

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
www.flsb.uscourts.gov

In re:

CINEMEX USA REAL ESTATE
HOLDINGS, INC., CINEMEX
HOLDINGS USA, INC., and CB
THEATER EXPERIENCE LLC,¹

Chapter 11

Case No. 20-14695-LMI

Debtors.

(Jointly Administered)

**DEBTORS' EMERGENCY MOTION (I) FOR AUTHORIZATION
TO OBTAIN POST-PETITION UNSECURED FINANCING PURSUANT
TO 11 U.S.C. §§ 105, 361, 362 AND 364; AND (II) SCHEDULING
A FINAL HEARING UNDER BANKRUPTCY RULE 4001**

(Emergency Hearing Requested for May 12, 2020)

The Debtors seek to continue to operate their business in the ordinary course, to preserve the value of the estates, to preserve jobs and to maintain their operations. Without the immediate authorization to obtain financing, the Debtors will not be able to meet tax, insurance utilities and other obligations necessary for their day-to-day operations.

The Debtors respectfully request that the Court conduct an interim hearing on this Motion on May 12, 2020, as the Debtors believe that a hearing on this Motion is needed no later than such date in order for the Debtors to meet their ongoing operations and remain a going concern. The Debtors respectfully request that the Court waive the provisions of Local Rule 9075-1(B), which requires an affirmative statement that a bona fide effort was made in order to resolve the issues raised in the Motion, as the relief requested herein is urgent in nature and does not lend itself to advance resolution.

¹ The Debtors in these cases and the last four digits of each Debtor's federal tax identification number are as follows: (i) Cinemex USA Real Estate Holdings, Inc. (2194); (ii) Cinemex Holdings USA, Inc. (5502); and (iii) CB Theater Experience LLC (0563). The address for the Debtors is 175 South West 7th Street, Suite 1108, Miami, Florida 33130.

Cinemex USA Real Estate Holdings, Inc. (“Cinemex Real Estate”), Cinemex Holdings USA, Inc. (“Cinemex Holdings”), and CB Theater Experience LLC (“CB Theater” and, with Cinemex Real Estate and Cinemex Holdings, the “Debtors”) by and through their proposed undersigned counsel, file *Debtors’ Emergency Motion (I) for Authorization to Obtain Post-Petition Unsecured Financing Pursuant to 11 U.S.C. §§ 105, 361, 362 and 364; and (II) Scheduling a Final Hearing Under Bankruptcy Rule 4001* (“Motion”).

In support of this Motion, the Debtors rely upon the *Declaration of Jose Leonardo Marti in Support of Chapter 11 Petition and First Day Motions* (“Declaration”) [ECF No. 47] and the *Declaration of Jose Leonardo Marti in Support of the Motion for Post-Petition Financing* (“Supplemental Declaration” and, together with the Declaration, the “Marti Declarations”), which is filed concurrently herewith, and respectfully represent as follows:

I. JURISDICTION

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief sought herein are sections 105(a), 361, 362, 364, 507(a)(8), 541, 1107(a) and 1108 of the Bankruptcy Code, Rules 2002, 2014(a), 4001(c), 2016, 6003, 6004 and 9014 of the Bankruptcy Rules, and Local Rules 9014-1(F) and (H).

II. BACKGROUND

3. On April 25, 2020 and April 26, 2020 (“Petition Date[s]”), the Debtors filed Voluntary Chapter 11 Petitions in the United States Bankruptcy Court for the Southern District of Florida.²

² Cinemex Real Estate and Cinemex Holdings filed on April 25, 2020 and CB Theater filed on April 26, 2020.

4. The Debtors are operating their business and managing their affairs as debtors-in-possession. 11 U.S.C. §§ 1107(a) and 1108.

5. Cinemex Holdings, which was incorporated in Delaware in February 2014, is the holding company for a total of five U.S. entities: (i) Cinemex Real Estate; (ii) CB Theater; (iii) Cinemex USA Enterprises, LLC (“Cinemex Enterprises”); (iv) Cinemex MD, LLC (“Cinemex MD”); and (v) Cinemex AD, LLC (“Cinemex AD”). Cinemex Enterprises, Cinemex MD and Cinemex AD have not yet filed Chapter 11 petitions (together, “Non-Debtors” and, together with the Debtors, “Cinemex USA”). Cinemex USA is based in Miami.

6. Cinemex Holdings is jointly owned by Grupo Cinemex, S.A. de C.V. (“Grupo Cinemex”) and Operadora de Cinemas, S.A. de C.V. (“Operadora de Cinemas”), both Mexican corporations. Grupo Cinemex has a 66% ownership stake in Cinemex Holdings while Operadora de Cinemas has a 33% ownership stake. Grupo Cinemex owns 99.99% of Operadora de Cinemas.

7. Cinemex USA is in the movie theater business. It operates 41 movie theaters in 12 states, including Florida (with multiple theaters in and around Miami and Tampa), Alabama, Colorado, Georgia, Illinois, Maryland, Minnesota, New Jersey, New York, North Carolina, Ohio and Virginia. The theaters operate under the brand name “CMX Cinemas.”

III. POST-PETITION FINANCING

8. As set forth above, Grupo Cinemex, the debtor-in-possession lender (“DIP Lender”), is the parent company of Debtor Cinemex Holdings.

9. Given the impact of the COVID-19 pandemic on the global economy, and on the cinema industry in particular, the Debtors do not presently have the liquidity needed to sustain their business and the costs of a bankruptcy proceeding. The DIP Lender is willing to provide emergency and immediate post-petition financing to the Debtors for a one-month period upon the

terms and conditions contained in the interim order (“Interim Order”), substantially in the form attached hereto as **Exhibit A**. Absent the proposed financing to cover immediate needs (including to cover insurance premiums for general liability insurance and pay utilities), the Debtors cannot sustain their operations. The prolonged cessation in the operations of the Debtors would impair the Debtors’ going concern value to the detriment of all stakeholders.

10. For the reasons described hereafter, the proposed financing is necessary to promote an effective reorganization of the Debtors. The terms of the proposed financing are in the best interest of the Debtors’ estates and their creditors.

11. Through this Motion, the Debtors seek to obtain post-petition financing from the DIP Lender pursuant to (i) the terms and conditions as set forth in the proposed Interim Order; and (ii) any promissory note and loan documents to be executed by the Debtors (collectively, the “DIP Loan Documents”) on the following terms:

- (i) An initial borrowing (or one or more interim initial advances) in an amount not to exceed \$1,920,000 pursuant to the Budget attached hereto as **Exhibit B** and at an annual interest rate of 5% with no commitment fee, exit fee, unused line fee or similar fee to the DIP Lender (“DIP Loan”);
- (ii) The incurrence of all of the obligations, liabilities and indebtedness under and in connection with the DIP Loan, including principal, interest, attorneys’ fees and expenses, financial advisory fees and expenses, and other charges of the DIP Lender (collectively, the “DIP Obligations”) and the payment of all amounts contemplated to be paid thereunder;
- (iii) The granting to the DIP Lender, pursuant to section 364(c)(1) of the Bankruptcy Code and the terms of the DIP Loan Documents, but subject in all events to only the Carve Out (defined below), of a superpriority administrative expense claim for all DIP Obligations (“Superpriority Claim”), with priority over any or all administrative expenses of the kind specified in section 503(b) and section 507(b) of the Bankruptcy Code;

- (iv) The Debtors' use of the proceeds of the DIP Loan, limited to a manner consistent with the terms and conditions of the Interim Order, the DIP Loan Documents and in accordance with the Budget, solely for the purposes set forth in the Budget, including for (a) payment of insurance, utilities and taxes to local and state taxing authorities that accrued prior to the Petition Dates but not yet paid (in particular, trust taxes); (b) payment for post-petition corporate payroll and expenses; (c) expenses related to rejection of leases; and (d) payment of certain of the costs of administration of the Debtors' chapter 11 cases ("Chapter 11 Cases");
- (v) The modification of 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 Interim Order; and
- (vi) The scheduling of a final hearing ("Final Hearing") to consider entry of the Final Order granting the relief requested in the Motion on a final basis and approve the form of notice with respect to the Final Hearing.

IV. DISCLOSURES UNDER BANKRUPTCY RULES, LOCAL RULES AND GUIDELINES

12. Pursuant to Local Rules 9013-1(F) and (H) and the Guidelines, the Debtors submit the following summary of the material terms of the proposed unsecured post-petition financing pursuant to the proposed Interim Order attached hereto (**Exhibit A**) and setting forth the location of such material terms in the Interim Order.

Material Provision	Location in Interim Order	Summary Description
DIP Lender	Preamble	Grupo Cinemex
Loan Amount	Preamble	Up to \$1,920,000
Interest Rate	Preamble	5% per annum
DIP Lender's Superpriority Claim	Preamble	Section 364(c) post-petition lender protections shall include a superpriority administrative expense claim with priority over any and all administrative expenses of the kind specified in section 503(b) or section 507(b) of this title, subject only to the Carve Out (the Superpriority Claim).

Material Provision	Location in Interim Order	Summary Description
Proposed Use of DIP Loan Proceeds	Preamble	<p>Working capital and general corporate purposes, including (a) payment of insurance, utilities and taxes to local and state taxing authorities that accrued prior to the Petition Dates but not yet paid (in particular, trust taxes); (b) payment for post-petition corporate payroll and expenses; (c) expenses related to rejection of leases; and (d) payment of certain of the costs of administration of the Debtors' Chapter 11 Cases.</p> <p>Disbursements are not to exceed the sum of (i) 120% of the disbursements projected per week in the Budget; plus (ii) except for the first week, any unused portion of the disbursements projected for any prior week in the Budget (but excluding, for avoidance of doubt, any amounts in excess of 100% of the projected disbursements for any week).</p> <p>For the Period from the Petition Dates through the anticipated Final Hearing June 1, 2020, the Debtors seek to use up to \$1,920,000 million in proceeds of the DIP Loan.</p> <p>Luis Castelazo, the Chief Financial Officer, prepared the Budget.</p>
Termination Declaration Date	¶ 14	The Interim Period shall be through June 1, 2020, and subject to termination provisions in paragraph 14 of the Interim Order.
Termination Provisions	¶ 13	<p>Debtors' ability to borrow funds shall terminate upon an event of default ("<u>Event of Default</u>"), including:</p> <ul style="list-style-type: none"> (i) Failure to comply with the terms of the Interim Order (including the Budget); (ii) The obtaining of credit or the incurrence of indebtedness that is equal to or senior to the claims of the DIP Lender, or entitled to priority administrative status which is equal or senior to that granted to the DIP Lender herein; (iii) The reversal, vacatur, or modification (without the express prior written consent of the DIP Lender, in its sole discretion) of the Interim Order; (iv) Dismissal or conversion of the Chapter 11 Cases, or appointment of a chapter 11 trustee or examiner; (v) The sale of any portion of the Debtors' assets outside the ordinary course of business without the prior written consent of the DIP Lender, in its sole discretion;

Material Provision	Location in Interim Order	Summary Description
		<p>(vi) The Debtors' failure to obtain entry of a Final Order by June 1, 2020;</p> <p>(vii) The granting of any motion providing for reconsideration, stay or vacatur of the Interim Order; or</p> <p>(viii) The Debtors' assertion in any pleading filed in any court that (a) any material provision of the Interim Order is not valid and binding for any reason; (b) any material provision of the Interim Order shall, for any reason, cease to be valid and binding without the prior written consent of the DIP Lender.</p>
Remedies Notice Period	¶ 15	Within seven (7) business days after a Termination Declaration Date (defined in the Interim Order), the Debtors and/or the official committee of unsecured creditors, if one is appointed (" <u>Committee</u> ") may seek an emergency hearing to determine whether an Event of Default (defined below and in the Interim Order) has occurred.
Waiver / Modification of Stay	N/A	None
Limitation on Use of Proceeds	¶ 18	<p>Neither proceeds from the DIP Loan nor Carve Out funds may be used to:</p> <p>(i) Pursue (a) any action adverse to interests of the DIP Lender; (b) any action for monetary, injunctive, or other affirmative relief against the DIP Lender; (c) preventing, hindering, delaying the DIP Lender's exercise of any right or remedy;</p> <p>(ii) Object to or challenge the interests held by the DIP Lender; or</p> <p>(iii) Assert, commence or prosecute any claim or cause of action, including chapter 5 claims against the DIP Lender.</p>
Waiver of Right to File a Plan	N/A	None
Deadlines for Filing a Plan	N/A	None

Material Provision	Location in Interim Order	Summary Description
Waiver or Modification of Non-Bankruptcy Law Regarding Perfection	N/A	Not Applicable
Indemnification	N/A	None
Limitation of Rights of Parties under section 506(c)	N/A	Not Applicable
Granting of Lien on Causes of Action	N/A	None
Carve Out	¶ 12	<p>DIP Lender’s Superpriority Claim shall be subordinate to the following (“Carve Out”):</p> <ul style="list-style-type: none"> (i) The claims of retained professionals of the Debtors in these bankruptcy proceedings (“<u>Retained Professionals</u>”) up to the amounts set forth in the Budget through the date of a Carve Out Trigger Notice (defined in the Interim Order) (from and after receipt of a Carve Out Trigger Notice, the Carve-Out shall be capped at \$100,000 in the aggregate for all Retained Professionals plus up to \$20,000 for any subsequently appointed trustee and any professionals engaged by any successor to the Debtors, including a trustee or an examiner with expanded powers); and (ii) Unpaid fees and expenses of the United States Trustee and the Clerk of the Court.
Binding Effect	¶ 24	The Interim Order and Final Order will bind all successors to the Debtors, including any trustee appointed to administer the assets of the Debtors’ estates.
Interim Order	N/A	The Debtors request the entry of the Interim Order substantially in the form attached as Exhibit A .

V. REQUEST FOR PRELIMINARY HEARING TO CONSIDER GRANTING INTERIM ORDER AUTHORIZING THE DEBTORS TO OBTAIN POST-PETITION FINANCING

13. Pursuant to Bankruptcy Rule 4001(c)(2), a final hearing on a motion to obtain post-petition financing may not be commenced earlier than 14 days after service of such motion. Upon request, however, the Court is empowered to conduct a preliminary expedited hearing on the motion and authorize post-petition financing to the extent “necessary to avoid immediate and irreparable harm to the estate pending a final hearing.” Bankruptcy Rule 4001(c)(2).

14. It is essential that the Debtors be authorized by this Court to obtain post-petition financing as set forth in the Interim Order pending the final hearing on the Motion. Unless this Motion is approved on an interim basis, the Debtors will be unable to pay their immediate obligations as set forth in the Budget (such as invoices for utilities and insurance premium payments as well as costs relating to the Chapter 11 Cases), which continue to come due despite that the Debtors’ business (showing movies in 41 theaters across the country) is not currently operational. Funds are urgently needed to meet the Debtors’ immediate working capital and other liquidity needs.

15. The Debtors have been informed that the DIP Lender is willing to provide the DIP Loan, subject to the conditions set forth in the Interim Order, including, without limitation, the provisions of the Interim Order assuring that (i) the DIP Lender receives a superpriority administrative expense claim pursuant to section 364(c)(1) of the Bankruptcy Code (the Superpriority Claim); and (ii) the Superpriority Claim will not be affected by any subsequent reversal or modification of the Interim Order, or by any other order that is applicable to the DIP Loan, as provided in section 364(e) of the Bankruptcy Code.

16. The Debtors submit that the DIP Lender has acted in good faith in consenting to and in agreeing to provide the financing, and the reliance of the DIP Lender on the assurances referred to above is in good faith. The DIP Lender and the Debtors have negotiated at arms' length and in good faith regarding the DIP Financing to fund the continued operations of the Debtor. The DIP Lender will not agree to provide the DIP Loan, absent the approval of the terms and conditions set forth in the Interim Order.³

17. Given the impact that the COVID-19 pandemic and the restrictions imposed by federal, state and local governments on social gatherings have had on the Debtors' business operations, as well as the uncertainty of the Debtors' future resulting therefrom and the extreme time constraints facing the Debtors, the Debtors' range of realistic financing alternatives is extremely limited. The Debtors submit that the terms and conditions of the DIP Loan, taken as a whole, (i) are fair and reasonable under the circumstances; (ii) reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duty; and (iii) are supported by reasonably equivalent value and fair consideration.

18. In view of the foregoing, the Debtors respectfully request entry of an Interim Order in substantially the form attached hereto as **Exhibit A**, together with such amendments and modifications as may be made by the Debtors and DIP Lender prior to, at, or as a result of the interim hearing.

19. Such interim relief is essential to enable the Debtors to fulfill their existing obligations, as specifically detailed in the Budget (including to pay for utilities, insurance

³ The Interim Order is without prejudice to the rights of the DIP Lender to seek a modification of the Interim Order, including a request for adequate protection or the termination of the DIP Loan, after notice and hearing, including a hearing noticed on an emergency basis. The DIP Lender has expressly reserved, and the Interim Order is without prejudice to, any and all rights and remedies of the DIP Lender, including the appropriateness of any adequate protection that may be proposed in connection with the DIP Loan after the Interim Period.

premiums as well as state and local trust tax obligations). These sums will be required to pay immediate obligations that are the bare minimum necessary for the Debtors to continue as a going concern for the benefit of all of their creditors, employees, and stakeholders. Accordingly, the Debtors respectfully request approval of the Motion, pending a final hearing on the Motion, on an emergency interim basis, on the terms and subject to the conditions set forth in the Interim Order and Budget, or on such other terms that the Court may deem appropriate.

VI. BASIS FOR THE RELIEF REQUESTED

20. Section 364(c) of the Bankruptcy Code provides as follows:

(c) If the trustee [or debtor in possession] is unable to obtain unsecured credit allowable under § 503(b)(1) of this title as an administrative expense, the court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt –

- (1) with priority over any and all administrative expenses of the kind specified in § 503(b) or 507(b) of this title;
- (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.

11 U.S.C. § 364(c).

21. To satisfy the standards of section 364 of the Bankruptcy Code, a debtor is not required to seek credit from every possible source: “the statute imposes no duty to seek credit from every possible lender before concluding that such credit is unavailable.” *Bray v. Shenandoah Fed. Sav. & Loan Ass’n (In re Snowshoe Co.)*, 789 F.2d 1085, 1088 (4th Cir. 1986). Rather, a debtor need only demonstrate “by a good faith effort that credit was not available without” the protections of section 364(c). *Id.*; see also *In re Ames*, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990). Where there are few lenders likely to be able and willing to extend the necessary credit to the

debtor, “it would be unrealistic and unnecessary to require [the debtor] to conduct an exhaustive search for financing.” *In re Sky Valley, Inc.*, 100 B.R. 107, 113 (Bankr. N.D. Ga. 1988). In general, a bankruptcy court should defer to a debtor’s business judgment regarding the need for and proposed use of funds unless such judgment is arbitrary and capricious. *See e.g., In re Curlew Valley Associates*, 14 B.R. 507, 511-14 (Bankr. D. Utah 1981) (discussing deference generally to the trustee of an estate).

22. There are no prohibitions in the Bankruptcy Code for an insider or an affiliate of an insider to make a debtor-in-possession loan. *See In re 495 Central Park Avenue Corp.*, 136 B.R. 626 (Bankr. S.D.N.Y. 1992) (presiding court allowed priming debtor-in-possession loan from shareholders of the debtor); *Bland v. Farmworker Creditors (In re Bland)*, 308 B.R. 109 (S.D. Ga. 2003) (recognizing that courts can approve post-petition loans from insiders).

23. The Debtors have satisfied the requirements of sections 364(c) because, under current circumstances, the Debtors are unable to obtain credit other than as provided in this Motion. Specifically, the Debtors are unable to obtain unsecured credit allowable under section 503(b)(1) of this title as an administrative claim, and the DIP Lender is unwilling to provide financing without the protection of a superpriority claim. Given the current state of the global economy – bearing the hallmarks of a recession that is unprecedented in modern history – the Debtors firmly believe that the financing to be provided as contemplated by the Interim Order represents the best financing available to the Debtors for their immediate needs at this time. Approval of the proposed Interim Order on an emergency basis is thus warranted, pending the Final Hearing.

24. In the exercise of their business judgment, the Debtors have concluded that the DIP Lender is the only lender willing and able to offer a post-petition credit facility that meets the Debtors’ working-capital needs on the terms, and within the timeframe, required by the Debtor.

Courts routinely defer to the business judgment of the debtor on most business decisions, including borrowing decisions. *See, e.g., In re Weaver Oil Co., Inc.*, 2008 WL 8202063, at *2 (Bankr. N.D. Fla. 2008) (“Under the ‘business judgment rule’, the Bankruptcy Court recognizes that it is ‘no more equipped to make subjective business decisions for insolvent businesses than [the Court is] for solvent businesses,’ and the formulation of the business judgment rule in corporate litigation is also the appropriate formulation of the business judgment rule in the Bankruptcy Court”); *In re Simasko Prod. Co.*, 47 B.R. 444, 449 (Bankr. D. Colo. 1985) (“business judgments should be left to the board room and not to this Court”); *In re Lifeguard Indus., Inc.*, 37 B.R. 3, 17 (Bankr. S.D. Ohio 1983) (same); *In re Curlew Valley Assocs.*, 14 B.R. at 511-13 (Bankr. D. Utah 1981) (courts generally will not second-guess a trustee’s business decisions where those decisions constitute “a business judgment made in good faith, upon a reasonable basis, and within the scope of its authority under the Code”). “More exacting scrutiny would slow the administration of the debtor’s estate and increase its costs, interfere with the Bankruptcy Code’s provision for private control of administration of the estate, and threaten the court’s ability to control a case impartially.” *Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303, 1311 (5th Cir. 1985).

25. Unless the Debtors have access to the DIP Loan to cover immediate obligations, they will not have sufficient funds to continue to preserve the business’s assets. The use of funds provided by the DIP Loan to preserve the value of the Debtors’ assets is clearly in the best interests of the Debtors’ estates.

26. Based on the circumstances present here and the grounds and authorities set forth above, the Debtors firmly believe that the financing sought is the best financing available, and that it is in the best interests of their estates and creditors to enter into the DIP Loan.

WHEREFORE, the Debtors respectfully request that the Court enter the Interim Order substantially in the form attached hereto as **Exhibit A** (i) authorizing the Debtors on an interim basis as set forth herein to obtain secured post-petition financing and grant superpriority administrative expense claims; (ii) setting an emergency interim hearing and thereafter a final hearing; and (iii) granting such other relief as is just and proper.

Dated: May 5, 2020

Respectfully Submitted,

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THEATER EXPERIENCE LLC

EXHIBIT A

(Proposed Order)

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
www.flsb.uscourts.gov

In re:

CINEMEX USA REAL ESTATE
HOLDINGS, INC., CINEMEX
HOLDINGS USA, INC., and CB
THEATER EXPERIENCE LLC,¹

Chapter 11

Case No. 20-14695-LMI

Debtors.

(Jointly Administered)

**INTERIM ORDER GRANTING DEBTORS' EMERGENCY MOTION
(I) FOR AUTHORIZATION TO OBTAIN POST-PETITION UNSECURED
FINANCING PURSUANT TO 11 U.S.C. §§ 105, 361, 362 AND 364; AND
(II) SCHEDULING A FINAL HEARING UNDER BANKRUPTCY RULE 4001**

THIS MATTER came for hearing on _____, 2020 at _____ a.m./p.m. ("Interim Hearing") upon the Emergency Motion of Cinemex USA Real Estate Holdings, Inc., Cinemex Holdings USA, Inc., and CB Theater Experience LLC (together, the "Debtors" or "Cinemex") in the above captioned chapter 11 cases ("Chapter 11 Cases") seeking entry of an interim order (this "Interim Order") and a Final Order (as defined below) authorizing, *inter alia*, the Debtors to:

¹ The Debtors in these cases and the last four digits of each Debtor's federal tax identification number are as follows: (i) Cinemex USA Real Estate Holdings, Inc. (2194); (ii) Cinemex Holdings USA, Inc. (5502); and (iii) CB Theater Experience LLC (0563). The address for the Debtors is 175 South West 7th Street, Suite 1108, Miami, Florida 33130.

- (i) Obtain unsecured post-petition financing from Grupo Cinemex S.A. de C.V. (“Grupo Cinemex”)² (in its capacity as the debtor-in-possession lender, the “DIP Lender”) pursuant to the terms and conditions of this Interim Order and any promissory note and loan to be executed by the Debtors in connection with and consistent with the terms and conditions of such financing (collectively, the “DIP Loan Documents”).
- (ii) Pursuant to this Interim Order and the DIP Loan Documents, borrow one or more interim initial advances in an amount not to exceed \$1,920,000 outstanding at any time during the Interim Period (as defined below), pursuant to the Budget attached as **Exhibit B** to the Motion (“DIP Loan”) and at an annual interest rate equal of 5%, with no commitment fee, exit fee, unused line fee or similar fee to the DIP Lender;
- (iii) Incur all of the obligations, liabilities and indebtedness under and in respect of the DIP Loan, including attorneys’ fees and expenses and financial advisory fees and expenses of the DIP Lender (collectively, the “DIP Obligations”) and pay all amounts contemplated to be paid thereunder;
- (iv) Grant to the DIP Lender, pursuant to section 364(c)(1) of the Bankruptcy Code, a superpriority administrative expense claim in respect of all DIP Obligations with priority over all administrative expenses, subject only to the Carve Out (as defined below) and the other terms and conditions contained herein (“Superpriority Claim”);
- (v) Use the proceeds of the DIP Loan in a manner consistent with the terms and conditions of this Interim Order, the DIP Loan Documents and in accordance with the Budget, solely for the purposes set forth in the Budget, including for (a) payment of insurance, utilities and taxes to local and state taxing authorities that accrued prior to the Petition Dates but not yet paid (in particular, trust taxes); (b) payment for post-petition corporate payroll and expenses; (c) expenses related to rejection of leases; and (d) payment of certain of the costs of administration of the Debtors’ Chapter 11 Cases, under this Interim Order.
- (vi) Vacate and modify the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of this Interim Order; and schedule a final hearing (“Final Hearing”) to consider entry of a final

² The Debtors have disclosed and the Court notes that the Debtors are wholly owned, indirect subsidiaries of the DIP Lender.

order (“Final Order”) granting the relief requested in the Motion on a final basis and approve the form of notice with respect to the Final Hearing.

The Court, having considered the Motion, the *Declaration of Jose Leonardo Marti in Support of Chapter 11 Petition and First Day Motions* (“Declaration”) and the *Declaration of Jose Leonardo Marti in Support of the Motion for Post-Petition Financing* filed contemporaneously with this Motion (“Supplemental Declaration,” together with the Declaration, “Marti Declarations”), that (i) it has jurisdiction over the matters raised in the motion pursuant to 28 U.S.C. §§ 157 and 1334(b); (ii) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); (iii) the relief requested in the Motion is in the best interest of the Debtors, their estates and their creditors; (iv) proper and adequate notice of the Motion and the hearing thereon has been given and no other or further notice is necessary; and (v) upon the record herein after due deliberation thereon, good and sufficient cause exists for the granting of the relief as set forth herein. Therefore,

IT IS HEREBY ORDERED THAT:

1. The Motion is **GRANTED** in accordance with and limited to the terms and conditions set forth in this Interim Order and the DIP Loan Documents.
2. All objections to the Motion as it relates to the interim relief sought therein and to the entry of this Interim Order have been resolved by the provisions hereof or are overruled.
3. Notwithstanding any provision of the Bankruptcy Code or the Bankruptcy Rules to the contrary, this Interim Order shall take effect immediately upon entry and shall remain in effect until 11:59 p.m. (Prevailing Eastern Time) on _____, 2020 at _____ a.m./p.m. (such period being referred to as the “Interim Period”), subject to being extended pursuant to the terms of a Final Order.
4. The Debtors, the DIP Lender and their respective advisors and employees have acted in good faith in negotiating, consenting and agreeing to the DIP Loan as contemplated and

provided by this Interim Order. The negotiation of the terms and provisions of this Interim Order has been conducted at arms' length, and such terms and provisions are fair and reasonable under the circumstances and reflect the Debtors' exercise of reasonable business judgment consistent with the Debtors' fiduciary duties.

5. Nothing in this Interim Order shall in any way be construed or interpreted to impose, or allow the imposition, upon the DIP Lender or its advisors or employees any liability for any claims arising from the pre-petition or post-petition activities of the Debtors in the operation of their business, or in connection with their restructuring efforts.

6. Based on the findings set forth in this Interim Order and the reliance of the DIP Lender in good faith on the terms thereof, if any of the provisions of this Interim Order are hereafter modified, vacated or stayed by an Order of this Court or another court, such stay, modification or vacation shall not affect the validity and enforceability of the DIP Lender's Superpriority Claim granted hereunder.

7. This Interim Order is without prejudice to the rights of the DIP Lender to seek a modification of this Interim Order, including a request for adequate protection or the termination of the DIP Loan, after notice and hearing, including a hearing noticed on an emergency basis. The DIP Lender has expressly reserved, and this Interim Order is without prejudice to, any and all rights and remedies of the DIP Lender, including the appropriateness of any adequate protection that may be proposed in connection with the DIP Loan after the Interim Period.

8. The DIP Lender shall receive such protections and be entitled to such rights as are set forth in this Interim Order. The Debtors and all other relevant parties are expressly and immediately authorized, empowered and directed to (i) execute and deliver to DIP Lender the DIP Loan Documents in a form consistent with the terms of this Interim Order; (ii) consummate the

transactions described herein and therein and incur and perform on an interim basis the DIP Obligations in accordance with, and subject to, the terms of this Interim Order and the DIP Loan Documents; and (iii) execute and deliver all instruments and documents which reasonably may be required or necessary for the performance by the Debtors under the DIP Loan. The Debtors are hereby authorized to perform all acts, and subject to the provisions of this Interim Order, pay the principal, interest, fees, expenses and other amounts described in this Interim Order and the DIP Loan Documents as such become due, including, without limitation, attorneys' fees and disbursements pursuant to the terms hereof.

9. In order to enable it to continue to operate their business during the Interim Period, subject to the terms and conditions of this Interim Order, the DIP Loan Documents and the Budget (which Budget may not be materially amended or modified during the Interim Period), the Debtors are hereby authorized under the DIP Loan to borrow up to the amounts set forth in the Budget during the Interim Period. Notwithstanding any provision of their certificate or articles of incorporation, bylaws, operating agreement, partnership agreement, membership agreement, certificate of formation, certificate of limited partnership, regulations, or comparable governing documents to the contrary, the Debtors are authorized to, and each officer, member, manager, partner, or other comparable authorized signatory of the Debtors are hereby authorized to execute and enter into any and all of the DIP Loan Documents and all other documents and transactions necessary to implement and effectuate the terms of the DIP Loan, this Interim Order and the DIP Loan Documents.

10. The proceeds of the DIP Loan (net of any amounts used to pay fees, costs and expenses under this Interim Order or the DIP Loan Documents) shall be used, in each case in a manner consistent with the terms and conditions of this Interim Order and the DIP Loan

Documents, and in accordance with the Budget limited pursuant to this Interim Order to the Interim Period.

11. Except with respect to the Carve Out during the Interim Period pending the entry of a Final Order, all DIP Obligations shall be an allowed super priority administrative expense claim (the Superpriority Claim, together with the all other rights granted hereunder to the DIP Lender, the “DIP Protections”) with priority in the Chapter 11 Cases under sections 364(c)(1), 503(b) and 507(b) of the Bankruptcy Code and otherwise over all administrative expense claims and unsecured claims against the Debtors and their estates, now existing or hereafter arising, of any kind or nature whatsoever including, without limitation, administrative expenses of the kinds specified in, arising, or ordered pursuant to sections 105, 326, 328, 330, 331, 503(a), 503(b), 506(c), 507(a), 507(b), 546(c), 546(d), 726(b), 1113 and 1114 of the Bankruptcy Code. Except in respect of the administrative expense claims provided for in the Carve Out (defined below), no costs or expenses of administration, including, without limitation, professional fees allowed and payable under sections 328, 330, and 331 of the Bankruptcy Code or otherwise, that have been or may be incurred in these proceedings, or in any successor case, and no priority claims are, or will be, senior to, prior to or *pari passu* with the DIP Protections or the DIP Obligations, or with any other claims of the DIP Lender arising hereunder.

12. The Superpriority Claim granted hereunder to and for the benefit of the DIP Lender shall be subject and subordinate only to the following expenses (collectively, the “Carve Out”):

- (i) The claims of the respective retained professionals of the Debtors in these Chapter 11 Cases, (collectively, the “Retained Professionals”) for fees and expenses incurred at any time on and after the Petition Date and prior to the delivery of a Carve Out Trigger Notice³ up to

³ As used herein, “Carve Out Trigger Notice” means, upon the occurrence of an Event of Default (defined below), a written notice delivered by the DIP Lender to counsel for the Debtors expressly stating that the Carve Out has been invoked and terminating the right of the Debtors to pay professional fees incurred after such date outside of the Carve Out.

the amount set forth for each professional in the Budget; provided that, in each case, such fees and expenses of the Retained Professionals are ultimately allowed, if and as applicable, on a final basis by this Court under sections 330 or 331 or allowed pursuant to the Court-approved terms applicable to the retention of the Debtors' Retained Professionals ("Pre-Termination Date Expenses" and the permitted amount thereof, the "Pre-Termination Date Amount");

- (ii) The claims of the Retained Professionals for fees and expenses which were incurred on and after the delivery of a Carve Out Trigger Notice; provided that, in each case, such fees and expenses of the Retained Professionals are ultimately allowed, if and as applicable, on a final basis by this Court under sections 330 or 331 of the Bankruptcy Code, and do not exceed \$100,000 in the aggregate for all of the Retained Professionals, plus the fees and expenses incurred by a trustee or any professionals engaged by any successor to the Debtors, including, without limitation, any trustee appointed under chapter 11 or 7 of the Bankruptcy Code or any examiner with expanded powers, in an aggregate amount not to exceed \$20,000 (such fees and expenses described in this clause, the "Post-Termination Date Expenses" and the permitted amount thereof, the "Post-Termination Amount" and, together with the Pre-Termination Date Amount, the "Professional Fees");
- (iii) The unpaid fees and expenses of the United States Trustee and the Clerk of the Court (or any agent thereof) pursuant to 28 U.S.C. § 1930(a)(6) or otherwise; and
- (iv) Unpaid operating expenses up to the amount set forth in the Budget for such expenses that were incurred prior to the delivery of a Carve Out Trigger Notice, solely to the extent that such claims would have been authorized to be paid by the Debtors prior to such date, pursuant to the Budget, if the Carve Out Trigger Notice had not been delivered.

13. The following events shall each constitute an event of default hereunder, (collectively, the "Event[s] of Default"):

Upon receipt of the Carve Out Trigger Notice, the Debtors shall provide immediate notice by electronic mail to the professionals retained in the Chapter 11 Cases informing them that a Carve Out Trigger Notice has been received and further advising them that the Debtors' ability to pay professional fees incurred subsequent to the date thereof is subject to the Carve Out.

- (i) The violation of or failure by the Debtors to perform, in any respect, any of the terms, provisions, conditions, covenants, or obligations under this Interim Order (including the Budget);
- (ii) The obtaining of credit or the incurring of indebtedness that is (a) secured by a security interest, mortgage or other lien on all or any portion of the property of the Debtors' estates; or (b) entitled to priority administrative status which is equal or senior to that granted to the DIP Lender herein;
- (iii) The reversal, vacatur or modification (without the express prior written consent of the DIP Lender, in its sole discretion) of this Interim Order;
- (iv) Dismissal of the Chapter 11 Cases, conversion of any of the Chapter 11 Cases to a chapter 7 case, or appointment of a chapter 11 trustee or examiner with expanded powers;
- (v) The sale of any portion of the Debtors' assets outside the ordinary course of business without the prior written consent of the DIP Lender, in its sole discretion;
- (vi) The Debtors' failure to obtain entry of a Final Order by June 1, 2020; or
- (vii) The Debtors asserting in any pleading filed in any court that (a) any material provision of this Interim Order is not valid and binding for any reason; or (b) any material provision of this Interim Order shall, for any reason, cease to be valid and binding without the prior written consent of the DIP Lender.

14. Immediately upon the occurrence and during the continuation of an Event of Default, the DIP Lender may declare a termination of the obligations to advance any additional amounts under the DIP Loan (any such declaration shall be referred to herein as a "Termination

Declaration”). The Termination Declaration shall be given by e-mail or facsimile (or other electronic means) contemporaneously to counsel to the Debtors, counsel to any official committee of unsecured creditors (if one has been appointed) (“Committee”) and the U.S. Trustee (the earliest date any such Termination Declaration is made shall be referred to herein as the “Termination Declaration Date”).

15. On the Termination Declaration Date, the DIP Lender shall not be obligated to advance any additional funds under the DIP Loan. Within seven (7) business days after the Termination Declaration Date (“Remedies Notice Period”), the Debtors and/or the Committee shall be entitled to seek an emergency hearing with the Court seeking an emergency determination of whether an Event of Default has occurred, with the rights and objections of all parties reserved with respect thereto. In addition, the DIP Lender shall have the right to file an emergency motion with the Court during the Remedies Notice Period seeking, among other things, relief from the automatic stay otherwise applicable to the DIP Lender so as to be able to exercise its rights and remedies at law or in equity to satisfy the DIP Obligations, the Superpriority Claim, and any other obligation under this Interim Order or the DIP Loan Documents.

16. Nothing herein shall be construed as consent to the allowance of, or obligate the DIP Lender to pay, any professional fees or expenses of the Debtors, the Committee or of any person or shall affect the right of the DIP Lender to object to the allowance and payment of such fees and expenses or to permit the Debtors to pay any such amounts not set forth in the Budget. The DIP Lender reserves the right to object to any request or application for the payment of professional fees that may be submitted or filed in the Case.

17. No costs or expenses of administration that have been or may be incurred in the Chapter 11 Cases at any time shall be charged against the DIP Lender.

18. Neither the proceeds from DIP Loan nor the Carve Out funds may be used in connection with or to finance, directly or indirectly, in any way any action, suit, arbitration, proceeding, application, motion or other litigation of any type (i) adverse to the interests of the DIP Lender; (ii) invalidating, setting aside, avoiding, re-characterizing or subordinating, in whole or in part, the obligations under the DIP Loan or this Interim Order; (iii) for monetary, injunctive or other affirmative relief against the DIP Lender; or (iv) preventing, hindering or otherwise delaying the exercise by the DIP Lender of any rights and/or remedies under this Interim Order, or applicable law for (a) objecting to or challenging in any way the claims or interests held by or on behalf of the DIP Lender; (b) asserting, commencing or prosecuting any claims or causes of action whatsoever; (c) for prosecuting an objection to, contesting in any manner, or raising any defenses to, the validity, extent, amount, perfection, priority, or enforceability of any other rights or interests of DIP Lender; or (d) for preventing, hindering or otherwise delaying the exercise by the DIP Lender of any rights and remedies granted under this Interim Order.

19. The DIP Lender has acted in good faith in connection with this Interim Order and its respective reliance on this Interim Order is in good faith. Based on the findings set forth in this Interim Order and in accordance with section 364(e) of the Bankruptcy Code, which is applicable to the DIP Loan contemplated by this Interim Order, in the event any or all of the provisions of this Interim Order are hereafter modified, stayed, amended or vacated by a subsequent order of this or any other Court, the DIP Lender is entitled to the protections provided in section 364(e) of the Bankruptcy Code and no such modification, stay, amendment or vacation shall affect the validity and enforceability of any advances made hereunder or the claims authorized or created hereby. Notwithstanding any such modification, amendment or vacatur, any claim granted to the DIP Lender hereunder arising prior to the effective date of such modification, amendment or

vacatur of any DIP Protections granted to the DIP Lender shall be governed in all respects by the original provisions of this Interim Order, and the DIP Lender shall be entitled to all of the rights, remedies, privileges and benefits, including the DIP Protections granted herein, with respect to any such claim. Since the loan made pursuant to the DIP Loan Documents is made in reliance on this Interim Order, the obligations owed to the DIP Lender prior to the effective date of any stay, modification or vacation of this Interim Order cannot, as a result of any subsequent order in the Chapter 11 Cases or in any successor case, be subordinated, lose its Super Priority Claim, or be deprived of the benefit of the status of the claims granted to the DIP Lender under this Interim Order and/or the DIP Loan Documents.

20. All costs and expenses of the DIP Lender in connection with the Chapter 11 Cases, including, without limitation, legal, accounting, financial advisory fees, will be paid by the Debtor. The DIP Lender shall provide to the U.S. Trustee, counsel to the Debtors and counsel to the Committee (together, "Fee Notice Parties"), on a monthly basis, the total amount of professional fees and expenses described in this subsection that are incurred per calendar month in the Chapter 11 Cases, upon request, along with summary invoices relating to such fees and expenses. Under no circumstances shall professionals for the DIP Lender be required to comply with the U.S. Trustee fee guidelines.

21. In the event any of the Fee Notice Parties object to such fees or expenses, or any portion thereof, such objecting Fee Notice Party shall send written notice of such objection to the DIP Lender within five (5) days of receipt of the invoice. Any unresolved objection shall be resolved by the Court after notice and hearing. Absent any objections, the Debtors shall pay such requested fees and expenses within five (5) days of receipt of the invoices.

22. The automatic stay imposed under section 362(a) of the Bankruptcy Code is hereby modified to the extent necessary to implement this Interim Order, including, without limitation, to authorize the DIP Lender to retain and apply payments hereunder in accordance with the provisions of this Interim Order.

23. The DIP Lender may, but is not required to file proofs of claim in the Chapter 11 Cases or any successor case. Any order entered by the Court in relation to the establishment of a bar date for any claim (including without limitation administrative claims) in the Chapter 11 Cases or any successor case shall not apply to the DIP Lender. Notwithstanding any order entered by the Court in relation to the establishment of a bar date in the Chapter 11 Cases or successor case to the contrary, the DIP Lender is hereby authorized and entitled, in its sole discretion, but not required, to file (and amend and/or supplement, as it sees fit) a proof of claim in the Chapter 11 Cases or any successor case.

24. The Interim Order will bind all successors to the Debtors, including any trustee appointed to administer the assets of the Debtors' estates.

25. The Final Hearing to consider entry of the Final Order and final approval of the DIP Loan, shall be held on __, 2020 at _____ a.m./p.m.

26. This Court has and will retain jurisdiction to enforce this Interim Order according to its terms.

Submitted by:

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PROPOSED COUNSEL FOR CINEMEX USA
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Copies to:

Attorney Jeffrey P. Bast, who shall electronically serve interested parties and file a certificate of service reflecting same.

EXHIBIT B

(Budget)

CMX Weekly Cash Flow Forecast - 5 Weeks (if theaters don't reopen until August 2020)

4-May-20



	1	2	3	4	5	TOTAL 5 WEEKS
	Apr 25 - May 1	May 2 - May 8	May 9 - May 15	May 16 - May 22	May 23 - May 29	
Total Net Revenues	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Film Rental	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
F&B COGS	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Theater Payroll	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Utilities	\$ -	\$ 12,500	\$ 12,500	\$ 12,500	\$ 12,500	\$ 50,000
Supplies & Services	\$ -	\$ 4,500	\$ -	\$ -	\$ -	\$ 4,500
Insurance	\$ -	\$ -	\$ 152,701	\$ -	\$ -	\$ 152,701
Real Estate Expenses	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Corporate Payroll (includes Burden like Taxes, Medicare, etc.)	\$ -	\$ 187,007	\$ -	\$ 140,627	\$ -	\$ 327,634
Corporate Expenses	\$ -	\$ 6,291	\$ 250	\$ 1,000	\$ 8,280	\$ 15,821
Taxes	\$ -	\$ 629,332	\$ -	\$ -	\$ -	\$ 629,332
Chapter 11 Expenses (Lawyers + Financial Advisors)	\$ -	\$ 680,000	\$ -	\$ -	\$ -	\$ 680,000
Rejection of Leases (eviction costs)	\$ -	\$ -	\$ 16,667	\$ 16,667	\$ 16,667	\$ 50,000
TOTAL CASH FLOW (excluding CAPEX)	\$ -	\$ (1,519,630)	\$ (182,118)	\$ (170,793)	\$ (37,446)	\$ (1,909,987)
ACCUMULATED CASH FLOW (excluding CAPEX)	\$ -	\$ (1,519,630)	\$ (1,701,748)	\$ (1,872,541)	\$ (1,909,987)	\$ (1,909,987)

Sales Tax considered in Week 2 are taxes owed from previous revenues (before filing). Sales Tax for future months will be zero (as long as there are no Revenues)

Other fees related to Chapter 11 are not considered in this Cash Flow (i.e. Creditors' Advisors, Court Fees, etc.)

Source: Finance Department