

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

In re:)	
)	Chapter 11
CHARMING CHARLIE HOLDINGS INC., <i>et al.</i> , ¹)	
)	Case No. 17-12906 (CSS)
Debtors.)	(Joint Administration Requested)
)	

**DEBTORS’ MOTION SEEKING ENTRY OF
INTERIM AND FINAL ORDERS (I) AUTHORIZING THE DEBTORS TO
OBTAIN POSTPETITION FINANCING, (II) AUTHORIZING THE DEBTORS TO USE
CASH COLLATERAL, (III) GRANTING LIENS AND PROVIDING SUPERPRIORITY
ADMINISTRATIVE EXPENSE STATUS, (IV) GRANTING ADEQUATE PROTECTION
TO THE PREPETITION LENDERS, (V) MODIFYING AUTOMATIC STAY,
(VI) SCHEDULING A FINAL HEARING, AND (VII) GRANTING RELATED RELIEF**

The above-captioned debtors and debtors in possession, (collectively, the “Debtors”)² respectfully submit this motion for the relief set forth herein. In support of this motion, the Debtors respectfully proffer the *Declaration of Stuart Erickson in Support of the Debtors’ Motion Seeking Entry of Interim and Final Orders (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Authorizing the Debtors to Use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection to the*

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, include: Charming Charlie Canada LLC (0693); Charming Charlie Holdings Inc. (6139); Charming Charlie International LLC (5887); Charming Charlie LLC (0263); Charming Charlie Manhattan LLC (7408); Charming Charlie USA, Inc. (3973); and Poseidon Partners CMS, Inc. (3302). The location of the Debtors’ service address is: 5999 Savoy Drive, Houston, Texas 77036.

² A detailed description of the Debtors and their business, and the facts and circumstances supporting the Debtors’ chapter 11 cases, are set forth in greater detail in the *Declaration of Robert Adamek, Chief Financial Officer of Charming Charlie Holdings Inc. in Support of Debtors’ Chapter 11 Petitions and First Day Motions* (the “First Day Declaration”), filed contemporaneously with the Debtors’ voluntary petitions for relief filed under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”), on December 11, 2017 (the “Petition Date”). Capitalized terms used, but not otherwise defined in this motion shall have the meanings ascribed to them in the First Day Declaration or Interim Order, as applicable.

Prepetition Lenders, (V) Modifying Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief (the “Erickson Declaration”), filed contemporaneously herewith, and the First Day Declaration. In further support of this motion, the Debtors respectfully state the following:

Preliminary Statement

1. In the midst of a significant and prolonged downturn in the brick-and-mortar retail industry that has seen chapter 11 filings by many of the Debtors’ peers and competitors, the Debtors are pleased to present the Court with this motion requesting access to two postpetition financing facilities provided by *both* tranches of the Debtors’ prepetition funded debt and authorization for the consensual use of Cash Collateral.

2. Specifically, the Debtors seek approval of a \$35 million senior secured asset-based loan provided by the Prepetition ABL Lenders and a \$60 million senior secured, delayed-draw term loan provided by the Prepetition Term Loan Lenders, which will provide the Debtors with \$20 million of new-money financing (and an immediate \$10 million upon entry of the Interim Order). Together, these two groups of stakeholders currently hold 100% of the Debtors’ Prepetition ABL Loans and over 80% of the Debtors’ \$132 million face amount of term loan debt, thus avoiding a potentially value-destructive priming fight.

3. If approved, the Debtors will use the proceeds of the DIP Facilities to, among other things: (a) fund the Debtors’ general and corporate operating needs during the contemplated time period of these chapter 11 cases, including turning back on the flow of inventory to the Debtors’ shelves and implementing the Debtors’ strategic business plan; (b) upon entry of the Interim Order, repay the Debtors’ outstanding ABL facility in full; and (c) upon entry of the Final Order, satisfy \$40 million of the Debtors’ outstanding term loan facility in full.

4. Obtaining an immediate injection of cash is critical to the Debtors remaining a go-forward enterprise. Without access to the liquidity provided by the DIP Facilities and access to their Cash Collateral, the Debtors will continue to suffocate from a lack of inventory and operations will come to a standstill. By contrast, the immediate liquidity made available by the DIP Facilities on an interim basis will, when combined with the anticipated cost savings from store closures and revenues from store closing sales related to the Debtors' store fleet optimization, put the Debtors on the first steps to a turnaround. Just as the Debtors' "Back-to-Basics" strategy is intended to give the customer what she wants better and more efficiently, the DIP Facilities—and the restructuring support agreement with which they work hand-in-glove—provide the Debtors with the breathing room they need to improve their operations and streamline their balance sheet.

5. For these reasons, and for the reasons set forth below, in the Erickson Declaration and the First Day Declaration, the Debtors firmly believe that incurrence of the DIP Facilities will maximize value for the Debtors' stakeholders and is in the exercise of the Debtors' sound business judgment. Accordingly, the Debtors respectfully request that the Court approve the entry of the Interim Order and the Final Order.

Relief Requested

6. 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 "DIP Orders");³

- a. authorizing the Debtors to obtain senior secured postpetition financing on a superpriority basis in the aggregate principal amount of up to \$35,000,000 (the "DIP ABL Facility"), which shall include a \$15,000,000 sublimit for the issuance of letters of credit (all amounts extended under the DIP ABL Facility, the "DIP ABL Loans"), pursuant to the terms and conditions of that certain *Senior Secured, Super-Priority Debtor-In-Possession Credit*

³ The Debtors will file the form of Final Order prior to the Final Hearing (as defined herein).

Agreement (as the same may be amended, restated, supplemented, waived or otherwise modified from time to time, the “DIP ABL Agreement”), by and among the Borrowers, the Guarantors, and Bank of America, N.A., as administrative agent and collateral agent (in such capacity, the “DIP ABL Agent”) for and on behalf of itself and the other lenders party thereto (collectively, including the DIP ABL Agent, the “DIP ABL Lenders”), substantially in the form of **Exhibit B**, attached hereto;⁴

- b. authorizing the Debtors to execute and deliver the DIP ABL Agreement and any other agreements, instruments, pledge agreements, guarantees, control agreements and other Loan Documents (as defined in the DIP ABL Agreement) and documents related thereto (including any security agreements, intellectual property security agreements, control agreements, or notes) (as amended, restated, supplemented, waived, and/or modified from time to time, and collectively, with the DIP ABL Agreement, the “DIP ABL Documents”) and to perform such other acts as may be necessary or desirable in connection with the DIP ABL Documents;
- c. granting the DIP ABL Facility and all obligations owing thereunder and under, or secured by, the DIP ABL Documents to the DIP ABL Agent and the DIP ABL Lenders (collectively, and including all “Obligations” as described in the DIP ABL Agreement, the “DIP ABL Obligations”) allowed superpriority administrative expense claim status in each of the Cases and any Successor Cases (as defined herein);
- d. authorizing the Debtors to obtain senior secured postpetition financing on a superpriority basis in the aggregate principal amount of \$60,000,000 (the “DIP Term Loan Facility,” and all amounts extended under the DIP Term Loan Facility, the “DIP Term Loans,” and the DIP Term Loan Facility together with the DIP ABL Facility, the “DIP Facilities”), consisting of (a) a \$20,000,000 in aggregate principal amount of new money multiple draw term loan facility (“New Money DIP Term Loans”), which shall be made available to the Debtors on the terms and subject to the conditions set forth in the DIP Term Loan Agreement (as defined herein), and (b) subject to entry of the Final Order, \$40,000,000 in aggregate principal amount of term loans resulting from the “roll-up” of amounts outstanding under the Prepetition Term Loan Agreement (as defined herein), pursuant to the terms and conditions of that certain *Senior Secured Super-Priority Debtor-in-Possession Term Loan and Guarantee Agreement* (as the same may be amended, restated, supplemented, waived or otherwise modified from time to time, the “DIP Term Loan Agreement,” and together with the DIP ABL Agreement, the “DIP Agreements”), by and among the Company, as borrower, CC USA and the Guarantors as guarantors, and Wilmington

⁴ Upon entry of this Interim Order, all Prepetition ABL Obligations (as defined herein) and all accrued and unpaid interest thereon and fees and expenses shall be fully-rolled into the DIP ABL Facility and shall constitute DIP ABL Obligations (as defined herein) hereunder.

Trust, N.A.. as administrative agent and collateral agent (in such capacity, the “DIP Term Loan Agent,” and, together with the DIP ABL Agent, the “DIP Agents”) for and on behalf of itself and the other lenders party thereto (collectively, including the DIP Term Loan Agent, the “DIP Term Loan Lenders,” and, together with the DIP ABL Lenders, the “DIP Lenders”), substantially in the form of **Exhibit C**, attached hereto;

- e. authorizing the Debtors to execute and deliver the DIP Term Loan Agreement and any other agreements, instruments, pledge agreements, guarantees, control agreements, and other Loan Documents (as defined in the DIP Term Loan Agreement) and documents related thereto (as amended, restated, supplemented, waived, and/or modified from time to time, collectively, with the DIP Term Loan Agreement, the “DIP Term Loan Documents,” and together with the DIP ABL Documents, the “DIP Documents”), and to perform such other acts as may be necessary or desirable in connection with the DIP Term Loan Documents;
- f. granting the DIP Term Loan Facility and all obligations owing thereunder and under, or secured by, the DIP Term Loan Documents to the DIP Term Loan Agent and DIP Term Loan Lenders (collectively, and including all Obligations as described in the DIP Term Loan Agreement, the “DIP Term Loan Obligations,” and together with the DIP ABL Obligations, the “DIP Obligations”) allowed superpriority administrative expense claim status in each of the Cases and any Successor Cases;
- g. granting to each of (a) the DIP ABL Agent, for the benefit of itself and the DIP ABL Lenders and each other Secured Party (as defined in the DIP ABL Agreement) under the applicable DIP Documents and (b) the DIP Term Loan Agent, for the benefit of itself and the DIP Term Loan Lenders and each other Secured Party (as defined in the DIP Term Loan Agreement) under the applicable DIP Documents, automatically perfected security interests in and liens on all of the DIP Collateral (as defined herein), including all property constituting “cash collateral” as defined in section 363(a) of the Bankruptcy Code (“Cash Collateral”), which liens shall be subject to the priorities set forth herein;
- h. authorizing the Debtors to pay the principal, interest, fees, expenses and other amounts payable under the DIP Documents as such become earned, due and payable, including, letter of credit fees (including issuance and other related charges), continuing commitment fees, closing fees, audit fees, appraisal fees, valuation fees, liquidator fees, structuring fees, administrative agent’s fees, the reasonable fees and disbursements of the DIP Agents’ attorneys, advisors, accountants and other consultants, all to the extent provided in, and in accordance with, the DIP Documents;
- i. authorizing the Debtors to use the Prepetition Collateral (as defined herein), including the Cash Collateral of the Prepetition ABL Parties under the

Prepetition ABL Documents and the Prepetition Term Loan Parties under the Prepetition Term Loan Documents (each as defined herein), and providing adequate protection to the Prepetition ABL Parties and Prepetition Term Loan Parties for any diminution in value of their respective interests in the Prepetition Collateral, including the Cash Collateral, resulting from the imposition of the automatic stay, the Debtors' use, sale, or lease of the Prepetition Collateral, including Cash Collateral, the priming of their respective interests in the Prepetition Collateral (including by the Carve Out) ("Diminution in Value") of their respective interests in the Prepetition Collateral, including the Cash Collateral;

- j. vacating and modifying the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of the DIP Documents and this Interim Order;
- k. scheduling a final hearing (the "Final Hearing") within thirty-five days of the Petition Date to consider the relief requested herein and approving the form of notice with respect to the Final Hearing; and
- l. granting related relief.

Jurisdiction and Venue

7. The United States Bankruptcy Court for the District of Delaware (the "Court") has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012. The Debtors confirm their consent, pursuant to rule 7008 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), to the entry of a final order by the Court in connection with this motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

8. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

9. The bases for the relief requested herein are sections 105, 361, 362, 363, 364, 503, and 507 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001, and 9014, and Local Rules 2002-1(b) and 4001-2.

Concise Statements Pursuant to Bankruptcy Rule 4001(b) and Local Rule 4001-2⁵

I. Concise Statement Regarding the DIP ABL Credit Facility.

10. The below chart contains a summary of the material terms of the proposed DIP ABL Credit Facility, together with references to the applicable sections of the relevant source documents, as required by Bankruptcy Rules 4001(b)(1)(B) and 4001(c)(1)(B) and Local Rule 4001-2.

Bankruptcy Code	Summary of Material Terms
Borrowers Bankruptcy Rule 4001(c)(1)(B)	Charming Charlie LLC Charming Charlie USA, Inc. <i>See</i> DIP ABL Agreement, Art. 1.
Guarantor Bankruptcy Rule 4001(c)(1)(B)	Charming Charlie Holdings Inc. Charming Charlie Manhattan LLC Poseidon Partners CMS, Inc. Charming Charlie International LLC Charming Charlie Canada LLC <i>See</i> DIP ABL Agreement, Art. 1.
DIP Financing Lenders Bankruptcy Rule 4001(c)(1)(B)	Bank of America, N.A. as administrative agent and collateral agent, and each lender from time to time party thereto <i>See</i> DIP ABL Agreement Preamble.
Term Bankruptcy Rule 4001(b)(1)(B)(iii), 4001(c)(1)(B) Local Rule 4001- 2(a)(ii)	<u>Stated Maturity Date.</u> The earlier of (a) June 8, 2018, (b) the effective date of a Plan of Reorganization, (c) the date of termination of all of the Revolving Credit Commitments pursuant to Section 2.13, (c) the date on which the Obligations become due and payable pursuant to this Agreement, whether by acceleration or otherwise, (d) the date of consummation of a sale of all or substantially all of the Debtors' assets under Section 363 of the Bankruptcy Code, (e) the date of conversion of any of the Chapter 11 Cases to a case under Chapter 7 of the Bankruptcy Code unless otherwise consented to in writing by the Administrative Agent, (f) the first business day on which the Interim

⁵ The summaries contained in this motion are qualified in their entirety by the provisions of the documents referenced, including the DIP Agreements and the Interim DIP Order. To the extent anything in this motion is inconsistent with such documents, the terms of the applicable documents shall control. Capitalized terms used in this summary chart but not otherwise defined have the meanings ascribed to them in the DIP Documents or the Interim DIP Order, as applicable.

Bankruptcy Code	Summary of Material Terms
	<p>Order expires by its terms or is terminated, unless the Final Order has been entered and become effective prior thereto, (g) dismissal of any of the Chapter 11 Cases, unless otherwise consented to in writing by the Administrative Agent, and (h) the earlier of (1) thirty-five (35) days after the date of entry of the Interim Order if entry of the Final Order has not occurred by such date and (2) the first business day on which the Interim Order expires by its terms or is terminated, unless the Final Order has been entered into and become effective prior thereto.</p> <p><i>See</i> DIP ABL Agreement § Art. 1.</p>
<p>Commitment Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(ii)</p>	<p><u>Commitments.</u> As of the Closing Date, the Total Commitments are \$35,000,000</p> <p><i>See</i> DIP ABL Agreement § Art. 1.</p>
<p>Conditions of Borrowing Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(ii)</p>	<p><u>Conditions Precedent to Effectiveness of Credit Agreement.</u></p> <ul style="list-style-type: none"> • Delivery of customary closing deliverables and requisite Loan Documents, a Borrowing Base Certificate, legal opinion, secretary’s certificate, officer’s certificate, financial statements, UCC and tax lien searches, “know your customer” and USA PATRIOT Act information, evidence of insurance naming the Administrative Agent as an additional insured or loss payee, to the extent required by the Loan Documents; receipt of the initial Approved Budget; updated inventory appraisal acceptable to the Administrative Agent and related reports • The Administrative Agent shall be satisfied that the Loan Documents and Order shall be effective to create in favor of the Administrative Agent a legal, valid, perfected and enforceable security interest and Lien upon the Collateral, with the priority set forth in the Order and the terms thereof. • The Administrative Agent shall have received evidence reasonably satisfactory to it (including calculations demonstrating) that immediately after giving effect to all Credit Extensions on the Closing Date, Excess Availability shall not be less than an amount equal to \$1,000,000; • No Material Adverse Effect; • The Administrative Agent, the Arranger and the Lenders shall have received all amounts due under the Fee Letter and all other applicable fees and other amounts due and payable on or prior to the Closing Date, including reimbursement or payment of all out of pocket expenses required to be reimbursed or paid by the Borrowers hereunder or under any other Loan Document (to the extent invoiced prior to the Closing Date) and the fees described in the Fee Letters; • Unless otherwise agreed by the Administrative Agent, the Borrowers shall have paid all fees, charges and disbursements of counsel to the Administrative Agent (directly to such counsel if requested by the Administrative Agent) to the extent invoiced prior to or on the Closing Date, plus such additional amounts of such fees, charges and disbursements as shall constitute its reasonable estimate of such fees, charges and disbursements incurred or to be incurred by it through the closing proceedings (<u>provided</u> that such estimate not thereafter preclude a final settling of accounts between the Borrowers and the Administrative Agent); • The Administrative Agent shall have received such other assurances, certificates, documents, consents or opinions as the Administrative Agent, the Issuing Bank or

Bankruptcy Code	Summary of Material Terms
	<p>any Lender reasonably may require;</p> <ul style="list-style-type: none"> • Since the Petition Date there shall have been no material increase in the liabilities, liquidated or contingent, of the Loan Parties taken as a whole (other than the incurrence of the Indebtedness pursuant to the DIP Term Loan Agreement); • Since the Petition Date, other than those changes resulting from commencement of the Chapter 11 Cases, there shall have been no adverse change in the ability of the Administrative Agent and the Lenders to enforce the Loan Documents and the Obligations of the Loan Parties hereunder; • No Default or Event of Default shall have occurred and be continuing or shall arise hereunder immediately after giving effect to this Agreement and the transactions contemplated hereby. • (i) Interim Order entered by no later than three (3) Business Days after the Petition Date and no more than three (3) Business Days prior to the Closing Date, in form and substance satisfactory to the Administrative Agent; (ii) established or shall maintain the cash management systems described in <u>Section 2.16</u>, and the Loan Parties shall have taken all steps necessary to comply with the Cash Management Order; (iii) all “first day orders” shall be in form and substance reasonably satisfactory to the Administrative Agent. • The Administrative Agent and the Lenders shall have received evidence, in form and substance satisfactory to the Administrative Agent, that, prior to or concurrently with the effectiveness of this Agreement, (i) the DIP Term Loan Facility shall be in full force and effect and (ii) the Lead Borrower has received gross proceeds from the DIP TL Closing Date Loan under the DIP Term Loan Facility and such proceeds shall be deposited into the DIP Term Loan Funding Account. • No trustee, examiner, or receiver shall have been appointed or designated with respect to the Loan Parties’ business, properties or assets and the Court shall not have entered any order granting any party, other than the Loan Parties, control over any Collateral other than the Specified Liquidation Agent in connection with the Specified Store Closing Sales. <p><u>Conditions Precedent to Each Credit Extension.</u></p> <ul style="list-style-type: none"> • Receipt of requisite notices. • All representations and warranties contained in this Agreement and the other Loan Documents or otherwise made in writing in connection herewith or therewith shall be true and correct in all material respects with the same effect as if made on and as of such date, other than representations and warranties that relate solely to an earlier date; • Both before and after giving effect to each Credit Extension, (i) no Default or Event of Default shall have occurred and be continuing and (ii) Excess Availability shall not be less than zero (0). • Total Outstandings shall not exceed the amount permitted to be borrowed hereunder pursuant to the terms of the DIP Term Loan Agreement or any other contractual agreement (including the Investor Rights Agreement) of any Loan Party or any of its Subsidiaries • (i) The Final Order shall have been entered following the expiration of the Interim Order; (ii) the Interim Order or the Final Order, as applicable, shall not have been vacated, stayed, reversed, modified or amended without the Administrative Agent’s consent and shall otherwise be in full force and effect; (iii) no motion for

Bankruptcy Code	Summary of Material Terms
	<p>reconsideration of the Interim Order or the Final Order, as applicable, shall have been timely filed by or with the support of any Debtor or any of their Subsidiaries or Affiliates; and (iv) no appeal of the Interim Order or the Final Order, as applicable, shall have been timely filed.</p> <ul style="list-style-type: none"> • After giving effect to the Loans or Letters of Credit requested to be made or issued, the aggregate amount of the sum of (i) the Credit Extensions <i>plus</i> (ii) the Pre-Petition Credit Extensions would not cause Excess Availability to be less than zero; <u>provided</u> that no Credit Extension shall be requested by the Borrowers, or shall be required to be made by the Lenders, which would result in Excess Availability being less than \$1,000,000 to the extent that the Borrower has amounts in the DIP Term Loan Funding Account or undrawn commitments under the DIP Term Loan Agreement • If applicable, the Approved Budget Variance Report due on the date of a proposed Credit Extension shall have been delivered. • The Borrowers shall have paid the balance of all fees and expenses then due and payable under this Agreement. <p><i>See</i> DIP ABL Agreement §§ 4.01, 4.02</p>
<p>Interest Rates Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(ii)</p>	<p><u>Rates and Payment of Interest.</u></p> <ul style="list-style-type: none"> • The Obligations shall bear interest as follows: (a) if a Prime Rate Loan, at a rate per annum equal to the Prime Rate plus the Applicable Margin and (b) if a LIBOR Loan, at a rate per annum equal to the LIBOR Rate for such Interest Period plus the Applicable Margin. “Applicable Margin” means (a) in the case of LIBOR Loans, 3.50% per annum and (b) in the case of Prime Rate Loans, 2.50% per annum. • During any Event of Default, the Administrative Agent may (and shall at the direction of Required Lenders) elect to apply Default Rate interest. <p><i>See</i> DIP ABL Agreement §§ 1.01, 2.08</p>
<p>Use of DIP Financing Facility and Cash Collateral Bankruptcy Rule 4001(b)(1)(B)(ii) Local Rule 4001-2(a)(ii)</p>	<p><u>Use of Proceeds.</u> The proceeds of Loans made hereunder and of Letters of Credit issued hereunder will be used by the Borrowers solely on or after the Closing Date to fund the Chapter 11 Cases in accordance with the Approved Budget (subject to variances permitted under <u>Section 5.23</u>) and for the financing of the Lead Borrower’s and its Subsidiaries’ ordinary working capital, letters of credit and other general corporate needs including certain fees and expenses of professionals retained by the Loan Parties, subject to the Carve-Out, and for certain other Pre-Petition and pre-filing expenses that are approved by the Court and permitted by the Approved Budget and to pay the Pre-Petition Obligations, including as provided in <u>Section 2.01(d)</u>.</p> <p>The Loan Parties shall not be permitted to use the proceeds of the Loans, Letters of Credit or any Cash Collateral in contravention of the provisions of the applicable Order or the Bankruptcy Code, including any restrictions or limitations on the use of proceeds contained therein. Nothing in this Agreement, including this <u>Section 5.16</u>, shall prohibit the Post-Petition payment of Pre-Petition Obligations, including principal, interest, fees, penalties or recoverable costs, due and payable in connection with the Pre-Petition Credit Agreement with the proceeds of the Collateral (as defined herein) or Collateral (as defined in the Pre-Petition Credit Agreement). No part of the proceeds of any Loan or other Credit Extension will be used, whether directly or indirectly, for any purpose that entails a violation of any of the regulations of the FRB, including Regulations U and X.</p> <p><i>See</i> DIP ABL Agreement § 5.16</p>

Bankruptcy Code	Summary of Material Terms
<p>Adequate Protection Bankruptcy Rules 4001(b)(1)(B)(iv), 4001(c)(1)(B)(ii)</p>	<p><u>Adequate Protection Liens.</u> Subject to and subordinate to the Carve Out as set forth in the Interim Order, pursuant to sections 361, 363(e), and 364(d) of the Bankruptcy Code, as adequate protection of the interests of the Prepetition ABL Parties in the Prepetition Collateral against any Diminution in Value of such interests in the Prepetition Collateral, the Debtors hereby grant to the Prepetition ABL Agent, for the benefit of itself and the Prepetition ABL Parties, continuing, valid, binding, enforceable, and perfected postpetition security interests in and liens on all DIP Collateral (the “<u>Prepetition ABL Adequate Protection Liens</u>”).</p> <p><u>Adequate Protection Superpriority Claims.</u> Subject and subordinate to the Carve Out as set forth in the Interim Order, as further adequate protection of the interests of the Prepetition ABL Parties in the Prepetition Collateral against any Diminution in Value of such interests in the Prepetition Collateral, the Prepetition ABL Agent, on behalf of itself and the Prepetition ABL Parties, is hereby granted as and to the extent provided by section 507(b) of the Bankruptcy Code an allowed superpriority administrative expense claim in each of the Cases and any Successor Cases (the “<u>Prepetition ABL Superpriority Claim</u>”).</p> <p><u>Adequate Protection Payments and Protections for Prepetition ABL Parties.</u> Subject to the Carve Out as set forth in the Interim Order, as further adequate protection (the “<u>Prepetition ABL Adequate Protection Payments</u>”), the Debtors are authorized and directed to provide adequate protection to the Prepetition ABL Parties in the form of payment in cash (and as to fees and expenses, without the need for the filing of a formal fee application) of (i) solely to the extent that any Prepetition ABL Obligations remain outstanding after entry of the Interim Order, interest [(at the default rate)] and principal due under the Prepetition ABL Documents, subject to the rights preserved in paragraph 43 of the Interim Order, (ii) immediately upon entry of the Interim Order, payment of the reasonable and documented fees, out-of-pocket expenses, and disbursements (including the reasonable and documented fees, out-of-pocket expenses, and disbursements of counsel, financial advisors, auditors, third-party consultants, and other vendors) incurred by the Prepetition ABL Agent arising prior to the Petition Date, and (iii) the reasonable and documented fees, out-of-pocket expenses, and disbursements (including the reasonable and documented fees, out-of-pocket expenses, and disbursements of counsel, financial advisors, auditors, third-party consultants, and other vendors) incurred by the Prepetition ABL Agent arising subsequent to the Petition Date; <i>provided, however</i>, that during the continuance of an Event of Default, any such payments to the Prepetition ABL Agent shall be made solely from DIP ABL Priority Collateral. Upon the commencement of a Challenge (as defined herein), the Debtors are further authorized to pay to the Prepetition ABL Agent, for the benefit of the Prepetition ABL Parties, \$500,000 into a non-interest bearing account maintained at [Bank of America, N.A.] (the “<u>Prepetition ABL Indemnity Reserve</u>”) to secure contingent indemnification, reimbursement or similar continuing obligations arising under or related to the Prepetition ABL Documents (the “<u>Prepetition ABL Indemnity Obligations</u>”). The Prepetition ABL Indemnity Reserve shall secure all costs, expenses, and other amounts (including reasonable and documented attorneys’ fees) incurred by the Prepetition ABL Agent and the Prepetition ABL Lenders in connection with or responding to any Challenge against the Prepetition ABL Agent or Prepetition ABL Lenders related to the Prepetition ABL Documents, the Prepetition ABL Obligations, or the Prepetition ABL Liens granted to the Prepetition ABL Agent, as applicable, whether in these Cases or independently in another forum, court, or venue. The Prepetition ABL Indemnity Obligations shall be secured by a first lien on the Prepetition ABL Indemnity Reserve and the funds therein and by a lien on the Prepetition Collateral (subject in all respects to the Intercreditor Agreement). Subject to paragraph 36 of the Interim Order, the Prepetition ABL Agent may apply amounts in the Prepetition ABL Indemnity Reserve against the Prepetition ABL Indemnity Obligations as and when they arise,</p>

Bankruptcy Code	Summary of Material Terms
	<p>without further notice to or consent from the Debtors, a Committee (if appointed), or any other parties in interest and without further order of this Court. The Prepetition ABL Agent (for itself and on behalf of the Prepetition ABL Parties) shall retain and maintain the Prepetition ABL Liens granted to the Prepetition ABL Agent as security for the amount of any Prepetition ABL Indemnity Obligations not capable of being satisfied from application of the funds on deposit in the Prepetition ABL Indemnity Reserve; <i>provided</i>, that (i) any such indemnification claims shall be subject to the terms of the Prepetition ABL Documents (including with respect to application of proceeds), (ii) the rights of parties in interest with requisite standing to object to any such indemnification claim(s) are hereby reserved in accordance with paragraph 43 of the Interim Order, and (iii) the Court shall reserve jurisdiction to hear and determine any such disputed indemnification claim(s). The Prepetition ABL Indemnity Reserve shall be subject to the DIP Liens and the Adequate Protection Liens, subject to the priority set forth herein. The Prepetition ABL Indemnity Reserve shall be released and the funds applied in accordance with paragraph 24 of the Interim Order upon the indefeasible payment in full in cash of the Prepetition ABL Obligations and the receipt by the Prepetition ABL Agent and the Prepetition ABL Lenders of releases from the Debtors and their estates (including any applicable liquidator), with respect to any claims arising out of or related to the Prepetition ABL Agreement and the Prepetition ABL Documents, acceptable to the Prepetition ABL Agent and each other Prepetition ABL Lender in their sole discretion.</p> <p><i>See ¶¶ 12, 14, 16.</i></p>
<p>Repayment Features Local Rule 4001-2(a)(i)(E)</p>	<p><u>Mandatory Prepayments.</u> The outstanding Obligations shall be subject to prepayment as follows:</p> <ul style="list-style-type: none"> • If at any time the sum of (i) the amount of Total Outstandings and (ii) the aggregate amount of Pre-Petition Credit Extensions causes Excess Availability to be less than zero, the Borrowers will, immediately (1) prepay, first, the Pre-Petition Loans (in the order and manner provided in the Pre-Petition Credit Agreement) and, second, the Loans in an amount necessary to eliminate such deficiency; and (2) if, after giving effect to the prepayment in full of all Pre-Petition Loans and outstanding Loans such deficiency has not been eliminated, Cash Collateralize Letter of Credit Outstandings in an amount necessary to eliminate such deficiency. • The Loans shall be repaid daily in accordance with (and to the extent required under) the provisions of <u>Section 2.16</u>. Notwithstanding anything to the contrary herein, during the period between the Closing Date and payment in full of all Pre-Petition Obligations (including all accrued and unpaid interest thereon and fees, but excluding all contingent indemnification obligations and other contingent obligations relating to Pre-Petition Obligations), Cash Receipts and other amounts may be applied to the Pre-Petition Obligations in accordance with the foregoing sentence and in a manner satisfactory to the Administrative Agent. • The Borrowers shall repay the Obligations as required pursuant to <u>Section 2.13(b)</u>. <p><i>See DIP ABL Agreement § 2.15</i></p> <p><u>Optional Prepayment of Revolving Credit Loans</u></p> <ul style="list-style-type: none"> • The Borrowers shall have the right at any time and from time to time to prepay without premium or penalty (but subject to payment of Breakage Costs as provided herein) (without a reduction in the Total Commitments) outstanding Loans in whole or in part, (x) with respect to LIBOR Loans, upon at least three (3) Business Days' prior written, telex or facsimile notice to the Administrative Agent, prior to 11:00 a.m., and (y) with respect to Prime Rate Loans, on the same Business Day as such

Bankruptcy Code	Summary of Material Terms
	<p>notice is furnished to the Administrative Agent, prior to 11:00 a.m., <i>provided</i> that, in the case of either (x) or (y), any such prepayments shall be applied, first, to the Pre-Petition Loans (in the order and manner provided in the Pre-Petition Credit Agreement) and then to the Loans, subject in each case to the following limitations:</p> <ul style="list-style-type: none"> • Subject to <u>Section 2.15</u>, all prepayments shall be paid to the Administrative Agent for application to the prepayment of outstanding Revolving Credit Loans ratably in accordance with each Lender’s Commitment Percentage; • Subject to the foregoing, outstanding Prime Rate Loans of the Borrowers shall be prepaid before outstanding LIBOR Loans of the Borrowers are prepaid (except as otherwise directed by the Borrowers). Each partial prepayment of LIBOR Loans shall be in an integral multiple of \$100,000 (but in no event less than \$2,000,000). No prepayment of LIBOR Loans shall be permitted pursuant to this <u>Section 2.14</u> prior to the last day of an Interest Period applicable thereto, unless the Borrowers reimburse the Lenders for all Breakage Costs associated therewith. No partial prepayment of a Borrowing of LIBOR Loans shall result in the aggregate principal amount of the LIBOR Loans remaining outstanding pursuant to such Borrowing being less than \$2,000,000 (unless all such outstanding LIBOR Loans are being prepaid in full); and • Each notice of prepayment shall specify (1) the prepayment date, (2) the principal amount and Type of the Loans to be prepaid, and (3) in the case of LIBOR Loans, the Borrowing or Borrowings pursuant to which such Loans were made. Each notice of prepayment shall be revocable, <i>provided</i> that the Borrowers shall reimburse the Lenders for all Breakage Costs associated with the revocation of any notice of prepayment. The Administrative Agent shall, promptly after receiving notice from the Lead Borrower hereunder, notify each applicable Lender of the principal amount and Type of the Loans held by such Lender which are to be prepaid, the prepayment date, and the manner of application of the prepayment. <p><i>See</i> DIP ABL Agreement § 2.14</p> <p><u>Repayment of Indebtedness</u></p> <p>Without limiting any other provision hereof, except pursuant to the Approved Budget, without express prior written consent of the Administrative Agent and pursuant to an order of the Court (including any Order) after notice and a hearing, no Loan Party shall make any payment or transfer with respect to any Lien or Indebtedness incurred or arising prior to the Petition Date that is subject to the automatic stay provisions of the Bankruptcy Code whether by way of “adequate protection” under the Bankruptcy Code or otherwise.</p> <p><i>See</i> DIP ABL Agreement § 6.17</p>
<p>Fees Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(ii)</p>	<p><u>Closing Fees</u>. In consideration of the Administrative Agent’s and the ABL Term Loan Agent’s services under the DIP credit facilities, the Borrowers shall pay aggregate fees on the Closing Date described in separate fee letters, in an aggregate amount of \$690,000.</p> <p><u>Administrative Agent Fees</u>. The Borrowers shall pay to the Administrative Agent and the Arranger, for their respective accounts, fees as set forth in the DIP ABL Agreement..</p> <p><u>Unused Fee</u>. The Borrowers shall pay the Administrative Agent, for the account of the Lenders, an aggregate fee (the “Unused Fee”) equal to the 0.375% per annum of undrawn Commitments.</p>

Bankruptcy Code	Summary of Material Terms
	<p><u>Letter of Credit Fees.</u> The Borrowers shall pay the Administrative Agent, for the account of the Lenders who are then participating in the Letters of Credit, a fee equal to the following per annum percentages of the average face amount of the following categories of Letters of Credit outstanding during the monthly period then ended: (i) with respect to Standby Letters of Credit, at a rate per annum equal to the then Applicable Margin for LIBOR Loans; and (ii) with respect to Commercial Letters of Credit, at a rate per annum equal to 50% of the then Applicable Margin for LIBOR Loans.</p> <p><u>Fronting Fee.</u> The Borrowers shall pay to the Issuing Bank, in addition to all Letter of Credit Fees, (i) the reasonable and customary the reasonable and customary fees and charges of the Issuing Bank in connection with the negotiation, settlement and amendment of each Letter of Credit issued by the Issuing Bank, and (ii) a fronting fee (each, a “Fronting Fee”) equal to one-eighth of one percent (0.125%) on the amount of all Letters of Credit.</p> <p><i>See DIP ABL Agreement § 2.17.</i></p>
<p>Budget Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(ii)</p> <p>Variance Covenant Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(ii)</p>	<p><u>Approved Budget.</u> Prior to the Closing Date, the Borrower will furnish to the Administrative Agent the Approved Budget, such Approved Budget was prepared in good faith upon assumptions the Borrower believed to be reasonable assumptions on the date of delivery of the then-applicable Approved Budget</p> <p><i>See DIP ABL Agreement § 3.27.</i></p> <p><u>Budget Compliance and Variance.</u> During the term of the DIP ABL Agreement, the Borrower shall comply with the Approved Budget; <i>provided</i>, that the Borrower may act within certain specified variances with respect thereto in accordance with the terms of, and as set forth in, the DIP ABL Agreement.</p> <p><i>See DIP ABL Agreement § Art. 1; 5.23.</i></p> <p><u>Approved Budget Variance Report.</u> A weekly report provided by the Borrowers to the Administrative Agent (i) showing, in each case, by line item the Actual Cash Receipts, the Actual Disbursement Amount and Actual Inventory Levels, Excess Availability and total available liquidity for the last day of the Prior Week and the Cumulative Four-Week Period, noting therein all variances, on a line-item and cumulative basis, from the amounts set forth for such period in the Approved Budget, and shall include explanations for all material variances, and (ii) certified by a Responsible Officer of the Borrowers. The Approved Budget Variance Report shall be in a form, and shall contain supporting information, satisfactory to the Administrative Agent in its sole discretion.</p> <p><i>See DIP ABL Agreement § Art. 1; 5.23.</i></p>
<p>Events of Default Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(ii)</p>	<p><u>Events of Default.</u> Usual and customary for financings of this type, including non-payment of obligations, defaults under covenants, breaches of representations and warranties, defaults related to the budget, cross-defaults to other indebtedness, attachment defaults, judgment defaults, invalidity of loan documents, change of control, failure to comply with ERISA rules and regulations, invalidity of collateral documents, change of control, invalidity of pre-petition loan documents, the occurrence of any number of adverse actions or consequences in any of the chapter 11 cases. <i>See DIP ABL Agreement § 7.01.</i></p>
<p>Indemnification Bankruptcy Rule 4001(c)(1)(B)(ix)</p>	<p><u>Indemnification of Agent Indemnitees and Issuing Bank Indemnitees.</u></p> <p>The Loan Parties jointly and severally shall indemnify the Administrative Agent (and any sub-agent thereof), each Lender and the Issuing Bank, and each Related Party of any of the foregoing Persons (each such Person being called an “Indemnitee”) against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and</p>

Bankruptcy Code	Summary of Material Terms
	<p>related expenses (including the fees, charges and disbursements of any counsel for any Indemnitee), incurred by any Indemnitee or asserted against any Indemnitee by any third party or by the Borrowers or any other Loan Party arising out of, in connection with, any actual or prospective claim, litigation, investigation or proceeding relating to arising out of (whether based on contract, tort or any other theory, whether brought by a third party or by the Borrowers or any other Loan Party or any of any Borrower's or such Loan Party's directors, shareholders or creditors, and regardless of whether any Indemnitee is a party thereto) in connection with the transactions as more fully set forth in the DIP Term Loan Agreement.</p> <p><i>See</i> DIP ABL Agreement § 9.04(b).</p>

11. A summary of certain additional material terms common to both the DIP ABL Credit Facility and the DIP Term Loan Facility is provided below.

II. Concise Statement Regarding the DIP Term Loan Facility.

12. The below chart contains a summary of the material terms of the proposed DIP Term Loan Facility, together with references to the applicable sections of the relevant source documents, as required by Bankruptcy Rules 4001(b)(1)(B) and 4001(c)(1)(B) and Local Rule 4001-2.

Bankruptcy Code	Summary of Material Terms
<p>Borrowers Bankruptcy Rule 4001(c)(1)(B)</p>	<p>Charming Charlie LLC</p> <p><i>See</i> Term Loan DIP Agreement; Interim DIP Order Preamble.</p>
<p>Guarantor Bankruptcy Rule 4001(c)(1)(B)</p>	<p>Charming Charlie Holdings Inc. Charming Charlie Manhattan LLC Poseidon Partners CMS, Inc. Charming Charlie International LLC Charming Charlie Canada LLC Charming Charlie USA, Inc.</p> <p><i>See</i> Term Loan DIP Agreement Preamble; Term Loan DIP Agreement § [●].</p>
<p>DIP Financing Lenders Bankruptcy Rule 4001(c)(1)(B)</p>	<p>Wilmington Trust, National Association, as Administrative Agent, and each of the Lenders from time to time party thereto</p> <p><i>See</i> DIP Term Loan Agreement § Preamble.</p>
<p>Term Bankruptcy Rule 4001(b)(1)(B)(iii), 4001(c)(1)(B)</p>	<p><u>Stated Maturity Date</u>. the earlier of (i) June 8, 2018, (ii) the earlier of (x) thirty-five (35) days after the Interim Order Entry Date if the Final Order Entry Date has not occurred by such date and (y) the first business day on which the Interim Order expires by its terms or is terminated, unless the Final Order has been entered into and become effective prior thereto, (iii) the effective date of an Acceptable Reorganization Plan, (v) the Final Order Entry Date, if such Final Order does not approve the Roll-Up DIP Loans (as defined</p>

Bankruptcy Code	Summary of Material Terms
Local Rule 4001-2(a)(ii)	<p>herein), (vi) the date on which the Obligations become due and payable pursuant to this Agreement, whether by acceleration or otherwise, (vii) the date of consummation of a sale of all or substantially all of the Debtors' assets under Section 363 of the Bankruptcy Code, (e) the date of conversion of any of the Cases to a case under Chapter 7 of the Bankruptcy Code unless otherwise consented to in writing by the Required Lenders, and (viii) dismissal of any of the Cases, unless otherwise consented to in writing by the Required Lenders.</p> <p><i>See</i> DIP Term Loan Agreement § 1.1.</p>
<p>Commitment Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(ii)</p>	<p><u>Initial Term Loans.</u> Initial Term Loan Commitment of \$10,000,000.</p> <p><u>Delayed Draw Term Loans.</u> Aggregate amount of Delayed Draw Term Commitments of \$10,000,000.</p> <p><u>Roll-Up Loans.</u> Upon entry of the Final Order, \$40,000,000 of Prepetition Term Obligations shall be "rolled-up" and constitute Obligations under the DIP Term Loan Agreement.</p> <p><i>See</i> DIP Term Loan Agreement § 2.1(a)-(c).</p>
<p>Conditions of Borrowing Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(ii)</p>	<p><u>Conditions to Initial Term.</u></p> <ul style="list-style-type: none"> • Entry of the Interim Order, and after the Interim Order Entry Date, the Interim Order shall be in full force and effect and shall not have been vacated or reversed, shall not be subject to a stay, and shall not have been modified or amended in any respect without the prior written consent of the Required Lenders and, to the extent affecting the rights or obligations of the Administrative Agent, the Administrative Agent; • entry of the "first day" orders, which shall be in form and substance acceptable to the Required Lenders in their sole discretion (and to the extent affecting the rights and obligations of the Administrative Agent, the Administrative Agent), including the Cash Management Order; • The Administrative Agent shall have received evidence, in form and substance satisfactory to the Required Lenders that, concurrently with the effectiveness of the Term DIP Facility, the Borrower shall have entered into the ABL DIP Facility; • No trustee, responsible officer or examiner having expanded powers shall have been appointed with respect to the Loan Parties, any of their subsidiaries or their respective properties. • All reasonable and documented out-of-pocket costs, fees, expenses (including, without limitation, reasonable and documented legal fees and expenses) set forth in the Loan Documents or otherwise required to be paid to the Administrative Agent and the Lenders on or before the Interim Order Entry Date shall have been paid. • The Administrative Agent and Required Lenders shall have received and be reasonably satisfied the initial Approved Budget prepared in accordance with Section 7.20(a). • The Administrative Agent shall have received copies of organizational documents and resolutions for the Loan Parties. • The Administrative Agent shall have received legal opinions, corporate certificates and other usual and customary closing documentation for transactions of this type satisfactory to the Required Lenders.

Bankruptcy Code	Summary of Material Terms
	<ul style="list-style-type: none"> • The Administrative Agent shall have received a Perfection Certificate, dated as of the date hereof. • The Administrative Agent and each Lender who has requested the same at least two (2) business days prior to the Interim Order Entry Date shall have received “know your customer” and similar information at least one (1) day prior to the Interim Order Entry Date. • The Collateral Agent, for the benefit of the Lenders, shall have valid and perfected liens on the security interests in the Collateral of the Debtors and perfected pursuant to the Interim Order in the case of the Debtors. <p><u>Conditions to Each Funding of Delayed Draw Term Loans.</u></p> <ul style="list-style-type: none"> • The Administrative Agent and Required Lenders shall have received a notice of withdrawal no later than 12:00 p.m. (Noon) no later than one (1) Business Day prior to the proposed date of such withdrawal; provided delivery of the Withdrawal Certificate (as defined below) shall be deemed to be notice for purposes of this Section 6.2(i) (in such capacity, a “Notice of Withdrawal”). Each Notice of Withdrawal shall include (i) the relevant account(s) to which, and/or persons to whom, such transfer is to be made from the Term DIP Account, and (ii) the amount requested to be withdrawn or transferred from the Term DIP Account and the proposed date of withdrawal or transfer. • The Administrative Agent and Required Lenders shall have received a withdrawal certificate from an Authorized Officer of the Borrower in the form of Exhibit O (the “Withdrawal Certificate”) certifying (a) no Default or Event of Default has occurred nor is continuing under this Agreement or the ABL DIP Facility, (b) the Loan Parties are in compliance with Section 7.20, subject to Permitted Variances, (c) the disbursements to be made by the Borrowers shall be used solely in a manner consistent with the Approved Budget, (d) the amount requested shall not exceed the disbursements set forth in the Approved Budget for the week in which such withdrawal is made plus an amount not to exceed \$500,000 and (e) for the week in which such withdrawal is made, projected Excess Availability (as defined in the ABL DIP Facility Documents) (calculated after giving effect to projected disbursements) shall not be greater than \$1,500,000, so long as an amount less than \$18,000,000 of Initial Term Loans and Delayed Draw Term Loans have been drawn. • Subject to Section 6.1, and the other terms and conditions set forth herein, the Administrative Agent shall honor instructions received from the Borrower in the form of a Notice of Withdrawal unless and until the Administrative Agent receives notice of the occurrence and continuation of an Event of Default. On and after the date of receipt of such a notice, the Borrower shall have no right to request withdrawals from the Term DIP Account and the Administrative Agent shall not honor such requests (other than to pay the Priority Carve-Out) until such Event of Default has been waived or cured or otherwise is no longer continuing; provided, that the Administrative Agent shall not be liable for (A) any disbursement made pursuant to instructions from the Borrower or (B) irrevocable electronic funds transfers or wire transfers that are subject to cut-off times, in each case, that were processed prior to receipt of such written direction from the Required Lenders. • Each submission by the Borrower to the Administrative Agent of a Notice of Withdrawal shall be deemed to constitute a representation and warranty by the Borrower that the conditions set forth in Section 6.1 have been satisfied as of the date of the withdrawal. With respect to any disbursement, withdrawal, transfer, or application of funds from the Term DIP Account hereunder, the Administrative Agent shall be entitled to conclusively rely upon, and shall be fully protected in

Bankruptcy Code	Summary of Material Terms
	<p>relying upon, (i) any Notice of Withdrawal submitted by the Borrower and (ii) any instructions from the Required Lenders. Notwithstanding anything herein to the contrary, the Administrative Agent shall have no obligation to fund any amount in excess of the amounts then held in the Term DIP Account.</p> <ul style="list-style-type: none"> • Notwithstanding any provisions to the contrary herein, while an Event of Default has occurred and is continuing, upon receiving written instructions from the Required Lenders, the Administrative Agent shall apply or direct the application of any cash balance then on deposit in or credited to the Term DIP Account to the payment of the Obligations in accordance with Section 10.3. • For the avoidance of doubt, funds withdrawn from the Term DIP Account pursuant to this Section 6.2 may be directed by the Borrower to a non-payroll disbursement account for use by the Borrower for disbursements not inconsistent with the Approved Budget; provided the funds from the Term DIP Account shall only be deposited into a non-payroll disbursement account not subject to any account control agreement in favor of the DIP ABL Agent or Prepetition ABL Agent. To the extent any Notice of Withdrawal is submitted to the Administrative Agent and the applicable conditions set forth in Section 6.1 and this Section 6.2 shall have been satisfied, the Administrative Agent agrees to promptly execute such documents required by the Custodian (as defined in that certain Account Control Agreement, by and among the Collateral Agent, the Borrower and Wilmington Trust as custodian) so as not to inhibit the Borrower's ability to withdrawal such funds from the Term DIP Account in accordance with the terms of this Agreement. <p>See DIP Term Loan Agreement § 6.1; 6.2.</p>
<p>Interest Rates Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001- 2(a)(ii)</p>	<p><u>Interest on Loans.</u></p> <p>The Obligations consisting of New Money DIP Loans and Roll-Up DIP Loans shall bear interest:(i) if a Base Rate Loan, at the Base Rate plus the Applicable Margin and (ii) if a LIBOR Loan, at the LIBOR Rate for the Interest Period applicable thereto plus the Applicable Margin. "Applicable Margin" means (x) in the case of New Money DIP Loans maintained as (i) New Money DIP Loans maintained as Base Rate Loans, 3.50% and (ii) LIBOR Loans, 4.50% and (y) in the case of Roll-Up DIP Loans maintained as (i) Base Rate Loans, 1.00% and (ii) LIBOR Loans, 1.00%.</p> <p>Default Interest. Upon the occurrence and during the continuance of an Event of Default, upon request of the Required Lenders (but from the date of incurrence), all principal and, to the extent permitted by law, overdue interest in respect of each Term Loan and other overdue amounts shall, in each case, bear interest at a rate per annum equal to the rate which is 2% in excess of the all-interest rate applicable to Term Loans that are maintained as Base Rate Loans. .</p> <p>See DIP Term Loan Agreement § 1.1, 2.9(a)-(f).</p>
<p>Use of DIP Financing Facility and Cash Collateral Bankruptcy Rule 4001(b)(1)(B)(ii) Local Rule 4001- 2(a)(ii)</p>	<p><u>Use of Proceeds.</u> All proceeds of the Term Loans shall be used for working capital and general corporate purposes of the Loan Parties and their Subsidiaries and to pay fees, costs and expenses incurred in connection with the transactions contemplated hereby and other administrative costs incurred in connection with the Cases, all in a manner consistent with the Approved Budget. No part of any Term Loan (or the proceeds thereof) will be used to purchase or carry any Margin Stock or to extend credit for the purpose of purchasing or carrying any Margin Stock.</p> <p>See DIP Term Loan Agreement § 5.12.</p>

Bankruptcy Code	Summary of Material Terms
<p>Adequate Protection Bankruptcy Rules 4001(b)(1)(B)(iv), 4001(c)(1)(B)(ii)</p>	<p><u>Adequate Protection Liens.</u> Subject to and subordinate to the Carve Out as set forth in the Interim Order, pursuant to sections 361, 363(e), and 364(d) of the Bankruptcy Code, as adequate protection of the interests of the Prepetition Term Loan Parties in the Prepetition Collateral against any Diminution in Value of such interests in the Prepetition Collateral, the Debtors hereby grant to the Prepetition Term Loan Agent, for the benefit of itself and the Prepetition Term Loan Parties, continuing, valid, binding, enforceable, and perfected postpetition security interests in and liens on all DIP Collateral (the “<u>Prepetition Term Loan Adequate Protection Liens</u>,” and together with the Prepetition ABL Adequate Protection Liens, the “<u>Adequate Protection Liens</u>”).</p> <p><u>Adequate Protection Superpriority Claims.</u> Subject and subordinate to the Carve Out as set forth in the Interim Order, as further adequate protection of the interests of the Prepetition Term Loan Parties in the Prepetition Collateral against any Diminution in Value of such interests in the Prepetition Collateral, the Prepetition Term Loan Agent, on behalf of itself and the Prepetition Term Loan Parties, is hereby granted as and to the extent provided by section 507(b) of the Bankruptcy Code an allowed superpriority administrative expense claim in each of the Cases and any Successor Cases (the “<u>Prepetition Term Loan Superpriority Claim</u>,” and together with the Prepetition ABL Superpriority Claim, the “<u>Adequate Protection Superpriority Claims</u>”).</p> <p><u>Adequate Protection Payments and Protections for Prepetition Term Loan Parties.</u> Subject to the Carve Out as set forth in the Interim Order, as further adequate protection (the “<u>Prepetition Term Loan Adequate Protection Payments</u>,” and together with the Prepetition ABL Adequate Protection Payments, the “<u>Adequate Protection Payments</u>”), the Debtors are authorized and directed to provide adequate protection to the Prepetition Term Loan Parties in the form of payment in cash, without the need for the filing of formal fee applications: (i) immediately upon entry of the Interim Order, the reasonable and documented fees, out-of-pocket expenses, and disbursements (including the reasonable and documented fees, out-of-pocket expenses, and disbursements of counsel, financial advisors, auditors, third-party consultants, and other vendors) incurred by (a) the Prepetition Term Loan Agent, including the reasonable and documented fees, out-of-pocket expenses, and disbursements incurred by (I) Covington & Burling LLP, as counsel to the Prepetition Term Loan Agent, and (II) Pepper Hamilton LLP, as co-counsel to the Prepetition Term Loan Agent, and (b) the Consenting Term Loan Committee, including the reasonable and documented fees, out-of-pocket expenses, and disbursements incurred by (I) Paul, Weiss, Rifkind, Wharton & Garrison LLP, as counsel to the Consenting Term Loan Committee, (II) Young Conaway Stargatt & Taylor, LLP, as co-counsel to the Consenting Term Loan Committee, and (III) FTI Consulting, as financial advisor to the Consenting Term Loan Committee arising prior to the Petition Date; and (ii) the reasonable and documented fees, out-of-pocket expenses, and disbursements (including the reasonable and documented fees, out-of-pocket expenses, and disbursements of counsel, financial advisors, auditors, third-party consultants, and other vendors) incurred by (a) the Prepetition Term Loan Agent, including the reasonable and documented fees, out-of-pocket expenses, and disbursements incurred by (I) Covington & Burling LLP, as counsel to the Prepetition Term Loan Agent, and (II) Pepper Hamilton LLP, as co-counsel to the Prepetition Term Loan Agent, and (b) the Consenting Term Loan Committee, including the reasonable and documented fees, out-of-pocket expenses, and disbursements incurred by (I) Paul, Weiss, Rifkind, Wharton & Garrison LLP, as counsel to the Consenting Term Loan Committee, (II) Young Conaway Stargatt & Taylor, LLP, as co-counsel to the Consenting Term Loan Committee, and (III) FTI Consulting, as financial advisor to the Consenting Term Loan Committee, arising subsequent to the Petition Date; <i>provided, however</i>, that during the continuance of an Event of Default, any such payments to the Prepetition Term Loan Parties shall be made solely from the DIP Term Priority Collateral. Upon the commencement of a Challenge, the Debtors are further authorized and directed to pay to the Prepetition Term Loan Agent, for the benefit</p>

Bankruptcy Code	Summary of Material Terms
	<p>of the Prepetition Term Loan Parties, \$500,000 into a non-interest bearing account maintained at an account to be designated by the Prepetition Term Loan Agent (the “<u>Prepetition Term Loan Indemnity Reserve</u>”) to secure contingent indemnification, reimbursement or similar continuing obligations arising under or related to the Prepetition Term Loan Documents (the “<u>Prepetition Term Indemnity Obligations</u>”). The Prepetition Term Loan Indemnity Reserve shall secure all costs, expenses, and other amounts (including reasonable and documented attorneys’ fees) incurred by the Prepetition Term Loan Agent and the Prepetition Term Loan Lenders in connection with or responding to any Challenge against the Prepetition Term Loan Agent or Prepetition Term Loan Lenders related to the Prepetition Term Loan Documents, the Prepetition Term Loan Obligations, or the Prepetition Term Loan Liens granted to the Prepetition Term Loan Agent, as applicable, whether in these Cases or independently in another forum, court, or venue, The Prepetition Term Indemnity Obligations shall be secured by a first lien on the Prepetition Term Loan Indemnity Reserve and the funds therein and by a lien on the Prepetition Collateral (subject in all respects to the Intercreditor Agreement). Subject to paragraph 36 of the Interim Order, the Prepetition Term Loan Agent and Prepetition Term Loan Lenders may apply amounts in the Prepetition Term Loan Indemnity Reserve against the Prepetition Term Indemnity Obligations as and when they arise, without further notice to or consent from the Debtors, a Committee (if appointed), or any other parties in interest and without further order of this Court. The Prepetition Term Loan Agent (for itself and on behalf of the Prepetition Term Loan Lenders) shall retain and maintain the Prepetition Term Loan Liens granted to the Prepetition Term Loan Agent as security for the amount of any Prepetition Term Indemnity Obligations not capable of being satisfied from application of the funds on deposit in the Prepetition Term Loan Indemnity Reserve; <i>provided</i>, that (i) any such indemnification claims shall be subject to the terms of the Prepetition Term Loan Documents (including with respect to application of proceeds), (ii) the rights of parties in interest with requisite standing to object to any such indemnification claim(s) are hereby reserved in accordance with paragraph 43 of the Interim Order, and (iii) the Court shall reserve jurisdiction to hear and determine any such disputed indemnification claim(s). The Prepetition Term Loan Indemnity Reserve shall be subject to the DIP Liens and the Adequate Protection Liens, subject to the priority set forth herein. The Prepetition Term Loan Indemnity Reserve shall be released and the funds applied in accordance with paragraph 24 of the Interim Order upon the indefeasible payment in full in cash of the Prepetition Term Loan Obligations and the receipt by the Prepetition Term Loan Agent and the Prepetition Term Loan Lenders of releases from the Debtors and their estates (including any applicable liquidator), with respect to any claims arising out of or related to the Prepetition Term Loan Agreement and the Prepetition Term Loan Documents, acceptable to the Prepetition Term Loan Agent and each other Prepetition Term Loan Lender in their sole discretion.</p> <p><i>See ¶¶ 12, 14, 17.</i></p>
<p>Repayment Features Local Rule 4001-2(a)(i)(E)</p>	<p><u>Scheduled Payments.</u> (a) The Borrower shall pay the aggregate principal amount of all Term Loans outstanding, together with accrued and unpaid interest thereon, on the Maturity Date or on the effective date of an Acceptable Reorganization Plan, all Term Loans shall be converted to an exit facility pursuant to and in accordance with the Plan Support Agreement.</p> <p><u>Voluntary Prepayments; Commitment Reductions.</u> The Borrower may at any time and from time to time prepay the Term Loans, in whole or in part, in each case, without premium or penalty, upon irrevocable notice delivered to the Administrative Agent no later than Noon (New York City time) three Business Days prior thereto, in the case of LIBOR Loans, and no later than Noon (New York City time) on the date of such payment, in the case of Base Rate Loans; provided that, if a LIBOR Loan is prepaid on any day other than the last day of the Interest Period applicable thereto, the Borrower shall also</p>

Bankruptcy Code	Summary of Material Terms
	<p>compensate each Lender, upon its written request, for all actual losses, reasonable and documented out-of-pocket expenses and liabilities which such Lender may sustain therefrom.</p> <p><u>Mandatory Prepayments.</u> Subject to the ABL/Term Intercreditor Agreement, Section 7.21, and the Orders, the Borrower shall deposit all Net Cash Proceeds of any DIP Term Loan Priority Collateral in the Term DIP Account, which shall be applied promptly upon receipt thereof first to the Term Loans and then to the Prepetition Obligations (in the order and manner provided in the Prepetition Credit Agreement)..</p> <p><i>See</i> DIP Term Loan Agreement §§ 2.4, 2.12, 4.1, 4.2.</p>
<p>Fees Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(ii)</p>	<p><u>Closing Fees.</u> In consideration of the Administrative Agent’s and the ABL Term Loan Agent’s services under the DIP credit facilities, the Borrowers shall pay aggregate fees on the Closing Date described in separate fee letters, in an aggregate amount of \$690,000.</p> <p><u>Fees.</u> The Borrower shall pay to the DIP Term Loan Lenders, fees and expenses payable to the DIP Term Loan Agent, for its own account, in consideration for the DIP Term Agent’s service as this DIP Term Loan Agent. (There are no (a) closing fees, (b) commitment fees or (c) fees payable on account of the loans being “rolled up”).</p> <p><i>See</i> DIP Term Loan Agreement § 3.1.</p>
<p>Budget Bankruptcy Rule 4001 (c)(1)(B) Local Rule 4001-2(a)(ii)</p> <p>Variance Covenant Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(ii)</p>	<p><u>Approved Budget.</u> Prior to the Closing Date, the Borrower will furnish to the Administrative Agent the Approved Budget, such Approved Budget was prepared in good faith upon assumptions the Borrower believed to be reasonable assumptions on the date of delivery of the then-applicable Approved Budget</p> <p><i>See</i> DIP ABL Agreement § 3.27.</p> <p><u>Budget Compliance and Variance.</u> During the term of the DIP ABL Agreement, the Borrower shall comply with the Approved Budget; provided, that the Borrower may act within certain specified variances with respect thereto in accordance with the terms of, and as set forth in, the DIP ABL Agreement.</p> <p><i>See</i> DIP ABL Agreement, Art. 1; § 5.23.</p> <p><u>Approved Budget Variance Report.</u> A weekly report provided by the Borrowers to the Administrative Agent (i) showing, in each case, by line item the Actual Cash Receipts, the Actual Disbursement Amount and Actual Inventory Levels, Excess Availability and total available liquidity for the last day of the Prior Week and the Cumulative Four-Week Period, noting therein all variances, on a line-item and cumulative basis, from the amounts set forth for such period in the Approved Budget, and shall include explanations for all material variances, and (ii) certified by a Responsible Officer of the Borrowers. The Approved Budget Variance Report shall be in a form, and shall contain supporting information, satisfactory to the Administrative Agent in its sole discretion.</p> <p><i>See</i> DIP ABL Agreement § Art. 1.</p>
<p>Events of Default Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(ii)</p>	<p><u>Events of Default.</u> Usual and customary for financings of this type, including non-payment of obligations, defaults under covenants, breaches of representations and warranties, defaults related to the budget, cross-defaults to other indebtedness, attachment defaults, judgment defaults, invalidity of loan documents, change of control, failure to comply with ERISA rules and regulations, invalidity of collateral documents, change of control, invalidity of pre-petition loan documents, the occurrence of any number of adverse actions or consequences in any of the chapter 11 cases.</p> <p><i>See</i> DIP Term Loan Agreement § 10.01.</p>

Bankruptcy Code	Summary of Material Terms
Indemnification Bankruptcy Rule 4001(c)(1)(B)(ix)	<p><u>Right to Indemnity.</u> The Borrower agrees to indemnify the Administrative Agent, each Lender and their Affiliates, and each of their respective officers, directors, employees, partners, advisors, representatives, agents, affiliates, controlling persons, trustees and investment advisors and each of their respective successors and assigns (each, an “Indemnified Person”) and hold each of them harmless from and against any and all liabilities, obligations (including removal or remedial actions), losses, damages, penalties, claims, actions, judgments, suits, costs, expenses and disbursements (including removal or remedial actions), losses, damages, penalties, claims, actions, judgments, suits, costs, expenses and disbursements (including reasonable fees and expenses of one counsel for all Indemnified Persons in connection with the transactions as more fully set forth in the DIP Term Loan Agreement.</p> <p><i>See</i> DIP Term Loan Agreement § 12.1.</p>

13. A summary of certain additional material terms common to both the DIP ABL Credit Facility and the DIP Term Loan Facility is provided below.

III. Concise Statement Regarding the Material Terms Common to Both DIP Facilities.

14. The below chart contains a summary of the material terms common to both DIP Facilities, together with references to the applicable sections of the relevant source documents, as required by Bankruptcy Rules 4001(b)(1)(B) and 4001(c)(1)(B) and Local Rule 4001-2.

Bankruptcy Code	Summary of Material Terms
Entities with Interests in Cash Collateral Bankruptcy Rule 4001(b)(1)(B)(i)	<p>Prepetition ABL Lenders under the Prepetition ABL Agreement and the Prepetition Term Loan Lenders under the Prepetition Term Loan Agreement</p> <p><i>See</i> Interim Order Preamble.</p>
Carve Out Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(i)(f)	<p><i>See</i> Interim Order ¶ 40.</p>
Liens and Priorities Bankruptcy Rule 4001(c)(1)(B)(i) Local Rule 4001-2(a)(i)(D) and (G), 4001-2(a)(ii)	<p><u>Liens.</u> Subject and subordinate to the Carve Out as set forth in the Interim Order, in order to secure the DIP Obligations, effective immediately upon entry of the Interim Order, pursuant to sections 361, 362, 364(c)(2), 364(c)(3), and 364(d) of the Bankruptcy Code, the DIP ABL Agent, for the benefit of itself and the DIP ABL Lenders, and the DIP Term Loan Agent, for the benefit of itself and the DIP Term Loan Lenders, are hereby granted, continuing, valid, binding, enforceable, non-avoidable, and automatically and properly perfected postpetition security interests in and liens on (collectively, the “<u>DIP Liens</u>”) all personal property (for the avoidance of doubt, the DIP ABL Liens (as defined herein) exclude real property of the Debtors located in the United States), whether now existing or hereafter arising and wherever located, tangible and intangible, of each of the Debtors (the “<u>DIP Collateral</u>”), including: (a) all cash, cash equivalents, deposit accounts, securities accounts, accounts, other receivables</p>

Bankruptcy Code	Summary of Material Terms
	<p>(including credit card receivables), chattel paper, contract rights, inventory (wherever located), instruments, documents, securities (whether or not marketable) and investment property (including all of the issued and outstanding capital stock of each of its subsidiaries), hedge agreements, furniture, fixtures, equipment (including documents of title), goods, franchise rights, trade names, trademarks, servicemarks, copyrights, patents, license rights, intellectual property, general intangibles (including, for the avoidance of doubt, payment intangibles), rights to the payment of money (including tax refunds and any other extraordinary payments), supporting obligations, guarantees, letter of credit rights, commercial tort claims, causes of action, and all substitutions, indemnification rights, all present and future intercompany debt, books and records related to the foregoing, accessions and proceeds of the foregoing, wherever located, including insurance or other proceeds; (b) all proceeds of leased real property; (c) actions brought under section 549 of the Bankruptcy Code to recover any post-petition transfer of DIP Collateral and all proceeds of any such action; (d) subject to entry of a Final Order, the proceeds of any avoidance actions brought pursuant to Chapter 5 of the Bankruptcy Code or applicable state law equivalents (other than actions brought pursuant to section 549 of the Bankruptcy Code); (e) subject to entry of a Final Order, the Debtors' rights under section 506(c) and 550 of the Bankruptcy Code and the proceeds thereof; and (f) all DIP Collateral that was not otherwise subject to valid, perfected, enforceable, and unavoidable liens on the Petition Date. Notwithstanding the foregoing, DIP Collateral shall not include the Debtors' real property leases (but shall include all proceeds of such leases). DIP Collateral that is (i) of a type that would be ABL Priority Collateral; (ii) of a type that would be ABL Priority Collateral, but that was not otherwise subject to valid, perfected, enforceable, and unavoidable liens on the Petition Date; (iii) subject to entry of a Final Order, the proceeds of avoidance actions brought pursuant to Chapter 5 of the Bankruptcy Code or applicable state law equivalents; and (iv) subject to entry of a Final Order, the Debtors' rights under section 506(c) of the Bankruptcy Code, shall, in each case, constitute "<u>DIP ABL Priority Collateral</u>"; <i>provided, however</i>, that the DIP ABL Agent and DIP ABL Lenders shall first seek recourse against the DIP ABL Priority Collateral comprising the Debtors' Inventory and Accounts (each as defined in the Prepetition ABL Agreement) prior to exercising any remedies against proceeds of avoidance actions DIP Collateral that is (i) of a type that would be Term Priority Collateral; (ii) of a type that would be Term Priority Collateral but that was not otherwise subject to valid, perfected, enforceable, and unavoidable liens on the Petition Date; and (c) the proceeds of the Debtors' real property leases, shall, in each case, constitute "<u>DIP Term Loan Priority Collateral</u>."</p> <p><u>Lien Priority.</u> The DIP Liens securing the DIP ABL Obligations (the "<u>DIP ABL Liens</u>") are valid, automatically perfected, non-avoidable, senior in priority, and superior to any security, mortgage, collateral interest, lien, or claim to any of the DIP Collateral, except that the DIP ABL Liens shall be subject to the Carve Out as set forth in the Interim Order and shall otherwise be junior only to: (i) as to the DIP ABL Priority Collateral, Permitted Prior Liens; and (ii) as to the DIP Term Priority Collateral, (A) Permitted Prior Liens; (B) the DIP Term Loan Liens (as defined herein); (C) the Prepetition Term Loan Liens; and (D) the Prepetition Term Loan Adequate Protection Liens (as defined herein). The DIP Liens securing the DIP Term Loan Obligations (the "<u>DIP Term Loan Liens</u>") are valid, automatically perfected, non-avoidable, senior in priority, and superior to any security, mortgage, collateral interest, lien, or claim to any of the DIP Collateral, except that the DIP Term Loan Liens shall be subject to the Carve Out as set forth in the Interim Order and shall otherwise be junior only to: (i) as to the DIP Term Priority Collateral, Permitted Prior Liens; and (ii) as to the DIP ABL Priority Collateral, (A) Permitted Prior Liens; (B) the DIP ABL Liens; (C) the Prepetition ABL Liens; and (D) the Prepetition ABL Adequate Protection Liens (as defined herein). Other than as set forth herein (including the Carve Out), the DIP Liens shall not be</p>

Bankruptcy Code	Summary of Material Terms
	<p>made subject to or <i>pari passu</i> with any lien or security interest heretofore or hereinafter granted in the Cases or any Successor Cases, and shall be valid and enforceable against any trustee appointed in the Cases or any Successor Cases, upon the conversion of any of the Cases to a case under Chapter 7 of the Bankruptcy Code (or in any other Successor Case), and/or upon the dismissal of any of the Cases or Successor Cases. The DIP Liens shall not be subject to section 510, 549 or 550 of the Bankruptcy Code. No lien or interest avoided and preserved for the benefit of the estate pursuant to section 551 of the Bankruptcy Code shall be <i>pari passu</i> with or senior to the DIP Liens.</p> <p>See Interim Order ¶¶ 5, 6.</p>
<p>506(c) Waiver Bankruptcy Rule 4001(c)(1)(B)(x) Local Rule 4001-2(a)(i)(C)</p>	<p><u>Section 506(c) Claims.</u> Subject to entry of a Final Order, no costs or expenses of administration which have been or may be incurred in the Cases at any time shall be charged against the DIP ABL Agent, the DIP Term Loan Agent, the DIP Lenders, the Prepetition ABL Agent, the Prepetition ABL Lenders, the Prepetition Term Loan Agent or the Prepetition Term Loan Lenders, or any of their respective claims, the DIP Collateral, or the Prepetition Collateral pursuant to sections 105 or 506(c) of the Bankruptcy Code, or otherwise, without the prior written consent of the DIP ABL Agent, the DIP Term Loan Agent, the DIP Lenders, the Prepetition ABL Agent, the Prepetition ABL Lenders, the Prepetition Term Loan Agent or the Prepetition Term Loan Lenders, as applicable, and no such consent shall be implied from any other action, inaction, or acquiescence by any such agents or lenders.</p> <p>See Interim Order ¶ 45.</p>
<p>Section 552(b) Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(i)(h)</p>	<p><u>Section 552(b).</u> Subject to entry of a Final Order, the Prepetition ABL Agent, the Prepetition ABL Lenders, the Prepetition Term Loan Agent and the Prepetition Term Loan Lenders shall each be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and the “equities of the case” exception under section 552(b) of the Bankruptcy Code shall not apply to the Prepetition ABL Agent, the Prepetition ABL Lenders, the Prepetition Term Loan Agent or the Prepetition Term Loan Lenders, with respect to proceeds, product, offspring or profits of any of the Prepetition Collateral.</p> <p>See ¶ 47.</p>
<p>Stipulations to Prepetition Liens and Claims Bankruptcy Rule 4001(c)(1)(B)(iii) Local Rule 4001-2(a)(i)(B)</p> <p>Waiver/Modification of Applicability of Nonbankruptcy Law Relating to Perfection or Enforceability of Liens Bankruptcy Rule 4001(c)(1)(B)(vii)</p>	<p><u>Debtors’ Stipulations.</u> After consultation with their attorneys and financial advisors, and without prejudice to the rights of parties-in-interest, the Debtors, on their behalf and on behalf of their estates, admit, stipulate, acknowledge, and agree immediately upon entry of the Interim Order, to certain stipulations regarding the validity and extent of the Prepetition ABL Lenders’ and Prepetition Term Loan Lenders’ claims and liens.</p> <p>See Interim Order ¶ F.</p>

Bankruptcy Code	Summary of Material Terms
<p>Challenge Period Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(i)(B)</p>	<p><u>Effect of Stipulations on Third Parties.</u></p> <p><i>Generally.</i> The admissions, stipulations, agreements, releases, and waivers set forth in the Interim Order (collectively, the “<u>Prepetition Lien and Claim Matters</u>”) are and shall be binding on the Debtors, any subsequent trustee, responsible person, examiner with expanded powers, any other estate representative, and all creditors and parties in interest and all of their successors in interest and assigns, including a Committee (if appointed), unless, and solely to the extent that, a party in interest with standing and requisite authority (other than the Debtors, as to which any Challenge (as defined herein) is irrevocably waived and relinquished) (i) has timely filed the appropriate pleadings, and timely commenced the appropriate proceeding required under the Bankruptcy Code and Bankruptcy Rules, including as required pursuant to Part VII of the Bankruptcy Rules (in each case subject to the limitations set forth in this paragraph) challenging the Prepetition Lien and Claim Matters (each such proceeding or appropriate pleading commencing a proceeding or other contested matter, a “<u>Challenge</u>”) by no later than (a) 60 days from the date of formation of a Committee, or (b) 75 days following the entry of the Interim Order in the case that no Committee is appointed (the “<u>Challenge Deadline</u>”), as such applicable date may be extended in writing from time to time in the sole discretion of the Prepetition ABL Agent (with respect to the Prepetition ABL Documents) and the Prepetition Term Loan Agent (with respect to the Prepetition Term Loan Documents), and (ii) this Court enters judgment in favor of the plaintiff or movant in any such timely and properly commenced Challenge proceeding and any such judgment has become a final judgment that is not subject to any further review or appeal.</p> <p>See Interim Order ¶ 43.</p>
<p>Waiver/Modification of the Automatic Stay Bankruptcy Rule 4001(c)(1)(B)(iv)</p>	<p><u>Modification of Automatic Stay.</u> The automatic stay imposed under section 362(a)(2) of the Bankruptcy Code is hereby modified as necessary to effectuate all of the terms and provisions of the Interim Order, including to: (a) permit the Debtors to grant the DIP Liens, Adequate Protection Liens, DIP Superpriority Claims, and Adequate Protection Superpriority Claims; (b) permit the Debtors to perform such acts as the DIP ABL Agent, the DIP Term Loan Agent, the Prepetition ABL Agent and the Prepetition Term Loan Agent each may reasonably request to assure the perfection and priority of the liens granted herein; (c) permit the Debtors to incur all liabilities and obligations to the DIP Agents, DIP Lenders, and Prepetition Secured Parties under the DIP Documents, the DIP Facilities, and the Interim Order; and (d) authorize the Debtors to pay, and the DIP Agents, the DIP Lenders, and the Prepetition Secured Parties to retain and apply, payments made in accordance with the terms of the Interim Order.</p> <p>See Interim Order ¶ 22.</p>
<p>Liens on Avoidance Actions Local Rule 4001-2(a)(i)(D)</p>	<p>See Interim Order ¶ 5.</p>
<p>Milestones Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(ii)</p>	<p><u>Milestones.</u> Each of the following DIP Milestones, Plan Milestones, Sale Milestones, and Other Milestones, a “Required Milestone” and collectively, the “Required Milestones”:</p> <p>(a) Achieve each of the following milestones (as the same may be extended from time to time with the consent of the DIP ABL Agent (in its sole and absolute discretion) the “DIP Milestones”), in each case on terms and conditions, and subject to documentation in form and substance, reasonably acceptable to the DIP ABL Agent in all respects.</p>

Bankruptcy Code	Summary of Material Terms
	<p>(i) On the Petition Date, the Debtors shall file a motion seeking approval of the facility evidenced by the DIP Senior Credit Facility.</p> <p>(ii) On or before three (3) business days after the Petition Date, the Interim Order shall have been entered by the Bankruptcy Court.</p> <p>(iii) On or before ten (10) business days after the Petition Date, the Borrowers shall have filed a motion requesting, and within seventy-five (75) days after the Petition Date shall have obtained, an order of the Bankruptcy Court extending the lease assumption/rejection period such that the lease assumption/rejection period shall be 210 days.</p> <p>(iv) On or before thirty-five (35) days after the Petition Date, the Final Order authorizing and approving the DIP Senior Credit Facility on a final basis shall have been entered by the Bankruptcy Court.</p> <p>(b) Achieve each of the following milestones (as the same may be extended from time to time with the consent of the DIP ABL Agent (in its sole and absolute discretion), the “Plan Milestones”), in each case on terms and conditions, and subject to documentation in form and substance, reasonably acceptable to the DIP ABL Agent in all respects.</p> <p>(i) On or before fifteen (15) days after the Petition Date, the Debtors shall have filed a Chapter 11 plan of reorganization and a disclosure statement relating to such plan of reorganization, which plan shall be supported by (a) committed financing acceptable to the Administrative Agent and shall provide, among other things, for payment in full in cash of the DIP Facility Obligations and the Prepetition Obligations, and the Administrative Agent shall be satisfied that such plan is reasonably anticipated to become effective on or prior to the 115th day after the Petition Date (any such Chapter 11 plan, an “Acceptable Plan”) and (b) a plan support agreement between the Debtors and lenders under the Prepetition Term Loan Agreement, which plan support agreement shall not be adverse to the Administrative Agent.</p> <p>(ii) On or before sixty (60) days after the Petition Date, the Debtors shall have obtained an order from the Bankruptcy Court approving the disclosure statement and voting and solicitation procedures for an Acceptable Plan; if not approved by such date, the Debtors shall file on or before sixty-five (65) days after the Petition Date, a motion to approve a sale of substantially all of the Debtors’ assets (the “Sale”) pursuant to Section 363 of the Bankruptcy Code (the “Sale Motion”), and the terms of such Sale Motion and related bidding procedures shall be in form and substance reasonably acceptable to the DIP ABL Agent.</p> <p>(iii) On or before 115 days after the Petition Date, the Debtors shall have obtained an order from the Bankruptcy Court confirming an Acceptable Plan.</p> <p>(iv) On or before 130 days after the Petition Date, the effective date of the Acceptable Plan shall have occurred in accordance with its terms, and the Debtors shall have emerged from Chapter 11.</p>

Bankruptcy Code	Summary of Material Terms
	<p>(c) Achieve each of the following milestones (as the same may be extended from time to time with the consent of the DIP ABL Agent (in its sole and absolute discretion), the “Sale Milestones”), in each case on terms and conditions, and subject to documentation in form and substance, reasonably acceptable to the DIP ABL Agent in all respects.</p> <p>(i) Unless waived by the DIP ABL Agent (in its sole and absolute discretion), on or before ninety (90) days after the Petition Date, the Bankruptcy Court shall have entered an order approving the bidding procedures.</p> <p>(ii) If a Sale Motion is filed, on or before 110 days after the Petition Date, the Bankruptcy Court shall have entered an order approving the Sale.</p> <p>(iii) If a Sale Motion is filed, on or before 125 days after the Petition Date, the Debtors shall have consummated the Sale.</p> <p>(iv) On or before three (3) business days after the Petition Date, the Debtors shall have obtained interim approval from the Bankruptcy Court to consummate the closing of the approximately [112] stores identified in writing to the DIP ABL Agent prior to such filing DIP ABL Agent (the closing of such stores, the “Permitted Store Closing Sales” and such motion requiring such authority, the “Liquidation Agent Motion”), on terms and conditions, including fee consideration, reasonably satisfactory to the DIP ABL Agent.</p> <p>(v) On or before thirty-five (35) days after the Petition Date, the Bankruptcy Court shall have approved the Liquidation Agent Motion on a final basis, including the assumption of any agent agreements between the Debtors and Hilco (the “Liquidation Agent”) to assist the Debtors in conducting the Permitting Store Closing Sales.</p> <p>The Loan Parties shall provide the DIP ABL Agent with any information or materials reasonably requested by the DIP ABL Agent in connection with the Obligors’ progress on achieving any Required Milestone.</p> <p><i>See See</i> DIP ABL Agreement, Schedule 5.18; Term Loan DIP Agreement § 7.16; Annex A.</p>

Background

I. The Debtors’ Prepetition Capital Structure.

15. As of the Petition Date, the Debtors’ capital structure consisted of outstanding funded-debt obligations in the aggregate principal amount of approximately \$154 million, consisting of the Prepetition ABL Facility and the Prepetition Term Loan Facility. The following table summarizes the Debtors’ outstanding funded-debt obligations.

Funded Debt	Maturity	Interest Rates	Principal Amount Outstanding
ABL Facility	June 2020 ⁶	Libor + 2.25–2.50%	\$22 million
		Prime Rate + 1.25–1.50%	
Term Loan Facility	December 2019	Libor + 8.00%	\$132 million
		Base Rate + 7.00%	
TOTAL			\$154 million

A. The Prepetition ABL Facility.

16. Charming Charlie LLC and Charming Charlie USA, Inc. (“CC USA”) are parties to that certain Credit Agreement, dated as of June 22, 2015 (as amended, restated, supplemented, or otherwise modified from time to time, the “Prepetition ABL Agreement”), by and among Charming Charlie LLC, as lead borrower, CC USA, as borrower, the guarantors party thereto,⁷ the lenders party thereto from time to time (the “Prepetition ABL Lenders”), and Bank of America, N.A., as administrative agent and collateral agent for itself and the Prepetition ABL Lenders (in such capacities, together with its successors and assigns, the “Prepetition ABL Agent”). The Prepetition ABL Agreement provides for a \$55 million senior secured revolving credit facility (subject to a borrowing base composed primarily of inventory and credit card receivables) with a maturity date that is the earlier of (a) June 22, 2020, and (b) 45 days prior to the stated maturity date of the Term Loan Facility and any permitted refinancing thereof (the “Prepetition ABL Facility”).

⁶ The June 2020 maturity date of the Prepetition ABL Facility springs to November 2019 (*i.e.*, 45 days before the maturity of the Term Loan Facility) if the Term Loan Facility is not repaid or refinanced prior to that date.

⁷ The guarantors under the Prepetition ABL Facility are Charming Charlie Holdings Inc. (“Holdings”), Poseidon Partners CMS, Inc. (“Poseidon”), Charming Charlie Manhattan LLC (“CC Manhattan”), Charming Charlie International LLC, (“CC International”), and Charming Charlie Canada LLC (“CC Canada”).

17. The Prepetition ABL Facility provides for LIBOR Loans and Prime Rate Loans. LIBOR Loans bear interest at LIBOR plus an applicable margin of 2.25% if the Average Daily Excess Availability Percentage exceeds 25% and 2.50% if the Average Daily Excess Availability Percentage is 25% or less. Prime Rate Loans bear interest at a Prime Rate (equal to the higher of (x) the applicable prime lending rate, (y) 0.50% above the overnight federal funds rate and (z) 1.00% above LIBOR, subject to a 0.25% floor), plus an applicable margin of 1.25% if the Average Daily Excess Availability Percentage exceeds 25% and 1.50 % if the Average Daily Excess Availability Percentage is 25% or less. Obligations under the Prepetition ABL Facility are secured by an all asset lien, including, without limitation, a first priority lien on the Debtors' accounts (including receivables), inventory, deposit accounts, security accounts, cash, and cash equivalents and a second priority lien on certain other property of the grantors, including, without limitation the Debtors' intellectual property and all equity interests of the Debtors and their subsidiaries (the "ABL Collateral"). As of the Petition Date, the aggregate amount outstanding under the Prepetition ABL Facility is approximately \$22 million.

B. The Prepetition Term Loan Facility.

18. Charming Charlie LLC is party to that certain Amended and Restated Term Loan and Guarantee Agreement, dated as of December 24, 2013 (as amended, amended and restated, supplemented, or otherwise modified, refinanced, or replaced from time to time prior to the Petition Date, the "Prepetition Term Loan Agreement"), among Charming Charlie Holdings, Inc., Charming Charlie LLC, as borrower, certain of the Debtors as guarantor parties thereto,⁸ the

⁸ The guarantors under the Term Loan Facility are Charming Charlie Holdings Inc. ("Holdings"), Poseidon Partners CMS, Inc. ("Poseidon"), Charming Charlie Manhattan LLC ("CC Manhattan"), Charming Charlie International LLC, ("CC International"), Charming Charlie Canada LLC ("CC Canada"), and Charming Charlie USA, Inc. ("CC USA").

lenders from time to time parties thereto, and Morgan Stanley Senior Funding, Inc., as administrative agent (in such capacity, the “Prepetition Term Loan Agent”). The Prepetition Term Loan Agreement provides for a loan in an original principal amount of \$150 million, with a maturity date of December 24, 2019 (the “Prepetition Term Loan Facility”). Charming Charlie USA, Inc., in addition to certain Debtors, has guaranteed all obligations under the Prepetition Term Loan Facility. Obligations under the Term Loan Agreement are secured by an all assets lien, including, without limitation, a second priority lien on the Debtors’ accounts (including receivables), inventory, deposit accounts, security accounts, cash, and cash equivalents and a first priority lien on certain other property of the Debtors, including, without limitation, the Debtors’ intellectual property and all equity interests of the Debtors and their subsidiaries (the “Term Loan Collateral”).

19. The Term Loan Facility provides for LIBOR Loans and Base Rate Loans. LIBOR Loans bear interest (per annum) at LIBOR (with a 1.00% floor) plus an 8.00% margin. Base Rate Loans bear interest (per annum) at Base Rate (equal to the higher of (x) the applicable prime lending rate, (y) 0.50% above the overnight federal funds rate and (z) 1.00% above LIBOR, subject to a 2.00% floor) plus a 7.00% margin. Additionally, LIBOR Loans and Base Rate Loans bear PIK interest, the rate of which varies based on the borrower’s total leverage ratio, as shown in the table below (provided, that such rates are increased by 1.00% in the event the Prepetition ABL Facility is in cash dominion):

Total Leverage Ratio	PIK Interest Rate
> 4.25x	3.00%
3.25x - 3.75x	1.50%
3.25x - 3.75x	1.00%
2.75x - 3.25x	0.75%
< 2.75x	0.25%

II. The Need to Use Cash Collateral and For Accesses to Financing.

20. The Debtors require immediate access to liquidity to ensure that they are able to continue operating during these chapter 11 cases and preserve the value of their estates for the benefit of all parties in interest. As of the Petition Date, the Debtors' total cash balance is approximately \$700,000, which is insufficient to operate their enterprise and continue paying their debts as they come due. Without prompt postpetition financing and access to cash collateral, the Debtors will be unable to pay wages for their employees, preserve and maximize the value of their estates, and administer these chapter 11 cases, causing immediate and irreparable harm to the value of the Debtors' estates to the detriment of all stakeholders. *See* First Day Declaration ¶ 71.

21. The Debtors, in consultation with their proposed restructuring advisor, AlixPartners, LLP, reviewed and analyzed the Debtors' projected cash needs and prepared a 13 week projection (as updated from time to time in accordance with the terms of the DIP Agreements, the "Budget")⁹ outlining the Debtors' postpetition cash needs in the initial 13 weeks of these cases. The Debtors believe that the Budget and their projections provide an accurate reflection of their funding requirements over the identified period, will allow them to meet their obligations—including the administrative expenses of the chapter 11 cases—and are reasonable and appropriate under the circumstances.

22. The Debtors relied on these forecasts to determine the amount of postpetition financing required to administer these chapter 11 cases. Each of the DIP Facilities is critical to the Debtors' ability to smoothly operate postpetition, including by providing sufficient liquidity to fund the administrative cost of these chapter 11 cases and, importantly, payments to the Debtors' manufacturers and other participants in the Debtors' supply chain to ensure the free flow of

⁹ A copy of the Budget is attached to the Interim Order as **Exhibit 1**.

inventory to the Debtors' stores. As a result, the Debtors believe that the DIP Facilities provide the Debtors sufficient liquidity to stabilize their operations and fund the administration of these chapter 11 cases as the Debtors seek to implement the restructuring contemplated by the PSA, and are therefore essential to the preservation of their assets during the pendency of these cases. *See* First Day Declaration, Ex. A.

23. With virtually no cash on hand, the Debtors require interim approval of the DIP Facilities to obtain access to mission-critical financing. *See* First Day Declaration ¶¶ 38, 65. Absent the immediate relief requested by this motion, the Debtors face a material risk of substantial, irreparable, and ongoing harm. Access to Cash Collateral and the DIP Facilities will ensure the Debtors have sufficient funds to preserve and maximize the value of their estates, and responsibly administer these chapter 11 cases.

III. Alternative Sources of Financing Are Not Readily Available.

24. The Debtors do not have alternative sources of financing readily available. The Debtors' Prepetition Lenders assert that substantially all of the Debtors' assets are encumbered under their existing capital structure, which, along with the Debtors' uncertain financial condition and overall weakness in the apparel industry, restricts the availability of, and options for, postpetition financing. *See* Erickson Declaration ¶¶ 21, 22; First Day Declaration ¶ 5. The Prepetition Lenders also made it clear that they would not consent to "priming" debtor-in-possession financing provided by a third party. *See* Erickson Declaration ¶¶ 28. Additionally, as described below, the Debtors' marketing process—which included outreach to numerous parties for a variety of financing solutions—yielded no actionable results. Accordingly, the Debtors do not believe third-party debtor-in-possession financing would be reasonably obtainable.

25. While negotiating the DIP Facilities with the Debtors' existing debtholders, the Debtors, with the assistance of Guggenheim Securities, LLC ("Guggenheim Securities"), began soliciting indications of interest from eleven alternative third-party sources of asset based financing (including specialty lenders and those that routinely provide debtor-in-possession financing), to gauge their interest in providing a revolving credit facility or term loan to the Debtors. *See* Erickson Declaration ¶ 23. From this group, six parties executed confidentiality agreements ("NDAs") and received access to non-public information. No party provided a proposal for alternative financing, with at least one party explaining that their financing proposal would cost the Debtors substantially more than the DIP Facilities and require priming of the Prepetition Lenders—likely resulting in expensive and distracting litigation at the critical start of these chapter 11 cases. *See Id.*

26. Contemporaneously, the Debtors, with the assistance of Guggenheim Securities, solicited 28 potential third-party investors (including distressed-oriented investors with experience in retail), to gauge their interest in providing capital to the Debtors, either independently or in connection with an alternative holistic restructuring proposal. *See* Erickson Declaration ¶ 24. Following the initial outreach to the 28 parties, 17 parties requested NDAs, 13 of which executed NDAs. *Id.* Parties that executed NDAs received access to a dataroom containing non-public information. *Id.* Only one party submitted a proposal for an independent postpetition term loan; however, the terms of the proposal did not surpass those provided by the Prepetition Term Lenders and required the Prepetition Term Lenders' consent. *Id.* Therefore, in the weeks leading up to the Petition Date, it became clear to the Debtors that their existing lenders would provide the best source of postpetition financing.

27. Additionally, with any third-party proposal, the Debtors would incur the execution risk associated with a new lender transaction, including material timing and due diligence constraints, necessarily involving the payment of additional professional fees. In contrast, the proposed DIP Facilities offered by the DIP Lenders allow the Debtors to avoid the need to engage in a costly and time-consuming priming fight at the outset of these chapter 11 cases.

Basis for Relief

I. The Debtors Should Be Authorized to Obtain Postpetition Financing Through the DIP Documents.

A. Entry into the DIP Documents Is an Exercise of the Debtors' Sound Business Judgment.

28. The Court should authorize the Debtors, as an exercise of their sound business judgment, to enter into the DIP Documents, obtain access to the DIP Facilities, and continue using the Cash Collateral. Section 364 of the Bankruptcy Code authorizes a debtor to obtain secured or superpriority financing under certain circumstances discussed in detail below. 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, e.g., In re Trans World Airlines, Inc.*, 163 B.R. 964, 974 (Bankr. D. Del. 1994) (approving a postpetition loan and receivables facility because such facility “reflect[ed] sound and prudent business judgment”); *In re L.A. Dodgers LLC*, 457 B.R. 308, 313 (Bankr. D. Del. 2011) (“[C]ourts will almost always defer to the business judgment of a debtor in the selection of the lender.”); *In re Ames Dep’t Stores, Inc.*, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) (“[C]ases consistently reflect that the court’s discretion under section 364 is to be utilized on grounds that permit 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.”).

29. Specifically, to determine whether the business judgment standard is met, a court need only “examine whether a reasonable business person would make a similar decision under similar circumstances.” *In re Exide Techs.*, 340 B.R. 222, 239 (Bankr. D. Del. 2006); *see also 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”).

30. Furthermore, 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., Inc.*, 294 B.R. 855, 886 (Bankr. W.D. Mo. 2003); *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 also 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 bankruptcy court for the Southern District of New York 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 non-economic 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 alliances 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).

31. The Debtors' determination to move forward with the DIP Facilities is an exercise of their sound business judgment following an arm's-length process and careful evaluation of alternatives. Specifically, the Debtors and their advisors determined that postpetition financing will create certainty with respect to cash flows necessary for the administration of these chapter 11 cases through confirmation. The Debtors negotiated the DIP Agreements and other DIP Documents with the DIP Lenders in good faith, at arm's length, and with the assistance of their respective advisors, and the Debtors believe that they have obtained the best financing available. Accordingly, the Court should authorize the Debtors' entry into the DIP Documents, as it is a reasonable exercise of the Debtors' business judgment.

B. The Debtors Should Be Authorized to Grant Liens and Superpriority Claims.

32. The Debtors propose to obtain financing under the DIP Facilities by providing security interests and liens as set forth in the DIP Documents pursuant to section 364(c) of the Bankruptcy Code. Specifically, the Debtors propose to provide to the DIP Lenders continuing, valid, binding, enforceable, non-avoidable, and automatically and properly perfected postpetition security interests in and liens on the DIP Collateral (as defined in the Interim Order), which includes substantially all of the Debtors' assets. The Prepetition Lenders will have similar "criss cross" first and second priority liens on the DIP Collateral as they do on the Prepetition Collateral (as defined in the Interim Order):

- a. The DIP Liens securing the ABL DIP Obligations (the "DIP ABL Liens") will be senior in priority and superior to any security, mortgage, collateral interest, lien, or claim to any of the DIP Collateral, except that the DIP ABL Liens will be junior only to:

- i. as to the DIP ABL Priority Collateral (as defined in the Interim Order) (A) Permitted Prior Liens (as defined in the Interim Order); and (B) the Carve Out; and
 - ii. as to the DIP Term Priority Collateral (as defined in the Interim Order) (A) Permitted Prior Liens; (B) the Carve Out; (C) the DIP Term Loan Liens (as defined herein); (D) the Prepetition Term Loan Liens; and (E) the Prepetition Term Loan Adequate Protection Liens (as defined in the Interim Order).
- b. The DIP Liens securing the Term Loan DIP Obligations (the “DIP Term Loan Liens”) will be senior in priority and superior to any security, mortgage, collateral interest, lien, or claim to any of the DIP Collateral, except that the DIP Term Loan Liens will be junior only to:
 - i. as to the DIP Term Priority Collateral (A) Permitted Prior Liens and (B) the Carve Out; and
 - ii. as to the DIP ABL Priority Collateral (A) Permitted Prior Liens; (B) the Carve Out; (C) the ABL DIP Liens; (D) the Prepetition ABL Liens; and (E) the Prepetition ABL Adequate Protection Liens (as defined in the Interim Order).

33. The statutory requirement for obtaining postpetition credit under section 364(c) is a finding, made after notice and hearing, that a debtor is “unable to obtain unsecured credit allowable under Section 503(b)(1) of [the Bankruptcy Code].” 11 U.S.C. § 364(c). *See In re Crouse Grp., Inc.*, 71 B.R. 544, 549 (Bankr. E.D. Pa. 1987) (secured credit under section 364(c) of the Bankruptcy Code is authorized, after notice and hearing, upon showing that unsecured credit cannot be obtained). Courts have articulated a three-part test to determine whether a debtor is entitled to financing under section 364(c) of the Bankruptcy Code. Specifically, courts look to whether:

- a. the debtor is unable to obtain unsecured credit under section 364(b) of the Bankruptcy Code, *i.e.*, by allowing a lender only an administrative claim;
- b. the credit transaction is necessary to preserve the assets of the estate; and
- c. the terms of the transaction are fair, reasonable, and adequate, given the circumstances of the debtor-borrower and proposed lenders.

See In re Ames Dep't Stores, 115 B.R. 34, 37–40 (Bankr. S.D.N.Y. 1990); *see also In re St. Mary Hosp.*, 86 B.R. 393, 401-02 (Bankr. E.D. Pa. 1988); *Crouse Grp.*, 71 B.R. at 549.

34. As described above and as set forth in the Erickson Declaration, third-party lenders were unwilling to provide postpetition financing on an unsecured basis or otherwise junior to the Prepetition Lenders. *See* Erickson Declaration ¶ 24. Therefore, the Debtors, in consultation with their advisors, concluded that any workable financing likely would require the support of, or be provided by, the Debtors' existing lenders. *See* Erickson Declaration ¶ 25. Absent the DIP Facilities, which will provide certainty that the Debtors will have sufficient liquidity to administer these chapter 11 cases, the value of the Debtors' estates would be significantly impaired to the detriment of all stakeholders. Given the Debtors' circumstances, the Debtors believe that the terms of the DIP Facilities, as set forth in the DIP Agreements, are fair, reasonable, and adequate, all as more fully set forth below. For all these reasons, the Debtors submit that they have met the standard for obtaining postpetition financing.

35. In the event that a debtor is unable to obtain unsecured credit allowable as an administrative expense under section 503(b)(1) of the Bankruptcy Code, section 364(c) provides that a court "may authorize the obtaining of credit or the incurring of debt (1) with priority over any or all administrative expenses of the kind specified in section 503(b) or 507(b) of [the Bankruptcy Code]; (2) secured by a lien on property of the estate that is not otherwise subject to a lien; or (3) secured by a junior lien on property of the estate that is subject to a lien." As described above, the Debtors are unable to obtain unsecured credit. Therefore, approving a superpriority claims in favor of the DIP Lenders is reasonable and appropriate.

36. Further, section 364(d) provides that a debtor may obtain credit secured by a senior or equal lien on property of the estate already subject to a lien, after notice and a hearing, where

the debtor is “unable to obtain such credit otherwise” and “there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted.” 11 U.S.C. § 364(d)(1). Consent by the secured creditors to priming obviates the need to show adequate protection. *See Anchor Savs. Bank FSB v. Sky Valley, Inc.*, 99 B.R. 117, 122 (N.D. Ga. 1989) (“[B]y tacitly consenting to the superpriority lien, those [undersecured] creditors relieved the debtor of having to demonstrate that they were adequately protected.”). Accordingly, the Debtors may incur “priming” liens under the DIP Facilities if either (a) the Prepetition Lenders have consented or (b) Prepetition Lenders’ interests in collateral are adequately protected.

37. Here, the Prepetition Lenders have consented to the DIP Facilities. Therefore, the relief requested pursuant to section 364(d)(1) of the Bankruptcy Code is appropriate.

C. No Comparable Alternative to the DIP Facilities Is Reasonably Available.

38. A debtor need only demonstrate “by a good faith effort that credit was not available without” the protections afforded to potential lenders by sections 364(c) of the Bankruptcy Code. *In re Snowshoe Co., Inc.*, 789 F.2d 1085, 1088 (4th Cir. 1986); *see also In re Plabell Rubber Prods., Inc.*, 137 B.R. 897, 900 (Bankr. N.D. Ohio 1992). Moreover, in circumstances where only a few lenders likely can or will extend the necessary credit to a 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); *see also In re Snowshoe Co.*, 789 F.2d 1085, 1088 (4th Cir. 1986) (demonstrating that credit was unavailable absent the senior lien by establishment of unsuccessful contact with other financial institutions in the geographic area); *In re Stanley Hotel, Inc.*, 15 B.R. 660, 663 (D. Colo. 1981) (bankruptcy court’s finding that two

national banks refused to grant unsecured loans was sufficient to support conclusion that section 364 requirement was met); *In re Ames Dep't Stores*, 115 B.R. at 37–39 (debtor must show that it made reasonable efforts to seek other sources of financing under section 364(a) and (b)).

39. As noted above, the Debtors do not believe that alternative sources of financing are reasonably available given the realities imposed by the Debtors' existing capital structure and the Debtors' unsuccessful solicitation of alternative financing proposals. Substantially all of the Debtors' existing assets, including Cash Collateral, are encumbered. *See* Erickson Declaration ¶ 9. Moreover, the Debtors have searched high and low for actionable alternative proposals—in this regard, the market has spoken. There are no other options. Thus, the Debtors have determined that the DIP Facilities provide the best opportunity available to the Debtors under the circumstances to fund these chapter 11 cases. *See* Erickson Declaration ¶ 2, 29. Therefore, in addition to evidence to be introduced at the hearing on the Interim Order if necessary, the Debtors submit that the requirement of section 364 of the Bankruptcy Code that alternative credit on more favorable terms be unavailable to the Debtors is satisfied.

D. The Proposed Repayment of Prepetition Indebtedness Should Be Approved.

40. Section 363(b) of the Bankruptcy Code permits a debtor to use, sell or lease property, other than in the ordinary course of business, with court approval. It is well settled in the Third Circuit that such transactions should be approved when they are supported by a sound business purpose. *See In re Abbots Dairies, Inc.*, 788 F.2d 143 (3d Cir. 1986) (holding that in the Third Circuit, a debtor's use of assets outside the ordinary course of business under section 363(b) should be approved if the debtor can demonstrate a sound business justification for the proposed transaction). The business judgment rule shields a debtor's management from judicial second-guessing. *In re Johns-Manville Corp.*, 60 B.R. 612, 615-16 (Bankr. S.D.N.Y. 1986) (“[T]he

[Bankruptcy] Code favors the continued operation of a business by a debtor and a presumption of reasonableness attaches to a debtor's management decisions.”).

41. Repayment of prepetition debt (often referred to as a “roll-up”) is a common feature in debtor-in-possession financing arrangements. Courts in this jurisdiction have approved similar DIP features on the first day of the case. *See, e.g., In re MACH Gen, LLC*, No. 14-10461 (MFW) (Bankr. D. Del. Mar. 5, 2014) (authorizing approximately \$200 million DIP that included roll-up of approximately \$144 million prepetition debt pursuant to interim order); *In re Furniture Brands Int'l, Inc.*, No. 13-12329 (CSS) (Bankr. D. Del. Sept. 11, 2013) (authorizing approximately \$140 million DIP that included roll-up of approximately \$91 million prepetition debt pursuant to interim order); *In re Appleseed's Intermediate Holdings LLC*, No. 11-10160 (KG) (Bankr. D. Del. Jan. 20, 2011) (authorizing approximately \$140 million DIP that included roll-up of approximately \$48.6 million prepetition debt pursuant to interim order); *In re Dayton Superior Corp.*, No. 09-11351 (BLS) (Bankr. D. Del. Apr. 21, 2009) (authorizing approximately \$165 million DIP that included roll-up of approximately \$110 million prepetition debt pursuant to interim order).¹⁰

42. Moreover, repayment of prepetition debt has been approved in several recent retail cases in this and other jurisdictions. *See In re American Apparel, Inc.*, No. 15-12055 (Bankr. D. Del. October 6, 2017) (approving on an interim basis the repayment in full of all outstanding amounts under the prepetition revolving credit agreement); *In re The Gymboree Corp.*, No. 17-32968 (Bankr. E.D. Va. June 12, 2017) (approving on an interim basis the conversion and “roll-up” of all outstanding prepetition revolving obligations and \$70 million of prepetition term loan obligations); *In re rue21, inc.*, No. 17-22045 (Bankr. W.D. Pa. May 18, 2017) (approving on an

¹⁰ Because of the voluminous nature of the orders cited herein, such orders have not been attached to this motion. Copies of these orders are available upon request of the Debtors' proposed counsel.

interim basis the conversion and “roll-up” of all outstanding prepetition revolving obligations and \$100 million of prepetition term loans); *In re BCBG Max Azria Holdings, LLC*, No. 17-10466 (Bankr. S.D.N.Y. March 28, 2017) (approving on a final basis the conversion and “roll-up” of \$35 million of prepetition term loan obligations); *In re BCBG Max Azria Holdings, LLC*, No. 17-10466 (Bankr. S.D.N.Y. March 2, 2017) (approving the conversion and “roll-up” of all outstanding prepetition revolving obligations on a rolling basis following entry of the interim order); *In re Aéropostale, Inc.*, No. 16-11275 (Bankr. S.D.N.Y. May 6, 2016) (approving on an interim basis the conversion and “roll-up” of all outstanding prepetition revolving obligations).

43. As set forth above, the DIP Agreements provide that (a) the full amount outstanding under the Prepetition ABL Facility will “roll up” into the DIP ABL Facility upon entry of the Interim Order and (b) \$40 million outstanding under the Prepetition Term Loan Facility will “roll up” into the DIP Term Loan Facility upon entry of the Final Order.

44. The repayment of the Prepetition ABL Facility and a portion of the Prepetition Term Loan Facility is a sound exercise of the Debtors’ business judgment and is a material component of the structure of the DIP Facilities and was required by the DIP Lenders as a condition to their commitment to provide postpetition financing. *See* Erickson Declaration ¶ 28. The Debtors were unable to obtain debtor-in-possession financing on similar terms that did not provide for the repayment of prepetition amounts on these terms. *See* Erickson Declaration ¶¶ 23-24; First Day Declaration ¶ 66. Without continued access to an asset-based lending facility to fund the flow of inventory to the Debtors’ customers and the \$20 million in incremental liquidity under the DIP Term Loan Facility to fund the administration of these chapter 11 cases, the Debtors’ businesses would cease and they would likely be forced to liquidate. *See* First Day Declaration ¶ 67. Maintaining the ability to continue as a going concern on the other side of a deleveraging

restructuring transaction is of immense benefit to the Debtors' estates and stakeholders. Importantly, the Prepetition ABL Lenders, with approximately \$22 million of first lien, first priority claims, are oversecured. Where, as the Prepetition ABL Lenders are here, a prepetition secured creditor is oversecured, repaying such creditor that stands to receive payment in full with postpetition loans will not harm the Debtors' estates and other creditors. Moreover, the conversion of the Prepetition ABL Obligations into DIP ABL Obligations will provide an additional benefit to the estate because, in connection with this conversion, the Prepetition ABL Lenders have agreed to waive their claims to a prepayment premium and default interest on the Prepetition ABL Obligations will not accrue. *See* Erickson Declaration ¶ 27.

45. The simple economic reality is that a peaceful, going concern transition in to chapter 11 comes at a price, which in this case the Debtors believe to be reasonable. The Prepetition Lenders are unlikely to continue to lend postpetition without some assurance regarding their prepetition claims. Absent the Prepetition Lenders' support, the first month of the Debtors' chapter 11 cases would likely devolve into a costly priming fight. In contrast, the roll up of the Prepetition ABL Facility and partial roll of the Prepetition ABL Facility merely affects the timing, not the amount or certainty, of the Prepetition Lenders' recovery—the secured claims arising under the Prepetition ABL Facility and Prepetition Term Loan Facility are required by section 1129 of the Bankruptcy Code to be satisfied in full before recoveries to junior creditors may be provided, absent consent of such secured parties (which consent the Debtors do not have here). Importantly, the proposed roll-ups are supported by both tranches of the Debtors' funded debt and subject to review by a creditors' committee (if appointed) or another party-in-interest with requisite standing if a committee is not appointed.

46. Given these circumstances, repayment of the Prepetition ABL Facility upon entry of the Interim Order and partial repayment of the Prepetition Term Loan Facility upon entry of the Final Order are reasonable, appropriate, and a sound exercise of the Debtors' business judgment.

II. The Debtors Should Be Authorized to Use the Cash Collateral.

47. Section 363 of the Bankruptcy Code generally governs the use of estate property. Section 363(c)(2)(A) permits a debtor in possession to use cash collateral with the consent of the secured party. Here, the Prepetition Lenders consent to the Debtors' use of the Cash Collateral (as well as the Prepetition Collateral), subject to the terms and limitations set forth in the Interim Order.

48. Section 363(e) provides for adequate protection of interests in property when a debtor uses cash collateral. Further, section 362(d)(1) of the Bankruptcy Code provides for adequate protection of interests in property due to the imposition of the automatic stay. *See In re Cont'l Airlines*, 91 F.3d 553, 556 (3d Cir. 1996) (en banc). While section 361 of the Bankruptcy Code provides examples of forms of adequate protection, such as granting replacement liens and administrative claims, courts decide what constitutes sufficient adequate protection on a case-by-case basis. *In re Swedeland Dev. Grp., Inc.*, 16 F.3d 552, 564 (3d Cir. 1994); *In re Satcon Tech. Corp.*, No. 12-12869 (KG), 2012 WL 6091160, at *6 (Bankr. D. Del. Dec. 7, 2012); *In re N.J. Affordable Homes Corp.*, No. 05-60442 (DHS), 2006 WL 2128624, at *14 (Bankr. D.N.J. June 29, 2006); *In re Columbia Gas Sys., Inc.*, Nos. 91-803, 91-804, 1992 WL 79323, at *2 (Bankr. D. Del. Feb. 18, 1992); *see also 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”).

49. As described more fully above, and as set forth in the Interim Order, the Debtors propose to provide the Prepetition Lenders with a variety of adequate protection to protect against the postpetition diminution in value of the Cash Collateral (as well as the Prepetition Collateral) resulting from the use of the Cash Collateral by the Debtors and the imposition of the automatic stay (collectively, the “Adequate Protection Obligations”):

- a. Valid and automatically perfected replacement liens and security interests in and upon the DIP Collateral;
- b. superpriority administrative claims under section 507(b) of the Bankruptcy Code;
- c. the Prepetition Agents’ and Consenting Term Loan Committee’s professionals’ fees and expenses; and
- d. with respect to the Prepetition ABL Parties, payment of interest, fees, and principal due under the Prepetition Revolver Documents.

50. Therefore, the Debtors submit that the proposed Adequate Protection Obligations are sufficient to protect the Prepetition Lenders from any diminution in value to the Cash Collateral and Prepetition Collateral. In light of the foregoing, the Debtors further submit, and the Prepetition Lenders agree, that the proposed Adequate Protection Obligations to be provided for the benefit of the Prepetition Lenders are appropriate.¹¹ Thus, the Debtors’ provision of the Adequate Protection Obligations is not only necessary to protect against any diminution in value but is fair and appropriate under the circumstances of these chapter 11 cases to ensure the Debtors are able to continue using the Cash Collateral, subject to the terms and limitations set forth in the Interim Order, for the benefit of all parties in interest and their estates.

¹¹ Pursuant to the DIP Orders, the Prepetition Lenders are permitted to seek additional adequate protection in accordance with the terms thereof.

III. The Debtors Should Be Authorized to Pay the Fees Required by the DIP ABL Agent and the DIP ABL Lenders Under the DIP ABL Documents.

51. Under the DIP Loan Documents, the Debtors have agreed, subject to Court approval, to pay certain fees to the DIP Agents and the DIP Lenders. In particular, the Debtors have agreed to pay on the Closing Date aggregate fees of \$690,000 consisting of the following (notably, there are no closing fees, commitment fees, or fees payable on account of the partial “roll up” of the Prepetition Term Loan Facility):

- a. to the DIP ABL Agent and DIP ABL Lenders (in accordance with the terms of the DIP ABL Agreement): (a) closing fees; (b) an unused commitment fee equal to 0.375% per annum of the undrawn commitments; (c) additional fees payable to the DIP ABL Agents, for their own accounts, in consideration for the DIP ABL Agents’ service as DIP ABL Agent and (d) letter of credit fees; and amendment fees relating to the third amendment of the Prepetition ABL Agreement in October 2017; and
- b. to the DIP Term Loan Agent and DIP Term Loan Lenders (in accordance with the terms of the DIP Term Loan Agreement), fees and expenses payable to the DIP Term Loan Agent, for its own account, in consideration for the DIP Term Agent’s service as this DIP Term Loan Agent.

52. It is understood and agreed by all parties, including the Debtors, that these fees are an integral component of the overall terms of the DIP Facilities, and were required by the applicable DIP Agents and the DIP Lenders as consideration for the extension of postpetition financing. *See* Erickson Declaration ¶ 31. Accordingly, the Court should authorize the Debtors to pay the fees provided under the DIP Documents in connection with entering into those agreements.

IV. The Debtors Should Be Deemed Good-Faith Lenders Under Section 364(e).

53. 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 loans or grant such liens is later reversed or modified on appeal. Section 364(e) of the Bankruptcy Code provides that:

The reversal or modification on appeal of an authorization under this section [364 of the Bankruptcy Code] to obtain credit or incur 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.

54. As explained herein, in the First Day Declaration and the Erickson Declaration, the DIP Documents are the result of: (a) the Debtors' reasonable and informed determination that the DIP Lenders offered the most favorable terms on which to obtain vital postpetition financing, and (b) arms'-length, good-faith negotiations between the Debtors and the DIP Agents and DIP Lenders. The Debtors submit that the terms and conditions of the DIP Documents are reasonable and appropriate under the circumstances, and the proceeds of the DIP Facilities will be used only for purposes that are permissible under the Bankruptcy Code. Further, no consideration is being provided to any party to the DIP Documents other than as described herein. Accordingly, the Court should find that the DIP Lenders are "good faith" lenders within the meaning of section 364(e) of the Bankruptcy Code and are entitled to all of the protections afforded by that section.

V. The Automatic Stay Should Be Modified on a Limited Basis.

55. The proposed Interim Order provides that the automatic stay provisions of section 362 of the Bankruptcy Code will be modified to allow the DIP Lenders to file any financing statements, security agreements, notices of liens, and other similar instruments and documents in order to validate and perfect the liens and security interests granted to them under the Interim Order. The proposed Interim Order further provides that the automatic stay is modified as necessary to permit the Debtors to grant the DIP Liens to the DIP Lenders and to incur all liabilities and obligations set forth in the Interim Order. Finally, the proposed Interim Order provides that, following the occurrence of an Event of Default, the automatic stay shall be vacated and modified

to the extent necessary to permit the DIP Agents to exercise all rights and remedies in accordance with the DIP Documents, or applicable law.

56. Stay modifications of this kind are ordinary and standard features of debtor-in-possession financing arrangements, and, in the Debtors' business judgment, are reasonable and fair under the circumstances of these chapter 11 cases. *See, e.g., In re Magnum Hunter Res. Corp.*, No. 15-12533 (KG) (Bankr. D. Del. Dec. 15, 2015) (terminating automatic stay after event of default); *In re Peak Broad., LLC*, No. 12-10183 (PJW) (Bankr. D. Del. Feb. 2, 2012) (terminating automatic stay after occurrence of termination event); *In re TMP Directional Mktg., LLC*, No. 11-13835 (MFW) (Bankr. D. Del. Jan. 17, 2012) (modifying automatic stay as necessary to effectuate the terms of the order); *In re Broadway 401 LLC*, No. 10-10070 (KJC) (Bankr. D. Del. Feb. 16, 2010) (same); *In re Hights Cross Commc'ns, Inc.*, No. 10-10062 (BLS) (Bankr. D. Del. Feb. 8, 2010) (same).

VI. Failure to Obtain Immediate Interim Access to the DIP Facilities and Cash Collateral Would Cause Immediate and Irreparable Harm.

57. 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.

58. For the reasons noted above, the Debtors have an immediate postpetition need to use Cash Collateral, including advances under the DIP Facilities. The Debtors cannot maintain the value of their estates during the pendency of these chapter 11 cases without access to this liquidity. The Debtors will use cash to, among other things, fund the administration of these

chapter 11 cases and the operation of their business. The Debtors believe that substantially all of their available cash constitutes the Prepetition Lenders' Cash Collateral. The Debtors will therefore be unable to operate their business or otherwise fund these chapter 11 cases without access to the Cash Collateral, and will suffer immediate and irreparable harm to the detriment of all creditors and other parties in interest. In short, the Debtors' ability to administer these chapter 11 cases through the use of Cash Collateral is vital to preserve and maximize the value of the Debtors' estates.

59. The Debtors request that the Court hold and conduct a hearing to consider entry of the Interim Order authorizing the Debtors, from and after entry of the Interim Order until the Final Hearing, to receive initial funding under the DIP Facilities. 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 Final Hearing

60. Pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2), the Debtors request that the Court set a date for the Final Hearing that is as soon as practicable, and in no event after 25 days after the Petition Date, and fix the time and date prior to the Final Hearing for parties to file objections to this motion.

Waiver of Bankruptcy Rule 6004(a) and 6004(h)

61. To implement the foregoing successfully, the Debtors request that the Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and that the Debtors have established cause to exclude such relief from the 14-day stay period under Bankruptcy Rule 6004(h).

Notice

62. The Debtors will provide notice of this motion to: (a) the Office of the U.S. Trustee for the District of Delaware; (b) the holders of the 50 largest unsecured claims against the Debtors (on a consolidated basis); (c) counsel to the DIP ABL Agent and the Prepetition ABL Agent; (d) counsel to the DIP Term Loan Agent; (e) counsel to the Ad Hoc Group of Term Loan Lenders; (f) the United States Attorney's Office for the District of Delaware; (g) the Internal Revenue Service; (h) the United States Securities and Exchange Commission; (i) the state attorneys general for all states in which the Debtors conduct business; (j) counsel to certain majority equity holders for Debtor Charming Charlie Holdings Inc.; and (k) any party that requests service pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

No Prior Request

63. No prior request for the relief sought in this motion has been made to this or any other court.

[Remainder of page intentionally left blank]

WHEREFORE, the Debtors respectfully request that the Court enter the DIP Orders, granting relief requested herein and such other relief as the Court deems appropriate under the circumstances.

Dated: December 11, 2017
Wilmington, Delaware

/s/ Domenic E. Pacitti

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