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1 **TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE; OFFICE OF THE**  
2 **UNITED STATES TRUSTEE; THE DEBTORS' SECURED LENDER; 20 LARGEST**  
3 **UNSECURED CREDITORS; AND OTHER PARTIES IN INTEREST:**

4 The debtors and debtors in possession in the above-captioned chapter 11 cases  
5 (collectively, the "**Debtors**"), hereby move the Court for the entry of an interim order (the "**Interim**  
6 **Order**"), substantially in the form annexed hereto as Exhibit "A,"<sup>1</sup> approving post-petition financing  
7 on a senior secured priming basis, authorizing use of cash collateral, granting security interests and  
8 superpriority claims, and providing adequate protection and following a final hearing (the "**Final**  
9 **Hearing**"), entry of a final order granting the relief requested herein (the "**Final Order**").

10 The Debtors request, pursuant to Local Bankruptcy Rule ("**LBR**") 2081-1(a)(9) and  
11 LBR 9075-1(a), that the Court schedule an interim hearing (the "**Interim Hearing**") on this Motion  
12 on less than 48 hours notice, upon timely notice to the Office of the United States Trustee ("**UST**"),  
13 the Debtors' secured creditors, 20 largest unsecured creditors, other asserted secured lenders, and  
14 other interested parties, if any (collectively, the "**Interested Parties**"). A copy of this Motion was  
15 served, concurrent with the filing hereof with the Court, on the Interested Parties by courier or  
16 overnight delivery.

17 **SUMMARY OF RELIEF REQUESTED**

18 By this Motion, the Debtors seek interim and final orders (i) authorizing post-petition  
19 financing (the "DIP Financing Facility") that they negotiated with Meserole, LLC ("**Meserole**," the  
20 "**DIP Agent**" and, together with such other lenders from time to time party to the DIP Financing  
21 Facility, the "**DIP Lenders**"), substantially on the terms and conditions set forth in the Debtor in  
22 Possession Financing Facility Term Sheet (the "**DIP Term Sheet**"), between the Debtors and the  
23 DIP Agent, (defined below), and the proposed Interim Order, (ii) authorizing the use of cash  
24 collateral; (iii) granting priming liens and superpriority claims; and (iv) providing adequate  
25 protection. Meserole is also a pre-petition secured creditor of the Debtors pursuant to the Second  
26 Amended and Restated Loan and Security Agreement (as amended, supplemented and modified, the

27 <sup>1</sup> The proposed Interim Order and Term Sheet are attached hereto as Exhibits A and B respectively.  
28

1 "**Prepetition Loan Agreement**"), and asserts a first priority, enforceable and unavoidable security  
2 interest in and lien on substantially all the assets of the Debtors.

3           The Debtors, in the exercise of their business judgment, recently determined that the  
4 best way to maximize value for their creditors and the estate would be to market all of their assets  
5 for sale as a going concern. The Debtors, however, do not have sufficient sources of working capital  
6 and financing to carry on the operation of their business pending the marketing and sale process  
7 without the DIP Financing Facility and the use of cash collateral, which will provide funding for the  
8 Debtors to complete the sale of their assets. Because any sale or wind-down will require that the  
9 Debtors maintain their operations as a going-concern until the process has been completed, the relief  
10 requested in the Motion is essential to preserving the maximum value of the Debtors' estates. As set  
11 forth in further detail below, the terms and conditions of the proposed DIP Financing Facility are fair  
12 and reasonable.

13           This Motion is based on the Memorandum of Points and Authorities below, the  
14 evidence contained in the "Declaration of Mark A. Fox in Support of First Day Motions" (the "**Fox**  
15 **Declaration**") filed concurrently herewith, the record in this case, and the arguments, evidence and  
16 representations that may be presented at or prior to the hearing on this Motion, if any.

17           Pursuant to LBR 9075-1(a)(7), any opposition or objection to the Motion may be  
18 presented before or at the time of the hearing on the Motion.

19           **WHEREFORE**, the Debtors respectfully request that (A) following the Initial  
20 Hearing, the Court enter the Interim Order (i) approving the DIP Financing Facility on the terms set  
21 forth in the DIP Term Sheet; (ii) authorizing the use of cash collateral; (iii) granting priming liens  
22 and

1 superpriority claims; (iv) providing adequate protection; (v) scheduling the Final Hearing, and (B)  
2 following the Final Hearing, enter the Final Order.

3  
4 DATED: July 11, 2013

/s/ Margreta M. Morgulas  
GARY E. KLAUSNER, and  
MARGRETA M. MORGULAS, Members of  
STUTMAN, TREISTER & GLATT  
PROFESSIONAL CORPORATION  
[Proposed] Restructuring Counsel for Debtors and  
Debtors in Possession

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **STATEMENT OF FACTS**

4 **A. Petition Date and Jurisdiction**

5 On July 10, 2013 (the "**Petition Date**"), the debtors and debtors in possession in the  
6 above-captioned chapter 11 cases (the "**Debtors**") commenced these cases by filing voluntary  
7 petitions under chapter 11 of title 11 of the United States Code (the "**Bankruptcy Code**"). Pursuant  
8 to Bankruptcy Code sections 1107(a) and 1108, the Debtors are continuing to operate their business  
9 and manage their financial affairs as debtors in possession.

10 This Court has jurisdiction over the Debtors, these chapter 11 cases and this Motion  
11 pursuant to 28 U.S.C. §§ 1334 and 157(b), and venue is proper in this District pursuant to 28 U.S.C.  
12 §§ 1408 and 1409.

13 By the Motion, the Debtors are requesting that the Court approve post-petition  
14 financing under Bankruptcy Code sections 364 (c) and (d), authorize use of cash collateral, grant  
15 priming liens and superpriority claims and provide adequate protection. Rule 4001(c) of the Federal  
16 Rules of Bankruptcy Procedure ("**Bankruptcy Rules**"), as amended, requires a concise statement of  
17 the relief requested in the Motion and the material provisions of the proposed post-petition  
18 financing.<sup>2</sup>

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24 <sup>2</sup> Local Bankruptcy Rule 4001-2 also requires that the Debtors either file form F4001-2 with the  
25 Motion or file a statement consistent with that form. The Debtors submit that the Concise  
26 Statement now required by Bankruptcy Rule 4001(c) is consistent with form F4001-2. This  
27 summary of indicative terms is provided to comply with applicable rules, but is not intended and  
28 shall not modify the terms and conditions of the DIP Term Sheet and the Interim Order, which  
shall control in the event of any inconsistencies between this Motion and the DIP Term Sheet or  
the Interim Order. Defined terms used herein and not defined shall have the meaning ascribed  
thereto in the DIP Term Sheet and Interim Order.



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TYPE OF PROVISION	CONTENT	LOCATION IN THE PROPOSED ORDER OR DIP TERM SHEET
Borrower	Colorep, Inc. and Transprint USA, Inc., as debtors and debtors in possession under chapter 11 of title 11 of the United States Code. In the event any other affiliates of the Debtors shall commence chapter 11 cases or an order for relief is entered against any such affiliate, such additional debtor(s) shall be deemed a Borrower and one of the Debtors hereunder without further order of the Court.	Debtor in Possession Financial Facility Term Sheet (the " <b>DIP Term Sheet</b> "), p. 1
DIP Agent	Meserole, LLC	DIP Term Sheet, p. 1
DIP Lenders	Meserole and other lenders from time to time party to the DIP Financing Facility	DIP Term Sheet, p. 1
Use of funds	<p>All advances under the DIP Financing Facility shall be used in accordance with the budget approved by the DIP Agent and DIP Lenders attached to the Interim Order (the "<b>Budget</b>"), as such Budget thereafter may be modified with the DIP Agent's and DIP Lenders' prior written consent.</p> <p>Funds may be used to (i) fund ongoing working capital requirements during the pendency of the Debtors' chapter 11 cases, including payment of the Debtors' trade payables and employee wages and benefits, in each case in accordance with the Budget (and to the extent any such item on the Budget relates to pre-petition obligations, then also in accordance with an order of the Court authorizing such disbursement); (ii) pay United States Trustee and professional fees and expenses</p>	DIP Term Sheet, p. 1-2

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TYPE OF PROVISION	CONTENT	LOCATION IN THE PROPOSED ORDER OR DIP TERM SHEET
	<p>associated with the chapter 11 cases of the Debtors in accordance with the Budget; (iii) for general corporate purposes in accordance with the Budget; and (iv) to refinance the emergency prepetition bridge financing in the amount of up to \$450,000 made available to the Debtors between June 20, 2013 and July 9, 2013 in contemplation of the commencement of the chapter 11 cases and as part of the Budget. In this regard, DIP Agent will endeavor to assist the Borrower as needed in any discussions with creditors and other parties in interest. Compliance with the Budget will be measured every week, subject to a weekly line item variance not to exceed 10% ("<b>Variance</b>").</p>	
Interest	<p>16% per annum; upon the occurrence of an Event of Default, 19% per annum, to be paid upon maturity.</p>	DIP Term Sheet, p. 2

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TYPE OF PROVISION	CONTENT	LOCATION IN THE PROPOSED ORDER OR DIP TERM SHEET
Maturity	The earlier of (a) ninety (90) days from the Petition Date; (b) the effective date of a plan of reorganization; (c) the consummation of a sale of all or substantially all of the assets of the Debtors under section 363 of the Bankruptcy Code (" <b>Sale</b> " or " <b>Sale Transaction</b> "); (d) delivery of the Carve-Out Event Notice; or (e) the entry of an order by the Court approving an alternative DIP financing, <u>provided, however</u> , that it may be extended upon written agreement of the parties without the need for court approval	DIP Term Sheet, p. 2
Use of Cash Collateral	The Pre-Petition Lender asserts a first priority secured lien on substantially all property of the Borrower (" <b>Pre-Petition Collateral</b> ") and consents to the Borrower's use of the Pre-Petition Collateral including Cash Collateral, in accordance with the Budget and subject to the terms of the DIP Term Sheet, including but not limited to the granting of the Pre-Petition Lender Adequate Protection	DIP Term Sheet, p. 3
Events of default	Standard provisions found in post-petition financing agreements, including breach of covenants or negative covenants, failure to adhere to the Budget, subject to the Variance, non-payment, dismissal or conversion before repaying the DIP Facility, entry of order for relief from stay to permit the exercise of rights on behalf of any party with respect to any asset or assets, entry of an order granting priority claim that is senior or pari passu with the claims of DIP Agent or DIP	DIP Term Sheet, pp. 9-11

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TYPE OF PROVISION	CONTENT	LOCATION IN THE PROPOSED ORDER OR DIP TERM SHEET
	Lenders, any order amending, vacating or modifying the Interim Order or Final Order without DIP Agent's or DIP Lenders' consent, cessation of liens or super-priority claims granted to DIP Lenders. In addition, the cancellation by Debs Corporation of any material pending order or the failure of Debs Corporation to place new orders substantially consistent with past practices shall constitute an event of default.	
Liens/Collateral	A first and senior priority perfected priming lien, pursuant to Bankruptcy Code sections 364(c)(2) and 364(d), upon all assets of the Debtors, whether now existing or hereafter acquired and proceeds thereof, except for claims and causes of action arising under Chapter 5 of the Bankruptcy Code (the " <b>DIP Collateral</b> "), effective immediately upon entry of the Interim DIP Order, without the need for any further action by the DIP Agent, the DIP Lenders, the Borrower or any other person; provided however, that the DIP Agent shall have entered into an acceptable account control agreement with the depository bank holding Borrower's DIP accounts	DIP Term Sheet, pp. 4, 6
Borrowing limit	Interim: \$1,450,000, including roll-up of pre-petition emergency bridge funding of up to \$450,000 (the " <b>Interim Advance</b> ")  Final: \$2,500,000  In the event the partial refinancing of the \$450,000 is not approved under the	DIP Term Sheet, p. 1

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TYPE OF PROVISION	CONTENT	LOCATION IN THE PROPOSED ORDER OR DIP TERM SHEET
	Interim Order, then the Interim Advance shall be \$1,000,000 and the total DIP Facility under the Final Order will be \$2,000,000	
Grant of priority lien pursuant to Bankruptcy Code section 364(d)	Yes, with consent of Pre-Petition Lender	DIP Term Sheet, p. 6
Adequate protection or priority for a claim that arose before the commencement of the case, including the granting of a lien on property of the estate to secure the claim, or the use of property of the estate or credit obtain under Bankruptcy Code section 364 to make cash payments on account of the claim	Yes. As adequate protection for the Pre-Petition Lender’s consent to being primed by the DIP Liens (as defined in the DIP Term Sheet) and the Carve-Out Expenses (as defined in the DIP Term Sheet) and the potential diminution in value of the Pre-Petition Lender’s interests in the Pre-Petition Collateral and the imposition of the automatic stay, the Borrower shall take all actions necessary for the Pre-Petition Lender to be granted adequate protection (collectively, the “ <b>Pre-Petition Lender Adequate Protection</b> ”) pursuant to Sections 361, 363, and 364 of the Bankruptcy Code, in the form of: (i) valid, binding, enforceable and perfected replacement liens upon and security interests in all property of the Debtors’ estates to the extent of any diminution in value of the Pre-Petition Lender’s interests in the Pre-Petition Collateral (the “ <b>Pre-Petition Lender Replacement Lien</b> ”), <u>provided, however</u> , that the Pre-Petition Lender Replacement Lien shall not extend to any causes of action, or proceeds thereof, that may be commenced pursuant to Chapter 5 of the Bankruptcy Code, except (y) any such claim against or recovery from the Pre-Petition Lender, DIP	DIP Term Sheet, p. 3

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TYPE OF PROVISION	CONTENT	LOCATION IN THE PROPOSED ORDER OR DIP TERM SHEET
	<p>Agent or DIP Lenders, and (z) any such claim against and recovery from the judgment creditor/garnishor that received approximately \$35,000 of Borrower's property subject to the Pre-Petition Lender's prior lien, which replacement liens shall be subordinate only to the DIP Lien, Pre-Petition Lien and the Carve-Out Expenses; (ii) payment by the Debtors through Interim Advances of the reasonable costs and fees, including without limitation reasonable attorneys' fees, incurred by the Pre-Petition Lender in its capacity as prepetition lender to the Borrower, such payment to be made from advances under the DIP Facility following delivery of monthly invoices to the Debtors but without necessity of receiving a draw request from the Debtors; and (iii) an allowed super-priority administrative claim pursuant to Bankruptcy Code section 503(b)(1), 507(a)(2) and 507(b) to the extent of the diminution in value of the Pre-Petition Collateral that shall be payable from and have recourse to, in addition to the property of the Debtors that is made subject to security interests and liens in favor of the DIP Agent for the benefit of the DIP Agent and DIP Lenders, any unencumbered prepetition and postpetition property of the Debtors (the "<b>Adequate Protection Administrative Claim</b>"); (iv) reporting provided to the DIP Agent; (v) upon an Event of Default, similar rights and remedies as granted to the DIP Agent hereunder and in the Interim Order and Final Order;</p>	

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TYPE OF PROVISION	CONTENT	LOCATION IN THE PROPOSED ORDER OR DIP TERM SHEET
	and (vi) such other forms of adequate protection as set forth in the Interim DIP Order and Final DIP Order.	
Waiver or modification of Bankruptcy Code provisions or applicable rules relating to the automatic stay	Yes	Interim Order, par. 25,26
Waiver or modification of any entity's authority or right to file a plan, seek extension of the exclusivity period, request the use of cash collateral, or requesting authority to obtain credit	N/A	N/A
Establishment of deadlines for filing a plan, approving a disclosure statement, for a hearing on confirmation, or for entry of a confirmation order	N/A	N/A
Establishment of deadlines for sale transaction	Yes. The Debtors shall (i) file with the Bankruptcy Court one or more motions, each in form and substance acceptable to the DIP Agent and DIP Lenders, seeking approval of a Court-approved sale process (the " <b>Sale Motion</b> ") and bidding procedures (the " <b>Bid Procedures Motion</b> ") within 10 days of the Petition Date. The Pre-Petition Lender, or its designee, may subsequently submit a bid to act as the stalking horse bidder; (ii) obtain entry of a Bankruptcy Court order, in form and substance satisfactory to the DIP Agent and DIP Lenders, approving the Bid Procedures Motion (the " <b>Bid Procedures Order</b> ") within 21 days of filing of the Sale Motion and Bid Procedures Motion; (iii) hold an auction for the Sale Transaction (the " <b>Auction</b> ")	DIP Term Sheet, pp. 8-9

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TYPE OF PROVISION	CONTENT	LOCATION IN THE PROPOSED ORDER OR DIP TERM SHEET
	within 45 days after the Petition Date; (iv) obtain entry of a Bankruptcy Court order, in form and substance reasonably satisfactory to the winning bidder at the Auction, approving of the asset purchase agreement and sale of the Assets (pursuant to sections 363(f) and 363(m) of the Bankruptcy Code, free and clear of all liens, claims, interests and encumbrances) and assumption and assignment of designated contracts pursuant to section 365 to the winning bidder at the Auction (the “ <b>Sale Approval Order</b> ”) within 55 days of the Petition Date; and (v) close the Sale Transaction no later than the 60 <sup>th</sup> day following the Petition Date	
Waiver or modification of the applicability of nonbankruptcy law relating to the perfection of postpetition liens or on the foreclosure or other enforcement of postpetition liens	Yes	DIP Term Sheet, p. 4
Indemnification	N/A	N/A
Release or waiver of surcharge claim under Bankruptcy Code section 506(c)	Yes	DIP Term Sheet, p. 7
Granting of liens on avoidance actions	No, other than liens on the estate’s avoidance actions, if any, against Pre-Petition DIP Lenders, the DIP Lenders and the DIP Agent or the judgment creditor/garnishor that received approximately \$35,000 of Borrower's property subject to the Pre-Petition Lender's prior lien	DIP Term Sheet, pp. 3-4



1 **B. General Background**

2 Originally founded as a technology development company in 1989, the company that  
3 later became known as Colorep shifted its focus in 2003 to industrial printing applications. By 2005  
4 Colorep had advanced its textile technology and had invented a patented process for dyeing and  
5 decorating fabric known as AirDye®, which is widely regarded as revolutionary because it does not  
6 result in water pollution and significantly reduces energy use, costs and time from design to market.

7 In 2007, Colorep began licensing AirDye® technology to manufacturers and resellers  
8 in the home interior, hospitality and apparel industries, which licensing continues to be very  
9 profitable for Colorep.

10 Due to the success of the AirDye® technology, in September 2009, Colorep began  
11 doing business as "AirDye Solutions."

12 At the end of 2007, Colorep acquired Transprint, a privately held, employee-owned  
13 company, with headquarters and manufacturing facilities in Harrisonburg, Virginia.. Transprint, a  
14 leading supplier of transfer-printing paper was a strategic and potentially lucrative acquisition for  
15 Colorep as it gave Colorep access to manufacturing capabilities, a global customer base, and a  
16 design library exceeding 15,000 unique designs.

17 Transprint is the wholly-owned subsidiary of Colorep. Colorep is owned by over 300  
18 shareholders, with interests in 1 or more of the 5 series of preferred stock (Series A-E) and/or in  
19 Colorep's common stock.

20 The Debtors share common management, jointly own most assets and are co-obligors  
21 or obligor/guarantor on most of the Debtors' collective obligations. The Debtors have the ability to  
22 generally identify which entity owns a particular asset or is the sole or primary obligor on a  
23 particular debt. Postpetition, the Debtors will maintain separate books and records.

24 **C. Events Leading to Chapter 11**

25 In 2011, the Debtors began experiencing significant cash flow constraints, which  
26 rendered the Debtors unable to pay their ordinary course operating expenses, pay overhead, acquire  
27 necessary raw materials to meet customer demands and purchase parts and supplies required for the  
28 maintenance of their equipment and manufacturing and production facility in Virginia. As a result,

1 the quality and availability of the Debtors' product began to decline and their key vendor and  
2 customer relationships eroded.

3 In or around June 2011, the Debtors entered into that certain Loan and Security  
4 Agreement (as amended, supplemented and modified, the "**Prepetition Loan Agreement**" and the  
5 underlying indebtedness, the "**Prepetition Indebtedness**") with Meserole, LLC ("**Pre-Petition**  
6 **Lender**" or "**Meserole**"). Pursuant to the Prepetition Loan Agreement, the Debtors had the ability to  
7 access up to \$25 million on the terms and conditions set forth in the Prepetition Loan Agreement. In  
8 exchange, the Debtors granted Meserole a first priority secured lien on virtually all of their tangible  
9 and intangible assets (the "**Pre-Petition Liens**").

10 Unfortunately, the Meserole loan did not result in the stabilization of the Debtors'  
11 operations as had been hoped. Accordingly, throughout 2012, the Debtors continued to experience  
12 cash shortages and, therefore, were unable to purchase necessary raw materials and timely produce  
13 ordered product. Further, the Debtors were unable to sustain the quality of the product they did  
14 produce as they lacked the capital necessary to improve or even perform necessary service and  
15 repairs to the equipment utilized in their production process. The Debtors' inability to timely meet  
16 demand and resolve the increasing quality control issues resulted in material cancellations and an  
17 ever-shrinking customer base.

18 The Debtors' working capital constraints also resulted in their inability to meet their  
19 obligations to their employees in a timely and consistent manner. This resulted in significant morale  
20 issues and ultimately in the loss of many key employees in 2012, which further diminished their  
21 capacity to fulfill customer orders and meet obligations to vendors.

22 By the end of 2012, the situation had worsened and the Debtors went through a  
23 number of "dark" periods during which time production halted completely and employees went  
24 unpaid.

25 In March 2013, the Debtors, with the consent of their primary secured lenders, hired  
26 Mark A. Fox as the Chief Restructuring Officer and interim Chief Operating Officer. Since that  
27 time, Mr. Fox worked with the Debtors' Boards of Directors and management to improve customer  
28

1 relationships, improve employee morale, and, most importantly, to try and resolve the operational  
2 issues faced by the Debtors.

3 From March through June 2013, the Debtors worked to adjust staffing to appropriate  
4 levels, minimize overall expenditures and eliminate expenditures that did not directly support the  
5 Debtors' production and research and development operations. Further, the Debtors focused on  
6 rebuilding the most valuable customer and vendor relationships and on minimizing the Debtors'  
7 exposure with respect to those relationships that had historically not been profitable. The Debtors  
8 have also focused on improving inventory analysis and control with an aim to improving the  
9 Debtors' ability to timely meet customer orders. Although significant cash shortages did not permit  
10 extensive business development efforts, to the extent feasible, the Debtors also worked to expand the  
11 Debtors' licensing activities to new, active markets around the globe.

12 **D. Pre-Petition Loan Agreements with Meserole**

13 The Debtors' primary assets are its intellectual property rights and interests, including  
14 patents, pending patent applications and copyrights, its manufacturing and operational facility in  
15 Hendersonville, Virginia, its furniture, fixtures and equipment, and its design studio and customer  
16 files in Charlotte, North Carolina and New York, New York.

17 As previously indicated, the Debtors' primary secured lender is Meserole, which, as  
18 of the Petition Date, was owed approximately \$17 million, exclusive of interest, fees, costs and  
19 expenses. Meserole asserts a first priority secured lien on all or substantially all of the Debtors'  
20 assets. Several other parties assert liens on the Debtors' assets, including, significantly, taxing  
21 authorities, judgment lien creditors, and subordinated debt holders, including Debs Corporation.<sup>3</sup>

22 **E. The Debtors' Need For Post-Petition Financing And Use Of Cash Collateral**

23 **1. The DIP Financing Facility And Use Of Cash Collateral Are Necessary To Allow**  
24 **Debtors To Operate Pending Sale Of Their Assets.**

25 Despite the significant operational improvements made since March 2013, it became  
26 clear that the Debtors could not continue to operate absent significant, additional capital infusions.

27 <sup>3</sup> Nothing in this Motion shall be deemed a waiver of the Debtors' rights to contest the extent,  
28 validity, enforceability, or priority of any alleged liens or security interests in or on the Debtors'  
property, all of which rights are expressly reserved.

1 However, the Debtors have been unable to find a source of sufficient new capital on reasonable  
2 terms and conditions. Accordingly, the Debtors have determined, in the sound exercise of their  
3 business judgment, that the best course of action to maximize the value of their assets and the  
4 potential return to creditors is to sell the Debtors' assets through an efficient sale process in chapter  
5 11.

6 The Debtors have obtained a commitment, subject to the Court's approval, from  
7 Meserole, LLC (together with other lenders from time to time party to the DIP Financing Facility,  
8 the "**DIP Lenders**"), pursuant to which Meserole, as Pre-Petition Lender, will permit the use of its  
9 cash collateral ("**Cash Collateral**") and the DIP Lenders will provide up to \$2 million in postpetition  
10 financing pursuant to the Budget, which the Debtors require to operate their business, conduct a  
11 transparent sale of their assets pursuant to Bankruptcy Code section 363 or, possibly, emerge from  
12 chapter 11 pursuant to a confirmed chapter 11 plan.

13 Attached to the Interim Order is a cash flow projection for the first 13 weeks of the  
14 bankruptcy case<sup>4</sup> (the "**Budget**").<sup>5</sup> As set forth in the Budget, the Debtors need funding from the  
15 DIP Financing Facility and use of Cash Collateral in order to cover the Debtors' Budgeted operating  
16 and administrative expenses pending a sale of their assets. Absent authorization to utilize the  
17 proceeds of the DIP Financing Facility and use Cash Collateral, the Debtors will have insufficient  
18 cash available to conduct ordinary business operations and to maintain and preserve the value of the  
19 Debtors' estates pending a sale of their assets.

20 As set forth in the Budget, the Debtors will need the infusion of working capital from  
21 the DIP Financing Facility and Cash Collateral during the initial weeks of this chapter 11 case  
22 primarily to: (a) fund the payment of obligations in the ordinary course of business (including

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23 <sup>4</sup> The assumptions to the Budget are specified therein. The Budget has been approved by the DIP  
24 Lender and the DIP Agent, but is subject to further change upon approval by the DIP Agent and  
the DIP Lender.

25 <sup>5</sup> Projections are considered to be reliable evidence on which a court may base its decision  
26 regarding the stability of a business and adequate protection. See In re Pursuit Athletic  
27 Footwear, Inc., 193 B.R. 713, 717 (Bankr. D. Del. 1996) ("The projection was carefully  
28 prepared . . . , used conservative sales figures, and accounted for the debtors' financial history.  
Such a projection is entitled to some deference.").

1 payroll obligations) in order to maintain the going concern value of, and maximize the ultimate  
2 return to, the Debtors' estates; (b) address the extraordinary demands on cash created by vendors  
3 refusing to grant ordinary credit terms and assist in maintaining ongoing relationships with these  
4 vendors; (c) permit the Debtors to honor pre-petition employee payroll and benefit claims to prevent  
5 significant losses of necessary personnel for ongoing operations; and (d) fund the expenses of  
6 professionals who are necessary for the ultimate success of the sale process.

7           The Debtors have prepared the Budget, which serves as a budget of cash receipts and  
8 expenditures reasonable and necessary to operate the Debtors' business and preserve the value of the  
9 Debtors' estates. All of the Debtors' expenditures are to be consistent with the Budget, within certain  
10 agreed upon Variances. The Debtors believe that the expenses identified in the Budget are  
11 reasonable and necessary business expenses that must be paid in order to continue their business, and  
12 maintain their value pending the sale of their assets. The Debtors will suffer immediate, irreparable  
13 injury if they are not allowed to gain access to the DIP Financing Facility and Cash Collateral in  
14 accordance with the Budget.

15           **2. The Debtors' Prospects For Post-petition Financing.**

16           Given the Debtors' current financial condition, their capital structure and, most  
17 significantly, the fact that Meserole, as Pre-Petition Lender, has liens on substantially all of the  
18 Debtors' assets, the Debtors could not obtain post-petition financing: (a) on a solely unsecured basis  
19 allowable under Bankruptcy Code section 503(b)(1) as an administrative expense; (b) pursuant to  
20 Bankruptcy Code sections 364(a) or 364(b); or (c) solely on a junior secured basis under Bankruptcy  
21 Code section 364(c)(3).

22           Based upon the Debtors' evaluation of alternative funding sources prior to the Petition  
23 Date, the Debtors believe that the terms of the proposed DIP Financing Facility as described in the  
24 DIP Term Sheet are more favorable to the Debtors than any other financing arrangement they could  
25 realistically expect to obtain from any other financing source. A more detailed discussion of the DIP  
26 Financing Facility is contained in the following section.

1           **3.     Summary of Terms contained in the DIP Term Sheet.**

2           The DIP Financing Facility is the result of arm's length negotiations between the  
3 Debtors and the DIP Agent. As noted above, the commitment of the DIP Lenders to extend the DIP  
4 Financing Facility is set forth in (and subject to the terms and conditions of) the DIP Term Sheet and  
5 the Interim Order. A summary of key provisions are set forth in the Concise Statement required by  
6 Bankruptcy Rule 4001(c) above, with citations to specific sections or paragraphs to the DIP Term  
7 Sheet and the Interim Order.

8           The following summarizes the material, economic terms of the DIP Financing  
9 Facility:<sup>6</sup>

- 10 • **Borrower:**           The Debtors<sup>7</sup>
- 11 • **DIP Agent:**           Meserole, LLC
- 12 • **DIP Lenders:**       Meserole, LLC and such other lenders from time to time party to the DIP  
13 Financing Facility
- 14 • **Commitment:**       Interim commitment up to \$1,450,000, inclusive of the roll-up of up to  
15 \$450,000 of emergency pre-petition bridge funding; and final commitment up to \$2,500,000<sup>8</sup>
- 16 • **Use:**                The proceeds shall be used (i) to pay expenses of the Debtors and their professionals  
17 pursuant to the Budget that shall have been approved by the DIP Agent and the DIP Lenders, (ii)  
18 to pay United States Trustee and approved professional fees and expenses associated with the  
chapter 11 cases in accordance with the Budget, (iii) for general corporate purposes in  
accordance with the Budget, and (iv) to refinance the bridge financing in the amount of  
\$450,000.

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19 <sup>6</sup> The following summary is qualified in all respects by the actual terms and conditions of the DIP  
20 Terms and the Interim Order. In the event of a conflict between the summary set forth below, on  
21 the one hand, and the DIP Term Sheet and the Interim Order, on the other hand, the latter shall  
22 control.

21 <sup>7</sup> In the event any other affiliates of the Debtors shall commence chapter 11 cases or an order for  
22 relief is entered against any such affiliate, such additional debtor shall be deemed a Borrower and  
one of the Debtors hereunder without further order of the Court.

23 <sup>8</sup> The Debtors are seeking authority to refinance through the Interim Advance a portion of their  
24 pre-petition obligations to the Pre-Petition Lender in an amount not to exceed \$450,000 for  
25 emergency advances that the Pre-Petition Lender advanced from June 20, 2013 through July 9,  
26 2013 on an interim bridge basis in contemplation of the commencement of these cases in order  
27 that the cases could be commenced under more orderly circumstances and in contemplation of  
28 and reliance on the Debtors' request for such authority, and but for such emergent circumstances  
such advances would have been made under the DIP Financing Facility. In the event that the  
partial refinancing is not approved under the Interim Order, then the Interim Advance amount  
will be \$1,000,000 and the total DIP Financing Facility under the Final DIP Order will be  
\$2,000,000.

- 1 • **Approved Variance:** Compliance with the Budget will be measured every week, subject to a  
2 weekly line item variance not to exceed 10% (the "**Variance**").
- 3 • **Maximum Amount Available During Period of Interim Order.** The total amount that can  
4 then be borrowed under the DIP Facility during the period covered by the Interim Order shall not  
5 exceed \$1,450,000.
- 6 • **Term:** Mature on the earlier of (a) ninety (90) days from the Petition Date; (b) the effective  
7 date of a plan of reorganization; (c) the consummation of a sale of all or substantially all of the  
8 assets of the Debtors under section 363 of the Bankruptcy Code ("**Sale**" or "**Sale Transaction**");  
9 (d) delivery of the Carve-Out Event Notice; or (e) the entry of an order by the Court approving  
10 an alternative DIP financing, provided, however, that it may be extended upon written agreement  
11 of the parties without the need for court approval.
- 12 • **Priority:** The DIP Agent, for itself and the DIP Lenders shall have an administrative  
13 superpriority claim pursuant to Sections 364(c)(1) and 507(b) of the Bankruptcy Code, subject  
14 only to (i) the payment of certain fees owed to certain governmental agencies and the  
15 Bankruptcy Court pursuant to 28 U.S.C. § 1930, and (ii) a carve-out for (a) statutory fees payable  
16 to the United States Trustee pursuant to 28 U.S.C. § 1930(a)(6); (b) fees payable to the clerk of  
17 the Court or any agent thereof; (c) an amount equal to the lesser of (x) the reasonable and  
18 allowed Budgeted professional fees and expenses actually incurred in the Chapter 11 cases by  
19 any professionals retained under section 327, 363, or 1103(a) of the Bankruptcy Code (the  
20 "**Permitted Professional Fees**") prior to the occurrence of a Carve-Out Event, whenever  
21 allowed by the Court, and (y) \$250,000, for payment of Permitted Professional Fees incurred  
22 prior to the occurrence of a Carve-Out Event, to the extent allowed by this Court, of which  
23 \$125,000 shall be disbursed directly to Stutman, Treister & Glatt, P.C. ("**STG**"), Borrower's  
24 bankruptcy counsel, immediately upon entry of the Interim DIP Order, to be applied to STG's  
25 postpetition fees and expenses in accordance with the applicable rules governing payment of  
26 professional fees; and (d) after the occurrence of a Carve-Out Event, an amount equal to the  
27 lesser of (x) the Permitted Professional Fees incurred following the occurrence of a Carve-Out  
28 Event, whenever allowed by the Court, and (y) \$25,000, for payment of Permitted Professional  
Fees incurred after the occurrence of a Carve-Out Event, to the extent allowed by this Court  
(subsections (a), (b), (c) and (d), collectively, the "**Carve-Out Expenses**"). Any payment of  
Permitted Professional Fees, other than the application of retainers held by any such  
professional, shall reduce the DIP Lenders' DIP Facility commitment and the Carve-Out  
Expense dollar for dollar. Upon the first day on which the DIP Agent is entitled to exercise  
remedies under the Interim DIP Order and Final DIP Order (the "**Carve-Out Event**") and  
provides written notice thereof to Borrower (the "**Carve-Out Event Notice**"), the right of the  
Borrower to pay Permitted Professional Fees outside the Carve-Out shall terminate. Upon the  
entry of the Final DIP Order the DIP Agent shall fund a reserve in the amount of the Permitted  
Professional Fees, which shall satisfy the DIP Agent's and DIP Lenders' obligation for Permitted  
Professional Fees under the Carve Out. In connection with the Carve-Out Expenses, the DIP  
Agent's and DIP Lenders' funding of the DIP Facility in accordance with this DIP Term Sheet,  
Budget and the Interim DIP Order, and the Pre-Petition Lender's consent for Debtors' use of  
cash collateral in accordance with the Interim DIP Order and the Budget, the Debtors, for  
themselves and their estates, waive all rights and claims against the DIP Agent, DIP Lenders,  
DIP Collateral, Pre-Petition Lender and Pre-Petition Collateral, under Bankruptcy Code sections  
506(c), 552(b) and 105 and other applicable laws to charge the DIP Agent, DIP Lenders, Pre-  
Petition Lender, the DIP Collateral or the Pre-Petition Collateral for any costs or expenses  
incurred by the Debtors or their estate
- **Liens:** Secured by first and senior priority priming liens (the "**Liens**") pursuant to Sections  
364(c)(2) and 364(d) of the Bankruptcy Code in and on all now existing and hereafter acquired  
property of the Debtors and the proceeds thereof (the "**DIP Collateral**"), provided, however, that  
such liens shall not apply to any avoidance actions under Chapter 5 of the Bankruptcy Code

1 against parties other than (y) Pre-Petition Lender, DIP Agent and DIP Lenders, and (z) any claim  
2 against and recovery from the judgment creditor/garnishor that received approximately \$35,000  
3 of Borrower's property subject to the Pre-Petition Lender's prior lien ("**Third-Party Avoidance  
Actions**"). Pre-Petition Lender consents to having its Prepetition Liens primed by the DIP Liens,  
subject to the terms and conditions of the DIP Term Sheet.

- 4 • **Adequate Protection:** As adequate protection for the Pre-Petition Lender's consent to being  
5 primed by the DIP Liens (as defined in the DIP Term Sheet) and the Carve-Out Expenses (as  
6 defined in the DIP Term Sheet) and the potential diminution in value of the Pre-Petition Lender's  
7 interests in the Pre-Petition Collateral and the imposition of the automatic stay, the Borrower  
8 shall take all actions necessary for the Pre-Petition Lender to be granted adequate protection  
9 (collectively, the "**Pre-Petition Lender Adequate Protection**") pursuant to Sections 361, 363,  
10 and 364 of the Bankruptcy Code, in the form of: (i) valid, binding, enforceable and perfected  
11 replacement liens upon and security interests in all property of the Debtors' estates to the extent  
12 of any diminution in value of the Pre-Petition Lender's interests in the Pre-Petition Collateral  
13 (the "**Pre-Petition Lender Replacement Lien**"), provided, however, that the Pre-Petition  
14 Lender Replacement Lien shall not extend to any causes of action, or proceeds thereof, that may  
15 be commenced pursuant to Chapter 5 of the Bankruptcy Code, except any such claim against the  
16 Pre-Petition Lender, DIP Agent or DIP Lenders, subordinate only to the DIP Lien, Pre-Petition  
Lien and the Carve-Out Expenses; (ii) payment by the Debtors of the reasonable costs and fees,  
including without limitation reasonable attorneys' fees, incurred by the Pre-Petition Lender in its  
capacity as prepetition lender to the Borrower, such payment to be made from advances under  
the DIP Facility following delivery of monthly invoices to the Debtors but without necessity of  
receiving a draw request from the Debtors; and (iii) an allowed super-priority administrative  
claim pursuant to Bankruptcy Code section 503(b)(1), 507(a)(2) and 507(b) to the extent of the  
diminution in value of the Pre-Petition Collateral that shall be payable from and have recourse to,  
in addition to the property of the Debtors that is made subject to security interests and liens in  
favor of the DIP Agent for the benefit of the DIP Agent and DIP Lenders, any unencumbered  
prepetition and postpetition property of the Debtors (the "**Adequate Protection Administrative  
Claim**"); and (iv) such other forms of adequate protection as set forth in the Interim DIP Order  
and Final DIP Order.
- 17 • **Fees:** No underwriting fee will be charged to the Debtors. The Debtors shall be responsible for  
18 the payment of all reasonable fees and expenses of the DIP Lenders, the DIP Agent and the Pre-  
19 Petition Lender in connection with this transaction and related transactions, enforcement of their  
20 rights with respect to the Pre-Petition Loan and DIP Obligations, including without limitation  
21 due diligence expenses and the reasonable fees and expenses of counsel ("**Fees and Expenses**").  
The Fees and Expenses shall be paid from advances under the DIP Facility following delivery of  
monthly invoices to the Debtors but without necessity of receiving a draw request from the  
Debtors. The Debtors' obligation to pay the Fees and Expenses shall be entitled to priority  
pursuant to Section 364(c)(1) of the Bankruptcy Code and shall survive the termination of the  
DIP Facility.
- 22 • **Interest:** 16% per annum; 19% upon the occurrence of an Event of Default.
- 23 • **Events of Default:** Standard provisions found in post-petition financing agreements, including  
24 breach of covenants or negative covenants, failure to adhere to the Budget, subject to the  
25 Variance, non-payment, dismissal or conversion before repaying the DIP Facility, entry of order  
26 for relief from stay to permit the exercise of rights on behalf of any party with respect to any  
27 asset or assets, entry of an order granting priority claim that is senior or pari passu with the  
28 claims of DIP Agent or DIP Lenders, any order amending, vacating or modifying the Interim  
Order or Final Order without DIP Agent's or DIP Lenders' consent, cessation of liens or super-  
priority claims granted to DIP Lenders. In addition, the cancellation by Debs Corporation of any  
material pending order or the failure of Debs Corporation to place new orders substantially  
consistent with past practices shall constitute an event of default.



- 1 • **Remedies for Default:** Standard provisions found in corporate post-petition financing.
- 2 • **Reporting Requirements.** The Debtors will be subject to various reporting requirements,  
3 including weekly lists of planned disbursements, weekly Budgets, and weekly estimated funding  
4 requirements.

5 The terms and conditions of the DIP Term Sheet were the subject of significant and  
6 extensive pre-petition negotiations between the Debtors and the DIP Agent, and are fair and  
7 reasonable. As noted in the Fox Declaration, the Debtors evaluated the alternative of obtaining  
8 debtor in possession financing from other lenders, but concluded that, to the extent that they could  
9 even obtain any sort of debtor in possession financing from lenders other than the DIP Lenders, they  
10 would be unable to obtain terms any more favorable than those offered under the DIP Term Sheet  
11 within the short time period.

12 Like any other comprehensive financing arrangement, the DIP Financing Facility  
13 confers a number of benefits on the Debtors and reflects several tradeoffs. The DIP Financing  
14 Facility and use of Cash Collateral should provide the Debtors with adequate capital to operate their  
15 business in the ordinary course for sufficient time until they can conduct and conclude the sale of  
16 substantially all of their assets to a successful bidder.

## 17 II.

### 18 ARGUMENT

#### 19 A. **Emergency Consideration of This Motion is Appropriate**

20 Bankruptcy Rule 4001(c) and (d) govern the procedure for consideration of motions  
21 to use cash collateral and to obtain post-petition financing. Both of these subsections provide for an  
22 expedited consideration of the Motion.

23 If the motion so requests, the court may conduct a hearing before such  
24 15 day period expires, but the court may authorize the obtaining of  
25 credit only to the extent necessary to avoid immediate and irreparable  
26 harm to the estate pending a final hearing.

27 See Fed. R. Bankr. P. 4001(c)(2) and (d)(3). LBR 2081-1(a)(9) also provides for an expedited  
28 consideration of the Motion.

1 The Ninth Circuit Court has recognized that immediate interim relief may be crucial  
2 to the success of a corporate reorganization:

3 We realize that 'in certain circumstances, the entire reorganization  
4 effort may be thwarted if emergency leave is withheld' and that  
5 reorganization under the Bankruptcy Code 'is a perilous process,  
6 seldom more so than at the outset of the proceedings when the debtor  
7 is often without sufficient cash flow to fund essential business  
8 operations.' In re Sullivan Ford Sales, 2 B.R. 350, 355 (Bankr. D. Me.  
9 1980). It is for this very reason that Congress specified that hearings  
10 concerning the use of cash collateral 'shall be scheduled in accordance  
11 with the needs of the debtor.' 11 U.S.C. § 363(c)(3) (1982).

12 In re Center Wholesale, Inc., 759 F.2d 1440, 1449 n.21 (9th Cir. 1985).

13 The DIP Financing Facility and use of Cash Collateral is needed to pay the essential  
14 operating expenses of the Debtors. Specifically, the Debtors must borrow under the DIP Financing  
15 Facility and use Cash Collateral immediately to pay their critical operating expenses going forward,  
16 including daily vendor payments, payroll obligations, rent, and weekly accrued claims under the  
17 Debtors' employee benefit plans. Because the cash needs of the Debtors are immediate, and absent  
18 satisfying those needs, the Debtors will be forced to terminate their ongoing operations, destroying  
19 the going concern value of their businesses and minimizing the potential value of the estates for  
20 creditors through a sale of their assets, the Debtors have demonstrated "immediate and irreparable  
21 harm to the estate" absent emergency consideration of the relief requested in this Motion.

22 The interim relief requested by the Debtors is precisely what is contemplated by  
23 Bankruptcy Rules 4001(c)(1) and 4001(c)(2) and should be granted to avoid immediate and  
24 irreparable harm to the Debtors' estates. The Debtors have served the Motion on the United States  
25 Trustee, the Pre-Petition Lender, counsel for Pre-Petition Lender, the DIP Agent, counsel for the DIP  
26 Agent, other asserted secured lenders, the 20 largest unsecured creditors of the Debtors, and other  
27 parties in interest. Pursuant to the terms of Bankruptcy Rules 4001(b) and (c), the Debtors will, after  
28 the Initial Hearing, give notice of the Final Hearing on the Motion to counsel for any committee  
appointed pursuant to Bankruptcy Code section 1102, entities that have filed UCC-1 financing  
statements, and other potential secured creditors, and all parties that served a demand for service of  
papers on the Debtors.

1 **B. Approving the DIP Term Sheet is Appropriate Under Bankruptcy Code Section 364**

2 As debtors in possession, the Debtors are authorized to operate their business under  
3 Bankruptcy Code section 1108. As part of that operation, a debtor in possession may incur  
4 unsecured debt in the ordinary course of business. See 11 U.S.C. § 364(a). The Bankruptcy Code  
5 offers a debtor in possession additional flexibility to the extent it needs additional credit, but cannot  
6 attract such credit on unsecured terms. Bankruptcy Code section 364 provides a progression of  
7 various protections to induce a post-petition lender to extend credit to a debtor in possession.

8 The necessity for obtaining the DIP Financing Facility has been fully described above  
9 and in the accompanying Fox Declaration and will not be repeated here. Bankruptcy Code  
10 section 364 governs a debtor in possession's ability to incur debt or obtain credit post-petition. More  
11 specifically, subsections (c)(1), and (d) of Bankruptcy Code section 364 address the incurrence of  
12 post-petition credit on a "superpriority" or senior secured basis, providing as follows:

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

16 (1) with priority over any or all administrative expenses of  
the kind specified in section 503(b) or 507(b) of this title;

17 . . .

18 (d) The court, after notice and a hearing, may authorize the  
19 obtaining of credit or the incurring of debt secured by a senior or equal  
lien on property of the estate that is subject to a lien only if —

20 (A) the [debtor in possession] is unable to obtain such credit  
21 otherwise; and

22 (B) there is adequate protection of the interest of the holder  
23 of the lien on the property of the estate on which such senior or  
equal lien is proposed to be granted.

24 11 U.S.C. § 364(c)(1), (d).

25 In order to obtain post-petition credit on "superpriority" basis or by granting a  
26 priming lien, a debtor in possession must show that it is unable to obtain the necessary credit  
27 otherwise and the lienholder to be primed (to the extent that such priming is not consensual) is  
28 adequately protected. Bankruptcy Code section 364, however, does not impose upon a debtor in

1 possession the onerous duty to seek credit from every possible lender before concluding that such  
2 credit is unavailable. See Bray v. Shenandoah Fed. Sav. & Loan Ass'n (In re Snowshoe Co., Inc.),  
3 789 F.2d 1085, 1088 (4th Cir. 1986); In re Ames Dep't Stores, Inc., 115 B.R. 34, 40 (Bankr.  
4 S.D.N.Y. 1990) (holding that contacting four financial institutions regarding a loan satisfied the  
5 requirements of Bankruptcy Code section 364(d)(1)(A)). Instead, a good faith effort to obtain less  
6 burdensome credit from other sources is all that is required of a debtor, especially when time is of  
7 the essence. See, e.g., In re Snowshoe Co., Inc., 789 F.2d at 1088; In re Reading Tube Indus.,  
8 72 B.R. 329, 332 (Bankr. E.D. Pa. 1987).

9  
10 **C. The Requirements Under Bankruptcy Code Section 364(c) and Should be Allowed to  
Borrow Under the DIP Financing Facility on a "Superpriority Basis"**

11 The DIP Term Sheet provides the DIP Agent, for itself and for the benefit of the DIP  
12 Lenders, with the following protections:

- 13 a. Superpriority administrative claim status pursuant to Bankruptcy Code  
14 section 364(c)(1), subject only to certain carve-outs and other limited exceptions; and  
15 b. A valid, perfected, and non-voidable security interest in and priming  
16 liens upon all assets of the Debtors, pursuant to section 364(c)(2), senior to the liens securing  
17 the Pre-Petition Indebtedness and subject to certain Senior Priority Claims.  
18 c. A partial roll-up, through the Interim Advance, of up to \$450,000 in  
19 emergency bridge funding provided to the Debtors from June 20, 2013 through July 9, 2013.

20 Other than the requirement of "notice and a hearing," the only statutory prerequisite  
21 for obtaining credit on a secured basis on a "superpriority" basis under section 364(c)(1) is that "the  
22 [debtor in possession] is unable to obtain unsecured credit allowable under section 503(b)(1) of this  
23 title as an administrative expense." This threshold test is certainly satisfied here.

24 As set forth in above and in the Fox Declaration, despite their efforts, the Debtors, as  
25 of the Petition Date, were unable to obtain unsecured credit sufficient to finance their operations.  
26 Moreover, the Debtors simply cannot obtain alternative financing of the magnitude proposed under  
27 the DIP Term Sheet on an unsecured basis, even if the resulting claim were to be allowed as an  
28 administrative claim, because the Debtors are likely to be unable to pay any such administrative

1 claim without the consent of the Pre-Petition Lender, which has liens on all of the Debtors' assets.  
2 The Debtors have evaluated alternative post-petition financing concepts, none of which contemplate  
3 a financing on anything other than a fully secured basis. And the DIP Agent and the DIP Lenders  
4 have only agreed to provide additional funding to the Debtors if it is given the added protection and  
5 benefits provided by the DIP Term Sheet. Consequently, the Debtors should be permitted to borrow  
6 under the DIP Term Sheet on a "superpriority" basis under section 364(c)(1), as such borrowing is  
7 the only source of funds available to the Debtors at this time.

8 **D. The Debtors Have Satisfied the Requirements of Bankruptcy Code Section 364(d)**

9 Under the DIP Term Sheet, the DIP Agent and the DIP Lenders are requiring that the  
10 funds advanced under the DIP Term Sheet roll up emergency bridge funding up to \$450,000 and be  
11 secured by liens that have priority over pre-petition liens, including the liens securing the Pre-  
12 Petition Indebtedness. The only statutory prerequisites for obtaining credit on a priming lien basis  
13 under Bankruptcy Code section 364(d) are that "the [debtor in possession] is unable to obtain such  
14 credit otherwise" and that, absent the consent of the secured creditor sought to be primed, "there is  
15 adequate protection of the interest of the holder of the lien on the property of the estate on which  
16 such senior or equal lien is proposed to be granted." 11 U.S.C. § 364(d). Each of these tests is  
17 satisfied in this case.

18 As set forth above, the Debtors simply cannot obtain alternative financing of the  
19 magnitude proposed under the DIP Financing Facility. The Debtors are unable to access the  
20 availability under the Pre-Petition Credit Facility because they are already over-advanced and the  
21 Pre-Petition Lender has made necessary emergency bridge advances. The Debtors otherwise do not  
22 have unencumbered sources of cash to fund their operations. The Pre-Petition Lender already has  
23 liens on all or substantially all of the Debtors' assets. Due to the uncertainty created by the current  
24 economic crisis, even the DIP Lenders have refused to extend credit post-petition without the  
25 "superpriority" and the "priming" protections afforded by Bankruptcy Code sections 364(c)(1) and  
26 (d), and the Debtors have been unable to obtain financing on any other feasible and more favorable  
27 terms. The DIP Agent and the DIP Lenders have specifically required that the DIP Priming Lien  
28 "prime" the liens securing the Pre-Petition Indebtedness.

1           The Pre-Petition Lender has agreed to subordinate its liens securing the Pre-Petition  
2           Indebtedness to the competing liens arising in connection with the DIP Financing Facility. This  
3           consensual subordination obviates the need for the adversarial "priming" and the accompanying need  
4           for a showing of adequate protection, that would otherwise be necessary if a lender other than  
5           Meserole provided the debtor in possession financing. If the Debtors attempted to "prime" the Pre-  
6           Petition Lender, the Debtors' operations would be held hostage to the uncertainty of such an  
7           adversarial fight, and due to the bankruptcy filing's negative impact on the Debtors' business  
8           operations, the value of the Debtors' assets could be the subject of a serious dispute. Moreover, the  
9           costs and delay in engaging in such litigation would likely negatively impact the Debtors' ability to  
10          normalize relationships with vendors and customers.

11           The Pre-Petition Lender has, however, conditioned its consent to be primed upon (i)  
12          the Debtors' providing the Pre-Petition Lender with valid, binding, enforceable and perfected  
13          replacement liens upon and security interests in all property of the Debtors' estates to the extent of  
14          any diminution in value of the Pre-Petition Lender's interests in the Pre-Petition Collateral (the  
15          "**Pre-Petition Lender Replacement Lien**"). (ii) the partial roll-up of up to \$450,000 in emergency  
16          bridge funding, (iii) the payment by the Debtors of the reasonable costs and fees, including without  
17          limitation reasonable attorneys' fees, incurred by the Pre-Petition Lender in its capacity as  
18          prepetition lender to the Borrower; and (iv) an allowed super-priority administrative claim pursuant  
19          to Bankruptcy Code section 503(b)(1), 507(a)(2) and 507(b) to the extent of the diminution in value  
20          of the Pre-Petition Collateral that shall be payable from and have recourse to, in addition to the  
21          property of the Debtors that is made subject to security interests and liens in favor of the DIP Agent  
22          for the benefit of the DIP Agent and DIP Lenders, any unencumbered prepetition and postpetition  
23          property of the Debtors (the "**Adequate Protection Administrative Claim**"). The Pre-Petition  
24          Lender is also protected by the advance of the additional funds under the DIP Facility because the  
25          value preserved by maintaining the Debtors' value pending a sale of its assets benefits all creditor  
26          constituencies. The financing provided under the DIP Financing Facility will enable the Debtors to  
27          preserve the value of their businesses pending a sale of their assets, which will benefit the estates and  
28          creditors.

1 It is well established that a bankruptcy court, where possible, should be flexible in  
2 approving a debtor's attempts to provide adequate protection:

3 The first effort of the court must be to insure the value of the collateral  
4 will be preserved. Yet, prior to confirmation of a plan of  
5 reorganization, the test of that protection is not by the same  
6 measurements applied to the treatment of secured creditor in a  
7 proposed plan. In order to encourage the Debtors' efforts in the  
8 formative period prior to the proposal of a reorganization, the court  
9 must be flexible in applying the adequate protection standard.

10 MBank Dallas, N.A. v. O'Connor (In re O'Connor), 808 F.2d 1393, 1398 (10th Cir. 1987); accord In  
11 re Dynaco Corp., 162 B.R. 389, 395 (Bankr. D. N.H. 1983) (cash collateral motion); Hoffman v.  
12 Portland Bank (In re Hoffman), 51 B.R. 42, 47 (Bankr. W.D. Ark. 1985) (relief from stay); In re  
13 Heatron, Inc., 6 B.R. 493, 496 (Bankr. W.D. Mo. 1980) (cash collateral motion).

14 The protections to be provided to Meserole, as Pre-Petition Lender, including the  
15 partial roll-up of the emergency bridge advances, are clear and supported by the facts -- without such  
16 adequate protection, it would not consent to the terms of the DIP Facility and the proposed priming  
17 liens. Absent the DIP Facility, the Debtors cannot continue their operations. The Debtors'  
18 employees and other creditor constituencies deserve an opportunity to preserve this going concern  
19 value pending the sale of the Debtors' assets. Consequently, the Debtors should be permitted to roll  
20 up the emergency bridge advances up to \$450,000 and borrow under the DIP Financing Facility by  
21 priming the Pre-Petition Liens pursuant to Bankruptcy Code section 364(d).

22 **E. Approval of the DIP Financing Facility is Supported by the Exercise of Sound Business**  
23 **Judgment**

24 The fact that the Debtors have satisfied the requirements of Bankruptcy Code  
25 section 364, of course, does not end the inquiry, as these sections are permissive, not mandatory.  
26 See 11 U.S.C. § 364(c)(1) and (d) ("after notice and a hearing", the court "may authorize the  
27 obtaining of credit or the incurring of debt") (emphasis added). Generally, however, courts give  
28 broad deference to business decisions of a debtor in possession. See, e.g., Richmond Leasing Co. v.  
Capital Bank, N.A., 762 F.2d 1303, 1311 (5th Cir. 1985). Moreover, a Bankruptcy Court generally  
will respect a debtor in possession's business judgment regarding the need for and the proposed use  
of funds. As the Court noted in In re Ames Dep't Stores, Inc.,

1 [A] court's discretion under section 364 is to be utilized on grounds  
2 that permit reasonable business judgment to be exercised so long as  
3 the financing agreement does not contain terms that leverage the  
4 bankruptcy process and powers or its purpose is not so much to benefit  
5 the estate as it is to benefit a party-in-interest.

6 115 B.R. at 40.

7 The power of the debtor in possession to incur secured debt follows necessarily from  
8 the general power of the debtor in possession to operate its business in the exercise of its business  
9 judgment. 11 U.S.C. § 1108. Without the ability to incur secured debt, the debtor in possession  
10 would be placed at a significant competitive disadvantage and its efforts to reorganize could be  
11 seriously impaired.

12 In the present case, the Debtors' decision to enter into the DIP Financing Facility  
13 represents an exercise of sound business judgment in the continued operation of the Debtors'  
14 business and preservation of asset value. Like most business decisions, the Debtors' decision to  
15 enter into the DIP Financing Facility will both confer a number of benefits on the Debtors and  
16 impose several tradeoffs. The DIP Financing Facility should provide the Debtors with sufficient  
17 capital to operate their business in the ordinary course, pending the marketing and sale of the assets  
18 as a going concern. The DIP Agent and the DIP Lenders have also agreed to fund certain carve-outs  
19 for payment of statutory fees, approved professional fees, and other necessary expenses.

20 In exchange for the foregoing, the Debtors have agreed, among other things, that:

21 (i) the Debtors' obligations under the DIP Financing Facility shall be secured by a lien on  
22 substantially all of the Debtors' assets; (ii) post-petition borrowings will bear interest of no less than  
23 16% per annum; (iii) the Debtors shall pay certain fees to the DIP Lenders, the DIP Agent and the  
24 Pre-Petition Lender; (iv) the Debtors will provide financial information to the DIP Agent and the  
25 DIP Lenders; (v) the Debtors will waive certain claims, rights and powers under 11 U.S.C. § 506(c)  
26 against Pre-Petition Lender and its collateral; and (vi) the Debtors will request that this Court, as part  
27 of the Final Order approving the DIP Financing Facility, set a bar date for challenges to any claims  
28 or liens of Pre-Petition Lender.

29 These general types of concessions are commonplace in complex financing  
30 arrangements and are amply justified here in light of the benefits conferred upon the Debtors under



1 the DIP Financing Facility and the absence of any other available financing. In fact, bankruptcy  
2 courts routinely recognize that concessions by debtors similar (or even greater) to those made here  
3 are often included in both debtor-in-possession financing and cash collateral arrangements. See,  
4 e.g., In re Adams Apple, Inc., 829 F.2d 1484, 1488 (9th Cir. 1987) ("Section 364 was designed to  
5 provide a debtor a means to obtain credit after filing bankruptcy. As such, cross collateralization  
6 clauses appear to be covered by section 364"); In re Keystone Camera Prods. Corp., 126 B.R. 177,  
7 182-83 (Bankr. D. N.J. 1991); Unsecured Creditors' Comm. v. First Nat'l Bank & Trust Co. (In re  
8 Ellingsen MacLean Oil Co., Inc.), 65 B.R. 358 (W.D. Mich. 1986), aff'd, 834 F.2d 599 (6th Cir.  
9 1987), cert. denied, 488 U.S. 817 (1988) (validation of liens, repayment of debt, cross  
10 collateralization); In re FCX, Inc., 54 B.R. 833, 839-41 (Bankr. E.D.N.C. 1985) (cross  
11 collateralization); Quigley v. Gen. Elec. Co. (In re Elec. City, Inc.), 43 B.R. 336, 338 (Bankr. W.D.  
12 Wash. 1984) (stipulation provided for post-petition lien and conceded validity of lien).

13           Such concessions are especially justified in cases where the failure to approve the  
14 requested financing threatens to doom any prospects the debtor has for a successful restructuring.  
15 See, e.g., In re Vanguard Diversified, Inc., 31 B.R. 364, 366-67 (Bankr. E.D.N.Y. 1983) (approving  
16 cross collateralization and the granting of a super-administrative priority claim in favor of a pre-  
17 petition lender where, among other things, failure to provide such financing would result in the  
18 failure of the chapter 11 case and the value of the encumbered assets at liquidation were less than the  
19 lenders' claims); accord In re Roblin Indus., Inc., 52 B.R. 241, 245 (Bankr. N.D.N.Y. 1985)  
20 (approving cross collateralization; "[i]f in fact [the lenders] are undersecured [and] absent financing  
21 the debtor would in all likelihood shut down, [then] liquidation would follow, and unsecured  
22 creditors would receive no distribution from the debtor's estate").

23           In sum, the substantial benefits the Debtors will derive from the proposed financing  
24 amply justify the Debtors' decision to enter into the DIP Financing Facility, a decision that the Court  
25 should ratify as being in the best interests of the Debtors and their estates.

1 **F. The Debtors Should be Granted Access to Cash Collateral Under Bankruptcy Code**  
2 **Section 363(c)(1)**

3 The Debtors' use of property of the estates is governed by section 363 of the Bankruptcy  
4 Code. Section 363(c)(1) provides, in pertinent part, that:

5 If the business of the debtor is authorized to be operated under  
6 section . . . 1108 . . . of this title and unless the court orders  
7 otherwise, the trustee [or debtor in possession] may enter into  
8 transactions, including the sale or lease of property of the estates,  
9 in the ordinary course of business, without notice or hearing, and  
10 may use property of the estates in the ordinary course of business  
11 without notice or hearing.

12 11 U.S.C. § 363(c)(1).

13 However, the Bankruptcy Code provides that a debtor in possession may only use, sell or lease  
14 "cash collateral," which is defined as "cash, negotiable instruments, documents of title, securities,  
15 deposit accounts, or other cash equivalents whenever acquired in which the estate and an entity  
16 other than the estate have an interest[,]" if either of two alternative circumstances exist:

17 (A) each entity that has an interest in such cash collateral consents;  
18 or

19 (B) the court, after notice and a hearing, authorizes such use, sale,  
20 or lease in accordance with the provisions of this section.

21 11 U.S.C. § 363(c)(2). In the event that a secured creditor does not consent to a debtor's use of cash  
22 collateral, courts will generally permit the use of such collateral if the secured lender is adequately  
23 protected. See, e.g., Security Leasing Partners, LP v. ProAlert, LLC (In re ProAlert, LLC), 314 B.R.  
24 436, 444 (B.A.P. 9th Cir. 2004) ("The plain language of § 363 allows a debtor to use cash collateral  
25 if the secured creditor's interest is adequately protected . . ."). A secured creditor is entitled to  
26 protection only to the extent that the use of collateral will result in a decrease in "the value of such  
27 entity's interest in such property." 11 U.S.C. §§ 361, 363(e); United Sav. Ass'n v. Timbers of  
28 Inwood Forest Assocs., Ltd., 484 U.S. 365 (1988); see also In re Glasstream Boats, Inc., 110 B.R.  
611, 613-14 (Bankr. M.D. Ga. 1990) (debtor should be allowed to use cash collateral as long as the  
value of the creditor's interest does not decrease). Courts have held that replacement liens are a

1 judicially recognized form of adequate protection. See, e.g., In re Senior Care Properties, Inc., 137  
2 B.R. 527, 530 (Bankr. N.D. Fla. 1992) ("The replacement lien on all of the furniture, fixtures, and  
3 equipment at the facility is sufficient protection of NBD's interests.").

4 Here, the Pre-Petition Lender consents to the use of Cash Collateral, provided that it is used  
5 in accordance with the Budget and, in the Debtors' business judgment, such use is necessary to  
6 continue operations pending a sale of the Debtors' assets. To the best of the Debtors' knowledge, no  
7 creditors (other than the Pre-Petition Lender) are entitled to adequate protection, because either (i)  
8 such creditors do not have perfected liens or security interests or (ii) such creditors are unsecured  
9 due to the lack of value in the collateral and the Pre-Petition Lender's first priority liens on such  
10 collateral. Nonetheless, the Debtors propose to provide adequate protection any creditor who can  
11 prove a properly perfected and valid security interest in cash collateral.<sup>9</sup> The adequate protection  
12 will be in the form of replacement liens, subject to the same defenses and rights of avoidance as the  
13 secured creditor's existing liens, upon and security interests in all property of the Debtors' estates,  
14 which replacement liens shall be limited to the diminution in value, if any, caused by the Debtors'  
15 use of their collateral and shall be junior to the replacement liens provided to the Pre-Petition  
16 Lender. Based on the foregoing, the Debtors' submit that the requirements of Bankruptcy Code  
17 section 363(c)(2) have been satisfied.

### 18 III.

### 19 CONCLUSION

20 **WHEREFORE**, the Debtors respectfully request that this Court, following the Initial  
21 Hearing, enter the Interim Order (i) approving the DIP Financing Facility on the terms set forth in  
22 the DIP Term Sheet; (ii) authorizing the use of Cash Collateral, (iii) granting priming liens and  
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24  
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27 <sup>9</sup> As stated above, the Debtors reserve the right to contest the extent, validity, enforceability, or  
28 priority of any alleged liens and/or security interests.

1 superpriority claims; and (iv) providing adequate protection, and, following the Final Hearing, enter  
2 the Final Order, and grant such other and further relief as the Court deems appropriate.

3  
4 Dated: July 11, 2013

/s/ Margreta M. Morgulas  
GARY E. KLAUSNER  
MARGRETA M. MORGULAS  
KIZZY L. JARASHOW  
STUTMAN, TREISTER & GLATT  
PROFESSIONAL CORPORATION  
[Proposed] Reorganization Counsel  
for Debtor and Debtor in Possession

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Exhibit "A"

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16 Attorneys for Meserole, LLC

17 **UNITED STATES BANKRUPTCY COURT**  
18 **CENTRAL DISTRICT OF CALIFORNIA**  
19 **LOS ANGELES DIVISION**

20 In re:  
21 Colorep, Inc., et al.,  
22 Debtors and Debtors-  
23 in-Possession.

Case No. 13-27689

Chapter 11

**INTERIM ORDER (A) AUTHORIZING  
DEBTOR TO OBTAIN POSTPETITION  
FINANCING; (B) GRANTING  
SUPERPRIORITY EXPENSE CLAIMS  
AND PRIMING LIENS; AND (C)  
GRANTING OTHER RELIEF UNDER 11  
U.S.C. §§ 105, 361, 362, 363,  
364 AND 507(B), F.R.B.P. 2002  
AND 4001; AND LBRS 2002-1 AND  
4001-2)**

HEARING

DATE: JULY 15, 2013

TIME: 2:00 A.M.

PLACE: 255 E. TEMPLE STREET,  
COURTROOM 1375  
LOS ANGELES, CA 90012

24  
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27  
28 Upon the Emergency Motion Of Debtors For Entry Of Interim

1 And Final DIP Orders (A) Authorizing Debtors To Obtain  
2 Postpetition Financing; (B) Granting Superpriority Expense Claims  
3 And Priming Liens; And (C) Granting Other Relief Under 11 U.S.C.  
4 §§ 105, 361, 362, 363, 364 and 507(b), F.R.B.P. 2002 and 4001;  
5 and LBRs 2002-1 AND 4001-2 (the "**Motion**"), dated July 10, 2013,  
6 of Colorep, Inc. and Transprint USA, Inc., as debtors and  
7 debtors-in-possession (collectively, the "**Debtors**"), in the  
8 above-captioned chapter 11 cases (the "**Cases**") under sections  
9 105, 361, 362, 363, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1),  
10 364(e) and 507(b) of title 11 of the United States Code, 11  
11 U.S.C. §§ 101, et seq. (as amended, the "**Bankruptcy Code**"), and  
12 Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy  
13 Procedure (the "**Bankruptcy Rules**") and Local Rules for the  
14 Bankruptcy Court for the Central District of California (the  
15 "**Local Rules**") 4001-2, 2002-2(a)(4) and 9013, seeking, among  
16 other things:

17 i) authorization for Debtors to enter into and to be  
18 bound by, and the approval of (A) the provisions of that  
19 certain Senior Secured Priming Debtor In Possession Term  
20 Credit Facility Term Sheet (the "**DIP Term Sheet**"), by and  
21 among Colorep, Inc. and Transprint USA, Inc., as borrower,  
22 Meserole, LLC and the lenders party thereto from time to  
23 time (collectively, "**DIP Lenders**") and Meserole, LLC, as  
24 administrative and collateral agent for itself and the DIP  
25 Lenders (in such capacity, the "**DIP Agent**") and (B) the  
26 provisions of the other documents, agreements and  
27 instruments reasonably necessary to document the financing  
28 and transactions contemplated in the DIP Term Sheet and

1 herein, including without limitation a credit agreement, if  
2 any, and any other documents granting a lien upon, or  
3 control (for Uniform Commercial Code purposes) of the DIP  
4 Collateral (as defined below) as security for payment of the  
5 DIP Obligations (as defined below) (collectively, the  
6 "**Ancillary DIP Agreements**"; the DIP Term Sheet, the  
7 Ancillary DIP Agreements, this Order (this "**Interim DIP**  
8 **Order**") and the Final DIP Order (as defined below),  
9 collectively, the "**DIP Documents**"), and that the DIP  
10 Documents are entered into in connection with postpetition  
11 financing (the "**DIP Loan**" or the "**DIP Financing**") consisting  
12 of a superpriority and senior, priming lien, secured term  
13 credit facility (collectively, the "**DIP Facility**") pursuant  
14 to which: (i) Debtors, on an interim basis, may (a) borrow  
15 from the DIP Lenders multiple draw term loans up to an  
16 aggregate principal amount outstanding not to exceed  
17 \$[1,450,000]<sup>1</sup> under the terms of the DIP Documents,  
18 including this Interim DIP Order, to refinance a portion of  
19 the advances made by Meserole, LLC prepetition on an  
20 emergency interim basis in contemplation of the commencement  
21 of these Cases in an amount not to exceed \$450,000, and to  
22 provide working capital for Debtors until the Termination  
23 Date in an amount sufficient to prevent immediate and  
24 irreparable harm to the estates prior to a Final Hearing (as  
25 defined below) on the Motion (the "**Interim DIP Advances**" or  
26 the "**Interim DIP Facility**"), (ii) conditioned on the

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27  
28 <sup>1</sup> If the Interim Advances are not permitted to refinance the pre-petition  
emergency advances, then the Interim Advance limit is [\$1,000,000.]



1 execution and satisfaction of the conditions to lending  
2 under all of the DIP Documents, and upon entry of the Final  
3 DIP Order, Debtors, on a final basis, may borrow from the  
4 DIP Lenders multiple draw term loans up to an aggregate  
5 principal amount outstanding not to exceed [\$2,500,000]  
6 (inclusive of the Interim DIP Advances)<sup>2</sup> under the terms of  
7 the DIP Documents and upon the entry of the Final DIP Order  
8 to provide working capital for Debtors until the Termination  
9 Date;

10 ii) authorization for Debtors to execute and enter  
11 into the DIP Documents and to perform such other and further  
12 acts as may be required in connection with the DIP  
13 Documents;

14 iii) limitation of Debtors' right to surcharge any Pre-  
15 Petition Collateral (as defined below) and DIP Collateral  
16 (as defined below) under sections 105, 506(c) and 552(b) of  
17 the Bankruptcy Code;

18 iv) under Bankruptcy Rule 4001 and Local Rule 4001-2,  
19 an interim hearing (the "**Interim Hearing**") on the Motion for  
20 approval of the DIP Facility and this Interim DIP Order; and

21 v) a final hearing (the "**Final Hearing**") to be held  
22 within 21 days after entry of this Interim DIP Order to  
23 consider final approval of the DIP Documents, entry of a  
24 Final DIP Order approving the DIP Documents and authorizing  
25 the balance of the borrowings under the DIP Documents on a  
26 final basis (the "**Final DIP Order**"), as set forth in the

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27  
28 <sup>2</sup> If the Interim Advances are not permitted to refinance the pre-petition  
emergency advances, then the DIP Facility will be limited to \$2,000,000.

1 Motion and the DIP Documents, which will be filed with this  
2 Court prior to the Final Hearing.

3 Debtors having served notice pursuant to sections 102(1),  
4 361, 362, 363 and 364 of the Bankruptcy Code and Bankruptcy Rules  
5 2002, 4001(b) and (c) and Local Bankruptcy Rules 4001-2, 2002-  
6 2(a)(4) and 9013, of the Motion, the relief requested therein on  
7 an interim basis and the Interim Hearing on, among others,  
8 Debtors' [Consolidated] Twenty Largest unsecured creditors as set  
9 forth in the list filed by Debtors pursuant to Bankruptcy Rule  
10 1007(d) (the "**Twenty Largest Creditors List**"); counsel for the  
11 Pre-Petition Lender, DIP Agent, DIP Lenders, all known holders of  
12 liens on Debtors' assets; and the Office of the United States  
13 Trustee for the Central District of California (the "**United**  
14 **States Trustee**");

15 The Debtors having filed Cases on July 10, 2013 (the  
16 "**Petition Date**")

17 The Interim Hearing having been held by this Court on July  
18 \_\_, 2013;

19 Upon the record made by Debtors at the Interim Hearing, the  
20 record in these Cases and the Declaration of \_\_\_\_\_ dated  
21 July 10, 2013, in support of First Day Pleadings, and it  
22 appearing that the Pre-Petition Lender consents to the approval  
23 of this Interim DIP Order, and that interests of all other  
24 holders of liens on the Pre-Petition Collateral are also  
25 adequately protected, and after due deliberation and  
26 consideration and sufficient cause appearing therefor:

27  
28

1 IT IS FOUND, DETERMINED, ORDERED AND ADJUDGED, that:

2 1. *Disposition.* The Motion is granted on an interim basis  
3 on the terms set forth in this Interim DIP Order. Any objections  
4 to the relief sought in the Motion or this Interim DIP Order that  
5 have not been previously resolved or withdrawn, and all  
6 reservations of rights contained therein, are overruled on the  
7 merits, except as objections to a Final DIP Order. This Interim  
8 DIP Order shall be valid, binding and enforceable on all parties  
9 in interest and fully effective immediately upon entry, subject  
10 only to the entry of the Final DIP Order.

11 2. *Jurisdiction and Venue.* This Court has jurisdiction  
12 over the Cases and the Motion as a core proceeding and over the  
13 parties and property affected hereby under 28 U.S.C. §§ 157(b)  
14 and 1334. Venue is proper before this Court under 28 U.S.C. §§  
15 1408 and 1409. No request has been made for the appointment of a  
16 trustee or examiner.

17 3. *Notice.* Under the circumstances, the notice given by  
18 Debtors of the Motion, the relief requested therein, and the  
19 Interim Hearing pursuant to Bankruptcy Rules 2002, 4001(b) and  
20 (c) and Local Bankruptcy Rules 4001-2, 2002-2(a)(4) and 9013  
21 constitutes appropriate, due and sufficient notice thereof and  
22 complies with Bankruptcy Rules 2002, 4001(b) and (c) and Local  
23 Bankruptcy Rules 4001-2, 2002-2(a)(4) and 9013, and the notice of  
24 the relief to be sought at the Final Hearing as prescribed herein  
25 below is adequate and appropriate.

26 4. *Findings Regarding the DIP Financing.*

27 a. The DIP Term Sheet and the Ancillary DIP  
28 Agreements have been negotiated in good faith and at arm's length

1 between all parties thereto, all of which were or have been  
2 represented by experienced counsel, are fair and reasonable under  
3 the circumstances, are for reasonably equivalent value and fair  
4 consideration, are enforceable in accordance with their terms,  
5 and have been and shall be deemed to have been entered into and  
6 extended in good faith, as that term is used in Section 364(e) of  
7 the Bankruptcy Code

8           b. Debtors do not have available sources of working  
9 capital and financing, including Cash Collateral, to carry on the  
10 operation of their business without obtaining the DIP Financing.  
11 Debtors need interim funding under the DIP Financing as  
12 authorized herein, subject to the limitations set forth in the  
13 DIP Budget (as defined below) (i) to finance, among other things,  
14 the orderly continuation of the operation of their businesses;  
15 (ii) to maintain business relationships with vendors, suppliers  
16 and customers; (iii) to finance payroll; (iv) to make capital  
17 expenditures; (v) to satisfy other working capital and  
18 operational needs; (vi) to pay DIP Agent's and DIP Lenders' Fees  
19 and Expenses (as defined below) pursuant to the terms hereof;  
20 (vii) to pay the Carve Out (as defined below); (viii) to pay such  
21 items as are set forth by line item in the DIP Budget; (ix) to  
22 refinance a portion of the Pre-Petition Lender's claim in an  
23 amount not in excess of \$450,000; and (x) for other lawful  
24 purposes in the ordinary course of Debtors' business not  
25 prohibited by the DIP Documents or this Interim DIP Order  
26 ("**Permissible Uses**"). The access of Debtors to sufficient working  
27 capital and liquidity through borrowings under the DIP Facility  
28 is vital to the preservation and maintenance of the going concern

1 values of Debtors and to a successful reorganization of Debtors.

2 c. Debtors are unable to obtain financing on more  
3 favorable terms from sources other than the DIP Lenders under the  
4 DIP Documents and are unable to obtain adequate unsecured credit  
5 allowable under sections 364(c)(1) or 503(b)(1) of the Bankruptcy  
6 Code as an administrative expense. Debtors are also unable to  
7 obtain secured credit from sources other than the DIP Lenders  
8 that would be allowable under sections 364(c)(2), 364(c)(3) and  
9 364(d)(1) of the Bankruptcy Code for the purposes set forth in  
10 the DIP Documents and Superpriority Claims as defined and set  
11 forth herein. The terms of the DIP Term Sheet are fair and  
12 commercially reasonable and in the best interests of creditors.

13 d. The terms of the DIP Term Sheet, the Ancillary DIP  
14 Agreements and this Interim DIP Order are fair and commercially  
15 reasonable, reflect Debtors' prudent exercise of business  
16 judgment consistent with their fiduciary duties and constitute  
17 reasonably equivalent value and fair consideration.

18 e. The DIP Term Sheet, the Ancillary DIP Agreements  
19 and the terms of the DIP Facility have been negotiated in good  
20 faith and at arm's length among Debtors and the DIP Agent, and  
21 all of Debtors' obligations and indebtedness arising under, in  
22 respect of or in connection with the DIP Facility, the DIP Term  
23 Sheet and the Ancillary DIP Agreements, including without  
24 limitation, any and all amounts due, whether now existing or  
25 hereafter arising, under DIP Term Sheet or any Ancillary  
26 Agreement, including any and all principal, interest, penalties,  
27 fees, charges, premiums, indemnities and costs owed or owing to  
28 the DIP Agent or any DIP Lender by the Debtors, in each instance,

1 whether absolute or contingent, direct or indirect, secured or  
2 unsecured, due or not due, primary or secondary, joint or  
3 several, arising by operation of law or otherwise, and all  
4 interest and other charges thereon, including post-petition  
5 interest (collectively, the "**DIP Obligations**"), shall be deemed  
6 to have been extended by the DIP Agent and DIP Lenders and their  
7 respective affiliates in good faith, as that term is used in  
8 section 364(e) of the Bankruptcy Code and in express reliance  
9 upon the protections offered by section 364(e) of the Bankruptcy  
10 Code, and the DIP Obligations, the DIP Lien (as defined below)  
11 and the Superpriority Claims (as defined below) shall be entitled  
12 to the full protection of section 364(e) of the Bankruptcy Code  
13 in the event that this Interim DIP Order or any provision hereof  
14 is vacated, reversed or modified, on appeal or otherwise, or by  
15 denial of the Final DIP Order or modification of the terms of the  
16 DIP Financing authorized by this Interim DIP Order by the terms  
17 of the Final DIP Order.

18 f. Debtors have requested immediate entry of this  
19 Interim DIP Order under Bankruptcy Rules 4001(b)(2) and  
20 4001(c)(2) and Local Rule 4001-2 and waiver of any applicable  
21 stay under Bankruptcy Rule 6004(h). Absent granting the relief  
22 sought by this Interim DIP Order, Debtors' estates will be  
23 immediately and irreparably harmed. Consummation of the financing  
24 under this Interim DIP Order and the DIP Documents is, therefore,  
25 in the best interest of Debtors' estates consistent with their  
26 fiduciary duties.

1           5.    *Authorization of the DIP Financing Under the DIP*  
2    *Documents.*

3           a.    *Interim DIP Advances.* Subject to the satisfaction  
4 of the conditions precedent set forth in the DIP Term Sheet,  
5 pursuant to and upon entry of this Interim DIP Order, Debtors are  
6 hereby authorized to enter into, and shall be bound by the  
7 provisions of, the DIP Documents. Debtors are hereby, based on  
8 entry of this Interim DIP Order, authorized to borrow the Interim  
9 DIP Advances.

10           b.    *Additional Advances Under the DIP Loan Other Than*  
11 *the Interim DIP Advances Conditioned on Issuance of a Final DIP*  
12 *Order.* Debtors shall not have authority to borrow, and the DIP  
13 Lenders shall not be obligated to lend, any advances pursuant to  
14 the DIP Documents other than the Interim DIP Advances until the  
15 Court has entered another Interim Order or the Final DIP Order  
16 and all of the conditions for such lending set forth in the DIP  
17 Documents have been satisfied or waived by the DIP Agent. Upon  
18 entry of the Final DIP Order, Debtors shall be authorized to  
19 borrow the full amount of the DIP Loan pursuant to the DIP  
20 Documents and all limitations set forth therein.

21           c.    Debtors are obligated to repay the DIP Obligations  
22 under the DIP Documents in accordance with the terms of this  
23 Interim DIP Order and the DIP Term Sheet. The proceeds of the  
24 Interim DIP Advances shall be used for the purposes, and subject  
25 to the terms and conditions, set forth herein the Budget and in  
26 the DIP Documents.

27  
28

1           6. *Mandatory Prepayments.* Unless otherwise agreed by DIP  
2 Agent in its sole and absolute discretion,<sup>3</sup> and except as  
3 provided below, the DIP Loan shall be mandatorily prepaid and the  
4 maximum amount of the DIP Loan shall be permanently reduced by  
5 net proceeds received from all dispositions of DIP Collateral  
6 outside the ordinary course of business, including all proceeds  
7 from sales of equipment, fixed assets, proceeds of other sales of  
8 DIP Collateral (but excluding, for the purpose of clarity,  
9 Debtors' collection of their accounts receivable in the ordinary  
10 course of business), all insurance proceeds from any casualty to  
11 DIP Collateral and all proceeds of any condemnation award in  
12 respect of, any DIP Collateral (but excluding insurance or  
13 condemnation award proceeds to the extent reasonably required to  
14 replace or repair facilities or equipment that are necessary for  
15 Debtors' business operations) ("**Collateral Disposition**  
16 **Proceeds**"). All Collateral Disposition Proceeds shall be  
17 promptly paid to the DIP Agent to reduce the DIP Obligations.

18           7. *Maturity Date.* Subject to compliance with the terms and  
19 conditions of the DIP Documents and this Interim DIP Order,  
20 Debtors are authorized, during the period from the date of entry  
21 of this Interim DIP Order through and including the Maturity Date  
22 (defined below) to use Cash Collateral and the Interim DIP  
23 Advances. The term "Maturity Date" means the earliest of (a)  
24 twenty-one (21) days from the date of this Interim DIP Order if a  
25 Final DIP Order has not been issued or, such later date to which

26 \_\_\_\_\_  
27 <sup>3</sup> The phrases "consent of DIP Agent", "agreed by DIP Agent in its sole and  
28 absolute discretion" and similar phrases herein shall be interpreted to mean  
"agreed by DIP Agent and DIP Lenders in their respective sole and absolute  
discretion".



1 the DIP Agent may consent in writing, (b) ninety (90) days from  
2 the Petition Date; (c) the effective date of a plan of  
3 reorganization; (d) the consummation of a sale of all or  
4 substantially all of the assets of the Debtors under section 363  
5 of the Bankruptcy Code ("Sale" or "Sale Transaction"); (e)  
6 delivery of the Carve-Out Event Notice; (f) the entry of an order  
7 by the Court approving an alternative DIP financing; and (g) such  
8 later date as the DIP Agent and DIP Lenders in their sole  
9 discretion may agree to in writing with the Borrower. If the DIP  
10 Agent and Debtors consent to an extension of the Maturity Date,  
11 they shall notify the United States Trustee and the Committee.

12 8. *Requests for Interim DIP Advances.* Subject to the  
13 limitations of this Interim DIP Order and the DIP Documents,  
14 including the limitation to Permissible Uses so long as the  
15 Maturity Date has not occurred and no Event of Default has  
16 occurred and is continuing, Debtors may request Interim DIP  
17 Advances by delivering to the DIP Agent an Interim DIP Advance  
18 Request. Interim DIP Advances may be requested on not less than  
19 two (2) Business Days' advance notice to the DIP Agent and not  
20 more frequently than once per week.

21 9. *Budget.* Debtors will only use Cash Collateral and the  
22 proceeds of Interim DIP Advances for Permissible Uses, including,  
23 subject to the Variances (as defined below), (i) the costs and  
24 expenses associated with the operation of Debtors' business and  
25 the conduct of the Cases in the amounts and categories of  
26 Debtors' budget, delivered to and agreed by the DIP Agent prior  
27 to entry of this Interim DIP Order in the form attached hereto as  
28 Exhibit "1" and which is hereby approved (the "**Budget**"), setting

1 forth by line item net cash flow (including cash receipts and  
2 cash disbursements) projected by Debtors on a weekly basis for  
3 the time period from Petition Date for a period of thirteen (13)  
4 weeks.

5 10. *Reporting Requirements.* Debtors will provide the DIP  
6 Agent, DIP Lenders and Committee with any written financial  
7 information or reporting on the same terms as provided in the DIP  
8 Documents. In addition, from and after entry of this Interim DIP  
9 Order, Debtors shall deliver to the DIP Agent, DIP Lenders and  
10 the Committee the following:

11 a. On each Wednesday, Debtors shall report open order  
12 and inventory sale prospects.

13 b. On each Wednesday, beginning with Wednesday of the  
14 first week following entry of this Interim DIP Order, Debtors  
15 shall deliver a rolling 13 week forecast by line item of net cash  
16 flow (including cash receipts and cash disbursements), (each a  
17 "**Thirteen Week Forecast**"), which Thirteen Week Forecast shall be  
18 subject to the consent of the DIP Agent in its sole and absolute  
19 discretion, and when so approved, each Thirteen Week Forecast  
20 shall constitute an amendment of the Budget or, as the case may  
21 be, the prior Thirteen Week Forecast, and as so amended the  
22 applicable Budget or Thirteen Week Forecast shall constitute the  
23 then approved and applicable Budget.

24 c. On each Wednesday, beginning with Wednesday of the  
25 second week following entry of this Interim DIP Order, Debtors  
26 shall deliver a report, for the week ending on the preceding  
27 Wednesday, of actual net cash flow (including cash receipts and  
28 cash disbursements) and expenditures (accounts payable) in each

1 case comparing Debtors' actual performance to the Budget, in a  
2 form reasonably satisfactory to the DIP Agent, and a  
3 certification from Debtors' CEO, CFO or CRO certifying that the  
4 reports fairly present the financial condition and results of  
5 operations of Debtors for such period (each an "**Actual Cash Flows**  
6 **Report**").

7 d. On each Wednesday, beginning with Wednesday of the  
8 second week following entry of this Interim DIP Order, Debtors  
9 shall deliver to the DIP Agent, DIP Lenders and Committee a  
10 reasonably detailed explanation for any Variances in the Actual  
11 Cash Flows Report from the Budget, in a form reasonably  
12 satisfactory to the DIP Agent (each, a "Variance Report").

13 e. Together with any Interim DIP Advance request,  
14 Debtors shall deliver to the DIP Agent, DIP Lenders and Committee  
15 a report, as of the close of the immediately preceding Business  
16 Day, stating Debtors' actual cash balances, in form and in detail  
17 reasonably satisfactory to the DIP Agent.

18 f. As and when reported to the United States Trustee,  
19 all interim reports and operating statements. On each Wednesday,  
20 Debtors shall deliver to DIP Agent a status report detailing  
21 Debtors' sale marketing efforts and upon receipt, copies of all  
22 expressions of interest, offers, letters of intent, and proposed  
23 asset purchase agreement.

24 g. The DIP Agent may, through its employees or  
25 through such expert consultants, counsel, and financial advisors,  
26 have access to the Debtors' premises and non-attorney-client  
27 privileged, business records as provided in the DIP Documents.  
28 The Debtors will cooperate, consult with and provide the DIP

1 Agent's employees, counsel, consultants and advisors all non-  
2 attorney-client privileged information and reports as provided in  
3 the DIP Documents. (Items (a) through (g), individually and  
4 collectively, the "**Reporting Requirements**").

5 11. *DIP Loan Covenants*. Debtors shall observe all covenants  
6 in the DIP Documents and in this Interim DIP Order at all times  
7 prior to the indefeasible payment in full of all outstanding DIP  
8 Obligations.

9 12. *Implementation, Supplementation and Modification of DIP*  
10 *Documents*. In furtherance of this Interim DIP Order and without  
11 further approval of this Court:

12 a. Debtors are authorized and directed to perform all  
13 acts, to make, execute and deliver all instruments and documents  
14 (including, without limitation, the execution or recordation of  
15 security agreements, pledge agreements, fixture filings, control  
16 agreements and financing statements), and to pay all fees that  
17 may be reasonably required or necessary for Debtors' performance  
18 of its DIP Obligations and this Interim DIP Order, including,  
19 without limitation: the fees referred to in the DIP Documents and  
20 reasonable costs and expenses as may be due from time to time,  
21 including, without limitation, fees and expenses of the  
22 professionals retained by DIP Agent and DIP Lenders as provided  
23 for herein and in the DIP Documents;

24 b. The DIP Agent, DIP Lenders and Debtors may agree  
25 in writing executed by them to (x) the execution, delivery and  
26 performance of one or more waivers, consents or forbearances  
27 under the DIP Documents (it being understood that no further  
28 approval of the Court shall be required for waivers, consents or

1 forbearances under the DIP Documents, or any amendment, waiver,  
2 consent or forbearance fees paid in connection therewith); (y) to  
3 make any non-material amendments or modifications to the DIP  
4 Documents; and (z) to make any Material Modification or Amendment  
5 (as defined below) to the DIP Documents; *provided* that notice of  
6 any Material Modification or Amendment to the DIP Documents shall  
7 be filed with the Bankruptcy Court and served by Debtors on the  
8 Committee's counsel, and the United States Trustee, whom shall  
9 each have five (5) Business Days from the date of such filing  
10 within which to object in writing to such proposed Material  
11 Modification or Amendment; *provided further* that if the Committee  
12 or the United States Trustee timely objects to any such Material  
13 Modification or Amendment to the DIP Documents, then such  
14 Material Modification or Amendment shall only be permitted  
15 pursuant to an order of this Court after notice and a hearing.  
16 For purposes of this paragraph, a "**Material Modification or**  
17 **Amendment of the DIP Documents**" shall mean any modification or  
18 amendment that operates to (1) shorten the maturity of the  
19 extensions of credit under the DIP Facility, (2) increase the  
20 aggregate amount of any of the commitments thereunder, (3)  
21 increase the rate of interest or any other existing fees or  
22 charges payable thereunder or (4) otherwise modify the DIP  
23 Documents in a manner materially less favorable to Debtors and  
24 their estates, but shall exclude any forbearance or waiver which  
25 may occur after an notice of an Event of Default;

26 c. Debtors are authorized and directed to perform all  
27 other acts required under or in connection with the DIP  
28 Documents.

1           13. *Interest, Fees and Expenses.* Debtors shall pay the  
2 following, or such item shall accrue, all as more particularly  
3 set forth in the DIP Documents:

4           a. *Interest.* Interest on the DIP Obligations shall  
5 accrue at the rate equal to 16% per annum, in each case, payable  
6 upon the Maturity Date or thereafter on demand. On the  
7 occurrence and during the continuation of an Event of Default,  
8 interest will be payable on all DIP Obligations at a rate that is  
9 3% above the otherwise applicable rate. Interest calculations  
10 will be based on a 360 day year and actual days elapsed. None of  
11 the fees, costs and expenses payable under this paragraph shall  
12 be subject to separate or prior approval by this Court and no  
13 recipient of these payments shall be required to file a motion or  
14 interim or final fee application pursuant to the provisions of  
15 sections 327, 328, 329, 330 or 331 of the Bankruptcy Code in  
16 regard thereto.

17           b. All accrued and unpaid fees and expenses incurred  
18 before or after the Petition Date which are payable on account of  
19 services rendered to the DIP Agent or DIP Lenders, or any of  
20 their respective affiliates, with regard to the negotiation,  
21 documentation and implementation of the DIP Documents or their  
22 participation in, or enforcement of rights in regard to, the DIP  
23 Facility, or pertaining to the Cases ("**DIP Agent Fees and**  
24 **Expenses**"), including the reasonable fees and disbursements of  
25 counsel, financial advisors and other consultants for the DIP  
26 Agent and DIP Lenders, or any of their respective affiliates,  
27 shall be due and payable on the Maturity Date.

1           14. *Effectiveness of DIP Documents.* Upon entry of this  
2 Interim DIP Order (the "**Effective Date**") the DIP Documents shall  
3 constitute valid and binding obligations of Debtors, enforceable  
4 against Debtors in accordance with their respective terms and the  
5 terms of this Interim DIP Order for all purposes during the  
6 Cases, any subsequently converted cases of Debtors under Chapter  
7 7 of the Bankruptcy Code or after the dismissal of the Cases. No  
8 obligation, DIP Obligation, payment, transfer or grant of  
9 security under the DIP Documents or this Interim DIP Order shall  
10 be stayed, restrained, voidable, avoidable or recoverable under  
11 the Bankruptcy Code or under any applicable law (including  
12 without limitation, under sections 502(d), 548 or 549 of the  
13 Bankruptcy Code or under any applicable state Uniform Fraudulent  
14 Transfer Act, Uniform Fraudulent Conveyance Act or similar  
15 statute or common law), or subject to any defense, reduction,  
16 setoff, recoupment or counterclaim.

17           15. *Conditions Precedent to Interim DIP Advances and DIP*  
18 *Loan.* Interim DIP Advances under this Interim DIP Order and  
19 advances under the DIP Loan under the Final DIP Order are  
20 conditioned on the satisfaction of all of the conditions  
21 precedent described in the DIP Documents and the following:

22           a. Due service of the Motion on required parties in  
23 form acceptable to the DIP Agent in its sole and absolute  
24 discretion.

25           b. Entry of this Interim DIP Order and approval for  
26 the Interim DIP Advances in form acceptable to the DIP Agent in  
27 sole and absolute discretion, including scheduling of hearing on  
28 Final DIP Order on or before August 2, 2013, in form acceptable

1 to the DIP Agent in its sole and absolute discretion.

2 c. DIP Agent shall have received executed originals  
3 of the DIP Documents and the Ancillary Agreements and the credit  
4 facility evidenced thereby.

5 d. Control agreements executed in favor of the DIP  
6 Agent over all bank accounts.

7 e. Satisfactory business due diligence review by the  
8 DIP Agent and DIP Lenders of Debtors and the Budget, cash flow  
9 projections and operating plan and other relevant information.

10 f. Continued engagement at all times of Executive  
11 Sounding Board Associates Inc. as CRO, pursuant to the Debtors'  
12 pre-petition agreement therewith, subject to subsequent approval  
13 in these cases as a post-petition professional on terms  
14 acceptable to DIP Agent in its sole discretion.

15 g. The DIP Agent shall have received and been  
16 satisfied with all orders entered by the Bankruptcy Court.

17 16. *Conditions Precedent to Final DIP Facility.* Conditions  
18 precedents shall include those set forth in the DIP Documents and  
19 the following:

20 a. No Event of Default has occurred under this  
21 Interim DIP Order or the DIP Documents, and no event or condition  
22 that with notice or the lapse of time, or both, would constitute  
23 an Event of Default, has occurred and is continuing under this  
24 Interim DIP Order or the DIP Documents.

25 b. The Bankruptcy Court shall have entered the Final  
26 DIP Order in form acceptable to DIP Agent in its sole and  
27 absolute discretion, certified by the Clerk of the Bankruptcy  
28 Court as having been duly entered, and the Final DIP Order shall



1 be in full force and effect and shall not have been vacated,  
2 reversed, modified, amended or stayed without the prior written  
3 consent of the DIP Agent.

4 c. The DIP Agent shall have received such additional  
5 documents, information and materials as the DIP Agent may  
6 reasonably request.

7 17. *DIP Liens*. As security for the DIP Obligations,  
8 effective and perfected by and upon the date of entry of this  
9 Interim DIP Order and without the necessity of the execution or  
10 recordation of filings by Debtors or DIP Agent, of security  
11 agreements, pledge agreements, fixture filings, control  
12 agreements, financing statements or other similar documents, or  
13 the possession or control by the DIP Agent of, or over, any DIP  
14 Collateral, the following security interests and liens are hereby  
15 granted to the DIP Agent for its own benefit and on behalf of the  
16 DIP Lenders on all tangible and intangible assets of Debtors,  
17 whether now existing or hereafter arising, and whether or not  
18 encumbered prior to the Petition Date, and the proceeds thereof  
19 in every form received, including, but not limited to: (i) all  
20 accounts, (ii) all inventories, (iii) all intangibles, (iv) all  
21 other assets of Debtors including but not limited to intellectual  
22 property of every nature, good will, contract rights, Commercial  
23 Tort Claims, and equipment, and (v) any and all cash of Debtors  
24 (whether maintained with the DIP Agent or otherwise),  
25 (collectively, the "**DIP Collateral**"), *provided, however,* that DIP  
26 Collateral shall not include (i) Debtors' claims and causes of  
27 action under sections 502(d), 544, 545, 547, 548, 549, 550 and  
28 553 of the Bankruptcy Code and any other avoidance actions under

1 the Bankruptcy Code (collectively, the "**Avoidance Actions**");  
2 *provided, however,* (y) any Avoidance Actions against the DIP  
3 Agent, DIP Lenders and Pre-Petition Lender and (z) any Avoidance  
4 Actions against and recovery from the judgment creditor/garnishor  
5 that received approximately \$35,000 of Borrower's property  
6 subject to the Pre-Petition Lender's prior lien shall constitute  
7 DIP Collateral (all such liens and security interests granted to  
8 the DIP Agent pursuant to this Interim DIP Order and the DIP  
9 Documents, the "**DIP Liens**"), with the following priorities, and  
10 subject, in these Cases, to the Carve Out:

11 a. *Senior, Priming, First Priority Priming Lien on*  
12 *Substantially All Assets.* Except as provided in subparagraph (b)  
13 below, pursuant to section 364(d) of the Bankruptcy Code, DIP  
14 Agent is granted a valid, binding, continuing, enforceable,  
15 fully-perfected, senior and priming first priority senior  
16 security interest in and lien upon all DIP Collateral, except  
17 liens permitted under the Pre-Petition Lender's credit agreement,  
18 which were on the Petition Date valid, unavoidable and perfected  
19 pre-petition security interests ("**Permitted Liens**").

20 b. *Junior DIP Lien.* DIP Agent is granted a junior  
21 lien pursuant to Section 11 U.S.C. § 364(c)(3) on all property of  
22 Debtors; which was on the Petition Date subject to Permitted  
23 Liens.

24 c. For avoidance of doubt, the DIP Agent consents to  
25 a junior lien on DIP Collateral to be granted in favor of the  
26 Pre-Petition Lender and other pre-petition lenders holding such  
27 claims as adequate protection replacement liens.

28

1 18. *Superpriority Claims*. Subject to the Carve Out, and,  
2 notwithstanding anything that may be contained herein to the  
3 contrary, solely to the extent necessary to satisfy any  
4 deficiency that may remain after resort to any DIP Collateral  
5 that may be available to satisfy their DIP Obligations, pursuant  
6 to section 364(c)(1) of the Bankruptcy Code, all of the DIP  
7 Obligations shall constitute allowed senior administrative  
8 expense claims against Debtors, jointly and severally, with  
9 priority over any and all unpaid administrative expenses,  
10 diminution claims and all other claims against Debtors, now  
11 existing or hereafter arising, of any kind whatsoever (the  
12 "**Superpriority Claims**"), including, without limitation, all other  
13 unpaid administrative expenses of the kind specified in sections  
14 503(b) and 507(b) of the Bankruptcy Code, and over any and all  
15 administrative expenses or other claims arising under sections  
16 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 546,  
17 726, 1113 or 1114 of the Bankruptcy Code, and shall at all times  
18 be senior to the rights of Debtors, any successor trustee or any  
19 creditor, in these Cases or any subsequent proceedings under the  
20 Bankruptcy Code, whether or not such expenses or claims may  
21 become secured by a judgment lien or other non-consensual lien,  
22 levy or attachment, which allowed claims shall be payable from  
23 and have recourse to all DIP Collateral. The Superpriority  
24 Claims granted hereunder shall also have recourse to any and all  
25 proceeds or property in respect of (i) any and all proceeds of  
26 Avoidance Actions (the "**Avoidance Action Proceeds**") whether or  
27 not such proceeds or property is recovered from a judgment,  
28 settlement or otherwise, and in (ii) the Debtors' rights, choses

1 in action, or claims of any kind whatsoever, choate or inchoate,  
2 present or residual, which for any reason cannot be made subject  
3 to the DIP Lien ("**Unencumbered Assets**"). Prior to payment in full  
4 of the DIP Obligations, Debtors agree that they will not sell,  
5 pledge, hypothecate or otherwise encumber any Avoidance Action  
6 Proceeds or Unencumbered Assets.

7 19. Meserole, LLC, in such capacity, the Pre-Petition  
8 Lender, and Colorep, as borrower and its wholly-owned  
9 subsidiaries, as guarantors, are parties to that certain Amended  
10 and Restated Loan and Security Agreement dated as of August, 2011  
11 (as the same may have been amended, modified or restated from  
12 time to time, the "**Pre-Petition Credit Agreement**") pursuant to  
13 which the Pre-Petition Lender agreed to lend on a revolving basis  
14 up to the principal sum of \$25 million under the terms and  
15 conditions set forth therein. As of the Petition Date, Colorep  
16 was indebted to the Pre-Petition Lender in an amount not less  
17 than \$19 million. The Pre-Petition Lender asserts valid,  
18 enforceable, unavoidable, perfected, first priority liens on and  
19 security interests in substantially all assets of Colorep, now  
20 owned and after acquired, and the proceeds thereof, as further  
21 detailed in the Pre-Petition Credit Agreement ("**Pre-Petition**  
22 **Liens**" and "**Pre-Petition Collateral**", as applicable). The cash  
23 proceeds of the Pre-Petition Collateral constitute cash  
24 collateral, as defined by section 363(a) of the Bankruptcy Code  
25 ("**Cash Collateral**"), in which the Pre-Petition Lender asserts an  
26 interest.

27 20. The Pre-Petition Lender consents to the Debtors use of  
28 Cash Collateral under the terms and conditions set forth in this

1 Interim DIP Order prior to the Termination Date and subject to  
2 the Budget, and in consideration for the adequate protection to  
3 be provided by the Debtors, as follows:

4 (i) The Pre-Petition Lender is hereby granted a replacement  
5 lien ("**Adequate Protection Lien**") on the DIP Collateral to  
6 the extent of any diminution in value of the Pre-Petition  
7 Lender's interest in the Pre-Petition Collateral resulting  
8 from the priming of the Pre-Petition Liens by the DIP Liens,  
9 Debtors' use of Cash Collateral or the imposition of the  
10 stay, which Adequate Protection Lien shall have priority  
11 junior to the Carve Out, Permitted Liens, and DIP Liens;

12 (ii) The Pre-Petition Lender is hereby granted a super-  
13 priority administrative claim ("**Adequate Protection Claim**")  
14 to the extent of any diminution in value of the Pre-Petition  
15 Lender's interest in the Pre-Petition Collateral resulting  
16 from the priming of the Pre-Petition Liens by the DIP Liens,  
17 the Debtors' use of Cash Collateral or the imposition of the  
18 stay, which Adequate Protection Claim shall have priority  
19 over all other administrative claims, except it shall be  
20 subject to the Carve Out and Super-Priority Claim granted to  
21 the DIP Agent;

22 (iii) The Debtors shall provide to the Pre-Petition Agent  
23 each report required to be provided to the DIP Agent under  
24 the DIP Documents and this Interim DIP Order;

25 (iv) Each event giving rise to the Maturity Date shall  
26 constitute a terminating event with respect to the Debtors'  
27 use of Cash Collateral; and

28

1 (v) Each event or omission giving rise to an Event of  
2 Default shall constitute an Event of Default with respect to  
3 the Debtors' use of Cash Collateral and the Pre-Petition  
4 Lender shall be afforded the same rights and remedies  
5 granted to the DIP Agent; provided, however, that the Pre-  
6 Petition Lender shall first provide 10 Business Days'  
7 advance notice to the DIP Agent before commencing to  
8 exercise any right or remedy upon an Event of Default and  
9 only in the event the DIP Agent does not commence to take  
10 any action may the Pre-Petition Agent commence to exercise  
11 any right or remedy.

12 21. *Carve Out*. For purposes hereof, "**Carve Out**" shall mean  
13 the liens on and security interests in the Pre-Petition  
14 Collateral and DIP Collateral and the superiority administrative  
15 expense claims shall be subordinate to the "Carve Out" or "Carve-  
16 Out Expenses": (a) statutory fees payable to the United States  
17 Trustee pursuant to 28 U.S.C. § 1930(a)(6); (b) fees payable to  
18 the clerk of the Court or any agent thereof; (c) an amount equal  
19 to the lesser of (x) the reasonable and Budgeted professional  
20 fees and expenses actually incurred in the Chapter 11 cases by  
21 any professionals retained under section 327, 363, or 1103(a) of  
22 the Bankruptcy Code (the "Permitted Professional Fees") prior to  
23 the occurrence of a Carve-Out Event, whenever allowed by the  
24 Court, and (y) \$250,000, for payment of Permitted Professional  
25 Fees incurred prior to the occurrence of a Carve-Out Event, to  
26 the extent allowed by this Court, of which \$125,000 shall be  
27 disbursed directly to Stutman, Treister & Glatt, P.C ("STG"),  
28 Borrower's bankruptcy counsel, as an initial Interim Advance upon

1 entry of the Interim DIP Order, to be applied to STG post  
2 petition fees and expenses in accordance with applicable rules  
3 governing payment of professional fees; and (d) after the  
4 occurrence of a Carve-Out Event, an amount equal to the lesser of  
5 (x) the Permitted Professional Fees incurred following the  
6 occurrence of a Carve-Out Event, whenever allowed by the Court,  
7 and (y) \$25,000, for payment of Permitted Professional Fees  
8 incurred after the occurrence of a Carve-Out Event, to the extent  
9 allowed by this Court. Any payment of Permitted Professional  
10 Fees, other than the application of pre-petition retainers held  
11 by any such professional, shall reduce the DIP Agent's and DIP  
12 Lenders' DIP Facility commitment and the Carve-Out Expenses  
13 dollar for dollar. Upon the first day on which the DIP Agent is  
14 entitled to exercise remedies under the Interim DIP Order and  
15 Final DIP Order (the "Carve-Out Event") and provides written  
16 notice thereof to Borrower (the "Carve-Out Event Notice"), the  
17 right of the Borrower to pay Permitted Professional Fees, other  
18 than pursuant to clause (d) above outside the Carve-Out shall  
19 terminate. Upon the entry of the Final DIP Order the DIP Agent  
20 shall fund a reserve in the amount of the Permitted Professional  
21 Fees, which shall satisfy the DIP Agent's and DIP Lenders'  
22 obligation for Permitted Professional Fees under the Carve Out.  
23 For the purpose of clarity, the Carve Out shall be reduced dollar  
24 for dollar by amounts paid to Professional Persons or on account  
25 of Court and UST Fees by Debtors. The Carve Out shall not be  
26 reduced by retainers received by Professional Persons prior to  
27 the Petition Date.

28

1           22. *Limitation on Charging Expenses Against Pre-Petition*  
2 *Collateral and DIP Collateral.* Effective upon the entry of the  
3 Final DIP Order, except to the extent of the Carve Out, no  
4 expenses of administration of these Cases or any future  
5 proceeding that may result from these Cases, including  
6 liquidation in bankruptcy or other proceedings under the  
7 Bankruptcy Code, may be charged against or recovered from the  
8 Pre-Petition Lender, Pre-Petition Collateral, DIP Agent, DIP  
9 Lenders or DIP Collateral under sections 105, 506(c) and 552(b)  
10 of the Bankruptcy Code or any similar principle of law, without  
11 the prior written consent respectively of the Pre-Petition  
12 Lender, the DIP Agent and DIP Lenders, and no consent of the Pre-  
13 Petition Lender, the DIP Agent or any DIP Lender may be implied  
14 from any other action, inaction, or acquiescence by them,  
15 *provided however*, that DIP Agent shall be deemed to have  
16 consented to the payment in the ordinary course of business of  
17 operating expenses, professional expenses and other costs as  
18 provided for in the approved Budget; and *provided further*  
19 *however*, that no expenses of administration of these Cases or any  
20 future proceeding that may result from these Cases, including  
21 liquidation in bankruptcy or other proceedings under the  
22 Bankruptcy Code, incurred or accrued during the period under this  
23 Interim DIP Order may be charged against or recovered from the  
24 Pre-Petition Lender, Pre-Petition Collateral, DIP Agent, DIP  
25 Lenders or DIP Collateral under sections 105, 506(c) and 552(b)  
26 of the Bankruptcy Code or any similar principle of law, without  
27 the prior written consent respectively of the Pre-Petition  
28 Lender, the DIP Agent and DIP Lenders in the event the Budget



1 proves inadequate. Except on the terms as provided in this  
2 Interim DIP Order, Debtors are enjoined and prohibited from (i)  
3 using the Cash Collateral or Interim DIP Advances; (ii) using the  
4 DIP Collateral; (iii) applying to any court for an order  
5 authorizing the use of the Cash Collateral or DIP Collateral or  
6 Unencumbered Assets as collateral for debtors in possession  
7 financing other than the DIP Facility under the DIP Documents.

8 23. *Perfection of DIP Liens.*

9 a. The DIP Liens granted under this Interim DIP Order  
10 shall constitute valid and duly perfected security interests and  
11 liens, and the DIP Agent is hereby not required to file or record  
12 any Notice Filings which otherwise may be required under federal  
13 or state law in any jurisdiction, or take any action, including  
14 taking possession, to validate and perfect such DIP Liens and  
15 such DIP Liens shall be deemed valid, perfected, allowed,  
16 enforceable, non-avoidable and not subject to challenge, dispute  
17 or subordination.

18 b. The DIP Agent is hereby authorized, but not  
19 required, to file or record any one or more financing statements,  
20 trademark filings, copyright filings, patent assignments, real  
21 estate mortgages, fixture filings, deeds of trust, notices of  
22 lien or similar instruments (collectively, "**Notice Filings**") in  
23 any jurisdiction, or take possession of or control over, or take  
24 any other action in order to further validate and perfect the  
25 perfected DIP Liens granted to the DIP Agent hereunder. The  
26 failure of Debtors to execute any documentation relating to the  
27 enforceability, priority or perfection of the DIP Liens shall in  
28 no way affect the validity, perfection or priority of the DIP

1 Liens.

2 c. If the DIP Agent, in its sole discretion, elects  
3 to file any Notice Filings or otherwise to confirm perfection of  
4 such DIP Liens, Debtors shall cooperate with and assist in such  
5 process, the stay imposed under section 362 of the Bankruptcy  
6 Code is hereby lifted to permit the filing and recording of a  
7 certified copy of this Interim DIP Order or the Final DIP Order  
8 or any such Notice Filings, and all such documents shall be  
9 deemed to have been filed and recorded at the time of and on the  
10 Petition Date. Any error, omission or other defect in any such  
11 filing shall not affect the validity, enforceability, priority or  
12 perfection of any DIP Lien granted under this Interim DIP Order.

13 d. A certified copy of this Interim DIP Order may, in  
14 the discretion of the DIP Agent, be filed with or recorded in  
15 filing or recording offices in addition to or in lieu of such  
16 Notice Filings, and all filing offices are hereby authorized and  
17 directed to accept such certified copy of this Interim DIP Order  
18 or the Final DIP Order for filing and recording.

19 24. *Events of Default*. In addition to the Events of Default  
20 under the DIP Documents and Pre-Petition Credit Agreement, which  
21 are incorporated herein and constitute events of default  
22 hereunder, the following shall constitute events of default  
23 (each, an "**Event of Default**") under this Interim DIP Order:

24 a. If Debtors fail timely to file a motion seeking  
25 approval of the Sale Transaction and related bidding procedures,  
26 terminate the sale process or fail to meet dates in the  
27 Procedures Order.

28 b. If the Cases are dismissed or converted to Chapter

1 7 cases; or if a Chapter 11 trustee, a responsible officer, or an  
2 examiner with enlarged powers relating to the operation of the  
3 business of Debtors (powers beyond those established in section  
4 1106(a)(3) and (4) of the Bankruptcy Code) is appointed in the  
5 Cases.

6 c. The Bankruptcy Court enters an order granting  
7 relief from the automatic stay to the holder or holders of a  
8 security interest to permit foreclosure (or the granting of a  
9 deed in lieu of foreclosure or the like) on any material assets  
10 of Debtors which have an aggregate value in excess of \$10,000.

11 d. An order is entered reversing, amending,  
12 supplementing, suspending or staying this Interim DIP Order or  
13 the Final DIP Order.

14 e. If Debtors create, incur or cause to exist any  
15 postpetition liens or security interests, other than those  
16 granted pursuant to this Interim DIP Order and Final DIP Order or  
17 to which the DIP Agent has not consented in writing, which  
18 exceeds \$25,000 individually or in the aggregate,

19 f. Any judgment in excess of \$10,000 as to any post-  
20 petition date obligation not covered by insurance is rendered  
21 against Debtors and the enforcement of the judgment against the  
22 Debtors' estates has not been stayed.

23 g. Debtors (or any of their successors or assigns or  
24 other person on behalf of the entities) file a motion or  
25 application or adversary proceeding challenging the validity,  
26 enforceability, perfection or priority of any claim or lien  
27 securing or pertaining to the Pre-Petition Loan or DIP Loan.

28 h. Debtors have not consummated the Sale by the

1 sixtieth day following the Petition Date.

2 i. A plan is confirmed in the Cases that does not  
3 provide for termination of the DIP Loan and payment in full in  
4 cash of outstanding DIP Obligations (on the effective date of a  
5 plan of reorganization or liquidation) unless DIP Agent consents  
6 to confirmation of such plan providing for an alternative  
7 treatment of the DIP Loan, or any order is entered that dismisses  
8 the Cases and which order does not provide for such termination  
9 and payment, or Debtors seek support or fail to contest the  
10 filing or confirmation of a plan or the entry of an order that  
11 does not provide for full and immediate payment and satisfaction  
12 of the DIP Obligations.

13 j. The filing of a motion, pleading, or proceeding by  
14 Debtors, or any of their affiliates, that could reasonably be  
15 expected to result in any impairment of the rights or interests  
16 of the DIP Agent or DIP Lenders or a determination by a court  
17 with respect to a motion, pleading or proceeding brought by  
18 another party that results in any impairment of the rights,  
19 claims and DIP Liens relating to the DIP Loan and any DIP  
20 Obligations.

21 k. Any other superpriority administrative expense  
22 claim or lien (other than the Carve Out) which is *pari passu* with  
23 or senior to the Superpriority Claims or DIP Liens of the DIP  
24 Agent is granted in the Case, provided, however, for avoidance of  
25 doubt, payment of operating expenses in the ordinary course of  
26 business pursuant to the DIP Budget is permitted.

27 l. Failure to obtain Final DIP Order approving the  
28 DIP Facility on or before August 2, 2013.

1 m. Any failure of Debtors' actual performance to meet  
2 the requirement of the DIP Budget subject to a variance on each  
3 line item not in excess of 10% per line item and in the aggregate  
4 in any week ("**Variance**").

5 n. Failure of Debtors to satisfy in a timely fashion  
6 any of the Reporting Requirements of this Interim DIP Order.

7 o. Debtors default in the due and punctual payment of  
8 any payment, fee or expense owing to DIP Agent pursuant to any of  
9 the DIP Documents, when and as the same shall become due and  
10 payable, whether at the Maturity Date, by acceleration or  
11 otherwise.

12 p. Any material provision of the DIP Documents shall  
13 at any time fail for any reason to be in full force and effect,  
14 or the DIP Facility shall terminate, be terminated or become void  
15 or unenforceable by the DIP Agent for any reason whatsoever  
16 without the prior written consent of DIP Agent.

17 q. The DIP Documents and the Interim DIP Order and  
18 Final DIP Order shall, for any reason, cease to create valid DIP  
19 Liens on any of the DIP Collateral purported to be covered  
20 thereby or such DIP Lien shall cease to be a perfected lien  
21 having the priority provided herein pursuant to Section 364 of  
22 the Bankruptcy Code against Debtors and their estates, or  
23 Debtors, or any other party in interest purporting to act on  
24 behalf of the estates shall so allege in any pleading filed in  
25 any court.

26 r. Debtors shall default in the performance or  
27 observance of any material covenant, agreement or provision  
28 contained in any DIP Document or in any other instrument or

1 document evidencing or creating any obligation, guaranty or lien  
2 in favor of DIP Lender in connection with or pursuant to the DIP  
3 Documents.

4 s. Any representation or warranty made or deemed made  
5 by the Debtors under or in connection with this Interim DIP  
6 Order, DIP Document or any information or report delivered by the  
7 Debtors pursuant to this Interim DIP Order or any DIP Document  
8 shall prove to have been incorrect or untrue in any material  
9 respect when made or deemed made or delivered.

10 t. The Debtors enter into any transaction or  
11 agreement that could reasonably be expected to result in a change  
12 of control that is to become effective prior to payment in full  
13 of the DIP Obligations; or a change of control shall have  
14 occurred prior to payment in full of the DIP Obligations.

15 u. Debtors are enjoined, restrained or in any way  
16 prevented by the order of any court or any Governmental Entity  
17 from conducting all or any material part of its business for more  
18 than 5 days.

19 25. *Protection of the DIP Agent's Rights.*

20 a. *Remedies on Termination Date.* Subject to the  
21 following provisions of this paragraph, on and after the Maturity  
22 Date, the DIP Agent for itself and for the benefit of the DIP  
23 Lenders shall have the exclusive right to exercise all rights and  
24 remedies under the DIP Documents as provided below, including in  
25 respect of exercising all rights and remedies to dispose of the  
26 DIP Collateral, in such commercially reasonable manner, including  
27 the sale of the DIP Collateral as a going concern under the  
28 supervision of the Bankruptcy Court, as the DIP Agent may

1 determine to effect the repayment of the DIP Obligations with the  
2 proceeds of such dispositions. After the occurrence and during  
3 the continuance of an Event of Default that has not either (i)  
4 been waived by the DIP Agent or (ii) subject an order granting  
5 the DIP Agent relief from the automatic stay as set forth in  
6 subparagraph c. below, the DIP Agent may undertake the following  
7 remedies:

8           b. *Remedies Available Without Notice Or Further Court*  
9 *Approval.* On the Maturity Date, without further Order of the  
10 Court, the automatic stay of Section 362(a) of the Bankruptcy  
11 Code having been hereby lifted for such purposes (i) DIP Agent's  
12 and DIP Lenders' commitments shall automatically terminate and  
13 Debtors' right to obtain Interim DIP Advances on the terms and  
14 conditions set forth in the DIP Documents and in this DIP Order  
15 shall terminate automatically, (ii) the unpaid balance of the DIP  
16 Obligations (and any unpaid and accrued interest) shall  
17 automatically be accelerated and become immediately due and  
18 payable, and (iii) the DIP Agent may instruct any depository bank  
19 holding any bank account of the Debtors that is subject to a  
20 control agreement entered into either before or after the  
21 commencement of this case in favor of DIP Agent or Meserole, as  
22 appropriate, that all funds in that account shall be frozen until  
23 DIP Agent consents to disbursement thereof; *provided, however,*  
24 *that the DIP Agent shall permit disbursement of funds to cover*  
25 *outstanding checks issued to pay expenses incurred consistent*  
26 *with the Budget.*

27           c. *Stipulation to Shortened Time.* Except for the  
28 actions authorized to be taken by the DIP Agent without notice or

1 further Court order under the prior subparagraph, upon the  
2 occurrence of any Event of Default under this Interim DIP Order  
3 or under the DIP Documents, the Debtors hereby stipulate and  
4 agree that any motion for relief from stay by DIP Agent may be on  
5 not less than 7 calendar days' notice, with notice to the United  
6 States Trustee and any official, statutory committee hereafter  
7 appointed in the Cases (each, a "Committee"). DIP Agent may seek  
8 relief to exercise all of its rights and remedies against the DIP  
9 Collateral by foreclosure, collection, suit, receivership or  
10 otherwise pursuant to the DIP Documents and applicable law.  
11 Following notice of an Event of Default. If no objection is  
12 filed by Debtors, the United States Trustee or any Committee by 3  
13 days prior to the hearing on DIP Agent's motion for relief from  
14 stay, then such failure shall be deemed a consent by the Debtors  
15 to the relief requested and DIP Agent shall be authorized to  
16 submit a declaration of non-opposition to its Motion for Relief  
17 From Stay and obtain an order pursuant to such motion and  
18 declaration and Debtors shall have no further remedy or recourse  
19 with regard to the DIP Collateral, including but not limited to  
20 no right to request use of Cash Collateral or DIP Collateral.  
21 Debtors and the Committee shall not have the right to seek  
22 relief, including, without limitation, under section 105 of the  
23 Bankruptcy Code, to the extent such relief would in any way  
24 impair or restrict the rights and remedies of the DIP Agent set  
25 forth in this Interim DIP Order or the DIP Documents. The delay  
26 or failure of the DIP Agent to seek relief or otherwise exercise  
27 or enforce its rights and remedies under this Interim DIP Order  
28 or the DIP Documents shall not constitute a waiver of the DIP



1 Agent's rights or remedies.

2 d. *Limitations On Marshaling*. In no event shall the  
3 DIP Agent be subject to the equitable doctrine of "marshaling" or  
4 any similar doctrine with respect to the DIP Collateral.

5 26. *Preservation of Rights Granted Under this Interim DIP*  
6 *Order*.

7 a. No claim or lien having a priority superior to or  
8 *pari passu* with those granted by this Interim DIP Order to the  
9 DIP Agent in respect to the DIP Collateral shall be granted or  
10 allowed while any portion of the DIP Obligations remains  
11 outstanding. Subsequent to the Petition Date, Debtors shall not  
12 grant to any party or suffer any liens senior to the DIP Agent  
13 and DIP Liens, except with the DIP Agent's prior written consent.  
14 The DIP Liens shall not be subject or subordinate to (i) any lien  
15 or security interest that is avoided and preserved for the  
16 benefit of Debtors and their estates under section 551 of the  
17 Bankruptcy Code, (ii) any liens arising after the Petition Date  
18 including, without limitation, any liens or security interests  
19 granted in favor of any federal, state, municipal or other  
20 governmental unit, commission, board or court for any tax  
21 liability of Debtors, whether secured or unsecured, including  
22 property taxes for which liability is in rem, in personam, or  
23 both, except a tax of a kind specified in section 507(a)(8) of  
24 the Bankruptcy Code, (iii) any intercompany or affiliate liens of  
25 Debtors or (iv) subordinated to or made *pari passu* with any other  
26 lien or security interest under sections 363 or 364 of the  
27 Bankruptcy Code or otherwise.

28 b. Unless all DIP Obligations shall have been

1 indefeasibly paid in full and all DIP Facility commitments  
2 terminated, Debtors shall not seek (i) any order modifying or  
3 extending this Interim DIP Order without the prior written  
4 consent of the DIP Agent, and no such consent shall be implied by  
5 any other action, inaction or acquiescence of the DIP Agent, (ii)  
6 any order modifying or extending this Interim DIP Order or  
7 adversely affecting the rights, priorities and liens provided  
8 herein without the prior written consent of the DIP Agent or  
9 (iii) an order converting or dismissing the Cases. If an order  
10 dismissing the Cases under section 1112 of the Bankruptcy Code or  
11 otherwise is at any time entered, such order shall provide (in  
12 accordance with sections 105 and 349 of the Bankruptcy Code) that  
13 (x) the DIP Liens and the Superpriority Claims in favor of the  
14 DIP Agent pursuant to this Interim DIP Order shall continue in  
15 full force and effect and shall maintain their priorities as  
16 provided in this Interim DIP Order until all DIP Obligations  
17 shall have been indefeasibly paid in cash and satisfied in full  
18 and the DIP Obligations shall have been terminated and that such  
19 Superpriority Claims and the DIP Liens remain binding on all  
20 parties in interest, and (y) this Court shall retain  
21 jurisdiction, notwithstanding such dismissal, for the purposes of  
22 enforcing the Superpriority Claims and the DIP Liens to the  
23 fullest extent authorized by statute and applicable law.

24 c. If any or all of the provisions of this Interim  
25 DIP Order are hereafter reversed, modified, vacated or stayed,  
26 such reversal, modification, vacatur or stay shall not affect (i)  
27 the validity, priority or enforceability of any DIP Obligations  
28 incurred prior to the actual receipt of written notice by the DIP

1 Agent, as applicable, of the effective date of such reversal,  
2 modification, vacatur or stay or (ii) the validity or  
3 enforceability of the DIP Liens or the Superpriority Claims  
4 authorized or created hereby with respect to any DIP Obligations.  
5 Notwithstanding any such reversal, modification, vacatur or stay,  
6 any DIP Obligations incurred by Debtors to the DIP Agent prior to  
7 the actual receipt of written notice by the DIP Agent of the  
8 effective date of such reversal, modification, vacatur or stay  
9 shall be governed in all respects by the original provisions of  
10 this Interim DIP Order, as applicable, and the DIP Agent shall be  
11 entitled to all the rights, remedies, privileges and benefits  
12 granted in sections 363(m) and 364(e) of the Bankruptcy Code and  
13 this Interim DIP Order with respect to all DIP Obligations.

14 d. Except as expressly provided in this Interim DIP  
15 Order or the DIP Documents, the DIP Liens, the Superpriority  
16 Claims, and the DIP Obligations, and all other rights and  
17 remedies of the DIP Agent granted by the provisions of this  
18 Interim DIP Order shall survive, and shall not be modified,  
19 impaired or discharged by (i) the entry of an order converting  
20 the Cases to a case under chapter 7, dismissing the Cases,  
21 terminating the joint administration of the Cases or by any other  
22 act or omission or (ii) the entry of an order confirming a plan  
23 of reorganization in the Cases and, pursuant to section  
24 1141(d)(4) of the Bankruptcy Code, Debtors having hereby waived  
25 any discharge of any remaining DIP Obligations. The terms and  
26 provisions of this Interim DIP Order shall continue in these  
27 Cases, in any successor Cases if these Cases cease to be jointly  
28 administered, or in any superseding chapter 7 Case under the

1 Bankruptcy Code, and the DIP Liens, the Superpriority Claims, the  
2 DIP Obligations, and all other rights and remedies of the DIP  
3 Agent granted by the provisions of this Interim DIP Order shall  
4 continue in full force and effect until the DIP Obligations are  
5 indefeasibly paid in full.

6       27. *Limitation on Use of the Interim DIP Advances.* Debtors  
7 have waived any and all claims and causes of action against the  
8 DIP Agent and DIP Lenders and their respective agents,  
9 affiliates, subsidiaries, directors, officers, representatives,  
10 attorneys or advisors, directly related to the DIP Facility and  
11 this Interim DIP Order or the negotiation of the terms thereof.  
12 Notwithstanding anything herein or in any other order by this  
13 Court to the contrary, no borrowings under the DIP Facility or  
14 proceeds of the DIP Collateral or the Carve Out may be used for  
15 any of the following without the prior written consent of each  
16 affected party: (a) to object, contest or raise any defense to,  
17 the validity, perfection, priority, extent or enforceability of  
18 any amount due under the this Interim DIP Order, the DIP  
19 Facility, or the DIP Liens or Superpriority Claims granted under  
20 this Interim DIP Order or the DIP Documents or the Pre-Petition  
21 Credit Agreement and Pre-Petition Lender, (b) to assert any  
22 claims or defenses or causes of action against the DIP Agent and  
23 DIP Lenders or their respective agents, affiliates, subsidiaries,  
24 directors, officers, representatives, attorneys or advisors, (c)  
25 to prevent, hinder or otherwise delay the DIP Agent's assertion,  
26 enforcement or realization on the DIP Collateral in accordance  
27 with the DIP Documents or this Interim DIP Order, (d) to seek or  
28 to modify any of the rights granted to the DIP Agent hereunder,

1 under this Interim DIP Order or under the DIP Documents, or (e)  
2 to pay any amount on account of any claims arising before the  
3 Petition Date unless such payments are approved by an order of  
4 this Court and consented to by the DIP Agent.

5 28. *Interim DIP Order Governs.* To the fullest extent  
6 permissible under the Bankruptcy Code and existing law, the  
7 provisions of this Interim DIP Order, including all findings, are  
8 binding on all parties in interest in these Cases, including the  
9 DIP Agent and the Committee, and Debtors and their respective  
10 successors and assigns (including any Chapter 7 or Chapter 11  
11 trustee subsequently appointed or elected for the bankruptcy  
12 estate of any Debtor) and inures to the benefit of the DIP Agent  
13 and DIP Lenders and Debtors and their respective successors and  
14 assigns; provided that the DIP Agent and DIP Lenders have no  
15 obligation to extend any financing to any Chapter 7 trustee or  
16 similar responsible person appointed for the bankruptcy estates  
17 of Debtors. To the extent that there is a conflict among the  
18 Motion, the DIP Documents and this Interim DIP Order, this  
19 Interim DIP Order will govern and control.

21 29. *Depository Bank Compliance.* All depository banks and  
22 blocked account banks shall comply, for the benefit of DIP Agent,  
23 with the terms and conditions of any blocked account agreement,  
24 restricted account agreements, account control agreements, DDA  
25 notifications, credit card notifications, or other similar  
26  
27  
28

1 documents received or furnished in connection with the DIP  
2 Documents or Pre-Petition Credit Agreement.

3 30. *No Waiver.* DIP Agent's failure to seek relief or  
4 otherwise exercise any of its rights and remedies under the DIP  
5 Documents or this Interim DIP Order shall not constitute a waiver  
6 of any of DIP Agent's rights hereunder, thereunder, or otherwise.  
7

8 31. *No Third Party Beneficiary.* Except as provided herein,  
9 this Interim DIP Order does not create any rights for the benefit  
10 of any third party, creditor, or any direct, indirect, or  
11 incidental beneficiary. The provisions of this Interim DIP Order  
12 shall inure to the benefit of, and be binding upon, the Debtors,  
13 or any representative of the Debtors' estates, DIP Agent, DIP  
14 Lenders, Pre-Petition Lender, and any assignee or successor to  
15 any of the foregoing, including any trustee thereafter appointed  
16 in these Cases, and shall also be binding upon all creditors of  
17 the Debtors, the Debtors' estates, and other parties in interest.

18 32. *No Control.* In determining to make any loan under DIP  
19 Facility, the DIP Documents or this Interim DIP Order, in  
20 approving an proposed budget or granting or withholding consent  
21 or approval, or in exercising any rights or remedies as and when  
22 permitted pursuant to the DIP Documents or this Interim DIP  
23 Order, DIP Agent and DIP Lenders shall not be deemed to be in  
24 control of the operations of the Debtors or to be acting as a  
25 "responsible person" or "owner or Operator" with respect to DIP  
26 Agent's or DIP Lenders' role, if any, as a mortgagee in  
27 possession, or on account of the operation or management of the  
28

1 Debtors (as such terms, or any similar terms, are used in the  
2 United States Comprehensive Environmental Response, Compensation  
3 and Liability Act, 29 U.S.C. § 9601 et seq., as amended, or any  
4 similar federal or state statute).

5 33. *Headings.* Sections headings used herein are for  
6 convenience only and are not to affect the construction of or to  
7 be taken into consideration in interpreting this Interim DIP  
8 Order.

9 34. *Waiver of any Applicable Stay.* Any applicable stay  
10 (including, without limitation, under Bankruptcy Rule 6004(h)) is  
11 hereby waived and shall not apply to this Interim DIP Order.

12 35. *Final Hearing.* The Final Hearing will be held on  
13 \_\_\_\_\_, 2013 at \_\_:00 \_\_.m. (prevailing Pacific time) before  
14 this Court (the "**Final Hearing**").  
15 *Notice Of Final Hearing And Final DIP Order.* Debtors shall,  
16 within one (1) Business Day after the entry of this Interim DIP  
17 Order, mail by overnight mail (i) a notice of the Final Hearing  
18 and the objection deadlines set forth below (the "**Final Hearing**  
19 **Notice**"), and (ii) copies of this Interim DIP Order on (a) the  
20 United States Trustee; (b) the Twenty Largest Unsecured  
21 Creditors as set forth in the list filed by Debtors pursuant to  
22 Bankruptcy Rule 1007(d), (c) all parties in interest on whom  
23 service is required by Debtors' order limiting notice entered in  
24 these Cases and their counsel and (d) all other known holders of  
25 liens on Debtors' assets, (e) counsel to the Committee, if any  
26 has been appointed, (f) the California Department of Justice,  
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1 Attorney General's Office, and(g) the other parties on whom the  
2 Court directed service on the record of the Interim Hearing.  
3 Objections by any party in interest to this Interim DIP Order  
4 shall be filed with this Court and served by overnight mail or  
5 personal delivery to the parties listed below at the addresses  
6 set forth below no later than July \_\_, 2013 at 4:00 p.m.  
7  
8 (prevailing Pacific time). At the Final Hearing, this Court will  
9 consider the objections properly filed and served. Any party in  
10 interest objecting to the relief sought at the Final Hearing  
11 must serve a written objection on (i) Frank Pepler, DLA Piper  
12 LLP (US), 550 South Hope Street, Suite 2300, Los Angeles, CA  
13 90071-2678, and Stuart M. Brown, DLA Piper LLP (US), 919 Market  
14 Street, Suite 1500, Wilmington, DE 19801, (ii) Gary Klausner,  
15 Stutman, Treister & Glatt, 1901 Avenue of the Stars, 12th floor,  
16 Los Angeles, CA 90067, and (iii) the Office of the United  
17 States Trustee for the Central District of California, and file  
18 the objection with the Clerk of the United States Bankruptcy  
19 Court for the Central District of California at Edward R. Roybal  
20 Federal Building and Courthouse, 255 E. Temple Street, Room 940  
21 Los Angeles, CA 90012 or in the Electronic Court Filing (ECF)  
22 system of the Bankruptcy Court for the Central District of  
23 California, in each case to allow actual receipt by above-named  
24 parties who are required to be served objections no later than  
25 July \_\_, 2013 at 4:00 p.m. (prevailing Pacific time).  
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1 IT IS SO ORDERED.

2 Dated: July \_\_\_\_\_, 2013

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## Exhibit "B"

## Colorep, Inc. DIP Term Sheet

### Term Sheet for Senior Secured, Priming Debtor in Possession Term Credit Facility

The terms and conditions set forth in this Term Sheet (the “**DIP Term Sheet**”) for Senior Secured Priming Debtor in Possession Term Credit Facility are to be used solely as a basis for continued discussions and do not constitute a commitment to provide financing of any sort or a commitment to prepare, negotiate, execute or deliver such a commitment. All figures, terms and conditions set forth herein are subject to change or withdrawal at any time. This DIP Term Sheet is confidential and may not be disseminated to any person or entity other than the Borrower and the Borrower’s agents and advisors without the express prior written consent of the DIP Lender.

**Borrower:** Colorep, Inc. and Transprint USA, Inc. (collectively, the “**Borrower**” or “**Debtors**”), as debtors and debtors-in-possession under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”).<sup>1</sup>

**DIP Agent and DIP Lenders:** Meserole, LLC (“**Meserole**”, the “**DIP Agent**” and the “**Pre-Petition Lender**”) and Meserole, LLC and the other lenders from time to time party hereto (collectively, the “**DIP Lenders**”).

**Commitment/Availability:** The DIP Lenders will make loans to the Borrower under a senior secured, priming debtor-in-possession term credit facility (the “**DIP Facility**”) in an aggregate amount not to exceed [\$2,500,000].<sup>2</sup> Upon the entry by the United States Bankruptcy Court having jurisdiction over the Debtors’ chapter 11 cases (the “**Court**”) of the Interim DIP Order (as defined below), the Borrower shall be permitted to borrow an amount not to exceed [\$1,450,000] (“**Interim Advance**”) in the aggregate. Upon the entry by the Court of the Final DIP Order (as defined below), the Borrower may draw on the full amount of [\$2,500,000], inclusive of the Interim Advance, subject to the terms and conditions set forth in this DIP Term Sheet, the DIP Facility agreement, if any, and the Final DIP Order. The Debtors will seek authority to refinance through the Interim Advance a portion of their pre-petition obligations to the Pre-Petition Lender in an amount not to

<sup>1</sup> In the event any other affiliates of the Debtors shall commence chapter 11 cases or an order for relief is entered against any such affiliate, such additional debtor shall be deemed a Borrower and one the Debtors hereunder without further order of the Court.

<sup>2</sup> Each DIP Lender’s commitment with respect to the Interim Advance and total DIP Facility is as set forth on Exhibit A attached hereto and incorporated herein, which may be amended from time to time by adding or deleting DIP Lenders, without adjusting the total commitment under the DIP Facility and without further order of the Court.

exceed \$450,000 for emergency advances that the Pre-Petition Lender advanced from on or about June 20, 2013 through July 9, 2013 on an interim bridge basis in contemplation of the commencement of these Cases in order that the Cases could be commenced under more orderly circumstances and in contemplation of and reliance on the Debtors' request for such authority, and but for such emergent circumstances such advances would have been made under the DIP Facility. In the event the partial refinancing is not approved under the Interim Order, then the Interim Advance amount will be [\$1,000,000] and the total DIP Facility under the Final DIP Order will be [\$2,000,000.]

**Use of Proceeds:**

All advances under the DIP Facility shall be used in accordance with the budget approved by the DIP Agent and DIP Lenders attached to the Interim Order (the "**Budget**"), as such Budget thereafter may be modified with the DIP Agent's and DIP Lenders' prior written consent, by the Borrower to (i) fund ongoing working capital requirements during the pendency of the Debtors' chapter 11 bankruptcy cases, including payment of the Borrower's trade payables and employee wages, in each case in accordance with the Budget (and to the extent any such item on the Budget relates to pre-petition obligations, then also in accordance with an of the Court authorizing such disbursement); (ii) pay United States Trustee and professional fees and expenses associated with the chapter 11 bankruptcy cases of the Debtors in accordance with the Budget; (iii) for general corporate purposes in accordance with the Budget; and (iv) to refinance the bridge financing in the amount of \$450,000 made available to the Borrower on or about June 20, 2013 through July 9, 2013, in contemplation of the commencement of the Cases and as part of the Budget. In this regard, DIP Agent will endeavor to assist the Borrower as needed in any discussions with creditors and other parties in interest. Compliance with the Budget will be measured every week, subject to a weekly line item variance not to exceed 10% ("**Variance**").

**Interest:**

Interest on the outstanding balance of the DIP Facility will accrue at the rate of sixteen percent (16%) per annum and will be calculated each month on the basis of actual days elapsed and a 360-day year, and will be payable on the Maturity Date. Interest on the DIP Facility shall increase to

nineteen percent (19%) per annum upon notice of occurrence, and during continuance, of an Event of Default (as defined herein), with the entire amount of such default interest together with all accrued and unpaid interest prior to an Event of Default, payable in cash upon demand.

**Maturity:**

The DIP Facility shall be repayable in full on the date (the “**Maturity Date**”) that is the earliest of (a) ninety (90) days from the Petition Date; (b) the effective date of a plan of reorganization; (c) the consummation of a sale of all or substantially all of the assets of the Debtors under section 363 of the Bankruptcy Code (“**Sale**” or “**Sale Transaction**”); (d) delivery of the Carve-Out Event Notice; (e) the entry of an order by the Court approving an alternative DIP financing; and (f) such later date as the DIP Agent and DIP Lenders in their sole discretion may agree to in writing with the Borrower.

**Use of Cash Collateral:**

The Pre-Petition Lender holds a first priority perfected secured lien on substantially all property of the Borrower (“**Pre-Petition Collateral**”) and consents to the Borrower’s use of the Pre-Petition Collateral including Cash Collateral, in accordance with the Budget and subject to the terms hereof, including but not limited to the granting of the Pre-Petition Lender Adequate Protection (as defined below).

**Adequate Protection:**

As adequate protection for the Pre-Petition Lender’s consent to being primed by the DIP Liens (as defined below) and the Carve-Out Expenses (as defined below) and the potential diminution in value of the Pre-Petition Lender’s interests in the Pre-Petition Collateral and the imposition of the automatic stay, the Borrower shall take all actions necessary for the Pre-Petition Lender to be granted adequate protection (collectively, the “**Pre-Petition Lender Adequate Protection**”) pursuant to Sections 361, 363, and 364 of the Bankruptcy Code, in the form of: (i) valid, binding, enforceable and perfected replacement liens upon and security interests in all property of the Debtors’ estates to the extent of any diminution in value of the Pre-Petition Lender’s interests in the Pre-Petition Collateral (the “**Pre-Petition Lender Replacement Lien**”), provided, however, that the Pre-Petition Lender Replacement Lien shall not extend to any causes of action, or proceeds thereof, that may be commenced pursuant to Chapter 5 of the Bankruptcy Code, except (y) any such claim against or recovery from the

Pre-Petition Lender, DIP Agent or DIP Lenders, and (z) any such claim against and recovery from the judgment creditor/garnishor that received approximately \$35,000 of Borrower's property subject to the Pre-Petition Lender's prior lien, which replacement liens shall be subordinate only to the DIP Lien, Pre-Petition Lien and the Carve-Out Expenses; (ii) payment by the Debtors through Interim Advances of the reasonable costs and fees, including without limitation reasonable attorneys' fees, incurred by the Pre-Petition Lender in its capacity as prepetition lender to the Borrower, such payment to be made from advances under the DIP Facility following delivery of monthly invoices to the Debtors but without necessity of receiving a draw request from the Debtors; and (iii) an allowed super-priority administrative claim pursuant to Bankruptcy Code section 503(b)(1), 507(a)(2) and 507(b) to the extent of the diminution in value of the Pre-Petition Collateral that shall be payable from and have recourse to, in addition to the property of the Debtors that is made subject to security interests and liens in favor of the DIP Agent for the benefit of the DIP Agent and DIP Lenders, any unencumbered prepetition and postpetition property of the Debtors (the "**Adequate Protection Administrative Claim**"); (iv) reporting provided to the DIP Agent; (v) upon an Event of Default, similar rights and remedies as granted to the DIP Agent hereunder and in the Interim Order and Final Order; and (vi) such other forms of adequate protection as set forth in the Interim DIP Order and Final DIP Order.

**Conditions Precedent:**

Availability of the DIP Facility shall be subject to the following conditions precedent, all of which shall be for the benefit of the DIP Agent and must be satisfied on occasion of each drawdown under the DIP Facility, unless waived in writing in advance by the DIP Agent and DIP Lenders in their respective discretion:

**A. Interim Advances**

1. The Court shall have issued an interim order, in form and substance acceptable to the DIP Agent and DIP Lenders and their respective counsel on or before July 12, 2013, in relation to the Debtors (the "**Interim DIP Order**"), which order, inter alia, shall approve the DIP Facility on an interim basis, including, without limitation, the grant of a first priority, perfected priming lien upon all assets and the

proceeds thereof of the Debtors, owned on or after the Petition Date and the proceeds thereof, to secure the obligations of the Borrower under the DIP Facility in accordance with the terms hereof (the “**DIP Collateral**”), effective immediately upon the entry of the Interim DIP Order, without the need for any further action on the part of the DIP Agent, DIP Lenders, the Borrower or any other person (including, without limitation, the execution or delivery of any further documents or agreements or the recording, filing, indexing, entering or registering of any financing statements or other similar instruments or documents); provided, however, DIP Agent shall have entered into an acceptable account control agreement with the depository bank holding Borrower’s DIP accounts.

2. The Borrower shall have permitted access to the DIP Agent and DIP Lenders and their financial advisor, if any, to their books and records and knowledgeable employees, agents and representatives.
3. The Interim DIP Order shall be in full force and effect and shall not have been reversed, stayed, appealed, modified or amended without the express written consent of DIP Agent and DIP Lenders, and no application or motion shall have been made to the Court for any stay, modification or amendment of the Interim DIP Order and no stay, appeal or leave to appeal with respect to same shall be pending.
4. No event has occurred and is continuing to occur that constitutes an Event of Default or would constitute an Event of Default, but for the requirement that notice be given or time to elapse or both.
5. DIP Agent and DIP Lenders have approved initial Budget.
6. The continued retention of ESBA pursuant to the pre-petition engagement agreement with the Debtor as CRO pending court approval of ESBA as CRO.

**B. Additional Advances**

1. The Court shall have entered a final order, in form and substance acceptable to the DIP Agent and DIP

Lenders and their respective counsel on or before August 2, 2013 (the “**Final DIP Order**”), which order, *inter alia*, shall approve the DIP Facility on a final basis, including, without limitation, the grant of a first priority, perfected priming lien upon all DIP Collateral to secure the obligations of the Borrower under the DIP Facility in accordance with the terms hereof, effective immediately upon the granting of the Final DIP Order, without the need for any further action on the part of the DIP Agent or DIP Lenders, the Borrower or any other person (including, without limitation, the execution or delivery of any further documents, agreements or the recording, filing, indexing, entering or registering of any financing statements or other similar instruments or documents).

2. All of the funds available under the Interim DIP Order shall have been borrowed and used in accordance with the terms of the DIP Facility, the Interim DIP Order and the Budget, subject to the Variance.
3. The Final DIP Order shall be in full force and effect and shall not have been reversed, stayed, appealed, modified or amended without the express written consent of DIP Agent and DIP Lenders, and no application or motion shall have been made to the Court for any stay, modification or amendment of the Final DIP Order and no stay, appeal or leave to appeal with respect to same shall be pending.
4. No event has occurred and is continuing to occur that constitutes an Event of Default or would constitute an Event of Default, but for the requirement that notice be given or time to elapse or both.

**Priority and Liens:**

As more fully set forth in the Interim DIP Order and the Final DIP Order, the DIP Obligations (i) pursuant to section 364(c)(1) of the Bankruptcy Code, shall constitute allowed superpriority administrative expense claims (the “**Superpriority Claim**”), (ii) pursuant to section 364(c) and (d) of the Bankruptcy Code, as applicable, shall be secured by a first priority, perfected priming lien on all of the DIP Collateral now owned or hereafter acquired (the “**DIP**



**Lien**”), and (iii) shall be subordinate to the Carve-Out Expenses.

The Pre-Petition Lender Replacement Lien shall be junior only to the Carve-Out Expenses and the DIP Lien. The Pre-Petition Lender Adequate Protection Administrative Claim shall have priority over any and all claims and administrative expenses against the Debtors of the kind specified in Bankruptcy Code sections 503(b) and 507(b), and shall be junior only to the Superpriority Claim and the Carve-Out Expenses.

**Carve-Out Expenses:**

As more fully set forth in the Interim DIP Order and the Final DIP Order, the liens on and security interests in the Pre-Petition Collateral and DIP Collateral and the superiority administrative expense claims shall be subordinate to the “**Carve-Out**” or “**Carve-Out Expenses**”: (a) statutory fees payable to the United States Trustee pursuant to 28 U.S.C. § 1930(a)(6); (b) fees payable to the clerk of the Court or any agent thereof; (c) an amount equal to the lesser of (x) the reasonable and Budgeted professional fees and expenses actually incurred in the Chapter 11 cases by any professionals retained under section 327, 363, or 1103(a) of the Bankruptcy Code (the “**Permitted Professional Fees**”) prior to the occurrence of a Carve-Out Event, whenever allowed by the Court, and (y) \$250,000, for payment of Permitted Professional Fees incurred prior to the occurrence of a Carve-Out Event, to the extent allowed by this Court, of which \$125,000 shall be disbursed directly to Stutman, Treister & Glatt, P.C (“STG”), Borrower’s bankruptcy counsel, as an initial Interim Advance under the Interim DIP Order, to be applied to STG post petition fees and expenses in accordance with applicable rules governing payment of professional fees; and (d) after the occurrence of a Carve-Out Event, an amount equal to the lesser of (x) the Permitted Professional Fees incurred following the occurrence of a Carve-Out Event, whenever allowed by the Court, and (y) \$25,000, for payment of Permitted Professional Fees incurred after the occurrence of a Carve-Out Event, to the extent allowed by this Court. Any payment of Permitted Professional Fees, other than the application of pre-petition retainers held by any such professional, shall reduce the DIP Agent’s and DIP Lenders’ DIP Facility commitment and the Carve-Out Expenses dollar for dollar. Upon the first day on

which the DIP Agent is entitled to exercise remedies under the Interim DIP Order and Final DIP Order (the “**Carve-Out Event**”) and provides written notice thereof to Borrower (the “**Carve-Out Event Notice**”), the right of the Borrower to pay Permitted Professional Fees, other than pursuant to clause (d) above shall terminate. Upon the entry of the Final DIP Order the DIP Agent shall fund a reserve in the amount of the Permitted Professional Fees, which shall satisfy the DIP Agent’s and DIP Lenders’ obligation for Permitted Professional Fees under the Carve Out.

In connection with the Carve-Out Expenses, the DIP Agent’s and DIP Lenders’ funding of the DIP Facility in accordance with this DIP Term Sheet, Budget and the Interim DIP Order, and the Pre-Petition Lender’s consent for Debtors’ use of cash collateral in accordance with the Interim DIP Order and the Budget, the Debtors, for themselves and their estates, waive all rights and claims against the DIP Agent, DIP Lenders, DIP Collateral, Pre-Petition Lender and Pre-Petition Collateral, under Bankruptcy Code sections 506(c), 552(b) and 105 and other applicable laws to charge the DIP Agent, DIP Lenders, Pre-Petition Lender, the DIP Collateral or the Pre-Petition Collateral for any costs or expenses incurred by the Debtors or their estate.

**Expenses:**

The Borrower shall reimburse the DIP Agent and DIP Lenders for the reasonable professional fees and expenses incurred by the DIP Agent and DIP Lenders at the Maturity Date.

**Covenants:**

The Debtors covenant and agree with the DIP Agent and DIP Lenders that, unless the DIP Agent and DIP Lenders otherwise consent in writing in their respective discretion, so long as any amount payable hereunder is outstanding or the DIP Facility shall remain in place, it shall only use the advances made under the DIP Facility for the purposes set out herein and shall not use such funds to commence any action against the DIP Agent or DIP Lenders, or their respective affiliates, owners, directors, members, managers, officers, employees, agents or representatives. As more fully set forth in the Interim DIP Order and the Final DIP Order, the Debtors further covenant and agree that no Obligation under the DIP Facility shall be subject to setoff or recoupment or any such rights under Bankruptcy Code

section 553 or otherwise with respect to any claim any Debtor may have against the DIP Agent or DIP Lenders arising after the Petition Date. Notwithstanding the foregoing, the DIP Agent and DIP Lenders shall be permitted to credit bid the DIP Obligations and the Pre-Petition Lender shall be permitted to credit bid the pre-petition obligations owing by Borrower to the Pre-Petition Lender in connection with the sale of any assets of the Debtors on which it holds a lien.

**Sale of Assets:**

Unless otherwise consented to in writing by the DIP Agent and DIP Lenders, the proceeds from any sale of assets, other than sales in the ordinary course of business, shall be first used to reduce any amount outstanding under the DIP Facility, and any such payments shall reduce the aggregate commitment of the DIP Lenders ratably on a dollar for dollar basis.

**Milestones:**

The Debtors shall take action to conduct a sale of substantially all of their assets as a going concern pursuant to Bankruptcy Code section 363 (the “**Sale Transaction**”) in accordance with the following milestones (the “**Milestones**”):

(i) file with the Bankruptcy Court one or more motions, each in form and substance acceptable to the DIP Agent and DIP Lenders, seeking approval of a Court-approved sale process (the “**Sale Motion**”) and bidding procedures (the “**Bid Procedures Motion**”) within 10 days of the Petition Date. The Pre-Petition Lender, or its designee, may subsequently submit a bid to act as the stalking horse bidder.

(ii) obtaining entry of a Bankruptcy Court order, in form and substance satisfactory to the DIP Agent and DIP Lenders, approving the Bid Procedures Motion (the “**Bid Procedures Order**”) within 21 days of filing of the Sale Motion and Bid Procedures Motion;

(iii) holding an auction for the Sale Transaction (the “**Auction**”) within 45 days following the Petition Date;

(iv) obtaining entry of a Bankruptcy Court order, in form and substance reasonably satisfactory to the winning bidder at the Auction, approving of the asset purchase agreement and sale

of the Assets (pursuant to sections 363(f) and 363(m) of the Bankruptcy Code, free and clear of all liens, claims, interests and encumbrances) and assumption and assignment of designated contracts pursuant to section 365 to the winning bidder at the Auction (the “**Sale Approval Order**”) within 55 days of the Petition Date; and

(v) closing of the Sale Transaction no later than the 60th day following the Petition Date.

**Financial Reporting:**

Unless otherwise consented to by the DIP Agent and DIP Lenders:

1. The Borrower shall provide to the DIP Agent, DIP Lenders, and any official committee appointed in the cases (“**Committee**”) on Wednesday of each week a list of all planned disbursements for the following week.
2. The Borrower shall provide to the DIP Agent, DIP Lenders and Committee no later than 3:00 p.m. on Tuesday of each week (each, a “**Reporting Date**”), (a) an updated Budget, (b) full accounting of all cash receipts and expenditures disbursed during the past week, commencing on the opening of business on the Monday and through the close of business of such past week, (c) a variance report of actual cash receipts and disbursements to the then applicable Budget of cash receipts and disbursements and a description of any line item variance greater than the Variance, (d) an update on the status of the steps taken with respect to the Sale Process, and (e) an estimate of the funding required for the succeeding 2 weeks.

**Events of Default:**

The occurrence of any one or more of the following events (each such event and the expiry of the cure period, if any, provided in connection therewith, being herein referred to as an “**Event of Default**”) shall constitute a default under this Term Sheet:

1. Debtors’ failure to adhere to the Budget, subject to the Variance, by line item in terms of purpose, amount and timing, without DIP Agent’s and DIP Lenders’ prior consent.

2. The failure by the Borrower to perform or comply with any term, condition, covenant or obligation contained in this Term Sheet, the Interim DIP Order or the Final DIP Order, on its part to be performed or complied with where any such failure to perform or comply shall not be remedied within three (3) business days from notice of default.
3. The cessation of the DIP Facility, the Interim DIP Order and the Final DIP Order to be in full force and effect or the DIP Facility being declared by the Court to be null and void or the validity or enforceability the DIP Facility being contested by the Borrower or the Borrower denying in writing that it has any further liability or obligation under the DIP Facility or the DIP Agent ceasing to have the benefit of the DIP Liens granted by the Interim DIP Order or the Final DIP Order.
4. Except as permitted in the Interim DIP Order or the Final DIP Order, the entry of any order of the Court granting a superpriority claim or lien pari passu with or senior to that granted to the DIP Agent and DIP Lenders hereunder.
5. Debs Corporation cancels any material pending order or fails to place new orders substantially consistent with past practices.
6. The entry of an order converting any of the Debtors' chapter 11 case to a case under chapter 7 of the Bankruptcy Code, or any Debtors filing a motion or not opposing a motion seeking such relief, unless consented to by the DIP Agent and DIP Lenders.
7. The entry of an order dismissing any of the Debtors' chapter 11 case, or any Debtors filing a motion or not opposing a motion seeking such relief, unless consented to by the DIP Agent and DIP Lenders.
8. The entry of any order in the Debtors' chapter 11 cases or any successor cases, which order constitutes the stay, modification, appeal or reversal of the Interim DIP Order or the Final DIP Order, as applicable, or which otherwise affects the

effectiveness of the Interim DIP Order or the Final DIP Order, as applicable, without the consent of the DIP Agent and DIP Lenders.

9. The entry of an order in the Debtors' chapter 11 cases granting relief from the automatic stay so as to allow a third party or third parties to proceed against any material property, including the DIP Collateral or to commence or continue any prepetition litigation against the Borrower.
10. Any judgment or order as to postpetition liability or debt for the payment of money in excess of \$10,000 shall be rendered against the Debtors, and the enforcement thereof against DIP Collateral shall not have been stayed.
11. Any non-monetary judgment or order with respect to a postpetition event shall be rendered against the Debtors which does or would reasonably be expected to (i) cause a material adverse change in the financial condition, business, prospects, operations or assets of the Debtors following the entry of the Interim DIP Order or Final DIP Order or (ii) have a material adverse effect on the rights and remedies of the DIP Agent under the DIP Facility, and there shall be a period of fourteen (14) days during which a stay of enforcement of such judgment or order, by reason of pending appeal or otherwise, shall not be in effect.
12. The failure to achieve any of the Milestones as set forth herein, unless otherwise waived by the DIP Agent in writing in its sole discretion.

**Governing Law:**

California

EXHIBIT A

	<b>Interim Advance Commitment</b>	<b>Total DIP Facility Commitment</b>
Meserole, LLC	100%	100%
	%	%
	%	%