

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

In re:

BROOKSTONE HOLDINGS CORP., *et al.*,¹

Debtors.

Chapter 11

Case No. 18-____ (____)

(Joint Administration Requested)

**DEBTORS' MOTION FOR ENTRY OF AN ORDER AUTHORIZING
PAYMENT OF (A) CERTAIN PREPETITION WAGES, SALARIES, AND OTHER
COMPENSATION AND (B) CERTAIN EMPLOYEE BENEFITS AND OTHER
ASSOCIATED OBLIGATIONS**

Brookstone Holdings Corp. and its affiliated debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “Debtors”) hereby move the Court (this “Motion”) for entry of an order, substantially in the form annexed hereto as Exhibit A, pursuant to sections 105(a), 363, 507, 541, 1107(a), and 1108 of title 11 of the United States Code (the “Bankruptcy Code”), Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 9013-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), authorizing, but not directing, the Debtors to pay (a) accrued prepetition wages, salaries, and other compensation to their workforce and (b) certain employee benefits and other associated obligations, as described below. In support of the Motion, the Debtors rely upon and incorporate by reference the *Declaration of Greg Tribou in Support of the Debtors' Chapter 11 Petitions and Requests for First Day Relief* (the “First Day Declaration”), which was filed with the Court

¹ The Debtors, along with the last four digits of each Debtor’s tax identification number, are: Brookstone Holdings Corp. (4638), Brookstone, Inc. (2895), Brookstone Company, Inc. (3478), Brookstone Retail Puerto Rico, Inc. (5552), Brookstone International Holdings, Inc. (8382), Brookstone Purchasing, Inc. (2514), Brookstone Stores, Inc. (2513), Big Blue Audio LLC (N/A), Brookstone Holdings, Inc. (2515), and Brookstone Properties, Inc. (2517). The Debtors’ corporate headquarters and the mailing address for each Debtor is One Innovation Way, Merrimack, NH 03054.

concurrently herewith.² In further support of this Motion, the Debtors respectfully represent as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334(b) and 157, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b), and pursuant to Local Rule 9013-1(f), the Debtors consent 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. Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory and legal predicates for the relief requested herein are sections 105(a), 363, 507, 541, 1107(a), and 1108 of the Bankruptcy Code, Bankruptcy Rules 6003 and 6004, and Local Rule 9013-1.

BACKGROUND

2. On the date hereof (the "Petition Date"), each of the Debtors commenced a voluntary case under chapter 11 of the Bankruptcy Code. Pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, the Debtors are continuing to manage their financial affairs as debtors in possession.

3. Contemporaneously herewith, the Debtors filed a motion seeking joint administration of their chapter 11 cases (collectively, the "Chapter 11 Cases") pursuant to Bankruptcy Rule 1015(b) and Local Rule 1015-1. No trustee, examiner, or official committee of unsecured creditors has been appointed in the Chapter 11 Cases.

² All capitalized terms used and not defined herein shall have the meanings ascribed to them in the First Day Declaration.

4. Information regarding the Debtors' history and business operations, capital structure and primary secured indebtedness, and the events leading up to the commencement of the Chapter 11 Cases can be found in the First Day Declaration.

THE WORKFORCE AND RELATED OBLIGATIONS

5. The Debtors' workforce consists of approximately 950 hourly wage earners (the "Hourly Employees") and approximately 230 salaried personnel (the "Salaried Employees" and, together with the Hourly Employees, the "Employees"). In addition, the Debtors supplement their business needs and workforce with approximately 13 independent contractors (the "Independent Contractors").

6. In the ordinary course of business, the Debtors incur payroll and other compensation obligations for their workforce. The Debtors also provide other benefits to Employees for the performance of services. These benefits and obligations are described in more detail below.

7. The Employees and Independent Contractors are the lifeblood of the Debtors' business, and their value cannot be overstated. The institutional knowledge, experience, and skills of the Employees and Independent Contractors are essential to the Debtors' ability to continue business operations during the Chapter 11 Cases. The Employees and Independent Contractors perform critical functions for the Debtors, including, among many other things, sales, purchasing, accounting, legal, finance, management, supervisory, administrative functions, and customer service. The Debtors' failure to pay Wage Obligations (defined below), and to continue to honor, as applicable, employee benefits, as detailed below, would have a material adverse impact on the Debtors' business and the Debtors' ability to maximize value through the prosecution of the Chapter 11 Cases.

A. Compensation Obligations

i) Wage Obligations

8. The Debtors incur payroll obligations for base wages and overtime compensation owed to their Employees and Independent Contractors (the “Employee Wage Obligations”). All Employees are paid on a weekly basis. The average weekly payroll for the Debtor’s Employees in a typical, non-Christmas season month, is approximately \$600,000, including payroll taxes.³ Employees are paid either by direct deposit or can have the funds pre-loaded onto a debit card.

9. The Debtors also maintain a limited sales incentivization program for non-insider district managers, store managers, and sales associates (the “Manager and Associate Plan”). The purpose of the Manager and Associate Plan is to reward and motivate district managers and store managers to drive store sales increases and for sales associates to provide high-level service. The Manager and Associate Plan includes, among other things, sales targets for district managers, store success targets for store managers, and service goals for sales associates which, if met, pay out bonus amounts (the “Manager and Associate Obligations”). As of the Petition Date, the Debtors estimate that Manager and Associate Obligations currently owed in the ordinary course of business do not exceed approximately \$15,000.

10. The Debtors currently administer their payroll and the disbursement of payroll funds in-house. However, the Debtors are in the final stages of transitioning the processing of wage payments and third-party tax payments and filings to Automatic Data Processing, Inc. (“ADP”). The services of ADP will be imperative to the smooth functioning of the Debtors’ payroll system. The Debtors will pay ADP approximately \$2,600 per month⁴ for its services (the

³ The average weekly payroll varies significantly for Independent Contractors and, therefore, a weekly average is difficult to calculate. As of the Petition Date, the Debtors estimate that Employee Wage Obligations owed to Independent Contractors do not exceed approximately \$30,000.

⁴ The amount the Debtors will pay to ADP varies based on Employee headcount.

“Payroll Administrator Obligations” and, together with the Employee Wage Obligations and the Manager and Associate Obligations, the “Wage Obligations”).

11. As of the Petition Date, the Debtors estimate that Wage Obligations currently owed in the ordinary course of business do not exceed approximately \$400,000 (collectively, the “Unpaid Wage Obligations”). To the best of the Debtors’ understanding, no Employee or Independent Contractor is owed more than \$12,850 in accrued and unpaid general prepetition wages or salaries.

12. The Debtors seek authorization, but not direction, to pay the Unpaid Wage Obligations in an amount not to exceed \$12,850 per eligible Employee or Independent Contractor, and to continue to honor the Wage Obligations on a postpetition basis in the ordinary course during the administration of the Chapter 11 Cases.

ii) Withholding Obligations

13. In connection with the salaries and wages paid to Employees, for each applicable pay period, the Debtors are required by law to withhold from Employees’ wages amounts related to federal, state, and local income taxes, as well as social security and Medicare taxes (collectively, the “Employee Withholding Taxes”) and to remit the same to the applicable taxing authorities. The Debtors are also required to make matching payments from their own funds for, among other things, social security and Medicare taxes and to pay, based on a percentage of gross payroll, state and federal unemployment insurance, and state disability insurance contributions (the “Employer Payroll Tax Obligations,” and together with Employee Withholding Taxes, the “Payroll Tax Obligations”).

14. Additionally, for each applicable pay period, the Debtors routinely deduct certain amounts directly from Employees' paychecks, including, without limitation, garnishments, child support and service charges, and similar deductions (collectively, the "Deductions").

15. The Debtors estimate that they withhold, on average, between \$650,000 and \$725,000 per month in Payroll Tax Obligations and Deductions (collectively, the "Withholding Obligations"). As of the Petition Date, the Debtors estimate that approximately \$220,000 in Withholding Obligations has been collected but not yet remitted to the appropriate third-party recipients ("Unremitted Withholdings Obligations").

16. The Debtors seek authorization, but not direction, to remit Unremitted Withholdings Obligations postpetition in the ordinary course of business and to continue collecting the Withholding Obligations. The Debtors believe that Unremitted Withholdings Obligations that remain in the Debtors' possession constitute moneys held in trust and, therefore, are not property of the Debtors' estates. Out of an abundance of caution, however, the Debtors seek authority to remit Unremitted Withholdings Obligations and continue collecting the Withholding Obligations in the ordinary course of business during the administration of the Chapter 11 Cases.

B. Paid Time Off

17. The Debtors offer certain Employees paid time off ("PTO") in the form of compensation for vacation, personal days, and sick time (collectively, "PTO Program").⁵ The rate at which Employees accrue PTO varies depending on an Employee's length of employment. When taking these factors into account, Employees generally receive 3 weeks of PTO per year.

⁵ Certain Employees not eligible for PTO may be eligible for sick time based on applicable law. To the extent an Employee is eligible for sick time based on applicable law, the Debtors are requesting authority, but not direction, to pay accrued sick time as of the Petition Date and to continue to pay sick time, as part of the PTO Program, in accordance with applicable law, throughout the administration of these Chapter 11 Cases.

In accordance with applicable law, Employees who are terminated from their employment (for any reason) are entitled to payment for all accrued but unused PTO as of the date of termination of employment. The PTO Programs are typical and customary, and continuing to offer them is necessary for the Debtors to retain Employees during the reorganization process.

18. Because PTO is accrued and used by Employees on a continuous basis, it is difficult to precisely quantify the cost of accrued PTO as of the Petition Date. However, the Debtors estimate that as of the Petition Date the value of accrued and unpaid PTO does not exceed approximately \$660,000 (“Unpaid PTO Obligations”). This amount, however, is not a current cash pay obligation as Employees are only entitled to be paid for accrued but unused PTO upon termination. To the best of their knowledge, the Debtors do not believe that any Unpaid PTO Obligations are currently due and owing as of the Petition Date. Out of an abundance of caution, however, the Debtors request authority, but not direction, to pay any Unpaid PTO Obligations as of the Petition Date solely in accordance with applicable law.

19. The Debtors request that they be authorized, but not directed, to pay any Unpaid PTO Obligations currently due and owing and to continue to honor the PTO Program (including with regard to any PTO that accrued prepetition, even if Employees use such prepetition PTO throughout the administration of these Chapter 11 Cases in accordance with the Debtors’ prepetition policy) in the ordinary course during the administration of the Chapter 11 Cases.

C. Reimbursable Expense Obligations

20. Prior to the Petition Date, in the ordinary course of business, the Debtors reimbursed Employees (the “Reimbursement Program”) for approved, legitimate expenses incurred on behalf of the Debtors in the scope of the Employee’s employment (“Reimbursable

Expense Obligations”).⁶ Reimbursable Expense Obligations typically include expenses for, among other things, travel, cell phones, and certain other business-related, out-of-pocket expenses. All such expenses are incurred with the applicable Employee’s understanding that he or she will be reimbursed by the Debtors in accordance with the Debtors’ reimbursement policy, as described in more detail below. In all cases, reimbursement is contingent on the Debtors’ determination that the charges are for legitimate, reimbursable business expenses.

21. It is difficult for the Debtors to determine the exact amount of Reimbursable Expense Obligations outstanding as of the Petition Date because, among other things, Employees may have expenses that they have yet to submit to the Debtors for reimbursement. Over the past year, the Debtors have paid, on average, approximately \$20,000 per week on account of Reimbursable Expense Obligations. The Debtors process payment of these Reimbursable Expense Obligations on a rolling basis. As of the Petition Date, the Debtors estimate that the total amount of unpaid prepetition Reimbursable Expense Obligations does not exceed approximately \$30,000 (“Unpaid Reimbursable Expense Obligations”).

22. Accordingly, to avoid harming Employees who incurred Reimbursable Expense Obligations, the Debtors request authority, but not direction, to pay all Unpaid Reimbursable Expense Obligations and authority to continue the Reimbursement Program in the ordinary course during the administration of the Chapter 11 Cases.

D. Employee Benefit Programs

23. In the ordinary course of business, the Debtors offer certain Employees medical benefits, including medical, dental, and vision benefits (collectively, the “Health Plans”). All

⁶ The Debtors also maintain a small number of corporate apartment and automobile leases (the “Corporate Leases”) for which the Debtors are obligors or co-obligors. The Debtors hereby request to pay amounts owed, if any, under the Corporate Leases and to continue the Corporate Leases in the ordinary course during the administration of these Chapter 11 Cases as part of the Debtors’ Reimbursement Program.

obligations with respect to the Health Plans are hereinafter referred to as the “Employee Benefits Obligations.”

24. The Debtors’ medical plan is self-funded and administered by Cigna.⁷ As of June 30, 2018, approximately 740 persons, including Employees and Employee dependents, are covered under the Debtors’ medical plan. The Debtors’ dental and vision plans are each fully insured. As of June 30, 2018, approximately 1100 persons, including Employees and Employee dependents, are covered under the Debtors’ dental plan and approximately 580 persons, including Employees and Employee dependents, are covered under the Debtors’ vision plan.

25. The medical and dental plans are funded through contributions by the participating Employee and by the Debtors, and the vision plan is funded through contributions by the Employee. The Debtors believe that it is necessary and appropriate to continue to honor their obligations under the Health Plans. The cost of the Health Plans is generally shared between the Debtors and the eligible employees, with the Debtors primarily responsible, but with Employees contributing approximately 30%, through payroll deductions for the medical plan and dental plan and fully funding the vision plan. The Health Plans cost the Debtors approximately \$75,000 per month for administrative and self-insurance costs (collectively, the “Administrative Costs”). As of the Petition Date, the Debtors estimate that their liability for Administrative Costs does not exceed \$100,000. Pursuant to the self-insured medical plan, the Debtors additionally pay approximately \$370,000 per month. Given the variable nature of claims related to the Debtors’ self-insured medical plan, it is difficult to estimate the amount outstanding under the plan on a week to week basis. However, as of the Petition Date, the Debtors estimate that their

⁷ The Debtors also provide a fully insured medical plan through Medical Card System, Inc. for three covered employees in Puerto Rico (the “MCS Plan”). For the avoidance of doubt, the Debtors are also requesting authority to pay any amounts under the MCS Plan and to continue to honor their obligations thereunder, as part of the Health Plans, in the ordinary course during the administration of the Chapter 11 Cases.

liability under the Health Plans does not exceed approximately \$85,000 (the “Self-Insured Claims Costs” and, together with the Administrative Costs, the “Unpaid Employee Benefit Obligations”).⁸

26. The Debtors request authority, but not direction, to pay all Unpaid Employee Benefit Obligations and to continue to offer the Health Plans and honor their obligations thereunder in the ordinary course during the administration of the Chapter 11 Cases.

E. Life Insurance and Disability Insurance

27. The Debtors provide (a) basic term life, short-term disability, and long-term disability insurance coverage to all full-time Employees and (b) access to, among other things, variable life, employee accident insurance, a flexible spending account, and identification theft insurance (collectively, the “Employee Insurance Program”). The Debtors incur estimated costs in the amount of \$40,000 per month with respect to the Employee Insurance Coverage. As of the Petition Date, the Debtors estimate that their liability under the Employee Insurance Program does not exceed approximately \$30,000 (the “Unpaid Employee Insurance Coverage”).

28. The Debtors seek authority, but not direction, to pay the Unpaid Employee Insurance Coverage and to continue to provide the Employee Insurance Program in the ordinary course of business during the administration of the Chapter 11 Cases.

F. Workers’ Compensation Claims

29. The Debtors maintain a workers’ compensation policy through QBE Insurance Group Limited (the “Workers’ Compensation Insurance Policy”)⁹ that provides the required level

⁸ The Debtors’ Self-Insured Claims Costs are back-stopped by a stop-loss insurance policy that reimburses the Debtors for Self-Insured Claims Costs paid out over a \$200,000 deductible.

⁹ Authority to continue the Workers’ Compensation Policy is sought in the *Debtors’ Motion for Entry of an Order Authorizing (A) Continuation of, and Payment of Prepetition Obligations Incurred in the Ordinary Course of Business in Connection With, Various Insurance Policies, Including Payment of Policy Premiums and Broker*

of coverage in each state in which the Debtors operate (the “Workers’ Compensation Program”). The Debtors also pay certain amounts to self-fund insurance in certain states, as required by applicable law, including, without limitation, plans in the state of Washington and Puerto Rico that the Debtors pay based on a quarterly headcount and number of hours worked.

30. The Debtors’ deductible under the Workers’ Compensation Insurance Policy is \$350,000 per incident. Accordingly, the Debtors retain risk with respect to workers’ compensation claims up to \$350,000 per claim, but capped at a maximum aggregate of \$1.2 million during the policy year (the “Workers’ Compensation Claims”).¹⁰ As of the Petition Date, the Debtors estimate that approximately \$200,000 is owed in Workers’ Compensation Claims (the “Unpaid Workers’ Compensation Claims”).

31. The Debtors seek authority, but not direction, to pay any Unpaid Workers’ Compensation Claims (regardless of when such obligations arose) and to continue to honor the Workers’ Compensation Program in the ordinary course of business during the administration of the Chapter 11 Cases.

G. Savings and Retirement Plans

32. The Debtors maintain a 401(k) plan for certain eligible Employees (the “401(k) Plan”), which is administered by Fidelity Management Trust Company. Generally, the 401(k) Plan provides pre-tax salary deductions on eligible compensation, which amounts are deducted automatically from each participating Employee’s paycheck and deposited in such Employee’s 401(k) Plan account. The Debtors match these Employee contributions to the 401(k) Plan.

Fees, (B) Continuation of Insurance Premium Finance Agreements, and (C) Banks to Honor and Process Checks and Electronic Transfer Requests Related Thereto (the “Insurance Motion”) filed contemporaneously herewith.

¹⁰ The Workers’ Compensation Insurance Policy for current claims is through QBE Insurance Group Limited. The Workers’ Compensation Insurance Policy was previously maintained through Sentry Insurance. To the extent the Debtors incur any legacy Workers’ Compensation Claims related to the Sentry Insurance policy, the Debtors are also requesting authority, but not direction, to make such Workers’ Compensation Claims payments and to continue to honor, as part of the Workers’ Compensation Program, any obligations related thereto.

Approximately 230 Employees currently participate in the 401(k) Plan, with an approximate weekly withholding amount from Employee paychecks of \$30,000 (exclusive of the Debtors' match amount), plus a small administrative fee of \$3,500 per quarter. As of the Petition Date, the Debtors hold in trust approximately \$40,000 in Employee 401(k) Plan contributions, which includes the Debtors' contribution match (the "Unremitted 401(k) Contributions").

33. The Debtors request that they be authorized, but not directed, to remit the Unremitted 401(k) Contributions and to continue to operate the 401(k) Plan in the ordinary course of business.

RELIEF REQUESTED

34. By this Motion, the Debtors seek entry of an order authorizing, but not directing, the Debtors, in their discretion and in consultation with the DIP Administrative Agent and DIP Term Agent, to (a) pay and/or remit, as applicable, (i) the Unpaid Wage Obligations, (ii) the Unremitted Withholdings Obligations, (iii) the Unpaid PTO Obligations, (iv) the Unpaid Reimbursable Expense Obligations, (v) the Unpaid Employee Benefits Obligations, (vi) the Unpaid Employee Insurance Coverage, (vii) the Unpaid Workers' Compensation Claims, and (viii) the Unremitted 401(k) Contributions (together with all costs and fees incident to the foregoing, collectively, the "Employee Obligations") and (b) continue to honor and/or collect, as applicable, (i) the Wage Obligations, (ii) the Withholding Obligations, (iii) the PTO Program, (iv) the Reimbursement Program, (v) the Health Plans, (vi) the Employee Insurance Program, (vi) the Workers' Compensation Program, (vii) the Unpaid Workers' Compensation Claims, and (viii) the 401(k) Plan (collectively, the "Employee Plans and Programs").

35. To enable the Debtors to carry out the relief requested, the Debtors also request that the Court authorize all applicable banks and financial institutions (collectively, the "Banks")

to receive, process, honor, and pay all checks presented for payment and all electronic payment requests made by the Debtors relating to the Employee Obligations and the Employee Plans and Programs, whether such checks were presented or electronic-payment requests were submitted prior to or after the Petition Date.

BASIS FOR RELIEF

36. The Debtors' ability to successfully operate is contingent on a reliable and loyal workforce. Thus, it is essential to assure the Employees and Independent Contractors that the Debtors will honor the Employee Obligations and continue and maintain the Employee Plans and Programs in the ordinary course of business throughout the Chapter 11 Cases. A failure to promptly do so will create concern and discontent among the Employees and could lead to resignations or the decision to not complete work for the Debtors or accept future hiring proposals. Loss of even a few key personnel would immediately and irreparably harm the Debtors' ability to maintain operations to the detriment of all interested parties. Therefore, pursuant to sections 105(a), 363, 507, 541, 1107(a), and 1108 of the Bankruptcy Code, the Debtors seek authority to pay the Employee Obligations, in their discretion and in consultation with the DIP Administrative Agent and DIP Term Agent, and to maintain and continue the Employee Plans and Programs, in their discretion and in consultation with the DIP Administrative Agent and DIP Term Agent, and in the ordinary course of business, in the exercise of their business judgment. This relief is necessary to retain the workforce, the loss of which would disable the Debtors' business operations.

A. A Portion of the Employee Obligations is entitled to Priority Treatment

37. Section 507(a)(4)(A) of the Bankruptcy Code grants priority status to up to \$12,850 for each employee's claims for "wages, salaries, or commission, including vacation, severance, and sick leave pay" earned within 180 days before the Petition Date. 11 U.S.C.

§ 507(a)(4)(A). Similarly, section 507(a)(5) of the Bankruptcy Code grants priority to contributions to employee benefit plans, up to an aggregate amount of \$12,850 multiplied by the number of employees covered, less any amounts paid to such employees under section 507(a)(4) of the Bankruptcy Code. 11 U.S.C. § 507(a)(5).

38. Indeed, “[w]age priority has been a feature of the bankruptcy law since 1898.” *In re Garden Ridge Corp.*, No. 04-10324 (KJC), 2006 WL 521914, at *2 (Bankr. D. Del. Mar. 2, 2006) (citing 4 Alan N. Resnick & Henry J. Sommer, *Collier on Bankruptcy* ¶ 507.05[1] (15th ed. 2005)). Its purpose is to “alleviate hardship on workers . . . who may have no other source of income” and “to encourage employees to stand by an employer in financial difficulty.” *Id.* (citing 4 Alan N. Resnick & Henry J. Sommer, *Collier on Bankruptcy* ¶ 507.05[1] (15th ed. 2005)). This priority extends to certain other “benefits that are considered akin to compensation, such as vacation, severance and sick leave pay.” *Id.*

39. A portion of the Employee Obligations relating to the period prior to the Petition Date constitutes priority claims under sections 507(a)(4) and (5) of the Bankruptcy Code. Amounts that are paid on account of priority claims for the majority of the Employee Obligations would not otherwise be available for distribution to unsecured creditors. Therefore, the Debtors’ unsecured creditors will not be prejudiced by permitting priority obligations to be satisfied in the ordinary course of business during the Chapter 11 Cases rather than at the conclusion of the cases. Indeed, the Debtors submit that payment of Employee Obligations at this time enhances value for the benefit of the Debtors and all interested parties by retaining the workforce.

B. The Debtors Should be Authorized to Pay the Employee Obligations Under Sections 1107(a) and 1108 of the Bankruptcy Code

40. The Debtors, operating their businesses as debtors in possession under sections 1107(a) and 1108 of the Bankruptcy Code, are fiduciaries “holding the bankruptcy estate[s] and

operating the business[es] for the benefit of [their] creditors and (if the value justifies) equity owners.” *In re CoServ, LLC*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002). “Implicit in the duties” of a chapter 11 debtor in possession is the duty “to protect and preserve the estate, including an operating business’s going-concern value.” *Id.*

41. Courts have noted that there are instances in which a debtor in possession can fulfill its fiduciary duty “only . . . by the preplan satisfaction of a prepetition claim.” *Id.* The *CoServ* court specifically noted that preplan satisfaction of prepetition claims is a valid exercise of a debtor’s fiduciary duty when the payment “is the only means to effect a substantial enhancement of the estate.” *Id.* The court provided a three-pronged test for determining whether a preplan payment on account of a prepetition claim is a valid exercise of a debtor’s fiduciary duty:

First, it must be critical that the debtor deal with the claimant. Second, unless it deals with the claimant, the debtor risks the probability of harm, or, alternatively, loss of economic advantage to the estate or the debtor’s going concern value, which is disproportionate to the amount of the claimant’s prepetition claim. Third, there is no practical or legal alternative by which the debtor can deal with the claimant other than by payment of the claim.

Id. at 498.

42. Payment of the Employee Obligations as set forth herein meets each element of the standard set forth in *CoServ*. The Debtors’ operations are complex, and rely on the skill and expertise of their Employees. Many Employees possess unique knowledge regarding specific aspects of the Debtors’ operations, which would be virtually irreplaceable should such Employees be lost through a failure to pay their obligations. In addition, any failure by the Debtors to pay the Employee Obligations as set forth herein would negatively impact the morale of the workforce at a critical time for the Debtors and their businesses when the workforce is most needed. The workforce is also critical to the Debtors’ ability to maintain their operations

consistent with past practices, which would be impossible without the continued efforts of the workforce. The damage to the value of the Debtors' business and, hence, the costs to creditors as a whole, would be immediate and irreparable if the Employee Obligations were not met. In short, the potential harm and economic disadvantage that would stem from the failure to pay the Employee Obligations greatly outweigh the amount of any prepetition claims that the Debtors are seeking authorization to pay.

43. After careful consideration in consultation with their advisors, the Debtors have determined in their business judgment that to avoid significant disruption to their business operations there exists no practical or legal alternative to the payment of the Employee Obligations.

C. Payment of the Employee Obligations is Warranted Pursuant to Section 363 of the Bankruptcy Code

44. Section 363(b)(1) of the Bankruptcy Code provides that a debtor may “after notice and a hearing, use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). A debtor’s decision to use, sell, or lease assets outside the ordinary course of business must be based upon the sound business judgment of that debtor. *See Official Comm. of Unsecured Creditors of LTV Aerospace & Def. Co. v. LTV Co. (In re Chateaugay Corp.)*, 973 F.2d 141, 143 (2d Cir. 1992) (holding that a court determining an application pursuant to section 363(b) must find from the evidence a good business reason to grant such application); *see also In re Ionosphere Clubs, Inc.*, 100 B.R. 670, 675 (Bankr. S.D.N.Y. 1989) (standard for determining a section 363(b) motion is whether the debtor has a “good business reason” for the requested relief). “Where the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.” *Comm. of Asbestos-*

Related Litigants and/or Creditors v. Johns-Manville Corp. (In re Johns-Manville Corp.), 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986). Consistent with a debtor's fiduciary duties, where there is a sound business purpose for the payment of prepetition obligations, and where the debtor is able to "articulate some business justification, other than the mere appeasement of major creditors," courts have authorized debtors to make such payments under section 363(b) of the Bankruptcy Code. *See, e.g., In re Ionosphere Clubs*, 98 B.R. at 175 (accepting debtor's argument that payment of employee wage claims was "critical . . . in order to preserve and protect its business and ultimately reorganize, retain its currently working employees and maintain positive employee morale," and finding that the debtor had "clearly demonstrated sound business reasons to justify such payments").

45. The Debtors pay the Employee Obligations in the ordinary course of business, as permitted by section 363(c) of the Bankruptcy Code. However, to the extent that the Court finds that approval is necessary and in an abundance of caution, the Debtors request that the Court grant the relief requested herein and enter an order authorizing them to pay the Employee Obligations, consistent with their compensation, PTO, and other benefit policies and plans, and to permit, but not require, the Debtors, in their discretion and in consultation with the DIP Administrative Agent and DIP Term Agent, to maintain and continue the Employee Plans and Programs for their Employees as those practices, programs, policies, and plans were in effect as of the Petition Date, as such may be modified, terminated, amended, or supplemented from time to time.

D. Payment of Certain Withholding Obligations is Appropriate Under Section 541 of the Bankruptcy Code

46. The Debtors also seek authority to pay the Withholding Obligations. These amounts principally represent the Employees' earnings that governments, the Employees, and the judicial authorities have designated for deduction from the Employees' paychecks. Indeed, certain Withholding Obligations are not property of the Debtors' estates because the Debtors have withheld such amounts from Employees' paychecks on another party's behalf. *See* 11 U.S.C. § 541; *see also City of Farrell v. Sharon Steel Corp.*, 41 F.3d 92, 95 (3d Cir. 1994) (observing the "well-settled principle that debtors do 'not own an equitable interest in property . . . [they] hold[] in trust for another,' and that therefore funds held in trust are not 'property of the estate.'") (quoting *Begier v. IRS*, 496 U.S. 53, 59 (1990)).

47. Further, federal and state laws require the Debtors to withhold certain tax payments from Employees' paychecks and to pay such amounts to the appropriate taxing authority. *See* 26 U.S.C. §§ 6672 and 7501(a); *see also Sharon Steel Corp.*, 41 F.3d at 95–97 (finding that state law requiring a corporate debtor to withhold city income tax from its employees' wages created a trust relationship between debtor and the city for payment of withheld income taxes); *In re DuCharmes & Co.*, 852 F.2d 194, 196 (6th Cir. 1988) (noting that individual officers of a company may be held personally liable for failure to pay trust fund taxes). A failure to pay these amounts could subject the Debtors and their officers and directors to liability. *See, e.g., John F. Olson, et al., Director & Officer Liability: Indemnification and Insurance* § 3:21 (2003). To avoid the potential of such liability, and because the Withholding Obligations are not property of the Debtors' estates, the Debtors request that the Court authorize them to remit these amounts to the appropriate parties in the ordinary course of business.

E. Payment of the Employee Obligations is Warranted Pursuant to Section 105(a) of the Bankruptcy Code and Under the Doctrine of Necessity

48. Courts have also authorized payment of prepetition claims in appropriate circumstances pursuant to section 105(a) of the Bankruptcy Code. Section 105(a) of the Bankruptcy Code, which codifies the inherent equitable powers of the bankruptcy court, empowers the bankruptcy court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Under section 105(a), courts may permit pre-plan payments of prepetition obligations when such payments are essential to the continued operation of the debtor’s business and, in particular, where nonpayment of a prepetition obligation would trigger a withholding of goods or services essential to the debtors’ business reorganization plan. *See, e.g., In re Ionosphere Clubs*, 98 B.R. at 177 (finding that section 105 empowers bankruptcy courts to authorize payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the debtor).

49. Numerous courts have used their section 105(a) powers under the “doctrine of necessity” to authorize payment of prepetition obligations where, as here, such payment is an essential element of the preservation of the debtor in possession’s potential for rehabilitation. *See In re CoServ, L.L.C.*, 273 B.R. at 497 (reasoning that because the debtor in possession has fiduciary duties it must meet, it is logical that the bankruptcy court may “use Section 105(a) of the [Bankruptcy] Code to authorize satisfaction of the prepetition claim in aid of preservation or enhancement of the estate”); *In re Synteen Techs., Inc.*, No. 00-02203-W, 2000 WL 33709667, at *2 (Bankr. D.S.C. Apr. 14, 2000) (noting that courts have permission to “allow payment of a prepetition claim when essential to the continued operation of the debtor” (citation omitted)); *In re Just For Feet, Inc.*, 242 B.R. 821, 824 (D. Del. 1999) (“courts have used their equitable power under section 105(a) . . . to authorize the payment of pre-petition claims when such payment is

deemed necessary to the survival of a debtor in a chapter 11 reorganization”); *In re NVR L.P.*, 147 B.R. 126, 127 (Bankr. E.D. Va. 1992) (“Under [section 105] the court can permit pre-plan payment of a prepetition obligation when essential to the continued operation of the debtor”); *In re Eagle-Picher Indus., Inc.*, 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) (approving payment of prepetition unsecured claims of tool makers as “necessary to avert a serious threat to the Chapter 11 process”); *In re Quality Interiors, Inc.*, 127 B.R. 391, 396 (Bankr. N.D. Ohio 1991) (“[P]ayment by a debtor-in-possession of pre-petition claims outside of a confirmed plan of reorganization is generally prohibited by the Bankruptcy Code,” but “[a] general practice has developed . . . where bankruptcy courts permit the payment of certain pre-petition claims, pursuant to 11 U.S.C. § 105, where the debtor will be unable to reorganize without such payment.”).

50. The “doctrine of necessity” is frequently invoked early in reorganization cases, during the so-called “breathing spell,” when preservation of the estate is most critical and often extremely difficult. *See* 2 Alan N. Resnick & Henry J. Sommer, *Collier on Bankruptcy* ¶ 105.02[4][a] (16th ed. 2018) (discussing cases in which courts have relied upon the “doctrine of necessity” or the “necessity of payment” rule to pay prepetition claims immediately). For example, in *In re Structurlite Plastics Corp.*, the court embraced “the principle that a bankruptcy court may exercise its equity powers under section 105(a) to authorize payment of prepetition claims where such payment is necessary to ‘permit the greatest likelihood of survival of the debtor’” 86 B.R. 922, 931 (Bankr. S.D. Ohio 1988) (quoting *In re Chateaugay Corp.*, 80 B.R. 279, 287 (S.D.N.Y. 1987)). The court explained that “a *per se* rule proscribing the payment of prepetition indebtedness may well be too inflexible to permit the effectuation of the

rehabilitative purposes of the Code.” *Id.* at 932. Flexibility of payment is particularly critical when the prepetition creditor provides vital goods or services to the debtor.

51. Here, the majority of the Employees rely on their compensation, benefits, and reimbursement of expenses to satisfy their daily living expenses and maintain their health and well-being. Consequently, these Employees will be exposed to significant financial hardships if the Debtors are not permitted to honor the Employee Obligations. If the Debtors are unable to satisfy such obligations, Employee morale and loyalty will suffer at a time when Employee support is critical. Further, if the Court does not authorize the Debtors to honor their various obligations under the Employee Benefits Plans, the Employees’ health coverage could be threatened, potentially burdening individual Employees with the costs of health care. At a minimum, the loss of health care coverage, or uncertainty regarding coverage, would result in considerable anxiety for the Employees at a time when the Debtors need their Employees to perform their jobs at peak efficiency. For all of the foregoing reasons, a sound business purpose exists to pay the Employee Obligations.

52. In the absence of such payments, the Debtors believe that their Employees may seek alternative employment opportunities. Such a development would deplete the workforce, hinder the Debtors’ ability to service the needs of their business, and likely diminish creditor and counterparty confidence in the Debtors. Moreover, the loss of valuable Employees and the recruiting efforts that would be required to replace such Employees would be a substantial and costly distraction at a time when the Debtors must focus on sustaining their operations. Accordingly, the Debtors must be able to pursue all reasonable measures to retain the Employees by, among other things, continuing to honor wages, benefits, and related obligations, including

those that accrued prior to the Petition Date, consistent with the terms set forth in the order attached hereto.

53. Taken together, the nature of the Employee Obligations, the substantial harm to the Debtors' businesses that would be caused if those obligations were not honored, the related potential for loss of value in the Debtors' estates, and the fact that a significant portion of the obligations in question relates to priority wage claims, lead to the conclusion that the Employee Obligations fall well within the scope of obligations whose payments may be authorized pursuant to the doctrine of necessity.

54. Accordingly, for all of the foregoing reasons, the relief requested herein will benefit the Debtors' estates and creditors by allowing the Debtors' business operations to continue without interruption and should therefore be approved.

F. The Court Should Authorize Applicable Banks to Honor Checks and Electronic Fund Transfers in Accordance with the Motion

55. In connection with the foregoing, the Debtors respectfully request that the Court authorize all applicable Banks to receive, process, honor, and pay all checks presented for payment and all electronic payment requests made by the Debtors relating to the Employee Obligations and the Employee Plans and Programs, whether such checks were presented or electronic-payment requests were submitted prior to or after the Petition Date.

SATISFACTION OF BANKRUPTCY RULE 6003

56. Pursuant to Bankruptcy Rule 6003, the Court may grant relief within 21 days after the filing of the petition regarding a motion to "use, sell, lease, or otherwise incur an obligation regarding property of the estate" only if such relief is necessary to avoid immediate and irreparable harm. Fed. R. Bankr. P. 6003(b). Immediate and irreparable harm exists where the absence of relief would impair a debtor's ability to reorganize or threaten the debtor's future as a

going concern. *See In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 36, n.2 (Bankr. S.D.N.Y. 1990) (discussing the elements of “immediate and irreparable harm” in relation to Bankruptcy Rule 4001).

57. Moreover, Bankruptcy Rule 6003 authorizes the Court to grant the relief requested herein to avoid harm to the Debtors’ customers and other third parties. Unlike Bankruptcy Rule 4001, Bankruptcy Rule 6003 does not condition relief on imminent or threatened harm to the estate alone. Rather, Bankruptcy Rule 6003 speaks of “immediate and irreparable harm” generally. *Cf.* Fed. R. Bankr. P. 4001(b)(2), (c)(2) (referring to “irreparable harm to the estate”). Indeed, the “irreparable harm” standard is analogous to the traditional standards governing the issuance of preliminary injunctions. *See* 9 Alan N. Resnick & Henry J. Sommer, *Collier on Bankruptcy* ¶ 4001.07[b][3] (16th ed. 2018) (discussing source of “irreparable harm” standard under Rule 4001(c)(2)). Courts will routinely consider third-party interests when granting such relief. *See, e.g., Capital Ventures Int’l v. Argentina*, 443 F.3d 214, 223 n.7 (2d Cir. 2006); *see also Linnemeir v. Bd. of Trs. of Purdue Univ.*, 260 F.3d 757, 761 (7th Cir. 2001).

58. As described herein and in the First Day Declaration, the Debtors will suffer immediate and irreparable harm without Court authorization to pay the Employee Obligations and other related relief requested herein. Accordingly, the Debtors submit that Bankruptcy Rule 6003 has been satisfied and the relief requested herein should be granted.

REQUEST FOR WAIVER OF STAY

59. The Debtors also request that the Court waive the stay imposed by Bankruptcy Rule 6004(h), which provides that “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the

court orders otherwise.” Fed. R. Bankr. P. 6004(h). As described above, the relief that the Debtors seek in this Motion is necessary for the Debtors to operate their business without interruption and to preserve value for their estates. Accordingly, the Debtors respectfully request that the Court waive the fourteen-day stay imposed by Bankruptcy Rule 6004(h), as the exigent nature of the relief sought herein justifies immediate relief.

DEBTORS’ RESERVATION OF RIGHTS

60. Nothing contained herein is intended or should be construed as an admission of the validity of, or a promise to pay with respect to, any claim against the Debtors; a waiver of the Debtors’ rights to dispute any claim; or an approval, assumption, or rejection of any agreement, contract, or lease under section 365 of the Bankruptcy Code.

NOTICE

61. The Debtors have provided notice of this Motion to: (a) the Office of the United States Trustee for the District of Delaware; (b) holders of the 30 largest unsecured claims on a consolidated basis against the Debtors; (c) counsel to Wells Fargo Bank, National Association in its capacity as DIP Administrative Agent and as Agent under the Credit Agreement, dated as July 7, 2014; (d) counsel to Gordon Brothers Finance Company, in its capacity as DIP Term Agent and as Term Agent under the Term Note dated June 3, 2015; (e) counsel to Wilmington Trust, National Association, in its capacity as Trustee under the Indenture dated as of July 7, 2014; (f) counsel to Sanpower (Hong Kong) Company Limited as Lender under certain secured and unsecured notes; (g) the Independent Contractors; (h) the Banks; and (i) all parties that have filed a notice of appearance and request for service of papers pursuant to Bankruptcy Rule 2002. Notice of this Motion and any order entered hereon will be served in accordance with Local Rule

9013-1(m). In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary.

WHEREFORE, the Debtors respectfully request that the Court grant the relief requested herein and such other and further relief as the Court may deem just and proper.

Dated: August 2, 2018
Wilmington, Delaware

/s/ Andrew L. Magaziner

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Proposed Counsel to the Debtors and Debtors in Possession

EXHIBIT A

PROPOSED ORDER

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

In re:

BROOKSTONE HOLDINGS CORP., *et al.*,¹

Debtors.

Chapter 11

Case No. 18-____ (____)

(Jointly Administered)

Ref. Docket No. _____

**ORDER AUTHORIZING PAYMENT OF (A) CERTAIN PREPETITION WAGES,
SALARIES, AND OTHER COMPENSATION AND (B) CERTAIN EMPLOYEE
BENEFITS AND OTHER ASSOCIATED OBLIGATIONS**

Upon the *Debtors’ Motion for Entry of an Order Authorizing Payment of (A) Certain Prepetition Wages, Salaries, and Other Compensation and (B) Certain Employee Benefits and Other Associated Obligations* (the “Motion”)² filed by the above-captioned debtors and debtors in possession (collectively, the “Debtors”); and this Court having reviewed the Motion; and this Court having found that it has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334(b) and 157, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012; this Court having found that venue of these cases and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having determined that it may enter a final order consistent with Article III of the United States Constitution; and it appearing that notice of the Motion has been given as set forth in the Motion and that such notice is adequate and no other or further notice need be given; and this

¹ The Debtors, along with the last four digits of each Debtor’s tax identification number, are: Brookstone Holdings Corp. (4638), Brookstone, Inc. (2895), Brookstone Company, Inc. (3478), Brookstone Retail Puerto Rico, Inc. (5552), Brookstone International Holdings, Inc. (8382), Brookstone Purchasing, Inc. (2514), Brookstone Stores, Inc. (2513), Big Blue Audio LLC (N/A), Brookstone Holdings, Inc. (2515), and Brookstone Properties, Inc. (2517). The Debtors’ corporate headquarters and the mailing address for each Debtor is One Innovation Way, Merrimack, NH 03054.

² All capitalized terms used and not defined herein shall have the meanings ascribed to them in the Motion.

Court having considered the First Day Declaration; and this Court having determined that the legal and factual basis set forth in the Motion establish just cause for the relief granted herein; and this Court having determined that the relief sought in the Motion is in the best interests of the Debtors and their estates; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.
2. The Debtors are authorized, but not directed, to continue to honor the Wage Obligations, in accordance with the Debtors' prepetition practices, in the ordinary course during the administration of these Chapter 11 Cases, and to pay the Unpaid Wage Obligations in an amount not to exceed \$400,000; *provided, however*, that, subject to the requirements of 11 U.S.C. section 507(a)(4) of the Bankruptcy Code, without prejudice to the Debtors' right to seek additional payments, the Debtors shall not make any payments in excess of \$12,850 on account of prepetition Wage Obligations to any one Employee, absent further order of this Court.
3. The Debtors are authorized, but not directed, to continue to collect the Withholding Obligations, in accordance with the Debtors' stated policies and prepetition practices, in the ordinary course during the administration of these Chapter 11 Cases, and to remit the Unremitted Withholdings Obligations in an amount not to exceed \$220,000.
4. The Debtors are authorized, but not directed, to continue the Debtors' PTO Program, including payout of accrued PTO upon termination, in accordance with the Debtors' prepetition practices, in the ordinary course during the administration of these Chapter 11 Cases, and to pay the Unpaid PTO Obligations in an amount not to exceed \$10,000; *provided, however*, that payments to any terminated Employee on account of PTO shall not exceed (i) \$12,850, *minus* (ii) any amount the terminated Employee received pursuant to paragraph 2 of this Order;

provided, further, however, that Unpaid PTO Obligations will only be paid to the extent required by applicable law.

5. The Debtors are authorized, but not directed, to continue to honor the Reimbursement Program, in accordance with the Debtors' prepetition practices, in the ordinary course during the administration of these Chapter 11 Cases, and to pay the Unpaid Reimbursable Expense Obligations in an amount not to exceed \$10,000; *provided, however,* that satisfaction of the Unpaid Reimbursable Expense Obligations shall only be allowed to the extent Employees have paid for such expenses directly from their own funds or are otherwise personally liable for such expenses.

6. The Debtors are authorized, but not directed, to honor the Health Plans, in accordance with the Debtors' prepetition practices, in the ordinary course during the administration of these Chapter 11 Cases and in accordance with the Debtors' prepetition policies and programs, and to pay the Unpaid Employee Benefits Obligations in an amount not to exceed \$185,000.

7. The Debtors are authorized, but not directed, to honor the Employee Insurance Program, in accordance with the Debtors' prepetition practices, in the ordinary course during the administration of these Chapter 11 Cases, and to pay the Unpaid Employee Insurance Coverage in an amount not to exceed \$30,000.

8. The Debtors are authorized, but not directed, to honor the Workers' Compensation Program, in accordance with the Debtors' prepetition practices, in the ordinary course during the administration of these Chapter 11 Cases, and to pay the Unpaid Workers' Compensation Claims in an amount not to exceed \$200,000.

9. The Debtors are authorized, but not directed, to continue the 401(k) Plan in accordance with the Debtors' prepetition practices, in the ordinary course during the administration of these Chapter 11 Cases, and to remit the Unremitted 401(k) Contributions in an amount not to exceed \$40,000.

10. Notwithstanding anything to the contrary contained herein, any payment to be made, or authorization contained, hereunder shall be subject to the requirements imposed on the Debtors under the Debtors' postpetition financing agreements (the "DIP Documents") and any orders approving the DIP Documents and governing the Debtors' use of cash collateral (including with respect to any budgets governing or relating thereto).

11. Nothing in the Motion or this Order, nor as a result of any payment made pursuant to this Order, shall be deemed or construed as an admission as to the validity or priority of, or a promise to pay with respect to, any claim against the Debtors, an approval or assumption of any agreement, contract or lease pursuant to section 365 of the Bankruptcy Code, or a waiver of the right of the Debtors, or shall impair the ability of the Debtors, or any other party in interest, to the extent applicable, to contest the validity and amount of any payment made pursuant to this Order.

12. Each of the Banks is authorized to receive, process, honor, and pay all checks and transfers issued or requested by the Debtors, to the extent that sufficient funds are on deposit in the applicable accounts, in accordance with this Order and any other order of this Court.

13. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests in connection with any of the Employee Obligations described herein that are dishonored or rejected.

14. Nothing in the Motion or this Order shall be construed to authorize any payments governed by section 503(c)(3) of the Bankruptcy Code (including section 503(c)(1)) or any severance payments to insiders in excess of the limits set forth in section 503(c)(2) of the Bankruptcy Code.

15. The Debtors shall not make any payments in excess of the amounts set forth in section 507(a)(4) and 507(a)(5) of the Bankruptcy Code, absent further order of this Court.

16. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied because the relief requested in the Motion, as granted hereby, avoids immediate and irreparable harm to the Debtors and their estates.

17. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

18. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

19. This Court shall retain exclusive jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: August ___, 2018
Wilmington, Delaware

UNITED STATES BANKRUPTCY JUDGE