UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
COACH AM GROUP HOLDINGS CORP., *et al.*[1]	Case No. 12-_____(___)
Debtors.	(Joint Administration Requested)

MOTION OF THE DEBTORS FOR ENTRY OF INTERIM AND FINAL ORDERS (I) AUTHORIZING THE DEBTORS (A) TO OBTAIN POST-PETITION FINANCING PURSUANT TO 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) AND 364(e) AND (B) TO UTILIZE CASH COLLATERAL PURSUANT TO 11 U.S.C. §§ 361, 362, 363 AND 364; (II) GRANTING ADEQUATE PROTECTION TO THE PREPETITION SECURED PARTIES PURSUANT TO 11 U.S.C. §§ 361, 362, 363 AND 364; AND (III) SCHEDULING FINAL HEARING PURSUANT TO BANKRUPTCY RULE 4001(b) AND (c)

[1] Coach Am Group Holdings Corp. (4830); Coach Am Holdings Corp. (1816); Coach America Holdings, Inc. (2841); American Coach Lines, Inc. (2470); America Charters, Ltd. (8246); American Coach Lines of Atlanta, Inc. (4003); American Coach Lines of Jacksonville, Inc. (1360); American Coach Lines of Miami, Inc. (7867); American Coach Lines of Orlando, Inc. (0985); Coach America Group, Inc. (2816); B & A Charter Tours, Inc. (9392); Dillon's Bus Service, Inc. (5559); Florida Cruise Connection, Inc. (9409); Hopkins Airport Limousine Services, Inc. (1333); Lakefront Lines, Inc. (5309); The McMahon Transportation Company (0030); Midnight Sun Tours, Inc. (2791); Royal Tours of America, Inc. (2313); Southern Coach Company (6927); Tippet Travel, Inc. (8787); Trykap Airport Services, Inc. (0732); Trykap Transportation Management, Inc. (2727); KBUS Holdings, LLC (6419); ACL Leasing, LLC (2058); CAPD, LLC (4454); Coach America Transportation Solutions, LLC (6909); CUSA, LLC (3523); CUSA ASL, LLC (2030); CUSA AT, LLC (2071); CUSA AWC, LLC (2084); CUSA BCCAE, LLC (2017); CUSA BESS, LLC (3610); CUSA CC, LLC (1999); CUSA CSS, LLC (1244); CUSA EE, LLC (1982); CUSA ELKO, LLC (4648); CUSA ES, LLC (1941); CUSA FL, LLC (1920); CUSA GCBS, LLC (1891); CUSA GCT, LLC (1833); CUSA KBC, LLC (1808); CUSA K-TCS, LLC (1741); CUSA Leasing, LLC (1321); CUSA PCSTC, LLC (1701); CUSA PRTS, LLC (1591); CUSA RAZ, LLC (0640); CUSA Transit Services, LLC (8847); Get A Bus, LLC (1907); Coach BCCAE, L.P. (3488); Coach Leasing BCCAE, L.P. (6784). The Debtors' corporate offices are located at 8150 North Central Expressway, Suite M1000, Dallas, Texas 75206.

The above-captioned debtors[2] and debtors in possession (collectively, the "**Debtors**"), by and through their proposed undersigned counsel, hereby submit this motion (the "**Motion**") for the entry of an interim order (the "**Interim Order**"), substantially in the form attached hereto as **Exhibit A**, authorizing the Debtors to, among other things (i) to obtain post-petition financing (the "**Financing**") pursuant to sections 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) and 364(e)(1)of title 11 of the United States Code (the "**Bankruptcy Code**") up to the aggregate principal amount of $30,000,000 (up to $14,828,000 on an interim basis) to be provided by JPMorgan Chase Bank, N.A. ("**JPMCB**"), acting as Administrative Agent and Collateral Agent (in such capacities, the "**DIP Agent**"), for itself and a syndicate of financial institutions (together with JPMCB, the "**DIP Lenders**") to be arranged by J.P. Morgan Securities LLC (the "**Lead Arranger**") pursuant to that certain proposed Superpriority Debtor in Possession Credit Agreement (the "**DIP Credit Agreement**"), substantially in the form attached hereto as **Exhibit B** and the other DIP Documents; (ii) execute and enter into the DIP Documents and to perform such other and further acts as may be required in connection with the DIP Documents; (iii) use Cash Collateral and all other collateral in which the Prepetition Lenders (as defined below) have an interest pursuant to section 363 of the Bankruptcy Code; (iv) grant to the DIP Agent (on behalf of the DIP Lenders) first priority security interests in and liens upon, all of the DIP Collateral (as defined below) to secure all of the obligations owed under the DIP Documents (the "**DIP Obligations**"); (v) grant allowed superpriority administrative expense claims to the DIP Lenders; (vi) grant adequate protection to the Prepetition Secured Parties (as defined below); and (vii) schedule a hearing (the "**Final Hearing**"), pursuant to Rule 4001(c)(2) of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), to consider the Final Order. In support of this Motion the Debtors submit the *Declaration in Support of Chapter 11 Petitions and First Day*

[2] Debtor Coach AM Group Holdings Corp. is not a Borrower or Guarantor under the DIP Credit Agreement, the Prepetition First Lien Credit Agreement or the Prepetition Second Lien Credit Agreement (each as defined herein) and is not a movant seeking the relief requested herein. All references to the "Debtors" in this Motion refer to all the Debtors identified in footnote one hereof except Coach AM Group Holdings Corp.

Motions (the "**First Day Declaration**") filed contemporaneously herewith, and further respectfully represent as follows:

JURISDICTION

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

2. The statutory predicates for the relief requested herein are sections 105, 361, 362, 363 and 364 of the Bankruptcy Code, Bankruptcy Rules 4001, 6003 and 6004 and Rule 4001-2 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "**Local Rules**").

BACKGROUND

A. Introduction

3. On the date hereof (the "**Petition Date**"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code (collectively, the "**Chapter 11 Cases**").

4. The Debtors continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner or official committee of unsecured creditors has been appointed in the Chapter 11 Cases. Simultaneously herewith, the Debtors filed a motion seeking the joint administration of the Chapter 11 Cases.

5. Detailed information regarding the Debtors' business and the events leading to the Chapter 11 Cases is set forth in the First Day Declaration.

B. The Debtors' Prepetition Capital and Debt Structure

6. Debtor Coach Am Holdings Corp. is a privately held corporation organized under the law of the State of Delaware and is the direct or indirect parent of its Debtor-subsidiaries.

7. As discussed in the First Day Declaration, as of the Petition Date, the Debtors had outstanding secured debt obligations in the aggregate principal amount of approximately $388,752,806 including approximately $318,729,664 in first lien debt arising under the Prepetition First Lien Credit Agreement (as defined below), $30,500,000 in second lien debt arising under the Prepetition Second Lien Credit Agreement (as defined below) and approximately $39,523,141 owed to certain capital lessors who are secured by liens over certain of the Debtors' capital assets.

8. Prior to the Petition Date, the Borrower entered into that certain Amended and Restated First Lien Credit Agreement dated as of April 20, 2007 and amended and restated as of February 18, 2011 (as heretofore amended, supplemented or otherwise modified, the "**Prepetition First Lien Credit Agreement**") by and among Coach America Holdings, Inc., as Borrower, and the other Debtors as guarantors, the lenders from time to time a party thereto (the "**Prepetition First Lien Lenders**") and JPMorgan Chase Bank, N.A. in its capacity as administrative agent and collateral agent for the Prepetition First Lien Lenders (the "**Prepetition First Lien Agent**"). Pursuant to the Prepetition First Lien Credit Agreement, the Prepetition First Lien Lenders agreed to extend certain loans to and issue letters of credit for the account of the Borrower and Guarantors (as defined in the Prepetition First Lien Credit Agreement) including (a) a term loan in the aggregate principal amount of $245 million (b) a funded letter of credit commitment in the aggregate amount of $50 million and (c) a revolving credit facility in the aggregate principal amount of up to $30 million, which includes a $10,000,000 subfacility for revolving letters of credit.

9. As of the Petition Date, the Borrower was indebted and liable to the Prepetition First Lien Lenders, without defense, counterclaim or offset of any kind, in the

aggregate principal amount of approximately $238,346,317.36 in respect of term loans made, in the aggregate principal amount of approximately $24,383,347.39 in respect of revolving loans made, in the aggregate face amount of approximately $6,000,000.00 in respect of revolving letters of credit issued and outstanding and in the aggregate face amount of approximately $50,000,000.00 in respect of funded letters of credit issued and outstanding, plus, in each case, interest thereon and fees, expenses (including any attorneys', accountants', appraisers' and financial advisors' fees that are chargeable or reimbursable under the Existing First Lien Agreements), charges and other obligations incurred in connection therewith as provided in the Existing First Lien Agreements (as defined below) (collectively, the "**Prepetition First Lien Debt**"), in each case pursuant to, and in accordance with the terms of the Existing First Lien Agreements.

10. The First Lien Debt is secured by first priority liens on and continuing security interests in (the "**Prepetition First Priority Liens**") substantially all of the Debtors' assets (excluding real property) (collectively, the "**Prepetition Collateral**") pursuant to that certain Amended and Restated First Lien Guarantee and Collateral Agreement dated as of April 20, 2007 as amended and restated as of February 18, 2011 (collectively with the Pre-Petition First Lien Credit Agreement, and the mortgages and all other documentation executed in connection therewith (including, for the avoidance of doubt, any Specified Hedge Agreements (as defined in the Prepetition First Lien Credit Agreement), if any), the "**Existing First Lien Agreements**").

11. In addition, prior to the Petition Date, the Borrower entered into that certain Amended and Restated Second Lien Credit Agreement dated as of April 20, 2007 and amended and restated as of February 18, 2011 (as heretofore amended, supplemented or otherwise modified, the "**Prepetition Second Lien Credit Agreement**" and together with the Prepetition First Lien Credit Agreement, the "**Prepetition Credit Agreements**") by and among Coach America Holdings, Inc., the Borrower and the other Debtors as guarantors, the lenders from time to time a party thereto (the "**Prepetition Second Lien Lenders**") and The Bank of New York Mellon ("**BONY**") in its capacity as administrative agent and collateral agent (the "**Prepetition**

Second Lien Agent" and together with the Prepetition Second Lien Lenders, the Prepetition First Lien Agent and the Prepetition First Lien Lenders, the "**Prepetition Secured Parties**"). Pursuant to the Prepetition Second Lien Credit Agreement, the Prepetition Second Lien Lenders agreed to extend a term loan to the Borrower and Guarantors (as defined in the Prepetition Second Lien Credit Agreement) in the aggregate principal amount of $55 million. As of the Petition Date, the Debtors owe approximately $30,500,000 with respect to the term loan under the Prepetition Second Lien Credit Agreement plus accrued and unpaid interest thereon and all other liabilities and obligations arising out of or in connection with the Prepetition Second Lien Credit Agreement (collectively, the "**Prepetition Second Lien Debt**" and together with the Prepetition First Lien Debt, the "**Prepetition Debt**"). The Second Lien Debt is secured by second priority liens on and security interests in (the "**Prepetition Second Priority Liens**") the Prepetition Collateral pursuant to that certain Second Lien Guarantee and Collateral Agreement dated as of April 20, 2007 and amended and restated as of as of February 18, 2011 among Holdings, the Borrower, each subsidiary party thereto and BONY, as collateral agent (as heretofore amended, supplemented or otherwise modified and, collectively with the Prepetition Second Lien Credit Agreement, and the mortgages and all other documentation executed in connection therewith, the "**Existing Second Lien Agreements**" and, together with the Existing First Lien Agreements, the "**Existing Agreements**")

12. Pursuant to that certain Amended and Restated Intercreditor Agreement dated as of April 20, 20007 as amended and restated as of February 18, 2011 (the "**Intercreditor Agreement**"), among other things, the Second Priority Liens are subject and subordinate to the First Priority Liens on the terms set forth in the Intercreditor Agreement. Pursuant to section 6.1 of the Intercreditor Agreement, because the Prepetition First Lien Agent consents to the use of Cash Collateral during the pendency of the Chapter 11 Cases and the Financing, the Prepetition Second Lien Agent may not object to the use of Cash Collateral or the Financing. In addition, the Prepetition Second Lien Agent may not request any form of adequate protection other than the

Adequate Protection provided to the Second Lien Agent, on behalf of the Second Lien Lenders, as set forth in the Interim Order.

C. The Debtors' Need for Postpetition Financing

13. The Debtors generate cash from the use of the assets pledged in connection with the Prepetition Credit Agreements. The Debtors use Cash Collateral in the ordinary course of their business to finance their operations and fund working capital, capital expenditures and for other general corporate purposes. As of the Petition Date, the Debtors' books reflect a cash balance of approximately $5 million. It is imperative that the Debtors obtain authority to use Cash Collateral to meet their working capital needs. The inability to use these funds during these Chapter 11 Cases would cripple the Debtors' business operations. Indeed, the Debtors must use their cash to, among other things, continue to operate their business in an orderly manner, maintain business relationships with vendors, suppliers and customers, pay employees and satisfy other working capital and operational needs, all of which are necessary to preserve and maximize the Debtors' going concern value for the benefit of all stakeholders.

14. However, the Debtors do not have sufficient available sources of working capital, including Cash Collateral, to operate in the ordinary course of business. Accordingly, the Debtors, with the assistance of their advisors, explored debtor in possession financing opportunities. Based on such efforts the Debtors determined that certain of the Prepetition First Lien Lenders were willing to provide postpetition debtor in possession financing (and consent to the use of Cash Collateral) on more favorable terms that any other reasonably available alternative. Accordingly, the Debtors began negotiating with certain of the Prepetition First Lien Lenders regarding the terms of the Financing.

15. Given the Debtors' existing capital structure and financial condition, the Debtors were unable to obtain postpetition financing in the form of unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code, as an administrative expense under section

364(a) or (b) of the Bankruptcy Code, or in exchange for the grant of an administrative expense priority pursuant to section 364(c)(1) of the Bankruptcy Code, without the grant of liens on assets.

16. Accordingly, after good faith arm's-length negotiations with respect to the terms and conditions of the Financing, Debtor Coach America Holdings, Inc., on behalf of itself and its Debtor subsidiaries, entered into that certain Superpriority Debtor-in-Possession Revolving Credit Facility Commitment Letter (the "**DIP Commitment Letter**") dated as of December 30, 2011, which attached a term sheet (the "**DIP Term Sheet**") the terms of which are embodied in the DIP Credit Agreement. The material terms of the Financing are summarized below in accordance with the disclosure requirements of Bankruptcy Rule 4001 and Local Rule 4001-2.

BANKRUPTCY RULE 4001 CONCISE STATEMENT

17. Material provisions of the Financing are set forth in the following sections of the DIP Credit Agreement and/or the Interim Order:[3]

(a) ***Borrower:*** Coach America Holdings, Inc.

(b) ***Guarantors***: Coach Am Holdings Corp. and each direct and indirect Debtor- subsidiary of the Borrower (each, a "**Guarantor**" and together with the Borrower, the "**Loan Parties**").

(c) ***DIP Lenders*****:** JPMorgan Chase Bank, N.A., as DIP Agent, and the lenders from time to time a party thereto.

(d) ***Lead Arranger and Bookrunner:*** J.P. Morgan Securities LLC

(e) ***Structure and Amount of Financing:*** Subject to the terms and conditions of the DIP Credit Agreement, the DIP Lenders agree to make available, in an aggregate principal amount at any time outstanding up to but not exceeding $30 million on a revolving basis for the Debtors' use and upon the Debtors' request. DIP Credit Agreement § 3.1(a); Interim Order ¶5.a.

[3] The summaries and descriptions of the terms and conditions of the DIP Credit Agreement and the Interim Order set forth in this Motion are intended solely for informational purposed to provide the Court and the parties in interest with an overview of significant terms thereof and should only be relied upon as such. The summaries and descriptions are qualified in their entirety by the DIP Credit Agreement and the Interim Order. In the event that there is a conflict between this Motion and the DIP Credit Agreement or the Interim Order, the Interim Order shall control in all respects. Capitalized terms used in this summary but not defined herein shall have the meaning ascribed to such terms in the DIP Credit Agreement or the Interim Order, as applicable.

(f) ***Use of Proceeds:*** The proceeds of the DIP Loans shall be used in accordance with the DIP Credit Agreement and the Approved Budget (as defined in the DIP Credit Agreement) as approved by the Required Lenders (as defined in the DIP Credit Agreement) (with respect to the Initial Approved Budget (as defined in the DIP Credit Agreement)), the DIP Agent (with respect to all Approved Budgets submitted for approval after the Initial Approved Budget) or by order of this Court. DIP Credit Agreement §§ 3.9, 5.16; Interim Order ¶18.e.

(g) ***Interest Rate***: The Borrower may elect that the DIP Loans comprising each borrowing shall bear interest at a rate per annum equal to: (A) 5.00% plus the highest of (i) the rate of interest publicly announced by JPMorgan Chase Bank, N.A. as its prime rate in effect at its principal office in New York City, (ii) the federal funds effective rate then in effect plus 0.50% and (iii) the Adjusted LIBO Rate (as defined below) applicable for a one month interest period plus 1.00% *or* (B) 6.00% plus the greater of (i) 1.50% and (ii) the rate at which eurodollar deposits in the London interbank market for one month are quoted on the applicable Reuters screen, as adjusted for statutory reserve requirement for eurocurrency liabilities ((i) and (ii) collectively, the "**Adjusted LIBO Rate**"). While any Event of Default set forth in Section 9.1 of the DIP Credit Agreement has occurred and is continuing, the Borrower shall pay the applicable interest rate plus an additional 2.00% per annum on the principal amount of all of its outstanding Obligations (as defined in the DIP Credit Agreement). DIP Credit Agreement §§1.1, 3.1, 3.2, 4.3, 4.5.

(h) ***Revolving Termination Date***: The earliest to occur of (a) the nine-month anniversary of the Effective Date (b) the acceleration of the Revolving Loans and the termination of the Revolving Commitments pursuant to section 9.1 of the DIP Credit Agreement, (c) the day that is 30 days after the entry of the Interim Order if the Final Order has not been entered by the Bankruptcy Court prior to the expiration of such 30-day period and (d) the earlier to occur of (i) a sale of all or substantially all of the Borrower's assets or (ii) the substantial consummation (as defined in section 1101(2) of the Bankruptcy Code, which for purposes hereof shall be no later than the effective date thereof) of one or more Reorganization Plans pursuant to an order entered by the Bankruptcy Court. DIP Credit Agreement §1.1, 3.1.

(i) ***Events of Default***: Events of default under the Financing are identified in Section 9.1 of the DIP Credit Agreement.

(j) ***DIP Superpriority Administrative Expense Claims***: To secure the DIP Obligations, the DIP Agent and DIP Lenders shall be granted allowed superpriority administrative expenses claims (the "**DIP Superpriority Administrative Expense Claims**") pursuant to section 364(c)(1) of the Bankruptcy Code in each of the Debtors' Chapter 11 Cases, having priority over any and all other claims against the Debtors. Further, the DIP

Superpriority Administrative Expense Claims shall be subject and subordinate in priority of payment only to payment of the Carve-Out. DIP Credit Agreement §3.10; Interim Order ¶6.a.

(k) ***DIP Liens***: To secure the DIP Obligations, the Interim Order provides for the benefit of the DIP Agent and the DIP Lenders liens (the "**DIP Liens**") as follows:

- ***First Lien on Cash Balances and Unencumbered Property***. Pursuant to section 364(c)(2) of the Bankruptcy Code, valid, binding, continuing, enforceable and fully perfected first priority senior security interests in and liens upon all of the prepetition and postpetition property of the Debtors, whether consisting of real, personal, tangible or intangible property (including all of the outstanding shares of capital stock of subsidiaries), in each case that is not subject to valid, perfected and non-avoidable liens (collectively, the "**Unencumbered Property**"), excluding Avoidance Actions but, subject only to and effective upon entry of the Final Order, shall include any proceeds or property recovered, unencumbered or otherwise the subject of successful Avoidance Actions, whether by judgment, settlement or otherwise;

- ***Lien Priming Prepetition Lenders' Liens***. Pursuant to section 364(d)(1) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected first priority senior priming security interest in and lien upon all pre- and post-petition property of the Debtors that is subject to the existing liens presently securing the Prepetition Debt (the "**Primed Prepetition Liens**") which shall be primed by and made subject and subordinate to the perfected first priority senior liens to be granted to the DIP Agent, and which senior priming liens in favor of the DIP Agent shall also prime any liens granted after the commencement of the Chapter 11 Cases to provide adequate protection of the Primed Prepetition Liens but shall not prime liens, if any, to which the primed Prepetition First Priority Liens are subject at the time of the commencement of the Chapter 11 Cases or thereafter as may be permitted pursuant to section 546(c) of the Bankruptcy Code; and

- ***Lien Junior to Certain Other Liens***. Pursuant to section 364(c)(3) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected security interest in and lien upon all pre- and post-petition property of the Debtors (other than the property described above), that is subject to (x) valid, perfected and non-avoidable liens in existence at the time of the commencement of the Chapter 11 Cases or (y) valid and non-avoidable liens in existence at the time of such commencement that are perfected subsequent to such commencement as permitted by section 546(b) of the Bankruptcy Code, on a junior priority basis in each case excluding liens securing any outstanding debt under the Prepetition Credit Agreements

which excluded liens shall be primed as set forth above (together with the assets described in this clause (k), the "**DIP Collateral**").

- The Debtors highlight for the Court that the DIP Collateral excludes Avoidance Actions but, subject only to and effective upon entry of the Final Order, shall include any proceeds or property recovered, unencumbered or otherwise the subject of successful Avoidance Actions, whether by judgment, settlement or otherwise.

(l) As set forth in the Interim Order, the DIP Liens shall be subject in each case to the Carve Out. For purposes hereof, the Carve Out means: (x) all fees required to be paid to the Clerk of the Bankruptcy Court and to the Office of the United States Trustee under section 1930(a) of title 28 of the United States Code, (y) in the event of the occurrence and during the continuance of an Event of Default under the DIP Credit Agreement and after the first business day following delivery of notice (the "**Carve Out Notice**") thereof to the U.S. Trustee, the lead and local counsel for the Debtors and the lead counsel for the official committee of unsecured creditors (once appointed, the "**Creditors' Committee**"), to the extent allowed by the Court at any time, whether before or after delivery of a Carve Out Notice, the payment of accrued and unpaid fees, costs and expenses of professionals retained by the Debtors or the Creditors' Committee (but excluding fees, costs and expenses of third party professionals employed by such Creditors' Committee members) (collectively, "**Professional Fees**") incurred prior to the first business day following the delivery of the Carve Out Notice and (z) Professional Fees incurred on or after the first business day following the delivery of the Carve Out Notice in an aggregate amount not exceeding $600,000 (the "**Carve Out Cap**"), which amount may be used subject to the terms of the Order. For the avoidance of doubt, the dollar limitation on Professional Fees in this clause (z) shall neither be reduced nor increased by the amount of any compensation or reimbursement of Professional Fees incurred, awarded or paid prior to the delivery of a Carve Out Notice, and nothing herein shall be construed to impair the ability of any party to object to any of the fees, expenses, reimbursement or compensation described in clauses (x), (y) and (z) above. DIP Credit Agreement §§1.1 and 3.10; Interim Order ¶6.b.

(m) ***Fees***: The DIP Credit Agreement sets forth a Commitment Fee that shall be calculated at the rate of 1% per annum on the average daily amount of the unused Financing, payable monthly in arrears.[4] DIP Credit Agreement §§1.1 and 3.5; Interim Order ¶5.b.iii.

(n) ***Limitation on Charging Expenses Against Collateral***: Upon entry of the Final Order, except to the extent of the Carve Out, no expenses of

[4] Certain additional fees are set forth in the separate confidential letter agreements entered into in connection with the Financing, which the Debtors are seeking authority to file with the Court under seal.

administration which have been or may be incurred in the Chapter 11 Cases or any successor case at any time shall be surcharged against the DIP Collateral, pursuant to sections 105 or 506(c) of the Bankruptcy Code or otherwise without the prior written consent of the DIP Agent or the Prepetition First Lien Agent and no such consent shall be implied. Interim Order ¶9.

(o) ***Carve-Out***: As set forth in subsection (l) above, the DIP Liens are subject to the Carve-Out. DIP Credit Agreement §3.10; Interim Order ¶6.b.

(p) ***Adequate Protection:*** The Prepetition First Lien Lenders are entitled, pursuant to sections 361, 363(e) and 364(d)(1) of the Bankruptcy Code, to adequate protection of their interests in the Prepetition Collateral to the extent that there is a diminution in the value of the collateral securing such obligations from and after the Petition Date. Interim Order ¶12.

As adequate protection for the interests of the Prepetition First Lien Lenders in the Prepetition Collateral (including Cash Collateral) the Debtors have agreed, among other things, to provide the Prepetition First Lien Lenders the following (the "**Senior Adequate Protection Obligations**"):

- ***Senior Adequate Protection Liens***. Valid, perfected, postpetition security interests in and liens on (the "**Senior Adequate Protection Liens**") all of the DIP Collateral, *provided, however*, that, notwithstanding anything to the contrary, the Senior Adequate Protection Liens shall only be and remain subject and subordinate to (i) payment of any DIP Obligations and/or the DIP Liens on account thereof, (ii) during the occurrence and continuance of an Event of Default (as defined in the DIP Credit Agreement), payment of the Carve-Out; and

- ***Senior Superpriority Administrative Expense Claims***. Superpriority administrative expense claims with priority over all administrative expense claims and unsecured claims against the Debtors or their estates, now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, administrative expenses of the kind specified in 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 (to the extent permitted by law), 1113 and 1114 and any other provision of the Bankruptcy Code (the "**Senior Superpriority Administrative Expense Claim**"); *provided, however*, that the Senior Superpriority Administrative Expense Claim shall be subordinate only to the DIP Superpriority Administrative Claim and the Carve-Out; *provided, further*, that the Primed First Lien Parties shall not receive or retain any payments, property or other amounts in respect of the Senior Superpriority Administrative Claim or the Existing First Lien Agreements unless and until the DIP Obligations have been paid indefeasibly in cash in full and shall not take any actions to foreclose on the

liens in respect of the Senior Superpriority Administrative Claim so long as the DIP Obligations are outstanding. DIP Credit Agreement §8.3(m).

- ***Fees and Expenses.*** In accordance with sections 361, 363(e) and 364(d) of the Bankruptcy Code, the Prepetition First Lien Agent shall receive the payment of all fees and expenses payable to the Prepetition First Lien Agent under the Existing First Lien Agreements and the continuation of such payments provided for thereunder as set forth in paragraph 12.c of the Interim Order.

- ***Monitoring of Collateral***. The Prepetition First Lien Lenders shall be permitted to retain one financial advisory firm at the expense of the Debtors, which advisory firm shall be given reasonable access for purposes of monitoring the business of the Debtors and the value of the Collateral.

- ***Information***. The Debtors shall provide the Pre-Petition First Lien Agent with any written financial information or periodic reporting that is provided to, or required to be provided to, the DIP Agent or the DIP Lenders.

Further, the Prepetition Second Lien Lenders are entitled, pursuant to sections 361, 363(e) and 364(d)(1) of the Bankruptcy Code, to adequate protection of their interests in the Prepetition Collateral to the extent that there is a diminution in the value of the collateral securing such obligations from and after the Petition Date. Interim Order ¶12.c

As adequate protection for the interests of the Prepetition Second Lien Lenders in the Prepetition Collateral the Debtors have agreed, among other things, to provide the Prepetition Second Lien Lenders the following (the "**Junior Adequate Protection Obligations**"):

- ***Junior Superpriority Administrative Expense Claims.*** Superpriority administrative expense claims with priority over all administrative expense claims and unsecured claims against the Debtors or their estates, now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, administrative expenses of the kind specified in 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 (to the extent permitted by law), 1113 and 1114 and any other provision of the Bankruptcy Code (the "**Junior Superpriority Administrative Expense Claim**"); *provided, however*, that the Junior Superpriority Administrative Expense Claim shall be subordinate only to the DIP Superpriority Administrative Claim, the Carve-Out and the Senior Superpriority Administrative Expense Claim; *provided, however*, that the Prepetition Second Lien Agent and Prepetition Second Lien Lenders shall not receive or retain any payments, property or other amounts in respect of the Second Lien Superpriority Administrative Claim or the Existing Second Lien Agreements unless and until the DIP

Obligations have indefeasibly been paid in cash in full and shall not take any actions to foreclose on the liens in respect of the Junior Superpriority Administrative Claim so long as the DIP Obligations are outstanding. DIP Credit Agreement §8.3(m).

- ***Junior Replacement Liens***. Valid, perfected, postpetition security interests in and liens on (the "**Junior Replacement Liens**") all of the DIP Collateral, *provided, however*, that, notwithstanding anything to the contrary, the Junior Replacement Liens shall only be and remain subject and subordinate to (i) payment of any DIP Obligations and/or the DIP Lenders' Liens on account thereof; (ii) during the occurrence and continuance of an Event of Default (as defined in the DIP Credit Agreement), payment of the Carve-Out; and (iii) the Senior Adequate Protection Liens in accordance with the Prepetition Intercreditor Agreement.

(q) ***Releases.*** The Debtors have agreed to release and be barred from bringing, any claims, counterclaims, causes of action, defenses or setoff rights, whether arising under the Bankruptcy Code or otherwise, against the Prepetition First Lien Lenders, the Prepetition First Lien Agent and their respective affiliates, agents, officers, directors, employees and attorneys. Interim Order ¶3.

(r) ***Indemnification.*** The Debtors have agreed to the Indemnification provisions set forth in the DIP Credit Agreement. DIP Credit Agreement §§ 4.11, 11.5.

(s) ***Significant Milestones.*** The Debtors have agreed to (i) file a motion on or prior to January 13, 2012 seeking approval by the Bankruptcy Court of bidding procedures to facilitate the sale of substantially all of the Debtors' assets, and to obtain an order from the Bankruptcy Court with respect thereto on or prior to February 2, 2012; and (ii) prior to May 1, 2012, either commence solicitation of votes on a plan of reorganization pursuant to a disclosure statement approved by the Bankruptcy Court or obtain an order from the Bankruptcy Court approving the sale of all or substantially all of its assets, which sale has the written support of the Administrative Agent, the Required Lenders and the Required Prepetition First Lien Lender Group. DIP Credit Agreement §§7.16, 9.1(t), 9.1(u).

(t) ***Determination of Validity of Prepetition First Lien Lenders' Claims***. Interim Order ¶¶3.a and 3.b.

(u) ***Automatic Stay.*** The automatic stay is vacated and modified to the extent necessary to permit the DIP Agent and the DIP Lenders to exercise remedies upon the occurrence of an Event of Default. DIP Credit Agreement §9.1; Interim Order ¶8.b.

RELIEF REQUESTED

18. By this Motion, the Debtors request entry of the DIP Orders authorizing the Debtors to (i) obtain post-petition financing pursuant to sections 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), and 364(e) of the Bankruptcy Code (a) in the amount of up to $30,000,000 (up to $14,828,000 on an interim basis) under the DIP Credit Agreement; (ii) use Cash Collateral; (iii) grant to the DIP Agent (on behalf of the DIP Lenders) first priority security interests in and liens on all of the DIP Collateral; (iv) grant the DIP Superpriority Administrative Expense Claim; (vi) grant adequate protection to the Prepetition First Lien Agent on behalf of the Prepetition First Lien Lenders; (vii) grant adequate protection to the Prepetition Second Lien Agent on behalf of the Prepetition Second Lien Lenders; and (viii) schedule the Final Hearing to consider the Final Order.

19. The Debtors have an immediate need to obtain the Financing and use Cash Collateral in order to permit, among other things, the orderly continuation of the operation of their businesses, to maintain business relationships with vendors, suppliers and customers, to make payroll, to make capital expenditures and to satisfy other working capital and operational needs. The access of the Debtors to sufficient working capital and liquidity through the use of Cash Collateral, incurrence of new indebtedness for borrowed money and other financial accommodations is vital to the preservation and maintenance of the going concern values of the Debtors and to a successful reorganization of the Debtors.

BASIS FOR RELIEF

D. The Debtors Should Be Authorized to Obtain Postpetition Financing.

(i) Entering into the DIP Credit Agreement Is an Exercise of the Debtors' Sound Business Judgment.

20. Section 364 of the Bankruptcy Code authorizes a debtor to obtain secured or superpriority financing under certain circumstances as described in greater detail below. Provided that an agreement to obtain secured credit does not run afoul of the provisions of, and policies underlying, the Bankruptcy Code, courts grant a debtor considerable deference in acting

in accordance with its sound business judgment in obtaining such credit. *See, e.g., Trans World Airlines, Inc. v. Travellers Int'l AG (In re Trans World Airlines, Inc.),* 163 B.R. 964, 974 (Bankr. D. Del. 1994) (approving postpetition loan and receivables facility because such facility "reflect[ed] sound and prudent business judgment."); *In re Barbara K. Enters., Inc.,* Case No. 08-11474, 2008 WL 2439649, at *14 (Bankr. S.D.N.Y. June 16, 2008) (explaining that courts defer to a debtor's business judgment "so long as a request for financing does not `leverage the bankruptcy process' and unfairly cede control of the reorganization to one party in interest."); *In re Ames Dep't Stores, Inc.,* 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) ("[c]ases consistently reflect that the court's discretion under section 364 [of the Bankruptcy Code] is to be utilized on grounds that permit [a debtor's] reasonable business judgment to be exercised so long as the financing agreement does not contain terms that leverage the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to benefit a party-in-interest."); *In re Farmland Indus., Inc.,* 294 B.R. 855, 881 (Bankr. W.D. Mo. 2003) (noting that approval of postpetition financing requires, inter alia, an exercise of "sound and reasonable business judgment."); *see also Bray v. Shenandoah Fed. Sav. & Loan Assoc. (In re Snowshoe Co.),* 789 F.2d 1085, 1088 (4th Cir. 1986) (stating that "[t]he statute imposes no duty to seek from every possible lender before concluding that such credit is unavailable").

21. Specifically, to determine whether the business judgment standard is met, a court is "required to examine whether a reasonable business person would make a similar decision under similar circumstances." *In re Exide Techs.,* 340 B.R. 222, 239 (Bankr. D. Del. 2006); *see also In re Curlew Valley Assocs.,* 14 B.R. 506, 513-14 (Bankr. D. Utah 1981) (noting that courts should not second guess a debtor's business decision when that decision involves "a business judgment made in good faith, upon a reasonable basis, and within the scope of [the debtor's] authority under the [Bankruptcy] Code.") (citation omitted).

22. Moreover, where few lenders likely can or will extend the necessary credit to a debtor, "it would be unrealistic and unnecessary to require [the debtor] to conduct such an exhaustive search for financing." *In re Sky Valley, Inc.,* 100 B.R. 107, 113 (Bankr. N.D. Ga.

1988), *aff'd sub nom., Anchor Sav. Bank FSB v. Sky Valley, Inc.,* 99 B.R. 117, 120 n.4 (N.D. Ga. 1989); *see also In re Garland Corp.,* 6 B.R. 456, 461 (B.A.P. lst Cir. 1980) (secured credit under section 364(c)(2) authorized, after notice and a hearing, upon showing that unsecured credit unobtainable); *In re Stanley Hotel, Inc.,* 15 B.R. 660, 663 (D. Colo. 1981) (bankruptcy court's finding that two national banks refused to grant unsecured loans was sufficient to support conclusion that section 364 requirement was met); *Ames,* 115 B.R**.** at 37-39 (debtor must show that it made reasonable efforts to seek other sources of financing under section 364(a) and (b)).

23. The Debtors' execution of the DIP Credit Agreement is an exercise of their sound business judgment that warrants approval by the Court. Prior to the Petition Date, the Debtors and their advisors undertook an analysis of the Debtors' projected financing needs during the pendency of these Chapter 11 Cases. Based on such analysis, the Debtors determined that they could not survive solely on Cash Collateral. The Debtors anticipate that they will need up to $30,000,000 in postpetition financing to support their operational and restructuring activities. Accordingly, the Debtors began negotiating with certain of the Prepetition First Lien Lenders regarding the terms of a postpetition financing. After a series of good faith, arm's-length negotiations, the Debtors, the DIP Agent and the DIP Lenders entered into the DIP Commitment Letter and DIP Term Sheet whereby the parties reached agreement on the material terms of the Financing. Based on the advice of their professionals, and the Debtors' own analysis, the Debtors have determined in their sound business judgment that the terms of the Financing contained in the DIP Commitment Letter and DIP Credit Agreement provide a greater amount of financing on more favorable terms than any other reasonably available alternative. The Debtors' advisors assisted the Debtors in ascertaining whether alternative debtor-in-possession financing is available and have assisted the Debtors in negotiations to obtain the best terms available.

24. Specifically, the Financing will provide the Debtors with access to up to $30 million, which the Debtors and their advisors have independently determined should be sufficient to satisfy postpetition obligations and solidify their credit-worthiness to their vendors

and customers and support the Debtors' ongoing operations and reorganization activities through the pendency of these Chapter 11 Cases.

(ii) ***The Debtors Should Be Authorized to Obtain Postpetition Financing on a Senior Secured and Superpriority Basis.***

25. Section 364 of the Bankruptcy Code authorizes a debtor to obtain, in certain circumstances, postpetition financing on a secured or superpriority basis, or both. Specifically, section 364(c) of the Bankruptcy Code provides, in pertinent part, that the court, after notice and a hearing, may authorize a debtor that is unable to obtain credit allowable as an administrative expense under section 503(b)(1) of the Bankruptcy Code to obtain credit or incur debt:

> (1) with priority over any or all administrative expenses of the kind specified in section 503(b) or 507(b) of [the Bankruptcy Code];
>
> (2) secured by a lien on property of the estate that is not otherwise subject to a lien; or
>
> (3) secured by a junior lien on property of the estate that is subject to a lien.

11 U.S.C. § 364(c).

26. To satisfy the requirements of section 364(c) of the Bankruptcy Code, a debtor need only demonstrate "by a good faith effort that credit was not available" to the debtor on an unsecured or administrative expense basis. *Bray v. Shenandoah Fed. Sa*^{y}*s. & Loan Ass 'n (In re Snowshoe Co.),* 789 F.2d 1085, 1088 (4th Cir. 1986). "The statute imposes no duty to seek credit from every possible lender before concluding that such credit is unavailable." *Id.; see also Pearl-Phil GMT (Far East) Ltd. v. Caldor Corp.,* 266 B.R**.** 575, 584 (S.D.N.Y. 2001) (superpriority administrative expenses authorized where debtor could not obtain credit as an administrative expense). When few lenders are likely to be able and willing to extend the necessary credit to a debtor, "it would be unrealistic and unnecessary to require [the debtor] to conduct such an exhaustive search for financing." *In re Sky Valley, Inc.,* 100 B.R. 107, 113 (Bankr. N.D. Ga. 1988), *aff'd sub nom., Anchor Savs. Bank FSB v. Sky Valley, Inc.,* 99 B.R. 117, 120 n. 4 (N.D. Ga. 1989); *see also Ames Dep't Stores,* 115 B.R. at 40 (approving financing facility

and holding that the debtor made reasonable efforts to satisfy the standards of section 364(c) where it approached four lending institutions, was rejected by two, and selected the most favorable of the two offers it received).

27. The Debtors' discussions, including through their financial advisors, with various potential sources of debtor-in-possession financing revealed that such financing on a junior or unsecured basis was not available. The Debtors' substantial secured debt of approximately $389 million and lack of material unencumbered assets precludes them from obtaining postpetition financing in the amount they require on terms other than on a secured and superpriority basis.

28. The Court should therefore authorize the Debtors to provide the DIP Agent, on behalf of itself and the other DIP Lenders, senior first priority liens on the Debtors' unencumbered property as provided in section 364(c)(2) of the Bankruptcy Code, and junior liens on the Debtors' property that is subject to valid, perfected, and unavoidable liens in existence immediately prior to the Petition Date or to valid and unavoidable liens in existence immediately prior to the Petition Date that are perfected after the Petition Date as permitted by section 546(b) of the Bankruptcy Code, as provided in section 364(c)(2) of the Bankruptcy Code, as well as to grant the Debtors' repayment obligations under the DIP Credit Agreement superpriority administrative expense status as provided for in section 364(c)(1) of the Bankruptcy Code.

(iii) ***The Debtors Should Be Authorized to Obtain Postpetition Financing Secured by First Priority Priming Liens.***

29. Section 364(d) of the Bankruptcy Code allows a debtor to obtain credit secured by a senior or equal lien on property of the estate that is subject to a lien, provided that (i) the debtor is unable to obtain such credit otherwise, and (ii) there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted. 11 U.S.C. § 364(d). When determining whether to authorize a debtor to obtain credit secured by a "priming" lien, as authorized by section 364(d) of the Bankruptcy Code, courts consider a number of factors, including, without limitation:

(a) whether alternative financing is available on any other basis (i.e., whether any better offers, bids or timely proposals are before the court);

(b) whether the proposed financing is necessary to preserve estate assets and is necessary, essential and appropriate for continued operation of the debtors' business;

(c) whether the terms of the proposed financing are reasonable and adequate given the circumstances of both the debtors and proposed lender(s); and

(d) whether the proposed financing agreement was negotiated in good faith and at arm's length and entry therein is an exercise of sound and reasonable business judgment and in the best interest of the debtor's estate and its creditors.

See, e.g., Ames Dep't Stores, 115 B.R. at 37-39; *Bland v. Farmworker Creditors,* 308 B.R. 109, 113-14 (S.D. Ga. 2003); *Farmland Indus.,* 294 B.R. at 862-79, *In re Lyondell Chem. Co.,* No. 09-10023 (Bankr. S.D.N.Y. Mar. 5, 2009); *Barbara K. Enters.,* 2008 WL 2439649 at *10; *see also* 3 Alan N. Resnick & Henry J. Sommer, *Collier on Bankruptcy* ¶ 364.04[1] (16th ed. rev. 2011).

30. As a condition to lending pursuant to the DIP Credit Agreement, the DIP Lenders have required the priming of the liens under the Prepetition Credit Agreements. In this instance, there is substantial overlap between the proposed DIP Lenders and the Prepetition First Lien Lenders, and such DIP Lenders have consented to such priming with respect to their respective liens under the Prepetition First Lien Credit Agreement.

31. Moreover, even in the absence of consent, the proposed priming liens under the DIP Credit Agreement are warranted under section 364(d) of the Bankruptcy Code.

32. As discussed above, substantially all of the Debtors' assets (except real property) are encumbered and, despite the diligent efforts of the Debtors and their advisors, the Debtors have been unable to procure the required funding absent the priming liens. Indeed, the Debtors conducted arm's- length negotiations with the DIP Lenders regarding the terms of the Financing, and those agreements reflect the most favorable terms on which the DIP Lenders were willing to offer financing. Further, the funds to be provided under the Financing are critical to preserve the value of their estates for the benefit of all creditors and other parties in interest.

Absent approval of the Financing, the Debtors will be unable to operate their business or prosecute these Chapter 11 Cases. Providing the Debtors with the liquidity necessary to preserve their going concern value through the pendency of these Chapter 11 Cases is in the best interest of all stakeholders. Additionally, upon entry of the Final Order, the Financing will provide the Debtors with access to $30 million in postpetition financing, which the Debtors and their advisors have independently determined is sufficient and, necessary to allow the Debtors to maintain their operations and their relationships with key constituents in connection with these Chapter 11 Cases.

33. Further, as detailed above the Debtors have offered a fair and reasonable adequate protection package to the Prepetition First Lien Lenders and the Prepetition Second Lien Lenders. Accordingly, the Debtors submit that the proposed adequate protection is fair and reasonable, and is sufficient to satisfy the requirements of section 364(d)(1)(B) of the Bankruptcy Code.

E. The Debtors' Request To Use the Cash Collateral, Pursuant to the Terms of the DIP Orders, Should Be Approved.

34. The Debtors' use of property of their estates is governed by section 363 of the Bankruptcy Code, which provides in pertinent part that:

> If the business of the debtor is authorized to be operated under section . . . 1108 . . . of this title and unless the court orders otherwise, the [debtor] may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing.

11 U.S.C. § 363(c)(1).

35. Section 363(c)(2)(A) of the Bankruptcy Code permits a debtor in possession to use cash collateral with the consent of the secured party. Section 363(e) of the Bankruptcy Code requires that the debtor adequately protect the secured creditors' interest in property to be used by a debtor against any diminution in value of such interest resulting from the debtor's use of the property during these chapter 11 cases.

36. What constitutes sufficient adequate protection is decided on a ease-by-case basis. *In re Sharon Steel Corp.,* 159 B.R. 165, 169 (Bankr. W.D.Pa. 1993); *In re Columbia Gas Sys., Inc.,* 1992 WL 79323, at *2 (Bankr. D. Del. Feb. 18, 1992); *see also In re Martin,* 761 F.2d 472 (8th Cir. 1985); In *re Mosello,* 195 B.R**.** 277, 289 (Bankr. S.D.N.Y. 1996); *In re Sw. Assos.,* 140 B.R. 360 (Bankr. S.D.N.Y. 1992). By adequate protection, the Bankruptcy Code seeks to shield a secured creditor from diminution in the value of its interest in the particular collateral during the period of use. *See In re 495 Cent. Park Ave. Corp.,* 136 B.R. 626, 631 (Bankr. S.D.N.Y. 1992); *In re Beker Indus. Corp.,* 58 B.R. 725, 736 (Bankr. S.D.N.Y. 1986); *In re Hubbard Power & Light,* 202 B.R. 680 (Bankr. E.D.N.Y. 1996). Adequate protection can come in various forms, including payment of adequate protection fees, payment of interest, and granting of replacement liens and administrative claims.

37. As discussed above and as set forth in detail in the Interim Order, the Debtors propose to provide the Prepetition First Lien Lenders and the Prepetition Second Lien Lenders, with various means of adequate protection to the extent of any diminution in value of the Prepetition Secured Parties' interests in the Prepetition Collateral (including the Cash Collateral) resulting from the Debtors' use, sale, or lease of such collateral (including the Cash Collateral), and the imposition of the automatic stay.

38. In light of the foregoing, the Debtors submit that the proposed adequate protection for the benefit of the Prepetition First Lien Lenders is necessary and appropriate under the circumstances of these Chapter 11 Cases to ensure that the Debtors are able to continue using Cash Collateral. Accordingly, the adequate protection proposed in the DIP Orders to the Prepetition First Lien Lenders and the Prepetition Second Lien Lenders is fair and reasonable and sufficient to satisfy the requirements of sections 363(c)(2) and (e) of the Bankruptcy Code. Moreover, courts in this district have granted similar relief in other recent Chapter 11 Cases. *See, e.g., In re Neb. Book Co.,* No. 11-12005 (PJW) (Bankr. D. Del. June 28, 2011) (interim order); *In re Barnes Bay Development, Ltd.,* No. 11- 10792 (PJW) (Bankr. D. Del. Mar. 21, 2011) (interim order); *In re Appleseed's Intermediate Holdings LLC,* No. 11-10160 (KG) (Bankr. D. Del. Jan. 20,

2011) (interim order); *In re Local Insight Media Holdings, Inc.,* No. 10-13677 (KG) (Bankr. D. Del. Nov. 19, 2010) (interim order); *In re Masonite Corp.,* No. 09-10844 (PJW) (Bankr. D. Del. Mar. 17, 2009) (interim order); *In re Monaco Coach Corp.,* No. 09-10750 (KJC) (Bankr. D. Del. Mar. 10, 2009) (interim order); *In re Spansion Inc.,* No. 09-10690 (KJC) (Bankr. D. Del. Mar. 4, 2009) (interim order); *In re Muzak Holdings LLC,* No. 09-10422 (KJC) (Bankr. D. Del. Feb. 12, 2009) (interim order); *In re Hawaiian Telcom Connun's, Inc.,* No. 08-13086 (PJW) (Bankr. D. Del. Dec. 3, 2008).

F. Debtors' Request for Entry of Interim Order Should Be Approved

39. Bankruptcy Rules 4001(b) and (c) provide that a final hearing on a motion to obtain credit or use cash collateral may not be commenced earlier than 14 days after service of such motion. The court, however, is authorized to conduct an expedited hearing prior to the expiration of such 14-day period and to authorize the obtaining of credit or use of cash collateral where, as here, such relief is necessary to avoid immediate and irreparable harm to a debtor's estate.

40. The Debtors' ability to finance their operations and the availability to the Debtors of sufficient working capital and liquidity is vital to the confidence of the Debtors' employees, suppliers, and customers and to the preservation and maintenance of the going-concern value and other values of the Debtors' estate. As discussed above, the Debtors require immediate access to the Financing and the use of cash collateral in order to meet their liquidity needs in connection with these Chapter 11 Cases.

41. The failure to obtain approval of the proposed financing and use of Cash Collateral on an expedited basis would no doubt lead to immediate and irreparable harm to the Debtors' estates. Accordingly, the Debtors seek immediate entry of the Interim Order to prevent immediate and irreparable harm to the Debtors' estates pending the Final Hearing pursuant to Bankruptcy Rule 4001(b).

REQUEST FOR FINAL HEARING

42. Pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2), the Debtors request that the Court set a date for the Final Hearing that is as soon as practicable, but in no event later than 30 days following the entry of the Interim Order, and fix the time and date prior to the Final Hearing for parties to file objections to the Motion.

WAIVER OF BANKRUPTCY RULE 6004(a) AND 6004(h)

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

NOTICE

44. The Debtors shall provide notice of the Motion to: (i) the Office of the United States Trustee for the District of Delaware, Attn: Tiiara Patton, Esq.; (ii) the creditors listed on the Debtors' consolidated list of 30 largest unsecured creditors; (iii) Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, New York 10017 (Attention: Brian M. Resnick, Esq.), attorneys for the Prepetition First Lien Agent and DIP Agent; (iv) Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, Delaware 19801, local counsel for the Prepetition First Lien Agent and DIP Agent (Attention: Mark D. Collins, Esq.); (v) the DIP Lenders; (vi) the Prepetition First Lien Lenders; (vii) the Prepetition Second Lien Agent; (viii) the Prepetition Second Lien Lenders; (ix) the landlords under each of the Debtors' existing leasehold agreements; (x) all known holders of liens upon the Debtors' assets; (xi) any parties that have filed a notice of appearance in the Chapter 11 Cases pursuant to Bankruptcy Rule 2002; and (xii) the Internal Revenue Service. As this Motion is seeking first-day relief, notice of this Motion and any order entered hereon will be served on all parties required by Local Rule 9013- 1(m). Due to the urgency of the circumstances surrounding this Motion and the

nature of the relief requested herein, the Debtors respectfully submit that no further notice of this Motion is required.

WHEREFORE, the Debtors respectfully request entry of the DIP Orders granting the relief requested herein and such other and further relief as this Court deems just and proper.

Respectfully submitted,

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Dated: January 3, 2012
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