

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re

DRAW ANOTHER CIRCLE, LLC, *et al.*,¹

Debtors.

Chapter 11

Case No.: 16- (_____)

(Joint Administration Requested)

**DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS
(I) AUTHORIZING (A) CONTINUATION OF, AND
PAYMENT OF PREPETITION OBLIGATIONS
INCURRED IN THE ORDINARY
COURSE OF BUSINESS IN CONNECTION
WITH VARIOUS INSURANCE POLICIES, AND
(B) CONTINUATION OF, AND PAYMENT OF PREPETITION
OBLIGATIONS INCURRED IN THE ORDINARY COURSE OF
BUSINESS IN CONNECTION WITH INSURANCE PREMIUM FINANCING
PROGRAMS; AND (II) AUTHORIZING BANKS TO HONOR AND PROCESS
CHECKS AND ELECTRONIC TRANSFER REQUESTS RELATED THERETO**

Draw Another Circle, LLC ("DAC") and its chapter 11 affiliates, the debtors and debtors in possession (the "Debtors") in the above-captioned chapter 11 cases (the "Cases"), hereby move the Court (the "Motion") for entry of interim and final orders, substantially in the forms attached hereto as Exhibit A and Exhibit B (the "Proposed Interim Order" and the "Proposed Final Order," respectively, and together, the "Proposed Orders"), pursuant to sections 105(a), 363(b) and 364 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code"), and Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") (i) authorizing, but not directing, the Debtors to (a) continue and, to the extent necessary, revise, extend, renew, supplement, or change the Debtors' prepetition insurance policies (each, an "Insurance Policy" and, collectively, the "Insurance Policies"), or enter into

¹ The Debtors and the last four digits of their respective federal taxpayer identification numbers are as follows: Draw Another Circle, LLC (2102); Hastings Entertainment, Inc. (6375); MovieStop, LLC (9645); SP Images, Inc. (7773); and Hastings Internet, Inc. (0809). The Debtors' executive headquarters are located at 3601 Plains Boulevard, Amarillo, TX 79102.

new policies, if necessary, in the ordinary course of business and pay prepetition obligations in respect thereof, and (b) continue the Debtors' insurance premium financing programs (each, a "Financed Program" and, collectively, the "Financed Programs") and, to the extent necessary, revise, extend, renew, supplement, or change the Debtors' Financed Programs, or enter into new financing programs, as necessary, in the ordinary course of business and pay prepetition obligations in respect thereof; (ii) authorizing banks and other financial institutions (collectively, the "Banks") to honor and process check and electronic transfer requests related to the foregoing; and (iii) granting related relief. In support of the Motion, the Debtors rely on the *Declaration of Duane A. Huesers in Support of Debtors' First Day Pleadings* (the "First Day Declaration")² concurrently filed herewith. In further support of the Motion, the Debtors respectfully represent as follows:

JURISDICTION

1. The United States Bankruptcy Court for the District of Delaware (the "Court") has jurisdiction over these Cases and the Motion pursuant to 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated February 29, 2012. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue of these Cases and the Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

2. Pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware ("Local Rules"), the Debtors consent to the entry of a final judgment or order with respect to the Motion if it is

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

determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

3. The statutory and legal predicates for the relief requested herein are sections 105, 363(b), and 364 of the Bankruptcy Code and Bankruptcy Rules 6003 and 6004.

BACKGROUND

4. On the date hereof (the "Petition Date"), each of the Debtors commenced a voluntary case under chapter 11 of the Bankruptcy Code.

5. The Debtors are authorized to continue to operate their businesses and manage their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner or statutory committee has been appointed in these Cases by the Office of the United States Trustee for the District of Delaware (the "U.S. Trustee").

6. Founded in 1968, Hastings Entertainment, Inc. ("Hastings"), a Texas corporation, is a leading multimedia entertainment and lifestyle retailer. Hastings operates entertainment superstores that buy, sell, trade and rent various home entertainment products, including books, music, software, periodicals, movies on DVD and Blu-ray, video games, video game consoles, hobby, sports and recreation, lifestyle and consumer electronics. Hastings also offers consumables and trends products such as apparel, t-shirts, action figures, posters, greeting cards and seasonal merchandise. With the assistance of over 3,500 employees, Hastings operates 123 superstores, averaging approximately 24,000 square feet, principally in medium-sized markets located in 19 states, primarily in the Northwestern, Midwestern, and Southeastern United States.

7. Hastings also operates a multimedia entertainment e-commerce web site, goHastings.com, which offers a broad selection of books, software, video games, movies on DVD and Blu-ray, music, trends, comics, sports, recreation, and electronics. Hastings fills orders for new and used products placed at the website and also through Amazon and eBay Marketplaces using its proprietary goShip program, which allows Hastings to ship directly from its stores or distribution center. Hastings has one wholly-owned subsidiary, Hastings Internet, Inc. In 2015, Hastings generated revenue totaling approximately \$401.1 million.

8. MovieStop, LLC ("MovieStop"), a Delaware limited liability company, is a value retailer of new and used movies based in Atlanta, Georgia. MovieStop currently operates 39 destination locations in 10 states, primarily along the Eastern United States Coast. MovieStop is conducting store closing sales at all of its locations, and anticipates completion of all store closings by the end of July.

9. SP Images, Inc. ("SPI"), a Massachusetts corporation, is a full-service licensed distributor of sports and entertainment products and apparel headquartered in Franklin, Massachusetts. SPI specializes in providing retail partners with an unmatched assortment of licensed merchandise that allows them to maximize turns, sales and gross margins. SPI stocks over 20,000 individual items licensed by Major League Baseball, the National Football League, the National Hockey League, the National Basketball Association, Marvel Comics, DC Comics and many more.

10. Hastings, MovieStop and SPI are each wholly-owned subsidiaries of DAC.

11. As is further discussed in the First Day Declaration filed contemporaneously herewith, the Debtors commenced these chapter 11 cases to (i) effectuate the

sale of Hastings pursuant to a Court-approved bidding and auction process; (ii) complete the liquidation of the MovieStop business for the benefit of creditors; (iii) preserve SPI's business through a going concern sale process; and (iv) liquidate all of the Debtors' remaining assets and discontinue all business lines that cannot be sold for value.

12. More detailed factual background regarding the Debtors and the commencement of these Cases is set forth in the First Day Declaration.

I. Overview of the Insurance Policies

13. In connection with their business operations, the Debtors maintain multiple Insurance Policies that vary in amounts and types of coverage in accordance with prudent business practices, state and local laws governing the jurisdictions in which the Debtors operate and various contractual obligations. The Insurance Policies include (a) general liability, (b) automobile liability, (c) umbrella liability, (d) property, (e) flood, (f) directors and officers liability, (g) fiduciary liability, (h) commercial crime, (i) aviation, (j) workers' compensation and employers' liability, and (k) cyber liability.³ The Insurance Policies that are the subject of this Motion include those that are listed in the schedule attached hereto as Exhibit C (the "Insurance Schedule").⁴ For each Insurance Policy, the Insurance Schedule includes, among other things: (a) the corresponding insurance carrier (each an "Insurance Carrier" and collectively, the "Insurance Carriers"); (b) the corresponding broker; (c) the last four digits of the policy number; and (d) the annual premium.

³ Contemporaneously herewith, the Debtors are filing a motion relating to the Debtors' employee compensation and benefits programs (the "Employee Wages Motion"). The Employee Wages Motion seeks, among other things, authority to continue to provide various benefits, including applicable insurance coverage, for employee health and welfare programs. These programs and policies are not listed on the Insurance Schedule, and the maximum allowances for payment of prepetition insurance obligations listed in this Motion are exclusive of any amounts for which payment authority may be sought in the Employee Wages Motion.

⁴ The Insurance Policies summarized on the Insurance Schedule are representative only and are not intended to restrict the Debtors from changing carriers or programs, or adding different types of insurance, in the reasonable exercise of the Debtors' discretion.

14. The total annual premiums under the current Insurance Policies are approximately \$1,213,000, including all related fees and charges. These premiums are paid to the relevant Insurance Carriers either as annual prepayments or as installment payments, including through the Financing Agreement (defined below). In connection with the Insurance Policies, the Debtors have posted a standby letter of credit to Hartford Fire Insurance Company, for which the outstanding contract balance is \$725,000. The Debtors do not believe there are any prepetition amounts owing to the Insurance Carriers with respect to the Insurance Policies. In an abundance of caution, the Debtors seek authority to pay any prepetition amounts in respect of the Insurance Policies, in an amount not to exceed \$100,000 on an interim basis and \$200,000 on a final basis, and to continue to pay postpetition costs with respect to the Insurance Policies in the ordinary course of business during the pendency of these Cases.

II. Overview of Financed Programs

15. In addition, most of the Debtors' premiums are financed. The Debtors finance the premiums for some of their existing Insurance Policies because it is not economically advantageous for the Debtors to pay those premiums in full on a lump-sum basis. The Financed Programs are financed pursuant to a Commercial Premium Finance Agreement dated November 5, 2015 (the "Financing Agreement")⁵ with Prime Rate Premium Finance Corporation, Inc. ("Prime Rate").

16. The Financing Agreement provides the Debtors with, general, property, umbrella, directors and officers, crime, cyber liability, and aviation insurance through seven insurance policies with Affiliated FM Insurance Company, Fireman's Fund Insurance Company, U.S. Specialty Insurance Company, Illinois National Insurance Company, National Union Fire Insurance Company of Pittsburgh, Pa., Underwriters at Lloyds of London, and Allianz Global

⁵ A copy of the Financing Agreement is attached hereto as Exhibit D.

Risks US Insurance Company. The seven insurance policies subject to the Financing Agreement expire on November 1, 2016. Under the Financing Agreement, the Debtors made a down payment of \$73,682.47 and received a loan in the amount of \$653,898.60, plus a \$9,243.62 finance charge, at an annual percentage interest rate of 3.38%. The Debtors are obligated to make monthly payments of \$73,682.47 on the 1st of each month in advance for that month. The Debtors have made 7 of their 9 payments under the Financing Agreement and are current on their obligations thereunder. The Debtors will be obligated to make a payment of \$73,682.47 on July 1, 2016.

17. The Debtors do not believe there are any prepetition amounts owing with respect to the Financing Agreement. In an abundance of caution, the Debtors seek authority to pay any prepetition amounts in respect of the Financing Agreement, in an amount not to exceed \$36,842 on an interim basis and \$73,683 on a final basis, and to continue to pay postpetition costs with respect to the Financing Agreement in the ordinary course of business during the pendency of these Cases.

III. Brokerage and Administrative Services

18. In connection with the procurement and maintenance of their Insurance Policies, the Debtors obtain brokerage services from McGriff, Seibels & Williams, Inc. (the “Broker”). The Broker assists the Debtors in obtaining comprehensive insurance for the Debtors’ operations by, among other things, assisting the Debtors with the procurement and negotiation of the Insurance Policies, and enabling the Debtors to obtain those policies on advantageous terms and at competitive rates. Historically, the Debtors have paid the Broker approximately \$120,000 in the aggregate on an annual basis for its services (the “Brokerage Fees”). The Debtors estimate that the Brokerage Fees may increase to approximately \$213,000 as of April 2016 because the

Broker is now providing services to MovieStop. The Debtors do not believe there are any prepetition amounts owing with respect to the Brokerage Fees. In an abundance of caution, the Debtors seek authority to pay any prepetition amounts in respect of the Brokerage Fees, in an amount not to exceed \$10,000 on an interim basis and \$40,000 on a final basis, and to continue to pay postpetition costs with respect to the Brokerage Fees in the ordinary course of business during the pendency of these Cases.

RELIEF REQUESTED

19. By this Motion, the Debtors request that the Court enter an order, pursuant to sections 105, 363(b), and 364 of the Bankruptcy Code and Bankruptcy Rules 6003 and 6004 (i) authorizing, but not directing, the Debtors to (a) continue and, to the extent necessary, revise, extend, renew, supplement, or change their prepetition Insurance Policies, or enter into new policies, if necessary, in the ordinary course of business and pay all prepetition obligations in respect thereof, including brokerage and administrative fees (collectively, the “Insurance Policy Obligations”), and (b) continue and, to the extent necessary, revise, extend, renew, supplement, or change the Financed Programs, or enter into new premium financing programs, as necessary, in the ordinary course of business and pay prepetition obligations in respect thereof; (ii) authorizing the Banks to honor and process check and electronic transfer requests related to the foregoing; and (iii) granting related relief.⁶

⁶ Nothing in this Motion should be construed as an assumption of any executory contract or unexpired lease between the Debtors and any other party, nor should it be construed as a rejection of any executory contract or unexpired lease. The Debtors reserve their rights to contest the amounts claimed to be due by any person or entity.

BASIS FOR RELIEF

I. There Are Sound Business Reasons for the Relief Requested Herein.

20. Section 363 of the Bankruptcy Code provides, in relevant part, that “[t]he [debtor], after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Under section 363(b), courts require only that the debtor “show that a sound business purpose justifies such actions.” *Dai-Ichi Kangyo Bank, Ltd. v. Montgomery Ward Holding Corp. (In re Montgomery Ward Holding Corp.)*, 242 B.R. 147, 153 (D. Del. 1999) (citations omitted); *see also In re Phoenix Steel Corp.*, 82 B.R. 334, 335–36 (Bankr. D. Del. 1987); *In re Adelpia Commc’ns Corp.*, No. 02-41729 (REG), 2003 WL 22316543, at *30 (Bankr. S.D.N.Y. Mar. 4, 2003); *Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1070-71 (2d Cir. 1983). Moreover, “[w]here the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.” *Comm. of Asbestos-Related Litigants v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986) (citation omitted); *see also Stanziale v. Nachtoml (In re Tower Air, Inc.)*, 416 F.3d 229, 238 (3d Cir. 2005) (“Overcoming the presumptions of the business judgment rule on the merits is a near-Herculean task.”).

21. The Debtors have satisfied the business judgment standard. First, the coverage provided under the Insurance Policies is essential for preserving the value of the Debtors’ assets and, in many instances, such coverage is required by various regulations, laws and contracts that govern the Debtors’ business operations. Indeed, section 1112(b)(4)(C) of the Bankruptcy Code provides that “failure to maintain appropriate insurance that poses a risk to the estate or to the public,” is “cause” for mandatory conversion or dismissal of a chapter 11 case.

11 U.S.C. § 1112(b)(4)(C). Moreover, maintenance of insurance policies is required by the operating guidelines established by the Office of the United States Trustee. *See* 3 United States Trustee Manual, § 3-3.2.3 (Oct. 1998) (“A debtor must maintain appropriate insurance coverage, and documentation regarding the existence of the coverage must be provided to the Office of the United States Trustee as early in the case as possible.”).

22. Second, if the Debtors fail to perform their obligations under the Insurance Policies and Financed Programs, their coverage thereunder could be voided or put at risk. Such a disruption of the Debtors’ insurance coverage could expose the Debtors to serious risks, including but not limited to: (a) direct liability for the payment of claims that otherwise would have been payable by the Insurance Carriers; (b) material costs and other losses that otherwise would have been reimbursed by the Insurance Carriers under the Insurance Policies; (c) the loss of good standing certification in jurisdictions that require the Debtors to maintain certain levels of insurance coverage; (d) the inability to obtain similar types of insurance coverage; and (e) higher costs for re-establishing lapsed policies or obtaining new insurance coverage. Any or all of these consequences could cause serious harm to the Debtors’ business.

23. Granting the relief requested herein will preserve the value of the Debtors’ estates and enhance the likelihood of the Debtors’ successful rehabilitation, thereby furthering the goals of chapter 11 by “facilitating the continued operation and rehabilitation of the debtor” *In re Ionosphere Clubs*, 98 B.R. 174, 176 (Bankr. S.D.N.Y. 1989).

24. The Debtors may also need to renew or replace certain of the Insurance Policies during the course of these Cases, or enter into new policies. If the Debtors do not pay prepetition amounts owing in respect of the Insurance Policies, there is a risk that the Insurance Carriers will refuse to renew the Insurance Policies.

25. Although the Debtors believe that the renewal, modification, or new execution of the Insurance Policies would constitute ordinary course transactions not requiring Court approval, the Debtors nevertheless seek authority to continue to renew and modify the Insurance Policies to assure the Insurance Carriers that the Debtors have full authority with respect to new or modified arrangements without the need to obtain further approval from the Court. The inability to renew Insurance Policies would put at risk the value of the Debtors' assets. Paying prepetition amounts owing in respect of the Insurance Policies will thus preserve the value of the Debtors' estates by facilitating the Debtors' ability to renew Insurance Policies or enter into new policies as needed.

II. The Relief Requested Herein is Warranted Under the Doctrine of Necessity.

26. The Court may authorize payment of prepetition claims under section 105(a) of the Bankruptcy Code. Section 105(a) of the Bankruptcy Code, which codifies the equitable powers of the bankruptcy court, empowers courts to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). Under section 105(a) of the Bankruptcy Code, courts may permit pre-plan payments of prepetition obligations when essential to the continued operation of the debtor's business. *See, e.g., In re Just for Feet, Inc.*, 242 B.R. 821, 825 (D. Del. 1999). Specifically, the Court may use its power under section 105(a) of the Bankruptcy Code to authorize payment of prepetition obligations pursuant to the "doctrine of necessity" (also referred to as the "necessity of payment" rule). *In re Ionosphere Clubs, Inc.*, 98 B.R. at 175-76.

27. The United States Court of Appeals for the Third Circuit recognized the "necessity of payment" doctrine in *In re Lehigh and New England Railway Co.*, 657 F.2d 570, 581 (3d Cir. 1981). The Third Circuit held that a court could authorize the payment of

prepetition claims if there “is the possibility that the creditor will employ an immediate economic sanction, failing such payment.” *Id.*; accord *In re Penn Cent. Transp. Co.*, 467 F.2d 100, 102 n.1 (3d Cir. 1972) (collecting cases holding that the necessity of payment doctrine permits “immediate payment of claims of creditors where those creditors will not supply services or material essential to the conduct of the business until their pre-reorganization claims shall have been paid”); see also *Official Comm. of Unsecured Creditors of Motor Coach Indus. Int’l, Inc. v. Motor Coach Indus. Int’l, Inc. (In re Motor Coach Indus. Int’l, Inc.)*, No. 08-12136 BLS, 2009 WL 330993, at *3 (D. Del. Feb. 10, 2009) (denying a stay pending appeal on the grounds that there is not a serious basis to challenge the doctrine of necessity in the Third Circuit); *Just for Feet, Inc.*, 242 B.R. at 824-26 (noting that the Third Circuit permits debtors to pay prepetition claims that are essential to continued operation of business).

28. Application of the doctrine of necessity is justified when necessary to preserve the value of the estate for all stakeholders. See *Just for Feet*, 242 B.R. at 826 (finding that payment of prepetition claims to certain trade vendors was “essential to the survival of the debtor during the chapter 11 reorganization”); *In re Quality Interiors, Inc.*, 127 B.R. 391, 396 (Bankr. N.D. Ohio 1991) (“[P]ayment by a debtor-in-possession of pre-petition claims outside of a confirmed plan of reorganization is generally prohibited by the Bankruptcy Code,” but “[a] general practice has developed . . . where bankruptcy courts permit the payment of certain pre-petition claims, pursuant to 11 U.S.C. § 105, where the debtor will be unable to reorganize without such payment.”); *In re Eagle-Picher Indus., Inc.*, 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) (approving payment of prepetition unsecured claims of tool makers as “necessary to avert a serious threat to the Chapter 11 process”); *Mich. Bureau of Workers’ Disability Comp. v. Chateaugay Corp. (In re Chateaugay Corp.)*, 80 B.R. 279, 287 (S.D.N.Y. 1987) (authorizing

payment of prepetition workers' compensation claims on grounds that the fundamental purpose of reorganization and equity powers of bankruptcy courts "is to create a flexible mechanism that will permit . . . payment of creditors in full or at least proportionately"); COLLIER ON BANKRUPTCY ¶ 105.04[5][a] (Alan N. Resnick & Henry J. Sommer Eds., 16th ed. rev. 2016) (discussing cases in which courts have relied on the "doctrine of necessity" or the "necessity of payment" rule to pay prepetition claims immediately).

29. Honoring the Debtors' obligations with regards to the Insurance Policies and Financed Programs is warranted under the doctrine of necessity. As described above, continuation of the Insurance Policies is essential to preserve the value of the Debtors' assets and minimize exposure to risk. Furthermore, insurance coverage is required by the Office of the United States Trustee as well as various jurisdictions in which the Debtors operate.

III. The Debtors Should Be Authorized to Honor Obligations Under and Renew the Premium Financing Agreement.

30. Payment of amounts owed under the Financing Agreement is necessary and appropriate, and may be authorized under sections 105(a) and 363(b) of the Bankruptcy Code. Moreover, pursuant to section 364(c) of the Bankruptcy Code, a debtor may, in the exercise of its business judgment, incur secured postpetition debt if the debtor has been unable to obtain unsecured credit and the borrowing is in the best interests of the estate. *See, e.g., In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 38 (Bankr. S.D.N.Y. 1990) (recognizing that courts "permit debtors-in-possession to exercise their basic business judgment consistent with their fiduciary duties" in incurring postpetition credit). As described above, the Debtors believe that continuing to perform under the Financing Agreement on a postpetition basis is in the best interests of their estates. Moreover, given the Debtors' current financial circumstances, the Debtors may have difficulty securing alternative premium financing on terms as favorable as

under the Financing Arrangements. In any event, the Debtors are highly unlikely to obtain such financing on an unsecured basis. Thus, the Debtors' ability to continue performing under and renew the Financing Agreement is likely to preserve estate value.

31. The Debtors' obligations under the Financing Agreement are secured by any and all unearned premiums and dividends which may become payable under the insurance policies for whatever reason and loss payments which reduce the unearned premiums subject to any mortgagee or loss payee interests. In addition, the Debtors granted to Prime Rate the Debtors' interests that may arise under any state guarantee fund relating to any policy shown in the schedule of policies. If the Debtors were unable to continue honoring their obligations under the Financing Agreement, Prime Rate may seek relief from the automatic stay to terminate the Financed Programs which, if granted, would require the Debtors to obtain replacement insurance on an expedited basis and likely at greater costs for the Debtors. Even if the Financed Programs were not terminated, any interruption in the Debtors' payments could adversely affect the Debtors' ability to finance premiums for future policies.

32. In addition, the Debtors respectfully submit that renewing the Financed Programs and/or obtaining new premium financing programs is within the ordinary course of the Debtors' businesses and therefore authorized by section 363(c)(1) of the Bankruptcy Code. To reduce the administrative burden, as well as to allow them to meet one of the criteria for operating as debtors in possession, the Debtors seek the Court's authority now, pursuant to section 364 of the Bankruptcy Code, to renew the Financing Agreement or obtain new premium financing arrangements as necessary in the Debtors' business judgment.

33. Courts in this district have authorized debtors to continue to honor premium financing arrangements in similar circumstances. *See, e.g., In re Phoenix Brands LLC,*

Case No. 16-11242 (Bankr. D. Del. May 23, 2016) [Docket No. 51]; *In re Newbury Common Assocs.*, Case No. 15-12507 (LSS) (Bankr. D. Del. Feb. 29, 2016) [Docket No. 336]; *In re Haggren Holdings, LLC*, Case No. 15-11874 (KG) (Bankr. D. Del. Oct. 2, 2015) [Docket No. 250]; *In re Am. Apparel, Inc.*, Case No. 15-12055 (BLS) (Bankr. D. Del. Oct. 6, 2015) [Docket No. 71].⁷

IV. Processing of Checks and Electronic Fund Transfers Should Be Authorized.

34. The Debtors also request that this Court authorize all applicable financial institutions to receive, process, honor and pay any and all checks or wire transfer requests in respect of the Insurance Policies, provided that sufficient funds are available in the applicable bank accounts to make such payments. The Debtors further request that all of the Banks be authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved pursuant to this Motion.⁸

IMMEDIATE RELIEF IS NECESSARY

35. Bankruptcy Rule 6003 provides that the relief requested in this Motion may be granted if the "relief is necessary to avoid immediate and irreparable harm." Fed. R. Bankr. P. 6003. As set forth throughout this Motion, any disruption of the Insurance Policies, including the Financed Programs and the related agreements, would substantially diminish or impair the Debtors' efforts in their Cases to preserve and maximize the value of their estates.

⁷ Because of the voluminous nature of the unreported orders cited herein, they are not annexed to this Motion. Copies of these orders are available upon email request of Debtors' counsel by contacting Max Schlan, Esq. at mschlan@cooley.com.

⁸ For further information regarding the Debtors' cash management system, see the *Debtors' Motion for Entry of Order (I) Authorizing Continued Use of Cash Management System, (II) Authorizing Continued Use of Existing Business Forms (III) Authorizing the Continuation of Intercompany Transactions, (IV) Granting Administrative Priority Status to Postpetition Intercompany Transactions, (V) Authorizing Use of Prepetition Bank Accounts, Account Control Agreements, and Certain Payment Methods, and (VI) Temporarily Suspending the Requirements of 11 U.S.C. § 345(b) on an Interim Basis* filed contemporaneously with this Motion, and the First Day Declaration.

36. For this reason and those set forth above, the Debtors respectfully submit that Bankruptcy Rule 6003(b) has been satisfied and the relief requested herein is necessary to avoid immediate and irreparable harm to the Debtors and their estates.

WAIVER OF ANY APPLICABLE STAY

37. The Debtors also request that the Court waive the stay imposed by Bankruptcy Rule 6004(h), which provides that “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of fourteen days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h). As described above, the relief that the Debtors seek in this Motion is necessary for the Debtors to operate their business without interruption and to preserve value for their estates. Accordingly, the Debtors respectfully request that the Court waive the fourteen-day stay imposed by Bankruptcy Rule 6004(h), as the exigent nature of the relief sought herein justifies immediate relief.

RESERVATION OF RIGHTS

38. Nothing in the Proposed Orders or this Motion (i) is intended or shall be deemed to constitute an assumption of any agreement pursuant to section 365 of the Bankruptcy Code or an admission as to the validity of any claim against the Debtors and their estates; (ii) shall impair, prejudice, waive, or otherwise affect the rights of the Debtors and their estates with respect to the validity, priority, or amount of any claim against the Debtors and their estates; (iii) shall impair, prejudice, waive, or otherwise affect the rights of the Debtors and their estates with respect to any and all claims or causes of action against an Insurance Carrier; or (iv) shall be construed as a promise to pay a claim.

NOTICE

39. The Debtors will provide notice of this Motion to: (i) the U.S. Trustee; (ii) holders of the thirty (30) largest unsecured claims on a consolidated basis against the Debtors; (iii) Bank of America, N.A.; (iv) Pathlight Capital LLC; (v) the Banks; (vi) the Insurance Carriers; and (vii) all parties who, as of the filing of this Motion, have filed a notice of appearance and request for service of papers pursuant to Bankruptcy Rule 2002. As this Motion is seeking “first day” relief, within two business days of the hearing on this Motion, the Debtors will serve copies of this Motion and any order entered in respect to this Motion as required by Local Rule 9013-1(m). In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary.

40. No previous request for the relief sought herein has been made by the Debtors to this or any other court.

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CONCLUSION

WHEREFORE, for the reasons set forth herein and in the First Day Declaration, the Debtors respectfully request that this Court enter interim and final orders, substantially in the forms attached hereto, granting the relief requested in the Motion and such other and further relief as is just and proper.

Dated: June 13, 2016
Wilmington, Delaware

Respectfully submitted,

/s/ Christopher M. Samis

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EXHIBIT A

Proposed Interim Order

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re

DRAW ANOTHER CIRCLE, LLC, *et al.*,¹
Debtors.

Chapter 11

Case No.: 16- (_____)

(Joint Administration Requested)

Re: Docket No. ____

**INTERIM ORDER (I) AUTHORIZING (A) CONTINUATION
OF, AND PAYMENT OF PREPETITION OBLIGATIONS
INCURRED IN THE ORDINARY COURSE OF
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VARIOUS INSURANCE POLICIES, AND (B) CONTINUATION
OF INSURANCE PREMIUM FINANCING PROGRAMS; AND (II)
AUTHORIZING BANKS TO HONOR AND PROCESS CHECKS
AND ELECTRONIC TRANSFER REQUESTS RELATED THERETO**

Upon the motion (the “Motion”)² of Draw Another Circle, LLC and its chapter 11 affiliates, the debtors and debtors in possession (the “Debtors”) in the above-captioned jointly administered chapter 11 cases (the “Cases”), for entry of an interim order (this “Interim Order”), pursuant to sections 105(a), 363(b) and 364 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”), and Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) (i) authorizing, but not directing, the Debtors to (a) continue and, to the extent necessary, renew all of their prepetition Insurance Policies in the ordinary course of business and pay all prepetition obligations in respect thereof, and (b) continue and, to the extent necessary, renew the Financed Programs and enter into new premium financing programs, as necessary, under substantially similar terms; (ii) authorizing banks and other

¹ The Debtors and the last four digits of their respective federal taxpayer identification numbers are as follows: Draw Another Circle, LLC (2102); Hastings Entertainment, Inc. (6375); MovieStop, LLC (9645); SP Images, Inc. (7773); and Hastings Internet, Inc. (0809). The Debtors’ executive headquarters are located at 3601 Plains Boulevard, Amarillo, TX 79102.

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

financial institutions (collectively, the “Banks”) to honor and process check and electronic transfer requests related to the foregoing; and (iii) granting related relief; and upon consideration of the First Day Declaration and the entire record of these Cases; and it appearing that the Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 1334 and 157, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated February 29, 2012; and it appearing that the Motion is a core matter pursuant to 28 U.S.C. § 157(b)(2) and that the Court may enter a final order consistent with Article III of the United States Constitution; and it appearing that venue of these Cases and of the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that due and adequate notice of the Motion has been given under the circumstances, and that no other or further notice need be given; and it appearing that the relief requested in the Motion is in the best interests of the Debtors’ estates, their creditors, and other parties in interest; and after due deliberation, and good and sufficient cause appearing therefor, it is hereby **ORDERED, ADJUDGED AND DECREED THAT:**

1. The Motion is GRANTED on an interim basis as set forth herein.
2. The Debtors are authorized to continue to maintain and perform under their Insurance Policies and to continue to maintain and perform under their Financing Programs.
3. The final hearing (the “Final Hearing”) on the Motion shall be held on _____, 2016, at ___:___ .m., prevailing Eastern Time. Any objections or responses to entry of a final order on the Motion shall be filed on or before 4:00 p.m., prevailing Eastern Time, on _____, 2016, and shall be served on: (i) the Debtors, 3601 Plains Boulevard, Amarillo, Texas 79102 (Attn: Duane A. Huesers); (ii) proposed counsel for the Debtors, (x) Cooley LLP, 1114 Avenue of the Americas, New York, New York 10036 (Attn:

Cathy Hershcopf, Esq. and Michael A. Klein, Esq.) Email: chershcopf@cooley.com and mklein@cooley.com and (y) Whiteford, Taylor & Preston LLC, The Renaissance Centre, 405 North King Street, Suite 500, Wilmington, Delaware 19801 (Attn: Christopher M. Samis, Esq. and L. Katherine Good, Esq.) Email: csamis@wtplaw.com and kgood@wtplaw.com; (iii) counsel to Bank of America, N.A., (x) Riemer & Braunstein, LLP, Times Square Tower, Suite 2506, Seven Times Square, New York, New York 10036 (Attn: Donald E. Rothman, Esq. and Steven E. Fox, Esq.) Email: drothman@riemerlaw.com and sfox@riemerlaw.com and (y) Ashby & Geddes, P.A., 500 Delaware Avenue, P.O. Box 1150, Wilmington, Delaware 19801 (Attn: Gregory Taylor, Esq.) Email: gtaylor@ashby-geddes.com; (iv) counsel to Pathlight Capital LLC, (x) Choate, Hall & Stewart LLP, Two International Place, Boston, Massachusetts 02110 (Attn: Kevin J. Simard, Esq.) Email: ksimard@choate.com and (y) Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, Delaware 19801 (Attn: Mark D. Collins, Esq. and John H. Knight, Esq.) Email: collins@rlf.com and knight@rlf.com; (v) the Office of the United States Trustee for the District of Delaware, J. Caleb Boggs Building, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801 (Attn: Hannah Mufson McCollum, Esq.) Email: hannah.mccollum@usdoj.gov; and (vi) counsel to any statutory committee appointed in these Cases. If no objections to entry of a final order on the Motion are timely received, this Court may enter such final order without further notice or hearing.

4. The Debtors are further authorized to pay prepetition amounts due and owing related to the Insurance Policies to the extent that the Debtors determine that such payment is necessary or appropriate, *provided, however*, that no payment of any such prepetition amounts shall be made, absent further order of this Court, on account of (i) premiums in an amount exceeding \$100,000 in the aggregate; (ii) any amounts due pursuant to the Financing

Agreement exceeding \$36,842 in the aggregate; or (iii) Brokerage Fees exceeding \$10,000 in the aggregate.

5. The Debtors are further authorized to revise, extend, renew, supplement or change the Insurance Policies or enter into new policies, if necessary, in the ordinary course of their business.

6. The Debtors are further authorized to revise, extend, renew, supplement, or change the Financing Agreement or to obtain new premium financing agreements and make all payments thereunder in the ordinary course of business.

7. The Banks are authorized, when requested by the Debtors, in the Debtors' discretion, to honor and process checks or electronic fund transfers drawn on the Debtors' bank accounts to pay prepetition obligations authorized to be paid hereunder, whether such checks or other requests were submitted prior to, or after, the Petition Date, provided that sufficient funds are available in the applicable bank accounts to make such payments. The Banks may rely on the representations of the Debtors with respect to whether any check or other transfer drawn or issued by the Debtors prior to the Petition Date should be honored pursuant to this Interim Order, and any such Bank shall not have any liability to any party for relying on such representations by the Debtors, as provided for in this Interim Order.

8. Nothing in this Interim Order, nor as a result of any payment made pursuant to this Interim Order, (a) is intended or shall be deemed to constitute an assumption of any agreement pursuant to section 365 of the Bankruptcy Code or an admission as to the validity of any claim against the Debtors and their estates, (b) shall impair, prejudice, waive, or otherwise affect the rights of the Debtors and their estates with respect to the validity, priority, or amount of any claim against the Debtors and their estates, (c) shall impair, prejudice, waive, or otherwise

affect the rights of the Debtors and their estates with respect to any and all claims or causes of action against an Insurance Carrier, or (d) shall be construed as a promise to pay a claim.

9. Notwithstanding anything to the contrary contained herein, any payment made or to be made under this Interim Order, any authorization contained in this Interim Order, or any claim for which payment is authorized hereunder, shall be subject to the requirements imposed on the Debtors under any orders of this Court approving any debtor in possession financing for, or any use of cash collateral by, the Debtors and any budget in connection therewith.

10. Bankruptcy Rule 6003(b) has been satisfied.

11. Notwithstanding any provision in the Bankruptcy Rules to the contrary: (a) this Interim Order shall be effective immediately and enforceable upon its entry; (b) the Debtors are not subject to any stay in the implementation, enforcement, or realization of the relief granted in this Interim Order; and (c) the Debtors are authorized and empowered, and may in their discretion and without further delay, take any action necessary or appropriate to implement this Interim Order.

12. The Court retains jurisdiction with respect to all matters arising from or related to the implementation or interpretation of this Interim Order.

Dated: _____, 2016
Wilmington, Delaware

United States Bankruptcy Judge

EXHIBIT B

Proposed Final Order

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re

DRAW ANOTHER CIRCLE, LLC, *et al.*,¹
Debtors.

Chapter 11

Case No.: 16- (_____)

(Joint Administration Requested)

Re: Docket No. ____

**FINAL ORDER (I) AUTHORIZING (A) CONTINUATION
OF, AND PAYMENT OF PREPETITION OBLIGATIONS
INCURRED IN THE ORDINARY COURSE OF
BUSINESS IN CONNECTION WITH
VARIOUS INSURANCE POLICIES, AND (B) CONTINUATION
OF INSURANCE PREMIUM FINANCING PROGRAMS; AND (II)
AUTHORIZING BANKS TO HONOR AND PROCESS CHECKS
AND ELECTRONIC TRANSFER REQUESTS RELATED THERETO**

Upon the motion (the “Motion”)² of Draw Another Circle, LLC and its chapter 11 affiliates, the debtors and debtors in possession (the “Debtors”) in the above-captioned jointly administered chapter 11 cases (the “Cases”), for entry of a final order (this “Final Order”), pursuant to sections 105(a), 363(b) and 364 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”), and Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), (i) authorizing, but not directing, the Debtors to continue and, to the extent necessary, renew all of their prepetition Insurance Policies in the ordinary course of business and pay all prepetition obligations in respect thereof, and (b) continue and, to the extent necessary, renew the Financed Programs and enter into new premium financing programs, as necessary, under substantially similar terms; (ii) authorizing banks and other

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

financial institutions (collectively, the “Banks”) to honor and process check and electronic transfer requests related to the foregoing; and (iii) granting related relief; and upon consideration of the First Day Declaration and the entire record of these Cases; and it appearing that the Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 1334 and 157, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated February 29, 2012; and it appearing that the Motion is a core matter pursuant to 28 U.S.C. § 157(b)(2) and that the Court may enter a final order consistent with Article III of the United States Constitution; and it appearing that venue of these Cases and of the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that due and adequate notice of the Motion has been given under the circumstances, and that no other or further notice need be given; and it appearing that the relief requested in the Motion is in the best interests of the Debtors’ estates, their creditors, and other parties in interest; and after due deliberation, and good and sufficient cause appearing therefor, it is hereby **ORDERED, ADJUDGED AND DECREED THAT:**

1. The Motion is GRANTED on a final basis as set forth herein.
2. The Debtors are authorized to continue to maintain and perform under their Insurance Policies and to continue to maintain and perform under their Financing Programs.
3. The Debtors are further authorized to pay prepetition amounts due and owing related to the Insurance Policies to the extent that the Debtors determine that such payment is necessary or appropriate, provided, however, that no payment of any such prepetition amounts shall be made, absent further order of this Court, on account of (i) premiums in an amount exceeding \$200,000 in the aggregate; (ii) any amounts due pursuant to the Financing

Agreement exceeding \$73,683 in the aggregate; or (iii) Brokerage Fees exceeding \$40,000 in the aggregate.

4. The Debtors are further authorized to revise, extend, renew, supplement or change the Insurance Policies or enter into new policies, if necessary, in the ordinary course of their business.

5. The Debtors are further authorized to revise, extend, renew, supplement, or change the Financing Agreement or to obtain new premium financing agreements and make all payments thereunder in the ordinary course of business.

6. The Banks are authorized, when requested by the Debtors, in the Debtors' discretion, to honor and process checks or electronic fund transfers drawn on the Debtors' bank accounts to pay prepetition obligations authorized to be paid hereunder, whether such checks or other requests were submitted prior to, or after, the Petition Date, provided that sufficient funds are available in the applicable bank accounts to make such payments. The Banks may rely on the representations of the Debtors with respect to whether any check or other transfer drawn or issued by the Debtors prior to the Petition Date should be honored pursuant to this Final Order, and any such Bank shall not have any liability to any party for relying on such representations by the Debtors, as provided for in this Final Order.

7. Nothing in this Final Order, nor as a result of any payment made pursuant to this Final Order, (a) is intended or shall be deemed to constitute an assumption of any agreement pursuant to section 365 of the Bankruptcy Code or an admission as to the validity of any claim against the Debtors and their estates; (b) shall impair, prejudice, waive, or otherwise affect the rights of the Debtors and their estates with respect to the validity, priority, or amount of any claim against the Debtors and their estates; (c) shall impair, prejudice, waive, or otherwise

affect the rights of the Debtors and their estates with respect to any and all claims or causes of action against an Insurance Carrier; or (d) shall be construed as a promise to pay a claim.

8. Notwithstanding anything to the contrary contained herein, any payment made or to be made under this Order, any authorization contained in this Order, or any claim for which payment is authorized hereunder, shall be subject to the requirements imposed on the Debtors under any orders of this Court approving any debtor-in-possession financing for, or any use of cash collateral by, the Debtors and any budget in connection therewith.

9. Notwithstanding any provision in the Bankruptcy Rules to the contrary: (a) this Final Order shall be effective immediately and enforceable upon its entry; (b) the Debtors are not subject to any stay in the implementation, enforcement, or realization of the relief granted in this Final Order; and (c) the Debtors are authorized and empowered, and may in their discretion and without further delay, take any action necessary or appropriate to implement this Final Order.

10. The Court retains jurisdiction with respect to all matters arising from or related to the implementation or interpretation of this Final Order.

Dated: _____, 2016
Wilmington, Delaware

United States Bankruptcy Judge

EXHIBIT C

Insurance Policies

Coverage Type	Entity	Broker	Broker Notice Address	Carrier	Carrier Notice Address	Annual Premium (\$)	Policy Number (Last Four Digits)	Financed (Y/N)
General Liability	Hastings Entertainment, Inc. MovieStop, LLC SP Images, Inc.	McGriff, Seibels & Williams	One Premier Plaza 5605 Glenridge Dr. Suite 300 Atlanta, GA 30342	The Hartford	One Hartford Plaza T-21 Hartford, CT 06155	103,000.00	8601	N
Property	Hastings Entertainment, Inc. MovieStop, LLC SP Images, Inc.	McGriff, Seibels & Williams	One Premier Plaza 5605 Glenridge Dr. Suite 300 Atlanta, GA 30342	Affiliated FM	PO Box 7500 Johnston, RI 02919	442,998.00	M400	Y
Automobile	Hastings Entertainment, Inc. MovieStop, LLC SP Images, Inc.	McGriff, Seibels & Williams	One Premier Plaza 5605 Glenridge Dr. Suite 300 Atlanta, GA 30342	The Hartford	One Hartford Plaza T-21 Hartford, CT 06155	6,608.00	8603	N
Workers' Compensation	Hastings Entertainment, Inc. MovieStop, LLC SP Images, Inc.	McGriff, Seibels & Williams	One Premier Plaza 5605 Glenridge Dr. Suite 300 Atlanta, GA 30342	The Hartford	One Hartford Plaza T-21 Hartford, CT 06155	267,872.00	8600	N
Umbrella Liability	Hastings Entertainment, Inc. MovieStop, LLC SP Images, Inc.	McGriff, Seibels & Williams	One Premier Plaza 5605 Glenridge Dr. Suite 300 Atlanta, GA 30342	Fireman's Fund	11605 Haynes Bridge Rd. Suite 200 Alpharetta, GA 30004	31,142.00	0670	Y
Aviation	Hastings Entertainment, Inc.	McGriff, Seibels & Williams	One Premier Plaza 5605 Glenridge Dr. Suite 300 Atlanta, GA 30342	Commerce and Industry	175 Water St. 18th Floor New York, NY 10038	17,198.00	94-03	Y
Directors and Officers Liability / EPL	Hastings Entertainment, Inc. MovieStop, LLC SP Images, Inc.	McGriff, Seibels & Williams	One Premier Plaza 5605 Glenridge Dr. Suite 300 Atlanta, GA 30342	US Specialty Insurance Company	HCC Global Financial Products LLC 8 Forest Park Drive PO Box 4018 Farmington, CT 06034	89,828.00	6125	Y
Fiduciary Liability	Hastings Entertainment, Inc. MovieStop, LLC SP Images, Inc.	McGriff, Seibels & Williams	One Premier Plaza 5605 Glenridge Dr. Suite 300 Atlanta, GA 30342	Illinois National	AIG 175 Water Street New York, NY 10038-4969	7,272.00	79-56	Y
Crime	Hastings Entertainment, Inc. MovieStop, LLC SP Images, Inc.	McGriff, Seibels & Williams	One Premier Plaza 5605 Glenridge Dr. Suite 300 Atlanta, GA 30342	National Union Fire Insurance Company of Pittsburgh, PA	175 Water St. 18th Floor New York, NY 10038	8,003.00	87-95	Y
Cyber	Hastings Entertainment, Inc. MovieStop, LLC SP Images, Inc.	McGriff, Seibels & Williams	One Premier Plaza 5605 Glenridge Dr. Suite 300 Atlanta, GA 30342	Beazley Group	300 Batterson Park Rd. Farmington, CT 06032	109,370.00	0601	Y

Coverage Type	Entity	Broker	Broker Notice Address	Carrier	Carrier Notice Address	Annual Premium (\$)	Policy Number (Last Four Digits)	Financed (Y/N)
Flood	Hastings Entertainment, Inc.	McGriff, Seibels & Williams	One Premier Plaza 5605 Glenridge Dr. Suite 300 Atlanta, GA 30342	Assurant Flood Solutions	Flood Service Center P.O. Box 4337 Scottsdale, AZ 85261	2,434.00	4965	N
Flood	Hastings Entertainment, Inc.	McGriff, Seibels & Williams	One Premier Plaza 5605 Glenridge Dr. Suite 300 Atlanta, GA 30342	Assurant Flood Solutions	Flood Service Center P.O. Box 4337 Scottsdale, AZ 85261	2,434.00	4963	N
Flood	Hastings Entertainment, Inc.	McGriff, Seibels & Williams	One Premier Plaza 5605 Glenridge Dr. Suite 300 Atlanta, GA 30342	Assurant Flood Solutions	Flood Service Center P.O. Box 4337 Scottsdale, AZ 85261	2,434.00	4964	N
Flood	Hastings Entertainment, Inc.	McGriff, Seibels & Williams	One Premier Plaza 5605 Glenridge Dr. Suite 300 Atlanta, GA 30342	Assurant Flood Solutions	Flood Service Center P.O. Box 4337 Scottsdale, AZ 85261	2,434.00	6362	N
Flood	Hastings Entertainment, Inc.	McGriff, Seibels & Williams	One Premier Plaza 5605 Glenridge Dr. Suite 300 Atlanta, GA 30342	Assurant Flood Solutions	Flood Service Center P.O. Box 4337 Scottsdale, AZ 85261	2,434.00	6360	N
Flood	Hastings Entertainment, Inc.	McGriff, Seibels & Williams	One Premier Plaza 5605 Glenridge Dr. Suite 300 Atlanta, GA 30342	Assurant Flood Solutions	Flood Service Center P.O. Box 4337 Scottsdale, AZ 85261	3,188.00	6361	N
Flood	Hastings Entertainment, Inc.	McGriff, Seibels & Williams	One Premier Plaza 5605 Glenridge Dr. Suite 300 Atlanta, GA 30342	Assurant Flood Solutions	Flood Service Center P.O. Box 4337 Scottsdale, AZ 85261	3,188.00	7415	N
Flood	Hastings Entertainment, Inc.	McGriff, Seibels & Williams	One Premier Plaza 5605 Glenridge Dr. Suite 300 Atlanta, GA 30342	Assurant Flood Solutions	Flood Service Center P.O. Box 4337 Scottsdale, AZ 85261	2,782.00	7412	N
Flood	Hastings Entertainment, Inc.	McGriff, Seibels & Williams	One Premier Plaza 5605 Glenridge Dr. Suite 300 Atlanta, GA 30342	Assurant Flood Solutions	Flood Service Center P.O. Box 4337 Scottsdale, AZ 85261	2,434.00	7416	N
Flood	Hastings Entertainment, Inc.	McGriff, Seibels & Williams	One Premier Plaza 5605 Glenridge Dr. Suite 300 Atlanta, GA 30342	Assurant Flood Solutions	Flood Service Center P.O. Box 4337 Scottsdale, AZ 85261	9,236.00	4618	N

Coverage Type	Entity	Broker	Broker Notice Address	Carrier	Carrier Notice Address	Annual Premium (\$)	Policy Number (Last Four Digits)	Financed (Y/N)
Flood	Hastings Entertainment, Inc.	McGriff, Seibels & Williams	One Premier Plaza 5605 Glenridge Dr. Suite 300 Atlanta, GA 30342	Assurant Flood Solutions	Flood Service Center P.O. Box 4337 Scottsdale, AZ 85261	2,434.00	7417	N
Flood	Hastings Entertainment, Inc.	McGriff, Seibels & Williams	One Premier Plaza 5605 Glenridge Dr. Suite 300 Atlanta, GA 30342	Assurant Flood Solutions	Flood Service Center P.O. Box 4337 Scottsdale, AZ 85261	2,434.00	7414	N
Flood	Hastings Entertainment, Inc.	McGriff, Seibels & Williams	One Premier Plaza 5605 Glenridge Dr. Suite 300 Atlanta, GA 30342	Assurant Flood Solutions	Flood Service Center P.O. Box 4337 Scottsdale, AZ 85261	2,434.00	7413	N
Flood	Hastings Entertainment, Inc.	McGriff, Seibels & Williams	One Premier Plaza 5605 Glenridge Dr. Suite 300 Atlanta, GA 30342	Assurant Flood Solutions	Flood Service Center P.O. Box 4337 Scottsdale, AZ 85261	21,768.00	4622	N
Flood	Hastings Entertainment, Inc.	McGriff, Seibels & Williams	One Premier Plaza 5605 Glenridge Dr. Suite 300 Atlanta, GA 30342	Assurant Flood Solutions	Flood Service Center P.O. Box 4337 Scottsdale, AZ 85261	3,985.00	4621	N
Flood	Hastings Entertainment, Inc.	McGriff, Seibels & Williams	One Premier Plaza 5605 Glenridge Dr. Suite 300 Atlanta, GA 30342	Assurant Flood Solutions	Flood Service Center P.O. Box 4337 Scottsdale, AZ 85261	1,066.00	4691	N
Flood	Hastings Entertainment, Inc.	McGriff, Seibels & Williams	One Premier Plaza 5605 Glenridge Dr. Suite 300 Atlanta, GA 30342	Assurant Flood Solutions	Flood Service Center P.O. Box 4337 Scottsdale, AZ 85261	537.00	4927	N
Flood	Hastings Entertainment, Inc.	McGriff, Seibels & Williams	One Premier Plaza 5605 Glenridge Dr. Suite 300 Atlanta, GA 30342	Assurant Flood Solutions	Flood Service Center P.O. Box 4337 Scottsdale, AZ 85261	11,219.00	5267	N
Flood	Hastings Entertainment, Inc.	McGriff, Seibels & Williams	One Premier Plaza 5605 Glenridge Dr. Suite 300 Atlanta, GA 30342	Assurant Flood Solutions	Flood Service Center P.O. Box 4337 Scottsdale, AZ 85261	2,501.00	5266	N
Flood	Hastings Entertainment, Inc.	McGriff, Seibels & Williams	One Premier Plaza 5605 Glenridge Dr. Suite 300 Atlanta, GA 30342	Assurant Flood Solutions	Flood Service Center P.O. Box 4337 Scottsdale, AZ 85261	1,037.00	4705	N

Coverage Type	Entity	Broker	Broker Notice Address	Carrier	Carrier Notice Address	Annual Premium (\$)	Policy Number (Last Four Digits)	Financed (Y/N)
Flood	Hastings Entertainment, Inc.	McGriff, Seibels & Williams	One Premier Plaza 5605 Glenridge Dr. Suite 300 Atlanta, GA 30342	Selective Insurance of America	40 Wantage Ave Branchville, NJ 85261	1,019.00	6905	N
Flood	Hastings Entertainment, Inc.	McGriff, Seibels & Williams	One Premier Plaza 5605 Glenridge Dr. Suite 300 Atlanta, GA 30342	Assurant Flood Solutions	Flood Service Center P.O. Box 4337 Scottsdale, AZ 85261	2,186.00	5600	N
Flood	Hastings Entertainment, Inc.	McGriff, Seibels & Williams	One Premier Plaza 5605 Glenridge Dr. Suite 300 Atlanta, GA 30342	Assurant Flood Solutions	Flood Service Center P.O. Box 4337 Scottsdale, AZ 85261	2,501.00	4620	N
Flood	Hastings Entertainment, Inc.	McGriff, Seibels & Williams	One Premier Plaza 5605 Glenridge Dr. Suite 300 Atlanta, GA 30342	Assurant Flood Solutions	Flood Service Center P.O. Box 4337 Scottsdale, AZ 85261	2,501.00	4619	N
Flood	Hastings Entertainment, Inc.	McGriff, Seibels & Williams	One Premier Plaza 5605 Glenridge Dr. Suite 300 Atlanta, GA 30342	Assurant Flood Solutions	Flood Service Center P.O. Box 4337 Scottsdale, AZ 85261	1,887.00	7384	N
Flood	Hastings Entertainment, Inc.	McGriff, Seibels & Williams	One Premier Plaza 5605 Glenridge Dr. Suite 300 Atlanta, GA 30342	Selective Insurance of America	40 Wantage Ave Branchville, NJ 85261	5,144.70	3142	N
Flood	Hastings Entertainment, Inc.	McGriff, Seibels & Williams	One Premier Plaza 5605 Glenridge Dr. Suite 300 Atlanta, GA 30342	Selective Insurance of America	40 Wantage Ave Branchville, NJ 85261	4,671.00	3132	N
Flood	Hastings Entertainment, Inc.	McGriff, Seibels & Williams	One Premier Plaza 5605 Glenridge Dr. Suite 300 Atlanta, GA 30342	Selective Insurance of America	40 Wantage Ave Branchville, NJ 85261	4,411.00	3136	N
Flood	Hastings Entertainment, Inc.	McGriff, Seibels & Williams	One Premier Plaza 5605 Glenridge Dr. Suite 300 Atlanta, GA 30342	Assurant Flood Solutions	Flood Service Center P.O. Box 4337 Scottsdale, AZ 85261	2,434.00	1141	N
Flood	MovieStop, LLC	McGriff, Seibels & Williams	One Premier Plaza 5605 Glenridge Dr. Suite 300 Atlanta, GA 30342	Selective Insurance of America	40 Wantage Ave Branchville, NJ 85261	8,742.00	6397	N

Coverage Type	Entity	Broker	Broker Notice Address	Carrier	Carrier Notice Address	Annual Premium (\$)	Policy Number (Last Four Digits)	Financed (Y/N)
Flood	Hastings Entertainment, Inc.	McGriff, Seibels & Williams	One Premier Plaza 5605 Glenridge Dr. Suite 300 Atlanta, GA 30342	Assurant Flood Solutions	Flood Service Center P.O. Box 4337 Scottsdale, AZ 85261	2,434.00	0808	N
Flood	Hastings Entertainment, Inc.	McGriff, Seibels & Williams	One Premier Plaza 5605 Glenridge Dr. Suite 300 Atlanta, GA 30342	Assurant Flood Solutions	Flood Service Center P.O. Box 4337 Scottsdale, AZ 85261	9,263.00	4077	N

EXHIBIT D

Financing Agreement

DOWN Pymt

EXECUTIVE LINES - PROP
DOWN Pymt

PRIME RATE PREMIUM FINANCE CORPORATION, INC.
2141 Enterprise Dr. P.O. Box 100507
Florence, South Carolina 29502-0507
www.primeratepfc.com
Phone: (800) 777-7458
TX License No. PR000803

PREMIUM FINANCE AGREEMENT
ACCOUNT NO. TX-1895258

Insured Name: **DRAW ANOTHER CIRCLE LLC**
HASTINGS ENTERTAINMENT INC
3601 PLAINS BLVD
AMARILLO, TX 79102

Agent/Broker/Producer: **BB&T - MCGRIFF 9075**
ATTN: CHRIS THOMAS
2211 7TH AVE S
BIRMINGHAM, AL 35233
(205) 252-9871

TIN/SSN:

Policy Eff. Date	Term	Policy Number	Name of Insurance Company and Name and Address of General Or Policy Issuing Agent	R	Type of Coverage	Total Premium
11/01/2015	12	GM400	26052-AFFILIATED FM INS CO Fees \$16,400.00	N	59 COMM PROP	\$442,998.00
11/01/2015	12	SUO00024500670	327-FIREMANS FUND INS CO See addendum for remaining policies detail.	N	66 UMBRELLA	\$31,142.00
						\$237,041.07

Creditor: Prime Rate Premium Finance Corporation, Inc.

(A) Total Premiums	(B) Cash Down Payment	(C) Amount Financed (The amount of credit provided to you or on your behalf)	(D) FINANCE CHARGE (The dollar amount the credit will cost you)	(E) Total of Payments (The amount you will have paid after you have made all payments as scheduled)	(F) ANNUAL PERCENTAGE RATE (The cost of your credit as a yearly rate)
\$727,581.07	\$73,682.47	\$653,898.60	* \$9,243.63	\$663,142.23	3.38 %

Your PAYMENT SCHEDULE will be: * Includes a non-refundable service charge of \$25.00

No. of Payments	Amount of Payments	When Payments Are Due
9	\$73,682.47	On the 1 st Day of each month, Beginning 12/01/2015

You have the right to receive an Itemization of the Amount Financed
 I want an Itemization
 I do not want an Itemization

Security: You are giving a security interest in any and all unearned or return premium(s) and dividends which may become due under the policy(ies) being purchased.
Late Charge: You will be charged 5% of the payment on any payment received more than 10 days after the due date.
Prepayment: If you voluntarily prepay in full prior to the last installment due date you will not be charged a prepayment fee and you may be entitled to a refund of part of the finance charge.
See Above and on the last page of this document for any additional information about non-payment default, any repayment in full before the scheduled date, and prepayment refunds and penalties.

In consideration of the payment(s) to be made by PRIME RATE PREMIUM FINANCE CORPORATION, INC. ("PR") to the above insurance companies ("Insurer(s)"), their agents, representatives, or producer, the ABOVE NAMED insured ("Insured") (jointly and severally if more than one):

(1) Promises to pay to the order of PR at the above address, the Total of Payments in accordance with the Payment Schedule set forth in the above Truth-in-Lending Disclosures as well as any other sums due pursuant to this Agreement.

(2) Irrevocably appoints PR as Attorney-In-Fact with full authority to affect cancellation of the policies covered hereby or any substitution, rewrite or renewal thereof in accordance with the provisions herein, to receive all sums assigned to PR or in which it has granted PR a security interest. PR may execute and deliver on behalf of the Insured all documents, forms and notices relating to the policies covered hereby in furtherance of this Agreement. The Power of Attorney is coupled with an interest and the powers given herein may be exercised by the Attorney-In-Fact, or its successors and assigns.

(3) Acknowledges that it has received a copy of all pages of this Agreement and if the borrower is a consumer, the Insured acknowledges that he has received a copy of PR's Privacy Statement.

THE INSURED AGREES TO THE PROVISIONS ABOVE AND ON THE FOLLOWING PAGE(S) OF THIS AGREEMENT

NOTICE: A. Read all pages of this Agreement before you sign. B. You are entitled to a completely filled in copy of this Agreement. C. Keep your copy of this Agreement to protect your legal rights. D. Under the law, you have the right to pay off in advance the full amount due and under certain conditions to obtain a partial refund of the finance charge.

HASTINGS _____ **Controller** 11/04/15
 INSURED'S NAME SIGNATURE OF INSURED OR AUTHORIZED REPRESENTATIVE TITLE DATE

DAC _____ **MGR** 11/5/15
 INSURED'S NAME SIGNATURE OF INSURED OR AUTHORIZED REPRESENTATIVE TITLE DATE

AGENT/BROKER/PRODUCER'S CERTIFICATION

The Agent/Broker/Producer warrants and agrees: 1. The insurance policies listed on this Agreement are in force and the information and the premiums are correct. 2. The Insured has received a copy of this Agreement, has authorized this transaction and recognizes the security interest assigned herein. 3. All of PR's guidelines and eligibility requirements have been complied with. 4. A proceeding in bankruptcy, receivership or insolvency has not been instituted by or against the named Insured. 5. No audit or reporting form policies or policies subject to retrospective rating or minimum earned premiums are included, except as indicated. The deposit or provisional premiums are not less than anticipated premiums to be earned for the full term of the policies. 6. All of the policies are cancelable by the Insured and unearned premiums will be calculated on the standard short-rate or pro-rata tables. 7. To hold in trust for PR any payments made or credited to the Insured through or to the undersigned, directly or indirectly, actually or constructively by the insurance companies or PR and to pay the monies as well as any unearned commissions to PR promptly upon demand to satisfy the outstanding indebtedness of the Insured. Any lien the undersigned has or may acquire in the return premiums arising out of the listed insurance policies is subordinated to PR's lien or security interest therein. There are no other liens on the unearned premiums and all premiums will be paid to the insurers.

THE UNDERSIGNED FURTHER WARRANTS THAT IT HAS RECEIVED THE DOWN PAYMENT AND ANY OTHER SUMS DUE AS REQUIRED BY THE AGREEMENT AND IS HOLDING SAME OR THEY ARE ATTACHED TO THIS AGREEMENT

 AGENT/BROKER/PRODUCER SIGNATURE OF AGENT/BROKER/PRODUCER TITLE DATE

2.5.5018.16884
TX 12

PRIME RATE PREMIUM FINANCE CORPORATION, INC.

2141 Enterprise Dr. P.O. Box 100507
 Florence, SC 29502-0507

www.primeratepfc.com
 Phone: (800) 777-7458

PREMIUM SERVICE AGREEMENT

ACCOUNT NO. TX-1895258

Insured Name: DRAW ANOTHER CIRCLE LLC
 HASTINGS ENTERTAINMENT INC
 3601 PLAINS BLVD
 AMARILLO, TX 79102

Agent/Broker/Producer: BB&T - MCGRIF 9075
 ATTN: CHRIS THOMAS
 2211 7TH AVE S
 BIRMINGHAM, AL 35233
 (205) 252-9871

TIN/SSN:

ADDENDUM

Policy Eff. Date	Term	Policy Number	Name of Insurance Company or General Agent or Policy Issuing Agent	R	Type of Coverage	Total Premium
11/01/2015	12	14MGU15A36125	33996-U S SPECIALTY INS CO %CRC INSURANCE SERVICES INC	N	94 D&O	\$89,828.00
11/01/2015	12	021427956	31504-ILLINOIS NATIONAL INS CO %CRC INSURANCE SERVICES INC	N	94 D&O	\$7,272.00
11/01/2015	12	021428795	19481-NATIONAL UNION FIRE OF PA %CRC INSURANCE SERVICES INC	N	75 CRIME	\$8,003.00
11/01/2015	12	W10E15150601	27283-UNDERWRITERS AT LLOYDS %CRC INSURANCE SERVICES INC	N	125 CYBER LIAB	\$109,370.00
11/01/2015	12	AV03450189403	Fees \$5,370.07 32140-ALLIANZ GLOBAL RISKS US INS %AVIATION RISK CONSULTING INC	N	69 AVIATION	\$5,370.07 \$17,198.00

REMAINING PROVISIONS OF PREMIUM FINANCE AGREEMENT

- (4) Assigns to PR as security for the total amount payable hereunder any and all unearned or return premiums and dividends which may become payable under the insurance policies covered by this Agreement and loss payments under said policies which reduce the unearned premiums (subject to any loss payee or mortgagee interests), and hereby authorizes and instructs its insurer(s) to pay such funds or proceeds to PR. The Insured gives to PR a security interest in all items mentioned in this paragraph. The Insured further grants to PR its interest which may arise under any state insurance guarantee fund relating to any policy shown on the front of this Agreement.
- (5) Agrees in the event of a default in payment of any installment, PR may cancel the policies covered hereby after giving the notice required as prescribed by law. In case of cancellation, the unpaid balance due to PR shall be immediately payable by the Insured. The Insured understands PR may collect and enforce repayment of the indebtedness evidenced hereby without recourse to any security underlying this Agreement. If cancellation occurs, the Insured agrees to pay a finance charge on the balance due at the contract rate of interest until that balance is paid in full or until such other date as permitted by law.
- (6) Agrees that any payments made to PR after Notice of Cancellation has been mailed to the insurer will be credited to the Insured's account and shall not constitute reinstatement or obligate PR to request reinstatement of any insurance policy. Any sum received from an insurer shall be credited to the Insured's indebtedness to PR, and any surplus shall be paid to whomever it is entitled. If the refund is less than \$1.00, no refund will be made. In case of a deficiency, the Insured shall remain liable and pay the same with interest as set forth above. The Insured will not be required to pay an amount due under this Agreement that is less than \$5.00.
- (7) May voluntarily prepay the full amount due and under certain conditions be entitled to receive a partial refund of the FINANCE CHARGE computed in accordance with the Rule of 78's, after deducting any fully earned charge permitted by law.
- (8) Understands that the FINANCE CHARGE begins to accrue the earlier of: (1) the date from which the insurer requires payment of the premium and payment was made to the insurer for the financed policy; or (2) the effective date of the policy.
- (9) Authorizes PR to correct or remedy any error or omission in the completion of this Agreement; the Insured will be notified at the address shown hereon of any change in Blocks (A) thru (F), or in the Federal Truth-In-Lending Disclosures or in the itemization of the Amount Financed Disclosures.
- (10) Warrants that each of the policies covered hereunder (or a binder thereof), except for policies written through residual markets, has been issued to the Insured, is in full force and effect and that no other power of attorney or other encumbrance or assignment is in effect nor will same be put into effect, except for the interest of mortgagees or loss payees, and agrees that all rights conferred upon PR shall inure to PR's successors or assigns.
- (11) Agrees that, in the event the total premiums are greater than that shown hereon, or if the Insured requests additional premiums be added or additional premiums financed, this Agreement may be amended to reflect the actual premiums and the Insured will either (i) pay the difference in premium due or (ii) pay any required additional down payment and any additional finance charge permitted by law. In such event PR will forward the Insured a revision notice showing all information required by law.
- (12) Agrees that (i) PR assumes no liability as an insurer, (ii) this Agreement shall not be effective until a written acceptance is mailed by PR, (iii) singular words used herein shall be deemed plural and vice versa as the sense of the Agreement demands, (iv) if any court of competent jurisdiction finds any part or provision of this Agreement to be invalid or unenforceable, such findings shall not affect any other part or provision.
- (13) Agrees that if this transaction is for other than personal, family or household purposes or more than the amount set by federal law none of the provisions of the Federal Truth-In-Lending Act or the regulations promulgated thereunder shall apply.
- (14) Agrees that should a check be returned for insufficient or uncollected funds, PR may re-present the check electronically and collect a service fee electronically equal to the maximum fee allowed by law.
- (15) Agrees that if payment is made by check, PR may use the check solely as a source document and as the basis for an electronic transaction. Receipt of the check will be deemed to be authorization for an ACH debit to the Insured's account.
- (16) Agrees that any refunds may be applied against any prior debts owed PR.
- (17) Agrees that the insurance agent or broker named in this Agreement is the Insured's agent, not PR's, and PR is not legally bound by anything the agent or broker represents to the Insured orally or in writing.
- (18) Agrees that the money paid by PR is only for the premium as determined at the time the insurance policy is issued. PR's payment shall not be applied by the insurance company to pay for any additional premiums owed by the Insured as a result of any type of misclassification of the risk. The Insured agrees to pay the company any additional premiums which become due for any reason. PR may assign to the company any rights it has against the Insured for premiums due the company in excess of the premiums returned to PR.
- (19) Agrees that a \$5.00 Administration Fee will be applied to any refund check that falls under the Abandoned Property Procedures if permitted by law.
- (20) Agrees to pay reasonable attorneys fees and/or collection agency fees and all other costs of collection if this contract is referred for collection to any collection agency and/or attorney not a salaried employee of PR if permitted by law.
- (21) Understands this Agreement is not required as a condition of the Insured obtaining insurance coverage.
- (22) Waives and releases PR from any claims, lawsuits and causes of action which may be related to any prior loans and/or to any act or failure to act prior to the time this Agreement becomes a binding contract, pursuant to paragraph 12ii. PR's liability for breach of any of the terms of this Agreement or the wrongful exercise of any of its powers shall be limited to the amount of principal balance outstanding, except in the event of gross negligence or willful misconduct. The laws of the State of Texas will govern this Agreement and any claims against PR shall be litigated exclusively in the state or federal courts of South Carolina, for Florence County.
- (23) Represents that the Insured is not insolvent or presently the subject of any insolvency proceeding.
- (24) Agrees to pay to the insurance company the earned premium computed in accordance with the policy provisions which is in excess of the amount of premium advanced by PR which the insurance company retains if the insurance policy issued to the Insured is auditable or is a reporting form policy or is subject to retrospective rating.
- (25) Certifies that it is empowered to enter into this Agreement without any restrictions and that the individual signing it has been fully empowered to do so. To the extent that the Insured either possesses or claims sovereign immunity for any reason, such sovereign immunity is expressly waived and the Insured agrees to be subject to the jurisdiction of the laws and courts set forth in the preceding paragraphs.
- (26) Agrees that the money paid by PR is only for the premium as determined at the time the insurance policy is issued. PR's payment shall not be applied by the insurance company to pay for any additional premiums owed by the Insured resulting from any type of misclassification of the risk. The Insured shall pay to the insurer any additional premiums or any other sums that become due for any reason. If PR assigns the same account number to any additional extension or extensions of credit, (i) this Agreement and any other Agreement(s) identified by such account number shall be deemed to comprise a single and indivisible loan transaction, (ii) any default with respect to any component of such transaction shall be deemed a default with respect to all components of such transaction, and (iii) any unearned premiums relating to any component of such transaction may be collected and applied by PR to the totality of such transaction.
- (27) For commercial agreements agrees that pursuant to Texas Insurance Code § 651.110, the Insured's agent has disclosed in writing that the agent will receive a payment from PR for establishing and administering a premium payment plan for the Insured's insurance.

NOTICE: SEE PREVIOUS PAGE FOR IMPORTANT INFORMATION