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*Proposed Counsel to the Debtors and Debtors in Possession*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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In re: )  
 ) Chapter 11  
 )  
HOLLANDER SLEEP PRODUCTS, LLC, *et al.*,<sup>1</sup> ) Case No. 19-11608 (\_\_\_)  
 )  
Debtors. ) (Joint Administration Requested)  
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**DEBTORS’ MOTION FOR ENTRY OF AN ORDER (A) AUTHORIZING THE  
DEBTORS TO ENTER INTO EXIT BACKSTOP COMMITMENT LETTER AND FEE  
LETTER AND (B) GRANTING RELATED RELIEF**

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The above-captioned debtors and debtors in possession (collectively, the “Debtors”) respectfully state as follows in support of this motion:

**Relief Requested**

1. By this motion, the Debtors seek entry of an order, substantially in the form attached hereto as **Exhibit A**, (a) authorizing the Debtors to enter into a backstop commitment letter for a \$30 million new money senior secured first-lien term loan facility (the “New Money Exit Term Loan”) as part of the \$58 million senior secured first-lien term loan facility (the “Exit

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Dream II Holdings, LLC (7915); Hollander Home Fashions Holdings, LLC (2063); Hollander Sleep Products, LLC (2143); Pacific Coast Feather, LLC (1445); Hollander Sleep Products Kentucky, LLC (4119); Pacific Coast Feather Cushion, LLC (3119); and Hollander Sleep Products Canada Limited (3477). The location of the Debtors’ service address is: 901 Yamato Road, Suite 250, Boca Raton, Florida 33431.

Term Loan Facility”), a copy of which is attached hereto as **Exhibit B** (together with the exhibits attached thereto, the “Exit Backstop Commitment Letter”), and a related fee letter (the “Fee Letter,” and, together with the Exit Backstop Commitment Letter, the “Commitment Letters”), a copy of which is attached hereto as **Exhibit C**, each with the exit financing lenders (the “Exit Financing Lenders”) and (b) granting related relief. In support of this motion, the Debtors submit the declaration of Saul Burian (the “Burian Declaration”), Managing Director at Houlihan Lokey Capital, Inc. (“Houlihan Lokey”), filed contemporaneously herewith, and respectfully state as follows.

### **Preliminary Statement**

2. The Debtors have commenced these chapter 11 cases with a commitment from certain of their prepetition term lenders to provide a holistic financing package to fund the Debtors’ chapter 11 cases and their go-forward business upon emergence. Specifically, the term lenders have agreed to fund a \$28 million debtor-in-possession term loan facility (the “DIP Term Loan Facility”) that will roll into the \$58 million Exit Term Loan Facility on the plan effective date with a commitment to backstop the remaining \$30 million of new money under the same facility. This committed exit financing is critical to the Debtors’ chapter 11 cases, provides certainty to their reorganization, and sends a strong signal to the market that the Debtors will emerge from bankruptcy with sufficient liquidity. Importantly, the exit financing commitment is part of a comprehensive value-maximizing restructuring transaction embodied in the restructuring support agreement (the “RSA”) and chapter 11 plan (the “Plan”), filed concurrently, that shares the support of 100% of the prepetition term lenders and the Debtors’ majority equityholder, Sentinel Capital Partners, LLC.

3. The proposed exit facility is the product of extensive, hard-fought negotiations between the Debtors and the term lenders. Over the course of the negotiations, the term lenders

made clear that the DIP Term Loan Facility and the proposed exit facility were inextricably linked. As a result, the DIP Term Loan Facility would not have been possible without the exit financing component. Additionally, after extensive negotiations, the term lenders made clear that they would be unwilling to commit to financing the Debtors' chapter 11 cases and emergence on different terms. To date, no other institution has proposed competing financing on any terms to fund the Debtors' cases or emergence.

4. By this motion, the Debtors seek authority to enter into the Exit Backstop Commitment Letter and corresponding Fee Letter to secure the New Money Exit Term Loan and ensure the Debtors have the financing necessary to emerge successfully.

#### **Jurisdiction and Venue**

5. The United States Bankruptcy Court for the Southern District of New York (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 Southern District of New York*, dated January 31, 2012. The Debtors confirm their consent, pursuant to Rule 7008 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy 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.

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

7. The bases for the relief requested herein are sections 105, 363(b), and 364(d) of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the "Bankruptcy Code"), Bankruptcy Rules 4001(b), (c), and (d), and Rule 4001 of the Local Bankruptcy Rules for the Southern District of New York (the "Local Rules").

## Background

### **I. The Debtors' Need for the New Money Exit Term Loan.**

8. The Debtors commenced these chapter 11 cases to implement the comprehensive restructuring contemplated in the RSA and Plan. The success of the Plan is contingent upon, among other things, obtaining exit financing that will provide the Debtors with the cash necessary to consummate the Plan and fund the reorganized Debtors' working capital needs post-emergence.

9. Entry into the Commitment Letters early in these chapter 11 cases is a critical aspect to this restructuring effort, as the Debtors' successful reorganization rests in part on receiving the funds necessary to operate on a go-forward basis upon emergence. Liquidity constraints and limited access to credit under the prepetition credit facilities created uncertainty about the Debtors' business in the months leading up to the Petition Date. Obtaining committed exit financing upfront (along with the DIP Facilities), however, will ease concerns about the future of the Debtors' operations and reassure customers and vendors, protect operations, and maximize value for creditors. Additionally, the exit financing is tied to a comprehensive restructuring transaction that delivers the support of the Debtors' key creditors constituencies, contemplates a substantial deleveraging of approximately \$166.5 million, and provides a clear path to emergence.

10. The fees, reimbursements, and other obligations contemplated under the Commitment Letters are necessary for these chapter 11 cases. The lenders that participate in the Exit Term Loan Facility are providing valuable consideration in ensuring that the Plan is feasible under section 1129(a) of the Bankruptcy Code in the event that the term lenders are the winning bidder. In such circumstances, the Exit Term Loan Facility will be used to satisfy the DIP Term Loan Facility claims, and the New Money Exit Term Loan will provide the Debtors with an infusion of capital upon emergence. The proposed exit lenders also have agreed to commit this financing for a period of 120 days, tying up capital while the Debtors also market their assets for

a potential sale transaction during that time period. Absent the Fee Letter, such lenders would not be willing to commit to provide the exit financing at the beginning of these cases or at all. Moreover, the fees to be paid under the proposed exit financing commitment were the subject of extensive and hard-fought, good-faith, arm's-length negotiations between the Debtors and the exit lenders and were required by the exit lenders as consideration for their commitments to the Debtors' reorganization process. The Debtors do not have alternative sources of exit financing readily available. Accordingly, the Debtors believe that the Commitment Letters provide certainty to the Debtors' reorganization efforts and are necessary for these chapter 11 cases.

## **II. The Marketing Process.**

11. Prior to the Petition Date, the Debtors and their advisors, as applicable, began engaging with their prepetition secured lenders as part of an effort to secure postpetition financing, including exit financing, for these cases. At the direction of the Debtors, Houlihan Lokey commenced a marketing process for possible financing alternatives in May 2019. To that end, Houlihan Lokey contacted approximately fifteen banks and institutions in the business of extending postpetition financing under similar circumstances. As of the date hereof, six have executed non-disclosure agreements and have been given access to a data room. No other institution has proposed a competing exit financing facility on any terms to date.

## **III. Overview of the Commitment Letters.**

12. The parties to the Exit Backstop Commitment Letter have committed to provide the New Money Exit Term Loan Facility, subject to, among other things, the Court entering an order authorizing the Debtors to incur and pay certain obligations, including the following:<sup>2</sup>

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<sup>2</sup> In the event that the description set forth herein is in conflict with the Commitment Letters, the Commitment Letters shall control.

- a. **Reimbursement of Fees and Expenses.** The Debtors are required to reimburse the parties to the Exit Backstop Commitment Letter and one advisor to such parties for all reasonable and documented out-of-pocket fees and expenses. The Debtors will remain obligated for all such amounts notwithstanding whether the Exit Term Loan Facility is consummated.
- b. **Commitment Fee.** The term lenders party to the Fee Letter are entitled to a fee that is earned and payable in cash on the business day following the date that the Court enters a final order approving the debtor-in-possession financing, provided that each Exit Financing Lender will have to refund the fee if the RSA is terminated solely because of a term lender's breach of the RSA. The fee is non-refundable in all other circumstances. The total calculation of such fee is subject to the terms of the motion to seal filed contemporaneously herewith.
- c. **Exit Equity Allocation.** Participating term lenders will receive 40% of the equity in the reorganized Debtors in exchange for funding the Exit Term Loan Facility on the effective date of the Plan (in addition to other consideration provided in the Fee Letter).
- d. **Indemnification Provisions.** The Exit Backstop Commitment Letter contains a standard indemnification provision that provides that the Debtors that are parties thereto agree to indemnify and hold harmless the parties to Exit Backstop Commitment and certain specified affiliates, as applicable, from and against losses, disputes, claims, investigations, litigation, proceedings, expenses (including attorneys' fees), damages, and liabilities arising out of or in connection with the Exit Backstop Commitment Letter, the Fee Letter, the Exit Term Loan Facility, the use or the proposed use of the proceeds thereof, or any other transaction contemplated in the Exit Backstop Commitment Letter. Such indemnification obligation does not cover claims and expenses that result from the indemnified parties (i) acting with gross negligence, willful misconduct, or bad faith, (ii) materially breaching the obligations under the Exit Backstop Commitment Letter, or (iii) engaging in a dispute among each other.

13. As described in further detail below, the Debtors believe these obligations are the best terms that could be secured, as this allows the Debtors to lock-in the must needed DIP Term Loan Facility for operations and these cases and positions the Debtors on a path towards emergence from chapter 11. Therefore, the Debtors respectfully submit that entry into and performance under the Commitment Letters reflect a sound exercise of business judgment and are in the best interests of the chapter 11 estates.

**Basis for Relief**

**I. Entry into the Commitment Letter is in the Debtors' Best Interests.**

14. Section 363(b)(1) of the Bankruptcy Code provides, in relevant part, that a debtor “after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate . . . .” 11 U.S.C. § 363(b)(1). To approve the use of estate property under section 363(b)(1) of the Bankruptcy Code, the Second Circuit requires a debtor to show that the decision to use the property outside of the ordinary course of business was based on the debtor’s sound business judgment. *Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1070 (2d Cir. 1983); *In re Ionosphere Clubs, Inc.*, 100 B.R. 670, 675 (Bankr. S.D.N.Y. 1989). Once a debtor articulates a valid business justification in this regard, the strong presumption arises that “in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action was in the best interests of the company.” *Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 656 (S.D.N.Y. 1992) (citations and quotations omitted), *appeal dismissed*, 3 F.3d 49 (2d Cir. 1993). Under the business judgment standard, a debtor’s business decision should be approved unless that decision “derives from bad faith, whim or caprice.” *In re Helm*, 335 B.R. 528, 538 (Bankr. S.D.N.Y. 2006) (quoting *In re Cent. Jersey Airport Servs., LLC*, 282 B.R. 176, 183 (Bankr. D. N.J. 2002) (internal quotations omitted)).

15. Entry into and performance under the Commitment Letters represents a sound exercise of the Debtors’ business judgment. The Commitment Letters are the product of an extensive good faith and arm’s-length negotiation process among the Debtors, on the one hand, and their prepetition term lenders, on the other hand. The terms in the Commitment Letters are the best that the Debtors could obtain under the facts and circumstances of these chapter 11 cases. All of the term lenders—whether they are Exit Financing Lenders or not—have documented their

support for the Commitment Letters and the Exit Term Loan Facility through their execution of the RSA. Additionally, a comprehensive reorganization requires the Debtors to engage with their prepetition secured lenders, as their support and participation reduces litigation and economic risks. The Commitment Letters provide for indemnities, reasonable and documented out-of-pocket expenses to be reimbursed, and other benefits that are integral to the restructuring. Such incentives are particularly necessary in light of the dual-tracks being pursued under the Plan and the degree of uncertainty associated with the Debtors' ultimate funding needs.

16. For these reasons, the Debtors determined in the exercise of their sound business judgment that entry into the Commitment Letters is reasonable and justifiable, particularly in light of the benefits that will accrue to the Debtors, their estates, and their creditors. Accordingly, the Debtors respectfully request that the Court grant this motion in all respects and authorize entry into the Commitment Letters.

## **II. Waiver of Stay Period Under Bankruptcy Rule 6004(h) Is Appropriate.**

17. Bankruptcy Rule 6004(h) provides that an "order authorizing the use, sale, or lease of property . . . is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise." The Debtors submit that there is no reason to delay the effectiveness of the Order. The Commitment Letters are immediately necessary to provide the Debtors access to much-needed funds under their DIP Term Loan Facility to pursue a comprehensive restructuring and successful emergence. Moreover, the Debtors are required to make certain payments on the first business day after this motion is approved. Accordingly, waiver of the 14-day stay period under Bankruptcy Rule 6004(h) is appropriate.

### **Notice**

18. The Debtors will provide notice of this motion to: (a) the Office of the United States Trustee for the Southern District of New York; (b) the holders of the 50 largest unsecured

claims against the Debtors (on a consolidated basis); (c) the administrative agent for the Debtors' term loan facility and counsel thereto; (d) the administrative agent for the Debtors' asset-based loan credit facility and counsel thereto; (e) the administrative agent for the Debtors' proposed debtor in possession term loan financing facility and counsel thereto; (f) the administrative agent for the Debtors' proposed debtor in possession asset-based loan credit facility and counsel thereto; (g) the United States Attorney's Office for the Southern District of New York; (h) the Internal Revenue Service; (i) the attorneys general for the states in which the Debtors operate; (j) the Cash Management Banks; and (k) any party that has requested notice 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**

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

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WHEREFORE, the Debtors respectfully request entry of an order, substantially in the form attached hereto as **Exhibit A**, granting the relief requested herein and granting such other relief as is just and proper.

New York, New York  
Dated: May 19, 2019

/s/ Joshua A. Sussberg  
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*Proposed Counsel to the Debtors and Debtors in Possession*

**Exhibit A**

**Proposed Order**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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In re:	)	
	)	Chapter 11
HOLLANDER SLEEP PRODUCTS, LLC., <i>et al.</i> , <sup>1</sup>	)	Case No. 19-11608 (___)
	)	
Debtors.	)	(Joint Administration Requested)
	)	
	)	<b>Re: Docket No.</b> ___

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**ORDER (A) AUTHORIZING THE DEBTORS TO ENTER INTO EXIT BACKSTOP  
COMMITMENT LETTER AND FEE LETTER AND (B) GRANTING RELATED  
RELIEF**

Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors-in-possession (collectively, the “Debtors”) seeking entry of an order (this “Order”) (a) authorizing the Debtors to enter into (i) the Exit Backstop Commitment Letter for the New Money Exit Term Loan and the Fee Letter, each with the Exit Financing Lenders and (b) granting related relief, all as more fully set forth in the Motion; and upon the Burian Declaration; and this Court having 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 Southern District of New York*, dated January 31, 2012; and this Court having the power to enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the Debtors’ notice of the Motion and opportunity for a hearing on the Motion were appropriate

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Dream II Holdings, LLC (7915); Hollander Home Fashions Holdings, LLC (2063); Hollander Sleep Products, LLC (2143); Pacific Coast Feather, LLC (1445); Hollander Sleep Products Kentucky, LLC (4119); Pacific Coast Feather Cushion, LLC (3119); and Hollander Sleep Products Canada Limited (3477). The location of the Debtors’ service address is: 901 Yamato Road, Suite 250, Boca Raton, Florida 33431.

<sup>2</sup> Capitalized terms used and not otherwise defined herein have the meanings given to them in the Motion.

under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; 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 to enter into each of the Commitment Letters and perform all obligations thereunder on the terms and conditions set forth therein, without notice, hearing, or further order of this Court when and to the extent they become due under the Commitment Letters. Each of the Commitment Letters is valid, binding, and enforceable against the Debtors, their estates, and the Exit Financing Lenders.
3. The Debtors are authorized to pay the fees and expenses associated with the Exit Term Loan Facility in accordance with the Fee Letter.
4. The Debtors are authorized to indemnify and hold harmless each of the indemnified parties (as such term is defined in the applicable Exit Backstop Commitment Letter) on the terms and conditions set forth in the Exit Backstop Commitment Letter, without notice, hearing, or further order of this Court as, when, and to the extent such obligation becomes due and payable under the terms of the Exit Backstop Commitment Letter.
5. The fees, expenses, and indemnities associated with the Commitment Letters, to the extent payable under the Commitment Letters and this Order, are actual, necessary costs and expenses of preserving the Debtors' estates and shall be treated as allowed administrative priority claims against the Debtors under sections 503(b)(1) and 507(a)(2) of the Bankruptcy Code, subject

in all terms in a final order that the Court enters approving the DIP Term Loan Facility. Such fees, expenses, and indemnities shall not be discharged, modified, or otherwise affected under any chapter 11 plan of the Debtors or related confirmation order, dismissal of these chapter 11 cases, or conversion of these chapter 11 cases to chapter 7 cases; nor shall any of such amounts be required to be disgorged or refunded except in accordance with the terms of the Commitment Letters.

6. The terms and provisions of this Order shall be binding in all respects upon all parties in these chapter 11 cases, the Debtors, their estates, and all successors and assigns thereof, including any chapter 7 trustee or chapter 11 trustee appointed in any of these cases or after conversion of any of these cases to cases under chapter 7 of the Bankruptcy Code.

7. Notwithstanding the possible applicability of Bankruptcy Rules 6004(a), 6004(h), or otherwise, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

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

9. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

New York, New York  
Dated: \_\_\_\_\_, 2019

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UNITED STATES BANKRUPTCY JUDGE

**Exhibit B**

**Exit Backstop Commitment Letter**

**(filed under seal)**

**Exhibit C**

**Fee Letter**

**(filed under seal)**