subject and subordinate only to the Carve Out and Permitted Prior Senior Liens (to the extent applicable);

(iii) authorizing the DIP Loan Parties to (a) execute and deliver the DIP Loan Documents, (b) borrow funds under the DIP Facility pursuant to the terms set forth in the DIP Agreement and the Interim Order, (c) incur the DIP Obligations, and (d) perform such other and further acts as may be necessary, desirable or appropriate in connection therewith;

(iv) authorizing the DIP Loan Parties to use the proceeds of the DIP Loans and Prepetition Collateral (as defined below), including Cash Collateral (as defined below), (a) in accordance with the Approved DIP Budget subject to any Permitted Variances set forth herein and in the DIP Agreement, (b) to provide working capital for, and for other general corporate purposes of, the Debtors, including for funding the Carve Out (as defined below), for payment of any Adequate Protection Obligations (as defined below), and for other permitted uses of proceeds not prohibited by the DIP Loan Documents, in each case, solely in accordance with the Approved DIP Budget, subject to any Permitted Variances, and the terms and conditions of the DIP Agreement and the Interim Order or Final Order, as applicable;

(v) subject and subordinate to the Carve Out in all respects, granting to the DIP Lender allowed superpriority administrative expense claim status against each of the Debtors, on a joint and several basis, in each of the Chapter 11 Cases and any Successor Cases (as defined below) pursuant to section 364(c)(1) of the Bankruptcy Code in respect of all DIP Obligations;

(vi) granting adequate protection to the DIP Lender (in its capacity as the holder of the Prepetition Note (as defined below)) (in such capacity, the "**Prepetition Secured Party**") to the extent of any Diminution in Value (as defined below) of its liens and security interests in the Prepetition Collateral;

(vii) modifying or vacating the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions set forth in the Interim Order and in the DIP Loan Documents, and waiving any applicable stay (including under Bankruptcy Rule 6004) with respect to the effectiveness and enforceability of the Interim Order, and providing for the immediate effectiveness of the Interim Order;

(viii) scheduling a final hearing (the "**Final Hearing**") to consider entry of a Final Order authorizing and approving, among other things, the relief requested in the Motion on a final basis; and

(ix) granting the Debtors such other and further relief;

in each case, in accordance with and subject to the terms and conditions set forth in the DIP Loan Documents and the Interim Order or Final Order, as applicable.

JURISDICTION

2. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. § 1334. This The United States Bankruptcy Court for the Southern District of New York (the "**Court**") has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference M-431*, dated January 31, 2012 (Preska, C.J.).

3. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b). The Debtors confirm their consent to the entry of a final order by the Court in connection with this Motion. Venue of the Chapter 11 Cases and related proceedings is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

BACKGROUND

4. On August 9, 2026 (the "**Petition Date**"), each Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors remain in possession of their property and continue to operate and manage their businesses as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request has been made for the appointment of a trustee or examiner, and no statutory committee has been appointed in the Chapter 11 Cases. The Debtors have filed a motion requesting joint administration of the Chapter 11 Cases pursuant to Bankruptcy Rule 1015(b).

5. The Debtors operate a portfolio of iconic restaurants located in New York City's entertainment and cultural districts, steps from Carnegie Hall and Lincoln Center and in the heart

of the Theater District, and in Washington, D.C. Their restaurants are among the City's longest-running and most recognizable dining destinations, having served generations of theatergoers, concertgoers, and visitors. Each offers a full-service dining experience, ranging from classic Italian cooking to American grill fare and elevated diner classics, served in spacious, art-filled marquee locations known for generous portions and attentive hospitality.

6. Additional information about the events leading up to the Petition Date and the Debtors' businesses, affairs, capital structure, and prepetition indebtedness can be found in the First Day Declaration.

PREPETITION SECURED INDEBTEDNESS

A. BankUnited Secured Loan

7. Prior to the Petition Date, S.M.F. Group Inc. and certain other Debtors, as borrowers (collectively, the "**BankUnited Borrowers**"), and BankUnited, N.A. ("**BankUnited**"), as the lender, entered into that certain *Loan and Security Agreement*, dated March 11, 2016 (as amended and restated from time to time, the "**BankUnited Secured Loan Agreement**"), which was amended and restated on several occasions, pursuant to which BankUnited agreed to lend $4,431,001.19 (the "**BankUnited Secured Loan**") in the aggregate to the BankUnited Borrowers through various credit facilities.

8. The obligations under the BankUnited Secured Loan Agreement (the "**BankUnited Secured Loan Obligations**") were guaranteed by certain of the applicable Debtors (collectively, the "**BankUnited Secured Loan Guarantors**"). The BankUnited Secured Loan Obligations were secured by The Fireman Group Café Concepts, Inc.'s ("**CCI**") present and future right, title and interest in all of the personal property of CCI then or thereafter acquired, and the BankUnited Borrowers' pledge and assignment of any membership, partnership, shareholder or other

ownership interest in CCI, in any of the BankUnited Secured Loan Guarantors, and Debtor SMJ Group LLC.

9. As of the Petition Date, the aggregate principal amount outstanding under the BankUnited Secured Loan is approximately $2,762,347.42.

B. Prepetition Note

10. Prior to the Petition Date, the Debtors (other than Fireman Hospitality Card LLC), as borrowers (collectively, the "**Prepetition Note Borrowers**"), and FHGRF LLC, as the lender ("**FHGRF**" and in its capacity as prepetition lender, the "**Prepetition Note Lender**"), entered into that certain *Secured Demand Promissory Note*, dated March 17, 2016 (as amended and restated from time to time, the "**Prepetition Note**"), which was amended and restated on several occasions, pursuant to which the Prepetition Note Lender agreed to lend $6,235,147.78 in the aggregate through various loans. Of this amount, at least $2,378,334.60 (the "**Prepetition Emergency Funding**") was advanced by the Prepetition Note Lender as emergency bridge funding in anticipation of the potential filing of these Chapter 11 Cases. The obligations under the Prepetition Note (the "**Prepetition Note Obligations**") were secured by all assets of the Debtors (subject to validly perfected prior, senior liens, the "**Prepetition Collateral**").

11. The Debtors' CEO has a 35.8% membership interest in the Prepetition Note Lender that is non-controlling, subject to dilution without his consent, and subject to senior distribution rights of other members. The Debtors have used procedural safeguards during the negotiations of the proposed DIP Facility to ensure an appropriate exercise of the Debtors' fiduciary duties.

12. As of the Petition Date, the aggregate principal amount outstanding under the Prepetition Note Secured Loan is approximately $6,235,147.78 (inclusive of the Prepetition Emergency Funding).

C. Equipment Financing

13. Prior to the Petition Date, in the ordinary course of business, the Debtors granted security interests in various equipment for their restaurant operations to certain equipment lessors to secure repayment of certain underlying equipment leases (the "**Equipment Obligations**").

14. As of the Petition Date, the Debtor's believe the aggregate principal amount outstanding on account of the Equipment Obligations is $35,087.00.

D. SBA EIDL Loans

15. Prior to the Petition Date, in the ordinary course of business, certain of the Debtors received economic injury disaster loans ("**EIDL Loans**") from the Small Business Administration (the "**SBA**"). The EIDL Loans were secured by a lien on the business assets of the certain Debtors that received EIDL Loans. The Debtors believe that Debtor Cieli Partners, L.P. is obligated to the SBA on an EIDL loan for approximately $125,000, which loan is secured by a lien on substantially all of its assets, and Debtor Fiorello's Roman Café, Inc. is obligated on another EIDL loan for approximately $125,000, also secured by a lien on substantially all of its assets. In addition, Debtor Brooklyn Diner USA, L.P. d/b/a Diner 57, Debtor Broadway Hospitality Venture, LLC d/b/a Bond 45 and Red Eye Grill, L.P. d/b/a Redeye Grill are obligated to the SBA for EIDL loans of $125,000, $125,000 and $416,667, respectively, but the Debtors believe that these obligations are not subject to valid and perfected liens on any assets.

PREPETITION UNSECURED INDEBTEDNESS

A. Merchant Cash Advance Loans

16. Certain Debtors are party to a number of MCA loans. As of March 2026, more than 30 MCAs across 11 lenders were outstanding with aggregate outstanding obligations of not less than $5.5 million. The Debtors believe that each MCA is a criminally usurious and

unenforceable loan under applicable nonbankruptcy law and is subject to recharacterization and/or subordination under bankruptcy law. The Debtors also have avoidance action claims and other claims, including civil RICO claims, against some or all such lenders. While the MCA funders (the "**MCA Funders**") may purport to have security interests in some or all of the Debtors' assets, the Debtors believe that such interests are invalid because the underlying obligations are unenforceable, were not validly granted under the applicable contracts, were not properly perfected, or are otherwise subject to avoidance.

B. Friends and Family Borrowing

17. In 2025, the Debtors began obtaining unsecured borrowings from family and friends in 2025 to bridge critical liquidity gaps. These borrowings are obligations of CCI with an original principal amount of $4,500,000. No interest or other payments have been made by the Debtors on account of such borrowings.

C. Other Unsecured/Trade Debt

18. As of the Petition Date, the Debtors estimate that they have approximately $17,898,574.63 in outstanding trade payables and other unsecured debt.

THE DEBTORS' NEED TO ACCESS POST-PETITION FINANCING

19. The DIP Facility is essential to the Debtors' ability to fund the Chapter 11 Cases and execute on their chapter 11 strategy. As discussed further in the First Day Declaration, the Debtors are acutely focused on recovering the more than $5.9 million (the "**Holdback Amounts**") in proceeds that have been held by the Debtors' payment processors in connection with the MCA Funders' redirect notices (the "**Redirect Notices**"). To that end, the Debtors have commenced an adversary proceeding (i) seeking the turnover of the Holdback Amounts, (ii) requiring timely, ordinary course settlement and remittance of the proceeds of postpetition card transactions, and

(iii) restraining the Debtors' payment processors from transferring any such funds to any other party other than the applicable Debtors. With the DIP Facility, access to Cash Collateral, and the protections of chapter 11, the Debtors seek to allow their restaurant operations to move forward with daily revenues generated and collected, so that the Debtors may maximize value for all parties involved.

20. Absent immediate access to the DIP Facility and the use of Cash Collateral, the Debtors lack the funds and ability to continue operating their restaurants and litigating with the MCA Funders and payment processors as the Debtors are not currently collecting daily revenues from their restaurants. With minimal cash on hand, the Debtors require interim approval of the DIP Facility to avoid immediate and irreparable harm to the estates and the Debtors' business operations, pending the Court's consideration of the proposed Final Order.

21. The Debtors do not have alternative sources of financing readily available. Given the urgent nature of these Chapter 11 Cases, the Debtors were unable to secure financing other than the DIP Facility, let alone on better or unsecured terms. The Debtors, with the assistance of their advisors, engaged in discussions with BankUnited regarding alternative financing, however, no proposal was presented to the Debtors. Therefore, the Debtors focused their efforts on financing from the Prepetition Secured Party, culminating in the proposed DIP Facility that provides the Debtors necessary access to liquidity during the pendency of the Chapter 11 Cases at fees and rates that, under the circumstances, the Debtors and their advisors consider to be reasonable and in the best interests of the Debtors and their estates.

THE PROPOSED DIP FACILITY

22. The Debtors and the proposed DIP Lender's negotiations culminated in the agreed upon terms set forth in the DIP Agreement and the Interim Order. As more fully set forth in the

DIP Agreement, the DIP Facility provides the Debtors with the postpetition financing needed to stabilize restaurant operations, recover the Holdback Amounts, litigate with the MCA Funders, and ultimately preserve and maximize value for the benefit of all parties involved. The following chart sets forth a summary of the material provisions of the DIP Facility and the Proposed Orders, as required by Bankruptcy Rule 4001(c) and Local Rule 4001-2(c):

SUMMARY OF MATERIAL TERMS OF THE DIP FACILITY	
Bankruptcy Rule and/or Local Rule	**Response and Location Source**
Borrower Bankruptcy Rule 4001(c)(1)(B)	The Fireman Group Café Concepts, Inc., SMJ Group, Inc., S.M.F. Group Inc., Italian Café Concepts, LLC, Fiorello's Roman Café, Inc., Ebbets Field Venture, LLC, Cieli Partners, L.P. and Ebbets Field Venture II, LLC, Broadway Hospitality Venture, LLC, Brasserie 57, LLC, SFAP Group, LLC, Café Concepts (Washington DC), LLC, Shelny, LLC, Red Eye/Brooklyn Associates, L.P., 57th Street Hospitality Partners, LLC, SMJ Group, LLC, The Finer Diner, LLC, Red Eye Grill, Inc., Red Eye Grill, L.P., Brooklyn Diner USA, L.P. and Brooklyn Diner USA, Inc.
DIP Lender Bankruptcy Rule 4001(c)(1)(B)	FHGRF LLC, a Delaware limited liability company
Borrowing Limits Bankruptcy Rule 4001(c)(1)(B), Local Rule 4001-2(a)(1	Subject to the terms and conditions set forth in the DIP Agreement and in the Interim Order, following entry of the Interim Order, the DIP Lender agrees to make the following loans to the Borrowers, upon their written request in accordance with Section 2.02 below and subject to Article IV: (i) a loan in an aggregate amount of *up to* the Interim New Money DIP Commitment on a revolving basis (the "**Interim New Money DIP Facility**") and (ii) with respect to the Prepetition Obligations, a term loan in an amount equal to two hundred percent (200%) of the principal amount of such Interim New Money Revolving Facility as such Interim New Money DIP Facility is drawn and shall automatically be deemed converted, exchanged, refinanced, and reconstituted as DIP Obligations at such time (the "**Interim Roll Up DIP Loan**"); *provided* that the deemed borrowing by the Borrowers of the Interim Roll Up DIP Loan shall entitle the Borrowers to receive for cancellation an equivalent aggregate principal amount of Prepetition Obligations from the Lender and shall not entitle the Borrowers to receive any cash or other consideration from the Lender on account of the

	Interim Roll Up DIP Loan. Notwithstanding that no such cash or other consideration is exchanged on account of the Interim Roll Up DIP Loan, the Borrowers shall owe the aggregate principal amount of the Interim Roll Up DIP Loan to the Lender under this Agreement and the Borrowers and the Lender agree that such amounts shall no longer be outstanding under the Prepetition Note Documents. The Interim New Money DIP Commitment shall expire upon the earlier of (i) the funding by the Lender of the maximum amount of the Interim New Money DIP Commitment, or (ii) the entry of the Final Order. Subject to the terms and conditions set forth in the DIP Agreement and in the Final Order, following entry of the Final Order, except for funds advanced under Section 8.03 of the DIP Agreement:, and following remittance by the Borrowers to the Lender of the Holdback Amounts then required to be remitted under the DIP Agreement, which shall be credited to the Prepetition Obligations and then, to the extent any amounts remain, to the Interim Roll Up DIP Loan, the Lender agrees to make the following loans to the Borrowers: (i) one or more loans on a revolving basis in an aggregate amount of *up to* the Additional New Money DIP Revolving Commitment (the "**Additional New Money DIP Revolving Facility**" and, together with the Interim New Money DIP Facility, the "**Revolving Facilities**") from time to time in amounts consistent with the projected cash flow shortfalls set forth in the Budget unless otherwise consented to by the Lender in its sole and absolute discretion; and (ii) with respect to the Prepetition Obligations, a term loan in an amount equal to two hundred percent (200%) of the principal amount of such Additional New Money DIP Revolving Facility as such Additional New Money DIP Revolving Facility is drawn and shall automatically be deemed converted, exchanged, refinanced, and reconstituted as DIP Obligations at such time (the "**Additional Roll Up DIP Loan**" and, together with the Interim Roll Up DIP Loan, the "**Roll Up DIP Loans**"); *provided* that the deemed borrowing by the Borrowers of the Interim Roll Up DIP Loan shall entitle the Borrowers to receive for cancellation an equivalent aggregate principal amount of Prepetition Obligations from the Lender and shall not entitle the Borrowers to receive any cash or other consideration from the Lender on account of the Interim Roll Up DIP Loan. Notwithstanding that no such cash or other consideration is exchanged on account of the Interim Roll Up DIP Loan, the Borrowers shall owe the aggregate principal amount of the Interim Roll Up DIP Loan to the Lender under this Agreement and the Borrowers and the Lender agree that such amounts shall no longer be outstanding under the Prepetition Note Documents. The Additional New Money DIP Revolving Commitment shall

	expire upon the earliest to occur of the Maturity Date, termination of the Revolving Commitments, or funding by the Lender of the maximum amount of the Additional New Money DIP Revolving Commitment.. *See DIP Agreement, Sections 2.01(a) and (b).*
Term/Maturity Bankruptcy Rule 4001(c)(1)(B)	The earliest of (a) December 31, 2026, (b) the date upon which the Interim Order expires if the Final Order has not been entered no later than 35 days after the Petition Date, (c) the conversion of the Chapter 11 Cases into cases under chapter 7 of the Bankruptcy Code, (d) the occurrence of the Effective Date of a Chapter 11 Plan, and (e) the date of the acceleration of the Loans. *See DIP Agreement, Section 1.01.*
Interest Rate Bankruptcy Rule 4001(c)(1)(B)	<u>Base Interest Rate</u>: 12% per annum from the date of borrowing until repaid, which will be paid in kind on the then principal amount of the Loans by increasing the principal amount of the Loans. <u>Default Interest Rate</u>: 4% per annum plus the interest rate otherwise accruing or payable thereon. *See DIP Agreement, Sections 2.06(a) and (b).*
Collateral Bankruptcy Rule 4001(c)(1)(B)(i)	As security for the DIP Obligations, effective as of the entry of the Interim Order (and without the necessity of the execution, recordation or filing by the DIP Loan Parties or the DIP Lender of any pledge, collateral or security documents, mortgages, deeds of trust, financing statements, notations of certificates of title, control agreements or other similar documents, or the taking of any other action to take possession of or control over any DIP Collateral), the DIP Lender is hereby granted valid, binding, enforceable, non-avoidable, and automatically and properly perfected liens and security interests (collectively, the "**DIP Liens**") in all DIP Collateral, in each case, subject and subordinate to the Carve Out in all respects, and subject to the relative priorities set forth in the Interim Order. For the avoidance of doubt, the DIP Collateral shall include the Debtors' commercial tort claims against merchant cash advance lenders, future receivables, and revenue-based financing funders and related affiliates and parties, and claims against Hilton Grand Vacations Management, LLC and related Hilton Club entities and their affiliates, principals, members, officers, and agents, together with all proceeds, products, substitutions, recoveries, judgments, settlements, and distributions in respect thereof. Notwithstanding the foregoing, any liens on Avoidance

	Action Proceeds shall be subject to and effective only upon entry of the Final Order. The DIP Liens shall be subject to the following priorities (in each case subject and subordinate to the Carve Out in all respects): (i) First Lien on Unencumbered Property. Pursuant to section 364(c)(2) of the Bankruptcy Code, valid, binding, continuing, enforceable, fully perfected first priority senior security interests in and liens upon all DIP Collateral, to the extent such DIP Collateral is not subject to valid, perfected, and non-avoidable liens as of the Petition Date (including the Prepetition Liens and Permitted Prior Senior Liens) or valid and non-avoidable liens in favor of third parties that were in existence immediately prior to the Petition Date that are perfected as permitted by section 546(b) of the Bankruptcy Code (or that becomes unencumbered upon the satisfaction of any prior secured obligations of the Debtors or release or invalidation or any prior security interests), which security interests and liens shall be subject and subordinate in all respects to the Carve Out; and (ii) Liens Junior to the Permitted Prior Senior Liens. Pursuant to section 364(c)(3) of the Bankruptcy Code, valid, binding, continuing, enforceable, fully perfected junior security interests in and liens on the DIP Collateral to the extent such DIP Collateral is subject to Permitted Prior Senior Liens, which security interests and liens shall be subject and subordinate in all respects to the Carve Out. Other than as set forth above, the DIP Liens: (i) shall be senior to all security interests in, liens on, or claims against any of the DIP Collateral (subject and subordinate to the Carve Out in all respects), including any lien or security interest that is avoided or preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code; (ii) shall be valid and enforceable (a) against any trustee appointed in the Chapter 11 Cases or any Successor Case, (b) upon the conversion of any of the Chapter 11 Cases to any Successor Case, and/or (c) upon the dismissal or conversion of any of the Chapter 11 Cases or Successor Cases; (iii) shall not be made subject to or pari passu with any lien or security interest heretofore or hereinafter granted

	in the Chapter 11 Cases or any Successor Cases; and (iv) shall not be subject to any of sections 510, 549, or 550 of the Bankruptcy Code. *See DIP Agreement, Section 5.15(c); Interim Order, ¶ 4(a) and(b).*
Superpriority Claim Bankruptcy Rule 4001(c)(1)(B)(i), Local Rule 4001-2(a)(4)	Subject only to the Carve Out, pursuant to section 364(c)(1) of the Bankruptcy Code, all of the DIP Obligations shall constitute allowed superpriority administrative expense claims against each of the Debtors' estates (without the need to file any proof of claim) to the extent set forth in the Bankruptcy Code (the "DIP Superpriority Claims"), having priority in right of payment over any and all other obligations, liabilities, and indebtedness of any of such Debtors, whether now in existence or hereafter incurred by any of such Debtors, of every kind or nature, including any and all unsecured claims, administrative expenses, adequate protection claims, priority claims or any other claims of the kind specified in, or ordered pursuant to, the Bankruptcy Code, including without limitation, sections 105, 326, 327, 328, 330, 331, 361, 362, 363, 364, 365, 503(a), 503(b), 506(c) (upon entry of the Final Order), 507, 546(c), 552(b), 726, 1113, or 1114 of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment, which allowed DIP Superpriority Claims shall for purposes of section 1129(a)(9)(A) of the Bankruptcy Code be considered administrative expenses allowed under sections 503(b) and 507(a)(2) of the Bankruptcy Code and which shall be payable from and have recourse to all prepetition and postpetition property of the Debtors and all proceeds thereof, including all applicable DIP Collateral, subject and subordinate to the payment of the Carve Out as provided for herein and pursuant to the DIP Loan Documents. *See DIP Agreement, Section 5.15(b), Interim DIP Order, ¶ 5.*
Adequate Protection Bankruptcy Rule 4001(c)(1)(b)	The Prepetition Secured Party is granted, in the amount of any Diminution in Value of the Prepetition Liens in the Prepetition Collateral (including Cash Collateral) from and after the Petition Date, superpriority administrative expense claims to the extent contemplated by section 507(b) of the Bankruptcy Code (the "Adequate Protection Claims") against each of the Debtors. The Adequate Protection Claims shall be (a) subject and subordinate only to the Carve Out and the DIP Superpriority Claims, and (b) senior to any and all other administrative expense claims and all other claims against the Debtors and their estates, now existing or hereafter arising, of any kind or nature whatsoever. The Prepetition Secured Party is hereby granted, effective and perfected as of the entry of the Interim Order, in the amount of any

	Diminution in Value of the Prepetition Liens in the Prepetition Collateral (including Cash Collateral) from and after the Petition Date, valid, binding, enforceable and automatically perfected replacement liens and security interests in the DIP Collateral (the "**Adequate Protection Liens**"). The Adequate Protection Liens shall be senior to all other liens on, or claims against any of the DIP Collateral, but subject and subordinate only to (i) the Carve Out in all respects and (ii) the DIP Liens, it being understood that notwithstanding anything to the contrary in the Interim Order or the Final Order, in no circumstances and at no time in these Chapter 11 Cases or in any Successor Case shall the Adequate Protection Liens be senior to or *pari passu* with any DIP Liens, regardless of whether any such liens attach prior in time. The Permitted Prior Senior Liens Holders shall receive replacement liens under sections 361 and 363 on all postpetition property to the same extent, validity and priority as their prepetition liens had as of the Petition Date, solely to the extent of any diminution in value resulting from the Debtor's use of their Collateral (but subject to the DIP Liens and Carve Out). Such replacement liens shall be deemed valid, binding, perfected, and enforceable upon entry of the Interim Order, without the necessity of the execution or filing of security agreements, financing statements, mortgages, notices, or any other documents, or the taking of any further action by any party but subject to a determination as to the validity, priority and extent of such Permitted Prior Senior Liens. Permitted Prior Senior Liens Holders shall receive a superpriority administrative expense claim under section 507(b) of the Bankruptcy Code, subordinate only to DIP Claims, including DIP Superpriority Claims and the Carve Out, solely to the extent that (i) the Permitted Prior Senior Liens Holder is determined to hold valid, perfected, and enforceable prepetition liens and claims, (ii) the Debtor's use of Cash Collateral results in a diminution in the value of such secured creditor's interest in the prepetition Collateral, and (iii) the other forms of adequate protection provided such secured creditor are determined to be insufficient to protect against any such diminution in value. *See Interim Order, ¶ 6.*
Use of DIP Proceeds Bankruptcy Rule 4001(c)(1)(B)	The Debtors shall be authorized to use the proceeds of the Loans only in accordance with the Budget and the DIP Order. Notwithstanding the foregoing, no portion of proceeds of the Loans, the Carve-Out, the Carve-Out Reserve, or the DIP Collateral or any cash collateral may be used in connection with

	the investigation (including discovery proceedings), initiation or prosecution of any claims, causes of action, adversary proceedings or other litigation against the Lender or its Related Parties, or to seek authority to obtain financing or use cash collateral without the Lender's prior written consent, challenge the amount, validity, perfection, priority or enforceability of the Prepetition Obligations, DIP Obligations, Prepetition Note Documents, DIP Loan Documents, DIP Liens or DIP Collateral, or assert any claim or cause of action against any Released Party. *See DIP Agreement, Section 6.10.*
Expenses and Fees Bankruptcy Rule 4001(c)(1)(B), Local Rules 4001-2(a)(3), 4001-2(a)(16)	All Lender Expenses and all reasonable and documented out of pocket expenses incurred by the Lender in connection with the documentation and negotiation of this Agreement and the other DIP Loan Documents and in connection with the Chapter 11 Cases through and after the Effective Date, including, without limitation, the reasonable and documented fees and expenses of Pullman & Comley LLC, as counsel, any third party consultants, financial, or accounting advisors, and other professionals, which expenses will be paid within five Business Days after presentation of a payment request and, to the extent permitted by the DIP Order, without the need for any further notice, hearing or Bankruptcy Court order. If Borrowers do not pay any Lender Expenses within the time period specified above Borrowers shall thereby be conclusively deemed to have requested, and Lender is hereby authorized at its discretion to make and charge to Borrowers' account, an advance under the Loans as of such date in an amount equal to such unpaid Lender Expenses and the same shall be and become part of the DIP Obligations, provided, that Lender shall have no obligation to make such payment and shall not by so doing be deemed to have assumed any obligation or liability of Borrowers. Upon the earlier to occur of the (a) Maturity Date, or (b) full repayment of the Loan and all other Indebtedness whether as a result of the acceleration of the Loan, or otherwise, the Borrowers shall pay an exit fee (the "**Exit Fee**") to the Lender in an amount equal to 2.0% multiplied by the aggregate principal amount of all Loans advanced, deemed advanced, capitalized or otherwise added to the DIP Obligations hereunder, which fee shall be fully earned upon entry of the Interim Order, due and payable upon the earlier of the events described in this Section, and not refundable under any circumstances. *See DIP Agreement, Section 2.08.*

Covenants Bankruptcy Rule 4001(c)(1)(B)	Affirmative Covenants (as more fully set forth in the DIP Agreement) (i) Certificates and other information; (ii) Notices; (iii) Payment of Taxes and Other Obligations; (iv) Preservation of Existence; (v) Maintenance of Properties and Leases; (vi) Maintenance of Insurance; (vii) Compliance with Laws; (viii) Books and Records; (ix) Inspection Rights; (x) Use of Proceeds; (xi) ERISA Compliance; (xii) Environmental Compliance; (xiii) Pledged Assets; (xiv) Casualty and Condemnation; (xv) Further Assurances; (xvi) Intellectual Property Maintenance; (xvii) Litigation Claims Management; (xviii) Milestones; and (xix) Budget. <u>Negative Covenants (as more fully set forth in the DIP Agreement)</u> (i) Liens; (ii) Investments; (iii) Indebtedness; (iv) Fundamental Changes; (v) Dispositions; (vi) Restaurant Closure; (vii) Restricted Payments; (viii) Transactions with Affiliates and Insiders; (ix) Burdensome Agreements; (x) Amendments to Indebtedness;

	(xi) Amendments to Material Documents; Fiscal Year; Legal Name; (xii) Ownership of Subsidiaries; (xiii) Sale and Leaseback Transactions; (xiv) Speculative Transactions; (xv) Formation of Subsidiaries; (xvi) Prepayment of Indebtedness; (xvii) Sanctions; (xviii) Anti-Corruption Laws; (xix) Capital Expenditures; (xx) Compensation; (xxi) Chapter 11 Claims; (xxii) Amendments to the DIP Order; (xxiii) Bankruptcy Notices; and (xxiv) Budget Covenant. *See DIP Agreement, Articles VI and VII.*
Roll-Up Provision Local Rule 4001-2(a)(7)	During the Interim Period, upon each advance of Interim New Money DIP Loans, a "roll-up" of the Prepetition Secured Obligations (defined below) of the Debtor under the Prepetition Loan Documents (defined below) in an amount equal to two times such advance (such rolled-up obligations, the "**Interim Roll-Up DIP Loans**", and together with the Interim New Money DIP Loans, the "**Interim DIP Loans**"), which Interim Roll-Up DIP Loans shall be automatically rolled up, refinanced, and converted into postpetition obligations under the DIP Facility on a cashless, equal basis; Following entry of the Final Order, upon each advance of Additional New Money DIP Revolving Loans, a "roll-up" of the Prepetition Secured Obligations of the Debtor under the Prepetition Loan Documents in an amount equal to two times such advance (such rolled-up obligations, the "**Additional Roll-Up DIP Loans**", and together with the Interim Roll-Up DIP Loans, the "**Rolled-Up DIP Loans**" and together with the New Money DIP Loans, the "**DIP Loans**"), which Additional Roll-Up DIP Loans shall be automatically rolled up, refinanced, and converted into postpetition obligations under the DIP Facility on a cashless, equal basis.

	See DIP Agreement, Preamble, Section 2.01(a); Interim DIP Order, Preamble.
Reporting Information	The Borrowers shall comply with the following budget variance covenants, tested on a weekly basis commencing on the first Friday following entry of the Interim Order: (a) **Disbursements**. As of the last day of each week, the Borrowers shall not permit the aggregate amount of disbursements during such week to exceed 110% of the aggregate budgeted disbursements for such period as set forth in the then-current Budget approved by the Lender; (b) **Receipts**. As of the last day of each week, the Borrowers shall not permit the aggregate amount of operating receipts during such four-week period to be less than 90% of the aggregate budgeted operating receipts for such period as set forth in the then-current Budget approved by the Lender; (c) **Line-Item Variance**. The Borrowers shall not permit any individual line-item disbursement category in the Budget to exceed 115% of the budgeted amount for such line item for any single week, unless offset by corresponding underspend in the same line item in a prior week; (d) **Budget Refresh**. The Borrowers shall deliver to the Lender an updated thirteen (13) week cash flow forecast (each, an "**Updated Budget**") each week after the Petition Date, which Updated Budget shall be in form and substance satisfactory to the Lender in its sole discretion. Upon written approval by the Lender, each such Updated Budget shall replace the then-current Budget for all purposes under this Agreement; and (e) **Draw Limitation**. No Borrowing of Revolving Facilities shall be permitted if, after giving effect thereto, the aggregate of such Borrowing and all prior borrowings of Revolving Facilities (net of repayments) would exceed 110% of the aggregate amount of Revolving Facilities projected to be outstanding as set forth in the then-current Budget, measured on a cumulative basis beginning on the Petition Date through the proposed date of borrowing, unless otherwise consented to in writing by the Lender. *See DIP Agreement, Section 7.24.*
Events of Default Bankruptcy Rule	Any of the following shall constitute an "Event of Default":

4001(c)(1)(B), Local Rule 4001-2(a)(10)	**Non-Payment**. The Borrowers fail to pay, when and as required to be paid herein, any amount of principal of any Loans, any interest on any Loans, premium or any fee due hereunder, or any other amount payable hereunder or under any other Loan Document; or **Specific Covenants; Other Defaults**. The Borrowers fail to perform or observe (i) any term, covenant or agreement contained in Article VI (Affirmative Covenants) or Article VII (Negative Covenants), Section 2.03 (Remittance of Holdback Amounts), Section 2.04 (Prepayments), or Section 2.08 (Lender Fees and Expenses) of this Agreement, with nor notice or cure period, or (ii) any other term, covenant or agreement contained in any DIP Loan Document on its part to be performed or observed which failure under this clause (ii) if capable of being cured, has not been remedied or waived within five Business Days after receipt by the Borrowers of written notice thereof from the Lender;; or **Representations and Warranties**. Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of the Borrowers herein, in any other DIP Loan Document or in any document delivered in connection herewith or therewith shall be incorrect or misleading in any material respect when made or deemed made (other than those representations, warranties and certifications that are expressly qualified by Material Adverse Effect or other materiality, in which case such representations, warranties and certifications shall be incorrect or misleading in any respect when made or deemed made); or **Cross-Default**. The Borrowers, except to the extent the payment obligation is stayed or otherwise not required by virtue of the Chapter 11 Cases, and except to the extent constituting a good faith dispute, (i) fail to make any payment when due beyond the grace period, if any, provided therefor (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise) in respect of any Indebtedness or Guarantee (other than Indebtedness hereunder) having an aggregate principal amount (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit arrangement) of more than $50,000, or (ii) fail to observe or perform any other agreement or condition relating to any such Indebtedness or such Guarantee or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event is to cause, or to permit the holder or holders of such Indebtedness or the beneficiary or beneficiaries of such Guarantee (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required, such Indebtedness

	to be demanded or to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its stated maturity; or **Insolvency Proceedings**. Other than the Chapter 11 Cases, any Borrower institutes or consents to the institution of any proceeding under any Debtor Relief Law, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer for it or for all or any material part of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed without the application or consent of such Borrowers and the appointment continues undischarged or unstayed for sixty (60) calendar days; or any proceeding under any Debtor Relief Law relating to any such Borrowers or to all or any material part of its property is instituted without the consent of such Borrowers and continues undismissed or unstayed for sixty (60) calendar days, or an order for relief is entered in any such proceeding; or **Judgments**. There is entered against any Borrower (i) one or more final judgments or orders for the payment of money in an aggregate amount exceeding $50,000 (to the extent not covered (subject to normal deductibles) by independent third-party insurance as to which the insurer does not dispute coverage), or (ii) any one or more non-monetary final judgments that have, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and, in either case ((i) or (ii)), and either (A) enforcement proceedings are commenced by any creditor upon such judgment or order and such proceedings remain unstayed or undismissed for a period of thirty (30) consecutive days, or (B) there is a period of thirty (30) consecutive days during which a stay of enforcement of such judgment, by reason of a pending appeal, the Chapter 11 Cases, or otherwise, is not in effect; or **Milestones**. A Milestone under Section 6.18 is not met as of the date required to be met, unless extended or waived by the Lender; **Invalidity of DIP Loan Documents**. Any DIP Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or on account of satisfaction in full of all the DIP Obligations, ceases to be in full force and effect; or any Borrower contests in any manner the validity or enforceability of any DIP Loan Document; or purports to revoke, terminate or rescind any DIP Loan Document; or

	<u>DIP Collateral</u>. The DIP Order after delivery thereof shall for any reason (other than pursuant to the terms thereof) cease to create a valid and perfected Lien, with the priority required by the DIP Order on and security interest in any DIP Collateral purported to be covered thereby, subject to Liens permitted under Section 7.01 or Excluded Liens; or **<u>Chapter 11 Cases</u>**. There shall have occurred any of the following in any Chapter 11 Case: An order with respect shall be entered by the Bankruptcy Court converting any Chapter 11 Case to a chapter 7 case; An order shall be entered by the Bankruptcy Court confirming a Chapter 11 Plan that does not (A) contain a provision for termination of the commitments and indefeasible payment in full in cash of all DIP Obligations of the Borrowers hereunder and under the other DIP Loan Documents and the Prepetition Indebtedness under the Prepetition Note on or before the effective date of such plan or plans upon entry thereof and (B) provide for the continuation of the Liens and security interests granted to the Lender hereunder until such plan effective date; An order shall be entered by the Bankruptcy Court dismissing any of the Chapter 11 Cases which does not contain a provision for termination of the commitments hereunder and payment in full in cash of all DIP Obligations of the Borrowers hereunder and under the other DIP Loan Documents upon entry thereof; An order shall be entered by the Bankruptcy Court without the express prior written consent of the Lender (a) to revoke, reverse, stay, modify, supplement or amend any of the DIP Orders, (b) to permit any administrative expense or any claim (now existing or hereafter arising, of any kind or nature whatsoever), other than the Carve-Out, to have administrative priority as to the Debtors equal or superior to the priority of the Lender in respect of the DIP Obligations, except for certain allowed administrative expenses, or (c) to grant or permit the grant of a Lien on the DIP Collateral, other than a Permitted Lien; An order shall be entered by the Bankruptcy Court that is not stayed pending appeal granting relief from the automatic stay to any creditor of any Borrower with respect to any claim in an amount equal to or exceeding $100,000; An application for (a) an order impairing the DIP Collateral, the appointment of a trustee, conversion to Chapter 7 or dismissal of

	the Chapter 11 shall be made (i) by a Person other than the Borrowers and such application is not contested by Debtors in good faith or (ii) by the Borrowers, (b) an order for the use of cash collateral without the prior written consent of the Lender is made, or (c) an order for the use of DIP Collateral (or the obtaining of financing or loans, secured by liens that are senior, pari passu, or junior to the Lender's Liens on DIP Collateral) without the prior written consent of the Lender is made. *See DIP Agreement, Section 8.01*.
Carve-Out Bankruptcy Rule 4001(c)(1)(B), Local Rule 4001-2(a)(5)	The term "Carve Out" means collectively (a) all fees required to be paid to the Clerk of the Bankruptcy Court and to the UST pursuant to 28 U.S.C. §1930(a) plus interest at the statutory rate, if any, pursuant to 31 U.S.C § 3717 (without regard to the Carve-Out Trigger Notice (as defined below)), (b) all unpaid reasonable fees and expenses incurred by a trustee and payable under section 726(b) of the Bankruptcy Code in an aggregate amount not to exceed $25,000 (without regard to the Carve-Out Trigger Notice), (c) to the extent allowed at any time and consistent with the Budget, whether by interim order, procedural order, or otherwise, all unpaid fees and expenses incurred by persons or firms retained by (i) the Debtors pursuant to section 327, 328, or 363 of the Bankruptcy Code, and (ii) the Committee pursuant to section 328 or 1103 of the Bankruptcy Code, at any time before or on the first business day following delivery by the DIP Lender of a Carve Out Trigger Notice, whether allowed by the Court prior to or after delivery of a Carve Out Trigger Notice; and (d) to the extent allowed at any time and consistent with the Budget, whether by interim order, procedural order, or otherwise, all unpaid fees and expenses incurred after the first business day following delivery by the DIP Lender of the Carve Out Trigger Notice by persons or firms retained by the Debtors or by the Committee in an aggregate an aggregate amount not to exceed $250,000. Notwithstanding the foregoing, in no event shall the Carve-Out apply to the Committee or its professionals for any actions taken to avoid, challenge, object to, recharacterize, subordinate or that would otherwise adversely affect the Prepetition Obligations or the security and collateral therefor existing as of the Petition Date, the DIP Loans or the DIP Collateral and the DIP Orders presented by the Borrowers and Lender for approval by the Bankruptcy Court. *See DIP Agreement, Section 1.01 (defining Carve Out); Interim Order,* ¶ 12(b).
Waiver/Modification of Automatic Stay	The automatic stay imposed by section 362(a) of the Bankruptcy Code (the "**Automatic Stay**") is hereby vacated and modified,

Bankruptcy Rule 4001(c)(1)(B)(iv)	without application to or further order of this Court, to permit: (a) the DIP Loan Parties to grant the DIP Liens and the DIP Superpriority Claims, and to perform such acts as the DIP Lender may request to assure the perfection and priority of the DIP Liens, (b) the DIP Loan Parties to incur all DIP Obligations as contemplated under the Interim Order and the DIP Loan Documents, (c) the Debtors to grant the Adequate Protection Liens and the Adequate Protection Claims, and to perform such acts as the Prepetition Secured Party requests to ensure the perfection and priority of the Adequate Protection Liens, (d) subject to paragraph 11 of the Interim Order, the DIP Lender and the Prepetition Secured Party to exercise, upon the occurrence of any DIP Termination Event (as defined below), all rights and remedies provided for in the Interim Order, the DIP Loan Documents, the Prepetition Loan Documents or applicable law, and (e) the DIP Loan Parties to perform under the Interim Order and the DIP Loan Documents, and to take any and all other actions that may be reasonably necessary or required. *See Interim Order,* ¶ 9.
Budget Local Rule 4001-2(a)(2)	The use by the Borrowers of Loans and other credit extensions under this Agreement and the DIP Loan Documents shall be in compliance with the Budget, the DIP Loan Documents and the DIP Order. The Lender (i) may assume that the Borrowers will comply with the Budget, (ii) shall have no duty to monitor such compliance, and (iii) shall not be obligated to pay (directly or indirectly from the DIP Collateral) any unpaid expenses incurred or authorized to be incurred pursuant to the Budget or unpaid expenses that the Borrowers may have failed to include in the Budget. The line items in the Budget for payment of interest, expenses and other amounts to the Lender are estimates only, and the Borrowers remain obligated to pay any and all DIP Obligations in accordance with the terms of the DIP Loan Documents and the DIP Order regardless of whether such amounts exceed such estimates. Nothing in the Budget shall constitute an amendment or other modification of any DIP Loan Document or any of the borrowing restrictions or other lending limits set forth therein. *See DIP Agreement, Section 6.19.*
Conditions of Closing / Initial Borrowing Local Rule 4001-2(a)(2)	<u>Conditions of Funding of the Interim New Money DIP Facility</u>: The obligations of the Lender to make advances under the Interim New Money DIP Facility shall be subject to the satisfaction or waiver of the following conditions precedent:

	Credit Agreement. Receipt by the Lender of executed counterparts of this Agreement and the other DIP Loan Documents, properly executed by a Responsible Officer of each Borrower, and subject only to entry of the Interim Order. **Resolutions**. Receipt by the Lender of such copies of resolutions, certificates of good standing, or other action, incumbency certificates and/or other certificates of Responsible Officers of each Borrower as Lender may require evidencing (i) the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Agreement and the other DIP Loan Documents, and (ii) the resolutions adopted by each Borrower's board of directors or governing body for the purpose of approving the transactions contemplated by this Agreement, each in form and substance satisfactory to the Lender. **Financing Statement Searches**. Certified copies, dated no earlier than 30 days prior to the first Borrowing Request, of financing statement searches, as the Lender shall request, accompanied by written evidence (including any UCC termination statements) that the Liens indicated in any such financing statements either constitute Permitted Liens or have been or, in connection with the funding of the Interim New Money DIP Facility, will be terminated or released; **Evidence of Insurance**. Receipt by the Lender of certificates of insurance and related endorsements of the Borrowers evidencing liability and casualty insurance naming the Lender as additional insured (in the case of liability insurance) and loss payee (in the case of hazard insurance). **No Litigation**. There shall be no (i) material litigation pending, or to the Borrowers' knowledge threatened in writing, against or affecting the Borrowers, or (ii) injunction or other form of restraining order, which in either case restrains, restricts, or seeks to restrain or restrict the closing of this Agreement or the making of the Loans. **Interim Order**. The Interim Order, in form and substance satisfactory to the Lender in its sole and absolute discretion, shall have been entered and shall not have been (x) stayed, vacated, reversed or rescinded, and any appeal of such order shall not have been timely filed and a stay of such order pending appeal shall not be presently effective, or (y) without the prior written consent of

	the Lender, given in its sole and absolute discretion, revised, amended or modified. **<u>Budget</u>**. The Borrowers and the Lender shall have agreed upon the Budget, and the Budget shall have been delivered to the Lender and approved by the Bankruptcy Court in the Interim Order. **<u>Chapter 11 Cases</u>**. The Chapter 11 Cases shall have been commenced and all material pleadings (including but not limited to pleadings related to the DIP Loan Documents and the assumption or rejection of executory contracts or unexpired leases (the "**Material Pleadings**")) to be entered or filed shortly after commencement of the Chapter 11 Cases shall have been provided at least 24 hours in advance to the Lender or otherwise with as much notice as reasonably practicable—but in no event later than the time on which such draft orders and pleadings are provided to counsel for the United States Trustee—and shall be in form, scope, and substance satisfactory to the Lender. *See DIP Agreement, Section 4.02.*
Repayment Provision Local Rule 4001-2(a)(13)	<u>Repayment of Loans</u>: The Borrowers shall repay to the Lender on the Maturity Date the aggregate principal amount of all Loans outstanding on such date, together with all accrued and unpaid interest thereon, and any outstanding fees, in each case, payable in accordance with the DIP Loan Documents, without notice or demand by the Lender. <u>Prepayment of Indebtedness</u>: At any time, directly or indirectly, make any payment or prepayment or redemption of any Indebtedness or repurchase, redeem, retire or otherwise acquire any Indebtedness of any Borrower except (a) the DIP Obligations and (b) regularly scheduled or required repayments or redemptions of Permitted Indebtedness as provided for in the Budget. <u>Mandatory Prepayments</u>: **<u>Dispositions and Involuntary Dispositions</u>**. Upon the receipt by any Borrower of the Net Cash Proceeds of any Disposition or Involuntary Disposition consummated on or after the Petition Date, the Borrower shall, on or prior to the date which is three (3) Business Days after the date of the realization or receipt by the Borrower of such Net Cash Proceeds, prepay the Loans as hereafter provided in an aggregate amount equal to 100% of the Net Cash Proceeds of such Disposition or Involuntary Disposition.

	Debt and Equity Issuances. Upon the receipt by any Borrower after the Petition Date of the Net Cash Proceeds (x) of any Debt Issuance not permitted under Section 7.03 or (y) from the sale or issuance by the Borrower of any of its Equity Interests (other than any sales or issuances of Equity Interests to another Borrower), in each case, the Borrower shall, on or prior to the date which is three (3) Business Days after the date of the realization or receipt by the Borrower of such Net Cash Proceeds, prepay the Loans as hereafter provided in an aggregate amount equal to 100% of such Net Cash Proceeds. **Litigation Recoveries**. Upon the receipt by any Borrower of the Net Cash Proceeds of any settlement, judgment, award, or other recovery in respect of any Commercial Tort Claim or other litigation claim constituting DIP Collateral, the Borrower shall, on or prior to the date which is three (3) Business Days after the date of the receipt by the Borrower of such Net Cash Proceeds, prepay the Loans as hereafter provided in an aggregate amount equal to 100% of such Net Cash Proceeds. **Prior Notice**. The Borrower shall notify the Lender in writing of any mandatory prepayment of Loans required to be made by the Borrower pursuant to clauses (i) through (iii) of this Section 2.04(b) not later than 12:00 p.m. at least one Business Day prior to the date of such prepayment. Each such notice shall specify the date of such prepayment and provide a reasonably detailed calculation of the aggregate amount of such prepayment to be made by the Borrower. **Application of Mandatory Prepayments**. All amounts to be paid pursuant to Section 2.04(a) or (b) shall be applied as follows: First, to payment of that portion of the DIP Obligations constituting fees, indemnities, expenses, and other amounts (including fees, charges and disbursements of counsel to the Lender and amounts payable under Article III) payable in accordance with the DIP Loan Documents to the Lender; Second, to payment of that portion of the DIP Obligations constituting accrued and unpaid interest on the Loans; and Third, to payment of that portion of the DIP Obligations constituting unpaid principal payments. Notwithstanding anything to the contrary in any DIP Loan Document, all prepayments under this Section 2.04(b) shall be

	accompanied by interest on the principal amount prepaid through the date of prepayment. *See DIP Agreement, Sections 2.04, 2.05, 7.16*.

BASIS FOR RELIEF REQUESTED

A. Entry into the DIP Facility is a Sound Exercise of the Debtors' Business Judgment

23. This Court should authorize the Debtors, as an exercise of their sound business judgment, to enter into the DIP Documents, obtain access to the DIP Facility, and continue using the Cash Collateral. Section 364 of the Bankruptcy Code authorizes a debtor to obtain secured or superpriority financing under certain circumstances. Courts grant a debtor in possession considerable deference in acting in accordance with its business judgment in obtaining postpetition secured credit, so long as the agreement to obtain such credit does not run afoul of the provisions of, and policies underlying, the Bankruptcy Code. *See In re Barbara K. Enters., Inc.*, No. 08-11474, 2008 WL 2439649, at *14 (Bankr. S.D.N.Y. June 16, 2008) (explaining that courts generally defer to a debtor's business judgment "so long as a request for financing does not 'leverage the bankruptcy process' and unfairly cede control of the reorganization to one party in interest"); *In re Ames Dep't Stores, Inc.*, 115 B.R. at 40 ("[C]ases consistently reflect that the court's discretion under section 364 [of the Bankruptcy Code] is to be utilized on grounds that permit [a debtor's] reasonable business judgment to be exercised so long as the financing agreement does not contain terms that leverage the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to benefit a party-in-interest."); *accord In re Farmland Indus., Inc.*, 294 B.R. 855, 881 (Bankr. W.D. Mo. 2003) ("the applicable factors can be synthesized as follows: (1) That the proposed financing is an exercise of sound and reasonable business judgment . . . .").

24. In considering whether the terms of postpetition financing are fair and reasonable, courts consider the terms in light of the relative circumstances of both the debtor and the potential lender. *In re Farmland Indus.*, 294 B.R. at 886; *see also Unsecured Creditors' Comm. Mobil Oil Corp. v. First Nat'l Bank & Trust Co. (In re Elingsen McLean Oil Co., Inc.)*, 65 B.R. 358, 365 n.7 (W.D. Mich. 1986) (recognizing a debtor may have to enter into "hard bargains" to acquire funds for its reorganization). The Court may appropriately take into consideration non-economic benefits to the Debtors offered by a proposed postpetition facility. For example, in *In re ION Media Networks, Inc.*, the Court held that:

> Although all parties, including the Debtors and the Committee, are naturally motivated to obtain financing on the best possible terms, a business decision to obtain credit from a particular lender is almost never based purely on economic terms. *Relevant features of the financing must be evaluated, including noneconomic elements such as the timing and certainty of closing, the impact on creditor constituencies and the likelihood of a successful reorganization.* This is particularly true in a bankruptcy setting where cooperation and establishing allegiances with creditor groups can be a vital part of building support for a restructuring that ultimately may lead to a confirmable reorganization plan. That which helps foster consensus may be preferable to a notionally better transaction that carries the risk of promoting unwanted conflict.

No. 09-13125, 2009 WL 2902568, at *4 (Bankr. S.D.N.Y. July 6, 2009) (emphasis added).

25. In addition, the mere fact that a negotiating counterparty may arguably constitute an "insider" within the meaning of section 101(31) of the Bankruptcy Code does not automatically alter the standard of review that applies to the Debtors' decision-making process. *See, e.g., In re Residential Capital, LLC*, No. 12-12020, 2013 WL 3286198, at *19 (Bankr. S.D.N.Y. June 27, 2013) (concluding that "the business judgment standard is appropriately applied" to debtor's decision to enter into plan support agreement with insider counterparty where debtor was represented in negotiations by an unconflicted fiduciary); *In re Mid-State Raceway, Inc.*, 323 B.R. 40, 58 (Bankr. S.D.N.Y. 2005) ("To overcome the business judgment rule, the entity opposing the decision by the directors must establish that they acted in bad faith or with fraudulent intent."); *see*

also In re Lukens Inc. S'holders Litig., 757 A.2d 720, 730 (Del. Ch. 1999) (noting that when one director is interested in the transaction, without any allegation that the interested director "controlled of majority of the board, there is no basis to say that the board as a whole lacked independence"). Notwithstanding the Debtors' CEO's minority interest in the DIP Lender, the Debtors' CEO was not involved in the negotiations of the DIP Facility and the Debtors and the DIP Lender are represented by separate, sophisticated legal and financial advisors, and all negotiations were conducted in good faith. Accordingly, the Debtors' decision to enter into the DIP Facility is governed by the business judgment standard.

26. The Debtors' determination to move forward with the DIP Facility is an exercise of their sound business judgment considering the urgent nature of these Chapter 11 Cases and inability to procure another viable funding proposal. Specifically, the Debtors and their advisors determined that the DIP Facility provides certainty with respect to capital necessary for the administration of these Chapter 11 Cases, as the use of Cash Collateral alone is insufficient to meet the Debtors' working capital needs. Following extensive negotiations, the Debtors were able to come to a resolution not only on economic terms, but also regarding case controls that provide the Debtors with flexibility to ensure a value-maximizing path to a restructuring transaction in these Chapter 11 Cases.

27. Based on the facts and circumstances in these Chapter 11 Cases, entering into the proposed DIP Facility represents a proper exercise of the Debtors' business judgment. Bankruptcy courts routinely defer to a debtor's business judgment on most business decisions, including the decision to borrow money. *See In re Ames Dep't Stores, Inc.*, 115 B.R. at 38 (courts should approve borrowings pursuant to section 364(c) and 364(d) of the Bankruptcy Code if the debtor was within its business judgment); *see also In re Utah 7000, L.L.C.*, 2008 WL 2654919, *2 (Bankr. D. Utah

2008); *In re Trans World Airlines, Inc.*, 163 B.R. 964, 974 (Bankr. D. Del. 1994) (noting that approval of interim loan, receivables facility and asset-based facility "reflect[ed] sound and prudent business judgment . . . [was] reasonable under the circumstances and in the best interest of [the debtor] and its creditors.").

28. To determine whether the business judgment test is met, the court "is required to examine whether a reasonable businessperson would make a similar decision under similar circumstances." *In re Exide Techs, Inc.*, 340 B.R. 222, 239 (Bankr. D. Del. 2006); *see also In re Helm*, 335 B.R. 528, 538-39 (Bankr. S.D.N.Y. 2006); *In re Curlew Valley Assocs.*, 14 B.R. 506, 513–14 (Bankr. D. Utah 1981) (noting that courts should not second guess a debtor's business decision when that decision involves "a business judgment made in good faith, upon a reasonable basis, and within the scope of [the debtor's] authority under the [Bankruptcy] Code").

29. The Debtors' decision to agree to the terms of the DIP Facility satisfies all legal prerequisites since it is a reasonable exercise of sound business judgment in light of the Debtors' immediate need for liquidity and the unavailability of financing on alternative terms. In light of this demonstration of sound business judgment, the Debtors should be granted authority to enter into the DIP Facility and borrow funds from the DIP Lender on the terms described herein and take the other actions contemplated by the DIP Facility and as requested herein.

B. To the Extent the DIP Lender is Deemed to be an Insider, the DIP Facility is Entirely Fair

30. To the extent the Court determines that the DIP Lender is an insider, the DIP Facility is entirely fair and should be approved.

31. When considering a proposed DIP facility provided by an insider of a debtor, the business judgment rule is not applicable to transactions [between] a debtor and an insider of the

debtor." *In re Wythe Berry Fee Owner LLC*, 2024 WL 2767121, at *17 (Bankr. S.D.N.Y. May 29, 2024). Rather, "courts apply a 'heightened scrutiny' test in assessing the bona fides of a transaction [between] a debtor and an insider of the debtor." *In re LATAM Airlines Group S.A.*, 2022 WL 272167, at *14 (Bankr. S.D.N.Y. Jan. 28, 2022). When applying heightened scrutiny, "courts are concerned with the integrity and *entire fairness* of the transaction at issue, typically examining whether the process and price of a proposed transaction not only appear fair but are fair and whether fiduciary duties were properly taken into consideration." *In re Innkeepers USA Trust*, 442 B.R. 227, 231 (Bankr. S.D.N.Y. 2010) (emphasis added).

32. The Debtors submit that, even if the "entire fairness" standard applies to the proposed DIP Facility, which requires an insider transaction to embody both a "fair process" and a "fair price," approval of the DIP Facility is appropriate and warranted. *See Pereira v. Cogan*, 267 B.R. 500, 508 (S.D.N.Y. 2001) (citing *Solomon v. Armstrong*, 747 A.2d 1098, 1112 (Del. Ch. 1999), *aff'd*, 746 A.2d 277 (Del. 2000)). Unfortunately for the Debtors and the urgent nature of the chapter 11 filing, the Debtors' outreach for financing proposals elicited no actionable proposals other than the DIP Facility proposed by the DIP Lenders. Considering the circumstances, there was no market for viable funding, leaving the Debtors with no alternative but to seek funding from the proposed DIP Lender. At all times relevant, the Debtors' CEO recused himself from any negotiations and discussions relevant to the DIP Facility and the Debtors and the DIP Lender were represented by separate counsel and decision makers. As such, the terms of the DIP Loan Documents were negotiated in good faith.

33. Additionally, the Debtors believe that they acquired funding at a fair price and on reasonable terms that will allow them to execute on their chapter 11 strategy for the benefit of their creditors. "The fair price analysis 'is not itself a remedial calculation' but a determination of

whether the price 'fell within a range of fairness.'" *In re Transcare Corporation*, 2020 WL 8021060, at *19 (Bankr. S.D.N.Y. July 6, 2020) (quoting *Reis v. Hazelett Strip-Casting Corp*., 28 A.3d 442, 465 (Del. Ch. 2011)); *see also Basho Techs. Holdco B, LLC v. Georgetown Basho Investors, LLC*, 2018 WL 3326693, at *36 (Del. Ch. July 6, 2018) ("[T]he court's task is not to pick a single number, but to determine whether the transaction price falls within a range of fairness."). In determining whether a price was fair, courts consider "whether the transaction was one 'that a reasonable seller, under all of the circumstances, would regard as within a range of fair value; one that such a seller could reasonably accept.'" *Transcare*, 2020 WL 8021060, at *19 (quoting *Cinerama, Inc. v. Technicolor, Inc*., 663 A.2d 1134, 1143 (Del. Ch. 1994), *aff'd*, 663 A.2d 1156 (Del. 1995)). The terms negotiated in the DIP Loan Documents represent terms that fall in the range of fairness and are tailored to preserve value for the Debtors' estates. Without the DIP Facility, the Debtors' estates would suffer irreparable harm and potentially risk total value destruction to the detriment of all creditors. The DIP Facility provides the only path forward for the Debtors and is focused on value preservation, rather than asset transfer. Given the alternative (*i.e.*, no financing at all, resulting in the closure of the Debtors' restaurants), the Debtors have negotiated the DIP Facility at a fair price and on reasonable terms that provides the Debtors with their only lifeline to preserve and maximize value for creditors. As such, the Debtors' entry into the DIP Loan Documents was a proper exercise of fiduciary duties to maximize value for the benefit of the Debtors' estates.

34. Accordingly, and under the circumstances, the Debtors submit that the DIP Facility should be approved. *See In re Med. Software Sols*., 286 B.R. 431, 437 (Bankr. D. Utah 2002) (noting that the court had previously granted a debtor-in-possession financing motion from an

"admitted insider" where "[the funding] appeared to be appropriate and to be the only means upon which the Debtor could continue operating").

C. **The Debtors Should be Authorized to Grant Liens and Superpriority Claims**

35. Section 364 of the Bankruptcy Code provides, in pertinent part:

> (b) The court, after notice and a hearing, may authorize the trustee to obtain unsecured credit and incur unsecured debt other than under subsection (a) of this section, allowable under section 503(b)(1) of this title as an administrative expense.
>
> (c) If the trustee is unable to obtain unsecured credit allowable under section 503(b)(1) of this title as an administrative expense, the court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt—
>
> (a) with priority over any or all administrative expenses of the kind specified in section 503(b) or 507(b) of this title;
>
> (b) secured by a lien on property of the estate that is not otherwise subject to a lien; or
>
> (c) secured by a junior lien on property of the estate that is subject to a lien.

36. Thus, if a debtor is not able to obtain post-petition credit on an unsecured basis, the court may authorize the debtor to obtain credit or incur debt, repayment of which is entitled to superpriority administrative expense status or is secured by a lien on unencumbered property, or a junior lien on encumbered property, or a combination of the foregoing protections. 11 U.S.C. § 364(c).

37. Here, the Debtors propose to obtain post-petition financing under the DIP Facility by providing the DIP Lender with superpriority administrative expense claim status and liens (senior only on unencumbered collateral) in accordance with section 364 of the Bankruptcy Code on the terms set forth in the DIP Agreement.

38. To satisfy the requirements of Section 364(c) of the Bankruptcy Code, a debtor need only demonstrate "by a good faith effort that credit was not available" to the debtor on an

unsecured or administrative expense basis. *In re Ames Dep't Stores, Inc.,* 115 B.R. 34, 37 (Bankr. S.D.N.Y. 1990); *see also In re 495 Central Park Avenue Corp*., 136 B.R. 626, 630 (Bankr. S.D.N.Y. 1992). "The statute imposes no duty to seek credit from every possible lender before concluding that such credit is unavailable." *Bray v. Shenandoah Fed. Savs. & Loan Ass'n* (*In re Snowshoe Co*.), 789 F.2d 1085, 1088 (4th Cir. 1986); *see also Pearl-Phil GMT (Far East) Ltd. v. Caldor Corp.*, 266 B.R. 575, 584 (S.D.N.Y. 2001) (superpriority administrative expenses authorized where the debtor could not obtain credit as an administrative expense); *In re YL West 87th Holdings I, LLC*, 423 B.R. 421, 441 n.44 (Bankr. S.D.N.Y. 2010) (court noting that only a showing of "reasonable efforts" to obtain credit is required). When there are few lenders likely, able or willing to extend the necessary credit to the debtor, "it would be unrealistic and unnecessary to require [the debtor] to conduct such an exhaustive search for financing." *In re Sky Valley, Inc*., 100 B.R. 107, 113 (Bankr. N.D. Ga. 1988), *aff'd sub nom. Anchor Sav. Bank FSB v. Sky Valley, Inc.,* 99 B.R. 117, 120 n.4 (N.D. Ga. 1989).

39. The Debtors do not believe that alternative post-petition financing can be realistically obtained on an unsecured basis or better terms under the circumstances. Indeed, the Debtors have not been able to secure any other financing, and the terms of the proposed financing were the best and only terms available under the circumstances. The Debtors' negotiations with the DIP Lender were conducted in good faith, resulting in a fair deal among the parties, that resulted in the Debtors providing the DIP Lender superpriority administrative expense claim status and senior and junior liens on certain collateral as set forth in the DIP Agreement and the Interim Order.

D. <u>The Debtors Should be Permitted to Roll-Up the Prepetition Secured Obligations with Proceeds from the DIP Facility</u>

40. The Debtors submit that the "roll-up" of the Prepetition Secured Obligations under the Prepetition Loan Documents with proceeds from the DIP Facility (as set forth in the DIP Agreement and the Interim Order), particularly in the broader context of the DIP Financing, is appropriate and reasonable. During the negotiations of the DIP Facility, the DIP Lender made it evident that the inclusion of the roll-up of the Prepetition Secured Obligations was a required part of any DIP Facility offered by it, and the Debtors agreed to the roll-up because of the DIP Lender's commitment to extend emergency funds to the Debtors as the financial bridge that made the Chapter 11 Cases possible.

41. Moreover, the DIP Facility provides meaningful new money to the Debtors up to $6.5 million, allowing the Debtors to preserve going-concern value, with a modest roll-up ratio of 2:1.

42. Given the thorough, good faith negotiations between all parties involved in the DIP Facility, and the Debtors' assessment, along with their advisors, that they were unlikely to find better alternatives given their circumstances, agreeing to the roll-up as part of the DIP Facility was a fair deal as the DIP Facility provides the only available means to make these Chapter 11 Cases possible. Moreover, all liens and claims related to the DIP Facility, including those subject to the roll-up of the Prepetition Secured Obligations, are subject to challenge through and including the Challenge Deadline, as preserved in the Interim Order. Therefore, this feature of the DIP Financing is not prejudicial to the rights of creditors in these Chapter 11 Cases.

E. **<u>The Debtors Should be Authorized to Use Cash Collateral</u>**

43. A debtor's use of property of the estate, including cash collateral, is governed by section 363 of the Bankruptcy Code. Pursuant to section 363(c)(2), a debtor may use cash collateral if "(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 [section 363]." 11 U.S.C. § 363(c)(2).

44. Section 363(e) of the Bankruptcy Code further provides that "on request of an entity that has an interest in property . . . to be used, sold or leased, by the trustee, the court . . . shall prohibit or condition such use, sale or lease as is necessary to provide adequate protection of such interest." 11 U.S.C. § 363(e). Further, section 362(d)(1) of the Bankruptcy Code provides for adequate protection of interests in property due to the imposition of the automatic stay. *See In re Cont'l Airlines*, 91 F.3d 553, 556 (3d Cir. 1996) (*en banc*). While the Bankruptcy Code does not expressly define "adequate protection", section 361 of the Bankruptcy Code provides examples of forms of adequate protection, such as granting replacement liens and administrative claims, courts decide what constitutes sufficient adequate protection on a case-by-case basis. *See, e.g., In re Swedeland Dev. Grp., Inc.*, 16 F.3d 552, 564 (3d Cir. 1994) (explaining that "determination of whether there is adequate protection is made on a case by case basis"); *In re Columbia Gas Sys., Inc.*, Nos. 91-803, 91-804, 1992 WL 79323, at *2 (Bankr. D. Del. Feb. 18, 1992) ("[W]hat interest is entitled to adequate protection and what constitutes adequate protection must be decided on a case-by-case basis"); *see also In re Dynaco Corp.*, 162 B.R. 389, 394 (Bankr. D.N.H. 1993) (citing 2 Collier on Bankruptcy ¶ 361.01[1] at 361–66 (15th ed. 1993) (explaining that adequate protection can take many forms and "must be determined based upon equitable considerations arising from the particular facts of each proceeding")).

45. As set forth in the DIP Loan Documents and the Interim Order, the Debtors have agreed to provide limited and customary adequate protection to the holders of Permitted Prior Senior Liens in the form of replacement liens and superiority administrative expense claim status to protect against the postpetition diminution in value of the Cash Collateral resulting from the use, sale, depreciation, or disposition of the Cash Collateral by the Debtors and the imposition of the automatic stay. Accordingly, the Debtors submit that the use of Cash Collateral is appropriate.

F. The Debtors Should be Authorized to Pay the Fees Required Under the DIP Agreement

46. The Debtors have agreed, subject to Court approval, to pay certain fees to the DIP Lender pursuant to the DIP Loan Documents. Specifically, the Debtors have agreed to pay the reasonable, documented fees, costs and expenses incurred or accrued by the DIP Lender in connection with any and all aspects of the Chapter 11 Cases, including, without limitation, the reasonable and documented out-of-pocket fees and expenses of legal counsel and other professionals hired by or on behalf of the DIP Lender. The Debtors, in consultation with their advisors, believe that these fees are an integral component of the overall terms of the DIP Facility, were required as consideration for the extension of postpetition financing, and are reasonable and customary.

G. The DIP Lender Should Be Deemed a Good Faith Lender

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

> The reversal or modification on appeal of an authorization under this section [362 of the Bankruptcy Code] to obtain credit or incurred debt,

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

11 U.S.C. § 364(e).

48. The DIP Agreement is the result of the Debtors' reasonable and informed determination that the DIP Lender offered fair market terms on which to obtain their necessary post-petition funding, as well as through good faith negotiations between the Debtors and the DIP Lender. Moreover, the proceeds under the DIP Facility will only be used for purposes that are permissible under the Bankruptcy Code.

49. Accordingly, the Debtors submit that the Court should find the DIP Lender to be a good faith lender within the meaning of section 364(e) of the Bankruptcy Code entitled to the protections afforded by that section.

MODIFICATION OF THE AUTOMATIC STAY IS APPROPRIATE

50. The relief requested herein contemplates a modification of the automatic stay, to the extent applicable, to, among other things, permit the Debtors to: (a) grant the security interests, liens and superpriority claims described herein with respect to the DIP Lender and to perform such acts as may be reasonably requested to assure the perfection and priority of such security interests and liens; (b) permit the DIP Lender to exercise, upon the occurrence and during the continuance of an Event of Default (as defined in the DIP Agreement), after the expiration of the applicable grace period, if any, or the occurrence of the Maturity Date, as applicable (i) certain immediate remedies, as detailed in the DIP Agreement, with respect to the loan issued under the DIP Facility, and (ii) certain other remedies under the DIP Agreement or the Interim Order or Final Order, as

applicable, after giving required notice; and (c) implement the terms of the Interim Order or Final Order, as applicable.

51. Stay modifications are standard features of post-petition financing facilities. In the Debtors' business judgment, the stay modification as described above is appropriate under the circumstances. *See, e.g., In re Chassix Holdings, Inc.,* Case No. 15-10578 (MEW) (Bankr. S.D.N.Y. March 13, 2015, Dkt. No. 67).

NECESSARY TO AVOID IMMEDIATE AND IRREPARABLE HARM

52. Bankruptcy Rules 4001(b) and 4001(c) provide that a final hearing on a motion to obtain credit pursuant to section 364 of the Bankruptcy Code or to use cash collateral pursuant to section 363 of the Bankruptcy Code may not be commenced earlier than 14 days after the service of such motion. Upon request, however, the Court may conduct a preliminary, expedited hearing on the motion and authorize the obtaining of credit and use of cash collateral to the extent necessary to avoid immediate and irreparable harm to a debtor's estate.

53. In addition, pursuant to Bankruptcy Rule 6003, the Court may grant relief within twenty-one (21) days after the filing of the petition regarding a motion to "use, sell, lease, or otherwise incur an obligation regarding property of the estate" only if such relief is necessary to avoid immediate and irreparable harm. Fed. R. Bankr. P. 6003(b). Immediate and irreparable harm exists where the absence of relief would impair a debtor's ability to reorganize or threaten the debtor's future as a going concern. *See In re Ames Dep't Stores, Inc.*, 115 B.R. at 36, n.2 (discussing elements of "immediate and irreparable harm" in relation to Bankruptcy Rule 4001).

54. As discussed herein, the Debtors will suffer immediate and irreparable harm without authorization for the relief requested herein. The Debtors require authority to use Cash Collateral and to obtain funds under the DIP Facility prior to the Final Hearing and entry of the

Final Order to continue operating, pay their administrative expenses, implement the relief requested in the Debtors' other "first day" motions, and execute their chapter 11 strategy. This relief will enable the Debtors to preserve and maximize value and, therefore, avoid immediate and irreparable harm and prejudice to their estates and all parties in interest, pending the Final Hearing.

REQUEST FOR BANKRUPTCY RULE 6004 WAIVER

55. To successfully implement the foregoing, the Debtors respectfully request a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the fourteen-day stay imposed by Bankruptcy Rule 6004(h), to the extent such stay is applicable.

NOTICE

56. The Debtors will provide notice of this Motion to: (a) the Office of the United States Trustee for the Southern District of New York; (b) the United States Attorney's Office for the Southern District of New York; (c) the Attorneys General of the State of New York and of the District of Columbia; (d) counsel for the proposed DIP Lender; (e) the Debtors' prepetition lenders or funders, or their counsel; (f) the holders of the 50 largest unsecured claims against the Debtors on a consolidated basis; and (g) any other party that is entitled to notice under Rule 9013-1(c) of the Local Bankruptcy Rules for the Southern District of New York or has requested notice pursuant to Bankruptcy Rule 2002. The Debtors respectfully submit that, in light of the nature of the relief requested, no other or further notice is necessary.

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CONCLUSION

57. The Debtors respectfully request that the Court enter the Interim Order, substantially in the form annexed hereto as **Exhibit A**, and the Final Order granting the relief requested herein and such other and further relief as the Court may deem just and proper.

Dated: August 10, 2026
New York, New York

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Proposed Counsel to the Debtors and Debtors in Possession

EXHIBIT A

(Interim Order)

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRCIT OF NEW YORK

In re: **THE FIREMAN GROUP CAFÉ CONCEPTS, INC., *et al.*,** **Debtors.**[1]	Chapter 11 Case No. 26-11399 (SAB) (Jointly Administered) Re: Docket No. ___

INTERIM ORDER (I) AUTHORIZING THE DEBTORS TO (A) OBTAIN SENIOR SECURED SUPERPRIORITY POSTPETITION FINANCING AND (B) USE CASH COLLATERAL (II) GRANTING LIENS AND PROVIDING CLAIMS WITH SUPERPRIORITYADMINISTRATIVE EXPENSE STATUS, (III) GRANTING ADEQUATE PROTECTIONTO THE PREPETITION SECURED PARTY, (IV) MODIFYING THE AUTOMATIC STAY, (V) SCHEDULING A FINAL HEARING, AND (VI) GRANTING RELATED RELIEF

Upon the motion (the ***"Motion"***)[2] [ECF No. [__]] of The Fireman Group Café Concepts, Inc. and each of its affiliated debtors and debtors in possession (collectively, the ***"Debtors"***) in the above-captioned chapter 11 cases (the ***"Chapter 11 Cases"***), pursuant to sections 105, 361, 362, 363, 364, 503, 506, 507, and 552 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the ***"Bankruptcy Code"***), Rules 2002, 4001, 6003, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the ***"Bankruptcy Rules"***), and Rules 2002-1, 4001-2 and 9013-1 of the Local Bankruptcy Rules of the United States Bankruptcy Court for the Southern District of New

[1]The Debtors and the last four digits of their federal tax identification numbers are: (1) S.M.F. Group Inc. (1726); (2) 57th Street Hospitality Partners, LLC (2026); (3) Brasserie 57 LLC (6251); (4) Broadway Hospitality Venture, LLC (5541); (5) Brooklyn Diner USA, Inc. (1194); (6) Brooklyn Diner USA, L.P. (9292); (7) Cafe Concepts (Washington DC), LLC (3827); (8) Cieli Partners, L.P. (7771); (9) Ebbets Field Venture, LLC (9637); (10) Ebbets Field Venture II, LLC (2344); (11) Fireman Hospitality Card LLC (4763); (12) Fiorello's Roman Cafe, Inc. (2519); (13) Italian Cafe Concepts, LLC (3784); (14) Red Eye/Brooklyn Associates, L.P. (9293); (15) Red Eye Grill, Inc. (1189); (16) Red Eye Grill, L.P. (9291); (17) SFAP Group, LLC (9152); (18) Shelny, LLC (1859); (19) SMJ Group, Inc. (1191); (20) SMJ Group, L.L.C. (3319); (21) The Finer Diner, LLC (1940); and (22) The Fireman Group Café Concepts, Inc. (5919). The Debtors' mailing address is 810 Seventh Avenue, Suite 615, New York, NY 10019.

[2] Each capitalized terms that is not defined in the recitals to this Interim Order and that is not otherwise defined in this Interim Order shall have the meaning ascribed to such term in the DIP Agreement or in **Annex A** to this Interim Order.

York (the ***"Local Bankruptcy Rules"***) promulgated by the United States Bankruptcy Court for the Southern District of New York (the ***"Court"***), seeking entry of an interim order (together with all exhibits hereto, this ***"Interim Order"***) and a final order (the ***"Final Order"*** and, together with the Interim Order, the ***"DIP Orders"***), *inter alia*:

(i) authorizing The Fireman Group Café Concepts, Inc. (in such capacity, the ***"DIP Borrower"***) and the other Credit Parties (as defined in the DIP Agreement (defined below)) (together with the DIP Borrower, the ***"DIP Loan Parties"***) to obtain postpetition, superpriority, senior secured, debtor-in-possession financing (the ***"DIP Facility"***) subject to the terms and conditions set forth in that certain Secured Superpriority Debtor-in-Possession Credit and Security Agreement attached hereto in substantially final form as **Exhibit 1** (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the ***"DIP Agreement"***), by and among the DIP Borrower, the other DIP Loan Parties, and FHGRF LLC, as sole lender (the ***"DIP Lender"*** or the ***"Lender"***) in an aggregate principal amount of up to $6,500,000.00, consisting of:

(a) an Interim New Money DIP Revolving Facility in an aggregate principal amount of up to $1,500,000.00, and in Lender's sole and absolute discretion, an additional $800,000, for a total of $2.3 million to be made available upon satisfaction of the conditions set forth in the DIP Loan Documents and upon entry of this Interim Order (the loans made thereunder, the ***"Interim New Money DIP Revolving Facility"***, and the commitments in respect thereof, the ***"Interim New Money DIP Commitment"***);

(b) during the Interim Period (defined below), upon each advance under the Interim New Money DIP Revolving Facility, a "roll-up" of the Prepetition Secured Obligations (defined below) of the Debtor under the Prepetition Loan Documents (defined below) in an amount equal to two times the amount of such advance (such rolled-up obligations, the "***Interim Roll-Up DIP Loans***", and together with the Interim New Money DIP Revolving Facility, the "***Interim DIP Loans***"), which Interim Roll-Up DIP Loans shall be automatically rolled up, refinanced, and converted into postpetition obligations under the DIP Facility on a cashless, basis in an amount equal to two times the amount funded under the Interim New Money DIP Revolving Facility;

(c) an Additional DIP Revolving Facility to be made available following entry of the Final Order and remittance of required Holdback Amounts (as defined in the DIP Agreement) (the loans made thereunder, the ***"Additional New Money DIP Revolving Facility"***, and together with the Interim New Money DIP Revolving Facility, the ***"New Money DIP Revolving Facility"***); and

(d) following entry of the Final Order, upon each advance of Additional New Money DIP Revolving Facility, a "roll-up" of the Prepetition Secured Obligations of the Debtor under the Prepetition Loan Documents in an amount equal to two times the amount of such advance (such rolled-up obligations, the "***Additional Roll-Up DIP Loans***", and together with the Interim Roll-Up DIP Loans, the "***Rolled-Up DIP Loans***" and together with the New Money DIP Revolving Facility, the "***DIP Loans***"), which Additional Roll-Up DIP Loans shall be automatically rolled up, refinanced, and converted into postpetition obligations under the DIP Facility on a cashless basis in an amount equal to two times the amount funded under the Additional New Money DIP Revolving Facility;

in each case, in accordance with the Approved DIP Budget (as defined below) then in effect (subject to any Permitted Variances (as defined below)) and the terms and conditions set forth in the DIP Loan Documents and the DIP Orders;

(ii) granting to the DIP Lender valid, enforceable, non-avoidable and automatically perfected DIP Liens (as defined below) pursuant to sections 364(c) and 364(d) of the Bankruptcy Code on all DIP Collateral (as defined herein) subject and subordinate only to the Carve Out and Permitted Prior Senior Liens (to the extent applicable);

(iii) authorizing the DIP Loan Parties to (a) execute and deliver the DIP Loan Documents, (b) borrow funds under the DIP Facility pursuant to the terms set forth in the DIP Agreement and this Interim Order, (c) incur the DIP Obligations, and (d) perform such other and further acts as may be necessary, desirable or appropriate in connection therewith;

(iv) authorizing the DIP Loan Parties to use the proceeds of the DIP Loans and Prepetition Collateral (as defined below), including Cash Collateral (as defined below), (a) in accordance with the Approved DIP Budget subject to any Permitted Variances set forth herein and in the DIP Agreement, (b) to provide working capital for, and for other general corporate purposes of, the Debtors, including for funding the Carve Out (as defined below), for payment of any Adequate Protection Obligations (as defined below), and for other permitted uses of proceeds not prohibited by the DIP Loan Documents, in each case, solely in accordance with the Approved DIP Budget, subject to any Permitted Variances, and the terms and conditions of the DIP Agreement and this Interim Order;

(v) subject and subordinate to the Carve Out in all respects, granting to the DIP Lender allowed superpriority administrative expense claim status against each of the Debtors, on a joint and several basis, in each of the Chapter 11 Cases and any Successor Cases (as defined below) pursuant to section 364(c)(1) of the Bankruptcy Code in respect of all DIP Obligations;

(vi) granting adequate protection to the DIP Lender (in its capacity as the holder of the Prepetition Note (as defined below)) (in such capacity, the ***"Prepetition Secured Party"***) to the extent of any Diminution in Value (as defined below) of its liens and security interests in the Prepetition Collateral;

(vii) modifying or vacating the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions set forth in this Interim Order and in the DIP Loan Documents, and waiving any applicable stay (including under Bankruptcy Rule 6004) with respect to the effectiveness and enforceability of this Interim Order, and providing for the immediate effectiveness of this Interim Order;

(viii) scheduling a final hearing (the ***"Final Hearing"***) to consider entry of a Final Order authorizing and approving, among other things, the relief requested in the Motion on a final basis; and

(ix) granting the Debtors such other and further relief as set forth in the Motion;

in each case, in accordance with and subject to the terms and conditions set forth in the DIP Loan Documents and this Interim Order.

The Court having held a hearing to consider entry of this Interim Order (the "***Interim Hearing***"); and the Court having considered the Motion, the *Declaration of Jordan Meyers in Support of the Chapter 11 Proceedings and First Day Pleadings* [ECF No. [__]] (including the exhibits annexed thereto, the **"*First Day and DIP Declaration*"**), the evidence submitted and arguments proffered or adduced at the Interim Hearing, and upon the record of the Chapter 11 Cases; and due and proper notice of the Interim Hearing having been given in accordance with Bankruptcy Rules 2002, 4001 and 9014 and all applicable Local Bankruptcy Rules; and it appearing that no other or further notice need be provided; and all objections, if any, to the relief requested in the Motion having been withdrawn, resolved, or overruled by the Court; and after due deliberation and consideration, and for good and sufficient cause appearing therefor:

THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW[3]:

A. *Petition Date*. On August 9, 2026 (the "***Petition Date***"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in this Court commencing these Chapter 11 Cases.

B. *Debtors in Possession*. The Debtors remain in possession of their property and continue to manage and operate their business and properties as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in any of the Chapter 11 Cases.

C. *Committee Formation*. As of the date hereof, the Office of the United States Trustee (the "U.S. Trustee") has not appointed an official statutory committee of unsecured creditors in the Chapter 11 Cases pursuant to section 1102 of the Bankruptcy Code (the "***Official Committee***").

D. *Jurisdiction and Venue*. This Court has jurisdiction over the Chapter 11 Cases, the Motion, and the parties and property affected hereby pursuant to 28 U.S.C. § 1334. This Court's consideration of the Motion constitutes a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

E. *Statutory Predicates for Relief*. The statutory predicates for the relief set forth herein are sections 105, 361, 362, 363, 364, 503, 506, 507, and 552 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001, 6003, 6004, and 9014, and Local Bankruptcy Rule 4001-2.

[3] The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

F. *Debtors' Stipulations*. Subject only to the rights of parties-in-interest specifically set forth in paragraph 12 of this Interim Order (and subject to the limitations contained therein), the Debtors stipulate and agree as to the following (collectively, the "***Debtors' Stipulations***"):

i. *Prepetition Note*. Pursuant to that certain Second Amended and Restated Secured Demand Promissory Note dated July 31, 2026, by The Fireman Group Café Concepts, Inc. and certain affiliated entities (collectively, the "***Prepetition Obligors***") in favor of FHGRF LLC (in such capacity, the "***Prepetition Secured Party***") (as amended, restated, supplemented, or otherwise modified prior to the Petition Date, the "***Prepetition Note***" and, together with any other agreements, instruments, and documents executed or delivered in connection therewith, each as may be amended, restated, amended and restated, supplemented, waived or otherwise modified prior to the Petition Date, the "***Prepetition Loan Documents***"), and in anticipation of the potential filing of these cases, the Prepetition Secured Party extended prepetition loans and other credit accommodations to and for the benefit of the Prepetition Obligors in an amount of at least $2,378,334.60 (the "***Prepetition Emergency Funding***").

ii. *Prepetition Secured Obligations*. As of the Petition Date, the Prepetition Obligors, without defense, counterclaim, or offset of any kind, were jointly and severally indebted and liable to the Prepetition Secured Party under the Prepetition Loan Documents in the aggregate principal amount of not less than $6,235,147,78 (inclusive of the Prepetition Emergency Funding), plus accrued and unpaid interest thereon and all other fees, costs, expenses, and all other obligations of whatever nature owing, whether or not contingent, whenever arising, accrued, accruing, due, owing, or chargeable in connection with the Prepetition Note under the Prepetition Loan Documents (collectively, the "***Prepetition Secured Obligations***").

iii. *Prepetition Liens*. As set forth more fully in the Prepetition Loan Documents, as of the Petition Date, pursuant to and in connection with the Prepetition Loan Documents, to secure the Prepetition Secured Obligations, the Prepetition Obligors granted to the Prepetition Secured Party valid, binding, non-avoidable, properly perfected and enforceable continuing liens on and security interests (collectively, the "***Prepetition Liens***") in certain assets and property of the Debtors (the "***Prepetition Collateral***").

iv. *Validity, Perfection, and Priority of Prepetition Liens and Prepetition Secured Obligations*. The Debtors acknowledge and agree that, as of the Petition Date, (a) the Prepetition Liens on the Prepetition Collateral were and continue to be valid, binding, enforceable, non-avoidable, and properly perfected and were granted to the Prepetition Secured Party for fair consideration and reasonably equivalent value; (b) the Prepetition Liens were senior in priority over any and all other endoliens on the Prepetition Collateral, subject only to potentially the Permitted Prior Senior Liens (as defined in Annex A); (c) the Prepetition Secured Obligations constitute legal, valid, binding and non-avoidable obligations of the applicable Debtors enforceable in accordance with the terms of the applicable Prepetition Loan Documents; (d) no offsets, recoupments, challenges, objections, defenses, claims, or counterclaims of any kind or nature to any of the Prepetition Liens or Prepetition Secured Obligations exist, and no portion of the Prepetition Liens or Prepetition Secured Obligations is subject to any challenge or defense, including avoidance, disallowance, disgorgement, recharacterization, or subordination (equitable or otherwise) pursuant to the Bankruptcy Code or applicable non-bankruptcy law; (e) the Debtors and their estates have no claims, objections, challenges, causes of action, and/or choses in action, including avoidance claims under chapter 5 of the Bankruptcy Code or applicable state law equivalents, against the Prepetition Secured Party or any of its affiliates, agents, attorneys, advisors, professionals, officers, directors, and employees arising out of, based upon or related to the Prepetition Loan Documents or any payment made to the Prepetition Secured Party prior to the Petition Date; and (f) the Debtors waive, discharge, and release any right to challenge any of the Prepetition Secured Obligations, the priority of the Debtors' obligations thereunder, and the validity, extent, and priority of the Prepetition Liens securing the Prepetition Secured Obligations.

v. *Sale & Credit Bidding*. In connection with any sale process or sale authorized by the Court, the Debtors acknowledge and agree that, subject to the rights preserved in Paragraph 12, the DIP Lender and the Prepetition Secured Party, or any assignee or designee of the foregoing entities, shall have the right to credit bid any or all of the obligations outstanding under the DIP Facility and the Prepetition Loan Documents, as applicable, in connection with any disposition of property of the Estates subject to the provisions of section 363(k) of the Bankruptcy Code, and the Debtors shall not oppose such right.

G. *Findings Regarding DIP Facility and Use of Cash Collateral*.

i. *Need for Immediate Access*. The Debtors have an immediate need to obtain the DIP Facility and to use Cash Collateral, solely to the extent and for the purposes permitted in the Approved DIP Budget, subject to any Permitted Variances, to, among other things, (a) permit the orderly continuation of their business; (b) maintain business relationships with their vendors, suppliers, customers, and other parties; (c) pay certain adequate protection payments, if any, required hereunder; and (d) pay the costs of administration of their estates and satisfy other working capital and general corporate purposes of the Debtors. The ability of the Debtors to obtain sufficient working capital and liquidity through the incurrence of new indebtedness under the DIP Facility is vital to the preservation and maintenance of the Debtors' going-concern value. The Debtors will not have sufficient sources of working capital and financing to operate their business in the ordinary course throughout the Chapter 11 Cases without access to the DIP Facility and the authorized use of Cash Collateral. Immediate and irreparable harm will be caused to the Debtors and their estates if immediate financing is not obtained and permission to use Cash Collateral is not granted.

ii. *Inability to Obtain More Favorable Financing*. The Debtors are unable to obtain financing on more favorable terms from sources other than the DIP Lender under the DIP Loan Documents, and are unable to obtain adequate unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as administrative expense claims. The Debtors also are unable to obtain secured credit allowable under sections 364(c)(1), 364(c)(2), and 364(c)(3) of the Bankruptcy Code for the purposes set forth in the DIP Loan Documents without the Debtors granting the DIP Liens and the DIP Superpriority Claims to the DIP Lender under the terms and conditions set forth in this Interim Order and the other DIP Loan Documents, in each case, subject and subordinate to the Carve Out in all respects.

iii. *Business Judgment*. The terms of the DIP Facility and the DIP Loan Documents are fair and reasonable and reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties, and are entirely fair to the Debtors.

iv. *Good Faith & Fair Dealing*. The DIP Facility and the DIP Loan Documents have been negotiated in good faith and at arm's length among the Debtors and the DIP Lender, and there was fair dealing among the parties, and all of the DIP Obligations shall be deemed to have been extended by the DIP Lender in good faith as that term is used in section 364(e) of the Bankruptcy Code and in express reliance upon the protections offered by section 364(e) of the Bankruptcy Code. The DIP Obligations, the DIP Liens, and the DIP Superpriority Claims shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that this Interim Order or any provision hereof is vacated, reversed, or modified on appeal or otherwise.

v. *Approved DIP Budget*. The Debtors have prepared and delivered to the DIP Lender an initial 13-week cash flow forecast which has been approved by the Lender (the "***Initial DIP Budget***", and as the same may be amended, supplemented, or updated from time to time in accordance with the terms of this Interim Order and the DIP Agreement, the "***Approved DIP Budget***"). A summary of the Initial DIP Budget is set forth on Exhibit 2 as attached hereto. Commencing on the first Friday after entry of this Interim Order and weekly thereafter, the Debtors shall deliver to the Lender an updated 13-week cash flow forecast (each, a "*Proposed DIP Budget*") and thereafter shall provide to the DIP Lender such documentation of any of the line items on the Proposed DIP Budget as may be requested by the DIP Lender. Each Proposed DIP Budget shall be subject to the written approval of the Lender after it receives any documentation it has requested, and, following such approval, shall constitute the Approved DIP Budget; provided that until such time as the Lender approves any Proposed DIP Budget, the Debtors shall be governed by the Initial DIP Budget or such previous Approved DIP Budget as may then be in effect. The Debtors shall not (A) permit weekly disbursements to exceed 110% of aggregate budgeted disbursements for any week, (B) permit operating receipts for any four-week period to be less than 90% of budgeted operating receipts for such period, (C) permit any line-item disbursement category to exceed 115% of the budgeted amount for a single week unless offset by prior underspend in such category, or (D) request borrowings under the Revolving Facilities in an amount exceeding 110% of projected Revolving Facilities outstanding unless otherwise consented to by the Lender (such deviations from the applicable projected amounts set forth in the applicable Approved DIP Budget satisfying (A), (B), (C), and (D), tested on a weekly rolling basis, the "***Permitted Variances***"). For the avoidance of doubt, the Initial DIP Budget shall constitute an Approved DIP Budget.

vi. *Adequate Protection*. (a) The Prepetition Secured Party is entitled, pursuant to sections 105, 361, 362, 363(e), 364(d)(1), and 507 of the Bankruptcy Code, to adequate protection (the "***Adequate Protection***") against the net post-petition diminution in value of its liens and security interests in the Prepetition Collateral, including Cash Collateral (any such net post-petition diminution, to the maximum extent permitted under the Bankruptcy Code, "***Diminution in Value***"). Based on the Motion and on the record presented to the Court, the terms of the proposed Adequate Protection arrangements and of the use of the Prepetition Collateral are fair and reasonable and constitute reasonably equivalent value and fair consideration for the use of the Prepetition Collateral (including the use of Cash Collateral).

(b) The Debtor proposes to provide adequate protection to the Permitted Prior Senior Liens Holders as set forth herein pursuant to sections 361, 362, 363 and 364(d) of the Bankruptcy Code to the extent of any postpetition diminution in value of the prepetition collateral (including Cash Collateral) of such Permitted Prior Senior Liens Holder (if any) from and after the Petition Date resulting from the Debtor's use, sale, or lease of such collateral, including the use of Cash Collateral by the Debtor on a dollar-for-dollar basis. ("***Diminution in Value***"). Based on the Motion and on the record presented to the Court, the terms of the proposed adequate protection for the Permitted Prior Senior Liens Holder constitute adequate protection pursuant to sections 361, 362, 363 and 364 of the Bankruptcy Code.

H. *Immediate Entry; Good Cause Shown*; *Best Interest*. Good cause has been shown for immediate entry of this Interim Order. The entry of this Interim Order is in the best interests of the Debtors' respective estates and creditors as its implementation will, among other things, allow for the continued operation of the Debtors' existing business and enhance the Debtors' prospects for a successful reorganization. Absent the relief sought by this Interim Order, the Debtors' estates will be immediately and irreparably harmed.

I. *Permitted Prior Senior Liens; Continuation of Prepetition Liens*. Notwithstanding anything to the contrary set forth herein, the DIP Liens and the Adequate Protection Liens shall be subject and subordinate to the Permitted Prior Senior Liens; provided, however, nothing herein shall constitute a finding or ruling by this Court that any lien on the assets of the Debtors alleged to be a Permitted Prior Senior Lien is valid, senior, enforceable, prior, perfected or non-avoidable. Moreover, nothing herein shall prejudice the rights of any party-in-interest, including the Debtors or the DIP Lender, to challenge the validity, priority, enforceability, seniority, avoidability, perfection or extent of any alleged Permitted Prior Senior Lien. The right of a seller of goods to reclaim such goods under section 546(c) of the Bankruptcy Code is not a Permitted Prior Senior Lien and is expressly subject to the DIP Liens. The Prepetition Liens and the DIP Liens are liens on the Prepetition Collateral or the DIP Collateral, respectively, and the Prepetition Collateral and the DIP Collateral (as applicable) are and will continue to be encumbered by the applicable Prepetition Liens or DIP Liens.

J. *Notice.* The Interim Hearing was held pursuant to Bankruptcy Rule 4001(b)(2) and (c)(2). Proper, timely, adequate, and sufficient notice of the Motion and the Interim Hearing has been provided in accordance with the Bankruptcy Code, the Bankruptcy Rules, and the Local Bankruptcy Rules, and no other or further notice of the Motion with respect to the relief requested at the Interim Hearing or the entry of this Interim Order shall be required.

NOW, THEREFORE, based upon the Motion, the First Day and DIP Declaration, the evidence adduced at the Interim Hearing and the record before the Court, and after due consideration, and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. *Motion Granted.* The Motion is hereby granted on an interim basis, entry into the DIP Agreement and other DIP Loan Documents is authorized and approved and the use of Cash Collateral is hereby authorized, in each case, upon the terms and conditions set forth in this Interim Order and the DIP Loan Documents. Any objections to the relief set forth in this Interim Order that have not been withdrawn, waived, settled, or resolved are hereby denied and overruled with prejudice. This Interim Order shall become effective and enforceable immediately upon its entry.

2. *Authorization of DIP Facility and DIP Loan Documents.*

(a) *Authorization of DIP Loan Documents.* The DIP Loan Parties are hereby authorized and empowered to execute, enter into and deliver, and perform all their obligations under the DIP Loan Documents and such additional documents, instruments, certificates, and agreements as may be reasonably necessary, required, appropriate, or desirable to perform their obligations under the DIP Facility and this Interim Order and to implement the transactions contemplated thereunder and hereunder.

(b) *Authorization to Borrow.* The DIP Borrower is hereby authorized to borrow and incur the DIP Loans under the DIP Facility, and each of the other DIP Loan Parties is hereby authorized to guarantee such borrowing and incurrence and other DIP Obligations on a joint and several basis, in each case subject to the terms and conditions set forth in the DIP Loan Documents and this Interim Order without the need to seek further Court approval. Upon entry of this Interim Order, the DIP Borrower may draw up to $1,500,000.00 and, in Lender's sole and absolute discretion, an additional $800,000, for a total of $2,300,000.00 in Interim New Money DIP Revolving Facility, subject to satisfaction of conditions precedent in the DIP Agreement, delivery of a Borrowing Request by noon one (1) Business Day before the requested borrowing date (unless the Lender otherwise agrees), and compliance with the Approved DIP Budget.

(c) *Use of DIP Collateral and Prepetition Collateral.* The Debtors are hereby authorized to use the proceeds of the DIP Loans and any Prepetition Collateral (including Cash Collateral) of the Prepetition Secured Party solely to the extent and for the purposes permitted in the Approved DIP Budget (subject to Permitted Variances), subject to the terms and conditions set forth in the DIP Loan Documents and this Interim Order.

(d) *DIP Fees and Expenses; Indemnification.* Subject to paragraph 2(b) of this Interim Order, the DIP Loan Parties are hereby authorized and empowered to pay all DIP Obligations as such amounts become due and payable in accordance with this Interim Order and the DIP Loan Documents without the need for further order of the Court. The DIP Loans shall bear interest at the rate of 12.00% per annum, payable in kind (the ***"Interest Rate"***). Upon the occurrence and during the continuance of an Event of Default, the DIP Obligations shall bear interest at the Default Rate equal to the Interest Rate plus 4.00% per annum. Without limiting the foregoing, the DIP Loan Parties are hereby authorized and empowered to indemnify the DIP Lender (and its affiliates, officers, directors, attorneys, agents, and employees) as and to the extent provided under the DIP Agreement and to pay or reimburse all out-of-pocket costs and expenses incurred by the DIP Lender, including the reasonable and documented fees and expenses of Pullman & Comley, LLC, legal counsel to the DIP Lender (collectively, the ***"DIP Professional Fees and Expenses"***).

(e) *Amendment of DIP Loan Documents.* The DIP Loan Parties are hereby authorized and empowered to execute, enter into and deliver, and perform under one or more amendments, waivers, consents or other modifications to and under the DIP Loan Documents (in each case, in accordance with the terms of the applicable DIP Loan Documents); *provided*, *however*, that a copy of all amendments, waivers, consents or other modifications to and under the DIP Loan Documents (other than the Approved DIP Budget) shall be provided to the U.S. Trustee and counsel to the Official Committee (if appointed) no later than two (2) Business Days prior to the anticipated date of effectiveness thereof; *provided further*, *however*, that any amendment that shortens the maturity or increases the aggregate commitments or the rate of interest payable thereunder (a **"*Material DIP Amendment*"**) shall be filed with the Court and, if no objection is made within two (2) Business Days of such filing, shall automatically be deemed approved; *provided*, if an objection is made, such Material DIP Amendment shall be subject to hearing and approval of the Court.

(f) *Maturity Date.* The DIP Facility shall mature on the earliest to occur of (i) December 31, 2026, (ii) the date on which this Interim Order expires if the Final Order has not been entered within thirty-five (35) days after the Petition Date, (iii) the conversion of any of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code, (iv) the effective date of a chapter 11 plan confirmed in the Chapter 11 Cases, and (v) the acceleration of the DIP Loans (the earliest of such dates, the ***"Maturity Date"***).

3. *DIP Obligations.*

(a) Upon execution and delivery thereof, the DIP Loan Documents shall constitute valid, binding, enforceable, and non-avoidable obligations of each of the DIP Loan Parties, and shall be fully enforceable against each of the DIP Loan Parties, their estates, and any successors thereto, including, without limitation, any estate representative or trustee appointed in any of the Chapter 11 Cases, in any case under chapter 7 of the Bankruptcy Code upon the conversion of any of the Chapter 11 Cases, and/or upon the dismissal of any of the Chapter 11 Cases or any such successor cases (collectively, the ***"Successor Cases"***), in each case, in accordance with the terms of the DIP Loan Documents and this Interim Order.

(b) Upon execution and delivery thereof, the DIP Loan Parties shall be jointly and severally liable for any and all DIP Obligations. The DIP Obligations shall be due and payable, without notice or demand, on the DIP Termination Declaration Date (as defined below) (subject to paragraph 10 hereof); upon the occurrence of the DIP Termination Declaration Date, the Debtors' rights to use Cash Collateral shall be permitted solely pursuant to paragraph 10(c).

(c) All obligations incurred, payments made, and transfers or grants of liens and security interests set forth in this Interim Order and the DIP Loan Documents by the DIP Loan Parties are granted to or for the benefit of the DIP Lender and the Prepetition Secured Party for fair consideration and reasonably equivalent value and are granted contemporaneously with the making of the loans and commitments and other financial accommodations secured thereby.

(d) Except to the extent necessary to cover any cash shortfalls to pay disbursements authorized under the Budget, any and all Holdback Amounts received by the Debtors during the term of this Interim Order or until the entry of a Final Order shall be held by the Debtors in a segregated account to be applied to the Prepetition Secured Obligations pursuant to Additional DIP Revolving Facility, subject to the Final Order of the Court.

4. *DIP Liens.*

(a) As security for the DIP Obligations, effective as of the entry of this Interim Order (and without the necessity of the execution, recordation or filing by the DIP Loan Parties or the

DIP Lender of any pledge, collateral or security documents, mortgages, deeds of trust, financing statements, notations of certificates of title, control agreements or other similar documents, or the taking of any other action to take possession of or control over any DIP Collateral), the DIP Lender is hereby granted valid, binding, enforceable, non-avoidable, and automatically and properly perfected liens and security interests (collectively, the ***"DIP Liens"***) in all DIP Collateral, in each case, subject and subordinate to the Carve Out in all respects, and subject to the relative priorities set forth in this Interim Order. For the avoidance of doubt, the DIP Collateral shall include the Debtors' commercial tort claims against merchant cash advance lenders, future receivables, and revenue-based financing funders and related affiliates and parties, and claims against Hilton Grand Vacations Management, LLC and related Hilton Club entities and their affiliates, principals, members, officers, and agents, together with all proceeds, products, substitutions, recoveries, judgments, settlements, and distributions in respect thereof. Notwithstanding the foregoing, any liens on Avoidance Action Proceeds shall be subject to and effective only upon entry of the Final Order.

(b) The DIP Liens shall be subject to the following priorities (in each case subject and subordinate to the Carve Out in all respects):

> (i) First Lien on Unencumbered Property. Pursuant to section 364(c)(2) of the Bankruptcy Code, valid, binding, continuing, enforceable, fully perfected first priority senior security interests in and liens upon all DIP Collateral, to the extent such DIP Collateral is not subject to valid, perfected, and non-avoidable liens as of the Petition Date (including the Prepetition Liens and Permitted Prior Senior Liens) or valid and non-avoidable liens in favor of third parties that were in existence immediately prior to the Petition Date that are perfected as permitted by section 546(b) of the Bankruptcy Code (or that becomes unencumbered upon the satisfaction of any prior secured obligations of the Debtors or release or invalidation of any prior security interests), which security interests and liens shall be subject and subordinate in all respects to the Carve Out; and

(ii) Liens Junior to the Permitted Prior Senior Liens. Pursuant to section 364(c)(3) of the Bankruptcy Code, valid, binding, continuing, enforceable, fully perfected junior security interests in and liens on the DIP Collateral to the extent such DIP Collateral is subject to Permitted Prior Senior Liens, which security interests and liens shall be subject and subordinate in all respects to the Carve Out.

Other than as set forth above, the DIP Liens: (i) shall be senior to all security interests in, liens on, or claims against any of the DIP Collateral (subject and subordinate to the Carve Out in all respects), including any lien or security interest that is avoided or preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code; (ii) shall be valid and enforceable (a) against any trustee appointed in the Chapter 11 Cases or any Successor Case, (b) upon the conversion of any of the Chapter 11 Cases to any Successor Case, and/or (c) upon the dismissal or conversion of any of the Chapter 11 Cases or Successor Cases; (iii) shall not be made subject to or *pari passu* with any lien or security interest heretofore or hereinafter granted in the Chapter 11 Cases or any Successor Cases; and (iv) shall not be subject to any of sections 510, 549, or 550 of the Bankruptcy Code.

5. *DIP Superpriority Claims.* Subject only to the Carve Out, pursuant to section 364(c)(1) of the Bankruptcy Code, all of the DIP Obligations shall constitute allowed superpriority administrative expense claims against each of the Debtors' estates (without the need to file any proof of claim) to the extent set forth in the Bankruptcy Code (the ***"DIP Superpriority Claims"***), having priority in right of payment over any and all other obligations, liabilities, and indebtedness of any of such Debtors, whether now in existence or hereafter incurred by any of such Debtors, of every kind or nature, including any and all unsecured claims, administrative expenses, adequate protection claims, priority claims or any other claims of the kind specified in, or ordered pursuant to, the Bankruptcy Code, including without limitation, sections 105, 326, 327, 328, 330, 331, 361, 362, 363, 364, 365, 503(a), 503(b), 506(c) (upon entry of the Final

Order), 507, 546(c), 552(b), 726, 1113, or 1114 of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment, which allowed DIP Superpriority Claims shall for purposes of section 1129(a)(9)(A) of the Bankruptcy Code be considered administrative expenses allowed under sections 503(b) and 507(a)(2) of the Bankruptcy Code and which shall be payable from and have recourse to all prepetition and postpetition property of the Debtors and all proceeds thereof, including all applicable DIP Collateral, subject and subordinate to the payment of the Carve Out as provided for herein and pursuant to the DIP Loan Documents.

6. *Adequate Protection.* The Prepetition Secured Party is entitled, pursuant to sections 361, 362, 363(e), 364(d)(1) and 507 of the Bankruptcy Code, to Adequate Protection of its Prepetition Liens in Prepetition Collateral (including Cash Collateral), as follows (collectively, the ***"Adequate Protection Obligations"***):

(a) *Adequate Protection Claims.* The Prepetition Secured Party is hereby granted, in the amount of any Diminution in Value of the Prepetition Liens in the Prepetition Collateral (including Cash Collateral) from and after the Petition Date, superpriority administrative expense claims to the extent contemplated by section 507(b) of the Bankruptcy Code (the ***"Adequate Protection Claims"***) against each of the Debtors. The Adequate Protection Claims shall be (a) subject and subordinate only to the Carve Out and the DIP Superpriority Claims, and (b) senior to any and all other administrative expense claims and all other claims against the Debtors and their estates, now existing or hereafter arising, of any kind or nature whatsoever.

(b) *Adequate Protection Claims for Permitted Prior Senior Liens.* The Permitted Prior Senior Liens Holders shall receive replacement liens under sections 361 and 363 on all postpetition property to the same extent, validity and priority as their prepetition liens had as of the Petition Date, solely to the extent of any diminution in value resulting from the Debtor's use of their Collateral (but subject to the DIP Liens and Carve Out). Such replacement liens shall be deemed valid, binding, perfected, and enforceable upon entry of this Interim Order, without the necessity of the execution or filing of security agreements, financing statements, mortgages, notices, or any other documents, or the taking of any further action by any party (but subject to a determination as to the validity, priority, and extent of such Permitted Prior Senior Liens).

(c) *Adequate Protection Liens.* The Prepetition Secured Party is hereby granted, effective and perfected as of the entry of this Interim Order, in the amount of any Diminution in Value of the Prepetition Liens in the Prepetition Collateral (including Cash Collateral) from and after the Petition Date, valid, binding, enforceable and automatically perfected replacement liens and security interests in the DIP Collateral (the ***"Adequate Protection Liens"***). The Adequate Protection Liens shall be senior to all other liens on, or claims against any of the DIP Collateral, but subject and subordinate only to (i) the Carve Out in all respects and (ii) the DIP Liens, it being understood that notwithstanding anything to the contrary in this Interim Order or the Final Order, in no circumstances and at no time in these Chapter 11 Cases or in any Successor Case shall the Adequate Protection Liens be senior to or *pari passu* with any DIP Liens, regardless of whether any such liens attach prior in time.

(d) *Adequate Protective Liens for Permitted Prior Senior Liens.* Permitted Prior Senior Liens Holders shall receive a superpriority administrative expense claim under section 507(b) of the Bankruptcy Code, subordinate only to DIP Claims, including DIP Superpriority Claims and the Carve Out, solely to the extent that (i) the Permitted Prior Senior Liens Holder is determined to hold valid, perfected, and enforceable prepetition liens and claims, (ii) the Debtor's use of Cash Collateral results in a diminution in the value of such secured creditor's interest in the prepetition Collateral, and (iii) the other forms of adequate protection provided such secured creditor are determined to be insufficient to protect against any such diminution in value.

(e) *Adequate Protection Professional Fees and Expenses.* The DIP Loan Parties are authorized and directed to pay all of the reasonable and documented out-of-pocket fees, costs and expenses of the Prepetition Secured Party, including, without limitation, the reasonable and documented fees and expenses of Pullman & Comley, LLC, legal counsel to the Prepetition Secured Party (the ***"Adequate Protection Professional Fees and Expenses"***), incurred since the Petition Date and relating in any way to the provision of legal services related to the Prepetition Secured Obligations, the Debtors, or the Chapter 11 Cases. The Adequate Protection Professional Fees and Expenses shall be subject to the review procedures set forth in paragraph 7 of this Interim Order.

7. *Reporting.* The Debtors shall provide counsel to the Official Committee (if appointed) with all written reports delivered to the DIP Lender under the DIP Loan Documents and this Interim Order.

8. *Review of Professional Fees and Expenses.* The payment of all DIP Professional Fees and Expenses and Adequate Protection Professional Fees and Expenses hereunder shall be made without the necessity of filing fee applications with the Court or compliance with the U.S. Trustee's guidelines and shall not be subject to further application to or approval of the Court; *provided*, *however*, that each such professional shall provide summary copies of its invoices (which may be redacted or modified to the extent necessary to delete any information subject to the attorney-client privilege or attorney work product) to counsel to the Debtors, the U.S. Trustee, and counsel to the Official Committee (if appointed) (collectively, the ***"Review***

Parties"). Any objections raised by any Review Party must be in writing and submitted to the affected professional within seven (7) calendar days after delivery of such invoices (the ***"Review Period"***). If no written objection is received prior to the expiration of the Review Period, the Debtors shall promptly pay such invoices. If an objection is received within the Review Period, the Debtors shall promptly pay the undisputed amount and the disputed portion shall not be paid until resolved by agreement or by order of this Court.

9. *Modification of Automatic Stay.* The automatic stay imposed by section 362(a) of the Bankruptcy Code (the ***"Automatic Stay"***) is hereby vacated and modified, without application to or further order of this Court, to permit: (a) the DIP Loan Parties to grant the DIP Liens and the DIP Superpriority Claims, and to perform such acts as the DIP Lender may request to assure the perfection and priority of the DIP Liens, (b) the DIP Loan Parties to incur all DIP Obligations as contemplated under this Interim Order and the DIP Loan Documents, (c) the Debtors to grant the Adequate Protection Liens and the Adequate Protection Claims, and to perform such acts as the Prepetition Secured Party requests to ensure the perfection and priority of the Adequate Protection Liens, (d) subject to paragraph 11 of this Interim Order, the DIP Lender and the Prepetition Secured Party to exercise, upon the occurrence of any DIP Termination Event (as defined below), all rights and remedies provided for in this Interim Order, the DIP Loan Documents, the Prepetition Loan Documents or applicable law, and (e) the DIP Loan Parties to perform under this Interim Order and the DIP Loan Documents, and to take any and all other actions that may be reasonably necessary or required.

10. *Perfection of DIP Liens and Adequate Protection Liens.*

(a) This Interim Order shall be sufficient and conclusive evidence of the attachment, validity, perfection, and priority of all liens and security interests granted hereunder and under the DIP Loan Documents, without the necessity of the execution, recordation or filing of any pledge, collateral or security agreements, mortgages, deeds of trust, control agreements, financing statements, notations of certificates of title for titled goods, or any other document or instrument, or the taking of any other action to attach, validate, perfect or prioritize such liens and security interests.

(b) The DIP Lender and the Prepetition Secured Party are each authorized, but not required, to execute, file, and record financing statements, trademark filings, copyright filings, mortgages, notices of lien, or similar instruments in any jurisdiction in order to validate, perfect, preserve, and enforce the liens and security interests granted to them hereunder or under the DIP Loan Documents. Whether or not the DIP Lender or the Prepetition Secured Party determines to take any such action, such liens and security interests shall nonetheless be deemed valid, perfected, allowed, enforceable, non-avoidable, and shall not be subject to challenge, dispute, or subordination as of the entry of this Interim Order.

11. *DIP Termination Events; Exercise of Remedies.*

(a) *DIP Termination Events.* Subject to any obligations under the Carve Out and any applicable grace period under the DIP Loan Documents and this Interim Order, the occurrence of an "Event of Default" under and as defined in the DIP Agreement shall constitute a ***"DIP Termination Event"***, unless waived in writing by the DIP Lender, which waiver may be evidenced by electronic mail from counsel to the DIP Lender to counsel to the Debtors.

(b) *Exercise of Remedies.* Upon the occurrence and during the continuation of a DIP Termination Event, without further application, notice, hearing or order of the Court, the Automatic Stay shall automatically be deemed vacated and modified to the extent necessary to permit the DIP Lender to deliver a written notice (which may be via electronic mail) to counsel for the Debtors, the U.S. Trustee, and counsel for the Official Committee (if appointed) (the ***"Remedies Notice"***) to declare the occurrence of a DIP Termination Event (such date, the ***"DIP Termination Declaration Date"***) and, subject to the Carve Out in all respects and effective no sooner than seven (7) calendar days following the DIP Termination Declaration Date (the ***"Remedies Notice Period"***), (i) terminate, reduce or restrict the commitments under the DIP Facility, (ii) accelerate and declare all DIP Obligations to be immediately due and payable, (iii) terminate the DIP Facility and the DIP Loan Documents as to any further liability or obligation thereunder, (iv) terminate, restrict or revoke the ability of the Debtors to use Cash Collateral, (v) charge interest at the Default Rate, and/or (vi) exercise or enforce any rights against DIP Collateral or Prepetition Collateral; *provided*, *however*, that the DIP Loan Parties and the Official Committee (if appointed) shall, during the Remedies Notice Period, be entitled to seek emergency relief before the Court, subject to the Court's availability (***"Emergency Motion"***) (in which case, the Remedies Notice Period shall automatically extend until the Court's adjudication of such Emergency Motion). Unless the Court orders otherwise, upon the expiration of the Remedies Notice Period the Automatic Stay shall automatically be deemed terminated.

(c) *Use of Cash Collateral During Remedies Notice Period.* During the Remedies Notice Period, the Debtors shall be permitted to use Cash Collateral solely to (i) fund payroll and critical expenses that are necessary to keep the Debtors' business operating or that have been consented to by the DIP Lender, (ii) fund the Carve Out, and (iii) file an Emergency Motion.

(d) *No Waiver for Failure to Seek Relief.* The failure or delay of the DIP Lender or the Prepetition Secured Party to exercise their respective rights and remedies under this Interim Order, the DIP Loan Documents, the Prepetition Loan Documents, or applicable law, as the case may be, shall not constitute a waiver of their respective rights hereunder, thereunder, or otherwise.

12. *Carve Out.*

(a) *Priority of Carve Out.* For the avoidance of doubt and notwithstanding anything to the contrary in this Interim Order, the DIP Loan Documents and the Prepetition Loan Documents, each of the DIP Liens, the DIP Superpriority Claims, the Prepetition Liens, the Adequate Protection Liens, the Adequate Protection Claims and any and all other forms of adequate protection, liens, or claims securing the DIP Obligations or the Prepetition Secured Obligations shall be subject and subordinate to payment of the Carve Out in all respects.

(b) *Carve Out.* The term **"*Carve Out*"** means the sum of (i) all unpaid fees required to be paid to the Clerk of the Court and the U.S. Trustee under 28 U.S.C. § 1930(a) plus interest at the statutory rate pursuant to 31 U.S.C. § 3717, (ii) all unpaid reasonable fees and expenses up to $25,000 incurred by a trustee appointed under section 726(b) of the Bankruptcy Code, (iii) to the extent allowed by the Court at any time and in an amount consistent with the Approved DIP Budget, all accrued but unpaid fees and expenses (the ***"Allowed Professional Fees"***) incurred by persons or firms retained by the Debtors pursuant to section 327, 328, or 363 of the Bankruptcy Code (the ***"Debtor Professionals"***) and the Official Committee (if appointed) pursuant to section 328 or 1103 of the Bankruptcy Code (the ***"Committee Professionals"*** and, together with the Debtor Professionals, the ***"Professional Persons"***) at any time on and before the first Business Day following delivery by the DIP Lender of a Carve Out Trigger Notice (as defined below), and (iv) Allowed Professional Fees of Professional Persons incurred after the first Business Day of delivery of the Carve Out Trigger Notice, in an aggregate amount not to exceed $250,000 (the ***"Post-Carve Out Notice Amount"***).

(c) *Carve Out Trigger Notice.* For purposes of this Interim Order, the ***"Carve Out Trigger Notice"*** shall mean a written notice (which may be via electronic mail) delivered by the DIP Lender to Debtors' lead counsel, the U.S. Trustee, and lead counsel to any Official Committee (if appointed), which notice may be delivered following the occurrence of a DIP Termination Event, stating that the Carve Out has been triggered and the Post-Carve Out Notice Amount has been invoked. The Carve Out Trigger Notice may be included in a Remedies Notice.

(d) *Carve Out Reserves.* On the date on which a Carve Out Trigger Notice is given by the DIP Lender (the ***"Carve Out Trigger Date"***), the Carve Out Trigger Notice shall constitute a demand to the Debtors to fund or make available to the Professional Persons to the extent funded the following segregated reserves: (i) a reserve equal to all then-unpaid estimated Allowed Professional Fees (whether or not already approved by the Court) incurred on and before the Carve Out Trigger Date, in an amount not to exceed the amounts set forth in the Approved DIP Budget for the payment of such Professionals through the date of delivery of the Carve Out Trigger Notice (the ***"Pre-Carve Out Trigger Notice Reserve"***), and (ii) a reserve equal to the Post-Carve Out Notice Amount (the ***"Post-Carve Out Trigger Notice Reserve"*** and, together with the Pre-Carve Out Trigger Notice Reserve, the ***"Carve Out Reserves"***). Following delivery of a Carve Out Trigger Notice, the DIP Lender shall not sweep or foreclose on cash of the Debtors until the Carve Out Reserves have been fully funded. The Carve Out Reserves shall not be subject to the DIP Liens or the Adequate Protection Liens. Upon an Event of Default, the Debtors may use proceeds of the DIP Facility or Cash Collateral to fund, subject to the Budget, the Carve Out and the Carve Out Reserves.

(e) *No Direct Obligation to Pay Allowed Professional Fees.* The DIP Lender and the Prepetition Secured Party shall not be responsible for the payment or reimbursement of any fees or disbursements of any Professional Person incurred in connection with the Chapter 11 Cases or any Successor Cases. Nothing in this Interim Order shall be construed to obligate the DIP Lender or the Prepetition Secured Party to pay compensation to, or to reimburse expenses of, any Professional Person.

13. *Effect of the Debtors' Stipulations on Third Parties.*

(a) The Debtors' Stipulations shall be binding upon the Debtors and any successor thereto immediately upon entry of this Interim Order. The Debtors' Stipulations shall be binding upon all parties-in-interest, including, without limitation, the Official Committee (if appointed), any statutory or non-statutory committees appointed or formed in the Chapter 11 Cases, and any other person or entity seeking to act on behalf of the Debtors' estates (including any chapter 7 or chapter 11 trustee or examiner appointed or elected for any of the Debtors) (collectively, ***"Successor Entities"***), unless the Official Committee (if appointed) or such other party-in-interest (i) files a motion seeking the requisite standing and authority to bring the Challenge (if and to the extent standing is required) prior to the Challenge Deadline (as defined below), which motion shall describe the specific nature and basis of the Challenge, (ii) timely and properly commences and serves an adversary proceeding or contested matter (each, a ***"Challenge Proceeding"***) by no later than the Challenge Deadline, asserting a Challenge with respect to the amount, validity, perfection, enforceability, priority, scope or extent of the Prepetition Secured Obligations, the Prepetition Liens, or the Prepetition Collateral, and (iii) obtains a final non-appealable order sustaining such Challenge.

(b) The ***"Challenge Deadline"*** means the earlier of (i) for all parties in interest (including the Official Committee, a chapter 7 trustee or chapter 11 trustee), the date that is the earlier of (A) sixty (60) days after formation of the Official Committee or, if no Official Committee has been appointed, seventy-five (75) days after entry of this Interim Order, and (B) confirmation of a chapter 11 plan; *provided*, *however*, that the foregoing deadlines shall be without prejudice to any provisions of the Final Order; or (ii) any such later date as (x) has been agreed to by the Debtors and the Prepetition Secured Party and (y) has been ordered by the Court for cause.

(c) If no such Challenge Proceeding is timely and properly filed by the Challenge Deadline, then (i) each of the Debtors' Stipulations shall be binding on all parties-in-interest, (ii) the Prepetition Secured Obligations shall constitute allowed claims and the Prepetition Liens shall be deemed legal, valid, binding, continuing, non-avoidable, perfected and enforceable, (iii) the Prepetition Secured Obligations and the Prepetition Liens shall not be subject to any further Challenge by any person or entity, and (iv) any and all Challenges shall be deemed forever waived, released and barred.

14. *Limitations on Use of DIP Facility, DIP Collateral, Cash Collateral, and Carve Out.* None of the DIP Facility, the DIP Collateral, the Prepetition Collateral (including Cash Collateral) or the proceeds thereof, or any portion of the Carve Out, may be used directly or indirectly (a) to investigate (except as expressly provided herein), initiate, prosecute, join, or finance any claim or action against the DIP Lender or the Prepetition Secured Party or seeking relief that would impair their rights or remedies under the DIP Loan Documents, this Interim Order, or the Prepetition Loan Documents; (b) for objecting to or challenging the legality, validity, priority, perfection, or enforceability of the claims, liens, or interests of the Prepetition

Secured Party or the DIP Lender; (c) for asserting any Avoidance Actions related to the DIP Liens, the DIP Superpriority Claims, the DIP Obligations, the Prepetition Liens, or the Prepetition Secured Obligations; or (d) for prosecuting an objection to or contesting the validity, extent, amount, perfection, priority, or enforceability of any DIP Liens, DIP Superpriority Claims, Prepetition Secured Obligations, Prepetition Liens, Adequate Protection Claims, or Adequate Protection Liens; *provided*, that, no more than $50,000 (the ***"Challenge Budget"***) of the DIP Collateral, the Prepetition Collateral, or the DIP Facility, in the aggregate, may be used by the Official Committee (if appointed) solely to investigate (but not to prosecute) the foregoing matters with respect to the Prepetition Liens or the Prepetition Secured Obligations within the Challenge Deadline.

15. *Payments Held in Trust.* Except as expressly permitted in this Interim Order or the DIP Loan Documents, in the event that any person or entity receives any payment on account of a security interest in DIP Collateral or receives any DIP Collateral or proceeds thereof prior to payment in full in cash of all DIP Obligations and termination of the DIP Facility, such person or entity shall hold any such payment in trust for the benefit of the DIP Lender and shall immediately turn over such proceeds to the DIP Lender for application in accordance with the DIP Loan Documents and this Interim Order.

16. *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 Secured Party is insufficient to compensate for any Diminution in Value of its interests in the Prepetition Collateral during the Chapter 11 Cases.

17. *Binding Effect; Successors and Assigns.* Immediately upon entry of this Interim Order, subject to paragraph 13, the DIP Loan Documents and this Interim Order, including all

findings of fact and conclusions of law herein, shall be binding upon all parties-in-interest in the Chapter 11 Cases and any Successor Cases, including without limitation, the DIP Lender, the Prepetition Secured Party, the Official Committee (if appointed) or any other statutory or non-statutory committee appointed or formed in the Chapter 11 Cases and any Successor Cases, and their respective successors and assigns (including any chapter 11 trustee or chapter 7 trustee or examiner appointed or elected in the Chapter 11 Cases or any Successor Cases).

18. *Protection of the Debtors, the DIP Lender, and the Prepetition Secured Party.*

(a) *Reservation of Rights.* Except as otherwise expressly set forth in this Interim Order, the entry of this Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, or otherwise impair: (i) any of the rights of the Prepetition Secured Party to seek any other or supplemental relief in respect of the Debtors, including the right to seek additional adequate protection; (ii) any of the rights of the DIP Lender or the Prepetition Secured Party under the Bankruptcy Code or under non-bankruptcy law, including, without limitation, the right to (A) request modification of the Automatic Stay, (B) request dismissal or conversion of any of the Chapter 11 Cases, or appointment of a chapter 11 trustee or examiner, or (C) seek to propose a chapter 11 plan; or (iii) any other rights, claims, or privileges of the DIP Lender or the Prepetition Secured Party.

(b) *No Waiver for Failure to Seek Relief.* The failure or delay of the DIP Lender or the Prepetition Secured Party to exercise their respective rights and remedies under this Interim Order, the DIP Loan Documents, the Prepetition Loan Documents, or applicable law shall not constitute a waiver of their respective rights.

19. *Preservation of Rights Granted Under Interim Order.*

(a) Subject to the Carve Out, Permitted Prior Senior Liens, and this Interim Order, the DIP Liens shall not be made subject to, junior to, or *pari passu* with (A) any lien or security interest granted in any of the Chapter 11 Cases arising after the Petition Date or (B) any lien or security interest that is avoided and preserved for the benefit of the Debtors' estates under section 551 of the Bankruptcy Code, and no claim shall be granted for any administrative expense, secured claim, or unsecured claim against any of the Debtors with priority superior to or equal to the DIP Superpriority Claims.

(b) If any or all of the provisions of this Interim Order are hereafter reversed, modified, vacated, or stayed, such reversal, modification, vacatur, or stay shall not affect (i) the validity, priority or enforceability of any DIP Obligations or Adequate Protection Obligations incurred prior to the actual receipt of written notice by the DIP Lender of the effective date of such reversal, modification, vacatur, or stay; or (ii) the validity, priority, or enforceability of the DIP Liens or the Adequate Protection Liens. The DIP Lender and the Prepetition Secured Party shall be entitled to all the rights, remedies, privileges and benefits granted in sections 364(e) and 363(m) of the Bankruptcy Code.

(c) Notwithstanding any order dismissing any of the Chapter 11 Cases under section 1112 of the Bankruptcy Code: (i) the DIP Superpriority Claims, the Adequate Protection Claims, the DIP Liens, and the Adequate Protection Liens shall continue in full force and effect and maintain their priorities until all DIP Obligations and Adequate Protection Obligations have been paid in full; (ii) the other rights granted by this Interim Order shall not be affected; and (iii) this Court shall retain jurisdiction for the purposes of enforcing such claims, liens and security interests.

(d) The DIP Liens, the DIP Superpriority Claims, the Adequate Protection Liens, and all other rights and remedies of the DIP Lender and the Prepetition Secured Party granted by this Interim Order shall survive, maintain their priority, and shall not be modified, impaired, or discharged by: (i) conversion or dismissal of any of the Chapter 11 Cases; (ii) the entry of an order approving the sale of any DIP Collateral pursuant to section 363(b) of the Bankruptcy Code (except to the extent permitted by the DIP Loan Documents); or (iii) the entry of an order confirming a chapter 11 plan.

20. *Insurance.* Upon entry of this Interim Order, the DIP Lender shall be deemed to be, without any further action or notice, named as an additional insured and lender's loss payee on each insurance policy maintained by the Debtors which in any way relates to the DIP Collateral.

21. *Interim Order Controls.* In the event of any conflict or inconsistency between or among the provisions of this Interim Order and any of the Motion, the DIP Loan Documents, the Prepetition Loan Documents, or any other order entered by this Court (other than the Final Order, when entered), unless such provision in this Interim Order is phrased in terms of "defined in" or "as set forth in" the DIP Agreement or the DIP Loan Documents, the provisions of this Interim Order shall govern and control.

22. *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 or indirect incidental beneficiary.

23. *Retention of Jurisdiction.* The Court retains jurisdiction to hear, determine, and enforce the terms of any and all matters arising from or related to the DIP Facility, the DIP Loan Documents, and this Interim Order.

24. *Effectiveness.* This Interim Order shall constitute findings of fact and conclusions of law and shall take effect and be fully enforceable immediately upon entry hereof. Notwithstanding Bankruptcy Rules 4001(a)(3), 4001(c)(1), 6004(h), 6006(d), 7062, or 9024, any other Bankruptcy Rule, or Rule 62(a) of the Federal Rules of Civil Procedure, this Interim Order shall be immediately effective and enforceable upon its entry and there shall be no stay of execution or effectiveness of this Interim Order.

25. *Final Hearing.* The Final Hearing to consider final approval of the DIP Facility and use of Cash Collateral shall be held on [__________, 2026], at [____] (prevailing Eastern Time), and any objections to the final relief sought in the Motion shall be filed with the Court no later than [__________, 2026] at 4:00 p.m. (prevailing Eastern Time), and served upon (a) proposed counsel to the Debtors, [__________]; (b) counsel to the DIP Lender, [__________]; (c) the U.S. Trustee for the Southern District of New York; and (d) counsel to the Official Committee (if appointed) (collectively, the ***"Notice Parties"***).

Dated: [__________, 2026]
New York, New York

____
UNITED STATES BANKRUPTCY JUDGE

Annex A

Defined Terms

"Additional New Money DIP Revolving Facility" has the meaning set forth in the recitals to this Interim Order.

"Additional Roll-Up DIP Loans" has the meaning set forth in the recitals to this Interim Order.

"Adequate Protection" has the meaning set forth in paragraph G(vi) of this Interim Order.

"Adequate Protection Claims" has the meaning set forth in paragraph 6(a) of this Interim Order.

"Adequate Protection Liens" has the meaning set forth in paragraph 6(b) of this Interim Order.

"Adequate Protection Obligations" has the meaning set forth in paragraph 6 of this Interim Order.

"Adequate Protection Professional Fees and Expenses" has the meaning set forth in paragraph 6(c) of this Interim Order.

"Allowed Professional Fees" has the meaning set forth in paragraph 12(b) of this Interim Order.

"Approved DIP Budget" has the meaning set forth in paragraph G(v) of this Interim Order.

"Automatic Stay" has the meaning set forth in paragraph 9 of this Interim Order.

"Avoidance Action" means any Claim or Cause of Action arising under Chapter 5 of the Bankruptcy Code, section 724(a) of the Bankruptcy Code, or any applicable state law Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or similar statute or common law.

"Avoidance Action Proceeds" means any and all proceeds of or property recovered from Avoidance Actions, whether by adjudication, judgment, settlement, or otherwise.

"Business Day" has the meaning set forth in the DIP Agreement.

"Carve Out" has the meaning set forth in paragraph 12(b) of this Interim Order.

"Carve Out Reserves" has the meaning set forth in paragraph 12(d) of this Interim Order.

"Carve Out Trigger Date" has the meaning set forth in paragraph 12(d) of this Interim Order.

"Carve Out Trigger Notice" has the meaning set forth in paragraph 12(c) of this Interim Order.

"Cash Collateral" means all of the Debtors' cash wherever located and held, including cash in deposit accounts, that constitutes or will constitute "cash collateral" of the Prepetition Secured Party (including the proceeds of Prepetition Collateral) or the DIP Lender within the meaning of section 363(a) of the Bankruptcy Code.

"Challenge" means, with respect to a party other than the Debtors, any challenge, objection, defense, or Claim or Cause of Action, including, without limitation, any Avoidance Action or any Claim or Cause of Action asserting reduction, setoff, offset, recoupment, recharacterization, subordination (whether equitable, contractual or otherwise), reclassification, disgorgement, disallowance, impairment, marshalling, surcharge, recovery, or other cause of action of any kind or nature whatsoever.

"Challenge Budget" has the meaning set forth in paragraph 14 of this Interim Order.

"Challenge Deadline" has the meaning set forth in paragraph 13(b) of this Interim Order.

"Challenge Proceeding" has the meaning set forth in paragraph 13(a) of this Interim Order.

"Committee Professionals" has the meaning set forth in paragraph 12(b) of this Interim Order.

"Debtor Professionals" has the meaning set forth in paragraph 12(b) of this Interim Order.

"Debtors' Stipulations" has the meaning set forth in paragraph F of this Interim Order.

"Diminution in Value" has the meaning set forth in paragraph G(vi) of this Interim Order.

"DIP Agreement" has the meaning set forth in the recitals to this Interim Order.

"DIP Borrower" means The Fireman Group Café Concepts, Inc.

"DIP Collateral" means all property pledged, mortgaged, assigned, granted, or otherwise subjected to a lien under the DIP Agreement or this Interim Order, including all assets and properties of the Debtors, whether tangible, intangible, real, personal, or mixed, whether now owned or hereafter acquired, and all proceeds, products, rents, and profits thereof, including the Debtors' commercial tort claims as described in the DIP Agreement; provided that DIP Collateral shall not include Avoidance Actions (subject to and effective only upon entry of the Final Order, Avoidance Action Proceeds shall be included in DIP Collateral).

"DIP Facility" has the meaning set forth in the recitals to this Interim Order.

"DIP Lender" means FHGRF LLC.

"DIP Liens" has the meaning set forth in paragraph 4(a) of this Interim Order.

"DIP Loan Documents" means the DIP Agreement and all guarantee, collateral, pledge, and security agreements, and all other agreements, documents, certificates, and instruments executed, recorded and/or delivered in connection therewith or related thereto, in each case, as amended, supplemented or modified in accordance with the terms thereof and this Interim Order.

"DIP Loan Parties" means the DIP Borrower and the other Credit Parties as defined in the DIP Agreement.

"DIP Loans" has the meaning set forth in the recitals to this Interim Order.

"DIP Obligations" means any and all obligations arising under the DIP Facility and the DIP Loan Documents, including all loans, advances, indebtedness, principal, interest, payments, fees, costs, expenses, charges, indemnification and reimbursement obligations, and all other amounts due under the DIP Loan Documents or this Interim Order.

"DIP Orders" means, collectively, this Interim Order and the Final Order.

"DIP Professional Fees and Expenses" has the meaning set forth in paragraph 2(d) of this Interim Order.

"DIP Superpriority Claims" has the meaning set forth in paragraph 5 of this Interim Order.

"DIP Termination Declaration Date" has the meaning set forth in paragraph 11(b) of this Interim Order.

"DIP Termination Event" has the meaning set forth in paragraph 11(a) of this Interim Order.

"Emergency Motion" has the meaning set forth in paragraph 11(b) of this Interim Order.

"Final Hearing" has the meaning set forth in the recitals to this Interim Order.

"Final Order" has the meaning set forth in the recitals to this Interim Order.

"*First Day and DIP Declaration*" has the meaning set forth in the recitals to this Interim Order.

"Interest Rate" means 12.00% per annum, payable in kind.

"Initial DIP Budget" has the meaning set forth in paragraph G(v) of this Interim Order.

"*Interim DIP Loans*" has the meaning set forth in the recitals to this Interim Order.

"Interim Order" has the meaning set forth in the recitals to this Interim Order.

"*Interim Period*" means the period between the date of the entry of this Interim Order and the earlier to occur of (x) the date of entry of the Final Order or (y) the date of termination of the DIP.

"*Interim Roll-Up DIP Loans*" has the meaning set forth in the recitals to this Interim Order.

"*Material DIP Amendment*" has the meaning set forth in paragraph 2(e) of this Interim Order.

"Maturity Date" has the meaning set forth in paragraph 2(f) of this Interim Order.

"*New Money DIP Revolving Facility*" has the meaning set forth in the recitals to this Interim Order.

"Notice Parties" has the meaning set forth in paragraph 25 of this Interim Order.

"Official Committee" has the meaning set forth in paragraph C of this Interim Order.

"Permitted Prior Senior Liens" means, collectively: (a) purchase money security interests or property subject to true equipment leases; (b) liens and security interests held by Bank United; (c) liens and security interests held by the Small Business Administration; (d) liens and security interests held by Inkind Card and Rewards Network to secure certain contractual obligations; and (e) *solely during the Interim Period*, liens and security interests held by an entity that provided financing to any Debtor in the form of a purchase of future receivables, revenue-based financing, or a merchant cash advance; in each case (a)-(e), solely to the extent such liens were senior to the Prepetition Lender and duly perfected, valid, enforceable, and non-avoidable as of the Petition Date. Notwithstanding the foregoing, "Permitted Prior Senior Liens" shall also include liens existing on the Petition Date and later perfected under section 546(b) of the Bankruptcy Code, solely to the extent valid, perfected, enforceable, unavoidable, and expressly identified as a Permitted Prior Senior Liens in the DIP Agreement or otherwise permitted by this Interim Order, ordinary depository setoff rights, minor real-property encumbrances, certain tax liens, and statutory and common law liens of landlords, carriers, warehousemen, mechanics, suppliers, materialmen, repairmen, and similar persons as permitted under Section 7.01 of the DIP Agreement.

"Permitted Prior Senior Liens Holders" means holders of Permitted Prior Senior Liens.

"Permitted Variances" has the meaning set forth in paragraph G(v) of this Interim Order.

"Petition Date" means August 9, 2026.

"Post-Carve Out Notice Amount" has the meaning set forth in paragraph 12(b) of this Interim Order.

"Pre-Carve Out Notice Amount" has the meaning set forth in paragraph 12(b) of this Interim Order.

"Prepetition Collateral" has the meaning set forth in paragraph F(iii) of this Interim Order.

"Prepetition Emergency Funding" has the meaning set forth in paragraph F(i) of this Interim Order.

"Prepetition Liens" has the meaning set forth in paragraph F(iii) of this Interim Order.

"Prepetition Loan Documents" has the meaning set forth in paragraph F(i) of this Interim Order.

"Prepetition Note" has the meaning set forth in paragraph F(i) of this Interim Order.

"Prepetition Obligors" has the meaning set forth in paragraph F(i) of this Interim Order.

"Prepetition Secured Obligations" has the meaning set forth in paragraph F(ii) of this Interim Order.

"Prepetition Secured Party" means FHGRF LLC, as holder of the Prepetition Note.

"Professional Persons" has the meaning set forth in paragraph 12(b) of this Interim Order.

"Remedies Notice" has the meaning set forth in paragraph 11(b) of this Interim Order.

"Remedies Notice Period" has the meaning set forth in paragraph 10(b) of this Interim Order.

"Review Parties" has the meaning set forth in paragraph 8 of this Interim Order.

"Review Period" has the meaning set forth in paragraph 8 of this Interim Order.

"*Roll-Up DIP Loans*" has the meaning set forth in the recitals to this Interim Order.

"Successor Cases" has the meaning set forth in paragraph 3(a) of this Interim Order.

"Successor Entities" has the meaning set forth in paragraph 13(a) of this Interim Order.

"U.S. Trustee" has the meaning set forth in paragraph C of this Interim Order.

EXHIBIT 1

DIP Agreement

[Attached]

SECURED SUPERPRIORITY

DEBTOR-IN-POSSESSION CREDIT AND SECURITY AGREEMENT

Dated as of August _, 2026

by and among

The Fireman Group Café Concepts, Inc.

as Borrower,

and

the other Borrowers parties hereto,

and

FHGRF LLC,

as Lender

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SECURED SUPERPRIORITY

DEBTOR-IN-POSSESSION CREDIT AND SECURITY AGREEMENT

This SENIOR SECURED SUPERPRIORITY DEBTOR-IN-POSSESSION CREDIT (as amended, restated, supplemented, or otherwise modified from time to time, this "**Agreement**") is entered into as of August ●, 2026, by and among The Fireman Group Café Concepts, Inc. ("**Parent**"), SMJ Group, Inc., S.M.F. Group Inc., Italian Café Concepts, LLC, Fiorello's Roman Café, Inc., Ebbets Field Venture, LLC, Cieli Partners, L.P. and Ebbets Field Venture II, LLC, Broadway Hospitality Venture, LLC, Brasserie 57, LLC, SFAP Group, LLC, Café Concepts (Washington DC), LLC, Shelny, LLC, Red Eye/Brooklyn Associates, L.P., 57th Street Hospitality Partners, LLC, SMJ Group, LLC, The Finer Diner, LLC, Red Eye Grill, Inc., Red Eye Grill, L.P., Brooklyn Diner USA, L.P. and Brooklyn Diner USA, Inc. (together with Parent, each a "**Borrower**" and collectively, "**Borrowers**" or the "**Credit Parties**"), and FHGRF LLC, a Delaware limited liability company, as sole lender hereunder and the holder of the Prepetition Note (as defined below) (together with its successors and permitted assigns, "**Lender**").

RECITALS

WHEREAS, on August ●, 2026 (the "**Petition Date**"), The Fireman Group Café Concepts, Inc. and the other Credit Parties (collectively, the "**Debtors**") commenced voluntary cases under chapter 11 of title 11 to the United States Code (the "**Bankruptcy Code**") in the United States Bankruptcy Court for the Southern District of New York (the "**Bankruptcy Court**"), which cases are pending joint administration under Case No. 26-11399 (each, a "**Chapter 11 Case**," and collectively, the "**Chapter 11 Cases**") and have retained possession of their respective properties and are authorized under the Bankruptcy Code to continue the operation of their respective businesses as debtors in possession; and

WHEREAS, prior to the Petition Date, and in contemplation of the filing of these Chapter 11 Cases, the Lender provided financing to the Debtors pursuant to that certain Second Amended and Restated Secured Demand Promissory Note, dated as of July 31, 2026, made by the Credit Parties in favor of the Lender (as amended, restated, refinanced, replaced, increased, supplemented or otherwise modified through the Petition Date, the "**Prepetition Note**"); and

WHEREAS, pursuant to the Prepetition Note, the Lender is owed at least $6,235,147.78, plus accrued and unpaid interest and all other amounts owing under the Prepetition Note, from the Credit Parties as of the Petition Date; and

WHEREAS, the Debtors have requested that the Lender make postpetition loans and advances and provide other financial or credit accommodations to the Debtors, and the Lender has agreed, subject to the conditions set forth herein and in the DIP Order (as defined below), to extend a senior secured superpriority debtor-in-possession credit facility of up to $6,500,000.00 to the Debtors (but in any event not to exceed the maximum aggregate amount of the Holdback Amounts) comprised of (x)(i) an Interim New Money DIP Revolving Facility in the aggregate principal amount of *up to* $1,500,000.00, which may be increased by $800,000.00 at the sole and absolute discretion of the Lender, for a total of $2,300,000.00, which will be available to be drawn after entry of the Interim Order (as defined below) and (ii) an Interim Roll Up DIP Loan in the amount of Prepetition Obligations equal to two hundred percent (200%) of the principal amount of such Interim New Money Loan as such Interim New Money Loan is drawn (and shall automatically be deemed converted, exchanged, refinanced, and reconstituted as DIP Obligations at such time), and (y) following entry of the Final Order (as defined below) and remittance to the Lender of all Holdback Amounts then required to be remitted under this Agreement, (i) an Additional New Money DIP Revolving Facility in an aggregate principal amount equal to the Additional New Money DIP Revolving Commitment, available to be drawn solely in accordance with the Budget, this Agreement and the DIP Order, and (ii) an Additional Roll Up DIP Loan in the amount of Prepetition Obligations equal to two hundred percent (200%) of the principal amount of such Additional New Money DIP Loan as such Additional New Money Loan is drawn (and shall automatically be deemed converted, exchanged, refinanced, and reconstituted as DIP Obligations at such time); and

WHEREAS, the Lender is only willing to make the Loans provided for by this Agreement (and the Debtors acknowledge and agree that the Lender is only willing to make the Loans provided for by this Agreement) on all of the terms and conditions and provisions of this Agreement and the other DIP Loan Documents, based on the truth and accuracy of these Recitals and all of the other representations and warranties made by the Debtors in this Agreement and the other DIP Loan Documents, as applicable, and on the terms and subject to the conditions of this Agreement and the other DIP Loan Documents, as applicable.

AGREEMENT

NOW, THEREFORE, in consideration of the representations and mutual covenants and agreements contained herein and in the other DIP Loan Documents, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in contemplation of the statements set forth in Recitals above, the truth and accuracy of which statements (and reliance thereon by the Lender) are specifically acknowledged by the Credit Parties, the parties hereto hereby covenant and agree as follows:

ARTICLE I
DEFINITIONS AND OTHER TERMS

1.01 **Defined Terms.**

As used in this Agreement, the following terms shall have the meanings set forth below:

"**Acquisition**" means, by any Person, the acquisition by such Person, in a single transaction or in a series of related transactions, of all or substantially all of the property of another Person or more than a majority of the Voting Stock of another Person, in each case whether or not involving a merger or consolidation with such other Person and whether for cash, property, services, assumption of Indebtedness, securities or otherwise.

"**Additional New Money DIP Revolving Facility**" has the meaning set forth in Section 2.01(b).

"**Additional New Money DIP Revolving Commitment**" means the lesser of (a) the amount of $4,200,000.00 and (b) the maximum aggregate of all Holdback Amounts *minus* the amount of the Interim New Money DIP Facility, *minus* any portion of the Holdback Amounts required to be held by any lender from time to time as collateral for any Indebtedness other than the Loans.

"**Affiliate**" means, with respect to any Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified; *provided*, that for purposes of this Agreement, the Lender shall not be considered an "Affiliate" of any Borrower.

"**Agreement**" has the meaning set forth in the introductory paragraph hereto.

"**Anti-Corruption Laws**" means all Laws of any jurisdiction applicable to the Borrowers from time to time concerning or relating to bribery or corruption, including without limitation the Foreign Corrupt Practices Act of 1977, 15 U.S.C. §§ 78dd-1, et seq.

"**Anti-Money Laundering Laws**" means all Laws of any jurisdiction applicable to the Borrowers from time to time concerning or relating to money laundering, including, without limitation, the Patriot Act.

"**Anti-Terrorism Laws**" means all Laws of any jurisdiction applicable to the Borrowers from time to time concerning or relating to terrorism or money laundering, including, without limitation, Title III of the Patriot Act, the Trading with the Enemy Act, and each of the foreign assets control regulations of the United States Treasury Department (31 C.F.R. Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto.

"**Assignment and Assumption**" means an assignment and assumption entered into by the Lender and an assignee.

"**Attributable Indebtedness**" means, on any date, (a) in respect of any Capital Lease of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP and (b) in respect of any Synthetic Lease of any Person, the capitalized amount of the remaining lease payments under the relevant lease that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP if such lease were accounted for as a Capital Lease.

"**Avoidance Action**" means any Claim or Cause of Action arising under Chapter 5 of the Bankruptcy Code, section 724(a) of the Bankruptcy Code, or any applicable state law Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or similar statute or common law.

"**Avoidance Action Proceeds**" means any and all proceeds of or property recovered from Avoidance Actions, whether by adjudication, judgment, settlement, or otherwise.

"**Bankruptcy Code**" has the meaning set forth in the recitals hereto.

"**Board of Directors**" means, with respect to any Person, the board of directors of such Person (or the equivalent board of advisors, managers, or members or body performing similar functions for such Person) or any committee of the board of directors of such Person authorized, with respect to any particular matter, to exercise the power of the board of directors (or board of advisors, managers, or members or body performing similar functions) of such Person.

"**Borrowers**" has the meaning set forth in the introductory paragraph hereto.

"**Borrowing**" means a borrowing or deemed borrowing of a Loan on a given date.

"**Borrowing Request**" means an irrevocable, written request for a Borrowing of Loans, which must be substantially in the form of **Exhibit A** and must specify (i) the requested date of the borrowing (which shall be a Business Day), (ii) the principal amount of a Revolving Facility to be borrowed, and (iii) wire instructions for the account(s) to which funds are to be disbursed.

"**Budget**" means the thirteen (13) week cash flow forecast attached to this Agreement as **Exhibit B**, approved by the Lender in its sole discretion, and approved by the Bankruptcy Court pursuant to the DIP Order, as such budget may be amended or modified in accordance with this Agreement and the DIP Order.

"**Business Day**" means any day other than a Saturday, Sunday, or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the State of New York.

"**Businesses**" means, at any time, a collective reference to the businesses operated by the Borrowers.

"**Capital Expenditures**" means, with respect to any Person for any period, any expenditure in respect of the purchase or other acquisition of any fixed or capital assets which are classified as capital expenditures in accordance with GAAP (excluding normal replacements and maintenance which are properly charged to current operations).

"**Capital Lease**" means, as applied to any Person, any lease of any property by that Person as lessee which, in accordance with GAAP, is required to be accounted for as a capital lease on the balance sheet of that Person.

"**Carve-Out**" means collectively (a) all fees required to be paid to the Clerk of the Bankruptcy Court and to the UST pursuant to 28 U.S.C. §1930(a) plus interest at the statutory rate, if any, pursuant to 31 U.S.C § 3717 (without regard to the Carve-Out Trigger Notice (as defined below)), (b) all unpaid reasonable fees and expenses incurred by a trustee and payable under section 726(b) of the Bankruptcy Code in an aggregate amount not to exceed $25,000 (without regard to the Carve-Out Trigger Notice), (c) to the extent allowed at any time and consistent with the Budget, whether by interim order, procedural order, or otherwise, all unpaid fees and expenses incurred by persons or firms retained by (i) the Debtors pursuant to section 327, 328, or 363 of the Bankruptcy Code, and (ii) the Committee pursuant to section 328 or 1103 of the Bankruptcy Code, at any time before or on the first business day following delivery by the DIP Lender of a Carve Out Trigger Notice, whether allowed by the Court prior to or after delivery of a Carve Out Trigger Notice; and (d) to the extent allowed at any time and consistent with the Budget, whether by interim order, procedural order, or otherwise, all unpaid fees and expenses incurred after the first business day following delivery by the DIP Lender of the Carve Out Trigger Notice by persons or firms retained by the Debtors or by the by the Committee in an aggregate amount not to exceed $250,000. Notwithstanding the foregoing, in no event shall the Carve-Out apply to the Committee or its professionals for any actions taken to avoid, challenge, object to, recharacterize, subordinate or that would otherwise adversely affect the Prepetition Obligations or the security and collateral therefor existing as of the Petition Date, the DIP Loans or the DIP Collateral and the DIP Orders presented by the Borrowers and Lender for approval by the Bankruptcy Court.

"Carve-Out Reserve" shall mean the reserves for Carve-Outs in the Budget, to be used consistent with the Carve-Out.

"**Carve-Out Trigger Notice**" shall mean a written notice delivered by the Lender to the Debtors' lead counsel, the UST, and lead counsel to any Committee, which notice may only be delivered following the occurrence and during the continuation of an Event of Default under this Agreement.

"**Change in Law**" means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation, or treaty, (b) any change in any law, rule, regulation, or treaty or in the administration, interpretation, or application thereof by any Governmental Authority, central bank, or comparable agency charged with the interpretation, administration, or application thereof, after the date of this Agreement, or (c) the making or issuance of any request, guideline, or directive (whether or not having the force of law) by any Governmental Authority, central bank, or comparable agency made or issued after the date of this Agreement.

"**Chapter 11 Cases**" has the meaning set forth in the recitals hereto.

"**Chapter 11 Plan**" means a plan of reorganization or liquidation in these Chapter 11 Cases confirmed by Order of the Bankruptcy Court.

"**Code**" means the Internal Revenue Code of 1986, as amended.

"**Committee**" means, collectively, the official committee of unsecured creditors and any other committee formed, appointed or approved in any Chapter 11 Case.

"**Contractual Obligation**" means, as to any Person, any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

"**Control**" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract, or otherwise. "Controlling" and "Controlled" have meanings correlative thereto. Without limiting the generality of the foregoing, a Person shall be deemed to be Controlled by another Person if such other Person possesses, directly or indirectly, power to vote 10% or more of the securities having ordinary voting power for the election of directors, managing general partners, or the equivalent; *provided* that the Lender shall not be deemed to "control" the Borrowers.

"**Debt Issuance**" means the issuance by any Borrower of any Indebtedness.

"**Debtors**" has the meaning set forth in the recitals hereto.

"**Debtor Relief Laws**" means the Bankruptcy Code, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

"**Default**" means any event or condition that constitutes an Event of Default or that, with the giving of any notice, the passage of time, or both, would be an Event of Default.

"**Default Rate**" means an interest rate equal to the Interest Rate plus **4%** per annum, to the fullest extent permitted by applicable Laws.

"**DIP Collateral**" means all property pledged, mortgaged, assigned, granted, or otherwise subjected to a Lien under this Agreement or the DIP Order.

"**DIP Loan Documents**" means this Agreement, the DIP Order, and each other agreement, instrument, or document executed or delivered at any time in connection with this Agreement and/or the DIP Order. Any reference in this Agreement or any other Loan Document to a Loan Document shall include all appendices, exhibits, or schedules thereto.

"**DIP Obligations**" means all advances to, and debts, principal, interest, premiums, fees, liabilities, obligations, covenants, and duties of the Borrowers arising under any DIP Loan Document, or otherwise with respect to any Loan, in each case, payable in accordance with the DIP Loan Documents, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing, or hereafter arising and including interest, premiums, or fees that accrue after the commencement by or against any Borrower of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding.

"**DIP Order**" means the Interim Order or Final Order, as applicable under the circumstances.

"**Disposition**" or "**Dispose**" means the sale, transfer, license, lease, or other disposition (including any Sale and Leaseback Transaction) of any property by any Borrower outside the ordinary course of business, including any sale, assignment, transfer, or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith.

"**Dollar**" and "**$**" mean lawful money of the United States.

"**Effective Date**" means the date on which the Debtors' confirmed Chapter 11 Plan becomes effective.

"**Environment**" means ambient and indoor air, surface water, and groundwater (including potable water, navigable water, and wetlands), the land surface or subsurface strata or sediment, and natural resources such as flora or fauna.

"**Environmental Laws**" means any and all Laws relating to (a) the Environment, preservation or reclamation of natural resources, or the generation, use, handling, transportation, storage, treatment, or Release of any Hazardous Material and (b) human health and employee health as affected by exposure to Hazardous Materials.

"**Environmental Liability**" means any liability, contingent or otherwise (including any liability for personal injury or damages, costs of environmental investigation, feasibility studies, and remediation, fines, penalties, or indemnities), of the Borrowers directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment, or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the Release of any Hazardous Materials, and (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

"**Environmental Permits**" means any and all Permits required under any applicable Environmental Law.

"**Equity Interests**" means, with respect to any Person, all of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options, or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights, or other interests are outstanding on any date of determination.

"**ERISA**" means the Employee Retirement Income Security Act of 1974, as amended, and any successor thereto.

"**ERISA Affiliate**" means any trade or business (whether or not incorporated) under common control with the Borrowers within the meaning of Section 414(b) or (c) of the Code (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code) or the meaning of Section 4001(a)(14) of ERISA; *provided*, however, that in no event shall the Lender or any of its Affiliates constitute an ERISA Affiliate for the purposes of this Agreement. Any former ERISA Affiliate of a Person shall continue to be considered an ERISA Affiliate of such Person within the meaning of this definition with respect to the period such entity was an ERISA Affiliate of such Person and with respect to liabilities arising during such period (but, for the avoidance of doubt, not after such period) for which such Person could be liable under the Code or ERISA.

"**ERISA Event**" means (a) a Reportable Event; (b) a withdrawal by the Borrowers or any of their respective ERISA Affiliates from any Pension Plan subject to Section 4063 of ERISA during a plan year in which such entity was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by the Borrowers or any of their respective ERISA Affiliates from a Multiemployer Plan or notification that a Multiemployer Plan is in "critical," "endangered" or "critical and declining" status (each, within the meaning of Section 432 of the Code or ERISA Section 305); (d) a mass withdrawal from a Multiemployer Plan under ERISA Section 4219(c)(1)(D); (e) the withdrawal from a Multiemployer Plan by any employer required to be listed in Schedule R of the Multiemployer Plan's Form 5500; (f) a Multiemployer Plan's adoption, amendment or update of a rehabilitation plan under ERISA Section 305(e); (g) the adoption by a Multiemployer Plan of any plan rule creating employer liability that is in addition to collectively bargained contributions or withdrawal liability; (h) the filing of a notice of intent to terminate, the treatment of a Pension Plan amendment as a termination under Sections 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan; (i) an event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan or Multiemployer Plan; (j) notice received by the Borrowers or any of their respective ERISA Affiliates from a Multiemployer Plan that such Multiemployer Plan is subject to Section 4245 of ERISA; (k) the failure of the Borrowers or any of their respective ERISA Affiliates to make by its due date a required installment under Section 430(j) of the Code with respect to any Pension Plan or the failure by any Pension Plan to satisfy the minimum funding standards (within the meaning of Section 412 of the Code or Section 302 of ERISA) applicable to such Pension Plan, whether or not waived in accordance with Section 412(c) of the Code or Section 302(C) of ERISA; (l) a determination that any Pension Plan is, or is expected to be, in "at risk" status (within the meaning of Section 430 of the Code or Section 303 of ERISA); (m) the filing pursuant to Section 412 of the Code or Section 302 of ERISA of an application for a waiver of the minimum funding standard with respect to any Pension Plan; (n) the failure by the Borrowers or any of their respective ERISA Affiliates to make any required contribution to a Multiemployer Plan pursuant to Section 431 or 432 of the Code; (o) the failure by the Borrowers or any of their respective ERISA Affiliates to pay when due (after expiration of any applicable grace period) any installment payment with respect to withdrawal liability under Section 4201 of ERISA; (p) the imposition of a Lien pursuant to Section 430(k) of the Code or Section 303(k) or 4068 of ERISA with respect to any Pension Plan; (q) the assertion of a material claim (other than routine claims for benefits) against any ERISA Plan other than a Multiemployer Plan or the assets thereof or against the Borrowers or any of their respective ERISA Affiliates in connection with any ERISA Plan; or (r) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon the Borrowers or any of their respective ERISA Affiliates.

"**ERISA Plan**" means any "employee benefit plan" (as such term is defined in Section 3(3) of ERISA) in respect of which the Borrowers or any of their respective ERISA Affiliates is (or, if such ERISA Plan were terminated, would under Section 4062 or Section 4069 of ERISA be deemed to be) an "employer" as defined in Section 3(5) of ERISA.

"**Event of Default**" has the meaning specified in Section 8.01.

"**Excluded Accounts**" means any accounts exclusively used for payroll, payroll taxes, or employee benefits and funded in the ordinary course of business.

"**Excluded Taxes**" means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient: Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of the Lender, its Lending Office located in, the jurisdiction imposing such Tax (or any political subdivision thereof).

"**Final Maturity Date**" means the earlier of (a) the date that is one Business Day after the Effective Date of a confirmed Chapter 11 Plan; or (b) December 31. 2026.

"**Final Order**" means, collectively, the order of the Bankruptcy Court entered in the Chapter 11 Cases after a final hearing under Bankruptcy Rule 4001(c)(2) or such other procedures as approved by the Bankruptcy Court, which order shall be in form and substance satisfactory to the Lender, in its sole and absolute discretion, and which order is in effect and not stayed, together with all extensions, modifications, and amendments thereto, in form and substance satisfactory to the Lender, in its sole discretion, which, among other matters but not by way of limitation, authorizes the Borrowers to obtain credit, incur (or guaranty) Indebtedness and grant Liens under this Agreement and the other DIP Loan Documents, as the case may be, provides for the super priority of the Lender's claims and authorizes the use of cash collateral.

"**Final Order Date**" means the date the Court enters the Final Order on the docket of the Chapter 11 Cases.

"**Fiscal Quarter**" means a calendar quarter of a Fiscal Year.

"**Fiscal Year**" means the 52- or 53-week fiscal year of the Borrowers.

"**GAAP**" means generally accepted accounting principles in the United States set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and the statements and pronouncements of the Financial Accounting Standards Board, consistently applied and as in effect from time to time.

"**Governmental Authority**" means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, any tribal, aboriginal, or native government or corporation, and any agency, authority, instrumentality, regulatory body, court, central bank, or other entity exercising executive, legislative, judicial, taxing, regulatory, or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

"**Guarantee**" means, as to any Person, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation payable or performable by another Person (the "primary obligor") in any manner, whether directly or indirectly, or (b) any Lien on any assets of such Person securing any Indebtedness or other obligation of any other Person, whether or not such Indebtedness or other obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term "Guarantee" as a verb has a corresponding meaning.

"**Hazardous Materials**" means (a) any substance, material, or waste designated or defined as a "hazardous substance," "hazardous material," "hazardous waste," "extremely hazardous waste," "restricted hazardous waste," "pollutant or contaminant," "toxic waste," or "toxic substance" under any provision of Environmental Law, and (b) any petroleum, petroleum distillates, petroleum products, asbestos, or asbestos-containing materials, urea-formaldehyde insulation, explosive, or radioactive materials, and polychlorinated biphenyls.

"**Holdback Amounts**" means the aggregate amount as of the Petition Date, together with all amounts thereafter accumulated, of all money or other obligations owed to the Borrowers and held by third-party payment processors, including, without limitation, American Express, Toast, Stripe and The Hilton Club (collectively, all such third-party payment processors being referred to hereinafter as the "**Payment Processors**").

"**Indebtedness**" means, as to any Person at a particular time, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP:

(a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments;

(b) all direct or contingent obligations of such Person arising under letters of credit (including standby and commercial), bankers' acceptances, bank guaranties, surety bonds and similar instruments;

(c) net obligations of such Person under any swap agreement;

(d) all obligations of such Person to pay the deferred purchase price of property or services (other than trade accounts payable in the ordinary course of business and, in the case of any such trade account payables, not past due for more than 90 days);

(e) indebtedness (excluding prepaid interest thereon) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;

(f) Capital Leases and Synthetic Lease obligations;

(g) all obligations of such Person prior to the Maturity Date to purchase, redeem, retire, defease, or otherwise make any payment in cash or cash equivalents in respect of any Equity Interest in such Person or any other Person, valued, in the case of a redeemable preferred interest, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends; and

(h) all Guarantees of such Person in respect of any of the foregoing.

Notwithstanding the foregoing, in no event shall the following constitute Indebtedness, in each case to the extent consistent with the Borrowers' past practices: (i) purchase price holdbacks arising in the ordinary course of business in respect of a portion of the purchase price of an asset to satisfy warranties or other unperformed obligations of the seller of such asset; (ii) trade accounts payable, deferred revenues, liabilities associated with customer prepayments, and deposits and other accrued obligations (including transfer pricing and accruals for payroll and other operating expenses accrued in the ordinary course of business), in each case incurred in the ordinary course of business, (iii) operating leases, (iv) customary obligations under employment agreements and deferred employee compensation, and (v) prepaid or deferred revenue and deferred tax liabilities.

For all purposes hereof, the Indebtedness of any Person shall include the Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venturer, unless such Indebtedness is expressly made non-recourse to such Person. The amount of any Capital Lease or Synthetic Lease obligation as of any date shall be deemed to be the amount of Attributable Indebtedness in respect thereof as of such date. To the extent that any recourse with respect to Indebtedness of the type described in clause (e) above is limited to solely to property of a Person, the amount of Indebtedness of any Person for purposes of clause (e) shall be equal to the lesser of (i) the aggregate unpaid amount of such Indebtedness and (ii) the net book value of such property encumbered thereby.

"**Indemnified Taxes**" means (a) Taxes, other than Excluded Taxes imposed on or with respect to any payment made by or on account of any obligation of any Borrowers under any Loan Document, and (b) to the extent not otherwise included in clause (a), Other Taxes.

"**Indemnitee**" has the meaning specified in Section 9.04(b).

"**Interest Rate**" has the meaning specified in Section 2.05(a).

"**Interest Payment Date**" means the Maturity Date.

"**Interim New Money DIP Commitment**" means the Lender's commitment to make advances under the Interim New Money DIP Facility, on a revolving basis, in a principal amount of *up to* $1,500,000.00, which may be increased by the amount of $800,000.00 in the Lender's sole and absolute discretion, for a total of $2,300,000.00.

"**Interim New Money DIP Facility**" has the meaning specified in Section 2.01(a).

"**Interim Order**" means the order of the Bankruptcy Court entered in the Chapter 11 Cases after an interim hearing in form and substance satisfactory to the Lender, in its sole discretion, which, among other matters (but not by way of limitation), authorizes and approves, on an interim basis, the use of prepetition cash collateral and authorizes and approves (i) the Borrowers' entry into the DIP Loan Documents, (ii) the making of the Loans, (iii) the granting of the DIP Superpriority Claims and DIP Liens against the Borrowers and their property in accordance with the DIP Loan Documents with respect to the DIP Collateral, (iv) stipulations and orders with respect to the validity, priority, and amount of the Prepetition Indebtedness, (v) subject to the right of the Lender to credit bid all claims arising under this Agreement and the other DIP Loan Documents and the right of the Lender to credit bid all claims arising under the Prepetition Note Documents as set forth in this Agreement, (vi) the payment of or obligation to pay all fees and expenses (including the fees and expenses of outside counsel, Pullman & Comley LLC) required to be paid to the Lender by the Borrowers, (vii) the use of Prepetition cash collateral, and (ix) the relief from the Automatic Stay if there is an Event of Default to exercise all rights and remedies available to the Lender under the Prepetition Note Documents, and applicable law.

"**Investment**" means, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition of Equity Interests of another Person, (b) a loan, advance or capital contribution to, Guarantee or assumption of debt of, or purchase or other acquisition of any other debt or equity participation or interest in, another Person, including any partnership or joint venture interest in such other Person and any arrangement pursuant to which the investor Guarantees Indebtedness of such other Person, or (c) an Acquisition. For purposes of covenant compliance, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in value, or the write-ups, write-downs or write-offs with respect thereto, of such Investment net of any return representing a return of capital or repayment of principal or payment of interest, if applicable, with respect to such Investment.

"**Investment Property**" means any security, whether certificated or uncertificated, security entitlement, securities account, commodity contract, or commodity account.

"**Involuntary Disposition**" means any loss of, damage to or destruction of, or any condemnation or other taking for public use of, any property of any Borrower.

"**IRS**" means the United States Internal Revenue Service.

"**Laws**" means, collectively, all international, foreign, federal, state, local, tribal, or aboriginal statutes, treaties, rules, guidelines, regulations, ordinances, codes , and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation, or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations, and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

"Lender Fees" means the Exit Fee, as defined in Section 2.08(c).

"**Lender's Expenses**" are, without duplication, (a) all reasonable and documented audit fees and expenses, costs, and expenses (including reasonable and documented attorneys' fees and expenses (excluding fees and expenses generated by in house counsel), as well as appraisal fees, fees incurred on account of lien searches, inspection fees, and filing fees) incurred by the Lender in connection with the Chapter 11 Cases, the preparation, negotiation, and administration of this Agreement and the other DIP Loan Documents or any amendments, modifications, or waivers of the provisions hereof or thereof, and (b) all reasonable and documented fees and expenses (including attorneys' fees and expenses, as well as appraisal fees, fees incurred on account of lien searches, inspection fees and filing fees) for defending and enforcing the DIP Loan Documents (including, without limitation, those incurred in connection with appeals, these Chapter 11 Cases, or other insolvency proceedings) or otherwise incurred by the Lender in connection with the DIP Loan Documents.

"**Lien**" means (a) any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest, or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way, or other encumbrance on title, and any financing lease having substantially the same economic effect as any of the foregoing), and (b) in the case of securities or Equity Interests, any purchase option, call or similar right of a third part with respect to such securities or Equity Interests; *provided*, however, that in no event shall any operating lease in and of itself be deemed to constitute a Lien.

"**Loan Party**" means any Borrower.

"**Loans**" means, collectively, the Revolving Facilities and the Roll Up DIP Loans.

"**Material Adverse Effect**" means (a) a material adverse change in, or a material adverse effect upon, the business, operations, assets, properties, liabilities (actual or contingent), prospects, cash flows, revenues, customer traffic, vendor relationships, payment processing arrangements, licenses, permits, regulatory approvals, labor availability, key management personnel, or financial condition of the Borrowers taken as a whole (except for the filing, commencement, and continuation of the Chapter 11 Cases); (b) a material impairment of the ability of the Borrowers taken as a whole to pay the DIP Obligations or perform their other material obligations under the DIP Loan Documents; (c) the suspension, revocation, non-renewal, termination, material restriction, or threatened loss of any permit, license, lease, occupancy right, liquor license, food-service permit, health department approval, payment processor relationship, reservation-platform relationship, delivery-platform relationship, or other authorization or commercial arrangement necessary or material to the continued operation of any material restaurant location; (d) the closure, material reduction in operating hours, material interruption of service, loss of access to premises, loss of utilities, casualty, condemnation, eviction proceeding, lockout, strike, labor disruption, public health order, regulatory enforcement action, or similar event affecting any material restaurant location, except to the extent expressly contemplated by the Budget or approved by the Lender in writing; or (e) a material adverse effect upon the legality, validity, binding effect, priority, perfection, or enforceability against any Borrower of any DIP Loan Document, DIP Lien, DIP Superpriority Claim, or material DIP Collateral.

"**Material Contract**" means the contracts, agreements, leases, Instruments, and other binding commitments and undertakings of any Borrower or any Subsidiary thereof identified in the Prepetition Note, and all other contracts, agreements, leases, instruments, and other binding commitments and undertakings of any Borrower or any Subsidiary thereof the performance or breach of which could reasonably be expected to have a Material Adverse Effect on a Borrower.

"**Material ERISA Event**" means liability of any Borrower or any of its respective ERISA Affiliates in an aggregate amount in excess of $50,000.

"**Maturity Date**" means the earliest of (a) December 31, 2026, (b) the date upon which the Interim Order expires if the Final Order has not been entered no later than 35 days after the Petition Date, (c) the conversion of the Chapter 11 Cases into cases under chapter 7 of the Bankruptcy Code, (d) the occurrence of the Effective Date of a Chapter 11 Plan, and (e) the date of the acceleration of the Loans.

"**Milestones**" has the meaning set forth in Section 6.18.

"**Multiemployer Plan**" means any employee benefit plan of the type described in Section 3(37) or 4001(a)(3) of ERISA that is subject to ERISA and to which the Borrowers or any of their respective ERISA Affiliates makes or is obligated to make contributions or, during the preceding five plan years, has made or been obligated to make contributions.

"**Net Cash Proceeds**" means the aggregate cash or cash equivalents proceeds received by the Borrowers in respect of any Disposition, Debt Issuance, or Involuntary Disposition, including by way of insurance proceeds or condemnation awards or sale or issuance of Equity Interests, net of (a) direct costs incurred in connection therewith (including, without limitation, legal, accounting and investment banking fees, costs, expenses, and sales commissions), (b) Taxes paid as a result thereof or reasonably estimated to be actually payable within two (2) years of the date of the relevant Disposition, Debt Issuance, or Involuntary Disposition as a result thereof, (c) payment of ordinary course expenses set forth in the Budget, and (d) in the case of any Disposition, the amount necessary to retire any Indebtedness secured by a Permitted Lien (ranking senior to any Lien of the Lender) on the related property; it being understood that "Net Cash Proceeds" shall include, without limitation, any cash or cash equivalents received upon the sale or other disposition of any non-cash consideration received by the Borrowers in any Disposition, Debt Issuance, Involuntary Disposition or sale or issuance of Equity Interests.

"**Note**" has the meaning specified in Section 2.06.

"**Organization Documents**" means, (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement; and (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

"**Other Connection Taxes**" means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

"**Other Taxes**" means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment.

"**Patriot Act**" has the meaning ascribed to such term in Section 9.15.

"**PBGC**" means the Pension Benefit Guaranty Corporation or any successor thereto.

"**Pension Plan**" means any "employee pension benefit plan" (as such term is defined in Section 3(2) of ERISA), other than a Multiemployer Plan, that (i) is subject to Title IV of ERISA or the minimum funding standards under Section 412 of the Code and (ii) is sponsored or maintained by the Borrowers or any of their ERISA Affiliates or to which the Borrowers or any of their ERISA Affiliates contributes or has an obligation to contribute, or in the case of a multiple employer or other plan described in Section 4064(a) of ERISA, has made contributions at any time during the immediately preceding five plan years.

"**Permit**" means any permit, license, certificate, approval, consent, clearance, notification, waiver certification, registration, franchises, accreditations, qualification or authorization issued or granted by any Governmental Authority or pursuant to any applicable Law.

"**Permitted Dispositions**" means (so long as no Default exists or would result therefrom) the following:

(a) the granting of Permitted Liens;

(b) any involuntary loss, damage or destruction of property by casualty and (ii) to the extent such property is equipment, the disposition of the assets so damaged or destroyed for fair market value (if any);

(c) the leasing of equipment by any Borrower in the ordinary course of business or as otherwise consented to in writing by the Lender;

(d) the making of a Permitted Investment;

(e) sales or other dispositions of assets from one Borrower to another Borrower;

(f) sales of inventory in the ordinary course of business;

(g) rejection of leases, closure of locations, and/or sale, liquidation or otherwise disposal of obsolete, surplus or worn-out property in each case as may be consented to by the Lender and as permitted by order of the Bankruptcy Court; and

(h) sale of substantially all of the assets of one or more Borrowers, with Lender's consent, pursuant to a final, non-appealable order entered by the Bankruptcy Court in a form acceptable to the Lender in its sole and absolute discretion.

"**Permitted Indebtedness**" means, at any time, Indebtedness of the Borrowers permitted to exist at such time pursuant to the terms of Section 7.03.

"**Permitted Investments**" means, at any time, Investments by the Borrowers permitted to exist at such time pursuant to the terms of Section 7.02.

"**Permitted Liens**" means, at any time, Liens in respect of property the Borrowers permitted to exist at such time pursuant to the terms of Section 7.01.

"**Permitted Prior Senior Liens**" has the meaning specified in Section 5.15(c).

"**Person**" means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

"**Petition Date**" has the meaning set forth in the recitals hereto.

"**Prepetition Note**" has the meaning specified in the recitals hereto.

"**Prepetition Note Documents**" means the Prepetition Note and other agreements, documents, and instruments executed or delivered in connection therewith.

"**Prepetition Loans**" means the loans made by the Lender (or any predecessor in interest) to the Borrowers before the Petition Date.

"**Prepetition Obligations**" means the "Obligations" under and as defined in the Prepetition Note and other Prepetition Note Documents.

"**Recipient**" means the Lender or an assignee of the Lender, as applicable.

"**Register**" has the meaning specified in Section 9.06(c).

"**Related Parties**" means, with respect to any Person, such Person's directors, officers, employees, agents, advisors and sub-advisors of such Person; *provided* that for purposes of this Agreement, the Lender shall not be a Related Party of any Borrower, or its Affiliates, partners, directors, officers, employees, agents, advisors, or sub-advisors.

"**Release**" means any depositing, spilling, leaking, seeping, pumping, pouring, emitting, emanating, discarding, abandoning, emptying, discharging, migrating, injecting, escaping, leaching, dumping, or disposing in, into or through the Environment.

"**Reportable Event**" means any of the events set forth in Section 4043(c) of ERISA, other than events for which the thirty-day notice period has been waived pursuant to DOL Reg. Section 4043.

"**Responsible Officer**" means (i) with respect to the Borrowers, the chief restructuring officer, president, chief financial officer, treasurer or assistant treasurer of such Borrower or any other officer of a Borrower designated as a "Responsible Officer" for purposes of the DIP Loan Documents by a Borrower in writing to the Lender and reasonably acceptable to the Lender and (ii) with respect to the Lender, any partner, managing director, principal, vice president, assistant vice president, assistant treasurer, assistant secretary, or any other officer of the Lender customarily performing functions similar to those performed by any of the above designated officers and having direct responsibility for the administration of this Agreement. Any document delivered hereunder that is signed by a Responsible Officer of a Borrower shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Borrower and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Borrower. Notwithstanding the foregoing to the contrary, the initial Responsible Officers (a) of the Borrowers shall be Jordan Meyer, the Chief Restructuring Officer of the Borrowers, and Benjamin Grossman, the sole manager of the Borrowers, and such individuals shall not be replaced or removed as Responsible Officers without the prior written consent of the Lender, and (b) of the Lender shall be Kelly O'Donnell, the Vice President and General Counsel of the Lender.

"**Restricted Payment**" means any dividend or other distribution (whether in cash, securities or other property) with respect to any Equity Interests of any Borrower, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such Equity Interests or on account of any return of capital to any Borrower's stockholders, partners or members (or the equivalent Person thereof), any payment of management fees (or other fee of a similar nature) or out-of-pocket expenses to the holders of such Equity Interests or any setting apart of funds or property for any of the foregoing.

"**Revolving Facilities**" has the meaning specified in Section 2.01(b).

"**Revolving Commitment**" means the Interim New Money DIP Commitment and the Additional New Money DIP Revolving Commitment.

"**Sale and Leaseback Transaction**" means, with respect to any Borrower, any arrangement, directly or indirectly, with any Person whereby such Borrower shall sell or transfer any property used or useful in its business, whether now owned or hereafter acquired, and thereafter rent or lease such property or other property that it intends to use for substantially the same purpose or purposes as the property being sold or transferred.

"**Sanctioned Country**" means any country, region or territory to the extent that such country or territory itself is the subject of comprehensive Sanctions (as of the date of this Agreement, the so-called Donetsk People's Republic, the so-called Luhansk People's Republic, the Crimea, Zaporizhzhia and Kherson Regions of Ukraine, Cuba, Iran, North Korea and Syria).

"**Sanctioned Person**" means, at any time, (a) any Person who is the subject of any Sanctions, including any Person listed or designated as being the target of any Sanctions (whether by name or by reason of being included in a class of persons), (b) any Person operating, having a place of business, organized, located or resident in a Sanctioned Country, (c) any agency of the government of or an organization controlled by a Sanctioned Country, or (d) any Person that is 50% or more, individually or in the aggregate, directly or indirectly, owned, or that is Controlled by, one or more of the persons indicated in clauses (a), (b) and/or (c), or acting directly or indirectly on behalf of any such Person.

"**Sanctions**" means any economic, financial or trade sanctions, laws, regulations or restrictive measures, or trade embargoes, imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State, (b) the United Nations or its Security Council, (c) the European Union, (d) Her Majesty's Treasury of the United Kingdom, or (e) any other relevant sanctions authority, including any other governmental or regulatory authority, institution or agency which administers economic, financial or trade sanctions laws, regulations, trade embargoes or restrictive measures applicable to the Borrowers or the Lender.

"**Subsidiary**" of a Person means a corporation, partnership, joint venture, limited liability company or other business entity of which at least a majority of the shares of Voting Stock is at the time beneficially owned, or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by such Person.

"**Superpriority Claim**" shall mean a claim against any Borrower in any of the Chapter 11 Cases that is a superpriority administrative expense claim having priority over any or all administrative expenses and other claims of the kind specified in, or otherwise arising or ordered under, any sections of the Bankruptcy Code (including, without limitation, sections 105, 326, 328, 330, 331, 503(b), 507(a), 507(b), 546, 726, 1113 and/or 1114 thereof), whether or not such claim or expenses may become secured by a judgment Lien or other non-consensual Lien, levy or attachment, subject to the Carve-Out in all respects.

"**Synthetic Lease**" means any synthetic lease, tax retention operating lease, off-balance sheet loan or similar off-balance sheet financing arrangement whereby the arrangement is considered borrowed money indebtedness for tax purposes but is classified as an operating lease or does not otherwise appear on a balance sheet under GAAP.

"**Taxes**" means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholdings), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

"**UCC**" means the Uniform Commercial Code as in effect in the State of New York or, when the laws of any other jurisdiction govern the perfection or enforcement of any Lien, the Uniform Commercial Code of such jurisdiction.

"**United States**" and "**U.S.**" means the United States of America.

"**UST**" means the Office of the United States Trustee for Region 2.

"**Variance Report**" means a weekly report to be provided by Borrowers to the Lender and counsel for the Lender on the first Wednesday of the week following entry of the Interim Order and no later than five (5) Business Days after the end of each week thereafter showing for the immediately preceding week the amount of variance and percentage variance of actual disbursements of the type of each line item set forth on the Budget (on a line item basis) from those disbursements and other amounts reflected in the Budget for the corresponding periods, and an explanation of the reason for any material variance.

"**Voting Stock**" means, with respect to any Person, Equity Interests issued by such Person the holders of which are ordinarily, in the absence of contingencies, entitled to vote for the election of directors (or persons performing similar functions) of such Person, even though the right so to vote has been suspended by the happening of such a contingency.

1.02 **Other Interpretive Provisions**.

With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." The word "will" shall be construed to have the same meaning and effect as the word "shall." Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document (including any Organization Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented, restated or otherwise modified (subject to any restrictions on such amendments, supplements, restatements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person's successors and assigns, (iii) the words "herein," "hereof" and "hereunder," and words of similar import when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv) all references in a Loan Document to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, the Loan Document in which such references appear, (v) any reference to any law shall include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such law, and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time, and (vi) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all real and personal property and tangible and intangible assets and properties, including cash, securities, accounts and contract rights. Terms used herein (including without limitation, "Accounts," "Chattel Paper," "Documents," "Instruments," "Inventory" and "Proceeds") that are defined in the UCC, unless otherwise defined herein, shall have the meanings specified in the UCC.

(b) In the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including"; the words "to" and "until" each mean "to but excluding"; and the word "through" means "to and including."

(c) Section headings herein and in the other DIP Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

1.03 **Accounting Terms**.

Except as otherwise specifically prescribed herein, all accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP applied on a consistent basis, as in effect from time to time, applied in a manner consistent with that used in preparing the Borrowers' financial statements; provided that calculations of Attributable Indebtedness under any Synthetic Lease or the implied interest component of any Synthetic Lease shall be made by the Borrowers in accordance with accepted financial practice and consistent with the terms of such Synthetic Lease.

1.04 **Times of Day**.

Unless otherwise specified, all references herein to times of day shall be references to New York time (Eastern daylight or standard, as applicable).

ARTICLE II
THE LOANS

2.01 **<u>The Loans</u>**.

(a) **<u>Interim DIP Loans</u>**. Subject to the terms and conditions set forth herein and in the DIP Order, following entry of the Interim Order, the Lender agrees to make the following loans to the Borrowers, upon their written request in accordance with Section 2.02 below and subject to Article IV: (i) a loan in an aggregate amount of *up to* the Interim New Money DIP Commitment on a revolving basis (the "**Interim New Money DIP Facility**"), and (ii) with respect to the Prepetition Obligations, a term loan in an amount equal to two hundred percent (200%) of the principal amount of such Interim New Money DIP Facility as such Interim New Money DIP Facility is drawn and shall automatically be deemed converted, exchanged, refinanced, and reconstituted as DIP Obligations at such time (the "**Interim Roll Up DIP Loan**"); *provided* that the deemed borrowing by the Borrowers of the Interim Roll Up DIP Loan shall entitle the Borrowers to receive for cancellation an equivalent aggregate principal amount of Prepetition Obligations from the Lender and shall not entitle the Borrowers to receive any cash or other consideration from the Lender on account of the Interim Roll Up DIP Loan. Notwithstanding that no such cash or other consideration is exchanged on account of the Interim Roll Up DIP Loan, the Borrowers shall owe the aggregate principal amount of the Interim Roll Up DIP Loan to the Lender under this Agreement and the Borrowers and the Lender agree that such amounts shall no longer be outstanding under the Prepetition Note Documents. The Interim New Money DIP Commitment shall expire upon the earlier of (i) the funding by the Lender of the maximum amount of the Interim New Money DIP Commitment, or (ii) the entry of the Final Order.

(b) **<u>Final DIP Facility</u>**. Subject to the terms and conditions set forth herein and in the DIP Order, following entry of the Final Order, except for funds advanced under Section 8.03, and following remittance by the Borrowers to the Lender of the Holdback Amounts then required to be remitted under this Agreement, which shall be credited to the Prepetition Obligations and then, to the extent any amounts remain, to the Interim Roll Up DIP Loan, the Lender agrees to make the following loans to the Borrowers: (i) one or more loans on a revolving basis in an aggregate amount of *up to* the Additional New Money DIP Revolving Commitment (the "**Additional New Money DIP Revolving Facility**" and, together with the Interim New Money DIP Facility, the "**Revolving Facilities**") from time to time in amounts consistent with the projected cash flow shortfalls set forth in the Budget unless otherwise consented to by the Lender in its sole and absolute discretion; and (ii) with respect to the Prepetition Obligations, a term loan in an amount equal to two hundred percent (200%) of the principal amount of such Additional New Money DIP Revolving Facility as such Additional New Money DIP Revolving Facility is drawn and shall automatically be deemed converted, exchanged, refinanced, and reconstituted as DIP Obligations at such time (the "**Additional Roll Up DIP Loan**" and, together with the Interim Roll Up DIP Loan, the "**Roll Up DIP Loans**"); *provided* that the deemed borrowing by the Borrowers of the Interim Roll Up DIP Loan shall entitle the Borrowers to receive for cancellation an equivalent aggregate principal amount of Prepetition Obligations from the Lender and shall not entitle the Borrowers to receive any cash or other consideration from the Lender on account of the Interim Roll Up DIP Loan. Notwithstanding that no such cash or other consideration is exchanged on account of the Interim Roll Up DIP Loan, the Borrowers shall owe the aggregate principal amount of the Interim Roll Up DIP Loan to the Lender under this Agreement and the Borrowers and the Lender agree that such amounts shall no longer be outstanding under the Prepetition Note Documents. The Additional New Money DIP Revolving Commitment shall expire upon the earliest to occur of the Maturity Date, termination of the Revolving Commitments, or funding by the Lender of the maximum amount of the Additional New Money DIP Revolving Commitment.

(c) The Revolving Facilities may be borrowed, repaid and reborrowed from time to time during the period from entry of the applicable DIP Order through the Maturity Date, subject to the terms and conditions of this Agreement and the DIP Order. Other than the remittance of Holdback Amounts set forth in section 2.03, Borrower is under no obligation to repay any Loan amounts earlier than upon the Maturity Date, an Event of Default, the occurrence of a mandatory prepayment event set forth in section 2.04 (b) or Termination Event, as set forth in this Agreement.

2.02 **Borrowing of the Loans**.

Following entry of the Interim Order (with respect to the Interim New Money DIP Facility) or the Final Order (with respect to the Additional New Money DIP Revolving Facility), the Borrowers may request a Borrowing under a Revolving Facility by delivering a Borrowing Request to the Lender no later than no later than 12:00 p.m. one Business Day prior to the requested date of such Borrowing (or such later time as may be agreed to by the Lender in its sole discretion); *provided* that the Lender's obligations to advance any requested amounts are subject in all respects to the conditions precedent set forth in Article IV, below unless otherwise consented to by the Lender in its sole and absolute discretion.

2.03 **Remittance of Holdback Amounts**.

Prior to entry of the Final Order, except to the extent necessary to cover any cash shortfalls to pay disbursements authorized under the Budget, upon the receipt by any Borrower of any portion of the Holdback Amounts, the Borrower shall, on or prior to the date which is one Business Day after the date of receipt by the Borrower of such Holdback Amounts, deposit all such amounts in a segregated account (the depositary of such account to be subject to the consent of the Lender in its sole discretion but in accordance with U.S. Trustee guidelines) which shall be subject to the Lender's control or otherwise satisfactory to the Lender, pending entry of the Final Order. Following entry of the Final Order, the Borrower shall remit all such amounts received to the Lender within one Business Day after receipt, and Holdback Amounts so received by the Lender shall be applied (A) first to the Prepetition Obligations then outstanding, if any, (B) next, to the outstanding balance of the DIP Loans as of the date of the prepayment, and (C) the amount of any excess then remaining may be retained by the Borrower only if no Default or Event of Default has occurred and is continuing hereunder.

2.04 **Prepayments**.

(a) **Voluntary Prepayments**. The Borrower may, upon notice to the Lender, at any time or from time to time, voluntarily prepay any Loans in whole or in part without premium or penalty, other than any Exit Fee, accrued interest, fees, expenses and other DIP Obligations then due and payable. Any prepayment of a Loan shall be accompanied by all accrued interest thereon and shall not reduce the Revolving Commitments unless the Lender otherwise agrees in writing.

(b) **Mandatory Prepayments of Loans**.

(i) **Dispositions and Involuntary Dispositions**. Upon the receipt by any Borrower of the Net Cash Proceeds of any Disposition or Involuntary Disposition consummated on or after the Petition Date, the Borrower shall, on or prior to the date which is three (3) Business Days after the date of the realization or receipt by the Borrower of such Net Cash Proceeds, prepay the Loans as hereafter provided in an aggregate amount equal to 100% of the Net Cash Proceeds of such Disposition or Involuntary Disposition.

(ii) **Debt and Equity Issuances**. Upon the receipt by any Borrower after the Petition Date of the Net Cash Proceeds (x) of any Debt Issuance not permitted under Section 7.03 or (y) from the sale or issuance by the Borrower of any of its Equity Interests (other than any sales or issuances of Equity Interests to another Borrower), in each case, the Borrower shall, on or prior to the date which is three (3) Business Days after the date of the realization or receipt by the Borrower of such Net Cash Proceeds, prepay the Loans as hereafter provided in an aggregate amount equal to 100% of such Net Cash Proceeds.

(iii) **Litigation Recoveries**. Upon the receipt by any Borrower of the Net Cash Proceeds of any settlement, judgment, award, or other recovery in respect of any Commercial Tort Claim or other litigation claim constituting DIP Collateral, the Borrower shall, on or prior to the date which is three (3) Business Days after the date of the receipt by the Borrower of such Net Cash Proceeds, prepay the Loans as hereafter provided in an aggregate amount equal to 100% of such Net Cash Proceeds.

(iv) **Prior Notice**. The Borrower shall notify the Lender in writing of any mandatory prepayment of Loans required to be made by the Borrower pursuant to clauses (i) through (iii) of this Section 2.04(b) not later than 12:00 p.m. at least one Business Day prior to the date of such prepayment. Each such notice shall specify the date of such prepayment and provide a reasonably detailed calculation of the aggregate amount of such prepayment to be made by the Borrower.

(v) **Application of Mandatory Prepayments**. All amounts to be paid pursuant to Section 2.04(a) or (b) shall be applied as follows:

(A) First, to payment of that portion of the DIP Obligations constituting fees, indemnities, expenses, and other amounts (including fees, charges and disbursements of counsel to the Lender and amounts payable under Article III) payable in accordance with the DIP Loan Documents to the Lender;

(B) Second, to payment of that portion of the DIP Obligations constituting accrued and unpaid interest on the Loans; and

(C) Third, to payment of that portion of the DIP Obligations constituting unpaid principal payments.

Notwithstanding anything to the contrary in any DIP Loan Document, all prepayments under this Section 2.04(b) shall be accompanied by interest on the principal amount prepaid through the date of prepayment.

2.05 **Repayment of Loans**.

The Borrowers shall repay to the Lender on the Maturity Date the aggregate principal amount of all Loans outstanding on such date, together with all accrued and unpaid interest thereon, and any outstanding fees, in each case, payable in accordance with the DIP Loan Documents, without notice or demand by the Lender.

2.06 **Interest**.

(a) **PIK Interest**. The Loans shall bear interest on the outstanding principal amount thereof from the date such Loans are borrowed until repaid, accruing on a simple basis at a rate per annum equal to twelve and 00/100ths percent (12.00%), which will be paid by the Borrowers in kind on the then outstanding principal amount of the Loans by increasing the principal amount of the Loans.

(b) **Default Interest**.

(i) Upon the occurrence and during the continuance of an Event of Default, the Borrowers shall pay interest on the outstanding DIP Obligations hereunder at an interest rate per annum at all times equal to the Default Rate, to the fullest extent permitted by applicable Laws.

(ii) After the Maturity Date, accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

(c) **Interest Payment**. Interest shall accrue and be paid to the Lender on the Interest Payment Date. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law. Interest at the Default Rate shall be payable on demand following an Event of Default.

(d) **Computation of Interest and Fees**. All computations of interest for the Loans shall be made on the basis of a 360-day year and actual days elapsed. Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid; *provided* that any Loan that is repaid on the same day on which it is made shall bear interest for one day. Each determination by the Lender of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

2.07 **Evidence of Debt**.

The Loans made by the Lender shall be evidenced by one or more accounts or records (including the Register maintained pursuant to Section 9.06(c)) maintained by the Lender in the ordinary course of business. Such accounts or records maintained by the Lender shall be conclusive as to the amount of the Loans made by the Lender to the Borrowers and the interest and payments thereon, absent manifest error. Any failure to so record or any error in the accounts or records shall not, however, limit or otherwise affect the obligation of the Borrowers hereunder to pay any amount actually owing with respect to the DIP Obligations. For the avoidance of doubt, this Agreement is being executed as a "noteless" credit agreement. However, at the request of the Lender at any time, the Borrowers agree that they will prepare, execute and deliver to the Lender a promissory note, in form and substance satisfactory to the Lender and consistent with the terms of this Agreement, payable to the order of Lender and its registered assigns (a "**Note**"). Thereafter, the Loans evidenced by such Note and interest thereon shall at all times (including after assignment permitted hereunder) be represented by one or more Notes in such form payable to the order of the payee named therein and its registered assigns.

2.08 **Lender Fees and Expenses**.

(a) **Senior Lender Expenses.** All Lender Expenses and all reasonable and documented out of pocket expenses incurred by the Lender in connection with the documentation and negotiation of this Agreement and the other DIP Loan Documents and in connection with the Chapter 11 Cases through and after the Effective Date, including, without limitation, the reasonable and documented fees and expenses of Pullman & Comley LLC, as counsel, any third party consultants, financial, or accounting advisors, and other professionals, which expenses will be paid within five Business Days after presentation of a payment request and, to the extent permitted by the DIP Order, without the need for any further notice, hearing or Bankruptcy Court order. If Borrowers do not pay any Lender Expenses within the time period specified above Borrowers shall thereby be conclusively deemed to have requested, and Lender is hereby authorized at its discretion to make and charge to Borrowers' account, an advance under the Loans as of such date in an amount equal to such unpaid Lender Expenses and the same shall be and become part of the DIP Obligations, provided, that Lender shall have no obligation to make such payment and shall not by so doing be deemed to have assumed any obligation or liability of Borrowers.

(b) **Exit Fees**. Upon the earlier to occur of the (a) Maturity Date, or (b) full repayment of the Loan and all other Indebtedness whether as a result of the acceleration of the Loan, or otherwise, the Borrowers shall pay an exit fee (the "**Exit Fee**") to the Lender in an amount equal to 2.0% multiplied by the aggregate principal amount of all Loans advanced, deemed advanced, capitalized or otherwise added to the DIP Obligations hereunder, which fee shall be fully earned upon entry of the Interim Order, due and payable upon the earlier of the events described in this Section, and not refundable under any circumstances.

2.09 **Payments Generally**.

All payments to be made by the Borrowers shall be made without condition or deduction for any counterclaim, defense, recoupment, or setoff. Except as otherwise expressly provided herein, all payments by the Borrowers hereunder shall be made to the Lender in Dollars and in immediately available funds not later than 2:00 p.m. on the date specified herein. All payments received by the Lender after 2:00 p.m. shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. If any payment to be made by the Borrowers come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

ARTICLE III
TAXES, YIELD PROTECTION AND ILLEGALITY

3.01 **Taxes**.

(a) **General**. Any and all payments by any Borrower hereunder shall be made in full, free and clear of and without deduction or withholding for any and all present or future Taxes. If any Borrower is required by law to deduct or withhold any Taxes from or in respect of any such payment to the Lender, (i) the sum payable shall, subject to applicable law, be increased as may be necessary so that after making all required deductions and withholdings (including deductions and withholdings applicable to additional sums payable under this Section 3.01), the Lender receives an amount equal to the amount it would have received had no such deductions or withholdings been made, (ii) the Borrowers shall make such deductions or withholdings and (iii) the Borrowers shall pay the full amount required to be deducted or withheld to the relevant taxation authority or other authority in accordance with applicable law and within the time for payment prescribed by applicable law.

(b) **Other Taxes**. In addition, the Borrowers agree to pay any present or future Other Taxes, other than Excluded Taxes.

(c) **Tax Indemnity**. The Borrowers hereby indemnify the Lender for, and agree to hold the Lender harmless from, the full amount of all Taxes and Other Taxes payable by the Lender (other than Excluded Taxes) and any liability, cost or amount (including penalties, interest and expenses) arising therefrom or with respect thereto.

(d) **Payment of Taxes**. Within 30 days after the date required for payment of any Taxes or Other Taxes required to be deducted or withheld by a Borrower in respect of any payment or delivery to the Lender, such Borrower will furnish to the Lender a form of evidence of payment thereof acceptable to the Lender.

3.02 **Increased Costs**.

(a) **Increased Costs Generally**. If any Change in Law shall:

(i) impose, modify, or deem applicable any reserve, special deposit, compulsory loan, insurance charge, or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, the Lender;

(ii) subject the Lender to any Taxes and Other Taxes payable by the Lender (other than Excluded Taxes) with respect to this Agreement or any Loan made by it, or change the basis of taxation of payments to the Lender in respect thereof; or

(iii) impose on the Lender any other condition, cost, or expense affecting this Agreement or loan made by the Lender;

and the result of any of the foregoing shall be to increase the cost to the Lender of making or maintaining the Loan, or to reduce the amount of any sum received or receivable by the Lender hereunder (whether of principal, interest, or any other amount) then, upon request of the Lender, the Borrowers will pay to the Lender such additional amount or amounts as will compensate the Lender for such additional costs incurred or reduction suffered.

(b) **Certificates for Reimbursement**. A certificate of a Responsible Officer of the Lender setting forth the amount or amounts necessary to compensate the Lender as specified in paragraph (a) of this Section 3.02 and delivered to the Borrowers shall be conclusive absent manifest error. The Borrowers shall pay the Lender the amount shown as due on any such certificate within five (5) Business Days after receipt thereof.

(c) **Delay in Requests**. Failure or delay on the part of the Lender to demand compensation pursuant to this Section 3.02 shall not constitute a waiver of the Lender's right to demand such compensation.

3.03 **Survival**.

All of the Borrowers' obligations under this Article III shall survive repayment of all other DIP Obligations hereunder, subject to the limitations contained in this Article III.

ARTICLE IV
CONDITIONS PRECEDENT

4.01 **Conditions to Funding of the Interim New Money DIP Facility**.

The obligations of the Lender to make advances under the Interim New Money DIP Facility shall be subject to the satisfaction or waiver of the following conditions precedent:

(a) **Credit Agreement**. Receipt by the Lender of executed counterparts of this Agreement and the other DIP Loan Documents, properly executed by a Responsible Officer of each Borrower, and subject only to entry of the Interim Order.

(b) **Resolutions**. Receipt by the Lender of such copies of resolutions, certificates of good standing, or other action, incumbency certificates and/or other certificates of Responsible Officers of each Borrower as Lender may require evidencing (i) the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Agreement and the other DIP Loan Documents, and (ii) the resolutions adopted by each Borrower's board of directors or governing body for the purpose of approving the transactions contemplated by this Agreement, each in form and substance satisfactory to the Lender.

(c) **Financing Statement Searches**. Certified copies, dated no earlier than 30 days prior to the first Borrowing Request, of financing statement searches, as the Lender shall request, accompanied by written evidence (including any UCC termination statements) that the Liens indicated in any such financing statements either constitute Permitted Liens or have been or, in connection with the funding of the Interim New Money DIP Facility, will be terminated or released;

(d) **Evidence of Insurance**. Receipt by the Lender of certificates of insurance and related endorsements of the Borrowers evidencing liability and casualty insurance naming the Lender as additional insured (in the case of liability insurance) and loss payee (in the case of hazard insurance).

(e) **No Litigation**. There shall be no (i) material litigation pending, or to the Borrowers' knowledge threatened in writing, against or affecting the Borrowers, or (ii) injunction or other form of restraining order, which in either case restrains, restricts, or seeks to restrain or restrict the closing of this Agreement or the making of the Loans.

(f) **Interim Order**. The Interim Order, in form and substance satisfactory to the Lender in its sole and absolute discretion, shall have been entered and shall not have been (x) stayed, vacated, reversed or rescinded, and any appeal of such order shall not have been timely filed and a stay of such order pending appeal shall not be presently effective, or (y) without the prior written consent of the Lender, given in its sole and absolute discretion, revised, amended or modified.

(g) **Budget**. The Borrowers and the Lender shall have agreed upon the Budget, and the Budget shall have been delivered to the Lender and approved by the Bankruptcy Court in the Interim Order.

(h) **Chapter 11 Cases**. The Chapter 11 Cases shall have been commenced and all material pleadings (including but not limited to pleadings related to the DIP Loan Documents and the assumption or rejection of executory contracts or unexpired leases (the "**Material Pleadings**")) to be entered or filed shortly after commencement of the Chapter 11 Cases shall have been provided at least 24 hours in advance to the Lender or otherwise with as much notice as reasonably practicable—but in no event later than the time on which such draft orders and pleadings are provided to counsel for the United States Trustee—and shall be in form, scope, and substance satisfactory to the Lender.

4.02 **Conditions to Funding All Loans**.

The obligations of the Lender to make any Loans, including advances under the Interim New Money DIP Facility and the Additional New Money DIP Revolving Facility, shall be subject to the satisfaction or waiver of the following additional conditions precedent:

(a) **Accuracy of Representations and Warranties**. The representations and warranties of the Borrowers contained in Article V or any other Loan Document, or which are contained in any document furnished at any time under or in connection herewith or therewith, shall be true and correct in all material respects (without duplication of any materiality qualifier contained therein) on and as of the date of any Borrowing Request, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects (without duplication of any materiality qualifier contained therein) as of such earlier date.

(b) **No Default**. No Default or Event of Default shall exist or would result from the making of such Loans or from the application of the proceeds thereof.

(c) **Borrowing Request**. The Lender shall have received an executed Borrowing Request in accordance with the requirements of Section 2.02 of this Agreement.

(d) **DIP Order**. Other than with respect to the Interim New Money DIP Facility, the Final Order, in a form satisfactory to the Lender in its sole and absolute discretion, shall be in full force and effect, and shall not have been (x) stayed, vacated, reversed, or rescinded, and any appeal of such order shall not have been timely filed and a stay of such order pending appeal shall not be presently effective, or (y) without the prior written consent of the Lender, given in its sole and absolute discretion, revised, amended or modified.

(e) **Material Adverse Effect**. Other than the commencement of the Chapter 11 Cases, in the Lender's reasonable discretion, no Material Adverse Effect shall have occurred since the Petition Date.

(f) **Milestones**. All Milestones set forth in Section 6.18 required to have been met as of the date of each applicable Borrowing shall have been met.

(g) **Budget**. The Borrowers shall be in compliance with the then-current Budget as determined pursuant to Section 7.24.

(h) **Valid Security Interest**. The Lender shall have, approved in the applicable DIP Order, a valid and perfected, priming first-priority Lien on and security interest in the DIP Collateral pursuant to this Agreement and the DIP Order, subject to the Carve-Out.

(i) **Payment of Lender Fees and Expenses**. The Borrowers shall have paid all Lender Expenses and Lender Fees and then due as set forth in Section 2.08 hereof.

(j) **Access to E-Books and Records**. The Borrowers shall have complied with Sections 6.08(c) and (d).

(k) **No Trustee**. There shall not have been appointed (a) a trustee under Section 1104 of the Bankruptcy Code, or (b) an examiner or other responsible person or officer with enlarged powers relating to the operation of the business (powers beyond those set forth in Section 1106(a)(3) and (4) of the Bankruptcy Code) under Section 1106(b) of the Bankruptcy Code, and (c) none of the Chapter 11 Cases shall have been dismissed or converted to a chapter 7 case;

(l) **DIP Liens**. All of the security interests with respect to the DIP Collateral shall be effective and perfected by the applicable DIP Orders on the terms set forth in the applicable DIP Orders and without the necessity of the execution of mortgages, security agreements, pledge agreements or other agreements (except to the extent so executed).

(m) **First Day Orders**. The Lender shall have received copies of all of the "first day orders" entered by the Bankruptcy Court on or about the Petition Date (and if any such orders shall have not been entered by the Bankruptcy Court, the form of such orders submitted to the Bankruptcy Court for approval) regarding, relating to or impacting (i) the Credit Parties' cash management systems and arrangements, (ii) any rights or remedies of any Lender, (iii) this Agreement, (iv) the DIP Collateral, any Liens thereon or any DIP Superpriority Claims, (v) the use of cash collateral, (vi) debtor-in-possession financing, (vii) adequate protection or otherwise relating to the Prepetition Obligations, and (viii) customer programs, warranties and sales facilitation programs, in each case in form and substance reasonably satisfactory to the Administrative Agent (it being agreed that the forms filed on the Petition Date are satisfactory).

(n) **Other Orders**. All orders entered by the Bankruptcy Court pertaining to any payment of any of the Borrowers' vendors, shippers, or other trade counterparties in compliance with the DIP Budget and all motions and other documents filed, and submitted to, the Bankruptcy Court in connection therewith shall be in form and substance reasonably satisfactory to the Lender.

(o) **Compliance Certificate**. The Lender shall have received a certificate duly signed by a Responsible Officer of each Borrower certifying to the conditions set forth in clauses (a)-(k) of this Section.

(p) **Reasonable Security**. On a reasonable, good-faith basis, the Lender shall deem itself adequately secured with respect to the DIP Collateral and the DIP Obligations hereunder.

4.03 **Conditions to Funding the Additional New Money DIP Revolving Facility**.

Unless otherwise consented to by the Lender in its sole and absolute discretion, prior to the Borrower being eligible to receive any advances of the Additional New Money DIP Revolving Facility, the Borrower shall have received Holdback Amounts in an amount not less than the amounts specified in Section 6.18(d) for the relevant period of time, and shall have remitted all such Holdback Amounts so received to the Lender in accordance with Section 2.03.

ARTICLE V
REPRESENTATIONS AND WARRANTIES

Each Borrower represents and warrants to the Lender as follows:

5.01 **Existence, Qualification and Power**.

Each Borrower (a) is duly organized or formed, validly existing and in good standing under the Laws of the jurisdiction of its incorporation or organization, (b) upon entry of the DIP Order, has all requisite organizational power and authority and all requisite governmental licenses, authorizations, consents and approvals to own, pledge, mortgage and operate its assets, to lease or sublease its assets and to carry on its business and execute, deliver and perform its obligations under the DIP Loan Documents to which it is a party, and (c) is duly qualified and is licensed and in good standing under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license.

5.02 **Authorization; No Contravention**.

Subject to entry of the DIP Order and to the extent not remedied by the entry of the DIP Order, the execution, delivery and performance by each Borrower of each DIP Loan Document have been duly authorized by all necessary company or other organizational action and do not (a) contravene the terms of any of such Borrower's Organization Documents; (b) result in any breach or contravention of, or the creation of any Lien under, or require any payment to be made under (i) any Material Contract to which such Borrower is a party or affecting such Borrower or the properties of such Borrower or (ii) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Borrower or its property is subject; (c) or violate any Law, except, in each case referred to in clause (c), to the extent that such violation could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

5.03 **Governmental Authorization; Other Consents**.

Except for the entry of the DIP Order, no Permit, approval, consent, exemption, authorization or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with the execution, delivery or performance by, or enforcement against, any Borrower of this Agreement or any other DIP Loan Document other than (a) those that have already been obtained and are in full force and effect and (b) actions necessary to comply with the DIP Loan Documents on or after the Petition Date.

5.04 **Binding Effect**.

Upon entry of the DIP Order, each DIP Loan Document will have been duly executed and delivered by each Borrower. Each DIP Loan Document constitutes a legal, valid and binding obligation of each Borrower, enforceable against each Borrower in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting the enforcement of creditors' rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or at law).

5.05 **No Material Adverse Effect**.

(a) Since the Petition Date, there has been no Disposition by any Borrower, or any Involuntary Disposition, of any material part of the business or property of any Borrower, and no purchase or other acquisition by any of them of any business or property (including any Equity Interests of any other Person) material to any Borrower, in each case, that is not set forth in the Budget or has not been disclosed in writing to the Lender on or prior to the Petition Date.

(b) Since the Petition Date, there has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect, other than the filing, commencement and continuation of the Chapter 11 Cases and the events that customarily result from filing, commencement and continuation of the Chapter 11 Cases.

5.06 **Litigation**.

Except for the Chapter 11 Cases, there are no actions, suits, proceedings, claims, disputes or investigations pending or, to the knowledge of the Borrowers, threatened, at law, in equity, in arbitration or before any Governmental Authority, by or against any Borrower or against any of their properties or revenues including, without limitation, any actions, suits, proceedings, claims, disputes or investigations pending that (a) purport to affect or pertain to this Agreement, any other DIP Loan Document, the DIP Collateral or any of the other transactions contemplated hereby or thereby, or (b) could reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

5.07 **Environmental Compliance**.

(a) To the knowledge of the Borrowers, after reasonable inquiry, the Borrowers have not received any notice, report, or other information regarding any actual violation, alleged violation, non-compliance, liability or potential liability concerning or arising out of Environmental Laws or Hazardous Materials with regard to the Borrowers or their Business or any of their past or present properties or facilities.

(b) To the knowledge of the Borrowers, after reasonable inquiry, the Borrowers have not handled, generated, treated, stored, transported, or disposed of, any Hazardous Materials, except in the ordinary course of business and in compliance with all applicable Environmental Laws;

(c) To the knowledge of the Borrowers, after reasonable inquiry, no judicial proceeding or governmental or administrative action is pending or threatened under any Environmental Law to which any Borrower is or may be named a party or with respect to the Businesses, nor, to the knowledge of the Borrowers, are there any consent decrees or other decrees, judgements, consent orders, administrative or other orders or similar administrative of judicial requirements outstanding under any Environmental Law with respect to the Businesses.

(d) To the knowledge of the Borrowers, after reasonable inquiry, the Borrowers are, and for a period of two years prior to the Petition Date, have been, in compliance with all applicable Environmental Laws.

5.08 **Insurance**.

The properties and businesses of the Borrowers are insured with financially sound and reputable insurance companies that are not Affiliates of the Borrowers, in such amounts, with such deductibles and covering such risks as are customarily carried by prudent companies of similar size and engaged in similar businesses and owning similar properties in localities where the applicable Borrower operates. All such insurance coverage is in full force and effect and all premiums due in respect of all insurance maintained by the Borrowers have been paid, to the extent due. As of the date hereof, to the knowledge of the Borrowers, after reasonable inquiry, no Borrower has received notice of violation or cancellation of any such insurance coverage and there is no existing default or event which, with the giving of notice or lapse of time or both, would constitute a default by any insured thereunder.

5.09 **Taxes**.

To the knowledge of the Borrowers, after reasonable inquiry, the Borrowers have timely filed, or caused to be timely filed, with the appropriate Governmental Authorities and in the appropriate jurisdictions, all federal, state, local and other Tax returns and reports required to be filed, and have timely paid, prior to the date on which any liability may be added thereto for non-payment thereof, all federal, state, local and other Taxes levied or imposed upon them or their properties, income or assets otherwise due and payable, except to the extent not required due to the filing of the Chapter 11 Cases or those which are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves have been provided in accordance with GAAP unless consented to otherwise by the Lender in its sole and absolute discretion. To the knowledge of the Borrowers, after reasonable inquiry, no such Tax return or report is under audit or examination by any Governmental Authority.

5.10 **Disclosure**.

The Borrowers have disclosed to the Lender all matters known to them (including with respect to all agreements, instruments and corporate or other restrictions to which it is subject) that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. To the knowledge of the Borrowers, after reasonable inquiry, no representation or warranty made by them in this Agreement or any other DIP Loan Document contains any untrue statement of a material fact or omits to state any material fact necessary to make the statements herein or therein, taken as a whole, in light of the circumstances when made, not misleading.

5.11 **Compliance with Laws and Agreements**.

To the knowledge of the Borrowers, after reasonable inquiry, and subject to entry of the DIP Order, the Borrowers are in compliance with the requirements of all Laws and all orders, writs, injunctions and decrees binding upon it and its properties, except in such instances in which (i) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted and (ii) the failure to comply therewith could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

5.12 **Creation and Perfection of Security Interests in the DIP Collateral**.

To the Borrowers' knowledge, upon the entry thereof and subject to its terms, the provisions of the DIP Order are effective to create in favor of the Lender a legal, valid and enforceable first-priority, priming Lien in all right, title and interest of the Borrowers in each item of DIP Collateral, except, as set forth in the DIP Order, in the case of any Permitted Liens to the extent that any such Permitted Liens would have priority over the security interest in favor of the Lender pursuant to any applicable Law.

5.13 **Labor Matters**.

To the knowledge of the Borrowers, there are no collective bargaining agreements or Multiemployer Plans covering the employees of any Borrower. To the knowledge of the Borrowers, after reasonable inquiry, as of the date hereof, the Borrowers are in compliance with all Laws relating to labor and employment.

5.14 **Permits**.

To the knowledge of the Borrowers, after reasonable inquiry, they have all Permits necessary to enable them to conduct their Business in the manner in which they are presently conducted, and such Permits are in full force and effect. To the knowledge of the Borrowers, after reasonable inquiry, they are in compliance in all material respects with all of their Permits.

5.15 **Reorganization Matters**.

(a) The Chapter 11 Cases were commenced on the Petition Date in accordance with applicable law and the Borrowers shall provide proper notice of (x) the motion seeking approval of the DIP Loan Documents and the DIP Order, (y) the hearing for the approval of the Interim Order and (z) the hearing for the approval of the Final Order. The Borrowers shall give on a timely basis as specified in the Interim Order or the Final Order, as applicable, all notices required to be given to all parties specified in the Interim Order or the Final Order, as applicable.

(b) Upon the entry of the DIP Order and subject to its terms, the DIP Obligations will constitute allowed Superpriority Claims in the Chapter 11 Cases having priority over all administrative expense claims and unsecured claims against the Borrowers now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expense claims of the kind specified in sections 326, 330, 331, 503(b), 506(c), 507(a), 507(b), 726, or any other provision of the Bankruptcy Code or otherwise, as provided under section 364(c)(1) of the Bankruptcy Code, subject to the Carve-Out.

(c) Upon the entry of the DIP Order and subject to its terms, the DIP Obligations will be secured by a valid and perfected, first-priority priming Lien on all of the DIP Collateral, subject to the Carve-Out and except for the following to the extent duly perfected and enforceable (in which case Lender shall be granted a junior Lien under section 364(c)(3) of the Bankruptcy Code): (i) purchase money security interests or property subject to true equipment leases; (ii) liens and security interests held by Bank United; (iii) liens and security interests held by the Small Business Administration; (iv) liens and security interests held by Inkind Card and Rewards Network to secure certain contractual obligations; and (v) *solely during the Interim Period*, liens and security interests held by an entity that provided financing to any Debtor in the form of a purchase of future receivables, revenue-based financing, or a merchant cash advance; in each case (i)-(v), solely to the extent such liens were senior to the Lender prior to the Petition Date and duly perfected, valid, enforceable, and non-avoidable as of the Petition Date (collectively, the "**Permitted Prior Senior Liens**"). Notwithstanding the foregoing, Permitted Prior Senior Liens shall also include liens existing on the Petition Date and later perfected under section 546(b) of the Bankruptcy Code, solely to the extent valid, perfected, enforceable, unavoidable, and expressly identified as a Permitted Prior Senior Liens in the DIP Agreement or otherwise permitted by this Interim Order, ordinary depository setoff rights, minor real-property encumbrances, certain tax liens, and statutory and common law liens of landlords, carriers, warehousemen, mechanics, suppliers, materialmen, repairmen, and similar persons as permitted under Section 7.01 of the DIP Agreement.

(d) The DIP Order is in full force and effect and has not been reversed, stayed, modified or amended without the Lender's consent in its sole and absolute discretion.

(e) The Budget delivered to the Lender was prepared in good faith on the basis of the assumptions stated therein, which assumptions were believed in good faith by the Borrowers to be reasonable in light of the conditions existing at the time of delivery of the Budget (it being understood that any projections or estimates made in the Budget are not to be viewed as facts, that no assurance can be given that any such projections or estimates will be realized, that actual results may differ from projected results and such differences may be material).

(f) The use of cash collateral to fund the fees and costs of retained professionals as set forth in the Budget constitutes a diminution of the collateral of Lender that warrants adequate protection.

(g) Subject to and effective upon the entry of the DIP Order and subject to the terms of the DIP Order, except to the extent of the Carve-Out, no costs or expenses of administration of the Chapter 11 Cases or any future proceeding that may result therefrom, including a case under Chapter 7 of the Bankruptcy Code, shall be charged against or recovered from the DIP Collateral pursuant to §§ 105 or 506(c) of the Bankruptcy Code, the enhancement of collateral provisions of § 552 of the Bankruptcy Code, or any other legal or equitable doctrine (including, without limitation, unjust enrichment) or any similar principle of law, without the prior written consent of the Lender. Upon the entry of the DIP Order and subject to its terms, in no event shall the Lender be subject to (i) surcharge under § 506(b), (ii) the "equities of the case" exception contained in § 552(b) of the Bankruptcy Code, or (iii) the equitable doctrine of "marshaling" or any other similar doctrine with respect to Lender's collateral, including, without limitation, the DIP Collateral.

ARTICLE VI
AFFIRMATIVE COVENANTS

So long as Lender shall have any Revolving Commitment hereunder, or any Loan or other DIP Obligation hereunder shall remain unpaid or unsatisfied (other than contingent indemnification obligations for which no underlying claim has been asserted), the Borrowers shall:

6.01 **Certificates; Other Information**.

Deliver to the Lender, in form and detail satisfactory to the Lender in its sole and absolute discretion:

(a) promptly after any request from the Lender, information regarding the business, financial or corporate affairs of the Borrowers or compliance with the terms of the DIP Loan Documents;

(b) promptly after any request by the Lender, copies of any detailed audit reports, management letters or recommendations submitted to the Board of Directors (or the audit committee of the Board of Directors) of the Borrowers by independent accountants in connection with the accounts or books of the Borrowers, or any audit of any of them;

(c) on or before 12:00 p.m. on the first Wednesday of the week following entry of the Interim Order and on or before 12:00 p.m. on the fifth Business Day following the end of each week thereafter, a Variance Report, in form satisfactory to the Lender in its sole and absolute discretion; and

(d) copies of all monthly reports, projections, or other information respecting the Borrowers' business or financial condition or prospects as well as all pleadings, motions, applications and judicial information filed by or on behalf of the Borrowers with the Bankruptcy Court or provided to the UST or any trustee (including any monitor, examiner, or interim receiver) or Committee appointed in the Chapter 11 Cases, which documents the Debtors shall endeavor to provide to the Lender *at least one Business Day prior* to the earlier of the time that such documents are filed with the Bankruptcy Court but which in no event will be provided to the Lender later than the time that such documents are provided to the UST, a trustee, or a Committee; *provided*, *however*, that all Material Pleadings will be provided to the Lender no later than the earlier of *two* Business Days prior to (i) the time such documents are filed with the Bankruptcy Court or (ii) such time as they are provided to the UST or the Committee (or such later time as is agreed to in writing by the Lender), unless not practical under the circumstances.

Documents required to be delivered pursuant to this Section 6.01 may be delivered electronically; *provided* that the Borrowers shall deliver paper copies of such documents to the Lender if the Lender so requests.

6.02 **Notices**.

Upon any Responsible Officer of any Borrowers becoming aware thereof:

(a) Immediately notify the Lender of the occurrence of any Default or Event of Default.

(b) Immediately notify the Lender of the occurrence of any Material Adverse Effect.

(c) Immediately notify the Lender of (i) any material breach or non-performance of, or any material default under, a Contractual Obligation of any Borrower; (ii) any dispute, litigation, investigation, proceeding or suspension between any Borrower and any Governmental Authority; (iii) any action, suit, proceeding or claim alleging any Environmental Liability against any Borrower; (iv) the commencement of, or any material development in, any litigation or proceeding affecting any Borrower, including pursuant to any applicable Environmental Laws; (v) any judgment against any Borrower; or (vi) any dispute, litigation, investigation, proceeding or suspension between any Borrower and any Governmental Authority against or affecting the Borrowers or any Affiliate thereof with respect to any Sanctions.

(d) Immediately notify the Lender of any material change in accounting policies or financial reporting practices by the Borrowers.

(e) Immediately provide the Lender with (i) copies of any adverse reports or notices received from any Governmental Authority related to any Taxes of any Borrower, and (ii) copies of any other adverse reports or notices received by such Borrower from any Governmental Authority.

(f) Immediately provide the Lender with copies of (i) any Organization Documents that have been amended or modified after the Petition Date in accordance with the terms hereof and (ii) a copy of any notice of default given or received by any Borrowers under any Organization Document.

(g) Promptly, from time to time, provide such other information regarding the operations, business affairs and financial condition of the Borrowers, or compliance with the terms of any DIP Loan Document, as the Lender may request.

Each notice pursuant to this Section 6.02(a) through (g) shall be accompanied by a statement of a Responsible Officer of the Borrowers setting forth details of the occurrence referred to therein and stating what action the Borrowers have taken and propose to take with respect thereto. Each notice pursuant to Section 6.02(a) shall describe with particularity any and all provisions of this Agreement and any other DIP Loan Document that have been breached.

6.03 **Payment of Taxes and Other Obligations**.

(a) **Payment of Obligations**. Except to the extent expressly prohibited by any DIP Loan Document or excused, or not permitted, by the Bankruptcy Code or the filing, commencement and continuation of the Chapter 11 Cases and effect thereof due to the filing of the Chapter 11 Cases, pay and discharge, in the ordinary course of business, all of its obligations and liabilities, including (a) all Taxes upon it or its properties or assets, or with respect to which the Borrowers have a withholding obligation, unless the same are being contested in good faith by appropriate proceedings diligently conducted, adequate reserves in accordance with GAAP are being maintained by the Borrowers, and the failure to make the payment could not reasonably be expected to result in a Material Adverse Effect; (b) all lawful claims arising after the Petition Date which, if unpaid, would by Law become a Lien upon its property not permitted by this Agreement and that is not void due to the filing of the Chapter 11 Cases unless being contested in good faith; and (c) all Indebtedness arising after the Petition Date, as and when due and payable, unless being contested in good faith.

(b) **Filing of Returns**. Timely and correctly file all federal, state, local and other Tax returns required to be filed by or with respect to it or its properties or assets.

6.04 **Preservation of Existence**.

(a) Preserve, renew and maintain in full force and effect its legal existence under the Laws of the jurisdiction of its organization.

(b) Preserve, renew and maintain in full force and effect its good standing under the Laws of the jurisdiction of its organization.

(c) Maintain all rights, privileges, permits, licenses and franchises necessary or desirable in the normal conduct of its business.

6.05 **Maintenance of Properties and Leases**.

Except to the extent subject to the automatic stay of section 362 of the Bankruptcy Code, excused by the Bankruptcy Code, or caused by the filing, commencement and continuation of the Chapter 11 Cases and effect thereof, or not permitted by the Budget:

(a) Use the standard of care typical in the industry to maintain, preserve and protect all of its/their respective properties which are used in the ordinary course of its/their business, and the equipment necessary or useful in the operation of its business in good working order and condition, ordinary wear and tear excepted, except in a transaction that constitutes a Permitted Disposition.

(b) Make all necessary repairs thereto and renewals and replacements thereof.

(c) Use the standard of care typical in the industry in the operation and maintenance of its facilities.

6.06 **Maintenance of Insurance**.

(a) Maintain in full force and effect all policies of insurance of any kind with respect to the property and businesses of the Borrowers with financially sound and reputable insurance companies that are not Affiliates of the Borrowers, in each instance, providing such coverages, in such amounts and with such deductibles as has been historically carried by the Borrowers or are customarily carried by prudent companies of similar size engaged in similar businesses and owning similar properties in localities where the applicable Borrower operates. If and to extent possible and permitted under the Bankruptcy Code, (a) the Lender shall be named as loss payee or mortgagee, as its interest may appear, and/or additional insured with respect to any such insurance, (b) such insurance shall provide that no cancellation, amendment or termination of coverage shall be effective until after 30 days' notice thereof to the Lender, (c) such insurance shall provide that (i) after the occurrence and during the continuance of an Event of Default, all proceeds thereunder shall be payable to Lender and (ii) no such insurance shall be affected by any act or neglect of the insured or owner of the property described in such policy and (d) each Borrower hereby agrees that it shall provide the Lender with at least ten (10) days' prior written notice before any such policy or policies shall be renewed.

(b) Subject to the provisions of the Bankruptcy Code, the Lender is hereby authorized to adjust and compromise claims under insurance coverage referred to in this Section 6.06 after the occurrence and during the continuance of an Event of Default. All loss recoveries received by the Lender under any such insurance may be applied to the DIP Obligations in such order as set forth in Section 8.04 hereof. Any surplus shall be paid by the Lender to the Borrowers. So long as no Event of Default has occurred and is continuing, the Borrowers shall have the right to adjust and compromise all claims under insurance coverage and to receive the proceeds of such insurance, subject to the requirements of Article II of this Agreement. If any Borrower fails to obtain insurance as hereinabove provided, or to keep the same in force, the Lender, if the Lender so elects, may obtain such insurance and pay the premium therefor on behalf of such Borrower, which payment shall constitute part of the DIP Obligations and shall be required to be paid by the Borrowers to the Lender.

6.07 **Compliance with Laws**.

Except to the extent subject to the automatic stay of section 362 of the Bankruptcy Code, excused by the Bankruptcy Code, or caused by the filing, commencement and continuation of the Chapter 11 Cases and effect thereof:

(a) Comply with the requirements of all applicable Laws (including all Environmental Laws, Anti-Corruption Laws, all applicable Bank Secrecy Act, Anti-Terrorism Laws and Anti- Money Laundering Laws and regulations and the Patriot Act) and all Permits, orders, writs, injunctions and decrees applicable to it or to its business or property, except in such instances in which (i) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted and (ii) the failure to comply therewith could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) Maintain in effect policies and procedures designed to promote and ensure compliance by the Borrowers and their respective directors, officers, employees and agents, with this Section 6.07, and with Anti-Corruption Laws, Anti-Money Laundering Laws and regulations, the Patriot Act, and Sanctions.

6.08 **Books and Records**.

(a) Maintain books of record and account, in which full, true and materially correct entries in conformity with GAAP consistently applied shall be made of all financial transactions and matters involving the assets and business of such Borrower.

(b) Maintain such books of record and account in material conformity with all applicable requirements of any Governmental Authority having regulatory jurisdiction over the Borrowers.

(c) Provide the Lender with a current list of all platforms used by the Borrowers for accounting, managing cash and bank balances, and data management (such as food management, inventory tracking, labor management, and sales tracking) and provide the Lender with at least seven Business Days written notice before making any additions, deletions, or material alterations to such platforms.

(d) Provide the Lender at all times with a unique username and password providing continuous, real time, read-only access to its deposit accounts and its cash and bank account information.

6.09 **Inspection Rights**.

Permit representatives and independent contractors on behalf of the Lender to visit and inspect any of its properties, to examine its corporate, financial and operating records, and to make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors, officers and independent public accountants, all at the expense of the Borrowers and, unless an Event of Default has occurred and is continuing, at such reasonable times during the Borrowers' normal business hours, upon reasonable advance written notice to the Borrowers.

6.10 **Use of Proceeds**.

Use the proceeds of the Loans only in accordance with the Budget and the DIP Order. Notwithstanding the foregoing, no portion of proceeds of the Loans, the Carve-Out, the Carve-Out Reserve, or the DIP Collateral or any cash collateral may be used in connection with the investigation (including discovery proceedings), initiation or prosecution of any claims, causes of action, adversary proceedings or other litigation against the Lender or its Related Parties, or to seek authority to obtain financing or use cash collateral without the Lender's prior written consent, challenge the amount, validity, perfection, priority or enforceability of the Prepetition Obligations, DIP Obligations, Prepetition Note Documents, DIP Loan Documents, DIP Liens or DIP Collateral, or assert any claim or cause of action against any Released Party.

6.11 **ERISA Compliance**.

Except to the extent subject to the automatic stay of section 362 of the Bankruptcy Code, excused by the Bankruptcy Code, or caused by the filing, commencement and continuation of the Chapter 11 Cases and effect thereof, do, and cause each of its ERISA Affiliates to do, each of the following: (a) maintain each ERISA Plan in compliance with the applicable provisions of ERISA, the Code and other federal or state law; (b) cause each ERISA Plan that is qualified under Section 401(a) of the Code to maintain such qualification; (c) make all required contributions to any ERISA Plan subject to Section 412 of the Code, except as could not reasonably be expected to result in a Material ERISA Event; and (d) take no actions that could reasonably be expected to result in an ERISA Event, except as could not reasonably be expected to result in a Material ERISA Event.

6.12 **Environmental Compliance**.

(i) Comply, and use commercially reasonable efforts to cause all lessees and other Persons occupying any real properties owned by the Borrowers to comply, with all Environmental Laws and Environmental Permits applicable to properties owned, leased or occupied by the Borrowers; (ii) not Release or threaten to Release any Hazardous Material on, under, about or from any properties owned, leased, or occupied by the Borrowers to the extent caused by the Borrowers' operations except in compliance with all applicable Environmental Laws; (iii) timely obtain and renew all Environmental Permits applicable to its operations and properties; (iv) undertake and perform any cleanup, removal, remedial or other action necessary to address a Release of Hazardous Materials at, on or from any of its current or former properties in accordance with applicable Environmental Laws.

6.13 **Pledged Assets**.

(a) **Equity Interests**. Cause 100% of the issued and outstanding Equity Interests of each Subsidiary directly owned by any Borrower to be subject at all times to a first-priority, perfected Lien in favor of the Lender pursuant to the terms and conditions of this Agreement and the DIP Order, any filings and deliveries necessary or desirable in connection therewith to perfect the security interests therein, all in form and substance satisfactory to the Lender.

(b) **Other Property**. Deliver such other documentation as may be necessary or as the Lender may request in connection with the DIP Collateral, including appropriate UCC-1 financing statements, resolutions and other organizational and authorizing documents of such Person, and other items of the types required to be delivered pursuant to Section 6.01, all in form, content and scope satisfactory to the Lender.

6.14 **Casualty and Condemnation**.

Furnish to the Lender prompt written notice of any casualty or other insured damage to any of the DIP Collateral or the commencement of any action or proceeding for the taking of any of the DIP Collateral or any part thereof or interest therein under power of eminent domain or by condemnation or similar proceeding and ensure that the Net Cash Proceeds of any such event (whether in the form of insurance proceeds, condemnation awards or otherwise) are collected and applied as and to the extent required in accordance with the applicable provisions of this Agreement.

6.15 **Further Assurances**.

At the request of the Lender at any time and from time to time, the Borrowers shall, at its expense, duly execute and deliver, or cause to be duly executed and delivered, such further agreements, documents and instruments as are necessary to effectuate the provisions or purposes of this Agreement or any of the other DIP Loan Documents.

6.16 **Intellectual Property Maintenance**.

(a) Maintain in full force and effect all registrations for Trademarks (as defined in the Prepetition Note) that are material to the business of the Borrowers, including by timely filing all required renewal applications, statements of use, affidavits of continued use (including Section 8 and Section 15 affidavits under the Lanham Act), and any other filings necessary to maintain and preserve such registrations with the United States Patent and Trademark Office, any state trademark office, and any comparable foreign authority;

(b) Continue to use in commerce, or cause to be used in commerce, all material Trademarks of the Borrowers in a manner sufficient to maintain the validity and enforceability of such Trademarks and to prevent any such Trademarks from becoming abandoned, generic, or otherwise unenforceable;

(c) Not sell, assign, transfer, exclusively license, abandon, or otherwise dispose of any material Intellectual Property Collateral (as defined in the Prepetition Note) without the prior written consent of the Lender, except as otherwise permitted under Section 7.05 hereof;

(d) Take all commercially reasonable steps to protect and enforce the Borrowers' rights in their material Intellectual Property Collateral against infringement, misappropriation, dilution, or other unauthorized use by third parties, and promptly notify the Lender in writing of any known or suspected infringement, misappropriation, or challenge to any material Intellectual Property Collateral;

(e) Maintain accurate and complete records of all material Intellectual Property Collateral and, promptly upon request by the Lender, provide the Lender with an updated schedule identifying all such intellectual property, including all registrations, applications, and pending filings.

6.17 **Litigation Claims Management**.

(a) Diligently prosecute and pursue all Commercial Tort Claims identified on Schedule 2 hereto, and any other material litigation claims constituting DIP Collateral, in a manner consistent with the Budget and in good faith, unless the Lender otherwise consents in writing to the dismissal, discontinuance, or abandonment of any such claim;

(b) Not settle, compromise, release, waive, or otherwise resolve any Commercial Tort Claim or other material litigation claim constituting DIP Collateral without the prior written consent of the Lender if the settlement or resolution involves (i) an amount in excess of $25,000 individually or $75,000 in the aggregate, (ii) any non-monetary terms (including injunctive relief, licensing arrangements, or restrictions on the Borrowers' business), or (iii) the release or discharge of any Person who is a Funder (as defined in Schedule 2) from any liability to any Borrower;

(c) Apply all Net Cash Proceeds received from any settlement, judgment, award, or other recovery in respect of any Commercial Tort Claim or other material litigation claim constituting DIP Collateral to the prepayment of the Loans in accordance with Section 2.04(b);

(d) Provide the Lender with quarterly written reports (or more frequently upon the Lender's request) on the status of all pending Commercial Tort Claims and other material litigation claims constituting DIP Collateral, including a summary of material developments, upcoming deadlines, estimated recoveries, and the fees and expenses incurred in connection therewith; and

(e) Not retain, replace, or terminate litigation counsel for any material Commercial Tort Claim without the prior written consent of the Lender (not to be unreasonably withheld), and cooperate with the Lender in the selection and retention of qualified litigation counsel for the prosecution of such claims.

6.18 **Milestones**.

The Borrowers shall satisfy or cause to be satisfied the following milestones (the "**Milestones**"), unless extended or waived by the Lender in accordance with the DIP Order.

(a) The Borrowers shall each have commenced the Chapter 11 Cases on **the Petition Date**;

(b) On or before **August 14, 2026**, the Court shall have entered the Interim Order approving the Interim New Money DIP Facility;

(c) On or before **August 26, 2026**, the Borrowers shall have retained, on terms reasonably acceptable to the Lender, a qualified investment banker or financial advisor to advise the Borrowers in connection with the Chapter 11 Cases;

(d) On or before **September 6, 2026**, the Bankruptcy Court shall have entered the Final Order, acceptable to Lender in its sole discretion, approving the DIP Facility;

(e) On or before **September 10, 2026**, Borrowers shall have collected and remitted to Lender not less than $4,800.000.00 of the Holdback Amounts and on or before October 4, 2026, Borrowers shall have collected and remitted to Lender all remaining Holdback Amounts;

(f) On or before **September 30, 2026**, the Borrowers shall have filed a Chapter 11 Plan and related disclosure statement, in each case in form and substance acceptable to the Lender;

(g) On or before **November 5, 2026**, the Bankruptcy Court shall have approved the disclosure statement related to the Chapter 11 Plan;

(h) On or before **November 10, 2026**, the Borrowers shall have commenced solicitation of votes on the Chapter 11 Plan;

(i) On or before **December 20, 2026**, the confirmation hearing on the Chapter 11 Plan shall have occurred;

(j) On or before **December 27, 2026**, the Bankruptcy Court shall have entered an order confirming the Chapter 11 Plan, in form and substance acceptable to the Lender in its sole discretion; and

(k) On or before **December 30, 2026**, the Effective Date of the Chapter 11 Plan shall have occurred.

The Borrowers and Lender acknowledge that certain of the milestones set forth above are subject to the Court's availability. The Borrowers and Lender shall cooperate in good faith to give effect to such milestones. To the extent that any such milestone is not satisfied due to the Court not being available on the timing contemplated herein, such milestone shall be deemed extended (with corresponding extensions of subsequent milestones) as appropriate to resolve such conflict but in no event for more than 3 Business Days. Other than the Court's availability addressed in the preceding sentence, no Milestone shall be deemed extended unless the Lender agrees to such extension in writing, and any such extension shall apply only to the specific Milestone identified in such written agreement.

6.19 **Budget**.

The use by the Borrowers of Loans and other credit extensions under this Agreement and the DIP Loan Documents shall be in compliance with the Budget, the DIP Loan Documents and the DIP Order. The Lender (i) may assume that the Borrowers will comply with the Budget, (ii) shall have no duty to monitor such compliance, and (iii) shall not be obligated to pay (directly or indirectly from the DIP Collateral) any unpaid expenses incurred or authorized to be incurred pursuant to the Budget or unpaid expenses that the Borrowers may have failed to include in the Budget. The line items in the Budget for payment of interest, expenses and other amounts to the Lender are estimates only, and the Borrowers remain obligated to pay any and all DIP Obligations in accordance with the terms of the DIP Loan Documents and the DIP Order regardless of whether such amounts exceed such estimates. Nothing in the Budget shall constitute an amendment or other modification of any DIP Loan Document or any of the borrowing restrictions or other lending limits set forth therein.

ARTICLE VII
NEGATIVE COVENANTS

So long as the Lender shall have any Revolving Commitment hereunder, or any Loan or other DIP Obligation hereunder shall remain unpaid or unsatisfied (other than contingent indemnification obligations for which no underlying claim has been asserted), the Borrowers shall not, directly or indirectly:

7.01 **Liens**.

Create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, other than the following (collectively "**Permitted Liens**"):

(a) Liens pursuant to any DIP Loan Document;

(b) Liens arising under the DIP Order;

(c) Liens existing on the Petition Date or that become validly perfected after the Petition Date as permitted by section 546(b) of the Bankruptcy Code, in each case solely to the extent such Liens are valid, perfected, enforceable, unavoidable and either expressly identified as Permitted Prior Senior Liens or otherwise permitted by the DIP Order;

(d) normal and customary rights of setoff upon deposits of cash in favor of banks or other depository institutions;

(e) encumbrances consisting of minor easements, zoning restriction or other restrictions on the use of real property that do not (individually or in the aggregate) affect the value of the assets encumbered thereby in any material respect or impair the ability of the Borrowers to use such assets in its business, and none of which is violated by existing or proposed structures or land use;

(f) Liens for Taxes not yet due or that are being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP;

(g) Replacement liens to the extent necessary for adequate protection under sections 362 or 363 of the Bankruptcy Code; and

(h) statutory or common law Liens arising in connection with landlords, carriers, warehousemen, mechanics, suppliers, materialmen or repairmen and other similarly situated Persons imposed by applicable law that, in each case, arise in the ordinary course of business which secure amounts not overdue for a period of more than thirty (30) days or are being contested in good faith by appropriate proceedings, including in connection with the Chapter 11 Cases, so long as reserves, if any, to the extent required by GAAP shall have been made for any such contested amounts.

7.02 **Investments**.

Make any Investments, except:

(a) Investments held by the Borrowers in the form of cash or cash equivalents;

(b) Investments existing on the Petition Date and listed on Schedule 7.02;

(c) Guarantees permitted by Section 7.03;

(d) Investments received in settlement of amounts due to such Borrowers effected in the ordinary course of business or owing to such Borrowers as a result of insolvency proceedings involving an account debtor or upon the foreclosure or enforcement of any Lien in favor of such Borrowers; and

(e) Investments by any Borrowers in any other Borrowers.

7.03 **Indebtedness**.

Create, incur, assume or suffer to exist any Indebtedness, except:

(a) Indebtedness under the DIP Loan Documents;

(b) Indebtedness incurred pursuant to the DIP Order;

(c) intercompany Indebtedness permitted under Section 7.02;

(d) unsecured Indebtedness incurred in respect of netting services or overdraft protection services, in each case, incurred in the ordinary course of business;

(e) Indebtedness constituting Permitted Investments;

(f) Indebtedness in respect of performance bonds, bid bonds, appeal bonds, surety bonds and completion guarantees and similar obligations, in each case provided in the ordinary course of business, including those incurred to secure health, safety and environmental obligations in the ordinary course of business; and

(g) unsecured Indebtedness incurred by any Borrower in the ordinary course of business, solely to the extent contemplated by and consistent with the Budget, not past due, and not exceeding $25,000 in the aggregate outstanding at any time without the Lender's prior written consent.

Notwithstanding anything herein to the contrary, Borrowers may not incur any additional Indebtedness that is pari passu or senior to the DIP Obligations or the obligations under this Agreement in right of payment or security.

7.04 **Fundamental Changes**.

Merge, dissolve, liquidate, consolidate with or into another Person, or Dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person, except as permitted by final, non-appealable order entered by the Bankruptcy Court in a form acceptable to the Lender in its sole and absolute discretion.

7.05 **Dispositions**.

Make any Disposition, other than Permitted Dispositions or except as permitted by final, non-appealable order entered by the Bankruptcy Court in a form acceptable to the Lender in its sole and absolute discretion.

7.06 **Restaurant Closure**.

Without the prior written consent of the Lender, close any restaurant location, cease operations at any location, or provide any notice (either publicly or to employees of a Borrower) that any restaurant location will be closed.

7.07 **Restricted Payments**.

Declare or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, except that each Borrower may:

(a) make Restricted Payments to another Borrower; and

(b) declare and make dividend payments or other distributions payable solely in the Equity Interests of such Person.

7.08 **Transactions with Affiliates and Insiders**.

Enter into or permit to exist any transaction or series of transactions with any officer, director or Affiliate of the Borrowers other than (a) advances of working capital to any such Person permitted hereunder, (b) transfers of cash and assets to, and other transactions between or among, any such Person permitted hereunder, (c) transactions, distributions and payments expressly permitted by Section 7.02(e), or Section 7.06 (other than Section 7.06(c)), (d) normal and reasonable compensation and reimbursement of expenses of officers, employees and directors in the ordinary course of business, and (e) except as otherwise specifically limited in this Agreement, other transactions which are entered into in the ordinary course of such Borrower's business on terms and conditions as favorable to such Borrower as would be obtainable by it in a comparable arms-length transaction with a Person other than an officer, director or Affiliate.

7.09 **Burdensome Agreements**.

(a) Enter into, or permit to exist, any Contractual Obligation that encumbers or restricts the ability of any such Borrower to (i) pay dividends or make any other distributions to any Borrower on its Equity Interests or with respect to any other interest or participation in, or measured by, its profits, (ii) pay any Indebtedness or other obligation owed to any Borrower, (iii) make loans or advances to any Borrower, (iv) sell, lease or transfer any of its property to any Borrower, (v) pledge its property pursuant to the DIP Loan Documents or any renewals, refinancings, exchanges, refundings or extensions thereof or (vi) act as a Borrower pursuant to the DIP Loan Documents or any renewals, refinancings, exchanges, refundings or extensions thereof, except (in respect of any of the matters referred to in clauses (i) through (v) above) for (1) this Agreement and the other DIP Loan Documents and (2) any Permitted Lien or any document or instrument governing any Permitted Lien; provided that any such restriction contained therein relates only to the asset or assets subject to such Permitted Lien.

(b) Enter into, or permit to exist, any Contractual Obligation that prohibits or otherwise restricts the existence of any Lien upon any of its property in favor of the Lender for the purpose of securing the DIP Obligations, whether now owned or hereafter acquired, or requiring the grant of any security for any obligation if such property is given as security for the DIP Obligations, except in connection with any Permitted Lien or any document or instrument governing any Permitted Lien; provided that any such restriction contained therein relates only to the asset or assets subject to such Permitted Lien.

7.10 **Amendments to Indebtedness; Material Contracts**.

(a) Amend any document, agreement or instrument evidencing any Indebtedness that is subordinated to the DIP Obligations, other than amendments or modifications that are not adverse to the Lender and that do not affect the subordination or payment provisions thereof (if any) in a manner adverse to the Lender; or

(b) Amend, modify or change any Material Contract without the Lender's prior written consent; provided, however, that the Borrowers may seek to reject any contract or lease pursuant to section 365 of the Bankruptcy Code with prior written notice to, and upon consultation with, the Lender.

7.11 **Amendments to Material Documents; Fiscal Year; Legal Name**.

(a) Amend, modify or change its Organization Documents without the Lender's prior written consent.

(b) Change its Fiscal Year without the Lender's prior written consent.

(c) Change its name, jurisdiction of formation or type of entity without the Lender's prior written consent.

7.12 **Ownership of Subsidiaries**.

Notwithstanding any other provisions of this Agreement to the contrary, (a) permit any Person (other than any Borrower) to own any Equity Interests of any Subsidiary of any Borrower, (b) create, incur, assume or suffer to exist any Lien on any Equity Interests of any Subsidiary of any Borrower, except for Permitted Liens, or (c) enter into any joint venture, partnership or similar arrangement.

7.13 **Sale and Leaseback Transactions**.

Enter into any Sale and Leaseback Transaction.

7.14 **Speculative Transactions**.

Engage in any transaction involving commodity options or swap contracts or any similar speculative transactions, which are, in any case, inconsistent with prior practice and not otherwise made in the ordinary course of business.

7.15 **Formation of Subsidiaries**.

Acquire, organize, or form any new Subsidiary.

7.16 **Prepayment of Indebtedness**.

At any time, directly or indirectly, make any payment or prepayment or redemption of any Indebtedness or repurchase, redeem, retire or otherwise acquire any Indebtedness of any Borrower except (a) the DIP Obligations and (b) regularly scheduled or required repayments or redemptions of Permitted Indebtedness as provided for in the Budget.

7.17 **Sanctions**.

(a) Permit any Loan or the proceeds of any Loan, directly or indirectly, to be used, lent, contributed or otherwise made available (i) to any Sanctioned Person or in any Sanctioned Country, (ii) to fund any activity or business of any Sanctioned Person or in any Sanctioned Country; or (iii) in any other manner that will result in any violation by any Person (including the Lender) of any Sanctions.

(b) Fund all or part of any payment under this Agreement out of proceeds or property of a Sanctioned Person or that is directly or indirectly derived from transactions which would cause a violation by any Person (including the Lender) of any Sanctions.

7.18 **Anti-Corruption Laws**.

Permit any Loan or the proceeds of any Loan, directly or indirectly, to be used, lent, contributed or otherwise made available in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Law, including the United States Foreign Corrupt Practices Act of 1977, as amended.

7.19 **Capital Expenditures**.

Make any Capital Expenditure other than in accordance with the Budget and the DIP Order.

7.20 **Compensation**.

Pay any compensation or other payments (x) to any Affiliate of a Borrower without the consent of the Lender or (y) to any officer, director or employee of a Borrower or any other Affiliate of a Borrower other than as provided for in the Budget.

7.21 **Chapter 11 Claims**.

(a) Except for the Carve-Out and the adequate protection Liens and claims of the Lender against the Borrowers in their role as prepetition lender, incur, create, assume, suffer to exist or permit any other super priority claim or Lien on any DIP Collateral which is pari passu with or senior to the DIP Obligations (or the Liens securing the DIP Obligations) or adequate protection Liens or claims of the Lender against the Borrowers in their role as a prepetition lender.

(b) File an application for approval of any Superpriority Claim or Lien in any of the Chapter 11 Cases that is pari passu with or senior to (i) the DIP Obligations (or the Liens securing the DIP Obligations), (ii) the Liens securing the Prepetition Obligations, or (iii) any Liens granted by the Bankruptcy Court to the Lender in its role as a prepetition lender as adequate protection, in each case without the consent of the Lender in its sole and absolute discretion.

(c) Commence any adversary proceeding, contested matter or other action asserting any claims or defenses or otherwise against the Lender arising from or relating to the Prepetition Note Documents, the other documents or agreements executed or delivered in connection therewith or the transactions contemplated thereby.

(d) The Borrowers shall not make (i) any prepetition "critical vendor" payments or other payments on account of any creditor's prepetition unsecured claim, (ii) payments on account of claims or expenses arising under section 503(b)(9) of the Bankruptcy Code or (iii) payments under any management incentive plan or on account of claims or expenses arising under section 503(c) of the Bankruptcy Code, except in each case in amounts and on terms and conditions that (x) are approved pursuant to order of the Bankruptcy Court after notice and a hearing and (y) to the extent that such payments will be made from Borrowings, are approved by the Lender and within the limits of the Budget and the DIP Order.

7.22 **Amendments to the DIP Order**.

Amend, supplement or otherwise modify the DIP Order without the written consent of the Lender, in its sole and absolute discretion.

7.23 **Bankruptcy Notices**.

Fail to provide the Lender with copies of all motions or other documents as provided in Section 6.01(d).

7.24 **Budget Covenant**.

The Borrowers shall comply with the following budget variance covenants, tested on a weekly basis commencing on the first Friday following entry of the Interim Order:

(a) **Disbursements**. As of the last day of each week, the Borrowers shall not permit the aggregate amount of disbursements during such week to exceed 110% of the aggregate budgeted disbursements for such period as set forth in the then-current Budget approved by the Lender;

(b) **Receipts**. As of the last day of each week, the Borrowers shall not permit the aggregate amount of operating receipts during such four-week period to be less than 90% of the aggregate budgeted operating receipts for such period as set forth in the then-current Budget approved by the Lender;

(c) **Line-Item Variance**. The Borrowers shall not permit any individual line-item disbursement category in the Budget to exceed 115% of the budgeted amount for such line item for any single week, unless offset by corresponding underspend in the same line item in a prior week;

(d) **Budget Refresh**. The Borrowers shall deliver to the Lender an updated thirteen (13) week cash flow forecast (which shall include, among other things, a salary run by employee with a budget line item for compensation and restaurant level detail) (each, an "**Updated Budget**") each week after the Petition Date, which Updated Budget shall be in form and substance satisfactory to the Lender in its sole discretion and shall be provided together with such supporting documentation as is reasonably requested by the Lender (such supporting documentation to be provided within three (3) Business Days of request therefor). Upon written approval by the Lender, each such Updated Budget shall replace the then-current Budget for all purposes under this Agreement; and

(e) **Draw Limitation**. No Borrowing of Revolving Facilities shall be permitted if, after giving effect thereto, the aggregate of such Borrowing and all prior borrowings of Revolving Facilities (net of repayments) would exceed 110% of the aggregate amount of Revolving Facilities projected to be outstanding as set forth in the then-current Budget, measured on a cumulative basis beginning on the Petition Date through the proposed date of borrowing, unless otherwise consented to in writing by the Lender.

ARTICLE VIII
EVENTS OF DEFAULT AND REMEDIES

8.01 **Events of Default**.

Any of the following shall constitute an "Event of Default":

(a) **Non-Payment**. The Borrowers fail to pay, when and as required to be paid herein, any amount of principal of any Loans, any interest on any Loans, premium or any fee due hereunder, or any other amount payable hereunder or under any other Loan Document; or

(b) **Specific Covenants; Other Defaults**. The Borrowers fail to perform or observe (i) any term, covenant or agreement contained in Article VI (Affirmative Covenants) or Article VII (Negative Covenants), Section 2.03 (Remittance of Holdback Amounts), Section 2.04 (Prepayments), or Section 2.08 (Lender Fees and Expenses) of this Agreement, with nor notice or cure period, or (ii) any other term, covenant or agreement contained in any DIP Loan Document on its part to be performed or observed which failure under this clause (ii) if capable of being cured, has not been remedied or waived within five Business Days after receipt by the Borrowers of written notice thereof from the Lender;; or

(c) **Representations and Warranties**. Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of the Borrowers herein, in any other DIP Loan Document or in any document delivered in connection herewith or therewith shall be incorrect or misleading in any material respect when made or deemed made (other than those representations, warranties and certifications that are expressly qualified by Material Adverse Effect or other materiality, in which case such representations, warranties and certifications shall be incorrect or misleading in any respect when made or deemed made); or

(d) **Cross-Default**. The Borrowers, except to the extent the payment obligation is stayed or otherwise not required by virtue of the Chapter 11 Cases, and except to the extent constituting a good faith dispute, (i) fail to make any payment when due beyond the grace period, if any, provided therefor (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise) in respect of any Indebtedness or Guarantee (other than Indebtedness hereunder) having an aggregate principal amount (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit arrangement) of more than $50,000, or (ii) fail to observe or perform any other agreement or condition relating to any such Indebtedness or such Guarantee or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event is to cause, or to permit the holder or holders of such Indebtedness or the beneficiary or beneficiaries of such Guarantee (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required, such Indebtedness to be demanded or to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its stated maturity; or

(e) **Insolvency Proceedings**. Other than the Chapter 11 Cases, any Borrower institutes or consents to the institution of any proceeding under any Debtor Relief Law, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer for it or for all or any material part of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed without the application or consent of such Borrowers and the appointment continues undischarged or unstayed for sixty (60) calendar days; or any proceeding under any Debtor Relief Law relating to any such Borrowers or to all or any material part of its property is instituted without the consent of such Borrowers and continues undismissed or unstayed for sixty (60) calendar days, or an order for relief is entered in any such proceeding; or

(f) **Judgments**. There is entered against any Borrower (i) one or more final judgments or orders for the payment of money in an aggregate amount exceeding $50,000 (to the extent not covered (subject to normal deductibles) by independent third-party insurance as to which the insurer does not dispute coverage), or (ii) any one or more non-monetary final judgments that have, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and, in either case ((i) or (ii)), and either (A) enforcement proceedings are commenced by any creditor upon such judgment or order and such proceedings remain unstayed or undismissed for a period of thirty (30) consecutive days, or (B) there is a period of thirty (30) consecutive days during which a stay of enforcement of such judgment, by reason of a pending appeal, the Chapter 11 Cases, or otherwise, is not in effect; or

(g) **Milestones**. A Milestone under Section 6.18 is not met as of the date required to be met, unless extended or waived by the Lender; or

(h) **Invalidity of DIP Loan Documents**. Any DIP Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or on account of satisfaction in full of all the DIP Obligations, ceases to be in full force and effect; or any Borrower contests in any manner the validity or enforceability of any DIP Loan Document; or purports to revoke, terminate or rescind any DIP Loan Document; or

(i) **DIP Collateral**. The DIP Order after delivery thereof shall for any reason (other than pursuant to the terms thereof) cease to create a valid and perfected Lien, with the priority required by the DIP Order on and security interest in any DIP Collateral purported to be covered thereby, subject to Liens permitted under Section 7.01 or Permitted Prior Senior Liens; or

(j) **Chapter 11 Cases**. There shall have occurred any of the following in any Chapter 11 Case:

(i) An order with respect shall be entered by the Bankruptcy Court converting any Chapter 11 Case to a chapter 7 case;

(ii) An order shall be entered by the Bankruptcy Court confirming a Chapter 11 Plan that does not (A) contain a provision for termination of the commitments and indefeasible payment in full in cash of all DIP Obligations of the Borrowers hereunder and under the other DIP Loan Documents and the Prepetition Indebtedness under the Prepetition Note on or before the effective date of such plan or plans upon entry thereof and (B) provide for the continuation of the Liens and security interests granted to the Lender hereunder until such plan effective date;

(iii) An order shall be entered by the Bankruptcy Court dismissing any of the Chapter 11 Cases which does not contain a provision for termination of the commitments hereunder and payment in full in cash of all DIP Obligations of the Borrowers hereunder and under the other DIP Loan Documents upon entry thereof;

(iv) An order shall be entered by the Bankruptcy Court without the express prior written consent of the Lender (a) to revoke, reverse, stay, modify, supplement or amend any of the DIP Orders, (b) to permit any administrative expense or any claim (now existing or hereafter arising, of any kind or nature whatsoever), other than the Carve-Out, to have administrative priority as to the Debtors equal or superior to the priority of the Lender in respect of the DIP Obligations, except for certain allowed administrative expenses, or (c) to grant or permit the grant of a Lien on the DIP Collateral, other than a Permitted Lien;

(v) An order shall be entered by the Bankruptcy Court that is not stayed pending appeal granting relief from the automatic stay to any creditor of any Borrower with respect to any claim in an amount equal to or exceeding $100,000;

(vi) An application for (a) an order impairing the DIP Collateral, the appointment of a trustee, conversion to Chapter 7 or dismissal of the Chapter 11 shall be made (i) by a Person other than the Borrowers and such application is not contested by Debtors in good faith or (ii) by the Borrowers, (b) an order for the use of cash collateral without the prior written consent of the Lender is made, or (c) an order for the use of DIP Collateral (or the obtaining of financing or loans, secured by liens that are senior, pari passu, or junior to the Lender's Liens on DIP Collateral) without the prior written consent of the Lender is made.

8.02 **Remedies Upon Event of Default**.

If any Event of Default occurs and is continuing, the Lender may (subject to the terms hereof) take any or all of the following actions:

(a) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, premiums, fees and all other amounts owing or payable hereunder or under any other DIP Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrowers; and

(b) declare the Revolving Commitments terminated, whereupon the Revolving Commitments shall immediately be terminated, except as provided in Section 8.03;

(c) terminate this Agreement and the other DIP Loan Documents as to any future liability or obligation of the Lender, subject to the obligations in Section 8.03, but without affecting any of the Lender's Liens in the DIP Collateral and without affecting the DIP Obligations; and

(d) after providing five Business Days' notice to counsel to the Borrowers, the UST, and counsel the Committee (if any), which notice may be by email, of the occurrence of the Event of Default, during which period the Borrowers may attempt to cure such Event of Default if feasible, (the "Notice Period"), exercise all rights and remedies with respect to the DIP Collateral and all rights and remedies available to it under the DIP Loan Documents, or under applicable Law or equity. During the Notice Period, the Borrowers shall not request or receive any additional Borrowings, use cash collateral except as expressly permitted by the DIP Order, or make any payment other than in accordance with the Budget and the DIP Order without the Lender's prior written consent.

None of the DIP Collateral or the application of the proceeds of the DIP Collateral (in connection with any voluntary or mandatory prepayment, exercise of remedy or otherwise) shall be subject to the equitable doctrine of "marshaling" or any other similar doctrine. Upon termination of the Notice Period and unless an order is entered by the Bankruptcy Court to the contrary prior to the expiration of the Notice Period, the automatic stay pursuant to Section 362 of the Bankruptcy Code shall be automatically terminated without further notice or order of the Bankruptcy Court, unless the Lender elects otherwise in a written notice to the Debtors, and the Lender shall be permitted to exercise all rights and remedies, including with respect to the DIP Collateral, set forth in the DIP Order and the DIP Loan Documents, and as otherwise available at law without further order or application or motion to the Bankruptcy Court, and without restriction or restraint by any stay under Bankruptcy Code Sections 362 or 105 or otherwise. In the event that any party requests a hearing seeking to prevent the Lender from exercising any of its rights and remedies that arise after an Event of Default, the sole issue before the Bankruptcy Court at such hearing shall be whether an Event of Default has occurred and has not been cured. No other issue or argument shall be relevant to any opposition to enforcement of the Lender's rights.

8.03 **Carve Out Reserve Funding**.

Upon the occurrence of an Event of Default, the Borrowers may use the proceeds of the Revolving Facilities or cash collateral to fund, subject to the Budget, the Carve-Out and the Carve-Out Reserve (as defined in the DIP Order); provided that no Borrower shall be entitled to any additional Borrowing for such purpose unless expressly required by the DIP Order or approved by the Lender in writing.

8.04 **Application of Funds**.

After the exercise of remedies provided for in Section 8.02 (or after the Loans have automatically become immediately due and payable), any amounts received on account of the DIP Obligations shall be applied by the Lender in the following order:

First, to payment of that portion of the DIP Obligations constituting fees, indemnities, expenses and other amounts (including fees, charges and disbursements of counsel to the Lender and amounts payable under Article III) payable to the Lender;

Second, to payment of that portion of the DIP Obligations constituting accrued and unpaid interest on the Loans and fees, premiums and scheduled periodic payments, and any interest accrued thereon;

Third, to payment of that portion of the DIP Obligations constituting unpaid principal of the Loans; and

Last, the balance, if any, after all of the DIP Obligations have been indefeasibly paid in full, to the Borrowers, or as otherwise required by Law.

ARTICLE IX
MISCELLANEOUS

9.01 **Amendments**.

Unless otherwise provided in this Agreement (including, for the avoidance of doubt, provisions that permit or require the consent, approval, waiver, extension, satisfaction, determination, judgment, acceptance or similar action of the Lender), no amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by the Borrowers therefrom, shall be effective unless in writing signed by the Lender and the Borrowers, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

9.02 **Notices and Other Communications; Facsimile Copies**.

(a) **Notices Generally**. All notices and other communications provided for herein shall be in writing and shall be delivered both (i) by hand or overnight courier service or mailed by certified or registered mail and (ii) by electronic mail, each to the address specified in this Section 9.02. Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received (if by hand) or one day after being deposited with a courier for overnight delivery. Notices delivered through electronic communications to the extent provided in subsection (b) below shall be effective as provided in such subsection (b).

TO THE LENDER:

FHGRF LLC
Kelly F. O'Donnell
c/o Interlaken Capital, Inc.
475 Steamboat Road
Greenwich, CT 06830
Telephone: [_______]
Email: [Email]

With Copies to:

Irve Goldman, Esq.
Tyler Hokanson, Esq.
Pullman & Comley LLC
850 Main Street
P.O. Box 7006
Bridgeport, CT 06601-7006
Telephone: 203.330.2000
Email: igoldman@pullman.com
thokanson@pullman.com

TO THE BORROWERS:

Jordan Meyer, CRO
S.M.F. Group Inc., *et al.*
c/o SierraConstellatin Partners LLC
[Address]
Telephone: [ ]
Email: jmeyers@scpllc.com

With Copies to:

Haid R. Rafatjoo, Esq.
David Forsh, Esq.
Carollynn H.G. Callari, Esq.
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1350 Avenue of the Americas, 22nd Floor
New York, NY 10019
Telephone: 917.790.7100
Email: hrafatjoo@raineslaw.com
dforsh@raineslaw.com
ccallari@raineslaw.com

(b) **Electronic Communications**. The Borrowers or the Lender may, in their discretion, agree to accept notices and other communications to them hereunder by electronic communications pursuant to procedures approved by them; *provided* that approval of such procedures may be limited to particular notices or communications. Notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement); provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient.

(c) **Change of Address, Etc**. Each Borrower and the Lender may change its address or electronic mail address for notices and other communications hereunder by notice to the other parties hereto.

(d) **Reliance by Lender**. The Lender shall be entitled to rely and act upon any notices (including telephonic notices) purportedly given by or on behalf of any Borrower even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Borrowers shall indemnify the Lender and its Related Parties from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of a Borrower, except for such losses caused by the Lender's or any of its Related Parties' gross negligence or willful misconduct. All telephonic notices to and other telephonic communications with the Lender may be recorded by the Lender, and each of the parties hereto hereby consents to such recording.

9.03 **No Waiver; Cumulative Remedies**.

No failure by the Lender to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

9.04 **Expenses; Indemnity; Damage Waiver**.

(a) **Costs and Expenses**. Except as provided in the DIP Order, the Borrowers shall pay, whether accrued or incurred prior to, on or after the Petition Date, (i) all out-of-pocket expenses (including, without limitation, reasonable and documented fees, disbursements and other charges of outside counsel, local counsel and financial advisors (collectively, the "Lender Professionals") and all persons not regularly in its employ) incurred by the Lender in connection with this Agreement, the transactions contemplated hereby, and the Chapter 11 Cases, and (ii) all reasonable and documented out-of-pocket expenses (including, without limitation, fees, disbursements and other charges of counsel) of the Lender for enforcement costs and documentary taxes associated with this Agreement, the transactions contemplated hereby, and the Chapter 11 Cases. Such costs and expenses shall be added and capitalized to the outstanding principal balance of the Loans.

(b) **Indemnification by the Borrowers**. The Borrowers shall indemnify and defend the Lender and its Related Parties (each such Person being called an "Indemnitee") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses (including the reasonable fees, charges and disbursements of outside counsel for the Indemnitees, including one local counsel, as applicable, in any relevant jurisdiction and any specialty counsel, as applicable, for each relevant specialty and, in the case of actual or potential conflict of interest (as determined by such Indemnitee), separate counsel for Indemnitees to the extent needed to avoid such conflict), incurred by any Indemnitee or asserted against any Indemnitee arising out of, in connection with, or as a result of, (i) the execution or delivery of this Agreement or any other DIP Loan Document, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, or the administration of this Agreement and the other DIP Loan Documents; (ii) any Loan or the use or proposed use of the proceeds therefrom; (iii) any actual or alleged Release of Hazardous Materials at, on, under or from any property owned, leased or operated by a Borrower, or any Environmental Liability related in any way to a Borrower or its respective facilities and/or properties; or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, and regardless of whether any Indemnitee is a party thereto, in all cases, whether or not caused by or arising, in whole or in part, out of the comparative, contributory or sole negligence of the Indemnitee; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the actual fraud, gross negligence, bad faith or willful misconduct of such Indemnitee.

(c) **Waiver of Consequential Damages, Etc**. To the fullest extent permitted by applicable Law, the Borrowers hereto shall not assert, and the Borrowers hereby waive, any claim against the Lender or its Related Parties on any theory of liability for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other DIP Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof. The Lender and its Related Parties shall not be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other DIP Loan Documents or the transactions contemplated hereby or thereby.

(d) **Payments**. All amounts due under this Section shall be payable not later than five (5) Business Days after demand therefor.

(e) **Survival**. The agreements in this Section 9.04 shall survive the resignation or replacement of the Lender and the repayment, satisfaction or discharge of all the DIP Obligations.

9.05 **Payments Set Aside**.

To the extent that any payment by or on behalf of any Borrower is made to the Lender, or the Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred.

9.06 **Successors and Assigns**.

(a) **Successors and Assigns Generally**. The provisions of this Agreement and the other DIP Loan Documents shall be binding upon and inure to the benefit of the parties hereto and thereto and their respective successors and assigns permitted hereby, except that the Borrowers may not assign or otherwise transfer any of their rights or obligations hereunder or thereunder without the prior written consent of the Lender, and the Lender may not assign or otherwise transfer any of its rights or obligations hereunder except (i) in accordance with the provisions of Section 9.06(b) or (ii) by way of pledge or assignment of a security interest subject to the restrictions of Section 9.06(d) (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby and, to the extent expressly contemplated hereby, the Related Parties of the Lender) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) **Assignments by Lender**. The Lender may at any time assign all of its rights and obligations under this Agreement and the other DIP Loan Documents (including all or a portion of the Loans). Subject to recording thereof by the Lender pursuant to clause (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of the Lender under this Agreement to the extent of the interest assigned, and the Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, the Lender shall cease to be a party hereto and the assignee shall become the "Lender" hereunder) but shall continue to be entitled to the benefits of Sections 3.01, 3.02, and 9.04 with respect to facts and circumstances occurring prior to the effective date of such assignment. Upon request, the Borrowers (at their expense) shall execute and deliver a Note to the assignee. Any assignment or transfer by the Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by the Lender of a participation in such rights and obligations.

(c) **Register**. The Lender, acting solely for this purpose as a non-fiduciary agent of the Borrowers, shall maintain at its office a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of any assignees and the Revolving Commitments of, and principal amounts of (and stated interest on) the Loans owing to, the Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive absent manifest error. The Register shall be available for inspection by the Borrowers at any reasonable time and from time to time upon reasonable prior notice.

(d) **Certain Pledges**. The Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note, if any) to secure obligations of the Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release the Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such as a party hereto.

(e) **Electronic Execution of Assignments**. The words "execution," "signed," "signature," and words of like import in any Assignment and Assumption shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable Law, including the Federal Electronic Signatures in Global and National Commerce Act and any state laws based on the Uniform Electronic Transactions Act.

9.07 **Set-off**.

If an Event of Default shall have occurred and be continuing, the Lender and each of its Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other obligations at any time owing by Lender or any such Affiliate to or for the credit or the account of the Borrowers against any and all of the obligations of the Borrowers now or hereafter existing under this Agreement or any other Loan Document to the Lender, irrespective of whether or not the Lender shall have made any demand under this Agreement or any other Loan Document and although such obligations of the Borrowers may be contingent or unmatured. The rights of the Lender and its Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that the Lender or its Affiliates may have. The Lender agrees to notify the Borrowers promptly after any such setoff and application, provided that the failure to give such notice shall not affect the validity of such setoff and application.

9.08 **Interest Rate Limitation**.

Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the DIP Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the "Maximum Rate"). If the Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrowers. In determining whether the interest contracted for, charged, or received by the Lender exceeds the Maximum Rate, the Lender may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the DIP Obligations hereunder.

9.09 **[Reserved]**

9.10 **Counterparts; Integration; Effectiveness**.

This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other DIP Loan Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Article IV, this Agreement shall become effective when it shall have been executed by the Lender and when the Lender shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by email shall be effective as delivery of a manually executed counterpart of this Agreement.

9.11 **Survival of Representations and Warranties**.

All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Lender, regardless of any investigation made by the Lender or on its behalf and notwithstanding that the Lender may have had notice or knowledge of any Default at the time of the making of any Loan, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied.

9.12 **Severability**.

If any provision of this Agreement or the other DIP Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other DIP Loan Documents shall not be affected or impaired thereby, and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions, the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

9.13 **GOVERNING LAW; JURISDICTION**.

(a) **GOVERNING LAW**. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK, WITHOUT REGARD TO ANY CHOICE-OF-LAW PROVISIONS THAT WOULD REQUIRE THE APPLICATION OF LAW OF ANOTHER JURISDICTION AND, TO THE EXTENT APPLICABLE, THE BANKRUPTCY CODE.

(b) **SUBMISSION TO JURISDICTION**. EACH OF THE PARTIES IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO (I) THE NONEXCLUSIVE JURISDICTION OF THE BANKRUPTCY COURT AND, IN THE EVENT THAT THE BANKRUPTCY COURT DOES NOT HAVE, OR ABSTAINS FROM EXERCISING SUCH JURISDICTION, TO (II) THE NONEXCLUSIVE JURISDICTION OF THE FEDERAL AND STATE COURTS SITTING IN NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT THE LENDER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST ANY BORROWER OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) **WAIVER OF VENUE**. EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (b) OF THIS SECTION. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) **SERVICE OF PROCESS**. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 9.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

9.14 **WAIVER OF RIGHT TO TRIAL BY JURY**.

EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER DIP LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

9.15 **USA Patriot Act Notice**.

The Lender hereby notifies the Borrowers that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Patriot Act"), it is required to obtain, verify and record information that identifies the Borrowers, which information includes the name and address of the Borrowers and other information that will allow the Lender to identify the Borrowers in accordance with the Patriot Act.

9.16 **No Advisory or Fiduciary Relationship**.

In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), each Borrower acknowledges and agrees that: (a)(i) the arranging and other services regarding this Agreement provided by the Lender are arm's-length commercial transactions between the Borrowers, on the one hand, and the Lender, on the other hand, (ii) the Borrowers have consulted their own legal, accounting, regulatory and tax advisors to the extent they have deemed appropriate, and (iii) the Borrowers are capable of evaluating, and understand and accept, the terms, risks and conditions of the transactions contemplated hereby and by the other DIP Loan Documents; (b)(i) the Lender is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not and will not be acting as an advisor, agent or fiduciary, for the Borrowers and (ii) the Lender has no obligation to the Borrowers with respect to the transactions contemplated hereby, except those obligations expressly set forth herein and in the other DIP Loan Documents to which it is a party; and (c) the Lender and its Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrowers, and the Lender has no obligation to disclose any of such interests to the Borrowers. To the fullest extent permitted by law, the Borrowers hereby waive and release any claims that they may have against the Lender with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

9.17 **Conflict**.

In the event of a conflict between this Agreement and the DIP Order, the DIP Order shall govern; provided that, to the fullest extent permitted by the DIP Order, this Agreement shall be construed to preserve all additional rights, remedies, protections and covenants in favor of the Lender.

9.18 **Release**.

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Borrowers hereby, for itself and its successors and assigns, fully and without reserve, releases acquits, and forever discharges the Lender, its successors and assigns, officers, directors, employees, representatives, trustees, attorneys, agents and affiliates (collectively, the "**Released Parties**" and each individually a "**Released Party**") from any and all actions, claims, demands, causes of action, judgments, executions, suits, debs, liabilities, costs, damages, expenses or other obligations of any kind and nature whatsoever, direct and/or indirect, at law or in equity, whether now existing or hereafter asserted, whether absolute or contingent, whether due or to become due, whether disputed or undisputed, whether known or unknown, for or because of any matters or things occurring, existing or actions done, omitted to be done, or suffered to be done by any of the Released Parties, in each case, on or prior to the date hereof and are in any way directly or indirectly arising out of this Agreement, any other DIP Loan Document, the Prepetition Note, the Prepetition Obligations, any other Prepetition Note Document, any of the Chapter 11 Cases, the DIP Order or any of the other orders, documents, or other matters related thereto, or any of the transactions contemplated hereby or thereby (collectively, the "**Released Claims**"). Each Borrower agrees that it will not sue any Released Party on the basis of any Released Claim. The provisions of this Section 9.18 shall survive the termination of the DIP Loan Documents and the payment in full of the DIP Obligations.

ARTICLE X
COLLATERAL

10.01 **Grant of Security Interest**.

As security for all DIP Obligations, each Credit Party hereby collaterally assigns and grants to the Lender a continuing first priority (subject to the Carve-Out and Permitted Prior Senior Liens) security interest in all property and assets of such Credit Party, whether now owned or existing or hereafter acquired or arising, regardless of where located, whether now owned or hereafter acquired or arising, and all proceeds and products and supporting obligations (as defined in the Code) in respect thereof, including the following:

(i) all Accounts;

(ii) all contract rights;

(iii) all chattel paper;

(iv) all documents;

(v) all instruments;

(vi) all supporting obligations, letters of credit and letter-of-credit rights;

(vii) all General Intangibles (including payment intangibles, intercompany accounts, intellectual property including all copyrights, all copyright licenses, all patents, all patent licenses, all trademarks, all trademark licenses and software);

(viii) all Pledged Equity; all Pledged Debt, including all intercompany notes and all money or other obligations owed to any Debtor and held by third parties (including payment processors); all deposit accounts, bank deposits, prepayments (including prepayments made to third party vendors), deferred assets, refunds, credits or overpayments, and similar cash items of the Borrowers, including all tax credits and rights arising from any refunds due from federal, state, or local Government entities with respect to taxes paid by the Debtors for periods ending on or before the Petition Date, including without limitation any Employee Retention Tax Credits to which the Borrowers may be entitled;

(ix) all inventory and other goods;

(x) all motor vehicles, equipment and fixtures;

(xi) all Investment Property, financial assets and all securities accounts;

(xii) all money, all electronic money, cash, cash equivalents, securities, and other property of any kind;

(xiii) all notes, and all documents of title;

(xiv) all books, records and other property related to or referring to any of the foregoing, including books, records, account ledgers, data processing records, computer software and other property, and General Intangibles at any time evidencing or relating to any of the foregoing;

(xv) all commercial tort claims, including, without limitation, (1) the Commercial Tort Claims described on Schedule 2 hereto, and (2) all of Borrowers' right, title, and interest in and to any and all claims, rights, remedies, causes of action, and proceeds arising under or pursuant to Section 542 of title 11 of the United States Code, whether now existing or hereafter arising, against any payment processor (including, without limitation, the Payment Processors), merchant acquirer, acquiring bank, payment facilitator, gateway, card network, reserve account holder, or other person or entity that receives, processes, holds, settles, remits, or is obligated to remit funds or other property for or on behalf of any Borrower, including any claim to compel turnover of funds, reserves, chargeback reserves, settlement amounts, receivables, deposits, or other property of any Borrower or of any Borrower's bankruptcy estate held by any such person or entity (collectively, the "**Turnover Claims**"). Borrowers agree that the Turnover Claims, and all proceeds, products, substitutions, recoveries, judgments, settlements, and distributions in respect thereof, constitute DIP Collateral under this Agreement;

(xvi) all of the Debtors' interest in deposit accounts, money, cash, cash equivalents, securities, or other property interests serving as collateral or funding sources for any other obligation, subject only to any first priority, perfected, and unavoidable security interests of any holder of a Permitted Lien in such accounts existing as of the Petition Date;

(xvii) all controllable electronic records, controllable accounts and controllable payment intangibles;

(xviii) all real property and rights therein;

(xix) all other personal property of the Debtors, including, subject to entry of the Final Order, Avoidance Action Proceeds; and

(xx) all accessions to, substitutions for, and replacements, products and proceeds of any of the foregoing, including, but not limited to, dividends or distributions on Investment Property, rents, profits, income and benefits, proceeds of any insurance policies, claims against third parties, and condemnation or requisition payments with respect to all or any of the foregoing.

10.02 **Perfection of Security Interest**.

(a) Notwithstanding the perfection of any security interest granted hereunder pursuant to the order of the Bankruptcy Court under the applicable DIP Order, to the fullest extent permitted by applicable law, the Lender may, but is not required to, file or authorize the filing of one or more financing statements disclosing the Liens under this Agreement on the DIP Collateral.

(b) A certified copy of the DIP Order may, in the discretion of the Lender, be filed with or recorded in filing or recording offices in addition to or in lieu of such financing statements, mortgages, notices of lien or similar instruments, and all filing offices are hereby authorized to accept such certified copy of the DIP Order for filing and recording. Notwithstanding the date of any such filing, the date of such perfection shall be the date of the DIP Order.

10.03 **Right to Cure**.

Upon the occurrence and during the continuance of an Event of Default, the Lender shall have the right (but not the obligation) to pay any amount or do any act required of any Borrower hereunder or under any other Loan Document (other than in respect of principal, interest or fees on the Loans) in order to preserve, protect, maintain, or enforce the DIP Obligations, the DIP Collateral, or the Liens securing the DIP Obligations, and which any Borrower fails to pay or do, including payment of any judgment against any Borrower, any insurance premium, any warehouse charge, any finishing or processing charge, any landlord's or bailee's claim, and any other obligation secured by a Lien upon or with respect to the DIP Collateral. All payments that the Lender makes under this Section 10.03 and all documented out-of-pocket costs and expenses that the Lender pays or incurs in connection with the foregoing shall be considered part of the DIP

Obligations. Any payment made or other action taken by the Lender under this Section 10.03 shall be without prejudice to any right to assert an Event of Default hereunder and to proceed thereafter as herein provided.

10.04 **The Lender's Rights, Duties, and Liabilities**.

The Borrowers assume all responsibility and liability arising from or relating to the use, sale, or other disposition of the DIP Collateral. The DIP Obligations shall not be affected by any failure of the Lender to take any steps to perfect the Liens hereunder or to collect or realize upon the DIP Collateral, nor shall loss of or damage to the DIP Collateral release any Borrower from any of the DIP Obligations. Nothing in this Agreement shall be interpreted as giving the Lender responsibility for or any duty concerning the validity, perfection, priority or enforceability of the Liens granted hereunder or giving the Lender any obligation to take any action to procure or maintain such validity, perfection, priority or enforceability, including, without limitation, any duty to file any financing statements, amendments, continuation statements or other documents to perfect or maintain the perfection of the security interest granted hereunder.

10.05 **Remedies**.

(a) Each Loan Party recognizes that the Lender may be unable to effect a public sale of any or all of the DIP Collateral that constitutes securities to be sold by reason of certain prohibitions contained in the laws of any jurisdiction outside the United States or in applicable federal, provincial, territorial or state securities laws but may be compelled to resort to one or more private sales thereof to a restricted group of purchasers who will be obliged to agree, among other things, to acquire such DIP Collateral to be sold for their own account for investment and not with a view to the distribution or resale thereof. Each Loan Party acknowledges and agrees that any such private sale may result in prices and other terms less favorable to the seller than if such sale were a public sale and, notwithstanding such circumstances, agrees that any such private sale shall, to the extent permitted by applicable law, be deemed to have been made in a commercially reasonable manner. Unless required by applicable law, the Lender shall not be under any obligation to delay a sale of any of such DIP Collateral to be sold for the period of time necessary to permit the issuer of such securities to register such securities under the laws of any jurisdiction outside the United States or under any applicable federal, provincial, territorial or state securities laws, even if such issuer would agree to do so. Each Loan Party further agrees to do or cause to be done, to the extent that such Loan Party may do so under applicable law, all such other acts and things as may be necessary to make such sales or resales of any portion or all of such DIP Collateral or other property to be sold valid and binding and in compliance with any and all applicable laws at such Loan Party's expense. Each Loan Party further agrees that a breach of any of the covenants contained in this Section 10.05(a) will cause irreparable injury to the Lender for which there is no adequate remedy at law and, as a consequence, agrees that each covenant contained in this Section 10.05(a) shall be specifically enforceable against such Loan Party, and each Loan Party hereby waives and agrees, to the fullest extent permitted by law, not to assert as a defense against an action for specific performance of such covenants that (i) such Loan Party's failure to perform such covenants will not cause irreparable injury to the Lender or (ii) the Lender has an adequate remedy at law in respect of such breach. Each Loan Party further acknowledges the impossibility of ascertaining the amount of damages which would be suffered by the Lender by reason of a breach of any of the covenants contained in this Section 10.05(a) and, consequently, agrees that, if such Loan Party shall breach any of such covenants and the Lender shall sue for damages for such breach, such Loan Party shall pay to the Lender, as liquidated damages and not as a penalty, an aggregate amount equal to the value of the DIP Collateral or other property to be sold on the date the Lender shall demand compliance with this Section 10.05(a).

(b) Subject to the terms of the DIP Order and the terms hereof, including, without limitation, Section 8.02 above: If an Event of Default has occurred and is continuing, the Lender shall have, in addition to all other rights of the Lender, the rights and remedies of a secured party under the UCC, and without limiting the generality of the foregoing, the Lender shall be empowered and entitled to: (i) take possession of, foreclose on and/or request a receiver of the DIP Collateral and keep it on any Borrower's premises at any time, at no cost to the Lender, or remove any part of it to such other place or places as the Lender may desire, or the Borrowers shall, upon the Lender's demand, at the Borrowers' cost, assemble the DIP Collateral and make it available to the Lender at a place reasonably convenient to the Lender; (ii) exercise set-off rights on cash collateral or deposits (other than, for the avoidance of doubt, with respect to Excluded Accounts); (iii) sell and deliver any DIP Collateral at public or private sales, for cash, upon credit or otherwise, at such prices and upon such terms as the Lender deems advisable and may postpone or adjourn any sale of the DIP Collateral by an announcement at the time and place of sale or of such postponed or adjourned sale; (iv) hold, lease, develop, manage, operate, control and otherwise use the DIP Collateral upon such terms and conditions as may be reasonable under the circumstances (making such repairs, alterations, additions and improvements and taking other actions, from time to time, as may be reasonably necessary or desirable), exercise all such rights and powers of each Borrower with respect to the DIP Collateral, whether in the name of such Borrower or otherwise, including without limitation the right to make, cancel, enforce or modify leases, obtain and evict tenants, and demand, sue for, collect and receive all rents, in each case, in accordance with the standards applicable to the Lender under the DIP Loan Documents; and (v) take any other actions, as may be reasonably necessary or desirable, in connection with the DIP Collateral (including preparing for the disposition thereof), and all reasonable and documented out-of-pocket fees and expenses incurred in connection therewith shall be borne by the Borrowers. Promptly following written demand from the Lender, the applicable Borrower shall direct the grantor or licensor of, or the contracting party to, any property agreement with respect to any property to recognize and accept the Lender as the party to such agreement for any and all purposes as fully as it would recognize and accept such Borrower and the performance of such Borrower thereunder and, in such event, without further notice or demand and at such Borrower's sole cost and expense, the Lender may exercise all rights of such Borrower arising under such agreements. Without in any way requiring notice to be given in the following manner, each Borrower agrees that any notice by the Lender of sale, disposition or other intended action hereunder or in connection herewith, whether required by the UCC or otherwise, shall constitute reasonable notice to such Borrower if such notice is delivered by registered or certified mail, return receipt requested, postage prepaid, or is delivered personally against receipt, at least five (5) Business Days prior to such action to the Borrowers' addresses specified in Section 9.02. If any DIP Collateral is sold on terms other than payment in full at the time of sale, no credit shall be given against the DIP Obligations until the Lender receives payment, and if the buyer defaults in payment, the Lender may resell the DIP Collateral. In the event the Lender seeks to take possession of all or any portion of the DIP Collateral by judicial process, each Borrower irrevocably waives (to the extent permitted by applicable law): (A) the posting of any bond, surety or security with respect thereto which might otherwise be required; (B) any demand for possession prior to the commencement of any suit or action to recover the DIP Collateral; and (C) any requirement that the Lender retain possession and not dispose of any DIP Collateral until after trial or final judgment. Each Borrower agrees that the Lender has no obligation to preserve rights to the DIP Collateral or marshal any DIP Collateral for the benefit of any Person. The Lender is hereby granted a license or other right to use, without charge, each Borrower's labels, patents, copyrights, name, trade secrets, trade names, trademarks and advertising matter, or any similar property, in completing production of, advertising or selling any DIP Collateral, and each such Borrower's rights under all licenses and all franchise agreements shall inure to the Lender's benefit for such purpose. The Lender will return any excess proceeds of the DIP Collateral to the applicable Borrower and the Borrower shall remain liable for any deficiency. The proceeds of sale shall be applied as required pursuant to Section 8.04 hereof.

(c) Notwithstanding anything herein to the contrary, the Lender shall not take any action under this Section 10.05 except after compliance with any applicable requirements under the DIP Order applicable thereto.

10.06 **Concerning the DIP Collateral**.

(a) Except for the custody of the DIP Collateral in its possession and the accounting for monies actually received by it hereunder, the Lender shall have no other duty as to the DIP Collateral, whether or not the Lender has or is deemed to have knowledge of any matters, or as to the taking of any necessary steps to preserve rights against any parties or any other rights pertaining to the DIP Collateral. The Lender shall not be liable for any interest on any money received by it. The Lender shall be deemed to have exercised reasonable care in the custody and preservation of the DIP Collateral in its possession if such DIP Collateral is accorded treatment substantially equal to that which the Lender would accord similar assets held for the benefit of third parties.

(b) Notwithstanding anything to the contrary contained herein or in any other Loan Document, in no event shall the Lender be obligated to execute or deliver any document evidencing any release or re-conveyance of DIP Collateral without receipt of a certificate executed by a duly authorized officer of the Borrowers certifying that such release is permitted by this Agreement and the other DIP Loan Documents, and that all conditions precedent to such release or re-conveyance (if any) have been complied with.

(c) The Lender shall not be responsible for insuring the DIP Collateral or for the payment of Taxes (and shall not be responsible for any tax reporting in connection with this Agreement), charges, assessments or liens upon the DIP Collateral. The Lender shall be under no obligation independently to request or examine insurance coverage with respect to any DIP Collateral. The Lender shall not be responsible for the maintenance of the DIP Collateral, except as expressly provided in this Agreement.

(d) In connection with the exercise of any rights or remedies in respect of, or foreclosure or realization upon, any Equity Interest Collateral pursuant to this Agreement or any other Loan Document, the Lender shall not be obligated to take title to or possession of such Equity Interests, as the case may be, in its own name, or otherwise in a form or manner that may, in its reasonable judgment, expose it to liability. In the event that the Lender deems that it may be considered an "owner or operator" under any environmental laws or otherwise cause the Lender to incur, or be exposed to, any Environmental Liability or any liability under any other federal, state or local law, the Lender reserves the right, instead of taking such action, to arrange for the transfer of the title or control of the asset to a court appointed receiver. The Lender will not be liable to any Person for any Environmental Liability or any environmental claims or contribution actions under any federal, state or local law, rule or regulation by reason of the Lender's actions and conduct as authorized, empowered and directed hereunder or relating to any kind of discharge or release or threatened discharge or release of any hazardous materials into the environment.

(e) The Lender shall not be liable for the acts or omissions of any bank, depositary bank, custodian or independent counsel of the Lender or the Borrowers or any other party selected by the Lender with reasonable care or selected by any other party hereto that may hold or possess DIP Collateral or documents related to DIP Collateral, and the Lender shall not be required to monitor the performance of any such Persons holding DIP Collateral.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

BORROWERS:

The Fireman Group Café Concepts, Inc., a New York corporation

By: ______________________
Name: Benjamin Grossman
Title: Authorized Signatory

SMJ Group, Inc., a Delaware corporation

By:________________________
Name: Benjamin Grossman
Title: Authorized Signatory

S.M.F. Group Inc., a Delaware corporation

By:________________________
Name: Benjamin Grossman
Title: Authorized Signatory

Italian Café Concepts, LLC, a Delaware limited liability company

By:________________________
Name: Benjamin Grossman
Title: Authorized Signatory

Fiorello's Roman Café, Inc., a New York corporation

By:________________________
Name: Benjamin Grossman
Title: Authorized Signatory

Ebbets Field Venture, LLC, a Delaware limited liability company

By:________________________
Name: Benjamin Grossman
Title: Authorized Signatory

Cieli Partners, L.P., a New York limited partnership

By:________________________
Name: Benjamin Grossman
Title: Authorized Signatory

Ebbets Field Venture II, LLC, a Delaware limited liability company

By:________________________
Name: Benjamin Grossman
Title: Authorized Signatory

Broadway Hospitality Venture, LLC, a Delaware limited liability company

Brasserie 57, LLC, a Delaware limited liability company

By:______________________
Name: Benjamin Grossman
Title: Authorized Signatory

By:______________________
Name: Benjamin Grossman
Title: Authorized Signatory

SFAP Group, LLC, a Delaware limited liability company

By:______________________
Name: Benjamin Grossman
Title: Authorized Signatory

Café Concepts (Washington DC), LLC, a Delaware limited liability company

By:______________________
Name: Benjamin Grossman
Title: Authorized Signatory

Shelny, LLC, a Delaware limited liability company

By:______________________
Name: Benjamin Grossman
Title: Authorized Signatory

Red Eye/Brooklyn Associates, L.P., a Delaware limited partnership

By:______________________
Name: Benjamin Grossman
Title: Authorized Signatory

57th Street Hospitality Partners, LLC, a Delaware limited liability company

By:______________________
Name: Benjamin Grossman
Title: Authorized Signatory

SMJ Group, LLC, a Delaware limited liability company

By:______________________
Name: Benjamin Grossman
Title: Authorized Signatory

The Finer Diner, LLC, a Delaware limited liability company

By:______________________
Name: Benjamin Grossman
Title: Authorized Signatory

Red Eye Grill, Inc., a Delaware corporation

By:______________________
Name: Benjamin Grossman
Title: Authorized Signatory

Red Eye Grill, L.P., a Delaware limited liability partnership

By:______________________
Name: Benjamin Grossman
Title: Authorized Signatory

Brooklyn Diner USA, L.P., a Delaware limited partnership

By:______________________
Name: Benjamin Grossman
Title: Authorized Signatory

Brooklyn Diner USA, Inc., a Delaware corporation

By:______________________
Name: Benjamin Grossman
Title: Authorized Signatory

LENDER:

FHGRF LLC

By:___________________________
Name: Kelly F. O'Donnell
Title: Manager

SCHEDULE 1

List of Debtors

1. The Fireman Group Café Concepts, Inc.
2. SMJ Group, Inc.
3. S.M.F. Group Inc.
4. Italian Café Concepts, LLC
5. Fiorello's Roman Café, Inc.
6. Ebbets Field Venture, LLC
7. Cieli Partners, L.P.
8. Ebbets Field Venture II, LLC
9. SFAP Group, LLC
10. Café Concepts (Washington DC), LLC
11. Shelny, LLC
12. Red Eye/Brooklyn Associates, L.P.
13. 57th Street Hospitality Partners, LLC
14. SMJ Group, LLC
15. The Finer Diner, LLC
16. Red Eye Grill, Inc.
17. Red Eye Grill, L.P.
18. Brooklyn Diner USA, L.P.
19. Brooklyn Diner USA, Inc.

SCHEDULE 2
COMMERCIAL TORT CLAIMS

All right, title and interest of the Debtors in and to all claims, counterclaims, causes of action, choses in action and rights of action against each entity that provided financing to any Debtor in the form of a purchase of future receivables, revenue-based financing, or a merchant cash advance (each, a "**Funder**") and against each Funder's affiliates, principals, members, officers, agents, syndicators, independent sales organizations, brokers, servicers, collection agents and assignees, arising out of or relating to each funding, financing, loan, or receivables sale agreements, as applicable, between any Debtor and such Funder, whether currently or previously in effect, of any kind or nature whatsoever, including without limitation whether sounding in fraud, fraudulent inducement, fraudulent concealment, negligent or intentional misrepresentation, contract, conversion, tortious interference with contract or with prospective economic advantage, abuse of process, malicious prosecution, breach of fiduciary duty, civil conspiracy, aiding and abetting, injurious falsehood, slander of title or defamation, or arising under 18 U.S.C. § 1961 et seq., together with all proceeds thereof and all rights to payment under any judgment, award, settlement or release in respect thereof, and including without limitation all claims asserted by or on behalf of any Debtor in Apollo Funding Co. v. Brasserie 57 LLC, et al., Index No. 2026-00026627 (N.Y. Sup. Ct., Clinton Cnty.); Samson MCA LLC v. 57th Street Hospitality Partners, LLC, et al., Index No. 806891/2026 (N.Y. Sup. Ct., Erie Cnty.); Samson MCA LLC v. Brasserie 57 LLC, et al., Index No. 806909/2026 (N.Y. Sup. Ct., Erie Cnty.); Samson MCA LLC v. Brooklyn Diner USA, L.P., et al., Index No. 806910/2026 (N.Y. Sup. Ct., Erie Cnty.); Samson MCA LLC v. Cieli Partners, L.P., et al., Index No. 806886/2026 (N.Y. Sup. Ct., Erie Cnty.); Ebbets Field Venture, LLC v. ODK Capital, LLC d/b/a OnDeck, Index No. 652781/2026 (N.Y. Sup. Ct., N.Y. Cnty.); EBF Holdings, LLC d/b/a Everest Business Funding v. Fiorello's Roman Cafe, Inc., Index No. 652671/2026 (N.Y. Sup. Ct., N.Y. Cnty.); Fiorello's Roman Cafe, Inc. et al. v. Forward Financing LLC, Index No. 653132/2026 (N.Y. Sup. Ct., Clinton Cnty.); Capybara Capital, LLC v. Red Eye Grill L.P., No. 2026CA003507 (Fla. 15th Cir. Ct.). As used herein, the term "Funder" means each of the following: Apollo Funding Co.; Amsterdam Group, Inc.; Amsterdam Capital Group; Capybara Capital, LLC; CFG Merchant Solutions, LLC; Forward Financing LLC; Mulligan Funding, LLC; FinWise Bank; Ocean Funding Corp.; ODK Capital, LLC; Rewards Network Establishment Services Inc.; Samson MCA LLC; and Webfund LLC.

All right, title and interest of the Debtors in and to all claims, counterclaims, causes of action, choses in action and rights of action against Hilton Grand Vacations Management, LLC or any of its affiliates, including without limitation Central Park Owners Association, Inc., 57th Street Vacation Owners Associations, Inc., and 48th Street Vacation Owners Association, Inc., and any other affiliates doing business as Hilton Club, and each of their respective affiliates, principals, members, officers, agents, arising out of or relating to the respective services agreements, whether currently or previously in effect, of any kind or nature whatsoever, including without limitation whether sounding in fraud, negligent or intentional misrepresentation, contract, conversion, tortious interference with contract or with prospective economic advantage, abuse of process, breach of fiduciary duty, aiding and abetting, injurious falsehood, slander of title or defamation, together with all proceeds thereof and all rights to payment under any judgment, award, settlement or release in respect thereof.

EXHIBIT A

BORROWING REQUEST FORM

The Fireman Group Café Concepts, Inc., SMJ Group, Inc., S.M.F. Group Inc., Italian Café Concepts, LLC, Fiorello's Roman Café, Inc., Ebbets Field Venture, LLC, Cieli Partners, L.P. Ebbets Field Venture II, LLC, SFAP Group, LLC, Café Concepts (Washington DC), LLC, Shelny, LLC, Red Eye/Brooklyn Associates, L.P., 57th Street Hospitality Partners, LLC, SMJ Group, LLC, The Finer Diner, LLC, Red Eye Grill, Inc., Red Eye Grill, L.P., Brooklyn Diner USA, L.P., and Brooklyn Diner USA, Inc.

BORROWING REQUEST

Date: _____________, 202_

Lender: FHGRF LLC

Dear [____]:

This Borrowing Request is furnished pursuant to Section 2.02 of that certain Secured Superpriority Debtor-in-Possession Credit and Security Agreement dated as of August ●, 2026 (as amended, modified, renewed or extended from time to time, the "Agreement") among The Fireman Group Café Concepts, Inc., SMJ Group, Inc., S.M.F. Group Inc., Italian Café Concepts, LLC, Fiorello's Roman Café, Inc., Ebbets Field Venture, LLC, Cieli Partners, L.P., Ebbets Field Venture II, LLC, SFAP Group, LLC, 12. Café Concepts (Washington DC), LLC, 13. Shelny, LLC, 14. Red Eye/Brooklyn Associates, L.P., 15. 57th Street Hospitality Partners, LLC, 16. SMJ Group, LLC, 17. The Finer Diner, LLC, 18. Red Eye Grill, Inc., 19. Red Eye Grill, L.P., 20. Brooklyn Diner USA, L.P., and 21. Brooklyn Diner USA, Inc. as Borrowers, the Guarantors party thereto, and FHGRF LLC, as Lender. Unless otherwise defined herein, capitalized terms used in this Borrowing Request have the meanings ascribed to them in the Agreement.

The Borrowers represent that as of the date of this Borrowing Request:

A. The Borrowers have complied with all requirements of Section 2.03 and Section 7.24 of the Agreement.

B. All Milestones in Section 6.18 of the Agreement required to have been satisfied as of the date hereof have been met.

C. There is no Default or Event of Default under the Agreement and all conditions to the requested Borrowing set forth in Article IV of the Agreement are satisfied.

The Borrower hereby notifies Lender of its request for the following Borrowing:

(1) Borrowing Date of the Borrowing (must be a Business Day): ____________________

(2) Amount of the Requested Borrowing: $____

(3) Account to be credited (last 4 digits): ____

The Fireman Group Café Concepts, Inc., for itself and on behalf of the other Borrowers

By: _________________________
Benjamin Grossman
Chief Restructuring Officer

EXHIBIT 2

Initial DIP Budget

[Attached]

Fireman Hospitality Group
DRAFT 13-Week Cash Flow Forecast
Full Case Exhibit

	Week 1	Week 2	Week 3	Week 4	Week 5	Week 6	Week 7	Week 8	Week 9	Week 10	Week 11	Week 12	Week 13
for the week beginning Monday	*08-09-2026*	*08-16-2026*	*08-23-2026*	*08-30-2026*	*09-06-2026*	*09-13-2026*	*09-20-2026*	*09-27-2026*	*10-04-2026*	*10-11-2026*	*10-18-2026*	*10-25-2026*	*11-01-2026*
for the week ending Sunday	*08-16-2026*	*08-23-2026*	*08-30-2026*	*09-06-2026*	*09-13-2026*	*09-20-2026*	*09-27-2026*	*10-04-2026*	*10-11-2026*	*10-18-2026*	*10-25-2026*	*11-01-2026*	*11-08-2026*
Cash Flow													
Operating Cash Receipts	$ 1,190,314	$ 1,190,314	$ 1,190,314	$ 1,327,407	$ 1,333,553	$ 1,333,553	$ 1,333,553	$ 1,755,010	$ 1,730,291	$ 1,730,291	$ 1,730,291	$ 1,744,802	$ 1,831,867
Holdback	(952,251)	-	-	-	-	-	-	-	-	-	-	-	-
Non-Operating Cash Receipts	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Cash Receipts	**$ 238,063**	**$ 1,190,314**	**$ 1,190,314**	**$ 1,327,407**	**$ 1,333,553**	**$ 1,333,553**	**$ 1,333,553**	**$ 1,755,010**	**$ 1,730,291**	**$ 1,730,291**	**$ 1,730,291**	**$ 1,744,802**	**$ 1,831,867**
Food & Beverage Disbursements													
Food Cost	$ (86,375)	$ (302,461)	$ (187,549)	$ (189,915)	$ (189,915)	$ (210,480)	$ (211,444)	$ (211,444)	$ (211,444)	$ (277,155)	$ (273,284)	$ (273,284)	$ (273,284)
Alcoholic Beverage Cost	(17,691)	(63,790)	(40,166)	(40,652)	(40,652)	(46,337)	(46,549)	(46,549)	(46,549)	(61,669)	(60,807)	(60,807)	(60,807)
Non-Alcoholic Beverage Cost	(5,359)	(6,683)	(10,036)	(10,252)	(10,258)	(11,315)	(11,361)	(11,706)	(11,684)	(15,033)	(14,844)	(14,831)	(14,755)
Other F&B Payments	(114,748)	(114,748)	(114,748)	(115,371)	(115,817)	(115,817)	(115,817)	(144,297)	(142,532)	(142,532)	(142,532)	(142,521)	(142,458)
Total Food & Beverage Disbursements	**$ (224,173)**	**$ (487,682)**	**$ (352,499)**	**$ (356,190)**	**$ (356,642)**	**$ (383,950)**	**$ (385,172)**	**$ (413,996)**	**$ (412,209)**	**$ (496,387)**	**$ (491,467)**	**$ (491,444)**	**$ (491,304)**
Operating Disbursements													
Corporate CC Payments	-	-	(90,000)	-	(90,000)	-	(90,000)	-	(171,500)	-	(125,000)	-	-
Labor	(668,823)	(901,278)	(583,823)	(899,774)	(583,703)	(901,079)	(583,703)	(984,486)	(630,650)	(979,324)	(630,650)	(981,734)	(640,773)
Rent	-	-	-	(606,557)	-	-	-	(606,557)	-	-	-	(606,557)	-
Insurance	(128,157)	(157)	(157)	(72,346)	(18,157)	(90,157)	(157)	(72,346)	(18,157)	(90,157)	(157)	(157)	(72,346)
Marketing	(4,367)	(4,367)	(4,367)	(4,367)	(4,367)	(4,367)	(4,367)	(4,367)	(4,367)	(4,367)	(4,367)	(4,367)	(4,367)
Repairs & Maintenance	(19,277)	(19,277)	(19,277)	(19,277)	(19,277)	(19,277)	(19,277)	(19,277)	(19,277)	(19,277)	(19,277)	(19,277)	(19,277)
Supplies & Equipment	(1,194)	(7,074)	(1,894)	(5,290)	(1,194)	(7,074)	(1,194)	(5,990)	(1,194)	(7,074)	(1,194)	(1,894)	(5,290)
Technology & POS	(11,238)	(5,838)	(13,979)	(33,387)	(4,338)	(12,738)	(5,238)	(42,128)	(4,338)	(12,738)	(5,238)	(11,579)	(33,387)
Utilities	(1,203)	-	(13,894)	(42,250)	(750)	(453)	-	(56,144)	(750)	(453)	-	(13,894)	(42,250)
Professional Services	(8,264)	(8,264)	(8,264)	(8,264)	(8,264)	(8,264)	(8,264)	(8,264)	(8,264)	(8,264)	(8,264)	(8,264)	(8,264)
Other / Miscellaneous	(1,797)	(1,797)	(111,797)	(1,797)	(1,797)	(1,797)	(1,797)	(1,797)	(1,797)	(111,797)	(1,797)	(1,797)	(1,797)
Cleaning & Sanitation	(7,243)	(7,243)	(7,243)	(7,243)	(7,243)	(7,243)	(7,243)	(7,243)	(7,243)	(7,243)	(7,243)	(7,243)	(7,243)
Sales Tax	-	(64,175)	(337,285)	-	-	(67,648)	(317,544)	-	-	(83,662)	(348,237)	-	-
Total Operating Disbursements	**$ (851,564)**	**$ (1,019,472)**	**$ (1,191,981)**	**$ (1,700,554)**	**$ (739,091)**	**$ (1,120,098)**	**$ (1,038,785)**	**$ (1,808,600)**	**$ (867,538)**	**$ (1,324,356)**	**$ (1,151,425)**	**$ (1,656,764)**	**$ (834,995)**
Operating Cash Flow	**(837,674)**	**(316,840)**	**(354,166)**	**(729,337)**	**237,819**	**(170,495)**	**(90,404)**	**(467,586)**	**450,544**	**(90,452)**	**87,400**	**(403,405)**	**505,567**
Cumulative Operating Cash Flow	**(837,674)**	**(1,154,514)**	**(1,508,679)**	**(2,238,016)**	**(2,000,197)**	**(2,170,692)**	**(2,261,096)**	**(2,728,683)**	**(2,278,139)**	**(2,368,591)**	**(2,281,191)**	**(2,684,596)**	**(2,179,029)**
Non-Operating Disbursements													
Debt Interest and Principal Payments	-	-	(75,000)	-	-	-	-	(75,000)	-	-	-	(75,000)	-
Restructuring Professional Fees	-	(128,000)	(128,000)	(391,066)	(141,066)	(141,066)	(141,066)	(141,066)	(191,066)	(127,816)	(327,816)	(127,816)	(177,816)
Capital Expenditures	-	-	-	-	-	-	-	-	-	-	-	-	-
Management Fees	-	-	-	-	-	-	-	-	-	-	-	-	-
Past Due Sales Tax	-	-	-	-	-	-	-	-	-	-	-	-	-
Past Due Rent	-	-	-	-	-	-	-	-	-	-	-	-	-
Past Due Trade Vendor	-	-	-	-	-	-	-	-	-	-	-	-	-
Other Non-Operating Disbursements	(23,810)	(23,810)	(523,810)	(23,810)	(148,810)	(23,810)	(1,523,810)	(23,810)	(23,810)	(23,810)	(23,810)	(23,810)	(23,810)
Total Non-Operating Disbursements	**$ (23,810)**	**$ (151,810)**	**$ (726,810)**	**$ (414,875)**	**$ (289,875)**	**$ (164,875)**	**$ (1,664,875)**	**$ (239,875)**	**$ (214,875)**	**$ (151,625)**	**$ (351,625)**	**$ (226,625)**	**$ (201,625)**
Total Disbursements	**$ (1,099,546)**	**$ (1,658,963)**	**$ (2,271,289)**	**$ (2,471,620)**	**$ (1,385,609)**	**$ (1,668,923)**	**$ (3,088,832)**	**$ (2,462,471)**	**$ (1,494,623)**	**$ (1,972,369)**	**$ (1,994,517)**	**$ (2,374,833)**	**$ (1,527,925)**
Net Cash Flow	**(861,483)**	**(468,649)**	**(1,080,975)**	**(1,144,212)**	**(52,056)**	**(335,370)**	**(1,755,280)**	**(707,462)**	**235,669**	**(242,077)**	**(264,226)**	**(630,031)**	**303,942**
Cumulative Net Cash Flow	**(861,483)**	**(1,330,133)**	**(2,411,108)**	**(3,555,320)**	**(3,607,376)**	**(3,942,747)**	**(5,698,026)**	**(6,405,488)**	**(6,169,819)**	**(6,411,896)**	**(6,676,122)**	**(7,306,153)**	**(7,002,211)**
Cash Rollforward													
Beginning Bank Balance	**$98,825**	**($762,658)**	**($1,231,308)**	**($2,312,283)**	**($3,456,495)**	**($3,508,551)**	**($3,843,922)**	**($5,599,201)**	**($6,306,663)**	**($6,070,994)**	**($6,313,071)**	**($6,577,297)**	**($7,207,328)**
(+/-) Net Cash Flow	($861,483)	($468,649)	($1,005,975)	($1,144,212)	($52,056)	($335,370)	($1,755,280)	($632,462)	$235,669	($242,077)	($264,226)	($555,031)	$303,942
(+/-) Borrow / (Repay)	-	-	($75,000)	-	-	-	-	($75,000)	-	-	-	($75,000)	-
(+/-) Intercompany Transfers	-	-	-	-	-	-	-	-	-	-	-	-	-
(+/-) Adjustments	-	-	-	-	-	-	-	-	-	-	-	-	-
Ending Bank Balance	**($762,658)**	**($1,231,308)**	**($2,312,283)**	**($3,456,495)**	**($3,508,551)**	**($3,843,922)**	**($5,599,201)**	**($6,306,663)**	**($6,070,994)**	**($6,313,071)**	**($6,577,297)**	**($7,207,328)**	**($6,903,386)**
Weekly Funding Need	**$760,000**	**$470,000**	**$1,080,000**	**$1,150,000**	**$50,000**	**$330,000**	**$1,760,000**	**$710,000**	**-**	**-**	**$270,000**	**$630,000**	**-**
Holdback													
Holdback Balance - BOP	**$5,063,803**	**$6,016,054**	**$6,016,054**	**$6,016,054**	**$6,016,054**	**$6,016,054**	**$6,016,054**	**$6,016,054**	**$6,016,054**	**$6,016,054**	**$6,016,054**	**$6,016,054**	**$6,016,054**
(+) Holdback	$952,251	-	-	-	-	-	-	-	-	-	-	-	-
(-) Holdback Payout	-	-	-	-	-	-	-	-	-	-	-	-	-
Holdback Balance - EOP	**$6,016,054**	**$6,016,054**	**$6,016,054**	**$6,016,054**	**$6,016,054**	**$6,016,054**	**$6,016,054**	**$6,016,054**	**$6,016,054**	**$6,016,054**	**$6,016,054**	**$6,016,054**	**$6,016,054**
Holdback %	80%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%

Fireman Hospitality Group
DRAFT 13-Week Cash Flow Forecast
Full Case Exhibit

CONFIDENTIAL DRAFT
For Discussion Purposes Only

	Week 14	Week 15	Week 16	Week 17	Week 18	Week 19	Week 20	Week 21	
for the week beginning Monday	*11-08-2026*	*11-15-2026*	*11-22-2026*	*11-29-2026*	*12-06-2026*	*12-13-2026*	*12-20-2026*	*12-27-2026*	**Total**
for the week ending Sunday	*11-15-2026*	*11-22-2026*	*11-29-2026*	*12-06-2026*	*12-13-2026*	*12-20-2026*	*12-27-2026*	*01-03-2027*	
Cash Flow									
Operating Cash Receipts	$ 1,831,867	$ 1,831,867	$ 1,831,867	$ 2,400,030	$ 2,388,655	$ 2,388,655	$ 2,388,655	$ 1,929,553	$ 36,412,708
Holdback	-	-	-	-	-	-	-	-	$ (952,251)
Non-Operating Cash Receipts	-	-	-	-	125,000	-	-	-	125,000
Total Cash Receipts	**$ 1,831,867**	**$ 1,831,867**	**$ 1,831,867**	**$ 2,400,030**	**$ 2,513,655**	**$ 2,388,655**	**$ 2,388,655**	**$ 1,929,553**	**$ 35,585,457**
Food & Beverage Disbursements									
Food Cost	$ (275,465)	$ (288,552)	$ (288,552)	$ (288,552)	$ (288,552)	$ (376,676)	$ (394,619)	$ (374,902)	$ (5,473,902)
Alcoholic Beverage Cost	(61,444)	(65,269)	(65,269)	(65,269)	(65,269)	(86,494)	(90,140)	(86,087)	(1,218,267)
Non-Alcoholic Beverage Cost	(14,897)	(15,752)	(15,752)	(16,202)	(16,193)	(20,514)	(21,389)	(20,038)	(288,858)
Other F&B Payments	(142,458)	(142,458)	(142,458)	(179,712)	(178,950)	(178,950)	(178,950)	(149,361)	(2,957,236)
Total Food & Beverage Disbursements	**$ (494,265)**	**$ (512,031)**	**$ (512,031)**	**$ (549,734)**	**$ (548,964)**	**$ (662,635)**	**$ (685,098)**	**$ (630,389)**	**$ (9,938,262)**
Operating Disbursements									
Corporate CC Payments	(171,500)	-	(125,000)	-	(171,500)	-	(125,000)	-	(1,159,500)
Labor	(996,195)	(640,773)	(996,195)	(725,282)	(1,134,583)	(723,806)	(1,134,583)	(668,428)	(16,989,645)
Rent	-	-	-	(606,557)	-	-	-	(626,986)	(3,053,215)
Insurance	(108,157)	(157)	(157)	(72,346)	(18,157)	(90,157)	(157)	(157)	(852,052)
Marketing	(4,367)	(4,367)	(4,367)	(4,367)	(4,367)	(4,367)	(4,367)	(4,367)	(91,714)
Repairs & Maintenance	(19,277)	(19,277)	(19,277)	(19,277)	(19,277)	(19,277)	(19,277)	(19,277)	(404,826)
Supplies & Equipment	(1,194)	(7,074)	(1,194)	(5,990)	(1,194)	(7,074)	(1,194)	(1,894)	(74,361)
Technology & POS	(11,238)	(5,838)	(5,238)	(42,128)	(4,338)	(12,738)	(5,238)	(11,579)	(294,492)
Utilities	(1,203)	-	-	(56,144)	(750)	(453)	-	(13,894)	(244,485)
Professional Services	(8,264)	(8,264)	(8,264)	(8,264)	(8,264)	(8,264)	(8,264)	(8,264)	(173,551)
Other / Miscellaneous	(1,797)	(1,797)	(1,797)	(1,797)	(1,797)	(1,797)	(1,797)	(1,797)	(257,736)
Cleaning & Sanitation	(7,243)	(7,243)	(7,243)	(7,243)	(7,243)	(7,243)	(7,243)	(7,243)	(152,108)
Sales Tax	-	(102,234)	(467,732)	-	-	(104,096)	(496,469)	-	(2,389,083)
Total Operating Disbursements	**$ (1,330,436)**	**$ (797,025)**	**$ (1,636,465)**	**$ (1,549,397)**	**$ (1,371,472)**	**$ (979,273)**	**$ (1,803,590)**	**$ (1,363,887)**	**$ (26,136,766)**
Operating Cash Flow	**7,166**	**522,811**	**(316,630)**	**300,899**	**593,220**	**746,747**	**(100,032)**	**(64,722)**	**(489,571)**
Cumulative Operating Cash Flow	**(2,171,863)**	**(1,649,053)**	**(1,965,682)**	**(1,664,783)**	**(1,071,563)**	**(324,816)**	**(424,848)**	**(489,571)**	
Non-Operating Disbursements									
Debt Interest and Principal Payments	-	-	-	(75,000)	-	-	-	(75,000)	(375,000)
Restructuring Professional Fees	(321,191)	(121,191)	(121,191)	(121,191)	(121,191)	(121,191)	(121,191)	(121,191)	(3,333,184)
Capital Expenditures	-	-	-	-	-	-	-	-	-
Management Fees	-	-	-	-	-	-	-	-	-
Past Due Sales Tax	-	-	-	-	-	(30,402)	(30,402)	(30,402)	(91,205)
Past Due Rent	-	-	-	-	-	-	-	-	-
Past Due Trade Vendor	-	-	-	-	-	-	-	-	-
Other Non-Operating Disbursements	(23,810)	(23,810)	(23,810)	(4,680,673)	(23,810)	(23,810)	(23,810)	(23,810)	(7,281,864)
Total Non-Operating Disbursements	**$ (345,000)**	**$ (145,000)**	**$ (145,000)**	**$ (4,876,864)**	**$ (145,000)**	**$ (175,402)**	**$ (175,402)**	**$ (250,402)**	**$ (11,081,253)**
Total Disbursements	**$ (2,169,701)**	**$ (1,454,056)**	**$ (2,293,497)**	**$ (6,975,995)**	**$ (2,065,435)**	**$ (1,817,310)**	**$ (2,664,090)**	**$ (2,244,677)**	**$ (47,156,281)**
Net Cash Flow	**(337,835)**	**377,810**	**(461,630)**	**(4,575,965)**	**448,220**	**571,345**	**(275,434)**	**(315,124)**	**(11,570,823)**
Cumulative Net Cash Flow	**(7,340,045)**	**(6,962,235)**	**(7,423,865)**	**(11,999,830)**	**(11,551,610)**	**(10,980,265)**	**(11,255,699)**	**(11,570,823)**	
Cash Rollforward									
Beginning Bank Balance	**($6,903,386)**	**($7,241,220)**	**($6,863,410)**	**($7,325,040)**	**($11,901,005)**	**($11,452,785)**	**($10,881,440)**	**($11,156,874)**	**$98,825**
(+/-) Net Cash Flow	($337,835)	$377,810	($461,630)	($4,500,965)	$448,220	$571,345	($275,434)	($240,124)	($2,336,108)
(+/-) Borrow / (Repay)	-	-	-	($75,000)	-	-	-	($75,000)	($75,000)
(+/-) Intercompany Transfers	-	-	-	-	-	-	-	-	-
(+/-) Adjustments	-	-	-	-	-	-	-	-	-
Ending Bank Balance	**($7,241,220)**	**($6,863,410)**	**($7,325,040)**	**($11,901,005)**	**($11,452,785)**	**($10,881,440)**	**($11,156,874)**	**($11,471,998)**	**($2,312,283)**
Weekly Funding Need	**$30,000**	**-**	**$90,000**	**$4,570,000**	**-**	**-**	**-**	**-**	**$11,900,000**
Holdback									
Holdback Balance - BOP	**$6,016,054**	**$6,016,054**	**$6,016,054**	**$6,016,054**	**$6,016,054**	**$6,016,054**	**$6,016,054**	**$6,016,054**	
(+) Holdback	-	-	-	-	-	-	-	-	
(-) Holdback Payout	-	-	-	-	-	-	-	-	
Holdback Balance - EOP	**$6,016,054**	**$6,016,054**	**$6,016,054**	**$6,016,054**	**$6,016,054**	**$6,016,054**	**$6,016,054**	**$6,016,054**	
Holdback %	0%	0%	0%	0%	0%	0%	0%	0%	